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July 13, 2015

By Email:

Reviewing Officer: Kristin Bail Forest Supervisor
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Reviewing Officer: Forest Supervisor
Chattahoochee-Oconee National Forests ("Chattahoochee")
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Reviewing Officer: Forest Supervisor
Francis Marion and Sumter National Forests ("Sumter")
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Re: Chattooga River Boating Access Project

Dear Objection Reviewing Officer:

This letter contains the objection of Georgia ForestWatch ("ForestWatch"), pursuant to 36 C.F.R. Part 218, to each of the following:

1. Nantahala District Ranger Michael Wilkins's Draft Decision Notice and Finding of No Significant Impact ("Nantahala Decision Notice")
2. Chattooga River District Ranger Edward Hunter Jr.'s Draft Decision Notice and Finding of No Significant Impact ("Chattahoochee Decision Notice")
3. Acting Andrew Pickens District Ranger Jennifer Barnhart's Draft Decision Notice and Finding of No Significant Impact ("Sumter Decision Notice")
4. The Environmental Assessment for Chattooga River Boating Access ("Access EA") supporting the above for the Chattooga River Boating Access Project ("Project") in the Nantahala, Chattahoochee, and Sumter Forests ("Forests")

Collectively, the Nantahala Decision Notice, Chattahoochee Decision Notice, and Sumter Decision Notice shall be referred to as the "2015 Access Decision Notices".

GEORGIA FORESTWATCH

ForestWatch has a longstanding interest in how the Wild and Scenic Chattooga River¹ is managed. ForestWatch is a grassroots, nonprofit membership organization headquartered in

¹ The Chattooga Wild and Scenic River itself shall be referred to herein as the "Chattooga" or the "River." When reference is made only to the portions of the River above the Highway 28 Bridge, the term "Upper Chattooga" shall be used, and when reference is made only to the portion of the River below the Highway 28 Bridge, the term "Lower

northern Georgia. ForestWatch advocates for the application of science-based management of public lands to first and foremost protect natural resources. ForestWatch also advocates for responsible and equitable low-impact recreational use of the Forests. A primary goal of ForestWatch is to protect and restore the wildness and natural systems of the region's public lands, including the Chattooga Corridor and the Ellicott Rock Wilderness. ForestWatch actively endeavors to protect the natural environment in the Forests and other public lands adjacent to these Forests, from the adverse impacts of human development, and has been an active participant in the planning process for the Forests. ForestWatch regularly comments on projects, volunteers with trail maintenance, and has helped fund a collaborative effort of multiple user groups on the Chattahoochee-Oconee National Forests to establish sustainable trail use.

BACKGROUND

In August 2012, acting upon pressure from recreational boaters, the Forest Supervisors for the Forests issued three independent decisions (collectively, the "2012 Decisions") altering decades of management of the Chattooga Corridor.² The Management changes affected by the 2012 Decisions included allowing boating on the Upper Chattooga for the first time in three decades, and directing users to access the Corridor on erosive user-created trails, while purporting to apply an adaptive management framework. The Forest Service's 2012 Decisions, and the analysis in support thereof, violated the Wild and Scenic Rivers Act ("WSRA") (16 U.S.C. §1271 *et seq.*), the National Forest Management Act ("NFMA") (16 U.S.C. § 1600 *et seq.*), the National Environmental Policy Act ("NEPA") (42 U.S.C. §§ 4321-4370), and the Forest Service's own regulations ("Access Regulations") (36 C.F.R. § 261.77). As a result, ForestWatch sued.³ Because this decision is tied to the illegal 2012 Decisions and the *Environmental Assessment: Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor* (January 2012) ("2012 EA") supporting those decisions, the 2015 Access Decision Notices and Access EA are also illegal and invalid.

Chattooga" shall be used. The terms "Corridor" or "Chattooga Corridor" shall mean the land adjacent to the River included within the boundary of the Wild and Scenic River Act designation and managed pursuant thereto.

