

1 Stephanie Sherman (CA Bar No. 338390)
2 Sherman Law, P.C.
3 2838 Pacific Coast Highway
4 Malibu, California 90265
5 Phone: (424) 425-6174
6 Email: stephanie@malibu.legal

7 *Attorney for Plaintiffs*

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**

10 UTU UTU GWAITU PAIUTE TRIBE OF
11 THE BENTON PAIUTE RESERVATION,
12 a federally recognized Indian Tribe;
13 SHANE SAULQUE, Tribal Chairman; and
14 RONDA KAUK,

15 *Plaintiffs,*

16 v.

17 UNITED STATES DEPARTMENT OF
18 THE INTERIOR; UNITED STATES
19 BUREAU OF LAND MANAGEMENT;
20 DOUGLAS BURGUM, in his official
21 capacity as Secretary of the Interior;
22 STEVE PEARCE, in his official capacity;
23 as Director of the Bureau of Land
24 Management; UNITED STATES
25 DEPARTMENT OF AGRICULTURE;
26 BROOKE ROLLINS, in her official
27 capacity as United States Secretary of
28 Agriculture; UNITED STATES FOREST
SERVICE; STEPHANIE HELLER, in her
official capacity as Mono Lake District
Ranger, Inyo National Forest; and
HEATHER STONE, in her official
capacity as Acting Field Manager, BLM
Bishop Field Office,

Defendants.

Civil Action No. 2:26-cv-01104

**COMPLAINT FOR DECLARATORY
AND
INJUNCTIVE RELIEF**

(National Historic Preservation Act, §
106, 54 U.S.C. § 306108; Executive
Order 13175; Executive Order 13007;
Joint Secretarial Order No. 3403;
Administrative Procedure Act, 5 U.S.C. §
706)

DEMAND FOR JURY TRIAL: NO

I. INTRODUCTION

1
2 1. On July 8, 2026, the federal government will deploy helicopters to round up
3 and permanently remove 624 wild horses (“Removal”) from and around the Montgomery
4 Pass Wild Horse Territory — the ancestral homeland of the Benton Paiute people, who have
5 lived alongside this herd since time immemorial. The Removal area includes Benton Paiute
6 Tribe’s Reservation.

7 2. The United States Department of the Interior, including the U.S. Bureau of
8 Land Management, U.S. Forest Service, and the U.S. Department of Agriculture (hereafter,
9 “Agencies”) never consulted with the Tribe as required by federal law. The Agencies
10 approved this Removal while acknowledging in their own 2025 Decision Record that tribal
11 consultation was “ongoing” and that cultural resource concerns remained unresolved. The
12 Agencies proceeded anyway disregarding federal law and the Tribe’s rights. This action
13 asks the Court to stop the Agencies’ unlawful Removal of the wild horses.

14 3. The Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation (“Benton
15 Paiute Tribe”) sits within the Agencies’ own Removal area. Tribal members wake up every
16 morning on land the federal government has now scheduled for helicopter operations,
17 vehicle traffic, and mass Removal of horses their people have lived alongside and co-
18 evolved with for generations. This is not a dispute about a distant federal action affecting
19 faraway tribal interests. The Removal is coming to them, their land and for the wild horses
20 who for them as indigenous, are sacred relatives and ancestors, who carried them and their
21 people for thousands of years.

22 4. The Agencies have not done what the law requires before starting the
23 Removal from and around the Montgomery Pass Wild Horse Territory (“Territory”) and
24 surrounding tribal ancestral lands. The Agencies have not consulted with Plaintiffs and have
25 not identified the cultural resources, sacred sites, and Traditional Cultural Properties within
26 the Removal footprint. They have not assessed the effect of helicopter operations, vehicle
27 traffic including heavy equipment, construction of trap sites and temporary holding
28 infrastructure, and bait trap installation on a landscape Plaintiffs and the Paiute people have
stewarded for millennia. The Agencies approved the Removal anyway — while
acknowledging in their own 2025 DR that tribal consultation was “ongoing” and concerns
about sacred sites “will continue to be considered.” The Agencies cannot lawfully proceed

1 with the Removal while conceding its own legally mandated review is grossly incomplete
2 and inadequate.

3 5. The Territory sits in and around tribal ancestral lands. The Territory is jointly
4 managed by the US Forest Service (USFS) (through the Mono Lake Ranger District, Inyo
5 National Forest (INF), and the Bridgeport Ranger District, Humboldt-Toiyabe National
6 Forest) and the Bureau of Land Management (BLM), through the Bishop and Stillwater Field
7 Offices. INF is the lead unit for management of the Territory and BLM is the lead agency for
8 the upcoming Removal. Ex. 3, Heller/Lisius Public Notice (Nov. 7, 2023).

9 6. The Agencies announced their intention to conduct the Removal of the
10 Montgomery Pass Wild Horse Herd (“Herd”) on November 7, 2023. Ex. 3, Heller/Lisius
11 Public Notice (Nov. 7, 2023), at 1. The Final Environmental Assessment (“EA”) was
12 released on August 8, 2024, and a Finding of No Significant Impact (“FONSI”) and Decision
13 Record (“DR”) was issued on March 7, 2025. Ex. 4, 2025 DR, *Removal of Wild Horses*
14 *Outside the Montgomery Pass Wild Horse Territory*, Decision Record, DOI-BLM-CA-C070-
15 2024-0001-EA (Mar. 7, 2025) (Sherri Lisius, Bishop Field Manager) (“2025 DR”).

16 7. The 2025 DR estimated that 624 wild horses out of the total of 694 horses
17 migrated off the Territory, concluding that these 624 horses are “excess,” and mandated
18 that all of them “must be removed.” Ex. 4, 2025 DR, at 1. The most recent census of the wild
19 horse population in the Territory and surrounding areas was completed by the Agencies in
20 2024, estimating that at least 694 wild horses were present in the surveyed area at the time,
21 with at least 624 wild horses located outside the Territory boundaries. *Id.* No census has
22 been done since 2024.

23 8. The 2024 census data is stale and now more than two years old. The Herd
24 has experienced significant natural losses in the intervening period. In the spring of 2023,
25 the area experienced “a winter of biblical proportions.” See Seidman, *Majestic Wild Horses*
26 *Are Trampling Mono Lake’s Otherworldly Landscape. The Feds Plan a Roundup*, L.A.
27 Times (Oct. 7, 2025). Early 2026, some of the horses were trapped in the snow resulting in
28 further losses. Notably, the Agencies’ own June 2026 public hearing notice cited 699 horses
— a figure inconsistent with the 694 number in the 2025 DR itself, Ex. 8, June 8 Hearing
Notice (May 29, 2026) — further demonstrating the unreliability of census data on which the
“excess” determination rests. The Agencies are therefore proceeding to remove 624 horses

1 based on population data that predates known mortality events and does not reflect current
2 conditions on the ground. The number of horses that remain in the Removal area today is
3 unknown.

4 9. A Removal of this magnitude — 90% of the documented Herd — built on a
5 two-year-old count is arbitrary and capricious under the Administrative Procedure Act, 5
6 U.S.C. §§ 701–706 ("APA") and the required government-to-government consultation must
7 include access to current, verified census data before any Removal may lawfully proceed.

8 10. The Agencies approved the Removal while simultaneously acknowledging that
9 tribal consultation was "ongoing" and that concerns regarding tribal Traditional Cultural
10 Properties and sacred sites "will continue to be considered." Ex. 4, 2025 DR, at 5. The
11 Agencies' acknowledgment is a concession of legal incompleteness.

12 11. The Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation ("Benton
13 Paiute Tribe") is a federally recognized Indian tribe whose reservation sits in Benton,
14 California, at the intersection of State Highways 120 and 6 — the precise corridor forming
15 the southeastern boundary of the Territory. The Territory is 207,921 acres in California and
16 Nevada, east of Mono Lake, crossing the White Mountain Range, and bounded by
17 Highways 6 and 120. Ex. 2, 1988 Plan, at 1.

18 12. The Benton Paiute Tribe's traditional ancestral territory extended well beyond
19 its reservation boundaries, encompassing ancestral gathering areas, travel routes,
20 ceremonial sites, and burial grounds within and adjacent to the Territory, across the
21 Excelsior Mountains, Pizona Range, Adobe Valley, and the Montgomery Pass corridor. Ex.
22 9, Saulque Decl., at ¶ 8

23 13. The Agencies have been on constructive notice since at least 1988 that
24 aboriginal interests are directly implicated by Territory management activities. Ex. 2, 1988
25 Plan, at 13. Despite that four-decade-old acknowledgment, they conducted no meaningful
26 nation-to-nation consultation before approving and scheduling the July 8, 2026, Removal.
27 See Section V.B, *infra*.

28 14. Plaintiff Ronda Kauk is a member of the Mono Lake Kootzaduka'a Tribe and
serves as Tribal Historic Preservation Officer ("THPO") and Cultural Monitor for the Benton
Paiute Tribe. Ex. 10, Kauk Decl., at ¶ 4. She first visited the Territory on a near-daily basis
starting in 2000 and has since maintained cultural and spiritual practices in the Territory and

1 Removal area. Her indigenous ancestors lived, hunted, gathered, and are buried, in the
2 Territory and Removal area. Plaintiff Kauk was never contacted by BLM or USFS about the
3 existence or location of indigenous cultural resources within the Removal footprint. Ex. 10,
4 Kauk Decl., at ¶ 23. The Agencies never asked — and so proceeded without knowing what
5 is there, and without any plan to avoid or mitigate harm to irreplaceable resources.

6 15. The Removal is scheduled to begin July 8, 2026. Helicopter operations,
7 vehicle traffic including heavy equipment, construction of trap sites and temporary holding
8 infrastructure, and bait trap installation across the Removal area create substantial risk of
9 physical damage to bedrock mortar sites, burial areas, springs, petroglyphs, and other
10 cultural resources the Agencies never identified because they never conducted the
11 consultation required to do so. Moreover, such aggressive operations cause stress to the
12 Herd resulting in injury and death of horses, including pregnant mothers and foals. Once
13 these indigenous cultural resources are damaged, they cannot be restored.

