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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UTU UTU GWAITU PAIUTE TRIBE OF THE BENTON PAIUTE RESERVATION, et al *Plaintiffs,* v. UNITED STATES DEPARTMENT OF THE INTERIOR et al, *Defendants.*	Civil Action No. 2:26-CV-02323-DAD-JDP **PLAINTIFFS' *EX PARTE* MOTION FOR TEMPORARY RESTRAINING ORDER, OR, ALTERNATIVELY, FOR AN ORDER SHORTENING TIME FOR HEARING ON MOTION FOR TEMPORARY RESTRAINING ORDER; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEPHANIE SHERMAN IN SUPPORT** (National Historic Preservation Act, § 106, 54 U.S.C. § 306108; Executive Order 13175; Executive Order 13007; Administrative Procedure Act, 5 U.S.C. § 706) DEMAND FOR JURY TRIAL: NO

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on July 6, 2026 at 1:30 p.m., or as soon thereafter as this matter may be heard, via Zoom only (with instructions sent by Court), Plaintiffs Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation ("Benton Paiute" or "Tribe"), Shane Saulque (Tribal Chairman), and Ronda Kauk (Tribal Historic Preservation Officer and Cultural Monitor) will and hereby apply *ex parte* pursuant to Federal Rule of Civil Procedure 65(b) and Local Rule 231, for: (1) a temporary restraining order immediately enjoining the United States Department of the Interior, Bureau of Land Management, United States Forest Service, and all named Individual Defendants (the

"Agencies") from conducting any Removal operations directed at wild horses from in or around the the Montgomery Pass Wild Horse Territory and the Removal area (known by the Agencies as "Project" area) — including any helicopter operations, vehicle traffic involving heavy equipment, construction of trap sites or temporary holding infrastructure, bait trap installation, and any other ground-disturbing activities in the Removal footprint, scheduled to begin July 7, 2026; and (2) an Order to Show Cause requiring Defendants to appear and demonstrate why a preliminary injunction should not issue pending resolution of this action on the merits.

THE NEED FOR EX PARTE RELIEF

Plaintiffs received notice on July 2, 2026 — the same day this Application is filed — that the Agencies have moved the Removal date to July 7, 2026, one day earlier than the Agencies had previously represented to Plaintiffs. Ex. 13.

Good cause exists for *ex parte* relief because the scheduled Removal of wild horses in and around the Montgomery Pass Wild Horse Territory ("Territory") will begin July 7, 2026 and affects indigenous rights, cultural resources, and sacred sites ignored by the Agencies. The Removal area includes land in and around the Benton Paiute Reservation and the Tribe's ancestral homelands. The Removal will cause immediate, irreversible physical damage to Tribe's indigenous Traditional Cultural Properties, sacred sites, petroglyph sites, burial areas, and other cultural resources within the Removal footprint. These indigenous resources have never been identified because the Agencies never conducted a meaningful nation-to-nation tribal consultation required by National Historic Preservation Act, § 106, 54 U.S.C. § 306108. Once these indigenous resources are damaged or destroyed, no injunction can restore them. The irreparable harm is not speculative; it is the inevitable result of the Agencies approving and proceeding with the Removal while disregarding their binding legal obligations to consult with a federally recognized tribe and its members under the National Historic Protection Act, the federal protections and law. Congress, the President, and the Council on Historic Preservation have mandated these to protect indigenous interests, resources, and sacred sites and properties.

The Agencies' own 2025 Decision Record concedes the tribal consultation is still open and incomplete. The 2025 DR states: "Tribal Consultation is ongoing, therefore, concerns regarding Traditional Cultural Properties, Sacred Sites or issues of Tribal concern in the project area will continue to be considered." Compl. ¶¶ 10, 48; Ex. 4, 2025 DR, at 5. The Agencies approved the

Removal while making this assertion. The Agencies cannot close the Section 106 process and proceed with a major ground-disturbing undertaking that affects indigenous' sacred sites and resources while simultaneously conceding, in its own decision document, that the consultation required remained incomplete.

This motion is supported by the accompanying Memorandum of Points and Authorities, the Declaration of Stephanie B. Sherman (Ex. 14), the Declaration of Shane Saulque (Ex. 9), the Declaration of Rana Saulque (Ex. 11), the Declaration of Ronda Kauk (Ex. 10), and all exhibits filed herewith. Plaintiffs are prepared to provide the Court with confidential documentation of specific petroglyph site locations for in camera review pursuant to 54 U.S.C. § 307103 upon request.

