To Make a Better Nation

An Administrative History of the Timbisha Shoshone Homeland Act

Theodore Catton
University of Montana

Report Prepared under Cooperative Agreement
with Rocky Mountain Cooperative Ecosystem Studies Unit
for Death Valley National Park, California

October 2009

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Dramatis Personae

Timbisha Shoshone

Pauline Esteves	Tribal Chairperson, elder, negotiator, activist
Joe Kennedy	Tribal Chairperson, elected 2004
Richard Boland	Tribal Administrator and Spokesperson for the Timbisha Shoshone Land Restoration Committee for Round 1
Barbara Durham	Tribal Administrator and Spokesperson for the Timbisha Shoshone Land Restoration Committee for Round 2

Tribal Consultants

Fred Marr	Tribal attorney from 1993 to 1997
Dorothy Alther	Tribal attorney, California Indian Legal Services, since 1997
Steven Haberfeld	Tribal consultant, Indian Dispute Resolution Services

NPS Officials

Edwin Rothfuss	Superintendent, Death Valley NP from 1983 to 1994
Richard Martin	Superintendent, Death Valley NP from 1994 to 2001
J. T. Reynolds	Superintendent, Death Valley NP from 2001 to 2009
Linda Greene	Chief, Natural and Cultural Resources, Death Valley NP
Patricia L. Parker	Chief, American Indian Liaison Office
Stan Albright	Regional Director, Pacific West Region to 1997
John Reynolds	Regional Director, Pacific West Region from 1997 to 2002
Ray Murray	Chief, Division of Planning, Pacific West Region
Roger Kelly	Senior Archeologist, Pacific West Region

BLM Officials

Ed Hastey	California State Director, Sacramento
Russ Kaldenberg	State Archeologist, Sacramento
Greg Thomsen	Resources Staff Chief, Ridgecrest Field Office

Office of the Secretary

John Duffy	Counselor to the Secretary of the Interior
James Pipkin	Counselor to the Secretary of the Interior
Don Barry	Assistant Secretary for Fish and Wildlife and Parks
Karen Atkinson	Counselor to the Assistant Secretary

Others

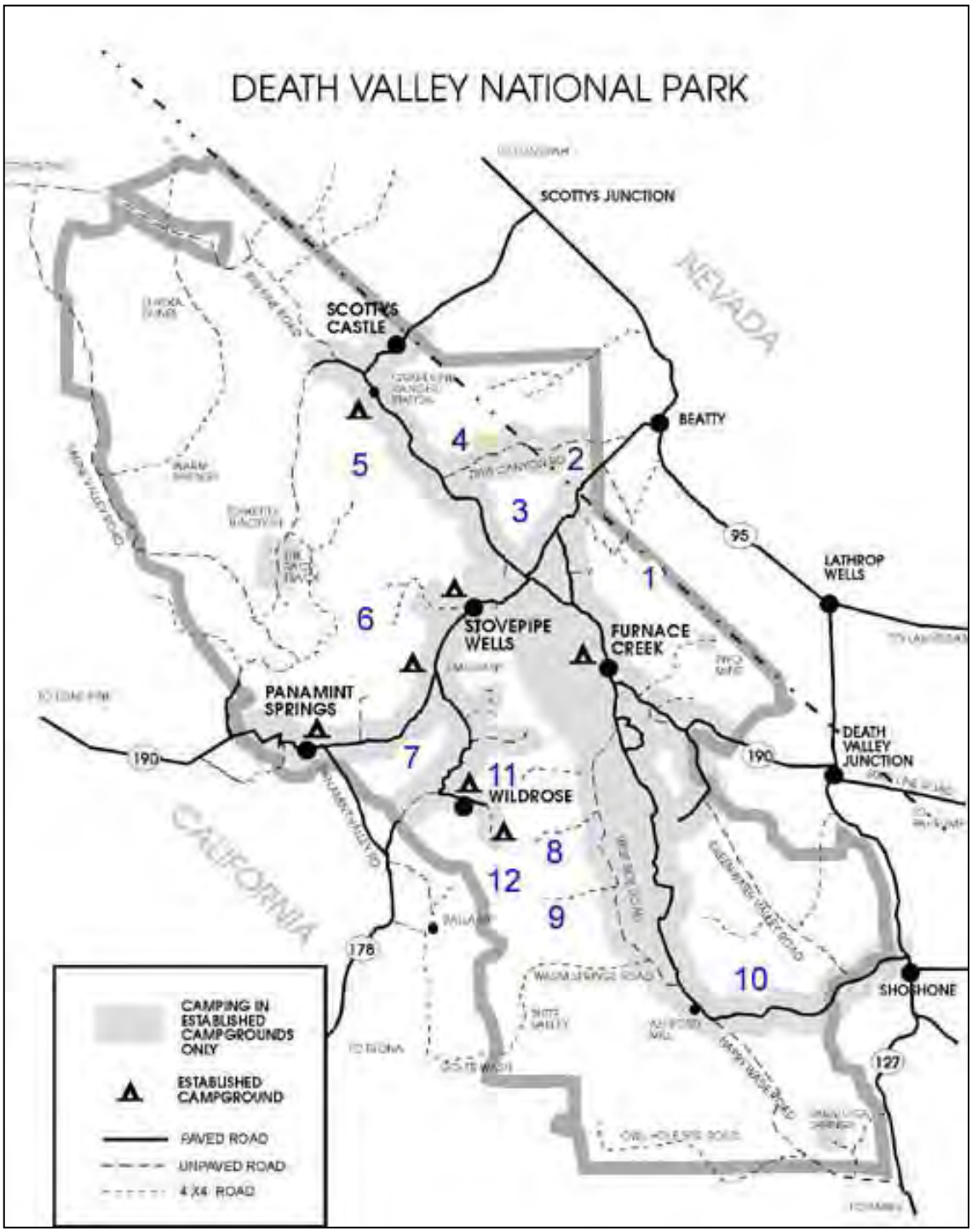
Patricia Zell	Staff Director, Senate Committee on Indian Affairs
Charles Wilkinson	Professor of Law, University of Colorado, and facilitator

Timeline

1933	Death Valley National Monument is proclaimed by President Hoover.
1936, May 23	BIA and NPS enter memorandum of agreement "Establishing a Colony of Indians on The Death Valley National Monument."
1957, May 9	NPS unilaterally adopts "Death Valley Indian Village Housing Policy."
1976	Timbisha Shoshone petitions the BIA for federal recognition as Death Valley Shoshone Band under Section 19 of the Indian Reorganization Act.
1977	Death Valley Shoshone Band, U.S. Department of the Interior, and the U.S. Department of Health, Education, and Welfare enter a memorandum of agreement to improve housing conditions at Furnace Creek.
1978	Timbisha Shoshone adopts Articles of Association and petitions for federal acknowledgement as a tribe under Section 16 of the Indian Reorganization Act.
1981	NPS completes two-year study, "Death Valley – Ethnohistorical Study of the Timbisha Band of Shoshone Indians."
1983, January 12	Timbisha Shoshone becomes a federally recognized Indian tribe.
1984	NPS completes *Timba-Sha Alternatives Study*, which considers Indian land tenure alternatives at Furnace Creek.
1993, May 11	Park hosts meeting with Timbisha Shoshone Tribe on land restoration.
1993, July 8	Timbisha Shoshone Tribal Council resolves to submit legislative package to Congress calling for homeland restoration.
1994, October 31	Congress passes and President Clinton signs into law California Desert Protection Act, which designates Death Valley National Park and enlarges the protected area. Section 705 (b) mandates a study of the Timbisha Shoshone land situation.

1995, May 23	First joint meeting to initiate 705 (b) study convenes at Death Valley and large working group is formed.
1995, August 1-2	Second large working group meeting at Death Valley.
1995, August 19-20	Third large working group meeting at Death Valley.
1995, September 12	Fourth large working group meeting at Death Valley.
1995, November 28	Draft Report of Secretary to Congress.
1995, December 5	Assistant Secretary of Indian Affairs Ada Deer hosts meeting between tribal delegation and Interior officials at Main Interior Building.
1995, December 16	Federal government shutdown begins and lasts until January 6.
1996, February	Federal negotiators meet in Washington without tribal participation.
1996, March 7	Tribe breaks off talks after meeting at Cow Creek, Death Valley NP. Later it alleges that NPS is misusing Section 705 (b) study as vehicle for ejecting Indians from Death Valley NP.
1996, May 26	Tribe and Greenpeace hold protest march and demonstration.
1996, September 8	Tribe addresses letter to President Clinton.
1996, September	Timbisha Shoshone helps form Alliance to Protect Native Americans in National Parks.
1997, March 14	Counselor to the Secretary James Pipkin writes to Senator Ben Nighthorse Campbell summarizing status of Section 705 (b) study.
1997, May	Assistant Secretary for Fish and Wildlife and Parks Don Barry chooses to renew and lead effort to resolve Timbisha Shoshone homeland issue.
1998, January 6	Tribal delegation meets with Barry and other federal officials at Main Interior Building.
1998, January 15-16	First meeting in second round of negotiations held at Death Valley.
1998, October	Negotiating team holds briefings in Washington on first draft report.

1999, April	*The Timbisha Shoshone Tribal Homeland – A Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base and Related Cooperative Activities* is submitted to Congress and released to the public.
1999, November 10	Senator Daniel K. Inouye requests the Department of the Interior to draft a bill for Congress pursuant to the *Secretarial Report*.
2000, March 21	Senate Committee of Indian Affairs holds hearing on the legislation.
2000, July 19	Senate passes the bill.
2000, October 17	House passes the bill.
2000, November 1	President Clinton signs the Timbisha Shoshone Homeland Act into law.


DEATH VALLEY NATIONAL PARK
SCOTTYS JUNCTION
NEVADA
SCOTTYS CASTLE
BEATTY
LATHROP WELLS
STOVEPIPE WELLS
FURNACE CREEK
PANAMINT SPRINGS
DEATH VALLEY JUNCTION
WILDROSE
SHOSHONE
CALIFORNIA
95
190
178
127
1
2
3
4
5
6
7
8
9
10
11
12
CAMPING IN ESTABLISHED CAMPGROUNDS ONLY
ESTABLISHED CAMPGROUND
PAVED ROAD
UNPAVED ROAD
4 X4 ROAD

As a new nation, the United States took virtually all of the ancestral lands of our Native American predecessors leaving them with little foundation for their own distinct cultures to survive. As a visionary nation, we invented National Parks so that America's most evocative places could be preserved forever. Often those Parks, and the lands most important to Native Americans, are one and the same. Such is the case in the Death Valley area where much of the Timbisha Shoshone Homeland and Death Valley National Park not only coincide physically but are highly valued by the Tribe, the National Park Service, and the American public.

If we resolve to make a better nation for our children, a nation that recognizes the promises of America's best ideas and is not bound to the thought that the decisions of the past are the best that we can do, then we have a unique opportunity to rectify the existing situation where the Tribe lives on its ancestral lands without the ability to achieve self-determination and economic independence.

Consequently, we resolved in Death Valley, and in the surrounding ancestral homelands of the Tribe, to value the beliefs and needs of both nations, to be fair to the Timbisha Shoshone and to the people of the United States. We seek to restore lands on which the Timbisha Shoshone can exercise their sovereign tribal rights guaranteed by our Constitution and courts, and to develop lasting cooperative arrangements with the Tribe. We do so in the context of a better and more holistic vision of what Death Valley National Park and other parts of the Tribe's ancestral lands can become with an expanded and renewed tribal presence and the commitment to such a presence by the National Park Service and the Bureau of Land Management.

- John Reynolds, preface to the *Draft Secretarial Report to Congress*, April 1999.

The word 'timbisha' refers to a red material found in the Black Mountains not far from our tribal village at Furnace Creek. Our ancestors, the Old Ones, used this material, called ochre in English. They would use it like paint on their faces, to protect them and heal them. The Old Ones believed that this material, 'timbisha', strengthened their spirituality.

Our people, the Timbisha, are named after this material and so is our valley. The term 'Death Valley' is unfortunate. We refrain from talking about death. Instead, we refer to "one who it has happened to." Even more importantly, this is a place about life. It is a powerful and spiritual valley that has healing powers and the spirituality of the valley is passed on to our people.

Our people have always lived here. The Creator, Appü, placed us here at the beginning of time. This valley, and the surrounding places that the Old Ones frequented, is 'tüpippüh', our Homeland. The Timbisha Homeland includes the valley and the nearby mountains, valleys, flats, meadows, and springs.

Then others came and occupied our land. They gave us diseases and some of our people died. They took away many of our most important places. The springs.... the places we used for food. The places we used for our spiritual practices. They didn't want us to carry on our religion or our ceremonies or our songs or our language. The names of our places became unknown to some of our people.

We never gave up. The Timbisha people have lived in our Homeland forever and we will live here forever. We were taught that we don't end. We are part of our Homeland and it is part of us. We are people of the land. We don't break away from what is part of us.

Still, a lot has been lost. The current situation is very serious. We have no land at all. Very few of our people are employed. They need, for their welfare, housing and economic development. The plan negotiated between the Timbisha and the Department of the Interior will be of great assistance in bringing economic self-sufficiency, done sustainably, to my Tribe.

Economic development, if it is to work, must be done by the Timbisha people themselves. Now, there are very few opportunities within the Tribe. This plan will bring many opportunities with the Tribe. It is significant that this will be done, not just in one place, but in several places within the Homeland, because that is how the Old Ones always did it.

Most important of all, I envision that this plan will bring the people closer teogether. Many of us will be able to live and work in tribal communities once again. Our cultural preservation program will be greatly expanded once we have a tribal center. What we are fundamentally doing is re-educating many of our people as to who they are. The Timbisha people are not from some other Homeland. This is our Homeland. We will stay on, and this plan will give us the opportunity to do that in a self-sufficient, sustainable, and spiritual way.

- Pauline Esteves, preface to the *Draft Secretarial Report to Congress*, April 1999.

Introduction

Death Valley National Monument was established by presidential proclamation in 1933 and originally contained some 1,601,800 acres of desert and mountain landscape. Subsequent proclamations in 1937 and 1952 increased the area of the monument to 2,067,793 acres. In the California Desert Protection Act of October 31, 1994, the monument was renamed Death Valley National Park and the area was increased by another 1.3 million acres, making it the largest national park in the U.S. outside of Alaska.

The Timbisha Shoshone people have made Death Valley their homeland since time immemorial. In 1936, the Timbisha Shoshone established a tribal center at Furnace Creek. In 1983, the Tribe achieved federal recognition as a sovereign entity; however, the Tribe did not have legal title to any land. In the California Desert Protection Act (CDPA), Section 705 (b) provided for a study that would lead to the establishment of trust lands for the Tribe inside and outside Death Valley National Park.

This congressional mandate contained in the CDPA was not only of vital interest to the Tribe and the national park, it also attracted the attention of Native Hawaiians, Native Alaskans, other Native Americans, and environmental groups including Greenpeace and the Sierra Club. The effort to secure trust lands for the Timbisha Shoshone in Death Valley came at a time of growing public awareness of indigenous people's interests in federally managed lands. Negotiations between the Tribe and the national park began in a contentious vein and soon reached an impasse over the key issue of whether there would be any transfer of lands within the park to the Tribe. After a cooling-off period, the negotiations were renewed in a different spirit, with several new individuals facilitating or shaping the dialogue. Working on a government-to-government basis, the joint federal-tribal team produced a comprehensive plan for the protection of a Timbisha Shoshone homeland. Many participants thought the plan to be exceptionally balanced and a workable basis for cooperative management.

In December 2000, Congress passed and President Clinton signed into law the Timbisha Shoshone Homeland Act, which transferred into trust 7,753.99 acres of land for the Timbisha Shoshone Tribe. The lands included 313.99 acres at Furnace Creek in

Death Valley National Park together with six other noncontiguous parcels located outside the national park in California and Nevada. In addition, the act designated special use areas in which tribal members are authorized to pursue low-impact, ecologically sustainable, traditional practices under a management plan mutually agreed upon by the Tribe and the National Park Service (NPS). Similar provisions apply and are directed toward the Tribe and the Bureau of Land Management (BLM) for special use areas located outside Death Valley National Park. Special use areas within Death Valley National Park include the Mesquite Use Area and the Buffer Area. The act also exempts tribal members from paying park entrance fees and authorizes the NPS and the BLM to provide preferential hiring of qualified members of the Tribe and training and technical assistance to the Tribe.

Participants in the administrative process that unfolded between 1994 and 2000 became aware that they were involved in something unique, significant to the federal government, and profoundly important to the Timbisha Shoshone people. Afterwards, relevant administrative records were collected at the park, the regional office, and the American Indian Liaison Office (AILO) of the NPS in Washington, D.C., and the NPS decided to have an administrative history prepared that would chronicle and analyze the administrative and legislative process leading to the Timbisha Shoshone Homeland Act of 2000.

In recent decades, bureaucracies have taken increasing interest in their administrative histories. Administrative history reports (that is, reports prepared by professional historians based on a synthesis of information gleaned from administrative records and oral history interviews) serve as management tools and a way to preserve institutional memory for current and future managers. They also serve to improve agencies' understanding of what they have done right and wrong in the past. In the new bureaucratic idiom, government agencies want to broadcast their "success stories," just as they also want to make the most of "lessons learned." The story of how the NPS and the Tribe mutually found their way out of their historic impasse and created a new cooperative relationship is instructive in both the negative and positive sense, for NPS officials and tribal leaders were by turns inflexible, frustrated, innovative, and successful in steering their way through this process. If participants in the process all agree on one thing about what happened, it is the fact that the negotiations passed through two stages between 1994 and 2000: a first stage that ended in acrimony, and a second stage that produced positive results. Fundamentally, this administrative history is an analysis of why the first stage failed and why the second stage succeeded.

NPS officials, tribal members, professional consultants, and attorneys who were involved in the process that led to the Timbisha Shoshone Homeland Act have ventured various opinions about why things happened the way they did and what the legislative act means for Death Valley National Park, the Timbisha Shoshone Tribe, and the rest of the national park system. Differences of opinion are not just a function of personal ego but

individual experience. All participants have a natural inclination to think that if they were not actually driving the process themselves then they were at least in the cockpit – whether that was the tribal office, park headquarters, the regional office, or the Office of the Secretary in Washington, D.C. More to the point, tribal members tend to see the process as having been driven by the Tribe's own gritty determination to secure its cultural survival, while NPS officials tend to perceive the process as an outgrowth of congressional mandates and Park Service policy on indigenous peoples' rights in national parks. Both of these perspectives are legitimate but incomplete by themselves, and one aim of this report is to pair these two perspectives and reconcile them. Furthermore, all participants feel that some degree of credit for the outcome is owed to the personal chemistry that formed in the second stage of negotiations, the framework imposed by the facilitator, and the leadership of certain individuals who were involved. Such personality factors are highly specific to this process and tend to limit the use of this history as a case study but they are very real nonetheless.

Historians use the phrases "top-down history" and "bottom-up history" to describe two different lenses for viewing the past. "Top-down history" focuses on the higher echelons, whether in society, the economy, or government, and assumes that events flow primarily from decisions made at the top. "Bottom-up history" focuses on the grassroots level, where stresses are more widespread, immediate, and acute, and it posits that events flow primarily from cumulative pressures and demands emanating from there. These two dichotomous views of history have a strong parallel in the different perspectives that federal officials and tribal members each bring to the discussion when they talk about what occurred at Death Valley from 1994 to 2000. Federal officials move from post to post, they are faithful to the land management system under their agency, and they respond to directives received within a hierarchical organization. As a result, federal officials naturally view local issues such as the Timbisha Shoshone's quest for land from a top-down perspective. By contrast, tribal members are rooted to a specific place and dwell within a localized social, economic, and political organization that is their tribe. They naturally view tribal issues from a bottom-up perspective. The aim of this history is not so much to arrive at some "truth" in the middle, but to ensure that each perspective is informed by the other one.

The body of this report is in three chapters. Chapter One surveys the historic relationship between national parks and indigenous peoples with emphasis on developments in the late twentieth century. The point of this chapter is to provide background for evaluating the hypothesis that NPS dealings with the Timbisha Shoshone Tribe were primarily shaped by evolving policy on the part of the NPS toward indigenous peoples in national parks. Chapter Two chronicles the story of the Timbisha Shoshone at Furnace Creek prior to 1994 with emphasis on the Tribe's quest for a land base. The aim of this chapter is to demonstrate that the events of 1994-2000 flowed from earlier events and represented the culmination of what had already been a long struggle by the Tribe. It provides background for evaluating the hypothesis that the Tribe was the key agent

driving the process. Chapter Three relates what happened from 1994 to 2000, from passage of the CDPA with its Section 705 (b) directive to the Secretary of the Interior to complete a study on a suitable land base for the Timbisha Shoshone Tribe to passage of the Timbisha Shoshone Homeland Act six years later.

This administrative history is not the first formal account of the story behind the Timbisha Shoshone Homeland Act. Philip Burnham featured the Timbisha Shoshone and Death Valley in two chapters of his book *Indian Country, God's Country* about the relationship of Native Americans and U.S. national parks. Steven Haberfeld, a consultant for the Tribe who was present through the whole process of negotiations from 1994 to 2000, published an article on the experience entitled "Government-to-Government Negotiations: How the Timbisha Shoshone Got Its Land Back." Historian Steve Crum and anthropologist Kay Fowler, both consultants for the Tribe in the 1990s, have also published articles based on their research and commissioned reports. Most recently, historian Mark Miller published an article titled "The Timbisha Shoshone and the National Park Idea: Building toward Accommodation and Acknowledgement at Death Valley National Park, 1933-2000." The Timbisha Shoshone Tribe is mentioned in other articles on indigenous peoples in protected areas as well.[1] The author hopes that this administrative history offers something different from all these other accounts by virtue of its grounding in the administrative record and its use of two dozen oral history interviews with participants, whose names are listed at the end of the report.

The full significance of the Timbisha Shoshone Homeland Act will ultimately rest on how the relationship between the Tribe and the NPS develops in the future. At present, not much time has elapsed since 2000 to make that assessment. The contemporary view of the Timbisha Shoshone Homeland Act generally holds that the Act has established a good foundation. This report ends with an epilogue that surveys how the Timbisha Shoshone Homeland Act has affected the Tribe and Death Valley National Park since 2000, and describes the early steps that the parties have taken to build on this new foundation.

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[1] Most of these writings are discussed or noted again at pertinent points in the report. The author did not have the benefit of Miller's article, which appeared after the draft report was completed. Philip Burnham, *Indian Country, God's Country: Native Americans and the National Parks* (Washington: Island Press, 2000); Steven Haberfeld, "Government-to-Government Negotiations: How the Timbisha Shoshone Got Its Land Back," *American Indian Culture and Research Journal*, 24, no. 4 (2000): 127-65; Steven Crum, "A Tripartite State of Affairs: The Timbisha Shoshone Tribe, the National Park Service, and the Bureau of Indian Affairs, 1933-1994," *American Indian Culture and Research Journal* 23, no. 1 (1998): 117-36; Catherine S. Fowler, Pauline Esteves, Grace Goad, Bill Helmer and Ken Watterson, "Caring for the Trees: Restoring Timbisha Shoshone Land Management Practices in Death Valley National Park," *Ecological Restoration* 21, no. 4 (2003): 302-06; Mark Miller, "The Timbisha Shoshone and the National Park Idea: Building toward Accommodation and Acknowledgement at Death Valley National Park, 1933-2000," *Journal of the Southwest* 50, no. 4 (Winter 2008).

Chapter One

The National Park Service and Indigenous Peoples

A Protest and a Movement

Around 8:00 a.m. on May 26, 1996, about 75 protestors assembled at the junction of Timbisha Road and State Route 190 in Death Valley National Park. It was the Sunday of Memorial Day weekend and already at that early hour of the day the temperature was approaching 100 degrees Fahrenheit. The protestors included elders and other residents of the Timbisha Shoshone village at Furnace Creek, additional members of the Timbisha Shoshone Tribe who lived outside Death Valley, Indians from other tribes in the region, and a smattering of non-Indians. Four environmental organizations were represented: Greenpeace, California Communities Against Toxics, Desert Citizens Against Pollution, and Ward Valley Against Radioactive Waste. As holiday weekend traffic began to hum along the highway, the protestors stepped out onto the road and began their march of a little more than one-half mile to the national park visitor center, carrying banners and signs proclaiming Death Valley as the tribal homeland. Park visitors, approaching in their air-conditioned vehicles, slowed to nearly a walking pace to edge carefully past this throng of pedestrians and see what they were demonstrating about. Some of these passing motorists buzzed down their electric windows to accept handbills that were being eagerly offered to them by the protestors. Some protestors, meanwhile, ran ahead of the mass of marchers and taped posters over three separate highway signs, including the entrance sign to the visitor center area. One poster read, "This is Our Homeland." Another read, "Cultural Respect Not Cultural Genocide."[1]

Half way along their route the protestors passed in front of the Furnace Creek Ranch, where cabin guests and restaurant patrons, milling on the covered porch and in the sun-drenched parking lot, stopped what they were doing momentarily to observe the procession. The Furnace Creek Ranch, an oasis family resort with spring-fed swimming

[1] Eric Inman to Holly Bundock and Ray Murray, undated email attached to WRO Public Affairs to NP-WRO, May 31, 1996, File 3: A9029 Permits and Public Gatherings Timbisha Shoshone Tribe, Central Files, DEVA.

pools, tennis courts, Borax Museum, and 224 guest rooms nestled among towering palm trees, sits between the Timbisha Shoshone village and the visitor center area. The historic and upscale Furnace Creek Inn perches 200 feet higher on an alluvial fan a mile to the east. The dual-complex Furnace Creek Inn and Ranch Resort occupies private land within the park that the federal government never acquired, so the resort is not strictly a concession, but its managing company, Xanterra Parks and Resorts, is the leading national and state parks concession in the United States. The resort's clientele on that Sunday morning were by and large oblivious of the fact that the resort, like the park administration itself, has a long and storied relationship with the resident Indian population at Furnace Creek. Several of the protestors, or their parents or grandparents, had worked for the resort in the past. Many of the Tribe's deceased are buried in a tribal cemetery situated on this wedge of private land.

Arriving at the visitor center, the protestors congregated near the front entrance to the building. Television news reporters and camera crews were present to record the event. Park officials were well-informed of the event, too. Five days earlier Superintendent Richard Martin had issued a special use permit to Tribal Administrator Richard Boland authorizing the protestors to march along the road shoulder, assemble outside the visitor center, and distribute literature and provide information to the public. Three areas were designated for use by the protestors, including the signed "First Amendment Area" that the Park Service sets aside in many of its units for citizens to exercise their constitutional right of free speech. Prior to the event, the superintendent and chief ranger had decided to keep law enforcement rangers away from the area, suspecting that protestors would attempt to draw them into a confrontation in front of television news cameras. Interpretive rangers observed the demonstration from the information desk inside the visitor center, but were under strict orders not to get involved.

As with so much else surrounding the Timbisha Shoshone's quest to attain a reservation inside the national park, what happened next was subject to differing interpretations afterwards. According to Superintendent Martin, who relied on his rangers' reports, the demonstrators did not stick to the designated areas identified in their special use permit but instead got in the way of the visitor center entrance and "disrupted the orderly flow of visitors in and out of the building." Martin asserted, too, that a few overzealous protestors ran after visitors, "forcing them to accept printed matter and not allowing them to simply pass by."[2] Greenpeace organizer Bradley Angel and Tribal Administrator Richard Boland said that both these statements were false. "In fact, no 'orderly flow' was disrupted at all," they both wrote in identically worded separate letters. "No doors or entrances were blocked. No person was blocked, harassed or prevented from doing anything at the Visitor Center. A brief informational rally was held in front of the building, an exercise of First Amendment activity fully allowed and

[2] Richard H. Martin to Richard Boland, June 26, 1996, File 3: A 9029 Permits and Public Gatherings Timbisha Shoshone Tribe, Central Files, DEVA.

protected under our nation's laws. The Timbisha and their supporters were peaceful and respectful at all times, without exception."[3] Tribal members' memories of the event also contradict the rangers' reports. Joe Kennedy, a young tribal member who lived in Bishop and who would be elected tribal chairperson in 2004, joined in the demonstration that day with his wife, children, and other kin. He was one of several participants who carried water jugs and kept the marchers hydrated. Pauline Esteves was one of the elders who marched. She remembers that an Indian health clinic in the region sent a medical team, which set up stations along the route equipped with sprinklers, ice chips, and first aid to prevent elders from suffering heat prostration. "It was really good. It was organized real well," she recalls.[4]

Similar differences of perception developed around the permanent sign that tribal members had erected at the entrance road to the Timbisha Shoshone village just a few days prior to the march. For the landless tribe, which had long been denied permission by the Park Service to do anything at Furnace Creek that would imply a permanent vested interest in the land (even the community building sat on wooden skids), putting up the sign was a symbol of defiance and sovereignty. Before the demonstration, tribal members debated how big to make the sign, how it should look, and what was the chance it would not be taken down by the Park Service, and in the days and weeks and months after putting it up, tribal members were amazed that the sign was still there.[5] For the Park Service, meanwhile, the sign was irritating because it stood out from other brown and white signs that were part of the national park ambiance. Why hadn't the Tribe consulted the NPS, which might have then assisted in putting up a sign that conformed to the park's design guidelines? When Superintendent Martin sent a letter about the sign to Boland he was hardly prepared for the heavy response. "The placing of a sign at the entrance to the Timbisha Village pales in comparison with the injustices historically and continuously committed by the United States government against the Timbisha people," came the bitter reply. "The Timbisha historically have had to suffer forced removal and relocation, destruction of their houses, racism, and ongoing harassment. To this day they live in poverty and without the same rights afforded other Americans, and are treated as squatters on their own land."[6] Martin and his staff eventually realized their mistake. "Looking back on it now," says Linda Greene, the park's chief of resource management, "I wonder, 'why did we do that?' It was, again, part of the learning process."[7]

From the Tribe's perspective, the peaceful demonstration and the bold new sign on State Route 190 had the desired effect. Passersby as well as people who learned about

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[3] Bradley Angel et al. to Richard Martin, July 25, 1996, and Richard Boland to Martin, September 18, 1996, File 3: A 9029 Permits and Public Gatherings Timbisha Shoshone Tribe, Central Files, DEVA.
[4] Bradley Angel interview, July 23, 2007; Joe Kennedy interview, August 1, 2007; Pauline Esteves interview, August 1, 2007.
[5] Barbara Durham interview, August 1, 2007.
[6] Bradley Angel et al. to Richard Martin, July 25, 1996, File 3: A9029 Permits and Public Gatherings Timbisha Shoshone Tribe, Central Files, DEVA.
[7] Linda Greene interview, August 2, 2007.

the Timbisha Shoshone in media reports wrote to their representatives in Congress and to President Clinton. Senator Harry Reid (D-NV) received numerous letters on the subject and requested that the Park Service explain to him what the controversy was about.[8] White House staffers, planning a presidential trip to California in July, read news reports about the Timbisha Shoshone and sent a request through the Office of the Secretary of the Interior for a White House briefing on the issue.[9] As talks between tribal representatives and the Department of the Interior had broken down two months earlier, the high-level interest shown by Senator Reid and the White House was just the sort of political heat that the Tribe wanted to generate in order to force the federal government back to the negotiating table.

Other Hot Spots

The Timbisha Shoshone complaint was one of a growing number of Indian grievances involving native ancestral lands and the NPS. In some cases, tribes were concerned about the treatment of sacred sites; in other cases, they wanted to reclaim land or use rights within national parks. Besides Death Valley, other hot spots in the mid-1990s included Devils Tower National Monument in Wyoming, where tribes pressured the NPS to prohibit rock climbers from scaling the volcanic butte that the tribes regard as sacred; Great Smoky Mountains National Park, where the Eastern Band of Cherokee clashed with the park superintendent over a new casino on the reservation and wintertime closures of the through-park road; and Glacier National Park, where the Blackfeet Nation threatened to sue for access and hunting rights it had once held under its 1895 land cession agreement. In September 1996, six groups of indigenous peoples formed the Alliance to Protect Native Rights in National Parks, claiming that a national prejudice against native peoples existed in the Park Service. Spearheaded by the Timbisha Shoshone, the group included the Miccosukees in Everglades National Park, who, like the Timbisha, wanted control of the land surrounding their village located within the park; the Hualapai, who opposed a plan to allow scenic flights over the Grand Canyon; the Navajo, who sought to protect tribal interests in Canyon de Chelly National Monument, Arizona; the Five Sandoval Indian Pueblos, who clashed with the NPS over management of cultural sites in Petroglyph National Monument, New Mexico; and the Pai O'hana, who were threatened with eviction at Kaloko-Honokohau National Historical Park, Hawaii. The wave of complaints by indigenous peoples against the NPS drew national media attention. Stories surveying the entire relationship of parks and native peoples appeared in *National Parks Magazine* and *High Country News* as well as native

[8] Pat Parker to Richard Martin, July 10, 1996, File 32: L3215 Land, Public Cooperation including administration, planning, and development, Central Files, DEVA.
[9] Steve Pittleman to Pat Parker, July 11, 1996, File 32: L3215 Land, Public Cooperation including administration, planning, and development, Central Files, DEVA.

media outlets such as *Indian Country Today* and *Cultural Survival Quarterly*.[10] What was behind this wave of protest, and why was it happening at that time?

