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INFORMATION
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111TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPORT
111–177

RESTORE OUR AMERICAN MUSTANGS ACT

JUNE 23, 2009.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RAHALL, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1018]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1018) to amend the Wild Free-Roaming Horses and Burros Act to improve the management and long-term health of wild free-roaming horses and burros, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Restore Our American Mustangs Act".

SEC. 2. REFERENCE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Act of December 15, 1971 (commonly known as the "Wild Free-Roaming Horses and Burros Act"; 16 U.S.C. 1331 et seq.).

SEC. 3. POLICY.

The first section is amended by striking "in the area where presently found, as".

SEC. 4. DEFINITIONS.

Section 2 (16 U.S.C. 1332) is amended—

(1) in paragraph (b), by inserting "born or present" after "unclaimed horses and burros";

(2) in paragraph (c), by striking "which does not exceed their known territorial limits,"

(3) in paragraph (d)—

(A) by inserting "and any associated foals" after "his mares"; and

(B) by striking "and" after the semicolon;

(4) in paragraph (e), by striking the period and inserting a semicolon;

(5) in paragraph (f)—

(A) by striking "(1) which" and all that follows through "(2)";

(B) by inserting ", in accordance with section 3(d)," after "from an area"; and

(C) by striking the period at the end and inserting a semicolon; and

(6) by adding at the end the following:

"(g) 'thriving natural ecological balance' means a condition that protects ecosystem health, the ecological processes that sustain ecosystem function and a diversity of life forms, including those species listed under the Endangered Species Act of 1973, and further ensures that wild horses and burros, livestock and wildlife species are given fair consideration in the allocation of resources on those lands where said species are authorized or managed consistent with the requirements of the Federal Land Policy and Management Act of 1976 (P.L. 94–579) and other applicable law; and

"(h) 'fatally injured or terminally ill' means an animal exhibiting one or more of the following:

"(1) A hopeless prognosis for life.

"(2) A chronic or incurable disease, injury, lameness, or serious physical defect (including severe tooth loss or wear, club foot, and other severe congenital abnormalities).

"(3) A condition requiring continuous treatment for the relief of pain and suffering in a domestic setting.

"(4) An acute or chronic illness, injury, physical condition or lameness that would preclude an acceptable quality of life for the foreseeable future.".

SEC. 5. INVENTORY AND DETERMINATIONS.

(a) Section 3(a) (16 U.S.C. 1333(a)) is amended as follows:

(1) By striking "is authorized and directed to" and inserting "shall—

"(1)".

(2) By striking ", and he may" and inserting a semicolon.

(3) By inserting before "designate" the following:

"(2)".

(4) In paragraph (2) (as so designated)—

(A) by striking "their" and inserting "the";

(B) by inserting "of wild free-roaming horses and burros" after "preservation";

(C) by striking "wherein" and inserting "where";

(D) by striking "deems" and inserting ", considers"; and

(E) by striking "desirable. The Secretary shall" and inserting "desirable;

"(3)".

(5) In paragraph (3) (as so designated), by striking the period after "public lands" and inserting a semicolon.

(6) By striking "He shall" and inserting the following:

"(4)".

(7) In paragraph (4) (as so designated), by striking "of this Act." and inserting "of this Act;".

(8) By striking "All" and inserting the following:

"(5) ensure that".

(9) In paragraph (5) (as so designated)—

(A) by inserting "related to wild free-roaming horses and burros are" after "activities";

(B) by striking "shall be" both places it appears;

(C) by inserting "relevant State" after "in consultation with the";

(D) by striking "of the State wherein such lands are located";

(E) by striking "which inhabit such lands"; and

(F) by striking the period after "endangered wildlife species" and inserting a semicolon.

(10) By striking "Any" and inserting the following:

"(6) ensure that any".

(11) In paragraph (6) (as so designated)—

(A) by striking "on any such lands shall take" and inserting "are made after taking"; and

(B) by striking "which inhabit such lands." and inserting "; and".

(12) At the end of such subsection, add the following:

"(7) ensure that the acreage available for wild and free-roaming horses and burros shall never be less than the acreage where wild and free-roaming horses and burros were found in 1971.".

(b) Subsection (b)(1) of section 3 is amended as follows:

(1) By striking "(b)(1) The Secretary shall" and inserting the following:

"(b) In order to determine if a thriving natural ecological balance exists with regards to wild free-roaming horses and burros, the Secretary shall—

"(1)".

(2) In paragraph (1) (as so designated)—

(A) by striking "a current" and inserting "an"; and

(B) by striking the period after "public lands" and inserting a semicolon and the following:

"(2) update the inventory every two years; and

"(3) make the inventory available to the public on the Website of the Bureau of Land Management.".

(3) By striking "The purpose" and all that follows through "the Secretary" and inserting the following:

"(c) In order to better manage and protect wild free-roaming horses and burros, and to achieve and maintain a thriving natural ecological balance, the Secretary, not later than one year after the date of the enactment of this section, shall take the following actions:

"(1) Adopt and employ the best scientific, peer-reviewed methods to accurately estimate wild free-roaming horse and burro populations on public lands for purposes of the inventory required in subsection (b).

"(2) Develop a policy and standards, with public involvement, for setting consistent, appropriate management levels on public lands, based on scientifically sound methodologies.

"(3) Provide a public process, including a period for notice and comment, for finalizing appropriate management level standards.

"(4) Publish and distribute these standards to each field office so that the methodology for estimating population and determining appropriate management levels is consistent across public lands.

"(5) Train Federal personnel on the use of these standard techniques to estimate population and determine appropriate management levels.".

(4) By striking "shall consult with" and inserting the following:

"(6) Develop and finalize the standards in consultation with—".

(5)(A) By inserting "(A)" before "the United States Fish".

(B) By inserting "(B)" before "wildlife agencies".

(C) By striking "wherein" and inserting "where".

(D) By striking "such individuals" and inserting "(C) individuals".

(E) By striking "such other individuals" and inserting "(D) individuals".

(F) By striking "he" and inserting "the Secretary".

(G) By inserting "to" after "determines".

(6) In subparagraphs (A) through (C) of paragraph (6) (as so designated), by striking each comma and inserting a semicolon.

(7) In subparagraphs (A) through (D) of paragraph (6) (as so designated), by moving the margins of such subparagraphs 4 ems to the right.

(8) After paragraph (6) (as so designated), by inserting the following:

"(7) Identify new, appropriate rangeland for wild free roaming horses and burros, including use of land acquisitions, exchanges, conservation easements, voluntary grazing buyouts, and agreements with private landowners to allow for the federally supervised protection of wild horses and burros on private lands, except that the Secretary shall assess the effects of new range for wild free-roaming horses and burros on rangeland health, riparian zones, water quality, soil compaction, seed bed disturbance, native wildlife, and endangered or threatened species and transmit the results of the assessment to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

"(8) Establish sanctuaries or exclusive use areas, except that the Secretary shall assess the effects of sanctuaries or exclusive use areas for wild free-roaming horses and burros on rangeland health, riparian zones, water quality, soil compaction, seed bed disturbance, native wildlife and endangered or threatened species and transmit the results of the assessment to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

"(9) In identifying or designating any new rangeland, or establishing any sanctuary or exclusive use area for wild free-roaming horses and burros, the Secretary of the Interior and the Secretary of Agriculture shall take into ac-

count and avoid any potential conflicts with wind, solar, geothermal, oil, natural gas, energy transmission, and mineral resources potential of the lands affected by the identification, designation, or establishment.

"(10) Research, develop, and implement enhanced surgical or immunocontraception sterilization or other safe methods of fertility control.".

(c) In subsection (b) of section 3, by striking "(2) Where" and inserting "(d) If".

