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Organization: American Whitewater
Title: National Stewardship Director
Comments: Attached are two related files: 1) American Whitewater's objection related to Chattooga River management, and 2) Four sets of prior comments that are cited in and relate to this objection, bundled into a single PDF.

March 22, 2022

National Forests in North Carolina

ATTN: Objection Coordinator 160 Zillicoa Street, Ste A Asheville, NC 28801

Submitted electronically to: https://cara.ecosystem-management.org/Public/CommentInput?Project=43545

Re: Nantahala and Pisgah National Forests Land Management Plan Objection American Whitewater hereby formally objects to specific findings and decisions within the revised Land Management Plan for the Nantahala and Pisgah National Forests (NPNF) and the associated Final Environmental Impact Statement (FEIS) and Record of Decision (ROD). We do so following the regulations in 36 CFR 219. The Draft Record of Decision was dated and published in January of 2022 by the Responsible Official, Forest Supervisor, James Melonas. Subsequently, the legal notice of the objection period appeared in the newspaper of record, the Asheville Citizen Times, on January 21, 2022. The 60-day objection period thus ends on March 22, 2022.

1. Statement of the issues and/or the parts of the plan revision to which this objection applies. Nantahala and Pisgah National Forests Land Management Plan (Final Plan) components WSR-S-31, WSR-S-32, and WSR-S-37 wrongly impose severe limits on paddling the Chattooga River. 1 These components were added to the prior forest plan in a 2012 amendment. Reconsideration of the Chattooga paddling limits in the Final Plan was wrongly deemed out of scope, and, in turn, wrongly eliminated from detailed analysis in the FEIS because they were out of scope. 2 The Chattooga paddling limits are clearly within the scope of this forest plan, and should have been reconsidered in detail based on a full decade of agency data collection which constitutes the best available scientific information and clearly shows that paddling the Chattooga River is sustainable recreation and that the limits are unnecessary. 2. Concise statement explaining the objection and suggestion of how the proposed plan decision may be improved. The Nantahala Pisgah National Forests (NPNF) wrongly deemed Chattooga River paddling management out of scope and then removed it from detailed consideration, the result being the continuation of outdated limits on paddling in the Final Plan despite a decade of data showing low use and no issues stemming from paddling. The NPNF fails to meet the legal standards for removing a topic from its scope and for eliminating a related alternative from detailed analysis. In addition, failing to consider ten years of monitoring data deviates from the direction of the 2012 planning rule to rely upon the best available science. Renewing the paddling limits among countervailing data is a violation of the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA). The proposed plan should follow the direction of the Nantahala Pisgah Forest Partnership and American Whitewater[rsquo]s comments on the Draft Plan and significantly ease or remove paddling limits from the Forest Plan. Specifically, we request the removal of seasonal and flow-based paddling limits, and removal of the full paddling prohibition on tributaries and portions of the Chattooga River upstream of Green Creek that are on public lands with existing access. We request more explanation of the cross-country foot travel prohibition and an updated monitoring plan reflective of these changes. We are open to discussing the most efficient way of reaching this outcome. 3. Identification of how American Whitewater believes that the plan revision is inconsistent with law, regulation, or policy. A. The NPNF violated the 2012 Forest Planning Rule by failing to rely upon the best available science. The 2012 Planning Rule expressly requires the Forest Service to [ldquo]use the best available scientific information to inform the planning

