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September 11, 2007

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Via Electronic Mail (comments-southern-francismarion-sumter@fs.fed.us) & U.S. Mail

Mr. John Cleeves  
Sumter National Forest  
USDA Forest Service  
4931 Broad River Road  
Columbia, South Carolina 29212-3530

Dear Mr. Cleeves:

This letter is filed on behalf of our client, Georgia ForestWatch, in response to the Sumter National Forest's August 14, 2007 request for comment on various alternatives for managing recreation uses on the Upper Chattooga, whose 21 miles form the headwaters of the Congressionally designated Wild and Scenic Chattooga River. This letter provides a timely response. It is also substantive, addressing all questions posed in your scoping letter of August 14, 2007 and commenting directly and in detail on the six management alternatives brought forward by the Forest Service. It thus meets all requirements for standing to comment under the National Environmental Policy Act.

Georgia ForestWatch is a not-for-profit forest conservation group dedicated to protecting and restoring the native ecosystems of Georgia's Mountain and Piedmont public lands and to informing the citizens of Georgia about these forested landscapes. The organization's members often visit the Chattooga River corridor for recreation purposes, for nature study, and for spiritual renewal. Georgia ForestWatch is very familiar with the headwaters areas as Georgia ForestWatch leads many hikes in the area. Some members of Georgia ForestWatch particularly are well versed in the area from having helped maintain Forest Service hiking trails in this region under Forest Service supervision. Georgia ForestWatch representatives, in addition, have attended every public meeting held by the Forest Service in connection with the visitor capacity analysis of the Upper Chattooga, individually, as Georgia ForestWatch representatives, and as members Friends of the Upper Chattooga, an umbrella organization formed to help protect the Chattooga's wild and scenic values, to educate the public to threats to these values and assist the Forest Service in arriving at a decision that protects this river's resources. Georgia ForestWatch is thus an interested party to the Forest Service's request for comment.

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The attached document contains Georgia ForestWatch's comments to the August 14, 2007 proposal. Georgia ForestWatch appreciates the Forest Service's careful consideration of these comments. If any additional information is needed, please do not hesitate to contact me.

Sincerely,



Susan H. Richardson

SHR/cb  
Attachment

cc: Joe Gatins, Georgia ForestWatch

**GEORGIA FORESTWATCH COMMENTS**  
**UPPER CHATTOOGA SCOPING NOTICE, AUGUST 14, 2007**

**Response to Forest Service Questions on Desired Conditions**

The Forest Service indicates that the public has expressed agreement on five threshold goals with regard to the Upper Chattooga, collectively referred to as the “desired condition:” (i) the need to protect and enhance the outstandingly remarkable values of the Chattooga River (i.e., its geology, biology, scenery, recreation and archeological history); (ii) the need to maintain a sense of solitude away from modern life; (iii) the need to offer a remote wilderness experience; (iv) the need to preserve the corridor’s spectacular scenery and setting, and (v) the need to protect its wild, natural resources. The Forest Services poses a series of questions directed to meeting the desired condition. These questions and the responses of Georgia ForestWatch are captured below:

**1) Should there be new standards limiting trailheads, trails and/or campsites?**

Overall, the answer is yes. Casual, visual observance of the Upper Chattooga corridor gives ample evidence – as do the combined biophysical findings of the Forest Service’s June 2007 Report on the Capacity and Conflict on the Upper Chattooga River (“Integrated Report”)<sup>1</sup> – that human trampling is degrading the banks of the river in many locations. Existing resources for management of the Upper Chattooga are not sufficient. At a minimum, no new trailheads or new areas of ingress and egress should be created near the river and its tributaries. Campsites should be closed or relocated to avert further resource damage, particularly in that part of Upper Chattooga corridor located in the Ellicott Rock Wilderness. It is not possible from the outline in the scoping notice to accurately identify which “user-created trails” the Forest Service would intend to keep open which the Forest Service would intend to close. Georgia ForestWatch requests that the Forest Service provide such detail so the public can accurately gauge the Forest Service’s intentions.

**2) Should there be new standards limiting group sizes, encounters between user groups and/or access?** Overall, the answer is yes. Existing management calls for a limit of 12 individuals per commercial or organized group, but then only in the Ellicott Wilderness. The Forest Service should consider a smaller group size, applicable to the entire corridor and applicable to all groups, no matter their organizational affiliations. This would help reduce the number of vehicles that any one group would need to bring to the corridor, and relieve some of the parking (and erosion) problems now occurring. No additional access should be granted or created to the Upper Chattooga corridor – but, at the same time, the agency should

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<sup>1</sup> Whittaker, D. and Shelby, B., Confluence Research and Consulting, *Capacity and Conflict on the Upper Chattooga River, An integrated analysis of 2006-2007 reports*, prepared for USDA National Forest Service, Sumter, Chattahoochee and Nantahala National Forests (June 2007).

act cautiously if it came to limiting existing access. Once granted, as it has been for decades, such access is deemed to be one of the freedoms granted the public, and would be difficult to reverse. The agency also will have to dedicate the appropriate manpower and budget resources to educate the public to such new standards – and then enforce them.