(d) In subsection (d) (as so designated) of section 3—

(1) by striking "determines" and all that follows through "horses and burros to be" in subparagraph (B) and inserting "has exhausted all practicable options for maintaining a thriving natural ecological balance on the range, the Secretary may provide that wild free-roaming horses and burros are";

(2) by striking "for which he determines" the first place it appears and inserting "so long as the Secretary has determined";

(3) by striking "and for which he determines he can assure" and inserting "and the Secretary can ensure";

(4) by striking "(including" and all that follows through "That, not" and inserting the following: "by requiring that—

"(1) no";

(5) in paragraph (1) (as so designated)—

(A) by striking "animals" the first two places it appears and inserting "wild free-roaming horses and burros";

(B) by striking "such" the first place it appears and inserting "the"; and

(C) by striking "and" after the semicolon and adding the following:

"(2) each individual adopter shall execute an appropriate attestation, pursuant to section 1001 of title 18, United States Code, affirming that adopted animals and their remains shall not be used for commercial purposes; and

"(3) wild free-roaming horses and burros may not be contained in corrals or short-term holding facilities for more than 6 months while awaiting disposition."; and

(6) by striking subparagraph (C) and paragraph (3).

(e) Redesignate subsection (c) of section 3 as subsection (e) and in such subsection—

(1) by striking "Where excess animals have" and inserting "When a wild free-roaming horse or burro has";

(2) by striking "a period of";

(3) by striking "is authorized" and inserting "shall,";

(4) by inserting a comma after "transferee";

(5) by striking "to" before "grant";

(6) by striking "title to not more than four animals to"; and

(7) by striking "at the end of the one-year period" and inserting "title to that animal".

(f) Redesignate subsection (d) of section 3 as subsection (f) and in such subsection—

(1) by striking "Wild" and inserting "(1) Except as provided for in paragraph (2), wild";

(2) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively;

(3) in subparagraph (A) (as so redesignated), by striking "(c) except for the limitation of subsection (c)(1)" and inserting "(e)";

(4) in subparagraph (C) (as so redesignated), by striking "(b)"and inserting "(h)";

(5) in subparagraph (D) (as so redesignated), by striking "; or" and inserting a period; and

(6) in paragraph (5), by striking "(5)" and all that follows through "burro" and inserting the following:

"(2) No animal ever covered under this Act".

(g) By inserting after section 3(f) (as so redesignated) the following:

"(g) Not later than one year after the date of enactment of this subsection, for the purposes of carrying out a successful wild free-roaming horse and burro adoption program the Secretary shall—

"(1) implement creative and more aggressive marketing strategies for the adoption program, including the use of the internet or other media to showcase horses and the adoption program;

"(2) explore public outreach opportunities, including agreements with local and State organizations that are using horses for rehabilitation, therapy, or prisoner programs;

"(3) provide resources to properly screen and train potential adopters;

"(4) conduct tours of Bureau of Land Management facilities for interested parties;

"(5) develop volunteer mentor and compliance check programs for assisting the agency in facilitating successful adoptions;

"(6) develop a program through which potential adopters may be offered an economic incentive for successful completion of the adoption process; and

"(7) take any and all other actions that the Secretary determines to be necessary and useful towards expanding the wild horse and burro adoption program.

"(h) The Secretary may not destroy or authorize the destruction of wild free-roaming horses or burros unless the Secretary—

"(1) determines that the wild free-roaming horse or burro is terminally ill or fatally injured; and

"(2) ensures that the terminally ill or fatally injured wild free-roaming horse or burro will be destroyed in the most humane manner.

"(i) If the immediate health or safety of wild free-roaming horses or burros is threatened, such as in severe drought conditions, the Secretary may temporarily remove animals from the range.

"(j) The Secretary may remove from the range wild free-roaming horses and burros determined to be a threat to the health and well being of native plant or wildlife species.

"(k) Except in cases of removal under subsection (d), (i), or (j), if the Secretary removes wild free-roaming horses or burros from an area, the Secretary shall provide a public notice on the Website of the Bureau of Land Management 30 days prior to the planned removal.

"(l) The Secretary shall—

"(1) track the number of wild free-roaming horses and burros injured or killed during gathering or holding in a centralized database system;

"(2) determine what information on the treatment of gathered wild free-roaming horses and burros in holding and adopted wild free-roaming horses and burros could be provided to the public to help inform the public about the treatment of wild free-roaming horses and burros; and

"(3) ensure that such information is easily accessible on the website of the Bureau of Land Management.".

(h) By striking subsection (e) (relating to sale of excess animals).

SEC. 6. PRIVATE MAINTENANCE.

Section 4 (16 U.S.C. 1334) is amended—

(1) by striking "animals removed" and inserting "animals returned to public land"; and

(2) by inserting "pursuant to section 3(h)" after "agents of the Secretary".

SEC. 7. COOPERATIVE AGREEMENTS.

Section 6 (16 U.S.C. 1336) is amended by inserting "and other private entities" after "landowners".

SEC. 8. JOINT ADVISORY BOARD.

Section 7 (16 U.S.C. 1337) is amended—

(1) by striking "nine" and inserting "12";

(2) by striking "Governments" and all that follows "management." and inserting "Governments and shall include at a minimum three representatives of the livestock industry; three representatives of the environmental community; three representatives of the animal protection community; and three scientists with expertise in wildlife management, animal husbandry, or natural resource management."; and

(3) by adding at the end the following new sentence: "Nomination of members of the board shall be conducted by public notice and comment in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) and shall be for a term of four years. No individual shall serve more then two consecutive terms.".

SEC. 9. CRIMINAL PROVISIONS.

Section 8 (16 U.S.C. 1338) is amended——

(1) by striking "Any person who" and inserting "(a) Any person who"; and

(2) in paragraph (4) of subsection (a) (as so designated)—

(A) by striking "except as provided in section 3(e),";

(B) by inserting ", transports for processing," after "processes";

(C) by striking "the remains of a" and inserting "a live or deceased"; and

(D) by inserting "for consideration" after "burro".

SEC. 10. LIMITATION OF AUTHORITY.

Strike section 10 (16 U.S.C. 1339) and redesignate section 11 as section 10.

SEC. 11. REPORTS.

Section 10 (as so redesignated by section 10 of this Act) is amended as follows:

(1) By striking "After the expiration" and all that follows through "thereafter" and inserting "(a)(1) Not later than one year after the date of enactment of this subsection and annually thereafter".

(2) By striking "will submit to Congress a joint report" and inserting "shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a joint report".

(3) By striking "he" and inserting "the Secretaries".

(4) By inserting after subsection (a)(1) (as so designated) the following:

"(2) The report shall also contain the following—

"(A) the number of acres managed by the Bureau of Land Management and the USDA Forest Service for wild free-roaming horses and burros;

"(B) the appropriate management levels on public rangelands;

"(C) a description of the methods used to determine the appropriate management levels and whether it was applied consistently across the agency;

"(D) the number of wild free-roaming horses and burros on public lands;

"(E) a description of the methods used to determine the wild free-roaming horse and burro population;

"(F) any land acquisitions, exchanges, conservation easements, and voluntary grazing buyouts that the Secretary has acquired or pursued for wild free-roaming horses and burros;

"(G) any sanctuaries or exclusive use areas established for wild free-roaming horses and burros;

"(H) programs established for immunocontraception research, development, and management level implementation;

"(I) the extent to which fertility control is being used by the Secretary to control the population of wild free-roaming horses and burros;

"(J) the percentage of the Bureau of Land Management budget devoted to contraception annually;

"(K) the ratio of animals the agency has contracepted and put back on the range; and

"(L) which herds have been administered contraception and with what results.

"(3) Each report submitted under paragraph (2) shall be made available to the public on the Website of the Bureau of Land Management.".

(5) By inserting "(b)" before "The Secretary of the Interior".

PURPOSE OF THE BILL

The purpose of H.R. 1018 is to amend the Wild and Free-Roaming Horses and Burros Act of 1971 to improve the management and long-term health of wild free-roaming horses and burros, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Although horses evolved in North America, none existed on the continent when Europeans initially explored the Americas. It is believed that Spanish explorers first brought domesticated horses and burros to the Americas in the 1500's. Some of these animals are thought to have escaped and become the first wild herds found in this country. Native Americans soon integrated these horses and burros into their cultures, and these animals became an essential part of tribal life and an enduring facet of our image of the American Indian.

Horses and burros were crucial to the pioneers as well. During America's westward expansion they played a fundamental role in the activities—such as ranching and mining—which led to the development of the American west. Many of these animals though, over time, either escaped or were released, so that by the 19th century as many as 2 million horses and burros roamed wild across

the western range—and into America's collective vision of the western landscape.

