S. HRG. 106–540

TIMBISHA SHOSHONE HOMELAND ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2102

TO PROVIDE TO THE TIMBISHA TRIBE A PERMANENT LAND BASE WITHIN ITS ABORIGNAL HOMELAND

MARCH 21, 2000
WASHINGTON, DC

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TIMBISHA SHOSHONE HOMELAND ACT

TUESDAY, MARCH 21, 2000

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 10:32 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. Seven years ago this committee held a hearing at which we learned about a tribe that was homeless, homeless because the tribe was not allowed to establish residence on the lands which were part of their traditional homelands, homeless because those lands had been made part of the national park system.

Today we are here to receive testimony on a measure that will, if enacted, finally provide a permanent homeland for that tribe, the Timbisha Shoshone Tribe. This, I think we can safely say, is a great day.

The importance of this legislation to the Timbisha Tribe, as well as to the United States, cannot be understated. The Timbisha Tribe has maintained a presence in and around Death Valley, CA, since time immemorial. The tribe's historic ties to the area, its close identification with the land and its flora and fauna is unquestioned, as it is unique. However, despite these ties, the tribe still has no land to call its own, largely because its ancestral lands are mostly within the Death Valley National Park.

Its members have no guarantee of access to those places they consider sacred, places where they have long practiced their traditional cultural and religious ceremonies. In addition, the tribe has a great need for housing for its growing membership and for the development of a tribal economy.

In 1994, with leadership from Senator Feinstein and other members of the California delegation, the Congress enacted legislation considerably expanding the Death Valley National Park. In so doing, the Congress also recognized the Timbisha Tribe's needs, as well as its unique relationship to the park.

Accordingly, the bill directed the Secretary of the Interior to identify lands within and outside the park that would be suitable for a reservation for the tribe. We know that the process by which the tribe and the Department came to identify proposed reservation

lands was a difficult one; nevertheless, it succeeded. Late last year, the Secretary sent a report to the Congress with a plan and recommendations for a reservation for the Timbisha Shoshone Tribe.

A few weeks ago, I was pleased to join Senator Feinstein and Senator Boxer in introducing S. 2102, which would implement these recommendations.

Briefly, this legislation would establish a small trust land base for the tribe within and outside the park in California and Nevada. It provides for a unique relationship between the tribe and the National Park Service that is to be spelled out in government-to-government agreements. These agreements will provide for the co-management of a special use area where the tribe can continue its traditional cultural and religious practices.

The cooperative relationship will also provide the tribe with employment and economic development opportunities that will ultimately enhance and enrich the experience of visitors to the park.

Clearly, it is long past time that the United States provide a permanent homeland for the Timbisha Shoshone Tribe within the tribe's ancestral area. This bill will accomplish that end in ways that will benefit not only the tribe but also the park itself, and the general public.

I wish to express my appreciation to each and every one who has been involved in developing the Timbisha study report and this legislation. In particular, I would like to commend Chairperson Esteves and the other Timbisha leaders and their advisers for their dedication and flexible approach to dealing with the challenges associated with this effort.

I would like to commend Don Barry, the assistant secretary for Fish, Wildlife, and Parks, his staff, and those members of the National Park Service and the Bureau of Land Management whose can-do approach has made this bill possible.

I look forward to expeditious action on S. 2102, incorporating any changes that may be proposed at today's hearing.

[Text of S. 2102 follows:]

II

106TH CONGRESS
2D SESSION

S. 2102

To provide to the Timbisha Shoshone Tribe a permanent land base within its aboriginal homeland, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2000

Mr. INOUYE (for himself, Mrs. FEINSTEIN, and Mrs. BOXER) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide to the Timbisha Shoshone Tribe a permanent land base within its aboriginal homeland, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Timbisha Shoshone Homeland Act".

SEC. 2. FINDINGS.

Congress finds the following:

(1) Since time immemorial, the Timbisha Shoshone Tribe has lived in portions of California and

Nevada. The Tribe's ancestral homeland includes the area that now comprises Death Valley National Park and other areas of California and Nevada now administered by the Bureau of Land Management.

(2) Since 1936, the Tribe has lived and governed the affairs of the Tribe on approximately 40 acres of land near Furnace Creek in the Park.

(3) The Tribe achieved Federal recognition in 1983 but does not have a land base within the Tribe's ancestral homeland.

(4) Since the Tribe commenced use and occupancy of the Furnace Creek area, the Tribe's membership has grown. Tribal members have a desire and need for housing, government and administrative facilities, cultural facilities, and sustainable economic development to provide decent, safe, and healthy conditions for themselves and their families.

(5) The interests of both the Tribe and the National Park Service would be enhanced by recognizing their coexistence on the same land and by establishing partnerships for compatible land uses and for the interpretation of the Tribe's history and culture for visitors to the Park.

(6) The interests of both the Tribe and the United States would be enhanced by the establish-

ment of a land base for the Tribe and by further delineation of the rights and obligations of each with respect to the Furnace Creek area and to the Park as a whole.

SEC. 3. PURPOSES.

Consistent with the recommendations of the report required by section 705(b) of the California Desert Protection Act of 1994 (Public Law 103–433; 108 Stat. 4498), the purposes of this Act are—

(1) to provide in trust to the Tribe land on which the Tribe can live permanently and govern the Tribe's affairs in a modern community within the ancestral homeland of the Tribe outside and within the Park;

(2) to formally recognize the contributions by the Tribe to the history, culture, and ecology of the Park and surrounding area;

(3) to ensure that the resources within the Park are protected and enhanced by—

(A) cooperative activities within the Tribe's ancestral homeland; and

(B) partnerships between the Tribe and the National Park Service and partnerships involving the Bureau of Land Management;

(4) to ensure that such activities are not in derogation of the purposes and values for which the Park was established;

(5) to provide opportunities for a richer visitor experience at the Park through direct interactions between visitors and the Tribe including guided tours, interpretation, and the establishment of a tribal museum and cultural center;

(6) to provide appropriate opportunities for economically viable and ecologically sustainable visitor-related development, by the Tribe within the Park, that is not in derogation of the purposes and values for which the Park was established; and

(7) to provide trust lands for the Tribe in 4 separate parcels of land that is now managed by the Bureau of Land Management and authorize the purchase of 2 parcels now held in private ownership to be taken into trust for the Tribe.

SEC. 4. DEFINITIONS.

In this Act:

(1) PARK.—The term "Park" means Death Valley National Park, including any additions to that Park.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior or the designee of the Secretary.

(3) TRIBAL.—The term "tribal" means of or pertaining to the Tribe.

(4) TRIBE.—The term "Tribe" means the Timbisha Shoshone Tribe, a tribe of American Indians recognized by the United States pursuant to part 83 of title 25, Code of Federal Regulations (or any corresponding similar regulation or ruling).

(5) TRUST LANDS.—The term "trust lands" means those lands taken into trust pursuant to this Act.

SEC. 5. TRIBAL RIGHTS AND AUTHORITY ON THE TIMBISHA SHOSHONE HOMELAND.

(a) IN GENERAL.—Subject to valid existing rights (existing on the date of enactment of this Act), all right, title, and interest of the United States in and to the lands, including improvements and appurtenances, described in subsection (b) are declared to be held in trust by the United States for the benefit of the Tribe. All maps referred to in subsection (b) shall be on file and available for public inspection in the appropriate offices of the National Park Service and the Bureau of Land Management.

(b) PARK LANDS AND BUREAU OF LAND MANAGEMENT LANDS DESCRIBED.—

(1) IN GENERAL.—The following lands shall be held in trust for the Tribe pursuant to subsection (a):

(A) Furnace Creek, Death Valley National Park, California, an area of approximately 300 acres for community development, residential development, historic restoration, and visitor-related economic development, as generally depicted on the map entitled "Community Development at Furnace Creek, Death Valley National Park", numbered Map #1 and dated December 3, 1999. This area shall include a 25-acre, nondevelopment zone at the north end of the area and an Adobe Restoration zone containing several historic adobe homes, which shall be managed by the Tribe as a tribal historic district.

(B) Death Valley Junction, California, an area of approximately 1,000 acres, as generally depicted on the map entitled "Death Valley Junction, California", numbered Map #2 and dated December 3, 1999.

(C) Centennial, California, an area of approximately 640 acres, as generally depicted on the map entitled "Centennial, California", numbered Map #3 and dated December 3, 1999.

(D) Scotty's Junction, Nevada, an area of approximately 2,800 acres, as generally depicted on the map entitled "Scotty's Junction, Nevada", numbered Map #4 and dated December 3, 1999.

(E) Lida, Nevada, Community Parcel, an area of approximately 2,800 acres, as generally depicted on the map entitled "Lida, Nevada, Community Parcel", numbered Map #5 and dated December 3, 1999.

(2) LIMITATIONS ON FURNACE CREEK AREA DEVELOPMENT.—

(A) DEVELOPMENT.—Recognizing the mutual interests and responsibilities of the Tribe and the National Park Service in and for the conservation and protection of the resources in the area described in paragraph (1), development in the area shall be limited to—

(i) for purposes of community and residential development—

(I) a maximum of 50 single-family residences; and

(II) a tribal community center with space for tribal offices, recreation facilities, a multipurpose room and kitchen, and senior and youth facilities;

(ii) for purposes of economic development—

(I) a small-to-moderate desert inn; and

(II) a tribal museum and cultural center with a gift shop; and

(iii) the infrastructure necessary to support the level of development described in clauses (i) and (ii).

(B) EXCEPTION.—Notwithstanding the provisions of subparagraph (A)(ii), the National Park Service and the Tribe are authorized to negotiate mutually agreed upon, visitor-related economic development in lieu of the development set forth in that subparagraph if such alternative development will have no greater environmental impact than the development set forth in that subparagraph.

(C) RIGHT-OF-WAY.—The Tribe shall have a right-of-way for ingress and egress on Highway 190 in California.

(3) LIMITATIONS ON IMPACT ON MINING CLAIMS.—Nothing in this Act shall be construed as terminating any valid mining claim existing on the date of enactment of this Act on the land described in paragraph (1)(E). Any person with such an existing mining claim shall have all the rights incident to mining claims, including the rights of ingress and egress on the land described in paragraph (1)(E). Any person with such an existing mining claim shall have the right to occupy and use so much of the surface of the land as is required for all purposes reasonably necessary to mine and remove the minerals from the land, including the removal of timber for mining purposes. Such a mining claim shall terminate when the claim is determined to be invalid or is abandoned.

(c) LEGAL DESCRIPTIONS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall file a legal description of the areas described in subsection (b) with the Committee on Resources of the House of Representatives and with the Committee on Indian Affairs and the Committee on Energy and Natural Resources of

the Senate. Such legal description shall have the same force and effect as if the information contained in the description were included in that subsection except that the Secretary may correct clerical and typographical errors in such legal description and in the maps referred to in the legal description. The legal description shall be on file and available for public inspection in the offices of the National Park Service and the Bureau of Land Management.

(d) ADDITIONAL TRUST RESOURCES.—The Secretary may purchase from willing sellers the following parcels and appurtenant water rights, or the water rights separately, to be taken into trust for the Tribe:

(1) Indian Rancheria Site, California, an area of approximately 120 acres, as generally depicted on the map entitled "Indian Rancheria Site, California" numbered ____ and dated _____.

(2) Lida Ranch, Nevada, an area of approximately 2,340 acres, as generally depicted on the map entitled "Lida Ranch" numbered ____ and dated _____, or another parcel mutually agreed upon by the Secretary and the Tribe.

(e) SPECIAL USE AREAS.—

(1) IN GENERAL.—The National Park Service and the Bureau of Land Management are authorized to designate the areas described in this subsection as

nonexclusive special use areas for the Tribe, subject to other Federal law. Members of the Tribe are authorized to use these areas for low impact, ecologically sustainable, traditional practices pursuant to a jointly established management plan mutually agreed upon by the Tribe, and by the National Park Service or the Bureau of Land Management, as appropriate. All maps referred to in paragraph (4) shall be on file and available for public inspection in the offices of the National Park Service and Bureau of Land Management.

(2) RECOGNITION OF THE HISTORY AND CULTURE OF THE TRIBE.—In the special use areas, in recognition of the significant contributions the Tribe has made to the history, ecology, and culture of the Park and to ensure that the visitor experience in the Park will be enhanced by the increased and continued presence of the Tribe, the Secretary shall permit the Tribe's continued use of Park resources for traditional tribal purposes, practices, and activities.

(3) RESOURCE USE BY THE TRIBE.—In the special use areas, any use of Park resources by the Tribe for traditional purposes, practices, and activities shall not be in derogation of purposes and values for which the Park was established.

(4) SPECIFIC AREAS.—The following areas are designated special use areas pursuant to paragraph (1):

(A) MESQUITE USE AREA.—The area generally depicted on the map entitled "Mesquite Use Area" numbered ____ and dated _____. The Tribe may use this area for processing mesquite using traditional plant management techniques such as thinning, pruning, harvesting, removing excess sand, and removing exotic species. The National Park Service may limit and condition, but not to prohibit entirely, public use of this area or parts of this area, in consultation with the Tribe. This area shall be managed in accordance with the jointly established management plan referred to in paragraph (1).

(B) BUFFER AREA.—An area of approximately ____ acres, as generally depicted on the map entitled "Buffer Area" numbered ____ and dated _____. The National Park Service shall restrict visitor use of this area to protect the privacy of the Tribe and to provide an opportunity for the Tribe to conduct commu-

nity affairs without undue disruption from the public.

(C) TIMBISHA SHOSHONE NATURAL AND CULTURAL PRESERVATION AREA.—An area that primarily consists of Park lands and also a small portion of Bureau of Land Management land in California, as generally depicted on the map entitled "Timbisha Shoshone Natural and Cultural Preservation Area" numbered ____ and dated _____.

(5) ADDITIONAL PROVISIONS.—With respect to the Timbisha Shoshone Natural and Cultural Preservation Area designated in paragraph (4)(C)—

(A) the Tribe may establish and maintain a tribal resource management field office, garage, and storage area, all within the area of the existing ranger station at Wildrose (existing as of the date of enactment of this Act);

(B) the Tribe also may use traditional camps for tribal members at Wildrose and Hunter Mountain in accordance with the jointly established management plan referred to in paragraph (1);

(C) the area shall be depicted on maps of the Park and Bureau of Land Management that are provided for general visitor use;

(D) the National Park Service and the Bureau of Land Management shall accommodate access by the Tribe to and use by the Tribe of—

(i) the area (including portions described in subparagraph (E)) for traditional cultural and religious activities, in a manner consistent with the purpose and intent of Public Law 95–341 (commonly known as the "American Indian Religious Freedom Act") (42 U.S.C. 1996 et seq.); and

(ii) areas designated as wilderness (including portions described in subparagraph (E)), in a manner consistent with the purpose and intent of the Wilderness Act (16 U.S.C. 1131 et seq.); and

(E)(i) on the request of the Tribe, the National Park Service and the Bureau of Land Management shall temporarily close to the general public, 1 or more specific portions of the area in order to protect the privacy of tribal

members engaging in traditional cultural and religious activities in those portions; and

(ii) any such closure shall be made in a manner that affects the smallest practicable area for the minimum period necessary for the purposes described in clause (i).

(f) ACCESS AND USE.—Members of the Tribe shall have the right to enter and use the Park without payment of any fee for admission into the Park.

(g) ADMINISTRATION.—The trust lands shall constitute the Timbisha Shoshone Reservation and shall be administered pursuant to the laws and regulations applicable to other Indian trust lands, except as otherwise provided in this Act.

SEC. 6. IMPLEMENTATION PROCESS.

(a) GOVERNMENT-TO-GOVERNMENT AGREEMENTS.—In order to fulfill the purposes of this Act and to establish cooperative partnerships for purposes of this Act, the National Park Service, the Bureau of Land Management, and the Tribe shall enter into government-to-government consultations and shall develop protocols to review planned development in the Park. The National Park Service and the Bureau of Land Management are authorized to enter into cooperative agreements with the Tribe for the purpose of providing training on the inter-

pretation, management, protection, and preservation of the natural and cultural resources of the areas designated for special uses by the Tribe in section 5(e)(4).

(b) STANDARDS.—The National Park Service and the Tribe shall develop mutually agreed upon standards for size, impact, and design for use in planning, resource protection, and development of the Furnace Creek area and for the facilities at Wildrose. The standards shall be based on standards for recognized best practices for environmental sustainability and shall not be less restrictive than the environmental standards applied within the National Park System at any given time. Development in the area shall be conducted in a manner consistent with the standards, which shall be reviewed periodically and revised as necessary.

SEC. 7. MISCELLANEOUS PROVISIONS.

(a) TRIBAL EMPLOYMENT.—In employing individuals to perform any construction, maintenance, interpretation, or other service in the Park, the Secretary shall, insofar as practicable, give first preference to qualified members of the Tribe.

(b) GAMING.—Gaming as defined and regulated by the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) shall be prohibited on trust lands within the Park.

(c) INITIAL RESERVATION.—Lands taken into trust for the Tribe pursuant to section 5(a) shall be considered to be the Tribe's initial reservation for purposes of section 20(b)(1)(B)(ii) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(B)(ii)).

(d) TRIBAL JURISDICTION OVER TRUST LANDS.—All trust lands located within California shall be exempt from section 1162 of title 18, United States Code, and section 1360 of title 28, United States Code, commencing 3 years after the date of enactment of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this Act such sums as may be necessary.

Senator INOUYE. With that, may I welcome all of the witnesses and assure you that your written statements will be included in the hearing record in full so that you may proceed to summarize your statement.

Our first witness is the assistant secretary for Fish, Wildlife, and Parks, Department of the Interior, Donald J. Barry.

Secretary Barry.

STATEMENT OF DONALD J. BARRY, ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC, ACCOMPANIED BY DICK MARTIN, SUPERINTENDENT, DEATH VALLEY NATIONAL PARK AND JOHN REYNOLDS, REGIONAL DIRECTOR, PACIFIC REGION, NATIONAL PARK SERVICE

Mr. BARRY. Thank you very much, Mr. Chairman. I will just summarize my remarks.

I have to say that today is, I think, a very historic day, and I often wondered whether it would happen or not.

There are some people who are with me today representing my particular area of responsibility that I'd like to introduce. They are available to answer any particular technical questions that escape my knowledge or range of familiarity with these issues.

We have three people who I think, in particular, have served me immensely ably and have gotten us to this point today.

We first have Dick Martin, who is the superintendent of Death Valley, who demonstrated an open mind and flexibility right from the get-go and signaled a willingness to work with the Timbisha and to do the "classic thinking out of the box" as a way of resolving these particular problems.

We also have John Reynolds, the regional director for the Park Service for the Pacific Region. Quite frankly, it was John to whom I turned and asked to take the lead in the negotiations on behalf of the Secretary of the Interior and myself, and John did a superb job, made this one of his top priorities, hung in there, stuck with it, developed a personal relationship with the chairwoman of the tribe, and I think was instrumental in helping to bring this across the finish line.

Having the support of these two Park Service individuals has been essential within Park Service, itself, for this to be viewed as a model for future use elsewhere. If we had just sort of hammered this from the top down, it would have maybe solved the problems of the Timbisha Shoshone situation in Death Valley, but would not have, I think, been viewed as a model within the Park Service for other superintendents to replicate, and I think John and Dick's support was critical for that.

