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Subject: ARO Letter - Little Blacktail Ecosystem Restoration Project ROD - Appeal #02-01-00-0044 - IPNFs - The Ecology Center, et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Jeff Juel on behalf of The Ecology Center, The Lands Council, Kootenai Environmental Alliance, and Friends of the Pond protesting the Little Blacktail Ecosystem Restoration Project Record of Decision (ROD) on the Idaho Panhandle National Forests.

The Forest Supervisor's decision adopts Alternative B, which includes regeneration and selective harvesting; road work, which would improve the durability of the road for project and public use and to reduce existing and potential sediment risks; construction of temporary roads (all of which would be decommissioned after use to avoid sediment risks); helicopter, skyline, and tractor yarding; decommissioning existing unclassified roads; and underburning.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision are in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellants' objections and recommended changes, has been thoroughly reviewed. Although I may not have listed each specific issue, I have considered all the issues raised in the appeal and believe they are adequately addressed below.

The appellants allege violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Clean Water Act (CWA), the Administrative Procedures Act (APA), and the Idaho Panhandle National Forests' Plan. The appellants request the alleged defects be rectified and a legal environmental analysis be resubmitted to the public and decision maker for commenting and public participation, or the project be dropped. The Ecology Center was contacted on March 19, 2002, and an appeal resolution meeting (via conference call) was set up for March 25, 2002. On March 21, 2002, Jeff Juel contacted the Forest, informing the Ranger The Ecology Center would not be participating in the meeting. No issues were resolved.

ISSUE REVIEW

Issue 1. The Little Blacktail FEIS fails to give adequate analysis and disclosure regarding cumulative effects, in violation of NEPA by failing to identify ongoing and reasonable foreseeable activities on non-federal lands.

Response: A list of past, present, and reasonably foreseeable actions that are relevant to the project analysis are discussed in the Final Environmental Impact Statement (FEIS) (Chapter I, pp. 7 to 8). Included is a discussion of urban and residential land use, agricultural uses on private land, activities on forested private land, and approximate acres of openings created on an



annual basis within the watershed. These actions were incorporated into the appropriate analyses.

The 329-acre timber sale the appellant is specifically concerned about, located on Idaho State land in T55N, R2W, Section 16, 21, and 28, is adjacent to the project area. This proposed timber sale would remove overstory trees within an area that was cut in 1987 or 1988. The local Idaho Department of Lands office was visited in December 2001, to obtain information on ongoing and foreseeable activities within the sub-drainage [Project File (PF), Section N, Exhibit 2].

Information on the project in question was not provided to the Forest by the State at that time. Site-specific information regarding this sale (unit location and amount of timber removed) was publicly made available in a legal advertisement in the Bonner County Daily Bee on January 16, 2002 (7 days after the ROD was signed). Because information on this project was not available to the ID team prior to the signing of the ROD, it was not considered in the analysis.

An 18.1 review (FSH 1909.15, 18.1 - Review and Documentation of New Information Received After a Decision Has Been Made) of new information and changed circumstances has been conducted in light of the above-mentioned sale and is attached to the Transmittal Letter for Appeal #02-01-22-0044). Watershed/Fisheries are the only resources that could be affected by this action. In determining the existing condition of the subwatershed, information from the Pend Oreille Basin Geographic Assessment and the Cocolalla Lake Watershed Management Plan were utilized (FEIS, Chapter III, p. 65; PF, Section I, Exhibit 27) and aerial photography was used in combination with other information. Since the State sale area was cut in the late 1980s, it is still considered a “hydrologic opening” from a watershed perspective. This area was input into the Equivalent Clearcut Area model as an opening (PF, Section I, Exhibit 7). The model indicated that additional cutting within these “hydrologic openings” would not change the cumulative water yield. In his 18.1 Review of New Information (Memo, March 27, 2002, attached to Transmittal Letter referenced above) the North Zone hydrologist discussed sediment yield:

“The Idaho State Department of Lands has to follow the same regulations associated with the current status of the Cocolalla Creek TMDL [total maximum daily load]. Therefore, the State cannot show any net increase in sediment. With this assumption, and that they have to follow their own State of Idaho Forest Practices Act, which lists harvest criteria and BMPs it is assumed that there would not be an increase in sediment yields from their activities.”

