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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, et al, Plaintiffs, vs. UNITED STATES OF AMERICA, et al; Defendants.	NO. 09-CV-00018-RMP PLAINTIFFS' SUPPLEMENTAL BRIEF IN OPPOSITION TO FEDERAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT RE EJECTMENT (ECF No. 231)

I. INTRODUCTION

The United States either has the authority to act on behalf of the Allottees[1] without their express notice and consent, or it does not. *But the U.S. cannot have it both ways.*

The U.S. claims it *could not* and *did not* act on behalf of the Allottees when (in its capacity as agent of the Allottees) it modified the Master Lease and approved the Lease term extension through 2034 (SUF[2] at ¶¶ 74-75, 79-82, 88-89), when it authorized the sale of Campground Memberships through 2034 and consented to advertisement of those membership terms as lasting through 2034 (*id.* at ¶¶ 81-87), when it notified the State of Washington in writing that the Lease would not expire until 2034 (*id.* at ¶ 90), when it participated in providing notice to the Allottees owning a majority interest in MA-8 of the 2034 expiration date (*id.* at ¶¶ 91-92), when it attended the 2004 mediation (*id.* at ¶¶ 114-115), and when it received notice of and did not object to the 2004 Settlement Agreement providing for Plaintiffs to pay the Allottees annual rental payments through 2034 in consideration of the right to use and occupy MA-8 through 2034 (*id.* at ¶¶ 117-120)—*all*

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[1] As used herein, "Allottees" refers to the 35 Defendant individuals who are beneficial owners of an undivided interest in MA-8, named in the Complaint.

[2] As used herein, "SUF" refers to the Amended and Restated Statement of Undisputed Facts jointly filed herewith by Plaintiffs and Wapato Heritage.

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because it apparently claims the Allottees did not expressly approve the U.S. to so act (apparently due to alleged lack of notice).

And yet now, in stark contrast to its prior position, the U.S. claims it may eject the Plaintiffs from the property *without* majority approval of the Allottees to do so. Deepening the conflict of interest and lack of standing issues, the U.S. also seeks to adjudicate the trust status of the land without an express directive from a majority of the Allottees that the U.S.' preferred finding that MA-8 is held in trust is in the Allottees' interest.

So, Plaintiffs ask: Which way is it? Does the U.S. need the Allottees' consent to act, or not? Nevertheless, *in either case*, the U.S. is estopped to deny Plaintiffs' use and occupation of the MA-8 property through 2034. ***Either:*** (1) the U.S. can act unilaterally—*as it did*, and in which case its acts are binding (or they were such that it is now estopped to deny Plaintiffs' right to occupy and use MA-8 through 2034); ***or*** (2) the U.S. may only act with notice to and consent of the majority of the Allottees[3]—*which it lacks*, meaning the U.S. lacks both standing and Allottee-support to eject the Plaintiffs. In either case, summary judgment on Federal Defendants' ejectment claim must be denied.

[3] And if so, then it begs the question *why* the U.S. engaged in the above-described acts if it lacked authority to do so, and this may be suggestive of affirmative misconduct on the part of the U.S. that would justify application of Plaintiffs' estoppel defense here.

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II. STATEMENT OF RELEVANT FACTS AND PROCEDURAL POSTURE

Plaintiffs refer this Court to the SUF, filed herewith, as well as the underlying record.

Plaintiffs recognize this Court inherited this case with a more than eleven year history following Judge Quackenbush's recusal in September 2019, and the case is now rocketing forward at light speed. This may be why statements in the March 26, 2020 Order Regarding Representation (ECF 411) do not align with prior orders of Judge Quackenbush, Judge Whaley, and the Ninth Circuit. Specifically, according to the March 26 Order, "[T]he Ninth Circuit held that the Mill Bay Members' lease had expired[.][4]" *Id.* at 3 (footnote in original); *see also id.* at 3, line 7-8 ("[T]hey claim that the Government has no authority to eject the Mill Bay Members, even though their lease expired"); *id.* at 9, lines 17-18 ("Plaintiffs have occupied MA-8 with an expired lease for over ten years while this litigation has been pending.").