Ex parte relief is warranted under Federal Rule of Civil Procedure 65(b) because: (1) immediate and irreparable harm will result ancient and indigenous before the Agencies can be heard through ordinary notice procedures — the Removal is scheduled to begin on July 7, 2026; (2) Plaintiffs' counsel certifies that, as of the date of filing, the Agencies have not responded to Plaintiffs' May 14, 2026 formal written demand for Section NHPA § 106 compliance and have failed to conduct any government-to-government consultation; and (3) the cultural resources at risk — petroglyphs, burial areas, bedrock mortar sites, and sacred springs — cannot be restored once damaged. *See* Sherman Decl. ¶¶ 14–20; Fed. R. Civ. P. 65(b)(1)(A)–(B).

The Agencies were given statutory notice of this Ex Parte Application prior to 10:00 a.m. PT on July 6, 2026. (Declaration of Stephanie Sherman). This Ex Parte Application is based upon this Notice, the Memorandum of Points and Authorities attached hereto, the accompanying Declaration of Stephanie Sherman, the pleadings and papers on file in this action, any evidence or argument presented at the hearing, and any other matters the Court may consider.

Dated: July 2, 2026

Respectfully submitted,
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

1. On July 7, 2026 — federal helicopters will begin rounding up and permanently removing 624 wild horses from the Montgomery Pass Wild Horse Territory ("Territory"), the ancestral homeland of the Benton Paiute people. The Removal area includes the Tribe's Reservation. The U.S. Department of the Interior, U.S. Bureau of Land Management, U.S. Forest Service, and individual Defendants (hereinafter, the "Agencies") acknowledge, in their own 2025 Decision Record, that tribal consultation is "ongoing" and that concerns about Traditional Cultural Properties and sacred sites "will continue to be considered." They are proceeding with the Removal anyway and in the absence of completing this legally required nation to nation process. .

This case presents a direct issue for the Court to decide – whether the Agencies have met their legal obligation to meaningfully consult with the Benton Paiute people before conducting a major land-disturbing federal wild horse Removal across a vast expanse of Indian territory while simultaneously conceding, in their own decision record, that the tribal consultation process was open and 'ongoing.'" The answer in the Ninth Circuit is no. *Hualapai Indian Tribe v. Haaland*, 755 F. Supp. 3d 1165 (D. Ariz. 2024) (enjoining BLM where the agency closed Section 106 review while its own environmental record acknowledged unresolved effects on tribal historic properties), and *Quechan Tribe v. U.S. Dep\u2019t of Interior*, 755 F. Supp. 2d 1104 (S.D. Cal. 2010) (enjoining BLM from proceeding with a solar project where the agency failed to make a reasonable, good-faith effort to identify historic properties) are the Court's guideposts.

The harm, should the unlawful Removal proceed, is irreversible. Helicopter operations at altitudes as low as ten to thirty feet, heavy equipment, trap site construction, and bait installation across unassessed indigenous cultural landscapes create imminent risk of physical destruction to bedrock mortar sites, petroglyph panels, burial areas, ceremonial springs, and other resources the Agencies have never identified — because they never asked. Once a petroglyph is fractured, it cannot be restored. Once a burial area is disturbed, it cannot be un-disturbed. There is no injunction that can undo damage inflicted while this case is pending.

Plaintiffs seek only what the law already requires: that the Agencies complete the consultation they have acknowledged is incomplete before they act. A brief delay costs the Agencies nothing they have not already cost themselves through thirty-seven years of documented inaction.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Territory, the Tribe, and the Removal

The wild horse Territory encompasses 207,921 acres in California and Nevada, east of Mono Lake, bounded by State Highways 6 and 120. Compl. ¶ 11. The Benton Paiute Tribe's Reservation sits at the precise southeastern corner of the Territory, within the Agencies' own Project Area boundary. The Territory and Removal area constitute the ancestral homeland of the Benton Paiute people, encompassing burial grounds, ceremonial springs, petroglyph sites, bedrock mortar sites, pinyon harvesting areas, travel corridors, and other cultural resources the Tribe has maintained since time immemorial. Compl. ¶¶ 51–56; Kauk Decl. ¶¶ 8–15.

The Agencies' own 1988 Comprehensive Resource Management Plan established constructive notice of aboriginal interests in the Territory, identifying Gerald Lewis, representing "Aboriginal Interests, Benton," as a Steering Committee member and identifying as Problem-Issue Number 6 that "[c]ultural and historical resources or aboriginal uses of the area may be affected by management activities." Compl. ¶ 52; Ex. 2, 1988 Plan, at 13. The Agencies carried that notice forward for thirty-seven years and then approved a 90% removal of the wild horse herd without meaningful tribal consultation.

