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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, ET AL. Plaintiffs, v. UNITED STATES OF AMERICA; ET AL. Defendants	NO. CV-09-18-JLQ **REPLY MEMORANDUM**

I. INTRODUCTION

Plaintiffs and Cross-claimant respond to the Confederated Tribes of the Colville Reservation's ("Colville Tribes") Motion to Dismiss with responses that distract from the issue at hand: whether this Court possesses jurisdiction over the Colville Tribes because of the Colville Tribes' sovereign immunity. As before, Plaintiffs' complaint and Cross-claimant's pleadings cite to no clear and unequivocal tribal waiver or Congressional abrogation of the Tribes' sovereign immunity, and do not allege any facts or law indicating that such a waiver or abrogation exists. This case has always

been about an alleged breach of contract by the Plaintiffs against Cross-claimant Wapato Heritage, LLC for damages. The Colville Tribes has never had privity of contract with the Plaintiffs. Unjustly, the Colville Tribes has been roped into this dispute without any jurisdictional basis. The Colville Tribes request that this Court ignore the filed red herring responses filed by Plaintiffs and Cross-claimant. Instead, the Colville Tribes requests that this Court rule in accordance with the exceedingly clear federal precedent that the Colville Tribes' sovereign immunity denies this Court jurisdiction and grant the Colville Tribes' Motion to Dismiss.

II. ARGUMENT

1. Plaintiffs and Cross-claimants have Failed to Meet Their Burden That the Colville Tribes has Clearly and Unequivocally Waived its Sovereign Immunity for this Court to Exercise Jurisdiction.

It is the Plaintiffs' and Cross-claimant's burden to prove that the Colville Tribes' immunity has been waived by clear and unequivocal waiver. Dunn & Black, P.S. v. United States, 492 F.3d 1084, 1088 (9th Cir.2007). A federal court is presumed to lack subject matter jurisdiction until plaintiff establishes otherwise. Kokkonen v. Guardian Life Ins. Co. of America, 511 U.S. 375(1994); Stock West, Inc. v. Confederated Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989). Therefore, plaintiff bears the burden of proving the existence of subject matter jurisdiction. Stock West, 873 F.2d at 1225; Thornhill Publishing Co., Inc. v. Gen'l Tel & Elect. Corp., 594 F.2d

730, 733 (9th Cir. 1979). The Plaintiffs and Cross-complaint have failed to meet this burden.

Plaintiffs ask this Court to stay its decision on the Motion to Dismiss to allow for discovery of sovereign immunity waivers. In other words, Plaintiffs ask this Court to exercise jurisdiction merely to subject the Colville Tribes to an illusory fishing expedition. This is exactly the kind of wasteful litigation that sovereign immunity is designed to address. Breakthrough Management Group, Inc. v. Chukchansi Gold Casino and Resort, 629 F.3d 1173, 1195 (10th Cir. 2010). The responses are an attempt to escape the Plaintiffs' and Cross-claimant's duty to demonstrate this Court's jurisdiction and improperly burden the Colville Tribes.

Despite their obligation to demonstrate jurisdiction, Plaintiffs, have apparently never sought any information through FOIA[1] or otherwise. Since January 2009, when this litigation was initially filed, Plaintiffs and Cross-claimants have had ample opportunity to seek this non-existent information. Ultimately, they have failed to meet their burden. This Court must dismiss this case.

Plaintiffs' request for a stay pending discovery only prolongs their illegal presence on the property. This case has been open since January 2009. Plaintiffs

[1] In all likelihood, Plaintiffs would be able to obtain significantly more information from the BIA's land records through FOIA's sweeping mandate than through discovery.

have spent three summers enjoying the sunshine and cool waters of Lake Chelan. Plaintiffs have attained their goal of staying on the lakeshore, despite the absence of any legal instrument permitting them to be there. Wapato Heritage, L.L.C. v. United States, 637 F.3d 1033 (9th Cir. 2011). Meanwhile, the owners, including the Colville Tribes, have been denied their property rights to use and occupancy of their land. Plaintiffs' request for a stay is not about permitting discovery; it is about staying on the lakeshore. Instead, this Court should grant the Colville Tribes' Motion to Dismiss.

The Colville Tribes did not, and has not, waived its sovereign immunity in any MA-8 purchases, which are administered by the BIA. There is no basis to believe that discovery would produce a waiver. The United States has never required such a waiver for a tribe to acquire land. Moreover, nothing suggests that the Colville Tribes would make such a waiver—especially a waiver permitting a law suit in federal court by a non-party to the transaction, lacking privity of contract, like the Plaintiffs. The idea is an absurd distraction intended to prolong the Plaintiffs stay on MA-8.

