

EXHIBIT 70

bill floyd

From: bill floyd <wcbfloyd@ix.netcom.com>
Sent: Friday, November 15, 2019 4:29 PM
To: vcchristiansen@fs.fed.us; Scofield, Margaret - FS; william.low@usda.gov
Cc: Michael Bamford; Chattooga Conservancy; wcbfloyd@ix.netcom.com; petesorenson@gmail.com; anicholas@fs.fed.us; karney@fs.fed.us
Subject: FLOYD FREEDOM OF INFORMATION ACT REQUESTS AND THE FOREST SERVICE'S REFUSAL TO SHARE INFORMATION IN AN OPEN WAY THROUGHOUT THE PREPARATION OF A NEW LAND RESOURCE MANAGEMENT PLAN FOR THE NANTAHALA AND PISGAH NATIONAL FORESTS

Chief Christiansen,

As the email chain below demonstrates, the United States Forest Service continues to coax me to give up my rights to challenge the agency's denial of my request for a fee waiver based on the public interest exception of 5 U.S.C. §552(a)(4)(A)(iii)—*long before the six years has passed for the agency to presume the expiration of my rights.*

I would ask the Chief's office to make sure that the electronic and hard copy records which local Forest Service officials *unilaterally took it upon themselves to locate* (with respect to a request for records first submitted on September 22, 2017) *are safeguarded against any inappropriate disposition or destruction and that they remain properly retained* pending the exhaustion of the applicable six year statute of limitations.

Instead of arguing about what kind of information should be disclosed under the FOIA, we ought to be working together to locate the proper mix of private/public funding needed to achieve two simple objectives with respect to the North Carolina headwaters of the Chattooga River:

(1) to remove the excessive blanket of fine sized particles of sandy sediment and organic silts (<2mm in particle size) which have filled in the interstitial spaces lying between the larger coarse substrates resting on the stream bed of these headwater (e.g. the stream bed's gravels and cobble, 4.5 cm to 30cm in size); and

(2) to reestablish *outstanding* densities and biomass of naturally reproducing populations of rainbow, brown, and brook trout instead of tolerating the presence of trout populations which merely manage *to persist* according to the Nantahala National Forest.

The need to work together is particularly true because of the unique legal significance of the administrative history associated with these headwaters' reclassification as Outstanding Resource Waters ("ORW") in 1989.

The visibly obvious fact remains: fine particle sized sediments continue to accumulate and impound on the stream bed in measurable quantities which, according to the *best available science*, exceed any reasonable minimum effects threshold for disrupting successful spawning by mature trout and the survival of newly hatched alevin.

The resulting non-temporary disruption in successful spawning by mature trout and the survival of their newly hatched alevin has made it impossible for these headwaters to sustain outstanding densities and/or biomass of naturally reproducing populations of trout—**despite the fact that sustaining such outstanding densities of trout constitutes the narrowly defined subcategorized use of the ORW water quality which has been assigned to these headwaters.**

Be informed that I have no intention of voluntarily giving up **any** of my rights under either the Freedom of Information Act, the Administrative Procedures Act (“APA”) the Clean Water Act, or the national Wild and Scenic Rivers Act —no matter how detailed a message your staff (or lawyers) publish **to imply** that the United States Forest Service has the authority “to close the request” (as discussed by your staff in the email below) **and perhaps fail to retain the records which the agency made a unilateral decision to collect.**

However, I am quite certain that the problems being suffered on the Chattooga could be erased with the collaboration of the United States Forest Service. I know we can find the funding needed to tackle this problem. Let’s work together to roll this rock back up the hill.

Best regards, and thank you for your continuing consideration of the pressing needs of the North Carolina headwaters of the Chattooga River.

