Wild Horse Crisis in Wyoming Research Memorandum for the Wyoming Stock Growers Association

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Overpopulation of the wild horse herds and how Wyoming can address removing wild horses from state land and holding the BLM accountable for herd population.

I. Background of Wyoming wild horse population and the Wild Horse and Burro Act.

As of March 2020, Wyoming's Wild horse population was much larger than the BLM's high appropriate management level (AML) standards. In 2020, the wild horse population was at 8,706 head of horses. The BLM acknowledges a twenty percent increase in herd population every year. Therefore, an estimated 10,447 head of wild horses would populate Wyoming in 2021. This number, however, is subject to any gatherings performed by the BLM to remove *excess* horses and horses that *stray* from federal public lands.

The BLM has discretionary power to determine the AMLs for the wild horses within the State. The statute's standard states the wild horses should be managed to promote a natural ecological balance of the wild horse herds within the herd management areas (HMAs). In Wyoming, AML's are set in a range between a high and low number; the low AML is 2,520 head of horses and a high AML of 3,795. These numbers represent the carrying capacity of the federal lands for the wild horse herds. Currently, Wyoming's wild horse population is anywhere from 4,911 to 6,186 head in *excess animals* as of 2020. *Excess Animals* are defined as wild horses that must be removed from the federally managed public lands to promote the natural ecological balance. 16 U.S.C.A. § 1332(f) (West 2021). These numbers are more inflated each year as the population increases within the State.

Accordingly, the Wild Horse and Burro Act of 1971 (WHA) foresaw overpopulation as a foreseeable issue in wild horse herds. In 16 U.S.C.S. § 1333(b)(1) (LexisNexis 2021), "The Secretary shall maintain a current inventory of wild free-roaming horses . . . on given areas of the public lands. *The purpose of such inventory shall be to: make determinations as to whether and*

where an overpopulation exists and whether action should be taken to remove excess animals; . . ." (emphasis added). Here, the WHA gives discretion to the Department of Interior (DOI) and Bureau of Land Management (BLM) to determine the appropriate stocking rate within the areas where the wild horses are managed. Accordingly, the BLM made determinations as stated above for the entire state of Wyoming by issuing AML's for each HMA, resulting in the total wild horse population being set at a maximum of 3,795 head. Therefore, the BLM is exceeding their discretionary standards of how many wild horses should be managed on Wyoming soil to satisfy the standard set by the DOI for the WHA.

Also, the WHA is meant to run in cooperation with State governments. The WHA states, "[a]ll management activities shall be at the minimal feasible level and shall be carried out in *consultation with the wildlife agency of the State* wherein such lands are located in order *to protect the natural ecological balance of all wildlife species which inhabit such lands,* particularly endangered species." § 1333(a) (emphasis added). Thus, the State's wildlife agency – Wyoming Game and Fish Department & Wyoming Department of Agriculture – should be consulted on the management plans of the wild horse population and help advise the federal government. It is well established that in Wyoming, many public lands are natural habitation for sage grouse. Jeff Beck Sage-Grouse Data, Compilation of 2019 Research in Wyoming (2019), https://wgfd.wyo.gov/Habitat/Sage-Grouse-Management/Sage-Grouse-Data. Having an overpopulated wild horse herd running on the same habitat as the sage grouse would disrupt the natural ecological balance of Wyoming's state lands. Also, sage grouse use Wyoming's public lands for living and repopulating. *Id.* Thus, this gives a strong interest for Wyoming to oppose the overpopulation of wild horses.

Furthermore, the Secretary of the United States Department of Interior can "enter into cooperative agreements with . . . landowners and . . . State and local governmental agencies" as is fitting to further the purpose of the WHA. § 1336. Here, it seems fitting to get the wild horse population to the AML amount set forth by the BLM's standards for conservational needs and herd health. Wyoming surely does not want to take on the burden of managing wild horses. However, Wyoming may be able to reach a long-term agreement to help focus the BLM's efforts within the state, so fewer resources are wasted in preparing gathering reports. Thus, enabling better management of wild horses by supporting the reduction of the wild horse herd size.

Wyoming's neighboring states attempt to address the wild horse crisis by state legislation.

I. Nevada, passing legislation beyond its power, hoping to trigger federal congressional change involving the AML and overpopulation of wild horse herds.