- 3) **Should there be new boating opportunities on the Chattooga River?** No new boating opportunities on the Upper Chattooga should be instituted unless and until a full and comprehensive appraisal (see comments below regarding need for an Environmental Impact Statement) of the long-term impacts of increased boating on the Outstandingly Remarkable Values of the headwater reach is completed. As the Integrated Report ably points out, introduction of a new extreme sport in the corridor, and the thousands of adherents that it would bring to this wild remote area of national forests, would further overwhelm a fragile, wild resource and further degrade the area's Outstandingly Remarkable Values.
- 4) **Should there be new standards limiting group sizes, encounters between user groups and/or access if new boating opportunities are allowed?** No, if the Forest Service answers question No. 3 in the negative. Yes, obviously, if such boating opportunities are allowed. But this question quickly becomes moot if the Forest Service makes the appropriate and legally supported decision, as supported by the NEPA review, to prevent "new boating opportunities" where such boating has been restricted for the past 30-plus years.

### **Response to Forest Service Alternatives**

Georgia ForestWatch provides the following response to the six alternatives proposed in the scoping letter of August 14, 2007.

- **Large woody debris.** Georgia ForestWatch agrees with the proposals in Alternatives 1-3 to emphasize and recruit large woody debris, one of the key ingredients in the aquatic food chain. Georgia ForestWatch further urges amendment to both the Chattahoochee and Nantahala Land and Resource Management Plans to bring those Management Plans into compliance with the Sumter National Forest Plan's provisions to attain the desired condition of 200 pieces of large woody debris per stream mile. For easier management, we urge the agency to do away with the various exceptions to this rule outlined in Alternative 1, except for when such debris "poses a threat to private property or National Forest infrastructure such as culverts and bridges." We disagree with the proposals in Alternatives 4-6 to permit "limited woody debris removal." Such a proposal is too vague to properly evaluate its impact. In addition, Georgia ForestWatch notes that the Forest Service, in the past, has countenanced illegal large woody debris removal on Holcomb and Overflow creeks, and along the

West Fork of the Chattooga, that was anything but “limited.” It is preferable in a truly Wild and Scenic river environment to simply let nature take its course and let the trees fall where they may. This, indeed, will be the case in coming years, as most of the native hemlocks killed by the woolly adelgid infestation fall from the sky. In this regard, Georgia ForestWatch reincorporates by reference the letter of April 30, 2007 from Friends of the Upper Chattooga relating to management of the tributaries and Large Woody Debris, previously filed on our behalf with your office.

- **Education and law enforcement.** All of the Alternatives (1-6) presuppose an active education and enforcement effort with the public, whether it is to educate campers regarding proper campsite etiquette or regulate group sizes, or, where boating is allowed, to monitor and regulate such new activity on the Upper Chattooga. Yet, nothing in the Forest Service documentation presented to date has any effort been made or disclosed as to how many Forest Service personnel this would require, how much it would cost and who would pay for it. The Forest Service must commit, in writing, to such compliance efforts to ensure the validity of any of the alternatives.
- **Monitoring, and the lack thereof.** None of the Alternatives (1-6) make any mention of long-term monitoring of the Upper Chattooga, with or without boating permitted. This is a serious deficiency. Georgia ForestWatch urges the Forest Service’s commitment to such monitoring on the agency’s part, perhaps with built-in “sunset provisions” to abandon any new management if deemed unworkable after 12 months.
- **Group sizes.** Under current management on the Sumter National Forest (Alternative 1), “commercial and organized group size” is limited to 12 individuals “within existing Wilderness areas” only. This standard is not broad enough to ensure Wilderness-compliant activities in the Ellicott Rock Wilderness. We urge the Forest Service to consider a smaller group size (perhaps as low as six-to-eight individuals,) and extension of these size limits not only to commercial and organized groups, but also to all groups, regardless of affinity, and to all segments of the Upper Chattooga corridor, whether they are treated as a wild, scenic or recreational segment of the area. We also urge that, whatever standard arrived at, such standard be made the same in all three affected national forests.
- **Trails.** Alternative 1 is unacceptable with regard to trails as it permits new non-motorized trail construction and motorized trail reconstruction and relocation, both of which would add new human pressures to the Upper Chattooga area. The only trail work that should be allowed in the corridor is the reconstruction and relocation of existing Forest Service system hiking trails to reduce riparian and aquatic impacts. The Forest Service, as part of its NEPA evaluation, must publish

a clear and accurate list of those trails that are deemed to be part of the Forest Service system, which are in fact unauthorized “user-created trails,” and, most importantly, which trails the agency proposes to “designate” under the various alternatives, and which it would close. Depending on which map is reviewed, it is not clear which are system trails and which are user-created. Alternatives 2-6, meanwhile, are unacceptable in that such options would sanction (i.e., “designate”) currently unauthorized user-created trails, many of which serve as vectors for erosion leading to the river. These alternatives also are too vague to properly evaluate. Is the agency considering sanctioning *all* user-created trails, or just some of them – and, if so, which ones specifically?

