

# EXHIBIT 19

**bill floyd**

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**From:** bill floyd <wcbfloyd@ix.netcom.com>  
**Sent:** Friday, August 16, 2019 8:30 AM  
**To:** anicholas@fs.fed.us  
**Cc:** karney@fs.fed.us; wcbfloyd@ix.netcom.com  
**Subject:** Opportunity to Comment on Impacts of High Hampton Redevelopment on Downstream Waters of the Chattooga River  
**Attachments:** FLOYD 08152019 Comments FINAL re High Hampton to USACE and NC DWR.pdf; 20180765 Ver 1\_Comments Received to PN Email 1 of 2\_20180727 excerpt of p 11-15.pdf

Allen,

I want to reiterate my desire to work collaboratively with the USFS in fixing the degraded trout habitat on the North Carolina headwaters of the Chattooga and in restoring the once outstanding densities of wild trout populations which existed when the Chattooga was designated a national Wild and Scenic River in 1974.

I intend to be a tireless advocate in helping to circle the funds needed to undertake the restoration efforts.

Unfortunately, over the last six months, you guys have left me in the dark like a mushroom growing in the forest. Time appears to be running short—with the Nantahala National Forest preparing to issue a new Land Resource Management Plan—which will undercut many of my rights.

Allen, you have a large world of responsibility as the Forest Supervisor for all of the national forests in North Carolina.

Consequently, I am not surprised about the agency's possible unawareness of either the Public Notice (July 19, 2019) associated with the High Hampton redevelopment or the second massive project being simultaneously permitted in connection with the separate and distinct Canoe Club's planned development around Cashiers Lake.

Disappointingly, while these two massive planned development projects did not appear overnight, neither of these two projects have been constantly kept in the public eye... While I see the land disturbing activities occurring at the High Hampton project every time I drive to the grocery store, the Public Notices and opportunity to comment have been poorly publicized.

However, that being said, and as you and I are both painfully aware, the United States Forest Service owes a non-discretionary duty to manage the downstream waters of the national Wild and Scenic Chattooga River by placing "primary emphasis" on "protecting" the quintessential

“scientific feature” which the agency described to Congress in 1971 as being unique to North Carolina headwaters:

Stated differently, the Forest Service must place primary emphasis on preventing any non-temporary diminishment in the original baseline *excellent trout stream productivity* which was administratively recognized back in 1971.

I hope the United States Forest Service has not been deprived of a timely opportunity to lodge comments forcefully opposing and objecting to any development activities which might cause any additional sedimentation pollutants (whether point source or non-point source) to be discharged into tributaries which eventually reach the Chattooga—so long as the excessive sediment problem being suffered downstream remain unaddressed.

These two massive real estate developments will also require some not clear amount of new raw sewage treatment. It remains unclear how much more effluent will be sent through the TWSA plant below Cashiers lake and into the Chattooga.

I would hope that your agency might discharge its legal responsibilities by forcefully objecting to any promulgation of a favorable Section 401 water quality certification so long as the trout habitat remains degraded downstream.

Consequently, I am sharing with you certain comments that were submitted to NC DEQ by the Chattooga Forest Association back on July 10, 2018 in connection with that agency’s consideration of a request for a Section 401 water quality certification.

See the attached two page document entitled “20180765 Ver 1\_Comments Received to PN Email 1 of 2\_20180727 excerpt of p. 11-15.pdf”

The Chattooga Forest Association reports that it constitutes a residential property owners association that owns a lake (Lake Chattooga) that is fed by Fowler Creek (a primary tributary which eventually dumps into the main stem of the Chattooga on the Rust family’s property) in Whiteside Cove.

The written comments of Chattooga Forest Association state that their lake is located approximately one-half mile downstream from where land disturbing activities are ongoing in connection with the High Hampton golf course redevelopment project.