process[rdquo]. 3 Under the [ldquo]best available science[rdquo] standard, case law supports that [ldquo]although the Forest Service need not collect new data, it should seek out and consider all existing scientific evidence relevant to the decision and it cannot ignore existing data[hellip]the Forest Service must determine which data are the most accurate, reliable, and relevant,[rdquo] and that will be reviewed deferentially, but it still must be good science[mdash]that is reliable, peer-reviewed, or otherwise complying with valid scientific methods.[rdquo] 4 The NPNF does not use the best available scientific information, as required by the 2012 Planning Rule 5 and affirmed in case law, 6 in deciding to manage paddling on the Upper Chattooga River based on extremely limited 15-year-old data rather than on a complete dataset on paddling use collected in the intervening decade. In our comments on the Draft Plan we point out that the paddling limits in the 2012 Amendment were based on three key flawed assumptions: 1. Assumptions that 97-99% more paddlers would float the river on available days than actually float the river. 2. Assumptions that there would be conflicts between paddlers and other visitors, although none have occured. 3. Assumptions that higher levels of recreational use occur in summer, although it does not. The 2012 amendment analysis acknowledged that the predictions and initial assumptions therein were approximate, based on limited data, and that monitoring should lead to updates: As discussed in the Recreation ORV analysis (Section 3.2.1), recreation use and social impact data for the upper segment of the Chattooga WSR is limited. Although a few studies have been conducted in parts of the corridor, and monitoring, workshops or logic-based calculations have informed impact analyses as part of this planning process, precise estimates of use, social impacts and use-impact relationships are approximate. Recreation monitoring would allow the agency to address these data shortcomings over time. 7

Indeed, the scientific information that the 2012 Amendment was based on was a single sanctioned descent of the river by a single small study group in 2007, followed by significant predictions of use and effects. Now, in the 2022 Forest Plan, the NPNF bases their decision on the same 10- to 15-year-old information. Importantly, this is no longer the best available scientific information. In fact, the predictions from 2007-2012 have been replaced and invalidated by significant new and superior information collected between 2012 and 2022, including permit data on all paddling descents 8 and a concerted broader monitoring effort culminating in a report. 9 American Whitewater assisted a graduate student in supplementing the Agency monitoring report with additional analysis that we cited in our Draft Plan comments that further built the record in support of change. 10 Arbitrarily and capriciously relying on inferior, outdated, and disproven predictions rather than robust and highly relevant data as a basis for the decision to continue paddling limits violates the 2012 planning rule, NEPA, and the APA. B. The NPNF violates NEPA and the APA by wrongly eliminating Chattooga management from the scope of analysis. The NPNF excluded Chattooga River management from the scope of analysis in 2014, and wrongly failed to re-integrate it as many years elapsed. The Draft Record of Decision states: Following the 2014 court decision, the Forest Supervisor for the National Forests in NC maintained that the Nantahala and Pisgah National Forest plan revision would not revisit the management of the Chattooga WSR because the 2012 decision had not been fully implemented and the required monitoring of the decisions had not yet begun. 11 The range of alternatives considered in the FEIS should be consistent with the purpose and need of the proposed action. The agency[rsquo]s stated [ldquo]need[rdquo] for the Plan revision is to [ldquo]address significant changes that have occurred in ecological, economic, and social conditions in the area since the 1994 Amendment as well as changes in resource demands, availability of new scientific information, and promulgation of new policy, including the 2012 Planning Rule.[rdquo] 12 The statement of purpose and need in the Final Plan references the agency[rsquo]s [ldquo]Need for Change identified at the initiation of the forest plan revision process[rdquo]; a June 16, 2014 document called [ldquo]Revising the Nantahala and Pisgah Land Management Plan [ndash] Need to Change the Existing Land Management Plan.[rdquo] 13 This document suggests that the scope should be quite broad and encompass recreational limits like those on the Chattooga [ndash] for example: There is a need for the revised plan to address how forest management in all resource areas should be prioritized[hellip](emphasis added) 14 There is a need to be responsive to changing trends in services, activities and types of facilities desired by the public including [ldquo][p]romoting outdoor physical activities, especially among youth[rdquo] and [ldquo][i]ncreasing demand for day use[.][rdquo] 15 There is a need for plan direction to address[hellip]potential user conflicts; issues with adjacent landowners; conservation of natural resources; [and] riparian area protection and how recreation activities affect priority watersheds[hellip]16 Each of these NPNF