14 16. Plaintiffs seek a declaratory judgment that the United States Department of the
15 Interior, BLM, USFS, and their officials, officers, and agents (collectively, the “Agencies”)
16 have violated and are violating federal laws, regulations, and policies including the National
17 Historic Preservation Act, 54 U.S.C. §§ 300101 et seq. (“NHPA”), Executive Orders 13175
18 and 13007, Joint Secretarial Order No. 3403, and the Administrative Procedure Act, 5
19 U.S.C. §§ 701–706 (“APA”) by approving and implementing the 2025 DR resulting in the
20 July 8, 2026 Removal.

21 17. Plaintiffs seek an Order vacating the 2025 DR and enjoining the Removal,
22 unless and until the Agencies fulfill their legally mandated consultation obligations, identify
23 and evaluate historic properties within the Removal footprint, and assess effects on
24 Traditional Cultural Properties as required by the NHPA connected to Plaintiffs documented
25 presence in this landscape and their indigenous ancestors. A delay to comply with
26 mandatory federal law costs the Agencies nothing they have not already cost themselves
27 through forty years of Territory mismanagement and inaction. The indigenous cultural
28 resources at risk cannot wait and cannot be replaced.

II. JURISDICTION AND VENUE

18 18. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.
19 Plaintiffs' claims arise under the National Historic Preservation Act, 54 U.S.C. §§ 300101 et

1 seq. ("NHPA"), Executive Orders 13175 and 13007, and the Administrative Procedure Act, 5
2 U.S.C. §§ 701–706 ("APA"). Declaratory relief is available under 28 U.S.C. §§ 2201–2202.
3 Jurisdiction also exists under 28 U.S.C. § 1362, as this action is brought on behalf of a
4 federally recognized Indian tribe.

5 19. Venue is proper in this District under 28 U.S.C. § 1391(e)(1)(B). A substantial
6 part of the events and omissions giving rise to Plaintiffs' claims — including the Agencies'
7 failure to consult, the location of the Removal area, and the sites of cultural resources at risk
8 — occurred within the Eastern District of California.

9 20. By filing this action, Plaintiffs do not waive sovereign immunity and do not
10 consent to suit as to any claim, demand, or cause of action by the United States, its
11 agencies, officers, or agents.

12 **III. PARTIES**

13 **A. Plaintiffs**

14 21. Plaintiff Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation
15 ("Benton Paiute Tribe") is a federally recognized Indian tribe. Federal Register, Vol. 89, No.
16 238 (Dec. 11, 2024). The Tribe's Reservation is located in Mono County, California, near the
17 town of Benton, at the intersection of State Highways 120 and 6, approximately 10 miles
18 west of the Nevada border and 45 miles east of Mammoth Lakes, California — the precise
19 southeastern boundary of the Montgomery Pass Wild Horse Territory as defined in the
20 Agencies' own governing document. Federal trust land held in ownership by the United
21 States government for the benefit of the Tribe consists of 400 acres: the original 160 acres
22 identified in the 1915 Executive Order and 240 acres obtained by Act of Congress in 2006.
23 The Tribe's Administrative Center lies within the high desert ecosystem of the Eastern
24 Sierra Nevada Mountain range at 5,700 feet above mean sea level. See
25 <https://www.bentonpaiuterreservation.org>.

26 22. Plaintiff Shane Saulque is the duly elected Tribal Chairman of the Benton
27 Paiute Tribe, having served in that capacity for the past ten years. He brings this action in
28 his official capacity on behalf of the Tribe, and in his individual capacity. Chairman Saulque
personally responded to the Agencies' initial consultation outreach within one day of receipt,
requested meaningful engagement, and was subsequently excluded from the Forest
Service's November 2024 objection resolution meeting. He has direct personal knowledge

1 of the Tribe's cultural and spiritual connection to the Territory, the Agencies' consultation
2 failures, and the harm that will result from the Removal.

3 23. Plaintiff Ronda Kauk is a member of the Mono Lake Kootzaduka'a Tribe and
4 serves as Cultural Monitor for the Benton Paiute Tribe. She has visited the lands comprising
5 and surrounding the Territory on a near-daily basis since approximately 2000. These visits
6 are an expression of her cultural and spiritual relationship with a landscape her people have
7 used since time immemorial. She has personal knowledge of culturally significant springs,
8 traditional gathering areas, pinyon harvesting locations, ancestral camps, travel corridors,
9 bedrock mortar sites, burial areas, and other cultural landscapes within and adjacent to the
10 Territory. The Removal project area encompasses lands both within and immediately
11 adjacent to the Benton Paiute Reservation, as well as lands outside the Reservation that the
12 Forest Service knew or had reason to know are culturally and historically significant to the
13 Tribe — including areas documented in the Agencies' own planning records as associated
14 with Native American traditional uses. Despite this knowledge, neither BLM nor USFS ever
15 contacted Ms. Kauk — the Tribe's designated Cultural Monitor and Tribal Historic
16 Preservation Officer — about the existence, location, or nature of cultural resources within
17 the Removal footprint. Ms. Kauk brings this action in two independent capacities, each
18 giving rise to cognizable injury. First, as a member of the Mono Lake Kootzaduka'a Tribe in
19 her own right: the Territory falls within her people's traditional ancestral range, and the
20 Removal will permanently alter a living cultural landscape she has visited, cared for, and
21 maintained a spiritual relationship with since 2000. Second, as designated Cultural Monitor
22 and Tribal Historic Preservation Officer for the Benton Paiute Tribe: she holds specific
23 documented knowledge of cultural resources within the Removal footprint that the Agencies
24 never asked her to share. These injuries are fairly traceable to the Agencies' failure to
25 conduct lawful Section 106 consultation before approving the 2025 DR and would be
26 redressed by the relief sought in this action.

24 **B. Defendants**

25 24. Defendant United States Department of the Interior is responsible for the
26 administration and management of federal lands through the Bureau of Land Management,
27 including lands within the Territory.

1 25. Defendant Douglas Burgum is the Secretary of the United States Department
2 of the Interior and is named herein in his official capacity. Secretary Burgum is vested with
3 authority to implement statutes, regulations, and Executive Orders governing
4 intergovernmental consultation with Native Nations, including NHPA § 106, Executive
5 Orders 13175, 13007, and 3403 and trust responsibilities to federally recognized tribes.

6 26. Defendant Steve Pearce is the Director of the Bureau of Land Management
7 and is named herein in his official capacity.

8 27. Defendant United States Department of Agriculture is responsible for the
9 administration and management of National Forest System lands through the United States
10 Forest Service, including lands within the Territory.

11 28. Defendant Brooke Rollins is the Secretary of the United States Department of
12 Agriculture and is named herein in her official capacity. Secretary Rollins is vested with
13 authority to implement statutes, regulations, and Executive Orders governing
14 intergovernmental consultation with Native Nations, including NHPA § 106, Executive
15 Orders 13175 and 13007, and trust responsibilities to federally recognized tribes.

16 29. Defendant Stephanie Heller is the Mono Lake District Ranger, Inyo National
17 Forest, United States Forest Service, and is named herein in her official capacity. Ranger
18 Heller co-signed the November 7, 2023 public notice announcing the proposed Removal
19 and has been directly involved in the Agencies' consultation process — or the absence
20 thereof — throughout this proceeding.

21 30. Defendant Heather Stone is the Acting Field Manager, Bureau of Land
22 Management, and is named herein in her official capacity as the current officer responsible
23 for implementation of the 2025 Decision and for the Bureau's ongoing obligations with
24 respect to the Montgomery Pass Wild Horse Territory. Ms. Stone succeeds Sherri Lisius,
25 who signed the March 7, 2025 Decision Record and co-signed the November 7, 2023 public
26 notice as Bishop Field Office Manager. As Ms. Lisius's successor in official capacity,
27 Defendant Stone is the proper defendant for purposes of prospective injunctive and
28 declaratory relief.

IV. STATUTORY AND REGULATORY BACKGROUND

A. National Historic Preservation Act, Section 106

31. Section 106 of the NHPA requires federal agencies to "take into account the effect of the undertaking on any historic property" before approving any "undertaking" — defined as "a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency." 54 U.S.C. § 306108; 36 C.F.R. § 800.16(y). The Section 106 process consists of four sequential steps: (1) initiating consultation, (2) identifying historic properties within the Area of Potential Effects, (3) assessing adverse effects on identified properties, and (4) resolving adverse effects. 36 C.F.R. §§ 800.3–800.6.

32. Federal agencies must consult with any Indian tribe that "attaches religious and cultural significance to historic properties that may be affected by an undertaking." 36 C.F.R. § 800.2(c)(2)(ii). Such consultation must be conducted on a government-to-government basis. *Id.* Agencies must provide tribes "a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance," and participate in the resolution of adverse effects. *Id.* This obligation applies regardless of whether the tribe is a federally recognized tribe, and regardless of whether the tribe's cultural resources have previously been formally documented with any federal agency. *Id.*

33. Traditional Cultural Properties ("TCPs") — places that are eligible for listing on the National Register of Historic Places because of their association with cultural practices or beliefs of a living community — are historic properties subject to Section 106 protection. See National Register Bulletin 38. Federal agencies are prohibited from issuing determinations of "no historic properties affected" when they have not conducted adequate consultation to identify whether TCPs are present within the Area of Potential Effects.

34. An agency cannot lawfully close the Section 106 process and approve an undertaking while consultation remains open. The Council on Historic Preservation's regulations contemplate completion of consultation before an agency proceeds. 36 C.F.R. §§ 800.5–800.6. An agency that acknowledges unresolved tribal concerns about TCPs and sacred sites while simultaneously approving the undertaking has acted contrary to procedure required by law within the meaning of 5 U.S.C. § 706(2)(D).

1 **B. Executive Order 13175 — Consultation and Coordination with Indian Tribal**
2 **Governments**

3 35. Executive Order 13175 (Nov. 6, 2000) requires federal agencies to "consult
4 with tribal officials early in the process of developing" policies and actions "that have tribal
5 implications," defined as "substantial direct effects on one or more Indian tribes, on the
6 relationship between the Federal Government and Indian tribes, or on the distribution of
7 power and responsibilities between the federal government and Indian tribes." Exec. Order
8 No. 13,175, § 1(a), 65 Fed. Reg. 67,249 (Nov. 6, 2000). Agencies must provide "meaningful
9 and timely input" in developing agency actions with tribal implications. Id. § 5(b). EO 13175
10 is enforceable through the APA as a procedure required by law. 5 U.S.C. § 706(2)(D).

