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RANGE ISSUES AND PROBLEMS WITH THE WILD HORSE AND BURRO ACT AND ITS IMPLEMENTATION

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

JULY 13, 1998, RENO, NEVADA

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FIELD HEARING ON RANGE ISSUES AND PROBLEMS WITH THE WILD HORSE AND BURRO ACT AND ITS IMPLEMENTATION

MONDAY, JULY 13, 1998

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON NATIONAL PARKS & PUBLIC LANDS, COMMITTEE ON RESOURCES, *Reno, Nevada.*

The Subcommittee met, pursuant to notice, at 9 a.m., in the Washoe County Commission Chambers, Building A, Reno, Nevada, Hon. James Hansen (chairman of the Subcommittee) presiding.

Members present: Representatives Hansen, Faleomavaega, Pombo, Chenoweth, Ensign and Gibbons.

STATEMENT OF HON. JAMES HANSEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

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

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

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

As a note of clarification, I think it is important to mention that these horses and burros are not truly wild animals in the sense that bighorn sheep, mountain lions and bears are wild animals. These are domesticated animals that have gone feral. They are only wild in the sense that the alley cat down the street is wild.

As more of the West was settled and better riding stock was imported, feral herds became less important. In fact, they were quickly becoming a liability to ranchers and farmers who needed the land for domestic stock. Thousands of these horses were slaughtered to remove competition with domestic stock, to obtain meat for animal feed or for other purposes. Fortunately, these horses had some pretty good PR people working for them, and the American people mobilized in the late 1960's pushing for some sort of protection for these animals.

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

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

It costs $18 million a year to administer the wild horse and burro program. Last year, 8,692 animals were adopted. This works out to over $2,000 per animal, and yet, these horses sell for $200 per animal. Two thousand to sell a $200 horse. If any public land program could be called a subsidy, this would be it.

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

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

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

I will now turn to the gentleman from American Samoa, Mr. Faleomavaega, for any opening statement that he may have.

[The prepared statement of Mr. Hansen follows:]

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

As a note of clarification, I think it is important to mention that these horses and burros are not truly wild animals in the sense that Bighorn Sheep, Mountain Lions

and Bears are wild animals. These are domesticated animals that have gone feral. They are only "wild" in the sense that the alley cat down the street is "wild."

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

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

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

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

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

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

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

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

STATEMENT OF HON. ENI FALEOMAVAEGA, A DELEGATE IN CONGRESS FROM THE TERRITORY OF AMERICAN SAMOA

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman, for calling this hearing this morning. I do want to also express my appreciation to the gentleman from Nevada, the host of our hearing this morning here in Reno. I want to also express my appreciation to all the witnesses who are scheduled for having their testimony before the Committee here this morning.

Mr. Chairman, I am pleased to be here today to participate in the Subcommittee's oversight hearing on wild horses and burros. To some, these animals are a beloved symbol of the west; to others, they are considered a nuisance. Either way, they are an important aspect of public lands management. Legislative policy on this important issue was established more than a quarter of a century ago with the passage of the Wild Free-Roaming Horse and Burro Act of 1971 that 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. Although the Act has been

in existence for nearly 27 years, it has been only in the last 2 years that the wild horses and burro program has come under significant public scrutiny.

Some months ago, an Associated Press report stated that despite the existence of current Federal law which is aimed at protecting these wild horses and burros, and with the implementation of a Federal adoption program for these wild animals, through individuals who qualified to adopt these animals, along with the pledges not to slaughter such animals, there are allegations that thousands of horses are being slaughtered and there are further allegations that BLM could not even account for some 32,000 adopted animals, and that even BLM employees may have been participants and may even have profited in the slaughter of thousands of wild horses.

Then there is also the question of title and ownership of these wild animals by their individual adopters. And if title is given to owners of these animals, can they transfer such ownership or title for purposes of selling the animal to a slaughter house company that makes dog and cat food items, which today is a multi-billion dollar industry.

Mr. Chairman, I am aware that a number of concerns have been raised about the BLM's management of wild horses and burros, particularly its adoption procedures. I also know that the BLM has undertaken a number of reforms in the programs in the past 18 months. I am here today to listen and learn how these reforms are working, as well as whether the overall program is achieving the intended purposes of the Wild Free-Roaming Horse and Burro Act.

I appreciate the presence of your witnesses again, and I look forward to their testimony. Thank you again, Mr. Chairman.

Mr. HANSEN. Thank the gentleman for his comments.

Our host is Mr. Jim Gibbons, our Congressman from this area. I turn to the representative from this area, Mr. Gibbons.

STATEMENT OF HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF UTAH

Mr. GIBBONS. Thank you very much, Mr. Chairman. And to you, as the Chairman of the Committee, and the Ranking Member, Mr. Faleomavaega of American Samoa, I want to welcome my colleagues and all of you here today to Reno for this hearing. And on behalf of the people of the state of Nevada, I want to say thank you for your concern about the wild horse and burro issue, and especially for conducting a hearing today, in which bringing Congress to Nevada brings our representation to the people, which I think is an important part. So I applaud you on your leadership of this issue and again welcome you here to Nevada.

Mr. Chairman, as you have eloquently stated in your remarks, the wild horses in Nevada, as well as the rest of the United States, have roamed the ranges here since the late 1500's when Spanish conquistadors explored north into North America from Mexico. These animals are not native to the west, they are feral. The horses and burros were released either—or lost by the Spanish, which grew wild on the fenceless ranges here in the west, and today, nearly 500 years later, their legacy lives on. Nowhere is this more prevalent than here in Nevada, home to about 60 percent of

the wild horses, 60 percent of the 43,000 that roam the public lands of the west.

Unfortunately many problems of the management of today's wild horses and burros have met with public scrutiny. The current overpopulation, both on and off range, threatens the wellbeing of the environment, strains the resources of the BLM to sustain excess animals that have been removed from the range.

Another concern is, the gene pool of these wild herds is degenerating as healthier, stronger animals, those more suitable for adoption are selected and removed from the range.

Now this Committee, I am sure, with the help of the public and the BLM can resolve many of these issues. That is why I have asked you to bring this hearing here today to Nevada so that we can hear more about this very important issue.

1971 public concern for the humane treatment of wild horses and burros persuaded Congress to pass the Free-Roaming Horse and Burro Act. This Act referred to the wild equines as living symbols of the historic and pioneer spirit of the west and declared them an integral part of the natural system of public lands. The Act granted authority to the Secretary of Interior to oversee and manage wild horses and burros. The herds are to be managed at a minimum level, allowing them to truly be free roaming and wild. However, strict language in the Act requires their numbers to be restrained to prevent damage to the range and other species.

Each year the BLM helicopters and riders round up excess horses and burros which are offered for adoption to the public and a nationwide adoption program. Unfortunately though the BLM is presently sheltering more than 6,000 unadopted wild horses and burros, these animals are costing the taxpayers about $50,000 a week. Many have become unadoptable, and in many instances, due to old age and the present spread of disease, have precluded their successful adoption. Also, these unadoptable animals are being held contrary to the resolution set forth in the Act of 1971, and done so at a great expense to taxpayers as well as we mentioned previously. Unfortunately many of these animals are destined to live out their days as Federal welfare cases as facilities across the United States are filled beyond capacity. Without adoption or commercial demand the horses and burros are consigned to death in captivity. A situation which is ironic at best considering the attempt of the statue to preserve them.

The Free-Roaming Horse and Burro Act mandates unadopted animals to—and I quote—"be destroyed in the most humane and cost efficient manner possible." That same fate is designated for old, sick or lame animals. However, the BLM is not fulfilling this unpleasant but probably necessary responsibility. The BLM has resolved to reduce the total population to a little more than 27,000 equines; however, neither a time table nor the resources are adequate as proposed to accomplish this goal.

Mr. Chairman, I will submit for the remainder of the time this morning my written comments. I look forward to the witnesses, and I would also like to ask that for purposes of submission for the record that I be allowed to enter into the record a copy of the Nevada wild horse management plan for Federal lands, which has

several recommendations within that, for the record for the Committee to review on this issue.

Again, I want to thank you for having this hearing hear today. I look forward to the testimony that we are about to receive from these panels of well known and educated individuals on this issue. Certainly it is time that Congress take a look at this very expensive case and have a look at the total cost of where we are going, how we are getting there and how the management of these animals is predicted and taking place for the future. Thank you, Mr. Chairman, again for having this hearing.

Mr. HANSEN. Thank you, Mr. Gibbons. Without objection, your entire testimony and the testimony on the BLM management plan will be included in the record.

[The prepared statement of Mr. Gibbons follows:]

STATEMENT OF HON. JIM GIBBONS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. Chairman:

On behalf of the people of Nevada and all states concerned with wild horses and burros, I would like to thank you for conducting this hearing today in Reno.

As you may know, wild horses and burros have roamed the ranges of Nevada since the late 1500s when Spanish conquistadores explored north from Mexico.

The horses and burros left, or rather *lost,* by the Spanish grew wild on the fenceless range. Today, nearly 500 years later their legacy lives on.

Nowhere is this more prevalent than here in Nevada, home to over half of the 43,000 wild horses and burros that roam public lands in the west.

Unfortunately, many problems challenge the management of today's wild horses and burros.

The current overpopulation—both on and off the range—threatens the well-being of the environment and strains the resources of the BLM to sustain excess animals that have been removed from the range.

Another concern is that the gene pool of the wild herds is degenerating as healthier, stronger animals—those more suitable for adoption—are selectively removed from the range.

I feel this Committee, with the help of the BLM, can resolve this situation. That is why I asked the Chairman to hold this hearing today.

In 1971, public concern for the humane treatment of the wild horses and burros persuaded Congress to pass the Free Roaming Horse and Burro Act.

This Act referred to the wild equines as "living symbols of the historic and pioneer spirit of the West," and declared them "an integral part of the natural system of the public lands."

The Act granted authority to the Secretary of the Interior to oversee and manage wild horses and burros.

The herds are to be managed at a minimum level—allowing them to truly be free-roaming and wild. However, strict language in the Act requires their numbers to be restrained to prevent damage to the range and other species.

Each year the BLM helicopters and riders round up excess horses and burros, which are offered for adoption to the public in a nationwide adoption program.

Unfortunately, though, the BLM is presently sheltering more than 6,000 unadopted wild horses and burros. These animals, which are costing taxpayers $50,000 dollars a week, have become unadoptable in many instances due to old age and the spread of disease.

These unadopted animals are being held contrary to the resolutions set forth in the Act of 1971—and done so at a great expense to taxpayers. Unfortunately, many of these animals are destined to live out their days as Federal welfare cases, as facilities across the U.S. are filled beyond capacity.

Without adoption or commercial demand, the horses and burros are consigned to death in captivity—a situation which is ironic at best.

The Free Roaming Horse and Burro Act mandates unadopted animals to "be destroyed in the most humane and cost efficient manner possible."

The same fate is designated for "old, sick, or lame animals." However, the BLM is not fulfilling this unpleasant, but necessary responsibility.

The BLM has resolved to reduce the total population to 28,000 equines, however, neither a timetable nor the resources have been proposed to accomplish this goal.

Many times I have heard the BLM claim that they do not have the necessary tools to properly manage the wild horses and burros program. Therefore, I call on the BLM to recommend legislative solutions, after taking careful consideration of today's testimony, to ensure proper management of wild horses and burros.

It is important to remember that the success of feral horse management will depend upon accurate scientific information and collaborative participation by all groups potentially affected by horse management.

My desire is to develop a realistic management strategy so that a healthy band of wild horses and burros freely roam our public lands for generations to come. The future of our rangelands demand no less!

Again, Mr. Chairman I would like to thank you for allowing us to have this hearing today, and I look forward to the testimony from our distinguished panels.

Mr. HANSEN. Our other Nevada host is Congressman John Ensign. We will turn to Congressman Ensign for an opening statement.

STATEMENT OF HON. JOHN ENSIGN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. ENSIGN. Thank you, Mr. Chairman. I will just make a few brief remarks and ask unanimous consent that my entire statement be made part of the record.

Mr. HANSEN. Without objection.

Mr. ENSIGN. As a veterinarian, this is an issue that I have followed over the years, and having dealt with a lot of different animal issues over the years, I find that—and one of the reasons I went into veterinary medicine was partly because—and mostly because the emotions that you have for animals. I think the reason that a lot of people are involved with animals is because of the emotional attachment that becomes part of that. But I also learned as a veterinarian working with various groups over the years that that emotional attachment sometimes can be more damaging to the animals that you are trying to help than pure science and objectivity would bring us in the end. So that is one of the things that I am interested in listening to today.

I will not be able to stay for the whole hearing, but I will be interested in reading some of the testimony and some of the questions and answers later. How much of the policy is actually being directed based on pure emotionalism? How much of the policy is being directed on what is truly best for the environment, best for the animals in the long-run for the overall part of the population, and truly how are we getting to where we are going and the thought processes along those lines.

So, Mr. Chairman, I thank you and I welcome you here to our great state of Nevada. We always say as Nevadans that it is the greatest state in the country and now you are here to experience why we believe that, so welcome.

Mr. HANSEN. Well thank you, Mr. Ensign. We appreciate your comments.

The gentleman from California, Mr. Pombo.

[The prepared statement of Mr. Ensign follows:]

STATEMENT OF HON. JOHN ENSIGN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Good morning, it is a pleasure to be here today in Reno, discussing an issue that is important to the people of Nevada. I am grateful to Chairman Jim Hansen, and the Subcommittee on National Parks and Public Lands for scheduling this hearing. I would also like to extend my appreciation to all our witnesses that have gathered

today and taken time out of their busy schedules to provide their perspectives and possible solutions to our wild horse management dilemma.

This hearing will provide an excellent opportunity to listen to the views of state and local officials, officials from the Bureau of Land Management, and concerned citizens. Participating in an open dialogue is the first step in finding solutions to the problems facing the BLM as they continue the ongoing management of wild horses.

In 1971, Congress declared that wild horses and burros were "living symbols of the historic and pioneer spirit of the West" and passed the Wild Free-Roaming Horse and Burro Act. The Act provided for the protection, management control, and control of wild horses and burros on the public lands, and directed the Department of Interior, specifically, to manage the wild horses and burros.

It is unfortunate that the current situation isn't what Congress had anticipated. Both Federal protection and the absence of natural predators have contributed to the growing populations of these animals.

Currently, there are an estimated 43,000 wild horses and burros found in the West and more than half of them are found right here in Nevada. As we look closer at the situation, we find the range land is deteriorating, with many of the riparian areas destroyed, and other natural wildlife suffering from a decreased availability of food and water.

There have also been many recent reports questioning tbe health and stability of many of the wild horses roaming our range. These factors obviously impact the Bureau's ability to manage and successfully adopt these horses.

It is my hope that through the medium of this hearing, we will be able to examine some possible solutions to this problem, for the benefit of the horses, and the benefit of the public. I am anxious to hear the points of view from our panelists. I am confident that we can examine possible alternatives that would provide for the adequate management of healthy wild horse herds, while still maintaining a healthy and diverse ecosystem.

Mr. POMBO. I have nothing, Mr. Chairman.

Mr. HANSEN. The gentlelady from Idaho, Mrs. Chenoweth.

Mrs. CHENOWETH. I have nothing, Mr. Chairman.

Mr. HANSEN. With that, we will turn to our first panel. Our first panel is Robert Abbey, Nevada State Director of BLM. If you gentlemen would like to come up. Mr. Dean Shroufe—Duane Shroufe, excuse me, Director of Arizona Game & Fish Department; Senator Dean Rhoads, Chairman of the Senate Natural Resources Committee of the Nevada Legislature and Mr. John Carpenter, Assemblyman in Nevada. If you folks could all come up, we appreciate you being here. As you probably are aware, we normally in this Committee limit the statements to 5 minutes. If you go over a tad, I can understand. We want to hear this testimony, this is very important for us. But if you can kind of keep it in that area, and keep in mind that all of your entire statements will be included in the record. So if you want to abbreviate those, at your wish, that would be fine.

Mr. Abbey, we will start with you. Pull that mike up. How this light system works is just like a traffic light. You go at green, at yellow you start winding it up and at red, we will not give you a ticket. Depending on how good your testimony is, we might let you go on. I am just kidding, of course. You just go right ahead.

STATEMENT OF ROBERT V. ABBEY, NEVADA STATE DIRECTOR, BLM

Mr. ABBEY. Thank you. I am Bob Abbey, State Director for the BLM here in Nevada, and like our distinguished Congressmen from Nevada, I too would like to welcome you to Reno. This is a great state.

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to participate in this morning's hearing. Due to our time constraint, I will provide the Subcommittee with a quick overview of the Bureau of Land Management's wild horse and burro program, highlighting those actions that are presently being taken to address the many issues associated with this program. However, I do ask that my prepared statement—copies which have been made available to you—be entered into the record since it provides additional information which might be of interest to the members of this Subcommittee.

As already communicated, since the passage of the Wild and Free-Roaming Horse and Burro, Act wild horse herds have flourished and these animals are in no danger of extinction. In 1971, it was estimated that between 10,000 and 17,000 wild horses and burros roamed the west. Today there are approximately 43,000 wild horses and burros on the public land, including an estimated 22,000 in Nevada.

In this state, the BLM manages 99 herd management areas encompassing over 16 million acres of public land. We are establishing appropriate management levels—or AMLs, as we commonly refer to it—through our multiple use decision process, which involves interdisciplinary monitoring of resources and evaluations to determine if multiple use and rangeland standard objectives are being met.

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

In herd management areas where we have achieved and are maintaining AML and working cooperatively with the permittees to develop better livestock management practices, we have seen a steady improvement in rangeland conditions. We have therefore demonstrated that wild horses and burros can be managed within a thriving ecological balance with other rangeland uses.

The BLM has focused its efforts on reaching AMLs by addressing population increases in herds through gathering excess animals, removing them from the rangelands and placing them with qualified adopters. Although the Act itself permits the humane destruction of animals, Congress has prohibited the destruction of excess healthy animals since 1988. The Adopt-A-Horse-and-Burro program is, therefore, the only tool the BLM currently possesses to manage the excess wild horses and burros removed from the range. So far in fiscal year 1998, we have gathered almost 4,000 animals in the western states and adopted almost 6,000, with most of these adoptions occurring in the east. We currently have 3,400 animals in our holding facilities.

The BLM has undertaken a number of initiatives geared to increase adoption demand and ensure the humane treatment of animals placed with qualified adopters. We have scheduled an additional 10 adoption events in the six western states that administer the wild horse and burro program to address adoption interests in these states.

Nevada historically does not have a large adoption demand, but at the three adoptions that we have sponsored in this state this year, we have adopted 65 animals. An additional 111 animals have been adopted directly from our holding facility in Palomino Valley this year.

The BLM has begun a pilot project using the Internet to increase public awareness of the adoption program and to accept adoption applications. So far, 15 of the 25 animals featured on the Internet have gone to new homes.

In conclusion, the BLM is making every effort to maximize adoptions while maintaining our emphasis on finding good homes for all adopted animals. We are moving ahead with research on fertility control through the use of contraception. We are looking forward to receiving additional recommendations from the National Wild Horse and Burro Advisory Board, which was reinstituted this year to address public criticism and perceived deficiencies within the program. All recommendations from the advisory board will be acted upon in a timely manner to take full advantage of new ideas which might increase efficiencies within the program and improve the health of our public lands.

Mr. Chairman, the BLM-managed wild horse and burro program is one of the most scrutinized programs I have ever dealt with. Everyone has opinions on how best to manage this program, and you will hear several people offer their insights to you this morning. The one principle I believe we all agree on in dealing with the challenges associated with wild horses and burros on the public land is the need to maintain a consistent population level that the resources can support. I think we can best accomplish this by:

(1) establishing appropriate management levels in all herd management areas based upon the best range science and monitoring information currently available.

(2) controlling the reproduction rates of horses and burros on the range through contraception.

(3) making available sufficient financial resources to gather and adopt the numbers necessary to keep a consistent population on the range.

And finally, humanely destroying those animals that are too old, sick or disabled to survive independently.

There may be other ideas from panel members which I would be interested in hearing, as I am sure you are, so I will conclude my statement at this time. I do however plan to stay for the entire hearing, so I will be available to respond to any questions that you might have now or later. Again, thank you for the opportunity to participate in today's hearing.

Mr. HANSEN. Thank you, Mr. Abbey. Mr. Shroufe.

[The prepared statement of Mr. Abbey may be found at end of hearing.]

STATEMENT OF DUANE L. SHROUFE, DIRECTOR, ARIZONA GAME & FISH DEPARTMENT

Mr. SHROUFE. Mr. Chairman and members of the Subcommittee, my name is Duane Shroufe and I am Director of the Arizona Game and Fish Department.

On behalf of the Arizona Game and Fish Commission and Department, I appreciate the opportunity to be here today to provide comments on the Wild Free-Roaming Horses and Burros Act and its implementation in Arizona. I would respectfully ask that my written statement in its entirety be submitted and on the record.

Mr. HANSEN. Without objection.

Mr. SHROUFE. I look forward to presenting information regarding the Act and its implementation in Arizona and to discuss ideas on how to improve management of feral horses and burros in order to protect our public lands.

In Arizona, wild horse and burro management is primarily associated with burro management on public lands administered by the Bureau of Land Management. However, burro management issues on lands not administered by the BLM are of increasing importance in our state, due to the lack of management, increasing numbers of burros and resource damage by burros on these lands. These lands include National Wildlife Refuges, state parks and lands managed in accordance with the Fish and Wildlife Coordination Act. We have a special area, the Arizona Game and Fish Department's Alamo Lake wildlife area. This area is dedicated to the management of the fish and wildlife resources and to fish and wildlife related recreation. The Arizona Game and Fish Department realizes that the BLM faces numerous challenges in order to manage feral burros on public lands in the state of Arizona. From the Arizona Game and Fish Department's perspective, the most significant of these challenges include:

(1) eliminating or minimizing adverse impacts to the wildlife habitat. These habitats include native wetland and riparian habitat and sensitive wildlife species habitat;

(2) completing burro population inventories, estimating population densities and maintaining existing appropriate management levels;

(3) collecting data to determine the level of impacts to wildlife habitats associated with burro use and overpopulation;

(4) dealing with burro overpopulation and expansion outside of established herd areas or herd management areas; and

(5) obtaining funds and manpower to remove burros from areas where there is overpopulation, expansion beyond herd area boundaries, or resource damage.

From the early 1980's to present, we have focused our efforts on working cooperatively with the BLM and other agencies to collect data in order to document this resource damage. Also, the Arizona Game and Fish Department has collected data on burro habitat use, resource damage to wildlife habitats and burro numbers and distribution during our ground and aerial wildlife survey efforts. Adverse impacts by burros on native riparian, wetland and upland habitats in Arizona have been documented in BLM land management planning documents, in U.S. Fish and Wildlife Service evaluations and by the Arizona Game and Fish Department's observations and studies.

Although some burro removal efforts have occurred in Arizona since the Act was passed, current burro numbers in many Arizona herd management areas are estimated by the BLM, the Arizona Game and Fish Department and other agencies to be much higher

than the existing appropriate management levels. And many of these areas are not in a thriving natural ecological balance.

For example, the Black Mountain herd management area has an appropriate management level of 478 burros, but the population is estimated to be over 700 burros. The Big Sandy herd management area's estimated burro population is around 300 while the appropriate management level is set at 139. The Alamo herd management area has an estimated appropriate management level of 200 burros, but the population is estimated to be between 500 and 600 animals.

