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## APPENDIX D

### United States Department of the Interior

OFFICE OF THE SOLICITOR  
Washington D.C. 20240

#### Memorandum

**To:** Karen Atkinson, Counselor to the Assistant Secretary for Fish Wildlife and Parks  
Elizabeth Homer, Director Office of American Indian Trust

**From:** Derril B. Jordan, Associate Solicitor, Division of Indian Affairs

**Subject:** Clarification of Rights of Timbisha Shoshone in Newly Designated Homeland

The California Desert Protection Act, [section 705\(b\)](#), directed the Secretary to conduct a study to identify lands suitable for a reservation for the Timbisha Shoshone Tribe within the Tribe's original homeland area. A joint Federal-Tribal negotiating team conducted a suitability study that recommended a plan to establish a permanent homeland for the Tribe. The details of this plan are laid out in a draft report to Congress. The report recommends that several separate parcels of land be transferred to the Tribe in trust and that other areas be designated as non-exclusive tribal use areas. Under the plan, 300 acres at Furnace Creek, in Death Valley National Park, will be transferred to the Tribe in trust and an additional 3000 acres will be designated the Timbisha Shoshone Natural and Cultural Preservation Area within which low impact, traditional tribal uses will be authorized subject to an established plan. In the lands transferred to the Tribe in trust within the Park, gaming operations will be prohibited.

In areas outside Death Valley National Park, the report proposes to transfer approximately 7,200 acres of Bureau of Land Management (BLM) land into trust for the Tribe and legislation is requested to authorize and appropriate funds for the purchase of three private parcels previously owned by tribal members. The BLM lands to be transferred in trust to the Tribe include four separate parcels: 1) 1,000 acres at Death Valley Junction, California, east of the park; 2) 640 acres at Centennial, California, west of the park; 3) 2,800 acres near Scotty's Junction, Nevada, northeast of the park; and 4) 2,800 acres near Lida, Nevada, north of the park. Under the plan, these parcels will be designated as part of the Tribe's reservation and Indian country. You have asked whether the Tribe will be able to conduct gaming on these BLM lands outside of the park boundaries.

The Indian Gaming Regulatory Act (IGRA) contains a general prohibition of gaming on lands acquired by the Secretary in trust for Indian tribes after October 17, 1988. 25 U.S.C. § 2719. There are a few exceptions to this general prohibition, however. The prohibition on gaming does not apply when lands are taken into trust as part of the initial

reservation of an Indian tribe acknowledged by the Secretary under the federal acknowledgment process. 25 U.S.C. § 2719 (b)(1)(B)(ii). In 1983, the Secretary acknowledged the Death Valley Timbi-sha Shoshone Band of California as a federally acknowledged tribe pursuant to the regulations at 25 C.F.R. Part 83. 44 Fed. Reg. 214 (November 4, 1982). Since the Timbisha Shoshone do not currently have a land base, and the Secretary has not previously taken any other lands into trust for the benefit of the Tribe, these BLM parcels outside Death Valley National Park would constitute the initial reservation of a tribe acknowledged by the Secretary, and thus would fall under the exception to the general prohibition on gaming.

However, to be in compliance with IGRA, any Tribe that wishes to conduct class III gaming on Indian lands must be located in a state that permits such gaming for any purpose by any person, organization, or entity, must have a gaming ordinance approved by the NIGC, and must also negotiate a tribal-state compact with the governor of the state in which the Indian lands are located. 25 U.S.C. § 2710 (d)(1)(A)(B) and (C). While gaming can occur on the BLM parcels transferred to the Timbisha Shoshone in trust, the Tribe must negotiate a compact with the governor of either California or Nevada if the Tribe wishes to conduct class III gaming on a specific parcel located within those states.

Notwithstanding the provisions for class III gaming under IGRA, the Tribe can conduct class II gaming without federal approval and the concurrence of the governor of the state in which the Indian lands are located provided that the State permits such gaming for any purpose by any person, organization or entity and that the Tribe has an ordinance approved by the NIGC. 25 U.S.C. § 2710 (b)(1)(A) and (B). Class II gaming is defined as the game of chance commonly known as bingo (whether or not electronic, computer, or other technologic aids are used) and card games that are explicitly authorized by the laws of the state or not explicitly prohibited by the laws of the state. 25 U.S.C. § 2703 (7) (A).

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