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Blowdown Settlement: Tribes continue efforts to recover revenue



Timber standing at the blowdown site.

The Confederated Tribes of Warm Springs is still trying to recover revenue lost as a result of alleged mismanagement by the federal government. The claim stems from charges relating to a timber salvage operation, which took place on the McQuinn Strip over 10 years ago and came to be known as the 1990 Blowdown Sale.

The tribes' original claim was filed in 1992. The interior secretary initially rejected that claim, but an amended version finally went to trial in Portland during the month of December 1997. The tribes argued for \$18 million in damages, but they were unable to convince the U.S. Court of Claims.

The court issued an Opinion and Order nearly two years later. The judgment was for the tribes, but the cash settlement was just \$226,756. That ruling is now being appealed.

A panel of three U.S. Circuit Judges for the U.S. Court of Appeals for the Federal Circuit heard the case on Nov. 7 in Washington, D.C. The hearing lasted for nearly an hour, well beyond the scheduled time allotment of 30 minutes, allowing the judges enough time to thoroughly question both tribal attorney Martin Hansen and U.S. attorney Ann Peterson. The extended hearing indicates the judges closely reviewed records from the District Court trial prior to the hearing.

In the appeal, Hansen argued that the U.S. Court of Claims' 1998 decision had failed to adequately compensate the Confederated Tribes for all the timber removed in the BIA-administered blowdown sale. Hansen specifically stated the decision erred by applying domestic prices to export-quality logs removed during the sale, by not compensating the tribes for timber that was harvested within the sale but not accounted for, and by not compensating the tribes for timber harvested outside the bounds of the sale.

Hansen requested that the case be

remanded back to the Court of Claims level with instructions that the court require the United States to pay the Confederated Tribes full compensation for all the removed timber, including any penalties associated with timber harvested in trespass.

Peterson, from the U.S. Department of Justice, argued that the BIA's only breach of trust responsibility occurred in the development of the forest management plan guiding the harvest of McQuinn and other Warm Springs timber. She said the blowdown sale was properly conducted, and the tribes were fully and fairly paid.

The judges were interested in specific facts of the case, even though federal appeals courts normally limit their examination of an appeal to questions of law. They engaged in discussions with Hansen about specifics of the timber sale and the extent of green timber harvested in what was supposed to be primarily a blowdown salvage sale.

In response, Hansen detailed numerous instances where the BIA failed to keep track of logs moving out of the sale, where high value logs were sold for much lower prices, where attempts were made to pass off good logs as cull, or where logs simply disappeared.

Tribal representatives are hoping the court will issue its ruling on the appeal in about three months, although longer waits are not uncommon.

The tribes' case against the government for breach of trust centers on their claim that the BIA mismanaged the salvage sale and cut timber beyond the McQuinn Strip's sustained yield. The tribes also allege the BIA operated outside rules and regulations set forth by the interior secretary.

In 1990, tribal leadership became concerned over the large volume of timber planned for sale on the McQuinn Strip and the fact that high value export-quality timber was being designated for domestic sale when

it could be expected to bring a much greater return to the tribes if it were held until export and tribal harvest restrictions expired on Jan. 1, 1992. A review of harvest data showing the 1972-92 sustained yield had already been exceeded by 1989 and a major blowdown of timber the following year focused attention on the proposed salvage sale.

While the BIA had the authority to salvage timber in the blowdown area, the tribes contend the federal government did not have authority to harvest unaffected green trees. Damages were also sought for loss of income and profits, and loss of growth that would have been realized had standing timber been left for future harvest.

Other claims of mismanagement faulted the BIA for allowing timber to be cut outside the sale area, not accounting for missing large logs, waste in the form of cut trees being left on site, loss of wildlife habitat, inadequate regeneration, and double damages (as provided for under Oregon law) for allowing or directing unauthorized cutting.

Ironically, the long battle to re-establish the reservation's original northern and western boundaries and regain the McQuinn Strip did not end with the 1972 passage of Public Law 92-427, as many thought it had. The law restored tribal ownership of over 61,000 acres that had been in the national forest system and placed another 17,251 acres of patented, privately owned land inside the reservation.

However, a concession to private timber interests resulted in a provision that prohibited the tribes from participating in the purchase and harvest of McQuinn Strip timber from 1972 to 1992. Instead, the timber was auctioned to private parties on a sustained yield basis and in accordance with established rules and regulations of the interior secretary. The tribes are contending the BIA did not abide by this agreement.

High Lookee Lodge receives National award

The Confederated Tribes of the Warm Springs assisted living facility, High Lookee Lodge, tied for the National Excellence in Affordable Assisted Living award in the rural category last month in Miami, Florida.

Sponsored by the American Association of Homes and Services for the Aging (AAHSA) and the National Cooperative Bank Development Corporation (NCBDC), the purpose of the competition was to "recognize and disseminate replicable examples of affordable assisted living, which provide excellence in services and environment".

High Lookee Lodge, is a 40-

unit assisted living facility, designed to meet the cultural, social, spiritual, and physical needs of the tribe's Native American elders, incorporating the cultures of the Warm Springs, Wasco, and Paiute Tribes.

Having already received an award for its design by LRS Architects, this latest recognition credits High Lookee Lodge with its creativity and accomplishments in overcoming funding, physical program and organizational challenges. Portland-based, Concepts in Community Living provides the operational and property management services to the Lodge.