The American Wilderness and Indian Removal

In one sense, the conflicts upwelling between Indians and the NPS in the 1990s had roots in the remote past of nineteenth-century America. Decades before the NPS or any national parks existed, the American people began to form distinctive conceptions about wilderness and native peoples. In the early decades of the nineteenth century, American intellectuals looked to the western frontier in their search for a national identity. Wanting to celebrate those things that made the United States different from Europe, they extolled the West's wild and rugged landscapes and exotic Indian inhabitants, whom the Europeans idealized as "noble savages" or "children of Nature." George Catlin, an artist famous for both his landscape paintings and his portraits of American Indians, famously proposed that the federal government take steps to preserve a large expanse of land on the upper Missouri as a "*nation's Park* containing man and beast, in all the wild and freshness of their nature's beauty." American artists' fascination with the frontier was echoed by writers such as James Fenimore Cooper and philosophers such as Henry David Thoreau. In this era of American Romanticism, the seedbed of the national park idea, the American conception of wilderness embraced native peoples as an integral part of the wilderness aesthetic.[11]

That changed in the second half of the nineteenth century as the United States adopted policies that pushed Indian peoples and wilderness toward separate islands – the former being subjugated and forced to live on reservations, the latter being set aside in national parks and forest reserves. With few exceptions, the United States created national parks from lands that it had already taken from the aboriginal inhabitants either by purchase or conquest or frontier settlement that displaced Indians. Starting with Yellowstone National Park in 1872, national parks came to be regarded as wild places that contained no resident peoples, or as tracts of uninhabited wilderness. Although most people did not think of it as such, the establishment of a national park came to involve a de facto two-step process: first, the United States extinguished aboriginal title to the area and removed its native inhabitants, and second (usually many years later), it made those vacated public lands into a national park. Meanwhile, Indian use of those public lands became negligible, or secretive, or it ceased entirely. By the twentieth century, Indian

[10] Todd Wilkinson, "Ancestral Lands," *National Parks Magazine* 67 (July/August 1993): 31-35; Chris Smith and Elizabeth Manning, "The sacred and profane collide in the West," *High Country News* 29, no. 10 (May 26, 1997): 5-8; Valerie Taliman, "Native alliance fights National Park Service," *Indian Country Today* 16, no. 26 (December 30, 1996): D1; Robert Paton, "Indigenous Peoples Fight Park Service in the US," *Cultural Survival Quarterly* 21, no. 2 (July 31, 1997): 7.
[11] Catlin quoted in Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the Making of the National Parks* (New York: Oxford University Press, 1999): 9-23.

peoples had been separated from some of these wilderness areas for so long as to lend plausibility to the notion that the wilderness was naturally devoid of humans.[12]

The idea that nature in its purest state was an uninhabited wilderness eventually broke down. Wildlife biologists and ecologists were among the first to recognize that Indians had long influenced their environments through cultural practices such as intentional burning of forests, which acted on the natural system as a periodic disturbance and became an integral part of ecological succession. Indian removal interrupted these cultural practices, changing the ecology of these areas forever.[13] The influential Leopold Report of 1963 provided one of the first clear statements about this, observing for instance that forests in California's Sierra Nevada Range had grown unnaturally thick in the absence of native burning, but the report also offered a prescription for how the NPS was to maintain the public façade that national parks were remnants of an original continental wilderness. One year after the Leopold Report, the Wilderness Act of 1964 further perpetuated the myth by establishing a national wilderness preservation system based on a definition of wilderness as "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain." Over the next three decades, as the national wilderness preservation system grew in extent and popularity its conceptual underpinnings eroded. By the 1990s, the paradoxes contained in the American idea of wilderness were being widely noted. Land managers increasingly shied from even using the term unless it was with a capital "W" to denote lands so designated under the terms of the Wilderness Act. Conservation biologists came to regard wilderness as being in a universally altered or even wounded condition – not just widowed of its human aborigines but constantly at risk of losing biodiversity from a variety of threats to ecosystem integrity. These scientific thinkers might be strong advocates for preserving wilderness but not for the cultural reasons that had been uppermost in the minds of most twentieth-century wilderness preservationists. Environmental historians, viewing these dramatic changes of perception from a historical perspective, pointed out that wilderness was at best a cultural construct, at worst an artifact of ethnocentrism.[14]

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[12] The concept that wilderness was naturally devoid of humans was not limited to the popular mind. As biotic communities changed when Indians were removed (for example, in response to new fire regimes), natural resource managers sometimes perceived of nature in these places as having reached a new equilibrium without the human presence.

[13] For a recent survey of the extensive literature on Indians' use of fire, see Shepard Krech III, *The Ecological Indian: Myth and History* (New York: W.W. Norton & Co., 1999): 101-22. Also see Stephen J. Pyne, *Fire in America: A Cultural History of Wildland and Rural Fire* (Princeton: Princeton University Press, 1982): 72-83, and Michael Williams, *Americans & Their Forests: A Historical Geography* (Cambridge: Cambridge University Press, 1989): 22-49.

[14] Theodore Catton, *Inhabited Wilderness: Indians, Eskimos and National Parks in Alaska* (Albuquerque: University of New Mexico Press, 1997): 217. The most influential work by an environmental historian on this issue was the essay by William Cronon, "The Trouble with Wilderness, or , Getting Back to the Wrong Nature," in his *Uncommon Ground: Rethinking the Human Place in Nature* (New York: W. W. Norton & Co., 1995): 69-90.

But if this post-modern critique of the American idea of wilderness found the concept wanting as a realistic description of the natural world, few people suggested that wild lands should be returned to Indian peoples in an effort to restore a past ecology. With good reason, no one cast a wistful eye back to George Catlin's proposal in the early nineteenth century to establish a "*nation's Park* containing man and beast." Even Catlin himself recognized that the Plains Indian culture he found so captivating in the 1830s was changing rapidly under the influence of Euro-American culture. No such park was truly possible. As Mark David Spence notes in his book *Dispossessing the Wilderness: Indian Removal and the Making of National Parks*, "Catlin's vision of 'classic' Indians grossly ignored the cultural dynamism of native societies, and his park would have created a monstrous combination of outdoor museum, human zoo, and wild animal park."[15] Still, by the 1990s there was growing interest in preserving and even reintroducing traditional forms of Indian land stewardship at least on a limited scale where it was practicable. In other words, there was a desire to think about and manage wild lands in a way that ran counter to more than a century of federal policy aimed at separating Indians and wilderness.

Indians Respond

The impetus for reviving Indian connections to the land came, not surprisingly, almost entirely from Indians. Some adopted the scientific language of restoration ecology while others preferred the religious tones of sacred lands protection. They formed a number of non-government organizations working for land protection, such as the Native American Land Conservancy, the Seventh Generation Fund, and the Indigenous Environmental Network.[16] Many initiatives came from tribal governments and regional inter-tribal organizations. As Indians sought to have more influence over land management, not just on reservations but over wide areas that encompassed their ancestral homelands, they gained increasing support from non-Indians who were similarly interested in restoration ecology.

One important reason why tribes were able to advance these proposals and garner respect for them was that tribal governments were finally coming into their own in the 1990s. Led by a new generation of experienced and well-educated politicians, tribal governments finally could command appreciable financial resources and technical expertise. They also enjoyed a newfound ability to share information through computer networks and the internet. The size and effectiveness of tribal governments varied widely. A 1994 survey of tribal governments in the Pacific Northwest pointed to the urgent need for more natural resource managers – in particular, professionally qualified

[15] Spence, *Dispossessing the Wilderness*, 11.
[16] Jake Page and Charles E. Little, *Sacred Lands of Indian America* (New York: Harry N. Abrams, Inc., 2001), 131-136. The Seventh Generation Fund was established in 1977. The Indigenous Environmental Network was formed in 1990. The Native American Land Conservancy, an intertribal organization, dates from 1998.

Indians – on many reservations as the shrinking Bureau of Indian Affairs shifted control of natural resource programs over to tribal governments. Some of these tribal governments' natural resource departments already employed sizeable staffs: 110 on the Flathead Reservation, 31 on the Blackfeet Reservation, 74 on the Nez Perce Reservation, and 226 on the Colville Reservation.[17]

A second important reason that tribal governments acquired more influence in the mid-1990s was that the Clinton administration supported this trend. President Clinton issued executive orders aimed at empowering tribes to fight for sacred sites protection, environmental justice, and other concerns of unique interest to Indian peoples. The centerpiece of Clinton's federal Indian policy was Executive Order 13175, announced by the president in a Rose Garden ceremony on April 29, 1994, which promised to honor and respect tribal sovereignty through "two simple steps." First, all federal agencies would henceforward work directly with tribal governments. Second, they would consult tribal governments prior to taking any action that might affect tribal trust resources.[18] The dual instructions contained in this memorandum constituted Clinton's reformulation of the unique historical relationship between the federal government and Indian peoples. Clinton sought to build a more effective day-to-day working relationship between federal agencies and tribal governments based on renewed respect for tribal sovereignty. At the same time, the operative word in his memorandum, "consult," maintained the federal government's superior standing in these government-to-government relations.[19]

Clinton's initiative was significant not so much for its originality as its timing. It came at a time of ferment in the definition of the federal government's longstanding trust relationship to Indian peoples. While tribal governments grew more assertive about exercising tribal sovereignty, the three branches of federal government disagreed about how far the government should allow tribal sovereignty to reach. Congress sought to promote tribal self-sufficiency and economic development on Indian reservations, while the Supreme Court, in a countervailing effort led by Chief Justice William Rehnquist, sought to reduce if not altogether terminate tribal sovereignty.[20] Clinton's directive to all his executives to ensure that federal agencies operate within a government-to-government relationship provided a framework for tribes desirous of playing a larger role in natural resource management.

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[17] Diane Krahe, "Tribal Natural Resource Employment Needs in the Northwest," survey conducted for the purposes of the advisory committee of Salish Kootenai College's bachelor's program in environmental science, Environmental Studies Department, University of Montana, January 1994, 1-6.

[18] William J. Clinton, "Remarks to Native American and Native Alaskan Tribal Leaders," April 29, 1994, *Public Papers of the Presidents of the United States: William J. Clinton, 1994*, Book 1 (Washington: Government Printing Office, 1995), 800-803.

[19] William J. Clinton, "Memorandum on Government-to-Government Relations with Native American Tribal Governments," April 29, 1994, *Public Papers of the Presidents of the United States: William J. Clinton, 1994*, Book 1 (Washington: Government Printing Office, 1995), 804.

[20] Derek C. Haskew, "Federal Consultation with Indian Tribes: The Foundation of Enlightened Policy Decisions, or Another Badge of Shame?" *American Indian Law Review* 24:1 (1999-2000), 34-41.

The National Park Service Formulates a Native American Policy

In their book *American Indians & National Parks*, Robert H. Keller and Michael F. Turek begin by noting significant historical parallels between Indians and national parks:

> In the late nineteenth century, Indians, like the original landscape and wildlife, seemed destined to vanish – a prospect that finally motivated reform and protection in both cases. As a result, tribes today retain fifty million acres, the Park Service controls approximately eighty million. Many parks and monuments, as was true of many reservations, were created not by acts of Congress but by presidential executive orders. Indians and parks are both supervised by complex but weak federal bureaucracies: the Bureau of Indian Affairs (BIA) and the National Park Service (NPS), located in the same branch of the federal government, the Department of the Interior.[21]

Keller and Turek touch on a wide variety of issues that have come between Indians and national parks over the years, including disputes over boundary lines, rights-of-way, hunting and wildlife management, grazing permits, water rights, employment preference, craft sales, cultural interpretation, sacred sites, entrance fees, dams, and casinos. But as these authors make clear, disputes over land have been the most prevalent and intractable of all these recurrent issues. Historically, the NPS approach to such problems was to insist on "hard" national park boundaries that admitted little or no tribal interest in the land and resources contained therein. During the Park Service's founding years from 1916 to 1929, the Bureau of Indian Affairs (BIA) was hitting full stride in its effort to break up Indian reservations through allotment. In subsequent decades, as federal Indian policy seesawed back and forth on the meaning of Indian self-determination and tribal sovereignty, the Park Service barely wavered in its hard-line stand on tribal claims within national parks. Two acts of Congress in the 1970s set the stage for the NPS to reassess its longstanding opposition to most Indian traditional uses within national park areas, and to begin feeling its way toward a more cooperative approach on NPS-tribal issues. The first was the Alaska Native Claim Settlement Act of 1971, and the second was the American Indian Religious Freedom Act of 1978.

The Alaska Precedent

Alaska Natives occupied an anomalous position relative to federal Indian policy. The federal government had never dealt with Alaska Natives as tribes, it had made no

[21] Robert H. Keller and Michael F. Turek, *American Indians & National Parks* (Tucson: University of Arizona Press, 1998), xii.

treaties with them, and it had never extinguished aboriginal title to the land. The Alaska Statehood Act of 1958 acknowledged the Native land claim at the same time that it promised the state a generous amount of federal public domain to give the state government a revenue base. In the mid 1960s, as the state government moved forward to acquire some of the 103 million acres to which it was entitled, the Alaska Native claim movement crystallized and successfully stymied state land selections until Congress would address the claim issue. The problem gained urgency when oil was discovered on Alaska's North Slope and oil companies and the state government tried to move ahead with plans for a Trans Alaska oil pipeline. The result was the Alaska Native Claim Settlement Act or ANCSA, which finally extinguished aboriginal title, clearing the way for resumption of state land selections and oil development. In return, Congress gave Alaska Natives $900 million and the right to select 44 million acres from the public domain ahead of the state's remaining land selections.

ANCSA's significance for the NPS was found in Section 17(d)(2) of the law, which directed the Secretary of the Interior to withdraw 80 million acres of the public domain for possible inclusion in the national park system, national wildlife refuge system, national forest system, and national wild and scenic rivers system. This initiated a multiyear, interagency administrative process that would culminate with passage of the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. Since Alaska Natives obtained much of their subsistence from these lands, ANCSA guaranteed that they would retain the right to hunt and fish for their subsistence in these areas. Thus, as the NPS set about planning for an enormous expansion of the national park system in Alaska, it also needed to devise a new approach to national park management that would permit subsistence hunting and fishing. Moreover, it recognized that it would need to cooperate with Native corporations (ANCSA created a system of Native regional and village corporations in lieu of tribal governments) on other issues as well, since many of the ANILCA parks were freckled with Native selected lands.[22]

Sacred Lands

While conditions in Alaska caused the NPS to rethink its traditional hard-line position on subsistence uses, political developments in California led the NPS to adopt new views on Indian sacred sites. In 1976, the California state legislature passed the California Native American Cultural, Historical and Sacred Sites Act, which in effect called for protections that would soon be spelled out on a nationwide basis in the

[22] For the background to ANILCA and the subsistence issue, see Catton, *Inhabited Wilderness.* Also see Frank Norris, *Alaska Subsistence: A National Park Service Management History* (Anchorage: Alaska Support Office, National Park Service, 2002), which focuses on the history since 1980. The establishment of Big Cypress National Preserve in Florida in 1974 was also precedent setting. Not only did the new "preserve" designation allow sport hunting (a crucial distinction between parks and preserves that was soon carried into wider use in ANILCA), the enabling legislation for Big Cypress also provided for members of the Miccosukee and Seminole tribes to continue traditional uses in the area.

American Indian Religious Freedom Act or AIRFA. The state law posed policy questions for national park managers in California, and the NPS Western Region sought guidance from the Washington Office. After several months of policy review, with input provided by all regional offices, the NPS issued Special Directive 78-1 on February 6, 1978, which recognized the need to provide Native Americans special privileges in national parks for the purpose of practicing their traditional religion. Hard-liners in the NPS objected that the policy could put resources at risk, while the assistant solicitor for national parks worried that the policy might conflict with the First Amendment's prohibition against the federal government supporting any one religion. The NPS appointed a task force to consider the policy further. The task force came back with an even stronger position in support of allowing Indians special access to ceremonial sacred sites. Among its provisions, the policy would allow gathering of natural materials for ceremonial purposes as long as the activity did not adversely impact park resources, and it would require consultation with Indian groups on interpretive materials and programs pertaining to their culture. At the same time, the policy would affirm that the NPS must retain full responsibility over its resource protection and interpretive programs. The task force report was still in review when Congress passed AIRFA on August 11, 1978.[23]

In AIRFA, Congress found that the United States had enacted conservation laws without due regard for traditional American Indian religions and that some federal laws and policies inadvertently infringed on Indians' abilities to practice their traditional religion. The act directed the President to coordinate a review of administrative policies by all pertinent federal agencies so that these infringements could be rectified.[24]

A New Outlook

One of the Park Service's responses to AIRFA was to hire Dr. Muriel Crespi, a cultural anthropologist, to head up a new Anthropology Division.[25] Crespi's charge was separate from the Park Service's Cultural Resource Division, which had a large staff of archeologists but no cultural anthropologists and whose focus was archeological and historic properties, not tribal relations. Crespi became the leading spokesperson within the agency for greater cooperation between the Park Service and indigenous peoples. In an article titled "The Potential Role of National Parks in Maintaining Cultural Diversity," she challenged her agency to move toward such innovative management practices as systematically incorporating local peoples and knowledge into programs of resource protection, acknowledging these people as part of the ecosystem, and identifying options

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[23] Jackson W. Moore, "The National Park Service's Native American Policy: A Status Report," *CRM Bulletin* 1, no. 3 (September 1978): 1-3.
[24] Public Law 95-341, 92 Stat. 469.
[25] NPS Chief Archeologist Douglas Scovill was responsible for hiring Crespi. He was supervisor of the nationwide NPS archeology division within the historic preservation program and recognized the need in the 1970s to have a senior cultural anthropologist from academia in the NPS Washington Office. (Roger Kelly, comments on draft report, April 2009.)

for cooperative management of specific resources. "This is no plea for the artificial preservation of lifeways," she explained, acknowledging that cultures continually undergo change to adapt to changing conditions. But just because cultural change was a constant did not mean that conservation agencies like the NPS should be deterred from taking steps to accommodate traditional lifeways where indigenous peoples still maintained a foothold in protected areas.[26]

Crespi took the position that the Park Service's responsibility toward Indian peoples should not be limited to Indian sacred sites located on lands in the national park system but should grow out of the agency's role as the keeper of the nation's heritage. She worked methodically to cultivate support for that broad view with professional organizations like the American Anthropological Association and the Society for Applied Anthropology, Indian organizations, and Congress. Eventually, when the NPS restructured in 1994, the Anthropology Division became the Ethnography Program. By then, thanks to Crespi's influence, the NPS had recognized a responsibility to make ethnographic studies for all units in which Native Americans were a significant presence.

As early as 1984, Crespi took note of the Timbisha Shoshone's unusual example of cultural persistence in Death Valley and suggested that the Tribe could play a role in managing resources within the monument based on traditional practices. In 1992, Crespi commissioned an ethnographic study of the Timbisha Shoshone. She hired Dr. Catherine Fowler, a professor in the Department of Anthropology at the University of Nevada, Reno, to head the study. An ethnobotanist, Fowler highlighted the indigenous people's role in cultivating mesquite and pinion pine. The final report, "Residence Without Reservation," came too late to have a direct impact on the process leading to the Timbisha Shoshone Homeland Act; however, it contributed to the growing body of knowledge connecting traditional cultural practices and natural ecosystems. Moreover, it led to another study, "Timbisha Shoshone Tribe's Land Acquisition Program: Anthropological Data on Twelve Study Areas," which the Tribe used effectively to support its assertion of a homeland area.[27]

In another initiative that was separate from the Ethnography Program though also in response to AIRFA, the Park Service broadened its efforts to protect Native American cultural properties. Much of this effort was related to the Park Service's role as keeper of the National Register of Historic Places. In 1986, Dr. Patricia L. Parker, a cultural anthropologist, went to work for the Park Service's Interagency Resources Division, providing assistance to state and local preservation programs. She was tasked to write a report for Congress on the funding needs for historic preservation on tribal lands. Parker's report, *Keepers of the Treasures: Protecting Historic Properties and Cultural*

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[26] Muriel Crespi, "The Potential Role of National Parks in Maintaining Cultural Diversity," in *National Parks, Conservation, and Development: The Role of Protected Areas in Sustaining Society,* edited by J. A. McNeely and K. R. Miller (Washington: Smithsonian Institution, 1984), 303-04.
[27] Catherine S. Fowler, comments on draft report, April 2009.

Traditions on Indian Lands, led to a tribal grants program administered by the Park Service. In 1993, Congress amended the National Historic Preservation Act, authorizing tribal governments to establish tribal historic preservation offices on a similar basis to state historic preservation offices. Parker managed the tribal grants program and assisted tribes as they began appointing their first Tribal Historic Preservation Officers (THPOs).[28]

Meanwhile, the Park Service was moving into other new areas of involvement with tribal governments. In 1990, Congress passed the Native American Graves Protection and Repatriation Act (NAGPRA), which required all federal agencies in possession of Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony to repatriate those items to the appropriate tribe. Within months of the law's enactment, NPS officials persuaded the assistant secretary for fish and wildlife and parks that the NPS was the best agency to coordinate all of the Department of the Interior's responsibilities under the act. As a result, the NPS established two distinct NAGPRA programs: one dedicated to assisting all units within the national park system, and another set up to assist all other agencies in the Department of the Interior. Dr. Michael Evans, a member of Crespi's staff group, was put in charge of the former, while Dr. Francis P. McManamon, head of the Archeological Assistance Division, was responsible for the latter.[29]

Another new area of NPS involvement with tribal governments concerned so-called "638 contracts." In 1988, Congress amended the Indian Self-Determination and Education Assistance Act (ISDEA) so as to accelerate efforts by tribes to take over BIA administered programs on tribal lands. The contracts negotiated by tribes and the BIA were called "638 contracts" after the initial act, P.L. 94-638. In 1994, Congress amended the act again so as to include Title IV, which provided for tribes to negotiate annual funding agreements with other agencies in the Department of the Interior for programs of "special historical, cultural, and geographic significance" to the tribe.

One of the first 638 contracts to involve the NPS was in Grand Portage National Monument, a small historic site located within the Grand Portage Indian Reservation in Minnesota. In this instance, the Grand Portage Band contracted with the NPS to do all the maintenance work in the national monument; essentially, the maintenance crew was transferred from the Park Service to the tribal government. When this switch was made in 1995 not all employees were happy about it, and relations between the national monument and the band suffered. In 1997, a new superintendent took charge of the national monument, relations improved, and Grand Portage soon became the poster child for cooperative management in the national park system. It helped that the new superintendent, Tim Cochrane, was a cultural anthropologist, one of a handful who had

[28] Pat Parker interview, August 8, 2007.
[29] Frank McMannamon, comments on draft report, April 2009.

been recruited by Crespi at the beginning of the 1990s and installed in the various regional offices. Before going to Grand Portage, Cochrane had been regional anthropologist in Alaska.[30]

Besides ethnographic studies, historic preservation on Indian lands, NAGPRA, and 638 contracts, the Park Service continued to deal with tribal governments on a host of other matters relating to park lands and resources. Recognizing the growing significance and complexity of these relations, NPS Director Roger Kennedy established an American Indian Liaison Office (AILO) in 1995, appointing Pat Parker as chief. Parker's main function was to devote all of her time to thinking about and responding to Indian issues concerning the NPS. She had a direct line to the director and was to serve as his eyes and ears. According to Parker, it was John E. Cook, regional director in the Southwest Region and the only Native American in the NPS leadership at the time, who recommended that the AILO be created. The new office was established during the Park Service's restructuring, which was made in response to Vice President Gore's National Performance Review (NPR). The timing was significant, for the AILO was one of very few offices established in Washington after the NPR, when virtually the entire federal bureaucracy was making concerted efforts to downsize central offices and move upper management staff out to the field. [31]

Among the first big items on Parker's plate was the matter of the Timbisha Shoshone in Death Valley.

[30] Tim Cochrane interview, July 20, 2007.
[31] Roger Kelly interview, August 15, 2007; Parker interview.

Chapter Two

The Timbisha Shoshone

Early History

The Timbisha Shoshone have inhabited Death Valley since time immemorial. Three to four generations before the establishment of Death Valley National Monument, the ancestors of the present Tribe appear to have made their winter villages in four main areas in Death Valley and another in Panamint Valley. Typically a winter village consisted of from three to ten conical brush houses, each belonging to a nuclear or extended family. Each village comprised a number of related families, and these ties of kinship extended out further to the other village groups of Timbisha Shoshone as well as to other speakers of the Panamint Shoshone language whose winter villages were located in more distant valleys in southern California and Nevada.[1]

Traditionally the Timbisha Shoshone adapted themselves to the hot, desert environment by moving camp with the changing seasons, hunting and gathering diverse plant and animal resources as they became available at different places and times of year. Winter habitations were usually located near mesquite groves, which were habitat for a variety of small game animals and birds that the people hunted. The mesquite trees were also a vital source of food as the beans they produced in late spring were harvested and stored and consumed in the following winter. After the mesquite harvest, the Timbisha Shoshone moved from the valley floor, where temperatures in summertime would frequently soar above 120 Fahrenheit, to cooler elevations in the Panamint Range to the west or the Grapevine Mountains to the northeast. Establishing base camps in the shade of pinion-juniper forests, they went on foraging expeditions in search of seeds, roots, berries, and pine nuts, and hunted bighorn sheep, mule deer, yellow-bellied marmot, black-tailed jackrabbit, chuckwalla, and other small game. Summer base camps usually numbered fewer than fifty people, but if pine nuts were particularly plentiful the camps

[1] Catherine S. Fowler, "Historical Perspectives on Timbisha Shoshone Land Management Practices, Death Valley, California," in *Case Studies in Environmental Archaeology*, edited by Elizabeth J. Reitz, Lee A. Newsom, and Sylvia J. Scudder (New York: Plenum Press, 1996), 90.

might draw Panamint Shoshone from farther away and swell to a population of one hundred people or more. The Timbisha Shoshone stayed in the mountains until the first snows in fall, when they returned to their winter village sites.

The Timbisha Shoshone believed (and still believe) that the Creator, Appü, placed them in their homeland at the beginning of time and that they were one with the land. In their seasonal rounds, they mingled subsistence hunting and gathering activities with spiritual practices that honored the places that were the sources of life. These included mountains, meadows, mesquite groves, and springs. When the Timbisha Shoshone prepared to harvest mesquite beans, for example, the activity began with the elders addressing the trees, thanking them for the food that was about to be harvested. When a group camped by a spring or a pothole, the people cleaned the water hole by removing willows or debris that had accumulated since the last visit. This helped the animals as well as the people.[2]

The Timbisha Shoshone interacted with the environment in other ways. Like other Great Basin peoples, they set fire to the scrub vegetation to clean riparian areas of unwanted plants and encourage growth of others, such as tobacco, or to increase seed production. They regularly pruned the lower branches of mesquite and pinion pine trees in order to make the beans and nuts easier to harvest. In the case of mesquite groves, this had the added benefit of protecting the grove from being overwhelmed by blowing sand, which would otherwise collect around the low-hanging limbs and form a dune. They also did various things to pinion pines to stimulate more cone production, such as pinching the new growth at the tips of each branch and beating the upper branches with the long poles that they used for knocking down cones.[3]

The Timbisha Shoshone saw what may have been the first Anglo visitors in their homeland in 1849, when several parties of prospectors moved through the area on their way to California's gold fields. In the first mention of the Tribe in recorded history, one of these forty-niners described coming to a "big Indian camp" at Furnace Creek where all but one of the inhabitants had left unseen before the party got to it. Over the next two decades, increasing numbers of prospectors, surveyors, and U.S. troops visited the area. In 1861, white miners formed a mining district at Telescope Peak in the Panamint Range and mining activity in other parts of the region followed. By the 1870s, there were some non-Indian settlements in the valley and contact between Indians and non-Indians became more regular. Some non-Indians attempted to graze cattle around Furnace Creek starting in 1870 but the enterprise was short-lived. A permanent ranch was established at Furnace Creek in 1883 in conjunction with the nearby Harmony Borax Works, established that

[2] Catherine S. Fowler, et al., "Caring for the Trees: Restoring Timbisha Shoshone Land Management Practices in Death Valley National Park," 303; Fowler, "Historical Perspectives on Timbisha Shoshone Land Management Practices, Death Valley, California," 98.
[3] Fowler, "Historical Perspectives on Timbisha Shoshone Land Management Practices, Death Valley, California," 91-99.

same year. As these non-Indian enterprises sprang up, the Timbisha Shoshone began to engage in seasonal wage work in a limited way which impinged somewhat on their seasonal rounds. They continued to move between winter and summer camps.[4]

The Timbisha Shoshone appear in early written accounts as "Panamint Shoshone." Genealogical research has confirmed that these people were ancestors of the present Timbisha Shoshone Tribe. A report from a government expedition in 1891 states that the "Panamint tribe" was cultivating several acres of corn, potatoes, squashes, and melons in the southern end of Death Valley. Their cooking utensils consisted of a mixture of traditional basketry and metal knives and pots. They hunted game both with bows and arrows and guns and were self-sufficient for all their food. (By the 1890s, most hunting and gathering tribes in the West were not self-sufficient because they had lost so much of their traditional resource base.) The men worked intermittently in the mining camps and as mail carriers, or they traveled out of the valley to seasonal jobs in the Owens Valley area.[5]

From about 1900 to 1933, the Timbisha Shoshone continued to occupy their traditional locations in winter and summer, hunting and gathering as in aboriginal times, but all the time giving more of their energy to wage work. Some individuals began traveling farther away for temporary jobs in towns that were growing up in the region, and dependence on wage earnings increased. Meanwhile, new local industries appeared in the valley; borax mining was revived after a hiatus in the 1890s, and tourism emerged in the 1920s. By the 1920s, these local industries began to influence where Timbisha Shoshone families resided most of the time. Indian census data show a noticeable increase in families residing at Furnace Creek, Grapevine Canyon (near the new Scotty's Castle mansion), Lida, and Beatty. Still, the Timbisha Shoshone continued to hold traditional fall gatherings and to leave the valley for high camps during the heat of summer.

Interestingly, historical research by the BIA's Office of Federal Acknowledgement was not able to pinpoint when the Timbisha Shoshone first came to the attention of the BIA. Agents made some efforts in the early 1900s to identify the large number of Indians in California who were not on reservations or enrolled at any agency. In 1911, the BIA established the Bishop Indian Agency, which claimed jurisdiction over the Indians in Death Valley; however, the agency was so far away that its oversight was nominal. In 1926, this agency closed and jurisdiction transferred to the Walker River Agency, and later Carson Indian Agency. Beginning around 1910, some of

[4] "Anthropological Report on the Death Valley Timbi-sha Shoshone Band," in Technical Reports regarding The Death Valley Timbi-sha Shoshone Band of Death Valley, California, Prepared in response to a petition submitted to the Secretary of the Interior for Federal acknowledgement that the Death Valley Timbi-Sha Shoshone Band exists as an Indian tribe, [1982], Office of Federal Acknowledgement (hereafter cited as OFA).
[5] Ibid.

the children began attending the Carson Indian School. Perhaps by 1915, other Timbisha Shoshone children went to public schools in Darwin and Beatty. In 1920, there were seven families at Furnace Creek with a total of 16 school-age children. The BIA urged the families to move to Owens Valley so their children could attend the Indian school there, but the families refused. This standoff continued for about two years until finally the BIA began paying tuition for the Indian children to attend local schools, first at Ryan, then at Furnace Creek.[6]

Pauline Esteves, who would play such a central role in the Timbisha Shoshone's quest for land in the late twentieth century, was born at Furnace Creek in 1924. She remembers her people moving the village three times during her early childhood in response to the non-Indians' encroachments. After the first move they lived by the open creek and she remembers a diversion and pond where she and the other kids played in the water. Then they moved to the site of the present visitor center, onto a parcel of land owned by the Pacific Coast Borax Company, where they obtained water from a pipe that the company put in the ground for them. "That's when the Park Service came along, and they found us living there, close to 190, the highway," she recalls. "And I don't know how we learned, but we learned that they didn't like the way we looked down there, living in our little shacks, let's say, out houses, no plumbing, just a faucet outside where we collected our water."[7] In 1936, they reluctantly consented to move yet again, to a site located about a mile to the southwest where the government would provide them with adobe houses and tap water. They did so with the promise that it would be the last time.[8]

Death Valley National Monument

Death Valley National Monument was proclaimed by President Hoover in February 1933. The proclamation followed a Park Service study of the area's national park potential. NPS Director Horace M. Albright, who had grown up in nearby Bishop and knew the area firsthand, thought Death Valley had a superb array of natural features, rare plants and animals, and exciting frontier history, and he regarded the monument designation as a way station on the road to the area becoming a national park. As a national monument, it was placed under the care of the superintendent of Sequoia National Park, John R. White.[9]

Neither the NPS nor the BIA appear to have noticed the Timbisha Shoshone presence in the valley until after the monument was proclaimed. White learned of their

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[6] Ibid.
[7] Esteves interview.
[8] Esteves interview; Crum, "A Tripartite State of Affairs: The Timbisha Shoshone Tribe, the National Park Service, and the Bureau of Indian Affairs, 1933-1994," 124.
[9] Typescript titled "Radio Talk Given by H. M. Albright 9:15 p.m. October 25th 1933 – WJZ – New York," Curator's Timbisha Files, DEVA.

presence on his first visit to Death Valley in the spring and he immediately decided that "one of the problems there will be looking after the hundred or two Indians who range within the Monument." Perhaps the most important reason why the superintendent saw the Indians as a "problem" was that he held the view, typical of his time, that regardless of whether or not the Indians were indigenous, they were not part of the natural environment. He was particularly concerned about the Indians' horses, which they allowed to range on the valley floor in winter and which seemed to cause damage to the scanty vegetation around springs. But even the Timbisha Shoshone themselves were intruders on the natural world in his mind. "My own impression," he wrote the NPS director, "is that these Indians have lived a nomadic life and have moved from the Panamint Mountains to the floor of the Valley in the winter and back again taking toll of the sparse wild life of the desert region." If the NPS was going to protect the monument's desert plants and wildlife, therefore, it would have to phase out the Indians' stock grazing and hunting activities.[10]

Another reason that the Timbisha Shoshone were a "problem" for administration of the monument in White's mind was that national park policy clearly favored public ownership of all the land area within every unit of the national park system. This principle was embodied in the Yellowstone National Park Act of 1872 and was carried into policy in the well known letter from Secretary of the Interior Franklin K. Lane to NPS Director Stephen T. Mather. That letter stated in no uncertain terms: "Private holdings should be eliminated."[11] Most of the Timbisha Shoshone did not yet have any legal title to land within the monument, but they occupied it nonetheless. What would give?

