

REVIEW

The Fight to Save a Memory

VELMA B. JOHNSON (WILD HORSE ANNIE)

[Reprinted from May, 1972, issue of the TEXAS LAW REVIEW]



[Reprint from May, 1972, issue of the TEXAS LAW REVIEW]

THE FIGHT TO SAVE A MEMORY

*Velma B. Johnston (Wild Horse Annie)**

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.

—Pub. L. No. 92-195, § 1, 85 Stat. 649 (Dec. 15, 1971)

On a memorable day in 1950, I came upon a truckload of mutilated horses as I was driving from our ranch into nearby Reno, where I work. I discovered that they were wild horses, captured in an airborne roundup. Their destination was a slaughter house, where the sole requirement was that the horses be ambulatory and plentiful. The captors received six and one-half cents per pound. Because net profit depended upon quantity rather than upon condition, injury to the animals was of minimal concern.

For many years I had heard about the capturing of wild horses by airplane. This practice concerned me, but because it had not touched my life directly, I pretended it didn't exist, hoping it would go away. After that day in 1950, I could no longer "pretend it wasn't there," for it had now touched my life. In the decades to come, it would reach and change the lives of many others as well.

At that time, twenty-one years ago, the practice of harvesting wild horses for use in commercial products had reached its peak. Their numbers had been reduced from two million to 25,000 in half a century, and the methods of gathering were ruthless and indiscriminate. If the exploitation had continued, these horses—so dramatically linked with our pioneer past—would literally have been wiped from the face of the earth. Burros, though not commercially exploited, fared no better than

* Chairman, Board of Trustees of Wild Horse Organized Assistance, Inc.; President, International Society for the Protection of Mustangs and Burros.

horses. Claims of overpopulation and possible competition with native desert bighorn sheep led to systematic extermination programs.

The pet food industry had created a ready market for all the horses that could be caught, and exploiters were quick to take advantage of it. Since the old method of running the horses by mounted horsemen was much too slow, cowboys took to the air. Low-flying airplanes drove the wild horses by the thousands at breakneck speed from their meagre shelters in the rim rocks and canyons into the dry and barren flats below. To force the horses to turn or run faster, the airborne cowboys blasted them with sawed-off shotguns—never fatally, but sufficiently to terrify and maim. Injured and exhausted by their flight through the rugged terrain, the horses were no match for the fast trucks that continued the chase, and ropers, lashed to the cabs of the trucks, easily lassoed them. Tied to the other end of the short ropes were heavy truck tires, which the exhausted and frightened horses would drag around attempting to escape until they could fight no longer. Finally, thrown and tied by the feet, they were dragged up rough board ramps onto trucks where they were prodded to their feet and packed in tightly, their weight against each other often being all that held them on their feet. On the way to processing centers they were rarely, if ever, fed or watered. Because they weighed less, colts were often left to die from starvation or to become victims of predators. The movie *The Misfits* was based on an actual roundup by this method. Other methods of capture were conceived—all cruel. The operation was big business.¹

I. A BRIEF HISTORY

Although they evolved in North America, no horses lived on this continent when Columbus discovered America. He brought the first ones to the New World on his second voyage in 1493. In 1498 Spain established royal breeding farms in Santo Domingo and the neighboring islands; but the first horses to reach the mainland of North America, it is believed, were brought from Cuba by Cortez in his conquest of Mexico.² Although at first they were terrified of this strange new creature, the Indians eventually overcame their fear and, luring the horses from the missions and ranches, quickly took advantage of the mobility they provided. The horse became the cultural key that enabled the Indian to make full use of his environment.³

¹ For example, within a four year period following World War II, more than 100,000 horses were captured in Nevada alone. T. MCKNIGHT, *FERAL LIVESTOCK IN ANGLO-AMERICA* 9 (1964). Throughout the West, their numbers, which had been assessed in the millions, W. WYMAN, *THE WILD HORSE OF THE WEST* (1945), were reduced to an estimated 14,810 to 29,620 in the 1950's. McKnight, *The Feral Horse in Anglo-America*, 49 *GEOGRAPHICAL REV.* 506 (1959).

