

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA  
AND THE  
UNITED STATES DEPARTMENT OF AGRICULTURE  
FOREST SERVICE – WASHBURN RANGER DISTRICT

ARTICLE 1 - PURPOSE

The purpose of this Memorandum of Agreement (MOA) is to formalize the cooperative, government-to-government relationship between the Red Cliff Band of Lake Superior Chippewa (Tribe), a *Federally-recognized Indian Tribe* and the United States Department of Agriculture, Forest Service – Washburn Ranger District (FS- WRD). The intent of the MOA is to highlight the existing cooperative relationship between the parties, to outline new cooperative endeavors, and to provide a framework for consultation that honors the government-to-government relationship and federal trust responsibilities.

The MOA is not intended to supersede the MOU with the USDA Forest Service and Lake Superior Chippewa Indians, *MOU Regarding Tribal-USDA-Forest Service Relations on National Forest Lands within the Territories Ceded in Treaties of 1836, 1837, and 1842* (MOU), ratified by the Tribe as a band of Lake Superior Chippewa Indians and FS-WRD as a subunit of the Forest Services' Eastern Region. Instead the MOA builds on the MOU to formalize programmatically the parties' shared vision of natural resource management, scientific research, economic development, training, and education that maintains Ojibwe cultural lifeways, ensures members' access and use of locally-available off-reservation resources, and emphasizes management activities for the benefit of native species.

ARTICLE 2 – STATEMENT OF MUTUAL BENEFIT

A clearly-defined framework for consultation mutually benefits the Tribe and FS-WRD by actively seeking tribal perspective, minimizing disagreement and improving the overall effectiveness of communication while efficiently carrying out the mandates of federal law. Cooperation between the Tribe and FS-WRD will strengthen the government-to-government relationship and collaborative involvement between the parties for the benefit of shared resource management goals and off-reservation treaty rights on federal lands. Detailing the programmatic

relationship between the parties will facilitate the exchange of scientific and Traditional Ecological Knowledge (TEK) decision-making tools, allow the parties to voluntarily leverage funding for mutually beneficial projects, and enhance collaborative planning and management of local resources. The parties will strive to achieve mutual landscape restoration goals and to foster a unified stewardship approach while seeking and promoting opportunities for the Tribe's economic development.

### ARTICLE 3 – AUTHORITY

The parties acknowledge and cite the following authorities in support of this MOA:

1. TREATIES The treaties between the United States and Lake Superior Chippewa Indians, specifically Treaty of 1836, 7 Stat 491, Treaty of 1837, 7 Stat. 536, and Treaty of 1842, 7 Stat. 591.
2. FEDERAL LAWS The Act of 1913, 38 Stat. 77 (1913); the Organic Administration Act of 1897; the Weeks Act of 1911; the Indian Reorganization Act of 1934; the Multiple Use Sustained Yield Act of 1960; the National Environmental Policy Act of 1970; the Indian Self-Determination Act of 1974; the Forest and Rangeland Renewable Resources Planning Act of 1974; the National Forest Management Act of 1976; the National Historic Preservation Act of 1966; the Native American Graves Protection and Repatriation Act of 1990; 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 Cultural & Heritage Cooperation Authority of 2008 (Farm Bill) any other applicable laws for the administration of the National Forest System and the protection of tribal sovereignty and trust resources.
3. EXECUTIVE POLICY E.O. 12898-Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations (1994); Presidential Memorandum of April 29, 1994, Government-to- Government Relations with Native American Tribal Governments; E.O. 13007-Indian Sacred Sites (1996); E.O. 13175-Consultation and Coordination with Indian Tribal Governments (2000); USDA Departmental Regulation 1340-007, Policies on American Indians and Alaska Natives (2008); USDA Departmental Regulation 1350-002, Tribal Consultation, Coordination, and Collaboration (2013); Forest Service Manual 1563-American Indian and Alaska Native Relations (2012); Forest Service Handbook 1509.13-American Indian and Alaska Native Relations