On November 7, 2023, the Agencies announced the proposed Removal. Ex. 3, Heller/Lisius Public Notice (Nov. 7, 2023), at 1. The Final Environmental Assessment ("EA") was released on August 8, 2024, and a Finding of No Significant Impact ("FONSI") and Decision Record ("DR") was issued on March 7, 2025. Ex. 4, 2025 DR, Removal of Wild Horses Outside the Montgomery Pass Wild Horse Territory, Decision Record, DOI-BLM-CA-C070-2024-0001-EA (Mar. 7, 2025) (Sherri Lisius, Bishop Field Manager) ("2025 DR"). The 2025 DR determined that 624 of 694 documented wild horses are "excess" and directed that all 624 "must be removed." Compl. ¶¶ 6–7; Ex. 4, 2025 DR, at 1. The Removal is scheduled to commence July 7, 2026.

B. The Agencies' Consultation Failures

The 2025 DR states: "Tribal Consultation is ongoing, therefore, concerns regarding Traditional Cultural Properties, Sacred Sites or issues of Tribal concern in the project area will continue to be considered." Ex. 4, 2025 DR, at 5. This is the Agencies' concession that the Section 106 process was never finished. Defendant Heller signed the 2025 DR on March 7, 2025 and has never retracted or amended her admission of incompleteness.

The Agencies' consultation history with Plaintiffs reveals a pattern of blatant dismissal of the Plaintiffs' tribal concerns. In October 2023, BLM and USFS sent form letters simultaneously to more than twelve tribes — not government-to-government consultation. Compl. ¶ 63. Tribal Chairman Saulque responded within one day; the Agencies did not hold a substantive meeting for fifteen months — by which time the Final Environmental Assessment had already been issued. Compl. ¶ 64. The January 16, 2025 meeting was structured as a presentation of already-determined conclusions with no inquiry about cultural resources. Compl. ¶ 65. In November 2024, Chairman Saulque was turned away from the Forest Service's objection resolution meeting. Compl. ¶ 66. At no point did the Agencies define the Area of Potential Effects in consultation with the Tribe, inquire about Traditional Cultural Properties, or establish any confidential disclosure process. Compl. ¶ 67.

On April 23, 2026, Plaintiff Kauk formally invoked NHPA Section 106 by name and requested consultation. Compl. ¶ 70; Ex. 6. On May 8, 2026 — sixty days before the scheduled Removal — Defendant Heller responded that she was awaiting guidance from the Office of General Counsel and DOJ on "if that will affect our ability to consult." Ex. 6. A consultation meeting proposed for May 19, 2026 was never held. Compl. ¶ 71.

On May 14, 2026, Plaintiffs' counsel sent a formal written demand for Section 106 compliance, attaching an eight-page Required Agenda for Government-to-Government Consultation citing the governing regulations by number. Ex. 7. The Agencies never responded, never acknowledged receipt, and never proposed a meeting. Compl. ¶ 74. The Agencies' failure to consult cannot be explained away as a function of distance: Defendant Heller is based in Bishop, California — approximately forty miles from the Benton Paiute Reservation — and Defendant Stone, as Acting Field Manager of the BLM Bishop Field Office, is similarly local. This was not a logistical failure. It was a choice.

C. The Cultural Resources at Risk

The Territory and Removal area contain irreplaceable cultural resources the Agencies have never identified because they never asked: springs of ceremonial and gathering significance; traditional plant harvesting areas; bedrock mortar sites; ancestral campsites and travel corridors; burial areas; and petroglyph sites known to Plaintiff Kauk that depict the Kootzaduka'a people's relationship with the wild horses of this landscape. Compl. ¶¶ 54–55; Kauk Decl. ¶¶ 8–15. Specific petroglyph site locations are withheld pursuant to 54 U.S.C. § 307103 and 36 C.F.R. § 800.11(c);

Plaintiffs are prepared to provide confidential documentation of cultural resources in the Removal area for in camera review. The Benton Paiute Tribe numbers only 160 members; cultural knowledge of specific site locations is held by a limited number of living elders and knowledge keepers whose ability to transmit that knowledge will be foreclosed if the Removal damages or destroys these resources before consultation occurs. Compl. ¶ 111.

III. LEGAL STANDARD

A plaintiff seeking a temporary restraining order must demonstrate: (1) likelihood of success on the merits; (2) likelihood of irreparable harm absent preliminary relief; (3) that the balance of equities tips in the plaintiff's favor; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The Ninth Circuit's "serious questions" variant permits a TRO where the plaintiff raises serious questions going to the merits, the balance of hardships tips sharply in the plaintiff's favor, irreparable harm is likely, and the public interest favors relief. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Plaintiffs satisfy both standards.

