



File Code: 1570

Date:

JUN 18 2019

Erik Molvar  
Executive Director  
Western Watersheds Project  
319 South 6th Street  
Laramie, WY 82070

...  
PO Box 1770  
Hailey, ID 83333

Dear Mr. Molvar,

This letter is in response to the April 22, 2019 Notice of Intent to Sue ("NOI") alleging violations of the Endangered Species Act ("ESA") regarding impacts to Lahontan Cutthroat Trout ("LCT") on three livestock grazing allotments in the Upper Reese River Watershed on the Humboldt-Toiyabe National Forest ("Forest"). The allotments challenged in the NOI are: (1) the Marysville, (2) the Tierney Creek, and (3) the Washington allotments. All three allotments are located on the Austin-Tonopah Ranger District.

The NOI alleges that the Forest Service has failed to meet its obligations under the ESA by authorizing livestock grazing on the three allotments without consultation with the US Fish and Wildlife Service ("USFWS") in violation of 16 U.S.C. § 1536 (section 7(a)(2) of the ESA) and 50 C.F.R. § 402.16. Further, the NOI alleges that the ongoing grazing is responsible for causing "take" of LCT in violation of 16 U.S.C. § 1538 (section 9 of the ESA).

The Western Watersheds Project ("WWP") requests that the Forest Service cease authorization of grazing on the three allotments until the agency completes Section 7(a)(2) consultation with the USFWS. My staff and I have reviewed the information contained in the NOI. The following addresses the stated concerns.

For the 2019 grazing season, grazing management for the Tierney Creek and Washington allotments has been adjusted to avoid all LCT habitats to ensure that *no irreversible or irretrievable commitment of resources* will occur foreclosing the formulation or implementation of any reasonable and prudent alternatives. This determination has been documented consistent with Section 7(d) of the ESA. These Section 7(d) determinations will be in effect until Section 7(a)(2) consultation is completed with the USFWS.

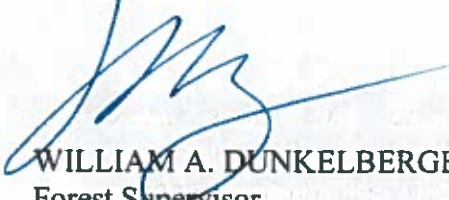
The permittee for the Marysville allotment has been informed that all livestock must be removed from the allotment no later than June 21, 2019.



The Forest Service began discussions with the U.S. Fish and Wildlife Service through conversations and information exchanges and expects to initiate formal consultation for the Marysville, Tierney Creek, and Washington allotments in the fall of 2020. Any authorized use of the three allotments in the 2020 grazing season, or at any time prior to the completion of consultation, will be consistent with the ESA.

The above grazing management is consistent with the ESA and addresses the concerns raised in the April 22, 2019 NOI. If you have any questions, please contact Austin/Tonopah District Ranger Lance Brown at (775) 964-2671 or lance.brown@usda.gov.

Sincerely,



**WILLIAM A. DUNKELBERGER**  
Forest Supervisor

Nora Rasure, Steve Beverlin, Lance Brown, Lee Ann Carranza



**File Code:** 2210  
**Date:** June 14, 2019

Doris Brooks  
PO Box 307  
Gabbs, NV 89409

**Amendment to 2019 Annual Operating Instructions  
Marysville Allotment**

Dear Mrs. Brooks:

This letter amends your Annual Operating Instructions (AOI) for the 2019 grazing season dated March 26, 2019.

This amendment is necessary to prevent violation of Section 7(a)(2) of the Endangered Species Act of 1973, as amended, by authorizing domestic livestock grazing within Lahontan cutthroat trout habitat.

I am rescinding your authorization to graze domestic livestock on the Marysville Allotment for the 2019 grazing season effective immediately and require all livestock removed from the Marysville Allotment no later than June 21, 2019. Your grazing fees may be refunded or credited to future use.

As previously agreed upon, all allotment related correspondence will be also sent to both parties listed on the Term Grazing Permit.

Sincerely,

LANCE BROWN  
DISTRICT RANGER

cc: Karl Brooks





**File Code:** 2210  
**Date:** June 14, 2019

Karl Brooks  
HC 61 Box 6190  
Austin, NV 89310

**Amendment to 2019 Annual Operating Instructions**  
**Marysville Allotment**

Dear Mr. Brooks:

This letter amends your Annual Operating Instructions (AOI) for the 2019 grazing season dated March 26, 2019.

