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SUBMITTED ON BEHALF OF THE WESTERN ASSOCIATION OF FISH AND WILDLIFE AGENCIES**

ON

**H.R. 1018  
TO AMEND THE WILD FREE-ROAMING HORSES AND BURROS ACT**

**BEFORE THE HOUSE OF REPRESENTATIVES  
NATURAL RESOURCES SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS**

**MARCH 3, 2009  
WASHINGTON, D.C.**

The original crafters of the Wild Free-Roaming Horses and Burros Act wisely balanced measures to protect free-roaming horses and burros with measures to protect wildlife habitats, rangeland resources and private interests.

H.R. 1018 would dramatically change the U.S. Forest Service and Bureau of Land Management (BLM) Wild Horse and Burro programs. The legislation would expand wild horse and burro populations to all public land and greatly complicate management of wild horse and burro herds by limiting the methods by which the federal agencies can conduct removals. The Western Association of Fish and Wildlife Agencies is concerned that 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 fish and wildlife resources and their habitats.

**Background**

The Wild, Free-Roaming Horses and Burros Act of 1971 (Act) provides for management of wild horses and burros by the Secretary of the Interior through the Bureau of Land Management (BLM) and the Secretary of Agriculture through the U.S. Forest Service (USFS). The Act granted the Secretaries the authority to manage, protect, and control wild burros on the nation's public rangelands in a way that ensures healthy herds and healthy rangelands. Federal protection and a lack of natural predators has resulted in thriving wild horse and burro populations in many states that grow significantly in number each year. Wild horses and burros can increase their population at a rate of 15-20% per year. This results in the population potentially doubling in size every three to four years. BLM monitors rangelands and wild burro populations to determine the number of animals, including livestock and wildlife that the land can support.

The BLM currently manages over 34,000 horses and burros in 181 herd management areas in 10 western states. Nationally, the Appropriate Management Level (AML) or the optimum number of animals on the range is about 27,200 animals. The Act (§1333) states that where the Secretary of the Interior determines that an overpopulation exists on a given area of public lands and that action is necessary to remove excess animals, 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. As a result, BLM must remove

thousands of animals from Western public rangelands each year to ensure that herd sizes are consistent with the land's capacity to support them.

In the past, the State fish and wildlife agencies often questioned the accuracy of USFS and BLM survey techniques and identified that population estimates developed by BLM were under-estimations of existing population numbers. This was recently substantiated when a Nevada Division of Wildlife biologist accompanied BLM staff in an aerial survey of a Wild Horse Management area. BLM had an estimated population of approximately 300 animals with an AML of 200 to 250. The actual count on this survey was over 1100 horses. State wildlife biologists are specialists in the management of free roaming populations and are highly experienced in aerial survey techniques, as this is the method used in estimating wildlife populations. In states such as Arizona and Nevada, state wildlife biologists are now working cooperatively with federal agency personnel to develop horse and burro census techniques and protocols for increasing the confidence in estimating populations on federal lands.

In 2001, BLM with assistance from some western states took active measures to remove excess animals from the range to reach appropriate management levels (AML) and to stop the critical deterioration of western ranges. Since that time, over 79,000 animals have been removed from the range. Adoptions and sales, however, have declined over that same time period; only 47,000 animals have been placed in private care since 2001. BLM now holds close to 33,000 unadoptable animals, which is up from 9,807 in 2001. Last years' holding costs accounted for nearly 75% of the program's enacted appropriation. Without funding increases, few resources remain for on-the-range management such as population estimates, removals, and mitigation projects to protect sensitive habitats.

### **Challenges of the Program**

These requirements can and will continue to conflict with the public's view of wild horses and burros. When properly funded and implemented, the BLM's Wild Horse and Burro Adoption Programs have been relatively successful in removing excess horses and burros from the landscape. However, not all horses and burros removed from public and private lands are adopted by the public. Since 1971, 236,112 excess burros were removed from BLM lands, but only 199,425 were successfully adopted through the adoption program. If an animal is not adopted at one of BLM's temporary adoption sites, the animal is returned to the nearest BLM facility and sent to another adoption. 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. 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 control drugs. 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 the state and federal land and resource agencies. BLM and USFS face numerous challenges in

managing burros on public lands. Requirements of the Wild Free-Roaming Horse and Burro Act include:

- 1) 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) Addressing burro expansion outside of established herd management areas; and
- 5) Obtaining funds and manpower to remove burros from areas experiencing overpopulation and expansion beyond herd management area boundaries or resource damage.

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 were serious 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).

Appropriate Management Levels (AMLs) have been established in accordance with the current Act. BLM is currently required to consider the best available information which is the number of burros and horses that can survive in a thriving ecological balance with wildlife. 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 from access to water. State Fish and Wildlife Agencies believe that the setting of an AML is fundamental to preventing wildlife impacts, such as territorial exclusion behavior.

## **WAFWA CONCERNS WITH H.R. 1018**

**SECTION 2. POLICY** – Requires that wild horses and burros be considered an “integral part of the natural system” on *all* public lands, not just the areas where they were found at when the Act was passed in 1971. (“Public lands” are defined in the Act as lands managed by the BLM and the Forest Service.)

Under the current law, BLM and USFS manage wild horse and burro populations in the areas they were found when the Act was passed in 1971. This section, in combination with sections 3 and 9, would eliminate the current protections for wildlife that occur in areas that were not historically occupied by wild horses and burros and would allow animals to expand beyond their current herd management areas to all public lands. Because rangelands are finite, reductions in forage allocations for cattle and wildlife would be anticipated in areas where wild horse and burro herds are expanded. Program costs would increase significantly to monitor populations and to maintain acceptable population levels in a larger area.

**RECOMMENDATION**– Maintain the requirement that wild horses and burros be limited to the areas they were found when the Act was passed in 1971.

**SECTION 3. DEFINITIONS** – Re-defines “range” to allow animals outside of their known territorial limits.

**RECOMMENDATION-** Remain consistent with the Act of 1971 due to the same implications of expanding populations mentioned above under Section 2- Policy.

**SECTION 4. INVENTORY AND DETERMINATIONS** – Strikes and replaces all of Section 1333 of the Act. This section affects nearly all aspects of BLM and USFS’s wild horse and burro program.

**INVENTORY** – The amendments in the section would direct the BLM to update inventory techniques, establish standards for determining AML, and train staff on new policies as recommended in the GAO report. It also includes a consultation requirement with the State Fish and Wildlife Agencies to ensure any adjustments to forage allocations consider the needs of wildlife.

**RECOMMENDATION-** Improve inventory methods that are modeled after proven and more cost effective wildlife population census techniques. These techniques should be developed jointly with the State fish and wildlife agencies and finalized in the agencies’ Wild Horse and Burro program handbook to more accurately and consistently determine AML.

**REMOVALS** – The Act requires BLM and USFS to achieve AML through removal or destruction of excess animals or through population growth control. Although the H.R. 1018 amendments in this section still require BLM to identify AML, AML would no longer trigger removals. Instead, BLM will be required to “exhaust practicable options to maintain populations on the range” before removing animals. Without a clear mechanism to trigger removals, wild horse and burro populations would grow exponentially, resulting in devastating wildlife habitat conflicts.

Amendments in this section would also require that an adoption demand exists before removing animals. Adoption demand has declined substantially in recent years. In 2008, only 3,500 animals were adopted, despite increased marketing efforts. The removals needed to get to AML far exceed what can be expected to be adopted. If gathers are limited to only animals that can be adopted, wild horse and burro populations would increase sharply and cause increasingly severe destruction of fish and wildlife habitats. Destructive effects in shrinking western rangelands coupled with persistent drought due to climate variability and change will likely result in significant horse and burro deaths.

H.R. 1018 would also ban the use of helicopters to gather excess animals. Helicopters are the only effective method to gather wild horses and burros. Bait and water trapping is another viable method, but is only effective in limited situations. Other alternatives to helicopters (all-terrain vehicles and horseback riders) would cause more stress and injury to the animals being gathered and the saddle horses and personnel conducting the gathers. As in the 1970’s when helicopter use was banned, wild horse populations would expand and rapidly outgrow the capacity of their range to support them. Livestock and wildlife will be displaced and, in a short time, the capacity of the range to support wild horses will be exceeded, causing irreparable damage to watersheds and rangelands. Prohibiting the use of helicopters would also greatly limit fertility control efforts.

H.R. 1018 requires that removals for drought be *temporary*, meaning the animals are later returned to the range, presumably after conditions improve. Areas affected by drought and wildfire can take years and often decades to recover.

**RECOMMENDATION**– Federal agencies must continue to use AML as the trigger for removing excess animals from the range and the use of helicopters, bait/water and other methods to gather excess burros from the range. Remove the requirement for animals that are removed due to drought or wildfire be returned to the range.

**SANCTUARIES** – Amendments in this section would require BLM to establish sanctuaries or exclusive use areas within one year. Creating an exclusive use area would require priority over wildlife and domestic livestock grazing from an area. This may be in conflict with the Federal Land Policy and Management Act (FLPMA) and the Taylor Grazing Act, and preclude the exercise of state trust responsibilities for wildlife.

