



## Northern Nevada's Meeting of the Minds: Mustang Controversy

On July 13, 1998, I attended a meeting of the Congressional Subcommittee on National Parks and Public Lands that was held here in Reno. The agenda read: "Oversight hearing on range issues and problems with the Wild Horse and Burro Act and its implementation." Three panels of witnesses with varying experiences with the Wild Horse and Burro Program presented their findings to the Subcommittee chaired by Congressman James Hansen, UT, assisted by Eni Faleomavaega, American Samoa, Richard Pombo, CA, Helen Chenoweth, ID, and our own Congressmen John Ensign and Jim Gibbons. The witnesses heard included the Nevada State BLM director, the Arizona Game & Fish Department director, Chairman of the Nevada Senate Natural Resources Committee, Commissioners from Elko and Lincoln counties, the Eureka County Natural Resources Manager, Counsel for the Animal Protection Institute, Field Directors of the National Wild Horse Association, and a Nevada rancher.

Chairman Hansen's opening statement reviewed the history of our Wild Horses, citing the foundation of feral herds from domesticated horses that were lost by the Spanish Conquistadors. These herds flourished until the progressive settling of the west led to competition with cattle for grazing land and the subsequent slaughter of mustangs by ranchers. In 1971, the Wild Horse and Burros Protection Act was passed by Congress. While Congressman Hansen applauded the intentions of the Act, he expressed concern that the current population of Wild Horses is contributing to degradation of rangeland. He discussed the \$18 million annual cost required to administer the current program. With 8,692 animals adopted last year, this means over 2,000 tax dollars spent per animal, while the donation for adoption is about \$200.

Every witness who spoke at the hearing expressed concern for the welfare of the wild horses, indigenous wildlife, the rangeland, and the ranchers whose livelihood is dependent on their cattle's well being. With the single exception of the Animal Protection Institute representative, everyone agreed that the cost of the wild horse program was excessive, and was unbalanced in favor of administration rather than implementation. Everyone also agreed that the current BLM management of the Wild Horses and Burros was not in the best interest of the animals. Many suggestions were made for changes in administration of the program. Most involved cooperative arrangements which shifted management away from BLM and into the hands of the private sector.

One of the last witnesses to speak was the Field Director of the National Wild Horse Association, a group composed of volunteers concerned with the survival of the Wild Horses and Burros in the west. He stated that across the nation, the adoption program is falling short with a devastating effect on the resources of the West. The current program repeatedly gathers older, unadoptable animals at great cost to government. Because there is no legal means of dispersing these animals, they are re-released and contribute to overgrazing of Herd Management Areas and deterioration of the wild horses' herd health. Without implementation of sale or euthanasia authority, or massive funding for the sanctuary program, nature eventually will control the Wild Horse and Burro herds in her own cruel way, with devastating consequences not only to the horses, but to our rangeland, wildlife, and domestic grazing animals.

# RENO/SPARKS

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## Control of wild horses sparks debate

### Congressional hearing: Leaders say BLM's management inefficient.

By Matthew Katz  
GANNETT NEWS SERVICE

WASHINGTON—Congressional leaders and Clinton administration officials squabbled Thursday over whether states or the federal government should manage the nation's more than 40,000 wild horses and burros—half of which roam free in Nevada.

Republican congressmen from Western states applauded

legislation that would effectively take control away from the federal Bureau of Land Management — which is charged with the protection, management, and control of wild horses and burros — and offer it to states. They said BLM has wasted taxpayer money and horses' lives in its 28 years of authority.

The wild horses and burros roam on some of America's federally managed ranges. A 1971 law gave BLM the authority to re-

move "excess" horses and burros from these lands and offer them to the public for adoption if they threatened the area's ecological balance.

"Unfortunately, many of these animals are destined to live out their days as federal welfare cases," said Rep. Jim Gibbons, R-Reno, sponsor of the proposed legislation, referring to over 6,000 animals who are not adoptable because of age and disease. The animals are boarded in federal facilities at a cost of \$50,000 a week.

Henri Bisson, BLM assistant director of Renewable Resources

and Planning, defended the federal government's role in managing the wild animals. He said the proposed bill is problematic because states would gain control over the removal of the horses and burros, but the BLM would still be responsible for putting them up for adoption.

"Failure to closely coordinate even one of these elements, particularly gathering and adoptions, causes ripple effects throughout the program," Bisson said at the congressional subcommittee hearing Thursday.

Gibbons countered that the federal program, which has cost



**Gibbons**  
Says federal program does not respond to individual states' needs.

\$250 million in its almost 30 years of existence, does not respond to individual states' needs. He noted Nevada's recent fires, which consumed more than 1.6 million acres of land, and the state's seven years of drought as

examples of individual state problems that cannot be handled appropriately by the federal government.

But even within Nevada, there is disagreement over whether it should have the responsibility of control over the wild horses and burros.

Saying she represented the majority of Nevada's citizens, Nevada Senate Minority Leader Dina Titus, D-Las Vegas, said her state does not have the bureaucracy in place or the money available to handle management of Nevada's almost 22,000 wild horses and 500 wild burros.

"Turning their management over to the states would be devastating — for the animals, for our public lands, for the state of Nevada, and for the taxpayers in my district," she said in her written testimony to the subcommittee.

She added that state control would lead to the privatization of wild horse management, whereby the ranching industry would gather the wild horses for the state and sell the captured horses to the slaughterhouses. The removal of horses, she said, would allow for more water and food for the ranching industry's cattle.

7/13/98

**COMMITTEE ON RESOURCES**

Subcommittee on National Parks & Public Lands

Monday, July 13, 1998 at 9:00 A.M.

Washoe County Commissioners Chamber - Building A, Reno, Nevada.  
July 13, 1998

**Agenda**

Oversight hearing on range issues and problems with the Wild Horse and Burro Act and its implementation.

**Members Attending**

- Honorable James Hansen, UT, Chairman
- Honorable Eni Faleomavaega, American Samoa, Ranking Minority Member
- Honorable Richard Pombo, CA
- Honorable Helen Chenoweth, ID
- Honorable John Ensign, NV
- Honorable Jim Gibbons, NV

**Witnesses**

**Panel I**

Robert V. Abbey ✓  
Nevada State Director  
BLM

Duane L. Shroufe  
Director  
Arizona Game & Fish Department

Senator Dean Rhoads  
Chairman of the Senate Natural Resources Committee  
Nevada Legislature

CARPENTER

**Panel II**

Anthony Lesperance, Ph.D.  
Elko County Commissioner  
Elko, NV

Rey Flake  
Lincoln County Commissioner  
Caliente, NV

John Balliette  
Eureka County Natural Resources Manager

**Panel III**

Ms. Sheila Hughes Rodriguez  
Counsel  
Animal Protection Institute

David and CJ Tattam  
Field directors  
National Wild Horse Association

Demar Dahl  
Rancher

BAR COMBS

**Opening Statement**  
**James V. Hansen, Chairman**  
**Subcommittee on National Parks and Public Lands**  
**Field Hearing on Wild Horses and Burros**  
**Reno, NV, July 13, 1998**

The Committee will come to order. The Subcommittee on National Parks and Public Lands convenes for a field hearing on range issues with wild horses and burros and implementation of the 1971 Wild Horse and Burro Act.

When the Spaniards first came to the Americas they brought horses. Conquistadors like Cortez and Coronado lost a few horses during their campaigns and these horses migrated north and formed the foundation stock of numerous herds of feral animals in the wilderness of North America.

These herds of feral horses became an important source of riding animals for the Plains Indians and later the American Pioneers. The herds were and continue to be supplemented by escaped farm and ranch stock. However, the feral burros are mostly descendants of 19<sup>th</sup> and 20<sup>th</sup> century escaped or released pack animals.

As a note of clarification, I think it is important to mention that these horses and burros are not truly wild animals in the sense that Bighorn Sheep, Mountain Lions and Bears are wild animals. These are domesticated animals that have gone feral. They are only "wild" in the sense that the alley cat down the street is "wild".

As more of the West was settled, and better riding stock was imported, feral herds became less important. In fact, they were quickly becoming a liability to ranchers and farmers who needed the land for domestic stock. Thousands of these horses were slaughtered to remove competition with domestic stock, to obtain meat for animal feed, or for other purposes.

Fortunately, these horses had some pretty good PR people working for them, and the American people mobilized in the late 1960's, pushing for some sort of protection for these animals.

In 1971 Congress, finding that wild free-roaming horses and burros were "living symbols of the historic and pioneer spirit of the West," passed the Wild Horses and Burros Protection Act. The Act directed the Secretaries of Agriculture and Interior to protect these animals from destruction, to set aside range for them, and to set up an adoption program for excess animals.

The intentions behind the Act were quite laudable. Unfortunately, things haven't worked out quite as well as Congress anticipated. The range is becoming degraded, riparian areas are being destroyed, adoptions are lagging and cost millions of dollars a year to administer, the health of the animals on the range is deteriorating, disease is becoming a problem in many areas, and the animals are competing with and driving out wildlife.

It costs 18 million dollars a year to administer the wild horse and burro program. Last year 8,692 animals were adopted. That works out to over \$2,000 per animal. And yet these animals sell for about \$200. \$2000 to sell a \$200 horse - If any public lands program could be called a subsidy, this would be it.

But we are not here today to talk about adoptions, because there are even bigger problems on the range. Some of these problems stem from the way the Act is implemented, others may stem from the Act itself.

As our friend Mr. Pat Shea has noted, these animals are livestock, and we need to give the BLM the authority to start managing them as livestock. The BLM faces a lot of challenges as it tries to manage feral animals on the public lands. We have given them laws and mandates to live by that are often contradictory, and generally they try to do the best they can to make sense out of the whole mess. I hope we can figure out a few ways to make that job a little easier.

This hearing was scheduled in order to give environmentalists, federal, state and local government officials, and concerned citizens an opportunity to discuss some of the problems with implementation of the Wild Horse and Burro Act and to give people an opportunity to present ideas on how to improve management of feral horses and burros. I would like to welcome our witnesses and thank them for joining us today. I hope this can be a productive dialogue.

I will now turn the time over to the Gentleman from American Samoa for any opening statement.

Statement of Bob Abbey  
State Director, Nevada State Office, Bureau of Land Management  
before the House Resources Subcommittee on National Parks and Public Lands  
Oversight Hearing on Range Issues Related to the Wild Horse and Burro Act  
Reno, Nevada  
July 13, 1998

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to participate in this hearing on resource issues associated with implementation of the Wild and Free-Roaming Horse and Burro Act (Act). Over the past two years, the BLM's management of the wild horse and burro program has come under intense scrutiny, prompting multiple reviews of all facets of the program.

Acting upon the results of those reviews, BLM Director Pat Shea has instituted a number of improvements in the management and operation of the wild horse and burro program that I will describe to you today. These improvements will help us meet the long-term objectives for the program including: perpetuating and protecting viable wild horse and burro populations and their habitat in accordance with the principles of multiple-use management; ensuring humane care and treatment of excess wild horses and burros; establishing and maintaining partnerships and cooperative relationships to benefit wild horses and burros; integrating and incorporating research, science, and technical development into the overall wild horse and burro program; and increasing and maintaining professional capability, leadership, and service to the public concerning wild horse and burro management.

In the Act, Congress directed the BLM to "... manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands." Under Federal protection, wild horse herds have flourished, and these animals are in no danger of extinction. In 1971, it was estimated that between 10,000 and 17,000 wild horses and burros roamed the West. Today there are about 43,000 wild horses and burros on the public lands, including some 22,000 in Nevada.

Competition for water and forage on the public lands between wild horses and burros, other wildlife species, and domestic livestock is inevitable in areas where they graze the open range together. Rangeland condition improves when the number of animals is appropriate to range conditions and carrying capacity. Establishing and maintaining appropriate management levels (AML) is essential to preserve a thriving natural ecological balance while protecting, managing and controlling wild horses and burros on the public land.

In Nevada, the BLM manages 99 Herd Management Areas encompassing over 16,000,000 acres of public land and involving 113 grazing allotments. We establish AMLs through our Multiple Use Decision process which involves interdisciplinary monitoring of resources and evaluations to determine if multiple use and rangeland standard objectives are being met. The results of the assessment are then used to set the terms and conditions for livestock permits, including livestock carrying capacities, the AML for wild horses and burros, and develop recommendations regarding wildlife populations.

At the end of fiscal year 1997, AMLs had been established on over half of Nevada's herd management areas (HMA) and our goal is to have those numbers established on all HMAs by fiscal year 2000. We have been removing excess animals at a rate allowed by funding and facility space, and have achieved the AMLs in many areas where AML numbers have been established.

In herd management areas where we have achieved and are maintaining AML and working cooperatively with the permittees to develop better livestock management practices, we have seen a steady improvement in rangeland conditions. These improvements are fostered by healthier vegetative communities derived from increased forage production and decreased utilization. The result is an ecological balance providing for recovering riparian areas, improved wildlife habitat and achievement of the Bureau's multiple use mandate. In addition, it results in healthy, viable populations of wild horses and burros on the public lands, which the public demands and the Wild Horse and Burro Act requires. We have shown that wild horses and burros can be managed within a thriving ecological balance with other rangeland uses when their populations are maintained within AML.

The BLM has focused its efforts on reaching AML by addressing population increases in wild horse herds through gathering excess animals, removing them from the rangelands, and placing them with qualified adopters. Although the Act permits the humane destruction of animals<sup>1</sup>,

Congress has prohibited the destruction of excess healthy animals since 1988.<sup>2</sup> The Adopt-A-Horse and -Burro Program is, therefore, the only tool the BLM currently possesses to manage the excess wild horses and burros removed from the range. Most of our recent efforts have focused on improving the adoption program and allowing us to achieve AML.

In fiscal year 1997 and the first part of fiscal year 1998, adoption demand declined. Possible causes for the decline include negative news articles, increased adoption fees, increased compliance checks, initial reaction to the new competitive bid process, and the higher costs of feed in winter. The past month has seen a renewal of public interest with adoptions returning

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<sup>1</sup>The Act authorizes the BLM to take the following actions to "remove excess animals from the range so as to achieve AML:

"(A) ... old, sick or lame animals to be destroyed in the most humane manner possible;

"(B) ... removed for private maintenance and care for which ... an adoption demand exists by qualified individuals; and

"(C) ... additional excess wild free-roaming wild horses and burros for which an adoption demand by qualified individuals does not exist to be destroyed in the most humane and cost efficient manner possible."

<sup>2</sup>"*Provided*, that appropriations herein made shall not be available for the destruction of healthy, unadopted, wild horses and burros in the care of the Bureau or its contractors."  
[Department of the Interior and Related Agencies Appropriations Act]

to normal levels. Of the 10,443 horses and burros gathered in FY 1997, a total of 6,993 horses and 1,699 burros (total of 8,692) were adopted. We are moving animals out of our holding facilities more slowly than planned and we are holding animals longer than expected.

As of June 1 in fiscal year 1998, we have gathered 3,861 animals, and 5,023 horses and burros have been adopted. As of June 1, we had 3,889 animals in our holding facilities. Lacking the ability to adopt out a larger number of animals, we expect that numbers of animals in our facilities will remain higher than is normal for this time of year. We are reviewing our gather schedule to ensure that we can balance the room we have in our holding facilities with the number of animals proposed to be gathered and with anticipated adoptions.

As adoption demand was declining in FY 1997, the wild horse and burro herds were reproducing at a rate of about 24 percent -- a rate at which a herd will double in size in three years. We expect about 9,000 foals will be born this year. To improve management of this situation, the BLM has undertaken the following actions:

**Re-establishment of the Wild Horse and Burro Advisory Board:** Director Shea rechartered the National Advisory Board in January 1998 to advise the Departments of the Interior and Agriculture on the management and protection of wild horses and burros on the public lands. Nominations for the nine-member Board were solicited from the research community, advocacy groups, humane organizations, natural resource and wildlife management groups, and the public at large. To date, the Board has held three public meetings: February 9, 1998, in Reno, Nevada, April 24, 1998, in Arlington, Virginia, and last week (July 9) in St. Louis, Missouri.

Following these meetings, the Board established working groups to focus on four key areas of concern: (1) horses on the range; (2) horses off the range; (3) science; and (4) burros. These groups have just begun their work; we expect the groups to present solid recommendations to the Director after they have reached consensus on specific issues. The Director has reaffirmed his pledge that the BLM will listen to the Board and seriously evaluate its recommendations.

In a break with past practice, the BLM will not postpone acting on Board recommendations until after the Advisory Board has completed its work and issued a report. Director Shea has committed the BLM to consider this Board's recommendations as soon as they are made, and decide on them as soon as possible. For example, at the April 24th Advisory Board meeting in Arlington, Virginia, the Board recommended that BLM adopt a revised policy on humane destruction of animals, proceed with a pilot program training wild horses, examine the structure of the leadership of the program, and proceed with a marketing study to look at new ways to increase our adoptions. We are implementing each of these recommendations.

**Fertility Control / Research:** the BLM is supporting research aimed at controlling the reproduction rate of wild horses while maintaining the integrity of the herd. A pilot study of immuno-contraceptive vaccine that prevents pregnancy in mares was implemented in northeast



Nevada in December 1992. The results of this pilot study to date have shown immuno-contraception could be a viable, economically feasible, and humane tool for reducing wild horse reproduction.

Researchers now have developed a single-injection vaccine that does not require a booster shot and will last for approximately one year. A second pilot project with a redesigned vaccine potentially lasting for more than one year was initiated on the Nevada Wild Horse Range/Nellis Bombing and Gunnery Range in January 1996. The results of the immuno-contraceptive test from the Nevada Wild Horse Range animals have been favorable.

Field application of the single-injection, 1-year vaccine is continuing with new field trials begun in Nevada in January and February 1998. The one-shot application of the immuno-contraceptive vaccine has been shown to be effective on almost 100 percent of the mares treated. Application of the vaccine will be expanded and additional herds will be treated in subsequent years. The two-shot protocol was 100 percent effective, but required a 30-day holding period between the initial injection and the booster, making it impractical for wild horses and burros. Research continues on a multi-year time release vaccine.

About \$200,000 is planned for wild horse and burro immuno-contraception research in FY 1999. This research is funded through the Biological Research Division of the U.S. Geological Survey.

The population model developed for wild horses and burros by the University of Nevada at Reno continues to be refined. A study on the impacts of the selective removal policy on herd health and viability was initiated in 1997 and will be incorporated into the model.

**Enhanced Adoption Efforts:** the BLM has undertaken a number of initiatives geared to increase adoption demand and ensure the humane treatment of animals placed with qualified adopters.

- Competitive bids -- The BLM changed its regulations on March 8, 1997, to allow the BLM to offer wild horses and burros for adoption using the competitive bid process authorized by Congress. This is to provide consistency to the customer and alleviate some of the internal concerns about changes in adoption procedures. Several BLM Field Offices have tested the competitive bid process and found most potential adopters receptive to this approach.
- Western states adoption -- In December 1997, BLM's Washington Office asked the BLM State Offices to add more adoptions to their existing schedule. The 6 Western States which administer Wild Horse and Burro Programs have added an additional 10 adoption events (both at holding facilities and satellite adoptions) to bring the adoption goal for the 6 Western States up to 2,430 animals for FY 1998 from 2,296 in FY 1997.

- Nevada does not have a large adoption demand, but we have participated in this effort by increasing our planned adoption events from three to four. On May 23, we conducted an adoption event in Elko where we placed 26 animals with qualified adopters and on May 30, an event was held in Winnemucca where 23 animals were adopted. At the June 13-14 adoption, held in conjunction with the National Wild Horse and Burro Show in Reno, 13 animals were adopted. The horse that trainer Brian Newbert worked with brought \$425 in the competitive bidding. More importantly, BLM-Nevada committed to provide assistance to other state offices to help accomplish their goals. We have sent BLM-Nevada employees to other states on six occasions to help meet the commitments of adopting larger numbers of animals.
- Internet -- The BLM is doing a pilot project using the Internet to increase public awareness of the adoption program. The first Internet Wild Horse and Burro Adoption was announced on April 15, 1998; the web site is: <http://www.adoptahorse.blm.gov/>. The public can view on the Internet photos and brief descriptions of the 25 animals up for adoption. Electronic applications were accepted from May 8-22. Fifty-three (53) applications were submitted, and 18 were approved to participate in the bidding. Since this was a pilot in test mode, BLM employees could not participate in bidding or adoptions at this time. The bidding for adoption privileges took place from May 15-29. Fifteen (15) animals were adopted.
- Pre-adoption horse training -- The BLM is also studying the idea of working with wild horses to gentle them before putting them up for adoption, with the goal of making the horses more attractive to prospective qualified adopters.

**Other Actions to Improve Management of the Program:** BLM Director Shea also appointed a fact-finder team, composed of professionals from the private sector, to report on three issues relating to BLM practices:

- the media -- The report's findings included the need for media training for employees involved with the Wild Horse and Burro Program.
- accounting methods -- The report recommended measures for improved tracking of excess animals gathered from public land to issuance of title for the animal to an adopter.
- the horse perspective -- The report recognized the biological, ethical and ecological considerations of wild horse management.

The BLM has implemented three recommendations from these reports respectively; including media training in wild horse and burro training courses; verifying data in the wild horse and burro information system; and, initiating development of a policy on humane destruction of unhealthy animals.

In conclusion, the BLM is making every effort to maximize adoptions, including a concerted effort to identify new markets and to enhance adoptability through gentling the animal prior to adoption as we continue striving to reach AML. We are moving ahead with research on fertility control through the use of contraception. We look forward to receiving the recommendations of the National Wild Horse and Burro Advisory Board.

Mr. Chairman, I welcome the subcommittee's continued interest in the BLM's management of the wild horse and burro program, and I appreciate this opportunity to discuss the direction we are taking in the program. I will be glad to respond to any questions you may have.

**Committee on Resources  
Subcommittee on National Parks and Public Lands  
Oversight Hearing on Range Issues and Problems with the  
Wild Horse and Burro Act and its Implementation**

July 13, 1998

Washoe County Commissioners Chamber  
1001 E. 9th Street, Building A  
Reno, Nevada

**Arizona Game and Fish Commission Comments**

**Range Issues and Problems with the Wild Horse and Burro Act  
and its Implementation in Arizona**

Presented by:

Duane L. Shroufe, Director  
Arizona Game and Fish Department

Arizona Game and Fish Commission  
July 13, 1998

On behalf of the Arizona Game and Fish Commission and Arizona Game and Fish Department (Department), I appreciate the opportunity to be here today to provide comments on the Wild, Free-Roaming Horses and Burros Act of 1971 (As amended; Act), and its implementation in Arizona. I look forward to presenting information regarding the Act and its implementation in Arizona. I also look forward to discussing ideas on how to improve management of feral horses and burros in order to protect our public lands.

The Act provides for management of wild horses and burros by either the Secretary of the Interior through the Bureau of Land Management (BLM) or the Secretary of Agriculture through the Forest Service. In Arizona, wild horse and burro management is primarily associated with burro management on public lands administered by BLM. There are eleven Herd Areas in Arizona. There are also serious burro management issues on lands not administered by BLM, such as National Wildlife Refuges and other lands dedicated to the management of wildlife. The Department realizes that BLM faces numerous challenges in order to manage feral horses and burros on public lands in Arizona. From the Department's perspective, the most significant of these challenges include:

- 1) eliminating or minimizing adverse impacts to wildlife habitat, including native wetland and riparian habitat and sensitive wildlife species habitats;
- 2) completing burro population inventories, estimating population densities, and maintaining existing appropriate management levels;
- 3) collecting data to determine level of impacts to wildlife habitats associated with burro use and overpopulation;
- 4) dealing with burro overpopulation and expansion outside of established Herd Areas or Herd Management Areas; and
- 5) obtaining funds and manpower to remove burros from areas where there is overpopulation, expansion beyond Herd Area Boundaries, or resource damage.

**1. Adverse impacts to wildlife habitat**

The Department's level of concern about adverse impacts by burros on upland and riparian wildlife habitats increased significantly in the mid to late 1980s. These impacts continue to be of significant concern to our agency. With regard to adverse impacts to riparian and wetland habitats and its wildlife, the Department's objective is to protect and restore perennial riparian and wetland habitats critical to wildlife including riparian obligate Federally listed species. The Department is also concerned about adverse impacts to upland habitats in Arizona, which are important to many wildlife

species, including the Sonoran desert tortoise, bighorn sheep, and mule deer. From the early 1980s to present, we have focussed our efforts on working cooperatively with the BLM and other agencies to collect data in order to document resource damage. Also, the Department has collected data on burro habitat use and resource damage to wildlife habitats, burro numbers and distribution during Department ground and aerial wildlife survey efforts. Adverse impacts by burros on native riparian, wetland, and upland habitats in Arizona have been documented in BLM land management planning documents, U.S. Fish and Wildlife Service evaluations (Exhibit 1), and by Department observations and studies.

## **2. Burro population inventories and maintaining existing appropriate management levels**

Burro population inventories by BLM in Arizona, required by the Act [Section 1333.(b)(1)], have been limited since the time the Act was passed. Therefore, in many cases, numbers of burros in Arizona Herd Management Areas have been estimated by using the original census levels that were determined shortly after the Act was passed and adding annual recruitment of 18% to 23%. As a result, resource damage is occurring and can be quantified, but an accurate estimate of the number of burros causing the damage and the numbers of burros that should be removed in order to minimize or eliminate the resource damage, is often unknown. However, BLM and other natural resource agencies have estimated that burro numbers are higher than the appropriate management levels or management prescriptions (e.g., managing for zero burros) in some Herd Areas and Herd Management Areas. In addition, resource damage has been documented in specific Herd Areas and Herd Management Areas in Arizona.

Therefore, although some burro removal efforts have occurred in Arizona since the Act was passed, current burro numbers in many Arizona Herd Management Areas are estimated to be much higher than the existing appropriate management level; and, many of these areas are not in a "thriving natural ecological balance". In Arizona, BLM suspended most significant burro removal efforts as a result of a 1989 IBLA decision regarding removal of excess free-roaming horses in Nevada. Any implementation of this decision, such as suspending burro population control measures, should have been subject to the National Environmental Policy Act process.

Due to the lack of burro removals, there are extremely high numbers of burros in several Herd Management Areas in Arizona. For example, the Black Mountain Herd Management Area has an appropriate management level of 478 burros, but the population is estimated to be over 700 burros; the Big Sandy Herd Management Area has an estimated burro population of around 300, while the appropriate management level is set at 139; the Alamo Herd Management Area has an established appropriate management level of 200 burros, but the population is estimated by BLM to be between 500 to 600 animals;

the Cibola-Trigo Herd Management Area has an established appropriate management level of 165 with an estimated burro population of over 1,000 animals (BLM estimate). In addition, Arizona BLM, through new land management planning efforts, has determined that burros will be managed in all Arizona Burro Herd Areas. This decision will make these areas, which were originally identified by BLM as areas where burros would not be managed, Herd Management Areas. At the time the Act was passed (or soon thereafter) some Areas of Distribution or Herd Areas were prescribed for zero burro numbers, due to one or several manageability concerns, such as land status and threatened and endangered species issues. However, Arizona BLM is now proposing to manage burros in all Herd Areas for a thriving natural ecological balance, even though the same manageability concerns exist today.

**3. Data collection to determine habitat deterioration associated with burro overpopulation**

As with burro population inventories, data collection [per Section 1333.(b)(2) of the Act] to determine habitat deterioration in several Arizona burro Herd Management Areas has been limited. In many cases, the best available data appears to be contained in the original Herd Management Area Plans. Many of these plans and other BLM planning documents developed during the late 1970s and mid to late 1980s describe resource damage caused by burros, and these data were used to determine the original appropriate management levels. Minimal overall data collection, coupled with previously documented resource damage and minimal burro removals in Herd Management Areas in the recent past, is of concern to the Arizona Game and Fish Department. If resource damage was documented shortly after the time the Act was passed, and this information was used to determine appropriate management levels, and overall burro removals during the last fifteen years have been limited, the logical conclusion is there are more burros and increasing resource damage occurring in these areas today.

