

S. REP. 106-327, S. Rep. No. 327, 106TH Cong., 2ND Sess. 2000, 2000 WL 893003 (Leg.Hist.)
P.L. 106-423, *1 PROVIDING TO THE TIMBISHA SHOSHONE TRIBE A PERMANENT
LAND BASE WITHIN ITS ABORIGINAL HOMELAND, AND FOR OTHER PURPOSES

SENATE REPORT NO. 106-327

June 30, 2000

Mr. Campbell, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 2102]

The Committee on Indian Affairs, to which was referred the bill (S. 2102) to provide to the Timbisha Shoshone Tribe a permanent land base within its aboriginal homeland, and for other purposes, having considered the same, reports favorably thereon with an amendment-in-the-nature-of-a-substitute and recommends that the bill, as amended, do pass.

PURPOSE

The purpose of S. 2102, the Timbisha Shoshone Homeland Act, is to provide in trust for the Timbisha Shoshone Tribe land on which the Tribe can live permanently and govern its affairs in a modern community within the ancestral homeland of the Tribe outside and within Death Valley National Park, consistent with the recommendations of the report prepared by the Secretary of the Interior as required by section 705(b) of the California Desert Protection Act of 1994 ([Public Law 102-433](#); 108 Stat. 4498).

BACKGROUND AND NEED

Ancestral homeland and lifestyle.—The traditional ancestral homeland of the Timbisha Shoshone Tribe encompasses a vast territory of up to 1 million acres in the region of Death Valley, California, and extends into Western Nevada. Located almost entirely within the Mojave Desert, the land consists of hills and mountains, plains and alluvial fans, plateaus, badlands, pediments, river washes, playas and sand dunes, as well as springs, hot springs, creeks and waterfalls. Elevation ranges from 11,000 feet to below sea level *2 while temperatures range from below zero on the mountain peaks to more than 120 degrees on the valley floors.

For millennia, the Timbisha Shoshone people have been inextricably tied to the austere desert landscape which has been their home and the source of their sustenance. The Timbisha have a profound attachment to the land and a strong sense of responsibility for it. Their knowledge of the area and the life within it is unequaled, and they have devised ingenious methods for managing natural resources, such as using fire to control vegetation in marshes and to encourage seeds and other plants known to be fire followers. Rich harvests and lush plant growth resulted from the time and effort the people traditionally spent clearing and pruning plants like pinon, mesquite, and willow and transplanting and cultivating native domesticated plants such as devil's claw, corn, beans, and squash. Tribal knowledge also included the location of water sources which they regularly cleaned and kept clear of debris to ensure a continued supply of clean, potable water for humans, animals, and migratory birds. Although mining interests, homesteaders, and ranchers began moving into Death Valley in the 1850s, the Timbisha maintained their traditional lifestyle, in which families would move into the mountains during the hot summer months and return to the mild valley floor in winter, until well into the twentieth century.

Dislocation.—The process of Timbisha dislocation began in the 1850's and accelerated through the 1870's and 1880's when homesteaders and ranchers moved into the area to supply mining camps and other settlements that served the miners. Dislocation

increased even more dramatically in the twentieth century. Between the mid-1920s and 1936, the Tribe was forced to move four times within the area that is now Furnace Creek in Death Valley National Park.

In the 1920's, the Pacific Coast Borax Company built a large ranch house and established a ranch north of the present post office at Furnace Creek. During this time, the Company experimented with the cultivation of grapes, citrus and dates. Many Timbisha members lived near the ranch house, worked at the ranch and on the 20-mule team borax wagons, and cultivated gardens of their own. In the late 1920s, the Tribe, whose families were living in traditional brush homes and using water from the Furnace Creek ditch, was directed to leave the ranch and move to what is now the Sunset Campground area.

In the early 1930s, the Company directed the Tribe to leave the Sunset Campground area and to move to where the Park Visitor Center is located today. Although no water was then available at the site, the Tribe complied with the Company's directive with the understanding that piped water would be provided. Tribal members constructed homes and planted gardens; however, after only a few years they were forced to move once more.

In 1933, President Herbert Hoover established the Death Valley National Monument by Executive Order, but the Order had no provisions addressing Timbisha Shoshone land tenure or a tribal land base. To address the Tribe's situation, the National Park Service and the Bureau of Indian Affairs entered into an agreement in 1936 to establish a tribal village site, to construct adobe residences, and provide for a tribal gift shop and laundry business. The Timbisha moved to their present location, south of Furnace Creek #3 Ranch, as the adobe houses were being built, with some of their families being forced to live in tents, and the tribal settlement near the Visitors Center was razed.

In the ensuing years the Tribe maintained an existence in the Monument, despite what tribal members came to perceive as a Park Service policy designed to drive them out. In the 1940's the Tribe was forced to discontinue hunting and caring for the land within the Monument. In addition, according to tribal testimony, their adobe homes at times were washed down by high-powered water hoses, or set on fire when the people left the Valley for the highlands during the hot summers. These actions effectively stopped them from moving to the mountains, and to remain instead on the Valley floor in the intense heat without electricity, which was not provided until the early 1970's.

