Rollie Wilson (*Pro Hac Vice*)
Jeffrey S. Rasmussen *(Pro Hac Vice)*
1900 Plaza Drive
Louisville, CO 80027
Phone: (303) 673-9600
Facsimile: (303) 673-9155
Email: rwilson@ndnlaw.com
Email: jrasmussen@ndnlaw.com

Scott R. Daniel, Esq.
Nevada Bar No. 12356
THE DANIEL FIRM
200 S. Virginia St., 8th Floor
Reno, Nevada 89501
Telephone: 775.686.2418
Facsimile: 775.201.0653
scott.daniel@danielfirm.com

*Attorneys for Plaintiff*

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF NEVADA**

BATTLE MOUNTAIN BAND OF THE TE-MOAK TRIBE OF WESTERN SHOSHONE INDIANS,

*Plaintiff*,

v.

UNITED STATES BUREAU OF LAND MANAGEMENT and JILL C. SILVEY, in official capacity as Bureau of Land Management Elko District Manager,

*Defendant.*
_____/

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

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS CROSSCLAIM OF CARLIN RESOURCES LLC**

The crossclaim of Carlin Resources (hereinafter "Carlin") must be dismissed for multiple independent reasons. First, it must be dismissed because Carlin has neither pled nor shown that it has exhausted administrative remedies. Second, it must be dismissed because the Battle Mountain Band of the Te-Moak Tribe of Western Shoshone Indians (hereinafter the "Band") is an indispensable, unjoinable party to the crossclaim. Third, Carlin lacks standing to bring the crossclaim.

## I. CARLIN HAS NOT ESTABLISHED THAT IT HAS EXHAUSTED THE ADMINISTRATIVE REMEDIES WHICH IT PREVIOUSLY ACKNOWLEDGED HAD TO BE EXHAUSTED BEFORE IT COULD INITIATE JUDICIAL REVIEW.

Because this is a Court of limited jurisdiction, this Court is required to presume that it lacks jurisdiction. *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). As the crossclaim plaintiff, Carlin has the burden to plead and then to prove that it has overcome the presumed lack of subject matter jurisdiction. *Id.*

In its own prior filings in this Court, Carlin admitted that it could not challenge the April 25, 2016 decision of the Bureau of Land Management (hereinafter "BLM") until Carlin had exhausted administrative remedies. Dkt. 92 at 8-9. *See also* 5 U.S.C. § 704. Carlin even discussed that it had previously attempted to exercise available administrative remedies but that "the Interior Board of Land Appeals dismissed the appeal as premature. Carlin will timely exhaust its administrative remedies before filing a claim against the BLM for judicial review of the BLM's action." Dkt. 92 at 8-9 (emphasis added). Carlin did not appeal the decision dismissing its prior administrative appeal as premature, and that decision is therefore binding law of the case against Carlin. 36 C.J.S. *Federal Courts* §602 (citing numerous cases).

5 U.S.C. § 704 restricts federal court review to "final agency action," and that statute "explicitly requires exhaustion of all intra-agency appeals mandated either by statute or by agency rule...." *Darby v. Cisneros*, 509 U.S. 137, 147 (1993). Although Carlin previously acknowledged to this Court that Carlin had to exhaust administrative remedies before it could seek this Court's review, it has neither alleged nor established that it has exhausted those remedies. Carlin does not allege that it even refiled its prior premature administrative appeal; let alone cite a final administrative decision of its challenge to the BLM's April 25, 2016 decision. It also does not plead nor show any exception to its previously admitted duty to exhausted administrative exhaustion.

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

Carlin therefore has not met its burden to overcome this Court's presumed lack of jurisdiction. Carlin's crossclaim therefore must be dismissed.

## II. CARLIN'S CROSSCLAIM MUST BE DISMISSED BECAUSE THE BAND IS AN INDISPENSABLE, UNJOINABLE PARTY.

Carlin previously attempted to bring its crossclaim as a counterclaim against the Band, without joining the United States as a party defendant to its claim. Carlin now makes the inverse error—seeking to bring the same substantive claim, challenging the validity of the BLM's April 25, 2016 decision, solely against the United States without attempting to join the Band as a party to the crossclaim.

