

MEMORANDUM OF UNDERSTANDING

Between the
USDA FOREST SERVICE
CHIPPEWA NATIONAL FOREST

And the
LEECH LAKE BAND OF OJIBWE of the MINNESOTA CHIPPEWA TRIBE



This **MEMORANDUM OF UNDERSTANDING (MOU)** was entered into by and between the USDA Forest Service, Chippewa National Forest, hereinafter referred to as the Forest Service; and the Leech Lake Band of Ojibwe, (appearing in the Federal Register of July 23, 2018 at Vol. 83, No. 141, p. 34865 as the Minnesota Chippewa Tribe, Leech Lake Band), hereinafter referred to as the Band. The Forest Service and the Band are jointly referred to herein as the Parties.

A. PURPOSE

1. The purpose of this MOU is to provide a framework for cooperation between the Forest Service and the Band for natural resource management, economic development and employment, training and education, maintaining Ojibwe cultural life-ways, and regulatory jurisdiction on National Forest System (NFS) and trust lands within the boundaries of the Leech Lake Reservation and the 1855 Ceded Territory.
2. Additionally, it is the purpose of this MOU to implement recommendations identified in a September 12, 2016 letter from the Chief of the USDA Forest Service to the Leech Lake Band of Ojibwe's Chair (Chief's Letter). The Chief's Letter included provisions for understanding the Band's desired vegetation conditions on Chippewa National Forest lands and developing a shared decision-making model for commercial timber harvesting and other natural resource considerations, utilizing Traditional Ecological Knowledge offered by the Band, and expanding the use of the Tribal Forest Protection Act to give voice to the Band's desired land management objectives. The 2016 letter from the Leech Lake Band of Ojibwe's Chair is attached as Appendix A. The Chief's response letter is attached as Appendix B.
3. On January 31, 2017, a memorandum was developed by the Leech Lake Band of Ojibwe's Division of Resource Management in response to the Chief's Letter, a copy of which is attached as Appendix C, regarding Desired Vegetation Conditions (DVC's). The DVC's set out in that letter include the following topics:
 - DVC-1 Increase blocks of ecologically functioning old growth stands
 - DVC-2 Protection of Scenic & Cultural Corridors (road corridors, rivers, lakes, old growth recreational sites)
 - DVC-3 Impacts to traditional cultural properties and threatened and endangered species are impacts to Bands Cultural Identity
 - DVC-4 Maintain and protect diverse hardwoods stands
 - DVC-5 Protecting the cultural integrity of the LLBO
 - DVC-6 Aspen Initiative – reduce aspen, promote other species
 - DVC-7 Restore Conifers to ecologically functioning systems
 - DVC-8 Implementation must correspond with approved action

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B. STATEMENT OF MUTUAL BENEFIT AND INTERESTS

1. The parties affirm in this MOU the principles of tribal sovereignty, self-determination, self-governance, and the unique government-to-government relationship that exists between the United States and federally recognized Indian Tribes. The Parties acknowledge their intent that based on the unique territorial and jurisdictional relationship between the Parties with regard to the Leech Lake Reservation, the 1855 Ceded Territory and the Chippewa National Forest so that the Band and Forest Service may achieve their joint goal to become full partners in the conservation of this shared landscape and the benefits derived therefrom.
2. The Parties acknowledge the Federal Government's trust responsibility and treaty obligations; that trust responsibility is a legally enforceable fiduciary obligation on the part of the United States to protect tribal lands, assets, resources, and rights, as well as a duty to carry out the mandates of federal law with respect to American Indian Tribes and tribal communities.

The Parties recognize the need to work collaboratively in the planning and implementation of policies and decisions affecting Forest Service lands within the exterior boundaries of the Leech Lake Reservation. The Parties will work together to achieve mutual landscape restoration goals and to foster a shared stewardship approach to these lands—while contemporaneously seeking and promoting opportunities for the Band's economic well-being.

3. The Parties recognize that there is a need to continue formal and informal learning to improve understanding and coordination. Therefore, on-going joint training of Band and Forest Service staff and leadership will be carried out on:
 - The unique legal history of the foundational relationship between the Band and the Chippewa National Forest,
 - How the multi-use mission of the Forest Service shapes perspectives of forest management, and
 - How culture and historical trauma shape the Band's perspective of Forest Service management activities.
4. The Band and the Forest Service will develop mutually agreeable protocols for monitoring of DVC progress within 6 months of the signing of this document.
5. The Parties wish to acknowledge the following facts in furtherance of this MOU.

