

1976

second report to congress



ADMINISTRATION OF
THE WILD FREE-ROAMING
HORSE AND BURRO ACT
1976

Second Report to Congress

Preface

The Wild Free-Roaming Horse and Burro Act (85 Stat. 649, 16 U.S.C. 1331 et seq.), enacted December 15, 1971, hereafter referred to as the 1971 Act (see Appendix 1), delegated to the Secretary of the Interior and the Secretary of Agriculture the authority and responsibility for protection, management, and control of wild free-roaming horses and burros on public lands administered by the Bureau of Land Management (BLM) and the Forest Service (FS). In compliance with section 10 of the Act, the Secretaries respectfully submit this joint report covering operations during the 24 months which have elapsed since the first Report to Congress dated June 1974.

This review presents the progress made and the problems encountered by these two managing Agencies in their administration of wild horses and burros since the last report. It also contains considerations for legislative changes which will allow the Agencies to meet the intent of the 1971 Act in a more effective, practical, humane, and cost-conscious manner.

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I. SUMMARY

Wild horses and burros are rapidly increasing on the western rangelands. Today, they are more numerous than at any time since the passage of the Wild Free-Roaming Horse and Burro Act in 1971.

It is estimated that 56,300 wild horses and 7,100 burros now roam the public lands, based on inventories through January 1976 by the Bureau of Land Management (BLM) and the Forest Service (FS).

Nearly all of the animals are located in the 10 Western States on lands administered by the Bureau of Land Management. Of the total, 3,025 horses and 311 burros are on lands managed by the Forest Service.

Nevada has the largest concentration of wild horses, with 22,258 head, followed by Wyoming with 8,833, Oregon 7,493, New Mexico 6,420, and California with 4,230. Most of the burros are in California and Arizona, which total 3,072 and 2,668, respectively.

Wild Horse and Burro Inventories

Recognizing the difficulty in arriving at precise numbers in the census of animals, the two Agencies have taken more frequent counts encompassing larger areas since the 1974 report. Aircraft and aerial photography, as well as ground counts, are used to arrive at inventory estimates. As a result of comprehensive inventorying since 1974, a downward adjustment has been made in the number of burros first reported to Congress. At that time, horses were estimated at 44,000 and burros at 14,000. Five years ago, when the Act was passed, and based on rough data, horses were estimated at 17,000, and burros at 10,000.

Maintenance Agreements--Providing Foster Homes

The Act provides for population controls in order to maintain an ecological balance between animals and habitat. It permits the humane destruction of animals, providing no commercial use is made of the carcasses, and for private care, by interested persons, under maintenance agreements. The latter is considered the most humane approach by both Agencies.

In May 1976, BLM initiated a national program to encourage horse enthusiasts to "adopt" animals being gathered this year--an estimated 2,000 to 4,000. At this time, it is too early to forecast the total number of horses which will go to "foster" homes under the BLM program.

The maintenance program provides only a partial solution because: title does not pass to "foster" caretakers, which is an inhibiting factor; excessive costs are involved in providing animals for maintenance, an average of \$300 per horse; and, the potential for future placement of large numbers of horses or burros will become less possible as qualified applicants are exhausted.

Since 1974, the Agencies authorized the removal of 3,928 excess horses and 63 excess burros. Because of the difficulty of gathering animals by riders on horseback, only 1,681 horses and 33 burros were captured. Thus far, 900 horses and a few burros were made available to persons under maintenance agreements (800 BLM, 100 FS). Of the balance, some were returned to the range, and some were claimed by private owners, or are awaiting assignment to families, while others were humanely destroyed, as in the case of old, sick, or lame animals.

Proposed Legislation

Both Agencies consider the 1971 Act "inadequate," and recommend its amendment, because it fails to fully resolve the management problems of increasing populations. The Act does not provide flexibility for disposing of excess animals too numerous in some areas to sustain a balanced and suitable habitat for all life forms; nor does it provide for modern, less hazardous, more humane methods of gathering animals, namely, the use of aircraft.

Seven legislative proposals to amend the Act have been introduced in the Congress. Essentially, these would authorize the respective Secretaries of Interior and Agriculture to sell or donate "excess" animals to individuals on written assurance that the animals will receive humane treatment and that humane methods will be used in their disposal. A preference would be given to persons seeking animals for domestic use. It would further authorize the use of aircraft and other motorized equipment to capture excess animals, under appropriate supervision. The National Advisory Board for Wild Free-Roaming Horses and Burros has twice recommended similar amendments to the Act.

Management of the Habitat - Wild Horse Ranges

In many areas, fast-growing horse and burro populations are accelerating the already serious deterioration of the range by competing with wildlife and other grazing animals for forage.

It is estimated that as many as 10,000 animals should be removed from the range annually in order to keep herds at existing levels. Wild horses have few natural predators.

Overall, to mitigate severe range conditions, BLM is applying a range management program in all States which calls for sound grazing principles. When necessary, grazing on the land, including livestock and wild horses and burros, is being adjusted so that the actual use does not exceed grazing capacity. Increased surveillance for illegal trespass, with accompanying prosecution, has also been emphasized. The Forest Service uses comparable management and control programs.

Ranges or sanctuaries for wild horses or burros are authorized under the 1971 Act. BLM administers two wild horse ranges, but both were established prior to the Act. The Bureau is exploring the possibility of additional ranges.

In terms of protection, management, and public education, the ranges offer advantages not possible when horses or burros are scattered over millions of acres of intermingled Federal, State, and privately owned lands.

Note:

Just prior to the printing of this report, the Federal Land Policy and Management Act of 1976, PL 94-579, became law and provides for the use of helicopters in the gathering of wild horses and burros after public hearings and under humane procedures prescribed by the Secretaries.

II. HISTORY AND BACKGROUND

Today's horses and burros are not native to America. The first modern-day horses and burros were brought here by Spanish conquistadors. Inevitably, some of these animals escaped and some were released to the wild. These horses earned the name mustang--a derivation of the Spanish word *mestaño*, meaning "wild." The Indians of the West recognized the opportunities that the horses and burros offered for transportation and food. They established a horse-related culture that hastened the spread of horses throughout the West.

By the late nineteenth century, the wild horse population had reached such heights as to be considered a serious problem on western rangelands. Although there were no official records at that time and horse numbers were largely a matter of conjecture, literature indicates that as many as two million animals may have roamed the open range during that period.^{1/}

In the late 1940's and early 1950's, Federal land managing Agencies, attempting to control grazing use and balance numbers of animals with the grazing capacity of the range, encouraged the removal of feral horses and burros from public lands. Forage on public grazing lands was allocated to domestic livestock and wildlife under various Federal laws. These laws did not provide for the needs of wild horses; and, as a result, they were considered to be in direct competition for forage with other grazing animals. Concentrations of horses, particularly on winter range, caused serious deterioration of rangeland in localized areas.

According to western tradition and consistent with the philosophy of the times, priority was given to livestock. In deference to livestock needs, the horses were either captured and domesticated, or shot. Later, they came to have value for slaughter, and by the 1940's, captured animals were commonly processed for commercial purposes. The 1940's also saw the last of most large horseherds. From 1950 on, except in a few locations, control actions consisted of sporadic instances of shooting or capturing scattered horses. In Nevada and portions of a few other Western States, populations were large enough to support some "commercial" capture operations.

Coincident with this era came an expression of organized national conscience asking for the preservation and for humane treatment of these animals. The first Federal law to deal specifically with

^{1/} Ryden, Hope, America's Last Wild Horses, New York: E. P. Dutton and Co., Inc., 1970

these issues was the Act of September 8, 1959 (73 Stat. 470, 18 U.S.C. 47), which prohibited the use of motor vehicles or aircraft and pollution of waterholes for the purpose of capturing or killing wild unbranded horses and burros on public lands.

In sentiment with public opinion, two national wild horse ranges were established by the Bureau of Land Management to protect and preserve these living symbols of America's western heritage. The first was a 394,000-acre area designated by a memorandum of understanding between the Department of Defense and Department of the Interior in 1961 as a wild horse area on the Nellis Air Force Base Bombing and Gunnery Range in Nevada. The Pryor Mountain Wild Horse Range in Montana and Wyoming, consisting of approximately 34,000 acres, became the second range designated by the Bureau of Land Management in 1968.

Although the 1959 Act dealt with the humane capture of wild horses and burros and was the major factor reversing downward trends in wild horse numbers on western ranges, the public became increasingly concerned over the future of the wild horse.

The wild horses had captured the imagination of the American public and additional efforts to assure their protection came about through an intensive "children's campaign." It was climaxed in 1971 with the passage of the Wild Free-Roaming Horse and Burro Act. The Act provided for the protection, management, and control of wild horses and burros on public lands.

The 1971 Act placed totally new and different duties on the two land managing Agencies involved. Neither the Forest Service nor the Bureau of Land Management had ever before received clear responsibility and authority for management and physical welfare of animals on the range.

The exercise of responsibilities and authorities originating with the 1971 Act required adjustments in culture and attitudes in many quarters. Responsibilities previously assumed by various State agencies came under United States jurisdiction. Landowners could no longer move independently against wild horses or burros which grazed their privately held lands. People could no longer assume ownership of free-roaming horses or burros without following claiming procedures specified in the Act. By law, wild horses and burros were now considered a part of the public lands' ecosystem, along with wildlife.

One of the early objectives of the managing Agencies upon the passage of the Wild Horse and Burro Act was to inform the general public of the context and intent of the new law. A Federal Register

notice issued by the respective Secretaries in March 1972 advised the public of the Act and stated that all unbranded and unclaimed animals on public lands were not to be molested. Interim directions were provided to all field officers of the Bureau of Land Management and Forest Service through instruction memoranda and other directives. These guidelines were issued to insure compliance with the law pending adoption of Federal regulations. Then the Secretaries wrote to the western Governors requesting cooperation of affected States in administration of the new Act.

The Act makes provision for the Secretaries to issue regulations deemed necessary for furtherance of the Act's purposes. The fact that lands of two jurisdictions are involved made it necessary to develop compatible regulations.

Proposed regulations by the Department of the Interior and the Department of Agriculture were published in the Federal Register via the rulemaking process on December 20, 1972. Draft environmental impact statements pertaining to the proposed regulations were released by the Forest Service and the Bureau of Land Management in December 1972. These proposed regulations and draft statements were made specifically available to all BLM and Forest Service grazing advisory boards for their review.

The proposed regulations and environmental statements became the first order of business of the newly appointed National Advisory Board for Wild Free-Roaming Horses and Burros at Salt Lake City, Utah, January 12-13, 1973.

After considering recommendations of the Advisory Board and public comment, each Department prepared a final environmental impact statement accompanied by proposed regulations. Final environmental impact statements were released by the Forest Service on July 6, 1973, and by the Bureau of Land Management on July 10, 1973.

The National Advisory Board reviewed and endorsed the proposed regulations, with suggested minor changes, at its meeting in Billings, Montana, on July 16-17, 1973. Regulations of both Departments were published as final rulemaking in the Federal Register dated August 15, 1973.

III. PERSPECTIVE - PUBLIC INVOLVEMENT

Wild horses and burros continue to be the focal point of a highly controversial issue that ranges from the emotional viewpoint that the animals are still threatened with extinction to one of callous disregard for animal suffering.

Public awareness of the status of wild horses in the last few years centered largely on misdeeds of the past.

There are several horse protection associations, as well as other humane and conservation groups, dedicated to the preservation of wild horses. Literature and media efforts from such groups profoundly influence public reaction. While some literature reports on the status of the wild horse and on measures taken by the interested groups to assure protection under the Act, other communications imply imminent extinction. As a result, there is a ground swell of public reactions and a heavy volume of mail calling for actions to "save the wild horses."

