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Comments: Attached are two documents: 1) American Whitewater's objection regarding wild and scenic river eligibility, and 2) Four supporting comments that are cited in our objection, bundled together in a single PDF.

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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.

Lead Objector

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1. Statement of the issues and/or the parts of the plan revision to which this objection applies.

The NPNF wrongly found at least four streams ineligible for Wild and Scenic designation. Specifically, the NPNF erred in omitting sections of the North Fork of the French Broad River, the Tuckasegee River, Panthertown Creek, and Greenland Creek from the list of eligible streams in Table 15 in the Final Plan and Table 3 in the Draft Record of Decision, a decision also reflected in text on page 37 of the Draft Record of Decision. The flawed rationale for these decisions, to which we object, is located in Appendix A of the FEIS, Appendix F of the FEIS, and the FEIS itself, generally and as cited in detail below.

2. Concise statement explaining the objection and suggestion of how the proposed plan decision may be improved.

The NPNF misapplied agency policy in finding several streams ineligible for Wild and Scenic designation, and in several instances based its findings on inaccurate, irrelevant, or inferior information. This objection shows clear inconsistencies between the NPNF rationale and laws, regulations, and policies, rendering the ineligibility findings untenable and in violation of the National Environmental Policy Act (NEPA) and the Administrative Procedures Act (APA). At the same time we show clear support in the record, consistent with agency policy and federal law, to reverse course and find these river reaches eligible for Wild and Scenic designation, as was recommended by American Whitewater and the Nantahala Pisgah Forest Partnership.

The proposed plan should be corrected to recommend that sections of the North Fork of the French Broad River, the Tuckasegee River, Panthertown Creek, and Greenland Creek be found eligible for Wild and Scenic designation.

3. Identification of how American Whitewater believes that the plan revision is inconsistent with law, regulation, or policy.

a. The NPNF violated agency policy in finding the Upper Tuckasegee to be not free-flowing, and in turn ineligible.

The NPNF in Appendix F, Wild and Scenic River Evaluation, splits the Tuckasegee River into two sections, and correctly finds the upper one to be free-flowing and the lower one not free-flowing. American Whitewater sought additional analysis of the Outstandingly Remarkable Values (ORVs) for the Tuckasegee in our Draft Plan Comments to support an eligibility finding, and in response the NPNF stated that:

The Upper Tuckasegee was originally identified as potentially eligible but later determined to not be free flowing due to controlled waters. The lower section is currently classified as [ldquo]dewatered[rdquo] with water flows which are regulated by a flood control dam.

Agency policy is clear that Wild and Scenic Rivers, including eligible rivers, may have dams and diversions immediately upstream and downstream of the protected reach, and indeed many do. The Wild and Scenic River Evaluation in the FEIS quotes the Section 16(b) of the Wild and Scenic Rivers Act[rsquo]s definition of [ldquo]free-flowing[rdquo] as stating: [ldquo]A river segment below or between impoundments may also be considered.[rdquo] Interagency guidance echos this well established policy:

Congress did not intend all rivers to be [ldquo]naturally flowing,[rdquo] i.e., flowing without any upstream or downstream manipulation. The presence of impoundments above and/or below the segment [hellip] do not necessarily render a river segment ineligible. There are segments in the National System that are downstream from major dams or are located between dams.

The section of the Upper Tuckasegee River that American Whitewater recommended for eligibility is entirely free-flowing. The section begins at the remote confluence of two undammed tributaries and flows through an equally remote and free-flowing gorge. The fact that downstream reaches are impounded and dewatered is immaterial to the upper reach[rsquo]s free flowing status and eligibility, as was correctly determined in Appendix F. In fact, the overwhelmingly dammed status of the Tuckasegee River downstream makes this wild free flowing reach all the more rare and worthy of protection from future dams and diversions.

The evaluation process requires the agency to consider [ldquo]If there is a segment of the river that is not free-flowing, should other segments be considered? Based on this policy, the NPNF should have considered the upper, free-flowing segment of the river that we recommended for eligibility separately from the impounded and dewatered segment located miles downstream.

The NPNF states [ldquo]In the absence of being free flowing and not possessing any ORVs, the Upper Tuckasegee was found to not be eligible as a WSR (Appendix F). The NPNF thus errs in finding the Upper Tuckasegee ineligible in part based on its flawed determination that the river is not free-flowing.

b. The NPNF violated agency policy, the National Environmental Policy Act, and the Administrative Procedures Act in finding the Upper Tuckasegee River, Greenland Creek, and Panthertown Creek to be lacking an ORV, and thus ineligible.

