ELAINA R. EROLA*

Wild and Untamed: The Problem of Wild Horses on Federal and Indian Lands

Introduction 274
I. Background 277
A. Government-Sponsored Adoption Programs 280
B. Slaughter 281
C. Contraception 282
D. Sterilization by Capture and Release 283
E. Jurisdiction on Tribal Lands 283
F. Ute Tribe Colorado 285
G. Navajo 286
H. Blackfeet 290
I. Wind River 291
J. Yakama 292
II. Federal Government Trust Duties and Responsibilities to Indian Lands and Tribes 294
A. The Trust Responsibility Includes the Responsibility to Protect Indian Lands and Resources 294
B. *United States v. Mitchell* (1983) "*Mitchell II*" 296
C. Defining Trust Assets 297
III. The Power of Contracting Between Tribal Nations and the Federal Government 300
A. A Tribe's Ability to Determine Classification 300
B. Federal General Funding Resources for Tribal Fish and Wildlife Departments 302
C. ISDEAA and the Underfunding of Tribal Programs 305
D. *Ramah Navajo Chapter v. Salazar* (2012) 307
E. The Duty of Consultation 309

* (Blackfeet) LL.M., Lewis and Clark College of Law, 2026; J.D., Northwestern California University SOL; B.A., Cal Poly Humboldt. A very special thank you to the efforts of Dr. Carma Cocoran, Lydia Dexter, Tom Schlosser, and my advisor on this project, Dan Rohlf.

Conclusion 312

INTRODUCTION

Both Native American Tribes and the wild horses of the United States, particularly in the western regions, carry the weight of the all-American symbol of freedom and wildness. Both have faced population declines that neared extinction in the United States of America. Both have been regulated by Congress and confined to designated lands. Depending on whom you are talking to, many Americans may not even realize that either still exists.

However, Americans seem to have a bleeding heart for the wild horse, yearning to protect it and advocate on its behalf in a way that they never have for Tribes throughout history. Animal activists and organizations have pursued litigation, led campaigns, and published literature countless times on behalf of the wild horse and its current political status. Americans have voiced numerous concerns regarding the holding, sterilization, and sale of wild horses, holding on to the legend that these magnificent animals deserve to run free and unencumbered through our lands, continuing to display their liberty for generations.

It's easy to become disillusioned by the mythos of American legends, mistakenly believing that the contemporary Native American people of the country and its free-roaming wild horses lived in harmony. While it remains true that many Tribes maintain their spiritual and ancestral ties to the horses that enabled generations to traverse the plains, hunt buffalo, and gather the sustenance necessary in the harsh terrain that both inhabited, the realities that Indian[1] Tribes face today are less harmonious and much harsher. Nearly every Tribe in the western United States is grappling with a crisis due to wild horses.

The Bureau of Land Management (BLM), the federal agency that has formal oversight of the animals and an agency within the Department of the Interior, has itself published conflicting information about how many wild horses it manages on public lands, but it has most

1 25 U.S.C. § 5129 ("The term 'Indian' . . . shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood . . . . Eskimos and other aboriginal peoples of Alaska shall be considered Indians. The term 'tribe' wherever used in this Act shall be construed to refer to any Indian tribe, organized band, pueblo, or the Indians residing on one reservation.").

recently been estimated that they number between 70,000 and 90,000.[2] The unmeasured remaining populations are found on Tribal reservations, Indian Country, and public land managed by other federal agencies, where BLM has no jurisdiction.[3] Of the land BLM manages, there are 175 Herd Management Areas (HMAs) across the designated ten[4] western states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming, totaling 27 million acres of land.[5] Both Indian Tribes and HMAs exist where the federal government once deemed land quality to be the poorest available,[6] and thus was appropriate only for Indians and wild horses.

This Article examines the historical and contemporary conflicts surrounding wild horse management in the United States, particularly focusing on the BLM and its impact on federally recognized Tribal Nations and argues that the U.S. Department of the Interior has failed to uphold its trust responsibilities to Tribes by inadequately addressing the overpopulation of wild horses, which has led to severe environmental, economic, and resource-management issues on tribal lands.

Part I explores the origins of the relationship between Tribal Nations and horses. This includes the legal framework governing wild horse management, beginning with the Wild Free-Roaming Horses and Burros Act of 1971 and then into past and current acts of legislative efforts. The Background section also includes fifty years of unsuccessful efforts by the federal government's adoption and contraceptive programs, failing to effectively regulate horse populations. Finally, the Article goes into more specific challenges, such as jurisdictional conflicts between federal agencies and tribal governments, faced by Tribes such as the Navajo, Yakama, Ute, and

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2 *See* discussion *infra* Part I.

3 Heather Hansman, *What's to Be Done About the Wild Horse Herds of the American West?*, SIERRA CLUB (June 12, 2023), https://www.sierraclub.org/sierra/2023-2-summer/feature/what-s-be-done-about-wild-horse-herds-american-west [https://perma.cc/5QTH-YTSZ].

4 *Herd Management Areas*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., https://www.blm.gov/programs/wild-horse-and-burro/herd-management/herd-management-areas [https://perma.cc/H8JA-CTJ7] (last visited Feb. 9, 2026).

5 *Frequently Asked Questions About America's Wild Horses and Burros*, AM. WILD HORSE CONSERVATION (Jan. 31, 2015), https://americanwildhorse.org/stories/frequently-asked-questions-about-americas-wild-horses-and-burros-4726 [https://perma.cc/Y95H-7A3Q].

6 Bryan Leonard, Dominic P. Parker & Terry L. Anderson, *Land Quality, Land Rights, and Indigenous Poverty*, J. DEV. ECON., Mar. 2020, at 1–2.

Blackfeet, who struggle with the consequences of unchecked horse populations on their lands while receiving little to no federal support. Please note that because of the lack of funding provided to Tribal Nations, much is unknown about wild horses on Indian lands. The Background section is meant to provide as much information as possible about what is known, mainly through the efforts of journalism.

Part II defines and explains the unique relationship that Tribal nations hold with the U.S. government. The Indian trust doctrine is essential to understanding this relationship and has been defined by voluminous case law. Here, I will analyze the case law applicable to trust relationships, defining trust assets and the trustee duties of the federal government. The current actions of the federal government, in failing to manage wild horse populations, do not fulfill its trustee duties with respect to the wild horses that are destroying Indian lands and sacred native plant species and stealing water resources from Indian people in times of drought. Using the case law in this Part, I will identify a few legal pathways to demonstrate a successful case to this effect.

Part III will discuss possible solutions to redress this failure by the United States. It will begin with a Tribe's ability to define wild horses as wildlife or invasive species and what either of those options looks like. I also discuss the abysmal lack of federal funding available for Tribal Nations, who are left to fight an overpopulation of wild horses on their own, and how the United States needs to provide grants and funding to Tribal Nations. Next, I will discuss the unique nature of contracts between Tribal Nations and the U.S. Government and the undisputed duty of Congress to fund these contracts, as well as the Indian Self-Determination and Assistance Act. Finally, this Article discusses the federal government's broad responsibility to respect the consultation and co-management requirements, with respect to lands and wildlife, enacted by the executive branch, as well as those required by congressional acts such as the National Environmental Policy Act ("NEPA").

This Article is not the solution to America's wild horse overpopulation problem. I do not propose to have solved the problems that the federal government has not, nor am I proposing that either tribal governments or activist groups have the solution. Rather, this Article argues that Tribes have been deprived of the circumstances required, both financially and procedurally, to realistically manage wild horses in the first place.

I
BACKGROUND

The horses of the Americas that we know today are not native to this part of the world.[7] The relationship between Native Americans and horses began with the Apache and the arrival of the Spanish horses.[8] The Apache stole and traded these horses, changing the lifestyle and culture of the Southwestern Tribes, reaching the Navajo, Ute, and Comanche.[9] The Comanche became expert riders, raiding the Spanish mercilessly, sometimes taking as many as fifteen hundred horses at a time.[10] In a typical raid observed by a French visitor in 1876, the Comanche made off with four hundred horses, and when the Spanish pursued them, they took the opportunity to ambush and steal 150 more.[11]

The fight to maintain the balance between land for the horses and land for the settlers is as old as the struggle to maintain Indian lands for the Tribes, as the population of America grew. As early as 1919, the United States government gave orders to the Crow Tribe of Montana to reduce their herds when non-tribal cattlemen with grazing permits on the Crow reservation felt that the wild Crow ponies were depleting the forage needed for their cattle.[12] When the Crow chose not to comply with these orders, government contractors came in and shot the animals at a bounty of four dollars per horse.[13] Within three years, more than forty thousand horses were massacred,[14] and more than 100 years later, the same conflict still exists.

BLM's authority to manage wild horse populations comes from the Wild Free-Roaming Horses and Burros Act of 1971.[15] The wild horses under the Federal government's stewardship roam on public lands where government range watchers say there should be just under

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7 *See generally* DAVID PHILIPPS, WILD HORSE COUNTRY: THE HISTORY, MYTH, AND FUTURE OF THE MUSTANG 1–35 (2017) (providing generally for a complete history of prehistoric horses and their extinction in America).

8 STEVE PRICE, AMERICA'S WILD HORSES: THE HISTORY OF THE WESTERN MUSTANG 39 (2017).

9 PHILIPPS, *supra* note 7, at 52.

10 *Id.* at 52–53.

11 *Id.* at 53.

12 *Id.* at 83.

13 *Id.*

14 *Id.*

15 16 U.S.C. §§ 1331–1340.

27,000.[16] This number is known as the "Appropriate Management Level" ("AML"),[17] the number designated by the BLM in order to "maintain a thriving natural ecological balance on the public lands,"[18] and it has stayed at 27,000 for over 50 years.

The most recent information available from the Department of the Interior, published on their official website, is from 2024, when the number was closer to 88,000, with 72,000 horses and 16,000 burros on public range lands.[19] However, in a statement given by Tracy Stone-Manning in May of 2024 in a funding request, that number was 73,500 wild horses and burros across the 177 HMAs, and the AML was still at 27,000.[20] This only further illustrates the constant problem of monitoring and reporting experienced by all agencies involved.

In 2024, in addition to the free-roaming wild horse populations, there were approximately 50,000 horses and burros kept in off-range corrals or pastures, many of which have no chance of being adopted into private care because of age or other factors.[21] Just the corralling of wild horses by the BLM costs the U.S. taxpayer $81 million per year to manage, and that number will easily grow to more than $1 billion per year in just a short time frame as more horses and burros come off the range.[22] "Over their lifetime, those horses and burros in holding cost

16 *Challenges and Potential Solutions for BLM's Wild Horse and Burro Program: Oversight Hearing on Wild Horses & Burros Before the H. Nat. Res. Subcomm. on Fed. Lands*, 114th Cong. (2016) (statement of Steve Ellis, Deputy Dir. of Operations, Bureau of Land Mgmt., U.S. Dep't of the Interior), https://www.doi.gov/ocl/wild-horses-and-burros [https://perma.cc/QMX9-PGNK].

17 *Id.*

18 Amy Joi O'Donoghue, *Crisis in the West: Americans Will Soon Have a $5 Billion Wild Horse Problem and Few Know About It*, DESERET NEWS (Oct. 23, 2019), https://www.deseret.com/utah/2019/10/23/20892118/crisis-in-the-west-americans-will-soon-have-a-5-billion-wild-horse-problem-and-few-know-about-it [https://perma.cc/VZ39-9ANX].

19 *Long-Term Management Options for the Bureau of Land Management's Wild Horse and Burro Program: Before the Subcomm. on Public Lands, Forests and Mining & S. Comm. on Energy and Nat. Res.*, 116th Cong. (2024) (statement of Steve Tryon, Deputy Assistant Dir. For Res. and Planning, Bureau of Land Mgmt.).

20 *Examining the President's FY 2025 Budget Request for the Bureau of Land Management and National Park Service: Before the Subcomm. on Fed. Lands of the H. Comm. on Natural Res.*, 118th Cong. (2024) (statement of Tracey Stone-Manning, Director, Bureau of Land Mgmt.).

