



United States
Department of
Agriculture

Forest
Service

Southern Regional Office

1720 Peachtree Rd., NW
Atlanta, GA 30309

File Code: 1570
12-08-03-0022
12-08-11-0023
12-08-12-0024
Date: June 28, 2012

CERTIFIED MAIL R.R.R.

Chattooga Conservancy
ATTN: Mr. Buzz Williams
8 Sequoia Hills Lane
Clayton, GA 30525

Re: Appeal of Forest Supervisor George M. Bain's, Acting Forest Supervisor Diane Rubiaco's and Forest Supervisor Paul L. Bradley's January 31, 2012, Decision for Amendments 1, 22 and 1, Respectively, for Management of Boating Activities in the Upper Chattooga River Land and Resource Management Plan

Dear Mr. Williams:

Pursuant to the authority granted to me by Title 36 Code of Federal Regulations (CFR) Part 219 Interim Appeal Regulations, this is my Decision on your Notice of Appeal (NOA) for the subject Decision. Your appeal is to the Decision to amend the Land and Resource Management Plan (LRMP) to regulate boating in the Upper Chattooga River Corridor. I have consolidated your Appeals 12-08-03-0022 (Chattahoochee-Oconee Amendment 1); 12-08-11-0023 (Nantahala Plan Amendment 22); and 12-08-12-0024 (Sumter Plan Amendment 1) into a single response.

BACKGROUND

On January 31, 2012, Chattahoochee-Oconee National Forests (NFs) Forest Supervisor George M. Bain, NFs in North Carolina Acting Forest Supervisor Diane Rubiaco, and Francis Marion-Sumter NFs Forest Supervisor Paul L. Bradley, signed the respective Decisions for this Project, amending the existing LRMP. On March 19, 2012, I received your electronically-filed NOA, which was accepted by acknowledgement on March 23, 2012.

RELIEF REQUESTED

You requested that the Decisions be withdrawn.



DECISION

I based my Decision upon a thorough review of your NOA, the Decision Notice (DN), Finding of No Significant Impact (FONSI), Environmental Assessment (EA) and other project record documents for these Part 219 LRMP Amendments. In addition, I also considered intervenor comments filed on your appeals by Kevin Colburn representing American Whitewater, American Canoe Association, Atlanta, Whitewater Club, Georgia Canoeing Association, Western Carolina Paddlers, Bruce Hare, Kenneth Strickland and Joseph Stubbs.

I find that the Forest Supervisors complied with the relevant legal authorities, such as the National Environmental Policy Act (NEPA), National Forest Management Act (NFMA) and Wild and Scenic River Act (WSRA). Therefore, I am affirming the Forest Supervisors' January 31, 2012, Decision. I have enclosed a detailed discussion of the issues raised in your appeals and the rationale which supports my findings for each issue.

This constitutes the final administrative determination of the Department of Agriculture unless the Chief, on his own volition, elects discretionary review of the Decision (36 CFR 219).

Sincerely,

/s/ Ken S. Arney

KEN S. ARNEY
Reviewing Officer
Deputy Regional Forester

Enclosure

DISCUSSION OF ISSUES

Issue 1 **Whether the decisions are in violation of NEPA.**

The appellant contends:

...the Forest Service’s decision to select an alternative that was not even a part of the Environmental Assessment (EA-2012) is a direct violation of the National Environmental Policy Act (NEPA), which allows the public input on any major decision affecting federal land under their jurisdiction, and further instructs the responsible agency to provide the public with all principal documents necessary in making decisions about public lands. In this case, the public was never informed that an alternative to allow access for whitewater boating at specific locations, including a location approximately one quarter of a mile downstream of the confluence of Green Creek and the Chattooga River, was an option to be considered, and that was never a part of the Environmental Assessment. In fact, the option to put in at this location is a new proposal, that has never even been proposed before as a “specific put-in.”
(Appeal, p. 1)