In reality, the threat of extinction is an exaggerated conclusion as this report will show. While the precise number of animals may be contested, the fact remains that since the passage of the Act, wild horses and burros have not declined. Thus, the Act has been an effective instrument to protect and preserve these symbols of America's western heritage. In itself, the increase in population presents a different side of the Act--the management considerations for horses and burros considered to be in excess of range carrying capacity.

Some protectionists question the validity of inventory methods and the accuracy of given horse and burro numbers. They contend that increases and environmental impacts attributed to overgrazing or potential overgrazing are overstated, and, therefore, efforts to "manage" numbers of animals on the range are equally questionable. They conclude that horses and burros should graze the range without restriction or control. On the other hand, while preservation is the paramount concern of many Americans and organized groups, there is recognition that an ecological balance should exist between horses, burros, wildlife, and livestock in relationship to the supportive habitat.

Overall, to mitigate severe range conditions in the Western States, the Bureau of Land Management is applying a range management program which calls for sound grazing principles. When necessary, grazing on the land, including livestock and wild horses and burros, is being adjusted so that the actual use does not exceed grazing capacity. The Forest Service uses comparable management and control programs to reach similar balance.

Greater public understanding of the wild horse and burro situation, plus public involvement in decisions concerning these animals, is vital to stated management goals. These goals are to maintain a thriving population of wild horses and burros without causing excessive damage to the land and its resources.

The Bureau of Land Management's comprehensive planning system requires public participation in land use decisions and there is high interest in wild horses and burros where land use plans involve known habitat. The Arizona Game and Fish Department, Arizona Cattlemen's Association, and the Bighorn Sheep Society favor large reductions in burro numbers. In a contrary view, residents of Oatman, Bullhead City, and Lake Havasu City generally favor having the burros near their towns. One Arizona television station carried a news feature on the wild burro "town pets" at Oatman.

Last January, BLM advised cattlemen in the Burns District, Oregon, that fewer cattle than usual would be permitted to graze on public rangelands this summer, and that the grazing period could be shortened by as much as 2 months. The reason given was that overgrazing by wild horse herds had reduced forage on both private and public lands to levels which could not adequately sustain either animal. It is reported that horses in the area had steadily increased, whereas cattle numbers has remained fairly stable. Such an action led to a claim filed against BLM by a cattleman for alleged damages by wild horses to his private land.

Eleven public meetings and workshops were held on land use planning in northwestern Colorado where wild horses were a major subject considered. A well publicized and attended meeting was held in Denver on wild horse management problems. The consensus of expressions at these meetings, plus individual and group contacts, was for more intensified management of wild horses through more effective and efficient methods. Gatherings and removal of excess horses with the use of helicopters and permitting outright sale of these animals were urged by participants at these meetings.

Although the majority of correspondence received supports an unequivocal protectionist view, the following exception, from a copy of a letter forwarded to the Department of the Interior, represents a more typical western viewpoint.

". . . let me hasten to state that I am likewise in favor of protecting wild horses and for many years have been involved with the operation of four different ranches in the State of Nevada. At no time have I ever permitted wild horses to be chased or mistreated although there were numerous horses involved on one ranch of 500,000 acres.

"As a matter of fact, the horses freely shared the range, on occasion ate \$60 per ton hay in the winter and drank from water sources provided by me. The same went for other wildlife, primarily deer.

* * *

"Horses should be treated like other protected wildlife such as the deer, where their numbers are controlled and adequate range is provided. This is what I understand the Bureau of Land Management is trying to accomplish, but due to the pressure groups . . . playing on the sympathy of the uninformed, you have created a real problem for the economy of the very few states where so called 'wild horses' are involved."

* * *

The sincere desire to assure protection and preservation of wild horses and burros, as represented by national associations and a large segment of the public, poses a dilemma--what to do about excess horses.

The problem of overpopulation and the deterioration of the land resources which the animals, wildlife, and livestock depend upon, does exist.

Under such situations, the Act does permit control measures up to and including humane "disposal" on the range. Another alternative being used is to make excess horses available to people who can provide care and proper facilities off the range under maintenance agreements or the "adoption" program. Considered only a partial solution, it is the most humane and publicly acceptable method available for meeting environmental needs.

From inception of the Act to January 1976, some 900 horses have been placed under maintenance agreements. Reaction and acceptance to this effort have been largely favorable. Public involvement and widespread information concerning these wild horse activities attribute to this reaction.

In Nevada, Oregon, Utah, and several other States, where gatherings were held in 1974 and 1975, horse protection associations and humane and conservation groups were often present to oversee carefully carried out operations. However, not all protectionist groups approve of these gatherings or favor the adoption program, nor are the gatherings without hazard to riders and horses, either domestic or wild.

General public acceptance prompted the Bureau to initiate in May 1976 a national "Adopt-A-Horse" program, appealing to horse enthusiasts to provide "foster" homes for wild horses expected to be taken from the range this spring and summer. Subject to conditions, as many as 4,000 horses may be captured, which is less than half of the numbers needed to be removed in order to keep herds at present levels.

The main purpose of the "Adopt-A-Horse" program is to substantially increase the number of bona fide applicants to meet anticipated needs and to avoid destruction of excess horses and burros. To date, the number of people who inquire about a horse is nearly ten times greater than those who actually pick up horses at capture sites.

The program also provides an educational opportunity to present the objectives of the Act, status of wild horses and burros, and the management responsibilities of the Agencies.

Since the passage of the Act, the greatest challenge to the protection and preservation of wild horses and burros was the question of the validity of the Act itself as contested by the State of New Mexico. On June 16, 1976, the Supreme Court upheld the constitutionality of the Act.

The Secretaries of the Department of the Interior and the Department of Agriculture will continue to administer the Wild Free-Roaming Horse and Burro Act in a manner intended to protect the animals in ecological harmony with the land and its people.

IV. RECOMMENDATIONS FOR LEGISLATION

Seven new legislative proposals which would amend the 1971 Act have been introduced in the Congress since June 1974.

Amendments would provide for the sale or donation of excess animals, and permit the use of aircraft or motorized vehicles in connection with management and control of wild horses and burros.

The bills contain and generally follow the recommendations of the National Advisory Board for Wild Free-Roaming Horses and Burros made at meetings in 1973 and 1974, which were reported by the Secretaries of the Interior and Agriculture in the joint Report to Congress, June 1974.

On January 26, 1976, hearings were held on H.R. 2935 before the Public Lands Subcommittee of the House Interior and Insular Affairs Committee. The bill was introduced by Congressman G. William Whitehurst, Virginia.

In testimony, the Department of the Interior offered, with the Department of Agriculture's concurrence, a legislative proposal to amend the 1971 Act. A copy of this proposal appears in this report as Appendix 2. It was introduced as H.R. 11571 and S. 3089. Language similar to the Administration's proposal also appears in H.R. 13777, the proposed Federal Land Policy and Management Act of 1976, reported favorably by the House Interior Committee. Other bills introduced include H.R. 11539, H.R. 13038, and S. 1923.

The Administration's proposal would amend the 1971 Act as follows: First, it would define the term "excess animals" as certain categories of wild free-roaming horses and burros and would authorize the Secretaries to sell or donate such excess animals to individuals on written assurance that the animals will receive humane treatment and that humane methods will be used in their disposal. Persons seeking animals for domestic use would be given a preference to acquire excess animals. Upon sale or donation, these animals would lose their status as wild horses and burros, and would no longer fall within the purview of the Act. Second, it would authorize the Secretaries to use aircraft and other motorized equipment to capture excess animals and to permit such use by other persons, provided that officials of the Department of Agriculture or Interior supervise the use of the equipment. Such use would have to be in accordance with humane procedures prescribed by the Secretaries.

Under present law, there are three alternatives for controlling wild horse and burro populations: (1) Wild horses and burros may be moved to other areas where they existed on December 15, 1971; (2) they may be removed for private maintenance under an agreement to assure proper care for the animals; and (3) they may be destroyed in a humane manner.

The 1971 Act is considered inadequate by the administering Agencies because it fails to fully resolve the management problems of increasing populations of wild horses and burros. It does not provide flexibility for disposing of excess animals, too numerous in some areas to sustain a balanced and suitable habitat for all life forms, nor does it provide for modern, less hazardous, more humane methods of gathering animals, namely, the use of aircraft.

As a population check, the 1971 Act allows for the humane destruction of excess animals. One method would be by shooting the animals on site. Since, by law, the remains may not be utilized in any manner, the carcasses would be left for carrion and to decompose naturally. Shooting is considered a last resort.

The most humane alternative to shooting, or other humane destruction, is the use of private maintenance agreements with individuals who can provide adequate care and facilities for excess animals off the public range. Maintenance agreements and the Bureau of Land Management's Adopt-A-Horse program have had widespread public acceptance and general support from most horse protective and humane groups.

Considering that as many as 10,000 horses may need to be removed from the range annually in order to keep herds at present levels, maintenance agreements at best are a partial and costly solution.

Apart from the difficulty and hazard involved in capturing sizeable numbers of animals by skilled riders and mounts, maintenance agreements pose other problems, such as:

1. Population increases will out pace the number of qualified applicants. People who receive horses are generally from geographic areas within reasonable distance of gathering sites. As this demand becomes exhausted, the potential for placing horses in distant States declines sharply, since transporting animals becomes more costly and difficult;
2. Inability to gain clear title to the animals is an inhibiting factor. People who have appropriate facilities are less anxious to make application and undergo considerable expense in caring for horses they cannot own;
3. As horses become dispersed across the Nation, presently from New York to California, distance and costs limit the Agencies' ability to monitor the well-being of the animals, which remain under Federal jurisdiction; and

4. Gathering animals by riders on horseback over rugged terrain is inefficient and costly. Usually, only small numbers are gathered at any one time. Costs range from \$300 to \$400 per horse.

The legislative proposal would assure protection and humane treatment of wild horses and burros while making possible proper management and protection of rangelands and wildlife. These proposed changes in the existing wild horse and burro legislation are not intended to negate the 1971 Act. The intention, as indicated by the definition of "excess animals" in the proposal, is to manage wild horses and burros in a manner that will maintain an ecological balance on rangelands and permit continued multiple-use management.

V. REPORT TO CONGRESS ON IMPLEMENTATION OF THE ACT

A. Managing Wild Horses and Burros

1. Wild Horse and Burro Inventory Data

It is estimated that 56,300 wild horses and 7,100 burros roam public lands in the Western States, as of January 1976, according to inventories made by the U.S. Departments of Agriculture and Interior. Nearly all of the animals are found on rangelands in the 10 Western States under the Bureau of Land Management's administration. Of the total, 3,025 horses and 311 burros are under Forest Service jurisdiction. (See Tables 1 and 2, pages 17 and 18.)

Inventory Methods

The Federal Agencies use aerial counts in their inventory process. This inventory method is the best measurement available to determine the number of wild horses and burros on the public lands.

Helicopters are most commonly used by the Bureau of Land Management in estimating animal numbers.

Observation teams chart the number and identify marker animals. The aircraft flies in a predetermined grid pattern to cover all areas. Inventory figures are the actual number of animals sighted and are not portrayed as 100 percent of the animals in a given area.

