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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BARTELL RANCH LLC, *et al.*,

Plaintiffs,

v.

ESTER M. MCCULLOUGH, *et al.*,

Defendants.

Case No. 3:21-cv-80-MMD-CLB
Related Case No. 3:21-cv-103-MMD-CLB
(Consolidated)

WESTERN WATERSHEDS
PROJECT, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF THE INTERIOR, *et al.*,

Defendants.

**FEDERAL DEFENDANTS'
ANSWER TO BURNS PAIUTE
TRIBE'S COMPLAINT-IN-
INTERVENTION FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Federal Defendants United States Bureau of Land Management (“BLM”) and
2 Ester M. McCullough, in her official capacity, as District Manager of BLM’s
3 Winnemucca District Office, hereby respond to the Complaint-In Intervention for
4 Declaratory and Injunctive Relief (the “Complaint”), ECF No. 83, filed on August 25,
5 2021, by Intervenor-Plaintiff Burns Paiute Tribe’s (“BPT”). By agreement of the
6 parties and the Scheduling Order entered by the Court, ECF No. 94, Federal
7 Defendants provide the following response to Intervenor-Plaintiffs’ claim for relief
8 and, in addition, assert affirmative defenses or relief to which they claim entitlement.
9 The numbered paragraphs of this response correspond to the numbered paragraphs in
10 the Complaint.
11
12

13 **CLAIMS FOR RELIEF**

14 **FIRST CLAIM FOR RELIEF**

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16 49. This paragraph incorporates the preceding paragraphs of the Complaint
17 and thus requires no response.

18
19 50. The allegations in Paragraph 50 purport to characterize the National
20 Environmental Policy Act (“NEPA”), 42 U.S.C. § 4332(2)(C), which speaks for itself
21 and is the best evidence of its contents. Any allegations contrary to its plain
22 language, meaning, and context are denied.
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1 51. The allegations in Paragraph 51 purport to characterize NEPA, 42
2 U.S.C. § 4332(2)(C)(i)-(ii), and its implementing regulations, 43 C.F.R. §§ 1502.16,
3 1508.7, 1508.8, and 1508.25, which speak for themselves and are the best evidence of
4 their contents. Any allegations contrary to their plain language, meaning, and
5 context are denied.
6

7 52. Federal Defendants deny the allegations in Paragraph 52 and its
8 subparts and deny any violations of law.
9

10 53. Federal Defendants deny the allegations in Paragraph 53 and deny any
11 violations of law.

12 54. Federal Defendants deny the allegations in the first sentence of
13 Paragraph 54. The allegations in the second sentence of Paragraph 54 constitute legal
14 conclusions to which no response is required. To the extent that a response is
15 required, Federal Defendants deny the allegations and any violation of law.
16

17 **SECOND CLAIM FOR RELIEF**

18 55. Federal Defendants incorporate by reference their responses in the
19 preceding paragraphs.
20

21 56. The allegations in Paragraph 56 purport to characterize NEPA's
22 implementing regulation at 40 C.F.R. § 1501.2(d)(2), which speaks for itself and is
23 the best evidence of its contents. Any allegations contrary to its plain language,
24 meaning, and context are denied.
25

26 57. Federal Defendants deny the allegations in Paragraph 57 and deny any
27 violations of law.
28

1 58. Federal Defendants deny the allegations in the first sentence of
2 Paragraph 58 and deny any violations of law. The allegations in the second sentence
3 of Paragraph 58 constitute legal conclusions to which no response is required. To the
4 extent that a response is required, Federal Defendants deny the allegations and any
5 violation of law.
6

7 **THIRD CLAIM FOR RELIEF**

8 59. Federal Defendants incorporate by reference their responses in the
9 preceding paragraphs.
10

11 60. Federal Defendants deny the allegations in Paragraph 60 and deny any
12 violations of law.

13 61. The allegations in Paragraph 61 constitute legal conclusions to which
14 no response is required. To the extent that a response is required, Federal Defendants
15 deny the allegations and any violation of law.
16

17 **FOURTH CLAIM FOR RELIEF**

18 62. The allegations in Paragraph 62 purport to characterize the
19 Administrative Procedure Act, 5 U.S.C. § 706(2)(A), which speaks for itself and is
20 the best evidence of its contents. Any allegations contrary to its plain language,
21 meaning, and context are denied.
22

23 63. The allegations in Paragraph 63 constitute legal conclusions to which
24 no response is required. To the extent that a response is required, the allegations are
25 denied.
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1 64. The allegations in Paragraph 64 constitute legal conclusions to which
2 no response is required. To the extent that a response is required, the allegations are
3 denied.

4
5 65. Federal Defendants deny the allegations in Paragraph 65 and deny any
6 violation of law.

7
8 66. Federal Defendants deny the allegations in Paragraph 66 and deny any
9 violation of law.

10 **PRAYER FOR RELIEF**

11 The remainder of the Complaint constitutes BPT's request for relief and legal
12 conclusions, to which no response is required. To the extent that a response is
13 required, Federal Defendants deny that BPT is entitled to the relief sought or any
14 relief whatsoever.

15 **GENERAL DENIAL**

16
17 Federal Defendants deny any allegations in BPT's Complaint, whether
18 express or implied, that are not specifically admitted, denied, or qualified herein.

19 **AFFIRMATIVE AND OTHER DEFENSES**

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21 1. The Court may lack subject matter jurisdiction to review some or all of
22 BPT's claims.

23 2. BPT may lack standing to bring some or all of its claims.

24 3. BPT fails to state a claim upon which relief may be granted.

25 4. BPT may have failed to exhaust its administrative remedies.

1 WHEREFORE, Federal Defendants respectfully pray that this Court deny in
2 all respects BPT's Prayer for Relief, dismiss BPT's Complaint, enter judgment for
3 Federal Defendants, and grant to Federal Defendants such other relief as may be
4 appropriate.
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7 Respectfully submitted this 13th day of October, 2021.
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9 TODD KIM
10 Assistant Attorney General
11 United States Department of Justice
12 Environment and Natural Resources Div.

13 /s/ Arwyn Carroll
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