And, last but not least, I have to say that I owe a significant debt of gratitude to Karen Atkinson of my staff, who has been my north start on Native American issues and is the person who I always look to for guidance. Karen worked very, very closely with Dick and with John in forming an excellent coalition for this effort.

We had other people in the Park Service, like Pat Parker and others, who provided the necessary input to keep this thing moving, and here we are today.

Senator I'd like to first of all thank you for issuing the challenge to us 6 years ago in the California Desert Protection Act, when you went to the floor and offered your amendment directing the Department to conduct a study. Quite frankly, we dropped the ball at the beginning and did a poor job in the initial phase of this effort, and it was only after I took over as assistant secretary that I approached Patricia Zell on your staff and discussed this matter with Patricia. If there is one person who deserves credit for us being here today, it is Patricia, who is an old, dear friend of mine, and I basically made a pledge to Patricia to try to get this thing back on track with her assistance and her help.

I have to say that when we had the first meeting with the leadership of the tribe 2½ years ago in the secretary's conference room of the department, there was a lot of distrust and a lot of, I think, justified anger on the part of the tribe. Their expectations had been unfulfilled for many years. I think they felt that the Department of the Interior and the Park Service at times had either treated them unfairly or had not been good listeners to what they were seeking, and I thought that that first meeting was really critical for us to try to wipe the slate clean and to have a fresh beginning.

I also would have to say that, for me, at least, a critical moment was when I went out to Death Valley and visited the tribal chairwoman in the Furnace Creek area and spent 3 hours sitting with Pauline outside her office and listening to stories of her childhood.

What was it like when you were growing up here? What are your memories? What were your memories as a child of the Death Valley area? And what were the things that were special to you? What are the changes that you've noticed, falling back on your years of experience in this area that you love so much?

For me, it was an important moment, because I think it was the first step along the trail of building trust and confidence in each other, and I felt that I had to offer her a fresh start by being willing to listen and to give her an opportunity to talk to me about the importance of this area for her tribe.

I think at the end what we have here is a model agreement. I know we like to use that phrase a lot in this city, but I really, truly believe that this is a model agreement that should be viewed as the best there is in true government-to-government relations.

The negotiation process was not easy. There were a number of critical issues that generated a lot of emotion and passion on both sides, but I think none of the parties at the table lost sight of our overall goal, and it really has created a new national template for resolving these types of issues.

Quite frankly, I wish that we had not had the fight with the Park Service and the Miccosukees in Everglades 10 years ago. I wish that issue was still in front of us so we could kind of have a fresh start in that particular situation and take some of the lessons learned from this instance to try to approach the situation in the Everglades a bit differently.

I think this package is comprehensive. I think it is innovative. I think it is very fair to the Timbisha, while, importantly, containing exactly the right set of safeguards for protecting Death Valley National Park and the values and purposes for which that area was originally established, and that has been the delicate balance that we have had to try to achieve here. How can we do something

that is fair to the tribe, provides an economic base, a land base they've never had, and at the same time being able to ensure the supporters of the national park system that Death Valley National Monument and National Park will always be what it was intended to be.

I think that the people who have been negotiating this agreement succeeded in striking that appropriate balance.

I was re-reading the bill this morning and was just struck by the parity and the fairness, the balance that is in the bill. I want to again compliment the tribal negotiators and the leadership of the tribe for also listening to our needs on the Park Service side to ensure that there would be sufficient safeguards to ensure that Death Valley National park would be not only protected under this agreement but would actually be benefiting and flourish under this agreement, with a better opportunity for the visiting public to learn more about the rich culture of the Timbishas and the importance of this area as their homeland.

I think the bill had to surmount many difficult challenges, and I think every one of them has been surmounted, ranging from concerns of the environmental community to water rights to gaming.

It is my understanding that Senator Reid, who I have worked with for many years, has some particular concerns regarding gaming. I welcome those concerns being expressed by Senator Reid. I remain immensely confident that we can work those issues out, as well, and overcome this challenge, as well.

I think Simon Peres once said, "Where there is no solution, there is no problem," and I am absolutely convinced that on the question of gaming, if we sit down together with the leadership of the tribe, we can address the questions that Senator Reid has to everybody's satisfaction, and I look forward to that opportunity.

I guess, last but not least, I would just suggest that if the National Park Service and the leadership of the Timbisha Shoshone Tribe can reach common ground and find common agreement in a package of legislative proposals before this committee today which they believe addresses their individual fundamental interests, it is something that we should support, and not just support begrudgingly, but support willingly, and to be prepared to highlight this as a better way for the Federal Government to maintain its government-to-government relationships in the best light possible.

Thank you very much.

Senator INOUYE. I thank you very much, Mr. Secretary.

[Prepared statement of Mr. Barry appears in appendix.]

Senator INOUYE. I just have a few questions, if I may ask.

As you know, Mr. Secretary, this bill authorizes the purchase of Lida Ranch. Can you tell us the reasons for acquiring this ranch and what is the tribe's connection to it?

Mr. BARRY. It is my understanding that this particular area is an area that has been used by the tribe for probably centuries, and perhaps maybe it would be a question most appropriately addressed to the chairwoman of the tribe. But it is my understanding that this area has a longstanding historical significance to the tribe. It's one of the few areas that has an adequate water supply that would be available for the tribe.

As we all know, Death Valley is aptly named for a very good reason—water is the critical missing resource in most of the area. And so, where you do have springs, where you do have water sources that are available, they become critically important. And I think the tribe views this as one of the few areas where there would be an opportunity for either economic development of some sort, or at least to provide additional community development. I think, for that reason, Lida Ranch becomes very, very important to the tribe.

Senator INOUYE. Is the Department moving to secure title to this land, this Lida Ranch, and also the Indian rancheria site in Salinas Valley?

Mr. BARRY. We have no initiative underway at present. I think we are waiting for Congress to authorize us to undertake this particular endeavor. I think if this bill is passed the burden then falls on the Department to pursue this further, follow up with specific proposals regarding funding for these acquisitions. It is an issue that still is in front of us. We want to basically see whether Congress agrees that these are things that we should be doing. If they do, then the burden is on us to make them happen.

Senator INOUYE. So what you are telling me is that there are no funds in the budget request for——

Mr. BARRY. At present that is correct, Senator.

Senator INOUYE [continuing]. For appraisal, for an option to buy?

Mr. BARRY. It is my understanding at present there has been no formal acquisition initiatives undertaken to date. But, again, if this legislation is enacted, as we hope that it will be, then the burden falls on the Department to go back and say,

Okay, Congress has now signaled their support for this activity. How do we make that happen?

Senator INOUYE. So, upon the passage of this measure and its signing into law, the Department will take that as direction to provide for funds to secure the title to this land?

Mr. BARRY. Let's put it this way: I think the burden is then on us to follow through in good faith to look for a way of trying to achieve the benefits for the tribe that the legislation would authorize. We would need to sit down with the budget people in the department, with Kevin Gover, with Secretary Babbitt, with myself, and try to figure out what the best method or means would be for accomplishing that.

Senator INOUYE. Mr. Secretary, as you know, this bill has a lot of blank spaces for acreages and map references for special use areas. Do you have those with you this morning?

Mr. BARRY. It's my understanding that Dick Martin, the superintendent, if asked could probably try to fill you in with more of that information. So, with your permission, if you would want, I could ask Dick to go to the map and at least try to address some of those matters now, if you'd care to.

Senator INOUYE. I would like to place it in the record, if I may.

Mr. BARRY. I'm sure we could do that.

Dick, if you'd like to maybe come to the microphone for one second.

Senator INOUYE. And, if you could, could you submit the numbers that we can place in the blank spaces?

Mr. MARTIN. The acreages, Mr. Chairman, to be transferred to the tribe include, within the park—and I'll point it out here—approximately 300 acres of Furnace Creek, and that location is right there, which is the heart of the park. That's where the Park Service visitor center is, it's where the tribe currently resides. And it is also the main economic area there. There's a resort there. It's a visitor use center where there are economic opportunities. So that would be 300 acres of Furnace Creek.

Outside to the park to the east, in California, at Death Valley Junction, the proposal is to transfer approximately 1,000 acres of current Bureau of Land Management public lands to the tribe. That's at a road intersection that is an important intersection between the city of Las Vegas and Death Valley National Park. There is some potential for economic development there. It is modest at the moment, but there may be future opportunities there.

In Nevada, at a location known as "Scotty's Junction," which is on U.S. Highway 95, the proposal there is to transfer approximately 2,500 acres of Bureau of Land Management land in the State of Nevada to the tribe.

I'll just finish up the land transfer acreages now and then mention the special use areas in 1 minute.

The other area in Nevada to transfer to the tribe is in the Lida area. It is currently public land, approximately 2,500 acres in that location.

There's another location in California known as "Centennial," one section, 640 acre land transfer.

In addition to those land transfers—those would be transfers in trust from National Park Service or Bureau of Land Management lands to the tribe in trust. In addition to those trust transfers, there also are special use areas that we would enter into agreements with the tribe on cooperative agreements for certain particular uses. Within the park at Furnace Creek, surrounding the 300-acre land transfer, there are two designations of lands at the Furnace Creek area that are currently national park lands.

One of these areas is referred to by the tribe and by the National Park Service as the "Mesquite Management Zone." This is an area of mesquite growth that the tribe has used traditionally for the care and management of mesquite, for the collection of beans, as well as for ceremonial and traditional purposes. This area is approximately 1,900 acres.

Also near the 300 acres and surrounding it is an area that the tribe has requested and we agreed would be a buffer zone. This would be an area where visitors would largely be excluded from in order to assure tribal privacy. This area is approximately 1,000 acres.

In addition to those areas, at Furnace Creek there is a large area that is colored in green on this map that is referred to that the tribe has suggested be referred to as the Timbisha Shoshone Natural and Cultural Preservation Area. We don't have a good accurate acreage on that, but you'll notice that the brown area is the entire park boundary and the green area is this special designation.

It looks like our estimate is it is approximately half or a little less than half of the acreage of the park. The park is 3.5 million acres total, the largest park in the lower 48, and this looks like it

is about half or so, or a little less, so we estimate that to be approximately 1.2 or 1.3 million acres.

In addition to those areas, there are some special designations outside the park that are on BLM land that I don't have the acreage for.

Senator INOUYE. Will you provide us with the map numbers and dates for the special use and preservation areas so that we can include them in the bill?

Mr. BARRY. We'll do so, Mr. Chairman.

Senator INOUYE. Mr. Secretary, I thank you very much sir.

Mr. Secretary, this environmental impact statement—you are preparing such to assess the effects of the proposed land transfer. When do you expect this EIS to be completed?

Mr. BARRY. It is my understanding, under the current time line, it would be completed this summer, in June or July, perhaps in July of this summer. Obviously, if Congress moves forward—well, at the end of the day Congress sets its own time table and its own pace. That's when we would be completing our work within the administration for completing the EIS. Clearly, Congress can choose to set whatever pace it desires with regard to this particular piece of legislation.

Senator INOUYE. Well, we will try our best to expeditiously proceed with this measure, notwithstanding the EIS, but you will be coming through with that, will you not?

Mr. BARRY. That's right. And it is my understanding that the draft EIS will be out very soon, so the environmental analysis that the Department has conducted to date will be available for the public and Congress to review within just a matter of weeks. We then would be gaining additional political, or at least public, input into the decisionmaking process as we let the public comment on our analysis. But I think clearly there will be, in front of the public, for everybody's review, the analysis done to date by the Department within 2 or 3 weeks.

Senator INOUYE. I thank you very much, Secretary Barry, and appreciate it very much.

Before I call the next panel, I would like to place the statement of Senator Frank Murkowski, who is chairman of the Committee on Energy and Natural Resources, in the record. But I think it is so important that I will read this.

PREPARED STATEMENT OF HON. FRANK H. MURKOWSKI, U.S. SENATOR FROM ALASKA

Mr. Chairman, I note that the 7,540 acres of land that will be placed into trust for the Shoshone Indians will be taken from lands within and adjacent to Death Valley National Park. As you are aware, the national parks are under the jurisdiction of the Committee on Energy and Natural Resources, of which I am the chairman. I'm sure the chairman of this committee would want to recognize this jurisdictional issue, since the original legislation concerning the Timbisha Shoshone Tribe's lands, which ultimately resulted in the legislation which we are currently considering, was added as an amendment by Senator Inouye on the floor of the Senate when the California Desert Protection Act was under consideration. No one can question the jurisdiction of the Committee on Energy and Natural Resources over the California Desert Protection Act.

Having said that, and as a member of this committee, I'm also aware that the tribe entered into negotiations with the National Park Service over 5½ years ago. This issue should have been resolved within 1 year's timeframe. Unfortunately, the

National Park Service chose first to ignore the legislative mandate, and then created a system to select lands that was much more complicated than was required to result in the legislative initiative before us today.

Given the extended time and great effort that it has taken to get us this far, I will not assert the authority of the Committee on Energy and Natural Resources. This issue has been delayed enough. We should move on, and I urge my colleagues to support this legislation.

Thank you.

Now may I call upon the second panel, Pauline Esteves, chairperson, Timbisha Shoshone Tribe of Death Valley, CA, and Barbara Durham, tribal administrator. They will be accompanied by LeRoy Jackson, vice chairman; Grace Goad, secretary-treasurer; Dorothy Alther, esquire, California Indian Legal Services; and Steven Haberfeld, Indian Dispute Resolution Services of Sacramento.

This is a historic day for your tribe, and so it is a great pleasure and honor to call upon you, Pauline Esteves.

STATEMENT OF PAULINE ESTEVES, CHAIRPERSON, TIMBISHA SHOSHONE TRIBE, DEATH VALLEY, CA, ACCOMPANIED BY BARBARA DURHAM, TRIBAL ADMINISTRATOR; LEROY JACKSON, VICE CHAIRMAN; GRACE GOAD, SECRETARY-TREASURER; DOROTHY ALTHER, ESQUIRE, CALIFORNIA INDIAN LEGAL SERVICES, BISHOP, CA; AND STEVEN HABERFELD, INDIAN DISPUTE RESOLUTION SERVICES, INC., SACRAMENTO, CA

Ms. ESTEVES. Honorable Vice Chairman Inouye, my name is Pauline Esteves. I am the chairperson of the Timbisha Shoshone Tribe of Death Valley, CA. I have served as the chief spokesperson on the tribal negotiation team. Today, to all members of your committee, I have greetings from my people. They are aware back home and very intense in anticipating that, with your wisdom, that you will approve the legislation being proposed by the Department of the Interior and the tribe to establish a land base for the Timbisha Shoshone people.

I have become inspired today to be here. I cannot find words for that feeling. I have waited all my life for the moment when my tribe could come before the U.S. Congress and ask the Federal Government to restore the ancestral lands back to the people. For 67 years, since 1933, President Hoover seized our land and established the Death Valley National Monument, making no provisions for the people that were living there, even though they have been there for generations before the Euro-Americans set foot in that area.

We were treated as though we did not exist. While 40 and 50 of us come to our homelands and refused to go anywhere else—we have been there ever since and are still there—the vast majority of the 250-plus membership dispersed to various places within the State of Nevada and California and also other States far away.

Alone, without the support and security of their families and their people, they were forced to break their ties to their homeland and make it on their own.

I have been able to sit before you as one of the last remaining elders today, and this is to see this historical wrong corrected by Congress.

I am enlightened because, during my remaining years, I can look forward to see our sons and daughters finally being granted a legal and permanent presence within our homelands. We will have land

where we can live our life as a healthy, self-governing, financially-self-reliant community. We will once again have a homeland, where we can teach the young people the language and the traditions and the culture and the values of the Timbisha Shoshone, and in that way then we can save our unique way of life from extinction.

Since the passage of the California Desert Protection Act in 1994, we have been in negotiations with the Department of the Interior. We extend our thanks to Senator Feinstein, who sponsored that act, and to you personally, Senator Inouye, and to other members of your committee and the Congress who passed the legislation and included that section 705(b). Because of this act and that special section which called for a study in consultation with the tribe of the suitability of lands for a reservation for the tribe, we have then been able to have the opportunity to sit down as equals, finally, with the National Park Service and the Bureau of Land Management and other agencies and individuals of the Department of the Interior.

We were able to work things out by talking things through. This process gave us the opportunity to become visible as a people with a past, present, and future—a people with rights that they deserve with respect, recognition, and satisfaction.

Sitting together, as sovereign government speaking to another sovereign government, there was an opportunity to fashion a comprehensive agreement that both the tribe and the Department fully support.

Today, after resolving our differences and coming to a mutual understanding, with come before you not only with one voice but with a strong, mutually-respectful relationship between neighbors.

Thanks to you and the legislation, we have come up with an agreement, not crafted by people in Washington but by the people at the local level who will have to live with its terms and its consequences.

Thanks to you and the legislation, we have come today not with disagreements between us that you have to sort out, but, instead, with a finished product which the partners to the agreement find workable.

What you have before you in the form of the proposed legislation is based on an agreement in which all the component parts fit together and are internally reinforcing. Each element must go with the other. The Timbisha Shoshone Tribe and the United States Department of the Interior are jointly proposing, first, a tribal land base located in the tribe's historical living areas, both inside and outside of Death Valley National Park.

Because of the conditions in Death Valley, it cannot support the primary needs of the tribe and the Federal Government. As a result, then, there were parcels that we studied that are located in different areas but are not contiguous.

Second, we are proposing 300 acres in trust land in Furnace Creek. As you know, Senator, Furnace Creek is the commercial administrative center of the park. This is also the location where we are living today, because it has the infrastructure, such as roads, utilities, water, schools for the children, and other amenities tribal members need to take care of their families' basic needs.

Third, this location at Furnace Creek is important in yet another respect. In Furnace Creek, the tribe has the opportunity to create income by developing decent and appropriate jobs for our people. At the same time, we can provide unique, culturally-based, educational experiences, and important services to the people who visit the park, and this is something that does not happen today.

Fourth, in addition to the Furnace Creek location, we are proposing four other parcels of Federal land and several parcels of private land identified for potential economic development. These parcels are located along roads that lead in and out of the park. Additionally, these parcels have historical significance to the people of the tribe. The private parcels identified in the report were all once in tribal members' ownership and was lost as a result of the white man's advancement into our homeland.

Fifth, we have thought about the present. We have also looked forward far into the future. Therefore, it is important for the tribe to have land beyond Furnace Creek beyond which to grow and to expand.

The four Federal parcels and private lands identified by the tribe in its proposal will meet the tribe's future needs. These parcels outside of the park will prevent over-crowding and adverse environmental impacts to Furnace Creek.

Sixth, finally, I want to point out that the legislation provides not only a permanent land base for the tribe; it provides a complementary way the tribe can establish a presence. The proposal provides opportunities for the tribe and tribal members to engage in cooperative activities, enter into cooperative agreements with the National Park Service and the Bureau of Land Management to share responsibility for protecting and enhancing the natural and cultural resources of the park and also of the surrounding areas.

We can look forward again to fulfill what we stand for—to protect the lands. Once again, we could be active parts of the ecological equation in which we belong, tending to the springs, nurturing the native vegetation, and protecting the endangered wildlife.

In closing, I thank you for the passing of the California Desert Protection Act and including that provision that calls for the creation of a land base for the Timbisha people in its ancestral homeland.