Because of the difficulty in counting and identifying different bands some wild horses and burros are being neck banded. One or two animals in a herd may be marked by this method. "Marker animals" with distinguishing marks or coloration are also more easily identified.

a. National Resource Lands (BIM)

Since 1974, the Bureau of Land Management substantially increased the number of inventories conducted, which also encompassed areas not previously surveyed. As a result of the aerial surveys in Arizona and California, more accurate data indicates fewer burros than original estimates in 1974.

b. National Forest System Lands (FS).

Numbers of wild horses and burros on National Forest System lands have increased 19 percent from January 1, 1974 (June 1974 Report to Congress), to January 1, 1976. On January 1, 1974, there were 2,813 animals inventoried, including 272 burros. On January 1, 1976, the Forest Service reports 3,336 animals, including 311 burros.

2. Claimed Animals

Section 5 of the Act provides for: "A person claiming ownership of a horse or burro on the public lands shall be entitled to recover it only if recovery is permissible under the branding and estray laws of the State in which the animal is found." The regulations established a 90-day period--August 15, 1973, to November 15, 1973--for the filing of claims by applicants with supporting evidence of ownership. During this time, 1,661 claims were filed for 17,165 horses and 123 burros on BLM lands. The Forest Service received an insignificant number of claims. (See Tables 1 and 2, pages 17 and 18.) If the claim is determined to be valid, the BLM or Forest Service official would authorize gathering of the claimed animals. All claimed unbranded animals on the public lands are considered wild free-roaming animals, until the appropriate State or local official inspects each animal in relation to the evidence of ownership previously submitted by the claimant. The State or local official will then make a written determination of ownership concerning each claimed animal pursuant to the State branding and estray laws and within the provisions of a cooperative agreement between the managing Agency and appropriate State or local authority.

a. National Resource Lands.

The number of claims has been reduced only slightly from the 1,661 initially filed. Two hundred and sixty-one claims for horses have been processed and only two for burros. The processing of these claims accounts for the removal of 2,634 horses, since passage of the Act, determined to be privately owned. As of January 1, 1976, \$37,807 was assessed by BLM in trespass fees on horses gathered through the claiming process. All gatherings of claimed animals are under close supervision of BLM employees in order to assure that animals are treated in a humane manner and that wild free-roaming animals are safely released back onto public lands. Two situations seem to deter owners from removing their animals:

(1) Present restrictions under the law make it difficult to gather animals economically. The only practical methods for capture legally available at present are rounding up the animals with the use of riders and saddle horses or trapping at watering sites. Water trapping, one legal means, can be used successfully only in areas where and when water and watering sites are scarce and animals tend to use one or two watering sites. The percent of animals captured after authority is given to retrieve claimed animals has been very low.

(2) All animals inspected by State brand inspectors and determined to be privately owned are subject to trespass action. This assures the Federal Government compensation for forage consumed by unlicensed animals while on public lands. Unless ranchers can gather their own animals economically, trespass charges may exceed the value placed on the animal.

b. National Forest System Lands.

There are four unsettled claims for animals reportedly grazing on National Forest System lands. In Nevada, on the Toiyabe National Forest, two claims covering 10 animals are recognized. Permission to gather has been given, however, as yet no animals have been captured. In Oregon, two claims on the Malheur National Forest cover 40 horses of which 30 were captured by claimants in March and April 1976. Claims for the 30 captured animals are in the process of being settled.

Table 1

Bureau of Land Management
Wild Horse and Burro Inventory Data
Estimates of Population and Claims

	NUMBER OF ANIMALS				NUMBER OF ANIMALS CLAIMED			
	1974		1976		1974		1976	
	(1) Horses	(2) Burros	(3) Horses	(4) Burros	(5) Horses	(6) Burros	(7) Horses	(8) Burros
States								
Arizona	115	10,000*	107	2,668	9	20	7	20
California	3,000	3,200	4,230	3,072	305	--	320	0
Colorado	500	---	1,035	0	74	--	19	0
Idaho	500	8	874	9	42	--	13	0
Montana	325	---	257	0	133	--	36	0
Nevada**	20,000	1,000	22,258	842	7,523	36	2,489	0
New Mexico	7,550	80	6,420	104	6,854	64	6,338	64
Oregon	5,265	16	7,493	25	1,310	2***	1,216	0
Utah	1,000	50	1,803	70	150	--	0	0
Wyoming	4,411	20	8,833	0	765	1***	585	0
Total	42,666	14,374	53,310	6,790	17,165	123	11,023	84

Included in total numbers each year are horses and burros claimed under section 5 of the Wild Horse and Burro Act. The total number may include some branded horses grazing in trespass which were not claimed.

* Estimate before aerial census of 1975.

** Does not include those animals in Nevada that are the responsibility of the Susanville, California District.

*** Mules

Table 2

National Forest System
Wild Horse and Burro Inventory Data
Estimates of Population and Claims

	<u>NUMBER OF ANIMALS</u>				<u>NUMBER OF ANIMALS CLAIMED</u>			
	<u>1974</u> (1) <u>Horses</u>	(2) <u>Burros</u>	<u>1976</u> (3) <u>Horses</u>	(4) <u>Burros</u>	<u>1974</u> (5) <u>Horses</u>	(6) <u>Burros</u>	<u>1976</u> (7) <u>Horses</u>	(8) <u>Burros</u>
<u>States</u>								
Arizona	7	36	5	24	--	--	--	--
California	828	209	1,037	252	--	--	--	--
Colorado	--	--	--	--	--	--	--	--
Idaho	34	6	5	5	63	--	--	--
Montana	8	--	9	--	--	--	--	--
Nevada	1,174	13	1,305	15	150	--	10	--
New Mexico	207	5	279	15	--	--	--	--
Oregon	215	--	295	--	10	--	40	--
Utah	45	3	90	--	5	--	--	--
Wyoming	23	--	--	--	--	--	--	--
Total	<u>2,541</u>	<u>272</u>	<u>3,025</u>	<u>311</u>	<u>228</u>	<u>0</u>	<u>50</u>	<u>0</u>

3. Herd Management Plans - Wild Horse Ranges

Both the BLM and Forest Service utilize land use planning systems as one step in preparation of wild horse or burro management plans. (See Table 3, page 21.) The procedures used by both Agencies are similar. In some instances, plans may be joint arrangements for management, as the animals may graze part of the year on lands administered by both the BLM and Forest Service. The planning systems of both Agencies require an equitable balance of the land resources for recreation, wildlife habitat, livestock, timber, and other uses recognized to be in the national interest.

Public participation is encouraged and sought throughout formulation of management plans. Two to three years is often needed for compilation of data, thoroughly airing proposed decisions at public meetings, making final decisions after review of all comments received from the public, and for preparing the actual herd management plan.

The plan specifies the number of wild horses or burros to be managed in a particular geographic region as an integral part of the natural system. The narrative of each plan describes the history, climate, and topography of the land. Watering facilities, soil types, and vegetative species found within the boundaries of the herd area are documented. Objectives are stated for protection, management, and control of the animals and how each objective will be accomplished. Age and sex ratios may be established to insure maintaining a viable herd. The plan lists facilities needed for improvement of the water supply (development or repair of springs or seeps, wells, tanks, etc.), along with fencing to properly manage livestock grazing or control expansion of wild horses or burros onto other than recognized areas. Details are provided on how and when excess animals are to be removed from the herd.

An environmental assessment, called an environmental analysis record (EAR), is prepared on each plan. The EAR describes impacts, both beneficial and adverse, on living and nonliving components, ecological interrelationships, and human values expected to occur upon implementation of the proposed plan or alternatives considered. Where required, an environmental impact statement will be prepared.

Management plans will differ as circumstances in each geographic area vary. For example, the Pryor Mountain plan provides for management of wild horseherds, free from any domestic livestock grazing competition. Wildlife use is recognized on all areas. Other plans will incorporate management of wild horses or burros under the multiple-use concept, which will allow livestock grazing for certain specified times of the year, as well as other uses.

An example of the latter is the East Kiger area in Oregon, where a herd of 20 to 30 wild horses is maintained in a grazing allotment with domestic livestock use. The East Kiger area also contains critical deer wintering range.

A major problem is that many areas inhabited by wild horses or burros include not only public land, but also private and State lands. Often private or State land comprises the major part of the land and water needed for year-long maintenance of wild horses and burros. Private lands, in many instances homesteaded because of a stream or spring located on them, may be the only available source of water. Unless the private landowner's cooperation can be obtained, realistic management planning is impossible. The Bureau has been requested to remove wild horses or burros from many areas of private land. In areas where the landownership is highly intermixed, such as checkerboard areas (every other section was granted to the railroads as early land grants for construction of the railroads; in most instances this is a 20-mile strip on each side of the tracks), the problem becomes even more complicated.

Table 3

Status of Management Plans:

a. National Resource Lands (BLM)

<u>States</u>	<u>Number of Plans</u>	<u>Name</u>
Arizona	0	---
California	2*	---
Colorado	1	Little Bookcliffs
Idaho	1	Challis
Montana	1	Pryor Mountain**
New Mexico	0	---
Nevada	0	---
Oregon	7	Smyth Creek, Riddle Mountain, South Steens, East Kiger, Murderers Creek,** Jackies Butte, and Three Fingers
Utah	1	Bible Springs
Wyoming	<u>0</u>	---
Total	13	

* Districtwide - Interim burro plan in Bakersfield District and interim horse plan in Susanville District.

** Joint plan with Forest Service and other agencies.

b. National Forest System Lands (FS)

<u>States</u>	<u>Number of Approved Plans</u>	<u>Name of Territory</u>
Arizona	1	Saguaro
California	5	McGavin Peak Three Sisters Brushy Mountain Black Mountain Modoc
Colorado	0	---
Idaho	0	---
Montana	1	Pryor Mountain*
New Mexico	0	---
Nevada	1	Cherry Springs
Oregon	<u>1</u>	Murderers Creek*
Total	9	

* Joint plan with BLM and other agencies.

Wild Horse Ranges

The 1971 Act authorizes the Agencies to designate and maintain specific ranges as sanctuaries for wild horses and burros. Two such ranges are presently administered by the Bureau of Land Management--both were established prior to the Act.

The Bureau is presently exploring the potential for additional ranges. There is a possibility that a third range could be established in the Bookcliffs area of Colorado. This range would accommodate approximately 75 horses on some 27,000 acres.

Over the long term, the Bureau believes that the concept of ranges or sanctuaries may prove to be an important element in the preservation of wild horses and burros as a valued part of the natural western environment and its history. This is particularly so if the encroachment of human activity continues to expand into remote areas which now provide habitat for horses, burros, and other forms of wildlife.

In terms of protection, management, and public education, the ranges could offer distinct advantages not possible when horses or burros are widely dispersed over millions of acres of intermingled Federal, State, and privately owned lands. Management of wild horses and burros would be the principal resource use in the established range. Other uses would also be protected and managed, but consistent with the attention granted to horses or burros.

Some advantages are:

1. Reduce conflict with critical wildlife habitat. At present, in many areas, horses and burros do conflict with wildlife for forage and water, especially such species as deer, bighorn sheep, and, in some instances, elk. Ranges could be established in areas that do not contain crucial habitat for these and other species.
2. Ranges would allow more concentrated protection and management methods on a particular area which could lead to cost efficiency. A small enforcement group is now required to investigate all alleged violations over 50 million acres of national resource lands located in 10 States. Ranges would reduce the cost of the total program.
3. Establishment of wild horse and burro ranges on public lands could help solve the problems now incurred by the animals intruding on private land holdings. Claims are often filed against the Government for damage done by horses or burros to facilities and the loss of forage on the private property.