In Arizona, BLM suspended most, if not all, significant burro removal efforts as a result of the 1989 IBLA decision regarding removal of excess free roaming horses in Nevada. Arizona BLM through land management planning efforts is proposing to manage burros in all Arizona herd areas. In other words, the BLM is planning to designate all herd areas as herd management areas in the state.

At the time the Act was passed or soon thereafter, some areas of distribution or herd areas, as they are called, were prescribed for zero burro numbers due to one or several manageability concerns, such as land status and threatened and endangered species issues. However, Arizona BLM is now proposing to manage burros in all herd areas for a thriving natural ecological balance even though the same manageability concerns exist today.

In Arizona, burros are expanding into areas where they have not been documented before and have clearly expanded outside the boundaries of the established herd areas and herd management areas. These problems are due to the lack of significant burro removals in Arizona. In the last few years, Arizona BLM has indicated to the Department and other agencies there are limited funds available for burro management, including removals in the state.

To improve management of feral burros and in order to protect our public lands in Arizona, burro management must be given a higher priority and funds must be available to manage burro populations in accordance with the Act.

We have several suggestions if I may just take the time to make those recommendations:

The Act itself may not be the problem. Rather, the problem appears to be the lack of compliance with the Act. This is likely due to different agency priorities, the lack of sufficient funding and opposition to responsible and proactive horse and burro management pursuant to the Act.

We need to improve the information and education regarding burro numbers in Arizona and the associated damage to the resources.

We need to improve inter-agency planning and management efforts to address the burro issues in our state.

We need to evaluate all available methods for reducing horse and burro populations provided for in the Act.

We need to exclude horses or burros from sensitive wildlife habitats such as riparian zones through fencing projects.

And most importantly, increase funding for burro management in the state.

The department looks forward to working cooperatively with the BLM and other agencies to address this issue in Arizona. Thank you for the opportunity to appear before you today.

Mr. HANSEN. Thank you. Senator Rhoads.

[The prepared statement of Mr. Shroufe may be found at end of hearing.]

STATEMENT OF SENATOR DEAN RHOADS, CHAIRMAN OF THE SENATE NATURAL RESOURCES COMMITTEE, NEVADA LEGISLATURE

Senator RHOADS. Thank you, Mr. Chairman. I am Dean Rhoads from Tuscarora, Nevada. I am a rancher, I raise and sell both cattle and horses and I am also a Nevada State Senator. I wanted to thank all of you for coming to Nevada and coming and revisiting this issue that has been around for a long time.

It is quite interesting to note as I was flying down here today, I recall one of my first trips to Washington, DC, I was in Walter Baring's office, Mr. Hansen might recall. At that time there was 51 bill drafts in there on wild horses and he thought he had selected the one that was most reasonable, and I am sure if he was around today, he would be astounded as to what has happened.

Also, about 25 years ago today—not today, but I was invited to my first Congressional hearing to testify up in Billings, Montana on the Wild Horse Act. And me and Velma Johnston, who was Wild Horse Annie and others testified. At that time, John Melcher, another veterinarian, was the Chairman, and I questioned the way the Act was being administered then and I really question the way it is being managed today.

This Act, 1972 was the first year it began, cost $400,000. Last year, it cost $18 million to manage the wild horses. So far, it has cost the taxpayers a quarter of a billion dollars over 27 years. The horse herd now, as you have heard many times, is 43,650. It costs $369 to feed one of those horses out there. As a person who receives part of my income from horse sales, I cannot survive with a cost of $369 per year.

Nevada, of course, has the largest share, 22,835, while the appropriate management level is 14,430. It is interesting to note that the appropriate management level, both nationally and in Nevada has never been met since the inception of the Act, in 27 years.

As a cattle rancher, I take great interest in the condition of the range. Fortunately, I do not have wild horses in my allotment. We have three stud bunches, probably 60 head of horses out on my range where my livestock run. I have toured various ranges where wild horses graze and it is a sad sight. The range condition is down to nothing, as bare as this table top in many places in the past few years.

Some major changes must be made to the Wild Horse Act of 1971. While as I understand it, the Wild Horse Act of 1971 gave the BLM the authority to destroy unadoptable excess animals, the Director of the BLM and the Chief of the United States Forest Service made a decision in 1982 not to use this authority. However, I just recalled Director Abbey stated the 1988 Congress also made that same change. I was not aware of that.

The Act should be amended that would give the BLM the authority to sell to the highest bidder the excess horses. We in our operation send to the sale horses that have been injured, crooked feet or just simply we cannot sell. We just sent a couple of loads, one load 2 weeks ago. Why can't the government be allowed to do the same thing?

I think there are other proposals, some have been tried previously and not worked, but I think you should take a good look at them again:

The gatherings could be conducted annually by private parties or permittees under contract with the U.S. Government. I think we could save the government a lot of money.

Provide for more wild horse preserves like the one in Pryor Mountain in Montana in the west on a combination private and public lands with management of these preserves being by private parties under supervision of the government. The private sector can definitely do it cheaper.

Then you could remove all the other horses from the west on much of our grazing lands.

We manage all activities on our public lands by controlling numbers, except wild horses. Ranchers, through the Taylor Grazing Act and so forth, they tell us when, how many and under certain conditions that we have out there. Wildlife, if numbers get too big, the Department of Wildlife increases the tags. The present program of gathering horses and releasing the sick, lame, old and unadoptables is about the most poor management practices as we in the ranching business could adopt. If we in the ranching business adopted such practices, I am sure we would be broke in 3 years.

Another problem I have with the adoption program is it is in competition with the private sector that sells horses. It costs the Federal Government $369 per year to keep a horse. Say they adopted that horse at 3 years old, that is $1,107, and then add the gathering costs of $1,100 per horse, you have over $2,200 into that horse. Then the BLM sells it for $125. The taxpayer picks up the tab for $2,075 for each horse.

I recently was contacted by a large ranch in Elko County that wanted to buy two horses. We spent part of a day working out several horses to pick from and had them priced from $1,200 to $2,000, the going price, only to be informed days later that they had bought two head at the BLM sale for $125 each. There were 5,937 horses that was put out for adoption in 1997 by the BLM for $125. We cannot compete.

Ladies and gentlemen, you have a difficult task and will have to make some tough and unpopular decisions. The most important decision you can make in my mind is to give the authority to the government agencies to sell the excess horses to the highest bidder. Give them sales authority and the major problem with management of the wild horses will be solved.

Good luck and I offer my assistance at any time.

Mr. HANSEN. Thank you, Senator.

Would you hand the mike down to Assemblyman Carpenter, who will be our next speaker. Mr. Carpenter.

[The prepared statement of Senator Rhoads may be found at end of hearing.]

STATEMENT OF ASSEMBLYMAN JOHN CARPENTER, NEVADA ASSEMBLYMAN

Mr. CARPENTER. Thank you. For the record, John Carpenter, Assemblyman, District 33, representing Elko County, and I want to thank the Committee for being here and listening to this testimony.

I think that after 27 years, maybe finally we are starting to turn the corner on what has been a very serious problem, especially in the state of Nevada. Last session of the legislature, we passed legislation that requires our Wild Horse and Burro Commission to come up with a Nevada plan, to put the Nevada brand on a plan for the management of wild horses.

I would just like to take a couple of seconds and say that I have had a lot of experience in wild horses. When I was growing up as a young fellow down in Ely, where my uncles had an allotment. We had two or three bands of wild horses on there, but we managed them, we kept the numbers down. Our neighbor, he had 1,000 wild horses and never did sell any of them. You can imagine what the range looked like. So at a young age, I learned that you have to manage the horses. We love the horses, we want them out there, but they need to be managed so that they do not destroy our range. I believe I was the first person that ever used a helicopter to gather wild horses. So I think that I have had experience through my lifetime to be, hopefully, a so-called expert on it.

I believe that the Wild Horse Act has been gutted through misdirected regulations, through judges who did not understand the west, did not understand the wild horses, we have practically rewritten the law. As Dean Rhoads said, I think that Congressman Baring would turn over in his grave if he knew what had happened to his Wild Horse Act. It was not too bad of an Act as originally written, but we have gotten completely away from it.

I think that we have to get the numbers established on these wild horse areas. The Bureau has established some of these numbers on some areas, but they do not have them all. And I heard Mr. Abbey say, you know, maybe in 2001 or 2002, I think we need to put a priority on this and get it done within a year. If we can get the numbers set, then we need to gather the horses down to that number. What is happening now, they go out and they gather the horses but because they say that anything over 9 years of age is unadoptable, they turn them back out. And so in some areas, there is darn near as many left after they gather as there was before. This does not make any sense. We need to gather them down to the appropriate management level. I do not think anybody has a problem if we would gather them down to that level.

And the horses that are left there should be from the same bands—horses have great family instincts. If you gather a bunch of horses into a corral and there is room enough, in just a little while, they will all be there within their family units. We need to leave these family units out on the range. It does not make any sense to bring all these horses in and to start picking them out and start to destroying these families. That is what is happening to our

country now, we are destroying families, and we are doing the same thing with the wild horses. We need to leave the best families out there, the ones that are able to make the best living, the ones that look the best, we need to leave them.

And then after we have done that, after we get the horses down to a reasonable level, then we need to, I believe, start using some cooperative agreements. I believe that there are a lot of groups out there that if you had the horses in a certain area down to appropriate levels, there are a lot of groups out there that could keep the numbers down—wild horse groups, wildlife people, ranchers, horsemen's organizations, even some counties would be glad to help on this situation. I think this is the only way we are going to be able to cut these costs, and that is to get everybody involved. Like if you are supposed to have say 50 or 75 head out on a certain area, it does not take too much to go out there every year or so and take 10 or 15 percent of them. You do not have to do it with a helicopter all the time. You know, some guys still like to play cowboy and go out and rope one or two. Or you can water trap them. And it is not a big deal. But what happens when the Bureau lets them build-up to 600 or 700 or 800 head and there is only supposed to be 75 there, we know what is happening to the range. And then they go out and they gather and maybe they are going to gather them down to the 75 head, well they gather them all and then they turn 500 more out because they will not be adoptable, according to their standards. This is wrong.

And then those animals that are unadoptable and after they have been in the holding facilities for a certain length of time, we have to put these animals to sleep humanely. I believe that we are doing that with the other animal populations in this country. If we did not, we would be absolutely overrun with dogs and cats. We need to apply the same thing to the horses. And it is going to be a tough deal. There is nothing worse that I have had to do in my life than to destroy a horse, but sometimes you have got to do it if we are going to be able to get this program where it is manageable. After we get it down to where the numbers are where they should be, there are going to be plenty of people to adopt them, but we need to make those first critical, hard decisions.

Thank you people for being here. I do appreciate it. Thank you.

Mr. HANSEN. Thank you, Mr. Carpenter.

I will recognize members of the Committee for questions of this panel for 5 minutes each. The gentleman from American Samoa, Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I have a couple of questions. Mr. Abbey first, I do not know if you will be able to help me, but you seemed to be the expert just for the state of Nevada but not for the whole regional area on BLM. But I will give it a shot and I will understand if you are not able to respond.

Hearing from our other witnesses, Mr. Abbey, I get the impression with an $80 million program, we cannot even account for how many horses and burros we have out there. Is this just by some estimates or do we have an accurate accounting on this? Not just for the state of Nevada but for the whole region or the states that do participate.

Mr. ABBEY. The numbers of horses and burros that we have on public lands are estimates. In most states we have 3-year cycles where we go out and do census within the herd management areas to ascertain to the best of our ability how many horses or burros are currently living within the herd management areas. But in response to your question, they are estimates.

Mr. FALEOMAVAEGA. Are there any—I think maybe one of the things that we ought to also explore is to find out exactly the origin, how this whole thing came about. It was not because it was the will of our policymakers, this came about because of the grassroot support from children all over the country. And for some reason and perhaps because of the allegations made about the slaughtering of these wild horses. And so Congress turned around in 1971 and we enacted this legislation to protect them. Some 27 years later now, have we basically protected the wild horse? I mean they are not ending up in slaughterhouses now, are they, Mr. Abbey?

Mr. ABBEY. Well, I certainly cannot sit here and say that there are not wild horses that may wind up in slaughterhouses, but in response again to your question, the wild horse is not in danger of being extinct. The populations have increased substantially since the estimates were devised in the early 1970's. We estimate that there are approximately 43,000 wild horses on the public lands, which is a substantial increase since the passage of the Act.

Mr. FALEOMAVAEGA. On the basis that we have enacted this law since 1971, what do you honestly believe that we ought to do statutorily and how to go about doing this, or do you think that under the implementation of the Act, you can still promulgate regulations to provide for this control, because that seems to be the problem we have here? We have got the enacting legislation since 1971, but by way of regulations, we seem to get fuzzy on this. And is it true that some 32,000 horses cannot be accounted for since we implemented this program?

Mr. ABBEY. I think to a large degree that figure is a result of the system that we had in place for tracking horses once they were adopted. That system has been greatly improved over the last 5 years and I can guarantee you we can pretty much track every horse that has been adopted through the Bureau of Land Management's adoption program certainly in the last 4 or 5 years.

The Act itself, which was passed in 1971, is sufficient to address the many issues associated with the wild horse and burro program. And therefore, I am not going to recommend that there be revisions made to the 1971 Act.

Mr. FALEOMAVAEGA. I would like to ask Senator Rhoads to help me on this. You suggested selling excess horses to the highest bidder. What do you intend to do with these excess horses if it was put out in the private sector?

Senator RHOADS. Thank you. Well, I would think—when I send horses to the sale, I sell probably 90 percent of my horses on the ranch, on private treaty, but there is occasions that either the horses are not that—confirmation-wise—as well as they should be, they are lame or might have been born with crooked feet, I send them to the sales yard. And I usually do not go to the sales yard so I have no idea who buys them, but I assume that some of them

are bought by people that take them home and break them. Others are probably bought that ends up in the slaughterhouse. But that is just the thing that we have been doing for centuries. And we do have a soft spot in our heart, the horses that we ride and retire and they do a good job, we just let them die on the ranch. But we do sell a number of horses. In fact, my neighbor this week, today, is coming down to buy some of my horses because they are shipping a whole semi load to the sale because they are old and crippled.

Mr. FALEOMAVAEGA. One more question, Mr. Chairman, to Mr. Abbey. What is the BLM policy about these lame and crippled horses? Are they to be put to sleep or are they then sent to the slaughterhouse?

Mr. ABBEY. No, we do not send any horses to the slaughter house. We have the draft, which I would be happy to share with the Subcommittee here, policy that was approved by the National Wild Horse and Burro Advisory Board this past week when they met, addressing humane destruction of wild horses and burros. If I could, I will read from this, it says, "Bureau of Land Management authorized officer may authorize the humane destruction of a wild horse or burro with any of the following conditions: Displays a hopeless prognosis for life; suffers from a chronic or incurable disease or serious congenital defect; requires continuous treatment for the relief of pain and suffering; is incapable of maintaining a body score greater than 1 in a normal rangeland environment." And it goes on. I would be happy to make this available to the Subcommittee if you would like. Again, it is a draft policy that was presented to the National Advisory Board last week. It was approved by the National Advisory Board and so I would expect that this would come out in final very shortly.

Mr. FALEOMAVAEGA. Mr. Abbey, I would like for the record, Mr. Chairman, if the BLM would submit as much as possible how many horses exactly were sent to the slaughterhouse that was supposed to be under the auspices of the BLM's supervision. Thank you, Mr. Chairman.

Mr. HANSEN. Thank you. The gentleman from Nevada, Mr. Ensign.

Mr. ENSIGN. Thank you, Mr. Chairman. Just a couple of questions.

First of all, at least in an article, Pat Shea had said and Bob, you had talked about that the estimate on the horses, you were not really exactly sure and he said at least in this article that the estimate could be much higher, not just a little bit higher, but much higher. Do you have any feel for how high the number may be?

Mr. ABBEY. Well again, we are fairly comfortable or confident in the estimates that we have come up with for the herd management areas in Nevada. I will say this, that based upon our estimates we are projecting that the populations in Nevada are increasing approximately 24 percent per year. Now given that, it would not take but 3 or 4 years before that population would double in size. So it is very important that we maintain significant gathers to remove excess horses off the herd management areas. We have estimated that there are approximately 22,000 horses and burros on herd management areas in Nevada. We are also presently working with

the Air Force through technology that they have, to try to see if there is additional information that they can share with us from some of the work that they are doing to validate the number of wild horses on our herd management areas. We should have some pretty good information from the Air Force within the next, I would say, 2 to 6 months.

Mr. ENSIGN. You said earlier that the 1971 Act is adequate. Given the current situation with the way it is being managed, you said that the population can double. Can you just comment on what is going to happen when the doubling does take effect if indeed the current situation stays the same, it doubles—what is going to happen to some of these riparian areas, what is going to happen—you know, basically across the board ecologically, but also what is going to happen to the animals, especially if we run into some drought years like we had. I have never seen this state so green as it is this year, but this is an unusual year. What is going to happen in normal years?

Mr. ABBEY. The moisture certainly makes us all look good in land management. The accurate response to your question is that there would be severe suffering on the part of the animals if there continues to be overpopulation of the horses. As a result, you would also see significant degradation of the natural resources including riparian areas. The horse, just like any other animal, is going to search for food and they will eat what is available to them at any place on the range. And therefore, unless there are continuing efforts to reduce the population of the horses and bring the numbers down to appropriate management levels, I think you would see some suffering on the part of the animals themselves and certainly degradation to the natural resources.

Mr. ENSIGN. I would like you to also comment, there has been brought up about, you know, I guess when Darwin wrote his theory of natural selection and survival of the fittest, what we seem to have here is an unnatural selection and survival of the unfittest, because the fittest are being adopted out and now we have the unfittest left on our public lands. Can you just comment on the BLM and what your experts are telling you what is happening to the gene pool?

Mr. ABBEY. We are trying to use our best judgment at these gather sites so that we can leave fit horses out on the range to continue a viable healthy population of horses within the ability of that resource to sustain that herd. We do have a policy in place that prevents us from removing excess horses that are 9 years or older to put into the adoption program. So horses that we are gathering out on the range that fall within that category, that are 9 years or older, we are leaving out on the range and we are taking the younger horses for the adoption program.

Mr. ENSIGN. But what is going to happen long term to the gene pool?

Mr. ABBEY. Again, what we are trying to do is to ensure a viable healthy population of horses by leaving sufficient stock and quality of stock out on the range so that we do not end up with just a bunch of older horses out there that would basically create deficient——

Mr. ENSIGN. The reason for my question was that is not the reports that I am hearing back. The reports that I am hearing back are that these animals are not the fittest, you know, that there are not enough of them and the gene pool is deteriorating dramatically.

Mr. ABBEY. Well, I do not think it is deteriorating dramatically, I think that is an overstatement. Again, I think that we are doing our best to make sure that there is a viable population of good stock of wild horses left on the range.

Mr. ENSIGN. Thank you, Mr. Chairman.

Mr. HANSEN. Mr. Pombo.

Mr. POMBO. No questions.

Mr. HANSEN. Mrs. Chenoweth.

Mrs. CHENOWETH. Mr. Chairman, I do have a couple of questions. I wanted to ask Mr. Abbey, you said, or I understand that most of the gathers are done by helicopter?

Mr. ABBEY. Yes, ma'am.

Mrs. CHENOWETH. Has the BLM really given much thought to having some sort of a private gathering because as I understand it, helicopter, the rotor really upsets the horses.

Mr. ABBEY. It certainly adds to their stress level.

Mrs. CHENOWETH. Have you thought about having some sort of a partnership with private ranchers on the gathers?

Mr. ABBEY. We are certainly interested in any proposal that we get from ranchers or anyone for that matter regarding reducing stress on the horses during a gather. I was certainly interested in Mr. Carpenter's statement and I certainly support what he stated, that there are opportunities for us to work very closely with counties, ranchers and many other entities within the state, not only this state but in every state, to gather horses and to do so in a more cost-effective manner. It is certainly something that we would be interested in working with our Resource Advisory Councils regarding those recommendations and we would entertain any proposal from anyone in this state that would be interested in working with us to help us gather excess animals.

Mrs. CHENOWETH. I was interested in Mr. Shroufe's testimony about the increase and I saw in Mr. Rhoads' testimony, one of the enclosures, was a graph that showed down here the AMLs, but up here actual levels of wild horses and in some years it has tripled the AMLs and so with that in mind—and I assume this comes from the BLM.

Mr. ABBEY. If that is not our chart, we have one very similar to it.

Mrs. CHENOWETH. All right. We have an endangered species that is listed here, the tortoise, some tortoise that is listed down here in Nevada. How does the increase in the wild horses affect those endangered species? There are also some other endangered species that cattle and the AUMs have been managed according to the endangered species? How does an increase like this, sometimes tripling the level, affect the endangered species?

Mr. ABBEY. If there is a significant increase in the number of horses or livestock for that matter, within those desert tortoise habitats, there certainly is cause for concern. In the case of the desert tortoise, we have prioritized those areas, those habitats, and have achieved or at least established appropriate management lev-

els within all of the desert tortoise habitat and we are—if we have not achieved AML in each of these desert tortoise habitats, we are rapidly working toward achieving AML within those with endangered species—so that we can protect the endangered species.

Mrs. CHENOWETH. Based on this graph, one would assume that if there are units that we have not achieve the AMLs, they would not be large in number, would they? Because this graph indicates right now a population of two to three times the amount of the carrying capacity.

Mr. ABBEY. We have achieved AML in many of the herd management areas to date.

Mrs. CHENOWETH. OK. And just one final question. In your determination with regards to how you manage certain units, the AMLs and how you make that determination, do you make a conscious decision to reduce the AUMs based on the AMLs?

Mr. ABBEY. The multiple use decision process that we use to establish AML—we also use that process to establish the carrying capacity of that range to support livestock and also to provide estimates of what the range could support to the Division of Wildlife for their use in setting numbers for wildlife. The total number of Nevada animal months authorized presently is 1,566,266 and this includes cattle, horses and sheep. There has been, at least in 1998, there has been a reduction of approximately 22,500 AUMs based on the carrying capacity of the range, but not all the reductions are the result of establishing AML. Some of those reductions—in fact, there is a proposed reduction in the Elko District Office of the Bureau of Land Management as a result of a proposed land exchange. Allotment evaluations also result in increases in AUMs. For instance, the number of AUMs authorized in 1997 was an increase of 50,600 over the previous year. So we do fluctuate in the number of AUMs that are authorized.

Mrs. CHENOWETH. So when the herd rises two to three times above the AMLs, then you are still reducing AUMs based on the numbers in the herds, right?

Mr. ABBEY. Yes, ma'am, there could be a reduction in the number of AUMs on that particular allotment based on overgrazing by not only livestock but overgrazing by—or at least—I will not use the term overgrazing, but grazing over and above the proficiency of the range to support that grazing. And we would also hopefully go in and reduce the number of horses on that same allotment. That has not always been the case.

Mrs. CHENOWETH. I would hope you would too, sir. Thank you.

Mr. HANSEN. Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman. Mr. Abbey, does the BLM have a written policy on the selection gathers?

Mr. ABBEY. Yes, sir, we do and I could certainly make that available to you.

Mr. GIBBONS. Would you make it available this week to us?

Mr. ABBEY. We sure can.

Mr. GIBBONS. Thank you. Mr. Abbey, you also heard Senator Rhoads talk about a private cooperative management with BLM oversight, which could effectively reduce the cost to the taxpayers for much of the management and gathering of these wild horses. What is your position on his proposal?

