

EXHIBIT 22

Bill Floyd

From: Luczak, Heather L -FS <hluczak@fs.fed.us>
Sent: Wednesday, September 06, 2017 10:05 AM
To: Bill Floyd (wcbfloyd@ix.netcom.com)
Cc: Nicholas, Allen -FS; Aldridge, Michelle -FS; Arndt, Paul -FS
Subject: FW: Continuing Suppression of Due Process and Failure to Comply With the Public Participation Mandate of the 2012 Planning Rule

Importance: High

Mr. Floyd,

Your comment letter submitted on July 28, 2017 is included in the record for the plan revision and your comment letter has been posted in the public reading room on the Plan Revision website. The 170 attachments that you provided with your comment letter have been included by reference in the administrative record and will be available on request to the public. To clarify, the public comment reading room is used primarily as a way of sharing the comments that we have received during plan revision. The public comment reading room is not the comprehensive administrative record of all information used in the plan development, nor does it include all of the hard copy public comments that we have received over the last four years during plan revision.

Regarding management of the Chattooga River, the Forest Supervisor has the discretion to determine the scope and scale of the revised Forest Plan. The Nantahala, Sumter, and Chattahoochee NFs completed an environmental analysis of management of the Chattooga River in 2012, and there is not a need to revisit the analysis at this time. The Forest has publically stated that we will not be revisiting the management direction for the Chattooga River as part of this plan revision. The revised forest plan for the Nantahala and Pisgah NFs will include management direction for the Chattooga River consistent with Amendment 22 (**Chattooga Wild and Scenic River**) and will include forestwide direction to protect and maintain water quality as well as provide protection for the outstandingly remarkable values of all designated Wild and Scenic Rivers on the Nantahala and Pisgah NFs. Any updates to the management of the Chattooga River will not be considered until after the plan revision, in subsequent analysis, and after several years of monitoring data is available to inform that analysis.

Forest Wildlife and Fisheries Biologist, Sheryl Bryan has provided some response to your questions regarding inventory and monitoring (see below). However, we will not be responding to individual questions and allegations raised in your comment letter as part of the plan revision process, nor do we respond individually to all of the 1000's of public comments that we receive as part of the planning process. The information you provided about water quality, aquatic habitat, recreational uses, and wild and scenic river management will be considered as we continue to develop the draft plan and alternatives. The proposed draft plan and draft Environmental Impact Statement will be shared with the public next spring/summer, and there will be a formal 90-day public comment period to provide substantive comments on the proposed plan language and environmental analysis of the alternatives.

Thank you for your thorough comments and interest in management of your National Forests.

Heather Luczak
Forest NEPA Coordinator

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Caring for the land and serving people

[From Sheryl Bryan]

Mr. Floyd,

I appreciate your time reviewing the Aquatic Ecosystems Supplemental Report for the Nantahala and Pisgah Forest Plan Revision Assessment (2014). This report was generated as a requirement of the 2012 planning rule specifically for the forest plan revision process. It was (and is) in no way a fair representation of all monitoring efforts in western NC, nor does it bear any relation to particular species' population trends. It is a very brief picture of the "state of aquatic resources" for the Nantahala and Pisgah Forest Plan Revision. These data are presented as representative of forest-wide conditions rather than a comprehensive analysis of individual streams. Hopefully the following will clarify some things and answer your questions.

One of the data sources used in this assessment was the NCDEQ's basin-wide monitoring program. DEQ conducts aquatic community health (fish) monitoring across all river basins in North Carolina using techniques such as the Index of Biotic Integrity (and similar indices for aquatic invertebrates). These indices are intended to gauge biotic integrity rather than population trends of specific species. They do not sample every stream or river as part of this effort, but rather a subset of representative sites. Additionally, they maintain monitoring sites that are, or have been, part of a special study. These sites provide quality aquatic community descriptions, but without replicate sampling, don't contribute to basin-wide aquatic community health trends.*

The Assessment report you have been reviewing was created specifically for the Nantahala/Pisgah Forest Plan Revision using a subset of the data DEQ collects—those sites located directly within or immediately adjacent to the National Forest because this is the best and most consistent data set we have to describe aquatic community health on the Forest. Of this subset of sites, Norton Mill Creek is the only site within the Savannah River basin. It would have been improper to use data from one site to represent an entire river basin in the assessment report—which is why the report specifically acknowledges the use of very small sample sizes in general, from all basins containing parts of the Nantahala and Pisgah National Forests. The report cautions readers not to apply the information summarized beyond the area from which it was collected because of these small sample sizes. Additionally, if a site was sampled once, it was used as part of the community descriptions, but not as part of the limited trend analysis, which is likely the case with the four streams you refer to.