We invite you to take our win/win agreement and transform it into legislation that will make it be a reality.

Thank you very much for your time to make this presentation for the Timbisha Shoshone Tribe.

Senator INOUYE. I thank you very much, Chairperson Esteves.

[Prepared statement of Ms. Esteves appears in appendix.]

Senator INOUYE. I hope that this will be the day that you have been dreaming about. We will try to do our best.

Does Barbara Durham wish to make a statement?

Ms. DURHAM. Good morning, Honorable Vice Chairman Inouye.

My name is Barbara Durham. I am a tribal member. I am also the tribal administrator for the Timbisha Tribe.

Today is a long-awaited occasion, one that I am personally proud to be a part of. I am a member of the Timbisha Land Restoration Committee and have been involved in the government-to-govern-

ment negotiations since the passing of the California Desert Protection Act in 1994.

For 6 years I have sat across the table from the National Park Service and Bureau of Land Management representatives and other agencies involved. My people have been waiting for a resolution to our living situation in Death Valley National Park for decades. With the return of some of our aboriginal lands inside and outside the park, our tribe, for the first time, will be able to revitalize our lost traditions and way of life.

The lands proposed for trust status possess an internal coherence and inter-dependence, and, therefore, represent what is historically and traditionally significant to the tribe. These lands also offer the prerequisite conditions for viable housing and community services, employment, and economic development strategies and communal use.

Without land for these many years, we have had no identity. With land, we hope to preserve, protect, and perpetuate our culture, which is in serious danger of extinction unless Congress acts to take lands in trust for the tribe in our ancestral homelands.

Finally, after so many years without land, we will be in a position to provide homes to those tribal members who are lost and homeless.

Today, we look forward to once again playing an active and responsible role in protecting an environment that has suffered from our long absence. The tribe is the first authentic environmental protection agency. We are the first authentic wilderness society, audubon society, Sierra club. To the tribe, the land and all that resides upon it are sacred. It is the mandate of the tribe to ensure the protection, preservation, and enhancement of these lands and resources.

Without land, our tribe has been unable to progress to the 21st century. To this day, we have been prohibited from building any homes or other physical structures that have foundations in the ground. The lack of a secure land base or land tenure has impeded the tribe's ability to construct new stick homes, resulting in substandard housing conditions. Currently, members live in mobile homes or one of the historical adobe homes.

Tribal administration and community facilities are virtually nonexistent. Our offices are two mobile homes sitting next to one another.

Lack of employment and housing in the Death Valley area has resulted in the majority of the tribe's members living in nearby towns and urban centers.

The uncertainty of a land base has impeded the tribe's ability to provide even the most basic tribal government services and to receive BIA, HUD, and Environmental Protection grants and funds.

According to the proposed legislation, the tribe will build 50 homes and a tribal administrative facility in the Furnace Creek area. We will work with the Park Service to create a sustainable development design plan for these facilities that will have minimal impact on water and natural resources and on the desert setting.

Also, according to the proposed legislation, the tribe will be able to engage in modest, low-impact, visitor-related economic develop-

ment. This will ensure the viability of our community by providing decent-paying local employment opportunities for our members.

Economic development in the park in the Furnace Creek area will consist of a tribal museum. Here, the tribe will be able to tell its own story to the millions of visitors to the park. The museum will include a small gift shop. There will also be a medium-sized inn reflecting Timbisha history and offering visitors the cross-cultural experience that can only be provided by the first inhabitants of this area.

Tribally-guided cultural heritage programs, including hikes, lectures, and tours may also be provided.

What I have described in this presentation is contained in a Department of Interior secretarial report commissioned by Congress as part of the California Desert Protection Act. The report was produced jointly by the Federal agencies and the Timbisha Tribe.

The win/win agreement hammered out between the agencies and the tribe is contained in the legislation before you for your consideration and approval.

In conclusion, I want to say that I am hopeful that you pass this legislation in its entirety. It is, as I said, a product of a lot of discussions and communications between the tribe and the Federal agencies.

I, personally, will take great satisfaction in the passing of this legislation, not only because I have been a part of it, but my people back home in Death Valley, where—I wish I could just package this all and take this back home, and we would be sitting there. But one day hopefully you will make it out there.

That's all I have to say.

Senator INOUYE. Thank you very, very much.

[Prepared statement of Ms. Durham appears in appendix.]

Senator INOUYE. Before I proceed with questions, since you have traveled a long distance, may I ask that the following people stand up to be recognized: LeRoy Jackson, the vice chairman; Grace Goad, the secretary-treasurer; Dorothy Alther, California Indian Legal Services; and Steven Haberfeld, Indian Dispute Services.

I thank you all, ladies and gentlemen, very much for your help.

Madam Chairperson, I note in your statement a very interesting statement.

> We will once again have a homeland where we can teach our young people the Timbisha Shoshone language and the Timbisha Shoshone cultural traditions and values.

How many people still speak the tribal native language?

Ms. ESTEVES. Very few, and we have just written up a grant proposal to start the planning, the teaching of that language.

At one time, in my elders' generation—my mother, my aunts, my uncles—they were in number about 1 dozen or more that could speak the language fluently. And when you say "fluently," I think that means that you can understand the language and you can speak it real well and not be broken up or using any slang words.

Then there is another group of people that were speaking sort of using words not properly pronounced or properly used, and that group was mainly the next generation, and that goes into my generation then. In my generation today, there is only about a handful of us that can speak it fluently. And when I say "fluently," again,

that can understand the language and can also speak it and to use the word properly and to pronounce words properly.

The large majority of them are the next number of memberships that are kind of young, and these are the people that can understand the language but cannot speak it, but can use words sort of in maybe just a few sentences put together, but they do know of the meanings and the word usages. That is the extent of their knowledge of the language, but we are starting this now, as soon as we get the funds.

Senator INOUYE. It has been said that death of a language is a prelude to the death of a culture, and so I think it is most appropriate that this matter be given some priority.

Now that we are at this point, do you have any concerns that are not addressed in this bill? Are you satisfied with the bill?

Ms. ESTEVES. I think I am. We have worked quite extensively on it. I, myself, spoke very bluntly and very loudly to the Department of the Interior people to say that, "Speak to me in my own way, and do not use the words of a lawyer or something like that," so I could understand just exactly where they were, how they were responding to the needs of the people. So I feel very comfortable with the agreement that we have developed.

Senator INOUYE. Madam Chairperson, on behalf of the committee, I pledge to you that we will most expeditiously report this matter to the full Senate.

Thank you very much.

Ms. ESTEVES. Thank you.

Senator INOUYE. Our next panel: Professor of anthropology at the University of Nevada-Reno, Dr. Catherine S. Fowler; and Moses Lasky professor of law at the University of Colorado Law School in Boulder, Charles Wilkinson.

Professor Wilkinson, Dr. Fowler, welcome.

STATEMENT OF CATHERINE S. FOWLER, PROFESSOR OF ANTHROPOLOGY, UNIVERSITY OF NEVADA-RENO, RENO, NV

Ms. FOWLER. Thank you very much.

I have submitted a longer testimony for the record. I'd like to read the opening paragraph and then, if you have any questions or the committee has any questions——

Senator INOUYE. I can assure you that your full statement will be included into the record of this hearing.

Ms. FOWLER. Yes; thank you very much.

My name is Catherine Fowler. As the vice chairman indicated, I am the professor of anthropology at the University of Nevada in Reno, as well as a member of the Board of Trustees in the National Museum of the American Indian, the Smithsonian Institution.

I am hereby testifying in favor of S. 2102. As one who has worked on contract for both the National Park Service and for the tribe on this matter, I believe that I am familiar with the historical context in which this act was proposed, and I will do my best to answer any questions that you may have.

I feel that this bill will right a longstanding wrong done to this tribe by providing them with trust lands in an area that they and their ancestors have called home for countless generations.

I sincerely believe that the Timbisha people will be responsible stewards of their lands and of the lands within Death Valley National Park that are proposed for cooperative management between them and the National Park Service.

My work with the elders of the tribe has documented their extensive knowledge of the ecology of the region and of ancestral and very sound approaches to resource management. Their sincere interest in all management issues involving this region stem from deep spiritual commitment to the land and resources.

In order for the younger generations of the tribe to carry forward to continue to treat the land with respect and to demonstrate their stewardship, they need to begin to interact with these lands again in the manner taught by the old ones. This is not a knowledge that should be fossilized in books, but one that should be part of a living tradition, in keeping with the goals of all natural, cultural, and historic preservation legislation, as well as with the stated goals of the National Park Service to make our national heritage lands places of contemporary human significance.

I would be happy to answer any additional questions that you may have.

[Prepared statement of Ms. Fowler appears in appendix.]

Senator INOUYE. Your prepared statement provides us with a rich foundation for this bill. Just for the record, in 1933, when the Government of the United States decided to establish this national park, how was the tribe treated? And why were they treated in such a cavalier manner?

Ms. FOWLER. Initially, when the monument was established in 1933, there was a period of adjustment on the part of both the park and the people. They seemed to get along reasonably well.

Then, in about 1940, as national legislation began to take effect in local areas, there was a closure of the lands, really, to the people for their traditional hunting and gathering, for wood collecting, for long-term camping, things of this sort.

The elders of the tribe reacted very negatively to this imposition on them and this forced change in their life ways.

As Pauline Esteves' mother very eloquently stated at one point.

How can the people who run this park assume to take care of the animals and not think of the animals as part of us, that is, the people. We are part of them, they are part of us. To only want to protect the animals and the plants is to ignore them completely.

In fact, she said,

What they need to do is come over and just shoot us all, get rid of us, because, obviously, we have no meaning when it comes to this land.

Of course, we believe that that is totally the opposite. Management techniques that the people practiced were very vital to the health of the desert ecosystems, and the people are, indeed, a part of the animals and plants and of that environment. To ignore the human dimension is very one-sided. It is all part of one package.

So, in other words, Mr. Vice Chairman, they were treated very poorly, and the ban on any kind of recognition of cultural priorities and cultural needs was very devastating on the culture.

Senator INOUYE. Is there any document or statement that refers to the future of the Timbisha Shoshone Tribe? Was the executive or legislative branch concerned about the future?

Ms. FOWLER. There is no indication that they ever really took the people into account. For a number of years, the Bureau of Indian Affairs partly recognized them, partly didn't. They would do some services, such as jointly with the Park Service constructing the 11 adobes at the Furnace Creek Village site. That was done in 1936. Then, if you read the correspondence, there is a continual backing off of any trust responsibility, and then they'll come in again, as the national climate changes, and they'll provide a few more services, then they'll back off again. And it was not really until 1983, when full Federal recognition was granted, that this was remedied.

However, it was not remedied in terms of land. Even though the people have lived on the 42-acre site since the founding of the monument, it is not their land. As indicated by members of the tribe, they have never been allowed to put permanent structures other than the adobes that were constructed for them on the site.

They are also among very few tribes in the United States that were ever granted Federal recognition without land. As of 1994, which is the last time I checked, there were only three other groups besides Timbisha that went through that recognition process and did not receive land. Two of those were about to obtain lands through the State—the Wampanoag and the Mohitan. The San Juan Southern Paiute of Arizona, who were the third group, are still in negotiations with the Navajo Tribe for land.

I'm not sure what has happened to the situation since, in terms of granting land without recognition, but this is a very unique case, and that is, I believe, what was recognized with the passage of Desert Protection Act to go forward and finally provide trust lands for this group.

Senator INOUYE. It would appear that the Government was hoping that the tribe would disappear, but somehow they refused to disappear.

Ms. FOWLER. The correspondence, if you examine it, continually states that. In a sense, if we ignore them they'll go away. If we do anything positive for them, it will only encourage them to stay here.

But, as Chairwoman Esteves indicated, they stayed anyway, and they have been very persistent in remaining in their traditional homelands.

The people who are also members of the tribe who have been forced to leave for economic reasons maintain close ties back to the valley, so I believe that if economic development does come, the tribe will have a chance to reunite and to renew itself, both culturally and linguistically.

Senator INOUYE. I thank you very much.

Ms. FOWLER. Thank you.

Senator INOUYE. May I now call on Professor Wilkinson?

STATEMENT OF CHARLES WILKINSON, MOSES LASKY PROFESSOR OF LAW, UNIVERSITY OF COLORADO LAW SCHOOL, BOULDER, CO

Mr. WILKINSON. It is a pleasure to be here today, Mr. Chairman, and also a great honor, for when all the histories have finally been written, they will look back with the most profound admiration on

your unparalleled record of accomplishments on behalf of Indian people.

I can't help but remember fondly today the celebratory dedication of this Indian hearing room several years ago—an elegant room that you, personally, conceived of and carried out in its every last detail.

I have had the privilege of serving as a facilitator in these negotiations for the past 2 years, and I know that my testimony has been added to the record, and a coalition of national environmental organizations will also be submitting a joint statement, and I want to say that they were a very constructive presence in this series of negotiations and took the time to come to Death Valley and meet with tribal members personally and get out on the ground.

Just very briefly, as the chairman knows, this bill is the product of a lengthy, sometimes difficult, but ultimately very collegial set of government-to-government negotiations between the Timbisha Shoshone Tribe and the Department of the Interior. Several different Interior Department agencies took part. I would personally like to give my lasting admiration and respect to every person who took part in the negotiations, for they gave such a priority to this work that each person attended essentially every meeting. There was hardly ever an absence. Needless to say, on both the tribal side and the Government side, these are exceedingly busy people.

It is their patience, open-mindedness, and vision that has brought us here today.

One last comment. I know that the negotiators would very much support the chairman's focus on the purchase of the Lida Ranch, and the authorization that hopefully will come out of this bill and later appropriations measures are of great importance to the tribe, and I think, as is usually the case, the chairman's ability to address a particularly sensitive issue is very appropriate.

I thank you very much.

Senator INOUYE. I thank you very much, Professor.

[Prepared statement of Mr. Wilkinson appears in appendix.]

Senator INOUYE. Does this measure provide the necessary authority for the Department to proceed with the purchase of Lida Ranch?

Mr. WILKINSON. Yes; I believe it does.

Senator INOUYE. As a member and a distinguished member of the legal profession, are you satisfied that this bill will withstand any legal challenge?

Mr. WILKINSON. Yes; I am, Mr. Chairman. I will say that, in an era where people and occasionally judges dream up legal theories that we could hardly imagine, it is hard to be sure, but I think it is as tight a bill in that respect as any that comes through this committee, to put it that way.

Senator INOUYE. Well, I want to thank you for all the years I have known you and for the assistance you have provided this committee. You are not only a distinguished member of the bar, but I would say one of most knowledgeable of the problems of Indian Country, and I hope that we can continue to work together for many more years to come.

Mr. WILKINSON. Yes.

Senator INOUYE. I thank all of you for participating in this historic morning. As I pledged to Madam Chairperson Esteves, we will do our utmost to make certain that all of the work that you have put in would not be in vain. We will see that this bill is passed by Congress.

Ms. FOWLER. Thank you, Mr. Vice Chairman.

[Whereupon, at 11:33 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA

I thank the committee for allowing me the opportunity to testify on behalf of this bill.

In 1994, the California Desert Protection Act directed the Department of the Interior to conduct a study to identify lands suitable for a reservation for the Timbisha Shoshone Tribe. The tribe's ancestral homeland includes the land in and around what is now Death Valley National Park.

A Federal and tribal negotiating team researched the land in and around the Park to determine which parcels of land might be suitable for the Tribe. The team took several factors into consideration, including climate, geology and the availability of water, mining claims, special resource designations (such as Wilderness and Area of Critical Environmental Concern) and the availability of infrastructure such as roads, power, and other services.

After years of negotiations and visits to the prospective sites, the team submitted its recommendations to Congress last year. I am proud to be a cosponsor of Senator Inouye's bill to put the land recommended by the negotiating team into trust for the tribe.

Numerous archaeological and sacred sites, burial grounds, and hunting trails show that the Timbisha Shoshone have lived in the Death Valley area for thousands of years. Despite this evidence, foundation of the National Park in 1933 meant the expropriation of the tribe. For decades the Timbisha have been without a home on their traditional homeland.

The tribe was federally recognized in 1983 but was not granted land for tribal needs. Since 1994 the Timbisha have actively worked to reclaim a land base. Senator Inouye's bill restores a modest amount of land to the Timbisha.

The bill puts 7,500 acres of land into trust for the Timbisha Nation.

Three hundred acres are to be located at Furnace Creek, within Death Valley National Park. This land will be used as a residential area for Timbisha tribal members, 45 of whom currently live near the Creek. Additionally, the tribe will use this parcel of land to establish a Timbisha Shoshone Tribal Museum and Cultural Center.

An additional four parcels of Bureau of Land Management land, totaling 7,200 acres, located in both California and Nevada, will also be placed in trust for the tribe.

These parcels of land will allow the 284 members of the tribe to pursue their goals of establishing housing, government and administrative facilities, cultural facilities, and sustainable economic development for themselves and their families.

The bill formally recognizes the contributions made by the tribe to the history and culture of the National Park and surrounding area. In addition to allowing the tribe to establish a tribal museum and cultural center within the Park, the bill allows the tribe to provide guided tours.

The Timbisha Shoshone have an immense attachment to the desert. The austere landscape in and around Death Valley has been the tribe's source of inspiration for countless generations. It is time to rectify the loss suffered by the Timbisha with restoration of their right to live on their ancestral homeland. A permanent land base is the tribe's right.

STATEMENT OF DONALD J. BARRY, ASSISTANT SECRETARY FOR FISH, WILDLIFE, AND PARKS, DEPARTMENT OF THE INTERIOR, BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS, CONCERNING S. 2102, A BILL TO PROVIDE FOR THE ESTABLISHMENT OF A HOMELAND FOR THE TIMBISHA SHOSHONE TRIBE INSIDE AND OUTSIDE DEATH VALLEY NATIONAL PARK AND FOR OTHER PURPOSES.

March 21, 2000

Thank you for the opportunity to present the Department of the Interior's views on S. 2102, a bill to provide a land base, or homeland, for the Timbisha Shoshone Tribe inside and outside Death Valley National Park. The Department supports this bill, with amendments, as it would provide a comprehensive integrated plan to establish a permanent homeland for the tribe sufficient to meet its needs into the future.

For thousands of years, the Timbisha Shoshone Tribe has lived in its ancestral homelands in the Mojave Desert, much of which is now in Death Valley National Park. The Timbisha are integrally tied to this land. Since 1850 the Timbisha have been dislocated from this land, first by homesteaders and ranchers, and later by mining interests. In 1933 President Hoover established Death Valley National Monument by executive proclamation under the Antiquities Act. The order creating the Monument was silent on the question of the Timbisha Shoshone land tenure. To address this situation, the National Park Service and the Bureau of Indian Affairs entered into an agreement to establish the Timbisha Shoshone village and to construct adobe residences in the Furnace Creek Area of the Monument. Unable to continue caring for their land within this unit of the park system, and with limited economic opportunities in the area, many Timbisha

families left the area. Today, about 50 tribal members live in seven adobe residences and eleven mobile residences at Furnace Creek.