Mr. ABBEY. Well actually right now, Mr. Gibbons, we are looking at a proposal that has been brought to our attention from a ranch in Arizona to use those ranch lands for placing horses after being processed at the Palomino Valley corrals here in Nevada. We would ship those horses to this ranch in Arizona where they would be placed until the adoption cycle can pick up so that people can begin adopting those horses.

Mr. GIBBONS. Well, that is the adoption cycle and I understand that very well, but I was thinking more of the habitat management, range management with wild horses using private entities to ensure that there is proper management with just BLM oversight of that proposal is I believe what Senator Rhoads has indicated earlier, not the adoption process and the distribution that he talked about as well, but the management of the wild horse habitats and the management of the horses themselves being run by the private sector.

Mr. ABBEY. Given the significance of the issues that we are facing in this program, we would certainly entertain any proposal that Senator Rhoads or others would present to us regarding such partnerships. We would weigh those proposals based upon the provisions of the Act itself, what we are allowed to do either by the Act or by policy and then we would certainly weigh the cost benefit associated with the proposal to see if it makes sense.

Mr. GIBBONS. Mr. Abbey, you mentioned also and submitted a copy of a draft policy on wild horse management practices. Are you going to open that policy up for public comment as well?

Mr. ABBEY. Well, the—you are talking about the one that I just passed up there?

Mr. GIBBONS. Yes, sir.

Mr. ABBEY. Quite honestly, Mr. Gibbons, I do not know what the intent is. It is out in draft, it was presented to the Advisory Board, the Advisory Board reviewed it and they made recommendations to the Director that it should be adopted. Given that, I am not aware of any plans to go out for public comment regarding that policy. I would say this, that the policy itself is consistent with the 1971 Act.

Mr. GIBBONS. I have also heard you talk earlier about your support for the status quo of the 1971 Act without any amendments or changes, even though we have seen in testimony either through you or the other gentlemen here that there are a number of problems both in the management, herd size, habitat management, expense of managing all these horses. I am perplexed why the administration either through the BLM or Department of Interior has not proposed changes up to this point that would remediate those concerns and wonder exactly why you want to hold the line to the status quo rather than moving forward with sound innovative science and solutions to these problems that could be effected through legislation.

Mr. ABBEY. Well, not knowing what may be proposed through legislation, it is hard for me to address what might be. But I——

Mr. GIBBONS. Well this begs the question, why do you not propose the legislation.

Mr. ABBEY. I think that there are sufficient flexibilities within the 1971 Act that would allow us to address the many issues asso-

ciated with wild horses and burros on public land. The actions that we take on the public lands have come about through an awful lot of public involvement and certainly public input regarding the policies that we are adhering to relative to management of public lands—excuse me, wild horses on the public lands.

So we believe that staying the course and given the sufficient funding to gather the number of excess horses—as Mr. Carpenter pointed out, once we achieve AML on public lands, I think that would be the biggest hurdle that we have facing us regarding this horse issue. And once we achieve AML—based on the estimate that I have been given for Nevada—all we would need to stay consistent with the AML is gather around 3,000 to 3,500 horses per year.

Mr. GIBBONS. Mr. Chairman, let me say, as my time has expired here, that reaching a 27,000 AML over 27 years seems to be an elusive goal that has not yet been met by the Bureau even though a quarter of billion dollars has been spent in that effort. I am not sure how long, how far and how much we are going to have to go to reach that appropriate management level, but we certainly need to do something in order to achieve that goal. And thank you for the time.

Mr. HANSEN. Thank you.

Mr. Shroufe, you pointed out that you are Director of Fish and Wildlife in the state of Arizona. That means, as I understand it, that you have complete care, custody and control of all of the animals within the state, is that right?

Mr. SHROUFE. Mr. Chairman, that is correct, the wildlife animals.

Mr. HANSEN. Wildlife.

Mr. SHROUFE. Wildlife, that is correct.

Mr. HANSEN. Now these are wild and free-running burros that you have got down there and I assume some horses, but you do not have any control there?

Mr. SHROUFE. We do not have any control over those, those are all governed by the 1971 Act.

Mr. HANSEN. So what do you do as Director when they——

Mr. SHROUFE. Well, we depend on cooperatively working with the BLM and trying to ensure that those populations first are in line with the goals that we set and second that they are not harming the habitat.

Mr. HANSEN. In effect, if they somewhat ruin habitat for other types of wildlife, what do you do?

Mr. SHROUFE. The only success we have had so far has to do with when we get a biological opinion on an endangered species, then the BLM is more apt to prioritize that and take some action against that. But when it comes to degradation of the habitat for mule deer or just other general wildlife species where there is not a Federal hammer hanging over their head, it seems like it is not a priority, and I say that probably in a lot of unfairness because they are strapped by funding. We just need more funding to help us out of this management hole that we are in. And I also testified that I guess I felt that the Act is not broken, we just need to administer the Act and we have not nearly administered the Act in Arizona to the degree that BLM has tried to administer it here in Nevada with wild horses, we have not got to first base on that.

Mr. HANSEN. It has almost been sacrosanct through the years that the local state manages the wildlife within the state.

Mr. SHROUFE. That is correct.

Mr. HANSEN. Fish, game, the whole nine yards.

Mr. SHROUFE. That is correct.

Mr. HANSEN. And now here we have made an exception, just like BLM now has an exception that they are managing a monument, the first one in the history of the nation, it's called the Grand Staircase Escalante, which is a rather sore point with me, but I will not get into it.

Anyway, carrying that on, I think the comment of our two elected officials here is interesting. You know, Senator Rhoads points out that possibly the unadoptables should be put on the market and say all right—and at that point the market, whoever buys them, does whatever they want to do with them, just like they do with cattle or sheep or chickens or whatever. What would you think—if I asked the two legislators here, what would you think if the Congress gave to the state the right to manage wild horse and burros with very limited parameters, what would you think you would do?

Senator RHOADS. I think that No. 1, we would ask for sales permission. You know, contrary to public opinion, there is a lot of wild horses out there today that are actually being ridden for saddle horses, and some of them are even showing some wild horses. So 100 percent of your wild horses that goes through the process of sales authority would not end up being slaughtered, I am sure. We would manage down the numbers. I have never talked to one rancher that wants to see 100 percent of the wild horses taken off of the map, it is the prettiest thing you can see, a bunch of wild horses or my stud bunch up there on the skyline with the sun setting and so forth. So we would manage them down to the appropriate level but we would have to have sales authority to do it, I am sure, and we would probably put up some vistas and interpretive centers and so forth. But we would like the numbers down to where it is manageable.

Mr. HANSEN. Senator, I think the key words that you are bringing up is you said you would manage them to an appropriate level. In other words, you are telling us there would be a cost benefit in here, there would be a range benefit in here, there would be a benefit for the public to see these horses, type of thing. Rather than just say whatever it is we are going to pay it.

Senator RHOADS. Yes.

Mr. HANSEN. And by that, I would also assume that you would cull the herd if old and sick ones were there and that you would reduce it to the amount that you could manage on a certain range area and that they would probably have veterinarians look at them and take care of them and all that type of thing. Would that be a correct statement?

Senator RHOADS. Oh, very definitely. We would manage them just like we manage our cow herds today.

Mr. HANSEN. Mr. Carpenter, did you want to respond to that?

Mr. CARPENTER. I certainly basically agree with what Senator Rhoads has said. I just think that the state could do a much better job of managing the horses than the BLM has or the Forest Serv-

ice, and I think cooperatively with all of the entities in Nevada working together that we could get a handle on this in a short period of time. We either have to have the right to sell the horses or we have to have the right to, like I said before, to put the unadoptables to sleep. But I think that we could do it and I think that we could probably do it with much less cost than the BLM is doing it. Another thing Senator Rhoads mentioned is interpretive centers or whatever, I think that is very important to have that. The way it is now, people that are interested in wild horses, they do not know where to go to view these animals. They are riding down the road and most of the time, you know, when they have got enough job to keep the kids quiet and keep the car on the road, let along to look for some horses. But if they knew where to go and these horses were managed properly within these centers, I think it would be a great thing for the people that really appreciate those horses.

Mr. HANSEN. How do you think the Senate and the General Assembly would respond?

Mr. CARPENTER. I believe that we would respond very favorably because like I said before, we had a bill adopted to come up with a Nevada plan and I think it passed unanimously, and I think it is a problem we have here in Nevada and I think that Nevadans are used to taking care of their own problems.

Mr. HANSEN. Mr. Abbey, it is kind of sacrosanct in this country if I read the Constitution right, the private property. What do you do if you get wild horses on private property that you folks, Federal Government, BLM, is responsible?

Mr. ABBEY. If the private landowner has such horses that have crossed from public lands onto private lands, all he has to do is give one of our closest offices a phone call and we will go gather that horse or the horses.

Mr. HANSEN. And if there are horses on his property, say he has a very large ranch, you will go out on that ranch with his permission and remove those horses, is that right?

Mr. ABBEY. That is our standard policy.

Mr. HANSEN. Have you ever done a cost/benefit analysis on what this wild horse thing costs us per horse?

Mr. ABBEY. I have not done one personally but I can tell you that it is not cost beneficial. There is quite a bit of subsidy associated with this program. We have never tried to hide that fact. Again, what we are doing is following the law and the policies that have been enacted by the Bureau of Land Management as a result of public input.

Mr. HANSEN. Cannot argue with that, I think you are right, but there is no cost benefit and there is a huge subsidy here.

Mr. ABBEY. There is a huge subsidy.

Mr. HANSEN. Sometime Congress is going to have to come to grips with the Endangered Species Act, the Horse Act, things such as that. When you are going to put out $200,000 per desert tortoise in an area, that gets awfully expensive. But anyway, that is just my own humble opinion, it does not matter here.

Thank you. We thank the panel for your very interesting comments and we will look forward to your written statement. One thing as I read your draft here that you just submitted, it does not

say a thing about adoptables, which worries me a little bit. Was that brought up when you discussed it?

Mr. ABBEY. I was not at the meeting, but I can tell you that the older unadoptable horse is the biggest challenge that we have in this program—what do you do with those older unadoptable horses.

Mr. HANSEN. Thank you so much for your testimony, we appreciate it and we will excuse this panel and call our next panel.

Our next panel is Anthony Lesperance, Ph.D., Elko County Commissioner; Rey Flake, Lincoln County Commissioner and John Balliette, Eureka County Natural Resources Manager. Have I got that all right? I hope I did.

Commissioner, we will start with you, sir.

STATEMENT OF ANTHONY LESPERANCE, Ph.D., ELKO COUNTY COMMISSIONER

Mr. LESPERANCE. Thank you, Mr. Chairman, members. My name is Tony Lesperance, Commissioner, Elko County.

I would like to take a little different tack in this. This statement presents factual data obtained entirely from the BLM sources, be it the web page or FOIA requests.

Initially, Congressional funding for this program remained low, first exceeding one million dollars in 1975. Funding remained below $6 million annually until 1985, when it jumped to over $17 million and it has remained in the $15 million to $17 million range ever since. To date, Congress has spent $246 million on this program. I guess one could logically ask has the expenditure of nearly one quarter of a billion dollars of taxpayers' money resolved the horse problem by achieving the stated BLM goal of obtaining the appropriate management level or what is known as the AML, which means a stable population of 27,000 animals.

The first year of agency reported numbers was 1976 when the population was estimated at 60,100 head. That number remained nearly constant through 1984. A significant increase in the appropriation occurred in 1985, which resulted in a decrease in numbers. However, since 1987, the decrease has been minimal.

Data from the estimated year end horse and burro population is presented in what you have before you in table 2. In an attempt to understand the significance of data in table 2, four mathematical representations of the set of data were considered. The best overall fit of a mathematical expression of the data was obtained using logarithmic equation. What this indicates is that as the population approaches the AML, the more difficult it will become to obtain the AML. The 1976 determined level of horses and burros was 60,100 head. The stated AML was 27,000 head. The 1996 estimated year end population was 42,138 head. Thus, after 21 years, some 54 percent of the goal has been obtained. If these data were indicative of a straight line regression equation we could assume in about another 20 years of reduction at the present rate of budget allocation, the AML goal would be attained. However, the data indicate that this is not a straight line relationship, that in fact every year the goal becomes more difficult to attain. The above equation is telling us plain and simple the stated AML goal, given the present parameters will never be attained.

Between 1976 and 1996, some 164,581 animals have been removed for an average annual removal of 7,837 head. Initially, this level of gather seemed to bring the population down, but as the data in table 2 clearly indicates, its effect is becoming less and less with each passing year. Congress tripled appropriation for the program in 1984, going from $5.8 million to $17 million. During the following 3 year period, some 40,606 head were removed, yet the year end population decreased only 17,000 head. It is common knowledge that when numbers of any population are reduced, there is a tendency for that population to increase its reproductive rate. Sometimes the remaining population will simply be younger, more dynamic, resulting in a better rate of reproduction. Sometimes it is a built in function of the population being more in balance with its ecosystem. Regardless, it would be very predictable that the free roaming horse and burro population of the western states would significantly increase its reproduction rate after some 67 percent of the population was removed over a 3-year period, and apparently that is precisely what happened.

If numbers are to come down to the AML, the projected numbers for removal will have to be increased if the goal is ever to be attained. Practically, can this be accomplished with the bureaucracy associated with a Federal organization such as the BLM? An examination of the budget for the program for the period of 1990 to 1994 suggests why this will be difficult to accomplish, which appears in your table 4. In 1990, some 20 percent of the budget for the program was spent on overhead, but by 1994, this had increased to 33 percent of the budget. It is predicable that the bureaucratic cost of operating the program will escalate to the point that annual gathers will decrease in numbers so that year end populations will likely start increasing. It is obvious that the Wild Horse and Burro Act will never be able to accomplish the AML goal of 27,000 head without significantly increasing Congressional funding. Further, it is also obvious that maintenance of an AML will not be accomplished, if ever attained, without significant longstanding financial support.

The cost of removal of a single horse since the inception of the program is now nearly $1,400 per head, which will only continue to escalate. At some point, the patience of the average American taxpayer must be considered. As a taxpayer as well as a county commissioner, I must strongly urge you to realistically consider alternative concepts such as privatizing the gather and simply using the BLM for licensing and overseeing. Provisions could really be made for a dual program of adoption and humane disposal to cover the cost of operation. The Congressional management of the wild horse and burro program is typical of the many resource problems faced in the west today. It represents an attempt by Congress to micro-manage a few million dollar problem that could be managed far more effectively at the local or state level.

A very effective argument can and has been made over the very ownership of these animals and that argument does not support Federal ownership. They are wildlife within the state and in Nevada, wildlife is the property of the state. Perhaps the real question for Congress to resolve is not the management or the cost of the management of these animals, but in fact to determine what truly constitutes a Federal feral horse or burro. Correctly resolving that

issue will go a long way to removing the frustration this program has caused for Congress to date.

Thank you.

Mr. HANSEN. Thank you, sir, appreciate it. Commissioner Flake.

[The prepared statement of Mr. Lesperance may be found at end of hearing.]

STATEMENT OF REY FLAKE, LINCOLN COUNTY COMMISSIONER

Mr. FLAKE. Thank you, Mr. Chairman. My name is Rey Flake, I am a Commissioner in Lincoln County and I thank you for the opportunity to address this Committee and I thank you for your interest in the public lands and for making this attempt to come to the west to have this hearing.

I am a fifth generation rancher—at least five generations that I know of, of my ancestors have made their living off the land. They have passed a great legacy on to me and a great legend that we have talked about. I know that there is no way to have a viable ranching operation without healthy lands. Lincoln County is 98.2 percent public lands. Public land management has a great impact on Lincoln County and our ability to provide services to the people that reside within our boundaries. I have at least two generations following behind me in the ranching business.

The other day, I went to a branding with my sons and we took a break. I noticed that there was seven boys there from 10 down to one and a half, that was involved in what we were doing. The realization came to me that among these young boys not only the future of the livestock industry but the future of healthy viable resource management was there. If we do not bring them up with a love for the land and teach them how to manage well, then our nation and our resources are going to be the great loser.

I have a great concern for the direction that is being taken on public lands, a little AUM cut here and there that amounts up to a lot over the aggregate, over the total period. It amounts to our ability to be economically independent. I am able to perform services in my operation because I have the economic ability to be there.

Wild horses and burros, it is amazing to me that since the Wild Horse and Burro Act of 1971, all of the players that seem to know how to manage wild horses and burros were immediately set aside and forgotten and a new team came in and tried to manage the horses and burros. We have not even identified how many the resource can handle—21 years and we do not even know what the appropriate AML is. The adoption program is slow and inefficient at best. It was reported to our Resource Advisory Council in March that over 6,000 head were in the adoption pipeline at a cost of nearly half a million dollars a month. Today, there are still over 4,000 in there with a great cost.

Correct science will show that there is a limit to what the resource can handle. The adoption program states that if we cannot adopt the horses, we turn them back on the range. We are letting the adoption run the whole program and not the resource. If I had a pasture that would run 40 cows and I put 80 cows in that pasture, I know that in a short time I am going to use up all the avail-

able feed. Then I will not be able to go back to the 40 cows, I will have to completely remove the cows until new feed is grown and so I can go back on there with an operation. We should understand that our whole horse program is in jeopardy if we cannot control them to manage and take care of the resource. We must check the direction of the whole wild horse and burro program. If you are trying to find a point with a compass, if you are two degrees off when you start, when you get out there 100 miles there is a wide gulf between where you were trying to go and where you end up. We must continually recorrect the course and redirect our area, and this has to be done through help from local people.

What are we trying to accomplish with the wild horse and burro program? Is this truly to be a legacy of the old west? I find it offensive that people think that my ancestors did not manage better than what is being managed in the wild horse and burro program, that we just turn them loose and let them run wild and do not take care of them. We have created a bureau that has accountability without—that has authority without accountability or responsibility, the fact is a whole department. Nowhere is that more apparent than in the wild horse and burro program.

This program has to be a resource driven program and not an adoption driven program. The BLM needs to have sale authority if only on a one time basis to achieve appropriate management levels. It is estimated that in the Ely District there are presently about 2,000 head over AML and about 13,000 head over in the state. We must control the numbers. We have got to manage, we must have a quality program and not a quantity program. We should involve local government and local permittees. I believe we should allow the permittees in some areas to control the horse numbers under the direction of the BLM. This could be done on a trial basis with a few ranchers at a great savings to the taxpayers of this nation.

We need to consider the idea of having one or two herds of horses in each state. These could include, as has been said, interpretive centers, a place where people could park their RVs and come to center their vacation around and learn about horses and be involved in horses and gain more enjoyment from their horses and then we would truly begin to develop a legacy of the west.

Ranching on public lands is also a legacy of the west. Let us consider the preservation of this legacy. I want my children and grandchildren to enjoy the same blessings that I have enjoyed from living close to the land. It is going to take us all working together to accomplish this. I hope that we can.

Thank you.

Mr. HANSEN. Thank you, Commissioner. Mr. Balliette.

The prepared statement of Mr. Flake may be found at end of hearing.]

STATEMENT OF JOHN BALLIETTE, EUREKA COUNTY NATURAL RESOURCES MANAGER

Mr. BALLIETTE. I brought some photographs. These are copies and if your Committee would like to have them for future reference, I would be happy to leave these with you. A photograph says a thousand words. Ray touched on it a little bit, I would like to talk about accountability also.

In the winter of 1993–1994, we had an extensive snow followed by a lengthy cold period. This animal died standing up trying to punch his way through a snowdrift. This is an animal that died right alongside the Railroad Pass, the road that connects Jiggs, Nevada with Diamond Valley, this animal was very weak. Notice the damaged sagebrush up here, they had tramped it and eaten it. Sagebrush is not a nutritious nor palatable forage plant. This animal, weakened by starvation could not make it over a berm left by a snow plow, died right next to the road. Here is another one, a mare and her colt, this is the south facing aspect with the rocks there. The snow would melt a lot faster here than in the adjacent areas. The mare undoubtedly drawn down by starvation and then she had the added effect of nursing a colt. Well, the mare died first and you can see where the colt had tried to suckle the dead mare before he finally died.

In terms of accountability, if I owned those animals, my accountability would be I would probably have animal violations charged—filed against me, you know, and rightly so. I am not suggesting that we should start filing charges against BLM folks, but I really feel strongly that when we have these die offs like have occurred twice in the last 5 years, Railroad Pass, Long Valley, several other places in central Nevada, 2 years ago at the Nellis Air Force range. When these die offs happen, we should take a review of this and say hey, was there some information we could have collected that would have, you know, predicted that this was going to happen, could this have been avoided? Are people collecting all the information necessary to make management decisions? And if they find some folks that are not—that may be in some way responsible for this, perhaps their talents should be used elsewhere besides the horse program.

In my written testimony I talked about Fish Creek allotment and what happened there when BLM does not stand up to their end of the bargain for multiple use decision. This is winter fat, this is the plant I told you about in my testimony. Winter fat is this gray-green shrub here, and it is probably—I will defer to the nutritionists, but it is probably the most nutritious and palatable range plant that we have as far as a native plant in central Nevada. It is also highly desired by livestock, horses, wildlife. This photograph was taken in August and this is about the time the winter fat has the majority of its growth and it is also previous to use by horses. When we went back in in February, there is a close up and this is a general view, and you can see that there is virtually nothing left. This is solely due to horses. The horse appropriate management level is 75 head. When they flew this in January of this year, I believe the number was 230. There is still approximately 500 head of horses on the entire HMA.

The accountability part that really bugs me about this is that the livestock industry, it has been pounded into them, you cannot treat Federal lands like this. If you do, you will be decisioned, your numbers will be reduced, your season of use will be changed. This is solely due to horses, there have not been livestock since the decision was issued in 1994. Basically, you know, the way I look at things is that we as citizens are being held to a higher level of ac-

countability to agency decisions than the agency that issued the decision.

When you look at this, the problem is simple, it is too many horses. This is not rocket science here, you know. The solutions that we have presently are not working. We have an adoption program that seems to be the tail wagging the dog here, and it cannot handle the excess numbers that we are generating as far as horses. I heard mentioned recently—earlier—of fertility control. On this particular allotment when the Bureau did their analysis for a fertility program, they estimated it will take 9 to 13 years to reach AML with the implementation of fertility control. The problem is this degradation is continuing, it is continuing as we speak.

Just to give you an idea, these are utilization cages. A utilization cage is used supposedly to protect vegetation. You can see here where the horses have tramped down the cage and then the uneven level of vegetation. Well that is what lengths they went to get something to eat there. And it is still pretty bad. The biologist in me, this is what scares me the most and this is a winter fat site that is now a collection of Eurasian annuals such as halogeton and clasping pepper weed and various mustards. We have converted a very productive site to a patch of weeds that are not very productive.

One of the solutions I hope you would consider is sale authority. I envision a different type of sale authority, limited sale authority where when we have vast—well, when we have population numbers that greatly exceed AML where we are doing damage to the range resource, that is an emergency and it requires emergency action and perhaps to go back in and sell some of the excess numbers right there once you reach AML, then sunshine sale authority.

I see I am out of time.

[The prepared statement of Mr. Balliette may be found at end of hearing.]

