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Equity’s New Frontier: Receiverships in Indian Country

Ziwei Hu*

Southern California’s Coachella Valley is one of the poorest regions in the country. Its location in Riverside County—which is within close proximity to some of the nation’s wealthiest citizens and also the U.S.-Mexico border—along with the county’s dependence on the agriculture industry has contributed to a significant demand for low-wage farm workers, who often have a mix of immigration statuses. Historical, political, and socioeconomic factors have compounded to limit affordable housing options in the Coachella Valley for these farm workers and have generated the proliferation of illegal trailer parks with egregious habitability concerns on the vast swaths of Indian country throughout the county. Tribal sovereignty renders these parks beyond the reach of prophylactic state and local laws that would otherwise protect the health, safety, and welfare of the parks’ residents. Consequently, these parks are subject only to the jurisdiction of federal courts. In United States v. Duro, a federal judge appointed a receiver to oversee urgent infrastructure improvements in Duroville, one of the largest parks. Receivership is arguably the strongest and most invasive articulation of a court’s equitable powers because it strips a party of his property rights and vests control of the property in question to a third party that is accountable only to the court. The court’s action in appointing a receiver was a key factor in the provision of a safe relocation site for...
Duroville’s residents, which required a concerted effort by the County, the State, and a private housing developer. This Comment explores the implications that this groundbreaking case has for other trailer parks on Indian country in the Coachella Valley. Ultimately, it concludes that the Duroville receivership was a necessary and legitimate extension of the court’s equitable powers and that receivership can be an effective means both to remedy urgent habitability problems in other trailer parks on Indian land and to spur local government actors to work towards providing decent, safe, and affordable housing alternatives for residents of these parks.

INTRODUCTION

The Coachella Valley, which has been deemed “California’s Third World,” is a desert region located in the eastern half of Riverside County, about 120 miles away from Los Angeles. Throughout the Coachella Valley, thousands of people live in deplorable conditions, lacking access to basic needs

such as water, electricity, and sanitation systems. Some people sleep in the fields, others sleep on cardboard swatches, and many live within the Valley’s numerous illegal trailer parks. In striking contrast to much of Coachella Valley, Mountain View Estates is an affordable housing development in Thermal, California that was completed in late 2012. Its 181 government-subsidized modular homes have air-conditioning, plumbing, clean carpets, and modern kitchens. The neighborhood’s other amenities include a community center with a gym and computer lab, a soccer field, and a playground. For its residents, the neighborhood is a safe, clean, and peaceful oasis in the Coachella Valley.

What makes Mountain View Estates especially unique is that it was created specifically to serve as a relocation site for the residents of Duroville, an illegal trailer park that once housed thousands of people and that has now been ordered to be shut down. Duroville is located in Indian country, where state and local laws generally do not apply. Its immunity from these laws,

2. Id.
3. Id.
4. Id. While Brown writes that there are “roughly 125 illegal mobile home parks” in the Coachella Valley, other individuals familiar with the situation estimate that there are up to 400 unpermitted trailer parks. Telephone Interview with Thomas Flynn, Receiver for Desert Mobile Home Park (Mar. 26, 2012). There are illegal trailer parks both on county land and in Indian country. This Comment focuses on the trailer parks located in Indian country because of the unique jurisdictional issues facing this type of park.
7. Id.
8. Id. (“Mountain View Estates . . . was built as a refuge solely for the hundreds of families living in Duroville, which a federal judge three years ago ordered shut down.”); Telephone Interview with Robert Melkesian, Owner and CEO of Desert Empire Homes, Inc. (Apr. 8, 2013).
10. On May 13, 2013, Magistrate Judge David T. Bristow ordered that Duroville be closed by June 30, 2013. Status Conference, United States v. Duro, No. EDCV 07-1309-DTB (C.D. Cal. May 13, 2013) (“Further, the Court ordered that all remaining tenants currently residing at [Duroville] shall vacate Duroville no later than June 30, 2013, and that no further residential tenancies will be allowed unless specifically authorized by the Court or applicable authority.”). However, the process of closing Duroville has been complicated. As of April 2013, some residents remain in Duroville, but many have moved out. Willon, supra note 6 (“More than 70 families already have moved from Duroville to Mountain View Estates, and 38 more are approved and just waiting until their new, modular homes are finished. Once a family moves, a demolition crew working for Riverside County comes in and flattens its old home in Duroville. The decrepit trailers often crumble with just a nudge from a bulldozer.”); see also Blake Herzog, Duroville Residents: ‘We’re Still Here’, THE DESERT SUN, (Feb. 28, 2013), http://www.citizen-times.com/article/J1/20130228/NEWS01/302280036/ (“[T]hose who remain in the dilapidated trailer park are still facing a mountain of other issues, including the perception that they’re not there anymore . . . [Duroville] won’t close until all families headed to Mountain View Estates are relocated . . . [which is] projected to happen about mid-May [of 2013].”)
11. The term “Indian country” refers to “all land within the limits of any Indian reservation under the jurisdiction of the United States government . . . all dependent Indian communities within the United States . . . and all Indian allotments, the Indian titles to which have not been extinguished.” 18 U.S.C. § 1151 (2012). This Comment will use the terms “Indian country” and “Indian land” interchangeably to refer to this type of land.
which seek to safeguard both public health and the habitability of dwellings, explains—at least in part—why life in Duroville was on par with life in the developing world. These conditions—dirt roads, the noxious scent of burning trash, leaky sewer lines, faulty electrical wiring, ponds of evaporating sewage, and a lack of running water and electricity—were often exacerbated by the extreme desert climate, where the temperature can reach up to 115 degrees.

The journey that took residents to the brand new houses of Mountain View Estates from the dilapidated trailers of Duroville must begin with an explanation of Duroville itself. Duroville’s official name is the Desert Mobile Home Park, but many refer to it by its nickname, “Los Duros.” Its namesake and founder, Harvey Duro, is a member of the Torres Martinez tribe. In 1999, when Mr. Duro initially opened his 40-acre allotment of tribal land to trailers, he said he envisioned “a few dozen farm workers living in fixer-uppers on rented spaces along tree-lined lanes” and told his fellow tribal members that he would be the “mayor” of the community. However, almost overnight, thousands of people—mostly low-wage, Latino farm workers—moved into the Park, bringing along with them their trailers, which were mostly in poor condition. Duroville grew “with astonishing speed and creative abandon,” as tenants “built additional rooms out of plywood and fencing and then sublet them to untold numbers of fellow workers.” Its growth exponentially outpaced Mr. Duro’s capacity to install infrastructure and implement regulations and rules in the Park. And while the living conditions in Duroville were undoubtedly harsh, Duroville was, at one point, home for thousands of people. Its residents listed an inability to locate affordable housing elsewhere

13. For instance, the California State Housing Law, codified at California Health and Safety Code sections 17910 et seq., provides that “[a]ny building or portion thereof including any dwelling unit . . . in which there exists any . . . conditions to an extent that endangers the life, limb, health, property, safety, or welfare of the public . . . shall be deemed and hereby is declared to be a substandard building.” CAL. HEALTH & SAFETY CODE § 17920.3 (West 2006) (emphasis added).
14. An example of this is California Civil Code section 1941, which provides: “The lessor of a building intended for the occupation of human beings must . . . put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenantable.” CAL. CIV. CODE § 1941 (West 2010).
16. See Brown, supra note 2.
17. United States v. Duro, 625 F. Supp 2d. 944, 945 (C.D. Cal. 2009). This Comment will refer to Duroville as “Duroville” or “the Park.”
19. Tribal allotment land will be defined and discussed in greater detail infra Part I.A.
22. Sahagun, supra note 9.
23. Id.
24. At its peak, there were 6,000 people living in Duroville. Interview with Thomas Flynn, supra note 4.
as a major reason for choosing to live in the park. As one former resident told a journalist: “It was a dream to have a house . . . even if it wasn’t the best you could think of.”

Citing “severe health and safety concerns” in Duroville, the United States Attorney’s Office (“USAO”) filed a complaint against Mr. Duro in 2007, seeking injunctive relief, money damages, and “such other and further relief as the Court deems appropriate.” The complaint demanded that Mr. Duro make immediate improvements or face closure of the Park. As the litigation progressed, Mr. Duro later testified that he wished to “throw in the towel” and no longer try to keep the Park open. Residents of Duroville intervened in the lawsuit as defendants, arguing that Duroville should not be closed. In 2009, U.S. District Judge Stephen G. Larson issued an order denying the government’s request to shut down Duroville and appointed a receiver to make urgent infrastructure improvements and assist residents in relocation efforts. The court ordered that “until and unless alternative housing is available—alternative housing that is safe, healthy, affordable and truly available to the residents—this Court will not close Duroville.” The order reflected the complexity of Duroville’s situation: while it ultimately sought to relocate residents to safe and habitable housing, it also recognized that such

25. See, e.g., Declaration of Intervener Cruz Navarro In Support of Injunctive Relief and Receivership at 2, United States v. Duro, 625 F. Supp. 2d 938 (C.D. Cal. 2009) (No. EDCV 01-1309 SGL (OPx)).
27. United States v. Duro (Duro II), 625 F. Supp. 2d 938, 940 (C.D. Cal. 2009). Duro II is actually the second complaint that the USAO filed against Mr. Duro. The USAO filed its first complaint against Mr. Duro in 2004, wherein it alleged that Mr. Duro was operating the Park without a lease from the Bureau of Indian Affairs (“BIA”) and in violation of a cease-and-desist order that the BIA had issued in 2003. The lawsuit was settled through a court-approved stipulation in 2004 and dismissed in 2005. See infra Part II.A; Order Dismissing Civil Action, United States v. Duro, No. EDCV 03-754-RT (SGLx) (C.D. Cal. May 6, 2005); see also Paul Young, Owner Harvey Duro Takes Stand in Duroville Trial, DESERT SUN (Apr. 24, 2009), http://www.standupca.org/tribes/Torres-Martinez/owner-harvey-duro-takes-stand-in-duroville-trial/.
29. Telephone Interview with Chandra Gehri Spencer, Counsel for Defendant-Interveners in Duro II (Mar. 21, 2012).
32. Duro II, 625 F. Supp. 2d at 943.
33. A receiver is a third-party entity appointed by the court to take possession of and manage property. 1 BAXTER DUNAWAY, THE LAW OF DISTRESSED REAL ESTATE § 11:13 (1985). As it necessarily interferes with a defendant’s property rights by ousting him from control of the property, receivership is an equitable remedy of extraordinary nature that a court should only employ with the utmost caution and only in cases of clear necessity. 12 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 2983 (2d ed. 1997). Appointment of receivers and receivership will be discussed in greater detail in Parts II.C, III.A, and III.B of this Comment.
34. Duro II, 625 F. Supp. 2d at 943.
35. Id. at 944–45.
housing was unlikely to be available immediately. It then directed the receiver to supervise improvements to make Duroville more habitable in the meantime. Furthermore, it encouraged the Torres Martinez tribe, government officials at the county, state, and federal levels, and interested non-government entities to work towards developing safe, healthy, affordable, and available housing for the residents of Duroville and “numerous other substandard mobile home parks.”

Three and a half years after the court’s order, through the efforts of Riverside County officials and a generous private developer, along with cooperation from both state and federal agencies, the conditions of the order appear to have been mostly met. However, while Mountain View Estates has certainly provided a safe living situation for the residents who have been fortunate enough to move there, it is by no means a long-term solution to the affordable housing crisis in the Coachella Valley. Indeed, not all of Duroville’s residents are eligible for relocation to Mountain View Estates, and most of those who have been left behind were desperate to vacate the Park.

Furthermore, Duroville is but one of many trailer parks located in Indian country in the Coachella Valley; advocates estimate that there may be up to fifty more parks on Indian land. Because of the unregulated and shifting nature of these parks, it is difficult, if not virtually impossible, to know exactly how many of them exist, or how many people reside in them. Residents of these parks, most of whom have gone unnoticed, are also deserving of attention from scholars, advocates, the government, and the community.

36. Id.
37. Id.
38. Id. at 945–46.
39. The developer is Robert Melkesian. Mr. Melkesian is the owner and CEO of Desert Empire Homes, Inc., and spearheaded the development of Mountain View Estates. Interview with Robert Melkesian, supra note 8.
40. Id.; Debra Gruszccki, Grant to Fund Water, Sewer Services to Duroville Mobile Home Park, THE DESERT SUN, Oct. 8, 2011 (“Three federal grants, totaling $6.3 million, will assure major service upgrades in Mountain View Estates.”); Willon, supra note 6 (“More than $28 million in county, federal and private funds were invested in Mountain View Estates to provide Duroville residents with a refuge. The project was delayed more than half a year when the state and county wrestled over $9.9 million in redevelopment funds to buy the homes, a dispute resolved in late 2012.”).
41. See Honoré, supra note 5; Willon, supra note 6.
42. See David Olson, Duroville: Thousands of Others Still in Decrepit Housing, THE PRESS ENTERPRISE (May 13, 2013), http://blog.pe.com/2013/05/13/duroville-thousands-of-others-still-in-decrepit-housing/ (“Sister Gabi Williams, whose tireless work on behalf of the poor in the eastern Coachella Valley earned her a national Catholic award in 2011, [said] that it’s not necessary to build a lot of new Mountain Views. ‘We need to make the existing ones safe and healthy,’ she said.”).
43. See Herzog, supra note 10 (describing the plight of a Duroville resident who did not qualify for relocation to Mountain View Estates “because she’s a single woman with no children”).
44. Telephone Interview with Megan Beaman, Attorney for California Rural Legal Assistance (Feb. 24, 2012).
45. Interview with Thomas Flynn, supra note 4. In the words of Mr. Flynn: “I’ve now been out there for a few years, and you can go down so many dirt roads, and turn the corner, and all of a sudden, you’ve got another [trailer] park—another twelve or thirteen units that don’t show up on anyone’s map. Just people living there—in very, destitute circumstances.” Id.
Part I of this Comment traces the genesis of the trailer parks in the Indian country sections of the Coachella Valley. It first provides a brief primer on relevant doctrines of Indian law and surveys the historical, socioeconomic, and political factors that led to the formation of trailer parks in Indian country. It then pulls together these factors to explain the unique jurisdictional framework posed by the location of these parks on Indian land, as well as the challenges that these jurisdictional issues create. Part II closely examines the Duro litigation and chronicles the aftermath of the Duroville receivership. It focuses on the remarkable manner in which the court resolved balancing the needs of Duroville’s residents with the legal complexities posed by Duroville’s jurisdiction. The final Part of this Comment explores the implications of the Duroville receivership for similarly situated communities. While acknowledging that receivership is an imperfect and incomplete remedy, this Comment maintains that appointing receivers in the Coachella Valley’s other communities may be an appropriate and necessary extension of receivership jurisprudence.

