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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,)

NO. 09-CV-00018-JLQ

RESPONSE MEMORANDUM OF MILL
BAY MEMBERS RE: COURT'S
ORDER OF JUNE 27, 2018

12 Plaintiffs,)

13 vs.)
14)

15 UNITED STATES OF AMERICA;)
16 UNITED STATES DEPARTMENT OF)
17 THE INTERIOR; THE BUREAU OF)
18 INDIAN AFFAIRS, et al.,)

19 Defendants.)

20 Plaintiffs, by and through their attorneys of record, Jeffers, Danielson, Sonn &
21 Aylward, P.S., by Brian C. Huber, submit this Memorandum pursuant to the Court's
22 instructions set forth in its Order dated June 27, 2018.
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1 The three topics addressed in this Memorandum are limited to (1) the role of the
2 Government and the Tribes in the 2004 mediation and/or court proceedings, (2) the rent
3 payments made by the Mill Bay Members since the 2004 settlement, and (3) the non-
4 existence of any verbatim transcripts (only clerk's minutes) relating to the 2004
5 settlement hearing in the Chelan County Superior Court.
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8 1. The role of the Government and the Tribes in the 2004 mediation and court
9 proceedings.

10 On December 1, 2012 the Plaintiffs submitted a Plaintiff's Statement of Facts In
11 Response to Federal Defendant's Motion for Summary Judgment (ECF No. 294)
12 which includes a detailed recitation of facts and evidence that go to the heart of the
13 first topic framed by the Court's June 27, 2018 Order.
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16 Specifically, a heading entitled "The Mill Bay Resort Litigation and 2004
17 Settlement" appears just above Statement of Fact No. 86 set forth at page 43 of
18 Plaintiff's Statement of Facts. That section of the Statement of Facts, which includes
19 Statement of Fact Nos. 86 through 153 and ends at page 70, delves extensively into the
20 role of the Government and the Tribes in the 2004 mediation and the related court
21 proceedings. Those Statements of Fact also include citations to the evidentiary record
22 already on file in this case.
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1 The Plaintiffs believe the court record, as set forth in the Statement of Facts and
2 the citations to the record set forth therein, conclusively establishes that the
3 Government and the Tribes:
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- 5 • Actively participated in the mediation and the negotiation of the
6 settlement.
- 7
- 8 • Were kept apprised of the pending actions and provided notice of the
9 November 23, 2004 TEDRA court hearing by which the Chelan County
10 Superior Court approved the 2004 Settlement.
- 11 • Declined to file any objection despite having been given notice and an
12 opportunity to object.
- 13 • Not only approved of the settlement terms but also accepted the benefits
14 of the settlement inasmuch as the BIA received the Plaintiffs' annual
15 payments (through Wapato Heritage, LLC) and then distributed the
16 settlement payments to the individual landowners.

17 All of these facts and more, as well as the underlying evidence supporting them, are set
18 forth in the Plaintiffs' Statement of Facts and specifically in Statement of Facts Nos.
19 86 through 153. See ECF No. 294.
20

21 Under the circumstances presented in this case, the 2004 Settlement Agreement
22 is binding and final. Washington's Trust and Estates Dispute Resolution Act (RCW
23 11.96A) ("TEDRA") applies not only to a broad range of disputes involving estates
24 and trusts, but also to a broadly defined list of "parties." The term "party" as defined
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1 by TEDRA includes, *inter alia*, “[a]ny other person who has an interest in the subject
2 the particular proceeding.” RCW 11.96A.030(5)(i). The parties meet this definition
3 under the facts presented here.
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5 Under TEDRA the court’s jurisdiction to resolve disputes involving estates is
6 very broad. Under TEDRA Judge Bridges had the statutory authority to administer
7 and settle the affairs of Mr. Evans’s estate and “order and cause to be issued all such
8 writs and any other orders as are proper or necessary; and do all other things proper or
9 incident to the exercise of jurisdiction under this section.” RCW 11.96A.040(3). See
10 also RCW 11.96A.060.
11

