

ATTACHMENT 4

**TIMBISHA SHOSHONE
CONSTITUTION**

Timbisha Shoshone Tribe
Timbisha Shoshone Constitution

Adopted February 17, 1986

TIMBISHA SHOSHONE CONSTITUTION

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CONSTITUTION OF THE
TIMBISHA SHOSHONE INDIAN TRIBE

Inyo County

Death Valley, California

PREAMBLE

We, the Timbisha Shoshone Indian Tribe, being a sovereign native people, in order to organize for our common good, to maintain and foster our tribal culture, to protect and conserve our land and natural resources, to promote the social, economic and general welfare of our people, to maintain peace and order, and secure the rights and powers inherent in our sovereign status, guaranteed to us by the laws of the United States, do hereby establish and adopt this document in accordance with the Indian Reorganization Act of June 18, 1934 (48 Stat. 984) as amended which from this time forward shall govern the Timbisha Shoshone Indian Tribe.

ARTICLE I

Name

The name of this organization shall be the Timbisha Shoshone Indian Tribe, hereinafter referred to as "the Tribe".

ARTICLE II

Territory and Jurisdiction

The jurisdiction of the Tribe shall extend to all lands,

water and resources within the exterior boundaries of what shall become the Timbisha Shoshone Indian Reservation and to such other lands, water and resources as may be thereafter acquired by the Tribe.

ARTICLE III

Membership

Section 1.

Membership in the Timbisha Shoshone Indian Tribe shall consist of the following:

a. All persons who filed as Timbisha Shoshone Indians and were listed on the genealogy roll prepared as of March, 1978 and used to request federal acknowledgment and recognition of the Tribe;

b. All persons who are lineal descendants of any person designated in subsection (a) above and who possess at least one-fourth (1/4) degree Indian blood of which one-sixteenth (1/16) degree must be Timbisha Shoshone blood;

c. All persons of Indian blood upon whom membership is conferred by adoption.

Section 2.

A person who has been allotted or given a land assignment on another reservation or is officially enrolled with or is a recognized member of some other tribe or band shall not be enrolled.

Section 3.

The official membership roll shall be prepared in accordance with an ordinance adopted by the tribal council. Such ordinance shall contain provisions for enrollment procedures, enrollment committees, application form, approval or disapproval of

applications, rejection notices, appeals, corrections, adoptions, disenrollment procedures and provisions for keeping the roll on a current basis.

Section 4.

No person shall be enrolled as an adopted member of the Tribe unless he/she possesses at least one-fourth (1/4) degree Indian blood and has been approved by a majority vote of the General Council.

Section 5.

Any person who wishes to withdraw from membership in the Tribe must submit his withdrawal in writing to the Tribal Council Chairperson who shall direct the enrollment committee to adjust its records accordingly.

Section 6.

The Tribal Council shall revoke membership status from any individual whom the enrollment committee has determined was erroneously, fraudulently or otherwise incorrectly enrolled.

ARTICLE IV

Governing Body

Section 1.

The powers of the government of the Tribe shall be divided into three distinct branches; the General Council, the Tribal Council and the Tribal Judiciary. No branch, group or person charged with the exercise of powers properly belonging to one of these branches shall exercise any powers belonging to one of the other branches, except as otherwise specified in this document.

Section 2.

The governing body of the Tribe shall be the General

Council. The General Council shall consist of all tribal members sixteen (16) years of age or older. All members of the General Council shall be able to vote at all General Council meetings and all tribal elections, referenda, initiatives, recalls and repeals.

Section 3.

In addition to the General Council, there shall be elected from the General Council, a Tribal Council. The Tribal Council shall be composed of five (5) persons elected by the General Council. The Tribal Council shall exercise, concurrently with the General Council, all powers delegated to it by the General Council in Article V of this document and otherwise vested in the Tribal Council by this document.

Any member of the Tribe who is eighteen (18) years old or older shall be eligible to serve as a member of the Tribal Council, provided that not more than one additional immediate family member of any person already serving on the Tribal Council may serve on the Tribal Council. For purposes of this section, "immediate family member" shall mean mother, father, brother, sister, spouse or child.

ARTICLE V

Powers

Section 1. General Council

a. All powers of the Tribe shall be vested in the General Council, subject to any limitation imposed upon such powers by the laws of the United States, including those powers delegated to the Tribal Council and any such other powers as may in the future be granted or delegated to the Tribe by federal law.

b. The General Council shall exercise its powers of self-government through the initiative, referendum, repeal and recall powers as set forth in this document.

c. The following powers shall be exclusively reserved to the General Council. No exercise of these powers by the Tribal Council or by any other agency or officer of the Tribe shall be effective unless the General Council has given its consent to such action in accordance with Article V of this document:

1. No sale, disposition, encumbrance of tribal lands, interest in lands or other Tribal assets shall be made without the consent of the General Council.
2. The power to regulate any tribal hunting or fishing rights.
3. The power to revoke, terminate or diminish a right reserved or delegated to the Tribe by federal law.
4. The power to grant or relinquish any tribal jurisdiction to any other government, political subdivision of a government agency, organization, association or person.
5. The power to waive the Tribe's immunity from suit.
6. The power to set compensation for Tribal Council members, officers and committee members, as it believes is advisable.
7. The power to reassume jurisdiction over juvenile matters pursuant to the Indian Child Welfare Act of 1978, Public Law 95-608, 92 Stat. 3069.