² W. WYMAN, *supra* note 1.

³ D. ALLEN, *OUR WILDLIFE LEGACY* 9 (rev. ed. 1962).

Other horses escaped and quickly adapted to the new land. In a few years their progeny spread over the continent and became known as "mustangs," a word that originated from the Spanish *mesteño*, meaning strayed or wild. These then were the glamorous forebears of our present-day wild horses, the fiercely proud, valiant, and beautiful animals that roamed our country when this century was young.

With the westward march of civilization, settlers found the bands of free-running wild horses a nuisance. Taking matters into their own hands the settlers killed horses by the thousands.⁴ Only the fastest, sturdiest, and wildest escaped to seek refuge in the hills. Driven into environments that man and his animals could not abide and that no horse should have been able to endure, they adapted and, with barely a fighting chance, survived. They were, for the most part, underfed and scrubby. Yet, since a certain value had been established for commercial exploitation of their carcasses, they became the target for still further abuse. Nowhere were they safe. As with the buffalo in an earlier era, the big slaughter was at hand, and also like the buffalo, the wild horses had no champion.

In addition to those actively engaged in the carnage for financial profit, the Bureau of Land Management, the agency responsible for the management and allotment of our public lands, also supported the removal program. Under constant pressure from vested interest users of public lands and from hunters of target animals, the Bureau opposed legislation that would interfere with this expedient and well-proved method of clearing the ranges of a species that did not enhance the domestic livestock industry's use of the ranges and that was not of edible or trophy value to the hunting industry. Man himself, being neither edible nor of trophy value, would have difficulty justifying his right to survival under those criteria. As land and forage resources diminished, every natural ill that befell the range was blamed on wild horses and burros. They became the scapegoats for those whose abuse of the habitat had left it barren and unproductive, whose philosophy had always been to graze it bare and move on to "greener pastures."

II. THE STRUGGLE FOR LEGISLATION: 1950-1970

Legislation to prohibit the capture of wild horses and burros by means of airborne and mechanized vehicles met with its first measure of success in 1952 in the small Nevada county where I lived. Although it was an infinitesimal victory, it was the beginning of a movement that was to sweep the nation. I learned then the power of the pen in soliciting help from the public, and this led three years later to enactment by

⁴ W. WYMAN, *supra* note 1.

the Nevada Legislature of a law to prohibit use of airborne and mechanized vehicles to capture wild horses and burros within the State. An amendment, however, specifically prohibited the legislation from applying to public lands, which included 86 percent of Nevada. It was obvious that nothing short of federal legislation could halt the massive clearance programs, for the initial steps had actually accelerated operations on public lands in Nevada, and on both private and public lands in all other western states.

Strong opposition to the Nevada legislation indicated that efforts on the federal level could encounter even stronger and better organized resistance. Nevertheless, as major publications increasingly carried articles on the shocking exploitation of wild horses and burros and the public became more aware of the atrocities committed in range clearance programs, major support developed throughout the United States to match or exceed the opposition.

On January 19, 1959, Congressman Walter S. Baring of Nevada introduced a bill to prohibit use of aircraft or motor vehicles to hunt wild horses or burros on all land belonging to the United States. To the thousands who wrote and asked, "What can I do to help?" I replied, "Contact your delegations in Washington and solicit their support when the bill comes before them for consideration."

For most Americans, the mere knowledge that the Wild Ones still exist somewhere in the West instills a warm, comfortable feeling that not all of America as it used to be is lost and that they still have a link with the colorful past. Perhaps they remember, too, that the forebears of these animals were as alien to the shores of the New World as were our own forefathers and that together they settled the trackless wilderness, drove off Indian attacks, enforced law and order, brought civilization to this raw and young country, and carried the mail by Pony Express over 2,000 miles of savage frontier wilderness from Saint Jo to Sacramento and back again. For whatever reasons, the response in behalf of the Wild Ones was tremendous. An Associated Press release of July 15, 1959, noting the overwhelming volume of mail pouring into Congressmen's offices, observed, "Seldom has an issue touched such a responsive chord in the hearts of their constituents."