In addition, the FEIS contains detailed discussion of the cumulative effects area for the various resources, and their reasoned rationale used to determine the cumulative effects area by resource [Chapter III, pp. 14 to 16 (Forest Vegetation); p. 22 (TES Plants); p. 26 (Noxious weeds); pp. 34 to 36 (fuels); pp. 43 to 45 (air quality); pp. 57 to 58 (wildlife) and p. 73 (watershed/fisheries)]. I find that the Forest conducted an adequate analysis and disclosure of cumulative effects and the documentation, including the 18.1 review, meets NEPA requirements.

Issue 2. The FEIS failed to adequately disclose the potential for increases in peak flows (rain-on-snow events) in Cocolalla Creek, in violation of NEPA.

Response: Peak flows were considered, but not calculated for this project for the reasons stated in the FEIS and PF (citations below). The difference in average annual flows between the two

action alternatives and the no action were not measurably different (PF, Section I, Exhibit 1). The Forest adequately discusses in the FEIS their reasons for not analyzing rain-on-snow as an indicator (Chapter III, p. 74 – “Issue Indicators Not Analyzed – Rain-on-Snow Events”).

The estimated equivalent clearcut area for the project is only 10 percent of the subwatershed (PF, Section I, Exhibit 7). Stream bank stability does not become a concern until the equivalent clearcut area values begin to approach 30 to 40 percent (PF, Section O, Exhibit 102).

The Upper Cocolalla Creek subwatershed is not broadly susceptible to rain-on-snow events (PF, Section I, Exhibit 1; FEIS, Chapter III, p. 66), and the Cocolalla Creek stream banks within the project area are very stable (FEIS, Chapter III, p. 71).

Finally, the project area only comprises 8 percent of the entire subwatershed (FEIS, Chapter III, p. 66). Based upon review of the documents and PF, I find the hydrologist adequately analyzed water yield and peak flow increases, and the FEIS is in compliance with NEPA.

Issue 3. The proposed logging in Alternative B fails to assure compliance with the approved Total Maximum Daily Load (TMDL) for Cocolalla Creek. The lack of expert agency comment or high quality information is in violation of NEPA.

Response: The FEIS (pp. 65 to 78) and PF (Section O, Exhibits 27 and 41) display the watershed analysis and supporting information. This includes a discussion of beneficial uses and TMDL for Cocolalla Creek (FEIS, p. III-66). The FEIS also documents the design features that would be used to reduce sediment and protect water and fish habitat (pp. II-7 to 9 and 12 to 14). The PF documents the conversation the project hydrologist had with the Department of Environmental Quality compliance officer and her determination the Little Blacktail project would not violate water quality standards (PF, Section I, Exhibit 13), and the letter from the US EPA stating the FEIS adequately responds to their comments on the Draft Environmental Impact Statement (EIS) (PF, Section P, Exhibit 16). The FEIS and project are in compliance with NEPA’s requirement that high quality environmental information be available to the public and government officials. The project is in compliance with the TMDL determination for Cocolalla Creek.

Issue 4. The ROD and FEIS are in violation of the requirements of the Clean Water Act for the protection and propagation of fish and also the requirement to restore and maintain fisheries.

Response: Beneficial uses and TMDL for Cocolalla Creek are discussed in the watershed portion of the FEIS (pp. III-66). The beneficial uses include, among others, salmonid spawning and cold-water biota. Due to sediment and thermal modification, these two beneficial uses are only partially supported. The stream has an approved TMDL, but no implementation plan has been developed. With this status, there cannot be a net increase in sediment entering the water from a project.

