



Leech Lake Band of Ojibwe

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September 9, 2003

Forest Plan Revision
Chippewa National Forest
200 Ash Avenue. NW
Cass Lake, MN 56633-8929

Dear Revision Team,

We have reviewed the proposed Forest Plan for the Chippewa National Forest ("CNF") and the associated documents and we find the proposed plan, based on Alternative E, to be unacceptable. The fundamental reason for the Leech Lake Band's disapproval is that the CNF and the Regional Office have refused to acknowledge that they must uphold a trust responsibility to the Leech Lake Band of Ojibwe ("the Band"), and the plan does a deplorable job of addressing issues of concern to the Band. Further, the proposed plan does a poor job of addressing ecological, biological, and botanical issues on the forest. Throughout the revision process our staff have been deeply involved and contributed a great deal of time toward adding tribal issues and concerns to the plan. It is very disappointing, to say the least, that few of those issues and concerns have made it into the proposed plan.

The Forest Service said it was committed to doing a better job of addressing resource issues and its trust responsibilities to the Band. We were hopeful that the proposed Forest Plan revision would reflect the Forest Service's policy in carrying out the unique relationship and obligation the United States Government has with Indian Tribal Governments. That policy is supposed to include a commitment to: (1) maintain a governmental relationship with federally recognized Tribal Governments; (2) implement programs and activities to honor Indian treaty rights and to fulfill legally mandated trust responsibilities; and (3) administer programs and activities to address and be sensitive to traditional Native religious beliefs and practices.¹ However, the proposed Forest Plan fails on all counts.

The Forest Service Manual itself provides that "[t]he trust responsibility is a legally enforceable obligation, a duty, on the part of the U.S. Government to protect the rights of

¹ Forest Service Manual 1500 – External Relations (1563.03 Policy).

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Federally Recognized Indian Tribes."² The Forest Service has an obligation to consult with Federally Recognized Tribes on a government-to-government basis.³ But saying that CNF and the Band have a "unique government-to-government relationship" is meaningless if CNF continues to ignore what this means. The first step in resolving this problem is for the Forest Service to put into the Forest Plan the wording that **"the US Forest Service as a federal agency has trust responsibility to uphold the hunting, fishing, and gathering property rights that were retained under treaty by the Leech Lake Band of Ojibwe, and that these retained rights in most cases supercede other laws and agreements."** Until this fundamental wording is put into place and substantive measures are taken to address and implement these retained rights, this plan will continue to be unacceptable to us.

Early in the revision process the Band, along with your staff, considered developing a "tribal alternative" but decided against it because issues and concerns that involve treaty rights are linked to federal laws and treaties that have to be in all Forest Plan alternatives. Instead, we worked with your staff on "minimal tribal standards" that were designed to meet your treaty obligations and that would be incorporated into all alternatives. Unfortunately little of the intent and wording of these standards were incorporated into the proposed plan.

Even with all the effort the Band put into the revision with your staff, we were never able to get beyond basic concepts to begin addressing major issues that needed to be examined from a tribal perspective. You never gave your tribal liaison staff the hours to conduct this work and in the end had a staff person who never even met with the tribal representatives write the tribal sections. These sections were identical to the plan from a western forest, the Sawtooth National Forest. That the Forest Service would adopt verbatim sections from the Sawtooth plan ignores the unique position of the CNF: nowhere else in the United States is there a national forest overlapping onto a tribal reservation. It is completely disrespectful to the Band, not to mention the CNF staff that diligently worked many hours over many months to develop tribal standards, to be told that the text of someone completely disconnected from our unique situation will be used instead of our group's work. This definitely shows a lack of consideration of the Band's attempts to address concerns and issues that need to be resolved to implement a relationship that the Forest Service claims is one of co-management.

The Forest Service Manual requires that the Forest Service must "[c]onsult with Indian tribes on plans, projects, programs, or activities that may affect the tribe's reserved rights on the National Forest System Lands...[and] incorporate the information from such consultations into planning documents and the decisionmaking process...[and] show tribes how their information was used."⁴ Because CNF has done such a poor job of addressing its trust responsibility under the preferred alternative and has failed to

² Forest Service Manual 2235.1, Section 2: Treaty Rights and Forest Service Responsibilities, pp. 51-52 (emphasis in original).

³ Id. at p. 53.

⁴ Id. at p. 52.

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incorporate the information discussed during our meetings, we have no choice but to recommend parts of other alternatives that will do a better job.

One of the items generated by this planning process was a map of areas that are important to and heavily utilized by tribal members (see Figure 1). Due to the importance of these areas it was agreed between the Forest Service and the Band that these areas would be managed in such a way as to focus on meeting the needs of tribal members. This map did not even make it into the Draft Environmental Impact Statement (DEIS) or the proposed plan, much less any of the details as to how these areas would be managed to meet tribal members' property rights which were retained under treaty. It appears to us that without cutting the areas important to tribal members there is no way of meeting the harvest levels as proposed under Alternative E. We demand that this map be put into the Forest Plan along with detailed standards and guidelines showing how these areas will be managed to fulfill your trust responsibility.

Other specific comments, concerns and suggestions pertaining the lack of recognition of the reservation and trust responsibility issues follow below.

Lack of recognition that the CNF is part of a reservation

Throughout the revision documents there is a general lack of recognition that the CNF is part of an American Indian reservation. If you look back at the origins of this forest you will find that it was originally protected because the federal government was doing a poor job of upholding the property rights the band retained under treaty. Since the reservation was here long before the national forest, the plan should say that much of the national forest, or the original national forest land, is located within the Leech Lake Reservation. For example, in the Executive Summary, SUM-1 Paragraph 2, it is recognized that the forest shares its land base with counties, but not a reservation. You also failed to recognize that you have trust responsibility in this section.

