

1 *William D. Hyslop*
2 United States Attorney
3 Joseph P. Derrig
4 Timothy M. Durkin
5 Assistant United States Attorneys
6 Post Office Box 1494
7 Spokane, WA 99210-1494
8 Telephone: (509) 353-2767

9 UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF WASHINGTON

11 PAUL GRONDAL, a Washington
12 resident; and THE MILL BAY
13 MEMBERS ASSOCIATION, INC., a
14 Washington Non-Profit Corporation,

15 Plaintiffs,

16 vs.

17 UNITED STATES OF AMERICA, et al.,
18 Defendants.

No. 09-CV-00018-RMP

**FEDERAL DEFENDANTS’
MOTION TO DISMISS WAPATO
HERITAGE, LLC’S REMAINING
CLAIMS**

**Hearing: 6:30 p.m. (w/o oral arg.)
December 10, 2020**

19 With judgment having previously been granted on Plaintiffs Grondal - Mill
20 Bay’s claims (ECF No. 503, 504), the Federal Defendants now seek the dismissal of
21 all of Wapato Heritage, LLC’s (“WHL”) remaining cross-claims, in accord with the
22 Court’s Order of October 5, 2020 (ECF No. 566).

23 **I. LAW & ARGUMENT**

24 **A. Threshold issues require dismissal of Wapato’s remaining cross-claims.**

25 **1. Absence of Subject Matter Jurisdiction bars WHL’s claims.** As a
26 preliminary matter, any federal court must determine its jurisdiction to hear a case
27 before it advances to the merits, regardless of whether the court's jurisdiction is raised
by the parties. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94–95, (1998)
(citing *Ex parte McCardle*, 74 U.S. 506 (1868)). In “determining jurisdiction, a court

1 must accept as true all undisputed facts asserted in the plaintiff's complaint and draw
 2 all reasonable inferences in favor of the plaintiff.” *Trusted Integration, Inc. v. United*
 3 *States*, 659 F.3d 1159, 1163 (2011). Nonetheless, the burden of establishing the court's
 4 subject matter jurisdiction lies with the party seeking to invoke it. *See KVOs, Inc. v.*
 5 *Associated Press*, 299 U.S. 269, 278 (1936); *Kokkonen v. Guardian Life Ins. Co. of*
 6 *Am.*, 511 U.S. 375, 377 (1994).

7 WHL has not met its burden of establishing the Court's subject matter
 8 jurisdiction over each of its purported remaining cross-claims and it is unclear how the
 9 Court has subject matter jurisdiction over its purported remaining claims. For
 10 example, WHL cites 28 U.S.C. § 1346(f) and its reference to § 2409a(a) (“Quiet Title
 11 Act”) as conferring jurisdiction. The Quiet Title Act, however, does not apply to trust
 12 lands. *Id.*; *see also, United States v. Mottaz*, 476 U.S. 834, 843 (1986) (“when the
 13 United States claims an interest in real property based on that property's status as trust
 14 or restricted Indian lands, the Quiet Title Act does not waive the government's
 15 immunity.”).

16 Absent WHL meeting its burden to prove subject matter jurisdiction for each of
 17 its cross-claimant claims, they must be dismissed. *See Marek v. Avista Corp.*, 2006
 18 WL 449259, at *4 (D. Idaho Feb. 23, 2006) (dismissing non-Indian claims for lack of
 19 jurisdiction); *see also Williams v. Lee*, 358 U.S. 217, 223 (1959) (Exclusive tribal
 20 jurisdiction exists when an Indian is being sued by a non-Indian over an occurrence or
 21 transaction arising in Indian country).

22 **2. Law of the Case bars WHL's claims.** “The law-of-the-case doctrine
 23 generally provides that ‘when a court decides upon a rule of law, that decision should
 24 continue to govern the same issues in subsequent stages in the same case.’” *Askins v.*
 25 *U.S. Dep't of Homeland Sec.*, 899 F.3d 1035, 1042 (9th Cir. 2018) (quoting
 26 *Musacchio v. United States*, 136 S. Ct. 709, 716 (2016)). This doctrine “‘expresses the
 27 practice of courts generally to refuse to reopen what has been decided....”