In 1994, as part of the California Desert Protection Act, Congress recognized the hardships the Timbisha have endured by requiring the Secretary of the Interior to study and identify lands that would be suitable for a reservation for the Timbisha Shoshone Tribe. A suitability study was conducted on a government-to-government basis with representatives of the Timbisha Tribe and the Department of the Interior. This joint federal-tribal negotiating team developed a comprehensive plan to establish a homeland for the tribe. S. 2102 would implement the recommendations of this plan. The Department of Interior is currently preparing a legislative Environmental Impact Statement which will analyze the potential environment effects of this proposed land transfer.

S. 2102 would transfer five parcels of land, which contain 7,540 acres, in trust to the Timbisha Tribe. These parcels would constitute a discontiguous reservation for the tribe. This is appropriate, given the desert environment in which essential resources like water are scarce and separated by vast distances. The existence of mining claims, the availability of infrastructure such as roads, power, and other services, and the fact that much of the land in this area has special resource designations, have resulted in the identification of several parcels to meet tribal needs, rather than a single contiguous parcel. In addition, a discontiguous reservation mirrors the way the Timbisha Shoshone people historically used their ancestral homelands, which covered more than eleven million acres. They used highlands during the hot summers and the valley floors in the cooler winters while drawing on a wide range of resources for sustenance. The parcels identified in S. 2102 as the

tribe's proposed reservation represent many of the historical areas used traditionally by the tribe

S. 2102 would transfer into trust for the benefit of the Timbisha Shoshone approximately 300 acres of Furnace Creek in Death Valley National Park, and 7,240 acres of land close to the park, located in California and Nevada and currently under the administration of the Bureau of Land Management (BLM). The bill also authorizes the purchase of two additional properties now in private ownership, to be taken into trust for the tribe. Each of these lands is located within the ancestral homeland of the Timbisha Shoshone Tribe, and each is of particular historical, cultural, or spiritual significance.

Over 95 percent of the acreage to be taken into trust for the Timbisha is presently under the jurisdiction of the BLM. The acreage is to be transferred in four parcels, which are located in Centennial, California; Death Valley Junction, California; Scotty's Junction, Nevada; and Lida, Nevada. While the current California Desert Conservation Protection Plan specifies that the Centennial and Death Valley Junction parcels are to be retained by BLM, the BLM now believes, based on its analysis of the current uses and resource values, that these parcels are suitable for legislative transfer to the tribe. Each of the 2,800 acre parcels located in Scotty's Junction and Lida, Nevada, have been classified as suitable for disposal in BLM management plans. The parcel at Scotty's Junction is suitable for tribal residences, or development. The parcel at Lida, Nevada, is an area that once had five traditional Timbisha villages, and continues to be used by the tribe. It is also suitable for residences and economic development. The 640-acre parcel at Centennial, California, lies to the west of Death Valley National Park, and would preserve a tribal presence on the

western edge of its ancestral homelands. It is suitable for residences. The 1,000-acre parcel at Death Valley Junction, California, is located at the main entrance to the park and is suitable for economic development and residences.

S. 2102 also authorizes the acquisition of the privately-owned 2,430-acre Lida Ranch, in Lida, Nevada, and the 120-acre Indian Rancheria Site, in Saline Valley, California.

The land that is central to the Timbisha's present-day existence is the 300-acre parcel at Furnace Creek, Death Valley National Park. This site is the current home of the Timbisha, and has the potential for modest economic development. This potential is recognized by Section 5(b)(2) of S. 2102, which would allow the Timbisha to construct and operate a small to moderate desert inn and a tribal museum on this land. S. 2102 also allows for the construction of residences and a community center at Furnace Creek, while recognizing the need to ensure the protection of national park resources.

Section 5(d)(4) of S. 2102 authorizes the National Park Service and the Bureau of Land Management to designate certain areas for nonexclusive special uses subject to Federal law. This section creates a unique partnership between the Timbisha Shoshone and federal land managers and encourages collaborative efforts to learn from the tribe's traditional knowledge of the area. These areas would remain in federal ownership, and applicable laws relating to wilderness, endangered species, and cultural resources would remain in force. Tribal members would use these areas for low-impact, ecologically sustainable, traditional practices pursuant to jointly established management plans. The

allowed traditional uses of the tribe would not include the taking of wildlife within Death Valley National Park.

Two special use areas are located near the proposed tribal trust land at Furnace Creek in the park. S. 2102 provides for a buffer zone of approximately 1,500 acres between Highway 190 and the trust parcel and between the trust parcel and the inholding development at Furnace Creek. This area would be managed by the National Park Service to ensure that the tribe is able to conduct its community affairs without undue disruption from the public. The Mesquite Use area of approximately 2,000 acres surrounds the western and southern boundaries of the trust parcel at Furnace Creek. The tribe would use this area for processing mesquite, a key element of their traditional diet, and manage the area using traditional plant management practices. This area would be managed subject to a cooperative agreement between the National Park Service and the tribe for the traditional uses of mesquite in a sustainable fashion.

The proposed special use area called the Timbisha Shoshone Natural and Cultural Preservation Area encompasses nearly one-half of Death Valley National Park. It is located primarily within the Park, although it includes a small area in California managed by the BLM. We support this designation as it recognizes the tribe's contributions to the history, culture, and ecology of the region and the inherent value of the tribe's continued presence in the Park. Consistent with such designation, the Secretary would be directed to permit the tribe's continued use of park resources for traditional tribal purposes, practices and activities, as defined in a jointly established management plan. Within this large area, two smaller areas would be designated for special tribal uses, one at Wildrose,

and the other at Hunter Mountain. Portions of these areas are not designated wilderness areas. Wildrose was an area that the Tribe used for seasonal residence to escape the summer heat, and for the harvest and processing of pinyon nut which continue to be important in the tribal diet. The bill provides for a tribal resource management office, a garage and storage facility at Wildrose within the area of the existing ranger station, and for traditional use camps at areas agreed to by the tribe and the National Park Service. Hunter Mountain is an important ceremonial area containing burials and sacred sites. The bill provides for traditional use camps at Hunter Mountain, also in non-wilderness locations agreed to by the tribe and the National Park Service.

In addition, the bill provides for access by tribal members to the park without fee admission payment, government-to-government agreements to establish cooperative partnerships and protocols for the review of planned development within the park. The agencies would be authorized to provide training and technical assistance to the tribe, and to provide preferential hiring to qualified members of the tribe.

S. 2102 provides that all of the parcels taken into trust would constitute the initial reservation of the Timbisha Shoshone Tribe under the Indian Gaming Regulatory Act. Consequently, class II gaming, commonly known as bingo could occur on the parcels if the state in which the parcel is located permits such gaming and the tribe has a gaming ordinance approved by the National Indian Gaming Commission. Class III gaming, commonly known as casino gaming, can occur on these parcels only if (1) class III gaming is permitted by the state, (2) the tribe has a gaming ordinance approved by the National

Indian gaming Commission, and (3) the tribe and the governor of the state within which the parcel is located successfully negotiate a gaming compact.

The effect of this would be to require the Timbisha to negotiate a compact with either California or Nevada if it wished to conduct class III gaming on lands located in those states. The Timbisha Shoshone Tribe would be able to conduct class II gaming without federal approval and the concurrence of the governor of the state in which the Indian lands are located if the State otherwise permits such gaming by any person or organization and the Timbisha Shoshone Tribe has an ordinance approved by the National Indian Gaming Commission.

S. 2102 also provides for a prohibition on gaming on the Furnace Creek parcel within Death Valley National Park. This prohibition is consistent with the agreement the Department negotiated with the Timbisha Shoshone Tribe during our study process. Both the Tribe and Department agreed that gaming on the Furnace creek parcel would be inconsistent with tribal and park purposes and values. We are recommending that Section 7(c) of S. 2102 be amended to make it clear that the Furnace Creek parcel would not be considered part of the Timbisha Shoshone's "initial reservation" for purposes of gaming under the Indian Gaming Regulatory Act.

The Department strongly supports S. 2102. The bill would create a foundation for the tribe to live in a modern community and to exercise its right to self-determination within the boundaries of the largest national park in the "lower 48." The bill also recognizes that the interests of the tribe and the National Park Service would be enhanced by recognizing

their coexistence on the same land and by establishing partnerships for compatible land uses. Quite simply, we believe that this bill would create the foundation for a better park—a park in which the contributions of the tribe to the history, culture and ecology of the region are recognized and interpreted in ways not now possible.

At the same time, we believe that S. 2102 provides sufficient safeguards that ensure that the resources of Death Valley National Park will be protected.

The Timbisha Shoshone Tribe deserves a homeland within which it can exercise its inherent right of self-governance and provide a decent standard of living for its people. The American people will benefit as the human history of Death Valley National Park becomes more fully expressed through a renewed and vibrant tribal presence. And finally, this bill establishes a firm foundation for cooperative, collaborative, partnerships among governments which can only enrich our American heritage.

We recommend amendments to the bill on issues relating to wildlife and gaming prohibitions on land within Death Valley National Park, Public Law 280, and on federal reserved water rights. The Department's amendment on wildlife clarifies that Timbisha traditional purposes, practices, and activities in the special use areas that would be created in the park does not include the taking of wildlife. The Department's amendment on Public Law 280 would clarify that § 7(d) applies only to the trust lands located in California proposed for transfer by S. 2102. The Department and the Timbisha Shoshone are currently working on issues related to federal reserved water rights including the possibility of quantification at each parcel to be taken into trust for the tribe. We will continue to

work on these issues in consultation with the State of Nevada and California and will provide a proposed amendment once these negotiations are completed. We understand that the Department of Justice is also reviewing this bill and may provide its views on provisions dealing with law enforcement, water rights, and other issues in the near future. We will be happy to work with the committee staff on developing this language.

This concludes my testimony. I would be happy to answer any of your questions.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240
MAY 1 2000

Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510-6252

Dear Mr. Chairman:

On behalf of the Department of the Interior, we are submitting the following amendments as was noted in our March 21, 2000, testimony on S. 2102. The first amendment clarifies that the traditional practices in the special use areas of the park section of the bill does not include the taking of wildlife. The second amendment, clarifies that the "initial reservation" for purposes of the Indian Gaming Regulatory Act does not include the Furnace Creek parcel which is located within the boundaries of Death Valley National Park. The third amendment will be submitted by the Department of Justice to address the Administration's concerns regarding tribal lands to be located in California. The fourth, fifth and sixth amendments provide for a quantification of water at each of the five parcels proposed for transfer and describe the attributes of those water rights.

In addition, we are submitting a complete set of all the maps referenced in the legislation in an 8 1/2 x 11 format and poster-size GIS maps of the land transfer parcels and the special use areas. Please note that only one map, Map # 8 entitled "Furnace Creek trust parcels and cooperative agreement areas," is provided for the "Mesquite Use Area" and for the "Buffer Area" described in the proposed legislation.

In our written testimony, we provided the acreage amount of 1,500 acres for the buffer area to be inserted in Section 5(e)(4)(B), page 12, line 19 of S. 2102.

The Office of Management and Budget has advised that from the perspective of the Administration's program, there is no objection of the submission of this report.

We appreciate your consideration of these amendments.

Sincerely,

Donald J. Barry

Assistant Secretary for
Fish and Wildlife and Parks

cc: Honorable Daniel K. Inouye
Ranking Minority Member

Department of Interior Proposed Amendments to S. 2102 a bill "To establish a Timbisha Shoshone Homeland"
Rev. 5/1/00

1. Proposed clarification of "traditional practices" language in the special use areas of the park section of the draft bill.

   Section 5(e)(3) Page 11, line 24, after "shall not" **insert**

   "include the taking of wildlife and shall not"

2. To clarify that the Furnace Creek trust parcel within the park is not part of the tribe's "initial reservation" for purposes of gaming under the Indian Gaming Regulatory Act.

   Section 7(c), Page 17, line 1, replace with the following:

   "The lands taken into trust for the Tribe, except for the Park land described in section 5(b)(1)(A), shall be considered to be the Tribe's initial reservation for purposes of section 20(b)(1)(B)(ii) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(B)(ii))."

3. The Department concurs with the substitute amendment for section 7(d) that is recommended by the Department of Justice.

4. To clarify that the transfer of land includes the following quantified water rights.

   Section 5(b)(1), page 6, line 3, after "following lands" insert:

   "and water"

5. To provide a quantified ground water right for each parcel to be transferred in subsections 5(b)(1)(A),(B),(C),(D),and (E) the following language should be inserted at the end of the description for each parcel:

   Section 5(b)(1)(A) Furnace Creek, page 6, line 8, after "Map #1 and dated December 3, 1999" insert:

   "together with 92 acre feet per annum of surface and ground water for the purposes associated with the transfer of lands."

   Section 5(b)(1)(B) Death Valley Junction, page 6, line 24, after "Map # 2 and dated December 3, 1999" insert:

   "together with 15.1 acre feet per annum of ground water for the purposes associated with the transfer of lands."

Section 5(b)(1)(C) Centennial, page 7, line 4, after "Map # 3 and dated December 3, 1999" insert:

"together with an amount of ground water not to exceed 10 acre feet per annum for the purposes associated with the transfer of lands."

Section 5(b)(1)(D) Scotty's Junction, page 7, line 9, after "Map # 4 and dated December 3, 1999" insert:

"together with 375.5 acre feet per annum of ground water for the purposes associated with the transfer of lands."

Section 5(b)(1)(E) Lida, page 7, line 14, after "Map # 5 and dated December 3, 1999" insert:

"together with 14.7 acre feet per annum of ground water for the purposes associated with the transfer of lands."

6. Section 5(b)(2), page 7, line 15, insert new subsection (2) and renumber the current subsection (2) and subsequent subsections:

"(2) WATER RIGHTS--The priority date of these federal water rights set forth in subsections 5(b)(1)(A),(B),(C),(D), and (E) shall be the date of the enactment of this Act. These water rights shall be subject to existing state and federal water rights. These water rights shall not be subject to relinquishment, forfeiture or abandonment.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240
March 21, 2000

Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
Washington, DC 20510-6252

Dear Mr. Chairman:

This letter sets forth the views of the Department of the Interior on S. 2102, a bill to provide a land base, or homeland, for the Timbisha Shoshone Tribe inside and outside Death Valley National Park. The Department supports this bill, with amendments, as it would provide a comprehensive integrated plan to establish a permanent homeland for the tribe sufficient to meet its needs into the future.

For thousands of years, the Timbisha Shoshone Tribe has lived in its ancestral homelands in the Mojave Desert, much of which is now in Death Valley National Park. The Timbisha are integrally tied to this land. Since 1850 the Timbisha have been dislocated from this land, first by homesteaders and ranchers, and later by mining interests. In 1933 President Hoover established Death Valley National Monument by executive proclamation under the Antiquities Act. The order creating the Monument was silent on the question of the Timbisha Shoshone land tenure. To address this situation, the National Park Service and the Bureau of Indian Affairs entered into an agreement to establish the Timbisha Shoshone village and to construct adobe residences in the Furnace Creek Area of the Monument. Unable to continue caring for their land within this unit of the park system, and with limited economic opportunities in the area, many Timbisha families left the area. Today, about 50 tribal members live in seven adobe residences and eleven mobile residences at Furnace Creek.

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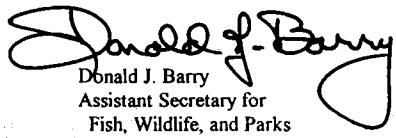
rights including the possibility of quantification at each parcel to be taken into trust for the tribe. We will continue to work on these issues in consultation with the State of Nevada and California and will provide a proposed amendment once these negotiations are completed. We understand that the Department of Justice is also reviewing this bill and may provide its views on provisions dealing with law enforcement, water rights, and other issues in the near future. We will be happy to work with the committee staff on developing this language.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,



Donald J. Barry
Assistant Secretary for
Fish, Wildlife, and Parks

cc: Honorable Daniel K. Inouye,
Ranking Minority Member

Timbisha Shoshone Tribe

TESTIMONY FOR THE SENATE COMMITTEE ON INDIAN AFFAIRS

COUNCIL

Pauline Esteves
Chairperson

Leroy Jackson
Vice-Chairman

Grace Goad
Secretary/Treasurer

Madeline Frank
Council Member

Tom Jackson
Council Member

STAFF

Barbara A. Durham
Administrator

HONORABLE VICE-CHAIRMAN INOUYE, my name is Pauline Esteves. I am the Chairperson of the Timbisha Shoshone Tribe in Death Valley, California. In this capacity I have served as the chief spokesperson on the Tribal negotiation team.

Today, I bring you and all the members of your Committee greetings from my people. They are intensely interested in the matter before you. They are at home anticipating that in your wisdom you will approve the legislation being proposed by the Department of Interior and the Tribe to establish a land base for the Timbisha Shoshone people

Personally, I am delighted to be here today. I cannot find words to express my excitement. I have waited all my life for the moment when my Tribe could come before the U.S. Congress and ask the federal government to restore my people's ancestral land.

I have been waiting sixty-seven years, since 1933, when President Hoover seized our land and established the Death Valley National Monument. At that time, he made no provision for the Tribe he displaced--even though we had been there for

generations before Euro-Americans had set foot in the area. We were treated as though we did not exist. We were anonymous, invisible. While 40-50 of us clung to our homeland and refused to go, and Have been there ever since, the vast majority of our 250+ members dispersed to various places in Nevada and California. . Alone, without the support and security of their families and their people, they were forced to break their ties and make it on their own.

Today, I am delighted to be able to sit before you as one of the last remaining elders and see this historical wrong corrected by Congress. I am delighted because in my remaining years, I can look forward to seeing our sons and daughters being finally granted a legal and permanent presence in our homeland. We will have land where we can live our lives as a healthy self-governing and financially self-reliant community. We will once again have a homeland where we can teach our young people the Timbisha Shoshone language and the Timbisha Shoshone cultural traditions and values. At last, we can save our unique way of life from extinction.

Since the passage of the California Desert Protection Act in October 1994, we have been in negotiations with the Department of Interior. We extend our thanks to Senator Feinstein who sponsored this Act, and to you personally Senator Enouye, and to other members of your Committee and Congress who passed the legislation and included Section 705 (b). Because of this Act and the special section which called for the study, in consultation with the Tribe, of the suitability of lands

for a reservation for the Tribe, we were given the opportunity to sit down as equals with the National Park Service , the Bureau of Land Management, and other agencies and individuals in the Department of Interior. We were able "to work things out by talking things through". This process gave us an opportunity to be visible, to be a people with a past, present and future, a people with rights that deserve respect, recognition and satisfaction.

Sitting together, sovereign government speaking to sovereign government, we had the opportunity to fashion a comprehensive agreement that both the Tribe and the Department fully support. Today, after resolving our differences and coming to a mutual understanding, we come before you not only with one voice but with a strong, mutually respectful relationship between neighbors. Thanks to you and the legislation, we have come up with an agreement, not crafted by people in Washington but by the people, at the local level, who will have to live with its terms and its consequences. Thanks to you and the legislation, we have come today, not with disagreements between us that you have to sort out, but instead with a finished product which the partners to the agreement find workable.

What you have before you, in the form of the proposed legislation, is based on an agreement in which all the component parts fit together and are internally reinforcing. Each element must go with all the others.

The Timbisha Shoshone Tribe and the U.S. Department of Interior are jointly proposing:

1. A tribal land base located in the Tribe's historical living areas, both inside and outside the Death Valley National Park. Because of the conditions in Death Valley, no one area could meet all the primary needs of the Tribe and the federal government. As a result, the parcels are are located in different areas and are not contiguous.