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- a. **THAT** the court in *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 (D. Minn. 1971) held that the Nelson Act did not disestablish the Leech Lake Indian Reservation and did not abrogate the hunting, fishing, and gathering rights of the Leech Lake Band;
- b. **THAT** the court in *United States v. Michael D. Brown* (Squarehook), 777 F.3d 1025(8th Cir. 2015) held that the Leech Lake Band's treaty rights to fish on public lands within the boundaries of the Reservation include the right to sell the fish and make a modest living therefrom;
- c. **THAT** the Nelson Act of 1889 (25 Stat. 642) provided for the allotment of the Leech Lake Indian Reservation;
- d. **THAT** the Chippewa National Forest was created by the Morris Act of 1902 (PL 57-175; 32 Stat. 400), which amended the Nelson Act, and was later amended by the Minnesota National Forest Act of 1908 (PL 60-137; 35 Stat. 268);
- e. **THAT** unique in the National Forest System, the Chippewa National Forest was the first national forest created by statute and the only national forest created with provisions for the benefit of both the general public and American Indians;
- f. **THAT** The Nelson Act, the Morris Act, the Minnesota National Forest Act, and predecessor legislation collectively provided for the employment of Indian labor; and dedicated a portion of timber sale receipts to a trust account for the benefit of the Band for a 50 year time period beginning in 1889; shared decisional authority with the Band in the oversight of timber valuation on a portion of the National Forest Service System lands found within the Reservation for the 50 year time period associated with dedicated timber sale receipts; protected Indian cemeteries; and the continued right of the Leech Lake Band to bury its dead on Forest Service lands.

C. AUTHORITIES

The Parties acknowledge that the following sources of legal authority support this MOU:

1. Treaties

The 1854 Treaty with the Chippewa at La Pointe; the 1855 Treaty with the Chippewa at Washington; the 1863 Treaty with the Chippewa of the Mississippi, Pillager and Lake Winnibigoshish Bands at Washington; the 1864 Treaty with the Chippewa of the Mississippi, Pillager and Lake Winnibigoshish Bands at Washington; the 1867 Treaty with the Chippewa of the Mississippi at Washington.

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2. Federal Laws

The Organic Administration Act of 1897; the Weeks Act of 1911; the Multiple Use Sustained Yield Act of 1960; the National Environmental Policy Act of 1970 (NEPA); the Forest and Rangeland Renewable Resources Planning Act of 1974; the National Forest Management Act of 1976; the American Indian Religious Freedom Act of 1978; the Religious Freedom Restoration Act of 1993; the Federal Lands Recreation Enhancement Act of 2004; the Tribal Forest Protection Act of 2004; the Agriculture Improvement Act of 2018 (Farm Bill); the Cultural & Heritage Cooperation Authority of 2008 (Farm Bill); and more particularly:

- The Nelson Act of 1889, or “An Act for the Relief, and Civilization of the Chippewa Indians in the State of Minnesota” (25 Stat. 642);
- The Morris Act of 1902, or “An Act to Amend an Act Entitled ‘An Act for the Relief, and Civilization of the Chippewa Indians in the State of Minnesota’” (PL57-175; 32 Stat. 400); and
- The Minnesota National Forest Act of 1908, or “An Act Amending the Act of January Fourteenth, Eighteen Hundred and Eighty-Nine, and Acts Amendatory Thereof, and for Other Purposes” (PL 60-137; 35 Stat. 268).
- *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 (D. Minn. 1971); and *United States v. Michael D. Brown* (Squarehook), 777 F.3d 1025(8th Cir. 2015).

3. Tribal Laws

The Off-Highway Vehicle Code of 2011; the Burial Grounds & Artifacts of 1978; the Conservation Code of 1991; the Cultural Resource Protection Ordinance of 1996; the Bough Harvesting Ordinance of 1994; the Pesticide Control Ordinance of 1996; the Land Use Ordinance 2006; the 1855 Territory Conservation Code of 2011; the Desired Vegetative Conditions Ordinance 2019; the Tribal Hazardous Substance Control Act of 2001 any other applicable Leech Lake Tribal laws

4. Executive Policy

The Executive Orders in 1873 and 1874 providing for the establishment of the Leech Lake Indian Reservation; E.O. 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (1994); E.O. 13007—Indian Sacred Sites (1996); E.O. 13175—Consultation and Coordination with Indian Tribal Governments (2000); E.O. 13270—Tribal Colleges and Universities (2002); USDA Departmental Regulation 1340-007, Policies on American Indians and Alaska Natives (2008); USDA Departmental

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Regulation 1350-001, Consultation (2008); Forest Service Manual 1563 – American Indian and Alaska Native Relations (2012); Forest Service Handbook 1509.13 - American Indian and Alaska Native Relations Handbook (2012); Chippewa National Forest Land and Resource Management Plan (2004).

D. UNDERSTANDINGS OF THE PARTIES WITH REGARD TO THE IMPLEMENTATION OF THIS GOVERNMENT-TO-GOVERNMENT RELATIONSHIP

1. CONSULTATION FRAMEWORK

The Parties agree that all decisions affecting Forest Service lands within the Leech Lake Reservation, whether made by the Forest Service or the Band, are decisions affecting both Parties. The Parties agree that formulation of these decisions requires and that they shall provide for early notice, meaningful collaboration and consultation, and an accountable process for tracking the Parties' interests and concerns.

