

Calendar No. 487

104TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 104-312

FREE-ROAMING HORSES IN THE OZARK NATIONAL SCENIC RIVERWAYS

—————
JUNE 28, 1996.—Ordered to be printed
—————

Mr. MURKOWSKI, from the Committee on Energy and Natural
Resources, submitted the following

REPORT

[To accompany H.R. 238]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 238) to provide for the protection of wild horses within the Ozark National Scenic Riverways and prohibit the removal of such horses, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

On page 2, strike lines 18 through 25, and insert in lieu thereof the following:

“(b) The Secretary shall not remove, assist in, or permit the removal of any free-roaming horses from Federal lands within the boundary of the Ozark National Scenic Riverways unless—

“(1) the entity with whom the Secretary has entered into the agreement under subsection (a), following notice and a 90-day response period, fails to meet the terms and conditions of the agreement; or

“(2) the number of free-roaming horses on Federal lands within the Ozark National Scenic Riverways exceeds 50; or

“(3) in the case of an emergency, or to protect public health and safety.”

PURPOSE OF THE MEASURE

The purpose of H.R. 238 is to provide for the protection of free-roaming horses at Ozark National Scenic Riverways.

BACKGROUND AND NEED

Wild horses have inhabited the Missouri Ozarks for at least 40 years and were certainly present in 1964 when Ozark National Scenic Riverways was authorized as a unit of the National Park System. Historians speculate that the feral horses were introduced into the area by the local residents in the 1940's. The size of the herd has fluctuated over the years and currently numbers between 15 and 22, ranging over an area of 20–30,000 acres both inside and outside of the park.

The National Park Service, (NPS) took no action to manage the horses for nearly 25 years after the park was authorized. In 1990, the NPS began a program to remove all horses. Due to substantial public opposition, the NPS prepared an environmental assessment on the project, after which the agency determined that removal was necessary.

When the NPS again initiated removal efforts, local citizens sued. Eventually the court of appeals ruled that it was within the discretion of the agency to remove the horses. While the NPS has temporarily ceased its removal efforts, absent legislation, the removal program can be reinstated at the discretion of the NPS.

The NPS maintains that allowing feral horses to range uncontrolled at Ozark National Scenic Riverways is contrary to the purposes of the park. This is but one of a number of exotic species issues with which the NPS is dealing in park areas across the United States. A few examples where the NPS has been very active in removing exotic species from parks include burros from Grand Canyon, Bandelier, and Death Valley; pigs from Great Smoky Mountains, Hawaii Volcanoes and Haleakela; and goats from Haleakela and Hawaii Volcanoes. While the Wild Free-Roaming Horses and Burros Act of 1971 gives special status to horses on western public land, NPS lands were specifically excluded from that Act.

As ordered reported, H.R. 238 would prohibit the NPS from removing the horses except in the case of an emergency, if the local citizens group fails to meet the terms of an agreement with the NPS for the management of the horses, or if the number of horses at the Scenic Riverway exceeds 50.

LEGISLATIVE HISTORY

Representative Emerson introduced H.R. 238 on January 4, 1995. The bill passed the House by voice vote on November 7, 1995 and was referred to the Senate on November 8, 1995.

Similar legislation, S. 796, was introduced in the Senate by Senators Bond and Ashcroft. A hearing on both bills was held by the Senate Subcommittee for Parks, Historic Preservation and Recreation on March 7, 1996.

At the business meeting on June 19, 1996, the Committee on Energy and Natural Resources ordered H.R. 238 favorably reported, as amended.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 19, 1996, by a unanimous voice vote of a quorum present, recommends that the Senate pass H.R. 238 if amended as described herein.

COMMITTEE AMENDMENTS

During the consideration of H.R. 238, the Committee adopted clarifying and conforming amendments. The amendment makes clear that the free-roaming horse population within the park is limited to no more than 50 horses. The amendment also authorizes the National Park Service to remove the horses to protect public health or safety, or in an emergency.

SUMMARY OF THE MEASURE

H.R. 238 amends the Ozark National Scenic Riverways Enabling Act to direct the National Park Service (NPS) to manage an existing herd of free-roaming horses on Federal lands. The bill directs the NPS to enter into an agreement with the Missouri Wild Horse League to allow the League to carry out the management of the horses, and to issue a permit which provides adequate land for pasturing up to 50 horses. The NPS may not remove the horses except in case of an emergency, if the Missouri Wild Horse League substantially fails to meet the terms of its agreement with the NPS, or if the number of free-roaming horses at the Scenic Riverway exceeds 50.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 25, 1996.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 238, an act to provide for the protection of wild horses within the Ozark National Scenic Riverways and prohibit the removal of such horses, as ordered reported by the Senate Committee on Energy and Natural Resources on June 19, 1996. We estimate that enacting this legislation would have no significant impact on the federal budget. H.R. 238 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

H.R. 238 would prohibit the National Park Service (NPS) from removing or allowing the removal of wild horses from federal lands within the Ozark National Scenic Riverways. The act would direct the NPS to enter into an agreement with a nonprofit group to provide for management of the horses at no cost to the federal government other than expenses related to monitoring the agreement. We expect that those expenses would not be significant.