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Like federal and state sovereigns, the Colville Tribes is very careful about waiving its sovereign immunity.[2] However, the Tribes (and its entities) sometimes waives sovereign immunity under proper, limited circumstances. For example, as Cross-claimant notes, the Colville Tribal Enterprise Corporation's ("CTEC") did so for itself to Tribal Court in the former sub-lease under the expired master-lease. ECF 225, p. 8. However, this waiver is strictly limited on two fronts: 1) it is a waiver by CTEC, not by the Colville Tribes;[3] and 2) the waiver is limited to Colville Tribal Court. Despite Cross-claimant's unsupported contention that this is somehow a

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[2] Section 1-1-6 of the Colville Code provides: "Except as required by a federal law, or the Constitution of the Colville Confederated Tribes, or as specifically waived by a resolution or ordinance of the Council specifically referring to such, the Colville Confederated Tribes shall be immune from suit in any civil action, and their officers and employees immune from suit for any liability arising from the performance of their official duties." (available at: http://www.colvilletribes.com/updatedcode.php).

[3] CTEC is a governmental corporation created in accordance with Chapter 7-1 of the Colville Tribal Code (available at: http://www.colvilletribes.com/updatedcode.php). Possessing derived sovereign immunity from the Colville Tribes, CTEC, like other business entities, shields its tribal shareholders from the Corporation's liabilities and waivers. CTEC is not a party to this lawsuit.

waiver permitting this Court to exercise jurisdiction, this is hardly a clear and unequivocal waiver of the Colville Tribes' sovereign immunity.

Cross-claimant cites no law that would demonstrate that the CTEC sub-lease waiver is a waiver that would grant this Court jurisdiction over this matter. Instead, CTEC (which is not a party to this lawsuit) waived into the Colville Tribes' court. Obviously, this is not a clear and unequivocal waiver of the Colville Tribes' sovereign immunity for this Court to exercise jurisdiction as required by law. Plaintiffs and Cross-claimant fail to meet their burden for demonstrating this Court's jurisdiction over the Colville Tribes. The Colville Tribes should be dismissed.

2. **Plaintiffs and Cross-claimant Have Failed to Plead a Jurisdictional Basis for This Court to Order the Lands Out of Trust or *In Rem.***

Plaintiffs' and Cross-claimant's[4] responses attempt to distract this Court with inapplicable and misleading arguments that this Court needs to order the United States to move the land in question out of trust status. ECF. 223, p. 4-8; ECF. 225, p. 4-7. The trust status of MA-8 is not before the Court in the Colville Tribes' Motion. Rather, because the United States is the legal titleholder of all trust resources (particularly land), the administration of Indian lands is reserved for the United States.

[4] Without support, Cross-claimant misleadingly describes the Moses-Columbia Tribe as "terminated". ECF 225, p. 4. The Moses-Columbia Tribe is a tribe within the Colville Confederacy. 7 Ind. Cl. Comm. 794.

See, generally, William C. Canby, American Indian Law in a Nutshell 52-61 (5th ed. 2009).

Plaintiffs' and Cross-claimant's responses merely attempt to distract this Court by raising the possibility of *in rem* jurisdiction for the first time. Neither Plaintiffs' complaint nor Cross-claimant's cross-complaint identify the MA-8 property as an *in rem* subject. See ECF 1, p.7; ECF 170, p. 16. Neither Plaintiffs' complaint nor Cross-claimant's cross-complaint allege *in rem* jurisdiction. They have not provided notice to anyone, much less this Court, that this is an *in rem* action. FRCP 4(n)(1), 8. Thus they are barred from now claiming that this is an *in rem* action.

Plaintiffs and Cross-claimant provide no federal case law supporting their claims that this is an *in rem* action; particularly the fact that they did not name the property as a party.[5] Again, Plaintiffs and Cross-claimant attempt to distract this Court with their responses. Plaintiffs and Cross-claimant fail to account for the fact that they have failed to provide any party notice of any *in rem* claim since this case was filed in January 2009. Instead, they attempt to pull a bait and switch as to the

[5] This Court previously observed in this case that the notice-pleading system of the FRCP "is designed to notify the adverse party and the court the general nature of the claims asserted. It would be improper and contrary to due process for the court to decide issues not presented in the pleadings." ECF 167, p. 2.

