



THE STATE OF ARIZONA
GAME AND FISH DEPARTMENT

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September 30, 2009

The Honorable John S. McCain
241 Russell Senate Office Building
Washington, D.C. 20510-0303

RE: Opposition to H.R. 1018 and S. 1579, *Restore Our American Mustangs Act*

Dear Senator McCain,

Thank you in advance for the opportunity to provide comments on Restore Our American Mustangs Act (ROAM). The Arizona Game and Fish Commission (Commission) recently voted unanimously in formal opposition to the proposed legislation, as the provisions expand wild horse and burro populations to all public land and greatly complicate management of wild horse and burro herds. Expanding the management of free-roaming horses and burros to all public lands will have devastating impacts to the long-term sustainability of the public's wildlife resources and habitat. Introduction of these measures, and consideration of them, should simply beg the following questions:

- Should priority for wild horses and burros on public lands relegate all other interests such as wildlife to a subordinate existence?
- Should the sensitive riparian areas of the San Pedro National Conservation Area be subjected to the impacts of the resident equine herds such as occurred to the Bill Williams River?
- Should the pristine future of Agua Fria National Monument, Sonoran Desert National Monument and the Eagle Tail Mountains Wilderness incur the insults to natural and cultural resources that the Lower Colorado River has sustained from equine presence?

The list of fragile, protected areas, which will become available for the expansion of horse and burro populations upon the adoption of ROAM, is seemingly infinite. The tools and resources necessary for litigating protections for these fragile, natural resources will simply not exist upon the adoption of ROAM. These measures are injurious to sound public land management policy in a multitude of ways.

Background

The Wild Free-Roaming Horses and Burros Act of 1971 (Act) authorized the Secretaries of the Interior and Agriculture to manage, protect, and control wild horses and burros on the nation's public rangelands in a way that ensures healthy herds and rangelands. The current Act mandates that these animals be limited to their area of distribution (herd areas) designated at the inception of the Act. The Act (§1333) further states that where the Secretary of the Interior determines that an overpopulation exists on a given area of public lands; he shall immediately remove excess animals from the range so as to achieve AML, and such action shall be taken until all excess animals have been removed so as to restore a "thriving natural ecological balance" to the range, and protect the range from the deterioration associated with overpopulation. Nationally, the Appropriate Management Level (AML) or the optimum number of animals on the range, in defined herd areas, is approximately 27,200 animals. As a result, the U.S. Bureau of Land Management (BLM) must remove thousands of animals from Western public rangelands each year to ensure that first, herd sizes are consistent with the land's capacity to support them, and second, to limit the dispersion of those animals to the original range of distribution.

Challenges of the Program

When properly funded and implemented, wild horse and burro programs have been relatively successful in removing excess horses and burros from the landscape. Since 1971, over 270,000 excess wild horses and burros were removed from BLM lands, but less than 221,000 were successfully adopted through the adoption program. If it is determined that the animal is "unadoptable," it is transported to one of BLM's contracted sanctuaries or long-term holding facilities where the animal will live out its life. Currently there are nearly 32,000 wild horses and burros held in captivity. In fiscal year 2008, holding costs exceeded \$26 million, accounting for 75% of the fiscal year appropriation for the Wild Horse and Burro Program to the BLM of approximately \$37 million. This level of funding is not sufficient to support summer removals from the range while maintaining lifetime holding for older, un-adopted animals.

The BLM has recently taken more innovative steps to control population growth on the range such as the use of fertility contraceptives. The effect of this treatment on population growth rates however, is not yet apparent.

Impacts to Wildlife Populations and their Habitat

In spite of balancing protective measures for wildlife embodied in the current Act, wild horse and burro impacts on the West's wildlife habitats continue to be of significant concern to state and federal land and resource agencies. The balancing measures in the Act became particularly significant to wildlife conservation interests when adverse impacts by horses and burros on upland and riparian wildlife habitats increased significantly in the mid to late 1980s. In addition to concerns regarding burro management on public lands administered by the BLM, there have been burro management issues on lands not administered by BLM, such as National Wildlife Refuges, private lands and other lands dedicated to the management of wildlife (State-owned Wildlife Management Areas). Specific locations in Arizona that have experienced significant habitat degradation in the past within the lower Colorado River watershed include: Imperial, Cibola, and Lake Havasu National Wildlife Refuges, the Alamo Lake Wildlife Area (state), and Lake Pleasant. The Arizona Game and Fish Department

(Department) initiated litigation against the BLM in 1994 for failure to comply with existing land use plans for the Alamo HMA. That lawsuit was resolved through the development of new resource management plans, which complied with the current provisions of the Act.[but the Department would prefer that appropriate burro management in Arizona not require litigation in the future.]

Under ROAM these areas (as well as new and adjacent areas) would be expected to suffer irreparable damage to Sonoran desert upland and riparian habitats. The wildlife populations that depend on these habitats would also be adversely impacted, including but not limited to the federally endangered southwestern willow flycatcher, mule deer, and bighorn sheep. Horses and burros not only compete for forage, but have been observed defending the few remaining springs from use by wildlife or other horses. Research indicates that wild horses will prevent wildlife's access to water. State Fish and Wildlife Agencies believe that setting and maintaining AMLs is fundamental to preventing wildlife impacts, such as habitat damage and territorial exclusion behavior.