Bill Floyd

From: Meloche, Douglas - FS [mailto:douglas.meloche@usda.gov]

Sent: Friday, November 15, 2019 6:45 AM

To: Bill Floyd

Cc: Sullivan, Sara L -FS; Krueger, Joseph -FS; Scofield, Margaret - FS; Beum, Frank R -FS; Arney, Ken S -FS; Nicholas, Allen -FS; Luczak, Heather L -FS

Subject: FOIA Process

Mr. Floyd,

Please let me know if you wish to receive the records associated with your FOIA request #2018-FS-R8-00827 or not. If you do not, I will close the request and start the process to reverse the debt for processing this request in our financial system. If that is not the case, and you still want the records, please indicate that in a reply email along with the best way to contact you to facilitate payment and delivery of the record set.

Additionally, you stated in your email to Ms. Sullivan that, “This prevents me from participating fully in the revision of the Land Resource Management Plan for the Nantahala and Pisgah National Forests—The Forest Service has shut down my ability to become fully informed about a local issue of concern to me during the LRMP revision”. I can assure you that the FOIA and participation in the Forest Planning process are not dependent of one another. FOIA is a law that allows a person to request copies of records that are located in a system of records within an agency. There is a set process the requester must follow that has nothing to do with the revision of any forest plan. FOIA is merely a way for you to request records.

Depending on the type of records you are seeking, the majority of records regarding the revision of the Land Resource Management Plan that are available to the public (outside of the FOIA process) can be found here - [Past Public Meetings and Workshops](#).

If you wish to participate in the revision of the Land Resource Management Plan for the Nantahala and Pisgah National Forests you can visit this website - [Nantahala and Pisgah National Forests Plan Revision](#) for information on how to participate and keep informed of the process as it moves forward.

As stated before, I will be your FOIA contact for the foreseeable future. Should you desire to request records under the FOIA that are not available to the public, please send your request directly to me for processing. Please be sure to be as specific as possible when it comes to the records you are seeking and your willingness to pay any fees or ask for a fee waiver. I am more than happy to provide you with any help you might need in filing a proper, fully perfected FOIA request.

Please feel free to contact me at the number or email below if you have any questions. Again, all I am asking you to do is to indicate whether you do or do not wish to receive the records associated with your FOIA request #2018-FS-R8-

00827. If that is not the case, and you still want the records, indicate that in a reply email along with the best way to contact you to facilitate payment and delivery of the record set.

I look forward to hearing from you.

Best – Doug M.



Douglas J. Meloche
Government Information Specialist
Regional FOIA/PA Coordinator

Forest Service
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Caring for the land and serving people

From: Sullivan, Sara L -FS <sara.sullivan@usda.gov>

Sent: Wednesday, November 13, 2019 9:26 AM

To: Bill Floyd <wcbfloyd@ix.netcom.com>

Cc: Scofield, Margaret - FS <margaret.scofield@usda.gov>; Meloche, Douglas - FS <douglas.meloche@usda.gov>

Subject: FW: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Mr. Floyd,

I am referring your email to Mr. Meloche, as the records you requested are located in the Regional Office. Mr. Meloche will address your concerns related to the email below.



Sara L Sullivan
Government Information Specialist

Forest Service
Office of Regulatory & Management Services

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Caring for the land and serving people

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

Sent: Wednesday, November 6, 2019 8:05 AM

To: Sullivan, Sara L -FS <sara.sullivan@usda.gov>

Cc: wcbfloyd@ix.netcom.com

Subject: FW: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Ms. Sullivan,

On June 21, 2019, I emailed you a 12 page letter detailing what was wrong with your allegations (made in the email below) that I have an unpaid liability to the United States Forest Service in connection with a request for records which was first properly submitted to the Forest Supervisor for the National Forests in North Carolina on September 22, 2017.

My email encouraged you to become better informed by reviewing my June 21, 2019 correspondence—a copy of which is being forwarded again today.

In that letter, I asked you to respond to a simple question: "...please direct me to where [in the record] I agreed (either expressly or impliedly) to pay an indeterminate amount of FOIA processing fees to have this September 22, 2017 request for records processed."