On that same day, armed with documented proof of the necessity for enactment of the measure, I presented my indictment of mankind for his treatment of our wild horses and burros at a public hearing on Congressman Baring's bill. The Department of the Interior, under which the Bureau of Land Management operates, presented a strong case against enactment, unless a provision was included for use of airplanes and mechanized vehicles by the Bureau or other authorized in-

dividuals in the management of public lands. I argued that by supporting the removal of wild horses and burros by "authorized individuals" the Department of the Interior was, in effect, asking Congress to put its stamp of approval on what the Department had been doing all along. I refused to agree to the crippling amendment.

The committee took only a few days to come to its conclusions; it unanimously recommended passage of the measure as it had been introduced, without the amendment proposed by the Department of the Interior. In less than two months, the Bill passed both the House and Senate; President Dwight D. Eisenhower signed it into law on September 9, 1959.⁶ Not acted upon, however, was my recommendation that a protection, management, and control program for wild horses and burros be instituted immediately.

With their expedient means of capture outlawed, the hunters were unable to continue taking the animals in large quantities, and for a time it seemed that these living symbols of our heritage of freedom were to be safe at last. In the last decade, however, man has encroached upon the habitat of wild horses and burros to a degree never imagined a few years back. Watering holes and grazing areas have been fenced off, and diversion of water for commercial, domestic, and recreational purposes has depleted natural watering sources. Horses have been indiscriminately shot, trapped, or driven off, lest the meagre forage they consumed reduce the number of domestic or target animals the land will support. Moreover, target animals bring in hunters who enrich the coffers of state fish and game commissions. Because technically they are defined neither as wildlife like deer, elk, and antelope nor as domestic animals, no agency would assume responsibility for them.

They have been protected only by what has come to be known as the Wild Horse Annie Law (prohibiting the use of airplanes and mechanized vehicles), enforcement of which rests in the hands of local officials. Since wild horses and burros inhabit areas where target animals are found and where domestic livestock interests predominate, the vigor of enforcement gave way before the influence of vested-interest groups. In addition, conflicting opinions over the meaning of the phrase "wild horses and burros" effectively subordinated administration of the law to a debate in semantics and definitions.

The practice of releasing domestic horses on the open range without adequate grazing permits persisted for a twofold purpose: (1) their progeny produced a harvestable commodity at no cost to owners of the domestic horses; and (2) since the owner may gather his horses in any manner he chooses (airplanes for the most part), should he capture any

⁶ 18 U.S.C. § 47 (1970).

or all wild horses in that area, he could always claim he was only rounding up his own animals and the others were gathered by mistake. A perfect ruse, and one used often.

Public interest and concern continued to mount, and with it came growing recognition that a federal management, protection, and control program was essential. No longer could responsibility remain in the hands of state and local agencies, for the wild horses and burros belong to all Americans, not just to those whose areas they inhabit—areas where, for the most part, their welfare is of secondary consideration.

The Bureau of Land Management, previously concerned primarily with meeting the demands of professional users of Public Lands, acknowledged in 1967 that it shared with many people an interest in preserving and protecting the remnants of the wild bands. It was a belated acknowledgment, to be sure, but the Bureau had been lulled by decades of public apathy. Furthermore, because ownership of wild horses and burros was vested in the separate states under state estray laws, the Bureau often lacked jurisdiction to provide a comprehensive control program for them.

On January 30, 1970, Senator Clifford P. Hansen of Wyoming introduced a bill "To authorize the Secretary of the Interior to protect, manage, and control free-roaming horses and burros on public lands."

