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Via Email, U.S. Mail and FedEx

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Re: Notice of Intent to Sue Over Violations of the Endangered Species Act Related to Issuance of Colville National Forest Term Grazing Permit for Tiger Hill and LeClerc Creek Allotments

Dear Secretaries Vilsack and Haaland, Chief Christiansen, Supervisor Smolden, and Ms. Vadala:

In accordance with the 60-day notice requirement of the Endangered Species Act (“ESA”),¹ this letter provides notice on behalf of The Lands Council, Kettle Range Conservation Group (“Kettle Range”), Western Watersheds Project (“Western Watersheds”), and WildEarth Guardians of their intent to sue the United States Forest Service and the officers and employees to whom this letter is directed (collectively, the “Forest Service”) for violations of Section 7 of the ESA, 16 U.S.C. § 1536. The Forest Service violated the ESA by failing to consult and/or failing to reinitiate consultation prior to its May 26, 2021, issuance of a 10-year Term Grazing Permit for the Tiger Hill and LeClerc Creek allotments within the Colville National Forest (the “Permit”).²

Unless the violation described in this notice is remedied, the organizations named above intend to sue the Forest Service after the end of the 60-day notice period, likely by seeking to amend the complaint in *The Lands Council, et al. v. U.S Forest Service, et al.*, No. 2:20-CV-324-

¹ 16 U.S.C. § 1540(g)(2)(A)(i).

² See *id.* § 1536(a)(2).

RMP (E.D. WA). Animal & Earth Advocates PLLC is representing The Lands Council, Kettle Range, Western Watersheds, and WildEarth Guardians in this matter, and any response to this notice should be directed to:

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I. ENDANGERED SPECIES ACT

The purpose of the ESA is to “provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered and threatened species . . . ”³ Section 7 is acknowledged as “the heart of the ESA.”⁴ It requires federal agencies to ensure that any action they authorize, fund, or carry out is “not likely to jeopardize the continued existence of any endangered [or threatened] species or result in the destruction or adverse modification of habitat of such species.”⁵ To ensure compliance with this substantive mandate, the ESA and its implementing regulations impose specific procedural duties that require an agency to consult with either the U.S. Fish and Wildlife Service (“Fish and Wildlife”) or NOAA Fisheries (“NOAA”) over any action that “may affect” a listed species or its designated critical habitat.⁶

The ESA’s consultation requirement applies “to all actions in which there is discretionary Federal involvement or control.”⁷ Agency “actions” requiring consultation include “all activities or programs of any kind authorized, funded, or carried out, in whole or in part, by Federal agencies,” including all “actions directly or indirectly causing modifications to the land, water, or air.”⁸

If species that is listed as threatened or endangered under the ESA might be present in the area of a proposed action, the agency taking the action must prepare a Biological Assessment to determine whether its action may affect the listed species.⁹ The “may affect” threshold is reached if the agency determines there will be “any possible effect, whether beneficial, benign, adverse or

³ *Id.* § 1531(b).

⁴ *See W. Watersheds Project v. Kraayenbrink*, 632 F.3d 495, 496 (9th Cir. 2011).

⁵ 16 U.S.C. § 1536(a)(2).

⁶ *Id.*; 50 C.F.R. § 402.14(a).

⁷ 50 C.F.R. § 402.03.

⁸ *Id.* § 402.02.

⁹ *See* 16 U.S.C. § 1536(c)(1); 50 C.F.R. § 402.12.

of an undetermined character.”¹⁰ In making this determination, an agency must examine both direct and indirect direct effects of the proposed action, including those effects that “may occur later in time and may include consequences occurring outside the immediate area involved in the action.”¹¹

The consultation process is complete if the action agency concludes in its Biological Assessment that its proposed action is not likely to adversely affect the listed species or adversely modify its critical habitat, and either Fish and Wildlife or NOAA issues a Letter of Concurrence.¹² If, however, the action agency determines the action is likely to adversely affect the listed species or adversely modify its critical habitat, then either Fish and Wildlife or NOAA must complete a Biological Opinion (“BiOp”).¹³