The original area of the monument was made up almost entirely of land owned by the federal government. There was one existing Indian allotment in the area. A Timbisha Shoshone named Hungry Bill had filed an Indian homestead claim in 1907. For some unexplained reason Hungry Bill never secured a patent for his claim, but twenty years later his heirs finally obtained a trust patent for an Indian allotment of 160 acres.[12] A second Indian allotment was made within the monument area three years after it was established. The circumstances surrounding this allotment were somewhat unusual. A Timbisha Shoshone named Robert Thompson and his relatives had occupied the land since the 1880s, when Thompson's father established a ranch and planted fruit trees there. Thinking the land belonged to him, Thompson began leasing it to some non-Indian miners in the 1920s. After a few years these miners decided to challenge whether Thompson had a valid claim in the hope of getting the land for themselves, and the case went to court. The BIA proposed to issue a trust patent for the land Thompson had always thought belonged to him, which would not only thwart the miners but alienate the

[10] John R. White to Oscar H. Lipps, May 3, 1933, and John R. White to The Director, July 19, 1934, Curator's Timbisha Files, DEVA.
[11] Quoted in John Ise, *Our National Park Policy* (Baltimore: John Hopkins Press, 1964), 194.
[12] Ellis Purlee to T. R. Goodwin, July 10, 1934, Curator's Timbisha Files, DEVA.

property from the newly created monument as well. The NPS opposed this action, fearing it would set a damaging precedent for the rest of the monument. "If this Indian is allowed to prove up on Warm Springs," ranger Theodore R. Goodwin wrote to Superintendent White, "we will have an Indian claiming every good water supply in the valley." This was not an unreasonable concern on Goodwin's part for he had heard of two such claims already. White agreed with him. "I do not believe that these Indians should be allowed to patent the springs which are of the greatest importance for public use and for monument development," he wrote to the director. When the court finally ruled on the Thompson case in 1942, it recognized as valid the trust patent that the BIA had issued in 1936. No further allotments were made to Indians within the monument as Goodwin and White had feared, however.[13]

Besides the concerns about resource protection and public ownership of the land, there was another reason why Superintendent White regarded the Timbisha Shoshone as a "problem" for monument administration. Owing to the fact that they were culturally adapted to live in such a desolate environment, the Timbisha Shoshone people were one of few Indian groups in the western United States in the early twentieth century who had escaped the clutches of reservation life, and in 1933 they still preferred it that way. Yet according to the cultural norms of non-Indians around them, they were living in destitute conditions and White recognized that they would inevitably require federal assistance. White understood that the NPS was not the ideal agency to provide social support services to a group of Indians. Instead, government assistance would fall to the BIA even though the NPS was the land manager – a cumbersome "tripartite state of affairs" as historian Steven Crum has described it.[14]

Superintendent John R. White was a quintessential "Mather man," capable, pragmatic, and strongly committed to the founding principles of the Park Service to preserve the natural and cultural resources and provide for the public's enjoyment of the same while leaving them unimpaired for future generations. English-born and Oxford-educated, he had served for a decade in the U.S. Army before taking the job of superintendent of Sequoia National Park in 1920.[15] Theodore R. Goodwin was White's key man on the ground in Death Valley and would succeed him as Death Valley National Monument's second superintendent in 1938. Both men expressed attitudes and used

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[13] T. R. Goodwin to John R. White, July 17, 1934, and White to The Director, July 19, 1934, Curator's Timbisha Files, DEVA; Crum, "A Tripartite State of Affairs: The Timbisha Shoshone, the National Park Service, and the Bureau of Indian Affairs, 1933-1994," 122. White's comments to Superintendent Ray R. Parrett of Walker River Agency (July 19, 1934) are also interesting. "I am entirely sympathetic with a view point which embraces the protection of the rights of the Indians in Death Valley, but I do not think that either their needs or their equities justify the alienation of these extremely valuable springs which they have used, in any case, in the most casual manner in connection with their semi-nomadic lives."

[14] John R. White to Oscar H. Lipps, May 3, 1933, Curator's Timbisha Files, DEVA; Crum, "A Tripartite State of Affairs: The Timbisha Shoshone, the National Park Service, and the Bureau of Indian Affairs, 1933-1994."

[15] For more on White, see Rick Hydrick, "The Genesis of National Park Management: John Roberts White and Sequoia National Park, 1920-1947," *Journal of Forest History* 28, no. 2 (April 1984): 68-81.

words to describe the Timbisha Shoshone that sound bigoted to the modern ear but they were not insensitive people. In fact, they took a strong humanitarian interest in the group's welfare. Still, they viewed the resident Indians as primarily a BIA responsibility while the Park Service's concerns were with protecting the resources, controlling the land, and providing for the public's enjoyment. Thus, they were not unfeeling when they wrote about the Indian "problem," or complained about the Park Service's "burden," or worried that the "squalor" of the Indian village was incongruent with the campground and other visitor facilities at Furnace Creek, although use of these terms did evoke their biases as national park managers.

The Timbisha Shoshone brought their own cultural perceptions to bear on the new relationship. In the first place, they were all too familiar with whites' racial prejudice. Although by the time Death Valley National Monument was established in 1933 the Timbisha Shoshone had many friends among the white population, the whites nevertheless treated them in a way that the Indians found condescending and intimidating. The Park Service rangers were not only white outsiders, but worse, the Timbisha Shoshone mistook them at first for soldiers. Pauline Esteves was then about nine years old. "My people thought that the army had pulled in, because they were all in uniform," she remembers. "We were told to be wary of them, not to speak back to them or anything like that. Kind of avoid them, you know. Stay away from them as much as we could." After the rangers became a more familiar presence, the Timbisha Shoshone remained suspicious even as the children grew more emboldened around them. The rangers would ask the children questions, trying to absorb some indigenous knowledge, and the children would mostly refuse to answer them. Esteves and the other children found the rangers' curiosity perplexing, she recalls, "because we're thinking, 'why are they asking us these kinds of questions when they're supposed to be so higher up than we are, in mentality and all this.'"[16]

While the Timbisha Shoshone tried to keep to themselves as much as possible, their situation grew more tenuous under the strain of the Great Depression. Seasonal jobs around the valley melted away and the Pacific Coast Borax Company became practically their sole employer. By the mid-1930s, the Timbisha Shoshone could no longer sustain themselves through the summer months of unemployment. Families who wintered at Furnace Creek continued to vacate the valley each summer, but they now depended on supplies being delivered to their summer camp at Wildrose by the citizens of nearby Trona in San Bernardino County to supplement what they obtained by hunting and gathering. The private relief effort was organized by ranger Goodwin's wife together with local resident John Thorndike and a citizen of Trona named James Doyle. "The Indians are no one's charge and everyone's problem," Goodwin once wrote peevishly to

[16] Esteves interview.

the NPS director. What he meant was that they lacked effective BIA oversight and that they urgently needed help to make themselves more self-supporting.[17]

The Indian Colony

What little oversight the BIA offered in the mid-1930s came from the Carson Indian Agency in neighboring Nevada. The superintendent of Carson Indian Agency was a woman by the name of Alida C. Bowler. During the first three years of NPS administration of the national monument, Bowler became increasingly concerned about the welfare of the Timbisha Shoshone in Death Valley. The problem, as Bowler saw it, was that her agency was limited in what it could do by the Timbisha Shoshone's legal status as "non-ward Indians," or Indians who did not belong to any federally recognized tribe. To get their status changed to "ward Indians," Bowler proposed that the group could be classified as a "colony." There were many such Indian colonies in Nevada, where the native population was sparse and conditions on Indian reservations were particularly bad. Typically these Indian colonies were located in towns or on white-owned ranches where the members of the colony found employment; often they included Indians from different tribes. In the early twentieth century, the BIA began recognizing these Indian colonies as de facto reservations. During the Indian New Deal of the 1930s, many of them became federally recognized tribes. Bowler proposed to form the Timbisha Shoshone of Death Valley into a colony. The colony would appoint a council and the BIA would then be able to provide medical service and economic relief to the members of the colony. Bowler explained her idea to ranger Goodwin in March 1936. "This was the basis on which we developed the Indian Village idea," Goodwin later wrote.[18]

While Bowler was primarily interested in changing the Indians' legal status so that her agency could take responsibility over them and deliver social services to them, Goodwin was more interested in the Indian community's physical location. While Bowler used the term "Indian colony," Goodwin used the term "Indian village" and this was the term that stuck. Jointly, Bowler and Goodwin envisioned a public works project that would result in a cluster of new housing units in a location near but somewhat apart from the existing Furnace Creek Ranch development. The colony or village would occupy a 40-acre tract. (Eventually, the size of the tract became 60 acres.) While the BIA would extend social services to this Indian community, the NPS would assist in its economic development by building a trading post and by encouraging sales of native crafts to monument visitors.[19]

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[17] T. R. Goodwin to John R. White, August 11, 1936, Curator's Timbisha Files, DEVA.
[18] Ibid.
[19] Ibid.

Upon first hearing of Bowler's idea, Superintendent White expressed confidence that "we shall be able to work this out together with a good deal of satisfaction to all of us." At the same time, he urged that the BIA and NPS go slow in developing the new village, deferring the construction of a school building, for example, until a year or two had passed and the BIA and NPS could evaluate how the community was doing. White saw the new village as an experiment in acculturation. That view as much as any other consideration shaped the village's design. "As far as the layout of the Village is concerned and the quarters for the Indians, I would propose to operate on a temporary basis, giving them some improvement over their present conditions but not attempting immediately to put them in quarters with running water, plumbing, etc." He went on in terms that, although belying a patronizing attitude, were fully intended to be sensitive. "I do not think it advisable, and undoubtedly you have thought along the same line, to make the transition from their present method of living to one of comparatively modern standards too violent. There are many problems of sanitation, social customs, migration, etc. which, of course, you have considered."[20]

On May 23, 1936, the BIA and the NPS entered a memorandum of agreement for "Establishing a Colony of Indians on The Death Valley National Monument," which Acting Director A. E. Demaray signed on behalf of the NPS and Commissioner of Indian Affairs John Collier signed on behalf of the BIA. Under the agreement, the BIA was to pay for the cost of building materials and the NPS was to furnish design and construction plans and oversee construction. The work would be done by the Civilian Conservation Corps. The houses were to be occupied by Indian families selected by the BIA, provided that their selection met with the approval of the NPS, and provided further that the NPS had the right to evict any tenants who violated NPS rules and regulations pertaining to the village occupancy. The NPS would be permitted to charge a nominal monthly rent of $3 for maintenance. The NPS was to employ able-bodied members of the colony on appropriate projects whenever possible.[21]

The key to this plan was that the land would transfer to the BIA so that it could be turned into an Indian trust territory. This small land base was essential for securing the Indians' status as an Indian colony. Bowler, Goodwin, and the Timbisha Shoshone all thought that the land transfer could be accomplished administratively. Thus, according to Bowler's plan, as soon as the village was occupied the Timbisha Shoshone formed the Death Valley Indian Council and petitioned the government to make the tract surrounding the village into a reservation. But the plan hit a roadblock: NPS officials in Washington held that no public land could be transferred out of a national monument except by an act of Congress, and BIA officials agreed that under the circumstances no Indian reservation could be established there except by an act of Congress. And since the Timbisha

[20] John R. White to Alida C. Bowler, April 2, 1936, Curator's Timbisha Files, DEVA.
[21] Memorandum of Agreement between the Bureau of Indian Affairs and the National Park Service, Department of the Interior, Relative to Establishing a colony of Indians on The Death Valley National Monument," May 23, 1936, Curator's Timbisha Files, DEVA.

Shoshone did not have any land, the federal government did not recognize them as anything other than non-ward Indians. Therefore the petition went unanswered. Of course, this meant the Timbisha Shoshone were in a Catch-22: without land they had no standing, and with no standing they could not get land. Goodwin looked for a way out of the impasse, proposing to the NPS director in August 1939 that the NPS and the BIA jointly present legislation to Congress by which the tract would transfer to the BIA. Alternatively, perhaps the tract could be turned into an individual Indian allotment by the same administrative procedures that had been used in establishing the 40-acre allotment for Robert Thompson at Warm Springs. "Under this procedure," Goodwin thought, "it might be possible to grant title to the Death Valley Indian Council without legislation."[22]

The NPS leadership circulated Goodwin's proposal for comment. There were concerns about precedent. "If we do this, should we set up an Indian Reservation in Yosemite and another where the new Indian village in Grand Canyon is located?" Assistant Director Demaray wondered. It also seemed like a dubious solution for the Indians: "60 people on 40 acres in Death Valley doesn't spell anything like economic self support to me," George L. Collins in the Planning Division noted.[23] Besides meeting with skepticism from NPS officials, the idea of creating a small reservation at Furnace Creek did not appeal to Commissioner of Indian Affairs John Collier. Instead, he wanted to recognize the Timbisha Shoshones' status as persons of one-half or more degree of Indian blood, which would make them eligible for emergency relief funds as a "rehabilitation project." What this meant in practical terms was that federal support would be year to year rather than open ended.[24]

Lacking support from the highest levels of the BIA and NPS, the Indian colony plan did not turn out the way Bowler had intended. Instead of evolving along the lines of other Indian colonies under the Carson Indian Agency's jurisdiction, the Death Valley Indian colony was exceptional because of its national monument setting. Soon NPS personnel were involved in tasks normally handled by BIA, such as dealing with school truancy and administering medical care. Perhaps in part because nearly everything fell to the NPS, the NPS did not meet all its obligations under the 1936 agreement. Rangers did not collect the $3 per month rent, which was supposed to be applied to maintenance on the buildings, and no maintenance work was done. Furthermore, the park made no effort to employ Timbisha Shoshone in the monument.[25] It went ahead with plans to develop a

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[22] T. R. Goodwin to The Director, August 15, 1939, File: Correspondence, 1934-1941, 1959, re: Timbisha Shoshone, OFA. The undated petition is in this same file.
[23] Demaray to Col. White, September 26, 1939, and George L. Collins to Mr. Demaray, August 23, 1939, File: Correspondence, 1934-1941, 1959, re: Timbisha Shoshone, OFA.
[24] Fred H. Daiker to Don C. Foster, November 7, 1939, File: Correspondence, 1934-1941, 1959, re: Timbisha Shoshone, OFA; T. R. Goodwin to The Director, November 18, 1939, File: Correspondence, 1930s, re: Timbisha Shoshone, OFA.
[25] Superintendent to Regional Director, February 28, 1963, File: Documents constituting the legislative and administrative history of relations between Death Valley National Monument and the Timbisha Band of Shoshone Indians, Vol. 2, Unlabeled box in locked case, DEVA.

trading post, but closed the facility after a four-year trial run. Meanwhile, the NPS placed more and more restrictions on the Timbisha Shoshones' traditional hunting and gathering activities in the monument. First, it suppressed native hunting of bighorn sheep; then, it prohibited hunting of small animals and discouraged gathering of pine nuts and other plant foods except by special use permits. The growing restrictions were particularly demoralizing for young men. When World War II came, most of the adult men in the colony left to find wage jobs or join the armed services since they were no longer able to provide for their people according to their traditional culture.[26]

The Indian Resident Housing Policy

After another decade had passed, the Indian village was in very poor physical condition. Evidently, the adobe structures did not hold up well without regular maintenance and consistent occupancy. The new monument superintendent, Fred W. Binnewies, reported that "several of the unoccupied houses have partially collapsed and are beyond repair." Binnewies sought approval of a new policy aimed at slowly eliminating the village. As people moved out, the houses would not be rented to new tenants, Binnewies proposed. BIA officials were supportive. Their agency had long ceased providing any meaningful oversight of the Timbisha Shoshone. In August 1957, Binnewies's new policy became official: the NPS and BIA mutually agreed to cancel the memorandum of understanding of 1936, and the BIA endorsed the revised NPS plan instead.[27]

Binnewies proceeded to implement the new "Indian resident housing policy" in a way calculated to drive the remaining Timbisha Shoshone out of their homes. In the first place he raised the rent in the special use permit from $3 per month to $8 per month and began sending rangers to the village to collect the money. The policy authorized the higher fee ostensibly to cover deferred maintenance costs, but Binnewies tried to enforce the fee (which had never been collected before) with the intent of driving out those tenants who were unwilling to pay it. All of the Timbisha Shoshone refused to pay and there were threats and recriminations on both sides.[28] Binnewies also ordered rangers to demolish the vacant houses. Since the houses were made of adobe, the method of demolishing them was to spray them with a water hose until they disintegrated. The Timbisha Shoshone were appalled when the rangers took this action.[29]

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[26] Crum, "A Tripartite State of Affairs: The Timbisha Shoshone Tribe, the National Park Service, and the Bureau of Indian Affairs, 1933-1994," 127.
[27] "Death Valley Indian Village Housing Policy," May 9, 1957, File 13: L30 Land Use Special Use Permits Timbisha Shoshone Tribe, Central Files, DEVA.
[28] Superintendent to Regional Director, February 28, 1963, File: Documents constituting the legislative and administrative history of relations between Death Valley National Monument and the Timbisha Band of Shoshone Indians, Vol. 2, Unlabeled box in locked case, DEVA.
[29] Joe Kennedy interview, August 1, 2007; Crum, "A Tripartite State of Affairs: The Timbisha Shoshone Tribe, the National Park Service, and the Bureau of Indian Affairs, 1933-1994," 129-30.

The "Indian resident housing policy" of 1957, although a Park Service initiative, clearly represented the stern spirit of the termination era in federal Indian policy. The BIA was making a concerted effort in this decade to relocate jobless rural Indians to cities – in spite of Indian peoples' strong cultural ties to their native land – in order to provide better job opportunities for them. In this context, driving the Timbisha Shoshone out of their homes at Furnace Creek could be grimly perceived as progressive. In a similar vein, the BIA returned to its earlier policy of encouraging Indian land sales. This was because most individual Indian allotments had passed into a confusing status in which the BIA held the land in trust for the heirs of the deceased original allottee. With ownership usually fractionated among multiple heirs, it was very difficult for the heirs to use the land or for the BIA to manage the land to its fullest potential. Both the Hungry Bill allotment and the Robert Thompson allotment in Death Valley National Monument were sold by the heirs under BIA auspices during the 1950s. All 200 acres, the sum total of Indian trust lands within the monument area, were bought by the Park Service and added to the monument.[30]

The Timbisha Shoshone community at Furnace Creek persisted through this time of adversity mainly because of the determination of four women who stayed in the adobe houses from year to year while the men came and went.[31] By staying put, the women prevented the NPS from ever treating the remaining structures as abandoned and demolishing them. Meanwhile, they steadfastly refused to pay any rent, even when rangers came to the village and tried to wait them out. In 1963, Superintendent John A. Aubuchon finally abandoned this charade of demanding rent and recommended to his superiors that the NPS drop its threat of eviction for failure to pay. "If we were to exercise our authority to evict the Indians under the existing policy and terms of the special use permit," he wrote, "we would be open to much adverse criticism from the public and various groups who interest themselves in the Indians." Aubuchon believed the village would be abandoned after the four women passed away.[32]

The Quest for Federal Acknowledgement

During the 1960s, the Timbisha Shoshone at Furnace Creek repeatedly contacted the BIA and asked for assistance. They wanted to have their adobe houses refitted with basic modern conveniences – electricity, running water, flush toilets – but neither the BIA nor the NPS was willing to undertake any such improvements. The BIA always met

[30] Crum, "A Tripartite State of Affairs: The Timbisha Shoshone Tribe, the National Park Service, and the Bureau of Indian Affairs, 1933-1994," 128.
[31] The four women were Rosie Esteves, Mary Ann Kennedy, Molly Shoshone, and Annie Shoshone.
[32] Superintendent to Regional Director, February 28, 1963, File: Documents constituting the legislative and administrative history of relations between Death Valley National Monument and the Timbisha Band of Shoshone Indians, Vol. 2, Unlabeled box in locked case, DEVA.

their demands with the same answer: they must talk to the NPS, the landowner, about it. The NPS, for its part, said that housing improvements were not its responsibility. By this time Pauline Esteves, now in her forties, had emerged as the most vocal member of the community. She would point out to the BIA that it had made an agreement with the NPS to build those houses in the first place; it had acted as their trustee then, so why not do so now? [33]

At the close of the decade, the Timbisha Shoshone finally found some productive avenues for taking their message to the federal government. There was a community of Paiute-Shoshone on the Lone Pine Reservation in Owens Valley that was sympathetic and sometimes gave them rice. As this relationship grew, the Timbisha Shoshone turned to that tribe for advice. Eventually this group informed the Timbisha Shoshone about California Indian Legal Services (CILS), a private law firm that was grant funded, tribally controlled, and wholly dedicated to the legal representation of Indians in California. The Timbisha Shoshone wrote to CILS and asked for help. "Our houses are made of mud adobe and all cracked in various places," the letter stated. "No plumbing outside of a sink in the kitchen. We still have outhouses."[34] Their principal request was to obtain new housing. Early in 1970, an attorney in the Berkeley office of CILS visited the regional office of the NPS in San Francisco and inquired on behalf of the Timbisha Shoshone as to how they might obtain electricity in their homes. The surprising fact was that electrical lines came within 300 feet of the Indian village and yet the village had never been wired. CILS rattled other cages as well. Soon the NPS was answering inquiries from the BIA area office in Sacramento and the Indian Health Service in Bishop. In 1972, the Inter-Tribal Council of California proposed that the government offer the Timbisha Shoshone 50-year, interest-free loans for new home construction provided that there was some sort of security for the investment – either a long-term lease or a reservation. But these conditions could not be met. Six months later, the NPS was responding defensively to letters from Senator Alan Cranston (D-CA), who wanted to know why the Timbisha Shoshone could not be helped. "The establishment of an Indian Reservation within Death Valley National Monument would be contrary to the purpose for which the Monument was established," the acting regional director, John E. Cook, wrote to Cranston. "Therefore, it would be inappropriate for this Service to enter into an agreement for this purpose." [35] Another letter to Cranston about the Timbisha Shoshone

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[33] Esteves interview.

[34] Quoted in Bruce R. Greene and Edward Forstenzer, Memorandum, October 18, 1975, File: Correspondence, 1970s, re: Timbisha Shoshone, OFA.

[35] Daniel J. Tobin, Jr., to Richard B. Collins, Jr., March 16, 1970, Superintendent to Regional Director, March 13, 1972, Willard D. Daellenbach to Robert J. Murphy, March 14, 1972, George B. Hartzog, Jr. to Alan Cranston, September 12, 1972, and John E. Cook to Cranston, September 20, 1972, File: Correspondence, 1970s, re: Timbisha Shoshone, OFA. Tobin described the status of the Indian village in 1970 as follows: "The Indian Village contains seven residences on Government land, has a population of about 23 Shoshone Indians from October to April and is virtually deserted during the hot months….Only present occupants of the houses and their descendants are eligible for housing. When a house is vacated and no longer needed it is removed."

was written by none other than the NPS director, George B. Hartzog, Jr. Thus, in two years, the Timbisha Shoshone and their attorneys had succeeded in bringing their case to the attention of a U.S. senator and the head of the Park Service, but in doing so they had provoked the Park Service into enunciating a hard line position.

In 1976, the Timbisha Shoshone petitioned the BIA for federal recognition of the band as a half-blood community under the terms of Section 19 of the Indian Reorganization Act (IRA). The BIA approved the petition two years later and for a brief time the Timbisha Shoshone acquired official status as the "Death Valley Shoshone Band." However, recognition under Section 19 did not entitle the band to all the benefits that would follow if it were to become a federally recognized tribe under Section 16 of the IRA. Therefore, before the 1976 petition was approved, the Timbisha Shoshone adopted articles of association and submitted a second petition for federal acknowledgement as an Indian tribe. One key difference from the earlier petition was that the attorneys working for them had compiled many more historical documents tracing the evolution of the group's relationship with the federal government, including what purported to be a trust agreement. In essence, the second petition argued that the BIA had recognized the Timbisha Shoshone as a tribe without a reservation in the late 1930s but had practically forgotten about them through the 1940s and 1950s, that the band had continued to function as a political group in those intervening decades, and that it still had ties to its ancestral homeland in Death Valley. The petition declared that the band currently consisted of approximately 150 members, of whom 35 resided in Death Valley, others in nearby areas, and still others throughout the states of California and Nevada. Due to the extreme climate of Death Valley, most residents of Furnace Creek went elsewhere during the summer months.[36] The Timbisha Shoshone petition was one of the first on the docket for the new Office of Federal Acknowledgement (OFA).

As the lengthy federal acknowledgement process got underway, the Timbisha Shoshone made other gains. In 1977, the U.S. Department of the Interior, the U.S. Department of Health, Education, and Welfare, and the tribe (currently known as the Death Valley Shoshone Band) entered a memorandum of agreement to improve housing conditions at Furnace Creek. The project entailed refitting the village with domestic water supply and waste disposal systems. It included installation of seven mobile homes, each one to be transferred to a head of household in the band without charge with the understanding that the head of household would become responsible for maintenance and repair of the property. Given the long standoff between the NPS, the BIA, and the

[36] "Petition for Federal Acknowledgement," undated [1978], File: Petition of the Death Valley Timbi-sha Shoshone Band…(1976) and Articles of Association (1978), OFA; Deputy Assistant Secretary to Assistant Secretary, February 9, 1982, File: Federal notice and recommendation and summary of evidence for federal recognition of Timbisha Shoshone Band (1982), OFA. According to OFA reports completed in 1982, the membership list contained 199 names, 191 with addresses. Of these, 174 lived in California or Nevada and 17 lived in other states.

Timbisha Shoshone over rent, repairs, and improvements, the agreement represented a significant breakthrough.[37]

Meanwhile, in a separate action, the Timbisha Shoshone sought to protect a cemetery located about one mile east of Furnace Creek Ranch. In this endeavor they worked with several agencies including the California State Historic Preservation Office, the Owens Valley Indian Burial Association, and the California Native American Heritage Commission. In the midst of this effort, Timbisha Shoshone leaders accompanied a delegation from the latter organization on a trip to San Francisco to meet with the NPS on a range of issues affecting Indians and national parks in California. While several Indian groups were represented in the meeting, the Timbisha Shoshone leaders made a particularly strong impression on NPS officials, who were not prepared for the intensity of their appeal.[38] It was a timely reminder of the Timbisha Shoshone homeland issue, for it was precisely then, in the fall of 1977, that the NPS launched a service-wide effort to craft a Native American policy.

The Timbisha Shoshone also made new strides in getting their story out to the general public. The *Los Angeles Times* ran a feature story, "Out of Tourists' Sight, Death Valley Indians Battle for Their Homes." Little by little, visitors to Death Valley National Monument became more inquisitive about the Timbisha Shoshone village, which looked more and more like a Third World slum next to the manicured oasis resort known as Furnace Creek Ranch. Some monument visitors learned of the Timbisha Shoshone through the monument's interpretive program. In 1975, Pauline Esteves went to work for the Park Service as a cultural demonstrator. Her job was to demonstrate basket weaving and talk about her people's culture. Often her audience's questions turned to where her people lived in the present day. With her razor-sharp wit, she seized every opportunity to increase the public's awareness about the tribe's contemporary situation. As energy conservation was a major issue then, she would tell her audience that her people were the ultimate conservers because they had no electricity in their homes. "She'd throw out some little hand grenade comments now and then and that was okay," her supervisor on the interpretive staff, Bruce Kaye, benignly recalls. Esteves remembers it more combatively. She says the superintendent called her into his office a couple of times and told her she could get fired if she used her government job to push the Timbisha Shoshone's political agenda. "Just do it," Esteves shot back. "And I'll contest you with this, the reasoning for my being fired. All I was doing was just answering questions. And it's all true, nothing was made up."[39]

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[37] Public Health Service, Health Services Administration, Indian Health Service, California Program Office, "Memorandum of Agreement Between The United States of America and The Death Valley Shoshone Band, Death Valley Indian Village, Inyo County, California, Project No. CA 78-701," September 1977, File: Correspondence, 1970s, re: Timbisha Shoshone, OFA.
[38] Regional Director to Superintendent, October 31, 1977, File: Correspondence, 1970s, re: Timbisha Shoshone, OFA.
[39] Bruce Kaye interview, September 17, 2008; Esteves interview.

Increased public awareness of the Timbisha Shoshone had the desired effect. Concerned citizens wrote to their representatives, who in turn wrote to federal officials. In 1979, Senator S. I. Hayakawa (D-CA) joined fellow Senator Cranston in pressuring the Department of the Interior to do something to resolve the issue. The Office of the Secretary of the Interior asked for the senator's patience while the NPS completed its formulation of Native American policy. One important issue that the agency was wrestling with, it was acknowledged, was how to treat Indians who resided in parks. In the meantime, the NPS proposed to do an ethnohistorical study of the Timbisha Shoshone as part of the process of developing a General Management Plan for Death Valley National Monument. The study would attempt to identify the origins of the Timbisha Shoshone and to determine the group's relationship to lands within the monument.[40]

The ethnohistorical study was conducted by John Herron, cultural anthropologist with the Denver Service Center, and included exhaustive research in the National Archives and Federal Records Centers as well as the records still held at the monument, Carson Indian Agency, various schools, and other entities involved in the twentieth-century history of the Timbisha Shoshone. The second half of the study encompassed genealogical research. Herron's report clearly established historical continuity between aboriginal use and occupancy of Death Valley and its modern Indian residents. But the report was carefully framed so that it did not venture any opinions about the Indians' current legal status.[41]

The Timbisha Shoshone's demands increasingly focused on the need for a land base at Furnace Creek. Land title was necessary not only to secure their future at Furnace Creek but to qualify the band for various grants under the Indian Self-Determination and Education Assistance Act of 1975. For a legal opinion concerning the status of the Timbisha Shoshone land claim, the NPS turned to the Office of the Solicitor, U.S. Department of the Interior. Regional Solicitor Charles R. Renda prepared a five-page opinion, dated May 15, 1981, based on a sheaf of documents five inches thick that had been drawn from Herron's research files. Renda concluded that the Timbisha Shoshone did not have a land claim based on treaty, statute, land allotment, adverse possession, or guardian and ward trusteeship. That left aboriginal title as the only remaining basis for a land claim, and Renda cited a slew of cases to show that the band's aboriginal title had been extinguished by Act of Congress of March 3, 1853 (a law providing for the survey of public lands of California) and that the Timbisha Shoshone band was to be compensated for the land taking under the Indian Claims Commission's final judgment award for the Western Shoshone, dated August 15, 1977. Therefore, they did not have an aboriginal claim either. Despite his negative finding, however, Renda stated that the

[40] Gary R. Catron to S. I. Hayakawa, undated, File: Correspondence, 1970s, re: Timbisha Shoshone, OFA.
[41] John G. Herron, "Death Valley – Ethnohistorical Study of the Timbisha Band of Shoshone Indians," September 1981, report contained in locked case, DEVA.

Timbisha Shoshone's federal acknowledgement as a tribe, which appeared to be in the offing based on signals received from the OFA, would change the situation. "That status will likely require the government to address the question of what, if any, type of residency the Timbisha people will be allowed to maintain within Death Valley National Monument," he wrote.[42]

Federal acknowledgement was finally forthcoming at the end of 1982. The BIA published the OFA's long awaited findings in the *Federal Register* in the fall of 1982, and the Timbisha Shoshone Tribe was officially recognized by the Assistant Secretary of the Interior for Indian Affairs on January 12, 1983. It was a great triumph for the small band of Western Shoshone formerly called the Death Valley Shoshone Band. The federal acknowledgement officially recognized them as the indigenous people of Death Valley and allowed them to claim rights of a sovereign people. But to exercise sovereignty a sovereign power must have a land base and in this respect the Timbisha Shoshone Tribe was disappointed. Federal acknowledgement was not accompanied by a reservation. Indeed, they became one of very few federally acknowledged tribes without a land base. For Pauline Esteves, this came as a bitter disappointment. She and her people had assumed that with federal acknowledgement the federal government would recognize their title to the land as well, that the land "would be part of us," and that the Park Service would no longer "have any say-so of what we do" in their village area. During the federal acknowledgement process the Death Valley Shoshone Band had changed its name to the Timbisha Shoshone Tribe and had adopted a new constitution, which contained language about how the Tribe would manage the land base at Furnace Creek. It seemed self-evident that the land would transfer as part of the federal acknowledgement process. "But it didn't," Esteves says, "which was very shocking to us."[43]

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[42] Regional Solicitor to Field Solicitor, May 15, 1981, File 16: L30 Land Use Special Use Permits, Timbisha-Shoshone Tribe 1991-1994, Central Files, DEVA. The issue of Timbisha Shoshone aboriginal title was discussed further following a Supreme Court decision in 1984. A press announcement by the BIA stated as follows: "The U.S. Supreme Court on February 20 voted unanimously to bar two Western Shoshone Indians from pursuing their claim to ownership of 12 million acres of land in Nevada. The court reversed a federal appeals court ruling allowing Mary and Carrie Dann to dispute the title of nearly one-sixth of the state. The federal government argued that a $26 million trust fund set up for the western Shoshone Indians at the Interior Department constituted payment for the and in Central Nevada. The Dann sisters, however, said that they never accepted the money and still occupy the land so the legal title is theirs. Supreme Court Justice William Brennan wrote the payment took place when the funds were placed in the U.S. Treasury account for the Indians. The case between the Bureau of Land Management (BLM) and the sisters had been in court for ten years. BLM filed the suit in 1974 when the sisters refused to pay grazing fees." (*Indian News Notes* 9, no. 7 (February 22, 1985), File 22: L3215 Land, Public Cooperation including administration, planning and development Timbisha Shoshone Tribe 1982-1984, Central Files, DEVA.) An NPS staff anthropologist noted the significance of the ruling for Death Valley National Monument: "This case has implications for the Death Valley (Timbisha) Shoshone situation. The Timbisha, as members of the Western Shoshone National Council and, therefore, descendants of the identifiable group, will probably feel that they too retain aboriginal title to their ancestral territory and that this ownership was never extinguished by any United States action." (Staff Anthropologist to Chief Anthropologist, November 15, 1984, same file.)

[43] Esteves interview.

The Quest for a Land Base

The Park Service's response to federal acknowledgement was to program a study of the Timbisha Shoshone as part of the general management plan for Death Valley National Monument. The study became known as the *Timba-Sha Alternatives Study*. Its purpose was to describe and evaluate a range of alternative land tenure arrangements for NPS administration of the village area and to consider employment opportunities for the Tribe. The land tenure alternatives included continuation of the special use permit (the no-action alternative), a long-term lease, a reservation at Furnace Creek, a reservation outside of the monument with a lease at Furnace Creek, and relocation of the village to another site in Death Valley or outside the monument. Another alternative, life tenancy for current residents, a common NPS approach for dealing with in-park landholders, was not applicable in this case because the Timbisha Shoshone wanted a permanent home for posterity. While the study considered all the other alternatives as viable in theory, in fact the NPS was only paying lip service to the notion of a reservation at Furnace Creek, while the Tribe would not accept anything less. One reason that a reservation outside the monument coupled with a lease at Furnace Creek was unacceptable to the Tribe was that it was doubtful whether the Tribe would be eligible for funding grants at two locations.[44] The NPS, for its part, had already decided that it would not support a reservation in the monument. The reports' authors felt they were constrained by the national monument proclamation and the Antiquities Act. According to former Superintendent Edwin Rothfuss, the sticking point was that the NPS would only support the establishment of a reservation with conditions (mainly to protect the monument against the development of a casino) and the Tribe rejected conditions on principle. Tribal leaders offered assurances that they would never build a casino at Furnace Creek, but NPS officials prudently pointed out that tribal governments change and that the present tribal leadership would inevitably pass.[45]

Rothfuss had become superintendent in August 1982 – a little more than one year before federal acknowledgement – and would stay for the next twelve years. The *Timba-Sha Alternatives Study* would stand as the major NPS appraisal of the Timbisha Shoshone situation for the duration of his tenure. Looking back, Rothfuss frankly recalls that the Timbisha Shoshone situation was perhaps fourth or fifth on his list of concerns when he arrived, behind the control of wild burros, mining issues, and staffing problems.