In 1983, the Tribe was granted Federal recognition, and its present tribal government structure was established. Unlike nearly all other Federally-recognized Indian tribes, however, and despite having lived in Death Valley since time immemorial, the Timbisha Shoshone Tribe continues to be without secure land tenure or a permanent land base. 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.

Effects of landless status.—Currently, about fifty tribal members live in seven adobe residences and eleven mobile residences at Furnace Creek. The lack of a land base has prevented the Tribe from having access to Federal housing or other community development programs. The lack of adequate housing in turn has caused many Timbisha tribal members to move to other Indian communities in California and Nevada. This geographic dispersion not only adversely affects relationships between and among tribal members but also impedes their communication with and full participation in tribal government.

Without a land base the Timbisha Shoshone Tribe's access to Federal aid programs in general is limited, as is aid for basic tribal services that is otherwise available through the Bureau of Indian Affairs. Unless the Tribe secures a land base of sufficient size to ensure sustainable development, its long-term economic prognosis is dramatically diminished. The need for such assistance is acute. Of 285 enrolled tribal members, nearly 40 percent are unemployed, a rate more than four times higher than the State of California.¹ Although more than 50 percent of the Tribe's population is in the active labor force, almost 25 percent work only part time. More than 80 percent of the Tribe's households fall below the 1993 poverty threshold in the United States, which is \$13,950 for a family of four.²

Without a land base the Tribe continues to be without the ability or opportunity to establish and provide health services in the community. The need for these services is also acute. Approximately 57 percent of tribal members have no health insurance,

or rely solely on the health services provided through the Indian Health Service *4 clinic and/or Medicare, and/or MediCal. Nearly 40 percent of tribal members do not receive dental care.³

The landless status of the Tribe also continues to be a source of frustration between the Tribe and National Park Service. Authorities available to the Park Service under existing law, such as to grant special use permits or to enter into memoranda of understanding, cannot provide the permanence, security, and economic opportunity that a trust land base affords a Tribe. Similarly, the Tribe's landless status precludes the Park Service and the Tribe from establishing clear allocations of administrative responsibilities for Furnace Creek tribal village area or providing a more appropriate framework for the division of responsibilities among the Tribe, the Park, and the Bureau of Indian Affairs.

Study, report and recommendations.—In 1994, in response to the Tribe's request for assistance in dealing with its needs and circumstances, the Congress included a requirement in section 705(b) of the California Desert Protection Act, P.L. 103-433, that the Secretary of the Interior conduct a study to identify lands within and outside the Death Valley National Park that would be suitable for a reservation for the Tribe.

In December, 1999, after extensive study and deliberation with the Timbisha Shoshone Tribe and consultation with the public, the Secretary submitted a draft report to the Congress containing his findings and recommendations for a tribal land base. All of the parcels recommended for trust status are within the Tribe's ancestral homeland area and were identified as having particular historical, cultural, or economic importance to the Tribe. They include former sites of homes and gardens of tribal members, burial grounds, sacred sites, camp sites and areas where tribal members gathered and used important food resources such as mesquite, pinon nuts, and spring greens, and cared for the springs and other water sources, and the land itself. These lands reflect the historical Timbisba Shoshone settlement pattern of dispersed residences and seasonal use of particular areas within their ancestral homeland area.

In analyzing the suitability for trust status, the Secretary assessed particular land parcels with respect to the Tribe's present and future social and economic needs, tribal historical ties to the lands in relation to current land uses, conservation and preservation needs of the area, and potential resource constraints. Locations were selected in order to establish a foundation for a viable, self-sufficient tribal community both within and outside of the Death Valley National Park given existing critical resources such as water.

On February 24, 2000, Senator Inouye, together with Senator Dianne Feinstein and Senator Barbara Boxer, introduced S. 2102, the Timbisha Shoshone Homeland Act. This legislation would implement the Secretary's recommendations for the establishment of a permanent land base for the Timbisha Shoshone Tribe and for cooperative management agreements between the Tribe and the National Park Service (NPS) and the Bureau of Land Management (BLM).

*5 SUMMARY OF MAJOR PROVISION

S. 2101, as amended and reported by the Committee on Indian Affairs, provides authority for the transfer of five parcels of Federal land, totaling approximately 7,753.99 acres in California and Nevada, into trust for the Tribe, and for the Secretary to acquire, from willing sellers, two other parcels of land in California and Nevada totaling 2,460 acres, which also would be taken in trust for the tribe. A 300-acre parcel of Federal land at Furnace Creek is the only parcel located within Death Valley National Park; the other parcels of Federal land are outside the Park and currently administered by the BLM. Tribal development on the Furnace Creek lands would be limited to a maximum of 50 single-family residences; a tribal multi-purpose community center a small-to-moderate desert inn; and a tribal museum and gift shop, together with necessary associated infrastructure, all of which would be subject to environmental standards and practices no less restrictive than applied elsewhere within the National Park System. In addition, the Federal lands taken into trust status for the Tribe would be subject to valid rights and mining claims existing on the date of enactment of the Act.