The Parties further agree that they shall consult in good faith and on a bilateral government-to-government basis with regard to all matters within the scope of this MOU and specifically with regard to decisions that:

- a. Affect the abundance, distribution and access to the natural resources on Forest Service lands within the Leech Lake Reservation;
- b. Affect Ojibwe cultural life-ways and cultural properties;
- c. have the potential to enhance opportunities for tribal economic development, including education, training, and employment;
- d. Concern or relate to the Band's right to self-governance, including the right to self-regulate;
- e. Concern or relate to the effective management of Forest Services lands within the Leech Lake Reservation;
- f. Concern or relate to the advancement of Environmental Justice within the Leech Lake Reservation and affected communities; and
- g. Matters that affect other issues of the Parties mutual concern or interest.

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2. COMMUNICATION

In addition to project-level engagement, the Band's Division of Resource Management Director (DRM) shall meet at least once quarterly or as otherwise mutually agreed upon with the Forest Supervisor and/or District Rangers for the purpose of discussing issues of mutual concern regarding management of lands, waters and resources that impact the Band's Treaty-protected rights on Forest Service lands. The Parties will review the Schedule of Proposed Actions and a list of other proposed or contemplated projects or activities not yet on the Schedule of Proposed Actions. The DRM Director shall bring any Tribal proposals for discussion to the quarterly meetings. The purpose of these meetings is to facilitate Tribal consultation and coordination over proposed projects prior to public scoping. Minutes of the quarterly meetings will be kept, with copies sent to the DRM Director.

Furthermore, the Parties agree that a fundamental goal and purpose of this MOU shall be to provide for good faith timely consultation that specifically provides that all decisions should expressly recognize the Band's rights to self-governance; and its right to hunt, fish, and gather on Forest Service lands and the Band's right for current and future generations to enjoy economic prosperity through use of these lands. It is mutually understood that consultation between the Parties will contribute to the creation of more enlightened, better constructed, and more effective policies and decisions. To achieve this end, the Parties specifically agree to adopt the following decision-making model.

3. SHARED DECISION-MAKING MODEL

The Parties agree that they will coordinate on a government-to-government basis in order to seek agreement regarding the Band's role during the planning phase of land management projects that occur within or overlap the Leech Lake Indian Reservation. This coordination will, as appropriate, include providing for the role of the Band as a "Cooperating Agency" for NEPA project review and analysis consistent with 40 CFR 1501.6.

This process will allow the Forest Service to benefit from knowledge offered by the Band including, among other things, Tribal Desired Vegetation Conditions, the impacts of historic trauma that may be caused by resource management, Traditional Ecological Knowledge, Traditional Cultural Properties, the relationship between cultural integrity and resource management, and other special cultural or resource expertise of the Band. In consideration of the above premises, the Parties agree to a shared decision-making procedure as follows:



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a. Tribal Coordination Prior to Public Scoping

- (1) Prior to the completion of the Project Initiation Letter, the Forest Service shall draft a letter to the Band regarding the project that includes a Notice of Level of Participation. The Forest Service line officer responsible for the project shall inform the Director of the DRM of the project and will also notify the Band in writing of the opportunity to participate in the NEPA process as a NEPA Cooperating Agency.
- (2) The Band shall use best efforts to respond to said notice within 30 days or request a reasonable extension within the 30-day period and the Band will advise the Forest Service of its intended level of participation regarding the specific project. Levels of participation include: i) Full Participation with NEPA Cooperating Agency Status; ii) Participation at Key Meetings; or iii) Quarterly Updates. If the Band does not respond to the Notice of Participation Level, quarterly updates are the default level of involvement. These three participation options are outlined below.

b. Tribal Participation in the NEPA Process

When a Forest Service action subject to the NEPA may affect the Leech Lake Reservation, the Forest Service shall promptly send a letter to the Band's Director of the Division of Resource Management (DRM) to request that the Band become a NEPA Cooperating Agency.

- (1) Tribal Involvement with the Interdisciplinary Team as a Cooperating Agency. If the Band elects to become a Cooperating Agency, the Band shall use best efforts consistent with available resources to participate in the scoping process and provide environmental analysis and information on the following and other topics as needed:
 - a) Tribal Desired Vegetation Conditions;
 - b) Impacts of historic trauma that may be caused by resource management;
 - c) Traditional Ecological Knowledge;
 - d) Traditional Cultural Properties;
 - e) The relationship between cultural integrity and resource management; and
 - f) Other special cultural or resource expertise of the Band.

The Tribal Council will appoint one or more Tribal employees to participate with the Forest Service Interdisciplinary Team (IDT) via a written appointment. This written

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appointment shall contain a delegation of authority to act on behalf of the Tribal Council for IDT activities, and a copy of the written appointment shall be provided to the Forest Service. The duly-appointed Band staff will participate in their official capacity in necessary IDT meetings, and provide views and information. Tribal staff shall be given adequate notice prior to IDT meetings. To the extent possible, the line officer shall schedule meetings to accommodate the Band's involvement.

