

1 William D. Hyslop
United States Attorney
2 Joseph P. Derrig
Assistant United States Attorney
3 Post Office Box 1494
Spokane, WA 99210-1494
4 Telephone: (509) 353-2767

5
6 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

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

No. 09-CV-00018-RMP

United States’ Supplemental Brief
Under ECF Nos. 411 & 431

10 Plaintiffs,

11 vs.

12 UNITED STATES OF AMERICA, et al.,

13 Defendants.

14 Rather than compete with the Rube Goldberg matrix of arguments created
15 by WHL and Mill Bay challenging the trust status of MA-8, the United States
16 draws the Court’s attention to singularly dispositive legal principle: a tenant is
17 estopped from challenging the title of its landlord as a defense to eviction. *See*
18 *French v. Starr*, 2015 WL 12592104, at *6-7 (D. Ariz. Feb. 12, 2015), *aff’d*, 691
19 Fed. Appx. 885 (9th Cir. 2017). This principle applies here where the initial public
20 offerings for the RV park state: “Fee title to the Project site [*i.e.* MA-8] is held in
21 trust by the United States of America” ECF No. 16 at p. 25 (emphasis added);
22 *see also* ECF No. 16 at p. 3 (Grondal’s declaration stating: Bill Evans “represented
23 to all prospective purchasers, both verbally and with documentation [that] his
24 long-term land lease [is] on ‘trust land’”). Mill Bay members purchased RV camp
25 memberships with full knowledge MA-8 was held in trust, and repeatedly
26 reaffirmed its trust status *until* the ruling at ECF No. 144. *See id.* Thus, Mill Bay is
27 therefore estopped from now challenging the trust status in response to ejection.
28

1 In *French*, French leased a lot on reservation land held in trust by the United
2 States from 1983 to 1993. *French*, 2015 WL 12592104, at *2. In the early 1990s,
3 French learned of a challenge by the State of California to the boundary of the
4 reservation. *Id.* In 1995, French stopped paying rent, and after the BIA sent him an
5 eviction notice, evictions proceedings were eventually initiated in tribal court. *Id.*
6 French defended against the eviction by claiming the lot was not on the
7 reservation. *Id.* The tribal court held plaintiff was estopped from claiming the lot
8 was not within the reservation. *Id.* French then filed suit in federal district court
9 against the tribal court judge and others. *Id.* at *3.

10 In the district court, French again argued the land was not within the
11 reservation in order to claim the tribal court did not have jurisdiction. *Id.* French
12 also argued the United States¹ and the tribe should be estopped because they had
13 taken inconsistent positions in the past on the reservation boundary. *Id.* at *8.

14 In response to these arguments, the district court adopted the general
15 principle in the Ninth Circuit that a tenant is estopped from challenging title of his
16 landlord. *Id.* at *6. The court analyzed several cases where the United States held
17 title to land or property and the plaintiff was estopped from challenging the United
18 States' title. *Id.* at *6-7. Ultimately, the court held: French was estopped from
19 arguing the lot he leased was not within the boundaries of the reservation. *Id.* at *8.
20 The court reasoned that both the terms of permit (lease) and French's own prior
21 conduct (payment to the BIA) required the application of estoppel. *Id.* The Ninth
22 Circuit affirmed the district court's order *on the basis that French was estopped*
23 *from contesting title. French v. Starr*, 691 Fed. Appx. 885, 886 (9th Cir. 2017).²
24

25
26 ¹ The United States participated as *amicus curiae*.

27 ² Notably, the district court and the Ninth Circuit declined to make a
28 determination with respect to the reservation boundaries.

1 *French* is directly applicable here. Mill Bay knew the land was trust land
2 before it purchased RV park camping memberships. ECF No. 16 at p. 25. Mill Bay
3 and WHL reaffirmed throughout their occupation of the RV park on MA-8 that the
4 land was trust by their interactions with the BIA, in their respective lawsuits in
5 2001-2003, and also in their 2004 settlement agreement that acknowledges Mill
6 Bay's right to continued use of the RV park was subject to the terms of the *now*
7 *terminated* "Master Lease." *E.g.*, ECF No. 16-5 at p. 46, ECF No. 398 at pp. 3-4.
8 Like *French*, Mill Bay is estopped from challenging the trust status of MA-8 both
9 by the terms under which it purchased its camping memberships, and by its own
10 actions repeatedly reaffirming MA-8's trust status. *See French*, 2015 WL
11 12592104, at *8.³

12 The *French* decision and the estoppel principal applied therein is singularly
13 dispositive. *See id.* Since Mill Bay is estopped from challenging *the trust status* of
14 MA-8, Mill Bay cannot maintain a defense of equitable estoppel against the United
15 States' *acting in its trust capacity* to eject it from MA-8.⁴ ECF No. 407 at p. 5;

17
18 ³ The *French* decision is also consistent with long-standing United States
19 Supreme Court and Washington State Supreme Court precedents. *See, e.g.*,
20 *Williams v. Morris*, 95 U.S. 444, 455 (1877) (whenever tenant gains possession
21 under any species of tenancy, the tenant is estopped from denying title of
22 landlord); *Decker v. Verloop*, 73 Wash. 10, 11 (1913) ("This court has frequently
23 held that title to real property cannot be tried out in an action [for unlawful
24 detainer]"). The United States does not suggest that Washington state law should
25 apply here but merely points out the consistency.

26 ⁴ Mill Bay also cannot raise the defense of equitable estoppel against
27 individual Indian allottees. ECF No. 436 at p. 3. The Individual allottees are not
28 personally bringing a claim for ejectment since the land is in trust. Mill Bay's

1 *United States v. City of Tacoma*, 332 F.3d 574, 581 (9th Cir. 2003). Accordingly,
2 the United States’ motion for ejectment must be granted.