S. 2102 designates three nonexclusive “special use areas” within the Park wherein the Tribe could engage in low impact, ecologically sustainable, traditional practices pursuant to a management plan agreed to by the Tribe, the NPS and the BLM. Within these areas, the Tribe could continue to use park resources for traditional purposes, including the management of mesquite and other plants and the conduct of religious ceremonies and other traditional practices and activities that are not in derogation of Park purposes and values. Such uses of Park resources by the Tribe do not include the taking of wildlife.

S. 2102 requires the NPS, the BLM and the Tribe to enter into government-to-government agreements regarding planned development in the Park, and to enter into cooperative agreements to provide training for Park personnel and tribal members on the interpretation, management, protection, and preservation of the natural and cultural resources of the special uses areas. Insofar as practicable, the Secretary would be required to give first preference in employment for any construction, maintenance, interpretation, or other service in the Park to qualified members of the Tribe.

S. 2102 bars any gaming activity on any land that would be taken in trust for the Tribe within the Park. On the parcels of land outside the Park, the primary uses of which would be for residential, agricultural and economic development, the Tribe could conduct class II (bingo) gaming if it had a gaming ordinance approved by the National Indian Gaming Commission (NGC). Class III, or casino gaming, could occur on these parcels outside the Park only if (1) class III gaming is permitted by the State, (2) the Tribe has a gaming ordinance approved by the NIGS, and (3) the Tribe and the governor of the State within which the parcel is located successfully negotiate a gaming compact.

S. 2102 provides that the Tribe could assume and administer civil and criminal jurisdiction over Timbisha Shoshone Reservation lands pursuant to the laws and regulations applicable to other Indian trust lands. However, those trust lands located in California *6 would remain under state criminal and civil jurisdiction, as provided under Public Law 83–280, until such time that the Secretary, after consultation with the Attorney General, certifies that the law enforcement system in place for such lands will be adequate to provide for the public safety and the public interest. Such certification could not take effect until three years after the date of enactment of the Timbisha Shoshone Homeland Act.

Finally, the bill authorizes the appropriation of such sums as may be necessary to carry out its provisions.

LEGISLATIVE HISTORY

On February 24, 2000 Senator Inouye, for himself, Senator Feinstein and Senator Boxer introduced S. 2102 and the bill was referred to the Committee on Indian Affairs. On March 21, 2000, the Committee on Indian Affairs held a hearing on S. 2102. Witnesses from the Administration and the Tribe testified in strong support of the bill, but agreed that further negotiations were needed to clarify provisions dealing with water rights and several other matters. In a letter to the Committee dated May 1, 2000, and printed elsewhere in this report, the Departments of Interior and Justice proposed changes and additions to S. 2102 with which the Tribe concurred. These changes and additions were included in an amendment-in-the-nature-of-a-substitute that was adopted by the committee on May 10, 2000.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

The Committee on Indian Affairs, in an open business session on May 10, 2000, adopted an amendment-in-the-nature-of-a-substitute to S. 2102 by voice vote and ordered the bill, as amended, reported favorably to the Senate.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 cites the short title of S. 2102 as the “Timbisha Shoshone Homeland Act”.

Section 2. Findings

Section 2 sets forth Congressional Findings:

(1) The ancestral homeland of the Timbisha Shoshone Tribe, which has lived in portions of California and Nevada since time immemorial, includes the area that now comprises Death Valley National Park and other areas of California and Nevada administered by the Bureau of Land Management.

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

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

(4) The Tribe's growing membership desires and needs housing, government and administrative facilities, cultural facilities, and sustainable economic development to provide decent, safe and healthy conditions for themselves and their families.

(5) The interests of 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 *7 for the interpretation of the Tribe's history and culture for visitors to the Park.

(6) The interests of the Tribe and the United States would be enhanced by the establishment of a land base for the Tribe and by further delineation of the rights and obligations of each with respect to the Furnace Creek area and to the Park as a whole.

Section 3. Purposes

Section 3 states the 7 purposes of the Act, which are consistent with the report required by Section 705(b) of the California Desert Protection Act of 1994, as—

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

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

(3) to ensure that the resources within the Park are protected and enhanced by cooperative activities within the Tribe's ancestral homeland and by partnerships between the Tribe and the National Park Service (NPS) and with the Bureau of Land Management (BLM);

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

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

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

(7) to transfer 4 separate parcels of land administered by the BLM in trust for the Tribe and to authorize the purchase of 2 parcels of privately-owned land to be taken in trust for the Tribe.