12 The broad authority granted to trial courts under TEDRA is further
13 demonstrated by RCW 11.96A.080(1) which provides in part that “any party may have
14 a judicial proceeding for the declaration of rights or legal relations to any matter, as
15 defined by RCW 11.96A.030.” (Emphasis added.) See RCW 11.96A.030(2) (setting
16 forth broad definition of “matter,” including “[t]he determination of any question
17 arising in the administration of an estate or trust, or with respect to any nonprobate
18 asset, or with respect to any other asset or property interest passing at death...”).
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24 There can be no doubt that the November 23, 2004 Order confirming settlement
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1 clearly invoked the broad powers afforded to Judge Bridges under TEDRA, RCW
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3 11.96A. Among other things, the Order:

- 4 • Includes specific Findings of Fact demonstrating the applicability of
5 TEDRA, including the death of William Evans, Jr., the Last Will and
6 Testament's listing of beneficiaries, the filing of a contingent creditor's
7 claim by the Mr. Grondal and the Mill Bay Members, the court's
8 certification of the creditor's claim as a class action creditor's claim, and
9 the commencement of a lawsuit by Mr. Grondal and the Mill Bay
10 Members seeking damages on the contingent creditor's claim. See, e.g.,
11 Finding of Fact Nos. 16-23 of November 23, 2004 Order confirming
12 settlement, attached as Exhibit C to Declaration of Brian C. Huber Re:
13 2004 Settlement filed concurrently herewith.
- 14 • Also includes Finding of Fact that on the Personal Representative of Mr.
15 Evans's Estate and the Estate "invoked their right to mediation of the
16 dispute under TEDRA, RCW 11.96A et. seq." (Id., at Finding of Fact No.
17 24) and that the two-day mediation thereafter took place at the law offices
18 of Stokes Lawrence in Seattle, Washington on August 8 and September 9,
19 2004. Id., at Finding of Fact No. 25. This demonstrates that the
20 mediation itself that resulted in the 2004 Settlement took place pursuant to
21 TEDRA.
- 22 • Includes a Finding of Fact that "[a]s a result of the mediation, the parties
23 entered into a Settlement Agreement, dated September 15, 2004, to settle
24 the creditor's claim and lawsuits. . ." Id., at Finding of Fact No. 27. This
25 Finding of Fact makes clear that the 2004 Settlement was a settlement
26 pursuant to TEDRA.
- Includes, in addition to Conclusions of Law confirming the settlement
itself, an additional Conclusion of Law providing as follows:

1 8. Binding Effect. The terms of the Settlement Agreement
2 and of this Order are binding on the parties hereto, as well as
3 their heirs, executors and administrators, successors and
4 assigns, and those terms shall have *res judicata* and other
5 proceedings maintained by or on behalf of any such persons, to
6 the extent those claims, lawsuits or other proceedings involve
7 matters that were or could have been raised in this Action. The
8 terms of the Settlement Agreement are binding upon all
interested parties and beneficiaries to the Estate of William
Evans, Jr. pursuant to RCW 11.96A.230-240.

9 Id., at Conclusion of Law No. 8. This Conclusion of Law demonstrates that the
10 confirmation of the settlement was intended to be final and to be binding upon “all
11 interested parties” and anyone else claiming an interest in the matter.
12

13 In short, Judge Bridges properly exercised the authority granted under TEDRA
14 by entry of his Order confirming settlement on November 23, 2004. The 2004
15 Settlement is binding and final.
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17 2. The rent payments made by the Mill Bay Members since the 2004 settlement.