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[44] U.S. Department of the Interior, National Park Service, *Timba-Sha Alternatives Study, Death Valley National Monument, California-Nevada* (Denver: Denver Service Center, 1984), 12.

[45] Roger Kelly, comments on draft report, April 2009; Edwin Rothfuss interview, July 6, 2007. Rothfuss recalls discussing the reservation with the NPS director and regional director. They agreed on a policy of "let's work positively with the tribe, let's look at options so we can support them if they want to do some of this economic development, as long as it's basically consistent with the policies of the National Park Service. You know, gift shops, restaurants. And let's kind of hang onto the concept that we cannot support a full reservation without any reservation restrictions. Which, up until the time I retired, the tribe would not accept that."

Nevertheless, he made a concerted effort to hire more tribal members on the monument staff and to provide assistance with village improvements. As anticipated, the Tribe's new legal status opened the door to more grant opportunities. In 1984, for example, the Tribe secured funding through the U.S. Department of Housing and Urban Development (HUD) to have the village access road paved, and NPS maintenance workers provided valuable assistance in getting it done. And yet, whatever the NPS did to help was like salt in the wound for the landless Timbisha Shoshone. In their first official meeting after federal acknowledgement, Pauline Esteves reminded Rothfuss that her people were now recognized as a nation, that they possessed tribal sovereignty, and that as leader of her people she ought to be sitting across the table from President Reagan, not a Park Service superintendent. Rothfuss duly explained that the President had delegated his authority to the Secretary of the Interior, who had delegated it to the NPS director, who had delegated it to him on all matters concerning the NPS presence in Death Valley National Monument. Rothfuss and Esteves respected each other, but due in part to these difficult circumstances their personalities clashed.[46]

One continuing point of contention was over water use. When water rights at Furnace Creek were adjudicated in the 1960s, most of the water was assigned to the NPS and a small quantity was assigned to U.S. Borax. It was up to the NPS to allocate some of its water to the Furnace Creek Ranch and the Timbisha Shoshone. The NPS ran a waterline from its treatment plant down to the Indian village, and eventually each adobe and mobile home was tied into this water main. The NPS charged a fee of $5 per month for water, which some of the tribal members paid and others refused to pay. In July 1985, the water main got clogged by a buildup of travertine sediment, temporarily cutting off water to the village. Rothfuss immediately sent a maintenance crew, and these individuals worked overtime for three days to get the problem fixed. While the waterline was down, tribal member Barbara Durham gave a scathing report to the media about how hostile the NPS was to the Tribe's presence at Furnace Creek – how the Tribe was forced to live in substandard housing, cordoned off by a barbwire fence and lacking a reliable water supply. When the NPS maintenance workers read the story in the newspaper they were understandably upset. Rothfuss went to Durham, who was an officer in the tribal government, and asked her why she had said such things. Durham was unapologetic. The maintenance workers may have been doing their utmost to get water to the Tribe, she acknowledged, but the larger point was that the Timbisha Shoshone people remained tenants in their own homeland. The crisis over the waterline presented an opportunity to get the word out.[47]

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[46] Rothfuss interview; Richard F. Boland to Richard H. Martin, July 17, 1996, File 16: L30 Land Use Special Use Permits, Timbisha-Shoshone Tribe, 1991-1994, Central Files, DEVA.

[47] Rothfuss interview; "Indian Village Thirsts As Rangers Clear Pipes," *Gazette* (Beatty, Nevada), July 19, 1985; Norman Fairbanks to Pauline Esteves, January 13, 1986, and Edwin L. Rothfuss to Pauline Esteves, March 31, 1986, Files: (1) Water Issues (Billing) and (2) Village Water System, Box L, Greene/RM files 8/2006, DEVA. The NPS and the Tribe continued to clash over the water delivery system and unpaid water bills from time to time. Months prior to the water stoppage, the NPS tried to garnish the wages of tribal members who were on the monument staff and who were delinquent in paying their water bills. The

It seemed as if everything involving the Tribe and the NPS was contentious in those years. When the Tribe saw an early draft of the *Timba-Sha Alternatives Study* around May 1984, it thought the NPS was hedging over a land transfer and took preemptive action, issuing its own report in July with the recommendation that the federal government establish a 2000-acre reservation around the village at Furnace Creek. In this report the Tribe declared that it had no interest in relocating out of the valley and that a reservation was the only viable solution to the Tribe's need for a permanent land base.[48] Soon after issuing the report, the Tribe's legal counsel invited the NPS and the BIA to sit down with the Tribe and develop a plan for establishing a reservation. This plan could then be jointly presented to the Secretary of the Interior. Superintendent Rothfuss replied to the Tribe's attorney by letter on November 9, 1984, stating that the Tribe's proposal that the NPS turn over land for a reservation was a non-starter. Referring to the *Timba-Sha Alternatives Study* that was still in the process of revision, Rothfuss informed the CILS attorney, "We are rejecting the option at each end of the spectrum – 1) asking the tribe to leave Death Valley and, 4) to turn land over to the tribe for a reservation."[49] Thus, the NPS had already settled on a position even before the *Timba-Sha Alternatives Study* was issued at the end of that year. Yet the Tribe's own aggressive tactics seemed to leave NPS officials no choice but to resist a land transfer.

In 1987, the NPS prepared a draft land use agreement to supplant the special use permit covering Timbisha Shoshone residency at Furnace Creek. The agreement assigned certain administrative responsibilities in the village area to the Tribal Council, including payment of utility bills, while committing the NPS to the maintenance and operation of utility systems and municipal services such as garbage collection. It transferred ownership of the five remaining adobe dwellings from the NPS to the Tribe, but residents still had to obtain NPS approval for landscaping improvements (to prevent introduction of exotic species). Moreover, the agreement required pets to be kept on leash in the area and prohibited possession of livestock in the area. Outside the village area, the agreement reaffirmed "the right of the Tribe to engage in the gathering of native plants and materials from within the national monument," under individual permits issued to tribal members upon request. The agreement allowed the Timbisha Shoshone to continue the use of a cemetery near the Texas Springs Campground for traditional burials until "the flat surface atop the ridge is filled, and no more burial plots are available."[50] Although the proposed land use agreement was an improvement over the existing special

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Tribe protested, the action was found to be illegal, and the pay deductions were restored. (Dottie Taitano to Superintendent, February 13, 1985 and Lawrence R. Stidham to Pauline Esteves, May 24, 1985, File 13: L30 Land Use Special Use Permits Timbisha Shoshone Tribe, Central Files, DEVA.)

[48] Crum, "A Tripartite State of Affairs," 132.

[49] Edwin L. Rothfuss to Lawrence R. Stidham, November 9, 1984, File 22: L3215 Land, Public Cooperation including administration, planning and development Timbisha Shoshone Tribe 1982-1984, Central Files, DEVA.

[50] Death Valley National Monument, "Draft Land Use Agreement, Timbisha Indian Village," August 11, 1987, File 1: A44 MOU & MOA Timbisha Shoshone Tribe, Central Files, DEVA.

use permits, the Tribe was reluctant to sign it out of concern that it would imply a solution to their land problem without the transfer of any land. Nonetheless, a memorandum of agreement was formalized in January 1988, which made the Tribe responsible for paying utility bills. The NPS continued to meet resistance in collecting the money. Four years later, the Tribe was more than $13,000 in arrears.[51]

As both the *Timba-Sha Alternatives Study* and the proposed land use agreement had failed to resolve the Tribe's land tenure problem, the NPS launched one more effort in 1992. This was the ethnographic study of Timbisha Shoshone traditional use of Death Valley noted in the previous chapter. The idea for the study came from Muriel Crespi, the Park Service's senior anthropologist in the Washington Office. Crespi had long been aware of the Tribe's difficult situation in Death Valley. She thought the Park Service had a responsibility to acquire baseline ethnographic information about every federally recognized tribe that had close ties to lands in the national park system, but in addition to that overarching system-wide responsibility, she thought the Park Service had a unique responsibility in Death Valley to try to sustain whatever might still exist of the indigenous people's traditional land uses. Given adequate background, she believed, the NPS would be able to enter into cooperative management agreements with the Tribe covering such activities as gathering of wild plants.[52]

The person selected to lead the ethnographic study was Dr. Catherine Fowler, a professor in the Department of Anthropology at the University of Nevada, Reno, and an expert on Great Basin native cultures. A major part of the study involved field surveys or interviews with tribal elders, and Fowler employed a tribal member on the study team who was fluent in the native language. The interviews were used to develop information on tribal utilization of natural and cultural resources and the locations of traditional use areas. The latter information would prove particularly useful for the Tribe's pursuit of a reservation. The NPS-funded ethnographic study led to a warm professional relationship between the university scholar and the tribal community. After completing the ethnographic study, Fowler continued to work with the Tribe, providing an authoritative and relatively detached perspective on the Tribe's land claim. As NPS funding of Fowler's work ran out, the Tribe took steps to ensure that her work would continue. The tribal government formed a historic preservation committee, which secured the cooperation of tribal elders who were so vital in making the studies possible, and the committee obtained grants from the Seventh Generation Fund and the Administration for Native Americans, which sustained Fowler's work for an additional two years. In 1995, Fowler would be the primary author on a report prepared for the Tribe entitled "Timbisha Shoshone Tribe's Land Acquisition Program: Anthropological Data on Twelve Study

[51] Edwin L. Rothfuss, Memorandum, "Death Valley National Monument," January 1993, File DOI NPS AILO TSHA 02 109, Timbisha Shoshone Homeland Act Records, American Indian Liaison Office (hereafter AILO).
[52] Greene interview; Crespi, "The Potential Role of National Parks in Maintaining Cultural Diversity," 303-04.

Areas," and still later she would publish articles on Timbisha Shoshone traditional use patterns.[53]

While Fowler's ethnographic study was helpful over time, it was initiated too late to appease the tribal leadership, which had become convinced that the NPS was dead set against giving up any land within Death Valley National Monument. Indeed, for tribal members living at Furnace Creek, Superintendent Rothfuss personified the agency's firm stand on this issue. Pauline Esteves says that she spoke to Rothfuss on many occasions and that he always stonewalled her. Barbara Durham relates how two elders, Esteves and Grace Goad, attended a farewell party for Rothfuss at the Furnace Creek Inn at which, in a private conversation, the superintendent told the women that they would never see reservation lands in the monument in their lifetimes.[54] Rothfuss retired on November 30, 1994, one month after Congress passed the California Desert Protection Act.

In January 1993, Rothfuss wrote a briefing statement about the Timbisha Shoshone Tribe's request for a reservation in Death Valley National Monument. At that time, Rothfuss assumed that the Tribe was still focused practically exclusively on securing a tract at Furnace Creek (Figure 2-1). In summary, he stated that the NPS was willing to work with the Tribe to develop a long-term lease to provide the Tribe with stability and eligibility for funding, but that the Tribe did not favor a lease because it regarded Death Valley as an ancestral home and claimed that it already possessed land and water rights.

Unbeknownst to Rothfuss, the tribal leadership was just then deciding on a new strategy. Rather than pursue the creation of a small reservation at Furnace Creek, the Tribe would assert a much bigger claim for restoration of ancestral lands throughout Death Valley. Moreover, it would appeal directly to Congress, going over the heads of federal officials in the Department of the Interior.[55] This crucial change of thinking crystallized in the summer of 1993 when the tribal government submitted a legislative package to members of Congress calling for a study of suitable lands leading to the establishment of a reservation. In what the Tribe called its land restoration proposal, it suggested a reservation of approximately 160,000 acres.

This action in the summer of 1993 in some ways marked the radicalization of the Tribe as it began to employ more aggressive tactics and more caustic rhetoric to get what

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[53] Shirley Harding to Edwin Rothfuss, November 21, 1992, Dr. Catherine Fowler, "Ethnographic Overview and Assessment, and Traditional Use Study, Death Valley National Monument," undated memorandum, and Catherine S. Fowler, Molly Dufort, and Mary K. Rusco, "Timbisha Shoshone Tribe's Land Acquisition Program: Anthropological Data on Twelve Study Areas," 1995, File: Ethno Overview Land/Use Study Catherine S. Fowler 1995, Box L, Greene/RM files, 8/2006, DEVA.
[54] Durham interview. See also Esteves interview.
[55] Michelle Nijhuis, "Another way to win back land," *High Country News* 34, no. 14 (August 5, 2002): 1-2.

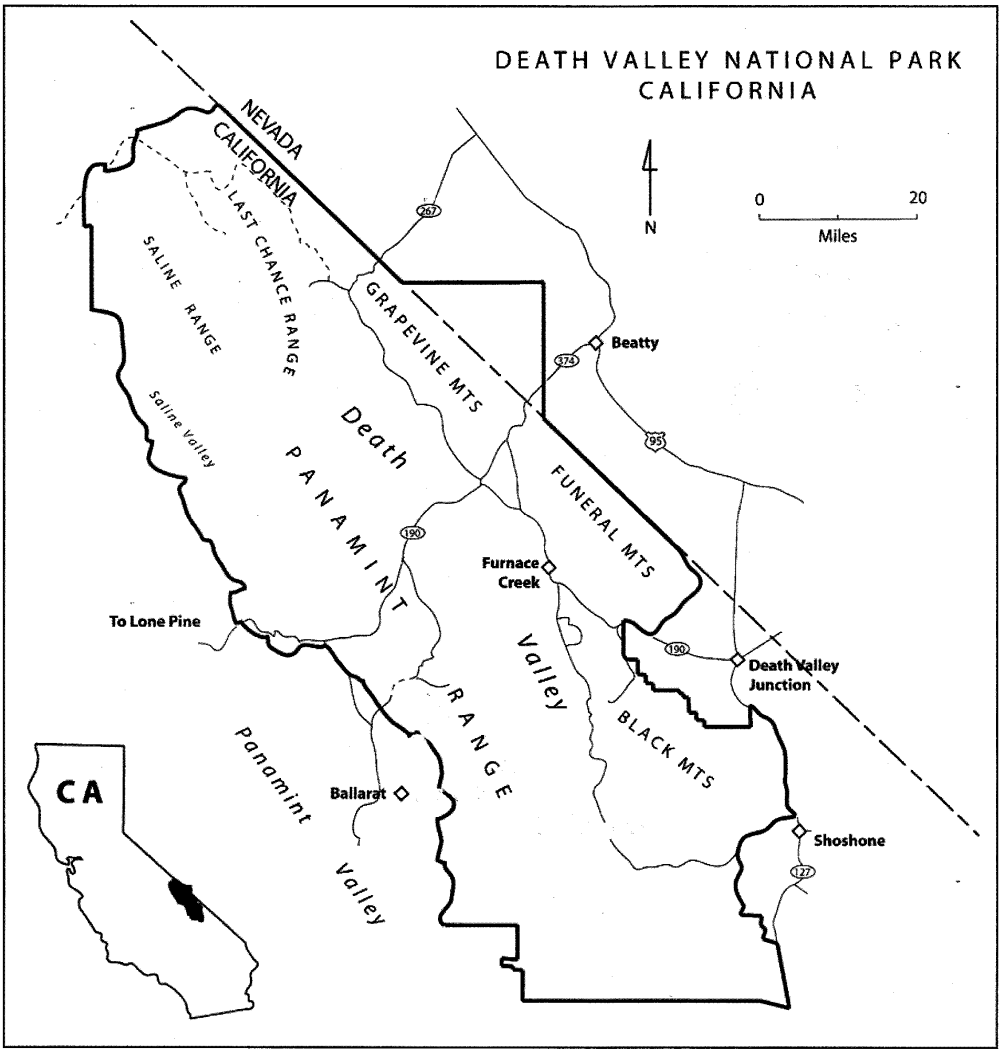

Figure 2-1. Furnace Creek and other communities in and around Death Valley NP.

it wanted. One important influence on the Tribe came from the Western Shoshone National Council, which represented widely scattered Western Shoshone groups in the Southwest including the Timbisha Shoshone of Death Valley. The Western Shoshone National Council maintained that the Western Shoshone people's aboriginal territory had been demarcated and recognized by the United States in the Treaty of Ruby Valley of 1863 and that they had never ceded aboriginal title to the United States. The Western Shoshone National Council would eventually take its case to the United Nations and other international forums, arguing among other things that the U.S. government's treatment of Western Shoshone peoples was a violation of human rights. Pauline Esteves herself would later travel to Germany and Hungary and other countries, speaking on behalf of the Timbisha Shoshone in solidarity with other suppressed indigenous peoples around the world.

From another perspective, the Tribe's land restoration proposal was not radical at all but part of a larger movement by Indian tribes to assert tribal interests in regional land management issues beyond the confines of Indian reservations. Tribal governments in this period increasingly got involved as stakeholders in off-reservation public land issues, and they often did so with the moral claim that the lands or resources at issue fell within the limits of their aboriginal territory. Thus, the Timbisha Shoshone Tribe was not alone or out of the mainstream in asserting tribal interests over a wide geographic area. Moreover, the Tribe's key demand – restoration of "traditional use" areas – made the Timbisha Shoshone appear more sympathetic than radical to many observers. By shifting its focus to the wider Death Valley landscape and emphasizing traditional use, the Tribe was able to reclaim a stewardship role in protecting the ecosystem. Given the rising public consciousness about the relationship between indigenous peoples and protected areas, as well as the emerging influence of tribal governments in regional environmental affairs generally, this proved to be an effective change of strategy.

The California Desert Protection Act

During the late 1980s and early 1990s, a broad coalition of environmental groups formed behind congressional legislation that eventually became the California Desert Protection Act (CDPA). Among other things, the legislative package proposed to expand the boundaries of Death Valley National Monument and designate the area a national park. While the campaign for this legislation ultimately succeeded, it engendered strong opposition from various interest groups ranging from mining companies to all-terrain-vehicle enthusiasts. The political battle over the CDPA was a grueling experience for NPS officials. Not only did they have to deal with large political coalitions on both sides, but they had to shepherd the many legislative proposals through two changes of administration following the presidential elections of 1988 and 1992. The Reagan administration adamantly opposed the measure, the Bush administration gave it tepid support, and the Clinton administration backed it enthusiastically. In the clamorous political atmosphere surrounding the legislative campaign for the CDPA, it was easy for some NPS officials to become tone deaf to the longstanding demands of the Timbisha Shoshone Tribe.

On the other hand, in preparing for the CDPA numerous NPS officials were encouraged to think boldly and imaginatively about how to manage the forthcoming additions to the national park system in southern California, including the large additions to what would become Death Valley National Park, and this provided an unusual opportunity for the Timbisha Shoshone Tribe to insert itself into land management planning. The NPS and the BLM created an interagency California Desert Transition Work Group. The work group's preliminary efforts culminated in a report in October 1993 with the ambitious title, *The California Desert in Transition: The Opportunity for Bioregional Management*. As the Timbisha Shoshone Tribe looked for ways to make

itself heard, it sought to capitalize on that spirit of cooperation and innovation connected with the CDPA.

Tribal leaders began to conceive of an ambitious land restoration proposal early in 1993. That winter, the Tribe was assigned a new attorney from CILS, Fred Marr. Marr had worked previously for tribes in Nevada before joining the staff of CILS. Aggressive, passionate, and immensely hard-working, Marr would soon make the Timbisha Shoshone case practically his full-time occupation, leave CILS, and open his own office in Bishop. That spring Marr formed a close working relationship with the young tribal administrator, Richard Boland. He also had the ear of Pauline Esteves. By April 1993, he was pressing Superintendent Rothfuss for a meeting between the NPS, the BIA, and the Tribe aimed at restarting talks about a land use settlement. Rothfuss agreed to host a meeting, which was set for May 11, 1993. Whatever Marr knew prior to this meeting about the land restoration proposal he evidently chose not to share with Rothfuss, because Rothfuss naïvely suggested to the regional director in mid-April that the upcoming meeting could lead to a land use agreement similar to what the NPS had proposed and the Tribe had rejected in 1987.[56]

At this same time, the Tribe was contemplating whether to seek legislation in the form of an amendment to the California Desert Protection bill. Rather than seek a special act of Congress, it would attempt to have its needs addressed in this comprehensive legislative package. More than six years in the making, this legislation finally appeared to be headed for success following the election of presidential candidate Bill Clinton and a Democratic majority in both houses of Congress in 1992. According to Richard Boland, the idea to insert the Timbisha Shoshone land issue into the bill came from Joe Saulque, leader of the Utu Utu Gwaitu Benton Paiute Tribe. Saulque advised Barbara Durham that the pending legislation offered the Timbisha Shoshone the best chance to get their rights recognized, and Durham relayed the idea to Boland who relayed it to Marr. "Fred just jumped right on it," Boland recalls.[57]

Marr waited until the meeting of May 11, 1993, to announce the Tribe's interest in obtaining an amendment to the California Desert Protection bill. Marr explained that the amendment would call for a study of the Timbisha Shoshone land situation that would provide the basis for subsequent legislation. Representatives of the NPS and the BIA, including Rothfuss, "agreed in principle" to this plan. NPS officials cautioned the Tribe, however, that the amendment language should be "as general as possible." It requested that the Tribe keep the NPS advised.[58]

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[56] Fred Marr to Edwin Rothfuss, April 8, 1993, and Superintendent to Regional Director, April 14, 1993, File 23: L3215 Land, Public Cooperation including administration, planning, and development Timbisha Shoshone Tribe, 1985-1986, 1988-1992, 1993-1994, Central Files, DEVA.
[57] Boland interview.
[58] Superintendent to Regional Director, July 26, 1993, File 24: File 3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

After the May 11 meeting, tribal leaders pondered whether the time had come to call for a specific amount of acreage, and if so, how much should it be? Pauline Esteves and Richard Boland recommended that the Tribe make a claim based on its ancestral territory. The source for the claim would be a map that tribal elders had made several years earlier for the Western Shoshone National Council. The purpose of that map was to delineate the ancestral lands of the various Shoshone nations and to identify where those territories overlapped. Esteves remembers that the map was spread out on a kitchen table at some point (probably in June 1993) and the tribal chairperson, Roy Kennedy, said, "Well, what are we going to do? Should we call for all these lands?" To which Esteves replied, "Why not? That's where our boundaries are."[59] Out of this discussion came the Tribe's proposal for a reservation of approximately 160,000 acres. Specifically, the Tribe suggested that the Department of the Interior study over one million acres of land in twelve geographic areas with a view to selecting about 160,000 acres for a reservation.[60] On July 8, 1993, the Tribal Council passed a resolution approving the submittal of a legislative package to Congress. The legislative package included the 160,000-acre figure. Marr sent the package, which included a briefing statement, a summary and overview of the federal government relationship to the Timbisha Shoshone Tribe, and the proposed legislation, to the NPS, the BIA, and members of Congress.

The Tribe's land restoration proposal came as a bombshell to NPS officials, who thought the amount of land was totally out of proportion with the Tribe's earlier call for a 60-acre reservation at Furnace Creek. The NPS responded to the Tribe's statement by backing off its earlier position that it would support an amendment to the California Desert Protection bill. Rather, it now favored "free standing legislation" to consider the Timbisha Shoshone issue. In a letter to Marr, Rothfuss explained that the proposal to study so much land area and to cobble together a reservation from several separate tracts was "very complex" and would require lengthy examination by three federal agencies (NPS, BLM, and the Forest Service). Meanwhile, the California Desert Protection bill was "moving on a much faster time schedule."[61]

The Tribe was not to be deterred. Starting in 1994, it began lobbying members of Congress to address the Timbisha Shoshone land issue in the California Desert Protection Act. In particular, the Tribe sought support from Congressman Jerry Lewis (R-CA), who represented the congressional district that included Inyo County; Congressman George Miller (D-CA), who was chairperson of the House Committee on Natural Resources;

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[59] Esteves interview.
[60] Edwin L. Rothfuss to Frederick Marr, August 26, 1993, File 24: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[61] Esteves interview; Timbisha Shoshone Tribe, "Briefing Statement," undated, File 23: L3215 Land, Public Cooperation including administration, planning and development, Timbisha Shoshone Tribe, 1985-1986, 1988-1992, 1993-1994, Central Files, DEVA; Edwin L. Rothfuss to Frederick Marr, August 26, 1993, File 24: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

Congressman Bill Richardson (D-NM), who was chairperson of the House Committee on Natural Resources Subcommittee on Native American Affairs; and Senator Daniel K. Inouye (D-HI), who was chairperson of the Senate Committee on Indian Affairs. Barbara Durham may have first brought the issue to Senator Inouye's attention when she saw him at an annual conference of the National Congress of American Indians. "I stood in line and waited for him and when it came my turn to talk I spoke from my heart and got his attention," she recalls. It is also possible that Senator Inouye was first informed of the issue by Patricia Zell, chief counsel for the Senate Indian Affairs Committee. Inouye had appointed Zell in 1986 and the two maintained a close working relationship for years. She was always on patrol for issues that she knew would be of concern to the senator, and both Zell and Inouye would keep an eye on this issue over the next six years. In any case, Inouye introduced the amendment on April 12, 1994, and it was passed by a voice vote the same day.[62]

After the House took up the measure in May, Congressman Richardson introduced a similar amendment to the House version of the bill. In a brief House floor speech on July 13, 1994, Richardson described the Timbisha Shoshone land issue. Congressman Bruce Vento (D-MN) asked for clarification of the intent of the amendment. The amendment called for a study and report to Congress by the Secretary of the Interior, and Vento wanted to clarify that the provision did not actually authorize a land transfer; it only set up conditions whereby Congress would later be able to consider the issue and possibly take action at that time. "I think that we should be careful not to raise undue expectations about the likelihood that Congress will agree to take lands out of parks, out of forests, out of wildlife refuges or wilderness areas once designated," Vento said. Richardson averred that Vento was correct in saying that any land transfer would require a further act of Congress, whereupon Vento stated that he supported the amendment. This short exchange constituted the only floor debate on what would become Section 705 (b) of the CDPA.[63]

Congress passed the California Desert Protection Act and President Clinton signed it into law on October 31, 1994. Section 705 (b) of this comprehensive legislation called for the Secretary of the Interior, in consultation with the Timbisha Shoshone Tribe and relevant federal agencies, to make a study aimed at identifying lands suitable for a reservation for the Tribe. Within one year of the law's enactment, the Secretary was to submit a report to Congress on the results of the study. Other than the one-year deadline, the law offered no guidelines for the study. No specific funding was provided for it. Nothing was said about authorship of the study other than the requirement for "consultation." Nothing was said about the amount of acreage, or whether the

[62] Durham interview; Don Barry interview, August 7, 2007; *Congressional Record*, vol. 140, 103rd Cong., 2d sess., p. 7129, 7132, 7224.
[63] *Congressional Record*, vol. 140, 103rd Cong., 2d sess., p. 16393.

reservation would include lands in Death Valley. These were all questions left to be worked out by negotiation.

Steven Haberfeld describes the CDPA as a "turning point" in the Tribe's long struggle to obtain a reservation in its homeland. "In retrospect," he writes, "the tribe's ability to insert itself in the political process at this late stage and get section 705 (b) included may have been the single most significant breakthrough in the tribe's sixty-five-year-long struggle for a land base."[64] While this appears to be a fair judgment, it must be emphasized that passage of the CDPA in no way guaranteed that the study would result in follow-up legislation to create a reservation, nor did it even stipulate that the Tribe would take a prominent role in completing the study. As Haberfeld correctly notes: "Nothing in federal law or congressional instructions to the Department of the Interior in the California Desert Protection Act required the federal agencies to approach the Timbisha Shoshone tribe as an equal and be committed to negotiate a win/win agreement." Thus, as significant an achievement as the CDPA may have been in the search for a solution to the Timbisha Shoshone situation in Death Valley, much groundbreaking work remained to be done, and both the Tribe and the NPS would shape the outcome.

[64] Haberfeld, "Government-to-Government Negotiations," 131-32.

Photo 1. Tom Wilson displays Timbisha Shoshone basketry. *Negative No. 595, Death Valley National Park Archives.*

Photo 2. Timbisha Shoshone dwellings, Furnace Creek Ranch, 1930s. *Photo by Burton Frasher, Sr. Neg. No. 4759, Death Valley National Park Archives.*

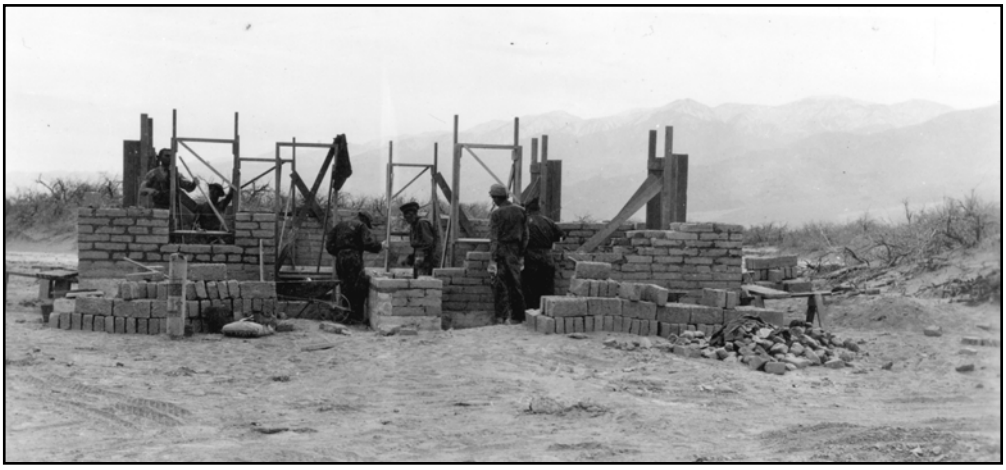

Photo 3. Adobe home for Timbisha Shoshone under construction by Civilian Conservation Corps, Furnace Creek, March 1937. *Photo by John Bergen, Neg. No. 3275, Death Valley National Park Archives.*

Photo 4. Park Ranger Howard Parr washes down one of the adobe houses, April 1958. *William C. Bullard photo, Neg. 1877, Death Valley National Park Archives.*

Photo 5. Dedication of Timbisha Shoshone Community Center, November 2007. *Web photo.*

Photo 6. Furnace Creek Ranch, which borders the Timbisha Shoshone village, January 1964. *Neg. No. 3529, Death Valley National Park Archives.*

Photo 7. Demonstration for Timbisha Shoshone homeland restoration, May 26, 1996. *Photo courtesy of Death Valley National Park.*

Photo 8. Lida, Nevada. In the search for suitable lands for a reservation outside of the park, the critical issue was whether they had sufficient water. *Web photo.*

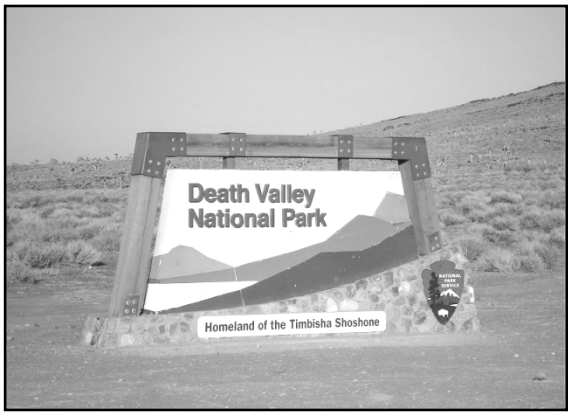

Photo 9. The new park entrance sign. *Web photo.*

Photo 10. Tribal members Ed Esteves, Madeline Esteves, Pauline Esteves and Barbara Durham with her grandchild accompany the park's Assistant Division Chief David Ek on survey of springs. *Photo courtesy of Death Valley National Park.*

Chapter Three

Making the Timbisha Shoshone Homeland Act

Initiating the Study

Death Valley National Park acquired a new superintendent just one month after the California Desert Protection Act was signed into law. Richard Martin took over the position of superintendent after Edwin Rothfuss retired on November 30, 1994. Martin inherited a challenging situation. The CDPA added more than a million acres to the park and it designated nearly 95 percent of the total area as wilderness. The additions included former BLM lands, state lands, and private inholdings. All these changes transpired without any increase in the park's staff or base funding. "We were incredibly overloaded," Martin recalls, explaining the context for how he first became acquainted with the Timbisha Shoshone homeland issue. As a result, although he was aware of the law's provision for a study, it took him two or three months just to gain a preliminary understanding of the Tribe's situation, its historical relationship with the federal government, and what it wanted from the study. As Martin learned about the issue, he formed the impression that the Tribe's longstanding grievances must be addressed and that the mandated study offered a promising opportunity. But he also recognized that it would take much more than the efforts of the park superintendent or a subordinate park employee; it would require teamwork by multiple federal agencies, the Tribe, and others. The land area alone took in four counties in two states, and then there were many different resources and managing agencies to consider. Even within Interior, the three primary agencies involved – NPS, BLM, and BIA – each answered to a different assistant secretary.[1]

On December 5, 1994, Tribal Chairperson Roy Kennedy wrote to the new superintendent to remind him of the study mandate and explain the Tribe's position on how it should be conducted. First, Kennedy interpreted the language of the act to signify the intent of Congress to create a reservation for the landless Timbisha Shoshone and thereby redress a historical injustice. (The reservation, he was saying, was not an "if" but

[1] Richard Martin interview, October 3, 2007.

a "when.") Second, he stated that the study would require active participation by the Tribe through every phase of the process, from initiation of the project, through planning and development, to "actual implementation, resulting in a report to Congress of the study groups' findings and recommendations." This was practically, if not explicitly, a call for co-authorship of the report. Invoking President Clinton's executive order of April 29, 1994, which promised formalized "government-to-government relations" between federal departments and agencies and tribal governments, Kennedy wrote that the Tribe looked forward to a "meaningful role in the study to achieve a reservation." Kennedy's third and final point was that the federal government must provide funds to allow the Tribe to participate, and he pointed to other examples (Grand Canyon and Glen Canyon) where contracts or cooperative agreements had been implemented to facilitate tribal input.[2]

From the Tribe's perspective, the NPS did not appear to be doing much in the winter of 1994-95 to get the project started. Park staff had a different perspective. The NPS was such a complex bureaucracy that it was necessary for it to take all sorts of internal soundings before it could begin to speak coherently to the Tribe about how it would proceed with the congressionally mandated study. During the winter, Superintendent Martin and members of his staff had numerous communications with the regional office and the Washington Office in an effort to discern some direction. Finding money for the study was not the least of their concerns. They also had to determine who would lead the study, who would be on the team, how much input and logistical support would be forthcoming from other agencies, and where the meetings and workshops would occur. By early spring, the NPS had scrounged together $250,000 from general planning money based on a preliminary cost estimate (the cost would eventually far exceed that amount) and Martin had agreed that the meetings and workshops would mostly take place at Death Valley, in large part to facilitate involvement by tribal members.[3]

In the meantime, in mid-February 1995, the tribal leadership decided that it had to take matters into its own hands to get the project underway. The Tribe secured a grant and hired a consultant, Dr. Steven Haberfeld of Indian Dispute Resolution Services, who conducted a training workshop in Bishop for all interested tribal members. The three-day workshop ran over a weekend and at its conclusion the tribal council voted to establish a committee tasked with spearheading the Tribe's role in the pending study. Six members were appointed to the committee: Richard Boland, Pauline Esteves, Grace Goad, Barbara Durham, Leroy (Spike) Jackson, and Gayle Hanson-Johnson. The committee was named the Timbisha Shoshone Land Restoration Committee, and the congressionally mandated study was designated the "Death Valley Timbisha Shoshone Land Restoration Project."

