

**USDI, Bureau of Land Management
Three Rivers Resource Area, Burns District**

DECISION RECORD

**STINKINGWATER HERD MANAGEMENT AREA
WILD HORSE GATHER**

**ENVIRONMENTAL ASSESSMENT
DOI-BLM-OR-B050-2010-0024-EA**

BACKGROUND

The Stinkingwater Herd Management Area (HMA) lies east of Burns 30 miles and adjacent to Warm Springs Reservoir on the east and Harney Basin on the west. The topography varies from slightly rolling hills to steep mountainous country. Elevation varies from approximately 3,885 feet to 5,935 feet. Precipitation ranges upwards of 14 inches annually and comes mainly in the form of snow. Temperatures vary from -30 °F in winter to 95 °F in summer. The major vegetation types are low sagebrush/Idaho fescue, big sagebrush/Idaho fescue, big sagebrush/bluebunch wheatgrass, and large stands of western juniper. There are also scattered stands of aspen and mahogany. Four perennial streams flow through the HMA.

Stinkingwater HMA was last gathered in 2005. The July 2009 inventory determined Stinkingwater HMA wild horse numbers to be 179 head. With the 2010 foal crop 214 head are expected, which is 134 over the high end of Appropriate Management Level (AML) (40 to 80 head), and these excess horses limit the range's ability to achieve or maintain a thriving natural ecological balance.

Since passage of the Act, Bureau of Land Management (BLM) experience has grown, and the knowledge of the effects of current and past management on wild horses has increased. For example, wild horses have been shown to be capable of 18 to 25 percent increases in numbers annually. This results in a doubling of the wild horse population about every 4 years. At the same time, nationwide awareness and attention has grown. As these factors have come together, the emphasis of the wild horse and burro program has shifted.

Program goals continue to focus on establishing "thriving natural ecological balance." The AML for the Stinkingwater HMA was established in 1977, based on monitoring data and following a thorough public review, as 40 to 80 wild horses. This AML was adopted in the Three Rivers Resource Management Plan/Record of Decision (RMP/ROD) (September 1992).

COMPLIANCE

The attached Environmental Assessment (EA) Gather Plan for the Stinkingwater HMA DOI-BLM-OR-B050-2010-0024-EA is tiered to the Three Rivers RMP and Final Environmental Impact Statement (EIS). The Proposed Action is in conformance with the Three Rivers RMP/ROD and has been designed to conform to the following documents, which direct and provide the framework for management of BLM lands within Burns District:

- The Wild Free-Roaming Horse and Burro Act (WFRHBA) of 1971 (Public Law (PL) 92-195 as amended) and Title 43 Code of Federal Regulations (CFR) Part 4700.
- National Environmental Policy Act (42 U.S.C. 4321-4347) 1970.
- Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701, 1976), Section 302(b) of FLPMA, states "all public lands are to be managed so as to prevent unnecessary or undue degradation of the lands."
- Public Rangelands Improvement Act (43 U.S.C. 1901. 1978).
- Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Public Lands Administered by the BLM in the States of Oregon and Washington (1997).
- Greater Sage-grouse and Sagebrush-steppe Ecosystems Management Guidelines (BLM - 2000).
- BLM National Sage-grouse Habitat Conservation Strategy (2004).
- Local Integrated Noxious Weed Control Plan (1998).
- Greater Sage-grouse Conservation Assessment and Strategy for Oregon (Hagen 2005).
- The following are excerpts from the 43 CFR:
 - 1) 4720.1 – "Upon examination of current information and a determination by the authorized officer that an excess of wild horses or burros exists, the authorized officer shall remove the excess animals immediately."
 - 2) 4710.3-1 – "Herd Management Areas shall be established for maintenance of wild horse and burro herds."
 - 3) 4180.2(b) – "Standards and guidelines must provide for conformance with the fundamentals of 4180.1."

DECISION

Having considered the Proposed Action, No Action, other Alternatives and associated impacts and based on analysis in DOI-BLM-OR-B050-2010-0024-EA, it is my decision to implement the capture and removal of excess wild horses in the HMA as described in the Proposed Action. Except gelding of stallions will not occur. This was analyzed as part of the No Action Alternative. Pursuant to Title 43 of the CFR at 4770.3(c), the Stinkingwater HMA 2010 gather will be approved for implementation following a 30-day appeal period, provided no stays are granted. Gather operations will begin on or about August 8, 2010, and last until management objectives are attained.