Under FRCP 12(b)(7), a complaint must be dismissed if it fails to join an indispensable party under FRCP 19. Courts must consider (1) whether a party is "necessary" under Rule 19(a). This inquiry involves whether the court can accord "'complete relief' … among existing parties" or "whether the absent party has a 'legally protected interest' in the subject of the suit" that will be impaired or impeded. *Shermoen v. United States*, 982 F. 2d 1312, 1317 -18 (9th Cir. 1992). Courts must next determine (2) whether the necessary party can be joined, and if it cannot be joined, (3) whether that party is indispensable such that in "equity and good conscience," the case must be dismissed. *Id.* This inquiry is "'a practical one and fact specific,'" and considers prejudice to the existing and absent parties. *Id.* at 1317 (quoting *Makah Indian Tribe v. Verity*, 910 F.2d 555, 558 (9th Cir. 1990); FRCP 19(b)).

### A. THE BAND IS A NECESSARY PARTY BUT IS IMMUNE FROM CARLIN'S CLAIMS.

Under Rule 19(a), the Court must first determine "whether the absent party has a 'legally protected interest' in the subject of the suit" that will be impaired or impeded. *Shermoen* at 1317 -18. In its prior counterclaim and its brief opposing the Band's motion to dismiss that counterclaim, Carlin clearly and emphatically stated that the Band had substantial interests at stake in this case. For example, Carlin stated: "Carlin filed the Counterclaim to obtain a binding judgment against the Band

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

as to the legal significance of the April 2016 letter and the finality of the ROD approving Carlin's plan for the Project. The purpose of the Counterclaim is to put a stop to 'the Band's improper continued attempts to undermine the ROD and interfere with Carlin's vested property rights....'" Dkt. 92 at 6 (quoting Counterclaim ¶6).

While Carlin's prior counterclaim, now its crossclaim, should have been filed as a claim against the United States, the Band continues to have that same interest in preserving the legal significance of the April 25, 2016 decision that it had when that claim was filed as a counterclaim.

While the Band has a legally protected interest in this case and is a necessary party, the Band is immune from Carlin's claims. As a matter of law, Indian tribes and their governing bodies are not subject to suit unless a tribe has waived its sovereign immunity or Congress has expressly authorized the action. *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1988). The issue of tribal sovereign immunity is jurisdictional. *E.g.*, *Pan Am. Co. v. Sycuan Band of Mission Indians*, 884 F.2d 416, 416 (9th Cir. 1989); *Ramey Constr. Co., Inc. v. Apache Tribe of the Mescalero Reservation*, 673 F.2d 315, 318 (10th Cir. 1982). Indian tribes enjoy immunity from suit whether the conduct giving rise to a complaint occurs on or off an Indian reservation. *Id.* Moreover, tribal immunity applies to suits for damages as well as those for declaratory and injunctive relief. *E.g., Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269 (9th Cir. 1991). As pertinent here, a tribe does not waive its sovereign immunity "from actions that could not otherwise be brought" against it merely because the claims are "pleaded in a counterclaim to an action filed by the tribe." *Okla. Tax Comm'n v. Potawatomie Indian Tribe*, 498 U.S. 505 (1991).

The Ninth Circuit has repeatedly reached the same result as the Supreme Court.

> [W]e consistently have held that a tribe's participation in litigation does not constitute consent to counterclaims asserted by the defendants in those actions. *See, e.g., Squaxin Indian Tribe v. Washington*, 781 F.2d 715, 723 (9th Cir. 1986) (neither tribe's initiation of suit for injunctive relief, nor tribe's continued sale of liquor while preliminary injunction in force, constituted waiver of sovereign immunity with respect to state's counterclaim for taxes allegedly due); *Chemehuevi*, 757 F.2d at 1053 (tribe's initiation

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

> of a suit for declaratory and injunctive relief against enforcement of California's cigarette tax as applied to tribal sales to non-Indian purchasers did not constitute waiver of the tribe's sovereign immunity with respect to California's counterclaim for taxes allegedly due).

