



# The Chattooga Quarterly

Fall



2004

## Take The High Road



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# Director's Page

## Buzz Williams

This *Chattooga Quarterly* will reach you shortly after the election. I have no idea who will be our next president. I do know that the next four years will be a critical time for conservation. Policy direction as set by the president for the next four years on such issues as energy and the environment, global warming, national forest management, and even foreign relations will have profound effects on the health of our environment.

This *Chattooga Quarterly* features several conservation issues where government policy will make a big difference. We take a look at the approach that the Bush administration has taken on citizen involvement in national forest management as related to the National Environmental Policy Act and the Clean Water Act. We also explore the concept and practice of land protection through the use of conservation easements. My contribution is an update on Stekoa Creek and recommendations for cleaning it up, once and for all, through sound land management policies.

Our goal is to inspire public participation in policy making based on solid facts and ethics. Often, political spin and misinformation by powerful special interests make it hard for us to decide the best course toward good conservation practices. We hope this issue of the *Chattooga Quarterly* helps in that regard.

Policy shifts in government are often dramatic. In the early eighties just after Reagan was elected, the new president found a job for his old friend, Governor Bob Edwards from South Carolina. Edwards recently revealed in a public radio interview that when he got to Washington, he asked what he should do as the new Director of the Department of Energy. "Your job is to dismantle it," Reagan replied.

Ronald Reagan's policy was clear: energy deregulation = cheap abundant energy via competition and free enterprise = a stimulated economy where everyone gets a piece of the pie. Unfortunately, Reagan's policy failed to account for the fact that an unregulated industry would knowingly gouge the public for profit based on a false energy crisis, or that this same industry would not protect the environment on their own. (Remember, this is the same President Reagan who once rushed to the press section on Air Force One after looking down on the Great Smokey Mountains and announced excitedly, "See that smog down there? It's TREES that cause pollution!") The fact remains that a flawed energy policy by Ronald Reagan reverberated far into the future.

Another good example of dramatic policy shifts has to do with national forest management. When Jack Ward Thomas was installed as Chief of the Forest Service under the Clinton administration, he immediately declared that his policy would be to "tell the truth, obey the law and to implement ecosystem management." Thomas was the first Chief of the Forest Service with a solid scientific background, and in my opinion a very honorable man. When Chief Thomas insisted on protecting habitat for the Spotted Owl and much of the remaining old growth forest of the Pacific Northwest, he discovered very quickly how powerful the timber lobby is in Washington. I met with Jack Ward Thomas shortly after his appointment as chief and asked him how things were going. "You have no idea how hard it is to get anything done with the likes of Senator Stevens in here yelling at me every week," he replied with disgust. Stevens, a senior member of the appropriations committee and champion of the Alaska timber barons,

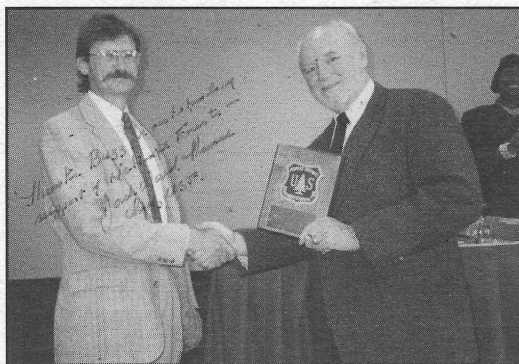
blocked Jack's every move toward more scientific forest management through sheer political clout and the threat of cutting off appropriations to the Forest Service.

Jack Ward Thomas soon resigned for personal reasons and was replaced by the more diplomatic Michael Dombeck. Chief Dombeck's first, major policy shift was to propose to protect all remaining roadless areas in the national forests. Dombeck took a very convincing argument to the people in over 600 public meetings

across the United States, where he received resounding support from the American people. When the Bush administration came into power, the roadless protection initiative was scrapped. Dombeck soon resigned over differences in policy.

The Bush administration replaced Michael Dombeck with Dale Bosworth as Chief of the Forest Service. Bosworth has already articulated several policy changes that do not bode well for conservation. The new chief has presided over several regulation changes that restrict citizen participation and requirements to maintain species viability, and has moved by way of "stewardship contracting" to turn national forest management over to the timber industry.

Choosing a policy is like choosing a path. We often hear the axiom, "there are many paths to the truth." But often, discerning the truth is the problem. Ours is a society where spin, misconception and outright falsehood often obscure the truth. We hope that our commentary and articles in the *Chattooga Quarterly* make it easier for you to become informed participants in the making of good policy, no matter who is president.



Buzz accepts an award from Jack Ward Thomas, former Chief of Forest Service.



# Stekoa: A Plan For Restoration

*Buzz Williams*

One of the best ways to assess the ecological health of a watershed is by looking at water quality. America's waterways had become so polluted by the mid 1960s that environmental activists began calling for new laws to restore and protect the water quality in our rivers and streams. The National Wild and Scenic Rivers Act and the Clean Water Act were products of this era of environmental activism. The Chattooga River was one of the only rivers in the southern Appalachian Mountains nominated in the Wild and Scenic Rivers Act. The river was eligible for protection under the statute as a last vestige of primitive America, where wildness and good water quality still existed. The Clean Water Act provided a means to protect rivers like the Chattooga that remained in a relatively pristine condition, while providing guidelines for restoring polluted rivers to acceptable water quality.

Water quality has improved in many rivers under the protection of the Wild and Scenic Rivers Act and the Clean Water Act. Yet many problems remain on rivers and streams where adequate enactment of these protective statutes has never been applied. Now, again our rivers and streams are threatened by unbridled development. The results are being seen in sedimentation due to ground disturbing activities and road building, reduced stream buffer zones, and inadequate sewage treatment. Nowhere is this story made more visible than in the efforts to restore and protect Stekoa Creek, one of the most polluted tributaries to the Chattooga River.

In 1997 we published an article in the *Chattooga Quarterly* highlighting the pollution in Stekoa Creek, accompanied by an appeal for support to address the problem. Today, seven years later the pollution persists with little improvement. This year, as we redouble our efforts to restore and protect this valuable tributary to the Chattooga River, it is instructive to look at where we were then and what has happened since, beginning with a summation of Stekoa's pollution problems and followed by an update and a new strategy for an aggressive program to clean up Stekoa Creek.

