

3/1983

Wild Horse & Burro Report



U.S. Department of the Interior

Bureau of Land Management

March 1983

Final Adoption Fee Regulations Lower Wild Horse Fee

Final regulations establishing adoption fees for wild horses and burros were published in the Federal Register on March 4, 1983, and became effective immediately. The rulemaking lowered the wild horse fee to \$125 per horse, maintained the \$75 burro fee, and established a \$25 nonrefundable advance payment to be submitted with the adoption application. The new regulations also specified that no adoption fee is charged for an unweaned foal under the age of 6 months accompanying its mare or jenny, nor for an orphan foal requiring intensive care to survive.

The Bureau of Land Management (BLM) reduced the adoption fee for wild horses in response to public comment on the proposed regulations, an analysis of program costs in Fiscal Year 1982, and its desire to place as many healthy excess animals as possible in private maintenance in a timely manner. The Forest Service also reduced their adoption fee for wild horses to \$125 per animal, plus transportation costs if applicable.

The BLM anticipates an increase in the number of wild horses adopted under the \$125 fee; and a corresponding reduction in the cost of maintaining animals awaiting adoption. The analysis of program costs indicated that although revenues increased substantially under the \$200 per horse fee, costs also increased because the BLM was maintaining animals in adoption centers for longer periods of time.

The adoption fee for wild burros was retained at the \$75 level since it had little effect on the number of burros adopted in 1982. To lower this fee would only decrease revenues collected and reduce funds available for on-the-ground management.

If the wild horse or burro is transported from the facility where it is prepared for adoption to another adoption center, transportation costs are added to the fee. Adoption fees, including transportation costs, at BLM's existing adoption centers are listed on Attachment 1.

All adopters who paid a \$200 per horse adoption fee (excluding transportation costs) since January 1, 1982, will receive a \$75 refund from the BLM. The refund will be sent automatically; however, if eligible adopters do not receive their check within 90 days, they should contact the BLM office servicing their location to inquire about their refund.

(continued on page 2)

Final Adoption Fee Regulations, continued from page 1

The advance payment of \$25 per application will be credited to the adoption fee when the applicant picks up his/her wild horse(s) or burro(s). Requiring submission of a portion of the adoption fee in advance should create a more reliable applicant list. In the past year, less than one in ten adoption applicants actually adopted a wild horse or burro. Costs of maintaining the adoption application list, screening applicants, and notifying them of the availability of animals should be reduced significantly if only applications from individuals seriously interested in adopting are recorded.

To preclude the possibility that the cost of processing the advance payments may exceed their value and increase program costs, guaranteed remittance (e.g., cashier's check, money order, etc.) is required. The BLM's costs for handling such payments are nominal.

The BLM has contacted each applicant currently on file to explain the new requirements and request submission of the advance payment within 30 days. Only applications from individuals submitting the advance payment will be maintained on file after the 30-day period ends.

National Academy of Sciences
Report on Wild and Free-Roaming Horses and Burros
Submitted to Congress

The National Academy of Sciences (NAS) final report on Wild and Free-Roaming Horses and Burros has been submitted to Congress by the Secretaries of Agriculture and the Interior, in accordance with requirements in Public Law 92-195, as amended. The report summarizes the findings and management implications of research projects studying wild horse and burro census methods and survival rates, food consumption rates and nutrition, demography, habitat preference and use, and vegetation response to grazing. An analysis of the report by BLM and the Forest Service is attached (see Attachment 2).

The NAS report is available for distribution through the National Technical Information Service (NTIS) at the following address:

U.S. Department of Commerce
National Technical Information Service
5285 Port Royal Road
Springfield, Virginia 22161

The report may also be ordered by telephone (703/487-4650), with the cost being charged to a VISA or MasterCard account.

When placing an order, the following information must be included:

NTIS Accession Number: PB83-153189
Report Number: BLM-AA-TE-82-001-4700
Title: Wild and Free-Roaming Horses and Burros
Quantity Desired: Paper copy (\$11.50 each) _____
Microfiche (\$4.50 each) _____

Legislation to Replace Public Law 92-195, as amended
Introduced in 98th Congress

On February 3, 1983, Senator James McClure of Idaho introduced Senate bill 457 to require the protection, management, and control of wild free-roaming horses and burros on public lands. A similar bill, H.R. 1675, was introduced by Representative Barbara Vucanovich of Nevada on February 24. If enacted, the legislation would supersede Public Law 92-195, as amended. The Congressional Record transcript of Senator McClure's introductory remarks and S. 457 is found in Attachment 3.

The changes proposed in the bills are similar to those contained in S. 2183, introduced by Senator McClure in the 97th Congress on March 9, 1982. Significant changes from the current law would:

- Require regulatory establishment of adoption fees that both discourage adoption for commercial gain and allow a viable adoption program;
- Authorize the sale by public auction, in addition to the presently required destruction, of excess animals for which no adoption demand by qualified individuals exists;
- Provide revenue for wild horse and burro management and reduce Adopt-A-Horse Program subsidies by returning proceeds from the sale of unadopted excess animals to the program;
- Eliminate paperwork required of qualified adopters to obtain title to their adopted animal(s);
- Provide for increased public participation in the development of regulations and policies concerning wild horse and burro management by reestablishing an advisory board;
- Deter individuals from illegal capture, sale, inhumane treatment or care, and other violations of the regulations by increasing the penalty for conviction of a second offense;
- Authorize humane and supervised use of helicopters and motor vehicles to remove horses and burros from lands under the administration of other Federal Agencies; and
- Improve the cost-effectiveness of the program by eliminating unnecessary program requirements such as public hearings on the use of helicopters (public notification would be required) and the biennial report to Congress (information would be transmitted through existing annual Agency reports); and by reducing compliance and titling costs.

