

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CONFEDERATED TRIBES OF THE
CHEHALIS RESERVATION, et al.,

Plaintiffs,

v.

THURSTON COUNTY BOARD OF
EQUALIZATION, et al.,

Defendants.

CASE NO. C08-5562BHS

ORDER DISMISSING
PLAINTIFFS' FIFTH CLAIM
FOR RELIEF AND DENYING
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT

This matter comes before the Court on Plaintiffs' Motion for Summary Judgment Re: Department of Revenue Decision (Dkt. 47) and the Court's Order to Show Cause (Dkt. 56). The Court has considered the pleadings filed in support of and in opposition to the motion, the order to show cause, and the remainder of the file. The Court hereby dismisses Plaintiffs' Fifth Claim for Relief and denies Plaintiffs' Motion for Summary Judgment for the reasons stated herein.

I. PROCEDURAL BACKGROUND

On September 18, 2008, Plaintiffs Confederated Tribes of the Chehalis Reservation ("Tribe") and CTGW, LLC ("CTGW") filed a complaint against Defendants Thurston County Board of Equalization; equalization board members John Morrison, Bruce Reeves and Joe Simmonds; Thurston County Assessor Patricia Costell; and

Thurston County. Dkt. 1. Plaintiffs alleged that Defendants are violating the U.S. Constitution as well as federal common law by imposing a personalty tax on CTGW's facility, the Great Wolf Lodge. *Id.* ¶ 1.

On October 21, 2008, the Court asserted jurisdiction over this action, declined to abstain from this action, and found that "Plaintiffs, as joined" met a 28 U.S.C. § 1362 exception to the Tax Injunction Act. Dkt. 24 at 4-6. With regard to abstention, the Court stated that the state court action did not "provide the relief that Plaintiffs are seeking in this action" and that "although functionally equivalent, a state tax exemption is not federal immunity from state taxation." *Id.* at 5. With regard to the Tax Injunction Act, the Court found that the Tribe's involvement in this action was a "significant factor" in favor of finding that Plaintiffs met "the [28 U.S.C.] § 1362 exception to the Tax Injunction Act." *Id.*

On March 9, 2009, Plaintiffs filed a First Amended Complaint for Declaratory and Injunctive Relief. Dkt. 46 ("Amended Complaint"). Plaintiffs allege a new claim that reads as follows:

[The State of Washington Department of Revenue ("Revenue")] has control over Defendants' administration of assessment and tax laws pursuant to RCW 84.08.010, *et seq.*

Defendants must follow any act, order or direction issued by Revenue as to any matter relating to the administration of the assessment and taxation laws of the State of Washington **pursuant to RCW 84.08.010, et seq.**

Defendant County Assessor Costello sought Revenue's opinion regarding the preemption of the instant personalty tax on the Improvements.

Revenue issued an opinion that, based on the balance of the federal, state, and Tribal interests at issue, federal law preempted the instant personalty tax on the [hotel, conference center, indoor water park and other improvements ("Improvements")].

By assessing and attempting to collect the instant personalty tax through distraint of the Improvements, Defendants are in direct conflict with an act, order or direction issued by Revenue.

Because Defendants must follow, and have no authority to act in conflict with, an act, order or direction of Revenue, their actions regarding the assessment, taxation and distraint of the Improvements **violate state law** and federal preemption law.

Id. ¶¶ 56-61 (emphasis added) ("Fifth Claim for Relief").

1 On March 12, 2009, Plaintiffs filed a Motion for Summary Judgment Re:
2 Department of Revenue Decision. Dkt. 47. Plaintiffs argue that:

3 Summary judgment is appropriate because there are no genuine issues of
4 material fact regarding Defendants' failure to comply with an August 2008
5 decision issued by the Washington State Department of Revenue . . .
6 pursuant to the requirements of state and federal law.

7 *Id.* at 2. On March 30, 2009, Defendants responded. Dkt. 52. On April 3, 2009,
8 Plaintiffs replied. Dkt. 54.