4. Individual ranges established primarily for the protection and management of wild horses and burros would minimize the present conflicts with domestic livestock grazing. The forage would be allocated primarily for horses or burros, but multiple-use concepts could still be implemented if the habitat requirements for wild horses and burros were recognized initially.

5. The boundaries of ranges might be established to include roads or overlooks, appropriately marked, to provide an opportunity for the public to view wild horses and burros in their natural habitat. Where ranges are established as specific sites, educational opportunities exist for relating to the public the history of the animals, the habitat and the horses' or burros' relationship to the environment.

Status of Existing Wild Horse Ranges

The Pryor Mountain Wild Horse Range, established in 1968 by order of the Secretary of the Interior, covers some 43,000 acres of public land bordering Montana and Wyoming. The natural rugged topography of the land and outside fencing mark the range's boundaries. The management plan for the area calls for the maintenance of a herd of 125 to 140 horses, a level compatible with their habitat.

Construction of the Wind Drinker Overlook, which will permit the public to observe the horses, will be funded in Fiscal Year 1977. The overlook is located on the Wyoming border of the Pryor Range.

Roundups are usually held every other year to keep the herd in balance with the food supply. In March 1975, 23 horses were removed from the Pryor Range and most were placed in private care under maintenance agreements. The Pryor Mountain herd is in good health and thriving under present management practices.

The second range, in Nevada, differs from the mountainous Pryor Range and consists of vast expanses of desert and rolling hills. Established in 1962 by a memorandum of agreement between the Department of the Interior and the Air Force, it is located north of Las Vegas on the Nellis Air Force Base Bombing and Gunnery Range and consists of nearly 400,000 acres. There are approximately 1,000 horses in the area.

Because Nellis is a military base, there are restrictions on entry for security and other reasons. BLM employees and other civilians must receive clearance prior to entry into the range. Additionally, BLM must be granted permission before pursuing its management objectives.

4. Removal or Disposal of Excess or Problem Animals

The 1974 Report to Congress projected that approximately eight to ten thousand animals per year would be in excess of the forage supply of the western rangelands. The estimate remains valid, according to field observations. In some areas, the horses and burros have increased to such proportions that they now constitute a serious threat not only to native species, but also to the maintenance of a healthy herd. For this reason, removal of excess horses and burros in accordance with the provisions of the Act have been authorized by both Agencies. However, due to restrictions placed on capture methods, populations in most areas remain excessive.

The excess animals are captured and removed by different methods depending on the terrain, water supply, and suitability of trapping sites. In the Southwest and drier regions, the animals have been captured by fencing their watering sites and closing the gate on the corral as they come in to drink. In other areas, the horses are driven into traps or corrals by the use of domestic horses and riders. This method has proven costly and dangerous to both domestic horses and riders due to rough terrain, rocks, or holes in the ground. The cost of driving horses into corrals and assigning under a cooperative agreement is \$300 to \$400 per head.

a. National Resource Lands.

Since 1974, the BLM has captured and removed approximately 1,547 excess or problem animals from the public lands since passage of the Act in 1971. Of that total, the majority have been placed for private care under maintenance agreements. The balance was either claimed by private owners, released, or destroyed, or are in the process of being assigned under maintenance agreements. Most of these excess wild horses or burros were removed in 1975. This reduction has not significantly mitigated the overall impact to range conditions and competition caused by the increasing number of wild horses and burros since protection has been provided under the law.

Authorizations for removal of excess animals are listed in Appendix 3.

Once the animals are inspected and located in corrals with ample food and water, the job of matching up the horse and applicant begins. Considerable time is spent with persons inquiring about the maintenance of wild horses and mailing and processing of the application. The BLM has just initiated a nationwide appeal to the public for aid in providing "foster homes" for wild horses and burros. The program is known as "Adopt-A-Horse."

The Washington Office receives the applications for preliminary screening. Based upon the information submitted with the application, potential "foster parents" are selected. The names of these individuals or organizations are then forwarded to the Denver Service Center for entry into a computer which prints a list, by State, of all qualified applicants. The computer data is then used to match the animals gathered with the applicant's request. Applicants are notified by mail to pick up the animals at the holding facility.

Some specific problems encountered at this time are: Applicant has moved; has bought a horse; has no means of transportation; has decided he cannot afford a horse; or does not need a horse.

Most applicants, when contacted, need time to make a decision as to whether or not to accept an excess horse or burro. A time limit, 30 days, is given and failure to respond is considered a negative answer. Even after giving an affirmative answer, some people fail to appear to pick up the animal. Such persons are contacted again. If a valid reason for the delay is given, the horse is held for another reasonable period of time.

Prior to a cooperator obtaining a horse, a record is established for the horse based on pictures and any identifiable markings. If the animal is moved across State lines, a brand inspection certificate is usually required.

It may take as long as 30 days to place some of the older animals. Most individuals request a young animal when seeking a horse or burro under the adoption program. Animals are usually destroyed in a humane manner if not placed with "foster parents."

A considerable amount of labor and time is required daily while the animals are in the holding pens awaiting distribution. Stallions must be separated to prevent fighting; injured or sick animals often require special treatment or the attention of a veterinarian. BLM personnel help in loading the animals for the successful applicant. All costs incurred after this point are the responsibility of the "foster parent."

Once the animals are placed, the Federal Government still retains responsibility for the horse or burro. However, progeny become the property of the "foster" caretakers. The 800 animals placed under cooperative agreements, up to January 1976, are located from coast to coast, and border to border of the United States. Followup and supervision over the care of such animals become an almost impossible task. Complaints of violations or mistreatment are investigated either by BLM personnel, or by cooperation through a local humane association.

Examples of some of the problems encountered by BLM in those cases where animals placed for private maintenance were not properly cared for include:

<u>No. of Horses</u>	<u>Situation</u>
2	Not watered properly; abused; suffering from thrush; cracked hoof. Horses reclaimed by BLM.
1	Fed straw hay; suffering from malnutrition.
1	Died from malnutrition and pneumonia according to necropsy.
1	Left without feed. Cooperator moved out of State and left horse. Horse in poor condition but recovering under BLM care.
1	Died from pneumonia and malnutrition.
4	Inadequately fed and watered. Cooperators told to correct situation or BLM will reclaim animals.
1	Suffering from malnutrition. This horse had lost its mother and was suffering from malnutrition. With proper care and food, it should recover.
1	Horse repeatedly running loose in town. Cooperator told to correct situation or BLM will reclaim horse.
1	An animal being given to other party for maintenance without authorization by agreement from BLM.
1	Failure to notify BLM when change of residence was made and horse moved to a new location.
1	Animal confiscated by another individual for failure to pay feed bill.
1	Animal escaping from a trailer or truck on the way to its new home.

Checking into situations such as those listed above is difficult and costly. Upon the death of an animal, another problem occurs concerning the carcass. As noted earlier, the Act states that it is a violation for anyone who "processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro." Many cities or counties do not allow animals to be disposed of by means other than a rendering plant or by burial.

Discussion

Some cooperative research is underway, made possible by joint funding of FS/BLM. Research dealing with the ecology of the burro on southwestern deserts is being conducted by Arizona State University. Programs for research by Forest and Range Experimental Stations are being formulated. The Forest Service places high priority on such budget allocations, but constraints in the budgetary process have prevented inclusion of this item in budget requests.

b. Recommended that the National Wild Horse and Burro Advisory Board urges the Secretaries, and through them the Congress of the United States, to modify the Act in a manner which will:

Authorize the Secretary to sell or donate excess animals to individuals or organizations on written assurance that such animals will receive humane treatment; place a statute of limitations on claims of ownership of branded or unbranded horses except those animals which entered the public lands after the effective date of these changes, give serious consideration to the use of intensive management areas as a management tool for these animals with appropriate restitution for the grazing privileges lost.

Discussion

The 1971 Act has not been modified to cover this recommendation. Status of current legislation is discussed under Part IV, page 11, of this report.

c. Recommended that the National Wild Horse and Burro Advisory Board urges the Secretaries, and through them the Congress of the United States, to modify the 1971 Act in a manner which will allow the use of motorized equipment and helicopters under direct supervision of the Secretary or duly authorized official or employee of the Departments in management of wild horses and burros.

Discussion

This legislative proposal is discussed in Part IV, page 11, of this report.

d. Recommended that the National Advisory Board request that the Secretaries ask the Chairman of the Interior and Insular Affairs Committees of both the U.S. Senate and House of Representatives to call a field hearing on the subject of population increases of the wild horses and burros, preferably here in Reno, Nevada, at the earliest possible date; and that copies of this resolution be sent to all members of the above-mentioned congressional committees.

Discussion

A field hearing was held in Billings, Montana, on August 12, 1975, by Congressman John Melcher.

e. Recommended, where necessary to protect the habitat of wild horses from off-road vehicle use, that the Secretaries develop enforcement procedures to enable the Bureau of Land Management to properly protect public lands in the public interest.

Discussion

Agencies are moving ahead in programs to implement Executive Order 11644 of February 8, 1972. There is still no additional authority given the Agencies to enforce compliance with off-road vehicle regulations.

Rock Springs, Wyoming (September 4 and 5, 1975, seventh meeting)

a. Recommended that the Secretaries act immediately to reduce feral horse populations in areas where management plans are current and that they reduce other populations to the 1971 level. In the event that Congress has not provided funds or modification of the 1971 Act to allow removal of horses and burros and placement in foster care, it was recommended that horses and burros be disposed of as provided in Section 3c of the 1971 Act to protect the habitat.

Discussion

Agencies are, to the extent possible, consistent with other priority work, moving ahead with management planning and control programs. No action has been taken under Section 3c of the 1971 Act, except where it is judged by the Secretary to be the only practical way to remove excess animals from the area.

b. Recommended that the Chairman of the Board personally write the Secretaries and impress upon them the necessity for immediate population control of wild horses and burros wherever they exist upon the public lands.

Discussion

The Secretaries received a letter from the Chairman of the Board. They are aware of the need for programs of population control. Agency programs are established which give consideration to management planning and to management of wild horse and burro areas.

c. Recommended that any public relations program issued by the Secretaries stress that horses and burros are exotic animals and not part of the natural system.

Discussion

The Act of 1971 states in part, ". . . they are to be considered in the area where presently found, as an integral part of the natural system of the public lands." These animals are recognized as part of the "natural system." Wild free-roaming horses and burros are recognized as being exotic and are not considered to be wildlife species.

d. Recommended that the Board urge responsible citizen conservation organizations to inform their own members and the public at large concerning the serious and immediate problem of all overuse of natural resources on public lands of the Western United States. This program would be done in cooperation with appropriate State and Federal Agencies regarding the need for immediate educational programs.

Discussion

This action by the Board would help bring about needed public understanding of wild horse and burro management programs. Agencies are attempting to work with conservation organizations to bring about such understanding.

e. Recommended that the Board reiterate its former stand as far as proposed legislation to the Congress from previous meetings was concerned.

Discussion

Covered as recommendations b and c in the recommendations made at the Reno, Nevada, September 1974 meeting of the Board.

Naval Weapons Center, China Lake, California (December 5 and 6, 1975, eighth meeting)

No recommendations were made since a quorum of Board members was not present.

John Day, Oregon (June 3 and 4, 1976, ninth meeting)

a. Recommended the need for management of wild horses and burros and implementation of a research program to determine proper methods of management in the many varied habitats. The USFS proposed for expanded research by contract with universities was supported.

Discussion

This need is also recognized by USFS and BLM. As mentioned above under recommendation (a) at the Reno, Nevada, meeting, research is considered a high priority item.

b. Recommended that the Secretaries discuss changes in cooperative agreements in the event the Wild Free-Roaming Horse and Burro Act were to be declared unconstitutional by the U.S. Supreme Court.