1 *Musacchio*, 136 S. Ct. at 716 (quoting *Messenger v. Anderson*, 225 U.S. 436, 444
 2 (1912)). In other words, “a court is generally precluded from reconsidering an issue
 3 previously decided by the same court, or a higher court in the identical case.” *United*
 4 *States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000). While application of
 5 this doctrine is discretionary, it is a tool ““designed to aid in the efficient operation of
 6 court affairs.”” *Id.* (quoting *Milgard Tempering, Inc. v. Selas Corp. of Am.*, 902 F.2d
 7 703, 714 (9th Cir. 1990)).

8 Thus, the law of the case doctrine should preclude this Court from re-litigating
 9 WHL’s declaratory relief claims asserting various iterations of MA-8’s trust status,
 10 which claims have already been decided by the Court’s recent decision on the
 11 coercive claims alleged. ECF No. 503 (Order), 504 (Judgment).

12 **3. Res Judicata bars Wapato Heritage’s claims.** “The preclusive effect
 13 of a judgment is defined by claim preclusion and issue preclusion, which are
 14 collectively referred to as ‘res judicata.’” *See Taylor v. Sturgell*, 128 S.Ct. 2161, 2173
 15 (2008). Under the doctrine of claim preclusion, a final judgment forecloses
 16 “successive litigation of the very same claim, whether or not relitigation of the claim
 17 raises the same issues as the earlier suit.” *New Hampshire v. Maine*, 532 U.S. 742, 748
 18 (2001). Issue preclusion, in contrast, bars “successive litigation of an issue of fact or
 19 law actually litigated and resolved in a valid court determination essential to the prior
 20 judgment,” even if the issue recurs in the context of a different claim. *Id.* at 748–749.
 21 By “preclud[ing] parties from contesting matters that they have had a full and fair
 22 opportunity to litigate,” these two doctrines protect against “the expense and vexation
 23 attending multiple lawsuits, conserv[e] judicial resources, and foste[r] reliance on
 24 judicial action by minimizing the possibility of inconsistent decisions.” *Montana v.*
 25 *United States*, 440 U.S. 147, 153–154 (1979).

26 “Res judicata is applicable whenever there is (1) an identity of claims, (2) a
 27 final judgment on the merits, and (3) privity between parties.” *Tahoe-Sierra Pres.*

1 *Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003)
2 (listing cases). *Identity of claims*: “The fact that res judicata depends on an ‘identity of
3 claims’ does not mean that an imaginative attorney may avoid preclusion by attaching
4 a different legal label to an issue that has, or could have, been litigated.” *Id.* Rather,
5 “[i]dentity of claims exists when two suits arise from ‘the same transactional nucleus
6 of facts.’” *Id.* Newly articulated claims based on the same nucleus of facts may still be
7 subject to a res judicata finding if the claims could have been brought in the earlier
8 action. *Id.*

9 Here, the relevant “transactional nucleus of facts” governing WHL’s purported
10 claims arise out of the Colville Tribes’ Master Lease that was at issue in *Wapato*
11 *Heritage, LLC v. United States*, 2:08-cv-00177-RHW (*Wapato I*), which was affirmed
12 in both published and unpublished decisions. Indeed, the arguments WHL made in
13 *Wapato I* are of the same identity as those being made in this case, with the exception
14 that WHL has changed its position on the trust status of MA-8, and have added
15 individual Indian allottees as purported defendants.

16 *Final Judgment on the Merits*: There can be no dispute that there was a final
17 judgment on the merits in *Wapato I*. See *Tahoe-Sierra Pres. Council, Inc. v. Tahoe*
18 *Reg'l Planning Agency*, 322 F.3d 1064, 1081 (9th Cir. 2003).

19 *Privity between the Parties*: WHL will no doubt argue it has added the
20 individual allottees as defendants in this case as compared to *Wapato I*, but the
21 individual Indian allottees are in a ‘close relationship’ with the United States. See
22 *Heckman v. United States*, 224 U.S. 413, 445-46 (1912). Indeed, if WHL had
23 prevailed against the United States in *Wapato I*, the allottees would have been
24 “precluded from relitigating [the questions raised in that suit] in a separate lawsuit.”
25 *United States v. Torlaw Realty, Inc.*, 348 Fed. Appx. 213, 217 (9th Cir. 2009). This
26 close relationship satisfies the privity element.