11 **C. Executive Order 13007 — Indian Sacred Sites**

12 36. Executive Order 13007 (May 24, 1996) directs federal agencies, "to the extent
13 practicable, permitted by law, and not clearly inconsistent with essential agency functions,"
14 to "(1) accommodate access to and ceremonial use of Indian sacred sites by Indian
15 religious practitioners, (2) avoid adversely affecting the physical integrity of such Indian
16 sacred sites, and (3) where appropriate, maintain the confidentiality of sacred sites." Exec.
17 Order No. 13,007, § 1(a), 61 Fed. Reg. 26,771 (May 29, 1996). Federal agencies are
18 required to establish procedures to "ensure that agency officials exercise their
19 responsibilities" under EO 13007. Id. § 1(b). EO 13007 is enforceable through the APA.

20 **D. Administrative Procedure Act**

21 37. The APA requires courts to "hold unlawful and set aside agency action" that is
22 "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or
23 "without observance of procedure required by law." 5 U.S.C. §§ 706(2)(A), (D). An agency
24 acts without observance of procedure required by law when it fails to follow the consultation
25 requirements of NHPA § 106, Executive Order 13175, or Executive Order 13007 before
26 taking final agency action affecting tribal interests and cultural resources.

27 **E. Joint Secretarial Order No. 3403 — Trust Responsibility in Federal Land**
28 **Stewardship**

 38. Joint Secretarial Order No. 3403 (Nov. 15, 2021), issued jointly by the
Secretary of the Interior and the Secretary of Agriculture, directs the Departments of the
Interior and Agriculture and their component bureaus and offices — including BLM and

1 USFS — to manage federal lands and waters in a manner that protects the treaty, religious,
2 subsistence, and cultural interests of federally recognized Indian Tribes; that is consistent
3 with the nation-to-nation relationship between the United States and Indian Tribes; and that
4 fulfills the United States’ unique trust obligation to Indian Tribes and their citizens. SO 3403,
5 § 1. The Order directs the Departments to “ensure that all decisions” relating to federal
6 stewardship of federal lands, waters, and wildlife “include consideration of how to safeguard
7 the interests of any Indian Tribes such decisions may affect.” Id. § 1(a). The Order further
8 requires the Departments to engage affected Indian Tribes in meaningful consultation “at
9 the earliest phases of planning and decision-making,” give “due consideration to Tribal
10 recommendations on public lands management,” and incorporate Tribal expertise and
11 Indigenous knowledge into federal decision-making. Id. § 3(c), (f). SO 3403 is enforceable
12 through the APA as a procedure required by law. 5 U.S.C. § 706(2)(D).

12 **F. Good Neighbor Authority**

13 39. The Good Neighbor Authority (“GNA”), as expanded by Congress in 2018,
14 authorizes USFS and BLM to collaborate with federally recognized Indian Tribes on
15 restoration projects on federal lands through formal Good Neighbor Agreements. 16 U.S.C.
16 § 1011b. Collaborative herd management activities — including fertility control — would
17 constitute restoration activity within the meaning of the GNA, providing a congressionally
18 authorized alternative to mass removal that the Agencies never explored, offered, or
19 documented rejecting.

19 **G. Tribal Forest Protection Act**

20 40. The Tribal Forest Protection Act of 2004 (“TFPA”), Pub. L. 108-278, 25 U.S.C.
21 §§ 3115a–3115b, authorizes the Secretaries of Agriculture and the Interior to contract with
22 federally recognized Indian Tribes to carry out projects on federal land addressing resource
23 threats that originate on or affect adjacent tribal trust land, implemented through 638 self-
24 determination contracts. The MPWHT shares its southeastern boundary with the Benton
25 Paiute Reservation; ecological and cultural degradation of the Territory directly affects the
26 Tribe’s adjacent trust land. Together with the GNA, the TFPA provided a congressionally
27 authorized framework for Tribal co-stewardship as a viable legal alternative to mass
28 removal. The Agencies never initiated, offered, or considered either mechanism.

1 **H. Wild Free-Roaming Horses and Burros Act and Native Species Status**

2 41. Congress unanimously enacted the Wild Free-Roaming Horses and Burros
3 Act ("WFHBA"), 16 U.S.C. §§ 1331–1340, in 1971 upon finding that wild free-roaming
4 horses and burros are "living symbols of the historic and pioneer spirit of the West" that
5 "contribute to the diversity of life forms within the Nation and enrich the lives of the American
6 people." 16 U.S.C. § 1331. Congress directed the Secretary of the Interior to "protect and
7 manage wild free-roaming horses and burros as components of the public lands" in a
8 manner that is "ecologically balanced." *Id.* § 1333(a).

9 42. The WFHBA does not authorize removal of wild horses without first
10 determining that the animals are "excess" within a designated territory, and only after
11 evaluating the land's capacity to support them. *Id.* § 1333(b)(1)–(2). The 2025 DR
12 concluded that 624 of the estimated 694 wild horses associated with the Territory are
13 "excess" and directed that they "must be removed." Ex. 4, 2025 DR, at 1. Any removal must
14 be conducted in compliance with all applicable federal law — including the consultation
15 requirements of NHPA § 106, Executive Orders 13175 and 13007, and the trust
16 responsibilities owed to affected Indian tribes. The Agencies' approval of the 2025 Decision
17 without completing the required tribal consultation is therefore also inconsistent with the
18 WFHBA's mandate that horses be managed as components of public lands that include the
19 ancestral territory and Traditional Cultural Properties of the Plaintiff Tribes.

20 **I. Wild Horses as a Native Species — Legal and Scientific Basis**

21 43. Consistent with Congress's declaration, the Ninth Circuit has recognized that
22 wild horses and burros occupy a categorically different status from introduced livestock. In
23 *In Defense of Animals v. U.S. Department of the Interior*, 751 F.3d 1054 (9th Cir. 2014), the
24 Ninth Circuit described the BLM's authority under the WFHBA as establishing Appropriate
25 Management Levels "for populations of native species — including wild horses and burros
26 — and introduced animals, such as livestock." *Id.* at 1056. The Ninth Circuit's
27 characterization of wild horses as a "native species" distinct from "introduced animals" is
28 grounded in both law and science, and Plaintiffs are entitled to rely on it. Congress enacted
the WFHBA upon an explicit legislative finding that wild horses and burros are "an integral
part of the natural system of the public lands." 16 U.S.C. § 1331. That congressional
designation reflects the horses' evolutionary origins on this continent — not their post-

1 European reintroduction — and is reinforced by peer-reviewed ancient DNA research
2 establishing that the horses that disappeared from North America approximately 10,000 to
3 13,000 years ago and those domesticated in Eurasia and reintroduced by Europeans are
4 genetically continuous lineages, not separate or foreign ones. Vershinina et al., Ancient
5 horse genomes reveal the timing and extent of dispersals across the Bering Land Bridge, 30
6 Molecular Ecology 6144 (2021), DOI: 10.1111/mec.15977. North America was the ancestral
7 continent of origin; horse populations dispersed into Eurasia across the Bering Land Bridge
8 and back over hundreds of thousands of years, maintaining genomic connectivity
9 throughout. The Ninth Circuit's classification is therefore not a legal fiction — it is consistent
10 with the science. In any event, Plaintiffs' Section 106 claims do not depend on resolving the
11 nativeness debate. The wild horse herd is independently established as a component of the
12 living cultural landscape of the Benton Paiute people through oral tradition, documented
13 traditional use, and the declarations of the Tribal Chairman, Vice-Chairwoman, and Cultural
14 Monitor filed with this complaint. Whether the horses are characterized as native or
15 reintroduced, the Agencies' obligation to consult before removing 624 animals from
16 ancestral tribal territory — and their failure to do so — stands independently on the NHPA
17 record.

18 **V. FACTUAL BACKGROUND**

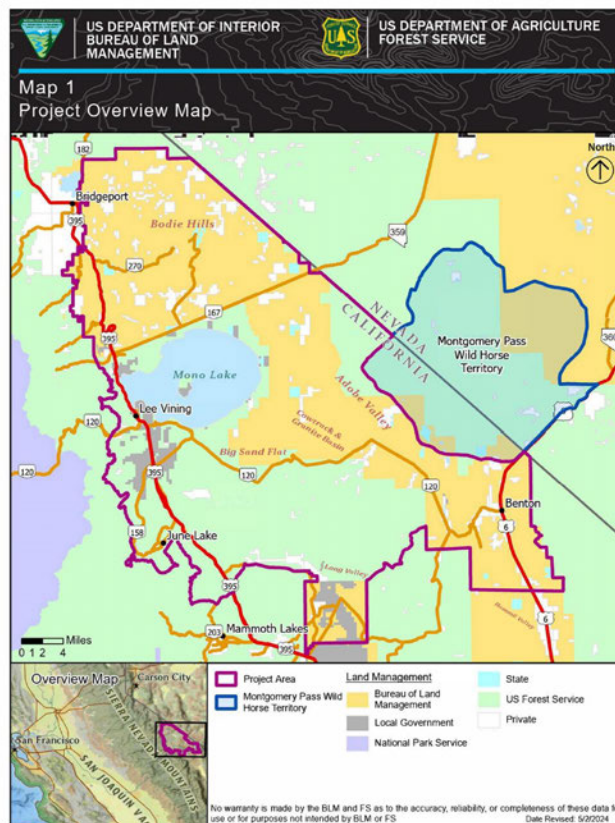
19 **A. The Territory and the 2025 Decision**

20 44. The Territory is jointly managed by USFS through the Mono Lake Ranger
21 District, Inyo National Forest, and the Bridgeport Ranger District, Humboldt-Toiyabe
22 National Forest, and by BLM through the Bishop and Stillwater Field Offices. INF is the lead
23 unit for management of the Territory.

24 45. The geographic scope of the Removal area — which the Agencies designate
25 as the "Project Area" — is depicted in the Agencies' own Project Overview Map, prepared in
26 connection with the Environmental Assessment. Ex. 1, Agency Maps, Map 1. The Project
27 Area boundary encompasses a vast swath of lands extending well beyond the MPWHT,
28 including lands immediately adjacent to and within the Benton Paiute Reservation at the
intersection of Highways 6 and 120, and across the Tribe's traditional territory in the
Excelsior Mountains, Adobe Valley, and the Montgomery Pass corridor. The Agencies' own
map confirms that the Removal operations will take place on and around a federally

1 recognized tribe’s reservation lands. This map was in the Agencies’ possession as of May 2,
 2 2024 — nearly a year before they signed the 2025 DR.

