

Joel Strong

MARTIN BASIN PERMITTEES
Santa Rosa Ranger District
Humboldt-Toiyable National Forest

June 27, 2017

Secretary
U.S. Department of the Interior
1849 C Street N.W.
Washington D.C. 20240

Director
U.S. Fish and Wildlife Service
1849 C Street N.W., Room 3331
Washington D.C. 20240

Regional Director
Pacific Southwest Region
U.S. Fish and Wildlife Service
2800 Cottage Way
Sacramento, California 95825

Field Supervisor
Pacific Southwest Region
U.S. Fish and Wildlife Service
1340 Financial Blvd., Suite 234
Reno, Nevada 89502-7147

Re: REQUEST TO REINITATE CONSULTATION as to the "*Amended Biological Opinion for the Martin Basin Rangeland Project, Humboldt County, Nevada*" dated June 9, 2016 ("2016 Martin Basin BO"), including and specifically as to the Martin Basin, Westside Flat Creek, and Buffalo Allotments, in accordance with the 2016 Martin Basin BO (at page 40) and 50 C.F.R. § 402.16. *See* File Number 2016-F-0244.

Re: NOTICE OF INTENT TO SUE FOR VIOLATIONS OF THE ENDANGERED SPECIES ACT regarding Lahontan Cutthroat Trout (*Oncorhynchus clarkii henshawi*) as to certain grazing allotments in the Martin Basin Rangeland Project, Humboldt County, Nevada; namely the Martin Basin, Westside Flat Creek, and Buffalo Allotments.

Dear Secretary and others,

Applicant Status:

"Martin Basin Permittees" are an unincorporated and unofficial group of individual permittees that join together to manage -- in consultation, cooperation, and coordination with the U.S. Forest Service ("USFS") -- the national forest system lands within a portion of the "Martin Basin Rangeland Management Project" area specifically as related to the Martin Basin, Westside Flat Creek, and Buffalo Allotments:

The USFS and USFWS purport that LCT occupy Long Canyon Creek of the North Fork Pasture of the Martin Basin Allotment.

The USFS and USFWS purport that LCT occupy Threemile Creek of the North Pasture of the Westside Flat Creek Allotment.

The USFS and USFWS purport that LCT occupy Falls Canyon Creek of the Falls Canyon Pasture of the Buffalo Allotment.

The USFS and USFWS purport that LCT occupy Adorno Creek of the Andorno Canyon Pasture of the Buffalo Allotment.

The Martin Basin Permittees requested applicant status per a letter sent to the USFS dated February 13, 2009, pursuant to the *Endangered Species Act*, 36 U.S.C. § 1536(a)(3).

Request to Reinitiate Consultation and Notice of Intent to Sue:

The Field Supervisor for the Pacific Southwest Region of the USFWS issued an "Amended Biological Opinion for the Martin Basin Rangeland Project, Humboldt County, Nevada" dated June 9, 2016 ("2016 Martin Basin BO"), specifically as to the Martin Basin, Westside Flat Creek, and Buffalo Allotments. *See* File Number 2016-F-0244.¹ The 2016 Martin Basin BO directly related to the management of LCT habitat within certain occupied streams, as identified above. Based upon this 2016 Martin Basin BO, the *District Ranger for the Santa Rosa Ranger District* -- that administers the Santa Rosa Ranger District within the Humboldt-Toiyabe National Forest -- decided on October 11, 2016, to modify the Martin Basin Permittees' Grazing Permits to include various terms and conditions from the 2016 Martin Basin BO. The Martin Basin Permittees administratively appealed such permit modifications, but such permit modifications were subsequently affirmed by the Forest Supervisor's Decision dated May 15, 2017, and the Regional Forester's Decision dated June 7, 2017.² However, in the meantime, new

¹ *See* Martin Basin Permittees' Notice of Appeal and Statement of Reasons to the USFS's District Ranger and USFS's Forest Supervisor dated November 22, 2016, the Martin Basin Permittees' Reply Statement to the USFS's District Ranger and USFS's Forest Supervisor dated April 3, 2017, and the Martin Basin Permittees' Oral Presentation Power Point Presentation to the USFS's District Ranger and USFS's Forest Supervisor dated April 13, 2017, which are incorporated by reference herein. Should you need a copy of these filings, please let us know.