As of March 2020, Nevada's wild horse population was at 51,528 head of horses. The high AML for Nevada is set at 12,811 head of wild horses and burros. Thus, the wild horse population in Nevada is 402% over the high AML number set forth by the BLM.

In 1999, the Nevada legislature attempted to resolve this overpopulation issue by passing state legislation. NEV. REV. STAT. ANN. § 244.387 (West 2021). During committee, the Senate made it clear that the statute's goal was to trigger the BLM and DOI into maintaining the wild horse population. *Authorizes county to institute court action on behalf of landowner to require enforcement of federal law requiring removal of wild horses from private property: Hearing on A.B. 509 Before the S. Comm.*, 1999, 70th Sess. (Nv. 1999). The statute calls for private landowners to inform the BLM or nearest federal marshal that the wild horses strayed off the public lands and onto their private land. § 244.387. Then if the federal agencies failed to act within a reasonable time, the statute allowed the counties to gather the wild horses that "stray"/trespass onto the private land. *Id.* The committee stated a reasonable time was ninety (90) to one-hundred and twenty (120)

days. *Hearing on A.B.*, (Nv. 1999). Additionally, the counties have the right to bring a cause of action for the landowner who seeks relief against the BLM and DOI for failing to act. § 244.387.

The Nevada Senate committee acknowledges this law is beyond the scope of the State's power and will likely start litigation. Such action taken by counties within a State would violate the WHA, therefore starting litigation about the legality of the county's actions. The WHA does not permit counties/states to gather wild horses that trespass onto private lands but instead allocates that duty to the Secretary of Interior and BLM agents. *Id.* However, the committee expressed concerns that this may be the only way to address the problem at the federal level. The committee here appears to be attempting to incite legislative change at the federal level by enacting this statute in hopes of litigation that may trigger Congress to act.

II. Oregon does not address the wild horse crisis in its statutory scheme but has a statute to enforce an agency's ministerial duty through a writ of mandamus.

Oregon's wild horse population in 2020 was at 6,196 head, and the high AML for Oregon is currently set at 2,700 head. Thus, Oregon's wild horse population is 229% of the current AML.

Oregon does not have a statute in place for addressing the wild horse crisis within the State. However, Oregon does have a statute that issues a writ of mandamus on public officials who do not fulfill their ministerial duties. OR. REV. STAT. ANN. § 34.110 (West 2021).

According to the encyclopedia, a writ of mandamus "may be issued against a public officer or board to compel performance of a purely ministerial duty imposed by law." 55 CORPUS JURIS SECUNDUM Mandamus § 147 (May 15, 2021, 9:00 A.M.), https://1.next.westlaw.com/Document/Id5b7c226b67c11d9a49dec8cdbddd959/View/FullText.html?transitionType=Default&contextData=(sc.Default). A writ of mandamus requires the public official to have a duty to act without request to perform. *Id.* Additionally, the entire public must have the right to the performance due by the public official in which the statute imposes. *Id.*

Additionally, the encyclopedia defines ministerial duty as "a simple, definite duty, arising under conditions admitted or proved to exist, and imposed by law." 55 CORPUS JURIS SECUNDUM Mandamus § 148 (May 15, 2021, 9:30 A.M.), https://1.next.westlaw.com/Document/Id5b7c229b67c11d9a49dec8cdbddd959/View/FullText.html?ppcid=d7553cac4beb49b4b5e395a5a172ff1b&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=%28sc.Default%29. Ministerial duties and discretionary duties differ from each other, as one allows the agency to be compelled to act while the latter does not. Discretionary duties are those where the public official has a say in performing the task. In contrast, a ministerial duty is an absolute duty imposed upon the public official and is a task that is easily defined. *Id.*

In 1978, the United States District Court in the District of Oregon addressed whether the Secretary of Interior had a ministerial duty to remove wild horses off private land. *Roaring Springs Associates v. Andrus*, 471 F. Supp. 522 (1978). In *Roaring Springs*, the landowner informed the nearest federal marshal and DOI agent of wild horses being on his property. Upon notifying the marshal and the agent, he asked them to remove the wild horses from his private property. *Id.* The public officials refused, spurring the landowner to bring his case to the Federal District Court of Oregon. *Id.*

The Court then addressed whether the removal of wild horses from private land was a ministerial duty imposed on the Secretary of Interior. *Id.* The Court turned to the controlling federal statute – 16 U.S.C. § 1334 – which places a duty on the BLM and DOI to remove wild horses from private land. *Id.* The Federal District Court of Oregon looked to the statute's plain language and determined it put an unqualified duty on the Secretary and his agents to remove all wild horses

from private lands. *Id.* Also, the Court determined its ruling further supported the WHA's purpose of keeping wild horses on public lands. *Id.*

III. Utah addresses the wild horse issue through a budgetary statute for federal public land in grazing zones determined by Utah.