**4. Burro overpopulation and expansion outside of established Herd Areas and/or Herd Management Areas**

In addition to overpopulations of burros in Arizona Herd Management Areas, there are burros in Herd Areas that were originally to be managed for zero burros. In addition, burros are expanding into areas where they have not been documented before, and have clearly expanded outside the boundaries of established Herd Areas and Herd Management Areas. These problems are due to the lack of significant burro removals in Arizona.

**5. Funds and manpower to remove burros from areas where there is overpopulation, expansion outside of established boundaries, and/or resource damage**

During the last few years, Arizona BLM has indicated to the Department and other agencies that there are limited funds

available for burro management/removals in the state. In 1997, we found this to be quite true. The Arizona Game and Fish Department, BLM and the U.S. Fish and Wildlife Service-Imperial National Wildlife Refuge conducted a study on Imperial Refuge to determine burro use of and damage to native upland vegetation along the lower Colorado River. All the agencies knew the burro population was high (estimated by BLM to be over 1,000 burros with an appropriate management level of 165), and adverse impacts to native wildlife habitat, such as a particular paloverde species (Cercidium mircophyllum) were easily observed. Preliminary study results showed that of a total of 219 foothill paloverde trees sampled, 79% had some form of bark stripping and nearly all trees were over-utilized based on BLM's utilization sampling techniques.

Although resource damage was clearly documented and all agencies agreed that the burro numbers needed to be reduced, it was difficult for the BLM to generate enough funding to conduct an emergency removal. The BLM did manage to find enough funding to remove approximately 365 burros from the Arizona side of the Colorado River on the Refuge. However, obtaining these funds were difficult, and based on recent conversations with BLM, funding for future removals does not look good at all. This is of major concern to the Department and the U.S. Fish and Wildlife Service because even after the removal, resource damage by burros is continuing to occur on the National Wildlife Refuge.

**Ideas on how to improve management of feral horses and burros while protecting our public lands**

Efforts to remove burros from the Imperial National Wildlife Refuge in 1997 raised several issues that may be helpful in generating and discussing ideas on how to improve management of feral horses and burros. These issues include:

1. The removal was based on biological data; resource damage was obvious to all agencies involved. However, even with these data, funding was difficult to obtain and indications are that Arizona BLM will have limited funding available for burro removals in the near future. Even with the removal, resource damage is still occurring and will continue as the burro population increases.
2. This was an interagency project with strong public support. As opposed to a "BLM project", this was an interagency effort which helped to generate public support for the burro removal and also resulted in additional funding and manpower. The additional funds and manpower associated with this project were focussed on data collection and some assistance by members of the public during the removal effort.



3. If the agency responsible for managing feral horses and burros does not have the funding and manpower necessary to manage populations appropriately, compliance with the Act is not possible.
4. The entire project area was within a National Wildlife Refuge. Resource damage by burros on National Wildlife Refuges, or other lands where conservation and enhancement of wildlife habitat is the primary purpose, is incompatible with the Act and other federal legislation dealing with the management of lands dedicated to the conservation and management of fish and wildlife resources.

To improve management of feral burros in order to protect our public lands in Arizona, burro management must be given higher priority and funds must be available to manage burro populations. In Arizona, the Department's studies and field observations, existing BLM planning documents, and U.S. Fish and Wildlife Service evaluations show that burros are adversely impacting native upland and riparian habitats, including habitats important to threatened and endangered species.

The Arizona Game and Fish Department is concerned about the existing and potential adverse impacts to the State's wildlife resources due to high feral burro numbers, and we offer the following comments and ideas on how to improve management of these animals in Arizona.

- The Act itself may not be the problem, rather the problem appears to be the lack of compliance with the Act. This is likely due to different agency priorities, the lack of sufficient funding, and opposition to responsible and proactive horse and burro management pursuant to the Act.
- Improve information and education regarding burro numbers in Arizona and the resource damage.
- Improve interagency planning and management efforts to address the burro issues in Arizona.
- Evaluate all available methods for reducing horse or burro populations provided for in the Act.
- Exclude horses or burros from sensitive wildlife habitats, such as riparian zones, through fencing projects.
- Increase funding for burro management in Arizona. Adequate funding must be made available to BLM to manage burros in Arizona in order to comply with the Act.

In addition to providing direction for the protection of wild, free-roaming horses and burros, the Act also considers protection of the natural ecological balance of all wildlife species, particularly endangered species. These wildlife and wildlife habitat related considerations in the Act have not been adequately addressed in Arizona.

**Supplemental Sheet**  
**Subcommittee on National Parks and Public Lands**  
**Oversight Hearing on Range Issues and Problems with the**  
**Wild Horse and Burro Act and its Implementation**  
**July 13, 1998**

Duane L. Shroufe, Director  
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**Summary of Arizona Game and Fish Commission Comments**

The Arizona Game and Fish Commission's and Department's level of concern about adverse impacts by burros on upland and riparian wildlife habitats increased significantly in the mid to late 1980s. These impacts continue to be of significant concern to our agency today. From the Department's perspective, the most significant burro management issues include: 1) eliminating or minimizing adverse impacts to wildlife habitat, including native wetland and riparian habitat and sensitive wildlife species habitats; 2) completing burro population inventories, estimating population densities, and maintaining existing appropriate management levels; 3) collecting data to determine habitat impacts associated with burro use and overpopulation; 4) dealing with burro overpopulation and expansion outside of established Herd Areas or Herd Management Areas; and 5) obtaining funds and manpower to remove burros from areas where there is overpopulation, expansion beyond Herd Area Boundaries, or resource damage.

The Arizona Game and Fish Department is concerned about the existing and potential adverse impacts to the State's wildlife resources due to high feral burro numbers, and we offer the following comments and ideas on how to improve management of these animals in Arizona: 1) the Act itself may not be the problem, rather the problem appears to be the lack of compliance with the Act. This is likely due to different agency priorities, the lack of sufficient funding, and opposition to responsible and proactive horse and burro management pursuant to the Act; 2) improve information and education regarding burro numbers in Arizona and associated resource damage; 3) improve interagency planning and management efforts to address the burro issues in Arizona; 4) evaluate all available methods for reducing horse or burro populations provided for in the Act; 5) exclude horses or burros from sensitive wildlife habitats, such as riparian zones, through fencing projects; and 6) increase funding for burro management in Arizona. Adequate funding must be made available to BLM to manage burros in Arizona in order to comply with the Act.

In addition to providing direction for the protection of wild, free-roaming horses and burros, the Act also considers protection of the natural ecological balance of all wildlife species, particularly endangered species.

**Statement Before The  
Committee on Resources  
Subcommittee on National Parks and Public Lands  
Oversight Hearing on Range Issues and Problems with the  
Wild Horse and Burro Act and its Implementation  
Arizona Game and Fish Commission  
Presented by:  
by Duane L. Shroufe, Director**

July 13, 1998

Mr. Chairman, members of the Committee, my name is Duane L. Shroufe and I'm the Director of the Arizona Game and Fish Department. On behalf of the Arizona Game and Fish Commission and Arizona Game and Fish Department, I appreciate the opportunity to be here today to provide comments on the Wild, Free-Roaming Horses and Burros Act and its implementation in Arizona. I look forward to presenting information regarding the Act and its implementation in Arizona. I also look forward to discussing ideas on how to improve management of feral horses and burros in order to protect our public lands. In Arizona, wild horse and burro management is primarily associated with burro management issues on public lands administered by the Bureau of Land Management (BLM). However, burro management issues on lands not administered by BLM are of increasing importance due to the lack of management, increasing numbers, and resource damage by burros on these lands. These lands include National Wildlife Refuges, State Parks, lands managed in accordance with the Fish and Wildlife Coordination Act (e.g., the Arizona Game and Fish Department's Alamo Wildlife Area), which are dedicated to the management of fish and wildlife resource and fish and wildlife-related recreation. The Arizona Game and Fish Department realizes that BLM faces numerous challenges in order to manage feral burros on public lands in Arizona. From the Arizona Game and Fish Department's perspective, the most significant of these challenges include: 1) eliminating or minimizing adverse impacts to wildlife habitat, including native wetland and riparian habitat and sensitive wildlife species habitats;

2) completing burro population inventories, estimating population densities, and maintaining existing appropriate management levels; 3) collecting data to determine the level of impacts to wildlife habitats associated with burro use and overpopulation; 4) dealing with burro overpopulation and expansion outside of established Herd Areas or Herd Management Areas; and 5) obtaining funds and manpower to remove burros from areas where there is overpopulation, expansion beyond Herd Area Boundaries, or resource damage. From the early 1980s to present, we have focussed our efforts on working cooperatively with the BLM and other agencies to collect data in order to document resource damage. Also, the Arizona Game and Fish Department has collected data on burro habitat use and resource damage to wildlife habitats and burro numbers and distribution during our ground and aerial wildlife survey efforts. Adverse impacts by burros on native riparian, wetland, and upland habitats in Arizona have been documented in BLM land management planning documents, U.S. Fish and Wildlife Service evaluations, and by Arizona Game and Fish Department observations and studies. Although some burro removal efforts have occurred in Arizona since the Act was passed, current burro numbers in many Arizona Herd Management Areas are estimated by the BLM, the Arizona Game and Fish Department, and other agencies to be much higher than the existing appropriate management levels; and, many of these areas are not in a "thriving natural ecological balance". For example, the Black Mountain Herd Management Area has an appropriate management level of 478 burros, but the population is estimated to be over 700 burros; the Big Sandy Herd Management Area has an estimated burro population of around 300, while the appropriate management level is set at 139; the Alamo Herd Management Area has an established

appropriate management level of 200 burros, but the population is estimated by BLM to be at 500-600 animals; the Cibola-Trigo Herd Management Area, much of which includes National Wildlife Refuge lands, has an established appropriate management level of 165 with an estimated burro population of over 1,000 animals (BLM estimate). In Arizona, BLM suspended most, if not all, significant burro removal efforts as a result of a 1989 IBLA decision regarding removal of excess free-roaming horses in Nevada. Arizona BLM, through new land management planning efforts, is proposing to manage burros in all Arizona Burro Herd Areas. In other words, BLM is planning to designate all Herd Areas as Herd Management Areas in Arizona. At the time the Act was passed (or soon thereafter) some Areas of Distribution or Herd Areas were prescribed for zero burro numbers, due to one or several manageability concerns, such as land status and threatened and endangered species issues. However, Arizona BLM is now proposing to manage burros in all Herd Areas for a thriving natural ecological balance, even though the same manageability concerns exist today. In Arizona, burros are expanding into areas where they have not been documented before, and have clearly expanded outside the boundaries of established Herd Areas and Herd Management Areas. These problems are due to the lack of significant burro removals in Arizona. During the last few years, Arizona BLM has indicated to the Department and other agencies that there are limited funds available for burro management, or removals, in the state. To improve management of feral burros in order to protect our public lands in Arizona, burro management must be given higher priority and funds must be available to manage burro populations in accordance with the Act.

The Arizona Game and Fish Department is concerned about the existing and potential adverse impacts to the State's wildlife resources due to high feral burro numbers, and we offer the following comments and ideas on how to improve management of these animals in Arizona:

- 1) The Act itself may not be the problem, rather the problem appears to be the lack of compliance with the Act. This is likely due to different agency priorities, the lack of sufficient funding, and opposition to responsible and proactive horse and burro management pursuant to the Act;
- 2) Improve information and education regarding burro numbers in Arizona and the associated resource damage;
- 3) Improve interagency planning and management efforts to address the burro issues in Arizona;
- 4) Evaluate all available methods for reducing horse or burro populations provided for in the Act;
- 5) Exclude horses or burros from sensitive wildlife habitats, such as riparian zones, through fencing projects; and
- 6) Most importantly, increase funding for burro management in Arizona. Adequate funding must be made available to BLM to manage burros in Arizona in order to comply with the Act. In addition to providing direction for the protection of wild, free-roaming horses and burros, the Act also considers protection of the natural ecological balance of all wildlife species, particularly endangered species. These wildlife and wildlife habitat related considerations in the Act have not been adequately addressed in Arizona.

The Department looks forward to working cooperatively with BLM and the other agencies to address burro management in Arizona.

Thank you for this opportunity to participate in this oversight hearing.

**ARIZONA GAME AND FISH COMMISSION  
EXHIBIT 1**

U.S. Fish and Wildlife Service Biological Opinion Summary, dated October 2, 1997, on the Bureau of Land Management's Lower Gila Resource Area Amendment, Arizona.

**Statement Before The  
Committee on Resources  
Subcommittee on National Parks and Public Lands  
Oversight Hearing on Range Issues and Problems with the  
Wild Horse and Burro Act and its Implementation**

**Presented by Duane L. Shroufe, Director  
Arizona Game and Fish Department**

**July 13, 1998**



**BIOLOGICAL OPINION SUMMARY**  
**LOWER GILA RESOURCE AREA AMENDMENT**

Date of opinion: October 2, 1997

Action agency: BLM

Project: Lower Gila Resource Area Amendment

Location: Maricopa, Yavapai, Pima, Pinal, La Paz and Yuma counties, Arizona

Listed species affected: Southwestern willow flycatcher (*Empidonax traillii eximus*)  
endangered, no critical habitat

Biological opinion: The proposed action is not likely to jeopardize the continued existence of the Southwestern willow flycatcher

Incidental take statement:

Anticipated take: *Exceeding this level may require reinitiation of formal consultation.*

The following level of take of this species can be anticipated by loss of habitat. Habitat losses will be anticipated in the following manner: no more than 25% of seedling cottonwood and willows < 4 feet tall with apical stem nipping, no more than 10% of cottonwood and willow trees displaying evidence of bark stripping by burros, no increase in the square footage of trailing caused by burros.

Reasonable and prudent measures: *Implementation of these measures through the terms and conditions is mandatory.*

- 1) The BLM will remove burros in the Alamo Herd Management Area as described in the following terms and conditions.
- 2) The BLM will monitor the effects of burros on vegetation and make appropriate adjustments in burro numbers.
- 3) The BLM will monitor recruitment and growth of willows and cottonwoods and growth of the midstory and make appropriate adjustments in burro numbers.
- 4) The BLM as part of their action will provide a yearly qualitative and quantitative report to determine the level of incidental take that actually results from the project.

Terms and conditions: *Terms and conditions implement reasonable and prudent measures and are mandatory requirements.*

To implement reasonable and prudent measure 1:

- 1) a. Within three years of the date of the final biological opinion, the BLM shall manage burro numbers so that the monitoring thresholds are not met or exceeded. Active management must be demonstrated by the first annual report (Terms and Conditions #3).
- b. Alternatively, the BLM shall remove burros in the Alamo Herd Management Area in excess of the 200 identified in the Lower Gila North Management Framework Plan and South Resource Management Plan within three years of the date of the final biological opinion. The BLM shall allow burro numbers to fluctuate (or increase) from that level as long as monitoring thresholds are not met or exceeded (25% apical stem nipping, bark stripping, trailing).

To implement reasonable and prudent measures 2 and 3:

- 2) Monitoring of the project area and other areas that could be affected by the proposed action shall be done to ascertain take of individuals of the species and/or of its habitat that causes harm or harassment to the species. This monitoring will be accomplished using the following protocol:
  - a. Study transects (numbers and placement) throughout occupied, suitable, and potential southwestern willow flycatcher habitat will be chosen within the Alamo Herd Management Area by the BLM in collaboration with the Service within 6 months of the date of the final biological opinion. All studies will be conducted using methods that are repeatable and that provide valid information that is determined to be usable for decision making by both the BLM and the Service.
  - b. No more than 10% of cottonwoods or willows displaying stripping from burros will be allowed in occupied, suitable, or potential southwestern willow flycatcher habitat within the herd management area. Additional bark stripping from burros will require the BLM to contact the Service to discuss options including removal of additional burros.
  - c. On designated transects, measurements of apical stem nipping of cottonwood and willow seedlings < 4 feet tall will be taken yearly and if more than 25% of the plants receive nipping, the BLM will discuss options with the Service, including the removal of additional burros.
  - d. Square footage of trailing caused by burros will be monitored. If the square footage of trails increase, the BLM will discuss options with the Service, including removal of additional burros.
  - e. The BLM will avoid conflicts with bald eagles when doing burro removal and monitoring.

To implement reasonable and prudent measure 4:

- 3) A report of the results of the monitoring, including complete and accurate records of all incidental take that occurred during the course of the project, will be submitted to the Service on a yearly basis. This report will also describe how the terms and conditions of all RPMs in this incidental take statement were implemented.

Conservation recommendations: *Implementation of conservation recommendations is discretionary.*

- 1) The BLM could contribute either monetarily or in kind to the continued monitoring effort of southwestern willow flycatcher presence in the State.
- 2) The BLM could implement a study to inventory invertebrate populations along the Santa Maria River, in relation to prey availability for southwestern willow flycatcher.

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**DEAN RHOADS**

**SENATOR**

**REPRESENTING THE NORTHERN NEVADA SENATORIAL DISTRICT**

**NEVADA STATE LEGISLATURE**

**STATEMENT OF  
SENATOR DEAN RHOADS  
BEFORE SUBCOMMITTEE OF  
NATIONAL PARKS & PUBLIC LANDS  
RENO, NEVADA  
JULY 13, 1998**

My name is Dean Rhoads. I am a ranch operator in Elko County, Nevada, and a State Senator for the Northern Nevada Senatorial District, which includes Elko, Humboldt, Pershing, and parts of Lander and Eureka Counties. As these counties have significant populations of feral horses, I was pleased to be invited to participate in this hearing.

First, I wish to convey to you the appreciation of the residents of the area I represent for your time and effort in reviewing the matter of wild horses and burros on the public range and the present program of management. Since before the inception of the Wild Horse and Burro Act, I have been active in matters concerning public land management through membership in BLM Advisory Boards, the Public Lands Council, which is based in Washington, D.C., numerous State and Federal committees, and being able to serve for 20 years in the Nevada State Legislature as an Assemblyman or Senator. In the Legislature, I have continually been associated with committees concerning public lands and environmental concerns. At the present time, I am Chairman of the Nevada Legislative Committee on Public Lands. During the 26-year period since the enactment of the Wild Horse legislation, wild horses and burros and their proper management has been a continuous debate among the ranchers making use of the public grazing lands, the wild horse advocates, the environmentalists, and the land managers with no firm solution being reached. It appears that most interested parties have reached a point that it is their desire to arrive at a solution and therefore your interest in this matter is timely.

During your tenure in the Legislature and now Congress, it is certain that you have heard as many presentations, for and against wild horses and burros, as I have and from those have formed some opinions, as I have. My opinions are guided by my background as a rancher, a conservationist, a horse raiser, and a legislator fully aware of my responsibility to represent all of the interests of the people.

Since the passage of the act, there has been \$246,098,000 appropriated for the program. This has ranged from a low of \$400,000 in 1973 to a high of \$17,936,000 in 1987 with the last 5-

year average being \$16,132,000. From 1993 through 1996, the average wild horse and burro population was 43,650, which gives an average annual expenditure of \$369.00 per head. As a livestock operator, these costs would be much higher than I could bear. As a legislator, it is necessary that these costs be related to the benefits and in these times when economy of government administration is paramount, reviews be made as to the efficiency of the program. It cannot be seen how the results obtained to date can continue to justify this type of expenditure. Some manner of economy must be established.

Dollar expenditures on the management of the animals is only part of the economic effect which must be considered. Nevada has the largest share of the wild horse and burro population, with the estimated population in the State in 1997 being 22,835 of the total number of 43,037. A simple calculation commonly used for forage consumption on public lands, shows that these numbers require sufficient forage during one year to support 28,543 cows year round. A number of economic studies show that each producing cow has a positive economic effect equal to an average of \$700 per head in the communities. Therefore, the forage which must be reserved for wild horses and burros by reduction represents a negative economic effect to the State of \$19.98 million per year.

One of the directives given to the BLM by Congress is that the agency must manage the lands in order to maintain their health. This applies not only to domestic animal grazing and wildlife, but also wild horses and burros. Up to this date, the program has not been able to meet this directive. In 1996, it was estimated that the nationwide appropriate management level provided for 26,912 animals with 14,430 in Nevada based upon the ability of management areas to support those animals in a healthy, ecologically sound condition. However, the estimated population was 42,138 or 56% above the national appropriate management level. The appropriate level has never been reached in any year since the passage of the Act. This is due to high costs of removal of animals, including gathering and adoption, continuous opposition to control of numbers by wild horse and animal right advocates and the sheer weight of the numbers of animals.

As a cattle rancher who makes use of public rangelands for a portion of the year-round use, I am very conscious of the necessity to maintain the basic resources and attempt to improve the forage and soil conditions on these lands. When horses exceed the numbers that an area can safely carry, degradation of the natural resource occurs. From the fact that there have always been numbers far over the appropriate management level, it is necessary to assume that there is damage each and every year to many herd management areas. I have seen areas in Nevada where extensive overgrazing coupled with the recent drought caused damage which will require many years for recovery, if such is possible. Even

when gathers are conducted to remove excess animals, it is very difficult to achieve the optimum population. If this was done, in the next year there would slightly over that population and this excess would continue to increase until another gather occurred. The present program is not able to remove excess animals from each management area each year to maintain proper numbers.

Congress directed that animals be maintained in a healthy, ecological environment. Due to the inability to maintain correct numbers and weather fluctuations, extreme suffering occurs with these animals. Drought, severe winter conditions and poor forage growing conditions causes starvation, abandonment of colts, death from lack of water and other forms of stress on these animals. As a livestock man, I find it deplorable to put any animal in this type of situation.

Advocates of the program feel that the wild horse and burro must be preserved as a part of our heritage. In many instances, this need is exaggerated to the point that claims are made that these animals are descendants of horses from the time of the Conquistadores. My knowledge of Nevada and from information obtained in other States, this does not appear to be a correct assumption. These horses are progeny of animals who escaped from ranchers and settlers or who may have been turned out on the public ranges during periods they were not needed for work and never gathered. However, these advocates very strongly desire to be assured that viable herds do exist and in such numbers and locations that a healthy breeding program can be maintained. As these advocates represent a group who strongly feel that the wild horse and burro is part of the American scene, efforts should be made to maintain sufficient numbers in their normal habitat.

The different aspects of the program presented are summarized for this hearing. To fully and impartially cover these points would require days of hearings and volumes of information. My opinion is that any review of the program should fully consider the cost of the present program, the effectiveness of the present program, the need to care for and improve the natural forage and soil resource, maintenance of healthy viable herds, and public desires. From this review, it is hoped that the need for change becomes evident and that such change will require new and innovative techniques for administration of the wild horse and burro program.

In the past, there has been proposals that portions of the program be placed in the private sector. As you know, several attempts have been made to place unadoptable horses in private preserves with payment of the costs being paid from Congressional appropriations. To my knowledge, these failed for economic reasons, primarily being that the costs of caring for the animals was severely underestimated by private land owners. Even with

these failures, it is suggested that efforts be continued to place more of the program in the private sector, with the costs being borne by Congressional appropriations. In every instance, operations conducted by private parties has proven more efficient than that under government administration.

In some recent hearings of the Heil Wild Horse Commission, it was suggested that gatherings of excess numbers be conducted annually by private parties or permittees under contract with the United States. This should certainly be a consideration. It is believed that this would be one method which could result in annual reviews of herd numbers and removal of excess numbers before damage to the forage resource or the herd occurred. Another past proposal has been to provide for wild horse preserves on a combination private and public lands, with management of those preserves being by private parties under government supervision. Both of these concepts are innovative and appear to justify further review. It is hoped that during your hearings on this matter, you will be able to encourage further new concepts for management which will result in an effective program which will serve to meet the desires of interested parties.

Another matter for your consideration is the necessity to consider disposition of older animals, cripples and other unadoptables at gathers in order to arrive at appropriate management levels and maintain viable herds.

As I have been so deeply involved with the wild horse and burro program from its inception through the various organizations I serve and as I have a responsibility to the people of Nevada in connection with the public lands due to my position on the Public Land Committee, I sincerely hope that your findings will result in improvements in this program. Again, I wish to express appreciation for your efforts in resolving this 26 year old problem. I will look forward to having the opportunity to reviewing your findings and recommendations and hope that it will be possible to support those throughout the State.

**SUPPLEMENTAL SHEET TO**  
**STATEMENT OF SENATOR DEAN RHOADS BEFORE**  
**SUBCOMMITTEE OF NATIONAL PARKS AND PUBLIC LANDS**

Senator Dean Rhoads  
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## **APPENDIX**

**Materials provided by the United States Bureau of  
Land Management, Nevada State Office**

## WILD HORSE AND BURRO INFORMATION

Prepared for Michael Stewart, State of Nevada Legislative Counsel Bureau

Information requested by Senator Dean Rhoads

May 27, 1998

### Background

The Wild Free-Roaming Horse and Burro Act was signed into law on December 15, 1971. It is Public Law 92-195. The Act of Congress says:

- *Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people.*

Velma "Wild Horse Annie" Johnston of Reno was instrumental in obtaining support for the passage of the Act. She had been the driving force behind the 1959 law which prohibited the use of aircraft to chase down horses roaming Western rangelands.

The law applies only to horses or burros on lands managed by the Bureau of Land Management (BLM) or the Forest Service (FS). The authority to manage wild horses and burros is given to the Secretary of the Interior and the Secretary of Agriculture who in turn have delegated those authorities to the BLM and the FS. The law does NOT apply to animals on all lands administered by Interior or Agriculture, nor does it apply to animals on private or state lands. Therefore, horses on the Virginia Range or in Hidden Valley are not considered to be "wild and free-roaming horses." To be "wild and free-roaming," an animal must live on or come from a Herd Management Area (BLM) or a Territory (FS).

### Population

At the end of September 1997, there were approximately 42,000 horses and burros in 10 Western states, with about 23,000 in Nevada.

The numbers are determined by helicopter census. Census methods employed were developed by the National Academy of Sciences and field tested with State Departments/Divisions of Wildlife, including Nevada. The goal is to census one third of the herd management areas each year. In off-years, population census models developed by the University of Nevada, Reno, and other universities are employed.

Nevada has 99 Herd Management Areas (HMAs) for wild free-roaming horses and burros. Burros are found in 14 of the 99 areas. The HMAs encompass 16 million acres.

A table showing herd area statistics is attached. The table lists:

- the name of the herd area
- the code for the area (This is by BLM District: 100 = Elko; 200 = Winnemucca; 300 = Carson City; 400 = Ely; 500 = Las Vegas; 600 = Battle Mountain)
- BLM acreage (public lands)
- Non-BLM acreage (private and state lands)
- Herd area acreage (total of public and private-state lands)
- Herd area status (Is the area to be managed for wild horses and burros as a Herd Management Area or are the animals to be removed?)
- Fiscal year the Herd Management Area Plan was signed
- Horse Appropriate Management Level\*
- Estimated horse population
- Burro Appropriate Management Level\*
- Estimated burro population
- Fiscal year of the last census

\*Appropriate Management Level is the median number of adult wild horses or burros determined through BLM's planning process to be consistent with the objective of achieving and maintaining a thriving natural ecological balance and multiple-use relationship in a particular herd area.

### Recruitment Rate

In Nevada the fiscal year 1997 recruitment rate was calculated to be about 24 percent. The recruitment rate is calculated by adding the number of current year foals to the existing population and deducting the number of animals that died during the year.

### Making sense of HMAS and AMLs

The objective of the Nevada wild horse and burro program is to plan and implement management to establish a "thriving ecological balance" in the 99 areas and to reach those population levels.

The HMAs overlap all or part of 113 grazing allotments. In Nevada, the Appropriate Management Levels or AMLs for horses and burros are set through a Multiple-Use Decision process which

establishes use levels for ALL grazing animals, including livestock, wild horses and burros and wildlife. At the end of the 1997 fiscal year, AMLs were established for 49 HMAs, while 17 HMAs have "partial" AMLs. The reason some HMAs are only partially completed is the Multiple-Use Decisions are made on grazing allotments and often include only part of a HMA. (This is the case in the Fish Creek Allotment which has been of great concern to the Eureka County Commissioners.)

While AMLs have yet to be established for 33 HMAs, it appears there may be as many as 8,800 excess wild horses and burros on Nevada rangelands and that the statewide AML may be about 14,000 animals.