The Senate bill has been referred for consideration to the Committee on Energy and Natural Resources; H.R. 1675 is being studied by the Committees on Interior and Insular Affairs and Merchant Marine and Fisheries. A public field hearing on the legislation was sponsored by Senator Malcolm Wallop in Rock Springs, Wyoming, on March 19, 1983.

Fiscal Year 1982 Program Accomplishments
(October 1, 1981, through September 30, 1982)

Funding

Fiscal Year 1982 expenditures for BLM's wild horse and burro program totaled \$6,896,000. Approximately 62 percent of these funds were expended in the Adopt-A-Horse Program: 58 percent for animal preparation and adoption application processing; 3 percent for compliance activities; and 1 percent for title issuance. The remaining 38 percent of the funding supported wild horse and burro management programs: 20 percent for on-the-ground management activities and 18 percent for removal of excess animals. A chart comparing Fiscal Year 1980 through 1982 wild horse and burro program cost estimates is found on Attachment 4.

Management

Eleven herd management area plans were developed in Fiscal Year 1982 by six States. These plans outline BLM's management objectives and methods for a particular wild horse or burro herd and its habitat.

Habitat and animals on over 16 million acres of public lands were inventoried. Wild horse and burro habitat and population monitoring and studies were conducted in 153 herd management areas to assess progress in meeting management objectives and to update habitat and animal inventory data.

Removal of Excess Animals

Almost 9,400 excess wild horses and burros were removed from public lands during Fiscal Year 1982. An additional 325 privately claimed horses were captured in Wyoming. Most of the 7,100 wild horses were gathered in Nevada and Wyoming, followed by Oregon, California, Idaho, Montana, Utah, and New Mexico. The 2,300 wild burros were captured in California and Arizona.

Disposition of Excess Animals

Approximately 11 percent of the excess animals removed from public lands died or were destroyed as old, sick, or lame animals. Sixteen horses and 36 burros were relocated or released on the public lands, frequently to carry out an identified management objective. Before January 1982, when BLM's Director established a moratorium on the destruction of healthy excess animals, 12 horses were destroyed as animals for which no adoption demand by qualified individuals existed.

More than 7,250 excess animals (about 5,470 wild horses and 1,780 wild burros) were placed in private maintenance through the Adopt-A-Horse Program. Since the program began, more than 42,300 wild horses and burros have been adopted.

The wild horse and burro adoption fee was increased on January 2, 1982, to \$200 per horse or \$75 per burro, plus transportation costs if applicable. More than 4,200 wild horses and burros were adopted in Fiscal Year 1982 under these fees.

A new adoption center opened in Lewisberry, Pennsylvania, in July, making wild horses and burros more readily accessible to residents of the north-eastern and mid-Atlantic States. Approximately 220 animals had been adopted through the center by the end of the fiscal year.

More than 6,400 certificates of title were issued to adopters for animals they had maintained for more than 1 year. Since the Wild Free-Roaming Horse and Burro Act was amended in 1978 to allow transfer of title, over 13,200 certificates of title have been issued.

Compliance/Enforcement

Because of the costs involved in making on-the-ground inspections, compliance checks were limited mostly to those cases where BLM received a complaint. About 1,200 wild horses and burros and their facilities were inspected during Fiscal Year 1982. Most of the complaints involved malnourished animals or inhumane treatment, and most problems were corrected by the adopter after the initial inspection.

The U.S. District Court in Ann Arbor, Michigan, sentenced an Ohio adopter to 1 year of imprisonment (suspended), 2 years of supervised probation, a \$3,000 fine, and 200 hours of community service work after the man pled guilty to three counts of violating the Wild Free-Roaming Horse and Burro Act. A joint investigation by BLM special agents and the animal control officer of the Jackson County, Michigan, Sheriff's Department led to a six-count indictment for inhumane treatment, abandonment, and maliciously causing the death of two of his four adopted horses.

Litigation

Four new lawsuits concerning BLM's wild horse and burro program were filed during Fiscal Year 1982. Two cases contested aspects of the disposal of excess animals removed from public lands; the other two cases sought removal of wild horses and burros from private and leased lands.

Outlook for the Future:
Program Projections for Fiscal Year 1983

Congress has appropriated the Bureau of Land Management \$4,812,000 to protect, manage, and control wild horses and burros on the public lands in Fiscal Year 1983. Wild horse and burro program priorities maintain emphasis on the cost-effective removal and adoption of excess animals. Inventories, studies, activity planning, and monitoring efforts will continue in order to enhance wild horse and burro management and to identify overpopulated areas. Approximately 9,100 excess wild horses and burros will be removed from public lands to protect their habitat from overuse.

