

**SUMMARY OF THE  
DETERMINATION OF CULTURAL AFFILIATION  
OF ANCIENT HUMAN REMAINS  
FROM  
SPIRIT CAVE, NEVADA**

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## 1. BACKGROUND

Spirit Cave, located in the Grimes Point/Stillwater area, about seventy-five miles, east of Reno, Nevada, was excavated in 1940 by S. M. Wheeler and Georgia N. Wheeler. The cave is a west-facing, dry, rockshelter, approximately twenty-five feet wide, fifteen feet deep and an average of five feet high. The cave is wavecut into a beach terrace of Lake Lahontan and its walls are tufa covered, suggesting long periods of inundation by the lake. In 1940, it was filled with wind-blown sand deposits, roof-spall, and rocks apparently brought in by people. There was a quarter circle of rocks extending from the center of the rear wall to just inside of the entrance on the north wall. There was also a small chamber off of the northeast corner of the main cave.

On August 11, 1940, the Wheelers began excavating within the arc of rocks and just over a foot below the surface uncovered “a large mat, very finely twined, with a warp of split tules and a weft of native hemp cord,” that was wrapped around “a few human bones, all that remained of some early Nevadan”. This is the burial recorded as Burial #1 by the Wheelers, who collected the mat and reburied the associated human remains. Next the Wheelers discovered that “immediately below this [Burial #1] was another large mat of tules, the warp held together by rows of tule twining about 5 inches apart” and this mat covered a second burial. The Wheelers recorded this burial as Burial #2, and it is now known as the Spirit Cave Mummy, or Spirit Cave Man.

Five days after removing Burial #2, the Wheelers returned to Spirit Cave to look for more burials and found “a small twined bag of split tules from beneath of which protruded the edge of a close twined bag of native hemp”. The Wheelers recorded the human remains in the two bags as Cremation #1 and Cremation #2 and noted that “both were definitely buried at the same time”.

The Wheelers' field notes identified and subsequent analysis confirms, at least two additional sets of human remains from Spirit Cave.

Based on their observations, and expert opinions, the Wheelers thought that Burial #2 was, “a young adult male” that was “approximately 1500 to 2000 years old”. However, subsequent analysis and description have identified it as the remains of a 45-55 year-old male with hair and dental morphology that are biologically related to Northern Asians and Native Americans and an average of a series of radiocarbon dates revealed that Burial #2 dates to 9,415 $\pm$ 25 years B. P. Cranial morphological measurements of Burial #2 were statistically compared to a worldwide sample of contemporary populations and this showed that the remains fall outside of the range of variation of any population represented in the comparative sample

In March 1996, the Nevada State Museum was approached by physical anthropologists from the University of California, Davis with a request for a collaborative investigation of early human remains from western Nevada. Since most of the remains of interest for this study came from BLM managed lands, the Museum requested authorization for consumptive testing (DNA analysis or radiocarbon dating) on 41 sets of human remains from BLM managed public lands, including a mummy from Spirit Cave. The BLM contacted Northern Paiute tribal governments and began consulting with them on this request.

From the first consultation meeting, the tribes strongly opposed consumptive testing and asserted their cultural affiliation with the human remains from Spirit Cave. In March 1997, the Fallon Paiute-Shoshone Tribe, representing all Northern Paiute tribal governments, formally asserted a NAGPRA claim of cultural affiliation with the remains. They also strongly opposed consumptive testing and requested immediate repatriation of all remains and associated funerary objects from Spirit Cave.

A series of additional consultations during 1998, to inform the tribe of the evidence counter to their claim and to elicit more evidence supporting the tribe's claim, failed to produce any additional information. In the Fall of 1998, the BLM, based on available evidence, reached the preliminary conclusion that while the human remains from Spirit Cave are Native American, they were not culturally affiliated with any living individual or contemporary human group.

At a meeting on January 22, 1999, to inform the tribes of this preliminary decision, the Chair of the Fallon Paiute-Shoshone Tribe asked for more time to develop and present evidence of affiliation. On December 16, 1999, the Fallon Tribe, through counsel, provided their response to the evidence supporting a determination of unaffiliated and on December 29, 1999 the tribal attorneys sent BLM a memorandum again claiming affiliation with the Spirit Cave remains; detailing the tribe's legal and substantive arguments supporting affiliation; and asking the BLM to act on its request for repatriation.

In a letter dated January 24, 2000, the Nevada State Museum informed the BLM that they are no longer taking the lead in Spirit Cave scientific studies and in a letter dated April 6, 2000 formally withdrew its request for DNA testing of human remains from the western Lahontan Basin, which includes Spirit Cave. The BLM is not actively considering any requests for testing or analysis of the Spirit Cave remains at this time.

