



File Code: 1570/1920

Date: March 26, 2012

Rachel S. Doughty, Esq.  
Greenfire Law  
231 Mullen Avenue  
San Francisco, CA 94110

Dear Ms. Doughty:

I received your March 15, 2012, request for a stay of implementation of specific projects or activities associated with the Decisions related to Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor that approve amendments to the Nantahala, Sumter and Chattahoochee Land and Resource Management Plans (LRMPs or Forest Plans). These Decisions are currently being reviewed as a result of timely submitted administrative appeals. You submitted a timely appeal on these Decisions on behalf of your clients Georgia Forest Watch, Georgia Chapter of the Sierra Club and Wilderness Watch on March 15, 2012.

Your request for a stay states that implementation of the projects or activities associated with the Decisions would, "for the first time since designation of the Chattooga River as a Wild and Scenic River, and for the first time ever in any significant number of participants, allow boating between the confluence of Green Creek and the Chattooga in North Carolina and the confluence of Lick Log Creek and the Chattooga on the Georgia-South Carolina state line between December 1 and April 30 when flows at Burrell's Ford reach 350 cfs or greater." You also stated that "[t]hese changes increase access to Wilderness- and Wild and Scenic River-designated areas and change their character; add put-ins, take-outs, portage trails, access trails, and parking areas for boaters; increase recreational enforcement and management obligations for the three National Forest; alter large woody debris management; alter the text, including definitions, of the LRMPs for each of the National Forests."

#### Reasons for Request

Your request for a stay states that there would be adverse effects to resources. Specifically, your request states that "[b]oating without officially designated put-ins, take-outs, and approach trails will cause erosion and sedimentation and will mar the beauty of the Upper Chattooga." Your request also alleges that "[r]ules must be harmonized among the three National Forests to prevent harm to resources and loss of wilderness qualities and outstanding resources values." Finally, your request states that "[e]nforcement resources must be identified and coordinated among the three National Forests to avoid disregard of the rules."

Your request for a stay states that there would be adverse effects to your client organizations. Specifically, your request alleges that there will be an immediate loss of solitude due to immediate access of boaters. Your request also states that there will be a permanent change in the character of the river and implementation will result in an unjustified commitment of funds that may be unnecessary if your clients prevail on appeal.

You state that a stay is necessary in order to preserve the status quo and the right to a meaningful appeal on the merits. Specifically, you state that a stay is needed in order to avoid establishing a pattern of use by boaters and to avoid establishing poor access routes.



This information and rationale satisfies the requirements of 36 CFR 219, 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 July 2012. Additionally, some of the boating activities of the decisions have started being implemented consistent with Section 10(a) or the Optional Appeal Procedures but before an appeal decisions can be issued. Therefore, I have further considered your request for stay.

#### Analysis and Decision on Stay Request

Your request to stay the permitting of boating between the confluence of Green Creek in North Carolina and Lick Log Creek in South Carolina between December 1 and April 30 at flow levels of 350 cfs or higher is granted. Pursuant to the Optional Appeal Procedures (Section 10(e)), I have considered the information you have provided and I have considered the effect that granting your stay request would have on preserving a meaningful appeal on the merits.

A total of six (6) administrative appeals have been timely submitted. Each appeal raises issues that the Forest Service has already begun to review. Due to the number of complex issues raised in these appeals, I believe granting your stay request is the most appropriate course of action. The granting of this stay allows for a meaningful appeal process to proceed based on the merits of each issue raised by all of the appellants. Thus, it is the intention of this stay to preserve the status quo until a decision is finalized on each of the timely submitted appeals. This stay will remain in effect until the final administrative decision by the Department of Agriculture is made for each of the appeals.

This stay applies only to those actions that, without a stay, have started to be or otherwise could have been immediately implemented. This stay does not apply to those projects or activities that, pursuant to the decisions, require a separate site specific NEPA analysis, since those future actions are not immediately implementable and may be separately subject to appeal. Therefore, your request to stay these types of activities is denied. However, I do encourage you to participate in the opportunities for public input into the planning process for these future actions.

My decision on your stay request does not prejudice the issues raised in yours 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.

Sincerely,

*/s/ Ken S. Arney*

KEN S. ARNEY  
Reviewing Officer  
Deputy Regional Forester

cc: George M Bain  
Paul Bradley  
Keith Lawrence