Implications of H.R. 1018 and S. 1579 for Wildlife and Habitat

The passage of ROAM would have catastrophic consequences for fish and wildlife populations and their habitats, and would greatly diminish the Department's ability to carry out its responsibilities of managing healthy wildlife populations for present and future generations. Consequences resulting from the passage of ROAM are delineated forthwith:

1. **Removing the restriction on limiting wild horses and burros to areas where they were found in 1971.** This would lead to a massive range expansion with widespread direct and cumulative impacts to wildlife resources. Currently, the Wild Horse and Burro Program is underfunded and understaffed. Any significant increase of acreage or animals would limit personnel and funding solely for purposes of crisis management – such as responding to lawsuits for damage to wildlife habitat. Under this scenario, wild horse and burro populations, costs, and resource impacts would spiral out of control.
2. **Requiring that the acreage available for wild and free-roaming horses and burros shall never be less than the acreage where they were found when the Act was passed in 1971.** Due to resource conflicts, many of the areas where wild horses and burros were found in 1971 were not designated as Herd Management Areas and were managed for a zero population level. This provision of ROAM alone would instantly increase the acreage available for wild horses and burros by more than 13.7 million acres.
3. **Requiring the BLM and United States Forest Service (USFS) to exhaust all practicable options before capturing and removing wild horses and burros.** This would delay necessary removal operations, slowing down an already cumbersome removal approving process. Also, managers may be reluctant to push for removals until resource damage is obvious. With a population growth rate of 15-20%, wild horse and burro populations can double in 4-5 years. In our fragile southwestern habitats, an overpopulation of horses and burros can quickly lead to habitat and watershed degradation.
4. **Limiting the amount of time captured burros and horses can be held in corrals and holding facilities to 6 months.** Due to inadequate adoption demand, and with few other options available, many wild horses removed from the range because of

overpopulation would likely have to be returned to the overpopulated range after 6 months - or they may have to be transported to a different range, expanding the distribution of the animals, the associated costs, and the habitat damage.

5. **Requiring the identification of new rangelands and sanctuaries – or exclusive use areas - for wild horses and burros.** This directive would elevate the importance of one species above all other species that use the range, severely impacting the Department's ability to manage wildlife populations. It is also inconsistent with the multiple use mandates in the Federal Lands Management Act of 1976.
6. **Revoking a provision that allows the BLM to destroy old, sick and lame animals; and excess horses and burros for which an adoption demand does not exist.** This would increase costs of holding and long term care, which would decrease the availability of funds for removals and surveys. Due to limited funds and holding facilities, managers would have to return more animals back onto the range - exacerbating resource damage.
7. **Allowing the BLM and USFS to relocate wild horses and burros to public lands where they did not exist before the Act.** This would have the effect of increasing and spreading the impacts to wildlife habitats, but it may be the land managers' only recourse given the restrictive provisions in these measures for controlling wild horse and burro populations. Relocating wild horses and burros will only transplant the problem and could increase the problem beyond the Wild Horse and Burro Program's ability to control it. This would lead to extreme, and geographically expanding, population growth and habitat damage.
8. **Requires that an adoption demand exists prior to capturing wild horses and burros.** Over the years it has been demonstrated that there is not sufficient adoption demand to keep up with wild horse and burro population growth. This provision would cause wild horse and burro populations to remain on the range at levels beyond its ability to support them and the wildlife that depend on the same resources.

Recommendations

A more effective strategy to manage wild horse and burro populations is to adequately fund the current Wild Horse and Burro Program. The current Act, if adequately funded, has built in checks and balances to prevent overpopulation and reduce resource damage on the range. It would be much more cost-effective to increase funding for the current program than to expand the distribution of wild horses and burros, simultaneously increasing their impacts to those natural resources. The passage of ROAM would promulgate degraded watersheds and wildlife habitats. Habitat restoration projects are very expensive, time intensive, and are oftentimes not successful in restoring landscapes to desired conditions. Preventing habitat damage to Arizona's landscape by defeating the passage of ROAM would be a more cost-effective strategy than mitigating for the consequences of its passage.

The Commission appreciates your time and consideration for its aforementioned concerns regarding ROAM, (H.R. 1018 and S. 1579) before a hearing or mark-up of one of those measures is held in the Senate. We respectfully request dialogue with your offices to prevent the furtherance, of either House or Senate measure, as currently written. Your continued commitment to Arizona's wildlife and wildlife habitat is commendable.

Sincerely,

Bob Hernbrode, Chairman
Arizona Game and Fish Commission

cc: Larry D. Voyles, Director, Arizona Game and Fish Department
Michael Anable, Senior Policy Advisor for Natural Resources, Agriculture and Environment, Office of the Governor
The Honorable Jon Kyl