21 *Id.*

22 *Curbing Wild Horse, Burro Herds on U.S. Public Lands to Cost $5 Billion: Official*, REUTERS (Oct. 23, 2019, at 13:27 PDT), https://www.reuters.com/article/business/environment/curbing-wild-horse-burro-herds-on-us-public-lands-to-cost-5-billion-officia-idUSKBN1X22K1/ [https://perma.cc/3XPQ-WFEC].

$47,000 per animal to house, assuming they enter a BLM facility at an early age and stay there for the duration of their life."[23]

It is difficult to fathom that in fifty-five years, we have reached these numbers when in 1971—the year the Wild Free-Roaming Horses and Burros Act[24] was passed—there were only an estimated 9,500 horses on federal range land.[25] And yet, legislation and activist groups have placed dozens of limitations on how the BLM can address the excess population. In 2019, the BLM's deputy director for policy and programs, William Perry Pendley, told reporters it would cost $5 billion and take fifteen years to get herds to the appropriate population levels, primarily through round-ups and increased sterilization controls, but that the damage was already done in some landscapes.[26] Further, because wild horses may inhabit lands only where they existed at the time the 1971 Act was passed, BLM cannot relocate wild horse populations to other areas or federal rangelands.[27] Additionally, BLM federal land has to be multiuse, pursuant to the Federal Land Policy and Management Act.[28] Therefore, ranchers lease the land to graze their cattle, and many of the natural predators in these areas, such as mountain lions and coyotes, have been eliminated at the request of the ranchers.[29]

In fact, it seems that no matter what solution is proposed to the wild horse problem, the BLM is met with opposition, accusing it of cruelty. It is important to understand that the horses do not understand, as BLM does, where their jurisdiction lies, and, by their very definition, "free-roaming" means they are mostly uncontained on public lands. The actions and inactions of BLM have created the problem of overpopulation, and thus, I believe it is important to discuss some of the management techniques attempted by this agency.

Beginning in 2004, Congress passed a sales-authority law (also known as the Burns Amendment or Wild Free-Roaming Horses and Burros Act Amendment of 2004) that authorized population control

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23 O'Donoghue, *supra* note 18.

24 16 U.S.C. §§ 1331–1340.

25 Stephen Lezak, *Wild Horses, Buffalo and the Politics of Belonging*, HIGH COUNTRY NEWS (Dec. 1, 2021), https://www.hcn.org/issues/53-12/indigenous-affairs-wildlife-wild-horses-buffalo-and-the-politics-of-belonging/ [https://perma.cc/HDL8-WNMM].

26 REUTERS, *supra* note 22.

27 J. EDWARD DE STEIGUER, WILD HORSES OF THE WEST: HISTORY AND POLITICS OF AMERICA'S MUSTANGS 178 (2011).

28 43 U.S.C. §§ 1701–1782 (1976).

29 DE STEIGUER, *supra* note 27, at 178.

methods by the euthanasia of older and unadoptable horses, increased adoption efforts, and lifted restrictions on the sale of wild horses.[30] The Amendment states that "any excess [horse (and burro)] or the remains of any excess [horse] shall be sold if—(A) the [horse] is more than 10 years of age; or (B) the [horse] has been offered unsuccessfully for adoption at least 3 times."[31] In 2006, Congress enacted the "Rahall Amendment" to curb the effects of the Burns Amendment by prohibiting the use of appropriated funds for activities that would enable the sale or slaughter of federally protected wild horses and burros.[32]

A. Government-Sponsored Adoption Programs

In 2018, Randy Moore, the supervisor of northeastern California's Modoc National Forest, warned that "unless the public stepped up with limited sale purchases, the government's only alternative to manage wild horse populations was to pursue unlimited sales of the animals without restrictions," in which case the horses could be slaughtered in Mexico or overseas.[33] In response, the United States government created an incentive program in 2019 that pays adopters $1,000 to take in the animals and care for them for a year.[34] "After that, the ownership title is transferred to these private owners and the horses' fate is left in their hands."[35] In the first year of the program, 7,104 horses and burros were adopted, which was a 54% increase from 2018.[36] In the 2023 fiscal year, the BLM moved 8,045 animals into private care through

30 Consolidated Appropriations Act, Pub. L. No. 108-447, § 142, 118 Stat. 2808 (2005).

31 U.S. DEP'T OF THE INTERIOR, INVESTIGATIVE REPORT OF BUREAU OF LAND MANAGEMENT WILD HORSE BUYER 2 (2015).

32 Rick E. Danvir, *Multiple-Use Management of Western U.S. Rangelands: Wild Horses, Wildlife, and Livestock*, 12 HUM.-WILDLIFE INTERACTIONS 5, 6 (2018).

33 Amy Joi O'Donoghue, *Is Slaughtering Wild Horses a Necessity? Tribes Wrangle with Controversial Issue*, DESERET NEWS (Oct. 23, 2019, at 22:08 MDT), https://www.deseret.com/utah/2019/10/23/20899394/is-slaughtering-wild-horses-a-necessity-tribes-wrangle-with-controversial-issue [https://perma.cc/GK7R-FEAT].

34 Mark Scaglione & Erin McLaughlin, *Wild Horses Put Up for Adoption by the Government Are Ending Up at Risk for Slaughter*, NBC NEWS (Sept. 27, 2023, at 16:00 PDT), https://www.nbcnews.com/news/us-news/wild-horses-adopted-at-risk-slaughter-rcna116913 [https://perma.cc/84E9-QRYY].

35 *Id.*

36 *BLM Announces Banner Year for Wild Horse and Burro Adoptions and Sales*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT. (Oct. 23, 2019), https://www.blm.gov/press-release/blm-announces-banner-year-wild-horse-and-burro-adoptions-and-sales [https://perma.cc/VK7L-62FX].

adoptions, sales, and transfers,[37] but this is a far cry from the fifty or sixty thousand that would need to be adopted out in order for the population to be at AML.

B. Slaughter

The slaughter of wild horses in the United States is not a realistic threat because horse slaughterhouses are effectively federally banned.[38] The last slaughterhouse for horses closed by late 2007, and a five-year ban on slaughter was instituted in the United States.[39] Since then, nearly every federal Agriculture Appropriations Bill has contained language prohibiting the use of federal funds to facilitate the inspection of horse meat, effectively ending horse slaughter in the United States.[40] The domestic ban did not end horse slaughter altogether, but instead shifted the site of butchery to Mexico and Canada, which resulted in increased abuse and neglect as the horses were shipped out of the country and beyond the reach of U.S. law.[41] In 2021, a New York Times investigation found that some adopters were pocketing the incentive money and then selling the horses at auctions frequented by slaughterhouse brokers.[42]

"Beginning in 2006, when inspections were temporarily prohibited, these U.S. horses continued to be slaughtered in foreign countries like Mexico and Canada," Mr. Bullard, chief executive for the plaintiff in a slaughterhouse-related lawsuit, said.[43] "We believe the Mexicans do

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37 *Program Data*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., https://www.blm.gov/programs/wild-horse-and-burro/about-the-program/program-data [https://perma.cc/UTD2-QZPP] (last visited Feb. 10, 2026).

38 U.S. GOV'T ACCOUNTABILITY OFF., BUREAU OF LAND MANAGEMENT: EFFECTIVE LONG-TERM OPTIONS NEEDED TO MANAGE UNADOPTABLE WILD HORSES 55 (2008).

39 Brendan Vandor, *If All Other Options Fail: The Plight of Wild Horses and the Dubious Case for Horse Slaughtering*, 47 U. Mich. J.L. Reform Caveat 1, 5 (2013).

40 *Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations for Fiscal Year 2024: Before S. Comm. on Appropriations*, 118th Cong. (2024), https://www.congress.gov/118/chrg/CHRG-118shrg50503/CHRG-118shrg50503.pdf [https://perma.cc/UPE3-SED8].

41 Stephen Dinan, *Obama, Congress Restore Horse Slaughter Industry*, WASH. TIMES (Nov. 30, 2011), https://www.washingtontimes.com/news/2011/nov/30/obama-congress-restore-us-horse-slaughter-industry/ [https://perma.cc/9M4J-ELJS].

42 Dave Philipps, *Wild Horses Adopted Under a Federal Program Are Going to Slaughter*, N.Y. TIMES (June 23, 2023), https://www.nytimes.com/2021/05/15/us/wild-horses-adoptions-slaughter.html [https://perma.cc/ZJ6A-LWRW].

43 Stephanie Strom, *U.S.D.A. May Approve Horse Slaughtering*, N.Y. TIMES (Feb. 28, 2013), https://www.nytimes.com/2013/03/01/business/usda-may-approve-horse-slaughter-plant.html [https://perma.cc/TF89-4Z2W].

not adhere to the same humane standards as in the United States, and so some of our members won't sell their horses."[44] However, horse slaughter continues to be the most feared issue by activists.[45] It is worth asking why we treat horses so differently when billions of other animals are slaughtered each year in the United States, and millions of cats and dogs are euthanized: What makes wild horses so special?

C. Contraception

According to an article published by National Geographic, the most widely used horse fertility control is Porcine Zona Pellucida (PZP).[46] The PZP immunocontraceptive vaccine is used to fool the female equine immune system into producing antibodies that attach to the eggs and prevent sperm from entering, costing only twenty-four dollars per dose.[47] It reportedly lasts for one year.[48] "For the PZP to be effective, the target animal needs to receive a primer dose, a booster dose four to six weeks later, and an annual booster after that."[49] The practicalities of darting thousands of mares in order to administer doses across thousands of acres and repeating the process annually leave room for doubt that this could be a long-term, effective solution, and the BLM continues to argue so.[50] Between 2017 and 2021, the BLM administered only 3,300 doses.[51] In 2023, only 480 horses received it.[52] The BLM plans to complete more contraception research, but warns that "using only short-term fertility control vaccines at any scale" will not significantly reduce on-range populations,[53] despite the fact that

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44 *Id.*

45 *See* discussion *infra* Section I.G (explaining how horse slaughter became a political issue in 2013).

46 Ben Masters, *The Future of America's Wild Horses: The Options*, NAT'L GEOGRAPHIC (Feb. 10, 2017), https://www.nationalgeographic.com/adventure/article/wild-horse-management-options [https://perma.cc/SNW5-UJJP].

47 Ben Masters, *Can Fertility Control Keep Wild Horse Herds in Check?*, NAT'L GEOGRAPHIC (Feb. 8, 2017), https://www.nationalgeographic.com/adventure/article/wild-horses-part-three [https://perma.cc/8RNN-R6KZ].

48 *Id.*

49 *Id.*

50 Lezak, *supra* note 25.

51 *Id.*

52 *Program Data*, *supra* note 37.

53 Scott Sonner, *Feds: 'Staggering' Cost of Reining in Wild Horses*, INDIAN COUNTRY TODAY (May 14, 2020), https://ictnews.org/health/feds-staggering-cost-of-reigning-in-wild-horses [https://perma.cc/9HF3-H65M].

research has shown that a single dose may keep females infertile for up to three years.[54]

D. Sterilization by Capture and Release

Although spaying the females is possible, animal rights groups have argued that sterilization is inhumane, subjecting the BLM to a large amount of criticism. Sterilization is achieved by performing ovariectomies.[55] "In early November, the BLM abandoned its plan to spay about 100 wild mares in Oregon, after a lawsuit brought a temporary halt to the research."[56] It is important to note that spaying is not currently a method that BLM uses.[57]

E. Jurisdiction on Tribal Lands

The federal jurisdiction for agencies like the BLM and the U.S. Forest Service stops at reservation borders.[58] Jurisdictional issues can give rise to litigation in Indian Country. As an example, the state of Nevada is home to the largest population of wild horses by far.[59] Almost half of the wild horses in America are in the state of Nevada, which is more than three times the AML.[60] In *Westlake v. Miller*, "[m]embers of the [Nevada-based] Pyramid Lake Paiute Indian Tribe . . . and employees of Cattoor Livestock Roundup, Inc. . . . rounded up feral horses that were on privately owned land in Palomino Valley using motorcycles, ATVs, a helicopter, and men on horseback on

54 Meeghan E. Gray et al., *Multi-Year Fertility Reduction in Free-Roaming Feral Horses with Single-Injection Immunocontraceptive Formulations*, 37 WILDLIFE RSCH. 475, 477–78 (2010).