2. We are proposing 300 acres in of trust land in Furnace Creek. As you know Senator, Furnace Creek is the commercial and administrative center of the Park. This location is today the only suitable area to create a viable residential community for the Tribe--the only location in the homeland that has the infrastructure (such as, roads, utilities, water, schools) and other amenities tribal members need to take care of their family's basic necessities.

3. This location in Furnace Creek is important in yet another respect. In Furnace Creek, the Tribe has the opportunity to create income by developing decent and appropriate jobs for our people--at the same time we can provide unique culturally based educational experiences and important services to people visiting the Park.

4. In addition to the Furnace Creek location, we are proposing four other parcels of federal land and several parcels of private land identified for **potential** economic development. These parcels are located along roads which lead in and out of the

Park. Additionally, these parcels have historical significance to the Tribe. The private parcels identified in the report were all once in tribal member ownership and lost as a result of white mans advancement into our Homeland.

5. We have thought about the present. We have also looked forward far into the future. Therefore it is important for the Tribe to have land beyond Furnace Creek upon which to grow and expand. The four federal parcels and private lands identified by the Tribe in its proposal will meet the Tribe's future needs. These parcels outside the Park will prevent overcrowding and adverse environmental impacts to Furnace Creek.

6. Finally, I want to point out that the legislation provides not only a permanent land base for the Tribe. It provides a complementary way the Tribes can establish a presence. The proposal provides opportunities for the Tribe and Tribal members to engage in cooperative activities and enter cooperative agreements with NPS and BLM to share responsibility for protecting and enhancing the natural and cultural resources of the Park and surrounding areas. We can look forward to once again fulfill our historical responsibility of stewardship. Once again we can be active parts of the ecological equation, tending the springs, nurturing the native vegetation, and protecting the endangered wildlife.

In closing, I thank you for the passing of the California Desert Protection Act and including the provision which called for the creation of a land base for the Timbisha people in it ancestral

homeland. We invite you to take our "win/win" agreement and transform it into legislation that will make it a reality. Thank you very much for the time to make this presentation.

Timbisha Shoshone Tribe

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Administrator

TESTIMONY BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS ON MARCH 21, 2000

Honorable Vice-Chairman Inouye, and members of the Senate Indian Affairs Committee, my name is Barbara Durham. I am a Timbisha Shoshone Tribal member and the Tribal Administrator of the Timbisha Shoshone Tribe of Death Valley, California.

Today is a long awaited occasion – one that I am personally proud to be involved with. I am a member of the Timbisha Land Restoration Committee, and have been involved in the government-to-government negotiations since the passage of the California Desert Protection Act in October, 1994. For six years, I sat across the table from the National Park Service and Bureau of Land Management representatives and other agencies involved. My people have been waiting for a resolution to our living situation in the Death Valley National Park for decades.

With the return of some of our aboriginal lands inside and outside the Park, our Tribe for the first

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time will be able to revitalize our lost traditions and way of life.

The lands proposed for trust status possess an internal coherence and interdependence, and therefore represent what is historically and traditionally significant to the Tribe. These lands also offer the prerequisite conditions for viable housing and community services, employment and economic development strategies, and communal use.

Without land for these many years, we have had no identify. With land, we hope to preserve, protect and perpetuate our culture, which is in serious danger of extinction unless Congress acts to take lands in trust for the Tribe, in our ancestral homelands. Finally, after so many years without land, we will be in a position to provide homes to those tribal members who are "lost" and "homeless".

Today, we look forward to once again playing an active and responsible role in protecting an environment that has suffered from our long absence. The Tribe is the first authentic Environmental Protection Agency. We are the first authentic Wilderness Society, Audubon Society, and Sierra Club. To the Timbisha, the land and all that resides upon it are sacred. It is the mandate of the Tribe to ensure the protection, preservation, and enhancement of these lands and resources.

The proposed legislation contemplates involvement by the Tribe with existing land management agency personnel. Many areas identified for cooperative agreements are places that are important to preserving tribal traditional knowledge of the land, animals, plants and medicines. We will enter into cooperative agreements with the Park, BLM, and the FWS to carry on the Tribe's traditional resource management practices such as caring for mesquite groves, harvesting pine nuts, clearing natural springs, gathering plant materials and protecting burial and cultural sites. This will also provide the federal agencies with an opportunity to learn from the Tribe's extensive traditional knowledge of this area and to enhance the conservation and protection of these resources.

Without land, our tribe has been unable to progress to the 21st century. To this day, we have been prohibited from building any homes or other physical structures that have foundations in the ground. The lack of a secure land tenure has impeded the Tribe's ability to construct new stick homes, resulting in substandard housing conditions (members currently live in mobile homes or one of the historical adobe homes). Tribal administration and community facilities are virtually nonexistent (our offices are two mobile homes sitting next to one another). Lack of employment and housing in the Death Valley area has resulted in the majority of the Tribe's members living in nearby towns and urban centers. The

uncertainty of a land base – has impeded the Tribe's ability to provide even the most basic tribal government services and to receive BIA, HUD and environmental protection grants and funds.

According to the proposed legislation, the Tribe will build 50 homes and a tribal administrative facility in the Furnace Creek area. We will work with the Park Service to create a sustainable development design plan for these facilities that will have minimal impact on water and natural resources and on the desert setting.

Also according to the proposed legislation, the Tribe will be able to engage in modest, low-impact visitor related economic development. This will ensure the viability of our community by providing decent-paying local employment opportunities for our members.

Economic development in the Park (in the Furnace Creek area-where the Tribal headquarters is located) will consist of a tribal museum. Here, the Tribe will be able to tell its own story to the millions of visitors to the Park. The museum will include a small gift shop. There will also be a medium sized Inn reflecting Timbisha history and offering visitors a cross-cultural experience that can only be provided by the first inhabitants of this area. Tribally guided cultural heritage programs including hikes, lectures and tours may also be provided.

We will use revenues generated by the Tribe's economic enterprises to underwrite some of the costs of protecting, preserving, conserving and enhancing the valuable desert resources of the area. This will reduce the need for federal dollars. The Tribe is committed to employing local people, subcontracting with local vendors and suppliers, banking with local institutions, and cooperating with local county governments to ensure that development has the greatest "multiplier effect" on the surrounding economies.

What I have described in this presentation is contained in the Department of Interiors Secretarial Report commissioned by Congress as part of the California Desert Protection Act. This Report was produced jointly by the federal agencies and the Timbisha Shoshone Tribe. The content is a product of government to government negotiations that extended from May 1995 to October 1998. The "win/win" agreement hammered out between the agencies and the Tribe is contained in the legislation before you for your consideration and approval.

In conclusion, I want to say that I am hopeful that you pass this legislation in its entirety. It is, as I said, a product of lots of discussions, creative work and tradeoffs.

I personally will take great satisfaction in the legislation passing--not only because I was an integral

part of this very fascinating government to government negotiation, but because I will live there and take pleasure in seeing my people get what is rightfully theirs. I will have the pleasure of seeing my daughter and my new granddaughter know they finally have a home in their homeland. They will have a home and productive employment and no longer have to move away like so many others have for so very long. All of us will be able to live as families, extended families, and as a tribal community like our ancestors did for many hundreds of generations before them. I am sure you can understand the depth of my emotions today. Thank you for allowing me to come before you today.

Testimony Before the Committee on Indian Affairs, U.S. Senate, March 21, 2000 on S. 2102, the Timbisha Shoshone Homeland Act

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My name is Catherine Fowler, and I am an anthropologist with the University of Nevada, Reno, as well as a member of the Board of Trustees of the National Museum of the American Indian, Smithsonian Institution. I am hereby testifying in favor of S. 2102, a bill to provide to the Timbisha Shoshone Tribe a permanent land base within its aboriginal homeland, in Death Valley National Park, CA, and vicinity. As one who has worked on contract for the National Park Service and for the Tribe on this matter, I believe I am familiar with the historical context in which this Act is proposed, and will do my best to answer any questions that the Committee may have. I feel that this bill will right a long-standing wrong done to this Tribe by providing them with trust lands in an area that they and their ancestors have called home for countless generations. I sincerely believe that the Timbisha people will be responsible stewards of their lands, and of the lands within Death Valley National Park proposed for cooperative management between them and the National Park Service. My work with the elders of the tribe has documented their extensive knowledge of the ecology of the region, and of ancestral and very sound approaches to land and resource management. Their sincere interest in all management issues involving this region stem from a deep spiritual commitment to the land and its resources. However, given that they have been prevented from actively participating in ancient resource management practices because of conflicting national policies, they and we are in danger of losing this valuable information. In order for the younger generations of the Tribe to carry forward, to continue to treat the land with respect, and to demonstrate their stewardship, they need to begin to interact with these lands again in the manner taught by the Old Ones. This is knowledge that should not be fossilized in books, but be part of a living tradition, in keeping with the goals of all national cultural and historic preservation legislation, as well as stated goals of the National Park Service to make our national heritage lands also places of contemporary human significance.

Explorers, emigrants and early scientists all agree that the Timbisha people and their closest relatives occupied the lands now incorporated within Death Valley National Park, as well as surrounding areas, from roughly Ash Meadows on the east to Owens Valley on the west, and from the vicinity of Lida, NV on the north to Shoshone, CA on the south–some 15,000 sq. mi. in all.. Within these lands they practiced a pattern of seasonal transhumance, taking them from semi-permanent camps on the floors of the valleys in winter and spring to additional semi-permanent locations in the adjacent mountains in summer and fall (see Attachment #1). This pattern was developed through the centuries in response to the difficult climatic conditions in the region, as well as to the pattern of naturally occurring food resources, such as mesquite and pinyon, and small and large game animals. Two of these camping areas joined in this pattern were Timbishaka, literally "at red ochre," the area near present-day Furnace Creek, and Paatsa, one of

several springs in the upper Wildrose mountain area. S. 2102 provides 300 acres of land at the former, and camping and resource access at the latter, in keeping with this old tradition. Other sites named in the bill, such as those on Hunter Mountain, and at Centennial, as well as Death Valley Junction and Lida, are linked in similar patterns and are far from arbitrary choices on the part of the Tribe. They reconstruct as closely as is now possible some of that ancient seasonal round that provided the spiritual foundation for the daily lives of the people. Likewise, the lands specified for co-management and special use are all places of deep historical and spiritual significance to the people: Saline Valley for its healing hot springs and historic ranches, Hunter Mountain and Wildrose for their pinyon groves, springs, hunting grounds and historic camps, etc.

Timbisha Village itself, presently a 42 acre area, is actually the 4th historic homesite of the Timbisha people in the vicinity of Furnace Creek. And, there are several older archaeological sites in the area that document an earlier occupation. The present village dates to 1936, when 11 adobes were constructed as a joint effort of the Bureau of Indian Affairs and the National Park Service. Of these, 7 remain today, along with additional non-permanent housing for the expanded community. Without title to these and additional lands, people cannot have adequate permanent housing or any other structures that will allow for economic or cultural development. Without title to these lands, the people cannot control any aspect of their future.

When the Timbisha Tribe gained federal recognition in 1983, the status was granted without trust lands, even excluding the 42 acres at Furnace Creek.. As of 1994, the last time I checked, all tribes obtaining federal recognition before the Timbnisha Tribe had land. Of those obtaining recognition since the Timbisha, three were without land as of August 1994. Of the three, two were about to obtain land through settlements with their respective states (Wampanoag, MA; Mohetan, CT), and the third (San Juan Southern Paiute, AZ) were involved in negotiations with another tribe (Navajo) for lands. I believe that the latter negotiations are still going on. I do not know the final disposition of the former two cases, or if federal status has been granted to Tribes without lands since 1994. But the Timbisha situation appears to be quite unique, and provisions of the Desert Protection Act of 1994 were in part designed to remedy that–to find a suitable homeland for the Tribe.

In the early years after the establishment of Death Valley National Monument in 1933, there were some economic opportunities for the Timbisha people within the area. They had earlier helped to build Scotty's Castle, and now would work on the Furnace Creek Inn. They worked at Furnace Creek Ranch, at the date orchard, and over the years in park maintenance, and for the private corporations that have operated the tourist facilities within the Monument and Park. However, in recent years, those opportunities have become fewer, and the lack of jobs has sent many individuals to surrounding areas to obtain employment and therefore residence. However, all individuals have remained tightly tied to the lands in Death Valley, continue to come home to visit, and express interest in returning if means for economic development can be found. Compatible tribal enterprises, such as eco-tourism and tourist services, a museum and cultural center, and the expansion of tribal offices and headquarters would be the needed impetus for their return. The ability to gain permanent housing for the present residents, as well as to expand permanent housing units for returning members, and room for future growth would be provided through this Act, not only at Furnace Creek, but at the other sites requested surrounding the Park.

The Tribe is fully cognizant of the need for enterprises within the Park to be fully compatible with Park policies, and it favors this orientation out of respect for the land and the natural beauty of the region.

In the period before the establishment of Death Valley National Monument, the Timbisha people practiced a type of land management that was gentle yet effective (see Attachment #2). They pruned the mesquite trees on the valley floor, both to provide wood in a scarce wood environment, and to foster the growth of the mesquite beans, a major staple food. They kept the groves open and free of undergrowth, which in turn lead to the germination of seedling trees and prevented the buildup of sand which now engulfs many of the trees. Similarly, they pruned the pinyon trees in the mountains after harvesting the nuts, a second staple food, which lead to more cone development and better overall tree health. They also burned old growth cattails and tules in and around open water sources and willows along stream banks, which opened up water sources for waterfowl and wildlife and allowed the people to harvest various plants for food and manufactures. They burned several acres/year to encourage the growth of native tobacco, and various seed plants, and they trimmed and tended leafy plants to encourage new growth, which in turn promoted biodiversity. They also were very careful in their game hunting practices, especially for bighorn sheep, and carefully tracked both the numbers and movements of large game animals and herds.

When Death Valley National Monument was created in 1933, some of the aboriginal subsistence practices of the Timbisha people were allowed to continue for a few years. But by the 1940s, with stiffer national policies, all hunting, long-term camping, burning, wood collecting, trimming and pruning ceased. This virtually paralyzed the people, completely changing their lives. As elders, including her mother, remarked to Pauline Esteves at the time they heard of the ban on former subsistence practices: "What we ought to do is get all our hunters and let them go up to wherever the mountain sheep are and kill the whole bunch of them...and then we women would go up there and set fire to the forest where the pine nuts are. Get rid of everything. And then see what they'll do to us. ... Why don't they just come and just kill us off? They can't just be saving what is part of us. The bighorn sheep and all the other things are just part of us, but they are protecting them. So they said we had no meaning to the land at all. Therefore, we were useless, and they ought to come by and just kill us off." The Timbisha people definitely have meaning to the land, and they are a significant part of its past and future.

I believe that these indigenous management techniques are extremely important to the health of the natural environment of Death Valley. They also would be of considerable interest to park visitors, and very instructive to younger generations of land management ethics. It is proposed in the Act that the Tribe and the National Park Service cooperate in illustrating these aspects for the visitor, as well as other areas where the Timbisha people have unique knowledge of the region to share. This will enhance the visitor experience, as will their direct contact with the Timbisha people as they tell their own story.

In sum, I feel that this legislation is highly significant, both to the future of this Tribe as well as to the betterment of us all. It rights a long-standing wrong, fosters the maintenance and cooperation of two government entities (the Tribe and the National Park Service), will benefit the lands and resources of Death Valley National Park, and enhance the visitor experience to the area.

I believe that there is everything to gain by the passage of this bill, and nothing to loose, and I urge you to give it the most serious consideration and highest priority.

CATHERINE S. FOWLER
ATTACHMENT #1

The Cambridge Encyclopedia of HUNTERS AND GATHERERS

Edited by RICHARD B. LEE AND RICHARD DALY

CAMBRIDGE
UNIVERSITY PRESS

CATHERINE S. FOWLER
ATTACHMENT #1

I.I.9

The Timbisha Shoshone of Death Valley

CATHERINE S. FOWLER University of Nevada, Reno

Introduction

The Timbisha Shoshone live within Death Valley National Park, California. Their name is derived from one of their winter villages (*timbisiika*: "(at) red ocher") (Dayley 1989:209). At the time of sustained contact in the 1840s, the Timbisha were part of a larger cultural/linguistic unit generally known as Panamint or Koso (Kroeber 1925, Thomas *et al.* 1986). In pre-contact times and into the 1940s, they were hunter-gatherers in one of the harshest environments in North America, the Mojave Desert. They were closely related in culture as well as language (Uto-Aztecan family, Numic branch) to various other Great Basin peoples, classically profiled by Steward (1938, 1955) as representing "family level" societies. Knowledge of their early lifeways is based on scant fieldwork, but with historical reconstruction a picture emerges of unique adaptations to a difficult region. Recently, this small group has been waging a vigorous campaign to gain reservation lands with which to develop economic self-sufficiency.

History

Timbisha traditions hold that the people were brought, by Coyote, to northern Death Valley during "The Time When Animals Were People." He carried them to Ubehebe Crater (*wose*: "cone basket"), a collapsed depression, and while he slept, they dispersed.

At the time of contact in the early 1800s, small family-based groups of Timbisha people lived in Death Valley and the adjacent environments. Their presence and activities were documented by early explorers, miners, and ranchers, and, after 1890, by scientists such as Coville (1892), Steward (1938), and Driver (1937).

Within Death Valley, gold and silver mining and borax processing were highly disruptive factors, requiring huge quantities of wood and water, scarce commodities in a desert. From the 1840s, miners appropriated the choicest springs, and began to deplete both large and small game. Woodcutting devastated pinyon pine and mesquite trees, both crucial to Timbisha subsistence.

Ranches, which began in the 1870s and 1880s at Grapevine Canyon and at Furnace Creek to feed miners, employed Timbisha people, and, together with the mines, encouraged their permanent settlement nearby. The Timbisha began gardening at this time, although there is evidence of its marginal practice prior to contact (Fowler *et al.* 1995).

Mining had diminished by 1910, and local non-natives looked to tourism for income. Furnace Creek Ranch became a tourist attraction owing to the attractive winter climate and the natural scenic beauty. Death Valley National Monument was established in 1933. Federal regulations forced Timbisha people living within the Monument area to abandon their remaining native subsistence activities and their seasonal movements on Monument lands.

Ecological setting

The Mojave Desert is a land of contrasts and extremes. There is a wide range in elevation within 50 km, from 94 m below sea level to 3700 m above, in Death Valley; and extreme aridity: annual precipitation approximately 114 mm, with some areas near zero and others, in the high country, near 1270 mm. Temperatures range from below −18°C in the high country in winter, to 54.5° C in the lowlands in the summer.

Population

Approximately 250 persons on the official Timbisha tribal rolls in 1995, with another 100+ persons claiming some type of relationship through broader Panamint kinship connections

Location

Aboriginal territory for Panamint Shoshone (including the Timbisha) was near 3,600,000 ha in the Mojave Desert (35°45' N to 38° N, and 116°15' W to 118°15' W). Timbisha portion roughly the eastern 1,200,000 ha.

