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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 UNITED STATES OF AMERICA, et al.,

11 Plaintiffs,

12 v.

13 STATE OF WASHINGTON, et al.,

14 Defendants.
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CASE NO. C70-9213
Subproceeding No. 89-3-10

ORDER GRANTING SQUAXIN
ISLAND TRIBE'S REQUEST FOR
FINDING OF CONTEMPT

17 This matter comes before the Court on the Squaxin Island Tribe's Petition for Order to
18 Show Cause (Dkt. 20) requesting this Court find C. Scott Grout and Gold Coast Oyster LLC in
19 civil contempt for their failure to comply with the Consent Decree and Settlement Agreement
20 ("Consent Decree"), which was approved by the undersigned on November 18, 2013.
21 Specifically, the Squaxin Island Tribe ("Tribe") alleges that C. Scott Grout and Gold Coast
22 Oyster LLC both failed to accommodate and interfered with the Tribe's opportunity to inspect
23 the Midles tidelands as required by the Consent Decree.
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1 This Court heard oral argument on Tuesday, February 2, 2016. The Squaxin Island Tribe
 2 was represented by Sharon Haensly and Kevin Lyon. C. Scott Grout and Gold Coast Oyster
 3 LLC were represented by Michael Johns. In addition, Joseph Panesko, counsel for the State of
 4 Washington, addressed the Court. The parties agreed that live testimony was not necessary and
 5 they would rely on the materials filed with the Court.

6 HISTORY OF THE CONSENT DECREE

7 On August 20, 2013 the Squaxin Island Tribe requested dispute resolution based on its
 8 assertion that Gold Coast refused to execute harvest plans for three separate tidelands which
 9 would allow the Squaxin Island Tribe to harvest its Treaty share of Manila clams and, in one
 10 instance, to recoup past Treaty shares dating back to 2007. In addition, the Squaxin Island Tribe
 11 sought to ensure that “Gold Coast conducts all future commercial shellfish activities within the
 12 Tribe’s U&A in compliance with federal and state law.” Dkt. 1.

13 The parties resolved their dispute and filed a “Consent Decree and Settlement Agreement
 14 – Squaxin Island Tribe and Gold Coast Oyster LLC.” Dkt. 11-1. Paragraph 7 of the Consent
 15 Decree is relevant to Tribe’s request for a finding of civil contempt:

16 Gold Coast shall comply with all requirements of the Shellfish Implementation
 17 Plan, including but not limited to the following: Whenever Gold Coast plans to
 18 enhance an existing natural bed or create a new artificial bed on Agreement
 19 Tidelands, Gold Coast shall submit to the Tribe all information required under
 20 Section 6.3 of the Shellfish Implementation Plan at least sixty (60) days before
 the proposed enhancement or creation of the bed occurs; and **shall accommodate
 and not interfere with the Tribe’s opportunity to inspect those tidelands
 so long as the Tribe provides fourteen (14) days’ advanced notice to Gold
 Coast.**

21 (emphasis added).

22 Pursuant to the terms of the Consent Decree, this Court retained jurisdiction in order to
 23 enforce the Decree. Dkt. 11-1, p. 4.

FACTS

As part of the Consent Decree, Gold Coast agreed to provide the Tribe with a list of all tidelands within the Agreement Tidelands that are “currently under Gold Coast’s control through contract or otherwise for purposes of conducting commercial shellfishing activities.” This list was to have been provided within 15 days after signing the Agreement or November 30, 2013. Dkt. 11-1, p. 2. Gold Coast did not meet this deadline. It was not until January 27, 2014 that Scott Grout provided the required list which included four parcels. He did not include the Midles tidelands in that list of four parcels.

On April 9, 2011 Gold Coast entered into a “license” with Dwight and Lisa Midles “to use the tidelands to harvest commercial quantities of marketable shellfish. Gold Coast agreed to make a royalty payment to the Midles based on the “total sales of each grade of **oysters and clams** harvested from the above listed tidelands.” Dkt. 25-1, pp. 5 – 6 (Exhibit 1) (emphasis added). Mr. Grout asserted that the Midles tidelands were not under his “control” in light of the fact that the waters were polluted and therefore no harvest could occur. Dkt. 25-1, p. 38 (Exhibit 15) and Dkt. 28, p. 3. The Court concludes that this interpretation does not comport with either the purpose or the language of the Consent Decree. Gold Coast clearly had control over the Midles tidelands at the time the Consent Decree was approved by this Court even though no harvest could occur. The Tribe, however, did not become aware of this fact until sometime in November 2014. The Court agrees with the Tribe that the Midles tidelands were not timely identified by Gold Coast pursuant to the terms of the Consent Decree. While this failure to comply with the Consent Decree does not form the basis for the Tribe’s requested finding of contempt, the Court notes this as indicative of Gold Coast and Mr. Grout’s limited compliance with the Decree.

