

United States District Court
District of Columbia

Timbisha Shoshone Tribe,
P.O. Box 206
Death Valley, California 92328,

Joe Kennedy, Chairman,
Timbisha Shoshone Tribal Council,
P.O. Box 206
Death Valley, California 92328,

Joe Kennedy, in his individual capacity,
HC 72 Box 05002
Dyer, Nevada 89010,

Angie Boland
P.O. Box 243
Death Valley, California 92328,

Madeline Esteves
P.O. Box 333
Death Valley, California 92328,

Pauline Esteves
P.O. Box 108
Death Valley, California 92328,

Grace Goad
P.O. Box 421
Death Valley, California 92328,

Plaintiffs,

v.

Kenneth Salazar, Secretary of the Interior,
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240,

The Department of the Interior,
1849 C Street, N.W.
Washington, D.C. 20240,

Timothy Geithner, Secretary of the Treasury,
Department of the Treasury
1500 Pennsylvania Avenue
Washington, D.C. 20220, and

The Department of the Treasury,
1500 Pennsylvania Avenue
Washington, D.C. 20220,

Defendants

COMPLAINT

1. This is a civil action seeking declaratory and injunctive relief on the ground that an act of Congress, the Western Shoshone Claims Distribution Act (“the Act”), orders a taking of a fund of money belonging in part to Plaintiff Timbisha Shoshone Tribe, without compensation in violation of the takings and equal protection guarantees of the Fifth Amendment to the Constitution of the United States. That fund of money, now in the United States Treasury, will be expropriated and distributed to others by the Defendant Secretary of the Interior pursuant to the Act unless relief is granted. This action challenges the Act as directing an unconstitutional taking and as a deprivation of rights based on Plaintiffs’ ancestry or race, in violation of the Fifth Amendment.

JURISDICTION AND VENUE

2. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1331 and

1362. Venue lies in this District under 28 U.S.C. §1391(b) and (e).

3. Plaintiffs' claim for relief arises under the Fifth Amendment to the United States Constitution and the Western Shoshone Claims Distribution Act, P.L. 108-270, 118 Stat. 805 (July 7, 2004).

PARTIES

4. Plaintiff Timbisha Shoshone Tribe is an American Indian nation recognized by the United States and particularly by the Defendant Secretary of the Interior (74 Fed. Reg. 40218 ("Death Valley Timbi-Sha Shoshone Band of California")), with offices on its trust lands near Furnace Creek, within Death Valley National Park. Its citizens or members are Indian persons generally known as Western Shoshones. It is a part of the Western Shoshone Nation.

5. Plaintiff Timbisha Shoshone Tribe is governed by its Tribal Council pursuant to the Timbisha Shoshone Tribe's Constitution. The Timbisha Shoshone Tribal Council authorized the filing of this action by resolution of April 18, 2010.

6. Plaintiff Joe Kennedy is Chairman of the Timbisha Shoshone Tribal Council, and he sues in his official capacity and in his individual capacity as a citizen or member of the Timbisha Shoshone Tribe on behalf of the Tribe.

7. Plaintiff Angie Boland is a member of the Timbisha Shoshone Tribal Council, and she sues in her official capacity and in her individual capacity as a citizen or member of the Timbisha Shoshone Tribe on behalf of the Tribe.

8. Plaintiff Madeline Esteves is a member of the Timbisha Shoshone Tribal

Council, and she sues in her official capacity and in her individual capacity as a citizen or member of the Timbisha Shoshone Tribe on behalf of the Tribe.

9. Plaintiff Pauline Esteves is a citizen or member of the Timbisha Shoshone Tribe, and she sues in her individual capacity as a member of the Timbisha Shoshone Tribe on behalf of the Tribe.

10. Plaintiff Grace Goad is a member of the Timbisha Shoshone Tribal Council, and she sues in her official capacity and in her individual capacity as a citizen or member of the Timbisha Shoshone Tribe on behalf of the Tribe.

11. Defendant Kenneth Salazar is the Secretary of the Interior. He has been directed by Congress pursuant to the Western Shoshone Claims Distribution Act to distribute the funds at issue in this action to others and not to Plaintiff Timbisha Shoshone Tribe. He is sued in his official capacity.