Title IX meeting set

The Title IX Parent Advisory Committee will meet at the Warm Springs Elementary Library on Tuesday December 12, 2000 at 7 p.m. The Committee will get results of the Needs Assessment Survey and look at membership. Any person interested in being a member of the Title IX Parent Advisory Committee is urged to attend.

Title IX meetings are open to all members of the public. The Committee meets at 7 p.m. at the Warm Springs Elementary Library on the second Tuesday of each month. If you have a disability, please advise the District 509-J Support Services office about special arrangements that may allow you to fully participate in the meeting. Please call Georgia Sosa at 475-6192.

WSFPI reduces workforce

On Dec. 1, representatives of Warm Springs Forest Products Industry (WSFPI) gave a 60-day notice of termination, as required by law, to 65 employees. This action will lead to a reduction in force to go to one shift.

Plans are being formulated to assist those people who will be without jobs. WSPFI will be working with Central Oregon Intergovernmental Council, the Tribal Education Branch, COCC, and others to create a support network. Funds for training will be available through the North American Free Trade Agreement.

The process to identify personnel who will not be terminated was a lengthy one. First, essential positions were identified, then filtering pools were created to address different work related areas. Issues such as dedication, skill level, performance, attendance, and safety were used to help supervisors identify those people who would remain on the job. The tribe's Affirmative Action policy was also a factor in this process. After the initial list was made, it was again scrutinized with the Affirmative Action policy as a major influence.

"We've done our best to evaluate these positions using Affirmative Action and other criteria, including seniority, as a guide," said Larry Potts, WSPFI

general manager. "All things were taken into consideration but no one particular area was all-conclusive in helping us determine what needed to be done."

Potts went on to say that WSPFI is now doing what many other mills off the reservation were forced to do earlier; to cut costs and enable the enterprise to remain profitable. "If we allow Warm Springs Forest Products to go bankrupt, it could cause great harm to the tribes," said Potts. "We must see to it that that does not happen."

The reservation's annual allowable cut of 48 million board feet allows the mill to operate one shift. A second shift requires the purchase of off-reservation logs. These logs have become scarce and cost prohibitive in recent months.

"Part of our timber industry is based on the economy," said human resources manager Teresa Van Pelt. "When log prices are high and lumber prices are low, we must adjust accordingly."

With no sign of an upswing in the timber industry, WSPFI began to feel the pinch. By October of this year the enterprise had lost \$3.8 million and there was no indication of any significant change on the foreseeable horizon.

After a thorough analysis of WSPFI's operation, management recommended to the WSPFI Board of Directors that the

workforce be reduced to one shift. On October 19 the WSPFI board gave their final approval to the recommendation.

When the plan was presented to Tribal Council, Raymond Tsumpti, Sr. asked that further research be done to see if there was another way to address this problem on a short-term and long-term basis. A special team known as the "Gang of Four" was appointed to research the possibilities.

The team was comprised of Ralph Minnick, WSPFI Chief Financial Officer, Gordon Cannon, BIA superintendent, Mark Jackson, Warm Springs forest manager, and Jody Calica, the Tribes' chief operation officer.

On Nov. 20 the Gang of Four reported back to Tribal Council with a recommendation to harvest 4 million board feet of timber outside the commercial forest base in restricted use areas to keep the swing shift working for another 60 days. Since the timber was not in the commercial forest base it was not going to be extracted from the annual allowable cut.

Tribal Council agreed that after the additional volume had been identified and the workforce was given 60-days notice, the recommended layoffs would occur. The terminations will take effect Feb. 2, 2001.

Giardia outbreak at Early Childhood Education Center

An outbreak of Giardiasis has been detected at the Warm Springs Early Childhood Center. The Warm Springs Health and Wellness Center along with Public Health officials are in the process of controlling and eliminating this outbreak.

Children enrolled at the ECE are being treated to aid in the prevention of the spread of Giardia, even though symptoms are not present.

Giardia

Giardia is a small parasite that causes an infection in the bowels or intestines. The intestine is the tube that goes between the stomach and the anus (rear end). Giardia can be caught from infected water, food and or unwashed contaminated hands. Drinking water from a stream while camping or hiking is a quick way to catch this little critter. This is known as the "Beaver Fever" and many a

camper has been fooled by cold clear running streams. Giardia is easily spread among family members and especially children in daycare centers.

Symptoms of Giardiasis

Abdominal (belly) cramping
Bad diarrhea, which smells bad
Bloating and bad smelling gas (farts)
Tiredness
Fever
Headaches
Weight Loss

What to do

Follow the instructions of your healthcare giver carefully.

Follow the instructions on the label of your medication carefully.

Drink 6 to 8 (pop can size) 12 ounce glasses of water each day to prevent dehydration.

Call the clinic if you have any questions. You will be directed to a

Public Health Nurse or other healthcare provider for answers.

Remember to wash hands with soap and water after using the bathroom or changing a dirty diaper every time, and especially before handling food for yourself or others.

Children at the ECE are being treated with a medication called Furazolidone (Furoxone) to treat bowel and stomach infections that cause diarrhea.

During the week of November 27 children are being treated. The same weekend the building will be cleaned professionally to eliminate any possible contamination of the building.

After this process is complete, any person who tests positive for Giardia can be treated promptly to prevent the spread of this parasite.