3 46. Equally significant, the Agencies’ Special Designations Map for the Project
 4 Area identifies numerous protected resource categories within the Removal footprint —
 5 including Wilderness Study Areas, Areas of Critical Environmental Concern, Wild and
 6 Scenic Rivers, and Research Natural Areas — but identifies no cultural resources,
 7 Traditional Cultural Properties, sacred sites, or areas of tribal significance anywhere within
 8 the Project Area boundary. Ex. 1, Agency Maps, Map 2. The absence of any cultural
 9 resource designation is not a reflection of the landscape. It is a reflection of the consultation
 10 that never happened.



21 **Figure 1:** Project Overview Map. Ex. 1, Agency Maps, Map 1 (Bureau of Land Management
 22 & U.S. Forest Service, rev. May 2, 2024). The pink boundary depicts the Agencies’ Project
 23 Area. The blue boundary depicts the Montgomery Pass Wild Horse Territory. The Benton
 24 Paiute Reservation is located at Benton, California, at the intersection of Highways 6 and
 25 120, within the Project Area boundary.

1 47. On November 7, 2023, Defendants Heller and Sherri Lisius (then Bishop Field
2 Office Manager) announced the proposed Removal of the wild horses by joint public notice.
3 Ex. 3, Heller/Lisius Public Notice (Nov. 7, 2023), at 1. A Final Environmental Assessment
4 was issued on August 8, 2024. On March 7, 2025, Defendant Heller, Mono Lake District
5 Ranger, signed the DR authorizing Removal of wild horses located outside the Territory
6 boundaries. Ex. 4, 2025 DR. The 2025 Decision concluded that 624 of the estimated 694
7 wild horses associated with the Territory are "excess" and directed that they "must be
8 removed." The Removal is scheduled to begin July 8, 2026.

9 48. The 2025 DR acknowledged that "[t]ribal Consultation is ongoing, therefore,
10 concerns regarding Traditional Cultural Properties, Sacred Sites or issues of Tribal concern
11 in the project area will continue to be considered." Ex. 4, 2025 DR, at 5. The Agencies' DR
12 states:

13 In October of 2023, letters were sent to twelve Tribes regarding the
14 proposed project. Ongoing consultation through meetings, emails and
15 phone calls continued with Tribes through January of 2025. A request for
16 formal Consultation was received in December of 2024. The BLM and the
17 USFS delayed their Decisions to accommodate this request. Concern was
18 expressed from some Tribes regarding removal of the horses and the use
19 of helicopters. The BLM and USFS considered the Tribal input and
20 determined that not gathering the horses and not using helicopters would
21 not meet the purpose and need of the project and would be inconsistent
22 with law and policy. However, Tribal Representatives may observe the
23 gathers as described in the public viewing section of the EA. Tribal
24 Consultation is ongoing, therefore, concerns regarding Traditional
25 Cultural Properties, Sacred Sites or issues of Tribal concern in the project
26 area will continue to be considered. Id.

27 49. Despite this acknowledgment of pending and unresolved tribal concerns, the
28 Agencies approved the Removal.

50. The Agencies' own Finding of No Significant Impact acknowledged that Native
American cultural connections to the Territory "were not fully reviewed" and were "limited to
discussing lithic scatters." Ex. 5, FONSI, at 3-4 This assessment is materially incomplete:
the Agencies never established a confidential consultation process through which Tribal
members could safely share sensitive site location information, and thus never obtained the
information necessary to conduct the required review.

1 **B. The Benton Paiute Tribe's Ancestral Connection to the Territory**

2 51. The Benton Paiute Tribe's ancestral homeland encompasses the landscapes
3 in and around Montgomery Pass, including the Territory and the surrounding area targeted
4 for Removal. The Tribe's Reservation sits at the precise southeastern corner of the Territory
5 as defined in the Agencies' own 1988 CRP, which describes the Territory as "bounded by
6 State Highway 6 to the southeast" and "situated north of State Highway 120." Ex. 2, 1988
7 Plan, at 1. The Tribe's people have lived on, traveled through, gathered from, and
8 stewarded these lands since time immemorial.

9 52. The Agencies have expressly recognized the Tribe's aboriginal interests in the
10 Territory since 1988. The 1988 CRP's Steering Committee — the multi-agency body that
11 developed and approved the Plan — included Gerald Lewis, identified as representing
12 "Aboriginal Interests, Benton," as a signatory member. Ex. 2, 1988 Plan, Steering
13 Committee Signature Page. The same document identified as Problem-Issue Number 6 that
14 "[c]ultural and historical resources or aboriginal uses of the area may be affected by
15 management activities." Ex. 2, 1988 Plan, at 13. The Agencies have thus been on
16 constructive notice for nearly four decades that aboriginal uses and cultural resources within
17 the Territory are directly implicated by management activities. That notice predates the 2025
18 Decision by thirty-seven years.

19 53. The Tribe's Reservation was established by Executive Order of President
20 Woodrow Wilson on July 22, 1915 — specifically because the Tribe had used the land as an
21 ancestral burial ground "for a very long time." Exec. Order No. 2,225 (July 22, 1915). This
22 established the government-to-government relationship between the United States and the
23 Tribe, and the trust responsibilities that flow from it, that have remained unbroken to the
24 present day.

25 54. The Territory and surrounding Removal area contain springs used by the Tribe
26 for gathering and ceremony; traditional plant gathering areas where generations of Tribal
27 members collected foods, medicines, and basketmaking materials; ancestral campsites and
28 homesites; travel corridors connecting the Tribe's traditional seasonal range; bedrock mortar
sites used communally for processing pine nuts, seeds, and other traditional foods; burial
areas where Tribal ancestors were laid to rest; petroglyphs depicting the Tribe's relationship
with the horses of this landscape; and other cultural landscapes of historical, cultural, and

1 spiritual significance to the Benton Paiute people. To protect sensitive resources, Plaintiffs
2 describe these locations generally rather than identifying specific sites in this public filing.

3 55. Plaintiff Kauk has personal knowledge of petroglyph sites within and adjacent
4 to the Project Area, including sites that depict the historical relationship between the
5 Kootzaduka'a people and the wild horses of this landscape. The specific locations of these
6 sites are withheld from this public filing pursuant to 54 U.S.C. § 307103 and 36 C.F.R. §
7 800.11(c). Plaintiffs are prepared to provide the Court with confidential site descriptions and
8 photographic documentation for in camera inspection subject to an appropriate
9 confidentiality order. The Agencies never asked Plaintiff Kauk about these sites. They never
10 established a confidential process through which she could safely share this information.
11 The absence of these sites from the Agencies' cultural resource inventory is not evidence
12 that they do not exist — it is evidence that the Agencies never asked.

13 56. Many of these resources have never been formally documented with any
14 federal agency — not because they do not exist, but because BLM and USFS never
15 established a confidential consultation process through which the Tribe could safely
16 disclose sensitive site information. The absence of documentation is a product of the
17 Agencies' consultation failure, not the absence of resources. Ex. 11, Saulque (Rana) Decl.,
18 at ¶ 9.

19 **C. The Kootzaduka'a People's Connection to the Territory**

20 57. Plaintiff Ronda Kauk is a member of the Mono Lake Kootzaduka'a Tribe, the
21 southernmost band of the Numu (Northern Paiute) people, whose traditional territory
22 encompasses the Mono Basin and extends east and north into the Excelsior Mountains and
23 the Territory. The Kootzaduka'a have resided in the Mono Lake region since time
24 immemorial, moving seasonally through the landscape — east of Mono Lake in winter, to
25 the basin shores in spring, and north into the surrounding hills for the autumn pinyon
26 harvest. The Territory falls within this traditional seasonal range.

27 58. Ms. Kauk's ancestral lineage extends unbroken through generations of Mono
28 Lake Paiute people who lived, traveled, and cared for these lands. Her great-great-great-
great-grandparents, Poker Bill and Suzie Bill (McGowan), were Mono Lake Paiute people
who traveled on horseback throughout this landscape for gathering, trade, and subsistence.
That lineage continues through Minnie Mike (1896–1974), Dorothy Andrews (1915–2006),

1 Violet Dondero, and Sheryl Dondero to Ronda Kauk. Horses were central to her ancestors'
2 way of life, their movement through this landscape, and the continuation of their culture.

3 59. Ms. Kauk has visited the Territory on a near-daily basis since approximately
4 2000. She serves as Tribal Historic Preservation Officer and Cultural Monitor for the Benton
5 Paiute Tribe and has personal knowledge of cultural resources within and adjacent to the
6 Territory, including springs, bedrock mortar sites, ancestral travel routes, gathering areas,
7 burial locations, and other places of cultural and spiritual significance. She has never been
8 contacted by BLM or USFS about any of these resources.

9 60. Ms. Kauk's connection to the Montgomery Pass herd is personal, specific, and
10 sustained across more than twenty-five years of near-daily observation. Since
11 approximately 2000, she has monitored the herd through every season — tracking
12 individual animals she recognizes by their markings, watching foals born in the Territory
13 grow to adults, and observing the herd's movements across the same water sources,
14 meadows, and travel corridors her ancestors used. Ex. 10, Kauk Decl., at §§ 13, 14, 18. She
15 has reported welfare concerns about specific horses directly to BLM and USFS. Id. at § 4.
16 These visits are not incidental — they are ceremonial, cultural, and ongoing, and she
17 intends to continue them. Id. at § 13. The planned Removal will cause Ms. Kauk grave
18 aesthetic injury: the permanent deprivation of her ability to observe, in their native
19 landscape, a herd she has known as individuals across decades. The forced removal of 624
20 horses — 90 percent of the herd — from a landscape she visits daily, watching animals she
21 knows individually be separated from their families and taken from the land where her
22 ancestors are buried, is an injury of the kind courts have recognized as sufficient to confer
23 standing. See *Am. Wild Horse Campaign v. Burgum*, No. 1:21-cv-02146-WJM (D. Colo.
24 Mar. 3, 2025) (holding that repeated personal observation of specific wild horse herds over
25 years establishes aesthetic injury sufficient for Article III standing); *Animal Legal Def. Fund*
26 *v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998) (en banc) (aesthetic injury from being forced to
27 witness suffering of animals one has personally observed constitutes cognizable injury in
28 fact). No injunction issued after the fact could restore to Ms. Kauk what the Removal will
destroy.

