

II. RESOURCE REPORTS

1. Tribal Rights and Interests

This section includes three monitoring questions related to tribal rights and interests. The first addresses sustaining American Indian's way of life, followed by a discussion on our government to government relationship, and finally some information on facilitating the right of the Tribes to hunt, fish, and gather.

In addition to the overview provided in this report, additional information can be found on our Tribal website: www.fs.usda.gov/chippewa --> Working Together --> Tribal Relations. → 2005-2009 Annual Monitoring and Evaluation Reports on Tribal Rights and Interests.

Key Points

- The Forest continues its efforts to uphold Federal Trust responsibilities. The Forest funds a Tribal Liaison position, provides employment opportunities, and interacts with tribal program staff in an effort to work in a government to government manner, facilitate rights to hunt, fish and gather, and sustain American Indian's way of life,

Monitoring Question

Is Forest management helping to sustain American Indians' way of life, cultural integrity, social cohesion, and economic well being?

Results

The Leech Lake Tribe holds the smallest percentage of its reservation lands of any of the Minnesota's tribes. County, state, and federal Governments own well over half of the original land of 864,158 original acres, nearly 300,000 acres are surface area of three big lakes. The Chippewa National Forest retains administrative jurisdiction over the largest portion of the original reservation land base. This leaves less than 5% of land owned by the Band.

It is not uncommon to hear tribal leaders voice their position that administrative management and ownership of the Chippewa National Forest should be returned to the Band. Eleven Indian communities make up the Leech Lake Reservation and all are within the proclamation boundary of Chippewa National Forest. These communities include:

Ball Club	Onigum
Bena	Pennington
Cass Lake - Tribal Headquarters	S. Lake
Inger	Smokey Point
Mission	Sugar Point
Oak Point	

The Forest Plan management direction generally assures the availability of resources to support the continued exercise of treaty rights and cultural practices and not impair access to such

resources and places of traditional practices. Specific availability of resources and access considerations may be determined through government-to-government consultation with the objective of maintaining sufficient availability of resources for the continued harvest or utilization needed to satisfy tribal needs.

In 2007 a Tribal Liaison position developed in cooperation with the LLBO was filled. A Chippewa National Forest employee will devote 40% of their time in that position. The Liaison position is designed to focus outreach and recruitment, cultural awareness, initiating development of a Memorandum of Understanding, and partnership building with LLBO.

Consultation and upholding Federal Trust responsibilities are actions the Chippewa NF aspires to fulfill within the direction and federal policies which guide these important activities. We would assess our performance in this area as very high and a matter of routine business on the Forest. Chippewa National Forest personnel at most levels of the organization interact with Tribal program staff, program directors or Local Indian Councils on a frequent basis in our efforts to coordinate and work in a government to government manner. Through consultations and planning meetings, Chippewa Resource Managers and Line Officers attempt to identify tribal concerns and interests prior to project decisions and implementation. Although not all Tribal concerns may be mitigated through this process, forest vegetation management projects generally tend to reflect input from the Tribe resulting in less commodity extraction, projects favorable to tribal gathering, hunting and protection of cultural sites. Over the long run the trends resulting from these decisions contribute to the social economic well being and cultural integrity of the Tribes.

Section 8105 of the Food, Conservation, and Energy Act of 2008 (PL 110-246; 122Stat.1651) aka 2008 Farm Bill authorizes FS to provide trees and other forest products for non-commercial traditional and cultural purposes. Other provisions allow FS to withhold information concerning traditional resource locations, as well as open closed areas for traditional and cultural practices. This new legislation has assisted FS in addressing some tribal rights and interests issues. Chippewa National Forest employees look to the provisions contained in the Farm Bill to expand and improve relationships with the Tribes. Since the 2008 Farm Bill and implementing directives were developed the Chippewa has received no formal requests from any of the Northwestern Minnesota Tribes for products or special access under these provisions. This has not been due to the lack of communications of these new authorities by Forest employees.