The EA (p. 39) states the following:

Table 2.2-8 Alternative 13A

Decision Points	Actions				
Capacities	Backcountry Reach	Average Groups per Weekday	Average People per Weekday	Average Groups per Weekend Day	Average People per Weekend Day
	Chattooga Cliffs	5	10	10	15
	Ellicott Rock	10	35	20	110
	Rock Gorge	15	40	30	95
	Nicholson Fields	15	40	30	95
	Frontcountry Areas	Groups at One Time		People at One Time	
	Grimshawes/Sliding Rock Bridge	25		65	
	Bullpen Road Bridge Area	15		40	
	Burrells Ford Bridge Area	80		205	
Highway 28 Bridge Area	35		85		
Boating from Green Creek to Lick Log Creek	<ul style="list-style-type: none">Boating from Green Creek to Lick Log Creek from December 1 to April 30 when flows reach 350 cfs or greater at the USGS Burrells Ford gauge during daylight hours. Daylight hours would be 30 minutes before official sunrise to 30 minutes after official sunset. Once boating is allowed, it may continue until 30 minutes after official sunset on that same day.Craft type: Tandem/single-capacity hard boats and tandem/single-capacity inflatable boats.Put-ins: Green Creek; Norton Mill Creek, Bullpen Road Bridge; Burrells Ford Bridge.Take-outs: Norton Mill Creek, Bullpen Road Bridge; Burrells Ford Bridge; Lick Log Creek.				

<i>Trails</i>	<ul style="list-style-type: none"> ▪ Designated/system trails only. Close redundant trails; trails where resource damage cannot be mitigated; and trails where closure is needed to limit encounters or minimize conflict. ▪ Rerouting may be necessary to correct existing problems on designated/system trails. ▪ Designated/system portage trails may be necessary to avoid unacceptable impacts to resources. ▪ Management actions related to designated/system trails would require site-specific NEPA decisions.
<i>Camping</i>	<ul style="list-style-type: none"> ▪ Camping only in designated sites. Close or relocate redundant campsites; campsites where resource damage cannot be mitigated; and campsites where closure is needed to limit encounters or minimize conflict. Campsites limited to no more than three tents, except at designated group campsites. ▪ Designated fire ring locations. ▪ Permanently close and rehabilitate excessive and unsustainable campsites. ▪ Management actions related to designated campsites would require site-specific NEPA decisions.
<i>Backcountry Group Size Limits</i>	<ul style="list-style-type: none"> ▪ Maximum of 12 people per group on trails ▪ Maximum of 6 people per group at campsites (except at designated group campsites). ▪ Maximum of 4 people per group for anglers ▪ Maximum of 6 people and minimum of two craft per group for boaters
<i>User Registration</i>	<ul style="list-style-type: none"> ▪ Boaters must self-register (the same as current management below Highway 28). ▪ Safety equipment for boaters to be determined at the district level as a condition of the self-registration permit.
<i>Large Woody Debris</i>	<ul style="list-style-type: none"> ▪ No large woody debris removal without agency approval.

The EA (pp. 128-134) also discloses the direct, indirect, and cumulative effects of Alternative 13A. Specifically, the EA (pp. 133-134) states that:

c. Boater put ins and take outs

This alternative would have the following put-ins and take-outs on the upper segment of the Chattooga WSR:

1. Green Creek confluence – Boaters would access the river here via an existing unnamed user-created trail on the bed of an old logging road for trips through the Chattooga Cliffs Reach;
2. Norton Mill Creek confluence – Boaters would access the river here via an existing user-created trail (County Line Road) on the bed of an old logging road for trips through the Chattooga Cliffs Reach;
3. Bullpen Bridge – Boaters would access the river here from short, user-created trails from the bridge or the Chattooga Trail for taking out after running the Chattooga Cliffs Reach or as a put-in for the Ellicott Rock Reach;
4. Burrells Ford Bridge – Boaters would access the river here from short, user-created trails near the bridge for taking out from an Ellicott Rock Reach trip or putting in for a Rock Gorge/Nicholson Fields trip.
5. Lick Log Creek – Boaters would take out of the river at the Lick Log Creek confluence.

