

EXHIBIT 23

bill floyd

From: Luczak, Heather L -FS <hluczak@fs.fed.us>
Sent: Monday, October 23, 2017 9:31 PM
To: Bill Floyd
Cc: Milholen, Carol -FS; Aldridge, Michelle -FS; Nicholas, Allen -FS
Subject: RE: Freedom of Information Act Request Outstanding from September 22, 2017
Attachments: FEE WAIVERS (4).docx

Mr. Floyd,

We are working to compile the documents that you have requested in your Sept 22, 2017 FOIA and I have a couple questions to narrow the scope and provide you with a timely response.

I would like to clarify what you are requesting in item 6 of your FOIA request. Numerous public mailings and notifications have been made during the plan revision process since 2012. Are you looking for direct communication between the FS and American Whitewater or all public mailings and notifications that included American Whitewater on the mailing list? It would help to narrow the scope of item 6 as this covers five years' worth of communication with the public.

Regarding your question about when we publicly stated that the revised Forest Plan would not be revisiting the management of the Chattooga River, the Forest Planner made this statement to a collaborative group of stakeholders at a meeting in April 2016:

- MEETING RECORD Stakeholders Forum for the Nantahala & Pisgah Plan Revision DRAFT Meeting Record, Tuesday April 12, 2016 10:00 AM - 4:00 PM
 - o https://www.nationalforests.org/assets/pdfs/2016-4-12-Stakeholders-Forum-Meeting-Record_finaldraft.pdf
- There was also public discussion at the July 11, 2017 Franklin public meeting between Ms. Luczak and members of the public. This discussion was not captured in meeting minutes. (July 11, 6-8 p.m.: Nantahala Ranger District at Tartan Hall, 26 Church St., Franklin)

Please also review the information on fee waiver requests (see attached), as it is my understanding that there may be some fees associated with the response to this FOIA request. <https://www.fs.fed.us/im/foia/feefactors.htm>

Heather Luczak
Forest NEPA Coordinator

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Caring for the land and serving people

From: Bill Floyd [mailto:wcbfloyd@ix.netcom.com]
Sent: Friday, October 20, 2017 2:56 PM
To: Luczak, Heather L -FS <hluczak@fs.fed.us>
Cc: wcbfloyd@ix.netcom.com

Subject: RE: Freedom of Information Act Request Outstanding from September 22, 2017

Importance: High

Ms. Luczak,

I am traveling with limited windows....if you would like, just send me your questions or suggestions by email and I can try to respond over the weekend.

Bill

From: Luczak, Heather L -FS [<mailto:hluczak@fs.fed.us>]

Sent: Friday, October 20, 2017 10:18 AM

To: Bill Floyd

Subject: RE: Freedom of Information Act Request Outstanding from September 22, 2017

Mr. Floyd,

I apologize for not getting back to you yesterday. I would like to discuss refining your requests in your FOIA. Please let me know what number I can reach you at.

Thank you.

Heather Luczak
Forest NEPA Coordinator

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Caring for the land and serving people

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

Sent: Tuesday, October 17, 2017 11:33 AM

To: Nicholas, Allen -FS <anicholas@fs.fed.us>; Luczak, Heather L -FS <hluczak@fs.fed.us>

Cc: wcbfloyd@ix.netcom.com

Subject: Freedom of Information Act Request Outstanding from September 22, 2017

Importance: High

Forest Supervisor Nicholas and Ms. Luczak,

I appreciated Ms. Luczak's suggestion on the telephone this am that she is working on sending me some materials or directing me to certain websites, etc. in response to my inquiries set forth in my Notification of September 22, 2017.

However, after I hung up, based on what Ms. Luczak stated about large amounts of documents, I became worried that there may be some misunderstanding about the narrow nature of my inquiries.

It serves no constructive purpose for the Forest Service to use its time to dump numerous documents on me if they are not narrowly connected to the subject matter.