Similar to DEQ's basin-wide biotic integrity monitoring, the NCWRC has monitored long-term trout population trends on a representative suite of streams across western NC. Some of this data is also presented in the assessment, and more of it will be presented in the environmental impact statement for the plan revision. Again, what is used for our forest planning efforts is a subset of the larger monitoring effort.

As I am sure you are aware, North Carolina is blessed with an abundance of trout streams—so many that it is impossible to monitor each and every one. Therefore, both the NCWRC and NCDEQ take great care to develop statistically sound monitoring programs that can be related to the entire landscape. They use widely accepted methods and maintain strict control over data consistency and quality. DEQ's NCIBI monitoring was not designed to monitor trout population trends specifically. Nor was NCWRC's trout monitoring program data designed to assess full aquatic community health. In my opinion, to mix the two for reasons other than purely descriptive ones would invalidate the reliability of the monitoring information both agencies are striving to achieve. I am in no way suggesting that there is no monitoring data available from the Savannah Basin. I am simply cautioning about mixing data sources and types. There is limited long-term monitoring data from this basin because there is relatively little of the Savannah Basin in North Carolina (when compared to other river basins). Logically, statistically reliable sampling design would put fewer sites in basins with fewer resources.

Again, thanks for your time, thoughts, and interest in your national forests.

*The NCIBI method was developed for assessing a stream's biological integrity by examining the structure and health of its fish community. The North Carolina Administrative Code defines *Biological Integrity* as: "...the ability of an aquatic ecosystem to support and maintain a balanced and indigenous community of organisms having species composition, diversity, population densities, and functional organization similar to that of reference conditions" (citation below)

NCDENR. 2013. Standard operating procedure: Biological monitoring- Stream fish community assessment program. North Carolina Department of Environment and Natural Resources. Division of Water Resources. <https://ncdenr.s3.amazonaws.com/s3fs-public/document-library/IBI%20Methods.2013.Final.pdf>

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Caring for the land and serving people

From: Bill Floyd [<mailto:wcbfloyd@ix.netcom.com>]

Sent: Thursday, August 31, 2017 7:48 AM

To: Nicholas, Allen -FS <anicholas@fs.fed.us>

Cc: wcbfloyd@ix.netcom.com

Subject: FW: Continuing Suppression of Due Process and Failure to Comply With the Public Participation Mandate of the 2012 Planning Rule

Importance: High

Forest Supervisor Nicholas,

On Monday August 28, 2017 at 9:46 am, I complained to your office that my Notification dated July 29, 2017 had not yet been posted to the Nantahala and Pisgah Forests Public Reading Room.

On August 29, 2017, I received word from an associate of mine that after over a full month of not having been posted to the Public Reading Room, and subsequent to my specific complaint emailed to your office on August 28, 2017 @ approximately 9:46 am, somebody had in fact located my Notification and posted it to the Public Reading Room being maintained at:

<https://cara.ecosystem-management.org/Public//ReadingRoom?Project=43545>

However, nobody within your office contacted me either to notify me of this action or to explain why the posting of my Notification had been delayed for such a long period of time.

Unfortunately, based on a query that I just ran this morning, August 31, 2017 @ approximately 7:00 am, none of the supporting documents referenced in my Notification dated July 29, 2017 have been posted to the Public Reading Room. I sure wish that we could be working together instead of going through a process that is analogous to having teeth pulled.

To clarify, I specifically asked that these critical supporting documents be added to the Administrative Record for the LRMP—in order to preserve my due process rights—and to provide other interested parties with access to a myriad of key facts and data demonstrating a need for a change of course in how the USFS approaches the forthcoming LRMP with respect to key bodies of water.

These critical supporting documents were emailed to your LRMP planning team, in multiple emails (34 emails), beginning approximately at July 28, 2017 @ 3:03 pm and concluding at approximately 10:36 pm on July 28, 2017. Each of those individual emails identified the name of the documents being submitted for inclusion into the Administrative Record.

I did receive a very brief acknowledgement from Ms. Luczak on July 28th that these supporting documents would be incorporated into the Administrative Record.

Could you please advise when these critically important documents will be finally posted to the Public Reading Room?

Second, on August 15, 2017 @ 2:19 pm, I advised you that I still had not received any response from the Nantahala National Forest regarding the specific questions posed in my Notification that I had sent to you and your staff on July 29, 2017 at approximately 9:44 am.

Could you please extend me the courtesy of advising whether or not your team intends to address the specific questions raised in that July 29, 2017 Notification?

Thank you.