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[2] Roy Kennedy to Dick Martin, December 5, 1994, File 24: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[3] Martin interview.

Richard Boland was appointed spokesperson for the committee. With the help of Fred Marr, the Tribe's attorney, it was decided that the committee would provide a packet of materials to the superintendent by March 24, including a proposed date, time, and location for the initial meeting, a suggested list of participants, a proposed agenda, and a statement of what the committee expected to accomplish. After this meeting of the Tribe in Bishop, Marr explained these developments in a letter to Superintendent Martin.[4]

The creation of the Land Restoration Committee thrust the young Richard Boland into a key role. Born in 1965 and raised in Death Valley and Los Angeles, he had turned eighteen in the year that the Tribe gained federal acknowledgement and had begun to participate in tribal council meetings shortly thereafter. In the years since then he had held elective office once and had occupied the staff position of tribal administrator intermittently. He had also worked for the national monument both in the Maintenance and Interpretation divisions. Recalling what his political views were at the time, Boland modestly says that he was learning them as he went – with tutelage from Marr – but that he was acting on the core conviction that the land restoration project was a social justice issue. Having seen the Tribe rise from a position of near powerlessness to a position in which it now sought to exercise rights of tribal sovereignty, he was determined to speak and act forcefully on the Tribe's behalf.[5]

Boland, like Roy Kennedy and Pauline Esteves, clearly put much stock in the federal government's growing commitment to tribal sovereignty and "government-to-government relations" in its conduct of Indian affairs. Since Congress had called for the study, he hoped that the head of each federal department and agency involved in the land issue would sit at the negotiating table with the Tribe and its consultants. Boland proposed a long roster of high-level administrators for attendance at the initial meeting, including the Secretary of the Interior, the assistant secretary for Indian affairs, the directors of the NPS, the BLM, and the Fish and Wildlife Service, and the chief of the U.S. Forest Service. In addition, he proposed that the meeting include Senator Dianne Feinstein (D-CA), as sponsor of the CDPA, Senator John McCain (R-AZ), as chairperson of the Senate Committee on Indian Affairs, and Congressman Jerry Lewis (R-CA), as the local district representative. For the Tribe's part, Boland wanted to include four consultants: Fred Marr, as the Tribe's legal counsel; Dr. Catherine S. Fowler, for her anthropological expertise; Dr. Steven Crum, assistant professor of Native American Studies at the University of California, Davis, as an expert on the Tribe's history; and Dr. Steven Haberfeld, executive director of Indian Dispute Resolution Services. Boland even prepared a proposed seating chart in which the tribal negotiating team and the federal negotiating team would be arrayed in two opposing semicircles. Whether or not he expected the NPS to agree to all of this, he was firmly intent on conveying the Tribe's

[4] Durham interview; Frederick I. Marr to Richard Martin, February 22, 1995, File DOI NPS AILO TSHA 02 0002, AILO.
[5] Boland interview.

expectation that this was to be a government-to-government meeting. Further underscoring the fact that the Tribe construed the congressionally mandated *study* to be a process of *negotiation*, Boland proposed that the meeting proceed with "presentations" followed by ample time for each team to "caucus," and that all commitments should be reduced to a written "memorandum of understanding." Anticipating avid interest by the media, Boland proposed that the first meeting conclude with the development of a joint press release on progress made; however, the Tribe would reserve the right to issue its own statements as well.[6]

Boland included this proposal with a letter addressed to Secretary of the Interior Bruce Babbitt, dated March 23, 1995. After reminding Babbitt of Section 705 (b) of the CDPA, Boland wrote: "In an effort to expedite the study, we have proposed a full day meeting on either April 24, 1995, or May 23, 1995, at the National Park Service auditorium in Death Valley, California." Boldly, perhaps with a dash of hauteur, he requested the Secretary to contact the committee's scheduler, Barbara Durham, if the dates were not convenient. He closed by saying that he looked forward to meeting and working with the Secretary on the "Timbisha Shoshone Land Restoration Study."[7]

Babbitt's reaction to this letter is not recorded. Later he would call the Tribe "crazy," and it would appear that this letter may have helped him form that impression. Babbitt directed his chief counselor, John Duffy, to prepare a reply. Duffy was baffled by the letter and wrote to the chief of staff and counselor to the NPS director, Anne Badgley, for help. "I had a hand in the drafting of the legislative provision on which they are relying," Duffy wrote, "and I don't understand their apparent interpretation of its language or their proposed process or what the Park Service is doing about this." Inevitably, Duffy's request for information circled back to the park and Martin briefed him by memorandum on April 24.[8]

Abrasive and perplexing though the Tribe's communication may have been, it succeeded in getting the process started. Between mid-April and mid-May several things happened. Martin and Boland set a date for the first meeting – May 23 – and agreed on an agenda and a list of participants. Assistant Secretary for Indian Affairs Ada Deer appointed Catherine Vandemoer to serve as her representative in the coming effort. BIA's participation was important as it appeared to the Tribe that the NPS might be hedging about whether it recognized all of Death Valley as Timbisha Shoshone homeland

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[6] Richard F. Boland to Bruce Babbitt, March 23, 1995, enclosing "The California Desert Protection Act Timbisha Shoshone Land Restoration Study, Initial Planning Meeting, Proposed Agenda," File 20: L58 Proposed Areas Timbisha Shoshone Tribe 1993-1994, Central Files, DEVA.

[7] Richard F. Boland to Bruce Babbitt, March 23, 1995, File 20: L58 Proposed Areas Timbisha Shoshone Tribe 1993-1994, Central Files, DEVA.

[8] John J. Duffy to Anne Badgley, April 12, 1995, File 20: L58 Proposed Areas Timbisha Shoshone Tribe 1993-1994, Central Files, DEVA; Superintendent to Counselor to the Secretary, April 24, 1995, Box L, Greene/RM files 8/2006, DEVA. Don Barry recalls that Babbitt warned him against taking up the Timbisha Shoshone situation in 1997 because the Tribe was "crazy." (Barry interview.)

area. And on another front, finding money, various federal agencies besides the NPS began to commit funds. In particular, the Bureau of Reclamation came forward with a plan to evaluate the water resources within the study area.[9]

NPS Takes the Lead

Babbitt's chief counselor, John Duffy, meanwhile, made the important decision in late April 1995 to give Superintendent Martin the lead on the study.[10] This would prove to be the wrong decision – not because of any incompetence on the part of Martin or other field personnel, but because the members of the federal team would find that they did not have the necessary authority to make hard decisions at the negotiating table. Indeed, Duffy made a fundamental error of judgment at this juncture in the process in failing to come to grips with what the Section 705 (b) study entailed. Although benignly termed a "study," it was, in fact, a negotiation since the Tribe would accept nothing less. Duffy would persist in misconstruing the study as essentially a Park Service matter as long as it remained his responsibility.[11]

Martin was under no such illusion, and if he bears some responsibility for what happened it is for failing to challenge Duffy's view. As Martin communicated with the Timbisha Shoshone Land Restoration Committee in April and May 1995, it was perfectly clear to him that the May 23 meeting was to launch a process of negotiation with the Tribe. In his role as the lead representative of the NPS, Martin had already begun to exercise his diplomatic skills in trying to manage expectations on the part of the Tribe. In the first place, he needed to get the Tribe to agree to sit down with federal field staff rather than agency heads. "We are pleased that we all share the goal that this meeting resolve several important questions and lead to immediate follow-up action," he wrote to Boland. "We understand your desire to have key management people present who will give high-profile support to this endeavor. However, we need to ensure that this does not become a media event with little substance actually being accomplished."[12] Martin fairly appreciated the Tribe's position and he might have been more forceful in communicating that perspective up the chain in the Department of the Interior.

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[9] Patrick Hayes to Barbara Boxer, April 14, 1995, Frederick I. Marr to Ada Deer, April 28, 1995, and Deer to Marr, May 17, 1995, File 20: L58 Proposed Areas Timbisha Shoshone Tribe 1993-1994, Central Files, DEVA; Richard Martin to Richard Boland, April 19, 1995, Box L, Greene/RM files 8/2006, DEVA; Martin interview.

[10] Duffy apparently did not memorialize the decision in writing, but subsequently referred to Martin's memo of April 24, 1995 as the basis for his decision. See John J. Duffy to Roger Kennedy, April 30, 1996, File 31: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

[11] John J. Duffy to Richard Boland and Frederick I. Marr, May 15, 1996, File 31: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

[12] Richard H. Martin to Richard Boland, April 19, 1995, Box L, Greene/RM files 8/2006, DEVA.

When Martin explained to Duffy what he was doing to initiate the study, his memorandum described at least three preliminary actions or premises that can now be regarded as seeds of failure for the undertaking. In view of the fact that Duffy approved this memorandum, later citing it as the best statement in his files on how the Department of the Interior had charted its course for implementation of Section 705 (b) of the CDPA, it is worth taking a closer look at the memorandum. In the first place, Martin candidly expressed a lack of enthusiasm for the assignment. The legislation did not identify a lead agency to conduct the study, Martin wrote, but the park, as the "current home of the Timbisha Shoshone Tribe," had been "put in the position of assuming this role." The park owned this study by default, he implied. Moreover, the legislation did not appropriate funds for the study, so the NPS and other government agencies were making "a 'good faith' commitment to use a portion of their own funds to begin this project." Even if Martin privately saw the study as a worthy undertaking, he adopted a somewhat begrudging tone in this memorandum to Duffy, which probably mirrored the tone of his discussions with key officials around the agency in the preceding months. That did not bode well for making the effort a success.[13]

Martin's second point was that he and the park staff were already working closely with appropriate personnel in the Western Regional Office, as well as with key officials in other federal agencies, particularly the BLM and the Forest Service. Absent from Martin's list of participants was the NPS regional director, Stanley Albright. While it may have been impossible for Martin or Duffy to anticipate this problem, it would soon become obvious that Albright was the decision maker missing from the table; Albright would not give his representatives from the Western Regional Office sufficient latitude to be effective negotiators.

Finally – and this was the most important point – Martin described how the NPS, as lead federal agency, would attempt to make the study a Park Service matter. All official communications about the initial meeting and subsequent meetings would "go through our office as lead agency until a determination otherwise is made," Martin wrote. "At this point, we would prefer not to see other parties communicate with state or federal offices or other individuals without our knowledge, only because it will add further confusion to an already complex situation."[14] This formulation satisfied Duffy, who would later defend the Department's record of consultation with the Timbisha Shoshone Tribe from the outset of the study process.[15] But it alienated the Tribe, which saw this as a violation of tribal sovereignty and a contradiction of the government-to-government relationship.

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[13] Superintendent to Counselor to the Secretary, April 24, 1995, Box L, Greene/RM files 8/2006, DEVA.
[14] Ibid.
[15] John J. Duffy to Richard Boland and Frederick I. Marr, May 15, 1996, File 31: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

"I must tell you," Boland wrote to Martin after he read this memorandum, "that I am disturbed by the tone of your memo, particularly the second to the last paragraph, as it shows a blatant disregard for the government-to-government relationship supported by President Clinton and delineated in his Memorandum of April 29, 1994." Boland went on to remind Martin that the Land Restoration Committee was an arm of the tribal government, a sovereign entity; therefore, it was "highly inappropriate" for the NPS to attempt to control its communications with other agencies. "Furthermore," Boland continued, "the Tribe has worked hard to insure that the Secretary's study would be a truly collaborative effort and not dictation passed off as consultation."[16] As it turned out, this was an apt warning about how things were soon to get off-track.

The Ill-Fated First Round

The May 23 meeting was held in the public auditorium in the park visitor center at Furnace Creek. By and large, the people who attended this meeting would constitute the study team through the first round of negotiations until the effort collapsed in the following year. The federal team included representatives of the NPS, the BLM, the BIA, and the Forest Service. Superintendent Martin headed a team of seven from the NPS, which included Ray Murray, chief of planning at the Western Regional Office; Roger Kelly, regional archeologist; Pat Parker, chief of the American Indian Liaison Office (AILO) in Washington, D.C.; and Elizabeth Owen, Ann Titus, and Linda Greene from the park staff. There were four officials from the BLM: Russell Kaldenberg, state archeologist at BLM's California State Office in Sacramento; Greg Thomsen, resources staff chief for the Ridgecrest Field Office; Bruce Crespin, cultural program analyst with the Native American Program Office in Santa Fe, New Mexico; and Robert Laidlaw, Native American policy analyst in BLM's Washington Office. The BIA was represented by two officials from the Sacramento Area Office, and the Forest Service was represented by two officials from the Inyo National Forest. The Tribe's negotiating team consisted of the six members of the Land Restoration Committee together with Fred Marr of CILS, Steve Haberfeld of Indian Dispute Resolution Services (IDRS), anthropologist Kate Fowler, and historian Steve Crum. Another employee of IDRS, Marshall Rogers, served as the meeting facilitator.[17]

At the outset of the meeting each tribal representative made a statement. Pauline Esteves talked for ten minutes about her people's relationship to the area and their past mistreatment by the Park Service. Richard Boland emphasized that the Tribe's continued existence as a cultural entity depended on its remaining in Death Valley and he suggested

[16] Richard Boland to Richard H. Martin, May 1, 1995, Box L, Greene/RM files 8/2006, DEVA.
[17] Parker interview; Durham interview; Steven Haberfeld, "Government-to-Government Negotiations: How the Timbisha Shoshone Got Its Land Back," *American Indian Culture and Research Journal* 24, no. 4 (2000): 133. "Timbisha Shoshone Land Restoration Committee Meeting, May 23, 1995," File 20: L58 Proposed Areas Timbisha Shoshone Tribe 1993-1994, Central Files, DEVA.

that preserving the tribal culture would seem to be an integral part of the Park Service's mission. "We are, after all, the ultimate cultural resource," he said. "Although we may require more care than an abandoned mine or castle, our existence within this valley says more than a cache of bones or baskets ever will." Spike Jackson asserted that no federal agency could be better caretakers of the land, or could have more love for the land, than the indigenous Timbisha Shoshone. "This love goes beyond just having the title of ownership," he said. "It starts with coming from the land physically, mentally, spiritually, and emotionally. This love carries us through our life, doing to the land as we would have it do to us. It ends with us going back to the land from where we came and our children inheriting what we left." After these impassioned statements from the tribal team, Martin admitted to the group that he had concerns about whether the NPS was the "appropriate catalyst" and wondered if it would be better for the NPS to be a participant rather than a lead in the study.[18] That reluctance on the part of the superintendent, combined with an apparent lack of preparation by other members of the federal team, gave members of the tribal team pause.[19] Pat Parker of the AILO, observing and listening to all of these people speak for the first time, found the tone of the meeting "very constrained…like a volcano getting ready to blow up."[20]

Despite those tensions, however, the first meeting did yield a plan for moving forward. The large group was to break into four smaller working groups, each one to tackle a component of the study and report back to the large group, which was to reconvene at the same location on August 1, a little more than two months later. The working groups were as follows. Group 1 was to produce a set of maps on 7.5 minute quads that defined "Land Study Areas," and these were to be based in turn on a description, forthcoming from the Tribe, of twelve proposed areas. Group 2 was to prepare a feasibility study on "Land Use and Economic Development Potential to Achieve Tribal Self-Governance and Self-Determination." Group 3 was to provide a review and analysis of legal issues; besides acting as consultant for the other work groups, Group 3 was to provide a recommendation that the land was legally able to be part of a reservation. Group 4 was to study options for cooperative management and to develop a draft agreement. The tribal team proposed another working group to prepare the report to Congress, but it was decided to postpone forming this group until later. At this point, everyone had their sights on completing a study within one year of passage of

[18] "Timbisha Shoshone Land Restoration Committee Meeting, May 23, 1995," File 20: L58 Proposed Areas Timbisha Shoshone Tribe 1993-1994, Central Files, DEVA.
[19] Haberfeld, "Government-to-Government Negotiations," 133.
[20] Parker interview. Russ Kaldenberg remembers that one of the two Forest Service representatives, Marty Dickes, made the surprising suggestion that the Tribe might have the White Mountains on the Inyo National Forest for a reservation. This proposal had not been vetted with either the forest supervisor or the regional forester and when BLM's state director Ed Hastey was informed of it he thought it was outrageous and without foundation. The proposal may have raised the Tribe's expectations for obtaining a large acreage, although it was evident at the meeting that the proposal was off the cuff and the Tribe was not particularly interested in acquiring that specific area. (Russ Kaldenberg interview, May 19, 2009.)

the CDPA, or by October 31, 1995, even though more than half the year had already elapsed.[21]

Two weeks later, on June 6, the Tribe submitted its report defining the twelve proposed areas for study. Topping the list was a 5,000-acre area that included the village at Furnace Creek. The Tribe proposed that this area be transferred into Indian trust status for residential and community economic development. Next on the list was an area of approximately 750,000 acres in the western part of the park that encompassed seven sacred sites together with a vast amount of mountain and valley terrain in which the Tribe had traditionally tended springs, hunted game, and gathered and cultivated plants for food, medicine, and basket-weaving material. The last three proposed areas consisted of three separate parcels of BLM land that lay along entrance roads to the park and totaled another 11,000 acres. While these parcels did fall within the ancestral homeland of the Timbisha Shoshone, their primary value to the Tribe was for future residential and economic development.[22]

The Tribe's report was supposed to give the working groups what they needed to do their assigned work. However, the working groups' progress was impeded by the knowledge that the NPS had serious reservations about the large amount of land that the Tribe proposed for study. NPS officials began parsing the language of Section 705 (b), especially the phrase "lands suitable for a reservation," in an effort to keep the study focused on a small area. NPS officials also raised questions about the Tribe's intended land uses as suggested in its report. For example, the Tribe's report referred to hunting bighorn sheep in one area and to "traditional hunting" in other areas that were currently within the national park. The report also referred to "spiritual healing and bathing" at Travertine Springs, the source of drinking water for Furnace Creek. Of most concern to the NPS, the report referred to "economic development" in both the Furnace Creek area and the parcels located near park entrances. What did the Tribe contemplate? Was it considering development of retail stores? A casino? Had it fully considered whether the land had sufficient water resources to sustain any amount of residential or economic development?[23]

BLM's representatives were only a little less skeptical. As a multiple-use agency, BLM did not have the same aversion to commercial and residential development that

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[21] "Timbisha Shoshone Land Restoration Committee Meeting, May 23, 1995," File 20: L58 Proposed Areas Timbisha Shoshone Tribe 1993-1994, Central Files, DEVA; Linda A. Reynolds to Elizabeth Owen, June 19, 1995, Box L, Greene/RM files 8/2006, DEVA.

[22] "Timbisha Shoshone-Death Valley Land Restoration Project Report on the Scope of the Study Process and Components Resulting from the May 23, 1995, Combined Tribe and Government Agencies Large Group Meeting in Death Valley, California," June 6, 1995, File 25: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA; Haberfeld, "Government-to-Government Negotiations," 135.

[23] Richard H. Martin to Richard Boland, July 5, 1995, File 25: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

NPS officials had. However, BLM lands were already laced with prior existing rights such as mineral rights and water rights, as well as other resource values, and BLM officials had to weigh those other interests. BLM had already given up a vast acreage in the CDPA – most of the land that went into additions to Death Valley National Park as well as the newly established Mojave National Preserve – and so there was a reluctance by BLM to give up yet more land to the Tribe. Indeed, BLM's powerful California state director, Ed Hastey, had vigorously opposed the Mojave National Preserve and regarded the CDPA as a personal affront. Hastey's position at the beginning of the process was that the Timbisha Shoshone by all rights should have a reservation, but the land should come entirely out of Death Valley National Park.[24]

The large group reconvened on August 1 as scheduled but only two of the four working groups delivered reports. Greg Thomsen of BLM presented the maps prepared by Group 1 and Roger Kelly of the NPS presented findings on cooperative management by Group 4. On the core issue of identifying lands suitable for a reservation, no real progress had been made. The meeting was strained, both sides failing to engage as it became clear that they would be talking across a chasm. Two weeks later, the problematic Group 2 finally met for the first time, and to get the work started Richard Boland presented a report, "Principles Related to Identifying Aboriginal Homeland Areas for Restoration to the Tribe."[25] As Group 2 had become the focus of the negotiations, it had no less than 23 people and was almost indistinguishable from the large group. The large group met again on August 19 and 20, Group 2 met two more times, and then there was another large group meeting on September 19.[26] Team members still hoped to complete a report for the Secretary of the Interior by the October 31 deadline.[27]

Two Emerging Problems

In the course of these meetings, two problems emerged that would eventually defeat the first round effort. The first problem was that the NPS negotiators could not truly negotiate. The tribal representatives rightly perceived that Ray Murray, the chief of planning in the regional office who gradually took over from Superintendent Martin as the NPS lead, was increasingly put in the role of messenger between the Tribe and Park Service higher-ups. Pauline Esteves describes the Tribe's frustration in the first-round effort, which it perceived as going "down hill," because the tribal delegates "weren't talking with the right people." The NPS "was very reluctant in getting the right people to

[24] Greg Thomsen interview, August 16, 2007; Ray Murray interview, August 13, 2007; Kaldenberg interview.
[25] Timbisha Shoshone Land Restoration Committee, "Principles Related to Identifying Aboriginal Homeland Areas for Restoration to the Tribe," August 17, 1995, File: Timbisha 1997, Box 1 of 2, Pacific West Regional Office [hereafter PWRO] files, DEVA.
[26] Chronology of Events and Major Correspondence Related to Implementation of Section 705 (b) of the California Desert Protection Act (Study to Identify Lands Suitable for a Reservation for the Timbisha Shoshone Tribe), File 2: A7221 FOIA & Privacy Act Timbisha Shoshone Tribe, Central Files, DEVA.
[27] Roger Kelly to Bruce Kilgore, August 22, 1995, File DOI NPS AILO TSHA 02 0056, AILO.

us," Esteves maintains. "We kept telling them, we don't want to keep talking to you, we want decision makers."[28] Unfortunately, Murray's ineffectual role was so irksome to the tribal representatives that they took a strong disliking to him, which further undermined the process.

By the end of summer, Murray was receiving orders from Regional Director Stanley Albright, who wanted to take a hard line against giving up any land in the park. Stan Albright was the nephew of Horace M. Albright, the legendary second director of the Park Service, whose family hailed from Bishop in the nearby Owens Valley. Coming from that background, Stan Albright was hugely dedicated to the national parks and he knew Death Valley National Park and its environs intimately. In his early career, he had served in nearby Devils Post Pile National Monument and Yosemite National Park. As regional director, he had come through the political battle over the CDPA and was deeply invested in it. He had grave concerns that a transfer of lands out of the park would be precedent setting for other tribal claims in the national park system. He was also reluctant to do anything that would possibly unravel the political compromise achieved in the CDPA. He did not even like the idea of the Tribe having land near the park entrances, fearing that the Tribe's push for ecotourism development would "encourage another Gatlinburg."[29]

The second problem of the first-round talks was that the two sides became more and more entrenched as time went on. There was too much attention to establishing each side's respective positions and too little effort to probe for shared interests that could form the basis for a win-win negotiation. Steven Haberfeld finds that the federal government was primarily responsible for this breakdown in the study process and he attributes it to the difference in power between the two sides. "The federal agencies did not see the study as a government-to-government negotiation between two sovereign entities," Haberfeld writes. "They never felt that they had to come to any agreement with the tribe." Section 705 (b) stated that the study would be made in consultation with the Tribe, but that did not necessarily mean a negotiation. Rather, the federal agencies construed Section 705 (b) to mean that they needed to accomplish research, data analysis, mapmaking, and report preparation. This was a task for field personnel and staff technicians.[30] Haberfeld, a keen observer who participated in both the first and second round talks from start to finish, offers this perceptive assessment of what went wrong in the first round:

> The federal representatives at the table did not respond to the tribe's initial proposals by identifying their underlying interests, offering counter proposals of their own, and trying to fashion an agreement. The representatives at the table

[28] Esteves interview.
[29] Martin interview; Ray Murray to Dick Martin (email), August 3, 1995, File 26: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[30] Haberfeld, "Government-to-Government Negotiations," 138.

> never got any clear direction from their agencies' hierarchies. The upper-level decision-makers were operating with a different model in mind. They saw themselves as the ultimate arbiters before recommendations went to Congress. They intended to clarify their positions with regard to trust land in and outside the Death Valley National Park only after the conclusion of the joint meetings with the tribe in Death Valley, and once the final draft of the study report was prepared.[31]

While Haberfeld is right that the federal government team approached the problem from a position of superiority, it must be noted that the Tribe took a series of positions in the summer of 1995 that were alarming to the NPS at the time and excessively strident in retrospect. One problem for federal negotiators was that the Tribe kept demanding more. "Is Table 'A' the Land Restoration Committee's current thinking?" Martin asked Boland in July, referring to one of the Tribe's numerous reports. "Or has there been an evolution in contemplated uses?" In particular, the federal government was concerned that the Tribe might build a casino in or near the park. Although the Tribe denied any interest in developing a casino, it would accept no limitations on what it could do with its land. In its August 17 report to Group 2, the Tribe made no effort to mollify NPS concerns other than to state that it would pursue a "special type of tourism development" that would be "low-impact and compatible with the local environment." It went on to state that existing visitor-use facilities developed under NPS auspices were not so compatible with the area – an assertion that drew an exclamatory "No!" in the report's margin from one NPS reviewer. Besides sounding more and more ambitious (as well as vague) in its economic development plans, the Tribe also kept extending its reach in the area of cooperative management. The Tribe's August 17 report enunciated both a "development principle" and a "management principle." According to the latter, the Tribe wanted lands put in trust that it would manage "independently and in cooperation with relevant federal agencies."[32] This led to a discussion of which side, the Tribe or the NPS, would have veto power over the other on cooperatively managed lands.

Report Preparation

At the end of the summer, NPS officials turned their attention to writing the report. Regional chief of planning Ray Murray took the lead with regional archeologist Roger Kelly assisting him. They did not invite the Tribe to co-author the report, although they did ask the Tribe to contribute sections on tribal history and culture. The federal government team took the high handed approach that the federal agencies would develop a recommendation and if they could not get the Tribe to support it then the report would simply present the Tribe's contrary position alongside the agencies' position. A first draft was completed in mid-September. The final draft report stated that the Tribe's

[31] Ibid, 138-39.
[32] Timbisha Shoshone Land Restoration Committee, "Principles Related to Identifying Aboriginal Homeland Areas for Restoration to the Tribe," August 17, 1995, File: Timbisha 1997, Box 1 of 2, PWRO files, DEVA.

position was that it wanted: (1) 700,000 contiguous acres in the Saline and Panamint valleys restored for traditional resource use and sacred use; (2) 100,000 acres in four separate tracts located at Furnace Creek, Death Valley Junction, Daylight Pass, and Mesquite Springs conveyed for purposes of economic development; and (3) an additional 2 million acres placed under co-management. The federal agencies' position was that it would not oppose legislation to convey (1) a 40-acre parcel of land at Furnace Creek for tribal residences, a community center, a cemetery, and a future tribal facility that would serve as a staging area for ecotours, provided that the law contained language restricting future development of gaming; (2) one or more tracts of land at or near Death Valley Junction, where the Tribe could develop tourism-related businesses; and (3) additional parcels outside the park still to be determined, provided that the size of these conveyances were consistent with other conveyances of federal lands to Tribes for reservation purposes in California and Nevada, which were in the range of 40 to 1,000 acres.[33]

During the fall of 1995, the Tribe was asked to respond to the first draft of the report in the hope that the Tribe's and the federal government's respective positions could be brought closer together. Both sides gave a little. The Tribe whittled its proposal for 100,000 acres of land for economic development purposes down to about 20,000 acres at six specific locations, three inside the park and three on BLM lands. While that was a large reduction in total acreage, the Tribe still sought tracts of a few thousand acres each for potential development at various prime locations, including 5,000 acres at Furnace Creek. The federal government, meanwhile, raised the amount of BLM land it recommended for "potential transfer" (pending a determination of whether the parcels had sufficient water resources to support economic development) to about 11,000 acres. The federal government's proposal came to focus on three areas: Death Valley Junction, California; Lida, Nevada; and Scotty's Junction, Nevada.[34]

At this early stage, BLM began to take a more accommodating position toward the Tribe. BLM California State Director Ed Hastey became enthused by the possibility that the Tribe could develop small tourism enterprises at highway junctions outside the park, especially Death Valley Junction. These parcels had little else of economic value. Russ Kaldenberg, BLM's state archeologist, helped bring Hastey around to this view, while the rest of BLM's negotiating team was also supportive.[35]

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[33] "Draft Report: Study to Identify Lands Suitable for a Reservation for the Timbisha Shoshone Tribe," September 19, 1995, File: Timbisha 1997, Box 1 of 2, PWRO files, DEVA.

[34] "Draft Report by the Secretary of the Interior: Results of a Study to Identify Lands Suitable for a Reservation for the Timbisha Shoshone Tribe," November 28, 1995, File: Timbisha 1997, Box 1 of 2, PWRO files, DEVA.

[35] Kaldenberg interview. This is not to say that the Tribe no longer had issues with BLM's negotiating team. Kaldenberg remembers a snafu that occurred in November 1995 that undermined his relationship with tribal negotiators. He was supposed to send parcel maps to Richard Boland. Lacking an address, and finding that Boland's phone service was temporarily interrupted, he sent the maps to Linda Greene with the intent that the maps would be handed directly to Boland. Through a miscommunication, the maps were

Not everyone in the NPS approved of how the federal government's proposal was taking shape. Pat Parker, chief of the AILO, raised serious doubts about it. Parker's role in the study group was unique: she was the only member of the NPS team who did not report to Regional Director Stan Albright and she served the team in an advisory capacity. Yet she was close to the NPS directorate in Washington. In late August, when it began to appear that the study would not be completed within the one year timeframe stipulated by Congress, Parker advised Superintendent Martin that she needed to brief Director Roger Kennedy about what was happening – before he was "blind-sided by the Secretary or John Duffy."[36] Three months later, she conveyed her growing concerns about the study to Kate Stevenson, associate director for cultural and partnership programs, suggesting that the tough stand being taken by the field staff on this matter could lead to criticism that the NPS was failing to uphold the Clinton administration's commitment to develop mutually productive partnerships with tribes.[37]

Parker leveled seven criticisms at the draft report. First, the NPS was not taking the opportunity to develop a useful model in Death Valley for how trust lands could be created within park units. Second, the lands proposed for conveyance did not form a contiguous land base and did not include any of the areas that the Tribe considered as most important for preserving the tribal culture. Third, the lands proposed for conveyance did not include the range of environments that the Tribe needed for maintaining traditional practices that were key to its survival as a distinct and sovereign people. Fourth, the NPS and the BLM had made no effort to coordinate the study with the Northern and Eastern Mojave Management Plan. Fifth, the parcels proposed for economic development appeared to be too small to allow anything more than marginal tribal participation in the local economy. Sixth, the study would not consider any designated wilderness lands as lands suitable for a reservation, even though 95 percent of lands within Death Valley National Park had been designated as wilderness. Seventh, the NPS was giving insufficient thought to co-management, which had potential to foster cross-cultural understanding and shared knowledge in place of inter-cultural conflicts. Parker warned that the Park Service faced a choice: it could take the opportunity to provide leadership, or it could wait until it was forced to consider such options.[38]

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circulated to park staff before they were given to the Tribe. Boland and other tribal representatives construed this act as a serious breach of trust. (Kaldenberg interview.)

[36] Pat Parker to Richard Martin (email), August 24, 1995, File: Timbisha 1997, Box 1 of 2, PWRO files, DEVA.