However, by the 1950's, the wild horse and burro population had plummeted, and it was estimated that less then 10,000 animals remained on the rangelands. Reports of abuse, disease, and cruelty ignited public awareness, and the outcry over the mistreatment of these animals led to efforts to protect these wild horses and burros and allow them to roam freely on western lands.

THE WILD FREE-ROAMING HORSE AND BURRO ACT OF 1971

The actions of one woman in particular, Mrs. Velma Bronn Johnston (better known by the nickname she earned, "Wild Horse Annie") galvanized public opinion and prompted an educational crusade—which included a massive letter-writing campaign and a beloved children's book. The campaign culminated successfully with the enactment of the landmark *Wild Free-Roaming Horse and Burro Act of 1971* (the 1971 Act) (16 U.S.C. § 1331 et seq.). The Act stated clearly that:

> Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered in the area where presently found, as an integral part of the natural system of the public lands.

However, while this legislation dramatically improved the plight of wild horses and burros, the law has proven to be far from perfect. As wild animals living on public land, management of these horses and burros fell to the federal government, acting principally through the Bureau of Land Management (BLM). But, underfunding and charges of mismanagement have plagued the BLM since passage of the 1971 Act, and have undermined the BLM Wild Horse and Burro Program and the intent of the law.

While the 1971 Act originally identified 53 million acres of public land on which wild horse and burro herds could roam freely, the BLM has since systematically removed horses and burros from nearly 19 million of those acres. Further, since 1971, more than 200,000 wild horses and burros have been rounded-up from public lands and either adopted or placed in long-term holding facilities. Critics assert that the round-ups are unnecessary and aggressive, and that the BLM has yet to provide adequate justification for their removal and the loss of the 19 million acres. However, of greater concern recently was the announcement in the summer of 2008 that, due to a combination of a lack of funding, facilities and options, the BLM would be required to kill as many as 30,000 healthy wild horses and burros.

THE 2008 GOVERNMENT ACCOUNTABILITY OFFICE REPORT

A 2008 Government Accountability Office (GAO) report identified a number of deficiencies with the BLM wild horse and burro program. The report found that the BLM uses poorly managed removals as the primary method for managing horses. As a result, BLM

now has more horses in holding facilities than in the wild and expends more than two-thirds of the program's budget to care for horses collected with no long-term plan for their care or adoption.

Further, many of the horses and burros currently housed in the BLM's holding centers should likely not have been removed from the range in the first place. The GAO found that the BLM uses an inaccurate method to determine wild horse populations and has yet to provide specific formal guidance to field offices to set Appropriate Management Levels (AMLs) consistently across the states where wild horses and burros are found.

Finally, the report found that BLM had not formally considered other possible solutions to deal with the large number of wild horses in long-term holding facilities. Thus, expanded use of contraception, creation of sanctuaries, and more aggressive adoption programs are all potential alternatives that could address the BLM's challenges, but have not yet been utilized.

H.R. 1018, THE RESTORE OUR AMERICAN MUSTANGS (ROAM) ACT

H.R. 1018 would amend the 1971 Act to address the issues raised in the 2008 GAO report and includes the GAO's recommendations, as well as other improvements. It is designed to provide federal land managers a broad array of tools with which to maintain healthy, thriving wild horse and burro herds on public lands.

Specifically, the ROAM Act would expand the areas available for wild horses and burros to roam in order to provide BLM needed flexibility in maintaining healthy herds on public lands. The bill would require more scientific methods for estimating the number of wild horses and burros and make that information public through annual reports. Following a specific GAO recommendation, BLM would be required to develop standard criteria for managing wild horses and burros and, after an opportunity for public input, employ those criteria uniformly across the states where wild horses and burros are found. The establishment of sanctuaries and use of enhanced contraception techniques would also be required. The bill would also define the term "thriving natural ecological balance," which was included in the underlying law but never defined. In doing so, the bill requires that the public lands where wild horses and burros are found will be managed in a way that protects ecosystem health, the ecological processes that sustain ecosystem function and a diversity of life-forms, including those listed under the Endangered Species Act, and in a manner consistent with the multiple use mandate of the Federal Lands Policy Management Act (FLPMA).

In instances where these management tools fail to produce an appropriate herd size, the legislation would authorize BLM to humanely capture and remove animals from the range so long as adoption demand exists. The bill tightens adoption requirements and would require BLM to strengthen its adoption program. The ROAM Act specifically prohibits the killing of healthy wild horses and burros. Lastly, the bill would expand the BLM's existing Wild Horse and Burro Advisory Board and require board members with more diverse qualifications.

COMMITTEE ACTION

H.R. 1018 was introduced on February 12, 2009, by Natural Resources Committee Chairman Nick Rahall (D–WV) and National Parks, Forests, and Public Lands Subcommittee Chairman Raúl Grijalva (D–AZ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on National Parks, Forests, and Public Lands.

On March 3, 2009, the House Subcommittee on National Parks, Forests and Public Lands held a hearing on the bill, during which a representative of the Department of the Interior deferred taking a position because of the transition to a new Administration.

On April 29, 2009, the subcommittee was discharged from further consideration of H.R. 1018 and the full Natural Resources Committee met to consider the bill. Subcommittee Chairman Grijalva offered an amendment in the nature of a substitute to H.R. 1018. In addition to technical changes, the substitute clarified changes in response to input from the Administration and advocacy groups.

Representative Bishop (R–UT) offered an amendment to the Grijalva substitute (Bishop #2) to allow a state to override any federal agency decision regarding proposals for new range and sanctuaries for wild free-roaming horses and burros. The amendment was not agreed to by a rollcall vote of 13 yeas and 16 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
111th Congress

Date: April 29, 2009

Meeting on: **HR 1018 - Amendment offered by Mr. Bishop #2 to the Amendment in the Nature of a Substitute was NOT AGREED TO by a roll call vote of 13 yeas and 16 nays.**

Recorded Vote # 1 (for office use only)

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Wittman, VA*	✔		
Mr. Doc Hastings, WA	✔			Mr. Boren, OK			
Mr. Miller, CA				*Mr. Broun, GA*	✔		
Mr. Don Young, AK				Mr. Sablan, MP		✔	
Mr. Markey, MA				*Mr. Fleming, LA*	✔		
Mr. Gallegly, CA				Mr. Heinrich, NM		✔	
Mr. Kildee, MI				*Mr. Coffman, CO*	✔		
Mr. Duncan, TN				Mr. Hinchey, NY			
Mr. DeFazio, OR				*Mr. Chaffetz, UT*	✔		
Mr. Flake, AZ	✔			Mrs. Christensen, VI		✔	
Mr. Faleomavaega, AS		✔		*Mrs. Lummis, WY*	✔		
Mr. Brown, SC				Ms. DeGette, CO		✔	
Mr. Abercrombie, HI		✔		*Mr. McClintock, CA*	✔		
Mrs. McMorris Rodgers, WA				Mr. Kind, WI			
Mr. Pallone, NJ				*Mr. Cassidy, LA*	✔		
Mr. Gohmert, TX				Mrs. Capps, CA		✔	
Mrs. Napolitano, CA		✔		Mr. Inslee, WA		✔	
Mr. Bishop, UT	✔			Mr. Baca, CA			
Mr. Holt, NJ				Ms. Herseth Sandlin, SD		✔	
Mr. Shuster, PA				Mr. Sarbanes, MD		✔	
Mr. Grijalva, AZ		✔		Ms. Shea-Porter, NH		✔	
Mr. Lamborn, CO	✔			Ms. Tsongas, MA			
Mrs. Bordallo, GU				Mr. Kratovil, Jr., MD		✔	
Mr. Adrian Smith, NE	✔			Mr. Pierluisi, PR			
Mr. Costa, CA		✔					
				Total	**13**	**16**	

Markups - 1/3 to meet (16), 25 to report
May 6, 2009 (6:07pm)

Representative Chaffetz (R–UT) offered an amendment to the Grijalva substitute (Chaffetz #1) that would require that the wild horse Joint Advisory Board include representatives from the livestock industry and from state grazing boards. The amendment was not agreed to by a rollcall vote of 15 yeas and 17 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
111th Congress

Date: April 29, 2009

Meeting on: **HR 1018 - Amendment offered by Mr. Chaffetz #1 to the Amendment in the Nature of a Substitute was NOT AGREED TO by a roll call vote of 15 yeas and 17 nays.**