statements of need clearly indicate that paddling limits on the upper Chattooga are within the scope of the Plan. Moreover, in the Plan itself the NPNF recognizes its broad reach and describes [ldquo]sustainable recreation[rdquo] within the Forest as a key purpose of the Plan. 17 In short, if it involves recreation within the Nantahala and Pisgah National Forests, it is within the scope of the Plan revision and the FEIS. In addition to erring at the high level described above, the NPNF additionally errs in their substantive justifications for removing the issue from the scope of analysis. Specifically, the Agency claims the decision was made because the 2012 decisions have not been fully implemented and more monitoring is needed. Not so. Right or wrong in 2014, this justification has been invalidated for years, as the NPNF now has a full decade of consistent monitoring results and the decisions have been fully implemented for roughly that same timeframe. Rather than acknowledge this, the NPNF claims that the first monitoring was conducted in 2017 and 2018. 18 This is patently false. Paddlers have been monitored via permit requirements for every descent starting in 2012, and are the only type of visitor required to fill out a permit to visit. Forest Service staff reportedly went to the river every day with sufficient flow for several years to ensure permit compliance (without issue), and reportedly monitored biophysical conditions in detail. While the NPNF may not have monitored other types of visitation like hiking and camping until 2017 and 2018, paddling has been under a microscope since 2012. The changes we seek, and indeed the NPNF approach to managing paddling, is independent of other visitation trends as paddling use is so relatively low as to be insignificant in terms of capacity. The NPNF also falsely claims that additional monitoring is needed: Additional monitoring is necessary to determine use trends and to determine whether changes to visitor use management on the Chattooga WSR should be appropriately contemplated. 19 Additional monitoring is needed to establish more robust data sets and trends before direct changes to recreation use are implemented. 20 Ongoing monitoring is necessary to determine if a change in visitor use management on the Chattooga River is needed. 21 At least regarding paddling, this is false. First, ten years of permit data show a flat trend of very low paddling use, 22 and collecting more data will not change that trend. Instead, it will simply include older and older data in the dataset that has less and less relevance. In terms of recreation, data older than ten years has little if any merit in forecasting use. Second, the need for change does not come from monitoring, it comes from the Agency providing for sustainable recreation under the 2012 planning rule, 23 the Agency[rsquo]s policy of [ldquo]manag[ing] the use of rivers by establishing as few regulations as possible[rdquo] 24 , [ldquo]imposing only that level of direct management necessary to achieve management objectives[rdquo] 25 , [ldquo]establish[ing] use limits and other management procedures that best aid in [hellip] providing sustained benefits to the public,[rdquo] 26 and the Agency[rsquo]s obligation to the public to support multiple uses 27 and make well-reasoned decisions that are in the public interest. The monitoring has shown that additional paddling can be allowed while remaining sustainable and below capacities, and thus monitoring has done all it can do to support change. Additionally, the NPNF assertion that all the recreational measures have not been completed are false. The NPNF states: While initial monitoring results indicate lower than anticipated boater use on the upper segment of the Chattooga, all direct and indirect measures to address recreational use in the Chattooga River corridor should be completed before adaptive management is utilized to update or change management of paddling limitations. 28

All direct and indirect measures to manage recreation use have not been implemented from the 2012 decision. 29 These claims are misleading at best. Every facet of paddling management has been in place for years. When the 2012 Amendment was issued, all the paddling management measures were immediately implemented including access, permits, the stream gage, rules, monitoring, trails, signs, etc. The only change has been some trail work and the designation of pre-existing trails five years ago, but those trails were opened to paddling use in 2012 and used by others for a long time before then. It is entirely unclear which measures the NPNF is referencing in these statements, but we can say with some certainty they have nothing to do with paddling. To be clear, the management of the Chattooga River is within the scope of the Forest Plan because numerous plan components directly address and govern the matter. None of the reasons given for removing the issue from the scope of analysis are relevant, persuasive, or based in fact. Rolling management prescriptions from the old plan into the new plan while excluding the topic from analysis avoids meaningful review, analysis, and participation. American Whitewater raised this matter at every possible opportunity, and actively sought an alternative that considered eliminating the aforementioned paddling limits on the Chattooga River. This is a reasonable