An action is considered to “adversely affect” a species *unless* the “effects on listed species are expected to be discountable, or insignificant, or completely beneficial.”¹⁴ Discountable effects are those “extremely unlikely” to occur, while insignificant effects cannot be “meaningfully measure[d], detect[ed], or evaluate[d],” and should “never reach the scale where take occurs.”¹⁵ Critical habitat has been adversely modified whenever there is a “direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.”¹⁶ A BiOp must evaluate whether the proposed activity will jeopardize a species or result in destruction or adverse modification of critical habitat, and may propose alternative actions intended to avoid such results.¹⁷

The ESA and its regulations also prohibit “take” of listed species, which includes harassing, harming, wounding, or killing the species.¹⁸ Harm is further defined to include significant habitat modification or degradation that injures a listed species by significantly impairing its breeding, feeding, or sheltering behaviors, while harassment is an act that creates the likelihood of injury by annoying a species to the extent that it significantly disrupts breeding, feeding, or sheltering behaviors.¹⁹

¹⁰ *Cal. ex rel. Lockyer v. U.S. Dep’t of Agric.*, 575 F.3d 99, 1018 (9th Cir. 2009) (quoting 51 Fed. Reg. 19,926, 19,949 (June 3, 1986)).

¹¹ 50 C.F.R. § 402.02.

¹² *Id.* §§ 402.12, 402.14(b).

¹³ *See id.* § 402.14.

¹⁴ *Endangered Species Consultation Handbook, Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act (1998)* at xv (available at https://www.fws.gov/endangered/esa-library/pdf/esa_section7_handbook.pdf) (“ESA Handbook”).

¹⁵ *Id.* at xvi.

¹⁶ *Id.* at xiii.

¹⁷ 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(g)(5).

¹⁸ 16 U.S.C. §§ 1538; 1533(d); 1532(19).

¹⁹ 50 C.F.R. § 17.3.

If a BiOp determines that an agency action may result in the incidental take of a listed species, then Section 7 of the ESA requires the issuance of an Incidental Take Statement that (1) “specifies the impact of such incidental taking” on the species; (2) “specifies those reasonable and prudent measures” necessary to minimize such impact; and (3) “sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency[.]”²⁰

After consultation is complete, an agency has a responsibility to ensure that it remains valid, and, as long as it maintains discretionary control over the action, it must re-initiate consultation if:

- (a) The amount or extent of taking specified in the incidental take statement is exceeded;
- (b) New information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered;
- (c) The identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or
- (d) A new species is listed or critical habitat designated that may be affected by the identified action.²¹

Any agency failure to comply with the substantive or procedural mandates of the ESA is subject to judicial review under the ESA’s citizen suit provision.²²

II. FACTUAL BACKGROUND

A. LeClerc Grazing Allotment Contains both Threatened Bull Trout and Designated Bull Trout Critical Habitat

In November 1999, Fish and Wildlife designated all species of bull trout within the coterminous United States as a threatened species under the ESA.²³ On October 18, 2010, Fish and Wildlife revised its designation of critical habitat for bull trout to include 19,729 miles of stream and 488,252 acres of reservoirs and lakes in Washington, Oregon, Nevada, Idaho, and Montana.²⁴

²⁰ 16 U.S.C. § 1536(b)(4)(C).

²¹ 50 C.F.R. § 402.16(a)

²² 16 U.S.C. § 1540(g)(1)(A).

²³ Determination of Threatened Status for Bull Trout in the Coterminous United States, 64 Fed. Reg. 58,910 (Nov. 1, 1999).

²⁴ Revised Designation of Critical Habitat for Bull Trout in the Coterminous United States, 75 Fed. Reg. 63,898 (Oct. 18, 2010).

The Colville National Forest contains 98 miles of designated bull trout critical habitat, 12.9 miles of which are along LeClerc Creek within the LeClerc grazing allotment (“LeClerc Allotment”).²⁵

Although the number of individual bull trout is uncertain and has been presumed to be low, the species has been regularly observed in the West Branch of LeClerc Creek, within the boundaries of the LeClerc Allotment, since the late 1990s. In 2015, the Forest Service took Environmental DNA (eDNA) samples from all streams on the Colville with bull trout critical habitat and detected bull trout in the West Branch of LeClerc Creek. Other eDNA surveys have detected bull trout at higher frequencies and in multiple stretches of LeClerc Creek, including in the Middle Branch, over the past five years.

