

## New DNA policy in filiation

By Dave McMechan  
Spilyay Tymoo

A new tribal policy requires DNA testing for filiation proceedings in Tribal Court.

This new requirement to the filiation process took effect August 21, by Tribal Council Resolution No. 11,651.

The DNA test for paternity costs the petitioner \$35 per child. The petition fee itself is \$25 per child. The process applies to situations where the mother of the child is not married.

The purpose of the DNA-test requirement, as stated in the Council resolution, is to "assure accurate filiation decisions by the Tribal Court, to protect the integrity of the Tribal membership list, and to accurately reflect the intent of the Tribal Council."

As stated in the Filiation

Proceedings section of the Tribal Code, 331.600:

"The Tribal Council believes that filiation proceedings are very important because all people have a right to know their true identity, parentage, and lineage, and that such knowledge is a significant factor in the health, security and general welfare of all people.

"Further, filiation proceedings are very important because the Tribal Court's paternity determination may serve as the basis for application and enrollment as a member of the Confederated Tribes."

The code also mentions that DNA testing is now widely available, highly accurate, and minimally invasive.

So the new process requires the filing of the filiation petition with the mother's name, the father's name, birth certificate, and a copy of Voluntary Acknowledgment of Paternity, if one exists. Additionally, the petition will

*Last year there were about 60 filiation proceedings filed with the Tribal Court.*

include:

"... the results of DNA testing, with a reliable chain of custody, demonstrating that the alleged father is, in fact, the father of the person whose background is to be determined. If the alleged father refuses to submit willingly to DNA testing, the petition shall so state, and the results of the DNA testing need not be attached to the petition."

The new requirement will affect a good number of people. Last year, for instance, there were about 60 filiation proceedings filed with the Tribal Court.

## Per capita tax idea draws criticism

Warm Springs Tribal Council Vice Chairman Ron Suppah testified on Sept. 15 before Congress, stating that the Internal Revenue Service does not have authority to tax per capita distributions of revenue from tribal trust resources.

Councilman Suppah was one of three tribal leaders from Indian Country to testify at the hearing.

The Congressional hearing was in response to notices Warm Springs and other tribes received this past spring from the IRS Portland office, stating per capita payments to tribal members "from the tribe's trust account holding timber revenue are subject to federal income tax."

Suppah and tribal leaders from the Yakama and Colville tribes testified at the hearing that IRS effort to tax tribal trust per capita payments would be a violation of federal law. The IRS witness at the hearing, Christy Jacobs, head of the IRS Indian Tribal Government office, appeared to signal a possible retreat by the IRS by testifying that the "legal reasoning" of a recent IRS announcement—that per capita payments from tribal trust claims settlements were not taxable—"would appear to apply to per capita payments from tribal trust accounts."

The federal Per Capita Act of 1983 and tribal treaties are supposed to prevent this type of action, the tribal leaders said, because per capita distributions of funds held in trust by the Interior Secretary for tribal citizens are not to be considered income or resources, so they therefore cannot be taxed.

Even before 1983, it was longstanding federal practice not to tax such funds, according to U.S. Rep. Doc Hastings, R-Washington, and chairman of the U.S. House Natural

Resources Committee.

While some uncertainty remains, the Department of the Treasury and the IRS are seriously rethinking their analysis and position on the Per Capita Act.

Tribal attorney Howie Arnett, with Councilman Suppah, represented the tribes at the Sept. 15 hearing.

### Council policy

In a related development involving the IRS, Tribal Council meanwhile has adopted a policy governing the Confederated Tribes' relationship with the Internal Revenue Service to ensure close monitoring of IRS inquiries and activities as a series of tax matters are being addressed

The Council resolution was needed, as Warm Springs and other tribes are in disagreement with the IRS regarding the idea of taxing per capita payments.

The resolution, titled "Internal Revenue Service Protocol," governs all contact between the IRS and the tribes, tribal officials, staff and employees.

"The Tribal Council intends that all contact with the IRS shall be administered formally by the Secretary-Treasurer of the Confederated Tribes," the resolution states.

This will be done "in such a manner as to assure that properly requested information and access to records to which the IRS is entitled is provided efficiently and effectively, and that information of any type provided to the IRS is pertinent and limited to the request made, and accurate in all respects."

This is best carried out with the S-T as the "single point of contact" between the tribes and the IRS.

The resolution continues,

*Tribal Council is also working with ATNI and the NCAI in attempts to resolve other tax matters that include: general welfare assistance that tribes offer to their members; income eligibility for federal programs; tax exempt financing; pension plans and investment accounts...*

"The Confederated Tribes of Warm Springs formally memorializes its support for the voluntary disclosure of information necessary to assist the IRS in enforcing the federal tax laws.

"Nothing in the Protocol, however, is to be construed as a waiver of the tribes' sovereign immunity or its right to insist on due process as may be afforded formal disclosure mechanisms and procedures."