² Specifically, the "2012 Decisions" are:

Decision Notice and Finding of No Significant Impact: Amendment #22 to the Nantahala and Pisgah National Forests Land and Resource Management Plan, Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor (signed by Acting Forest Supervisor Diane Rubiaco on January 31, 2012);

Decision Notice and Finding of No Significant Impact: Amendment #1 to the 2004 Revised Land and Resource Management Plan Chattahoochee-Oconee National Forests, Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor (signed by Forest Supervisor George Bain on January 31, 2012);

Decision Notice and Finding of No Significant Impact: Amendment #1 to the 2004 Revised Land and Resource Management Plan Sumter National Forest, Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor (signed by Forest Supervisor Paul Bradley on January 31, 2012).

³ That case has been briefed and is awaiting a decision from the United States District Court for the District of South Carolina (Civil Action No. 8:12-CV-3455-MGL).

From 1976, when the Chattooga Wild and Scenic Development Plan was published in the Federal Register, floating (including boating, rafting, and tubing) was assigned to the 37 miles of the River located below the Highway 28 Bridge (Lower Chattooga), while recreational management of the 20 miles above the bridge (Upper Chattooga) focused on those seeking a more solitary, remote experience, including fishermen, hikers, and those engaged in nature study. 41 Fed. Reg. No. 56, 11847, 11849 (March 22, 1976), p. 11819. At the time of designation in 1974, an estimated 21,000 floaters used the River each year. *Id.* at 11850. At present as many as 89,000 boaters a year run the sections of the Lower Chattooga—over four times the number of boaters in 1974. Sumter LRMP, p. 2-24. Within the region where the Corridor is located, recreation use is expanding and predicted to increase by 20 percent over the next decade. 2012 EA, p. 156. Already the National Forests in North Carolina are the second most visited national forest(s) in the U.S., with 5 million visitors a year. The Chattahoochee-Oconee National Forests have over 2.5 million visitors per year. Managing recreation in the Forests must be taken seriously.

The condition of the Corridor, including the Upper Chattooga, is degraded as a result of recreational pressure: it is plagued by litter, sediment, and lack of solitude. Doug Whittaker, Ph.D. and Bo Shelby, Ph.D., *Capacity & Conflict on the Upper Chattooga River*, (June 2007) (“Integrated Assessment”); *see also* Declaration of Dr. Glenn E. Haas (“Haas Declaration”); *Upper Chattooga River Visitor Capacity Analysis Data Collection Reports* (maps showing erosion points). Heavy use has generated user-created features in the Chattooga Basin, which are “chronic sediment sources.” 2012 EA, p. 297.⁴ These features are a product of dispersed recreation, and, already in the Upper Chattooga, there is “an abundance of user-created trails, campsites and stream crossings, especially in areas that are important to a variety of user groups.” *Id.* at 52. This current dispersed use is “problematic because it often occurs in areas that are most sensitive to disturbance.” *Id.* Existing features to which the 2012 Decisions direct increased use are already eroded. ForestWatch has regularly provided photographs of this damage in several previous comments.

OBJECTIONS

No Comprehensive River Management Plan

There is no current Comprehensive River Management Plan (“CRMP”) for the Chattooga Corridor. The WSRA requires that each designated river have a management plan “in the form of a single, comprehensive document [. . . in] a single, self-contained plan”—a CRMP. *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1026 (9th Cir. Cal. 2008); 16 U.S.C. § 1274(d)(2). In 1977, the Chattahoochee, Sumter and Nantahala National Forests prepared the *Chattooga Wild and Scenic Management Plan*. It was revised in 1980 (“1980 Chattooga CRMP”), and has not been updated since 1980. The Forest Service maintains that the CRMP for the Chattooga Corridor is now contained in the Land and Resource Management Plans (“LRMPs”) for the three Forests rather than in a single comprehensive document.

The lack of a single, comprehensive document causes significant procedural and substantive problems:

⁴ Because the Access EA is tiered to the 2012 EA, records referenced in that earlier document are already part of the record for this decision and so are not included as attachments. If the Forest Service does not have ready access to any record referenced in this objection letter, ForestWatch is happy to provide a copy upon request.