1 **D. The Wild Horses as Living Cultural Landscape**

2 61. The wild horses of the Montgomery Pass herd are not wildlife to the Benton
3 Paiute Tribe and Kootzaduka'a people — they are part of the living cultural landscape. The
4 horses have coexisted with, and been integral to, Paiute life on this landscape for
5 generations. The Tribe's oral histories, elder accounts, and family memories document the
6 use of horses for travel, hunting, trade, and ceremonial life within this landscape. Tribal
7 ancestors gathered horses from the Territory for everyday use. The Territory contains
8 petroglyphs depicting the people's relationship with the horses of this landscape. The
9 horses' presence is inseparable from the cultural integrity of a place that remains sacred to
the Tribe today.

10 62. A 1991 ethnographic interview with Kootzaduka'a elder Jessie Durant
11 documents that her grandfather owned approximately twelve to fifteen horses that ranged
12 the meadows, springs, and travel corridors that are now within and adjacent to the Removal
13 area — the same landscape the Agencies propose to sweep with helicopters without any
14 consultation about its cultural significance.

15 **E. The Agencies' Consultation Failures**

16 63. BLM and USFS first contacted the Tribe regarding the proposed gather in
17 October 2023 through form letters and mass emails sent simultaneously to more than a
18 dozen tribes. This outreach did not constitute the meaningful government-to-government
consultation required by NHPA § 106 or Executive Order 13175.

19 64. Chairman Saulque personally responded to the October 2023 outreach within
20 one day, expressing the Tribe's concern for the horses and requesting a meeting with the
21 Tribe's community. Despite this immediate response, BLM and USFS did not convene a
22 substantive meeting with the Tribe for more than fifteen months — until January 16, 2025,
23 by which time the Final Environmental Assessment had already been finalized and issued
24 on August 8, 2024, more than six months earlier, and the agency objection period was
underway.

25 65. The January 16, 2025 meeting was not initiated by BLM or USFS. The Tribe
26 had to request it. The meeting was structured as an agency presentation of the Agencies'
27 already-determined legal framework and timeline. No agency official asked the Tribe about
28 the existence or location of culturally or spiritually significant sites within the Removal area.

1 No agency official asked whether any locations might qualify as Traditional Cultural
2 Properties. No agency official invited the Tribe to participate in identifying or evaluating
3 historic properties. No confidential disclosure process was established or offered.

4 66. In November 2024, Chairman Saulque attempted to attend the Forest
5 Service's objection resolution meeting. He was turned away and told by email that he was
6 not among those permitted to attend. The Tribe was offered a separate meeting in place of
7 participation in the objection process. This exclusion prevented the Tribe from participating
8 at a critical stage of agency decision-making.

9 67. At no point in the process did BLM or USFS: (a) ask the Tribe to help define
10 the Area of Potential Effects for the Section 106 review; (b) inquire whether any locations
11 within the Removal area hold traditional religious or cultural significance to the Tribe; (c)
12 invite the Tribe to participate in identifying or evaluating historic properties, including
13 Traditional Cultural Properties; (d) establish any confidential process through which the
14 Tribe could safely share sensitive site location information; or (e) issue any finding regarding
15 the effect of the proposed Removal on historic properties. The Agencies' closure letter
16 stated that "no actionable comments were received" — a characterization that inverts the
17 legal obligation. The duty to identify historic properties and conduct consultation runs to the
18 agency, not the tribe. As of the filing of this complaint, the Agencies have not responded to
19 Plaintiffs' counsel's May 14, 2026 formal written demand for Section 106 compliance, have
20 not provided written confirmation that the Removal will be delayed pending lawful
21 consultation, and have not contacted any Tribal officer or Plaintiff Kauk to initiate the
22 process the law requires.

23 68. On December 12, 2025 — nine months after signing the 2025 Decision —
24 Sherri Lisius (then Bishop Field Office Manager) sent an email to Chairman Saulque offering
25 to reschedule a consultation meeting. Her email stated: "After conferring with our solicitors,
26 we have been advised that if the focus of the consultation meeting is the Removal, we
27 would only be able to offer a listening session. This is because we are in active litigation." A
28 true and correct copy of this email chain is attached to the Declaration of Stephanie B.
Sherman as Exhibit 12. Ex. 12, Sherman Decl., at ¶ 16. A "listening session" — in which the
agency hears but does not engage, respond, or participate in collaborative identification of
historic properties — is not government-to-government consultation under Section 106 or

1 Executive Order 13175. The litigation cited by Sherri Lisius as justification, *Tobin v. Rollins*,
2 No. 2:25-cv-02259-CSK (E.D. Cal. Feb. 20, 2026), involved no tribal consultation claims.
3 The Agencies cannot use unrelated wildlife litigation as a shield against their independent
4 consultation obligations to the Tribe. That Sherri Lisius acknowledged nine months after the
5 2025 Decision that a rescheduled meeting was still needed confirms what the DR itself
6 conceded: the Section 106 process was never completed.

6 69. The Agencies' exclusion of Tribal monitors from decisions affecting the
7 Territory continued into 2026. In January 2026, Plaintiff Kauk and Rana Saulque, Vice-
8 Chairwoman of the Benton Paiute Tribe and Tribal Historic Preservation Monitor, learned
9 through social media that a group of the Herd had become stranded in deep snow north of
10 Mammoth Lakes. On January 12, 2026, both women alerted authorities and arrived on site
11 before the USFS. Despite their prior presence and their formal designations as Tribal
12 cultural monitors with clearance to observe agency handling of wildlife on their ancestral
13 lands, the USFS excluded them from the rescue operation and barred them from observing
14 or assessing the horses at the Bishop holding facility. The Agencies provided email updates
15 in lieu of meaningful participation. Six horses were found dead on site; one died of
16 starvation after rescue; three others were euthanized. The Agencies offered the Tribal
17 monitors the bodies of the dead horses — but never offered them a meaningful role in
18 decisions affecting the living ones. Ex. 10, Kauk Decl., at ¶ 30.

18 70. The pattern continued through May 2026. On April 23, 2026, Plaintiff Kauk, in
19 her capacity as Tribal Historic Preservation Officer for the Benton Paiute Tribe, sent a formal
20 written request for Section 106 consultation to Defendant Heller and the U.S. Forest
21 Service, expressly invoking NHPA § 106 by name and requesting coordination regarding
22 tribal cultural resources and interests within the Territory and surrounding lands. Ex. 6,
23 Section 106 Email Chain (Apr. 23–May 8, 2026). On May 8, 2026 — sixty days before the
24 scheduled Removal — Defendant Heller responded that she was “waiting to hear back from
25 the Office of General Counsel and the Department of Justice on if that will affect our ability
26 to consult with Tribes,” and that the Agencies “may be limited in what we can say regarding
27 the elements of the decision that are part of the litigation.” *Id.* Defendant Stone was copied
28 on this email in her capacity as Acting Field Manager of the BLM Bishop Field Office. *Id.*

1 71. A consultation meeting had been proposed for May 19, 2026. The Tribe
2 confirmed its availability. That meeting was never held. The Agencies indicated their ability
3 to discuss matters related to the Removal would be limited due to the pendency of the Tobin
4 appeal. That appeal involved claims under the Wild Free-Roaming Horses and Burros Act
5 and NEPA brought by wildlife observers — it contained no tribal consultation claims and no
6 Section 106 issues. The Agencies’ invocation of *Tobin v. Rollins*, No. 2:25-cv-02259-CSK
7 (E.D. Cal.), to limit or avoid Section 106 consultation has no legal basis. Plaintiff Tribes are
8 not parties to *Tobin*. Their rights under NHPA § 106, Executive Order 13175, and Executive
9 Order 13007 were never before that court. The duty to conduct government-to-government
10 tribal consultation is independent of pending litigation on other claims. It does not pause
11 because a separate case is on appeal. By invoking *Tobin* to avoid the May 19 meeting, the
12 Agencies ensured that Section 106 consultation could never be completed before the July 8
13 Removal — and then scheduled the Removal anyway. As of the filing of this complaint, the
14 Section 106 consultation formally requested by the Tribal Historic Preservation Officer on
15 April 23, 2026 has never occurred.

16 72. Similarly, neither BLM nor USFS contacted Plaintiff Ronda Kauk, in her
17 capacity as Cultural Monitor for the Benton Paiute Tribe and as a member of the Mono Lake
18 Kootzaduka'a Tribe, about the existence, location, or nature of cultural resources within the
19 Removal area. The Agencies did not ask what sites of cultural significance are present
20 within or adjacent to the Territory, how a Removal operation might affect those sites, or what
21 steps should be taken to identify or protect them.

22 73. On May 14, 2026, Plaintiffs’ counsel sent a formal written letter by email to
23 Defendant Heller and Defendant Stone, on behalf of both Plaintiff Tribes, providing written
24 notice that the Agencies had not completed a lawful Section 106 review. The letter cited the
25 governing regulation directly: the Section 106 process must be initiated “early in the
26 undertaking planning,” before the agency commits resources or forecloses alternatives, and
27 compliance must be completed “prior to the approval of any Federal funds on the
28 undertaking or prior to the issuance of any license.” 36 C.F.R. § 800.1(c). The letter stated
that the 2025 DR’s “Tribal Consultation” statement is “neither truthful nor legally sufficient,”
and that any Removal without completing the Section 106 process is unlawful. The letter
attached a detailed Required Agenda for Government-to-Government Consultation setting

1 forth the minimum legal requirements for compliance, including: collaborative determination
2 of the Area of Potential Effects; formal confidential inquiry to the Tribes regarding Traditional
3 Cultural Properties, sacred sites, petroglyphs, and other cultural resources within the
4 Removal footprint; written assessment of adverse effects on cultural resources and the
5 Territory as a living cultural landscape; and good-faith evaluation of alternatives including
6 fertility control and Tribal co-management. The letter requested written confirmation that no
7 Removal would proceed until the Section 106 process was completed and invited the
8 Agencies' legal team to respond. True and correct copies of the May 14, 2026 letter and
9 Required Agenda are attached to the declarations of Shane Saulque and Ronda Kauk.