It has now been 139 days and the United States Forest Service has not provided me with the evidence needed to support your assertion that "we cannot process any future FOIA requests until fees are paid for costs incurred in processing your previous FOIA request."

Could you please provide me with the evidence of when, how, and to whom I made a commitment to pay any amount of FOIA processing fees—much less an indeterminate amount of fees?

It remains my steadfast contention that I have never made a commitment to pay any FOIA processing fees. Nevertheless, the Forest Service persists in using this unsubstantiated claim. This prevents me from participating fully in the revision of the Land Resource Management Plan for the Nantahala and Pisgah National Forests—The Forest Service has shut down my ability to become fully informed about a local issue of concern to me during the LRMP revision.

If I am somehow mistaken about the administrative record, I would certainly appreciate your **immediately** providing me with a clarification demonstrating precisely how, when, and to whom I made such a commitment to pay.

Thank you.

Bill Floyd

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

Sent: Friday, June 21, 2019 11:39 AM

To: 'Sullivan, Sara L -FS'

Cc: Nicholas, Allen -FS; Arney, Ken S -FS; william.low@usda.gov; vcchristiansen@fs.fed.us; Bill Floyd

Subject: RE: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Ms. Sullivan

I disagree with your characterization of my obligations vis a vis the obligations of the United States Forest Service.

The attached document “Floyd Response 06212019 to S Sullivan 06202019 email RE FOIA IMPLEMENTATION BY USFS.pdf” outlines why I disagree with your characterizations.

I sincerely hope you will commit the time to review my rebuttal of your allegations set forth below.

Regards,

Bill Floyd

From: Sullivan, Sara L -FS [<mailto:sara.sullivan@usda.gov>]

Sent: Thursday, June 20, 2019 10:16 AM

To: wcbfloyd@ix.netcom.com

Cc: Gaulke, Peter T -FS; Tilden, Matthew - OGC, Atlanta, GA; Luczak, Heather L -FS; Nicholas, Allen -FS; Aldridge, Michelle -FS; Meloche, Douglas - FS; FS-wo FOIA

Subject: RE: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Mr. Floyd,

I am reaching out to you to re-iterate that the Forest Service cannot process any future FOIA requests until fees are paid for costs incurred in processing your previous FOIA request. Mr. Douglas Meloche, FOIA Coordinator, for our Regional Office has provided you the information you need to submit your payment and has called and emailed you several times but has not received a response. Once payment has been received, we will be able to process your FOIA request.

In accordance with USDA FOIA Regulations, Section 8(d), where a requester has previously failed to pay a fee, the requester is being required to pay the full amount owed, plus any applicable interest, as well as the full estimated fee associated with any new request prior to the agency commencing to process a new or subsequent request.

All FOIA requests are to be submitted to the correct FOIA Office for processing. Sending your FOIA requests to multiple offices, slows the FOIA process and can create confusion or duplication of efforts by Agency offices.

You can submit your request to the following email address: WO_FOIA@fs.fed.us or you can submit your FOIA request on line using PAL (Public Access Link) using the information below.

Submit Online via USDA's Public Access Link (PAL)

PAL is a web portal that allows you to create, submit, and track the status of your FOIA request(s). Prior to use, you must register and create a username and password using the link below. Please note the submission site does not currently provide the ability to submit a single FOIA request to multiple agencies. You can, however, easily submit the same request to multiple agencies or in the alternative you can submit one request to the Office of the Chief Information Officer ("OCIO") detailing the agencies likely to maintain responsive records. Upon receipt, the OCIO will then forward your request.

[USDA PUBLIC ACCESS LINK](#)



Sara L. Sullivan
Acting Assistant Director

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Caring for the land and serving people

From: Meloche, Douglas - FS
Sent: Thursday, June 20, 2019 9:53 AM
To: Sullivan, Sara L -FS <sara.sullivan@usda.gov>
Cc: Gaulke, Peter T -FS <peter.gaulke@usda.gov>; Tilden, Matthew - OGC, Atlanta, GA <matthew.tilden@usda.gov>; Luczak, Heather L -FS <heather.luczak@usda.gov>; Nicholas, Allen -FS <allen.nicholas@usda.gov>; Aldridge, Michelle -FS <michelle.aldridge@usda.gov>
Subject: FW: FOIA Request June 10, 2019 Made to Forest Supervisor Nicholas

Hi Sara,

As discussed, here is the latest email thread regarding Mr. Floyd's FOIA request.