The Final Recovery Plan for the Coterminous United States Population of Bull Trout (“Bull Trout Recovery Plan”) acknowledges that habitat loss and fragmentation and fish passage issues are two of the most significant threat factors affecting the species, and that the availability of migratory corridors is “critical to the survival of bull trout.”²⁶ Within the Pend Oreille River basin, wherein LeClerc Creek is a tributary, bull trout habitat is fragmented by the Albeni Falls Dam and Box Canyon Dam.²⁷ In this area, a “primary threat” to bull trout habitat and bull trout recovery is riparian and instream degradation due to livestock grazing and other land management practices.²⁸

The impacts of livestock grazing on fish habitat are “well documented.”²⁹ Grazing pollutes water sources with elevated levels of fecal coliform; causes soil erosion and increases sediment in streams; destroys riparian vegetation that provides shade and stabilizes stream banks; and changes channel morphology, including widening channels and destabilizing banks.³⁰ Livestock may also cause direct mortality to fish populations, including by trampling the redds that spawning fish create to lay their eggs.³¹

B. Comments on Proposed LeClerc Allotment Management Plan Raised Concerns about Impact on Bull Trout and Bull Trout Critical Habitat

The LeClerc Allotment spans 23,412 acres in the LeClerc Creek watershed, which is located in the Sullivan Lake Ranger District in Pend Oreille County.³² The Forest Service approved

²⁵ *Id.*; U.S. Dep’t of Interior, Endangered Species Act - Section 7 Consultation, Biological Opinion, Colville National Forest Land and Resource Management Plan Revision (Oct. 24, 2017) (“Forest Plan BiOp”) at 112.

²⁶ U.S. Fish and Wildlife Service, Recovery Plan for the Coterminous United States Population of Bull Trout (*Salvelinus confluentus*) (Sept 28, 2015) at 10.

²⁷ Columbia Headwaters Recovery Unit Implementation Plan for Bull Trout (Sep. 2015) (“CHRUIP”) at D-17.

²⁸ *Id.*

²⁹ Forest Plan BiOp at 142.

³⁰ *See id.* at 142; LeClerc FEIS at 90, 93, 95; CHRUIP at D-17.

³¹ *See* Forest Plan BiOp at 142.

³² U.S. Dep’t of Agriculture, LeClerc Creek Grazing Allotment Management Planning, Final Environmental Impact Statement (“LeClerc FEIS”) (Feb. 2018) at 2.

the first and only Allotment Management Plan (“AMP”) for the LeClerc Allotment in 1982. Since the LeClerc AMP was first approved in 1982, there have been no fewer than three attempts to reinstate the National Environmental Policy Act (“NEPA”) process to develop a new AMP. According to the Forest Service’s latest schedule, it was supposed to finish conducting the NEPA analysis for a new AMP in 2019.³³

In 2015, the Forest Service published a Draft Environmental Impact Statement (LeClerc DEIS”) as part of its latest attempt to complete the NEPA process for the LeClerc Allotment.³⁴ Following comments on the DEIS, the Forest Service published the LeClerc FEIS on June 29, 2018, beginning a 45-day objection period.³⁵ Within days of issuing this notice, however, the Forest Service withdrew the LeClerc FEIS, cancelled the objection period, and put the LeClerc Project indefinitely on hold.³⁶

During the comment period for the LeClerc DEIS, concerns about grazing’s impact on bull trout, bull trout critical habitat, and bull trout recovery efforts were expressed by Public Utility District #1 for Pend Oreille County (“POPUD”), the Kalispel Tribe, Washington Department of Fish and Wildlife (“WDFW”), Environmental Protection Agency (“EPA”), and United States Department of Interior (“Interior Department”).

POPUD commented that it “cannot support any alternative that continues to allow grazing in the LeClerc Creek drainage,” because of its effect on stream restoration programs, including the Trout Habitat Restoration Program (“THRP”).³⁷ POPUD further stated that the LeClerc drainage is “designated as a primary watershed for bull trout recovery,” and that neither of the modified grazing alternatives provide “sufficient stream protections to minimize damage” to stream habitat.³⁸

³³ *U.S. Forest Service*, National Allotment NEPA Schedule 2017-2028, at 64.

³⁴ See Environmental Impact Statements; Notice of Availability; EIS No. 20150277, Draft, USFS, WA, LeClerc Creek Grazing Allotment Management Planning, 80 Fed. Reg. 59775 (Oct. 2, 2015).

