

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FILED
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LANCE S. WILSON
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DEPUTY

FALLON PAIUTE-SHOSHONE TRIBE,)
a federally recognized Indian tribe,)
)
Plaintiff,)
)
v.)
)
UNITED STATES BUREAU OF LAND)
MANAGEMENT,)
)
Defendant.)


No. CV-N-04-466 LRH (RAM)

**MOTION OF THE ETHNIC MINORITY COUNCIL OF AMERICA
FOR LEAVE TO APPEAR AS *AMICUS CURIAE***

The Ethnic Minority Council of America moves for an order granting it leave to appear and participate as *amicus curiae* in this action. The bases for this motion are set forth in the memorandum submitted herewith.

Respectfully Submitted,

Dated: Oct. 27, 2005



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CERTIFICATE OF SERVICE


I, William E. Peterson, certify that copies of the Motion of the Ethnic Minority Council of America for Leave to Appear As *Amicus Curiae* were served by first class mail, this 27th day of October, 2005, on:

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**MEMORANDUM IN SUPPORT OF
MOTION OF THE ETHNIC MINORITY COUNCIL OF AMERICA
FOR LEAVE TO APPEAR AS AMICUS CURIAE**

The Ethnic Minority Council of America (the “EMCA”) seeks leave to appear and participate as *amicus curiae* in this action. The bases for this motion are set forth generally below and in greater detail in the *Amicus Curiae* Brief Submitted by the Ethnic Minority Council of America In Opposition to the Fallon Tribe’s Motion for Summary Judgment, which is being filed separately.

A. The EMCA

The EMCA was founded in 1985 to promote and protect our nation’s diverse ethnic heritage. Many of the EMCA’s members are of American Indian descent, living both within and outside the territorial limits of reservations created by treaty and recognized under federal law. The EMCA is politically and socio-economically diverse. Members of the EMCA are registered Democrats, Republicans and independents. They are located throughout the U.S. and pursue a wide variety of vocations ranging from homemakers to licensed professionals. They come from many religious backgrounds, including American Indian faiths, Christianity, Judaism, Islam, Hindu, Buddhism and agnostic belief systems.

B. The EMCA's Interest in the Spirit Cave Litigation

The EMCA supports the preservation of ancient remains and artifacts because these items are indispensable components of our common history. The EMCA believes that this history must be explored, understood and recorded for posterity. The EMCA believes that the cultural, educational, medical and scientific exploration of ancient artifacts and remains is a way of understanding and preserving our diverse cultural identities for our sake and for the sake of future generations.

Consistent with quasi-property rights long recognized in the law, the EMCA recommends repatriation of remains and other cultural items in cases *where the next-of-kin or other direct lineal descendants can be identified* and desire reburial, cremation or other disposition. Such repatriations should be reserved for *actual descendants*, not broadly-defined or aggregated groups or coalitions bound only by a common political or religious objective but with no historically shared group identity, or because of a mere geographic overlap.

The EMCA is concerned that the claiming tribe in this case seeks to exercise extraordinary property rights over the disposition of human remains and cultural material with which it has *no* demonstrated cultural affiliation, let alone one supported by a preponderance of the evidence. The exercise of these rights would impact many – indeed all – of our nation's diverse cultural citizens, including those represented by the EMCA.

The EMCA is concerned that while the Native American Graves Protection and Repatriation Act (“NAGPRA”) was intended to and has on the one hand provided a practical enforcement system for the rights of present-day American Indians relative to ancestral materials and remains, that enforcement system has been misapplied in ways that disrupt the delicate balance of interests NAGPRA was intended to preserve. The EMCA is concerned that the Fallon Tribe urges a misapplication of NAGPRA in this case. That is, the Fallon Tribe seeks to extend