The BLM will strive to find acceptable foster homes for all healthy captured animals. Contracts for three adoption centers (in Spanaway, Washington; Valley Mills, Texas; and Cross Plains, Tennessee) expire during Fiscal Year 1983. The BLM is evaluating the location of adoption demand to identify areas with support for future adoption centers. Greater emphasis will be placed on temporary "satellite" adoption centers, which operate in one location for only 3 to 5 days.

Litigation Update

Since the last issue of the Wild Horse and Burro Report (August 1982), one new lawsuit has been filed and four cases have been resolved. Additional action occurred in a sixth case.

New Litigation

American Horse Protection Association, Inc. v. Watt, et al.;
Civil Action No. 82-3477 (D.D.C., filed December 1982)

Issue: Plaintiff seeks to enjoin defendants from authorizing the adoption of 25 or more wild horses or burros by one applicant (referred to as large-scale adoptions) on the ground that such adoptions subject the animals to an abnormally and unreasonably high risk of illegal sale or inhumane abuse and neglect. Plaintiff argues that the BLM, in authorizing large-scale adoptions, is violating its duties to manage and protect the animals under the Wild Free-Roaming Horse and Burro Act. Plaintiff also seeks an order in the nature of mandamus to compel defendants to perform adequate investigations of all previously authorized large-scale adoptions to determine whether the adopters acquired the animals in good faith, and have since provided the animals with humane care and treatment. Furthermore, plaintiff seeks to enjoin defendants from transferring full title to any wild horses or burros that were part of large-scale adoptions until investigations of the adopters are completed. Plaintiff argues that defendants' failure to conduct adequate investigations prior to authorizing large-scale adoptions and to conduct post-adoption inspection and monitoring, constituted arbitrary, capricious action, and an abuse of discretion, in violation of the Wild Free-Roaming Horse and Burro Act.

Status: Defendants filed an answer to the complaint on February 7, 1983, alleging that the complaint fails to state a claim upon which relief can be granted.

Resolved Litigation

American Horse Protection Association, Inc. v. Kleppe; Civil No. 76-1455 (D.D.C., filed 1976)

Status: On December 10, 1982, the court of appeals held that in light of the 1978 amendments to the Wild Free-Roaming Horse and Burro Act, the BLM can no longer be required to undertake the prolonged process of giving full and careful consideration to all alternatives to removing wild horses from the public lands where there is an overpopulation of the animals. Nonetheless, the court of appeals did not dissolve the injunction. The case was remanded to the district court to determine if the BLM's plan to reduce the size of the herd in the Challis Planning Unit was rationally grounded.

The parties stipulated to dismissal of the lawsuit. The BLM is now authorized over the next 2 1/2 years to manage the size of the wild horse herd from 185 to 340 head. After July 1, 1986, the management level is discretionary with the BLM.

State of Nevada, ex. rel. Nevada State Board of Wildlife Commissioners and Nevada State Department of Wildlife v. Andrus; Civil No. R-79-185-BRT (D. Nev., filed 1979)

Status: Pursuant to stipulation of both parties, a final judgment has been entered in the case. The stipulation established guidelines for reductions of wild horse herds in Nevada, and provided that such reductions would be planned by the defendants in consultation with the plaintiffs.

T Quarter Circle Ranches, Inc. v. Watt; Civil No. R-81-110-ECR (D. Nev., filed 1981)

Status: Under terms of the stipulation for dismissal of the case, BLM agreed to remove free-roaming wild horses located on checkerboard lands pursuant to a schedule, with total removal of the animals to be completed by December 31, 1987.

American Horse Protection Association, Inc., et al. v. Watt; Civil No. 82-0559 (D.D.C., filed 1982)

Status: On March 4, 1983, the BLM announced its final rulemaking establishing fees of \$125 for each wild horse and \$75 for each burro adopted by a qualified individual. One week later, pursuant to stipulation of counsel, the district court dismissed the case.

Pending Litigation

Bright-Holland Company v. Watt; Civil No. R-82-153-BRT (D. Nev., filed 1982)

Status: On January 8, 1983, plaintiffs filed a motion for summary judgment. Plaintiffs argue that there is no genuine issue of material fact and they are entitled to judgment as a matter of law since (1) defendants are under a mandatory duty to arrange for the removal of wild horses on plaintiffs' private property, and (2) the diminution in value to their

property as a result of the forage consumed by the wild horses is compensable under the Fifth Amendment. On January 24, 1983, defendants filed a motion in opposition to summary judgment, arguing in part that a genuine issue of material fact exists as to the presence of wild horses on plaintiffs' property. Defendants also filed a motion to dismiss the compensation claim since the district court lacks subject matter jurisdiction over claims in excess of \$10,000 founded on a constitutional taking. Both parties have filed reply memorandums. Pursuant to stipulation, no oral argument is scheduled and the parties are awaiting the district court's decision on the pending motions.

No action occurred in five other cases still pending on wild horse and burro management.

Charges Filed Against
East Texas Rancher

Charges of abandonment and cruelty and inhumane treatment of three adopted wild horses have been filed by the U.S. Attorney in Tyler, Texas, against Joe Corbett of Pittsburg, Texas. Mr. Corbett will appear before a magistrate in Beaumont, Texas, who will set the bond and a date for the preliminary hearing. Maximum penalties for conviction under provisions of the Wild Free-Roaming Horse and Burro Act would be 6 years imprisonment or a \$12,000 fine, or both.