I. SOVEREIGN SLUMS: THE ORIGINS OF DUROVILLE AND OTHER TRAILER PARKS IN INDIAN COUNTRY

The Housing Authority of the County of Riverside is a state-chartered public agency charged with administering the development, rehabilitation, and financing of affordable housing programs.\(^{46}\) On its website, the Housing Authority states that “[d]ue to limited funding for housing assistance programs and a very large number of families requesting assistance (there are approximately 40,000 families waiting for assistance), the wait for assistance will probably be well over one year. Regrettably, the Housing Authority does not have any emergency housing assistance.”\(^{47}\) This statement belies what the Housing Authority claims to be its primary mission: to provide “affordable decent, safe and sanitary housing opportunities to low and moderate income families . . . while supporting programs to foster economic self-sufficiency.”\(^{48}\)

The lack of affordable housing may be in part responsible for the proliferation of trailer parks in Riverside County, and also why so many of these trailer parks have developed on tribal land. Understanding the particular predicaments of trailer parks on Indian land within the larger context of the region’s affordable housing crisis also requires a basic understanding of tribal sovereignty and federal Indian law.\(^{49}\) Accordingly, this Part will begin with an


\(^{48}\) HOUS. AUTH. OF RIVERSIDE CNTY., supra note 46.

\(^{49}\) I recognize that the term “Indian” is perceived as a pejorative term in referring to Indigenous Peoples in the United States. See, e.g., Michael Yellow Bird, What We Want To Be Called: Indigenous Peoples’ Perspectives on Racial and Ethnic Identity Labels, 23 AM. INDIAN Q. 1, 1 (1999) (noting that both the terms “‘American Indian’ and ‘Native American’ are the most common racial and ethnic labels used to identify the general populations of Indigenous Peoples in the United States,” and
overview of some elementary Indian law doctrine before delving into an exploration of deeper historical, political, and socioeconomic patterns that continue to shape the way in which the County provides (or does not provide) housing assistance, the flows of migrant farmworkers into Riverside County, and ultimately, the ability of people to find decent, safe, and affordable housing.50

A. Primer on Indian Law

“Indian law” generally refers to the “body of law dealing with the status of the Indian tribes and their special relationship to the federal government, with all the attendant consequences for the tribes and their members, the states and their citizens, and the federal government.”51 There are four concepts distilled from Indian law that are particularly relevant to the issues described in this Comment. Two of the four relevant concepts relate specifically to jurisdictional issues, the third concept concerns the relationship between Indian tribes and the federal government, and the fourth concept pertains to one of the categories of Indian land.

Because Indian law is “greatly concerned with actual or potential conflicts of governmental power,”52 controversies within this legal landscape “usually have at their core a jurisdictional dispute.”53 First, there is the notion of tribal sovereignty—that because the tribes were sovereign before the founding of the United States,54 they are “independent entities with inherent powers of self-government.”55 As a consequence of tribal sovereignty, tribes and their members enjoy a degree of immunity from suit in state and federal courts.56 Second, the “power to deal with and regulate the tribes is wholly federal,” and states have virtually no jurisdiction over tribes unless Congress delegates this

50. For a more thorough discussion of how U.S. agricultural and immigration policies have created a dearth of affordable housing for migrant farm workers and the Torres Martinez tribe, see Guadalupe T. Luna, United States v. Duro: Farmworker Housing and Agricultural Law Constructions, 9 HASTINGS RACE & POVERTY L.J. 397 (2012).

51. W ILLIAM CANBY, AMERICAN INDIAN LAW IN A NUTSHEL 1 (4th ed. 1998). However, Robert B. Porter, who once served as the Attorney General of the Seneca Nation of Indians, argues that “‘federal Indian law’ is actually ‘federal Indian control law’ because it has the twofold mission of establishing the legal bases for American colonization of the continent and perpetuating American power and control over the Indian nations.” Robert B. Porter, A Proposal to the Hanodaganyas to Decolonize Federal Indian Control Law, 31 U. MIC. J. L. REFORM 899, 902 (1998). Professor Porter’s conception of Indian control law will be discussed in greater detail infra Part III.B.

52. CANBY, supra note 51, at 2.

53. Id.

54. See id. at 76.

55. Id. at 1–2.

56. See Katherine J. Florey, Indian Country’s Borders: Territoriality, Immunity, and the Construction of Tribal Sovereignty, 51 B.C. L. REV. 595, 597–98 (2010). However, this immunity is not absolute.
power to them. These two principles illustrate the jurisdictional framework of Duroville. The Torres Martinez tribe occupied the land long before the official boundaries that form Riverside County were drawn and is a sovereign nation. Consequently, the state of California generally has no authority over the tribe or any of its land, and relations between the Torres Martinez tribe and individual tribal members are generally conducted at the federal level.

Accordingly, the third doctrine pertains to the relationship between the federal government and Indian tribes. The federal government owes a trust responsibility to the tribes “for the protection of the tribes and their properties, including protection from encroachments by the states and their citizens.” This responsibility is referred to as the “federal trust responsibility,” “trust doctrine,” or “trust relationship.” The trust relationship between the federal government and tribes is one of the “cornerstones of Indian law,” although its contours are often unclear and confusing. However, it is “generally accepted that the United States owes fiduciary duties to [Indian tribes].” This relationship only pertains to tribes that the federal government has officially recognized.


59. See Torres Martinez Vision Statement, TORRES-MARTINEZ DESERT CAHUILLA INDIANS, www.torresmartinez.org (last visited July 12, 2013) (asserting that the Torres Martinez tribe has “power as a sovereign nation”).

60. See COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 6.03(1)(a) (Nell Jessup Newton ed., 2012) (“[A] state ordinarily may not regulate the property or conduct of tribes or tribal-member Indians in . . . the territory in which federal power preserves a realm of tribal government.”).

61. CANBY, supra note 51, at 2; see also Frequently Asked Questions, BUREAU OF INDIAN AFFAIRS, www.bia.gov/FAQs/index.htm (last visited July 12, 2013) (“Congress ended treaty-making with Indian tribes in 1871. Since then, relations with Indian groups have been formalized and/or codified by Congressional acts, Executive Orders, and Executive Agreements.”).

62. CANBY, supra note 51, at 2.


64. Id. at 1215.

65. Newton, supra note 57, at 232.

66. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, supra note 60, at § 5.04(3)(a).

67. See CANBY, supra note 51, at 33 (“Yet it is very difficult to mark the boundaries of this relationship, and even more difficult to assess its legal consequences. . . . Unfortunately, the same terms of fiduciary obligation are often used by the courts whether they are referring to the broadest or the narrowest definition.”).

68. Chambers, supra note 63, at 1213 (citing numerous cases asserting this responsibility).

69. BUREAU OF INDIAN AFFAIRS, supra note 61 (“A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation . . . .”). Tribes receive federal recognition status “through treaties, acts of Congress, presidential executive orders or other federal administrative actions, or federal court decisions.” Id. The Secretary of the Interior publishes a list of all Indian tribes “which the Secretary recognizes to be eligible for the special programs and services provided by the United States to Indians because of their status as Indians.” 25 U.S.C. § 479a-1 (2012).
The trust relationship between the United States and Indian tribes is administered mainly through the Bureau of Indian Affairs ("BIA"), and a basic knowledge of the BIA is essential to understanding how Duroville arose. Specifically, the BIA is "charged with carrying out the United States' trust responsibility to American Indian and Alaska Native people, maintaining the federal government-to-government relationship with the federally recognized Indian tribes, and promoting and supporting tribal self-determination." The Torres Martinez tribe has official recognition from the federal government. Consequently, the tribe is eligible for funding and services from the BIA and it is clear that the BIA—and the federal government at large—owes a fiduciary obligation to the Torres Martinez tribe and its individual members.

The BIA also manages the 55.7 million acres of Indian country. There are four main types of land on Indian country: federal Indian reservations, state Indian reservations, restricted status lands, and allotted lands. Because Duroville is located on allotted land, the final component of this short primer on Indian law explains this type of land. Allotted lands are the legacy of one of the federal government's policies throughout the 1800s that sought to weaken tribal power and assimilate Indians into mainstream American society.

Allotment resulted in "many reservations today hav[ing] a significant non-Indian population and a checkerboard land pattern with non-Indian fee property mixed in with Indian allotments and collective tribal property." The "checkerboard" land pattern exists in the Coachella Valley,

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70. BUREAU OF INDIAN AFFAIRS, supra note 61. However, while the mission of the BIA is "ostensibly to assist Indians," the BIA has also been complicit in efforts by the federal government "to subjugate and in some cases to exterminate them." Robert McCarthy, The Bureau of Indian Affairs and the Federal Trust Obligation to American Indians, 19 BYU J. PUB. L. 1, 5 (2004). Indeed, the BIA is perhaps "the most maligned agency in the entire United States Government." Id. at 6.


74. BUREAU OF INDIAN AFFAIRS, supra note 61.

75. See COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, supra note 60, at §§ 1.03[6][b], 1.04; Phillip P. Frickey, A Common Law for Our Age of Colonialism: The Judicial Divestiture of Indian Tribal Authority over Nonmembers, 109 YALE L.J. 1, 14–15 (1999).

76. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, supra note 60, at §1.04 ("Under the federal allotment and assimilation policy, the Native American was to abandon his nomadic lifestyle, leave tribal lands, own his own farm, and compete for material goods. . . . Accomplishing allotment called for a government-supervised survey of commonly held tribal lands and their divisions among the individual members of the tribe.").


78. Frickey, supra note 75, at 15.
where it is difficult, if not impossible to know the exact boundaries of allotted land, tribal reservation land, private agricultural land, and the county’s land.  

B. History and Geography of Riverside County

The history and geography of Riverside County, particularly how the county came to depend heavily on agriculture, are also important to explaining the origin of Duroville and other similar communities. Spanning over seventy-two hundred square miles, Riverside County encompasses a rectangular area that extends from near the Pacific Ocean to the California-Arizona border. Its diverse landscape features mountains, fertile river valleys, low deserts, foothills, and rolling plains. The San Jacinto and Santa Rosa mountains roughly divide the county into eastern and western portions. The western portion is more densely populated and metropolitan, and the eastern portion—the location of the Coachella Valley—is rural, less populous, and more devoted to agriculture.

Thanks in large part to its frost-free climate, Riverside County’s land has an enduring history of agricultural use. From the 1700s to early 1830s, Spanish missions raised grain and cattle on it. In 1869, the completion of the transcontinental railroad brought in land speculators, developers, and settlers. The discovery that citrus fruits thrived on the land further spurred population growth and economic development. By the time the founders officially formed the county in 1893, the city of Riverside, the county’s seat, already had established itself as an attractive economic boomtown in Southern California. In 1942, the All-American Canal was built, which routed water from the Colorado River to Riverside County. This provided heavily subsidized irrigation waters, which enabled large-scale agriculture on thousands of acres and multiplied the demand for farm labor.

Today, Riverside County has retained its agricultural character. This is reflected in the County’s land-use patterns: 28 percent of its land is open space, and the percentage of agricultural land use is more than twice that of
commercial and industrial use. That land in Riverside is substantially open space and agricultural sets the foundation for the remaining factors contributing to the development of trailer parks in Indian country.

C. Socioeconomic Factors

Riverside County’s population has grown dramatically in the last few decades, spurred in part by the migration of both documented and undocumented individuals from across the Mexican border. The population surged by about 76 percent, from 663,172 in 1980 to 1,170,412 in 1990. From 1990 to 2000, the population increased 32 percent to 1,545,387. According to the latest data from the Census Bureau, the county’s population now sits at around 2,203,332. The initial spike in Riverside County’s population growth coincided with mass emigration from Mexico, likely triggered by the Mexican government’s implementation of certain policies cited as the cause of economic instability and unemployment. In the United States, demand for manual agricultural labor has been and remains high, in spite of various polices enacted to curb the immigration of undocumented people from across the border.

This immigration contributed directly to the rise of informal housing, such as trailer parks, in Riverside County. As a county whose economy is largely driven by agriculture, Riverside was a clear destination for displaced migrants seeking employment opportunities in the agriculture industry. These migrants, like all people, needed housing. As Michelle Wilde Anderson, a scholar of local government law described, “jobs attract workers, and workers need housing, whether or not the private market or the government provides and serves such housing.” Because Riverside County has historically been reluctant to provide affordable housing assistance, thousands of farmworkers turned to mobile homes for shelter. This pattern fits in with the scholarship of Jane Larson, who conducted a detailed case study of unregulated and informal housing developments along the U.S.-Mexico border in Texas known as

90. Id.
93. Id.
95. Alejandro I. Canales, Mexican Labour Migration to the United States in the Age of Globalisation, 29 J. ETHNIC & MIGRATION STUD. 741, 756 (2003) (“The neoliberal policy implemented in Mexico has caused greater job insecurity, a reduction in the number of jobs, and low wages, and has had other adverse effects on the labour force.”).
97. See COUNTY OF RIVERSIDE, supra note 83.
100. Larson described informal housing as having four main components:
Larson detailed the relationship of large-scale forces of globalization and the informal housing economy, and observed that informal housing is an inevitable consequence of globalization.103

While mobile homes have been common in the agricultural Coachella Valley for decades, several developments have led to the increasing installation of unpermitted parks. According to the 1990 Riverside County Consolidated Plan, about 19 percent of the county’s housing stock was composed of mobile home parks; the plan also noted that this percentage was increasing.105 In 1992, the California State Assembly addressed the issue with the passage of an emergency measure in the form of AB 3526, the Farm Labor Housing Protection Act, commonly known as the “Polanco Bill,” named after its sponsor, Assemblyman Richard Polanco.106 The Polanco Bill loosened zoning and land use permits for parks of twelve units or less on agricultural land that housed farmworkers.107 However, it had the unfortunate and unintended consequence of enabling unscrupulous landowners to build hundreds of unpermitted parks, dubbed “polancos,” that ignored basic health and safety concerns.108

The large percentage of unincorporated land in Riverside County also contributed to the growth in unpermitted trailer parks. Because there are only twenty-eight incorporated cities in the seventy-two hundred square miles that comprise Riverside, 87 percent of the land in the county remains

(1) the occupants do most of the work to construct a house (often the terms “self-help” or “self-built” housing are used); (2) constructed housing takes a nonstandard form; (3) the settlements or subdivisions into which the housing is clustered are illegal or nonconforming; and (4) the financing for housing production comes from private capital invested outside of formal credit markets or institutions.


102. See generally Larson, supra note 100.

103. Id. at 151–55.

104. Interview with Chandra Gehri Spencer, supra note 29; see also David Kelly, Crackdown Panic Leads to Progress, PRESS ENTERPRISE, Oct. 7, 1999, at B06.