Trust responsibility

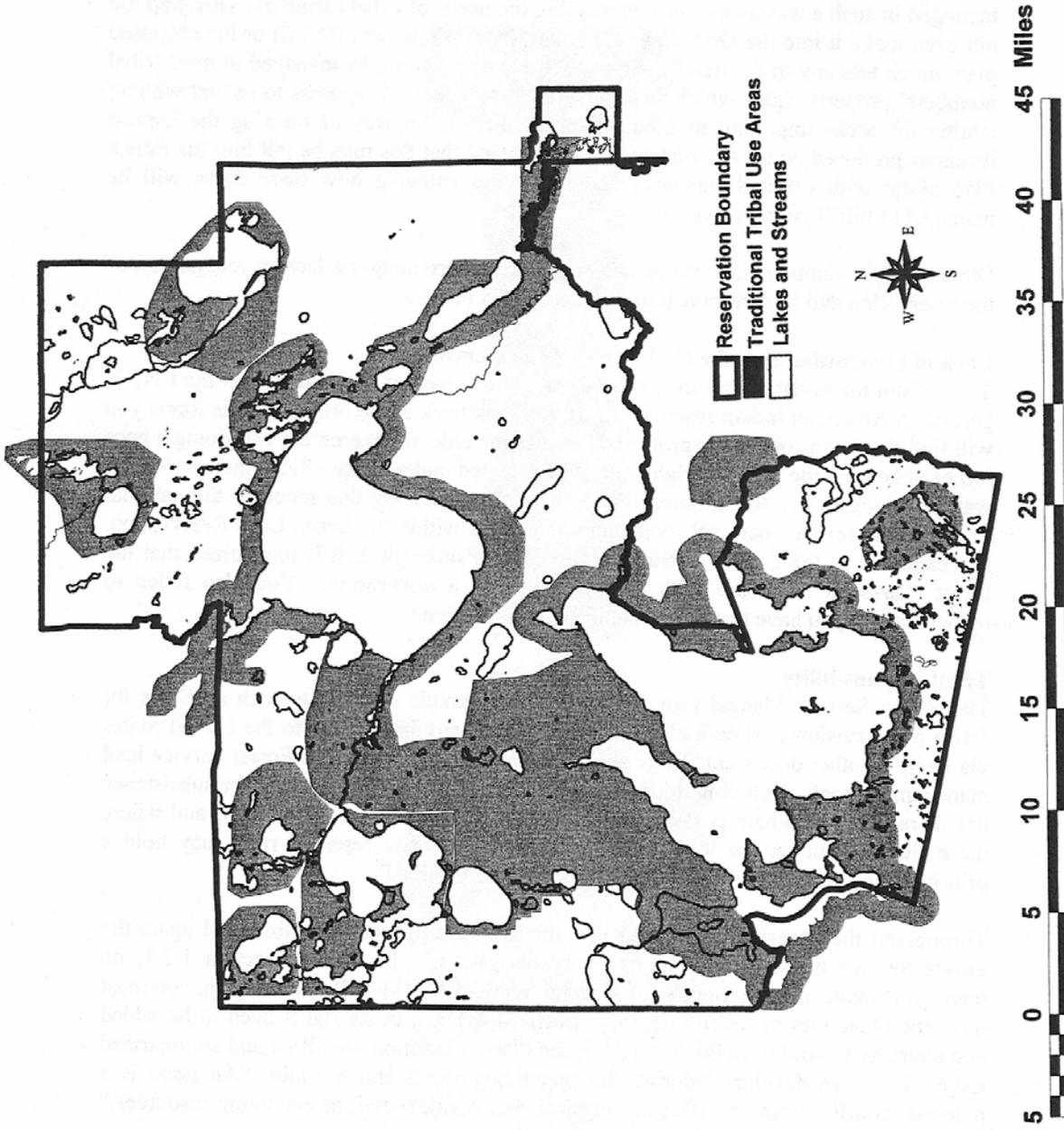
The Forest Service Manual provides that "programmatic documents such as EIS's for forest plan revisions...should also include a map of any land ceded to the United States via treaty or other document. There should be a discussion of overall Forest Service land management goals, including duties to honor treaties or acts of Congress for subsistence use of resources. Where possible, include the extent of the rights identified and where these rights occur on the forest. The existence of a treaty reserved right may hold a priority for a specific site or location over a proposed action."⁵

Throughout the Forest Plan revision documents and proposed plan, time and again the Forest Service neglects to state its treaty obligations. In SUM-2 Section 1.2.1, no mention is made of obligations under federal treaty. In SUM-3, Purpose, again, you must meet the objectives of federal treaties. In SUM-4 1.3.3, treaty rights need to be added and addressed. And in SUM-5 to 8, 1.5, the "Issues" section identified and summarized issues that were developed during the planning process and it states, "An issue is a potential conflict from an effect on physical biological, social, or economic resources."

⁵ Id. at p. 56.

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Figure 1. Important Tribal Traditional Use Areas



Map by LL Res. DRM Aug. 2003
Data from USFS, DRM

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First among those effects should have been your treaty trust responsibility, but it isn't mentioned at all. We find it shocking that this fundamental issue, which has been ongoing for many years, isn't even on the list. It must be added and addressed.

This lack of recognition of trust responsibility continues in the DEIS where on page 1-5, "Purpose and Need," you should also disclose that you must address the trust responsibility issues under federal treaty. Page 1-9 section 1.3.3 should also identify the need to address treaty trust responsibility.

On DEIS page 1-12, Socio-economic Considerations, you finally get around to stating that the "Revised Forest Plans need to consider these Tribal interests and plans as well as state landscape level plans and county comprehensive plans." In so doing, you have equated tribes with the state, counties, and other governments, even though you have a higher obligation to the tribes, especially Leech Lake. You also state that the forest service needs to "consider" our interests and needs; however, under treaty you have to make every legal effort to uphold those obligations that fall under treaty rights, not simply consider them.

On page 1-14, "Issues," again, upholding tribal trust responsibility should be the first item on the list and the Issue Indicator would be improvements in meeting treaty obligations.

You need to change the wording in section 2.31, "Laws, Regulations, and Policies" (page 2-6), about American Indians to read, "Recognize the unique status of American Indians and their rights retained by treaty with the United States. The USFS as a federal agency has a trust responsibility to uphold the property rights that the band retained under treaty with the federal government. In most cases, because these are federal treaties, they supercede other laws and regulations."

In section 3.1.1, "Social and Economic Setting," on page 3.1-2, "Chippewa NF History," you have neglected to outline the events that led up to the creation of the forest. It is inexcusable to ignore the fundamental reason for this national forest to exist. On page 3.1-3, in the map in Figure INT-1, the outline of the reservation is shown, but you neglected to designate it in the legend. In the map in Figure INT-3 on page 3.1-5, you outline the national forest, state, and county ownerships, but not the reservation boundary. No maps showing other governmental units or other ownerships even made it into the Proposed Forest Plan.

In 3.1-7 you outline the economic history of the region. By reading this section you would think no one lived here prior to European settlement and the mining and logging booms of the mid to late 1800s. Where is the mention of the thriving tribal communities and economy that existed prior to the arrival of Europeans?

DEIS page 3.1-11 Tribal Rights and Interests – The section on Tribal Rights and Interests is far too important to have been tucked away in the DEIS; instead it should have been designated as a separate section in the proposed Forest Plan. The Band also takes

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exception with the Forest Service's characterization of the sovereign status of federally recognized tribes. The DEIS incorrectly states that "federally recognized tribes have a sovereign status similar to or above that of State government." The Band's tribal rights and interests were retained under treaty and, as the Forest Service Manual itself points out, "[t]he Supreme Court has held that treaties are superior to State laws, including State constitutions, and are accorded equal status with Federal Statutes." Further, as the Manual clearly states, under Article II, Section 2, Clause 2 of the United States Constitution, "treaties are equal to Federal law and are binding on states as the supreme law of the land."⁶ The Band believes that the Forest Plan revision should make this distinction clear, rather than minimizing the significance of our sovereign status.

DEIS 3.9.2 Social Sustainability – The gathering of traditional resources is based on continuing traditions passed down from prior generations, not only for the sole purpose of recreation. A traditional gathering area should not be thought of as an equivalent activity such as a favorite fishing spot. Indicator 1 should be reworded so as not to combine, or to make it appear as though tribal values are similar or comparable to, non-Indian recreational activities. Indicator 2 needs to more specifically state the Band's interests and the importance of these areas to Band members who depend upon them.

Forest-wide goals

Under the "Forest-wide Goals" section (page 2-3) of the draft plan it states that you "Contribute to efforts to sustain the American Indian way of life, cultural integrity, social cohesion, and economic well-being." Under trust responsibility you must do more than contribute; you must assure that these qualities are maintained. The Forest Service Manual requires that "[e]ach of these resources, if they are related to the proposed action, needs to have associated with it, a discussion of a trust duty that may impose upon the Forest Service a need for special consideration or protection...For a broader, programmatic NEPA document, such as the EIS for a forest plan revision, a more detailed discussion is needed" for such things as wildlife, plants, roots, and medicinal/spiritual, reserved rights, and cultural resources.⁷

Hierarchy of laws

The Forest Service Manual requires that "[t]reaties, acts of Congress...and executive orders after 1871, also obligate the United States and its agencies to fulfill certain trust responsibilities. Planning documents should discuss this complex and legal relationship."⁸ The Manual also provides that broad, programmatic NEPA documents such as the EIS for forest plan revisions should include a discussion of "all treaty and other rights and their relationship to the proposed action."⁹ Also, "the NEPA document should clearly indicate that the proposed action and all alternatives meet Forest Service requirements and comply with American Indian Treaties, executive orders, or statutory rights and address individual Indian interests."¹⁰ In the draft forest plan (page 4) you list

⁶ Id at p. 44.