A hunter discovered several carcasses and malnourished horses in a pasture leased by Mr. Corbett last November. He reported the incident to officials of the Titus County Humane Society, who in turn contacted BLM when the U.S. Government freeze mark identifications were discovered.

The surviving horses were transported to the Black Beauty Ranch near Tyler and placed under veterinary care. The 123 animals that regained their health have been reassigned to new adopters.

Estimated Costs at BLM
Wild Horse and Burro Adoption Centers

The standard adoption fee is \$125 per horse or \$75 per burro. The following charges include transportation costs, where applicable. The \$25 advance payment is credited to the fee at the time of adoption.

<u>Pickup Point</u>	<u>Horse</u>	<u>Burro</u>
Arizona		
Kingman	NA*	\$ 75
California		
Susanville	\$125	\$ 75**
Redlands	NA	\$ 75
Colorado		
Denver	\$145	\$100
Idaho		
Homedale, Salmon	\$125	NA
Montana		
Pryor Mountains	\$125	NA
Nebraska		
Valley	\$165	\$120
Nevada		
Palomino Valley	\$125	\$ 75**
Oregon		
Burns, Vale	\$125	NA
Eugene	\$145	\$100
Pennsylvania		
Lewisberry	\$215	\$140
Tennessee		
Cross Plains	\$210	\$130
Texas		
Valley Mills	\$195	\$115
Utah		
Delta, Faust	\$125	NA
Wyoming		
Rock Springs	\$125	NA

*NA--None available

**Burros available infrequently

THE NATIONAL ACADEMY OF SCIENCES REPORT ON WILD HORSES AND BURROS:

ANALYSIS BY THE BUREAU OF LAND MANAGEMENT

AND THE FOREST SERVICE

Purpose of Research Study

When the Public Rangelands Improvement Act (Public Law 95-514) was passed in 1978, it amended the Wild Free-Roaming Horse and Burro Act of 1971 (Public Law 92-195, as amended), to read:

"For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended by the National Academy of Sciences for having scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a research design panel to be appointed by the President of the National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the Senate and House of Representatives on or before January 1, 1983."

Description of Study

The Bureau of Land Management (BLM) and the Forest Service (FS) contracted the National Academy of Sciences (NAS) to design and oversee the research required by the amendment. The 3-year contract with NAS called for the design of projects which would:

- develop information on the biology of wild horses and burros;
- identify principles and procedures for inventorying and managing wild horses and burros;
- develop information concerning the availability and use of forage and water resources; dietary and habitat overlaps with wildlife and livestock; and other factors relating to the number of wild horses and burros that a range can sustain; and
- provide information to assist the Agencies in setting appropriate management levels and criteria for determining what constitutes excess animals.

To direct the research effort, NAS established in June 1979 a 14-member committee chaired by Dr. Frederic H. Wagner of Utah State University. The committee recommended a three-phase study effort that involved review of existing knowledge and recommendation of further studies, monitoring the studies undertaken by the Agencies and identifying any additional studies needed, and finally, recommending wild horse and burro management strategies based upon the findings.

Prior to 1978, six separate and unrelated research efforts on wild horses and burros had been initiated by BLM and FS. Some of these had been partially completed by June 1979 when the NAS committee was impaneled, and the findings to that date were subsequently incorporated into the committee's Phase I report, the executive summary of which is included as an appendix to the final report (pages 69-80).

The committee completed the first phase in December 1980 and recommended 18 research projects, some of which require 7 to 10 years of study for valid results. The NAS committee estimated that \$1.5 million annually would be required to fund all of the recommended projects. In addition, the Agencies had only 2 years before a final report was due to Congress. Recognizing these constraints, the NAS committee identified the following projects as having higher priority for immediate study:

"Census Methods for Wild Horses and Burros," later modified to add "Adult Female and Foal Survival Rates." A contract for \$353,000 was awarded by BLM to the University of Minnesota.

"Food Consumption Rates and Nutrition of Horses and Cattle." A contract for \$184,200 was awarded by BLM to Colorado State University.

"An Initial Study of Wild Horse and Burro Demography: Determination of Pregnancy and Lactation Rates in Various Herds." A contract for \$40,000 was awarded by BLM to Utah State University.

"Wild Horse Habitat Preference and Use; Vegetation Response to Grazing; and Diet and Nutritional Status of Horses and Cattle Grazing Desert Ranges in Western Wyoming." A contract for \$690,000 was awarded by BLM to the University of Wyoming.

In total, the Agencies will have spent on the NAS study approximately \$1,617,200, of which \$62,500 was provided by FS and the balance by BLM. Included in the total is \$350,000 for the contract with NAS. Prior wild horse and burro research expenditures by the Agencies have amounted to \$476,186.

Highlights of Major Findings and Recommendations

Final reports for all of the projects have not yet been received by the Agencies; however, the results available to the committee by September 1982 have been incorporated into the NAS report. The report's Executive Summary (ES, pages 1-5) highlights the major findings and recommendations made. Most apply primarily to wild horses because the NAS-designed projects undertaken focused on horses. A limited analysis of burro census techniques was made and a review of literature of previous research on burros is presented.