The NPNF wrongly determined that the Upper Tuckasegee River, Greenland Creek, and Panthertown Creek as individual streams and as a system lack even a single ORV. To be considered an ORV, according to the National Park Service, a value must be (1) river-related or river dependent, and (2) rare, unique, or exemplary in a regional or national context. Expert public comments support that these three streams have multiple river-related values that are regionally and nationally rare and that fit under scenic, recreation, geologic, fish and wildlife ORV categories.

These streams comprise one of the main attractions and elements of an extraordinary and unique valley, akin to a wild southern Appalachian Yosemite Valley, complete with towering cliffs, large waterfalls, rare habitats, rare species, and burgeoning water-based recreational opportunities. The NPNF acknowledges these values and dismisses them by saying there are other cliffs, other waterfalls, other bogs, other tannic waters, and other places to recreate. The NPNF fails to appreciate the totality of these factors in the unique setting of the Panthertown Valley. As we pointed out in our Draft Plan comments, the NPNF fails to appreciate the uniqueness of this valley compared to the intensely developed and gated private ownership of the few reference valleys, and fails to appreciate that this is the only free-flowing part of the Tuckasegee River remaining, with the rest being dammed, diverted, or affected by heavily manipulated flows.

The NPNF analysis relies on a small amount of evidence to support its conclusions and this evidence is of inferior quality in comparison to that provided by commenters on the Draft Plan. American Whitewater and many other commenters, including Friends of Panthertown, provided richly informed and detailed comments. We ask that the reviewing officer read our comments and others relating to Panthertown Valley and compare it to the scant analysis in the FEIS for the Land Management Plan.

The 2012 Planning Rule expressly requires the Forest Service to [ldquo]use the best available scientific information to inform the planning process[rdquo]. 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]

We are confident that the best available scientific information on the eligibility of these streams has been submitted by public stakeholders, not generated by the Forest Service, and we request the Agency find these streams eligible accordingly.

c. The NPNF violated agency policy, NEPA, and the APA in finding the North Fork of the French Broad River ineligible for Wild and Scenic designation due to the presence of power lines.

The NPNF errs in stating that:

Additional internal review has determined that the North Fork of the French Broad is not eligible for WSR designation, due to the presence of powerlines[hellip]

Power line crossings may be considered in assigning a classification of Recreational or Scenic to an eligible stream, but do not render a river ineligible. Many Wild and Scenic Rivers have power lines, not to mention roads and railroads with their associated powerlines, paralleling them and crossing them. Agency policy dictates that following designation:

Existing powerline or communication transmission rights-of-way may continue to be used and maintained.

Importantly, paddlers most commonly launch at the lower power line crossing on the North Fork of the French Broad, and are immediately immersed in the gorge from which the power line is not visible or near to the river. Even when paddling from upstream, the brief and subtle crossing of the small power line does not eliminate the well-documented recreation ORV. Indeed, the decades-long history, evidence, and expert testimony in favor of a Recreation ORV exists despite the presence of the power line.

The Wild and Scenic River Evaluation process for assessing a Recreation ORV makes no mention of power lines, and the NPNF wrongly considered power lines in their ORV assessment.

Under the APA, a court may set aside an agency[rsquo]s actions, findings, or conclusions if they are arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law. It may also do so if the agency[rsquo]s actions are [ldquo]without observance of procedure required by law[rdquo] or if the agency decision is [ldquo]unwarranted by the facts.[rdquo]

In this instance the NPNF violates the APA by dismissing evidence in favor of a Recreation ORV in part due to the presence of a power line that is permissible under statute and agency policy and that does not eliminate the Recreation ORV. While not necessary, the NPNF could also have moved the starting point for the eligible reach

to just downstream from the power line, where the world-class whitewater begins.

d. The NPNF violated agency policy, NEPA, and the APA in finding the North Fork of the French Broad River ineligible for Wild and Scenic designation due to remnants of logging activity and roads.

The NPNF errs in stating that:

Additional internal review has determined that the North Fork of the French Broad is not eligible for WSR designation, due to the presence of remnants of logging activity and roads.