These conditions pose hardships for the plants and animals of the region, but many of the species became uniquely adapted. Zonal patterns of plants correlate with geologic and soil features, some of which are alkaline, and most of which lack effective moisture. Each plant community has characteristic mammal, bird, and reptile populations. Small game is more common than large. Migratory waterfowl are present seasonally in fresh- and saltwater marshes. Many other species of birds are either residents or visitants. Common reptiles include large and small lizards, snakes, and the desert tortoise.

Economy

The Timbisha and other Panamint people hunted and gathered diverse species common to the Mojave Desert. They followed a seasonal round that took them from the valley floors to the high country of the surrounding mountains. In the springtime valleys they collected mesquite pods (*Prosopis glandulosa*), and processed the starchy pulp into meal. This was prepared in many ways and stored for other seasons. Annual and perennial seed-producing plants usually ripened in spring and early summer (Coville 1892, Steward 1938). Most were collected in special baskets, then ground to meal on flat stone metates, using hand stones (*mano*). Leafy greens, fleshy stalks, and tubers were also common spring foods (Coville 1892, Irwin 1980), as were growth tips and fruits of the Mojave Desert endemic, the Joshua tree (*Yucca brevifolia*). These foods were picked by hand or pried up with digging sticks, then boiled in baskets with hot stones or in pots placed directly on the fire. While women worked with these foods, men took small game in various habitats.

Summer and fall plant resources included the pinyon pine (*Pinus monophylla*), prized for its nuts, as well as several species of berries; also, the fruits and occasionally pads of cacti. Pine nuts followed mesquite as the second staple plant food to be massively collected and stored. Summer, fall, and winter game included bighorn sheep, taken in the high country by single hunters stalking or from blinds, or occasionally by communal efforts. Deer were rare. Marmots, ground squirrels, and woodrats were shot with bow and arrow or trapped in deadfalls. Game was boiled or roasted, and some dried for later use. Fishing was infrequent.

Settlement patterns

Panamint Shoshone territory was divided into seven districts, each defined by a low-lying, large valley and a set of intervening mountain ranges. Death Valley, rimmed by the Panamint and Cottonwood Mountains on the west and the Funeral and Black Mountains on the east, was one district.

Seasonally transhumant, the Timbisha lived in the warm valley in winter and early spring; they moved to cooler high country to the west in late spring, remaining until after the fall pinyon harvest. Valley camps were in fixed locations, chosen for the proximity of wood and water. In historic times (1840s), there were approximately six Timbisha winter villages on the floor of Death Valley, and another two to three of close kinsmen in adjacent Panamint Valley. Other Panamint people camped in three to four villages in Saline Valley, and another ten to twelve elsewhere within the broader cultural area. Specific families' use of specific villages and camps was recognized by others, though ownership was not exclusive to these families. Hunting and collecting territories, too, were associated with families. A network of kinship ties extended throughout Panamint territory, linking almost all families. Low population density and the prohibition against marrying any kinsman created these linkages.

Domestic organization

Winter villages contained a few families; temporary camps might be composed of individual families or small groups of related men or women. The following lived and worked together: men who chose hunting partners from their kinsmen and friends; and women who chose female relatives and friends with whom to gather plant foods and trap small mammals and birds. Children, when old enough, accompanied adults. Infants and toddlers remained in camp with grandparents. The role of grandparents in raising young children and teaching them about the land and its resources was crucial. Children also learned the importance of the wider network of kinsmen with whom one shared weal and woe (Steward 1938).

Kinship was reckoned bilaterally, with marriage prohibitions extending to any kinsman related through connections as far back as could be remembered. Residence might be initially matrilocal, usually until the birth of a child. Households normally included one or more persons from the parental generation, or a visiting relative or friend. When divorce occurred, children normally remained with the mother but continued to visit the father's household.

Political organization

Political organization generally centered on land use. Local headmen often suggested that families move camp if food supplies were dwindling. They took responsibility for the care of any very old or young who lacked

12 Overview of Death Valley, California, looking east toward the Black Mountains. Photo: Catherine S. Fowler.

immediate kin. Some local headmen had specific power related to big game (bighorn sheep or deer) hunting, or to directing communal rabbit drives. They brought disputants together and helped reach solutions. Leaders' authority was based on upholding local values and working through consensus – activities which made them focal in land use matters.

A headman's authority rarely extended beyond the winter village or summer camp. They often directed harvest festivals (pine nuts, mesquite, rabbits). In post-contact times they served as spokesmen for, and advisers to, their people in relation to the Europeans. Persons were also free to disagree, and move elsewhere.

Religion and spirituality

Religious concepts emphasized the sacredness of and respect for life, including the life force within the Earth (Driver 1937:1051). All things in nature have a spiritual essence: whether plants, animals, rocks, water, fire, or weather. The individual developed his/her own relationships with the many spirits of the world, some of which offered their help in dreams and visions (Steward 1941:322) which revealed why some would be great hunters; why some people would have the power and talent to doctor the sick; why certain plants could be called upon to furnish medicines; why the dead should not be disturbed or their burial places approached; why people should act properly toward plants and animals when they took them for food, not taking more than they needed and treating them with respect; why disrespect for the land and its resources would bring human disaster. Individuals normally prayed in the morning as the sun came up, and in the evening.

Many aspects of spirituality are encoded in a lively oral tradition, most of which is set in "The Time When Animals Were People," when these beings went about making a natural, social, and cultural world which humans would later inhabit, and in which they would

13 Timbisha village, near Furnace Creek, Death Valley. Photo: Catherine S. Fowler

behave "properly," in relation both to other species and to their own.

Religious concepts dictated the timing of ceremonies, those of the subsistence cycle among others. Most ceremonies focused on prayers of thanksgiving for important events, like the pine nut or mesquite harvests and communal rabbit drives. At the same time, prayers for rain and other necessary conditions for future prosperity and the people's health were offered (Steward 1938:75, 82). Curing ceremonies were held when needed (under the guidance of a person with reputable powers).

Current situation

With the statute creating Death Valley Monument in 1933, Timbisha land officially became US Federal Government Property. Land use and livelihoods were changed. The Bureau of Indian Affairs alternately ignored the people and awarded them some of its services. In the 1930s, however, the National Park Service (NPS) became involved. These agencies cooperated to construct a permanent village of eleven adobe homes on a 16 ha tract at Furnace Creek in 1936.

In 1981 the Timbisha Shoshone Tribe was federally recognized by the US Government, yet without "reservations" or title even to the 16 ha on Furnace Creek. Since 1981 the few remaining original houses have been stabilized and improved, and a limited number of mobile homes have been brought into the village. This has only been possible under Park Service authority and supervision.

The people of Timbisha Village (population about fifty) subsist on limited wage work and federal assistance funds. They pay the NPS for water, trash disposal, police protection, and other services. Health care is administered through the distant Bureau of Indian Affairs. Children attend a local grade school, and are bussed 135 km for secondary schooling. Education and employment

levels are low. Alcohol consumption and related social problems are high in a number of families.

The Timbisha presently strive for cultural and language salvage. People have been effectively locked out of their lands, which have a near-total conservation status (the Monument); their chances to learn and renew traditional land-based knowledge, and the broader human–land relationships, are consequently thwarted. Subsistence-based knowledge is limited to those over fifty. No one under the age of fifty speaks the Timbisha Shoshone language.

Organization for resistance

In the 1980s, the Timbisha Tribe became a member of the Western Shoshone National Council, an overarching political organization with an agenda of land restoration, native rights, and anti-nuclear protest. The Tribe remains active in that organization. In 1994, in cooperation with California Indian Legal Services, the Tribe organized a Land Restoration Committee. Federal legislation passed in 1994 changed the status of the Monument to a National Park and provided Congress-supported feasibility studies for settlement of the Tribe's land question. The Land Restoration Committee chose twelve large areas of Panamint territory for potential restoration, ultimately narrowing its proposal to 360,000 ha. In 1995 negotiation meetings were held with the NPS and the other land managing agencies responsible for these lands. The agencies' offer (the village site and 2,400 ha of Nevada lands beyond Death Valley) was rejected. Negotiations are now continuing at a higher level.

Reading list

Coville, F. V. (1892). The Panamint Indians of California. *American Anthropologist* 5(4):351–6.

Dayley, J. P. (1989). *Tümpisa (Panamint) Shoshone dictionary*. University of California Publications in Linguistics 116. Berkeley.

Driver, Harold E. (1937). Culture element distributions: VI. Southern Sierra Nevada. *University of California Anthropological Records* 1(2):53–154. Berkeley.

Fowler, C. S., M. Dufort, M. K. Rusco, and the Historic Preservation Committee of the Timbisha Shoshone Tribe (1995). Residence without reservation: ethnographic overview and traditional land use study, Timbisha Shoshone, Death Valley National Park, California (Phase I). National Park Service, Applied Anthropology Program, Washington, DC (Contract report).

Irwin, C. (ed.) (1980). *The Shoshone Indians of Inyo County, California: the Kerr manuscript*. Ballena Press Publications in Archaeology, Ethnology and History 15. Socorro, NM.

Kroeber, A. L. (1925). *Handbook of the Indians of California*. Bureau of American Ethnology Bulletin 78. Washington, DC.

Steward, J. H. (1938). *Basin-plateau aboriginal sociopolitical groups*. Bureau of American Ethnology Bulletin 120. Washington, DC.

(1941). Culture element distributions XVIII: Nevada Shoshone. *University of California Anthropological Records* 4(2):209–360. Berkeley.

(1955). *Theory of culture change*. Urbana: University of Illinois Press.

Thomas, D. H., L. S. A. Pendleton, and S. C. Cappannari (1986). Western Shoshone. In W. L. D'Azevedo, (ed.), *Handbook of North American Indians*, vol. XI, *Great Basin*, pp. 262–83. Washington, DC: Smithsonian Institution.

Films

Broken treaty at Battle Mountain. 1973. (60 min.). Joel L. Freeman, dir. and prod., Cinnamon Productions, 19 Wild Rose Road, Westport CT 06880, USA.

To protect Mother Earth (sequel to *Broken treaty*). 1989. Joel L. Freeman, dir. and prod., Cinnamon Productions, 19 Wild Rose Road, Westport CT 06880, USA.

Regarding the hunting/gathering ban instituted by the US National Park Service: "My mother, she was very upset . . . she said maybe what we ought to do is get all our hunters and let them go up to wherever the mountain sheep are and kill the whole bunch of them . . . "and then we women could go up there and set fire to the forest where the pine nuts are. Get rid of everything. Then see what they'll do to us . . . I heard it from several other people: why don't they come and just kill us off? The bighorn sheep and all the other things were just part of us, but they were protecting them. They said we had no meaning to the land at all. Therefore, we were useless and they ought to come by and just kill us off."

(Pauline Esteves, 1994)

CATHERINE S. FOWLER
ATTACHMENT #2

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Chapter 6

Historical Perspectives on Timbisha Shoshone Land Management Practices, Death Valley, California

CATHERINE S. FOWLER

During the past two decades, scholars have paid increasing attention to the role of indigenous peoples and communities, both at present and in the past, in land and resource management and in other forms of environmental manipulation. Few anthropologists would deny that hunter–gatherers and subsistence farmers know a considerable amount about their resources and environments, but most would see an important difference between the knowledge systems of these peoples and their resulting influences on landscapes. Agricultural people were known to practice techniques such as slash and burn, various forms of soil disturbance and manipulation, water diversion, and other techniques that resulted in altered landscapes. By implication, these activities altered habitats and even genetics for plants and animals.

Hunter–gatherers, however, were viewed as more passive in their effects on the landscape, with occasional attempts at manipulation such as burning tracts of land or broadcast sowing of wild seeds, but little else (Blackburn and Anderson 1993; Harris and Hillman 1989). Now, with new field studies, the differences in environmental knowledge and procedures among such groups

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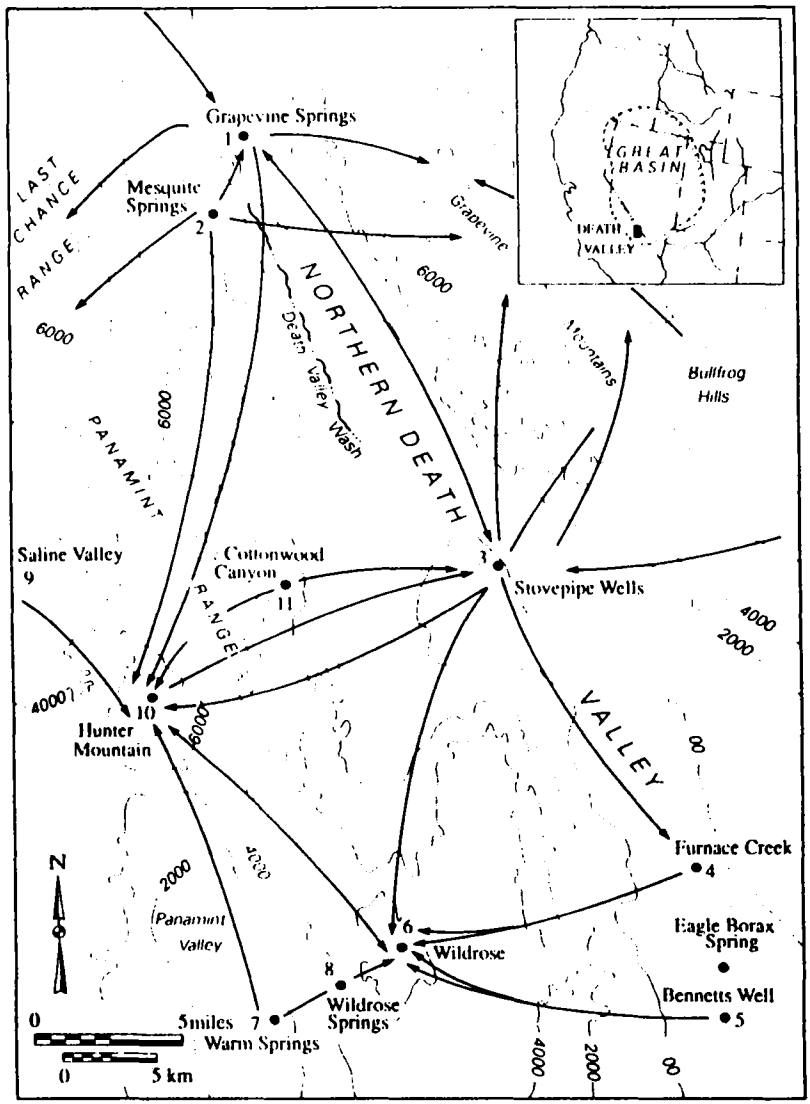

Figure 1. Map of Timbisha Shoshone winter camps in Death Valley, California. Arrows indicate seasonal movements. (1) Grapevine Springs; (2) Mesquite Springs; (3) Stovepipe Wells; (4) Furnace Creek; (5) Bennetts Well; (6) Wildrose; (7) Warm Springs; (8) Wildrose Springs; (9) Saline Valley; (10) Hunter Mountain; (11) Cottonwood Canyon.

are less obvious, and most see instead a real continuum in principles of environmental manipulation and resource management among peoples practicing various modes of primary subsistence. Hunter–gatherers, and former hunter-gatherers, hold some very sound ideas about these topics, most of which are well worth exploring and assessing, not only for their contributions to ongoing discussions about the ultimate courses and processes of domestication, but also for a broader understanding of past and present environments and distributions (see Harris 1989; Ucko 1989).

This case study reviews the preliminary results of field studies among the Timbisha Shoshone people of Death Valley National Monument in southern California (Figure 1). The Timbisha people in the 1840s were hunter–gatherers in what is often seen as one of the harshest of environments, the Mojave Desert. They were closely related in culture as well as language to various other Great Basin Indian people, classically profiled by Steward (1938, 1955) as representing "band level" societies. Due to federal land use regulations, it is no longer possible to directly observe Timbisha land and resource management systems in action in Death Valley. Death Valley National Monument was established in 1933. In the 1940s, monument staff began implementing federal regulations on the use of monument lands and resources. Bans were instituted against killing or collecting animals and gathering some types of plants. Camping outside approved campgrounds, building fires, and cutting wood were also banned.

The indigenous peoples still remember enough about former activities to outline some of what used to occur. Through an approach that involved extensive interviews of elders of the tribe, as well as on-site visits to former camps and other locations, a picture of these practices begins to emerge. It is clearer for activities related to plants than it is for animals, possibly only because today more women than men recall former times. Gathering plant resources, classically women's work, seems to have persisted longer than game animal hunting, classically men's work.

BACKGROUND

When sustained contact with Euro-Americans began in the 1840s, small kin-based groups of Shoshone people lived in and around Death, Panamint, Saline, and Eureka valleys and in the surrounding and intervening mountain ranges in the northern Mojave Desert. In the older literature, they are often referred to as "Panamint" or "Panamint Shoshone" or "Koso Shoshone," although more recently the people in Death Valley have come to be known as Timbisha Shoshone after their place name for Death Valley (Dayley 1989; Thomas et al. 1986). In former times, these peoples lived by hunting and gathering diverse botanical and faunal resources, following a seasonal round that took them from the hot valley floors (44–54°C maximum) to the cooler

mountains (-18 to +1°C minimum) in appropriate seasons. Plant resources particularly favored for food were honey mesquite (*Prosopis glandulosa*) and single-leaf pinyon (*Pinus monophylla*), both producers of large and abundant fruits ("beans" and "nuts"); several genera and species of plants with edible leaves, fruits, bulbs, or corms; and many small-seeding annuals and perennials (Fowler 1986; Irwin 1980; Steward 1938). Some of these resources were carefully managed using such practices as burning, cleaning, clearing, pruning, and coppicing, along with minimal transplanting. Others seem not to have been the focus of these activities, but rather to have reproduced without human intervention.

From ethnographic work in the early 1930s by Steward (1938, 1941), it is known that in the 1840s there were four main areas on the floor of Death Valley and at least one in Panamint Valley that served as common winter village sites. At these sites, people usually built from three to ten conical brush houses, each serving a nuclear or extended family. The houses were often within mesquite groves, although in good weather people lived under the trees without shelters. The mesquite groves sheltered a range of small game animals and birds to be hunted. In spring and early summer, they also provided mesquite beans, an exceedingly important and storable food crop.

From these sites, people moved out to the high country on all sides, especially in summer and fall, for other plant resources—including seeds, roots, berries, and pine nuts—as well as for large and small game, including bighorn sheep (*Ovis canadensis*), mule deer (*Odocoileus hemionus*), yellow-bellied marmot (*Marmota flaviventris*), black-tailed jackrabbit (*Lepus californicus*), and chuckwalla (*Sauromalus obesus*). They established base camps in the pinyon–juniper woodlands of the Grapevine, Panamint, and Cottonwood mountains in late summer and fall and remained there until snows sent them back to the valley floor camps for the winter. In most seasons, subsistence was decidedly a mixture of plant and animal resources, although during specific harvest times, a single food might be eaten almost exclusively for a short period. People lived almost entirely on cached vegetable products during some periods of winter.

Kinship connected the people of Death Valley with those of Panamint Valley and, in turn, these two groups with all other speakers of the Panamint Shoshone language in southern California and Nevada (Dayley 1989). Families from these areas also sometimes met in the high country of the Panamint, Cottonwood, or Grapevine mountains or at other points to the west or east in the summer and fall. The number who habitually camped near each other in these areas was probably most often under 50 persons. During good years for pinyon nut harvests, however, camps of 100 people or more were reported (Dutcher 1893). Material culture for these groups in former times stressed the light and portable, as befitting quite mobile strategies (Driver 1937; Steward 1941). Social and religious systems likewise evidenced "conspicuous environmental conditioning" (Steward 1938:1).