All powers that are not expressly mentioned in this document or which are not expressly delegated in this document by the General Council to the Tribal Council or any other officer or agency of the Tribe, shall not be abridged but shall be reserved to the General Council.

Section 2. Tribal Council

The General Council hereby delegates to the Tribal Council the following enumerated powers subject only to those limitations imposed by this document and the laws of the United States:

a. On behalf of the Tribe, to consult, negotiate, contract or conclude agreements with federal, state, local and tribal governments and with private persons and organizations;

b. To employ legal counsel of its choice on behalf of the Tribe or for the benefit of tribal members and to fix the fees for such counsel in accordance with federal law;

c. To make recommendations to the Secretary of the Interior or to his authorized representative with regard to all appropriation estimates for all projects which are for the benefit of the members of the Tribe, prior to the submission of such estimates to the Office of Management and Budget and Congress, or to the State of California;

d. To borrow money from public and private sources and to pledge, mortgage or assign tribal assets except as provided in Sections 2, 3, 4, and 5 of this Article;

e. To set aside and to spend tribal funds for tribal purposes;

f. To impose taxes on all persons, property and business activities located or conducted within tribal jurisdiction,

provided no tax shall be imposed on real property held in trust by the United States of America;

g. To regulate the use and development of all tribal lands, whether assigned or unassigned, and to manage, lease or otherwise use all unassigned tribal lands. Toward this end the Tribal Council shall, within one year of the effective date of this document, submit for approval to the General Council a land assignment and a land use law;

h. To charter and regulate corporations, cooperatives, associations, special districts, housing authorities, educational and charitable institutions, political subdivisions and other entities;

i. To license and regulate the conduct of all business activities within tribal jurisdiction;

j. To establish business enterprises as branches or agencies of the tribal government and otherwise to engage in business activities and projects which promote the economic well-being of the Tribe and its members;

k. To purchase and to acquire in other ways land and other property;

l. To condemn for tribal purposes real property or interest in real property within tribal jurisdiction, provided that the owners of assignments or property condemned by the Tribal Council shall be paid fair market value for the assignment or property and all improvements made thereon by the assignee or owner, and provided further that an assignee of condemned tribal lands shall be assigned alternative tribal lands of comparable condition and value; and provided further that no assignments shall be con-

demned without the approval of the General Council;

m. To manage, develop, protect and regulate the use of water, minerals and all other natural resources within tribal jurisdiction;

n. To enact laws, statutes and codes governing conduct of individuals and proscribing offenses against the Tribe; to maintain order, to protect the safety and welfare of all persons within tribal jurisdiction; and to provide for the enforcement of the laws and codes of the Tribe;

o. To establish tribal courts or courts of Indian offenses from time to time as may be required, and to provide for the court or courts jurisdiction, procedures and a method for the selection of judges;

p. To prescribe conditions under which non-members may enter and remain on the reservation and to establish procedures for the exclusion of non-members from any land within the Tribe's jurisdiction;

q. To assert as a defense to lawsuits against the Tribe, the sovereign immunity of the Tribe, except that no waiver of sovereign immunity can be made by the Tribal Council without prior approval of the General Council;

r. To regulate the domestic relations of members of the Tribe; to provide for the guardianship of minors and incompetent persons within tribal jurisdiction; to provide services for the peace, safety, health, education and general welfare of the members of the Tribe;

s. To regulate the inheritance of all lands within tribal jurisdiction and all property owned by persons within tribal

jurisdiction; and to provide for escheat of property to the Tribe, provided that no law, statute, code or ordinance governing the inheritance of property owned by tribal members shall be in violation of federal law;

t. To enact ordinances consistent with this document establishing procedures for the nomination, election, removal and recall of tribal officers;

u. To appoint, direct and set the compensation of a tribal business administrator or manager; and to establish policies and procedures for the employment of tribal personnel;

v. Subject to any limitations contained in this document to delegate any powers vested in the Tribal Council to subordinate tribal officers, tribal employees or other appropriate persons;

w. To take all actions which are necessary and proper for the exercise of the powers enumerated in this document and which are otherwise consistent with, and in furtherance of, tribal customs, traditions and beliefs, and any other powers which may hereafter be vested in the Tribal Council; and ✓

x. Except as provided in this document, to establish its own rules of procedures.