But Judge Quackenbush unequivocally held that Plaintiffs had no lease; rather, they have a *license*. ECF 144 at 29-30, 35-36; *see also* SUF at ¶ 78. He held Plaintiffs' interest in the land is a right "to use the premises, not a right to possession." ECF 144 at 29; *see generally* ECF 329 (repeatedly characterizing Plaintiffs' interest in MA-8 as a right to "occupy" and "use"). Plaintiffs add to this that the license is irrevocable (ECF 295 at 19-22), in part because Plaintiff "licensee[s], acting on the faith of the license, [have] incurred

[4] *Wapato Heritage, LLC v. United States*, 637 F.3d 1033, 1040 (9th Cir. 2011).

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expenses and made improvements." ECF 295 at 20. This irrevocable license may be more accurately described as an easement—"a right to enter and use property for some specified purpose," and which can arise by estoppel under Washington law. *Id.* at 23-24.

Similarly, this Court's March 26 Order states the Ninth Circuit held the Plaintiffs' lease had *expired*. ECF 411 at 3, 9. But Judge Quackenbush interpreted Judge Whaley's decision (later affirmed by the Ninth Circuit) quite differently:

> There are **three narrow issues** pertaining to the Master Lease which were fully litigated before Judge Whaley. Issue preclusion bars relitigation of these findings here:
>
> 1) The BIA is not a party to the Master Lease;
> 2) Evans and Wapato Heritage (the lessees to the Master Lease) did not actually or substantially comply with the notice requirements of the renewal provisions of the Master Lease; and
> 3) The BIA had no authority to unilaterally modify the terms of the Master Lease or ratify any deficiency in compliance with the terms of the lease.
>
> See EDWA Cause No. 08-CV-177, *Ct Rec. 30*.
>
> . . . **The court rejects the Federal Defendants' attempt to more broadly characterize Judge Whaley's ruling as precluding Plaintiffs from making <u>any</u> argument regarding the term of the Master Lease in this lawsuit.** The Federal Defendants assert that any argument as to whether the Master Lease was or should be extended to 2034 should be dismissed on the grounds of issue and claim preclusion because of Judge Whaley's decision in the *Wapato Heritage* case. However, estoppel applies only to preclude relitigation of issues actually decided in the proceeding. **Judge Whaley's decision did not declare the expiration date of the Master Lease and more relevantly, did not address Plaintiffs[']** rights to occupy MA-8. Notably, the landowners, the Master Lease lessors, were not even named parties to that lawsuit. **Rather, upon Wapato Heritage's own submission of the issue to the court, Judge Whaley only ruled that Evans had not actually or substantially complied with the notice requirement of the renewal provision. Judge Whaley's**

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> **decision forecloses re-litigation only of the three precise issues addressed by the ruling and identified above.**

ECF 144 at 21-23 (bold emphasis added; underlined emphasis original); *see also* ECF 227 at 3 ("It has been . . . affirmed by the Ninth Circuit Court of Appeals, that the option to renew was not extended by reason of the failure of the Lessee to give proper notice to the landowners."); ECF 329 at 20 ("In 2011, the Ninth Circuit affirmed Judge Robert H. Whaley's decision and held the option to renew the Master Lease was not effectively exercised . . . .").

Thus, far from having "occupied MA-8 with an expired lease for over ten years while this litigation has been pending" (ECF 411 at 9), Plaintiffs have instead occupied and used MA-8 with a valid license, and the question is whether that license (established under Washington State law, Judge Bridges' ruling, and the actions of the Allottees and the U.S. in subjecting MA-8 to the protections of the Camping Resorts Act) may be revoked by the U.S., in the absence of majority approval of the Allottees, prior to February 2, 2034. It is from this standpoint that Plaintiffs submit this Brief.

III. ARGUMENT

A. The U.S. has a Conflict of Interest in Seeking to Eject Plaintiffs from MA-8.

The U.S.' role in these proceedings is to act as trustee for the Indian landowners, acting in their best interests. But the U.S. did not poll the Allottees on whether they believe classifying MA-8 as trust property is in their best interest. While Landowners owning a

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20.7% interest in the portion of MA-8 alleged to be held in trust have so indicated, no one else has. ECF 311, 314, 318-320, 322-324; *see also* Declaration of S. Harmeling in Support of Supplemental Brief ("Harmeling Dec.") at ¶5. The U.S. is not acting at the direction of a majority of the Allottees in advancing arguments in favor of the land being classified as held in trust. The U.S. also actively campaigned *against* the Allottees being supplied with independent counsel, a necessary prerequisite for them to fairly evaluate the consequences of a trust classification, over Plaintiffs' and others' objections to the contrary. Nor does the U.S. have an interest in MA-8 being classified as trust property. Rather, only if MA-8 is found to be held in trust does this case even implicate the U.S. For that reason, it is Plaintiffs' position that the U.S. has both a conflict of interest in arguing, and lacks standing to argue, that MA-8 should or should not be classified as trust land. The Court should refuse to consider the U.S.' arguments regarding the trust status of the land.

