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6  
7 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON  
8

9 PAUL GRONDAL, a Washington  
resident; and THE MILL BAY  
10 MEMBERS ASSOCIATION, INC., a  
Washington Non-Profit Corporation,

11 Plaintiffs,

12 vs.

13 UNITED STATES OF AMERICA;  
14 US DEPARTMENT OF INTERIOR;  
15 BUREAU OF INDIAN AFFAIRS,  
16 WAPATO HERITAGE, LLC,  
17 CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION,  
18 FRANCIS ABRAHAM,  
CATHERINE GARRISON, et al.,  
allotees of Moses Allotment 8,

19 Defendants, Cross-,  
20 Counter-claimants.

No. 09-CV-00018-RMP

UNITED STATES' RESPONSE  
TO JOINT MOTION TO EXTEND  
DEADLINE RE: ECF NO. 419

21  
22 Despite the Court writing just last week that “the Court will become an  
23 instrument of injustice if it delays a resolution of this matter any longer,” WHL and  
24 Mill Bay *again* ask the Court to do just that. ECF No. 1 at p. 9. The United States  
25 shares the Court’s concern that the use of delay has been a means to achieve an  
26 ends rather than resolve the pending ejectment motion. This is particularly true in  
27 light of WHL and Mill Bay’s requested *30-day* extension that would be more likely  
28 to push the Court’s ruling on the pending motion into a time when approximately

1 150-170 RV park members could be at the RV park rather than just the handful  
2 that remain there year round. *See* ECF 418.<sup>1</sup> The property, like much of Lake  
3 Chelan, is sparsely populated in the winter and heavily populated in the summer.  
4 Accordingly, pushing the decision of the pending ejectment motion into the  
5 summer when more RVs are at the park is more likely to deprive the rightful  
6 owners of the property from yet another summer of its beneficial use, or create  
7 unnecessary conflict.

8         Notwithstanding any claimed inefficiencies due to the Governor’s stay at  
9 home order, WHL’s and Mill Bay’s law firms have quickly mobilized to file an  
10 impressive and coordinated set of documents asking for more time. WHL and Mill  
11 Bay are represented by at least eight attorneys all seeking the same objective with  
12 respect to the pending ejectment motion. Just one of these capable attorneys is  
13 more than sufficient to review a *single* motion, on a *single* claim (ejectment),  
14 raising a *single* defense (equitable estoppel) in order to provide a *permissive* (non-  
15 mandatory) supplemental brief supporting their combined position *if* they identify  
16 “any new, relevant precedent or facts *that were not previously briefed.*” ECF No.  
17 411 at p. 10 (emphasis added).

18         Moreover, if there had been any change in facts or law favorable to WHL  
19 and Mill Bay’s position within the last eight years, the United States respectfully  
20 submits WHL and Mill Bay would have brought it to the Court’s attention  
21 immediately regardless of any briefing schedule. Indeed, on June 27, 2018, when  
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25 <sup>1</sup> Mr. Smith appears to confuse the United States’ position in his declaration. The  
26 United States is not claiming that Mill Bay has begun moving RVs to the park in  
27 response to the Court’s order. It has no knowledge of that one way or the other.  
28 The United States is simply claiming, consistent with Mr. Smith’s declaration, that  
the property is heavily occupied in the summer whereas now it is typically not.

1 the court ask for any additional evidence and for the parties to identify any specific  
2 disputed facts, neither Mill Bill nor WHL specifically identified any disputed facts.  
3 *See* ECF No. 411 at p. 2.

4 The United States also remains concerned about WHL’s representations to  
5 the Court that it allegedly had “additional material” to submit during the November  
6 1, 2019 status conference which, to date, has not been provided to the Court or the  
7 United States. Additionally, the present motion indicates WHL and Mill Bay are  
8 planning to “request oral argument” or move for “clarification” of the Court’s  
9 recent order. ECF no. 413 at p. 9. Both of these circumstances indicate that WHL  
10 and Mill Bay are not diligently seeking of a just, speedy, and economical  
11 resolution which would otherwise weigh in favor of granting a *short* continuance.

12 Where delay is the injustice in this case, the United States respectfully  
13 submits that “good cause” for a *yet another* extension has not been shown here.  
14 Attorneys and law firms are uniquely positioned for remote work particularly here  
15 where the disposition of the pending motion for ejectment turns on a *legal* issue, in  
16 short: can Mill Bay change its position (after an adverse ruling)<sup>2</sup> regarding the trust  
17 status of MA-8 to try to evoke the defense of equitable estoppel? It cannot, and  
18 there is no amount of time or research that can yield a case supporting such an  
19 illogical approach to equitable estoppel here;<sup>3</sup> or more importantly, against the  
20 United States at all when it acts in its trust capacity. Accordingly, continued delay  
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23 <sup>2</sup> The same position it maintained years of prior litigation in state, federal, and  
24 administrative courts.

25 <sup>3</sup> *Major premise:* Estoppel protects parties in litigation from the unfair  
26 consequences of their opponents’ changes in position.

27 *Minor premise:* Mill Bay changed its position.

28 *Flawed conclusion:* Therefore, Mill Bay’s opponents are estopped.

1 only creates continued prejudice, and thus – *under the unique history and*  
2 *circumstances of this case* – the United States does not believe good cause exists  
3 and cannot support yet another delay which may push a decision on the pending  
4 ejection motion out into the summer.

5  
6 DATED this 3<sup>rd</sup> day of April.

7  
8 William D. Hyslop  
9 United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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and hereby certify that I *will* mail by United States Postal Service the document to the following non-CM/ECF participants *at the earliest opportunity*:

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