

# EXHIBIT 16

**bill floyd**

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**From:** bill floyd <wcbfloyd@ix.netcom.com>  
**Sent:** Thursday, June 13, 2019 12:38 PM  
**To:** 'Nicholas, Allen -FS'  
**Cc:** wcbfloyd@ix.netcom.com; Mike Owens  
**Subject:** RE: The Degraded Trout Habitat and Diminished Densities and Biomass of Wild Rainbow, Brown, and Brook Trout on the North Carolina Headwaters of the Chattooga River

Yes. I know Mike. He has an expertise about watersheds—in particular watersheds associated with springs.

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**From:** Nicholas, Allen -FS [mailto:allen.nicholas@usda.gov]  
**Sent:** Thursday, June 13, 2019 12:19 PM  
**To:** bill floyd  
**Cc:** wcbfloyd@ix.netcom.com  
**Subject:** Re: The Degraded Trout Habitat and Diminished Densities and Biomass of Wild Rainbow, Brown, and Brook Trout on the North Carolina Headwaters of the Chattooga River

Thanks Bill. Say do you know a Mr. Mike Owens? He has similar interests as yourself about the river and sedimentation. I provided an email response to him yesterday on some questions and mentioned your name as someone with similar interests. I did not provide any of your contact information. If you would like his contact info I'll pass it on to you unless you already know him.  
Be well and hope all goes well with your eye issue. Well be in touch.

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**From:** bill floyd <wcbfloyd@ix.netcom.com>  
**Sent:** Thursday, June 13, 2019 12:08:24 PM  
**To:** Nicholas, Allen -FS  
**Cc:** wcbfloyd@ix.netcom.com; Arney, Ken S -FS; Low, William E -FS; Christiansen, Victoria C -FS  
**Subject:** RE: The Degraded Trout Habitat and Diminished Densities and Biomass of Wild Rainbow, Brown, and Brook Trout on the North Carolina Headwaters of the Chattooga River

Allen,

Take care of your health...

I unexpectedly had a cardiac echocardiogram and ultrasound carotid artery study done yesterday after briefly losing sight in my right eye on Wednesday.

I have only one concern as a volunteer—restoring the Chattooga's once outstanding populations of naturally reproducing rainbow, brown, and brook trout—and to do so before getting caught on the fish hook of life.

You have many responsibilities scattered all over North Carolina.

I further appreciate your offer for additional discussion when you return but I feel pressed by the urgency of time.

I trust you understand the anxiety that arises as a consequence of having spent so much time on this project, that arises because of the difficult challenge that I have undertaken, and because of the heavy burden that I have to overcome in order to see the achievement of the physical restoration of this once outstanding trout habitat and outstanding wild trout fisheries.

My rights are threatened with being evaporated over the passage of time.

Making the Chattooga River's watershed a national priority watershed sounds great theoretically—if this will in fact somehow cause budget dollars to flow towards solving this problem.

However, I still have not heard how any money is going to be devoted to improving the suitability of the stream bed habitat for spawning or by removing some of the sediments.

Furthermore such a provision would most likely be insufficient to resolve my concerns.

As I suggested way back in the summer and fall of 2017, there is a pressing need to incorporate non-discretionary protections into the new LRMP to prevent the Chattooga's Trout habitat and trout fisheries from being forced to suffer any further degradation—regardless of the source of sediment input. I know there are other individuals who are similarly concerned that the new plan will not provide the trout habitat and wild trout fisheries on these headwaters with the strict protections they are entitled to receive under the national Wild and Scenic Rivers Act and the Clean Water Act.

My need to move more expeditiously follows from my inability to wait any longer to receive meaningful and tangible promises of action from the agency.

For me, the continuing FOIA disputes constitute the straw that breaks the camel's back. The agency's demonstrated desire to avoid disclosure of relevant information is troubling.

If the agency won't answer narrowly focused questions or respond to requests for records that have a direct bearing on the problem in dispute, then how can the public ever hope to work and find solutions/compromises to contentious issues?

Allen, take care of yourself during your time away! Timing is sometime the greatest key to success. Timing appears to be working against me.