B. The U.S. Lacks Authority to Eject Plaintiffs.

a. MA-8 Is No Longer Held in Trust by the U.S.

Plaintiffs stand on their prior briefing on these points (ECF 295 at 2-9; ECF 312) and join in Wapato Heritage's Supplemental Brief in Opposition to Federal Defendants' Motion for Partial Summary Judgment, filed contemporaneously herewith.

Plaintiffs reiterate that this Court's jurisdiction may be lacking whether or not MA-8 is found to be held in trust, although lack of trust status would most certainly deprive this court of jurisdiction by removal of the U.S. from the action. Plaintiffs by no means waive

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their right to challenge the assertion of federal court jurisdiction as other judges and courts have found state jurisdiction may be more appropriate here. *E.g.*, ECF 422 at 4-7 & n.1; ECF 144 at 33-34 ("The court rejects the United States' initial counter argument that the state court lacked jurisdiction over anything to do with MA-8. Contrary to the Federal Defendants' contention, there is no federal or state law which would have precluded the state court from assuming jurisdiction over a contract dispute pertaining to the right to *use* property held in trust property under a contract. Defendant's blanket assertion that 'federal law . . . applies to MA-8' is an incorrect overstatement."); *see also* SUF at ¶ 110.

C. Whether or Not MA-8 is Held in Trust, Defendants are Estopped to Deny Plaintiffs the Right to Occupy MA-8 Through 2034.

As Judge Quackenbush explained:

> Plaintiffs have asserted a claim for declaratory relief against the MA-8 landowners asserting that they are "equitably, collaterally, or otherwise estopped from denying the Plaintiffs their right to use the Mill Bay Resort until February 2, 2034." *See* Ct. Rec. 1 [Complaint] at 43, Prayer for Relief, ¶ 2. This claim for relief is distinct from the Plaintiffs['] equitable *defense* to the Government's counterclaim for trespass and/or ejectment, which also remain pending. The Government errs when it asserts that there are no claims asserted by Plaintiffs against the Indian landowners or that the court has "eliminated all outstanding issues except for the BIA's ejectment action." Ct. Rec. 158 at 4; *see also* Ct. Rec. 186; Ct. Rec. 158 at 3.

ECF 197 at 2 (emphasis in original); *see also* ECF 226 at 3.

1. The Allottees are Estopped to Deny Plaintiffs' Right to Occupy and Use MA-8 through 2034 by Virtue of Default Judgments and Admitted RFAs.

As detailed in Plaintiffs' Motion for Default Judgment (ECF 433), on October 2,

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2009, the Clerk of the Court entered an Order of Default against 27 of the 35 Defendant Allottees for failure to answer or otherwise defend against this action. ECF 102-104, 114-116, 135. The 19 individuals identified in the Motion for Default were named in the Order of Default and filed no answer, letter, declaration, pleading, or motion in this action. ECF 433 at 2. Plaintiffs are entitled to a declaratory judgment against those MA-8 landowners "that they are 'equitably, collaterally, or otherwise estopped from denying the Plaintiffs their right to use the Mill Bay Resort until February 2, 2034.'" ECF 227 at 3.

Likewise, as detailed in Plaintiffs' Motion for Summary Judgment Against Certain Individual Allottee Defendants filed contemporaneously herewith, nine (9) Allottees are deemed to have admitted Plaintiffs' Requests for Admissions ("RFAs') by virtue of their non-response thereto. Those RFAs are dispositive that Plaintiffs are entitled to declaratory judgment against those MA-8 landowners that they are equitably, collaterally, or otherwise estopped from denying Plaintiffs' right to use the Mill Bay Resort until February 2, 2034.

