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THE HONORABLE JUSTIN L. QUACKENBUSH

5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON
7

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

12 Plaintiffs,)

13 vs.)
14)

15 UNITED STATES OF AMERICA;)
16 UNITED STATES DEPARTMENT OF)
17 THE INTERIOR; THE BUREAU OF)
18 INDIAN AFFAIRS, and FRANCIS)
19 ABRAHAM, CATHERINE GARRISON,)
20 MAUREEN MARCELLAY, MIKE)
21 PALMER, JAMES ABRAHAM, NAOMI)
22 DICK, ANNIE WAPATO, ENID)
23 MARCHAND, GARY REYES, PAUL)
24 WAPATO, JR., LYNN BENSON,)
25 DARLENE HYLAND, RANDY)
MARCELLAY, FRANCIS REYES,)
LYDIA W. ARMEECHER, MARY JO)
GARRISON, MARLENE MARCELLAY,)

) NO. 09-CV-00018-JLQ
) MEMORANDUM IN SUPPORT OF
) PLAINTIFF'S **THIRD** MOTION FOR
) PARTIAL SUMMARY JUDGMENT RE:
) ESTOPPEL

1 LUCINDA O'DELL, MOSE SAM,)
 2 SHERMAN T. WAPATO, SANDRA)
 3 COVINGTON, GABRIEL)
 4 MARCELLAY, LINDA MILLS, LINDA)
 5 SAINT, JEFF M. CONDON, DENA)
 6 JACKSON, MIKE MARCELLAY,)
 7 VIVIAN PIERRE, SONIA)
 8 VANWOERKOM, WAPATO)
 9 HERITAGE, LLC, LEONARD)
 10 WAPATO, JR, DERRICK D. ZUNIE, II,)
 11 DEBORAH L. BACKWELL, JUDY)
 12 ZUNIE, JACQUELINE WHITE PLUME,)
 13 DENISE N. ZUNIE and)
 14 CONFEDERATED TRIBES OF THE)
 COLVILLE RESERVATION, Allottees of)
 MA-8 (known as Moses Allotment 8),)
 Defendants.)

I. BACKGROUND FACTS

The background facts supporting this Motion by Plaintiffs' Regarding Settlement Agreement are set forth in the Memorandum in Support of Plaintiffs' First Motion for Summary Judgment.

II. ADDITIONAL FACTS REGARDING ESTOPPEL ARGUMENT

This case's history involves actions and inactions by various Colville Agency Superintendents. Each of those individuals had actual authority to bind the United

1 States and the MA-8 Landowners to the Master Lease, and any modifications to it.
2
3 Superintendent George Davis had actual authority, on behalf of the Landowners, to
4 accept service of Evans' January 30, 1985 Option to Renew. Superintendent Davis,
5 and each of his successor Superintendents, had actual authority to determine the
6 validity of that renewal. After Evans' January 30, 1985 Option to Renew, the various
7 Superintendents evidenced, in many ways, that the Master Lease was renewed until
8 2034, including, but not limited to the following¹:
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10
11 Plaintiffs' Facts #90, 92, 93, 94, 97: Evans submitted modifications to the
12 Master Lease, including the "Expanded Membership Agreement," for approval by the
13 BIA. The Expanded Membership Agreement provided that its duration was
14 coextensive with the fifty year term commencing February 2, 1984, of Seller's lease for
15 the Mill Bay property. On July 6, 1989, George Davis wrote a note to Sharon
16 Redthunder informing her that he was approving the modification and expanded
17 membership concept and instructed that a letter be sent to Evans stating the same.
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21 Plaintiffs' Facts #118, 120: On August 6, 1993, Evans entered into another
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23
24 ¹See also Plaintiffs' facts asserted in relation to Plaintiffs' Motion for Partial Summary Judgment Re
25 2004 Settlement Agreement.

1 sublease with CTEC, which stated “[t]he term of this sublease shall be the time
2 remaining on the twenty-five (25) year term as established in Master Lease No. 82-21
3 and shall begin on _____, 1993, and the additional term of twenty-five (25) years
4 exercised by Evans in the letter to the Superintendent on January 30, 1985.” This
5 sublease was approved by BIA Secretary.
6

7
8 Plaintiffs’ Fact #71, 72.: On July 14, 2004, Superintendent Nicholson signed a
9 Lease Information Affidavit which was submitted to the Washington State Department
10 of Licensing and Regulation. This affidavit stated that the MA-8 Lease expires
11 February 2, 2034 and that the landlord for this land was the “Bureau of Indian Affairs.”
12 Superintendent Nicholson signed this affidavit as “Signature of Landlord.”
13
14

15
16 Regardless of the foregoing, the BIA takes the position that the Master Lease
17 expired by its own terms as of February 2, 2009, and that Plaintiffs’ rights to occupy
18 MA-8 expired at the same time.
19

20 Principles of estoppel refute the BIA’s attempt to now extinguish the Plaintiffs’
21 right to use and occupy the Mill Bay Resort through 2034. As a result, the BIA’s
22 counterclaim for trespass must be dismissed as a matter of law.
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III. ARGUMENT

Plaintiffs seek a declaratory judgment ruling that the BIA and the MA-8 landowners are estopped to deny the Plaintiffs’ rights to use Mill Bay Resort until February 2, 2034.

The doctrine of equitable estoppel precludes a litigant from asserting a claim or defense which might otherwise be available to him against another party who has detrimentally altered her position in reliance on the former’s misrepresentation or failure to disclose some material fact.