Discussion

This recommendation is now inapplicable, since the U.S. Supreme Court on June 16, 1976, upheld the constitutionality of the Act.

c. Recommended that the BLM/FS initiate communications to the Board so they can be better advised on issues and questions from the general public.

Discussion

Agencies are aware of the need for close communications and are working toward the goal of more complete and timely exchange of information.

d. Recommended that the Secretaries give high priority to providing adequate funding for management of wild free-roaming horses and burros.

Discussion

The agencies are complying with this request to the extent possible under established budgetary procedures.

6. Research

BLM currently has two research contracts with Arizona State University which are evaluating wild burro populations and the relationships between burros and the native desert and riparian vegetation along the lower Colorado River. These research projects are considering seasonal distribution, home ranges, sex and age ratios, diet intake, habitat condition, and competition with the desert bighorn sheep.

A total of \$129,389 has been spent on these projects. Some of the major findings of the studies include: Burro age structure in the Chemehuevi Mountains is imbalanced and is comprised of extremely young animals (1-5 years); age structure in the Bill Williams Mountains is more balanced, with older age classes being present; the burros are increasing in the Chemehuevi Mountains at the rate of approximately 20 percent every 18 months; mortality in the Chemehuevi herd will be practically nonexistent until young animals move into the older age classes; burros and bighorn sheep utilize similar types of forage, particularly an annual forb, Plantago insularis; supplies of Plantago are replenished during periods of adequate moisture. When dry periods persist, Plantago supplies are diminished and burro/bighorn competition becomes more acute; as supplies of Plantago are diminished by burros and bighorn sheep, other perennial vegetation is utilized heavily. Such heavy grazing may create impacts to the fragile native vegetation, requiring many years for recovery.

Continued research is needed on wild burros to identify the proper course of management for the animals in their desert habitat. Proper management can only be based on an adequate understanding of the interworkings of the ecosystem and the effect burros have on the environment.

BLM is not funding an active research contract on wild horses at the present time. However, BLM is cooperating with Eastern Montana State College, Billings, Montana, on an independent research project for wild horses. It involves the study of the reproductive biology of wild horses in an attempt to develop a delivery system for effective antifertility compounds. By controlling reproduction, wild horse populations could be maintained within acceptable levels.

In 1974, the Bureau also solicited cooperative research contracts with some 40 institutions. The prospectuses on wild horses and burros (Appendixes No. 6 and 7) covered investigation into:

1. Biological and physiological needs;
2. Population dynamics; and
3. Competition with other animal life.

Because of higher priorities in range management, funds have not been allocated.

Forest Service research has developed a prospectus covering needs for research related to management of wild free-roaming horses and burros. The prospectus is currently undergoing administrative review. It calls for research in the following areas:

- Adapt present censusing techniques to wild horses and burros and identify their most commonly used habitats.
- Determine population dynamics and behavioral patterns of wild horses and burros, and develop effective and humane control and capture techniques.
- Determine biological and physiological needs of wild horses and burros, their forage preferences, and effects of predators and disease.
- Establish ecological interrelations (such as competition for food, cover, and water) among wild horses and burros, domestic livestock, and wildlife.
- Determine environmental impacts of wild horses and burros in sensitive ecosystems of the Great Basin and other parts of the West, especially pinyon-juniper, sagebrush-grass, mountain grassland, salt-desert shrub, and other deserts.

- Develop special techniques needed for rehabilitation of ranges damaged by wild horses and burros, and for maintaining them in optimum condition and productivity.
- Provide management alternatives to achieve ecological balance between the animals and their habitats.

7. Management Costs

BLM - The funds allocated for the protection, management, and control of wild horses and burros is an integral part of the total range management program. Out of the total Range budget, each year more money has had to be expended for the wild horse program than initially allocated out of that budget.

Table 4 - Costs to date of Wild Horse and Burro Program

<u>Year</u>	<u>Allocation</u>	<u>Expenditure</u>
1972 FY	None	(unknown)
1973 FY	\$ 100,000	\$ 275,000
1974 FY	\$ 400,000	\$ 687,123
1975 FY	\$ 700,000	\$1,314,306
1976 FY	\$1,000,000	\$1,271,833
1977 FY	\$1,850,000	

The costs shown include all aspects of the program--field surveillance and investigation of violations, processing and supervising private claims, capture, feeding and disposal of excess and problem animals, veterinarian fees, preparation of management plans, research, and charges incurred by holding horses and burros in Federal custody awaiting the outcome of lawsuits. Sixteen full-time positions were charged specifically to the wild horse and burro program in FY 1976.

Forest Service - Funds allotted for protection, management, and control of wild free-roaming horses and burros on National Forest System lands have remained relatively constant during the 2 years since the last Report to Congress. Field units are authorized to expend funds appropriated by Congress for range management purposes to accomplish needed work in administration of the Wild Horse and Burro Act. About \$200,000 is expended each year. The removal project in Oregon in the spring of 1976 required additional funding. Costs of this roundup are summarized as follows:

Roundup and Placement costs = \$40,382

$\$40,382 \div 115 \text{ head} = \$351/\text{head}$

Trap Construction (Title X) = \$25,000

$\$25,000 \div 115 = \$217/\text{head}$

Total Cost \$65,382

Total Cost per head - $\$65,382 \div 115 = \569

B. Protection and Law Enforcement

Protection and law enforcement, under the Act, have intensified since the 1974 Report to Congress. The Bureau of Land Management now has eight special investigators trained and experienced in law enforcement. Recommendations to establish a small cadre of law enforcement professionals within BLM were noted in the 1974 Report.

Since August 1975, these agents, who have arrest authority under the 1971 Act, conducted investigations of alleged violations of the Act. Prior to this, employees trained in investigative procedures, but lacking arrest authority, were utilized. At the time of the Act, the Forest Service was vested with such enforcement authority.

As reported in 1974, other law enforcement personnel from Interior agencies also assist BLM upon request. By September 1976, these arrangements with the Fish and Wildlife Service are expected to be covered by a cooperative agreement.

In the period from June 1974 to January 1975, BLM reported 85 alleged violations on the national resource lands, of which 65 warranted investigation. Four arrests were made, and three fines were levied.

Forest Service field offices had no reports of violations of Public Laws 92-195 or 86-234.

Although investigations have increased, similar problems to those reported in 1974 exist and hamper enforcement.

The areas patrolled are often remote, and particularly in the case of BLM, these areas span millions of acres of rough terrain. Despite increased ground and aerial surveillance, incidents uncovered or violations reported are generally well after the alleged illegal activities occur. As an example, a carcass may be found, but the remains are 6 to 8 weeks' old. In most instances, cause of death cannot be accurately determined.

The gathering of hard evidence is a difficult process, and U.S. attorneys decline to issue complaints or seek search warrants unless evidence is overwhelming. There may be other mitigating circumstances which affect prosecution. For example, in Idaho, the U.S. attorney declined to prosecute because the person alleged to have shot two stallions was a juvenile and the State did not pursue the case.

The following reports from BLM offices in several States are illustrative of the kinds of violations, or alleged violations:

In Nevada, three arrests were made in 1975; fines were levied in the amount of \$625. In one case, a \$500 fine was levied as a result of the capture and subsequent death of a colt.

In Oregon, there have been no arrests or fines assessed for persons violating the 1971 Act or the 1959 Act. Investigations of alleged violations of the Wild Horse and Burro Act are as follows:

Survey of horse processing plants and State brand inspection procedures was made during August 1974. Investigator covered Oregon, Washington, Idaho, Wyoming, Montana, Nevada, and California.

Burns District, late summer 1974. Investigated death of 38 horses on private land with State Brand Inspector. Horses were determined to be privately owned and had died of thirst. Case turned over to State.

Prineville District, December 23, 1974. Ten to twelve horses allegedly shot on national resource lands. Investigation included 10 man-days on foot and 4 hours helicopter time searching for carcasses. FBI and Fish and Wildlife Service assisted. No carcasses were discovered and the allegations were not confirmed.

Eugene, Oregon, January 16, 1975. Investigated death of horse placed under cooperative agreement. Investigation showed the horse has been in poor condition--probably died from malnutrition or pneumonia--but was not otherwise abused.

Catlow Valley, March 17, 1975. Approximately 100 head of wild horses disappeared. Packing plant records checked. Horses turned up in an adjacent area. Might have been moved by someone, or moved on their own.

Eugene, July 18, 1975. Investigated alleged neglect and abuse of two wild horses placed under private maintenance agreements. Terms of cooperative agreements were violated. Horses were reclaimed and assigned to other individuals.

In California, aerial and ground surveillance was used in all reported violations. No arrests have been made and no fines assessed.

California reports:

Bakersfield District, June 26, 1974, Kern County. Illegal possession of two burros; insufficient evidence to prosecute.

Susanville District, November 1974. Report of 859 horses being rounded up or missing from Susanville herds. After aircraft surveillance and inventory, report held unfounded.

Riverside District, March 1975, Riverside County. Report of six burros shot. Investigation found old carcasses.

Arizona reported 17 burros and three horses killed by automobiles on State highways. Each of these 20 cases required some type of investigation by State police and/or BLM personnel.

Table 5

Incidents Reported by States
(Through January 1976)

<u>States</u>	<u>Incidents Reported</u>	<u>Investigated</u>	<u>Other</u>	<u>Arrests and Fines</u>
Arizona	39	19	20*	0
California	6	6	0	0
Colorado	5	5	0	0
Idaho	5	5	0	0
Montana	0	0	0	0
Nevada	9	9	0	3
New Mexico	1	1	0	0
Oregon	9	9	0	0
Utah	11	11	0	1**
Wyoming	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
TOTALS	85	65	20	3

* Animal injury by collision with automobiles and injury or death attributed to natural causes.

** Pending in District Court since 1974.

C. The Courts and the Act

The methods and procedures followed in management of wild horses and burros have been questioned on several occasions by groups or State agencies which had different interpretations or questioned the validity of the 1971 Wild Horse and Burro Act. The most critical was the State of New Mexico vs. Thomas S. Kleppe, which involved the very constitutionality of the 1971 Act itself. The case was finally resolved by the U.S. Supreme Court, June 1976, which upheld the constitutionality of the Act by a 9 to 0 vote. The details of this and other cases follow:

1. State of New Mexico vs. Thomas S. Kleppe, the Secretary of the Interior, et al.

The Bureau of Land Management and the Forest Service entered into a cooperative agreement with the New Mexico State Livestock Board on August 7, 1973, which spelled out how privately claimed animals would be handled as distinguished from animals known to be wild and free-roaming.

The State Livestock Board terminated that agreement on January 15, 1974. The BLM was subsequently notified that the State of New Mexico would treat all unbranded and unclaimed animals as strays and would deal with them according to State law.

On February 11, 1974, 19 burros were rounded up by several individuals near Carrizozo, New Mexico, and moved to Roswell, New Mexico, where they were sold on February 18 at public auction. The New Mexico Livestock Board approved the request for roundup and disposal.

The Bureau of Land Management, learning of the capture and sale of the burros through a newspaper article, notified the U.S. attorney. The U.S. attorney requested the Livestock Board to return the burros to the national resource lands inasmuch as they were protected under the Wild Free-Roaming Horse and Burro Act. The request was refused. The New Mexico State Livestock Board subsequently filed suit in Federal court challenging the United States' action to administer wild horses and burros under the Act and charging the Act violated State statutes.