55 *Mare Ovariectomy Experiments: Legal Battle Against BLM's Controversial Procedures*, AM. WILD HORSE CONSERVATION (Sept. 24, 2018), https://americanwildhorsecampaign.org/mare-ovariectomy-experiments [https://perma.cc/WJ7E-KD5D].

56 Jodi Peterson, *Latest: BLM Abandons Plan to Surgically Sterilize Wild Horses*, HIGH COUNTRY NEWS (Nov. 29, 2018), https://www.hcn.org/issues/50-21/latest-blm-abandons-plan-to-surgically-sterilize-wild-horses/ [https://perma.cc/RBT8-CSUD].

57 *Id.*

58 Lezak, *supra* note 25.

59 *How Many Wild Horses Are in Nevada?*, SCIENCE INSIGHTS (Nov. 10, 2025), https://scienceinsights.org/how-many-wild-horses-are-in-nevada/ [https://perma.cc/M7P2-SV85] (noting that "Nevada hosts the largest population of these protected animals on public lands").

60 CONG. RSCH. SERV., IF11060, WILD HORSE AND BURRO MANAGEMENT: OVERVIEW OF COSTS 1 (2025), https://www.congress.gov/crs_external_products/IF/PDF/IF11060/IF11060.8.pdf [https://perma.cc/B6MS-9ELK].

January 4, 2019."[61] Among the horses that were gathered, one of them was a horse named Lady that belonged to the plaintiff, Colleen Westlake.[62] The plaintiffs called the sheriff's office to report the roundup, but the sheriff's office instructed the plaintiffs to contact the Nevada Department of Agriculture, which then instructed the plaintiffs to contact the sheriff's office—both unaware of which department had jurisdiction over the horse.[63] In a suit brought on behalf of Westlake, the American Wild Horse Preservation campaign claimed the Tribe, and others they hired, illegally came onto land it didn't control and drove the horses, including Lady, to the reservation.[64] The plaintiffs asserted that the Tribe did not own the horses, but rather the state of Nevada or individual owners did.[65] The suit was ultimately dismissed by the plaintiff.[66]

One of the largest issues that affects Tribal Nations is the consequences that wild horses have on biological diversity. Warren Seyler, a historian and elder of the Spokane Reservation, works for the tribal Department of Natural Resources and says horses are an integral part of the Tribe's culture.[67] "They're just one part of the connected web of animals and plants that live on the 150,000 acres of the Spokane Reservation,"[68] but the horses compete with the deer and elk that tribal members hunt, and the plants and medicines they harvest from their lands.[69] "If you have 10,000 wild horses and they're overrunning in your root fields, your bitterroot, your white camas, your brown camas, your medicines, that's one part of your culture versus another," Seyler says.[70]

Ken Sandusky was a public information officer who worked for the Forest Service in Modoc County as a tribal liaison and is a member of

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61 Westlake v. Miller, No. 319CV00023MMDWGC, 2019 WL 402310, at *1 (D. Nev. Jan. 31, 2019).

62 *Id.*

63 *Id.*

64 *Id.* at *2.

65 *Id.* at *4.

66 Mike Brunker, *Nevada Horse Owner Drops Lawsuit Over Tribal Roundup*, L.V. REV.-J. (Feb. 11, 2019, at 16:01 PST), https://www.reviewjournal.com/local/local-nevada/nevada-horse-owner-drops-lawsuit-over-tribal-roundup-1595037/ [https://perma.cc/ES6M-PTU4].

67 Ashley Ahearn, *Managing and Rehoming Wild Horses on Tribal Lands*, WBUR (Nov. 24, 2023), https://www.wbur.org/hereandnow/2023/11/24/wild-horses-tribal-lands [https://perma.cc/5348-YDUK].

68 *Id.*

69 *Id.*

70 *Id.*

the Choctaw Tribe of Oklahoma, but as a Modoc native, he is more culturally in touch with the Klamath Tribe of Northern California.[71] When it comes to rangeland health, he said, "Range managers may perceive progress from a year-to-year basis, but to many Indigenous tribes, the baseline for 'progress' goes back generations, to pre-contact times" and "[t]hey have long memories . . . Tribes see damage that is a hundred-plus years in the making."[72]

Another huge resource to consider is water. In 2024, the Supreme Court ruled that the Navajo Nation's treaty rights did not impose an obligation on the United States to meet the Nation's water needs.[73] Yet in 2012, when the United States was experiencing one of the worst droughts in fifty years, non-tribal members were releasing their domestic horses into the wild at unprecedented numbers (the Unwanted Horse Coalition estimated between 170,000 and 180,000 nationwide), and the Navajo Nation felt the brunt of that burden.[74] On the reservation, Tribal rangers reported carcasses dotting the arid landscape as horses jumped fences, fought, and stole water from troughs meant to supply tribal members' families.[75]

F. Ute Tribe Colorado

"Horse problems on Southern Ute rangelands started around 2001 with just a dozen feral horses," said Range Division Head Jason Mietchen.[76] "[It creates a] huge impact to tribal lands," Mietchen said, adding that the animals will graze year-round when left unchecked, which creates a trickle-down effect on tribal members, who need the land for their own livestock to graze.[77] Grazing leases are allocated to tribal members for their livestock—mostly cattle—and then managed by the Southern Ute Indian Tribe's Range Division to ensure

71 Kang-Chun Cheng, *Kicking Up Controversy with Wild Horses in the West*, YES! MAG. (Nov. 27, 2020), https://www.yesmagazine.org/environment/2020/11/27/wild-horses-west-land-management (on file with the Journal of Environmental Law and Litigation).

72 *Id.*

73 Arizona v. Navajo Nation, 599 U.S. 555, 569–70 (2023).

74 Fernanda Santos, *Horses Fall Victim to Hard Times and Dry Times on the Range*, N.Y. TIMES (Aug. 18, 2012), https://www.nytimes.com/2012/08/19/us/horses-fall-victim-to-hard-times-and-dry-times-on-the-range.html [https://perma.cc/ZC92-G5BV].

75 *Id.*

76 Jeremy Wade Shockley, *Tribe Seeks to Lure Feral Horses from Reservation*, THE S. UTE DRUM (May 16, 2013), https://www.sudrum.com/news/2013/05/16/tribe-seeks-to-lure-feral-horses-from-reservation/ [https://perma.cc/F2BU-E5K2].

77 *Id.*

sustainability.[78] "The reservation acts as an important winter range for deer and elk. Having good forage on the reserve [is important]," said Southern Ute Wildlife Biologist Aran Johnson, who was clear that "[y]ear-round grazing depletes winter range resources."[79] The Range Division is working to remove feral horses from rangeland and wildlife habitat along the eastern side of the Southern Ute Reservation lands. Using a contract company, "the New Mexico-based Mt Taylor Mustangs . . . use[] a unique approach that relies on a bait system to lure the horses into captivity."[80] "Pretty much every tribe in the West has a feral horse problem," said Mietchen.[81]

G. Navajo

In 2013, a new legal battle over horse slaughter in the United States emerged, with the Navajo Nation caught in the middle. Beginning in February, a slaughterhouse in Roswell, New Mexico, sued the United States Department of Agriculture over a lack of inspection services for horse slaughter.[82] The owner of Valley Meat, Rick De Los Santos, tried to transition to horse slaughter when his business began to struggle after twenty years in cattle slaughter.[83] He did so because there was an opportunity—the 2006 ban on horse slaughterhouse inspections ended in 2011.[84] As a result, the Obama Administration began urging Congress to bring back riders that would effectively reinstate the ban.[85]

In August 2013,[86] U.S. District Judge Christina Armijo issued a temporary restraining order (TRO), temporarily making the permits issued by the Department of Agriculture ineffective, citing that the department failed to do the proper environmental studies before issuing them.[87] In November, hours after that TRO expired, Armijo threw out

78 *Id.*

79 *Id.*

80 *Id.*

81 *Id.*

82 Strom, *supra* note 43.

83 Jeri Clausing, *US Judge Clears Way for Domestic Horse Slaughter*, AP NEWS (Nov. 1, 2013, at 16:37 PDT), https://apnews.com/general-news-819cefbdde1e40dc81f0335dad43162d [https://perma.cc/7S66-4UU4].

84 Strom, *supra* note 43.

85 *Id.*

86 At this point, the slaughterhouse had not been approved.

87 Lauren Zakalik, *Judge Blocks Planned Horse Slaughter at 2 Plants*, KOAT ACTION 7 NEWS (Aug. 2, 2013, at 17:21 MDT), https://www.koat.com/article/judge-blocks-planned-horse-slaughter-at-2-plants-1/5049445 [https://perma.cc/U4DR-HJY4].

the lawsuit entirely, once again clearing the way for slaughter to resume in the United States.[88] But two white knights had already stepped in.

> Bill Richardson, a former governor of New Mexico, and the actor Robert Redford, a staunch conservationist, joined animal rights groups in a federal lawsuit to block the revival of horse slaughter in the United States, proclaiming that they were 'standing with Native American leaders,' to whom horse slaughter 'constitutes a violation of tribal cultural values.'[89]

The Navajo Nation immediately made a public comment, letting Mr. Richardson and Mr. Redford know their help was not needed.[90]

> Free-roaming horses cost the Navajos $200,000 a year in damage to property and range, said Ben Shelly, the Navajo president. There is a gap between reality and romance when, he said, 'outsiders' like Mr. Redford—who counts gunslinger, sheriff's deputy and horse whisperer among his movie roles—interpret the struggles of American Indians.[91]

"The bottom line is that we have too many horses," said Gloria Tom, manager of the Navajo Nation Department of Fish and Wildlife.[92] "We do aerial surveys every year, and every year we're seeing more horses where they shouldn't be. If we don't do anything, that population of 48,000 or 50,000 could double in the next four years."[93] Despite this reality, in October 2013, Ben Shelly announced he would no longer support wild horse slaughter on the reservation due to political pressures as well as pressures from animal activists.[94]

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88 *National Digest: Horse Slaughterhouses Allowed to Resume Operation*, WASH. POST (Nov. 1, 2013), https://www.washingtonpost.com/politics/national-digest-horse-slaughterhouses-allowed-to-resume-operation/2013/11/01/b2ddc712-4331-11e3-8b74-d89d714ca4dd_story.html [https://perma.cc/Q9DM-EWH8].

89 Fernanda Santos, *On Fate of Wild Horses, Stars and Indians Spar*, N.Y. TIMES (Aug. 10, 2013), https://www.nytimes.com/2013/08/11/us/on-fate-of-wild-horses-stars-and-indians-spar.html [https://perma.cc/92Y6-ZHFT].

90 *Id.*

91 *Id.*

92 *Controlling Navajo Nation's Free-Roaming Horse Dilemma*, NAVAJO-HOPI OBSERVER (Sept. 19, 2017), https://www.nhonews.com/news/controlling-navajo-nation-s-free-roaming-horse-dilemma/article_51c406db-da7d-5445-8481-a5eacc95fb68.html [https://perma.cc/TF9X-GT9M].

93 *Id.*

94 Fernanda Santos, *Navajo Leader Drops His Support for Slaughter of Wild Horses on the Reservation*, N.Y. TIMES (Oct. 7, 2013), https://www.nytimes.com/2013/10/08/us/navajo-leader-drops-his-support-for-slaughter-of-wild-horses-on-the-reservation.html [https://perma.cc/2LDW-2Y7H].

Instead, the Navajo Nation announced that it intended to enter into a memorandum of understanding with the newly formed Foundation to Protect New Mexico Wildlife, created by Richardson and Redford, with the intent to "pressure the federal government to do more to help the Navajos handle the tens of thousands of horses that roam freely on their land."[95] On May 1, 2014, the agreement was formalized to develop a "comprehensive and humane program."[96] This kind of political PR stunt is the kind of thing that can be most dangerous to a tribe. Nonprofits, individuals, or even the Tribe's own members may assume the funding, and thus the problem is fully handled, because two prominent, well-funded, famous men have been public about it. However, little more can be found about the initiative following the initial press release, stating that the agreement had been reached. As addressed later in this Article, overpopulation only worsened in the Navajo Nation from there.