⁷ Id at p. 57.

⁸ Id at p. 53.

⁹ Id at p. 55.

¹⁰ Id at p. 56.

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various laws, acts and executive orders you must follow. Treaties are the highest ranking of laws and must be included to reflect the treaty rights of American Indian tribes. Accordingly, you must include the treaties, executive orders, etc., that involve treaty rights with the Band. Since treaties and executive orders are the highest order of law applying to federal agencies' relationships with tribes, they should be first on the list.

Recognition of tribal management authority and jurisdiction

Under the "Rare Natural Resources" section of the Proposed Forest Plan (A-27) you discuss the relationship with the state with regard to using its sensitive species list when updating the R9 list and considering the species they have listed in reviewing projects. If you are going to utilize a state list you also must utilize any similar tribal lists. You also state in this section that, "Except for federally listed species and migratory birds, the State of Minnesota has responsibility on National Forest land for species populations, while the National Forest has responsibility for habitat management on forest system lands." This is blatantly disrespectful of the Band and is but one more example of the failure of the Forest Service to recognize the jurisdiction and management authority of the Band over species found within its reservation boundaries. Wildlife populations are largely co-managed by the DNR and the Band, as we both set seasons, often cooperatively. There are, however, some resources that the reservation has exclusive jurisdiction over such as bait, non-game fish, and wild rice. This section of the draft plan needs to be rewritten to recognize these provisions.

Special Management Complexes

Under Alternative E all Special Management Complexes (SMCs) have been dropped. Tribal members use many of these areas extensively because, to a large degree, they are more-or-less intact stands where traditionally gathered materials can still be found (compare Figures 1 and 2). We want the SMCs to be reinstated, as they have high value to tribal members and they are some of the last intact tracts that will serve as species reservoirs to repopulate other areas. There is a great deal of overlap between SMCs and high tribal use areas (see Figure 2) so by removing the special status of these areas and targeting these areas for harvest you will violate your trust responsibility to the Band.

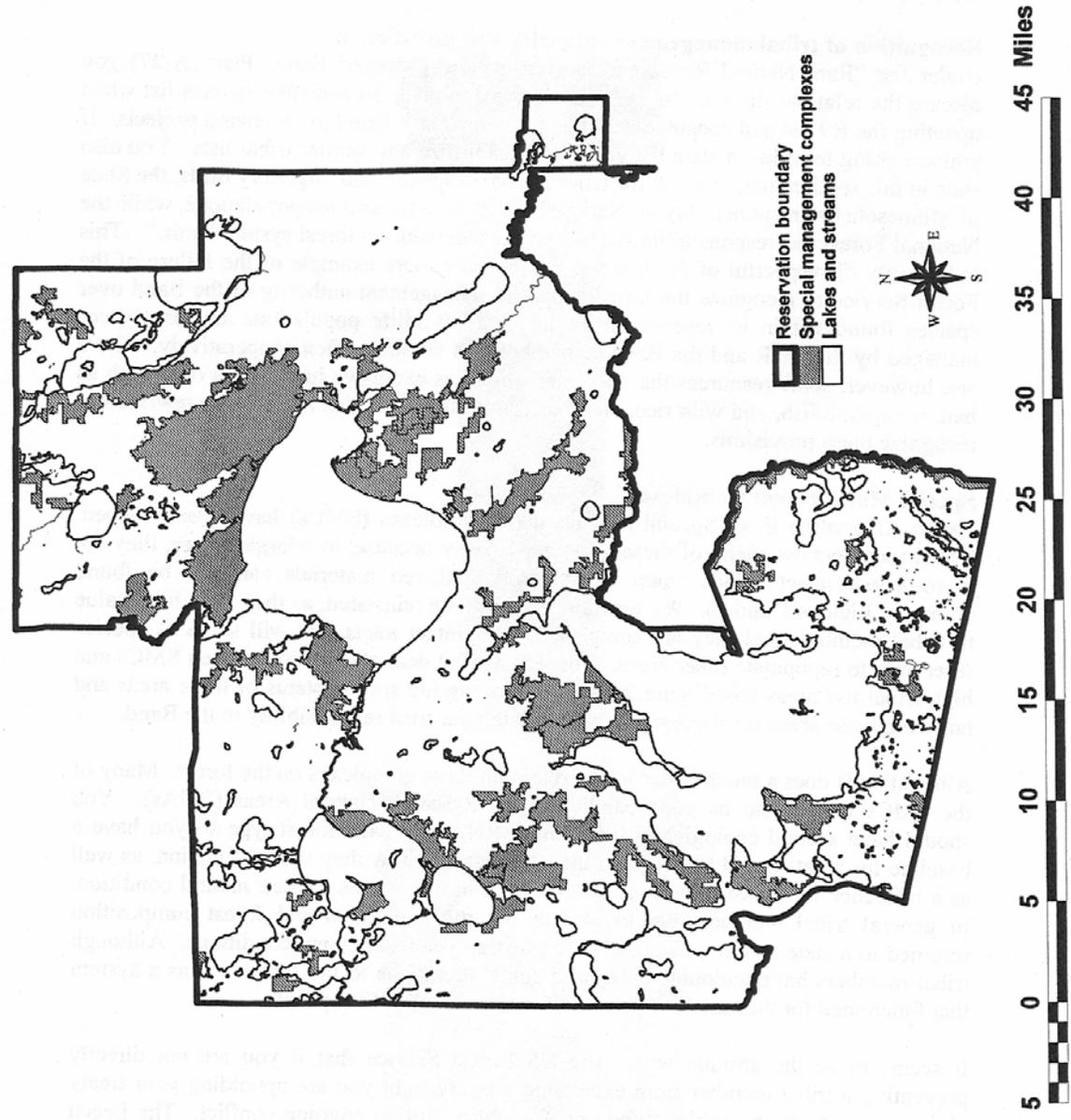
Alternative B does a much better job of retaining these complexes on the forest. Many of the SMCs would also be good candidates for Research Natural Areas (RNAs). You should have several ecologically functioning RNAs for each forest type so you have a baseline for what should be found in these forests and how they should function, as well as a reference for measuring progress toward returning stands to their natural condition. In general tribal members would like to see the conditions and forest composition returned to a state as close as possible to pre-European settlement conditions. Although tribal members have undoubtedly caused some alterations to the forest, it was a system that functioned for thousands of years before the arrival of Europeans.

It seems to be the attitude within the US Forest Service that if you are not directly preventing a tribal member from exercising a treaty right you are upholding your treaty obligations. As long as this attitude persists there will be ongoing conflict. The Leech Lake Band never relinquished their property rights assured under federal treaty to hunt,

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Map by LL Res. DRM Aug. 2003
Data from USFS, DRM

Figure 2. Special Management Complexes on the Chippewa National Forest



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fish, and gather on the lands within the reservation. But in order to exercise these rights, the resources must be present in high enough numbers to sustain these activities. When challenged in court, such issues are settled according to the terms and conditions that were understood by the parties at the time the treaty was made. Surely tribal members would have never agreed to these provisions had they known that in the future they would become scarce due to the mismanagement that has occurred over the past 100 years. Undoubtedly, it would have been their understanding that the forests and gathering opportunities would be similar in the future to what they were when the treaty was signed.

Non-Native Invasive Species (NNIS)

In the DEIS, six pages are devoted to NNIS, yet in the draft Forest Plan the issue is barely mentioned. On page 2-18 of the proposed plan, NNIS appears under the wildlife objectives. This important issue should have a separate section, since invasive species introductions are second only to loss of habitat due to development in causing species extinctions worldwide. The two objectives listed (O-WL-40 and 41) are completely insufficient: O-WL-40 states that the Forest Service will “(r)educe the spread of terrestrial or aquatic non-native invasive species that pose a risk to native ecosystems” but the standards and guidelines are abysmal: there is no standard for NNIS management, and the guideline (G-WL-21) only says, “During project implementation, reduce the spread of non-native invasive species”. Not only is this redundant, but it says nothing as to how to reduce the spread or how to determine what species to concentrate on. The tables from the DEIS were not carried over to the proposed plan.