Recorded Vote # 2 (for office use only)

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Wittman, VA*	✔		
Mr. Doc Hastings, WA	✔			Mr. Boren, OK			
Mr. Miller, CA				*Mr. Broun, GA*	✔		
Mr. Don Young, AK				Mr. Sablan, MP		✔	
Mr. Markey, MA				*Mr. Fleming, LA*	✔		
Mr. Gallegly, CA				Mr. Heinrich, NM		✔	
Mr. Kildee, MI				*Mr. Coffman, CO*	✔		
Mr. Duncan, TN				Mr. Hinchey, NY			
Mr. DeFazio, OR				*Mr. Chaffetz, UT*	✔		
Mr. Flake, AZ	✔			Mrs. Christensen, VI		✔	
Mr. Faleomavaega, AS		✔		*Mrs. Lummis, WY*	✔		
Mr. Brown, SC				Ms. DeGette, CO		✔	
Mr. Abercrombie, HI		✔		*Mr. McClintock, CA*	✔		
Mrs. McMorris Rodgers, WA				Mr. Kind, WI			
Mr. Pallone, NJ				*Mr. Cassidy, LA*	✔		
Mr. Gohmert, TX				Mrs. Capps, CA		✔	
Mrs. Napolitano, CA		✔		Mr. Inslee, WA		✔	
Mr. Bishop, UT	✔			Mr. Baca, CA			
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD	✔		
Mr. Shuster, PA				Mr. Sarbanes, MD		✔	
Mr. Grijalva, AZ		✔		Ms. Shea-Porter, NH		✔	
Mr. Lamborn, CO	✔			Ms. Tsongas, MA		✔	
Mrs. Bordallo, GU				Mr. Kratovil, Jr., MD		✔	
Mr. Adrian Smith, NE	✔			Mr. Pierluisi, PR			
Mr. Costa, CA	✔						
				Total	**15**	**17**	

Markups - 1/3 to meet (16), 25 to report
May 6, 2009 (6:08pm)

Representative Chaffetz then offered an amendment to the Grijalva substitute (Chaffetz #2) that would require the Secretary of the Interior to take into account potential conflicts with oil and gas development, renewable energy resource development, and energy transmission when identifying and designating any new rangeland for wild horses and burros. The amendment was agreed to by voice vote.

Representative Lummis (R–WY) offered an amendment to the Grijalva substitute (Lummis #1) that would limit the rangeland available to wild horses and burros. The amendment was not agreed to by a voice vote.

Representative Lummis then offered an amendment to the Grijalva substitute (Lummis #2) requiring the Secretary to conduct a study of the effects of the designation of new wild horse and burro range, and of the establishment of sanctuaries, on natural resources. The amendment was modified to only require an assessment of new designations and the amendment was then agreed to by voice vote.

Representative Lummis then offered an amendment to the Grijalva substitute (Lummis #4) requiring the Secretary to remove wild and free roaming horses and burros from the range if there is a threat to native plants and wildlife. The amendment was modified to make such removals discretionary and the amendment was agreed to by voice vote.

Representative Lummis then offered an amendment to the Grijalva substitute (Lummis #5) that would strike language in the bill to expand the range available to wild horses and burros. The amendment was not agreed to by a rollcall vote of 14 yeas and 20 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
111th Congress

Date: April 29, 2009

Meeting on: **HR 1018 - Amendment offered by Mrs. Lummis #5 to the Amendment in the Nature of a Substitute was NOT AGREED TO by a roll call vote of 14 yeas and 20 nays.**

Recorded Vote # 3 (for office use only)

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV		✔		*Mr. Wittman, VA*	✔		
Mr. Doc Hastings, WA	✔			Mr. Boren, OK			
Mr. Miller, CA				*Mr. Broun, GA*	✔		
Mr. Don Young, AK				Mr. Sablan, MP		✔	
Mr. Markey, MA		✔		*Mr. Fleming, LA*	✔		
Mr. Gallegly, CA				Mr. Heinrich, NM		✔	
Mr. Kildee, MI				*Mr. Coffman, CO*	✔		
Mr. Duncan, TN				Mr. Hinchey, NY		✔	
Mr. DeFazio, OR				*Mr. Chaffetz, UT*	✔		
Mr. Flake, AZ	✔			Mrs. Christensen, VI		✔	
Mr. Faleomavaega, AS		✔		*Mrs. Lummis, WY*	✔		
Mr. Brown, SC				Ms. DeGette, CO		✔	
Mr. Abercrombie, HI		✔		*Mr. McClintock, CA*	✔		
Mrs. McMorris Rodgers, WA				Mr. Kind, WI			
Mr. Pallone, NJ		✔		*Mr. Cassidy, LA*	✔		
Mr. Gohmert, TX				Mrs. Capps, CA		✔	
Mrs. Napolitano, CA		✔		Mr. Inslee, WA		✔	
Mr. Bishop, UT	✔			Mr. Baca, CA			
Mr. Holt, NJ		✔		Ms. Herseth Sandlin, SD	✔		
Mr. Shuster, PA				Mr. Sarbanes, MD		✔	
Mr. Grijalva, AZ		✔		Ms. Shea-Porter, NH		✔	
Mr. Lamborn, CO	✔			Ms. Tsongas, MA		✔	
Mrs. Bordallo, GU				Mr. Kratovil, Jr., MD		✔	
Mr. Adrian Smith, NE	✔			Mr. Pierluisi, PR			
Mr. Costa, CA		✔					
				Total	**14**	**20**	

Markups - 1/3 to meet (16), 25 to report
June 18, 2009 (11:40am)

The Grijalva amendment in the nature of a substitute was then agreed to by voice vote. The bill, as amended, was then ordered favorably reported to the House of Representatives by a rollcall vote of 21 yeas and 14 nays, as follows:

COMMITTEE ON NATURAL RESOURCES
U.S. House of Representatives
111th Congress

Date: April 29, 2009

Meeting on: **HR 1018 - Favorably reported to the House, as amended, by a roll call vote of of 21 yeas and 14 nays.**

Recorded Vote # 4 (for office use only)

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Rahall, WV	✔			*Mr. Wittman, VA*		✔	
Mr. Doc Hastings, WA		✔		Mr. Boren, OK			
Mr. Miller, CA				*Mr. Broun, GA*		✔	
Mr. Don Young, AK				Mr. Sablan, MP	✔		
Mr. Markey, MA	✔			*Mr. Fleming, LA*		✔	
Mr. Gallegly, CA				Mr. Heinrich, NM	✔		
Mr. Kildee, MI				*Mr. Coffman, CO*	✔		
Mr. Duncan, TN				Mr. Hinchey, NY	✔		
Mr. DeFazio, OR	✔			*Mr. Chaffetz, UT*		✔	
Mr. Flake, AZ		✔		Mrs. Christensen, VI	✔		
Mr. Faleomavaega, AS	✔			*Mrs. Lummis, WY*		✔	
Mr. Brown, SC				Ms. DeGette, CO	✔		
Mr. Abercrombie, HI	✔			*Mr. McClintock, CA*		✔	
Mrs. McMorris Rodgers, WA				Mr. Kind, WI			
Mr. Pallone, NJ	✔			*Mr. Cassidy, LA*		✔	
Mr. Gohmert, TX				Mrs. Capps, CA	✔		
Mrs. Napolitano, CA	✔			Mr. Inslee, WA	✔		
Mr. Bishop, UT		✔		Mr. Baca, CA			
Mr. Holt, NJ	✔			Ms. Herseth Sandlin, SD		✔	
Mr. Shuster, PA				Mr. Sarbanes, MD	✔		
Mr. Grijalva, AZ	✔			Ms. Shea-Porter, NH	✔		
Mr. Lamborn, CO		✔		Ms. Tsongas, MA	✔		
Mrs. Bordallo, GU				Mr. Kratovil, Jr., MD	✔		
Mr. Adrian Smith, NE		✔		Mr. Pierluisi, PR			
Mr. Costa, CA		✔					
				Total	**21**	**14**	

Markups - 1/3 to meet (16), 25 to report
May 6, 2009 (6:08pm)

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 provides that this Act may be cited as the "Restore Our American Mustangs Act."