On February 28, 1975, the U.S. District Court for the District of New Mexico ruled the Wild Free-Roaming Horse and Burro Act unconstitutional. The District Court stated the Act "conflicts with both the historical interpretation of the Territorial Clause, and the traditional doctrines concerning wild animals." The District Court further stated, "Wild horses and burros do not become 'property' of the United States simply by being physically present on the 'territory' or land of the United States. The doctrine of common law, dating back to the Roman law, has been that wild animals are owned by the State in its sovereign capacity, in trust for the benefit of the people. This sovereign ownership vested in the colonial government and was passed to the states."

On March 7, 1975, a stay of judgment was granted. While the stay order was in effect, normal management activities continued by both the Forest Service and Bureau of Land Management. On March 28, 1975, an appeal was made by the Department of Justice to the Supreme Court.

The 19 burros involved were sold at auction to two individuals. Sixteen burros were placed under a maintenance agreement with the BLM on March 7, 1975, until the litigation between the State and U.S. Government was decided. As of January 1976, the BLM has incurred the following maintenance expenses for these burros.

Veterinary expenses	\$ 712.00
Burial expenses for eight burros which died shortly after capture	332.80
Feed and care for burros	<u>\$6,620.00</u>
	\$7,664.80

An additional bill has been submitted by the purchaser of the 16 burros for the period of February 18, 1974, to March 6, 1975, totaling \$9,060. Eight of the burros have died. Three foals born after the roundup make a total of 14 animals remaining from the original 19 burros captured.

The Supreme Court decision resolved the question of constitutionality and remanded the case to the District Court. The State of New Mexico has filed a petition for rehearing. The burros are still in the custody of the individuals who purchased them at public action.

2. American Horse Protection Association, et al.,
vs. the Secretary of the Interior and Secretary of Agriculture,
et al.

Horses were rounded up from National Forest System and BLM lands near Howe, Idaho, during January and February of 1973 by local ranchers.

On April 5, 1973, the American Horse Protection Association filed suit against the Secretaries of Agriculture and the Interior and other officials to seek court review of the matter.

One branded and fifty-three unbranded horses were involved in the roundup. Thirty of the horses were traced to North Platte, Nebraska. These horses were taken into custody by Federal officials and placed under the care of a veterinarian. The horses were in poor condition and many died while under veterinary care. Thirteen of the horses traced to North Platte, Nebraska, plus a newborn colt survived. Other horses were traced to various locations in Idaho. Persons known to be holding these animals were given written notice from the Government concerning the possibility these animals may be wild and free-roaming.

In November 1973, the horses at North Platte, Nebraska, were transported to Idaho Falls, Idaho. These horses remain in custody of the Government.

The incident was fully investigated by a BLM and Forest Service team. On April 12, 1973, the Department of the Interior and Department of Agriculture referred the matter to the Department of Justice.

The Department of Justice, on October 11, 1973, informed the Interior and Agriculture Departments that prosecution of any of the individuals involved in the horse roundup had been declined because available evidence was considered insufficient to successfully prosecute.

The Idaho State Brand Inspector, in accordance with State law and the cooperative agreement between the State, the Bureau of Land Management, and the Forest Service, has the responsibility for the determination of ownership claims under the provisions of Section 5 of the Wild Free-Roaming Horse and Burro Act. On September 3, 1974, following a public hearing, he declared in a 14-page decision that all of the Howe, Idaho, horses in the Government's possession in Idaho Falls, Idaho, are "domesticated" horses and not "wild," "feral," or "wild free-roaming" horses.

On December 2, 1974, Judge Thomas Flannery, United States District Court for the District of Columbia, upheld the Government's interpretation of the Wild Free-Roaming Horse and Burro Act that private ownership claims are to be determined by the State and not the Federal Government. Judge Flannery ruled that the Idaho State Brand Inspector was authorized under Federal law, and in accordance with the cooperative agreement, to make the decision he rendered on September 3, 1974.

Oral arguments on the appeal were heard on January 14, 1976, in the Circuit Court of Appeals, District of Columbia. A final decision has not been rendered. Thirteen horses remain in the custody of the Government. During this extended litigation, the Forest Service and Bureau of Land Management have expended \$13,219 as of January 1, 1976, for the care of these animals.

3. American Horse Protection Association, Inc., vs. Dale Kent Frizzell, et al.

In certain areas, expanding wild horse populations are a major factor contributing to declining range conditions. To alleviate these conditions, as an interim measure, BLM field offices were instructed to initiate plans to control wild horse populations at the 1971 level. Offices were also advised to update multiple-use planning in order to determine optimum numbers of wild horses, wildlife, and livestock which could be sustained.

In Nevada, the Stone Cabin Valley area was selected for the first major effort to effect management control of horses under the Wild Horse and Burro Act. The herd area in southern Nevada consists of 384,000 acres of national resource lands and 1,300 acres of other ownership.

The area is isolated, rugged, and far from human habitation. Elevations range from 5,300 feet to 9,300 feet above sea level. Vegetation is typical desert shrub interspersed with alkaline salt grass flats. Watering sources for horses, livestock, and wildlife are limited.

The Battle Mountain BLM District personnel planned to remove 400 horses by contract using water trapping techniques. Selection of this area was based primarily on the fact that the forage resources were being severely damaged by domestic livestock and the rapidly expanding wild horse population.

The number of wild horses had increased in the area from an estimated 50 head in 1957 to the current population of 917 (July 1974 helicopter survey). Numbers in 1971 were estimated to be 500, determined by interpolating aerial counts made in 1967, 1969, 1973, and 1974. Licensed domestic horse use in this area was as much as 200 head in the 1930's. Since passage of the 1971 Wild Horse and Burro Act, BLM has not licensed domestic horses in the Stone Cabin Valley.

Range studies indicated that 56 percent of the area was in poor condition with a declining trend. Wildlife in the area included 150-200 antelope and a small population of mule deer. Domestic livestock numbers are controlled by license or permit and have remained relatively constant except for minor seasonal variations. Game animal populations are controlled through hunting seasons and bag limits. Wild horse populations were uncontrolled with numbers increasing substantially since 1971.

The American Horse Protection Association questioned the need for population control measures. It also took issue with livestock management practices in the area. BLM arranged a field tour for some of the Association's key people to acquaint them with resource conditions in the Stone Cabin Valley.

The livestock industry, wildlife, and other conservation groups have been extremely critical of BLM's failure to take positive action to control wild horse numbers in the area. On a very limited basis, the Bureau has been able to obtain voluntary livestock reductions through cooperation with the individual ranchers. These efforts were initiated to prevent overgrazing.

The BLM program received support from the Governor of Nevada and the Director of the Nevada Department of Fish and Game. Mrs. Velma Johnston indicated support of her organization, Wild Horse Organized Assistance (WFOA!), to the planned removal of 400 excess wild horses. The organization (WFOA!) helped in screening individuals who had applied for these

horses through cooperative maintenance agreements. The Nye County Commissioners were also on record supporting the Stone Cabin roundup, as well as representatives of the National Mustang Association, the National Wild Horse Association, and the First Nevada Cavalry. These groups indicated support and stated that removal of excess horses would benefit the remaining wild horses.

The roundup received widespread publicity and public reaction was favorable. The District received approximately 2,600 letters and telephone inquiries from individuals in 38 States indicating interest in acquiring horses under private maintenance arrangements. Further screening indicated that arrangements could be made with qualified applicants who could provide care and facilities for the 400 excess wild horses.

In September 1974, the National Advisory Board for Wild Free-Roaming Horses and Burros toured the area and recommended population control measures to protect national resource lands from overgrazing by excessive numbers of wild free-roaming horses.

Removal of 400 horses in Stone Cabin Valley would have left a viable herd of 517 animals and would have been consistent with the Secretary's responsibility to manage these animals in a manner designed to achieve and maintain a thriving natural ecological balance on the national resource lands.

An experienced wrangler from Las Vegas, Nevada, under contract to the Bureau, began water trapping excess wild horses on July 21, 1975. On July 23, the American Horse Protection Association filed suit in District Court in Washington, D.C., asking the court to enter an order permanently enjoining the Secretary of the Interior and others from authorizing or continuing any roundup of excess horses in the Stone Cabin unit. Attorneys from the Justice Department and the Solicitor's Office of USDI appeared before Judge Sirica in U.S. District Court, District of Columbia, and obtained a change of venue to Nevada on July 24.

The American Horse Protection Association subsequently stated it would continue the suit in Nevada. As of July 28, the contractor had captured approximately 80 animals and had them in a holding corral in Stone Cabin Valley.

On July 28, the Director, Department of Agriculture for Nevada, impounded the 80 horses alleging he had authority for such action under State law. Ed Rowland, BLM State Director, subsequently issued a stop order on the contract to prevent capture of any additional animals.

The intent of the State to dispose of those horses considered estrays appeared in the local paper in Tonopah on August 1. According to State law, the advertisement would again appear on Friday, the 8th.

The Director, Nevada State Department of Agriculture, planned to hold a hearing on August 18 to receive any private claims on the horses. If not privately claimed under State law, it was understood the horses would be sold as estrays on August 25, 10 days after the public notice period.

To comply with State law, the Bureau intended to turn the three branded horses plus their offspring over to the State as estrays. There being no outstanding claims on the remainder of the animals, BLM considered health and brand clearance a fairly routine matter not involving a long holding period and solicitation of private claims. Wild horse and burro regulations had previously provided a claiming period. Private claims were filed and then were waived prior to initiating the roundup. The Nevada Department of Agriculture requested BLM to proceed with the trapping operations and waive all trespass and trapping charges.

The Bureau considered the request and rejected it. Nor could trespass and trapping charges be reduced by agreement since the possibility of compromise is dependent upon specific facts of a given trespass case. No trespass cases existed in Stone Cabin Valley. Furthermore, BLM could not accept any proposal for the State to sell unbranded "estrays" because free-roaming, unbranded horses are subject to the Wild Horse and Burro Act.

The controversy on procedures for disposing of the animals caused BLM personnel to release most of the captured horses back onto the national resource lands on August 6 because litigation could result in months of confinement that could lead to disease, injury, or death for some of the animals. Also, the 1971 Act has no provision for turning unbranded and unclaimed horses found on national resource lands over to any State official. Other reasons for the release were, (1) potentially high cost of extended confinement, and (2) refusal of the State to issue health and branding clearance for the captured horses.

On September 3, 1975, a cooperative agreement was signed between Nevada State and BLM officials. It clarified procedures for disposal of horses, and enabled the Bureau to continue removal of excess horses. Roundup activities were started again.

On September 10, the American Horse Protection Association filed an amended complaint and a motion for a temporary restraining order in the U.S. District Court for the District of Nevada to stop the Bureau from roundup activities of excess horses in Stone Cabin Valley. The suit also named the State of Nevada as a defendant. On September 11, 1975, plaintiffs' motion for a temporary restraining order was denied.

A hearing on the plaintiffs' motion for preliminary injunction was held on September 17. No decision was made on plaintiffs' motion at that time and the Bureau continued to capture excess horses without interruption because the method being used (water trapping) was dependent upon the hot and dry weather conditions of summer and a further delay could jeopardize the success of the roundup.

On October 2, Judge Roger D. Foley denied the AHPA motion for a preliminary injunction. On November 11, 1975, the case was dismissed without prejudice.

The Bureau captured 227 horses before fall weather conditions made trapping impractical. Under the cooperative agreement with the State of Nevada, four horses were turned back onto national resource lands, nine animals were turned over to the State, and 16 horses died or were destroyed during the operation. The remaining 198 animals, including a number of older stallions, were successfully assigned to individuals for private maintenance. Trapping was continued during the spring of 1976 and approximately 200 horses were removed, bringing the total to the planned 400.