H.R. 238 contains no intergovernmental or private-sector mandates as defined in Public Law 104-4, and would impose no direct costs on state, local, or tribal governments.

On October 26, 1995, CBO prepared a cost estimate for H.R. 238, as ordered reported by the House Committee on Resources on August 2, 1995. The two estimates are identical.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

JUNE E. O'NEILL, *Director*.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 238. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 238, as ordered reported.

EXECUTIVE COMMUNICATIONS

On June 20, 1996, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on H.R. 238. These reports had not been received at the time the report on H.R. 238 was filed. When these reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Department of the Interior at the Subcommittee hearing follows:

STATEMENT OF JOHN J. REYNOLDS, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, thank you for the opportunity to appear before you today to discuss the views of the Department of Interior on bills relating to the management of the National Park Service (NPS).

S. 796 and H.R. 238, provide for the protection of wild horses within the Ozark National Scenic Riverways and prohibit the removal of such horses. The National Park Service opposes these bills for the reasons discussed in detail below.

We oppose the enactment of S. 796 and H.R. 238, bills to provide for the protection of wild horses within the Ozark National Scenic Riverways and to prohibit the removal of such horses. These bills would amend Public Law 88-492, which established the Ozark National Scenic Riverways. The enabling legislation states, in part, that the purpose of the park is for "conserving and interpreting

unique, scenic and other natural values and objects of historic interest.” This includes the sections of two rivers, the associated riparian zone, and wildlife.

S. 796, if enacted, would change the park’s original purpose by adding “protection and preservation of free-roaming horses.” The bill would further amend P.L. 88–492 by prohibiting the Secretary from removing, allowing, or assisting in the removal of any free-roaming horse from federal lands within the boundaries of the Ozark National Scenic Riverways (ONSR), except in the case of medical emergency or natural disaster.

H.R. 238 requires NPS to “enter into an agreement with the Missouri Wild Horse League” or other entity to manage the wild horses. The NPS would also have to issue permits “for adequate pastures to accommodate” a herd of not more than 50 horses. This legislation prohibits the NPS from removing horses unless the managing entity does not adhere to the terms of their agreement or in case of “emergency as defined in the agreement.” H.R. 238 also prohibits the United States from incurring any additional liability as a result of this agreement for any damages “to property” caused by the horses inside or outside the boundaries of park. However, this appears to hold the United States liable for any bodily injury to persons caused by the feral horses.

We should emphasize at the beginning that these horses are not wild horses, but feral horses—an animal that has returned to an untamed state from domestication—that was introduced by the local population in the 1940s. Therefore, feral horses are an exotic species—not native to the area. NPS policy is to remove exotic species from park units “whenever an exotic plant or animal species threatens park resources or public health and when control is prudent and feasible.”

We also note that in the state of Missouri domestic animals are prohibited from running at large. In addition, the Wild Free-Roaming Horses and Burros Act of 1971, which gave special status to horses on western public land, specifically excluded NPS lands from the Act.

NPS Management Policies based on laws affecting the Service state that the NPS “will manage the natural resources of the National Park System to maintain, rehabilitate, and perpetuate their inherent integrity.” Much of the terrain within ONSR boundaries where the horses roam is classified as a “natural zone” under the 1984 General Management Plan (GMP). NPS Management Policies state that “within natural zones, natural resources and processes will be preserved and will remain largely unaltered by human activity.” This GMP was developed with public involvement and the preparation of a draft and final environmental assessment.

The herd of feral horses does not contribute to any element of the park’s mandate from the enabling legislation. Although there are visible signs of the presence of the

horses in the areas where they roam, there have not been any definitive in-depth studies done to document resource damage. A 1985 Status and Proposed Management Report by a member of the park staff states that most of the visual impact was caused by the horses grazing in fields that have been leased by the NPS to local farmers. At least one permittee gave up his lease due to the impact of the horses. The horses also have caused damage to fields and fences on property belonging to landowners adjacent to the park. They are known to frequent springs and wet areas in the range. Springs are very delicate ecosystems, and the fact that the horses are attracted to them for water concentrates the impact on these sensitive areas. The size of the herd has fluctuated over the years and currently numbers between 15 and 22. At the present small population level, substantial impacts have not been observed. However, if the herd receives protected status and is allowed to grow, the potential for serious impact over a greater range is very high. The NPS had intended to address the feral horse issue before serious damage occurred, not afterward.