In 1974, that section of the Chattooga River below the confluence of Stekoa Creek and the main river was nearly excluded from designation as a Wild and Scenic River because of pollution from Stekoa Creek. Stekoa Creek is one of the largest tributaries to the Chattooga River, and

flows predominantly through private land and the City of Clayton in Rabun County, Georgia. The creek was discovered to be so polluted from fecal coliform and sedimentation in 1970 that the team studying the Chattooga River to assess its eligibility under the Wild and Scenic Rivers Act concluded that designation of the river below its confluence with Stekoa should be included only with an agreement with the City of Clayton that a sewage treatment plant would be constructed. Fecal coliform levels at that time were documented to be 20 times higher than normal. In 1975, one year after the Chattooga River was designated as a National Wild and Scenic River, the City of Clayton replaced its old settling ponds with a new sewage treatment plant.



*A wave of sprawl is moving into the upper flood plain of Stekoa Creek.*

In 1981, water testing again revealed unabated pollution problems in Stekoa Creek. The Georgia Department of Natural Resources (DNR) found acute difficulties with the Clayton sewage treatment plant. Further investigations found storm water infiltration into sewer pipes causing flow through the plant to be 5 times greater than its designed capacity of 160,000 gallons per day. The 50-year-old sewer lines were leaking so much storm water into the plant that after heavy rainfall raw sewage was overflowing the treatment plant and spilling directly into Stekoa Creek.

Again in 1993, the DNR threatened enforcement action against Clayton unless immediate action was undertaken to correct continuing permit violations at the Stekoa sewage treatment plant. Meanwhile, sediment escaping from

## Stekoa Creek: A Plan For Restoration

development along the highway 441 corridor through Clayton and failing septic systems were adding even more pollution to Stekoa Creek.

In 1995 at the request of the Chattooga Conservancy, Georgia Law in the Public Interest investigated discharge monitoring reports from the sewage treatment facility in Clayton and revealed serious noncompliance with permitted levels for total suspended solids, biochemical oxygen demand and pH levels. At the same time, the report did acknowledge some improvements at the sewage treatment plant resulting from upgrades.

Finally, on June 2, 1995 the City of Clayton entered into a consent order with Georgia's Environmental Protection Division (EPD) to install further upgrades on the sewage plant to boost its capacity from 160,000 to 800,000 gallons per day. In 1996, improvements were initiated at the Clayton sewage treatment plant, yet the storm water infiltration problem causing periodic sewage spills during periods of high rainfall continued. Meanwhile, in March of 1996 the Sierra Club won a landmark water quality case against the US Environmental Protection Agency. This ruling faulted the agency, which had failed in requiring the State of Georgia to comply with the federal Clean Water Act's mandate to identify "impaired" waters in the state, and then devise a viable plan for restoring water quality to acceptable levels for the water's designated use.

The City of Clayton has now completed sewage treatment plant improvements with some improvement in water quality. But recent heavy rains from a series of tropical storms have once again resulted in untreated sewage spilling into Stekoa Creek. To its credit, the City of Clayton (with pressure from DNR) has completed a "smoke test" of the aging sewage system, which should soon zero in on leaks. For fixing the problem that has been estimated to cost in excess of a million dollars, the EPD will allow a further expansion of the sewage treatment plant to serve the burgeoning demand for service to increased development along the highway 441 corridor paralleling Stekoa Creek. The question of finding the money for sewage line upgrades looms large in the prospect of staying ahead of the growing demands on Stekoa Creek as the primary recipient of Clayton's sewage effluent.

Positive movement on the fecal coliform problem via sewage plant improvements and upgrades recently have been offset by a shocking escalation of sprawl along Stekoa Creek and highway 441 that has resulted in a massive increase of sedimentation in Stekoa Creek. Developers taking advantage of loop holes in erosion and sedimentation laws are filling Stekoa's flood plain for a car dealership, and a host of other land disturbing projects along highway 441, including a Wal-Mart (already in operation), and a Home Depot. The resulting runoff from these huge ground-disturbing activities is only compounding sediment

problems in Stekoa Creek. The impervious surfaces of acres of new parking facilities could also add a significant volume of petroleum-based pollutants to Stekoa Creek.

Other, worsening pollution problems on Stekoa Creek revolve around the failure of the Georgia DNR to adequately screen requests by developers to invade stream buffer zones. Unfortunately, the DNR has granted numerous variances that waive stream protection zones and allow land disturbing activities up to the water's edge, causing a further decline in water quality. Development friendly state officials have also navigated around the Clean Water Act ruling that mandated restoration of Stekoa Creek's water quality, by crafting a wildly insufficient clean up plan that is void of any meaningful mechanisms to improve the creek.

Efforts to clean up Stekoa Creek are a now-or-never proposition, given the intense development and infrastructure related pressure building in Rabun County. This stark reality has prompted the Chattooga Conservancy to initiate a new campaign to protect and restore Stekoa Creek. First, we have started a stream sampling program to find point sources of pollution in Stekoa Creek. Water samples will be analyzed at the University of Georgia's environmental water laboratory and test for excessive levels of fecal coliform and sediment. We are working with the Georgia DNR to tighten up on needless variances to stream buffer zones. We are also asking the Rabun county officials to enforce existing floodplain ordinances to prevent more filling of Stekoa Creek's floodplain along highway 441. We are involved with the 10-year comprehensive planning process for Rabun County, advocating for provisions for streamside protections and orderly development. Finally, we are partnering with citizens and landowners in an effort to establish a greenway along Stekoa Creek. This greenway could provide for adequate buffering against sedimentation in the creek, restore its native riparian vegetation, set the stage for major improvements in water quality, and create an attractive environment and recreational corridor for the community to use. We have secured support for the Stekoa Greenway Project from both Rabun County and the City of Clayton. We are also working with local businesses to promote the greenway for revitalization of the downtown Clayton business district.

This strategic plan for the monumental task of cleaning up Stekoa Creek will depend on citizen support and involvement at every phase. The *Chattooga Quarterly's* 1997 article about the status of Stekoa Creek concluded that "time is running out ...." Today, the time is up. With your help, Stekoa can be cleaned up, once and for all. If you would like to participate, call the Georgia EPD at 888-373-5947 and ask them to stop issuing variances in stream buffer zones on Stekoa Creek and start working to improve its water quality. Also check our website and [www.chattoogariver.org/alerts/stekoa.shtml](http://www.chattoogariver.org/alerts/stekoa.shtml).