Mr. HANSEN. Thank you. I recognize the Committee for 5 minutes each. Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

As I listened intently to the testimonies that were given previously as well as our friends now before the panel, I think we are beginning to lose what really was the essence as to why this Act, how it all came about with Wild Horse Annie and the thousands of children across the country, because of the indiscriminate slaughtering of horses that ended up in the slaughterhouses and became a major aspect of the pet industry. And I think this is really the essence. You know when we talk about Gene Autry and Hopalong Cassidy and Roy Rogers, bless his heart, who just passed away, and John Wayne—we all romanticize the idea that horses are pets, they are not like cattle that we eat and consume. And so we come to this—now look at this situation, we could not have asked for a worse agency to manage horses because they are not experts in managing horses. And I am talking about the Bureau of Land Management, with all due respect. It just happens to be that horses were incidental to the public lands which is owned by the Federal Government, administered by the Bureau of Land Management, so they had to come up with some kind of a program. And now we end up with a $247 million expenditure in the 27 year pe-

riod that we have not even accomplished doing that which we were trying to do, to protect wild horses and burros and to continue the pioneer spirit that horses were a beast of burden, they were really a help to man. And I do not know if my colleagues are aware, I am sure they may be, and members of the public here, horse meat is found in the most expensive restaurants in France and New York and Paris. When we talk about consuming horse meat, you do not want to hear that in America. And I think this is really the bottom line. We talk about slaughtering horses and we put them to sleep, because we treat them almost like fellow human beings, or are they to be used for economic reasons. I am very curious what percentage of horse meat goes into the pet industry, the pet food industry—what it was 27 years ago and what it is now. So I think this is really the bottom line issue that I would like to pursue.

And gentlemen, do not get me wrong, I really, really appreciate your testimony. Mr. Balliette, I think you hit it right on the nail. You have reaffirmed the fact that we just have done a very poor job in managing what millions of children, hundreds of thousands of children throughout America just did not like the idea of indiscriminate slaughtering of horses, as a sentimental value—and I for one look at horses almost as a fellow human being, and this is really the crux.

Now it has been suggested that we ought to give it to states to manage our wild horses. It just happens that these horses are not on state lands, these are on Federal lands. So I raise that question, Mr. Chairman. I do not have any questions of our witnesses, but I would like to add I want to thank you for your testimony.

Mr. HANSEN. Thank you. The gentleman from California, Mr. Pombo.

Mr. POMBO. Thank you, Mr. Chairman.

Mr. Flake, you are a cattleman and we looked at figures of as much as $1,400 per head on management of these animals for every one that is removed. That seems way out of line to me in terms of management of livestock. Can you give the Committee an idea of what the annual cost is of an animal say on your ranch?

Mr. FLAKE. Our cost of operation is just a little over $250 a head on the ranch.

Mr. POMBO. So you would consider this figure high?

Mr. FLAKE. Absolutely, unreal.

Mr. POMBO. And am I to understand that you run cattle on public lands?

Mr. FLAKE. Yes, sir.

Mr. POMBO. What would happen if you managed your allotment to the degree of these photos that we have seen?

Mr. FLAKE. I would be out of business, both from regulation and also out of business because there is no way to handle a livestock operation without available forage, without available feed—it cannot be done.

Mr. POMBO. I would like you to explain the first part. You said you would be out of business because of regulation. What do you mean by that?

Mr. FLAKE. I mean that if I could not do any better job on the public lands than that, the Bureau would pull my permit and I would be gone.

Mr. POMBO. Because you overgrazed it?

Mr. FLAKE. Because I overgrazed and I overused the resource.

Mr. POMBO. So if you did manage that way and say BLM allowed you to continue to manage in that way, what would happen to your livestock herd?

Mr. FLAKE. It would be non-existent. They would die off. If I do not put some correct management to my herd, why I cannot stay in business, I cannot be economically feasible, I cannot finance myself there on the land any more.

Mr. POMBO. You say that the animals would die off, they would die off because of starvation?

Mr. FLAKE. Absolutely.

Mr. POMBO. Do you have any idea how long it would take an animal to get to the condition that—Mr. Balliette had pictures of animals that he claims starved to death. How long of a period of time are we talking about here that an animal does not have enough feed to get to that kind of condition?

Mr. FLAKE. To have them get to that kind of condition would take 3 or 4 months of absolutely no feed.

Mr. POMBO. Three or 4 months?

Mr. FLAKE. Well, it depends on the condition they were when they began to be stressed. If they were in fat condition, they could probably live off their back fat for 2 or 3 months before they went down. If they were thin and already stressed, then it is a matter of a couple of weeks before they are to that point.

Mr. POMBO. Obviously the public has a concern about wild horses, that is why the Act was passed to begin with. Do you consider that humane, to manage in that way?

Mr. FLAKE. I certainly do not and that is why I feel affronted when they talk about leaving wild horses out there in uncontrolled numbers and degrading the range and suffering theirselves as a legacy of the west. That is not the legacy that was passed on to me. My ancestors managed their land and they managed their livestock and they would never allow anything like that to happen.

Mr. POMBO. One final question for you. What would you do if you did not have enough feed to feed the horses and cattle on your ranch?

Mr. FLAKE. I would sell them. I might, for a short time, step out and try to buy feed to hold on, but usually that is futile, you are better to sell and get out and send them to slaughter or to somewhere where they can be properly taken care of. You do not just stay there and beat out the resource because then it is not going to come back and then you are not going to ever get back in business. You have got to make some moves to take care of the resource that you are living on.

Mr. POMBO. Thank you.

Mr. HANSEN. Thank you. The gentlelady from Idaho, Mrs. Chenoweth.

Mrs. CHENOWETH. Mr. Chairman, I have no questions. I just wanted to compliment the members of this panel for the quality of their testimony and for the addendums that you added to your testimony. It is very, very helpful, and the photographs were startling. Thank you very much.

Mr. HANSEN. The gentleman from Nevada, Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman.

I would like to start with Commissioner Lesperance if I may. Commissioner, we have heard testimony from the BLM, we have heard also testimony from you about the amount of money over the years that has been spent on herd gathers, herd management, the amount of money per year going from $5 million to $15 million or somewhere in that approximate figure. Is it your opinion that more money is the answer to this problem?

Mr. LESPERANCE. Well, it certainly is not my opinion that money is the problem. You folks can throw a lot of money at a problem, I have seen that on several other occasions, and you can sure throw a lot of money at this problem and you are going to have to throw a lot of money at this problem if you continue to operate under the same set of circumstances because $15 or $17 or $18 million is losing ground. I would suggest you are probably going to have to about double that, but I again remind you to look very carefully at the data in the back of my—the last table, table 4 in my presentation because it shows you the very problem and that is the bureaucracy of the BLM. The overhead management of this program is escalating logarithmically and will continue to do so. That is just common knowledge of how the bureaucracy operates, the more money you put in, the bigger the overhead becomes and you are creating a monster. And let me assure you if you ever get these numbers down to 27,000 head and you are going to manage them at 27,000 head using the Federal bureaucracy to do it, you folks better be prepared to cough up a lot of money for a lot years because that is what it is going to take.

Mr. GIBBONS. Dr. Lesperance, in your number of years that you have been either a professor at a university or a rancher or directly involved in business or in your role as a county commissioner, do you have any suggestions for this Committee on how to better improve the management and the cost effectiveness of that management for these herds of horses?

Mr. LESPERANCE. I think you have got to bite the bullet and you have got to go back to the local level. I think the only people that can manage this exist at the local level, and I believe strong county government can take a big step in this direction. I also believe the state can. And I view these as wildlife and I would also suggest you look very closely at the attachment to this under Exhibit A, and that is a legal opinion rendered by Zane Miles, Deputy District Attorney for Eureka County for a recent case which was just ruled in favor of the State of Nevada versus the United States in Douglas County. And that statement clearly indicates these are wildlife and they should be managed by the state and he goes through a number of very legitimate legal arguments in this—on this behalf. And I think we have to look at this very seriously and bring this back to the local level and I think we can do this.

These animals were managed rather humanely for a long period of time by local people. I am a product of that, raised a product of that. These animals were not hurt. The healthiest animals from a horse standpoint I ever saw on the public lands of the west were those that were managed humanely before this Act occurred.

Mr. GIBBONS. Dr. Lesperance, one more question. I heard my colleague from American Samoa talk about the fact that these are

wild animals on public Federal land out there in Nevada. Do we also manage other wild animals that range over public lands on a state level?

Mr. LESPERANCE. Do you mean you the Federal Government?

Mr. GIBBONS. No, the State of Nevada.

Mr. LESPERANCE. Oh, the State of Nevada owns the wildlife and manages the wildlife.

Mr. GIBBONS. On Federal lands.

Mr. LESPERANCE. Yes. And I might add that due to the recent court decision in Douglas County, we also own the water. And that may become a very critical issue in this argument as it unfolds.

Mr. GIBBONS. Thank you. Mr. Balliette, in the remaining time I have left, I think your point is that it is not total elimination of these horses that we are after, it is not cows versus horses, but rather it is proper and appropriate herd management levels, it is herd health and it is habitat health. Did that summarize your testimony?

Mr. BALLIETTE. Yes, it did.

Mr. GIBBONS. Do you have any suggestions for this Committee as far as achieving these goals?

Mr. BALLIETTE. One thing that—well, it goes back to the issues I brought up about accountability, when the Bureau fails to take an action to reduce horses to AML, their inaction is really an action and that inaction is causing environmental degradation and I believe that should be out for public review, either in addition to the record of decision or something along those lines. Let us put it past the citizens and see if they really agree with what is happening and their failure to reach appropriate management levels.

Mr. GIBBONS. Thank you. Mr. Chairman, I see my time has expired, but I think from the testimony we have heard here today, it is clear that the Federal Government needs to be held to the same standards that it holds the American citizens and the American public to. I think that would be fair to say. Thank you, Mr. Chairman.

Mr. HANSEN. I thank the panel for their excellent testimony and we will excuse you and move to the last panel.

The last panel is Sheila Hughes Rodriguez, Counsel, Animal Protection Institute; David and C.J. Tattam, Field Directors, National Wild Horse Association; Demar Dahl, rancher; and Cathy Barcomb, Commission for the Preservation of Wild Horses. I think I got all those in. You all understand the rules, but we are pretty lenient this morning, so whatever works. We will start with Sheila Hughes Rodriguez. The floor is yours, as we say in our business.

STATEMENT OF SHEILA HUGHES RODRIGUEZ, COUNSEL, ANIMAL PROTECTION INSTITUTE

Ms. RODRIGUEZ. Thank you for inviting me to testify before the Subcommittee this morning. My name is Sheila Hughes Rodriguez, I represent the Animal Protection Institute. API is a non-profit animal advocacy organization with over 80,000 members nationwide. For more than 20 years, API has worked to preserve and protect wild and free-roaming horses and burros on their habitat.

This hearing focuses on range issues and problems with the Wild Horses and Burros Act. Indeed I believe there are several problems

with the Act and how the BLM interprets and administers it. I will concentrate, however, on API's most critical concern.

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

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

In the late 1960's, Wild Horse Annie's efforts led thousands of school children across the country to write to Members of Congress urging them to protect these animals. Nicknames notwithstanding, by the early 1970's, Wild Horse Annie had rallied the support of both humane associations and horse protection groups, culminating in the passage of the Wild Horse and Burros Act in 1971.

If we look at the legislative history of the Act, we see that Congress unequivocally intended these animals to be protected and preserved. Quoting from the Senate report, "The wild free-roaming horses and burros presently inhabiting the public lands of the United States are living symbols of the historic pioneer spirit of the west and as such are considered a national esthetic resource."

As I said earlier, I am not here to lament the state of animal rights. I am here to discuss the state of the law and what we might do to save these living symbols of our own rugged independence and pioneer heritage.

When Congress passed the Act, it declared "... wild free-roaming horses and burros shall be protected from capture, branding, harassment or death; and to accomplish this they are to be considered in the areas where presently found, as an integral part of the natural system of the public lands."

The regulations implementing the Act amplify this protection, "(a) Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other uses and the productive capacity of their habitat."

Today, however, the BLM is failing to manage herd areas as self-sustaining populations of healthy animals. The BLM's 1995 report to Congress describes numerous herd areas with AMLs of zero and many areas with AMLs that will not sustain healthy populations.

In Nevada, the agency plans to extinguish 10 herd areas. A 1975 Nevada District Court case, discussed more fully in API's written statement, strongly suggests that the BLM is not authorized to extinguish wild horse populations. That case was American Horse Protection Association v. Frizzell.

The Federal Land Policy and Management Act of 1976, or FLPMA, provides that the Secretary of Interior "shall use and observe the principles of multiple use and sustained yield".

Under FLPMA's multiple use mandates, BLM cannot give livestock grazing any priority of use. One case vindicating this principle is National Wildlife Federation v. Bureau of Land Management, decided just last year.

In conclusion, the BLM is actively extinguishing wild horse and burro populations in violation of the Act. It remains to be seen whether in carrying out this policy, the BLM is complying with other applicable laws.

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

For all of these reasons, API recommends the following:

1. Wild horse removals must not eliminate individual herd areas or lower the number of animals to a level that threatens the long-term survival of the herd.
2. The BLM must take into account the adoptability of the wild horses removed, as well as the impact of the removals on the remaining family and bachelor bands.
3. The BLM must not schedule roundups during periods when gathering would place undue stress on foals and pregnant mares.
4. The BLM must consider decreases in wild horse populations as part of a comprehensive plan to improve range management and it must be accompanied by an equivalent reduction in the number of grazing livestock.

If I may continue, I just have one paragraph. If, as API believes, the Wild Horses and Burros Act protects these animals from extinction, API is willing to work with BLM to achieve this goal. If the Act does not protect these animals, then Congress must amend it or propose new laws that will save these living symbols of the historic and pioneer spirit of the west.

Thank you.

Mr. HANSEN. Thank you. Mr. Tattam.

[The prepared statement of Ms. Rodriguez may be found at end of hearing.]

STATEMENT OF DAVID C.J. TATTAM, FIELD DIRECTOR, NATIONAL WILD HORSE ASSOCIATION

Mr. TATTAM. I would like to take this opportunity to thank you all for coming here today and exploring this issue. My name is David Tattam, I am the Field Director of the National Wild Horse Association. I have 27 years experience in the horse industry. For the last 14 years, I have served as a volunteer to the National Wild Horse Association, working with the BLM, National Park Service and the U.S. Forest Service. In that time, I have had on-the-ground experience in over 40 herd management areas in four states. It has been interesting as well as very enlightening.

There seems to be an enormous difference between the public's perception and the reality of how horses are handled by the BLM, the number of animals that are on the range, what horses need to thrive and the eventual outcome if horses and burros are not managed.

The National Wild Horse Association is headquartered in Las Vegas, Nevada, it was founded in 1971 by people concerned with the survival of wild horses and burros in the west. Our association is made up entirely of volunteers with no paid positions. Over the last 27 years, we have worked with the National Park Service, the U.S. Forest Service, the BLM to improve the range and secure a future for wild horses and burros. We have worked on range projects, gathers and adoptions. Over the last 7 years, we have hand raised over 500 foals for the BLM. We have also assisted in putting on training clinics, conducting pre- and post-adoption compliance checks, helped to monitor and care for animals involved in neglect or abuse cases and provided medical care for injured animals brought in from the range.

Most currently, we have had members assisting at the gather near Vernal, Utah of suspected EIA horses. We were there to observe and assist in the gather and to implement a care and feeding program for infected foals.

In the last 7 years, our association has logged over 70,000 volunteer hours. This is one reason why the Las Vegas District has had few problems with the adoption program and why the number of wild horses and burros in southern Nevada is closer to AML now than at any time since 1971.

However, across the nation, the adoption program is falling short with a devastating effect on the resources of the west. In many parts of the country, there is a large demand for wild horses and burros, yet there seems to be a breakdown in the system. Adoptions are a lot of work and in many cases the people responsible do not seem to be putting forward the effort to inform and qualify potential adopters. Some suggestions would be a greater accountability to BLM personnel, better marketing and a greater use of volunteers in the adoption program. For example, develop regional adoption teams consisting of BLM personnel and volunteers to facilitate more successful adoptions, post-adoption compliance checks, et cetera.

Another problem with the program is that many older, unadoptable horses are being gathered repeatedly with the government paying out again and again only to be re-released because there is no outlet for them. Because of the government's inability to dispose of these animals, they are allowed to remain in often overgrazed HMAs. This is a true threat to the wild horses and burros of the west.

There must be a way of dealing with large numbers of unadoptable horses that are currently being allowed to overgraze the ranges in many of our HMAs. In many areas, by allowing these horses to remain on the range today, we are destroying the chance of a future for the wild horses and burros. One suggestion would be to give BLM a limited sale authority to dispose of unadoptable animals. This window would be a limited time, for example three to 5 years, and give the BLM time to go through all HMAs and obtain appropriate AML, according to range conditions, with room for herd enlargement once range conditions are improved. This would turn future management into a planned maintenance rather than the current management by crisis which we are so often forced to

deal with when starvation from overgrazing and drought have their effects, as we see here in Nevada.

The management system must be changed from a demand system in which horses are gathered only to the availability of space in the adoption program, to a resource driven program in which decisions are based on what is good for the resource.

Implementation of the Wild Horse and Burro Act is virtually impossible without either sale or euthanasia authority or massive funding for the sanctuary program. To reach any reasonable management goal without one or all of the above, ensures adverse impacts to the range.

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

It seems that many problems start in Washington with the appointment of each new Director. By the time he appoints committees to study the problems and report back to him, he is gone and a new person has taken his place and the cycle starts over again with new studies and committees. A workable plan is never implemented. The only way any resource management agency can work is to eliminate political appointees and require that the director have a strong resource background. Only then will the professional in the field be trusted and decisions be made using science rather than the knee-jerk political perceptions. Washington responds to input from a few select groups, most of which have little hands-on experience, but rarely solicits opinions or backing from groups that understand the tough decisions that must be made with science for the good of the horses.

To ensure the future of wild horses and burros, the public must be made to understand that the ranges will be destroyed if the resources are not managed properly. Without the ranges, we will have no wild horses or burros, no wildlife, no livestock grazing, just barren land where nothing can survive. The public and all involved government agencies must work together to make sure this does not happen. The BLM must do its part by setting appropriate management levels in each herd management area, reducing the number of animals to at or below those levels, depending on current range conditions, and managing these areas in a responsible and consistent manner.

Thank you.

Mr. HANSEN. Thank you. Mr. Dahl.

[The prepared statement of Mr. Tattam may be found at end of hearing.]

STATEMENT OF DEMAR DAHL, RANCHER

Mr. DAHL. A lot of the information that I was going to present I think has already been presented, so I would like to just take a few minutes and talk about one issue that has not been covered, and that is removing wild horses from private land.

When Mr. Abbey was asked what the BLM does when they are requested to remove horses from private lands, he said they just go out and remove them. And I want you to know that is not the case in all of the—not all of the instances, but most of the instances that I am aware of.

I have had wild horses on my private land and tried in vain for years to have them removed and the BLM has not been able to do that. So that is a problem that—in fact, in desperation, I issued a trespass notice to the BLM and trespassed them for having horses on my private land and have kept track of that. In the meantime, I have sold that ranch, but the man that has it now has kept track and we know how much the BLM owes, or the U.S. Government owes us for the use of private lands by those wild horses, which they of course say they do not have to pay. But it is a burden, it is not a big problem because it does not affect a lot of people but those who it does affect, it is a problem.

I think that it would be a step in the right direction if we could have a national recognition that even though the wild horse is a symbol of the pioneer spirit of the west, there are people out there working the land and running livestock and providing food and fiber for this nation that still embody within themselves the true pioneer spirit of the west. And those horses who are the symbol of the pioneer spirit of the west are making it very difficult for some of those to stay in business and to survive.

For instance, I have a friend, in fact the one who is on the ranch who has been trying to get the BLM to gather the horses from his private lands, has on his winter range right now, today, over 300 head of wild horses that will stay there all through the summer. Now he has moved his cattle off of that winter range to let it regrow and then plans to move back there in the fall, that is where he is going to winter his cattle. Now because this has been such an exceptional year, he is probably going to get by, but on an average year, there is very little left for his livestock to go back to. And we do it to protect the range. And if you just leave the horses on that resource year round, it is very hard on the range.

We need I think to recognize that the horse is a resource. All of us love Bambi and all of us love deer, we all recognize that a deer herd has to be managed and we manage them and we control their numbers. And how do we do it? We eat them. The horse is a resource, there are horses that are good for companionship, good for pleasure riding, good for working cattle, good for jumping. There are some horses that I can tell you, and I have known horses all my life and I love good horses, but there are a lot of horses that are just to be eaten and that is their best use. And there are plenty of people and plenty of pets in this world that are willing to utilize

that resource. And I think that common sense should dictate that we give the BLM sale authority and allow that to happen.

I would like to throw out what I think are three solutions to the problem, and these have been talked about already today:

1. I think that if the state were to be given management authority, that that would be definitely a step in the right direction. We already manage the wildlife on Federal lands.

2. I think that if we were to remove all of the wild horses from the ranges but establish horse reserves where people, as John Carpenter talked about, could come and visit and see the horses, but keep all of the horses off of the other areas, I think that would be a step in the right direction.

3. And I definitely think that if we are not able to do those things or maybe in conjunction with those other things, we should give the BLM sale authority and the money derived from the sale of those horses should stay in the wild horse program so that the taxpayer does not have to subsidize this program.

And I can tell you right now, there are a lot of wild horses, BLM—horses with a BLM freeze iron under the brand, that go through the sales to the killer plants today. And any horse sales that you want to go to where they put killer horses through, you will find a number of wild horses that people have adopted and then they find out they have just a mustang and this is not really what they wanted, they keep it a year, they get title to the horse and they sell it and the horse goes for slaughter. So it is happening already, we just need to recognize it.

Somebody is going to have to get tough enough to bite the bullet on this. Thank you very much.

Mr. HANSEN. Thank you, Mr. Dahl. Cathy Barcomb, Commission for the Preservation of Wild Horses.

[The prepared statement of Mr. Dahl may be found at end of hearing.]

STATEMENT OF CATHY BARCOMB, EXECUTIVE DIRECTOR, COMMISSION FOR THE PRESERVATION OF WILD HORSES

Ms. BARCOMB. Thank you for coming to Nevada. My name is Cathy Barcomb, I am the Administrator of the State of Nevada Wild Horse Commission. We are a state agency, established by the 1985 legislature, for the preservation and protection of wild horses on Nevada's public lands.

My purpose today is to make this introduction and give you some idea of what our Commission is doing on a state level. Our Commission is made up of members much like yourself in that we have representatives of horse organizations, veterinarian, humane society representative, a rancher and even an attorney.

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

The Commission—we are presently conducting a number of scoping sessions around the state of Nevada throughout all the rural areas and major city areas. We are traveling to every part of

this state taking testimony and discussing issues and problems with the people affected in those areas. When our scoping sessions are complete, we will have field hearings in every part of the state from Las Vegas to Elko and everywhere in between, on the plan that we are preparing.

You can imagine the testimony we have received is mostly from the people in the field, but this is from the people that mostly deal with the horse issues on a daily basis. This includes not only the ranchers, environmentalists, local representatives, but the BLM personnel as well. Let me add that the BLM personnel that have been with us in the various locations have been extremely cooperative and more importantly, have provided vital information for our investigation into this. We fully plan on continuing to work with the BLM field personnel, the local representatives, the ranchers and environmentalists, and involving them in every stage in the process of this Nevada plan as it comes together.

As I stated, my appearance today was intended only as an introduction as to what we are doing on a state level, but let me leave you with a few thoughts. Whatever comes of our work and your work as well, the final acid test in our view is whether it works in the field. An effective wild horse management plan must meet the objectives of (1) the horses themselves, to the end that we have a healthy herd of horses and able to stay in balance with their habitat; (2) the plan must remember the interests of those directly affected by the horses, such as those seeking to preserve the horses in their environment or seeking adoption, but not forgetting the other multiple uses of the range; (3) and finally, the plan must work for those in the field who are on the front lines, charged with the responsibility for the management of the program. It must be a workable program for all.