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Events preceding the Tribal survey:

With regard to the Midles tidelands, Gold Coast’s Section 6.3 Notice to the Tribe is dated January 20, 2015. Dkt. 25-1, p. 46 (Exhibit 18). In the Notice Gold Coast denied that the tidelands contained the density of Manila Clams sufficient for the determination of a natural bed. As part of the 6.3 Notice, Gold Coast was required to “explain the basis for your density estimate for each species, and attach any survey data.” His response was: “No species present.” *Id.* at p. 47.

The Tribe disagreed with Gold Coast’s assessment that there was no natural bed of Manila clams and on January 21, 2015 advised Gold Coast that it would conduct a survey of the tidelands on February 6, 2015 at 12:30 p.m. In this letter the Tribe also advised Mr. Grout that a “Squaxin Tribal Police officer may accompany the survey crew.” Dkt. 25-1, p. 5 (Exhibit 20).

Prior to the 6.3 Notice from Gold Coast, Eric Sparkman and Scott Grout exchanged emails regarding the survey technique to be utilized by the Tribe. In that exchange of email, Mr. Sparkman confirmed that the “methodologies” the Tribe would be using “would be the same ‘manner and method’ of the type currently used by the State of Washington.” Dkt. 25-1, p. 34. In response, Mr. Grout requested access to the computer application used by the Tribe and asserted that “[t]he State has told me that the Tribe’s application of the surveys is not the same as the State’s application.” Dkt. 25-1, p. 33 (Exhibit 12). The Court notes, however, that this assertion has been refuted by the State of Washington as stated by the Tribe in its Reply (Dkt. 32 at p. 2, fn. 1) and also confirmed by Mr. Panesko during oral argument in this matter.

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1 On January 5, 2015 Mr. Grout sent an email to Sharon Haensly, counsel for the Tribe,
 2 demanding that certain conditions be agreed to prior to the survey¹. In his email, Mr. Grout
 3 advised:

4 The survey can proceed so long as the following criteria is negotiated. ...Eric failed
 to let me know the number of staff, what time will they arrive etc.
 5 I also request the following site conditions: disembark from vessel in public
 right of way. At no time shall the vessel touch or remain parked on the
 6 tidelands. No loud noises (60-65 db), no shining of lights at the residence
 while on site, species the tribe is surveying, a list of equipment (mechanical or
 7 magical) that will be used, a declaration from the Tribe that the staff are not
 “criminals, sex offenders, wanted by any courts for wants or warrants”, no
 8 use of tobacco or recreational narcotics on site, and that the staff are here in the
 United States lawfully. . . . I would like to negotiate enforcement provisions
 9 with negotiated penalties in place prior to the site visit. This will keep all
 claims outside Section 9. . . . I also seek a release from the Tribe.

10
 11 Dkt. 25-1, pp. 36 – 37 (Exhibit 14).

12 Gold Coast, through Mr. Grout, subsequently added another demand which he referred to
 13 as the “TSA clause.” “This basically discusses no weapons capable of producing bodily harm.
 14 If you can’t fly with it via a carry on piece of luggage we ask that it not be on site during Tribal
 15 staff’s visit. The one exception is “liquids” greater than 4 ml.” Dkt. 25-1, p. 44 (Exhibit 16).

16 Mr. Grout and Ms. Haensly had a phone conversation which Ms. Haensly subsequently
 17 memorialized in an email to Gold Coast dated January 14, 2015. Dkt. 25-1, pp. 38 – 39 (Exhibit
 18 15). In that email Ms. Haensly confirmed that the Tribe had accepted some of Mr. Grout’s
 19 demands. She also indicated that she would make her client aware of other demands which had
 20 not been accepted.

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23 ¹ The Court notes that Ms. Haensly did not communicate directly with Mr. Grout until after Mr. Grout’s
 24 counsel gave her permission to do so.

1 On January 15, 2014 Ms. Haensly offered to accept Scott Grout's invitation that Eric
2 Sparkman inspect the Midles beach and suggested the date of Friday, January 23 at 1:30 p.m.
3 with the scheduled survey to be conducted the following Monday, unless cancelled by the Tribe.