IV. ARGUMENT

A. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

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. 54 U.S.C. § 306108. The Section 106 process has four mandatory sequential steps: (1) initiating consultation; (2) identifying historic properties within the Area of Potential Effects; (3) assessing adverse effects; and (4) resolving adverse effects. 36 C.F.R. §§ 800.3–800.6. An agency cannot lawfully close the Section 106 process and approve an undertaking while consultation remains open.

The Agencies' own 2025 DR acknowledges that "Tribal Consultation is ongoing" and that concerns regarding Traditional Cultural Properties and sacred sites "will continue to be considered." Ex. 4, 2025 DR, at 5. This internal contradiction — closing the Section 106 process while conceding consultation is unresolved — is precisely what *Hualapai Indian Tribe v. Haaland*, 755 F. Supp. 3d 1165 (D. Ariz. 2024), held to be arbitrary and capricious. *Id.* at 1175–76. The court further held that there is "simply no exception in the NHPA for 'temporary' effects." *Id.* at 1176.

This is not the first time a California court has had to enjoin BLM for disregarding tribal concerns. In *Quechan Tribe of Fort Yuma Indian Reservation v. U.S. Department of Interior*, 755 F.

Supp. 2d 1104 (S.D. Cal. 2010), the Court held Section 106 consultation "is not an empty formality" and "must recognize the government-to-government relationship between the Federal Government and Indian tribes." *Id.* at 1108. The court enjoined BLM from proceeding with a solar project because the agency had "not made a reasonable and good faith effort to identify historic properties." *Id.* at 1116. The record here is the same, the Agencies never defined the Area of Potential Effects in consultation with the Tribe, never inquired about sacred sites or cultural resources, and never received the site information in these landscapes for thousands of years because the Agencies never asked.

Even when the Plaintiffs asked for the tribal consultation, the Agencies responded with a myriad of excuses including an unrelated appeal, *Tobin v. Rollins*, No. 2:25-cv-02259-CSK (E.D. Cal.) the Agencies used as justification for not being able to discuss certain things, The Tobin case contains no claims against the Agencies for failing to meet their tribal consultation requirements. Pending litigation on unrelated claims does not suspend the Agencies' independent consultation obligations.

B. PLAINTIFFS WILL SUFFER IRREPARABLE HARM ABSENT A TRO

1. Damage to Indigenous Sacred Sites, Artifacts and Landscapes Cannot be Replaced

"Damage to or destruction of any" cultural or religious sites "easily" meets the irreparable harm requirement. *Quechan Tribe*, 755 F. Supp. 2d at 1120, quoted with approval in *Hualapai*, 755 F. Supp. 3d at 1177. "Environmental injury, by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, i.e., irreparable." *Sierra Club v. Bosworth*, 510 F.3d 1016, 1033 (9th Cir. 2007). The record here establishes not one but four independent, mutually reinforcing categories of irreparable harm: (A) destruction of unassessed physical cultural resources; (B) severance of a living cultural and spiritual relationship between the Tribes and the Herd; (C) an imminent, documented risk of death and injury to the horses themselves; and (D) the permanent, unrestorable loss of 90% of the Herd. Any one of these grounds independently satisfies the irreparable harm requirement.

The irreparable harm here is not speculative — it is the inevitable consequence of deploying helicopters, heavy equipment, and Removal infrastructure across 207,921 acres of unassessed cultural landscape, including the Benton Paiute Reservation itself. Helicopter operations at altitudes as low as ten to thirty feet generate rotor wash capable of dislodging petroglyph panels. Ground vehicles

including heavy equipment compact soil and destroy subsurface archaeological features, including bedrock mortar sites, burial areas, and springs that all three declarants identify as fragile and incapable of withstanding heavy equipment or repeated ground disturbance. Shane Saulque Decl. ¶¶ 19–20; Rana Saulque Decl. ¶ 14; Kauk Decl. ¶ 22. Once damaged, these resources cannot be restored.

As Rana Saulque, Vice-Chairwoman of the Benton Paiute Tribe, explains from personal knowledge of the Territory: "Once a burial site is disturbed by vehicle traffic, it cannot be undisturbed. Once a bedrock mortar is fractured by ground disturbance, it cannot be restored. Once a spring is degraded by the compaction and erosion that accompany heavy gathering operations, the ecosystem that sustained our ancestors — and that we are responsible to protect — may not recover." Rana Saulque Decl. ¶ 13. She further attests to a distinct and compounding harm: the presence of Removal workers and operators in areas containing undisclosed sacred sites creates a risk that those sites will be discovered, marked, or posted — permanently compromising the confidentiality that has protected them from destruction and vandalism for generations. *Id.* ¶ 14. That risk exists precisely because the Agencies never established a confidential consultation process through which the Tribes could safely disclose sensitive site locations — a failure that has left an unknown number of documented cultural resources, including burial sites, petroglyphs, bedrock mortar features, and traditional gathering areas, entirely unassessed and unprotected going into the Removal. Rana Saulque Decl. ¶¶ 8–10, 12; Kauk Decl. ¶¶ 19–21, 23; Shane Saulque Decl. ¶¶ 15, 19–20.