Certain findings corroborate the Agencies' current approaches to protection, management, and control of wild horse and burro populations. For example, the census project revealed that the Agencies' herd population estimates, especially in earlier years (1971-72), have been conservative due to the limited accuracy of the census techniques available (ES point 22). The report also concluded that herds of horses and burros, left alone, would not self-limit before causing significant damage to their habitat (ES point 5).

Left unresolved, however, is an issue that continues to limit the effectiveness of the Agencies' management strategies - the rate of population increase for wild horses and burros (ES point 4). The report concludes that the rate is between 3 and 20 percent annually (page 44), but suggests that variability in the increase rate occurs between herd areas, from year to year, for different herd densities, and with forage condition (page 14). To be more accurate in estimating rates of increase, site-specific studies are recommended.

Further study also was deemed necessary on the issue of habitat preference and competition with other animals. The projects that focused on whether competition occurs between horses and burros and wildlife and domestic livestock were limited to studies of horses and livestock in sagebrush/grass habitats. Analyses of cattle and wild horse diets and habitat use did produce some results (ES points 11-14). The report concluded that horses have less efficient digestive systems and appear to consume more forage than cattle to obtain comparable nutritional value. Dietary overlap may occur seasonally, especially on spring-summer ranges, in areas with limited water, or in areas with limited opportunities for spatial separation (page 30).

Turning to the question of desirable population levels, the committee concluded that the term "excess" has both biological and social components. The report provided the Agencies with general biological criteria for determining whether a herd area has excess animals. It also recognized that public priorities and local needs must enter into an Agency's decision on which species of animals should be limited or removed from an area to maintain an ecological balance (ES points 6 and 7).

The study examined alternative methods of population control ranging from nonselective live capture and removal (the method currently used by the Agencies) to sterilization, fertility control, and selective removal of female animals (ES points 25-30). It concluded that live capture appears to be the most feasible method of population control at present, but that fertility control of female horses has potential if effective dosages and methods of administering them can be identified. Further research in this area is recommended, but given a low priority (page 10).

Concerning on-the-ground management, the report outlined the information base recommended for effective planning (ES point 8). It concluded that some herds can be monitored without an annual census, and that use of a helicopter does not necessarily increase accuracy compared to use of fixed-wing aircraft (ES point 24; page 41).

Finally, the report recommended that the Agencies complete the balance of the 18 studies and ranked them by priority (page 10). An additional study on age determination methodology was identified, but not ranked.

Implications for Future Management

While conclusions were limited in scope, the results of certain projects were recognized as having implications for current management activities.

A census manual will result from one project and should assist the Agencies in improving the precision and accuracy of their wild horse and burro population estimates. More cost-effective population monitoring may be realized by shifting to a 2 or 3-year cycle as recommended. Closer evaluation of the type of aircraft (e.g., fixed-wing versus helicopter) appropriate for each herd area census should provide additional opportunities for reducing costs. The Agencies were cautioned that over large areas aerial counts alone will not provide reliable enough population estimates for many management purposes. In at least some herds, the use of marked animals (although more costly) will be necessary for long-term management.

The report's findings may "defuse" some of the controversy surrounding the program, particularly those aspects concerning population control, the need for human intervention (pages 14-18), and the question of biological niche. On the subject of "exotic versus native" species, the report indicates that wild horses and burros do not cause any more disturbance to western ecosystems than a proportionate number of domestic livestock (pages 11-13). The issue in managing public rangelands is determining and keeping grazing use in balance with the habitat.

Thorough analysis of this report as well as the individual projects will be necessary for the Agencies to apply the findings concerning habitat use, forage consumption rates, and herd management. A change in management practices, such as periodically opening and closing water sources, may be effective in distributing animals for more efficient use of available forage (page 33).

Roundup procedures are well established and will continue as the Agencies' only practical means of removing excess wild horses and burros. Should other more humane and cost-effective methods be developed, they would be implemented.

The committee reiterated its conviction that effective management programs require a firm base of scientific information and sufficient research personnel within the Agencies. While the report outlines an extensive 7 to 10-year research program, the Agencies must temper that with other program priorities. The Agencies recognize the research program recommended by the committee was barely started and that some of the findings presented are tentative and incomplete at best. As time and funding allow, the Agencies will pursue additional studies needed to resolve site-specific management problems.

In the meantime, management decisions made by the Agencies should be enhanced by the information provided in the NAS report.

Congressional Record

Senate

THURSDAY, FEBRUARY 3, 1983

By Mr. McCLURE (for himself, Mr. SYMMS, Mr. LAXALT, and Mr. WALLOP):

S. 457. A bill to require the protection, management, and control of wild free-roaming horses and burros on public lands; to the Committee on Energy and Natural Resources.

WILD AND FREE ROAMING HORSE AND BURRO ACT
AMENDMENTS OF 1983

● Mr. McCLURE. Mr. President, I reintroduce today for consideration by the Senate a bill to further amend Public Law 92-195, commonly referred to as the Wild Free-Roaming Horse and Burro Act of 1971. On behalf of several other Members of the Senate, I offered similar legislation for consideration in the last session of Congress. That bill has been slightly revised on the basis of comments received from several private organizations and individuals, and the current experiences of the land management agencies responsible for these animals.