#### Population history

Attached is a table depicting the national population level from fiscal year 1986 through fiscal year 1997. Also show is the national AML. On the latter, however, remember that Nevada has not completed setting its AMLs.

**POPULATION NUMBERS, WILD HORSES AND BURROS ON BLM LANDS\***  
**FISCAL YEARS 1993 - 1997**

(A fiscal year runs Sept. 30 through Oct. 1)

National Population (*Nevada Population*)

1993	46,462 (26,664)
1994	42,410 (23,107)
1995	43,593 (24,067)
1996	42,138 (23,483)
1997	43,037 (22,865)

\*Horses and burros on Forest Service territories are not included in these figures.

NEVADA WILD HORSE AND BURRO HERD AREAS ADMINISTERED BY BLM

HERD AREA NAME	H.A. CODE	BLM AC	NON-BLM AC	HERD AREA AC	HA STATUS	FY HMAP SIGNED	HORSE A.M.L.	ESTIMATED HORSE POP.	BURRO A.M.L.	ESTIMATED BURRO POP.	FY LAST CENSUS
ARGOSA VALLEY	NV511	10,000	13,000	23,000	HM AREA		0	0	0	0	97
LOPE	NV401	390,553	8,782	400,335	HM AREA	93	311	799	0	0	97
LOPE RANGE	NV211	83,009	48,751	131,780	FMV ALL		0	130	0	2	95
LOPE VALLEY	NV107	462,040	1,500	463,540	HM AREA	93	240	507	0	0	
LEWHITE	NV518	27,814	0	27,814	HM AREA		20	13	0	0	97
MEADOWS	NV509	200,000	20,000	220,000	FMV ALL		0	0	0	0	97
JUSTA MTNS	NV311	210,000	6,000	216,000	HM AREA		308	668	0	0	97
MTN	NV803	120,000	0	120,000	HM AREA		362	324	0	0	95
BLACK ROCK RANGE EAST	NV209	91,300	3,804	95,104	HM AREA		93	217	0	0	97
BLACK ROCK RANGE WEST	NV227	92,543	8,047	100,590	HM AREA		83	316	0	0	97
BOY RUNS	NV204	43,991	31,858	75,847	FMV ALL		0	0	0	0	85
NOSE PEAK	NV514	86,695	0	86,695	HM AREA		20	2	0	0	97
WING MTNS	NV217	17,913	0	17,913	HM AREA	87	29	37	23	34	95
CO-BALD	NV403	613,950	13,080	627,030	HM AREA		426	1,471	0	0	97
AL O HILLS	NV220	123,141	9,269	132,410	HM AREA		314	377	0	0	97
FROG	NV829	126,900	700	127,800	HM AREA		12	0	195	17	96
E	NV407	430,770	5,730	436,500	HM AREA	93	118	215	0	0	97
COMT N	NV222	155,594	1,572	157,166	HM AREA		333	840	0	3	97
AGHAN	NV804	153,000	0	153,000	HM AREA		207	638	0	0	95
BERRY CREEK	NV408	44,269	0	44,269	HM AREA		11	0	0	0	97
ALPINES	NV310	320,000	2,800	322,800	HM AREA	93	978	1,200	0	0	97
RYER CREEK	NV517	33,653	0	33,653	HM AREA		40	0	0	0	97
RYER MTNS	NV518	175,717	0	175,717	HM AREA		60	60	0	0	97
BLUDGE CANYON	NV521	108,607	0	108,607	HM AREA		50	45	0	0	97
BAR	NV515	180,234	1,338	181,570	HM AREA	82	100	88	0	0	97
TOYA	NV808	124,000	0	124,000	HM AREA		217	187	0	0	97
OND	NV609	122,000	0	122,000	HM AREA		171	171	0	0	97
OND HILLS NORTH	NV104	70,000	0	70,000	HM AREA		37	37	0	0	
OND HILLS SOUTH	NV412	10,500	0	10,500	HM AREA		22	19	0	0	97
SKIN MTN	NV302	7,600	0	7,600	HM AREA	94	12	50	0	0	95
LAKE	NV410	494,335	0	494,335	HM AREA		84	140	0	0	97
TRANGE	NV225	310,605	120,790	431,395	FMV ALL		0	20	0	0	85
COLORADO MTNS	NV501	22,734	81,210	103,944	FMV ALL		0	0	0	10	97
ENE MTNS	NV207	39,540	37,989	77,529	FMV ALL		0	0	0	0	93
CREEK	NV812	275,000	0	275,000	HM AREA		248	550	0	1	94
LAKE VALLEY	NV622	10,000	10	10,010	HM AREA		50	10	9	0	95
UKAN	NV301	16,260	1,000	17,260	HM AREA	91	104	125	0	0	95
LAKE RANGE	NV228	171,958	5,307	177,263	HM AREA		204	483	0	0	97
FIELD FLAT	NV313	148,800	3,200	150,000	HM AREA		125	165	0	0	97
OD BUTTE	NV502	176,878	98,890	273,768	HM AREA		0	0	80	25	97
OD MTN	NV628	92,000	50	92,050	HM AREA		50	3	0	2	96
ODFIELD	NV628	92,000	0	92,000	HM AREA		103	0	41	5	97
HITE	NV108	250,800	0	250,800	HM AREA		160	439	0	0	
HITE PEAK	NV303	4,800	0	4,800	HM AREA	93	15	45	0	0	95
HITE RANGE	NV221	88,438	13,214	101,650	HM AREA		258	636	0	0	97
ILAND PEAK	NV522	137,778	1,849	139,625	HM AREA	87	50	38	0	0	97
SE MTN	NV307	53,000	160	53,160	HM AREA	92	75	42	0	0	95
SE SPRING	NV308	18,000	12,000	30,000	FMV ALL		0	0	0	0	
CREEK	NV816	40,478	35,584	76,060	HM AREA		41	58	0	0	97
SPRING MTNS	NV203	49,324	21,139	70,463	FMV ALL		0	0	0	0	85
BOLDT	NV224	243,048	198,888	441,932	FMV ALL		0	9	0	0	93
KSON MTNS	NV208	274,510	8,490	283,000	HM AREA		217	601	0	0	97
ESWASH	NV408	67,045	0	67,045	HM AREA		35	70	0	0	97
MA MTNS	NV214	54,573	2,872	57,445	HM AREA	87	84	59	0	0	95
IM HILLS	NV208	30,780	23,220	54,000	FMV ALL		0	0	0	0	85
ONTIAN	NV308	10,500	1,000	11,500	HM AREA	92	9	60	0	0	85
I CHANCE	NV510	78,895	3,342	82,237	HM AREA		0	0	50	37	97
A BEDS	NV215	231,744	0	231,744	HM AREA	87	119	370	13	34	95
IE FISH LAKE	NV814	28,420	83,488	109,908	HM AREA		54	75	0	0	97
IE HUMBOLDT	NV102	84,075	8,408	92,481	HM AREA		107	244	0	0	
IE MTN	NV519	54,148	410	54,558	HM AREA	84	50	33	0	0	97
IE OWYHEE	NV200	398,160	16,560	414,720	HM AREA	87	298	1,100	0	0	97

NEVADA WILD HORSE AND BURRO HERD AREAS ADMINISTERED BY BLM

HERD AREA NAME	H.A. CODE	BLM AC	NON-BLM AC	HERD AREA AC	HA STATUS	FY HMAP SIGNED	HORSE A.M.L.	ESTIMATED HORSE POP.	BURRO A.M.L.	ESTIMATED BURRO POP.	FY LAST CENSUS
ALTA	NV318	88,500	1,550	88,050	HM AREA	87	0	0	85	102	87
BLACK-MEDICINE	NV105	285,960	500	286,460	HM AREA		332	332	0	0	
BURNING MTN	NV210	50,000	0	50,000	HM AREA		0	0	41	85	84
BURNING VALLEY MTNS	NV513	84,968	0	84,968	HM AREA		0	27	0	0	87
BURNING PLAT	NV520	90,901	280	91,181	HM AREA	82	50	59	0	0	87
CRISTO	NV402	155,330	73,810	228,940	HM AREA	77	238	628	0	0	87
CUMMA PEAK	NV825	57,000	30	57,030	HM AREA		118	4	0	8	87
DIAMOND	NV413	83,873	0	83,873	HM AREA		61	84	0	0	87
DIAMOND MTNS	NV512	175,423	0	175,423	HM AREA		0	0	0	0	87
DIAMOND HILL	NV508	30,855	27,834	58,489	HM AREA		50	49	0	0	87
DIAMOND MTNS	NV503	81,228	79,590	140,818	HM AREA		0	9	50	20	87
DIAMOND WILD HORSE RANGE	NV524	394,500	0	394,500	HM AREA	95	800	528	0	0	87
DIAMOND PASS-RAVENSWOOD	NV602	225,000	0	225,000	HM AREA		476	271	0	0	84
DIAMOND ENGALE MTNS	NV219	72,218	3,801	78,019	HM AREA	87	52	280	0	0	85
DIAMOND STILLWATER	NV229	131,104	1,325	132,429	HM AREA		175	288	0	1	87
DIAMOND MOUNTAINS	NV202	88,273	53,843	121,816	FMV ALL		0	0	0	0	85
DIAMOND TEE	NV101	371,000	3,234	374,234	HM AREA		150	471	0	0	
DIAMOND HILL	NV304	8,000	18,000	26,000	FMV ALL		0	0	0	0	
DIAMOND HILL	NV824	71,000	200	71,200	HM AREA		78	0	0	0	87
DIAMOND SPLIT LONE MTN	NV821	85,000	0	85,000	HM AREA		48	84	0	1	87
DIAMOND MAIN	NV314	495,000	800	495,800	HM AREA		348	395	0	0	87
DIAMOND BUTTE	NV305	218,000	72,000	288,000	HM AREA		179	468	0	0	85
DIAMOND SNAKE	NV523	75,481	0	75,481	HM AREA		20	1	0	0	87
DIAMOND HILL	NV819	125,400	920	128,320	HM AREA		165	128	0	0	87
DIAMOND HILLS MTN	NV607	132,000	0	132,000	HM AREA		150	378	0	0	85
DIAMOND CREEK	NV103	115,500	38,500	154,000	HM AREA		250	502	0	0	
DIAMOND HILLS	NV605	124,000	0	124,000	HM AREA		131	188	0	0	85
DIAMOND SPRINGS EAST	NV405	388,778	0	388,778	HM AREA		257	519	0	0	87
DIAMOND SPRINGS WEST	NV630	203,868	35	203,903	HM AREA		49	19	0	0	87
DIAMOND HILL	NV411	361,318	0	361,318	HM AREA		159	51	0	0	87
DIAMOND WHITE RANGE	NV212	126,188	3,903	130,089	FMV ALL		0	88	0	20	85
DIAMOND HILL	NV813	80,938	7,482	88,428	HM AREA		105	145	0	0	83
DIAMOND TROUGHS	NV218	130,181	17,749	147,910	HM AREA	87	124	380	37	85	85
DIAMOND AVE MTNS	NV218	88,927	18,214	107,141	HM AREA	87	80	380	0	0	85
DIAMOND PEAK	NV823	186,000	12,000	198,000	HM AREA		200	87	0	1	86
DIAMOND BERING HILLS	NV205	84,862	14,585	79,547	FMV ALL		0	0	0	0	85
DIAMOND STORM MTNS	NV201	133,138	12,400	145,538	HM AREA	87	140	120	0	0	86
DIAMOND MA RANGE	NV223	148,799	60,779	209,578	FMV ALL		0	0	0	0	85
DIAMOND SHOSHONE	NV601	180,000	0	180,000	HM AREA		85	273	0	0	85
DIAMOND SLUMBERING HILLS	NV230	15,181	14,585	29,788	FMV ALL		0	0	0	0	85
DIAMOND STILLWATER	NV309	7,600	0	7,600	HM AREA	95	25	18	0	0	85
DIAMOND G MTN	NV504	297,853	278,232	575,885	HM AREA		50	81	50	48	87
DIAMOND DE-PEQUOP	NV109	138,000	0	138,000	HM AREA		82	218	0	0	
DIAMOND E CABIN	NV818	392,178	12,205	404,381	HM AREA	82	364	141	0	0	87
DIAMOND EWALL	NV827	21,800	0	21,800	HM AREA		43	0	24	0	87
DIAMOND O	NV110	57,500	57,500	115,000	FMV ALL		0	14	0	0	
DIAMOND RANGE	NV231	185,322	9,754	195,078	HM AREA		19	85	0	0	87
DIAMOND Y RANGE	NV232	89,712	46,215	135,827	FMV ALL		0	19	0	13	85
DIAMOND KEE RANGE	NV213	91,864	78,084	169,748	FMV ALL		0	0	0	0	87
DIAMOND SPRINGS CANYON	NV228	82,305	831	83,136	HM AREA		175	453	24	24	87
DIAMOND HUK	NV312	80,000	20,000	80,000	HM AREA		123	165	0	0	87
DIAMOND HILL	NV608	80,000	0	80,000	HM AREA		28	49	0	0	82
DIAMOND RIVER	NV408	88,534	0	88,534	HM AREA		90	88	0	0	87
DIAMOND CREEK	NV404	889,185	0	889,185	HM AREA		171	127	0	0	87
DIAMOND SIDE OF HERD AREAS	NV000						0	31	0	0	
<b>ACREAGE TOTAL:</b>		<b>18,877,402</b>	<b>1,994,473</b>	<b>18,871,875</b>		<b>ANIMAL TOTAL:</b>	<b>13,325</b>	<b>22,281</b>	<b>702</b>	<b>574</b>	

SIGNED HMAP's: 28

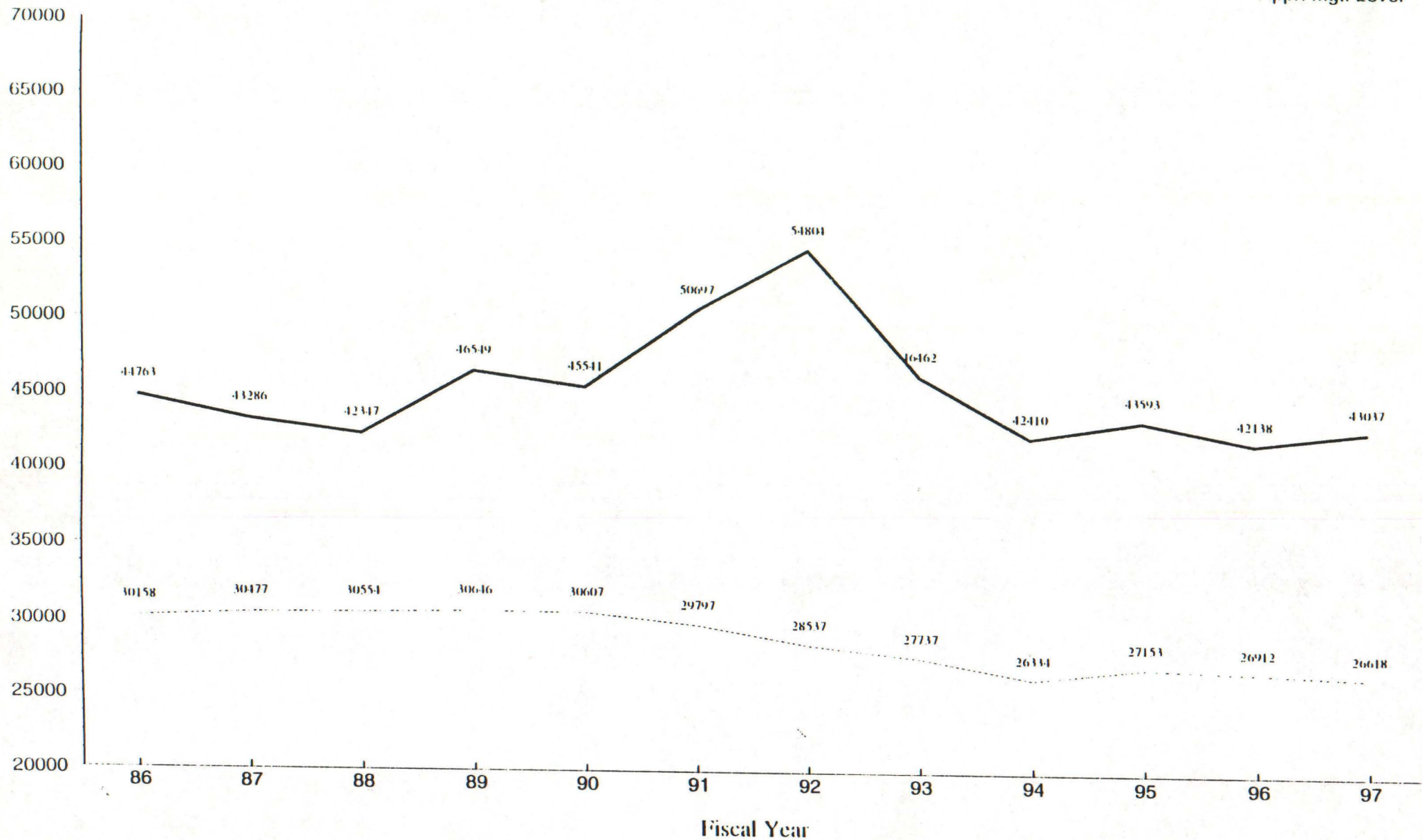
STATE WH&B POPULATION: 22,885

STATE WH&B A.M.L.: 14,027

EXCESS WH&B's: 8,838

### BLM WH&B POPULATION HISTORY (Pop. at end of FY)

Population  
Appr. Mgt. Level





## Gathers

Over the past five years, Nevada has gathered between 5,100 to 6,700 animals per year. Fiscal year 1998 funding provides for Nevada to remove 5,000 animals.

There are a number of factors which determine the number to be gathered, where the gathers will occur and which animals will be gathered.

In a "normal year," the BLM horse specialists meet to discuss which herd areas are most in need of gathers based on multiple-use planning, the condition of the range, the availability of water, court orders and the cost effectiveness of gathering in adjacent areas. All gathers are dependent on money available to the state.

Some of the practical items to be considered are:

- Humane consideration for foals and pregnant mares -- We do not gather during foaling season (March 1 - June 30) unless there are unusual circumstances.
- Most gathers are done by helicopter round-up, so contractor availability must be considered.
- Water trapping can occasionally be used instead of helicopters, but this method's success is highly dependent on weather and topography of the area.
- Once animals are removed from the range, the focus becomes the health and welfare of the individual animal and the capacity of the wild horse preparation and adoption facilities.
- Adoption is the principal method of placing "excess" wild horses and burros. If adoption rates slow down, the holding facilities become full and cannot take more animals.
- Adopters prefer younger animals. Since 1992, the BLM has only removed the younger, more adoptable animals knowing older animals fill the corrals with difficult to adopt animals. (Currently we only remove animals under age nine.)
- Although the Act has language on humane destruction of animals, Congress has for the past ten years in its Appropriations bills forbidden the destruction of any "healthy" horse.
- Immunocontraception is a birth control method which has been improved since the 1992 pilot project in the Ely-Elko area. The drug is still being researched, but may be utilized more in the future.

Emergencies do occur which alter the planned gathers. Drought or unusually heavy winter snowfall have both necessitated emergencies.

### Costs to gather

Contract gathers are bid in three parts:

- Groundwork, such as capture by helicopter, panels for the trap and sorting corrals, wranglers and aging of animals. This bid is received in ranges, such as the capture of 50-100 animals runs about \$350 to \$400 per head. The capture of 2,000 animals averages about \$125 to \$130 per head.
- Feed and care while at the field holding facility. This usually ranges from \$5 to 7 per horse per day.
- Transportation to a preparation facility. Cost is about \$2 per head.

Bureau of Land Management costs also include salary and travel for two BLM employees who serve as a Contracting Officer's Authorized Representative and a Project Inspector.

Others who contribute to the gather include a contracting officer and supervisors who oversee the horse specialists. There are costs to census before a gather to determine not only number of horses, but distribution. In the planning process, there are costs for planning and determining Appropriate Management Levels, preparing and issuing the Environmental Assessment and preparing and issuing the Gather Plan.

### Adoption program

As mentioned, the principal method of placing "excess" wild horses and burros is through the adoption program. This program began in 1973. A total of 162,000 animals have been placed (current as of May 29, 1998).

When an animal is removed from the range, it is transported to a preparation center where it receives immunizations for major horse diseases, is wormed, and is given the Coggins test to assure it does not have Equine Infectious Anemia. The animal is introduced to domestic hay. The National Wild Horse and Burro Center at Palomino Valley purchases as much as 4,000 tons of alfalfa and grass hay per year, mostly from the Yerington and Fallon areas.

Attached are two tables showing how many animals have been removed from the range and how many have been adopted throughout the Nation. Most horses are adopted west of the Mississippi where more people have acreage to keep a horse. Many burros are adopted as pets or to farmers and ranchers who desire a "guard" burro for sheep or geese.

Adoption demand has been down this fiscal year, for a variety of reasons. There are currently 1,400 animals in the Palomino Valley facility. In normal years, the corrals are empty by June as adopters are more enthusiastic about taking on a new pet in the spring and summer. Possible reasons for reduced adoption demand are: unpredictable, cold winter across the Nation; high cost of hay; negative press as a result of an Associated Press series of stories on the wild horse program in 1997; saturation of certain markets; change in adoption fees and use of competitive bids; less interest in animals ages five and older.

The cost for an animal is now \$125 each. For a number of years the cost was \$125 for an adult horse, \$75 for a burro, and \$125 for a pair (mare and foal).

Adoption may be the traditional lottery-type method where the qualified adopters draw for when they may choose an animal. Or, the competitive bid may be used, giving adopters a chance to determine monetarily which animal they want. Thus far, BLM has observed that the first few animals go for a high price, then the rest of the animals go for \$125.

## TOTAL REMOVALS AND ADOPTIONS, 1992 TO 1997 FISCAL YEARS\*

(A fiscal year runs from October 1 to September 30)

National number in regular type(*Nevada numbers in italics*)

### TOTAL WILD HORSES AND BURROS REMOVED

1992	6,663 (3,632)
1993	8,545 (5,103)
1994	7,868 (5,328)
1995	9,286 (6,701)
1996	9,365 (5,884)
1997	10,443 (6,295)

### TOTAL WILD HORSES AND BURROS ADOPTED

1992	8,095 (310)
1993	7,251 (173)
1994	7,867 (242)
1995	9,655 (224)
1996	8,074 (116)
1997	8,692 (207)

\*These removals and adoptions reflect animals on both BLM and the Forest Service lands in the Great Basin area. Typically, the two agencies cooperate so that gathers are joint because this is more cost effective and efficient. However, in other geographic areas, the BLM and Forest Service may have other gather and placement arrangements; therefore, not all Forest Service numbers are reflected here.

NOTE: In fiscal year 1998, which began Oct. 1, 1997, we have gathered 3,921 animals, nationally. In Nevada, we have gathered 2,965. Thus far in fiscal year 1998, the national adoption figure is about 4,900 animals.

Has gathering/adoption improved range conditions?

The answer is yes. The purpose of all wild horse and burro captures within HMAs is to remove excess wild horses and burros to achieve a thriving ecological balance. It brings the herd to a population level that will result in a sustainable use of the resource.

The purpose of captures when wild horses and burros have wandered outside a HMA is to maintain a sustainable level of forage use on those areas designated for uses by other animals . i.e., wildlife and domestic livestock.

Adoption is the only means available at this time to the BLM to place these "excess" animals.

## MISCELLANEOUS

### Sanctuary

There is one wild horse sanctuary, located in Bartlesville, Oklahoma. This program was recommended by Congress as a place for older, less adoptable or less attractive horses which are otherwise healthy. About 1,450 horses are on the sanctuary. The last horses shipped there were older horses (well above age nine) from the Nellis Wild Horse Range.

PUBLIC LAND

STATISTICS

1996

Volume 181

BLM/BO/ST-97/001-1165

March 1997

TABLE 5-4. Wild free-roaming horse and burro populations as of September 30, 1996

Administrative State	Horses	Burros	Total
Arizona	171	3,555	3,726
California	2,434	2,485	4,919
Colorado	871		871
Idaho	551	1	552
Montana	165		165
Nevada	22,796	687	23,483
New Mexico	70		70
Oregon	1,718	6	1,724
Utah	2,405	118	2,523
Wyoming	4,105		4,105
<b>Total</b>	<b>35,286</b>	<b>6,852</b>	<b>42,138</b>



TABLE 5-5. Wild free-roaming horse and burro removals and adoptions by State, fiscal year 1996

Administrative State	Animals adopted				Animals removed	
	FY 1972 to FY 1995		FY 1996		FY 1996	
	Horses	Burros	Horses	Burros	Horses	Burros
Alaska . . . . .	62	11				
Arizona . . . . .	1,799	991	68	21	7	422
California . . . . .	10,634	3,925	401	81	257	132
Colorado . . . . .	3,858	439	452	54	640	
Eastern States . . .	39,469	10,027	2,911	716		
Idaho . . . . .	4,559	205	198	2	84	
Montana . . . . .	14,320	1,407	497	64	2	
Nevada . . . . .	3,412	495	104	12	4,497	1,387
New Mexico . . . . .	21,111	2,624	804	158	6	
Oregon . . . . .	7,925	1,141	278	13	344	
Utah . . . . .	3,857	225	326	53	221	55
Wyoming . . . . .	6,801	809	782	79	1,311	
Total . . . . .	117,807	22,299	6,821	1,253	7,369	1,996

Total adopted, fiscal years 1972 through 1995: 140,106

Total adopted, fiscal year 1996: 8,074

Total removed, fiscal year 1996: 9,365

Notes: The table reflects reassignments, which occur when adopted animals are returned to the Federal government and then readopted. Mules are reported as burros.

Adoptions were previously reported by geographic state, including the District of Columbia. Beginning in 1996, consistent with removals of wild horses and burros, adoptions are reported by the administrative state having jurisdiction over the animal.

Eastern States Office administers the wild horse and burro program in the 31 States east of and bordering on the Mississippi River. Wyoming administers the program in Nebraska. Montana administers the program in North and South Dakota. New Mexico administers the program in Kansas, Oklahoma, and Texas. Oregon administers the program in the State of Washington. California administers the program in Hawaii.

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GEORGE R.E. BOUCHER  
COUNTY MANAGER  
(702) 738-5398

*Board of County Commissioners*

COUNTY OF ELKO  
569 COURT STREET • ELKO, NEVADA 89801

July 7, 1998

**NANCY LAHEEB, SUBCOMMITTEE CLERK  
NATIONAL PARKS AND PUBLIC LANDS  
% PAT PHILLIPS  
400 SOUTH VIRGINIA STREET, SUITE 502  
RENO, NEVADA 89501**

**re: Oversight Hearing Wild Horse & Burro Act**

Enclosed are 75 copies of my testimony for the above mentioned hearing to be held on Monday, July 13, 1998 at 8:00 a.m., at the Washoe County Commissioners Chamber, 1001 E. 9th, Building A, Reno, Nevada.

Additionally I have faxed a complete statement with all attachments to your subcommittee office at 202-226-2301.

Thank you for allowing me the opportunity to present a statement at this very important field oversight hearing. I look forward to the opportunity.