The Chippewa National Forest is not a significant consideration or boost to the local Tribal communities in terms of overall employment. Tribal members gain supplemental income and employment through seasonal activities afforded through the gathering of boughs and other miscellaneous forest products. The Chippewa has hosted and facilitated a few meetings with the Leech Lake Band over the last 4-6 years that were designed to explore and inform tribal leaders about potential Forest based economic development initiatives and authorities. These included Tribal Forest Protection Act training and meetings to explore tribal capacity and interest in bio mass production. Tribal gaming and tribal program operations account for nearly two thirds of the employment of Band members. The Chippewa National Forest presently employs 8-10 permanent Native American employees which represent approximately 8% of the permanent workforce. The Forest has a good track record of hiring tribal members through seasonal,

student hiring authorities, Youth Programs and under agreement with local colleges and tribal programs.

Other noteworthy accomplishments include:

- The Forest has entered into two stewardship contracts with the Leech Lake Band. The first awarded in 2007, and a second now underway. Our goal is to continue to work with the Band in developing more stewardship projects as the Band's capacity grows in this arena.
- Stevens Fund Grants have been awarded to the Leech Lake Band over consecutive years contributing training and employment opportunities and hazardous fuels reduction projects on the Forest.
- In 2009 and 2010 the Forest was successful in developing multiple Stimulus funding (ARRA) proposals incorporating Tribal interests and concerns. This resulted in over \$ 444, 000 being awarded to the Leech Lake Band. The Red Lake Band of Chippewa was also a recipient of Stimulus funded projects totaling \$1.5 million.

ARRA Projects awarded to Leech Lake Band of Ojibwe

- Firefighter training and use on prescribed burn and fuels reduction projects - \$100,000
- Experimental Forest roads project - \$ 340,000
- Temporary Employment Program, trails maintenance - \$4,339.00

ARRA Projects awarded to Red Lake Chippewa Band

- Camp Rabideau restoration – \$1. 5 million.
- A Memorandum of Understanding (MOU) and Programmatic Agreement were recently signed that advance social and cultural values.
 - Signed an MOU 11/12/08 with Leech Lake Band providing for the return of funerary objects and human remains to be repatriated under the Native American Graves Protection and Repatriation Act. FS will surrender these to THPO as soon as we are notified that preparations for repatriation have been completed by the Band and they are willing to take custody.
 - Developed a Programmatic Agreement (PA) with LLBO that addresses elements of Section 106 review that may affect management of historic properties, especially archeological sites. The PA specifies FS, THPO and SHPO responsibilities, establishes consultation protocols, lists undertakings that are exempt from review, and addresses other issues affecting management of historic properties of interest to the Band. Implementation of the PA contributes to maintenance of American Indian cultural integrity.

Monitoring Question

Are government to government relationships functional?

Results

Communications between the Chippewa National Forest and the Tribes can be described as functional. Establishment of relationships and the continuity of the communications are influenced by changes in leadership both on the Forest and within the Band. Communication protocols continue to evolve becoming more institutionalized as our relationships mature with the Tribes. New employees arriving on the Chippewa learn the importance of regular communication with tribal entities especially if management decisions and actions have potential to impact Tribal rights and interests. A mutually acceptable approach to government to government consultation has recently been the focus of discussions between the Leech Lake Band and the Chippewa. This is one area the Forest Supervisor and Tribal Liaison recognize needs attention and resolution. This is especially important in light of the current trend toward more rule and policy changes at the National level precipitating the need for formal consultation with tribes at the local level. The Forest has been able to successfully facilitate consultations on those topics the Band is interested in. Examples include the Section 8106 and 8103 of the Farm Bill, Forest Planning Rule, and a few others. Regarding National issues the Leech Lake Band prefers to engage the Forest Service in separate consultations as opposed to joining with other Lake States Tribes due to the unique nature of their relationship with the Chippewa NF. The Forest and Region will be involved in consultations with the Leech Lake Band in the near future regarding access and regulatory enforcement issues.