All of these put-ins and take-outs are accessible by existing U.S. Forest Service system trails or commonly used user-created trails. Boaters would use these obvious routes to the river until the agency has identified and/or developed a preferred route that minimizes biophysical impacts, redundancy with existing trails and user

conflict. The agency would designate these put-ins and take-outs only after site-specific NEPA analysis.

The DN/FONSI states the following (citation at end of each):

6. Require boaters to start or complete their trip only at specific boater put-ins and takeouts, which will be designated after site-specific NEPA analysis and will be a condition of the self-registration boating permit. In the interim, require boaters to start or complete their trip only at existing trails at the following locations:
 - a) Within one-quarter mile downstream of the Green Creek confluence;
 - b) Within 500 feet of the Norton Mill Creek confluence;
 - c) Within one-quarter mile of Bullpen Bridge;
 - d) Within one-quarter mile of Burrells Ford Bridge; and
 - e) Within one-quarter mile downstream of the Lick Log Creek confluence. (3.0 Decision, p. 2).

Designated boater put-ins and takeouts:

Providing five different put-ins and takeouts where boaters must start and/or end their trip-- near the Green Creek, Norton Mill Creek and Lick Log Creek confluences, as well as at the Bullpen and Burrells Ford bridges--will mitigate potential conflict between boaters and existing users on trails. The appropriate district ranger will designate the specific put-in and takeout locations after site-specific NEPA analysis is completed. Like other users, boaters will be encouraged to use system trails to access these points. (4.0 Rationale for Decision, p. 5.)

Based on the above information, the EA identifies general locations for access while the DN/FONSI identifies interim locations for access. Both documents state that site specific NEPA analysis will designate the specific put-in and takeout locations.

Finding

I find that the decisions are in compliance with NEPA regulations.

Issue 2 Whether an EA has been conducted on specific locations of designated put-in for whitewater boating.

The appellant contends the following:

In fact, the Forest Service has stated that they would have to “conduct a full EA on any specific location to be designated as a put in for whitewater boating. Yet, an EA has not been conducted.” (Appeal, p.1)

The EA (pp. 128-134) discloses the direct, indirect, and cumulative effects of Alternative 13A. Specifically, the EA states (pp. 133-134) that:

- c. Boater put ins and take outs

This alternative would have the following put-ins and take-outs on the upper segment of the Chattooga WSR:

1. Green Creek confluence – Boaters would access the river here via an existing unnamed user-created trail on the bed of an old logging road for trips through the Chattooga Cliffs Reach;
2. Norton Mill Creek confluence – Boaters would access the river here via an existing user-created trail (County Line Road) on the bed of an old logging road for trips through the Chattooga Cliffs Reach;
3. Bullpen Bridge – Boaters would access the river here from short, user-created trails from the bridge or the Chattooga Trail for taking out after running the Chattooga Cliffs Reach or as a put-in for the Ellicott Rock Reach;
4. Burrells Ford Bridge – Boaters would access the river here from short, user-created trails near the bridge for taking out from an Ellicott Rock Reach trip or putting in for a Rock Gorge/Nicholson Fields trip.
5. Lick Log Creek – Boaters would take out of the river at the Lick Log Creek confluence.

All of these put-ins and take-outs are accessible by existing U.S. Forest Service system trails or commonly used user-created trails. Boaters would use these obvious routes to the river until the agency has identified and/or developed a preferred route that minimizes biophysical impacts, redundancy with existing trails and user conflict. The agency would designate these put-ins and take-outs only after site-specific NEPA analysis.