10 74. Attached to the May 14, 2026 letter was a Required Agenda for Government-
11 to-Government Consultation — an eight-page, citation-specific document submitted jointly
12 by the Benton Paiute Tribe and Plaintiff Kauk, in her capacity as Tribal Historic Preservation
13 Officer, setting forth the minimum legal requirements for a lawful Section 106 review under
14 36 C.F.R. Part 800 and Executive Orders 13007 and 13175. Ex. 7, § 106 Consultation
15 Agenda (May 14, 2026). The Agenda constituted formal legal notice that the listed items
16 were “a legal prerequisite — not a courtesy — to any lawful authorization or implementation
17 of the 2025 Decision.” Id. The Agenda addressed, by regulation and citation, each required
18 step of the Section 106 process: preliminary consultation requirements; collaborative
19 determination of the Area of Potential Effects; identification of Traditional Cultural
20 Properties, petroglyphs, sacred sites, and archaeological resources; assessment of adverse
21 effects; resolution of adverse effects including good-faith consideration of alternatives
22 including fertility control and tribal co-management; execution of a Memorandum of
23 Agreement; and nation-to-nation consultation obligations under Executive Orders 13175
24 and 13007. Id. The Agencies never responded to the § 106 Consultation Agenda. They did
25 not acknowledge receipt. They did not dispute its legal requirements. They did not propose
26 a meeting to address its contents. They said nothing.

27 75. On May 29, 2026 — fifteen days after the Agencies received and ignored the
28 Tribes' formal § 106 Consultation Agenda — Defendant Heller sent a notice to tribal
partners announcing a virtual public hearing on motorized vehicle use for the Removal,
scheduled for June 8, 2026. Ex. 8, June 8 Hearing Notice (May 29, 2026). The notice
provided ten days advance notice — less than half the minimum 21-day notice required for

1 tribal consultation meetings under 36 C.F.R. § 800.2(c)(2)(ii)(A), a regulation the Tribes had
2 cited by number in their unanswered § 106 Consultation Agenda. The hearing was
3 structured as a one-way public comment session, not a consultation: Heller’s press release
4 stated expressly that it was “not a question-and-answer session” and that the Forest Service
5 would “not respond to comments received during this hearing in the same manner as those
6 submitted as part of a National Environmental Policy Act process.” Id. This is the precise
7 definition of a listening session — the same format Sherri Lisius had proposed in December
8 2025, which the Tribe had already rejected as legally insufficient. The June 8 hearing was
9 not government-to-government consultation. It was a public comment period with a
10 disclaimer. Not one person who spoke supported the use of helicopters. The Agencies
11 proceeded to announce the July 8, 2026 helicopter Removal anyway.

12 76. Helicopter operations, vehicle traffic including heavy equipment, construction
13 of trap sites and temporary holding infrastructure, and bait trap installation cause ground
14 disturbance, soil compaction, and vegetation trampling that can damage or destroy bedrock
15 mortar sites, disturb burial areas, and degrade springs, travel corridors, and other water
16 sources of cultural significance. These resource types are fragile and cannot withstand
17 heavy equipment or repeated ground disturbance. Once damaged, they cannot be restored.
18 The Agencies’ failure to identify these resources before approving the Removal means there
19 is no plan to avoid or mitigate this harm.

20 77. The Agencies’ planning documents for the Mono Basin acknowledge the
21 presence of both known and undiscovered cultural resources, archaeological sites,
22 traditional use areas, and locations of cultural significance throughout the region, and call
23 for reviewing archaeological records, site files, historical records, and cultural resource
24 information before undertaking projects that could affect them. Those same documents
25 reference consultation with archaeologists and technical experts — but contain no record of
26 consultation with the Benton Paiute Tribe or the Mono Lake Kootzaduka'a Tribe, whose
27 people have occupied and used this landscape since before those records were created.
28

VI. CAUSES OF ACTION

COUNT I

**Violation of National Historic Preservation Act, Section 106, and
APA, 5 U.S.C. § 706(2)(A) and (D)**

(Against All Defendants)

78. Plaintiffs incorporate by reference all preceding paragraphs.

79. The planned gather and Removal of wild horses is an "undertaking" within the meaning of NHPA Section 106 and 36 C.F.R. § 800.16(y) because it is a project undertaken under the direct jurisdiction of BLM and USFS, funded by federal appropriations, and authorized by the 2025 Decision.

80. The Benton Paiute Tribe is an Indian tribe that attaches religious and cultural significance to historic properties within and adjacent to the Removal area, including Traditional Cultural Properties, sacred sites, ancestral burial grounds, bedrock mortar sites, petroglyphs, springs, gathering areas, and traditional travel corridors. The Agencies were required to consult with the Tribe under 36 C.F.R. § 800.2(c)(2)(ii) before approving the 2025 Decision.

81. The Agencies violated Section 106 by: (a) failing to define the Area of Potential Effects in consultation with the Tribe; (b) failing to make a reasonable and good-faith effort to identify historic properties, including Traditional Cultural Properties, within the Area of Potential Effects; (c) issuing a finding of no historic properties affected without conducting adequate consultation or inventory to support that finding; (d) failing to establish a confidential consultation process through which the Tribe could safely share sensitive site information; (e) declaring Section 106 compliance complete while simultaneously acknowledging in the 2025 Decision itself that tribal consultation remained "ongoing" and that concerns about Traditional Cultural Properties and sacred sites would "continue to be considered"; and (f) closing the Section 106 process without resolving, or even identifying, the Tribe's concerns about historic properties within the Removal footprint.

82. The Agencies' Section 106 process was so procedurally deficient as to constitute no meaningful review at all. The FONSI's acknowledgment that Native American cultural connections "were not fully reviewed" and were "limited to discussing lithic scatters" is a concession that the required identification and evaluation of historic properties did not

1 occur. Section 106 consultation "is not an empty formality; rather, it 'must recognize the
2 government-to-government relationship between the Federal Government and Indian tribes'
3 and is to be 'conducted in a manner sensitive to the concerns and needs of the Indian
4 tribe.'" Quechan Tribe of Fort Yuma Indian Rsrv. v. U.S. Dep't of Interior, 755 F. Supp. 2d
5 1104, 1108 (S.D. Cal. 2010), quoted with approval in Hualapai Indian Tribe v. Haaland, 755
6 F. Supp. 3d 1165, 1175 (D. Ariz. 2024). The Agencies cannot avoid their Section 106
7 obligations by characterizing Removal operations as "temporary." There is "simply no
8 exception in the NHPA for 'temporary' effects." Hualapai, 755 F. Supp. 3d at 1176.
9 Helicopter operations, vehicle traffic including heavy equipment, construction of trap sites
10 and temporary holding infrastructure, and bait trap installation all constitute "effects" within
11 the meaning of 36 C.F.R. § 800.16(i) — they alter the character and use of historic
12 properties regardless of duration.

13 83. The 2025 Decision also reflects the precise internal contradiction that the
14 Hualapai court held was arbitrary and capricious: BLM there issued a finding of "no historic
15 properties affected" under Section 106 while its Environmental Assessment separately
16 identified multiple effects on the same sacred property. Hualapai, 755 F. Supp. 3d at 1175-
17 76. Here, the Agencies declared Section 106 compliance complete while the 2025 Decision
18 itself acknowledged that "[t]ribal Consultation is ongoing" and that concerns regarding
19 Traditional Cultural Properties and sacred sites "will continue to be considered." 2025
20 Decision at 5. An agency cannot simultaneously close its Section 106 process and
21 acknowledge that the tribal concerns at the heart of that process remain unresolved. The
22 2025 Decision is therefore arbitrary, capricious, and without observance of procedure
23 required by law, in violation of 5 U.S.C. §§ 706(2)(A) and (D).

24 **COUNT II**

25 **Violation of Executive Order 13175 and APA, 5 U.S.C. § 706(2)(A) and (D)**

26 **(Against All Defendants)**

27 84. Plaintiffs incorporate by reference all preceding paragraphs.

28 85. The planned Removal has substantial direct effects on the Benton Paiute
Tribe, on the government-to-government relationship between the federal government and
the Tribe, and on the distribution of responsibilities between the federal government and the

1 Tribe with respect to the management of ancestral cultural lands. The Removal therefore
2 has "tribal implications" within the meaning of Executive Order 13175.

3 86. Executive Order 13175 required the Agencies to consult with the Tribe early in
4 the development of the Removal proposal, provide meaningful and timely opportunity for
5 tribal input, and accommodate tribal perspectives before taking final action.

6 87. The Agencies violated Executive Order 13175 by: (a) initiating consultation
7 through a form letter sent simultaneously to more than a dozen tribes, without individualized
8 engagement; (b) failing to convene a substantive meeting with the Tribe for fifteen months
9 after the Tribe responded within one day expressing its concerns and requesting
10 engagement; (c) structuring the single substantive meeting as an agency presentation of
11 already-determined conclusions rather than a dialogue; (d) excluding the Tribal Chairman
12 from the Forest Service's objection resolution meeting; and (e) approving the 2025 Decision
13 without providing the Tribe meaningful and timely input into the decision-making process; (f)
14 limiting any post-Decision consultation to a "listening session" at the direction of agency
15 solicitors, citing unrelated litigation as the reason, nine months after the Removal was
16 approved while consultation remained acknowledged as incomplete; and (g) failing to
17 respond to Plaintiffs' counsel's May 14, 2026 formal written demand for Section 106
18 compliance, failing to schedule any meaningful consultation meeting, and failing to contact
19 any Tribal officer or Plaintiff Kauk about cultural resources within the Removal footprint as of
20 the date of filing; and (h) invoking unrelated pending litigation — *Tobin v. Rollins*, No. 2:25-
21 cv-02259-CSK, which involved no tribal consultation claims — as a purported legal basis for
22 refusing to hold the May 19, 2026 consultation meeting the Tribe had confirmed, thereby
23 ensuring Section 106 consultation could never be completed before the July 8, 2026
24 Removal.

25 88. The Agencies' conduct violated the duty of meaningful government-to-
26 government consultation and constitutes agency action that is arbitrary, capricious, and
27 without observance of procedure required by law, in violation of 5 U.S.C. §§ 706(2)(A) and
28 (D).