At bottom, WHL does not have the right to pursue claims it brought or could have brought in *Wapato I* in this lawsuit.¹ *Adams v. California Department of Health Services*, 487 F.3d 684, 688–89 (9th Cir. 2007) (discussing the related theory prohibiting claim splitting); *Stearns v. Ticketmaster Corp.*, 655 F.3d 1013, 1025 (9th Cir. 2011) (referring to actions dismissed for claim-splitting as ones where “plaintiff was, in effect, attempting to avoid an unfavorable prior ruling in one case by filing essentially the same claims in a new case.”).

4. Judicial Estoppel bars WHL’s claims. Just as judicial estoppel barred Mill Bay’s claims, it should also bar the claims asserted by WHL. ECF No. 503 at p. 24-27. WHL’s claims here are based on the premise that MA-8 is not trust land and that Washington state law applies. ECF No. 228 at p. 18, ¶ 229 (WHL alleging: “As the MA-8 fee land is located in Washington State, it is subject to Washington law.”). This is decidedly contrary to the claims WHL made in *Wapato I*.

Having lost *Wapato I*, WHL has changed its position on both of those issues. Compare 2:08-cv-00177-RHW ECF No. 15 at p. 3, 8 (WHL stating: “In this case, federal contract law will control the determination of the validity of the exercise of the option to renew” and “the Federal Government holds [MA-8] in trust”) with ECF No. 445 at p. 5 (WHL stating “MA-8 is not trust property”) and ECF No. 485 at p. 6 (WHL arguing “state law applies”). “[B]y changing position on such a fundamental issue so late in the litigation, and only after their own claims against the United States

¹ Of note, 28 U.S.C. § 1927 provides for the assessment of sanctions against counsel whose conduct unreasonably and vexatiously multiplies the proceedings by overzealously advocating claims that have been previously decided and/or are groundless. See e.g., *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 757 (1980) (§ 1927 sanctions are especially appropriate where preclusion doctrines of res judicata and/or collateral estoppel plainly preclude the relitigation of issues or claims).

1 had been resolved, [WHL] attempt to gain an unfair advantage and have played ‘fast
2 and loose’ with this Court.” ECF No. 503 at p. 27 (discussing Mill Bay’s claims).

3 Thus, judicial estoppel should also operate to bar WHL’s remaining claims. *See*
4 *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001) (judicial estoppel doctrine is
5 intended to “prevent the perversion of the judicial process” and “protect [its] integrity
6 ... by prohibiting parties from deliberately changing positions according to the
7 exigencies of the moment.”).

8 **B. WHL’s Declaratory Relief claim must be dismissed.**

9 Declaratory relief is not a cause of action in itself, but rather a remedy that is
10 based on a valid underlying claim. *See, Lopez v. Wells Fargo Bank, N.A.*, 727 F.
11 App’x 425, 426 (9th Cir. 2018) (affirming dismissal of request for declaratory relief
12 where district court properly dismissed underlying claims); *Pugal v. ASC (Am.’s*
13 *Servicing Co.)*, 2011 WL 4435089, at *3 (D. Haw. Sept. 21, 2011) (declaratory relief
14 is not cognizable as an independent cause of action when it essentially duplicates
15 other causes of action). Further still, the Declaratory Judgment Act provides that a
16 court, upon the filing of an appropriate pleading, “may” issue a declaratory judgment
17 in “a case of actual controversy within its jurisdiction.” 28 U.S.C. § 2201(a)).
18 Therefore, federal courts have discretion on whether to exercise jurisdiction over a
19 declaratory judgment action. *See Wilton v. Seven Falls Co.*, 515 U.S. 277 (1995)
20 (Declaratory Judgement Act is “an enabling act which confers a discretion upon the
21 courts rather than an absolute right upon the litigant.”).