4 In response Mr. Grout again requested the following:

5 no felony convictions, no wants or warrants, here lawfully, release of unintentional
6 torts. ... I must ask again for these conditions as it is private property and these
7 negotiations, if approved, are intended to be infinite. ... Is your client also willing
to sign a non-disclosure agreement for all things on site not related to the tidelands? ...
Does he have any allergies that I should be aware of?

8 Dkt. 25-1, p. 43 (Exhibit 16).

9 In response Ms. Haensly attested that Eric Sparkman has no felony convictions or
10 warrants and confirmed a release from liability for unintentional torts. She was unaware of
11 whether Mr. Sparkman had allergies and she questioned the relevance of that information. She
12 also advised that the Tribe would not sign a nondisclosure agreement. Dkt. 25-1, p. 42 (Exhibit
13 16).

14 Mr. Grout responded regarding the non-disclosure agreement as follows: "There are
15 proprietary concerns and if Mr. Sparkman were to disclose what he sees he would imperil the
16 anonymity of these sensitive projects. These NDA's are quite common and are used all the time.
17 ... I would hate to see an NDA spoil the work that has been accomplished thus far. Please
18 consider this again." Dkt. 25-1, pp. 41 – 42 (Exhibit 16). When Ms. Haensly advised that Mr.
19 Sparkman would not sign a non-disclosure agreement, Mr. Grout asked if Mr. Sparkman would
20 consider being blindfolded. "I could provide the blindfold and escort him, safely, to the beach. .
21 . . If the Tribe is not willing to negotiate this last remaining condition for upland access for the
22 inspection I must insist on boat access via the public waterway with the conditions we
23 negotiated. Are we going by boat access or via uplands?" Dkt. 25-1, p. 41 (Exhibit 16).

1 On January 20, 2015 Mr. Grout requested assurances that Tribal staff would be in good
2 health which included “immunizations up to date or declared if there are no immunizations
3 taken. Measles, smallpox, tuberculosis, anthrax, etc. Have they had a flu immunization for
4 2014? ... Once all items are resolved I request a formal agreement that contains all items we
5 have negotiated formally drawn up and signed by GCO as well as the Tribal Council.” Dkt. 25-
6 1, p. 45 (Exhibit 17).

7 By email dated January 21, 2015 the Squaxin Island Tribe responded to Gold Coast’s 6.3
8 Notice and advised Mr. Grout that a tribal biologist and a technician would be conducting the
9 inspection and possibly a clam population survey on Friday, February 6th, 2015 at 12:30 p.m.
10 The Tribe also noted that a Squaxin Tribal Police may accompany the survey crew. Dkt. 25-1, p.
11 51 (Exhibit 20). Gold Coast responded as follows:

12 No officer’s on site, period. The security detail can remain in the vessel but cannot
13 ever enter the site. I can contact WDFW if you wish to have an armed guard
14 present. I don’t see the need but will leave that up to your discretion. I agreed to
15 two staff, one biologist and one tech. I also need all the declarations formalized
16 as well as the site controls as well as access controls. Site controls will include the
17 TSA model. If you can’t fly with it you can’t bring it to the site. I will grant
exemptions for liquids and the clam fork. I’m glad there is no disagreement
on the inspection of the boat when it arrives to ensure sanitary facilities are
present. You also mentioned that the tidelands are leased. They are in our
commercial control but not leased. I think the record should reflect that. Did
Eric approve of the survey corridors I proposed? What about the SSOP?

18 Dkt. 25-1, p. 50 (Exhibit 19). The Tribe did not respond to this email. It did conduct the
19 inspection and survey on February 6, 2015.

20 The Tribe does not assert that a Grower is prohibited from seeking agreement to
21 conditions related to a survey. It does, however, assert that most of the conditions requested by
22 Mr. Grout were not reasonable and instead resulted in Gold Coast’s not accommodating and
23 interfering with the Tribe’s opportunity to inspect the tidelands in violation of the Consent
24 Decree.

1 The Court notes that the information required in the 6.3 Notice includes identification by
 2 the Grower of the species proposed for cultivation. Rather than clearly identifying “oysters,” as
 3 Mr. Grout asserts he intends to cultivate, he referenced an attachment that is in such small print
 4 that it requires a magnifying glass to read and it includes a listing of over 200 “species”
 5 including the Pacific Chinese-hat snail. Dkt. 25-1, p. 49 (Exhibit 18). It does appear that Mr.
 6 Grout does know how to properly complete the 6.3 Notice. In his most recent 6.3 Notice for the
 7 Midles tidelands dated 10-8-15 he specifically identified the shellfish species he proposes for
 8 cultivation as “pacific oysters, kumamoto oysters, olympia oysters, virginica oysters,
 9 gigamotos.” Dkt. 20-4, p. 43 (Exhibit 36). He, however, continues to dispute the results of the
 10 survey taken by Mr. Sparkman and asserts that the “sites density falls below the .14 density set
 11 forth in the SIP.” *Id.* at p. 44.