12. The Department of the Interior is the department of the federal government with general responsibility for matters concerning American Indian nations, including Plaintiff Timbisha Shoshone Tribe. The Department of the Interior has legal control over the fund of money belonging in part to Plaintiff Timbisha Shoshone Tribe.

13. Defendant Timothy Geithner is Secretary of the Treasury. He is sued in his official capacity.

14. The Department of the Treasury is named as a Defendant, because the fund of money at issue is now held in an account in the United States Treasury.

FACTUAL ALLEGATIONS

15. Plaintiff Timbisha Shoshone Tribe has existed as an Indian, land-holding entity in its homeland since time immemorial. The homeland or original territory of the Plaintiff Timbisha Shoshone Tribe is an area of land in what is now known as Nevada and California, including present day Death Valley National Park.

16. In 1951, a claim was filed ostensibly on behalf of the “Shoshone Tribe” before the Indian Claims Commission pursuant to the Indian Claims Commission Act, 60 Stat. 1049 *et seq.*, 25 U.S.C. §70 (1976 ed.). The Commission decided that the claims of the Western Shoshone tribes should be separated from the claims of other Shoshone tribes and considered as a separate case known as *Western Shoshone Identifiable Group v. United States*. The Commission decided that the Temoak Bands was a proper representative of the Identifiable Group. The claim sought compensation for the alleged taking of a large area of the Western Shoshone homeland in Nevada and in California, including particularly the land belonging to and used by Plaintiff Timbisha Shoshone Tribe since time immemorial.

17. Plaintiff Timbisha Shoshone Tribe has at all times been a part of the Western Shoshone Identifiable Group as described by the Indian Claims Commission. The Timbisha Shoshone Tribe has resided in the Death Valley area of the Great Basin and elsewhere since time immemorial. Its ancestral homeland was included in the area identified by the Indian Claims Commission as the land of the Western Shoshone Identifiable Group. The Timbisha Shoshone Tribe received formal recognition by the federal government in 1983. The Tribe had no reservation or territory formally

recognized by the federal government until 2000, when the Timbisha Homeland Act created a permanent land base in trust for the Tribe both within and outside of the Death Valley National Park.

18. The land that was the subject of the 1951 claim before the Indian Claims Commission has at all relevant times belonged to the Western Shoshone Nation or the several Western Shoshone nations or tribes recognized by the United States today, including Plaintiff Timbisha Shoshone Tribe, not to Western Shoshone individuals.

19. Most of the land that was the subject of the claim had not in fact been taken by the United States either as a practical matter or as a matter of law. When the Western Shoshone tribes discovered that the claim was incorrect or fraudulent, they sought for many years to stop or stay the claim and to retain ownership of their lands.

20. The Indian Claims Commission, however, refused to stop or stay the claim or to allow the Western Shoshone tribes to amend the claim to seek damages only for actual takings and actual wrongs by the United States.

21. Over continuing formal protests by the tribes, and based only upon a stipulation that, for purposes of valuation, the land had been taken on a certain date when in fact it had not been taken at all, the Indian Claims Commission entered judgment for \$26,145,189.89 on August 15, 1977. The Court of Claims affirmed the judgment, and the judgment became final. *Temoak Band of Western Shoshone Indians v. United States*, 593 F.2d 994 (9th Cir. 1979). The award was automatically appropriated pursuant to 31 U.S.C. §724a (Supp. V 1981) and was paid into a trust account in the United States Treasury for the benefit of the Western Shoshone Identifiable Group, including Plaintiff

Timbisha Shoshone Tribe.

22. At that time, if not earlier, Plaintiff Timbisha Shoshone Tribe became the owner of an undivided share of the judgment fund described in the previous paragraph, the fund of money that is in issue in this case.

23. Some citizens of the Western Shoshone Nation, including Mary and Carrie Dann and the Dann Band, sought to remain in possession of portions of the Western Shoshone lands that were the subject of the claim in *Western Shoshone Identifiable Group v. United States*. However, the United States Supreme Court ruled that when the judgment fund was deposited into an account in the United States Treasury, “payment” had occurred within the meaning of the Indian Claims Commission Act and that, therefore, no claim to the land itself could be made against the United States.

