United States Department of Agriculture | **Forest Service** | **Region One** | **200 East Broadway P.O. Box 7669 Missoula, MT 59807**

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Subject: 215 - ARO Letter - West Gold Project ROD - IPNFs - Appeal #06-01-00-0057 - Kootenai Environmental Alliance, et al.

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Mike Mihelich, on behalf of Kootenai Environmental Alliance, The Lands Council, and WildWest Institute, protesting the West Gold Project Record of Decision (ROD) on the Idaho Panhandle National Forests.

The Forest Supervisor's decision adopts Alternative C-Modified, which includes selective harvest on approximately 411 acres, regeneration harvest and planting on approximately 898 acres, fuel treatments on 1,347 acres, constructing 0.16 miles of road, decommissioning 1.4 miles of classified road and 0.7 miles of unclassified road, putting 1.7 miles of road into storage after use for the project, and conducting road maintenance on 27.9 miles of existing road.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and decision is 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 Endangered Species Act (ESA), the Clean Water Act (CWA), the State of Idaho Administrative Code, and the Idaho Panhandle National Forests' Plan. The appellants request the ROD be withdrawn or remanded, and "if the Idaho National Forests wish to carry out logging activities in the West Gold Project Area, a revised EIS be completed that remedies all the violations of Federal and State of Idaho laws, Forest Plan regulations (sic) and policies identified in the Statement of Reasons." An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. The Final Supplemental Environmental Impact Statement (FSEIS) fails to disclose the potential for the restoration projects not being completed due to a lack of funds because the timber sale will be below cost. In violation of NEPA, there are no expert agency comments or high quality information that disclosed the sources of the additional guaranteed funds. The financial analysis in Chapter III of the FSEIS also did not discuss the issue of payments to the counties from gross timber sale receipts.

Response: The Preliminary Appraisal Comparison (PF, Section L, Doc. L-4) states, "[n]one of the alternatives are predicted to be deficit sales, since predicted high bids are greater than base rates. All sales on the North Zone of the IPNF have sold in the last year, with an average overbid of $9.30/ccf last year, forest-wide." In their appeal, the appellants conducted their own financial analysis and contend it shows the West Gold Project to be a below-cost sale. Many of the costs they subtract from the predicted high bid (such as road work, fuel reduction, reforestation, mitigation, and other direct costs) have already been deducted from the stumpage value to arrive at the predicted high bid (EIS, pp. III-178 to III-179; PF, Section L, Doc. L-3).

The ROD (pp. 4 to 8) discusses the details of the chosen alternative, including the road restoration treatments that are part of the project. In the ROD, the Deciding Official states, "[i]f these roads are used by the contactor to accomplish vegetation restoration activities, decommissioning will be included in the contract or accomplished using revenue generated by the sale of timber. If any of the existing roads proposed for decommissioning are not used for the project, they will be decommissioned using appropriated or other funding."

The focus of the economic analysis is to provide the decision maker only with information that is useful in making the decision. The interdisciplinary team (ID team) used a transaction evidence appraisal method to provide the decision maker the necessary information on the economic viability of the sale (EIS, Appendix J, p. J-30). Although the Deciding Official stated economic factors were not overriding in her decision, she did consider them and concluded the three action alternatives would result in positive financial returns (ROD, p. 26).

Payments to counties were not discussed because current law does not require that 25 percent of timber sale gross receipts be sent to the counties. The analysis is in compliance with the NEPA requirement for high quality information.

Issue 2. The FSEIS has an inaccurate analysis of increases in peak flows (rain-on-snow events) and Equivalent Clearcut Acreage procedures. The FSEIS failed to include an assessment to determine whether the selected alternative would increase the potential for rain-on-snow (ROS) events. The FSEIS also wholly ignores and fails to disclose the Forest Service's own research (King, 1989) on the accuracy of a peak flow model in estimating increases in peak flows from logging and roads in northern Idaho.