Remnants of logging activity and roads do not render a river ineligible. One need only look to the page immediately preceding this incorrect NPNF claim to find the correct policy:

Within the corridor of a Scenic classified river segment, evidence of past or ongoing management activities, including timber harvest, is acceptable provided the forest appears natural from the riverbank. Within the corridor of a Recreational classified river segment, adjacent lands may be developed for the full range of forestry uses and may show evidence of past and ongoing timber harvest.

Thus, the NPNF claim that remnants of logging activity and roads render a river ineligible is refuted by plain agency policy, regardless of whether the river is categorized as Scenic or Recreational.

The Wild and Scenic River Evaluation process for assessing a Recreation ORV makes no mention of remnants of logging or roads, and the NPNF wrongly considered these factors in their ORV assessment.

In addition to this policy flaw, the NPNF is also factually incorrect: there are no signs of timber harvest visible from the river in the recommended reach. The forest appears fully intact and there are no canopy openings. In one area, a trained eye can view an old road near Submarine Falls, which is now a helpful portage trail that also allows hikers to enjoy viewing the falls. Thus, the one slightly and briefly visible old road remnant is a recreational amenity, rather than a detriment to the Recreation ORV.

The NPNF violates NEPA and the APA by misapplying policy and by making a decision unwarranted by the facts.

e. The NPNF violated agency policy and the APA in finding the North Fork of the French Broad ineligible for Wild and Scenic designation due to unsightly campsites.

The NPNF errs in stating that:

Additional internal review has determined that the North Fork of the French Broad is not eligible for WSR designation, due to the presence of unsightly campsites.

Near Submarine Falls is the only campsite visible or proximal to the recommended reach, which also serves as a put in and take out. Most Wild and Scenic Rivers have riparian camps, such as the Middle Fork Salmon, Rogue, and Selway rivers, many of which are occupied daily during the paddling season by large groups. To have one (or many) campsites in a reach does not render a river ineligible, and, in fact, could add to the Recreation ORV. If it is unsightly, that is easily remedied, but it looks similar to other camps in the Forest and merely had a picnic table in it that we believe is gone now. In many trips we have never seen this site occupied.

The Wild and Scenic River Evaluation process for assessing a Recreation ORV makes no mention of unsightly campsites, and the NPNF wrongly considered these factors in their ORV assessment.

The NPNF thus violates NEPA and the APA by misapplying policy and by making a decision unwarranted by the

facts.

f. The NPNF violated agency policy and the APA in finding the North Fork of the French Broad River ineligible for Wild and Scenic designation due to a lack of entry and exit locations.

The NPNF errs in stating that:

Additional internal review has determined that the North Fork of the French Broad is not eligible for WSR designation, due to[hellip]a lack of entry and exit points.

This statement is false and irrelevant. Many Wild and Scenic Rivers require long hike-ins or even flights to reach, and easy access is not a requisite characteristic for a recreation ORV. Regardless, the North Fork of the French Broad has several put-ins and take-outs that have been used by paddlers for many decades, granting easy access to a variety of trip options. Ample parking exists at the put-ins, and takeout parking is distributed among various pull-outs along Highway 215. Access is so easy that many paddlers run the reach several times in a day. While more and better parking would be nice given the high demand for the river, this is not a justifiable reason to fail to protect the river[rsquo]s Recreation ORV. In fact, it is further justification for protection.

The Wild and Scenic River Evaluation process for assessing a Recreation ORV makes no mention of entry and exit points, and the NPNF wrongly considered these factors in their ORV assessment.

The NPNF thus violates NEPA and the APA by misapplying policy and by making a decision unwarranted by the facts.

g. The NPNF violated agency policy, NEPA, and the APA in finding the North Fork of the French Broad River ineligible for Wild and Scenic designation based on a flawed comparison with the dewatered Upper Nantahala.

The FEIS incorrectly claims that:

While the [North Fork of the French Broad] is popular with high water paddlers, the upper Nantahala River provides a comparable floating experience[hellip]

As we pointed out in our comments on the Draft Forest Plan the Upper Nantahala is strikingly different from the North Fork of the French Broad in terms of recreational paddling, as summarized in the table below.

See Table

There is actually very little in common between these two rivers except that they are of somewhat similar paddling difficulty.

Extraordinary differences notwithstanding, it is counter to the purpose of the Wild and Scenic Rivers Act and the Agency mandate under Section 5(d)(1) of the Act to determine a free-flowing river does not have a Recreation ORV and thus merit protection because a different severely dewatered river provides for recreation. This approach does not protect Wild and Scenic values across the region of comparison.