Section 4. Definitions

Section 4 sets forth definitions of the terms “Park”; “Secretary”; “Tribal”; “Tribe”; and “Trust Lands”.

Section 5. Tribal rights and authority on the Timbisha Shoshone homeland

Subsection (a) declares all right, title and interest of the United States in and to the lands, including improvements and appurtenances, listed in subsection (b) to be held in trust by the United States for the benefit of the Tribe, subject to valid rights and mining claims existing on the date of enactment of this Act. It further requires that maps indicating such lands be on file and available for public inspection in the appropriate offices of the NPS and the BLM.

Subsection (b)(1) describes the land and water to be held in trust for the Tribe pursuant to subsection (a), as follows:

A. 313.99 acres at Furnace Creek in Death Valley National Park, together with 92 acre-feet per annum of surface and ground water for the purposes of community development, residential development, historic restoration, and visitor-related economic development. *8 Twenty-five acres at the north end of this area would be designated as a non-development zone. Because it contains several historic adobe homes, this area would also be designated as an Adobe Restoration zone that will be managed by the Tribe as a tribal historic district.

Furnace Creek is located on the valley floor of central Death Valley and encompasses the tribal village, a privately-owned inholding containing the Furnace Creek Ranch and Furnace Creek Inn, the Park Visitor Center, Texas Springs Campground, and a small airport. The area is bordered on the west by a large alluvial fan of about 3,000 acres of mesquite groves of great importance to the Tribe and the Park.

The Furnace Creek area is the cultural, political, and geographic heart of Timbisha Shoshone ancestral lands. The Timbisha Shoshone people have never left it. The area contains sacred sites and tribal burial grounds. The settlement at Furnace Creek is where the current tribal government was formed, and is the place where the Tribe wants to build homes for its people, tribal offices to carry on tribal governance and business, and to develop visitor-related services to provide income and employment opportunities for its people.

B. 1,000 acres at Death Valley Junction, California, together with 15.1 acre feet per annum of ground water for the purposes associated with such transfer.

Death Valley Junction is located in Inyo County at about 2,000 feet elevation in open saltbush scrub habitat. The parcel lies on the eastern edge of an alluvial fan sloping gently to the east. It is located at the junction of highways 127 and 190, the latter being a main entrance road into the Park. According to the Secretary's report, the purposes for which the parcel could be used include establishment of several residences and small businesses. Although the ground water is of poor quality and would require treatment, it would be sufficient for these purposes.

Tribal members traveled through what is now Death Valley Junction on their way to camps, residences, and gardens near the springs at Ash Meadows National Wildlife Refuge.

C. 640 acres at Centennial, California, together with an amount of ground water not exceed 10 acre feet per annum, for the purposes associated with such transfer.

This land is located in Inyo County, west of the Park at 4,000 to 5,000 feet in elevation. It is part of the Centennial bowl which is ringed on three sides by desert mountains, and contains creosote bush and Joshua tree woodland. Highway 190 runs to the

north and China Lake Naval Air Weapons Station lies to the south. The land would be used for a limited number of residences and small-scale economic development, subject to the availability of water and valid existing water rights.

Information provided to the Committee from the Department of the Interior is inconclusive as to full extent of available ground water on the Centennial acreage. As this report is written it is known that pumping domestic water quantities from the Lower Centennial Flat groundwater reservoir for many years may induce a measurable ground water level decline up to one mile away. However, pumping would not impact other communities in the area because the ground water in the Lower Centennial Flat basin is not *9 connected to nearby community water supply sources. Coso Spring, over 10 miles south at an elevation of about 5,400 feet, is the water supply for the town of Darwin. The Keeler water supply well, over 10 miles north, is in the alluvial fan west of the Inyo Mountains and is recharged by runoff on the fan. Nevertheless, the Committee recognizes concerns of existing water users in these areas regarding the availability of sufficient water to fulfill the Tribe's Federal water right of up to 10 acre feet per year for the Centennial parcel. The Committee notes the language of section (5)(b)(2) which provides that the priority date of the Tribe's Federal water rights shall be the date of enactment of this Act, thus designating the Tribe's water rights as junior to all existing state and Federal water rights. The Committee further observes that, if the Secretary were to seek to purchase water rights for the Tribe, the policy of the Committee and the Congress, consistent with the provisions of section (5)(d), limits the Secretary to purchase such rights only from willing sellers, at no less than fair market value.

Centennial is an important location at the western edge of the Tribe's ancestral lands in view of Hunter Mountain, a sacred site and traditional hunting and camping area. Tribal cultural history maintains that there is a sacred relationship between Hunter Mountain and the valley floors below. The area was used for both summer and winter camps, and is documented as a place where tribal members conducted communal rabbit and antelope hunts and gathered basketry materials.

D. 2,800 acres at Scotty's Junction, Nevada, together with 375.5 acre feet per annum of ground water for the purposes associated with the transfer of such lands.