1. Without a CRMP there is no comprehensive management authority for the Forests, each of which may act unilaterally. None of the supervisors of the Forests are bound by the direction in the LRMPs for the other Forests. The Forest Service concedes that "[s]ince the 2014 EA will result in three separate unique decisions on three National Forests, there is nothing to preclude one National Forest from selecting the 'No Action' and another from selecting the 'Action' Alternative." Access EA, p. 129. Divergent management may result in take-outs inappropriately sized to accommodate the capacity imposed upon them by upstream put-ins.
2. Lack of a CRMP places a burden on the public, which must negotiate with three different Forests (which are not bound to take compatible positions) to resolve the objections contained in this letter and any future management conflicts for the Corridor. *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1036-1037 (9th Cir. Cal. 2008) ("*Yosemite III*") ("[the managing agency] is required to prepare a single plan, not issue supplemental volumes that simply cross-reference thousands of pages of material from [earlier plans].")
3. The Nantahala Forest is currently in the LRMP revision process and the Sumter and Chattahoochee-Oconee National Forests will soon be undergoing their forest plan revisions. Nothing requires that the Forests' coordinated management (to the extent it even now exists) be maintained in the Chattooga Corridor if conflicting pressures arise during the separate revision processes.
4. The Forest Service cannot defend its decisions regarding management of the Corridor without a CRMP. *Sierra Club v. Babbitt*, 69 F. Supp. 2d 1202, 1251, 1256 (E.D. Cal. 1999) ("The absence of a predetermined plan that sets forth allowable degrees of intrusion upon the river's ORVs renders [a management agency's] claim of no significant impact on the river's ORVs arbitrary because the basis for that determination is lacking." "Absent a qualifying 'Management Plan,' Defendants' determination that their actions were within the bounds of the 'varying degrees of protection' allowed by statute is, again, a mere post-hoc justification of project outcomes.").

Proposed Solution: ForestWatch requests that the Forest Service produce a single CRMP, *which is signed by and binding on each of the managing Forests*. Amendments to management of the River would then require the consent of each of the Forests.

Inverted Planning

By identifying the location of specific access points, the 2012 Decisions made site-specific decisions as amendments to the Forests' LRMPs. In doing so, the 2012 Decisions committed the Forest Service to future action--designation of System Trails for River access points--in violation of Forest Service regulations, which require authorization of public uses of National Forests at the project, not LRMP, level. "Forest Service planning occurs at different organizational levels and geographic scales. Planning occurs at three levels--national strategic planning, NFS unit planning [the LRMP], and project or activity planning." 36 C.F.R. § 219.2. "A [LRMP] does not authorize projects or activities or commit the Forest Service to take action. [. . .] A plan does not regulate uses by the public." 36 C.F.R. § 219.2(b)(2). Here the Forest Service has

made a plan amendment that authorizes uses and commits it to future System Trail designation in a manner that violates its own regulations.⁵

The Forest Service's failure to follow its own planning rules has resulted in the following:

1. The Forest Service artificially restrained the range of alternatives it has at its disposal for managing recreation on the Upper Chattooga in violation of NEPA.
2. Specifically, the Forest Service committed itself to allow boating before determining whether it could protect the Corridor and provide access for that use in violation of the WSRA and the Wilderness Act.

Proposed Solution: The Forest Service should withdraw the 2012 Decisions and the 2015 Access Decision Notices and examine access together with the question of appropriate capacity limits for different kinds and amounts of use of the Chattooga Corridor.

Too-Narrow Capacity Analysis

The Forest Service failed to consider users other than boaters in evaluating the impacts of various boater access trails. A central purpose of a CRMP is to have a "single, comprehensive plan that collectively addresses all the elements of the plan--both the 'kinds' and 'amounts' of permitted use--in an integrated manner." *Yosemite III*, 520 F.3d at 1036. The Secretarial Guidelines define "carrying capacity" as "the quantity and mixture of recreation and other public use which *can* be permitted without adverse impact on the resource values of the river area." 47 FR 39454, 39459 (emphasis added). The purpose identified by the Secretarial Guidelines of this capacity determination is that "[m]anagement of the river area can then be planned accordingly." *Id.* The Forest Service Handbook directs that CRMPs should "Include specific and detailed management direction necessary to meet the management objectives." FSM 2350 § 2354.32.3.

1. The Forest Service acknowledges throughout the Access EA that the access trails (most of which are user-created) have been and will be used by various recreational users, not just boaters, once they become designated system trails. The multi-use impacts have not been adequately assessed. Therefore, it is not possible to know whether user-capacities are being or will be exceeded on these trails, and whether the effects analysis is accurate.
2. The Forest Service neglected to add boating and establishing capacity guidelines to the past, present, and reasonably foreseeable actions table within the watershed. Table 3.1-1, Access EA, pp. 19-20. Therefore, the entire effects analysis is questionable.

Proposed Solution: The Forest Service must consider the impacts of all visitors, regardless of their intended use, who may use the access points evaluated in the Access EA. These impacts must be considered in the context of past, present, and reasonably foreseeable actions in the Corridor.

Violation of Access Regulations

⁵ If the Forest Service denies that it has committed itself to future action, then the basis for its finding that the 2012 Decisions do not cause significant impact to the environment—the mitigated FOINSI—does not exist on its face. See Section IV.C.4, below.

Any access must be compliant with the Code of Federal Regulations. *U.S. v. Heffner*, 420 F.2d 809, 811 (4th Cir. 1969) (“If an agency fails to scrupulously observe the rules, regulations, or procedures which it has established, the Court is required to overturn its actions.”). The Access EA acknowledges that the proposed access is not legal: “Consistent with the requirements outlined at 36 CFR 261.70, the Forest Service is planning to change 36 CFR 261.77 to more clearly reflect this new management direction for the entire length of the Chattooga WSR on national forest system lands. The change will include all portions of the river located in all three National Forests and the three States at 261.77.” Access EA, p. 146-147. This change will require formal rule making.

Proposed Solution: No boaters should be allowed access to the Chattooga who have not registered at one of the specific locations listed in 36 C.F.R. § 261.77 until the rulemaking is completed, and then only if access is consistent with the amended regulations.⁶

Limited NEPA Alternatives Analysis

For each access trail, only two alternatives were presented to the public. The no action alternative would result in: “No new trails would be constructed or designated and current access points to the river would continue to be used by boaters and other recreational users.” Access EA, p. 7. In other words, if no action is selected, boaters and other recreational users would continue to use user-created trails, which would result in continued soil erosion, stream sedimentation, and trampling of nearby vegetation. The second alternative was to accept the proposed action: “The U.S. Forest Service proposes to identify and designate trails and boater access points to facilitate boating on the upper segment of the Chattooga WSR during the designated boating season.” Access EA, p. 7.

In response to comments regarding the lack of a third alternative, the Forest Service stated:

There is no requirement that an EA include more than one alternative. Alternatives are developed to address unresolved issues. Since the [Access] EA will result in three separate unique decisions on three National Forests, there is nothing to preclude one National Forest from selecting the “No Action” and another from selecting the “Action” Alternative. The potential permutations of this scenario need not be analyzed individually as long as they are within the range of effects considered.

Access EA, pp. 129-130.

The lack of a third alternative, such as trail closure, left the public with limited choices. Given the large number of public comments indicating that five trails weren’t necessary and too many for the area, a trail closure alternative should have been provided. This was clearly a popular sentiment or “unresolved issue”.

The Forest Service’s response regarding the lack of a third alternative goes on to say that “Alternative locations were considered, but not evaluated in detail for the reasons described below (page 17 2014 EA).” Access EA, p.130. Indeed, three alternatives were suggested instead of the Greens Creek Trail, but ForestWatch is not aware of other alternatives that may have been proposed or discussed for the remaining four trails.

⁶ These locations are: “at Highway 28, Low-Water Bridge, Earl’s Ford, Sandy Ford, Highway 76, Woodall Shoals, or Overflow Bridge.” 36 C.F.R. § 261.77(a).