- **County Line Road Trail.** In addition, Georgia ForestWatch would like to bring to the Forest Service’s attention the management and description of the so-called “County Line Road Trail” that goes from Whiteside Cove Road to the Chattooga River Trail, slightly downriver from the river’s confluence with Norton Mill Creek. Although this trail is described in recent Forest Service papers as a user-created trail, it currently is being used by the Nantahala National Forest as a logging road under the White Bull timber sale. In addition, in recent years this trail has served as an official alternate hiking trail to the river, maintained by volunteers under the supervision of the former Highlands Ranger District. It also recently was reshaped and repaired after Hurricanes Frances and Ivan by contractors paid from public funds, again under Forest Service contracts. We urge the Forest Service to determine if either Jackson or Macon counties, North Carolina, retain any rights to this trail/road.
- **Campsites.** We agree with proposals in Alternatives 1-6 to mitigate damage from existing campsites and to establish uniform rules across all three national forests involved in this study for dispersed camping away from the river and its tributaries, trails and roads. These new rules must apply uniformly across all wild, scenic and recreational segments of the river corridor as well as in the Ellicott Rock Wilderness.
- **Parking.** We disagree with all parking proposals set forth in Alternatives 1-6. There should be no change in current parking (no loss, no gain, and no change in current parking availabilities in an effort to arrive at “no net gain in parking capacity.” That last suggestion is a recipe for conflict.)
- **User registration.** Georgia ForestWatch does not support the proposal to institute voluntary self-registration on existing visitors to the Upper Chattooga as such efforts are likely to fail. Registration forms often disappear over time, or “the ballot box gets stuffed,” and there is no way for the Forest Service to accurately gauge whether such a system is being followed by all visitors to the area. Georgia ForestWatch believes a better option is for the Forest Service to periodically check

visitor levels in person. In addition, Georgia ForestWatch does not support the imposition of fees or permits on existing pedestrian visitors. In comparison, should boating be permitted, which we contend it should not, a permitting system *is* appropriate to enforce the Forest Service's established limitations on the number of boats and boaters allowed on the Upper Chattooga. As such, the necessary monitoring proposed by the Forest Service mandates a clear permit system, as there is no other accurate method of monitoring the number of boats and boaters without it.

- **Duckies (inflatable kayaks) and ELF boating.** Alternatives 4-6 introduce a troubling and unnecessary proposal if boating were to be allowed – that is, that the Forest Service would permit single-capacity inflatable kayaks, not just single-capacity hard boats. To our recollection, even the most aggressive of the pro-boating advocates have never suggested permitting inflatable kayaks on the Upper Chattooga. Allowing such inflatable kayaks has the potential of creating a back-door way of permitting commercial boating on the Upper Chattooga, as such inflatables are often provided for rent by outfitter companies. This would contravene the agency's appeal decision, which limited the agency's review to non-commercial boating. Thorough review of the inflatables as part of the NEPA review process also will demonstrate that such craft often are used by a subset of "creek boaters" who prefer the "sport" of "extreme low flow (ELF) boating." These creek boaters are often less skilled, weekend-variety boaters and thus present additional risks and potential unnecessary utilization of Forest Service resources to address such risks.
- **Safety and emergency rescue.** The NEPA evaluation also should be used to gauge the new safety and emergency rescue considerations that will be introduced in this area if boaters, particularly unskilled weekend boaters in "duckies," are allowed on the Chattooga headwaters or its tributaries. The Forest Service must evaluate the likely resource damage that will occur if a large-scale rescue effort became necessary. We also ask the agency to review the possibility, advanced by some boaters if boating were allowed on the Upper Chattooga, of requiring personal emergency locator beacons for boaters and analyzing the costs to taxpayers if the Forest Service provided such beacons to permitted boaters.
- **Fishing impacts.** Alternatives 4-6 (and any other alternative that might spring forth that permits *any* boating on the Upper Chattooga) are tailor-made to create conflict with anglers. These conflicts will occur at river flow levels preferred by both boaters and anglers and generally across all seasons of the year (*see* Integrated Report.) One does not need an expensive consultant or sophisticated study to know that boats spook fish, particularly in the narrow stretches of river that characterize most of the Upper Chattooga, particularly in the back-country fishing holes preferred by many anglers.

