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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON

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

No. 09-CV-00018-RMP

11 Plaintiffs/Counter-Defendants,

FEDERAL DEFENDANTS'  
REQUEST FOR A STATUS  
CONFERENCE

12 vs.

13 UNITED STATES OF AMERICA;  
14 US DEPARTMENT OF INTERIOR;  
15 BUREAU OF INDIAN AFFAIRS,  
16 WAPATO HERITAGE, LLC,  
17 CONFEDERATED TRIBES OF THE  
18 COLVILLE RESERVATION,  
19 FRANCIS ABRAHAM,  
20 CATHERINE GARRISON, et al.,  
allotees of Moses Allotment 8,

Defendants/Cross-Defendants/Cross-  
Claimants/Counter-Defendants.

21 The United States respectfully requests a status conference on its Motion for  
22 Summary Judgment Re Ejectment (ECF No. 232). The United States has reached  
23 out to counsel of record for the parties regarding this request and has received no  
24 objection; however, Ms. Harmeling and Mr. Foreman have indicated they question  
25 whether all the Court's prior requests have been answered. The United States has  
26 not been informed of which of the Court's prior requests they believe have gone  
27 unanswered. Nonetheless, the United States submits a status conference would at  
28

1 the very least elucidate what remains outstanding before a decision may be had on  
2 its Motion for Summary Judgment Re Ejectment (ECF No. 232).

### 3 I. BACKGROUND

4 On June 9, 2008, Wapato Heritage filed an action in the U.S. District Court  
5 against the United States challenging the decision made by the BIA that the Master  
6 Lease was to expire on February 2, 2009. Wapato Heritage LLC v. United States,  
7 EDWA Cause No. 08-CV-177-RHW (“Wapato Heritage case”). ECF No. 144.  
8 Wapato Heritage LLC asserted three arguments: 1) that Evans had actually or  
9 substantially complied with the renewal notice terms of the Master Lease; 2)  
10 alternatively, regardless of Evans’ actions, the BIA through its own actions had  
11 approved and extended the term of the lease; and 3) that equity favored a  
12 determination that the lease renewal was validly exercised. On November 21,  
13 2008, Judge Whaley issued a decision in the *Wapato Heritage* case rejecting all  
14 three of Wapato Heritage LLC’s contentions and dismissing the claim for  
15 declaratory judgment that the option to renew was validly exercised. ECF No. 144.

16 After Judge Whaley’s ruling, on December 10, 2008, the BIA informed the  
17 occupants of MA-8 that the Master Lease would expire as of February 2, 2009.

18 On January 1, 2009, Plaintiff’s filed the present complaint for Declaratory  
19 Judgement and Injunctive relief. ECF No. 1. Plaintiffs raised five claims: (1)  
20 estoppel, (2) waiver and acquiescence, (3) modification, (4) agency action was  
21 arbitrary and capricious, (5) violation for the Fifth Amendment, and a request for  
22 declaratory judgment.  
23

24 The United States filed an Answer and Counterclaim on April 3, 2009. ECF  
25 No. 42. The United States claimed Plaintiffs were in trespass because the lease  
26 expired on February 2, 2009.

27 On September 1, 2009, the United States moved for dismissal of plaintiffs’  
28 claims and summary judgment on its trespass counterclaim. ECF No. 70. Plaintiffs

1 also made five motions for summary judgment on their respective claims. ECF No.  
2 77, 79, 81, 83, and 85).

3 On January 12, 2010, the Court held it “lacks subject matter jurisdiction over  
4 Plaintiffs’ five claims and requests for declaratory relief against the United States  
5 Bureau of Indian Affairs” and dismissed plaintiffs’ Complaint. ECF No. 144 at p.  
6 24. The Court also denied with leave to renew the United States motion for  
7 summary judgment on its trespass counterclaim. ECF No. 144 at p. The Court  
8 reasoned the trespass action may be premature due to Wapato Heritage apparently  
9 attempting to obtain a new lease. ECF No. 144 at p. 25-27.

10 On March 22, 2012, the United States renewed its motion for summary  
11 judgment seeking an order ejecting Plaintiffs from MA-8; which they have  
12 unlawfully occupied since February 2009. ECF No. 232 at p. 1. On December 1,  
13 2012, Plaintiff’s responded to the United States motion for ejectment and the  
14 United States replied on December 19, 2012. ECF Nos. 295 and 306.

15 On January 10, 2013, the Court ordered supplemental briefing on the Motion  
16 for Summary Judgement Re: Ejectment with respect to MA-8’s trust status. ECF  
17 No. 308. The parties responded on January 23, 2013. ECF Nos. 312-316.

18 On August 1, 2014, the Court ordered the United States, among other things,  
19 to contact all individual landowners regarding the Court’s “desires to give all the  
20 individual landowner Defendants the opportunity to inform the court of their  
21 positions in this case after consultation with legal counsel.” ECF No. 329 at p. 32-  
22 33. On August 29, 2014, the United States responded to the Court’s August 1,  
23 2014 order. ECF No. 333.

24 On January 1, 2015, Timothy Lawlor and Mathew Mensik appeared *pro*  
25 *bono* on behalf of the individual landowners that desired counsel, and the  
26 individual landowners joined the United States’ motion for summary judgment re:  
27 ejectment. ECF No. 344.  
28

1 On February 23, 2016, the Court entered an order, among other things,  
2 directing the United States to file a schedule with the Court regarding the current  
3 and former individual landowners of MA-8. ECF No. 345. On April 1, 2016, the  
4 United States responded to the Court's February 23, 2016 order. ECF No. 347.

5 On June 27, 2018, the Court ordered additional filings with respect to three  
6 questions, for the parties to identify any disputed facts, and stated that upon receipt  
7 of the responses the Court will schedule a status conference. ECF No. 353. On July  
8 18, 2018, the parties filed the requested additional filings. ECF. Nos. 355-363.

9 Since the parties' June 2018 responses, the United States has been informed  
10 that Mill Bay Members Association, Inc. have begun to conduct mud bog races on  
11 MA-8 as well as creating an unauthorized dump, which can be seen on google  
12 maps:





1 and hereby certify that I have mailed by United States Postal Service the document  
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