The DN/FONSI states the following (citation at end of each):

Designated boater put-ins and takeouts:

Providing five different put-ins and takeouts where boaters must start and/or end their trip-- near the Green Creek, Norton Mill Creek and Lick Log Creek confluences, as well as at the Bullpen and Burrells Ford bridges--will mitigate potential conflict between boaters and existing users on trails. The appropriate district ranger will designate the specific put-in and takeout locations after site-specific NEPA analysis is completed. Like other users, boaters will be encouraged to use system trails to access these points. (4.0 Rationale for Decision, p. 5).

Based on the above information, the EA identifies general locations for access while the DN/FONSI identifies interim locations for access. Both documents state that site specific NEPA analysis will designate the specific put-in and takeout locations. Neither documents specifically states an Environmental Assessment will occur but only that site specific NEPA analysis will be conducted.

Finding

I find the EA analyzed the decisions of whether to allow boating in the Upper Chattooga. Further, the decisions provided for interim use by boaters until site-specific analysis of specific put-in and takeout sites is conducted in the future.

Issue 3 **Whether an EA has been conducted for the construction of a trail and parking lot.**

The appellant contends the following:

...Nantahala National Forest District Ranger Mike Wilkins is currently constructing a trail along the County Line Road, and has installed a kiosk along this old logging road for the purpose of registering whitewater boaters. Ranger Wilkins has stated verbally as well as in writing that the County Line Road is not recognized as a system road, and that it has never been on the books as an officially designated trail. Thus, it is by the Forest Service’s own admission that the County Line Road is a user-created trail. 36 CFR 220.6 (e)(i) concerning trail head construction, and FSH 2309.18, that also prescribes requirements for trail and parking lot construction, both indicate that the activities now being implemented by Ranger Wilkins should require a separate environmental assessment as a precursor to officially designating the County Line Road as a system trail, before beginning construction, and that any such environmental assessment be subject to full public participation. Yet, an EA has not been conducted. (Appeal, p. 1-2)

Note that a decision by you—as the “deciding officer” in this matter, and who in full knowledge of the aforementioned illegal activities currently being conducted by Ranger Wilkins—that would allow the implementation of the decision that encourages and directs the public to utilize an unauthorized user-created trail, albeit “illegally” designated, would also be in and of itself illegal. (Appeal, p. 2)

Finding

The factual allegations made as part of this contention fall outside the scope of this administrative appeal review.

Issue 4 **Whether the decisions will likely cause irreparable harm to the fragile ecosystem and irreparable harm to the experience of those seeking solitude.**

A. Appellant contends:

“The proposed alternative to manage whitewater boating in the Chattooga River headwaters encourages the creation of additional miles of user-created trails, because it is unclear about exactly where to put-in. The result will be user-created trails into the confluence of Green Creek and the Chattooga River. The proposed alternative will also encourage the use of the County Line Road, which is an illegally designated trail. It will direct boaters to a put in at Norton Mill Creek, which is one quarter of a mile above a log jam, and several mandatory portages, that will encourage even more user-created trails. The likelihood is that all this predictable activity will undoubtedly harm the fragile ecosystem in the Chattooga Cliffs reach.” (Appeal, p. 2)

The Environmental Assessment (pp. 68-69) examines current use levels of different recreational activities and discloses the effects of setting capacity limits on use in frontcountry and backcountry areas of the Upper Chattooga. For the Upper Chattooga, deciding officials chose to set capacities in frontcountry areas in terms of “groups at one time” by parking lot size (based on a regional average of 2.5 people per vehicle) and in backcountry areas in terms of “groups per day.” They chose “groups per day” for backcountry areas because encounters tend to happen randomly throughout the day instead of encountering several groups at one time as one might in a frontcountry area, where groups congregate. Social interaction is integral to many frontcountry activities (EA, p. 67) such as swimming, picnicking, and day hikes and frontcountry users have a greater tolerance for higher densities, encounters, and different kinds of users. The EA analyzed varying capacity levels in the alternatives (from no capacity levels set in Alternative 1 to a range of groups per day and group sizes in other alternatives). The selected alternative 13A, (EA, p. 132) defines a capacity level designed to prevent backcountry encounters from exceeding between two and eight per day on weekdays and between four and fifteen per day on weekends. As the EA notes (p. 132), these capacities are consistent with encounter tolerances in wildernesses with higher use (Dawson and Alberga, 2003) as well as findings from a study done in the Ellicott Rock Wilderness itself (Rutlin, 1995).