This amendment is necessary to prevent violation of Section 7(a)(2) of the Endangered Species Act of 1973, as amended, by authorizing domestic livestock grazing within Lahontan cutthroat trout habitat.

I am rescinding your authorization to graze domestic livestock on the Marysville Allotment for the 2019 grazing season effective immediately and require all livestock removed from the Marysville Allotment no later than June 21, 2019. Your grazing fees may be refunded or credited to future use.

As previously agreed upon, all allotment related correspondence will be also sent to both parties listed on the Term Grazing Permit.

Sincerely,

LANCE BROWN  
DISTRICT RANGER

cc: Doris Brooks





**File Code:** 2210  
**Date:** June 14, 2019

Jack Barta  
BTAZ Nevada, LLC  
224 North Park Ave.  
Fremont, NE 68310

**Amendment to 2019 Annual Operating Instructions  
Washington Allotment**

Dear Mr. Barta:

This letter amends your BTAZ Nevada, LLC (BTAZ) Annual Operating Instructions (AOI) for the 2019 grazing season dated May 1, 2019.

This amendment is necessary to prevent violation of Section 7(a)(2) of the Endangered Species Act of 1973, as amended, by authorizing domestic livestock grazing along Lahontan cutthroat trout (LCT) occupied streams.

Effective immediately, I am modifying your May 1, 2019 AOI to the following authorized livestock, pasture, and schedule for the Washington Allotment to only receive 275 cow/calf pairs from July 1 – July 31 or until allowable use is reached. Prior authorized use of the North Mountain Pasture and South Mountain Pastures are hereby rescinded.

Table 1. Modified 2019 AOI Authorized livestock within the Washington Allotment.

<b>Allotment: Washington C&amp;H</b>	<b>Number</b>	<b>Kind/Class</b>	<b>Season of Use</b>	<b>Head Months</b>
N. Knox Seeding Pasture	275	Cow/Calf	07/1-07/31	280
North Mountain Pasture	-	-	Not authorized	-
South Mountain Pasture	-	-	Not authorized	-





As an alternative for authorized grazing use on the Austin-Tonopah Ranger District during the 2019 season, I do hereby authorize BTAZ to use the adjacent Reed's Indian Canyon Allotment (which is in non-use status) as follows:

Table 2. Amended 2019 AOI for BTAZ to include authorized livestock use in Reed's Canyon C&H Allotment

<b>Unit</b>	<b>Number</b>	<b>Kind/Class</b>	<b>Season</b>	<b>Head Months</b>
Porter Pasture & Dry Pasture	275	Cow/Calf	8/1-8/31	280
Marshall Pasture & Johnson Pastures	275	Cow/Calf	9/1-9/30	271

Additional Terms and Conditions added to the 2019 AOI for Washington C&H Allotment and Reed's Canyon C&H Allotment are as follows:

- USFS and Permittee will jointly monitor use levels to assist with the correct timing of moving livestock from the Knox Seeding North Pasture on the Washington C&H Allotment and the pastures on the Reed's Canyon C&H Allotment.
- While authorized cattle are in the Knox Seeding North, all fences will be maintained to standard and checked at least 2 times/week while authorized livestock are in pastures adjacent to pastures with occupied LCT streams.
- Authorized cattle will be monitored closely by the Permittee and adjustments will be made if livestock exhibit tendency to pressure fences adjacent to pastures containing occupied LCT streams.
  - Cattle will be regularly moved away from fences adjoining pastures with occupied LCT streams using Low Stress Stockmanship principles.
  - Cattle exhibiting propensity to pressure fences adjacent to pastures with occupied LCT streams will be promptly removed from the allotment by the Permittee.

Sincerely,



LANCE BROWN  
DISTRICT RANGER

cc: Clyde Magnuson

**Date:** June 14, 2019

**File:** 2670

**Subject:** Section 7(d) of the Endangered Species Act and Continued Implementation of Grazing Activities on the Washington Allotment

**To:** Lance Brown, Austin/Tonopah District Ranger

### Introduction

This documents Forest Service compliance with the Endangered Species Act (ESA) for the Washington Allotment pursuant to *50 CFR Section 402.09* (ESA Section 7(d)). This section of ESA prohibits the irreversible and irretrievable commitment of resources that have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative during the Section 7 consultation process. This section allows for ongoing actions to continue after initiation of consultation provided they are not in violation of Section 7(d).

