

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
AT RENO

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FALLON PAIUTE-SHOSHONE TRIBE,
a federally recognized Indian tribe

Plaintiff,
v.

UNITED STATES BUREAU OF LAND
MANAGEMENT

Defendant.

CV-N-04-0466-LRH-RAM

ANSWER

The Defendant, United States Bureau of Land Management ("United States"), hereby answers the Complaint of the Plaintiff, Fallon Paiute-Shoshone Tribe, as follows:

I. INTRODUCTION

1. The first sentence of Paragraph 1 is a description of Plaintiff's cause of action, and therefore requires no response from the Defendant. Defendant denies the second sentence of Paragraph 1. Defendant admits the third sentence of Paragraph 1. Defendant denies the fourth and fifth sentences of Paragraph 1, and further states that BLM manages approximately 261 million acres of surface lands and 700 million acres of sub-surface public interests. Defendant states that the Bureau of Land Management's management of public land is to be "[o]n the basis of multiple use and sustained yield unless otherwise specified by law." 43 U.S.C. § 1701(a)(7).

2. This paragraph is a description of the Plaintiff's cause of action, requiring no response from Defendant.

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3. The allegations are conclusions of law and jurisdictional allegations, and as such require no response.

4. Defendant admits that the District of Nevada is the proper venue for this action.

II. STATUTORY FRAMEWORK

5. Defendant admits the allegations of Paragraph 5, but states that, to the extent Plaintiff in Paragraph 5 selectively quotes from or paraphrases Section 5(a) of NAGPRA, such statute speaks for itself and is the best evidence of its contents.

6. Defendant admits the allegations of Paragraph 6, but states that, to the extent Plaintiff in Paragraph 6 selectively quotes from or paraphrases Section 7 of NAGPRA, such statute speaks for itself and is the best evidence of its contents.

7. Defendant admits the allegations of Paragraph 7, but states that, to the extent Plaintiff in Paragraph 7 selectively quotes from or paraphrases Section 7 of NAGPRA, such statute speaks for itself and is the best evidence of its contents.

8. Defendant admits the allegations of Paragraph 8, but states that, to the extent Plaintiff in Paragraph 8 selectively quotes from or paraphrases Section 8 of NAGPRA, such statute speaks for itself and is the best evidence of its contents.

9. Defendant admits the allegations of Paragraph 9, but states that, to the extent Plaintiff selectively quotes from Section 8(c) of NAGPRA, such statute speaks for itself and is the best evidence of its contents. Defendant further avers that the Review Committee is only advisory in nature under applicable statutes and regulations.

10. Defendant admits the allegations of Paragraph 10, but states that, to the extent Plaintiff in Paragraph 10 selectively quotes from or paraphrases Sections 8 and 15 of NAGPRA, such statutes speak for themselves and are the best evidence of their contents.

11. Defendant admits the allegations of Paragraph 11, but states that, to the extent Plaintiff in Paragraph 11 selectively quotes from or paraphrases Section 2 of NAGPRA, such statute speaks for itself and is the best evidence of its contents.

12. Defendant admits to the existence of the House and Senate Committee reports on NAGPRA referred to in Paragraph 12, and further admits that Plaintiff has correctly quoted language in the reports referred to in the first, second and third sentences of that paragraph. Defendant otherwise states in response to the allegations of Paragraph 12 that, to the extent Plaintiff in Paragraph 12 selectively quotes from or paraphrases certain congressional committee reports, such reports speak for themselves and are the best evidence of their contents.

13. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 13 because Plaintiff does not specify what "these standards" are. Defendant admits that Plaintiff has correctly quoted language in 43 C.F.R. § 10.14(d), but otherwise states that, to the extent Plaintiff in Paragraph 13 selectively quotes from or paraphrases 43 C.F.R. § 10, such regulation speaks for itself and is the best evidence of its contents.

