

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 28, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, a Washington
resident,

Plaintiff,

v.

MILL BAY MEMBERS
ASSOCIATION, INC., a Washington
non-profit corporation; UNITED
STATES OF AMERICA; UNITED
STATES DEPARTMENT OF
INTERIOR; BUREAU OF INDIAN
AFFAIRS; FRANCIS ABRAHAM;
CATHERINE GARRISON;
MAUREEN MARCELLAY, MIKE
PALMER, also known as Michael H.
Palmer; JAMES ABRAHAM;
NAOMI DICK; ANNIE WAPATO;
ENID MARCHAND; GARY REYES;
PAULWAPATO, JR.; LYNN
BENSON; DARLENE HYLAND;
RANDY MARCELLAY; FRANCIS
REYES; LYDIA W. ARMEECHER;
MARY JO GARRISON; MARLENE
MARCELLAY; LUCINA O'DELL;
MOSE SAM; SHERMAN T.
WAPATO; SANDRA COVINGTON;
GABRIEL MARCELLAY; LINDA
MILLS; LINDA SAINT; JEFF M.

NO: 2:09-CV-18-RMP

ORDER GRANTING PLAINTIFFS'
MOTION FOR CLARIFICATION
AND AMENDING JUDGMENT AT
ECF NO. 504

1 CONDON; DENA JACKSON; MIKE
2 MARCELLAY; VIVIAN PIERRE;
3 SONIA VANWOERKON; WAPATO
4 HERITAGE, LLC; LEONARD
5 WAPATO, JR.; DERRICK D.
6 ZUNIE, II; DEBORAH L.
7 BACKWELL; JUDY ZUNIE;
8 JAQUELINE WHITE PLUME;
9 DENISE N. ZUNIE;
10 CONFEDERATED TRIBES
11 COLVILLE RESERVATION; and
12 ALLOTTEES OF MA-8, also known
13 as Moses Allotment 8,
14 Defendants.

9 BEFORE THE COURT is Plaintiffs’ Motion for Clarification, ECF No. 505,
10 which seeks clarification of this Court’s Order at ECF No. 503 and the
11 corresponding Judgment at ECF No. 504. The Court has considered the briefing, the
12 record, the relevant precedent, and is fully informed.

13 On July 9, 2020, the Court granted Defendants’ Motion for Summary
14 Judgment re Ejectment, denied Plaintiffs’ Motion for Summary Judgment Against
15 Certain Individual Allottees, and denied Plaintiffs’ Motion for Default Judgment
16 Against Certain Individual Allottees. ECF No. 503. The Court ordered: “Plaintiffs
17 have had no right to occupy any portion of MA-8 after February 2, 2009. Plaintiffs
18 are in trespass, and their removal from the subject property is authorized.” *Id.* at 71.
19 The Court further ordered, “Judgment shall be entered for the Government (Federal
20 Defendants) on its trespass claim.” *Id.* The Clerk entered Judgment consistent with
21 the Court’s order. ECF No. 504.

1 Plaintiffs have requested clarification of the Court’s prior Order and
2 Judgment, asserting that it is unclear whether the Order was intended as a final
3 order, such that it is appealable. They explain that “neither the Order nor the
4 Judgment contain an express determination ‘ that there is no just reason for delay,’
5 as required by Federal Rule of Civil Procedure 54(b) in order to establish a final
6 judgment on which an immediate appeal may be taken.” ECF No. 505 at 2.

7 Rule 54(b) states, in relevant part:

8 When an action presents more than one claim for relief . . . or when
9 multiple parties are involved, the court may direct entry of a final
10 judgment as to one or more, but fewer than all, claims or parties only if
the court expressly determines that there is no just reason for delay.

11 Fed. R. Civ. P. 54(b). Plaintiffs argue that, because there are remaining claims in
12 this case and because the Court did not expressly find that “there is no just reason for
13 delay” under Rule 54(b), the Order and Judgment are not appealable final orders.