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13 **Events at the Tribal survey:**

14 Both Mr. Grout’s and Eric Sparkman noted, on their arrival at the Midles tidelands, that a
 15 harvest of clams had occurred. The photographs taken on February 6, 2015 by Rana Brown, a
 16 shellfish biologist for the Squaxin Island Tribe, clearly documents a harvest of a substantial
 17 number of clams. Dkt. 25-2, pp. 1 – 17 (Exhibit 21). According to Mr. Sparkman, and not
 18 contradicted by Mr. Grout, the evidence of a commercial harvest included clean, recently
 19 unearthed clam shells at the surface; soft ground; and the surface layer of sediment having been
 20 turned under where digging had occurred. Dkt. 25-1, pp. 2 – 3.

21 The photographs also clearly contradict the assertion, made several times by Mr. Grout,
 22 that there were no shellfish on the Midles tidelands. *See* Dkt. 25-1, p. 29 (Exhibit 10) (We do
 23 not intend to harvest any shellfish as there are none.”) and Dkt. 25-1, p. 46 (Exhibit 18) (6.3
 24 Notice stating that “no species present”).

1 The Court notes that the SIP requires the Grower, in his 6.3 Notice, to “explain the basis
2 for the Grower’s determination that the sustainable yield of shellfish is below the natural bed
3 threshold in Exhibit A or if it is above the threshold, what the sustainable harvest yield is.” The
4 Court concludes that if Mr. Grout had made a good faith effort to comply with this section of the
5 SIP it would have been obvious to him that there were shellfish on the tidelands. Instead, his 6.3
6 Notice stated that there were “no species present.”

7 At this time it is unknown who conducted the harvest prior to February 6, 2015. The
8 Tribe believes that the harvest was done by or on behalf of Gold Coast and/or Mr. Grout. On the
9 other hand, Mr. Grout suggested that the owners dug the clams for Super Bowl weekend. Mr.
10 Sparkman estimated that between 500 to over 1,200 pounds of Manila clams were harvested
11 shortly before the Tribe’s February 6, 2015 survey, which amount “hugely exceeds the usual
12 amount harvested for personal consumption.” Dkt. 25-1, p. 1. The evidence at the scene led
13 both Rana Brown and Eric Sparkman to conclude that a commercial harvest had occurred and
14 the Court agrees with that conclusion.

15 According to Rana Brown, as soon as she and Eric Sparkman arrived on the Midles
16 tidelands Mr. Grout “began a barrage of complaints and negative commentary.” Dkt. 25-2, p. 26
17 (Exhibit 23). Mr. Grout followed Mr. Sparkman around as he was mapping the beach and
18 argued about various things, including the surveying methodology. Mr. Grout refused to show
19 Mr. Sparkman and Ms. Brown the boundaries “claiming his stakes were management units not
20 boundaries.” *Id.* He became agitated and was escalating so Ms. Brown spoke with Officer
21 Blankenship and asked him to come onto the beach in case Mr. Grout got out of hand. *Id.*

22 Officer Blankenship and Detective Bogart understood that they were present for security
23 purposes because of Tribal concerns regarding previous hostile and aggressive behavior
24 associated with Mr. Grout. According to Detective Bogart, Mr. Grout had been known to be

1 confrontational with both tribal biologists and Law Enforcement officers.² Officer Blankenship
2 stated that several weeks prior to the survey Eric Sparkman “requested assistance from Squaxin
3 Island Law Enforcement on this survey, due to previous hostile and aggressive behavior
4 associated with Scott C. Grout.” Dkt. 25-2, p. 21.

5 Officer Blankenship, who had been observing events in a boat approximately 500 yards
6 off the Midles tidelands, noted that “two individuals closely followed behind BROWN and
7 SPARKMAN. After approximately 20-25 minutes, I called BROWN via cell phone and asked
8 how things were going? BROWN STATED “I was just getting ready to call you, we would
9 really like one of you on the beach as the situation was getting heated.” Dkt. 25-2, p. 21. At
10 the time this call was made, Detective Bogart observed Mr. Grout standing directly above Ms.
11 Brown and he appeared to be talking to her. Dkt. 20-4, p. 1 (Exhibit 23). Officer Blankenship,
12 along with Officer Rollins and Detective Bogart, responded to the beach. Officer Rollins and
13 Detective Bogard remained in the boat while Officer Blankenship contacted Brown “who
14 advised GROUT’S aggressive demeanor and verbal comments were making her feel
15 uncomfortable.” Dkt. 25-2, p. 21.

