

**Testimony of Ed Roberson
Assistant Director, Renewable Resources & Planning
Bureau of Land Management
U.S. Department of the Interior
Subcommittee on National Parks, Forests, & Public Lands
Committee on Natural Resources
U.S. House of Representatives
H.R. 409, Las Vegas Motor Speedway Expansion
March 3, 2009**

Thank you for the opportunity to testify on H.R. 409, a bill which provides for the sale of approximately 115 acres of public land administered by the Bureau of Land Management (BLM) in Clark County, Nevada to the Nevada Speedway, LLC. While the Bureau does not oppose the conveyance of these lands out of Federal ownership for full fair market value, we would like an opportunity to work with the sponsor of the bill and the Committee to ensure that the conveyance results in the best possible return for the public and to resolve some other concerns with the bill.

Background

The Las Vegas Motor Speedway is a multiple track auto racing complex about 12 miles north of downtown Las Vegas. It hosts NASCAR and other popular racing events, bringing in as many as 100,000 racing fans for events. The current parking facilities are inadequate and for several years the Speedway has been looking for opportunities to expand parking.

H.R. 409

H.R. 409 would require the BLM to sell approximately 115 acres of public land adjacent to the Speedway to Nevada Speedway, LLC if it offers to pay fair market value as estimated by an appraisal. Furthermore, all costs associated with the conveyance would be paid by Nevada Speedway, LLC. The bill makes clear that the land conveyed can only be used for a parking lot for the Nevada Speedway and that any other use would cause the reversion of the lands to the Federal government. The 115 acres would be withdrawn from the public land, mining, and mineral leasing laws under the legislation. Finally, the bill directs that the proceeds from the sale be deposited in the Federal Land Deposit Account established under the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(a)), which allows the use of the fund for acquisition from willing sellers of environmentally-sensitive private inholdings within Federally-designated areas such as wilderness areas, National Parks, Forests, and Refuges.

We would like the Committee to be aware that the 115 acres of land to be sold under H.R. 409 have not been identified for disposal by the BLM through the agency's land use planning process. If they were so identified the BLM would have the authority to sell these lands at auction to the highest bidder. Such a sale might provide a higher return to the Federal taxpayer than may be realized under this bill.

The bill withdraws these 115 acres of public land from the mining, mineral materials, mineral leasing, and the public land laws. While this makes sense pending an acquisition (in order to avoid potential nuisance mining claims) the bill provides no sunset on the withdrawal. If this

legislation is enacted and Nevada Speedway LLC ultimately declined to purchase the lands or the lands were to revert to the United States under the bill, they would still be withdrawn. Therefore, the BLM recommends that the bill include a sunset on the withdrawal.

H.R. 409 stipulates that the lands transferred could be used only for parking lot purposes. However, the legislation also transfers all right, title and interest of the land. The BLM notes that valuable mineral materials exist on this site, and it is adjacent to a sand and gravel pit that is currently operating on public land. It is not clear whether Nevada Speedway LLC intends to sell the mineral materials that would be conveyed under H.R. 409. To ensure that the taxpayer is fully compensated for the full value of these lands, we believe the bill should clarify that if the sale of mineral materials does constitute a parking lot purpose an appraisal should fully take into account the high value of these mineral materials. We recommend that section 2(b) of the bill, which details the requirements for the appraisal of the lands, be amended to ensure that the lands be appraised at highest and best use in accordance with Federal land appraisal standards. The legislation should also include a deadline for the sale of the land to ensure that these lands do not remain in limbo in perpetuity.

Finally, we would like the opportunity to discuss the time frames and other technical issues in the legislation.

Thank you for the opportunity to testify, I would be happy to answer any questions.

**Testimony of Ed Roberson
Assistant Director, Renewable Resources & Planning
Bureau of Land Management
U.S. Department of the Interior**

**Subcommittee on National Parks, Forests & Public Lands
Committee on Natural Resources
U.S. House of Representatives
On H.R. 1018, Restore Our American Mustangs (ROAM)
March 3, 2009**

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify on H.R. 1018, the Restore Our American Mustangs Act. As the Subcommittee is aware, the new Administration is still in a period of transition – both at the Department of the Interior and at the Bureau of Land Management (BLM) – and has not yet made policy determinations on several challenges facing the BLM in its management of the Wild Horse and Burro program. Therefore, we must defer taking a position on H.R. 1018 at this time. Because we are not providing a position we will continue to follow-up with the bill’s sponsor and the Subcommittee as the bill moves forward.