Utah has an agricultural commodity zoning statute for grazing federal public lands within the state. The statute falls under the state's budgeting title and within the resource management plan for federal lands. Currently, the statute has proposed legislation that will change some of the chapter's language. The language of the chapter that is relevant to the issue at hand will be unscathed by the proposal/enactment. This statute addresses in part the overpopulation of wild horses within Utah. The BLM currently has Utah's high AML at 1,956 head of wild horses. As of 2020, Utah's wild horse population reached 5,746 head, leaving the state's wild horse population about 294% of Utah's high AML number. It appears Utah has a statute in place regarding federal public lands, and there must be an agreement between Utah and the Department of Interior for the statute to be enforceable. However, without knowing or finding such an agreement, the following section is a breakdown of the statute.

The relevant portion of the chapter is UTAH CODE ANN. § 63J-8-105.8 (West 2021). Section one of the chapter begins with the purpose of the statute, such as:

> (a) preserving and protecting the agricultural livestock industry from ongoing threats; (b) preserving and protecting the history, culture, custom, and economic value of the agricultural livestock industry from ongoing threats; and (c) maximizing efficient and responsible restoration, reclamation, preservation, enhancement, and development of forage and watering resources for grazing and wildlife practices and affected natural, historical, and cultural activities.

Id. As stated above, the statute's design is to influence federally controlled lands within Utah to benefit the state's agricultural livestock industry, wildlife, and rangeland habitats. *Id.* Additionally, Utah has recognized that the preservation and protection of the livestock industry are symbiotic to Utah's wildlife and rangeland habitats. Thus, promoting rangeland health within Utah will benefit both the wildlife that are native to the area and support a significant component of Utah's livestock industry.

The following section expresses and marks out the areas subject to the grazing zones of this statute. The legislature breaks the zones up by counties where they were historically grassland and used primarily for livestock production. *Id.* Then, the proceeding section refers to maps for references to correspond the zones indicated in the statute to areas on the county maps. *Id.* This section also states where the maps can be found for public use. *Id.*

Section four states the legislature's concerns and why they formed the grazing zones in the statute. First, Utah discussed the history of the agricultural livestock industry and how the zones in history have provided culture, welfare, and economy for more than a decade. *Id.* Second, Utah points out the natural abundance of vegetation in these zoned areas. *Id.* Utah also acknowledges that the land "will support and expand" livestock and wildlife within the same habitat if the land is correctly managed. *Id.* Third, Utah claims the agricultural livestock industry within the state's designed zones is worthy of preservation and protection. *Id.* In large part due to the historical significance of livestock in Utah. *Id.* Fourth, preservation and restoration will enhance the rangeland health and watershed areas, and it promotes the sage grouse population who use the same habitat for a home. *Id.* Additionally, preservation and restoration will allow for a symbiotic relationship between the livestock industry and wildlife habitats. *Id.* The last two subsections of

this part of the statute require energy and recreational development to comply with this statute, emphasizing the health of the rangeland and watershed areas. *Id.*

Section five relates to the current and future threats that could result in serious harm to Utah's agricultural livestock industry and wildlife habitats within the zoned areas. *Id.* This section lists the threats as: (a) unreasonable, arbitrary, and unlawful restrictions of federal management policies; (b) inflexible federal grazing practices; (c) *the mismanagement of wild horses and having excess herd populations in Beaver and Emery counties*; (d) improper management of vegetation; and (e) other practices that will degrade the health of the range within the zoned areas. *Id.* (emphasis added).

