



United States  
Department of  
Agriculture

Forest  
Service

Southern Regional Office

1720 Peachtree Rd., NW  
Atlanta, GA 30309

File Code: 1570  
12-08-03-0025  
12-08-11-0026  
12-08-12-0027  
Date: June 28, 2012

### **CERTIFIED MAIL R.R.R.**

Mr. William C. Clay  
125 Apple Orchard Road  
Mountain Rest, SC 29664

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. Clay:

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 12-08-03-0025 (Chattahoochee-Oconee Amendment 1); 12-08-11-0026 (Nantahala Plan Amendment 22); and 12-08-12-0027 (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 vacated.



## **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 and EA are arbitrary.**

**The appellant contends the following:**

**1) Withdraw or vacate the current Decision and keep in place the thirty+ year policy of no boating above Highway 28 on the Wild and Scenic Chattooga corridor until an integrated and comprehensive Chattooga River Management Plan can be put in place which follows the mandates of the Wild and Scenic Rivers Act to "protect and enhance" the values which caused the Chattooga to be designated in the first place. (Appeal, p. 3)**

**Without a CRMP in place to ensure and under gird both in spirit and letter the requirements of the WSRA for a comprehensive analysis of the entire Wild and Scenic Chattooga corridor, and to provide for a meaningful and sustainable planning framework for the river now and into the future, the 2012 EA and Decision Notices are by definition arbitrary and must be withdrawn and revised. (Appeal, p. 4)**

The Sumter 2004 *Revised Land and Resource Management Plan* (pp. 3-8 to 3-17) identifies 2.A Chattooga Wild and Scenic River Corridor. Specifically, the Plan (p. 3-8) states “[t]he direction in this Forest Plan specific to the Chattooga (prescriptions 2A, 2.A.1, 2.A.2 and 2.A.3) constitutes the comprehensive plan as required in Section 3(d)(2) of the Wild and Scenic Rivers Act (Act)...The Nantahala and Chattahoochee National Forest will use this direction for management of the river within their respective forest boundaries.”

The Sumter Final Environmental Impact Statement (p. 2-67) identifies Issue 13 – Chattooga River Watershed.

In the document titled “A Compendium of Questions & Answers Relating to Wild & Scenic Rivers” dated May 2011 (Project Record #413, p. 64) states that “...there is no statutory requirement that a CRMP be revisited in a specified timeframe...In some cases, this may include updating the CRMP during the agency unit-plan revision cycle.” The Compendium further states (p.69) that “...the term ‘protect’ is interpreted by the Council above as ‘eliminating adverse impact,’ it is not interpreted as an absence of impacts. Rather, each WSR-administering agency must, based on best available scientific information and reasonable professional judgment, ensure that existing values are protected and, to the extent practical, enhanced.”

The DN/FONSI (p. 1) states that the Purpose and Need for the Decision is “... 2. Provides consistent management of the upper segment of the Chattooga WSR on all three national forest; and 3. Preserves the upper segment of the Chattooga WSR’s free-flowing condition, protects its water quality and protects its outstandingly remarkable values (as required by the Wild and Scenic Rivers Act [WSRA]), as well as preserves the wilderness character of the Ellicott Rock Wilderness (as required by the Wilderness Act).” Specifically, the Rationale for the Decision

(p. 5) states "...4. Protects the Recreation ORV. This decision protects the Recreation ORV by expanding recreation opportunities for boating on the entire Chattooga WSR by allowing boating on the upper segment of the Chattooga WSR while maintaining opportunities for existing users".

Further in the DN/FONSI under Section 8.0 (pp. 11-12) titled "Best Available Science" the following is disclosed:

In consultation with the two other responsible officials, I have considered the best available science in making this decision. The project records demonstrates a thorough review of relevant scientific information, consideration of responsible opposing views, and where appropriate, the acknowledgement of incomplete or unavailable information, scientific uncertainty and risk.

- The agency completed a detailed biophysical survey to document the Chattooga WSR's existing condition. This survey documents various resource impacts and concerns, such as erosion, litter, logjams, water quality, etc. In consultation with the other two responsible officials, I considered the existing condition of the Chattooga WSR in the decision-making process.
- The agency completed annual monitoring reports that document trends in the condition of the Chattooga WSR and the Ellicott Rock Wilderness.
- The agency conducted extensive reviews of literature, management history, available agency information and field studies to collect information on recreation use, impacts and other recreation management issues...

Also in the DN/FONSI under Section 9.0 (pp. 12-14) titled "Finding of No Significant Impact" the following is disclosed:

The physical, biological, and social effects are limited to the project area and immediate adjacent areas, which are analyzed in Chapter 3 of the EA. All actions are consistent with the 2004 *Revised Land and Resource Management Plan* for the Sumter National Forest as amended by this decision, and all environmental effects are within the range disclosed in the EA.

The analysis identifies no significant impacts to any unique characteristics of the geographical area, including historic or cultural resources (EA, pages 251 to 256, Section 3.2.4 History ORV and SHPO letters in the project record). Based on the analysis in the EA, my decision preserves the wilderness character of Ellicott Rock Wilderness (EA, pages 385 to 397, Section 3.7 Wilderness) and protects the Chattooga Wild and Scenic River's Outstandingly Remarkable Values (ORVs), preserve its free-flowing conditions and protect its water quality (EA, pages 61-28, Sections 3.2 Outstanding and Remarkable Values and 3.3. Other River Values). No significant impacts to wetlands are anticipated (EA, pages 286 to 335, Section 3.4.2 Water and Riparian Corridor).

The action will not violate federal, state, or local laws or requirements for the protection of the environment. Applicable laws and regulations were considered in the EA (see EA, pages 1 to 5, Section 1.2 Need for The Proposed Action, pages 15 to 21, Section 1.8

Outstanding Remarkable Values, Biological Evaluation and Biological Assessment in the project record, and Section 7.0 Findings Required by Other Laws and Regulations in the Decision Notice).

## **Finding**

I find that analysis and decision rationale are adequate and not arbitrary.

## **Issue 2      Whether the decisions are in compliance with the Wild and Scenic Rivers Act (WSRA).**

### **The appellant contends:**

**The USFS is accountable under the "protect and enhance" requirements of the WSRA to address both past and present degradation. Yet the agency has resolutely declined to expand the analysis (contained within the EA) to include the entire W&S Chattooga, adamantly holding to an exclusionary consideration of just the upper 21 mile portion of the river above Highway 28 (Appeal, p. 4).**

In the document titled "A Compendium of Questions & Answers Relating to Wild & Scenic Rivers" dated May 2011 (project record #413, p. 69) states that "...the term 'protect' is interpreted by the Council above as 'eliminating adverse impact,' it is not interpreted as an absence of impacts."

The DN/FONSI (p. 1) states that the Purpose and Need for the Decision is the following:

1. Responds to an appeal decision on the 2004 Sumter Revised LRMP;
2. Provides consistent management of the upper segment of the Chattooga WSR on all three national forest; and
3. Preserves the upper segment of the Chattooga WSR's free-flowing condition, protects its water quality and protects its outstandingly remarkable values (as required by the Wild and Scenic Rivers Act [WSRA]), as well as preserves the wilderness character of the Ellicott Rock Wilderness (as required by the Wilderness Act)."

DN/FOSNI states (p. 3) under Section 3.0 Decision that "I have decided to implement Alternative 13A. The scope of my decision is limited to the upper segment of the Chattooga WSR. However, I made the decision within the context of the entire river..."

Section 4.0 (DN/FONSI, p. 6) Rationale for the Decision lists the components for the decision. Specifically relevant to the rational are:

5. Ensure the physical environment can accommodate use
6. Recognizes the value of and ensure the continued presence of large woody debris
7. Address public concerns about protecting the "highly diverse biological conditions" in the Chattooga Cliffs Reach

8. Addresses public concerns about boating in the tributaries
9. Addresses public concerns about commercial boating.

Further in the DN/FONSI under Section 8.0 (pp. 11-12) titled “Best Available Science” the following is disclosed:

In consultation with the two other responsible officials, I have considered the best available science in making this decision. The project records demonstrates a thorough review of relevant scientific information, consideration of responsible opposing views, and where appropriate, the acknowledgement of incomplete or unavailable information, scientific uncertainty and risk.

- The agency completed a detailed biophysical survey to document the Chattooga WSR’s existing condition. This survey documents various resource impacts and concerns, such as erosion, litter, logjams, water quality, etc. In consultation with the other two responsible officials, I considered the existing condition of the Chattooga WSR in the decision-making process.
- The agency completed annual monitoring reports that document trends in the condition of the Chattooga WSR and the Ellicott Rock Wilderness.
- The agency conducted extensive reviews of literature, management history, available agency information and field studies to collect information on recreation use, impacts and other recreation management issues...

Also in the DN/FONSI under Section 9.0 (pp. 12-14) titled “Finding of No Significant Impact” the following is disclosed:

The physical, biological, and social effects are limited to the project area and immediate adjacent areas, which are analyzed in Chapter 3 of the EA. All actions are consistent with the 2004 *Revised Land and Resource Management Plan* for the Sumter National Forest as amended by this decision, and all environmental effects are within the range disclosed in the EA.

The analysis identifies no significant impacts to any unique characteristics of the geographical area, including historic or cultural resources (EA, pages 251 to 256, Section 3.2.4 History ORV and SHPO letters in the project record). Based on the analysis in the EA, my decision preserves the wilderness character of Ellicott Rock Wilderness (EA, pages 385 to 397, Section 3.7 Wilderness) and protects the Chattooga Wild and Scenic River’s Outstandingly Remarkable Values (ORVs), preserve its free-flowing conditions and protect its water quality (EA, pages 61-28, Sections 3.2 Outstanding and Remarkable Values and 3.3. Other River Values). No significant impacts to wetlands are anticipated (EA, pages 286 to 335, Section 3.4.2 Water and Riparian Corridor).

The action will not violate federal, state, or local laws or requirements for the protection of the environment. Applicable laws and regulations were considered in the EA (see EA, pages 1 to 5, Section 1.2 Need for The Proposed Action, pages 15 to 21, Section 1.8 Outstanding Remarkable Values, Biological Evaluation and Biological Assessment in the project record, and Section 7.0 Findings Required by Other Laws and Regulations in the Decision Notice).

The EA identifies the statutes with which the Agency must comply. These include the: Wild and Scenic Rivers Act (p. 3) and Wilderness Act (p. 4). The EA further states in the Proposed Action (p. 5) that establishing new management direction for the respective forest plans would:

- Protect and/or preserve the river's values: ORVs, free-flowing condition and water quality,
- Maintain the quality of recreation experiences...
- Manage biophysical impacts to natural resources from recreation use...
- Manage large wood debris (LWD) recruitment and retention...
- Maintain or increase opportunities for solitude and sense of remoteness in the backcountry...
- Use vehicle counts at access points to monitor ...3
- Manage social impacts...

Finally, Chapter 3 of EA (pp. 51-397) discloses at length the direct, indirect, and cumulative effects respective to each resource and alternative.

### **Finding**

I find that the decisions are in compliance with the WSRA.