Wild horses and burros are symbols of the American West. We share the concerns of the public about the future of these American icons and the health of the Western rangelands where they live. The BLM’s Wild Horse and Burro program is part of a broader multiple-use mandate which requires that BLM manage the public lands for a variety of uses to meet the needs of the American people. Realizing these goals requires achieving appropriate herd management levels so that wild horse and burro populations do not exceed the capacity of the land to sustain them. If herd sizes are allowed to exceed this capacity, not only will native plants, wildlife, and other public land uses be threatened, but the horses and burros themselves will be at increased risk of disease and starvation.

Our concerns are discussed in more detail throughout the testimony. We would appreciate the opportunity to work with the bill’s sponsor and the Subcommittee to develop workable proposals that would help the BLM to fulfill its responsibility to preserve wild horses and burros while maintaining the health of the public rangelands.

My statement today will discuss the background of the BLM’s Wild Horse and Burro program and the challenges we face; highlight some of our preliminary concerns with H.R. 1018; and update the Subcommittee on a recent report by the Government Accountability Office (GAO).

Background

The BLM manages wild horses and burros under the Wild Free-Roaming Horses and Burros Act (the Act), a 1971 law that sets forth certain protections for the animals and guides the BLM’s program.

The Act requires BLM to manage these animals only in the areas where they were found roaming in 1971. Currently, the BLM manages wild horses and burros in 181 herd management areas in 10 western states. These herd management areas cover over 32.6 million acres, an area bigger than the state of New York.

The Act also requires the BLM to determine the “appropriate management level”, that is, the number of wild horses and burros that can graze on the land without causing range deterioration. In determining appropriate management levels, the BLM takes into account all natural resources and authorized uses of the public lands, consistent with the Act and our agency’s multiple-use mandate. BLM has determined that the current appropriate management level on the range is about 27,200 animals. BLM currently estimates wild horse and burro populations on the range at over 34,000 animals. Because wild horses and burros have virtually no natural predators, their herd sizes can double about every four years. As a result, BLM removes thousands of animals from public rangelands each year to ensure that herd sizes are consistent with the land’s capacity to support them.

Since BLM first started to track animal numbers in the 1970s, herd populations have consistently exceeded appropriate management levels. Herd populations in the 1970s and 1980s surpassed 64,000 animals, more than twice what the rangelands could sustain. Since the 1970s, we have removed over 270,000 animals and adopted out more than 220,000. Unfortunately, despite the BLM’s aggressive marketing efforts, adoptions and sales have declined significantly in recent years. BLM now holds close to 33,000 animals in corrals and long-term holding facilities, three times the number of animals cared for in 2001. Pastured wild horses tend to live up to 30 years versus 15 years on the range.

The BLM’s primary tool for controlling herd populations is gathers. Appropriate management level is set as a range (from high to low). Gathers are planned once populations approach the high end of that range, usually every four years. BLM completes an Environmental Assessment with public participation before conducting gathers. Normally BLM gathers wild horses and burros from the range using helicopters. The helicopter is used to drive animals at an easy pace towards a trap. Routine gathers ensure that herd sizes are kept in balance with other public rangeland resources and uses.

Contraception is an additional method BLM is using to control populations on the range. Research on an immunocontraceptive first began in 1978. The most promising agent, Porcine Zona Pellucida (PZP), was developed in the 1990s. BLM began using PZP on a large scale in 2004, with over 2,200 mares treated since that time.

The BLM administers a two-year PZP pellet to captured mares. The drug must be mixed on site by a trained applicator and injected using a jab stick. The treated animals are then freeze-branded so they can be identified and tracked. The BLM normally applies the drug during regular gather operations. However, when applying fertility control, many more animals must be gathered. This is so mares can be treated with PZP and be returned to the range, and excess animals can be removed to achieve appropriate management levels.

The effects of this treatment on population growth rates will be better assessed over time. The BLM plans to treat close to 2,000 more animals over the next two years. At the same time, the agency is intensively researching better application techniques in cooperation with the Humane Society of the United States.