These facts are critical, as those 28 Allottees plus Wapato Heritage (who consents to the Mill Bay Members' presence on MA-8 through 2034) own **more than 62%** of the undivided interest in the portion of MA-8 alleged to be held in trust. Harmeling Dec. at ¶¶3-4, 6-9, & Exhibit A.[5] Judge Quackenbush recognized the implications of this outcome:

[5] Questions of fact also remain as to whether the Colville Tribe's ownership interest is

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> I don't know what the Government's going to do about its alleged trustee role in letting . . . any alleged order of default be entered against those landowners on the claims that they're estopped to deny that the lease was extended. . . . And I want you to be prepared, [counsel for the United States], to tell me what, when we next meet, as to what's going to happen if these people are defaulted out. Where does that leave us in this case? Does that say, as to those people's interests, Wapato Heritage has a lease that expires in 2034 as opposed to the current status that Judge Whaley found that there was not a proper extension of the 2034 lease?

See ECF 177 at 8:23-10:1.

While the U.S. responded that Plaintiffs had asserted no claims directly against the Allottees (ECF 186 at 8-9), Judge Quackenbush immediately dismissed that notion: "The Government errs when it asserts that there are no claims asserted by Plaintiffs against the Indian landowners or that the court has 'eliminated all outstanding issues except for the BIA's ejectment action.' Ct. Rec. 158 at 4; *see also* Ct. Rec. 186; Ct. Rec. 158 at 3."). ECF 197 at 2. Instead, the true outcome was detailed by Plaintiffs:

> The defaulted Defendant landowners are deemed to have admitted that Plaintiffs have a valid right to use and occupy the Mill Bay Resort until 2034. (ECF No. 294 at 23.) Likewise, the Defendant Landowners who have appeared, but failed to answer Plaintiffs' Requests for Admission within the requisite 30 days have admitted the same and also admitted that they provided the BIA with express authority to act on their behalf with regards to the entirety of the MA-8 lease and contract transactions, including acceptance of the 2004 Settlement Agreement. (*Id.*) At the very least, an issue of fact exists as to what express authority the Landowners provided the BIA in representing

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subject to the rights of the Plaintiffs, as the Tribe did not own any interest in MA-8 until some point *after* 1991 and possibly even after 1994. ECF 223 at 3.

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> them as to the transactions with Plaintiffs, thus, precluding summary judgment in favor of the Federal Defendants.

ECF 295 at 17; *see also id.* at 27-28.

2. The Allottees are Estopped to Deny Plaintiffs' Right to Occupy and Use MA-8 through 2034 Due to Their Acceptance of Settlement Monies.

The Allottees are further estopped to deny Plaintiffs' right to occupy the property through to 2034 due to their knowledge of the 2004 mediation and Settlement Agreement, and their on-going acceptance of rents from Plaintiffs thereafter. *E.g.*, ECF 345 at 1-2. As Judge Quackenbush articulated in 2018:

> The 2004 Settlement Agreement, incorporated in the Order Approving Class Action Settlement, . . . provided for rent in the amount of $25,000 per year, with $5,000 increases every five years starting in 2009 and continuing through 2034. *See* (ECF No. 346-1 at § 5.7). The rent provision in the 2004 Settlement Agreement recited the Mill Bay Members' right to use the park until December 31, 2034. (*Id.*); *see also,* (*id.* at § 5.14). By the terms of the Master Lease (ECF No. 73-3) signed by the Government on behalf of the individual landowners, including the Colville Tribe, in 1984, the Government was to receive the rent due from the Lessee and distribute it to the individual landowners according to their interests in MA-8. *See* (ECF No. 73-3 at § 4). The record is unclear as to whether some or all of the rental payments made by Mill Bay and its members pursuant to the 2004 Settlement Agreement were passed on to the landowners by the Government. *See* (ECF No. 347 at 8).

ECF 353 at 2-3.

It is undisputed that Plaintiffs have made the annual rental payments to the Allottees required by the 2004 Settlement Agreement. ECF 358 at 6-8 (detailing 2009 to 2018 annual payments); *see also* Harmeling Dec. at Exhibits B-C (2019-2020 annual payment letters); *see also* ECF 360 at 2-3 (Wapato Heritage acknowledges all of Plaintiffs' payments have

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been made). For this reason, the Allottees are estopped to deny Plaintiffs the right to occupy and use MA-8 through 2034. *See also Kizer v. PTP, Inc.*, 129 F. Supp. 3d 1000, 1003 (D. Nev. 2015) (suggesting equitable estoppel is a viable defense against Indian land allottees in the context of BIA-approved leases where the allottees accepted lease payments for many years; ultimately deciding the case on other grounds).