22 Wapato Heritage sets forth several iterations of essentially what has been its
23 singular refrain, it is entitled to a declaratory judgment because MA-8 is no longer
24 trust land or should be discharged from trust status. ECF No. 228 at 26-27. In its
25 recent July 9, 2020, Order, the Court dedicated 25 pages of discussion to this issue
26 and conclusively held, as the Ninth Circuit did previously, that “MA-8 is trust land.”
27 ECF No. 503 at 24-50. Accordingly, Wapato Heritage’s claim for declaratory relief

1 must be denied for the multiple reasons stated above. *Id. See also, Pub. Util. Comm'n*
 2 *of State of Cal. v. F.E.R.C.*, 100 F.3d 1451, 1459 (9th Cir. 1996) (“A federal court
 3 cannot issue a declaratory judgment if a claim has become moot.”); *United States v.*
 4 *State of Washington*, 759 F.2d 1353, 1357 (9th Cir. 1985) (“Declaratory relief should
 5 be denied when prudential considerations counsel against its use” and “when it will
 6 neither serve a useful purpose in clarifying and settling the legal relations in issue nor
 7 terminate the proceedings and afford relief from the uncertainty and controversy faced
 8 by the parties.”) (citations omitted).

9 **C. Claims of Ejectment and/or Wrongful Detainer must be dismissed**
 10 **since WHL has no right of possession to MA-8.**

11 Absent a valid lease, WHL has no right of possession to MA-8 and thus cannot
 12 maintain a cause of action for ejectment. Before even an allottee co-owner can possess
 13 fractionated trust land, she/he must have a formal BIA-approved lease or some form
 14 of unanimous permission from all of the co-owners. 25 C.F.R. § 162.005.
 15 Unauthorized possession, even by a co-owner allottee, would be — and is — treated
 16 as a trespass. *Id.* § 162.003 (defining trespass as “any unauthorized occupancy, use of,
 17 or action on any Indian land or Government land”). Since the Master Lease expired in
 18 2009, WHL has been in trespass ever since and plainly cannot assert a claim for
 19 ejectment.

20 **D. Overpayment claims must also be dismissed.**

21 WHL’s overpayment claim seeks a “money judgment against Defendant
 22 allottees, jointly and severally, for the amount due under the terms of the Master
 23 [L]ease, as reported by the Sells Report in the sum of \$751,285,” plus interest. ECF
 24 No. 228 at ¶ 284. This claim fails as a matter of law for multiple reasons.

25 First, WHL’s alleged injury was not caused by the individual allottees. To
 26 present a cognizable claim, a party “must allege personal injury fairly traceable to the
 27 defendant’s allegedly unlawful conduct and likely to be redressed by the requested

1 relief.” *Allen v. Wright*, 468 U.S. 737, 751 (1984). To establish causation, which is an
 2 irreducible constitutional minimum to assert a claim, WHL was required to show that
 3 the injury complained of was “fairly traceable” to the individual allottees, and
 4 “not...th[e] result [of] the independent action of some third party....” *Lujan v. Defs. of*
 5 *Wildlife*, 504 U.S. 555, 560 (1992).

6 WHL has not pled any facts showing that the alleged overpayments were the
 7 result of the *individual allottees’* actions. To the contrary, according to WHL’s own
 8 allegations, it was WHL’s own “bookkeeper” who made the errors that resulted in the
 9 alleged overpayment. ECF 346-9 (the lease administration was handled by “Evans
 10 directly via his personnel bookkeeper” and “The bookkeeper made another error.”).²
 11 WHL has not asserted any alleged unlawful conduct attributable to the individual
 12 allottees — much less any conduct showing the allottees are responsible for, or their
 13 conduct is related to, WHL’s asserted injury.³

14 Moreover, WHL failed to exhaust required administrative procedures and
 15 available remedies through the BIA before asserting this claim. *Klaudt v. U.S. Dep’t of*
 16 *Interior*, 990 F.2d 409, 411 (8th Cir. 1993), is instructive. In *Klaudt*, the plaintiffs
 17 alleged the BIA did not administer a tribal tax in a fair and uniform fashion when
 18 overseeing some cattle grazing permits on trust land. Rather than pursuing
 19 administrative review, the plaintiffs brought several claims in the district court, which
 20
 21

22 ² ECF 346-9 is the “Sells Report” that forms the basis of WHL’s overpayment
 23 claim, which WHL incorporated by reference in its cross-claim complaint.

