

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL and THE MILL BAY MEMBERS ASSOCIATION,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, et al;
BUREAU OF INDIAN AFFAIRS;
ALLOTTEES OF MA-8, et al,

Defendants.

No. CV-09-00018-JLQ

ORDER RE: PENDING MOTIONS
AND DIRECTING FILING OF
REPORTS

BEFORE THE COURT is Wapato Heritage, LLC’s Motion for Order Setting Briefing Schedule (ECF No. 343). The Motion requests an Order from this court for briefing schedules for the “Marcellay Defendants” in regard to the other pending dispositive motions. The “Marcellay Defendants” are some of the individual landowners and are now represented by counsel. *See* (ECF No. 341); (ECF No. 342). Subsequent to the Motion, the Marcellay Defendants filed a Motion for Joinder (ECF No. 344) joining the Federal Defendants’ Motion for Summary Judgment re Ejectment (ECF No. 231). The Motion for Briefing Schedule is Denied with leave to renew by reference upon further Order of the court.

Currently pending in this case are the matters of whether MA-8 is trust land or land held in fee by MA-8 property owners. A determination of whether the United States and the Bureau of Indian Affairs (BIA) is or is not the trustee of the MA-8 land is one of the critical decisions that must be made in the determination of the Motion for Summary Judgment filed by the United States and the BIA for ejectment of the Plaintiffs from the Mill Bay portion of MA-8 (ECF No. 231). This determination is

1 also a central issue to Plaintiffs' contention that the United States, its agencies, and the
2 MA-8 property owners should be estopped from seeking ejectment of the Plaintiffs by
3 reason of, *inter alia*, promissory estoppel arising from the Plaintiffs payment of
4 monies and fees for its occupancy of the Mill Bay property, both in its inception and
5 through the settlement in 2004 of a Chelan County Superior Court action involving
6 the Mill Bay property.

7 This court, having continually expressed its concerns over the lack of
8 independent representation of the MA-8 landowners, and the potential conflicts
9 between the position of the United States and the Indian landowners, directed the BIA
10 to consider the provision of independent counsel for the un-represented MA-8
11 landowners. As stated in this court's Memorandum and Order Re: Appointment of
12 Counsel (ECF No. 329) dated July 31, 2014 (filed August 1, 2014) at 30, the
13 landowner ". . . Defendants have the right to be represented by private counsel
14 independent of any actual or potential conflict of interest." The BIA was further
15 ordered to "file all BIA responses and decisions rendered in regard to requests for
16 independent counsel made by any Defendant in the instant case." (ECF No. 329 at
17 32).

18 The BIA has not complied with that direction. The BIA filed declarations from
19 counsel (ECF No. 339) and the BIA Director (ECF No. 340), but never filed any
20 agency responses and decisions concerning requests for independent counsel as
21 specified in the Order. Two attorneys have now appeared on behalf of the "Marcellay
22 Defendants," (ECF No. 341 and ECF No. 342), but no other attorney appearances
23 have been entered on behalf of the many remaining landowners who are still
24 unrepresented. Due to the noncompliance, the court has no basis to evaluate whether
25 all individual landowners who requested representation have received independent
26 counsel. This is highly concerning to the court. In order for the views of all parties to
27 be properly represented and presented, the parties must satisfy the court's concerns

1 before any Order on dispositive matters can be considered or issued.

2 **IT IS HEREBY ORDERED:**

- 3 1. The Motion (ECF No. 343) is **DENIED WITH LEAVE TO RENEW.**
- 4 2. On or before **April 1, 2016**, the United States Defendants (United States
5 Interior Department and the United States Bureau of Indian Affairs) shall
6 file a schedule with the court setting forth:
- 7 a. The name and current address of all landowners of MA-8;
- 8 b. The proportionate interest of each landowner in MA-8;
- 9 c. The name and address of any attorney who has notified the United
10 States of an appearance for any individual landowner;
- 11 d. The name and address of any individual landowner who has
12 requested the United States, or an agency thereof, to appoint
13 independent counsel to represent that landowner in this matter;
- 14 e. The specific content of the response of the United States or its
15 agency(s) to a request for representation including the name, if
16 any, and address of any attorney appointed by or provided by the
17 United States to represent a landowner.
- 18 3. On or before **April 1, 2016**, the United States Defendants shall also file a
19 schedule setting forth the following:
- 20 a. The name and address of the parties to the sale of any landowner's
21 interest in MA-8 since the inception of this action on January 21,
22 2009, including the name and address of each party thereto;
- 23 b. The specifics of the sale of such property interest including
24 whether the sale was approved by the United States or its agent;
- 25 c. The United States shall file a copy of all documents in its
26 possession applying to any such sale;
- 27 d. Whether the seller of any interest in MA-8 requested the
28 appointment of independent counsel in connection with the sale.
4. On or before **April 1, 2016**, any party hereto that paid or received any
monetary consideration in connection with the settlement in 2004 of the
Chelan County Superior Court action involving MA-8 shall set forth the
following which may be by reference to any documents or pleadings on

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

file herein:

- a. A copy of the final settlement documents;
 - b. The name of the payor, payee, and date of all monies paid or received from or in connection with the settlement of the Chelan County Superior Court action.
5. Upon the resolution of the court's concern over the lack of independent representation of the MA-8 landowners the court intends to require the filing of status reports and schedule dispositive and/or trial dates for the claims which survive the pending dispositive motions.

IT IS SO ORDERED. The Clerk is hereby directed to enter this Order and furnish copies to counsel.

Dated this 23rd day of February, 2016.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE