

1981

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Recommended Citation

Santini, George (1981) "Good Intentions Gone Estray - The Wild Free-Roaming Horse and Burro Act," *Land & Water Law Review*. Vol. 16 : Iss. 2 , pp. 525 - 539.

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GOOD INTENTIONS GONE "ESTRAY"—THE WILD, FREE-ROAMING HORSE AND BURRO ACT¹

In the early 1950's the attention of the American public was drawn to the plight of the wild horses and burros which inhabited the vast open ranges of the public lands in the western United States.² These animals, like the buffalo and the American Indian, had been displaced by the westward expansion of the nation into the most rugged and remote areas.³ As a result of the decrease in the amount of open range and the increased competition for forage by domestic animals, the number of wild horses and burros dwindled from the estimated two million which once roamed the western plains and mountains in vast herds.⁴ A loss of valuable forage and range was not the only reason for this decrease in numbers; wild horses and burros were also victimized by systematic extermination programs conducted by commercial hunters who sold the animals to slaughterhouses to be processed into pet food and fertilizer.⁵ The result of the interaction of commercial exploitation and smaller ranges was that by 1971 it was estimated that fewer than 9,500 wild horses remained.⁶

Largely in response to a public outraged by the brutal and inhumane treatment of these animals, made known through the efforts of individuals such as the late Velma B. (Wild Horse Annie) Johnston and the group she headed, the Wild Horse Organized Assistance, Inc., Congress in 1959 acted to outlaw the use of aircraft and motorized vehicles for the purpose of hunting or capturing wild horses or burros on lands owned by the federal government.⁷ This

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1. 16 U.S.C. §§ 1331-40 (Supp. II 1979).

2. S. REP. NO. 92-242, 92d Cong., 1st Sess. (1971), reprinted in [1971] U.S. CODE CONG. & AD. NEWS 2149, 2150.

3. 117 CONG. REC. 44537 (1971) (Statement of Sen. Dole).

4. S. REP. NO. 92-242, *supra* note 2, at 2149, and Johnston, *The Fight to Save a Memory*, 50 TEX. L. REV. 1055, 1956 (1972).

5. *Id.*

6. 117 CONG. REC. 34780 (1971) (remarks of Rep. Anderson).

7. Johnston *supra* note 5, at 1058-59.

Act,⁸ popularly dubbed the "Wild Horse Annie Law," was designed to prevent the use of the most prevalent method of roundup in use at that time. Roundups used low-flying aircraft to drive the animals at breakneck speeds from their shelters onto barren flats where men in pickup trucks and four-wheel drive vehicles waited to drive the frightened animals into exhaustion. The horses were then roped and loaded tightly onto trucks to be delivered for slaughter.⁹ The law ultimately proved to be ineffective due to half-hearted enforcement by local officials who were frequently more concerned with the interest of local livestock groups.¹⁰

Then, in 1971, Congress again attempted to provide for the protection of these animals which symbolized to many the pioneer spirit of the nation. A bill to provide for the protection of wild horses and burros by placing them under the exclusive jurisdiction of the Secretary of Interior was introduced in the second session of the 91st Congress by Senator Clifford P. Hansen of Wyoming.¹¹ This bill died without further action after being referred to the Senate Interior and Insular Affairs Committee.¹²

The 92nd Congress, in response to a nearly unprecedented letter writing campaign by those seeking legislative action, spearheaded by the young readers of the national school newspaper, the *Weekly Reader*, and readers of every major publication from *Time* magazine to the *Wall Street Journal* and the *Christian Science Monitor*,¹³ acted swiftly and with near-unanimity to enact the much needed legislation. That enactment, the Wild Free-Roaming Horse and Burro Act,¹⁴ is the focus of the present comment.

8. Pub. L. 86-234, 73 Stat. 470 (1959), codified at 18 U.S.C. § 47 (1976).

9. Johnston, *supra* note 4, at 1056.

10. Note, *Constitutional Law — Expansion of National Power Under the Property Clause: Federal Regulation of Wildlife. Kleppe v. New Mexico*, 426 U.S. 529 96 S. Ct. 2285 (1976), 12 LAND & WATER L. REV. 181, 182 (1977). See also 117 CONG. REC. 34772 (1971) (remarks of Rep. Wiggins).

11. S. REP. NO. 92-242, *supra* note 2, at 2150.

12. *Id.*

13. Johnston, *supra* note 4, at 1062. Also 117 CONG. REC. 34773 (1971) (remarks of Rep. Gude).

14. Pub. L. 92-195, 85 Stat. 649 (1971) codified at 16 U.S.C. 1331-40 (Supp.

STATUTORY ANALYSIS

In adopting the Wild Free-Roaming Horse and Burro Act (the Act)¹⁵ Congress declared that "wild free-roaming horses and burros shall be protected from capture, branding, harassment or death . . . as an integral part of the natural system of the public lands."¹⁶ Administration of the Act was entrusted to the Secretary of Interior through the Bureau of Land Management and the Secretary of Agriculture through the Forest Service,¹⁷ who were empowered to protect and manage the wild horses and burros as components of the public lands and to designate and maintain specific ranges as sanctuaries for their protection and preservation.¹⁸ These management activities were to be undertaken at the minimal feasible level, after consultation with state wildlife agencies, in order to protect the natural ecological balance of all wildlife inhabiting the public lands.¹⁹ Relocations of animals to public lands which were not part of their range at the time of enactment was expressly forbidden.²⁰

The Act additionally provided for the appointment of an advisory board consisting of nine or fewer members of the public who had special knowledge about the protection of wild horses and burros, wildlife management, animal husbandry or natural resource management.²¹ The members of the board were to be consulted by the appropriate Secretary prior to the establishment of specific ranges as wild horse and burro sanctuaries²² and before the destruction of old, sick, or lame animals or the removal of additional excess wild horses or burros from overpopulated areas was ordered by the Secretary.²³

Captured wild horses and burros which were removed from overpopulated areas were subject to disposal through

15. 16 U.S.C. § 1331-40 (Supp. II 1979).

16. 16 U.S.C. § 1331 (1976).

17. 16 U.S.C. § 1332(a) (1976).

18. 16 U.S.C. § 1333(a) (1976). One such refuge is the Pryor Mountain Wild Horse Range located on the Wyoming-Montana border.

19. 16 U.S.C. § 1333(a) (1976).

20. 16 U.S.C. § 1339 (1976).

21. 16 U.S.C. § 1337 (1976).

22. 16 U.S.C. § 133(a) (1976). Consultation with the appropriate state wildlife agency is also provided for.

23. 16 U.S.C. § 1332(b) (Supp. II 1979).

the federal "Adopt-A-Horse" program to qualifying individuals.²⁴ In order to insure that only "wild" animals, and not privately owned stock which had strayed onto public lands, were transferred through this program, local landowners and other interested parties claiming ownership of any of the captured animals would be entitled to recover them if permissible under the branding and estray laws of the state where they were captured.²⁵

Criminal penalties for unauthorized removal or attempts to remove wild free-roaming horses or burros from public lands, unauthorized conversion of the animals for private use, malicious killing or harassment of wild horses and burros, commercial use of their remains, sales of such animals maintained on private lands, and willful violations of regulations were all provided for under the Act.²⁶ The scope of the prohibition against commercial use of the remains of adopted horses was uncertain because of provisions allowing the customary disposal of the remains so long as they were not sold directly or indirectly for consideration.²⁷ Whether this restricted only the person who adopted the horse from receiving any monetary or other consideration or extended to persons to whom the remains were transferred was unclear under the Act.

A special section dealt with the problem of the treatment of wild horses and burros which were located on privately owned lands.²⁸ Private landowners were given a choice under the Act to either allow their property to be used without compensation for the maintenance of the animals in a manner consistent with the treatment accorded animals on the public domain²⁹ or notify the responsible federal official to have the straying wild horses or burros removed by the

24. The Adopt-A-Horse program is administered through the Bureau of Land Management.

25. 16 U.S.C. § 1335 (1976).

26. 16 U.S.C. § 1338(a) (1976). The prescribed penalty for such violations is a fine of up to \$2000, imprisonment for up to a year, or both.

27. 16 U.S.C. § 1333(d) (1976) (amended in 1978).

28. 16 U.S.C. § 1334 (1976).

29. Lands leased from the government under the Taylor Grazing Act have similar rules regarding the maintenance of wild free-roaming horses and burros. Landowners and lessees both have the duty to report the approxi-

mate number of animals thus maintained.

government.³⁰ Landowners could also enter into cooperative agreements with the appropriate federal agency for the purposes of implementing the Wild Horse Act.³¹

Perhaps realizing their approach was innovative and unconventional Congress required that the Secretaries prepare periodic reports on their administration of the Act.³² The department heads were also empowered to begin studies of the wild horses and burros they deemed necessary in order to carry out the mandate of the Act.³³

Senator Henry Jackson of Washington, one of the original sponsors of the Senate version of the bill, expressed the belief of the entire Congress when he stated, "The Congress has demonstrated to the public our concern for the preservation of our wildlife and the sincere desire to enhance and enrich the dreams and enjoyment of future generations of Americans."³⁴ Congress was clearly satisfied that it had dealt adequately with the problem which had severely troubled the conscience of the American public.

THE REVISIONS OF 1978

Nearly seven years later, Congress found it necessary to "fine-tune" the Act³⁵ by certain amendments contained in the Public Range Lands Improvement Act of 1978 (PRLIA).³⁶ Representative Teno Roncalio of Wyoming, the sponsor of the House version of the PRLIA, described the bill as being his swan song as one of the members of the

30. This alternative has proven to be less than effective due largely to inadequate funding and the incapability of federal officials to rapidly process animals through the Adopt-A-Horse program. See text accompanying notes 85 to 91 *infra*.

31. 16 U.S.C. § 1340 (1976). The Secretary may also enter into similar cooperative agreements with state and local agencies.

32. 16 U.S.C. § 1340 (1976).

33. *Id.*

34. 117 CONG. REC. 44536 (1971) (remarks of Sen. Jackson).

35. A minor amendment to allow government officials conducting roundups of excess wild horses and burros to use motor vehicle and aircraft passed in 1976. Pub. L. 94-579, 90 Stat. 2775 (1976), codified at 16 U.S.C. § 1338 (a) (1976). This provision was made necessary by the retention of the Wild Horse Annie Law, 18 U.S.C. § 47 (1976), and the difficulties encountered by range managers in attempting to roundup the wary and swift animals by other means.

36. Pub. L. 95-514, 92 Stat. 1803 (1978) [hereinafter the PRLIA].

House.³⁷ Other members of that distinguished body went even further in describing the PRLIA as “perhaps the most important legislation relating to the western range since the Taylor Grazing Act of 1934.”³⁸

Congress was confronted with an unusual problem. Unlike 1971, the problem was not the ineffectiveness of the prior legislation in achieving its goals of protecting the wild horses and burros from disappearing from the open range. Now the issue was whether the 1971 Act had been overly successful to the detriment of the public lands.³⁹ Additionally, certain abuses were occurring in the Adopt-A-Horse program which required corrections.