Response: The EIS (p. I-6) discusses the findings from the Gold Creek Ecosystem Assessment, including that the West Gold Creek subwatershed is in a ROS zone, which, combined with the current sediment risks from roads, can put fish spawning habitat at risk. Therefore, part of the purpose and need of the project was to reduce the potential sediment risks from existing roads to maintain and improve the aquatic habitat in West Gold Creek (ROD, p. 3). The EIS (pp. III-137 to III-139 and III-145 to III-146) describes in detail the reference and existing conditions of watershed and erosional processes related to impacts from ROS and other similar events. This included estimated water yield responses from ROS events within the West Gold Drainage. The EIS (pp. III-159 to III-160) explains that with the stream channel and landtype characteristics of West Gold Creek and its tributaries, the estimated changes in peak flows, estimated changes in

sediment yields, and the potential increases in flows from a ROS event, would not affect stream channel morphology; and, therefore, would not change fish habitat. Finally, the EIS (p. III-170) describes the cumulative effects to peak flows from ROS events within the Gold Creek Watershed.

The Biological Assessment (EIS, Appendix K, pp. K-24 to K-29) addresses the increase in water yield and the cumulative effect to peak flows from ROS events. The findings within the BA discuss that ROS events are natural processes that occur episodically in time and space. Vegetation prescriptions would move the vegetation towards conditions and patterns that would be similar to those formed by past disturbance events. The greatest impacts observed from ROS events occur when culverts become plugged from resulting floods and debris flows. Improving or removing the high-risk culverts significantly reduces the risk of a road failure.

As discussed in the Response to Comments (EIS, Appendix J, p. J-18), the King report (1989) is not referenced in the EIS because the findings from his report do not relate to the methodology used to measure peak flow increases for this project. His research paper studied water yield increases based on Equivalent Clearcut Acreage. That procedure determines increases in water yield through average annual flows, which are flows averaged over a 1-year period. It is true average annual flows do underestimate water yield responses. In the West Gold Project analysis, the issue indicators for water yield increases were increases in peak flows, not increases in average annual flows. Peak flows are the values estimated during the high runoff periods, which are usually the channel forming flows. Since the King report (1989) does not use the same methodology as the West Gold Project used, King (1989) was not cited.

The watershed analysis included an analysis of ROS events, considered appropriate literature, and is in compliance with NEPA.

Issue 3. The FSEIS fails to disclose that small headwater channels are especially vulnerable to increased erosion and sediment transport to downstream habitats caused by increased peak flows.

Response: The Gold Creek Ecosystem Assessment at the Watershed Scale (EAWS) (PF, Section O, USDA Forest Service, 2002) considered stream channel characteristics associated with the headwater drainages throughout the Gold Creek Watershed. The EAWS (pp. 25 to 28) documents the existing and reference condition of the stream channels within the project and cumulative effects analysis area. The EIS documents the potential impacts to stream channel morphology (pp. III-160) and the reference condition of West Gold Creek (pp. III-137 to III-144); describes the existing condition of West Gold Creek, its tributaries, and the overall inherent sensitivity of each stream channel type (pp. III-144 and III-151); and discusses the effects from water yield increases.

The Gold Yeller Monitoring Review (PF, Section I, Doc. I-13) documents the response that small headwater channels had to previous timber harvests in the West Gold Creek Watershed. Based on the stream channel and landtype characteristics of West Gold and its tributaries, the

estimated changes in peak flows and the potential increases in flows from a ROS event would not affect stream channel morphology from any of the three action alternatives. The EIS sufficiently analyses erosion and sediment transport from the headwater channels. The analysis is in compliance with NEPA.

Issue 4. The sediment risk analysis in the FSEIS relies on conclusitory statements that are not supported by accurate scientific data, authorities, or explanatory information. The appellants contend that the failure by the Forest Service to perform mandatory road maintenance operations on the roads where the stream crossings are located renders the claim of 2,051.4 tons of sediment risk reduction meaningless.

