



Many legal issues loom for Chattooga boating in 2010

U.S. Forest Service stays boating decision pending appeals resolutions

The struggle to keep boating out of the Wild and Scenic Upper Chattooga River heats up as we move toward a new year. In April of 2009, the Forest Service issued a decision that would allow boating on the Upper Chattooga for the first time in more than 30 years. A total of 19 conservation and recreation organizations and individuals (including Georgia ForestWatch) have filed administrative appeals asking the Forest Service to reconsider its decision. Additionally, American Whitewater, the boating lobby, has filed a federal lawsuit to try to bypass the Forest Service decision process.

Boating has been excluded from the Upper River and allowed in the Lower Corridor as the result of a compromise made more than three decades ago. The effects of the different management approaches could not be more evident. The Upper Chattooga is a place of amazing natural beauty and solitude. The lower Chattooga shows the wear and tear of phenomenal popularity and for anyone seeking natural solitude feels more like an amusement park ride on busy Saturdays. Now boaters want to upset the compromise and force the whole river to be managed more like the Lower Corridor.

For now, Georgia ForestWatch has protected the Upper Chattooga by successfully urging the Forest Service to, “stay,” implementation of its decision to allow boating until it can address all of the administrative appeals. The Forest Service says it will complete that review in March or April, 2010. After that date, whether the Upper Chattooga is protected depends on how the Forest Service reacts to the appeals, and whether any group is able to challenge that decision in court.

Below is a brief roadmap of what is happening in the appeals process and a related federal lawsuit. If you want to review the actual appeal documents and Forest Service communications, visit the Forest Service website: <http://www.fs.fed.us/r8/fms/sumter/resources/Chattooga.php>. Here’s the short version:

- Georgia ForestWatch has filed an administrative appeal of the Forest Service’s boating decision, which means it has officially asked the Forest Service to reconsider its decision. Georgia ForestWatch stands alone as the sole conservation organization proposing that boating and associated access trails etc. is not appropriate for a wild area of national forestlands encompassing the environmentally sensitive Chattooga Cliffs area and the Ellicott Rock Wilderness. To permit even the limited boating suggested by the Forest Service, we believe, would open the door to future boating increases, affecting all other users and their experience of the wild and isolated character of the area.
- American Whitewater has also filed an administrative appeal arguing that the area should be open to boating at all times of the year, when there is enough water in the river to make it passable. As for the bigger picture, American Whitewater’s appeal (and lawsuit) aims right at the heart of federal forest managers’ ability to “zone,” that is, manage recreation to preserve a broad range of recreation experiences and to protect sensitive areas. Just as boating is now prohibited in sections of (a very few) Wild and Scenic Rivers, so are all-terrain vehicles, horses, snow mobiles, hunting, camping, over-fishing and mountain bikes prohibited in places where those uses would interfere with areas set aside to protect other experiences and special sensitive ecological areas. The following boating organizations have joined the American Whitewater administrative appeal: American Canoe Association, Atlanta Whitewater Club, Georgia Canoeing Association, and Western Carolina Paddlers.

- American Whitewater and the related groups, plus three individuals and the Foothills Paddling Club, also have gone to U.S. District Court in Anderson, S.C. to try for an end-run around the administrative appeal process and to urge a federal judge to open the headwaters immediately and permanently to boating. American Whitewater, which caused the Forest Service to initiate the 54 months of study leading up to the current juncture with its own appeal in 2004, is now trying to stop that process. American Whitewater tried the same approach in 2004-2005 in U.S. District Court in Gainesville, Georgia, but was summarily turned down by that court. A hearing on this new case is set for early 2010. Meanwhile, American Whitewater's team of six attorneys has filed multiple memoranda to get Georgia ForestWatch's stay overturned so that boating can commence now, even while the agency works through the numerous administrative appeals. U.S. Attorneys have countered with their own memoranda, arguing that American Whitewater's lawsuit "is an attempt to avoid exhausting the administrative process..." The government intends to file its own motion to dismiss the AW suit, "based upon plaintiffs' failure to exhaust administrative remedies..." the government contends.
- The Chattooga Conservancy, whose main mission is to protect the natural ecological integrity of this watershed, has filed its own appeal, which would bar all boating from the river's headwaters to Bull Pen Road, a four-mile stretch that includes the pristine Chattooga Cliffs. But the Conservancy would countenance boating on the remaining 17 miles of the Upper Chattooga, from Bull Pen Road to the Route 28 Bridge, year-round, at river flow levels that exceed 450 cubic feet per second, if the number of boaters per day were limited to four groups consisting of no more than six boaters per group.
- An umbrella group, Friends of the Upper Chattooga, also favors a new compromise position. The Friends' "limited appeal" would accept the Forest Service proposal to try to allow boating on seven miles of the river, but appeared largely aimed at continuing the prohibition on boating between the headwaters at Grimshawes and Norton Mill Creek, and between Burrell's Ford and the Route 28 bridges, areas particularly valued by fishermen, as well as keeping boats off the Upper Chattooga's tributaries. The Friends includes the South Carolina and Georgia chapters of Trout Unlimited (whose members often fish a stocked portion of the river above Route 28), the Georgia Wildlife Federation, North Carolina Wildlife Federation, Jackson-Macon Conservation Alliance, and Whiteside Cove Association. The Whiteside Cove Association owns and operates a fishing camp on private property along the river at Grimshawes. In early December, the Friends group withdrew its appeal following a meeting with Forest Service officials.

How is this to be resolved? Given the variety of opinions of all of the appellants and the intensity with which they are held, it appears unlikely that the agency's final decision will satisfy everyone. Once the Forest Service makes a final decision, the only legal recourse left to those who do not like it will be litigation in the federal court system.

Here, in summary, is the boating proposal recommended by the U.S. Forest Service:

- Boating would be permitted annually in hard boats or inflatable kayaks between December 1 and March 1, when water levels "approximately" exceed 450 cubic feet per second at the Burrell's Ford Bridge gauge.
- Boating permitted only between the confluence of the river with Norton Mill Creek and Burrell's Ford Bridge, with put-ins only permitted at Norton Mill Creek and Bull Pen Bridge and take-out only at Bull Pen Bridge or Burrell's Ford Bridge.
- Boater group sizes limited to six boaters per group, with a minimum of two craft per group.
- No commercial guided boating or shuttles would be permitted. No boating permitted on Upper Chattooga tributaries.