In the LeClerc DEIS and the July 2015 Biological Evaluation/Management Indicator Species Report (“Fisheries Specialist Report”) prepared as part of the DEIS, the Forest Service analyzed four alternatives: Alternative A—no change, which would reauthorize grazing under the terms and conditions of the existing permit; Alternative B—no grazing, which would not reauthorize grazing on the LeClerc Allotment; Alternative C, which would reauthorize grazing but incorporate modifications, resource damage mitigation measures, and an adaptive management plan; and Alternative D, which was similar to Alternative C but included changes suggested by permittee Fountain Ranch.

³⁵ Environmental Impact Statements; Notice of Availability; EIS No. 20180146, Final, USFS, WA, LeClerc Creek Grazing Allotment Management Planning, 83 Fed. Reg. 30730 (June 29, 2018).

³⁶ Environmental Impact Statements; Notice of Availability; EIS No. 20180146, Final, USFS, WA, WITHDRAWN, LeClerc Creek Grazing Allotment Management Planning, 83 Fed. Reg. 31535 (July 7, 2018).

³⁷ POPUD comment letter (Nov. 13, 2015) at 1.

³⁸ *Id.*

The Kalispel Tribe concluded that only the “no grazing alternative is lawful,” and claimed the “Forest Service has been unlawfully managing the Allotment since at least 1982.”³⁹ The Tribe noted the significant investment that bull trout recovery projects such as THRP have already made in the LeClerc watershed, adding that LeClerc “is not only the largest” of seven priority watersheds, but “has the most potential to provide the largest amount of quality native habitat when restored.”⁴⁰

WDFW commented that discontinuing grazing on the allotment would have “significant” benefits to bull trout critical habitat.⁴¹ It voiced its concern that bull trout habitat recovery efforts “may be compromised by current livestock grazing practices occurring in riparian corridors throughout the allotment,” since POPUD surveys have shown that “in stream reaches where cattle have access, fish habitat function continues to be impacted.”⁴²

Similarly, the EPA noted that cattle grazing “may continue to contribute elevated sediment levels to streams in the watershed, resulting in fish mortality or egg loss.”⁴³ And DOI commented that continued grazing on the allotment would “render any riparian and stream habitat improvements made pursuant to the THRP moot,” and that the “only alternative that appears to adequately protect native fish habitats” is Alternative B, the no grazing alternative.⁴⁴

C. Forest Service Acknowledged the Impact on Bull Trout and Bull Trout Critical Habitat and Consulted Fish and Wildlife During LeClerc AMP Process

The Fisheries Specialist Report incorporated into the LeClerc DEIS assessed the current habitat quality in the LeClerc Creek watershed as “not properly functioning.”⁴⁵ It concluded that, reauthorizing grazing would continue to “cause a downward trend to stream habitat conditions,” including in designated bull trout critical habitat.⁴⁶

Given its assessment of the potential impact on bull trout critical habitat, the Forest Service consulted with Fish and Wildlife regarding the potential impacts of reauthorizing grazing during the LeClerc AMP planning process. The Forest Service’s request for formal consultation was received by Fish and Wildlife on December 18, 2014.⁴⁷ Following review of the Forest Service’s

³⁹ Kalispel Tribe comment letter (Dec. 15, 2015) at 1.

⁴⁰ *Id.* at 3.

⁴¹ WDFW comment letter (Dec. 14, 2015) at 2.

⁴² *Id.* at 2.

⁴³ EPA comment letter (Dec. 16, 2015) at 5.

⁴⁴ DOI comment letter (Jan. 11, 2016) at 1-2.

⁴⁵ Fisheries Specialist Report at 26.

⁴⁶ *Id.* at 43.

⁴⁷ *U.S. Dep’t of the Interior, Fish and Wildlife Service, Biological Opinion for the LeClerc Creek Cattle Grazing Allotment Project* (Mar. 11, 2016) at 1.

