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September 25, 2007

VIA EMAIL AND U.S. MAIL

Charles L. Myers
Regional Forester
Southern Region, USDA Forest Service
1720 Peachtree Road NW
Atlanta, GA 30309

David Carter
Acting Forest Supervisor
Chattahoochee-Oconee National Forests
1755 Cleveland Hwy.
Gainesville, GA 30501

Re: Implementation of FW-127 on the Chattahoochee-Oconee National
Forests

Dear Messrs. Myers and Carter:

I am writing on behalf of the Back Country Horsemen of America, the Back Country Horsemen of North Georgia and the Back Country Horsemen of Middle and South Georgia (collectively "BCH") regarding the Forest Service's intent to implement Forestwide Standard FW-127 on the Chattahoochee-Oconee National Forests. That implementation will apparently occur without the issuance of any revised Record of Decision or other formal decision by the Regional Forester which is then subject to appeal by an interested party. However, there is currently no valid decision in place which authorizes the implementation of FW-127 in the wake of the Chief's Appeal Decision issued on July 25, 2006. Because of that fact, any implementation of FW-127 without a proper decision notice would be contrary to applicable law. Furthermore, it would result in the public being denied the opportunity to properly participate in the development of the Forest Plan, which would contravene the National Forest Management Act, 16 U.S.C. § 1604(b). We urge you to reconsider this course of action so that the public can have an opportunity to review and comment on any decision by the Regional Forester to implement FW-127 on the basis of his identification of proper analysis which he believes supports that decision.

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As you may be aware, the previous Regional Forester, Mr. Jacobs, issued a final decision regarding the implementation of FW-127 in a Record of Decision (“ROD”) dated January 15, 2004. BCH appealed the ROD to the Chief pursuant to the regulations set out at 36 CFR Part 217, which implement the National Forest Management Act (NFMA), 16 U.S.C. § 1600 *et seq.* In its appeal, BCH challenged the implementation of standard FW-127 because, among other things, the administrative record failed to include proper environmental reviews and site specific analyses regarding any implementation of that standard.

In a decision dated July 25, 2006, the Chief upheld BCH’s appeal and stated that, based on the administrative record as of that point, the Regional Forester’s ROD could not authorize implementing FW-127 until the Regional Forester completed one of two substantive actions. ROD at 4. The actions which the Regional Forester was required to take were to “either demonstrate that the analysis exists to support implementing Standard FW-127, or to conduct additional site specific analysis, including public involvement, regarding the need for and impacts of the decision to restrict horse and pack stock to designated routes. Until such analysis is provided or completed, Standard FW-127 may not be implemented . . .” ROD at 4 (emphasis added.) Because the Chief’s decision invalidated the ROD with respect to implementation of FW-127, a new or revised ROD must be issued before FW-127 can be legally implemented. Furthermore, that decision must demonstrate the existence of the proper analysis which supports implementing FW-127. Any other means of implementing FW-127 would preclude proper public involvement.

The course of action which the Forest Service apparently intends to pursue would prevent public comment and the opportunity for submitting an administrative appeal in response to this new decision. As such, these actions would be directly contrary to applicable law. *See* 16 U.S.C. § 1604(d)(requiring public participation in the review and development of Forest Plans). Moreover, the Regional Director’s apparent plan to provide the Chief with information that was not previously provided to the public in the course of a comment period would result in that information being outside of the administrative record. As such, any reliance by the Chief on this information would invalidate any subsequent decision. In addition, the Forest Service could not refer to this extra-record information in an effort to support its decision before a court.

Please be assured that BCH is seeking every opportunity to avoid litigation in its effort to protect the rights of equestrians and very much prefers to resolve this matter directly with the Forest Service. However, absent an opportunity to comment on and appeal the Forest Service’s decision, if merited, BCH will have no choice but to seek any redress it believes is required from the District Court.

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If you should have any questions regarding the above, please contact the undersigned.

Very truly yours,

THE GARDEN LAW FIRM P.C.

Kevin R. Garden

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cc: Jim McGarvey
Back Country Horsemen of North Georgia
Tina Maddox
Back Country Horsemen of Middle and South Georgia
Steve Didier
Back Country Horsemen of America