In addition, the EA (pp. 7-8) notes that as well as conducting annual monitoring to document trends in wilderness conditions, the agency conducted extensive reviews and field studies to collect information on visitor use, impacts, and recreation issues; conducted several public meetings, user surveys, and expert panels in a Limits of Acceptable Change (LAC) process in 2005-2007 (EA, p. 450); and conducted a visitor capacity analysis (EA, p. 456; Capacity and Conflict on the Upper Chattooga River: An Integrated Analysis, 2007).

The agency also conducted a Social Impact Analysis in the EA (Appendix F, p. 460) which included a “Values, Beliefs and Attitudes” assessment of public comments received from 2005 to 2009. The VBA Assessment (EA, p. 461) indicates the strong sense of attachment to the upper segment of the Chattooga River expressed by many types of users. Users value the solitude, remoteness and pristine conditions of the Chattooga W&S River and the Ellicott Rock Wilderness; believe protection of the natural resource is paramount; and feel that opportunities for solitude could be affected by uncontrolled recreation use.

The EA (p. 68) defines capacity as the amount and type of use that protects and enhances river values. The goal of conducting an LAC process is to protect river values by ensuring impacts do not exceed acceptable levels (EA, p. 68). Monitoring of capacity levels (Monitoring Plan, EA Appendix G, p. 482) will determine if boating contributes to higher use while still meeting current levels of opportunities for solitude without degrading the ORVs of the river.

The Decision Notice (p. 5) notes that components of the decision relating to capacity, parking, group size limits, and actions to designate trails, campsites, put-ins and take-outs will maintain or increase opportunities for solitude.

The Sumter National Forest DN/FONSI (Item #13, p. 3) states: “Adopt the monitoring plan in Appendix G of the EA to help determine whether my decision is producing the desired outcomes and avoiding unintended consequences.”

The Chattahoochee-Oconee National Forest DN/FONSI (Item #13, p. 5) states: “Adopt the monitoring plan in Appendix G of the EA to help determine whether my decision is producing the desired outcomes and avoiding unintended consequences.”

The Nantahala National Forest DN/FONSI (Item #13, p. 3) states: “Adopt the monitoring plan in Appendix G of the EA to help determine whether my decision is producing the desired outcomes and avoiding unintended consequences.”

The EA (Appendix G, pp. 483-485) addresses monitoring Large Woody Debris (LWD), Federally-listed species, Sensitive plant species, and the use of adaptive management to address any problems revealed through monitoring.

The Biological Assessment describes the monitoring plan for the Federally-listed rock gnome lichen and the subsequent annual report to the US Fish and Wildlife Service, Ashville Field Office. The USFWS concurred with the BA’s effects determination of implementing Alternative 13A for the rock gnome lichen in their concurrence letter dated December 6, 2011.

The Response to Comments (2012 Summary, p. 49) states: “... E) The effects of the alternatives on biological resources are disclosed in Chapter 3, sections 3.2.2 and 3.5. A Biological Evaluation and Biological Assessment have been completed and consultation has been completed with the US Fish and Wildlife Service. The exact location of the designated trail would be decided with additional site-specific NEPA including additional consultation with FWS if needed. The decision on trails to be designated would be informed from public input and potential effects to resources.”

Finding

I find the decision to set capacity limits for the Upper Chattooga River corridor will protect and enhance the river’s values, including the river’s ecosystems and opportunities for solitude.