

(There Is A Time Limit)

File Money Damage Claims Promptly

The following notice is being published for the purpose of advising individuals of the Confederated Tribes of Warm Springs of the necessity for prompt action in filing money damage claims arising from actions that took place on or before July 18, 1966.

The notice was prepared by the Regional Solicitor's Office in conjunction with the BIA Portland Area Office.

The Area Director's office stressed that any claims should always be acted upon promptly since they are all subject to the Statute of Limitations.

More current claims are being processed as part of the normal workload, but a special effort is now being made which is directed toward determining and processing valid claims for damages based on actions which occurred prior to July 18, 1966.

According to Warm Springs Superintendent James Cornett, some of these claims might include damages for non-payment of a lease, trespass or timber trespass, or damages resulting from carelessness with fire. The claim could be against a tribal member or a non-Indian.

The cases are those in which the United States would intervene on the part of the Tribes or an individual tribal member for money damages.

The following notice explains in detail the procedures and limitations involved in processing such claims and who to

contact here if you have any questions.

NOTICE

Time Limit for United States to File Suits to Recover Money Damages Upon Indian Claims.
(28 U.S.C. & 2415)

SCOPE OF CLAIMS BARRED BY STATUTE

Congress has enacted a statute of limitations establishing a time limit after which the United States is forever barred from commencing a lawsuit to recover money damages on behalf of recognized Indian tribes, bands or groups of American Indians or individual Indians whose lands are held in trust or restricted status.

Where the acts, transactions or occurrences upon which the claim for money damages is based took place on or before July 18, 1966, the claim will be barred unless the United States files suit prior to April 1, 1980. Where the events upon which the claim is based took place after July 18, 1966, the United States will be barred from commencing such a suit unless the suit is filed six years and ninety days following the time the right to sue first existed.

The statute applies to all cases here the United States has capacity to sue to recover money damages on behalf of an Indian tribe or individual Indian by virtue of its trust responsibility to protect Indian property rights. It applies to causes of action arising out of a legally wrongful act or omission or the

breach of a contractual obligation.

To establish a claim subject to this statute, it will be necessary to define the specific Indian property rights which have been damaged and establish that the same are protected by federal law. This may require a legal analysis of the particular property rights and whether the United States has a trust responsibility to protect such property rights.

CLAIMS NOT BARRED BY STATUTE

The statute does not apply to claims which Indian tribes or individual Indians may have against the United States or any officer or agency thereof. Nor does it prohibit the United States from commencing a suit at any time to establish the title to or right of possession of either real or personal property. 28 U.S.C. & 2415 bars only actions to recover money damages.

TYPES OF CLAIMS BARRED BY STATUTE

The following categories and types of claims indicated the general nature of some claims for damages which will be barred by this statute. It should not be regarded as indicating all of the types of claims subject to this statute.

- A. Claims for damages due to wrongful occupancy or use of federally protected tribal or individually owned land or the use or removal of its natural resources. (TORT - trespass)

- 1. Damages resulting from wrongful occupancy and use of tribal or allotted lands. For example occupancy by a person, buildings, improvements or water without lawful authority, permission or consent or the occupancy and use of such lands under a claim of unrestricted ownership arising out of its purported taking for nonpayment of state taxes or by an unauthorized conveyance.

- 2. Damages to tribal or allotted lands or natural resources resulting from a fire.

- 3. Damages resulting from the removal of natural resources from tribal or allotted lands. For example, sand, gravel, timber or minerals.

- 4. Damages resulting from the wrongful appropriation or interference with federally protected Indian water rights.

- B. Claims for damages due to the wrongful possession or use of tribal or individually owned personal property if such personal property is protected by federal government. (TORT - Conversion)

Damages resulting from wrongfully depriving an Indian owner, tribal or individual, of the possession or use of personal property which is protected by the federal law. For example wrongful removal of felled timber (logs) from Indian lands.

- C. Claims for damages due to the nonperformance of a contractual obligation relating to federally protected tribal or individually owned property.

(Contract)

- 1. Damages resulting from breach of a contract involving federally protected property. For example, use of property contrary to contract provisions.