After stating the threats, Utah addresses ways to avoid such threats. One way pertinent here is by effective and responsible management of wildlife habitat and management of the wild horse population and eliminating any excess population. *Id.* Utah also promotes the cooperative management approaches of federal and state/local government to promote the effectiveness of this chapter. *Id.*

Utah has a series of requests for federal agencies with authority over the land subject to the grazing zones. *Id.* Utah requests that the: (a) federal agency cooperates and coordinates with the state/county to develop and manage resource management plans; (b) federal agency expedite grazing permits and range improvements; (c) federal agency allow continued maintenance of roads, powerlines, and pipelines; (d) federal agency "refrain from any planning decisions and management actions that will undermine, restrict, or diminish the goals, purposes, and policies for each grazing zones . . . ;" (e) federal agency refrain from implementing policy contrary to Utah's goals for promoting the sage grouse population; and (f) federal agency should utilize the federal

public lands to above fifty percent capacity unless they coordinate and cooperate with local government and have a specific issue they are attempting to resolve. *Id.*

The chapter continues to discuss if the federal agency poorly manages the zones to increase the risk of catastrophic wildfires, and increased grazing would reduce the risk (or decrease grazing would reduce the risk), and such risk will adversely affect the people of Utah's well-being. *Id.* The local government can increase/decrease grazing on the zones, and the governor and attorney general can increase/decrease livestock in the grazing zones. *Id.*

Utah wraps the statute up by discussing the importance of the statute. First, it is to provide special protection and counter the threats that were identified. *Id.* Finally, Utah calls for federal and state/local officials to cooperate and have similar plans to manage federal public lands within Utah. *Id.*

IV. New Mexico's Attorney General opinion from 1990 based on the *Kleppe v. New Mexico* about wild horses that are not on DOI land would not be under the DOI's jurisdiction, and New Mexico can exercise its laws to remove the wild horses off the public land.

In 1990, the Attorney General (AG) of New Mexico addressed this question: "What is the status, under New Mexico law, of the wild horses on the White Sands Missile Range?" N.M. A.G. Op. No. 90-01 (1990). The AG first analyzed how New Mexico law addresses estray animals. *Id.* Then, once finishing that analysis, the AG discussed that the WHA did not apply to these wild horses. *Id.* The AG pointed out that the wild horses were on the Department of Defenses (DOD) land and the DOI had no authority to manage the horses there. *Id.* Thus, if the DOI had no authority to manage the horses there, the WHA would be inapplicable, and the power would fall to New Mexico. *Id.* The AG supported his claim by turning to *Kleppe v. New Mexico*, 429 U.S. 529, 543 (1976), stating:

> Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause.

Id. (quoting *Kleppe*, 426 U.S. at 543). Here, the AG is saying that the federal government does not have exclusive control over the public lands in New Mexico, and New Mexico is free to enforce criminal and civil laws upon those lands. *Id.* Thus, this would be power not given to the federal government but instead power that would fall to the state of New Mexico. *Id.* Therefore, the AG stated, "[u]ntil and unless the handling of the horses in question is preempted by Congress, New Mexico law will control the handling of those animals." *Id.* Finally, the AG then concluded that the wild horses would be considered "estray," and the New Mexico Livestock Board could handle and dispose of them under New Mexico law. *Id.*

Are Wyoming state public lands forced to take the wild horse population as permanent residents of the land? Or is Wyoming entitled to the same ejectment action private citizens are when wild horses enter their land?

Can Wyoming force the BLM to remove wild horses from state public lands? The WHA defined *Public Lands* as "any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service. 16 U.S.C.A. § 1332(e) (West 2021). Furthermore, under the Property Clause, Congress may acquire state property either consensually or non-consensually. *Kleppe*, 426 U.S. at 542.

However, "[a]n agency's power is no greater than that delegated to it by Congress," *Lyng v. Payne*, 476 U.S. 926, 937 (1986), and "[a]n agency confronting resource constraint may change its own conduct, but it cannot change the law." *Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 327 (2014). Under the language of the WHA in section 1332(e), the statute only grants the BLM and Forest Service the authority to manage wild horses on federal public lands under the

control of the DOI and USDA Forest Service. § 1332(e). It may be true that the Property Clause under the Constitution gives Congress the ability to use any land they deem necessary. However, under the WHA, Congress only granted the DOI to manage wild horses on federal BLM and Forest Service lands. *Id.* The WHA did not grant authority to the DOI to control all lands the wild horse herds may stray onto, such as state land. *See id.* Instead, the WHA gives the DOI and its agents a duty to remove the wild horses if they enter onto such lands. *Id.* Therefore, the statute does not grant power to the DOI to run wild horses on state lands. *See id.*