Chattooga Forest Association makes certain allegations about massive amounts of mud and silt flowing into their lake. They point their finger at the construction activities ongoing at High Hampton. They provide photos evidencing the consequences about which they complain.

Interestingly, the Public Notice (that I sent to you yesterday) admits on page 1: “During an inspection in December 2018 of the activities associated with the golf course redesign the Corps observed impacts to the waters of the U.S. (WofUS). These impacts were conducted without

authorization and were a violation of federal law under the Clean Water Act, Section 301 (33 USC 1311). The Corps issued a notification of unauthorized activity in January 2019. At that time, the applicant's request for a DA permit was administratively withdrawn. The applicant completed the Corps required remedial and corrective measures and the violation has been resolved."

Allen, the Forest Service needs to take a leadership role in halting (once and for all) the discharge of sedimentation into the Chattooga River.

Your agency has the information it needs to admit that an excessive bedded sediment problem is being suffered on the waters flowing through the lands that the Forest Service manages. You guys have had four years to study this problem.

There is no *assimilative capacity* for any additional sediments to be discharged into this river.

The September 2016 trout population study proves that the densities and/or biomass of wild trout have suffered a measurable and non-temporary decline from the metrics documented by the 1992-1996 study of trout populations.

Your agency has the legal power (and responsibility) to object forcefully to any further land disturbing activities in the upstream watershed that might cause additional sediments to find their way into the Chattooga—and you should do so without any further delay.

This river will not heal itself because the natural sediment transport capacity of this river has been entirely overwhelmed.

Finally, I would remind you how somebody appears to have been using a chain saw to try to cut out (or substantially weaken) key pieces of the massive log jam that currently prevents the massive deposit of sediment from being released downstream.

The objective for sawing out pieces of wood can only be presumed to be an effort to see this log jam collapse.

This would inevitably result in the further fouling of additional segments of the river lying further downstream.

On July 26, 2019 I sent the Forest Service the photos that I took on May 30th and 31<sup>st</sup> evidencing this concern. See the document indexed as P-14.

Allen, I am also sharing a copy of the 12 pages of comments that I submitted late last night to David Brown USACE and Sue Homewood NC DWR re the Public Notice published on July 19, 2019 regarding the applicant's request for a Section 404 permit (approving certain dredge and fill activities) in upstream tributaries of the Chattooga and the issuance of a favorable Section 401 Water Quality Certification.

You might be aware of most (but not all) of the common sense but provable arguments that I make.

However, given your personal unawareness of the details of these two massive development projects in the Chattooga's upstream watershed, and the brevity of time that exists for your team to react and to respond, I wanted to provide your team with context for why they might respond with aggressive opposition to any promulgation of a favorable Section 401 water quality certification pertaining to the planned activities in the upstream watershed.

I hope your team will undertake extraordinary efforts to prevent the downstream portions of the Chattooga that you manage from suffering any additional degradation caused by land development activities in the upstream watershed.

Allen, to the extent that you can, with the advice of your superiors and counsel, I would appreciate being copied on any comments that your team has submitted (or that it plans to submit) to NC DEQ in connection with the proposed issuance of a favorable Section 401 water quality certification for both the High Hampton project as well as the separate Canoe Club development around Cashiers Lake.

Clearly, the Forest Service has a non-discretionary duty to advise and to inform the Corps and the state of North Carolina about the massive bedded sediment problem being suffered on the portions of the river that you guys are managing—which occur on the most remote parts of the river far removed from the convenience of a trail or bridge.

Allen, I am always interested in hearing from you about how the agency plans to restore the trout habitat and its now degraded biological capacity for sustaining outstanding densities and/or biomass of wild trout populations.

However, time has an odd way of catching up with us...as was recently brought to my attention when I suffered a small T.I.A. on June 12 that ultimately led me to discover that I have a right to left shunt in my heart.

My sense of urgency in getting this restoration project started has been exponentially increased.

Let me know how I might help the Forest Service in figuring out how to do the right thing.

