

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 04, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PAUL GRONDAL, a Washington
resident; MILL BAY MEMBERS
ASSOCIATION, INC., a Washington
non-profit corporation,

Plaintiffs,

v.

UNITED STATES OF AMERICA;
UNITED STATES DEPARTMENT
OF INTERIOR; BUREAU OF
INDIAN AFFAIRS; FRANCIS
ABRAHAM; CATHERINE
GARRISON; MAUREEN
MARCELLAY, MIKE PALMER,
also known as Michael H. Palmer;
JAMES ABRAHAM; NAOMI DICK;
ANNIE WAPATO; ENID
MARCHAND; GARY REYES;
PAULWAPATO, JR.; LYNN
BENSON; DARLENE HYLAND;
RANDY MARCELLAY; FRANCIS
REYES; LYDIA W. ARMEECHER;
MARY JO GARRISON; MARLENE
MARCELLAY; LUCINA O'DELL;
MOSE SAM; SHERMAN T.
WAPATO; SANDRA COVINGTON;
GABRIEL MARCELLAY; LINDA

NO: 2:09-CV-18-RMP

STIPULATED PROTECTIVE
ORDER

1 MILLS; LINDA SAINT; JEFF M.
2 CONDON; DENA JACKSON; MIKE
3 MARCELLAY; VIVIAN PIERRE;
4 SONIA VANWOERKON; WAPATO
5 HERITAGE, LLC; LEONARD
6 WAPATO, JR.; DERRICK D.
7 ZUNIE, II; DEBORAH L.
8 BACKWELL; JUDY ZUNIE;
9 JAQUELINE WHITE PLUME;
10 DENISE N. ZUNIE;
11 CONFEDERATED TRIBES
12 COLVILLE RESERVATION; and
13 ALLOTTEES OF MA-8, also known
14 as Moses Allotment 8,
15 Defendants.

16 Based on the stipulation of the parties through their respective counsel, ECF
17 No. 623, **IT IS HEREBY ORDERED** that the parties' Stipulated Protective Order,
18 **ECF No. 623**, is **GRANTED**.

19 1. PURPOSES AND LIMITATIONS

20 Discovery in this action is likely to involve production of confidential,
21 proprietary, or private information for which special protection may be warranted.
Accordingly, the parties hereby stipulate to and petition the court to enter the
following Stipulated Protective Order. This agreement does not confer blanket
protection on all disclosures or responses to discovery; the protection it affords from
public disclosure and use extends only to the limited information or items that are
entitled to confidential treatment under the applicable legal principles, and it does
not presumptively entitle parties to file confidential information under seal.

1 2. CONFIDENTIAL MATERIAL

2 “Confidential” material shall include the following documents and tangible
3 things produced or otherwise exchanged:

4 (a) An appraisal conducted of a property in Chelan County by a
5 colleague of Bruce Jolicoeur for a non-party to this action. The sole intended use for
6 the appraisal was for financing or underwriting decisions for a non-party use only.
7 The parties agree that this appraisal shall be marked “attorney’s eyes only” and
8 treated accordingly.

9 (b) Proprietary business information, information regarding financial
10 transactions or accounts, or private personal information, which is not typically
11 available to the public or the parties, including that of their respective non-party
12 related entities as well as that of the individual allottees.

13 3. SCOPE

14 The protections conferred by this agreement cover not only confidential
15 material (as defined above), but also (1) any information copied or extracted from
16 confidential material; (2) all copies, excerpts, summaries, or compilations of
17 confidential material; and (3) any testimony, conversations, or presentations by
18 parties or their counsel that might reveal confidential material.

19 However, the protections conferred by this agreement do not cover
20 information that is in the public domain or becomes part of the public domain
21 through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles: A receiving party may use confidential material that
3 is disclosed or produced by another party or by a non-party in connection with this
4 case only for prosecuting, defending, or attempting to settle this litigation.

5 Confidential material may be disclosed only to the categories of persons and under
6 the conditions described in this agreement. Confidential material must be stored and
7 maintained by a receiving party at a location and in a secure manner that ensures that
8 access is limited to the persons authorized under this agreement.

