

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL GRONDAL, a Washington
resident; MILL BAY MEMBERS
ASSOCIATION, a Washington
non-profit corporation,

Plaintiff-Appellee,

v.

UNITED STATES OF AMERICA, ET
AL.,

Defendant-Appellees,

v.

WAPATO HERITAGE LLC; GARY
REYES, ET AL.,

*Third-party-defendants-
Appellees*

NO. 20-35694

DECLARATION OF FRANKLIN
SMITH IN SUPPORT OF MOTION
FOR RECONSIDERATION OF
ORDER DENYING STAY OF
EXECUTION OF JUDGMENT
PENDING APPEAL

**DECISION REQUESTED BY:
SEPTEMBER 30, 2020**

FRANKLIN SMITH, pursuant to 28 U.S.C. § 1746, states and declares:

1. I make this declaration based upon personal knowledge, and if called upon to do so, could and would testify competently as a witness to the matters stated herein.

2. I am one of the members of the Mill Bay Members Association (“Mill Bay”), a Plaintiff in the above-entitled action in the district court below and an Appellant in this

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1 action.

2 3. I am familiar with the agreement between the United States, the Confederated
3 Tribes of the Colville Reservation (the “Tribes”), and Mill Bay to have all Mill Bay
4 members depart MA-8 by September 30, 2020 and for all Mill Bay personal property and
5 improvements to be removed from MA-8 by March 30, 2021.

6 4. I have read the September 25, 2020 correspondence from the United States
7 and the Tribes stating their intent to breach this agreement and require the removal of all
8 personal property and improvements from the RV Park by midnight on September 30,
9 2020. This deadline was difficult *before* the U.S. and the Tribes offered to extend it, but
10 complying with it on *five days’ notice* will be *impossible* for our members.

11 5. Most Mill Bay members have departed MA-8 already. Many Mill Bay
12 members—myself included—have left our personal property and improvements on MA-
13 8, including RVs, based on the United States’ and Tribes’ promise that such property could
14 remain there until March 30, 2021.

15 6. The United States’ and the Tribes’ walking back on their word places an
16 incredible hardship on our members. Many persons have no ability to move their RVs;
17 some RVs are located behind heavy concrete block walls that will require either an
18 excavator or a team of men to dig out. Many of our members canceled arrangements to

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1 have their RVs taken from MA-8 on an emergency basis in good-faith reliance on the
2 agreement between the United States, the Tribes, and Mill Bay. One of our elder members
3 elected to proceed with rotator cuff surgery with the understanding that he would be able
4 to move his RV and personal property by the end of March 2021, long after he recovered.
5 Of course, he is now unable to move his RV at this juncture while he recovers from his
6 surgery.

7 7. As for me personally, I do not have the necessary equipment to move my fifth-
8 wheel RV, such as a truck with a fifth-wheel hitch. Moreover, my RV's tires are extremely
9 old and almost certainly will not withstand any movement, meaning I will have to replace
10 them before moving the RV from MA-8. While these are issues I can solve with some
11 expense, the United States and Tribes promised me I had until March 30, 2021 to do so.
12 There is simply no way I can remove my RV by Wednesday, September 30, 2020 as the
13 United States and Tribes now demand.

14 8. I am concerned that my property and the property of many other Mill Bay
15 members will be damaged or destroyed should the United States and Tribes (or others) be
16 allowed to begin removing it on October 1, 2020 in contravention of their promise to us.

17 9. I declare under penalty of perjury that the foregoing and attached is true and
18 correct.

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1 Executed on September 28th, 2020.

2
3 By s/FRANKLIN SMITH
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 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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1 Notice of this filing is being sent this date via United States Postal Service First Class Mail
2 to the parties below at the addresses indicated below.

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11 DATED at Wenatchee, Washington this 28th day of September, 2020.

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