Regards,

Bill Floyd

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**From:** bill floyd [mailto:wcbfloyd@ix.netcom.com]  
**Sent:** Thursday, August 15, 2019 1:15 PM  
**To:** 'Nicholas, Allen -FS'  
**Cc:** wcbfloyd@ix.netcom.com  
**Subject:** RE: Chattooga River

Allen,

Thanks...

These two developments are quite large (have a lot of money behind them) and may be ongoing for many years—I find it distressing that the High Hampton project has already run afoul of the water quality standards of the Clean Water Act.

The Forest Service stands in the most powerful position for successfully challenging the issuance of any 401 water quality certifications ---based on the Clean Water Act's antidegradation mandate—presuming that the Forest Service might wish to do something to abate the sediment problem in the river.

At a minimum the Forest Service should try to get the mitigation offsets or credits awarded in connection with either the High Hampton or Canoe Club projects to be applied towards addressing the excessive sediment problem downstream of north Fowler Creek. This would only constitute a small amount of the total funds required to fix this longstanding loss of trout habitat problem—but would represent a starting point.

Bill

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**From:** Nicholas, Allen -FS [mailto:allen.nicholas@usda.gov]  
**Sent:** Thursday, August 15, 2019 11:20 AM  
**To:** bill floyd; Arney, Ken S -FS  
**Subject:** RE: Chattooga River

Hi Bill,

I was unaware of these proposed actions but forest staff may have been contacted. I'll check on the status of any response. That said, I will discuss this internally and will provide comments as part of this proposed action. On another note I had a team look at portions of the watershed north of the iron bridge. I plan on having them do further inventories to look at sediment production. You are welcome to visit or go with this team once we get it developed. I'll keep you in the loop on our progress. Hope you are well. A



**Allen Nicholas, MBA**  
**Forest Supervisor**

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**From:** bill floyd [mailto:wcbfloyd@ix.netcom.com]  
**Sent:** Wednesday, August 14, 2019 9:06 PM  
**To:** Nicholas, Allen -FS <allen.nicholas@usda.gov>; Arney, Ken S -FS <ken.arney@usda.gov>  
**Cc:** wcbfloyd@ix.netcom.com  
**Subject:** Chattooga River

A large part of the sediment that is in the river has clearly arrived on the waters managed by the USFS because of development in the upstream watershed over time.

There are two large real estate development projects that are in the permitting process right now that threaten adverse impact to this stream's trout habitat: the Canoe Club Cashier Lake development and the High Hampton redevelopment project.

The Forest Service should be actively participating to prevent any additional sediments from being discharged into upstream tribs of the Chattooga because of either of these projects.

Regarding the High Hampton project, I am attaching a copy of the recent USACE public notice of July 19, 2019 re SAW-2017-02281. As you can see, this public notice admits:

“ A public notice for this project was originally published in June 2018. During an inspection in December 2018 of the activities associated with the golf course redesign the Corps observed impacts to waters of the U.S. (WoUS). This impacts were conducted without authorization and were a violation of federal law under the Clean Water Act, Section 301 (33 USC 1311). The Corps issued a notification of unauthorized activity in January 2019. At that time, the applicant's request for a DA permit was administratively withdrawn. The applicant completed the Corps required remedial and corrective measures and the violation has been resolved.”

I witnessed this event. They never put up sediment fences before pushing dirt around the creek next to Highway 107...nevertheless the assumption is that everything will go as planned in the future.

The United States Forest Service owes a non-discretionary duty to manage the Chattooga's headwaters by placing "primary emphasis" on "protecting" the quintessential "scientific feature" which the agency recognized in 1971 as being an outstandingly remarkable value which was unique to North Carolina's headwaters.

Did the Forest Service complain to anybody about the discharge of sediments into this tributary to the Chattooga? Is the Forest Service doing anything to protect the trout habitat from being further degraded? If so, what exactly is being done??

Bill Floyd

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