In 2017, the Navajo Nation was denied an $800,000 funding request from the Navajo Nation Tribal Council for the Fish and Wildlife Department to help reduce the horse population, leaving the Nation with few alternatives.[97] This essentially left the Nation with no Agricultural Department to manage the wildlife.[98] The department director at that time, Leo Watchman, said, "You need to put dollars forward to gain management, . . . but the issue will come up again."[99]

In 2018, the Nation proposed a hunt, but there was strong backlash against this idea as well.[100] On February 28, 2018, the Navajo Nation Division of Natural Resources "rescinded a proclamation issued only days before that a six-day 'feral horse management hunt' would be held

95 *Id.*

96 *Foundation to Protect New Mexico Wildlife Reaches Agreement with Navajo Nation to Protect Horses*, ANIMAL WELFARE INST. (May 1, 2014), https://awionline.org/press-releases/foundation-protect-new-mexico-wildlife-reaches-agreement-navajo-nation-protect (on file with the Journal of Environmental Law and Litigation).

97 Kim Baca, *The Navajo Nation Has a Wild Horse Problem*, HIGH COUNTRY NEWS (Oct. 6, 2017), https://www.hcn.org/issues/49-20/tribal-affairs-what-will-navajo-nation-do-about-its-wild-horse-problem/ [https://perma.cc/P769-SFV8].

98 *Id.*

99 *Id.*

100 Justin Higginbottom, *Authorities Don't Know Who Is Shooting Free-Roaming Horses in the Utah Desert*, NPR (Jan. 18, 2023, 5:01 EST), https://www.npr.org/2023/01/18/1148870794/authorities-dont-know-who-is-shooting-free-roaming-horses-in-the-utah-desert [https://perma.cc/TE8X-PHNG].

to reduce by at least 60 the wild horse population in the Carrizo Mountains near Teec Nos Pos."[101]

Facing a planned protest that was organized by the Indigenous Horse Nation Protector and hoping to hear public comment on how to address the issue, the Navajo Nation cancelled the hunt.[102] Vice President Jonathan Nez said, "In addressing this issue, we are calling upon our Navajo citizens to bring forth their input to address feral horse management within their regions. We must also consider how factors like low precipitation will impact our grazing areas. We need to be prepared for the coming drought."[103]

The Tribe prominently wrestles with water shortages for its land, its people, and its livestock. In Navajo territory, which is parched by years of unrelenting drought and beset by the poverty of the reservation and the land, one feral horse will consume five gallons of water and eighteen pounds of forage a day.[104] The horses are industrious in their quest for water and sometimes consume the water and food a family brings for itself and its cattle.[105] Despite this fact, in May 2018, nearly 200 horses were found dead in a dried-up stock pond on Navajo territory in Arizona, having died of thirst after becoming trapped in mud, too weak to escape.[106] The mass death of the animals occurred during one of the worst and unprecedented droughts Arizona had ever seen,[107] but with global warming getting worse every year, it is an event sure to be repeated.

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101 Merritt Clifton, *Shoot Wild Horses, Sell Them to Slaughter, or Just Let Them Die?*, ANIMALS 24-7 (May 11, 2018), https://www.animals24-7.org/2018/05/11/shoot-wild-horses-sell-them-to-slaughter-or-just-let-them-die/ [https://perma.cc/7A2E-TWTN].

102 Hannah Grover, *Navajo Nation Cancels Plans for Wild Horse Hunt*, USA TODAY (Feb. 26, 2018), https://www.usatoday.com/story/news/local/navajo-nation/2018/02/26/wild-horse-hunt-canceled-navajo-nation/374931002/ (on file with the Journal of Environmental Law and Litigation).

103 *Navajo President: 'My Administration Will Not Condone a Horse Hunt,'* RETURN TO FREEDOM (Feb. 28, 2018), https://returntofreedom.org/navajo-president-horse-hunt-canceled-in-lieu-of-alternate-considerations/ [https://perma.cc/ZTE9-RUVA].

104 Kristine Phillips, *Nearly 200 Free-Roaming Horses Died Searching for Water on Navajo's Parched Land*, WASH. POST (May 6, 2018), https://www.washingtonpost.com/news/animalia/wp/2018/05/06/nearly-200-free-roaming-horses-died-searching-for-water-on-navajos-parched-land/ [https://perma.cc/UKN5-W4JX].

105 *Id.*

106 *Id.*

107 Weldon B. Johnson, *Arizona Is in a 50-Year Drought. Here's What That Means.*, AZCENTRAL (May 5, 2018, 4:00 MST), https://www.azcentral.com/story/news/local/arizona-weather/2018/05/05/arizona-50-year-drought-intensifies/575258002/ [https://perma.cc/B6H5-AZE9].

In 2023, it appeared that someone began taking matters into their own hands as dozens of horses, dead from bullet wounds, began showing up in a remote patch of the Utah desert that borders the Navajo Nation.[108] The land was owned and commonly leased by the BLM for grazing, but it had denied lease requests that year because of the overpopulation of horses.[109]

H. Blackfeet

"Five of the plaintiffs who sued in federal court to bar commercial horse slaughter in the United States are Native American, and they cited their peoples' spiritual ties with the Horse Nation as the reason for their opposition to horse meat processing plants."[110] Roxanne Talltree-Douglas, one of those plaintiffs who was anti-slaughter, recounted the Blackfoot belief that "horses are spirit beings that were put on Mother Earth to teach us how to live, love, and exist and that hitting or hurting a horse is the same as spitting in the face of the Creator."[111] As of 2022, "the Bureau of Indian Affairs estimates that there are about 16,000 feral horses on the Blackfeet Reservation."[112]

Harvey Sansavere of the BIA Range Department, a division of the Natural Resources Department,[113] spoke in 2022 regarding the Blackfeet Reservation:

> The horses are not good for the land . . . . Our acreage is limited, and most of the reservation land is only open as grazing units for five months to give the grass a chance to regrow. These [wild] horses are grazing year-round, though, which means the grass doesn't get the chance to recover. We are seeing people pay for the grazing units and then go to put the cows on it, only to find that all the grass has been consumed by feral horses.[114]

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108 Higginbottom, *supra* note 100.

109 *Id.*

110 Leslie Linthicum, *Delicate Balance in Horse Nation – Native Americans Divided on Horse Slaughter*, ALBUQUERQUE J. (Aug. 18, 2013), https://www.unm.edu/~unmvclib/handouts/horseslaughterabqj.pdf [https://perma.cc/GG5S-7DRF].

111 *Id.*

112 Ainsley Rothschild, *Thousands of Feral Horses Grazing Across Blackfeet Reservation*, CUT BANK PIONEER PRESS (Mar. 16, 2022), https://www.cutbankpioneerpress.com/glacier_reporter/article_489ec0c4-a4d8-11ec-8fe8-e3da20ea7ee3.html (on file with the Journal of Environmental Law and Litigation).

113 *Id.*

114 *Id.*

I. Wind River

Between 2011 and 2021, the population of wild horses on federal rangelands in Wyoming grew from 38,000 to 95,000, while the number on the Wind River Reservation—where only three fish and game wardens were responsible for 2.2 million acres—was in the unknown thousands.[115] These wardens were employed by the Shoshone and Arapaho Fish and Game Department, which has reportedly received no funding from the BLM since at least 2017.[116]

In October 2023, 6,500 horses were removed from the Wind River Reservation.[117] The operation was a collaborative effort involving the Northern Arapaho and Eastern Shoshone Tribes, the state of Wyoming, the Bureau of Indian Affairs, and associated wildlife agencies.[118] Although the total cost of the operation is unknown, the Governor's office for the State of Wyoming expended a total of $400,000 toward the cost during the fiscal years 2022 and 2023.[119] The Governor's office stated that the Tribes also received matching funding from federal and other sources, as well as funding from non-state sources, such as nonprofit organizations.[120] The federal funding comes from the BIA, but the amount is undisclosed.[121] The results of removing wild horses were almost immediate, apparent after only a single day.[122] Elk, mule deer, and sage grouse returned to the land that was once tens of thousands of acres of barren and desolate dirt.[123]

Despite this success, the BLM is struggling to complete a round-up in the Red Desert complex, less than 200 miles away from the Wind River Reservation.[124] The complex includes the Antelope Hills, Crooks

115 *Wild Horses, Buffalo, and Politics on the Wind River Indian Reservation*, AM. WILD HORSE CONSERVATION (Dec. 29, 2021), https://americanwildhorse.org/stories/wild-horses-buffalo-and-politics-on-the-wind-river-indian-reservation-7824 [https://perma.cc/ANS8-2N5F].

116 *Id.*

117 Katie Roenigk, *'A Very Large Success': 6,500 Feral Horses Removed from Wind River Reservation*, CNTY. 10 (Oct. 10, 2023), https://county10.com/a-very-large-success-6500-feral-horses-removed-from-wind-river-reservation/ [https://perma.cc/LBT2-SQ2Q].

118 *Id.*

119 KATE BARLOW, NOLAN RAP & KIT WENDTLAND, 2022 WYO. SESS. LAWS CH 97 WILD HORSE & BURRO MANAGEMENT REPORT 3 (2023).

120 *Id.* at 4.

121 *Id.*

122 Roenigk, *supra* note 117.

123 *Id.*

124 Mike Koshmrl, *BLM Wins Two Lawsuits, Clearing Way for Elimination of Two Wyoming Wild Horse Herds*, WYOFILE (Aug. 16, 2024), https://wyofile.com/blm-wins-two

Gap, Green Mountain, Lost Creek, and Stewart Creek HMAs, which include approximately 700,000 acres of public land.[125] However, after the finalization of an Environmental Assessment[126] in May 2025 that would allow roundups of two herds, the agency was immediately sued in two different lawsuits.[127] The U.S. District Court of Wyoming Judge, Kelly Rankin, sided with the BLM in both the lawsuit filed by the American Wild Horse Campaign[128] and the lawsuit filed by the Rock Springs Grazing Association.[129] A Notice of Appeal has already been filed in court,[130] and the BLM is also pursuing the plan procedurally through the National Environmental Policy Act.[131]

J. Yakama

In the state of Washington, the Yakama Tribe has had a long-standing historical relationship with horse slaughter, using it as a method of population control and as a source of extraneous revenue for many years.[132] But when horse slaughterhouses were outlawed in 2006, the population of wild horses on the reservation grew from a manageable number to 12,000 by 2013.[133] Today, there are around

-lawsuits-clearing-way-for-elimination-of-two-wyoming-wild-horse-herds/#:~:text=U.S.%20District%20Court%20of%20Wyoming,Rock%20Springs%20Grazing%20Association's%20complaint [https://perma.cc/P3WD-9Y6C].

125 *2018 Red Desert Complex Wild Horse Gather*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/lander-fo-rawlins-fo/2018-red [https://perma.cc/3PCF-YWYT] (last visited Feb. 12, 2026).

126 U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., *Gather Plan to Remove Excess Wild Horses from Herd Areas Previously Designated as Herd Management Areas*, Env't Assessment No. DOI-BLM-WY-D040-2024-0101-EA (May 29, 2025), https://eplanning.blm.gov/Documents/?id=103e7de2-a7f2-f011-8407-001dd80bcf93&spid=9ddc6c8c-a8f2-f011-8406-001dd8008d46 [https://perma.cc/S9V2-B4C8].

127 Koshmrl, *supra* note 124.

128 Am. Wild Horse Campaign v. Stone-Manning, No. 23-CV-117-KHR, 2024 WL 3872558, at *1 (D. Wyo. Aug. 14, 2024).

129 Order Affirming Agency Action and Denying Mandamus Relief, No. 23-CV-48-KHR (2024).

130 Koshmrl, *supra* note 124.

131 *Project Information*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., https://eplanning.blm.gov/eplanning-ui/project/2032715/510 [https://perma.cc/AH45-ZUC5] (last visited Feb. 12, 2026).