14. Defendant admits the allegations of Paragraph 14, but states that, to the extent Plaintiff in Paragraph 14 selectively quotes from or paraphrases 43 C.F.R. § 10.14(c), such regulation speaks for itself and is the best evidence of its contents.

III. FACTUAL BACKGROUND

A. Disinterment of Human Remains and Funerary Objects from Spirit Cave

15. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 15, and on this basis, denies same. Defendant

admits that the Wheelers' explorations took them onto Federal lands, and within a few miles of the Fallon Paiute Shoshone Tribe's Reservation and into Northern Paiute aboriginal territory, but otherwise denies the allegations in the second sentence of Paragraph 15.

16. Defendant denies that Spirit Cave is located in a rocky outcropping, but admits the remaining allegations in the first sentence of Paragraph 16. Defendant admits that the Wheelers found a sagebrush lined burial pit that had been covered with brush and rock and which contained burials 1 and 2. Defendant denies all allegations in the second sentence not specifically admitted. Defendant admits the allegations in the third through sixth sentences of Paragraph 16.

17. Defendant admits the allegations in the first and third sentences of Paragraph 17. Defendant denies the second and fourth sentences of Paragraph 17. Defendant admits that the Nevada State Museum conducted unauthorized radiocarbon dating on the Spirit Cave Man remains and his funerary objects, but otherwise denies the allegations in the fifth sentence of Paragraph 17.

B. Opposition to NAGPRA Within BLM's Nevada State Office and the Nevada State Museum

18. Defendant states that the first sentence of Paragraph 18 refers to a statute enacted by Congress, requiring no response. To the extent a response is required, Defendant admits the allegations in the first sentence of Paragraph 18. Defendant denies the allegations in the second sentence of Paragraph 18 with regard to BLM's Nevada State Office, and lacks knowledge sufficient to respond to the allegations in the same sentence with regard to the Nevada Museum staff, and on this basis, denies the allegations in the second sentence of Paragraph 18.

19. Defendant admits the allegations of the first and second sentences of Paragraph 19. Defendant admits that the Plaintiff has correctly quoted language from the referenced article in the third and fourth sentences of Paragraph 19, but otherwise denies the allegations of the fourth sentence of Paragraph 19. To the extent Plaintiff in the third and fourth sentences selectively quotes from or paraphrases portions of the referenced article, Defendant contends that the referenced statements and positions of the authors must be read in context. Defendant further states that such article speaks for itself and is the best evidence of its contents. Defendant avers, however, that the referenced article is not part of the administrative record, and that this Court's review is confined to the record.

20. Defendant admits the first and second sentences of Paragraph 20. Defendant denies the third sentence of Paragraph 20.

21. Defendant denies the allegations in the first, third and fifth sentences of Paragraph 21. Defendant admits that BLM State Archaeologist, Dr. Pat Barker, Ph.D., and Nevada State Museum official, Amy Dansie, discussed that items determined to be more than 3,000 years old could be listed as unaffiliated, but otherwise denies the allegations of the second sentence of Paragraph 21. Defendant admits that Dr. Barker stated that resolution of NAGPRA claims could take time to resolve, but otherwise denies the allegations of the fourth sentence of Paragraph 21. With regard to the sixth sentence of Paragraph 21, Defendant admits that Dr. Barker discussed with Ms. Dansie, in general, that studies done to complete the inventory needed to be done by the inventory deadline of May 1996, and, that additional studies to determine affiliation when a claim was filed would require further consultation and some legal justification to delay processing a claim. Defendant otherwise denies the allegations of the sixth sentence of Paragraph 21.