Road construction produces short-term increase in sediment, but improved road drainage would reduce sediment delivery to stream in the long term. This reduction in sediment is expected to

lead to improved fish rearing and spawning habitat (FEIS, Appendix H, p. 21). Activities in the project area will have no effect on threatened species of fish, and are not expected to adversely affect sensitive fish or their habitat. Long-term benefits are anticipated if the proposed project activities occur (FEIS, Appendix H, p. 20).

As disclosed at the end of the watershed section of the FEIS (p. III-78), sediment, which is the pollutant of concern, would not increase in the water quality limited segment of Cocolalla Creek. Risks to beneficial uses in the Creek would not be changed by the project, and all alternatives would be consistent with the Clean Water Act.

Issue 5. The ROD and FEIS violate the IPNF Forest Plan regarding water resources degradation, monitoring and evaluation, and fisheries.

Response: The FEIS, Appendix B (pp. 7 to 9), provides detailed discussion on fry emergence and provides the rationale as to why fry emergence standards as outlined in the Plan are no longer valid. Since the standard was written, fry emergence models have been found to have only limited application, were unreliable outside of the area they were developed, and using fry emergence as a surrogate for viability has been called into question because fry emergence is highly variable and egg-to-fry mortality is usually density-independent. The Inland Native Fish Strategy (INFS) amended existing Forest Plans and their standards and guidelines. The project complies with the original Forest Plan intent because, although fry emergence was not computed, a detailed analysis of the effects to fish habitat and water resources was developed as required (FEIS, p. III-65 to 78). The project is also in compliance with the Forest Plan, as amended by INFS.

Monitoring and Evaluation

The Forest, in their Response to Comments, adequately responded to the appellants' concern regarding monitoring and evaluation of this project and the two past timber sales in the Blacktail area (FEIS, Appendix I, p. 9). The Forest explained past sales were monitored from sale activities through regeneration activities.

Forest Plan Goals

Based upon my review of the FEIS and PF, I find the Forest to be in compliance with Forest Plan Goals #9, 13, 18, and 19. As explained in the environmental consequences section of the FEIS (Chapter III, pp. 73 to 76) the project will have a net decrease in sediment, thus it will benefit fisheries conditions in the upper watershed. The BA/BE reiterates that the project will reduce sediment delivery to Cocolalla Creek in the long term, and there will be an immediate reduction in risk of sediment delivery by upgrading culverts (FEIS, Appendix H, pp. 16, 17, 21 and 24). This complies with Forest Plan Goals for fisheries. The project meets Forest Plan requirements pertaining to water resources (FEIS, Appendix A, pp. 9 to 11).

Issue 6. The Little Blacktail project is based on conclusory statements unsupported by data, authorities, or explanatory information, which assume that best management practices (BMPs) and other mitigation measures reduce sediment delivery to ecological insignificant levels, in violation of NEPA, NFMA, APA, and the Forest Plan.

Response: The Forest utilized applicable references related to BMPs, their effectiveness, and how they are updated and refined (PF, Section O, Exhibits 4, 11, 15, 23, 25, 37, 64, 92 and 110). Appendices A and B of the FEIS reference BMPs, Forest Plan consistency, and fisheries management direction and guidelines. Chapter III of the FEIS (p. 77) describes compliance with the Forest Plan. Documentation on features designed to protect water and fish habitat is provided in the FEIS (Chapter II, pp. 12 to 14). Design features and estimated effectiveness ratings are based on scientific literature (cited above). These design features were prescribed to protect beneficial uses and to reduce any sediment inputs to Cocolalla Creek.