Sincerely,



Anthony L. Lesperance, Commissioner

cc: Elko County Commission

COMMISSIONERS

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*Board of County Commissioners*

COUNTY OF ELKO  
569 COURT STREET • ELKO, NEVADA 89801

**July 13, 1998**

**SUBMITTED FOR THE RECORD**

**HOUSE SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
HONORABLE JAMES V. HANSEN, CHAIRMAN**

**STATEMENT SUBMITTED BY: ANTHONY L. LESPERANCE, Ph.D.  
Commissioner, DISTRICT V, ELKO COUNTY  
President, GREAT BASIN AGRICULTURE, INC.**

COMMISSIONERS

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*Board of County Commissioners*

COUNTY OF ELKO  
569 COURT STREET • ELKO, NEVADA 89801

July 13, 1998

**SUBMITTED FOR THE RECORD**

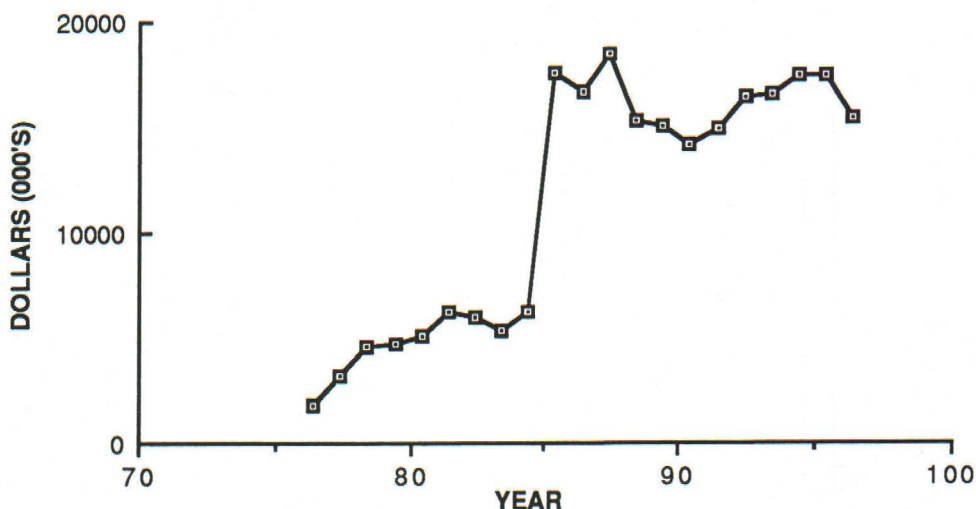
**HOUSE SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
HONORABLE JAMES V. HANSEN, CHAIRMAN**

Mr. Chairman, Honorable Members:

Since the creation of the Wild Horse and Burro Program, Congress has heard considerable rhetoric, both pro and con, concerning this subject. Unfortunately, much of the presented information has been more emotional than factual. I would like to take this opportunity today to present for your consideration certain factual data obtained entirely from the BLM National Wild Horse and Burro Program web page (<http://www.blm.gov/whb/statsum.html>), as well as certain information obtained from the BLM via FOIA requests.

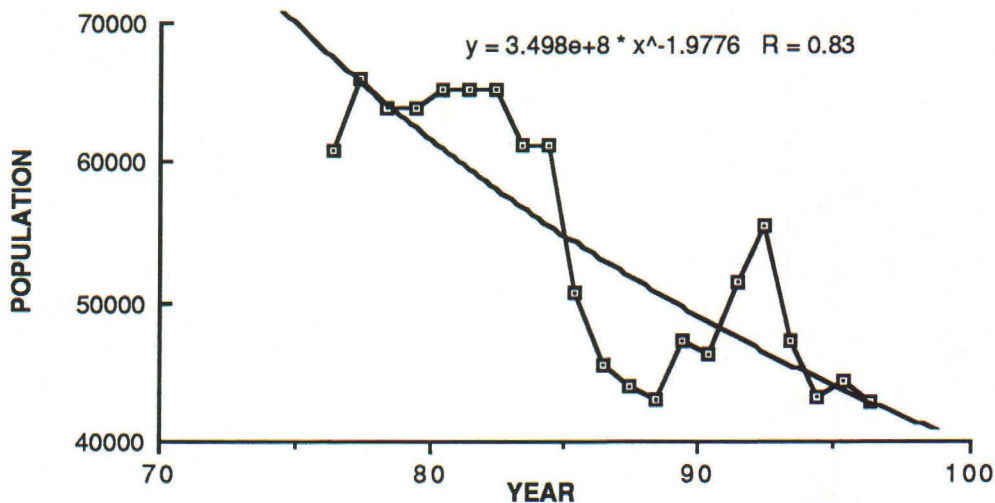
Funding for the BLM Wild Horse and Burro Program started in 1973 and has continued through 1997. To date some \$246,099,000 has been allocated by Congress. Initially, funding remained low, only exceeding one million dollars annually in 1975. Funding remained below six million annually until 1985, when it jumped to over 17 million, and has remained in the 15-17 million dollar range ever since. A graphical representation of the annual commitment of public funds to this program is presented in Table One.

Table One: Annual appropriation by Congress for the Wild Horse and Burro Program.



One can logically ask, has the expenditure of nearly one quarter of a billion dollars of taxpayers monies resolved the wild horse and burro problem? In this statement, resolving means to achieve the stated BLM goal of obtaining the "appropriate management level" (AML), which nation wide means obtaining a stable population of approximately 27,000 animals. The first year of agency reported wild horse and burro numbers was 1976, when the population was estimated at 60,100 head. That number remained nearly constant through 1984. As mentioned earlier, a significant increase in the appropriation occurred in 1985, resulting in a dramatic decrease in numbers of animals still roaming public and private lands. However, since 1985, the decrease in numbers has been minimal, and remained relatively constant for the last three years. Data of estimated year end horse and burro population is presented in Table Two.

Table Two: Estimated year end numbers of agency managed wild horses and burros roaming public and private lands.

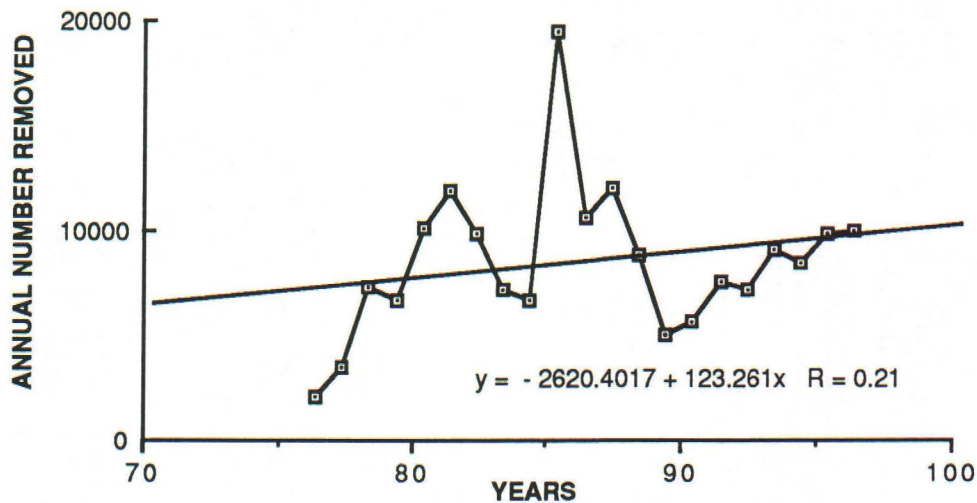


In an attempt to better understand the significance of the data in Table Two, mathematical representations of the set of data were considered. In all, four equations were considered, including a simple mathematical expression; a polynomial expression; a logarithmic expression and an exponential expression. The best overall fit of a mathematical expression of the data in Table Two was obtained using a logarithmic equation. Basically, what this indicates is that as the wild horse and burro population approaches the AML, the more difficult it will become to obtain the stated goal. The 1976 determined level of horses and burros was some 60,100 head. The stated AML is 27,000 head. The 1996 estimated year end population was 42,138 head. Thus, after 21 years, some 54% of the goal has been obtained. If these data were indicative of a simple, or straight line regression equation, then we could assume that in about another 19-20 years of reduction at the present rate of budget allocation, the stated

AML goal of 27,000 head would be obtained. However, the data indicate that this is not a straight line relationship, that in fact every year the goal becomes more difficult to obtain. In fact, the above equation is telling us that the stated AML goal of 27,000 head, given the present parameters, will in all likelihood never be obtained.

Removal of wild horses and burros commenced in 1973; however, only limited numbers were removed in 1973-1975. Between 1976 and 1996, some 164,581 horses and burros were removed, for an annual average of 7,837. Data for horse removal by years is presented in Table Three. A statistical evalua-

Table Three: Annual removal of wild horses and burros from public and private ranges.



tion of these data indicates that the gathering has been increasing at an average of 123 head a year; however, the R value of 0.21 indicates that this increase is not statistically significant. In other words, we can conclude that the gather has simply averaged 7,837 head annually over this period. Initially, this level of gather seemed to bring the population down, but, as the data in Table Two clearly indicate, this effect is becoming less and less with each passing year.

Several factors are worthy of consideration as possible explanation. First, Congress tripled the appropriation for the Program from 1984 to 1985, going from 5.8 million to 17.0 million dollars. This directly resulted in the number of animals removed going from 6,084 in 1984 to 18,959 in 1985. This in turn resulted in the estimated end of year population dropping from 60,356 in 1984 to 49,935 in 1985. The following year another 10,126 head were removed further dropping the remaining number to 44,763. In 1987 another 11,521

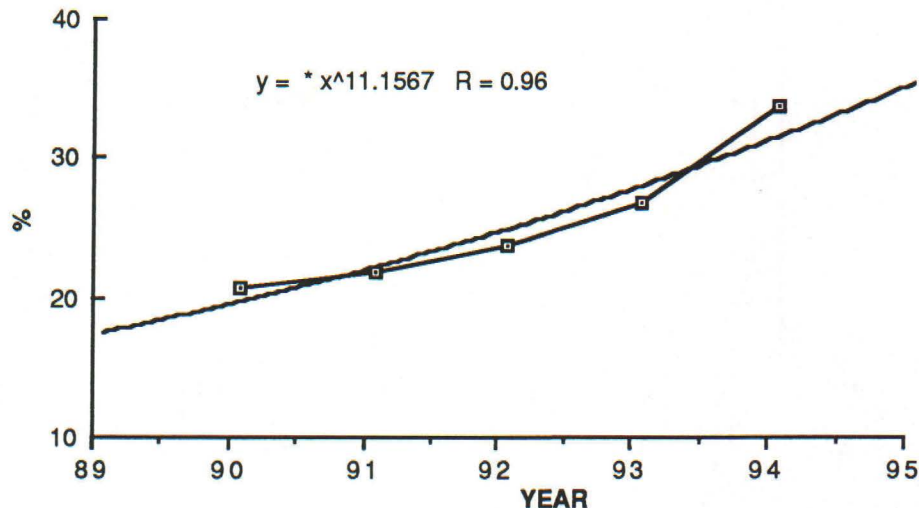
head were removed, resulting in a year end estimated remaining total of 43,286 head. In the subsequent nine years, year end populations have remained nearly constant, while gathers have averaged 7,400 head annually. However, what is of interest is the three years 1985-1987. Some 40,606 head of wild horses and burros were removed, yet, the year end population decreased only 17,070, from 60,356 to 43,286. Where did the extra 23,536 head of animals come from, or possibly go to? Possibly the BLM had underestimated the entire herd population in years prior to the increased gather appropriation. Or possibly certain well known biological factors affecting population dynamics were occurring.

Biologist, game managers, ranchers and most everyone dealing with populations of almost any type of organism know that when numbers of any population are reduced, there is a tendency for that population to increase its reproductive rate, like a built in safeguard against the elimination of the species. This is a common high school biology lab experiment with bacteria in a petri dish. Various factors will cause this population explosion; possibly, a better level of nutrition, simply from less competition for food from reduced numbers. Ranchers will tell you this is a "flushing" concept. Sometimes, the remaining population will simply be younger, and more dynamic, directly resulting in a better rate of reproduction. Or sometimes, it is a built in function of the animal population to be more in balance with its ecosystem. Regardless of what the motivating factor truly was, it would be very predictable that the free roaming horse and burro population of the western states would significantly increase its reproduction rate after some 67% of its population was removed over a three year period; and apparently, that's precisely what happened, at least in part. In all likelihood, better reporting techniques also will account for some of these figures. However, the important point is that if numbers are to come down to the AML, the projected numbers for removal will have to be increased, if the goal is ever to be obtained.

Practically, can this be accomplished with the bureaucracy associated with a federal organization such as the BLM? Likely not. An examination of the budget for the Wild Horse and Burro Program for the five year period of 1990-1994 suggest why this will be difficult to accomplish (Table Four). The overhead for any bureaucratic program increases with time. The tripling of the budget in 1985 directly resulted in the tripling of the gather; however in subsequent years, similar budgets have resulted in the same level of gathering that was occurring with budgets of 5 million dollars, not 15 million dollars.

In 1990, some 20% of the budget for the Program was spent on overhead, or what is called program management, but by 1994 this had increased to 33% of the budget. Furthermore, as the data in Table Four indicate, this is not a straight line relationship, rather a logarithmic one, thus, the increase in overhead cost is increasing at an ever increasing rate, and in a few short years, it is totally predictable that the bureaucratic cost of operating the Program will be such that annual gathers will decrease to the point that the year end populations will likely increase back to previous highs, or even higher levels than were reported at the inception of the program.

Table Four: Percent of total allocation spent on overhead of the Wild Horse and Burro Program.



Wild horses and burros exist in 10 western states. However, of the current estimated population of 42,138 animals, some 26,192 exist in the State of Nevada, or 62%. Of the current budget for the program, less than 43% is allocated for use in Nevada, which is a further indication of the extent that overhead is dominating the actual use of dollars going directly for gathering.

The bureaucracy of the BLM is not entirely to blame for these problems. Many of the tools for effective removal of horses and burros have either been eliminated, or reduced to where they are no longer effective. One such example comes from an examination of the data for number removed versus number adopted annually. During the period of 1976-1985, some 1,878 more head were removed annually than were adopted, suggesting other means of disposing of horses were employed. In the 11 years since 1985 (1986-1996) only an average of 70 head more were removed than were adopted, essentially indicating that adoption is presently the only method of removing horses and burros from government management. These discrepancies are also possibly explainable by the fact that some removed horses were never actually put up for adoption, but were returned to the public lands. It is also conceivable that this practice still continues, but returned horses are simply no longer reported as being removed.

It is obvious that the Wild Horse and Burro Act will never be able to accomplish the AML goal of 27,000 head without significantly increasing congressional funding. Further, it is also obvious that maintenance of the AML will not be accomplished, if obtained, without significant long standing financial support from Congress. The cost of the Program, based on the removal of a single horse since the inception of the Program is in excess of an average



HON. J. HANSEN, 7/13/98

PAGE 6

of \$1,392 per head. Based on the above facts, the per head cost can only continue to escalate. At some point the patience of the average American taxpayer must be considered. As a taxpayer, as well as a county commissioner, I must strongly urge you to realistically consider alternative concepts, such as privatizing the gather, and simply using the BLM for licensing and overseeing. Provisions could readily be made for a dual program of adoption and humane disposal to cover the cost of the operation. *It is possible to convert a growing tax liability into at least a financially self sustaining program.*

The congressional management of the Wild Horse and Burro Program is typical of the many resource problems faced in the West today. It represents an attempt by Congress, dealing with a multi-trillion dollar budget, to micro-manage a few million dollar problem, that could in fact be managed far more effectively at the local, or state, level. A very effective argument can and has been made over the very ownership of these animals, and that argument does not support federal ownership; they are wildlife within the state, and in Nevada, wildlife is the property of the state (see Exhibit A, attached herewith). Perhaps the real question for Congress to resolve, is not the management, or the cost of the management of these animals, but in fact what truly constitutes a federal feral horse or burro. Correctly resolving that issue will go a long way in removing the frustration of this program from the hands of Congress.

Regardless of what path Congress takes on this issue, it is for certain that continuation of the present Program will not accomplish the stated goal of obtaining 27,000 animals. Furthermore, the cost of an effective program will only continue to escalate under the present set of circumstances. Additionally, not controlling the wild horse and burro population will only continue to add to the degradation of the western ranges, the consequences of which are unacceptable, and a fact which only Congress can ultimately be held responsible for.

Respectfully submitted,



Anthony L. Lesperance, Commissioner  
ELKO COUNTY

**EXHIBIT A**

## PART TWO

In its opening brief (points and authorities) the United States asserts that its Bureau of Land Management has a requirement to obtain water rights for the benefit of wild horses and wildlife. Nevada Revised Statutes provide that use of the State's water for wildlife is a beneficial use, and that statute appears to include water for wild (feral) horses. But the United States' assertion that the Bureau of Land Management has a right to appropriate water for wild horses and wildlife is unavailing because, as hereinafter shown, the Bureau has no cognizable property interest in wild horses or most wildlife situated in the State of Nevada. Since the Bureau has no such interest, it can have no basis to seek to appropriate water on behalf of wild horses and burros or wildlife and could not prove beneficial use if it were granted a permit.

\* \* \* \* \*

### **AS SUCCESSORS BY CONQUEST TO THE ENGLISH CROWN, THE ORIGINAL THIRTEEN STATES OWNED ALL THEIR WILDLIFE.**

**History.** Prior to the Revolution, the English sovereign owned all wildlife in his American colonies, just as he owned all wildlife in England. The treaties entered into between the English king and the seceding Thirteen Colonies vested by right of conquest all rights of sovereignty which the king had possessed in the new nation-states. **That included ownership or title to all wildlife within their respective borders.** See, Treaty Of Peace With Great Britain (Treaty of Paris) 1 DOCUMENTS OF AMERICAN HISTORY, pp.117-119, Document 74, Treaty of Peace with Great Britain (Treaty of Paris) (H.S. Commager ed. Prentice Hall 9th ed. 1973); Martin v. Waddell's Lessee (a.k.a. Martin v. Waddell), 41 U.S. (16 Pet.) 367, 410, 10 L.Ed. 997, 1012-1013 (1842); Johnson and Graham's Lessee v. M'Intosh (a.k.a. Johnson v. M'Intosh), 21 U.S. (8 Wheat.) 543, 595; 5 L.Ed. 694 (1823).

By adopting the present Constitution of the United States to replace the Articles of Confederation, the Original Thirteen vested certain enumerated and limited powers in the new national government. U.S. Const., Art I, Secs. 8, 9, Art. II, Secs. 2, 3; Printz v. United States (No. 95-1478) and Mack v. United States (95-1503), \_\_ U.S. \_\_ (June 27, 1997); U.S. v. Lopez, 514 U.S. \_\_, 531 L.Ed.2d 626, 633, 115 S.Ct. 1624 (1995); . **The Constitution does not grant the national**

government any power over wildlife, except by implication in the:

- (i) Interstate Commerce Clause (Art. I, Sec. 8), or
- (ii) International treaty powers (Art. II, Sec. 2).

If the national government does not possess any power over wildlife, no such power can be delegated to the Department of the Interior and its Bureau of Land Management.

All sovereignty not expressly granted away by the States in the Constitution, or necessarily implied by its terms, remained vested in the individual States or in the people. U.S. Const. Tenth Amend.; New York v. U.S., 505 U.S. \_\_\_, 120 L.Ed.2d 120, 154, 112 S.Ct. 2408, 2431. **The Original Thirteen, therefore, retain all that sovereignty over wildlife formerly possessed by the English king.**

### **PURSUANT TO THE EQUAL FOOTING DOCTRINE, THE STATE OF NEVADA OWNS ALL WILDLIFE SITUATE WITHIN ITS BORDERS.**

The Equal Footing Doctrine, broached in the Articles of Confederation, is incorporated into the present Constitution (Art. VI, Cl. 1), and further adopted by statute by the 1st Congress meeting after its ratification (Northwest Ordinance, readopting the Confederation's Northwest Ordinance.) The doctrine holds that all after-admitted States enter the federal Union with exactly the same attributes of sovereignty that were possessed by the Original Thirteen at the time they created the Union, no less, no more. U.S. v. Texas, 339 U.S. 707, 94 L.Ed. 1221, 70 S.Ct. 918 (1950); U.S. v. California, 332 U.S. 19, 91 L.Ed. 1889, 67 S.Ct. 1658 (1947); Coyle v. Smith (a.k.a. Coyle v. Oklahoma) 221 U.S. 559, 55 L.Ed. 853, 31 S.Ct. 688 (1911); Pollard's Lessee v. Hagan, (a.k.a. Pollard v. Hagan) 44 U.S. (3 How.) 212, 11 L.Ed. 565 (1845).

**Therefore Nevada, pursuant to the Equal Footing Doctrine, holds exactly the same incidents of sovereignty over wildlife as do the Original Thirteen.** No sovereignty over wildlife was expressly vested in the United States by Original Thirteen; implied federal authority under the Constitution is limited to the Interstate Commerce Clause and the International Treaties Clause.

Can the United States through its Bureau of Land Management claim jurisdiction over wildlife and wild (feral) horses and burros in Nevada pursuant to those two clauses? The answer generally is "no."

### International Treaty Power

The court is asked to take judicial notice that wild (feral) horses and burros in Nevada do not migrate across national boundaries; therefore they do not fall under the federal government's international treaty power over migratory animals. Likewise, judicial notice is requested that wild horses and burros are not endangered species (in fact their rapid reproduction or "recruitment rate" is a continuing problem); therefore they do not fall within the parameters of any endangered species treaty. The International Treaties Clause affords the federal government no authority or jurisdiction over wild horses and burros.

Intervenor Eureka County stipulates that certain wildlife resident in Nevada is subject to the international treaty power. For example, those birds covered by the Migratory Bird Treaty Act are subject to federal, not state, control. Likewise, any flora or fauna covered by a ratified endangered species or biodiversity treaty would be subject to federal control. **Except for water use by migratory waterfowl visiting refuges already withdrawn from the public domain (and subject to the Winters Doctrine of reserved federal water rights), the use of Nevada water by flora and fauna subject to migratory treaty power is *de minimus*.** Migratory waterfowl and their refuges are the province of the U.S. Fish and Wildlife Service, not the Bureau of Land Management.

SB 94, under attack by the Bureau of Land Management in the instant proceeding, does not prevent the U.S. Fish and Wildlife Service from making application under Nevada water statutes for appropriate water permits for treaty flora and fauna. Those permits can be certificated under Nevada law after beneficial use is shown to the state engineer. But, that's a Fish and Wildlife Service prerogative, not within the BLM's scope of authority.

### Interstate Commerce Clause

The court is asked to take judicial notice that wild (feral) horses and burros in Nevada do not (with very minor exceptions) migrate across state lines; the herds are resident within the State's boundaries. A few burros wander back and forth between Nevada and California within boundaries of Death Valley National Park, a unit of the National Park Service, not the BLM. Arguably, what little water those few burros drink is already reserved to the United States pursuant to the Winters Doctrine, with a priority date when the monument was withdrawn from the public domain. A very

few feral horses living in the northwest corner of Nevada on occasion may wander into adjacent California or Oregon. Likewise, a very few horses living in the Owyhee Desert of north-central Nevada rarely venture into Idaho. Again, any interstate activity is *de minimus*.

Further, the wild (feral) horses and burros in Nevada are not ordinarily entered into interstate commerce. To the extent that might occur, the federal government does have authority under the Interstate Commerce Clause to regulate or forbid such activity, although the Kleppe case, discussed *infra*, disregards interstate commerce as a possible basis for upholding the Wild and Free-roaming Horse and Burro Act.

Congress has power (i) to keep the channels of interstate commerce free from immoral and injurious uses, (ii) to regulate and protect the instrumentalities of interstate commerce or persons or things in interstate commerce, even though the threat may come only from intrastate activities, and (iii) the power to regulate those activities that substantially affect interstate commerce. United States v. Lopez, 514 U.S. \_\_\_, 131 L.Ed.2d 626, 637, 115 S. Ct. 1624 (1995). Congress may not use the Interstate Commerce Clause to ". . . [e]mbrace effects upon interstate commerce so indirect and remote that to embrace them . . . would obliterate the distinction between what is national and what is local and create a completely centralized government." Lopez, supra, at 636 (L.Ed.2d), quoting Jones & Laughlin Steel, 301 U.S. at 37, 81 L.Ed. 893, 57 S.Ct. 615 (19 ). The Lopez and Printz-Mack cases above cited represent a change in direction by the Supreme Court, reining in the broad readings of the Interstate Commerce Clause which have prevailed since the start of the New Deal era.

**Clearly, the Interstate Commerce Clause today does not afford Congress any substantial jurisdiction over wild (feral) horses and burros unless those animals are entered into interstate commerce or affect interstate commerce.** That could occur if the animals are slaughtered for pet food, or sold out of the state for any purpose, but not so long as the horses are roaming the public lands in Nevada.

## **CONGRESS MAY ONLY ENACT LAWS "IN PURSUANCE" OF THE CONSTITUTION; THE WILD HORSE AND BURRO ACT IS VOID.**

The Congress has no authority to enact laws except "in pursuance" of the Constitution. U.S. Const., Art. VI. ". . . [A]n act of the legislature, repugnant to the Constitution, is void." Marbury

v. Madison, 5 U.S. (2 Cranch) 137, 175, 2 L.Ed. 60, 73 (1803). "An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." Norton v. Shelby County, 118 U.S. 425, 442, 30 L.Ed. 178, 186 (1886). "Where rights secured by the Constitution are involved there can be no rule making or legislation which would abrogate them." Miranda v. Arizona, 384 U.S. 436, 491, 16 L.Ed.2d 694, 733, 86 S.Ct. 1602 (1966).

The Constitution is the measure of federal power. "The constitutional authority of Congress cannot be expanded by the 'consent' of the governmental unit whose domain is thereby narrowed, whether that unit is the Executive Branch or the States." New York v. U.S., *supra*, at 154 (L.Ed.2d) and 2432 (S.Ct.), quoting INS v. Chadha. "State officials . . . cannot consent to the enlargement of powers of Congress beyond those enumerated in the Constitution." New York v. U.S., *supra*. "Where Congress exceeds its authority relative to the States, therefore, the departure from the constitutional plan cannot be ratified by the 'consent' of state officials." New York v. U.S., *supra*. "Nor does the State's prior support for the [an] Act estop it from asserting the Act's unconstitutionality." New York v. U.S., *supra*, at 155 (L.Ed.2d) and 2432 (S.Ct.).

The Constitution confers on Congress "only discrete, enumerated" powers. U.S. Const, Art. 1, Sec. 8. Printz and Mack, *supra*.

The "great innovation" of our constitutional design "is that our citizens would have two political capacities, one state and one federal, each protected from incursion by the other -- a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." Printz and Mack, *supra*, quoting U.S. Term Limits Inc. v. Thornton, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring).

The federal government's incursion into wildlife management, other than as authorized by its interstate commerce and treaty powers, is an invasion of a sphere which has been that of the states since adoption of the U.S. Constitution. There is no over-riding necessity for such federal intervention, and therefore the Wild and Free-roaming Horse and Burro Act is unconstitutional.

The Wild Horse and Burro Act establishes criminal penalties for such violations as "harassing" the animals it purports to protect. That is an equally egregious violation of our federal system where the "States possess primary authority for defining and enforcing the criminal law." Brecht v. Abrahamson, 507 U.S. \_\_\_, 123 L.Ed.2d 353, 113 S.Ct. 1710 (1993). "Our national government is one of delegated powers alone. Under our federal system the administration of criminal justice rests with the States except as Congress, **acting within the scope of those delegated powers**, has created offenses against the United States. Screws v. U.S., 325 U.S. 91, 89 L.Ed. 1495, 65 S.Ct. 1081, 162 ALR 1330 (1945) (plurality opinion) (emphasis supplied).

Since Congress is not granted any discrete, delegated powers to legislate with respect to wild (feral) horses and burros, and since Congress' implied powers are not relevant, and since to so legislate would violate our federal system, the conclusion is inescapable that the federal Wild and Free-roaming Horse and Burro Act is unconstitutional.

### **KLEPPE V. NEW MEXICO APPEARS TO HAVE BEEN OVERRULED BY DECISIONS REVIVING CONSTITUTIONAL STATES' RIGHTS.**

And, it follows as the night the day, that wild (feral) horses and burros are not federal property.

It has been argued that the question of federal supremacy over wild (feral) horses and burros was addressed by the U.S. Supreme Court in Kleppe v. New Mexico, 426 U.S. 529, 49 L.Ed.2d 34, 96 S.Ct. 2285 (1976) reh. den. 429 U.S. 873, 50 L.Ed.2d 154, 97 S.Ct. 189. Kleppe is only marginally a Supremacy Clause case; it primarily reviews the Property Clause and is noteworthy for the observation that "[t]he power over the public lands thus entrusted to Congress is without limitations," quoting U.S. v. San Francisco, 310 U.S. 29, 84 L.Ed. 1050, 60 S.Ct. 749.