C. Radiocarbon Dating of the Spirit Cave Remains and Funerary Objects and its Aftermath

22. Defendant admits the allegations in Paragraph 22.

23. Defendant admits the allegations in Paragraph 23.

24. Defendant denies the allegations in the first sentence of Paragraph 24. Defendant denies that the reference to "they" by Ms. Dansie in the second sentence of Paragraph 24 included Dr. Barker. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the third, fourth and sixth sentences of Paragraph 24 and on this basis, denies same. With regard to sentence five, Defendant admits that at least one year after the press conference referenced in Paragraph 24, BLM was contacted by a representative of the television show NOVA who requested information on Spirit Cave for a segment of a NOVA documentary, and BLM representatives, including Dr. Barker and Ms. Cynthia Ellis (formerly Pinto) met with representatives of NOVA. Defendant admits that Plaintiff has correctly quoted language in the sixth sentence of Paragraph 24, but otherwise states in response to the allegations of that sentence that the article in the Sacramento Bee that is referred to speaks for itself and is the best evidence of its contents.

25. Defendant admits that Dr. Barker has made approximately two local presentations to archaeological groups on Spirit Cave and was a junior presenter on local textiles (sandals). Defendant denies all remaining allegations in Paragraph 25 regarding the BLM. Furthermore, Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 25 concerning the Nevada Museum staff, and on this basis, denies same.

26. Defendant admits that in July of 1996, Ms. Dansie of the Nevada State Museum sent to the BLM Nevada State Director to the Nevada State Museum's inventory of human

remains, which listed Spirit Cave Man's remains as "unaffiliated," but otherwise denies the allegations in Paragraph 26.

27. Defendant denies the allegations in the first sentence of Paragraph 27 that BLM permitted destructive testing on funerary objects associated with the Spirit Cave remains, but otherwise admits the allegations in that sentence. Defendant admits the allegations in the second sentence of Paragraph 27. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the third and fourth sentences of Paragraph 27, and, on this basis, denies same.

D. The Tribe's Request for Repatriation

28. Defendant admits the allegations in the first sentence of Paragraph 28. Defendant denies the allegations in the second and third sentences of Paragraph 28.

29. Defendant admits the allegations in the first sentence of Paragraph 29. With regard to the second sentence of Paragraph 29, Defendant admits that Dr. Barker did not mention his 1994 article at this meeting. Defendant denies that during a November 1997 meeting between the Northern Paiute Tribe and the Nevada State Museum, Dr. Barker stated that he was in general opposition to NAGPRA, and further denies that BLM staff has reviewed and agreed with the listing of the remains on the Nevada Museum's inventory. Defendant denies the remaining allegations in the second sentence of Paragraph 29.

30. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the first and fourth sentences of Paragraph 30 and on this basis, denies same. Defendant admits the allegations in the second sentence of Paragraph 30. Defendant admits that Dr. Barker and other BLM staff were invited to the conference, but lacks knowledge sufficient to form a belief as to the truth of the allegations in the remainder of the third sentence of Paragraph

30, and on this basis, denies same.

31. Defendant admits that in January 1998, the Nevada State Museum announced it would display a facial reconstruction of the man disinterred from Spirit Cave, but denies all remaining allegations in the first sentence of Paragraph 31. Defendant admits that the facial reconstruction had been created from the results of a CAT scan of the skull, which had been authorized by the Museum, but otherwise denies the allegations in the second sentence of Paragraph 31. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 31, and on this basis, denies same. Defendant admits that a photograph of the facial reconstruction of the man disinterred from Spirit Cave appeared on the cover of Newsweek magazine and in Discover magazine, but lacks knowledge sufficient to form a belief as to the truth of the allegations in the remainder of the fourth sentence of Paragraph 31, and on this basis, denies same.

32. Defendant denies the allegations in the first sentence of Paragraph 32. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 32 and on this basis, denies same.

33. Defendant admits the allegations in the first through third sentences of Paragraph 33. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the fourth sentence of Paragraph 33, and on this basis, denies same.

34. Defendant admits the allegations in Paragraph 34.

35. Defendant admits the allegations in the first, second, third and fourth sentences of Paragraph 35. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the fifth sentence of Paragraph 35, and on this basis, denies same.

