

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROSEMERE NEIGHBORHOOD
ASSOCIATION, et al.

Plaintiffs,

v.

CLARK COUNTY et al.,

Defendants.

CASE NO. C11-5213 RBL

ORDER GRANTING MOTION TO
LIFT STAY

[Dkt. #56]

THIS MATTER is before the Court on Plaintiffs’ (together “Rosemere”) Motion to Lift Stay for Ruling on Partial Summary Judgment [Dkt. #56]. This Court imposed the stay in late 2011 [Dkt. #36], pending the outcome of state court appeals of proceedings before the Pollution Control Hearings Board. Those proceedings have ended, with the exception of the County’s pending petition for review at the Washington Supreme Court. The Court of Appeals affirmed the PCHB’s decision in Rosemere’s favor.

The case involves Clark County’s municipal storm sewer system, and the Department of Ecology’s 2007 Phase I Stormwater General Permit for that system. Ecology subsequently issued Clark County a Notice of Violation, alleging that the flow control policy was inadequate. In 2010, Clark County and Ecology entered into an Agreed Order. Rosemere successfully

1 challenged that Agreed Order before the PCHB, claiming (among other things) that it was not
2 compliant with the Clean Water Act. The PCHB's determination that the Agreed Order violated
3 the Phase I permit and the Clean Water Act was affirmed by the Court of Appeals.

4 While those proceedings were pending, Rosemere brought this federal case. It seeks to
5 enforce the Phase I permit, and penalties. This Court stayed the proceedings pending the
6 resolution of the state court action.

7 Rosemere now asks the Court to lift the stay, arguing that the issues that the Supreme
8 Court might review do not affect its claims or the County's defenses in this case. It argues that
9 the PCHB's invalidation of the Agreed Order will not be overturned even if the Supreme Court
10 accepts review.

11 The County opposes the Motion, arguing that it would be premature to do so while the
12 state Court proceeding continues. It asks the Court to continue to abstain from hearing this case
13 under the *Colorado River* doctrine. See *Colorado River Water Conservation Dist. v. United*
14 *States*, 424 U.S. 800, 817 (1976); see also *Moses H. Cone Memorial Hosp. v. Mercury Constr.*
15 *Corp.*, 460 U.S. 1, 19 (1983).

16 Under *Colorado River*, considerations of "wise judicial administration, giving regard to
17 conservation of judicial resources and comprehensive disposition of litigation" may justify the
18 imposition of a stay. 424 U.S. at 817. "Exact parallelism" is not required; "it is enough if the
19 two proceedings are 'substantially similar.'" *Holder v. Holder*, 305 F.3d 854, 867 (9th Cir. 2002)
20 (quoting *Nakash*, 882 F.2d at 1416).

21 Following *Colorado River* and *Moses Cone*, the Court considers the following factors to
22 determine if a stay is appropriate: (1) whether either court has assumed jurisdiction over a *res*;
23 (2) the relative convenience of the forums; (3) the desirability of avoiding piecemeal litigation;
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1 (4) the order in which the forums obtained jurisdiction; (5) whether state or federal law controls;
2 and (6) whether the state proceeding is adequate to protect the parties' rights. *See Nakash*, 882
3 F.2d at 1415 (citing *Colorado River*, 424 U.S. at 818 and *Moses Cone*, 460 U.S. at 25-26).

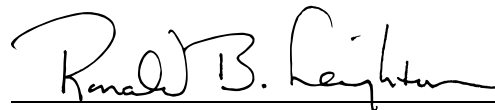
4 The County argues that factor Nos. 3 and 4 still support the stay, and ask the Court to
5 avoid piecemeal litigation by continuing the stay.

6 The issues in these cases were never overlapping; they were simply similar. That
7 similarity has been greatly diminished in the aftermath of the Court of Appeals' decision, and the
8 limitation of the issues the County seeks to litigate further in state court.

9 Rosemere's Motion to Lift the Stay [Dkt. #56] is GRANTED, and the stay is LIFTED.
10 Plaintiffs' Motion for Partial Summary Judgment [Dkt. #16] is RE-NOTED for March 22, 2013.

11 IT IS SO ORDERED.

12 DATED this 21st day of February, 2013

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15 Ronald B. Leighton
16 United States District Judge
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