3 At bottom, the trust status of MA-8 has already been litigated and
4 determined by the Ninth Circuit. *Wapato Heritage, L.L.C. v. United States*, 637
5 F.3d 1033, 1035 (9th Cir. 2011) (“The United States holds MA–8 in trust”). That
6 issue does not need to be re-litigated and decided again. This is particularly true
7 here where the narrow issue raised by the pending motion for ejectment is resolved
8 by application of the reasoning and estoppel analysis in *French*. See *French v.*
9 *Starr*, 2015 WL 12592104, at *8 (Recognizing that estopping French from
10 challenging title left the location of the reservation boundary unresolved, and
11 noting that in the absence of estoppel, French would have to overcome other
12 obstacles to challenging trust title that the court *need not address*).⁵ The approach
13 taken in *French* should be applied here and ultimately requires granting the United
14 States’ motion for ejectment.

15 DATED this 17th day of April, 2020.

16
17 William D. Hyslop
18 United States Attorney
19 s/ Joseph P. Derrig
20 Joseph P. Derrig
Assistant United States Attorney

21 _____
22 attempt to treat the individual Indian allottees as private parties bringing an
23 ejectment action *ignores the trust status* of MA-8 and the United States’ unique
24 position with respect to tribal trust land.

25 ⁵ If the Court desires to again review the trust status, the result is the same as
26 the Ninth Circuit previously held: MA-8 is trust land. The trust status has been
27 thoroughly briefed and thus is not briefed again given the Court’s order. The
28 United States limits its brief to the explanation the *French* case and its application
since it was decided after the motion for ejectment was briefed and argued.

CERTIFICATE OF SERVICE

I hereby certify that on April 17, 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:

Franklin L. Smith:	frank@flyonsmith.com
R. Bruce Johnston:	bruce@rbrucejohnston.com
Dana Cleveland:	dana.cleveland@colvilletribes.com
Dale M. Foreman:	dale@daleforeman.com
Sally W. Harmeling:	sallyh@jdsalaw.com
Brian C. Gruber:	bgruber@ziontzchestnut.com
Nathan J. Arnold:	nathan@caoteam.com
Robert R. Siderius:	bobs@sdsalaw.com
Joseph Q. Ridgeway:	josephr@jdsalaw.com
Brian W. Chestnut:	bchestnut@ziontzchestnut.com
Tyler D. Hotchkiss:	tyler@fhbzlaw.com

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

Enid T. Wippel P.O. Box 101 Nespelem, WA 99155	Michael Palmer P.O. Box 466 Nespelem, WA 99155
Gary & Francis Reyes P.O. Box 296 Newman Lake, WA 99025	Linda Saint P.O. Box 3614 Omak, WA 98841-3614
Mary Jo Garrison P.O. Box 1922 Seattle, WA 98111	Francis Abraham 11103 E. Empire Ave. Spokane Valley, WA 99206
Paul G. Wapato, Jr. 2312 Forest Estates Drive Spokane, WA 99223	Catherine L. Garrison 3434 S. 144 th St., Apt. 124 Tukwila, WA 98168-4061
Judy Zunie P.O. Box 3341 Omak, WA 98841	Deborah A. Backwell 24375 SE Keegan Rd. Eagle Creek, OR 97022
Francis Reyes	

1 P.O. Box 215
2 Elmer City, WA 99124-0215

3 Annie Wapato
4 1800 Jones Rd.
5 Wapato, WA 98951-9413

Jeffrey M. Condon
P.O. Box 3561
Omak, WA 98841-3561

6 Vivian Pierre
7 P.O. Box 294
8 Elmer City, WA 99124-0294

Soni W (Wapato) Vanwoerkom
810 19th St.
Lewiston, ID 83501-3172

9 Arthur Dick
10 P.O. Box 288
11 Nespelem, WA 99144-0288

Hannah Rae Dick
P.O. Box 198
Nespelem, WA 99155-0198

12 Marlene Marcellay
13 7920 NE 61st Circle
14 Vancouver, WA 98662-5992

Kathleen M. Dick
P.O. Box 288
Nespelem, WA 99155-0288

15 Dwane Dick
16 P.O. Box 463
17 Nespelem, WA 99155-0463

Lynn K. Benson
P.O. Box 746
Omak, WA 98841-0746

18 Stephen T. Wapato
19 246 N. Franklin Ave.
20 Wenatchee, WA 98801-2156

Lydia A. Arneecheer
P.O. Box 475
Wapato, WA 98951-0475

21 James Abraham
22 2727 Virginia Ave.
23 Everett, WA 98201-3743

Randy Marcellay
P.O. Box 3287
Omak, WA 98841-3287

24
25 Gabe Marcellay
26 P.O. Box 76
27 Wellpinit, WA 99040-0076

Travis E. Dick & Hannah Dick
Guardian of Travis E. Dick
P.O. Box 198
28 Nespelem, WA 99155

1 Maureen M. Marcellay
2 501 SE 123rd Ave., Apt. U150
3 Vancouver, WA 98683-4008

Jacqueline L. Wapato
P.O. Box 611
Lapwai, ID 83540-0611

4 Leonard M. Wapato
5 P.O. Box 442
6 White Swan, WA 98952-0442

Darlene Marcellay-Hyland
16713 SE Fisher Dr.
Vancouver, WA 98683

7 Mike Marcellay
8 P.O. Box 594
9 Brewster, WA 98812-0594

Enid T. (Pierre) Marchand
P.O. Box 101
Nespelem, WA 99155-0101

10 Gary Reyes
11 P.O. Box 3341
12 Omak, WA 98841

s/ Joseph P. Derrig
Joseph P. Derrig
Assistant United States Attorney