Response: As discussed in the EIS (pp. III-132 and III-147) the sediment risk analysis was conducted using *Methods for Inventory and Environmental Risk Assessment of Road Drainage Crossings* (Flanagan, et al., 1998), which can be found in the project file (Sec. O, Flanagan). The data and calculations can be found in the project file (Docs. I-2 and I-3), while the explanatory information and results can be found in the EIS (pp. III-147 and III-148, Table 20; and Appendix J, p. J-15). In the discussion of present, ongoing, and foreseeable activities the EIS (p. III-164) indicates that road maintenance is a regular occurrence in the Gold Creek watershed. The information and analysis are in compliance with NEPA.

Issue 5. The FSEIS fails to disclose the inaccuracies of the WATSED model and sediment analysis.

Response: The EIS (pp. III-130 to III-132) and project file (Section O, Patten, 1989) describe the WATSED model at length, including its uses and limitations. The Response to Comments goes into considerable detail discussing the limitations and use of the WATSED model (EIS, Appendix J, pp. J-27 to J-29). The project file contains the Forest Plan monitoring reports that detail the monitoring done to validate and calibrate WATSED (Section O, USDA Forest Service, 2000, pp. 25 to 27; USDA Forest Service, 2003, pp. 41 to 44; and USDA Forest Service, 2004, pp. 37 to 44). The EIS is in compliance with NEPA.

Issue 6. The WATSED model's predictions on the cumulative effects violate NEPA because there is a complete lack of high quality information in Chapter III regarding the specific features of the WATSED model that were used to accurately account for the recent logging that has occurred. It does not take into account the recent Packsaddle South Timber Sale and does not list the Saddle Up Timber Sale.

Response: The WATSED manual, data files, and computer run results can be found in the project file (Sec. I, h2o). It has accounted for all past timber sales. The past timber sales that were included in the watershed analysis are displayed in the EIS (Appendix D, p. D-6, Fig. D-1). The recent Packsaddle South Timber Sale is included. The Saddle Up Timber Sale in not in the Gold Creek watershed and, therefore, was not included in the cumulative effects for the West Gold project. The analysis is in compliance with NEPA.

Issue 7, Contention 1. The West Gold watershed analysis violates the Clean Water Act. The proposed logging with Alternative C-Modified is in direct violation of the Clean Water Act Section 303(d) TMDL requirements; the water quality standards (WQS) regulations described at 40 CFR 130.0 (b), 40 CFR 130.3, and 40 CFR 130.12; and violates Idaho Water Quality Standards as described in Idaho Administrative Code IDAPA 58, Title 01, Chapter 02.

Response: As discussed in the EIS (pp. III-128 to III-129 and III-144 to III-145), Gold Creek is currently a water quality-limited segment. The pollutants of concern are temperature and sediment. The creek has an approved TMDL for sediment, and the implementation plan is pending. Under this status, there is to be no net increase in sediment entering Gold Creek due to management activities. The Forest Service will develop an implementation plan in cooperation with Idaho Department of Environmental Quality (IDEQ), Idaho Department of Lands, and interested local parties. Any activities the National Forest undertakes or permits will be designed to substantially reduce pollutants of concern. As indicated by the letter from the EPA (PF, Doc. Q-2), the EPA supports the decision to select Alternative C. The selected alternative, Alternative C-Modified, is in compliance with the Clean Water Act and Idaho State Water Quality Laws (ROD, pp. 21 and 22).

Issue 7, Contention 2. The West Gold watershed analysis violates NEPA. The significantly different figures of sediment yields associated with Alternative C found the Final EIS (FEIS) versus the Final *Supplemental* EIS (FSEIS), 8.7 tons for the FSEIS versus 52 tons for the FEIS, does not comply with NEPA requirements at 40 CFR 1500.1(b) for high quality information. There is no high quality information in the FSEIS or ROD that supports the contention the Gold Creek sediment TMDL approved by EPA Region 10 includes any "pollutant trading" language.

Response: The decision made in 2002 was based on the FEIS; the decision made in 2006 was based on the FSEIS. In the time between the writing of the FEIS and the FSEIS a number of sediment-reducing activities have been implemented. These include stabilization of the Kick Bush slide and phases 1, 2, and 3 of the Idaho Lakeview Mine reclamation. The component of sediment risk from culvert removal and improvement was also removed from the sediment budget analysis (EIS, p. III-127). These differences account for the change in sediment yield.