9 On April 29, 2009, the Court ordered Plaintiffs to show cause, if any they had,
10 "why the Court (1) should not abstain from this matter, (2) is not divested from
11 jurisdiction over this matter, or (3) should not decline to exercise supplemental
12 jurisdiction over the [Fifth Claim for Relief] pursuant to 28 U.S.C. § 1367(c)(1)." Dkt. 56
13 at 6. On May 15, 2009, Plaintiffs filed an opening response. Dkt. 57. On May 22, 2009
14 Defendants responded. Dkt. 58. On May 29, 2009, Plaintiffs replied. Dkt. 60.

15 II. FACTUAL BACKGROUND

16 A. The Lodge

17 The Tribe occupies a reservation at the confluence of the Black and Chehalis
18 Rivers in Southwest Washington ("Reservation"). *Confederated Tribes of the Chehalis*
19 *Indian Reservation v. State of Washington*, 96 F.3d 334, 338 (9th Cir. 1996). The
20 Reservation, which was created by Secretarial Order in 1864, was set aside for "the use
21 and occupation of the Chehalis Indians." 1 Kappler, *Indian Affairs, Laws and Treaties*
22 901-04 (2d ed. 1904). The Tribe has approximately 800 members, which include persons
23 descended from the Upper Chehalis, the Lower Chehalis, Cowlitz, Satsop, Qualioqua and
24 other aboriginal tribes of Southwest Washington. Dkt. 3, Declaration of Chairman
25 Burnett, ¶ 5 ("Burnett Decl."). The Reservation has a land area of approximately 4,200
26 acres (about 7.022 square miles) in southeastern Grays Harbor and southwestern Thurston
27 Counties. *Id.*

28 Approximately five years ago, the Tribe purchased 43 acres near the I-5 freeway,
Exit 88, Highway 12, in Grand Mound, WA. Burnett Decl, ¶ 7. That property was

1 subsequently converted to non-contiguous federal trust property and is currently held in
2 trust by the United States for the benefit of the Tribe. *Id.*; *see also id.*, Exh. B at 2.

3 In 2005, the Tribe and Great Wolf Resorts Inc., a non-Indian corporation with
4 water park expertise, formed CTGW, a limited liability company, under Delaware law,
5 for the purpose of building and owning Great Wolf Lodge Grand Mound (“Lodge”). *Id.* ¶
6 8. The Lodge is located on 39 of the 43 acres and consists of the Improvements. *Id.* ¶ 9.
7 The Tribe leases the property to CTGW. *Id.*, Exh A., U.S. Dept. of the Interior Business
8 Development Lease (recorded by the Bureau of Indian Affairs on July 2, 2007) (“Lease”).
9 Under the CTGW operating agreement, the Tribe has a majority “proportionate share” of
10 CTGW’s profits of 51%, and Great Wolf receives the remaining 49% of CTGW’s profits.
11 Burnett Decl. ¶ 11. Plaintiffs claim that “[u]nder this unique structure, the Tribe is both
12 the owner-lessor of the property and the majority-interest owner of the lessee.” Amended
13 Complaint, ¶ 22.

14 The lease agreement between the Tribe and CTGW contains a provision regarding
15 improvements that reads as follows:

16 All buildings and improvements on the Premises shall be owned in
17 fee by the Lessee during the term of this Lease provided that such buildings
18 and improvements (excluding removable personal property and trade
19 fixtures) shall remain on the Premises after the termination of this Lease
20 and shall thereupon become the property of the Lessor.

21 Burnett Decl., Exh. A, Art. 11.

22 **B. State Taxation**

23 In Washington, “personal property,” for purposes of taxation, includes “all
24 improvements upon lands the fee of which is still vested in the United States.” RCW
25 84.04.080. The Washington Administrative Code further defines personal property as
26 including “[a]ll privately owned improvements, including buildings and the like, upon
27 publicly owned lands which have not become part of the realty.” WAC 458-12-005. A
28 county may enforce such taxes by placing liens on the assessed improvements and then
selling them at a tax sale. RCW 84.60.020.

