



United States
Department of
Agriculture

Forest
Service

Francis Marion &
Sumter National Forests

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Route To:

Subject: Direction Regarding the Range of Alternatives for Management of the Upper Chattooga River

To: John Cleeves - Chattooga River Analysis Core Team Leader and Interdisciplinary Team Leader

The Southern Region Planning Director, in coordination with Recreation, Public Affairs and others, provided the enclosed guidance for consideration by the Forest Supervisors for the Francis Marion and Sumter NFs, the National Forests in North Carolina, and the Chattahoochee-Oconee NFs, in analyzing the range of alternatives for management of the upper Chattooga Wild and Scenic River. We have closely reviewed and analyzed this issue and the recommendations from the Office of the General Counsel and the Regional Office and are providing the attached as direction to the Chattooga River Analysis Core Team and the Chattooga River Analysis Interdisciplinary Team.

The analysis teams are directed to follow the recommendations provided in the enclosed document, "Recommendations Regarding the Range of Alternatives for Management of the Upper Chattooga River."

"In light of the factors discussed above, the Responsible Officials for the plan amendments addressing management of the upper Chattooga River are advised to defer any management decisions that would alter the current status of boating opportunity from Grimshawes Bridge to the southern end of the Rust property. Any preliminary alternatives which contain this river segment should be eliminated from detailed consideration in the environmental assessment currently underway. Any new alternatives developed during the NEPA process that include management for general public use purposes should not include this segment of the river."

The responsible Forest Supervisors support this direction, which goes into effect immediately, in considering alternatives included in the August scoping letter, any new alternatives, and in communicating our analysis process to stakeholders.

/s/ Jerome Thomas
JEROME THOMAS
Forest Supervisor

Enclosure

cc: Chattooga Core Team, Steering Team, and
Interdisciplinary Team Members



Recommendations Regarding the Range of Alternatives For Management of the Upper Chattooga River

Introduction

The 57-mile Chattooga Wild and Scenic River includes lands in three National Forests (the Nantahala in North Carolina, the Chattahoochee in Georgia and the Sumter in South Carolina) and passes through about five miles of the 8,724-acre Ellicott Rock Wilderness. The 57-mile corridor offers an array of important recreation opportunities, such as high quality fishing, whitewater boating, hiking, swimming, camping and hunting, for visitors to the area. The superiority of these activities has attracted substantial numbers of visitors and use on the river which, in turn, has led to increased concern about visitor impacts.

In 2004, the Sumter National Forest revised its Land and Resource Management Plan (Forest Plan) to address recreation issues in the corridor. As part of that plan, a 1976 decision to allow whitewater boating only on the lower 36 miles of the Chattooga River was retained. American Whitewater appealed this decision; as a result, the Forest Service has undertaken to reassess that decision as part of a broader analysis of visitor capacity issues on the upper Chattooga River.

As part of the analysis, the Forest Service has been examining current desired conditions, goals, objectives, standards and monitoring related to the river in the existing forest plans for the Sumter, Chattahoochee and Nantahala/Pisgah National Forests. Although the scope of the Decision for Appeal is limited to the upper Chattooga River (above the Highway 28 bridge in Georgia and South Carolina), management of national forest lands in the entire corridor is being considered when addressing use and impact patterns and the acceptability of management actions. Currently, floating activities are prohibited in the river corridor on National Forest System lands in North Carolina.

Preliminary Alternatives

On August 14, 2007, the Sumter National Forest initiated analysis of six preliminary alternatives for management of the upper Chattooga River, by issuing a scoping notice. The alternatives were based on data from the visitor use capacity analysis and on information gathered during a series of public meetings and workshops. Taken together, the six preliminary alternatives covered a range of options from maintaining current management to introducing new boating use to implementing restrictions on all users. Two of these preliminary alternatives extend all the way to Grimshawes Bridge in North Carolina. By so doing, they include a 1.7-mile stretch of the river that is entirely bordered by private land (hereafter referred to as the Rust property), potentially opening it to use by the general public.

Navigability

The issue of navigability and the rights of the public with respect to this section have not been adjudicated by a court of law. No federal or state agency or authority has officially determined or specifically opined as to whether this section of the river is navigable and

thus subject to general public use without permission.¹ According to FSM 2354.14 - Navigability of Rivers, “Most rivers in the country have not been adjudicated as navigable or non-navigable. Consider them non-navigable until adjudicated otherwise.”

The North Carolina Attorney General appears to be the proper state authority to provide an opinion regarding navigability of the river pursuant to state law. Ultimately, however, the authority to determine navigability resides exclusively with the federal and state courts. North Carolina law provides that a river that can be navigated for “pleasure boating” in its natural condition is navigable-in-fact and therefore navigable-in-law. Such waters are subject to the public trust doctrine, which authorizes the public to use the waters for recreational purposes such as swimming and fishing.

Access at Grimshawes Bridge

Although two identifiable stretches of private lands are located in North Carolina along the Chattooga River, the uppermost potential location to put in for recreational boating and general recreational access occurs at Grimshawes Bridge (County Road 1107) in North Carolina. The land on the north side of the bridge is part of the National Forest System, while the south side of the bridge marks the beginning of the Rust property.

Boaters putting in at this location and wishing to continue down the river would have to pass through the Rust property, which would put them at risk of potentially committing trespass. The private land interests in this segment of the river have expressed their opposition to public boating and general public use through the Rust property at any time and under any conditions. It is likely that any member of the general public attempting to use this section of the river would face legal action brought by the landowners.

Additionally, information regarding the ability to float and recreate on this stretch of the river and the environmental impacts of such uses is incomplete and inconclusive. To date, the Forest Service has been unable to secure the access needed from private land interests in this segment to assess conditions in the area. Therefore, the agency is limited in its ability to conduct an environmental assessment of alternatives which would permit boating and other recreational uses of the general public along this stretch of the river.

Recommendations

In light of the factors discussed above, the Responsible Officials for the plan amendments addressing management of the upper Chattooga River are advised to defer any management decisions that would alter the current status of boating opportunity from Grimshawes Bridge to the southern end of the Rust property. Any preliminary alternatives which contain this river segment should be eliminated from detailed consideration in the environmental assessment currently underway.

¹ The US Army Corps of Engineers is the federal agency charged with determining whether waterways are navigable for regulatory purposes pursuant to the Rivers and Harbors Act.

Any new alternatives developed during the NEPA process that include management for general public use purposes should not include this segment of the river.