106. Brown, supra note 2.

107. Id.

108. Id. (“Opportunistic landlords swooped in to erect an estimated 400 unpermitted parks, still known as ‘polancos,’ that skirted basic health and safety regulations, including the placement of wells, septic systems and safe electrical wiring.”).

109. In California, incorporated cities are communities that have gone through a formal process to become municipal corporations in the California constitution. About Municipal Government, LEAGUE OF WOMEN VOTERS OF CAL., http:// guidetogov.org/ca/state/overview/municipal.html (last visited July 12, 2013). Once incorporated, cities are granted powers by the state to legislate to protect the health, safety, and welfare of their people, to levy taxes and service fees, employ needed personnel, and to condemn property for public use. Id. The functions of a city government generally include, but are not limited to, providing fire and police protection, the construction and maintenance of streets and roads, providing facilities for water, sewage, storm drainage, and waste disposal. Id.
unincorporated. By its nature, unincorporated land is subject to less oversight than a city or town. The lack of regulation, coupled with the fact that the land is interspersed with patches of Indian land, has contributed to conditions ripe for the proliferation of these unpermitted trailer parks in areas far from the county’s center of governance.

D. Riverside County’s Code Enforcement Crackdown and the Rise of Duroville

Riverside County’s Code Enforcement Department is “responsible for enforcing State of California Laws and over fifteen Riverside County Ordinances in the unincorporated areas of Riverside County.” The county’s ordinances concern matters including cars and trucks, campers and recreational vehicles, fences, dangerous or substandard structures, fire, animals, trash and outdoor storage, commercial businesses, and mobile homes. Those who violate the codes may be subjected to administrative citations ranging from $100 to $500 per violation, or a misdemeanor citation with fines up to $1,000 and/or imprisonment in a county detention facility for upwards of six months.

Prior to 1998, Riverside County turned a blind eye to the hundreds of trailer parks operating without permits. These parks did not comply with building codes, and many of them had defective wiring. But after two people died in 1998 as a result of fires caused by faulty electrical wiring, Riverside County began a crackdown on the unpermitted mobile home parks. The county appointed a special team of code-enforcement officers to inspect the parks and filed lawsuits against landlords whose parks did not comply with building and safety codes. Panic ensued among park residents, most of whom were Latino farmworkers.

110. THE COMMUNITY FOUND., supra note 82. Unincorporated land lies beyond the boundaries of incorporated cities; thus, residents residing in unincorporated communities must rely on counties as their most proximate tier of general-purpose local government. Anderson, supra note 98, at 1095.

111. Anderson, supra note 98, at 1106–12 (describing the challenges facing unincorporated urban areas in clean water, law enforcement and emergency services, and other habitability concerns); see also Tony LoPresti, Reclaiming the Authentic Future: The Role of Redevelopment in Unincorporated California, 44 URB. L. 135, 142–145 (2012) (examining “the disadvantages of relying on counties as the sole tier of general purpose government” for low-income unincorporated communities in Central California).


114. Id.

115. Brown, supra note 2 (“The parks remained largely under the radar until the summer of 1998, when two people died in two different parks . . . .”).

116. Id.

117. Susan Herendeen, Officials Get Firsthand Look at Substandard Properties, DESERT SUN, Jan. 21, 1999, at 1B.

118. Id.
While the ultimate purpose for building-code enforcement is to guarantee the health and safety of Riverside’s residents, the aggressive and harsh means by which the county implemented code enforcement in the late 1990s and early 2000s effectuated racial discrimination against Latinos. Although the code enforcement claimed as its aim the protection of public health and safety, there was substantial evidence of racial discrimination in the way it was administered. Twenty-four Latino families filed complaints with the U.S. Department of Housing and Urban Development (“HUD”), alleging that the county “targeted Hispanic-owned and occupied mobile home parks for selective and discriminatory enforcement of its health and safety code regulations” and that the inspectors “improperly attempted to evict some of [the residents] from their homes.” HUD’s investigations found that many of the complaints were valid. The complaints eventually resulted in a $21 million settlement that required the county to provide resources and assistance to the farm workers. However, the settlement did not avert mass displacement. After the settlement, the county continued in its crackdown against the unpermitted parks, a response that was both harsh and ineffective. Rather than addressing the root causes of the housing crisis, the county’s response arguably exacerbated the crisis with its prosecutorial and aggressive code enforcement.

While the crackdown was ongoing, Harvey Duro, a member of the Torres Martinez tribe and an allottee of tribal land, saw a business opportunity: “I saw dollar signs in my head . . . I had 40 acres, my trailer and a well and said, ‘Why not do a trailer park here?’” Encouraged by other park owners who “assured him that the business was a gold mine,” Mr. Duro, along with some business partners, created Duroville in 1999. Mr. Duro stated that opening and operating Duroville on his 40-acre allotment was “an expression of [his] sovereign right, and [that he was] using it to make a better living.”

119. See Ezra Rosser, Rural Housing and Code Enforcement: Navigating Between Values and Housing Types, 13 GEO. J. POVERTY L. & POL’Y 33, 34–35 (2006) (“Building codes, seen positively, aim to ensure that houses are free from construction defects or failings which diminish a house’s safety, structural soundness, or overall quality.”).


121. See id. at 491–92 (citing Enforcement Agreement Between the U.S. Department of Housing and Urban Development and Maria Hernandez et al. and County of Riverside, Case Nos. 09-98-2574-8 (Title VIII), 09-99-11-0007-300 (Title VI)).


123. Beaman & Rodriguez, supra note 120, 491–92 (citing Enforcement Agreement Between the U.S. Department of Housing and Urban Development and Maria Hernandez et al. and County of Riverside, Case Nos. 09-98-2574-8 (Title VIII), 09-99-11-0007-300 (Title VI)).

124. Id.

125. Id.

126. Id.


128. Id.

129. Sahagun, supra note 9.
However, Mr. Duro’s statement expressing absolute sovereignty was incorrect; while state and local laws generally do not apply to his allotment, federal laws do apply because Indian trust lands, including Mr. Duro’s allotment, are subject to the authority of the BIA. According to 25 U.S.C. § 415, the Secretary of the Interior must approve any commercial use of allotment land before the allottee can begin to conduct business. In a declaration filed with the court, Mr. Duro stated, “[i]n 1999 prior to my building the trailer park on the Parcel, I had several conversations with the BIA concerning the trailer park. BIA was specifically aware of my plans to build a trailer park on the parcel. There [sic] only comment to me was ‘don’t tell us’ and ‘good luck.’” Mr. Duro’s declaration indicated that he had attempted to obtain a lease from the BIA to set up Duroville, and his later testimony evinced his belief that he had the BIA’s blessing. Regardless of his understanding, it was illegal for Mr. Duro to lease his allotted land without official BIA and Department of Interior approval. This action provided the grounds for the BIA’s case against Mr. Duro in 2003.

On the one hand, Duroville’s existence on sovereign Indian land sheltered its residents from the harsh, discriminatory effects of Riverside County’s code’s enforcement. But on the other hand, it deprived them of the protections afforded by the California Mobile Home Residency Law (“MRL”). Duroville was beyond the jurisdiction of the MRL, which provides the state’s landlord/tenant law for mobile home park residents. The MRL protects basic residency rights, such as “the right to live in a reasonably peaceful existence.” It also charges the park owner with maintaining the common areas of the park and providing basic utilities such as water and electricity. In addition, the MRL includes an eviction procedure that predicates eviction

130. Declaration of James Fletcher in Support of Plaintiff’s Motion for Preliminary Injunction at 4, Duro II, 625 F. Supp. 2d 938 (C.D. Cal. 2009) (No. EDCV 07-1309-SGL (JCRx)).
133. Declaration of Defendant Harvey Duro Sr., supra note 18, at 5.
134. Beaman & Rodriguez, supra note 120, at 492.
135. California Mobile Home Residency Law, CAL. CIV. CODE §§ 798–799.11 (West 2007); see also COMMUNITY TOOLKIT: UNDERSTANDING YOUR RIGHTS AS A MOBILE HOME OWNER, CAL. WATCH, available at http://californiawatch.s3.amazonaws.com/files/Toolkit/English/Coachella/Coachella_guide.pdf (last visited Aug. 25, 2013). As a part of California’s Civil Code, the MRL is enforced through the state court system. See id. If a mobile home owner’s rights have been violated, she can bring her case against the violator before a judge, typically in a small claims court. CAL. CIV. CODE §§ 798–799.11 (West 2007).
136. CAL. CIV. CODE § 798.87.
137. Id.
For its residents, Duroville’s jurisdictional vacuum has been a double-edged sword. Although the residents are outside the reach of the county’s code enforcement, they also remain without the extensive protections that state and county tenant law provide to mobile home renters, the health and safety provisions designed to ensure the habitability of housing, and the services and infrastructure usually provided by a municipality. The voices of Duroville residents manifest the duality of this existence. One reported, “We like it here . . . the kids go to public school. And you can do most anything you want. You can throw a party, or build a fire. No one complains.” In contrast, another resident who attempted to bring a complaint to Duroville’s main office about water pressure and lighting was told by Mr. Duro, “If you don’t like it, move.”

Duroville’s residents are thus trapped in a perplexing dilemma. In the event of abuse, the residents’ only recourse is to go to the Torres Martinez tribal council, as tribal ordinances are the only regulatory laws that apply in Duroville. However, Raymond Torres, the chairman of the Torres Martinez council, said in an interview that the tribe could not regulate what happens on allotted land, such as Mr. Duro’s. Even if it attempted to do so, it is doubtful that the tribe, which has acknowledged its “scarce financial and human resources,” would have been able to implement an effective system for oversight and enforcement of its ordinances. Given Duroville’s size, its large
population—many of whom do not speak English or even Spanish—and the dilapidated condition of most of the trailers, enforcement would be challenging even for an efficient and well-resourced municipality.

Thus, Duroville effectively lacked the rule of law. With no central governance system and no formal rules, people could do as they pleased—for better or worse. For instance, the Park had no formal eviction procedure. Several residents submitted declarations that Mr. Duro and the Park’s management caused interruptions in utility services to pressure and intimidate tenants who failed to pay their rent or paid it only in part. Mr. Duro’s attorney corroborated the use of these practices, and Mr. Duro himself admitted to it during trial: “[at] some point when they reached a high level of nonpayment, we would just turn the electricity off.” There were also rumors of tenants trading drugs or sex as payment for rent. Some trailers were even burned to the ground after their residents failed to pay rent. Perhaps among the most ominous activities enabled by the lack of governance was a thriving underground economy, with at least nineteen illicit businesses that dealt in stolen cars, drugs, and guns.

In spite of these hardships and dangerous conditions, many of Duroville’s residents grew attached to their homes. After all, it was a fear of being homeless that initially drove many of the residents to Duroville. When the U.S. government filed a complaint in federal court that sought the immediate

149. Interview with Chandra Gehri Spencer, supra note 29; Interview with Thomas Flynn, supra note 4.
150. Interview with Chandra Gehri Spencer, supra note 29.
154. Interview with Chandra Gehri Spencer, supra note 29; see also David Kelly, Resident Acquitted in Trailer Fires at Duroville, L.A. TIMES, Jan. 26, 2008, http://articles.latimes.com/2008/jan/26/local/me-arson26 (quoting a public defender describing Duroville as a “Third World California” wherein “managers traded sex for rent and arson was used as a means of eviction”).
155. Interview with Chandra Gehri Spencer, supra note 29.
156. Interview with Thomas Flynn, supra note 4.
157. This is especially true of Duroville’s Purepechán community, which is estimated to be at least 2,000. See David Kelly, The Poorest of the Poor, L.A. TIMES (Apr. 28, 2008), http://articles.latimes.com/2008/apr/28/local/me-purepecha28. The Purepecha are an indigenous and ancient people of unknown origin and who speak a language unrelated to any other. Id. The Purepecha in Duroville migrated from the Mexican state of Michoacán, beginning in the 1970s. Id. Often described as the “poorest of the poor,” the Purepecha have a long history of exploitation by Spaniards and discrimination at the hands of Mexicans. Duroville became a regional cultural capital for the Purepecha, where they felt free to engage in cultural and traditional practices free from harassment by a majority group. Id.
closure of Duroville, its residents again faced the same fear. By the time the USAO initiated its first legal action in 2004, at least two thousand residents in three hundred trailers had already made their homes in Duroville. Fortunately, legal action, with assistance from California Rural Legal Assistance (“CRLA”), spared Duroville’s residents from a potential forced relocation.

II. THE STORY OF THE UNITED STATES V. DURO LITIGATION

For nine years, Mr. Duro was embroiled in lawsuits. United States v. Duro (“Duro I”) was filed in 2003 and was officially terminated in 2005. On September 17, 2007, the USAO, which represents


In March 2003, the BIA issued to Mr. Duro a cease-and-desist order that directed him to immediately stop operating Duroville and its associated businesses on his allotment. Four months later, the USAO, which represents

158. See Complaint for Injunctive Relief and Money Damages at 12, Duro II, 625 F. Supp. 2d 938 (C.D. Cal. 2009) (No. EDCV 07-1309-SGL (JCx)) (wherein the U.S. government requested that the court shut down Duroville and restore the land to its original condition).
159. Id.
160. In addition to the Duroville litigation, Mr. Duro was involved in two other civil actions: Duro v. Fletcher and Singer v. Duro. Both decisions are unpublished.
162. The order terminating Duro I specified that a motion to reopen needed to be filed before November 2005. Order Dismissing Civil Action, No. ED CV 03-0754-RT (SGLx) (May 6, 2005) (“It is therefore ordered that this action is hereby dismissed without costs and without prejudices to the right, upon good cause shown prior to November 13, 2005, to reopen this action if settlement is not consummated.”).
163. As of April 7, 2013, the case is active. Magistrate Judge David T. Bristow presided over a settlement conference held on March 20, 2013, between the USAO, Mr. Duro, the Intervenors, and Mr. Flynn, at which the court ordered “the parties to meet and confer and continue to work toward a resolution” and “set a further settlement conference for Monday, April 15, 2013, following the monthly status conference.” Settlement Conference, United States v. Duro, No. EDCV 07-1309-DTB (C.D. Cal. Mar. 20, 2013); Telephone Interview with Thomas Flynn, (Apr. 7, 2013).
164. Complaint for Injunctive Relief and Money Damages, supra note 158, at 4–8.
federal government agencies in litigation, filed a complaint in the district court alleging that Mr. Duro had (1) violated 25 U.S.C. § 415 (“§ 415”) by failing to obtain a lease from the BIA, and (2) violated the cease-and-desist order that the BIA previously issued. The USAO’s initial complaint sought an injunction that ordered Mr. Duro to comply fully with § 415 and the cease-and-desist order, as well as money damages for the costs incurred in returning the allotted land to its original condition.