With this lack of direction in the Forest Plan, how do you expect to implement Executive Order 13112? The Executive Order clearly states that federal agencies shall “not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States. . .” The Forest Service is well aware, as are other agencies and organizations, of the numerous ways invasive species are introduced and spread, including contaminated seed, mulch, gravel, mowers, logging trucks and equipment, other heavy equipment, ATVs, etc., used in Forest Service projects or on federal land.

In addition, in the objectives it is stated that Integrated Pest Management (IPM) will be used to manage NNIS (page 2-18). There’s a definite disconnect between that statement and the definition of IPM in the glossary at the end of the proposed plan, which was apparently intended to apply only to tree diseases, pests, and damage. The usual definition of Integrated Pest Management refers to a combination of manual, mechanical, cultural, chemical, and biological control methods to manage invasive species, not “wind, frost, hail, animals, insects and disease” that “reduce the vigor or cause mortality of trees.” As in so many areas of the plan, “vegetation” seems to be equated with “marketable tree species”. Your definition is laughable and only underscores the fact that the Chippewa National Forest is intent on becoming nothing but a big tree farm.

Lest invasive species be perceived as just a bunch of weeds that don’t have any impact on trees or forests, think about the American chestnut and American elm, trees once

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common in the canopy of US forests but now rare as a result of diseases from other continents. Various budworms, gypsy moths, emerald ash borers, and two-lined chestnut borers are either already here or will likely arrive from overseas or from other states in the future. Even garlic mustard and non-native earthworms may prove to affect soil chemistry and tree seedling germination and survival. By not dealing with invasive species that damage the ecosystem you are violating your trust responsibility.

As for the usual definition of IPM, currently the Chippewa NF is exploring the use of herbicides on the forest, since the Great Lakes Agreement has been amended to allow for it. We suggest that the appropriate environmental assessments be done to allow not only the use of herbicides in recreational areas and on severe infestations of invasive plants, but also the use of biological control in the management of invasive species, and that wording be included in the Forest Plan to that effect. (Biological control has not been used on the forest service lands for the past two years because the appropriate NEPA documents have not been written, even though it had been used in the past through the cooperative weed management agreement with Leech Lake Band of Ojibwe.) Invasive species are increasing while the forest has the equivalent of one hand tied behind its back when it comes to fighting them.

Fire risk

Fire risk is rated under the various alternatives. We question some of these rankings. The CNF has relatively few fires and, due to the extensive road system along with natural lake and stream barriers, we do not think that under any alternative you ever reach a high fire risk level. Secondly, about the only forest type that approaches a high level of risk is pine plantations, which are most prevalent in Alternatives A and C. Under alternative B the goal was to be to return fire to the landscape as in pre-settlement times. If this is done the risk under this alternative is lowered. An honest assessment of fire risk is needed.

You should also keep the option of utilizing stand replacement fires as an option. You are having a very hard time regenerating some tree species to say nothing about the entire community that should be associated with them. In some cases, in order to keep these habitats on the landscape stand replacement fires without harvest may be the only way of doing this.

Another fire-related issue that needs to be addressed is the effect of prescribed fire on both surface and subsurface archaeological artifacts. Prescribed fire should be avoided in all areas where there are identified and known archaeological properties.

Forest and timber-related issues

Clear-cutting--One of the major issues that you repeatedly hear about from tribal members is opposition to clear-cutting as a method of harvesting trees. This method of harvest is principally responsible for damage to our forest, loss of species, and conflicts with traditional gathering. Clear-cutting is touted as a substitute for natural catastrophic disturbance, but in reality it is not. Even after the most severe wind-throw event many trees survive, and the resulting tangle of trees provides a bonus for some wildlife species such as snowshoe hare, pine martin, ruffed grouse, and Canada lynx. The other

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catastrophic event that clear-cuts are supposed to replicate is stand replacement fires. But in these fire events much of the nutrients and minerals on the site are retained and recycled, while the fire-damaged trees provide habitat for certain species of wildlife. Even when aspen does become a big component in burned-over areas, its presence will make these areas relatively resistance to fire; over time these stands often convert to pine and aspen will decrease in abundance. Once the stand has a heavy component of pine it starts to become fire-prone and may burn again. This process may take hundreds of years to complete. The routine rotation of aspen every 40-60 years is totally unnatural and is probably not sustainable over time, as the nutrients in the soil continue to be removed. Alternative E calls for 59% of the harvest to be by clear-cutting. This is much too high and should be reduced to the point where clear-cutting is only used in the event that a species is becoming rare because it requires this type of habitat.

Modified clear-cutting--In addition to heavy reliance on outright clear-cutting, some of the other harvest practices like shelterwood harvest also amount to modified clear-cuts for many species because you remove most of the trees. Any harvest that removes greater than about 50% of the canopy cover is essentially a clear-cut from the perspective of many species of interior forest wildlife and some rare vegetation. Shelterwood areas may provide habitat for some species faster than traditional clear-cuts but they are still not the way to manage our forests. We want these methods all but removed from the Forest Plan as a harvest practice on the forest.

Minimum regeneration age and consideration of the entire plant community--In the proposed Forest Plan, page 2-75, a table lists minimum age for even-aged regeneration harvest. These may be the ages at which the particular tree species reach their highest value from a commercial forest standpoint, but the Forest Service is charged with managing the national forests, not tree farms, and you have failed to address this in these figures and throughout the entire plan. Trees are only one component of a forest ecosystem and many of the other components such as wildlife, coarse woody debris, herbaceous plants, shrubs, mycorrhizal fungi, and even tree diversity in terms of age and species composition in many cases take much longer to develop. The ages listed are really a starting point for many of these processes. Restoring the rest of the forest processes and other species can take much longer, therefore these ages need to be increased, perhaps in some cases to hundreds of years. The Chippewa National Forest may still have lots of trees, but it is almost out of intact forest. Much more of the forest needs to be put into extended rotation or old growth complexes if you are to truly manage for the various forest type communities, instead of just considering the commercial value of the trees. Alternative B does a much better job of addressing these types of issues.

Aspen resource--After the mixed pine forests that predominated the region were harvested at the turn of the last century and not adequately regenerated, the area grew back to extensive stands of aspen. Currently this is the forest type that the CNF relies upon to provide wood fiber to the forest industry. We currently have close to half the forest covered by aspen, which in some forest types is 30-40% above what should naturally occur here. We know that you are having a difficult time getting other forest types back on the landscape, but we want to see our forest returned to a more natural mix

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of the tree species that existed here at the time the treaties were signed and it was our forefathers' understanding that these forests would exist into the future.

Forest insects and disease--In this section (3.2.3) you talk about insect and disease problems on the forest, but one element that seems to be missing is that most of the insect and disease problems, along with many of the fire problems, are most prevalent in stands that are managed as monotypic stands or plantations. If you avoided these situations and managed for a more natural mix of species in our forests, insect and disease problems in many cases would not reach epidemic proportions. Even naturally occurring pests like forest tent caterpillars seem to cause the most problems in areas where large blocks of aspen are found. In stands that contain a mixed species complex the problem is not nearly as prevalent. An alternative similar to B would do a better job of accommodating this.

Fragmentation--One of the goals of this plan supposedly was to address the problem of habitat fragmentation, but alternative E actually increases fragmentation over current levels during the first couple of decades and will not even get back up to current conditions until somewhere around decade four. We already know that current levels of fragmentation are having adverse affects on some species, so it is inexcusable to continue this trend. We want this trend reversed now; we do not want a promise that you will do better 40 years from now. Alternative B does a better job of reducing fragmentation to more reasonable levels.