Scotty's Junction is located east of the Park in Nye County, Nevada, on the junction of Highways 95 and 267 which is the access road to northern Death Valley. The land is in the Sarcobatus Flat valley bottom, and the terrain is relatively flat with low lying hot desert shrubs. The area is within the Tribe's ancestral area and several tribal families lived there, with tribal members hunting for bighorn sheep and deer until the 1940's. This parcel of land would be used for several residences and small businesses.

Scotty's Junction is supplied only by ground water from an aquifer 200 to 300 feet below the surface. The annual yield in the valley in which it is located is about 3,000 acre feet with an annual discharge of about 5 acre feet per acre. Current water use in the area is between 1,200 and 2,000 acre feet, leaving approximately 1,000 acre feet per year available on a valley-wide basis.

E. 3,000 acres at Lida, Nevada, together with 14.7 acre feet per annum of ground water for the purposes associated with the transfer of such lands.

This parcel of land is located north of Death Valley National Park in Esmeralda County, Nevada, and lies on the eastern slope of the Palmetto Mountains. Its terrain varies from gradual to steep and rugged slopes and contains a mix of hot desert shrub and pinon-juniper vegetation. The parcel is adjacent to the historic town of Lida.

The area has been used continuously by the Tribe since at least the early nineteenth century, and continues to be used for hunting, harvesting pine nuts, and ceremonies. At least five traditional villages were located in this area which is also the birthplace and *10 burial area of relatives and ancestors. There are at least four springs known to tribal members who in the past had gardens and raised cattle in the area. The land would be used for residences and for economic development.

Ground water is supplied by an alluvial fill aquifer primarily recharged by local precipitation, with annual recharge estimated to be 150 acre feet per year. Local yield, estimated to be about 30 acre feet per year, is of generally good quality and sufficient to supply several residences and small businesses.

Subsection (b)(2) provides that the priority date of the Federal water rights described in subparagraphs (A) through (E) of paragraph (1) shall be the date of enactment of this Act, that such water rights shall be junior to Federal and State water rights existing on such date, and shall not be subject to relinquishment, forfeiture, or abandonment by the Tribe.

Subsection (b)(3) limits tribal community and residential development in the Furnace Creek area to a maximum of 50 single-family residences, a tribal community center with space for tribal offices, recreation facilities, a multipurpose room and kitchen, and senior and youth facilities, and limits economic development to a small-to-moderate desert inn, a tribal museum and cultural center with a gift shop, together with the infrastructure necessary to support all such development.

Subsection (b)(3)(B) authorizes the NPS and the Tribe to negotiate visitor-related economic development in lieu of that described in the previous subparagraph if such alternative development will have no greater environmental impact.

Subsection (b)(3)(C) provides that the Tribe shall have a right-of-way for ingress and egress on Highway 190 in California.

Subsection (b)(4) states that nothing in this Act shall be construed as terminating any valid existing mining claim or limit existing rights associated with such a claim.

Subsection (c) requires the Secretary to file a legal description of the areas described in subsection (b) with the House Committee on Resources, the Senate Committee on Indian Affairs and the Senate Committee on Energy and Natural Resources within one year of enactment, and to make such description available for public inspection in NPS and BLM offices.

Subsection (d) authorizes the Secretary to purchase, from willing sellers, and to take in trust for the Tribe, approximately 120 acres known as the Indian Rancheria Site, California, and approximately 2,340 acres comprising the Lida Ranch, Nevada, or another parcel mutually agreed upon by the Secretary and the Tribe, with appurtenant or separate water rights.

Subsection (e) provides for the designation of three areas as nonexclusive special use areas wherein the Tribe, subject to other Federal law, may engage in low impact, ecologically sustainable, traditional practices pursuant to a management plan jointly established and agreed to by the Tribe, the NPS, and the BLM.

In the special use areas, in recognition of the Tribe's significant contributions to the history, ecology and culture of the Park and to ensure that the visitor experience in the Park will be enhanced by the increased and continued presence of the Tribe, the Secretary shall permit the Tribe's continued use of Park resources for traditional *11 tribal purposes, practices, and activities that are not in derogation of Park purposes and values.

These special use areas, which shall be depicted on NPS and BLM maps that are provided for general visitor use, are:

(A) Mesquite Use Area, where the Tribe may process mesquite using traditional plant management techniques such as thinning, pruning, harvesting, removing excess sand, and removing exotic species. The NPS may limit and condition, but not prohibit entirely, public use of this area, in consultation with the Tribe. The area is to be managed in accordance with the joint management plan referred to paragraph (1);

(B) Buffer Area, wherein the NPS shall restrict visitor use to protect the privacy of the Tribe to enable the Tribe to conduct community affairs without undue interruption from the public; and

(C) Timbisha Shoshone Natural and Cultural Preservation Area, where the Tribe may establish and maintain a tribal resource management field office, garage and storage area at the site of an existing ranger station at Wildrose, and tribal members may use traditional camps at Wildrose and Hunter Mountain.