Thus, the question becomes can Wyoming force the BLM to remove wild horses from State lands? First, the tenth amendment in the United States Constitution gives the states "exclusive right to legislate concerning state lands within their borders." *Choctaw and Chickasaw Nations v. Bd. of Cnty. Comm'r. of Love Cnty., Okla.*, 239 F. Supp. 650, 651 (E.D. Okla. 1965). Therefore, Wyoming can govern all lands within the state that is not under the umbrella of a federal statute. Granted, it is unclear whether Wyoming can remove wild horses that stray onto state land themselves. The U.S. Supreme Court in *Kleppe* did not address the issue as to whether the "Property Clause empowers Congress to protect animals on private lands or the extent to which such regulation is attempted by the [WHA]." *Kleppe*, 426 U.S. at 546.

Furthermore, the regulations in correspondence of the WHA define public lands to be "any lands or interests in lands administered by the Secretary of the Interior through the Bureau of Land Management." 43 C.F.R. § 4700.0-5 (West 2021). Therefore, state land is not under the interest of lands or lands that Congress authorized the DOI to manage wild horses on. *Id.* Furthermore, the WHA fails to define private land as it is referred to in the statutory scheme.

As persuasive support, the Soil Conservation act defines *Private Grazing Land* as any non-federally owned rangeland, pastureland, grazed forestland, and any other lands used for grazing,

including privately owned land and state-owned land. 7 C.F.R. § 610.31 (West 2021). This definition is not binding on the WHA. However, this regulation is given authority under the conservation title in which Congress authorized the WHA. 16 U.S.C.A. §§ 590a-590q-3. Due to the lack of clarity of how the WHA defines private land within the regulatory scheme, private land should be viewed as any non-federally owned land. Thus, this would encompass Wyoming's state lands.

Additionally, the BLM cannot refuse to remove wild horses from private property. As mentioned above, an agency with limited resources cannot neglect its ministerial duties. *See Utility Air*, 537 U.S. at 327. Furthermore, "[t]he State, no less than a private owner of property, has the power to preserve the property under its control for the use to which it is lawfully dedicated." *Greer v. Spock*, 424 U.S. 828, 836 (1976) (quoting *Adderley v. State of Florida*, 385 U.S. 39, 47 (1966)). In *Greer*, the case was about free speech and the basic principle of property ownership and ejectment. *Id.* Both principles are relevant to our issue. Furthermore, the right to exclude is one of the core principles of property ownership shared by private landowners and government parties. *Knight First Amend. Inst. at Colum. Univ. v. Trump*, 302 F.Supp.3d 541, 569 (S.D. N.Y. 2018) (citing *Lingle v. Chevron U.S.A. Inc.* 544 U.S. 528, 539 (2005)).

Additionally, in *Roaring Springs*, the federal courts found section four of the WHA put an unqualified duty to remove wild horses from private lands. *Roaring Springs*, 471 F. Supp. at 526. Therefore, it is not far-fetched that Wyoming has the same legal rights on state land as those on private land do when wild horses stray from federal public lands. In either situation, the wild horses have strayed off federal public lands and are not furthering the statute's purpose as Congress authorized it. Therefore, it is likely that Wyoming's state land can get the same treatment as privately owned land when wild horses stray from federal public lands.

I. Can Wyoming hold the BLM to their AML numbers for wild horse herds within the State?

As mentioned earlier, the BLM gave Wyoming an AML range of 2,520 to 3,795 head of wild horses. Additionally, wild horse numbers are 4,911 head in *excess* of the High AML number as of 2020. Also, with a population growth of roughly twenty percent annually, the number of wild horses will only continue to exceed the AML range for Wyoming's federal public lands.

Past agreements between the BLM and Wyoming allowed for three-year inventory checks on wild horses. 2003 Wyoming and BLM Consent Decree clause 3. The agreement also had the BLM work in unison with Wyoming's Department of Game and Fish to optimize the efficiency of any gathering within the state. *Id.* The agreement also allowed Wyoming to hold the BLM accountable for not addressing excess horse populations. *Id.* The agreement forced the BLM to submit a budget request for gathers when the BLM determined the wild horse population would be in excess of the AML number. If the BLM failed to make the request, Wyoming could file a motion to compel the BLM to remove the wild horses in excess of the AML's. However, this agreement was not renewed by the BLM when it expired in 2013.

