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October 20, 2009

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VIA US MAIL AND E-MAIL

APPEALS-SOUTHERN-REGIONAL-OFFICE@FS.FED.US

USDA Forest Service
Attn: Appeal Reviewing Officer
1720 Peachtree Road, NW, Ste. 811N
Atlanta, GA 30309-9102

Re: Stay Request for Boating Provisions of the Proposal for Management of the Upper Chattooga River

Dear Appeal Reviewing Officer:

On behalf of Georgia ForestWatch, we hereby request a stay of any and all activities and projects implementing the management changes contained in or permitted by the joint decision to adopt the management direction of "Alternative 4" presented in the *Environmental Assessment: Managing Recreation Uses on the Upper Chattooga River* in the Sumter, Chattahoochee, and Nantahala National Forests (August 2009) (hereinafter "EA"), and the three separate decisions by the three responsible officers to amend the Forest Plans of each of these National Forests. These decisions are established in the following documents (hereinafter collectively referred to as "Decision Notices"):

- (1) Decision Notice and Finding of No Significant Impact for Amendment #1 to the Chattahoochee-Oconee National Forests Revised Land and Resource Management Plan Managing Recreation Uses on the Upper Chattooga River (Published in the Times on September 3, 2009); deciding officer: Forest Supervisor George Bain (Decision Notice signed on August 25, 2009) (hereinafter "Chattahoochee DN");
- (2) Decision Notice and Finding of No Significant Impact for Amendment #1 to the Sumter National Forest Revised Land and Resource Management Plan Managing Recreation Uses on the Upper Chattooga River (Published in The State on September 4, 2009); deciding officer: Forest Supervisor Monica J. Schwalbach (Decision Notice signed on August 25, 2009) (hereinafter "Sumter DN"); and
- (3) Decision Notice and Finding of No Significant Impact for Amendment #22 to the Nantahala and Pisgah National Forests Revised Land and Resource Management Plan

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Managing Recreation Uses on the Upper Chattooga River (Published in the Asheville Citizen-Times on September 4, 2009); deciding officer: Forest Supervisor Marisue Hilliard (Decision Notice signed on August 25, 2009) (hereinafter "Nantahala DN").

We submitted an administrative appeal on behalf of Georgia ForestWatch of these same decisions on October 19, 2009. Georgia ForestWatch has been actively involved (submitting comments and attending public meetings) in the entire planning process for the Upper Chattooga that resulted from American Whitewater's appeal of the Forest Service's plan to continue over thirty years of management of the Chattooga Wild and Scenic River Corridor through zoning activities designed to preserve solitude and protect natural resources.

I. SPECIFIC ACTIVITIES AT ISSUE

Provisions of the three Decision Notices will result in changes to the Land and Resource Management Plans for the Chattahoochee, Sumter and Nantahala National Forests that would, for the first time since designation of the Chattooga River as a Wild and Scenic River, allow boating between the confluence of Norton Mill Creek in North Carolina and Burrells Ford Bridge in South Carolina between December 1 and March 1 at flow levels of approximately 450 cfs or higher. Changes to management of large woody debris and trails, and the construction of a parking lot for floaters wishing to access the Upper Chattooga River apparently will follow from the changes to the three management plans.

II. REASONS WHY THE STAY SHOULD BE GRANTED

A. Adverse effects on requester

Immediate loss of solitude/all options for a boat-free experience. Georgia ForestWatch members frequently visit the Chattooga River corridor for recreation, nature study and spiritual renewal. As a result of the Decision, members and other visitors who traditionally have hiked many miles to this remote section of Wild and Scenic River for the solace of solitude and back-country challenge will find their experience negatively transformed during high water events as groups of boaters with easier access are able to quickly penetrate into the wilderness areas. There is no other option within the Wild and Scenic Chattooga Corridor for users seeking this experience. Boating is allowed on the lower two thirds of the protected River, where, as a result, the character is much less wild, less isolated and noisier.

Permanent change in character. The anticipated impacts to resources (discussed in detail in the next section) would permanently change the character of the Upper Chattooga and therefore diminish the experience of visitors to the area, including Georgia ForestWatch members.

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Unjustified commitment of funds. Construction of a parking lot specifically for floaters is proposed and scoping is scheduled immediately.¹ This expense will be unnecessary if Georgia ForestWatch prevails in its appeal because no users for the proposed parking lot have been identified besides floaters, who would use the parking lot on approximately six days of the year. This activity does not yet exist and there is no urgent need for anyone to float the Upper Chattooga. Therefore, it does not make sense to direct limited resources to planning for this parking lot until Georgia ForestWatch's appeal has been resolved.

Even though the administrative appeals process is ending, American Whitewater has filed a lawsuit in federal court seeking to open all of the Upper Chattooga and its headwaters to floating without restriction. If American Whitewater prevails, any money spent implementing the management direction in the three Decision Notices would be wasted as much more intensive use would have to be addressed (e.g. more miles of monitoring for LWD impacts, larger or more numerous parking areas in perhaps different locations, different endangered species management planning, and greater commitment of resources to enforcement). The court has denied American Whitewater's motion for a temporary restraining order and has stated that it will not hold a hearing on American Whitewater's motion for preliminary injunction before January, 2010, at the earliest. The court has rejected American Whitewater's urgent request to intensify boating and so should the Forest Service until pending processes of administrative and judicial review clarify appropriate management of the Upper Chattooga.