In conjunction with this complaint, the USAO filed an ex parte application for a temporary restraining order that would require Mr. Duro to “1) immediately give residents of the trailer park notice to vacate the trailers within fifteen days, 2) immediately give operators of businesses located on the land five days to close and vacate their businesses, and 3) file with the court his plans, within fifteen days, as to how he will return the land to its original condition.” The USAO’s demands were a harsh response to the issues posed by the park. The short timetable requested by the USAO was particularly shocking in light of the fact that the government was fully cognizant that Duroville had “300 to 400 trailers inhabited by between 2,000 and 4,000 predominantly migrant farm workers and their children.” Despite this knowledge, the USAO made no mention of relocation assistance or what should happen to the residents upon closure of the Park.

The court issued to Mr. Duro an order to show cause as to why Duroville should not be closed. Although the court concluded that the dangerous conditions in Duroville meant that the USAO had demonstrated a strong likelihood of success on the merits for injunctive relief and stated that “such extreme relief might ultimately be appropriate,” it denied the application for a temporary restraining order. It concluded that, “in light of the breadth of [the USAO]’s request for relief . . . the balance of hardships does not tip sharply in [the USAO]’s favor.” In the meantime, the court ordered Mr. Duro to install fences around the sewage ponds, remove sewage sludge, and install systems to treat the drinking water and ensure that the water was not contaminated by sewage. The court-ordered relief focused on improvement and not on the closure of Duroville.

Noticeably absent from the docket was any input from two parties who perhaps had the most at stake in the litigation: Duroville’s residents, who would be rendered homeless by its closure, and the County of Riverside, which likely

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166. Id.
167. Id.
168. Id. at 2 (emphasis added).
170. See id. at 2.
171. Id.
172. Id. at 5.
173. Id.
would have been required to shoulder some of the costs and work of relocating residents if Duroville closed. Between the filing of the complaint and the settlement, around one hundred of Duroville’s residents attended a rally organized by an activist, who urged them to resist eviction. Furthermore, a development specialist with the Riverside County Economic Development Agency criticized the USAO for ignoring the fact that the immediate closure of the park would render hundreds of families homeless.

Much to the relief of Duroville’s residents, the USAO and Mr. Duro reached a stipulation that specified the terms for Mr. Duro to obtain a lease from the BIA for the operation of the park (“the Duro I stipulation”). It required that Mr. Duro “bring all structures, including any tenant owned structures . . . including without limitation the drinking water, sewage, electrical and fire safety systems, into compliance with all applicable governmental codes, standards and regulations . . . and do so within eighteen (18) months of the filing of this Stipulation.” However, the court failed to “explain or identify the ‘applicable governmental codes, standards, and regulations’ to which it referred – a presage of future disputes.” The court then dismissed Duro I, but allowed the right to reopen the case if the settlement was not consummated prior to November 2005, eighteen months after the stipulation was reached.


In May 2007, a fire in Duroville caused several homes to be burned to the ground and forced the evacuation of 120 families. This fire likely influenced the USAO’s decision to file a new complaint against Mr. Duro on October 9, 2007. The second action (“Duro II”) “sought injunctive relief in the form of park closure as well as monetary relief to fund the return of the land to its natural desert state.” The USAO asserted that Mr. Duro had failed to comply

176. Louis Sahagun, Feds Poised To Close Desert Shantytown, L.A. TIMES (July 20, 2003), http://articles.latimes.com/2003/jul/20/local/me-duroville20 (“‘In addition to looking at the immediate problem of shutting down the trailer park . . . the federal agencies involved need to deal with the large number of homeless families that would result from such action.’”) (quoting Leah Rodriguez, a development specialist with the county’s economic development agency).
177. Stipulation of Settlement and Request for Court To Retain Jurisdiction re Completion of Settlement Terms at 2, Duro I, No. EDCV 03-754-RT (SGLx) (C.D. Cal. May 13, 2004).
178. Beaman & Rodriguez, supra note 120, at 492. The settlement contained no discussion of how Indian law and Duroville’s location on tribal land would obfuscate the matter of what the applicable laws in Duroville would be. See Stipulation of Settlement, supra note 177.
179. Order Dismissing Civil Action, supra note 27, at 1.
180. Declaration of James Fletcher, supra note 130, at 4.
182. Beaman & Rodriguez, supra note 120, at 492.
with the "Duro I" stipulation and reiterated that he still lacked a lease for a commercial operation from the BIA pursuant to 25 U.S.C. § 415.183

While "Duro II" was still in its pleading stage, four of Duroville’s residents ("the Interveners"), represented by CRLA, filed a timely motion to intervene as defendants.184 Federal Rule of Civil Procedure 24(a), Intervention of Right, states that

on timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.185

Intervention is a legal tool that has frequently been used by public interest groups in many contexts.186 In the Duroville litigation, it was the logical first step, because the residents had the most at stake in the event of the park’s closure; intervention was the clearest way for them to assert greater control over a legal battle that could have potentially disastrous consequences for them.

Importantly, the Interveners’ Motion brought to the court’s attention that if the court were to close Duroville, the “Interveners would in most instances require relocation assistance to obtain safe, habitable and affordable housing.”187 The Interveners were uniquely situated to address the issue of relocation, because “[n]either Plaintiff nor Defendants have a paramount interest in addressing and bringing to the attention of the Court the lack of affordable housing in the Eastern Coachella Valley which would be necessary to absorb the hundreds of families that would be displaced as a result of closure.”188 The Intervener’s Motion further pointed out that

[n]either party to this litigation has an interest in advocating that Interveners and other displaced park residents be provided relocation assistance to prevent Interveners and other families from being forced to relocate to housing which is even more substandard, dangerous and a larger threat to their health and safety than that which is alleged exists in the mobilehome park.189


184. See generally Notice of Motion and Motion of Cruz Navarro, Delfina Ochoa, Pedro Lopez and Orbelina Escobar For Leave To Intervene as Party Defendants, Duro II, 625 F. Supp. 2d 938 (C.D. Cal. 2009) (No. EDCV 07-1309-SGL (JCRx)).

185. FED. R. CIV. P. 24(a)(2) (emphasis added).


187. Memorandum of Points and Authorities in Support of Motion To Intervene at 8, Duro II, 625 F. Supp. 2d 938 (No. EDCV 07-1309-SGL (JCRx)).

188. Id. at 8–9.

189. Id.
The USAO filed an opposition to the Interveners’ motion, arguing that “[g]iven the existence of a grave threat to health and human safety at the trailer park, [Interveners] cannot be allowed to continue to occupy those dangerous premises, even if they desire to continue to live there.”\(^{190}\) However, the USAO did not address what would happen to the residents in the event of Duroville’s closure—a matter of great concern to Judge Stephen G. Larson, the presiding judge.\(^{191}\) Judge Larson ordered the parties to appear with him at Duroville for a site visit,\(^{192}\) and explained to the Los Angeles Times, “[m]y concern is that there are real safety hazards that need to be addressed now. I want to see for myself. I want to know what is being done to ensure the safety of the 3,000 to 6,000 people living there.”\(^{193}\) Following his visit, Judge Larson indicated that “what he saw during his visit convinced him that the place represented an imminent threat to residents.”\(^{194}\)

Judge Larson granted the motion to intervene, noting that “[e]veryone is well-represented in this case except the individuals in the trailer park.”\(^{195}\) During the hearing, he expressed concern for both the safety of Duroville’s residents and also what would happen to the residents if Duroville were closed. Judge Larson posed this question to one of the USAO’s attorneys, who deflected it by stating “[i]t’s unfair for the farmers and the local government to put this burden [of relocating the residents] on the United States. It cannot be the United States’ problem to allow this slum park to continue to exist with the liability being on the United States.”\(^{196}\)

Less than two weeks after this hearing, a potential solution arose. The Los Angeles Times’ coverage of the case attracted the attention of Mark Adams, an attorney with experience managing and rehabilitating troubled properties as a court-appointed receiver.\(^{197}\) Mr. Adams believed that “any property can be rehabilitated, to make it safe and financially viable,”\(^{198}\) including Duroville, and sought to implement a receivership there.\(^{199}\) He contacted CRLA’s attorneys and connected them to Chandra Gehri Spencer, a private attorney and former city prosecutor who had experience seeking receiverships in state
Mr. Adams, Ms. Spencer, and CRLA’s attorneys agreed that receivership was the best remedy for Duroville and hoped that, at the least, they could buy the residents more time to find housing alternatives.\footnote{200}{Interview with Chandra Gehri Spencer, \textit{supra} note 29.}

The Interveners then submitted a brief in support of injunctive relief and the appointment of Mr. Adams as receiver for Duroville, along with a declaration from Mr. Adams that detailed his plans for financing and implementing the rehabilitation of the park.\footnote{202}{Interveners’ Brief in Support of Injunctive Relief and for the Appointment of a Receiver, \textit{supra} note 31, at 2.} The brief argued that “\textit{g}iven the unique factual circumstances in this matter, the Court is empowered to consider the substantial harm the Interveners and the other 350 families will suffer if repairs are not made to the mobile home park.”\footnote{203}{\textit{Id.} at 9.} It stated “\textit{t}his issue alone warrants the exercise of the Court’s equitable powers to appoint a receiver.”\footnote{204}{\textit{Id.}}

The brief also mentioned that Riverside County supported the appointment of a receiver and that the county would provide the receiver with some technical assistance.\footnote{205}{\textit{Id.} at 1.} It then cited California law,\footnote{206}{CAL. HEALTH & SAFETY CODE §§ 17980.6, 17980.7 (West 2006); CAL. CODE. REGS. tit. 25, § 1617.} which enables tenants of substandard housing to petition the court for a receiver, as well as two decisions in the Second Circuit that recognized the authority of federal courts to appoint receivers.\footnote{207}{Donovan v. Bierworth, 680 F.2d 263 (2d Cir. 1982); Donovan v. Bryans, 566 F. Supp. 1258 (E.D. Pa. 1983).} The USAO attacked this argument on the grounds that “[t]here is no legal basis to appoint a receiver over Indian trust land” and “\textit{o}nly the federal government has authority over Indian trust lands.”\footnote{208}{Supplemental Brief Opposing Appointment of Receiver at 1, \textit{Duro II}, 625 F. Supp. 2d 938 (C.D. Cal. 2009) (No. CV-07-1309 SGL (JCRx)).} However, the Interveners’ arguments proved more persuasive to the court; at the next hearing, Judge Larson appointed Mr. Adams as interim receiver.\footnote{209}{\textit{Duro II}, 625 F. Supp. 2d 938 (order granting in part and denying in part partial summary judgment) (detailing the history of the litigation and noting that on February 19, 2009, Mr. Adams was appointed as Interim Receiver to manage Duroville at least until the trial). Unfortunately, the relationship between Mr. Adams and the others involved in the rehabilitation of Duroville eventually soured. The court terminated his term as receiver at a later hearing. Interview with Thomas Flynn, \textit{supra} note 4.}

As for Mr. Duro, who was now playing a less prominent role in the litigation, Judge Larson later noted “\textit{t}he failure of defendants (Mr. Duro and his park management) to engage in good faith efforts to rehabilitate and manage the park when it was under their control . . . as well as the defendants’ failure to
obtain the critical bridge financing.” 210 The court also found that Mr. Duro’s continued involvement “was not only ineffective but was actually counterproductive.”211 It ordered that Mr. Duro not operate or control the park in any manner.212

The case came to a climax during an eight-day bench trial held over a three-week period in April of 2009.213 More than twenty witnesses testified at trial, including residents, social workers, government officials, and volunteers.214 The residents testified that a sense of community had developed in Duroville and that conditions had improved under court supervision.215 Purepechan residents testified about how Duroville had become a cultural center for them, and that forced relocation would impair their ability to remain faithful to their traditions.216 Duroville’s residents emphasized “that the lack of decent affordable housing in the area would make it even more difficult to obtain shelter, that they would lose access to local schools and local fields where residents worked, that they would face significant relocation costs, health risks, and homelessness.”217

At the conclusion of the bench trial, Judge Larson read aloud his decision in the packed courtroom.218 First, he vacated the court’s earlier finding that Mr. Duro had breached the Duro I stipulation, citing the confusion and ambiguity in determining applicable codes and standards by which to measure compliance. However, the court did find that Mr. Duro had violated § 415 by failing to obtain a lease from the BIA, and further that “his creation and expansion of the Park in violation of the law was both knowing and willful” and that “he purposely neglected his legal obligations.”219 Thus, the court removed Mr. Duro from control over Duroville, and it “enjoined Mr. Duro from profiting from his unlawful residential and business operation.”220 The court also placed some of the responsibility for the creation of Duroville on the BIA, pointing out that the BIA’s treatment of Mr. Duro indicated that it had breached its fiduciary duty towards him, and that it demonstrated “an adverse predisposition if not an outright animus towards Mr. Duro.”221 It noted the BIA’s conduct would be considered in determining the remedy.222

The next portion of the decision demonstrated a deliberate and carefully thought-out understanding of Duroville’s many dimensions. First, it focused on

211. Id.
212. Id.
213. Kelly, supra note 153.
214. Id.
215. Id.
216. Id.; see also note 157, supra.
217. Beaman & Rodriguez, supra note 120, at 493.
218. Id.
220. Id. at 942.
221. Id.
222. Id. at 943.
the most fundamental aspect of the park—its critical role in providing much-needed shelter for its residents:

The Park, or Duroville or Los Duros, as it is better known by its residents, is not a business, it is a village: thousands of our fellow human beings call the Park home. It is not nearly as safe or as healthy as we would want it to be; it is, nonetheless, home for a community of people who are poor, undereducated, disenfranchised, and in many respects, exploited.223

While the court recognized the vulnerability of Duroville’s residents, it also acknowledged their resiliency. It stated that “despite these disadvantages, these very same people, based on the evidence at trial, are an honest, hard-working, proud, colorful and family-oriented community of people committed to educating their children and raising them to be productive and successful members of our society.”224

Another remarkable aspect of the decision was the sympathetic way in which the court addressed the immigration status of some of the residents—an admittedly sensitive topic. The court acknowledged that “some [of Duroville’s residents] are undocumented, some are resident aliens, and some are United States citizens.”225 It recognized that “this complicated combination of immigration statuses places many of [Duroville’s residents] in the crossroads of our Nation’s incongruous immigration and agricultural policies that, on the one hand, portend that undocumented workers lack legal status while at the same time predicking the economic efficiency of an agricultural industry on their hard work.”226 This critique of the United States’ immigration and agricultural systems also contained a thinly-veiled reference to the Atlantic slave trade: “it appears to this Court that we have, once again, established a rather ‘peculiar institution’ to service our agrarian needs.”227

In contrast to the county’s tactics during its earlier code enforcement, which ignored the residents’ need for shelter, the court focused on the devastating impact that a forced relocation would have on the community of thousands of people. The decision continued, “to accede to the government’s—and now Mr. Duro’s request to promptly close the park, without identifying where the vast majority of its residents would then live, would create one of the largest forced human migrations in the history of this State.”228 The court then referenced a dark period in American history to further express the gravity of the situation: “[u]nlike another forced migration in this State’s history—the internment of Japanese citizens during World War II—there is not even a Manzanar for these residents to go.”229

223. Id. at 944.
224. Id.
225. Id.
226. Id.
227. Id. The phrase “peculiar institution” was used as a euphemism for slavery in the antebellum South. See generally Kenneth M. Stamp, THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH (1989).
229. Id.
The court’s concern for the habitability of the park was tempered by its recognition that Duroville provides much-needed housing for its residents: “as unsafe and unhealthy as the Park may be—circumstances that the Court has observed first-hand through its visits to the park—it nonetheless offers a shelter in place for a people who otherwise have nowhere to go.” The court then issued an ultimatum: “Until and unless alternative housing is available—alternative housing that is safe, healthy, affordable and truly available to the residents—this court will not close Duroville.”