[37] Acting Chief, AILO, to Associate Director, Cultural Resource Stewardship and Partnerships, November 21, 1995, File 28: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

[38] Acting Chief, AILO, to Associate Director, Cultural Resource Stewardship and Partnerships, November 21, 1995, File 28: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

A Surprise Move

Parker's warning was sound: just a few days later the Tribe decided that it would seek outside intervention in the study in order to make the study's recommendation acceptable to the Tribe. To that end, it would send a delegation to Washington. When Assistant Secretary for Indian Affairs Ada Deer learned that the Tribe was coming, she set up a meeting for December 5 at the Main Interior Building. Deer announced the meeting to a long list of department officials, suggesting that the Tribe would have an opportunity to conduct a seminar, after which the Tribe would be able to arrange smaller meetings with the several federal agencies involved to resolve differences.[39]

In preparation for the December 5 meeting, the NPS held an internal conference call on December 1. Present on the call were Deputy Director John Reynolds and Associate Director Kate Stevenson representing the NPS directorate, Stan Albright and Ray Murray representing the field, and Pat Parker. It was agreed that Parker would represent the NPS director at the meeting and that she would listen but not respond to what the Tribe said. Further, it was agreed that the NPS and the BLM would meet confidentially on January 9 to explore further options for responding to the Tribe's requests. It was also agreed that some time after the meeting Destry Jarvis, special assistant to the director for policy and legislation, would go to California and bring a fresh perspective to the study effort.[40]

In the following days, the format of the December 5 meeting was altered. Instead of listening but not responding to the Tribe's presentation, Parker read a prepared statement on behalf of Director Kennedy and the NPS. In that statement, which reflected her own thinking, she disclosed the fact that the NPS would consider alternatives to the present proposal. When Ray Murray in California learned of her statement he was furious, saying that Parker had spoken out of turn before the field had had a proper opportunity to brief the Washington Office, and that her statement undermined the field's position at a critical point in the process. "I don't know if your statement was handed out or is a matter of record," he wrote sharply. "Regardless, the Tribe heard it." Undoubtedly, the statement did encourage the Tribe to expect concessions from the Park Service, but that was exactly Parker's intention for she thought that was a necessary step to break the deadlock. What Parker and perhaps others in the Washington leadership did not anticipate was how much Regional Director Albright would dig in to protect his hard-line position.

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[39] Assistant Secretary – Indian Affairs to Distribution List, November 29, 1995, File 28: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[40] Ray Murray to Pat Parker (email), December 11, 1995, File: 1997, Box 1 of 2, PWRO files, DEVA; Statement by Pat Parker, Acting Chief, American Indian Liaison Office, December 5, 1995, File: DOI NPS AILO TSHA 02 0098, AILO.

Following the December 5 meeting, the tribal delegation met with various congressional staff and Interior officials and then returned to Death Valley one week later. On December 12, the Tribe submitted a formal request that the Secretary of the Interior convene a high level group in Washington to undertake government-to-government negotiations with the Tribe. On December 22, the Land Restoration Committee submitted 31 pages of comments on the second draft report. They were written by Boland and reviewed by Marr. Again and again in these comments, Boland pointed to the need for "interest-based negotiations" and "face-to-face meetings" to resolve differences. The Tribe, he stated, wanted to start over with another federal government team because the previous one had abused its trust. "This is yet another example of federal agencies deciding what is 'good' for Indian people," Boland wrote on behalf of the Tribe. "Those days are over."[41] The Land Restoration Committee sent copies of these comments by express mail to 14 different federal officials, none of whom either read or received them for the next two weeks, ironically, owing to the historic government shutdown at the end of that year.[42]

The government shutdown caused a break at a critical point in the process. Whatever momentum the Tribe's visit to Washington had generated was promptly lost. Haberfeld states that the Tribe received assurances during its visit that a new federal government team would re-open talks. The team was to consist of Elizabeth Homer, director of the Office of American Indian Trust, Catherine Vandemoer, special assistant to the assistant secretary of Indian Affairs, and Pat Parker.[43] This team never assembled. Nor did the NPS and BLM meet on January 9 to explore further options. One positive thing did come from the government shutdown: Parker used this interlude to prepare a white paper on the Timbisha Shoshone for Deputy Director Reynolds.[44] Her paper focused on the potential to create a Timbisha Shoshone "heritage area" or "protected area" within Death Valley National Park. The idea was not to put the land in trust or establish a reservation, but to designate an area for cooperative management for the purpose of maintaining traditional land use patterns.[45] This idea would later be carried into the second-round talks, and it would eventually flower with the designation of the Timbisha Shoshone Natural and Cultural Preservation Area.

With the exception of Parker's white paper, the government shutdown seemed to precipitate a hardening of the federal government's position. John Duffy, the counselor

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[41] Timbisha Shoshone Land Restoration Committee, "Comments on the November 28, 1995 Draft Report," December 22, 1995, File 28: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[42] President Clinton ordered the shutdown when Congress failed to pass a budget bill. The shutdown lasted from November 14 to November 19, and again from December 16 to January 6.
[43] Haberfeld, "Government-to-Government Negotiations," 164.
[44] Parker interview.
[45] National Park Service, "Recommendations for Timbisha-Shoshone 'Area' Within Death Valley National Park," February 9, 1996, File 29: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

to the Secretary of the Interior, set the tone in statements he made in January. First, he stated that the lead for negotiating with the Tribe and preparing the report rested with the NPS and BLM, not with the BIA or the assistant secretary for Indian affairs.[46] Second, he said that the report by the Secretary must straightforwardly discuss whether lands were suitable for a reservation or not; it should not propose conveyances of lands with restrictions on them. Such an arrangement might be negotiated at a later time, he said, but it was beyond the scope of the Section 705 (b) study. Third – and this was the most decisive point – he recommended that the report should not propose a reservation at Furnace Creek, only on lands outside the park.[47] This was exactly in line with Regional Director Albright's thinking. Murray says that his boss "felt pretty strongly about not conveying park land."[48]

The NPS, BLM, and the Office of the Secretary held meetings in Washington in February and did not invite the Tribe to participate in them. When the Land Restoration Committee learned about these meetings, Boland accused the NPS of violating the Department of the Interior's trust responsibility. Murray replied that the different federal agencies needed to pull together to take the report to the next level; it was no different than the Tribe needing to caucus during negotiations.[49] However, what Murray did not disclose was that the federal government team was now struggling over a way to restate its position on the crucial Furnace Creek site. Without the Tribe's involvement to act as a check on their thinking, the federal negotiators formed the misguided idea that they could resolve the Timbisha Shoshone situation through a two-phase process: a first phase in which BLM lands were conveyed for purposes of establishing a reservation outside the park, and a second phase in which the Furnace Creek site (and other park lands) were converted into some other kind of mutually acceptable land status. The report would deal with the first phase only, and there was the rub. "If we go this way," Destry Jarvis advised, "we will have to be very careful in communicating with the Tribe so that they do not go ballistic and excite Congress to act on the Report. We need to convince them that the Report is not their salvation inside the park, but that we will deal effectively with their land claims in Furnace Creek outside the Report."[50] It was a subtle and convoluted strategy that failed to take into account the Tribe's loss of trust in the process.

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[46] Richard Martin to Kate Stevenson, Denny Galvin, Destry Jarvis, and Pat Parker, January 29, 1996, File 29: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[47] Destry Jarvis to Richard Martin (email), January 30, 1996, File: Timbisha 1997, Box 1 of 2, PWRO files, DEVA.
[48] Murray interview.
[49] Richard Martin to Kate Stevenson, Denny Galvin, Destry Jarvis, and Pat Parker, January 29, 1996, File 29: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[50] Destry Jarvis to Richard Martin (email), January 30, 1996, File: Timbisha 1997, Box 1 of 2, PWRO files, DEVA.

The ill-advised plan came crashing down when the federal government team presented it to the Land Restoration Committee. The notorious meeting took place on March 7, 1996 in the Cow Creek residential area in Death Valley. As the visitor center auditorium was unavailable, a makeshift meeting site was arranged in the fire house. The room was hot and stuffy and there were not enough chairs. Some people sat on upturned buckets. There was food on the table but no one touched it. These were all the ingredients, it seemed to tribal members, for a humiliating betrayal by their federal partners.[51] When Murray set out to explain the federal government's new position on the Furnace Creek site the discussion quickly became "emotional." Murray veered from his outline and in the heat of the moment he was blunt: "Park lands are off the table," he said.[52] Pauline Esteves, who was then tribal chairperson, said there was no further point to the meeting and she started to lead the tribal delegation out of the building. One of the federal negotiators tried to buttonhole Boland and get him to hold the group there, but Boland said he was only the committee spokesperson and it was the tribal chairperson's decision to leave. So the Tribe walked out of the talks, much to the federal negotiators' dismay.[53]

The federal government team should not have been shocked by the outcome. Since November, when the Tribe called for intervention in the negotiations, the team had been put on notice that the Tribe's trust in the study process was ebbing. Clearly what the Tribe had come to fear was that the Report to the Secretary would convey to Congress a false impression of the Tribe's position and that the singular opportunity presented by the CDPA would be lost. The Tribe could not afford to sign a report that did not satisfy the Tribe's interests. The federal negotiators failed to see that central point. When the federal government team came back with a third draft of the report and announced that it was retracting its earlier proposal to convey lands inside the park, but it wanted the Tribe's support anyway, the federal strategy appeared to the Tribe to be nothing short of trickery.[54]

Stormy Hiatus

During the first-round talks, one ploy that Murray used to obtain tribal consent to the federal government's positions was to insist that Congress would not act on anything

[51] Esteves interview; Haberfeld interview.
[52] Ray Murray to Richard Boland, March 13, 1996, File 30: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA; Greene interview.
[53] Esteves interview.
[54] "Despair in Death Valley," pasted into Richard Martin to Glenn Gossard (email), April 5, 1996, File 3: A9029 Permits and Public Gatherings Timbisha Shoshone Tribe, Central Files, DEVA. The article quotes Esteves: "It was one long eleven-month charade. Those pasty-faced bureaucrats knew from the beginning that they would not restore ancestral lands to us. They sat there through presentation after presentation by the tribe, fooling us into believing that there could be a sincere dialogue between the federal government and its constituents…."

that the two parties did not agree on. No agreement, no action. This cut both ways. As the negotiations soured, the Tribe decided that non-agreement was its best hope for maintaining pressure on the Department of the Interior. When the Tribe walked, it was banking on the idea that the NPS and the Secretary would not try to wrap up the Section 705 (b) study without its participation. The study effort would stall, giving the Tribe time to mount a publicity campaign against the NPS and bring political pressure on the Department of the Interior to modify its stand.

The Tribe wasted no time in launching its publicity campaign. Four days after it broke off negotiations, the Tribe issued a press release in which the Tribe alleged that Secretary Babbitt had decided on a policy of Indian removal. Stretching the facts, the Tribe asserted that the federal government's refusal to recommend lands inside the park for a reservation was tantamount to its getting ready to force the Tribe to give up its 40-acre residential area at Furnace Creek. It called the decision an act of "ethnic cleansing." It referred to the government's "decades long racist policy to get Indians out of National Parks." It asserted that the Clinton administration was cynically misusing the CDPA to implement its "final solution" toward the Timbisha Shoshone in Death Valley.[55]

Besides seeking media attention, the Tribe sent letters and faxes to members of Congress, Secretary Babbitt, and President Clinton. Teaming up with Greenpeace organizer Bradley Angel, it held protest rallies at Furnace Creek. It sought help from other Indian tribes. With five other tribes, it formed the Alliance to Protect Native Rights in National Parks. The Alliance in turn secured support from the National Congress of American Indians (NCAI), the most influential national Indian organization in the nation. The NCAI passed two resolutions that were critical of the NPS, one calling for the Secretary to address the Alliance's issues and the other requesting Congress to hold oversight hearings on the Park Service's allegedly anti-Indian policies. The Alliance, with NCAI backing, held press conferences in Washington.[56]

The Timbisha Shoshone also brought attention to itself by suing the BLM for permitting a heap-leach open-pit gold mine to be located within its aboriginal homeland area without consultation. The proposed mining project had been a major issue during the campaign to enact the CDPA. Senator Feinstein, making a political horse trade to win support for her bill, had become a staunch supporter of the mine project. Located in the Panamint Mountains on the edge of Death Valley National Park, the project area impinged on both the national park addition and the wilderness area. The Timbisha Shoshone had been frustrated in its efforts to prevent the mine development, and in the spring of 1996 it ratcheted up the public discourse about the mine, alleging that the federal government's refusal to consider any trust land for the Tribe within the park was a

[55] "Despair in Death Valley," pasted into Richard Martin to Glenn Gossard (email), April 5, 1996, File 3: A9029 Permits and Public Gatherings Timbisha Shoshone Tribe, Central Files, DEVA.
[56] Haberfeld, "Government-to-Government Negotiations," 140.

retaliatory measure for the Tribe's opposition to the mine. Greenpeace and other environmental groups rallied behind the Tribe in its battle with the mining interest.[57]

The Timbisha Shoshone presented its case to foreign audiences as well as the American public. This was hardly surprising considering the unusually high percentage of foreign tourists who came to Death Valley National Park. Handbills were produced in several different languages, and Pauline Esteves traveled abroad to speak at various conferences. Information about the Timbisha Shoshone of Death Valley, the homeland issue, and the heap-leach open-pit gold mine appeared in an exhibition on Indian culture in Hamburg, Germany, prompting a surprisingly well informed letter from one German citizen to Secretary Babbitt in which the writer urged a resumption of government-to-government negotiations "according to the President's directive" to restore the Timbisha Shoshone's homeland. "It is a policy of discrimination to cleanse National Parks from their original inhabitans [sic] and thus to destroy an indigenous culture," wrote Sabine Westphal of Hamburg, Germany.[58] Many such letters were written by ordinary U.S. citizens in protest of the federal government's stand.

Bruising as all of these allegations and protests were to federal officials who were close to the situation, they were just pin pricks to the NPS leadership and the Office of the Secretary. Neither John Reynolds nor Don Barry, the two senior officials who would become most instrumental in the second-round talks with the Tribe, remember much about the Tribe's publicity campaign in this period.[59] Once in a while the Tribe landed a blow that got some attention. Its letter to President Clinton in September 1996 ended up on the desk of NPS Director Roger Kennedy, who called Pat Parker and demanded, "Pat, what's going on here?"[60] Similarly, the Tribe got Babbitt's attention when it went to the United Nations and claimed that its dishonorable treatment at the hands of the Department of the Interior, and its threatened disappearance from Death Valley, amounted to *genocide*. In the spring of 1997, when Assistant Secretary for Fish and Wildlife and Parks Don Barry suggested to Secretary Babbitt that he wanted to take on the Timbisha Shoshone homeland issue, Babbitt was dubious. "You're nuts," he said to Barry, "because the Tribe is nuts." Then Babbitt told him, "If you want to spend your time doing it, fine, but this is a fool's errand. You're not going to be able to get them to reach agreement with you."[61] Senior federal officials would never admit that anything the Timbisha Shoshone said or did forced the federal government to come back to the

[57] Pauline Esteves et al. to Bruce Babbitt, April 26, 1996, Files 7-12: L2423 Mining Encroachment Timbisha Shoshone Tribe & Briggs Mine, 1993-1996, Central Files, DEVA; "Tribal Alert: Stop The Eviction of Timbisha Shoshone From Death Valley!" no date, File 29: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[58] Sabine Westphal to Bruce Babbitt, May 12, 1997, File: Timbisha Shoshone Support Letters, Box L, Greene/RM Files 8/2006, DEVA.
[59] John Reynolds interview; Barry interview.
[60] Parker interview.
[61] Barry interview.

negotiating table. Still, the Tribe's publicity campaign worked like a slow solvent on the Park Service's hard-line position.

The first sign of softening could be found in a status report prepared for the Department of the Interior's Legislative and Congressional Affairs Office one week after the Tribe broke off negotiations. This memorandum summarized factors that had delayed progress on the study and then it zeroed in on a decision point for how to complete it: was the goal to identify lands that were "suitable" or "potentially suitable" for a reservation? "Suitable" would mean that the proposed reservation lands had been thoroughly analyzed for transfer into trust status; "potentially suitable" would mean that the lands had been generally evaluated by technical staff in consultation with the Tribe. If the latter, this memorandum stated, the study could be completed in about eight months for about one tenth of the cost of doing the more rigorous analysis.[62] It was decided to conclude the present study on that basis. Although that was the more expedient alternative, it also allowed more latitude in what the report would recommend.

Ray Murray and Roger Kelly prepared one more draft, a fourth, in the fall of 1996. In contrast to earlier drafts, this one did not highlight differences between the Tribe's position and the federal government's position by juxtaposing headings and blocks of text. Instead, it simply acknowledged the need for further consultation at many points throughout the discussion. A tone of conciliation came through especially in the section of the report that addressed traditional use. The NPS proposed to study a large area of land in the western part of the park that the Tribe had identified as having particular cultural and religious significance to the Tribe. "This area could be designated for tribal use in a variety of ways – through zoning as a historic district or traditional cultural area, or as a Congressionally designated special use area of the Park," the draft report stated. "Accommodating traditional care and use of plants by the Timbisha Shoshone Tribe conforms with general park management policies that guide the maintenance and interpretation of other traditional plant use areas such as historic orchards." The report went on to say that a growing body of research on California Indian traditional plant management showed that aboriginal groups such as the Timbisha Shoshone were not simply gatherers but horticulturalists who manipulated plants to serve their purposes in sustainable ways. Such traditional use might be compatible with wilderness management principles, because its mark upon the landscape was so subtle as to be "substantially unnoticeable."[63]

The final draft report was less promising when it came to the Furnace Creek site. Acknowledging the fact that Congress could create a reservation inside the park with

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[62] "Status of Timbisha Shoshone Tribe Reservation Lands Suitability Study Report," memorandum prepared for Danny Consenstein, Department of the Interior, Legislative and Congressional Affairs Office, March 13, 1996, File: Timbisha 1997, Box 1 of 2, PWRO files, DEVA.

[63] "Status Report on a Preliminary Study to Identify Lands Suitable for a Reservation for the Timbisha Shoshone Tribe," draft report, November 1, 1996, File: 1997, Box 1 of 2, PWRO files, DEVA.

restrictions on land use, the NPS nevertheless believed that such an enclave would be a recipe for conflict. "The tribal exercise of self-determination would be constantly at odds with conditions the National Park Service would establish to ensure that there would be no derogation of park resources." As an alternative to trust lands, the NPS proposed to create a permanent easement for residential purposes. It would be subject to tribal authority and it would be sufficient to qualify tribal members living on the easement for government services and programs to which they were entitled as Indian people.[64]

Murray and Kelly produced another draft document at this time, which they called "Framework for Increased Involvement of the Timbisha Shoshone Tribe in Death Valley National Park." It paralleled the report, but since it was an internal document and not specifically addressed to the language in Section 705 (b) of the CDPA, it provided a somewhat freer discussion. In fact, many statements contained in this white paper appeared to be laying the foundation for a change from "positional" to "interest-based" negotiations. Such simple, declarative statements as, "Tribal culture and history add value to the park" and "The park is a richer place because of the Tribe's continued presence" laced the document. Concerning the Furnace Creek village: "Continued occupation by the Timbisha is desirable." Concerning traditional use areas: "Traditional Tribal use and management practices in selected areas of the Park would add value to the Park provided there are no adverse impacts…on park resources and the park visitor experience." Still following in this bulleted format, the document delved into more technical matters as well: "In a government-to-government manner, the NPS will work with the Tribe to establish long term permits to minimize the need for separate special use permits. The NPS will make provisions to insure that older or infirm members of the Tribe can be afforded access to key traditional use and sacred sites."[65]

New Faces

While the NPS carried on without tribal participation, some key changes in personnel occurred that eventually helped to get the two sides talking again. In the fall of 1996, Babbitt moved John Duffy to the BIA and assigned the Timbisha Shoshone homeland issue to another one of his special attorneys, James Pipkin. Pipkin turned out to be only a transitional figure, but he did manage to improve the tone while he was nominally in charge of the study. Like Duffy, Pipkin came from Babbitt's former law firm of Steptoe and Johnson. An expert on alternative dispute resolution, he had previously worked on such major Clinton administration environmental initiatives as the President's Northwest Forest Plan and the Florida Everglades restoration. On October 10, Pipkin met with Senate Indian Affairs Committee staff concerning the Department of the Interior's progress in carrying out Section 705 (b) of the CDPA, and two weeks later

[64] Ibid.
[65] "Draft Framework for Increased Involvement of the Timbisha Shoshone Tribe in Death Valley National Park," September 17, 1996, File 32 (Jun-Aug) and 33 (Sep-Oct): L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.

he visited Death Valley National Park where he met with Superintendent Martin but not the Tribe. The following month, Pipkin asked Pat Parker to draft a letter for his signature that would serve as a cover letter to the draft report, which was now called a "status report." His thinking was that the study had proceeded as far as it could without a congressional appropriation and if Congress wanted something further it would have to put up money for it. Parker duly wrote the letter and the NPS cleared it, but Pipkin apparently changed his mind about sending the letter or the status report.[66] Had he done so, the Tribe would certainly have protested since it would have signified some degree of closure of the matter. Instead, three more months passed and then Pipkin provided a five-page synopsis of Interior's efforts to Senator Ben Nighthorse Campbell (R-CO), chairman of the Committee on Indian Affairs. Pipkin began that letter by stating, "I wish to emphasize that the Department has made no final recommendations on these issues, and that it will not do so until there has been further opportunity for consultation with the Timbisha Shoshone Tribe and a formal study has been completed." At the end of his letter Pipkin reiterated Interior's "strong desire to consult with the Timbisha Shoshone Tribe" and went on to explain that the Tribe had withdrawn from the study effort based on dissatisfaction with the process and the federal government's proposed recommendation. Noting that the NPS and BLM wanted to work with the Tribe on a variety of subjects of mutual interest, he averred that the agencies would "continue to seek to reestablish a productive, positive and open relationship with the Tribe."[67] Pipkin's March 14 letter to Senator Ben Nighthorse Campbell was his last word on the subject. In May 1997, he passed the baton to Assistant Secretary for Fish and Wildlife and Parks Don Barry.

Don Barry's decision to grapple with the Timbisha Shoshone homeland issue would prove to be a turning point. His intervention simultaneously accomplished two things: it moved the Park Service off its hard-line position not to give up any lands inside the park, and it satisfied the Tribe's long held desire to deal with someone at a higher level in the federal government. Barry himself, looking back on it from his current position outside of government, considers his intervention to have been crucial. "If you're looking for lessons learned," he says, "big things like this only happen if you get a push from the top outside the agency." But it must be a respectful push, he continues, and sensitive to the fact that "the Park Service will dig in faster than any other organization around and will backdoor you in a heartbeat if they think you're pushing them in a direction that is injurious to the park or the park system." With his quick mind and big heart matched by a healthy ego, Barry says that he provided the necessary high-level political cover (and direction) so that agency officials on the ground could get the job done. "I was going to fly high altitude. I was the B-52 bomber providing the air

[66] Jim Pipkin to John McCain, draft letter, no date, and Roger Kelly to Stan Albright, November 5, 1996, File: 1997, Box 1 of 2, PWRO files, DEVA; Pat Parker to Pipkin, December 4, 1996, File: DOI NPS AILO TSHA 03 0286, AILO.
[67] James Pipkin to Ben Nighthorse Campbell, March 14, 1997, File: 1998-1, Box 1 of 2, PWRO files, DEVA.

support. I had clearly the lead on it. But then also I pushed much of that authority right back across the table," he says, giving credit to the hard work of others, especially John Reynolds.[68]

Don Barry began his career with the federal government as a staff attorney in the U.S. Fish and Wildlife Service. After a turn with the World Wildlife Fund, he accepted a political appointment as counselor to the assistant secretary for fish and wildlife and parks at the beginning of the Clinton administration. From there he moved to deputy assistant secretary and then to assistant secretary. The experience that shaped Barry's thinking about the Timbisha Shoshone situation more than any other came in 1996 when Babbitt directed him to oversee a revision of department policy on how the Endangered Species Act was applied where Indian treaty rights were concerned. Barry had authored the legal opinion that underpinned existing policy a decade earlier when he was chief counsel for the Fish and Wildlife Service. Many now saw that the dictates of the Endangered Species Act weighed disproportionately on Indian reservations and sometimes impinged on tribal sovereignty. Although Barry had been known as a hardliner when he served in the agency, he now took a broader view of Indian affairs in his position in the Office of the Secretary. Magnanimously, he sat with the tribes and crafted a secretarial order that essentially undid his earlier work. "That was a defining process for me," Barry says, "because you can't spend eight months in pretty intensive negotiations with some of the brightest advocates in the Indian community, or on behalf of Indian affairs, without it impacting and influencing your thinking."[69]

Another influence on Barry's thinking was Patricia Zell, staff director for the Senate Indian Affairs Committee and a close assistant of Senator Inouye. A Navajo/Arapahoe who had both a Ph.D. and a law degree, Zell took a keen interest in the Timbisha Shoshone situation and probably did more than any other individual to keep the Senate committee abreast of developments on the Section 705 (b) study. As Zell and Barry formed a close professional relationship, Zell changed Barry's views on tribal issues. It was through Zell that Barry learned about the Timbisha Shoshone of Death Valley.[70]

Still another influence on Barry was the department's recent experience with the Miccosukee in Everglades National Park. Like the Timbisha Shoshone, the Miccosukee had a village located inside a national park and they wanted land title to assure their permanence at that place. Negotiations between the tribe and the park went badly and eventually Secretary Babbitt took the matter out of the Park Service's hands and gave it to the department's solicitor to resolve. The lesson that Barry and others drew from this

[68] Barry interview.
[69] Ibid.
[70] Ibid.

controversy was that the Park Service's intransigence had led to loss of control and probably a worse outcome from the agency's standpoint.[71]

Coincidentally, about the same time that Barry decided to get involved with the Timbisha Shoshone issue John Reynolds was appointed regional director for the Pacific West Region, replacing Stan Albright, who retired. Since Albright had been associated more closely than anyone with the Park Service's hard-line position in the first-round talks, Reynolds's views on this matter were very important. No one seems to recall the exact order of meetings and phone calls, but soon after Barry decided to intervene Reynolds was brought into the loop. Tribal consultant Steve Haberfeld and Pat Parker were also instrumental in initiating a fresh start at this time. Haberfeld says that he met with Parker during a trip to Washington in May 1997 and indicated that the Tribe might be ready to renew talks, and that Parker told him there had been some key personnel changes in the Department of the Interior that would likely be helpful.[72] Reynolds remembers that not long after he took office Parker called him and asked if he would be willing to negotiate with the Timbisha Shoshone, to which he replied positively yes.[73] That assurance from Reynolds was important to Barry because Barry wanted a partner inside the Park Service whom he could trust to work with him creatively and respectfully on this controversial matter. Both Barry and Parker had worked with Reynolds previously when he was deputy director in the Washington Office, and they had a good feeling about his instincts.[74]

Their confidence in Reynolds was not misplaced. Reynolds would show a great deal of empathy, courage, and finesse in the forthcoming negotiations. When asked today what it was in his background that made him receptive to investing so much of himself in the Timbisha Shoshone homeland issue, Reynolds modestly replies:

> Well, I don't know. I'm never sure of this. But I think the place it started was that my dad was in the Park Service, and at one point he was superintendent of Pipestone National Monument, and at that time I was in the seventh and eighth grades. And one of my two best friends was an Indian kid whose dad carved pipestone and in the summertime sold it to park visitors. My dad wrote the first interpretive brochure of the park and of course it was heavily weighted toward the Indian point of view because he was constructed that way. And I think it's because of my dad and his relationship to the Indians who carved pipestone there. And both he and my brother and sister and myself participated in a song of Hiawatha pageant which they still hold every year there. At that time probably half the players were Indian and half were white folks. And the Indian folks asked my brother and sister and me if we'd like to be Indian dancers with their kids. And we participated. So there was a relationship of equals in how I

[71] Ibid. John Reynolds also cited this negative example as an influence on his thinking in dealing with the Timbisha Shoshone homeland issue. (Haberfeld, "Government-to-Government Negotiations," 142.)
[72] Haberfeld, "Government-to-Government Negotiations," 143-44.
[73] John Reynolds interview.
[74] Barry interview.

> perceived that my dad treated those folks, that I think led me to believe that, number one, it is a relationship of equals. You never know how much prejudice you have or you don't have. There is a little prejudice about anything. But my relationship and belief about Indian people – I think that exposure through my father was the first place.[75]

Over the next six months, the two sides took steps to develop a positive framework for the second-round talks. The Tribe took the first initiative by sending a letter to Parker that identified several procedural issues that would have to be resolved before the Tribe was willing to sit down. Among the Tribe's concerns was that the federal government explicitly agree to enter government-to-government negotiations. The talks would aim at developing a bilateral agreement describing what lands were recommended for Congress to make into a permanent home for the Tribe. While Parker refused to stipulate that the purpose of the second-round talks was to negotiate a bilateral agreement, there was considerable correspondence and communication back and forth to clarify how the talks would proceed and what they were to cover.[76]

Barry, meanwhile, used Zell to make "back door" contact with the Tribe and establish that the Tribe was serious about coming to terms with the federal government. Zell went to Death Valley and met with tribal leaders. She had the respect and credibility to talk frankly with the tribal leaders, ensure that they had realistic expectations, and develop a level of trust. Barry was relieved to hear from Zell that the Tribe's attorney, Fred Marr, had left the case, as it was generally perceived (by the federal government side) that Marr had incited the Tribe to make outlandish demands.[77]

The two sides agreed to start over with a new facilitator. Parker recommended Charles Wilkinson, a professor of law at the University of Colorado who was a leading expert on Indian and public land law. Wilkinson had worked on the side of the tribes in the recent negotiations over the Endangered Species Act, so Barry knew him through that connection. Parker had worked with him on putting together a short course on the federal Indian trust responsibility for federal employees. No one in the Tribe had previously known Wilkinson, but his reputation spoke for itself, so the Tribe agreed to his selection. Wilkinson was approached through a neutral third party, an attorney with the Native American Rights Fund by the name of Steve Moore, and he quickly agreed to take it on.[78]

The two sides also agreed in advance about who would be on the respective negotiating teams. On the federal government's side, the NPS initially proposed just three people to represent the NPS: John Reynolds, Pat Parker, and Richard Martin.

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[75] John Reynolds interview.
[76] Haberfeld, "Government-to-Government Negotiations," 144-45.
[77] Barry interview.
[78] Parker interview; Wilkinson interview.

BLM would continue to be represented by Greg Thomsen. The Tribe wanted someone from the Office of the Secretary present on the team and it suggested Karen Atkinson, special counsel to Assistant Secretary Don Barry. The NPS agreed to include her. Atkinson, like Wilkinson, had represented tribes in the recent negotiations over the Endangered Species Act and treaty rights. Soon afterwards, Barry had hired her for his staff. She was the first Native American ever to work for the assistant secretary for fish and wildlife and parks.[79] Meanwhile, the Tribe's team was pared down to six people: Pauline Esteves, Grace Goad, Spike Jackson, Barbara Durham, Steve Haberfeld, and Dorothy Alther, who replaced the fiery Marr as the Tribe's legal counsel. Conveniently, Richard Boland was away attending university. It was no accident that both team leaders from round one – Ray Murray on the federal government side and Richard Boland on the tribal side – stayed out of round two.[80]

A New Approach

Preparation for round two included a dialogue about the need to engage in interest based negotiations and to get away from taking positions, which had been one of the pitfalls of round one. According to Haberfeld, the Tribe pressed for this approach, believing that if both sides were explicit about their general needs, then both parties would have information to fashion realistic proposals that would bridge both sides' interests. In fairness, it would seem that Murray and Kelly, working behind the scenes for the NPS, had much the same idea. Their white paper titled "Framework for Increased Involvement of the Timbisha Shoshone Tribe in Death Valley National Park," which drew upon the Tribe's pronouncements in round one, laid some of this groundwork for resuming the talks on an improved footing. Be that as it may, the Tribe set out nine interests in a letter to Parker dated November 18, 1997, suggesting that the federal government respond in kind. These were:

1. co-existence in Death Valley;
2. the Tribe's establishment of a permanent homeland in traditional ancestral land areas falling within today's National Park boundaries;
3. the Tribe's interest in establishing housing clusters close to schools, services and physical infrastructure (roads, electricity, water and sewage, etc.). Proposed locations will include places in and near Furnace Creek;
4. the Tribe's interest in using its traditional summer camping areas for seasonal residence, harvesting, stewarding land and natural resources, etc.;
5. the Tribe's interest in locating its government headquarters and community and human service programs in and near Furnace Creek;
6. the Tribe's interest in preserving and developing its own dynamic indigenous culture by living as a community on its ancestral lands;

[79] Karen Atkinson interview, August 21, 2007; Barry interview.
[80] Haberfeld, "Government-to-Government Negotiations," 142; Boland interview; Murray interview.