16 Once Officer Blankenship stepped off the boat onto the tidelands it is clear that Mr. Grout
17 became very hostile, as documented through the video taken by Rana Brown on her cell phone.
18 Dkt. 25-2, p. 18 (Exhibit 22). Mr. Grout was extremely loud, offensive and aggressive and he
19 used derogatory, demeaning and abusive language towards Officer Blankenship. He harassed
20 Officer Blankenship and stepped within inches of Officer Blankenship’s face. In spite of this
21 tirade, Officer Blankenship remained calm and did not take any aggressive action towards Mr.
22 Grout. It was Mr. Grout who was the aggressor through both his words and his actions. As

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24 ² A Washington State Department of Fish and Wildlife officer obtained a protection order against Mr.
Grout on October 18, 2013.

1 shown on the video and recited in the Tribe's Reply, the video shows Mr. Grout saying to
2 Officer Blankenship "I can get this close to you, can't I?" and immediately stepping forward
3 until he was toe-to-toe with Officer Blankenship and only inches from the officer's face. Officer
4 Blankenship said, "Don't touch me" to which Mr. Grout replied "I am touching you skinjun" and
5 performed three "whoops" in the Officer's face. Dkt. 32, p. 6. Clearly Mr. Grout was aggressive
6 and making every attempt to escalate a situation on the beach. Fortunately, Officer Blankenship
7 did not respond in kind.

8 The Court also notes that Mr. Grout had a GoPro camera on his hat but no video has been
9 produced by him. On the other hand, the video taken by Ms. Brown clearly shows that if the Go-
10 Pro was actually operating that the video taken by Mr. Grout could not cast him in a favorable
11 light.

12 Detective Bogart saw Mr. Grout remove a fork from the biologist's bucket and throw it
13 into the water. When asked why he did that, Mr. Grout said it was trespassing. Mr. Grout later
14 returned to the bucket and threw a hammer into the water. Detective Bogart later saw Mr. Grout
15 retrieve both the fork and hammer. Dkt. 20-4, pp. 1 – 2 (Exhibit 23). Rana Brown also confirms
16 Mr. Grout's actions regarding the fork. Mr. Grout told her that "when he was arguing with
17 Blankenship he got angry and the fork 'grew wings' and went flying into the water but he
18 retrieved it for us." Dkt. 25-2, p. 27. The Court is aware that Mr. Grout denies doing this (Dkt.
19 28, p. 8) but believes the testimony of Detective Bogart and Rana Brown.

20 On February 9, 2015 Mr. Grout's attorney, Eric S. Valley, wrote a letter to Sharon
21 Haensly in which he stated that "Mr. Grout informs me that Natural Resources Officer Ben
22 Blankenship of the Squaxin Island Tribe's Tourism Department engaged in intentionally
23 offensive and threatening conduct during this inspection that may have constituted Assault or
24 Disorderly Conduct; Mr. Grout informs me that Mr. Blankenship stepped to literally within one

1 | inch of Mr. Grout's face and person, sought to provoke a physical confrontation and was armed
2 | with a handgun and a large bladed weapon." Dkt. 20-4, p. 9 (Exhibit 27). Clearly, the only
3 | thing that was true was the fact that the officer did have a hand gun and knife. The gun and
4 | knife, however, were never displayed or brandished nor did Officer Blankenship attempt to use
5 | them in any fashion to intimidate or threaten Mr. Grout. Mr. Grout's assertions were descriptive
6 | of his behavior and not that of Officer Blankenship.

7 | Mr. Grout also asserted in his declaration that Officer Blankenship "came up and stood
8 | directly in front of me, almost toe to toe." Dkt. 28, p. 8. The video taken by Rana Brown
9 | confirms that this is not true. The "almost toe to toe" contact occurred when Mr. Grout
10 | deliberately stood too close Officer Blankenship.

11 | The Tribe was able to complete the survey of the Midles tidelands and determined that it
12 | did contain a significant clam band which would entitle the tribe to harvest its Treaty share.