The NPS and BLM shall accommodate access and use by the Tribe of this area for traditional cultural and religious activities and shall, at the request of the Tribe, temporarily close to the general public the smallest practicable portions of the area for the minimum period of time necessary to protect the privacy of tribal members engaging in traditional cultural and religious activities.

Subsection (f) provides that members of the Tribe shall have the right to enter and use the Park without payment of any fee for admission into the Park.

Subsection (g) provides that the trust lands constituting the Timbisha Shoshone Reservation shall be administered pursuant to the laws and regulations applicable to other Indian trust lands, except as otherwise provided in this Act.

Section 6. Implementation process

Subsection (a) requires the NPS, BLM and the Tribe to enter into government-to-government consultations and develop protocols to review planned development in the Park, and authorizes the NPS and the BLM to enter into cooperative agreements with the Tribe to provide training on the interpretation, management, protection, and preservation of the natural and cultural resources of the special use area as designated under Section 5.

Subsection (b) requires the NPS and the Tribe to develop mutually agreed-upon standards for size, impact, and design for use in planning, resources protection, and development of the Furnace Creek area and for the facilities at Wildrose. These standards shall be based on standards for recognized best practices for environmental sustainability and shall not be less restrictive than the environmental standards applied within the National Park System. Development in the area is to be consistent with these standards, which shall be reviewed periodically and revised as necessary.

Section 7. Miscellaneous provisions

Subsection (a) requires the Secretary, insofar as practicable, to give first preference in employment for any construction, maintenance, *12 interpretation, or other service in the Park to qualified members of the Tribe.

Subsection (b) prohibits gaming, as defined and regulated by the Indian Gaming Regulatory Act (IGRA) (25 U.S.C. 2701), on trust lands within the Park.

Subsection (c) provides that lands taken in trust for the Tribe pursuant to section 5(a) shall be considered to be the Tribe's initial reservation for purposes of section 20(b)(1)(B)(ii) of the IGRA.

Subsection (d) provides that all lands in California that are transferred in trust to the Timbisha Shoshone Tribe shall be exempt from the State's civil and criminal jurisdiction pursuant to [section 1162 of title 18, United States Code](#), and [section 1360 of title 28, United States Code](#), upon the certification by the Secretary, after consultation with the Attorney General, that the law enforcement system in place for such lands will be adequate to provide for the public safety and the public interest, except that no such certification may take effect until after three years after the enactment of this Act.

Section 8. Authorization of appropriations

This section authorizes to be appropriated such sums as may be necessary to carry out this Act.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 2102, as amended, as provided by the Congressional Budget Office, is set forth below:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 26, 2000.

Hon. Ben Nighthorse Campbell,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2102, the Timbisha Shoshone Homeland Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lanette Keith.

Sincerely,

Barry B. Anderson
(For Dan L. Crippen, Director).

Enclosure.

S. 2102—Timbisha Shoshone Homeland Act

CBO estimates that implementing S. 2102 would cost about \$14 million over the 2001–2005 period, assuming appropriation of the necessary amounts. The bill would not affect direct spending or receipts; thus, pay-as-you-go procedures would not apply. S. 2102 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). Enactment of this bill would benefit the Timbisha Shoshone tribe, and would have no significant impact on the budgets of state, local, or other tribal governments.

S. 2102 would establish a reservation for the Timbisha Shoshone Tribe of California and Nevada. The bill would direct the Secretary *13 of the Interior to take into trust for the benefit of that tribe, subject to valid existing rights approximately 7,754 acres of federal land currently administered by the Bureau of Land Management (BLM) and the National Park Service (NPS) and about 508 acre-feet per year of federal water rights. S. 2102 also would authorize the Secretary to purchase and take into trust about 2,500 acres of privately owned land. Under the bill, the agencies and the tribe could negotiate cooperative agreements for the purpose of planning, developing, and managing areas within the reservation designated for special uses by the tribe.

Based on information from the Department of the Interior, CBO estimates that purchasing additional privately owned land for the tribe would cost about \$14 million. We estimate that the administrative cost of taking the land into trust and any additional costs incurred by the land management agencies would be insignificant in any given year. According to BML and NPS, the federal land to be taken into trust currently does not generate significant receipts, and the agencies do not expect it to generate significant receipts over the next ten years.

The CBO staff contact is Nanette Keith. This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

EXECUTIVE COMMUNICATIONS

The views of the Administration on S. 2102 are set forth in the following letters of March 21, 2000, and May 1, 2000, from Donald J. Barry, assistant Secretary for Fish Wildlife and Parks, Department of the Interior, to the Chairman of the Committee on Indian Affairs, Senator Ben Nighthorse Campbell:

Department of the Interior,
Office of the Secretary,
Washington, DC, March 21, 2000.