Section 2. Reference

Section 2 establishes that all instructions in the bill to repeal or amend existing law shall be considered to be made to a section or other provision of the "*Wild Free-Roaming Horses and Burros Act of 1971*" (16 U.S.C. 1331 et seq.; hereafter in this report referred to as the "1971 Act"), except as otherwise expressly provided.

Section 3. Policy

Section 3 makes a minor amendment to the policy statement of the 1971 Act by striking the phrase "in the area where presently found,". This is one of several amendments which will allow the BLM to find new range for wild horses and burros.

Section 4. Definitions

Section 4 amends Section 2 of the 1971 Act, by updating several existing definitions and then adding and defining two new terms.

Specifically, Section 4 includes the addition and definition of the term "thriving natural ecological balance" and the term "fatally injured or terminally ill". They are defined as follows:

(g) "thriving natural ecological balance" means a condition that protects ecosystem health, the ecological processes that sustain ecosystem function and a diversity of life forms, including those species listed under the Endangered Species Act of 1973, and further ensures that wild horses and burros, livestock and wildlife species are given fair consideration in the allocation of resources on those lands where said species are authorized or managed consistent with the requirements of the Federal Land Policy and Management Act of 1976 (P.L. 94–579) and other applicable law. The Committee would note that this term already appears in the law but has not been defined previously. In providing a definition, it is the Committee's intent that management of wild horses and burros be more consistent and balanced and that resource management decisions, including the allocation of forage, be more equitable.

(h) "fatally injured or terminally ill" means an animal exhibiting one or more of the following: (1) A hopeless prognosis for life. (2) A chronic or incurable disease, injury, lameness, or serious physical defect (including severe tooth loss or wear, club foot, and other severe congenital abnormalities). (3) A condition requiring continuous treatment for the relief of pain and suffering in a domestic setting. (4) An acute or chronic illness, injury, physical condition or lameness that would preclude an acceptable quality of life for the foreseeable future.

Section 5. Inventory and determinations

Section 5 amends and rewrites significant parts of Section 3 of the 1971 Act. References below are made to section 3 of the 1971 Act as amended by section 5 of H.R. 1018, and are as follows:

Section 3(a) of the 1971 Act is amended to update and clarify the Secretary's jurisdiction and responsibilities with regards to the

management and protection of wild horses and burros. Specifically, a new provision is added, subsection (a)(7), which requires the Secretary to ensure that the acreage available for wild horses and burros shall never be less then the acreage available to these animals at the time of the passage of the 1971 Act.

Section 3(b) of the 1971 Act is amended to require the Secretary to determine if a thriving natural ecological balance exists with regards to the population of wild horses and burros on public lands. In order make that determination, the Secretary is first required to maintain an inventory of wild and free-roaming horses and burros on public lands. Two new subsections are included, which also require the Secretary to update the inventory every two years make the inventory available to the public on the Bureau of Land Management's website.

Section 3(c) is a new section which directs the Secretary to take certain actions in order to manage wild horses and burros and to achieve and maintain a thriving natural ecological balance on rangelands where these animals are found.

Section 3(c) provides that fertility control shall be one of the tools that the Secretary shall use to manage wild horses and burros. It is the Committee's intent that the Bureau of Land Management shall research, develop, and implement enhanced fertility control for mares and/or stallions, including but not limited to surgical, chemical or immunocontraception or other safe, humane and effective methods of fertility control.

Section 3(d) is a new section, but in drafting this section, substantial parts of section 3(b) of the 1971 Act were rewritten or deleted to accommodate a shift in policy. Specifically, the bill strikes language in section 3(b)(2)(A) of the 1971 Act allowing the Secretary to order "old, sick, or lame animals" to be destroyed. The bill also strikes section 3(b)(2)(C), which authorizes the Secretary to destroy any wild horse or burro, for which an adoption demand does not exist.

Section 3(d) provides that wild horses and burros may only be removed if the Secretary has exhausted all practicable options for maintaining a thriving natural ecological balance on the range, as laid out in section 3(c); and so long as the Secretary has determined that an adoption demand, by a qualified individual, exists; and so long as the Secretary can ensure their humane capture and removal. Once removed for private maintenance and care, the Secretary must ensure the humane treatment and care of these animals.

Section 3(e) updates section 3(c) of the 1971 Act. It authorizes the Secretary to transfer title of a wild horse or burro, to a qualified individual, one year after adoption of that animal. However, it provides that the transfer of title can only occur if the Secretary has determined that the individual has provided humane conditions, treatment and care for these animals.

Section 3(f) rewrites section 3(d) of the 1971 Act. This section provides that (1) wild and free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros, and shall no longer fall within the purview of this Act under certain stipulations listed under this subsection. However, under subsection (2) no animal ever covered under this Act, or its re-

mains, may be sold or transferred for consideration for processing into commercial products.

Section 3(g) is a new section that requires the Secretary to implement a more effective and dynamic adoption program within one year of enactment of this subsection. Specifically, it requires the Secretary to: (1) implement more aggressive marketing strategies for the adoption program, including the use of the internet of other media to showcase adoptable horses; (2) explore public outreach opportunities, including agreements with local and state organizations that are using horses for rehabilitation, therapy or prisoner programs; (3) provide resources to properly screen and train potential adopters; (4) conduct tours of Bureau of Land Management facilities for interested parties; (5) develop a volunteer mentor and compliance check program for assisting the agency in facilitating successful adoptions; (6) develop a program through which potential adopters may be offered an economic incentive for successful completion of the adoption program; and (7) take all other actions that the Secretary determines to be necessary and useful towards expanding the wild horse and burro adoption program.

Section 3(h) is a new section which provides that the Secretary may not destroy or authorize the destruction of wild free-roaming horses or burros unless the Secretary, (1) determines that the wild free-roaming horse or burro is terminally ill or fatally injured (as defined in section 2(h)); and (2) ensures that the terminally ill or fatally injured wild free-roaming horse or burro will be destroyed in the most humane manner.

Section 3(i) is a new section that provides for emergency removal. It provides that if the immediate health or safety of wild free-roaming horses or burros is threatened, such as in severe drought conditions, the Secretary may temporarily remove these animals from the range.

Section 3(j) is a new section that provides that the Secretary may remove from the range wild free-roaming horses and burros determined to be a threat to the health and well being of native plant or wildlife species.

Section 3(k) is a new section. It provides that, except in cases of removal under subsections (d), (i), or (j), if the Secretary removes wild free-roaming horses or burros from an area, the Secretary shall provide a public notice 30 days prior to the planned removal.

Section 3(l) is a new section to address transparency. It provides that the Secretary shall (1) track the number of wild free-roaming horses and burros injured or killed during gathering or holding in a centralized database system; (2) determine what information on the treatment of gathered wild free-roaming horses and burros in holding and adopted wild free-roaming horses and burros could be provided to the public to help inform the public about the treatment of wild free-roaming horses and burros; and (3) ensure that such information is easily accessible on the website of the Bureau of Land Management.

Section 6. Private maintenance

Section 6 amends Section 4 of the 1971 Act. Specifically it directs that wild and free-roaming horses or burros that wander onto privately owned land, shall be returned to the public land.

Section 7. Cooperative agreements

Section 7 amends the 1971 Act to authorize the Secretary to enter into cooperative agreements with other landowners, and with state and local governmental agencies. This section also amends the 1971 Act to authorize the Secretary to enter into cooperative agreements with "other private entities" as well.

Section 8. Joint Advisory Board

Section 8 amends Section 7 of the 1971 Act. It increases the number of members that make up the Joint Advisory Board from 9 to 12 members.

Further, this section reorganizes the make-up of the Joint Advisory Board. It provides that the Advisory Board include at a minimum three representatives of the livestock industry, three representatives of the environmental community, three representatives of the animal protection community; and three scientists with expertise in wildlife management, animal husbandry, or natural resource management. It also provides that the nomination of members shall be conducted by public notice and comment in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) and shall be for a term of four years. Finally it directs that no individual shall serve on the Board for more then two consecutive terms.

Section 9. Criminal provisions

Section 9 amends Section 8 of the 1971 Act. Specifically, it amends Section 8(4) and provides that any person who processes, transports for processing, or permits to be processed into commercial products a live or deceased wild free-roaming horse or burro for consideration, will be subject to a fine of not more than $2,000 or imprisonment for not more than one year, or both.