# Conservation Easements

*Carol Greenberger*

Dick and Gillian Heywood live in southern Macon County, North Carolina in a 120-year old, restored log cabin on Middle Creek. Their 35-acres have been farmed since the Civil War, producing corn, beans, cattle and chickens. In just six years in the United States during the 1990s over five and a half million acres of agricultural land was converted to developed use. The Heywoods were concerned about the future of their property and wanted to ensure that it would continue to be used for agriculture, and not developed. With the help of the Little Tennessee Land Trust, the Heywoods established a conservation easement to protect their land's agricultural heritage. The easement allows for continued farming, constructing farm-related buildings, and harvesting timber, while limiting any future subdividing of the land.

A conservation easement is a method landowners can employ to protect their property without selling land or giving up the ability to use and enjoy it. Landowners across the country are establishing easements to protect riverfront property, wildlife habitats, scenic vistas, forests and farmland, historic sites, urban gardens and many other types of land and natural resources. Over two and a half million acres of land in the United States are currently protected by conservation easements.

These voluntary legal agreements are made between landowners and another party, either a private land trust or a public agency, to restrict the development of a piece of property. The agreement must be permanent in order for the landowner to qualify for income and estate tax benefits. This means that the easement remains with the property even if it is sold or passed on to heirs. The agreement is legally binding and is recorded in the county in which the land is located. A conservation easement is usually donated, but in some cases they are sold to a land trust or public agency.

The usual rights of land ownership, such as the right to subdivide, sell, farm, cut timber or build are restricted under a conservation easement. The landowner agrees to give up one or more of these rights in order to protect a resource or conservation value. A landowner might prohibit dredging in

a wetland, restrict chemical application in a river floodplain or prohibit the building of any structures or roads. Public access to the protected property is not a requirement of a conservation easement. The landowner may also specify rights they wish to keep, such as selling the property, harvesting timber or maintaining the land for agriculture.

The concept that a landowner can convey specific rights on his or her land is rooted in the history of English common law, on which our legal system is based. However, conservation easements are a more recent creation. Nearly every state has enacted laws authorizing conservation easements. Federal tax benefits were first provided by Congress to promote conservation in 1976. In addition, twelve states, including North Carolina and South Carolina, have enacted laws to either provide state income tax credits

for conservation easements or to exempt the sale of them from state income tax.

While the tax savings alone do not usually provide enough of an incentive to be the sole reason for a conservation easement, the landowner may benefit from lower estate and property taxes as well as federal and state income taxes. Gifts of a conservation easement provide a charitable income tax donation to the landowner. The donation is based on the fair market value of the easement. The

contribution is usually valued at the difference between the fair market values of the land without the easement, and the land with the easement.

The more development potential a property has and the more restrictive the conditions of the easement, the higher the value of the conservation easement. The annual federal income tax donation is limited to 30% of the donor's adjusted gross income each year. If the entire donation cannot be taken in one tax year, a portion may be deducted for a total of six years. A landowner can split up the property into pieces and stagger the donation of the conservation easements, in order to receive full tax benefits. For example, several acres may be donated and the tax deduction taken over six years. Then additional acreage may be donated and the tax benefit on that second contribution taken over the next six years.



*This section of Stekoa Creek would be ideal for a conservation easement to help create a greenway in Rabun County, GA.*



## Conservation Easements

Placing a conservation easement on land may lower a landowner's property taxes, because the property's fair market value is lowered. The same reduction in fair market value would result in a decrease in federal estate and gift taxes. Recent amendments to federal gift and estate tax law offer a potential further savings regarding conservation easements. A new federal tax provision allows exclusion of land value from a decedent's estate if the land is subject to a qualified conservation easement. The exclusion applies after the value of the conservation easement is subtracted from the fair market value of the land, essentially giving the landowner the reduction in value twice. Of course, because we are dealing with taxes and the IRS, several limitations apply and the rules are complex. It is best to let a tax or financial advisor determine the tax ramifications and benefits for you.

State laws in Georgia, South Carolina and North Carolina provide benefits to landowners for conservation easements. Georgia's General Assembly passed the Uniform Conservation Easement Act in 1992. The act authorizes and promotes the use of conservation easements. Georgia offers state income tax deductions, and reductions in property and estate taxes on conservation easements. As of April 2001 there were over 40 land trusts active in Georgia and over 37,000 acres of land throughout the state are protected by conservation easements. Georgia also operates a Purchase of Development Rights program. Governor Barnes' enacted the *Community Green Space Program*, designed to purchase the development rights of property, focusing initially on high growth counties. The goal of the program is to preserve 20 percent of Georgia's land as green space.

In 1983, North Carolina became the first state to offer a state income tax credit for owners who donate conservation easements on their property. Unlike a deduction, which reduces your taxable income, a tax credit is subtracted directly from taxes owed. The credit allowed on North Carolina state income taxes is 25% of the fair market value of the donation. The ceiling has been raised from its initial \$5,000 to the present maximum credit of \$250,000 for individuals. To take advantage of the tax credit, the donation must serve a public benefit such as public beach access and use, public access to water or trails, fish and wildlife conservation, or other similar land conservation purposes. North Carolina has over 108,000 acres of land under conservation easements.

South Carolina passed the Conservation Easement Act of 1991 to protect natural resources, maintain or enhance air quality, ensure the availability of property for agricultural, forest, recreational, educational or open-space use, and to preserve historical, architectural, archaeological or cultural aspects of property. The initial law sought to make the donation of conservation easements attractive by requiring local tax assessors to consider the easement when assessing property value. In 2000 South Carolina added tax credit incentives. If a donation in South Carolina meets the federal

guidelines, tax credits can be taken on state income taxes, as of June 1, 2001. These credits are good forever. There are limits however - tax credits can be taken up to 25% of the federal deduction, or are limited to \$250 per acre of land under easement, whichever is less. A South Carolina taxpayer can use up to \$52,500 in credits each year. South Carolina offers an additional incentive for landowners. The state tax credits can be assigned, transferred to others and sold. According to the 2000 National Land Trust census, over 71,000 acres of land in South Carolina are under conservation easements.

