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11 UNITED STATES DISTRICT COURT  
12 EASTERN DISTRICT OF WASHINGTON

13 PAUL GRONDAL, A WASHINGTON ) NO. 09-CV-00018-JLQ  
14 RESIDENT; AND THE MILL BAY )  
15 MEMBERS ASSOCIATION, INC., A ) PLAINTIFFS' NON-OPPOSITION TO  
16 WASHINGTON NON-PROFIT ) STATUS CONFERENCE, RESPONSE  
17 CORPORATION, ) TO FEDERAL DEFENDANTS' AND  
18 ) COLVILLE TRIBES' ALLEGATIONS

19 Plaintiffs, )

20 vs. )

21 UNITED STATES OF AMERICA; )  
22 UNITED STATES DEPARTMENT OF )  
23 THE INTERIOR; THE BUREAU OF )  
24 INDIAN AFFAIRS, AND FRANCIS )  
25 ABRAHAM, CATHERINE GARRISON, )  
MAUREEN MARCELLAY, MIKE )  
PALMER, JAMES ABRAHAM, NAOMI )  
DICK, ANNIE WAPATO, ENID )  
MARCHAND, GARY REYES, PAUL )  
WAPATO, JR., LYNN BENSON, )

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 13 HERITAGE, LLC, LEONARD )  
 14 WAPATO, JR, DERRICK D. ZUNIE, II, )  
 15 DEBORAH L. BACKWELL, JUDY )  
 16 ZUNIE, JACQUELINE WHITE PLUME, )  
 17 DENISE N. ZUNIE AND )  
 18 CONFEDERATED TRIBES OF THE )  
 19 COLVILLE RESERVATION, )  
 20 ALLOTTEES OF MA-8 (KNOWN AS )  
 21 MOSES ALLOTMENT 8) )  
 22 )  
 23 )  
 24 )  
 25 )  
 Defendants. )

Plaintiffs hereby submit this Non-Opposition to Status Conference, Response to Allegations by Federal Defendants (ECF No. 373) and Colville Tribes (ECF No. 379).

**A. Plaintiffs Have Not Participated in Any Mud Bogs or Unauthorized Dumping.**

Federal Defendants allege that “Mill Bay Members Association, Inc. have begun to conduct mud bog races on MA-8 as well as creating an unauthorized dump.” ECF

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1 No. 373 at p. 4. Colville Tribes simply restate Federal Defendants' allegation, but offer  
2 no further evidence or citation to substantiate the claim. ECF No. 379 at p. 2. In support  
3 of their allegation, Federal Defendants attach a photograph from google maps with  
4 portions circled, purporting to reflect the same:  
5  
6



23 *Id.*

24  
25 But the portions circled by Federal Defendants are *across the highway* from the

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1 land controlled by the Mill Bay Members. Those portions are actually controlled by *the*  
2 *Colville Tribe*, who are Defendants in this action and who are blaming the Mill Bay  
3 Members for these acts. In fact, the Colville Tribe casino has a history of *sponsoring*  
4 the mud bog races on that property.  
5

6  
7 In contrast, the Mill Bay Members occupy the RV Park referenced in Defendants’  
8 photograph next to the pink dot. The Mill Bay Members have never had any dealings  
9 across the highway. The below drone photograph depicts the area more clearly, showing  
10 the Mill Bay Members’ RV Park abutting the water, with a boundary created by the  
11 highway, across which the Colville Tribes’ mud bogs appear:  
12  
13



24 There is no factual basis for the claims that the Mill Bay Members Association  
25 created a mud bog or garbage pit, and it should not form the basis of any part of a status

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1 report filed with the Court.