Beyond the destruction of unassessed cultural resources, the Removal will inflict further injury and loss directly on the Herd itself — animals that are, to Plaintiffs, sacred ancestors rather than fungible wildlife to be managed. Many of the Herd's mares are pregnant or have recently foaled. Rana Saulque has personally observed newborn foals of the Herd on July 1, 2026, still carrying the umbilical cord — evidence of how recently they were born onto this land. Rana Saulque Decl. ¶ 22, Ex. A (photograph). The planned helicopter drive will pursue these pregnant mares and their newborn foals across the Territory's rocky terrain. *See infra* Section II.C. The Agencies have proceeded knowing that a helicopter gather conducted under these conditions places pregnant mares and newborn foals at heightened risk of injury and death, without any documented effort to time, phase, or otherwise modify the Removal to protect them.

B. The Removal Will Sever a Living Cultural and Spiritual Relationship With the Herd That Cannot Be Restored

For the Utu Utu Gwaitu Paiute and Mono Lake Kootzaduka'a peoples, the Herd is not wildlife to be managed — it is, in Chairman Saulque's words, composed of "sacred relatives" whose presence on these lands is documented in tribal history and oral tradition since at least the 1860s. Shane Saulque Decl. ¶¶ 16, 18. Petroglyphs within the Territory depict this centuries-long relationship between the Tribes and the horses. *Id.* ¶ 19; Rana Saulque Decl. ¶ 18; Kauk Decl. ¶ 21. Ronda Kauk, THPO and Cultural Monitor for the Benton Paiute Tribe, has visited the Territory on a near-daily basis since approximately 2000 — a practice she describes as "not recreational but ceremonial," and an expression of a cultural and spiritual relationship her people have maintained "for thousands of years." Kauk Decl. ¶¶ 13–14, 18. Removal of what she calls "the ancient herd" would be a loss with no remedy: "Once the horses are extinct, that lineage is gone forever and cannot be replaced." *Id.* ¶ 40. Kauk further attests that removal of a culturally significant species of this kind constitutes a form of historical trauma to indigenous communities — that "it feels as though history is repeating itself against both indigenous people and the horses who have lived alongside us." *Id.* ¶ 39.

Rana Saulque describes watching this same herd move through the meadows of Adobe Valley during her childhood — "part of the landscape we lived in" — and attests that the Removal "would cause irreparable spiritual and cultural harm to the Tribe" because "[t]he horses are part of the living landscape — inseparable from the cultural integrity of the Territory as our people have known and used it across generations." Rana Saulque Decl. ¶¶ 11, 19. No injunction issued after the Removal, and no remediation program the Agencies might propose, could restore what would be lost. *Id.* ¶ 19; Shane Saulque Decl. ¶ 21.

Chairman Saulque confirms that this loss cannot be undone after the fact: "Once the wild horses are removed, the harm to the Tribe's ancestral cultural landscape will be permanent and irreversible. No injunction issued after the Removal gather commences can restore the herd to its present condition or undo the disruption to the cultural and spiritual character of the Territory." Shane Saulque Decl. ¶ 22.

C. The Removal Poses an Imminent, Documented Risk of Fatal Harm to the Horses Themselves

This risk is not hypothetical. In January 2026, a separate BLM/USFS operation involving this same Herd left six horses dead on site, one dead of starvation after rescue, and three more euthanized — while Tribal cultural monitors Kauk and Rana Saulque, who had reached the stranded horses and

alerted authorities before the USFS arrived, were excluded from the rescue operation entirely and denied any opportunity to observe or assess the horses at the Bishop holding facility. Kauk Decl. ¶¶ 30–31. The Agencies' own recent conduct with respect to this Herd is thus direct evidence of what unfolds when gathering operations proceed without meaningful Tribal participation.