The Humboldt-Toiyabe National Forest intends to initiate consultation for the Washington allotment in the fall of 2020. This 7(d) determination will be in effect until a concurrence letter or Biological Opinion is issued.

### Project Description

The Washington Allotment is located in the Toiyabe Range of the Austin-Tonopah Ranger District and comprises four pastures - the North Mountain Pasture, South Mountain Pasture, South Knox Seeding Pasture, and North Knox Seeding Pasture. Lahontan cutthroat trout occupied streams are located within the North Mountain Pasture and South Mountain Pasture. There are no LCT occupied streams located in the South and North Knox Seeding Pastures. There are two term grazing permits for the Washington allotment. The allotment has a turnout date of June 1 and an off date of September 30.

For the 2019 grazing season, livestock grazing will only be authorized in the South and North Knox Seeding Pastures. Reese River Valley, LLC will be authorized in the South Knox Seeding Pasture with 42 cow/calf pairs to graze from June 15<sup>1</sup> to September 1 or until allowable use is reached. BTAZ Nevada, LLC, will be authorized in the North Knox Seeding Pasture with 275 cow/calf pairs from July 1 to July 31 or until allowable use is reached. All livestock will be removed from North Knox Seeding Pasture by July 31 and from South Knox Pasture by September 1.

Additional Terms and Conditions will be incorporated into the 2019 Amended Annual Operating Instructions (Amended AOI) for the Washington C&H Allotment for BTAZ Nevada, LLC:

- All fences will be maintained to standard and checked at least 2 times/week while authorized livestock are in pastures adjacent to other pastures that have LCT occupied streams.

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<sup>1</sup> Turnout for the 2019 grazing season will not occur before June 15<sup>th</sup>, but due to wet conditions the actual date will be dependent on road access.

- Authorized cattle will be monitored closely by the Permittee and adjustments will be made if livestock exhibit tendency to pressure fences adjacent to pastures containing LCT occupied streams.
  - Cattle will be regularly moved away from fences adjoining pastures with LCT occupied streams using Low Stress Stockmanship principles.
  - Cattle exhibiting propensity to pressure fences adjacent to pastures with occupied LCT streams will be promptly removed from the allotment by the Permittee.
- USFS and Permittee will jointly monitor use levels to assist with the correct timing of removing livestock from the North Knox Seeding Unit on the Washington C&H Allotment.

Within the allotment, Lahontan cutthroat trout are present in Washington Creek within the North Mountain Pasture and within Cottonwood Creek and San Juan Creek in the South Mountain Unit (Figure 1). For the 2019 grazing season, the North and South Mountain Pasture will not be authorized for grazing. The District Ranger has discussed and provided notice to each permittee regarding these changes. They will be implemented through the 2019 Amended AOI. The Amended AOI was sent to BTAZ Nevada LLC on June 14, 2019 which included maps of areas not authorized for grazing during the 2019 grazing season to protect Lahontan cutthroat trout.

**Table 1. Authorized Number and Rotation of Livestock within Washington Allotment**

<b>Allotment:</b> <b>Washington C&amp;H</b>	<b>Number</b>	<b>Kind/Class</b>	<b>Season of Use</b>	<b>Head Months</b>
S. Knox Seeding	42	Cow/Calf	06/15-09/1	128
N. Knox Seeding	275	Cow/Calf	07/1-07/31	280
North Mountain	-	-	Not authorized	-
South Mountain	-	-	Not authorized	-

Expected Project Effects on Listed Species and Critical Habitat

Lahontan cutthroat trout populations are present in Washington, San Juan, and Cottonwood Creeks within the North and South Mountain Units of Washington C&H Allotment. No grazing is authorized within the North and South Mountain Units to avoid effects to Lahontan cutthroat trout. North and South Knox Seeding Units do not have occupied Lahontan cutthroat trout streams.

No direct or indirect effects are likely to occur since no grazing will occur within the areas with occupied Lahontan cutthroat trout streams.