- **Encounters and solitude.** Only one alternative, Alternative 2, mentions efforts to regulate encounters between visitors, in this case to “no more than three encounters per day except within 300 feet of Burrell’s Ford Bridge.” This statement is vague. What exactly is meant by no more than three encounters? Three individuals? Three groups of individuals? The Forest Service in its NEPA review must clearly explain what is meant by this proposal. At the same time, the Forest Service must examine how it will preserve the Outstandingly Remarkable Value of solitude in the Upper Chattooga corridor – and how encounters with other visitors degrade that crucial value.
- **Comment specific to preliminary Alternative 4.** Georgia ForestWatch, for reasons stated above, is opposed to introduction of boating or so-called “creeking” anywhere on the Upper Chattooga’s 21 miles of wild river. If boating were permitted under Alternative 4, however, we would make the following comments and ask that they be evaluated by the Forest Service. The boating access point in this Alternative 4 is proposed for the top end of the river (from the U.S. Forest Service parking lot on Whiteside Cove Road, along the Chattooga River Trail and a spur, user-created trail to the river). This access point is problematic. The parking lot is not big enough to handle more than about three or four vehicles and cannot readily be expanded given its location adjacent to private properties. This will occasion parking pressure adjacent to the Whiteside Cemetery or the Whiteside Church (and a concomitant use of private lands to access the official trails) if Alternative 4 is permitted. This parking pressure is exactly the type of problem that establishment of the new parking lot was supposed to fix. The spur trail leading to the river also represents a steep descent to the water, which will inevitably cause greater erosion if boaters are allowed unfettered and unlimited year-round access to this portion of the river, as suggested in Alternative 4. Similar problems arise under this proposed alternative for boating below the Bull Pen Road Bridge (also called the Old Iron Bridge.) Permitting as many as 48 new visitors per day (and their vehicles) under this alternative would further pressure the parking situation and likely conflict with fishing activities above Burrell’s Ford Bridge. The boating egress proposed under this alternative cannot be evaluated without further information. Would boaters come out on the Georgia or South Carolina side of the river? Would this create a new “user-created trail?” Further, were boating allowed under this alternative, Georgia ForestWatch urges immediate implementation of a permitting system, rather than self-registration, for boating in the corridor.
- **Comment specific to preliminary Alternative 5.** Georgia ForestWatch, for reasons stated above, is opposed to introduction of boating or so-called “creeking” anywhere on the Upper Chattooga’s 21 miles of wild river. If boating were permitted under this alternative, however, Georgia ForestWatch makes the

following comments and asks that they be evaluated by the Forest Service. Alternative 5, similar to Alternative 4, would create greater year-round parking pressure, especially at the small parking lots in the Thrift's Lake areas above the Lick Log Creek egress point. It also would raise navigability and private-property issues (as discussed below) that must be resolved *a priori* before this alternative can even be evaluated.

- **Comment specific to preliminary Alternative 6.** Georgia ForestWatch, for reasons stated above, is opposed to introduction of boating or so-called "creeking" anywhere on the Upper Chattooga's 21 miles of wild river. If boating were permitted under this Alternative 6, however, we would make the following comments and ask that they be evaluated by the Forest Service. Alternative 6, which would allow unlimited boating, anytime, any day or month of the year, anywhere on the Upper Chattooga, top to bottom, is both unrealistic and overly broad and conflicts with all other lawful activities currently permitted in the Upper Chattooga corridor. The Outstandingly Remarkable Values of the Upper Chattooga Wild and Scenic River corridor and the Ellicott Rock Wilderness inevitably would be degraded under this alternative.
- **Other alternatives.** NEPA requires the Forest Service to fully study and evaluate viable alternatives to any proposed action. In this case, the Forest Service must use the NEPA process to study and evaluate the boaters and so-called "creekers" existing wealth of nearby waterways to ply their extreme sport and whether these existing opportunities are sufficient to meet demand of these whitewater devotees. These resources include the nearby Overflow, Clear and Holcomb Creeks and the entire West Fork of the Chattooga, not to mention the entire 36 miles of the Lower Chattooga. The agency also mentions in its scoping notice that "management of national forestlands in the entire corridor are being considered when addressing use and impact patterns and the acceptability of management actions." It is unclear what exactly is meant by this statement. If the intent of the Forest Service is to provide greater river access to so-called "creek boaters," it thus might be valuable to study the alternative of providing them greater access to the swift and dangerous whitewater rapids of the Lower Chattooga. Such a proposal likely would require limiting access to those 36 miles of whitewater by the commercial outfitters and rafting companies in favor of the private boaters -- which would occasion its own management conundrum. But if the agency was serious about studying viable alternatives, as it is legally bound to do, we urge analysis of such an alternative. Another management alternative clearly suggested by the agency's bio-physical findings and the clear mandates of the Wild and Scenic River and Wilderness acts is that the Rock Gorge (Big Mountain) Roadless area can meet the criteria for designation as a Wilderness Study Area under the Sumter and Chattahoochee Land Resource and Management Plans. This alternative must be studied and evaluated as part of the NEPA review process.