24 ³ Even if WHL had alleged some conduct attributable to the individual allottees,
 25 such a claim would be barred by the statute of limitations, laches, and/or the voluntary
 26 payment doctrine. In any event, those claims should have been exhausted through
 27 administrative procedures.

1 dismissed for failure to exhaust administrative remedies, and the Eighth Circuit
2 affirmed on appeal.

3 Federal regulations provide that administrative procedures must be followed
4 before seeking relief in federal court. 25 C.F.R. § 2.6. Here, in light of WHL's claims
5 that the allottees were overpaid, the regulations provided WHL a process to recover
6 the alleged overpayments. 25 C.F.R. 115.600-620. Trust funds are monies derived
7 from the sale or lease of Indian lands and are deposited into Individual Indian Money
8 (IIM) accounts on behalf of the individual allottee who has an interest in trust lands.
9 These IIM accounts are interest bearing and are under the control of the Secretary of
10 the BIA. 25 C.F.R. 115.002.

11 The BIA may restrict an individual's IIM account if presented with
12 documentation that the BIA erred in making a deposit into the account. 25 C.F.R.
13 115.602(4). If the BIA wishes to restrict an individual's account, it must notify the
14 individual and provide the opportunity for a hearing to challenge that decision. After
15 BIA holds a hearing, where testimony and evidence may be presented, the BIA issues
16 a final decision on whether to restrict the IIM account. *See* 25 C.F.R. 115.602-620.
17 The decision to restrict an IIM account may then be appealed under the 25 C.F.R. Part
18 2 and 43 C.F.R. Part 4 processes.

19 WHL, however, did not initiate even the first steps of this administrative
20 process. Instead, WHL asserted this claim for the first time in federal court.
21 Accordingly, WHL is simply not entitled to a judicial hearing on the merits of their
22 claims nor can it invoke this court's jurisdiction under the Administrative Procedures
23 Act (APA). *See Myers v. Bethlehem Shipbuilding Corp.*, 303 U.S. 41, 58 (1938). The
24 governmental interest in requiring exhaustion outweigh WHL's request for immediate
25 judicial review. The governmental interest in exhaustion also includes allowing the
26 involved agency to develop a factual record of the alleged dispute, to exercise its
27

1 discretion and to apply its expertise in trying to resolve the issue⁴ Agency autonomy
2 and judicial economy are further considerations supporting the administrative
3 exhaustion prerequisite here. *McKart v. United States*, 395 U.S. 185, 193-95 (1969).

4 These considerations are particularly weighty here where the Tribes and BIA
5 were looking at the Master Lease payments following Evan's death. WHL notably
6 seized upon this fact as an opportunity to try to create leverage against the individual
7 allottees or, in Mr. Johnston's words, to file cross-claims against both the individual
8 allottees and against the government to try to create "further conflicts" between and
9 amongst the various parties, while at the same time still unreasonably challenging the
10 very foundation of the Master Lease (i.e. MA-8's trust status). Now that the trust
11 status issue has *again* been settled, WHL can no longer ignore MA-8's trust status and
12 the administrative procedures – remedies related to the BIA's administration of a lease
13 involving trust land, which procedures must be exhausted before one can bring suit.

14 Alternatively, to the extent WHL is asserting this claim exclusively against the
15 individual allottees, it must first seek relief in tribal court. Claims arising out of
16 contract disputes between a non-Indian and Indian landowners over an occurrence or
17 transaction arising on the reservation in Indian country against Indian allottees must
18 first be brought in Tribal court. *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9,
19 18 (1987) (civil jurisdiction over the activities of non-Indians on reservation lands lies
20 in tribal courts). Indeed, courts have found that the exhaustion of tribal court remedies
21 is required prior to any action in federal court. *Grand Canyon Skywalk Development,*
22 *LLC v. 'Sa'Nyu Wa Incorporated*, 715 F.3d 1196 (9th Cir. 2013).

23 The requirement of tribal court exhaustion is particularly salient here, where the
24 Tribes, as an allottee, are an indispensable party to the potential overpayment claims
25

26 ⁴ This is particularly true here were the Defendant allottees here may be heirs of
27 allottees who never received an alleged overpayment, among other considerations.