Large forest patches--In the Proposed Forest Plan (page 2-74) it states that you have a goal of maintaining a minimum of 85,000 acres of mature older upland forests in patches of 300 acres or greater. The Draft EIS, page 3.2-56, states that we currently have 95,600 acres and the amount will drop even lower in decades 1 and 2 under Alternative E. This appears to be a contradiction, especially when you consider that this is a habitat that we desperately need to increase. This is another example of where alternative E goes on cutting away at unsustainable levels with the promise that down the road you'll start to do a better job. The amount of this forest type needs to start increasing above the 95,600 level now if we are to provide for the species that need this type of habitat.

Unrealistic harvest levels--The proposed harvest levels under alternative E are based on modeling that uses forest inventory data that is often inaccurate and not up-to-date. This database was also frozen with existing data early in the plan revision process for the purpose of doing the modeling and planning. In the meantime even more stands have been cut, making the modeling even more inaccurate. Over this timeframe and especially the past few years, the CNF has been desperately trying to find wood to harvest. Although all sorts of reasons have been given for it, the fact of the matter is that you are simply running out of harvestable wood. Under alternative E you are proposing to nearly double the harvest levels of the past few years. No one, including many of your staff, has any idea of where all this wood will come from. Models are fun to play with, but when they contain inaccurate data the results they come up with are not very realistic.

By attempting to harvest at the proposed levels you are setting yourselves up to fail from

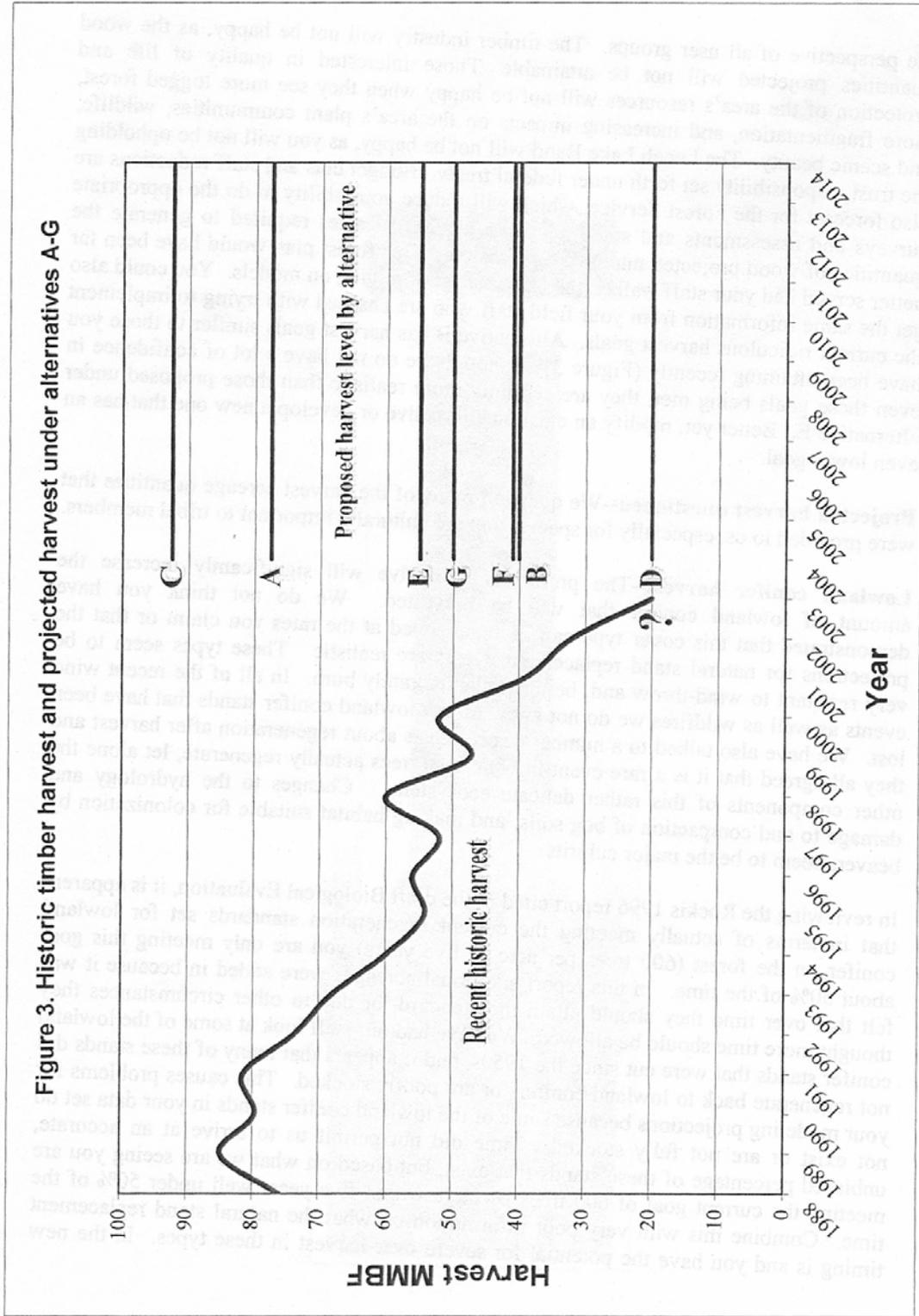
the perspective of all user groups. The timber industry will not be happy, as the wood quantities projected will not be attainable. Those interested in quality of life and protection of the area's resources will not be happy when they see more logged forest, more fragmentation, and increasing impacts on the area's plant communities, wildlife, and scenic beauty. The Leech Lake Band will not be happy, as you will not be upholding the trust responsibility set forth under federal treaty. Budget cuts and staff reductions are also forecast for the Forest Service, which will reduce your ability to do the appropriate surveys and assessments and still set up the number of sales required to generate the quantities of wood projected under this alternative. This forest plan would have been far better served had your staff walked the land instead of relying on models. You could also get the same information from your field staff who are charged with trying to implement the current ridiculous harvest goals. Alternative B has harvest goals similar to those you have been attaining recently (Figure 3). Although we do not have a lot of confidence in even these goals being met, they are certainly more realistic than those proposed under alternative E. Better yet, modify an existing alternative or develop a new one that has an even lower goal.

Projected harvest questioned--We question many of the harvest acreage quantities that were provided to us, especially for species that are culturally important to tribal members.

Lowland conifer harvest--The preferred alternative will significantly increase the amount of lowland conifer that will be harvested. We do not think you have demonstrated that this cover type can be regenerated at the rates you claim or that the projections for natural stand replacement events are realistic. These types seem to be very resistant to wind-throw and, being wetlands, rarely burn. In all of the recent wind events as well as wildfires we do not know of any lowland conifer stands that have been lost. We have also talked to a number of ecologists about regeneration after harvest and they all agreed that it is a rare event in which the trees actually regenerate, let alone the other components of this rather delicate ecosystem. Changes to the hydrology and damage to and compaction of bog soils, and making habitat suitable for colonization by beavers seem to be the major culprits.

In reviewing the Rockis 1996 report cited in the draft Biological Evaluation, it is apparent that in terms of actually meeting the current regeneration standards set for lowland conifer on the forest (600 trees per acre in five years) you are only meeting this goal about 50% of the time. In this report additional acreages were added in because it was felt that over time they should attain the standard, or due to other circumstances they thought more time should be allowed. We have had our staff look at some of the lowland conifer stands that were cut since the 1950s, and it appears that many of these stands did not regenerate back to lowland conifers or are poorly stocked. This causes problems for your modeling projections because some of the lowland conifer stands in your data set do not exist or are not fully stocked. Time did not permit us to arrive at an accurate, unbiased percentage of these stands that exist, but based on what we are seeing you are meeting the current goal of 600 trees per acre within five years well under 50% of the time. Combine this with very poor information on what the natural stand replacement timing is and you have the potential for severe over-harvest in these types. In the new

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Forest Plan you have dropped your standard from 600 trees per acre in five years to 400. If you are currently getting poor regeneration, maybe you should find a different method of measuring your success that includes not only the commercially valuable trees but the other components in this plant community as well.