The debate over whether wild horses and burros were on the verge of extinction did not arise in hearings on the adoption of the PRLIA. Instead, the discussions on that portion of the PRLIA focused on whether overpopulation was occurring as a result of the prior enactment. Groups as diverse as the Carter administration, cattlemen’s and livestock associations, the National Audubon Society, the Wildlife Management Federation and the Sierra Club insisted that wild horse and burro overpopulations were causing range habitat destruction on public and private lands and that immediate action was vital to prevent further adverse impacts on wildlife and livestock grazing.⁴⁰ This view was opposed by a few animal protective organizations who argued that no overpopulation existed and, even if it did, natural forces would act to regulate the numbers of wild horses and burros without tampering with the Act which in their view was working well.⁴¹

The amendments to the Act which were finally adopted reflect the belief that an accurate and scientific inventory of wild horse and burro populations was essential to the effective administration of the public lands in a manner consistent with the “multiple-use” concept set forth in the

37. 124 CONG. REC. H6238 (daily ed. June 29, 1978) (remarks of Rep. Roncalio).

38. *Id.* at H6234 (remarks of Rep. Don H. Clausen).

39. *Id.* at H6233 (remarks of Rep. Roncalio).

40. *Id.*

41. *Id.*

Classifications and Multiple Use Act.⁴² The Act was amended to require that such a current inventory be maintained by the Secretaries in order to determine whether and where an overpopulation existed, whether removal activities of "excess animals"⁴³ should be undertaken, the appropriate management level of the animals on areas of the public domain,⁴⁴ and how these management levels should be maintained.⁴⁵ A research study by private experts on the dynamics of wild horse and burro populations and their interrelationships with wildlife, forage, and water resources was authorized to be completed and submitted to Congress by 1983.⁴⁶

To restore a thriving ecological balance on the range and to prevent further deterioration associated with overgrazing and overpopulation by excess wild horses and burros on areas of the public lands, the Secretary retained the power of removal in order to achieve what he determined to be appropriate management levels.⁴⁷ Findings of overpopulation by the Secretary under the amended Act are to be based upon the required current inventories, information contained in land use plans, court ordered environmental impact statements, and additional information such as that contained in the private research study due in 1983; in the absence of such information, the Secretary can make the determination on the basis of all information he has currently available.⁴⁸ Once such a determination is made, removal activities are mandatory.⁴⁹ Prior to the initiation of removal it is necessary to prepare an environmental impact statement if these activities are deemed to be "major federal action significantly affecting the quality of the human environment."⁵⁰

42. 43 U.S.C. §§ 1411-18 (1976).

43. "Excess animals" are defined as "wild free-roaming horses or burros (1) which have been removed from an area by the Secretary pursuant to applicable law or, (2) which must be removed from an area in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in the area." 16 U.S.C. § 1332(f) (Supp. II 1979).

44. 16 U.S.C. § 1333 (b) (1) (Supp. III 1979).

45. *Id.*

46. 16 U.S.C. § 1333 (b) (3) (Supp. III 1979).

47. 16 U.S.C. § 1333 (b) (2) (Supp. III 1979).

48. *Id.*

49. *Id.*

50. 42 U.S.C. § 4332(2) (c) (1976). See *American Horse Protection Ass'n. Inc. v. Frizzell*, 403 F. Supp. 1206 (D. Nev. 1975); and *American Horse Protection Ass'n. v. Andrus*, 608 F.2d 811 (9th Cir. 1979).

Appropriate management levels of wild horses and burros can be maintained by the Secretary by following a priority list of actions: (1) ordering the destruction, in the most humane manner possible, of old, sick or lame animals; (2) capturing and removing additional excess animals for which an adoption demand by qualified individuals exists; and (3) ordering the destruction of additional excess wild horses and burros in the most humane manner possible if a sufficient adoption demand does not exist.⁵¹

Abuses occurring under the Adopt-A-Horse program⁵² were addressed in a two-fold manner. First, the number of wild horses or burros which could be adopted by qualified individuals was limited to four per year unless a written determination of capability to adopt and properly care for more than four was made by the Secretary.⁵³ Secondly, title to the adopted animals would be transferred to qualified individuals who were determined by the Secretary to have provided humane treatment, conditions, and care for such animals for the period of one year upon written application.⁵⁴ The approach adopted in the amendments was designed to increase the care with which individual applicants for wild horse or burro adoption were screened and examined, including limited post-adoption inspection and monitoring, while allowing for the eventual passage of full title to the animals so that more horses could be adopted with greater speed by qualified applicants.⁵⁵

51. 16 U.S.C. § 1333(b) (2) (Supp. III 1979). The PRLIA amendments superceded prior provisions which did not rely on the existence of an adequate private adoption demand in determining whether capture or destruction of additional excess animals was to be ordered. Under the prior law the Secretary had discretion where it was his judgment that such action was the only practical method to remove excess animals from the area.

