

THE HONORABLE ROSANNA MALOUF PETERSON
Hearing Date: May 29, 2020 at 1:30 PM
Telephonic Oral Argument

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UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

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

v.

UNITED STATES OF AMERICA;
UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT
OF THE INTERIOR; THE BUREAU
OF INDIAN AFFAIRS, and FRANCIS
ABRAHAM, CATHERINE
GARRISON, MAUREEN
MARCELLAY, MIKE PALMER,

Case No. CV-09-0018-RMP

GARY REYES' OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
AGAINST CERTAIN INDIVIDUAL
ALLOTTEES

GARY REYES' OPPOSITION TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AGAINST CERTAIN INDIVIDUAL
ALLOTTEES - 1
(CV-09-0018-RMP)

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1 JAMES ABRAHAM, NAOMI DICK,
2 ANNIE WAPATO, ENID
3 MARCHAND, GARY REYES, PAUL
4 WAPATO, JR., LYNN BENSON,
5 DARLENE HYLAND, RANDY
6 MARCELLAY, FRANCIS REYES,
7 LYDIA W. ARMEECHER, MARY JO
8 GARRISON, MARLENE
9 MARCELLAY, LUCINDA O'DELL,
10 MOSE SAM, SHERMAN T.
11 WAPATO, SANDRA COVINGTON,
12 GABRIEL MARCELLAY, LINDA
13 MILLS, LINDA SAINT, JEFF M.
14 CONDON, DENA JACKSON, MIKE
15 MARCELLAY, VIVIAN PIERRE,
16 SOMA VANWOERKON, WAPATO
17 HERITAGE, LLC, LEONARD
18 WAPATO, JR, DERRICK D. ZUNIE,
19 II, DEBORAH L. BACKWELL, JUDY
20 ZUNIE, JAQUELINE WHITE
21 PLUME, DENISE N. ZUNIE and
22 CONFEDERATED TRIBES OF THE
23 COLVILLE RESERVATION,
24 Allottees of MA-8 (known as Moses
25 Allotment 8),

Defendants.

Plaintiffs' Motion for Summary Judgment Against Certain Individual
Allottees (ECF No. 439) seeks judgment against a number of allottee defendants,

1 including Gary Reyes. The Plaintiffs' motion should be denied as to Mr. Reyes.
2 The grounds for denial depend on whether the Court concludes MA-8 constitutes
3 trust land.

4 To the extent the Court concludes MA-8 is not trust land and the interests
5 are actually held or have been held in fee, *see e.g.*, ECF No. 445 at 2:17-10:22,
6 Plaintiffs' motion should be denied as moot. This is because the only parties that
7 are litigating/contesting Plaintiffs' right to occupy and use the Mill Bay Resort
8 until February 2, 2034 are the Federal Defendants, and they have no standing to
9 challenge Plaintiffs' occupancy/use of the land if MA-8 is determined to not be
10 trust land.

11 To the extent the Court concludes MA-8 is trust land, denial of Plaintiffs'
12 motion is still proper as to Mr. Gary Reyes because irrespective of any failure to
13 respond to Plaintiffs' Requests for Admission in 2012, the record reflects that Mr.
14 Reyes no longer has a beneficial interest in MA-8. ECF No. 347 and ECF 347-1
15 at p. 31 of 41 reflect that Mr. Reyes conveyed his interest in MA-8 to the
16 Confederated Tribes of the Colville Reservation on January 25, 2013. While
17 undersigned counsel has just recently appeared in this matter and is attempting to
18 investigate the extent of disclosures made in connection with that conveyance and
19 the facts and circumstances surrounding that conveyance, the fact remains that no
20 judgment (including any subsequent judgment for attorneys' fees) should be
21 entered against Mr. Reyes. The evidence in the record is that as of January 25,
22 2013, and assuming the land was/is trust land, Mr. Reyes no longer had a
23 beneficial interest in MA-8. To ignore the deed filed at ECF 347-1 at p. 31 and
24 instead deem admitted Request for Admission No. 1 regarding whether Mr.

1 Reyes is a beneficial landowner of MA-8 would result in allowing Fed. R. Civ. P.
2 36 to be used “. . . in the hope that a party’s adversary will simply concede
3 essential elements,” *Conlon v. U.S.*, 474 F.3d 616, 625 (9th Cir. 2007), which is
4 not proper and would contravene one of the purposes of Rule 36 – “truth-seeking
5 in litigation.” *Conlon*, 474 F.3d at 622. Accordingly, denial of Plaintiffs’ motion
6 as to Mr. Reyes is proper even if the Court holds that the interests in MA-8 are
7 held in trust. Any judgment entered in favor of Plaintiffs should not include Mr.
8 Reyes as a party to that judgment.

9
10 Dated this 8th day of May, 2020.

11 /s/ Manish Borde

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CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused the foregoing document to be electronically filed with the Clerk of the above entitled Court using the CM/ECF system, which will send notification of such filing to all registered recipients of that system as of the date hereof.

Notice of this filing is being sent via United States Postal Service First Class Mail to the parties below at the addresses indicated below.

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DATED this 8th day of May, 2020

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