24. Most, perhaps all, of the Western Shoshone tribes continued to demand that the United States take steps to return or recognize at least some of the land in question, most of which is still held by the United States. These tribes, including Plaintiff Timbisha Shoshone Tribe, declined to seek an actual payment or distribution of the judgment fund until a general resolution of the Western Shoshone land issues could be negotiated with the United States.

25. These tribes, particularly Plaintiff Timbisha Shoshone Tribe, did not waive or give up their respective undivided shares of the judgment fund, but they did not want a distribution of the fund to become a pretext for refusing to resolve their long-standing demands for a negotiated land settlement.

26. The Western Shoshone tribes today hold only small areas of land recognized

by the United States government as shown in the following table:

	<u>Trust Land in Acres</u>
Ely Shoshone Tribe	3,601.00
Elko Band Colony	192.80
Battle Mountain Band Colony	691.25
South Fork Band Colony	13,913.34
Wells Band Colony	80.00
Duckwater Shoshone Tribe	3,854.52
Yomba Shoshone Tribe	4,718.00
Timbisha Shoshone Tribe	7,753.00

27. Today, most of the land that was the subject of *Western Shoshone Identifiable Group v. United States* is held and administered by the United States itself as unappropriated public domain and is not settled or occupied by others.

28. Starting in about 2001, a law firm contracted with a number of Western Shoshone individuals, not the tribes that own the judgment fund, to seek an act of Congress that would take the fund of money from the tribes and distribute it to individuals.

29. Eventually, despite the active opposition of a majority of the federally recognized Western Shoshone tribal governments, Congress passed the Western Shoshone Claims Distribution Act on July 7, 2004.

30. The Act provides that Defendant Secretary of the Interior shall establish a “Western Shoshone judgment roll” consisting of all individuals who have at least 1/4 degree of Western Shoshone blood, are citizens of the United States, and are living on the date of the enactment of the Western Shoshone Claims Distribution Act. Section 3(b).

However, the Act makes ineligible “[a]ny individual that is certified by the Secretary to be eligible to receive a per capita payment from any other judgment fund based on an aboriginal land claim awarded by the Indian Claims Commission, the United States Claims Court, or the United States Court of Federal Claims, that was appropriated on or before the date of enactment of this Act,” Section 3(b)(2).

31. Thus, the Act does not provide for distribution to all the members or citizens of the Western Shoshone tribes, but rather directs the Secretary of the Interior to distribute the money to individuals according to the criteria established in the Act, as described above, irrespective of whether they are members or citizens of any of the Western Shoshone tribes.

32. The Act directs the Defendant Secretary of the Interior to distribute all of the judgment fund to the individuals on the judgment roll. Section 3(c).

33. No funds at all are to be reserved for or distributed to Plaintiff Timbisha Shoshone Tribe or to any of the Western Shoshone tribes. Congress has made no provision for compensating Plaintiff Timbisha Shoshone Tribe or any of the tribes for the taking of the judgment fund.

34. An American Indian nation or tribe, such as Plaintiff Timbisha Shoshone Tribe, is a distinct political, governmental and legal entity. It is not identical to nor the same as the individual citizens of the nation or tribe. Property owned by the Tribe as a legal entity is not owned by its citizens or members.

35. The Secretary of the Interior and the Department of the Interior will, unless restrained, pay out the entire Western Shoshone judgment fund as directed by the Western

Shoshone Claims Distribution Act, thus effecting a complete taking of Plaintiff Timbisha Shoshone Tribe's share of the fund.

36. Plaintiff Timbisha Shoshone Tribe has few economic assets and very little revenue to support its governmental responsibilities. The United States has already deprived Plaintiff Timbisha Shoshone Tribe of the use of nearly all its homeland. If the fund of money is paid out to individuals, Plaintiff will be deprived of a much needed asset.

