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Subject: 215 - ARO Letter - Wrenco DN - IPNFs - Appeal #06-01-00-0026 - Selkirk Conservation Alliance

To: Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Paul Sieracki, on behalf of the Selkirk Conservation Alliance, protesting the Wrenco Decision Notice (DN) on the Idaho Panhandle National Forests (Sandpoint Ranger District).

The District Ranger's decision adopts Alternative A, which includes thinning on approximately 530 acres; regeneration harvest on approximately 82 acres; planting of desired long-lived species such as ponderosa pine, white pine, and larch; prescribed burning on approximately 141 acres; mechanical fuel treatment on 471 acres; and removal of three existing sediment sources on the West Fork of Johnson Creek.

My review was conducted pursuant to, and in accordance with, 36 CFR 215.19 to ensure the analysis and the decision are in compliance with applicable laws, regulations, policy, and orders. The appeal record, including the appellant's 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.

I was disappointed to see the appellant did not directly comment at any phase during the NEPA process (see Transmittal Letter, p. 2). In response to the Environmental Assessment (EA), comment letters on behalf of the appellant were sent by Kootenai Environmental Alliance and The Ecology Center. This gave the appellant standing to appeal; however, it is clear from Mr. Sieracki's appeal that many of his concerns were not conveyed to the Forest in the comments of the other groups. This left the appellant unsatisfied with the analysis.

The appellant alleges violations of the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA), the Endangered Species Act (ESA), the Clean Water Act (CWA), and the Idaho Forest Practices Act. The appellant requests the decision be rescinded; an Environmental Impact Statement be completed; the effects of additional roads be reconsidered; the Forest develop partnerships with the Idaho Department of Lands, the timber industry, and local landowners to restore connectivity in the project area; and additional training be provided to Forest Service employees. An informal meeting was not held, and no resolution of the issues was reached.

ISSUE REVIEW

Issue 1. The EA failed to consider cumulative and indirect effects to the mountain caribou population in the Selkirk Mountains, violating NEPA and the ESA.



Response: Comment letters in response to the Wrenco EA were made by the Kootenai Environmental Alliance and The Ecology Center on behalf of the appellant. Those letters, both dated June 16, 2005, did not raise the concern about mountain caribou. Paul Sieracki and the Selkirk Conservation Alliance, therefore, did not put the agency on notice of their concerns on this issue. “As discussed in a Congressional colloquy during enactment of the ARA [Appeals Reform Act] and in the **Federal Register** notice announcing the revision to [the appeals rule at 36 CFR 215] (67 Federal Register 77451), the notice and comment period is intended to solicit information, concerns, and any issue specific to the proposed action and to provide such comments to the Responsible Official before the decision is made... The intent in requiring substantive comments is to obtain meaningful and useful information from individuals about their concerns and issues, and use it to enhance project analysis and project planning” (68 Federal Register 33587). Waiting until the appeal period to raise an issue or concern does not give the Responsible Official an opportunity to consider the impacts of the project in light of public concerns.

Due to the fact the appellant did not bring their concern to the attention of the Responsible Official at the appropriate time, I will not consider the appeal point on mountain caribou. I will point out, however, the EA does consider mountain caribou. The transmittal letter, dated December 5, 2005, signed by the District Ranger and sent to the Appeal Deciding Officer indicates where this issue is discussed in the DN, EA, and project file.

Issue 2. The EA fails to address the effects to wildlife from logging, road building, road density, and the noise associated with the project, in violation of NEPA and NFMA.

Response: A roads analysis was completed for the project (PF, Doc. B-1). The EA includes the effects on wildlife and wildlife habitat from project implementation as one of the analysis issues (EA, p. 12). Table 2-6 (EA, pp. 33 to 36) summarizes the impact the project would have on various wildlife species, including boreal toad, flammulated owl, fringed myotis, pygmy nuthatch, northern goshawk, black-backed and pileated woodpeckers, marten, white-tailed deer, and forest land birds. In the wildlife analysis (EA, pp. 70 to 94), the wildlife biologist identifies those attributes of the landscape and the project that may impact a particular species.