Biological Assessment and other supplemental information, Fish and Wildlife issued its Biological Opinion on March 11, 2016 (“2016 BiOp”).⁴⁸

The 2016 BiOp only analyzed one of the four alternatives identified in the LeClerc AMP – the Forest Service only “requested consultation on Alternative D,” and that Alternative D was selected during analysis as the “most likely scenario and is assessed in this Opinion.”⁴⁹

Alternative D proposed reauthorizing grazing on the LeClerc Allotment, but with substantial modifications and mitigation measures. Among other changes, Alternative D would: modify the allotment boundary, including dropping Fourth of July pasture and adding a pasture at Hanlon Meadows; specify a deferred grazing rotation system with approximate dates of use for each pasture; specify new range improvements to be constructed on the allotment, including additional fencing to prevent cattle drift and to exclude cattle from sensitive riparian areas; provide for three riparian Designated Monitoring Areas to implement Multiple Indicator Monitoring protocols; and require the Forest Service to implement an adaptive management plan to coordinate the monitoring of range and riparian resources and adjust grazing according to utilization standards.⁵⁰

The 2016 BiOp recognizes that individual bull trout have been found in LeClerc Creek. It mentions a female bull trout that spawned in 2000, as well as an adult bull trout found in the West Branch of LeClerc Creek in 2014.⁵¹ However, Fish and Wildlife concurred with the Forest Service’s determination that impacts to bull trout are expected to be “insignificant.”⁵² This concurrence was based on the low numbers of individual bull trout within the allotment, as well as specific mitigation measures incorporated into Alternative D, including “proposed fencing, grazing rotations, and other factors that minimize the extent and duration of impacts in any one area” and “the monitoring requirements that will ensure, after 3 years, that problems are addressed[.]”⁵³

The 2016 BiOp included a separate section addressing the Forest Service’s request for concurrence with a “not likely to adversely affect” determination on bull trout critical habitat.⁵⁴ The 2016 BiOp did not concur with the Forest Service’s determination that grazing was “not likely to adversely affect” bull trout critical habitat, but concluded that although “significant adverse effects to critical habitat” are expected at the local level, the grazing proposed in Alternative D “is not likely to destroy or adversely modify designated critical habitat.”⁵⁵

⁴⁸ *See id.*

⁴⁹ *Id.* at 6.

⁵⁰ *Id.* at 6-12.

⁵¹ *Id.* at 5.

⁵² *Id.* at 6.

⁵³ *Id.* at 6, 31.

⁵⁴ *See id.*

⁵⁵ *Id.* at 31.

The 2016 BiOp's Incidental Take Statement indicates that no incidental take is "anticipated or exempted," and thus "no reasonable and prudent measures and terms and conditions are provided below."⁵⁶ However, if take is detected, the BiOP provides that the Forest Service must reinitiate consultation.⁵⁷ The BiOp's re-initiation notice also makes clear that "formal consultation is required" if "new information reveals effects" not previously considered, or if "the agency action is subsequently modified in a manner that causes an effect" not previously considered.⁵⁸

Finally, the 2016 BiOp recommends that to "minimize or avoid adverse effects," the Forest Service should "consider relocating the LeClerc Allotment," and if it is unable to do so, it should at least "completely fence or exclude riparian and wetland areas that support native salmonids."⁵⁹

D. Recovery and Conservation Efforts Have Significantly Altered Current and Future Conditions for Bull Trout, Bull Trout Critical Habitat, and Bull Trout Recovery

Since the 2016 BiOp, there have been a number of developments in bull trout surveys and recovery efforts that make clear that continued grazing on the LeClerc Allotment will adversely affect bull trout and adversely modify bull trout critical habitat.

According to data collected by the Forest Service, there have been numerous detections of bull trout in the LeClerc Creek in the last five years. Bull trout have been detected through eDNA methods in Middle Branch LeClerc Creek in 2016, and in West Branch LeClerc Creek in four separate stream reaches in 2016, 2018, 2019, and 2020.⁶⁰

In the summer of 2018, an upstream fish ladder project was completed at Box Canyon Dam. This project was undertaken by POPUD pursuant to a 2010 settlement agreement ("2010 Agreement") regarding the Box Canyon Dam license. The completion of this upstream fish ladder is expected to contribute to the restoration of habitat connectivity for bull trout in the Pend Oreille River basin.

In the summer of 2019, the 2010 Agreement was amended and a new off-license agreement was reached ("2019 Agreement"), again with respect to the Box Canyon Dam license. Among other provisions, the 2019 Agreement stipulates that POPUD is no longer responsible for the construction of a downstream fish ladder at Box Canyon Dam, but that it shall contribute funding to various other bull trout recovery efforts over the course of the next 25 years.

⁵⁶ *Id.* at 32.

⁵⁷ *Id.*

⁵⁸ *Id.* at 34.

⁵⁹ *Id.* at 33.