14 In response to the instant motion, the Government and the Confederated
15 Tribes of the Colville Reservation argue that the Court’s prior Order already is
16 appealable under 28 U.S.C. § 1292(a)(1), as it is essentially an interlocutory order
17 granting an injunction for the purposes of that statute. *See* 28 U.S.C. § 1292(a)(1)
18 (explaining that the courts of appeals have jurisdiction to hear appeals of
19 interlocutory orders “granting, continuing, modifying, refusing or dissolving
20 injunctions, or refusing to dissolve or modify injunctions”); ECF No. 515 at 2–3
21 (citing *Carson v. American Brands, Inc.*, 450 U.S. 79, 83–84 (1981)); ECF No. 516

1 at 2–3 (citing *Thompson v. Enomoto*, 815 F.2d 1323 (9th Cir. 1987)). Accordingly,
2 these Defendants maintain that the Order is immediately appealable, even though the
3 Court did not make express findings under Rule 54(b).

4 Additionally, the Government asserts that, should the Court grant Plaintiffs’
5 Motion for Clarification and amend its Judgment, the Court also should expressly
6 reserve its jurisdiction to enforce the Order and Judgment. The Government
7 maintains that this finding will foreclose any future argument that the Court lacks
8 jurisdiction to enforce its Order authorizing Plaintiffs’ ejection, which is a form of
9 injunctive relief.

10 As the Court already has explained, further delay in this case will result in
11 injustice. *See* ECF No. 411 at 9. This is especially true now that the Government
12 has prevailed on its trespass counterclaim on summary judgment, and the Court has
13 found Plaintiffs are in trespass.

14 The Court agrees that the Judgment and Order are appealable under 28 U.S.C.
15 § 1292(a)(1), due their injunctive nature. *See Thompson*, 815 F.2d at 1326–27
16 (explaining that a court order may be considered an injunction for the purposes of 28
17 U.S.C. § 1292(a)(1) when it is “sufficiently injunctive in nature”). However, to
18 clarify its intent that the Order and Judgment be immediately appealable, the Court
19 also finds that there is no just reason to delay an appeal of its Order at ECF No. 503,
20 or the corresponding Judgment. *See* Fed. R. Civ. P. 54(b).

1 Consistent with Rule 54(b), the Court retains jurisdiction over all remaining
2 claims and will issue a scheduling order to resolve those claims. Moreover, the
3 Court retains jurisdiction to enforce its Order authorizing the ejectment of Plaintiffs
4 from MA-8, absent a stay. By expressly retaining jurisdiction over all remaining
5 claims, as well as jurisdiction to enforce its Order authorizing ejectment, the Court
6 intends to circumvent any possibility of a party further stalling this litigation, which
7 has been ongoing for eleven years.

8 In its responsive briefing the Government requests that the Court amend its
9 Judgment to specify that a writ of assistance may issue without further court order
10 pursuant to Rule 70(d). Rule 70(d) explains, “On application by a party who obtains
11 a judgment or order for possession, the clerk must issue a writ of execution or
12 assistance.” Fed. R. Civ. P. 70(d). Plaintiffs filed no reply and thus have not
13 objected to the inclusion of this language in the Amended Judgment. Accordingly,
14 the Court includes the requested language in the Amended Judgment.

15 Accordingly, **IT IS HEREBY ORDERED:**

- 16 1. Plaintiffs’ Motion for Clarification, **ECF No. 505**, is **GRANTED**.
- 17 2. The District Court Clerk is directed to **amend the Judgment at ECF No.**
18 **504** by adding the following language to the Judgment:

19 ‘The Court finds that, pursuant to Fed. R. Civ. P. 54(b), there is no just
20 reason for delay and this Judgment and corresponding Order at ECF No.
21 503 are immediately appealable. However, the Court retains jurisdiction to
enforce its Orders in this matter, including the Order at ECF No. 503, as
well as jurisdiction over all remaining claims in this case.

1 Pursuant to Fed. R. Civ. P. 70(d), a writ of assistance may issue without
2 further court order to enforce this Judgment.’

- 3 3. The parties shall file a joint status report, no later than **August 10, 2020**,
4 identifying the remaining claims in this matter. Upon review of the joint
5 status report, the Court will issue a scheduling order to resolve the
6 remaining claims.

7 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
8 Order, provide copies to counsel, provide copies to *pro se* parties, and enter an
9 Amended Judgment consistent with this Order.

10 **DATED** July 28, 2020.

11 *s/ Rosanna Malouf Peterson*
12 ROSANNA MALOUF PETERSON
13 United States District Judge
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