7. the Tribe's involvement in economic and employment development activities, particularly in low-impact eco-tourist development;
8. the Tribe's historic responsibility to remain concerned and engaged in the active protection and preservation of the environment (water, vegetation, wildlife) and cultural resources of the Death Valley area; and
9. the Tribe's interest in being an integral part of the Death Valley National Park's landscape and program, including presenting/interpreting its own history and culture to Park visitors.[81]

Parker was cautious in her reply to this letter and to other overtures by the Tribe in the summer and fall of 1997. Although she was generally supportive of the shift to interest-based negotiations, she was careful not to overstep her authority or to make any commitments prior to the start of actual negotiations.[82]

In early December 1997, Assistant Secretary Don Barry unexpectedly called a meeting with tribal representatives in Washington prior to the scheduled start of the round-two talks. This meeting took place on January 6, 1998, in the Main Interior Building. Representing the Tribe were Barbara Durham, Spike Jackson, Dorothy Alther, and Steve Haberfeld. (Pauline Esteves was unable to attend having just had eye surgery.) Besides Barry, there were nine officials representing the federal government. The meeting symbolized the department's renewed commitment to work with the Tribe in accomplishing the mandated study.[83]

The Successful Round Two

Round two began a little more than one week later on January 15, 1998, in Death Valley. At the Tribe's request, the first meeting took place in the Tribe's small community building. The idea for the Tribe to host this meeting came from Pauline Esteves, who wanted to underscore the government-to-government relationship at the outset of round two. Other tribal members were skeptical. Where would everyone sit? Would the small room be too warm? Would their guests be willing to use the single pit toilet outside? But Esteves insisted, thinking it was important to expose the federal negotiators to these actual living conditions in the village area. Apparently her idea worked. She remembers what happened when the swamp cooler broke down and the small room got so unbearably hot that everyone went outside to see if the unit could be fixed. "Dick Martin was out there supervising the Bureau of Indian Affairs people," Esteves relates. "They didn't know what the heck they were doing, so Dick Martin says, 'hey, I'm an expert at this, I'm from here. You could mess around with that little screw

[81] Steven Haberfeld to Patricia L. Parker, November 18, 1997, File: DOI NPS AILO TSHA 04 0082, AILO.
[82] Haberfeld, "Government-to-Government Negotiations," 146-47; Haberfeld interview.
[83] Pat Parker to John Reynolds (email), January 8, 1998, File: unlabeled red file, Box 1 of 2, PWRO files, DEVA.

for all it's worth, but what I do is I bend it.' So he bent the arm of the float. And they said, 'wow.' And Dick says, 'Ask Pauline – I bet she does the same thing.' I says, 'I do – we all do.'" It was a little thing, but it helped bring the negotiating teams together.[84]

While Esteves and Martin already knew each other in January 1998, others were meeting for the first time. No one had more at stake in this first meeting than John Reynolds, the new lead for the federal government team. Reynolds knew that he had to convince the Tribe that he was not just a stand in for the former regional director or Ray Murray, but that he had a different view from them. Reynolds recalls that on the day before they convened, he rode from the Las Vegas airport to Death Valley in the same car with Charles Wilkinson, which gave the two of them an opportunity to get acquainted and talk. Wilkinson gave Reynolds an article he had just written about the negotiations over the Endangered Species Act, which Reynolds uncharacteristically took to bed with him that night and read before going to sleep. The article inspired him and settled his nerves, and as a result he walked into the meeting the next morning with "no plan of attack" other than a calm resolve to speak off the cuff and trust Wilkinson's skills as a facilitator. That was fortuitous, because Pauline Esteves immediately put him to the test. Almost as soon as everyone had found a seat in the small meeting room, Esteves declared that the Tribe needed something right away: it needed to begin with the issue of the forty acres at Furnace Creek. Wilkinson rephrased the question and put it straight to Reynolds: was he considering an arrangement that would give the Tribe a land base at Furnace Creek? Reynolds replied simply and positively, "Yes." A few minutes later, in his self-introduction, Reynolds spoke eloquently about why the Park Service felt so strongly about park lands and resources – and why there was an emotional attachment. It was not the same as the Tribe's attachment to its homeland, he explained, but rooted in the conviction that national parks represent the values of the United States in their best form. This was "why we seem to be obstinate – because we care a lot," he said. "We talk from the point of view of laws, and that is a cover for what [parks] emotionally mean to us." With this heartfelt and idealistic statement, all the combativeness dissolved from the room.[85]

Wilkinson also played a pivotal role in this first meeting as he insisted that everyone avoid taking positions and adopt an interest based approach. Wilkinson explained to them that the two sides would begin by preparing a statement of its interests; this was their homework for the next day. Interests were different from solutions (or positions), Wilkinson stressed. Interests were the bedrock; they were non-negotiable. At the same time, each side had to accept the other side's interests in totality before the negotiations could move forward. Reynolds recalls that both sides "had to swallow kind of hard trying not to imagine what the solutions to those interests would be when we

[84] Esteves interview.
[85] John Reynolds interview; Parker interview; "Meeting Summary," January 15-16, 1998, File: Timbisha 1998, Box 1 of 2, PWRO files, DEVA.

agreed to accept and abide by and protect each other's interests during the negotiation." It required people to trust in the process and to trust in the reasonableness of the other side. "But it was the key to the whole negotiation," he continues. "It wouldn't have been successful otherwise."[86]

The teams agreed on two important procedural matters at the first meeting. In keeping with the decision to limit the number of people involved, everyone made a personal commitment to attend every meeting. There would be no patching in by telephone, no substitutes. With the regional director involved, this commitment by the whole group automatically elevated the Timbisha Shoshone homeland issue to one of high priority for the Pacific West Region. The second important decision was to hold future meetings in Las Vegas. Subsequently, the group found a hotel near the airport that was convenient, comfortable, and inexpensive, and perhaps most importantly, a neutral location.[87]

An Emerging Outline

As the second-round negotiations proceeded, the substantive issues fell into three main categories. These were: 1) how to provide for the permanence of the tribal community at Furnace Creek, 2) how to provide for traditional use and involve the Tribe in resource protection over a large area of its original homeland, and 3) how to provide opportunity for sustainable economic development with transfer of suitable lands outside the park.

Regarding the Furnace Creek site, the NPS offered and the Tribe agreed to involve a planner from the Denver Service Center for the purpose of making some preliminary drawings of how the area might be developed (Figure 3-1). With the planner's help it soon became clear that the Tribe wanted a transfer of enough land to secure its community area (with room for expansion) and to develop an eco-tourism enterprise such as an inn, while the NPS wanted a buffer zone between the tribal land and the existing Furnace Creek Ranch complex. The two sides reached an understanding that all of this could be accomplished without injury to their respective interests, but the question remained: how many acres? Reynolds believed the NPS had to give up more than just forty acres – "Forty acres is a homestead; in my head, it's just sort of an insulting number" – but he knew that if it gave up much more than 40 acres there would be strong criticism. He recommended to his superiors that it be about 200 acres. From there, the number he put on the table rose to 250, then 275, but thinking about how his superiors would react to it Reynolds figured it was like incremental increases in the price of gas: only the next round number would register a psychological impact so he could go

[86] John Reynolds interview.
[87] Parker interview.

all the way to 299 if necessary. Still, the Tribe had its own psychological barrier; it could accept no less than 300 acres. Reynolds feared that this figure might meet with rejection

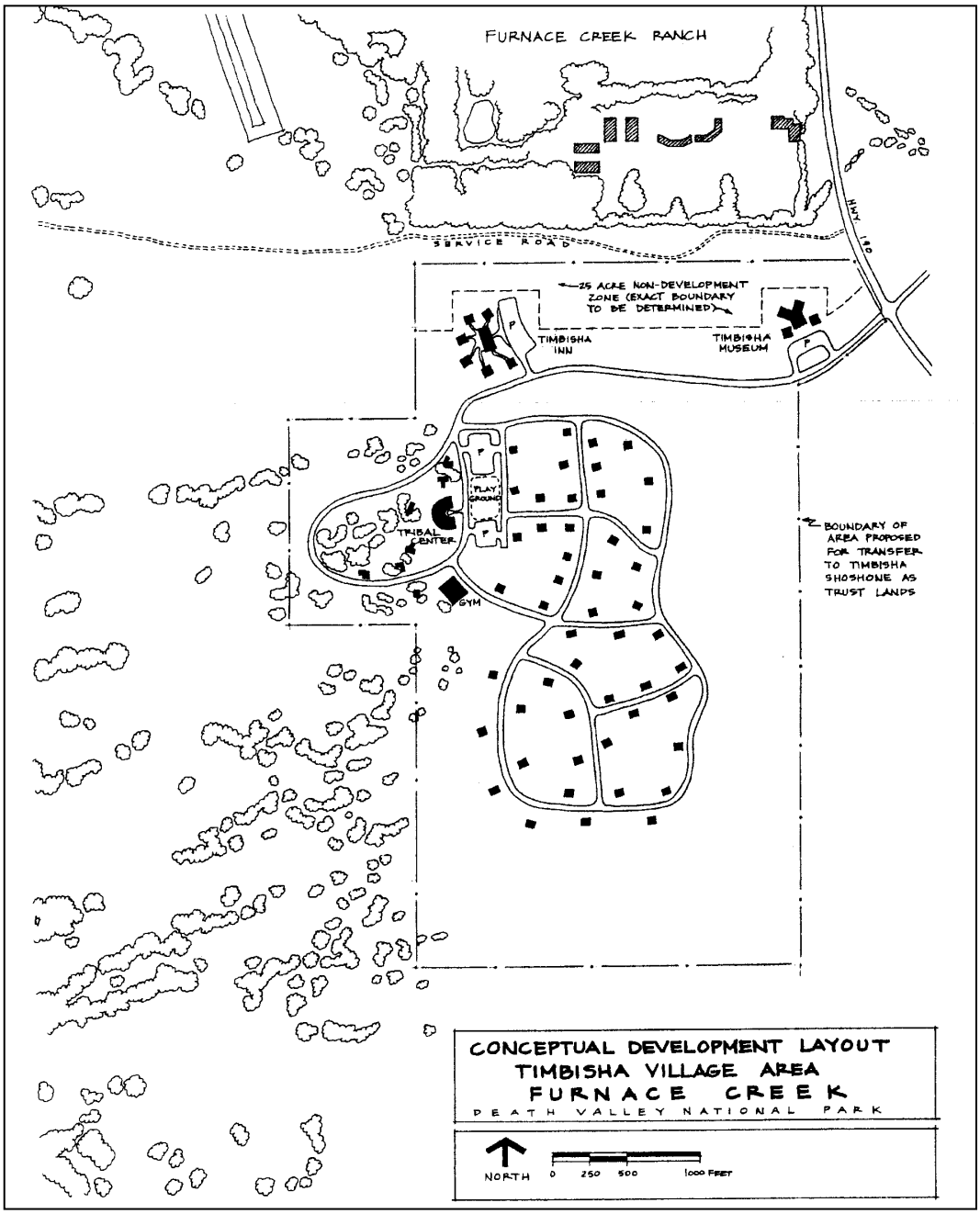

Figure 3-1. Denver Service Center plan for Furnace Creek site.

by his superiors. When it seemed the two sides had reached an impasse, Wilkinson took Reynolds and Esteves aside. At that moment, Reynolds had an idea: would the Tribe accept the 25-acre buffer strip as part of its own land base? Esteves agreed to this, so the number became 300.[88] (After survey, it was eventually recorded as 313.99 acres.) In the final agreement (and in the Timbisha Shoshone Homeland Act) this was the only land transferred out of the park.

On the second issue, the establishment of a traditional use area, the Tribe now recognized that a transfer of several thousand acres of land to tribal management was out of the question. Environmental groups would not stand for it, and neither the NPS nor Congress would support it. The best that the Tribe could attain was special use rights and responsibilities under cooperative management agreements with the landowners, the NPS and BLM. During round one, the two sides had dickered over the complicated relationship between co-management or cooperative management and sovereign authority, which finally led the NPS to draw a crucial distinction. Under *co-management*, ownership and control was shared equally with both parties having "veto power" over the other, an arrangement that the NPS thought unworkable and counter to park purposes. Under *cooperative management*, the landowner was ultimately in control but the other party had a management role as spelled out under cooperative management agreements.[89] In Round Two, the Tribe soon accepted the NPS definition of cooperative management as a framework for discussions, yielding on its previous demand for a transfer of some 750,000 acres out of the park. As the talks became interest based, the Tribe became more comfortable with the idea that tribal needs and park purposes could be effectively intertwined in a "Timbisha Shoshone Natural and Cultural Preservation Area" that would remain part of the park (Figure 3-2). This idea also allowed the Tribe to accept a much smaller transfer of land out of the park for its reservation, because a large part of the 5,000 acres that the Tribe had previously demanded at Furnace Creek was placed under a separate cooperative management area, called the Mesquite Use Area, instead.[90]

Still, differences remained. The Tribe, for example, favored a resumption of hunting use within the area while the NPS strongly opposed it. The Tribe reluctantly dropped this demand. The Tribe, too, was more confident than the NPS about its ability to manage natural vegetation on a large scale. The Park Service accepted the idea that the Timbisha Shoshone had a longstanding relationship with the natural environment and that a certain level of vegetation management through traditional use practices was

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[88] John Reynolds interview.
[89] "Report by Group Four – Cooperative Management," August 1, 1995, File 25: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA; National Park Service, "Recommendations for Timbisha-Shoshone 'Area' Within Death Valley National Park," February 9, 1996, File 29: L3215 Land, Public Cooperation including administration, planning and development, Central Files, DEVA.
[90] John Reynolds interview.

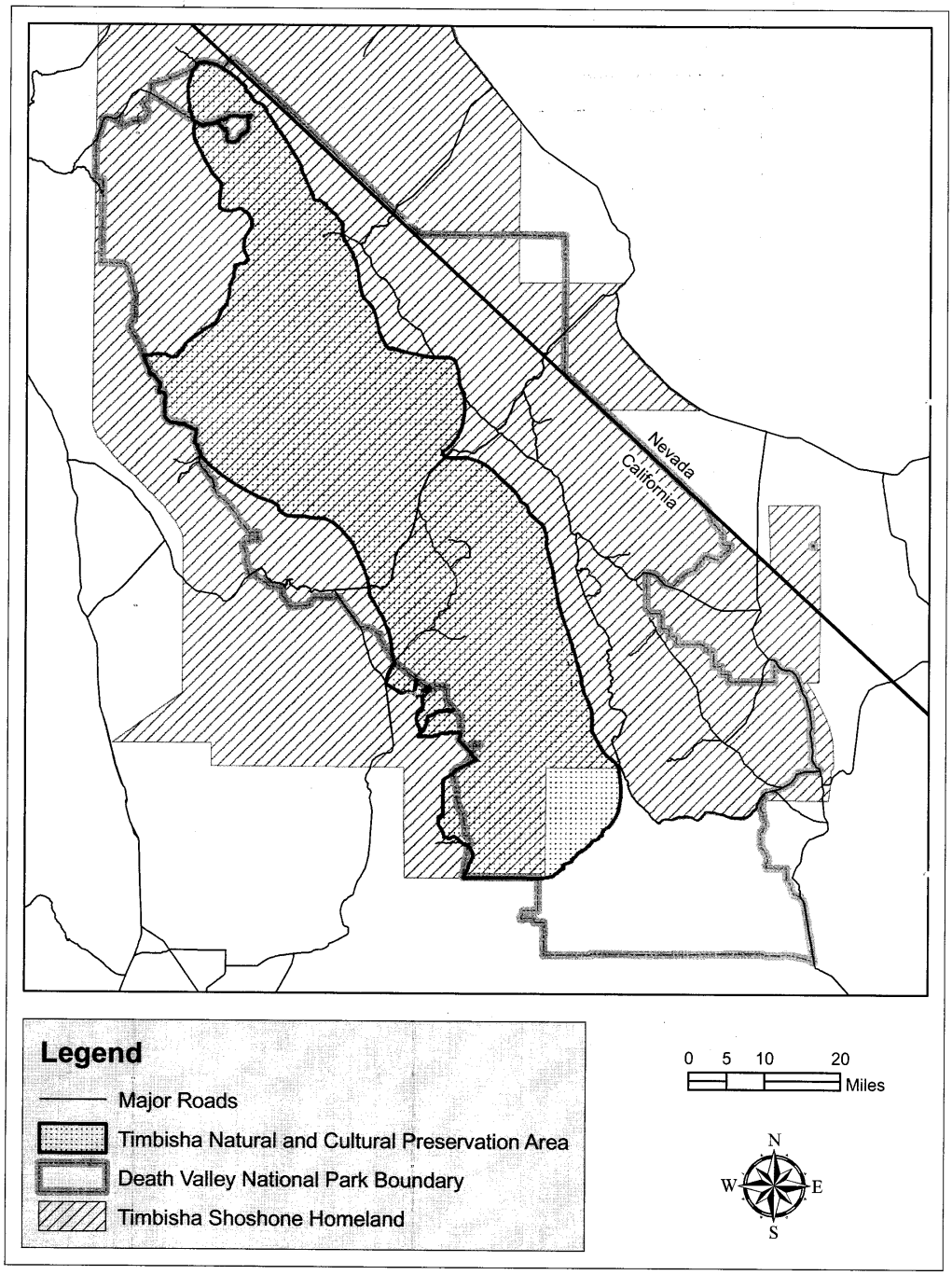

Figure 3-2. Timbisha Natural and Cultural Preservation Area.

appropriate. But the Tribe's efforts to manage vegetation by transplanting, planting, thinning, and pruning had largely fallen away over the years and it was an open question how these traditional use practices would be revived and what effects they would have on the natural vegetation after years of disuse.[91]

To help with these questions, the federal government team looked at other examples of cooperative management for comparisons. That comparative analysis had started in round one, when one of the four work groups, headed by Roger Kelly, prepared a report. Kelly expanded on that work, traveling to British Columbia to interview First Nations leaders about cooperative management in the provincial parks and Canadian national parks. He prepared a memorandum titled "Summary of Suggestions from U.S. and Canadian Experiences as Applied to Death Valley NP and Timbisha Shoshone Tribe."[92] Reynolds drew upon his personal experience as a park planner in Alaska in the 1970s, when proposed additions to the national park system had taken shape in tandem with Alaska Natives' land selections. When Alaska's new national parks were established, Alaska Natives retained subsistence use rights on park lands and the Park Service coordinated with local subsistence boards in managing subsistence use. Karen Atkinson also did some research for the team and prepared a memo on "Tribal and Native Hawaiian Designated Traditional Use Areas Within the National Park System." A focus of Atkinson's research was to explore ways in which NPS relationships with local native communities had been structured in legislation. She described recent examples in Hawaii and American Samoa as well as an older example found in Grand Canyon National Park, where the "Havasupai Use Lands" had been designated in 1975.[93]

In the final analysis, the team was informed by all of these other examples but it crafted something unique to Death Valley. The main outlines of an agreement over the Timbisha Shoshone Natural and Cultural Preservation Area took shape as follows. The exercise of low-impact, ecologically sustainable traditional uses and practices would be authorized by law within a designated area. Tribal uses within the area would be consistent with park purposes and wilderness management. The Tribe would negotiate and enter into a joint management plan for the area with the NPS and the BLM. The management plan would provide for a pilot demonstration project to test the feasibility of tribal vegetation management. Tribal access and use of certain areas – Hunter Mountain, Saline Valley Springs, Wildrose Canyon, Mesquite Springs, and Daylight Pass – would be protected under a cooperative agreement between the Tribe and the NPS.[94]

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[91] Pat Parker to Richard Martin (email), July 15, 1998, File: unlabeled red file, Box 1 of 2, PWRO files, DEVA.
[92] Roger Kelly, "Summary of Suggestions from U.S. and Canadian Experiences as Applied to Death Valley NP and Timbisha Shoshone Tribe," May 29, 1998, File: Timbisha 1998-2, Box 1 of 2, PWRO files, DEVA.
[93] Karen Atkinson to Don Barry et al., August 13, 1998, File: Timbisha 1998-3, Box 1 of 2, PWRO files, DEVA.
[94] "First Draft of the Report to Congress from the Secretary of the Interior Regarding a Suitable Homeland for the Timbisha Shoshone Tribe," enclosed with Pat Parker to Report Drafting Team, September 21, 1998, File: unlabeled red file, Box 1 of 2, PWRO files, DEVA; Timbisha Shoshone Tribe and the Department of

After the Furnace Creek site and the Timbisha Shoshone Natural and Cultural Preservation Area, the third critical piece of the proposal was land parcels outside the park. The main intent was to establish a land base for sustainable economic development by the Tribe. BLM lands were to provide quantity, if not quality, acreage. Looking back, NPS participants on the federal team give credit to BLM officials for their cooperative role. "BLM's role was important since they 'lost' land to NPS [in the CDPA] and then offered up more land to the Tribe later on," NPS regional archeologist Roger Kelly observes. "BLM ultimately gave up 7,500 acres while the NPS gave up 314," notes Parker.[95] BLM did not relish its role. Indeed, BLM's California state director, Ed Hastey, pushed hard for the NPS to be more forthcoming with land inside the park.[96] Rather like NPS Regional Director Stan Albright in the first round of negotiations, Hastey took an avid interest in the proceedings mostly from afar. John Reynolds always knew that Hastey was a force to be reckoned with. "Ed was a powerful figure in the state of California, probably the most powerful federal figure in the state," Reynolds explains. "His nickname was 'The King of California.' I always joked, not entirely facetiously, that Ed carried a parcel map of California in his head." Hastey impressed people not only with his mental grasp of the millions of acres of real estate under his purview but also his extraordinary political savvy. He understood the politics of California like few others.[97]

The negotiating team finally settled on four parcels of BLM land for transfer to the Tribe in trust: Death Valley Junction, Scotty's Junction, Lida, and Centennial. The first three tracts were located along highways and offered the potential for tourism oriented enterprise as well as small scale residential development. The fourth tract was remote, with scant water, and was selected strictly for the development of residences and small gardens. The tracts were not primarily locations for traditional use. Each location did have cultural significance to the Tribe. In addition to these four parcels, three other places outside the park were identified as special use areas: Eagle Mountain, Warm Sulphur Springs, and an area of pinion and juniper pine stands near Lida. These three areas would remain in BLM ownership and would be subject to cooperative management. Although the four parcels and three special use areas were widely separated from one another, they roughly circled Death Valley and described the outer perimeter of the Timbisha Shoshone homeland area.

The critical issue surrounding these parcels was water availability. The problem was to balance the Tribe's need to acquire lands for economic development and the

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the Interior, "The Timbisha Shoshone Tribal Homeland, A Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base and Related Cooperative Activities," undated, copy provided by Dorothy Alther.

[95] Roger Kelly, comments on draft report, April 2009; Pat Parker, comments on draft report, April 2009.

[96] Murray interview.

[97] Reynolds interview.

federal government's need to protect the surrounding natural resources together with their precious water sources. If the federal government pushed too hard to protect existing water sources, there was a danger that the Tribe could be stuck with useless tracts of land. To guard against such a scenario, the Tribe requested that a representative of the Bureau of Reclamation be included in the second-round talks. The federal government agreed to this, and water resource investigations became an integral part of the study process. Those water studies were still ongoing as the negotiating team prepared the report for the Secretary.[98]

During the fall of 1998, the negotiating team's efforts turned to drafting the report. In contrast to round one, this time two tribal representatives, Steve Haberfeld and Dorothy Alther, were asked to serve on the drafting team. Charles Wilkinson and Pat Parker also worked on it extensively. One contribution by Parker was to insist on ample use of the "tribal voice." Sections of the text, set off in italics, highlighted the indigenous perspective on the land and resources. Likewise, two prefaces, one authored by John Reynolds and the other by Pauline Esteves, eloquently expressed not only the two cultural perspectives but also underscored the teamwork that had gone into the study.[99]

At this point, the BIA's Elizabeth Homer made a significant contribution. At Karen Atkinson's invitation, she went over the whole report to make the language "more tribal" in tone. Homer and her staff did considerable redrafting, and the Tribe embraced the revised version. Undoubtedly, Homer's own ethnic identity as an Indian person contributed to some degree in giving the Tribe more pride of authorship in the final document. In addition, Homer developed a matrix that summarized "legislative action" and "departmental action" necessary for implementing each element in the report. This scheme was incorporated into the text of the final document.[100]

The Legislative Campaign

The final draft of the report was titled *The Timbisha Shoshone Tribal Homeland – A Draft Secretarial Report to Congress to Establish a Permanent Tribal Land Base and Related Cooperative Activities.* It was presented to Assistant Secretary Don Barry in February 1999, reviewed by the other assistant secretaries, BLM, and the Office of the Solicitor, and released at the end of April. Well before its release, on February 25, the *Los Angeles Times* ran a story on it. The article quoted Tribal Administrator Barbara Durham saying that the "draft agreement" was "fair" and praising the Park Service for

[98] U.S. Department of the Interior, "Summary Document Relating to Water Resources for the Proposed Timbisha Shoshone Tribal Homeland Draft Report," December 1999, File: Timbisha LEIS, Box L, Greene/RM files 8/2006, DEVA.
[99] Parker interview.
[100] Patricia L. Parker to John Reynolds (fax), February 3, 1999, File: Timbisha 1998-3, Box 1 of 2, PWRO; Parker interview; Atkinson interview.

"recognizing that we have a right to be here." Pat Parker, Don Barry, Charles Wilkinson, and Pauline Esteves were all quoted in the story as well.[101]

By the time the study was completed it was clear what the next step would be. The Department of the Interior would recommend legislation and probably draft a bill for Congress. Now that the NPS and the Tribe were in agreement, no one expected much resistance to the proposal; in fact, the negotiating team had already held briefings on the draft report the previous October with top Interior officials, key NPS people, conservation organizations, and Senator Inouye's and Senator Campbell's staffs, and in those briefings the negotiating team had encountered not a ripple of opposition.[102] The main challenge would be getting Congress to take up the measure on its busy calendar. The NPS needed to do what it could to expedite the process.[103] In May 1999, the NPS and the Tribe jointly held five public scoping meetings in Pasadena, Ridgecrest, Lone Pine, Pahrump, and Goldfield. In July 1999, the NPS initiated work on a Legislative Environmental Impact Statement (LEIS). The decision to do an LEIS was based first on the assumption that the Department of the Interior would soon be invited to draft a bill, and second on the understanding that an LEIS was more streamlined than an EIS.

Certain high-level Interior officials made sure that the LEIS was completed post-haste. BLM officials wanted to include more information in the document, insisting that the Tribe ought to know beforehand if the parcels contained anything that would constrain their use. BLM contracted for a cultural resources inventory, which found negligible cultural resources, but for reasons that were never adequately explained to BLM's Kaldenberg this information was not put in the draft LEIS. When Kaldenberg and his colleague, Mailyn Nickles commented on the lack of cultural resources documentation, Undersecretary Sylvia Baca directed BLM to take both individuals off the federal team. Staff in the BLM's Ridgecrest Field Office were also told to drop work on the draft LEIS.[104]

In September 1999, the NPS issued a final scoping summary.[105] All of this was preparatory to action by Congress, which started at last on November 10, 1999, when Senator Inouye wrote to Secretary Babbitt with a request that the NPS, in consultation with tribal representatives, draft a bill for the Senate Committee on Indian Affairs. The

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[101] Frank Clifford, "U.S. Death Valley Indians Strike a Unique Land Deal," *Los Angeles Times*, February 25, 1999.
[102] John Reynolds to Bill Walters et al. (email), October 18, 1998, File: unlabeled red file, Box 1 of 2, PWRO files, DEVA.
[103] John J. Reynolds to Robert Stanton, December 29, 1998, File: unlabeled red file, Box 1 of 2, PWRO files, DEVA.
[104] Kaldenberg interview.
[105] U.S. Department of the Interior, "Internal Draft: Legislative Environmental Impact Statement, Timbisha Shoshone Homeland," undated, File: unlabeled green file, Box 1 of 2, PWRO files, DEVA.

Secretary of the Interior submitted to Congress a draft bill together with the draft report in December 1999.[106]

Opposing Arguments

Public comment during the scoping process focused mainly on water rights. The NPS had been concerned all along that environmentalists would object to the proposal if they perceived any threat to the park, such as the possibility of a casino at Furnace Creek or a derogation of wilderness values in the Timbisha Shoshone Natural and Cultural Preservation Area. In the end, environmentalists did not raise any significant objections. They were not thrilled by the prospect of an enhanced tribal presence in the park, but they conceded that it was the right thing to do. "The Timbisha have not been treated well," Sierra Club representative Elden Hughes said to a *San Francisco Chronicle* reporter. "They do deserve a homeland."[107] Other environmental groups wanted a clear statement that hunting would not be allowed in the park.[108] Wilderness Watch supported the transfer of the Furnace Creek tract for purposes of a reservation, but it raised "concerns" about the federal government giving the Tribe greater management involvement in the Timbisha Shoshone Natural and Cultural Preservation Area, which largely overlapped with designated wilderness.[109]

Opposition to the proposal centered in the historic mining town of Darwin, located in Inyo County about five miles west of the park. Darwin was the closest community to the parcel of BLM land at Centennial Flat that was proposed for transfer to the Tribe. Residents of Darwin feared that residential development of the Centennial tract would draw down the aquifer that was the source of their water. The town had about 54 residents, of whom exactly half signed a petition to the NPS and the BLM in June 1999. Their spokesperson, Kathy Goss, objected in a separate letter to Superintendent Martin the following month that the federal government had not made appropriate studies of the water supply. She also raised doubts about the Tribe's ability to manage an extensive area of the park in cooperation with the NPS. In particular she opposed the idea of a demonstration project for cooperative management centering on the Saline Valley Warm Springs.[110]

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[106] Daniel K. Inouye to Bruce Babbitt, November 10, 1999, File: unlabeled green file, Box 1 of 2, PWRO files, DEVA; U.S. Senate, *Providing to the Timbisha Shoshone Tribe a Permanent Land Base Within its Aboriginal Homeland, and for other purposes*, 106th Cong., 2d sess., Report 106-327, 2000, 4.
[107] Carl T. Hall, "Back to Life: In the hot red rock of Death Valley, a tribe of Shoshone Indians is reviving a venerable culture," *San Francisco Chronicle*, July 11, 1999.
[108] Rosalyn J. Fennell to Karen J. Atkinson, February 10, 2000, File: Timbisha LEIS, Box L, Greene/RM files 8/2006, DEVA; Parker interview.
[109] Tina Marie Ekker, "Death Valley Days," *Wilderness Watcher* 11, no. 3 (November 2000): 2.
[110] Kathy Goss to Jerry Lewis, June 11, 1999, enclosing Petition from Darwin Residents, and Goss to Richard Martin, July 13, 1999, File: unlabeled green file, Box 1 of 2, PWRO files, DEVA.

The Saline Valley Warm Springs was an unusual management problem for the park in its own right. Although the Timbisha Shoshone claimed the site as sacred, tribal members had long been displaced by a transient population of mostly nude bathers who had gradually developed the site to their own liking with the installation of concrete-lined tubs, imported palm trees, and a roped-off lawn.[111] These improvements already existed when the area was added to Death Valley National Park in 1994. Since then, the park administration had been mulling over how to manage the place. When the residents of Darwin protested so strongly over the threat to their water supply, some people speculated that they were a local front for the non-Indian bathers who did not want to be ejected from the warm springs. Indeed, the bathers were remarkably well-organized as the Saline Preservation Association, which had a website and claimed a far flung membership of more than 2,000. For a while, tribal members confronted the bathers at the location and the Saline Preservation Association retaliated by sending the Tribe requests under the Freedom of Information Act, which were ignored. Eventually this brouhaha faded away, with the mostly nude bathers essentially keeping control of the resource.[112]

Probably the most significant resistance to the proposal came from within the NPS itself. During the negotiations, as word spread through the agency that the federal government team was supporting the creation of an Indian reservation inside a national park, Superintendent Martin began receiving phone calls from other superintendents who were worried that the NPS would be allowing a bad precedent. Some saw what had happened with the Miccosukee in Everglades National Park and wondered if the transfer of lands out of Death Valley National Park would be the next in a line of falling dominoes. Martin answered them each with a question, "Well, what do you think we should do?" Or, "Why don't you come out and take a look at this?" Or he would offer to send them some background information. Usually these skeptics would respond by asking him if he thought he had a unique situation. And Martin would reply by saying that he had worked in a few other national parks where there were neighboring tribes with land issues and his philosophy had always been to do the right thing. "And if the right thing sets a precedent," Martin would say, "all right, tell me what's wrong with that."[113]

Martin approached the Timbisha Shoshone homeland issue intellectually. He was not one to follow Park Service rules and regulations by rote. He considered such things on their own merits and went through an intellectual process to understand why they were what they were. Looking back, he came to think that his earlier position on the Furnace Creek site, in support of a 99-year lease, had been wrong. It would have kept the park administration inappropriately involved with tribal business, he now explains. "I

[111] Hall, "Back to Life: In the hot red rock of Death Valley."
[112] J.T. Reynolds interview, July 31, 2007; Durham interview; Esteves interview.
[113] Martin interview.

don't think tribal business is our business. That's the Tribe's business. They're just as smart and free as we are, maybe more in some ways." When Reynolds first got involved with the negotiations, the regional director telephoned Martin and asked him if he had any objection to renewing the effort. Martin responded, "No, John, absolutely not. I've been frustrated because no one would allow us to talk about these kinds of things." Martin and Reynolds soon found they were kindred spirits, both willing to face down opposition within their agency.[114]

Reynolds, too, was frequently challenged about whether the Timbisha Shoshone Homeland Act would be precedent setting. On one occasion he was at a gathering at Grand Teton National Park and had a conversation about the matter with three prominent park superintendents, Dick Ring from Everglades, Mike Finley from Yellowstone, and Rob Arnberger from Grand Canyon. He told them that he expected to give up park land and why it was necessary and how the park would benefit. They were satisfied with his explanation and said they supported him, but they all had concerns about whether it would form a precedent. Reynolds argued that it would not form a precedent because it dealt with a discreet set of circumstances, but they all recognized that to some degree every action forms a precedent.[115]

The concern with precedent was shared by the Office of the Solicitor, which reviewed the *Draft Secretarial Report* in April 1999. Deputy Regional Solicitor William Back wrote to Reynolds that the NPS should clarify to what extent it was committing itself to pursue similar agreements with other tribes. Predictably, Back suggested that the report should circumscribe the precedence as narrowly as possible. Since the Timbisha Shoshone was a federally-recognized tribe with no land base, whose homeland centered on a national park, that made a rare set of circumstances that superintendents of other national parks – Grand Canyon, Olympic, Glacier, among others – could point to when approached by neighboring tribes with similar demands. Back was troubled by specific phrases in the report that suggested just the opposite. For example, there was the statement, "This recommended plan provide[s] the foundation for productive, collaborative relationships among governments and neighbors in the future."[116] Reynolds and the negotiating team stuck to their guns; the provocative phrase was not edited out of the document.

The final challenge to the proposal came from Senator Harry Reid (D-NV), who was concerned about Indian gaming on the new reservation. Reid argued that since the *Draft Secretarial Report* specifically described the size and character of the residential and business developments planned for each parcel then those things should be put in the act. Concerned with protecting his state's gaming industry, he did not want to see a

[114] John Reynolds interview.
[115] Ibid.
[116] William Back to John Reynolds, April 21, 1999, File: unlabeled green file, Box 1 of 2, PWRO files, DEVA.

casino developed on one of the BLM land parcels located outside the park and across the state line in California. When the Tribe asked to meet with Reid, he responded that he had no obligation to meet with a California tribe; tribal representatives could read about his objections in the newspapers. Reid threatened to block the bill, but finally accepted assurances that the Tribe did not plan to pursue gaming.[117]

Passage and Celebration

Senator Inouye introduced Senate Bill 2102, co-sponsored by Senator Feinstein and Senator Barbara Boxer (D-CA), on February 24, 2000. The Senate Committee on Indian Affairs heard testimony on March 21, 2000, Don Barry being the principal witness. The committee then amended the bill and reported it favorably to the full Senate, which passed it on July 19. The same bill was passed by the House on October 17. President Clinton signed the Timbisha Shoshone Homeland Act into law on November 1, 2000.