⁶⁰ See U.S. Forest Service, Range-wide bull trout eDNA Project map, at <https://usfs.maps.arcgis.com/apps/webappviewer/index.html?id=6d5597b2755c4c00a35613b7a1849760> (last updated June 5, 2021).

On January 19, 2021, the United States Army Corps of Engineers released their work plans for the upcoming year, listing the Albeni Falls Dam fish passage as one of the construction projects slated for completion.⁶¹ The Albeni Falls Dam fish passage is listed in the 2019 Agreement, and is expected to greatly contribute to the restoration of bull trout habitat connectivity in the Pend Oreille River basin, as it will help connect existing bull trout populations in Lake Pend Oreille to historical bull trout spawning habitats in tributaries to the Pend Oreille River.⁶²

III. VIOLATIONS OF THE ESA

On May 28, 2021, the Forest Service issued a 10-year Term Grazing Permit to the Fountain Ranch Partnership which reauthorized grazing on the Tiger Hill and LeClerc Creek grazing allotments.⁶³ The Permit allows 101 cow/calf pairs to graze from June 1 to September 30 each year on the LeClerc Allotment.⁶⁴ Under the Permit, cattle will have access to all 12.9 miles of designated bull trout critical habitat.⁶⁵

The Forest Service's issuance of the Permit is not a continuation or extension of the action analyzed during the 2016 BiOp. The Forest Service did not complete the new LeClerc AMP nor finalize the NEPA process for the AMP. The Permit makes no reference to that NEPA process, does not mention bull trout or bull trout critical habitat, and it does not incorporate any of the grazing modifications or mitigation measures proposed in the DEIS alternative analyzed by the 2016 BiOp. The Permit authorizes grazing within the existing allotment boundaries; it does not propose additional fencing to prevent cattle access to bull trout critical habitat; it does not specify a grazing rotation schedule; and it does not set any specific monitoring requirements that would ensure adequate protection of bull trout and bull trout critical habitat.

The Forest Service's issuance of the Permit is an agency "action" under the ESA, and the Forest Service was obligated to initiate an ESA consultation if it determined that this action "may affect" listed species or critical habitat.⁶⁶ The Forest Service was obviously aware of the potential impact that authorizing grazing on the LeClerc Allotment would have on bull trout and bull trout critical habitat, since it requested formal consultation with Fish and Wildlife during the LeClerc AMP process, acknowledged that grazing would degrade habitat conditions during this process, and received numerous comments during this process on the effect grazing would have on bull trout and bull trout critical habitat.

⁶¹ See *U.S. Army Corps of Engineers*, 2021 Work Plan at <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll6/id/2145>.

⁶² See CHRUIP at D-17, D-29.

⁶³ Permit at 1.

⁶⁴ Permit at 1, 7.

⁶⁵ See LeClerc DEIS at 138.

⁶⁶ 50 C.F.R. § 402.14(a).

The Forest Service thus violated section 7 of the ESA by issuing the Permit without initiating consultation with Fish and Wildlife regarding the effects on bull trout and bull trout critical habitat. Even if the issuance of the Permit were to be considered an extension of the LeClerc AMP process, the Forest Service violated Section 7 because it failed to re-initiate consultation, despite the fact that the Permit significantly modified the action considered by the 2016 BiOp, new information demonstrates an increased risk the Permit would result in a take of bull trout, and advancements in bull trout recovery increase the likelihood that the Permit will adversely affect bull trout and adversely modify bull trout habitat.⁶⁷

IV. CONCLUSION

The Forest Service failed to initiate formal consultation with Fish and Wildlife regarding the effects on bull trout and bull trout critical habitat before issuing the Permit, or in the alternative, failed to re-initiate such consultation when it proposed a new action, and following a significant changes in circumstances. This failure constitutes a violation of Section 7 of the ESA.

If action is not taken to cure this ESA violation, then after 60 days has elapsed from the date of the notice, The Lands Council, Kettle Range, Western Watersheds, and WildEarth Guardians intend to amend their suit in *The Lands Council, et. al v. U.S. Forest Service, et. al*, to add claims brought under the ESA's citizen suit provision, 16 U.S.C. § 1540(g)(1)(A).

I hope to hear from you soon regarding the steps you plan to take to cure these violations.

Respectfully,



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⁶⁷ *Id.* § 402.16.