- (2) Tribal Participation at Key Meetings. For this level of involvement, the Band and the Forest Service responsible line officer shall use best efforts consistent with available resources to schedule key meetings associated with the project at such times that permit the Band to fully participate. These meetings, to the extent practicable, will be scheduled to align at key process points within the project planning cycle. It is the Parties' belief that timely and informed input from the Band's staff will assist and inform the Forest Service with project development and planning. This level of participation may include the Parties engaging in formal consultation during the project planning and decision-making process. Either Party may request formal consultation.
- (3) Quarterly Updates. For this level of participation, the Parties agree that quarterly updates will be scheduled for the project so that the Band may have the opportunity to provide timely input to the decision-making process.
- (4) Dispute Resolution. The Band's staff and Forest Service staff shall make every effort to communicate and share information, and to come to a mutually beneficial resolution of issues during IDT meetings and other work during project planning. The Band and Forest Service staff shall rely on principles of sound resource management, the protection of LLBO's sovereign rights, and the Forest Service's obligation to manage the Forest consistent with existing law and policy when attempting to address identified issues or disputes. If a dispute cannot be resolved at the staff level, either party may within 10 business days elevate the dispute to the next level, which shall be before the Forest Service line officer for the project and Director of DRM. Upon the written request of either party the Forest Service Line Officer and the Director of DRM shall, within 10 business days review the issue in dispute and these officials shall then meet within 30 business days of receiving the written request to seek to develop a mutually acceptable resolution to the dispute.

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c. Consultation Prior to Public Notice

The Forest Service line officer for the project shall make consultation available with the Director of DRM prior to public scoping and the release of a Categorical Exclusion (CE), Environmental Assessment (EA) or draft Environmental Impact Statement (EIS). The following procedures shall be used by the Parties to facilitate such consultation.

- (1) **Notice.** The Forest Service line officer shall promptly send written notice of the proposed public release of a CE, EA, or draft EIS to the Director of DRM. The notice shall include a copy of the CE, EA, or draft EIS. If requested by the Band, the Parties shall within 10 business days arrange a time to meet with appropriate staff and discuss the to-be-released document prior to its release for public comment.
- (2) **Consultation.** The Forest Service line officer and Director of DRM shall discuss all information relevant to the CE, EA or draft EIS, including the preferred alternative, if one exists, along with such matters as possible impacts to treaty rights resources, and the possible differences of opinion between the Parties regarding the project or its environmental analysis.
- (3) **Dispute Resolution.** The Band and Forest Service staff will rely on principles of sound resource management and the protection of the Band's sovereign rights, and the Forest Service's obligation to manage the Forest consistent with existing law and policy when attempting to address identified issues or disputes. If a dispute cannot be resolved at the staff level either Party may provide written notice, within 10 business days, to the Director of DRM, District Ranger and the Forest Supervisor. The Director of DRM, District Ranger and the Forest Supervisor shall then meet within 30 days of receiving such written notice to seek to develop a mutually acceptable resolution to the dispute arising out of consultation discussed above.

d. Consultation with LLBO Prior to Issuing Final Decision

The Forest Service line officer shall notify the Director of DRM of their intention to sign a final decision for the project no less than 30 days prior to such final decision. The notice shall include a copy of the supporting NEPA document(s) and the to-be-approved final decision. If requested within 10 business days by the Band, the Parties shall promptly arrange a time to meet with appropriate staff to discuss the to-be-approved final decision prior to this decision being signed by the Forest Service line officer. The Parties shall discuss the project, public comment on the project, the Band's interest, and other issues



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relevant to the to-be-approved final decision. The Parties shall make every effort to communicate and share information, and to come to mutually beneficial resolutions of management and activity issues.

The Parties shall rely on principles of sound resource management and acknowledge their joint obligation to protect the Band's sovereign rights in a manner consistent with existing law and policy when addressing disagreements. If the Forest Service line officer is not the Forest Supervisor, any disagreement at this level shall first be elevated for discussion and attempted resolution among the Forest Service line officer, the Director of DRM and the Forest Supervisor. If the conflict cannot be mutually resolved at this level, either party may initiate the procedures for dispute resolution outlined below in Section d(1):

- (1) Dispute Resolution: Disputes that cannot be resolved between the Forest Supervisor and the Director of DRM regarding the Band's recommendations or input regarding a to-be-approved decision under the NEPA may be elevated to government-to-government formal consultation discussions between the Forest Supervisor and the Band Chair. The Forest Supervisor shall provide a written rationale for the to-be-approved decision, and how the Band's input has been taken into consideration. Within 30 days of receiving the Forest Supervisor's rationale, the Band Chair (or his or her designated staff) shall provide a written response explaining any remaining concerns or recommendations. These documents shall be submitted to the Band Chair and the Forest Supervisor. The Band Chair and the Forest Supervisor shall then meet in person if requested by either party to review the documents within the next 30-day period and shall work in good faith to attempt to develop a mutually acceptable resolution to the dispute. The Band reserves the right to raise any matter not resolved at this level to a higher Forest Service official.
- (2) Letter of Concurrence. To the extent practicable, the Forest Service agrees to delay any to-be-approved final decision on the unresolved matter until this dispute resolution process has had the opportunity to take place. The Band will provide a letter of concurrence or non-concurrence with the to-be-approved final decision from the Director of the DRM within 30 days of receiving this decision. Failure to provide a letter indicates concurrence by the Band. Unless surrounding circumstances including the need to protect life, health, safety, property, or the environment require faster approval, the Forest Service agrees not to issue the to-be-approved final decision until the letter of concurrence is received, the dispute has been resolved, or 30 days have lapsed with no response from the Director of the DRM.