36. Defendant admits the allegations in the first sentence of Paragraph 36. Defendant admits the allegations in the second sentence of Paragraph 36 to the extent the Tribe failed to establish any affiliation between itself and Spirit Cave Man under NAGPRA. With respect to the third sentence of Paragraph 36, Defendant admits that BLM Nevada State Archaeologist, Dr. Pat Barker, Dr. Stephanie Damadio, Ph.D., BLM's National Curator, and Cynthia Ellis, M.A. (formerly Cynthia Pinto) formerly BLM Nevada Native American Program Coordinator, wrote the *Determination of Cultural Affiliation of Ancient Human Remains from Spirit Cave, Nevada*, and that Dr. Damadio also authored the 2000 BLM report *Spirit Cave Man: Biological Aspects*. Defendant denies the allegations in the fourth sentence of Paragraph 36. Defendant specifically denies any allegation in the fourth sentence that the preliminary determination was unsupported by the evidence. Defendant contends that the statements in the documents referenced in Paragraph 36 must be read in context, and further contends that the documents speak for themselves and are the best evidence of their contents.

37. Defendant admits that the BLM gave the Tribe 45 days to respond to BLM's preliminary determination, but otherwise denies the allegations of the first sentence of Paragraph 37. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 37, and on this basis, denies same. Defendant admits that the Tribe requested additional time to submit its response to BLM, but denies the allegation in the third sentence of Paragraph 37 that it denied the Tribe's request for additional time to respond because "it had been pending for a long time and it was time to make a decision." Plaintiff's allegations in the fourth sentence of Paragraph 37 state a legal conclusion, requiring no response. Defendant admits the allegations in the fifth and sixth sentences of Paragraph 37.

E. Proceedings Before the Review Committee.

38. Defendant admits the allegations in Paragraph 38.

39. Defendant admits the allegations in Paragraph 39.

40. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the first and third sentences of Paragraph 40, and on this basis, denies same. With regard to the allegations in the second sentence of Paragraph 40, Defendant admits that the Review Committee invited BLM to the meeting during which Spirit Cave Man was on the schedule of matters for consideration and indicated BLM could submit a written summary of the Spirit Cave Man matter to the Committee. Defendant denies BLM took the position that the Review Committee's dispute resolution procedures were not available to the Tribe, but otherwise admits the allegations in the fourth sentence of Paragraph 40.

41. Defendant admits the allegations in Paragraph 41.

42. Defendant admits that BLM provided the Review Committee with documents including the *Determination of Cultural Affiliation of Ancient Human Remains from Spirit Cave, Nevada*, authored by Pat Barker, Ph.D., Cynthia Ellis, M.A., and Stephanie Damadio, Ph.D., and the 2000 BLM report *Spirit Cave Man: Biological Aspects* by Dr. Damadio, but denies the remaining allegations in the first sentence of Paragraph 42. Defendant admits that BLM was not in attendance at the Review Committee's meeting, but denies the remaining allegations in the second sentence of Paragraph 42.

43. Defendant admits the allegations in the first sentence of Paragraph 43. Defendant specifically denies the Plaintiff's statement in the second sentence of Paragraph 43 to the effect that it had not "been given a reasonable opportunity to respond to BLM's determination," as well as all other allegations of that sentence.

44. Defendant admits the allegations in Paragraph 44.

45. Defendant admits the allegations in Paragraph 45.

F. Evidence Before the Review Committee

46. Defendant denies the first, second and fourth sentences of Paragraph 46. With regard to the third sentence of Paragraph 46, Defendant denies that BLM was reluctant to consult with the Tribe after the Tribe retained experts to assist it. Defendant admits that BLM's Nevada State Director continued to consult with the Tribal Chairman on a government to government level, as was determined to be appropriate.

47. Defendant admits that the Fallon-Paiute Shoshone Tribe is a Federally recognized Tribe and has standing to bring a claim under NAGPRA, but otherwise denies the allegations in Paragraph 47.