underlying essence of this case and its jurisdictional basis. Their defense to the Colville Tribes' Motion to Dismiss fails on its face.

a. Plaintiffs' Action is not *in rem* and Plaintiffs did not Plead *in rem*

Plaintiffs' action is not against the property and never has been. Plaintiffs are not seeking to quiet title or to determine real property interests. Instead, Plaintiffs claim is that in equity, defendant landowners and BIA should be estopped from exercising authority to evict the Plaintiffs based on certain past acts by BIA to Plaintiffs' alleged detriment. These acts do not include any acts by the landowners—including the Colville Tribes. This Court has left open the possibility for the Plaintiffs to argue equitable estoppel as an affirmative defense to a United States' ejectment action. The remaining equitable estoppel defense would be against the United States—not the Colville Tribes and certainly not the property itself. Oddly, Plaintiffs have steadfastly argued that the Indian landowners (including the Colville Tribes) in this case cannot be dismissed because they are necessary parties. However, dismissal of the Colville Tribes from this action does not prejudice Plaintiffs' claimed rights. Indeed, this is the very argument that Plaintiffs' make on page 13 of their response. ECF 223, p.13. Yet, for the first time, Plaintiffs claim *in rem* jurisdiction, which necessarily means the Indian landowners are not real parties in interest. They cannot have it both ways. This Court should not be misled by this drivel. Instead this Court should dismiss the Colville Tribes from this law suit.

b. Cross-claimant Did Not Plead a Jurisdictional Basis for *In Rem*

As stated previously, the complaint and cross-complaint fail to plead a basis for jurisdiction over the Colville Tribes, *in rem* or otherwise. Similarly, Cross-claimant and Plaintiffs provide no jurisdictional basis for litigating an *in rem* action (or any other property action where "the United States claims an interest" 28 U.S.C. § 2409a). Federal courts "may only assert jurisdiction over property if authorized by federal statute." FRCP 4(n)(1). Because the sovereign Colville Tribes and sovereign United States have an interest in MA-8, applicable sovereign immunity waivers must affirmatively be pled. Plaintiffs and Cross-claimant plead no such *in rem* authorization and nothing indicates that any such authorization exists.

Moreover, the issue of trust status cannot be litigated here because Cross-claimant's claim that MA-8 is not trust land would divest the United States of its interest in land. If fee patents issued, the United States would no longer hold title and would lose any interest in the land. Law suits relating to the United States' interest in land are only possible because of the United States' limited waiver of sovereign immunity in the Quiet Title Act, 28 U.S.C. § 2409a (providing that the United States may be sued "to adjudicate a disputed title to real property in which the United States claims an interest"). Metropolitan Water Dist. v. United States, 830 F.2d 139 (9th Cir. 1987), aff'd by an equally divided Court sub nom. California v. United States, 490

U.S. 920 (1989). The Quiet Title Act has never been pled in this case by Plaintiffs or Cross-Claimants,[6] and therefore any claims thereunder are facially deficient.

Even if the Quiet Title Act had been appropriately and accurately pled, this Court would still lack jurisdiction. The Quiet Title Act permits the United States to be named as a defendant in lawsuits seeking the adjudication of disputed title to land. However, when the United States claims an interest in real property based upon that property's status as trust or restricted Indian lands, the Government is immune from suit under the Quiet Title Act. 28 U.S.C. § 2409a(a) ("This section does not apply to trust or restricted Indian lands…") See United States v. Mottaz, 476 U.S. 834 (1986); Wildman v. United States, 827 F.2d 1306, 1309 (9th Cir. 1987). Thus, the United States "cannot be sued at all without the consent of Congress. A necessary corollary of this rule is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied." Block v. North Dakota, 461 U.S. 273, 287 (1983) (emphasis added).

The policy reason for the Indian lands exception was properly noted by Congress:

[6] The fatally flawed cross-claims even ask this Court to quiet title, but fail to cite to the Quiet Title Act as a basis for jurisdiction or otherwise. ECF 170 at p. 27.

> [t]he Federal Government's trust responsibility for Indian lands is the result of solemn obligations entered into by the United States Government. The Federal Government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements. The Indians, for their part, have often surrendered claims to vast tracts of land. President Nixon has pledged his administration against abridging the historic relationship between the Federal Government and the Indians without the consent of the Indians. Metropolitan Water Dist. v. U.S., 830 F.2d at 144, qoting, H.R.Rep. No. 1559, 92d Cong., 2d Sess. (1972).