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E. NON-BINDING MEDIATION

In the event the consultation and dispute resolution processes provided for in this agreement do not resolve a dispute, the Parties may utilize non-binding mediation as a tool to resolve the issue in question. Utilization of non-binding mediation will not waive or otherwise limit the rights of the Band or the Forest Service to seek further administrative or judicial review. In addition to mediation and the dispute resolution process described above, the Band reserves its right to challenge any Forest Service decision or action in accordance with applicable laws and regulations.

F. COOPERATION IN THE EVENT OF EMERGENCY

Notwithstanding any provisions or timelines herein to the contrary, the Parties shall cooperate in good faith to achieve the tasks laid out herein on a reasonable compressed timeframe in the event of an emergency situation that gives rise to, directly or indirectly, the need for expeditious action to manage or protect Forest resources, public health or safety, or the environment. Such emergencies may include, without limitation, acts of war or terrorism, civil disturbances, government shutdowns, loss or malfunctions of utilities, pest or fungus infestations, blow downs, landslides, fires, tornados, floods, disasters or acts of God, and such management or protective actions may include, without limitation, salvage sales or prescribed burns.

G. ADMINISTRATION OF THE MOU

The Parties further agree that:

1. The Band shall consult with the Forest Service when developing and implementing any rule, code, or land management decision that has direct application on NFS lands within the Leech Lake Reservation.
2. Each party shall designate a person to serve as their Principal and as Lead Contact for the administration of this MOU.
3. The Forest Service shall keep secure and confidential any information shared by the Band that the Band deems to be proprietary or culturally sensitive to the extent permitted by Federal laws and regulations.
4. The Forest Service shall use best efforts to assist the Band in providing for timely implementation of the provisions outlined in this MOU, and the Parties shall work together to identify priority focus areas to be added to this MOU for future coordination and consultation.
5. Nothing in this MOU implies that all disputes between the Band and Forest Service will be resolved. The Parties recognize that there may be times when they disagree on principle; but

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they concur that these disagreements shall not stand in the way of an effective, respectful working relationship nor preclude continuing consultation in good faith.

H. PRINCIPAL AUTHORITIES

1. The following individuals serve as the “principals” for this MOU:

Leech Lake Band of Ojibwe
FARON JACKSON, SR.
Chairman
Leech Lake Band of Ojibwe
190 Sailstar Drive NW
Cass Lake, Minnesota 56633
Phone: 218-335-8200
Email: Faron.Jackson@llojibwe.org

USDA Forest Service
ROBERT LUECKEL
(Acting) Regional Forester
Eastern Region, Region 9
626 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
Phone: 414-297-3765
Email: Robert.luekel@usda.gov

2. The following individuals serve as the Lead Contacts for the administration of this MOU:

Leech Lake Band of Ojibwe
BENJAMIN BENOIT
Environmental Director
Leech Lake Band of Ojibwe
190 Sailstar Drive NW
Cass Lake, Minnesota 56633
Phone: 218-335-7417
Email: Benjamin.benoit@llojibwe.org

USDA Forest Service
DOUGLAS THOMPSON
Tribal Relations Specialist
Chippewa National Forest
200 Ash Avenue NW
Cass Lake, Minnesota 56633
Phone: 218-335-8615
Email: douglas.thompson@usda.gov

I. ADMINISTRATIVE MATTERS

1. **FREEDOM OF INFORMATION ACT (FOIA).** Any information furnished to the Forest Service under this MOU is subject to the Freedom of Information Act (5 U.S.C. 552). FOIA Exemption 3 allows for non-disclosure of certain categories of culturally sensitive information under the provisions of the Archaeological Resources Protection Act (16 U.S.C. 470hh), the National Historic Preservation Act (16 U.S.C. 470w-3), and the Cultural and Heritage Cooperation Authority (25 U.S.C. 3056). Unless specifically approved for release by the Band all culturally sensitive or proprietary information shared with the Forest Service shall be kept confidential.

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2. **PARTICIPATION IN SIMILAR ACTIVITIES.** This MOU in no way restricts the Forest Service or the Band from participating in similar activities with other public or private agencies, organizations, and individuals.
3. **COMMENCEMENT/EXPIRATION/TERMINATION.** This MOU takes effect upon the signatures of the Forest Service and the Band and shall remain in effect for five (5) years from the date of execution. This MOU may be extended or amended upon written agreement of the parties. Either the Forest Service or the Band may terminate this MOU at any time after providing 60-day written notice to the other party.
4. **RESPONSIBILITIES OF PARTIES.** The Forest Service and the Band and their respective agencies and offices will manage their own activities and utilize their own resources, including the expenditure of their own funds in pursuing the objectives of this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
5. **NON-FUND OBLIGATING DOCUMENT:** Nothing in this MOU shall obligate the Forest Service or the Band to obligate or transfer any funds. Specific work projects or activities that involve the transfer of funds, services, or property among the various agencies and offices of the Forest Service and the Band will require execution of separate agreements and be contingent upon the availability of appropriated funds. Such activities must be independently authorized by appropriate statutory authority. This MOU does not provide such authority. Negotiation, execution, and administration of each agreement must comply with all applicable statutes and regulations.
6. **ESTABLISHMENT OF RESPONSIBILITY.** This MOU is not intended to, and does not create, any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity, by a party against the United States, its agencies, its officers, or any person.
7. **TRIBAL SOVEREIGNTY.** Nothing in this MOU shall waive or otherwise limit the sovereign immunity from suit or otherwise impair the sovereignty of the Leech Lake Band of Ojibwe or the Minnesota Chippewa Tribe.