The Wild Free-Roaming Horse and Burro Act was designed originally to protect the few remaining wild horses and burros on public lands from the abusive roundups by mustangers interested only in getting the animals to slaughterhouses for a quick profit. With the dramatic decline in the wild horse and burro population caused by mustanging, primary emphasis in 1971 was placed on preserving these symbols of the wild American West. The law also provided for managing wild horses and burros as an integral part of the natural system of the public lands and, in overpopulated areas, for controlling their numbers.

By 1978, wild horse and burro populations had increased beyond the capacity of their habitat in many areas, and it was apparent that controlling wild horse and burro population levels was imperative if a multiple-use environment and natural ecological balance were to be maintained. Amendments to the Wild Free-Roaming Horse and Burro Act were included in the Public Rangelands Improvement Act requiring the immediate removal of excess animals to protect the range from the deterioration associated with overpopulation. The amendments also specify methods and a priority for disposing of the excess animals. First, old, sick, or lame animals must be humanely destroyed. Then healthy excess animals must be made available for private maintenance as long as an adoption demand by qualified individuals exists. If qualified adopters

cannot be found, the Wild Free-Roaming Horse and Burro Act requires the Federal Government to destroy the animals in the most cost-effective and humane manner possible.

The two Federal agencies charged with administering this act, the Department of the Interior's Bureau of Land Management (BLM) and the Department of Agriculture's Forest Service, have made a valiant effort to enforce the provisions it contains. However, removal and disposal of excess animals proved to be expensive—an average of \$460 per animal in fiscal year 1981. More than two-thirds of the funding appropriated to BLM for the protection, management, and control of wild horses and burros was expended on the adoption program alone. In a time of fiscal restraint in all areas of the Federal Government, the agencies felt it was inappropriate to continue such subsidies to the individuals benefiting from the program.

At the recommendation of a congressional subcommittee and the Office of Management and Budget, the agencies increased their adoption fees for wild horses and burros to cover approximately one-half of the program costs. This was to allow more appropriated funds to be spent in managing those wild horses and burros remaining on the public lands and improving their habitat.

Unfortunately, the agencies are now finding it difficult to place the excess wild horses and burros in private maintenance. Whether this drop in adoption demand has been caused by unusually severe weather, higher fees, or the general economy of the Nation, the result is that the Bureau of Land Management is maintaining approximately 1,500 excess wild horses and burros in their adoption centers. Feed costs alone average \$1.60 per animal per day, which translates into almost \$2,400 per day of taxpayer's money to maintain these animals. Every effort has been made to reduce adoption program costs. Even so, funds identified for the removal of excess animals are now being diverted to maintain animals in corrals. Both the rangeland environment and the animals that inhabit it are suffering because of this.

Under the current law, BLM should be destroying these animals. Understandably, the agency is reluctant to do so. Can you image the effect on the American public if they destroyed 1,500 perfectly healthy and useful animals?

Such scenes as we saw through the news media of dead and starving adopted wild horses in a Texas pasture are abhorred by all, yet can we fault an agency with neither the experience nor the personnel required to ensure humane treatment of all animals obtained by private individuals through the adoption program? Wild horse and burro management has attained proportions beyond the wildest dreams of those who drafted the 1971 act. More than 42,000 animals have been placed

in private maintenance since the adopt-a-horse program began in 1973.

Mr. President, by now you can picture the dilemma into which we have placed BLM and the Forest Service. They must remove the excess wild horses and burros to comply with the law and the requirements of sound land and habitat management. The agencies are attempting to operate a successful adopt-a-horse program. But when foster homes cannot be found, the very law originally designed to protect these animals requires their destruction! Surely America's wild horse and burros deserve every chance to a productive, useful life.

The bill I am introducing today provides another chance for unadoptable animals, for those wild horses and burros remaining on public lands, and for the rangeland ecosystem. It would provide a long term solution to wild horse and burro management, in contrast to the short term "quick fix" proposals of the past. The legislation would amend the Wild Free-Roaming Horse and Burro Act to allow the Secretaries to sell excess animals for which foster homes cannot be found. Revenue generated from the sale would be returned to BLM or the Forest Service for wild horse and burro habitat improvement, studies designed to improve the general welfare of the animals, and on-the-ground program management. Humane treatment of animals after such sale would be afforded by State, local, and Federal laws that have been successful in protecting domestic animals.

Other provisions of this legislation would authorize the reestablishment of a Wild Horse and Burro Committee to advise the agencies on policy issues affecting the program; increase penalties for repeated offenses under the act; and authorize humane use of helicopters and motorized vehicles in horse/burro management on other Federal lands under the jurisdiction of the Secretary of the Interior. The amendments would also decrease program costs by authorizing automatic titling after a 1-year period of adoption if no complaints are received; by altering the requirement for a public hearing before helicopter and motorized vehicle use in gathering operations to required public notification; and by eliminating the biennial report to Congress on the administration of the Wild Free-Roaming Horse and Burro Act, which duplicates the annual report to Congress required by the Federal Land Policy and Management Act of 1976.