Idaho Code (IDAPA 58.01.02.054 Section 04) allows for pollutant trading in creeks with approved TMDLs as long as the total load remains constant or decreases. However, a 2006 IDEQ clarification has made this point moot. In the FEIS the TMDL on Gold Creek was thought to extend to the mouth of the creek at Pend Oreille Lake. In a post decisional email from Robert Steed of the IDEQ to Jason Gritzner of the USFS, IPNFs (PF, Section O, Steed personal comm., 2006), Steed states, "DEQ maintains that the TMDL was written for four assessment units: Gold (24_02, 23_03, and 21_03) and Chloride Creek (23_02) upstream from the confluence with West Gold." Without a TMDL for West Gold Creek and the lower portion of Gold Creek, below the confluence of West Gold Creek, there is no need to discuss pollutant trading with respect to the West Gold project. The analysis is in compliance with NEPA.

Issues 8 and 9. The West Gold project will result in a short-term adverse impact on fisheries. These short term impacts were not evaluated, and do not comply with a May 31, 2001, United States Court of Appeals for the Ninth Circuit ruling in Pacific Coast Federation of Fishermen's Association, Inc. v. National Marine Fisheries Service. The Forest Service failed to account for the cumulative effects of the Packsaddle South and Saddle Up timber sales that included 370 acres of logging in the Kick Bush Gulch area, which is within the West Gold cumulative effects analysis area.

Response: After analyzing the reference condition of the watershed (EIS, pp. III-137 to III-144) and the existing condition of the watershed (EIS, pp. III-144 to III-151), the EIS analyzes the direct, indirect, and cumulative effects of the project on fisheries in both the long term and short term (pp. III-151 to III-171). This analysis includes the cumulative impact of the timber sale in Kick Bush Gulch and the rest of the cumulative effects analysis area (EIS, Appendix D). (See my response to Issue 6, above). The EIS states (p. III-170):

> "The modeled short-term increase in sediment yield directly associated with the West Gold project is very small compared to the overall reduction in sediment yield through mine reclamation and slide stabilization, as well as the reduced risk of culvert failure and sediment delivery associated with culvert upgrades. The potential short-term increase in sediment may affect individual westslope cutthroat trout in the upper watershed, but would not begin a trend towards federal listing. In the long term, the reduction in sediment yield is expected to benefit survival of individuals. Similarly, cumulative effects from the project and reasonably foreseeable actions may affect, but are not likely to adversely affect, federally listed bull trout, and are expected to benefit individual survival in the long term."

The U.S. Fish and Wildlife Service (USFWS) concurred with the determination of impacts on bull trout (PF, Sec. J, Doc. J-7). The analysis of short term and long term, direct, indirect, and cumulative effects is in compliance with NEPA.

Issue 10. The project violates ESA because it would result in the 'destruction or adverse modification' of critical bull trout habitat in West Gold Creek.

Response: The Fisheries Biological Assessment and Bull Trout Matrix discusses direct, indirect, and cumulative effects to fisheries and provides rationale for the "may affect, but is not likely to adversely affect" determination for bull trout (EIS, Appendix K, pp. K-14 to K-41).

Critical habitat was designated for bull trout; the final rule was published in the Federal Register on September 26, 2005. Streams regulated under the Inland Native Fish Strategy (INFS) were excluded from the critical habitat designation, because INFS provides substantial protection and restoration for bull trout and their habitat. INFS was amended into the IPNFs' Forest Plan in 1995.

Only the lowest reach of Gold Creek, below the confluence with Kick Bush Gulch, was designated as bull trout critical habitat because it is on private lands and, therefore, without the INFS protections. Since the designation of critical habitat, Federal agencies are required to meet

the requirements of section 7(a)(2) of the Act with regard to critical habitat. Specifically, Federal agencies shall, in consultation with the USFWS, ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The term "destruction or adverse modification" means direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of a listed species. Since it was determined that the project "may affect, but is not likely to adversely affect" bull trout individuals or their habitat, and cumulatively the project will be beneficial to bull trout and their habitat in the long term, there will be no destruction or adverse modification of designated critical habitat in lower Gold Creek. The USFWS concurred with this determination (PF, Section J, J-7). The project is in compliance with the ESA.