In Kleppe Mr. Justice Thurgood Marshall adroitly finesses the question of ownership of wild horses and burros, and other wildlife. New Mexico stipulated that the gathered animals had resided on federal land (and the question, if any, of ownership of the land was not litigated). Justice Marshall then concluded that the federal government could regulate wild horses and burros, and other wildlife, ancillary to its power to declare rules and regulations for its property (the land). Therefore, the Court held, the Wild and Free-roaming Horses and Burro Act was a constitutional exercise of the power



of Congress.

Kleppe does appear conclusive in the matter, at least until one ponders more recent U.S. Supreme Court decisions that cast considerable doubt on Kleppe's continued vitality. Justice Marshall, understandably considering his background, held no brief, no patience for states' rights. But the Ninth Judicial District Court must consider those states' rights cases that have been noted *supra*, U.S. v. New York (1992), U.S. v. Lopez (1995) and Printz/Mack v. U.S. (1997). Those cases 16 to 20 years subsequent to Kleppe, and the holdings therein cited, have reinvigorated the federal system as devised by the Founders, and rescued the Tenth Amendment of the Constitution from oblivion as merely an unnecessary statement of the obvious, *i.e.*, "that which is not granted is retained."

Kleppe clearly is at odds with today's High Court holdings that the federal and state systems are independent, "one of the Constitution's structural protections of liberty," Printz-Mack v. U.S., *supra*. Fair reading of New York, Lopez, and Printz/Mack leads to an inescapable conclusion:

**Kleppe has been overruled by the more recent states's rights cases, at least insofar as Kleppe could be read to grant the federal government plenary power over wild (feral) horses and burros, and other wildlife, that have been the property and domain of the States since the successful conclusion of the American Revolution.**

The states' rights law of New York, Lopez, and Printz/Mack simply cannot be reconciled with the federal power grab authorized by Kleppe. Either the more recent cases are wrongly decided, or the Kleppe rationale has been implicitly abandoned. It is past time for the courts to declare that either Kleppe was improvidently decided in the first place, or that the case no longer has any legal vitality in light of subsequent decisions.

Therefore, the Ninth Judicial District Court in and for the County of Douglas should recognize:

**1. That the federal government has no authority over any state's wildlife, except such limited authority as may be found in the Interstate Commerce and International Treaty clauses;**

**2. That whatever invasion of states' rights over wildlife may have been assented to in**

Kleppe v. New Mexico, *supra*, the vitality of such invasion has been implicitly abandoned by the holdings of the recent states' rights cases, New York, Lopez, and Printz/Mack.

Such findings by the district court will allow for disposition of the pending matter by confirmation and ratification of the decision of the Nevada State Engineer dismissing the applications of the Bureau of Land Management for stockwatering permits on nine springs in Douglas County where "ancillary" use by wild (feral) horses and burros and wildlife practically would be a primary use.

**CONCLUSION: THE FEDERAL GOVERNMENT DOES NOT HAVE A GENERAL PROPERTY INTEREST IN WILD (FERAL) HORSES AND BURROS AND OTHER WILDLIFE IN NEVADA, AND GENERALLY IS NOT ENTITLED TO STOCK-WATERING PERMITS FOR USE BY SUCH ANIMALS BECAUSE IT COULD NOT SHOW FEDERAL BENEFICIAL USE. TO THE EXTENT THAT THE FEDERAL GOVERNMENT MAY HOLD PROPERTY INTERESTS IN WILDLIFE UNDER THE INTERSTATE COMMERCE OR INTERNATIONAL TREATY CLAUSES SO IT CAN SHOW BENEFICIAL USE, IT IS ENTITLED TO APPLY FOR NEVADA WATER RIGHTS FOR WILDLIFE PURPOSES.**

Respectfully submitted.

**EUREKA COUNTY DISTRICT ATTORNEY**

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*Board of County Commissioners*

COUNTY OF ELKO  
569 COURT STREET • ELKO, NEVADA 89801

**July 13, 1998**

**SUBMITTED FOR THE RECORD**

**HOUSE SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS  
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES  
HONORABLE JAMES V. HANSEN, CHAIRMAN**

**FOLLOW-UP ADDRESS**

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**STATEMENT SUMMARY:**

The statement evaluates the management of wild horse and burros based on data obtained from the BLM web page and FOIA requests. Data includes annual costs of the administration of the Wild Horse and Burro Program (Program), estimated year end numbers of animals on public and private lands, annual removal of animals, and overhead costs of the Program. Analyses of data clearly indicates that obtaining the appropriate management level (AML) of 27,000 animals nation wide will be difficult if not impossible. One possible reason for this is the fact that as animal populations are decreased, reproductive rates appear to increase. Additionally, analyses of the Program budget indicates that overhead is escalating rapidly, consequently funding for actual removal/adoption of animals becomes limited. Left unchecked, the present Program will require substantial improvements in funding if the AML is ever to be achieved. Maintenance of the AML, if achieved, will require a never ending congressional budgetary commitment. Alternative concepts are suggested, including close congressional consideration of what truly constitutes a federal feral horse or burro. Additional, consideration is urged for privatization of the Program, with licensing and overseeing to be conducted by either the BLM, or possibly the state, if it is determined that the animals in fact are not federal property.

**DISCLOSURE REQUIREMENT**  
**Required by House Rule XI, clause 2(g)**  
**7/13/98**

1. Name: Anthony L. Lesperance
2. Business Address: 651 Silver St. Elko, NV 89801
3. Business Phone: 702-738-8560
4. Organization you are representing: Elko County Commission
5. Any training or educational certificates, diplomas or degrees which add to your qualifications to testify on or knowledge of the subject matter of the hearing:  
B.S., M.S. & Ph.D. in various fields of agriculture and ecology, with emphasis on public and private land management
6. Any professional license or certifications held which add to your qualifications to testify on or knowledge of the subject matter of the hearing:  
None
7. Any employment, occupation, ownership in a firm or business, or work related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:  
I was a professor at the University of Nevada, Reno for 25 years. During that period I taught and did research in all fields of agriculture and ecology of private and public lands throughout the Great Basin.  
  
I have been president and owner of Great Basin Agriculture, Inc. for the last 13 years. This corporation operates two sub businesses, called Great Basin Agriculture and Mine Supply and Great Basin Resource Management. These organizations have been active in many phases of mining and agriculture in Nevada and surrounding states.
8. Any offices, elected positions or representational capacity held in the organization on whose behalf you are testifying:  
Commissioner, Elko County  
  
President, Great Basin Agriculture, Inc.
9. Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1994 from the U.S. Department of the Interior and/or the U.S. Department of Agriculture, the source and the amount of each grant or contract:  
None
10. Any federal grants or contracts (including subgrants and subcontracts) which were received since October 1, 1994 from the U.S. Department of the Interior and/or the U.S. Department of Agriculture by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:

No contracts, but Great Basin Agriculture, Inc. does have an equipment maintenance agreement with the Elko District, BLM for two pieces of equipment. The agreement is annual and the amount is variable depending on the service required; however, the yearly value would not exceed \$2,000.

11. Any other information you wish to convey to the committee which might aid the members of the Committee to better understand the context of your testimony:

My research and teaching at the University centered around the management of public and private lands. During that tenure I acquired extensive knowledge on the workings of the various land management agencies, and the impact that their management decisions have on productive aspects of multiple use, including livestock grazing, wildlife management, and wild and free roaming horses and burros.

I am a recognized expert in livestock management on both public and private lands. Our firm has managed some of the larger ranches in Nevada. More recently, I have become a recognized expert on surface water rights on both public and private lands.

I frequently work as an expert witness in litigations between the federal government and private interests, including political subdivisions such as counties. These litigations include takings concepts involving all aspects of private property rights.

My tenure as a County Commissioner has impressed on me how serious the ever changing rules and regulations being fostered by the land management agencies are on the economy of rural counties.

Rey Flake  
Lincoln County Commissioner  
Caliente, Nevada

Written testimony for  
Subcommittee on National Parks and Public Lands  
Field Oversight Hearing  
Monday, July 13, 1998  
9:00 a.m.  
Reno, Nevada

I thank you for the opportunity to address this committee. I thank you for your concern for Public Lands in the West and for your willingness to come out to the West and hold these hearings to find facts that will perhaps help Congress as they direct the Department of Interior and the Bureau of Land Management in the management of public lands in the west.

I'm a fifth generation rancher -- at least five generations that I know of, five generations of my ancestors have made their living in agriculture and in livestock management. They've passed a great legacy on to me -- they were all men who loved the land and attempted to care for it. I was taught by my father and my grandfather that whether the land is public land or private land we are merely stewards over the land. Someday we will answer to the Creator for the stewardship which we exercised over the land that we were given as well as our livestock and other possessions. I know that there is no way to have a viable ranching operation without healthy lands.

Lincoln county is 98.2% public lands. Public land management has a great impact on Lincoln County, its finances and our ability to provide services to the people who reside within its boundaries.

I have at least two generations following behind me that are involved in agriculture and in ranching on public lands. Three sons, a daughter and son-in-law and their children are directly involved in the ranching industry on public lands in the west.

Not long ago I went to help my sons brand a bunch of calves. As we took a little break and were visiting, I looked up and realized that there had been seven little boys, ages ten down to a year and a half who had been around and involved in our branding, pretending, doing everything they were seeing the men do. The older ones being involved, helping, doing jobs they could do. The younger ones living every aspect of the life that was around them. The stark realization came to me that among these young boys existed not only the future of the livestock industry but the future of healthy, viable resource management. If we don't bring future generations up, involved in the ranching way of life, involved in the public lands management, involved in caring for the resource, if we don't teach them correct principles and give them a desire to be involved at this young age, we will lose a great legacy. The nation and the health of the public lands will be the great loser.

I have a grave concern for the direction that is being taken in the management of Public lands. I have a great concern for the erosion of the number of AUM's (Animal Unit Months). Nothing great, no big numbers, just little, gradual, cutting



of AUM's. In the Ely district, there has been over the last few years a cumulative AUM loss of nearly thirty percent. This represents an annual loss of economic activity in the amount of \$3,040,122. \*1 How can we propose or even hope to keep a viable industry, how can we keep people on the land to care for it if we continually encroach upon their ability to produce and be economically independent.

In my own operation I am able to perform services for other public land users and do many things that are beneficial to the health and welfare of public lands. I can only do this if it's an economically viable operation. Hardly a day goes by that I am not out on my permit, deterring vandalism, directing the lost person to find their way, providing a jack to change a tire, giving gasoline to those who have not properly prepared to travel out in the wide open spaces, monitoring the resource, meeting wildlife needs, providing all types of services. Again I can only do that if it is an economically feasible operation to allow me to be out there.

You specifically wanted to talk about the Wild Horse and Burro Act, its shortfalls, its implementation. I'd like to make some comments on that today. It's amazing to me that with the passage of the Wild Horse and Burro Act of 1971, immediately, anyone who had any knowledge of management of wild horses on western ranges, seemed to be the "bad guy" and were set aside and a whole new team came into being to manage the wild horses. A team that knew nothing about what it took to manage wild horses. I guess it is amazing that things haven't been worse than they are - but they have been bad enough!

Horse management in Nevada at least, has caused great damage to the resource. Damage that in many places will take years for it to recover. It has managed to cripple an industry which was in place and committed to the protection of public lands. What has happened could be compared to me taking over the coaching of a professional ball team, firing all the players, getting all new players - who didn't even know how to play the game and then wonder why I couldn't win. It's been 27 years and we still don't know what the appropriate management level is in many areas. We haven't identified how many horses the resource can handle. How can we start to have proper management if we don't know what the limits of our resources are? There has to be a way to remove excess numbers. There has to be some innovative ways to move these numbers. The adoption program is slow and costly, grossly inadequate and very ineffective. In March there were over 6,000 head of horses in the "Adoption Pipeline" at a cost of approximately \$500,000 per month. \*2 Today there are about 4,000 head still in the holding facilities. \*3

Correct science will show that there is a limit to what the resource will handle. If I had a pasture that would run 40 cows and I put 80 in that pasture, it should be no surprise that they will consume all the available feed. In time, with the resource all gone, I can't just go back to the 40 head of cows. I have to get rid of everything and have no cows until I can grow some feed back and have resource to handle them. Even the horse advocate groups and the inexperienced horse lovers have to know that there has to be something out there for the horses to eat. If the west is as they see it, an unlimited resource that can run an unlimited number of horses then why have we through the years continually cut back the numbers that the ranchers can run? There is a limit to the number that the resources can handle! If we just keep messing around with it we will ruin the horse program as well as the resource.

One case-in-point is the Nevada Wild Horse range on the Nellis bombing range. There's a resource that has been totally destroyed. It will take years to build back the resource to where it can be a viable operation. No one was willing to bite the bullet and remove the horses. It had ten or twelve times the number of horses on there over what the resource was rated to handle. This is an area where there are no livestock. It is managed exclusively by the BLM. There is no excuse for this *mismanagement*. They just didn't know what to do or didn't have the ability to do what was necessary. There are other areas that are headed the same direction. What are we doing about them? We must check the direction of the whole wild horse and burro program.

You know if you are trying to find a point with a compass, if you're off two degrees at the start it doesn't seem like much, but when you get out there a hundred miles that two degrees makes a pretty wide gulf between where you wanted to go and where you actually ended up. There has to be a way to continually correct the course. If we don't correct the course continually as we go along, pretty soon we think that our north is true north and we completely lose sight of the goal where we were headed and miss it by a mile.

What are we trying to accomplish with the wild horse and burro program? If this is truly to be a legacy of the old west we had better take a reality check and see if we're really doing that. Is having a bunch of old, thin, poor, starving horses, out there on the range by the hundreds over using the resource a legacy of the old west? Did our ancestors allow that to happen? Did they allow stock, be it horses or cattle to just run lose out there with no management, no control, no upgrading, no breeding programs, no attempts to balance the numbers with the available resources? If so, we wouldn't have wild horses, we wouldn't have anything today. Granted -- there were a few abuses,

but by in large there was some management. I would dare say far more management than there is in the program today.

We've created a bureau that has authority but does not have accountability or responsibility. We've created a whole department in our nation -- a department with the authority to make broad sweeping decisions, but no accountability for the correctness of those decisions and no corrective course to bring them to a reality check from time to time to see if we're really going where we want to go.

We have allowed the adoption process to drive the whole horse program. Horses are gathered off the range and anything that is deemed unadoptable is turned back out and those that are deemed adoptable are taken away. This is false practice. How can we expect to raise adoptable horses if we keep turning the unadoptable ones back to reproduce? The adoption process drives the whole program. If we don't have people to adopt the horses they are simply turned back out and allowed to destroy the resource. Some changes have to be made in the program. **It has to be a resource driven program and not an adoption driven program.** We have to cut the horse numbers down to what the resources can handle and figure out what to do with the others. We need to expand adoptions and the BLM needs to have sale authority if only on a one time basis to help us achieve AML (Appropriate Management Level).

It is estimated that the Ely District is at present about 2,000 head over AML and the State of Nevada is about 13,000 head over. \*4 .As much as we hate to see it, we've got to do away with the excess horses. We must control the numbers or we won't have enough resource left to have any program at all. **We must have a quality program and not a quantity program!** If we really want to preserve a legacy of the old west we've got to have quality in our animals and cut the quantity down. We've got to manage. Its got to be a resource driven quality program. We must do whatever it takes to make it work.

One of the things that needs to happen is to have local involvement. We need to involve local government and the permittees. For example, on my allotment I could "water trap" horses when necessary for removal at a great savings of time and money to the BLM. I believe we should allow the permittees in some areas to control the horse numbers under the direction of the BLM. This could be done on a trial basis with a few ranchers. I think we would be surprised at how well it would work. Local involvement will help to correct the course from time to time and get the program going the right direction. When there are fewer horses available there will be increased adoption possibilities.. There's got to be a demand for these horses. The only way

to get that demand is to cut down the supply. We must get the numbers down to a manageable controllable figure.

We should consider the idea of having one or two herds of horses in each state. These areas could include interpretive centers to educate the public. There could be R.V. spaces available for rent and guided tours. The smaller number of horses could be more intensely managed and the public could gain more enjoyment from their horses. They would then truly begin to be a Legacy of the West.

Ranching on public lands is also a legacy of the west. Let's consider the preservation of this legacy. I want my children and grandchildren to enjoy the same blessings I have enjoyed by living close to the land. As we all work together I am sure this can be accomplished.

Thank you,

- \*1 Resource Concepts, Inc. A Review of Public Land Grazing in Eastern Nevada Apr 1998
- \*2 Bureau of Land Management report to Southern Mojave RAC (Resource Advisory Committee) 2/98
- \*3 Personal contact with Alan Shepherd, Wild Horse Spec., Caliente Field Office, Ely NV District 7/98
- \*4 Personal contact with Alan Shepherd, Wild Horse Spec., Caliente Field Office, Ely NV District 7/98

## EXECUTIVE SUMMARY

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In 1994, three Nevada State Grazing Boards recognized the need to review selected Bureau of Land Management (BLM) grazing management decisions. The BLM Grazing in Nevada database was developed to allow for the evaluation of grazing trends within selected BLM Districts. Since publication of that report, "Analysis of the Bureau of Land Management Grazing Allocation Process in Nevada" (RCI, 1994), significant changes have occurred in BLM regulations governing the management of grazing allotments. Realizing the historic and economic impacts of the new management practices, Lincoln and White Pine Counties and the N-4 State Grazing Board have cooperated to update the Ely District portion of the 1994 report. Also, the report's scope was expanded to include the US Forest Service (FS) Ely Ranger District and the Great Basin National Park.

Active preference has been reduced by 209,837 AUMs (animal unit months<sup>1</sup>) within the Ely BLM District since adjudication in 1965. This represents a 29 percent reduction. Between 1980 and January 31, 1998, 130 of the 235 allotments were evaluated and subjected to some level of management change. Based on this, the Ely BLM District has completed slightly over half of the evaluation process. Since adjudication, active preference was reduced in 136 allotments, increased on one allotment, and active preference on 97 allotments has not been changed. Reductions since 1980 total 88,273 AUMs. At a value of \$21 per AUM, the potential direct impact in economic activity to the livestock sector within the Ely District is an annual loss of \$1,853,733. The decrease in economic activity in the region as a result of these reductions is estimated to be \$3,040,122 annually. The market value of the impacted ranches is estimated to have decreased by \$3,266,101 since 1980. This directly impacts property values, thereby affecting county property tax structures.

As with the BLM, the FS Ely Ranger District also has undergone and continues to experience changes in livestock management in the recent past. Foremost among these changes was

TESTIMONY OF  
JOHN BALLIETTE  
CONTRACTUAL NATURAL RESOURCE MANAGER  
EUREKA COUNTY, NV  
before the  
HOUSE COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS

Monday, July 13, 1998

Chairman and Members of the Committee:

Thank you for the invitation to testify before your Committee on an issue that is very important to rural Nevada. My testimony will include a summary of my background and qualifications, an overview of some major problems we have encountered and some suggestions on how the wild horse and burro program can be improved.

My education in natural resource management includes a bachelors degree from the University of Nevada-Reno and a masters degree from New Mexico State University. I have worked on ranches and for both the Bureau of Land Management (BLM) and the US Forest Service. I also spent 10 years working for the University of Nevada-Reno as an agricultural extension agent. For the last three years, I have represented Eureka County Nevada as a contractual natural resource manager on a wide range of issues including wild horses.

Problems in the wild horse program do have an affect on rural communities. An increasing horse population, in combination with other factors, have resulted in significant reductions in livestock AUM's (Attachment 1). Recent AUM suspensions, that are partially attributable to increased horse numbers, represent a loss of about 20% of the permitted livestock use in Eureka County. Similarly, cattle numbers have fallen in Eureka County from 41,000 in 1982 to 15,000 in 1997 (Nevada Agricultural Statistics Bulletins, USDA National Agricultural Statistics Service). These losses are felt not only in the agricultural industry but also by local governments. The long term sustainable economic sector and tax base in Eureka County has traditionally been agriculture.

Several problems in the horse program in Nevada have a lot to do with accountability. In the winter of 1993-94, Railroad Pass in Central Nevada experienced a significant horse kill. A deep snow followed by a lengthy cold period resulted in starving horses.

Similarly, there was a major die-off of horses on the Nellis Range several years ago after a prolonged drought. In both cases, I will argue that the magnitude of these disasters could have been lessened if horse numbers were at an appropriate level in relation to the range resource. Furthermore, if those horses were in private hands, the owners would likely have faced serious charges. I am not suggesting that serious charges should be brought against agency employees but I feel strongly that such instances should be thoroughly reviewed and individuals who are in some way responsible, should at a minimum, be assigned to activities for which they are better qualified.

Another area where accountability is lacking is in the Multiple Use Decision (MUD) process. A MUD is typically the document that sets appropriate management level (AML) for horses, stocking rates for livestock and a forage allocation for wildlife. Often a MUD will also prescribe changes in management for livestock such as season of use or implementation of a grazing system. Livestock producers are expected to comply immediately with a MUD and can face consequences such as trespass or livestock impoundment for non-compliance. Unfortunately when it comes to mustangs, we have witnessed a trend in which BLM apparently does not feel compelled to comply with their own decisions. Because, livestock producers can not use excuses for failing to comply with MUDs, we as citizens are held to higher level of accountability to BLM decisions than the agency itself.

The Fish Creek grazing allotment and the Fish Creek Herd Management Area (HMA) is an example of BLM failing to comply with their own decisions. In 1994, BLM reduced the number of livestock by 75% on the Fish Creek Allotment and an AML of 75 horses was established for that portion of Fish Creek HMA that lies within Fish Creek Allotment (62% of Fish Creek HMA lies within the Fish Creek grazing allotment). Despite two horse gathers over the past several years, a March 1998 census by BLM showed 263 horses were in the Fish Creek Allotment. This is much higher than the 75 head called for in the MUD. We have heard excuses from the BLM such as not enough time, money or manpower as well as a lack of space in adoption facilities as reasons for not reaching AML. These reasons are not acceptable and I believe the agency must reconsider its priorities. I also believe removing perennial language from Interior Appropriations language that restricts the Secretary from selling surplus horse should also be considered.

The second problem area with the horse program is when BLM fails to comply with the criteria of a MUD, the result can be very detrimental to the resource base. In the Fish Creek Allotment, failure to bring horses to AML has resulted in continued heavy to severe grazing of white sage (a very palatable shrub). This over utilization is due solely to horses because no livestock have used the allotment for over three years. Similarly, horses in Railroad Pass consistently over utilized a revegetated area to such an extent that ranchers could not use the allotment. Also, at last count, there are over 400 head of horses above AML in the Grass Valley Allotment which contributes to overgrazing. Again, the over grazing in these three allotments can be directly attributed to BLM's failure to maintain horses at AML. I have lengthy documentation of over utilization by horses on both the Fish Creek and Railroad Pass Allotments and will duplicate this

documentation for your sub-committee at your request. The point I am trying to make is that BLM has issued MUD's on numerous allotments that have resulted in livestock reductions, more intensive management, losses of personal income and a loss of tax base. These MUD's have also called for the reduction of horses yet BLM has not complied with this requirement. When BLM fails to bring horse numbers to AML, these impacts are compounded by the continued degradation of the resource base.

Excessive numbers are also challenging the viability of the present horse herds. BLM has a policy of only removing animals under nine years of age. As a result, herds that have been gathered several times consist of the very old and the very young. Along with increased age, many herds are dominated by studs, because older studs are not as adoptable as older mares. Biologically, a healthy population consists of evenly distributed age classes and severe events (drought, cold, hunger etc.) have a more severe impact on the youngest and oldest age classes. We may be setting the stage for disaster, given the present composition of horse herds.

The first solution that must be implemented is decisions regarding horses must be made on the basis of sound range management and the needs of other multiple uses. Presently, decisions regarding the horse program appear to be based on the adoption system. Because the adoption system can not handle the present excess, especially the old and undesirable, the outlet for excess animals must be expanded.

The current tools for controlling horse populations are limited to the adoption program and fertility control. The adoption program was backed up with 5,000-6,000 head of horses earlier this year. Also at present, the national horse population exceeds AML by over 15,000 head (1996 BLM estimates, National Wild Horse and Burro Program). If Congress expanded funding to gather all excess horses, the existing adoption program would likely be inadequate.

Many of us view the fertility control program with skepticism, especially for HMA's that greatly exceed AML. Fertility control, to me, seems best suited for populations at or near AML. Using Fish Creek as an example once more, BLM recognized in their Environmental Assessment for fertility control (EA# NV-062-EA98-005) that "... it can be projected that AML can be achieved in 9 to 13 years with the implementation of fertility control." This strongly indicates that large reductions in a horse population will take a significant length of time using fertility control. I contend the length of time required to reduce population with fertility control may actually prove detrimental to the range resource base as I can document in the Fish Creek and Railroad Pass Allotments.

At any rate, the current tools for dealing with excess horses are inadequate. There are several ways to expand the outlet for excess horses. Perhaps the most controversial and effective is sale authority. However, sale authority must be debated.

Some real double standards exist when it comes to sale authority. Each year our country sells thousands of privately owned horses for slaughter. But the mere mention of sale



authority of "wild" horses with the possibility of slaughter is offensive to some. Horses are the only large ungulate on federal lands that are not harvested for consumptive purposes. If harvesting one large ungulate is acceptable, why is harvesting horses unacceptable? Horses must be viewed as are other large ungulates on federal lands, a renewable resource that can be effectively managed by harvesting excess numbers.

Perhaps a more acceptable solution would be limited sale authority. The model I envision would allow sale authority for herd management areas that greatly exceed carrying capacity or AML. Rather than removing only young adoptable animals and leaving only old unadoptable animals, remaining herds should consist of evenly distributed age classes. By using sale authority, BLM could base management and actual horse numbers on the health and viability of the range resource and the health and viability of the horse herds rather than basing such decisions on the adoption program. Once AML is reached, sale authority would then be sunsetted and politically correct methods of population control such as adoption and fertility control may have a better success rate.

I also urge you to be cautious with euthanasia, especially for large reductions. Personally, I would view putting thousands of horses down as a terrible waste of a resource. I also believe the first time several hundred horses are euthanized in one spot, a political firestorm will follow.

Also as a solution, I would recommend that cooperative agreements with non-federal entities as an alternative to federally operated adoption programs. There are numerous groups that claim to have an interest in the well being of horses. Since the inception of the horse program, our government has spent over \$240 million for the benefit of a small number of horse advocates. Turning over the adoption program to horse advocacy groups would not only put the responsibility of the care of horses in the hands of the people who claim that interest, but, I also believe these folks could do a more efficient job. In my experience, working for the bureaucracies does not reward innovation. However, dealing with the present excess of horses will require innovation not bureaucratic restraints. I believe horse advocacy groups have greatly benefited and it is now time for them to invest time and money to help solve a problem.

Finally, I would like to say a few words about the National Wild Horse and Burro Advisory Board. I know several folks on that Board and do not wish to discredit their efforts. However, giving this Board two years to make recommendations seems a little excessive. Especially when it will take BLM another year or more to take action based on the Board's recommendations. Simply put, the problem with the horse program is excess numbers and the solution to this problem is controlling population growth. I would recommend that your Committee seek legislation which would require the Board to submit findings to Congress no later than January 15, 1999. Language in the Interior Appropriations Conference Committee report might accomplish this.

In summary, wild horses are capable of damaging the range resource and this is occurring as I speak. Decisions issued by BLM are often not followed by BLM and as a result, damage to the rangelands has and will occur as a result of their non compliance. The present methods of adoption and fertility control are not capable of controlling excess horse numbers. New outlets for excess animals are needed and include limited sale authority and allowing private participation in operating the adoption program.

Thank you again for the opportunity to testify.

