

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BATTLE MOUNTAIN BAND of the TE-
MOAK TRIBE of WESTERN SHOSHONE
INDIANS,

Plaintiff,

v.

UNITED STATES BUREAU OF LAND
MANGEMENT; and JILL C. SILVEY,

Defendants.

Case No. 3:16-cv-0268-LRH-WGC

ORDER

Before the court is plaintiff the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians' ("Battle Mountain Band" or "the Band") motion to dismiss intervenor Carlin Resources, Inc.'s ("Carlin") counterclaim (ECF No. 77). ECF No. 82. Carlin filed an opposition to the motion (ECF No. 92) to which the Band replied (ECF No. 93).

I. Facts and Procedural Background

This action involves the various agency decisions and federal permits issued by the BLM authorizing the construction of a power transmission line on land located in Elko County, Nevada that has been identified by the Battle Mountain Band as its traditional cultural property ("TCP") and has recently been deemed eligible by the BLM for inclusion on the National Register of Historic Places ("National Register").

///

1 Plaintiff Battle Mountain Band is one of four bands that comprise and make up the Te-
2 Moak Tribe of Western Shoshone Indians (“Te-Moak Tribe”), a federally recognized Indian
3 tribe. The Band currently resides on colony lands in close proximity to the Tosawihī Quarries.
4 The Band contends that the entirety of the quarries, including the specific TCPs at issue in this
5 action, are a vital spiritual, cultural, and economic center for the Band and other member bands
6 of the Te-Moak tribe.

7 Defendant BLM is the federal agency responsible for overseeing and administering
8 public lands, including the public lands on which the Tosawihī Quarries and the identified TCPs
9 exist. As part of its administration of these lands, the BLM is authorized to issue permits and
10 leases for use of the land.

11 Intervenor Carlin is the current owner of certain mining rights within the Tosawihī
12 Quarries. Approximately eight years ago, Carlin’s predecessors-in-interest applied for a permit
13 from the BLM to convert certain land in the quarries from an exploratory mining area into a
14 functional mining operation. Carlin, as the current owner of the mining rights, is the interested
15 party to the various agency decisions and federal permits issued by the BLM.

16 All of the various BLM decisions in this action arise from and/or relate to the Hollister
17 Mine Project (“the project”). The project is a now approved mining project located in and around
18 the Tosawihī Quarries in Elko County, Nevada. As part of the project, an approximately 4.5-mile
19 electric power transmission line would need to be placed and run to the mine from a newly
20 constructed power substation at the entrance to the Tosawihī Quarries.

21 On April 30, 2014, the BLM issued Carlin a right-of-way (“ROW”) for construction of
22 the power line to Carlin pursuant to the Federal Land Policy and Management Act, 43 U.S.C.
23 § 1761. On May 19, 2016, after the BLM issued the Notice to Proceed to Carlin for the
24 construction of the power line, the Battle Mountain Band filed the underlying complaint against
25 defendants for declaratory and injunctive relief. ECF No. 31. In its complaint, the Band alleges
26 three claims against defendants: (1) violation of the National Historic Preservation Act
27 (“NHPA”); (2) violation of the Religious Freedom Restoration Act (“RFRA”); and (3) violation
28 of the Indian trust responsibility. *Id.* Specifically, the Band alleges that the BLM violated the

1 substantive requirements of the NHPA by failing to reconsider its prior decision to allow Carlin
2 to build a power line through land which the BLM now considers eligible for the National
3 Register, and violated the RFRA by failing to assess the impact that the construction of the
4 power line would have on the Band's religious activities. Id. In response to the Band's
5 complaint, Carlin filed a counterclaim against the Band for a single claim of declaratory relief
6 alleging that the BLM complied with all requirements under the NHPA. ECF No. 77. Thereafter,
7 the Band filed the present motion to dismiss Carlin's counterclaim. ECF No. 82.

8 **II. Discussion**

9 In its motion, the Battle Mountain Band requests that the court dismiss Carlin's
10 counterclaim on the basis that it does not challenge any action by the Band and instead seeks a
11 declaration as to the BLM's compliance with a federal statute when issuing certain agency
12 actions. See ECF No. 82. The court has reviewed the documents and pleadings on file in this
13 matter and agrees. In fact, in its opposition, Carlin recognizes that its declaratory relief claim is
14 against the BLM and not the Band as alleged. See ECF No. 92. As such, Carlin has requested
15 leave to file cross-claims against the BLM. Id. Therefore, the court shall grant both the Band's
16 motion to dismiss Carlin's counterclaim and Carlin's request for leave to file cross-claims.

17
18 IT IS THEREFORE ORDERED that plaintiff's motion to dismiss counterclaim
19 (ECF No. 82) is GRANTED. Intervenor Carlin Resources, Inc.'s counterclaim (ECF No. 77) is
20 DISMISSED in its entirety.

21 IT IS FURTHER ORDERED that intervenor Carlin Resources, Inc. shall have ten (10)
22 days after entry of this order to file cross-claims against defendant Bureau of Land Management,
23 if any.

24 IT IS SO ORDERED.

25 DATED this 9th day of December, 2016.

26
27 
28 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE