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Chief Tom Tidwell
US Forest Service
1400 Independence Ave., SW
Washington, D.C. 20250-0003

Re: Petition for Discretionary Review of January 31, 2012 Decisions for Amendments of the Revised Land and Resource Management Plan (Managing Recreation Uses, Chattooga River) of Forest Supervisors Diane Rubiaco, Paul Bradley and George Bain (together, “the Decision”)

Dear Chief Tidwell:

On behalf of the Rust family, I request that you exercise your discretion to review the March 19, 2012 appeal by the Rust family of the Decision, along with the agency response of June 28, 2012 affirming the Decision. Please also consider the family’s April 11, 2012 comments to the appeal of American Whitewater, et al. of the same Decision.

In its appeal, the Rust family sought to have the agency clarify and amend its Decision and EA (consistent with the agency’s own rules and prior determinations) with respect to removing the family’s private property from the scope of its geographic analysis and decision, evaluate and document the impact of the proposed action on private property interests in the WSR corridor (as required under NEPA laws), correct an erroneous statement in the EA concerning Forest Service authority over private property (in which the Forest Service claimed it could have allowed public recreation through and over the family’s property), and clarify that the location for the northernmost put-in for boating should be at Bull Pen bridge or, if not there, then it must be located at least ¼-mile below the confluence with Green Creek (to match the geographic scope of the biological assessment and avoid affecting private property).

Although the reviewing officer appeal response claimed it included “a detailed discussion of the issues raised in your appeals and the rationale which supports my findings for each issue,” the review discussion did not adequately respond to, or even address, the contentions outlined in the family appeal. Although arguably the discussion might be somewhat responsive to contentions A and E of the Appeal, the discussion did not address any position the Forest Service has taken in federal court (contention B), the numerous concessions made to boaters (contention C), or the impact on private property interests of the underlying decisions to extend boating (contention D).

We do appreciate that the appeal response discussion (p.3) reiterates that in regards to “boating opportunity from Grimshawes Bridge to the southern end of the Rust property” any “alternatives which contain this river segment should be eliminated from detailed consideration

in the environmental assessment.” However, the agency has continued to provide a platform from which the kayak access lobby can misrepresent laws regarding navigability and purported public access rights, which misrepresentations the agency has failed to dispel.¹ In fact, the agency has made no effort to clarify the kayak lobby’s misrepresentation as to boundaries between private and public lands. As discussed in the family’s appeal, the Forest Service even appears to encourage such claims by the kayak access lobby and incite unlawful trespass.

Finally, one WSR designation value was not even considered in the 2012 Assessment - private recreation developments. The 1971 Chattooga Study Report (p.25) submitted to Congress provides that “*private recreation developments contribute to making the area surrounding the Chattooga River a complete vacation land.*” So while *private recreation* was clearly a congressional value for which the Chattooga was designated, the EA continues to avoid analyzing effects boating may have on that designated value, as well as on private property interests within the WSR corridor in general.

We respectfully urge the agency to reconsider carefully the points raised in the family’s appeal and correct and amend its unlawful process.

Respectfully submitted,

/S/Alan R. Jenkins

Alan R. Jenkins

JENKINS AT LAW, LLC

Counsel for the Rust Family

¹ Please see the family’s April 11, 2012 comments in which the family pointed out numerous ludicrous and erroneous claims the kayak lobby has made, including the claim that the federal government should take the family’s property so that boaters can avoid a one-mile hike to their “wilderness experience.”