In other words, to allow this suit would permit third parties to interfere with the Government's discharge of its responsibilities to Indian tribes in respect to the lands it holds in trust for them. See, Florida Dept. of Business Regulation v. United States Dept. of Interior, 768 F.2d 1248, 1253-55 (11th Cir.1985), cert. denied, 475 U.S. 1011, 106 S.Ct. 1186, 89 L.Ed.2d 302 (1986).

c. Cited State Law is Inapplicable

The two Washington State cases cited by Plaintiffs and Cross-claimant are not applicable here. Smale v. Noretep,150 Wash. App. 476 (2009) was a quiet title claim to fee property through adverse possession. Anderson & Middleton Lumber Co. v. Quinault Indian Nation, 130 Wash.2d 862 (1996) was an action to partition and quiet title to fee lands on the Quinault Reservation. Both cases deal with fee property where an Indian tribe's fee interest was questioned before a state court in an *in rem* action. In both cases the plaintiffs pled an *in rem* action. In other words, the determination was to be whether the tribe held title in fee property. Because the lands in question were fee, the United States was not implicated in either case. Because the action

merely dealt with the partition of the fee surface, the State Court found that the United States was not an indispensable party. Id at 878. "Because the United States is legal titleholder of all trust resources, the federal government is of necessity a participant in all… dispositions of these [real property] assets." William C. Canby, American Indian Law in a Nutshell 53 (5th ed. 2009). Here, the property interest supposedly in question is trust land where the United States presumably holds an interest. Even if the Cross-claimant's frivolous assertion that MA-8 is not in trust and fee patents should issue was correct, the question before this Court would still be whether the United States holds title. There is no jurisdictional basis to implicate the United States' title and none has been pled. Again, this is a red herring distracting this Court from the issue at hand: this Court simply lacks jurisdiction over the Colville Tribes.

Even if this Court has *in rem* jurisdiction over the land, which it does not, it lacks jurisdiction over the Colville Tribes. Therefore, while this Court would determine the respective interests of the parties as to the land, the Plaintiffs' and Cross-claimant's claims for relief would be barred by the Colville Tribes' sovereign immunity. Wright v. Colville Tribal Enterprise Corp., 159 Wash.2d 108 (2006) (Washington State Supreme Court holding that employment discrimination claims for off-reservation activities by the Colville Tribes' governmental corporation were barred due to derived sovereign immunity). Still, Plaintiffs and Cross-claimants have failed to adequately plead a jurisdictional basis for the Colville Tribes to remain in

this case. They have not met their burden to show a waiver or abrogation of the Colville Tribes' sovereign immunity. Therefore, the dismissal of the Colville Tribes must issue.

3. MA-8 is Trust Land.

Plaintiffs' and Cross-claimant's tired contention that MA-8 is not trust land is not based in law. Plaintiffs and Cross-claimant cite to no case where a federal court has declared trust land fee. This Court has no basis to exercise jurisdiction over the Colville Tribes or MA-8 *in rem* or otherwise. Again, they attempt to distract this Court from the issue at hand, seeking an extraordinary remedy despite the law. Plaintiffs and Cross-claimants have continually failed to meet their burden to demonstrate jurisdiction over the Colville Tribes.

The United States has provided a history of Congressional and Executive action which extended the trust period. ECF 186. The Colville Tribes does not wish to re-hash the government's explanation here. Still, Cross-claimant again argues that the Act of June 21, 1906, 34 Stat. 325 (now codified at 25 U.S.C. § 391) , does not apply to MA-8 and that Act only applies to allotments issued pursuant to the General Allotment Act (commonly referred to as the Dawes Act) of February 8, 1887, 24 Stat. 388. However, Cross-claimant admits, at page 6, lines 5 and 6 of its Response, ECF 225, that President Wilson's Executive Order of December 23, 1914, applies to MA-8. That Executive Order specifically cites to the General Allotment Act as authority.

Ultimately, the General Allotment Act applies to MA-8.

Conveniently and more importantly, Cross-claimant fails to acknowledge to this Court that the Act of June 21, 1906 (25 U.S.C. § 391) provides:

> prior to the expiration of the trust period of any Indian allottee to whom a trust or other patent containing restrictions upon alienation has been or shall be issued under any law or treaty the President may in his discretion continue such restrictions on alienation for such period as he may deem best… (emphasis added).