Section 10. Limitation of authority

Section 10 strikes all of section 10 of the 1971 Act. This section in the 1971 Act restricted the authority of the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they did not exist at the time of passage of the 1971 Act. This bill would lift that restriction.

This section also redesignates section 11 of the 1971 Act as section 10.

Section 11. Reports

Section 11 amends and updates the newly redesignated section 10 of the 1971 Act. Specifically, it updates the reporting requirements to require that not later than one year after the date of enactment of this section and annually thereafter, the Secretaries of the Interior and Agriculture shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a joint report on the administration of this Act, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions as the Secretaries may deem appropriate.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3, of the Constitution of the United States grant Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Wild and Free-Roaming Horses and Burros Act of 1971 to improve the management and long-term health of wild free-roaming horses and burros.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 1018—Restore Our American Mustangs Act

Summary: H.R. 1018 would amend the Wild Free-Roaming Horses and Burros Act, which governs the protection of wild herds of horses and burros in the western United States. The bill would require that the acreage available to such animals never be less than the area they occupied in 1971. It also would prohibit keeping wild animals in holding facilities for longer than six months. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 1018 would cost about $200 million over the 2010–2014 period. Enacting the bill would not affect revenues or direct spending.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1018 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2010	2011	2012	2013	2014	2010–2014
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	6	13	15	136	140	310
Estimated Outlays	5	9	12	70	104	200

Basis of estimate: For this estimate, CBO assumes that H.R. 1018 will be enacted during fiscal year 2009 and that the amounts estimated to be necessary will be appropriated for each of fiscal years 2010 through 2014. Estimated outlays are based on spending patterns for similar programs.

CBO estimates that implementing H.R. 1018 would increase discretionary costs of the Bureau of Land Management (BLM), which has primary responsibility for managing herds of wild horses and burros, by about $200 million over the 2010–2014 period. Additional funds would be needed after 2014 to continue acquiring and restoring range land for those animals.

Based on information from federal agencies, CBO estimates that additional funding would be needed by BLM to comply with provisions in the bill that require the agency to manage herds on about 20 million more acres of public land and to restrict the practice of holding animals in corrals in the Midwest. Those provisions would both increase the area that wild herds occupy (from about 33 million acres to 53 million acres) and raise the number of animals kept in the wild (currently around 36,000 animals). The estimated costs of complying with those provisions include:

- $1 million annually (through 2012) to amend federal land use plans to accommodate additional herds and manage them in conjunction with grazing, protection of endangered species, and other agency missions;
- Between $5 million and $13 million annually to manage the herds, including the costs of gathering, treating, and moving animals from existing herds to new federal lands as they breed;
- About $5 million annually (beginning in 2011) to restore damaged rangelands; and
- About $140 million a year (beginning in 2013) to purchase new land to increase the range of herds to the level they occupied in 1971 and to accommodate additional animals that are gathered and moved to avoid over-grazing. For this estimate, CBO assumes that BLM would be able to increase the acreage on which it manages herds by moving some animals to lands managed by other federal agencies. We expect that the agency would also have to purchase significant new acreage, assuming other suitable properties are available. The costs of acquiring additional acreage (primarily after 2013) could be as high as $500 million. We assume that BLM would acquire acreage for the herds rather than free up federal lands currently used for cattle grazing (as authorized by the bill) because very few holders of grazing permits would voluntarily cash in their allotments.

The above costs are net of reductions in the existing program that would result from eliminating the use of Midwest facilities to hold horses and burros for more than six months. The cost of holding currently accounts for well over half of the BLM budget for this

program and will, under current law, consume an increasing portion of the agency's budget as wild horses continue to reproduce.

Intergovernmental and private-sector impact: H.R. 1018 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Melissa Merrell; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

EARMARK STATEMENT

H.R. 1018 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF DECEMBER 15, 1971

(Commonly known as the "Wild Free-Roaming Horses and Burros Act)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress finds and declares that wild free-roaming horses and burros are living symbols of the historic and pioneer spirit of the West; that they contribute to the diversity of life forms within the Nation and enrich the lives of the American people; and that these horses and burros are fast disappearing from the American scene. It is the policy of Congress that wild free-roaming horses and burros shall be protected from capture, branding, harassment, or death; and to accomplish this they are to be considered [in the area where presently found, as] an integral part of the natural system of the public lands.

SEC. 2. As used in this Act—

(a) * * *

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

(c) "range" means the amount of land necessary to sustain an existing herd or herds of wild free-roaming horses and burros, [which does not exceed their known territorial limits,] and which is devoted principally but not necessarily exclusively to

their welfare in keeping with the multiple-use management concept for the public lands;

(d) "herd" means one or more stallions and his mares *and any associated foals*; [and]

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

(f) "excess animals" means 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 accordance with section 3(d),* in order to preserve and maintain a thriving natural ecological balance and multiple-use relationship in that area[.]*;*

(g) "thriving natural ecological balance" means a condition that protects ecosystem health, the ecological processes that sustain ecosystem function and a diversity of life forms, including those species listed under the Endangered Species Act of 1973, and further ensures that wild horses and burros, livestock and wildlife species are given fair consideration in the allocation of resources on those lands where said species are authorized or managed consistent with the requirements of the Federal Land Policy and Management Act of 1976 (P.L. 94–579) and other applicable law; and

(h) "fatally injured or terminally ill" means an animal exhibiting one or more of the following:

(1) A hopeless prognosis for life.

(2) A chronic or incurable disease, injury, lameness, or serious physical defect (including severe tooth loss or wear, club foot, and other severe congenital abnormalities).

(3) A condition requiring continuous treatment for the relief of pain and suffering in a domestic setting.

(4) An acute or chronic illness, injury, physical condition or lameness that would preclude an acceptable quality of life for the foreseeable future.

SEC. 3. (a) All wild free-roaming horses and burros are hereby declared to be under the jurisdiction of the Secretary for the purpose of management and protection in accordance with the provisions of this Act. The Secretary [is authorized and directed to] *shall—*

(1) protect and manage wild free-roaming horses and burros as components of the public lands[, and he may]*;*

(2) designate and maintain specific ranges on public lands as sanctuaries for [their] *the* protection and preservation *of wild free-roaming horses and burros*, where the Secretary after consultation with the wildlife agency of the State [wherein] *where* any such range is proposed and with the Advisory Board established in section 7 of this Act [deems]*, considers* such action [desirable. The Secretary shall] *desirable;*

(3) manage wild free-roaming horses and burros in a manner that is designed to achieve and maintain a thriving natural ecological balance on the public lands[. He shall]*;*

(4) consider the recommendations of qualified scientists in the field of biology and ecology, some of whom shall be independent of both Federal and State agencies and may include

members of the Advisory Board established in section 7 [of this Act. All]*;*

(5) ensure that management activities [shall be] *related to wild free-roaming horses and burros are* at the minimal feasible level and [shall be] carried out in consultation with the *relevant State* wildlife agency [of the State wherein such lands are located] in order to protect the natural ecological balance of all wildlife species [which inhabit such lands], particularly endangered wildlife species[. Any]*;*

(6) ensure that any adjustments in forage allocations [on any such lands shall take] *are made after taking* into consideration the needs of other wildlife species [which inhabit such lands.]*; and*

(7) ensure that the acreage available for wild and free-roaming horses and burros shall never be less than the acreage where wild and free-roaming horses and burros were found in 1971.

[(b)(1) The Secretary shall]

(b) In order to determine if a thriving natural ecological balance exists with regards to wild free-roaming horses and burros, the Secretary shall—

(1) maintain [a current] *an* inventory of wild free-roaming horses and burros on given areas of the public lands[.]*;*

(2) update the inventory every two years; and

(3) make the inventory available to the public on the Website of the Bureau of Land Management.

[The purpose of such inventory shall be to: make determinations as to whether and where an overpopulation exists and whether action should be taken to remove excess animals; determine appropriate management levels of wild free-roaming horses and burros on these areas of the public lands; and determine whether appropriate management levels should be achieved by the removal or destruction of excess animals, or other options (such as sterilization, or natural controls on population levels). In making such determinations the Secretary]

(c) In order to better manage and protect wild free-roaming horses and burros, and to achieve and maintain a thriving natural ecological balance, the Secretary, not later than one year after the date of the enactment of this section, shall take the following actions:

(1) Adopt and employ the best scientific, peer-reviewed methods to accurately estimate wild free-roaming horse and burro populations on public lands for purposes of the inventory required in subsection (b).