The ROD documents the design features the project would use to protect water and fish habitat. These features are from the Inland Native Fish Strategy and Forest Service Handbook BMPs, which are based on, and reference, scientific literature (Appendix C, pp. 1 and 2). The Forest Supervisor explains how the decision is consistent with NEPA, the Forest Plan, the CWA and Idaho State Water Quality Laws, and the NFMA (ROD, pp. 17, 19, 21, and 22). The decision is neither arbitrary nor capricious.

Issue 7. The appellants allege NFMA and NEPA violations regarding impacts on soil.

Response: Concerns raised by the appellants regarding the adoption of Regional Soil Quality Standards are beyond the scope of the Blacktail project-level analysis.

Impacts of project activities on soils and soil productivity were issues eliminated from detailed study in the Draft EIS. However, based upon comments received on the Draft EIS, the Forest responded by adding an appendix to the EIS that specifically addresses soils and soil productivity to further clarify and explain why soils and soil productivity were not considered an issue for this project (FEIS, Appendix F, p. F-1 to 7).

The Forest database was queried for past activities. Eleven stands that would be affected by the proposed harvest activities of this project were identified as being previously harvested. Further analysis was done for these stands to determine the percent of detrimentally disturbed soil in each potential activity area. This analysis considered the past harvest method, site preparation, and season of prescribed fire. A field analysis was then conducted (PF, Section L, Exhibit 9). Field review of the stands proposed for harvest did not show evidence of past logging activity in most of them. The FEIS (Chapter III, p. 88) explains that some soils will be compacted during timber harvest activities. The soil scientist determined that all action alternatives when combined with past activities would meet all Regional Soil Quality Standards, which require at least 85 percent of the activity area to be maintained in a condition of acceptable productivity. The project also provides a list of design features to protect or minimize detrimental impacts of soil compaction, displacement, severe burning, and nutrient and organic matter depletion on long-term soil and site productivity (FEIS, Chapter II, pp. 15 to 16; Appendix F, pp. 2 to 5; and ROD, p. C-3). The Forest also provides an estimated effectiveness rating for each feature listed. The rating is based on past Forest Plan monitoring, meeting of Forest and Regional Soil Quality Standards, or research. All of the design features received a “high” effectiveness rating (FEIS, Chapter II, pp. 15 to 16). The soils analysis is in compliance with NEPA and NFMA.

Issue 8. The Little Blacktail FEIS and ROD violate NFMA and the Forest Plan by failing

to provide sufficient old growth habitat to provide for population viability and diversity of plant and animal communities dependent on such forest types.

Response: The Forest Plan (p. II-5) states, “to obtain desired distribution, the Idaho Panhandle National Forests will be managed to maintain approximately 5 percent of each old growth unit as old growth **where it exists**” (emphasis added). For this project, old growth was identified as an issue eliminated from detailed analysis (FEIS, Chapter II, p. 5). It was shown that there are no old growth stands within the project area (PF, Section H, Exhibits 6, 7, and 8). Therefore, there will be no effect on old growth from project implementation. As stated in the Response to Comments (FEIS, Appendix I, pp. 20 to 21), “The FEIS does not propose logging in dry site old growth stands since there is no dry site old growth” in the project area. Based upon my review, I find that the project is in compliance with NFMA and Forest Plan standards for old growth.

Issue 9. The Little Blacktail EIS lacks an appropriate and reasonable range of alternatives, in violation of NEPA.

Response: The Forest followed the NEPA process by identifying a purpose and need for the project (FEIS, Chapter I, pp. 1 to 3). A proposed action was developed to move toward the achievement of the desired condition (FEIS, Chapter 1, pp. 5 to 7). Significant issues were developed following internal and public scoping (FEIS, Chapter II, pp. 2 to 5). From these key issues and analysis issues, alternatives to the proposed action were developed (FEIS, Chapter II, pp. 5 to 22). Alternatives suggested by the public (“Moist Site Stands South of Cocolalla Creek,” “Use of Even-aged Harvest Units not Exceeding 40 Acres,” “Extensive Roding” and “Rehabilitate the Ecosystem without a Commercial Logging Operation”) were considered (FEIS, Chapter II, pp. 24 to 27; Appendix I, pp. 2 to 3). Alternative C was developed in response to public comments that expressed objection to any new road construction (FEIS, Chapter II, p. 10). The Forest provided an adequate and rational discussion of their reasons for dropping the other alternatives from detailed analysis (FEIS, Chapter II, pp. 24 to 27; ROD, pp. 13 to 17). The alternatives in the EIS respond to the purpose and need, are within the management direction, respond to the issues raised during public scoping, and are reasonable for this project. I find this to be an adequate range of alternatives, in compliance with NEPA.