132 Kate Prengaman, *Yakama Land Can't Sustain Growing Wild Horse Population*, YAKIMA HERALD-REPUBLIC (Jan. 12, 2014), https://www.yakimaherald.com/news/local/yakama-land-cant-sustain-growing-wild-horse-population/article_85fb4ade-8f83-53e0-9e5c-5173e6a489dd.html [https://perma.cc/7SBQ-MC9A].

133 Kevin Taylor, *They Eat Horses, Don't They? Bucking the Slaughterhouse Ban on Horses*, ICT (Nov. 13, 2013), https://ictnews.org/archive/they-eat-horses-dont-they-bucking-the-slaughterhouse-ban-on-horses [https://perma.cc/NTX8-ZKTH].

10,000 wild horses on the 1.3 million-acre reservation, and the wild horses are damaging the landscape and the medicines.[134]

The environment was the most pressing issue when the Yakima Chairman at the time, Harry Smiskin, emphasized the degradation of the land as a result of the increased wild horse population, saying,

> The dilemma we are facing is that these wild horses, or feral horses, are causing severe degradation to the natural resources of our land. As American Indian people, the native people of the land, we utilize a lot of the plants, the herbs, and roots from Mother Earth. When you walk onto the landscape of Yakama Nation rangeland, it becomes a moonscape because the horses come through there and what they don't eat off, they trample down to bare dirt.[135]

Whereas some Tribes have had to focus only on the management and population control of wild horses, the Yakama Nation once depended on these wild horses as a source of economic revenue. In a written testimony by James Stephenson, a Yakama Nation biologist, Stephenson noted, "Before cessation of horse slaughter in the United States, members of the Yakama Nation could sell horses at a price of approximately $150 to $400 per animal. Now, if you can find a buyer, such horses are often sold for prices of $5 to $20 per head."[136] Chairman Smiskin commented on this issue in a letter to the President and Secretary of Agriculture in 2013, writing: "Smiskin argued the market for horse meat in other parts of the world, as well as the United States before World War II, could create jobs, humanely reduce overpopulated herds and feeds others, adding 'it is absurd to prohibit it.'"[137]

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134 Carol Craig, *Wild Horses Ask and Get Permit Revisions*, FACEBOOK: YAKAMA NATION REV. (Apr. 18, 2024), https://www.facebook.com/TheYNReview/photos/wild-horses-ask-and-get-permit-revisionsby-carol-craigyakama-nation-reviewtoppen/930335892427833/ [https://perma.cc/6J7H-QHW2].

135 Taylor, *supra* note 133.

136 Tom Banse, *Northwest Tribes Take Steps to Corral Growing Wild Horse Population*, NW NEWS NETWORK (Oct. 29, 2014), https://www.nwnewsnetwork.org/food-agriculture-and-animals/2014-10-29/northwest-tribes-take-steps-to-corral-growing-wild-horse-population [https://perma.cc/6R8T-XZLQ].

137 Shannon Dininny, *Yakamas Urge Feds to Consider Horse Slaughter*, HERALDNET (Apr. 1, 2013, 16:36 PST), https://www.heraldnet.com/news/yakamas-urge-feds-to-consider-horse-slaughter/ [https://perma.cc/3TKA-2J5A].

II
FEDERAL GOVERNMENT TRUST DUTIES AND RESPONSIBILITIES TO INDIAN LANDS AND TRIBES

Overpopulation of wild horses persists on Indian lands, but while the Public Trust Doctrine applies to public lands that the BLM manages, the federal government has a legal obligation to protect Indian lands under the Indian Trust Doctrine. On public lands, the Department of the Interior allows wild herds to grow rapidly, doubling in size every four years,[138] yet it is clear that the number of horses the BLM manages does not account for the total population of wild horses in the United States. Looking at 2021 estimates of how many wild horses exist on all lands across the United States (not the number of wild horses on BLM land), the full number, taking Indian lands into account, was a conservative 300,000.[139]

In 2013, when the public strife on the Navajo Nation began, it was estimated that the reservation was home to some 75,000 horses.[140] In 2024, the Office of the President for the Navajo Nation released a presidential media packet with current numbers that the Navajo Nation Department of Agriculture estimates at approximately 100,000.[141] This is more than the entirety of the population the BLM manages on all 77 HMAs, all left to be managed by one tribal government. Removing as many as 156 horses would save the Navajo Nation more than 290,000 gallons of water and 1.1 million pounds of forage a year.[142]

A. The Trust Responsibility Includes the Responsibility to Protect Indian Lands and Resources

The Supreme Court has acknowledged in multiple cases that there is "a general trust relationship between the United States and the Indian people."[143] Because Tribes function as sovereign nations, this

138 O'Donoghue, *supra* note 18.

139 Kathryn A. Schoenecker, Sarah R.B. King & Terry A. Messmer, *The Wildlife Profession's Duty in Achieving Science-Based Sustainable Management of Free-Roaming Equids*, 85 J. WILDLIFE MGMT. 1057, 1058 (2021).

140 Santos, *supra* note 94.

141 *Feral Horse Problem Discussed in Report to Resources and Development Committee*, NAVAJO NATION COUNCIL (June 25, 2024), https://www.navajonationcouncil.org/wp-content/uploads/2024/06/Feral_Horse_problem_discussed_at_RDC.pdf [https://perma.cc/7LGE-QTUW].

142 Phillips, *supra* note 104.

143 United States v. Mitchell, 463 U.S. 206, 225 (1983); *see also* Haaland v. Brackeen, 599 U.S. 255, 274 (2023) (reaffirming Congress's longstanding authority grounded in the

relationship is a sovereign-to-sovereign political relationship.[144] The principle that the federal government must fulfill the promises it has made in exchange for land and peace is known as the *Doctrine of Trust Responsibility*.[145]

The Doctrine of Trust Responsibility can be viewed and applied by the courts both narrowly, requiring the federal government to provide only the services explicitly outlined in treaties or statutes,[146] or broadly, requiring the federal government to facilitate tribal sovereignty and economic development.[147] Virtually every federally recognized Tribe receives significant financial and technical assistance from dozens of federal programs that provide housing, health care, land development, education, loans, employment, and agriculture, with the hope that Indian Tribes will be able to reach economic self-sufficiency someday.[148]

Although there is no congressional act, statute, or legislation that defines the trust relationship in explicit terms, Nathan Margold, solicitor of the Department of the Interior from 1933 to 1942, said,

> The right of the Federal Government to bring such suits has been justified . . . on the theory that title to the lands rested with the Federal Government has a special obligation, as guardian of the Indians, to protect their lands against trespass even where full title in fee simple is held by the Indian tribe.[149]

Thus, the original intended purpose at the onset of this relationship seems to have stayed consistent in establishing protections. This trust relationship has been further defined in subsequent cases.

Considered to be one of the first modern cases concerning federal trust obligations with respect to Indian lands and property, the Supreme Court confirmed in *United States v. Mitchell*[150] that the General

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federal trust relationship with Indian tribes); Cobell v. Norton, 240 F.3d 1081, 1098 (D.C. Cir 2001) (describing the federal government's fiduciary obligations arising from its trust relationship with Indian tribes).

144 *See* Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903).

145 Matthew L.M. Fletcher, *The Dark Matter of Federal Indian Law: The Duty of Protection*, 75 ME. L. REV. 305, 311 (2023).

146 STEPHEN L. PEVAR, THE RIGHTS OF INDIANS AND TRIBES (5th ed. 2025).

147 *Id.* at 49.

148 *Id.*

149 FELIX S. COHEN, HANDBOOK OF FEDERAL INDIAN LAW XIII (1941).

150 United States v. Mitchell, 463 U.S. 206 (1983).

Allotment Act[151] created a trust title to each individual allotment to be held by the United States, albeit a limited one.[152] This was later expanded upon in its subsequent case of 1983, *Mitchell II*, which hinged on a money damages claim brought under the Tucker Act.[153]

B. United States v. Mitchell (1983) "Mitchell II"

In *Mitchell II*, the Supreme Court concluded that

> [A] fiduciary relationship necessarily arises when the Government assumes such elaborate control over forests and property belonging to Indians. All of the necessary elements of a common-law trust are present: a trustee (the United States), a beneficiary (the Indian allottees), and a trust corpus (Indian timber, lands, and funds).[154]

> [Where] the Federal Government takes on or has control or supervision over tribal monies or properties, the fiduciary relationship normally exists with respect to such monies or properties (unless Congress has provided otherwise) even though nothing is said expressly in the authorizing or underlying statute (or other fundamental document) about a trust fund, or a trust or fiduciary connection.[155]

Also in *Mitchell II*, the Supreme Court upheld the Tucker Act[156] to "fairly be interpreted as mandating compensation" whenever Congress places pervasive control of a tribal resource in the hands of a federal agency that mismanages that resource.[157] When a federal statute places Indian property—such as oil, gas, minerals, or timber—under the comprehensive control and management of federal agencies, the federal government acquires a fiduciary duty to manage those trust resources properly and in the best interests of the Indian beneficiaries.[158] Furthermore, the supervision of Indian property may

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151 25 U.S.C. § 331 (1887); *Dawes Act (1887)*, NAT'L ARCHIVES, https://www.archives.gov/milestone-documents/dawes-act [https://perma.cc/XA7J-SWEJ] (last visited Feb. 13, 2026) ("Approved on February 8, 1887, 'An Act to Provide for the Allotment of Lands in Severalty to Indians on the Various Reservations,' known as the Dawes Act, emphasized severalty—the treatment of Native Americans as individuals rather than as members of tribes.").

152 United States v. Lopez, 445 U.S. 542 (1980); COHEN, *supra* note 149.

153 28 U.S.C. § 1491 (2018).

154 Restatement (Second) of Trusts § 2, cmt. h, at 10 (1959).

155 United States v. Mitchell, 463 U.S. 206, 225 (1983) (quoting Navajo Tribe of Indians v. United States, 624 F.2d 981, 987 (1980)).

156 28 U.S.C. § 1491.

157 *Mitchell*, 463 U.S. at 226.

158 *Id.*

create trust obligations even without the explicit language establishing such obligations, as long as elaborate control is exercised.[159]

The United States Government is more than a mere contracting party. The Bureau of Land Management of the Department of the Interior, for example, is the trustee in a trust relationship. In *Seminole Nation v. United States*, a general standard of conduct was established in the following language:

> In carrying out its treaty obligations with the Indian tribes the Government is something more than a mere contracting party. Under a humane and self imposed policy which has found expression in many acts of Congress and numerous decisions of this Court, it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.[160]

C. Defining Trust Assets

As mentioned earlier, the BLM has no jurisdiction over reservations or Indian lands because Indian lands are held in trust; as of this writing, the United States holds over 56 million acres of land in trust for the benefit of American Indian and Alaska Native communities.[161] Trust resources have been defined by numerous regulations, case laws, and congressional acts. The Code of Federal Regulations defines trust assets as "trust lands, natural resources, trust funds, or other assets held by the federal government in trust for Indian tribes and individual Indians."[162] Some lands or parts of reservations are held in "fee," but those 56 million acres that are held in trust would be considered trust assets.[163]

In litigation involving the 2016 Indian Trust Asset Reform Act,[164] the Supreme Court stated that "the responsibility of the United States

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159 *Id.*

160 Seminole Nation v. United States, 316 U.S. 286, 296–97 (1942).

161 *Trust Land Acquisition (Fee to Trust)*, U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, https://www.bia.gov/service/trust-land-acquisition#:~:text=There%20are%20over%2056%20million,Indian%20and%20Alaska%20Native%20communities [https://perma.cc/A8TJ-2KNK] (last visited Feb 13, 2026).

162 Bureau of Indian Affairs Trust Regulations, 25 C.F.R. § 115.002.

163 *Benefits of Trust Land Acquisition (Fee to Trust)*, U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, https://www.bia.gov/service/trust-land-acquisition/benefits-trust-land-acquisition [https://perma.cc/E8A8-MFS9] (last visited Feb. 13, 2026).