Although the Forest Service states in one response that trails can be decommissioned, the more economically- and ecologically-prudent course of action would have been to include “trail closure” as a third alternative.

The Forest Service has locked itself into this position by allowing boating in the prior decision in the locations where it did. This is exactly why NEPA prohibits segmentation of projects. The Forest Service did not consider the access for the boating and the implications of that, so it did not present accurately to the public the full effects of boating. Now the character of the area is being changed (per the opinion of many commenters identified in the Access EA) and discussion of that is “beyond the scope” of the decision. When the public predicted this problem in comments and appeals of the 2012 EA and 2012 Decisions, it was told that the site-specific trail decisions were beyond the scope of that decision. Therefore, the Forest Service closed out the public’s ability to protest the addition of a new use if its site-specific impacts were too great.

The Forest Service neglected to add boating and establishing capacity guidelines to the past, present and reasonably foreseeable actions table within the watershed. Table 3.1-1, Access EA, pp. 19-20. Therefore, the entire effects analysis is questionable.

Proposed Solution: The Forest Service should evaluate boating and its access in a single EA without prior constraints upon the conclusions of that analysis by arbitrary segmentation of access and use. At the very least, for each put-in and take-out an alternative of closure should be offered and evaluated.

Failure to Protect ORVs

The Forest Service has failed to address degradation of the Chattooga Corridor by sediment.

The [WSRA] expressly provides that the federal agency ‘having jurisdiction over any lands which include, border upon, or are adjacent to’ a designated river ‘*shall* take such action respecting management policies, regulations, contracts, plans, affecting such lands . . . as may be necessary to protect such rivers in accordance with the purposes of this chapter.’ 16 U.S.C. § 1283(a) (emphasis added). The plain meaning of the word ‘shall’ requires the governing federal agency to implement such a management agenda before making commitments of government resources that raise a significant likelihood of threatening the values upon which the Act is based.

Wilderness Soc. v. Tyrrel, 701 F. Supp. 1473, 1483 (E.D. Cal. 1988); *see also* 16 USC 1274(d)(1) (requiring management that is “necessary or desirable to *achieve* the purposes of [the WSRA].”)(emphasis added). The Protect and Enhance Policy of the WSRA requires that management agencies “address both past and ongoing degradation.” *Yosemite III*, 520 F.3d. at 1035.

ForestWatch has repeatedly raised concerns about sedimentation of the Chattooga as a result of recreational management. The soils of the Chattooga River area are described by the Forest Service as having “high erosive potential.” 2012 EA, p. 300. Soils are more susceptible to compaction and displacement in the winter season (when boating now is allowed on the Upper Chattooga, following the 2012 Decisions) when they are moist for longer duration and subject to freeze/thaw processes. Erosion is more likely during high river flows or intense rainstorms—the very times when boating access is proposed.

In response to our comment pointing out the current reliance on user-created trails for access when the Forest Service acknowledges they are chronic sediment sources, the Forest Service replies: “Section 3.4.1 of the 2012 EA analyzed soil erosion and sedimentation. Erosion and sediment originating from user-created trails and campsites, as well as areas with chronic erosion, are minor when compared to chief contributors such as existing roads, bridges and parking lots (Van Lear *et al.*, 1995, cited in the 2012 EA).” Once again, the Forest Service ignores that those using access features must also use roads and parking areas within the Chattooga Corridor.

The Van Lear study relied upon by the Forest Service states that:

[m]ultipurpose roads with the greatest frequency of sediment sources were generally those with heavy vehicular traffic. Heavy vehicle use, especially during wet weather, causes rutting of roads surfaces which increases the need for maintenance. Over-maintenance, as well as under-maintenance, is a major cause of sedimentation of streams in the Chattooga River watershed. (p. 20).