The Tribal Council is also continuing work with the Affiliated Tribes of Northwest Indians and the National Congress of American Indians in attempts to resolve other tax matters that include: general welfare assistance that tribes offer to their members; income eligibility for federal programs; tax exempt financing; pension plans and investment accounts.

*(You can watch the Sept. 15 per capita tax hearing on the Internet at:*

*naturalresources.house.gov/calendar/eventsingle.aspx?EventID=307521)*

— Dave McMechan



The grand opening of the Wiwnu Wash Cultural Center at Mt. Hood included a salmon bake.

## ATNI opposes measures 82 and 83

The Affiliated Tribes of Northwest Indians unanimously adopted a resolution opposing Oregon Ballot Measures 82 and 83.

These measures would allow for development of a private casino in the Portland area.

The Affiliated Tribes of Northwest Indians (ATNI) represents tribal interests—including health, safety, welfare, education and employment—in the Northwest region.

The ATNI resolution regarding measures 82 and 83, which will be on the Nov. 6 ballot, states:

"Each of the nine federally recognized tribes in Oregon have established and operate a single casino pursuant to a Tribal-State Gaming Compact to provide employment opportunities and revenue to support their Tribal Governmental operations."

Passage of measures 82 and 83 in November will "create a dangerous precedent for Indian Gaming because there is the potential that other private investors or corporations could develop other casinos in Oregon."

Also: "The passage of ballot measures 82 and 83 would

change the delicate balance of gaming that the State of Oregon and its nine sovereign tribal nations have created to provide for their citizens."

And: "If the ballot measures pass, the potential proliferation of private casinos in Oregon could also adversely affect tribal casinos in Washington, Idaho and Northern California."

And in conclusion, "ATNI stands united against commercial casino development in Oregon and directs its executive officers and its staff to encourage Oregonians to vote "no" on ballot measures 82 and 83."

## Bomb scare suspect with local ties released

Harley Andrews, 30, who was arrested along with two other individuals Aug. 28 in Oklahoma City after police discovered an explosive device in their basement, was released from custody recently, a Warm Springs relative said.

Andrews was charged with possession of an explosive device while in commission of a felony, possession of a controlled and dangerous substance, possession of drug paraphernalia and possession of an offensive weapon while committing a felony, authorities said. His bail was set at \$28,500.

His arrest happened when Oklahoma City police were searching for the suspect in a stabbing incident.

The explosive device they discovered was a small vile with a fuse.

Police also found "bomb-making materials" which included gunpowder and shrapnel reportedly used in wild boar hunting. Authorities detonated the device at a specialized range.

"I'm going to be praying for my little brother, that this all gets worked out," Harvianna Tohet-Tias said. "I've been worried about him for a while now, asking where he has been. I was hoping he

had moved away and was doing good things with his life."

"His mistakes are his lessons in life," said Andrews' aunt, Rochelle Holliday of Warm Springs. "It's not for anyone to judge. Has anyone offered help to a young man like this or any other young person?"

"[Andrews] is my cousin," Danni Katchia-Herkshan said recently. "He has children here on the [Warm Springs] Reservation. So rather than judge him, pray for his children. And him."

— Duran Bobb

### Public Notice

## Federal Emergency Management Agency - Draft Environmental Assessment - Seekseequa Telecommunications Tower Project, Warm Springs, Oregon

The U.S. Department of Homeland Security's Federal Emergency Management Agency (FEMA) proposes to provide funding to the Confederated Tribes of Warm Springs for a 140-foot telecommunications tower in Seekseequa to improve communications for police, fire and medical response. Funding would be provided as authorized by the State Homeland Security Project Grant Program as authorized by the Homeland Security Act.

A draft environmental assessment (EA) for the proposed project was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 and FEMA's implementing regulations found in 44 Code of Federal Regulations (CFR) Part 10. The EA

evaluates alternatives for compliance with applicable environmental laws, including Executive Orders #11990 (Protection of Wetlands), #11988 (Floodplain Management), and #12898 (Environmental Justice). The alternatives evaluated in the EA are the (1) no action; (2) proposed action, construction of a telecommunications tower in Seekseequa.

The draft EA is available for review at the Planning Department at 1233 Veterans St. A copy is also available at the Warm Springs Library located in the Family Resource Center, 1144 Warm Springs Street. More detailed information about the project is available by contacting: Lonny Macy at the Planning Department, 541-553-3509.

Written comments on the draft EA should be directed no later than 5 p.m. on October 17, 2012 to Science Kilner, FEMA Region X, 130 228th Street SW, Bothell, WA 98021, or by e-mail at Science.Kilner@fema.dhs.gov. Comments also can be faxed to 425-487-4613. If no significant issues are identified during the comment period, FEMA will finalize the EA, issue a Finding of No Significant Impact (FONSI), and fund the project. Unless substantive comments are received, FEMA will not publish another notice for this project. However, should a FONSI be issued, it will be available for public viewing at <https://www.fema.gov/environmental-historic-preservation-documents> under Region X.

### Public Notice