However, in determining the appropriate response to the situation, the court still had to consider that Mr. Duro had indeed violated § 415, and that the government was entitled to a remedy at law and equity. The court thus faced the challenge of devising a just and equitable remedy that would account for the following factors: (1) that the operation of Duroville as a commercial mobile home park was unlawful; (2) in spite of recent efforts, Duroville remained unsafe and unhealthy; (3) in spite of recent efforts, there were no readily available relocation facilities for most of Duroville’s residents; and (4) immediate closure of Duroville “under current circumstances would create an unacceptable humanitarian crisis for thousands of people.”

As such, the remedy prescribed by the court was lengthy, detailed, and complex. First, in light of the dangers posed by the crowded conditions in the park, the court encouraged the Torres Martinez tribe, Riverside County, state and national legislators, and all governmental and non-governmental organizations to continue in “efforts to develop safe, healthy, affordable, and available housing for the residents of the Park (not to mention the residents of the numerous other sub-standard mobile home parks referenced at trial).” The court recognized that this would require a “bi-partisan commitment to addressing all of the related issues.” Secondly, the court appointed Thomas Flynn as receiver for a two-year term, subject to renewal. Mr. Flynn had been active as a property manager in Duroville’s rehabilitation. As receiver, Mr. Flynn would manage the property and finances of the park, with authority from the court to enter the park without interference, and would submit monthly reports to the court.

The court ordered Mr. Flynn to encourage and facilitate the safe relocation of park residents and implement, as soon as possible, a set of urgent infrastructure improvements that reflected the most pressing health and safety concerns. These included road signage, sewerage, electrical wiring, and

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230. Id.
231. Id. at 944–45.
232. Id. at 945.
233. Id.
234. Id. at 946.
235. Id.
236. Id.
237. Interview with Thomas Flynn, supra note 4.
238. Id.
239. Id.
water. Next, the court ordered that “no new or replacement tenants and no new or replacement non-residential businesses” would be permitted in the park unless and until the BIA approved a lease. The court also issued an order that provided a procedure for when a park resident failed to pay rent. Additionally, in recognition of the trust relationship and duty owed by the BIA to the Torres Martinez, the court ordered that following a six-month cooling-off period, Mr. Duro and the BIA were to engage in a settlement conference to “explore options related to Mr. Duro’s allotment.”

Reactions to the decision were overwhelmingly positive. Duroville residents were especially overjoyed and grateful, as there had been rumors that the park would likely close. Eighteen-year-old Adriana Martinez said, “[w]e had been very worried for months that we would have to leave while I was pregnant . . . [w]e kept saying, ‘Where are we going to live? There are no other places to go.’ When I found we could stay I was so happy.” Maria Mulato, a 24-year-old Purepechan mother of five said, “I feel so good now that I get to stay . . . I have lived in this park for 11 years . . . This is my home. I have no other place to go.”

In October 2009, Judge Larson retired from the bench, and the case was passed to Magistrate Judge David Bristow. Judge Bristow, like his predecessor, has undertaken several visits to Duroville. Of note is that Judge Bristow has ensured that Riverside County continues to play an active role in the status conferences, and that the county remains accountable to the court, even though it is not formally a party to the action.

C. The Duroville Receivership and the Residents’ Transition to Mountain View Estates (April 2009–April 2013)

Throughout the months following the court’s order, Mr. Flynn began to implement improvements to the park’s infrastructure. The media coverage of the case drew a tremendous number of donations and attention from volunteers and charitable organizations. Veterinarians volunteered to spay and neuter the feral dogs that had run rampant in the streets, medical students from a nearby university ran a free health clinic, and individuals helped clear debris from the park. Volunteers had been barred from even entering the park before the

240. Id.
241. Id.
242. Id.
243. Id.
245. Id.
246. Interview with Stephen G. Larson, supra note 191.
247. Interview with Thomas Flynn, supra note 4.
248. Interview with Chandra Gehri Spencer, supra note 29.
249. Interview with Thomas Flynn, supra note 4.
250. Beaman & Rodriguez, supra note 120, at 493.
court removed control from Mr. Duro.251 The receivership also helped residents establish an eleven-member council to govern the community.252 The council members, referred to as “captains,” visited homes and ensured that tenants abided by regulations.253 According to Merejildo Ortiz, one of the captains, “the change has been enormous.”254 In April 2010, Ortiz reported that the roads and common areas were cleaner, and that residents had begun to feel more pride in their homes.255

A partnership between Riverside County, through its Redevelopment Agency (later its Economic Development Agency),256 and a private contractor began to develop Mountain View Estates, just a few miles away from Duroville, as the primary relocation site for Duroville residents.257 While Mountain View Estates was scheduled to open in the early summer of 2010,258 problems with funding delayed its opening.259 In September 2011, with assistance from the office of Senator Dianne Feinstein, the county secured $6.3 million in grants from the U.S. Department of Agriculture to complete a sewage system that would ready Mountain View Estates for habitation.260 The grant was conditioned on 75 percent of Mountain View Estate’s inhabitants coming from Duroville.261 Upon hearing that the anticipated completion date of Mountain View Estates was set for June 29, 2012, Judge Bristow began to discuss the process for closing Duroville and terminating the receivership.262

251. Interview with Thomas Flynn, supra note 4. Additionally, the charities were likely “reluctant to donate to or volunteer for a park in danger of closing.” Beaman & Rodriguez, supra note 120, at 493.


254. De Atley & Olson, supra note 252, at 2.

255. Id.


258. De Atley & Olson, supra note 252.

259. Interview with Thomas Flynn, supra note 163 (describing how problems with funding delayed the relocation of Duroville residents for at least two years).

260. Gruszecki, supra note 40; Interview with Thomas Flynn, supra note 4.

261. Gruszecki, supra note 40.

Mr. Flynn’s term as receiver was renewed in November 2011, and as of April 2013, he was still on-site full time.\(^{263}\) The number of occupied units in Duroville decreased from 296, when the provisional receivership began in 2008, to 214 in January 2012, to 190 in October 2012. As of April 2013, there were eighty-seven occupied units.\(^{264}\) CRLA, Ms. Spencer, and Mr. Flynn have concentrated their efforts on facilitating the relocation process through surveying residents, addressing concerns they have about relocation, and helping them apply for Riverside County’s Mobile Home Loan Assistance Program.\(^{265}\) They continued to meet in monthly status conferences with Judge Bristow, Riverside County attorneys, the U.S. attorneys, and Mr. Duro’s attorney.\(^{266}\)

By May 2012, Riverside County and the U.S. Department of Agriculture had already spent more than $12 million towards the construction of Mountain View Estates.\(^{267}\) But the relocation to Mountain View Estates encountered another barrier in May 2012. California state officials announced that the $12.1 million of California redevelopment funds that had been earmarked to buy the 181 new mobile homes for Mountain View Estates would revert back to the State because Riverside County officials had secured the loan agreement several months after California terminated redevelopment agencies in June 2011.\(^{268}\) On May 17, 2012, Riverside County sent a formal appeal to California’s Finance Department.\(^{269}\) The State initially denied the county’s appeal, but on October 3, 2012, it approved the use of $9.9 million in bond money from former redevelopment agency funding to complete Mountain View Estates.\(^{270}\) County officials had been in daily contact with the State; said County Supervisor John Benoit, “[w]e’re very, very pleased the state was able to come to this conclusion which will improve the lives of several hundred families, and maybe thousands of people.”\(^{271}\) Duroville residents began moving

\(^{263}\) Interview with Thomas Flynn, supra note 4.

\(^{264}\) Status Report of Receiver Thomas Flynn, United States v. Duro, No. EDCV 07-1309-DTB (Jan. 24, 2012); Blake Herzog, Benoit: Duroville Residents Will Move, THE DESERT SUN, Oct. 3, 2012; cf. Interview with Thomas Flynn, supra note 163 (noting that there were sometimes several families occupying the same unit).

\(^{265}\) Interview with Thomas Flynn, supra note 4; Interview with Chandra Gehri Spencer, supra note 29.

\(^{266}\) Interview with Thomas Flynn, supra note 163.

\(^{267}\) See Marcel Honoré, Duroville Mobile Home Park Closure Effort In Danger, THE DESERT SUN, May 19, 2012 (“The County has already spent more than $6.5 million for roads, a community center and other improvements at Mountain View. The USDA, working with the Coachella Valley Water District, has also spent about $6 million for a new water and sewer line designed for Mountain View that could also serve other nearby properties.”).

\(^{268}\) Marcel Honoré, Duroville Relocation Effort Suffers Blow, THE DESERT SUN, May 1, 2012. The State found that the contracts between the County and the State were unenforceable, because they had been signed after the June 2011 deadline.


\(^{270}\) $10 Million for Duroville Relocation Released by State, THE DESERT SUN (Oct. 16, 2012), http://www.smfws.com/articles_2012/articles_october_2012/art10162012.html (“Department of Finance spokesman H.D. Palmer said the state was able to OK the funding under a ‘cleanup’ law addressing issues around former redevelopment agencies passed this spring, including ‘stranded’ bonds issued by the agencies before they were dismantled.”).

\(^{271}\) Id.
to Mountain View Estates around the middle of November 2012. By that time, the county had already approved at least 137 Duroville families to move to Mountain View Estates. As of April 1, 2013, eighty-four Duroville families had already moved to Mountain View Estates, and fifty-five families were waiting for units in Mountain View Estates to open up.

Magistrate Judge David T. Bristow has presided over monthly status conferences that pertain to the logistics of the relocation and the definitive timeline for the closure of Duroville. The County’s Economic Development Agency has been processing the applications for residents seeking to relocate to Mountain View Estates. For the families still waiting, Mr. Flynn has continued his efforts to maintain safety and stability in Duroville. Though the transition from Duroville to Mountain View Estates has been an imperfect process, it is nevertheless important to acknowledge and celebrate the fact that many families now have safe, clean, and affordable homes.

III.

DUPLICATING THE DURO RECEIVERSHIP: IS IT A GOOD IDEA?

The victory of Duroville’s residents impels the question of what ramifications the Duro receivership has for the other similarly situated communities in the Coachella Valley, and whether it is possible—and desirable—to duplicate what occurred in Duroville in the other parks. Within the numerous federally recognized tribes in Southern California, there is a tremendous amount of diversity: tribes can vary in the structure and stability of their tribal government, cultural norms and language, availability of infrastructure and technology, and financial resources. Given this diversity of circumstances, it would be imprudent to prescribe receivership as a remedy for every trailer park in Indian country with substandard living conditions.

273. Honoré, supra note 5.
274. Interview with Thomas Flynn, supra note 163. Mr. Flynn also stated that thirty-two families will not be moving to Mountain View Estates, but that “everyone’s got to go somewhere. The relocation plan of these families is uncertain.”
275. Id. According to Mr. Flynn, the County officials use a twelve-step criteria for qualifying residents. Id.
276. Id.
278. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, supra note 60, at § 21.01.
279. BRYAN H. WILDENTHAL, NATIVE AMERICAN SOVEREIGNTY ON TRIAL xiv (2003).
280. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, supra note 60, at § 21.02.
281. See Tina Dirmann, Tribe Impoverished by Salton Sea Gets Windfall, L.A. TIMES (Mar. 29, 2002), http://articles.latimes.com/2002/mar/29/local/me-torres29 (describing the woes of the Torres Martinez Tribe, which “unlike neighboring tribes, which have made the most of their tribal lands with flourishing casinos, [has] been unable to come up with a gambling center because of a lack of funds and their location, tucked deep into the desert community of Thermal”).
However, because each area of Indian land has a unique jurisdiction\textsuperscript{282} that might complicate the availability of legal remedies for non-Indian individuals dealing with habitability concerns on tribal land, and because a crowning feature of equity jurisprudence is its flexibility to adapt to unique situations,\textsuperscript{283} it is nevertheless worthwhile to explore how receivership can equitably remedy these habitability concerns.\textsuperscript{284}

This Part argues that while receivership is both difficult to obtain and to administer properly, it may still be an effective way for a federal court to address especially egregious living conditions in certain trailer parks on Indian land. Furthermore, as demonstrated by \textit{U.S. v. Duro}, a court’s imposition of receivership can draw the attention of local governments and stakeholders to the plight of marginalized communities. This Part will also consider and address three significant concerns posed by federal receiverships in Indian country: its incursion on Indian sovereignty, its administrative burden on courts, and its legitimacy. Finally, this Part concludes by emphasizing that receivership is a means to an end, and by providing a preview of longer-term solutions to the affordable housing crisis on Indian land in the Coachella Valley.

\textbf{A. The Broader Context of Receivership Litigation}

\textit{1. The Roots of Equitable Relief and Receivership}

The authority of federal courts to grant equitable relief, such as receivership, is rooted in the Judiciary Act of 1789, which bestowed upon federal courts jurisdiction over “all suits . . . in equity.”\textsuperscript{285} The United States Supreme Court has long held that the jurisdiction the Judiciary Act conferred is “an authority to administer in equity suits the principles of the system of judicial remedies which had been devised and was administered by the English Court of Chancery at the time of the separation of the two countries.”\textsuperscript{286} Thus, the substantive prerequisites for obtaining an equitable remedy “depend on traditional principles of equity jurisdiction.”\textsuperscript{287} In adjudicating a suit in equity,
a federal court must inquire whether the equitable relief sought by a party would have been “traditionally accorded by courts of equity.”