9 4.2 Disclosure of “CONFIDENTIAL” Information or Items: Unless
10 otherwise ordered by the court or permitted in writing by the designating party, a
11 receiving party may disclose any confidential material only to:

12 (a) the receiving party’s counsel of record in this action, as well as
13 employees of counsel to whom it is reasonably necessary to disclose the information
14 for this litigation;

15 (b) the officers, directors, and employees (including in house
16 counsel) of the receiving party to whom disclosure is reasonably necessary for this
17 litigation, unless the parties agree that a particular document or material produced is
18 for **Attorney’s Eyes Only** and is so designated;

19 (c) experts and consultants to whom disclosure is reasonably
20 necessary for this litigation and who have signed the “Acknowledgment and
21 Agreement to Be Bound” (Exhibit A);

1 (d) the court, court personnel, and court reporters and their staff;

2 (e) during their depositions, witnesses in the action to whom

3 disclosure is reasonably necessary and who have signed the “Acknowledgment and

4 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating

5 party or ordered by the court. Pages of transcribed deposition testimony or exhibits

6 to depositions that reveal confidential material must be separately bound by the court

7 reporter and may not be disclosed to anyone except as permitted under this

8 agreement;

9 (f) the author or recipient of a document containing the information

10 or a custodian or other person who otherwise possessed or knew the information.

11 4.3 Filing Confidential Material: Before filing confidential material or

12 discussing or referencing such material in court filings, the filing party shall confer

13 with the designating party to determine whether the designating party will remove

14 the confidential designation, whether the document can be redacted, or whether a

15 motion to seal or stipulation and proposed order is warranted. During the meet and

16 confer process, the designating party must identify the basis for sealing the specific

17 confidential information at issue, and the filing party shall include this basis in its

18 motion to seal, along with any objection to sealing the information at issue.

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1 5. DESIGNATING CONFIDENTIAL MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection:

3 Each party or non-party that designates information or items for protection under
4 this agreement must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The designating party must designate for
6 protection only those parts of material, documents, items, or oral or written
7 communications that qualify, so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this agreement.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber or delay the case development process or
13 to impose unnecessary expenses and burdens on other parties) expose the
14 designating party to sanctions. If it comes to a designating party's attention that
15 information or items that it designated for protection do not qualify for protection,
16 the designating party must promptly notify all other parties that it is withdrawing the
17 mistaken designation.

18 5.2 Manner and Timing of Designations: Except as otherwise provided in
19 this agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise
20 stipulated or ordered, disclosure or discovery material that qualifies for protection
21 under this agreement must be clearly so designated before or when the material is

1 disclosed or produced.

2 (a) Information in documentary form: (e.g., paper or electronic
3 documents and deposition exhibits, but excluding transcripts of depositions or other
4 pretrial or trial proceedings), the designating party must affix the word
5 “CONFIDENTIAL” to each page that contains confidential material. If only a
6 portion or portions of the material on a page qualifies for protection, the producing
7 party also must clearly identify the protected portion(s) (e.g., by making appropriate
8 markings in the margins).

9 (b) Testimony given in deposition or in other pretrial proceedings:
10 the parties and any participating non-parties must identify on the record, during the
11 deposition or other pretrial proceeding, all protected testimony, without prejudice to
12 their right to so designate other testimony after reviewing the transcript. Any party
13 or non-party may, within fifteen days after receiving the transcript of the deposition
14 or other pretrial proceeding, designate portions of the transcript, or exhibits thereto,
15 as confidential. If a party or non-party desires to protect confidential information at
16 trial, the issue should be addressed during the pre-trial conference.

17 (c) Other tangible items: the producing party must affix in a
18 prominent place on the exterior of the container or containers in which the
19 information or item is stored the word “CONFIDENTIAL.” If only a portion or
20 portions of the information or item warrant protection, the producing party, to the
21 extent practicable, shall identify the protected portion(s).

1 5.3 Inadvertent Failures to Designate: If timely corrected, an inadvertent
2 failure to designate qualified information or items does not, standing alone, waive
3 the designating party's right to secure protection under this agreement for such
4 material. Upon timely correction of a designation, the receiving party must make
5 reasonable efforts to ensure that the material is treated in accordance with the
6 provisions of this agreement.

7 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8 6.1 Timing of Challenges: Any party or non-party may challenge a
9 designation of confidentiality at any time. Unless a prompt challenge to a
10 designating party's confidentiality designation is necessary to avoid foreseeable,
11 substantial unfairness, unnecessary economic burdens, or a significant disruption or
12 delay of the litigation, a party does not waive its right to challenge a confidentiality
13 designation by electing not to mount a challenge promptly after the original
14 designation is disclosed.