Thanks,
Doug



Douglas J. Meloche
Government Information Specialist

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Caring for the land and serving people

From: bill floyd <wcbfloyd@ix.netcom.com>
Sent: Tuesday, June 18, 2019 1:42 PM
To: Meloche, Douglas - FS <douglas.meloche@usda.gov>
Cc: Luczak, Heather L -FS <heather.luczak@usda.gov>; Aldridge, Michelle -FS <michelle.aldridge@usda.gov>; Gaulke, Peter T -FS <peter.gaulke@usda.gov>; Tilden, Matthew - OGC, Atlanta, GA <matthew.tilden@usda.gov>; Nicholas, Allen -FS <allen.nicholas@usda.gov>; Arney, Ken S -FS <ken.arney@usda.gov>; Christiansen, Victoria C -FS <victoria.christiansen@usda.gov>; Low, William E -FS <william.low@usda.gov>; wcbfloyd@ix.netcom.com
Subject: RE: FOIA Request Juyne 10, 2019 Made to Forest Supervisor Nicholas

Mr. Meloche

I disagree that there is any need to search for a solution—as best I can tell—the Forest Service believes that it is justified in refusing to produce records which are clearly in the public interest.

The 20 day statutory clock for processing my FOIA request started to run on Monday, June 10th, although this most recent FOIA request was submitted to Forest Supervisor Nicholas on Sunday, June 9 2019.

In any case, the United States Forest Service has already articulated a final agency decision (on June 12, 2019) of refusing to process my request for records.

“Before we can process your request [June 10, 2019], I need to speak with you about an outstanding processing fee for your previous FOIA request #2018-FS-R8-00827.”

Again, I would respectfully ask the United States Forest Service to cease any further delay in processing my FOIA request of June 10, 2019.

Please produce the records requested on a timely basis.

Thank you.

Bill Floyd

From: Meloche, Douglas - FS [<mailto:douglas.meloche@usda.gov>]
Sent: Tuesday, June 18, 2019 12:52 PM
To: wcbfloyd@ix.netcom.com
Cc: Luczak, Heather L -FS; Aldridge, Michelle -FS; Gaulke, Peter T -FS; Tilden, Matthew - OGC, Atlanta, GA
Subject: FW: FOIA Requests

Hello Mr. Floyd,

I was copied on Ms. Luczak’s email below and again wanted to reach out to you about the FOIA process. I have tried to explain the FOIA process to you in the past and I’m not sure where I might be failing in my message.

As the FOIA Coordinator for both Region 8 and Region 9, I assist those in the field at the forest level with processing FOIAs, training and FOIA guidance. I also conduct the Regional FOIA reviews making all redactions, process fees and fee waiver requests, etc. for both regions. That is my main responsibility. I am the program manager.

I frequently become involved in what you refer to as the "appropriate level of agency responsibility" for a multitude of reasons. In this instance, the main reason is because of request #2018-FS-R8-00827. You were denied a fee waiver upon appeal and before we can give you those records you need to pay the fee associated with the processing of that request. That is of course, if you still want those records. Because of this outstanding fee, we are not obligated to process any additional FOIA requests you send us until we complete request #2018-FS-R8-00827. If you no longer want the records, please indicate that in an email and we can close that request out. Please remember, according to FOIA, we can also collect fees (should there be any) in advance of any future requests. I have tried a few times to discuss the matter with you and you have ignored my emails.

Again, I would like to discuss the FOIA process with you and also try and clear up any misunderstandings you or I might have. Please send an email or give me a call at the below number so we can move forward with a solution. I will be on travel from 6/19-6/21 but will have access to my email and will respond as soon as I can.