The only conclusion that we have come to, speaking only as one representative, but a view shared by others, is that an effective program will require more cooperation between the states, the affected interests and the Federal Government. Our Commission will be addressing this issue on state and Federal cooperation and hopefully coming up with ideas on how the states can contribute to constructive ways to assist in the wild horse management program. Along those lines, we will be utilizing all the information that comes out of your deliberations and we hope that you will be taking into consideration some of our views once they are adopted.

Our draft plan is scheduled to be on the street the first week of August with the final out by December.

Thank you.

[The prepared statement of Ms. Barcombe may be found at the end of the hearing.]

Mr. HANSEN. Thank you. Questions for this panel? Mr. Faleomavaega.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. It seems to me, Mr. Chairman, after listening to our panel of witnesses, I want to commend the State of Nevada for really making a better effort than the BLM for taking care of wild horses with all the different commissions and the presence of the different groups and associations that really do have a real feel for the care of these wild animals.

I want to thank Mr. Dahl for his candor, exactly the bottom line it seems of the problems that we deal with with wild horses.

I would like to ask Mr. Tattam, has your National Wild Horse Association been in existence before the enactment of the 1971 law?

Mr. TATTAM. No, it came in at about the same time. People saw that with the horses not being allowed to be gathered or managed by the ranchers, that there was going to be a need for people to step in and help.

Mr. FALEOMAVAEGA. So it is obvious that BLM over the years has fallen far short of its given responsibilities, and I suspect even under the provisions of the law, while they may have stipulated the protection of these wild animals, they never really got into the economics. When you put them out there in the fields, out our there in the barren lands, they cannot exist and maybe this is an area that the BLM has not taken its responsibilities in providing for the needs for these wild animals.

So again, Mr. Chairman, I want to thank you and the members of our Subcommittee for coming to Reno, Nevada, the birthplace, if I might add, of the Wild Horse and Burro Act, thank the gentleman, my good friend from Nevada, Mr. Gibbons, for allowing us this opportunity to have a hearing here and hopefully as a result of this hearing, we will come out with some real serious considerations, either by way of strengthening the regulations or maybe we may have to amend the 1971 law to put some more teeth into exactly how we should go about protecting these wild animals. Protection and economics are the two basic questions. Having a sense of humanity, and as I said earlier about Hopalong Cassidy or Gene Autry and all the historical aspects that most of us have shared the experience of looking at horses truly as pets and friends and not like we look at cattle.

So with that, Mr. Chairman, I want to thank you for allowing us to be here this morning, and thank the members of the panel.

Mr. HANSEN. Thank you. The gentleman from California, Mr. Pombo.

Mr. POMBO. No questions at this time, Mr. Chairman.

Mr. HANSEN. The gentlelady from Idaho, Ms. Chenoweth.

Mrs. CHENOWETH. I have some questions for Ms. Rodriguez. Ms. Rodriguez, you cited the National Wildlife Federation v. BLM, a 1997 decision.

Ms. RODRIGUEZ. That is correct.

Mrs. CHENOWETH. Was that not a BLM hearing——

Ms. RODRIGUEZ. That was a decision that was affirmed by the Interior Board of Land Appeals, it is an administrative law decision.

Mrs. CHENOWETH. So it was—it never did make it to the district court?

Ms. RODRIGUEZ. No, it did not, but I also cited the other case, American Horse Protection Association v. Frizzell, which is a district court case.

Mrs. CHENOWETH. And that had to do with NEPA, did it not?

Ms. RODRIGUEZ. That and several other statutes, including the Wild Horses and Burros Act.

Mrs. CHENOWETH. In the Frizzell case, the court ruled that you must do a NEPA statement before putting out horses for adoption, right?

Ms. RODRIGUEZ. Well, I think the gist of the Frizzell decision is that there were 600 horses remaining after the BLM gather and so the judge in that case said it may very well have been a very different case if there had been no horses left after the removal.

Mrs. CHENOWETH. In the Frizzell case, did the judge not say that this does not give the BLM a blank check to remove horses without an environmental impact statement?

Ms. RODRIGUEZ. I believe that was the case where he said that, yes.

Mrs. CHENOWETH. OK. Now is it not—I think some of my colleagues sometimes wonder why I do not just go along with a lot of pieces of legislation when they say you are not conferring any authority to any agencies with this Act, you are only making a finding, the Congress finds that—and that is exactly, Mr. Chairman, what the Wild Horse and Burros Act is, it is a simple finding by the Congress. It reads, "The Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the west, and that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people." That is the Wild Horse and Burros Act. And I do not find in here, Mr. Chairman, that there is any authority delegated to the BLM or any other Federal agency to give a preference to the management of the wild horse and burros above cattle, the tortoise or anything else.

I think we have really allowed an agency to stretch its authority beyond the finding. And because I live in the west, I agree with the Congressional finding.

I want to thank you for holding these hearings because I think it is time that we bring back the management of the wild horse and burros to actually what the Congressional finding was, and specify what authority has been conferred by the Congress to the BLM for the management of the wild horse and burros. And I do not believe, Mr. Chairman, that FLPMA mandates that the BLM must manage the horses above the grazing rights. And in fact, for the record, a recent decision, the Bremer decision out of Wyoming, in fact said just the opposite, that there is a preference right given to the cattlemen for their grazing allotments. And of course, multiple use as defined by FLPMA says that all uses should be balanced. And so I want to thank you for bringing your Committee out here and I want to thank the panelists for all of their good testimony. I have learned an awful lot. Thank you.

Mr. HANSEN. Thank you. The gentleman from Nevada, Mr. Gibbons.

Mr. GIBBONS. Thank you very much, Mr. Chairman.

I have very few questions for this panel, but I did want to address just a couple to kind of summarize what we have heard today. Ms. Hughes Rodriguez, you have expressed a number of legal concerns which are going on and the problems that your organization sees with the BLM and its management of this herd. What specific actions can the BLM do within the existing framework that your organization is recommending they do, besides the few things like changing the time of year which they are going to do these roundups to avoid the foaling seasons or to stress—are you suggesting that the BLM stop using helicopters or mechanical means

of roundup? How do you get to some specific recommendations from what you have seen?

Ms. RODRIGUEZ. I gave specific recommendations in my oral testimony. API's true position is that it would like to see a moratorium on all wild horse roundups until the BLM administers and interprets the law it is charged with administering, correctly. I am deliberately leaving wild burros out of the equation, for reasons that I think are beyond the scope of this hearing, but API's firm position is a moratorium on wild horse roundups.

Mr. GIBBONS. Mr. Tattam, in your work around the various states that you have worked in, in your position with the National Wild Horse Association, do you have a general assessment of horse herds, wild horse herds, the health of these wild horse herds that you have seen in your work in your position?

Mr. TATTAM. Yes, and they vary from state to state and from HMA to HMA. You have a lot more overpopulation in northern Nevada, central and northern Nevada, than we have in southern Nevada. I was up in Vernal a few weeks ago—last week as a matter of fact, in Vernal, Utah. They have got—their horses are in excellent condition. They have got a gather going on there now for some health reasons, but the horses are in pretty good shape.

Mr. GIBBONS. What is the health reason they have got the gather going?

Mr. TATTAM. They have an outbreak of EIA, equine infectious anemia, which is incurable and is very easily spread from horse to horse.

Mr. GIBBONS. Contagious?

Mr. TATTAM. Very contagious.

Mr. GIBBONS. Mr. Dahl, you mentioned that wild horses are oftentimes found on private property. Have you ever had wild horses mix with the domesticated herds to where if there is an EIA disease that there is a possibility of spreading that disease?

Mr. DAHL. No, I have not. Before the Act was passed, we would manage a small herd of wild horses on the range just to have them there and we would gather them periodically and cull the studs and put a better stud with them and so on, but now we do not—in fact I think in most districts wherever there are wild horses, the BLM does not grant a domestic horse permit.

Mr. GIBBONS. Ms. Barcomb, thank you for being here and I appreciate the work you have done on the Nevada Commission on the Preservation of Wild Horses as well. Your scoping hearings around the state have provided a great deal of invaluable information I am sure. You have also indicated that your Commission's conclusion will be out in about 2 weeks, the first part of August. Is there any way you can share some of your conclusions at this point in time with the Committee; and then the second part of my question, since the time is elapsing, does your plan and its objectives vary from the BLM's management plan for wild horses in Nevada?

Ms. BARCOMB. Thank you. I think it may be a little premature to talk on the conclusions we have drawn because the initial report that we are putting out is a compilation of all the testimonies we received, what we found to be problems and we had two forums, in April and May, that invited all the interests to come to help us write the plan.

Mr. GIBBONS. Would you be willing as soon as that plan is available to providing this Committee with a copy of it so that we have it for our work as well?

Ms. BARCOMB. Yes, sir, immediately.

Mr. GIBBONS. Is there a difference between the objectives, or is that objective also included in your plan?

Ms. BARCOMB. I believe in the last few years the BLM has initiated what was called the Pearson report and the Culp report. Those were their own investigations into the program. I think we are using a lot of their work that they have already done, instead of trying to recreate the wheel. We have looked at what they have taken in testimonies and then we have gone throughout Nevada and like I said, in forums, we have invited the public to come in and write the plan with us. I believe representatives of your organization and a lot of people that are in this room helped us write the plan and I think it is a good compilation from Nevada.

Mr. GIBBONS. Thank you.

And Mr. Chairman, if I may, one final comment here. I have heard a lot of comments from people referring to wild horses as the symbol of the pioneer spirit of the west. Yes, they are a symbol of that spirit. But I would also like to say that so are ranchers like Mr. Dahl sitting here before us. And I think if we can take care of our horses, we should be able to take care of our ranchers in the same spirit. They deserve protection as well.

And I want to thank you, Mr. Chairman, for bringing this hearing to Reno, it has been a very enlightening and a very important hearing. It also has allowed the public from Nevada rather than having to go all the way to Washington, DC to submit their concerns or to submit their solutions, to have a venue, you have provided that and I want to thank you for your leadership again on holding this hearing.

Mr. HANSEN. Well, thank you, Mr. Gibbons. And of course, Jim Gibbons is the reason we are here, he asked us to come on a problem that he could see and now I think we see this all over America and especially in the west. Like many of you folks, I have a soft spot in my heart for horses, I grew up with horses and I think every ache and pain I have got in my body now is a result of a horse, but anyway, you do love those animals, but I think we do have a real problem here. And I think it is the intent of this Committee to move ahead with something. I intend to work with the Departments of Interior and Agriculture and I hope to work with my colleagues on the Committee because I feel we have a substantial problem that is out of control.

I think if I have learned anything here—and no disrespect to any entity of the government—but if we are going to treat private citizens a certain way—I know when they have a problem on AUMs or overgrazing, it does not take long for the Department of Interior or the Department of Agriculture to be talking to them—if we are going to play it right with those folks, we are going to play it right with the other side. I mean if we are going to have an overgrazing of horses, then I think we have got to do something about that.

There is no easy solution to anything we get involved in. Congress is not a place of easy solutions, believe me. We argue over the most mundane—you think something would be simple. I re-

member once we were going to give a gold medal to Queen Beatrice of the Netherlands, and we argued over that. It would seem we could have just given it to her. We argued over giving Louis L'Amour a medal of some kind prior to him passing on. So this will be kind of difficult but I commend my colleague from Nevada and the members of the Committee for being here and I want to thank this panel, and we will digest all of your information and we would hope that we would have the right to ask additional questions from all of the panelists who have been before this Committee.

Thank you so much and this Committee stands adjourned.

[Whereupon, at 11:26 a.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF BOB ABBEY, STATE DIRECTOR, NEVADA STATE OFFICE, BUREAU OF LAND MANAGEMENT

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

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

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

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

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

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

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

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

the humane destruction of animals[1], Congress has prohibited the destruction of excess healthy animals since 1988.[2] The Adopt-A-Horse-and-Burro Program is, therefore, the only tool the BLM currently possesses to manage the excess wild horses and burros removed from the range. Most of our recent efforts have focused on improving the adoption program and allowing us to achieve AML.

In fiscal year 1997 and the first part of fiscal year 1998, adoption demand declined. Possible causes for the decline include negative news articles, increased adoption fees, increased compliance checks, initial reaction to the new competitive bid process, and the higher costs of feed in winter. The past month has seen a renewal of public interest with adoptions returning to normal levels. Of the 10,443 horses and burros gathered in fiscal year 1997, a total of 6,993 horses and 1,699 burros (total of 8,692) were adopted. We are moving animals out of our holding facilities more slowly than planned and we are holding animals longer than expected.

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

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

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

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

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

Fertility Control/Research: the BLM is supporting research aimed at controlling the reproduction rate of wild horses wile maintaining the integrity of the herd. A pilot study of immuno-contraceptive vaccine that prevents pregnancy in mares was implemented in northeast Nevada in December 1992. The results of this pilot study to date have shown immuno-contraception could be a viable, economically feasible, and humane tool for reducing wild horse reproduction.

Researchers now have developed a single-injection vaccine that does not require a booster shot and will last for approximately one year. A second pilot project with a redesigned vaccine potentially lasting for more than one year was initiated on the

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[1] The Act authorizes the BLM to take the following actions to "remove excess animals from the range so as to achieve AML:

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

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

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

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

Nevada Wild Horse Range/Nellis Bombing and Gunnery Range in January 1996. The results of the immuno-contraceptive test from the Nevada Wild Horse Range animals have been favorable.

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

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

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

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

- Competitive bids—The BLM changed its regulations on March 8, 1997, to allow the BLM to offer wild horses and burros for adoption using the competitive bid process authorized by Congress. This is to provide consistency to the customer and alleviate some of the internal concerns about changes in adoption procedures. Several BLM Field Offices have tested the competitive bid process and found most potential adopters receptive to this approach.
- Western states adoption—In December 1997, BLM's Washington Office asked the BLM State Offices to add more adoptions to their existing schedule. The 6 Western States which administer Wild Horse and Burro Programs have added an additional 10 adoption events (both at holding facilities and satellite adoptions) to bring the adoption goal for the 6 Western States up to 2,430 animals for fiscal year 1998 from 2,296 in fiscal year 1997.
- Nevada does not have a large adoption demand, but we have participated in this effort by increasing our planned adoption events from three to four. On May 23, we conducted an adoption event in Elko where we placed 26 animals with qualified adopters and on May 30, an event was held in Winnemucca where 23 animals were adopted. At the June 13-14 adoption, held in conjunction with the National Wild Horse and Burro Show in Reno, 13 animals were adopted. The horse that trainer Brian Newbert worked with brought $425 in the competitive bidding. More importantly, BLM-Nevada committed to provide assistance to other state offices to help accomplish their goals. We have sent BLM-Nevada employees to other states on six occasions to help meet the commitments of adopting larger numbers of animals.Internet—The BLM is doing a pilot project using the Internet to increase public awareness of the adoption program. The first Internet Wild Horse and Burro Adoption was announced on April 15, 1998; the web site is: **http://www.adoptahorse.blm.gov/.** The public can view on the Internet photos and brief descriptions of the 25 animals up for adoption. Electronic applications were accepted from May 8-22. Fifty-three (53) applications were submitted, and 18 were approved to participate in the bidding. Since this was a pilot in test mode, BLM employees could not participate in bidding or adoptions at this time. The bidding for adoption privileges took place from May 15-29. Fifteen (15) animals were adopted.
- Pre-adoption horse training—The BLM is also studying the idea of working with wild horses to gentle them before putting them up for adoption, with the goal of making the horses more attractive to prospective qualified adopters.

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

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

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

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

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

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
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In Reply Refer To:
1120/4700
(NV-912)

JUL 24 1998

The Honorable James Hansen
Chair, Subcommittee on National
Parks and Public Lands
Committee on Resources
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Hansen:

Thank you for the opportunity to address the members of the Subcommittee on the matter of wild horses and burros at the July 13, 1998, field hearing in Reno. I would also like to thank you for providing the citizens of our state the opportunity to participate and observe. The management of wild horses is one of the most scrutinized and controversial programs the Bureau of Land Management (BLM) administers, and I hope that the information provided by all the participants will prove useful to the Subcommittee members.

During the hearing you asked for more information on selective removal gathers, and on BLM's investigation into the Associated Press allegations of slaughter of wild horses. I am enclosing that information.

Enclosure 1 is a two-page Instruction Memorandum outlining the selective removal criteria for 1997-1998. Enclosure 2 is a three-page summary of findings from the BLM's national law enforcement office regarding visits in January 1997 to nine horse processing facilities. Enclosure 3 is the February 18, 1997, news release issued by the BLM national office regarding those findings.

Again, I appreciate the invitation to address the Subcommittee and look forward to future dialogues with your members on public lands issues.

Sincerely,

ROBERT V. ABBEY

Robert V. Abbey
State Director, Nevada

3 Enclosures
1 - WO IM 98-17 (2 pp)
2 - Law Enforcement Summary of Findings, law enforcement (3 pp)
3 - WO News Release 97-27 (2 pp)

cc: Andrea Nelson, (WO-620), Rm 401 LS (w/encls)
Dennis McLane, National Law Enforcement Office, Boise (w/encls)
Fran Cherry/Bud Cribley, (WO-200), Rm 5650, MIB (w/encls)
Henri Bisson, (WO-100), Rm 5650, MIB (w/encls)
Mary Knapp, (WO-610), Rm 406 LS (w/encls)
Tom Pogacnik, (NPO - NV) (w/encls)
Terry Woosley, (NV-930) (w/encls)
Donette Gordon, (NV SAC) (w/encls)

United States Department of the Interior
Bureau of Land Management
Washington D.C. 20240

November 5, 1997

In Reply Refer To:
4710.3 (220) N

EMS TRANSMISSION 11/12/97
Instruction Memorandum No. 98-17
Expires: 9/30/99

To: All SD's (except Alaska)

From: Director

Subject: Wild Horse and Burro Selective Removal Criteria for 1997-1998

Implementation of the Strategic Plan for Management of Wild Horses and Burros on Public Lands requires that only adoptable animals of a specific age be removed during gather operations.

The selective removal policy was addressed at the National Wild Horse and Burro Workshop in Nashville, Tennessee, May 13-15, 1997. At the meeting, it was proposed that the selective removal minimum age be raised to allow for more flexibility during gathering operations. At the meeting, discussions included the difficulty in trying to adopt older wild horses, and the impact to the adoption program of holding large numbers of unadoptable animals. Emergency drought conditions in southern Nevada have resulted in a large number of wild horses above 10 years of age being placed into the national adoption program. The adoption of these older wild horses has not been successful and many will now require permanent placement on the Prairie National Wild Horse Sanctuary in Oklahoma. The national adoption program has suffered from reduced adoptions and declining public interest as the number of older, wild horses has increased. At the workshop, it was decided that the age restrictions for the selective removal policy should not be changed at this time.

The following policy will be in effect for all wild horses removed by the Bureau of Land Management (BLM), including those wild horses gathered for the Forest Service or National Park Service during the 1997-1998 gather season. It is assumed that all wild burros are adoptable.

a. Wild horses removed from all public or private lands that are to be placed into the national adoption program, will be limited to adoptable animals aged 9 years and younger.

b. The authorized officer may elect to remove wild horses of any age from public or private lands provided that the animals are to be adopted in-state. Wild horses aged 10 years and older may not be placed into the national adoption program except as noted in "d" of this section. The Forest Service and National Park Service may elect to remove animals of any age provided that the animals are adopted by that agency.

c. All wild horses, regardless of age, that in the judgment of the authorized officer are deemed unadoptable because of defects, previous injuries, recent but not life threatening injuries, or other factors that may limit their adoptability, will be returned to the public lands or adopted in-State.

d. During emergency situations, when the long-term survival of a wild horse population is threatened, the prohibition on removing wild horses aged 10 years and older and placing them in the national adoption program may be amended. The Wild Horse and Burro National Program Office must approve amending selective removal criteria prior to initiating the emergency gathering. Approval to amend the selective removal criteria will only be authorized in rare instances when other options are not viable.

The provisions of the selective removal policy will be reviewed each year at the National Wild Horse and Burro Program Workshop. Policy modifications will be made following this yearly review.

Questions or comments concerning this policy should be directed to Lill Thomas of the Wild Horse and Burro National Team or Tom Pogacnik, Chief, Wild Horse and Burro National Team at 702-785-6583.

Signed by:
Carson W. Culp
Acting Director

Authenticated by:
Robert M. Williams
Directives and Records
Group,WO540

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
NATIONAL LAW ENFORCEMENT OFFICE
3833 SOUTH DEVELOPMENT AVENUE
BOISE, IDAHO 83705

FOR OFFICIAL USE ONLY

To: Chief, National Law Enforcement Office

From: Art Lunkley, National Law Enforcement Office

Subject: Summary of Findings

Listed below are brief summaries and findings of contacts made to nine horse processing facilities made by BLM during the period of January 14, 1997 to January 24, 1997.

AmFran Packing
Glendron Road 712 B
Plainfield, CT 06374

Amfran Packing (AP) provided information that they processed approximately 10,000 horses annually in 1995 and 1996. AP stated that they did not process any BLM freeze marked horses without certificates of title. AP provided 7 BLM Certificates of Title dating back to 1986. AP could not determine when the 7 horses had been processed. There is no state brand inspection law.

Beltex Corporation
3801 N. Grove Street
Ft. Worth, TX 76106

Beltex provided information that they processed approximately 40,000 horses annually in 1995 and 1996. Of the 40,000 horses processed annually Beltex estimated that approximately 100 head of BLM horses probably go through the facility undetected annually. Beltex provided 43 certificates of title dating to 1981, but could not determine when the horses had been processed through the facility.

S:Art/equine

Bouvry Exports LTD.
Box 2024
Ft. Macleod, Alberta, Canada

Bouvry provided information and records that showed their facility processed approximately 40,000 horse in 1995 of which 17,001 of the horses had been purchased and exported from the United States. Documentation provided by Bouvry showed that in 1995 the facility had processed 53 BLM freeze marked horses for which they had 14 BLM Certificates of Title. In addition 7 freeze marks other than for the horses with certificates of title were identified and the ASPEN Data Base indicated that those 7 horses had also been titled..

Documentation for 1996 showed that Bouvry had processed approximately 47,000 horses in 1996 of which 16, 665 had been purchased and exported from the United States. Examination of the records indicated that 132 of the horses were BLM freeze marked horse and 3 burros. 12 of the horses had BLM Certificates of Title. In addition to the 12 horses with certificates of title, 20 other freeze marks were identified which the ASPEN Data Base identified as titled also.

Cavel International, Inc.
108 Harvestore Drive
De Kalb, IL 60115

Cavel international, Inc (CII) provided information that it processed approximately 9,000 horses annually in 1995 and 1996. CII stated that no BLM freeze marked horses were accepted for processing without BLM Certificates of Title. CII provided 19 BLM Certificates of Title that had been collected over approximately 10 years. Illinois has no state brand inspection laws.

Cavel West, Inc.
1607 SE Railroad Avenue
Redmond, OR 97756

Cavel West (CW) estimated that it processed approximately 5,000 horses annually in 1995 and 1996. CW stated that no BLM freeze marked horses were accepted for processing without assurance that BLM Certificates of Title had been issued. CW provided 9 BLM titles for 1995 and 8 titles 1996. Oregon has state brand inspection regulations.

Central Nebraska Packing
2800 E. Eighth Street
North Platte, NB 69101

Central Nebraska Packing (CNP) provided information that approximately 26,000 horses were processed annually in 1995 and 1996. CNP stated that they would not accept BLM freeze marked horses without BLM Certificates of Title. Although CNP could not specify which years

the horses were processed, they did provide 33 BLM Certificates of Title for horses processed that had been collected over several years. Nebraska has no state brand inspection regulation for horses.