3. Federal Defendants are Estopped to Deny Plaintiffs' Right to Occupy and Use MA-8 through 2034 as They Lack Majority Allottee Approval.

Federal Defendants have no authority to eject Plaintiffs from the property absent the express consent of a majority of the Allottees—*which is now impossible to obtain.* Judge Quackenbush was clear that "[t]he BIA's own view on whether the Master Lease had expired is meaningless to the actual judicial determination of whether this is in fact the case." ECF 144 at 21. He explained further:

> **Judge Whaley has determined that the BIA was not a party to the Master Lease. Accordingly, the BIA has no independent *contractual* right to enforce the terms of the Master Lease.** The authority of the BIA in regards to the Master Lease stems entirely from federal regulatory law. . . . The Government holds the allotment in trust for allottees and has the power to control the occupancy on the property and to protect it from trespass. . . . The regulations . . . indicate that in the event a tenant does not cure a lease violation within the requisite time period, the BIA must, under 25 C.F.R. § 162.619, "consult with the Indian landowners, as appropriate," and determine what remedies should be invoked, including for example whether to provide the tenant with additional time to cure. The regulations make clear that the entire purpose of the authority and remedies provided to the BIA for lease violations is to ensure that the landowners' property and financial interests are protected. **There is no evidence in this case that the BIA has consulted with the Indian landowners or that this trespass action is in response to their concerns.** . . . If . . . the BIA has yet to consult with the Indian landowners in

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> regard to the issue of Evan's failure to properly renew under the Master Lease, then the BIA's trespass action is inappropriate. Premature adjudication of the United States' trespass action is especially inappropriate in the circumstances of this case, where it seeks to displace Plaintiffs from their residence on the property.

Id. at 25-27 (bold emphasis added; italics original); *see also* ECF 329 at 21, 29.

Federal Defendants represent that they have since inquired of the Allottees whether they want to eject the Plaintiffs from MA-8. ECF 232 at 13-14; ECF 232-2 at 16. They claim "landowners holding just over 81% of the Indian trust interests indicated they wanted BIA to take action to eject Plaintiffs and seek trespass damages for their occupation of MA-8 since February 2009." ECF 232 at 13-14. This statement is misleading. It is based on the March 2012 Declaration of Debra Wulff, Superintendent for the Colville Agency of the BIA. ECF 234-21 at ¶¶5-7; ECF 234-24. Ms. Wulff's process was to mail in July 2011 a 2-page biased and incomplete summary of the lawsuit to the Allottees, which concluded with a check-a-box form: "Please check which, if any, option you prefer. . . . ___ Option A: Attempt Eviction/Damages from RV park. ___ Option B: Attempt to Negotiate a lease with RV park." ECF 234-21 at ¶5; ECF 234-24. Below this was the word "Comments:" followed by several blank lines. ECF 234-24. Ms. Wulff did not poll Wapato Heritage, which holds an almost 25% ownership interest in the alleged trust portion of MA-8. ECF 234-21 at ¶5. Of the remaining Allottee interest, Ms. Wulff said she received responses from 16 individuals amounting to 81.6% of the non-Wapato Heritage Allottee interest. *Id.* at ¶¶6-7. She concluded, "If the interest held subject to Wapato Heritage, LLC's life estate

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is excluded, owners holding 54% of the trust interests in MA-8 support Option A." *Id.* at ¶7. She failed to take into account the six (6) Fee Patents previously issued to Allottee owners, amounting to approximately 4% of the interests in MA-8. SUF at ¶¶ 36, 38.

The underlying completed mailers are not produced with Ms. Wulff's declaration or elsewhere in the record. Nor does Ms. Wulff identify the Allottees who allegedly responded. Thus, there is no way to verify her claimed percentages or to cross-examine the alleged responders to confirm who completed the forms or whether the forms truly represented their considered interests. Even the mailers themselves would be inadmissible hearsay—offered to prove the truth of the matter asserted: that a majority of the relevant Allottees had in fact instructed the U.S. to eject the Plaintiffs from MA-8. FRE 801(c), 802. Without them, Ms. Wulff's testimony is inadmissible double hearsay. This Court may not grant summary judgment based on inadmissible hearsay evidence. *Blair Foods, Inc. v. Ranchers Cotton Oil*, 610 F.2d 665, 667 (9th Cir. 1980) ("[H]earsay evidence is inadmissible and may not be considered by this court on review of a summary judgment."); *Casimir v. Remington Arms Co., LLC*, 2013 WL 179756, at *4 (W.D. Wash. Jan. 16, 2013) ("[t]he declaration of Plaintiff is not admissible [on a motion for summary judgment] because it was not based on personal knowledge and contains hearsay within hearsay").

