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13 **UNITED STATES DISTRICT COURT**  
14 **EASTERN DISTRICT OF WASHINGTON**

15 PAUL GRONDAL, et al.,

16 Plaintiffs,

17 v.

18 UNITED STATES OF AMERICA;  
et al.,

19 Defendants.

} Case No. 2:09-cv-0018-RMP

} STATUS CONFERENCE  
MEMORANDUM OF WAPATO  
HERITAGE

20 COMES NOW Defendant Wapato Heritage, LLC (“Wapato Heritage”), by and  
21 through counsel, and submits this brief in connection with the Status Conference  
22 scheduled by the court for November 1, 2019.  
23  
24  
25

1 **I. JOINDER IN PLAINTIFF’S STATUS CONFERENCE MEMORANDUM**

2 Wapato Heritage agrees with and joins in the Plaintiffs’ Status Conference  
3 Memorandum. ECF No. 381.

4 **II. ADDITIONAL STATEMENTS RE STATUS CONFERENCE.**

5  
6 As Judge Quackenbush stated so clearly, this case involves the “preeminent  
7 question of trust status.”<sup>1</sup> In its Order of August 1, 2014, ECF No. 329, the court sets  
8 forth the issues and summarizes the briefing on that preeminent issue.<sup>2</sup> However, the  
9 court, and Wapato Heritage and the Plaintiffs, recognized that the Federal Parties were  
10 in a clear and irreconcilable conflict of interest vis-à-vis the individual allottees, who  
11 were, for the most part, unrepresented in this very complex proceeding.  
12  
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15 \_\_\_\_\_  
16 <sup>1</sup> ECF No. 32 at 29:19.

17 <sup>2</sup> The history was also recited in the court’s decision on summary judgment (ECF No.  
18 144), and also in *Wapato Heritage, LLC v. United States*, 637 F.3d 1033 (9th Cir.  
19 2011); in *United States v. La Chappelle*, 81 F. 152 (C.C. Wash. 1897); in *United*  
20 *States v. Moore*, 161 F. 513 (9th Cir. 1908); and in *Starr v. Long Jim*, 227 U.S. 613  
21 (1913). However, as indicated in ECF No. 329, the court was not correct in ECF No.  
22 144 that the allotments were issued under the General Allotment Act; they were issued  
23 separate from that Act.  
24  
25

1 Wapato Heritage is owned by direct descendants of Wapato John (whose given  
2 name was Sar-sarp-kin) who traveled to Washington D.C. and visited President Hayes  
3 on about July 7, 1883, with three other Chiefs, and who “reached an agreement with  
4 the Secretary of the Interior, commonly called the Moses Agreement.”<sup>3</sup> As such, they  
5 are distant relatives of most of the other allottees of MA-8, and have a concern for  
6 their welfare and fair treatment. To that end, counsel for Wapato Heritage sent a letter  
7 expressing concern for the non-representation of the other allottees in this complex  
8 matter. *See* ECF No. 315 at 8-10. This letter was extensively discussed by the court.  
9 ECF No. 329 at 27:20-28:5. In short, the BIA owed the allottees independent and  
10 competent representation—and has never provided that fundamental fairness to the  
11 cestui of their trust.  
12

13  
14  
15 Why is this important? Because the evidence in this case will show that the  
16 BIA has been complicit in making sweetheart deals with the Colville Confederated  
17 Tribes regarding rent, terms, etc., to the most extreme disadvantage of the allottees,  
18 including the individual allottees and Wapato Heritage. The BIA and the Tribe has  
19 also asserted trust status of MA-8, when the allottees are entitled to fee title to the  
20 land.  
21  
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24  
25 <sup>3</sup> ECF No. 329 at 4:1-3.

1 **III. BIA BREACHES OF FIDUCIARY DUTY TO ALLOTTEES SPAN MORE**  
2 **THAN 100 YEARS.**

3 For additional litigation history of the MA-8 property, please see *Lord v.*  
4 *Wapato Irrigation Corp.*, 81 Wash. 561 (1914), which describes in detail how the BIA  
5 helped the Wapato Irrigation Corp. defraud Wapato John, and his heirs, out of the  
6 majority of MA-8, as it existed at the beginning of the 20th century.  
7

8 **IV. THE MUD BOG ALLEGATIONS ARE MISREPRESENTATIONS**

9 In addition to the false allegation that the Plaintiffs have been involved with the  
10 alleged Mud Bog activities, as debunked by the Plaintiffs' Memorandum, the Tribe  
11 fails to note that the Mud Bog activities have been ongoing for nearly 20 years, and  
12 that the Colville Casino has supported the activities in the past. An example of the  
13 past advertisements of the activities is attached hereto as Exhibit 1, and says, in 2008,  
14 "Advertised by the Mill Bay Casino at Lake Chelan."  
15  
16