MANAGEMENT PRACTICES

The environmental management practices for plants that can be documented for the Timbisha Shoshone people within memory are these: the use of fire; clearing, pruning, and coppicing; and transplanting and cultivation. Some of these practices follow general principles stating that the land and its plants should be generally tended; others have to do with activities that are more species-specific, producing a desired result or end product. Another practice, cleaning and clearing springs, generally benefits wildlife as well as people.

The Use of Fire

Timbisha people today recall that fire was used as a management tool for at least three purposes in earlier times: to encourage the growth of tobacco (*Nicotiana attenuata*); to clear riparian and marshy areas of dense growth of willows (*Salix* spp.), emergents, and fringing grasses; and to promote the growth of certain types of seeds, particularly white-stemmed blazing star (*Mentzelia albicaulis*). They tend to associate each use with specific places they have heard discussed in the past, but in all likelihood these activities took place in other locations as well. They also say more generally that fire is good and useful to clean the country; this they were told by the Old People. The best fires were natural fires caused by lightning, which were thought to be always beneficial to the land.

Hunter Mountain, at the south end of the Cottonwood Mountains, is particularly well known for its good tobacco. In June 1993, a considerable amount of tobacco was growing in disturbed conditions along the roadway leading up to the mountain. Several individual plants were also associated with pine nut harvesting camps on the summit. In former times, the people who habitually used Hunter Mountain for winter camps and seasonal camps (Saline and Panamint Valley Timbisha) apparently burned certain areas on the mountain to encourage tobacco growth. Timbisha people are no longer certain where these places are, but other people in the region may recall them.

Both Steward (1941:281) and Driver (1937:84) were told by the people they interviewed that burning for tobacco was formerly a practice of the Death Valley, Saline Valley, and Koso people. Tobacco was known to be a fire follower by many native California and Great Basin peoples, who also fired a few acres in the fall or spring, usually in areas dominated by big sagebrush (*Artemisia tridentata*) or by sagebrush and juniper (*Juniperus* spp.) (Fowler 1986; Kroeber 1941; Steward 1938).

The use of fire in and around marshes to remove unwanted growth of emergent vegetation and also fringing grasses is best documented for Warm Springs in Panamint Valley, but is likely to have taken place in Death Valley as well. According to what Timbisha people have heard, a Panamint Valley

resident used to tell his relatives that it was time to burn the marsh at Warm Springs when the vegetation was dry (late fall, winter). This burning would clear the area and provide open water for waterfowl. Although what they heard probably relates to the 1890s or later, there is historical evidence that this site was burned much earlier in the past to encourage the growth of grasses for horses. In the 1930s, a Saline Valley man provided a tale involving a horse raid into southern California, probably prior to 1850. In order to get ready, Warm Springs was fired by the men so there would be grass when they returned with the horses (Irwin 1980:69).

Cattail (*Typha* spp.), especially, can become a weedy problem if conditions are right and it is not controlled (Morton 1975). Bulrush (*Scirpus* sp.) is less troublesome, although three-square (*S. americanus*) is known to be invasive. Some managers today advocate deep dredging to remove cattails, or cutting below the waterline two to three times during the growing season (Morton 1975:13). Burning is probably also effective, however, especially if water levels are slightly lower so that the fire reaches part of the rhizome. It certainly clears the area of old matted vegetation, which itself can facilitate the spread of cattail.

Timbisha people have noticed particularly how open water has been lost to cattail (and probably three-square) at the pond at Eagle Borax, a site in south central Death Valley. In the 1930s, there was considerable open water at this location, and duck hunting occurred regularly. Two men who camped here kept the growth of cattails and an unidentified bunchgrass in check by letting their horses (*Equus caballus*) and burros graze the area each fall. Otherwise, the animals were kept in corrals. It is possible that the men used fire before acquiring livestock.

Firing riparian areas, potential sites for cultivation and plant collecting, is best documented for Hunter Mountain and Cottonwood Canyon, but it probably also occurred elsewhere as part of general management. Dried willows, grasses, and other annual and perennial growth was fired in the fall to clear areas for next year's planting and harvesting. Burning was felt to keep the willow under control and keep it from invading other areas of moist ground. Two sites that were fired and then planted from the 1890s to the 1930s were visited in 1994; both are now dense willow thickets with little evidence of cleared ground.

A number of annual plants formerly harvested for their seeds are known to be fire followers today, and it is quite clear that people knew their habits in the past. Timbisha people today remember primarily this characteristic for white-stemmed blazing star, and they recall looking for it in places where natural fires had occurred. But both Steward (1941:281) and Driver (1937:65) record that all the individuals they interviewed in the 1930s said that areas were purposefully burned to encourage the growth of several types of seeds. Also in the 1930s, one man reported that while women were collecting blazing

star seeds, the men burned in the same region during rabbit drives (Irwin 1980:15).

Documented in the ethnographic literature for the larger Panamint territory is the use of fire in deer and rabbit drives, which secondarily could have achieved some of the same ends as purposeful firing for seed growth. The deer drives apparently involved firing around the base of a small hill so that the flames would drive animals, but especially deer, past waiting hunters (Irwin 1980:22–23). Firing the brush for rabbits involved setting several linear fires one at a time and one ahead of the other at roughly 150- to 200 m intervals. In this way, the rabbits were driven in one direction until they became exhausted and overheated, at which time they were said to turn back to seek refuge under unburned brush. There, the hunters shot them with bow and arrow, taking as many as they needed (Irwin 1980:24).

Clearing, Pruning, and Coppicing

An additional set of related management tools used in several ways by the Timbisha people involved clearing undergrowth as well as pruning and coppicing perennial plants and trees. These techniques were used extensively in pinyon pine nut harvesting areas and in mesquite groves, but coppicing willow also occurred near springs or seeps, or along stream banks where good willows for basketry were known to grow.

All areas in the pinyon–juniper forests where people habitually camped or collected pinyon pine nuts were carefully cleaned of underbrush as part of routine and necessary maintenance. Lower branches of trees were cut close to the trunk to allow freer access underneath. Timbisha people were taught by their elders that these activities were an important part of learning to care for the land properly—to keep it clean and litter-free. Secondarily, such care also provided wood for fires and made the collection of pinyon pine nuts easier, as those that fell from the cones could be seen more easily on cleared ground. Even beyond these purposes, cleaned and cleared areas would not catch fire, so that in the unlikely event that a campfire got away, the fire could be put out quickly.

In the pinyon pine nut camps visited in 1992 and 1993 in the Wildrose district and on Hunter Mountain, evidence of this clearing and cleaning process was still present. There was very little big sagebrush or other undergrowth under the trees, especially those immediately surrounding the camps. The lower branches to many of the trees were cut close to the trunk, up to about 2 m or so. The Hunter Mountain camps, which are outside the monument boundary, are still kept clean and clear by the Panamint and Saline Valley people who use them. The Wildrose sites have not been thoroughly cleaned since the 1940s, when people were prevented from camping there by

Figure 2. Mesquite engulfed by dune sand in Death Valley, California.

Monument regulations. The axe-scarred trees are the primary reminders of these former activities.

This same type of activity was also required in the mesquite groves, particularly those near Furnace Creek in central Death Valley. Timbisha people say their elders told them that when the people formerly camped in the middle of a mesquite clone, they kept the area clean and clear of undergrowth, dead limbs, and lower branches. This cleaning made it easier for people to make paths through the trees while avoiding the thorns, but also it was easier to collect beans from trees that had been properly trimmed and tended. The wood and other debris were used for fires. Wood was always a scarce commodity on the valley floor. People did not kill living trees for firewood; they depended on this cleaning process for fuel.

In the case of the mesquites, there was yet another benefit to this clearing process, especially in areas where there were dunes. Today, a number of the mesquites on the floor of Death Valley, at Furnace Creek, and along the western edge of the valley are being overtaken by blowing dune sand. Although this process is probably natural to some degree (it was one noted as early as 1891 by Frederick Coville of the U.S. Biological Survey [Coville 1891]), many Timbisha people feel that it is much more common today than in former times because the trees are not being properly tended. Deadwood is left to accumulate without cutting, and lower branches are not trimmed well above ground level; now, the blowing sand is stopped, and eventually the mesquite is totally engulfed (Figure 2). The trees are still alive under these hummocks of sand,

but they do not seem to be flowering or fruiting properly. Although it is unlikely that Timbisha people formerly kept all mesquites clear of dune sand, they certainly were responsible for liberating a much higher number than at present.

Clearing and cleaning mesquite groves also may have fostered seedling development. According to authorities (Mooney et al. 1977), mesquite seedlings are not good competitors with grasses and other types of undergrowth. They also require sunlight, which could have been provided by trimming the trees to open up the groves. The seedings do best if somehow the seeds are pressed into the ground even slightly, as might occur as a by-product of people walking among the trees. When mesquite pods were processed for food, an activity that normally was done within the grove, a wooden mortar and a long stone pestle were used to grind into meal the spongy mesocarp as well as part of the stronger exocarp and endocarp. The hard seeds were normally discarded as inedible after the pounding process, itself an excellent form of scarification. Pestle scarification might have given seeds an extra impetus to break dormancy, further solidifying the relationship of people to mesquite. It is interesting to note that mesquites are doing well and spreading today in the southwestern United States only where cattle are grazed (Fisher 1977). Cattle appear to produce several of the same conditions as native peoples did for these plants in the past: reduced competition, trampling, cleaning, and clearing. Today, the mesquite groves of Death Valley are contracting rather than expanding. Lack of water is one suspected cause; changes in management may well be another.

Although trimming pinyons and mesquites can also be a form of pruning, additional techniques that seem to have fostered more cone production were used on pinyons in former times. These techniques were whipping the trees as well as pinching or breaking the growth tips. Whipping was done with the long harvesting poles used to remove cones in the fall. After the harvest, the poles were used again to whip the trees vigorously to remove any dead cones. In addition to removing the dead cones, the whipping seemingly broke the ends of the branch tips, thus bringing about the production of one or two growth buds. Pinching or breaking the growth buds by hand accomplished the same thing, although this was usually done only on the lower branches. People say that both processes were "good for the trees," and the trees responded by producing more pinyon pine nuts. Although these processes have not been thoroughly studied, it is known that new cones will be produced on the faster-growing branches of the tree (Lanner 1981:79). Perhaps the pruning activity stimulates this growth. Whipping trees to stimulate production is also known in other world areas, a case in point being 17th century Europe, where walnut trees were whipped (Eugene Anderson 1993, personal communication). Today, no one is whipping or pruning the pinyon pines of Death Valley National Monument, but a few people still do on Hunter Mountain and in the

Figure 3. Pruned prince's plume (*Stanleya elata*). Dried stems and leaves have been removed and new leaves will be harvested.

Grapevine Mountains. A number of people feel that pinyon pine nut crops have suffered in recent years because no one is tending the trees.

People also pruned plants as part of routine maintenance. Two species in particular were routinely pruned as part of the food-collecting process in the spring, these being the prince's plumes: Panamint prince's plume (*Stanleya elata*) and desert prince's plume (*S. pinnata*). As the new growth was removed to be used as a green, people broke off last year's flower stalks and any dead leaves on these perennials, thus cleaning them up to make ready for continued new growth (Figure 3). These plants absorb increasing amounts of toxic selenium during the growth cycle. One must boil even young plants and discard the water. People therefore harvested only young and tender leaves in the early spring, giving the plant ample time to put on additional leaves to carry it through the late spring to early summer bloom. The pruning and cleaning promoted healthy growth for next year, according to what people were taught by their elders.

Coppicing of willow was widely practiced throughout this region to produce straight stems for basketry. Each winter, after last year's stems were harvested, those remaining in a willow patch were cut to the ground. The large root then responded by sending up new and vigorous sprouts or canes (known as rods in Europe). These canes were straight and without side branches. This type of first-year growth was most prized for basketry, especially for splitting strands for wefts. Side branches interfere with the splitting process, as do any insect borings or scales. They weaken the stem so that the splits hinge off, and

the person doing the splitting cannot maintain three even strands throughout the length. Thus, it was very important to tend willow patches in this fashion each year, or else a weaver would be unable to get materials that were workable or worth her time. Cut willows could be refreshed by burying them in the damp sand, so that taking them in quantity was not wasteful. People also knew that coppicing helped keep insect infestations under control.

Nothing is known of tending deer grass (*Muhlenbergia rigens*), a plant used for warp in basketry. DeDecker (1984:89) lists it as occurring only west of the Coso Range on Sierran slopes, but it was identified as a basketry plant by Coville (1892), seemingly east of the Coso Range. In several areas of southern California, deer grass clumps were burned to stimulate new growth (Anderson 1993).

Transplanting and Cultivation

Although the history of agriculture is not fully documented for the Timbisha Shoshone, it is suggested that some people may have cultivated traditional crops (maize [*Zea mays*], beans [*Phaseolus* spp.], and gourd/squash [*Cucurbita* spp.]) for some time before Death Valley was settled by Euro-Americans. Driver (1937:113) was told by a consultant that his great-grandfather had visited the Mohave people on the lower Colorado River and brought back seeds of various domesticated plants. Driver interpreted the date of this acquisition to be about 1840. Included were maize, beans, and unidentified varieties of yellow squash. The man's great-grandfather apparently planted these seeds at a ranch in the Panamint Range at a well-known gardening spot. Jaeger (1941:284) also remarks, presumably about the same individual, that he visited Fort Mohave "about 80 years ago" and obtained seeds of devil's claw (*Proboscidea parviflora*), used in basketry, which he also planted at the same gardening spot. Other accounts from the 1870s speak of gardens in what is probably this location, as well as in Grapevine Canyon and at Furnace Creek (Wallace 1980).

Whatever the sources and timing of the introduction of agriculture among the Timbisha people (for a discussion, see Wallace 1980), they were familiar with the ideas of planting, tending, and irrigating crops for quite some time. Thus, either from this knowledge or from even earlier sources, people had ideas about planting and transplanting that they put to use in several instances. There is some indication that moving plants too far from their native situations may have met with disapproval.

In Wildrose Canyon, one individual transplanted willows into a location near a spring so that his sisters would have a source of supply for their basketry. He seems to have done so in the 1920s or 1930s, while the camp in the area was still being heavily used. Another member of the same family planted at the same site a plum tree (*Prunus* sp.) that reached maturity and fruited [illegible]

members of the Timbisha community were against these activities, as the willows were known to be invasive and would probably ruin the spring, and the plum tree "did not belong there." The willow, indeed, has taken over quite an area around the spring. A few years ago, when a Timbisha tribal member attempted to remove some of its growth to increase the water flow, a monument ranger stopped the activity as destructive, probably not realizing that the willow had originally been transplanted there. Other native Californians transplanted small shrubs such as ceanothus (*Ceanothus* sp.) and manzanita (*Arctostaphylos* spp.) (Shipek 1989:380).

Cleaning Water Sources

Timbisha people were also taught by their elders to care for other types of resources, such as those that provide water. Springs and tanks or potholes were routinely cleaned when people arrived at a site to camp, this procedure being part of the general cleaning process, but also one that specifically aided people and wildlife. Springs choked with willow, such as the one mentioned above, were cleared and dug out so that the water could accumulate better. Potholes that had filled with debris since the last visit were similarly cleared. Freshwater would then collect in future rains, and thus aid all animals in the vicinity. Water sources were never to be fouled, or overused, as such action would jeopardize all life forms that depended upon them.

DISCUSSION

It is equally erroneous to view the landscape as unmanipulated wilderness and to romanticize native environmental control and management. Common ground and common sense dictate, however, that native management principles and procedures at Death Valley National Monument, as well as elsewhere, be further investigated and explored. Although the practices described herein have been suppressed within the monument since the 1940s, there are still elders who would be willing to cooperate with resource managers toward solutions that might lead to healthier mesquite groves, pinyon–juniper forests, and marshes. The ethic of caring for the environment is still very much alive, and the people see themselves as having something to contribute on this level. They are also willing to listen to others with different ideas, as long as they can see some results.

Seeing results perhaps is one important general feature of Timbisha management principles that needs to be stressed. For the Timbisha people, it appears that management should show, thereby creating, in certain circumstances, habitats that appear to be tended as opposed to what they feel is unkempt. This is particularly true of areas they formerly pruned and cleared, such as mesquite groves, camps,

and favorite gathering areas in pinyon–juniper woodlands, and patches of willow and prince's plume. Elders explain that plants need to "feel" the presence of people; they are used to it. This is how plant–human interrelationships are in part maintained. Plants are not destroyed when people harvest or care for them in proper ways; they are actually enhanced.

Ucko (1989:xii–xiii) remarked, with reference to the Australian Aborigines, that they "'domesticated' the environment, *including plants, not* by practising agriculture but by developing a complex system of mental categorizations which gave them control over their plants (and animals)." Although the Timbisha people would probably not agree with the term "control," they would certainly understand the concept of a "domesticated environment," based on some that they have known. This is not to say that they have necessarily created anthropogenic environments of the types recognized in parts of southern California (e.g., chaparral (Lewis 1993a:67), northern California (coastal prairie) (Blackburn and Anderson 1993:22), and the Southwest (Sonoran oases) (Nabhan et al. 1982). They altered conditions to fit their standards of a managed landscape. It remains to be determined whether there are any negative or additional positive benefits beyond those suggested.

Certainly one of the most effective and widely used technologies for creating true anthropogenic landscapes or for encouraging succession is fire, and its effects have been chronicled in Australia, Africa, Canada, and the United States (for a discussion, see Lewis 1993b). Fire opens grasslands, cleans out forest litter, promotes the germination and growth of species that have coevolved with it, provides mulch, and much more. Timbisha uses of fire fit quite well into this picture, even though the details of its use are no longer clear. Likewise, their activities in coppicing willow fit previously known patterns for the region (Anderson 1991, 1993; Fowler 1986). Pruning and cleaning prince's plume, pruning mesquite, and whipping pinyon are new records, but also parallel principles documented for California as well as elsewhere (McCarthy 1993; Shipek 1989).

Considerable attention has been given to questioning why native cultivation of maize, beans, and squash seemingly did not spread from the Southwest into the southern California deserts (and well beyond) prior to the 17th century (for a review, see Bean and Lawton 1973). Although Timbisha agriculture also appears to be relatively late, the reason was not used does not seem to be that the Timbisha peoples lacked knowledge of how to manipulate plants. As with the broader question of the factors involved with the transition from hunter–gatherers to farmers, explanations other than simplistic ones are generally required (Harris and Hillman 1989; Rindos 1984). Continued exploration of human-plant relationships among hunter–gatherers, and former hunter–gathers such as the Timbisha Shoshone, may provide additional clues.

ACKNOWLEDGMENTS

Research for this chapter was conducted under the auspices of the Applied Ethnography Program of the National Park Service, Washington DC, through a cooperative agreement with the University of Nevada, Las Vegas (CAO No. 8011-92-9003). The Timbisha Shoshone Tribe's Historic Preservation Committee worked hard on all aspects of this and the larger land use project of which this is a part. The committee's cooperation and expertise are gratefully acknowledged, as are the funding and advice of the National Park Service. Molly Dufort and Mary Rusco also participated in all phases of the work.