Equity is the system of justice that originated in and was administered by the English Court of Chancery in the exercise of its extraordinary jurisdiction. The Court of Chancery emerged from the need to resolve cases without the constraints imposed by the inflexibility and technicality of common law rules, as well as the need to provide relief in cases where justice demanded a remedy greater than that provided at law. The Court of Chancery has been described as a dual-purpose tribunal: to serve “higher justice” according to the principles of natural law, and to “develop flexible approaches to replace rigid common law rules where their enforcement would actually result in injustice.” In recognition of the inability of the common law to address social and economic changes occurring in society, the Court of Chancery’s equitable power was thus more extensive and flexible. It “was a court of conscience, in which defendants could be coerced into doing whatever conscience required in the full circumstances of the case,” and its freedom from the procedural formalities and customs of the precedent-based common law enabled it to fashion remedies that effected justice in new and unique circumstances.

The Court of Chancery’s power was broad, but not unlimited. Unlike common law remedies, equitable remedies were not available as of right and were subject to the discretion of the Chancellor. The key prerequisite for a plaintiff to receive equitable relief was whether a legal remedy would be adequate to redress her injury. In making its determination, the Court of Chancery considered the behavior of both parties, the practicality of the

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288. Id.

289. BLACK’S LAW DICTIONARY (9th ed. 2009); see also EMMA WARNER REED, EQUITY AND TRUSTS 5 (2012) (“if the decisions of the [common law] judges were regarded as unfair . . . the parties to the claim had the option to appeal directly to the king, ‘throwing themselves upon the king’s conscience,’ for his ultimate judgment in the matter. The king soon became inundated with applications, however, and so he began to delegate his powers to his secretarial department, under the supervision of the Lord Chancellor. The secretariat of the king, which was commonly known as ‘the Chancery,’ soon began to resemble a judicial body, and by the fifteenth century the Chancery was soon formally recognised as having judicial power. It was at this time it became known as the ‘Court of Chancery.’”).

290. Timothy S. Haskett, The Medieval English Court of Chancery, 14 LAW & HIST. REV. 254 (1996); see also SUKHINDER PANESAR, EXPLORING EQUITY AND TRUSTS 4 (2d ed. 2012) (“Lord Ellesmere . . . once commented in the famous Earl of Oxford’s Case (1615) 1 Rep Ch. 1 at page 6 that ‘men’s actions are so diverse and infinite that it is impossible to make any general law which will aptly meet with every particular and not fail in some circumstances. The office of the Chancellor is to correct men’s consciences for fraud, breaches of trust, wrongs and oppressions of what nature so ever they be, and so soften and mollify the extremity of the law.’”).


293. PANESAR, supra note 290, at 9.

294. Haskett, supra note 290, at 252.


296. JOSEPH STORY, COMMENTARIES ON EQUITY JURISPRUDENCE 556 (1st ed. 1884).

297. Id.
requested relief, and the impact that the requested relief would have on the community at large.\(^\text{298}\)

The earlier forms of equitable relief were confined to the protection of property rights.\(^\text{299}\) The importance of equity’s role in protecting property can be seen in Justice Joseph Story’s Commentaries on Equity Jurisprudence, in which he wrote, “wherever there is danger of [property] being converted to other purposes, or diminished or lost by gross negligence, the interference of a court of equity becomes indispensable.”\(^\text{300}\) This is true of receivership, which originally arose in the nineteenth century\(^\text{301}\) from the need to resolve disputes pertaining to the management and preservation of property interests until the final adjudication of the litigation.\(^\text{302}\) In particular, the purpose of receivership was to safeguard the property “for the benefit of those entitled to it.”\(^\text{303}\) To this end, the receiver needed to be a neutral third party accountable to the court who would supervise the property while the litigation was pending and ensure compliance with the judgment.\(^\text{304}\)

2. The Evolution of Receivership Jurisprudence

Traditionally, courts appointed receivers in cases where parties who held title to land were incompetent or were competent but otherwise disqualified, where the parties were in violation of fiduciary duties and trust relationships, and where the ordinary process would be insufficient to carry out the judgment of the court.\(^\text{305}\) The earliest cases of receivership focused on protecting private property interests.\(^\text{306}\) Receivership later expanded to other contexts that posed novel questions to the courts: railroads, municipalities, civil rights, and housing.

In a law review comment that argues for the imposition of receiverships on uncooperative polluters, Jason Feingold chronicles the development of receivership jurisprudence as follows:

While the conceptualization of receivership as a protective custodial measure probably comports with the restrained use of receivers in the

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\(^\text{298}\) Jaroslawa Zelinsky Johnson, Comment, Equitable Remedies: An Analysis of Judicial Utilization of Neoreceiverships To Implement Large Scale Institutional Change, 1976 WIS. L. REV. 1161, 1166 (1976) (citing DOBBS, supra note 283 at §§ 2.1, 2.4, 2.5).


\(^\text{300}\) STORY, supra note 296, at 556.

\(^\text{301}\) See SMITH, supra note 284, at iii (“It has been said that receivership is of recent origin . . . .”).

\(^\text{302}\) Id. at § 3.

\(^\text{303}\) MUIR HUNTER, KERR AND HUNTER ON RECEIVERS AND ADMINISTRATORS 4 (2006).

\(^\text{304}\) SMITH, supra note 284, at 4. (“A receiver is an indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or fund in litigation, pendent lite, when it does not seem reasonable to the court that either party should hold it.”); see also STORY, supra note 296, at § 831 (“The receiver, when appointed, is treated as virtually an officer and representative of the court, and subject to its orders.”).

\(^\text{305}\) Id. at 7–9.

\(^\text{306}\) See Jason Feingold, Comment, The Case for Imposing Equitable Receiverships upon Recalcitrant Polluters, 12 UCLA J. ENVTL. L. & POL’Y 207, 213.
nineteenth century, the employment of receivership more recently has been adapted and expanded to achieve much broader remedial ends. The flexibility and innovation which characterizes the exercise of all equitable powers have facilitated considerable evolution in the use of receiverships as courts of equity address the problems of an increasingly complex society.307

Receivership jurisprudence has evolved beyond being purely a remedy oriented towards protecting private property interests. The first stage of the evolution arose in the context of railroad insolvencies in the mid-nineteenth century.308 Courts confronting this problem had no remedies in statutes or the common law, yet recognized that the “public interest [particularly the small communities who depended on the railroads] necessitated saving the railroads from piecemeal sale for the benefit of creditors.”309 In order to do so, courts developed a receivership procedure that prevented the collapse of the bankrupt railroads while reorganizing their railroads’ debt structure.310 The development of the railroad receiverships demonstrates both the flexibility of equity in providing relief where no legal precedents exist and the ability of a court sitting in equity to respond to pressing social needs when the legislature is slow or reluctant to do so.311

Towards the latter half of the nineteenth century, the next step in the evolution of receivership occurred as courts faced suits filed against municipalities who had defaulted on their bonds.312 The municipal bond receiverships had a clear focus on protecting the public interest—in addition to the interests of the investors, these receiverships sought to “preserv[ing] the ability of the United States to borrow money on the international market.”313 They were also markedly more invasive than the railroad bankruptcy receiverships. These receivers levied taxes upon the citizens of the insolvent municipalities and disbursed the proceeds to investors as payments on the bonds to ensure compliance with the court’s judgments against the municipalities.314

The third stage in the progression of receivership in the 1960s and 1970s coincided with the later years of the civil rights movement. Courts began to explicitly acknowledge that equitable relief was appropriate to protect purely personal or constitutional rights and expanded receivership into public institutional reform litigation. 315 In a student Comment, Jaroslawa Zelinsky

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307.  Id.
308.  Id.; see Johnson, supra note 298, at 1167 (“[T]he context shifted from protection of a private property interest of litigants to the protection of a private property interest essential to the public welfare.”).
309.  Johnson, supra note 298, at 1168.
310.  Feingold, supra note 306, at 213; Johnson, supra note 298, at 1168.
311.  Feingold, supra note 306, at 213.
312.  Id. at 213–14; Johnson, supra note 298, at 1169.
313.  Feingold, supra note 306, at 213.
314.  Id. at 214; see also Johnson, supra note 298, at 1170.
315.  Carolyn Hoecker Luethke, Innovation or Illegitimacy: Remedial Receivership in Tinsley v. Kemp Public Housing Litigation, 65 Mo. L. Rev. 655, 676 (2000); Note, Receivership as a Remedy in Civil Rights Cases, 24 Rutgers L. Rev. 115, 119 (1969); see also Johnson, supra note 298, at 1173
Johnson uses the term “neoreceivership” to describe the model of receivership that emerged in this era. According to Johnson, a neoreceiver’s duties “are broader and more flexible than those associated with traditional remedial forms and [their duties are] instrumental in developing remedies and implementing decrees which involve protection of constitutional rights, and which result in large-scale institutional change.” Johnson identifies three main arenas in which courts appointed neoreceivers: school desegregation in the wake of *Brown v. Board*, supervision of municipal redistricting to ensure equal voting representation, and the implementation of health and safety standards in state prison systems.

Receivership oriented towards improving substandard conditions in residential housing marks a fourth stage in receivership jurisprudence. Housing receiverships appointed by state courts are commonplace and often have a statutory basis. Housing receiverships appointed by federal courts are less common and have generally arisen in situations that involve the misconduct of a public housing authority. One important example is *Tinsley v. Kemp*, a class-action lawsuit filed on behalf of all residents in a public housing development in Kansas City, Missouri. In *Tinsley*, the court appointed a receiver to complete “all acts necessary to transform [the Housing Authority of Kansas City] into a functional housing authority—one that provided decent, safe, and sanitary dwellings for families of lower income—and to comply with

n.95 (noting that equitable relief has been provided in cases pertaining to police action, school desegregation, access to public recreation facilities, admission to federally financed public housing, and equal representation).

316. Johnson, supra note 298, at 1163.
317. Id. at 1163 n.7.
318. Id. at 1184–86; see Morgan v. Kerrigan, 401 F. Supp. 216 (D. Mass. 1975) (federal district court appointed a receiver to implement injunctive orders against the Boston School Committee, which had denied African American children their Fourteenth Amendment right to attend a school system without experiencing verbal and physical abuse); Turner v. Goolsby, 255 F. Supp. 724 (S.D. Ga. 1965) (federal district court appointed a receiver in a county school system to facilitate desegregation).
319. Johnson, supra note 298, at 1184.
320. Id. at 1186–87; Newman v. Alabama, 466 F. Supp. 628 (M.D. Ala. 1979) (federal district court placed the Alabama state prison system in receivership because of barbaric prison conditions that demanded swift and effective remedial action).
322. Habitability provisions are usually at the state level. Consequently, states have codified the procedure for obtaining receiverships to improve habitability of substandard housing. See, e.g., N.Y. MUL. DWELL. LAW § 309(5)(d)(1) (McKinney 2012) (setting out the procedure for receivership); see also David Listokin, Lizabeth Allewelt & James J. Nemeth, *Housing Receivership: Self-Help Neighborhood Revitalization*, 27 WASH. U. J. URB. & CONTEMP. L. 71, 89 (1984) ("[M]ost states limit [the application of receivership] to situations when a building is in an advanced state of disrepair and immediate remediation is necessary. State receivership statutes often stipulate that an action can be brought only when a building is ‘dangerous,’ is a ‘nuisance,’ or is a ‘safety hazard.’")
323. One example is *Gautreaux v. Chicago Housing Authority*, 178 F.3d 951 (7th Cir. 1999), a struggle that lasted for over thirty years that centered on the racially discriminatory practices of the Chicago Housing Authority. In *Gautreaux*, a district court appointed a receiver to develop scattered site housing on behalf of the Chicago Housing Authority, Id. at 952.
all applicable laws and regulations."\[325\] While not without its share of challenges and controversy,\[326\] the Tinsley receivership was largely hailed as a success.\[327\]

In December 2011, CRLA successfully obtained receivership for the Los Gatos mobile home park of ninety residents in Thermal, CA.\[328\] The Los Gatos case marks the first time that a state court granted receivership for a mobile home park.\[329\] In this case, which did not involve Indian law sovereignty issues, “[r]esidents filed suit in 2010 claiming they endured more than a month without electricity during the sweltering summer heat.”\[330\] Because the Los Gatos case was filed in state court, as opposed to federal court, it had the advantage of citing the extensive protections around habitability in state law, which explicitly codifies the right of tenants to seek receiverships.\[331\] Ms. Beaman, a CRLA attorney who was involved in the Duroville litigation and the Los Gatos case, has said that the judge’s order granting receivership was “extraordinary” and acknowledged its potential to “be a model for other east valley parks and deter owners from neglecting their property.”\[332\]

The various manifestations of receivership in railroads, municipalities, civil rights, and substandard housing contexts demonstrate these characteristics, and provide a baseline for determining other contexts where it might be appropriate. Because equity is “not bound by strict common law rules,” it has “the power, where necessary, to pierce rigid statutory rules to prevent injustice” and to “do substantial justice” in the face of “changing demands of society.”\[333\] The breadth, flexibility, and coercive power of equitable relief enable receivership to “met[e] out even and exact justice . . . to all parties in interest untrammeled by legal forms and distinctions.”\[334\]
B. The Mechanics of a Receivership in Indian Country

1. Legal Authority

The origins of equity and the trajectory of receivership jurisprudence support its extension into substandard trailer parks in Indian country, which can be considered a special subset of housing receiverships. Because their unique legal situation places them in somewhat of a jurisdictional limbo, these parks are at the cutting edge of social conditions that require judicial intervention. Furthermore, as Indian law sovereignty renders federal, state, and local prophylactic laws inapplicable to substandard housing in Indian country, a federally appointed receiver is perhaps the only way to address the egregious conditions in trailer parks therein.