## Comments Regarding the NEPA Review Process

The Forest Service in its scoping notice, both directly and indirectly, also has posed several additional key questions that merit comment.

- **Should the Forest Service prepare an Environmental Impact Statement as part of its analysis of the management alternatives?** Yes, the Forest Service must prepare an Environmental Impact Statement (EIS). An EIS is required when a major federal action significantly affects the quality of the human environment. An Environmental Assessment (EA) is not required if the agency has decided to prepare an EIS. Georgia ForestWatch believes an EA in this instance will only go part of the way to address the important questions surrounding the issues facing the Forest Service with regard to the Upper Chattooga. As such, the NEPA analysis undertaken pursuant to the EA inevitably will lead to the ultimate conclusion that the action significantly affects the environment and thus an EIS is required. Only a detailed and thorough EIS will answer the many significant questions raised by the potential of introducing a rapidly growing sport to this Wild and Scenic River corridor. Further, Forest Service procedures require an EIS when preliminary analysis indicates there may be significant effects on the environment. *See* Forest Service Handbook (FSH) 1909.15 at 11.6. Only an EIS in this case can fully evaluate and review *all* the many factors that must be analyzed as the Forest Service works to adhere to the statutory mandates for resource protection, as a priority, in both the Wild and Scenic River and Wilderness Acts, as well as agency guidelines presented in the American Whitewater Decision for Appeal (No. 04-13-00-0026) as well as in new Land and Resource Management Plan for the Sumter National Forest. We note that this management direction specifically calls on the Forest Service to give “primary emphasis” to protecting the corridor’s aesthetic, scenic, historic, archaeological and scientific features.
- **Effects Analysis.** The Forest Service is required to evaluate the direct, indirect and cumulative effects of each alternative, including biological, physical, economic and social effects of the proposed alternatives. FSH 1909.15 at 15. It is not apparent that such an evaluation has been conducted. Before the public can provide meaningful input on any of the alternatives, such an evaluation must be conducted as part of the NEPA analysis, whether it is an EA, or, as we contend is required, an EIS. In this context, Georgia ForestWatch identifies and discusses below a variety of crucial biological and archeological questions, and other significant issues, that merit review before the Forest Service can make a NEPA-compliant evaluation and decision in this case.
- **Precedent-setting national impact.** We note that any decision advanced by the

Forest Service in this matter likely will have immediate and precedent-setting national impact, particularly as affects the boating issue on the whitewater creeks and streams of Yellowstone National Park. Boating has been banned from those waters for better than 50 years. Reversal of the existing boating ban on the Chattooga, in turn, likely would serve to fuel efforts to do the same in Yellowstone.

- Issues of navigability and private property rights. Finally, Georgia ForestWatch notes that the Forest Service, to date, has failed to address two crucial questions relating to any proposal to authorize boating on the Upper Chattooga and its tributaries: First, are these waters legally navigable under federal law and applicable state statutes in Georgia, South Carolina and South Carolina and second, what would the effects be on private landholdings if boating were allowed? Such questions also must be answered in the NEPA evaluation.
- **Questions relating to tributaries and Large Woody Debris.** Despite repeated calls to do so, the Forest Service also has yet, to date, has yet to undertake a detailed analysis of the effects of boating on the Upper Chattooga's tributaries with regard to the potential of boaters to remove large woody debris from these waters. This detailed analysis must be conducted as part of the Forest Service's NEPA evaluation.

### **Comments Regarding Necessary Components of the NEPA Evaluation**

The Forest Service also should study and analyze the following significant issues in an EA or, as Georgia ForestWatch contends is required, an EIS, before any of the six proposed management alternatives (or any other alternatives) are selected as a "preferred alternative."

- **Biological surveys.** The Forest Service must produce and document a thorough biological survey of the 21 miles of the Upper Chattooga (a field survey, not just a document review) on all three national forests at issue, the Sumter, Chattahoochee and Nantahala National Forests, as well as all of the North Fork's tributaries as part of its NEPA evaluation. Such a baseline inventory is crucial to evaluating the effects of all potential human uses in the Upper Chattooga corridor. Although we understand that the Forest Service this month is undertaking a late-breaking review of the corridor's rare plants, concentrating on known "hot spots" and likely portage areas, this review is unlikely to be sufficient to adequately evaluate biological impacts. Georgia ForestWatch recommends that this review be broadened to include the entire area, especially including likely new dispersed camping areas that could be opened under the advent of boating, as well as all new ingress and egress areas proposed under the agency's boating alternatives (Alternatives 4-6.)

