

EXHIBIT 67

bill floyd

From: bill floyd <wcbfloyd@ix.netcom.com>
Sent: Wednesday, June 12, 2019 7:38 PM
To: anicholas@fs.fed.us; karney@fs.fed.us
Cc: william.low@usda.gov; vcchristiansen@fs.fed.us; wcbfloyd@ix.netcom.com
Subject: Chattooga River: Denial of Rights Under FOIA
Attachments: 2018-FS-R8-00827-F_WO_Final_Signed_Fee_Response.pdf; 2018-FS-R8-00827-F_Floyd_BFC.pdf

Regional Forester Arney and Forest Supervisor Nicholas

I am forwarding a copy of the email that I received today from Mr. Meloche in Atlanta—since you were not copied on it. I am also sharing with Chief Christiansen’s office in Washington.

I am disappointed that my FOIA request of June 10, 2019 has been taken away from Ms. Luczak (who I understand is *now* the FOIA coordinator in North Carolina) and taken up by the Regional Forester’s staff in Atlanta.

My FOIA request of June 10, 2019 was appropriately tendered to Mr. Nicholas because the narrowly defined records being requested are most likely in the possession of Forest Supervisor Nicholas.

This is consistent with the requirements of the Freedom of Information Act.

More importantly, I am not sure why the United States Forest Service now asserts in the email below:

“Before we can process your request [of June 20, 2019] I need to speak with you about an outstanding processing fee for your previous FOIA request #2018-FS-R8-00827-F”

Neither do I agree with the Forest Service’s presumed entitlement to declare: “ Until then, we will not move forward with your new [June 10, 2019 FOIA] request.”

My new FOIA request has nothing to do with the Forest Service having processed a prior FOIA from almost two years ago, and then having arbitrarily decided to withhold 100% of the 195 non-privileged pages that the agency recovered which were deemed responsive to my narrowly fenced in request for records.

I am unaware of when I agreed to assume any liability for the FOIA request which was first submitted on September 22, 2017—which became the subject of much controversy and which remains legally unresolved despite the subsequent denial in August 2018 of my appeal submitted to then Chief Tooke’s office on February 20, 2018—

I do not believe that I ever explicitly or implicitly agreed to pay anything for the 195 pages of un-redacted and redacted records that the Forest Service went looking for and which you ultimately recovered—much less to have the FOIA processed. In fact, I repeatedly stated my intention that I would not pay any fees. Where is the contract that your invoice alleges that I entered into with the USFS?

Could you please cite when I agreed to assume liability for the processing of my FOIA request of September 22, 2017?

Furthermore, the cases cited in Mr. Meloche's email below are not applicable with respect to the facts and circumstances that are relevant today.

I see how the USFS might wish to hold on to the claim (based on the current status of the record) that I am not technically entitled to receive the 195 pages of records in electronic form by email unless I agree to pay \$905.97 or \$4.55 per page. The denial of my appeal would support that view.

However, such a position would not excuse the agency from complying with my request that these critically relevant (but otherwise unpublished) records be published within the administrative records being maintained for the revision of the LRMP for the Nantahala National Forest so that the public at large might have access to them during the LRMP process.

I ask again that these 195 pages of records be *immediately* posted to the electronic public reading room being maintained during the revision of the LRMP for the NNF so that all interested members of the public might review them.

Furthermore, the USFS states below "There are some options to move forward with this new request and close out the old one as well."

I don't plan to conform with any demand that I *must* call to discuss those "options" before my June 10, 2019 FOIA might be processed. I don't believe that to be a correct interpretation of the FOIA.

I intend for my narrowly fenced in and properly submitted request of June 10, 2019 to be processed in accordance with the time limits set forth in the statute.

I continue to hope that we might work together to abate the sediment and restore the once outstanding wild trout fisheries. Unfortunately, it appears that the United States Forest Service is more interested in going a different route.

Here are a couple of photos that I took May 31, 2019 to demonstrate for you the non-temporary nature of the bedded sediment problem which continues to plague the trout habitat on an extended stretch of the river reaching upstream from Cane Creek confluence to Green Creek confluence.







In closing I would caution the Forest Service from explicitly telling the public (or even implying to the public) that the agency has any intention of trying to work with NGO's to seek Section 319 grants with respect to fixing the excessive bedded sediment problems down on the Chattooga.

As I have pointed out to the Forest Service, until the Chattooga is placed on the Section 303(d) list of impaired waters, none of these NGO's would qualify to apply for a Section 319 non-point source grant. Hence it would be entirely speculative and somewhat misleading to suggest to the public that the USFS intends to try to fix this sediment problem (in the future) by working with

NGO's to obtain such grants. This would be presuming a set of facts that do not exist at this point in time.