The Removal is scheduled for July 7, 2026, among the hottest months of the year in this high desert region. Chairman Saulque attests that helicopter roundup operations conducted during peak heat pose "extreme risk of injury and death to pregnant mares, nursing foals, and older horses," and that foals — "not built for the sustained running a helicopter drive requires" — routinely suffer severe hoof damage from rocky terrain during summer gathers. Shane Saulque Decl. ¶ 24. As Kauk attests, watching these animals suffer during a forced helicopter drive that separates family bands and confines them in holding facilities is "emotionally devastating" precisely because they are part of the living history and spirit of this place: "No monetary compensation could replace what would be lost if these horses are removed from this landscape." Kauk Decl. ¶ 42.

D. No Subsequent Remedy Can Restore What Will Be Lost

Plaintiff Kauk will also suffer irreversible aesthetic and cultural injury. She has observed individual horses in this herd on a near-daily basis for more than twenty-five years. *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). The permanent removal of 90% of the herd cannot be compensated or restored after the fact — a harm compounded by the certainty, borne out by the Agencies' own conduct just months ago, that some portion of the animals subjected to a summer helicopter gathering will not survive the process at all. Kauk Decl. ¶¶ 30–31, 40, 42; Shane Saulque Decl. ¶ 24.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST FAVOR A TRO

The Agencies have known since at least 1988 that aboriginal interests are directly implicated by Territory management activities. They have had thirty-seven years to build a lawful consultation record and have not done so. An agency cannot claim urgency manufactured by its own neglect. *Quechan Tribe*, 755 F. Supp. 2d at 1122. The asymmetry is stark: delay is inconvenient; destruction is permanent.

Congress, the President, and the Council on Historic Preservation have all expressed clear policy that tribal consultation is a substantive obligation, not a procedural formality. NHPA, 54

U.S.C. § 306108; Executive Orders 13175 and 13007; Joint Secretarial Order No. 3403; 36 C.F.R. Part 800. The public interest is served by requiring federal agencies to comply with the law before acting. *Hualapai*, 755 F. Supp. 3d at 1199.

V. THE STALE 2024 CENSUS DATA CANNOT SUPPORT A LAWFUL EXCESS DETERMINATION

The 2025 DR's determination that 624 horses are "excess" rests on census data now more than two years old and in that time the Herd has experienced substantial losses due to harsh winters.In the spring of 2023,the area experienced "a winter of biblical proportions." See Seidman, Majestic Wild Horses Are Trampling Mono Lake's Otherworldly Landscape. The Feds Plan a Roundup, L.A. Times (Oct. 7, 2025). Early 2026, some of the horses were trapped in the snow resulting in further losses.

The Agencies' own June 2026 hearing notice cited 699 horses — inconsistent with the 694 figure in the 2025 DR. Ex. 8. The current number of horses in the Removal area is unknown. A 90% removal built on stale population data that predates known mortality events is arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A).

The discrepancy is not merely semantic. The Forest Service's own July 2, 2026 press release now states that only 450 wild horses will be gathered — a reduction of 174 horses, nearly 28%, from the 624 horses the 2025 DR determined "excess" based on the 2024 census. Ex. 13. The Agencies have never explained this discrepancy, issued a revised excess determination, or identified which 450 of the original 624 horses are now targeted for removal. An excess determination that overstates its own target population by more than a quarter, discovered only days before the Removal is set to begin, is precisely the kind of stale, unreliable agency action that Section 706(2)(A) forbids.

VI. IN THE ALTERNATIVE, GOOD CAUSE EXISTS FOR AN ORDER SHORTENING TIME

Should the Court decline to issue the requested temporary restraining order on the present *ex parte* record, Plaintiffs respectfully request, in the alternative, an order shortening time for hearing on Plaintiffs' Motion for Temporary Restraining Order pursuant to Eastern District of California Local Rule 144(e) and Federal Rule of Civil Procedure 6(c)(1)(C), such that the motion may be heard and decided before the Removal commences on July 7, 2026.

Courts evaluate *ex parte* requests to shorten time under the two-part standard articulated in *Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995): (1) whether the moving party's cause will be irreparably prejudiced if the underlying motion is heard according to regular noticed motion procedures, and (2) whether the moving party is without fault in creating the crisis that requires expedited relief, or the crisis arose from excusable neglect. Both elements are satisfied here.

First, Plaintiffs will be irreparably prejudiced absent expedited hearing. Ordinary notice motion practice under Local Rule 230 would not permit briefing and hearing to conclude before the Removal is scheduled to begin on July 7, 2026. As set forth throughout this Memorandum, the harm that will result from the Removal — physical destruction of unassessed cultural resources, severance of the Tribe's living relationship with the Herd, and risk of injury or death to pregnant mares and newborn foals — is irreversible and cannot be remedied by any subsequent order. *See supra* Section II. A brief delay to permit expedited hearing on the merits imposes no comparable harm on Defendants, who have had thirty-seven years to conduct lawful consultation and have simply chosen not to.