Irreversible and Irretrievable Commitment of Resources

After review of the potential effects of grazing in the North and South Knox Seeding Units on the Washington Allotment for the 2019 season, I have determined that any potential effects to Lahontan cutthroat trout will be discountable (unlikely to occur) and will be insignificant (immeasurable) for the following reasons:



No livestock grazing is authorized within the North Mountain Pasture and South Mountain Pasture which contain streams occupied by Lahontan cutthroat trout.

Based on this finding I conclude there will be no irreversible and irretrievable commitment of resources that have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives during the ESA Section 7 process.

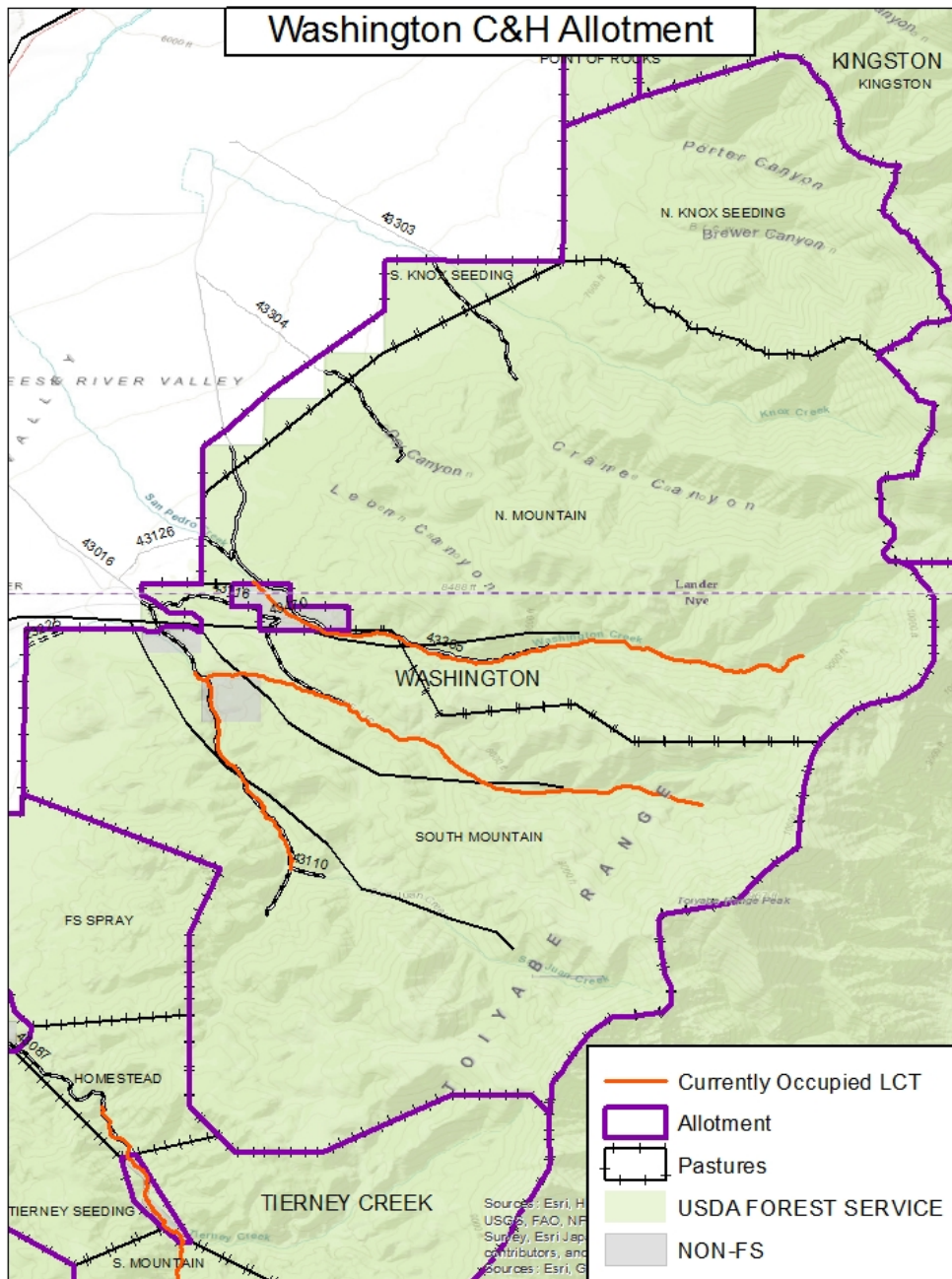
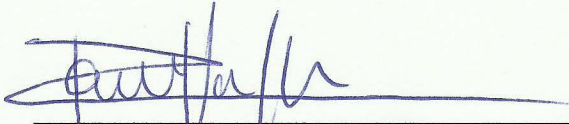


Figure 1. Allotment Map

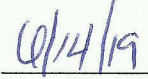
Consultation

The Forest Service plans to initiate formal consultation with the US Fish and Wildlife Service in the fall of 2020. Data collection is ongoing to inform the development of the proposed action. This 7(d) determination will be in effect until a concurrence letter or Biological Opinion is issued.