1 Revenue exercises general supervision over state taxation and may formulate rules
2 and processes for the assessment of taxes. The Washington statute that grants Revenue
3 these powers reads, in part, as follows:

4 Revenue shall:

5 (1) Exercise general supervision and control over the administration
6 of the assessment and tax laws of the state, over county assessors, and
7 county boards of equalization, and over boards of county commissioners,
8 county treasurers and county auditors and all other county officers, in the
9 performance of their duties relating to taxation, and perform any act or give
10 any order or direction to any county board of equalization or to any county
11 assessor or to any other county officer as to the valuation of any property,
12 or class or classes of property in any county, township, city or town, or as to
13 any other matter relating to the administration of the assessment and
14 taxation laws of the state, which, in the department's judgment may seem
15 just and necessary, to the end that all taxable property in this state shall be
16 listed upon the assessment rolls and valued and assessed according to the
17 provisions of law, and equalized between persons, firms, companies and
18 corporations, and between the different counties of this state, and between
19 the different taxing units and townships, so that equality of taxation and
20 uniformity of administration shall be secured and all taxes shall be collected
21 according to the provisions of law.

22 (2) Formulate such rules and processes for the assessment of both
23 real and personal property for purposes of taxation as are best calculated to
24 secure uniform assessment of property of like kind and value in the various
25 taxing units of the state, and relative uniformity between properties of
26 different kinds and values in the same taxing unit. The department of
27 revenue shall furnish to each county assessor a copy of the rules and
28 processes so formulated. The department of revenue may, from time to
time, make such changes in the rules and processes so formulated as it
deems advisable to accomplish the purpose thereof, and it shall inform all
county assessors of such changes.

RCW 84.08.010.

29 In support of its motion for summary judgment, Plaintiffs have submitted the
30 declaration of Revenue's Deputy Director, Leslie Cushman. Dkt. 48 ("Cushman Decl.")).
31 Ms. Cushman declares, in part, as follows:

32 In February 2007, Revenue issued a letter determination regarding
33 the applicability of Washington state excise taxes to various elements of
34 CTGW LLC, the joint venture that owns the personal property at issue in
35 [this] lawsuit.

36 In making its determination under the federal balancing test,
37 Revenue analyzed state, tribal and federal interests. Based on a review of
38 the tribal, state, and federal interests at issue, Revenue determined that all
Washington state sales and use taxes were exempted under the doctrine of
federal preemption.

1 In early 2008, the Thurston County Assessor's office requested that
2 Revenue render an opinion regarding whether the improvements located at
Great Wolf Lodge in Grand Mound, Washington were subject to property
taxation.

3 On August 28, 2008, Revenue issued an opinion regarding the
preemption of the personal property tax under the federal balancing test.

4 In making its determination, Revenue analyzed state, tribal and
5 federal interests. The opinion concluded that "it appears that the balance of
the federal, state, and tribal interests tilt in favor of federal preemption"
6 with respect to the property owned by CTGW, LLC that is in question in
this litigation.

7 *Id.* ¶¶ 5-9.

8 Although Plaintiffs claim that "Revenue determined that the instant tax was
9 federally preempted" (Dkt. 47 at 5), the decision included numerous qualifications. For
10 example, the August 28, 2008 letter reads, in part, as follows:

11 In weighing the relative tribal interests and state interests, *it is*
12 *difficult to say with legal certainty what the appropriate conclusion must be*
relative to state taxation of the personal property (improvements) located at
Great Wolf.

13 ***

14 This is a situation that is a matter of "first impression," at least in
Washington, and as far as can be determined, in the United States. We have
15 been provided access to the LLC formation agreement, the Management
Agreement, and the lease agreement between [Great Wolf Resorts] and the
Tribe, and based upon our review of those documents, and upon the
16 representations made by the Tribe, we have reached a conclusion. *Although*
17 *the relevant facts are still not as clear as we would like, and although a*
legitimate argument could be made either for federal preemption or for
18 *state taxation, it appears* that the balance of the federal, state, and tribal
interests tilt in favor of federal preemption for this property.