Handbook (2012); Chequamegon-Nicolet National Forest Land and Resource Management Plan (2004).; File Code 1560 – Tribal Relations Commitments from Regional Forester (2014); President Barack Obama Memorandum of Tribal Consultation (Nov. 5, 2009)

4. EXISTING AGREEMENTS MOU Regarding Tribal-USDA-Forest Service Relations on National Forest Lands within the Territories Ceded in Treaties of 1836, 1837, and 1842; MOA Regarding Restoration of Sharp-tailed Grouse, Aagask, in Moquah Barrens, Chequamegon-Nicolet National Forest – A Traditional Subsistence Species Project
5. TRIBAL LAW Appendix A: Model Off-reservation National Forest Gathering Code (Model Code of MOU)

#### ARTICLE 4 – GENERAL CONSULTATION FRAMEWORK

The Parties agree that Forest Service Washburn Ranger District (FS-WRD) decisions affecting Forest Service lands are decisions affecting both Parties. The formulation of these decisions requires early notice, meaningful collaboration and consultation, and an accountable process for tracking the Tribe's interests and concerns.

Therefore, the Parties agree that they shall consult on a bilateral Government-to-Government basis on decisions:

- That may affect the abundance, well-being, distribution and access to the natural resources on FS-WRD lands, including forest management, wildlife management, invasive species management, air management, and surface and groundwater management, or associated activities that may impact those resources;
- That may affect the Tribe's cultural life-ways and cultural properties;
- That have potential to enhance opportunities for economic development, including education, training, and employment;
- That may have implications for the Tribe's right to self-governance, including the right to self-regulate;
- That has implications for the effective management of Forest Service lands near the Tribe's lands;
- Other issues of mutual concern or interest.

In addition, the Parties agree that the goal of such consultation shall be that any such decisions should expressly recognize the Tribe's rights to self-governance and its right to access its lands, its right to participate in lawful activities on Forest Service lands, and to

enjoy economic prosperity. 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 that:

- a. As to decisions that result in particular land management actions, in policies or guidelines governing those actions and to issues subject to this MOA:
  - i. The FS-WRD shall consult with and facilitate effective participation by the Tribe at all stages and levels of the planning and decision making process. This collaboration is recognized as a dynamic process that must include consultation on a consistent and timely basis at the appropriate levels of government and that must be flexible to deal with ever-changing circumstances and adaptive natural resource management responses.
  - ii. The FS-WRD shall consider the effects of its decisions on the Tribe and the United States' trust responsibility to the Tribe. In decision and analysis documents, including those required by the National Forest Management Act and the National Environmental Policy Act, decision-makers will show how tribal information and involvement was taken into account in analyzing the effects of potential management actions and in making the decision.
  - iii. The Tribe and the FS-WRD will strive to reach consensus. Where consensus cannot be reached on a Forest Service decision:
    - They will attempt to resolve any dispute or disagreement first by good faith discussions between the Tribe and the Forest Service deciding official. The Tribe may raise any matter not resolved at this level to a higher Forest Service official, including the appropriate Forest Supervisor, Regional Forester, or Chief of the Forest Service. The Forest Service agrees to delay a final decision on the unresolved matter until this process has had the opportunity to take place within a reasonable amount of time or not less than 60 days.
    - The FS-WRD may make and implement the decision.
    - In addition to the procedures provided by the MOA, the Tribe may utilize the predecisional administrative review (referred to as "objection," 36 CFR 261 Part 218) process for proposed actions of the Forest Service concerning projects and activities implementing land and resource management plans documented with a Record of Decision or Decision Notice.
- b. Nothing in this MOA implies that all disputes between the Tribe and FS-

WRD will be resolved. The Parties recognize that there may be times when they disagree on principle; but they concur that these disagreements shall not stand in the way of an effective, respectful working relationship nor preclude continuing consultation in good faith.

- c. During the course of their dealings, the Tribe and FS-WRD shall ensure that they have identified their representatives with whom the other Parties should interact regarding particular decisions or particular types of decisions.
- d. Nothing in this MOA shall preclude the Tribe and FS-WRD from discussing matters or advancing particular requests that are not part of this MOA.

