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**Code:** 1570-1 **Date:** June 11, 2007
**Route To:** (1570 (215))

**Subject:** 1570 (215) - ARO Letter - Hidden Cedar Project ROD - IPNFs - Kootenai Environmental Alliance, et al. - #07-01-00-0137

**To:** Appeal Deciding Officer

This is my recommendation on disposition of the appeal filed by Mike Mihelich, on behalf of The Kootenai Environmental Alliance, The Lands Council, the WildWest Institute, and the Friends of the Clearwater, protesting the Hidden Cedar Project Record of Decision (ROD) on the Idaho Panhandle National Forests (St. Joe Ranger District).

The Forest Supervisor's decision adopts Alternative F modified, which includes timber harvest on approximately 1,268 acres, planting of 175 acres, gopher control on 160 acres, decommissioning and storing approximately 25 miles of existing roads, constructing almost 9 miles of new roads, reconstructing approximately 6 miles of the existing roads, pre-commercial thinning of 24 acres, and 1,268 acres of various post harvest slash treatments.

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 Administrative Procedures Act (APA), the Clean Water Act, the Idaho Water Quality Standards as listed in the Idaho Administrative Code including IDAPA 58.01.02.054.04, the Forest Service Manual, and the Idaho Panhandle National Forest (IPNF) Plan. The appellants request the Hidden Cedar ROD be withdrawn, and if the IPNF wishes to perform management activities in the Hidden Cedar project area, they request a new alternative be developed that is in full compliance with all federal and State laws, policies, and regulations identified in the appeal, particularly in regards to cumulative effects analysis. An informal meeting was held but no resolution of the issues was reached.

ISSUE REVIEW

**Issue 1. The Hidden Cedar project on the Idaho Panhandle National Forest will result in violations of the Idaho State Water Quality Standards, and the Clean Water Act specifically increases in sediment yield to impaired water bodies from logging.**

**Response:** The potential effect to sediment yield from logging activities was presented in the FSEIS (pp. 268 to 299). Logging activities are planned outside high mass failure areas, follow INFISH standards and guidelines (FSEIS, pp. 273 and 286), and will follow design and mitigation measures to prevent sediment from reaching drainages (FSEIS, p. 299). The IDEQ

sediment model (FSEIS, pp. 257 to 259) was used to predict the short-term increases and long-term sediment yield for each of the alternatives. Short-term increases and long-term sediment yield decreases were described in the analysis (FSEIS, pp. 268 to 299).

The Idaho spreadsheet model (IDEQ TMDL model) was also used in the TMDL development and used for the effects analysis (FSEIS, pp. 258 to 259; PF, Docs. SSW-4 and SSW-18). The Forest identified design and mitigation measures to be consistent with IDAPA 58.01.02.350 (FSEIS, p. 299). The effects analysis on water quality and beneficial uses shows a trend toward attainment (FSEIS, p. 293). The Forest disclosed that short-term sediment increases would occur and stated the reasons that the short-term increases would not further impair beneficial uses (FSEIS, pp. 293 and 299; PF, Docs. SSW-82, SSW-83, and SSW-84). The information presented in the ROD (pp. 51 to 53), FSEIS, and in the Response to Comments (FSEIS, Appendix E, Responses 2-2 to 2-8, 5-27 to 5-30, and 8-7 to 8-9) indicates the action is in compliance with the Idaho Water Quality Standards, consistent with the TMDL, and therefore in compliance with the Clean Water Act.

**Issue 2. The Best Management Practices (BMPs) are inadequate to protect water quality. By following BMPs the Forest Service violates the Clean Water Act, Idaho Code, and the Idaho Administrative Procedures Act in failing to ensure water quality.**

**Response:** Through a Memorandum of Understanding Implementing the Non-point Source Quality Program in the State of Idaho of 1993 (IDWR, 1993) the Forest Service is responsible for implementing non-point source pollution control and the Idaho Water Quality Standards (IDAPA 58.01.02) on National Forest System lands. Under the MOU the Forest Service is to promote the improvement, protection, restoration, and maintenance of water quality to support beneficial uses, promote and apply approved BMPs to control non-point source pollution, comply with State and national water quality goals, and design monitoring programs for specific activities and practices that might affect in-stream beneficial uses (FSEIS, p. 256). The Idaho Forest Practices Act is applied through BMPs and timber sale contract provisions (SW-49) (FSEIS, p. 298).