Removal of the horses was proposed, bids were solicited, and one was accepted. However, in February 1991, citizens concerned about the horses attempted to stop the NPS from removing feral horses from the ONSR by filing suit against the Department of the Interior. The case was tried on June 14, 1991, by the U.S. District Court in Cape Girardeau, Missouri. On June 17, 1992, the Court issued a permanent injunction to enjoin the removal of the horses. On August 14, 1992, the Secretary appealed the case to the U.S. Court of Appeals for the Eighth Circuit. On June 15, 1993, the Court of Appeals reversed the judgment of the District Court, vacating the permanent injunction. The Plaintiffs then filed a motion for rehearing or transfer to the Full Court, which was denied on July 28, 1993. The Supreme Court denied Plaintiff's petition for certiorari on June 1, 1994.

The NPS, under current law, many remove the horses at any time, but has no immediate plans to do so. The Missouri Wild Horse League has united to fight the removal of the horses. The NPS has stated that we are willing to meet with the League to work out a strategy for removal of the horses to a suitable place. However, the League continues to oppose the removal of the horses from park lands.

Mr. Chairman, we oppose S. 796 and H.R. 238 because, if enacted, they would amend the original purpose of the park and would conflict with NPS management policies, setting a dangerous precedent for park management. If the horses are allowed to remain, and increase in number, park resources will be impacted. I wish to emphasize that we would be pleased to work with the community to find an amicable solution to the removal of the feral horses.

This concludes my prepared testimony. We would welcome the opportunity to work with members of the Committee on our recommended changes to these bills. At this time, I will be pleased to respond to any questions you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee, changes in existing law made by the Act H.R. 238, as ordered 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):

“AN ACT To provide for the establishment of the Ozark National Scenic Riverways in the State of Missouri, and for other purposes” (16 U.S.C. 460m-6)

【SEC. 7. (a) There is hereby established an Ozark National Scenic Riverways Commission. The Commission shall cease to exist ten years after the date of establishment of the area pursuant to section 4 of this Act.

【(b) The Commission shall be composed of seven members each appointed for a term of two years by the Secretary as follows:

【(1) Four members to be appointed from recommendations made by the members of the county court in each of the counties in which the Ozark National Scenic Riverways is situated (Carter, Dent, Shannon, and Texas), one member from the recommendations made by each such court;

【(2) Two members to be appointed from recommendations of the Governor or the State of Missouri; and

【(3) One member to be designated by the Secretary.

【(c) The Secretary shall designate one member to be chairman. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

【(d) A member of the Commission shall serve without compensation. The Secretary shall reimburse members of the Commission for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

【(e) The Secretary or his designee shall from time to time consult with the members of the Commission with respect to matters relating to the development of the Ozark Wild and Scenic Riverways, and shall consult with the members with respect to carrying out the provisions of this Act.

【(f) It shall be the duty of the Commission to render advice to the Secretary from time to time upon matters which the Secretary may refer to it for its consideration.】

“SEC. 7. (a) *The Secretary, in accordance with this section, shall allow free-roaming horses in the Ozark National Scenic Riverways. Within 180 days after enactment of this section, the Secretary shall enter into an agreement with the Missouri Wild Horse League or another qualified nonprofit entity to provide for the management of free-roaming horses. The agreement shall provide for cost-effective management of the horses and limit Federal expenditures to the costs of monitoring the agreement. The Secretary shall issue permits for adequate pastures to accommodate the historic population level*

of the free-roaming horse herd, which shall be not less than the number of horses in existence on the date of the enactment of this section nor more than 50.

“(b) The Secretary shall not remove, or assist in, or permit the removal of, any free-roaming horses from Federal lands within the boundary of the Ozark National Scenic Riverways unless—

“(1) the entity with whom the Secretary entered into the agreement under subsection (a), following notice and a 90-day response period, fails to meet the terms and conditions of the agreement; or

“(2) the number of free-roaming horses on Federal lands within the Ozark National Scenic Riverways exceeds 50; or

“(3) in the case of an emergency, or to protect public health and safety.”

“(c) Nothing in this section shall be construed as creating additional liability for the United States for any damages caused by the free-roaming horses to property located inside or outside the boundaries of the Ozark National Scenic Riverways.”