The FEIS incorrectly claims that the Upper Nantahala is [ldquo]a source for regional and national competitive events.[rdquo] In fact, there are no competitive events on the Upper Nantahala. Nor, we should add, are there competitive events on the vast majority of Wild and Scenic Rivers, for reasons of compatibility, rendering this metric nonsensical.

The FEIS irrelevantly and incorrectly claims that:

[hellip]the Nantahala River has a highly developed outfitter guide program and the supporting facilities that enable a more comprehensive recreation experience.

As we pointed out in our comments on the Draft Plan, these facilities are not on the Upper Nantahala nor does any guided whitewater recreation occur on the Upper Nantahala. Both the lower Nantahala and the lower North Fork of the French Broad have highly developed outfitter guide programs and supporting facilities located on them. There is no logical connection between a downstream outfitting operation and a Recreation ORV, nor is this a legitimate difference between the rivers.

There is simply no factual basis for claiming the Upper Nantahala is recreationally comparable to the North Fork of the French Broad in any way relevant to Wild and Scenic eligibility. The claims made by the NPNF are false, and there is a preponderance of evidence to the contrary. The NPNF thus violates NEPA and the APA by misapplying policy and by making a decision unwarranted by the facts.

h. The NPNF violated agency policy, NEPA, and the APA in finding the North Fork of the French Broad River ineligible for Wild and Scenic designation based on a flawed comparison to other rivers.

The NPNF States, presumably as evidence that the North Fork of the French broad lacks an ORV or should not be found eligible:

Challenging whitewater runs can also be found across other creeks and rivers throughout the region of comparison, including the Tellico and Ocoee Rivers in Tennessee and Wilsons Creek and the Chattooga River in North Carolina.

As we pointed out in our comments on the Draft Plan, these comparisons fail on many levels. Two of these rivers are already federally designated Wild and Scenic Rivers (Chattooga and Wilson Creek), and one is severely dewatered by hydropower dams (Ocoee) and thus ineligible. These are not potential wild and scenic rivers under Section 5(d)(1) of the Wild and Scenic Rivers Act that are subject to comparison. The NPNF bans paddling entirely on some Chattooga River reaches and boating on permitted reaches is limited to only five winter months at high flows, so it cannot possibly serve as a comparison. And the Tellico, a lovely stream indeed, is roadside and three hours away on a different National Forest. The analysis even misspells the names of two of the four rivers, an indication of its shallowness and inaccuracy. A review of our comments on the Draft Plan further points out the flaws in the NPNF analysis.

i. The NPNF violated agency policy, NEPA, and the APA in finding the North Fork of the French Broad River to be lacking an ORV, and thus ineligible.

American Whitewater and the Nantahala Pisgah Forest Partnership proposed that the classic 3-5 mile whitewater section of the North Fork of the French Broad downstream of Macedonia Road be found eligible. Instead of analyzing this distinct section for its recreational values, the NPNF instead appears to have wrongly analyzed the entire river and waived away obvious ORV findings based on poorly-informed and inferior information.

The criteria for a Recreation ORV does not mention the presence of power lines, remnants of timber harvest, roads, campsites, or access. Instead, it rightly places an emphasis on recreational quality and the use and appeal of the river. Look up the North Fork of the French Broad in any paddling guidebook and you will not see nor read about any of the factors raised by the NPNF because they are absent or irrelevant to recreation on the North Fork of the French Broad. Instead you will read lines like:

The North Fork of the French Broad has long been a super classic staple of WNC creeking, providing a highly scenic, super fun entry level adventure for aspiring [creek] boaters to cut their teeth on.

And,

The North Fork of the French Broad is a jewel of a Class IV creek run, offering a mile of quality bedrock slides and drops in an incredibly beautiful little bedrock gorge hidden far below Hwy 215. The North Fork runs quite often in the winter / spring season, and can pop up any time after a quick summer downpour, and therefore has a large, devoted community that calls it home.

Our comments present similar expert analysis regarding the rare, unique, and exemplary recreational values of the North Fork of the French Broad. While the NPNF claims that such values do not exist, they offer no evidence for those claims whatsoever. Likewise, they offer no evidence for the false claim that the North Fork does not [ldquo]consistently attract visitors from throughout or beyond the Southern Appalachian region of comparison.[rdquo] The NPNF admits the river is [ldquo]popular with high water paddlers[rdquo] yet offers no data on where those paddlers are from. Curated regional and national guidebooks offer evidence that paddlers come from afar, as does anecdotal evidence gathered by American Whitewater staff at the river.

