

# Chattooga River paddling ban will stay for

## Forest Service decision on opening upper-third of river may take a year

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Those who want the right to kayak and raft in the headwaters of the Chattooga River will have

to wait for the government to decide on whether a ban will remain in place, following a legal setback for the group.

U.S. District Judge Michelle Childs has ruled

against a request by a group of paddlers, American Whitewater, to issue a preliminary injunction that would have allowed unrestricted access to the upper-third portion of the legendary river.

The group's lawsuit against the U.S. Forest Service and other wildlife

regulatory agencies will press on in Greenville federal court after years of bureaucratic wrangling.

The government represents a larger — and disparate — group of hunters, photographers, hikers, campers and environmentalists who have agreed that the remote up-

per portion of the Chattooga should be off limits to paddlers who already have access to the lower two-thirds of the river.

The government must now answer American Whitewater's complaint by March 2011.

In her ruling against an injunction, Childs wrote

## now

that she was concerned whether the government has properly exercised its authority in banning paddling in the headwaters, but that in the meantime paddlers won't be significantly hurt because they are able to enjoy the lower

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two-thirds.

The 21-mile-long headwaters north of State 28 — which the paddlers argue is the most-challenging portion of the 57-mile river — are only navigable on a few days when water levels rise, so the concerns of limited access don't rise to the level of irreparable harm, Childs wrote.

The battle has endured for two decades, with thousands of pages of documents to sift through and a complicated history of administrative decisions that at times have been contradictory.

The river — featured in the classic 1972 film "Deliverance" — begins in the Nantahala Forest in North Carolina and passes through Oconee County as it helps form a border between South Carolina and Georgia.

A collection of paddling advocacy groups, among them American Whitewater, sued the Forest Service last year, arguing the government has held up decisions on requests —

and in one case withdrew a compromise — to allow paddling in the upper third.

A hearing on the injunction took place in October.

An attorney for the paddlers, Nathan Galbreath, said in court that the Forest Service in 2005 had promised to make a decision but has cited a series of administrative hang-ups that has held the paddlers "in limbo."

In August 2009, the Forest Service issued an amendment to a 2004 plan that allowed paddling the section only during the months of December through March and only when the water reached a certain level.

However, after a court hearing on a temporary restraining order, two months later the government rescinded the amendment and once again completely banned paddling in the headwaters.

An attorney for the Forest Service, Assistant U.S. Attorney John Douglas, argued in court that the administrative process is slow but that it hasn't run its course, and until it does, the issue should stay out of the courts.

It could be another year

before an administrative decision is made, Douglas said.

While not a foregone conclusion, Childs wrote, "Based on the agency's past inability to substantiate the reasons for wholly banning floating on the headwaters, plaintiffs may have some chance of success on the merits."

The ultimate decision must weigh the interests of campers, hikers and hunters who believe paddling will disrupt the wildness of the river.

In nearly four hours of arguments in the hearing, attorneys sparred over the minutia of government documents, including an original copy of an early-1970s study held up as an exhibit.

For 250 years, people have been paddling on the entire stretch of the Chattooga, which forms in a bowl created by mountains in Cashiers, N.C., and flows into the Tugaloo Reservoir in Georgia, Galbreath said.

In 1974, Congress designated the Chattooga as part of the national Wild and Scenic River Act, based in part on a 1971 study that found activities such as "whitewater canoeing" a value worth

preserving, Galbreath said.

In 1976, the government banned boating of any kind in the headwaters, a decision that was confined to one sentence at the end of a voluminous series of documents, Galbreath said.

The paddling community at the time was small, he said, and no signs were posted, leaving people to continue paddling in the headwaters for years without knowledge of the ban.

In 1985, the government as part of a review of the Sumter National Forest plan continued the ban on boating, though it was based on the threat to "quality trout fishing" unlike "safety concerns" cited in the 1976 ban, Galbreath said.

Beginning in the late 1980s, new technology in paddling craft made the activity more accessible and led to more paddlers, and it was at that time the government erected signs notifying paddlers that they weren't allowed on the headwaters, Galbreath said.

Administrative protests to the ban began in earnest in the mid-1990s and have continued since.