*McClendon v. United States*, 885 F.2d 627, 630 (9th Cir. 1989). *See also Ute Indian Tribe v. Utah*, 790 F.3d 1000 (10th Cir 2015) (where tribe brought suit to enforce prior federal court order, tribe had not waived its sovereign immunity to claims seeking to challenge the prior order); *Jicarilla Apache Tribe v. Hodel*, 821 F.2d 537, 539 (10th Cir. 1987).

Although crossclaims are less common than claims by a plaintiff or counterclaims, the same reasoning applies to all types of claims-whether brought as a claim, crossclaim, or counterclaim, *Dugan v. Rank*, 372 U.S. 609, 620 (1963); 6 Wright & Miller, *Fed. Prac. & Proc.* § 1431 (3d ed.); or in fact to any other unconsented judicial process, *United States v. James*, 980 F.2d 1314 (1992) (quashing subpoena); *Alltel Commc'ns, LLC v. DeJordy*, 675 F.3d 1100 (8th Cir. 2012) (same).

The Court must resolve the Band's claim of sovereign immunity as a threshold issue because the Band's "full enjoyment of its sovereign immunity is irrevocably lost once the Tribe is compelled to endure the burdens of litigation." *Kiowa Indian Tribe of Oklahoma v. Hoover*, 150 F.3d 1163, 1172 (10th Cir. 1998) (citing *Seminole Tribe v. Florida*, 517 U.S. 44 (1996)). This is because sovereign immunity from suit not only prevents a sovereign from being subject to liability, but also prevents the sovereign from having to suffer the unwarranted demands associated with defending a lawsuit. "The Supreme Court has very clearly held that tribal immunity does indeed guarantee immunity from suit and not merely a defense to liability." *Osage Tribal Council ex rel. Osage Tribe of Indians v. U.S. Dep't of Labor*, 187 F.3d 1174, 1179 (10th Cir. 1999) (holding that Supreme Court precedents regarding absolute and qualified immunity apply by analogy to determine the procedures for resolving claims of tribal sovereign immunity and for determining the effect of a finding of immunity). *See also Siegert v. Gilley*, 500 U.S. 226, 232 (1991); *Mitchell v. Forsyth*, 472 U.S. 511, 525 (1985); *Fed. Maritime Comm'n v. S.C. Ports Auth.*, 535 U.S. 743, 766 (2002) ("Sovereign immunity does not

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

merely constitute a defense to monetary liability or even to all types of liability. Rather, it provides an immunity from suit.").

The rule which federal courts created to properly protect sovereigns is that the court must resolve a claim of sovereign immunity on the merits before the case can move on to discovery or other issues. "[T]he district court should resolve that threshold question before permitting discovery." *Crawford-El v. Britton*, 523 U.S. 574, 598 (1998) (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). *E.g. Anderson v. Creighton*, 483 U.S. 635, 646 n. 6 (1987) (holding that until a threshold immunity defense has been resolved, the trial court must limit discovery to that immunity issue because immunity "should be resolved at the earliest possible stage of a litigation."); *Harlow*, 457 U.S. at 818 (where the defendant raised a qualified immunity defense, the Court held "Until this threshold immunity question is resolved, discovery should not be allowed."). *See also U.S. Catholic Conf. v. Abortion Rights Mobilization, Inc.*, 487 U.S. 72, 79-80 (1988) (holding more broadly that "It is a recognized and appropriate procedure for a court to limit discovery proceedings at the outset to a determination of jurisdictional matters.").[1]

One of the justifications for this rule is that trial and the matters associated with trial can be "peculiarly disruptive of effective government." *Harlow*, 457 U.S. at 817, and that therefore the Court must "avoid subjecting government officials either to the costs of trial or to the burdens of broad-reaching discovery." *Mitchell*, 472 U.S. at 526 (internal quotation marks omitted). For example, the Ninth Circuit has held that requiring a sovereign to endure discovery before its claim of sovereign