13 | On March 3, 2015 Mr. Sparkman approached Mr. Grout to discuss the two proposed
14 | harvest plans he emailed and mailed to him the week before. During that "conversation" Mr.
15 | Grout "referred to Officer Blankenship as 'Blankenshit' and kept referring to him as a Squaxin
16 | 'pig' or 'skin-jin.' He continued ranting about how Blankenship was not allowed on the beach
17 | and that he had said no 'pigs' were supposed to come that day." Dkt. 25-1, p. 2. Mr. Sparkman
18 | testified to his concern for not only his safety but the safety of others who are on the beach or in
19 | the vicinity of Mr. Grout during Treaty shellfishing activities.

20 | Accordingly, I told Mr. Grout at the March 3 conference that I would not go
21 | to a beach under his control without a Squaxin Police Department officer for
22 | my safety. Mr. Grout responded that if Officer Blankenship came out to the
23 | beach 'he wouldn't be leaving the beach.' I said that sounded like a threat,
24 | to which Mr. Grout responded that 'it was just a statement not a threat.' Mr.
25 | Grout then said something about him bringing a gun to the beach next time
26 | or bringing someone with a gun along but not on the beach.

27 | *Id.*

1 **Subsequent Tribal Harvest of the Midles Tidelands:**

2 On June 22, 2015 Mr. Midles advised the Tribe that he terminated his license agreement
3 with Gold Coast. Dkt. 20-4, p. 31. The Tribe and the Midles reached an agreement regarding
4 the Tribe's harvesting its Treaty share of 602 pounds. Dkt. 20-4, p. 38 (Exhibit 34).

5 It is interesting to note that when the Tribe and Mr. Midles were negotiating the Treaty
6 harvest, that Mr. Midles told Ms. Haensley that "I would even be willing to let the tribe walk
7 down to my beach from my paved drive way, so they would not have to come by boat, if that
8 would be easier." Dkt. 20-4, p. 32. Mr. Midles voiced no concern about there being anything on
9 his property for which he had "proprietary concerns" or that he had any "sensitive projects" on
10 his property such that someone from the Tribe needed to be lead down to the tidelands
11 blindfolded nor did he require a non-disclosure agreement from the Tribe.³

12 The Tribe conducted a harvest in June 2015 but according to Eric Sparkman, the two
13 harvesters were only able to harvest 176 pounds even though the February 6 survey indicated
14 that there were 754 pounds of Manila clams of marketable size on the beach. Dkt. 25-1, p. 3.
15 According to Mr. Sparkman, the "Tribe has never experienced such an extreme discrepancy
16 between its survey results and the harvested amount in that short of timeframe, the evidence
17 clearly indicates that someone harvested sometime after the survey and before the Tribal
18 harvest." *Id.* However, both Dwight and Lisa Midles, the property owners, have declared that
19 the only shellfish taken off their property was for their private use and only a small amount and
20 they both deny that shortly before the Tribal harvest that a commercial harvest occurred on their
21 beach without their permission as they would have observed it. Dkt. 30 and 31. Mr. Grout

22
23 ³ The Court notes that Mr. Grout requested a non-disclosure agreement from the Tribe because "[t]here are
24 proprietary concerns and if Mr. Sparkman were to disclose what he sees he would imperil the anonymity of these
sensitive projects." Dkt. 20-2, pp. 42 - 42 (Exhibit 16). Apparently those concerns were only in the mind of Mr.
Grout and not the landowner.

1 stated that “[n]either Gold Coast nor I personally have ever conducted a harvest on the Midles’
2 property.” Dkt. 28, p. 9.

3 STANDARD FOR CIVIL CONTEMPT

4 Federal courts have inherent power to enforce compliance with their lawful orders,
5 including Consent Decrees, through actions for civil contempt. *See Spallone v. United States*,
6 493 U.S. 265, 276 (1990).

7 Civil contempt in this context consists of a party’s disobedience to a
8 specific and definite court order by failure to take all reasonable steps
9 within the party’s power to comply. The contempt “need not be willful,”
10 and there is no good faith exception to the requirement of obedience
11 to a court order. *Crystal Palace*, 817 F.2d at 1365. But a person should
12 not be held in contempt if his action “ ‘appears to be based on a good faith
13 and reasonable interpretation of the [court’s order].’ ” (citations omitted).
14 “Substantial compliance” with the court order is a defense to civil
15 contempt, and is not vitiated by “a few technical violations” where every
16 reasonable effort has been made to comply. (citations omitted).

17 *In re Dual-Deck Video Cassette Antitrust Lit.*, 10 F.3d 693, 695 (9th Cir. 1993).

18 “Sanctions for civil contempt may be imposed to coerce obedience to a court order, or to
19 compensate the party pursuing the contempt action for injuries resulting from the contemptuous
20 behavior, or both.” *General Signal Corporation v. Donallco, Inc.*, 787 F. 2d. 1376 (9th Cir.
21 1986).