Issue 11. The information presented in the FSEIS clearly indicates that long-term monitoring of the effects to fisheries and fisheries habitat from logging and road activities is not mandatory and therefore likely will not occur as requested by Idaho Fish and Game, in violation of NEPA.

Response: The regulations cited in the appeal on this point [40 CFR 1500.1(b)] is concerned with information being available before a decision is made and before actions are taken. It is not concerned with collecting monitoring information following implementation. While the EIS (p. II-30) states, "[n]ot all monitoring is considered mandatory, and its implementation is not a consideration in the determination of environmental effects. The monitoring projects listed [in the EIS] are designed to be accomplished during project activities, but are dependent upon the availability of funds and other resources," it is clear in the ROD (pp. 8 and 9) the Deciding Official expects the project-specific monitoring will be conducted, and the permanent stream channel cross-section monitoring will continue on an annual basis. The monitoring in this EIS is in compliance with NEPA.

Issue 12. The Forest Service has failed to disclose that hazardous fuels will actually increase in the project area, probably for at least 10 years. Stand conversion to dry site species such as ponderosa pine is inappropriate.

Response: The risk of crown fire is reduced when the project is implemented, however, the EIS acknowledges that between the times the timber is harvested and the logging slash is treated, ground fire intensities can be increased due to the presence of the slash (EIS, pp. III-65 and III-186). The primary fuel concern of the project is to reduce fuel loading to improve our ability to suppress wildfires within project area (EIS, pp. III-62 to III-65).

As discussed in the fire and fuels section of the EIS (pp. III-58 to III-61) the typical fire return interval for the area was 19 years, but due to fire suppression there has been no major fire activity in the Gold Creek Watershed since 1934. With the suppression of fire, there has been a substantial reduction in the percent of the landscape composed of long-lived tree species such as western white pine, ponderosa pine, and western larch, with an increase in Douglas-fir and grand fir. Also, without periodic fires in the area, the dry sites in the West Gold Project area have

become more susceptible to stand-replacing fire because of ladder fuels, and the shade-tolerant stands are now even more susceptible to insects, disease, and stand-replacing wildfires. In order to lessen the risk of extensive tree kills from insects, disease, and stand-replacing wildfire, it is appropriate to encourage the growth of longer-lived, more fire- and disease-resistant species.

Historically, the West Gold drainage consisted of more ponderosa pine and western larch dry cover types, and less Douglas-fir and grand fir than exists today (EIS, pp. III-10 to III-13, and Table 7). The dry cover types had frequent low-intensity fires (EIS, pp. III-8 to III-9). The project will attempt to convert some of the Douglas-fir and grand fir cover type back to the dry ponderosa pine and western larch cover types, and the moist western white pine cover type (pp. III-18 to III-20, and Table 9). This is appropriate when one of the Purposes and Needs of the project is to restore fire as an ecological process (EIS, p. I-4). The analysis is in compliance with NEPA.

Issue 13. The West Gold project is based on an out of date Forest Plan that is not in compliance with NFMA and NEPA, and is out of date in terms of its considerations of fire ecology, as ICBEMP research indicates.

Response: On August 2, 2005, President Bush signed into law H.R. 2361, the Department of the Interior, Environment, and Related Agencies Appropriations Act 2006. The relevant section of the law reads as follows:

> "Sec. 415. Prior to October 1, 2006, the Secretary of Agriculture shall not be considered to be in violation of subparagraph 6(f)(5)(A) of the Forest and Rangeland Renewable Resources Planning Act of 1974 [16 U.S.C. 1604(f)(5)(A)] solely because more than 15 years have passed without revision of the plan for a unit of the National Forest System…Provided, That if the Secretary is not acting expeditiously and in good faith, within the funding available, to revise a plan for a unit of the National Forest System, this section shall be void with respect to such plan…"

The Idaho Panhandle Forests' Plan Revision process is underway and expected to be completed in 2007. In the meantime, the Forest continues to monitor implementation of the Forest Plan as is evidenced in years of Forest Plan Monitoring and Evaluation Reports (PF, Section O, USDA Forest Service, 1988, 1989, 1991, 1992, 1993, 1998, 1999, 2000, 2001, 2002, 2003, 2004).