Best,
Doug M.



Douglas J. Meloche
Government Information Specialist

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From: Luczak, Heather L -FS

Sent: Tuesday, June 18, 2019 10:19 AM

To: Bill Floyd <wcbfloyd@ix.netcom.com>

Cc: Aldridge, Michelle -FS <michelle.aldridge@usda.gov>; Meloche, Douglas - FS <douglas.meloche@usda.gov>

Subject: RE: LRMP Revision for the Nantahala and Pisgah National Forest and documents related to the Chattooga River

Mr. Floyd,

You are correct that I am the FOIA Coordinator for the NFs in NC; however, FOIA is not my full-time job and is just one of many positions that I fill on the forest. Doug Meloche is the Regional FOIA/PA Coordinator and will continue to be your contact regarding the FOIA. Any requests you send to me directly will be forwarded to him for processing. I will not be processing them.

Thank you, and have a nice day.



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: Monday, June 17, 2019 5:35 PM

To: Luczak, Heather L -FS <heather.luczak@usda.gov>

Cc: Meloche, Douglas - FS <douglas.meloche@usda.gov>; Aldridge, Michelle -FS <michelle.aldridge@usda.gov>; Low, William E -FS <william.low@usda.gov>; Christiansen, Victoria C -FS <victoria.christiansen@usda.gov>; Nicholas, Allen -FS <allen.nicholas@usda.gov>; Bill Floyd <wcbfloyd@ix.netcom.com>; Arney, Ken S -FS <ken.arney@usda.gov>

Subject: RE: LRMP Revision for the Nantahala and Pisgah National Forest and documents related to the Chattooga River

Ms. Luczak,

First of all, in addition to the records previously submitted to the Nantahala National Forest for inclusion in the administrative record on June 9th and June 11th, please place the attached document “P-13 Paddler Constructed Portage Site CC-1” into the administrative record for consideration during the rewrite of the LRMP for the Nantahala National Forest.

This document contains a compilation of photos (which I took on May 30, 2019) to demonstrate the haphazard way and without regard for the health of the trout habitat that new portage trails are being literally sawed out of the rhododendron and mountain laurel that used to guard this trout stream.

This creek boater constructed portage trail did not exist before the introduction of boating. The 2007 Biophysical Inventory corroborates this assertion. I did not want the USFS to be left in the dark about the extensive damage that has been done to the trout buffer by paddlers—at a time when this river cannot tolerate any additional inputs of sediment.

I appreciate the response set forth below to my prior email communication of June 9th and June 11th.

However, I’m not sure of the purpose of the Nantahala National Forest’s latest advisory.

The email below from the Nantahala does not state what records the USFS acknowledges having received from me.

Neither does the message itemize which records the USFS believes should be placed into the administrative record for consideration during the LRMP revision—or which ones should not.

To clarify, the records that need to be placed into the administrative record were itemized via email dated June 11, 2019 @ 7:13 AM to yourself and others.

All of these itemized records (including the records turned up by the September 22, 2017 FOIA request #2018-FS-R8-00827 pertaining to back and forth communications with American Whitewater) need to be placed into the administrative record.

The public's ability to challenge the wisdom of Forest Service decisions is prejudiced when the agency chooses to sanitize its administrative record so that information that might impeach the agency's reasoning is never disclosed to the public—especially when that information has been specifically brought to the attention of the agency by interested members of the public.

Hence, to clarify, I am not asking the United States Forest Service to use some imagined form of discretion to pick and choose which records brought to its attention will be placed into the administrative record to be considered by the agency during the revision of the LRMP.

The ultimate relevance of any records submitted for inclusion into the administrative record by interested members of the public will have to be determined by somebody other than the agency.

I am securing my administrative appeal rights by demanding that the USFS place all of the information shared with the agency into the administrative record during the revision of the Nantahala National Forest's LRMP.