22 It is well settled law that in a civil contempt proceeding, the contempt must be proved by
23 clear and convincing evidence. *Vertex Distributing v. Falcon Foam Plastics, Inc.*, 689 F.2d 885
24 (9th Cir. 1982).

DISCUSSION

21 It is undisputed that the Consent Decree applies to Gold Coast and Scott Grout’s actions
22 as they relate to the Midles tidelands. The Decree also specifically and clearly states that Gold
23 Coast and Scott Grout “shall accommodate and not interfere with the Tribe’s opportunity to
24

1 inspect those tidelands so long as the Tribe provides fourteen (14) days' advanced notice to Gold
2 Coast.”

3 Based on the evidence presented to the Court, the undersigned concludes, based on clear
4 and convincing evidence, that Scott Grout and Gold Coast failed to comply with the Consent
5 Decree. Mr. Grout's actions were not based on a “good faith and reasonable” interpretation of
6 the Consent Decree and he did not substantially comply with the Consent Decree.

7 It is clear to the Court that Mr. Grout does not agree with the methodology utilized by the
8 Tribe when conducting a survey of tidelands to determine whether the Tribe is entitled to a
9 Treaty share. It is also clear to the Court that his displeasure with the concept of a Treaty share
10 is reflected in his actions taken both before and during the survey.

11 In his January 20, 2015 6.3 Notice to the Tribe, Mr. Grout did not make any reasonable
12 effort to comply with several requirements of the SIP. For example, he asserted that there were
13 no species present on the tidelands. Clearly that assertion was false and he knew it. Ms. Haensly
14 pointed this out to him when he was presenting his conditions to the Tribe. “You want the
15 Tribe's vessel not to touch the landowners' tidelands. ... out of concern that the vessel will
16 disturb the soil turbidity and ‘squish product.’ As an initial matter, I don't understand how
17 product exists if the beach, as you said, consists of sterile mud and is devoid of shellfish.” Dkt.
18 25-1, p. 39 (Exhibit 15). Also, it was very obvious on the day of the survey that there were
19 shellfish on the tidelands. Also, rather than identifying the shellfish species proposed for
20 cultivation, as required in the 6.3 Notice, he attached an inordinately long list of over 200
21 species. When he filed a second 6.3 Notice he listed five shellfish species he intended to
22 cultivate on the Midles tidelands. Dkt. 20-4, p. 43 (Exhibit 36). While these actions do not form
23 the basis for a finding of contempt, they show an attitude of obstruction that continued during the
24 negotiation of conditions at the site and that during the survey.

1 With regard to negotiating conditions for a survey, the Tribe agreed that such
2 negotiations are common and generally not problematic. That clearly was not the case with
3 Scott Grout and Gold Coast as identified more specifically in the Facts section above. Mr. Grout
4 asserted in his declaration that he requested “additional conditions to preserve the integrity of the
5 tidelands and to lessen the impact on the owners and neighbors of the property, including that the
6 Tribe’s employees did not ground their boat on the tidelands and that they conduct the survey as
7 quietly as possible without shining lights on the Midles’ home.” Dkt. 28, p. 4. It is unclear to
8 the court why “shining lights” might be an issue as the Tribe advised Mr. Grout they would be
9 on the tidelands at 12:30 p.m. – in the middle of the day.

10 The Court concludes that a substantial number of conditions requested by Mr. Grout were
11 not intended to preserve the integrity of the tidelands or were even reasonable. For example, Mr.
12 Grout wanted to have a list of “magical” equipment that would be used by the Tribe during the
13 survey. He wanted signed declarations from Tribal staff that they are not criminals, sex
14 offenders, wanted by any courts from warrants or warrants and are lawfully in the United States. If
15 the Tribe agreed to upland access to the tidelands they had to either agree to a non-disclosure
16 agreement or be lead blindfolded to the tidelands. This request had nothing to do with the
17 Midles property or tidelands. He also wanted to negotiate penalties with the Tribe to keep it out
18 of Section 9, the dispute resolution section of the SIP, and Mr. Grout’s attempt to avoid that
19 section should there be some disagreement between the parties. This also had nothing to do with
20 the integrity of the tidelands. He wanted the imposition of a TSA clause, he wanted to inspect
21 Tribal vessels, he wanted the Tribal Council to sign a formal agreement agreeing to all of his
22 conditions, he wanted to know of any allergies of those who would be working on the tidelands,
23 and he wanted immunizations records.