Since it appears that you are proposing to harvest this type at rates in excess of natural stand replacement frequency, in the event that less lowland conifer actually exists than your modeling predicts or it is not of the quality anticipated, harvest would outpace regeneration. This brings into question the viability of many species of plants and wildlife that need this type of habitat. Many of these species already have very low ranking as outlined in the Draft Biological Evaluation, and lower habitat quantity or quality may push some species up to or beyond viability limits. The species of most concern include the white adder's-mouth, calypso orchid, ram's-head lady-slipper, spruce grouse, great gray owl, black-backed woodpecker, bay-breasted warbler, and Connecticut warbler. By the looks of your data it appears that very little if any of this forest type can be harvested and still sustain itself or the species that need it, so until such time as you can assure the viability of these species and find a better way of assuring that you can regenerate lowland conifers, those stands shouldn't be harvested.

Jack Pine--Your efforts to regenerate jack pine, especially the local jack pine ecotype, have not been very successful, while additional losses due to conversion to red pine continue. In light of these factors we do not see how you can meet the projected harvest outlined under Alternative E.

Other cover types--Likewise, you are supposedly trying to get more white pine on the landscape, but cutting at the proposed rates will not make this happen. The proposed plan also calls for very high northern hardwood harvest, especially in the later decades. This area produces very little bolt-quality hardwood, so there is a limited market for it outside of firewood. It appears that this cover type is being heavily targeted just to get the harvest acreage numbers up when there isn't even a market for the timber. This cover type is also important for many traditionally gathered products tribal members are interested in.

The draft Forest Plan, page 2-3, states the Forest Service Mission as, "To sustain the health, diversity, and productivity of the nation's forests and grasslands to meet the needs of present and future generations." Alternative E does not meet the mission of the Forest Service nor does it meet your treaty obligations. The CNF has known for over twenty years that it was going to run short of harvestable wood, yet measures were not taken to correct this situation. **There is no way you can meet your treaty obligations to the Band and harvest at the levels proposed under the preferred alternative.** A harvest level along the lines of Alternative B may not be attainable either, but the alternative could be modified.

Legacy patches--Standard S TM-5 has reduced the amount of trees that are to be retained in the stand to 5% while the old standard is 10%. Why has there been a reduction in this amount? It should have been increased, not decreased.

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Climate change--Almost all experts now agree that climate change is occurring; they are just uncertain how these changes will affect any specific location on the planet. There is little if any discussion about or planning for how these changes will affect the various cover types on the forest or, more importantly, the regeneration of these types. Some of these changes could potentially begin soon or are already occurring. It seems likely that some of the goals you have set in the new Forest Plan will be unattainable, even based on the information we currently have. This issue and contingency plans need to be addressed in the EA and Forest Plan.

Sensitive species, wildlife, botanical resources

Environmental consequences for indicator sensitive species

In the DEIS, under Alternative E many species are pushed into C, D, and E outcome categories under this ranking system. The numbers in the D and E categories are most alarming. When species are in these two lowest categories there is increased risk that some unforeseen conditions or cumulative effects will occur that will result in loss of viability and lead to extirpation. We think this is an unacceptable risk to take.

Botanical resources, including rare plants, should have a separate section. Several forests in the Southwest have separate botanical sections in their plans. We think you should do the same in the plan for the Chippewa National Forest, especially given that there are numerous sensitive plant species and plant communities, as well as over 450 culturally significant plants, present on the forest.

Northern goshawk

The northern goshawk has become a species of great interest because it has been negatively affected by the forest management practices of the past century. Its need for fairly large blocks of intact older habitat that have prey in them is well documented. Knowing all this, it is beyond belief that you have dropped from the Forest Plan the provisions developed to provide for foraging habitat. Studies conducted on this forest have pretty well documented that problems in the foraging areas are reducing the viability of this species on the forest. Foraging area guidelines in the Goshawk Desk Reference need to be strengthened and put back into the Forest Plan if you are sincere about the viability of this species.

Black-backed woodpecker

Standards and guidelines need to be developed and incorporated into the plan, as the proposed high harvest rates in jack pine and lowland conifers are very likely to be detrimental to this species. Far more snags need to be retained in management prescriptions to maintain the viability of this species.

Spruce grouse

Due to habitat loss (mainly quality northern jack pine stands) it appears that the spruce grouse is on the verge of extirpation from the Chippewa National Forest. To prevent this from happening and to improve the viability outlook for this species you need to develop and implement substantive standards and guidelines for this species.

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Monitoring

In the monitoring section of the proposed Forest Plan there are tables of all the monitoring proposed. Unfortunately, past experience has shown that it is rarely accomplished. Monitoring is frequently mentioned as a means of addressing viability issues but the catch phrase “dependent on available staff and funding” all too often comes into play and this work is never done. We want to see wording added to the plan that will assure that monitoring actually gets accomplished.

Sensitive species surveys

There does not seem to be any direction, outside of federally threatened or endangered species, as to when and how you will survey and mitigate for other rare species that are Region 9, state, or tribally listed. This is a serious shortcoming and one that even the existing plan does a better job of addressing. We would also like to see more detailed information on rare plants similar to the information on other rare species.

White-tailed deer

The extensive amount of edge habitat created by current harvest practices has resulted in the increase of deer populations to the point that they are now limiting the persistence and reproduction of some plants and forest types, including some traditionally used ones. Even though deer are currently a popular species harvested by both tribal and non-tribal members, there is still a need to look to the future to prevent them from becoming still more over-abundant and causing further problems. Hunting, controlled by the Band and MN DNR, is currently keeping numbers in check, but if trends in other states such as Wisconsin and Michigan are any indication, it is unlikely that this will be effective for much longer. Edge habitat is continuing to increase due to human alterations to the environment, and Alternative E will exacerbate this trend.

The percentage of people who hunt peaked around 1975 and has continued to decline, and youth are less likely to hunt than in the past. This leads us to believe that in the not-too-distant future deer numbers will no longer be controllable by harvest. Factor in climatic changes that seem to be reducing the severity of winters, which in the past was a factor in controlling deer populations, and we conclude that reducing habitat may be the only means of keeping deer numbers under control. Although forest changes that will reduce the amount of edge will take 50-100 years to fully attain, we think it is none too soon to start incorporating these edge-reducing changes now, otherwise some traditionally used plant resources will be greatly reduced and you will find it extremely difficult to meet some of your forest regeneration goals due to deer browsing. This topic needs to be addressed and added to the EA and Forest Plan.

Beaver

The number of beavers has increased on the forest and is probably at historic highs. Although beavers are a keystone species in that they provide good habitat for some aquatic and edge species, they are also known to be causing declines in other species. They are also causing considerable flooding or are contributing to poor regeneration of some cover types such as lowland conifer. Loss of some of the R9 listed rare species

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(bog orchids, for example) due to flooding has been documented. There is also mounting evidence that when beavers build a series of impoundments that allow fish to colonize deep into wetlands that they would normally never reach, these fish compete with waterfowl by consuming the invertebrate food supply. A number of factors such as declining fur prices, fewer trappers, and roads across creeks and wetlands that give the beavers ready-made dikes are contributing to increased beaver numbers. The overwhelming factor is the endless food supply that has been created for them due to forest management practices. The proliferation of young aspen forest near areas that can be flooded is a major problem. We think the forest plan needs to address this issue if it is to provide for the future of some of our rare species in addition to lowland conifer systems.