Portman v. United States, 674 F2d 1155, 1158 (7th Cir. 1982)

Equitable estoppel against a governmental agency requires a showing of (1) an admission, statement, or act by the government inconsistent with its later claim; (2) reliance on the admission, statement, or act; (3) injury to the relying party if the government were allowed to contradict or repudiate its prior admission, statement, or act; (4) the necessity of estoppel to prevent a manifest injustice; and (5) no impairment of governmental functions if estoppel is applied.

“Estoppel by operation of law arises where the acts or statements of the defendant **or his agent** induce the plaintiff, in reasonable reliance, to act or forbear to act to his prejudice.” Marsh v. General Adjustment Bureau, Inc., 22 Wn. App. 933,

1 935, 592 P.2d 676, 678 (1979). The BIA acts as an agent on behalf of the landowners
2 in the lease of tribal land. As the BIA's actions and/or inactions resulting in estoppel
3 binds the landowners.Ritter v. United States, 3 Cir., 1928, 28 F.2d 265, states the rule
4 succinctly: 'The acts or omissions of the officers of the government, if they be
5 authorized to bind the United States in a particular transaction, will work estoppel
6 against the government, if the officers have acted within the scope of their authority.'
7 Ritter, 28 F.2d at page 267.

11 Further, an officer authorized to make a contract for the United States has the
12 implied authority thereafter to modify the provisions of that contract particularly where
13 it is clearly in the interest of the United States to do so. Goltra v. United States, Ct.Cl.,
14 96 F. Supp. 618; 37 Op.Atty.Gen. 254 (1933); United States v. Corliss Steam-Engine
15 Co., 91 U.S. 321, 23 L.Ed. 397; Satterlee v. United States, 30 Ct.Cl. 31.

18 Cases in which the United States has been estopped by
19 such conduct have appeared in the areas of tax disputes,
20 Immigration proceedings, and, most significant for our
21 purposes here, disputes relating to the administration of
22 public lands.

23 ...

24 **Perhaps most important of these equitable**
25 **considerations is the concern that we not allow**

1 **transactions between the government and its citizens**
2 **to become subject to whimsical, unilateral, reversals**
3 **at administrative will.** (emphasis added)

4 Oil Shale Corp. v. Morton, 370 F. Supp. 108, 12-127 (D.Colo.1973).

5 [W]here a private party seeks to estop the government
6 **from disavowing an arrangement it had previously**
7 **condoned or entered into**, estoppel should be available
8 “where justice and fair play require it,” i.e. where the
9 government’s change in position threatens a serious
10 injustice, and the interests of the public will not be
 unduly jeopardized by the estoppel claim.

11 Portman, *supra* at 1167 (citing California Pacific Bank v. Small Business Admin., 557
12 F.2d 218, 224 (9th Cir. 1977).

13 In United Nuclear Corp. v. U.S., 912 F.2d 1432, 1437-1438 (C.A.Fed. 1990),
14 the court found that the Secretary’s requirement that the tribe approve a mining
15 construction plan constituted an unlawful taking when the lease did not require such
16 approval, stating:
17 approval, stating:

18 In its brief before us, the government asserts that the Secretary's
19 requirement of tribal approval of the mining plan was intended
20 to promote the Indians' right to and development of self-
21 determination. **It is difficult to understand, however, how**
22 **encouraging the Indians not to live up to their contractual**
23 **obligations, which they entered into freely and with the**
24 **Secretary's approval, could be said to encourage self-**
25

1 **determination.** To the contrary, one would think that the best
2 way to make the Indians more responsible citizens would be to
3 require them to live up to their contractual commitments.

4 ...
5 The Secretary's action reflects not concern over national safety,
6 **but an attempt to enable the Tribe to exact additional**
7 **money from a company with whom it had a valid contract,**
8 which the government euphemistically describes as an attempt
9 to encourage and promote Indian self-determination.

10 The court in United Nuclear recognized, as this Court should here, that holding
11 tribes and individual tribal members to their agreements with individuals and
12 businesses is vital to the economic stability of tribes. To not hold tribes to their
13 agreements would only serve to discourage parties from conducting business with
14 tribes. It will be a disservice to the MA-8 landowners to allow the BIA to change its
15 position as it is now doing with the MA-8 lease and subleases.

16 Applying the above principles here, the BIA and the landowners are estopped to
17 deny the Plaintiffs' right to use and occupy the Mill Bay Resort through 2034. The
18 BIA's attempt, allegedly on behalf of the landowners, to extinguish the Plaintiffs'
19 rights to use and occupy the Mill Bay Resort are inconsistent with numerous prior
20 actions and statements of the BIA Superintendents. Further, there can be no dispute
21 the Plaintiffs' reasonably relied on those actions and statements to their detriment,
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1 having expended millions of dollars to purchase and improve their RV sites.
2
3 (Plaintiffs' Fact #115, 116).

4 **IV. CONCLUSION**

5 An order granting the Plaintiffs summary judgment, declaring that the BIA and
6 the landowners are estopped to deny the Plaintiffs' rights to use and occupy the Mill
7 Bay Resort and dismissing the BIA's claim of trespass, is appropriate.
8
9

10 DATED this 1st day of September, 2009.

11
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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system, and via U.S. Mail. Parties may access this filing through the Court's system.

DATED at Wenatchee, Washington this 1st day of September, 2009.

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