Public Law 92-195
92nd Congress, S. 1116
December 15, 1971

An Act

85 STAT. 641

To require the protection, management, and control of wild free-roaming horses and burros on public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that 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.

Wild horses
and burros.
Protection.

SEC. 2. As used in this Act—

Definitions.

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

(b) "wild free-roaming horses and burros" means all unbranded and unclaimed horses and burros on public lands of the United States;

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

(d) "herd" means one or more stallions and his mares; and

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

SEC. 3. (a) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary is authorized and directed to protect and manage wild free-roaming horses and burros as components of the public lands, and he may designate and maintain specific ranges on public lands as sanctuaries for their protection and preservation, where the Secretary after consultation with the wildlife agency of the State wherein any such range is proposed and with the Advisory Board established in section 7 of this Act deems such action desirable. The Secretary shall manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands. He shall consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include members of the Advisory Board established in section 7 of this Act. All management activities shall be at the minimal feasible level and shall be carried out in consultation with the wildlife agency of the State wherein such lands are located in order to protect the natural ecological balance of all wildlife species which inhabit such lands, particularly endangered wildlife species. Any adjustments in forage allocations on any such lands shall take into consideration the needs of other wildlife species which inhabit such lands.

Jurisdiction
management.

85 STAT. 650

Destruction
or removal,
authority.

(b) Where an area is found to be overpopulated, the Secretary, after consulting with the Advisory Board, may order old, sick, or lame animals to be destroyed in the most humane manner possible, and he may cause additional excess wild free-roaming horses and burros to be captured and removed for private maintenance under humane conditions and care.

(c) The Secretary may order wild free-roaming horses or burros to be destroyed in the most humane manner possible when he deems such action to be an act of mercy or when in his judgment such action is necessary to preserve and maintain the habitat in a suitable condition for continued use. No wild free-roaming horse or burro shall be ordered to be destroyed because of overpopulation unless in the judgment of the Secretary such action is the only practical way to remove excess animals from the area.

(d) Nothing in this Act shall preclude the customary disposal of the remains of a deceased wild free-roaming horse or burro, including those in the authorized possession of private parties, but in no event shall such remains, or any part thereof, be sold for any consideration, directly or indirectly.

Private
maintenance.

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

Recovery
rights.

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

Agreements
and regula-
tions.

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

Joint advisory
board.

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

Penalty.

SEC. 8. Any person who—

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

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

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

December 15, 1971

- 3 -

Pub. Law 92-195

85 STAT. 651

(4) processes or permits to be processed into commercial products the remains of a wild free-roaming horse or burro, or

(5) sells, directly or indirectly, a wild free-roaming horse or burro maintained on private or leased land pursuant to section 4 of this Act, or the remains thereof, or

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

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

Power of arrest.

SEC. 9. Nothing in this Act shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they do not presently exist.

Limitation.

SEC. 10. After the expiration of thirty calendar months following the date of enactment of this Act, and every twenty-four calendar months thereafter, the Secretaries of the Interior and Agriculture will submit to Congress a joint report on the administration of this Act, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions as he might deem appropriate.

Report to Congress.

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

Studies.

Approved December 15, 1971.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 92-480 accompanying H.R. 9890 (Comm. on Interior and Insular Affairs) and No. 92-681 (Comm. of Conference).

SENATE REPORT No. 92-242 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 117 (1971):

June 29, considered and passed Senate.

Oct. 4, considered and passed House, amended, in lieu of H.R. 9890.

Dec. 2, House agreed to conference report.

Dec. 3, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 7, No.

Dec. 17, Presidential statement.

A B I L L

To facilitate the coordination of programs for the protection, management and control of wild free-roaming horses and burros, and other resources and for other purposes.

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That a new subsection (f) is added to section 2 of the Act of December 15, 1971, 85 Stat. 649, 16 U.S.C. §1332 (Supp. II, 1972) to read as follows:

"excess animals' means wild free-roaming horses or burros which must be removed from an area in order to preserve and maintain the habitat in a suitable condition for continued use, while also maintaining a thriving natural ecological balance and harmonious multiple-use relationship in that area."

Sec. 2. Subsections (b), (c) and (d) of section 3 of the Act of December 15, 1971, 85 Stat. 16 U.S.C. §1333 (Supp. II, 1972), are deleted in their entirety and new subsections are added as follows:

"(b) The Secretary may order wild free-roaming horses and burros to be captured and removed in a humane manner when in his judgment:

- 1) they are excess animals; or
- 2) they are old, sick or lame; or
- 3) it is an act of mercy

"(c) The Secretary is authorized to sell or donate excess animals on written assurance that such animals will receive humane care and handling and that humane methods will be used in the disposal of such animals. The Secretary shall establish procedures which give priority to persons seeking excess animals to keep and maintain for domestic use.

"(d) When the Secretary determines wild free-roaming horses or burros to be old, sick, lame or excess animals or when it is an act of mercy, he may order them to be destroyed in a humane manner. No excess animal shall be destroyed pursuant to this subsection unless in the judgment of the Secretary such action is the only practical way to remove excess animals from the area or range.

"(e) Upon sale or donation, as provided in subsection (c) of this section, or destruction, as provided in subsection (d) of this section, animals shall lose their status as wild free-roaming horses and burros and shall no longer be considered as falling within the purview of this Act."

NATIONAL ADVISORY BOARD FOR
WILD FREE-ROAMING HORSES AND BURROS

Membership 1973-1976

Mrs. Velma B. Johnston
140 Greenstone Drive
Reno, Nevada 89502

Area of knowledge and experience: Protection of wild horses and burros
Initially Appointed: January 1, 1973
Reappointed: 1974 and 1975
Term expired: December 31, 1975

Mr. Roy Young
P.O. Box 588
Elko, Nevada 89801

Area of knowledge and experience: Animal Husbandry (Livestockman)
Initially Appointed: January 1, 1973
Reappointed: 1974, 1975, and 1976
Term Expires: 1976

Mr. Dean Prosser, Jr.
1717 Alexander Avenue
Cheyenne, Wyoming 82001

Area of knowledge and experience: Animal Husbandry (State Brand
Inspector)
Initially Appointed: January 1, 1973
Reappointed: 1974 and 1975
Term Expired: December 31, 1975

Dr. C. Wayne Cook
4800 Venturi Lane
Ft. Collins, Colorado 80521

Area of knowledge and experience: National Resource Management
(Education)
Initially Appointed 1973 (Chairman 1973)
Reappointed: 1974 (Chairman 1974)
Term Expired: December 31, 1974

Mr. Ed Pierson
3010 Arrowhead Road
Laporte, Colorado 80535

Area of knowledge and experience: Natural Resource Management
Initially Appointed: 1973 (Vice-Chairman 1973)
Reappointed: 1974 (Vice-Chairman 1974)
Term Expired: December 31, 1974

Mrs. Pearl R. Twyne
629 River Bend Road
Great Falls, Virginia 22066

Area of knowledge and experience: Protection of wild horses and burros
Initially Appointed: January 1, 1973
Reappointed: 1974, 1975, and 1976
Term Expired: December 31, 1976

Dr. C. Roger Hungerford
4422 N. Anna Park Drive
Tucson, Arizona 85705

Area of knowledge and experience: Management of wildlife (Education
and Research)
Initially Appointed: January 1, 1974
Reappointed: 1974 and 1975 (Vice-Chairman 1975)
Term Expired: December 31, 1975

Dr. Floyd W. Frank
1395 Walenta
Moscow, Idaho 83843

Area of knowledge and experience: Animal Husbandry (Education and
Research)
Initially Appointed: January 1, 1973
Reappointed: 1974, 1975, and 1976 (Chairman 1975)
Term Expires: December 31, 1976

Mr. William L. Reavley
451 Parkfair Drive, Suite 2
Sacramento, California

Area of knowledge and experience: Management of wildlife
Initially Appointed: January 1, 1975
Reappointed: 1976
Term Expired: December 31, 1976

Dr. Thadis Box
914 River Heights Blvd.
Logan, Utah 84321

Area of knowledge and experience: Natural Resource Management
(Education)
Initially Appointed: January 1, 1975
Reappointed: 1976
Term Expires: December 31, 1976

Mr. Arnold Ewing
North Morning Star Road, Pleasant Hill
Springfield, Oregon

Area of knowledge and experience: Natural Resource Management
Initially Appointed: January 1, 1975
Reappointed: 1976
Term Expires: December 31, 1976

Mr. J. Melvin Coleman
Saguache, Colorado

Area of knowledge and experience: Animal Husbandry (Livestockman)
Initial Appointment: January 1, 1976
Term Expires: December 31, 1976

Miss Patricia D. Moehlman
Route 7
Verona, Wisconsin

Area of knowledge and experience: Management of wildlife (Research)
Initially Appointed: January 1, 1976
Term Expires: December 31, 1976

Mr. Michael J. Pontrelli
1137 Buena Vista Avenue
Reno, Nevada

Area of knowledge and experience: Protection of Wild Horses and Burros
Initially Appointed: January 1, 1976
Term Expires: December 31, 1976

Mr. Ben Glading
Route 4, Box 774
Bend, Oregon 97701

Area of knowledge and experience: Management of wildlife
(Administration)
Initially Appointed: January 1, 1973
Reappointed: 1974
Term Expired: December 31, 1974

APPENDIX 4

ADVISORY BOARD - 1973

Mrs. Velma B. Johnston
Mr. Roy Young
Mr. Dean Prosser, Jr.
Dr. C. Wayne Cook - Chairman
Mr. Ed Pierson
Mrs. Pearl R. Twyne
Dr. C. Roger Hungerford
Dr. Floyd W. Frank
Mr. Ben Glading

ADVISORY BOARD - 1974

Mrs. Velma B. Johnston
Mr. Roy Young
Mr. Dean Prosser, Jr.
Dr. C. Wayne Cook - Chairman
Mr. Ed Pierson
Mrs. Pearl R. Twyne
Dr. C. Roger Hungerford
Dr. Floyd W. Frank
Mr. Ben Glading

ADVISORY BOARD - 1975

Mrs. Velma B. Johnston
Mr. Roy Young
Mr. Dean Prosser, Jr.
Mrs. Pearl R. Twyne
Dr. C. Roger Hungerford
Dr. Floyd W. Frank - Chairman
Mr. William L. Reavley
Dr. Thadis Box
Mr. Arnold Ewing

ADVISORY BOARD - 1976

Mr. Roy Young - Chairman
Mrs. Pearl R. Twyne
Dr. Floyd W. Frank
Mr. William L. Reavley
Dr. Thadis Box
Mr. Arnold Ewing
Mr. J. Melvin Coleman
Dr. Patricia D. Moehlman
Dr. Michael J. Pontrelli

NOTICES

Office of the Secretary
NATIONAL ADVISORY BOARD FOR WILD-FREE ROAMING HORSES AND BURROS
Establishment

Under provisions of section 14(a) (1) of the Federal Advisory Committees Act (86 Stat. 770; 5 App. I U.S.C.), the National Advisory Board on Wild Free-Roaming Horses and Burros, provided for by section 7 of the Act of December 15, 1971 (85 Stat. 649; 16 U.S.C. 1331-1340) terminated on January 5, 1975. It has been determined that there is a continuing need for the advice and recommendations of such a board and that establishment is in the public interest in connection with the performance of duties imposed upon our respective Departments by the Act of December 15, 1971. Accordingly, and under the provisions of section 9(a) of the Federal Advisory Committee Act, notice is hereby given that the National Advisory Board for Wild-Free Roaming Horses and Burros is established for the period January 6, 1975 through December 31, 1976. The purpose, composition, functions, and operation of the Board shall be in accordance with the rules set forth in the FEDERAL REGISTER January 10, 1973 (38 FR 1225-1226).