BMPs would be implemented in all action alternatives to prevent sediment generation or movement from proposed activities (IPNF, 2002, SSW-61). As displayed in the FSEIS (p. 282) the overall effectiveness for all BMPs is expected to be high (Lynch and Corbett 1989; Seyedbagheri 1996; Idaho DEQ 2001); SSW-61 (USDA Forest Service IPNF Forest Plan Monitoring Reports); SSW-14 (Dutch Cat TS monitoring); BMP Effectiveness Monitoring Report, USDA Forest Service, Lolo NF, (USDA Forest Service, 2002). The BMPs have been shown to protect water quality. By following them the Forest Service is in compliance with the Forest Plan, the Clean Water Act, the Idaho Code, and the Idaho Administrative Procedures Act.

**Issue 3. The cumulative effects analysis for water yield and water temperature in the Hidden Cedar project is inaccurate and incomplete.**

**Response:** The Forest analyzed the impact the project would have on stream temperature (ROD, pp. 2, 38, 48, and 51 to 52; FSEIS, pp. 293, and 296 to 299). The ROD and FSEIS described the application of Idaho Forest Practices Act (IFPA) as required by law on non-Forest Service lands

(ROD, pp. 38 to 39; FSEIS, p. 293). The ROD and FSEIS describe the application of design measures, including the use of INFISH to forest activities to protect water temperatures (ROD, pp. 8-18). IFPA rules were developed to protect designated beneficial uses and ambient water quality on all lands within the State of Idaho. The Forest utilized the assumption that the IFPA rules would be followed on non-Forest Service lands. The Forest Service does not have the authority to determine if IDAPA approved BMPs are sufficient to protect designated beneficial uses on non-Forest Service System lands (FSEIS, p. 293).

The 2007 FSEIS included additional cumulative effects analysis (ROD, pp. 38 to 39; FSEIS, pp. 8 and 51 to 61). The Forest updated information on activities that have been completed, modified, or planned within and adjacent to the project area. In 2005 and 2006, the Forest contacted adjacent land owners to determine current and future activities, including Potlatch Corporation (PF, Docs. SSW-7, ST-3, and ST-5) and Idaho Department of Lands, which included information on private land activities (PF, Docs. SA-4, SA-4a, and SA-5). The project GIS layers were updated with this information for the effects analysis (PF, Doc. ST-4). Data collected about adjacent State and Potlatch land activities (2006-2007) were added to the water yield calculations (FSEIS; pp. 260 to 262, and 291; PF, Docs. SA-4, SA-4a, SA-5, ST-3, ST-5, SSW-7, SSW-13, and SSW-15). The Forest has analyzed the cumulative impacts of the Forest decision with other activities including the logging and road building that will occur on private land (including cost-share) (ROD, p. 38 to 39). The project analysis is in compliance with NEPA.

**Issue 4. Water Quality.**

**Issue 4, Contention 1. The effects analysis in the FSEIS does not present information about the use of models (WATSED, IDEQ spreadsheet model) to determine limitations and assumptions, for the Hidden Cedar project.**

**Response:** The FSEIS (pp. 259 to 262) clarified that the FSEIS analysis for **water yield** used the WATSED model to compare relative differences between alternatives (effect of peak flow monthly discharge), and to account for recovery overtime. In addition, the project file contains additional information on WATSED model limitations, local comparisons, and guidelines used for analysis (PF, Docs. SSW-27, SW-33, SW-34, SW-37, SW-35, SW36a, and SW-51).
The water yield effects analysis presented in Table 3-78 (FSEIS, pp. 278 to 282) shows the results of the water yield analysis using all methodologies and presents the results of the effects analysis. The analyses include cumulative effects to water yield (FSEIS, pp. 294 to 299).
The FSEIS (pp. 258 to 261, and 289 to 290) clarified that the FSEIS analysis for **sediment yield** used the IDEQ spreadsheet model (including coefficients). This was a change from the 2002 EIS (FSEIS, Appendix E, Comment and Response #5-29). In addition, the project file contains additional information on the use and assumptions of the IDEQ sediment model (PF, Docs. SSW-1, SSW-4, Appendix B on CD, SSW-18, SSW-24, SSW-53, SSW-54, SSW-58, sed_budget.xls). This provided consistency with other agencies concerning the requirements of the TMDL. The FSEIS (pp. 258 to 259, and Appendix E, Comments and Responses Letter #2) clarifies assumptions used in the IDEQ spreadsheet relative to road treatments and coefficients.