In addition:

1. FS-WRD will notify the Tribe of proposed decisions or actions on the Washburn Ranger District by providing a consolidated summary of planned projects on a regular basis or at least biannually.
2. Proposed decisions or actions will initially be exchanged through the FS-WRD's Land Management Planner and Tribe's Treaty Natural Resources Division Administrator for dissemination to appropriate staff. Meetings between the Tribe and FS-WRD to review in detail specific proposed decisions or actions in which the Tribe has expressed interest or concern will be held upon request of either party.
3. NHPA Section 106 and NAGPRA consultation will be coordinated through the Forest's Archaeologist with the Tribal Historic Preservation Office.
4. The CNNF Quarterly Schedule of Proposed Actions, identifying the nature and location of proposed Forest projects to the Tribe, is available for review on the Chequamegon-Nicolet National Forest website at <http://www.fs.usda.gov/detailfull/cnnf/landmanagement/projects/?cid=stelprdb5117814&width=full>

#### ARTICLE 5 – SPECIFIC COOPERATIVE PROJECTS, PROGRAMS AND NEW ENDEAVORS

1. TRIBAL YOUTH INTERNS: Since 2013, the FS-WRD has partnered with the Tribes Treaty Natural Resources Division (Division) to enhance the learning experience for the interns of the summer tribal youth program. FS-WRD typically hosts the 3-4 high school and college age tribal members for up to two weeks of their

summer schedule. During that time, the interns work shadow FS-WRD staff and also get directly involved with field activities on FS WRD lands.

2. CAREER DEVELOPMENT OPPORTUNITIES: The two parties shall work together to develop opportunities (e.g., training, youth outreach, educational tours) that may help lead to employment of tribal members in the natural resources field.
3. RESTORATION OF SHARP-TAILED GROUSE IN THE MOQUAH BARRENS: The Tribe has provided Division staff to the FS-WRD since 2015 to complete habitat restoration and enhancement work at the Moquah Barrens. The Tribe was also an active partner in the trapping, translocation and post-release monitoring. An existing MOA describes the parties' roles and responsibilities.
4. RELOCATION OF NUISANCE WILDLIFE: Due to the Tribe's small land base, relocation of wildlife that create nuisance in residential areas can be problematic, such as black bear that become habituated to residential food sources. Through collaboration the two parties shall work together to identify FS-WRD lands for the purpose of relocating nuisance wildlife.
5. TIMBER PRODUCTS : The two parties shall work together to identify and make available to the Tribe areas for harvest of forest products for traditional, cultural and non-commercial purposes utilizing MOU Appendix C – Tribal Timber Harvest framework.
6. WOLF RESEARCH: The Division will work collaboratively with wildlife staff of the FS-WRD to trap, collar and monitor the movement of wolves from packs that utilize both the reservation and FS-WRD lands or from packs with territory that closely overlaps both reservation and FS-WRD lands. Both parties shall strictly protect data shared from this shared research endeavor and shall prevent the disclosure of data collected without previous authorization of the other party.
7. PRESCRIBED BURNS: The Tribe recently began a wildland fire program and has staff members certified to participate in wildland and prescribed fire activities. Per request of FS-WRD, the Division can provide staff to assist FS-WRD with prescribed burn activities. This will be facilitated through a Cooperative Agreement the Tribe has with Bureau of Indian Affairs. Likewise, the Division will notify FS-WRD when prescribed burn activities are scheduled on Red Cliff reservation lands in the event that FS-WRD is available to provide assistance. All cost and liability of tribal, BIA

and FS-WRD personnel will be covered by their own agency, unless funding is available from one or more of the agencies and incorporated into a cooperative/cost share agreement. All sharing of prescribe fire personnel between the BIA, Tribe and FS-WRD shall be documented and requested using the National Standard Resource Ordering Process (ROSS). All resource orders will be completed and processed through the Wisconsin Interagency Coordination Center (WICC) located in Rhinelander, WI. If personnel are requested for wildfire suppression activities, personnel shall follow the national standard ROSS procedures and be facilitated and requested through WICC. All personnel utilized on prescribe fire or wildfire, must meet NWCG and 310-1 certification requirements, in addition to NWCG and 310-1, FS-WRD personnel must also meet Forest Service supplemental certification requirements.