[1] Yet even more broadly, federal courts hold that because of the importance of protection of sovereign immunity, any order denying that preliminary defense is immediately appealable. *Ute Indian Tribe v. Utah*, 790 F.3d 1000 (10th Cir. 2115); *Prescott v. Little Six, Inc.*, 387 F.3d 753, 755 (8th Cir. 2004); *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians of Florida*, 63 F.3d 1030, 1050 (11th Cir. 1995). *See also Harlow*, 457 U.S. at 817; *Mitchell*, 472 U.S. 511; *Rubin v. Islamic Republic of Iran*, 637 F.3d 783 (7th Cir. 2011) (where a district court's discovery order "effectively rejected" a claim of sovereign immunity, the order was immediately appealable).

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

immunity is fully and finally resolved would wrongly destroy this sovereign right "to be free from the 'crippling interference' of litigation." *Marx v. Guam*, 866 F.2d 294, 296 (9th Cir. 1989). Consequently, the Court "must address it first and resolve it irrespective of the merits of the claim." *Chemehuevi Indian Tribe v. Cal. St. Bd. of Equalization*, 757 F.2d 1047, 1051 (9th Cir. 1985), *rev'd. on other grounds*, 474 U.S. 9 (1985). Courts have no discretion on this issue because it "involves a right which courts have no choice, in the absence of a waiver, but to recognize. It is not a remedy . . . , the application of which is within the discretion of the court." *California v. Quechan Tribe of Indians*, 595 F.2d 1153, 1155 (9th Cir. 1979). Thus, the Band is a necessary party but is immune from Carlin's counterclaims.

**B. THE BAND IS AN INDISPENSABLE PARTY.**

Because the Band is a necessary party and enjoys sovereign immunity, the Court must next assess whether the Band is "indispensable." The Band is an indispensable party if, "in equity and good conscience," the court should not allow the action to proceed in its absence. Fed. R. Civ. Proc. 19(b). This Court is required to balance four factors in making the indispensability determination: (1) prejudice to any party or to the absent party; (2) whether relief can be shaped to lessen prejudice; (3) whether an adequate remedy, even if not complete, can be awarded without the absent party; and (4) whether there exists an alternative forum. *Kescoli v. Babbitt*, 101 F.3d 1304, 1310-1311 (9th Cir. 1996).

In this analysis, courts have found that the Band's immunity from suit is essentially dispositive. "If the necessary party is immune from suit, there may be very little need for balancing Rule 19(b) factors because immunity itself may be viewed as the compelling factor." *Kescoli*, 101 F.3d at 1311; *Confederated Tribes of the Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496, 1499 (9th Cir. 1991). "In many cases in which we have found that an Indian tribe is an indispensable party, tribal sovereign immunity has required dismissal of the case." *EEOC v. Peabody W. Coal Co.*, 400 F.3d 774, 781 (9th

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

Cir. 2005) (citing *Dawavendewa v. Salt River Project Ag. Improvement Power Dist.*, 276 F.3d 1150, 1162 (9th Cir. 2002) and *Am. Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1027 (9th Cir. 2002)). Despite this conclusion, courts have still conducted the balancing under Rule 19(b).

**1. The first 19(b) factor most appropriately directs dismissal.**

The first indispensability factor under Rule 19(b) is prejudice to a party or to the absent party. In *American Greyhound Racing*, the Court examined Rule 19(b) and the Court held that "the first factor of prejudice, insofar as it focuses on the absent party, largely duplicates the consideration that made a party necessary under Rule 19(a): a protectable interest that will be impaired or impeded by the party's absence." 305 F.3d at 1024-25 (citing *Dawavendewa*, 276 F.3d at 1162 and *Confederated Tribes of the Chehalis Indian Reservation*, 928 F.2d at 1499)).

Furthermore, "plaintiffs may not do indirectly what they cannot do directly. Plaintiffs cannot get relief from [defendants] that implicates the interests of parties with sovereign immunity." *Timbisha Shoshone Tribe v. Bureau of Indian Affairs*, 2003 WL 25897083 at *6 (E.D. Cal.) (citing *Pit River Home & Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1097-1103 (9th Cir. 1994)(hereinafter "*Pit River*").