15 6.2 Meet and Confer: The parties must make every attempt to resolve any
16 dispute regarding confidential designations without court involvement. Any motion
17 regarding confidential designations or for a protective order must include a
18 certification, in the motion or in a declaration or affidavit, that the movant has
19 engaged in a good faith meet and confer conference with other affected parties in an
20 effort to resolve the dispute without court action. The certification must list the date,
21 manner, and participants to the conference. A good faith effort to confer requires a

1 face-to-face meeting or a telephone conference.

2 6.3 Judicial Intervention: If the parties cannot resolve a challenge without
3 court intervention, the designating party may file and serve a motion to retain
4 confidentiality. The burden of persuasion in any such motion shall be on the
5 designating party. Frivolous challenges, and those made for an improper purpose
6 (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may
7 expose the challenging party to sanctions. All parties shall continue to maintain the
8 material in question as confidential until the court rules on the challenge.

9 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
10 PRODUCED IN OTHER LITIGATION

11 If a party is served with a subpoena or a court order issued in other litigation
12 that compels disclosure of any information or items designated in this action as
13 “CONFIDENTIAL,” that party must:

14 (a) promptly notify the designating party in writing and include a
15 copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or
17 order to issue in the other litigation that some or all of the material covered by the
18 subpoena or order is subject to this agreement. Such notification shall include a copy
19 of this agreement; and

20 (c) cooperate with respect to all reasonable procedures sought to be
21 pursued by the designating party whose confidential material may be affected.

1 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
3 confidential material to any person or in any circumstance not authorized under this
4 agreement, the receiving party must immediately (a) notify in writing the
5 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
6 all unauthorized copies of the protected material, (c) inform the person or persons to
7 whom unauthorized disclosures were made of all the terms of this agreement, and
8 (d) request that such person or persons execute the “Acknowledgment and
9 Agreement to Be Bound” that is attached hereto as Exhibit A.

10 9. INADVERTENT PRODUCTION OF PRIVILEGED OR
11 OTHERWISE PROTECTED MATERIAL

12 When a producing party gives notice to receiving parties that certain
13 inadvertently produced material is subject to a claim of privilege or other protection,
14 the obligations of the receiving parties are those set forth in Federal Rule of Civil
15 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
16 may be established in an e-discovery order or agreement that provides for production
17 without prior privilege review. The parties agree to the entry of a non-waiver order
18 under Fed. R. Evid. 502(d) as set forth herein.

19 10. NONTERMINATION AND RETURN OF DOCUMENTS

20 Within 60 days after the termination of this action, including all appeals, each
21 receiving party must return all confidential material to the producing party, including

1 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
2 appropriate methods of destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival
4 copy of all documents filed with the court, trial, deposition, and hearing transcripts,
5 correspondence, deposition and trial exhibits, expert reports, attorney work product,
6 and consultant and expert work product, even if such materials contain confidential
7 material.

8 The confidentiality obligations imposed by this agreement shall remain in
9 effect until a designating party agrees otherwise in writing or a court orders
10 otherwise.

11 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
12 Order and provide copies to counsel.

13 **DATED** January 4, 2021.

14
15 *s/ Rosanna Malouf Peterson*
16 ROSANNA MALOUF PETERSON
17 United States District Judge
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EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

1
2 I, _____ [print or type full name], of
3 _____ [print or type full address], declare
4 under penalty of perjury that I have read in its entirety and understand the Stipulated
5 Protective Order that was issued by the United States District Court for the Eastern
6 District of Washington on [date] in the case of **Grondal et al. v. United States et**
7 **al., 2:09-CV-0018-RMP**. I agree to comply with and to be bound by all the terms
8 of this Stipulated Protective Order and I understand and acknowledge that failure to
9 so comply could expose me to sanctions and punishment in the nature of contempt.
10 I solemnly promise that I will not disclose in any manner any information or item
11 that is subject to this Stipulated Protective Order to any person or entity except in
12 strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court
14 for the Eastern District of Washington for the purpose of enforcing the terms of this
15 Stipulated Protective Order, even if such enforcement proceedings occur after
16 termination of this action.

17 Date: _____

18 City and State where sworn and signed: _____

19 Printed name: _____

20 Signature: _____