



**File Code:** 1950  
**Date:** December 30, 2015

Kevin Colburn  
National Stewardship Director  
American Whitewater  
PO Box 1540  
Cullowhee, NC 28723

Dear Mr. Colburn:

This letter is in response to your objection, dated July 10, 2015, on behalf of American Whitewater, to the Chattooga River Boating Access Project located on the Nantahala Ranger District of the Nantahala National Forest. I have read your objection, reviewed the Environmental Assessment (EA), and the analysis in the project file, and I understand the disclosed environmental effects. My review was conducted in accordance with 36 CFR 218 Subparts A and B.

#### **NON-HFRA PROJECT BACKGROUND**

The administrative review of the Project has been conducted under 36 CFR 218 Subparts A and B in which the objector provides sufficient narrative description of the project, specific issues related to the project, and suggested remedies that would resolve the objection (36 CFR 218.8 (d)(5)).

These regulations also allow for the parties to meet in order to resolve the issues (36 CFR 218.11(a)). On September 25, 2015, District Ranger Mike Wilkins, Administrative Review Coordinators James Knibbs and Heather Luczak, and I met with you by conference call to discuss your concerns about the project and analysis.

I have reviewed and considered the project in light of the issues presented in your objection letter. I appreciate that you have taken an interest in the proposal, and that you have taken the time to discuss your objections and concerns with me. This letter summarizes your issues, as presented in your objection letter and provides the Forest Service response to these concerns.

#### **ISSUE REVIEW<sup>1</sup>**

**Issue 1:** In your objection you stated, "The Decisions fail to explicitly state that paddling will be neither permitted nor prohibited on the Chattooga River upstream of Green Creek, which the agency confirmed is the present management in Federal Court filings. The agency response to our comments on this issue in the EA was vague. This lack of clarity could wrongly lead to

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<sup>1</sup> For purpose of clarity, *Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor Environmental Assessment* is referred to in this document as the 2012 EA. The associated Decision Notices from the three Forest Supervisors are referred to as the 2012 Decision Notices. *Chattooga River Boating Access Environmental Assessment* is referred to in this document as the Boating Access EA or the 2015 EA.



revisions of permit language or 36 CFR 261.77 prohibiting paddling on this reach which are inconsistent with claims made in Federal Court, as well as without basis. This reach was explicitly determined to be out of scope of the 2012 decisions from which the Decisions at issue in this Objection tier. See Draft Decision Notice and FONSI at 2 (first decision bullet point) and 6. See also EA at 120-122.”

**Suggested Remedy:** American Whitewater recommends that the 2015 decision clearly state that the Forest Service does not prohibit paddling upstream of Green Creek, or state that no permit is required for floating above the point 200 feet upstream of Green Creek.

**FS Response:** The scope of this decision is limited to the designation of managed access points on the river and is tiered to the 2012 EA.

The 2012 Decision Notice (DN) stated that the selected alternative will “Require boaters to start or complete their trip only at specific boater put-ins and take-outs, which will be designated after site-specific NEPA analysis and will be a condition of the self-registration boating permit.”

Amendment 22 of the Nantahala and Pisgah National Forests Forest Plan states under standard a1:

Floating on the Chattooga River is not allowed upstream of the Highway 28 bridge except non-commercial boating is allowed on approximately 17 miles of the 21-mile main stem only from December 1 to April 30 from the confluence of Green Creek downstream to the designated take-out within one-quarter mile downstream of the Lick Log confluence by issuance of a self-registration boating permit consistent with 36 C.F.R. § 261.77, with the following conditions:

- A. Boating is allowed from the time that flows reach 350 cfs or greater at the USGS Burrells Ford gauge during daylight hours. Once boating is allowed, it may continue until 30 minutes after official sunset on that same day.
- B. Boaters must use tandem/single-capacity hard boats or tandem/single-capacity inflatable boats;
- C. Boaters must start or complete their trip at specific put ins and take outs at the following locations:
  - 1. Within one-quarter mile downstream of the Green Creek confluence;
  - 2. Within 500 feet of the Norton Mill Creek confluence;
  - 3. Within one-quarter mile of Bullpen Bridge;
  - 4. Within one-quarter miles of Burrells Ford Bridge; and
  - 5. Within one-quarter mile downstream of the Lick Log Creek confluence.

Similarly, the 2015 Draft DN states that the selected alternative will “Designate trails and require boaters to start or complete their trip only at specific boater access points...”

The 2012 EA states:

“Navigability and public access rights on this reach have not been formally analyzed by any federal or state agency or authority, nor has its navigability been adjudicated by a court of law. Public access rights and navigability are complex topics, and the outcome of a formal analysis or adjudication for the upper segment of the Chattooga WSR is uncertain. According to FSM 2354.14 - Navigability of Rivers, “Most rivers in the country have not been adjudicated as navigable or non-navigable. Consider them non-navigable until adjudicated otherwise.

Until decisions about boating are made for the sections of the river with public land along them, or public access rights on this reach are determined, the U.S. Forest Service considers this decision to be beyond the current scope of analysis.”

As stated in both the 2012 Decision Notice and 2015 Draft Decision Notices, boaters may only begin or end at designated put-ins or take-outs. The permit conditions will be changed to be consistent with the final decision. The decisions and boating permits would apply only to National Forest lands.

**Issue 2:** The Decisions unnecessarily, dangerously, and unfairly require paddlers to launch in specific zones while allowing all other visitors to access the river wherever they choose. See draft Decision Notice and FONSI at 2. See also EA at 122-123.

**Suggested Remedy:** Allow paddlers to access the Upper Chattooga where they choose just like other visitors.

**FS Response:** The scope of this decision is limited to the designation of managed access points on National Forest System lands on the river. The document is tiered to the 2012 EA and DNs which made the broader decision on boater use and to designate specific boater access points. Modifying the decision, also known as Amendment 22 of the Nantahala and Pisgah National Forests Land and Resource Management Plan is outside the scope and purpose of the Boating Access EA. The rationale behind designating access is described on page 4 of the Boating Access EA. Boater safety was addressed in the 2012 EA on page 467.


## SUMMARY

After careful review of the issues presented in your objection letter, I have concluded that there is adequate direction in place (or to be in place once the decision is signed and implemented) to ensure that the proposed actions are being authorized as stated in the Environmental Assessment and Decision Notice/Finding of No Significant Impact.

This letter meets the requirements for resolution of objections (§218.11(b)(1)) and, therefore, concludes the administrative review process for this objection (§218.11(b)(2)). Based on this response, Nantahala District Ranger Mike Wilkins, Chattooga River District Ranger Edward Hunter Jr. and Andrew Pickens District Ranger Robert Sitzlar may sign their decisions (36 CFR 218.12 (a) and (b)) and implement the project as soon as practicable. This response is not subject to further administrative review by the Forest Service or the Department of Agriculture (36 CFR 218.11 (b)(2)).

Thank you for participating in the process. I appreciate the time and thoughtfulness you have given to this project.

Sincerely,



JAMES MELONAS  
Acting Forest Supervisor