(2) Develop a policy and standards, with public involvement, for setting consistent, appropriate management levels on public lands, based on scientifically sound methodologies.

(3) Provide a public process, including a period for notice and comment, for finalizing appropriate management level standards.

(4) Publish and distribute these standards to each field office so that the methodology for estimating population and determining appropriate management levels is consistent across public lands.

(5) Train Federal personnel on the use of these standard techniques to estimate population and determine appropriate management levels.

[shall consult with]

(6) Develop and finalize the standards in consultation with—

(A) the United States Fish and Wildlife Service[,]*;*

(B) wildlife agencies of the State or States [wherein] *where* wild free-roaming horses and burros are located[, such individuals]*;*

(C) individuals independent of Federal and State government as have been recommended by the National Academy of Sciences[,]*;* and [such other individuals]

(D) individuals whom [he] *the Secretary* determines *to* have scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management.

(7) Identify new, appropriate rangeland for wild free roaming horses and burros, including use of land acquisitions, exchanges, conservation easements, voluntary grazing buyouts, and agreements with private landowners to allow for the federally supervised protection of wild horses and burros on private lands, except that the Secretary shall assess the effects of new range for wild free-roaming horses and burros on rangeland health, riparian zones, water quality, soil compaction, seed bed disturbance, native wildlife, and endangered or threatened species and transmit the results of the assessment to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(8) Establish sanctuaries or exclusive use areas, except that the Secretary shall assess the effects of sanctuaries or exclusive use areas for wild free-roaming horses and burros on rangeland health, riparian zones, water quality, soil compaction, seed bed disturbance, native wildlife and endangered or threatened species and transmit the results of the assessment to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(9) In identifying or designating any new rangeland, or establishing any sanctuary or exclusive use area for wild free-roaming horses and burros, the Secretary of the Interior and the Secretary of Agriculture shall take into account and avoid any potential conflicts with wind, solar, geothermal, oil, natural gas, energy transmission, and mineral resources potential of the lands affected by the identification, designation, or establishment.

(10) Research, develop, and implement enhanced surgical or immunocontraception sterilization or other safe methods of fertility control.

[(2) Where] *(d) If* the Secretary [determines on the basis of (i) the current inventory of lands within his jurisdiction; (ii) information contained in any land use planning completed pursuant to section 202 of the Federal Land Policy and Management Act of 1976; (iii) information contained in court ordered environmental impact statements as defined in section 2 of the Public Range Lands Improvement Act of 1978; and (iv) such additional information as becomes available to him from time to time, including that informa-

tion developed in the research study mandated by this section, or in the absence of the information contained in (i-iv) above on the basis of all information currently available to him, that an overpopulation exists on a given area of the public lands and that action is necessary to remove excess animals, he shall immediately remove excess animals from the range so as to achieve appropriate management levels. Such action shall be taken, in the following order and priority, 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:

[(A) The Secretary shall order old, sick, or lame animals to be destroyed in the most humane manner possible;

[(B) The Secretary shall cause such number of additional excess wild free-roaming horses and burros to be] *has exhausted all practicable options for maintaining a thriving natural ecological balance on the range, the Secretary may provide that wild free-roaming horses and burros are* humanely captured and removed for private maintenance and care [for which he determines] *so long as the Secretary has determined* an adoption demand exists by qualified individuals, [and for which he determines he can assure] *and the Secretary can ensure* humane treatment and care [(including proper transportation. feeding, and handling): *Provided*, That, not] *by requiring that—*

(1) no more than four [animals] *wild free-roaming horses and burros* may be adopted per year by any individual unless the Secretary determines in writing that [such] *the* individual is capable of humanely caring for more than four [animals] *wild free-roaming horses and burros*, including the transportation of such animals by the adopting party; [and]

(2) each individual adopter shall execute an appropriate attestation, pursuant to section 1001 of title 18, United States Code, affirming that adopted animals and their remains shall not be used for commercial purposes; and

(3) wild free-roaming horses and burros may not be contained in corrals or short-term holding facilities for more than 6 months while awaiting disposition.

[(C) The Secretary shall cause additional excess wild free-roaming 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.

[(3) For the purpose of furthering knowledge of wild horse and burro population dynamics and their interrelationship with wildlife, forage and water resources, and assisting him in making his determination as to what constitutes excess animals, the Secretary shall contract for a research study of such animals with such individuals independent of Federal and State government as may be recommended bv the National Academy of Sciences for having scientific expertise and special knowledge of wild horse and burro protection, wildlife management and animal husbandry as related to rangeland management. The terms and outline of such research study shall be determined by a research design panel to be appointed by the President of the National Academy of Sciences. Such study shall be completed and submitted by the Secretary to the

Senate and House of Representatives on or before January 1, 1983.]

[(c) Where excess animals have] *(e) When a wild free-roaming horse or burro has* been transferred to a qualified individual for adoption and private maintenance pursuant to this Act and the Secretary determines that such individual has provided humane conditions, treatment and care for such animal or animals for [a period of] one year, the Secretary [is authorized] *shall,* upon application by the transferee, [to] grant [title to not more than four animals to] the transferee [at the end of the one-year period] *title to that animal*.

[(d) Wild] *(f)(1) Except as provided for in paragraph (2), wild* free-roaming horses and burros or their remains shall lose their status as wild free-roaming horses or burros and shall no longer be considered as falling within the purview of this Act—

[(1)] *(A)* upon passage of title pursuant to subsection [(c) except for the limitation of subsection (c)(1)] *(e)* of this section; or

[(2)] *(B)* if they have been transferred for private maintenance or adoption pursuant to this Act and die of natural causes beforepassage of title; or

[(3)] *(C)* upon destruction by the Secretary or his designee pursuant to subsection [(b)] *(h)* of this section; or

[(4)] *(D)* if they die of natural causes on the public lands or on private lands where maintained thereon pursuant to section 4 and disposal is authorized by the Secretary or his designee[; or].

[(5) upon destruction or death for purposes of or incident to the program authorized in section 3 of this Act; Provided, That no wild free-roaming horse or burro]

(2) No animal ever covered under this Act or its remains may be sold or transferred for consideration for processing into commercial products.

(g) Not later than one year after the date of enactment of this subsection, for the purposes of carrying out a successful wild free-roaming horse and burro adoption program the Secretary shall—

(1) implement creative and more aggressive marketing strategies for the adoption program, including the use of the internet or other media to showcase horses and the adoption program;

(2) explore public outreach opportunities, including agreements with local and State organizations that are using horses for rehabilitation, therapy, or prisoner programs;

(3) provide resources to properly screen and train potential adopters;

(4) conduct tours of Bureau of Land Management facilities for interested parties;

(5) develop volunteer mentor and compliance check programs for assisting the agency in facilitating successful adoptions;

(6) develop a program through which potential adopters may be offered an economic incentive for successful completion of the adoption process; and

(7) take any and all other actions that the Secretary determines to be necessary and useful towards expanding the wild horse and burro adoption program.

(h) The Secretary may not destroy or authorize the destruction of wild free-roaming horses or burros unless the Secretary—

(1) determines that the wild free-roaming horse or burro is terminally ill or fatally injured; and

(2) ensures that the terminally ill or fatally injured wild free-roaming horse or burro will be destroyed in the most humane manner.

(i) If the immediate health or safety of wild free-roaming horses or burros is threatened, such as in severe drought conditions, the Secretary may temporarily remove animals from the range.

(j) The Secretary may remove from the range wild free-roaming horses and burros determined to be a threat to the health and well being of native plant or wildlife species.

(k) Except in cases of removal under subsection (d), (i), or (j), if the Secretary removes wild free-roaming horses or burros from an area, the Secretary shall provide a public notice on the Website of the Bureau of Land Management 30 days prior to the planned removal.

(l) The Secretary shall—

(1) track the number of wild free-roaming horses and burros injured or killed during gathering or holding in a centralized database system;

(2) determine what information on the treatment of gathered wild free-roaming horses and burros in holding and adopted wild free-roaming horses and burros could be provided to the public to help inform the public about the treatment of wild free-roaming horses and burros; and

(3) ensure that such information is easily accessible on the website of the Bureau of Land Management.