164 Indian Trust Asset Reform Act, Pub. L. No. 114-178, 130 Stat. 432 (2016) (codified at 25 U.S.C. §§ 5601–5636).

to Indian tribes includes a duty to promote tribal self-determination regarding governmental authority and economic development."[165] Title II of the Act authorizes the Secretary of the Department of the Interior to establish and carry out an Indian Trust Asset Management Demonstration Project by encouraging tribes engaged in forest land management and/or surface leasing activities on trust lands to apply to participate and submit an Indian Trust Asset Management Plan (ITAMP) for the management of tribal trust assets.[166] Although this Act outlines plans for forest and surface leasing assets, it continues to demonstrate a recognition of the need to further promote economic stability through the Department of the Interior programs.

To make a case that the federal government has failed as a trustee under the Trust Doctrine alone, a tribe would need to make a showing that it had failed to protect trust assets. As shown above, land is a trust asset. Thus, evidence that these designated trust assets were not being protected to the level that would rise to a trustee's duties is necessary.

The wild horses managed on Indian lands and the wild horses managed on public lands by the BLM do not exist in two separate vacuums, but rather, like fish, birds, or other wildlife, horses move freely across borders. Therefore, it is evident that the extensive control that the Department of the Interior exercises over its horses on public lands has a clear but-for causal relationship to the damages incurred by Tribes to Indian lands. Interactive maps showing the proximity of BLM jurisdictions to BIA jurisdictions show that it is likely that the respective herds in those lands have ample opportunity to do so.[167]

Because of the nature of reservations, some privately owned horses roam freely and are mistaken for wild horses.[168] In 2015, domestic horses belonging to members of the Fort McDermitt Paiute-Shoshone Tribe, whose reservation spans over the California-Oregon border,

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165 25 U.S.C. § 5602 (2023).

166 *Indian Trust Asset Reform Act (ITARA)*, U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS, https://www.bia.gov/service/itara?utm_source [https://perma.cc/CA6K-2YSE] (last visited Feb. 13, 2026).

167 *Wild Horse and Burro Online Corral*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT. WILD HORSE & BURRO PROGRAM, https://wildhorsesonline.blm.gov/ [https://perma.cc/7FPM-ZSN8] (last visited Feb. 13, 2026).

168 *Oglala Sioux Stray Horse Ordinance, Ordinance No. 24-03*, OGLALA SIOUX PARKS AND RECREATION (April 23, 2024), https://oglalasiouxparksandrec.net/latest-news/oglala-sioux-stray-horse-ordinance/ [https://perma.cc/3K7S-WMUF] (illustrating how freely roaming horses on reservations may be treated as stray or unclaimed); *see also*, Zach P. Wallace et al., *An Abundance Estimate of Free-Roaming Horses on the Navajo Nation*, 74 RANGELAND ECOLOGY & MGMT. 100 (2021) (demonstrating the significant presence of free-roaming horses on tribal lands).

crossed over to federal land belonging to the U.S. Forest Service.[169] Some 2,000 horses were illegally grazing on federal lands, causing damage to the environment and using up water supplies in a time of drought.[170] The Chairman at the time, Tildon Smart, was clear in emphasizing, "These are not wild horses . . . . They are horses that are owned by tribal members that have just gotten out of control."[171]

The gathering of these domestic horses had no known impact on any wild horses in the area, as determined by state, federal, and tribal officials, but once again, there were public concerns—this time that wild horses were being gathered under the "guise" of Tribal round-up, despite the fact that no known wild horses were occupying the Little Owyhee HMA, eight miles to the east.[172]

The U.S. Forest Service has published information about horses designated as "unauthorized livestock" under Arizona state law that occasionally wander from the Salt River Pima-Maricopa Indian Community to lands under the jurisdiction of the Tonto National Forest.[173] In 2015, the tribe was outraged to learn that the U.S. Forest Service had planned a roundup without consulting the tribe, saying that some of the horses crossed over to the reservation and that they didn't have a problem with the animals.[174]

The trust relationship was clarified even further in *United States v. White Mountain Apache Tribe*, where the U.S. Supreme Court held that a trust relationship is established by the facts of occupation, control, or

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169 *Fort McDermitt Paiute-Shoshone Tribe Plans Roundup of Horses*, INDIANZ (Apr. 10, 2015), https://indianz.com/News/2015/04/10/fort-mcdermitt-paiuteshoshone-2.asp [https://perma.cc/4NRW-RUY2].

170 *Id.*

171 *Id.*

172 MANAGEMENT PRACTICES, SAFEGUARDS AND INSPECTION CRITERIA TO DISTINGUISH WILD HORSES FROM DOMESTIC HORSES BEING GATHERED FROM TRIBAL AND PUBLIC LANDS, COOPERATIVE AGREEMENT BETWEEN FORT MCDERMITT PAIUTE AND SHOSHONE TRIBAL COUNCIL, USDA FOREST SERVICE, USDI BUREAU OF LAND MANAGEMENT (2018).

173 U.S. DEP'T OF AGRIC., FOREST SERV., LIVESTOCK (CATTLE, HORSES, GOATS, AND SHEEP) GRAZING ON NATIONAL FOREST SYSTEM LANDS WITHOUT A PERMIT ARE CONSIDERED UNAUTHORIZED LIVESTOCK (n.d) (internal policy document) (explaining that horses near the Lower Salt River on Tonto National Forest are considered unauthorized livestock); U.S. DEP'T OF AGRIC., FOREST SERV., TONTO NATIONAL FOREST LAND MANAGEMENT PLAN 190 (2023) (noting that horses outside the Salt River Horse Management Area are managed as unauthorized livestock).

174 *Salt River Tribe Opposes Removal of Wild Horses on Federal Land*, INDIANZ (Aug. 5, 2015), https://indianz.com/News/2015/08/05/salt-river-tribe-opposes-remov.asp [https://perma.cc/8CE2-H99Y].

management of the property in question, and the extent of the federal government's trust obligations may be defined by the common law of trusts.[175] *White Mountain Apache* concerned permitting the federal government to occupy a tract of land held in trust for a defined period of time. At the end of that time, the land was returned with many buildings in disrepair, in breach of the government's obligation to repair and maintain the land. Here, an asset was passed from tribal control to federal government control and back again.[176] The land was held in trust, and the obligation to repair and maintain was undisputed. If wild horses were classified as a trust asset and crossed reservation boundaries onto BLM land and back again, the court could apply the same argument made in *White Mountain Apache*. The following Part expands on a Tribe's ability to define wild horses.

III
THE POWER OF CONTRACTING BETWEEN TRIBAL NATIONS AND THE FEDERAL GOVERNMENT

A. A Tribe's Ability to Determine Classification

In *New Mexico v. Mescalero Apache Tribe*, the Supreme Court "effectively nullif[ied] the Tribe's unquestioned authority to regulate the use of its resources by members and nonmembers, interfere with the comprehensive tribal regulatory scheme, and threaten Congress' firm commitment to the encouragement of tribal self-sufficiency and economic development."[177] This case was essential in recognizing that Indian Tribes have an inherent right "to manage the use of their territory and resources."[178] Finally, this case was the only Supreme Court case that mentioned the federal government by way of the National Park Service actively engaging in co-management services and range development with the Tribe, in a footnote stating, "wild horses . . . compete for the available forage on the reservation."[179] Although the ability of a Tribe to regulate wildlife on their lands is not at issue in this Article, it is necessary to examine the case in order to establish that tribes have broad authority over the wildlife on their lands, including the ability to classify wild horses, and the reaffirmation

175 *See* United States v. White Mountain Apache Tribe, 537 U.S. 465, 475–76 (2003).

176 *Id.* (affirming that when the United States occupies and uses land held in trust for a tribe, it may be liable for breach of fiduciary duties to maintain, protect, repair, and preserve the trust property).

177 New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 344 (1983).

178 *Id.* at 335.

179 *Id.* at 328 n.6.

of Congress's overriding goal of encouraging "tribal self-sufficiency and economic development."[180]

Under U.S. federal law, wildlife is defined as "any wild animal, whether alive or dead . . . includ[ing] any part, product, egg, or offspring thereof."[181] The Wild Horses and Burros Act of 1971 established a unique legal status for wild horses exclusively on public lands.[182] Because this unique status does not apply to wild horses on Indian lands, a Tribe may, if the Tribal nation considers it advantageous, classify horses as invasive and round them up, sell or slaughter them, or they may classify horses as wildlife and manage them under their own comprehensive wildlife system free from state interference.

An example where this might become important is the state of New Mexico, where the BLM operates only two HMAs on close to 29,000 acres of land,[183] but when horses exist on lands outside of those HMAs, they become the responsibility of the New Mexico State Department of Agriculture.[184] This has prompted a mess of jurisdiction as well as a whole new set of state laws that apply to a new classification of horse that is defined as "horses that inhabit and that have historically lived in and around the lower Salt river and Saguaro lake areas in the Tonto national forest and that do not have a brand or other mark that indicates ownership," but does not include horses that are subject to the jurisdiction of the federal government under the federal Wild Free-Roaming Horses and Burros Act.[185] Essentially, the horses not managed by the BLM are left to the state and the 23 federally recognized Tribes[186] to address.

Some Tribes have used the protections afforded under *Mescalero*. For example, the Yakama Nation allows tribal members to purchase

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180 *Id.* at 335.

181 Lacey Act, 16 U.S.C. § 3371(b) (2023).

182 16 U.S.C. § 1332(b) (2023) ("'[W]ild free-roaming horses and burros' means all unbranded and unclaimed horses and burros on public lands of the United States.").

183 *BLM New Mexico Gathers and Removals*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., https://www.blm.gov/programs/wild-horse-and-burro/herd-management/gathers-and-removals/new-mexico [https://perma.cc/36X4-EUME] (last visited Feb. 13, 2026).

184 Hannah Dean, *The 'Wild Horses' of Cloudcroft: Who Cares for Them?*, CLOUDCROFT READER (July 14, 2024), https://www.cloudcroftreader.com/p/the-wild-horses-of-cloudcroft-who [https://perma.cc/8R5G-9Y9P].

185 Ariz. Rev. Stat. § 3-1491.

186 Lezak, *supra* note 25.

permits for wild horse chasing, which allows members to capture the horses, once considered a traditional art in its own right.[187] It authorizes up to nine crewmembers, and the permit holder agrees to no game violations.[188]

B. Federal General Funding Resources for Tribal Fish and Wildlife Departments

Tribal lands are not subject to some of the same federal restrictions the BLM faces, but Tribes also do not receive the funding that the BLM receives. Yet, in the same way as the BLM, almost every Tribe near a wild horse herd is facing the overpopulation and degradation of land and native species. Like these federal agencies, Tribes have also been named defendants in multiple lawsuits spawned by claims of illegal roundups, inhumane treatment, and horses captured for slaughter,[189] hauling Tribes into expensive federal courts.

As discussed above, the federal government is a trustee to all Tribal nations, charged with the duties of a trustee, which include protecting tribal Trust assets. Although this duty does not explicitly state a duty to provide general funding, there is an argument to be made that because only Tribal nations can manage horses on their respective Indian lands through their own departments, providing federal funding to Tribal Nations to support these departments will result in better management of tribal trust assets such as Indian lands. Therefore, the following is an exhaustive list of how Tribal nations might obtain this funding.

Currently, most Tribal Fish and Wildlife Departments are funded by a limited pool of grants. Grants are currently offered by the U.S. Fish

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187 Carol Craig (@Yakima Nation Review), FACEBOOK, *Wild Horses Ask and Get Permit Revisions* (Apr. 18, 2024), https://www.facebook.com/TheYNReview/photos/wild-horses-ask-and-get-permit-revisionsby-carol-craigyakama-nation-reviewtoppen/930335892427833/ [https://perma.cc/J7HX-TATN].