ROGERS C. B. MORTON,
Secretary of the Interior.

APRIL 30, 1975.

EARL L. BUTZ,
Secretary of Agriculture.

MAY 9, 1975.

CHARTER

NATIONAL ADVISORY BOARD ON WILD FREE-ROAMING HORSES AND BURROS

1. *Official Designation:* National Advisory Board on Wild Free-Roaming Horses and Burros.

2. *Objectives and Scope of Activity:* Advise the Secretaries of Agriculture and the Interior on the protection and management of wild free-roaming horses and burros on national forest lands and on public lands administered by the Bureau of Land Management.

3. *Period of Time Necessary for Committee's Activities:* Since the advice and recommendations of the Board are related to continuing responsibilities imposed upon the Departments of Agriculture and the Interior by the Act of December 15, 1971 (85 Stat. 649-651), the Board's activities are indefinite in duration.

4. *Agencies and Officials to Whom the Board Reports:* Director, Bureau of Land Management, Interior Building, Washington, D.C. 20240; or, Chief, Forest Service, Independence Avenue and 14th Street, S.W., Washington, D.C. 20250.

5. *Agency Responsible for Administrative Support:* Bureau of Land Management, U.S. Department of the Interior.

6. *Board Duties:* In an advisory capacity only, gather and analyze information, make studies, hold meetings, counsel and make recommendations for the Secretaries of Agriculture and the Interior in accordance with the procedures set forth in the FEDERAL REGISTER of January 10, 1973 (38 FR 1225-1226).

7. *Estimated Annual Operating Costs:* \$40,000 and one man year of Federal manpower.

8. *Estimated Number and Frequency of Meetings:* Four regular (quarterly) meetings annually.

9. *Membership:* The Board will be comprised of not more than nine members. In view of the functions to be performed by the Board, each must have specialized knowledge, gained through education, training, and/or experience, to give informed advice in one or more of the following fields: the protection of horses and burros, the management of wildlife, animal husbandry, and natural resource management. The distribution of appointments in these fields will be as follows:

a. Two members from organizations concerned with wild free-roaming horses and burros and the humane treatment of animals, or persons otherwise qualified by experience in the management and protection of wild free-roaming horses and burros.

b. One member with professional standing in wildlife management.

c. One member from an established wildlife organization, who can be either a layman or a professional.

d. One member with professional standing in veterinary science.

e. One member from a livestock association.

f. One member prominent in the administration of State livestock laws.

g. One member with professional standing in natural resource management.

h. One member from an established natural resource management organization, who may be either a layman or a professional.

The term of appointment will be one year. Members may be appointed for additional one-year terms not to exceed three years of total service. All shall serve without compensation except for reimbursement for travel and per diem expenses as authorized by section 5703 of Title 5, United States Code.

10. *Board Officers:* The Board shall elect its own Chairman and Vice Chairman.

11. *Board Termination Date:* On November 18, 1974, the Acting Secretary of the Interior determined that the Board was necessary and in the public interest in accordance with the provisions of Section 14 (a) of the Federal Advisory Committee Act (Pub. L. 92-463). It will terminate December 31, 1976 unless renewed by the Secretaries of Agriculture and the Interior under the provisions of the Advisory Committee Act.

ROGERS C. B. MORTON,
Secretary of the Interior.

APRIL 30, 1975

EARL L. BUTZ,
Secretary of Agriculture.

MAY 9, 1975.

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Research Informational Needs for a Program of
Protection, Management, and Control
of Wild, Free-Roaming Burros

I. Title - Wild Burros as components of the Range Ecosystem.

II. Introduction - Feral burros are found principally in the desert rangelands of southwestern United States, but occur locally in small groups or bands in most of the other western states as well. They are believed to be descendants of animals brought into Mexico and the southwest by early-day Spanish explorers, augmented by pack animals which were abandoned or escaped from miners, prospectors, and sheepherders during the past hundred years or longer. Generally, they have been tolerated or even regarded with affection by westerners, excepting instances where excessive populations resulted in conflict or severe competition with ranching interests, recreational developments, or endangered wildlife populations. Reduction or elimination of animals under these situations led to the first protective legislation enacted in California in 1953. Now, under the provisions of Public Law 92-195, burros will receive full protection in all areas where populations existed as of December 15, 1971, the date of its enactment. The Bureau of Land Management, as one of the agencies charged with administrative responsibilities under this law, will require much more detailed information than has heretofore been available about the burro and its habitat. Some of this can be acquired in the course of regular operational programs. Other needs must be filled through contractual study and research carried out by educational institutions, research agencies, or professional consultants.

III. General Research Objectives.

A. Biological and physiological requirements of wild burros to include:

1. Forage requirements; preferred range types and plant species; a comprehensive listing of all plants used, including low preference survival species.
2. Water requirements under normal and drouth conditions; distances traveled to and from water sources; use of water to influence animal movements and management.
3. Habitat limitations as related to extremes of climate, elevation, shelter and other factors.

4. Social characteristics relating to such things as group association, territorial requirements, if any, others.

B. Population dynamics:

1. Reproductive rate, average breeding age and life span.
2. Survival data by age groups, colt mortality.

C. Predation and disease:

1. Predators as a limiting factor on population growth, distribution patterns, etc.

2. Losses due to disease or parasites.

D. Competition with other animals.

1. Degree of competition or compatibility with other native animal and bird life with special reference to bighorn sheep.

2. Compatibility with domestic livestock, competition for use of water or salt.

3. Overlap, if any, with habitat of wild horses.

E. Environmental influences.

1. Evidence of changes in vegetative composition or trend due to burro use.

2. Determine the degree of site deterioration due to trampling; destruction of water developments or range improvement structures; depletion of soil or vegetation from destructive grazing use; other watershed influences.

F. Compilation and review of literature, both published and unpublished with appropriate abstract of material applicable to the protection and management of the burro and its habitat.

IV. Research Plan - The contracting agency shall furnish a detailed plan and location for conducting a study of wild burros, including the procedures and methods to be used in reaching the objectives listed under part III. If the study plan requires capture or collection of specimens for marking, autopsy, or other purposes, it will be the responsibility of the contracting agency to secure legal clearance and authorization under provision of State or Federal law.

Subsequent to such authorization, the Bureau and contracting agency shall jointly agree upon the number, time and place for such collections to be made and the contractor will maintain a complete record in each case.

In addition, if aerial surveillance, telemetry, or similar procedures will be used, they will be fully described in order to assure compliance with Section 8 of the law relating to harassment or death of animals.

V. Estimated Project Cost - In consideration of the plan and objectives of this study as outlined in the preceding sections, any individual or agency offering to conduct the study shall provide an estimated time and cost breakdown for completion of the project. The estimate shall provide a time frame for completion of the various phases with estimated costs on an annual basis. Cost shall be broken down as to:

- A) Level and quality of manpower to be utilized.
- B) Supplies and equipment needs.
- C) Anticipated cooperative support in terms of manpower, equipment usage, etc., which may be required from BLM.
- D) Any special requirements not included under (A),(B),(C).

Research Informational Needs for a Program of
Protection, Management, and Control
of Wild, Free-Roaming Horses

I. Title - Wild Horses as Components of the Range Ecosystem.

II. Introduction - Western rangelands have supported a substantial population of feral horses for several hundred years. Passage of the Taylor Grazing Act in 1934 resulted in the first broadscale attempts to control overuse and destruction of grazing lands and provide for conservation of the natural resource values inherent in these lands. Well into the second half of the 20th Century, undomesticated horses running at large on the range were considered as undesirable trespass animals subject to partial or complete elimination in the interest of providing more water and forage for domestic livestock and wildlife. Public Law 92-195, dated 12/15/71, has completely changed this concept. Wild horses and burros have assumed the mantle of "living symbols of the historic and pioneer spirit of the West," to be preserved "as an integral part of natural systems of the public lands." To meet the requirements for control, protection, and management as authorized in P.L. 92-195, requires greatly expanding the fund of knowledge now available to resource managers. Studies to develop this information may be carried out in part as an "In-House" effort by Bureau employees. Other needs can best be satisfied by contractual research carried out by educational institutions, research agencies, or professional consulting firms.

III. Research Objectives - Listed below are topics needing additional study and research by educational institutions, research agencies, or recognized consultants.

A. Biological and physiological needs of wild horses to include:

1. Forage requirements including preferred vegetative types; preferred plant species; low preference survival species; a comprehensive list of all utilizable plant species.

2. Water requirements; daily watering habits; subsistence on snow; maximum travel distance to water under drouth conditions; use of water to influence animal movement and management.

3. Band composition and territorial requirements, i.e., habitat acres per animal; daily travel distances; seasonal migrations; tolerance to other bands of horses; tolerance to man's activities without losing wild, free roaming characteristics; need for buffer zones.

B. Population dynamics to include:

1. Reproductive rate; average breeding age; average life span; season of foaling.
2. Survival by age groups; colt mortality and causes.
3. Characteristics of non-breeding animals such as young bachelor bands and older solitary animals.

C. Predation and Disease:

1. Influence of native predators, particularly mountain lions on colts and juveniles.
2. Effect, if any, by coyotes or other predators on young or winter-weakened animals.
3. Evidence of disease, such as equine encephalitis, as a mortality factor.
4. Parasites and their role in disease transmission or direct loss of animals.

D. Competition with other animal life:

1. Degree of competition or compatibility with native big game animals.
2. Influence on habitat of small wildlife species.
3. Compatibility with domestic livestock at water holes, salt licks, or other areas of concentration.
4. Degree of overlap between wild horse and wild burro habitat areas, if any.

E. Environmental Influences:

1. Evidence of change in vegetative composition or trend resulting from horse use.
2. Effects of trampling at watering places or other site depleting activities.
3. Evidence of other than normal wear and tear on developed range improvements due to horse use.

4. Evidence of depletion of watershed from destructive grazing habits.

F. The contract should include a compilation and thorough review of literature, published and unpublished, with appropriate abstract of material applicable to management of wild horses on public lands.

IV. Research Plan - The contracting agency shall furnish a detailed plan and location for conducting a study of wild horses, including procedures and methods to achieve data needed for each of the objectives listed under Section III. Should the plan call for collection of specimens for autopsy or other purposes; it shall be the responsibility of the researchers to secure legal clearance and authorization for such action from the authorized officer.

Subsequent to such authorization, the Bureau and the Contracting Agency will jointly agree upon the number, place, and time of needed specimen collections with adequate record documentation in each case. In addition, if telemetry, aerial surveillance, or similar procedures will be involved, the exact procedure shall be fully outlined in order to meet the anti-harassment and other provisions of PL 92-195 and PL-86-234.

V. Estimated Project Costs. In consideration of the plan and objectives of this study as outlined in the preceding sections, any individual or agency offering to conduct the study shall provide an estimated time and cost breakdown for completion of the project. The estimate shall provide a time frame for completion of the various phases with estimated costs on an annual basis. Costs shall be broken down as to:

- A. Level and quality of manpower to be utilized.
- B. Supplies and equipment needs.
- C. Anticipated cooperative support in terms of manpower, equipment usage, etc., which may be required from BLM.
- D. Any special requirements not included under (A), (B), (C).