To be sure, it is *impossible* for the U.S. to show that Allottees holding 81% of the ownership interest in the alleged trust portion of MA-8 intend for the BIA to eject the Plaintiffs from MA-8, because Wapato Heritage owning a 24.9% interest opposes the

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proposed ejectment, and another 35.49% of the relevant ownership interest in MA-8 is **estopped** to deny Plaintiffs the right to occupy MA-8 through 2034, by virtue of Plaintiffs' Motion for Default Judgment (ECF 433) and Motion for Summary Judgment Against Certain Individual Allottees filed herewith. In such case, the U.S. simply cannot claim to be acting with approval or at the direction of the majority interest. And finally:

> The Federal Defendants' contention that the Landowners *now* want to eject Plaintiffs has no effect on whether the Landowners agreed to allow Plaintiffs the right in the first place. A question of fact exists as to what the Landowners' intent was when they accepted rent from Evans and his entities based upon membership sales and when they accepted the 2004 Settlement Agreement money.

ECF 295 at 17-18. Summary judgment for Federal Defendants' should be denied.

4. Federal Defendants are Estopped to Deny Plaintiffs' Right to Occupy MA-8 through 2034 Due to Their Prior Inconsistent Acts.

Judge Quackenbush twice acknowledged that estoppel, while rare against the government, may be appropriate based on the unique circumstances of this case:

> One cannot consider this case without some sympathy for the predicament the Plaintiffs find themselves in. They have invested substantial sums of money relying primarily on the word of Bill Evans and his entities, that the Master Lease option to renew would be exercised and that Evans' leasehold interest would not expire until 2034. . . . One undisputable point in this case, evidenced by written and oral communications going back more than 20 years, is that Bill Evans' desired and intended to exercise the option, and apparently believed that the 1985 letter to the Secretary would suffice.
>
> Additional facts making this case unique is that a non-party to the contract, the BIA, plays the lead role in its drafting, execution, approval, administration, and enforcement of the lease. . . . In this case, upon receipt of Evans' 1985 letter explicitly purporting to exercise the option to renew, the

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> BIA a) neglected to inform the Indian landowners, whose interests it is their duty to protect, of the letter; b) did not ensure that their tenant (Evans) had complied with the requirements of the lease until over twenty-years later, despite numerous inquiries, and then c) conducted its business without questioning and on the explicit assumption that the lease had been effectively renewed. In 2004, the BIA even made affirmative representations to the State of Washington that the lease did not expire until February 2, 2034.
>
> Although estoppel will rarely work against the government, the assertion of this defense against the Defendant landowners and the BIA, acting on their behalf, in this trespass action presents a unique context which would merit further consideration by the court.

ECF 144 at pp. 37-38l; *see also* ECF 329 at 21 ("The court left open the Plaintiffs' contentions that the Defendants should be equitably estopped from denying Plaintiffs the right to use the Mill Bay Resort until 2034. *Id.* at 38 (holding that 'although estoppel will rarely work against the government, assertion of this defense against the Defendant landowners and the BIA, acting on their behalf, in this trespass action presents a unique context which would merit further consideration by the court.')."").

On these points, Plaintiffs stand on their existing briefing in the record. ECF 295. There is a genuine issue of material facts as to whether the U.S.' actions warrant it being estopped from denying Plaintiffs the right to occupy and use MA-8 through 2034.

IV. CONCLUSION

For all of the foregoing reasons, there are genuine issues of material fact precluding summary judgment in favor of the U.S. Federal Defendants' Motion for Summary Judgment Re Ejectment should be denied.

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DATED this 17th day of April, 2020.

By s/SALLY W. HARMELING

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of April, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to the parties listed below by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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DATED at Wenatchee, Washington this 17th day of April, 2020.

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