RESPECTUFLY SUBMITTED this 13<sup>th</sup> day of July, 1998

By:

John Ballietto

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## Attachment 1 Summary of Grazing Preference for BLM Districts in Eureka County

BLM District	AUM'S <sup>1</sup> Adjudicated	Initial <sup>2</sup> Suspension	Evaluation <sup>3</sup> Suspension	Transfer <sup>4</sup> Suspension	Lost <sup>5</sup> Permit Value(\$)
Battle Mountain	182,983	41,004	22,998	17,176	1,486,438
Elko	132,941	31,324	1,480	5,296	250,712
<b>Totals</b>	<b>315,924</b>	<b>72,328</b>	<b>24,478</b>	<b>22,472</b>	<b>1,737,150</b>

<sup>1</sup>AUM's adjudicated in 1960's when N-6 Grazing District was formed

<sup>2</sup>Initial suspension based on a one time survey of base property and public land production

<sup>3</sup>Evaluation suspension based on recent allotment evaluations

<sup>4</sup>Transfer suspension applied when ranch or permit ownership is transferred

<sup>5</sup>Lost permit value uses only evaluation and transfer suspensions and assumes \$37/AUM

### Sources:

Resource Concepts Inc. 1994. Analysis of the Bureau of Land Management Grazing Allocation Process in Nevada

USDI/BLM. 1988. Shoshone-Eureka Rangeland Program Summary

USDI/BLM. 1987. Elko Resource Management Plan Rangeland Program Summary

USDI/BLM.---. Individual Grazing Case Files. Elko and Shoshone-Eureka Resource Areas.

**Statement of the Animal Protection Institute**

**House Subcommittee on National Parks and Public Lands  
Field Oversight Hearing  
Reno, NV, July 13, 1998:**

**Representing the Animal Protection Institute:**

**Sheila Hughes Rodriguez  
Counsel**

**Statement of the Animal Protection Institute**  
**Field Oversight Hearing**  
**House Subcommittee on National Parks and Public Lands**  
**Reno, Nevada, July 13, 1998**

... [T]he wild free-roaming horses and burros presently inhabiting the public lands of the United States are living symbols of the historic pioneer spirit of the West *and as such are considered a national esthetic resource.*<sup>1</sup>

**INTRODUCTION**

Thank you for inviting me to testify before the Subcommittee this morning. I represent the Animal Protection Institute (API). API is a not-for-profit<sup>2</sup> animal advocacy organization with over 80,000 members nationwide. For more than 20 years, API has worked to preserve and protect wild and free-roaming horses and burros—and their habitat.

This hearing focuses on range issues and problems with the Wild and Free-Roaming Horses and Burros Act, 16 U.S.C. § 1331, *et seq.* (Act). Indeed, I believe there are several problems with how the Bureau of Land Management interprets and administers the Act. I will concentrate, however, on API's most critical concern: The BLM's current policy on roundups is rapidly extinguishing populations of wild horses and burros throughout the country.<sup>3</sup>

To say that API and the BLM have a contentious history would be charitable. API has appealed scores of BLM decisions to the Interior Board of Land Appeals; and has twice challenged the Agency in federal district court.<sup>4</sup>

While I may criticize the BLM today, I am not here to deliver a jeremiad on "animal rights." Yes, I believe animals are entitled to fundamental rights. But I also know that we inhabit a legal universe that is hardly sympathetic to animals, much less to any notion of animal rights. Yet, we have a long history in this country of using the law to protect wild horses and burros.

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<sup>1</sup> S. Rep. No. 242, 92<sup>nd</sup> Cong., 1<sup>st</sup> Sess. 2149 (1971).

<sup>2</sup> API is a California public benefit corporation organized under § 501(c)(3) of the Internal Revenue Code. 26 U.S.C. § 501(c)(3).

<sup>3</sup> U.S. Department of the Interior, Bureau of Land Management, 10<sup>th</sup> and 11<sup>th</sup> Report to Congress on the Administration of the Wild Free-Roaming Horses and Burros Act for Fiscal Years 1992 - 1995.

<sup>4</sup> See *e.g.*, *Animal Protection Institute of America, et al. v. Babbitt, et al.*, CV-R-85-365-HDM (settled October 15, 1997); *Animal Protection Institute of America v. Hodel*, 671 F. Supp. 695 (D. Nev. 1987), *aff'd*, 860 F.2d 920 (9<sup>th</sup> Cir. 1988).

### History

In 1959, at the behest of the late Velma Johnston of Reno, Nevada, Congress passed the first law intended to protect wild horses and burros. 18 U.S.C. § 47. I am told that Mrs. Johnston adopted the name "Wild Horse Annie" after she overheard someone call her that during a congressional hearing in Washington, DC. Perhaps it was this sense of humor that helped to carry Mrs. Johnston through the following decades in her quest to protect these animals.

In the late 1960's, Wild Horse Annie's efforts led thousands of school children across the country to write to members of Congress urging them to protect wild horses and burros. Nicknames notwithstanding, by the early seventies, Wild Horse Annie had rallied the support of both humane associations and horse protection groups, culminating in the passage of the Wild Horses and Burros Act, 16 U.S.C. § 1331, *et seq.*, in 1971.

If we look at the legislative history of the Act, we see that Congress unequivocally intended these animals to be protected *and* preserved:

. . . . [T]he wild free-roaming horses and burros presently inhabiting the public lands of the United States are living symbols of the historic pioneer spirit of the West *and as such are considered a national esthetic resource.*<sup>5</sup>

As I said earlier, I am not here to lament the state of animal rights. Rather, I am here to discuss the state of the law and what we might do to save these "living symbols" of our own "rugged independence and . . . pioneer heritage."<sup>6</sup> I urge you to remember what Congress said so eloquently nearly three decades ago:

[W]ild free-roaming horses and burros . . . belong to no one individual. They belong to all the American people.<sup>7</sup>

### "Self-Sustaining Populations"?

When Congress passed the Wild Horses and Burros Act, 16 U.S.C. § 1331, *et seq.*, it declared:

. . . wild free-roaming horses and burros *shall* be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as *an integral part of the natural system of the public lands.*

16 U.S.C. § 1331 (emphasis added).

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<sup>5</sup> See *supra* note 1.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

The regulations implementing the Act amplify this protection:

(a) Wild horses and burros *shall* be managed as *self-sustaining* populations of healthy animals in balance with other uses and the productive capacity of their habitat.

43 C.F.R. § 4700.0-6 (emphasis added).

There is ample evidence today that the BLM is failing to manage herd areas<sup>8</sup> as “self-sustaining populations of healthy animals.” Nowhere is this more apparent than in the BLM’s own report to Congress. The 1995 report, the most recent available, describes numerous herd areas with “Appropriate Management Levels” (AML’s) of zero and many areas with AML’s that will not sustain healthy populations.<sup>9</sup>

In Nevada, home of the BLM’s Wild Horse and Burro Program Office, the Agency has announced that it will extinguish the following ten herd areas:

Armargosa Valley	Last Chance
Antelope Valley	Muddy Mountain
Ash Meadows	Selenite Range
Eugene Mountains	Toano
Humboldt	Trinity Range <sup>10</sup>

One Nevada district court case strongly suggests that the BLM is not authorized to extinguish wild horse populations. *American Horse Protection Ass’n v. Frizzell*, 403 F. Supp. 1206, 1219 (D.C. Nev. 1975). At issue in *Frizzell* was a BLM roundup of 400 wild horses in Stone Cabin Valley, Nevada. The AHPA challenged the roundup under the Wild Horses and Burros Act, 16 U.S.C. § 1331 *et seq.*; the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*; (NEPA); and the Administrative Procedure Act, 5 U.S.C. § 701, *et seq.*

Although the court upheld the roundup, it allowed that “[it] may have been a different case had [AHPA] been able to satisfy the Court that the proposed roundup would extinguish the wild horse population in Stone Cabin Valley.” *Id.* Of significance to the court was the fact that some 600 horses remained in the Valley, thereby preserving “human[,] cultural, historical, educational, and scientific interests.” *Id.*

<sup>8</sup> A “herd area” means “the geographic area identified as having been used by a herd as its habitat in 1971. 43 C.F.R. § 4700.0-5(d).

<sup>9</sup> See *supra* note 3.

<sup>10</sup> *Id.* at 20-24. In response to API’s recent request under the Freedom of Information Act, 5 U.S.C. § 552, the BLM stated that all but two of the ten herd areas, discussed *supra*, have AML’s of zero. The BLM further stated that the Antelope, Eugene Mountains, Humboldt, Selenite, Trinity Range, and Toano herd areas are not managed for horses or burros because of the “checkerboard land ownership pattern.” Although the BLM indicated that the Armagosa, Ash Meadows, Last Chance, and Muddy Mountains herd areas are not managed for horses or burros, it gave no reason for this. With respect to the two herd areas not yet scheduled to be zeroed-out, i.e., Last Chance and Muddy Mountain, the BLM stated that it has not yet established AML’s for these areas. Letter of June 2, 1998, from Jean Rivers-Council, Associate State Director, Nevada, BLM, to Sheila Hughes Rodriguez.

The so-called "benchmark test" is whether wild horse population levels will achieve a "thriving ecological balance" on the public lands within the meaning of § 1333(a)<sup>11</sup> of the Act. *Dahl v. Clark*, 600 F. Supp. 585, 594 (D.C. Nev. 1984).

### Livestock Grazing on Public Lands

Livestock grazing is authorized on approximately 159 million acres, or about 90 percent, of the 177 million acres of BLM lands in the Western United States.<sup>12</sup> Despite the enormous amount of public lands devoted to livestock grazing, the public lands produce only about two percent of the feed consumed by beef cattle in the United States.<sup>13</sup>

Given the low productivity of these arid lands, why does the BLM allow domestic livestock to degrade so much of this land? Moreover, why does the BLM routinely make wild horses the scapegoat for environmental degradation? Federal courts acknowledge this paradox:

The Nation's public rangelands have been deteriorating for years and, for the most part, are not improving. These vast lands need to be protected through better management by the Bureau of Land Management. Deterioration can be attributed principally to poorly managed grazing by livestock--horses, cattle, sheep, and goats. *Livestock have been permitted to graze on public rangelands year after year without adequate regard to the detrimental effect on range vegetation.*

*Natural Resources Defense Council, Inc. v. Hodel*, 618 F. Supp. 848, 857 (D.C. Cal. 1985) (citing 1977 General Accounting Office report) (emphasis added).

### "Multiple Use"?

The Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701, *et seq.* ("FLPMA"), provides that the Secretary of the Interior . . .

. . . shall—

(1) use and observe the principals of *multiple use* and sustained yield set forth in this and other applicable law...

43 U.S.C. § 1712(c)(1) (emphasis added).

<sup>11</sup> Section 1333(a) provides ". . . The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands . . ." 16 U.S.C. § 1333(a).

<sup>12</sup> Joseph M. Feller, *Til the Cows Come Home: The Fatal Flaw in the Clinton Administration's Public Lands Grazing Policy*, 25 Environmental Law Rev. 703 (1995) (citing BLM statistics in Rangeland Reform 94 Draft Environmental Impact Statement at 3-5 (1994)).

<sup>13</sup> *Id.* at 704.



"Multiple use" is defined as:

. . . [T]he management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; *the use of some land for less than all of the resources*; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

43 U.S.C. § 1702(c) (emphasis added).

Central to the land-use planning process is the "Allotment Management Plan." FLPMA defines an AMP as:

. . . a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands . . . in the eleven contiguous Western States and which: prescribes the manner in, and extent to which[,] *livestock operations* will be conducted in order to meet the *multiple-use*, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned . . .

43 U.S.C § 1702(k) (emphasis added).

Under FLPMA's mandate, the BLM cannot give livestock grazing any priority of use. One case vindicating this principal is *National Wildlife Fed'n v. Bureau of Land Management*, No. UT-06-91-1 (U.S. Dept. of the Interior, Office of Hearings and Appeals, Hearings Div.), *aff'd* August 1997.

In this case, the Interior Board of Land Appeals affirmed an administrative law judge's decision holding that the BLM had violated FLPMA by authorizing cattle grazing on a small, but sensitive, portion of a grazing allotment in southeastern Utah. The IBLA ruled that the BLM must balance harms against benefits in authorizing livestock grazing.

Despite the amendments to the grazing regulations in 1995,<sup>14</sup> and the holding in this case, the BLM has yet to implement any changes in the regulations that would require it to evaluate the pros and cons of livestock grazing.<sup>15</sup>

<sup>14</sup> 60 Fed. Reg. 9894 (1995).

<sup>15</sup> Feller, *The Comb Wash Case: The Rule of Law Comes to the Public Rangelands*, 17 Public Land and Resources L. Rev. 25, 26 (1996); personal conversation with Joseph Feller, Professor of Law at Arizona State

### The National Environmental Policy Act

Whether all wild horse and burro roundups withstand the scrutiny of NEPA, 42 U.S.C. § 4321, *et seq.*, is yet another question. Many legal challenges to BLM roundups have invoked NEPA. *See e.g., American Horse Protection Ass'n v. Andrus*, 460 F. Supp. 880 (D.C. Nev. 1978), *aff'd in part, vacated in part, and remanded*, 608 F.2d 811 (9<sup>th</sup> Cir. 1979); *Frizzell*, 403 F. Supp. 1206 (D.C. Nev. 1975).

In *Frizzell*, the court outlined what the BLM can and can't do under NEPA:

This Court is not saying that the BLM is free to round up wild horses whenever a particular range has an overgrazing problem. Nor is the Court saying that every time the removal of wild horses will have a limited, slightly positive effect on the environment of the range, the BLM can proceed to remove a certain number of those horses . . . *In other words, this opinion should not be read as giving the BLM a blank check to order the removal of wild horses without filing an impact statement whenever it determines that a range is overgrazed.*

*Id.* at 1219-1220 (emphasis added).

### CONCLUSION

The BLM is actively extinguishing wild horse and burro populations in violation of the Wild Horses and Burros Act, 16 U.S.C. § 1331, *et seq.* It remains to be seen whether, in carrying out this policy, the BLM is complying with other applicable laws.<sup>16</sup> Where is the so-called "blank check" that permits this?

If the BLM would seriously weigh the effects of livestock grazing in its land-use decisions, it would be free of the Sisyphean burden of endless wild horse roundups. With public lands producing so little of the feed consumed by beef cattle, is such a shift in policy really so politically impossible?

An estimated 6,000 horses are currently in holding facilities awaiting adoption. The BLM spends approximately \$50,000 each week to care for these animals. Moreover, due to negative publicity on the adoption program, the demand for wild horses is down. As a matter of simple economics, rounding up wild horses is costing the BLM—and the taxpayer—millions of dollars every year.

For all of these reasons, API recommends that the BLM decrease the frequency of wild

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University.

<sup>16</sup> *See e.g., NEPA; FLPMA; the Public Rangelands Improvement Act of 1978, 43 U.S.C. § 1901, et seq; the Administrative Procedure Act, 7 U.S.C. § 706(2)(A).*

horse roundups,<sup>17</sup> as well as the number animals removed in each roundup. If roundups *must* continue, API asks that the BLM adhere to the following stipulations:

Wild horse removals must not eliminate individual herd areas or lower the number of animals to such a level that threatens the long-term survival of the herd;

The BLM must take into account the adoptability of the wild horses removed, as well as the impact of the removals on the remaining family and bachelor bands;

The BLM must not schedule roundups during periods when gathering would place undue stress on foals and pregnant mares; and

The BLM must consider decreases in wild horse populations as part of a comprehensive plan to improve range conditions, which must be accompanied by equivalent reductions in the number of grazing livestock.

The BLM's current policy on wild horse removals violates the very Act it is charged with administering. Until this policy changes, API urges Congress not to appropriate funding for wild horse removals in 1999. The funding that would otherwise be dedicated to such removals should be allocated exclusively towards the management and improvement of the public rangelands.

If, as API believes, the Wild Horses and Burros Act protects these animals from extinction, API is willing to work with the BLM to achieve this goal. If the Wild Horses and Burros Act does *not* protect these animals, then Congress must amend the Act or propose new laws that *will* save these "living symbols of the historic and pioneer spirit of the West."

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<sup>17</sup> For reasons beyond the scope of this statement, API is not calling for a reduction in the number of wild burros removed from the public lands.

**DISCLOSURE REQUIREMENT**  
Required by House Rule XI, clause 2(g)

1. Name: Sheila Hughes Rodriguez
2. Business Address: Animal Protection Institute      Mailing Address:  
2831 Fruitridge Road      P.O. Box 22505  
Sacramento, CA 95820      Sacramento, CA 95822
3. Business Phone Number: 916 731-5521
4. Organization you are representing: Animal Protection Institute
5. Any training or educational certificates, diplomas or degrees which add to your qualifications to testify on or knowledge of the subject matter of the hearing: J.D., 1988, State University of New York at Buffalo; M.A., State University of New York at Buffalo(English); B.A., State University of New York at Buffalo(Political Science/Psychology)(See attached resume); knowledge of Wild Horses and Burros Act, Federal Land Policy and Management Act; Public Rangelands Improvement Act; and National Environmental Policy Act.
6. Any professional licenses or certifications held which add to your qualifications to testify on or knowledge of the subject matter of the hearing: Member, New York and Pennsylvania Bars; Ninth and D.C. Circuit Courts of Appeals (see attached resume).
7. Any employment, occupation, ownership in a firm or business, or work related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing: Attorney, 1988 to 1994, Federal Aviation Administration(represented FAA at public hearings held throughout the U.S. in 1990; served as presiding hearing officer at two of these hearings); represented API in law suit in 1997 against BLM involving wild horses and burros.
8. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying: Represent API as in-house counsel.
9. Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1994, from the Department of the Interior, the source and the amount of each grant or contract: N/A.
10. Any federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 1994, from the Department of the Interior by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract: N/A.
11. Any other information you wish to convey to the committee which might aid the members of the Committee to better understand the context of your testimony: I represent API, a not-for profit animal advocacy organization. API has over 80,000 members nationwide. For more than thirty years, API has actively worked to protect wild horses and burros. API has twice challenged the BLM in federal district court over the BLM's wild horse and burro adoption program. API prevailed in the first suit; the second suit was settled on the condition that BLM make significant changes in its adoption program.

Statement Presented To  
Committee on Resources  
Subcommittee on National Parks and Public Lands  
July 13, 1998  
Reno, Nevada

Presented By  
David C.J. Tattam, Field Director  
National Wild Horse Association  
PO Box 12207  
Las Vegas NV 89112  
702-452-5853

My name is David Tattam, I am the Field Director for the National Wild Horse Association. I have 27 years experience in the horse industry. For the last 14 years I have served as a volunteer through the National Wild Horse Association working with the Bureau of Land Management, National Park Service and the United States Forest Service. In that time I have had on the ground experience in over 40 Herd Management Areas in 4 states. It has been interesting as well as very enlightening. There seems to be an enormous difference between the public's perception and the reality of how horses are handled by the Bureau of Land Management, the number of animals that are on the range, what the animals need to thrive and the eventual outcome if the horses and burros are not managed.

The National Wild Horse Association is headquartered in Las Vegas, Nevada. It was founded in 1971 by people concerned with the survival of the Wild Horses and Burros in the West. Our Association is made up entirely of volunteers with no paid positions. Over the last 27 years we have worked with the National Park Service, United States Forest Service and the Bureau of Land Management to improve the range and secure a future for the Wild Horses and Burros.

We have worked on range projects, gathers and adoptions. Over the last 7 years we have hand raised over 500 foals for the Bureau of Land Management. We also assist by putting on training clinics, conducting pre and post adoption compliance checks, help to monitor and care for animals involved in neglect/abuse cases and provide medical care for injured animals brought in from the range. Most recently, we have had members assisting at the gather near Vernal, Utah of suspected E.I.A. horses. We were there to observe and assist in the gather and to implement a care and feeding program for the infected foals.

In the last 7 years, our Association has logged over 70,000 volunteer hours. This is one reason why the Las Vegas District has had few problems with the adoption program and why the number of Wild Horses and Burros in Southern Nevada is closer to Appropriate Management Levels now than at any time since 1971.

However, across the Nation, the adoption program is falling short with a devastating effect on the resources of the West. In many parts of the country, there is a large demand for Wild Horses and Burros, yet there seems to be a breakdown in the system. Adoptions are a lot of work and in many cases, the people responsible don't seem to be putting forward the effort to inform and qualify potential adopters. Some suggestions would be greater accountability of Bureau of Land Management personnel, better marketing and a greater use of volunteers in the adoptions program. For example, develop regional adoption teams, consisting of Bureau of Land Management personnel and volunteers to facilitate more successful adoptions, post adoption compliance checks and education, etc..

Another problem with the program is that many of older, unadoptable animals are being gathered repeatedly with the government paying out again and again, only to be re-released because there is no outlet for them. Because of the government's inability to dispose of these animals, they are allowed to remain and often overgraze Herd Management Areas. This is a true threat to the Wild horses and Burros of the West.

There must be a way of dealing with these large numbers of unadoptable animals that are currently being allowed to overgraze the ranges in many Herd Management Areas. In many areas by allowing these horses to remain on the range today, we are destroying the chance of a future for the Wild Horses and Burros.

Suggestions would be to give the Bureau of Land Management a limited sale authority to dispose of unadoptable animals. This window would be for a limited time, I.E. 3-5 years, and would give the Bureau of Land Management time to go through all Herd Management Areas and obtain appropriate Appropriate Management Levels according to range conditions with room for herd enlargement once the range conditions are improved. This would turn future management into a planned maintenance, rather than the current management by crisis, which we are so often forced to deal with when starvation from overgrazing and drought have there affects as we see here in Nevada.

The management system must be changed from a demand system in which horses are gathered only to the availability of space in the adoption program, to a resource driven program in which decisions are based on what is good for the resource. Implementation of the Wild Horse Act is virtually impossible without either

sale or euthanasia authority, or massive funding for the sanctuary program. To reach any reasonable management goal without one or all of the above insures adverse impacts to the range.

It often appears that the Bureau of Land Management in Washington has little confidence in its people in the field. This effects the Wild Horse and Burro in many ways. One recent example was the last 2 gathers on the Nevada Wild Horse Range. In January 1997 a gather was stopped due to the number of old and sick animals which were being euthanized, even though this was and is consistent with Bureau policy. Later that year the Bureau of Land Management conducted another gather of the same horses and moved the old horses to a sanctuary. The following winter there was concern from Washington due to the high death rate of these horses, most of which should have been euthanized at the time of their capture. The estimated cost of the second gather was half a million dollars, sanctuary cost is unknown. All this money could have been saved by letting the experts in the field do their jobs. If those people can not be trusted to do the right thing, then the Bureau needs to get people who can be.

It seems that many of the problems start in Washington with the appointment of each new Director. By the time he appoints committee's to study the problems and report back to him, he's gone and a new person has taken his place and the cycle starts over again with new studies and committees and a workable plan is never implemented. The only way to make any resource management agency work is to eliminate political appointee's and require that any Director have a strong resource background. Only then will the professional in the field be trusted and decisions be made using science rather than knee jerk political perception.

Washington responds to input from a few select groups, most of which have little hands on experience, but rarely solicits opinions or backing from groups that understand that tough decisions must be made with science for the good of all Wild Horses and Burros and the range.

Another area of great concern to us is the loss of burro habitat with the creation of the Mojave National Preserve and the large reductions in Appropriate Management Levels in the Lake Mead National Recreation area. These two changes have led to a massive reduction in burro habitat in the Southwest.

We do see some positives in the current horse and burro program. The gather process itself as well as the handling of animals in the holding facilities has always seemed to be done in a most professional and human manner. We have seen very little proof of the abuse and cruelty which has so often been publicized, and find it very hard to believe that it occurs as often as is implied. In most cases we think this is a hysteria created to feed the coffers of special interests or just the ramblings of the uninformed.

To insure the future of Wild Horses and Burros the public must be made to understand the ranges will be destroyed if the resources are not managed properly. Without the ranges we will have no Wild Horses or Burros, no Wildlife and no Livestock grazing. Just barren land, where nothing can survive. The public and all involved Government agencies must work together and make sure this does not happen. The Bureau of Land Management must do its part by setting the Appropriate Management Levels in each Herd Management Area, reducing the numbers of animals to at or below those levels, depending on current range conditions and managing those areas in a responsible and consistent manner.

Something which must be remembered, in recent history Nevada had few large grazing animals and developed its ecosystem accordingly, thus there is neither the food or predators to maintain the herds at reasonable size. Man introduced the modern horse and burro to Nevada, it is up to man to manage them now. Nature is a cruel master and for Nature to run its course there will be great amounts of unnecessary pain and suffering for the Wild Horses and Burros of the West, not to mention the massive amounts of damage to our ranges, which could take many years if ever to recover. With proper management this can be avoided.

As a Wild Horse and Burro group we realize and understand that to insure the future of Wild Horses and Burros on the range, some tough decisions need to be made. These will be politically unpopular, but only by doing this can we insure the legacy of Wild Horses and Burros for future generations.

## DEMAR DAHL COMPANY, LLC

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702 423-4870

July 13, 1998

U.S. House of Representatives  
Subcommittee on National Parks and Public Lands  
Washington, D.C. 20515

My name is Demar Dahl and I have been a cattle rancher in Nevada since 1969. Most of that time was spent on ranchers where there were mustangs on my range.

With the passing of the Wild Horse Act in 1971, I could see the potential for problems caused by competition between horses and livestock. To establish what the numbers of horses on my range were I appealed a decision of the Battle Mountain District Manager concerning domestic horse permits. With documentation acquired at that appeal hearing, I was able to establish that there were only thirty-one head of wild horses on my ranch at the time the Wild Horse Act was passed.

In the early 80's I filed suite in Federal District Court, asking the court to require the BLM to remove enough horses from my range so as to return horse numbers to the 1971 level. Our reasoning in the suite was that, even though the act did not specify that horse numbers had to stay the same as in 1971, it dictated that horses were not to be in areas they did not occupy in 1971. We reasoned with the Federal District Judge that the only way to keep horses only in areas they did occupy in 1971, since the Act also prohibited fencing to control horse movement, was to keep the horse numbers at what they were in 1971. We established for the court, that where on my range there were 31 head of horses in 1971, about ten years later, at the time of the trial, there were in excess of seven hundred. Part of the increase was of course from procreation and part from horses moving into the area from adjacent ranges. For me that was a very expensive case and I lost it on a technicality.

I had to sell that ranch at a considerable loss because I could not survive with the horses almost outnumbering my cattle.

Later in 1980's I had the Big Springs Ranch in Elko County which had many wild horses but also much deeded land. The wild horses ran on both the BLM and private land and I had requested that BLM remove the wild horses from the private land. On one occasion we had gathered cattle from a large piece of county in order to be off by the time the BLM permit dictated but we had to turn five cows back to find their calves that had gotten lost in the gather. The next day a BLM employ spotted the cows which were looking for their calves and sent me a trespass notice. The notice said in part, "You are hereby notified that the Bureau of Land Management has made an investigation and evidence tends to show that you are making unauthorized use of the public lands. We allege that you are violating the law(s) specified below ..... " " Failure to comply with this notice will result in



further action to protect the interest of the United States.”

I was struck by the irony that I was being held accountable to the law governing trespass while the BLM, in spite of my requests, refused to remove the wild horses from my deeded land. The Wild Horse Act requires the BLM to remove wild horses from private property when requested to do so by the land owner.

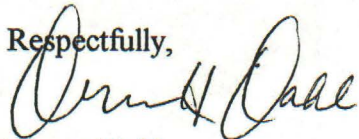
My response was to send the BLM a trespass notice, quoting the law that required them to remove the horses upon my request. I also sent them a bill using their trespass rates of \$8.49 per AUM and then after a five day period raised the charge to equal the BLM intentional trespass fee which is considerably higher. I received a weak response from the district manager which in effect said, ” I’m sorry but I can’t do anything about the horses.” If I had responded to the BLM trespass notice in that way, I would have received a notice telling me of my sin against the United States, and I would have been fined and my cattle impounded. I have kept track of the BLM’s trespass over the years and the many thousands of dollars it would cost them if required to pay. If you would like to see this documentation, which includes trespass notices and fee calculation, etc., please contact me.

It has been heartbreaking over the years to see so much damage done to the range by an over population of wild horses.

I have taken pride in my range and always used grazing techniques that maximize the health of the range. To remove cattle from a piece of county so as to let it rest but watch as many horses stay as there are cattle removed is hard to take. Horses usually stay in the same area year round and often tromp in the springs and decimate new spring growth.