1 to allottees by WHL. *See McClendon v. United States*, 885 F.2d 627, 633 (9th Cir.
2 1989) (dismissing claim for enforcement of lease terms where the tribe, as the lessor,
3 was immune and a necessary party). The failure to exhaust administrative or even
4 tribal court remedies further bars WHL's claim for its alleged overpayment of funds.

5 **E. WHL's claim for Underpayment must likewise be dismissed.**

6 WHL also claims that the BIA is obligated to collect \$751,285 alleged to have
7 been underpaid by the Confederated Tribes of the Colville Reservation (CTCR) on
8 WHL's sublease of a portion of the MA-8. WHL also claims BIA distribute the
9 alleged underpaid funds to the allottees. More particularly, WHL requests "an Order
10 which compels the BIA in its capacity *as a fiduciary* for the MA-8 owners, to
11 immediately collect (for dispersal to the MA-8 owners) the sum of \$751,285 from
12 CTCR due under report and calculations for the Sells Report." ECF No. 228 at ¶ 286
13 (emphasis added).

14 Preliminarily, WHL's claim appears to be styled as a breach of trust claim
15 premised on the repeatedly rejected assertion that WHL is owed *a fiduciary duty* by
16 the United States. WHL's argument that the United States owed it a fiduciary duty
17 once again "finds no support in law . . ." *See Wapato Heritage, LLC*, 2:08-cv-00177-
18 RHW at ECF No. 82 at p. 6. The BIA does not owe WHL a fiduciary duty and
19 therefore does not have a duty to collect rents allegedly owed by CTCR to WHL
20 under its sublease. Accordingly, this claim also fails as a matter of law.⁵

21 Moreover, according to WHL's own allegations, *no individual Indian Allottee*
22 *was harmed by any alleged underpayment* by the Tribes to WHL, because WHL
23 alleges the individual Indian allottees *were overpaid* by the same amount that WHL
24 allegedly failed to properly collect from CTCR. *Compare* ECF No. 228 at p. 30
25

26 ⁵ Further, the BIA does not appear to have any legal right to demand payment from
27 CTCR under the sublease since the allottees (and BIA) are not parties to the agreement.

1 (claiming \$751,285 in overpayment) to ECF No. 228 at p. 30 (discussing WHL’s
2 failure to collect the same amount from CTCR).⁶

3 In contrast, WHL actually had a duty as the Lessee of the Master Lease to
4 properly account for payments under the Master Lease including any sublease
5 thereunder. The Lessee WHL was required to provide annual accountings by a
6 “Certified Public Accountant . . . who must not be an employee of the Lessee . . .”
7 ECF No. 73 at p. 11. All rents were to be paid without prior notice or demand and past
8 due rental payments were to bear interest at 18%. *Id.* To the extent WHL failed to
9 collect proper payments from the Tribes or the Colville Tribal Enterprises, Inc.⁷ (ECF
10 No. 228 at p. 25, ¶ 259), under a sublease of the Master Lease, it was the errors of
11 WHL’s own bookkeeper and thus WHL’s own failure that caused its alleged harm.
12 WHL knew or should have known of any such underpayments and elected not to
13 pursue remedies in tribal court where jurisdiction may have been proper.

14 At bottom, WHL’s attempts to shift blame for its own bookkeeper’s accounting
15 errors and, for that matter, its own business management errors to the United States,
16 but WHL does not and cannot state a claim for which it has standing or jurisdiction.
17 Therefore, WHL’s “underpayment and failure to collect” claim must be dismissed.

18 **F. WHL’s claim for partition against all defendants must be dismissed.**

19 Since it is *well settled* that MA-8 is trust land, partition is only available through
20 federal law and not Washington state law as WHL now argues. Partition of Indian
21 trust lands is available through an administrative process that must be exhausted. 25
22

23 ⁶ Indeed, if the individual Indian allottees had not been paid the appropriate amount
24 under the Master Lease due to an underpayment by the Tribes, WHL would have been
25 in default of the Master Lease and the Secretary would have pursued enforcement
26 action, such a default and the removal of all persons on MA-8. ECF No. 73 at p. 24.

27 ⁷ Colville Tribal Enterprises, Inc., is not a named party in this suit.