B. Harmful site-specific impacts or effects on resources

Removal of Large Woody Debris. Large woody debris (LWD) forms a key component in the aquatic food chain of cold-water rivers like the Chattooga; removing it will harm the Upper Chattooga and surrounding wilderness ecosystems. Although the changes to the management plans directed by the Decision Notices would forbid removal of LWD from the Upper Chattooga for recreational purposes, such bans have not dissuaded boaters on other regional rivers from chain sawing out the strainers and dead and dying hemlocks. This temptation will only grow as the Eastern hemlock dies off, filling the River with more and more branches. Furthermore, it is unclear that the amendments to the management plans would prevent removal of LWD for floater safety concerns.

Erosion. The parking lot and put-in and take-out locations for boating that are proposed by the Forest Service will put new pressures on the Upper Chattooga and create new access to a section of river that is now protected by its remoteness. New access, scouting,

¹ See *Schedule of Proposed Actions* for the Forests in North Carolina for October through December 2009 (available at: <http://www.fs.fed.us/sopa/components/reports/sopa-110811-2009-10.pdf>).

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and portage trails, many created by users and of poor quality, will further fragment this valuable and rare Wilderness area. Access is proposed at the “confluence of County Line Road with Norton Mill Creek.” This is not a system trail or road. Nevertheless, a parking lot is proposed for this location, which will encourage the use of this unauthorized trail/road. It is unclear how the Forest Service proposes to fund maintenance of this access route. Unmaintained roads are a major source of sediment, so routing an entire user group down an unmaintained road could quickly result in significant harm to the natural resource for which no financial resources are designated for repair.

Ninety percent of the existing Eastern hemlock is forecasted to be dead within five to ten years. As these trees die, bank stability will decrease and more LWD will fill the Upper Chattooga. Boaters following the rule against removal of LWD will be forced to portage frequently on banks of decreasingly stability. Understory vegetation will be unable to take root and stabilize banks where portage and scouting trails are established.

User Conflict. The issue of opening the Upper Chattooga to boating is already highly charged. Changing management in a way that is certain to create actual, as opposed to theoretical, conflicts between user groups will further polarize and enflame the already contentious issue. This will diminish the experience of all user groups.

III. A STAY IS NECESSARY TO PRESERVE THE STATUS QUO AND THE RIGHT TO A MEANINGFUL APPEAL ON THE MERITS

Avoid establishing pattern of use. Once boaters have access, become familiar with the Upper Chattooga, and establish portage and approach routes, it is unlikely that it will be possible to cause all boating use to cease should Georgia ForestWatch be successful in its appeal. Furthermore, encouraging one user group to access the River on a non-system “trail” or “road” will probably result in others using the same route, especially if a parking lot is constructed as proposed. Furthermore, encouraging the use of this particular “trail” will suggest that use of such “trails” throughout the three national forests is officially encouraged or at least permitted.

Inadequate resources to maintain current natural resource quality with the addition of new uses. The Forest Service lacks the manpower and financial resources necessary to monitor and enforce the terms of the limited boating that is proposed. Actual use likely will be much greater than suggested by the EA, amplifying the negative effects discussed above. Already, the Forest Service is proposing construction of a new parking lot to accommodate floaters when existing forest management needs are going unmet, such as addressing hemlock die-off, reducing litter, and reducing sedimentation from existing roads, parking areas, trails and campsites.

Inadequate systems in place to manage resource. Management of the Upper Chattooga is made many times more complex because three states, three national forests

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and three different ranger districts are involved. There is no indication that a plan to coordinate management of use of the Upper Chattooga between the three forests has been or will be developed. This is necessary even if the current prohibition on boating this part of the river is maintained; it is critical if boating is allowed.

Parts of this Wilderness area are difficult to reach by foot, which will make monitoring for resource damage a challenge. Managing this area is already a challenge for the Forest Service, evident in the trash and multiple user created trails that already mar the otherwise pristine area. Opening the area to yet another use—and one encouraged to access the wilderness on an unauthorized trail—is not responsible without a plan in place for addressing the problems that access will cause (discussed above).

IV. STAY REQUESTED

We request that a stay of any and all activities or projects implementing the management changes contained in or permitted by the decisions be imposed immediately and continue until such time as either:

- (1) Georgia ForestWatch prevails in its appeal of the decision to allow boating on the Upper Chattooga; or
- (2) A single written cooperative management plan is developed and entered into by each of the three national forests involved in the management of the Upper Chattooga and funding has been identified for its implementation so that boating management, monitoring, and enforcement is not fragmented by forest.

We look forward to your response within ten days of receipt of this request. Please do not hesitate to contact me with any questions.

Sincerely,



Rachel S. Doughty
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

cc:

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