It was many years before anyone in Congress was courageous enough to speak out about the parts of the Endangered Species Act that just did not make sense. The fact that the Endangered Species Act is no longer considered a sacred document that can not be changed gives me hope that we may soon apply some common sense to the Wild Horse Act.

Respectfully,



Demar Dahl

## CONGRESSIONAL TESTIMONY

## CONGRESSMAN GIBBONS

JULY 13, 1998

Presented by Cathy Barcomb, Administrator

Mr. Chairman and members of this committee...welcome to Nevada and thank you for the opportunity to address you today. My name is Cathy Barcomb, I am the Administrator of the State of Nevada Commission for the Preservation of Wild Horses. My purpose today is to make this introduction and to give you some idea of what our Commission is doing on a State level.

Our Commission is made up of members much like yours in that we have representatives of horse organizations, veterinarian, a humane society representative, a rancher, and even an attorney.

The Nevada Commission was established by the 1985 Nevada Legislature. Our mission statement from the legislature is to prepare a plan for the management of the wild horses in Nevada. This will be a year long project, and our final plan will be completed at the end of this calendar year and then presented to the next session of the Nevada legislature.

We are presently conducting a number of scoping sessions throughout Nevada. We are traveling to every part of this state taking testimony an discussion issues and problems with the people affected in those areas. When our scoping sessions are complete we will hve field hearings in every part of this state, from Las Vegas to Elko and everywhere in between.

As you can imagine, the testimony we received was mostly from the people in the field... from the people that most deal with wild horse issues on a daily basis. This includes not only the ranchers, environmentalists, local representatives, but also the local BLM personnel as well.

Let me add that the BLM personnel that have been with us in the various locations have been extremely cooperative, and more importantly, have provided vital information. We fully plan on continuing to work with the BLM personnel and involving them at every stage of the process as this as this Nevada plan comes together.

As I stated, my appearance was intended only as an introduction as to what we are doing on a state level, but let me leave you with a few thoughts:

Whatever comes of our work, and your work as well, the final acid test, in my view is whether it works in the field. An effective wild horse management plan must meet the objectives of:

(1) First, the horses themselves, to then end that we have a healthy herd of horses, and able to stay in balance with their habitat;

(2) Second, the plan must remember the interests of those directly affected by the horses, such as those seeking to preserve the horses in their environment or seeking adoption, but not forgetting the multiple uses of the range.

(3) and finally, the plan must work for those in the field who are on the front lines charged with the responsibility for managing the program, it must work for all.

The only conclusion I have come to, speaking as only one representative, but a view shared by others, is that an effective program will require more cooperation between the states, the affected interests, and the federal government. Our Commission will be addressing this issue of state and federal cooperation, and hopefully coming up with ideas on how the states can contribute in constructive ways to assist in wild horse management.

Along those lines, we will be utilizing all the information that comes out of your deliberations, and we hope you will be taking into consideration some of our views once they are adopted. We anticipate the draft plan being distributed to the public the first week of August and the final being presented by December for presentation to the next session of the Nevada Legislature.

Thank you for this opportunity to address you today.

**TESTIMONY OF HENRI BISSON**  
**ASSISTANT DIRECTOR, RENEWABLE RESOURCES & PLANNING**  
**U.S. Department of the Interior**  
**Bureau of Land Management**  
**Before the**  
**U.S. House of Representatives**  
**Committee on Resources**  
**Subcommittee on National Parks and Public Lands**  
**on**  
**H.R. 1500**  
**and**  
**H.R. 2874** ✓ *Amended*

October 28, 1999

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to come before you today to discuss the Administration's views on H.R.1500, "America's Wilderness Protection Act" and H.R. 2874, the "Wild Horse and Burro Preservation and Management Act of 1999."

H.R. 1500 proposes to "accelerate the wilderness designation process by establishing a timetable for the completion of wilderness studies on Federal Lands." The Administration does not believe the bill would accomplish this. Rather, it would create a timetable that would virtually guarantee wilderness areas would not be designated. The Administration is strongly opposed to H.R. 1500, and, if it were presented to the President for signature, Secretary Babbitt would recommend that he veto it.

H.R. 2874 proposes delegating responsibility for on-the-range management of wild horses and burros to any State requesting such authority. Over the past few years, the Bureau of Land Management (BLM) has made a number of significant accomplishments within the program and has many projects and initiatives in progress which reflect our commitment to the protection, management and control of wild, free-roaming horses and burros as an important and

perpetual component of the rangeland ecosystem. We have begun to reshape and implement several strategies which we believe will allow the BLM to achieve our goals with regard to the wild horse and burro program. This bill would effectually thwart, if not reverse, our efforts. Accordingly, the BLM opposes the legislation.

Allow me to discuss both bills in more detail.

### **H.R. 1500**

I will begin with H.R. 1500. H.R. 1500 would undermine and alter the meaning and interpretation of the only law the BLM uses for administering Wilderness Study Areas, the Federal Land Policy and Management Act of 1976 (FLPMA). The bill would allow Congress ten years to resolve the outstanding wilderness issues facing BLM in Alaska and all western states except Arizona -- the only state where a comprehensive BLM wilderness bill has become law. If H.R. 1500 is enacted, Wilderness Study Areas that do not receive attention by Congress in the next ten years will be released from both Wilderness Study Area status and from the Interim Management protection mandated by the FLPMA. When released by default, these Wilderness Study Areas would no longer be protected to conserve their unique values until Congress specifically decides their fate.

Forcing a 10 year sunset on Wilderness Study Areas, H.R. 1500 would remove BLM's only tool for protecting wilderness values. As a direct result, the wilderness values on millions of acres of BLM land would be lost. In the future, there would be limited opportunities for BLM wilderness designations. With H.R. 1500 in place, Congressional failure to introduce, move and enact BLM wilderness legislation guarantees the benefit of wilderness protection would be lost to all future generations.

H.R. 1500 is a major departure from and is, in effect, an amendment to FLPMA. To better understand the full impact of the bill, it is useful to review what would have happened if

the idea proposed in H.R. 1500 had been included in the FLPMA. The majority of the Wilderness Study Areas on public lands administered by BLM were designated by November 1980. If these Wilderness Study Areas had a ten year sunset provision, they would have been released from Interim Management in November 1990. Without the protection of Interim Management, development pressures would have increased, and wilderness values would have been lost in many areas. The loss of wilderness values would have prevented or significantly altered the major BLM wilderness bills which were passed after 1990. These include:

1. The Colorado Wilderness Act of 1993 which designated two BLM Wilderness Areas with 51,000 acres;
2. The California Desert Protection Act of 1994 which designated 69 BLM Wilderness Areas with 3.6 million acres as Wilderness and eight BLM Wilderness Study Areas; and
3. The Omnibus Parks and Public Lands Management Act of 1996 which expanded one BLM Wilderness Area by 16,000 acres.

Recently, Congress also passed wilderness legislation for The Gunnison Gorge in Colorado and is considering similar legislation for The Otay Mountains in Southern California and several areas in Utah's West Desert. If the direction of H.R. 1500 had been included in the FLPMA, none of these wilderness designations would have been realistically possible today.

Currently the BLM manages 135 designated Wilderness Areas covering 5 million acres in 10 western states. These 5 million acres are approximately 2% of the total BLM lands. In addition to Wilderness Areas, BLM manages 621 Wilderness Study Areas with approximately 17 million acres (or 6 1/2% of the public lands). These Wilderness Study Areas are located in all western states and Alaska. Wilderness Study Areas managed by BLM contain some of the most pristine, beautiful, diverse and spectacular wild landscapes found in America. As the 20<sup>th</sup> century comes to a close, these areas are threatened by continued and ever growing pressures for

development. H.R. 1500 ignores the values of these areas and would likely make them available for development. If H.R. 1500 were law, BLM's contribution to the National Wilderness Preservation System would be capped at 2%. It is likely that none of the Wilderness Study Areas would be designated wilderness. It is inconceivable that none of these Wilderness Study Areas deserve wilderness protection.

Resolution of the wilderness issue is by its very nature a lengthy and complex process. H.R. 1500 places an unrealistic and arbitrary time frame on the debate, discussion, negotiations and collaboration needed to resolve the wilderness issue. When wilderness bills are introduced, nobody knows how long they will take or how they will finally be resolved. H.R. 1500 would dismantle and destroy this process and could hamper all efforts to adequately resolve BLM wilderness issues. It is unfair to future generations to make an arbitrary determination that the BLM wilderness system is complete. We believe it is not and the process of negotiation and compromise, as difficult and time consuming as it is, must and should continue.

#### **H.R. 2874**

Successful management of the wild horse and burro program is predicated on maintaining control of the number of horses removed from public lands based upon the number of animals expected to flow through the adoption system. In this light, H.R. 2874 could only serve to add complexity and complicated barriers to the wild horse and burro program. While states, which chose to do so, would assume responsibility for removing animals from public lands, the BLM remains responsible for adoption of these animals. Herein lies much of the problem.

The Wild Horse and Burro Program has to be managed as a nationwide network of several components – setting appropriate management level (AML), gathering, removal, preparation, marketing, adoption, compliance, and titling. None of the components stand alone.

Failure to closely coordinate even one of these elements, particularly gathering and adoptions, causes ripple effects throughout the program. If removals exceed adoption demand, horses are held in facilities, at great expense to the taxpayer, until they are adopted. In the BLM, we characterize the management of the flow of animals from gather through adoption as maintaining a constant flow in the pipeline. This bill makes it virtually impossible to maintain this pipeline balance. Under H.R. 2874, it is quite conceivable that states, invigorated by federal funds, will work diligently to set, achieve and maintain appropriate management levels. With no control over the number of animals placed in the pipeline, the BLM could find itself holding thousands of animals with neither means nor prospect for adoption. The program could rapidly regress to the days of sanctuaries or holding facilities filled with animals who are merely pastured and fed at great expense to the Federal government.

The BLM's responsibility is to perpetuate and protect viable wild horse and burro populations within the principles of multiple-use management. BLM monitors rangeland health and wild horse herds to help determine the number of animals, including livestock and wildlife, the land can sustain. Establishing and maintaining AML is necessary to preserve a thriving natural ecological balance. By year's end, we project the total population of wild horses and burros will be approximately 46,000 of which approximately 40,000 animals are wild horses and 6,000 animals are burros. The BLM estimates AML for these animals is approximately 26,000, 23,000 horses and 3000 burros. AMLs are based on current monitoring data and are established as part of the BLM's land-use planning process in a collaborative effort with the public. Reaching AML on the range presents BLM's biggest challenge. However, one of our goals is to have AMLs established on all herd management areas (HMA) by 2003.

Wild, free roaming horses and burros are protected by Federal law and have no natural predators. As a result, their numbers have increased dramatically since 1971. Population growth rates have increased to about 18 to 20 percent a year, meaning a herd can double its



population in three or four years. This year, the program expects adoptions of about 6500 animals; however, this year alone we expect the population of animals to increase by 8,300 animals. Presently, the adoption program is the only available tool to control populations on the range. Fertility control research is ongoing and we are on the verge of developing a multi-year, one shot vaccine. However, widespread application is at least six years away. None of these challenges are remedied by this bill.

The BLM continues to explore alternative strategies to allow us to achieve AML on all HMAs within four years beginning in 2001. This initiative provides for a multi-faceted approach—increased gathers, through increased adoptions, marketing studies, aggressive promotion, gelding, temporary holding for older animals, training and, to the degree possible, fertility control. Successful development of all phases of the pipeline would improve rangeland health and reduce program costs significantly in the long term. Since adoption remains our only tool for controlling wild horse and burro populations on the range, we plan to expand our national media campaign to increase awareness and, ultimately, adoption of wild horses and burros.

The BLM welcomes your support of a heightened media campaign and we look forward to your assistance to ensure preservation of wild horses and burros as living symbols of the spirit of the West while fulfilling our responsibility to maintain the health of the range within a multiple use context.

Mr. Chairman, the wild horse and burro program is one of the most visible, emotional and potentially positive renewable resource programs that BLM manages. Wild horses and burros evoke strong public emotions and capture the interest of national and international news media. Part of the BLM's mission is to affirm that wild, free-roaming horses and burros are recognized and maintained as a part of the natural ecosystem and are valued for their biological,

social and cultural attributes. While we agree there are areas of the program that are poised for Congressional assistance, the proposed legislation does not provide the answer. The BLM looks forward to working with you to develop strategies for improving the wild horse and burro program.

I welcome the committee's continued interest in the BLM's programs and look forward to responding to any questions you or other members of the committee may have.

Larry L. Schutte  
Big Springs Ranch  
HC 67 Box 2039  
Wells, Nevada 89835  
702 478-5112

Re: Subcommittee National Parks & Public Lands, Wild Horse & Burro Act, Oversight Hearing  
July 13, 1998, Reno, Nevada

I am the current lessee, permittee of Big Springs Ranch located in northeastern Nevada, between Wells and Wendover, Nevada.

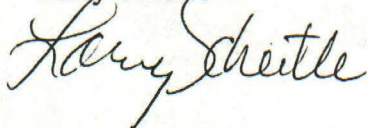
The Big Springs winter range is the Shafter Pasture situated on the west side of the Goshute Mountains. In the 1930's and 40's, the UTAH Construction Company used the ranges from Idaho, south to Pioche, for cattle and horses, however, the world war demanded both horses and men, causing the UC to sell off portions of the ranch. Only certain types of horses were accepted for army use and the balance of mares, colts and cull horses were left turned out due to poor prices.

The 1972 Wild Horse Act allowed for a claiming period where permittees could gather and personally claim the horses within their own allotment. The Big Springs Ranch, managed by Howard Robinson in 1978, gathered the Goshute county, missing 28 head. The BLM was to take census at that time, however they were delinquent for 6 months. This allowed horses from Antelope Valley, from the south, to move north and inhabit the Goshute Valley. The BLM census was 160 head which in turn established an approximate allotment management level (AML) for the Goshute Herd Area.

The BLM standards for census taking in a county full of canyons, pinion and mountains has been, to me, both a humorous experience and a low blow. My personal counts of horses made by living in the country, by vehicle and horseback are continually higher than the BLM census. Horses should be counted at a slower pace and encompass four times the area than prescribed by BLM standards. Different management should include people with common sense and hands on experience or be returned to the rancher.

My winter range is used between November 1 and April 1. We move the cattle off the winter range before April so that the feed can grow all during the growing season and be available for the next winter. Good management dictates that all livestock be removed from this winter range during the primary growing season. The cattle are removed but of course the horses stay. The BLM census claims approximately 69 horses in the area. There are actually over 300 head and this is a number that is easily proved. The forage these three hundred horses consume is paid for by me as there has never been forage allocated for the horses which were considered trespass animals when the forage adjudication was made. More importantly, it is forage I depend on having for my livestock for the following winter that is not there because the horses have eaten it during the summer.

Larry Schutte



Elsie Dupree  
216 East Hampton Drive  
Carson City, NV 89706

702-885-7965

July 14, 1998

**National Parks & Public Lands  
Subcommittee Members**

Dear Congressman,

I attended the wildhorse meeting on July 13, 1998. I was there representing myself. I am very interested in the public lands and in keeping the public lands public. I think these lands should remain as Public Domain and all decisions on the land should be very public with full public participation. I hoped your meeting would have a public question and answer period so you could hear all sides. Since you did not, I have chosen to write to you. I am submitting the following to a newsletter in our state called NEVADA WILDLIFE.

Washoe County was honored with a visit from a subcommittee from our Congress. This subcommittee on NATIONAL PARKS AND PUBLIC LANDS came to visit on the problems with wild horses and burros on public lands.

As is typical in Nevada, when there is a public land issue, the panels were set up to include invited speakers very carefully leaving out the majority of Nevadans.

Bob Abbey was there from the BLM and did a great job of informing the committee about how the BLM operates in Nevada. He was severely criticized when he said the original law was good and covered all the bases. He just needed the manpower and money to implement all aspects of the law. Without manpower and money, he had to make choices.

Mr. Shroufe from Arizona Fish and Game also had a request for money as the burros are eating Arizona feed for other wildlife like muledeer.

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State Senator Rhoads and Assemblyman Carpenter were there to represent the SAGEBRUSH REBELS in Nevada. We heard the old story of how they can not compete with \$125. adoption fees. They want to sell their horses for way more then that. It seems Rhoads had a buyer all ready to buy when they decided to adopt wild horses instead. Both agreed that the state of Nevada should control the horses and put a few in a zoo (they said preserve) put up a shelter with a viewing area and direct the tourists to come and take pictures of these wild (??) horses. Then we could catch all the rest and take them to the auction house. There they would be sold to the highest bidder.

Following were Tony Lesperance, Elko County Commissioner; Rey Flake, Lincoln County Commissioner; Demar Dahl, rancher; John Balliette, Eureka County manager; all faithfully repeating the lines of Rhoads and Carpenter.

To represent the horses we had Sheila Hughes Rodriguez from Animal Protection and David Tattam from National Wild Horse Association and Cathy Barcomb for the State Wild Horse Commission. They spoke for better management and for manpower and money to do this. Rodriguez wanted to stop all horse round ups until it was clear that there were good humane laws involved.

This is a public land issue and the public should be involved in this procedure. Yet those that were invited did not represent all Nevadans. Where were the County Commissioners from Las Vegas and Reno? Where were the representatives from the environmental groups? Where was the Humane Society? Where were the hunters, fishermen, campers, photographers and on and on? Why didn't they want to hear from all Nevadans?

Instead, we had representation of 6 1/2 (Cathy Barcomb representing State Horse Commission is the 1/2) representing the 2,500 ranchers and farmers in Nevada. This counts the farmers doing cantaloupe, garlic and hay and do not even own cows or horses. The balance of the residents in Nevada, over a million, (nearly 40,000 environmental organization membership) were represented by 2. I do not believe this is fair representation.

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Then there is the subsidy problem. We heard how the BLM should be ashamed to take all this money and not have solved the horse problem. We need to give the horses to the state/BLM permittees to manage. What about this subsidy? We already as taxpayers, give a huge subsidy to public land ranchers. We heard today that it costs about \$250 to raise one cow for market per year (Mr. Flake). He concluded that it would be about the same to manage a horse for market. So here we go again. We hire the permittee to catch the horses and sell them. Who gets the money? Would the state? Then we hire the BLM to supervise the state that is catching and selling the horses. More money? This looks like more subsidy for that little group of ranchers that are so powerful in our state.

Did you also notice who came from Washington DC? This subcommittee did not have one person that stuck up for the public land and the horses. They all asked questions about how the state should be in charge. Mr. Hansen even said he wanted to do away with Endangered Species along with the horses as we should never spend even \$100,000 on just a desert tortoise.

As Nevadans that love the public land and our multiple use on the land, we need to let Congress know that what they are doing is not fair. They need to hear from all sides of the issue not just a few chosen delegates from the SAGEBRUSH REBEL group. I encourage you all to write to our Congressmen and to James Hansen, Chairman of the subcommittee and ask them to stop playing favoritism to a few. We all need to be represented by our Congress. It is supposed to work as majority rule.

Rep. Jim Gibbons—1116 Longworth Bldg, Washington DC 20515  
Rep. John Ensign---414 Cannon House Office Bldg, Washington DC 20515  
Rep. James Hansen---2466 Rayburn House Office Bldg, Washington DC  
20515

Thank you, Elsie Dupree



Cost Benefit Ratio

29 m's

**Questions for Bob Abbey (BLM Nevada State Director)**

AMH's

Mr. Abbey, could you help explain the difference between a herd area and a herd management area? What is the difference as far as the BLM's management responsibilities?

Mr. Abbey, what is the BLM's policy for dealing with wild horses on private land? Can a rancher remove them from his land? Will the BLM pay for it?

Mr. Abbey, does the BLM turn unadoptable horses back onto the range? Genetically speaking, don't you think that is a bad idea for the herds?

Mr. Abbey, how does the BLM conduct censuses of feral horse populations? How accurate would you say your methods are? I am hearing from some groups that your counts are drastically low and from other groups that you are too high.

**Questions for Duane Shroufe (Dir. of AZ Game and Fish Department)**

Mr. Shroufe, as director of the Arizona Game and Fish Department you should be in a pretty good position to understand how burros affect wildlife populations. In Ms. Sussman's submitted testimony she says that burros occupy a unique ecological niche and therefore don't really compete with other wildlife. Is this true?

Mr. Shroufe, the law seems pretty clear that states should be allowed to manage the wildlife within their borders. Burros and Horses seem to be the exception. Why? Is it the fact that they are feral and not really wildlife? Does the Arizona Game and Fish Department have the authority to manage other feral domesticated animals such as packs of wild dogs? Should the Federal Government start managing wild dogs?

Mr. Shroufe, why is it more expensive to gather burros than to gather horses?

Mr. Shroufe, suppose that in an area of BLM lands in Arizona there was a severe overpopulation of deer, causing significant ecological damage. How would the Arizona Game and Fish department handle that problem? . . . [They would have people shoot them].

How much would it cost the Game and Fish Department to remove 500 excess deer? . . . [people pay for their hunting tags, so the cost is negligible].

How much do you figure it costs to remove 500 excess burros?

Mr. Shroufe, in Arizona what is the public perception of the burro problem? You say that all of the agencies are in agreement that there is a severe overpopulation problem, and yet when a person actually shot one of the burros a few months back the Arizona press wanted to hang whoever was responsible. Are the people in Arizona just not aware that there is a problem here, or do they just love burros so much that they are willing to sacrifice the desert tortoise, the bighorn sheep, and the mule deer for them.

### **Questions for Larry L. Schutte (Nevada Rancher)**

Mr. Schutte, did you say that some of the wild horses on your range are descendants of horses turned loose by the UTAH Construction Company in the 1940s? I think that's an important thing to mention here. Many people believe that all wild horses are purebred "mustangs" coming from 500 year old spanish stock. But a good proportion of these horses are descendants of cull animals that people turned out on the range within the past few decades.

Mr. Schutte, you said that the BLM census claims that there are 69 horses on your range but that there are actually over 300. That's more than 4 times as many horses as the BLM claims are there. How do you account for the discrepancy? Why is the BLM so bad at counting?

### **Questions for Rey Flake (Rancher and Lincoln County Commissioner)**

Mr. Flake, in your testimony you talk about how the wild horse and burro program needs to focus on quality instead of quantity. How do you propose that we get to the high quality, low quantity point?

Mr. Flake, you said that local involvement would help to more effectively manage wild horse populations. Could you give us some examples of what types of things local people could do?

### **Anthony Lesperance**

Mr. Lesperance, you mentioned the possibility of a financially self sustaining wild horse and burro program using a dual program of adoption and humane disposal to cover the costs of the operation. What do you mean by that? How would it work?



Mr. Lesperance, you said that feral horses and burros are wildlife and are consequently owned by the state. Was the state of Nevada managing horse and burro populations before the Wild Horse and Burro Act?

**Demar Dahl (Rancher)**

Mr. Dahl, you say that there were 31 horses on your range in 1971 and that ten years later there were over 700? Do you think that the BLM is driving wild horses to extinction like some of the animal rights groups are alleging?

## STATEMENT BY KAREN A. SUSSMAN, PRESIDENT

### INTERNATIONAL SOCIETY FOR THE PROTECTION OF MUSTANGS AND BURROS

As president of the International Society for the Protection of Mustangs and Burros (ISPMB), and a member of the past National Wild Horse and Burro Advisory Board, which is mandated by Congress, I welcome this opportunity to give testimony.

ISPMB is the oldest wild horse and burro organization in the United States. Our first president, "Wild Horse Annie," and ISPMB were instrumental in rallying support for the passage of the Free-Roaming Wild Horse and Burro Act of 1971. In thirty-eight years of our organization's history, we have a strong historical perspective and understanding of the successes and failures of the BLM's Wild Horse and Burro program.

It is a real tragedy for the American people and our Nation's National Heritage Species, the wild horses and burros, so declared by Congress in 1971, that we are here on a two-fold mission. This mission is to dispel allegations that this Sub-Committee is investigating and to offer solutions for improving the management of wild horses and burros on public lands for the BLM. It is an irony that after twenty-seven years of the enactment of a law which clearly tells the BLM how they should manage wild horses and burros that this should be our mission today. BLM's program should have been milestones ahead as one of its most successful and visible programs and might I add, a program which could operate in the black. Instead, on BLM's present day course, we believe that *wild horses and burros are being managed out of existence.*

In 1971, 303 wild horse and burro ranges (herd areas) existed. Today, we have lost 40% of these ranges and over 10 million acres of land where wild horses and burros once roamed. Out of the remaining 180 plus ranges, nearly half of those ranges have populations with so few numbers that populations will not be sustained over time. Another 20% of these ranges have AML set at numbers which will not sustain viable populations. This adds up to nearly 70% of the herd areas left in danger of eventual elimination. BLM's target population level for horses is projected at 12,044 and burros at 4,396 which is far less than the numbers present in 1974 when the official count was approximately 67,000 wild horses and burros and at which time the Act stated that these animals were "*fast disappearing from the American scene.*" This target population is not based on monitoring data which is required by the statutory language of the law. Out of the remaining 30% of ranges, we believe that sex ratios may be so skewed due to selective removals that population numbers will drop drastically with stallion ratios far greater than mares.

Simply, there is no over-population of wild horses and burros. We are in real danger of losing one of America's great resources, a part of our Western heritage, a part of our history.

By design, BLM has not made great strides at trying to make this program work. In 1992, the National Wild Horse and Burro Advisory Board recommended that BLM create a training

program for its specialists and hire a person to concentrate solely on marketing their program. BLM declined doing this at late as 1995. How can any business survive for 27 years or let alone be successful, without a training program for its employees and a quality marketing program for its valuable product. It wasn't until Associated Press reporter, Martha Mendoza, uncovered how thousands of wild horses were going to slaughter that the BLM acquiesced to creating a very low budget training program slated for this year.

In spite of BLM's attempt to sabotage this unique program, five-hundred years of nature's breeding program has created extremely healthy animals. Dr. Gus Cothran from the University of Kentucky asserts that wild horses are more genetically diverse compared to any particular breed of horse in the United States. Wild horses and burros by nature are healthier and stronger and can subsist on much less food than their domestic counterparts. Disease is practically unheard of in the wild and only if they have been exposed to domestic stock.

Wild burros have helped other wildlife survive by digging for water as deep as four feet. These little springs that burros have created actually water other wildlife in the worst of droughts. In Montana, Big Horn sheep have increased their habitat areas by staying close to the wild horse herd for protection. An experimental program is being created as we speak where wild burros will be used in herds of livestock to protect them from wolf predation. Most studies show that other wildlife and wild burros share watering holes. It is a fallacy that wild burros defecate in water holes. Wild burros will go at any length to avoid stepping in water. The problem is not *competition* between the animals but *conflict* created by the users of public lands. The term "feral" is a word which denigrates wild horses and burros and keeps conflict high. To label these animals in any other category except wild diminishes their importance and creates more conflict. This conflict must be resolved and it cannot be resolved using wild horses and burros as scapegoats for declining habitat. The greatest cause of declining habitat and riparian damage can be attributed to domestic livestock grazing not wild horses and burros.

The real travesty is that the American public believes our wild horses and burros are being protected because there is a law designed to protect them. This law is a sound law which requires BLM to be good stewards of the land but BLM has ignored this law. The lack of enforcement of this law has created the systematic elimination of wild horses and burros from their rightful lands. We ask that members of this oversight hearing bring BLM to accountability and require them to adhere to the letter of the law. We ask that a separate oversight hearing commence to review all allegations of corruption within the BLM especially the closure of the Grand Jury Investigation in Del Rio, Texas in 1995 investigating corruption within the Bureau's Wild Horse and Burro program. Not one shred of evidence was ever allowed to be presented to the jury. We know that without justice there is no freedom.

**Implementation of the Wild Horse and Burro Act:** In understanding the problems pertaining to the implementation of the Act, it is paramount to understand the history of the BLM and its attitude towards wild horses and burros. **We contend that the future of wild horses and burros is bleak at best and likely that they will be managed out of existence if BLM is not held accountable to the implementation of the Wild Horse and Burro Act.** When an agency's attitude is so ingrained in the extermination of wild horses as it was with the BLM leading up to the 1971 Wild Horse and Burro Act, it is little wonder that these animals received little protection from the agency mandated by law for their safekeeping.