More than 1260 land trusts across the United States rely on conservation easements as an effective tool for protecting farmland, open space and natural areas. The Chattooga Conservancy is a land trust and eligible to hold conservation easements. The National Land Trust Census of 2000 reported that more than 6.2 million acres of land have been protected by land trusts. This equals an area twice the size of Connecticut. Over forty percent of those acres have been protected by conservation easements. Conservation easements grew from 450,000 acres in 1990, to 2.6 million acres in 2000, an increase of 475%. There are more than 11,600 easement agreements between land trusts and property owners.

Significant public benefits can accrue from conservation easements, even though they are placed on private land. They protect the future of small farms and ranches, keeping land in traditional uses. Conservation easements have been used to buffer national parks, such as Glacier and Yellowstone, and other public lands, preserving scenic entrances and expanding wildlife habitat. Historic properties can be maintained and serve to enhance the quality of life and preserve heritage. Water quality can be improved by protecting watersheds and aquifers. Conservation easements can protect and improve a community's scenic beauty, which promotes community pride as well as tourism.

Here in the watershed an effort is underway now to use conservation easements to improve this area's beauty. In Clayton, Georgia the recent, highly visible impact from construction on Stekoa Creek has prompted the alarm of local citizens who are concerned about a negative effect on the economy, want to improve the aesthetics of Stekoa Creek, clean up the water and establish a greenway through the city along the creek (See article on Stekoa Creek in this issue). Responding to community interest, the City of Clayton recently stated that they would accept land donations for the purpose of creating a greenway along Stekoa Creek, with the Chattooga Conservancy holding the conservation easements. A committee formed of concerned citizens and the Conservancy is working hard to try and make the greenway a reality. This proposed greenway is an excellent example of how conservation easements can potentially benefit both the community and landowners who donate the easements.



# Deconstruction of Environmental Policy

**Eric Orr**

*"Over the last four years, the air has become cleaner, our water more pure, and we have reversed the net loss of wetlands. In addition, our parks are better managed, better funded, and better protected. Throughout his first term, President Bush has launched a series of climate change initiatives to improve scientific understanding and reduce emissions through the use of new, energy-efficient technologies."* That's the state of our environment according to [www.georgewbush.com](http://www.georgewbush.com), the official website of Bush-Cheney '04, Inc.

By the time this article is published, the result of the 2004 presidential election will be decided, assuming the process goes as planned. Regardless of who is in charge next year, Bush has indeed launched a series of climate change initiatives, and his administration has left in its wake a legacy of environmental erosion. Two major targets are the National Environmental Policy Act and the Clean Water Act.

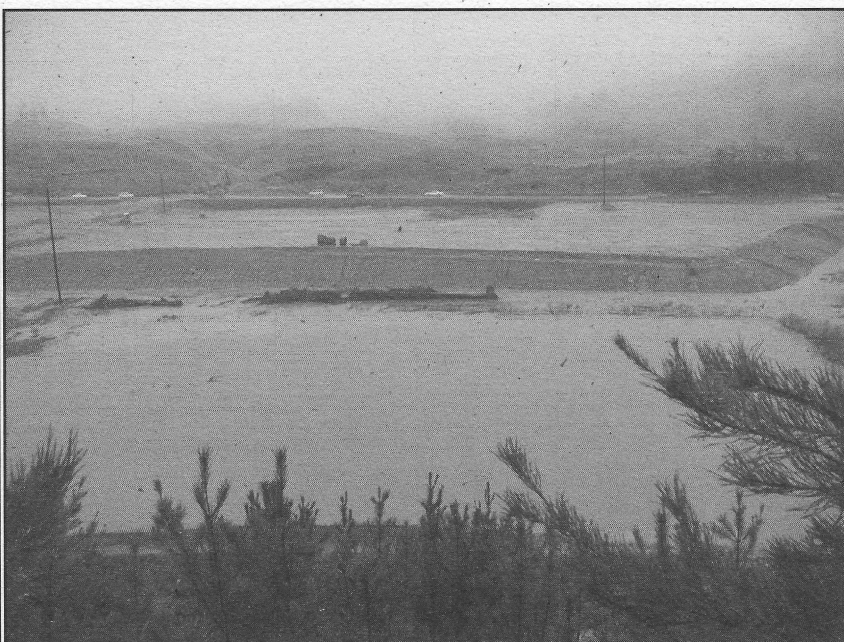
## National Environmental Policy Act

In 1970, President Nixon signed into law the National Environmental Policy Act (NEPA). NEPA established a set of rules which requires federal agencies to use scientific research and public participation to assess any major action concerning natural resources. Under NEPA regulations, the government must present an exhaustive study called an Environmental Impact Statement (EIS) for any action that significantly impacts the environment. In addition to an EIS, the public must be "scoped" for comment. NEPA declares that "each person should enjoy a healthful environment and that each person has a responsibility to

contribute to the preservation and enhancement of the environment." It grants citizens the right to voice concerns and offer suggestions to federal actions that impact the environment. After the comment period expires, the agency must consider all submissions including possible alternatives.

Since its inception NEPA has played a vital role in securing environmental victory for a concerned public. In the early 1980's the Forest Service scoped a proposal to build an observation deck at Bull Sluice, which lies in a section of the Chattooga River that is designated "wild" by the Wild and Scenic Rivers Act. The act specifies that the shorelines of wild rivers must remain primitive. A small uprising from local environmentalists and river enthusiasts ensued. Comments were submitted to the Forest Service and letters were written to politicians. In the end, the government reversed the decision. A similar situation occurred not long after when the Forest Service announced a plan to build a platform at Dick's Creek Falls. Like Bull Sluice, Dick's Creek enters the Chattooga River in a wild section, and again, public comment incited the Forest Service to abandon the plan.

NEPA allows government agencies to take care of routine business by the use of "categorical exclusion." As defined by NEPA, categorical exclusion is "a category of actions which do not individually or cumulatively have a significant effect on the human environment..." What this means to us is that the government is neither required to produce an Environmental Impact Statement nor is the public allowed to appeal their decision. It's a necessary tool for tackling everyday procedural duties, such as maintaining and restocking campsite bathhouses. But it has recently become subject to serious abuse. The public participation process has been reduced to a meaningless formality leaving citizens with no rights to appeal impactful government projects.