Corona Cattle Company
14657 Chandler Street
Corona, CA 91752

Corona Cattle Company (CCC) provided documentation that in 1996 they processed 108 horses through their facility. No BLM freeze marked horses were processed. California State Brand Inspectors confirmed that no BLM horses had been processed at CCC.

Dallas Crown, Inc.
2000 West Fair Street
Kaufman, Texas 75142

Dallas Crown Inc., (DCI) provided information that approximately 15,000 horses were processed at their facility annually. DCI provided a total of 5 BLM Certificates of Title for horses that had been processed through their facility within the last few years. The titles showed that 1 title had been issued in 1994, 1 title in 1993, 2 titles in 1992 and 1 title in 1990. There are no state brand laws in Texas requiring recordation of brands for horses processed for slaughter.

Iowa Beef Packers
P.O. Box 709
Palestine, TX 75801

Iowa Beef Packers (IBP) formerly Calhoun Packing and formerly Transcontinent Packing, was acquired by IBP in 1996 and stopped purchasing horses for processing in June or July of 1996. IBP estimated that approximately 100 BLM horses probably went through processing undetected annually because Texas has no brand inspection regulations. IBP provided 5 BLM Certificates of Title, 2 issued in 1995 and 3 titles in 1994. IBP stated that a company person would be assigned to check approximately 100 boxes of old records that were in storage for title and that they would be provided within the next week. Estimated annual processing for 1995 was 15,000 horses and 7,500 for 1996 (only operated until June or July 1996).

The BLM teams that collected the above information will be providing completed reports detailing each facility that was visited. Each title or alpha brand/ mark identified will be evaluated to determine the individual to whom title was issued. The names will be checked against BLM records to determine if they are employees.

BUREAU OF LAND MANAGEMENT
NEVADA STATE OFFICE
NEWS RELEASE

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Contact: Bob Johns
Phone: 202-208-6913

Investigation Into Wild Horse Abuse Contradicts Press Accounts

An investigation by Bureau of Land Management law enforcement officers contradicts recent press allegations that wild horses are routinely sent to slaughter. The investigation, prompted by an Associated Press story last month claiming that wild horses were being "channeled by the thousands to slaughterhouses," found that less than one-quarter of one percent of all horses sent to meat-packing plants were ever wild, Federally protected or managed by the agency.

In the course of the investigation, the BLM sent teams of law enforcement agents and wild horse experts to eight horse slaughterhouses in the U.S. and one in Canada. With the cooperation and assistance of meat processing plant owners and managers, these teams reviewed data from the last two years. They found that about 266,000 horses were slaughtered during 1995 and 1996 and that less than one quarter of one percent, about 350 per year, were at any time wild. In contrast, the wild horse adoption program, which is conducted by the BLM, adopts out about 8,000 horses each year to qualified adopters.

"While any wild horse being sent to slaughter is regrettable, it is obvious that this is occurring '- a far, far lesser degree than was alleged," said Interior Department Assistant Secretary Bob ıstrong, who ordered the investigation. "In spite of that, I have asked the BLM to continue their ıop-to-bottom review of the program to ensure that opportunities for abuse are eliminated."

Associated Press reports also alleged that BLM employees were "...among those profiting from the slaughter." Slaughterhouse records reviewed by BLM investigators also contradict this allegation. They revealed that only one BLM employee in the last two years has sold a horse that ultimately went to slaughter. In that particular case, there was no evidence of profiteering or illegal or unethical behavior on the part of the employee. The horse in question had been titled, became private property and was sold to a second owner.

"The reports of employees profiting from sending wild horses to slaughter were particularly distressing," BLM Interim Director Sylvia Baca said. "We owe it to taxpayers and to our employees to look at those claims seriously. Our employees who adopt wild horses and burros do so because they love the animals, and I can say with confidence that they represent some of our very best adopters."

According to Baca, the adoption process requires a careful pre-screening of applicants, a mandatory briefing prior to adoption on care requirements of horses and the signing of a care agreement by the prospective adopter. Further, applicants are cautioned that the adopted horse remains federal property at least until one year of proper care has been provided and BLM has transferred title to the adopter and that during the time, unannounced spot checks of the horses may be made by federal officials.

In 1996, BLM conducted almost 3,000 such spot checks and responded to over 200 horse neglect complaints which led to the repossession of 51 horses and the reassignment of 317 horses to other adopters.

As part of its continuing efforts to improve the horse adoption program, the BLM recently announced that it will begin offering some adoptable horses on a competitive bidding basis. This is expected to result in higher adoption fees for some animals, which will help defray expenses for the program. Higher adopter investment costs should also further diminish what minimal profiteering incentives may exist for adopting horses and sending them to slaughter after titling.

"The taxpaying public is getting a lot for its money on this program," Baca said. "Congress has mandated that we protect and manage these animals, as well as the land where they still roam. The annual $16 million we spend each year has resulted in tens of thousands of horses living better lives with good, caring families. Further, by removing excess horses and burros, we have been able to improve the health of fragile western rangelands that ranching families and wildlife depend on. This helps provide better habitat for a variety of wildlife such as deer, elk and antelope." Baca said.

Baca pointed out that the BLM invests almost $1,100 in getting each horse ready for adoption, including substantial costs in direct horse care. Horses gathered from the rangeland are immediately provided with abundant food as well as water, given a veterinary check, provided with appropriate medication and de-wormed.

Additionally, in response to severe drought conditions in parts of the west, BLM convened a team of horse experts that, in consultation with a variety of horse interest groups and humane groups, has provided more than 20 recommendations relating to the emergency drought situation and the long-range direction of the horse program. The recommendations include changes in the oversight and management of the program, changes in the wild horse and burro strategic plan, and the establishment of a national wild horse and burro advisory board.

As part of the continuing efforts to improve the program, Baca also directed the creation in January of a review team to provide recommendations on a variety of other wild horse and burro program issues, including employee adoptions, the spot check or compliance process, the horse and burro data base, and the horse and burro titling process. A report from that team is expected in March. Baca stated, "I am committed to looking into every specific complaint or allegation of wrong doing. If there are problems in this program, we want to find them and fix them."

The wild horse and burro program was established following the passage of the Wild, Free Roaming Horse and Burro Act of 1971. The act charged the BLM with managing wild horse herds in 10 western states. To ensure the long-term survivability of the herds, which have few natural predators and reproduce at a rate as high as 20 percent per year, the BLM gathers what are considered to be excess animals and makes them available for adoption at a fee of $125. Currently there are 42,000 wild horses and burros on the public rangelands.

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STATEMENT OF JOHN BALLIETTE, CONTRACTUAL NATURAL RESOURCE MANAGER, EUREKA COUNTY, NEVADA

Chairman and Members of the Committee:

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

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

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

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

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

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

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

The second problem area with the horse program is when BLM fails to comply with the criteria of a MUD, the result can be very detrimental to the resource base. In the Fish Creek Allotment, failure to bring horses to AML has resulted in continued heavy to severe grazing of white sage (a very palatable shrub). This over utilization is due solely to horses because no livestock have used the allotment for over

three years. Similarly, horses in Railroad Pass consistently over utilized a revegetated area to such an extent that ranchers could not use the allotment. Also, at last count, there are over 400 head of horses above AML in the Grass Valley Allotment which contributes to overgrazing. Again, the over grazing in these three allotments can be directly attributed to BLM's failure to maintain horses at AML. I have lengthy documentation of over utilization by horses on both the Fish Creek and Railroad Pass Allotments and will duplicate this documentation for your Subcommittee at your request. The point I am trying to make is that BLM has issued MUD's on numerous allotments that have resulted in livestock reductions, more intensive management, losses of personal income and a loss of tax base. These MUD's have also called for the reduction of horses yet BLM has not complied with this requirement. When BLM fails to bring horse numbers to AML, these impacts are compounded by the continued degradation of the resource base.

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

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

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

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

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

Some real double standards exist when it comes to sale authority. Each year our country sells thousands of privately owned horses for slaughter. But the mere mention of sale authority of "wild" horses with the possibility of slaughter is offensive to some. Horses are the only large ungulate on Federal lands that are not harvested for consumptive purposes. If harvesting one large ungulate is acceptable, why is harvesting horses unacceptable? Horses must be viewed as are other large ungulates on Federal lands, a renewable resource that can be effectively managed by harvesting excess numbers.

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

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

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

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

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

Thank you again for the opportunity to testify.

EXECUTIVE SUMMARY

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

DRAFT

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

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

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

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

[1]AUM's adjudicated in 1960's when N-6 Grazing District was formed
[2]Initial suspension based on a one time survey of base property and public land production
[3]Evaluation suspension based on recent allotment evaluations
[4]Transfer suspension applied when ranch or permit ownership is transferred
[5]Lost permit value uses only evaluation and transfer suspensions and assumes $37/AUM

Sources:

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

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

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

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

STATEMENT OF DEMAR DAHL, STARR VALLEY, DEATH, NEVADA

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

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

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

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

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

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

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

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

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

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

STATEMENT OF CATHY BARCOMB, EXECUTIVE DIRECTOR, COMMISSION FOR THE PRESERVATION OF WILD HORSES

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for this opportunity to address you today.

STATEMENT OF LARRY L. SCHUTTE, BIG SPRINGS RANCH, WELLS, NEVADA

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

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

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

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

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

STATEMENT OF JON FUGATE, CHAIRMAN, LEGISLATIVE AFFAIRS, YUMA VALLEY ROD & GUN CLUB, INC., YUMA, ARIZONA

Dear Chairman Hansen,

My name is Jon Fugate. I am chairman of the Legislative Affairs Committee of the Yuma Valley Rod and Gun Club (YVRGC). We appreciate the opportunity to provide written comment to range issues and problems with the Wild Free-Roaming Horses and Burros Act of 1971 (As amended; Act).

Although our written testimony is addressed to Director Pat Shea of the Bureau of Land Management you will see that we have been and are continuing to be very involved with trying to resolve adverse impacts caused by over populations of feral burros in Arizona. If BLM had merely controlled populations of burros in Arizona that were achieved prior to the IBLA decision (1989) and managed those populations to date, this oversight hearing would not be necessary.

If those reduced burro populations achieved by 1989, would have been maintained to date, BLM would not be faced with non-compliance of the Act, overpopulation, habitat destruction, degradation of riparian areas, competition with livestock or feral burros competing with wildlife as they are today. Now in Arizona, the main issue at hand is BLM not being allocated adequate funding for removal of excess burros to fulfill their responsibility to maintain a thriving natural ecological balance between wildlife, burros, and livestock as mandated by the Act.

Thank you in advance for your immediate attention to this matter.

LETTER TO MR. PAT SHEA, DIRECTOR, BLM FROM THE YUMA VALLEY ROD & GUN CLUB, INC.

Dear Director Shea,

On behalf of the Yuma Valley Rod and Gun Club (YVRGC), I would like to take this opportunity to thank you for being sincere and honest about dilemmas BLM is facing in regard to responsibilities for the management of wild horses and burros on public lands. I refer to an article in the Arizona Republic newspaper where you were quoted as saying *"The people I have met in the program are very, very dedicated public servants" . . "But faced with an impossible job they have shown a tendency to cover up their mistakes and problems rather than try to resolve them."* In regard to burro management, it is the feeling of our organization, BLM in Arizona could be some of these dedicated public servants, who have always wanted to make the right decisions, but could not, simply because adequate funding has not been available to provide the services necessary to comply with the Wild Free Roaming Horses and Burros Act of 1971 (as amended; Horse and Burro Act).

With regard to burro management, BLM in Arizona, working collaboratively with the Arizona Game and Fish Department (AGFD) and United States Fish and Wildlife Service (FWS), within the Cibola/Trigo Herd Management Area (CTHMA), have agreed to work towards managing for the existing appropriate management level (AML), which is 165 burros, consistent with the CTHMA plan and the Horse and Burro Act. In September of 1997 an emergency burro removal by BLM occurred because of adverse impacts caused by burros. At this time, there are still too many burros to maintain a thriving natural ecological balance within the CTHMA. We further understand that BLM, working collaboratively with AGFD and FWS, will determine the process for future monitoring and gathering of data to substantiate the AML. It is the feeling of the YVRGC this approach for burro management in Arizona is correct and will allow for the completion of the Cibola/Trigo Comprehensive Wilderness Management Plan in a timely manner.

In regard to future burro removals and adequate funding for necessary burro management in Arizona, the YVRGC is concerned that according to the national BLM program objectives and budget request for 1998, that little will be done in Arizona. BLM being responsible for reaching AML's within herd management areas (HMA) across our state will not be possible, because there is no money. Since 1989, BLM has performed poorly in regards to responsible burro management in Arizona, because responsible burro management has not been a BLM priority, most likely because, adequate funding was not available. If funding to manage burros is not adequately provided, you as Director of BLM *can not provide, nor even think about maintaining* a thriving natural ecological balance in Arizona as outlined in the *Strategic Plan for Management of Wild Horses and Burros on Public Land (June 1992).*

One approach that the YVRGC would like to suggest that you might consider, is go back to Congress for additional funding, and direct their attention to the Horse and Burro Act and under section 1331 *Congressional Findings and Declaration of Policy* indicate that *"Congress found and declared that wild free roaming horses and burros . . . are fast disappearing from the American Scene."* With this, you should advocate this is not the case any more, and BLM responsibility has changed from primarily protecting wild free roaming horses and burros, to trying to protect our public lands from being destroyed from over populations. In the case of Arizona, you should also advocate that burros, not horses are the primary target for removal.

A second approach that the YVRGC would like to suggest, is that you advocate to Congress, even though the Strategic Plan for Management of Wild Horses and Burros on Public Land (June 1992) indicates BLM direction to the end of the century, BLM has not even come close to fulfilling goals and objectives of the plan because of over-population. This has occurred not because BLM was not doing their job after 1989, but because of one judge, not understanding the long term effects that his decision, for the state of Nevada, has caused BLM in Arizona, to shy from their HMAP's, as they have been labeled "arbitrarily derived." I refer to page 11 of the Final Black Mountain Ecosystem Plan (BMEP) in Arizona (April 1996) where it states: *"The Black Mountain Wild Burro Herd Management Area (Map 4) was designated, and a herd management plan was completed in 1981. This plan established vegetation monitoring studies, and also prescribed an appropriate management level of 400 burros. This number is no longer legally applicable because it was rather arbitrarily derived."* The next sentence on page 11 briefly explains the IBLA decision. The BMEP completed in April 1996 took approximately three hard long years to complete and the appropriate management level decided upon was 478 burros (refer to page 33). To the YVRGC, since a plan legally prepared by BLM in 1981 is within 78 animals, it is our opinion that not only did BLM waste taxpayers dollars because of a decision from a judge in another state in regards to a plan which had nothing to do with the BMEP, your BLM employees, some seventeen years ago, have indicated the original plan was correct, and BLM and the other responsible agencies obviously knew what they were doing in 1981, regardless of how it was derived. The YVRGC has not reviewed one HMAP that did not identify resource damage caused by burros and a need to manage for a specific AML. Because few significant burro removals have taken place in southwestern Arizona since 1989, the resource damage which was documented in the early 1980's has worsened. With this, our organization questions why BLM is fighting so hard to throw out existing HMAP's in order to manage for some undefined natural ecological balance.

Another approach, which would not have to be presented to Congress, is that you direct (already appropriated) funds for wilderness management and/or fire protection management to be moved and allocated to the management of burros. It makes little sense to spend taxpayers dollars for the purpose of these types of management, when everyday in the arid deserts of Arizona, burros are adversely impacting wilderness and non-wilderness land and vegetation to a point where a rangeland fire would be insignificant. These adverse impacts include degradation of native riparian

habitat important to many wildlife species, including the Endangered southwestern willow flycatcher.

However, before the completion of the BMEP and prior to the decision of an initial AML for the CTHMA, BLM in Arizona chose to manage burros at levels many many times that of their respective AML's since the IBLA decision in 1989. In our opinion, prior to the IBLA decision of 1989, BLM in Arizona had reduced populations of burros in accordance to plans developed in the early 1980's, and had BLM continued, merely to control populations achieved at that time, and managed those populations to date, BLM would not be in the dilemma you are having to face today.

BLM did not, for what ever reason, (whether it be the threat of another law suit or not) continue to do the right thing which was to follow the mandates authorized to the BLM, through the Horse and Burro Act. BLM in Arizona has not been able to provide the services necessary to maintain a thriving natural ecological balance between wild free roaming burros and wildlife resources.

This issue is of great importance to the YVRGC and your immediate attention to this matter will be greatly appreciated. Thanks, in advance for your consideration of the comments provided in this letter. If you have any questions regarding this letter, please contact me at the following telephone numbers or address below.

STATEMENT OF THE HUMANE SOCIETY OF THE UNITED STATES (HSUS)

On behalf of The Humane Society of the United States (HSUS) and our 6.2 million members and constituents, I thank you for the opportunity to submit a statement for the record for the Wild Horse and Burro Program field oversight hearing of the House Resources Subcommittee on National Parks and Public Lands on July 13, 1998, in Reno, Nevada.

The HSUS, which is the nation's largest animal protection organization, has been working to promote the health and welfare of America's wild horse and burro herds for over three decades. Our goals have been threefold: to assure the existence of healthy wild horse and burro herds on the range; to assure equitable distribution of forage among wild horses, livestock and wildlife; and to assure humane treatment of wild horses and burros after their removal from the range, including the securing of humane lifelong care in good homes for animals passing through the Bureau of Land Management's (BLM) Adopt-a-Horse program.

In our experience, wild horses and burros exercise an extraordinary hold on the American imagination, and the sustained level of interest and concern for these animals among the public should not be underestimated by Congress. The firestorm of public outrage that greeted last year's press reports concerning the fate of wild horses in the BLM Adopt-a-Horse Program did not arise in response to abstract concerns about poor record keeping or bureaucratic mismanagement. Rather, the public was furious that, in spite of the clear mandates of the Wild Free-Roaming Horse & Burro Act, the American government was allowing American wild horses to come to harm. The public supports wild horse protection, the public supports the Act, and the public wants to see the Act implemented.

The BLM Wild Horse & Burro Program remains an imperfect tool for managing wild horses and burros on the public lands in a manner consistent with the mandates of the Act and the will of the American public. Nevertheless, the HSUS is working closely with the BLM to improve all aspects of the program, including management of rangelands, management of horses and burros on the range, handling of horses and burros in BLM facilities, and the Adopt-a-Horse program.

These are the some of the changes in management and policy that we believe are most important:

> The BLM must shift emphasis and resources from the adoption program to on-the-range management of horses, wildlife, and livestock, with improvements in the accuracy of animal census data, consistency and clarity of range monitoring data collection, and increased efforts at range restoration.
>
> The BLM must increase responsible use of immunocontraception on wild horse populations, with the goal of reducing reproduction on the range to the extent necessary to preserve a thriving ecological balance. Such a reduction in reproduction on the range would reduce the number of gathers conducted and reduce the number of horses entering the adoption program. This would in turn reduce stress on horses, improve the quality of adoptions, and save tax dollars.
>
> The BLM must end the arbitrary elimination of wild horse and burro populations from herd areas, and ensure that all existing wild horse and burro herds are managed to assure long-term health and viability. We will actively oppose any further reduction in the number of herd management areas.

The BLM must improve the marketing of horses in the Adopt-a-Horse program to recruit additional qualified adopters and to better match horses to adopters. In particular, we encourage the BLM to continue to explore avenues for humanely gentling and training horses prior to adoption; we believe such training will improve the animals' attractiveness to adopters and provide better quality adoption experiences for adopters and horses alike.

The BLM must screen potential adopters more rigorously, improve adopters' access to information and assistance before and after adoption, and increase follow-up contacts with adopters from BLM personnel and volunteer mentors.

We adamantly oppose any change in the law that would provide the BLM with sale authority for the wild horses and burros removed from the range. Inevitably, most of these animals would go to slaughter. Neither the HSUS nor, thirty years of experience tell us, the American public will tolerate such cruelty.

We also adamantly oppose turning over the management of wild horses or burros on public lands to ranchers or other private interests. Wild horses are not livestock, and their wild-free roaming character will be lost if they are managed as such.

The HSUS believes that wild horses, burros, wildlife, and livestock can be maintained on public lands in a thriving ecological balance, as the Act mandates. We also believe that, at the present time, the BLM is moving in the right direction. The HSUS is committed to keeping the agency moving in that direction, and to assuring that wild horses and burros, these "living symbols of the pioneer spirit of the West," thrive on public lands forever.

STATEMENT OF HOLLY E. HAZARD, EXECUTIVE DIRECTOR, DORIS DAY ANIMAL LEAGUE

Dear Representative Hansen:

On behalf of our 280,000 members and supporters nationwide, I am writing to express our concern about proposals made during the oversight hearing held on July 13 in Reno, Nevada.

During the discussions with the first panel, Nevada State Senator Dean Rhoads underscored his frustration with the Wild Horse and Burro Program's administrative costs. He proposed that the Bureau of Land Management be given sale authority to offer "excess" horses for sale to the highest bidder. As you know, horses and burros who are removed from their home range are now placed in the Wild Horse and Burro Adoption Program. Although we have yet to see sufficientt information to support the removal of these animals due to overpopulation (as the Wild Free-Roaming Horse and Burro Act requires), placing the animals in adoptive homes is the only acceptable alternative to leaving them on the range.

We strongly oppose any efforts to amend the Wild Free-Roaming Horse and Burro Act that would further endanger these animals, which Congress has the duty to protect as part of our natural heritage. We are grateful that Representative Eni F.H. Faleomavaega was present to reinforce the original intent of the 1971 Act, passed to protect these animals from slaughter.

I hope you will consider the immense public support for the survival of these magnificent animals and re-evaluate any attempts to amend the Wild Horse and Burro Act. With the Subcommittee's oversight authority of the Wild Horse and Burro Act and the overwhelming support for maintaining this strong American heritage, perhaps the questions raised should include:

- why are outdated Environmental Assessments being used to justify wild horse round-ups?
- how can a sheep rancher permittee be allowed to keep all of his herd on public lands while horses are removed?

Thank you for your consideration.

NEVADA WILD HORSE MANAGEMENT PLAN FOR FEDERAL LANDS

A. LISTING - ISSUES IDENTIFIED THROUGH INITIAL PUBLIC SCOPING PROCESS THAT ARE WITHIN THE LEGAL "SIDEBOARDS" OF THE WILD HORSE & BURRO ACT OF 1997

Rangeland Health

1) Impacts on livestock grazing and wildlife habitat.

2) Reduce wild horse populations to a minimum in the Seven Troughs, Trinity, and Antelope Ranges of Western Pershing County which contribute to the extinction of sage grouse.

3) Reduce wild horse numbers dramatically in the Lava Beds, Shawave, Nightingale, Truckee, Selenite, Blue Wing, and Kamma Ranges to improve habitat for chukar, deer, antelope and other non-game species.

4) Wild horses dishonestly blamed for public lands deterioration due to livestock overgrazing and other exploitive abuses of the public lands.

5) Identify the standards used in stocking levels and determine whether they are applied in all animal classifications

6) Investigate whether closure is necessary in some areas to provide for wild horses.

7) Publicize the number of wild horses on public lands when the Commission started vs what the population is at the end of the Management Plan.

8) Determine livestock use and season of use within wild horse herd areas.

9) Educate all interests in the LUP process and PL 92-195 (Wild Free Roaming Horse and Burro Act, 1991).