Any person or class with “an interest in property that a statute or one of the general principles of equity authorizes the court to protect” may seek the appointment of a receiver in a federal court. 335 Rules 66 and 70 of the Federal Rules of Civil Procedure govern the appointment of receivers. Rule 66 provides, in part, that “the practice in administering an estate by a receiver or a similar court-appointed officer must accord with the historical practice in federal courts or with a local rule. An action in which a receiver has been appointed may be dismissed only by court order.” 336 Rule 66 does not mention the criteria for appointing receivers; rather it codifies federal equity receiverships, whose authority had already been established through the Judiciary Act of 1789. 337 Rule 70 provides, in part: “If a judgment requires a party . . . to perform any . . . specific act and the party fails to comply within the time specified, the court may order the act be done . . . by another person appointed by the court.” 338 The broad language of Rule 70 indicates that federal courts have a great deal of discretion to effect enforcement of judgments. The Supreme Court affirmed the expansive powers granted to officers appointed by federal courts in In re Peterson, where it held that “[c]ourts have . . . inherent power to provide themselves with appropriate instruments required for the performance of their duties . . . . This power includes authority to appoint persons unconnected with the court to aid judges in the performance of specific judicial duties, as they may arise.” 339

At the same time, given the fact that receivership is a remedy of last resort that represents the court’s equitable power at its most expansive, a court must employ the utmost caution and should only grant receivership in cases of “clear necessity.” 340 Further, because receivership is an equitable remedy, it is a

335. WRIGHT, MILLER, & MARCUS, supra note 33, at § 2983.
336. FED. R. CIV. P. 66.
337. See Canada Life Assur. Co. v. La Peter, 563 F.3d 837, 842 (9th Cir. 2009) (“Not only does Rule 66 require application of the federal rules in an action where the appointment of a receiver is sought, it specifically indicates a normative standard for uniform administration of receiverships in accordance with the historical practice in federal courts.”).
338. See supra Part III.A.1.
339. FED. R. CIV. P. 70.
341. WRIGHT, MILLER, & MARCUS, supra note 33, at 24.
matter of the court’s discretion and not a matter of positive right and should only be granted when there is no alternate legal remedy. In Duro II, the court’s granting of receivership signaled its acknowledgement of the extreme circumstances in Duroville, an understanding of the deeper problem—the lack of decent and affordable housing in the Coachella Valley—and that these extreme circumstances warranted the appointment of a receiver. In light of the conditions in some trailer parks in Indian country and that once there is a basis for the grant of equitable relief, “the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies,” it is clear that ample legal authority exists upon which a federal court may grant receivership in trailer parks located on Indian land.

2. Addressing Concerns

In Duro II, the court repeatedly emphasized the extreme conditions in Duroville that merited the court’s decision to appoint a receiver. This suggests that receivership may also be appropriate for situations with similarly extreme conditions. Indeed, receivership is perhaps the most effective and powerful way for a court to address a community’s substandard living conditions because it is the “only realistic option to insure that action is actually taken to immediately safeguard the health and safety of the [community’s] residents.” This is because a receiver is directly accountable to the court and serves as its “eyes and ears” on the ground. Receivership can help fill a gap caused by a lack of central governance in trailer parks on Indian land by overseeing the implementation of reasonable rules and regulations for residents, ensuring the provision of basic services such as water and electricity, and making necessary infrastructure improvements. Nevertheless, as the Duroville receivership illustrates, courts and advocates should be aware of a number of concerns before implementing receivership in other trailer parks on Indian land.

a. Tribal Sovereignty and the Native American Legacy

Easily the most significant of these concerns is that a federal receivership on Indian land necessarily involves an abrogation of tribal sovereignty. “[T]hat tribes possess a nationhood status and retain inherent powers of self-government” is an axiomatic principle of federal Indian law. Given the unique history of the Torres Martinez in particular and of Native American
tribes generally, a repeated incursion on tribal sovereignty would be a harsh blow to the centuries-long struggle of Native American tribes for self-determination in the face of genocide and ethnic cleansing. There is a valid concern that a federal receivership on Indian land runs the risk of seeming paternalistic—or even worse—imperialistic.

This Comment first and foremost acknowledges that tribal sovereignty and the federal government’s troubled history with Native Americans are sensitive matters that should not be taken lightly, and that receiverships are by no means a complete and universal panacea to substandard housing conditions in Indian country. It offers, however, a different perspective of a federally appointed receivership on Indian land. Specifically, this Comment argues that such a receivership, despite unavoidably impinging on tribal sovereignty and evoking a painful legacy of oppression, can be an effective way to address the unique and complicated set of circumstances in certain trailer parks where residents are suffering and lack alternative legal recourse because of their location in Indian country. The rationale of this argument is conscious pragmatism; while cognizant of the fundamental unfairness of federal Indian law, the argument operates within the constraints of Indian law to use a powerful, yet imperfect tool for the purpose of alleviating the harms of individuals who are suffering through no fault of their own.

The argument itself rests upon the following points: (1) federal Indian law is fundamentally unfair; (2) the federal government generally has a trust relationship with Native American tribes to serve the best interests of tribes and of their individual members; (3) in both the actions and inactions it has taken with regard to trailer parks in Indian country, the federal government—in particular the BIA—has breached its duty to the tribes and harmed the residents of the trailer parks; (4) courts must also consider the welfare of the residents of destroyed communities, farms, and part of the Southern Pacific Railroad. See Chris Kraul, supra. Agricultural runoff and drainage exacerbated the initial flood and now forms the Salton Sea, which covers about half of the tribe’s land. Chris Epting, *The Salton Sea: A ‘Dead’ Sea Ready to Rise?*, AOL NEWS (Mar. 13, 2011), http://www.aolnews.com/2011/03/13/the-salton-sea-a-dead-sea-ready-to-rise/. Furthermore, the remoteness of the Torres Martinez land has made it difficult for the tribe to attract income-generating activities and has made their land an easy target for illegal dumping of toxic waste. See *Torres Martinez Solid Waste Collaborative*, U.S. Envl. Prot. Agency, http://www.epa.gov/region9/tribal/torres-martinez/index.html (last visited June 17, 2003). The dumping dates back to at least the 1990s. See *Violence in Indian Country over Waste*, RACHEL’S ENVIRONMENT & HEALTH WEEKLY (Aug. 25, 1994), http://www.ejnet.org/rachel/rehw404.htm.


350. Vine Deloria, Jr., an American Indian historian and activist, describes the genocide of Native Americans as follows:

   Law after law was passed requiring him to conform to white institutions. Indian children were kidnapped and forced into boarding schools thousands of miles from their homes to learn the white man’s ways. Reservations were turned over to different Christian denominations for governing. Reservations were for a long time church operated. Everything possible was done to ensure that Indians were forced into American life. Vine Deloria Jr., *Custer Died for Your Sins* 8 (1969).
the parks, many of whom do not belong to federally recognized Native American tribes;351 and (5) the traditional justifications for equitable relief are very much applicable here. The *Duro* receivership illuminates this perspective—that although the legal precedent that makes receiverships in Indian country possible is built on bad history, certain parks, such as Duroville, present opportunities for the federal government to make amends for the harms that it has inflicted.

To explain the fundamental unfairness of federal Indian law, it is fitting to draw upon the ideas of Robert B. Porter, who once served as Chief Justice of the Sac & Fox Nation of Kansas and Missouri, and the Attorney General of the Seneca Nation of Indians.352 Porter characterizes federal Indian law as “federal Indian Control law” because of its “twofold mission of establishing the legal bases for American colonization of the continent and perpetuating American power and control over the Indian nations.”353 To illustrate this idea, Porter describes the “legal minefield” of federal Indian law. It, on the one hand, “provide[s] for the federal government’s protective trust responsibility over Indian affairs,” and on the other, allows the federal government’s interests to interfere with tribal self-government, and “make[s] it impossible for the Indian nations to exercise fully their sovereign right of self-determination.”354 Indeed, the phrase “trust relationship,” which normally connotes protection and acting in the best interests of a third party,355 has been, in the context of Indian law, the means by which the federal government justified imposing its views on tribes, despite the right of sovereignty that tribes possess.356

Thus, having acknowledged that federal Indian law is a flawed system, we now focus on how to work within the system to achieve at least a semblance of justice. Here, the proper place to begin is the trust relationship between Native Americans and the federal government. This relationship has its basis in the Constitution.357 It was first defined by the Supreme Court as being analogous to “that of a ward to his guardian.”358 The Supreme Court later described the federal Indian trust responsibility as legally obliging the federal government as being “charged . . . with moral obligations of the highest responsibility and

351. Duroville’s population includes a sizeable percentage of Purepechans, an indigenous group that is not a federally recognized tribe. See Kelly, *supra* note 157.


353. *Id.* at 902.

354. *Id.* at 902–03.


356. See Porter, *supra* note 51, at 950–51 (noting that the federal government has asserted the trust relationship to justify “interfer[ing] with internal tribal affairs such as land allotment, native religious practices, and the ‘approval’ of tribal laws, because the federal government ‘knows best’”).

357. See U.S. CONST. art. I, § 8, cl. 3 (granting Congress the power “to regulate Commerce with foreign nations, and among the several States, and with the Indian tribes”); U.S. CONST. art. II, § 2, cl. 2 (granting the President “Power by and with the Advice and Consent of the Senate, to make Treaties”). Taken together, these provisions support the notion that the federal government has a role as a trustee. CANBY, *supra* note 51, at 36.

358. Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831). The sentences preceding this description read: “[The tribes] occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases—meanwhile they are in a state of pupilage.” *Id.*
trust” towards Native American tribes, which it described as “domestic dependent nations.” While the federal government has breached this trust relationship “innumerable times,” the basic obligation of protecting the tribes’ unique interests still survives as a central feature of Indian jurisprudence. This remains true in Duro II, where the court premised its decision to appoint a receiver on the acknowledgment that “[t]he Supreme Court has consistently recognized the undisputed existence of a general trust relationship between the United States and the Native American people” and that this trust relationship has “long dominated the Government’s dealings with Native Americans.”

In Duro II, before detailing the ways in which the BIA violated its fiduciary relationship, the court explicitly stated that “[t]o be clear, the BIA owes a fiduciary obligation to Harvey Duro, Sr.; conversely, Harvey Duro, Sr. does not owe a fiduciary obligation to the BIA.” To begin, the court found that the BIA’s “initial response of ‘good luck’” to Mr. Duro’s first inquiry into obtaining a lawful lease, its “selective prosecution” of Duroville, its “neglect [of] the park for ‘literally years at a time,’” and its “attitude [towards Mr. Duro] that borders on an adverse predisposition if not an outright animus,” demonstrated “that the BIA actually attempted to obstruct Mr. Duro’s efforts to commercially develop his allotment.” The court further found that the BIA’s fiduciary obligation to Mr. Duro would have required it to make “a good faith effort to help him commercially utilize his allotment.” Although Mr. Duro did not bring a claim that the BIA had breached its fiduciary duty to him, the fact that the court noted that “the BIA’s conduct from the genesis of the Park is certainly one factor that the Court will consider in determining the equitable relief to be afforded to the government” strongly indicates that it views this breach as significant.

360. Cherokee Nation, 30 U.S. at 17. This language demonstrates a “self-interested determination [on the part of the federal government] that the Indians were a subservient people dependent on the United States [who were] uncivilized heathens” unable to “appeal to an American court of justice for an assertion of right or a redress of wrong.” Porter, supra note 51, at 917.
361. See also DELORIA, supra note 350, at 37 (“The United States pledged over and over again that it would guarantee to the tribes the peaceful enjoyment of their lands. . . . [T]he tribes were [eventually] shocked into awareness that the United States had silently taken absolute power over their lands and lives.”).
364. Id.
365. Id.
366. Id.
367. Id. at 943. As of March 2013, it appears that the BIA may finally be taking steps towards fulfilling its fiduciary duties to Mr. Duro. Per the directions of Magistrate Judge David Bristow, Mr. Duro and his attorneys are scheduled to meet with the BIA to “negotiate a lease allowing him to conduct some sort of enterprise on the land.” Blake Herzog, Tribal Owner Mulls “Green” Housing for Notorious Duroville Site, THE DESERT SUN, Mar. 6, 2013.
368. It is worth noting that it was the USAO who first invoked the equitable powers of the court, not the Interveners. Here, the court alludes to the equitable maxim that “one who comes into
Guadalupe T. Luna, who has written extensively on agricultural law and policy, expands upon the BIA’s breach to the Torres Martinez, contending that “[t]he BIA’s failure to act as required under federal law to protect Indigenous people demonstrates how the federal responsibility to ‘protect’ the [Torres Martinez] yielded to the labor needs of the agricultural sector.”369 She added that the United States food production system generally (agricultural laws that favor growers and producers without providing adequate protection for farm workers) intruded on the Torres Martinez’s ability and right to manage their land.370 Essentially, the “complex and intrusive food law constructions” that depend on the labor of a large, low-wage workforce, in conjunction with the state and county authorities’ neglect of Duroville’s residents, “perpetuate the colonization” of the Torres Martinez by creating conditions that “allowed the region’s growers and producers to benefit from the workers’ labor at the expense of the [Torres Martinez].”371

Additionally, the welfare of Duroville’s thousands-strong population was of great concern to the court. The residents’ testimony played a clear role in the court’s decision to exercise its equitable powers to appoint a receiver, given the language of the opinion that bespoke a deep respect for Duroville’s residents and the value of the community they had built. It also evidenced an awareness of the catastrophic consequences of an immediate forced closure. Receivership has been established as an appropriate remedy to protect the constitutional rights of individuals who lack the capacity to protect themselves,372 including schoolchildren373 and prisoners.374 However, there is no constitutionally recognized right to housing,375 and the state and local statutory provisions that would otherwise address safety, sanitary, and habitability concerns do not apply on Indian land.376 Thus, the court could not find that an explicit, legally recognized right of the residents had been violated. Instead, the court took a

equity must come with clean hands.” Furthermore, Mr. Duro, in 2007, filed a suit against the BIA superintendent that accused the BIA of defamation and of violating Mr. Duro’s constitutional rights. A federal magistrate judge later dismissed this suit. Duro v. Fletcher, No. EDCV 07-01125 CJC (SS) (C.D. Cal. Oct. 29, 2010) (order dismissing complaint with leave to amend).

Furthermore, Ms. Spencer, one of the attorneys for the Interveners, stated that she invoked the old equitable maxims during her closing argument at the bench trial. Interview with Chandra Gehri Spencer, supra note 29. She indicated that the maxim, “he who comes to equity must come with clean hands,” was particularly influential. This maxim essentially connotes the idea “that a person who has acted wrongly” cannot then bring a claim to the court. See REED, supra note 289, at 7.

369. Luna, supra note 50, at 439.
370. Id.
371. Id.
372. “A federal remedial power may be exercised ‘only on the basis of a constitutional violation’ and ‘(a)s with any equity case, the nature of the violation determines the scope of the remedy.” Miliken v. Bradley, 418 U.S. 717, 738 (quoting Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 16 (1971)).
375. “[T]he Constitution does not provide judicial remedies for every social and economic ill. We are unable to perceive in that document any constitutional guarantee of access to dwellings of a particular quality . . . . Absent constitutional mandate, the assurance of adequate housing . . . [is a] legislative, not judicial function.” Lindsey v. Normet, 405 U.S. 56, 74 (1972).
376. See infra Part I.A.
more indirect approach to protecting the rights of Duroville’s residents by declaring that an immediate closure of Duroville “would create an unacceptable humanitarian crisis for thousands of people.”377 In light of several instances of forced relocation that Native American tribes endured at the hands of the federal government in the past,378 the court’s imposition of receivership to prevent a forced relocation of thousands of individuals is especially appropriate and has a redemptive quality.