Afterwards the Tribe had a celebration at Furnace Creek. In addition to tribal members, several individuals on the negotiating team attended the ceremony including Steve Haberfeld, Dorothy Alther, John Reynolds, and Richard Martin. As it happened, Martin was soon to retire as park superintendent and Reynolds had already selected the next park superintendent, J. T. Reynolds (no relation), who was invited to attend the ceremony as well. J. T. Reynolds met the tribal leaders for the first time on this occasion, and although he was still unfamiliar with the history behind the act, he could readily see in the radiant looks on their faces the pride and gratitude they all felt.[118] John Reynolds presented all the negotiators with turtle figurines of carved pipestone from Pipestone, Minnesota, the scene of his first boyhood experiences with Native Americans. The turtle is the Sioux totem of fertility, which in Siouan culture represents something much bigger; it is the power to create something good. Esteves received the offering as a reflection of all of the efforts that her people and the federal government's representatives had made together.[119]

Conclusion

Passage of the Timbisha Shoshone Homeland Act marked the culmination of a 65-year struggle by the Tribe to secure its permanent home in Death Valley. Since the creation of Death Valley National Monument in 1933, the Timbisha Shoshone people had faced an uncertain future. Living in poverty, unable to develop any economic enterprise at Furnace Creek where the core population resided, and largely prevented

[117] Christine Dorsey, "Tribe Seeks to Regain a Homeland," *Las Vegas Review Journal*, March 29, 2000.
[118] J. T. Reynolds interview.
[119] John Reynolds interview.

from carrying on traditional use practices or tending to sacred sites elsewhere in its homeland area, they might have despaired and wandered off. Instead the Timbisha Shoshone people held their ground, enduring those demoralizing conditions in the firm belief that they were one with the land. If the Tribe dispersed, the culture would die. For that reason, the Tribe argued that the government's unwillingness to give it a land base within its homeland area equated to "ethnic cleansing" or "cultural genocide." These were strong words, but they did fairly express the Tribe's point of view. In the America of the mid-1990s, the Timbisha Shoshone protests drew an obvious parallel with U.S. protests of Bosnians' treatment by Serbs in the former Yugoslavia. Furnace Creek was the Tribe's Sarajevo.

To the extent that the American people paid attention to the Timbisha Shoshone's plight, they tended to be sympathetic. In the Timbisha Shoshone Homeland Act, Congress found that the interests of both the Tribe and the United States would be enhanced by the establishment of a land base and traditional use areas for the Tribe inside the national park. While the law did not actually state that it was redressing historical wrongs, Congress's action on the bill certainly conveyed that that was Congress's intent. In particular, the Senate committee report stressed that "the Tribe's landless status has been and continues to constitute a major barrier to the social, economic, and political advancement of the Tribe and its members."[120] This was the core issue addressed by the Timbisha Shoshone Homeland Act.

The law did establish precedent, as all laws do. It appears to have been the first act of Congress to take land out of a national park and make it into an Indian reservation. Importantly, it put limitations on development for the 313.99 acres at Furnace Creek that were put in trust for the Tribe. Residential development would be limited to 50 single-family residences, a tribal community center, tribal offices, and recreation, senior, and youth facilities, while economic development would be limited to a small-to-moderate desert inn, a tribal museum, and cultural center with gift shop. Furthermore, it provided for the NPS and the Tribe to develop mutually agreed upon standards for resource protection and development of the Furnace Creek area (Figure 3-3). Similar though less stringent limitations were put on development of the other parcels outside the park in view of the limited water supply. The law designated three "special use areas" within Death Valley National Park where the Tribe would be allowed traditional use of park resources under a jointly established management plan. These were the large Timbisha Shoshone Natural and Cultural Preservation Area together with two smaller areas, the Mesquite Use Area and the Buffer Area, both at Furnace Creek. Thus, the law carried a definite mandate for the NPS and the Tribe to do cooperative management in these areas. The law contained two prohibitions that were important to environmental groups: in the

[120] U.S. Senate, "Providing to the Timbisha Shoshone Tribe a Permanent Land Base within its Aboriginal Homeland, and for other purposes," 3.

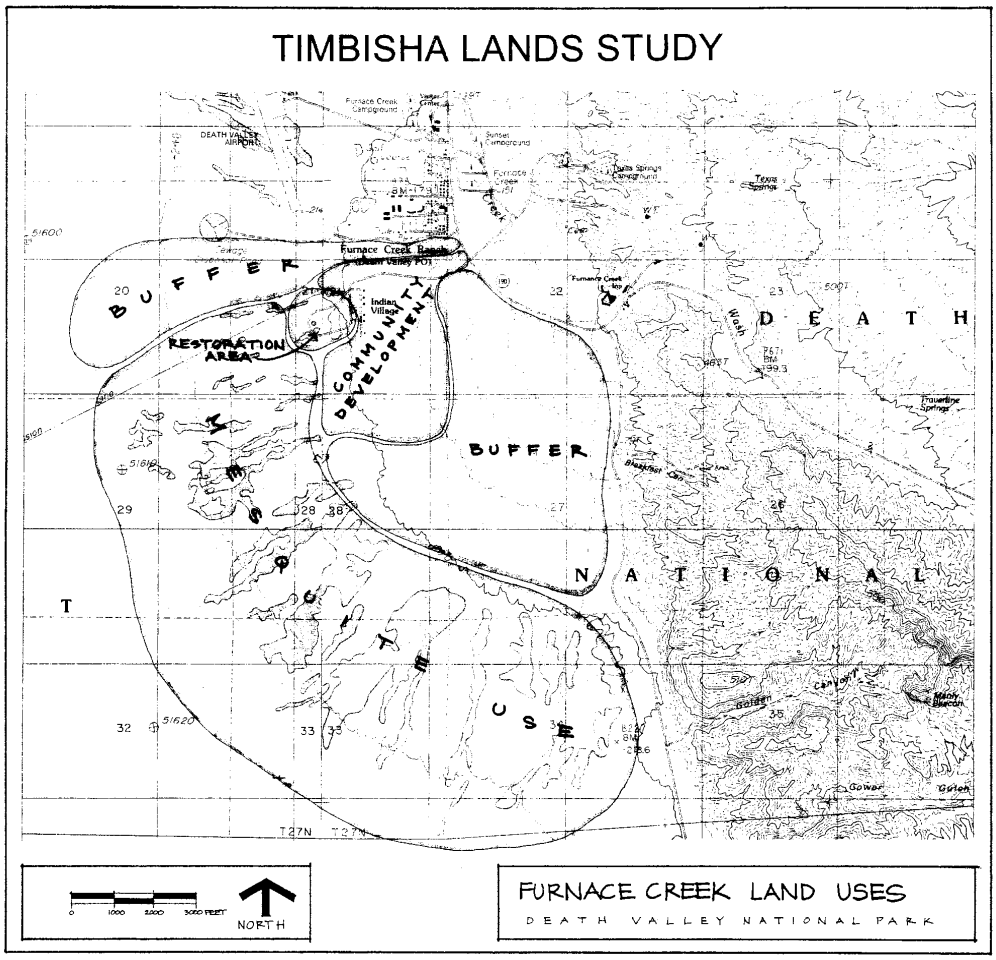

Figure 3-3. Furnace Creek Land Uses.

special use areas traditional use was not to include hunting, and on those lands taken out of the park and put in trust for the Tribe there was to be no Indian gaming.

What lessons could be taken away from the Timbisha Shoshone's long struggle and the Park Service's response? Perhaps the key to what happened from the Tribe's perspective was that it wanted the federal government to make good on its promise to conduct government-to-government relations with the Tribe. For the Tribe, there were two key milestones on the road to the Timbisha Shoshone Homeland Act. The first was federal acknowledgement in 1983. The second was passage of the CDPA, with its Section 705 (b) mandating a Timbisha Shoshone study. Tribal leaders believed that the CDPA signaled Congress's intent to establish a land base for the Tribe, something they thought the federal government had overlooked in 1983, and they thought that the Tribe's status as a federally recognized Indian tribe provided assurance that the Section 705 (b) study would take the form of a bilateral negotiation. Significantly, tribal leaders made frequent reference to Clinton's executive order of April 29, 1994, in support of their demands for government-to-government relations. The insistence on government-to-government relations was in part symbolic; tribal leaders desperately wanted to be treated with greater respect now that the Tribe had finally attained the status of a sovereign nation. The Tribe was also looking for a real benefit from government-to-government relations: by sitting across the table from higher level department officials, tribal leaders hoped to raise the homeland issue above the purview of the federal agencies, where it had been mired for so many years, and get it under the bright glare of congressional interest, where they believed they had better prospects of achieving their goals. Federal officials generally underestimated how much stock the Tribe placed in government-to-government relations until it was too late and the study process had soured. Certainly by the time the second round of talks began federal officials knew better. In the second round, the process was shaped by a genuine commitment to bilateral negotiations, and that commitment helped it succeed.

No one disputes the fact that the first and second rounds of talks were separate and distinct, and that the first round ended in collapse and the second round ended in success. Some participants, particularly on the federal side, emphasize that the first round talks did accomplish a lot of preliminary groundwork and that the progression from round one to round two was a necessary learning process. There is some truth in that claim, and the best evidence for it is found in the fact that the NPS was able to put together a valuable framework during the hiatus in negotiations based on what the Tribe had offered it in round one. This framework was in many ways a blueprint for the final agreement. On the other hand, tribal participants tend to view round one as not very productive because the federal government was not living up to its commitment to conduct government-to-government relations. In this view, the Tribe did what it had to do by breaking off talks and carrying on a publicity campaign to build its base of political support in Congress so that the NPS would finally be more responsive to its demands. This perspective is supported by the fact that the Park Service only changed its core

position on giving up land at Furnace Creek when it was forced to do so by direction from outside the agency – by the intervention of Assistant Secretary for Fish and Wildlife and Parks Don Barry. This is not to say that one perspective or the other is closer to the truth, but simply to observe that there are two valid perspectives on it.

Even if people who look at what happened in these negotiations agree that the Park Service needed a push from outside to come back to the table in round two with what really mattered – that is, with a willingness to give up land at Furnace Creek – they still may differ on another point. Where did the decisive push come from? The Tribe's perspective on this point is that its publicity campaign finally caused the Department of the Interior to bend. After a season of demonstrations in the park, letters to the President, complaints to the United Nations, and the formation of the Alliance to Protect Native Rights in National Parks, the Park Service leadership could no longer take a hard line on the Timbisha Shoshone homeland issue without looking anti-Indian. The noise level finally reached a point where the Park Service found it was worth conceding the prize in Death Valley National Park in order to hush the controversy. In contrast to the Tribe's perspective, people on the federal side, including Don Barry, do not think the political agitation by the Tribe was decisive at all. Rather, they believe the federal government gradually came around to its more accommodating position on its own initiative. Clinton issued his executive order on government-to-government relations, the Park Service established the American Indian Liaison Office, and in numerous other ways the federal government began to take a new look at its trust responsibilities to Native Americans in the mid-1990s. Many people within the Park Service were receptive to new ideas about the relationship between national parks and indigenous peoples, but they had to work within an institutional setting that was resistant to change. It is probably fair to say that the impetus for the Park Service to change its stand on the Timbisha Shoshone homeland issue came partly as a result of pressure from the Tribe and partly as a result of innovative ideas germinating within the federal government. Not just one or the other set of influences was decisive, but rather the Park Service was reacting to this combination of external and internal influences all at once.

Many people who were involved in the Timbisha Shoshone homeland issue believe that the most important difference between round one and round two was intrinsic to the negotiations. They recall the change in chemistry from one round of talks to the other. Several things were responsible for the change in chemistry, the most important one being the change from "positional" negotiations to "interest-based" negotiations. Whereas positional negotiations are characteristic of an unequal playing field and aim to arrive at a "win/lose" outcome, interest-based negotiations are premised on finding a "win/win" solution. The latter approach derives from alternative dispute resolution. The round-two facilitator, Charles Wilkinson, had a strong background in alternative dispute resolution, as did the Tribe's consultant, Steve Haberfeld of the firm Indian Dispute Resolution Services. Other factors that changed the chemistry in round two included the skillful leadership of John Reynolds on the federal negotiating team, the

high-level direction provided by Don Barry, and the thoughtful selection of other participants. Even the mechanics of the negotiations changed in important ways. The two sides adopted protocols for how they would talk to each other and they selected meeting venues that were helpful for team building.

The most important lesson to draw from this story is to appreciate the fact that the Timbisha Shoshone Homeland Act has very different significance for the NPS and for the Tribe; therefore, it is only to be expected that the NPS and the Tribe will have different narratives about how the act came to be. The NPS perspective on the Timbisha Shoshone Homeland Act contains a measure of doubt – is it precedent setting in a way that will cause harm to the national park system? – even though the dominant feeling in the Park Service narrative is that the act resolved an unfortunate situation in the best possible way. The Tribe, by contrast, views the act as a sheer triumph. It is as vital to the Timbisha Shoshone's exercise of tribal sovereignty as the federal acknowledgement that came in 1983. The act is one of the Tribe's founding documents. It is as basic to the Tribe as the Declaration of Independence is to the American nation. Described and published in full on the tribal government's webpage, it is one of the first things that the Tribe presents to the outside world. In the tribal narrative, the Timbisha Shoshone Homeland Act came about through the tireless efforts of the Tribe itself.

Epilogue

The Timbisha Shoshone Homeland Act is premised on cooperation between the Park Service and the Tribe continuing for the long term. Section 2 of the act describes one of Congress's findings as follows: "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." The act prescribes a number of specific items that the Tribe and the National Park Service are to produce jointly, including a cooperative management plan for the special use areas, protocols for mutual review of all development in the park, and design standards for development of tribal facilities at Furnace Creek and Wildrose. The act authorizes some additional action items: the Secretary of the Interior may purchase for the Tribe both the Indian Rancheria Site, an area of approximately 120 acres inside the park, and the Lida Ranch, an area of approximately 2,340 acres, located outside the park in Nevada; and the Tribe may establish and maintain a tribal resource management field office at Wildrose inside the park. These purchases and developments are in addition to the potential developments described for the Furnace Creek area. Since all of this spells out in some detail what the parties are expected to accomplish in the name of their new collaborative partnership, it is fair to consider how much progress has been made on these action items since the act was passed. Unfortunately, the answer is not much. However, tribal people and park staff agree that the act provides a solid foundation for future cooperation and they insist that none of these goals have been forgotten. They only wish that progress could be faster.

Immediately after the Timbisha Shoshone Homeland Act became law, the Tribe began to experience internal problems. For years, the group at Furnace Creek had been the driving force in the push to obtain a land base, while other clusters of tribal members located in Bishop, Lone Pine, and elsewhere had mostly provided back up. When the Tribe obtained a land base and acquired resources and new management responsibilities, some of these outlying groups began to vie with the Furnace Creek group for leadership. The first challenge came over what to do with revenue sharing. As a non-gaming tribe, the Timbisha Shoshone was eligible for money from the Indian Gaming Revenue Sharing Trust Fund. Esteves and the Tribal Council wanted to earmark this money for economic development but they now faced a groundswell of demand for a per capita distribution of

the revenue instead. The matter was put to a vote of the General Council (the entire tribal membership) as required by the tribal constitution, and the General Council voted overwhelmingly for the per capita distribution. A second challenge involved tribal members' access to federal housing assistance moneys. A rival group within the Tribe accused the chairperson, Pauline Esteves, of obstructing the distribution of funds, and she was ousted from office in 2001.[1] A third divisive issue revolved around the potential for a casino. A developer by the name of Rinaldo Corporation began courting the Tribe with a plan to develop a casino. The proposal was to acquire land and build a casino in the city of Hesperia on the main travel corridor between Los Angeles and Las Vegas. The proposal was based on the provision in the Timbisha Shoshone Homeland Act that authorized the Secretary of the Interior to acquire the Lida Ranch for the Tribe or, alternatively, "another parcel mutually agreed upon by the Secretary and the Tribe." Although Hesperia was outside the previously identified Timbisha Shoshone homeland area, advocates for the proposal said that the Timbisha Shoshone could still establish historical ties to the location. If the property were acquired in lieu of the Lida Ranch property it could legally qualify as "initial reservation" property, giving the Timbisha Shoshone the right to develop a casino on it.[2]

All three of these issues pitted the long sought improvements at Furnace Creek against other priorities for spending and development. More than that, however, the power struggle within the Tribe was hugely destabilizing and sapped the Tribe's energy. In 2002, there was a pair of contested tribal elections in November and December, and for a while there were two tribal councils each claiming legitimacy. The BIA reluctantly stepped in and annulled the elections but it was slow to sort out which of the two councils would be recognized as the tribal government. For two years, the BIA froze all tribal assets. In the midst of this turmoil, the tribal government office was suddenly moved from Furnace Creek to Bishop. It happened one morning without warning; one of the two factions claiming leadership hired a company in Ridgecrest to swoop in unannounced, load all the office files onto a truck, and haul them to Bishop. Although the Inyo County sheriff accompanied the movers, the action still had the feeling of a coup d'etat.[3] Thus, four years after passage of the Timbisha Shoshone Homeland Act, Pauline Esteves and the 30 tribal residents at Furnace Creek found themselves in a minority faction as the government now sat in Bishop and the Tribe seemed intent on pursuing the gaming option.

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[1] Esteves interview. The funds were made available under the Native American Housing Assistance Self-Determination Act of 1996. Another grievance against Esteves was that she sometimes conducted government business speaking the native language and said things that others found offensive.

[2] Beau Yarbrough, "Timbisha stands united on key issue: Tribe still wants a casino," *Hesperia Star*, May 24, 2005.

[3] Interior Board of Indian Appeals, "Order Dismissing Appeals," March 3, 2006, 42 IBIA 236, at http://www.oha.doi.gov/IBIA (January 29, 2009); Esteves interview; Atkinson interview; J. T. Reynolds interview.

With the tribal election of November 2004, there were indications that the Tribe was getting past what Barbara Durham refers to as its "growing pains."[4] Joe Kennedy became chairperson, and he was successful for a while in soft pedaling the gaming option and giving due respect to the community at Furnace Creek and the Tribe's resource stewardship responsibilities under the Timbisha Shoshone Homeland Act. But recently the power struggle has erupted all over again. The catalyst appeared to be a decision by Kennedy and the Tribal Council on June 25, 2008, to reject a proposed gaming management contract. A little more than half the members of the Tribe met in Las Vegas on September 20, 2008, where they claimed to constitute a General Council (even though the chairperson and the Tribal Council were not present). The assembled body then proceeded to depose the standing government and elect a new one under the leadership of George Gholson. Kennedy and his supporters charged that the General Council meeting was illegal and an attempted coup d'etat. However, BIA Superintendent Troy Burdick (representing Central California Agency) recognized the General Council as legitimate and the Gholson-led council as duly elected. Kennedy filed a notice of appeal of Burdick's decision, and on December 4, 2008, BIA Area Director Dale Morris summarily denied the appeal. On December 17, 2008, the Kennedy-led council filed suit in U.S. district court calling for declaratory and injunctive relief. According to the complaint, "The immediate effect of the December 4, 2008 decision is a sudden and complete transfer of control over all tribal programs, tribal assets and ongoing efforts on behalf of the Tribe and its members." The renewed uncertainty surrounding the tribal government threatened to bring "total cessation of tribal programs involving basic health care, housing and other ongoing federal trust-related projects."[5] The court, not persuaded that the situation was so dire, denied the motion for an injunction. It appeared that the Tribe was headed back to the same dysfunction that had developed between 2002 and 2004, when there were multiple tribal councils and the BIA had frozen all tribal assets.

The Tribe's internal turmoil presented major obstacles for the development of cooperative management in Death Valley National Park. In the first place, the partnership had to rest on more than good personal relationships, because tribal leaders – just like park superintendents – came and went. The new park superintendent, J. T. Reynolds, entered the situation in January 2001 with his "eyes open," recognizing that the chairperson and the Tribal Council could change frequently. Coming from Grand Canyon National Park, where he had served as deputy superintendent, Reynolds knew from experience how a change of tribal leadership could suddenly lead "back to square one" on projects of mutual interest. He approached the situation with a humble attitude, assuming that the Tribe and the NPS were still in the process of learning how to understand each other better. One of his first acts was to invite Pat Parker to present her short course on federal Indian trust responsibility to the park staff. The idea was to

[4] Durham interview.
[5] United States District Court, Eastern District of Califonria, Timbisha Shoshone Tribe v. Dirk Kempthorne, "Complaint for Declaratory and Injunctive Relief," December 17, 2008, and "Motion and Order," December 23, 2008, at http://turtletalk.files.wordpress.com (January 29, 2009).

change the culture, creating a climate of cooperation that went beyond personal relationships or individuals.[6]

Still, on the tribal side a few individuals have remained central to the partnership. Pauline Esteves, Grace Goad, and Barbara Durham are key. They meet with the park on a quarterly basis to discuss mutual projects. "All the other folks come and go," comments Linda Greene, who was the park's tribal liaison for many years until she retired at the end of 2008. "It's been a very unstable sort of tribal infrastructure for a very long time, and hopefully that will get worked out at some time." It might seem that the park's ongoing communications with these three individuals could be viewed by tribal leaders as side-stepping the government-to-government relationship, but nobody has raised that objection yet. "We have dealt with the people who have always been here no matter what their status," Greene says, "whether or not they have some tribal position. We deal with them because they're here and they have an interest." Greene and others agree there is a need for younger tribal members to get involved in the partnership since these three women will not be able to do all the work forever, but the Tribe has so far made little headway in recruiting a new generation of activists in this area.[7]

Since the tribal office was first moved to Bishop, the government-to-government relationship has sometimes been tenuous. For a long time the tribal office at Furnace Creek was closed and the position of tribal administrator was vacant. Barbara Durham finally reopened the building and resumed her post without salary. The residents at Furnace Creek sold Indian tacos to park visitors in order to raise money to pay the utility costs of keeping the tribal office at Furnace Creek open. After about a year of volunteer service Durham was appointed THPO by the tribal government. "We kept [the tribal office] open," she says proudly. "You know, it needed to be open. The park needed to work with us because they sure weren't getting any cooperation when it was up there in Bishop."[8] In October 2008, there was a replay of the earlier raid on this office building by a rival group within the Tribe; this time Chairperson George Gholson, accompanied by the Inyo County sheriff, entered the premises and seized two computers – presumably making off with data and work in progress that pertains to the Tribe's stewardship responsibilities in Death Valley.

The park and the Tribe have made some progress in developing design standards for the Furnace Creek area, but currently there are differences about how to proceed. In the early going, the NPS brought back the Denver Service Center architect, Billy Garrett, who John Reynolds had involved with the negotiating team during the study, in the hope that his previous work could be used as the basis for an agreed set of design standards. Garrett's design standards incorporated a traditional architectural style for the tribal

[6] J. T. Reynolds interview. The course was subsequently given to staff a second time.
[7] Greene interview.
[8] Durham interview.

housing and community buildings and these concepts had met with the tribal representatives' approval previously, but in this second draft Garrett included a full-blown set of design standards for road surfaces, curves, curbs, pull-outs, and the like. The Tribe gave the draft document to its housing architect who found it excessively "bureaucratic." Tribal members insisted that it was a "Park Service document" containing all sorts of components that did not apply to the Tribe. So the Tribe produced its own draft design standards, which the NPS, in turn, rejected as too spare. According to Greene, it was a "minimal document" that essentially just pledged the Tribe to work with colors, fabrics, and materials that were compatible with the environment. Since then, the need for shared design standards has been discussed at quarterly meetings but the park and the Tribe still need to come to terms.[9]

In November 2007, the Tribe dedicated its new community center at Furnace Creek. The design and construction process revealed strengths and weaknesses in the new partnership. The Tribe secured a $550,000 grant for the building and presented its architectural plans to the park. In the absence of mutually acceptable design standards, the Tribe and the park had some give-and-take over the style of the building and then the discussion ended as the Tribe experienced delays in getting a building contractor. The Tribe eventually contracted with McGuinness Construction Company and work began on the 3500-square-foot structure. From the park's perspective, the construction job did not have adequate oversight. The park had considerable experience doing construction in the intense heat of Death Valley, procuring materials at this remote location, building on salt pan, and so on, and park staff worried that the Tribe would run into problems with its contractor. Belatedly, the Tribe accepted the park's offer to assist with contract oversight. For better or worse, McGuinness Construction did complete the project – working at night under floodlights to avoid the worst heat of summer and waiting for the heat to break in the fall before applying stucco on the exterior walls. At the end of the process the Tribe was pleased with the new building but park staff thought that the project could have been more cooperative.[10]

In 2001, the Tribe obtained a grant from the Environmental Protection Agency (EPA) and initiated a research project on caring for mesquite and pinion pine trees according to traditional ways. The purpose of the study was to obtain information on the ecological characteristics of honey mesquite and single-leaf pinion pine, to establish sample plots for development of baseline data and monitoring, and to initiate traditional care on half of each sample plot in order to measure the effects of traditional care against a control. The sample plots for mesquite were located in the Mesquite Use Area, while the sample plots for pinion pine were located at Wildrose. Sample plots were small (totaling less than one percent of each area) because the Tribe had only one

[9] Greene interview.
[10] Mark Waite, "Tribe dedicates community center," *Pahrump Valley Times*, November 2, 2007; Durham interview; Greene interview. Durham notes that she obtained help from the park archeologist in accomplishing a site survey prior to construction.

environmental technician, tribal member Ken Watterson, available to perform the traditional care and monitor the results. The small size of the plots proved to be a limitation on the study as a caterpillar infestation affected the fruit production of the mesquite trees in the spring of 2001 and again the following year. The Tribe's internal problems proved even more detrimental to the study as the EPA-funded program was suspended for a time when the BIA froze the Tribe's assets. Still, the Tribe had made a positive start. With the help of the park and another grant from the U.S. Geological Survey, the study was revived and enlarged a few years later.[11]

The park and the Tribe began to work on a cooperative management plan for the Timbisha Shoshone Natural and Cultural Preservation Area in the fall of 2006. The NPS brought in Ken Grant, an Alaska Native and assistant superintendent of Glacier Bay National Park and Preserve. Grant worked primarily with Durham, the Tribal Historic Preservation Officer (THPO), to prepare a draft document. The intent of the parties was to create a document that was broad and flexible and would provide a framework for other agreements on more specific items. It was expected, too, that this document would serve as a template for a similar cooperative agreement between the BLM and the Tribe.[12] Two years after this project was initiated the document remained in draft. Barbara Durham, for one, holds the Park Service accountable for unreasonable delays in making the agreement final. "The Tribe is getting impatient with this tactic," she reports. "The Tribe wants this agreement approved so it can be shared with the California and Nevada BLM offices."[13] In the meantime, the park and the Tribe have engaged in other cooperative management activities. Notably, park staff and tribal members have conducted joint field surveys of springs, archeological sites, and other resources in an effort to develop the park's indigenous knowledge. On these visits to springs, for example, tribal elders explained traditional practices of cleaning debris out of the springs and described how they remember the plant and wildlife conditions to have been in the past when their people took care of these places.[14]

The park has made a concerted effort to respect Timbisha Shoshone access to traditional use resources and sacred sites. On one occasion, a ranger on patrol stopped a carload of tribal members for what he thought to be a natural resource violation. The group, which included Barbara Durham and Pauline Esteves, were returning home after dark at the end of a full day of collecting pine nuts at Wildrose. The purpose of their excursion was not just to collect pine nuts, but to videotape the traditional methods they used as part of an instructional video for other tribal members. The long sticks that they used for whipping the upper branches of the pinion pines were tied to the roof of the car, which appeared to the ranger like an illegal load of firewood. The ranger's mistake was that he failed to observe the sticker on their vehicle that identified them as Timbisha

[11] Fowler, et al., "Caring for the Trees," 304-06; Durham interview; Greene interview.
[12] Durham interview.
[13] Barbara Durham, comments on draft report, April 2009.
[14] Kennedy interview.

Shoshone. The tribal members were displeased about being stopped by a ranger and complained to the superintendent. Fortunately, it was an isolated incident. The tribal members treated it as a humorous mistake if only because they recognized how careful the NPS would be to avoid a similar thing happening again.[15]

The Timbisha Shoshone Homeland Act provides in Section 5 (e) (5) (E) (i) that the NPS, at the request of the Tribe, shall temporarily close an area to the general public to protect the privacy of tribal members engaging in traditional cultural and religious activities. To date, this provision of the law has never been put into effect. The Tribe has made no such request. As for the Tribe's desire to take back the Saline Valley Warm Springs from nude bathers, the park has done very little to address it. Superintendent Reynolds attributes this inaction to the Tribe's own reticence to challenge this public use. Tribal members have ceased being vocal about it. The park, for its part, has relaxed its stand. An explicit "Clothing Optional" sign, erected soon after the park took over the area, was removed about ten years later. Now the park largely lets the place be.[16]

The Timbisha Shoshone Homeland Act provides in Section 7 (a) that in hiring people for construction, maintenance, interpretation, or other services in the park, the Secretary shall give preference to qualified tribal members. The park currently employs several tribal members, but the Tribe is not completely satisfied that the hiring preference is taken seriously. On one occasion, a tribal member complained to the Tribal Office at Furnace Creek that the hiring preference was not being followed. Apparently, an NPS human resources officer had deleted the pertinent language from the job application because she did not understand it. Superintendent Reynolds had this error corrected as soon as it was brought to his attention.[17]

One area in which the park and the Tribe have made considerable headway since passage of the Timbisha Shoshone Homeland Act is the visitor experience. The act calls for cooperation in interpreting the Tribe's history and culture for park visitors. It also lists as one of the act's purposes, "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."[18]

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[15] Durham interview; J. T. Reynolds interview. The production of the instructional videotape was part of a tribal project sponsored by a Preservation, Training, and Technology (PTT) grant from the NPS.

[16] J. T. Reynolds interview. See also Finn-Olaf Jones, "Desert Libertarians," *Forbes Life*, June 6, 2005, at http://www.forbes.com.

[17] Barbara Durham, comments on draft report, April 2009.

[18] In one respect the NPS may have done less than it might have to fulfill the spirit of the law. Section 5 (e) (5) (C) requires that the Timbisha Shoshone Natural and Cultural Preservation Area "shall be depicted on maps of the Park and Bureau of Land Management that are provided for general visitor use." When the writer asked John Reynolds if he was satisfied with the depiction of this area on the park brochure with only a tiny inset map, he responded: "Well you know my personal view is that it ought to be highlighted on the park map. It should be celebrated that the park has evolved to this." (John Reynolds interview.)

Much of what has happened is still in the planning stage, but both parties are interested and working together. Their ideas are generally harmonious.

Soon after the Timbisha Shoshone Homeland Act was passed the NPS designed new entrance signs for Death Valley National Park. At Superintendent Reynolds's direction, the subheading "Homeland of the Timbisha Shoshone" was incorporated into the standard design. This was a conspicuous and gracious way to honor the Tribe's presence and to announce the collaborative partnership that now exists between the Tribe and the NPS.[19] The park also began to update its information on the Tribe in the park brochure, the park newspaper, and the park website. In each instance it consulted with the Tribe to assure accuracy. It collaborated with the Tribe in revising the relevant portion of the park's interpretive plan. Among other things, the interpretive plan called for new exhibits on Timbisha Shoshone history and culture for the visitor center museum. Tribal members thought replacing the old exhibits was long overdue. This project hit an unexpected snag when the visitor center museum was identified as an outstanding example of Mission 66 museum design. Was it more important to update the exhibits with a modern retelling of the Timbisha Shoshone story or to preserve the outdated exhibits as worthy historical artifacts of the Mission 66 era in national park design? While this issue was being considered, the park faced budgetary hurdles for commencing the project. Major upgrading of the visitor center facility was originally programmed for 2008 but was soon pushed back to 2011 or later.[20]

As yet there are no formal guided tours available to park visitors to enrich their understanding of the Tribe's place in Death Valley. The park recently developed a self-guiding auto tour using a high-tech device called a GPS Ranger. It is available for rent by the park visitor, and it goes in the visitor's car and narrates what the visitor is seeing as the visitor drives around the park. At the visitor's option, the GPS Ranger may provide information about the Tribe or the Tribe's use of the area. The park interpretive staff developed the tribal information through videotaped interviews with tribal members.[21]

The cultural demonstration programs that were once part of the interpretive program are currently not offered. Durham remarks that this is a shame and that more could be done. "I wish that our tribe would be able to put together a walk or a hike through our area and talk to [park visitors] ourselves," she says. "And maybe that would be something good that the Park could do, like a campground fire talk or something, and have a tribal member there." Visitors often drive down the short spur road to the residential area and occasionally they knock at the tribal office. "All nationalities come

[19] J. T. Reynolds interview.
[20] Ibid.
[21] Ibid. Individual tribal members were supposed to be compensated for their time, and in addition the Tribe was to receive a small royalty on rental sales of the GPS Ranger. Apparently the park never made these payments to individuals or the Tribe. (Barbara Durham, comments on draft, April 2009.)

in here," Durham says. "They're from New York, or Ireland, or France, or Montana. You know, they come here, and they want to meet [us]. We have brochures that we hand out that tell about the Timbisha Homeland Act and where our lands are." Durham likes to chat with the visitors. "Sometimes they'll pay us the entrance fee," she adds with a laugh. "They'd rather pay us the entrance fee than the National Park Service."[22]

What lessons can be drawn from these recent happenings? Not enough time has elapsed since the passage of the Timbisha Shoshone Homeland Act to allow anything more than tentative conclusions. The tumultuous internal politics of the Tribe, together with the modest gains made toward implementing specific provisions of the act, call forth two main responses: there is a need for realism and there is a need for patience. The history of the Timbisha Shoshone Tribe is a testament to the ability of a native culture to persist through times of great adversity. For two generations, from the 1930s through the 1990s, the native inhabitants of Furnace Creek found themselves in the precarious position of living inside a national monument without a secure land base. The situation developed largely because federal officials in the BIA and the NPS mistakenly predicted that the native people would move away, die off, or assimilate into the non-Indian population rather than persist as a tribe and a separate culture. Defying those predictions, the native inhabitants found that they must have a reservation in Death Valley in order to survive as a tribe. Although the Timbisha Shoshone Homeland Act accomplished that first aim, the achievement came very nearly too late. Traditional resource uses have been mostly disrupted for many years and the older generation has not had the usual opportunities to pass traditional knowledge down to the younger generation. Currently the Tribe faces a shortage of young people who are willing to take on these responsibilities. Whether the Tribe will be able to revive its traditional resource use practices over a broad area in Death Valley remains in doubt. It will depend on the Tribe's ability to recruit and educate a new generation of interested practitioners. The Park Service, for its part, must continue to invest considerable time and effort in the cooperative relationship to make it succeed. Probably the park and the Tribe will only make substantial progress on the cooperative management agreement and other more site-specific resource management projects if the new park superintendent makes these goals a high priority.

[22] Durham interview.

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