52. An example of these abuses is reflected by *United States v. Hughes*, 626 F.2d 619 (9th Cir. 1980), in which a participant in the Adopt-A-Horse program who had "adopted" 109 wild horses was found guilty of conversion of government property for his sale of a number of the horses to a slaughterhouse buyer for consumption abroad.

53. 16 U.S.C. § 1333(b) (2) (B) (Supp. III 1979). The Secretary has the duty of being able to assure the humane treatment and care of the animals prior to adoption by private individuals.

54. 16 U.S.C. § 1333(c) (Supp. III 1979). Prior to amendment the federal government retained title to the animals for their entire lifetime.

55. The Department of Agriculture was opposed to the imposition of any probationary period as being exceedingly difficult to administer and overly expensive. See [1978] U.S. CODE CONG & AD. NEWS 4117, 4124.

JUDICIAL INTERPRETATIONS UNDER THE ACT

In *Kleppe v. New Mexico*,⁵⁶ the United States Supreme Court issued its only interpretation of the Act thus far. In that case the Court was squarely confronted with the issue of whether the Congress had the authority to assert jurisdiction over wild horses and burros under the Property Clause.⁵⁷ A three-judge district court⁵⁸ had ruled the Act unconstitutional reasoning that: (1) the statute was designed to protect wild horses and burros, not federally owned lands, (2) ownership of wild animals was vested in the state as sovereign in trust for the benefit of the people, not the federal government,⁵⁹ (3) the property clause gives Congress the power to regulate wild animals on the public lands only as an incident to its power to protect public lands from damage; therefore, the Act could not be sustained as a valid exercise of power by Congress under the Property Clause.⁶⁰ The Supreme Court unanimously reversed, holding that the Property Clause gives Congress the power to protect wildlife on federally owned lands, state law notwithstanding.⁶¹ The Court reserved ruling on whether the Act would be sustained in all its conceivable applications, particularly the permissible reach of the Act under the Property Clause.⁶²

Other federal court decisions construing the Act have made it clear that although persons claiming ownership of horses or burros must meet the requirements of state brand-

56. *Kleppe v. New Mexico*, 426 U.S. 529 (1976).

57. U.S. CONST. art. 4, § 3, cl. 2. provides:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

58. 28 U.S.C. § 2282 (1970) (repealed 1976), provided for three-judge courts to hear cases seeking injunctive relief against enforcement of state and federal statutes which were allegedly unconstitutional.

59. Relying on *Geer v. Connecticut*, 161 U.S. 519 (1896), whose state ownership analysis was recently specifically rejected and overruled in *Hughes v. Oklahoma*, 441 U.S. 322, 335 (1979) (7-2 decision *per J. Brennan*).

60. *New Mexico v. Morton*, 406 F. Supp. 1237 (D.N.M. 1975), *rev'd sub nom. Kleppe v. New Mexico*, 426 U.S. 529 (1976).

61. *Kleppe v. New Mexico*, *supra* note 56, at 546.