alternative, indeed the management we are seeking is how every other river in the Forest is managed, and in general every river in the entire National Forest System. C. The NPNF violates NEPA and the APA by wrongly eliminating Chattooga management from detailed analysis as an alternative. The NPNF eliminated an alternative from detailed analysis that would have eased limits on paddling the Upper Chattooga because they deemed the issue out of scope. This fails on multiple levels. CEQ NEPA Regulations at [sect] 1502.14(a) state that agencies must [ldquo]Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.[rdquo] 30 In Webster v. U.S. Dept. of Agriculture, the court states that Natural Resources Conservation Service offered appropriate reasons for eliminating alternatives from detailed study by considering reasons related to technical feasibility, pecuniary costs, and effectiveness in achieving the purposes of the action. 31 Here the Chattooga management was eliminated because it was (wrongly) deemed outside the scope of analysis not because it was infeasible, costly, or ineffective in achieving the purpose of the forest plan. All direct and indirect measures to manage recreation use have not been implemented from the 2012 decision. 29 These claims are misleading at best. Every facet of paddling management has been in place for years. 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American Whitewater raised this matter at every possible opportunity, and actively sought an alternative that considered eliminating the aforementioned paddling limits on the Chattooga River. This is a reasonable alternative, indeed the management we are seeking is how every other river in the Forest is managed, and in general every river in the entire National Forest System. C. The NPNF violates NEPA and the APA by wrongly eliminating Chattooga management from detailed analysis as an alternative. The NPNF eliminated an alternative from detailed analysis that would have eased limits on paddling the Upper Chattooga because they deemed the issue out of scope. This fails on multiple levels. CEQ NEPA Regulations at [sect] 1502.14(a) state that agencies must [ldquo]Evaluate reasonable alternatives to the proposed action, and, for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination.[rdquo] 30 In Webster v. U.S. Dept. of Agriculture, the court states that Natural Resources Conservation Service offered appropriate reasons for eliminating alternatives from detailed study by considering reasons related to technical feasibility, pecuniary costs, and effectiveness in achieving the purposes of the action. 31 Here the Chattooga management was eliminated because it was (wrongly) deemed outside the scope of analysis not because it was infeasible, costly, or ineffective in achieving the purpose of the forest plan. conducting significant monitoring in 2017 and 2018, and has in fact comprehensive data on paddling use each year since 2012. 34 This is important because the Forest Service now has actual, current user data (and data about the lack of user conflicts), whereas it previously relied on outdated pre-ban data, estimates of usage based on counting of cars, and other speculative data projecting potential future conflicts. Choosing to rely on old and outdated data while ignoring newer more relevant data is not supportable. 35 Not only would review show that the predictions and so-called data underlying the 2012 Amendment are stale and outdated, it would also show they were wrong. There are now 10 years of data proving those predictions wrong, proving the Agency[rsquo]s expert opinion wrong, and showing that the Agency record behind the 2012 amendment is a flawed work of fiction. The court would take a relatively fresh look at a 2022 decision, based on the record for that decision and the Agency[rsquo]s failure to consider the issue anew in the Land Management Plan, and find that the Agency erred in failing to consider the matter as within the scope of analysis and to develop an alternative exploring reasonably easing the paddling limits based on public comments, a decade of superior monitoring data, changed conditions, and the new context of the 2012 planning rule. Recall that the Wild and Scenic Rivers Act requires the administering agency to manage each designated river segment [ldquo]in such manner as to protect and enhance the values which caused it to be included in said system without, insofar as is consistent therewith,

limiting other uses that do not substantially interfere with public use and enjoyment of these values.[rdquo] 36 A decade of comprehensive data on paddling now shows that paddling does not interfere with other values or their enjoyment, nor could it be reasonably predicted to do so if limits were eased. The 2014 court ruling approving the 2012 Amendment does not give the Agency a free pass to continue their severe paddling limits forever without review. The 2022 Land Management Plan is a new decision, with a new record, and carries with it a legal obligation to review this issue and ease or eliminate the paddling limits described herein. E. The NPNF fails to provide for Sustainable Recreation as required by the 2012 planning rule. The 2012 Planning Rule states that the new forest plan must include plan components, including standards and guidelines, to provide for: (i) Sustainable recreation; including recreation settings, opportunities, and access; and scenic character. Recreation opportunities may include non-motorized, motorized, developed, and dispersed recreation on land, water, and in the air. 37 In this case, the NPNF is not doing so. Paddling on the Chattooga River is intensely monitored sustainable recreation and is not provided for by plan components, but rather is prohibited entirely or limited to levels far below the NPNF[rsquo]s sustainable visitation capacity limits. Banning sustainable recreation is not providing for sustainable recreation under the 2012 planning rule. Based on intense scrutiny and monitoring, the Forest Service has shown that paddling these reaches causes no problems, occurs in extremely small numbers, and would remain sustainable without the imposed limits. There is likely no use of the entire Nantahala Pisgah National Forest that has been so exhaustively proven to be sustainable, with or without the limits in the 2012 amendment. 38 F. The NPNF violates NEPA and the APA by reinstating severe limits on paddling the Chattooga River with no basis, when facts and public input support the alternative. NEPA requires that agencies take a [ldquo]hard look[rdquo] at the environmental effects of their planned action, even after a proposal has received initial approval but new information surfaces: When new information comes to light the agency must consider it, evaluate it, and make a reasoned determination whether it is of such significance as to require [a supplemental EIS]. 39 NEPA policy similarly requires that: An agency shall revise the determinations made under paragraphs (b), (c), (e), and (f) of this section [hellip] if significant new circumstances or information arise which bear on the proposal or its impacts. 40 In this case the new information came to light with each passing year of an entire decade, in which closely monitored paddling use was consistently well over 97% less than predicted, made de minimis contributions to approved visitor capacities, and caused no conflicts or environmental impacts. As we pointed out in our comments on the Draft Plan, the Forest Service has a record of every descent since 2012 via permit data, as well as new data on other visitors, that show that the paddling limits are unneeded. Also, a decade ago there was not broad collaborative support for easing or eliminating the Chattooga paddling limits addressed herein. This is no longer the case. Several years ago the Stakeholder Forum supported this change, 41 and more recently in Draft Plan comments the Nantahala Pisgah Forest Partnership supported it. 42 This is a significant change that more than justifies a hard look at the river[rsquo]s management. The fact that eight years ago, and several Forest Supervisors ago, a decision was made to remove Chattooga River management from scope, has no bearing on the appropriateness of retaining that decision again and again as eight years passed and the data piled up showing the predictions behind Chattooga management were wrong and public perceptions had changed. NEPA requires that the Forest be open to new information as it becomes available, and in this case that Chattooga management be fully reconsidered. More to the point, the facts support easing or eliminating the Chattooga paddling limits described above and in our comments on the Draft Plan. Nowhere else in the entire Forest Service System is a river banned to boating below a certain flow, banned to boating seasonally to prevent conflicts, banned to boating to protect brook trout habitat (tributaries), banned to boating to block paddling through downstream private lands, or banned to hiking except on trails, let alone all of those limits plus more. We now know all these limits were unfounded. The flawed rationale for the need for these unique draconian limits has been disproven by facts and the passage of time. Specifically, as we discuss in our comments on the Draft Plan, in a decade of limited paddling use there have been no conflicts, no capacity concerns, no significant environmental impacts, and vastly lower use than predicted, so low that the Agency field monitoring process did not encounter a single paddler. In short, paddling was allowed and the sky did not fall. It was and remains a total non-issue on the river. There is simply no [ldquo]rational connection between the facts found and the choice made[rdquo] to continue paddling limits on the Upper Chattooga. 43 4. Statement that demonstrates the link between prior substantive formal comments submitted by the objector and the content of the objections, unless the objection concerns an issue that arose after the opportunity for formal comment. On June 29, 2020, American