What we need right now is bold action by the agency not continuing incrementalism. Is there anybody else that might move these issues down the field in your absence?

Regards

Bill Floyd

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**From:** Nicholas, Allen -FS [mailto:allen.nicholas@usda.gov]  
**Sent:** Thursday, June 13, 2019 10:29 AM  
**To:** bill floyd  
**Cc:** wcbfloyd@ix.netcom.com  
**Subject:** Re: The Degraded Trout Habitat and Diminished Densities and Biomass of Wild Rainbow, Brown, and Brook Trout on the North Carolina Headwaters of the Chattooga River

Sorry for the quick termination of the call. Bill I will ask Shelly to schedule a call to discuss this. I'm needing to take some time off so it might be

A couple of weeks before I can get with you but I

will. There is nothing going on behind the scenes by me on this issue. You will see in the forest plan revision the forest making this watershed a priority watershed. Thanks bill and I'll be in touch. A

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**From:** bill floyd <wcbfloyd@ix.netcom.com>  
**Sent:** Sunday, June 9, 2019 1:23 PM  
**To:** Nicholas, Allen -FS  
**Cc:** wcbfloyd@ix.netcom.com  
**Subject:** The Degraded Trout Habitat and Diminished Densities and Biomass of Wild Rainbow, Brown, and Brook Trout on the North Carolina Headwaters of the Chattooga River

Forest Supervisor Nicholas,

Thank you for taking my call this past week. I sincerely hope that your medical appointment (which necessitated the termination of our discussion) proved satisfactory.

Please see my new June 10, 2019 FOIA request embedded at the bottom of this email.

During our phone conversation, did you mean to suggest that you have engaged somebody or that you plan to engage somebody to undertake some further investigation into my stated concerns??

You mentioned the possibility of making the Chattooga's watershed a national priority watershed—which is encouraging.

However, it remains my understanding that you had on your “to do list” an intention to write to me to detail precisely what you have done subsequent to my meeting with Regional Forester Arney and yourself on Wednesday, March 27, 2019.

It isn't clear to me whether or not you were suggesting in our phone call (this past week) that you had already hired a third party consultant (or intended to hire some third party consultant) or whether you had asked Dr. Andy Dolloff (Va Tech and USFS Southern Research Station) to undertake an investigation—or at what stage the Forest Service is currently at in investigating my concerns.

You also did not specify what any such investigation might entail.

In our brief email exchanges on April 3<sup>rd</sup> and April 19<sup>th</sup>, I understood that you were focusing your efforts on trying to validate how several scientific studies might be applied to the concerns down on the Chattooga. I believe you were focusing your efforts on:

- (1) Suttle, Power, Levine & McNeely, *How Fine Sediment in Riverbeds Impair Growth and Survival of Juvenile Salmonids*, *Ecological Applications*, 14(4) 969-974 (2004) (“The linear relationship between deposited fine sediment and juvenile steelhead growth suggests that there is no threshold below which exacerbation of fine-sediment delivery and storage in gravel bedded rivers will be harmless, but also that any reduction could produce immediate benefits for salmonid restoration”) (italics added).

(2) Bryce, Lomnický & Kaufmann, *Protecting sediment-sensitive aquatic species in mountain streams through the application of biologically based streambed sediment criteria*, *Journal of North American Benthological Society*, 29(2):657-672 (June 2010) (“Combining all lines of evidence, we concluded that for sediment-sensitive aquatic vertebrates, minimum-effect sediment levels were 5% [for  $\leq 0.06$ mm fines] and 13% [for  $\leq 2$ mm sand and fines], respectively, both expressed as areal percentages of the wetted streambed surface.”); Bryce, Lomnický, Kaufmann, McAllister, & Ernst, *Development of biologically-based sediment criteria in mountain streams of the western United States*. *North American Journal of Fisheries Management* 28:1714–1724 (2008).

Allen, to be clear, the articles that you asked about do not constitute the total body of scientific literature that I believe supports my contention that we have a bedded sediment problem down on the Chattooga. Neither do they constitute the total body of scientific literature which has been placed into the administrative record for consideration during the revision of the LRMP for the Nantahala National Forest.