In addition to removing animals and looking for ways to control their populations on the range, BLM also encourages creativity and innovation in finding ways to improve its adoption program. Adoptions of wild horses and burros are now offered through the Internet, at more than 100 adoption events each year held all across the United States, and at the BLM's holding facilities. With the assistance of our partners, BLM has made advances in offering gentled animals for adoption. The BLM partners with prison training programs in Colorado, Kansas, Nevada, Utah, and Wyoming to gentle mustangs for adoption. The Mustang Heritage Foundation's popular "Extreme Mustang Makeovers" highlight the trainability and versatility of mustangs. Also, the Foundation places gentled mustangs in good homes through BLM's Trainer Incentive Program. The U.S. Customs and Border Protection (CBP) agency is using trained BLM mustangs in its patrol of the international borders. Notably, ten of the CBP's adopted mustangs were recently featured in President Obama's inaugural parade. We are working to increase the number of adoptions through these types of programs.

Despite these efforts, adoption rates are declining. The recent economic downturn has further exacerbated the impact on the adoption market. We are also concerned that the BLM's holding costs (hay, pasture rent, etc.) could continue to rise. On average, BLM spends about \$100,000 per day caring for the 33,000 animals in short- and long-term holding. To give further context, we spend, on average, nearly \$2,100 per year caring for each animal in short-term holding and \$475 per year in long-term holding.

H.R. 1018

Although the BLM is deferring taking a position on this legislation, we have identified a few areas of concern that we would like to bring to the Subcommittee's attention.

H.R. 1018 would require the BLM to continue to identify appropriate management levels, but the legislation repeals the requirement in the 1971 Act that excess animals be removed if these levels are exceeded. Under H.R. 1018, the BLM would be required to "exhaust all practicable options to maintain populations on the range" before removing any animals. H.R. 1018 would also require that an adoption demand exists before removing animals. Without a clear mechanism to trigger removals, wild horse and burro populations could grow exponentially. As we noted before, adoption rates have declined substantially in recent years. In 2008, only 3,700 animals were adopted. If gathers are limited to only animals that can be adopted, wild horse and burro populations on the range could increase sharply and cause severe destruction of rangeland habitats (including wildlife and fish habitats). We would like to work with the bill's sponsor and the Subcommittee to craft language that promotes healthy rangelands and herd management.

The BLM is concerned about the impacts to rangeland and animal health that could result from the bill's provisions that ban the use of helicopters for gathers. H.R. 1018 would limit BLM to using motor vehicles to gather animals. Given the size and topography of many herd

management areas, it would be inefficient and dangerous to gather wild horses and burros using all-terrain vehicles and horseback riders without any exceptions. Limiting gathers to these methods also results in more stress and injury to the wild horses being gathered and to the personnel conducting the gathers. Prohibiting the use of helicopters could cause populations on the range to increase. It also greatly limits fertility control. Animals must be captured to be treated with the contraceptive PZP.

The BLM is concerned by the provision in H.R. 1018 that would restrict humane destruction to only those animals that are determined to be “terminally ill.” This new policy would be inconsistent with the standard commonly used in equine veterinary medicine. Under the 1971 Act, BLM is authorized to euthanize animals that are old, lame or sick. While not “terminally ill”, animals with deformities or serious injuries can suffer great pain. The ability to euthanize old, sick, and lame animals is an important part of providing humane care.

We are concerned that several provisions of H.R. 1018 could increase the operating costs of the wild horse and burro program in several ways. 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. H.R. 1018 would allow these animals to expand beyond their current herd management areas to all public lands. Because wild horses and burros have virtually no natural predators, their numbers can double about every four years. Under this scenario, BLM expects that program costs could grow exponentially with every new herd management acre and new population. The BLM would like to work with the Subcommittee to craft language that continues to limit animals to existing herd management areas except where new public land herd management areas would be created for special circumstances.

H.R. 1018 removes BLM’s authority to sell animals. With adoption rates declining and holding costs increasing, every avenue needs to be pursued to find good homes for excess animals. We would like to work with the Subcommittee to address our concerns with this provision. We appreciate that H.R. 1018 would remove the 1971 Act’s four-animal titling provision, a limitation that has slowed our efforts to work with horse rescue groups willing to adopt large numbers of animals.