Second, Plaintiffs are without fault in creating the present urgency. Plaintiffs' counsel formally demanded Section 106 compliance on May 14, 2026 — nearly two months before the scheduled Removal — and requested written confirmation that the Removal would be delayed pending lawful consultation. Sherman Decl. ¶ 8. The Agencies never responded. Sherman Decl. ¶¶ 13, 15. Plaintiffs did not sit on their rights; they pursued informal resolution diligently and in good faith before resorting to emergency judicial relief, and gave the Agencies statutory notice of this Application before 10:00 a.m. PT on July 2, 2026 — five days before the Removal is scheduled to commence. Sherman Decl. ¶ 16. Unlike the dilatory litigants described in *Mission Power*, Plaintiffs did not create their own crisis; the Agencies did, by declining to respond to a lawful consultation demand until the eve of an irreversible Removal. 883 F. Supp. at 492.

Accordingly, if the Court does not grant the requested temporary restraining order outright, Plaintiffs respectfully request that the Court, in the alternative, shorten time for hearing on Plaintiffs' Motion for Temporary Restraining Order to a date and time before July 7, 2026, and set an expedited briefing schedule accordingly.

VI. NO BOND SHOULD BE REQUIRED

Federal courts have consistently waived or set nominal bonds in public interest environmental and tribal rights litigation. *Central Or. Landwatch v. Connaughton*, 905 F. Supp. 2d 1192, 1198 (D. Or. 2012). In *Hualapai Indian Tribe v. Haaland*, the court waived bond entirely for a tribal plaintiff challenging a BLM decision on NHPA grounds. 755 F. Supp. 3d 1165, 1178 (D. Ariz. 2024). No bond should be required.

VIII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court: (1) issue an immediate temporary restraining order enjoining all Removal operations pending completion of lawful tribal consultation under NHPA Section 106; (2) issue an Order to Show Cause why a preliminary injunction should not issue; (3) set this matter for expedited briefing and hearing; and (4) require no bond, or at most a nominal bond.

The cultural resources at risk have survived in this landscape for centuries. They may not survive through this Removal. The law requires consultation before action. Plaintiffs ask only that the Court hold the Agencies to that requirement.

DECLARATION OF STEPHANIE SHERMAN

I, Stephanie Sherman, declare:

1. I am the attorney of record for Plaintiffs in this action and a partner at Sherman Law, P.C. I have personal knowledge of the following facts, and, if called as a witness, I could and would testify competently thereto. I make this Declaration in Support of Plaintiffs' Ex Parte Application for Temporary Restraining Order, or, Alternatively, for an Order Shortening Time for Hearing on Motions Seeking Same Relief.
2. Attached hereto as Exhibit 1 is a true and correct copy of the Agencies' Project Overview Map and Special Designations Map for the Territory and Removal area, obtained from BLM and USFS records in the course of my representation of Plaintiffs.
3. Attached hereto as Exhibit 2 is a true and correct copy of the Agencies' 1988 Comprehensive Resource Management Plan for the Montgomery Pass Wild Horse Territory, including the Steering Committee Signature Page identifying Gerald Lewis as representing "Aboriginal Interests, Benton."
4. Attached hereto as Exhibit 3 is a true and correct copy of the November 7, 2023 public notice issued jointly by Defendant Heller and then-Bishop Field Office Manager Sherri Lisius announcing the proposed Removal.
5. Attached hereto as Exhibit 4 is a true and correct copy of the March 7, 2025 Decision Record, DOI-BLM-CA-C070-2024-0001-EA, signed by Defendant Heller, authorizing the Removal.
6. Attached hereto as Exhibit 5 is a true and correct copy of the Agencies' Finding of No Significant Impact, which acknowledges that Native American cultural connections to the Territory "were not fully reviewed" and were "limited to discussing lithic scatters."
7. Attached hereto as Exhibit 6 is a true and correct copy of the Section 106 email chain between Plaintiff Ronda Kauk and Defendant Heller dated April 23, 2026 through May 8, 2026, in which Ms. Kauk formally invoked Section 106 of the NHPA and requested government-to-government consultation.
8. On May 14, 2026, at 3:22 p.m., I sent a written email to Defendant Stephanie Heller and Defendant Heather Stone, with a copy to Shane Saulque and the Benton Paiute Tribal Historic Preservation Office, on behalf of the Utu Utu Gwaitu Paiute Tribe and Ronda Kauk of the Mono Lake Kootzaduka'a Tribe. In that email, I advised the Agencies that the Tribes were