FIRST CAUSE OF ACTION
THE ACT VIOLATES THE FIFTH AMENDMENT TAKINGS CLAUSE

37. Plaintiffs re-allege paragraphs 15 through 36 above.

38. Plaintiff Timbisha Shoshone Tribe is the owner of an undivided share of the judgment fund described in paragraph 21 above. That undivided share of the judgment fund is, therefore, the private property of the Plaintiff Timbisha Shoshone Tribe.

39. The Western Shoshone Claims Distribution Act directs the Secretary of the Interior to take the entirety of the judgment fund, including the share of the Plaintiff Timbisha Shoshone Tribe, and to distribute all of that fund to various individuals.

40. No part of the judgment fund is to be paid to or left for the Plaintiff Timbisha Shoshone Tribe or any of the other tribes that own a share of the fund.

41. The Western Shoshone Claims Distribution Act makes no provision for compensation to Plaintiff Timbisha Shoshone Tribe or any other tribe for the prospective taking of the judgment fund.

42. The Plaintiff Timbisha Shoshone Tribe has never consented to the taking or distribution to individuals of its share of the judgment fund.

43. Unless restrained, the Defendants Secretary of the Interior and the Department of the Interior will take from the Treasury and distribute the fund of money as directed by the Western Shoshone Claims Distribution Act, thus effecting a complete taking of funds presently belonging to the Western Shoshone Identifiable Group, including Plaintiff Timbisha Shoshone Tribe's share of the fund.

44. If the fund of money is taken and distributed by the Secretary as directed by the Act, Plaintiffs will suffer irreparable injury, because the fund will be disbursed to thousands of as yet unknown individuals and will as a practical matter be impossible to recover. Plaintiffs have no adequate remedy at law. Recovery of the share of the fund belonging to Plaintiff Timbisha Shoshone Tribe would require countless suits in many jurisdictions, the cost of which would be beyond the means of Plaintiffs and would surely exceed any possible recovery.

SECOND CAUSE OF ACTION

THE ACT DENIES EQUAL PROTECTION OF THE LAW

45. Plaintiffs re-allege paragraphs 15 through 44.

46. The Act denies to Plaintiffs, based on Plaintiffs' Indian ancestry or race, certain constitutional, statutory and common law rights, including the right to just compensation for a taking, that others in the United States routinely enjoy and that Congress and Defendants regularly extend to others.

47. Indian nations or tribes have a particular, recognized status in the Constitution, but nothing in the Constitution requires or implies that, because of that status, Indian nations or tribes or persons of Indian ancestry may be denied rights guaranteed to all by the Constitution, and denial of such rights, by an act of Congress or the actions of federal officials based on ancestry or race is a violation of the Fifth Amendment.

48. The Western Shoshone Claims Distribution Act and the actions of the Defendants Secretary of the Interior and the Department of the Interior under the Act are invidious, harmful, and detrimental to Plaintiffs and are based on the Indian race or ancestry of Plaintiffs.

49. Because of the Indian ancestry or race of the citizens of the Plaintiff Timbisha Shoshone Tribe, Congress and Defendants have subjected Plaintiff Timbisha Shoshone Tribe to invidious, harmful, and detrimental laws, policies, and government actions that apply only to and are directed only at Indian or Alaska Native tribes or nations.

50. The Western Shoshone Claims Distribution Act and the related actions of Defendants Secretary of the Interior and the Department of the Interior deprive the Plaintiffs of due process of law and the equal protection of the law in violation of the equal protection guarantee of the Fifth Amendment to the Constitution.

RELIEF

WHEREFORE, Plaintiffs ask this Court:

1. For a declaratory judgment that the Western Shoshone Claims Distribution Act

is unconstitutional and void on the ground that it takes the property of the Plaintiff Timbisha Shoshone Tribe without compensation in violation of the Fifth Amendment to the Constitution;

2. For a declaratory judgment that the Western Shoshone Claims Distribution Act is unconstitutional and void on the ground that it deprives the Plaintiff Timbisha Shoshone Tribe of due process of law and the equal protection of the law in violation of the Fifth Amendment to the Constitution;

3. For a permanent injunction restraining Defendants from distributing any part of the fund unless and until Congress provides for distribution of the fund in a manner consistent with the United States Constitution;

4. For such other and further relief as may be required.

Respectfully submitted,

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