Additionally, a Finding of No Significant Impact (FONSI) found the Proposed Action and alternatives analyzed in DOI-BLM-OR-B050-2010-0024-EA did not constitute a major Federal action that will adversely impact the quality of the human environment. Therefore, an EIS was unnecessary and will not be prepared.

The Proposed Action is to capture approximately 214 wild horses in the HMA and all horses outside Stinkingwater HMA (Location Map A and HMA Map B), and remove 173 excess horses. This alternative includes determining sex, age and color, assessing herd health (pregnancy/parasite loading/physical condition/etc.), monitoring results as appropriate, sorting individuals as to age, size, sex, temperament and/or physical condition, and returning selected animals, primarily in the 6 to 10-year age group (Appendix D of the EA). This will ensure a vigorous and viable breeding population, reduce stress on vegetative communities and wildlife, and be in compliance with the WFRHBA of 1971 and land use plan.

It is anticipated one to three capture sites (traps) will be used to capture wild horses from the HMA. Trap site corrals will typically be approximately 800 square feet. With secondary disturbance areas such as trap wings, total surface disturbance will be approximately 2,400 square feet (0.05-acre) per trap site. Trap wing configuration will vary, depending on terrain and materials. Trap sites will be selected during the gather operations. Traps are built as close to the horse's location as possible.

All capture and handling activities, including capture site selections, will be conducted in accordance with Standard Operating Procedures described in Appendix A of the EA.

COMMENTS RECEIVED

A copy of the original EA and unsigned FONSI were mailed on May 18, 2010, to 72 people. In addition, a notice was posted in the *Burns Times-Herald* newspaper on May 18, 2010. The Burns District BLM received 14 comment letters and e-mails.

Although BLM's review of public comments did not indicate that changes to the analysis presented in the original EA were warranted, the comments did lead to an additional map to help clarify BLM's analysis. This map shows perennial water sources and pasture fences within the HMA. The map is attached to this decision.

RESPONSES TO COMMENTS

The BLM received approximately 14 comment letters and e-mails. Responses to 30 comments are found in Appendix A of this decision. Comments that were not addressed in Appendix A were considered to be outside the scope of the current decision, unrelated to the current decision, or too vague.

RATIONALE

In accordance with 43 CFR 4720.1, upon examination of current information and a determination by the authorized officer there is an excess of wild horses, the authorized officer shall remove the excess animals immediately. Implementation of the Proposed Action and an element of the No Action Alternative (no gelding) will meet the BLM's objective to achieve and maintain a wild horse AML that achieves a thriving natural ecological balance and prevents resource deterioration within the Stinkingwater HMA. Gelding of such a small number will have limited impact on reducing numbers and reproductive rates for this particular herd.

The selected action will achieve a balance in resource values and uses among wild horses, vegetation, water, livestock, and wildlife as directed in Section 3(b)(2) of the 1971 WFRHBA and Section 302(b) of the FLPMA of 1976. The selected action will also result in collection of data on herd characteristics, health, and viability. The selected action will maintain herd characteristics which were typical of Stinkingwater HMA at the time of passage of the Act.

The alternatives considered all have the ability to reduce populations of wild horses to AML except for the No Action Alternative. The alternatives differ in the method and effectiveness of reducing the population. Leaving excess horses on the range under the No Action Alternative will lead to degradation of the range and damage to riparian resources.

AUTHORITY

Authority for this decision is found in the WFRHBA of 1971 (PL 92-195) as amended and Title 43 CFR Part 4700 including 43 CFR 4720.1, 43 CFR 4740 .1, 43 CFR 4710.3-1, and 4710.4. The authority to provide that all or part of a decision be effective upon issuance is found in 43 CFR 4770.3 (c).

APPEAL PROCEDURES

Within 30 days of receipt of this wild horse decision, you have the right to appeal to the Board of Land Appeals, Office of the Secretary, in accordance with regulations at 43 CFR § 4.4. An appeal should be in writing and specify the reasons, clearly and concisely, as to why you think the decision is in error. If an appeal is taken, your notice of appeal must be filed in this office (at the above address). The appellant has the burden of showing that the decision is in error.