18 The Supplemental Declaration of Paul Grondal Re: 2004 Settlement Payments
19 (ECF No. 349) filed on April 1, 2016 includes a detailed discussion and listing of the
20 payments made by Mill Bay Members through the year 2016 pursuant to the 2004
21 Settlement Agreement, all of which were paid in full and on a timely basis.
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24 The Declaration of Kristin Fererra Re: 2004 Settlement Agreement (ECF No.
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1 348) outlines the annual payments made from 2009 through 2016, all of which were
2 transmitted to Jeffrey Webb on behalf of Wapato Heritage, LLC, along with
3 instructions to distribute the payments (via the BIA) to the individual landowners.
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6 In the roughly two years that has passed since the April 2016 filing of the
7 Supplemental Declaration of Paul Grondal Re: Settlement Payments (ECF No. 349)
8 and the Declaration of Kristin Fererra Re: 2004 Settlement Agreement (ECF No. 348),
9 the Mill Bay Members have continued to make the required payments in full and on a
10 timely basis. As before, the 2017 and 2018 annual payments were transmitted to
11 Jeffrey Webb, Operations Manager for Wapato Heritage, LLC, and accompanied by a
12 cover letter directing him as follows: “As per previous agreements, we direct you to
13 remit this payment to the individual MA-8 allottees/landowners via the Bureau of
14 Indian Affairs (the “BIA”).” See Declaration of Brian C. Huber Re: 2004 Settlement
15 Payments filed concurrently herewith, Exhibit A. Both transmittal letters, as with
16 previous transmittal letters, specifically directed Mr. Webb that “[i]f you have any
17 questions or objections to the contents of this letter, please have your attorney contact
18 me upon receipt.” Id.
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24 To date, neither the Mill Bay Members nor their counsel have received any
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1 indication that Mr. Webb or Wapato Heritage, LLC have had any questions or
2 objections to the contents of the transmittal letters.
3

4 It is presumed that the BIA has continued to distribute the settlement payments
5 to the individual landowners as the BIA has previously acknowledged it has done each
6 year since the 2004 Settlement was achieved. See, e.g., Plaintiff's Statement of Fact
7 Nos. 143-150 (ECF No. 294) and citations to the record set forth therein.
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10 3. The non-existence of transcripts relating to the 2004 settlement hearing.

11 To the knowledge of Plaintiffs' counsel, there is no transcript, recording or other
12 record of the 2004 mediation that took place in Seattle and was attended by the parties
13 to this litigation as well as by representatives of the BIA and the Tribes.
14

15 As the Court is aware, a TEDRA settlement hearing took place on November
16 23, 2014 before Judge Bridges of the Chelan County Superior Court. The hearing
17 pertained to three separate lawsuits, the In Re Estate of William Evans probate matter
18 (Cause No. 03-4-00185-8), the Paul Grondal and All Mill Bay Resort Members v.
19 Chief Evans Inc. class action matter (Cause No. 02-2-1100-9) and the Paul Grondal v.
20 Jeffrey Webb matter (Cause No.03-4-00185-8), and was therefore conducted as a joint
21 hearing. A copy of the clerk's minutes from that hearing is attached as Exhibit B to
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1 the Declaration of Brian C. Huber filed concurrently herewith.

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3 Plaintiffs' counsel has inquired as to the existence of any verbatim transcripts,
4 recordings or other documentation that might exist in connection with the joint
5 settlement hearing. The undersigned has been informed that as of 2004 there was no
6 standard procedure in place by which audio recordings were made during court
7 hearings in the Chelan County Superior Court (although that practice was later
8 adopted).
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11 As of 2004 court hearings would be attended by an official court reporter and
12 transcribed only if requested by a party in advance of the court hearing. At the bottom
13 of pages 1 and 2 of the clerk's minutes from the November 23, 2004 settlement
14 hearing, the minutes state "Not Reported[.]" Id.
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17 It is the undersigned's understanding that no court reporter was requested in
18 advance of the November 23, 2004 settlement hearing and that therefore no verbatim
19 transcript exists. It appears the official record of the hearing is limited to the clerk's
20 minutes and Judge Bridges's Order confirming settlement of that same date. A copy of
21 said Order is attached as Exhibit C to the Declaration of Brian C. Huber filed
22 concurrently herewith.
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DATED this 18th day of July, 2018.

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RESPONSE MEMORANDUM OF THE MILL BAY
MEMBERS

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4374534-Memorandum of the Mill Bay Members

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CERTIFICATE OF SERVICE

I hereby certify that on July 18th, 2018, 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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2 Notice of this filing is being sent this date via United States Postal Service First
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DATED at Wenatchee, Washington this 18th day of July, 2018.

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