19 Burnett Decl., Exh. C at 3-4 (emphasis added).

20 Finally, Plaintiffs allege that "[i]n 2007, the Thurston County Assessor determined
21 the value of the Improvements for taxation in 2008 as partially completed." Amended
22 Complaint, ¶ 34. Plaintiffs also allege that the assessor "then reduced that value by the
23 Tribe's 51% ownership interest in CTGW, to a 2007 taxable value of \$10,115,462, and
24 then assessed CTGW a personal property tax based on the 49% interest of Great Wolf in
25 CTGW." *Id.* On the other hand, Plaintiffs allege that, for the 2008 tax year, the Assessor
26 "has assessed the Improvements at full completion at their full value" and "increased the
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value of the Improvements for taxation in 2009 to 100%, irrespective of the Tribe's 51% ownership in CTGW." *Id.* ¶ 35.

III. DISCUSSION

A. Jurisdiction

The Court has "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a), which provides, in part, as follows:

the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

However, a district court may decline to exercise supplemental jurisdiction over a claim if "the claim raises a novel or complex issue of State law [.]” 28 U.S.C. § 1367(c). “[O]nce judicial power exists under § 1367(a), retention of supplemental jurisdiction over state law claims under § 1367(c) is discretionary[.]” *Acri v. Varian Associates, Inc.*, 114 F.3d 999, 1000 (9th Cir. 1997). The Ninth Circuit has

emphasize[d] that actually exercising discretion and deciding whether to decline, or to retain, supplemental jurisdiction over state law claims when any factor in subdivision (c) is implicated is a responsibility that district courts are duty-bound to take seriously.

Id. at 1001.

In this case, it is undisputed that the Court has original jurisdiction over at least one of Plaintiffs' claims. The Amended Complaint, however, raises the following three issues regarding the Court's jurisdiction over all of Plaintiffs' claims:

1. Whether Plaintiffs' Fifth Claim for Relief states a federal cause of action that the Court has original jurisdiction over;

2. If not, whether the Court has supplemental jurisdiction over the claim because it forms part of the same case or controversy as the asserted federal claims; and

1 3. If judicial power exists under § 1367(a), whether the Court should decline
2 to exercise supplemental jurisdiction over the claim under § 1367(c).

3 **1. Federal Question Jurisdiction**

4 Plaintiffs argue that their “amended complaint alleges that the tax at issue is illegal
5 because it violates *federal law*.” Dkt. 57 at 2 (emphasis in original). Defendants counter
6 that “Plaintiffs go to great lengths in an attempt to create an aspect of federal law in their
7 new claim,” but the claim “clearly asserts a violation of state law.” Dkt. 58 at 2. The
8 Court agrees.

9 Plaintiffs assert that “Defendants are violating federal law by failing to follow the
10 direction of Revenue because federal law mandates a *Bracker* analysis.” Dkt. 60 at 2
11 (emphasis in original). Although Plaintiffs consistently argue that a *Bracker* analysis is
12 mandated before a state may impose a tax on Indian land or tribal members, they fail to
13 cite any authority for this proposition. *See* Dkt. 47 at 4, 6, 8, 14, and 17; Dkt. 54 at 2 and
14 7-8; Dkt. 57 at 1, 3 and 4; Dkt. 60 at 1-2. In other words, Plaintiffs have set forth a
15 hypothetical procedural course that mandates that some entity must perform a *Bracker*
16 analysis before a state may exercise its regulatory authority, yet Plaintiffs have failed to
17 cite any authority that requires this specific procedure. Moreover, the Court is unaware of
18 any authority that supports Plaintiffs’ proposition.

19 In *Bracker*, the Supreme Court stated that:

20 Congress has broad power to regulate tribal affairs under the Indian
21 Commerce Clause, Art. 1, § 8, cl. 3. This congressional authority and the
22 “semi-independent position” of Indian tribes have given rise to two
23 independent but related barriers to the assertion of state regulatory authority
24 over tribal reservations and members. First, the exercise of such authority
25 **may** be pre-empted by federal law. Second, it **may** unlawfully infringe “on
26 the right of reservation Indians to make their own laws and be ruled by
27 them.” The two barriers are independent because either, standing alone, can
28 be a sufficient basis for holding state law inapplicable to activity undertaken
on the reservation or by tribal members. They are related, however, in two
important ways. The right of tribal self-government is ultimately dependent
on and subject to the broad power of Congress. Even so, traditional notions
of Indian self-government are so deeply engrained in our jurisprudence that
they have provided an important “backdrop,” against which vague or
ambiguous federal enactments must always be measured.