*Stekoa Creek, flooded at a development site, suffers from lack of EPA enforcement.*

Take the Healthy Forests Initiative, for instance. President Bush announced the plan in August 2002 after wildfires burned rampant the previous year. He said the initiative would promote forest health by expediting forest thinning projects and ensuring "sustainable forest management and appropriate timber production." It would provide safety to communities near public lands by reducing hazardous fuels and "by reducing unnecessary regulatory obstacles that hinder active forest management." As a result of the Healthy Forests Initiative, the Forest Service has permanently added new categorical exclusions to its management plan. Hazardous fuels reduction projects are now eligible to be exempt from environmental assessment and public appeal. A mechanical removal project,

## Deconstruction of Environmental Policy

such as logging, can be categorically excluded if the project area is less than 1,000 acres, and a prescribed burn can be up to 4,500 acres. So commercial logging can be excluded if the primary intent is fuel reduction, but the Forest Service previously could not categorically exclude any commercial logging project that exceeded 10 acres.

The 2003 Healthy Forests Restoration Act (HFRA) takes even more decision making power from the public. Again Bush used the public's fear of fire to push the new law, claiming that too often citizens' appeals stalled fuel reduction projects, despite a General Accounting Office report which stated that 97 percent of the 762 logging projects reviewed were not even contested. According to the report, over 95 percent of the projects occurred in a timely manner. But the HFRA was signed in to law in December 2003. The new law imposes restrictions on who can legally challenge or appeal logging projects, and it allows timber companies to harvest mature trees in remote areas in the name of "fire prevention." One of the major flaws of HFRA is funding. Bush's Fiscal Year 2005 Budget provides no money for hazardous fuel reduction on non-federal lands, but the federal government only owns 15 percent of the "buffer lands" surrounding communities that are at a high fire risk. So it's up to the individual communities or states to deal with the remaining 85 percent. Instead of actually addressing the real fire hazards, HFRA projects are focused on more commercially valuable areas.

In the 2<sup>nd</sup> presidential debate of 2004, Bush had this to say of his new law: "What happens in those forests, because of lousy federal policy, is they grow to be — they are not — they're not harvested. They're not taken care of. And as a result, they're like tinderboxes." In January 2004 the Forest Service finalized their decision to open Giant Sequoia National Monument to logging for the sake of wildfire risk reduction. Under the plan, trees up to 30 inches in diameter and over 100 years old may be cut. 10 million board feet, enough trees to fill 3,000 logging trucks, can be harvested each year. But big trees are not hazardous fuels. They resist burning. HFRA affects all national forests across the entire U.S. In a temperate rain forest such as the Southern Appalachians, trees are the best protection against fire. If they are allowed to mature they provide a canopy which keeps the forest floor cool, damp, and free of flammable underbrush. Intensive timber harvest only serves to *increase* the risk of fire.

### Clean Water Act

In an effort to reverse the environmental degradation of the nation's waterways, Congress passed the Clean Water Act in 1972. It was a huge victory for citizens, because it not only limited pollution, but it attempted to reverse the effects. It was critical to maintaining a safe water supply for people and wildlife alike. The law protected every single water source in the U.S., including small tributaries, bogs, ponds,

and even prairie potholes. It remained intact for over 30 years.

Then in January 2003 the Bush administration announced plans to change Clean Water Act rules and issued a policy directive that would immediately imperil the health of many of our water sources. The directive says that regulators (the Environmental Protection Agency (EPA) and the Corps of Engineers) must seek permission from Washington to extend protection to certain intrastate non-navigable waters that are "isolated." However, no justification is necessary to withdraw protection, and there is no clear definition of "isolated." Streams, critical wetlands, and even tributaries to rivers have been included in the "isolated" category. Some of these waterways clearly impact waters downstream. The administration dumped the rulemaking plan due to overwhelming opposition from the public, but the directive is still in effect. On Earth Day 2004, Bush announced that he would begin to push beyond "no net loss" of wetlands and strive towards gaining wetlands. He pledged to "work to restore and to improve and to protect" 3 million acres of wetlands over the next 5 years. But his policy directive threatens 20 million acres.

We depend on wetlands to clean our water through natural filtration. Unmitigated development of these wetlands poses a serious health threat by allowing chemical and biological pollutants to enter the water supply. Indigenous wildlife can be choked out by excessive nutrients, sediment, and toxins. Water quality can be reduced to undrinkable. Yet last year the EPA and the Corps of Engineers approved a plan for the Potash Corporation of Saskatchewan to expand a phosphate mine in the Suwannee River watershed, which already suffers the effects of pollution. The plan action will destroy 4,000 acres of wetlands, which are known to provide habitat for bald eagles, the threatened indigo snake, and the endangered wood stork. The agencies contend that the ponds constructed to hold the clay slurry by-product of mining will negate the destruction of the natural wetlands, because they attract a more diverse set of wildlife. But they offer no proof that the new group of wildlife benefits the ecosystem. Aside from the fact that the mining expansion will result in the destruction of habitat, thousands of Florida residents depend on the Suwannee River watershed for drinking water.

Not only were protections lifted from critical water sources, but Bush's EPA has been lax enforcing the protections that still exist. Only about 15 percent of all serious polluters are punished by the EPA. Less than half of the offenders end up paying fines that average \$6,000.

In just 4 years we have seen 30 years of progressive policy crumble. If Kerry takes the title in November, he could spend the next 4 years fixing a fraction of what's broken. If it's Bush, we can expect more of the same.