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1 While the Tribe agreed to some of his demands, there is no evidence before the Court that
2 the other demands he made were reasonable, were reasonably related to maintaining the integrity
3 of the tidelands or were commonly agreed to. The Tribe's representatives spent substantial time
4 responding to these unreasonable demands and the Court concludes that the level of these
5 demands was such that they rise to the level of having failed to accommodate the Tribe in its
6 opportunity to conduct the survey.

7 With regard to the events that occurred at the survey itself the Court concludes that Mr.
8 Grout interfered with the Tribe's opportunity to inspect the tidelands. While it is true that the
9 inspection did in fact occur, that does not mean that there could be no interference.

10 First, there is a significant issue regarding the commercial harvesting of the tidelands
11 immediately before the survey occurred. The Midles' affidavits do not address this time frame
12 and Mr. Grout only stated that neither he nor Gold Coast personally harvested the tidelands.

13 Second, as identified more specifically in the Facts section above, Mr. Grout's actions at
14 the tidelands clearly support the finding that he interfered with the Tribe's opportunity to conduct
15 the survey. His interference started as soon as Mr. Sparkman and Ms. Brown arrived on the
16 tidelands. Mr. Grout was agitated and approached Mr. Sparkman with a "barrage of complaints
17 and negative commentary." Dkt. 25-2, p. 26 (Exhibit 23). After 20 to 25 minutes, Ms. Brown
18 requested the presence of the Tribal officers on the beach because of her concern over Mr.
19 Grout's actions. Once Officer Blankenship was on the beach Mr. Grout became very aggressive,
20 used very inappropriate and extremely offensive language and stood within inches of Officer
21 Blankenship – all of which was documented by the video taken by Rana Brown.

22 It is also fortunate for the Tribe that the video was taken as Mr. Grout has not been
23 truthful regarding his actions on the beach as seen in the letter written on his behalf by his
24 attorney as well as his assertion in his declaration that Officer Blankenship "came up and stood

1 directly in front of me, almost toe to toe.” The “toe to toe” occurred when Mr. Grout came up
2 and stood directly in front of Officer Blankenship. Based on the whole record, the Court finds
3 that Mr. Grout is not credible and when there is truly conflicting evidence between Mr. Grout
4 and representatives of the Tribe, the Court has accepted the Tribe’s representative’s statements as
5 being true.

6 For the above reasons, the Court **GRANTS** the Squaxin Island Tribe’s request to find
7 Gold Coast and Scott Grout in contempt of the Consent Decree.

8 **REMEDIES**

9 **Amendment of the Consent Decree:** One of the remedies requested by the Tribe is
10 amendment of the Consent Decree. The undersigned requests additional briefing regarding the
11 authority of the Court to amend a Consent Decree and what, if any, parameters apply with regard
12 to the Tribe’s requested amendments. The Tribe shall file its brief no later than February 26,
13 2016 and include a noting date of March 18, 2016. Gold Coast shall file any opposition by
14 March 14, 2016 and the Tribe may file its reply no later than the noting date.

15 **Discovery:** The Court is granting the Tribe’s request to conduct discovery, including
16 depositions, regarding the commercial harvests of clams that occurred on the Midles tidelands
17 before the survey of February 6, 2015. The Tribe has also presented sufficient evidence to
18 warrant discovery regarding any clam harvest that may have occurred prior to the Tribal harvest
19 in June 2015.

20 **Harvest Plan for Midles Tidelands:** The Court did not understand until oral argument
21 that the Tribe wanted, as a remedy, the requirement that Gold Coast sign either Harvest Plan 1 or
22 Harvest Plan 2 (Dkt. 20-4, pp. 12 – 19, Exhibit 30) for the Midles tidelands. The Court notes
23 that Paragraph 9 of the Consent Decree sets forth the requirements for a harvest plan and that
24 Paragraph 10 permits a party to request the assistance of this Court in resolving any dispute. The

1 Court is directing the parties to comply with the Consent Decree. Although this matter is
2 currently before the court based on a request for dispute resolution, the Court concludes that it is
3 preferable to require the parties to first attempt to negotiate a harvest plan. If they are unable to
4 do so, then the matter will be resolved by the Court pursuant to Paragraph 10 of the Consent
5 Decree.

6 **Attorney Fees:**

7 The Court concludes that it is appropriate to award the Squaxin Island Tribe its
8 reasonable attorney fees and costs related to this Motion for Contempt. However, since issues
9 remain to be resolved, the Court will make a determination as to the appropriate amount of an
10 award of fees and costs at a later date.

11 DATED this 16th day of February, 2016.

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14 Karen L. Strombom
15 United States Magistrate Judge
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