As discussed above, Carlin itself has made abundantly clear that the purpose of its crossclaim is to prejudice the Band's attempt to protect its substantial interests in a 10,000 year-old sacred site. Furthermore, "where sovereign immunity is asserted, and the claims of the sovereign are not frivolous, dismissal of the action must be ordered where there is a potential for injury to the interests of the absent sovereign." *Republic of Philippines v. Pimentel*, 553 U.S. 851, 867 (2008). Thus, the first factor most appropriately directs dismissal.

**2. The second 19(b) factor most appropriately directs dismissal.**

The second Rule 19(b) factor is whether prejudice to the absent party could be lessened or avoided by relief or measures alternative to dismissal. With respect to the second factor, courts have

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

found that where tribal interests are at stake, any decision adverse to a tribe, no matter how it is framed, would be prejudicial in the absence of the tribe. *E.g., Pit River*, 30 F.3d at 1102. Accordingly, in these cases courts have been unable to shape relief to minimize the prejudice. *E.g., Lucero v. Lujan*, 788 F. Supp. 1180, 1183 (D. N.M. 1992); *Village of Hotvela Traditional Elders v. Indian Health Services*, 1 F. Supp.2d 1022, 1030 (D. Ariz. 1997), *aff'd*, 141 F.3d 1182 (9th Cir. 1998), *cert. denied*, 525 U.S. 1107 (1999); *Quileute Indian Tribe v. Babbitt*, 18 F.3d 1456, 1460-61 (9th Cir. 1994). Similarly, because judgments are not binding on tribal entities without a waiver of sovereign immunity, courts have found that adequate relief cannot be afforded without the tribal party's joinder. *Pit River*, 30 F.3d at 1102; *Lucero*, 788 F. Supp. at 1183; *Davis v. United States*, 199 F. Supp.2d 1164, 1177 (W.D. Okla. 2002).

On Carlin's crossclaim, it is impossible to shape relief or provide other measures that will lessen or avoid prejudice against the interests of the Band. Carlin's own filings before this court have made abundantly clear that the second factor favors dismissal. The relief that Carlin is seeking is to vacate or nullify a decision that certain sacred sites are Traditional Cultural Properties (TCPs) eligible for the National Register of Historic Places. There is no lesser or partial relief possible.

**3. The third 19(b) factor most appropriately directs dismissal.**

The third Rule 19(b) factor is whether a judgment rendered in the Band's absence will be adequate. As discussed above, the sole relief requested in the crossclaim would result in the above-described prejudice to the Band. In any event, the interests of the parties before the court "cannot be given dispositive weight when the efficacy of the judgment would be at the cost of the absent parties' rights to participate in litigation that critically affect[s] their interests." *Wichita & Affiliated Tribes of Oklahoma*, 788 F.2d 765, 777 (D.C. Cir. 1986) (emphasis added), *cited in United States ex rel. Hall v. Tribal Dev. Corp.*, 100 F.3d 476, 480 (7th Cir. 1996).

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

**4. The fourth 19(b) factor also supports dismissal of this action.**

The fourth Rule 19(b) factor is whether the crossclaim plaintiff will have an adequate remedy if the action is dismissed for non-joinder "[T]he plaintiff 's inability to obtain relief in an alternative forum is not as weighty a factor when the source of that inability is a public policy that immunizes the absent person from suit." *Davis*, 343 F.3d at 1293-1294; *see Pimentel*, 553 U.S. at 872; *Seneca Nation of Indians v. New York*, 383 F.3d 45, 48 (2d Cir. 2004), *cert. denied*, 547 U.S. 1178 (2006); *Hall*, 100 F.3d at 480-481; *Wichita & Affiliated Tribes*, 788 F.2d at 777. This is because the lack of an alternative forum "is a common consequence of sovereign immunity, and the Tribes' interest in maintaining their sovereign immunity outweighs the plaintiffs' interest in litigating their claims." *Am. Greyhound Racing*, 305 F.3d at 1025. This conclusion recognizes Congress's broad authority over Indian matters and the long-standing policy of protecting tribal sovereignty and immunity from suit. *Pit River*, 30 F.3d at 1103; *Quileute*, 18 F.3d at 1460-61. In this regard, the court in *American Greyhound* stated that:

> Some courts have held that sovereign immunity forecloses in favor of the Tribes the entire balancing process under Rule 19(b), but we have continued to follow the four-factor process even with immune Tribes. With regard to the fourth factor, however, we have regularly held that the tribal interest in immunity overcomes the lack of an alternative remedy or forum for the plaintiffs. We conclude, therefore, that inequity and good conscience this action cannot proceed.