# Who Was General Andrew Pickens?

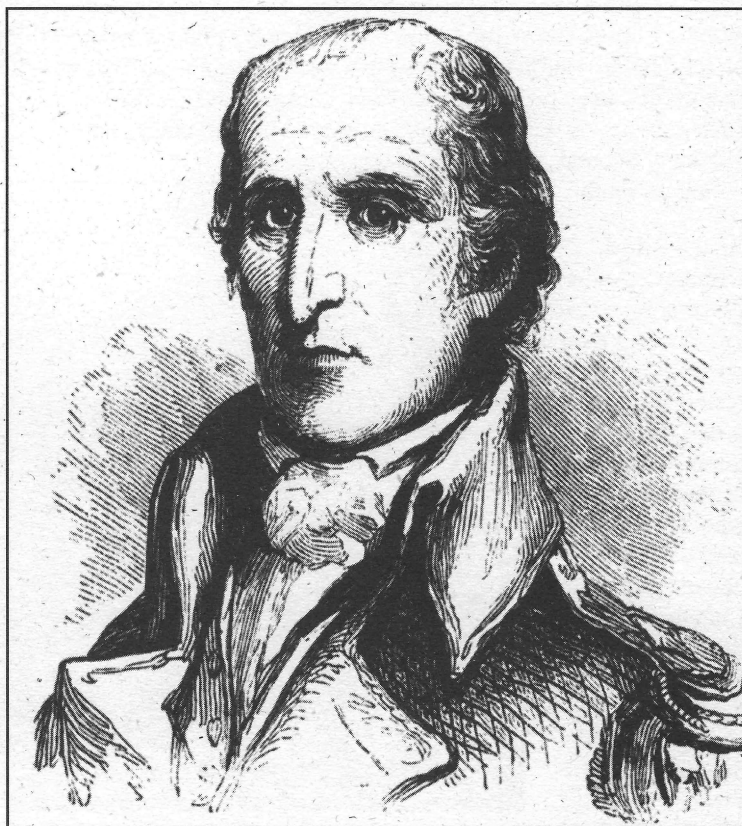
*Long before Harry Potter, the upstate of South Carolina had it's own Wizard Owl. Known by the Cherokee as Skyagunsta, or the Wizard Owl as a tribute to his skill as a warrior, General Andrew Pickens played an important role in the history of the state and the nation. Pickens, the stern old Presbyterian, was also known as the "Fighting Elder." He was a veteran Indian fighter and took part in several decisive battles with the British during the American Revolution including the battle of Cowpens that turned the tide of war in favor of the Americans. He, along with Thomas Sumter, the "Gamecock," and Francis Marion, the "Swamp Fox," were the fathers of the guerilla tactics that enabled the outgunned and out numbered American army to defeat the larger and better equipped British forces. Pickens was viewed by some historians as a courageous hero and by others as one who exploited the Cherokee, killing them and burning their villages as a soldier, while at the same time amassing a personal fortune in Indian trade. Paradoxical as his life may have seemed, an elder and a warrior, a farmer and a trader, respected by the Cherokee as a soldier and yet their enemy, Pickens nonetheless was a tactical genius and a man of true courage. Here is a brief history of General Andrew Pickens, the Wizard Owl, whose life has left an indelible mark on our culture and our history.*

General Andrew Pickens is the namesake for the mountain district of the Sumter National Forest in the northwest corner of South Carolina. An able commander of South Carolina rebel militia during the American Revolution, Pickens was born near Paxtang, Pennsylvania, of Scots Irish immigrants. His family moved south to the Waxhaws with other Scots Irish families in the mid 1700s. Andrew Pickens served in the Cherokee War of 1760-1761 and was an officer in a provincial regiment that accompanied Colonel James Grant and British regulars in an expedition against the Lower Cherokee towns in 1761. He moved in 1764 to the Long Cane Creek settlement in Abbeville County where he married Rebecca Calhoun, aunt of John C. Calhoun. In 1768, Pickens built a blockhouse at the future location of Abbeville, to defend against Indian attack and to serve as his base for the Indian trading business.

Pickens, an elder in the Presbyterian Church, was described as a severe, dour, Scots Irishman of few words. He fathered six children. Much of his future wealth was built on trade with the Cherokees. He was also a farmer, justice of the peace, and church leader at the outbreak of the Revolution. He became a captain of rebel militia under Andrew Williamson at Ninety Six in 1775 and took part in the 1775 Snow Campaign against loyalist militia in the piedmont. A majority of the settlers in the back country remained loyal to the king or did not support rebellion.

The Cherokees attacked several settlements along the frontier and killed many settlers in July 1776. Captain Andrew Pickens led militiamen from the Long Canes in Williamson's expedition to burn the Lower Cherokee towns in northern South Carolina. The settlements of Essenecca (Seneca), Tomassee, Jocassee, Estatoe, Tugaloo, Brass Town, Cane Creek, Chehohee, Qualhatchee, Toxaway, Chittitogo, Sugar Town, Keowee, and others were destroyed. Andrew Pickens was leading a detachment of 25 men to destroy Tamassee when they were attacked by a large Cherokee force estimated at over 150 men and surrounded in an open field. The militiamen formed a small circle and fired out at the surrounding Indians in what came to be called the "Ring Fight." Pickens won the fight after being reinforced. Following the destruction of the Lower Cherokee towns, Williamson conducted a campaign into Georgia and North Carolina to destroy the Cherokee Valley Towns. Andrew Pickens was elected major for this expedition. Williamson's forces fought five battles with the Cherokees and destroyed 32 towns and villages in the Lower and Valley settlements.

Major Pickens served in General Williamson's army in 1778 in a failed attempt to take British St. Augustine. In the spring of 1778, he was appointed colonel of the Regiment of Ninety Six South Carolina Militia. The British occupied Augusta and were recruiting loyalist troops in the western piedmont when Andrew Pickens' militia surprised and



General Andrew Pickens, the "Wizard Owl"



## Who Was General Andrew Pickens?

defeated a loyalist force of 700 men gathered at Kettle Creek about 50 miles northwest of Augusta. The British were forced to withdraw from Augusta and serious efforts by them to control the back country were suspended until the fall of Charleston in 1780. After Charleston was surrendered to the British, Andrew Pickens, along with many other rebel leaders accepted parole and British rule.

When loyalists burned his home and plundered his property in late 1780, Pickens informed the British that they had violated the terms of his parole and he was rejoining the rebels. He was soon leading operations in the vicinity of Ninety Six and over to Georgia. Pickens cooperated well with Continental forces. He was in charge of the South Carolina militia at the Battle of Cowpens in January 1781. There, with Continental troops under General Daniel Morgan, the rebels won a great victory over British regulars commanded by Colonel Banastre Tarleton. Following the Battle at Cowpens, Andrew Pickens command worked with the Continental Army under Nathaniel Greene in North Carolina.

After the Battle at Weitzel's Mill, Andrew Pickens' South Carolina and Georgia militia were called home from North Carolina to defend local rebel interests and missed the major battle at Guilford Courthouse. General Pickens worked with Colonel Elijah Clarke in harassing British forces in the area between Ninety Six and Augusta. The British in Augusta surrendered to Pickens, Clarke, and Continental troops under Colonel "Light Horse Harry" Lee in April 1781. The Star Fort at Ninety Six withstood a siege and attack by General Greene and the Continental Army in June. As Greene withdrew from Ninety Six, he instructed Pickens to harass the enemy and most importantly keep peace between the rebels and loyalists in the back country. In July the British destroyed the fort and village at Ninety Six and withdrew south.