The FSEIS clearly describes the assumptions and limitation of the sediment and water yield models used for the effects analysis in the Hidden Cedar project and is in compliance with NEPA and CWA.

**Issue 4, Contention 2. High quality information and expert agency comments are missing in the water section. The watershed analysis does not account for activities on private lands for the cumulative effects analysis.**

**Response:** The ROD and FSEIS clearly show that information was collected about past, present, and reasonably foreseeable future activities on the Forest and on adjacent private and State lands. This information was presented and used in the analysis (ROD, pp. 38 to 39, and 42; FSEIS, pp. 51 to 61, 257 to 262 and 286 to 293). The analysis is in compliance with NEPA.

**Issue 4, Contention 3. Information/data is not available and of high quality with expert agency comments to account for logging activities on private lands in the water yield analysis. The methodology (WATSED) does not meet the requirements of NEPA for scientific accuracy for the Hidden Cedar project.**

**Response:** Past activities, including activities on private and State land were identified for cumulative effects analysis (FSEIS, pp. 51 to 61). The Forest updated information on activities that have been completed, modified, or planned (ROD, p. 38-39; FSEIS, p. 51). In 2005 and 2006 the Forest contacted adjacent land owners to determine current and future activities. Contacts included Potlatch Corporation (PF, Docs. SSW-7, SSW-21, ST-3, and ST-5) and Idaho Department of Lands (PF, Docs. SA-4 and SA-4a), which included private activities permitted by the State (PF, Doc. SA-5, Vol. II). The project GIS layers were updated with this information for the effects analyses (PF, Doc. ST-4).

Additional effects analyses were completed by the Forest for the FSEIS (2007) to update the water yield from non-Forest and private lands using the new information (PF, Doc. SSW-13). The analysis information was disclosed in the FSEIS (pp. 260 to 262). The discussion on sediment (FSEIS pp. 258 to 259 and 289 to 290) and water yield (FSEIS, p. 291) is accurate and considers logging activities on private land. The analysis is in compliance with NEPA's requirement to use high quality scientific analysis [40 CFR 1500.1(b) and 1502.24].

**Issue 5. There is no high quality information in the fisheries section of Chapter 3 regarding the project's impacts to fisheries and fisheries habitat from the cumulative effects of past FS, State of Idaho, and Potlatch timber sales, in violation of NEPA.**

**Response:** The Hidden Cedar Project FSEIS (pp. 88, 104, and 106 to 131) and the original project files (CD#3 – pp. 3, and 5 to 7) disclose the analysis of fisheries and fish habitat. The analysis methodologies have been established through close coordination with the State and other federal agencies (FSEIS, pp. 90 and 99). The FSEIS provides rationale (pp. 122 to 123) for its determination of effects to the West Fork St. Maries fisheries and the project's compliance with Forest Plan standards and laws (p. 131). The FSEIS (Appendix F) disclosed the Biological Assessment and Biological Evaluation for fisheries and the concurrence by the USFWS. The fisheries analysis is in compliance with ESA, NEPA, and NFMA.

**Issue 6. The 2007 Hidden Cedar FSEIS and ROD fail to address EMS rules and regulations as they apply to this project, and the Forest Service did not notify citizens in the Hidden Cedar DSEIS that the EMS process was in effect in June 2006.**

**Response:** Executive Order 13423 requires federal agencies to implement environmental management systems; and while an EMS can complement aspects of the NEPA process, it is neither a rule nor a regulation requiring analysis or consistency findings. The Forest Service presented information about EMS during public meetings for the Proposed Land Management Plan during the month of May 2006 in communities around the IPbNF, including Coeur d'Alene and St. Maries. The project documentation is in compliance with NEPA.

**Issue 7. The Forest is in violation of NFMA soils requirements because the ROD and FSEIS fail to provide high quality information or expert agency comments to ensure that required soil monitoring and mitigation would occur, particularly in units 36 and 48, or that there would be sufficient funds to do them.**

**Response:** As discussed in the FSEIS (pp. 208 to 210), for each alternative, the detrimentally-disturbed acres were calculated using coefficients based on past IPNF soil monitoring data. The coefficients were developed as an average soil disturbance level and were equated to harvest equipment, time of year (summer vs. winter), fuel treatment methods, and whether or not fuel treatment took place prior to 1990. Since the coefficients are based on an average, the areas that have had prior harvest activities could have soil disturbance levels lower or greater then the coefficient's average. This monitoring information is contained in Forest Plan Monitoring and Evaluation Reports and is summarized in the IPNF Soil NEPA Analysis Process (Niehoff, 2002). The direct and indirect effect analyses took into account the acres and types of proposed logging, burning, roads, and landings.