The best available science is well settled: A strong correlation exists between increasing levels of embedded sediments and declining densities of wild trout.

For example as the US EPA has recognized:

“Alexander and Hansen (1983) experimentally reduced sandy bedload sediments in a Michigan stream by means of a sediment settling basin, and observed the control (upstream from sediment basin) and treatment (downstream from sediment basin) reaches for 6 years... The basin reduced sand bedload by 86%... Small brown and rainbow trout increased by 40% in the treated area. Trout production increased 28%, but growth rate changed little, hence most of the increase was associated with increased numbers of fish (survival), and, apparently, with improved habitat and production of macroinvertebrates. The useful experimental approach of Alexander and Hansen

(1983) provides excellent and conclusive data on the negative effects of sediment on population density and growth in the test stream.” *Development of Criteria for Fine Sediment in the Northern Rockies Ecoregion, Final Report*, D.W. Chapman & K.P. McLeod, for the US EPA, Water Division, Region 10, EPA 910/9-87-162, April 1987 at page 118.

In addition the United States Forest Service, Pacific Southwest Research Station has also weighed in on the adverse impacts of bedded sediment on the health of trout

populations. “Elevated fine-sediment inputs to streams can alter a variety of conditions and processes, including the amount of fine sediments stored in riffles. We sought to measure the influence of deposited fine sediment on the survival and growth of juvenile rainbow trout... (106-130mm fork length) using a field experiment that included 18 enclosures in riffles of a small northwestern California stream. The experiment included six replicates of three levels of deposited fine sediment (low, background, and high) that embedded riffle cobbles at 0, 50, and 100%, respectively. Only 1 of 12 fish survived in high-sediment enclosures, while survival of fish in low- and background-sediment treatments equaled or exceeded 50%. Low and background-sediment treatments could be distinguished from each other by a difference in fish growth: fish in the low-sediment treatment gained mass, on average, while all surviving fish in the background-sediment treatment lost mass. In addition to providing relatively high survival and growth benefits for juvenile rainbow trout, low-sediment experimental units were colonized at significantly higher rates by other vertebrates, particularly coastal giant salamanders... The amount of stored fine sediment in small streams may substantially influence the total amount of habitat available to vertebrates at the watershed scale.” *The Effect of Deposited Fine Sediment on Summer Survival and Growth of Rainbow Trout in Riffles of a Small Stream*, North American Jour. Of Fisheries Management, 29:434-440 (2009), Harvey, White, & Nakamoto, USFS, Pacific Southwest Research Station, last downloaded on November 23, 2018 from [https://www.fs.fed.us/psw/publications/harvey/psw\\_2009\\_harvey001.pdf](https://www.fs.fed.us/psw/publications/harvey/psw_2009_harvey001.pdf)

I wish that we could stop trying to validate that there is a sediment problem on the Chattooga and instead move forward together to locate the funding needed to fix this problem and restore this once outstanding wild trout fishery.

A quick comparison of the raw data results of the Chattooga trout population study conducted in September 2016 against the results of the study conducted between 1992-1996 ought to provide more than sufficient evidence that there is a problem. The September 2016 study only counted 26 young-of-the-year trout despite sampling 8 different six hundred foot sample sites spread out over almost two miles of water.

During our call this past week you advised that you were having a difficult time in finding anybody other than myself who believes there is a bedded sediment problem down on the Chattooga's headwaters in North Carolina. You mentioned Trout Unlimited. This echoes what you have said before. I presumed that you are implying that my view of the world cannot be substantiated with science—simply because the selection of folks with whom you have spoken lean in a different direction.

I cannot comment on their observations without studying the specific basis for their claims. However, the science underlying my claims are self-evident.

I do believe that there are a myriad of conflict of interest explanations (having to do with grant applications and the awarding of grants) which might inform why individual biologists, etc. might not wish to challenge the opinions of the United States Forest Service regarding the Chattooga.