1 C.F.R. § 152.33. WHL has never asserted a federal legal basis for partition and has
 2 never sought to utilize this potential administrative process. Accordingly, WHL's state
 3 law partition claim must, like all of its other remaining claims, be dismissed. *See*
 4 *Haeker v. U.S. Gov't*, 2014 WL 4073199, at *9 (D. Mont. Aug. 14, 2014), *report and*
 5 *recommendation adopted*, CV 14-20-BLG-SPW, 2014 WL 4388278 (D. Mont. Sept.
 6 4, 2014) (subject matter jurisdiction lacking in claim brought by non-Indian allottee
 7 for partition).

8 **G. WHL's claim for attorney's fees and costs must be dismissed.**

9 Attorney's fees and costs are not a claim but rather a request for relief. Since
 10 WHL cannot prevail on any claim, its "claim" for attorney's fees and costs is
 11 groundless and must be dismissed.

12 **II. CONCLUSION**

13 For the forgoing reasons, WHL's remaining cross-claims must be dismissed
 14 *with prejudice*.

15
 16 RESPECTFULLY SUBMITTED on this 19th day of October 2020.

17 *William D. Hyslop*
 18 *United States Attorney (EDWA)*

19 */s/ Joseph P. Derrig*
 20 Joseph P. Derrig
 21 Timothy M. Durkin
 22 Assistant United States Attorney
 23
 24
 25
 26
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Certificate of Service

I hereby certify that on October 19, 2020, 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:

Franklin L. Smith:	frank@flyonsmith.com
R. Bruce Johnston:	bruce@rbrucejohnston.com
Dana Cleveland:	dana.cleveland@colvilletribes.com
Dale M. Foreman:	dale@daleforeman.com
Sally W. Harmeling:	sallyh@jdsalaw.com
Brian C. Gruber:	bgruber@ziontzchestnut.com
Nathan J. Arnold:	nathan@caoteam.com
Robert R. Siderius:	bobs@sdsalaw.com
Joseph Q. Ridgeway:	josephr@jdsalaw.com
Brian W. Chestnut:	bchestnut@ziontzchestnut.com
Tyler D. Hotchkiss:	tyler@fjbzlaw.com
Manis Borde:	mborde@bordelaw.com
Emanuel F Jacobowitz	manny@caoteam.com
Jacob M Knutson	jacobk@jdsalaw.com
Anna Brady	abrady@ziontzchestnut.com

and hereby certify that I caused to be served on October 19, 2020 by United States Postal Service mail the document to the following non-CM/ECF participants:

Catherine Garrison 3434 S 144th St Apt 124 Tukwila, WA 98168-4061	James Abraham 2727 Virginia Avenue Everett, WA 98201	Maureen Marcellay 7910 NE 61st Cir Vancouver, WA 98662
Darlene Hyland 16713 S E Fisher Drive Vancouver, WA 98683	Jeff M Condon PO Box 3561 Omak, WA 98841	Micheal F Marcellay P O Box 594 Brewster, WA 98812-0594
Deborah A Backwell 24375 SE Keegan Rd Eagle Creek, OR 97022	Judy Zunie P O Box 3341 Omak, WA 98841	Mike Marcellay P O Box 594 Brewster, WA 98812
Enid T Wippel P O Box 101 Nespelem, WA 99155	Linda Saint P O Box 3614 Omak, WA 98841-3614	Mike Palmer P O Box 466 Nespelem, WA 99155
Francis Abraham 11103 E Empire Avenue	Lynn Benson P O Box 746 Omak, WA 98841	Paul Wapato, Jr 2312 Forest Estates Drive Spokane, WA 99223

Spokane Valley, WA 99206		
Francis Reyes P O Box 215 Elmer City, WA 99124	Marlene Marcellay 1300 S E 116th Court Vancouver, WA 98683	Randy Marcellay P O Box 3287 Omak, WA 98841
Gabriel Marcellay P O Box 76 Wellpinit, WA 99040	Mary Jo Garrison P O Box 1922 Seattle, WA 98111	Sandra Covington P O Box 1152 Omak, WA 98841
	Sonia Vanwoerkon 810 19th Street Lewiston, ID 83501	Timothy Ward Woolsey Colville Tribes Office of Reservation Attorney PO Box 150 Nespelem, WA 99155

s/ Joseph P. Derrig
Joseph P. Derrig
Assistant United States Attorney