- **Gaddy studies.** In particular, Georgia ForestWatch urges the Forest Service to study and update the Chattooga-related findings contained in the 1992 publication, "*Natural Areas of the Highlands Region: Inventory of Primary Natural Areas of The Highlands Township Region, in Macon and Jackson Counties, North Carolina*," by Dr. L.L. Gaddy, the Walhalla-based consulting biologist. We urge specific attention to that portion of the headwaters reaches from the source to Bull Pen Bridge, which harbors one of two localities on the Upper Chattooga for the rare rock club moss, the rare fir club moss, the rare Biltmore sedge and divided-leaf groundsel, as well as the dwarf filmy fern and sword moss. Gaddy further reported that that lower portion of the river to Ellicott Rock, as well as the lower reaches of Fowler Creek and Scotsman Branch also harbored another location of rock club moss, as well as film fern, rock gnome lichen and the equally rare naked-fruit needle rush.
- **GDOT biological surveys.** In particular, the Forest Service must also avail itself of any special biological surveys that may have been more recently conducted on behalf of the Georgia Department of Transportation (GDOT) in connection with a proposed replacement and widening of the Russell Bridge over the Chattooga at Route 28. In particular, Georgia ForestWatch recommends review of the special study conducted for the highway construction agency on bog turtle habitat in the vicinity of the Route 28 bridge.
- **Caddisfly reports.** The Forest Service should review the GDOT public comment file for the Russell Bridge project, which, in a communication of December 20, 2003, relayed the findings of Dr. John Morse, Professor of Entomology at Clemson University. Dr. Morse reports the capture and identification of several rare caddisfly species in the vicinity of the same bridge. These included the rare *Matrioptila jeanae* (this one also reportedly found on the East Fork of the Chattooga, in the vicinity of the South Carolina State Fish Hatchery,) as well as several other unusual caddisfly species: *Rhyacophila vuphipes*; *Stactobiella palmata*; *Mayatrichia ayama*; *Pycnopsyche lepida*; *Setodes Stehri* and *Micrasema bennetti* Ross.
- **Other incidence of rare, protected and species of special concern.** Forest Service officials also must use the NEPA process to review the incidence and exact location of the following species, using existing NatureServe surveys for Georgia, South Carolina and North Carolina, as well as visual observation on the ground during the appropriate growing seasons: *Aneides aeneus* (Green Salamander,) *Bare rock/lichens, br noncalcareous outcrop* (Noncalcareous Outcrop Rock/lichens,) *Carex manhartii* (Manhart's Sedge,) *Corydalis sempervirens* (Pale Corydalis,) *Herbaceous veg., br noncalcareous outcrop* (Noncalcareous Outcrop Herb Community,) *Huperzia appalachiana* (Fir

Clubmoss,) *Hymenophyllum tayloriae* (Taylor Filmy Fern,) *Isotria medeoloides* (Small Whorled Pogonia,) *Juglans cinerea* (Butternut (nut-bearing Only,) *Leiophyllum buxifolium* (Sand-myrtle,) *Listera smallii* (Appalachian Twayblade,) *Lycopodium clavatum* (Ground Pine,) *Lysimachia fraseri* (Fraser's Loosestrife,) *Melanthium latifolium* (Broadleaf Bunchflower,) *Monotropsis odorata* (Sweet Pinesap,) *Neotoma floridana haematoreia* (Southern Appalachian Woodrat,) *Packera millefolia* (Blue Ridge Golden Ragwort,) *Plagiochila caduciloba* (Gorge Leafy Liverwort,) *Plagiochila sullivantii* (Sullivant's Leafy Liverwort,) *Plagiomnium carolinianum* (Mountain Wavy-leaf Moss,) *Prunus pensylvanica* (Fire Cherry,) *Shortia galacifolia* (Oconee Bells,) *Shrub/scrub veg., mountain bog/seeep* (Mountain Shrub Bog,) *Solidago simulans* (Cliffside Goldenrod,) *Calystegia catesbeiana ssp. sericata* (Silky Bindweed,) *Hymenophyllum tayloriae* (Taylor Filmy Fern,) *Notropis scepticus* (Sandbar Shiner,) *Panax quinquefolius* (American Ginseng,) *Plagiochila caduciloba* (Gorge Leafy Liverwort,) *Plagiochila sharpii* (Sharp's Leafy Liverwort,) *Platyhypnidium pringlei* (Pringle's Platyhypnidium,) *Plethodon teyahalee* (Southern Appalachian Salamander,) *Lygodium palmatum* (Climbing Fern,) and *Sorex hoyi* (Pygmy Shrew,) as well as any other endemic, disjunct and relic plant species in the corridor.