considering legal action to enjoin any Removal of wild horses from the Montgomery Pass Wild Horse Territory unless and until the Agencies meaningfully consulted with the Tribes as required by the National Historic Preservation Act, 54 U.S.C. §§ 300101–307108, and cited 36 C.F.R. § 800.1(c) for the requirement that Section 106 consultation be initiated early in the undertaking planning process. I informed the Agencies that their consultation log to that point reflected only mass emails, form letters, and a single in-person meeting structured as an agency presentation — not the collaborative identification of historic properties or assessment of cultural impacts the NHPA requires. I attached to my email a proposed Required Agenda for Government-to-Government Consultation setting forth the minimum requirements for lawful consultation under 36 C.F.R. Part 800, Executive Order 13007, and Executive Order 13175. The Agenda states on its face that it is submitted "as a Condition of Lawful Consultation" and that completion of its items "is a legal prerequisite — not a courtesy — to any lawful authorization or implementation of the 2025 Decision." I requested written confirmation that no gather would take place until the Agencies completed the Section 106 process, and advised that any gather without completing that process would be met with legal action. The Agencies never provided the written confirmation I requested. Attached hereto as Exhibit 7 is a true and correct copy of my May 14, 2026 email and the attached Required Agenda for Government-to-Government Consultation.

9. Attached hereto as Exhibit 8 is a true and correct copy of the May 29, 2026 notice issued by Defendant Heller announcing a virtual public hearing on motorized vehicle use for the Removal, scheduled for June 8, 2026 on ten days' notice.

10. Attached hereto as Exhibit 9 is a true and correct copy of the Declaration of Shane Saulque, executed June 28, 2026.

11. Attached hereto as Exhibit 10 is a true and correct copy of the Declaration of Ronda Kauk, executed June 28, 2026.

12. Attached hereto as Exhibit 11 is a true and correct copy of the Declaration of Rana Saulque, executed June 28, 2026.

13. I make this declaration further in support of Plaintiffs' request that this Court grant ex parte relief pursuant to Federal Rule of Civil Procedure 65(b).

14. The Removal is scheduled to commence July 7, 2026 — five days from the filing of this application. Absent immediate relief, the Agencies will begin helicopter and ground-based gather operations before Defendants can be heard through ordinary noticed-motion procedures, causing the irreparable harm described in the accompanying Memorandum of Points and Authorities and the declarations of Shane Saulque, Rana Saulque, and Ronda Kauk.
15. As of the date of this filing, the Agencies have not responded to Plaintiffs' May 14, 2026 formal written demand for Section 106 compliance described in ¶ 8 above, have not provided written confirmation that the Removal will be delayed pending lawful consultation, and have not contacted any Tribal officer or Plaintiff Kauk to initiate the consultation process the law requires.
16. On December 12, 2025 — nine months after signing the 2025 Decision Record — then-Bishop Field Office Manager Sherri Lisius sent me an email offering to reschedule a consultation meeting with Chairman Saulque. Ms. Lisius's email stated: "After conferring with our solicitors, we have been advised that if the focus of the consultation meeting is the Removal, we would only be able to offer a listening session. This is because we are in active litigation." 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 Executive Order 13175. Attached hereto as Exhibit 12 is a true and correct copy of this email chain.
17. Attached hereto as Exhibit 13 is a true and correct copy of the U.S. Forest Service's July 2, 2026 press release, which I received on July 2, 2026, announcing the Wild Horse Gather Closure Area, effective July 7–17, 2026, confirming that the Agencies moved the Removal date to July 7, 2026 — one day earlier than the Agencies had previously represented to Plaintiffs — and stating that the Agencies now intend to gather only 450 wild horses, not the 624 horses the 2025 DR determined to be "excess."
18. The litigation Ms. Lisius cited as justification for limiting consultation to a listening session, Tobin v. Rollins, No. 2:25-cv-02259-CSK (E.D. Cal.), involved no tribal consultation claims and no Section 106 issues. Plaintiffs are not parties to Tobin.

19. The cultural resources at risk from the Removal — including petroglyphs, burial areas, bedrock mortar sites, and sacred springs within the Territory — cannot be restored once damaged, as described in the declarations of Shane Saulque, Rana Saulque, and Ronda Kauk filed herewith.

20. I make this declaration in good faith and based on my direct involvement in the pre-filing correspondence and consultation efforts described herein, in support of Plaintiffs' request for emergency relief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed on July 2, 2026, at Malibu, California.

Stephanie Sherman
Stephanie Sherman

Dated July 2, 2026

Respectfully submitted,

SHERMAN LAW, P.C.

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