Bill Floyd

From: Bill Floyd [<mailto:wcbfloyd@ix.netcom.com>]

Sent: Monday, August 28, 2017 9:46 AM

To: anicholas@fs.fed.us

Cc: wcbfloyd@ix.netcom.com

Subject: Continuing Suppression of Due Process and Failure to Comply With the Public Participation Mandate of the 2012 Planning Rule

Importance: High

Forest Supervisor Nicholas

On July 29, 2017 I provided you and the Nantahala and Pisgah Forests LRMP planning staff with a detailed complaint about a pattern and practice of behavior through which the Nantahala and Pisgah National Forests have been suppressing my Due Process rights to participate actively in the LRMP planning process.

The title of this document was “*Floyd Notification to USFS 07292017 re Nantahala National Forest Land Resource Management Planning Problems.pdf*”.

In addition to identifying specific deficiencies in the planning process, and in addition to offering recommendations about how to establish publicly enforceable *Standards* of sufficient intensity for protecting the specifically designated uses of the water quality of a single Outstanding Resource Water (the Chattooga’s headwaters), my Notification documented multiple examples of how the United States Forest Service (“USFS”) has piecemealed its responses to my narrow complaints, or simply refused to answer very narrow LRMP questions.

These questions pertain to the ongoing refusal of the USFS to prevent incompatible recreational uses from causing the unlawful displacement of soils within North Carolina’s trout buffer and the creation of point sources

of pollution where displaced soils are being channeled into the Outstanding Resource Waters of the Chattooga's headwaters in Jackson and Macon counties.

My Notification made reference to a multitude of documents that I had previously forwarded to you and the LRMP planning staff.

I asked specifically that my Notification and all the separate documents referenced in my Notification but sent to you in a series of previous emails be incorporated into the Administrative Record for the Land Resource Management Plan—in order to protect my Due Process rights.

This morning, I reviewed the contents of the Public Reading Room which I understand is being maintained on your website at the following URL: <https://cara.ecosystem-management.org/Public/ReadingRoom?Project=43545&SearchResultsPerPage=25>.

Unfortunately, neither a query using my first name or last name manages to locate my Notification of 127 pages or even a single one of my referenced documents.

Why have my LRMP comments not been posted to this Public Reading Room website—so that other interested members of the public might learn about the lack of protection being planned for preventing any further degradation of the specifically designated uses of water quality on the most important cold-water mountain trout streams in the Nantahala and Pisgah National Forests?

Am I mistaken or have my documents been improperly indexed somehow?

Could you advise?

In contrast, how is it that multiple comments submitted by Kevin Colburn of American Whitewater are posted in this Public Reading Room?

Unfortunately, all of this circumstance supports an impression that the Nantahala and Pisgah LRMP is being *primarily* shaped by behind the scenes conversations that are occurring between USFS officials and specific lobbyists who are being provided with special access and opportunity for input—outside the view of the general public.

The fact is the *Stakeholders Forum* (<https://www.nationalforests.org/who-we-are/regional-offices/eastern-regional-program/stakeholdersforum>) constitutes a hidden form of special access that is only being provided to a select group.

Today, were a member of the public at large to enter a query on the Nantahala and Pisgah Forests LRMP Revision Website for “*Stakeholders Forum*”, they would not find a single link providing any information about the critical influence that this *Stakeholders Forum* is playing in the development of the LRMP.

It is insufficient to expect the public at large to recognize the need to go to a separate website outside of the LRMP Revision website to discover this critical but hidden source of influence on the development of the LRMP. Why isn't the *Stakeholders Forum* provided on the Nantahala LRMP Revision Website?

I continue to hope to secure the full cooperation of the USFS, as well as the relevant state agencies, in working with me to restore the once outstanding native trout habitat and once outstanding rainbow, brown, and brook trout fisheries that have been allowed to become degraded on an extended reach of the Chattooga's headwaters in North Carolina.

As you are aware, almost 2 miles of the Chattooga's headwaters suffers impermissible degradation because small sized sandy sediments (<2mm) have embedded this trout stream's larger stream bed substrates in an amount that exceeds any reasonable minimum effects threshold for disrupting the early life cycle of the trout populations whose standing crops are compelled to be preserved at an *outstanding*" level.

There is no doubt that the number of young-of-the-year trout relative to other age classes are much lower on this degraded section of river compared to less impacted sections further downstream or as compared to other trout streams in the Nantahala and Pisgah National Forests. *In fact, the Nantahala has admitted this fact.*

As I have repeatedly suggested, there are multiple scientific studies that have not yet been conducted on the Chattooga—studies which must be conducted in order to comply with the continuous monitoring obligations of the USFS. Perhaps the USFS might truly welcome public participation by working with me to make sure that the best science available is deployed to monitor the degraded condition of one of our most valuable water resources in the forests.

I would appreciate the courtesy of a prompt response to my concerns about why my Notification has not been placed on the Public Reading Room website.

You also still owe me a response to my message sent to you on August 15, 2017 at 2:20 pm.

With best regards,

Bill Floyd

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