Hon. Ben Nighthorse Campbell,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

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

For thousands of years, the Timbisha Shoshone Tribe has lived in its ancestral homelands in the Mojave Desert, much of which is now in Death Valley National Park. The Timbisha are integrally tied to this land. Since 1850 the Timbisha have been dislocated from this land, first by homesteaders and ranchers, and later by mining interests. In 1933 President Hoover established Death Valley National Monument by executive proclamation under the Antiquities Act. The order creating the Monument was silent on the question of the Timbisha Shoshone land tenure. To address this situation, the National Park Service and the Bureau of Indian Affairs entered into an agreement to establish the Timbisha Shoshone village and to construct adobe residences in the Furnace Creek Area *14 of the Monument. Unable to continue caring for their land within this unit of the park system, and limited economic opportunities in the area, many Timbisha families left the area. Today, about 50 tribal members live in seven adobe residences and eleven mobile residences at Furnace Creek.

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

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

S. 2102 would transfer into trust for the benefit of the Timbisha Shoshone approximately 320 acres of Furnace Creek in Death Valley National Park, and 7,240 acres of land close to the park, located in California and Nevada and currently under the administration of the Bureau of Land Management (BLM). The bill also authorizes the purchase of two additional properties now in private ownership, to be taken into trust for the tribe. Each of these lands is located within the ancestral homeland of the Timbisha Shoshone Tribe, and each is of particular historical, cultural, or spiritual significance.

Over 95 percent of the acreage to be taken into trust for the Timbisha is presently under the jurisdiction of the BLM. The acreage is to be transferred in four parcels, which are located in Centennial, California; Death Valley Junction, California; Scotty's Junction, Nevada; and Lida, Nevada. While the current California Desert Conservation Protection Plan specifies that the Centennial and Death Valley Junction parcels are to be retained by BLM, the BLM now believes, based on its analysis of the current uses and resource values, that these parcels are suitable for legislative transfer to the tribe. Each of the 2,800 acre parcels located in Scotty's Junction and Lida, Nevada, have been classified as suitable *15 for disposal in BLM management plans. The parcel at Scotty's Junction is suitable for tribal residences, or development. The parcel at Lida, Nevada, is an area that once had five traditional Timbisha villages, and continues to be used by the tribe. It is also suitable for residences and economic development. The 640-acre parcel at Centennial, California, lies to the west of Death Valley National Park, and would preserve a tribal presence on the western edge of its ancestral homelands. It is suitable for residences. The 1,000-acre parcel at Death Valley Junction, California, is located at the main entrance to the park and is suitable for economic development and residences.

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

The land that is central to the Timbisha's present-day existence is the 300-acre parcel at Furnace Creek, Death Valley National Park. This site is the current home of the Timbisha, and has the potential for modest economic development. This potential is recognized by Section 5(b)(2) of S. 2101, which would allow the Timbisha to construct and operate a small to moderate desert inn and a tribal museum on this land. S. 2102 also allows for the construction of residences and a community center at Furnace Creek, while recognizing the need to ensure the protection of national park resources.

Section 5(d)(4) of S. 2102 authorizes the National Park Service and the Bureau of Land Management to designate certain areas for nonexclusive special uses subject to Federal law. This section creates a unique partnership between the Timbisha Shoshone and federal land managers and encourages collaborative efforts to learn from the tribe's traditional knowledge of the area. These areas would remain in federal ownership, and applicable laws relating to wilderness, endangered species, and cultural resources would remain in force. Tribal members would use these areas for low-impact, ecologically sustainable, traditional practices pursuant to jointly established management plans. The allowed traditional uses of the tribe would not include the taking of wildlife within Death Valley National Park.

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

The proposed special use area called the Timbisha Shoshone Natural and Cultural Preservation Area encompasses nearly one-half of Death Valley National Park. It is located primarily within the Park, although it includes a small area in California managed by *16 the BLM. We support this designation as it recognizes the tribe's contributions to the history, culture, and ecology of the region and the inherent value of the tribe's continued presence in the Park. Consistent with such designation, the Secretary would be directed to permit the tribe's continued use of park resources for traditional tribal purposes, practices and activities, as defined in a jointly established management plan. Within this large area, two smaller areas would be designated for special tribal uses, one at Wildrose, and the other at Hunter Mountain. Portions of these areas are not designated wilderness areas. Wildrose was an area that the Tribe used for seasonal residence to escape the summer heat, and for the harvest and processing of pinyon nut which continue to be important in the tribal diet. The bill provides for a tribal resource management office, a garage and storage facility at Wildrose within the area of the existing ranger station, and for traditional use camps at areas agreed to by the tribe and the National Park Service. Hunter Mountain is an important ceremonial area containing burials

and sacred sites. The bill provides for traditional use camps at Hunter Mountain, also in non-wilderness locations agreed to by the tribe and the National Park Service.