62. *Id.* at 546-7. For contrasting discussion on the effect of the Court's decision see Note, *Constitutionality of the Free Roaming Wild Horse and Burros Act: The Ecosystem and The Property Clause in Kleppe v. New Mexico*, 7 ENV. L. 137-51 (1977) (use of the property clause as a base for the exercise of federal environmental regulatory power); and *Constitutional Law—Expansion of National Power Under the Property Clause*, *supra* note 10 (property clause used to circumvent state authority).

ing and estray laws to be entitled to recovery,⁶³ the ultimate decision regarding animal ownership is to be made by federal authorities.⁶⁴ These decisions have been incorporated in the current regulations governing removal of claimed trespass horses and burros.⁶⁵

In *Roaring Springs Associates v. Andrus*,⁶⁶ it was held that the Act imposes a ministerial duty upon the federal government to remove wild horses and burros from private lands upon notice from the landowner. The court further held that if funds were currently available to carry out the removal, mandamus⁶⁷ was available to compel federal officials to carry out their statutorily mandated duty of removal upon request.⁶⁸ Regulations which required removal of wild horses or burros only if they strayed onto lands which were enclosed by a "legal fence" or were located in the "no fence districts"⁶⁹ were ruled invalid as being inconsistent with the statute.⁷⁰

This interpretation, coupled with the checkerboard pattern of ownership⁷¹ on large tracts of the public range, has led to a situation where the available range of the animals has been greatly reduced. By nature, wild horses and burros are nomadic animals traveling in herds over large areas. Therefore, it is possible for a single herd to have natural ranges composed of both public and private lands. Federal officials who drive wild horses or burros from unfenced

63. 16 U.S.C. § 1335 (1976).

64. *American Horse Protection Ass'n. v. United States Department of Interior*, 179 U.S. App. D.C. 209, 551 F.2d 432 (D.C. Cir. 1977); *Sheridan v. Andrus*, 465 F. Supp. 662 (D. Colo. 1979).

65. 43 C.F.R. §§ 4720.1 et seq. (1979).

66. *Roaring Springs Associates v. Andrus*, 471 F. Supp. 522 (D. Or. 1978).

67. 28 U.S.C. § 1361 (1976).

68. *Roaring Springs Associates v. Andrus*, *supra* note 66, at 523. The district judge did not express an opinion as to the Acts' requirement if and when funds ran out. That issue is currently before the federal district court for Wyoming. *Mountain States Legal Foundation v. Andrus*, No. C79-275K (D. Wyo., filed Sept. 21, 1979).

69. 43 C.F.R. § 4750.3 (1979).

70. *Roaring Springs Associates v. Andrus*, *supra* note 66, at 523-25; *American Horse Protection Ass'n, Inc. v. Andrus*, 460 F. Supp. 880, 885-6 (D. Nev. 1978). These authorities would seem persuasive in light of Congressional refusal to amend the Act to limit responsibility for removal to fenced lands despite requests by the Department of Interior to do so. See [1978] U. S. CODE CONG. & AD. NEWS 4088, 4103-04.

71. This checkerboard pattern of landownership is the result of federal land grants to railroads to spur the construction of the transcontinental railroad. See *Leo Sheep Co. v. United States*, 440 U.S. 668, 670-77 (1979).

private property one day could be forced to return the next day if requested to do so by private landowners.⁷² The most practical solution for federal officials would be to capture and remove the animals from all checkerboard areas or other areas where the animals' range overlaps private lands, but even that alternative is limited by the ability of the federal officials to assure humane treatment of captured animals and adequate demand for their adoption.⁷³ Another solution would be to erect fences around all the publicly owned sections, but this would be excessively expensive as well as in direct contravention of the Congressional intent to shift the emphasis of protection from a range or refuge concept to treating wild horses and burros as integral portions of the multiple use resource managements system.⁷⁴

The Act was clearly an attempt to balance the interests of landowners and lessees of public lands with the interests of the public in maintaining the national symbol of freedom wild horses and burros had come to represent. The striking of this balance has proven to be an even more difficult task than envisioned by its drafters. Where the scales will finally rest is a matter of conjecture at the present time.