A copy of the appeal, statement of reasons, and all other supporting documents should also be sent to the Regional Solicitor, Pacific Northwest Region, U.S. Department of the Interior, 805 SW Broadway, Suite 600, Portland, Oregon 97205. If the notice of appeal did not include a statement of reasons for the appeal, it must be sent to the Interior Board of Land Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203. It is suggested appeals be sent certified mail, return receipt requested.

The appellant may wish to file a petition for a stay (suspension) of this decision during the time that the appeal is being reviewed by the Board pursuant to Part 4, Subpart B, Section 4.21 of Title 43, CFR, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay except as otherwise provided by law or other pertinent regulation, a petition for a stay of decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied,
- 2) The likelihood of the appellant's success on the merits,
- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4) Whether the public interest favors granting the stay.

/signature on file/
Richard Roy
Three Rivers Resource Area Field Manager

July 2, 2010
Date

APPENDIX A – Responses to Public Comments

1. Comment: What role would geldings have in the dynamics of a wild horse band? No studies have been done on this matter.

Response: From the BLM's experience herd dynamics are changed more when the numbers of breeding studs exceeds the number of breeding mares. The gelding component of the Proposed Action will not be carried forward to the Decision Record.

2. Comment: Under what circumstances did this HMA reach 214 estimated horses?

Response: In Paragraph 4 of Section 1.2 in the EA it explains during the 2005 gather, approximately 52 horses were not captured and after the 28 head were returned post gather, there were a total of approximately 80 horses remaining in the HMA. With 179 horses counted in 2009, the actual percentage increase is about 22 percent per year.

3. Comment: The BLM's official foaling season starts March 1 and goes through June 30. In the EA it states that "the BLM does not generally schedule gathers 6 weeks prior to or 6 weeks after the foaling season."

Response: The gathering of the Stinkingwater HMA has been rescheduled to begin about August 8, 2010.

4. Comment: The map included with this EA is not representative of the actual area as it fails to show the maze of livestock fences criss-crossing the HMA and other natural and manmade obstacles in the area.

Response: A map showing all fences has been added to the EA.

5. Comment: There must be genetic testing done on this herd.

Response: Hair samples will be collected at the time of the gather to begin a genetic baseline for the Stinkingwater herd.

6. Comment: Consider adding an older stallion from an unrelated herd to make sure there is a new gene pool added to this herd to insure it has a viable future.

Response: The Burns District has for many years introduced both studs and mares with desirable characteristics to other herds in the District to promote genetic mixing and perpetuate desirable color and confirmation traits.

7. Comment: Has the application of infertility drugs, specifically PZP, been considered in this area.

Response: The use of PZP has been considered in this area in the past. It was not part of the current EA due to the fact that at best PZP works for up to 2 years. Burns BLM does not have the capacity to gather the Stinkingwater HMA horses every 2 years in order to effectively manage horse fertility using a PZP.

8. Comment: It is necessary to re-evaluate AUM allocations for both wild horses and livestock.

Response: AMLs and AUM allocations based on carrying capacity were established through prior separate decision-making processes and are outside the scope of this decision. The current livestock permitted use or preference and wild horse AML were adopted in the RMP. It is necessary to manage wild horse numbers to achieve a thriving natural ecological balance in compliance with FLPMA, wild horse and burro act, the RMP, to meet the Standards, and other applicable regulations. It is necessary to manage livestock on the public lands in compliance with FLPMA, TGA, PRIA, the RMP, and grazing regulations to achieve the Standards. BLM monitoring shows that the authorized livestock management and use levels are in compliance with RMP decisions and objectives and meeting the Standards. The current wild horse numbers are outside of AML and monitoring shows that wild horse impacts are leading to failures to meet the Standards. Since BLM is prohibited from managing wild horses, wild horse numbers need to be addressed.

9. Comment: What is your scientific reference for the statement that leaving 40 horses (mares/stallions/geldings) on the Stinkingwater HMA ensures a vigorous and diverse breeding population?

Response: Experience with three other HMAs with similar AMLs within the Burns District has shown that these herds have remained reproductive with no genetic deficiencies.

10. Comment: Public land which was designated by congress *principally though not exclusively* for wild horses. Please explain the reason for this oversight in management.