[(e) SALE OF EXCESS ANIMALS.—

[(1) IN GENERAL.—Any excess animal or the remains of an excess animal shall be sold if—

[(A) the excess animal is more than 10 years of age; or

[(B) the excess animal has been offered unsuccessfully for adoption at least 3 times.

[(2) METHOD OF SALE.—An excess animal that meets either of the criteria in paragraph (1) shall be made available for sale without limitation, including through auction to the highest bidder, at local sale yards or other convenient livestock selling facilities, until such time as—

[(A) all excess animals offered for sale are sold; or

[(B) the appropriate management level, as determined by the Secretary, is attained in all areas occupied by wild free-roaming horses and burros.

[(3) DISPOSITION OF FUNDS.—Funds generated from the sale of excess animals under this subsection shall be—

[(A) credited as an offsetting collection to the Management of Lands and Resources appropriation for the Bureau of Land Management; and

[(B) used for the costs relating to the adoption of wild free-roaming horses and burros, including the costs of marketing such adoption.

[(4) EFFECT OF SALE.—Any excess animal sold under this provision shall no longer be considered to be a wild free-roaming horse or burro for purposes of this Act.]

SEC. 4. If wild free-roaming horses or burros stray from public lands onto privately owned land, the owners of such land may inform the nearest Federal marshall or agent of the Secretary, who shall arrange to have the [animals removed] *animals returned to public land*. In no event shall such wild free-roaming horses and burros be destroyed except by the agents of the Secretary *pursuant to section 3(h)*. Nothing in this section shall be construed to prohibit a private landowner from maintaining wild free-roaming horses or burros on his private lands, or lands leased from the Government, if he does so in a manner that protects them from harassment, and if the animals were not willfully removed or enticed from the public lands. Any individuals who maintain such wild free-roaming horses or burros on their private lands or lands leased from the Government shall notify the appropriate agent of the Secretary and supply him with a reasonable approximation of the number of animals so maintained.

* * * * * * *

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

SEC. 7. The Secretary of the Interior and the Secretary of Agriculture are authorized and directed to appoint a joint advisory board of not more than [nine] *12* members to advise them on any matter relating to wild free-roaming horses and burros and their management and protection. They shall select as advisers persons who are not employees of the Federal or State [Governments and whom they deem to have special knowledge about protection of horses and burros, management of wildlife, animal husbandry, or natural resources management.] *Governments and shall include at a minimum three representatives of the livestock industry; three representatives of the environmental community; three representatives of the animal protection community; and three scientists with expertise in wildlife management, animal husbandry, or natural resource management.* Members of the board shall not receive reimbursement except for travel and other expenditures necessary in connection with their services. *Nomination of members of the board shall be conducted by public notice and comment in accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix) and shall be for a term of four years. No individual shall serve more then two consecutive terms.*

SEC. 8. *(a)* Any person who—

(1) * * *

* * * * * * *

(4) [except as provided in section 3(e),] processes*, transports for processing,* or permits to be processed into commercial products [the remains of a] *a live or deceased* wild free-roaming horse or burro *for consideration*, or

* * * * * * *

[SEC. 10. Nothing in this Act shall be construed to authorize the Secretary to relocate wild free-roaming horses or burros to areas of the public lands where they do not presently exist.]

SEC. [11. After the expiration of thirty calendar months following the date of enactment of this Act, and every twenty-four calendar months thereafter] *10. (a)(1) Not later than one year after the date of enactment of this subsection and annually thereafter*, the Secretaries of the Interior and Agriculture [will submit to Congress a joint report] *shall submit to the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a joint report* on the administration of this Act, including a summary of enforcement and/or other actions taken thereunder, costs, and such recommendations for legislative or other actions as [he] *the Secretaries* might deem appropriate.

(2) The report shall also contain the following—

(A) the number of acres managed by the Bureau of Land Management and the USDA Forest Service for wild free-roaming horses and burros;

(B) the appropriate management levels on public rangelands;

(C) a description of the methods used to determine the appropriate management levels and whether it was applied consistently across the agency;

(D) the number of wild free-roaming horses and burros on public lands;

(E) a description of the methods used to determine the wild free-roaming horse and burro population;

(F) any land acquisitions, exchanges, conservation easements, and voluntary grazing buyouts that the Secretary has acquired or pursued for wild free-roaming horses and burros;

(G) any sanctuaries or exclusive use areas established for wild free-roaming horses and burros;

(H) programs established for immunocontraception research, development, and management level implementation;

(I) the extent to which fertility control is being used by the Secretary to control the population of wild free-roaming horses and burros;

(J) the percentage of the Bureau of Land Management budget devoted to contraception annually;

(K) the ratio of animals the agency has contracepted and put back on the range; and

(L) which herds have been administered contraception and with what results.

(3) Each report submitted under paragraph (2) shall be made available to the public on the Website of the Bureau of Land Management.

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

DISSENTING VIEWS

The Wild Horse and Burro Program of the Bureau of Land Management and the U.S. Forest Service is not working well, and although this bill would dramatically change the program, the proposed changes will not be for the better.

This 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 manage the herds and mitigate the damage done to native plants, wildlife and rangeland. We are concerned that expanding the range of free-roaming horses and burros to all public lands will have devastating impacts on rangeland health, damage riparian areas, and threaten long-term sustainability of native fish and wildlife resources and their habitat.

The Wild, Free-Roaming Horses and Burros Act of 1971 gave the Secretaries of the Interior and Agriculture authority to manage wild horses and burros on BLM and National Forest rangelands to protect the herds and ensure healthy rangelands. But with no natural predators, the wild horse and burro populations have grown significantly each year. Wild horses and burros can increase their population at a rate of 15–20% per year, resulting in a population doubling in size every three to four years.

BLM currently manages over 34,000 horses and burros in 181 herd management areas in 10 western states. This population level far exceeds the scientifically determined Appropriate Management Level (AML) or the optimum number of animals on the range of about 27,200 animals. Under current law, where an overpopulation exists, the Secretary is to protect the health of both the herd and the range by removing excess animals 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. The 1971 Act requires the BLM to manage wild horse and burro populations only in the areas where they were found when the law was passed in 1971. These current herd management areas cover a vast area, over 32.6 million acres in ten states, an area bigger than the state of New York. H.R. 1018 would allow these animals to *expand* beyond their current herd management areas to *all public lands*.

Since 2001, over 79,000 animals have been removed from the range. Adoptions and sales of the animals, however, have declined over that same time period. Only 47,000 animals have been placed in private care since 2001. Additionally, extensive attempts to employ birth control technologies have proven expensive, very difficult to administer and ineffective. BLM now holds close to 33,000 un-

adopted animals, up from 9,807 in 2001. Last year's holding costs accounted for nearly 75% of the program's enacted appropriation.

Clearly, changes in the program are needed. Unfortunately, instead of correcting the problems in the current program, this bill compounds its failures by requiring 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 when the Act was enacted in 1971. Because rangelands are finite, reductions in forage for wildlife—including endangered species—and reduced allocations for cattle are expected in areas where wild horse and burro herds are expanded. Wild horses are particularly aggressive in defending scarce water sources against use by native wildlife in the critically water-short rangeland of the West.

Unfortunately, the Committee rejected efforts during mark-up to strengthen the bill by adding scientific range management and "look before you leap" provisions. Amendments for studying the impacts on rangeland before creating new wild horse and burro sanctuaries and balancing the advisory panels by adding members with actual range management experience in the affected states were rejected. An amendment to include two representatives of existing grazing boards on the advisory panels was turned down based on the erroneous claim that they are state employees. Questions about where the new sanctuaries would be located and whether or not the bill's ban on "commercial" use of adopted horses bars their use on farms and ranches were left unanswered.

Much as we appreciate the role wild horses play in the romance and mythology of the American West, we believe the laws governing the management of our public lands need to be based on firmer ground. Our goal should be to devise a real-world management program in which healthy herds of these non-native, feral animals thrive in their allotted habitat in a balanced, self sustaining relationship with the land, vegetation, human activities and wildlife. Unfortunately, the well-meaning but misguided policies contained in H.R. 1018, do not take us in that direction.

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