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8. **AUTHORIZED REPRESENTATIVES.** By signature below, each party certifies that the individuals listed in this document as representatives of the individual parties are authorized to act in their respective areas for matters related to this agreement. In witness whereof, the parties hereto have executed this agreement, as of the last date written below.

Robert Lueckel

Robert Lueckel
(Acting) Regional Forester, USDA Forest Service

10/4/2019

Date

Faron Jackson, Sr.

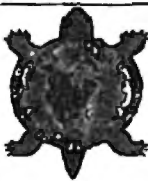
Faron Jackson, Sr.
Chairman, Leech Lake Band of Ojibwe

10-4-19

Date

Appendices:

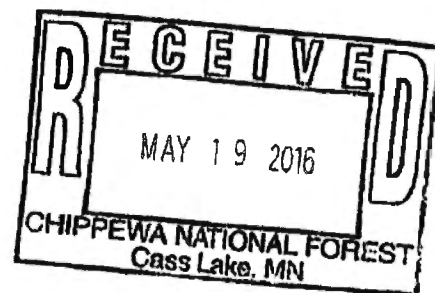
- A. April 14, 2016 letter from Leech Lake Band of Ojibwe Chairwoman, Carrie Jones, to USDA Forest Service Chief, Tom Tidwell regarding vegetation management activities on the Chippewa National Forest.
- B. September 12, 2016 response letter from USDA Forest Service Chief, Tom Tidwell, to Leech Lake Band of Ojibwe Chair, Faron Jackson, regarding vegetation management conditions on the Chippewa National Forest.
- C. January 31, 2017 Leech Lake Band of Ojibwe Memorandum describing the Band's desired vegetative conditions on the Forest Service System lands on the Leech Lake Indian Reservation.



LEECH LAKE BAND OF OJIBWE
DIVISION OF RESOURCES MANAGEMENT
190 Sailstar Dr. NE, Cass Lake, MN 56633
218-335-7400

April 14, 2016

Chief Tom Tidwell
USDA Forest Service
1400 Independence Ave. SW
Washington, DC 20250-1111



Re: Preservation of the Chippewa National Forest

Dear Chief Tidwell,

As the elected Chairwoman of the Leech Lake Band of Ojibwe I am writing to express the Bands concerns over ongoing efforts to harvest increasing amounts of timber from the Chippewa National Forest located within the Leech Lake Indian Reservation. Our relationship is not only defined by a shared land base but our common history and has been checkered with injustices towards my people. In recent times we have made some notable strides in developing a positive relationship with the United States Forest Service specifically the Chippewa National Forest. I commend the Chippewa National Forest Supervisor, Darla Lenz, and her leadership team for trying to bridge the gap and create a bright future for the area based on our mutual concern and interest and not our differences. It is not a coincidence that my letter will find you the same week as Earth Day. We felt it was appropriate since our request is based on becoming better stewards of the land. Please do not read my comments as a one sided attack on U.S. Forest Service but instead a request for help to find solutions to unsustainable timber harvesting being proposed.

The current timber harvest levels are unsustainable and are having significant negative effects on Tribal Trust Resources. This will only get worse with increased harvest. The Chippewa National Forest was created as a result of efforts to provide a home-land and to protect the Reserved Rights the band retained under various treaties with the US Government. The Chippewa National Forest is one of the most commercialized forests in the nation, and has one of the highest percentages of cutting in relation to the allowable harvest and one of a limited number that has no wilderness area. All of these factors are contributing to degradation of our natural resources and has impacted the ability of the Leech Lake Band of Ojibwe to practice the subsistence lifestyle which has sustained my people for generations.

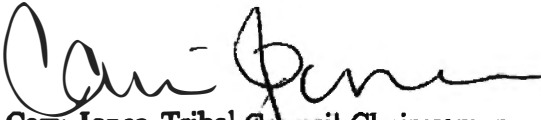
The overharvesting we have experienced, and the inability to restore natural forest types, has resulted in much of our land being converted on monotypic aspen stands and plantations of red pine. Both of these are very simple communities that do not support the diversity of wildlife and the plants that have been important to our culture. Simplification of our forests is also not in

keeping with the Forest Service goal of preparing for climate change. The Chippewa National Forest/ Leech Lake Reservation is located near the center of the continent, far from the moderating effects of the oceans, so it is expected that we will see some of the most dramatic alterations due to climate change. We believe some of these effects are already evident and are changing the ecosystems of the reservation and negatively affecting our member's ability to practice their way of life. The new forest management planning rules also puts an emphasis on considering and accommodating the type of needs we are requesting.