Whitewater raised essentially all of the points in this objection, in greater detail, in our comments on the Draft Plan. 44 We ask that those comments be considered as part of this objection. These comments are attached in a separate attachments file. On June 25, 2020, American Whitewater raised the issues in this objection at a high level and requested the similar relief along with our 25 diverse partners in the Nantahala Pisgah Forest Partnership, in that collaborative group[rsquo]s comments on the Draft Plan. 45 These comments are available online. On November 19, 2014 American Whitewater submitted Alternative Development Comments providing a detailed analysis of Chattooga data and issues, and requesting an alternative that lifts various paddling limits. These comments are attached in a separate attachments file. On April 28, 2014 American Whitewater submitted official Scoping Comments requesting an alternative that would lift seasonal, flow, and geographical paddling closures on the Upper Chattooga. These comments are attached in a separate attachments file. On May 6, 2013 American Whitewater submitted Assessment Comments requesting easing of the paddling limits on the Chattooga. These comments are attached in a separate attachments file. Conclusions It turns out after a decade of paddling use and intensive monitoring, paddling is a non-issue on the Upper Chattooga, just like it is on every other regional free-flowing river. Actually, it is delightful. I personally have had the pleasure of paddling each partially-open section once in the past few years. On each trip we saw almost no one, certainly had no negative interactions, and deeply enjoyed the scenery, water quality, and whitewater. Our trips, however, were governed by excessive rules and limits that are anathema of Wilderness and Wild and Scenic Rivers, and that undercut public support for public lands, protective designations, and the Forest Service.

1 Final Plan, pg 264-266.

2 Record of Decision, pg 57-58; and FEIS, Pg. 2-31.

3 36 C.F.R. [sect] 219.3

4 See, e.g., Ecology Ctr., Inc. v. U.S. Forest Serv., 451 F.3d 1183, 1194 fn.4 (10th Cir. 2006)

5 Forest Planning Rule: [sect] 219.3 Role of science in planning.
https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5362536.pdf.

6 "Forest Service's approval of the project, holding that the Forest Service's failure to consider or mention the [ldquo]best available science[rdquo] standard rendered its approval of the project arbitrary and capricious." Id. at 1195 (citing Forest Watch v. U.S. Forest Serv., 410 F.3d 115, 119 (2d Cir.2005)). See also Utah Envtl. Cong. v. Richmond, 483 F.3d 1127, 1136 (10th Cir. 2007).

7 US Forest Service. Environmental Assessment Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor. Pg. 42.

8 See American Whitewater[rsquo]s comments on the Draft Plan.

9 Chattooga National Wild and Scenic River Upper River Recreation Use Monitoring Study Report, Prepared for Sumter, Chattahoochee, and Nantahala National Forests by Louis Berger, February 2019.

10 John Ryan McGreevy and Kevin Colburn. Chattooga National Wild and Scenic River Upper River Use Report: Reconsidering congestion, conflict, and experience of various visitor types. (March 2020). Available for download at https://www.americanwhitewater.org/content/Document/view/?id=2183

11 Record of Decision, Pgs. 57-58.

12 Final Plan, Pg. 1-1.

13 Revising the Nantahala and Pisgah Land Management Plan [ndash] Need to Change the Existing Land Management Plan, June 16, 2014. https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprd3804619.pdf

14 Id., Pg.1.

15 Id., Pg. 8.

16 Id.

17 Final Plan, Pgs 23-24.

18 Record of Decision, Pgs. 57-58.

19 Id

20 FEIS Appendix A, Pg. 160.

21 Record of Decision, Pg 16

22 See American Whitewater[rsquo]s Comments on the Draft Plan for details of use.

23 Forest Planning Rule: [sect] 219.8(b)(2) re: Sustainable Recreation.

24 Forest Service Manual 2354.03. (https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb5403594.pdf)

25 Id.

26 Id.

27 See 2012 Forest Planning Rule at [sect] 219.10 Multiple Use.

28 FEIS Appendix A, Pg. 160.

29 Id.

30 https://www.govinfo.gov/content/pkg/FR-2020-07-16/pdf/2020-15179.pdf.