1 *Bracker*, 448 U.S. at 142 (internal citations omitted). Implicit in this statement is the
2 procedure that the state acts first by asserting regulatory authority and then the court is
3 called upon to determine whether there is an applicable barrier to that authority. There is
4 no mention of any government entity passing upon the federal balancing test before an
5 assertion of regulatory authority. The Court is unpersuaded by Plaintiffs' arguments to
6 the contrary.

7 Stripped of the allegation that Defendants violated federal law by imposing its
8 regulatory authority without completing a *Bracker* analysis, Plaintiffs' Fifth Claim for
9 Relief does not arise under the "Constitution, laws, or treaties of the United States." As
10 Plaintiffs argue in their summary judgment briefing, their claim is that Defendants' tax
11 "violates state law, because Revenue determined that the tax violates federal law and the
12 Assessor has failed to heed that determination." Dkt. 54 at 10.

13 Therefore, the Court finds that Plaintiffs' Fifth Claim for Relief does not state a
14 violation of federal law and does not implicate the Court's original jurisdiction. The
15 Court must now determine whether it should assert supplemental jurisdiction over the
16 claim.

17 **2. § 1367(a)**

18 A state law claim is part of the same case or controversy when it shares a
19 "common nucleus of operative fact" with the federal claims and the state and federal
20 claims would normally be tried together. *Bahrampour v. Lampert*, 356 F.3d 969, 978
21 (9th Cir. 2004)

22 In this case, Defendants argue that the Court does not have supplemental
23 jurisdiction over Plaintiffs' Fifth Claim for Relief. Specifically, Defendants argue that:

24 The pertinent facts in the [Fifth Claim for Relief] concern whether Revenue
25 issued an act, order or direction that was binding and, if binding, whether
26 the Assessor followed the act, order, or direction. These facts are entirely
27 distinct from the claims in Plaintiffs' initial complaint as to who owns the
28 improvements at the Great Wolf Lodge; whether the improvements are
permanent; and the tribal, state, and federal interests to be balanced in
applying a *Bracker* analysis. The distinct nature of the state law claim

1 establishes there is no nucleus of facts common to the state and federal
2 claims that would support the Court's exercise of supplemental jurisdiction.

3 Dkt. 58 at 5. The Court agrees.

4 The Fifth Claim for Relief is based on two operative facts: (1) Revenue issued an
5 advisory decision on the possible assertion of regulatory authority, and (2) the Thurston
6 County Assessor did not follow that decision. Under RCW 84.08.010, the outcome of
7 Revenue's decision is irrelevant as the alleged violation arises from the failure to follow
8 that decision.

9 Therefore, the Court finds that Plaintiffs have failed to show that the Court has
10 supplemental jurisdiction over their Fifth Claim for Relief because it does not involve a
11 common nucleus of operative fact with Plaintiffs' other claims for relief.

12 3. § 1367(c)

13 Even if the Court has supplemental jurisdiction over Plaintiffs' Fifth Claim for
14 relief, the Court must still consider whether to decline to exercise such jurisdiction
15 because the claim raises novel and complex issues of state law. A district court does not
16 abuse its discretion by declining to exercise supplemental jurisdiction over a claim that
17 would require an "uncertain" application of a state statute. *See Manufactured Home*
18 *Communities Inc. v. City of San Jose*, 420 F.3d 1022, 1034 (9th Cir. 2005) ("While the
19 [state] statute may not be complex on its face, the application of the law in these
20 circumstances is uncertain.").