In other words, the Act of June 21, 1906 (25 U.S.C. §391) applies to trust patents beyond those issued just under the General Allotment Act if they are issued under any law or treaty. Thus, allotments issued under the "law or treaty" known as the Act of July 4, 1884, 23 Stat. 79-80 (the Congressionally ratified Moses Agreement), cited in Cross-claimant's Response at page 5, line 1 and 2, ECF 225, are subject to the Act of June 21, 1906 (25 U.S.C. §391). Similarly, the sweeping "any law or treaty" language also, necessarily, must apply to the earlier Act of March 8, 1906, 34 Stat. 55, upon which the Plaintiffs and Cross-claimant rely. Cross-claimant and Plaintiffs misleadingly omit mention of the "any law or treaty" language in their assertions that the Act of June 21, 1906 (25 U.S.C. §391) does not apply to MA-8.

In United States v. Jackson, 280 U.S. 183 (1930), the Supreme Court ruled on the very issue of the applicability of the Act of June 21, 1906 (25 U.S.C. §391) to a law other than the 1887 General Allotment Act. In that case, Chief Justice Taft appropriately used the Act of June 21, 1906's language which includes the phrase

"any law or treaty" and found that the Act of June 21, 1906 (25 U.S.C. §391) authorized the President in his discretion to continue restrictions on alienation in patents issued under the Indian Homestead Act of July 4, 1884. The Supreme Court accepted that even though the 1884 Indian Homestead Act (predating the General Allotment Act) did not even refer to the restricted land as "allotment" and instead referred to them as "homesteads," 1884 Indian Homestead Act Indian homesteads were still subject to the Executive's interpretation. That Executive interpretation was that the Act of June 21, 1906 (25 U.S.C. §391) applies and it remained in trust at the Executive's discretion. Id at 192. Here, this Court is not even faced with this sort of dilemma of interpretation. The statutes cited by Cross-claimant clearly refer to the Moses-Columbia Allotments (like MA-8) as "allotments." This Court still lacks jurisdiction over the Colville Tribes or MA-8 *in rem*.

Conveniently, Cross-claimant also fails to cite to the clear language of the June 19, 1902 Joint Resolution No. 31, 32 Stat. 744, which relevantly provides:

> Insofar as not otherwise specially provided, all allotments in severalty to Indians, outside of the Indian Territory, shall be made in conformity to the provisions of the Act approved February eighth, eighteen hundred and eighty-seven, entitiled "An Act to provide for the allotment of lands in severalty to Indians on various reservations, and to extend the protection of the laws of the United States and the Territories over the Indians, and for other purposes," [the General Allotment Act] and the general Acts amendatory thereof or supplemental thereto, and shall be subject to all the restrictions and carry all the privileges incident to allotments made under said Act and other general Acts amendatory thereof or supplemental thereto.

Again, Congress clearly acted to make all allotments, including MA-8, subject to the provisions of the General Allotment Act and any subsequent amending or supplementing acts and Executive Orders. See, ECF 186. Therefore, Cross-claimant's contention that the General Allotment Act, the Act of Act of June 21, 1906 (25 U.S.C. §391), and any other Congressional or Executive actions referring to allotments do not apply to MA-8 are misleading and frivolous and should be ignored.

Cross-claimant's contention that the Act of May 20, 1924, 43 Stat. 133, somehow converted MA-8 out of trust into fee is, at best, preposterous and in no way grants this Court jurisdiction over the Colville Tribes or *in rem* over MA-8. The full text of the law is:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any allottee to whom a trust patent has heretofore been or shall herafter be issued by virtue of the agreement concluded on July 7, 1883 with Chief Moses and other Indians of the Columbia and Colville Reservations, ratified by Congress in the Act of July 4, 1884(Twenty-third Statutes at Large, pages 79 and 80), may sell and convey any or all the land covered by such patents, or if the allottee is deceased the heirs may sell or convey the land, in accordance with the provisions of the Act of Congress June 25, 1910 (Thirty-sixth Statutes at Large, page 855).

Nothing in this statute renders MA-8 fee property or otherwise *requires* fee patents to issue. Cross-claimant's mischaracterization that this Act "specifically converted the Patents 'heretofor… Issued [sic]" into freely alienable Patents", ECF 225, p. 6, line 16, 17, misleads and misdirects this Court. This language does not convert title from

trust to fee. Instead, the Act merely permits the Executive[7] to sell and convey the trust patent, hence the use of the permissive "may". It does not render the property fee and does not describe it as fee.[8] In fact, it makes no mention of issuance of fee patent. It speaks only of trust patents.