I just wanted to clarify what I have asked of the Forest Service and under what basis. In my Notification of September 22, 2017, based on my *public participation* rights, I tendered several specific questions (on page 2 of that Notification which I will copy here in red:

“The USFS abandons any pretense of objectivity by summarily asserting that the ‘Forest Supervisor has the discretion to determine the scope and scale of the revised Forest Plan. The Nantahala...completed an environmental analysis of management of the Chattooga ...in 2012, and *there is not a need to revisit the analysis at this time*...Any updates to the management of the [Chattooga’s] will not be considered until after the plan revision, in subsequent analysis, and after several years of monitoring data is available to inform the analysis.”

... “The Forest has *publicly stated* that we will not be revisiting the management direction for the Chattooga River as part of this plan revision.”

Consequently, in your capacity as the Responsible Official for the LRMP, please answer the following questions directly, comprehensively, and without any delay.

- 1) How does making such a *public statement* shield the USFS for ignoring the well documented and ongoing violation of the no visible sediment *Standard* articulated by the Nantahala and Pisgah National Forests’ existing Land Resource Management Plan as applied to the Chattooga River?**
- 2) Who made such a *public statement* and when did they make it?**
- 3) To whom did the USFS make such a public statement?**
- 4) Has this public statement and the reasons for making it been memorialized in emails, correspondence, memorandums or written documents of any kind?**

Similarly, could you explain the specific reasons why the USFS feels that any investigation of the Chattooga’s degraded condition can be put off until “after the plan revision...and after several years of monitoring data is available to inform that analysis[?]”

These questions are different from the FOIA request summarized on page 61 of that September 22, 2017 Notification.

Here is what the FOIA request asked for (in blue):

“Freedom of Information Act Request For Documents

Because the USFS offers no explanation or foundation for asserting the discretion to ignore this discrete LRMP planning problem, pursuant to the Freedom of Information, please provide electronic copies of the following documents:

- (1) For the period of time between July 1, 2017 and September 6, 2017, any and all internal communications between any USFS personnel, including emails and handwritten notes, that in any way mentions, references, or that instructs or provides orders about how to discharge the decision of Ms. Heather Luczak to advise Bill Floyd via email on September 6, 2017 @ 10:05 am, that “that there is no need to revisit the analysis at this time”, including but not limited to any such communications transmitted or received by any of the following groups:**
 - a. (A) the current Chief of the United States Forest Service, Mr. Tony Tooke, and any of the Chief’s Office Staff,**
 - b. any executive leadership or staff personnel currently assigned to the Region 8, Southern Regional office in Atlanta**

- c. any leadership or staff personnel working within the Nantahala and Pisgah National Forests;
- (2) Subsequent to January 1, 2017, any and all *sedimentation* studies conducted to monitor and recognize any negative environmental impacts taking place on the North Carolina section of the Chattooga, as necessitated by the terms of Amendment #22 to the Nantahala and Pisgah Forests Land Resource Management Plan (January 2012);
 - (3) any and all monitoring studies specifically conducted to assess and inventory any creek boating caused displacement of soils lying within North Carolina's trout buffer subsequent to the start of creek boating on December 1, 2012;
 - (4) any associated communications, emails, memorandums, reports, or documents of any kind exchanged internally between USFS personnel, or exchanged with any external third party, summarizing, analyzing, or describing the significance of the results and details contained within all such monitoring studies enumerated in (2) and (3)
 - (5) any internal USFS communications, including emails and handwritten notes, discussing the need to conduct such monitoring in response to public complaints;
 - (6) For the period from January 1, 2012 going forward, please provide any back and forth emails, correspondence, or written documents of any kind, either received from American Whitewater, or any representative of American Whitewater, or alternatively transmitted to American Whitewater by any USFS official."

In my view this FOIA request is narrowly drawn. It should be possible for you to respond *item by item* to avoid any confusion about the nature of your response.

Please do not hesitate to contact me if needed. I believe the FOIA deadline runs this week.

Thank you.

Bill Floyd

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