

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 06, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, a Washington
resident,

Plaintiff,

v.

MILL BAY MEMBERS
ASSOCIATION, INC., a Washington
non-profit corporation; UNITED
STATES OF AMERICA; UNITED
STATES DEPARTMENT OF
INTERIOR; BUREAU OF INDIAN
AFFAIRS; FRANCIS ABRAHAM;
CATHERINE GARRISON;
MAUREEN MARCELLAY, MIKE
PALMER, also known as Michael H.
Palmer; JAMES ABRAHAM;
NAOMI DICK; ANNIE WAPATO;
ENID MARCHAND; GARY REYES;
PAULWAPATO, JR.; LYNN
BENSON; DARLENE HYLAND;
RANDY MARCELLAY; FRANCIS
REYES; LYDIA W. ARMEECHER;
MARY JO GARRISON; MARLENE
MARCELLAY; LUCINA O'DELL;
MOSE SAM; SHERMAN T.
WAPATO; SANDRA COVINGTON;
GABRIEL MARCELLAY; LINDA
MILLS; LINDA SAINT; JEFF M.

NO: 2:09-CV-18-RMP

ORDER RESOLVING MOTION FOR
EXTENSION OF SUPPLEMENTAL
BRIEFING DEADLINE AND
MOTION TO CLARIFY

1 CONDON; DENA JACKSON; MIKE
2 MARCELLAY; VIVIAN PIERRE;
3 SONIA VANWOERKON; WAPATO
4 HERITAGE, LLC; LEONARD
5 WAPATO, JR.; DERRICK D.
6 ZUNIE, II; DEBORAH L.
7 BACKWELL; JUDY ZUNIE;
8 JAQUELINE WHITE PLUME;
9 DENISE N. ZUNIE;
10 CONFEDERATED TRIBES
11 COLVILLE RESERVATION; and
12 ALLOTTEES OF MA-8, also known
13 as Moses Allotment 8,
14 Defendants.

15 BEFORE THE COURT are Plaintiffs’ and Cross-Claimant Wapato Heritage’s
16 Joint Motion to Extend Deadline, ECF No. 413, and Plaintiffs’ Motion to Clarify,
17 ECF No. 422. The Court has considered the briefing on these motions, the record,
18 and is fully informed.

19 In October of 2019, this case was transferred to this Court. In November, of
20 2019, this Court held a telephonic status conference to become familiar with the
21 parties and the case. During that conference, the Court set a briefing schedule in
order to resolve the pending, threshold issue of legal representation for the
individual allottee Defendants in this matter. *See* ECF No. 389. The Court also
stated that fresh briefing on the issue of the land’s trust status would be helpful, but
it did not set a briefing schedule on that issue at that time. In an order
memorializing the hearing, the Court ordered, “After the Court resolves the issue

1 of legal representation of the parties, the Court will set a briefing schedule for the
2 issue of whether the property at issue is trust land.” *Id.* at 3.

3 In its resolution of the legal representation issue, the Court had an
4 opportunity to thoroughly review the extensive record in this case and found that
5 the arguments about MA-8’s trust status already had been briefed. *See, e.g.*, ECF
6 Nos. 275, 279, 281, 293, 295, 304, 306, 312, and 314 (all discussing trust status of
7 MA-8); *see also* ECF No. 329 (prior Order laying out the complex history of the
8 MA-8 allotments’ status, but making no official findings as to the status of the
9 land). For instance, the issue was argued, appropriately, in the briefing related to
10 the pending Motion for Summary Judgment re Ejectment, which the Court now
11 must decide. *See* ECF Nos. 275, 295, and 306.

12 However, the Court acknowledged that the briefing related to the pending
13 Motion for Summary Judgment re Ejectment, which includes briefing on the trust
14 land issue, is dated. In its Order at ECF No. 411, the Court noted that new facts
15 and law may have developed since that previous round of briefing occurred. Thus,
16 the Court found it appropriate to allow supplemental briefing, in which the parties
17 may apprise the Court of relevant facts and case law that have developed since the
18 Motion for Summary Judgment re Ejectment was briefed. ECF No. 411. This
19 inherently includes new facts and law related to the trust status of MA-8. The
20 Court ordered that any supplemental briefing be submitted by April 9, 2020. *Id.*

1 Plaintiffs and Cross-Claimant Wapato Heritage have asked for a thirty-day
2 extension to submit their supplemental briefing. ECF No. 813. They ask for this
3 extension, in part, due to the recent COVID-19 outbreak. *Id.* Additionally,
4 Plaintiffs and Wapato Heritage request an extension so that counsel who are new to
5 the case may “get[] up to speed.” *Id.* at 8. The Court appreciates that the COVID-
6 19 emergency and the Governor’s “Stay Home, Stay Healthy” Order have made
7 legal work less efficient, warranting some additional time to complete the
8 supplemental briefing. However, the Court finds that an eight-day extension is
9 sufficient, rather than a thirty-day extension.

10 Plaintiffs also have filed a Motion to Clarify. ECF No. 422. They argue that
11 the Court’s recent Order at ECF No. 411, directing the parties to file supplemental
12 briefing, is inconsistent with the statements made by the Court at the status
13 conference last November, in which the Court noted that it would set a briefing
14 schedule for the trust land issue.

15 When the Court resolved the issue related to the legal representation of the
16 individual allottee Defendants, it became apparent that the arguments regarding
17 MA-8’s trust status already had been briefed. Notably, the parties argued the trust
18 land issue in their briefs on the pending Motion for Summary Judgment re
19 Ejectment, which the Court now has had an opportunity to read. *See* ECF Nos.
20 275, 295, and 306. In their prior briefing, Plaintiffs challenge the trust status of
21 MA-8 in response to the Motion for Summary Judgment re Ejectment. Because

1 the arguments about MA-8's trust status have been briefed in the specific context
2 of the pending motion, only supplemental briefing of any recent relevant legal or
3 factual developments is needed.

4 Accordingly, **IT IS HEREBY ORDERED:**

5 1. Plaintiffs' and Cross-Claimant's Motion to Extend Deadlines, **ECF No.**
6 **413**, is **GRANTED IN PART**, for good cause shown. The parties shall
7 submit any supplemental briefing of any recent relevant legal or factual
8 developments, consistent with this Order and the Order at ECF No. 411,
9 no later than **April 17, 2020**.

10 2. Plaintiffs' Motion to Clarify, **ECF No. 422**, is **DENIED**.

11 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
12 Order and provide copies to counsel.

13 **DATED** April 6, 2020.

14
15 *s/ Rosanna Malouf Peterson*
16 ROSANNA MALOUF PETERSON
17 United States District Judge
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