21 In this case, Plaintiffs request a unique application of RCW 82.08.010. Although
22 Plaintiffs argue that the "issue of Revenue's plenary authority over the Assessor . . . has
23 been tried multiple times in state court and resolved," the Court is not persuaded that the
24 issue presented to the Court has even been addressed by a Washington state court.
25 Plaintiffs cite three Washington cases in support of their position: *State ex rel. Barlow*
26 *v. Kinnear*, 70 Wn.2d 482 (1967), *Boeing Co. v. King County*, 75 Wn.2d 160, 165 (1969),
27 and *Ridder v. Dep't of Revenue*, 43 Wn. App. 21, 28 (1986). This case, however, is
28 factually distinguishable on the ground that the Assessor sought an "opinion" and

1 Revenue issued a “decision,” which included numerous qualifications. Whether the
2 Assessor violates Washington law by not acting in conformity with Revenue’s decision is
3 a novel, and arguably complex, issue of state law.

4 Therefore, even if the Court has supplemental jurisdiction under § 1367(a), the
5 Court declines to exercise supplemental jurisdiction under § 1367(c) over Plaintiffs’ Fifth
6 Claim for Relief.

7 **4. Conclusion on Jurisdiction**

8 The Court dismisses Plaintiffs’ Fifth Claim for relief because it either does not
9 have or declines to exercise supplemental jurisdiction over the claim.

10 **B. Summary Judgment**

11 Plaintiffs’ first claim for relief alleges that “Permanent improvements to tribal trust
12 property are not subject to state taxation.” Complaint, ¶ 42. Plaintiffs moved for
13 summary judgment on this issue. Dkt. 47 at 14-16.

14 **1. Standard**

15 Summary judgment is proper only if the pleadings, the discovery and disclosure
16 materials on file, and any affidavits show that there is no genuine issue as to any material
17 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
18 The moving party is entitled to judgment as a matter of law when the nonmoving party
19 fails to make a sufficient showing on an essential element of a claim in the case on which
20 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323
21 (1985). There is no genuine issue of fact for trial where the record, taken as a whole,
22 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
23 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
24 present specific, significant probative evidence, not simply “some metaphysical doubt”).
25 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
26 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
27 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
28

1 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
2 626, 630 (9th Cir. 1987).

3 The determination of the existence of a material fact is often a close question. The
4 Court must consider the substantive evidentiary burden that the nonmoving party must
5 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
6 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
7 issues of controversy in favor of the nonmoving party only when the facts specifically
8 attested by that party contradict facts specifically attested by the moving party. The
9 nonmoving party may not merely state that it will discredit the moving party’s evidence at
10 trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec.*
11 *Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*). Conclusory, nonspecific
12 statements in affidavits are not sufficient, and missing facts will not be presumed. *Lujan*
13 *v. Nat’l Wildlife Fed’n*, 497 U.S. 871, 888-89 (1990).

14 **2. Plaintiff’s Motion**

15 Plaintiffs argue that “Permanent improvements to land held in trust by the United
16 States for the benefit of a tribe are not subject to state personal property taxes.” Dkt. 47 at
17 14 (citing *U.S. v. Rickert*, 188 U.S. 432, 442 (1903)). In *Rickert*, the Attorney General of
18 the United States instituted an action to restrain the collection of taxes by the county of
19 Roberts, South Dakota. *Id.* at 432. The county had assessed taxes for “certain permanent
20 improvements on, and personal property used in the cultivation of, lands in that county
21 occupied by members of the Sisseton band of Sioux Indians” *Id.* The permanent
22 improvements consisted of a “large frame house and barn attached thereto” and the
23 personal property consisted of “horses, one cow, and two wagons” *Id.* at 433. The
24 land upon where this property was located was held in trust by the United States and was
25 allotted to Charles R. Crawford, an Indian and member of the Sisseton band. *Id.*

26 In answering whether the permanent improvements were subject to assessment and
27 taxation, the Supreme Court reasoned as follows:
28

1 Looking at the object to be accomplished by allotting Indian lands in
2 severalty, it is evident that Congress expected that the lands so allotted
3 would be improved and cultivated by the allottee. But that object would be
4 defeated if the improvements could be assessed and sold for taxes. The
5 improvements to which the question refers were of a permanent kind. While
6 the title to the land remained in the United States, the permanent
7 improvements could no more be sold for local taxes than could the land to
8 which they belonged. Every reason that can be urged to show that the land
9 was not subject to local taxation applies to the assessment and taxation of
10 the permanent improvements.