Monitoring after 1990 represents management activities which have implemented updated BMPs. All monitored sites have been adjusted to represent detrimental disturbance based on the updated Regional Soil Quality Standards (PF, Doc. SSW-49). Each proposed harvest unit was field reviewed by the District hydrologist or trained members of the hydrology crew (PF, Doc. SSW-48) to verify existing soil conditions by conducting the "Onsite Assessment Method" outlined in Niehoff (2002) (PF, Doc. SSW-49).

The protocol for field investigation of the soil condition involved two procedures: 1) random transects within proposed harvest units with sampling for compaction, large woody debris, and surface organic material; or 2) 'walk-through' verification of past activities with random sampling for compaction and surface organic material. Potential disturbance for the soil resource was determined using Niehoff's (2002) guidelines for soil analysis, the Soil Disturbance Spreadsheet Model (PF, Docs. SSW-40 and SSW-49), and field verification (PF, Doc. SSW-22). This analysis includes potential effects from proposed logging systems, temporary roads, landings, roads, and fuel treatments on soils. The spreadsheet model estimates detrimental disturbance on proposed harvest units for each harvest and fuel treatment method based on empirically-derived coefficients obtained and averaged from numerous monitored sites throughout the Idaho Panhandle National Forests (Forest Plan Monitoring and Evaluation

Reports 1988, 1991, 1993, and 1997; Process and Source of Soil Disturbance Model Coefficients by Jerry Niehoff, October 2002).

All treatment units will meet the Forest Plan Soils Standard of maintaining acceptable productivity on 80 percent of activity areas (FSEIS, pp. 236-237). The analysis (FSEIS, Table 3-50) for Alternatives B and F shows that Unit 36 would exceed Regional soil quality guidelines **if** the unit is harvested using both ground-based and helicopter yarding. In response to public concerns and the Forest's desire to maintain soil productivity, the Forest Supervisor decided to only conduct helicopter yarding in Unit 36 (ROD, p. 47; FSEIS, Appendix E, p. 6), which would result in an estimated disturbance level of only 2 percent (FSEIS, p. 237).

Units 40 and 48 would be at thresholds for detrimental soil disturbance (FSEIS, p. 224). In response to public concerns and the Forest's desire to maintain soil productivity, the Forest Supervisor decided to drop Unit 40 (ROD, p. 47). After harvest is completed on Unit 48 the Forest will monitor the impact to the soil resource. If the post harvest monitoring indicates that the detrimental impacts are beyond the Forest Plan Standards or the Regional Soil Standards, up to 2 acres of skid trails would be decompacted (ROD, p. 47). This is expected to bring the total detrimental disturbance down to 15 percent (FSEIS, Table 3-50, p. 226).

Regarding funding, the Deciding Official decided on the amount of work that could be accomplished based on past budgets. While the Forest's budget is always uncertain from year to year, the Forest Supervisor states, "more watershed improvement activities, such as road decommissioning and long-term storage, could be proposed, but I feel this is what we can accomplish based on what watershed improvement work has been completed since the original 2002 ROD and anticipating continued flat or slowly declining budgets." The Deciding Official addresses the concern about how much work can be accomplished, including the required monitoring and mitigation, based on funding levels.

I did note there is a typographical error in Table 3-51 (FSEIS, p. 228) showing 34 percent disturbance for Unit 41 under Alternative F. After further review, the project file indicates the correct amount is 4 percent, rounded up from 3.5 percent (PF, Doc. SSW-40). The Forest is in compliance with NFMA soils requirements to ensure the required monitoring and mitigation, and to maintain soil productivity.