48. Defendant admits the first and second sentences of Paragraph 48. With respect to the third (partial) sentence of Paragraph 48, Defendant denies that the "evidence demonstrated the Spirit Cave remains and funerary objects were not only related to the indigenous people of the United States generally, but to the Fallon Tribe and its immediate ancestors in particular." Defendant responds to Plaintiff's specific allegations regarding the evidence before the Review Committee as follows:

a. Defendant admits the allegations in Paragraph 48, sub-paragraph a.

b. Defendant admits the allegations in the first sentence of Paragraph 48, sub-paragraph b. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations relating to the work of scientists hired by the Tribe in the second sentence of Paragraph 48, sub-paragraph b. Defendant admits, however, to the conclusions of the Tribe's scientists as set forth in the second and third sentences of Paragraph 48, sub-paragraph b.

c. The allegations in Paragraph 48, sub-paragraph c, are vague and ambiguous. It is not possible to provide an informed response to such allegations, and on this basis, Defendant denies the allegations in that sentence.

d. Defendant denies the allegations in Paragraph 48, sub-paragraph d.

e. Defendant admits the allegations in the first sentence of Paragraph 48, sub-paragraph e. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the second sentence of Paragraph 48, sub-paragraph e, regarding the mass capture of fish by Spirit Cave Man “possibly with basketry or very fine net-mesh dip techniques,” and on this basis, denies same. Defendant admits the remaining allegations in the second sentence of sub-paragraph e. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the third sentence of Paragraph 48, sub-paragraph e, and on this basis, denies same.

f. Defendant denies the allegations in the first and second sentences of Paragraph 48, sub-paragraph f. With regard to the allegations in the third, fourth and fifth sentences of Paragraph 48, sub-paragraph f, Defendant admits that Plaintiff’s experts made the claims referenced, but disagrees with the conclusions reached by such experts that are likewise referenced in these sentences.

g. Defendant denies the allegations in Paragraph 48, sub-paragraph g.

h. Defendant denies the allegations in the first sentence of Paragraph 48, sub-paragraph h. Defendant admits that an expert retained by the Tribe made the conclusions regarding Great Basin burials in the second sentence of Paragraph 48, sub-paragraph h, however, Defendant denies the allegations in this sentence. Defendant admits that the ethnographic accounts of the Tribe contain burial customs, but otherwise denies the allegations in the third sentence of Paragraph 48, sub-paragraph h.

49. The allegations in the first sentence of Paragraph 49 relate to Plaintiff's burden of proof under NAGPRA, requiring no response. To the extent a response is required, Defendant denies the allegations in the first sentence of Paragraph 49. Defendant further denies that the evidence before the Review Committee also showed that the human remains and associated funerary objects found in Spirit Cave belonged to an identifiable earlier group.

a. The allegations in sub-paragraph a of Paragraph 49 relate to Plaintiff's burden of proof under NAGPRA, requiring no response. To the extent a response is required, Defendant denies the allegations in Paragraph 49, sub-paragraph a.

b. Defendant denies the allegations in Paragraph 49, sub-paragraph b.

c. Defendant admits the allegations in the fourth sentence of Paragraph 49, sub-paragraph c, to the extent that the dates therein relate to the Early Holocene time period and not to any group. Defendant otherwise denies the allegations in Paragraph 49, sub-paragraph c.

d. Defendant denies the first and second sentences of Paragraph 49, sub-paragraph d. Defendant admits that Spirit Cave Man lived approximately 9,400 years ago, but denies the remaining allegations in the third sentence of Paragraph 49, sub-paragraph d. Defendant denies that scientific analysis of Spirit Cave Man's skeleton points to a desert and marsh adaptation, but otherwise admits the allegations in the fourth sentence of sub-paragraph d. Defendant admits that Spirit Cave Man was found with twined textiles and a rabbit-fur robe, but otherwise denies the allegations in the fifth sentence of Paragraph 49, sub-paragraph d.