The study goes on to attribute most road use to recreationists, and so concludes that “much of the impacts on water quality attributed to roads might reasonably be attributed to recreational use of the watershed.” *Id.* at 26. The Van Lear study suggests “seasonal road closures during periods of heavy rains or continual freeze-thaw cycles should be employed to preserve desired road conditions, and thereby reduce maintenance costs and sedimentation impacts.” *Id.* at 42. Therefore, upon adding access for a use *that will be conducted primarily during wet weather* it is not acceptable to dismiss sediment concerns by ignoring that boaters will drive to put-ins and take outs and park in the vicinity of each. The Van Lear study certainly does not support this conclusion.

A more recent study by Pruitt *et al.* (2001)⁷ has identified accelerated sedimentation as the leading determinant in loss of habitat and reduction in bedform diversity in the Chattooga River watershed. The authors found good correlation between aquatic ecology and normalized total suspended solids (TSS) data. The results of this study showed that road density and associated sediment sources accounted for 51% of the total sediment loading in the Chattooga River Watershed (less than the Van Lear estimate). This study also emphasizes the importance of overlaying a biological index on TSS to help assess TSS (turbidity) thresholds for aquatic macroinvertebrate species.

ForestWatch does not consider the large number of user-created trails along the Chattooga Corridor as minor sources of soil erosion, sedimentation, and trampling. Although each of these would be considered a small sediment source, the cumulative impacts of all of these user-created trails on local streamwater quality and aquatic macroinvertebrate community structure are not minor. Boater access trails are a subset of the overall problem with user-created trails along the Upper Chattooga.

Kidd et al. (2014)⁸ found that water quality, as indicated by changes in macroinvertebrate indices, was lower downstream from system trail crossings than in upstream reference reaches. Their study illustrates that recreational stream crossing approaches have the potential to deliver sediment into

⁷ 2001. Pruitt BA, Melgaard DL, Howard H, Flexner MC, & AS Able. Chattooga River Watershed Ecological/Sedimentation Project. *FISC Proceedings, Federal Interagency Sedimentation Conference*, Reno, Nevada, March 26-30, 2001.

⁸ 2014. Kidd KR, Aust WM, & CA Copenheaver. Recreational stream crossing effects on sediment delivery and macroinvertebrates in Southwestern Virginia, USA. *Environmental Management*. 54:505-516.

adjacent streams, particularly where BMPs are not implemented or where approaches are not properly managed (as in user-created trails), and as a result, can negatively impact water quality below stream crossings.

Boater access trails are not just used by boaters, and the 2012 EA conclusions regarding sedimentation were based on planned improvements to campgrounds, parking areas and trails throughout the Upper Chattooga, not just access trails. To ForestWatch's knowledge, the Forest Service has taken no action to address these other features.

Proposed Solution:

The Forest Service should consider the wet-weather impact of roads, parking and trails which may be attributable to boating and other recreational uses. Final access trails should be properly-built designated trails, and all non-system trails in the Corridor should be rehabilitated and closed. Measurable water quality impacts should trigger wet-weather closure of erosive roads, trails, and parking facilities.

Finally, our earlier comments raised environmental concerns regarding user-created portage trails. We appreciate that the Forest Service will monitor the longer-term portage sites and other portage sites certain to arise from falling hemlocks. Although the Whittaker and Shelby (2007) study indicates that "most portages would likely occur within the river channel itself and only a limited number of trails would occur on the river bank" (Access EA, p. 153), hemlock log-jams, such as those illustrated in GFW-Attachment 2.Photos, will only increase in frequency. Regular monitoring will be critical to minimize further degradation of the natural resources.

Conclusion

Given the intense recreational pressure that exists today on the Chattooga Corridor, it is the duty of the Forest Service under the WSRA to protect and enhance the Chattooga's ORVs. Perhaps now is an opportune time to conduct a study to examine recreational impacts on the health and diversity of the Upper Chattooga Corridor, in particular, on water quality and biological indices.

Sincerely,



Mary Topa, Ph.D.
Executive Director
Georgia ForestWatch

Attachments (2)

GFW-Attachment 1.References
GFW-Attachment 2.Photos (*Photos courtesy of Bill Floyd*)