Issue 10. The Little Blacktail project is based on conclusory statements unsupported by data, authorities, or explanatory information, which assume that logging is an appropriate tool to replace fire, in violation of NEPA and APA.

Response: The Forest responded to this concern in their Response to Comments (FEIS, Appendix I, pp. 22 to 23).

Logging to mimic natural disturbance process

Part of the purpose and need for this project is to restore fire as an ecological process (FEIS, Chapter I, p. 2). The Forest Supervisor, in her “Reasons for My Decision,” provides her rationale for the selected alternative. Specific to restoring fire as an ecological process, she states, “analysis shows that prescribed burning will help restore fire to fire-dependent habitat types” (ROD, p. 12; FEIS, Chapter III, pp. 34 to 41). The Forest Supervisor recognizes “that severe stand-replacing fires are part of the fire history in this area; however, it would be

irresponsible of me to consider not suppressing fires with the proximity of the project area to private lands and developments” (ROD, p. 12).

Broad-scale assessments (Interior Columbia Basin Ecosystem Management Project; Northern Region Overview; Pend Oreille Geographic Assessment and other documents that pertain to the Little Blacktail Project Area) discuss the opportunity for vegetative treatments and restoration with timber sales (FEIS, Chapter I, pp. 4 and 5). Project design features for the selected alternative show a “high” effectiveness rating in protecting wildlife habitat (FEIS, Chapter II, pp. 14 to 15) and regenerating vegetation (FEIS, Chapter II, p. 12).

The FEIS (Chapter III, p. 37) explains that many aspects of a wildfire can be imitated with alternative methods and prescribed fire. These alternative methods are based on Forest Service research (PF, Section O, Exhibit 91).

Fire Suppression

The objectives of fuels management are to reduce fire hazards and potential fire severity to a level where cost-effective resource protection is possible should a wildfire occur (Chapter III, p. 30). The risks are too great within this project area to allow a wildfire to go unattended (FEIS, Appendix I, pp. 11 and 12). The FEIS describes how fuel treatments will increase the success of fire suppression (FEIS, Chapter III, p. 33) and provides a discussion of fire risk and aggressive suppression on private lands due to the social unacceptability of returning to the full range of historic disturbance patterns (FEIS, Chapter III, p. 36). Treatment of over half of the project area using the selected alternative would reduce the potential for fire risk within this area and would also allow for more timely containment of wildfires, which reduce the chances of a fire escaping onto adjacent private lands (FEIS, Chapter III, pp. 40 to 41). This is consistent with Forest Plan goals and land management objectives (FEIS, Chapter III, p. 41).

I find the data, authorities, and explanatory information in the FEIS support the fire and timber harvest analyses and conclusions. The analyses and conclusions are in compliance with NEPA and APA.

Issue 11. The Little Blacktail FEIS fails to disclose that logging can increase the risk of fire in violation of NEPA.