Furthermore, assuming, for the sake of argument, that the language in the 1924 Act is unclear (which it is not) this Court should disregard the Cross-claimant's whimsical interpretation. Courts should grant deference to legal interpretations by the Executive—especially in the context of Indian affairs. United States v. Jackson, 280 U.S. at 193. Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984) (Courts should grant deference to the legal interpretation of a statute by the agency charged with administering the statute and its subject matter). Clearly, the United States' prudent interpretation that MA-8 remains in trust should equally be followed by this Court if the question was up for legitimate debate, which it is not. See, ECF 186. This Court should, therefore, ignore this superfluous and misrepresentative distraction and find in accordance with overwhelming authority that this Court lacks jurisdiction over the Colville Tribes.

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[7] The original allottee of MA-8, Wapato John, died in September 1911. Therefore, only the second portion of the 1924 Act would be applicable.

[8] Trust-to-trust sales and conveyances between Indians occur regularly in Indian Country.

As for Cross-claimant's citation to fee patents issued for MA-8, this does not demonstrate that MA-8 is not trust property. Instead it merely demonstrates that the United States can, at its discretion, permit the sale of these lands when the Indian owners so request so and the Secretary of the Interior must agree. 25 U.S.C. §404; 25 C.F.R. §152.1 et seq. Again, Cross-claimant misleads and attempts to distract this Court. This should be ignored and the Colville Tribes should be dismissed from this case.

4. Sovereign Immunity Can be Raised at Any Time.

Despite Cross-claimant's unsupported arguments to the contrary, the law is quite clear that a challenge to the court's subject-matter jurisdiction can be raised at any time, including *sua sponte* by a court. Emrich v. Touche Ross & Co., 846 F.2d 1190, 1194 n. 2 (9th Cir.1988). The Federal Rules provide: "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed.R.Civ.P. 12(h)(3). A sovereign can assert immunity "at any time during judicial proceedings." In re Jackson, 184 F.3d 1046, 1048 (9th Cir. 1999). Even when a party does not invoke sovereign immunity until appeal, it does not waive immunity unless it voluntarily invokes jurisdiction or makes "a 'clear declaration' that it intends to submit itself to jurisdiction." Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 670 (1999). In other words, if a Court lacks jurisdiction to compel defendants, it lacks authority to act and must dismiss the case. Here, the

Colville Tribes has objected to this Court's jurisdiction over the Colville Tribes since the beginning. See, e.g., ECF 41, p. 2, 187, p. 7. Therefore, the Colville Tribes' Motion is properly before this Court. This Court should grant the Colville Tribes' motion.

5. Plaintiffs and Cross-claimant Failed to Provide a FRCP 8 Jurisdiction Statement Pertaining to Colville Tribes or MA-8

Despite their assertion otherwise, Plaintiffs did not provide a "short plain statement of the grounds for the court's jurisdiction" over the Colville Tribes by showing a clear and unequivocal waiver of sovereign immunity. FRCP 8. Cross-claimant's untimely answer and cross-claims—filed over twelve months late without leave from this Court—contain no FRCP 8(a) jurisdictional statement pertaining to the Colville Tribes. Complaints containing no statement of grounds of jurisdiction are deficient. Smith v. Dulles, 236 F.2d 739 (D.C. Cir. 1956), cert. denied 352 U.S. 955; Kaske v. Rothert, 133 F.Supp. 427 (S.D.Cal. 1955). This deficiency in the Plaintiffs' and Cross-claimant's pleadings is probably because there is no basis for this Court's jurisdiction over the Colville Tribes. It is only in their responses to the motion presently before this Court that they first raise the possibility of *in rem* jurisdiction over MA-8, despite the required lack of federal statute authorizing such jurisdiction. FRCP 4(n)(1). Instead, Plaintiffs only asserted a jurisdictional basis for suing the

United States.[9] These failures indicate that on their face, the pleadings have not overcome the high jurisdictional hurdle for this Court to assert jurisdiction over the Colville Tribes.

III. CONCLUSION

This case should ultimately boil down to a breach of contract claim for damages by Plaintiffs against Cross-claimant. The Colville Tribes never has had privity of contract with the Plaintiffs. Moreover, this Court lacks jurisdiction over the Colville Tribes.

For all of the reasons above and in the Colville Tribes' Memorandum in Support of the Colville Tribes Motion to Dismiss, this Court must dismiss the action and cross-claims against the Colville Tribes.

DATED: October 21, 2011

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[9] This Court dismissed most claims by Plaintiffs against the United States on Jurisdictional Grounds. ECF 144.

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CERTIFICATE OF SERVICE

I hereby certify that on October 21, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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