Forest management effects on ruffed grouse populations

A great deal of concern has been put forth by the ruffed grouse hunters over proposed reductions in the amount of young aspen and what they think this will mean for grouse populations. An objective look needs to be taken to determine how valid this claim is in the light of landscape-scale changes that have occurred across the forest. Early research on ruffed grouse indicates that in large blocks of contiguous habitat, creating small openings (< 11 acres) of young forest types can enhance grouse numbers by increasing the amount of herbaceous plants and the insects associated with this edge habitat. On the Chippewa National Forest this has been carried to the extreme and we now have extensive areas that are comprised of very young, early-successional tree species, to the point that some species, including ruffed grouse, may be lacking other habitats such as mature nesting cover and winter foraging and roosting areas. Currently the Chippewa National Forest has extensive young aspen habitat at or near all-time highs that should be filled with grouse, but this is not the case. Most grouse hunters will tell you that even in peak cycle years the numbers of grouse just are not there like they used to be. This raises the question of the value of other cover types to the well-being of grouse and is another item that needs to be addressed in the Forest Plan.

An additional item that needs to be considered with respect to forest management and ruffed grouse populations is whether your current management is good for grouse or grouse hunters. Ruffed grouse tend to concentrate in edge habitats, especially during fall dispersal. In a heavily-managed landscape these are often along forest trails, roads, or edges of clear-cuts. This behavior makes ruffed grouse very vulnerable to harvest by hunting, to the point that we could be clipping the peaks and lowering the valleys of the grouse cycle. The question that needs to be addressed in the Forest Plan is what effects your management is actually having on grouse populations. It is quite possible that a more diverse forest may be better for grouse and ultimately grouse hunters.

Other issues

ATVs--Most tribal members are opposed to ATV usage as it interferes with their traditional gathering activities and allows others who can afford these machines access to areas that Band members once had all to themselves. Currently over 80% of the CNF is within a quarter mile of a road or trail. This level of access already is excessive, yet under Alternative E you are proposing the highest level of new miles of ATV trails.

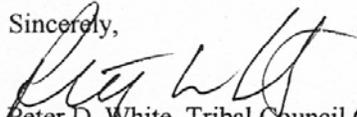
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Tribal members have a spiritual need and desire to have some areas that are remote and difficult to access. These areas are also important as reservoirs for wildlife species that are intolerant of human activities and will serve as refuges that will be safer from invasion by non-native species. We would like to see an alternative selected that drops new ATV trails entirely and increases restrictions on their use.

Reduce the need for appeals--It was our hope, and the promise of the Chippewa National Forest, that the new plan was going to deal with many of the problems that are ongoing on the forest by reducing harvest levels to sustainable levels that would provide for other interests and uses, to say nothing of tribal trust responsibility. The proposed plan, however, fails to do this. In many respects it is no better than the existing plan and in some cases it is worse. What this plan outlines is a continuation of high harvest levels that are not sustainable, with a heavy emphasis on clear-cutting. This is especially true in the first decade of the plan, after which you promise to start doing a better job. The goal of the Forest Service is to revise plans every 10 years or so, in which case the proposed plan allows you go on merrily cutting away until the next plan. This is totally unacceptable. You need to immediately start making substantive changes to restore the forests, uphold your trust responsibility to the Leech Lake Band, and stop being a servant to the whims of the timber industry. Alternative E will force us to start an endless string of appeals or other legal action to halt continued mismanagement of our homeland.

In conclusion, the Forest Service must do more than pay lip service to its treaty obligations to the Band. It is high time that you stop catering to the timber industry and start putting efforts into managing the whole forest ecosystem, not just the merchantable trees. Simply put, the Forest Service must stop exploiting significant resources guaranteed to the people of the Leech Lake Band by treaty and instead must begin restoring the Chippewa National Forest.

Sincerely,



Peter D. White, Tribal Council Chairman
Leech Lake Band of Ojibwe

Fond du Lac Reservation

Business Committee

1242

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Forest Plan Revision
Chippewa National Forest
200 Ash Avenue NW
Cass Lake, MN 56633-8929



Chairman
Robert B. Peacock

Secretary/Treasurer
Kevin R. Dupuis, Sr.

Dist. I Councilman
Clifton Rabideaux

Dist. II Councilman
V.R. "Butch" Martineau

Dist. III Councilman
Vacant

Executive Director
I. Jean Mulder

Re.: Proposed Superior National Forest Plan

September 8, 2003

Dear Revision Team Members,

The Fond du Lac Band of Lake Superior Chippewa appreciates the opportunity to give input on the future management of the Superior National Forest by providing comments on the proposed plan and the Draft Environmental Impact Statement. Most of the Superior National Forest lies within the boundaries of Fond du Lac's 1854 Ceded Territory where the Band exercises traditional hunting, fishing and gathering rights. As such, the shape of the future forest will directly impact the ability of band members to exercise their treaty rights in a culturally meaningful way.

Fond du Lac opposes the selection of an alternative that would reduce populations of moose, ruffed grouse or deer on the Superior National Forest. These species, moose in particular, provide the bulk of subsistence hunting for band members on the Superior. A patchwork of stand ages across the landscape with emphasis on early successional stands is needed. Traditionally, band members set fires to maintain these forests and provide habitat for game species. Timber harvest practices that mimic the role of large natural fires are needed today.

The moose is a culturally important species to the FDL Band. In addition, moose have economic and symbolic importance to the region. The species is at the southern end of its range in northeast Minnesota and therefore vulnerable to long term changes in habitat and climate. The Superior National Forest is unique in the upper Midwest for having a large moose herd. Whitetail deer are widespread everywhere else, but generally exists at lower densities on the Superior. It's inappropriate that the DEIS uses deer as a management indicator species to analyze changes on the Superior and not moose. This should be changed and moose given equal consideration in the analysis of alternatives to that of lynx, wolves, northern goshawks and white pine.

Access to the Forest is important for FDL band members to exercise their treaty rights. At the same time, a balance must be struck to close unnecessary roads and repair environmental damage caused by existing roads. However, FDL would oppose the selection of an alternative that closes significant miles of existing roads or blocks current or future access to large blocks of the Superior. Any alternative selected must contain provisions to allow the cross country use of ATVs to retrieve big game animals.

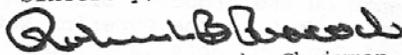
The need and reasoning behind the selection of individual RNAs on the Forest is not described in the proposed plan. FDL is concerned that a designation of an RNA will result in the creation of defacto wilderness where options for timber and wildlife management and vehicle access will be greatly limited or

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nonexistent. In particular FDL is concerned about the Big Rice Lake RNA and the proposed size of the Seven Beavers RNA. The Seven Beavers area has significant moose numbers and could be further improved for moose habitat with additional timber harvest. Big Rice Lake is an important wild rice and waterfowl area. FDL is concerned that designating large areas of the shoreline as an RNA will restrict future management options for rice and waterfowl.

FDL would appreciate the opportunity to address these concerns further with the Forest Service. Questions or comments may be directed to Mike Schrage, FDL Wildlife Biologist at (218) 878-8003.

Sincerely,


Robert B. Peacock, Chairman

FOND DU LAC, R.B.C.

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August 8, 2003

Forest Plan Revision
Chippewa National Forest
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The 1854 Authority would like to provide comment on the Draft Environmental Impact Statement (DEIS) and the Proposed Forest Plan for the Superior National Forest.

The 1854 Authority is an inter-tribal natural resource management organization governed by the Bois Forte Band and Grand Portage Band of Lake Superior Chippewa. The organization is charged to preserve and protect rights to hunt, fish, and gather in the 1854 Ceded Territory of northeastern Minnesota. Because the Superior National Forest constitutes a large portion of the 1854 Ceded Territory, management direction will have widespread effects on the treaty rights retained by these bands.