10) Address fencing of herd areas to facilitate livestock management.

11) Limits on Recreation Use.

12) Protection of Sensitive Ecosystems and Species.

13) Protection of Wilderness Values in Wilderness and WSA's.

14) Opportunities of Developed Recreation.

15) Unregulated General Recreation.

16) Summer Homes.

17) Management of Wildlife.

18) Commercial use of public land.

19) Prescribed fires.

20) Risk of wildlife.

21) Energy conservation.

22) Protection of heritage resources.

23) Disposal of National Forest Land within the Spring Mtns. National Recreation Area.

24) Address the interactions between livestock and wild horses.

25) It is imperative the BLM develop a positive strategy regarding the necessity of management for all range users with rangeland health the sole purpose.

26) Management and control of wild horses in Nevada is necessary for proper rangelands health and the State of Nevada needs to provide and state their recommendations for wild horse management.

27) Include Nevada Rangelands Monitoring Handbook guidelines for monitoring in appendix.

28) In glossary define BLM terms for AUM, livestock grazing preference, actual use and conversions rates.

Herd and Habitat Management

1) Improve wild horse habitat on public lands to healthy conditions.

2) Manage wild horses at healthy population levels.

3) Correct wild horse over populations in small isolated areas.

4) BLM's reluctance to manage wild horses at population levels found in 1971.

5) Inventory and monitor wild horse populations.

6) Effectiveness of BLM to manage wild horse herds.

7) Use of collaborative, facilitated process for determining management objectives for the wild horse herds of the state.

8) Horse numbers and male/female ratios need to be constantly monitored to maintain a balance between overall animal numbers and the environment.

9) Monopolization of public lands by the livestock industry.

10) Unfair treatment of wild horses by government officials.

11) Alternative live styles for achieving larger numbers of wild horses on public lands and restoring them to areas where they have been eliminated to stress positive contributions of wild equids to ecosystem.

12) Determine whether LUP's provide measurable objectives in providing sufficient water, food, cover, and space to maintain viable populations of wild horses or burros.

13) Surface water should be provided to wild horses in water deficient areas since State NRS states wild horses are a beneficial use of water.

14) Investigate the release of wild horses and burros outside their historic herd areas and whether this practice jeopardizes their survival.

15) Set statewide AML.

16) Determine whether sufficient agency employees exist to monitor, plan, and manage wild horse and burros in each of the 100 HMA's.

17) Relocation of wild horse and burros from one HMA to another HMA to achieve AML's.

18) Control of wild horses and burros.

19) Review of HMA's.

20) Determination of AML's or wild horse and burro densities by area.

21) Address wildlife/wild horse and burro conflicts which are habitat related and causing interspecific strife.

22) Consider using BLM Standards and Guidelines for the goal of rangeland health.

23) Ecological balance of grazing ungulates on public rangelands.

24) Priority balance on use of public rangelands between wild horses, wildlife and domestic livestock.

25) Use of public lands for multiple purposes.

26) Sustain wild horse AML range at low levels.

27) Clarify in plan that wild horses are in reality feral introduced/exotic species and are not wildlife.

28) AML herd size should not interfere with long term existing livestock grazing preference.

29) Support the 1971 delineation herd areas for wild horses consistent with the federal laws and regulations which state wild horses will be maintained at a thriving natural ecological balance with other resource uses.

30) Neither existing adjudicated grazing privileges nor wildlife populations should be ignored when determining "carrying capacity" or "thriving natural ecological balance" within the herd management areas (HMA).

31) Commission should be aware that the determination of what is the "AML" or "thriving natural ecological balance" of wild horses does not require the issuance of a "Multiple Use Decision" - it may be accomplished simply by determining that the number of horses exceeds the level which results in a thriving natural ecological balance with other resource uses.

32) Nothing in the "Wild Horse Act" requires the maximizing of wild horses within a designated HMA, and should in reality be kept at the minium to alleviate exceeding the range carrying capacity and so that BLM does not have to remove horses annually.

33) It is undesirable to continue herd lineage in areas where inbreeding or cross-breeding has resulted in individuals which are malformed or of unsound conformation and are unadoptable.

34) "Herd Area" boundaries that overlap with other herd areas and that have many bands of wild horses of the same herd should be reviewed and consolidated into one herd area.

35) BLM should coordinate amongst Districts to determine census flights and timing of flights for an entire herd area where overlap of District boundaries exist to most

efficiently track population, recruitment, mortality and seasons of use of the entire herd.

36) BLM needs to monitor vegetal utilization by user group to determine who ate what, when, where and in what amount. Only then, can the over-utilization of the range resource be pin pointed the offending animal and adjustments made accordingly in fairness to all users.

37) Developed waters on public lands should not be shut off to wild horse and wildlife use after permittee has removed his stock from the allotment, but rather BLM should provide compensation to the permittee to leave the water running.

38) BLM should pursue an exchange of AUM use with permittees in areas of private checkerboard lands where wild horses use these lands for short periods of time.

39) Political trespass is still trespass, and should be treated as such by BLM.

40) Too much money is currently being spent on the wild horse program.

41) Nevada needs to establish some wild horse sanctuaries so the viewing public can see these animals in their natural environments.

42) BLM's established AML's may not be achievable due to lack of funding, proper removal documentation (MUD) in place for gathers, and holdups in the adoption program.

43) BLM should emphasize cooperation amongst the Districts in the states of Nevada, Utah, California, Idaho and Oregon for the management of wild horses where herd areas overlap into adjacent states.

44) Cooperation and good stewardship of the Public Lands amongst all user groups is necessary to benefit all users and the most importantly the base land and water resources..

45) Better cooperation is needed amongst all parties including federal, state, local municipalities, counties and permittees.

46) Pilot Program areas for the Wild Horse Program should be established to identify and test proper management methods.

47) Make sure all issues identified within the Plan are within the constraints of the current established Act.

48) Wild horse management should be established by allotment and HMA.

49) Range inventories need to be done immediately on closed grazing allotments to determine

future livestock turn on dates.

50) Establish and maintain a public data base of HMA's in Nevada and identified AML's for these respective areas.

51) Examine on an ongoing basis the proper criteria/needs of HMA's relative to habitat requirements and management feasibility of land areas designated as HMA's.

52) Address the impact of fencing within a HMA, the impact of private water developments in HMA's and whether BLM permits for construction considers wild horses.

53) Address the impacts of wild horses on permittee's livestock numbers and distribution.

54) Permittees should be compensated for any loss in grazing privileges because of excessive wild horse numbers.

55) Wild horses are the most destructive animals to public lands.

56) Wild horse populations need to be managed based on the land/water carrying capacities and not over utilized.

57) The Nevada Wild Horse Management Plan should be developed with an emphasis on science.

58) Commission should emphasize in plan the needed improvement to the base resources of land and water.

59) The Act and regulations direct the BLM to manage as follows: "Wild horses and burros shall be managed as self-sustaining populations of healthy animals in balance with other users and the productive capacity of their habitat" (43CFR 4700.0-6a).

60) Plan needs to list alternatives for goal/objectives/strategies.

Animal Removal

1) Practice humane wild horse and burro removal and adoption from public lands.

2) Only fillies and mares should be made available for adoption to control herd numbers.

3) When the need arises to remove male horses, only old age animals should be removed from the population and relocated to areas of excess lands, e.g. wilderness areas. Stud horses need to be gelded to eliminate reproduction should someone introduce a mare to the area.

4) Set parameters on "emergencies" and related monitoring on removals.

5) Develop cooperative systems wherein wild horse and burro management and removal costs can be reduced.

6) Euthanasia should be reconsidered for disposal of aged, crippled, sick or other unadoptable wild horses.

7) "Sunset Drugs" which causes delayed death after injection at capture sites or aerially applied should be investigated as a disposal method on rangelands for old, crippled, sick, or other unadoptable wild horses.

8) Address the use of site specific water traps for the capture of wild horses over other more costly methods.

9) Those BLM Districts that have all the proper planning/decision documents in place of wild horse management should not be "bumped" from implementing these decisions due to emergency gather in other Districts which don't have the proper decision documents in place, and those Districts without "decision documents" should be serviced last.

10) Those Herd Areas with established AML's and without appeals, should have priority schedules.

11) Include BLM's guidelines for emergency removals.

12) BLM age policy for adoption (the over 9 yr. standard) do not take and (under 5yrs. standard) for HMA's do take, seems to be the source of many management limitations and should be looked at closely for revision.

Animal Placement

1) Address "excess" older age animals.

2) Since the State of Nevada provides for over half of the habitat for wild horse and burro populations in the nation, management actions proposed for Nevada should consider the impacts to the national wild horse and burro program, including adoption preparation capabilities and adoption of excess animals.

3) Open auctions should be considered for adoptable wild horses and the funds received from these actions to be returned to the BLM District from which the horses came from for management off set cost of the program within this District.

4) Consider the creation of a "Companion Program" which would give an older age horse free of charge to current owner of an adopted younger horse.

5) When an adopted young horse dies replace it with another at no cost to adopter.

6) Innovative methods of disposal of adoptable wild horses should be pursued, such as video marketing.

7) BLM should Investigate the cost-benefit-ratio between wild horse holding facilities vs range improvements.

8) The adoption program should not dictate the wild horse protection and management program because some animals are more adoptable than other, that is not the intent of the "Wild Horse Act".

9) A definition of "healthy wild horse" needs to be determined publicly for adoption purposes.

10) Greater public awareness of adoptions (and sales) is essential to be effective and needs increased publicity through all available medial outlets by BLM and the Commission.

11) An adoption plan should be developed that provides self-sufficient funding for the program.

12) Adoption fees should be what the market will bare and adoption titles issued expediently.

Research

1) Intensify research toward the management of wild horse herds to determine appropriate censuring techniques, census trends, modeling, database currency relevance and validity, criteria for fertility control, limited growth vs. ZPG VS. reductions, gene pool considerations, cost, role of politics and biology managing herds.

2) Develop research date on the economic effects of wild horse management to state, regional and local livestock operators and on local economies and their related social effects.

3) BLM needs to investigate the interaction of county governments and permittees to wild horse management.

4) Herd areas using fertility drugs should be planned a year in advance to determine pros and cons of selecting the particular area.

5) Research and develop herd management criteria to protect herd integrity and develop recommendations for on-the-ground applications.

6) Serve as a clearinghouse and information source for information on population models and estimates as well as scientific research materials dealing with Meta-population of HMA's.

Law/Policy/Regulation Enforcement

1) Effective prosecution of those who kill or poach wild horses on public lands.

2) Demand that laws, regulations and policies regarding public notification and comment period be safeguarded.

3) Include the Pierson and Culp Reports as well as all Nevada Land Use Planning documents in the Issue Reference section of the Plan.

4) Rights of American Indians.

5) Clarification of the goals and objectives of the Wild Horse and Burro program will help focus the planning process and lead to a better plan.

Tourism

1) Promote wild horses as a unique and beautiful resource of all Nevadans and visitors to our state.

2) Assessment of economic gain to local communities because of adjacent wild horse herds.

3) Visual resources.

4) Any wild horse viewing areas so designated within the state must be easily accessible and visible for the public.

5) Tourism pertinent to wild horse viewing should be dove-tailed with the Nevada Commission on Tourism.

6) There are opportunities for developed recreational viewing of wild horse herds and the possibility of viewer tag fees implemented through licensed guides.

7) Revenue generated through tourism (viewing of wild horse herds) needs to be modeled for rural communities to determine feasibility.

Funding

1) Funding distribution and management intensity of wild horses and burros in Nevada should reflect that the State contains 75% of the nation's wild horse and burro populations.

2) Plan needs to consider funding requirements for on-the-ground management actions for wild horses.

3) Plan should address provisions to utilize "matching funds" from any available source as well as "in-kind labor match"

4) The criterial for expenditure of the Heil Trust Fund are required by NRS to be identified in the Plan and will also require an action plan.

Education

1) BLM Wild Horse Specialists and Managers need to have the appropriate education and training pertaining to the overall management of the wild horse program and have equal management decision authority with their peers in range management.

2) All interest groups need to be educated in the Land Use Planning process and PL 92-195 (Wild Free Roaming Horse and Burro Act, 1991).

3) A public education program is needed for the Red Rock Wild Horse Area in Clark County to protect wild horses in the area.

4) Development of a Public Information Program is needed to influence public opinion pertinent to adequate wild horse management.

B. LISTING - ISSUES IDENTIFIED THROUGH INITIAL PUBLIC SCOPING PROCESS THAT WOULD REQUIRE AMENDMENT TO THE WILD HORSE & BURRO ACT OF 1997

Herd and Habitat Management

1) The National and State wild horse and management and adoption programs should be allowed to be privatized for management efficiency and cost benefit.

2) Investigate setting up a trial area where the permittee would take all necessary action to manage wild horses in HMA with close observation by BLM and Nevada Wild Horse Commission.

3) Cooperative agreements between permittees and BLM may be a better method for management of wild horse herds and for range improvements.

4) Wild horse management in Nevada prior to the 1971 ACT was better in the hands of local ranchers who provided quality horses by proper culling, controlled populations at reasonable levels and at no expense to the tax payer.

Animal Removal

1) Amendment to the Wild Horse & Burro Act of 1971 is needed to include a sales authority clause to remove excessive numbers of unadoptable animals with sale proceeds earmarked to defray program costs.

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

July 13, 1998

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

Arizona Game and Fish Commission Comments

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

Presented by:

Duane L. Shroufe, Director
Arizona Game and Fish Department

Arizona Game and Fish Commission
July 13, 1998

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

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

1) eliminating or minimizing adverse impacts to wildlife habitat, including native wetland and riparian habitat and sensitive wildlife species habitats;

2) completing burro population inventories, estimating population densities, and maintaining existing appropriate management levels;

3) collecting data to determine level of impacts to wildlife habitats associated with burro use and overpopulation;

4) dealing with burro overpopulation and expansion outside of established Herd Areas or Herd Management Areas; and

5) obtaining funds and manpower to remove burros from areas where there is overpopulation, expansion beyond Herd Area Boundaries, or resource damage.

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

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

2. Burro population inventories and maintaining existing appropriate management levels

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. The removal was based on biological data; resource damage was obvious to all agencies involved. However, even with these data, funding was difficult to obtain and indications are that Arizona BLM will have limited funding available for burro removals in the near future. Even with the removal, resource damage is still occurring and will continue as the burro population increases.

2. This was an interagency project with strong public support. As opposed to a "BLM project", this was an interagency effort which helped to generate public support for the burro removal and also resulted in additional funding and manpower. The additional funds and manpower associated with this project were focussed on data collection and some assistance by members of the public during the removal effort.

3. If the agency responsible for managing feral horses and burros does not have the funding and manpower necessary to manage populations appropriately, compliance with the Act is not possible.

4. The entire project area was within a National Wildlife Refuge. Resource damage by burros on National Wildlife Refuges, or other lands where conservation and enhancement of wildlife habitat is the primary purpose, is incompatible with the Act and other federal legislation dealing with the management of lands dedicated to the conservation and management of fish and wildlife resources.

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

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

- The Act itself may not be the problem, rather the problem appears to be the lack of compliance with the Act. This is likely due to different agency priorities, the lack of sufficient funding, and opposition to responsible and proactive horse and burro management pursuant to the Act.

- Improve information and education regarding burro numbers in Arizona and the resource damage.

- Improve interagency planning and management efforts to address the burro issues in Arizona.

- Evaluate all available methods for reducing horse or burro populations provided for in the Act.

- Exclude horses or burros from sensitive wildlife habitats, such as riparian zones, through fencing projects.

- Increase funding for burro management in Arizona. Adequate funding must be made available to BLM to manage burros in Arizona in order to comply with the Act.

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

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

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Summary of Arizona Game and Fish Commission Comments

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

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

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

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

July 13, 1998

Mr. Chairman, members of the Committee, my name is Duane L. Shroufe and I'm the Director of the Arizona Game and Fish Department.

On behalf of the Arizona Game and Fish Commission and Arizona Game and Fish Department, I appreciate the opportunity to be here today to provide comments on the Wild, Free-Roaming Horses and Burros Act and its implementation in Arizona. I look forward to presenting information regarding the Act and its implementation in Arizona.

I also look forward to discussing ideas on how to improve management of feral horses and burros in order to protect our public lands. In Arizona, wild horse and burro management is primarily associated with burro management issues on public lands administered by the Bureau of Land Management (BLM). However, burro management issues on lands not administered by BLM are of increasing importance due to the lack of management, increasing numbers, and resource damage by burros on these lands. These lands include National Wildlife Refuges, State Parks, lands managed in accordance with the Fish and Wildlife Coordination Act (e.g., the Arizona Game and Fish Department's Alamo Wildlife Area), which are dedicated to the management of fish and wildlife resource and fish and wildlife-related recreation.

The Arizona Game and Fish Department realizes that BLM faces numerous challenges in order to manage feral burros on public lands in Arizona. From the Arizona Game and Fish Department's perspective, the most significant of these challenges include: 1) eliminating or minimizing adverse impacts to wildlife habitat, including native wetland and riparian habitat and sensitive wildlife species habitats;

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

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

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

The Department looks forward to working cooperatively with BLM and the other agencies to address burro management in Arizona.
Thank you for this opportunity to participate in this oversight hearing.

ARIZONA GAME AND FISH COMMISSION
EXHIBIT 1

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

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

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

July 13, 1998

BIOLOGICAL OPINION SUMMARY
LOWER GILA RESOURCE AREA AMENDMENT

Date of opinion: October 2, 1997

Action agency: BLM

Project: Lower Gila Resource Area Amendment

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

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

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

Incidental take statement:

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

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

1) The BLM will remove burros in the Alamo Herd Management Area as described in the following terms and conditions.

2) The BLM will monitor the effects of burros on vegetation and make appropriate adjustments in burro numbers.

3) The BLM will monitor recruitment and growth of willows and cottonwoods and growth of the midstory and make appropriate adjustments in burro numbers.

4) The BLM as part of their action will provide a yearly qualitative and quantitative report to determine the level of incidental take that actually results from the project.

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

To implement reasonable and prudent measure 1:

1) a. Within three years of the date of the final biological opinion, the BLM shall manage burro numbers so that the monitoring thresholds are not met or exceeded. Active management must be demonstrated by the first annual report (Terms and Conditions #3).

b. Alternatively, the BLM shall remove burros in the Alamo Herd Management Area in excess of the 200 identified in the Lower Gila North Management Framework Plan and South Resource Management Plan within three years of the date of the final biological opinion. The BLM shall allow burro numbers to fluctuate (or increase) from that level as long as monitoring thresholds are not met or exceeded (25% apical stem nipping, bark stripping, trailing).

To implement reasonable and prudent measures 2 and 3:

2) Monitoring of the project area and other areas that could be affected by the proposed action shall be done to ascertain take of individuals of the species and/or of its habitat that causes harm or harassment to the species. This monitoring will be accomplished using the following protocol:

a. Study transects (numbers and placement) throughout occupied, suitable, and potential southwestern willow flycatcher habitat will be chosen within the Alamo Herd Management Area by the BLM in collaboration with the Service within 6 months of the date of the final biological opinion. All studies will be conducted using methods that are repeatable and that provide valid information that is determined to be usable for decision making by both the BLM and the Service.

b. No more than 10% of cottonwoods or willows displaying stripping from burros will be allowed in occupied, suitable, or potential southwestern willow flycatcher habitat within the herd management area. Additional bark stripping from burros will require the BLM to contact the Service to discuss options including removal of additional burros.

c. On designated transects, measurements of apical stem nipping of cottonwood and willow seedlings < 4 feet tall will be taken yearly and if more than 25% of the plants receive nipping, the BLM will discuss options with the Service, including the removal of additional burros.

d. Square footage of trailing caused by burros will be monitored. If the square footage of trails increase, the BLM will discuss options with the Service, including removal of additional burros.

e. The BLM will avoid conflicts with bald eagles when doing burro removal and monitoring.

To implement reasonable and prudent measure 4:

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

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

1) The BLM could contribute either monetarily or in kind to the continued monitoring effort of southwestern willow flycatcher presence in the State.

2) The BLM could implement a study to inventory invertebrate populations along the Santa Maria River, in relation to prey availability for southwestern willow flycatcher.