50. Defendant denies the allegations in the first sentence of Paragraph 50. The second sentence of Paragraph 50 is not a complete sentence in which Plaintiff makes any factual allegations. Rather, it is a prefatory to the allegations in the sub-parts of Paragraph 50. Therefore, Defendant is unable to respond to the second sentence.

a. Defendant denies the allegations in the first and second sentences of Paragraph 50, sub-paragraph a. Defendant admits the allegations in the third sentence of Paragraph 50.

b. Defendant denies the allegations in the first, second, third, fifth and eighth sentences of Paragraph 50, sub-paragraph b. With regard to the fourth and fifth sentences of Paragraph 50, sub-paragraph b, Defendant admits that twining techniques used to construct textiles have been present throughout this time, but denies that this includes the twining techniques utilized in some of the Spirit Cave textiles. Defendant denies all remaining allegations in the fourth and fifth sentences of Paragraph 50, sub-paragraph b. Defendant admits that stone tools found in Spirit Cave were most likely used from the middle Holocene period on, but otherwise denies the allegations in the sixth sentence of Paragraph 50, sub-paragraph b. Defendant admits that as reflected in the archaeological record, one would expect to see changes in technology over a 10,000 year period, but otherwise denies the allegations in the seventh sentence of Paragraph 50, sub-paragraph b.

c. Defendant denies the allegations in the first, third and fourth sentences of Paragraph 50, sub-paragraph c. Defendant denies that Lovelock Wickerware was used as direct support for the Numic Expansion hypothesis, but admits the remaining allegations of the second sentence of Paragraph 50, sub-paragraph c. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the fifth and sixth sentences of Paragraph 50, sub-paragraph c, and on this basis, denies same.

d. Defendant denies the allegations in Paragraph 50, sub-paragraph d.

e. Defendant denies the allegations in the first, third and fourth sentences of Paragraph 50, sub-paragraph d. Further, the second sentence is vague and ambiguous. An informed response to the allegations in this sentence is not possible, and on this basis, the

Defendant denies each and every allegation in this sentence.

f. Defendant denies the allegations in the first sentence of paragraph 50, sub-paragraph f. The second sentence of paragraph 50, sub-paragraph f, is vague and ambiguous. An informed response to the allegations in this sentence is not possible, and on this basis, the Defendant denies each and every allegation in this sentence.

g. Defendant denies the allegations in Paragraph 50, sub-paragraph g.

G. The Review Committee's Findings and Recommendation

51. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 51, and on this basis, denies same. Plaintiff's statement in the second sentence of Paragraph 51 to "statutory responsibility" is a conclusion of law, requiring no response. Defendant otherwise admits the allegations of the second sentence of Paragraph 51. Defendant admits that the Plaintiff has correctly quoted the language referenced in the third sentence of Paragraph 51, but denies that any inference is appropriate because that quotation is taken out of context. To the extent Plaintiff in Paragraph 51 selectively quotes a member of the Review Committee, Defendant states that the record of the proceedings before the Review Committee speaks for itself and is the best evidence of its contents. Defendant admits the allegations in the fourth and fifth sentences of Paragraph 51.

H. BLM's Failure to Consider the Materials and Testimony Submitted to the Review Committee or the Committee's Findings and Recommendation; Final Agency Action.

52. Defendant admits that BLM prepared the internal briefing paper referred to in the first sentence of Paragraph 52, and that Plaintiff has correctly quoted language in that paper in the first and second sentences of Paragraph 52. In respect to the allegations of the first, second and third sentences of Paragraph 52, Defendant states that the internal briefing paper speaks for itself

and is the best evidence of its contents. In respect to the third sentence of Paragraph 52, Defendant admits that the September 2000 determination and biological paper were prepared prior to the submission of the matter to the Review Committee. With respect to the allegations in the fourth sentence of Paragraph 52, Defendant avers that the internal briefing paper states that the basis for BLM's position that the Spirit Cave remains and funerary objects are not affiliated with the Tribe is set forth in the September 2000 determination and biological paper, and Defendant admits that none of the written information or testimony submitted to the Committee or the Committee's Findings alter BLM's September 2000 Determination. Defendant denies all remaining allegations in Paragraph 52 not expressly admitted.