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

COUNT III
Violation of Executive Order 13007 and APA, 5 U.S.C. § 706(2)(A) and (D)
(Against All Defendants)

89. Plaintiffs incorporate by reference all preceding paragraphs.

90. The Territory and surrounding Removal area contain Indian sacred sites within the meaning of Executive Order 13007, including but not limited to springs of ceremonial significance, petroglyphs, burial areas, and places associated with traditional cultural practices of the Benton Paiute people and the Kootzaduka'a people.

91. Executive Order 13007 required the Agencies to accommodate access to and ceremonial use of Indian sacred sites within the Removal area, avoid adversely affecting the physical integrity of those sites, and maintain their confidentiality where appropriate.

92. The Agencies violated Executive Order 13007 by: (a) failing to identify Indian sacred sites within the Removal footprint before approving the 2025 Decision; (b) failing to establish any process for the Tribe to confidentially disclose the location of sacred sites; (c) approving Removal operations — including helicopter activity at altitudes as low as ten to thirty feet, vehicle traffic including heavy equipment, construction of trap sites and temporary holding infrastructure, and bait trap installation — across a landscape containing unidentified sacred sites, without any plan to avoid or mitigate physical impacts on those sites; and (d) issuing the 2025 Decision without determining whether the Removal would adversely affect the physical integrity of Indian sacred sites.

93. The Agencies' failure to identify and protect Indian sacred sites before approving the Removal constitutes agency action that is arbitrary, capricious, and without observance of procedure required by law, in violation of 5 U.S.C. §§ 706(2)(A) and (D).

COUNT IV
Violation of Joint Secretarial Order No. 3403 and APA, 5 U.S.C. § 706(2)(A) and (D)
(Against All Defendants)

94. Plaintiffs incorporate by reference all preceding paragraphs.

95. Joint Secretarial Order No. 3403 (Nov. 15, 2021) directs the Departments of the Interior and Agriculture — and their component bureaus, including BLM and USFS — to ensure that all decisions relating to the stewardship of federal lands, waters, and wildlife

1 include consideration of how to safeguard the interests of any Indian Tribes such decisions
2 may affect. SO 3403, § 1(a). The Order further requires the Departments to engage affected
3 Indian Tribes in meaningful consultation at the earliest phases of planning and decision-
4 making, to give due consideration to Tribal recommendations on public lands management,
5 and to incorporate Tribal expertise and Indigenous knowledge into federal decision-making.
6 Id. §§ 3(c), (f).

7 96. SO 3403 applied with full force to the Agencies' development and approval of
8 the 2025 Decision. The planned Removal of 624 wild horses from the Montgomery Pass
9 Wild Horse Territory — land adjacent to and ecologically continuous with the Benton Paiute
10 Reservation — is a federal land management decision with direct, substantial
11 consequences for the treaty, cultural, subsistence, and religious interests of the Benton
12 Paiute Tribe and the Kootzaduka'a people.

13 97. The Agencies violated Joint Secretarial Order No. 3403 by: (a) failing to
14 consider how the 2025 Decision would safeguard the interests of the Benton Paiute Tribe
15 before approving the Removal; (b) failing to engage the Tribe in meaningful consultation at
16 the earliest phases of planning, instead initiating contact through a form letter sent
17 simultaneously to more than a dozen tribes fifteen months before the scheduled Removal;
18 (c) failing to give due consideration to Tribal recommendations, including the Tribe's
19 expressed concerns about the cultural, spiritual, and ecological significance of the wild
20 horse herd to the Tribe and its ancestral territory; (d) failing to incorporate Tribal expertise or
21 Indigenous knowledge into the 2025 Decision or the underlying environmental review; and
22 (e) approving the 2025 Decision while expressly acknowledging in the Decision Record itself
23 that tribal consultation remained incomplete and unresolved.

24 98. The Agencies' failure to comply with the obligations imposed by SO 3403
25 constitutes agency action that is arbitrary, capricious, an abuse of discretion, not in
26 accordance with law, and without observance of procedure required by law, in violation of 5
27 U.S.C. §§ 706(2)(A) and (D).
28

COUNT V
Violation of APA, 5 U.S.C. § 706(2)(A) and (D) — Failure to Follow Trust
Responsibilities

(Against All Defendants)

99. Plaintiffs incorporate by reference all preceding paragraphs.

100. The federal government's trust responsibility to the Benton Paiute Tribe requires federal agencies to act in a manner consistent with the government-to-government relationship established by the 1915 Executive Order and maintained through 400 acres of federal trust land held on behalf of the Tribe. The trust responsibility requires agencies to protect tribal interests — including cultural resources and ancestral lands — from agency actions that proceed without adequate consultation.

101. The Agencies violated their trust responsibilities by approving an action — the removal of 624 wild horses from the Tribe's ancestral territory — without fulfilling their legal obligations under NHPA § 106, Executive Order 13175, Executive Order 13007, Joint Secretarial Order No. 3403, and the trust responsibility owed to the Benton Paiute Tribe, and while acknowledging in the 2025 Decision itself that tribal consultation remained incomplete and unresolved.

102. The 2025 Decision reflects a pattern of agency conduct that treats tribal consultation as a procedural formality to be discharged rather than a substantive obligation to be honored. The 1988 CRMP identified aboriginal interests as directly implicated by Territory management activities. The Agencies carried that acknowledgment forward for thirty-seven years and then approved a 90% removal of the wild horse herd — deeply connected to Tribal culture, history, and identity — without meaningful engagement with the Tribe whose ancestral territory it occupies.

103. The Agencies' failure to fulfill their trust obligations was compounded by their failure to consider congressionally authorized alternatives to mass removal that would have enabled Tribal co-stewardship of the herd and the Territory. The Good Neighbor Authority, 16 U.S.C. § 1011b, provided a mechanism for a formal Good Neighbor Agreement under which the Benton Paiute Tribe could have collaborated with USFS and BLM on herd population management — including fertility control — as a restoration activity on federal lands. The Tribal Forest Protection Act, 25 U.S.C. §§ 3115a–3115b, provided a separate

1 statutory pathway for the Tribe to address resource threats on the MPWHT that affect the
2 Tribe's adjacent trust land through a self-determination contract or agreement. The
3 Agencies neither offered nor considered either mechanism. An agency acts arbitrarily and
4 capriciously when it ignores congressionally authorized alternatives that would serve both
5 the agency's management objectives and the Tribe's rights — particularly when, as here,
6 the agency was on notice of the Tribe's deep and longstanding connection to the land and
7 its wildlife.

8 104. This conduct is arbitrary, capricious, an abuse of discretion, not in accordance
9 with law, and without observance of procedure required by law, in violation of 5 U.S.C. §§
10 706(2)(A) and (D).

11 **VII. IRREPARABLE HARM**

12 105. If the Removal proceeds before the Agencies fulfill their consultation
13 obligations, Plaintiffs will suffer irreparable harm on multiple independent grounds.

14 106. Physical harm to cultural resources. "Damage to or destruction of any" cultural
15 or religious sites "easily" meets the irreparable harm requirement. Quechan Tribe, 755 F.
16 Supp. 2d at 1120, quoted with approval in Hualapai, 755 F. Supp. 3d at 1177.
17 "Environmental injury, by its nature, can seldom be adequately remedied by money
18 damages and is often permanent or at least of long duration, i.e., irreparable." Sierra Club v.
19 Bosworth, 510 F.3d 1016, 1033 (9th Cir. 2007). Helicopter operations, vehicle traffic
20 including heavy equipment, construction of trap sites and temporary holding infrastructure,
21 and bait trap installation across unassessed cultural landscapes create imminent risk of
22 physical damage to bedrock mortar sites, burial areas, petroglyphs, springs, and other
23 resources that the Agencies have never identified because they never asked. Once a
24 bedrock mortar is fractured by ground disturbance or a burial area is disturbed by vehicle
25 traffic, it cannot be restored. There is no injunction that can un-damage a resource
26 destroyed while this case is pending.

27 107. The irreparable harm Plaintiffs face includes risk to petroglyph sites within the
28 Project Area known to Plaintiff Kauk whose specific locations are withheld from the public
record pursuant to 54 U.S.C. § 307103 and 36 C.F.R. § 800.11(c). Plaintiffs are prepared to
provide the Court with confidential documentation of these sites for in camera review upon
request. Once a petroglyph panel is damaged by helicopter rotor wash, ground vehicle

1 traffic, or Removal infrastructure, it cannot be restored. The Agencies' failure to identify
2 these resources before approving the Removal means there is no plan to avoid or mitigate
3 this harm — because the Agencies never asked Plaintiff Kauk what is there.

4 108. The physical resources at risk are not discrete, isolated features. The Benton
5 Paiute Tribe's cultural resources "are historically and culturally interrelated and
6 interconnected" across the Territory and its surrounding landscape. Quechan Tribe, 755 F.
7 Supp. 2d at 1108. The Tribe "views all of the landforms, such as mountains, and
8 archaeological sites as being interconnected." *Id.* Damage to any single resource — a
9 spring, a bedrock mortar, a burial area, a petroglyph — "contributes to destruction of the
10 Tribe's culture, history, and religion." *Id.* The Removal operations cross a 207,921-acre
11 landscape without any survey, inventory, or plan to avoid these resources. The potential for
12 cumulative harm across an unassessed cultural landscape is not speculative — it is the
13 direct and foreseeable result of an agency proceeding without asking.

14 109. Permanent alteration of living cultural landscape. The wild horses are part of
15 the living cultural landscape of the Benton Paiute Tribe and the Kootzaduka'a people. Their
16 presence is not separable from the cultural meaning of the Territory to these peoples.
17 Removal of 624 horses — 90% of the herd — permanently alters the character of a sacred
18 landscape in ways that cannot be remedied after the fact. Once removed, the herd as it
19 exists today — shaped by 160 years of natural selection on this landscape, in relationship
20 with this Tribe — cannot be reconstituted.