- **Old growth.** The Forest Service must identify old growth communities in the corridor and along its tributaries and specify how these will be protected.
- **Archeological surveys.** The Forest Service has listed a variety of archeological sites in its Upper Chattooga paperwork, but it is impossible to fairly gauge the potential impact of boating on the Upper Chattooga and streamside activity on these sites without providing the public more detail. Accordingly, the Forest Service, during the NEPA evaluation, must document the location of particular sites along the 21 miles of the North Fork at issue -- and all its tributaries -- and fully evaluate potential impacts thereon. This requires a systematic survey of the North Fork corridor – as well as tributaries – and appropriate evaluation of whether any sites or areas are eligible for inclusion on the National Register of Historic Places.
- **GDOT archeological surveys.** In particular, we ask that you again consult the GDOT file for the Russell Bridge Project to apprise the agency, and by extension the public, of any and all special site studies and archeological surveys conducted in connection with the bridge replacement project at Route 28 – known to be the site of a historic Cherokee Indian town. This site is eligible for inclusion on the National Register of Historic Places – and is of such importance that it contributes mightily to the outstanding historic and heritage rating for the Chattooga.
- **Indian grave protection.** The Forest Service has provided no assurance that it has fulfilled its responsibilities under the Native American Graves Protection and

Repatriation Act. As such, we ask that the Forest Service divulge its correspondence with the Eastern Band of the Cherokee Indians regarding Old Chattooga Cherokee Indian Town on both sides of the Route 28 bridge (as well as any other Indian-era sites in the Upper Chattooga area) to ensure that the agency has fulfilled these duties.

- **Other archeological sites.** The Forest Service must pay special attention to several historic and archeological sites in the Georgia quadrant of the Ellicott Rock Wilderness immediately north of Burrell's Ford Road, believed to date both to the pre- and post-European era. These several sites, known to heritage program managers of the Chattahoochee-Oconee National Forests (but apparently not yet scientifically surveyed,) must be assessed formally during the NEPA process. In similar fashion, the agency must document what steps it will take to protect the old Burrell family cemetery below Burrell's Ford if boating is allowed in that area.
- **Monroe cabin and similar sites.** The Forest Service must document how it will protect the archeological sites along (upper) Fowler Creek as well as the Monroe Cabin, located below Corkscrew Falls.
- **Wildlife and keystone animal species.** We ask the agency, in its NEPA evaluation, to fully document impacts and potential impacts on the terrestrial and aquatic fauna of the Upper Chattooga, specifically to include black bears, migratory birds, keystone species, salamanders, crayfish, and the many types of fish native to this river – and the importance of Wilderness and roadless areas to supporting such wildlife habitat. We also reincorporate by reference the white paper twice previously filed with your office as part of the agency's analysis, "*Wilderness, wildlife and procedural concerns of the USFS Visitor Capacity, LAC, and NEPA analysis of the Chattooga River headwaters,*" by Butch Clay. This review should include rare and sensitive, non-game species in the watershed.
- **Cougar survey.** The Forest Service must open a direct consultation with the U.S. Fish and Wildlife Service to obtain an update on that agency's five-year review of the federally endangered eastern Cougar (*Felis concolor cougar*), and also to check specifically on the efforts of qualified professionals to study and document the credible report of an eastern Cougar sighting by a Forest Service professional in the middle of the Upper Chattooga corridor in late January, 2007. If such an effort has not yet been undertaken, the Forest Service must do so, in concert with qualified professionals, as part of the NEPA evaluation in this instance.
- **Green salamander.** We ask the agency to make a special effort to assemble information on the disjunct populations of the rare green salamander, (*Aneides*

*aeneus*,) that are known to populate the Upper Chattooga area and how it plans to protect these populations on all three affected national forests.