II. Legal options that may trigger the BLM to act on the overpopulation of wild horses in Wyoming.

a. The Wild Horse and Burro Act imposes a duty on the Secretary of Interior to manage the wild horse population to have a thriving ecological balance.

The WHA gives the Secretary of Interior a ministerial duty to manage the wild horses to "achieve and maintain a thriving natural ecological balance on the public lands." § 1333(a). The United States Supreme Court stated that when a statute uses both the words "may" and "shall" in the same statute, it gives a clear mandatory duty to the duties following the term "shall." *Kingdonware Technologies, Inc. v. U.S.*, 136 U.S. 1969, 1977 (2016). Therefore, once the Secretary of Interior has designated specific federal public land for the use of wild horses, the

statute then puts a mandatory duty on the Secretary to maintain those lands to have a thriving natural ecological balance on the land. *Id.* Additionally, the statute requires the Secretary to consider input from ecologists and biologists independent from the federal and state governments. *Id.* Finally, the statute also calls for the management to be as minimal as possible, but it must be carried out in "consultation" with the state agencies to promote and protect the natural ecological balance of all wildlife species, especially any endangered species. *Id.*

The 10th Circuit Court of Appeals ruled that the Secretary has discretion as to whether to act in determining what constitutes the overpopulation of wild horses on federal public lands. *Wyoming v. United States Department of Interior*, 839 F.3d 938, 945 (10th Crt. 2016). However, there is no court record as to forcing action based on environmental and ecological impacts of wild horses on the current population within the state. Because the statute requires the wild horse population to be managed in harmony with wildlife's natural ecological balance, proving irreparable harm to wildlife such as elk, deer, antelope, and sage grouse may be a viable way to force the BLM to remove the excess horses.

Additionally, focusing on the wildlife and range health requirements may also bolster the fact that having an overpopulation of animal units on any ground will significantly reduce productivity and result in less forage for the appropriate level of wild horses and wildlife for years to come. Therefore, the Secretary has discretion on whether the wild horse herd has excess animals, but he has no discretion as to the standard the federal public lands must be maintained to support all wildlife and future wild horses. Congressional hearing from 1974 supports this goal as to the management of the wild horses:

> Without natural predators, and with finite forage capacity, the control of populations has two primary solutions. It can be provided by the humane and more

> flexible methods which we propose to the committee today. Or it can come from overgrazing, famine, sickness, emaciation, and possible starvation. The latter alternatives are grim, harsh, inhumane and repugnant. They are also unnecessary.

Wild Free-Roaming Horses and Burros Act of 1971: Hearings before the Senate Committee on Interior and Insular Affairs, 93rd Cong., 2d Sess. 19-21 (1974). This excerpt from the congressional hearing addresses the wild horse herds management. However, more importantly, the legislature shows concern for the ecological impacts of wild horses on lands mismanaged by the DOI. *Id.* Congress stated the issues of finite forage capacity and overgrazing of the rangeland in the relation of an overpopulated wild horse herd. *Id.* Also, the committee does not show that the DOI can increase acreage as a solution, but rather that the herds need to be managed within the given land. *Id.*

In a Congressional Research Service (CRS) report issued in December of 2011, the BLM acknowledged that if they ceased to remove excess wild horses on the federal public lands, the result would be "further damage of soil, vegetation, riparian areas, and wildlife habitat." CAROL HARDY VINCENT, CONG. RSCH. SERV., RL34690, WILD HORSES AND BURROS: ISSUES AND PROPOSALS (2011). Additionally, the AML range with a high and low was designed to gather more efficiently. Thus, when the herd population reached the high AML, a gather would occur to remove the excess horses down to the low AML on the federal public lands. *Id.* Furthermore, Secretary Salazar – who is no longer there – of the DOI acknowledged that the wild horse program has become unsustainable for the BLM to maintain, and the WHA did not intend to have wild horses managed the way they currently are. *Id.* Finally, the Government Accountability Office (GAO) made some recommendations within the report. *Id.* One recommendation is that the BLM should

use statistical data to help prepare and project future gathering dates to determine when to gather more efficiently. *Id.*

These findings in the CRS demonstrate that the BLM has known and simply mismanaged the wild horse population in the western states for many years. Additionally, this report shows that the BLM is aware of the effects of overpopulated wild horse herds from an ecological standpoint for Wyoming's federal public lands.

b. The legislature in Wyoming has a fiduciary duty to protect and ensure the state trust land for future generations.