The Chippewa National Forest has conscientious staff that want to do the right thing and provide for the interest of the people of Leech Lake, but they have a very difficult time doing so due to the need to try to meet unrealistic timber harvest targets. The problem will not be fixed until the Forest Plan changes. The high harvest goals that are in the current plan are simply not sustainable, especially if you are to meet your trust responsibility of ensuring federal actions do not impact tribal life-ways. The only remedy we see for this situation to address these issues in a New Forest Plan. The Chippewa National Forest is currently operating under a plan that expired in 2014. The Leech Lake Band of Ojibwe is requesting that the planning process for this forest be moved to the top of the priority list and commence with the next year.

We await your response to our concerns and request.

Sincerely



Carri Jones, Tribal Council Chairwoman
Leech Lake Band of Ojibwe

cc:

Kathleen Atkinson, Regional Forester
Daria Lenz, Forest Supervisor
Senator Al Franken
Senator Amy Klobushar
Representative Rick Nolan

Appendix B

File Code: 1560

Date: SEP 12 2016

Mr. Faron Jackson, Sr.
Chairman
Leech Lake Band of Ojibwe
190 Sailstar Drive NW
Cass Lake, MN 56633

Dear Chairman Jackson:

Thank you for your letter of April 14, 2016, in which your predecessor Ms. Carri Jones expressed concern over the amount of timber being harvested from the Chippewa National Forest (Forest) in Minnesota. I apologize for the delayed response.

In her letter, Ms. Jones brought to my attention the Band's concerns about "ongoing efforts to harvest increasing amounts of timber from the Chippewa National Forest" and the "inability to restore natural forest types," resulting in forest types "[T]hat do not support the diversity of wildlife and the plants that are important to [your] culture." I understand the Band's concerns and respectfully acknowledge Ms. Jones' recommendation to expedite a New Forest Plan; however, I believe that the Forest and the Band can continue to work productively within the context of the existing Land and Resource Management Plan (Plan). For example, the Plan includes three relevant desired conditions:

- Lands within the Forest serve to help sustain American Indians' way of life, cultural integrity, social cohesion, and economic well-being. (D-TR-1);
- The Forest Service continues to work within the context of a respectful government-to-government relationship with Tribes, especially in areas of treaty interest, rights, traditional and cultural resources, and ecosystem integrity. The Forests provide opportunities for traditional American Indian land uses and resources. (D-TR-2); and
- The Chippewa National Forest facilitates the exercise of the right to hunt, fish, and gather as retained by Ojibwe whose homelands were subject to treaty in 1855 (10 Stat. 1165). Ongoing opportunities for such use and constraints necessary for resource protection are reviewed and determined in consultation with the Leech Lake Band of Ojibwe. (D-TR-3).

Additionally, the Plan includes the following objectives:

- Improve relationships with American Indian tribes in order to understand and incorporate tribal cultural resources, values, needs, interests, and expectations in forest management and develop and maintain cooperative partnership projects where there are shared goals. (O-TR-1);
- Maintain a consistent and mutually acceptable approach to government-to-government consultation that provides for effective Tribal participation and facilitates the integration of tribal interests and concerns into the decision-making process. (O-TR-2); and



- The Forest Service will work with the appropriate tribal governments to clarify questions regarding the use and protection of miscellaneous forest products with the objective of planning for and allowing the continued free personal use of these products by band members within the sustainable limits of the resources. (O-TR-3).

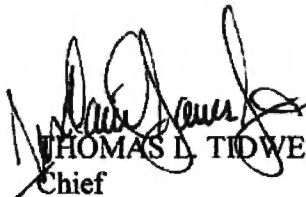
The Plan was last revised in 2004, and there is no scheduled revision date at this time. Until revision process is initiated, I invite you to consider an amendment to the existing 2013 Memorandum of Understanding (MOU) between the Forest and the Band. Together, the Forest Service and the Band can address the Band's concerns within the government-to-government framework without engaging in the lengthy process of plan revision.

I am asking Regional Forester Kathleen Atkinson to immediately initiate consultation with you and the Division of Resource Management staff with the following objectives:

- To discuss and understand the Band's desired vegetation management conditions on National Forest System lands within the Leech Lake Indian Reservation (LLIR) to achieve the appropriate balance of resources to sustain Ojibwe lifeways;
- To use any Traditional Ecological Knowledge (TEK) offered by the Band to achieve desired conditions described in the Plan;
- To expand use of the Tribal Forest Protection Act (TFPA) to give voice to the Band's desired land management objectives on Forest Service lands within LLIR;
- To develop a shared decision-making model for commercial timber harvesting and other natural resource considerations on Forest Service lands within LLIR; and
- To codify the agreed upon TFPA and shared decision-making model into the 2013 MOU by amendment.

Thank you for your interest in the management of your National Forests. If you need assistance, please contact Regional Forester, Kathleen Atkinson at (414) 297-3765.