Our comments on the DEIS and proposed plans will focus only on the Superior National Forest. The comments highlight main areas of concern with the preferred alternative and overall change in management direction. Due to the fact that the U.S. Forest Service has a mandate to consult with tribes on a government to government basis, we expect to have more meaningful input at the project level as the forest plan is implemented. We have grouped our comments and concerns into six broad categories:

Tribal Rights and Sovereignty

The 1854 Authority supports language in the DEIS and proposed plan that outlines the U.S. Forest Service's responsibility to consult with Indian bands on a government to government basis. Bands must be allowed the opportunity for early and meaningful input on management decisions, both at this stage and beyond this comment period when the management plan is implemented at the project level. The planning process and project implementation must recognize the sovereign status of bands and the rights retained by treaty with the United States. Although language in various parts of the documents recognizes treaty rights and their cultural significance, the 1854 Authority would like to emphasize the importance of rights to hunt, fish, and gather retained under the Treaty of 1854. These rights are traditionally and culturally essential, and are based on subsistence not recreation. Management direction must support the continued exercise of treaty rights.

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In the DEIS, language discussing social sustainability is often general in nature when referring to tribal rights. The purpose, need, and issue identification section should mention the need to consider effects on the 1854 Ceded Territory and associated bands. Issue indicators are general, and could be more specific for tribes and treaty rights (page 1-27). More language describing the 1854 Ceded Territory, the rights retained under the Treaty of 1854, and the importance of these rights should be added to sections discussing effects on social sustainability (pages 3.9-28,29,30).

In the proposed forest plan for the Superior National Forest, the 1854 Authority supports the forest-wide goal to contribute to efforts to sustain the American Indian way of life, cultural integrity, social cohesion, and economic well being. We also generally support the desired conditions, objectives, standards, and guidelines for Tribal rights and interests. However, some additional objectives which were listed in the DEIS should be incorporated into the proposed forest plan:

- Administer programs and activities to address and be sensitive to traditional beliefs and practices
- Provide research, transfer of technology, and technical assistance to Tribal governments

Wildlife Habitat

While the 1854 Authority supports management activities that provide habitat for all species, our constituents are particularly concerned about game species such as moose, deer, and grouse. Band members exercising treaty reserved rights to hunt for subsistence generally key on these three species within the 1854 Ceded Territory, and as such have a great deal of interest in their management within the Superior National Forest. The 1854 Authority supports the current forest plan that emphasizes habitat management for game species by providing aspen forests, forest openings, young forests, and edge habitat. Under the preferred alternative E, the amount of aspen forest type would be reduced and the forest would eventually shift to older age classes and more coniferous habitats. The 1854 Authority opposes this proposed change in management direction. These shifts, if implemented, would negatively impact moose, deer, and grouse populations in the long-term. The Boundary Waters Canoe Area Wilderness contributes to the range of habitats needed by all wildlife.

Several other species of management concern (including deer and ruffed grouse) are included in the DEIS for analysis of the effects on wildlife. These species were chosen because of their social, economic, or ecological importance. They may be commonly hunted, require special habitats, or have a viability concern. However, moose was not included in the species of management concern. Moose is hunted for subsistence use and is culturally important to band members. Non-band members also place importance on moose as a game animal and for other activities such as wildlife viewing. The 1854 Authority believes that moose should be added as a species of management concern and considered when analyzing alternatives.

Objectives, standards, and guidelines for numerous wildlife species are outlined in the proposed plan for the Superior National Forest. However, important game species such as moose, deer, and grouse were not included. The 1854 Authority believes that objectives, standards, and guidelines for these species should be outlined in the forest plan. We reiterate our concerns with these species and suggest that, at a minimum, language addressing protection of and management for important areas like deer and moose wintering areas and moose calving areas be included.

Trapping of furbearers, primarily pine marten and fisher, continues to be important to many band members. The DEIS and proposed plan do not contain any language about the effects on these species. While we realize that it is not practical to include every species, furbearers should be a consideration in planning documents and plan implementation.

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Forest Vegetation

Band members continue to utilize the 1854 Ceded Territory, including the Superior National Forest, for gathering a variety of plants and plant material. These plants should be a consideration during forest vegetation management activities. Limited language in the DEIS describes the effects on plants of interest to the bands. These effects are generally included in the social and economic sustainability sections and not under forest vegetation. Similarly, the desired conditions and objectives for vegetation management in the proposed plan for the Superior National Forest do not directly address plant species of importance to band members. Language in these and related sections should be strengthened to ensure that plant species utilized by band members are a consideration. The 1854 Authority supports the list of plant species of interest to bands listed in the DEIS. Maple, balsam, birch, and a variety of berries are of particular concern to us. Band members should be allowed to fully exercise their treaty rights by collecting plant resources without permit requirements.

Watershed Health

The 1854 Authority supports addressing the protection of riparian areas and water resources in the DEIS and proposed plan for the Superior National Forest. Many species of management concern associated with lake and stream health are listed in the DEIS. Primary of concern to us are potential effects to game fish and wild rice. Fishing and gathering wild rice are important aspects of treaty rights retained in the 1854 Ceded Territory. These resources are not only utilized for subsistence purposes, but are also culturally significant (especially wild rice). Fishery resources and wild rice must be protected and enhanced during forest management activities.

Sections of the proposed plan address the desired conditions, objectives, standards, and guidelines for watershed health and riparian areas. Additional language highlighting the need to protect fishery and wild rice resources for subsistence use and the exercise of treaty rights should be included in the desired conditions and objectives. Standards and guidelines for the aquatic portion of riparian areas should address effects on wild rice. Water level management is the primary concern as discharge control or beaver dam alteration can have significant impacts to wild rice.

Heritage Resources

The 1854 Authority believes that impacts to heritage resources, including traditional cultural properties, should be avoided during forest management activities. We agree with the overall goal of heritage resource management to preserve heritage resources in good condition through maintenance and documentation. Because sites are lost when they are disturbed or artifacts are removed from their natural setting, these activities should be limited. Bands should be consulted when heritage resources may be affected during forest management activities.

Interpretive programs for the public (such as Passport in Time) are occasionally conducted on heritage sites. When these sites have a Native American presence, Bands should be notified and consulted prior to scheduling events. Bands should also have the opportunity to assist with the design of such programs.

Access

Exercise of hunting, fishing, and gathering rights retained under the Treaty of 1854 is limited to public lands and waters in the 1854 Ceded Territory. Practical access to the forest and associated resources is a necessity for the continued exercise of these guaranteed rights. The 1854 Authority supports the allowed use of cross country all-terrain vehicle (ATV) travel for big game retrieval and trapping access as outlined in the preferred alternative. The 1854 Authority opposes any further restrictions on ATV use on forest roads. ATV use on roads should be allowed as practical

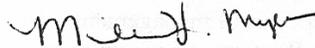
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and as safety allows. Consistent and understandable rules for ATV use on roads and trails should be developed and communicated with forest users. The 1854 Authority also supports the allowed use of cross country snowmobile travel and snowmobile use on unplowed National Forest System roads as outlined in the preferred alternative.

The 1854 Authority is in support of development and/or enhancement of public access to waters. The 1854 Authority opposes any further wilderness or similar designations whereby public access is restricted.

Thank you for the opportunity to review and comment on the Draft Environmental Impact Statement and the Proposed Forest Plan for the Superior National Forest. The 1854 Authority requests to receive the final Environmental Impact Statement and Record of Decision, and looks forward to ongoing consultation as the Superior National Forest Plan is implemented.

Sincerely,



Millard (Sonny) Myers
Executive Director

cc: Jim Sanders, Superior National Forest Supervisor
Walt Okstad, Superior National Forest Heritage Program Manager
Corey Strong, Bois Forte Reservation Natural Resources Director
Curtis Gamon, Grand Portage Reservation Trust Lands Administrator