For example, the EA indicates past road building activities may have affected boreal toad (EA, p. 74), while the loss of ponderosa pine has affected flammulated owl (EA, pp. 74 to 75). In the case of northern goshawk, the concern about disturbance brought about a design feature in the project: Logging operations and related activities would be suspending within 1/2 mile of active goshawk nests (EA, p. 23; DN/FONSI, p. 74). It is clear the wildlife biologist considered the impact of road building, timber harvesting, and related activities when analyzing the impact the project and past projects have on the wildlife in the project area (EA, p. 71). The project is in compliance with NEPA and NFMA.

Issue 3. In Table 3-7 of the Wrenco EA, the reason given for the dismissal of analysis for fisher is there is no suitable habitat in the project area. A field review of the area in May 2005 revealed areas of mature forest both outside and along riparian areas that serve as suitable fisher habitat. But a query of the TSMRS database showed there is only “capable” fisher habitat. This information is erroneous.

Response: TSMRS data is only a starting point for the wildlife biologist (DN/FONSI, p. 77). That information is field-checked as part of the project analysis (PF, Docs. C-1, C-3, and G-12). Based on the field-checked data, the wildlife biologist determines the likelihood of a species using the area. The project file (Doc. G-1, pp. 3 and 4) documents that the Wrenco project area is not considered fisher habitat because it is a small isolated block surrounded by a highly fragmented and altered landscape. This small piece would have little relevance to, or affect on, a wide-ranging species such as fisher.

Issue 4. The EA lumps many species together as *Forest Land Birds* and attempts to discuss cumulative effects in an unprofessional, non quantitative way, making grandiose and speculative statements about increasing habitat diversity in an area that has many acres of early successional habitat. Many other species of birds should have been covered in the wildlife analysis.

Response: Comment letters in response to the Wrenco EA were made by the Kootenai Environmental Alliance and The Ecology Center on behalf of the appellant. Those letters, both dated June 16, 2005, did not raise the concerns about analyzing forest land birds as a group, or the extensive list of species found in the appeal. Paul Sieracki and the Selkirk Conservation Alliance, therefore, did not put the agency on notice of their concerns on these issues. “As discussed in a Congressional colloquy during enactment of the ARA [Appeals Reform Act] and in the **Federal Register** notice announcing the revision to [the appeals rule at 36 CFR 215] (67 Federal Register 77451), the notice and comment period is intended to solicit information, concerns, and any issue specific to the proposed action and to provide such comments to the Responsible Official before the decision is made... The intent in requiring substantive comments is to obtain meaningful and useful information from individuals about their concerns and issues, and use it to enhance project analysis and project planning” (68 Federal Register 33587). Waiting until the appeal period to raise an issue or concern does not give the Responsible Official an opportunity to consider the impacts of the project in light of public concerns.

Due to the fact the appellant did not bring their concerns to the attention of the Responsible Official at the appropriate time, I will not consider the appeal point on the forest land birds, or the desire for an analysis on other species. I will point out, however, the EA does consider forest land birds, and the threatened, endangered, sensitive, and management indicator species the analysis is required to cover. The transmittal letter, dated December 5, 2005, signed by the District Ranger and sent to the Appeal Deciding Officer indicates where these issues are discussed in the DN, EA, and project file.

Issue 5. The lack of expert agency comments in the EA regarding all of the processes the WEPP model cannot perform violates the NEPA requirement [40 CFR 1500.1(b)] to make information available the public. It has not been shown in the Wrenco EA that the WEPP model in fact produces accurate predictions for sediment production, as is required by NEPA. The sediment reduction analysis, including the figure of 170 tons, does not contain accurate scientific analysis, and also does not contain high quality information as required by NEPA at 40 CFR 1500.1(b).

Response: The EA (pp. 113 to 114) discusses the use of the WEPP model for sediment yield and delivery from hillslopes, water yield, erosion, and sediment yields from roads. The EA states, “The Disturbed (sic) module is limited to generalized vegetation cover and exhibits a plus or minus 50 percent accuracy (Elliott, et al., 2000). Modeling parameters, assumptions and coefficients are discussed in detail within the aquatics section of the project file.” The project file documents cited in the EA include *Validation of the FS WEPP Interfaces for Forest Roads and Disturbances* (PF, Doc. Q-42); a reprint from the Journal of the American Water Resources Association by the WEPP model author, William J. Elliot, 2004, entitled *WEPP Internet interfaces for forest erosion prediction* (PF, Doc. Q-43); and a variety of papers that demonstrate the assumptions made to calibrate the WEPP model, contain the analysis to identify resource issues and make recommendations for remediation (regarding roads), and evaluate the effectiveness of chosen treatments based on a wide range of rigorous scientific investigations (PF, Docs. I-20, I-21, I-24, Q-10, Q-16, Q-17, Q-27, Q-29, Q-52, Q-65, Q-77, Q-86, Q-103, Q-153, and Q-163). The discussion and analysis in the EA and the project file are in compliance with NEPA and the implementing regulations at 40 CFR 1500 et seq.