**Issue 8. Old Growth.**

**Issue 8, Contention 1. The Forest's failure to respond to the issue of 2005 and 2006 monitoring indicates that no Forest-wide old growth monitoring took place during those years. The ROD and FSEIS did not address the issue of missing Forest-wide old growth surveys.**

**Response:** The Hidden Cedar Project ROD (p. 46); and FSEIS (pp. 165 to 169), Appendix E, Response to Comments (pp. 24 to 27) details the regulatory framework, analysis area, assumptions and methods, and Response to Comments (especially #6-49 through #6-57) regarding old growth and latest science (PF, Docs. SOG-1, 3, and 11). The IPNF Forest Plan Monitoring and Evaluation Report—2004 discloses Forest-wide monitoring assumptions and

results (PF, Doc. SOG-11). The FSEIS discloses obtaining very recent monitoring data for the old growth analysis units in the project area. This analysis is consistent with Forest-wide monitoring procedures and standards (pp. 168 to 169) outlined in the Forest Plan and discussed in the 2004 monitoring report. The FSEIS is in compliance with NEPA and NFMA.

**Issue 8, Contention 2. The analysis in the FSEIS does not ensure preservation of sufficient old growth to provide for diversity of plant and animal communities, in violation of NFMA and the Forest Plan for the IPNF.**

**Response:** It is clear from the FSEIS there will be no road construction, timber harvest, or other activities proposed within allocated old growth and there would be no direct, indirect, or cumulative effects from the project on old growth (FSEIS, pp. 167 to 168). It is also clear from the FSEIS that the project area and the Forest as a whole are in compliance with the Forest Plan requirements for old growth (FSEIS, pp. 168 to 169). The project and the Forest are in compliance with the Forest Plan and NFMA.

**Issue 8, Contention 3. Since the old growth inventory is suspect and/or inaccurate, old growth species viability is at risk in the Hidden Cedar project area.**

**Response:** Even though no old growth stands would be affected by the project, the wildlife biologist analyzed the impact the project would have on old growth species in the project area (FSEIS, pp. 324 to 348). The wildlife biologist determined the project would not result in appreciable adverse habitat modification or a perceptible change in the populations of management indicator species (MIS). The project is in compliance with NEPA and NFMA.

**Issue 8, Contention 4. The FSEIS discloses that the old growth in the project area is fragmented, but fails to disclose the implications of this indirect degradation of old growth in terms of maintaining or assuring population viability of old growth MIS and sensitive species.**

**Response:** The Hidden Cedar Project FSEIS discusses the whole project area being "naturally fragmented" for various reasons (p. 316). The project is determined to be consistent with IPNF Forest Plan standards and guidelines for old growth patch size (p. 316) and amounts (pp. 168 to 169). The FSEIS discusses direct and indirect effects to connectivity (p. 322) and species that may use old growth (and other similar habitats), including pileated woodpecker (pp. 324 to 328), and several sensitive species (pp. 337 to 348) in the context of viability and population dynamics (Samson, 2005). The FSEIS is in compliance with NEPA and NFMA.

**Issue 8, Contention 5. Monitoring of population trends is needed for the FS to understand cumulative management impacts on old growth MIS and sensitive species; but the FS has not obtained this important inventory information.**

**Response:** The Forest Service has obtained information and monitoring data pertinent to MIS and sensitive species. The FSEIS analyzed the impact the project would have on MIS and sensitive species including pileated woodpecker, marten, goshawk, elk, moose, wolverine, black-backed woodpecker, flammulated owl, Coeur d'Alene salamander, boreal toad, pygmy nuthatch,

and fringed myotis. The Hidden Cedar Project ROD (pp. 38 and 48), FSEIS (pp. 301 to 306, 325 to 328, and 337 to 348), FSEIS, Appendix E, Response to Comments (pp. 23 to 30), and the project file (PF, Docs. SWL-7 through 40, Samson 2005, Kowalski 2006 and IPNF 2003 Monitoring Report) detail the regulatory framework, assumptions and methods, and results of IPNF monitoring of MIS and sensitive species. The FSEIS is in compliance with NEPA and NFMA.

**Issue 8, Contention 6. The FSEIS fails to disclose that the FS has failed to monitor the population trends of its old growth MIS, including pine marten, pileated woodpecker, and the northern goshawk.**

**Response:** The IPNF Forest Plan says that the State will monitor MIS annually and report every 5 years (Table IV-2, Item F-1, p. IV-11). The 2003 Monitoring Report contains information on MIS as required by the Forest Plan. The FSEIS is in compliance with NEPA and NFMA.

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 PIEPER
Appeal Reviewing Officer

cc:
Forest Coordinator
Responsible Official