## 2. LEGAL ISSUES

Section 5 of the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA) directs federal agencies, including the Bureau of Land Management (BLM) to: (1) inventory all Native American human remains and associated funerary objects taken from Public Lands; and (2) to the extent possible, identify the geographical and cultural affiliation, if any, of such items.

For each set of remains or objects, the BLM has to identify cultural affiliation by determining if there is a "shared group identity which can be reasonably traced historically or prehistorically between a present day Indian tribe or individual and an identifiable earlier group." (43CFR10.4(3)). Affiliation is established when, in the opinion of the BLM, a preponderance of the evidence shows a relationship of shared group identity. If there is no demonstrable relationship, then the remains or objects are unaffiliated.

If a set of remains or objects is affiliated, then the BLM publishes a notice in the Federal Register and allows 30 days for Native American individuals or groups to contest the determination. There is no legal requirement to publish a notice of a determination that remains

or objects are unaffiliated. Instead, a list of unaffiliated remains is sent to the National Park Service, who in turn forwards it to the NAGPRA Review committee.

Affiliated remains are subject to repatriation, upon request by the lineal descendants or the culturally affiliated tribe. The BLM retains possession and control of unaffiliated remains and would continue to curate them at a museum.

If the determination is not contested, the BLM negotiates the place and manner of repatriation with the lineal descendants or affiliated tribe and disposes of the remains or objects according to their wishes. The law allows for deferred repatriation of remains and objects that are "indispensable for the completion of a specific scientific study, the outcome of which would be of major benefit to the United States."

Pursuant to Section 7(a)(4) of NAGPRA, a lineal descendant or tribe may make a claim regarding human remains which are determined to be unaffiliated. The claimant must show by a preponderance of the evidence that the remains are culturally affiliated. All relevant information, including geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or expert opinion may be considered. Upon written receipt of the evidence for such a claim, the BLM must evaluate it with the same process and criteria used in making the initial determination. The BLM may affirm the original determination or make a new determination. The BLM retains ownership and control of the remains or objects and cannot complete repatriation until all claims are settled.

The trust relationship between non-BIA federal agencies and federally-recognized Indian Tribes is a complex one. At its broadest, the relationship mixes legal duties and moral obligations with expectations that have grown up in the course of dealings between the Federal government and the Indian tribe, both generally, and as to the specific transaction. Therefore, though BLM does not consider the human remains at issue here to be trust assets, BLM has been diligent in trying to protect its general trust relationship with the Tribe throughout the consultation required by NAGPRA for making this affiliation decision.

Human remains are explicitly classified as cultural items under NAGPRA, and NAGPRA fails to list human remains as legally recognized persons or as an entity with legally protected interests. Therefore, while BLM is sensitive to the Tribe's religious beliefs and concerns regarding the status of the dead as persons in their own right, NAGPRA reposes the legal rights of ownership and control, where affiliation has been determined and repatriation has occurred, in the living Native American lineal descendant or culturally affiliated tribe. Where affiliation has not been determined, and until the remains are repatriated, ownership and control in this case continue to rest with the government.

A law may be burdensome or contrary to a group's religious beliefs and still be neutral in its application. Here, NAGPRA has set up rights in the living and not with the dead. Generally, the law recognizes quasi-property rights over the bodies of the dead and their effects in the living beneficiaries of the person or in his/her lineal descendants. Generally, the scope of this quasi-property right is limited to family members and their rights related to burial of the person,

allowing and autopsy, etc., and may not apply after a corpse has been buried for a long time.

### **3. NECESSARY ELEMENTS AND DECISION CRITERIA**

#### **A. Standing**

For the purposes of complying with NAGPRA, the BLM had to decide if the remains from Spirit Cave were Native American and who, if anyone, should be consulted about their disposition. NAGPRA defines a Native American as "of, or relating to, a tribe, people, or culture that is indigenous to the United States" [25 USC 3001 SEC 2(9)] . Under this definition, the BLM determined, based on dating, that the remains in question were Native American and subject to the provisions of NAGPRA. Further, since the Northern Paiute territory defined by the Indian Claims Commission [7 Ind. Cl Comm 322:372-373 (1959)] included Spirit Cave, the BLM contacted Northern Paiute tribal governments and began consulting with them on this request.

#### **B. Affiliation**

Section 5 of NAGPRA directs federal agencies (including the BLM) to determine the cultural affiliation, if any, of human remains and associated funerary objects from federal lands.

