



File Code: 1570/1920

Date: November 5, 2009

John D. Austin, Jr
Patton Boggs LLP
2550 M Street, NW
Washington DC 20037-1350

RE: Request for Stay of Implementation of Floating Prohibitions on the Upper Chattooga River, Project Appeals #10-08-03-0022, 10-08-11-0023, and 10-08-12-0024

Dear Mr. Austin:

I have received your October 29, 2009, "Request for Stay of Implementation of Floating Prohibitions on the Upper Chattooga River" related to the Upper Chattooga River decisions amending the Forest Plans on the Sumter, Chattahoochee, and Nantahala National Forests (August 2009). The Decisions approving the Forest Plan Amendments are currently under appeal. The groups you represent (American Whitewater, American Canoe Association, Atlanta Whitewater Club, Georgia Canoeing Association, and Western Carolina Paddlers) submitted a timely appeal on these decisions on October 19, 2009.

Your request stated that the actions to be "stopped" include; 1) "The 2009 Boating Bans" and 2) "All Prior Boating Bans."

Reasons for Request

You stated that there would be **adverse effects on the boating parties**, specifically you claim that the Boating Parties and their members will continue to suffer an unlawful ban on their statutorily-protected right to float the entire Chattooga Wild and Scenic River. You further state that members of the Boating Parties are irreparably harmed by their exclusion from a spectacular natural resource that was protected by Congress expressly for the type of use they wish to enjoy. You also state that the stay is necessary to end the arbitrarily unequal, and unlawful, treatment of one class of recreational users.

You stated that there would be **harmful site-specific impacts or effects on resources**, in the area affected by the actions to be stopped. Specifically, you claim that implementing the Decision Notices will preclude the possibility of conducting a valid User Capacity Analysis as required by the WSRA and the USFS Chief's 2005 decision.



You further stated that without a stay the effects and impacts associated with implementation **would prevent a meaningful appeal decision on the merits** of the appeal issues. Specifically, you claim that a meaningful User Capacity Analysis of the impacts associated with floaters cannot be conducted without floaters being present on the river.

This information you have provided meets the requirements of the Optional Appeal Procedures (Section 10) for a stay request.

Under the Optional Appeal Procedures (Section 10)(c)), requests to stay implementation of a specific project or activity will be considered where the project or activity would be implemented before a decision on the merits of the appeal could be rendered. I expect a decision on your appeal, as well as others who have appealed this project, to be signed in March or April 2010. Therefore, I have further considered your request for stay.

Analysis and Decision on Stay Request

Your request for stay of “The 2009 Boating Bans” and “All Prior Boating Bans” is denied. Pursuant to the Optional Appeal Procedures (Section 10(f)(1-4)), I have considered the information provided by you, considered the effect that granting the stay you have requested would have on preserving a meaningful appeal on the merits and other factors I have considered relevant to the decision.

The decisions at issue and currently under administrative appeal concern amendments to the three affected Forest plans. These decisions, among other things, allow for additional boating opportunities. A total of 5 administrative appeals have been filed. Each appeal raises issues that the Forest Service must review. Due to the volume and complexity of issues raised in these appeals, a stay of implementation for the decisions at issue was already granted on October 26, 2009. A stay of the implementation of the decisions at issue allows for a meaningful appeal process to proceed based on the merits of each issue raised by all of the appellants. Thus, the status quo (the existing management of the river in effect prior to August 25, 2009; the date all three Forest Supervisor decisions were signed) is preserved and currently in effect until a decision is finalized on each of the appeals filed. As a result, the agency will refrain from implementing the decisions at issue until the final administrative decision by the Department of Agriculture is made for each of the appeals.

My decision on your stay request in no way prejudices the issues raised in your or others’ project appeals. A meaningful review of all appeal issues will be conducted based on their merits, and independent of this stay decision. I encourage your continued involvement in local decision-making.

John D. Austin, Jr.

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Sincerely,

/S/ KEN S. ARNEY

KEN S. ARNEY

Reviewing Officer for the Regional Forester