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RACHEL VAN HORNE  
Fisheries Biologist



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Date



**File Code:** 2210  
**Date:** June 14, 2019

Jay and Georgia Black  
Reese River Valley, LLC  
HC 61 Box 6214  
Austin, NV 89310

**Amendment to 2019 Annual Operating Instructions  
Tierney Creek Allotment**

Dear Jay and Georgia:

This letter amends your Reese River Valley, LLC (RRV) 2019 Annual Operating Instructions (AOI) for Tierney Creek Allotment dated April 16, 2019.

This amendment is necessary to prevent violation of Section 7(a)(2) of the Endangered Species Act of 1973, as amended, by authorizing domestic livestock grazing along Lahontan cutthroat trout (LCT) occupied streams in the Homestead Pasture and South Mountain Pasture.

Effective immediately, I am modifying your April 16, 2019 AOI to the following authorized livestock, pasture, and schedule for the Tierney Creek Allotment to only receive 150 cow/calf from June 15 – August 15, or until authorized use is reached. Due to the wet conditions affecting road access, the actual turn out date may be later than June 15. Prior authorized livestock use of the North Mountain Pasture and South Mountain Pasture are hereby rescinded.

**Table 1. Modified 2019 AOI Authorized livestock within the Washington Allotment.**

<b>Allotment: Tierney Creek C&amp;H</b>	<b>Number</b>	<b>Kind/Class</b>	<b>Season of Use</b>	<b>Head Months</b>
FS Spray Seeding Pasture	150	Cow/Calf	06/15-07/15	153
Tierney Seeding Pasture	150	Cow/Calf	07/16-08/15	153
Homestead Pasture	-	-	Not authorized	-
North Mountain Pasture	-	-	Not authorized	-
South Mountain Pasture	-	-	Not authorized	-



Additional Terms and Conditions have been incorporated into the 2019 Amended Annual Operating Instructions (Amended AOI) for the Tierney Creek Allotment:

- USFS and Permittee will jointly monitor use levels to assist with the correct timing of moving livestock from the FS Spray and Tierney Seeding Pastures.
- All fences will be maintained to standard and checked at least 2 times/week while authorized livestock are in pastures adjacent to pastures with LCT occupied streams.
- Authorized cattle will be monitored closely by the Permittee and adjustments will be made if livestock exhibit tendency to pressure fences adjacent to pastures containing LCT occupied streams.
  - Cattle will be regularly moved away from fences adjoining pastures with LCT occupied streams using Low Stress Stockmanship principles.
  - Cattle exhibiting propensity to pressure fences adjacent to pastures with LCT occupied streams will be promptly removed from the allotment by the Permittee.
- Livestock will not be moved or trailed across LCT occupied streams.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lance Brown", with a long horizontal flourish extending to the right.

LANCE BROWN  
DISTRICT RANGER

**Date:** June 14, 2019

**File:** 2670

**Subject:** Section 7(d) of the Endangered Species Act and Continued Implementation of Grazing Activities on the Tierney Creek Allotment

**To:** Lance Brown, Austin/Tonopah District Ranger

### Introduction

This documents Forest Service compliance with the Endangered Species Act (ESA) for the Tierney Creek Allotment pursuant to *50 CFR Section 402.09* (ESA Section 7(d)). This section of ESA prohibits the irreversible and irretrievable commitment of resources that have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative during the Section 7 consultation process. This section allows for ongoing actions to continue after initiation of consultation provided they are not in violation of Section 7(d).

The Humboldt-Toiyabe National Forest intends to initiate consultation for the Tierney Creek allotment in the fall of 2020. This 7(d) determination will be in effect until a concurrence letter or Biological Opinion is issued.