The court also considered the misconduct of Mr. Duro and the ways in which the residents suffered harm at his hands and at the hands of Duroville’s management. While Mr. Duro may have opened Duroville with the intention of providing much-needed affordable housing,379 the court found that Mr. Duro’s creation and operation of Duroville “was both knowing and willful” and that he “purposely neglected his legal obligations.”380 The court also found that Mr. Duro’s “continued involvement [in the litigation] was not only ineffective but was actually counterproductive.”381 Mr. Duro’s status as the allottee of the land, which the court recognized, did not preclude the court from acknowledging his misconduct, and the degree of his misconduct, which was severe enough for the court to remove his control over his allotted land.382

The circumstances surrounding Duroville and other trailer parks in Indian country thus demonstrate that tribal sovereignty is not the only important consideration that a court must weigh as it determines an appropriate remedy. As observed by Mary Christina Wood, a scholar of Indian and environmental law, “it is almost inevitable that courts facing off-reservation conflicts will, at some level, balance the gravity of the harm to the tribe on one hand, and the magnitude of the non-Indian interests at stake on the other.”383 Wood further notes that “[w]here mutual accommodation is impossible, courts may prioritize the native interest by requiring that the governmental objective be compelling and of national scope to justify its detrimental action.”384 As detailed above, the circumstances in Duroville were indeed compelling. The Duro court discussed the federal government’s trust responsibility to Native Americans,385 which it weighed along with the health and safety concerns of the residents and Mr. Duro’s illegal conduct, before ultimately deciding to place Duroville in receivership. Furthermore, in recognition of the special trust relationship between the federal government and Native Americans—and specifically the fiduciary duties the BIA owes to Native Americans—the court ordered,

378. COHEN’S HANDBOOK OF FEDERAL INDIAN LAW, supra note 60, § 1.03[4][a] (describing the federal government’s policy of forcibly “removing Indians to lands in the West”).
379. See Kelly, supra note 21 (quoting Mr. Duro as saying, “I created something here but not with the intent of hurting anyone. Leave us alone and we will make improvements. It won’t look like Palm Springs, but it will be adequate.”).
381. Id. at 938.
382. See id. at 942.
384. Id. at 233.
“following a six-month cooling-off period,” that Mr. Duro and his attorneys meet with the BIA and the government’s attorneys “to explore future options related to Mr. Duro’s allotment.”386 Finally, although it had enjoined Mr. Duro from profiting from Duroville, the court ordered that Mr. Duro be paid $2,000 per month from the rent proceeds “in the interest of justice.”387 Here, the “interest of justice” most likely alluded to the BIA’s violation of its obligation to Mr. Duro. The court’s orders pertaining to Mr. Duro therefore demonstrate how it tried to respect tribal sovereignty and the trust relationships, despite removing Mr. Duro from control of his allotment.

Thus, the Duro receivership demonstrates that a federal court has both the legal authority and a compelling interest in implementing receiverships in trailer parks in Indian country. The logic of Duro can be extended to similarly situated communities. The experiences of Duroville’s residents perhaps echo those of other individuals residing in similarly situated parks, and the federal government owes a fiduciary duty to all federally recognized Native American tribes.

b. Administrative Burden

Receivership requires the court to maintain jurisdiction over the property in question in order for it to regularly “evaluate progress towards fulfilling the mandate, and to enter further orders as justice from time to time may require.”388 This continued retention of jurisdiction is unavoidably time consuming and costly:389 “[t]he demands that framing and administering a decree impose on a judge are immense,” as the temporal resources of a trial judge “are strained by an already overcrowded docket.”390 The burden on the court is undeniable—the Duroville receivership is essentially akin to a municipal bureaucracy.391 Mr. Flynn, the Duroville receiver, collected rents every month and turned them over to the court, which reviewed the rents collected and the expenses required and then disbursed the revenue accordingly.392 The Duroville receivership also entailed regular status conferences between Magistrate Judge David T. Bristow, Mr. Flynn, CRLA attorneys, local government officials, and USAO attorneys.393

Nevertheless, the burdens imposed on courts are ultimately outweighed by the gravity of harms that receivership in Indian country is intended to correct. For these parks, a receivership might be the most efficient way to translate the health, safety, and sanitation protections that exist at the state level to a

386. Id. at 948.
387. Id.
388. Johnson, supra note 298, at 1198 (citing Louisiana v. United States, 380 U.S. 145, 156 (1965)).
389. See id.
391. Interview with Thomas Flynn, supra note 4.
392. Id.
393. Id.
jurisdiction beyond state law’s reach.\(^{394}\) It is also worth noting that courts would not shoulder alone the burden of receivership. In Duroville, the implementation of receivership also enabled an outpouring of volunteer efforts that included medical check-ups for residents, assistance in removing debris, the spaying and neutering of feral dogs, and tutoring and educational services for children.\(^{395}\)

Duroville demonstrates that the benefits of receivership can outweigh its costs. However, not every trailer park is of the same size as Duroville, which was large enough to guarantee an adequate cash flow. A single receivership, because of the burdens that it imposes upon a court, may not be appropriate in every instance of poorly managed, substandard housing sites—especially smaller parks that would not generate enough money from rent to pay for the improvements.\(^{396}\) For these smaller parks, one possibility may be a “super-receivership” that would group together small parks into an entity whose rents, when pooled together, could be enough to finance the overhead and costs of receivership.\(^{397}\) Super-receiverships are yet to be tested in courts.\(^{398}\)

c. Legitimacy

The intrusive nature and coercive potential of receivership also call into question “both the competence and the propriety of judicial interference in the daily management of the affairs of private firms or public bodies.”\(^{399}\) It has even been argued that receivership amounts to dictatorship.\(^{400}\) However, this argument loses its force when placed against the backdrop of trailer parks in Indian country. Here, as is the case with school desegregation and prisoners’ rights, receivership is justified “by the failure of the political process, both local and national, to otherwise resolve issues of social injustice and political inequality.”\(^{401}\) And where these social and political problems “defy . . . resolution” “in the political arena by other branches of government[,] . . . the judiciary must bear a hand and accept its responsibility to assist in the solution.”\(^{402}\)

The Duro court was keenly aware of the separation of powers doctrine and its role in addressing the housing crisis in the Coachella Valley. This recognition is evident from the court’s exhortation to the Torres Martinez tribe, Riverside County, the offices of Senators Dianne Feinstein and Barbara Boxer, the office of then-governor Arnold Schwarzenegger, the United States
Attorney, “and all other governmental and non-governmental organizations” to work toward “develop[ing] safe, healthy, affordable and available housing” for individuals residing in substandard conditions in mobile home parks.403 In calling on various branches of the executive and the legislature and professing a unified “commitment to addressing all the related issues raised by the case,” the court raised the need for a large-scale political solution that was beyond its purview.404 This reference to the system of checks and balances that forms the bedrock of American governance suggests that factors contributing to the proliferation of substandard trailer parks on Indian land can ultimately be traced to action and inaction by both the Legislature and the Executive.405

Eventually, government officials at all levels—including Senator Feinstein, Riverside County, and the State of California—heeded the court’s call to provide safe housing alternatives for Duroville’s residents. The chain of events following the 2009 order demonstrates that the court, in exercising the upper limits of its equitable power, spurred the other branches of government into meeting the needs of Duroville’s residents. The story of Duroville illustrates what Barry Friedman, a constitutional law scholar, has deemed “cooperation of powers.”406 According to Friedman, “[e]ach branch or governmental unit has a special role to play, but goals cannot be advanced unless the branches work together to some extent.”407 Friedman noted that while “courts may play an important role by defining rights and issuing decrees . . . they cannot open the door alone. Ultimately, the courts have neither the power of the sword nor the power of the purse but must depend upon—and enlist—the assistance of other branches.”408 Seen from this perspective, the Duroville receivership was a way for the court to draw the attention of government officials to an urgent issue that it was imperative upon them to address.

It is entirely possible that seeking receiverships in other trailer parks on Indian land could have a similar effect and that doing so would continue to signal to legislators and government officials that further action is needed to solve the housing crisis in the Coachella Valley. Derrick Bell, a founder of Critical Race Theory who was at the forefront of school desegregation and no stranger to asking courts for equitable relief, observed that “[l]itigation can and should serve lawyers and clients as a community-organizing tool, an

404.  Id. at 946.
405.  The California Legislature has actually declared that “[t]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every Californian, including farmworkers, is a priority of the highest order.” CAL. GOV’T CODE § 65580(a) (West 2010) (emphasis added). Furthermore, the Legislature declared that “local and state governments have a responsibility to use the powers vested in them to facilitate the improvement and development of housing to make adequate provision for the housing needs of all economic segments of the community.” Id. § 65580(d) (emphasis added).
407.  Id.
408.  Id.
educational forum, a means of obtaining data, a method of exercising political leverage, and a rallying point for public support.” Indeed, the media attention that Duroville attracted, including outlets with a nationwide readership such as the Huffington Post, the Los Angeles Times, the Chicago Tribune, and the New York Times, can likely be attributed to the fact that Duroville was the subject of a federal lawsuit.

The three concerns discussed above caution against the unilateral prescription of receiverships on all trailer parks in Indian country. Nevertheless, receivership may still be appropriate in some very extreme circumstances, as was the case with Duroville.

3. A Means, Not an End

Receivership, by definition, is a remedy of circumscribed duration. This temporal quality should put to rest the key concerns levied against it. Receivership would undoubtedly intrude on tribal sovereignty—but only for a limited period. Receivership does impose an administrative burden on the court—but this burden is not everlasting. Receivership further runs the risk of seeming overly political—but its intrusion on the political branches comes to an end when those branches fulfill their mandates. In sum, receivership is a means to an end—but a powerful means to very worthy ends.

While a detailed and lengthy discussion of these ends is beyond the scope of this Comment, it is fitting to end with a glimpse of potential avenues of political action that could alleviate the conditions that created Duroville and other trailer parks in Indian country. One priority should be for all levels of government to provide farm workers with safe, decent housing and to ensure the enforcement of habitability laws. To accomplish this, Guadalupe T. Luna suggests that federal subsidies to agricultural producers should be contingent upon producers providing farm workers with safe and habitable housing. She further recommends “increasing the regulatory inspection process, [which] could provide incentives to prohibit the desperate housing situations that led to Duroville.” Another option is for advocates to secure funding for farm worker housing through HUD’s Rural Housing and Economic Development Program, which “provides for capacity building at the state and local level for

411. The Los Angeles Times has extensively covered the Duroville case. See, e.g., Kelly, supra note 21; Kelly, supra note 153.
414. Interview with Megan Beaman, supra note 44.
416. Luna, supra note 50, at 445–46.
417. Id. at 446.
rural housing and economic development and to support innovative housing
and economic development activities in rural areas. 418 This program appears
tailor-made for the issues facing the Coachella Valley, as well as for those who
are eligible to apply for funding, including non-profit agencies, federally
recognized Indian tribes, and state housing finance agencies. 419 Another
promising endeavor by the federal government is the establishment of the
Colonias/Farmworker Legal Working Group, an inter-agency initiative seeking
to “improve the housing and communities of migrant/farmworkers.” 420 The
Working Group aims to “connect federal, state, and local government agencies
and community organizations, such as legal aid groups, to discuss and solve
legal problems that impact colonias and migrant farmworker communities.” 421
That the federal government has recognized the urgent issues facing migrant
farm workers is encouraging and hopefully bodes well for future legislative and
legal action that will address the root causes of the Coachella Valley housing
crisis.

CONCLUSION

“There are many more that need to be litigated, some on Native
American land and some not on Native American land . . . It’s
shameful that such conditions exist in this nation, especially when
they’re in spitting distance of some of our nation’s wealthiest
citizens.”

- Magistrate Judge David T. Bristow 422

Theoretically, Duroville could have been a win-win situation for both
impoverished farmworkers in need of shelter and the individual who could
have provided them homes. Although the reality of the situation was far from
this ideal scenario, there was eventually a happy ending for many of
Duroville’s residents. Their journey began and continues to be about a
community that simply wants a place to call home. And although their struggle
to find safe homes has pitted them against larger forces of racial discrimination,
poverty, and political marginalization, Duroville’s residents have not been
without allies. The residents’ advocates, including CRLA, Ms. Spencer, and
Mr. Flynn, have worked tirelessly to blaze new legal precedent on the question
of how far a court can go in its efforts to remedy conditions of extreme poverty
in a slum located on Indian land. Riverside County, which initially had played a
role in perpetuating the housing crisis, later emerged as an ally of Duroville’s
residents, as it supported Mr. Flynn’s appointment as receiver and assisted in

418. Rural Housing and Economic Development (RHED), U.S. DEP’T OF HOUS. & URB.
ment/programs/rhed (last visited July 14, 2013). The USDA gave a $6.3 million in grant money to
ensure safe drinking water and sanitary sewages service for Mountain View Estates. Gruszecki, supra
note 40.

419. See Rural Housing and Economic Development, supra note 418.

420. Colonias/Farmworker Legal Working Group, U.S. DEP’T OF HOUS. & URB. DEV.,

421. Id.

422. Herzog, supra note 264.
relocating residents to Mountain View Estates. The court—first through Judge Larson and now through Judge Bristow—has remained focused on the welfare of Duroville’s residents, even while their relocation suffered a number of setbacks.

This Comment has argued that for Duroville, the appointment of a receiver to oversee habitability improvements and assist the residents in relocation efforts was a necessary and appropriate use of a federal court’s equitable powers. While it does assert that receivership can be a powerful tool for alleviating egregious habitability concerns amidst the jurisdictional confusion in substandard housing communities on Indian land, this Comment ultimately does not presume to prescribe receivership as a solution for the housing crisis in the Coachella Valley. Rather, it seeks to spark a dialogue about how advocates can work within a flawed system to remedy complex and deep-rooted injustices in Indian country and what the proper role of federal courts should be in addressing a confluence of failed social policies. This Comment’s contribution, to that end, is situating the story of Duroville in this dialogue. By telling Duroville’s story from beginning to end, this Comment describes how various historical, socioeconomic and political factors created a housing crisis in the Coachella Valley, and how the initial prosecutorial attitude of the county and the USAO to the crisis failed to address its root causes. This approach contrasts greatly with the extraordinary manner in which the Duro II court endeavored to protect the welfare of Duroville’s residents while also seeking to uphold the federal government’s trust responsibility to Indian tribes and individuals. Duro II is an important milestone in Indian law jurisprudence that scholars and advocates should take note of and learn from, and also marks one step closer to achieving safe, healthy, and affordable housing for everyone.