It is true the understanding of fire ecology has advanced considerably since the Forest Plan was signed. That is why research, such as Zack and Morgan (1994) and Smith and Fisher (1997), has been incorporated into the analysis (EIS, pp. III-58 and III-60). (See also Appendix E – Literature Cited, for a complete list of all publications used in the EIS.) The Forest Plan's Standards and Guidelines *are* relevant. As stated in the Forest Plan (p. II-38) and condensed in the EIS (pp. III-55 to III-56) the Standards (paraphrased) are: 1) Follow management area standards; 2) Human life and property will be protected; 3) Fire will be used to achieve amendment goals according to management area goals; 4) In escaped fire situations management area standards will be used to establish resource priorities; 5) Use appropriate response to

wildfire to prevent the loss of old growth; 6) Activity fuels will be reduced; and then at 7) the Plan lists expenditure priorities. Regardless of the age of the Plan these are still very logical and relevant in protecting life and property, and in managing the Forest. The analysis and project are in compliance with NEPA and NFMA.

Issue 14. The FSEIS and ROD violate NFMA and the IPNFs' Forest Plan by failing to provide sufficient old growth habitat to provide for population viability and diversity of plant and animal communities that are dependent on such a diverse and important habitat. The West Gold Project FSEIS and ROD fail to disclose all the Forest Plan Standards relevant for old growth species and fail to demonstrate the project's consistency with those standards. Yet Alternative C would log 127 acres (FSEIS at III-19) of the best mature forest in the area, mature forest being that which most closely resembles old growth.

Response: As discussed in the ROD (p. 5) and the EIS (p. II-11), approximately 29 acres of one old growth stand (Unit 26) would be underburned, without any cutting, to provide the ecological benefits of a low-intensity fire. The vegetation in Unit 26 is of the dry habitat type, which historically was maintained by frequent, low-intensity fire (EIS, p. III-9). In the section entitled *Effects Common to Alternatives B, C, and D,* the EIS states the underburning would be used to maintain the old growth characteristics of Unit 26; and no cutting would occur in the stand (EIS, p. III-21). Table 9 (EIS, p. III-19) indicates that old growth would remain the same (104 acres in the project area) under any of the alternatives. Under *Cumulative Effects Common to All Alternatives* the EIS (p. III-17) states, "Old growth stands should maintain their old growth structures and characteristics through all alternatives unless severe natural disturbance occurs to change this." It is clear the project will not impact old growth.

The EIS goes into extra-ordinary detail concerning Forest Plan standards for old growth, and how the Forest and project are meeting those (EIS, Appendix C, pp. C-13 to C-24, and Response to Comments, Appendix J, pp. J-36 to J-43). The Forest Plan old growth objective (Forest Plan, p. II-5) states, "Approximately 10 percent of the Forest will be maintained in old growth as needed to provide for viable populations of old growth-dependent and management indicator species. To maintain the desired distribution, the IPNF will be managed to maintain approximately 5 percent of each old growth unit as old growth where it exists." Old growth Standard 10c (Forest Plan, p. II-29), states, "Select and maintain at least five percent of the forested portion of those old-growth units that have five percent or more existing old growth." In other words, if an old growth unit has less than 5 percent old growth the Forest is not allowed to harvest the old growth, but they are not required to designate non-existent or nearly old enough stands to make up the difference. Their objective is to manage old growth where it now exists. As discussed in the EIS (p. C-19) the Forest has already identified and allocated 278,552 acres of old growth, which is 12.1 percent of the Forest.