DISCUSSION AND CONCLUSION

Several important questions remain to be answered about the effectiveness of the Act in achieving its goal of "enhancing and enriching the dreams and enjoyment of future generations of Americans by protection of wild horses and burros on public lands as living symbols of the historic pioneer spirit of the West."⁷⁵ It is not clear how the Act's emphasis on protection of wild horses and burros is to be reconciled with the concept of multiple use of public lands. The approach of the Act is generally one of studied obser-

72. See *Roaring Springs Associates v. Andrus*, *supra* note 66. In evaluating the effect of this result it should be borne in mind that capture and removal of wild horses and burros under the Act is contingent upon the ability of Federal officials to care for the animals prior to adoption and the adequacy of demand for adoption by qualified individuals. In case of failure in either requirement then ordering of destruction of the excess wild horses and burros is mandated. 16 U.S.C. § 1333(b) (Supp. III 1979).

73. 16 U.S.C. §§ 1333, 1334 (Supp. III 1979).

74. S. REP. No. 92-242, *supra* note 2, at 2149, 2151-2.

75. *Id.* at 2149.

vation and minimum management.⁷⁶ Are wild horses and burros to be given preference in allocating grazing rights on public lands to the detriment of lessees and permittees who seek to graze domestic livestock under the Taylor Grazing Act?⁷⁷ The Act requires that adjustments in forage allocations are to take into consideration the needs of other wildlife species inhabiting the public lands, but does not address the issue of how the remaining forage is to be allocated.⁷⁸ At what levels are wild horse and burro populations to be stabilized? The Act required the determination of appropriate management levels;⁷⁹ does this mean as many horses as possible or healthy representative herds?

Some problems of implementation of the Act were obvious before the passage of the PRLIA. As early as 1976, the Director of the Bureau of Land Management noted that wild horse and burro populations were increasing at the alarming rate of 20 to 25% per year, threatening increasingly severe damage to the range.⁸⁰ Representatives of the National Cattlemen's Association and National Wool Growers Association noted that if the present rate of increase was not reversed, by 1987, all of the forage on public lands in Nevada would be needed to maintain that state's population of wild horses.⁸¹ The animals were threatened with malnutrition and starvation due to the damage being caused to the public lands resulting from overpopulation and overgrazing. The Act, in providing protection to the animals, had the practical effect of worsening the conditions of their range to the detriment of not only the livestock grazing industry but other wildlife and the wild horses and burros themselves.⁸²

The principal management tools in the hands of federal officials under the Act are the Adopt-A-Horse program begun in 1974⁸³ and cooperative agreements with private

76. 16 U.S.C. § 1333 (Supp. III 1979).

77. 43 U.S.C. § 315 to 3151 (1976).

78. 16 U.S.C. § 1333(a) (1976).

79. 16 U.S.C. § 1333(b) (1) (Supp. III 1979).

80. *Hearings on the Department of the Interior and Related Agencies Appropriations for Fiscal Year 1977 Before the Senate Committee on Appropriations*, 94th Cong., 2d Sess. 1392-93 (1976).

81. *Id.* at 11, 29.

82. *Id.* at 29.

landowners and state and local governments.⁸⁴ Neither has proven to be effective in addressing the problems of overpopulation.

The Adopt-A-Horse program suffered from serious difficulties. While horses have been removed in substantial numbers by B.L.M. range managers, the commercial exploitation of wild horses and burros has not been prevented. The American Horse Protection Association estimated in 1979 that 50% of the animals adopted through the program were eventually resold to slaughterhouses.⁸⁵ The B.L.M. itself admitted to a 10% rate, while other estimates ranged as high as 90%.⁸⁶

Even when such resales did not occur, the program was costly. From its inception in 1974 until fiscal year 1979, the total amount necessary for its operation increased more than fivefold.⁸⁷ It cost the B.L.M. from \$300 to \$500 for each animal corralled under the program, many of which were frequently incapable of being broken or trained for other uses.⁸⁸ Other problems plagued the program including postcapture treatment of the animals which was not only inhumane but bordered on sadistic.⁸⁹ Roundups conducted under the program often tragically resulted in the deaths of many of the animals.⁹⁰

As has been seen, Congress, in adopting the PRLIA in 1978, attempted to deal with these problems by placing more stringent controls and guidelines on wild horse roundups, setting limits on the number of horses which can be placed for adoption per year with any one individual, requiring greater monitoring and control of the adoptive program, and allowing the culling of excess animals in the most humane

84. 16 U.S.S. § 1336 (1976).