These changes and other minor alterations accompanying them are imperative if our rangelands and the animals inhabiting them are to be preserved in a financially responsible and environmentally sound manner. We must recognize and respond to the urgent need for these new changes to the Wild Free-Roaming Horse and Burro Act.

Mr. President, I ask unanimous consent that the text of this bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 457

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West, and that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people. It is the policy of Congress that wild free-roaming horses and burros shall be protected from unauthorized capture, branding, harassment, or death; that a healthy wild free-roaming horse and burro population base shall be maintained on the public lands; and that to accomplish this they are to be considered as an integral part of the natural system of the public lands and managed under the principle of multiple use.

SEC. 2. As used in this Act—

(a) "Secretary" means the Secretary of the Interior when used in connection with public lands administered by him through the Bureau of Land Management and the Secretary of Agriculture in connection with public lands administered by him through the Forest Service;

(b) "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros that use public lands as all or part of their habitat, or that have been removed from the public lands by the Secretary but have not lost status under Section 3 of the Act;

(c) "range" means the area of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, which does not exceed their known territorial limits, and which is devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public lands;

(d) "herd" means one or more bands using the same general area;

(e) "public lands" means any lands administered by the Secretary of the Interior through the Bureau of Land Management or by the Secretary of Agriculture through the Forest Service;

(f) "excess animals" means wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area; and

(g) "band" means a group of wild horses or burros running together or a lone wild horse or burro.

SEC. 3. (a) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public land as sanctuaries for their protection and preservation, where the Secretary after consultation with appropriate State and Federal agencies and with the Advisory Board established in section 7 of this Act deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological bal-

ance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 7 of this Act. All management activities shall be in accordance with the resource management objectives for the area established in land use plans. Such plans and activities shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of wildlife species which inhabit such lands.

(b)(1) The Secretary shall maintain current inventory of wild free-roaming horses and burros on given areas of the public lands. The purpose of such inventory shall be to: make determination as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of the public lands; determine appropriate actions conducive to effective wild horse and burro management; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options. In making such determinations the Secretary shall consult with the United States Fish and Wildlife Service, wildlife agencies of the State or States wherein wild free-roaming horses and burros are located, and individuals independent of Federal and State government who he determines have scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

(2) Where the Secretary determines on the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 202 of the Federal Land Policy and Management Act of 1976; (iii) information contained in court ordered environmental impact statements as defined in section 2 of the Public Range Lands Improvement Act of 1978; and (iv) such additional information as becomes available to him from time to time, or in the absence of the information contained in (i-iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels and to accomplish appropriate herd management. Such action shall be taken, in the following order and priority, until all excess animals have been removed so as to restore a thriving natural ecological balance to the range, and protect the range from the deterioration associated with overpopulation:

(A) The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;

(B) The Secretary shall cause such number of additional excess wild free-roaming horses and burros to be humanely captured and removed for private maintenance and care for which he determines an adoption demand exists by qualified individuals, and for which he determines he can assure humane treatment and care (including proper transportation, feeding, and handling); *Provided*, That, not more than four animals may be adopted per year by any in-

dividual unless the Secretary determines in writing that such individual is capable of humanely caring for more than four animals, including the transportation of such animals by the adopting party; and the Secretary shall establish by regulation adoption fees that discourage private maintenance of excess animals for the purpose of commercial gain and maintain a viable adoption program; and

(C) The Secretary shall cause additional excess wild free-roaming horses and burros for which an adoption demand by qualified individuals does not exist to be sold at public auction or destroyed in the most humane, cost efficient manner possible. *Provided*, That when they are sold or destroyed, the excess wild free-roaming horses and burros shall become subject to all State and local humane and sanitation laws, and all Federal humane laws other than this Act.

(D) Revenue from the sale or adoption of excess wild free-roaming horses and burros pursuant to this Act shall be deposited in the appropriate account of the agency from whose lands the excess animals were removed as reimbursement for costs related to removal, sale, private maintenance, habitat improvement, population management, and studies for the general welfare of wild free-roaming horses and burros.

(c) Where excess animals have been transferred to a qualified individual for adoption and private maintenance pursuant to this Act and there is no evidence for of inhumane care or treatment for such animal or animals for a period of one year, the Secretary is authorized to grant title to the transferee at the end of the one-year period.

(d) Wild free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this Act—

(1) upon passage of title at sale or pursuant to subsection (c) of this section; or

(2) if they have been transferred for private maintenance or adoption pursuant to this Act and die of natural causes before passage of title; or

(3) upon destruction by the Secretary or his designee pursuant to subsection (b) of this section; or

(4) if they die of natural causes on the public lands or on private lands and disposal is authorized by the Secretary.

SEC. 4. If wild free-roaming horses and burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshal or agent of the Secretary, who shall arrange to have the animals removed. In no event shall such wild free-roaming horses and burros be destroyed except by the agents of the Secretary. Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or lands leased from the Government, if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands. Any individuals who maintain such wild free-roaming horses or burros on their private lands or lands leased from the Government shall notify the appropriate agent of the Secretary and supply him with a reasonable approximation of the number of animals so maintained.

SEC. 5. A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found.