21 110. Harm to Plaintiff Kauk's cultural practices and aesthetic injury. Ms. Kauk visits
22 the Territory nearly daily as an expression of her cultural identity and responsibility as
23 Cultural Monitor. The Removal operations — helicopter activity, vehicle traffic including
24 heavy equipment, construction of trap sites and temporary holding infrastructure, and bait
25 trap installation across the Removal area — will physically disrupt her access to and use of
26 this landscape during the Removal and its aftermath. The cultural harm to her is both
27 personal and irreversible. Ms. Kauk will also suffer grave aesthetic injury of the kind courts
28 have recognized as sufficient to confer Article III standing. See *Am. Wild Horse Campaign v.*
Burgum, No. 1:21-cv-02146-WJM (D. Colo. Mar. 3, 2025); *Animal Legal Def. Fund v.*
Glickman, 154 F.3d 426 (D.C. Cir. 1998) (en banc). She has observed individual animals in
this herd on a near-daily basis for more than twenty-five years — watching foals born and

1 grow to adults, recognizing horses by their markings and behavior across seasons, and
2 monitoring the herd's welfare as part of her ongoing cultural and monitoring duties. Ex. 10,
3 Kauk Decl., at §§ 13, 14, 18. The forced removal of 624 horses will deprive her of the ability
4 to observe, in their native landscape, animals she knows as individuals — and will compel
5 her to witness the violent disruption of a herd and a landscape that are inseparable from her
6 identity, her people's history, and her responsibility to future generations. That injury cannot
7 be compensated or restored.

8 111. Loss of oral tradition and cultural knowledge. The Benton Paiute Tribe
9 numbers only 160 members. Because of the Tribe's small size, cultural knowledge —
10 including knowledge of the Territory's sacred sites, traditional use areas, petroglyph
11 locations, and the spiritual significance of the wild horse herd — is held by a limited number
12 of living elders and knowledge keepers. This knowledge is transmitted primarily through oral
13 tradition. The irreplaceable information those individuals carry about specific cultural
14 resources within the Territory cannot be recovered once it is lost. If the Removal proceeds
15 and the cultural landscape is damaged or disrupted before meaningful consultation occurs,
16 the opportunity to document, protect, and transmit that knowledge may be permanently
17 foreclosed — not only because the physical resources will have been harmed, but because
18 the living connection between those resources and the people who carry their meaning is
19 fragile in ways that no agency mitigation measure can address. For a tribe of 160 people,
20 the loss of even one or two knowledge keepers, or the severing of the relationship between
21 those keepers and the lands they steward, can cause the permanent disappearance of
22 cultural knowledge that would otherwise be transmitted to future generations.

23 112. Harm to the Tribe's government-to-government relationship. The Agencies'
24 failure to engage in meaningful consultation before proceeding with the Removal causes
25 ongoing harm to the integrity of the government-to-government relationship between the
26 United States and the Benton Paiute Tribe. The 2025 Decision's acknowledgment that
27 consultation is "ongoing" while simultaneously authorizing the Removal treats the Tribe's
28 legal rights as an afterthought to be managed rather than a condition precedent to be
satisfied.

1 **VIII. BALANCE OF EQUITIES AND PUBLIC INTEREST**

2 113. The balance of equities strongly favors a temporary halt. The Agencies have
3 known since at least 1988 (as documented in their own records) that aboriginal interests are
4 directly implicated by Territory management activities. The Agencies have had thirty-seven
5 years to build a consultation record and have not done so. The Agencies cannot claim
6 urgency manufactured by their own neglect. A brief delay to allow this Court to assess
7 whether the Agencies fulfilled their legal obligations costs the Agencies nothing they have
8 not already cost themselves.

9 114. Against this, Plaintiffs face the prospect of irreversible physical damage to
10 cultural resources that have survived in this landscape for centuries and may not survive a
11 helicopter Removal conducted without any protective plan. The asymmetry is stark: delay is
12 inconvenient; destruction is permanent.

13 115. The public interest favors enforcement of the federal government's
14 consultation obligations to Indian tribes. Congress, the President, and the Council on
15 Historic Preservation have all expressed clear policy that tribal consultation is not a
16 procedural formality — it is a substantive obligation that reflects the government-to-
17 government relationship between the United States and sovereign tribal nations. Allowing
18 the Agencies to proceed while acknowledging unresolved tribal concerns signals that tribal
19 consultation obligations are optional. That signal harms every tribe whose cultural resources
20 are at risk from federal agency actions.

21 116. **Hualapai Indian Tribe v. Haaland**, 755 F. Supp. 3d 1165, 1199 (D. Ariz.
22 2024), held that where the federal government has failed to fulfill its tribal consultation
23 obligations, the balance of equities and public interest favor injunctive relief. The court there
24 recognized that the government's trust relationship with tribes creates obligations that courts
25 must enforce, and that allowing an agency to proceed on an incomplete consultation record
26 causes irreparable harm to tribal rights that cannot be compensated after the fact.

27 **IX. BOND**

28 117. Plaintiffs respectfully request that the Court require no bond, or at most a
nominal bond. "Federal courts have consistently waived the bond requirement in public
interest environmental litigation or required only a nominal bond." *Central Or. Landwatch v.*
Connaughton, 905 F. Supp. 2d 1192, 1198 (D. Or. 2012). In *Hualapai Indian Tribe v.*

1 *Haaland*, the court waived bond entirely for a tribal plaintiff challenging a BLM decision on
2 NHPA and NEPA grounds, finding that any bond amount would have "a drastic effect on the
3 tribe" and that the potential chilling effect on the tribe's general fund warranted complete
4 waiver. 755 F. Supp. 3d 1165, 1178 (D. Ariz. 2024). The same considerations apply here. A
5 federally recognized Indian tribe and its Cultural Monitor bringing claims to enforce the
6 government's NHPA consultation obligations and trust responsibilities should not be
7 required to post a bond that would function as a barrier to the exercise of federally
8 guaranteed rights. No bond should be required.

9 **X. PRAYER FOR RELIEF**

10 118. WHEREFORE, Plaintiffs respectfully pray for judgment against the Defendants
11 as follows:

12 119. For a declaratory judgment that the Agencies violated the National Historic
13 Preservation Act, Section 106, 54 U.S.C. § 306108, and its implementing regulations at 36
14 C.F.R. Part 800, by approving and scheduling the Removal of wild horses from the Territory
15 and surrounding Removal area without completing the required government-to-government
16 tribal consultation, without identifying historic properties and Traditional Cultural Properties
17 within the Area of Potential Effects, and without assessing or resolving adverse effects on
18 those properties, as required before any federal undertaking may lawfully proceed;

19 120. For a declaratory judgment that the Agencies violated Executive Order 13175
20 by failing to consult with Plaintiffs early in the development of the Removal proposal, failing
21 to provide meaningful and timely opportunity for tribal input before reaching a final decision,
22 and approving the 2025 DR while tribal consultation remained expressly unresolved.

23 121. For a declaratory judgment that the Agencies violated Executive Order 13007
24 by failing to identify Indian sacred sites within the Removal footprint, failing to establish a
25 confidential process for the Plaintiffs and Tribes to disclose sensitive site location
26 information, and approving Removal operations across a landscape containing unidentified
27 sacred sites without any plan to avoid or mitigate physical impacts on those sites.

28 122. For a declaratory judgment that the Agencies violated the Administrative
Procedure Act, 5 U.S.C. §§ 706(2)(A) and (D), by approving the 2025 DR in a manner that
is arbitrary, capricious, an abuse of discretion, not in accordance with law, and without
observance of procedure required by law, including the consultation requirements of NHPA

1 § 106, Executive Order 13175, Executive Order 13007, and the federal trust responsibility
2 owed to the Plaintiff Tribe and its members;

3 123. For an order vacating and setting aside the 2025 DR, DOI-BLM-CA-C070-
4 2024-0001-EA (Mar. 7, 2025), and remanding this matter to the Agencies for completion of
5 lawful tribal consultation and a Section 106 review that complies with the requirements of
6 NHPA, Executive Orders 13175 and 13007, and the APA;

7 124. For a temporary restraining order, and a temporary, preliminary, and
8 permanent injunction, prohibiting the Agencies and their officers, agents, servants,
9 employees, and all persons acting in concert with them from conducting any Removal of
10 wild horses within or off the Montgomery Pass Wild Horse Territory or Project Area —
11 including any helicopter operations, vehicle traffic including heavy equipment, construction
12 of trap sites and temporary holding infrastructure, bait trap installation, and other ground-
13 disturbing activities in the Removal footprint, or any issuance of any Notice to Proceed —
14 until the Agencies complete a lawful Section 106 consultation process under NHPA that
15 includes: (1) collaborative determination of the Area of Potential Effects with Plaintiffs; (2) a
16 good-faith confidential inquiry to the Plaintiffs regarding Traditional Cultural Properties,
17 sacred sites, petroglyphs, burial areas, and other cultural resources within the Removal
18 footprint; (3) a written assessment of adverse effects on identified historic properties and on
19 the Herd as a component of the living cultural landscape; and (4) resolution of adverse
20 effects, including good-faith evaluation of alternatives, prior to any renewed authorization;

21 125. For a temporary restraining order, and a temporary, preliminary, and
22 permanent injunction, prohibiting any Removal of wild horses within or off the Territory or
23 Project Area until the Agencies conduct a current, accurate census of the wild horse
24 population within the Project Area and provide the results to the Benton Paiute Tribe for
25 review and comment as part of the required government-to-government consultation
26 process, given that the 2024 census data on which the 2025 Decision rests is now more
27 than two years old and does not reflect known mortality events, natural herd losses, or
28 current conditions on the ground;

126. For an order retaining jurisdiction over this matter to supervise the Agencies'
compliance with the Section 106 process on remand, including compliance with any

1 Memorandum of Agreement executed as part of that process, and to enforce the terms of
2 any injunctive or declaratory relief entered in this case.

3 127. For an order requiring no bond, or at most a nominal bond, consistent with the
4 Court's discretion in public interest litigation brought by a federally recognized Indian tribe to
5 enforce mandatory federal consultation obligations and trust responsibilities. *See Hualapai*
6 *Indian Tribe v. Haaland*, 755 F. Supp. 3d 1165, 1178 (D. Ariz. 2024) (waiving bond entirely
7 for tribal plaintiff challenging BLM decision on NHPA grounds).

8 128. For an award of Plaintiffs' reasonable attorneys' fees, expenses, and costs
9 pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412; and

10 129. For such other and further relief as the Court deems just and equitable.

11 DATED this June 28, 2026.

12 Respectfully submitted,

13 SHERMAN LAW, P.C.

14 *Stephanie Sherman*

15 _____
16 Stephanie B. Sherman
17 CA Bar No. 338390
18 Sherman Law, P.C.
19 2838 Pacific Coast Highway
20 Malibu, California 90265
21 Phone: (424) 425-6174
22 Email: stephanie@malibu.legal

23 *Attorney for Plaintiffs*
24
25
26
27
28