Following introduction of that bill, which subsequently died in committee, I was invited to meet with a specially appointed committee of the American National Cattlemen's Association and the National Wool Growers' Association, to review the provisions of the Hansen Bill and, if possible, to work out recommendations for legislation that would be acceptable to all users of our public domain. In turn I invited Dr. Michael J. Pontrelli, then an Assistant Professor of Biology at the University of Nevada and director of a wild horse research program, to attend the meetings. Over a fourteen month period the special committee held meetings with representatives of the Bureau of Land Management, the Nevada Fish and Game Agency and the United States Forest Service. At the end of this period, Dr. Pontrelli and I prepared an analysis, which was forwarded to key lawmakers in Washington, and became the basis for subsequent legislation.

The private interest representatives at the meeting particularly disapproved the prohibition in the Hansen Bill against commercial processing of any wild horses and burros deemed to exceed range capacity. This provision was designed to deter overzealous control measures by eliminating the potential for financial gain. Because the capture of horses for commercial processing is profitable, any limits approved under a bona fide control program could well be exceeded. The livestock representatives asserted that disposal costs would be ex-

cessive. Dr. Pontelli and I pointed out that this ignores several important factors, including the public reaction to the commercial slaughter of the animals and to the expenditure of tax dollars to benefit the relatively few private users of the public lands.

In our report, we focused particularly on some of the misconceptions regarding the livestock industry's dominant use of the open range. The livestock industry contended that curtailment of their use of public lands through increased grazing fees or decreased grazing allotments would deal the industry a severe financial blow and create serious economic hardship for the nation's meat consumers by causing a major rise in prices. They argued that the domestic livestock industry is the lifeblood of small communities in the West since it provides a market for commodities supplied by local retailers. Boyd L. Rasmussen, Director of the Bureau of Land Management, testified, however, that public domain lands administered by the Bureau of Land Management provide nationally only about one percent of the feed for all cattle and 6 percent of the feed for all sheep, and that of 14,419 grazing permittees, fewer than 700 are allotted fifty-two percent of all Bureau of Land Management forage.⁶ In most instances the latter are absentee operators whose profits generally are not seen in the local communities. Furthermore, increased mechanization has gradually reduced the need for manpower on large ranch operations, decreasing local employment in the industry.

Domestic livestock representatives were equally opposed to our recommendation that legislation prohibit release of domestic horses to run with wild horses and burros. They contended that the resulting obligation to pasture and "feed-lot" domestic horses used in its operations would financially handicap the industry. Yet many livestock men admitted the current system does not work well. They complained of competitors with permits to graze twelve domestic horses who graze forty, and others with no permit who run several hundred, thus depriving all other livestock of forage.

The livestock interests favored state rather than federal legislation in the area, but state legislation seemed doomed to failure. The habitat of wild horses and burros is in demand by other interests within the Western states, and a majority of the state legislative committee members represent those interests. Bills contrary to their financial welfare are killed in committee regardless of strong public support that would likely produce passage of the measures if they were released from committee. Early in 1971, such political maneuvering resulted in bills dying in committee in Oregon, Colorado, and Nevada. Protectionists did

⁶ *Hearings on Review of Grazing Fees Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs, 91st Cong., 1st Sess., 114-15, 119 (1969).*

support legislation in the separate states, not because we believed it would be enacted, but because we believed we could divert opposition away from the federal effort. In that respect, we feel we were successful.

III. CONGRESSIONAL ACTION: 1971

In an unprecedented wave of congressional response to public opinion, members of both the Senate and House of Representatives introduced into the Ninety-second Congress bills to provide the necessary management, protection, and control program for wild horses and burros on public lands. The majority of organizations and individuals chose to support S. 1116, introduced by Senators Henry M. Jackson of Washington and Mark Hatfield of Oregon, and H.R. 5375, introduced by Congressman Baring. Both bills had a large number of cosponsors, and additional support was indicated by introduction of similar measures by other members of Congress.