53. Defendant admits the allegations in Paragraph 53.

54. Defendant admits that the Tribe wrote to the Secretary as stated in the first sentence of Paragraph 54, but denies the remaining allegations of that sentence. Defendant admits the allegations in the second sentence of Paragraph 54. Defendant admits that the Tribe forwarded two NCAI resolutions to the Secretary, but denies the remaining allegations of the third sentence of Paragraph 54.

55. Defendant admits that the Tribe provided the Secretary with the legal memorandum referred to in Paragraph 55, but otherwise states that that memorandum speaks for itself and is the best evidence of its contents. Defendant further states that Plaintiff's statements in Paragraph 55 concerning the decision in Bonnichsen v. United States, 217 F.Supp.2d 1116 (D.Or. 2002), call for a legal conclusion, requiring no response.

56. Defendant admits that Plaintiff sent Secretary Norton the letter referenced in Paragraph 56, identifying various alleged flaws in BLM's determination, but Defendant denies that its determination was flawed or that it failed to reconsider evidence which was presented to

the Review Committee. Defendant further states that such letter speaks for itself and is the best evidence of its contents. Defendant denies the allegations in Paragraph 56, sub-paragraphs a and b. In regard to the allegations contained in sub-paragraph c, Defendant admits that the Review Committee was established by Congress pursuant to NAGPRA, appointed by the Secretary of the Interior, that members of the Review Committee possess varying levels of expertise in Native America traditions and other disciplines, and that the Committee supported the Tribe's claim, but otherwise denies all remaining allegations in Paragraph 56, sub-paragraph c. Defendant denies the remaining allegations of Paragraph 56, including all sub-paragraphs.

57. Defendant specifically denies the allegations in the first sentence of Paragraph 57 to the effect that there was unanimous support for the Plaintiff's repatriation request among tribes, or that BLM tried to solicit other tribes to make NAGPRA claims for Spirit Cave remains. Defendant further states that the letter referred to in Paragraph 57 speaks for itself and is the best evidence of its contents. Defendant denies the Tribe's allegations in the letter that are referred to in Paragraph 57.

58. Defendant admits that on December 20, 2002, BLM provided the response referred to in Paragraph 58, and that the language referred to in the third sentence of that paragraph is correctly quoted. Defendant otherwise states that such letter speaks for itself and is the best evidence of its contents.

59. Defendant admits the allegations in the first sentence of Paragraph 59, but otherwise states, in response to the allegations in the second through sixth sentences of that paragraph, that the response of the Tribe referred to in Paragraph 59 speaks for itself and is the best evidence of its contents. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the seventh and eighth sentences of Paragraph 59, and on this basis,

denies same.

60. In respect to the allegations in the first, second and third sentences of Paragraph 60, Defendant states that the response of the Tribe referred to in Paragraph 60 speaks for itself and is the best evidence of its contents. Defendant denies the allegations in the fourth sentence of Paragraph 60.

61. Defendant lacks knowledge sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 61, and on this basis, denies same. Assuming the letter referred to in that sentence exists (which Defendant has not been able to confirm), such letter would speak for itself and be the best evidence of its contents. Defendant admits that the meeting referred to in the second sentence of Paragraph 61 took place, but denies allegations in the third sentence, and as such, denies same. Defendant admits that the Tribe wrote the Director the letter referred to in the fourth sentence of Paragraph 61, but states that such letter speaks for itself and is the best evidence of its contents.

62. Defendant admits the allegations in the first sentence of Paragraph 62, and further admits that the language in the second sentence of that paragraph is correctly quoted. Defendant admits that the Tribe provided the response referred to in the third sentence of Paragraph 62, but otherwise states that such response speaks for itself and is the best evidence of its contents.

63. Defendant admits the allegations of the first sentence of Paragraph 63. Defendant further admits that Plaintiff has correctly quoted the language in the letter referenced in the first sentence, but otherwise states in response to the allegations of that paragraph that such letter speaks for itself and is the best evidence of its contents.