Section 3. Reserve Powers of General Council

The Tribal Council shall have all the appropriate powers necessary to implement specific provisions of this document and to effectively govern tribal affairs. All powers heretofore vested in the Tribe, but not specifically referred to in this document, shall not be abridged, but shall be reserved to the General Council.

Section 4. Limited Power to Transfer Tribal Land Out of

Tribal Ownership

The Tribal Council shall not transfer land or interests therein out of tribal ownership by any means unless prior to any such transfer taking effect, such proposed transfer is approved by:

a. A vote of two-thirds (2/3) of the General Council provided that at least forty-five (45) people who are entitled to vote are present;

b. The Secretary of the Interior;

Provided, however, the Tribal Council may exchange land, prior to it becoming tribal land, however, such exchanges must be approved by a two-thirds (2/3) vote of the General Council before the exchange.

Section 5. Limited Power to Encumber Tribal Land

a. Except as permitted by Subsection (b) of this Section, the Tribal Council shall not pledge, mortgage, lease or grant licenses to use land, (whether revocable or irrevocable) or otherwise encumber tribal land or interests therein unless it is approved by the Secretary of the Interior and by a vote of a majority of the General Council voting on the question, Provided that at least forty-five (45) persons who are entitled to vote are present.

b. The Tribal Council may authorize the following encumbrances by a vote of a majority of the entire Tribal Council:

1. Grants of permission to members of the Tribe and qualified non-members in accordance with provisions of this document, to use specified portions of tribal land for residential, agricultural, com-

mercial or industrial purposes.

2. Grants of rights-of-way over tribal land or interests therein; for the purposes of providing municipal services, such as water, sewer disposal, electricity, telephone and roads, to and for the benefit of tribal members, or the heirs and descendants of tribal members who had a land use assignment or lease.

Section 6. Limited Power to Develop Natural Resources

The Tribal Council shall not develop on a commercial or industrial basis any natural resources of the Tribe without the consent of a majority vote of the General Council, provided that at least forty-five (45) persons who are entitled to vote are present.

Section 7. Principal of Construction

Section 5, 6 and 7 of this Article shall not be construed to deny to the Tribal Council its governmental power and authority to regulate activities on tribal land for the Tribe's general welfare, including, but not limited to, zoning, the regulation of commercial ventures, fishing, hunting and other sports activities, and for the purpose of promoting the health, safety and welfare of tribal members and the conservation and protection of tribal resources.

ARTICLE VI

Elections

Section 1.

An election board, appointed by the chairperson and approved by the Tribal Council, shall supervise and administer all elec-

tions in accordance with the election ordinance enacted by the Tribal Council in accordance with this document, within three months of the effective date of this document.

Section 2.

Members of the Tribal Council shall be chosen by secret ballot, the form of which shall be established by the election ordinance enacted by the Tribal Council. The Tribal Council shall also make provision in the election ordinance for absentee voting.

Section 3.

All present officials shall continue to hold office until the first general election date following the adoption and ratification of this document. The first election of Tribal Council members and officers of the Tribe under this document shall be held on the first general election date following the effective date of this constitution. Procedures for the first election shall be consistent with the provisions of this Article and the election ordinance, should it be established at that time, and be administered by the present officials. Thereafter all elections shall be conducted in accordance with this document and the election ordinance.

At the first election held pursuant to this document, the two members receiving the highest number of votes shall hold office for three (3) years and the remaining members shall hold office for two years. Thereafter, the candidate(s) receiving the highest number of votes shall fill the vacancy or vacancies for two year terms of office.

Section 4.

a. Any qualified member of the Tribe who desires that his or her name be placed on the ballot as a candidate for the Tribal Council shall file with the Tribal secretary a statement of intent stating his or her name and address. Such statement shall be filed thirty (30) days prior to the next general election or special election. If only one qualified member files a statement of intent for a tribal office, a special meeting of the General Council shall be convened for the purpose of taking nominations from the floor for a candidate or candidates for that office; however, no more than the first three (3) nominations will be accepted from the floor for any one position.

b. General elections to vote for Tribal Council members shall be held annually on the second Tuesday of the month of November. Notice of the general elections shall be posted by the secretary of the Tribal Council at least twenty (20) days before each such election at the Tribe's business office, the voting place, and in three or more additional public places. In case the date of the general election should conflict with a holiday, the election shall be held on the following work day.

c. All newly elected officials shall assume their offices thirty (30) days after the election in which they were elected.

d. A tie vote shall be decided only by holding a general election within thirty (30) days from the date of the previous general election that resulted in a tie. Only those receiving the same number of votes shall be candidates in the subsequent election. The person receiving the highest number of votes for the particular office shall hold that office.

Section 6.