For each set of remains or objects, the BLM has to determine the cultural affiliation, if any, by following the procedures set forth at 43 CFR 10. According to 43 CFR 10.14(c-f), the BLM will determine cultural affiliation as follows:

(c) Criteria for determining cultural affiliation. Cultural affiliation means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe or Native Hawaiian organization and an identifiable earlier group. All of the following requirements must be met to determine cultural affiliation between a present-day Indian tribe or Native Hawaiian organization and the human remains, funerary objects, sacred objects, or objects of cultural patrimony of an earlier group:

- (1) Existence of an identifiable present-day Indian tribe or Native Hawaiian organization with standing under these regulations and the Act; and
- (2) Evidence of the existence of an identifiable earlier group. Support for this requirement may include, but is not necessarily limited to evidence sufficient to:
  - (i) Establish the identity and cultural characteristics of the earlier group,
  - (ii) Document distinct patterns of material culture manufacture and distribution methods for the earlier group, or
  - (iii) Establish the existence of the earlier group as a biologically distinct population; and

(3) Evidence of the existence of a shared group identity that can be reasonably traced between the present-day Indian tribe or Native Hawaiian organization and the earlier group. Evidence to support this requirement must establish that a present-day Indian tribe or Native Hawaiian organization has been identified from prehistoric or historic times to the present as descending from the earlier group.

(d) A finding of cultural affiliation should be based upon an overall evaluation of the totality of the circumstances and evidence pertaining to the connection between the claimant and the material being claimed and should not be precluded solely because of some gaps in the record.

(e) Evidence. Evidence of a kin or cultural affiliation between a present-day individual, Indian tribe, or Native Hawaiian organization and human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by using the following types of evidence: geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion.

(f) Standard of proof. Lineal descent of a present-day individual from an earlier individual and cultural affiliation of a present-day Indian tribe or Native Hawaiian organization to human remains, funerary objects, sacred objects, or objects of cultural patrimony must be established by a preponderance of the evidence. Claimants do not have to establish cultural affiliation with scientific certainty.

#### **4. EVIDENCE**

As required by NAGPRA, The BLM has reviewed the relevant available evidence from geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, or other relevant information or expert opinion. The results of this review can be summarized as follows:

1. Culture History: There is no evidence from the early Holocene that one can use to identify a human group that is distinct from other human groups that may have lived in the area. There is no evidence showing which language or languages were spoken in the early Holocene and no evidence suggesting details of social or political organization, territorial boundaries, kinship patterns, religious beliefs, or world.

The culture history of the Spirit Cave area shows significant cultural changes through time, possible in response to significant environmental change, and little evidence for cultural continuity throughout the Holocene. Instead there is evidence of discontinuity in material culture, settlement patterns, and subsistence strategies. While it is difficult to associate ethnicity or language with archaeological materials, the BLM's review of the available evidence indicates sufficient discontinuity such that it is unlikely that the tribes occupying the Spirit Cave area in historic times are from same culture as the people who buried their dead in Spirit Cave in the early Holocene or that they are the direct descendants of that group.

Therefore, BLM's review of the available evidence indicates that the culture history of the western Great Basin shows a pattern of changes in cultural adaptations that does not support cultural continuity over the last 10,000 years. The level of discontinuity is sufficient to warrant the conclusion that the remains from Spirit Cave cannot be reasonably affiliated with any modern tribe or individual.

2. Textiles: Based on the available evidence, the BLM determined that the textile evidence does not show cultural continuity throughout the Holocene. Burials #1 and 2 from Spirit Cave were associated with sophisticated warp-face-plain-weave (diamond plaited) textiles that disappeared around 8800 years BP and there was at least one textile tradition (Lovelock Wickerware) in the area between 3000 and 1000 years BP that was different from both the Spirit Cave textiles and ethnographic textiles. Other textiles, clearly associated with the Northern Paiute do not appear in the archaeological record before about 1000 years B.P. and coiled baskets may not have been made until the turn of the century. Therefore the available textile evidence does not support affiliation between the Spirit Cave remains and any contemporary group.

3. Burial Practices: The available burial evidence does not support affiliation. The direct evidence from Spirit Cave; the tightly-flexed bundle burials from Elephant Mountain Cave (about 2,000 years B.P.), the mixed burials from Lovelock Cave (around 3,400 years B.P.), and the Stillwater Marsh burial population (1,250-650 years B.P.) indicate that there have been at least four different burial traditions among groups in the Spirit Cave area between when Burial #1, Burial #2, and the cremation were interred at Spirit Cave in the early Holocene and when the Northern Paiute occupied the area in ethnographic times. Based on the available evidence, the people practicing these traditions did not bury their dead in a manner that was consistent with the ancient burials from Spirit Cave or with ethnographic descriptions of Northern Paiute burial practices.

Therefore, the BLM's review of the available archaeological evidence related to burial patterns in the region surrounding Spirit Cave throughout the Holocene shows significant cultural discontinuity and does not support the argument that the ancient remains from Spirit Cave are affiliated with any modern individuals or groups.