188 *Id.*

189 *See Lawsuit Filed Over Tribal Roundup of Horses in Palomino Valley*, KOLO TV (Jan. 16, 2019, 17:29 PST), https://www.kolotv.com/content/news/Lawsuit-filed-over-Tribal-roundup-of-horses-in-Palomino-Valley-504459921.html [https://perma.cc/FV65-46NN] (reporting that the American Wild Horse Preservation Campaign and Colleen Westlake sued the Pyramid Lake Paiute Tribe in U.S. District Court, alleging illegal roundup and potential sale of horses to slaughter); *Lawsuit Against Nevada Tribe Over Horse Roundup Dismissed*, AM. WILD HORSE CONSERVATION (Jan. 30, 2019), https://www.americanwildhorse.org/stories/lawsuit-against-nevada-tribe-over-horse-roundup-dismissed-6819 [https://perma.cc/WJ4E-2L49] (noting dismissal of claims against the Pyramid Lake Paiute Tribe due to sovereign immunity, part of wild horse advocacy litigation over inhumane treatment).

and Wildlife Service for general habitat conservation.[190] In the fiscal year 2024, the average grant awarded was approximately $200,000, and none of the awarded projects were related to free-roaming horses.[191] Funding is also available through the Environmental Protection Agency's Indian Environmental General Assistance Program ("GAP"), and awards are typically between $75,000 and $400,000, with an average award of $120,000.[192] These funds are typically awarded to projects that go to the restoration of contaminated sites, with no evidence of support for lands decimated by free-roaming horses.[193]

The federal government operates through agencies such as the BLM, but the BLM does not provide any programs to financially aid Tribal Nations with wild horse management.[194] Further, the BIA's website is void of any mention of wild horses, let alone opportunities for funding.[195] "The Branch of Agriculture and Rangeland Development, Bureau of Indian Affairs, offers oversight and technical assistance for rangeland protection and improvements, among other things, and provides leasing and permitting services for farmers and ranchers."[196] If a federally recognized Tribe is willing to officially declare their free-roaming horses as an invasive species, the Tribe is eligible to apply for grant funding[197] through the BIA.[198] These grants are available in the

190 *Tribal Wildlife Grants*, U.S. FISH & WILDLIFE SERVICE, https://www.fws.gov/service/tribal-wildlife-grants [https://perma.cc/R4QD-UMCX] (last visited Feb. 14, 2026).

191 *FY 2024 Tribal Wildlife Grants Awards Summaries*, U.S. FISH & WILDLIFE SERV., https://www.fws.gov/media/fy-2024-tribal-wildlife-grants-awards-summaries [https://perma.cc/4ECH-ZSWT] (last visited Feb. 14, 2026).

192 *Indian Environmental General Assistance Program (GAP)*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/tribal-lands/indian-environmental-general-assistance-program-gap [https://perma.cc/4WRE-FKYQ] (last visited Feb. 14, 2026).

193 *Creating Tangible Environmental Results with Tribes*, U.S. ENV'T PROT. AGENCY, https://epa.maps.arcgis.com/apps/Shortlist/index.html?appid=7e7e4789fb8f41c6b5bd15dd3034a896 [https://perma.cc/YB68-JY9M] (last visited Feb 14, 2026).

194 Lezak, *supra* note 25.

195 *Learn About Indian Affairs*, U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFS., https://www.bia.gov/ [https://perma.cc/LFN7-Y9Q6] (last visited Feb. 14, 2026).

196 *Horses Clash with Livestock at Blackfeet Nation?*, W. HORSE WATCHERS (Mar. 17, 2022), https://westernhorsewatchers.com/2022/03/17/horses-clash-with-livestock-at-blackfeet-nation/ [https://perma.cc/3Y5Q-DZV9].

197 The author discovered the grant by contacting the regional BIA branch, not through the BIA website.

198 *Bureau of Indian Affairs – Invasive Species (IS) Program, Ranking Criteria and Application Process*, BUREAU OF INDIAN AFFS. (2025), https://www.bia.gov/sites/default/files/media_document/2025application_for_invasive_species_program_funding-4_pages_3.pdf [https://perma.cc/SE73-8XYW].

amounts of $2,500 and $200,000.[199] Consider the delicate and ancestral relationship that Indian Tribes have with horses. In light of this relationship, it is appalling, disrespectful, and grossly culturally inconsiderate that the federal agency tasked with managing all Tribal Nations in the United States requires a tribe to classify horses as an invasive species to compete for federal grants. There is no other option here except for the eradication of the invasive species of horses that may be considered familial to that nation's Tribal members.

Returning to *Seminole Nation*, the United States government was making payments for the benefit of the tribe but distributing these payments to tribal officials instead of to the tribal members individually.[200] There was clear evidence of corruption within the Tribal government, and thus, the United States was aware that the payments were not actually benefiting the Tribe, and therefore, the Supreme Court ruled that there was a breach of trust. Furthermore, the case was essential in establishing that the monies distributed must actually benefit the tribes. For example, three of the "items" concerned the tribal schools.[201] However, because the schools actually received the funding (only the tribal members themselves were denied their per capita payments), the trust relationship was found not to be breached.[202]

The federal government has a fiduciary trustee duty to distribute funds for the actual benefit of Tribes, so why are Tribes forced to compete for funding to manage the issues they are forced to govern? Rudy R. Shebala, who was executive director of the Navajo Nation's Division of Natural Resources, said in a 2019 interview, "the government has to take care of it [funding], and the government becomes the bad guy."[203] Congress allocated $80 million annually to the BLM's Wild Horse and Burro Management program from 2011 to 2019, but in 2020, the bureau estimated it needed $900 million over the following five years to rein in herds—$116 million next year, growing to $238 million by the year 2025.[204] In May 2024, the BLM claimed that, according to their estimates, activities associated with

199 *Id.*

200 Seminole Nation v. United States, 316 U.S. 286, 296 (1942).

201 *Id.* at 292.

202 *Id.*

203 Amy Joi O'Donoghue, *Is Slaughtering Wild Horses a Necessity? Tribes Wrangle with Controversial Issue*, DESERET NEWS (Oct. 23, 2019, 22:08 MDT), https://www.deseret.com/utah/2019/10/23/20899394/is-slaughtering-wild-horses-a-necessity-tribes-wrangle-with-controversial-issue [https://perma.cc/FWP8-746S].

204 U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., REPORT TO CONGRESS: AN ANALYSIS OF ACHIEVING A SUSTAINABLE WILD HORSE AND BURRO PROGRAM (2020).

BLM-managed public lands and minerals contributed an estimated $262 billion to the nation's economic output, supporting approximately one million jobs in FY 2022.[205] All of these requests have been unfulfilled.

In its statement, the BLM acknowledged that climate change has caused a shortage of forage and water "as well as competition among wild horses and burros, big games species, and livestock over these limited resources, [which] have made it even more difficult for the BLM to maintain this necessary ecological balance, resulting in further degradation of the range and undermining other BLM land health investments."[206] The BLM requested $170.9 million in the 2025 fiscal year including $15 million to increase the usage of PZP, as well as $250,000 to "increase the Cultural Resources Management program," but only in the area of compliance with the Native American Graves Protection Act of 1990.[207]

C. ISDEAA and the Underfunding of Tribal Programs

The Indian Commerce Clause and the Treaty Clause grant the federal government the unique authority to enter into political and legal relationships with Tribes, a relationship that no other non-state entity has.[208] Under the Indian Self Determination and Assistance Act (ISDEAA),[209] the Secretary of the Interior and the Secretary of Health and Human Services are directed to enter into self-determination

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205 *Examining the President's FY 2025 Budget Request for the Bureau of Land Management and National Park Service: Oversight Hearing Before the Subcomm. on Fed. Lands*, 118th Cong. (2024) (statement of Tracey-Stone Manning, Dir., Bureau of Land Mgmt.).

206 *Id.*

207 BUDGET JUSTIFICATION AND PERFORMANCE INFORMATION FISCAL YEAR 2025, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., at V-58, https://www.blm.gov/sites/default/files/docs/2024-03/FY25%20Greenbook%20Budget%20Justification%20508.pdf [https://perma.cc/97MQ-R4Z8] (last visited Mar. 31, 2026) (noting that the BLM Wild Horse and Burro Management Program requested $170,917,000 for FY 2025 with a $15,000,000 increase for permanent sterilization efforts and that the Cultural Resources Management program included a $250,000 increase for NAGPRA compliance).

208 U.S. CONST. art. I, § 8, cl. 3. ("Congress shall have Power . . . to regulate Commerce . . . with the Indian Tribes."); U.S. CONST. art. II, § 2, cl. 2 (recognizing the executive power to make treaties with the advice and consent of the Senate. The Treaty clause does not mention Indian tribes specifically but was used widely for that purpose at the time of the founding and is understood to include tribes in its authorization).

209 Indian Self-Determination and Education Assistance Act, Pub. L. No. 93-638, 88 Stat. 2203 (1975) (codified as amended at 25 U.S.C. §§ 5301–5423).

contracts upon the request of a tribe, provided that the request satisfies several statutory criteria.[210]

These statutory criteria include the following language:

> "construction programs" means programs for the planning, design, construction, repair, improvement, and expansion of buildings or facilities, including, but not limited to, housing, law enforcement and detention facilities, sanitation and water systems, roads, schools, administration and health facilities, irrigation and agricultural work, and water conservation, flood control, or port facilities.[211]

Section 5363(c) of the Act adds that the Secretary may include other programs, services, functions, and activities or portions thereof that are of "special geographic, historical, or cultural significance" to a participating self-governance Tribe.[212]

The ISDEAA was intended to strengthen the ability of Tribes to determine how government services are delivered to people in their communities. The Act transformed how the United States approached its trust obligations toward Tribes, American Indians, and Alaska Natives, because rather than the federal government making decisions about what is in the best interest of Indian people, the ISDEAA put that power squarely in the hands of Indian people.[213]

In 2023, the BIA published a list of "Programs Eligible for Inclusion in Funding Agreements Negotiated with Self Governance Tribes by Interior Bureaus Other than the Bureau of Indian Affairs; Fiscal Year 2024 Programmatic Targets."[214] Specifically, these are "programs or portions of programs eligible for inclusion in self-governance funding agreements with Indian Tribes."[215] In Section III.A, the Bureau specifically lists Eligible Bureau of Land Management Programs, and even more specifically, includes "Wild Horse Management" referring to "[a]ctivities such as wild horse roundups, adoption, and disposition,

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210 Ramah Navajo Chapter v. Salazar, 644 F.3d 1054, 1060 (10th Cir. 2011).

211 25 U.S.C. § 5304(a).

212 25 U.S.C. § 5363(c).

213 *Advancing Tribal Self-Determination: Examining Bureau of Indian Affairs' 638 Contracting: Before the H. Comm. on Natural Res. & the Subcomm. on Indian and Insular Affs.*, 118th Cong. (2024) (statement of Bryan Newland, Assistant Sec'y for Indian Affs., U.S. Dep't of the Interior).

214 Fiscal Year 2023 List of Programs Eligible for Inclusion in Funding Agreements Negotiated with Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs; Fiscal Year 2024 Programmatic Targets, 88 Fed. Reg. 54649, 54649–54 (Aug. 11, 2023), https://www.federalregister.gov/documents/2023/08/11/2023-17192/fiscal-year-2023-list-of-programs-eligible-for-inclusion-in-funding-agreements-negotiated-with [https://perma.cc/LN2Y-RWW5].

215 *Id.* at 54649.

including operation and maintenance of wild horse facilities, [that] may be available in specific States."[216] Therefore, every Tribe has the ability to contract with the federal government for funding for a Wild Horse Management Program under ISDEAA. These contracts place these programs under unique legal protections, which require them to be fully funded for whatever the contract amount is:

> Once ISDEAA agreements are finalized, DOI must fund tribal entities under the subsequently negotiated annual funding agreements. Tribal entities are entitled to an amount equal to what the DOI agency otherwise would have spent operating that [program, service, function or activity]. BIA must provide a tribal share, a non-inherently federal portion of BIA funds that the tribal entity is assuming. ISDEAA also requires funding contract support costs and 105(1) leases.[217]

D. Ramah Navajo Chapter v. Salazar (2012)

Ramah Navajo Chapter v. Salazar was unique in that it acknowledged that "[f]ederal domination of Indian service programs has served to retard rather than enhance the progress of Indian people."[218] Contracts for programs that are absolutely essential to self-government, such as law enforcement, economic development, and natural resource management, had become "unworkable," according to the federal government, because "these agreements include contract support costs (CSCs) which are the 'reasonable costs for activities that must be carried on by a tribal organization as a contractor to ensure compliance with the terms of the contract and prudent management.'"[219]

Congress has mandated that all self-determination contracts provide full funding of CSCs,[220] but in *Ramah*, the government had failed to appropriate funds sufficient to pay CSCs every year since 1994.[221] The Defendant, the Secretary of the Interior, argued that all funds had been exhausted by other Tribes, and that the courts should resolve the issue by holding that the phrase "*subject to the availability of*

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216 *Id.* at 54651.