17 **V. CLAIMS REMAINING IN THE CASE**

18 As stated in ECF No. 329, the claims remaining in the case are:

- 19
- 20 1. Plaintiffs' (the Mill Bay Members Association and Paul  
21 Grondal) claim against the MA-8 landowner Defendants, other  
22 than the Tribe, to declare them "equitably, collaterally, or  
23 otherwise estopped from denying the Plaintiffs their right to use  
24 the Mill Bay Resort until February 2, 2034." (ECF No. 1 at 43,  
25 Prayer for Relief, ¶ 2; ECF No. 197 at 2);
  2. The Federal Defendants' counterclaims against Plaintiffs for  
Ejectment and Trespass (ECF No. 42);

1 3. The Federal Defendants' Cross-claim against Wapato Heritage  
2 for rent owed under the Master Lease (ECF No. 230); and

3 4. Wapato Heritage, LLC's 8 Cross-claims (ECF No. No. 228) for:  
4 a) declaratory relief (against all Defendants);  
5 b) "quiet title" (by declaring that fee patents issue to owners  
6 of MA-8;  
7 c) estoppel (against Federal Defendants and allottees);  
8 d) ejectment of the Tribe from MA-8 (against the Tribe);  
9 e) damages for overpayment (against the allottees);  
10 f) damages for underpayment and failure to collect amount  
11 due under Master Lease (against the Federal Defendants);  
12 g) partition of MA-8 amongst various owners (against the  
13 Tribe); and  
14 h) attorney fees and costs (against all Defendants).

15 ECF No. 329 at 22:20-23:9.

## 16 VI. FUTURE SCHEDULING

17 Wapato Heritage filed a motion to move the case forward in 2016. ECF No.  
18 343. That motion was denied with leave to renew. ECF No. 345. The hang up was the  
19 continued failure of the Federal Parties to comply with the court's clear orders  
20 regarding independent representation of the individual allottees in the face of the  
21 obvious conflicts of interest of the Federal Parties and their counsel. *Id.* The court  
22 stated: "Due to the noncompliance, the court has no basis to evaluate whether all  
23 individual landowners who requested representation have received independent  
24 counsel. This is highly concerning to the court. In order for the views of all parties to  
25 be properly represented and presented, the parties must satisfy the court's concerns

1 before any Order on dispositive matters can be considered or issued.” ECF No. 345 at  
2 2:24-3:1.

3  
4 Instead of complying with the court’s direction, the Federal Parties have  
5 acquiesced in, and allowed, the Tribe to purchase the interests of unrepresented  
6 individual allottees at unconscionably low prices, without anything near adequate  
7 disclosure by the Tribe and/or the BIA, acting as the Trustee for the individual  
8 allottees. This was a fundamental disobedience of the court’s directives.  
9

10 When the representation issues are resolved, fully, Wapato Heritage will renew  
11 its motion for a scheduling order, and respectfully requests that, given the passage of  
12 time, additional briefing on the pending motions be permitted.  
13

14 **DATED** this 30th day of October 2019.

15  
16 **CLOUTIER ARNOLD JACOBOWITZ PLLC**

17  
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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 the following:

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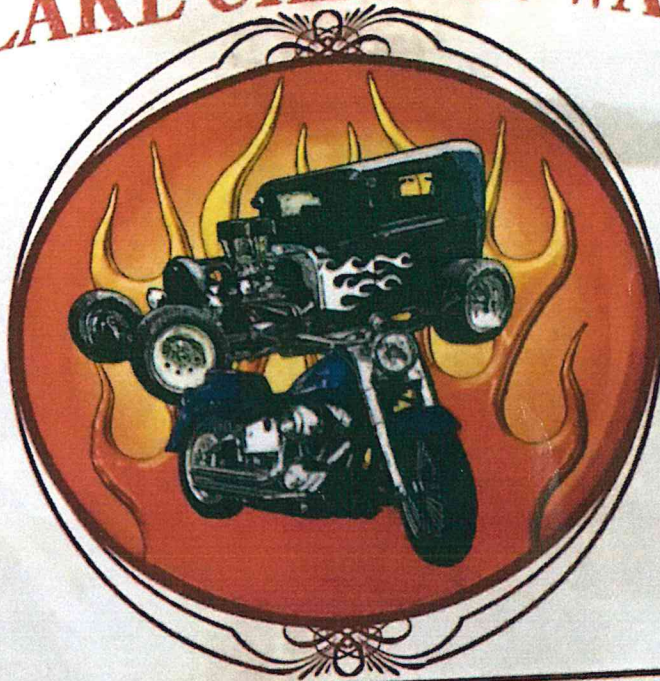
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**DATED** this 30th day of October, 2019.

/s/ Daniel J. Appel  
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