4. Biological: There is no biological information available at this time, given the state of current scientific technology, methodology and theoretical framework, which would allow the assignment of Spirit Cave Man to an affiliation with a particular tribe. There is no available biological information which clearly supports cultural continuity with contemporary North American Indians. The biological information does not indicate that there is, "a relationship of shared group identity which can reasonably be traced historically or prehistorically between members of the present-day Indian tribe..and an identifiable early group," as required by NAGPRA. No biological findings to date indicate by a "preponderance of the evidence" that there is "affiliation" of Spirit Cave Man to an affiliation with a particular tribe

5. Kinship/Genealogy: Throughout the consultation process and analysis of the available evidence, there has been no evidence found that identifies any lineal descendants of the

individuals buried in Spirit Cave. Therefore the available genealogical evidence is relevant but inconclusive for establishing affiliation.

6. Geography: The ICC determined that Northern Paiute occupied the Spirit Cave area at the time of contact and that they hold sole aboriginal title to those lands. However, the available geographic evidence does not, and cannot, demonstrate the existence of either an earlier group or of a shared group identity between any present-day Indian tribe and any earlier group. There is no geographic evidence indicating how long the Northern Paiute have occupied the Spirit Cave area prior to European contact in the early 1800s and none indicating who, if anyone, lived there at any earlier time. Therefore, the geographic evidence is relevant but inconclusive for establishing affiliation.

7. Descriptive Linguistics: The only direct descriptive linguistic data available shows that Numic speaking Northern Paiute bands occupied the Spirit Cave area at first contact. However, as with the evidence from geography and history, there is no descriptive linguistic evidence indicating how long the ancestors of the contemporary Northern Paiute bands have occupied the Spirit Cave area prior to first contact and none indicating how many different human groups lived there at any earlier time.

8. Numic Expansion (Archaeology and Linguistics): The available archaeological evidence related to the Numic Expansion model indicates at least one period of cultural, and possibly linguistic discontinuity between when Burial #1, Burial #2, and the cremation were interred at Spirit Cave in the early Holocene and when the Numic speaking ancestors of the Northern Paiute occupied the area, sometime in the late Holocene. Therefore, this line of evidence does not support the argument that the ancient remains from Spirit Cave are affiliated with any modern individuals or groups.

Given the unresolved controversy over the chronological issues associated with the Numic expansion model, the available linguistic evidence, taken by itself is relevant, but inconclusive for determining affiliation. However, the available linguistic evidence coupled with the available archaeological and biological evidence related to the Numic expansion (see Hill 2000; and this document), suggest that these lines of evidence do not support the argument for affiliation.

9. Anthropology: Using the available evidence from the oral tradition, there is no way to know how many different groups lived in the region in late prehistoric times, and no way to determine which of these groups, if any, died out, migrated away, or survived to have descendants who became the historic occupants of the region. There is enough available information from the oral tradition to say that there were at least two groups in the area and this means that this line of evidence does not support the argument for affiliation.

10. Historic: BLM's evaluation of the available historic record shows that the ancestors of contemporary Northern Paiute bands occupied the Spirit Cave area at first contact on or before 1818. There is no historic evidence indicating how long the ancestors of contemporary Northern Paiute bands had occupied the Spirit Cave area prior to first contact and none indicating who, or



how many different human groups, lived there at any earlier time. Since the historic record documents that the Northern Paiute occupied the Spirit Cave area at first contact, it is relevant, however, the historic record lacks sufficient time depth to be conclusive for determining affiliation.

11. Expert Testimony: Expert testimony from contemporary tribal elders asserts that the Northern Paiute have been in the Spirit Cave area from “time immemorial” and that this means that there is a relationship of shared group identity between the Northern Paiute and the people who interred the remains from Spirit Cave. However, this testimony does not provide sufficient detail to trace this asserted relationship historically or prehistorically from the present back to the early Holocene. Other relevant evidentiary expert testimony is summarized in this document and in its associated references. Additional expert testimony would vary across the spectrum of opinions already presented and would not contribute additional new evidence applicable to this decision.

## **5. DETERMINATION**

Based on a review of the evidence from the tribe, as well as the evidence gathered from other sources, the BLM has concluded that the preponderance of the available evidence demonstrates that the human remains from Spirit Cave are appropriately considered to be unaffiliated with the Northern Paiute, i.e., the remains predate contemporary Northern Paiute tribes and cannot reasonably be culturally affiliated with any of them. Thus, the BLM has determined that the remains from Spirit Cave are unaffiliated with any modern individual, tribe, or other group and are therefore culturally unidentified.