The records being shared should assist the Forest Service in doing its job. The Forest Service should welcome a robust debate regarding the public interest concerns that are substantiated by the records that I have tried to painstakingly place into the administrative record—since November 2014.

The USFS has chosen for a very long time to refuse to place primary emphasis on protecting the once outstanding quality of the wild trout habitat on North Carolina's headwaters and that unique biological capacity for sustaining outstanding densities and/or biomass of naturally reproducing populations of rainbow, brown, and brook trout. Instead, it has wasted significant amounts of funds and personnel energy on promoting the interests of a single recreational user group—a form of recreational use which the Fourth Circuit Court of Appeals has already cautioned: “floating is not a value of the Chattooga that must be protected and enhanced under §1281(a).” *American Whitewater et al, v. Tidwell*, 770 F. 3d 1108, 1118 (4th Cir. Ct. App. 2014).

The agency's administrative records do not reflect the reality about the degraded trout habitat and degraded trout fisheries. The records being added to the administrative record represent just

a small portion of the records that need to be added to the administrative record to bridge the Grand Canyon like gap in missing data, information etc.

My disagreement with how the agency continues to implement the FOIA has already been explained in prior communications (email dated June 12, 2019) directed to Regional Forester Arney and Forest Supervisor Nicholas with copies to the office of the Chief of the United States Forest Service.

I do not believe that I have any further need to communicate with Mr. Meloche about the FOIA that I submitted to Mr. Nicholas on June 9, 2019. Mr. Meloche has explicitly stated on June 12, 2019: “Before we can process your request [June 9, 2019], I need to speak with you about an outstanding processing fee for your previous FOIA request #2018-FS-R8-00827.”

Respectfully, I disagree with Mr. Meloche’s assertions about how FOIA operates.

Ms. Luczak, am I wrong in my understanding that you are the individual responsible for fielding FOIA requests submitted to the National Forests in North Carolina?

I intend to continue submitting my FOIAs to the appropriate level of agency responsibility where the officials are posted who are most likely to have possession of the records that I am requesting.

Unless advised that I am incorrect that you are currently serving as the FOIA coordinator for the Nantahala National Forest, I will continue to forward my requests to your attention in order to comply with FOIA.

In closing, please immediately place all of the records that have I forwarded to the USFS (on June 9th, June 11th, and June 17th) into the administrative record.

In addition I reiterate my demand that the 195 pages of records that the agency identified as being responsive (and non-privileged) to my September 22, 2017 FOIA request (identified in your records as #2018-FS-R8-00827) be immediately placed into the administrative record where other members of the public might review them (or request to be provided with access to those records).

Among other things, my September 22, 2017 request asked for all back and forth communications between USFS officials and American Whitewater subsequent to January 1, 2012.

Thank you.

Bill Floyd

From: Luczak, Heather L -FS [<mailto:heather.luczak@usda.gov>]
Sent: Monday, June 17, 2019 10:51 AM
To: Bill Floyd (wcbfloyd@ix.netcom.com)
Cc: Meloche, Douglas - FS; Aldridge, Michelle -FS
Subject: RE: LRMP Revision for the Nantahala and Pisgah National Forest and documents related to the Chattooga River

Mr. Floyd,

We have received your documents related to trout habitat in the Headwaters of the Chattooga River.

In regards to the Nantahala and Pisgah NFs plan revision, the Chattooga River watersheds on the Nantahala National Forest will be identified as priority watersheds with an opportunity to develop watershed restoration plans during plan implementation.

The records that you have submitted for plan revision will be reviewed and only those records that are necessary to inform the plan decision will be included in the project record. The public comment reading room will not be used as a comprehensive catalog of all literature and comments that we have received as part of the plan revision process and documents responsive to your FOIA requests will not be filed in the reading room.

Any additional questions you have regarding your recent FOIA and any previous FOIAs should be directed to Region 8 FOIA Coordinator, Doug Meloche.



Heather Luczak
Forest NEPA Coordinator

Forest Service
National Forests in North Carolina

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