The USFS spent seven years and hundreds of thousands of dollars (and perhaps well over a million dollars) between April 28, 2005 and January 31, 2012 trying to develop a way to justify a new recreational use management policy. Some of my concerns (if proven true) would evidence how those funds were spent in a wasteful manner.



To provide you with some context about why this fisheries problem continues to go unnoticed, please review the comments of Dr. McLarney about the physical research limitations that create an opportunity for non-temporary declines in trout populations to go unnoticed and undocumented.

Subsequently, could you please make sure that the attached document “P-12 Dr McLarney email 08102016 re trout survey sampling problems.pdf” gets *immediately* placed into the administrative record for the revision of the LRMP for the Nantahala National Forest. I also believe that it ought to be published in the electronic reading room being maintained during the LRMP rewrite.

Allen, I find it informative that the Cullasaja River arises on the opposite side of Whiteside Mountain from where the Chattooga River arises. The Cullasaja suffers from an excessive sediment problem. The Cullasaja’s sediment problem has been found to have suffered impairment of one or more designated uses of the water quality of that stream. Inexplicably, and in stark contrast, the bedded sediment problem on the ORW classified and WSR designated Chattooga goes unaddressed.

I hate to sound like a broken record...but these are the facts.

I would like to understand what the USFS has done to follow up in investigating the degraded trout habitat and decreased densities of wild trout that was discussed in the March 27, 2019 meeting. Consequently, I am submitting a new request for records pursuant to FOIA.

I presume that you will correspond with me (as you indicated on our phone conversation this past week). However, I wanted to make sure that I obtain as much information as possible about your efforts to validate the problems that are taking place on the Chattooga’s headwaters. Hence, I am submitting a FOIA request for records.

**NEW June 10, 2019 FOIA REQUEST:**

Allen, please share *electronic copies* of any and all records and documents and emails created, evaluated, read, or reviewed by any official or employee of the United States Forest Service (subsequent to Tuesday, March 26, 2019) and which pertain to the following narrow subject matter: What Regional Forester Arney, Forest Supervisor Nicholas, or any staff members of the USFS, have been doing (subsequent to Tuesday, March 26, 2019) to investigate my stated concerns about the loss of trout habitat and the non-temporary declines in the densities and/or biomass of wild trout populations on the North Carolina headwaters of the Chattooga. This includes back and forth emails communicating those investigations.

This FOIA encompasses a request for a waiver of any fees based on the public interest exception of 5 U.S.C. §552(a)(4)(A)(iii).

**September 22, 2017 FOIA Request.**

Finally, I would like to revisit certain records first requested under FOIA back on September 22, 2017.

You have a copy of that September 22<sup>nd</sup> FOIA as it was embedded on pages 61-62 of the Notification dated September 22, 2017 which was emailed to your attention.

The USFS assigned tracking number 2018-FS-R8-00827-F to that September 22, 2017 FOIA request.

The Regional Forester's staff advised in a communication carrying a date of January 24, 2018 (but not received by me until February 7, 2018 via email from Mr. Harald Fuller-Bennett) that a total of 211 pages of responsive records had been located.

Upon review, the Regional Forester's staff determined that 183 pages were capable of being released in full, with 12 pages redacted, and 16 pages withheld pursuant to FOIA exemptions 5 U.S.C. §552(b)(5) and 5 U.S.C. §552(b)(6).

However, the USFS refused to provide me with electronic copies of those records unless I agreed to pay \$905.07—which of course I refused to do.

An appeal was submitted to the Chief of the USFS which was ultimately rejected on August 9, 2018.

In any case, I would ask again that all these 183 pages of records be shared with me in electronic form via email.

I would further request that these 183 pages of records be immediately placed into the administrative record for the revision of the Land Resource Management Plan for the Nantahala National Forest.

I would also ask that these 183 pages of records be posted in the electronic public reading room being maintained during the revision of the LRMP.

## **CONCLUSION**

Allen, the USFS would find me to be just as vigorous a teammate in finding the funding to achieve this fix as I have demonstrated in being an adversary dedicated to focusing attention on this habitat degradation. I hope that the USFS shares my desire to fix this visibly obvious problem

Many Thanks.

Bill Floyd

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