305 F.3d at 1025 (citations omitted).

When the Rule 19(b) factors are analyzed with a proper appreciation of the importance of the Band's sovereign immunity, it is clear that the Band is an indispensable party, and that the action should be dismissed. The Band has sovereign immunity from suit. It has only waived that sovereign immunity for its claims against the United States, not for any claims by Carlin. In essence, Carlin is not permitted to use the fact that Carlin intervened in a suit brought by the Band against BLM to then expand the case to other claims which Carlin would want to bring. The crossclaim therefore must be dismissed.

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418

## III. CARLIN LACKS STANDING TO BRING ITS CROSSCLAIM.

On April 4, 2017, the United States filed a motion to dismiss Carlin's crossclaim because Carlin lacks both Article III and prudential standing. While the Band disagrees with many of the United States' assertions regarding the underlying case, the Band agrees with the United States that Carlin lacks Article III and prudential standing. Carlin's claim is based upon conjecture about what the United States might do,[2] or how the United States might interpret and apply the Programmatic Agreement for the Hollister Mine to Carlin's future attempts to harm the TCPs.

The Band also agrees with the United States that Carlin's claim is not within the zone of interest of the National Historic Preservation Act (NHPA). The purpose of the NHPA is to protect historic properties, which includes TCPs. As it did in its prior counterclaim, Carlin again seeks through its crossclaim to stand the NHPA on its head—using the NHPA as a sword to destroy a 10,000 year old historic, cultural, and religious property. Its crossclaim is not within the zone of interest protected by the NHPA.

## CONCLUSION

For all of the reasons discussed herein, the Court must dismiss Carlin's crossclaim.

**Respectfully submitted this 6th day of April, 2017.**

FREDERICKS PEEBLES & MORGAN, LLP

*/s/ Jeffrey S. Rasmussen*

Jeffrey S. Rasmussen *(Pro Hac Vice)*
1900 Plaza Drive
Louisville, CO 80027
Phone: (303) 673-9600
Facsimile: (303) 673-9155
Email: jrasmussen@ndnlaw.com

[2] The United States is correct that Carlin's crossclaim is based upon Carlin's conjecture that the United States will protect the TCPs from Carlin's ongoing or future attempts to harm the TCPs. But the Band is very concerned that Carlin's assertions are not merely unactionable conjecture, but will ultimately prove to be wrong. There are numerous statements in the United States' motion to dismiss which indicate that, as it has been doing all along, the BLM is continuing to work hand in glove with Carlin to abet Carlin's attempts to harm the TCPs.

FREDERICKS PEEBLES & MORGAN, LLP

*/s/ Rollie Wilson*
Rollie Wilson (*Pro Hac Vice*)
401 9th Street, N.W.
Washington, DC 20004
Phone: (202) 450-4887
Facsimile: (202) 450-5106
Email: rwilson@ndnlaw.com

THE DANIEL FIRM

*/s/ Scott R. Daniel*
Scott R. Daniel, NV Bar 12356
200 South Virginia Street, 8th Floor
Reno, NV 89501
Phone: (775) 686-2418
Facsimile: (775) 201-0653
Email: scott.daniel@danielfirm.com

*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of April, 2017, I electronically filed the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS CROSSCLAIM OF CARLIN RESOURCES LLC** with the Clerk of the Court and served on all parties of record using the CM/ECF System.

*/s/ Ashley Klinglesmith*

THE DANIEL FIRM
200 S. Virginia Street, 8th Floor
Reno, Nevada 89501
775.686.2418