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DEAN RHOADS

SENATOR

REPRESENTING THE NORTHERN NEVADA SENATORIAL DISTRICT

NEVADA STATE LEGISLATURE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SUPPLEMENTAL SHEET TO

STATEMENT OF SENATOR DEAN RHOADS BEFORE

SUBCOMMITTEE OF NATIONAL PARKS AND PUBLIC LANDS

Senator Dean Rhoads
P. O. Box 8
Tuscarora, NV 89834
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APPENDIX

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

WILD HORSE AND BURRO INFORMATION
Prepared for Michael Stewart, State of Nevada Legislative Counsel Bureau
Information requested by Senator Dean Rhoads
May 27, 1998

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

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

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

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

Population

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

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

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

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

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

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

Recruitment Rate

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

Making sense of HMAS and AMLs

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

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

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

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

Population history

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

POPULATION NUMBERS, WILD HORSES AND BURROS ON BLM LANDS*
FISCAL YEARS 1993 - 1997
(A fiscal year runs Sept. 30 through Oct. 1)

National Population (*Nevada Population*)

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

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

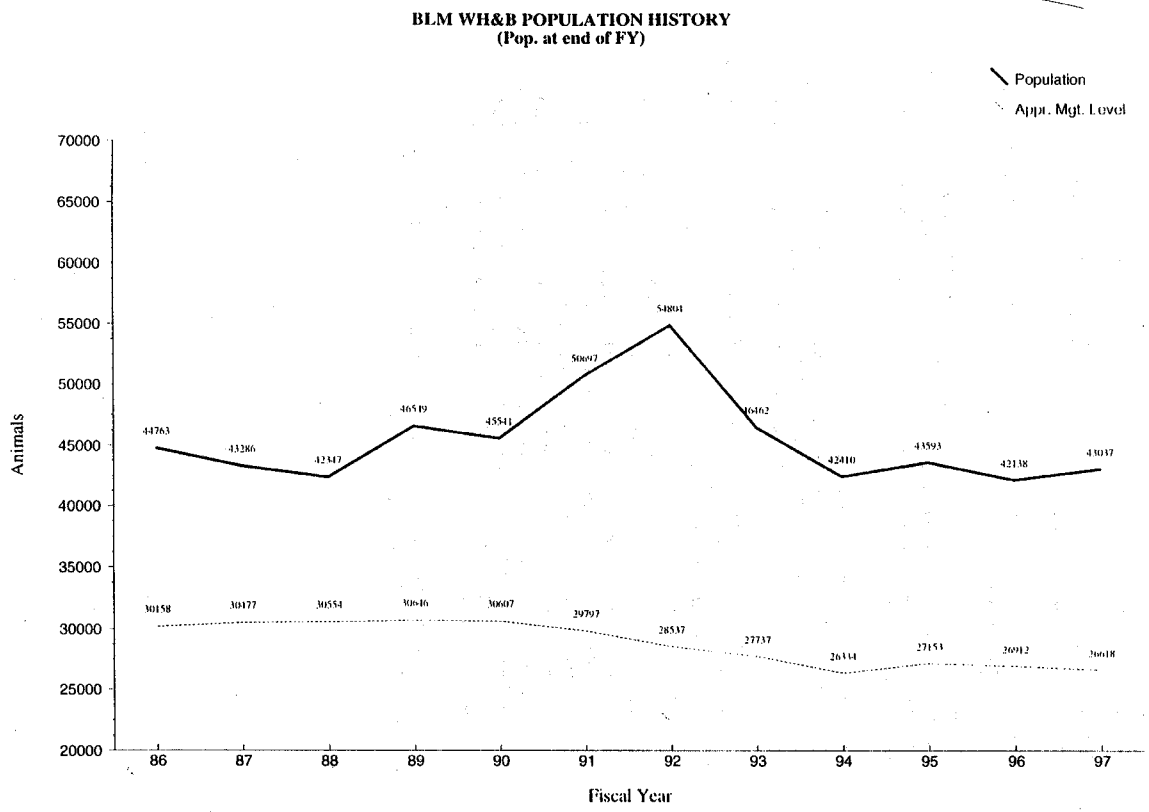
NEVADA WILD HORSE AND BURRO HERD AREAS ADMINISTERED BY BLM

HERD AREA NAME	H.A. CODE	BLM AC	NON-BLM AC	HERD AREA AC	HA STATUS	FY HMAP SIGNED	HORSE A.M.L.	ESTIMATED HORSE POP.	BURRO A.M.L.	ESTIMATED BURRO POP.	FY LAST CENSUS
AMARGOSA VALLEY	NV511	10,000	13,000	23,000	HM AREA		0	0	0	0	97
ANTELOPE	NV401	390,553	9,782	400,335	HM AREA	93	311	798	0	0	97
ANTELOPE RANGE	NV211	83,009	48,751	131,760	RMV ALL		0	130	0	2	95
ANTELOPE VALLEY	NV107	462,040	1,500	463,540	HM AREA	93	240	507	0	0	
APPLEWHITE	NV516	27,814	0	27,814	HM AREA		20	13	0	0	97
ASH MEADOWS	NV509	200,000	20,000	220,000	RMV ALL		0	0	0	0	97
AUGUSTA MTNS	NV311	210,000	6,000	216,000	HM AREA		306	668	0	0	97
BALD MTN	NV603	120,000	0	120,000	HM AREA		362	324	0	0	95
BLACK ROCK RANGE EAST	NV209	91,300	3,804	95,104	HM AREA		93	217	0	0	97
BLACK ROCK RANGE WEST	NV227	92,543	8,047	100,590	HM AREA		93	316	0	0	97
BLOODY RUNS	NV204	43,991	31,856	75,847	RMV ALL		0	0	0	0	85
BLUE NOSE PEAK	NV514	86,695	0	86,695	HM AREA		20	2	0	0	97
BLUE WING MTNS	NV217	17,913	0	17,913	HM AREA	87	29	37	23	34	95
BUCK-BALD	NV403	613,950	13,080	627,030	HM AREA		426	1,471	0	0	97
BUFFALO HILLS	NV220	123,141	9,269	132,410	HM AREA		314	377	0	0	97
BULLFROG	NV629	126,900	700	127,600	HM AREA		12	0	195	17	96
BUTTE	NV407	430,770	5,730	436,500	HM AREA	93	116	215	0	0	97
CALICO MTN	NV222	155,594	1,572	157,166	HM AREA		333	640	0	3	97
CALLAGHAN	NV604	153,000	0	153,000	HM AREA		207	638	0	0	95
CHERRY CREEK	NV406	44,269	0	44,269	HM AREA		11	0	0	0	97
CLAN ALPINES	NV310	320,000	2,600	322,600	HM AREA	93	979	1,200	0	0	97
CLOVER CREEK	NV517	33,653	0	33,653	HM AREA		40	0	0	0	97
CLOVER MTNS	NV518	175,717	0	175,717	HM AREA		60	60	0	0	97
DEER LODGE CANYON	NV521	108,607	0	108,607	HM AREA		50	45	0	0	97
DELAMAR	NV515	180,234	1,336	181,570	HM AREA	82	100	66	0	0	97
DESATOYA	NV606	124,000	0	124,000	HM AREA		217	187	0	0	97
DIAMOND	NV609	122,000	0	122,000	HM AREA		171	171	0	0	97
DIAMOND HILLS NORTH	NV104	70,000	0	70,000	HM AREA		37	37	0	0	
DIAMOND HILLS SOUTH	NV412	10,500	0	10,500	HM AREA		22	19	0	0	97
DOGSKIN MTN	NV302	7,600	0	7,600	HM AREA	94	12	50	0	0	85
DRY LAKE	NV410	494,335	0	494,335	HM AREA		94	140	0	0	97
EAST RANGE	NV225	310,605	120,790	431,395	RMV ALL		0	20	0	0	85
ELDORADO MTNS	NV501	22,734	81,210	103,944	RMV ALL		0	0	0	10	97
EUGENE MTNS	NV207	39,540	37,889	77,529	RMV ALL		0	0	0	0	93
FISH CREEK	NV612	275,000	0	275,000	HM AREA		246	550	0	1	94
FISH LAKE VALLEY	NV622	10,000	10	10,010	HM AREA		50	10	0	0	95
FLANIGAN	NV301	16,260	1,000	17,260	HM AREA	91	104	125	0	0	95
FOX-LAKE RANGE	NV228	171,956	5,307	177,263	HM AREA		204	483	0	0	97
GARFIELD FLAT	NV313	146,800	3,200	150,000	HM AREA		125	165	0	0	97
GOLD BUTTE	NV502	176,878	96,890	273,768	HM AREA		0	0	60	25	97
GOLD MTN	NV626	92,000	50	92,050	HM AREA		50	3	0	2	96
GOLDFIELD	NV629	62,000	0	62,000	HM AREA		103	0	41	5	97
GOSHUTE	NV108	250,800	0	250,800	HM AREA		160	439	0	0	
GRANITE PEAK	NV303	4,600	0	4,600	HM AREA	93	15	45	0	0	95
GRANITE RANGE	NV221	88,436	13,214	101,650	HM AREA		258	638	0	0	97
HIGHLAND PEAK	NV522	137,776	1,849	139,625	HM AREA	87	50	38	0	0	97
HORSE MTN	NV307	53,000	160	53,160	HM AREA	92	75	42	0	0	95
HORSE SPRING	NV308	18,000	12,000	30,000	RMV ALL		0	0	0	0	
HOT CREEK	NV616	40,476	35,584	76,060	HM AREA		41	56	0	0	97
HOT SPRING MTNS	NV203	49,324	21,139	70,463	RMV ALL		0	0	0	0	85
HUMBOLDT	NV224	243,046	198,886	441,932	RMV ALL		0	9	0	0	93
JACKSON MTNS	NV208	274,510	8,490	283,000	HM AREA		217	601	0	0	97
JAKES WASH	NV408	67,045	0	67,045	HM AREA		35	70	0	0	97
KAMMA MTNS	NV214	54,573	2,872	57,445	HM AREA	87	64	59	0	0	95
KRUM HILLS	NV206	30,780	23,220	54,000	RMV ALL		0	0	0	0	85
LAHONTAN	NV306	10,500	1,000	11,500	HM AREA	92	9	60	0	0	95
LAST CHANCE	NV510	78,895	3,342	82,237	HM AREA		0	0	50	37	97
LAVA BEDS	NV215	231,744	0	231,744	HM AREA	87	119	370	13	34	95
LITTLE FISH LAKE	NV614	26,420	83,488	109,908	HM AREA		54	75	0	0	97
LITTLE HUMBOLDT	NV102	64,075	8,406	72,481	HM AREA		107	244	0	0	
LITTLE MTN	NV519	54,146	410	54,556	HM AREA	84	50	33	0	0	97
LITTLE OWYHEE	NV200	398,160	16,560	414,720	HM AREA	87	286	1,100	0	0	97

NEVADA WILD HORSE AND BURRO HERD AREAS ADMINISTERED BY BLM

HERD AREA NAME	H.A. CODE	BLM AC	NON-BLM AC	HERD AREA AC	HA STATUS	FY HMAP SIGNED	HORSE A.M.L.	ESTIMATED HORSE POP.	BURRO A.M.L.	ESTIMATED BURRO POP.	FY LAST CENSUS
MARIETTA	NV318	66,500	1,550	68,050	HM AREA	87	0	0	85	102	97
MAVERICK-MEDICINE	NV105	285,960	500	286,460	HM AREA		332	332	0	0	
MCGEE MTN	NV210	50,000	0	50,000	HM AREA		0	0	41	65	94
MEADOW VALLEY MTNS	NV513	94,966	0	94,966	HM AREA		0	27	0	0	97
MILLER FLAT	NV520	90,901	280	91,181	HM AREA	82	50	59	0	0	97
MONTE CRISTO	NV402	155,330	73,610	226,940	HM AREA	77	236	626	0	0	97
MONTEZUMA PEAK	NV625	57,000	30	57,030	HM AREA		116	4	0	6	97
MORIAH	NV413	63,673	0	63,673	HM AREA		61	94	0	0	97
MORMON MTNS	NV512	175,423	0	175,423	HM AREA		0	0	0	0	97
MT STERLING	NV508	30,855	27,634	58,489	HM AREA		50	49	0	0	97
MUDDY MTNS	NV503	61,226	79,590	140,816	HM AREA		0	9	50	20	97
NEVADA WILD HORSE RANGE	NV524	394,500	0	394,500	HM AREA	95	800	526	0	0	97
NEW PASS-RAVENSWOOD	NV602	225,000	0	225,000	HM AREA		478	271	0	0	94
NIGHTENGALE MTNS	NV219	72,218	3,801	76,019	HM AREA	87	52	280	0	0	95
NORTH STILLWATER	NV228	131,104	1,325	132,429	HM AREA		175	298	0	1	97
OSGOOD MTNS	NV202	68,273	53,643	121,916	RMV ALL		0	0	0	0	85
OWYHEE	NV101	371,000	3,234	374,234	HM AREA		150	471	0	0	
PAH RAH	NV304	6,000	18,000	26,000	RMV ALL		0	0	0	0	
PALMETTO	NV624	71,000	200	71,200	HM AREA		76	0	0	0	97
PAYMASTER-LONE MTN	NV621	85,000	0	85,000	HM AREA		48	64	0	1	97
PILOT MTN	NV314	495,000	800	495,800	HM AREA		348	395	0	0	97
PINE NUT	NV305	216,000	72,000	288,000	HM AREA		179	466	0	0	95
RATTLESNAKE	NV523	75,461	0	75,461	HM AREA		20	1	0	0	97
REVEILLE	NV619	125,400	920	126,320	HM AREA		165	128	0	0	97
ROBERTS MTN	NV607	132,000	0	132,000	HM AREA		150	378	0	0	95
ROCK CREEK	NV103	115,500	38,500	154,000	HM AREA		250	502	0	0	
ROCKY HILLS	NV605	124,000	0	124,000	HM AREA		131	166	0	0	95
SAND SPRINGS EAST	NV405	386,776	0	386,776	HM AREA		257	519	0	0	97
SAND SPRINGS WEST	NV630	203,868	35	203,903	HM AREA		49	19	0	0	87
SEAMAN	NV411	361,318	0	361,318	HM AREA		158	51	0	0	97
SELENITE RANGE	NV212	126,186	3,903	130,089	RMV ALL		0	66	0	20	95
SEVEN MILE	NV613	80,936	7,492	88,428	HM AREA		105	145	0	0	93
SEVEN TROUGHS	NV216	130,161	17,749	147,910	HM AREA	87	124	360	37	85	95
SHAWAVE MTNS	NV218	88,927	18,214	107,141	HM AREA	87	60	360	0	0	95
SILVER PEAK	NV623	186,000	12,000	198,000	HM AREA		200	87	0	1	99
SLUMBERING HILLS	NV205	64,962	14,585	79,547	RMV ALL		0	0	0	0	85
SNOWSTORM MTNS	NV201	133,138	12,400	145,538	HM AREA	87	140	120	0	0	96
SONOMA RANGE	NV223	148,799	60,779	209,578	RMV ALL		0	0	0	0	85
SOUTH SHOSHONE	NV601	180,000	0	180,000	HM AREA		85	273	0	0	85
SOUTH SLUMBERING HILLS	NV230	15,161	14,585	29,786	RMV ALL		0	0	0	0	85
SOUTH STILLWATER	NV309	7,600	0	7,600	HM AREA	85	25	16	0	0	85
SPRING MTN	NV304	297,653	278,232	575,885	HM AREA		50	61	50	46	97
SPRUCE-PEQUOP	NV109	138,000	0	138,000	HM AREA		82	218	0	0	
STONE CABIN	NV618	392,176	12,205	404,381	HM AREA	82	364	141	0	0	97
STONEWALL	NV627	21,800	0	21,800	HM AREA		43	0	24	0	97
TOANO	NV110	57,500	57,500	115,000	RMV ALL		0	14	0	0	
TOBIN RANGE	NV231	185,322	9,754	195,076	HM AREA		19	65	0	0	97
TRINITY RANGE	NV232	89,712	46,215	135,927	RMV ALL		0	19	0	13	95
TRUCKEE RANGE	NV213	91,884	78,064	169,748	RMV ALL		0	0	0	0	92
WARM SPRINGS CANYON	NV226	62,305	831	63,136	HM AREA		175	453	24	24	97
WASSUK	NV312	60,000	20,000	80,000	HM AREA		123	165	0	0	97
WHISTLER MTN	NV608	60,000	0	60,000	HM AREA		28	49	0	0	92
WHITE RIVER	NV409	98,534	0	98,534	HM AREA		60	66	0	0	97
WILSON CREEK	NV404	689,185	0	689,185	HM AREA		171	127	0	0	97
* OUTSIDE OF HERD AREAS	NV000						0	31	0	0	
	ACREAGE TOTAL:	16,877,402	1,994,473	18,871,875		ANIMAL TOTAL:	13,325	22,291	702	574	

SIGNED HMAP's: 28 STATE WH&B POPULATION: 22,865 STATE WH&B A.M.L.: 14,027 EXCESS WH&B's: 8,838


BLM WH&B POPULATION HISTORY
(Pop. at end of FY)
Population
Appr. Mgt. Level
Animals
70000
65000
60000
55000
50000
45000
40000
35000
30000
25000
20000
86
87
88
89
90
91
92
93
94
95
96
97
Fiscal Year
44763
43286
42347
46519
45541
50697
54804
46462
42410
43593
42138
43037
30158
30177
30554
30646
30607
29797
28537
27737
26434
27153
26912
26618

Gathers

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

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

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

Some of the practical items to be considered are:

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

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

Costs to gather

Contract gathers are bid in three parts:

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

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

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

Adoption program

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

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

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

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

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

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

TOTAL REMOVALS AND ADOPTIONS, 1992 TO 1997 FISCAL YEARS*
(A fiscal year runs from October 1 to September 30)
National number in regular type(*Nevada numbers in italics)*

TOTAL WILD HORSES AND BURROS REMOVED

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

TOTAL WILD HORSES AND BURROS ADOPTED

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

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

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

Has gathering/adoption improved range conditions?

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

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

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

MISCELLANEOUS

Sanctuary

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

PUBLIC LAND

STATISTICS

1996

Volume 181

BLM/BO/ST-97/001-1165

March 1997

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

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

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

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

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

Total adopted, fiscal year 1996: 8,074

Total removed, fiscal year 1996: 9,365

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

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

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

COMMISSIONERS

LLEE CHAPMAN
ROYCE L. HACKWORTH
TONY LESPERANCE
MIKE NANNINI
ROBERTA K. SKELTON

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

Board of County Commissioners

COUNTY OF ELKO
[illegible] COURT STREET • ELKO, NEVADA [illegible]

July 13, 1998
SUBMITTED FOR THE RECORD

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

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

COMMISSIONERS

LLEE CHAPMAN
ROYCE L. HACKWORTH
TONY LESPERANCE
MIKE NANNINI
ROBERTA K. SKELTON

GEORGE R.E. BOUCHER
COUNTY MANAGER
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July 13, 1998
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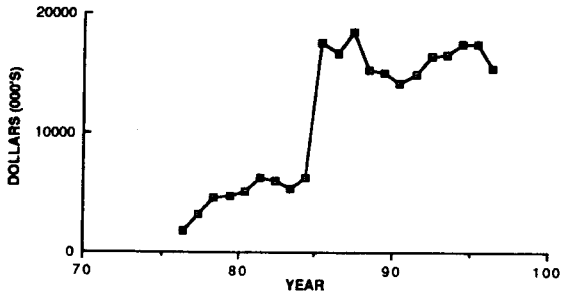
HOUSE SUBCOMMITTEE ON NATIONAL PARKS AND PUBLIC LANDS
UNITED STATES CONGRESS, HOUSE OF REPRESENTATIVES
HONORABLE JAMES V. HANSEN, CHAIRMAN

Mr. Chairman, Honorable Members:

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

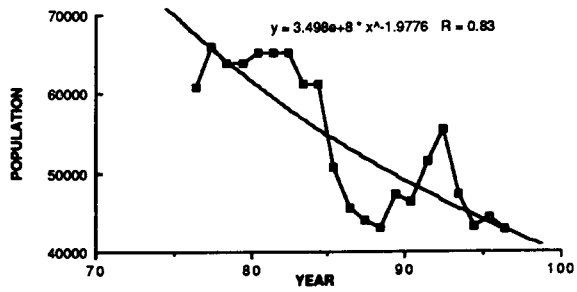
Funding for the BLM Wild Horse and Burro Program started in 1973 and has continued through 1997. To date some $246,099,000 has been allocated by Congress. Initially, funding remained low, only exceeding one million dollars annually in 1975. Funding remained below six million annually until 1985, when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

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



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

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

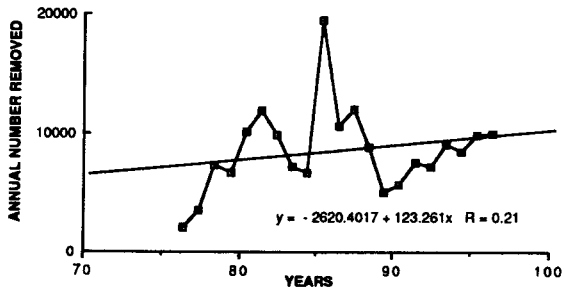


In an attempt to better understand the significance of the data in Table Two, mathematical representations of the set of data were considered. In all, four equations were considered, including a simple mathematical expression; a polynomial expression; a logarithmic expression and an exponential expression.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

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

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

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



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

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

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

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

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

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

HON. J. HANSEN, 7/13/98
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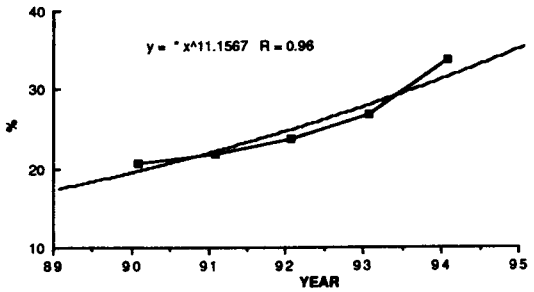
Table Four: Percent of total allocation spent on overhead of the Wild Horse and Burro Program.



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

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

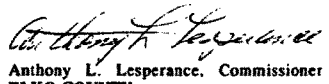
It is obvious that the Wild Horse and Burro Act will never be able to accomplish the AML goal of 27,000 head without significantly increasing congressional funding. Further, it is also obvious that maintenance of the AML will not be accomplished, if obtained, without significant long standing financial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

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

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

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

Respectfully submitted,



Anthony L. Lesperance, Commissioner
ELKO COUNTY

EXHIBIT A

PART TWO

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

* * * * *

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

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

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

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

(i) Interstate Commerce Clause (Art. I, Sec. 8), or

(ii) International treaty powers (Art. II, Sec. 2).

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

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

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

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

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

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

International Treaty Power

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

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

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

Interstate Commerce Clause

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of Congress.

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

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

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

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

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

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

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

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

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

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

Respectfully submitted.

EUREKA COUNTY DISTRICT ATTORNEY

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Board of County Commissioners
COUNTY OF ELKO
569 COURT STREET • ELKO, NEVADA 89801

July 13, 1998
SUBMITTED FOR THE RECORD

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

FOLLOW-UP ADDRESS

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STATEMENT SUMMARY:

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

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

1. Name: Anthony L. Lesperance

2. Business Address: 651 Silver St. Elko, NV 89801

3. Business Phone: 702-738-8560

4. Organization you are representing: Elko County Commission

5. Any training or educational certificates, diplomas or degrees which add to your qualifications to testify on or knowledge of the subject matter of the hearing:
   B.S., M.S. & Ph.D. in various fields of agriculture and ecology, with emphasis on public and private land management

6. Any professional license or certifications held which add to your qualifications to testify on or knowledge of the subject matter of the hearing:
   None

7. Any employment, occupation, ownership in a firm or business, or work related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:
   I was a professor at the University of Nevada, Reno for 25 years. During that period I taught and did research in all fields of agriculture and ecology of private and public lands throughout the Great Basin.

   I have been president and owner of Great Basin Agriculture, Inc. for the last 13 years. This corporation operates two sub businesses, called Great Basin Agriculture and Mine Supply and Great Basin Resource Management. These organizations have been active in many phases of mining and agriculture in Nevada and surrounding states.

8. Any offices, elected positions or representational capacity held in the organization on whose behalf you are testifying:
   Commissioner, Elko County

   President, Great Basin Agriculture, Inc.

9. Any federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1994 from the U.S. Department of the Interior and/or the U.S. Department of Agriculture, the source and the amount of each grant or contract:
   None

10. Any federal grants or contracts (including subgrants and subcontracts) which were received since October 1, 1994 from the U.S. Department of the Interior and/or the U.S. Department of Agriculture by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:

Disclosure Statement/Lesperance
page 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rey Flake

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you,

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

Statement of the Animal Protection Institute

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

Representing the Animal Protection Institute:

Sheila Hughes Rodriguez
Counsel

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

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

INTRODUCTION

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

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

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

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

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

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

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

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

History

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

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

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

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

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

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

"Self-Sustaining Populations"?

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

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

16 U.S.C. § 1331 (emphasis added).

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5 *See supra note* 1.
6 *Id.*
7 *Id.*

The regulations implementing the Act amplify this protection:

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

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

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

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

Armargosa Valley	Last Chance
Antelope Valley	Muddy Mountain
Ash Meadows	Selenite Range
Eugene Mountains	Toano
Humboldt	Trinity Range[10]

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

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

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

9 *See supra* note 3.

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

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

Livestock Grazing on Public Lands

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

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

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

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

"Multiple Use"?

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

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

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

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

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

[13] *Id.* at 704.

"Multiple use" is defined as:

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

43 U.S.C. § 1702(c) (emphasis added).

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

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

43 U.S.C § 1702(k) (emphasis added).

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

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

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

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[14] 60 Fed. Reg. 9894 (1995).

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

The National Environmental Policy Act

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

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

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

Id. at 1219-1220 (emphasis added).

CONCLUSION

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

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

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

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

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University.

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

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

> Wild horse removals must not eliminate individual herd areas or lower the number of animals to such a level that threatens the long-term survival of the herd;
>
> The BLM must take into account the adoptability of the wild horses removed, as well as the impact of the removals on the remaining family and bachelor bands;
>
> The BLM must not schedule roundups during periods when gathering would place undue stress on foals and pregnant mares; and
>
> The BLM must consider decreases in wild horse populations as part of a comprehensive plan to improve range conditions, which must be accompanied by equivalent reductions in the number of grazing livestock.

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

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

* * *

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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July 13, 1998

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

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

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

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

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

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

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

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

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

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

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

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

Respectfully,

Demar Dahl

STATEMENT BY KAREN A. SUSSMAN, PRESIDENT

INTERNATIONAL SOCIETY FOR THE PROTECTION OF MUSTANGS AND BURROS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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