**RECOMMENDATION**– Limited creation of sanctuaries for non-reproducing herds as a short-term solution for holding animals prior to adoption.

**FERTILITY CONTROL** – The amendments in the section would require USFS and BLM to develop and implement surgical or immune-contraception sterilization or other fertility control.

**RECOMMENDATION**– Continue ongoing research in developing these agents and their large scale use as a method for controlling horse and burro populations. USFS and BLM must retain the ability to use helicopters to capture horses and burros for the application of these agents.

**SALE AUTHORITY** – H.R. 1018 eliminates the authority in the Act to sell animals that are older than 10 years or have not been adopted after three attempts. Sale authority currently provides USFS and BLM a necessary tool to reduce the number of animals in captive holding.

**RECOMMENDATION**- Maintain broad authority to place excess animals through adoptions and sales, using monetary incentives such as grants, where necessary.

**EUTHANASIA** – H.R. 1018 limits humane destruction of animals to those determined to be “terminally ill.” This new standard for euthanasia would greatly increase animal suffering and prevent the BLM from providing humane care by making appropriate euthanasia decisions, when necessary and continue the federal systems exposure to escalating program costs.

**RECOMMENDATION**– Retain the legal authority set in Section 1333(2)(iv)(C) of the Wild Free-Roaming Horses and Burros Act of 1971, (Public Law 92-195).

**SECTION 5. PRIVATE MAINTENANCE** – Requires that wild horses or burros that stray from public lands to private land be returned to the public land, rather than be removed.

**IMPLICATIONS**– Wild horses or burros that repeatedly stray onto private land are typically removed and offered for adoption rather than returning them to herd management areas. Experience has shown that animals tend to repeatedly try to return to private land. Furthermore, costs to implement actions to preclude wild horses and burros (e.g., fences) would be at the expense of the non-federal landowner(s). This change would complicate management and could potentially deteriorate relationships with non-federal landowners bordering public lands.

**RECOMMENDATION**– Retain the authority of the Secretary to remove animals that stray onto private land.

**SECTION 6. COOPERATIVE AGREEMENTS** – Expands the Secretary’s authority to enter into cooperative agreements to include private entities, in addition to government agencies and landowners.

**IMPLICATIONS** – Allows BLM to partner with non-profit organizations and other horse advocacy groups.

**RECOMMENDATION**– Retain as another tool to increase the effective management, including removal, of horses and burros on federal lands.

**SECTION 7. JOINT ADVISORY BOARD** – Expands the FACA-chartered advisory board from nine to 12 members, adding three wildlife management scientists; limits service to two consecutive terms.

**RECOMMENDATION**– Increase participation of the Advisory Board to include three wildlife management scientists with the expectation that wildlife population census techniques and the habitat requirements of wildlife will be considered and consistently applied when determining AML.

**SECTION 9. TRANSPORTATION OF CAPTURED ANIMALS** – Limits BLM to using motor vehicles to transport captured animals; eliminates the use of helicopters.

**IMPLICATIONS** – See Comments under Section 3.

**SECTION 10. LIMITATION OF AUTHORITY** – Removes the requirement that wild horses and burros be limited to the areas they were found when the Act was passed in 1971.

**RECOMMENDATION**– Maintain the requirement that wild horses and burros be limited to the areas they were found when the Act was passed in 1971.

## **ADDITIONAL RECOMMENDATIONS FOR THE SUBCOMMITTEE'S CONSIDERATION**

The Western Association of Fish and Wildlife Agencies has developed the following comments and suggestions on how to improve horse and burro management in the West:

- 1) The Act itself may not be the problem, rather the past problems experienced by wildlife agencies appears to be the lack of compliance with measures to balance competing interests that are contained in the current 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 horse and burro numbers and associated resource damage;
- 3) Improve interagency planning and management efforts to address issues in the West;
- 4) Evaluate all available methods for reducing horse and burro populations provided for in the current Act;
- 5) Exclude horses and burros from sensitive wildlife habitats, such as riparian zones, through fencing projects; and
- 6) Increase funding for horse and burro management. Adequate funding must be available to BLM and USFS to manage horses and burros in the West in order to comply with the existing Act.

*The Western Association of Fish and Wildlife Agencies, founded in 1922, is a quasi-governmental organization of public agencies from 19 states and four provinces/territories charged with the protection and management of fish and wildlife resources in the western part of the United States and Canada. The Association has been a key organization in the promotion of the principles of sound resource management and the strengthening of federal, state and private cooperation in protecting and managing fish and wildlife and their habitats in the public interest. Our mission is, "Delivering conservation through information exchange and working partnerships".*