Sec. 6. The Secretary is authorized to enter into cooperative agreements with other landowners and with the State and local governmental agencies and may issue such regulations as he deems necessary for the furtherance of the purposes of this Act.

Sec. 7. Notwithstanding the provisions of any other Act, the Secretary of the Interior and the Secretary of Agriculture are authorized and directed to appoint a joint advisory board of not more than nine members to advise them on any matter relating to wild free-roaming horses and burros and their management and protection. They shall select as advisers persons whom they deem to have special knowledge about protection of horses and burros, management of wildlife, animal husbandry, or natural resources management. Members of the board shall not receive reimbursement except for travel and other expenditures necessary in connection with their services.

Sec. 8. (a) Any person who—

(1) knowingly removes or attempts to remove a wild free-roaming horse or burro from the public lands, without authority from the Secretary, or

(2) sells or converts a wild free-roaming horse or burro to private use, without authority from the Secretary, or

(3) maliciously causes the death or harassment of any wild free-roaming horse or burro, or

(4) processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro without authority from the Secretary, or

(5) knowingly violates a regulation issued pursuant to this Act, shall be subject to a fine of not more than \$2,000, or imprisonment for not more than one year, or both. Any person so charged with such violation by the Secretary may be tried and sentenced by any United States commissioner or magistrate designated for that purpose by the court by which he was appointed, in the same manner and subject to the same conditions as provided for in section 3401, title 18, United States Code. Any person who previously has been convicted of a violation of this section shall, upon conviction of a second offense punishable pursuant to this section, be subject to a fine of not more than \$10,000, or imprisonment for not more than two years, or . . .

(b) Any employee designated by the Secretary of the Interior or the Secretary of Agriculture shall have power, without warrant, to arrest any person committing in the presence of such employee a violation of this Act or any regulation made pursuant thereto, and to take such person immediately for examination or trial before an officer or court of competent jurisdiction, and shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction to enforce the provisions of this Act or regulations made pursuant thereto. Any judge of a court established under the laws of the United States, or any United States magistrate may, within his respective jurisdiction, upon proper oath or affirmation showing probable cause, issue warrants in all such cases.

Sec. 9. In administering this Act and any laws pertaining to management of Federal lands, the Secretary or the head of any Executive Department or Agency administering Federal lands may use or contract for the use of helicopters or, for the purpose of transporting captured horses or burros, motor vehicles. Such use shall be undertaken only after public notification and under the direct supervision of a duly authorized official of the Department or Agency. The provision of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(a)) shall not be applicable to such use. Such use

shall be in accordance with humane procedures prescribed by the secretary or other Agency head.

Sec. 10. Nothing in this Act shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they do not presently exist.

Sec. 11. The Secretary of the Interior and the Secretary of Agriculture shall consult with respect to the implementation and enforcement of this Act and to the maximum feasible extent coordinate the activities of their respective departments and in the implementation and enforcement of this Act. The Secretaries are authorized and directed to undertake those studies of the habits of wild free-roaming horses and burros that they may deem necessary in order to carry out the provisions of this Act. ●

BUREAU OF LAND MANAGEMENT
Wild Horse and Burro Program Appropriations, Cost Estimates, and Receipts
Fiscal Years 1980, 1981, and 1982

	<u>FY 1980</u>	<u>FY 1981</u>	<u>FY 1982</u>
I. <u>APPROPRIATION - SUBACTIVITY 4321 - WILD HORSES AND BURROS.</u>	\$6,244,274	\$7,060,000	\$5,366,000 ^{1/}
<u>OTHER FUNDS SUPPORTING WILD HORSE AND BURRO PROGRAM.</u>	\$1,056,526	\$711,000	\$1,787,000
II. <u>COSTS.</u>			
A. <u>Costs of Management.</u>	\$2,264,000	\$2,420,300	\$1,405,000
(Includes costs of studies, research, environmental assessments, activity planning, monitoring, detection and supervision, inventory, and development and maintenance of range improvements.)			
<u>Animals Managed (Estimated)</u>	64,500	64,500	56,800
B. <u>Costs of Removing Excess Animals.</u>	\$2,520,600	\$1,845,600	\$1,268,000
(Includes costs of removal planning, capture, and transportation of captured animals to facilities where they are prepared for adoption.)			
<u>Animals Removed</u>	9,610	11,356	9,360
C. <u>Costs of Adopting Excess Animals.</u>			
1. <u>Adoption.</u> (Includes costs of freeze marking, brand inspection, necessary vaccinations and medical treatment, feed, handling, application processing, and transportation.)	\$2,166,600	\$3,032,100	\$3,970,000
<u>Animals Adopted</u>	7,770	10,149	7,034
2. <u>Compliance Activities.</u> (Includes costs of ensuring adopter compliance with terms and conditions of adoption agreements.)	\$329,200	\$437,700	\$190,000
<u>Cases</u>	1,465	1,859	1,237
3. <u>Title Transfer.</u>	\$19,700	\$35,300	\$63,000
<u>Animals Titled</u>	908	5,610	6,423
III. <u>RECEIPTS.</u>	\$505,600	\$625,000	\$859,000
(Includes adoption fees and transportation costs collected from adopters of wild horses and burros.)			

^{1/} Beginning in 1982, administrative costs were funded by a separate subactivity.