11 It is true that the statutes of South Dakota, for the purposes of
12 taxation, classify 'all improvements made by persons upon lands held by
13 them under the laws of the United States' as personal property. But that
14 classification cannot apply to permanent improvements upon lands allotted
15 to and occupied by Indians, the title to which remains with the United
16 States, the occupants still being wards of the nation, and as such under its
17 complete authority and protection. The fact remains that the improvements
18 here in question are essentially a part of the lands, and their use by the
19 Indians is necessary to effectuate the policy of the United States.

20 *Id.* at 442-43.

21 In answering whether the personal property was subject to assessment and
22 taxation, the Supreme Court reasoned as follows:

23 The answer to this question is indicated by what has been said in
24 reference to the assessment and taxation of the land and the permanent
25 improvements thereon. The personal property in question was purchased
26 with the money of the government, and was furnished to the Indians in
27 order to maintain them on the land allotted during the period of the trust
28 estate, and to induce them to adopt the habits of civilized life. It was, in
fact, the property of the United States, and was put into the hands of the
Indians to be used in execution of the purpose of the government in
reference to them. The assessment and taxation of the personal property
would necessarily have the effect to defeat that purpose.

29 *Id.* at 443-44.

30 In this case, the Court is not persuaded that the rule of *Rickert* applies to bar the
31 taxation in question because this case involves a significantly different factual scenario.
32 Although the site in Grand Mound is held in trust by the United States for the benefit of
33 the Tribe, the Lessee, CTGW, owns the improvements in fee during the terms of the
34 Lease. Moreover, it cannot be said that the improvements are "occupied" by the Tribe as
35 CTGW currently uses the improvements to operate a hotel, conference center, and indoor
36 water park. Therefore, the *Rickert* rule that was implemented to protect a homestead and
37 associated livestock is, in this Court's opinion, inapplicable to privately owned
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1 commercial business ventures even though the improvements are on land held in trust by
2 the United States.

3 Plaintiffs also argue that taxes may not be levied against the Improvements
4 because, if CTGW did not pay those taxes, Defendants would seize and sell the
5 Improvements, “pervert[ing] the purpose of holding property in trust for the benefit of
6 [the Tribe.]” Dkt. 54 at 9. Although neither party brought this to the Court’s attention, the
7 Lease specifically provides that the Lessee, CTGW, is responsible for all taxes and/or
8 liens resulting therefrom. *See* Lease, Art. 26. In fact, CTGW is contractually bound to

9 protect and hold harmless the Lessor, the United States and the leased
10 premises and all interest therein and improvements thereon from any and all
11 claims, taxes, assessments and like charges and from any lien there from
[sic] or sale or other proceedings to enforce payment thereof, and all costs in
connection therewith.

12 *Id.* In light of this provision, the Court is not persuaded that the Tribe would experience a
13 reduction in the benefit of the trust if CTGW failed to pay taxes that were properly due.

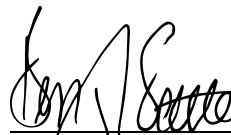
14 Therefore, the Court denies Plaintiffs’ motion for summary judgment on this issue
15 because Plaintiffs have failed to show that they are entitled to judgment as a matter of law
16 that the state is barred from taxing the Improvements on the property held in trust by the
17 United States for the benefit of the Tribe.

18 IV. ORDER

19 Therefore, it is hereby

20 **ORDERED** that Plaintiffs’ Fifth Claim for Relief is **DISMISSED** because the
21 Court either does not have, or declines to exercise, supplemental jurisdiction over the
22 claim, and Plaintiffs’ Motion for Summary Judgment (Dkt. 47) is **DENIED** because
23 Plaintiffs have failed to show that they are entitled to judgment as a matter of law.

24 DATED this 2nd day of July, 2009.

25
26 
27 BENJAMIN H. SETTLE
28 United States District Judge