### Project Description

The Tierney Creek Allotment is located on the Toiyabe Range, Austin-Tonopah Ranger District and is comprised of five pastures – the FS Spray Seeding, Tierney Seeding, Homestead, North Mountain, and South Mountain pastures. Lahontan cutthroat trout (LCT) occupied streams are located within the Homestead and South Mountain pastures. There are no LCT occupied streams in the FS Spray Seeding, Tierney Seeding, or North Mountain pastures.

There is one term grazing permit for the Tierney Creek Allotment with a permitted turnout date of April 21 and an off date of September 30. For the 2019 grazing season, a total of 150 cow/calf pairs will be authorized within the Tierney Creek allotment in two pastures: FS Spray Seeding and Tierney Seeding. In the FS Spray Seeding pasture 150 cow/calf pairs will be authorized from June 15 to July 15, or until allowable use is reached. Due to the wet conditions affecting road access, the actual turn out date may be later than June 15. Livestock will then be moved to Tierney Seeding Pasture from July 16 to August 15, or until allowable use is reached.

Additional Terms and Conditions have been incorporated into the 2019 Amended Annual Operating Instructions (Amended AOI) for the Tierney Creek Allotment:

- USFS and Permittee will jointly monitor use levels to assist with the correct timing of moving livestock from the FS Spray and Tierney Seeding Pastures.
- All fences will be maintained to standard and checked at least 2 times/week while authorized livestock are in pastures adjacent to pastures with LCT occupied streams.
- Authorized cattle will be monitored closely by the Permittee and adjustments will be made if livestock exhibit tendency to pressure fences adjacent to pastures containing LCT occupied streams.
  - Cattle will be regularly moved away from fences adjoining pastures with LCT



- o occupied streams using Low Stress Stockmanship principles.
- o Cattle exhibiting propensity to pressure fences adjacent to pastures with LCT occupied streams will be promptly removed from the allotment by the Permittee.
- Livestock will not be moved or trailed across occupied LCT streams.

Within the allotment, Lahontan cutthroat trout are present in Tierney Creek within the Homestead and South Mountain pastures (Figure 1). For the 2019 grazing season, the Homestead, North Mountain, and South Mountain pastures are not authorized for grazing. The District Ranger has discussed and provided notice to each permittee regarding these changes. They will be implemented through the 2019 Amended AOI. The Amended AOI was sent to Reese River Valley LLC on June 14, 2019.

**Table 1. Authorized Number and Rotation of Livestock within Tierney Creek Allotment**

<b>Allotment: Tierney Creek C&amp;H</b>	<b>Number</b>	<b>Kind/Class</b>	<b>Season of Use</b>	<b>Head Months</b>
FS Spray Seeding	150	Cow/Calf	06/15-07/15	153
Tierney Seeding	150	Cow/Calf	07/16-08/15	153
Homestead	-	-	Not authorized	-
North Mountain	-	-	Not authorized	-
South Mountain	-	-	Not authorized	-

Expected Project Effects on Listed Species and Critical Habitat

There is a Lahontan cutthroat trout population present in Tierney Creek within the Homestead and South Mountain Units of Tierney Creek C&H Allotment. No grazing is authorized within the Homestead, North Mountain, and South Mountain Units to avoid effects to Lahontan cutthroat trout. FS Spray Seeding and Tierney Seeding Units do not have occupied Lahontan cutthroat trout streams.

No direct or indirect effects are likely to occur since no grazing will occur within the areas with occupied Lahontan cutthroat trout streams.

Irreversible and Irrecoverable Commitment of Resources

After review of the potential effects of grazing in the FS Spray and Tierney Seeding Units on the Tierney Creek Allotment for the 2019 season, I have determined that any potential effects to Lahontan cutthroat trout will be discountable (unlikely to occur) and will be insignificant (immeasurable) for the following reasons:

No livestock grazing is authorized within pastures that contain Tierney Creek, which is occupied by Lahontan cutthroat trout.

Based on this finding I conclude there will be no irreversible and irretrievable commitment of resources that have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives during the ESA Section 7 process.