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

S. 2102 provides that all of the parcels taken into trust would constitute the initial reservation of the Timbisha Shoshone Tribe under the Indian Gaming Regulatory Act. Consequently, class II gaming, commonly known as bingo, could occur on the parcels if the state in which the parcel is located permits such gaming and the tribe has a gaming ordinance approved by the National Indian Gaming Commission. Class III gaming, commonly known as casino gaming, can occur on these parcels only if: (1) class III gaming is permitted by the state, (2) the tribe has a gaming ordinance approved by the National Indian Gaming Commission, and (3) the tribe and the governor of the state within which the parcel is located successfully negotiate a gaming compact.

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

S. 2102 also provides for a prohibition on gaming on the Furnace Creek parcel within Death Valley National Park. This prohibition is consistent with the agreement the Department negotiated with the Timbisha Shoeshone Tribe during our study process. Both the Tribe and Department agreed that gaming on the Furnace Creek parcel would be inconsistent with tribal and park purposes and values. We are recommending that Section 7(c) of S. 2102 be amended *17 to make it clear that the Furnace Creek parcel would not be considered part of the Timbisha Shoshone's "initial reservation" for purposes of gaming under the Indian Gaming Regulatory Act.

The Department strongly supports S. 2102. The bill would create a foundation for the tribe to live in a modern community and to exercise its right to self-determination within the boundaries of the largest national park in the "lower 48." The bill also recognizes that the interests of the tribe and the National Park Service would be enhanced by recognizing their coexistence on the same land and by establishing partnerships for compatible land uses. Quite simply, we believe that this bill would create the foundation for a better park—a park in which the contributions of the tribe to the history, culture and ecology of the region are recognized and interpreted in ways not now possible.

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

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

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

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

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

Sincerely,

Donald J. Barry,
Assistant Secretary for
Fish, Wildlife, and Parks.
*18 Department of the Interior,
Office of the Secretary,
Washington, DC, May 1, 2000.

Hon. Ben Nighthorse Campbell,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

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

In addition, we are submitting a complete set of all the maps referenced in the legislation in an 8½ x 11 format and poster-size GIS maps of the land transfer parcels and the special use areas. Please note that only one map, Map #8 entitled "Furnace Creek trust parcels and cooperative agreement areas," is provided for the "Mesquite Use Area" and for the "Buffer Area" described in the proposed legislation.

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

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

We appreciate your consideration of these amendments.

Sincerely,

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

DEPARTMENT OF INTERIOR PROPOSED AMENDMENTS TO S. 2102
A BILL "TO ESTABLISH A TIMBISHA SHOSHONE HOMELAND"

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

Section 5(e)(3) Page 11, line 24, after "shall not" insert "include the taking of wildlife and shall not".

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

Section 7(c), Page 17, line 1, replace with the following: "The lands taken into trust for the Tribe, except for the Park land described in section 5(b)(1)(A), shall be considered to be the Tribe's initial reservation for purposes of section 20(b)(1)(B)(ii) of the Indian Gaming Regulatory Act (25 U.S.C. 2719(b)(1)(B)(ii))."

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

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

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

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

Section 5(b)(1)(A) Furnace Creek, page 6, line 8, after "Map #1 and dated December 3, 1999" insert: "together with 92 acre feet per annum of surface and ground water for the purposes associated with the transfer of lands."

Section 5(b)(1)(B) Death Valley Junction, page 6, line 24, after "Map #2 and dated December 3, 1999" insert: "together with 15.1 acre feet per annum of ground water for the purposes associated with the transfer of lands."

Section 5(b)(1)(C) Centennial, page 7, line 4, after "Map #3 and dated December 3, 1999" insert: "together with an amount of ground water not to exceed 10 acre feet per annum for the purposes associated with the transfer of lands."

Section 5(b)(1)(D) Scotty's Junction, page 7, line 9, after "Map #4 and dated December 3, 1999" insert: "together with 375.5 acre feet per annum of ground water for the purposes associated with the transfer of lands."

Section 5(b)(1)(E) Lida, page 7, line 14, after "Map #5 and dated December 3, 1999" insert: "together with 14.7 acre feet per annum of ground water for the purposes associated with the transfer of lands."

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

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

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill S. 2102, as amended. The Committee finds that the regulatory impact of S. 2102, as amended, will be minimal.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill are required to be set forth in the accompanying Committee report. The Committee states that enactment of S. 2102 will not result in any changes in existing law.

1 Timbisha Shoshone Tribe "Tribal Needs Assessment and Socio-Economic Profile", Vallo and Associates, Sacramento, California for California Indian Manpower Consortium, Inc., Sacramento California. March 1994

2 Ibid.

3 Ibid.

S. REP. 106-327, S. Rep. No. 327, 106TH Cong., 2ND Sess. 2000, 2000 WL 893003 (Leg.Hist.)

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