Issue 6. The Forest Service assumes the implementation of Best Management Practices (BMPs) will sufficiently mitigate any water quality problems, but offers no proof of this assertion. This assumption is flawed as attested to by the cold-water biota beneficial uses not being supported in Johnson Creek and the West Fork of Johnson Creek due to sediment sources that include road building. The Forest Service cannot substantiate that mitigation measures described in the DN and in the EA will be fully implemented, and cannot provide quantitative data that confirms mitigation measures in fact substantially improved water quality or fisheries habitat. The failure of BMP discussions in the DN and the EA to rigorously examine and describe the stated failures associated with previous BMP mitigation measures is a violation of NEPA at 40 CFR 1500.1(b).

Response: The EA (pp. 111 to 131) discusses the existing water quality of Johnson Creek and the impact the project would have on water quality and beneficial uses. The EA (p. 111) states, “Johnson Creek is not considered impaired and is currently meeting beneficial uses under the State of Idaho’s 303d process (IDEQ 2002).” The transmittal letter does indicate there is another Johnson Creek on the Forest, at the mouth of the Clark Fork River, that is 303d-listed, but it is not in the project area.

The project’s removal of culverts and a bridge would likely increase short-term sediment production; however, the removal of these sediment sources along with the decommissioning of a portion of Forest Road 1023 would reduce sediment production in the long term (EA, p. 124). In order to assure maintenance of water quality, and comply with the Clean Water Act and the Idaho Forest Practices Act, the project would monitor compliance with established BMPs (EA, p. 29; DN, p. 30), as required by the Forest Plan (pp. II-9 and II-33; ROD, pp. 25 and 26).

The objectives of BMP monitoring are to check that BMPs are applied and implemented as designed (implementation monitoring), that they are effective in controlling non-point sources of pollution (effectiveness monitoring), and they are protecting water quality and beneficial uses as intended (validation monitoring). The results of past BMP monitoring are reported in the Forest Plan Monitoring Reports (for examples see PF, Doc. Q-155, Reports for Fiscal Years 1999,

2000, 2001, 2002, and 2003). The EA (pp. 21 and 123, and Appendices A and B) discusses the use and effectiveness of BMPs along with other mitigation measures and design features. The DN specifically delineates the design features (i.e. mitigation measures) that would be used as part of the project (DN, pp. 12 to 25). Design features for aquatic resources and soils can be found in the EA (pp. 16 to 20, 21 to 22, and 24 to 26).

The EA recognizes the requirement to follow the Forest Plan direction for water quality (EA, pp. 7 and 8). The project is designed to lessen the amount of sediment entering the Johnson Creek watershed (EA, pp. 3 to 5, 7, 16, 17, 33, 36, and 122 to 128; DN/FONSI, pp. 1, 3, 5 to 9, 16 to 18, 34, 48, 50, 51, 55, 67, 79, 89, and 90). The project is in compliance with the Endangered Species Act, the Clean Water Act, the Idaho Forest Practices Act, the Forest Plan, and INFISH (EA, pp. 128 and 129; DN/FONSI, pp. 17, 18, 21, 31, 32, and 35).

Issue 7. There is no mention of the specific Idaho Forest Practices Act road construction and maintenance regulations (IDAPA 20.02.01.040, including 040.02, 040.03, and 040.04) that require the Forest Service to maintain culverts and ditches.

Response: It is clear from the EA and the DN/FONSI the Forest is well aware of the State of Idaho Forest Practices Act regulations, and that the project meets them, including all the non-point source regulations at IDAPA 20.02.01 (EA, pp. 13, 16, 18 to 21, and Appendix A; DN/FONSI, pp. 25 to 28, 34, and 35).

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 appellant. I recommend the District Ranger's decision be affirmed and the appellant's requested relief be denied.

/s/ Lesley W. Thompson
LESLEY W. THOMPSON
Appeal Reviewing Officer