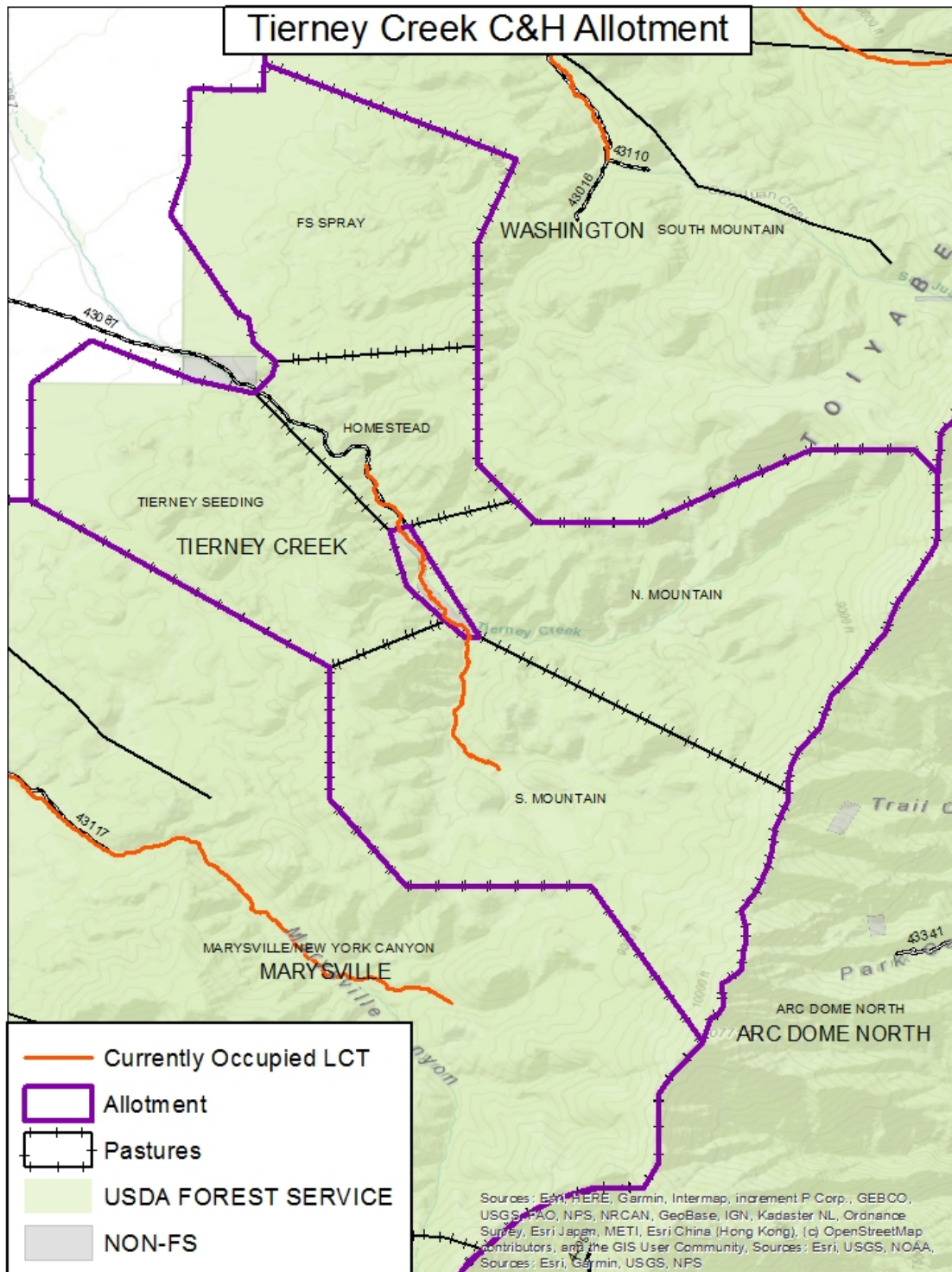
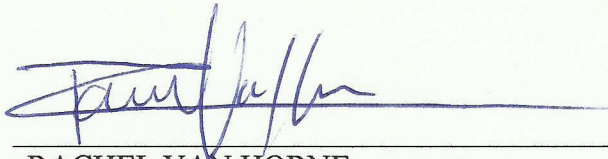


Figure 1. Allotment Map

Consultation

The Forest Service plans to initiate formal consultation with the US Fish and Wildlife Service in the fall of 2020. Data collection is ongoing to inform the development of the proposed action. This 7(d) determination will be in effect until a concurrence letter or Biological Opinion is issued.



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RACHEL VAN HORNE  
Fisheries Biologist

02/14/19  
Date