Wyoming's Act of Admission provided that every section 16 and 36 in every township would be used for funding schools within the state. *Riedel v. Anderson*, 70 P.3d 223, 227 (Wyo. 2003). The Wyoming Supreme Court determined Wyoming's legislature created a statutory trust on the state trust lands. *Id.* at 231. Additionally, the statutory language of Wyoming gives the directive to lease the lands to provide the greatest benefit to the beneficiaries of the land. WYO. REV. STAT. ANN. § 36-5-105(a) (West 2021). As the Court in *Riedel* pointed out, the Wyoming legislature discussed principles to evaluate when leasing state trust land. *Riedel*, 70 P.3d at 232. One pertinent principle relevant to the WHA issue is that the state trust land needs to be managed for long-term use to benefit the future generation of students and their school fund. *Id.* at 233.

First, the state trust land needs to be managed long-term for future generations to reap the benefits from the land. The critical goal of state lands is to return profits from the land to fund the K-12 schools throughout Wyoming. Office of State Lands and Investments, Trust Land Management (May 20, 2021, 3:00 P.M.), https://lands.wyo.gov/trust-land-management. Therefore, it is imperative to manage these lands with the utmost diligence for conservation efforts and promote revenue-driven industries. The overbearing goal of the state lands will likely be significantly depleted with the roaming of wild horses on such lands.

Additionally, without the wild horses being charged for the grass they are consuming, the main goal of funding K-12 schools will be less attainable from the agricultural grazing trust lands. Furthermore, wild horses' negative ecological effect on lands would also dimmish any land's productivity in the future. Thus, it would be of Wyoming's interest to charge an elevated rate for wild horses grazing state grass for rangeland restoration in the future. Such rates would then be invoiced to the BLM for the amount of the grazing rates outlined in the statute.

Second, Wyoming's state trust land is not subject to "preemption, homestead entry, or any other entry under the land laws of the United States, . . . , but shall be reserved for school purposes only." 51st Congress Session 1 Chapter 664 § 5, An act to provide for the admission of the State of Wyoming into the Union, and for other purposes (1890). When Congress admitted Wyoming into the United States, they passed this section acknowledging the State of Wyoming would be the governing law of the state trust land. *See id.* This clause is especially true for the state grazing lands because the only exception Congress discussed was that if the land had mineral-producing capabilities, then the U.S. government would have the right to such ground. *Id.* § 13. Therefore, under the Act of Admission passed by the 51st Congress of the United States, Wyoming has the authority to manage the lands necessary to provide for the public schools. *Id.* at § 5. Thus, that means Wyoming may exclude whoever may be a threat to such land. *See id.* It should be acknowledged that the state lands are not required to allow any access from any parties. *See id.* The only requirement is that the land is managed for the benefit of the beneficiaries, which means doing what is best for the school fund in Wyoming. *Id.*

Conclusion

Wyoming has few options for enforcement of the wild horse population on federal public lands. However, Wyoming likely has the same rights as other private landowners as the WHA

does not define private landowners and only defines public lands to mean federal public lands under the control of the DOI. More specifically, Wyoming could pass legislation like Nevada that may bring about legislative change. However, legislation such as Utah would allow for a cooperative approach to managing lands within Wyoming, both federal and state lands. Such an agreement is only enforceable if both the federal and state governments agree for it to be binding. As for Wyoming getting wild horses removed from state land, a writ of mandamus statute may be the most effective. Wyoming should focus on the DOI's unqualified duties and allow state and county officials to bring claims when wild horses stray from federal public lands. Finally, Wyoming's state trust lands are in a statutory trust, which gives the state legislature the fiduciary duty of managing the lands for its beneficiaries. Due to this fact, the legislature must preserve the state lands for the K-12 school fund against all threats that will restrict the land for this purpose.