The project area encompasses portions of two old growth management units (OGMUs). They are OGMUs 17 and 18, which have 2.2 percent and 3.8 percent old growth, respectively (EIS, Appendix C, p. C-2). Due in part to this low percent of old growth in these two OGMUs the Forest will not harvest any old growth with this project. The type of management the project

calls for is a low-intensity underburn to maintain the old growth and lessen the possibility of a wildfire destroying the old growth they have in OGMU 18. Management of old growth in an effort to maintain it as old growth is not disallowed in the Forest Plan. The project and the Forest as a whole are in compliance with the Forest Plan standards for old growth.

Pileated woodpecker is the IPNFs' management indicator for old growth (EIS, p. III-101). The EIS (pp. III-116 to III-120) analyzes the impacts to pileated woodpecker. The EIS (pp. II-22 to II-23) discusses the design features that would be used in the West Gold Project to maintain sufficient snag habitat. The project encourages the persistence of older forest and large snag habitat. The cumulative effects would benefit pileated woodpecker, and the analysis concludes, "…none of the alternatives would likely result in any perceptible change in local or regional pileated woodpecker populations" (EIS, p. III-119).

The Silviculturist analyzed the likelihood that the various mature stands in the project area would become old growth at some point in the future (PF, Section D, Doc. D-19). The discussion (p. 2) states,

> "Stands or portions of stands that are proposed for regeneration cutting and are shown as mature are not expected to trend toward old growth structures due to mortality presently occurring or expected to occur. Some stands prescribed for thinning have the potential for trending toward large diameter long-lived seral trees. These stands have the possibility of reaching old growth structure in the future. In addition, other stands with long lived species (example: cedar in riparian areas) which are not proposed for cutting may reach old growth structures if disturbance does not trend them back toward early succession. Nearly all these stands are five decades away from meeting the necessary age requirements for old growth."

The EIS also points out that one mature stand came very close to meeting old growth minimum criteria (p. III-13). This stand is proposed for underburning, not harvest. The project and the Forest are in compliance with the Forest Plan for retaining old growth.

Issue 15. It is not clear whether goshawk viability is in fact being maintained or how goshawk viability is expected to be maintained into the future if this and other cumulative actions proceed. The Forest Service has not incorporated up-to-date quantitative science into this analysis and has therefore not demonstrated that it is maintaining goshawk viability.

Response: The EIS (pp. III-100 to III-101) says the project area is dominated by immature forest that is on the threshold of developing the structural attributes necessary for goshawk nesting habitat, but with the absence of disturbance the relatively open understory is being replaced by dense stands of Douglas-fir and grand fir. Due to the age and density of the forest, the high relief of the area, and relatively high percentage of drier habitat, the area is marginal for goshawk. Surveys have not found any goshawk in the area, and only found 120 acres of suitable habitat scattered throughout the analysis area, most of which is outside any treatment areas (PF,

Sec. H, Doc. H-10). For these reasons the wildlife biologist determined the project may impact individuals or habitat, but will not likely contribute to a trend towards Federal listing or loss of viability to the population or species (EIS, Appendix K, p. 13), and therefore, the project would not affect goshawk viability Forest-wide. The project is in compliance with the Forest Plan.

Issue 16. The FSEIS failed to adequately disclose impacts on and assure sufficient habitat to maintain viability for pileated woodpecker. Although the FSEIS cites Bull, et al. (1997), the FSEIS essentially ignored much of its implications for viability of pileated woodpeckers and other cavity-nesting species on the IPNFs, again revealing a lack of consideration of the best science available.

Response: Pileated woodpeckers were discussed under the old growth issue (Issue 14, above). The project would exceed the Forest Plan requirements for snag retention and will not impact old growth. Therefore, pileated woodpecker viability will remain unaffected by the West Gold Project. Appropriate literature was considered in determining impacts to pileated woodpecker. The analysis and project are in compliance with NEPA and the Forest Plan.

Issue 17. Despite the fact pine marten is an MIS and the project area falls within its historic range, the FSEIS fails to discuss pine marten in adequate detail to disclose impacts on it and assure the viability of the species.