Response: This issue is outside the scope of this analysis. Information about the Congress' intent is found in the Senate Conference Report (92-242) which accompanies the 1971 WFRHBA (Senate Bill 1116): "**The principal goal of this legislation is to provide for the protection of the animals from man and not the single use management of areas for the benefit of wild free-roaming horses and burros.** It is the intent of the committee that the wild free-roaming horses and burros be specifically incorporated as a component of the multiple-use plans governing the use of the public lands." (Senate Report No. 92-242).

Under the 1976 Federal Land Policy and Management Act (FLPMA), BLM is required to manage public lands under the principles of multiple use and sustained yield. Managing use by cattle and sheep, together with wildlife and wild horses and burros, and a host of other uses is a key part of BLM's multiple-use management mission under FLPMA.

The Burns District does not administer any congressionally designated Wild Horse or Burro Ranges, which are "devoted principally but not necessarily exclusively to their welfare in keeping with the multiple-use management concept for the public land."

11. Comment: Please outline the number of permitted livestock grazing on this HMA in both Animal Unit Months (AUMs) and total number of head at peak and minimum as per the granted allotments.

Response: This information is listed in Table 3 on Page 10 of the EA.

12. Comment: Please provide accurate scientific analysis of any damage done to the range by horses and burros and indicate how this damage is attributed to wild equids and not livestock. How will wild horse and burro reduction aid in restoration of disturbed areas when such high numbers of livestock are grazed on these same public lands?

Response: The effects of public land uses such as wild horse use and livestock use are documented through monitoring, not scientific analysis. Standards for Rangeland Health were assessed through formal allotment-level evaluations and the Standards for Riparian Function and Water Quality were not achieved on two of the streams due in part to wild horse grazing. Refer to Pages 2, 23, and 24 of the EA.

Wild horse impacts could be separated from livestock impacts, because there are periods when livestock are not present. All the allotments within the HMA have grazing systems. All the grazing systems provide periodic forage growing season non-use by livestock. On many pastures there are complete years when livestock are not present. During these periods the impacts from wild horse use are differentiated from impacts of livestock use. The allotment evaluations can be reviewed at the BLM Burns District Office in Hines, Oregon.

Livestock management in the Stinkingwater HMA uses the duration, season, and level of grazing to account for the physiological needs of the forage plants, riparian functionality, and habitat needs of resident wildlife. The permittees and BLM put a lot of work into making livestock use on the Stinkingwater HMA a positive component of the FLPMA mandated multiple-use setting. As a result monitoring data shows that the permitted livestock use is helping to achieve the Standards for Rangeland Health.

The only management tool available to BLM for managing horses is numbers. Outside of gathers nothing is done to mitigate the impacts of wild horse use on forage, streams and springs, and the other resource values that exist on the Stinkingwater HMA. As a result the potential impacts from wild horses are fully realized. The similar potential impacts from livestock are mitigated by management actions by the permittee and BLM.

This means that for any given number of wild horses their impacts to the land are much greater than occur from the same number of livestock. Put another way the horses are unmanaged and present yearlong. Livestock are present in any pasture for a few months or less in a 1 to 2-year period and their use during that time is managed to protect or achieve specific resource conditions and values. The differences are obvious and the results are apparent as documented in the EA and monitoring data.

13. Comment: Given that you have the authority for managing both livestock and wild horses and burros, along with the other wildlife in the area, why has your office failed to increase wild horse and burro AMLs to levels that would benefit taxpayers by decreasing removal costs while benefiting the environment by concurrently reducing livestock grazing levels?

Response: Under the 1976 Federal Land Policy and Management Act (FLPMA), BLM is required to manage public lands under the principles of multiple use and sustained yield. Managing use by cattle and sheep, together with wildlife and wild horses and burros, and a host of other uses is a key part of BLM's multiple-use mission under FLPMA. AMLs and AUM allocations were established through prior separate decision-making processes and are outside the scope of this analysis.

There is no number of wild horses or relative changes to wild horse and livestock numbers that would achieve the suggested goal. Raising AML would delay the current proposed gather. At the documented 22 percent annual increase in horse numbers on this HMA, whatever the new AML was, it soon would be reached. Then a larger, longer, more expensive gather would be required. A larger group of horses would enter the adoption program with most of them ending up in long-term holding. Except for avoiding the cost of this specific planned gather there is no savings to the taxpayer. And this is not a savings, but a delay. Does anything cost less today than it will cost in 3 or 5 or 7 years? This delay in financial costs in no way compensates for the ever increasing damage to wildlife habitat including sage-grouse and redband trout habitat and degradation of plant communities, riparian function, and water quality on the Stinkingwater HMA.