31 Webster v. U.S. Dept. of Agriculture, 685 F.3d 411, 427 (4th Cir.2012).

32 https://www.fs.usda.gov/nfs/11558/www/nepa/95298_FSPLT3_3017889.pdf. Pg. 1.

33 See, e.g., Sanitary Bd. of City of Charleston, W. Virginia v. Wheeler, 918 F.3d 324, 335 (4th Cir. 2019) (noting the importance of a complete administrative record, and finding [ldquo]no basis for pulling from the CWA[rsquo]s statutory time deadlines a hard full-stop limit on compiling the information needed to make a correct and well-reasoned decision.[rdquo]).

34 FEIS, Pg. 2-31. See also American Whitewater[rsquo]s comments on the Draft Plan.

35 See Tidwell, 770 F.3d 1108 at 1116. See also N. Plains Res. Council, Inc. v. Surface Transp. Bd., 668 F.3d 1067, 1086 (9th Cir. 2011) ([ldquo]Reliance on data that is too stale to carry the weight assigned to it may be arbitrary and capricious.[rdquo]); Lands Council v. Powell, 395 F.3d 1019, 1031 (9th Cir. 2005) (faulting the

Forest Service[rsquo]s reliance in an EIS on fish surveys that were [ldquo]are at least six years old,[rdquo] and noting that [ldquo]the lack of up-to-date evidence on this relevant question prevented the Forest Service from making an accurate cumulative impact assessment of the Project[rdquo]).

36 16 U.S.C. [sect] 1281(a); Hells Canyon Alliance v. U.S. Forest Serv., 227 F.3d 1170, 1177[ndash]78 (9th Cir.2000) (emphasis added). Am. Whitewater v. Tidwell, 959 F.Supp.2d 839, 850, aff'd, 770 F.3d 1108 (4 th Circuit 2014)

37 Section 219.10(b)(2) of the 2012 Forest Planning Rule.

38 See American Whitewater[rsquo]s comments on the Draft Plan for an analysis of how little paddling use would increase if the paddling limits were eased as requested.

39 Friends of the Clearwater v. Dombeck, 222 F.3d 552, 558 (9th Cir. 2000). See also: Hughes River Watershed Conservancy v. Glickman, 81 F.3d 437, 444-45 (4th Cir. 1996) (holding that the agency violated NEPA by failing to take a "hard look" at new information regarding zebra mussel infestation).

40 40 CFR 1501.9.

41 See Sustainable Recreation Plan Component Recommendations, Stakeholders Forum, Nantahala Pisgah National Forests (April 12, 2016). Pg. 3. [ldquo] Goal: Restore normal nationally-consistent management of paddling by removing the geographical, seasonal, and flow based paddling prohibitions on Chattooga River and tributaries in the NC National Forests. Recommendation: Do not carry forward prior plan components containing geographical, seasonal, and flow based paddling prohibitions on Chattooga River and tributaries in the NC National Forests. Do not carry forward limits on where paddlers may launch. Continue to require permits, and update permit language to match plan language. Voluntary/optional closures or recommendations are acceptable indirect limits.[rdquo] The decision was documented in meeting notes: https://www.nationalforests.org/assets/pdfs/2016-4-12-Stakeholders-Forum-Meeting-Record_finaldraft.pdf

42 See Nantahala Pisgah Forest Partnership comments on the Draft Plan, dated June 25, 2020, pgs

43-45. Located at: https://npforestpartnership.org/wp-content/uploads/2020/07/NPFPComments062520FINAL.pdf

43 Ohio Valley, 556 F.3d at 192

44 See American Whitewater[rsquo]s comments on the Draft Plan, dated June 29, 2020. Pgs 6-14. Located at: https://cara.fs2c.usda.gov/Public/Letter/2532769?project=43545

45 See Nantahala Pisgah Forest Partnership comments on the Draft Plan, dated June 25, 2020, pgs

43-45. Located at: https://npforestpartnership.org/wp-content/uploads/2020/07/NPFPComments062520FINAL.pdf