The Forest has completed work on development of a Tribal Relations Strategy. The focus of the Strategy is toward improved relationships through communications with the Tribes and consistent approaches to consultation. The Strategy contains a 5 year action plan which will focus Chippewa National Forest Tribal Relations efforts and resources over the next 5 years.

Monitoring Question

Is the Forest facilitating the right of the Tribes to hunt, fish, and gather as retained via Treaty?

Results

Courts have confirmed that the Leech Lake Band retains the right to hunt, fish, and gather on public lands within the Leech Lake Reservation without regulation by the State of Minnesota (*Leech Lake Band of Chippewa v. Herbst*). A recent U.S. Supreme Court opinion indicates that this status would also apply within the ceded territory (opinion regarding 1855 treaty in *Minnesota v. Mille Lacs of Chippewa*). In these treaty areas Band members use and rely upon a wide array of plant and animal resources. The Chippewa National Forest has a role in maintaining ecosystem health on lands under their jurisdiction so as to have the overall effect of

allowing for continued resource use through Ojibwe hunting, fishing, and gathering activities as reserved by treaty.

President Obama has directed agencies to operate within a government-to-government relationship; to consult with Tribal governments prior to taking actions affecting resources in which Tribal governments may have an interest; to assess the impact of plans, projects, and programs to assure that Tribal governments' rights and interests are considered; and, to remove any procedural impediments to working directly and effectively with Tribal governments.

This is a complex issue and at the heart of the relationship between the Leech Lake Band and the Chippewa National Forest. Evaluating National Forest progress in a quantifiable and objective manner is a daunting feat. This monitoring question will get a highly variable response depending upon where you are sitting in the Chippewa National Forest organization. From the perspective of the Tribal Liaison, generally Forest Service actions have contributed to maintaining and enhancing tribal hunting, gathering and fishing opportunities on the Chippewa National Forest. Forest Service resource managers, planners and decision makers do an admirable job of outreach to the tribal communities, Division of Resource Management, Tribal Historic Preservation Officer and other personnel in considering tribal rights of hunting, fishing and gathering. All Chippewa National Forest employees know that the Forest has a unique relationship with the Band that requires frequent coordination and consultation. This is evident in environmental documents, programmatic agreements, vegetation management alternatives and policies developed on the Forest. A recent example of this is the Chippewa National Forest charge firewood policy. The Forest consulted with the Band and developed policy to ensure Band members' rights to gathering personal use firewood were not impinged upon by requiring a charge firewood permit. Other examples of actions the Forest is taking to enhance and protect traditionally gathered resources include: retaining fruiting shrubs in plantations and planting shrubs in wildlife openings, enhancing blueberry production through prescribed burning, implementation of the mitigation plan for the transmission line. These are just a few of the activities that are ongoing and evolve from regular coordination and communication between Chippewa National Forest staff and Leech Lake Band officials.

Leech Lake Band members are highly protective of their treaty rights within the Leech Lake Reservation. Tribal sovereignty and self determination are very important to the Band. Historically the Leech Lake Band has held a position that its membership is exempt from state and federal regulation within the boundaries of the Leech Lake Reservation. This continues to be an issue the Forest Service Law Enforcement organization and Chippewa NF are challenged with.