14. Comment: Please provide, for the interested public, a categorized budget and estimated total cost for this helicopter removal and subsequent processing to be conducted by the Cattoor Livestock Company.

Response: There is one national contract that the gather contractors work under. Unit costs for the Stinkingwater HMA gather are the same as any other BLM gather. Generally speaking contractors are paid per head gathered. For FY 2010 for less than 101 head the rate is about \$419/head, for 101 to 200 head the rate is about \$377/head, for 201 to 300 head the rate is about \$304/head. If the contractor feeds gathered horses at trap sites for FY 2010 that cost is \$10.94/head/day. These are the typical basic costs the BLM incurs for a contracted gather.

15. Comment: Please describe in full the planned capture process for the interested public. This would include trap locations, procedure for moving horses and burros to holding location, outline processing and future plans for all removed animals.

Response: This information is listed in the Standard Operating Procedures in Appendix A of the EA. Also see Response to Comment 9 above.

16. Comment: What are the effects of mountain lion predation on this herd and the effect of other potential predators?

Response: Although mountain lions can be found in the Stinkingwater HMA there is no documented occurrence of successful wild horse predation by lions. That does not mean it never occurs. But it does not occur enough to leave signs. Natural predation is not controlling the wild horse population in the HMA. Wild horse populations on public lands have growth rates of 18 to 25 percent with a national average of 20 percent which shows that natural controls and self regulation do not have a major impact on this growth rate.

17. Comment: The EA did not consider an alternative to control wild horse numbers by natural means.

Response: See Response to Comment 21 above. The BLM does not consider such an alternative, because there is not an example or know a mechanism whereby adapted exotic species populations self regulate short of habitat decimation. There are many examples to the contrary such as noxious weeds and invasive species.

18. Comment: Should this removal proceed, will humane observers and the public be given full access to observe (while not disturbing the operation) any planned removal plans, processing and infertility control treatment. There is a high level of interest in this action.

Response: A plan is being developed for an observation day during the gather.

19. Comment: 1990 the Government Accountability Office Report underscored that wild horse removals did not significantly improve range conditions. The report pointed to cattle as the culprit as they vastly outnumber horses on BLM-managed public lands. They reported that wild horse removals are not linked to range conditions and mentioned the lack of data provided by BLM.

Response: Monitoring data specific to the Stinkingwater HMA showed that the existing excess number of wild horses is a causal factor in not meeting rangeland health standards 2. See Section 3 of the EA.

20. Comment: BLM does not have the authority to move unadopted horses to long-term holding.

Response: IDA's lawsuit (*In Defense of Animals v. Salazar*, Case No. 1:09-cv-02222-PLF) challenging the legality of long-term holding was dismissed by the U.S. District Court for the District of Columbia in a Decision dated May 24, 2010.

21. Comment: What happens to these animals after they are taken off the range?

Response: A description of what happens to removed horses can be found in Section 3, Pages 18 and 19 in the EA.

22. Comment: The Proposed Action and alternatives provided in the EA are insufficient and the Burns District Office is negligent in fulfilling its mandate to manage wild horses at "minimal feasible level" and therefore the Proposed Action should be postponed until the inadequacies outlined herein are addressed.