Response: The FEIS (Chapter I, p. 1) and ROD (p. 3) discuss the purpose and need statements to reduce the risk of destructive wildfire around the microwave sites at the top of Little Blacktail Mountain and the power line corridor that serves the electronic equipment. Chapter III of the FEIS provides a discussion of the direct and indirect effects of the selected alternative regarding reducing the risk of a destructive wildfire around the microwave sites and the power line corridor. This section also identifies the short-term increase in fire risk due to the lag between harvest and treatment of the slash due primarily to limited windows of opportunity for burning in the spring and fall of each year (FEIS, Chapter III, p. 39). Fuel treatment methods and acres to be treated are discussed (FEIS, Chapter II, p. 6) and displayed in Table 1 (FEIS, Chapter II, p. 9). Treatment location maps are found in Appendix M of the FEIS. Appendix C provides a list of vegetative and follow-up fuel treatments for Alternatives B and C. BEHAVE model runs predicting rate of spread, flame length, and other factors for estimating before and after treatment

effects can be found in the PF (Section F, Exhibit 1 and 2). The FEIS is in compliance with NEPA disclosure requirements.

Issue 12. The Little Blacktail FEIS fails to disclose that logging can increase the risk of root disease and insect levels in violation of NEPA.

Response: The Forest recognizes that root disease exists in some of the stands identified for harvest (ROD, pp. 3 and 11; FEIS, pp. III-16 to 18; Appendix I-22; PF, Section D, Exhibits 13, 14, and 15). The intent of the project is to remove those diseased trees and surrounding susceptible ones and replace them with trees that are less susceptible to root rot disease (ROD, p. 11; FEIS p. III-19). As cited in the appeal (p. 33), the Fish Bate Timber Sale on the Clearwater National Forest recognized that repeated **intermediate, partial, or uneven-age** harvests can increase the frequency and severity of root diseases in susceptible stands. That is precisely the reason the Idaho Panhandle Forest Supervisor requested the Regional Forester's approval to exceed the 40-acre size limit in eleven stands (PF, Section D, Exhibit 20) and received that approval (PF, Section D, Exhibit 22). Instead of perpetuating the disease with an uneven age harvest, the Forest would regenerate the stand using an **even-aged** harvest method and replant the stand with less root rot susceptible larch, ponderosa pine, and western white pine. The work would therefore lessen the risk of root disease in the project area.

The appellant had not previously brought up Douglas-fir beetle infestations of logging slash and stumps. Douglas-fir beetles do not infest branches or small-diameter tree boles. The utilization standard during logging on the Idaho Panhandle National Forests is down to a 6-inch top. Therefore, logging slash would not provide habitat for the beetles. According to the transmittal letter (p. 39), Forest entomologists working on the Idaho Panhandle National Forests have not seen any significant increase in the Douglas-fir beetle population due to stumps infestation. If stumps were infested, the amount of phloem available for beetles to utilize is extremely small and very few new beetles would be produced (silviculturist's personal conversation with Sandy Kegley, Northern Region Forest Entomologist).

The FEIS discussion on insects and disease is in compliance with NEPA disclosure requirements.

Issue 13: The FEIS fails to conserve or adequately analyze the cumulative effects to sensitive species, in violation of NFMA.

Response: Sensitive species were considered in the FEIS (p. III-50). Only three of the Northern Region's sensitive species were considered present and potentially affected by the proposed actions. They are flammulated owl, black-backed woodpecker, and northern goshawk. For these species the FEIS displays the reference condition, current condition, analysis methodology, direct and indirect effects of each alternative, and the cumulative effects (pp. III-51 to 63). The selected alternative meets the resource protection requirements of the NFMA in that proposed activities will either not affect or will maintain sufficient habitat for viable populations of existing native vertebrate species and management indicator species consistent with the multiple-use objectives established in the Forest Plan (ROD, p. 22). The FEIS is also in compliance with NEPA requirements for a cumulative effects analysis.

RECOMMENDATION

I have reviewed the record for each of the contentions addressed above and have found that the analysis and decision adequately address the issues raised by the appellants. I recommend the Forest Supervisor's decision be affirmed and the appellants' requested relief be denied.

/s/ Martin L. Prather
MARTIN L. PRATHER
Appeal Reviewing Officer
Director of Information Systems