Prior to the passage of the Taylor Grazing Act (TGA) of 1934, wild horses were being exploited by mustangers for profit in the pet food industry and by cattlemen who suspected wild herds of competing with cattle for range. The TGA created the Division of Grazing under the department of Interior with Colorado Stockman, Farrington Carpenter as its first director.

- ◆ Rey states, "*Although this act regulated grazing in the West, its administration strongly reflected grazing interests. Consequently, the Grazing Service was an agency somewhat dominated by stockmen.*" (1975 - University of Michigan).
- ◆ The Grazing Service policy, as quoted by its first director, was .. "*the removal of wild horses from public ranges...*" (Wyman, 1975) "*This unregulated exploitation of the wild horse herds constituted the Grazing Service's policy for nearly thirty years*" (Rey, 1975).

During this thirty year period, the Division of Grazing became the Grazing Service in 1939 which later combined with the General Land Office in 1946 and became known as the Bureau of Land Management.

- ◆ "*After the TGA, the government worked to exterminate the feral horse and thousands were taken off the ranges... Old timers that ran range horses are still bitter about having to give up their horses under pressure from the government, and many felt that the government men were brutal in the way they handled the removal. One man remembers a government plane chasing horses off a 400 foot cliff.*" (Wild Horse Controversy - Thomas 1979)
- ◆ "*In a classic example of western control of federal lands, the Taylor Grazing Act retained the elite stock raisers' dominance using a permit system, a small grazing fee and a weak agency to manage the program.*" (This Land is Your Land, Shanks, 1984)
- ◆ "*The TGA of 1934 gave the ranching industry added organization to and the government means to destroy free-roaming horses. By the 1940's the horse population was so low that people began to worry (or hope, in the case of most stockmen) that free-ranging horses would be extirpated completely from the West.*" (Waste of the West - Jacobs 1991)
- ◆ "*Agency corruption and pro-ranching biases have remained prevalent all along, though things have begun to change somewhat in recent years.*" (Waste of the West - Jacobs 1991)
- ◆ Wild Horse Annie testified before Congress in 1971 prior to the passage of the Wild Free-Roaming Horse and Burro Act stating, "*And it climaxed ten years of struggle against the powerful forces aligned against effort to curtail the slaughter - forces comprised of domestic livestock industry, the target animal industry, and pet food manufacturers, and the Department of Interior's Bureau of Land Management - custodian of the public lands- which looked upon the commercial harvesting of the animals as an expedient means of range clearance to make more forage available to the vested interest groups. From an estimated two million at the turn of the century, their numbers have been reduced to an estimated 25,000 in the late 1950's.*" "*Decades of bloody and indiscriminate annihilation of wild horses and burros, under the agency's direction in order*

*to make more grazing land available for domestic livestock, was a black chapter in the history of man's abuse of animals until an act of Congress in 1959 outlawed that expedient means of 'management and control'.*"

- ◆ Wild Horse Annie's June 4<sup>th</sup>, 1976 presentation to the National Wild Horse and Burro Advisory Board, "*Shortly after the Wild Horse and Burro Act was passed, I was asked if I believed it could be effectively administered, and my reply was that it all depended on attitudes.. attitudes of those actually involved in administering the Act, including those at the field level. Subsequent developments have confirmed that opinion.*" Wild Horse Annie was chastising the BLM for its numerous unjustified accounts of wild horses overgrazing on public lands as quoted in public documents and newspapers. She goes on to document that in spite of BLM's accounts of over grazed ranges permitted use increased in 1973 and 1974. Annie stated that these distortions about wild horses would lead to a dangerously high animosity among all interests involved in national resource land use and preservation. Precisely, this is what has happened today. We are here once again to clear distortions about wild horses and burros.

BLM's *laissez faire* attitude in administering the Act is acknowledged by some employees as the agency's hope that the Act would somehow disappear. On June 17, 1976, the constitutionality of this law was challenged in the Supreme Court in *Kleppe v's New Mexico*. The stalwartness of the Wild Free-Roaming Horse and Burro Act did not waver. The PRIA amendment passed in '78 which eliminated the Secretaries' discretionary authority for removal and disposal of wild horses and burros and laid out a clear definition of excess. Regulation changes proposed in 1984 which were contrary to statutory language of the Act by trying to circumvent PRIA allowed BLM to gather an unprecedented number of wild horses during the two year period that the rule changes were pending. However, at the end the 16 month period, the BLM reverted back to the statutory definition of excess and dropped this proposed rule change on the definition of excess.. With approximately 40,000 horses sitting in BLM corrals and feedlots, BLM was saddled with disposal of massive numbers of horses which should not have been removed from public lands in the first place. Another 1984 regulation was implemented known as fee-waivers/mass adoptions which allowed 100 or plus horses to be given to adopters. Ranchers adopted them and turned around and sold many to slaughter after title passed. An estimated 20,000 horses ended up in fee-waivered programs. A lawsuit against BLM halted the mass adoptions and forced the agency to develop alternatives such as the prison training program and sanctuaries for unadoptable horses. During these years, with BLM's approval, several attempts were made to allow BLM to sell "unadoptable" horses for slaughter by initiating language which never got out of committee in Congress. The Range Omnibus bill which included the slaughter provision made it to the floor of Congress but was defeated. The fallacious term "*unadoptable*" which BLM labeled horses over the age of seven, created a quagmire for the BLM in its ability to market such horses. (In our 38 year history, we have not found any horse or burro to be unadoptable.)

In 1989, Animal Protection Institute successfully challenged BLM's arbitrary and capricious decisions for removal of wild horses and burros from public lands. The Interior Board of Land Appeals (IBLA) required BLM to monitor and inventory habitat to determine if an excess wild horse population existed. This is precisely the strength of the Wild Horse and Burro law because

it requires BLM to fulfil their mandate as stewards of the land. Because BLM did not have monitoring data in 1989 to comply with the IBLA ruling, BLM created the Full Force and Effect ruling which allowed them to remove horses immediately as a decision was rendered. In many cases, removal crews were removing horses as the ink was drying on the decision document. This rule was an attempt to remove IBLA out of the decision process. It would even be to late to be granted a stay. Most decisions were now rendered in "full force and effect." During the 1991 Advisory meeting in Colorado, BLM's asserted that this rule making would only be employed in the most extreme of cases. I projected that in the very near future BLM would use this as a tool for removals and circumvent IBLA decisions. Such was the case. The burden of proof in IBLA cases no longer was the agency's responsibility but transferred to the appellant which made cases fall in the favor of the BLM.

BLM reduced herd sizes more by creating a "herd management area" inside of the herd area or range. If animals strayed out of the herd management area even though they were within the herd area, they were removed. BLM soon promoted the fact to the nearby land users that if wild horses strayed on their land, they could be removed. Wild horses and burros could be removed without declaring excess. BLM did not look to see if the animals were permanent residents outside of the boundaries nor did they look at factors which caused the animals to move out of their herd management areas. There is no statutory language in the law to reduce management in herd areas to herd management areas.

BLM violated law by circumventing determining excess number of horses when "emergency gathers" commenced to save wild horses from many contrived dire conditions. The emergencies were in direct opposition to the definition of emergency as was proposed by the Nevada BLM and Wild horse interest groups at a meeting in Reno in 1990. (Information Bulletin No. NV -91-070). In many cases, after wild horses and burros were removed, cattle were restocked shortly thereafter. BLM conveniently forgets to impose 4710.5 CFR, Closure to Livestock Grazing which states, "*If necessary to provide habitat for wild horses and burros, to implement herd management actions, or to protect wild horses or burros from disease, harassment or injury, the authorized officer may close appropriate areas of the public lands to grazing use by all or a particular kind of livestock.*"

The BLM had over a ten year period where advertising for wild horses and burros stimulated ongoing conflict by falsely asserting "too many wild horses and burros overgrazing on public lands."

It was in 1990 through 1992 that we had a window of opportunity and a glimmer of hope that the wild horse and burro program was going to change and be given the long overdue recognition it deserved. The Assistant Director for Lands and Renewable Resources, Mr. Mike Penfold, made extraordinary changes in the Wild Horse and Burro program. RMP's which were not consistent with applicable law were rewritten (Kingman RMP), gathers which did not have supporting field data were shut down (West Douglas Creek, CO), language of employees was scrutinized. An awareness that words create reality took place. Employees who spoke of

"getting rid" of wild horses and burros at adoptions suddenly were challenged with language of the intent of the law such as adopting a "national treasure" or having the privileged to share your life with a wild horse or burro. Advertising changed from negative to positive. For the first time in the Act's history, a meeting took place in New Mexico where all Wild Horse and Burro Specialists would come together to share ideas and develop a consistent program throughout the states. A strategic plan was started with a mission in compliance with the law and goals which elevated the stature of the program. However, this plan soon became the formula for removal of wild horses and burros from public lands when it was handed to employees to come up with objectives. The mentality of the organization was based on removals, and the adoption program and little on range management.

The National Wild Horse and Burro Advisory Board of 1990-92 recognized the great potential of the Wild Horse and Burro program and stated in its introduction, *"It is ironic that the Wild Horse and Burro Act was passed in 1971 with virtually no congressional dissent. Yet in the 20 years since passage of Public Law 92-195, the wild horse and burro management has become mired in nearly continuous controversy. The program has largely been characterized by bad press, legal entanglements, humane and ecological disasters, and growing public disillusionment and polarization. This becomes even more remarkable considering that the wild horse and burro program has the potential to be the Bureau's "show case" program. It could generate a more positive public image and wider public recognition than any of the Bureau's other activities will ever accomplish.*

*Affinity for the wild horse and burro is pervasive throughout the American public. This interest in wild horses and burros cuts across virtually all segments of our society; urban and rural or eastern and western folks all share this interest. No other Bureau activity has the potential for such a positive public identity and appeal. The mythical wild horse is inexorably interwoven into the fantasy and fascination the American society has for the "Ole West" and "Cowboys." Wild horses and burros are a symbol of our roots. Adding to this special identity is the unique opportunity for people through adoption and volunteerism to be a part of the wild horse program. As an image maker, the wild horse and burro program should have exceeded Smokey Bear.*

*In the absence of a common philosophical foundation on how free-roaming large grazing animals should be managed, the wild horse and burro program has instead been tugged to and fro by conflicting special interest agendas to no one's satisfaction. The wild horses and burros have literally been used to create conflict over public rangelands use."*

A new era of trust and credibility was spawning in Washington's BLM. There was hope for the Wild Horse and Burro program. The new Director, Jim Baca of New Mexico talked about making the wild horse the symbol of the BLM. According to PEER's (Public Employees for Environmental Responsibility) White Paper published in April of 1997, *"The BLM began a crackdown on wild horse-to-slaughter operations in 1993 under the new director. BLM investigators began compiling evidence documenting theft of wild horses during BLM sponsored gathers or captures; black booking or phony double branding of horses so that duplicate branded horses could disappear without a paper trail; manipulation of wild horse adoptions where one person holds the proxies for a group of supposedly separate adopters and the horses all end up at slaughter; use of satellite ranches to hold horses for days or weeks as stopping points on the way to slaughter; fraudulent use of wild horse*

*sanctuaries- ranchers subsidized by the federal government to care for unadoptable wild horses deemed excess and removed from the range- as fronts for commercial exploitation. Baca's campaign on behalf of wild horse protection worried top Interior officials and, according to Baca, played a major role in his abrupt removal from office in 1994.*

*One investigation backed by Baca had already been accepted for prosecution by the U. S. Attorney's Office in the Western District of Texas by the time he had left office. This investigation, developed by law enforcement agents from the BLM New Mexico, centered around the direct participation of BLM employees and contractors selling wild horses for slaughter with the knowledge and approval of BLM managers. Their scheme involved the use of satellite ranches and horse sanctuaries to hide the horses for profit.*

*One particular troubling aspect of this investigation was the apparent obstruction and witness tampering by BLM managers. In some instances, BLM officials warned suspects of impending search warrants and the revealed identity of undercover investigators. In Baca's absence, the Department of Interior began a campaign to shut down the U.S. Attorney's investigation although a grand jury had already been convened to hear evidence in the case. Using lawyers from the Interior's Solicitors Office and the agency's civil legal representatives in the Department of Justice, pressure was brought upon the U. S. Attorney to limit the scope of the investigation to the actions of low level BLM employees.*

*Once the investigation was limited, the BLM reassigned investigators working on the case and began a campaign to drive these original investigators out of the agency altogether. When agency lawyers were able to block execution of subpoenas it struck the death blow to the grand jury probe. The grand jury was cut off from the evidence it needed to continue. Lawyers from the Department of Justice also urged that the case be dropped **because the tolerance within BLM for the horse to slaughter trade was so widespread** that it would be unfair to single out any one person for prosecution. Over the objections of the Assistant U. S. Attorney who led the case, the recommendations of the Justice Department lawyers was accepted and the grand jury was dismissed.*

*The Office of the Inspector General (OIG) of the DOI is supposed to be an independent monitor of agency actions but when it came to wild horses this watchdog ran for cover. The OIG answers to the Secretary of the Interior and declined even a request for assistance from the Chief of BLM Law Enforcement who acknowledged that his program lacked independence to investigate its own agency."*

*The final paragraph of this report sums up with clarity the problems of the Wild Horse and Burro program. "The agency under interim leadership is simultaneously denying the existence of any problem while announcing multiple paper reforms to improve the performance of its Wild Horse and Burro program. **The problems are not administrative or budgetary in nature. The problems stem from failure to faithfully execute the law regardless of political consequences.**"*

*The planned strategy by the BLM to diminish the importance of wild horses and burros is seen recently in the revision of BLM's mission statement in 1991 where wild horses and burros were excluded as a resource on public lands. Although we can assume that they should fall under the category of wildlife, it would give greater emphasis standing alone since the law deems them a National Heritage Species and the Supreme Court case, *Kleppe v's New Mexico* clearly defines them as wild animals. Director Jamison was unable to adequately defend BLM's position of*



omission to two Wild Horse and Burro Advisory members when he said then the BLM would have to list wild turkeys etc. Since wild horses and burros have their own specific law and wild turkeys do not, this does not make sense. In April of 1994, Acting Director, Mike Dombeck lists ten visions for public lands all of which do not include any mention of wild horses and burros. BLM has not had a Director since 1994 until recently when Pat Shea was appointed in 1997. During the period of interim directors, there was literally no attention placed on the Wild Horse and Burro program until Associated Press articles forced BLM's attention to the program.

Because BLM is required to monitor and inventory the habitat to determine if wild horses and burros are excess, the latest scam is allowing variable utilization levels depending on which species it will impact. Usually in any area where livestock graze, utilization of the plants is allowed to be 50% while in areas where only horses or burros graze, utilization levels are sometimes as low as 10%. The realization is that rabbits and grasshoppers can eat 10% of the plants. This is nothing more than manipulation of field data to promote more removals.

The implementation of the Wild Horse and Burro Act is not difficult. It requires the BLM to monitor and inventory wild horses and burros and habitat. It requires BLM to report to Congress biannually. BLM violated the law by not reporting to Congress in 1994 and 1996 which would have been the 10<sup>th</sup> and 11<sup>th</sup> report to Congress. This report was combined and came out in 1997. Congress created a superb law which not only protects wild horses and burros but protects habitat and is consistent with other applicable laws such as NEPA, FLPMA, and PRIA. The Wild Horse and Burro Act implements NEPA but its strongest point is that it requires BLM to be good stewards of the land because it requires monitoring and inventorying of habitat and wild horses and burros.

Suggestions for solutions for implementation of PL 92-195 include stronger whistle blower laws to prevent retribution of field employees who try to make decisions favorable to the health of the range and are not supported by management. (Our supporting documentation follows in the next paragraph under Degradation of Riparian Habitat.) Secondly, heads of federal agencies should not be political appointees such as the Director of the BLM, Forest Service etc. Thirdly, that a moratorium on gathers be initiated through the Appropriation bill for a minimum of one year and those monies be used for monitoring of the ranges, determining sex ratios, eliminating fences where possible which prohibit the movement of wild horses and burros, monitoring behaviors and other activities which would protect wild horses and burros on the range. Finally and most importantly, that Congress call a special oversight hearing to review all allegations of corruption within the BLM and its failure to implement the Act including but not limited to the closure of the Del Rio investigation in Texas. If violations of the Act persist within the BLM, that Congress take swift action against the violators.

**Riparian Damage on public lands:** Wild horses and burros contribute little to riparian damage. GAO (1988b) reported that federal lands managed by BLM and the Forest Service had degraded riparian communities, largely due to extensive overuse by livestock. *"Once a riparian community has been or is being degraded and its banks and channels are unstable, excessive use by*

*livestock will not allow the area's vegetation to recover. Riparian areas degraded by livestock will continue to degrade through accelerated erosion until grazing management is changed. Riparian areas will not recover on a large scale without changes in policy, regulations and management.*" (Draft EIS, BLM's Rangeland Reform '94 from Elmore and Beschta 1987) Cooperrider et al 1986 claims that most riparian areas are in poor condition because of past management practices. Excessive amounts of plant biomass have been removed from riparian areas by livestock grazing and timber harvesting for the past 100 years or more. Major causes of damage to riparian areas include land clearing, irrigation and related water projects, and flooding under impoundments. Livestock, especially cattle will spend a disproportionate amount of time in riparian areas compared to uplands (GAO 1988b, Clary and Webster 1989, Platts 1990). Riparian communities are critically important and are the most severely altered ecosystem in the U. S. (Brinson et al 1981) Cooperrider and other in a 1986 report estimate that 70 to 90 percent of the natural riparian ecosystems have been lost because of human activities. Riparian communities make up one percent of federal land (Draft EIS, Rangeland Reform, BLM). *"Rangeland riparian communities have been influenced by many factors, including flood control and irrigation impoundments, but they have been most affected by livestock grazing. Livestock tend to spend a lot of time in riparian areas because of the lush vegetation, shade, and water. Livestock remove protective vegetation, trample streambanks, and defecate near streams, degrading water quality."* (Draft EIS, Rangeland Reform, BLM '94) *"Even a handful of cattle will on a vast range will concentrate in riparian areas"* (Chaney, 1990) *"Cattle are relatively lethargic, and once settled into this pleasant environment they stay indefinitely unless strongly induced to move. The BLM found that in the Great Basin all riparian land covers less than 2% of the area, yet receives 50% of the livestock pressure."* (Waste of the West, Jacobs 1991).

In observations by Seegmiller, wild horses spend little time at watering holes. During the summer months, wild horses will water two times a day at perinneal streams. However, during rainstorms, wild horses may not come to water at all but use ephemeral sites or seeps. Wild horses and burros may range up to fourteen miles for forage. Winter time according to Berger, wild horses may not come in at all for water because they eat the snow or drink at ephemeral sites. Wild horses migrate to high ridges in the summer to escape the heat and flies.

The GAO 1988 report on Riparian Areas gives numerous reports of BLM employees fearing retribution by their area managers as they try to implement formal policy. The staff stated that without more specific BLM support from top to bottom for their efforts, it is very doubtful that any worthwhile riparian policy will ever be in place. Some BLM staff stated that they are reluctant to go to far with riparian management programs. They said management has taken reprisal against staff who tried to implement riparian management programs in areas with politically powerful permittees. These permittees can overturn field-level decisions through contacts with higher levels of management. Further reported in this GAO report is the livestock industry's political power and ability to influence BLM decisions has been documented in general studies. An example used is Audubon's *Wildlife Report* which stated that the livestock industry intimidates BLM into transferring, demoting, or firing field staff who take actions that upset local ranchers. The study also states that the industry applies pressure to have decisions by BLM field

staff overturned at upper agency levels. This makes BLM field staff wary about making tough land management decisions. The GAO also reported that during the years of 1980 and 1988, that technical staffing positions were greatly reduced and therefore BLM was unable to implement the Director's policy pertaining to riparian management. During the same time, staffing levels of both wildlife and fisheries biologists were reduced by 34 to 56 percent respectively. The GAO reported in 1989 that "*the BLM has often placed the needs of commercial interests... ahead of other users as well as the long-term health of the resources.*" (Knickerbocker, 1990) According to Bernard Shanks (1984) 85% of BLM line managers hold degrees in range management, forestry, or agriculture. Almost all were educated in western universities, especially land-grant colleges that collaborate closely with the livestock industry.

**Disease:** It is rare that wild horses carry disease unless exposed to domestic stock. We do report that when wild horses are contained in BLM's holding facilities that they have suffered from strangles and ringworm which are prevalent in this facilities. Although BLM requires its adopters to have shade and protection from the elements for the wild horses and burros, BLM's facilities fail their own standards. We also are aware that BLM has knowingly sent sick horses from these facilities to adoptions without regard for the welfare of the horses or the transmittal of these illnesses to other horses. According to Dr. Gus Cothran, a leading geneticist in equine research, "*Wild horses are far more genetically diverse compared to any particular breed of horse in the United States.*" This means that wild horses for the most part are not inbred as particular breeds of domestic horses are in our country. Genetic testing has also revealed that many of the herds carry Spanish characteristics and genes from the reintroduction of Spanish horses into the U. S. in 1493.

**Habitat destruction:** Destruction of the habitat occurs mainly around water sources. These areas were covered under riparian destruction. According to GAO's 1990 Wild Horse Report, wild horse removals have not significantly improved range condition. The following reasons were given: 1.) Wild horses are vastly outnumbered on federal rangelands by domestic livestock. There are an estimated 4.1 million domestic livestock compared to approximately 25,000 wild horses and 5,000 wild burros. In total the domestic livestock consume 20 times more forage than wild horses which means reductions in wild horse populations will not substantially reduce total forage consumption. 2.) Wild horse behavior patterns make the horses somewhat less damaging than cattle especially to vulnerable ranges. Available horse behavior studies demonstrate that, unlike cattle which concentrate on lower elevations, wild horses range widely throughout both steep, hilly terrain and lower more level areas. Range conditions in steep hilly areas where cattle do not frequent are generally better than in lower areas. Reducing horse populations in these areas has been shown by experience to have a negligible effect on the resource. In the lower level areas, especially ecologically important riparian areas adjoining streams and other water sources, cattle do more damage because they tend to "camp" in the areas instead of watering and moving on. GAO again reiterates in this report that livestock grazing is the primary cause of damaged riparian areas. 3.) Conflicting BLM reports gave reasons why wild horses were removed in an area in Wyoming for damage to the riparian areas however, other documentation showed this location was over grazed by livestock and not wild horses. 4.) In many areas where wild horses removals

have taken place, BLM authorized grazing levels have either not been reduced or have been increased thereby negating any reduction in forage consumption. Examples are given by the GAO where 349 wild horses (or 4,188 AUMs) were removed in 1986 and in 1987 the rancher was granted a temporary increase of 2,266 AUMs for livestock in the same area. Another case involved a heavily over grazed range where the Nevada State office recommended removing 176 horses and in addition reducing livestock grazing by almost 80%. The BLM District office planned to remove the horses but had no plans to remove the permittee's authorized livestock. Another Nevada case cites the removal of over 2,800 wild horses from a herd area over 4 years based, in part, on a Nevada district court's ruling in favor of the permittee. After the horses were removed BLM found that overgrazing persisted and that 18% cattle reductions needed to take place. Instead, BLM is collecting more data to strengthen support for "negotiated" grazing reductions with the permittee in the future.

To restore damaged habitat several solutions should be employed. According to the above GAO report, reducing authorized grazing levels would likely be cheaper than wild horse removals to achieve the same reduction in forage consumption. BLM's domestic livestock grazing program currently operates at a substantial loss to the federal government. For example, in 1993, BLM and Forest Service spend an average of \$3.99 per AUM of forage grazed by livestock on lands they administer. The grazing fee charged was \$1.86. This represents a loss of \$2.13 per AUM. BLM alone administers 15 million AUMs of forage on its lands representing a loss of nearly 32 million dollars. Secondly, suspended use of AUMs should not be allowed. Suspended AUMs are those AUMs representing forage that is not there for grazing either because rangelands are over grazed or too many AUMs were allotted in the 1964 allocations and forage is not available. It is these suspended AUMs in which "paper" cuts are made by the BLM showing that cattle have been reduced when in essence actual cows were never there to be reduced. The reduction is a paper reduction only. Jacobs reports, "*Cattle alone now eat a greater relative percentage of Western vegetation than did all native large ungulates combined when they roamed in great herds and scattered bands 150 years ago.*" (1991) The Committee on Government Operations in 1986 reported that the actual number of permittees grazing on BLM and FS lands in 16 western states is about 23,000. In the 11 western states it is 22,000. The 23,000 permittees represent less than 2% of the 1.6 million livestock producers in the U.S. Less than 15% of original permits issued by BLM or FS remain with the family to which they were issued. Jacobs reports that the notion that most public lands ranching is done by descendants of the original settlers is another powerful myth associated with the grazing industry. Ferguson reports in 1983 that 40% of federal grazing is controlled by only 3% of the permittees. There are small public lands ranchers but corporate ranchers and large individual operators predominate. On BLM lands according to Atwood, 1990, 5% of cattlemen, those with a herd size over 500, control 58% of all herbage allotted to livestock, 32% goes to medium-sized operations of 100-499 animals and 10% goes to the small rancher who owns less than 100 cattle. Thirdly, more of BLM's budget should be used for monitoring range impacts by herbivores and determining which herbivore is causing damage. According to the GAO Rangeland Management Report, 1988, carrying capacity information is not available on 30% of BLM cattle allotments. Range managers of both agencies disclosed that no adjustments of the number of livestock on grazing permits were scheduled for 75% of the

allotments the managers believed were over grazed. Fourth, base value of ranches should not be tied to the value of the permit. This means that because grazing fees are so low as compared to the true market value of the herbage they represent, government AUMs are sold as if they were part of private property. Combined with the value represented by other subsidies, this is generally known as "permit value". Often the value of the public grazing allotment exceeds the value of the deeded property, house and improvements. Public lands ranchers can take out loans using permits as collateral. **Eliminating this subsidy would reduce the number of lawsuits** against the BLM for reductions taken in the permittees permit and would take the vested interest pressure out of BLM's grazing decision. Fifth we would encourage that a better distribution of the grazing fees be designed so that most of the fees go back into the Federal Treasury. As it stands now, permittees actually pay more than half of their federal grazing fees right back to themselves for ranching development. This means that a grazing permit of \$1.81 per AUM actually only costs the permittee 90 cents. (Jacobs, 1991)

**Competition with other wild life and users of the range:** Competition in its most simplistic terms means that two animals are in the same place at the same time consuming the same food which is unable to sustain both animals. By the very nature of movement and feeding patterns, it is highly unlikely that wild horses and burros compete with other wildlife or domestic animals such as cattle and sheep. In Arizona in the Black Mountains, Big Horn Sheep are found in the highest elevations, burros are found in the foothills and cattle are in the lowest elevations. Because burros can travel large distances within their ranges, they are more likely not to over graze in one area such as Big Horns or cattle. The majority of Big Horns reside in lambing grounds while cattle camp in areas near water in lower elevations. With proper monitoring of rangeland habitat for each species, there should never be competition. We have already stated our case about riparian areas where cattle tend to "camp." In order to correct high utilization use in riparian areas cattle will have to be reduced. In 1984 with the regulation changes, suitability criteria was thrown out. Obviously for reasons which would allow more cattle on public lands. In determining the carrying capacity of the land, the entire land is figured into the equation. However, if cattle do not use the entire area, they are still apportioned AUMs from the entire area. This presents an inaccurate assessment of use by cattle by giving more AUMs to cattle than they should receive since they congregate in lower areas and not in high terrains such as wild horses and burros do. If suitability criteria were figured into BLMs equation, we would have far less cattle and more wild horses and burros. It is no wonder that suitability was thrown out in 1984. However, the proper management of public lands should require suitability's reentry into the carrying capacity equation.

Finally, the Wild Horse and Burro Act specifically states that ranges or what BLM calls herd areas should be devoted *principally* from not necessarily exclusively to their welfare in keeping with the multiple-use management concept for public lands. The 'multiple use' concept is defined as the management of public lands and their various resource values so they can be utilized in the combination which best meet the present and future needs of the American people. Consideration is given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.