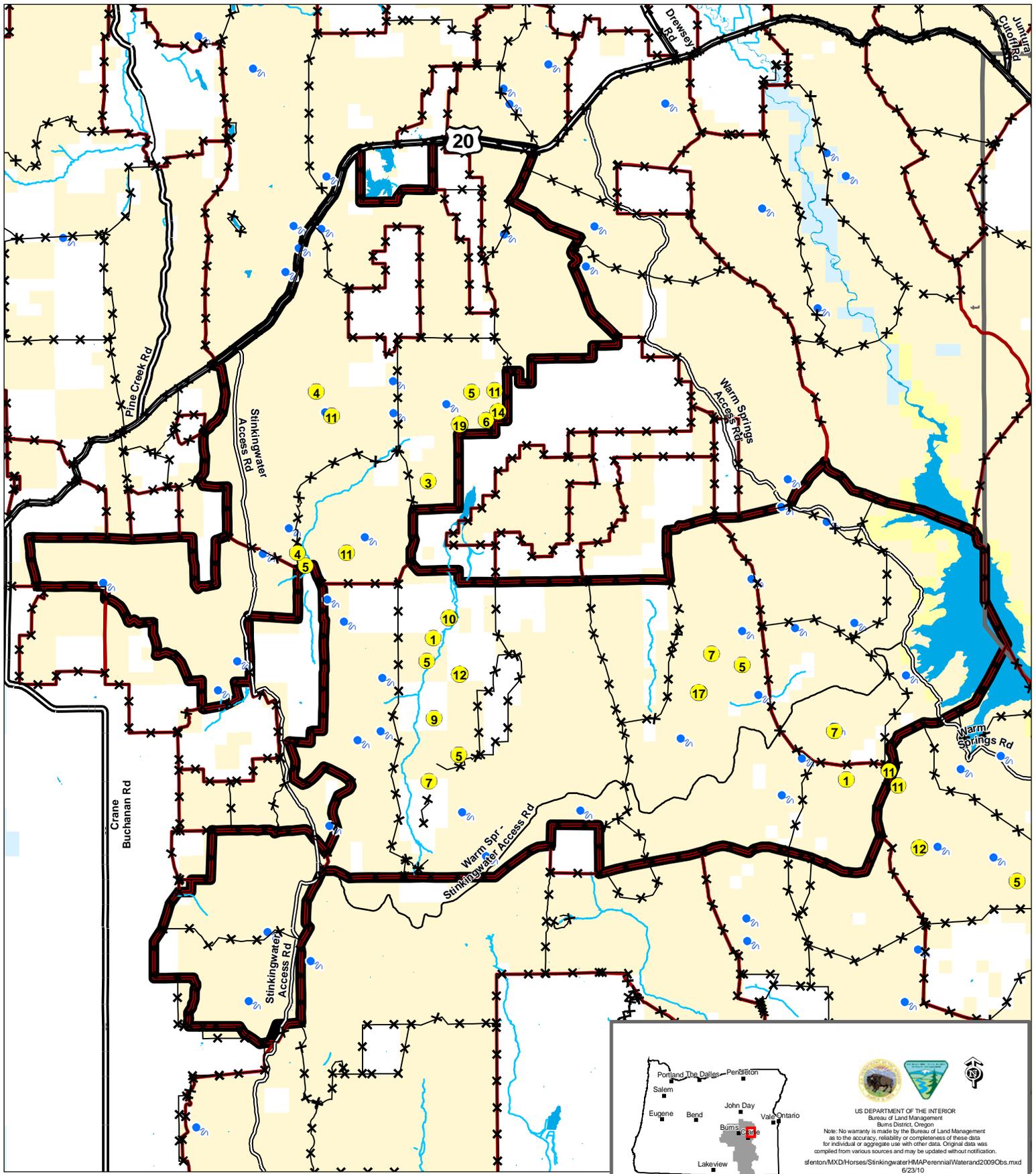
Response: 43 CFR 4710.4 on Page 3 of the EA states management of wild horses shall be at a minimum feasible level to attain objectives of the Land Use Plan and HMA Plan. The EA describes how the gathering and removal of horses is necessary to accomplish these objectives. While "minimal" and "feasible" are clearly subjective and open to interpretation, BLM is not allowed to violate the multiple-use sustained yield mandate of FLPMA and the approved land use plan by allowing wild horses in excess of carrying capacity to damage the public lands, move biological and physical conditions away from meeting the Standards, or take actions that will not meet objectives or comply with decisions in the land use plan.

23. Comment: There is not a reasonable range of alternatives.

Response: Reasonable alternatives should respond to the purpose and need, be technically or economically feasible, consistent with basic policy objectives, and be implementable. Given existing conditions and values on the Stinkingwater HMA as completely described and analyzed in the EA the three alternatives considered and three analyzed in detail encompassed a wide spectrum of reasonable alternatives.

24. Comment: There was not an adequate public comment period.

Response: The public comment period was in addition to all regulatory public participation requirements. A public comment period was provided from May 18, 2010 to June 21, 2010. It was posted on the Burns District Web site, *Burns Times-Herald* and sent to 73 interested publics on the mailing list.



**Stinkingwater Herd Management Area
Perennial Water and 2009 Horse Observations**