² The 2016 Martin Basin BO states at pages 1-2 that:

This document represents the U.S. Fish and Wildlife Service's (Service) amended biological opinion (BO) based on our review of the Humboldt-Toiyabe National Forests' (HTNF) proposed action related to the Martin Basin Rangeland Project (Project), Humboldt County, Nevada, and its effects **on the threatened Lahontan cutthroat trout (LCT; *Oncorhynchus clarkii henshawi*)**, pursuant to section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 USC 1531 *et seq.*). Your request for formal consultation and amended Biological Assessment (BA) were received by the Service on February 8, 2016. The BA states the proposed action is a modification to the existing grazing permits. In 2017, the HTNF will begin preparing a new environmental analysis consistent with the National Environmental Policy Act (NEPA) for livestock grazing on the Buffalo, Buttermilk, Granite Peak, Indian, Martin Basin, Rebel Creek, and West Side Flat Creek allotments (collectively, the Martin Basin allotments). The proposed action for livestock grazing on the Martin Basin allotments will be consistent with the 1986 Humboldt National Forest Land and Resource Management Plan (LRMP; USFS 1986), as amended. Relevant LRMP amendments include, but are not limited to, the 2015 Greater Sage-

information has arisen as to one particular term and condition in the 2016 Martin Basin BO that was imposed in the District Ranger's permit modification decisions; namely, new information as to the "stream alteration" term and condition in the USFWS's 2016 Martin Basin BO and the USFS's Permit Modification Decisions. The new information is that the USFWS recently determined to not impose the "stream alteration" term and condition in USFWS's "*Concurrence and Biological Opinion for Ongoing Livestock Management on the Jarbidge Ranger District, Humboldt-Toiyabe National Forest, Elko County, Nevada*" dated June 16, 2017 ("2017 Jarbidge BO") (File No. 2017-F-0110).³ This new information reveals a conflict between the 2016 Martin Basin BO and the 2017 Jarbidge BO as related to (at least) the "stream alteration" term and condition -- giving reason for the "stream alteration" term and condition to be stricken from the 2016 Martin Basin BO, as well as the associated USFS's permit modification decisions.

grouse Record of Decision for Idaho, Southwest Montana, Nevada, and Utah (USFS 2015). Upon completion of the NEPA analysis and issuance of the decision, the Forest Service will renew the grazing permits for the Martin Basin allotments to implement the decision, including applicable LRMP direction.

In completing this BO, the Service has considered the following: (1) the 2016 amended BA for the Project (U.S. Forest Service (USFS) 2016), (2) the 2011 ROD for the Project (USFS 2011), (3) the 2009 Final Environmental Impact Statement (FEIS) for the Project (USFS 2009a) and the Record of Decision (ROD) for the Project (USFS 2009b), (4) file information and reference material located at the Service's Reno Fish and Wildlife Office, and (5) personal communication records with HTNF and Service staff.

Bold emphasis supplied.

³ The 2017 Jarbidge BO states at page 1 that:

"This document represents the U.S. Fish and Wildlife Service's (FWS) biological opinion (BO) on the Humboldt-Toiyabe National Forests' (HTNF) proposed Ongoing Livestock Management on the Jarbidge Ranger District (Project), and its effects on the threatened bull trout (*Salvelinus confluentus*) and bull trout designated critical habitat **and the threatened Lahontan cutthroat trout (LCT, *Oncorhynchus clarkii henshawi*)**, pursuant to section 7 of the Endangered Species Act of 1973 (Act), as amended (16 USC 1531 *et seq.*). On December 16, 2016, the Service received your request for consultation and associated biological assessment (BA) with the following determinations: (1) the action may affect, likely to adversely affect (LAA) bull trout, bull trout designated critical habitat, and **LCT on eight grazing allotments**; and (2) the action may affect, not likely to adversely affect (NLAA) the bull trout, bull trout critical habitat and LCT on two allotments.

In completing this BO, the Service considered the following: (1) the 2016 BA for the Project (USFS 2016); (2) the Humboldt National Forest Land and Resource Management Plan. As amended (USFS 1986); (3) file information and reference material located at the Service's Reno Fish and Wildlife Office (RFWO); and (4) personal communication records with HTNF and Service staff.

Bold emphasis added.

Based upon the foregoing, in accordance with the 2016 Martin Basin BO (at page 40) and with 50 C.F.R. § 402.16, the Martin Basin Permittees request to reinitiate consultation concerning the 2016 Martin Basin BO and the Forest Service's authorization of livestock grazing⁴ within the Santa Rosa Ranger District on the Humboldt-Toiyabe National Forest, particularly as related to the conflict between 2016 Martin Basin BO (which imposed a stream alteration term and condition) and 2017 Jarbidge BO (which did not impose a stream alteration term & condition). Both BO's are functional equivalents of each other since both implicate *LCT fish management* upon grazing allotments on national forest system lands in northern Nevada, but both apply opposite terms & conditions without any rational or legal basis to do so.