Response: The EIS (p. III-94, Table 17) indicates detailed discussion for this species is not necessary because the species and its habitat are not contained with the affected area. The EIS then directs the reader to the project file for more information. The project file (Section H, Doc. H-26, p. 6) indicates pine marten has not been documented in the area and due to the limited preferred habitat in the project area, which is large patches of late successional forest, the presence of pine marten is unlikely. Therefore, the wildlife biologist determined the project would have no impact on pine marten and no further analysis was necessary. The analysis and project are in compliance with NEPA and the Forest Plan.

Issue 18. The Forest Service has not adequately addressed comments regarding black-backed woodpecker habitat.

Response: The Forest did respond to the appellants' comments on black-backed woodpecker (EIS, Appendix J, pp. J-50 to J-51). The Forest Service has conducted a conservation assessment of black-backed woodpecker and other species of interest (PF, Sec. O, Doc. Sampson, 2006). In the assessment, Sampson concluded that short-term viability of black-back woodpecker is not an issue in the Northern Region, including the IPNFs (EIS, p. III-112). The EIS (pp. III-99 to III-100, III-109 to III-112, and Appendix K, p. K-13) describes the direct, indirect, and cumulative effects the project will have on black-backed woodpecker. The analysis and project are in compliance with NEPA and the Forest Plan.

Issue 19. The Forest Service has not fulfilled the Forest Service Manual direction for Biological Evaluations of Sensitive Species; has not identified a logically defined cumulative effects analysis area for Sensitive Species; and has failed to take into account activities that are past, ongoing, or reasonably foreseeable in the cumulative effects analysis on sensitive species.

Response: The Forest Service Manual (FSM) at 2621.2 states, "units must develop conservations strategies for those sensitive species whose continued existence may be negatively affected by the forest plan or a proposed project." The wildlife biologist found the project would not negatively affect the continued existence of any of the sensitive species (EIS, Appendix K, p. K-13). A conservation strategy, therefore, is not required.

For each sensitive species analyzed in the EIS, the wildlife biologist discusses the analysis area used for that species and explains the rationale for using the effects area he used. As the wildlife biologist explains in the EIS (p. III-104), "Determining [the cumulative effects] area for wildlife depends upon a given species' relative home range size in relation to its available habitat, topographic features that influence how a species moves and utilizes its home range (e.g. watershed boundaries), and boundaries that represent the point of diminishing potential effects (Table 19)." This is a very logical way to determine the cumulative effects boundary for animal species. It is clear from reading the cumulative effects discussion under each sensitive species that the wildlife biologist has, in fact, considered past, ongoing, and reasonably foreseeable actions, including past logging, in the cumulative effects analysis for each species he analyzed (EIS, pp. III-107 to III-127). The analysis and project are in compliance with NEPA and the Forest Service Manual.

Issue 20. The scientific adequacy of the Forest Service's methodology for maintaining soil productivity has never been demonstrated. The Forest Service's determination that it may permanently damage the soil on 15 percent of an activity area and still meet NFMA and planning regulations is arbitrary.

Response: In order to meet NFMA direction and manage National Forest System lands without permanent impairment, the policy of the Northern Region is to "…not create detrimental soil conditions on more than 15 percent of an activity area" (FSM, 2554.03). Detrimental soil disturbance is not equal to permanent damage. At no point has the Forest Service determined that projects may permanently damage 15 percent of the soil in an activity area. Arguments regarding the Regional supplement to the Forest Service Manual are beyond the scope of the West Gold analysis.

The ID team did analyze the impact the project would have on the soil resource, including field reviews (EIS, pp. III-75 to III-91). The project includes design features to protect soils and site productivity (EIS, pp. II-19 to II-21; and ROD, pp. 26 and Attachment C, pp. C-7 to C-8). The EIS also recognizes there will be some adverse impacts to soil (p. III-185). The project is in compliance with NFMA and the Forest Service Manual.

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/ David M. Pieper
DAVID M. PIEPER
Appeal Reviewing Officer