2  
3 **B. Federal Defendants and the Colville Tribe Have Not Complied with the**  
4 **Court's Orders.**

5 Federal Defendants' Status Report also inquires as to which of the Court's prior  
6 requests have gone unanswered. ECF No. 373 at p. 1. In the Court's August 2014  
7 Memorandum and Order Re: Appointment of Counsel, Judge Quackenbush expressed  
8 concern regarding the unrepresented nature of many of the individually-named  
9 Defendant landowners. *See generally* ECF No. 329. Up until that point in time, the BIA  
10 had purported to adequately represent those landowners' interests in the litigation. In  
11 the August 2014 Order, Judge Quackenbush disagreed:  
12  
13  
14

15 The claims and defense in this case concern the Plaintiffs' claims to  
16 occupy a portion of land known as Moses Allotment 8 (MA-8), an off-  
17 reservation allotment claimed by . . . some of the Defendants to be held  
18 in trust by the United States. Plaintiffs claim the Defendants are  
19 estopped to deny Plaintiffs' right to occupy the property. The two  
20 pending dispositive motions hinge upon the Plaintiffs' and Defendant  
21 Wapato Heritage's contentions that MA-8's trust period has expired  
22 and that the United States therefore lacks standing to seek ejectment as  
23 trustee. Of the 35 *individually* named Defendant landowners, just 3  
24 have appeared with legal counsel; 9 have filed *pro se* Answers; 5 have  
25 filed *pro se* Declarations; 2 have written letters to the court; and 16 have  
expressed the desire for individual counsel. As "those with direct  
interests—economic, historical, spiritual—in the outcome of a case are  
their own best representatives," *Arizona v. California*, 460 U.S. 605,  
652 (1983) (dissent), the court will not finally rule upon the pending  
matters without independent legal counsel for the individually named

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1 Defendant landowners.

2  
3 ECF No. 329 at pp. 1-2 (emphasis in original).

4 To be sure, Judge Quackenbush spent 33 pages detailing the Federal Defendants'  
5 conflicts of interest and inadequate representation of this group, which he highlighted  
6 with a concern raised in a third party letter: “[T]hat the individual Indian owners named  
7 to the suit ‘generally have low income and relatively low sophistication, hav[e]  
8 involvement considerably different than the Department of Interior, the Bureau of Indian  
9 Affairs, and the Confederated Tribes of the Colville Reservation’ . . .”. *Id.* at p. 26. The  
10 Court then ordered the Federal Defendants to file certain information, designed to offer  
11 adequate assurances to the Court that the unrepresented allottees’ interests were  
12 protected. *See generally, id.*

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17 But Federal Defendants did not comply. On February 23, 2016, Judge  
18 Quackenbush reiterated his concern:

19  
20 This court, having continually expressed its concerns over the lack of  
21 independent representation of the MA-8 landowners, and the potential  
22 conflicts between the position of the United States and the Indian  
23 landowners, directed the BIA to consider the provision of independent  
24 counsel for the un-represented MA-8 landowners. As stated in this  
25 court’s Memorandum and Order Re: Appointment of Counsel (ECF  
No. 329) dated July 31, 2014 (filed August 1, 2014) at 30, the  
landowner “. . . Defendants have the right to be represented by private  
counsel independent of any actual or potential conflict of interest.” The

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1 BIA was further ordered to “file all BIA responses and decisions  
2 rendered in regard to requests for independent counsel made by any  
3 Defendant in the instant case.” (ECF No. 329 at 32).

4 ***The BIA has not complied with that direction.*** The BIA filed  
5 declarations from counsel (ECF No. 339) and the BIA Director (ECF  
6 No. 340), but never filed any agency responses and decisions  
7 concerning requests for independent counsel as specified in that Order.  
8 Two attorneys have now appeared on behalf of the “Marcellay  
9 Defendants,” (ECF No. 341 and ECF No. 342), but no other attorney  
10 appearances have been entered on behalf of the many remaining  
11 landowners who are still unrepresented. Due to the noncompliance, the  
12 court has no basis to evaluate whether all individual landowners who  
13 requested representation have received independent counsel. ***This is  
14 highly concerning to the court.***

15 ECF No. 345 at p. 2 (emphasis added).

16 The Court, therefore, entered *another* Order that, by no later than April 1, 2016,  
17 Federal Defendants must identify all landowners of MA-8 and provide information  
18 regarding “the parties to the sale of any landowner’s interest in MA-8 since the inception  
19 of this action on January 21, 2009,” the specifics of the sale of all such property,  
20 documents underlying such property sales, and whether each individual landowner  
21 requested the appointment of independent counsel in connection with the sale. *Id.* at p.  
22 3.