As the British withdrew, Andrew Pickens gave strict orders to his men to observe justice, and restore peace and order. He soon joined General Nathaniel Greene who was moving to attach the British under Lieutenant Colonel Alexander Stewart on the Santee River. At the Battle of Eutaw Springs on September 8, Pickens was shot off of his horse by a bullet which hit

the buckle of his sword belt. He was not seriously wounded, but the wound troubled him in later years. The battle ended in a draw.

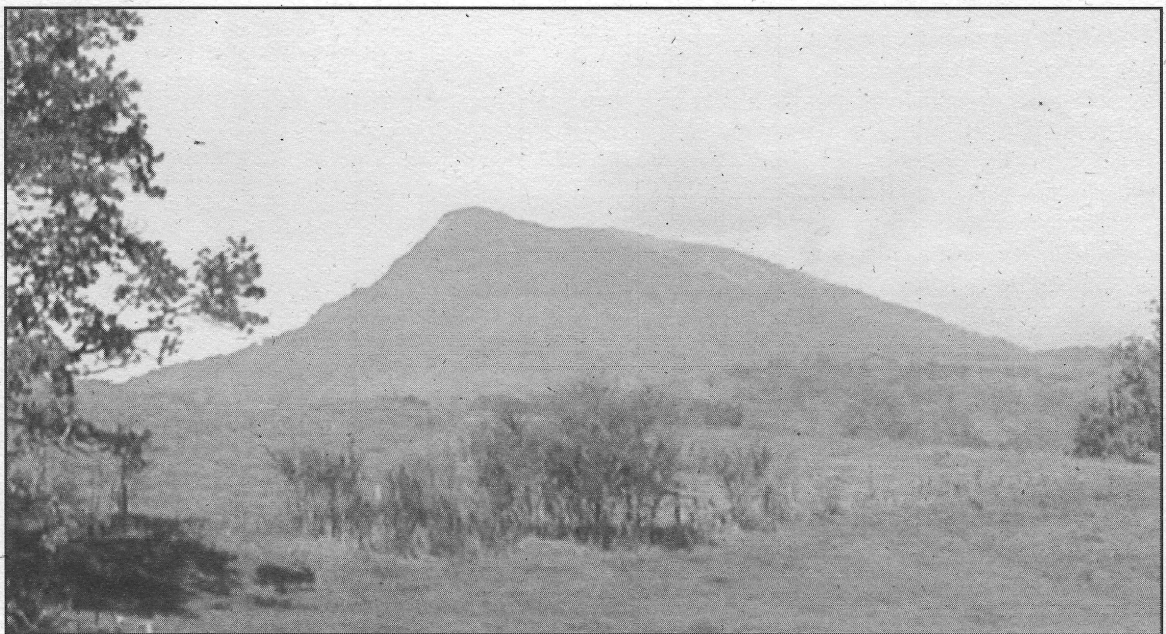
In September, while General Pickens was recuperating from his wound, the Cherokees attacked settlements on the western frontier. With the withdrawal of the British Army, Governor Rutledge moved to re-establish civil government in South Carolina. In January 1782, Andrew Pickens became a member of the South Carolina General Assembly. Recovered from his wound, in March 1782, Pickens led a force again against the Lower Cherokees and burned several villages in Oconee County.

In 1785, he met with the Cherokee at the Treaty of Hopewell where the Indians ceded their lands to the state.

In 1787, Pickens moved to Seneca and his plantation at Hopewell. About 1802, he moved to the site of the former Cherokee Village Tomassee, near where he had the "ring fight" in 1776 and built a plantation which he named after the village. Pickens lived at Tamassee until 1817. He remained an elder in the Presbyterian Church and was the first United States congressman from the Pendleton District.

The Andrew Pickens Ranger District was named after this early South Carolina military and political leader. His final home at Tamassee is located at the eastern edge of the district. The General Pickens District began with land acquired in 1914 in what was called the Savannah Purchase Unit under the authority of the 1911 Weeks Act. It became part of the Sumter National Forest by presidential proclamation in 1936.

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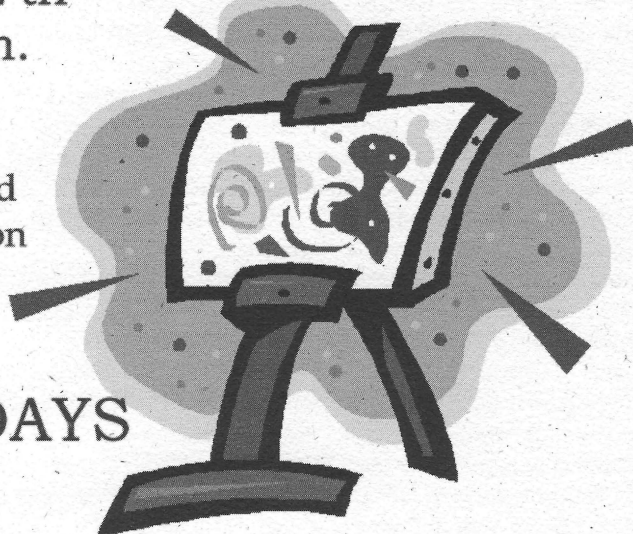
*Pickens Nose is a 4,900 ft. mountain that lies on a ancient Indian trail near Rabun Gap, where Pickens once fought the Cherokee.*



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# Watershed Update

## DON'T BE HORSIN' AROUND

The Andrew Pickens Ranger District, which includes the South Carolina portion of the Chattooga River watershed, has announced intentions to expand the horse trail system on the SC side of the Chattooga River. The Sumter National Forest's quarterly report vaguely identifies the project area as public lands lying in between Earls Ford Road, Chattooga Ridge Road, and Fall Creek Road, which is a large and significant parcel located directly adjacent to the Chattooga Wild & Scenic River corridor. Equestrian trails in the Chattooga watershed have been the subject of increased attention and outright controversy because of the growing popularity and demand for horse trails, and the negative impacts of over use, poorly designed trails, and river fords. With rumors brewing and prospective trails being flagged throughout the proposed project area, the Chattooga Conservancy requested a meeting with the District Ranger and other principals involved with the project. In attendance were various Forest Service personnel, the Chattooga Conservancy, private entrepreneurs, and Clemson University staff.