Many of the issues identified in the study (McAvoy and Shirilla 2003) suggest that not much has changed in the last eight years depending on your individual perspective. The McAvoy and Shirilla study, (http://www.fs.fed.us/ne/newtown_square/publications/technical_reports/pdfs/2005/326papers/mcavoy326.pdf) revealed a number of issues that can be used as a benchmark for measurement of progress the Forest has made in the area of facilitating the rights of tribal hunting and gathering. The study involved interviews of Leech Lake Band members. When asked if they encounter conflicts when trying to participate in gathering activities, respondents in the Leech Lake study

identified timber harvesting and road closures as the major sources of conflicts. Fifty-three percent of Leech Lake respondents identified timber harvests as disrupting and/or destroying their gathering opportunities in the forest. They especially noted that clearcutting practices often totally destroy plants and game habitat. Some tribal members had been gathering specific plants in an area for years, before a clearcut completely destroyed the area for gathering. Forestry management practices that allow clearcut areas to grow back into a single species stand (usually aspen) often result in a loss of plants and animals that rely on a more diverse ecosystem. Tribal members often indicated in interviews that the forests seem to be managed solely for the benefit of timber corporations, production that offers no value for tribal members.

The other major cause of conflict, identified by 51% of those interviewed, is the closing (gating) of forest roads. These roads are often closed during the summer, which is the time of the year when the forest is used most often by tribal members for gathering. This means tribal members, especially older people, cannot gain adequate access to forest areas traditionally used for gathering. It is particularly galling to tribal members to see these same roads opened in the fall during hunting season so Anglo American tourists can have access to forest areas for hunting. Tribal members also indicated conflicts with commercial picking of resources and off road vehicle use.

The Tribe appealed the 2004 Revised Forest Plan through the formal administrative appeals process. The appeal stated their objections to fundamental aspects of the 2004 Forest Plan. The Appeal Decision determined that Leech Lake Band was appropriately consulted throughout the planning process, that the Forest Plan contains provisions that ensure the Forest continue to meet all treaty obligations and trust responsibilities, such as requiring the Forest to consult with tribal governments and consider traditional cultural practices in project decisions. (Chippewa National Forest, Appeal Decision, August 2005).

Since then the Leech Lake Band has appealed three of the 19 vegetation projects completed since the Forest Plan Revision. Comments and appeal points raised by the Band have been similar on all the projects. One of the appeals was informally resolved by dropping stands in close proximity to a tribal community. In the second project, stands of concern were dropped in a tribal community area as a result of the formal appeal process. In the third, the project was formally reviewed by the Regional Office and the decision upheld. No further modifications were made to the decision. The details of these appeals are presented in the Monitoring and Evaluation reports for FY 2007 and 2008.

The 2004 Forest Plan direction, standards and guidelines for tribal rights and interests were new in that similar direction was not included in the 1986 Forest Plan. Consequently, it has taken time and some trial and error for forest personnel to develop relationships, understanding, and respond appropriately to tribal concerns. Projects developed shortly after 2004 showed few, if any, considerations of tribal gathering opportunities and spiritual values associated with resources. In recent projects, alternatives developed usually take into consideration tribal use areas. Modifications of alternatives and treatments reflect an improved recognition and appreciation for tribal values. Although disagreements on forest management continue to exist, both the Forest and the Band continue to consult on projects and engage in cooperative actions.

Implications

The Forest continues to focus on relevant issues of importance to the Band. Issues that will form the basis for the next 5 year monitoring period include:

- Implementation of transmission line mitigations
- Implementation of non-native invasive species (NNIS) treatments
- Resource Advisory Committee (RAC) project implementation
- Regulatory enforcement
- Maintenance of healthy ecosystems
- Employee education
- Ecosystem restoration in high interest areas
- Increasing Tribal capacity

Recommendations

- Continue to work with the Leech Lake Band of Ojibwe to strengthen cultural awareness, consultation, communication, employment and outreach, partnerships, and resource management.
- Continue steps to draft Memorandum of Understanding with the LLBO to help guide working relationships and define a more consistent manner for working together.
- Continue efforts that facilitate greater involvement of all Tribal members in FS programs and activities afforded the general public.
- Continue connecting key leaders from both governments to help address key issues that may have potential to disrupt relations.
- Continue evaluating need for Tribal Liaison position.

A full report is in the project file and is available upon request.