The NPNF oddly and at times dismissively notes that specific rivers are only runnable following rains, including a reference to [ldquo]high water paddlers[rdquo] frequenting the North Fork of the French Broad. This is not a reason to find a river ineligible for Wild and Scenic designation in any policy, and indeed even intermittent streams can be eligible. Indeed recreation on nearly all Wild and Scenic Rivers, and rivers in general, have water level and seasonal constraints. Many rivers in the West for example are frozen-over all winter and are good for paddling only at spring high water. In the southeast extremely few free-flowing rivers are boatable except following rains. This is natural, normal, and ubiquitous. Stochastic flows are at the very heart of the Wild and Scenic Rivers Act which aims to protect free-flowing status. Outdoor recreation is simply dependent on natural conditions: fishing works best at low-water, skiing when there is snow, ice climbing in the cold after rain, rock climbing when it is dry, trail running and most activities only during the day, sailing when there is wind, surfing when there is swell, swimming when it is warm out, etc. Some of the best recreation in the region and world is dependent on highly variable natural conditions. It is unclear if the NPNF uses flow dependency as a justification for ineligibility, but, if so, they are wrong and in violation of agency policy and practice.

It is obvious and understandable that NPNF staff have not paddled the North Fork of the French Broad and thus not experienced the entire gorge with ample flow in it or perhaps at all. But, rather than fill this knowledge gap regarding the paddling recreation ORV with information gathered and received from experts, the NPNF chose to rely upon uninformed staff opinions.

The factual record more than supports a finding that paddling the North Fork of the French Broad is rare, unique, and exemplary on a regional and national scale. In choosing to supplant this factual record with staff opinions the NPNF violates NEPA and the APA and fails to rely upon the best available science as required by the 2012 planning rule and affirmed in case law.

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. 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 at a high level and requested the same relief along with our 25 diverse partners in the Nantahala Pisgah Forest Partnership, in that collaborative group[rsquo]s comments on the Draft Plan. These comments are available online.

On October 1, 2017, American Whitewater, along with our 25 diverse partners in the Nantahala Pisgah Forest Partnership, requested the rivers addressed in this objection be found eligible in that collaborative group's Proposals for the Nantahala Pisgah National Forest Plan Revision on Preliminary Plan Content, Geographic and Management Area Building Blocks. This document is available for download online.

In 2017 American Whitewater shared an economic analysis we assisted with documenting the economic value of paddling the North Fork of the French Broad River. This document is available for download online.

On December 15, 2015, American Whitewater submitted Wild and Scenic Eligibility Evaluation Comments providing detailed information on the Wild and Scenic values of the rivers addressed in this objection and others, seeking findings of eligibility. These comments are attached in a separate attachment file.

On April 28, 2014 American Whitewater submitted official Scoping Comments requesting consideration of the rivers addressed in this objection for their eligibility. These comments are attached in a separate attachment file.

On May 6, 2013 American Whitewater submitted Assessment Comments requesting consideration of the Tuckasegee River and other streams for their eligibility. These comments are attached in a separate attachment file.

Lastly we would like to note that we've given multiple presentations to various collaborative groups, Forest Service staff, and the public regarding the values of the rivers addressed in this objection and their Wild and Scenic River eligibility.

Conclusion

We object to the NPNF finding the North Fork and the French Broad River, the Tuckasegee River, Greenland Creek, and Panthertown Creek ineligible for Wild and Scenic designation, and ask that each of these streams be found eligible in the final plan. Informed members of the public, including American Whitewater staff and members, have consistently documented that these rivers possess at a minimum rare, unique, or exemplary recreational values that justify their eligibility. This evidence, offered by experts and those who have directly experienced the recreational value of these rivers, is superior to the opinions of Forest Service staff less acquainted with the nature of and opportunities provided by these rivers.

As the lead objector, I will add that I have myself paddled the North Fork of the French Broad many times, and the Upper Tuckasegee once. I've hiked along the Panthertown Valley streams numerous times. I can tell you these streams are truly something special and that they merit Wild and Scenic River protections. I wish the Forest Service review team could know the recreational value of these streams as I do, with rich memories of experiencing their graceful power and beauty firsthand in a kayak. Because this is not possible though I ask that the Agency reconsider our direct experiences and expert opinions of the recreational and other values that the Wild and Scenic Rivers Act was passed to protect.

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