217 MARIEL J. MURRAY, CONG. RSCH. SERV., IF11877, INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT (ISDEAA) AND THE BUREAU OF INDIAN AFFAIRS 2 (2024).

218 Ramah Navajo Chapter v. Salazar, 644 F.3d 1054, 1057 (10th Cir. 2011) (quoting 25 U.S.C. § 450(a)(1) (2023)).

219 *Id.* at 1056.

220 25 U.S.C.S. § 450j-1.

221 *Ramah Navajo Chapter*, 644 F.3d at 1056–57.

appropriations" should unambiguously eliminate the government's obligation to pay CSCs.[222] The plaintiff Tribes argued that they had agreed to be bound by congressional funding choices but did not agree to be bound by the allocation choices of the Interior Department.[223]

The Court relied on the language of the ruling in *Cherokee Nation v. Leavitt*,[224] which had been recently decided and followed similar facts.[225] Here, the language of the government's own brief reads, "if the amount of an unrestricted appropriation is sufficient to fund the contract, the contractor is entitled to payment even if the agency has allocated the funds to another purpose or assumes other obligations that exhaust the funds."[226] The court held that these contracts should be construed in favor of the Tribes and that the government would continue to remain liable for the funds, despite the argument that the agency had allocated the funds to run the Indian Health Service's central Washington office.[227]

This issue had been resolved in *Cherokee*, where the Tribe agreed to supply health services normally provided by the Department of Health and Human Services, creating a valid contract under the Indian Self-Determination and Assistance Act, but the Government had refused to fund the CSCs, arguing that Congress had not appropriated sufficient funds.[228] The Court held that contracts under the Act contained no special provisions and that they were contracts intended to be treated like any other government contract.[229] Furthermore, the court

> recognize[d] that agencies may sometimes find that they must spend unrestricted appropriated funds to satisfy needs they believe more important than fulfilling a contractual obligation. But the law normally expects the Government to avoid such situations, for example, by refraining from making less essential contractual commitments; or by asking Congress in advance to protect funds needed for more essential purposes with *statutory* earmarks; or by seeking added funding from Congress; or, if necessary, by using unrestricted funds for the more essential purpose while leaving the

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222 *Id.* at 1057 (emphasis added).

223 *Id.*

224 Cherokee Nation of Okla. v. Leavitt, 543 U.S. 631, 641 (2005).

225 *Ramah Navajo Chapter*, 644 F.3d at 1057.

226 *Cherokee Nation of Okla.*, 543 U.S. at 641 (quoting Brief for the Federal Parties at 23, Cherokee Nation of Okla. v. Leavitt, 543 U.S. 631 (2005) (Nos. 02-1472 and 03-853)).

227 *Id.* at 642.

228 *Id.* at 631.

229 *Id.* at 632.

> contractor free to pursue appropriate legal remedies arising because the Government broke its contractual promise.[230]

Therefore, any contracts made under ISDEAA between Tribes are not subject to the Department of the Interior's allocation of choices, nor may they be underfunded due to Congress's allocation of choices. Tribes are free to contract into and execute any method of management they deem appropriate for their land and culture, including round-up, sterilization, contraception, or slaughter. Unlike the BLM, the contractual funding is not subject to cancellation because of pressure from activist groups, nor is it restricted by the Wild Horses and Burros Act.

E. The Duty of Consultation

In turning to non-fiduciary solutions, it is likely that some of these conflicts between Tribal Nations and the Department of the Interior could be avoided merely with more effective communication. Consider the previously addressed Salt River Pima-Maricopa Indian Community, which was surprised to learn that the wild horses wandering between their community and the U.S. Forest Service were scheduled for a roundup. Or the members of Fort McDermitt Paiute Shoshone Tribe, who were surprised to learn that their privately owned horses were scheduled for round-up. The government has a broad duty of consultation whenever federal actions may affect the Tribe, tribal land, or the environment surrounding the Tribe. There is both a trust duty and a statutory duty, as explained below.

The BLM has three ongoing government-to-government consultation policies: one concerning a Unified Agenda of Regulatory and Deregulatory Actions, one concerning the Federal Coal Leasing Program, and one concerning the National Historic Preservation Act.[231]

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230 *Id.* at 642.

231 *See BLM Government-to-Government Consultation for Five Rulemakings Included in President Biden's Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., https://www.blm.gov/services/tribal-consultation/president-bidens-five-rule-makings [https://perma.cc/L7MM-WRA7] (last visited Mar. 16, 2026) (describing BLM's Tribal consultations on Unified Agenda rulemakings); *BLM Government-to-Government Consultation for Review of the Federal Coal Leasing Program*, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., https://www.blm.gov/services/tribal-consultation/federal-coal-leasing-program [https://perma.cc/E9ND-9DNP] (last visited Mar. 16, 2026) (noting formal Tribal consultation letters for coal leasing review); *BLM Government-to-Government Consultation for Review of the National Programmatic Agreement Under the National Historic Preservation*

None of these consultation policies concern the management of wild horses on Indian lands, yet the executive branch continues to advocate for the pertinence of consultation. In 2000, President Clinton issued an Executive Order directing all federal agencies to "establish regular and meaningful consultation" with Indian Tribes in "the development of Federal policies that have tribal implications."[232]

This order, still valid today, requires federal agencies to consult with tribal governments early in the development process before issuing a regulation or policy impacting Tribes. President Barack Obama described consultation as a "critical ingredient" in the trust relationship, and issued a memorandum that required each federal agency to create and implement a written tribal consultation policy.[233] President Joe Biden's administration issued detailed standards for tribal consultation, including how to determine when a consultation is necessary, the notice that must be provided to Tribes, and the way in which consultation should be conducted.[234] The Biden Administration also created the Tribal Grant Clearinghouse, a source for Tribes to find funding sources; however, there are currently none for wild horse management.[235] Most recently, in 2021, Secretary Haaland and Secretary of Agriculture Vilsack issued Secretary's Order 3403: Joint Secretarial Order on Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters,[236] "affirm[ing] the trust relationship between the United States and Tribes, and acknowledg[ing] that the United States can benefit from the land management expertise and practices Tribal nations have developed over centuries."[237]

Act, U.S. DEP'T OF THE INTERIOR, BUREAU OF LAND MGMT., https://www.blm.gov/services/tribal-consultation/blm-government-government-consultation-review-blm-national-programmatic-agreement-NHPA [https://perma.cc/K37B-NWZE] (last visited Mar. 20, 2026) (explaining Tribal consultation in NHPA Section 106 programmatic agreement updates).

232 Exec. Order No. 13175, 65 Fed. Reg. 67249 (Nov. 9, 2000).

233 Memorandum on Tribal Consultation, 74 Fed. Reg. 57881 (Nov. 5, 2009).

234 Uniform Standards for Tribal Consultation, 87 Fed. Reg. 74479 (Nov. 30, 2022).

235 *See Clearinghouse*, U.S. DEP'T OF THE INTERIOR, BUREAU OF INDIAN AFFS., https://www.bia.gov/events/clearinghouse [https://perma.cc/D6AN-SXFN] (last visited Feb. 14, 2026).

236 U.S DEP'T OF THE INTERIOR & U.S. DEP'T OF AGRIC. JOINT SECRETARIAL ORDER NO. 3403, FULFILLING THE TRUST RESPONSIBILITY TO INDIAN TRIBES IN THE STEWARDSHIP OF FEDERAL LANDS AND WATERS 1 (2021), https://www.doi.gov/document-library/secretary-order/so-3403-joint-secretarial-order-fulfilling-trust-responsibility [https://perma.cc/3M3D-JLR3].

237 *Examining Opportunities to Promote and Enhance Tribal Forest Management: Before the H. Comm. on Natural Res. & the Subcomm. on Federal Lands*, 118th Cong.

Federal agencies should engage in consultations: "The Department of Justice will consult with federally recognized Tribes before formulating or implementing policies that have Tribal implications."[238] Yet in 2016, fifty-nine Tribes and eight organizations representing tribal interests came together in October and November to address concerns regarding federal infrastructure projects.[239] The issue that was repeatedly addressed was that more often than not, the federal government failed to provide tribes with enough information or time to make an informed decision, failed to follow the agency's own consultation policy, dismissed tribal cultural and religious interests as insignificant, and did not treat tribes on a government-to-government basis during the consultation process.[240]

In instances of any federal action that may significantly affect environmental quality, the National Environmental Policy Act of 1969 (NEPA)[241] requires the preparation of an Environmental Impact Statement (EIS). The requirements of an EIS are laid out in 40 C.F.R. pt. 1502.[242] In subsection 1502.4(c), it is clearly stated that "participation of likely affected Federal, State, Tribal and local agencies and governments as cooperating or participating agencies, as appropriate; any applicant; and other likely affected or interested persons (including those who might not be in accord with the action), unless there is a limited exception under § 1507.3(d)(3) . . . ."[243] Additionally, the organization assigned to implement the Act, the Council on Environmental Quality (CEQ), has issued regulations that require that "[t]he Federal agency consults early with appropriate State, Tribal, and local governments and with interested private persons and organizations when their involvement is reasonably foreseeable."[244]

(2023) (statement of Bodie K. Shaw, Deputy Reg'l Dir. for Trust Servs., Bureau of Indian Affs.).

238 U.S. DEP'T OF JUSTICE, DOJ MEMORANDUM ON TRIBAL CONSULTATION (2023), https://www.justice.gov/d9/2022-12/doj-memorandum-tribal-consultation.pdf [https://perma.cc/CBX5-5PXA].

239 U.S. DEP'T OF THE INTERIOR, U.S. DEP'T OF THE ARMY & U.S. DEP'T OF JUSTICE, IMPROVING TRIBAL CONSULTATION AND TRIBAL INVOLVEMENT IN FEDERAL INFRASTRUCTURE DECISIONS 2 (2017).

240 *Id.*

241 National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4370h (2018).

242 40 C.F.R. § 1502 (2024).

243 § 1502.4(c).

244 § 1501.2(b)(4)(ii).

Despite the protections of NEPA, courts have acknowledged that this Congressional Act does not displace the court's traditionally broad and flexible equitable powers, nor should it deter a court from making a finding that the environmental impact of government actions of Indian lands is a violation of the responsibilities of the United States as the Trustee of a Tribe, as it did in the lower district Montana court in 1985.[245] As established in the Background section of this Article, Indian lands are continuing to suffer environmental, biological, and ecological damages as a result of these untamed and overabundant wild horses, which is a direct result of government actions.

CONCLUSION

The federal government's mismanagement of wild horses has had devastating consequences, not only for public lands but also for Tribal Nations that bear the brunt of the problem with little support or recourse. While the BLM continues to struggle with population control and policy limitations, tribal governments face even greater challenges—forced to contend with the ecological, economic, and cultural impacts of overpopulated herds without adequate funding or meaningful consultation.

This Article has demonstrated that the federal government, tasked with overseeing both the BLM and the federal government's trust responsibility to Tribes, has failed in its obligations. Despite the established legal precedent affirming the federal government's fiduciary duty to protect tribal lands and resources, there has been no significant effort to provide Tribes with the necessary tools to address the crisis. Instead, Tribes are left to navigate the consequences of a failed federal policy—one that allows wild horse populations to exceed sustainable levels while preventing effective management solutions.

If the federal government is to uphold its trust responsibility, it must recognize that its policies do not exist in a vacuum. Wild horses do not respect jurisdictional boundaries, and neither should solutions. Tribes must be granted greater autonomy, funding, and co-management opportunities to address this crisis on their lands. The trust doctrine, as established by decades of Supreme Court precedent, demands no less. Without immediate action, the cycle of environmental degradation, economic hardship, and jurisdictional conflict will continue—at the expense of both tribal sovereignty and the lands they have long fought to protect.

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245 N. Cheyenne Tribe v. Hodel, 851 F.2d 1152, 1154 (9th Cir. 1988).