We are also concerned with the provision of H.R. 1018 that repeals portions of the 1971 Act that specify when a wild horse or burro is no longer considered “wild.” Without this provision, adopters would never own their animals, most likely resulting in further reduction in adoption demand. BLM would remain responsible for all wild horses in perpetuity.

GAO Report

The recent Government Accountability Office (GAO) report, *Effective Long-Term Options Needed to Manage Unadoptable Wild Horses* (GAO-09-77, October 2008), distilled the significant challenges facing the BLM’s Wild Horse and Burro program into two conclusions, concerning long-term holding, and options for unadoptable animals.

The first GAO conclusion stated: *“If not controlled, off-the-range holding costs will continue to overwhelm the program. The percentage of the program’s direct costs for holding animals off*

the range increased from \$7 million in 2000 (46 percent) to \$21 million in 2007 (67 percent). In 2008, these costs could account for 74 percent of the program's budget."

It is no longer realistic to expect all excess animals to be adopted or sold. Adoptions and sales of wild horses have steadily declined. Approximately 7,600 animals were placed in 2001; in 2008, 3,700 were placed. The most urgent issue is what to do with the tens of thousands of horses removed from the range in order to sustain the health of the public lands.

In response to the GAO's recommendations, the BLM has committed to finding cost-effective alternatives to life-long care for wild horses removed from the range. Yesterday (March 2), in Reno, Nevada, the BLM's Wild Horse and Burro Advisory Board held a public meeting to take additional input from stakeholders and the public on options for meeting these challenges.

The GAO's second conclusion is: "*BLM has limited options for dealing with unadoptable animals. The Act provides that unadopted excess animals shall be humanely destroyed or, under certain circumstances, sold without limitation. However, BLM only manages these animals through sales with limitations. BLM is concerned about the possible reaction to the destruction of healthy animals.*"

BLM has decided to continue caring for its unadopted animals in holding facilities rather than humanely destroying them or selling "without limitation" as the 1971 Act requires. We believe that holding animals indefinitely is untenable in the long run. In FY 2008, BLM spent nearly 75 percent of the Wild Horse and Burro's program budget on off-range holding. On-range management activities, like reaching appropriate management levels, had to be deferred in FY 2008 and we have continued to defer these activities in FY 2009.

The GAO commented that by *not* destroying excess unadopted animals or selling without limitation, the BLM was *not* in compliance with the requirements of the Act: "*BLM is faced with a dilemma as it attempts to comply with the Act. On one hand, the Act directs BLM to protect and preserve wild horses and burros, and on the other hand the Act directs BLM to destroy excess animals for which an adoption [or sale] demand does not exist....*" A key GAO recommendation is that the BLM discuss with the Congress and other stakeholders how best to comply with the Act or amend it so that the BLM would be able to comply. We welcome this opportunity and are working to identify options.

Conclusion

Mr. Chairman, the wild horse and burro program is one of the most challenging resource programs that BLM manages. Wild horses and burros evoke strong public emotions and capture the interest of national and international news media. In keeping with the public's expectations, the BLM's mission is to protect, manage, and control healthy herds of wild horses and burros on Western public lands while ensuring a thriving natural ecological balance with other uses of public lands.

The GAO concluded that BLM's Wild Horse and Burro program is at a critical crossroads, stating: "*Within the program's existing budget, BLM cannot afford to care for all of the animals*

off the range, while at the same time managing wild horse and burro populations on the range. Resource limitations are forcing BLM to reconsider all available management options, and a workable solution must be developed to bring BLM into compliance with the Act.” We are committed to finding a workable solution to bring BLM into compliance with the Act.

The BLM would like to work with the Subcommittee and the Congress to improve the way excess animals are dealt with while at the same time protecting the wild herds, their habitat, and the public lands from the destructive effects of overpopulation. We welcome the Subcommittee's continued interest in the BLM's management of the Wild Horse and Burro program. We will continue to follow-up with the bill's sponsor and the Subcommittee and look forward to working with you on this legislation as it moves forward. I will be glad to respond to any questions you or other members of the Subcommittee may have.