REFERENCES

Anderson, M. K., 1991, California Indian Horticulture: Management and Use of Redbud by the Southern Sierra Miwok, *Journal of Ethnobiology* 11:145–157.

Anderson, M. K., 1993 [1973], Native Californians as Ancient and Contemporary Cultivators, in: *Before the Wilderness: Environmental Management by Native Californians* (T. C. Blackburn and K. Anderson, comps. and eds.), Ballena Press, Menlo Park, California, pp. 151–174.

Bean, L. J. and Lawton, H. W., 1973, Some Explanations for the Rise of Cultural Complexity in Native California with Comments on Proto-Agriculture and Agriculture, *Ballena Press Anthropological Papers 1*, Socorro.

Blackburn, T. C., and Anderson, K. (comps. and eds.), 1993 [1973], *Before the Wilderness: Environmental Management by Native Californians*, Ballena Press, Menlo Park, California.

Coville, F. V., 1891, *Death Valley Expedition Itinerary*, unpublished manuscript, United States Fish and Wildlife Service, 1860–1961, Smithsonian Institution Archives, Washington, DC.

Coville, F. V., 1892, The Panamint Indians of California, *American Anthropologist* (o.s.) 5:351–356.

Dayley, J. P., 1989, *Tumpisa (Panamint) Shoshone Grammar, University of California Publications in Linguistics 116*, Berkeley.

DeDecker, M., 1984, *Flora of the Northern Mojave Desert, California*, California Native Plant Society, *Special Publication 7*, Berkeley.

Driver, H. E., 1937, Culture Element Distributions. VI. Southern Sierra Nevada, *University of California Anthropological Records* (Berkeley) 1:53–154.

Dutcher, B. H., 1893, Pinon Gathering among the Panamint Indians, *American Anthropologist* 6:377–380.

Fisher, C. E. 1977, Mesquite and Modern Man in Southwestern North America, in: *Mesquite: Its Biology in Two Desert Ecosystems* (B. B. Simpson, ed.), Dowden, Hutchinson and Ross, Stroudsburg, Pennsylvania, pp. 177–188.

Fowler, C. S., 1986, Subsistence, in: *Handbook of North American Indians, Great Basin*, Volume 11 (W. C. Sturtevant, gen'l ed.), (W. L. d'Azevedo, vol. ed.), Smithsonian Institution Press, Washington, DC, pp. 64–97.

Harris, D. R., 1989, An Evolutionary Continuum of People–Plant Interaction, in: *Foraging and Farming: The Evolution of Plant Exploitation* (D. Harris and G. C. Hillman, eds.), Unwin Hyman, London, pp. 11–26.

Harris, D. R. and Hillman, G. C. (eds.), 1989, *Foraging and Farming: The Evolution of Plant Exploitation*, Unwin Hyman, London.

Irwin, C. (ed.), 1980, The Shoshone Indians of Inyo County, California: The Kerr Manuscript, *Ballena Press Publications in Archaeology, Ethnology and History 15*, Socorro.

Jaeger, E. C., 1941, *Desert Wild Flowers*, Stanford University Press, Palo Alto, California.

Kroeber, A. L., 1941, Culture Element Distributions: XV Salt, Dogs, Tobacco, *University of California Anthropological Records* (Berkeley) 6:1–20.

Lanner, R. M., 1981, *The Pinyon Pine: A Natural and Cultural History*, University of Nevada Press, Reno.

Lewis, H. T., 1993a [1973], Patterns of Indian Burning in California: Ecology and Ethnohistory, in: *Before the Wilderness: Environmental Management by Native Californians* (T. C. Blackburn and K. Anderson, comps. and eds.), Ballena Press, Menlo Park, California, pp. 55–116.

Lewis, H. T., 1993b [1973], In Retrospect, in: *Before the Wilderness: Environmental Management by Native Californians* (T. C. Blackburn and K. Anderson, comps. and eds.), Ballena Press, Menlo Park, California, pp. 389–400.

McCarthy, H., 1993 [1973], Managing Oaks and the Acorn Crop, in: *Before the Wilderness: Environmental Management by Native Californians* (T. C. Blackburn and K. Anderson, comps. and eds.), Ballena Press, Menlo Park, California, pp. 213–228.

Mooney, H. A., Simpson, B. B., and Solbrig, O. T., 1977, Phenology, Morphology, Physiology, in: *Mesquite: Its Biology in Two Desert Ecosystems* (B. B. Simpson, ed.), Dowden, Hutchinson and Ross, Stroudsburg, Pennsylvania, pp. 26–43.

Morton, J., 1975, Cattails (Typha spp.)—Weed Problem or Potential Crop?, *Economic Botany* 29:7–29.

Nabhan, G. P., Rea, A. M., Reichhardt, K. L., Mellink, E., and Hutchinson, C. F., 1982, Papago Influences on Habitat and Biotic Diversity: Quitovac Oasis Ethnoecology, *Journal of Ethnobiology* 2:124–143.

Rindos, D., 1984, *The Origins of Agriculture: An Evolutionary Perspective*, Academic Press, San Diego.

Shipek, F. C., 1989, An Example of Intensive Plant Husbandry: The Kumeyaay of Southern California, in: *Foraging and Farming: The Evolution of Plant Exploitation* (D. Harris and G. C. Hillman, eds.), Unwin Hyman, London, pp. 159–170.

Steward, J. H., 1938, Basin–Plateau Aboriginal Sociopolitical Groups, *Bureau of American Ethnology Bulletin* (Washington, DC) 120.

Steward, J. H., 1941, Culture Element Distributions: XIII Nevada Shoshone, *University of California Anthropological Records* (Berkeley) 4:209–360.

Steward, J. H., 1955, *Theory of Culture Change*, University of Illinois Press, Urbana.

Thomas, D. H., Pendleton, L. S. A., and Cappannari, S. C., 1986, Western Shoshone, in: *Handbook of North American Indians, Great Basin*, Volume 11 (W. C. Sturtevant, general ed.), (W. L. d'Azevedo, vol. ed.), Smithsonian Institution Press, Washington, DC, pp. 262–283.

Ucko, P., 1989, Foreword, in: *Foraging and Farming: The Evolution of Plant Exploitation* (D. Harris and G. C. Hillman, eds.), Unwin Hyman, London, pp. ix–xvii.

Wallace, W. J., 1980, Death Valley Indian Farming, *Journal of California and Great Basin Anthropology* 2:269–272.

UNITED STATES SENATE
COMMITTEE ON INDIAN AFFAIRS

Room 485 Russell Senate Office Building
Tuesday, March 21, 2000

Testimony of Charles F. Wilkinson

My name is Charles F. Wilkinson, Distinguished University Professor and Moses Lasky Professor of Law at the University of Colorado. My research and teaching over the past 25 years have focused on natural resources issues in the American West, primarily in the areas of federal public land law, Indian law, water law, and administrative law. In addition to my articles, most of which have involved Indian issues and the federal public lands, my eleven books include *Federal Public Land and Resources Law* (3rd edition) (with Coggins and Leshy); *Cases and Materials on Federal Indian Law* (4th edition) (with Getches and Williams); and *Crossing the Next Meridian: Land, Water, and the Future of the West.* Since January 1998, I have served as the facilitator in the negotiations between the Timbisha Shoshone Tribe and the Department of the Interior that led to the introduction of S. 2102 and this hearing.

I would like to extend my lasting respect and admiration to the negotiating teams from the Department of the Interior and the Timbisha Shoshone Tribe who have made this bill possible. They faced a daunting task because their work took place against a

backdrop of grievances, some going back many generations, some very recent. Yet they proceeded with open and creative minds. They gave this effort their top priority and made many personal sacrifices to meet a grueling schedule.

One critical factor was that each person in the two negotiating teams held two basic convictions: to bring justice to the Timbisha Shoshone Tribe and to protect a fragile and wondrous natural resource, Death Valley National Park. The result is this proposed legislation, which achieves both of those objectives.

This effort represents the highest ideals of modern federal Indian policy. The historic trust relationship was fully honored. The Tribe's sovereignty was fully recognized. These were true government-to-government negotiations. Importantly, these ideals have also been fulfilled by this Committee, which has worked closely with the negotiating teams and has so promptly scheduled this hearing.

Thank you for the opportunity to present this testimony.

U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

May 2, 2000

The Honorable Ben Nighthorse Campbell
Chairman
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman,

This letter presents the views of the Department of Justice on S. 2102, the "Timbisha Shoshone Homeland Act." We join the Department of the Interior in its support of this bill with amendments.

The bill would provide a measure of justice for the Timbisha Shoshone Tribe, who for too long have been excluded from their aboriginal homelands. The bill's core provisions would establish a permanent land base for the Timbisha Shoshone Tribe on a portion of their aboriginal lands in and nearby Death Valley National Park. These tribal lands would be located in both Nevada and California. As the Department of the Interior explains in its letter, this bill would benefit both the tribe and the Nation as a whole. Death Valley National Park is one of the parks most often visited by the public and the park would be enhanced by the ongoing residence of the Timbisha Shoshone people, who have lived in this area since time immemorial.

The Department of Justice does, however, have concerns about the provisions of section 7(d) in regard to the tribal lands to be located in California. Indian lands within California are subject to Public Law 83-280, which delegated general Federal Indian country law enforcement responsibility to the State of California. Thus, the State and local law enforcement agencies enforce criminal laws on Indian lands and they share that law enforcement responsibility with tribal governments, which retain inherent jurisdiction over crimes by Indians. See 25 U.S.C. § 1301. As currently drafted, section 7(d) of the bill automatically would exempt the Timbisha lands in California from Public Law 83-280 after three years. That would mean that the

Federal government then would have: 1) exclusive jurisdiction to prosecute crimes committed by non-Indians against Indians; 2) jurisdiction under certain circumstances to prosecute, in cases where the tribe chose not to prosecute, minor crimes by Indians against non-Indians under 18 U.S.C. § 1152; and responsibility for prosecuting serious crimes committed by Indians under 18 U.S.C. § 1153. Of course, the tribe would retain jurisdiction to prosecute crimes by Indians, which is either exclusive or concurrent, depending on the nature of the offense and the identity of the victim.

We have several concerns with section 7(d). First, it appears that there is a typographical error such that section 7(d) could be read to exempt all trust lands in California from Public Law 83-280, no matter where they are located and no matter what tribe governs them. We understand that this is not the bill's intent. For this reason, at minimum, section 7(d) should be amended to clarify that only lands transferred to the Timbisha Shoshone Tribe would be exempt from Public Law 83-280 under this provision. Second, there currently are not adequate Federal or tribal law enforcement resources available to provide for public safety on the newly created homeland. The tribe does not now have a law enforcement agency. The Bureau of Indian Affairs has no law enforcement agents serving this area. The nearest FBI office in the Eastern District of California is in the city of Bakersfield, approximately 245 miles from Death Valley. The nearest Federal district court is in the city of Fresno, 350 miles away. It would take time for the Timbisha Shoshone to develop a tribal police department, a court system, detention arrangements, and a law and order code. Without BIA or tribal law enforcement and without a tribal court or court of Indian offenses in place, there would be no agencies to enforce misdemeanor laws over which the tribe would have exclusive jurisdiction if Public Law 83-280 did not apply. Arrangements to provide for adequate law enforcement and other matters, such as the transportation of Federal arrestees, must be in place before the application of Public Law 83-280 is suspended with regard to the tribe's California lands.

For these reasons, we believe that before the application of Public Law 83-280 is suspended on the tribe's California lands, the tribe should demonstrate to the Secretary of the Interior that a law enforcement system will be in place that will be adequate to protect the public safety and manage such other matters as the transport of arrestees. In evaluating such a

demonstration, the Secretary should consult with the Attorney General to ensure that the necessary tribal and Federal resources are in place. Accordingly, we recommend that the following language should be substituted for the current language of section 7(d):

> All trust lands transferred under this Act within California shall be exempt from section 1162 of title 18, United States Code, and section 1360 of title 28, United States Code, upon certification by the Secretary of the Interior, after consultation with the Attorney General, that the law enforcement system in place for such lands will be adequate to provide for public safety and the public interest; *provided*, that no such certification may take effect until three years after the date of enactment of this Act.

This recommended language is patterned after the process the Federal government applies in accepting a State retrocession of jurisdiction to the United States under Public Law 83-280, as set forth in Executive Order 11435, insofar as it requires an action by the Secretary of the Interior after consultation with the Attorney General. This provision also would meet the Timbisha Shoshone Tribe's interest in having an opportunity to work towards a direct Federal-tribal law enforcement system, while maintaining the Executive branch oversight that is necessary to ensure that adequate Federal and tribal law enforcement resources are available to maintain community safety.

We also are concerned about ambiguity in the bill's language concerning application of the Indian Gaming Regulatory Act ("IGRA"). We understand that the Department of the Interior is working to address this issue.

In sum, the Department of Justice supports the return of a homeland to the Timbisha Shoshone Tribe. The Department of Justice strongly recommends amending section 7(d) as we have proposed to ensure that public safety is maintained. Additionally, we understand that the Department of Interior will submit proposed amendments to address and clarify portions of the bill concerning water rights and the application of the Indian Gaming Regulatory Act.

Thank you for the opportunity to present our views on S. 2102. Please do not hesitate to call upon us if we may be of

additional assistance. The Office of management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

Robert Raben
Assistant Attorney General

IDENTICAL LETTER SENT TO THE HONORABLE DANIEL INOUYE, RANKING MINORITY MEMBER

TESTIMONY OF
THE WILDERNESS SOCIETY
NATIONAL PARKS CONSERVATION ASSOCIATION
SIERRA CLUB
S. 2102
TIMBISHA SHOSHONE HOMELAND ACT
Statement for the Record
SENATE INDIAN AFFAIRS COMMITTEE
MARCH 21, 2000

The Wilderness Society, the National Parks Conservation Association, the Sierra Club and our 1,100,000 members nationwide appreciate this opportunity to submit testimony to the Senate Indian Affairs Committee March 21, 2000, hearing regarding S. 2102, the "Timbisha Shoshone Homeland Act." We support of the establishment a permanent tribal homeland for the Timbisha Shoshone, as provided for under the California Desert Protection Act.

California Desert Protection Act

Section 705 of the California Desert Protection Act directs the Secretary [of Interior] to: (1) ensure access to the wilderness areas and park units designated by this Act for traditional Indian cultural and religious purposes; and (2) conduct a study to identify lands suitable for a reservation for the Timbisha Shoshone Tribe that are located within the Tribe's aboriginal homeland area within and outside the boundaries of the Death Valley National Monument and the Death Valley National Park. [Public Law: 103-433 (10/31/94)]

Finally the culmination of that directive is to take place with the passage of the Timbisha Shoshone Homeland Act. While we recognize the need to establish a Timbisha Shoshone homeland, we still have some concerns with S. 2102.

Definition of Tribal Traditional Activities within Death Valley National Park

The Timbisha Shoshone tribe is uniquely qualified to partner with the National Park Service in providing interpretive and conservation service to Death Valley NP and its visitors. The tribe should be allowed to continue to engage in the traditional activities that have lead to their expertise. However, we seek clarification of language pertaining to "traditional practices" in Special Use Areas. Section (5)(e)(1) of the legislation reads:

> "Members of the Tribe are authorized to use these [special use] areas for low impact, ecologically sustainable, traditional practices..."

What are permissible traditional practices? What are prohibited traditional practices?

The Timbisha Shoshone Tribal Homeland Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base clearly spells out a range of traditional activities that *would be permitted* by the Tribe within Park boundaries. These activities are incorporated in the legislation. The Draft Report also spells out a specific traditional activity that ***would be prohibited*** by the Tribe within Park boundaries. One activity, namely hunting, is conspicuously absent from mention in the legislation.

> Draft Report p. 26 on permissible traditional activities:
>
> "Anticipated traditional uses include seasonal camping, harvesting of pinon nuts and plants for medicinal purposes but not the taking of wildlife in the park."
>
> S. 2102 permissible traditional activities:
>
> "...the Tribe is also authorized to use traditional camps..." [Section (5)(e)(5)(B)]
>
> "The Tribe is authorized to use this [Special Use] area for...harvesting..." [Section (5)(e)(4)(A)]

It is imperative to specifically include language in the legislation or clarifying language in the Indian Affairs Committee Conference Report that ***would prohibit*** the taking of wildlife in Death Valley National Park. The Draft Report gives evidence that hunting was a traditional activity of the Timbisha Shoshone prior to Death Valley being declared a national monument in 1933. Section (C)(1)(a) of the Draft Report specifically states that Hunter Mountain, located in the Nelson Range in the west central part of the Park "was a valuable hunting area for [bighorn mountain] sheep and deer until it was included within the boundaries of the Park."

All national monuments and all but one national park are legally closed to hunting. [The one exception is Grand Teton National Park, WY, where Congress took the highly unusual step of authorizing the National Park Service to "deputize" hunters each year to assist in the reduction of the elk population.] Hunting is incompatible with the resource preservation goal of the national park system. All hunting: ceremonial, subsistence, and sport hunting should be prohibited within Death Valley National Park.
The "derogation" language in the Purposes section of the Timbisha Shoshone Homeland Act [§3, Para. (4)] should not be relied on to clearly spell out the Congress's intent with respect to hunting. The National Park Service is currently actively engaged in creating policy to deal with the issues surrounding the American Indian Religious Freedom Act and the taking of wildlife in our National Parks. Additionally, there is ongoing litigation with respect to the definition of "traditional activities" in Alaska's Denali National Park and Preserve. We should not allow the good intentions of the Timbisha Shoshone Homeland Act to be mired in controversy because we did not take the opportunity, now, to legislate how we would deal with this issue in this park. The Timbisha Shoshone Homeland Act will be looked upon as groundbreaking legislation on the subject of settling tribal ancestral homelands issues and we should be extremely clear as to intention when it comes to hunting and the taking of wildlife.

Therefore, there needs to be an amendment to the legislation expressly prohibiting all hunting in the Death Valley National Park for purposes of this act.

Water Rights

It is not clear whether all necessary water studies have been completed. We request that the transfer of valid water rights both inside and outside of the park not contribute to the derogation of natural resources within the park. Water allocation should be determined after completion of an Environmental Impact Statement.

Establishment and Maintenance of a Tribal Resource Management Field Office

Tribal Rights and Authority on the Timbisha Shoshone Homeland—Special Use Areas—Additional Provisions [Section 5(e)(5)(A)] states that the Tribe is authorized to establish and maintain a garage and storage area within the area of the existing ranger station at Wildrose. The proposed management plan as referenced in the legislation should ensure that any vehicles stored in the garage not be used in designated wilderness, nor should any tools be stored which would be used in designated wilderness without meeting the minimum requirement threshold.

Seasonal Occupation

Tribal Rights and Authority on the Timbisha Shoshone Homeland—Special Use Areas—Additional Provisions [Section 5(e)(5)(B)] states that

> "...the Tribe is authorized to use traditional camps for tribal members at Wildrose and Hunter Mountain in accordance with the jointly established management plan..."

The proposed management plan as referenced in the legislation should ensure that no permanent structures are built in the wilderness area for purposes of supporting the seasonal camps of the Timbisha Shoshone people.

Thank you for this opportunity to submit testimony for the written record of the U.S. House Subcommittee on National Parks and Public Lands.

○