In addition, based upon the foregoing, in accordance with the Endangered Species Act's ("ESA") citizen suit provision, 16 U.S.C. § 1540(g), Martin Basin Permittees provide notice of intent to sue for violations of the Endangered Species Act. The violations concern the 2016 Martin Basin BO and the Forest Service's authorization of livestock grazing⁵ within the Santa Rosa Ranger District on the Humboldt-Toiyabe National Forest, particularly as related to the conflict between 2016 Martin Basin BO (which imposed a stream alteration term and condition) and 2017 Jarbidge BO (which did not impose a stream alteration term & condition). Both BO's are functional equivalents of each other since both implicate *LCT fish management* upon grazing allotments on national forest system lands in northern Nevada, but both apply opposite terms & conditions without any rational or legal basis to do so.

Separate and apart from the Request and Notice herein, the Martin Basin Permittees reserve the authority to seek judicial review under the Administrative Procedure Act, 5 U.S.C. § 706(2), of the 2016 Martin Basin BO and of the District Ranger's Permit Modification Decisions dated October 11, 2016, as affirmed by the Forest Supervisor's related Decision dated May 15, 2017, and the Regional Forester's related Decision dated June 7, 2017.

If you have any questions, please direct any questions to the Martin Basin Permittees identified below. In the alternative, you may call David Cassinelli at 775-578-3322.

Very truly yours,

Martin Basin Permittees



By _____
David Cassinelli for Permittees

⁴ See District Ranger's Permit Modification Decisions dated October 11, 2016; Forest Supervisor's related Decision dated May 15, 2017; Regional Forester's related Decision dated June 7, 2017.

⁵ See Footnote 4 herein.

cc: USDA and U.S. Forest Service, as follows:

Secretary of the U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, DC 20250

Chief of the U.S. Forest Service
1400 Independence Ave, S.W.
Washington, DC 20250-1111

Regional Forester of the *Intermountain Region*
324 25th Street
Ogden, Utah 84401

Forest Supervisor of the *Humboldt-Toiyabe National Forest*
1200 Franklin Way
Sparks, Nevada 89431

District Ranger of the *Santa Rosa Ranger District*
1200 East Winnemucca Blvd.
Winnemucca, Nevada 89445

cc: Martin Basin Permittees via email only, as follows:

- within the Martin Basin Allotment, as follows:

T Five Ranch LLC
Attn: Dave and Tom Cassinelli
P.O. Box 1
Paradise Valley, Nevada 89426
Telephone: Home 775-578-3322
Via email: davidjcass@yahoo.com

- within the Westside Flat Creek Allotment, as follows:

Frank & Lavonne Mader and Kirk & Donna Mader
P.O. Box 240
Orovada, Nevada 89425
Telephone: Home 775-272-3241
via email: kdmader@wmca.net

- in common within the Buffalo Allotment, as follows:

Wilson Ranch, Inc.
Attn: Walter Wilson
17250 U.S. Hwy 95 North
Winnemucca, Nevada 89445

Wilson Ranch, Inc.
Attn: Walter Wilson
P.O. Box 144
Orovada, Nevada 89425
Telephone: Home 775-272-3201; Cell 775-427-1523
via email: Walter_Wilson2003@yahoo.com

Leon L. & Mary L. Frey
180 US Hwy 95N
Winnemucca, Nevada 89445
Telephone: Home 775-272-3267
via email: WillFrey1@yahoo.com

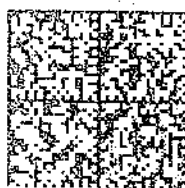
Anderson Family Trust (aka Verna Anderson Residual Trust)
Attn: Eric Anderson
4210 Warren Way
Reno, Nevada 89509

Anderson Family Trust (aka Verna Anderson Residual Trust)
Attn: Eric Anderson
9901 E. Hidden Valley Road
Scottsdale, Arizona 85262
Telephone: 775-530-0034
Via email: ejanderson14@gmail.com

MARTIN BASIN PERMITTEES
c/o Dave Cassinelli
P.O. Box 1
Paradise Valley, NV 89426

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Chief of the U.S. Forest Service
1400 Independence Ave., S.W.
Washington DC 20250-1111

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