Bill Floyd
704 562 7834

From: Meloche, Douglas - FS [mailto:douglas.meloche@usda.gov]
Sent: Wednesday, June 12, 2019 10:34 AM
To: wcbfloyd@ix.netcom.com
Subject: Possible FOIA Request

Mr. Floyd:

I hope this email finds you well. Your below email was forwarded to me because you indicated your intent to file a Freedom of Information Act (FOIA) request for records from the National Forests in North Carolina. Unfortunately, Ms. Milholen is no longer the point of contact for FOIA requests for the National Forests in North Carolina, I will be your direct contact for the foreseeable future.

Before we can process your request, I need to speak with you about an outstanding processing fee for your previous FOIA request #2018-FS-R8-00827-F. You appealed the original Region 8 fee waiver denial to the Washington Office FOIA Service Center (WO-FOIA) on February 20, 2018. Your appeal was denied by the WO-FOIA on August 9, 2018 (see attached letter).

The current outstanding fee for request #2018-FS-R8-00827-F is a total of \$905.97 (see attached Bill for Collection). I still have the records and did not receive any guidance from you as to your intent to pay the fee. As a reminder, the United States Department of Justice Guide to the Freedom of Information Act, "Prior to transmitting responsive records to the requester courts have recognized that an agency may collect any fees owed on the request." Referenced court cases are as follows:

*See Farrugia v. EOUSA, 366 F. Supp. 2d 56 (D.D.C. 2005) ("Where an agency already has processed a request, it is clear 'that the agency may require payment before sending the requested records.'") (quoting Trueblood v. U.S. Dep't of the Treasury, 943 F. Supp. 64, 68 (D.D.C. 1996)); Taylor v. U.S. Dep't of the Treasury, No. A-96-CA-933, 1996 WL 858481, at *2 (W.D. Tex. Dec. 17, 1996) (recognizing that agency may require payment before sending processed records); Putnam v. DOJ, 880 F. Supp. 40, 42 (D.D.C. 1995) (allowing agency to require payment of current and outstanding fees before releasing records); Crooker v. ATF, 882 F. Supp. 1158, 1162 (D. Mass. 1995) (finding no obligation to provide records until current and past-due fees are paid); Strout v. U.S. Parole Comm'n, 842 F. Supp. 948, 951 (E.D. Mich. 1994), aff'd, 40 F.3d 136 (6th Cir. 1994) (granting defendant's motion for summary judgment after finding agency regulation requiring payment prior to releasing records to requester valid).*

Link: <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/procedural-requirements.pdf>

There are some options to move forward with this new request and close out the old one as well. Please contact me at the below number to discuss them. Until then, we will not move forward with your new request. I am available until 3PM today and between 7AM-3PM tomorrow. After that I will be out of the office until Tuesday, 6/18.

Best,
Doug M.



Douglas J. Meloche
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Caring for the land and serving people

From: Luczak, Heather L -FS
Sent: Wednesday, June 12, 2019 8:45 AM
To: Meloche, Douglas - FS <douglas.meloche@usda.gov>
Subject: FW: LRMP Revision for the Nantahala and Pisgah National Forester: FW: 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



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Caring for the land and serving people

From: bill floyd [<mailto:wcbfloyd@ix.netcom.com>]
Sent: Tuesday, June 11, 2019 7:13 AM
To: Aldridge, Michelle -FS <michelle.aldridge@usda.gov>; Luczak, Heather L -FS <heather.luczak@usda.gov>; Milholen, Carol -FS <carol.milholen@usda.gov>
Cc: wcbfloyd@ix.netcom.com
Subject: LRMP Revision for the Nantahala and Pisgah National Forester: FW: 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

1. Ms. Aldridge and Ms. Luczak, please place the email below (which was sent to Forest Supervisor Nicholas on June 9, 2019) and the attachment P-12 into the administrative record being considered during the revision of the Land Resource Management Plan (“LRMP”) for the Nantahala National Forest (“NNF”);

2. Ms. Aldridge and Ms. Luczak, please place both of these referenced documents into the electronic reading room being maintained during the rewrite of the LRMP;
3. Ms. Aldridge and Ms. Luczak, please see the email below, and please make sure that all of the 183 pages of records that the USFS identified as being responsive to my FOIA request from September 22, 2017 get placed into the administrative record for the rewrite of the LRMP as well as the electronic public reading room. As you may know, those records have never been published for the benefit of the public.
4. Ms. Milholen, please process the FOIA request which is detailed at the bottom of the email below and which I am forwarding to your attention under the assumption that you still are serving as the FOIA official for the NNF. I note that NNF website now seems to have eliminated any reference to whom the appropriate FOIA contact is at the local level...but maybe I am mistaken.
5. Please kindly acknowledge your receipt of these documents and requests

Thank you.

Bill Floyd

From: bill floyd [<mailto:wcbfloyd@ix.netcom.com>]

Sent: Sunday, June 09, 2019 1:23 PM

To: anicholas@fs.fed.us

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 3rd and April 19th, 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 ≤ 0.06 mm fines] and 13% [for ≤ 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

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 22nd 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
704 562 7834

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