- **Scenery.** The Forest Service must document how it intends to protect the unparalleled scenery of the deeply entrenched Upper Chattooga corridor and how it intends to protect visitors' experience of these areas.
- **The outstandingly remarkable value of solitude.** Perhaps nowhere else on the East Coast is there such a large stretch of publicly owned land that provides such a marvelous sense of remoteness and solitude as the Upper Chattooga. The need for "getting away from it all," particularly in the hurly-burly of modern urban life, is growing. Such solitude is extraordinarily fragile and valuable in 21<sup>st</sup> Century society. The Forest Service must thoroughly examine the need to protect this value and the damage that will be done if recreational activities overwhelm the resource – as almost surely will occur if the boating is permitted into this area. We note this is particularly true for the Ellicott Rock Wilderness, which, under the Wilderness Act, requires the agency to administer this area "for the use of the American people in such manner as will leave (it) unimpaired for future use and enjoyment as Wilderness," which is further defined in the Act as an area with "outstanding opportunities for solitude or primitive or unconfined type of recreation."
- **Cumulative impacts and connected actions.** The Forest Service, to date, has resisted requests to analyze seriously cumulative impacts and connection action. However, as set forth *infra*, this cumulative impacts analysis must be conducted to address the likely impacts to the Upper Chattooga if boating was allowed in that area – namely that it will soon look and feel like the human zoo that typifies the Lower Chattooga. NEPA requires the agency to fairly evaluate not only obvious impacts, but also the long-term impacts that "when added to other past, present and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions." (*see* 40 C.F.R. § 1508.7.) The Integrated Report pre-supposes increased pressure for boating as area population increases occur (on the order of 20 percent over the next few decades,) and thus must evaluate such impact in its NEPA evaluation. In particular, the agency also must review its own record on the Lower Chattooga as regards the inexorable push by commercial interests to use the river for profit. Another connected action that must be studied closely regards the issue of the Upper Chattooga's tributaries and how they should be managed, whether boating is allowed or the current ban is continued. This latter evaluation should include close review of how Large Woody Debris will be managed not only on the North Fork but also on the tributaries (see further discussion above.)

- **Economic impacts.** All of the management alternatives brought forward by the Forest Service must be evaluated for their economic impact, whether positive or negative, and we again urge that an EIS is appropriate in this case to do so.
- **Impact on local economies.** The NEPA evaluation must analyze the impact on local economies from the substantial reduction in local housing, food and entertainment receipts that will occur if boating is allowed in the designated fish harvest areas above Route 28 (and the concurrent dislocation this will cause to anglers); the direct impact of the costs associated with streamside and trail improvements proposed under the management alternatives; the impact on Forest Service budgets from requiring new educational efforts with the public; the impacts on Forest Service budgets from requiring continuing new law enforcement and resource protection on the Upper Chattooga; the impact on agency budgets from providing the new river rangers and resource protection officers that will be necessary to providing adequate regulation on the Upper Chattooga; the impact if new regulations are adopted – but no funds are budgeted for the new manpower needed to monitor activities and enforce new rules. (The Forest Service record in this latter regard is most spotty, given the experience in the Ed Jenkins National Recreation Area and the recently completed LAC plan for the Cohutta Wilderness, which have not received adequate agency funding.)
- **Matters of economic justice.** The Forest Service must analyze, as required under NEPA, the possibility of boating on this part of the Upper Chattooga will be fair to underprivileged and economically deprived members of the public – given the significant costs necessary to whitewater boating (just a creeking-style kayak alone can easily cost as much as \$1,000 or more.)
- **Roads analysis.** Current Forest Service regulations require the agency to conduct a project-level and watershed-level roads analysis for the various management alternatives, including “potential environmental and access effects” of any road changes or improvements, (including parking changes,) contemplated under the alternatives, particularly since many of these will increase vehicular and parking pressure on the area. (*see* 36 C.F.R. Part 212, Subpart B.) Such analysis must be made part of the NEPA evaluation, in concert with efforts to analyze the potential damage from erosion and sedimentation due to roads (previously identified in Lear as the major contributor to such problems.)
- **Alternatives, generally.** The NEPA evaluation also must conscientiously and thoroughly analyze management alternatives raised by the agency – and must provide a much greater level of detail as to the physical, biological, social and economic impacts of each individual alternative. The scoping letter of August 14 outlines six various alternatives, but these cannot adequately be analyzed until the agency provides a more detailed analysis of each.

## **Conclusions**

The issues raised by the Forest Service scoping with regard to the potential of boating on the Upper Chattooga are significant enough to require preparation of a thorough Environmental Impact Statement. The agency must answer all legal questions regarding the navigability of the Upper Chattooga and the trampling of private property and private property rights before boating is contemplated. The agency must study all viable alternatives to opening this wild and pristine section of the North Fork – and its tributaries – to boating. The agency must, above all, protect the Outstandingly Remarkable Values that characterize the Upper Chattooga today – both under the Wild and Scenic River and Wilderness Acts, and the agency's implementing guidelines and forest plans -- and, if necessary and appropriate, disregard the legal sword of Damocles hung over its head by a one of the largest band of lawyer-lobbyists in the country. Fair and thorough analysis of these matters undoubtedly will show, we believe, that current management prohibiting boating on the Upper Chattooga, arrived at more than 30 years ago, was the appropriate, fair, right and far-sighted action and should remain the preferred alternative now and for the benefit of future generations.