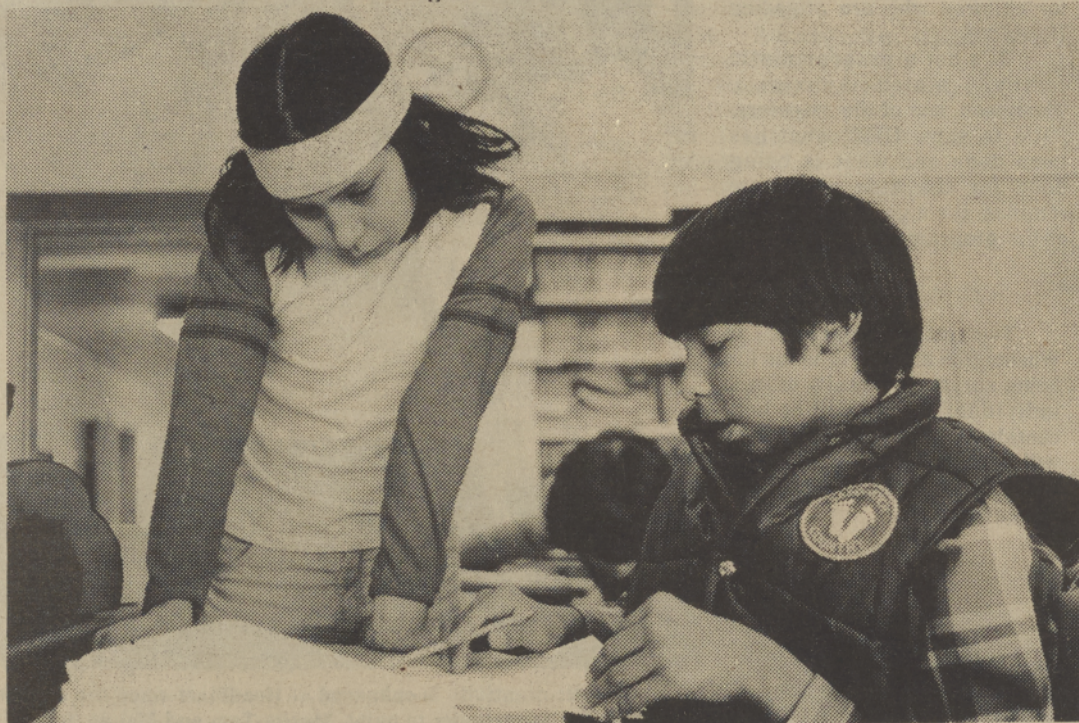
- 2. Damages resulting from breach of a lease of federally protected property. For example, nonpayment of rent by tenant, or use of land contrary to lease provisions.

- 3. Damages resulting from breach of a permit to use federally protected property.

The foregoing categories and types of claims should not be regarded as indicating all of the types of claims that are or may be subject to this statute. REPORT ALL POSSIBLE CLAIMS - IMMEDIATELY

Indian tribes and individual Indians who believe that they may have a claim which is subject to this statute of limitations should immediately contact: Harlow Nasewytewa, Agency Coordinator, Realty Office, Warm Springs Agency, Warm Springs, Oregon 97761.

Give him as much information concerning the basis of the claim as is possible. Development of a claim to the point a suit could be filed or negotiations completed will usually require months of work. To prevent claims not being filed due to the lack of time for processing, it is necessary that all actions upon which a claim might be based be reported to the local agency as soon as possible.



Host John Tolman showed his guest Glenn Smith recent work he had collected into a notebook for his Writing Techniques class, taught by Mr. Moore. Sixth graders like Glenn spent a day at Madras Junior High going to classes with students as part of an orientation program made possible by Johnson-O'Malley funds. CDS Photo

Tree, Shrub Planting Suggestions

People adding new trees or shrubs to their landscapes should heed the following rule: dig you must for a healthy plant.

"Trees and shrubs should be planted in large holes to be sure the plants get enough air as well as water," says Duane Hatch, Oregon State University Extension home gardening coordinator.

Improper planting of new trees and shrubs can cause the soil to become saturated and prevent oxygen from reaching the root zone, he explained. Proper soil preparation at planting time is the best way to create adequate soil aeration.

"Primarily that means creating a fairly porous and well-grained soil that does not crust on the surface," Hatch

added.

The planting hole should be at least one-half again as deep and wide as the earth ball on the shrub or tree. After the hole is dug, backfill it with sand, gravel, or organic matter (depending on the existing soil condition), the garden expert said.

Try to blend the backfill material into the sides and bottom of the hole as much as possible, he added.

Other suggestions: When placing the plant in the hole and refilling with dirt, make sure no air pockets remain.

Surface crusting can be prevented by adding organic matter and by applying an organic surface mulch.

Once planted, water the tree or shrub thoroughly to wet the root zone, but do not irrigate more frequently than necessary.

Resignation (Continued from Page 1)

Gerard "to do what the Indians want." Gerard's expressed concern about a possible "conflict of interest" if Roland Johnson was appointed, was termed "ridiculous" by Abourezk.

In a press release from Abourezk's office in D.C., the March 16 letter was described as the culmination of a series of exchanges in which Abourezk has been increasingly critical of Gerard for his "deliberate delay of vital BIA reorganization in direct contradiction of promises made to the Senate during his confirmation hearings."

Abourezk wrote in his letter that Gerard's actions to date

remind him of "a funeral service for Indian self-determination."

Although Abourezk was not "spurred" by Indian leaders to write the letter, according to his office, he hopes that support will be forthcoming.

Mel Tonasket, vice president of the National Congress of American Indians, went on record at the recent Affiliated Tribes meeting in Billings as critical of Gerard and his recent actions and in support of the Albuquerque incident.

On March 17 Secretary Andrus announced he would stand by both Gerard and Mills.

SUBSCRIPTION TO SPILYAY TYMOO

SEND SUBSCRIPTION TO
Spilyay Tymoo P.O. Box 735 Warm Springs, Oregon 97761

NAME _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

SUBSCRIPTION RATES: 1 YEAR \$6.00

Enclosed is a Check Money Order .

Amount of \$ _____ for _____ Year (s) Subscription.

All Tribal Enrolled Members Will Receive The Spilyay Tymoo at No Cost.
Spilyay Tymoo is Published Bi-Weekly by the Confederated Tribes of Warm Springs.