This meeting revealed that the entrepreneurs were planning to build a private horse camp with direct access to the new horse trail system, and the Forest Service was advancing a partnership arrangement between the agency, the entrepreneurs, and the university to execute the project. Indeed, the groundwork was already underway, which accounted for the flagged trails. Further, the notion was to privatize the major tasks of trail layout and maintenance to Clemson University and the horse camp folks, respectively. This would be a precedent-setting initiative to privatize a major recreation and natural resource management activity on the national forest, and one clearly favored by the Bush administration and the Chief of the Forest Service.

Chattooga Conservancy staff hiked some of the proposed horse trails and found them traversing wetlands, steep slopes and shallow, fragile soils—wholly unacceptable trail design. Other proposed trails outlined on a preliminary map appeared to have similar problems brought about by following old logging roads, which are gullied relics of times when erosion and sedimentation were non-issues. The Chattooga Conservancy is bringing these problems to the forefront, as well as the fact that there is an acute lack of law enforcement to address illicit off-road vehicle and horse trails, which are presently causing significant resource damage on public lands. In addition, the Conservancy is working with a respected, expert horse trail builder to fashion a sound alternative that would allow for a reasonable expansion of equestrian trails in the Chattooga watershed. Stay tuned—this issue is a waking giant that could leave large footprints in the Chattooga River watershed.

## ONE FISH, TWO FISH, RED FISH, BLUE FISH—NOT QUITE!

On September 29, 2004, the Bush administration quietly enacted a radical new rule eliminating the Forest Service's responsibility for managing our public lands to maintain "viable populations" of wildlife species. Previously, the wildlife viability standard was a common sense requirement that the Forest Service maintain healthy populations of native species on national forest lands in concert with timber harvesting and other resource extraction projects. Wildlife populations could be sampled, and hard numbers determined if a species was reproducing and healthy. Now the administration has replaced the viability standard with a vague and essentially meaningless directive for forest managers to "consider," and not necessarily apply, the "best available science." It's common knowledge that science can be good or bad or disregarded, and the current administration has a strong history of manipulating and ignoring science to support its logging, mining, oil and gas drilling priorities. This new rule was issued with no opportunity for public oversight and comment, and in combination with other, recent assaults on public lands protections (eliminating the Roadless Area Conservation Rule, and greatly reducing wilderness area recommendations) it could have a dramatic negative effect on the Chattooga River watershed, where visitors to these national forest lands have enjoyed a marked reduction in timber harvesting for the last few years specifically because of species viability issues.

## WHAT'S THE DIRT?

The Chattooga Conservancy has started a stream sampling program to find point sources of pollution in Stekoa Creek. Stekoa is a prominent, major tributary of the Chattooga, and the polluted creek has long blighted the Chattooga's water quality onward from where it joins the wild and scenic river (halfway down Section IV). The history of Stekoa's status as an "impaired" waterway is a discouraging story of ineffective mandates for cleaning up the water (see also pp. 4-5). Now, with even more dirt and fecal coliform bacteria finding its way into Stekoa Creek, the time has come for renewed efforts to focus state, federal and citizens' resources on improving Stekoa's water quality. To support this work, the Conservancy is systematically collecting "grab" samples of water at strategic points along Stekoa Creek. Then these water samples are analyzed at the University of Georgia's environmental water laboratory. The first round of testing has revealed high fecal coliform counts, far in excess of permitted levels, at 2 of the 4 sites sampled. The sampling regime is slated for six months duration, and data will be used to spur sorely needed corrective measures for cleaning up Stekoa Creek. Citizens are invited to participate in collecting water samples, and we also welcome contributions earmarked for the laboratory costs, which total about \$150 per sampling batch.



# Members' Page

*Many thanks to all who recently renewed their membership, joined or donated goods or time to the Chattooga Conservancy. Your generous contributions will help us continue to work on all of the important conservation issues facing the watershed.*

*Nanette Alexander*

*Frank Bachelder*

*David Bailey*

*Johnny & Rhonda Bailey*

*Ms. Carroll Garren Beele*

*Karen Bentley*

*Randy Bigbee*

*Richard & Elizabeth Bruce*

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*Eric Orr*

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Your contribution is greatly appreciated!

Donations will be used to support the Conservancy's work, and guarantee you delivery of the *Chattooga Quarterly*. We're a non-profit organization, and all contributions are tax-deductible.

***THANK YOU!***

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# Chattooga Conservancy

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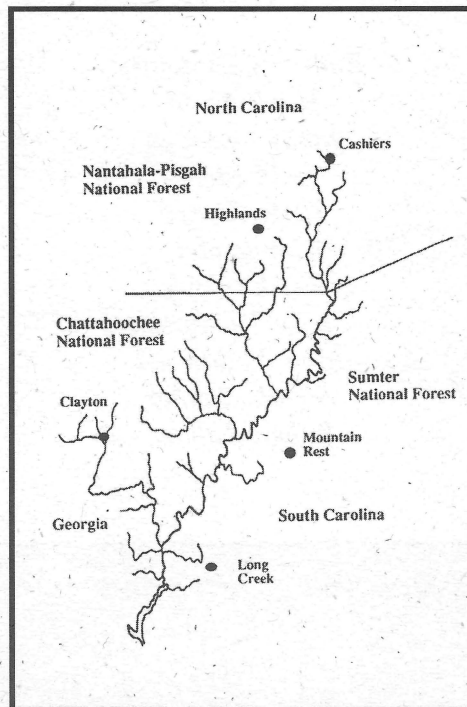
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**Purpose:** To protect, promote and restore the natural ecological integrity of the Chattooga River watershed ecosystem; to ensure the viability of native species in harmony with the need for a healthy human environment; and, to educate and empower communities to practice good stewardship on public and private lands.

**Made Possible By:**

Members and Volunteers  
Appalachian Forest Resource Center  
National Forest Foundation  
Patagonia, Inc.  
Frances A. Close  
The Sapelo Foundation  
Environmental Systems Research Institute



**Goals:**

Monitor the U.S. Forest Service's management of public forest lands in the watershed

Educate the public

Promote public choice based on credible scientific information

Promote public land acquisition by the Forest Service within the watershed

Protect remaining old growth and roadless areas

Work cooperatively with the Forest Service to develop a sound ecosystem initiative for the watershed

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