Sincerely,



THOMAS L. TIDWELL
Chief

cc: Richard Robinson, Director, LLBO Division of Resource Management
Levi Brown, LLBO Environmental Lands Manager
Kathleen Atkinson, Regional Forester
Darla Lenz, Forest Supervisor
Senator Al Franken
Senator Amy Klobuchar
Representative Rick Nolan



**LEECH LAKE BAND OF OJIBWE
DIVISION OF RESOURCE MANAGEMENT
115 6th ST. NW Suite E, Cass Lake, MN 56633**

*Management Practices to achieve
Desired Vegetative Conditions*

The Basic Management Priorities are there for forest staff to give guidance to longer term conditions that need to be returned to lands within the LLR. These priorities should be cemented in every Purpose and Need section of Project EA's across the forest.

Basic Management Priorities (Desired Vegetation Conditions)

- ★ **LL-DVC-1** Increase blocks of ecologically functioning old growth stands
- ★ **LL-DVC-2** Protection of Scenic Corridors (Road Corridors, rivers, lakes, Old Growth Rec. sites)
- ★ **LL-DVC-3** Impacts to TES/TCP's are impacts to tribes cultural Identity
- ★ **LL-DVC-4** Maintain and Protect Diverse Hardwoods stands
- ★ **LL-DVC-5** Protecting the cultural integrity of the LLBO
- ★ **LL-DVC-6** Aspen Initiative - reduce aspen promote other species
- ★ **LL-DVC-7** Restore conifers to ecological functioning systems
- ★ **LL-DVC-8** Implementation must correspond with approved action

The information outlined on the following pages provides more detail on these concepts.

Stand Level Implementation Standards

Harvest practices on the Chippewa National Forest in the past have been focused on the production of commercial forest products with little emphasis on other needs and objectives. This has resulted in declines in many of the resources that were reserved by the Leech Lake Band under Federal treaty. It has also resulted in declines in some wildlife species that are important to the Band and overall biodiversity of the forest, putting us in a poor position to address climate change. The purpose of these mitigation measures is to return to a more ecologically healthy condition by diversifying our forests back to more natural conditions.

A. Forest Stands (All Types):

The extent of each of these measures will, on a project by project basis, be quantified, outlined and followed in the project planning, sale implementation, and during any post-harvest activities.

- i. Retain all non-target species of trees to the maximum extent possible.
- ii. Promote and enforce progressive logging to protect non harvest trees and to retain snags, forest structure, and overall diversity. In general no more than 50% of a stand will have traffic or skidding over it. The Minnesota Forest Management Guidelines (page 18) outlines skid trail practices that will help to attain this standards.
- iii. In stands where “wolfie” trees are found, to the maximum extent possible these trees will be retained to provide future snags and coarse wood material. Promote the retention of coarse woody material (>4 inches) up off the ground to the maximum extent possible due to its wildlife habitat value. Material should be elevated off the ground one foot or more. In order to help facilitate this measure we encourage the piling of tops in scattered piles that are also up off the ground. In stands where coarse woody material is lacking, it may be generated from within or adjacent stands to promote these features. In some cases it may also be necessary to drop trees or bring materials from other sources.
- iv. In areas where there is a likelihood of human caused fires (along major roads, near communities, etc.) a buffer that contains less woody material may be established to reduce fire risk.
- v. In stands identified in planning or survey as having berry shrubs, it will be necessary to mark and avoid them. In stands where cultural and medicinal plant gathering activities have been identified, avoidance will be needed unless measures have been mitigated that will enhance these species.
- vi. The amount of clear-cuts and coppice cuts will be reduced in favor of other harvest methods to promote forest diversity and TCPs.

- vii. If targeted species cannot be harvested without damaging reserved trees that are quantified in the prescription, the target species will not be harvested.
- viii. All harvest and ground disturbing operations will be minimized during the April 1 to July 15 to reduce songbird and other cavity nesting wildlife losses. The exception can be younger conifer plantations that have minimal wildlife usage.

B. Conifer Specific:

With the exceptions of jack pine and black spruce that are created as the result of stand replacement fires, naturally occurring conifer stands would not be simple communities. All too often, diversity is lost when plantation management is utilized. To restore a suitable level of diversity, changes must be implemented. The following management practices will greatly aid in achieving the desired vegetative conditions in conifer stands.

The extent of each of these measures will, on a project by project basis, be quantified, outlined and followed in the project planning, sale implementation, and during any post-harvest activities.

- i. In areas where conifer regeneration is undertaken, the first emphasis will be on utilizing natural regeneration whenever possible.
- ii. In conifer plantings, hardwood species need to be counted towards meeting regeneration standards and stand diversity standards.
- iii. Promote extended rotations in long-lived conifer species, thinning at multiple entries that allow for increased diversity over time, extending rotation ages to ≥ 200 yrs.
- iv. During conifer harvest and thinning operations, retain hardwoods and non-target conifer species for diversity and future wildlife habitat in the stand.
- v. Once planted, conifer seedlings will require thinning in the sapling stage to ensure they do not become over-dense and to allow for stand diversity. This will be especially true for white spruce.
- vi. Release brushing operations may require release of conifer AND select hardwood species. In many cases, release may only be necessary immediately around desired saplings.