#### ARTICLE 6 – ADMINISTRATION OF THE MOA

1. Each party shall designate a person to serve as a lead contact for the administration of this MOA, which will be updated as needed from time to time.
2. Each party shall attend the annual meeting held the second Thursday in February to review and update the MOA. The lead contacts for each entity will organize the meeting.
3. Utilizing existing authorities, the Parties agree to work to meet the objectives of this MOA.
4. Each party shall provide, within its existing capacity, technical assistance and expertise in the implementation of mutually agreeable projects.
5. The Tribe shall provide, within its existing capacity, technical assistance and expertise in the implementation of projects that address the Tribe's cultural life ways, traditional cultural properties and practices, and traditional ecological knowledge (TEK).
6. Each project, proposal, or agreement developed by the Parties shall be agreed to in writing by the Parties and appended hereto as ancillary to the MOA or as an independent agreement utilizing authorities not cited herein.
7. The Forest Service will cooperate with the Tribe to identify funding opportunities, training opportunities and other means of assistance to implement the provisions outlined in this agreement.

8. FREEDOM OF INFORMATION ACT (FOIA). Unless exempted, information furnished to the Forest Service under this MOA 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); in addition to the prohibition of certain disclosures contained in section 8106 of the Cultural and Heritage Cooperation Authority of 2008 (25 U.S.C. 3056). Unless Forest Service is required to disclose specific information, culturally sensitive or proprietary information shared with the Forest Service shall be kept confidential by the Forest Service.
9. PARTICIPATION IN SIMILAR ACTIVITIES. This MOA in no way restricts the Forest Service or the Tribe from participating in similar activities with other public or private agencies, organizations, and individuals.
10. COMMENCEMENT/EXPIRATION/TERMINATION. This MOA takes effect upon the signatures of the Forest Service and the Tribe and shall remain in effect, unless terminated by either Party. Either the Forest Service or the Tribe may terminate this MOA at any time with a 60-day written notice to the other Party.
11. AMENDMENTS. This MOA may be amended from time to time upon written agreement of the Parties. Such amendments may include changes to any attachments to this MOA, and/or may include additional agreements and/or MOA's between the Parties.
12. RESPONSIBILITIES OF PARTIES. The Forest Service and the Tribe 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 MOA. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
13. NON-FUND OBLIGATING DOCUMENT: Nothing in this MOA shall obligate the Forest Service or the Tribe 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 Tribe 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 MOA does not provide such authority. Negotiation, execution, and administration of each such agreement must comply with all applicable statues and regulations.

- 14. ESTABLISHMENT OF RESPONSIBILITY. This MOA 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.
- 15. TRIBAL SOVEREIGNTY. Nothing in this MOA is intended to waive the sovereign immunity of the Tribe from suit or otherwise impair the sovereignty of the Tribe.
- 16. 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.

The following individuals serve as the lead contact for the administration of this MOA:

FOREST SERVICE	RED CLIFF BAND OF LAKE SUPERIOR CHIPPEWA
TITLE: District Ranger	TITLE: Treaty Natural Resources Division Administrator
ADDRESS: 113 East Bayfield St., Washburn, WI 54891	ADDRESS: 88455 Pike Road, Bayfield, WI 54814
PHONE: 715/373-2667	PHONE: 715/779-3750
EMAIL: mdavalos@fs.fed.us	EMAIL: chad.abel@redcliff-nsn.gov

In witness whereof, the Parties have executed this agreement, as of the lasted date written below.

  
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 BRYAN J. BAINBRIDGE  
 Tribal Chairman, Red Cliff Band of Lake Superior Chippewa

4/18/2017  
 \_\_\_\_\_  
 Date

*Michelle W. Davalos*  
 \_\_\_\_\_  
 MICHELLE DAVALOS  
 District Ranger, Washburn Ranger District Chequamegon-Nicolet NF

4-18-17  
 \_\_\_\_\_  
 Date