64. Defendant admits the allegations in the first sentence of Paragraph 64, but states that the letter referred to in Paragraph 64 speaks for itself and is the best evidence of its contents.

Defendant denies the allegations in Paragraph 64 that BLM failed to conduct a substantive analysis of the materials provided to the Review Committee or of the Committee's findings and recommendations.

65. Defendant admits the allegations in Paragraph 65.

66. Defendant admits the allegations in the first sentence of Paragraph 66, but otherwise states in response to the allegations of that paragraph that the documents produced in response to Plaintiff's Freedom of Information Act request speak for themselves and are the best evidence of their contents.

IV. CLAIMS

67. Paragraph 67 is not a complete sentence in which Plaintiff makes any factual allegations. Rather, it is a prefatory to the allegations in Paragraphs 68 through 73. Therefore, Defendant is unable to respond.

68. Defendant denies the allegations of Paragraph 68.

69. With regard to the allegations of the first sentence of Paragraph 69, Defendant states that BLM's Nevada State Director consulted with the Tribal Chairman on a government to government level numerous times over a number of years in meetings that, at times, included the Tribe's expert consultants; meetings strictly between staff members or consultants and BLM staff did not occur. Defendant otherwise denies the allegations of the first sentence of Paragraph 69. Defendant denies the allegations of the second sentence of Paragraph 69.

70. Defendant denies the allegations of Paragraph 70.

71. Defendant denies the allegations of Paragraph 71.

72. Defendant denies the allegations of Paragraph 72.

73. Defendant denies the allegations of Paragraph 73.

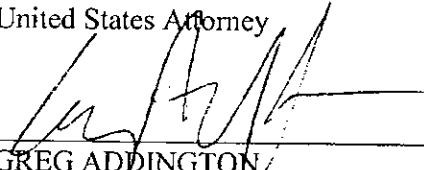
V. REQUEST FOR RELIEF

74. This paragraph constitutes Plaintiff's prayer for relief and requires no response. To the extent any response is required, Defendant denies that Plaintiff is entitled to any relief whatsoever.

Further, each and every allegation in the Complaint that is not specifically admitted is hereby denied.

Respectfully submitted,

DANIEL G. BOGDEN
United States Attorney



GREG ADDINGTON
Assistant United States Attorney
Office of the United States Attorney
100 W Liberty Street
Suite 600
Reno, NV 89501
(775) 784-5438 (phone)
(775) 784-5181 (fax)

THOMAS L. SANSONETTI
Assistant Attorney General

ELSIE B. KAPPLER
Trial Attorney
Environment and Natural Resources
Division
General Litigation Section
Post Office 663
Washington, DC 20044
(202) 305-0430 (phone)
(202) 305-0506 (fax)

Of Counsel:
Clementine Berger
Deputy Regional Solicitor
Pacific Southwest Region
Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825-1890
(916) 978-5682 (phone)
(916) 978-5694 (fax)

Dated: December 17, 2004

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CERTIFICATE OF SERVICE

FALLON PAIUTE-SHOSHONE TRIBE,
a federally recognized Indian tribe

Plaintiff,

v.

UNITED STATES BUREAU OF LAND
MANAGEMENT

Defendant.

CV-N-04-0466-LRH-RAM

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the District of Nevada and is a person of such age and discretion as to be competent to serve papers.

That on December 17, 2004, a copy of the attached ANSWER was served by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which is the last known address, and by depositing said envelope and contents in the United States mail at an authorized depository.

Addressee(s):

GORDON DEPAOLI, ESQ.
Woodburn and Wedge
P.O. Box 2311
Reno, NV 89505

MARC SLONIN, ESQ.
BRIAN CHESTNUT
Ziontz, Chestnut, Varnell,
Berley & Slonin
2101 Fourth Avenue, Suite 1230
Seattle, WA 98121-2331

Judith K. Turner