85. *Hearings on the Adopt-A-Horse Program*, *supra* note 81, at 38.

86. *Id.* at 26, 42.

87. *Id.* at 20-21. The annual program budget in 1974 was \$700,000, by fiscal year 1979 this had increased by \$3,700,000.

88. *Id.* at 5, 6, 20-21.

89. *Id.* at 1-2.

90. *American Horse Protection Ass'n. v. Andrus*, *supra* note 70, at 887-88. The ABC News program "20/20" in a story shown in 1979 entitled "They Kill Horses Don't They" alleged that over 400 horses were killed by the BLM at a single holding facility known as Palomino Valley.

and cost efficient manner.⁹¹ More importantly, recognizing the need for accurate and scientific information, the amended Act required the maintenance of a current inventory of the animals⁹² and an independent study of the animals and their interrelationship with the resources and other uses of the public lands.⁹³ These were laudable measures but have not solved the underlying problems.

Funding to implement the provisions of the Act has been inadequate.⁹⁴ The funds which have been made available have been largely spent on planning and setting up the necessary organizational structure to undertake the burdens placed on the departments by the provisions of the Act.⁹⁵ Until adequate funding is provided, the promise of Congress implicit in the Act to protect wild horses and burros as parts of the public lands will remain unfulfilled. The losers in that case are not only the landowners whose forage is taken by rapidly increasing populations and the animals, both of whom will suffer unduly, but the future generations of Americans for whom the preservation of the animals was intended.

If the Wild Free-Roaming Horse and Burro Act is to be retained as law, Congress must act, and act swiftly, in addressing the problems of overpopulation and the balancing of demands on our public lands. At a minimum, I believe the following actions must be taken:

1) Removal of the 1 year probationary period for adoption of wild horses and burros;⁹⁶ 2) Granting a greater role to local and state agencies in maintaining appropriate man-

91. 16 U.S.C. § 1333(b) & (c) (Supp. III 1979).

92. 16 U.S.C. § 1333(b) (1) (Supp. III 1979).

93. 16 U.S.C. § 1333(b) (3) (Supp. III 1979).

94. See affidavit of Frank Gregg, former director of the Bureau of Land Management, submitted in support of Motion for Summary Judgment in *Mountain States Legal Foundation v. Andrus*, *supra* note 68.

95. *Id.*

96. Adequate preadoption screening and limit on the number of animals which can be adopted in any single year should be all that is necessary to insure the proper care and maintenance of adopted animals. The post-adoption monitoring program would seem to be an expensive duplication of effort.

agement levels of animals;⁹⁷ 3) Research and development of alternative means of controlling population levels including sterilization and increased use of the refuge concept; 4) Centralization of authority over the animals into a single agency; 5) Increased criminal penalties and enforcement activities for violations of the Act; and 6) Adequate appropriation of funds to fully implement the mandate of the Act.

The aims of the Act are noble and worthy of preservation, however, unless action is quickly forthcoming, irreparable damage will be done to this country's greatest treasure, its public lands. The nation can no longer afford to take for granted the need to use our public lands wisely. A more rational balancing of the diverse interests in the preservation of our wild horses and burros would be progress toward the goals of efficient management and preservation of the natural environment.

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97. While the current Act provides for consultation with local and state officials in practice this has proven to be a hollow promise. One suggestion is to allow local agencies to conduct roundups and culling operations under guidelines established by the appropriate federal agency. Greater federal-state interaction in implementing the Act would assure greater stability and provide much needed local input to the decision-making process.