A record number of witnesses representing the many interests involved testified at the House hearings on April 19, 1971, and at the Senate hearings the next day. Although most of those presenting testimony supported the legislation, opposition by some of the lawmakers surfaced in subsequent committee meetings. S. 1116 contained virtually all of the recommendations set forth in the special committee analysis previously cited, plus a number of additional provisions designed to strengthen the legislation. It passed the Senate without a dissenting vote on June 29, 1971. Similar to the Senate bill, H.R. 5375 was more bitterly contested and would never have emerged from committee absent the dedication of its sponsor, Congressman Baring. Amended and redrafted as H.R. 9890 with approximately 200 co-sponsors, it passed the House unanimously on October 4, 1971. After differences in the two bills were resolved in conference committee, the consolidated measure passed both the Senate and House and was signed by President Richard Nixon on December 15, 1971, becoming Public Law 92-195.

Though the new law does not provide the Utopia its proponents hoped to achieve, wild horses and burros of Western America at long last have been assured a measure of protection they have never known before.

Moreover, by strongly supporting the legislation, the public has indicated a growing awareness that it can, and must develop an interest in the use to which its own land is put. Concern for the fate of wild horses and burros has provided an invaluable spur to united public action which, with passage of this legislation, will have far-reaching benefits for the preservation of other natural resources.

Public Law 92-195 defines all unbranded and unclaimed horses and burros on public lands of the United States as "wild free-roaming horses

and burros," and makes the Secretaries of Agriculture and the Interior responsible for their management and protection. No longer will the fate of these animals depend on local officials who, for the most part, have demonstrated a singular disregard for their welfare. The animals are classified as components of the public lands in a program designed to achieve natural ecological balance. If deemed advisable, specific ranges may be designated as sanctuaries, but not to the exclusion of protection in areas not so designated.

Indiscriminate reduction programs are prohibited but humane destruction of old, sick, or lame animals may be ordered if an area is overpopulated. Additional excess animals may be captured and removed for private maintenance under humane conditions and care. The remains of deceased wild, free-roaming horses or burros may not be sold for any consideration, directly or indirectly, nor can they be processed into commercial products. Only a federal marshal or agent of the Secretary may authorize the removal or destruction of a wild horse or burro that strays onto private lands. Anyone who violates the terms of the Act is subject to a \$2,000 fine or one year's imprisonment, or both.

IV. UNFINISHED BUSINESS

Although the passage of Public Law 92-195 signals a momentous advance, much was left undone. Although supporters of the Act sought civil as well as criminal sanctions, the former were omitted from the final version of the bill. Furthermore, the statute does not adequately immunize the Secretary from the influence of state wildlife agencies and other local governmental bodies with whom he is authorized to make cooperative agreements. Local pressure groups in areas where domestic livestock and target animal interests traditionally prevail can jeopardize the execution of the legislative purpose—to benefit wild horses and burros.

Unfortunately, the recommendation to prohibit release of domestic horses on the open range was not included in the legislation. In the light of this omission, careful consideration should be given to forage supply where permits for grazing domestic horses are sought. Permits should not be granted if the survival of wild horses and burros would be jeopardized, and strict regulations should be instituted to keep the number of domestic horses within the limit authorized by the Bureau of Land Management.

The most serious gap in Public Law 92-195 was the elimination of the authorization for appropriation of funds to carry out the provisions of the Act. The additional obligation to protect, manage, and control wild horses and burros on public lands throughout the eleven Western states has increased tremendously the Bureau of Land Management's

responsibility; the Bureau is now faced with the impossible task of fulfilling that responsibility on a budget already stretched to the breaking point. Experienced conservationists know that conservation always costs something; if efforts to obtain an emergency appropriation fail, the long-awaited program for wild horses and burros may come to nothing.

Legislation to protect and manage wild horses and burros by placing them under federal jurisdiction has followed a tenuous path, with public interest and action finally prevailing. Those of us in the forefront of the battle only showed the way. We did not achieve all that we set out to achieve, and we are not yet sure that what has been gained will provide an adequate program; we must wait and watch. The people of America have fought hard to save this colorful remnant of two animal species that so uniquely represent the American spirit—freedom, pride, independence, endurance, and the ability to survive against unbelievable odds. Should the future of these animals remain in doubt, the fight will go on.