23 On April 1, 2016, multiple parties, including Plaintiffs and Federal Defendants,  
24 submitted documents and information to the Court concerning, *inter alia*, the requested  
25

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1 interactions with the unrepresented allottees. ECF Nos. 346-349. Federal Defendants  
2 itemized the number of allotment shares purchased from individual allottees. ECF No.  
3 347. This filing disclosed that, *between 2013 and April 2016, the Colville Tribe*  
4 *purchased allotments from several allottees (many unrepresented) to the tune of*  
5 *\$2,162,694.43 for 88,140 shares representing 13.6% of the total allotment shares.* ECF  
6 No. 347 at pp. 4-6. Federal Defendants have not provided any updated filing reflecting  
7 similar information from April 2016 to date, although Plaintiffs anticipate such a filing  
8 would reflect even more unrepresented allottees' shares being purchased by the Colville  
9 Tribe.  
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14 The parties heard nothing further from the Court until its June 27, 2018, Order  
15 Directing Additional Filings, in which the Court noted some of the materials submitted  
16 on April 1, 2016, raised questions concerning, *inter alia*, “the amount of rent money paid  
17 by the Mill Bay Members pursuant to the 2004 Settlement Agreement that was passed  
18 on to the individual landowners, if any[.]” ECF No. 353 at p. 3. The Court directed  
19 additional filings on this and other questions. *Id.* The Court did not address further its  
20 concerns regarding the unrepresented nature of the individual landowners. On  
21 September 16, 2019, Judge Quackenbush recused himself. ECF No. 366.  
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It remains Plaintiffs' position that Judge Quackenbush's concerns regarding the

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1 conflict of interest between the BIA (who is closely aligned with the Colville Tribe) and  
2 the individual landowners were never adequately addressed. As Judge Quackenbush  
3 noted, the Colville Tribe has purchased, from *unrepresented allottees*, millions of dollars  
4 of allotments in the past few years. All such purchases were presumably approved by  
5 the Colville BIA Superintendent, who in January 2017, was elected to head the Colville  
6 Tribal Public Safety Division, which oversees tribal legal services. *See Tribal Tribune*,  
7 “Tribe Finalizes Hiring of New Public Safety Director,” Jan. 6, 2017, *available at*  
8 [http://www.tribaltribune.com/news/article\\_1e237c3a-d428-11e6-939f-](http://www.tribaltribune.com/news/article_1e237c3a-d428-11e6-939f-67a6a16a2aab.html)  
9 [67a6a16a2aab.html](http://www.tribaltribune.com/news/article_1e237c3a-d428-11e6-939f-67a6a16a2aab.html) (accessed Oct. 28, 2019). This is the very behavior Judge  
10 Quackenbush was concerned about, in terms of the Colville Tribe and BIA taking  
11 advantage of the unrepresented allottees. Meanwhile, all of the unrepresented allottees  
12 accepted settlement monies from the Mill Bay Members following the 2004 mediation,  
13 as consideration for their agreement to permit the Mill Bay Members to remain on the  
14 property through 2034.  
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DATED this 29<sup>th</sup> day of October, 2019.

By s/SALLY W. HARMELING

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of October, DATE \@ "yyyy" 2019, 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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Notice of this filing is being sent this date via United States Postal Service First

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DATED at Wenatchee, Washington this 29<sup>th</sup> day of October, 2019.

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