

B00127

Cooperative Agreement
for Prescribed Fire and Wildland Fire Use
between
the
U.S. Fish and Wildlife Service
and
Bureau of Indian Affairs
and
National Park Service
and
U.S. Forest Service in Minnesota
and
Minnesota Department of Natural Resources

I. BACKGROUND, AUTHORITY, AND PURPOSE

The U.S. Fish and Wildlife Service, the Bureau of Indian Affairs, the National Park Service, the U.S. Forest Service (hereinafter collectively referred to as "the Agencies"), and the Minnesota Department of Natural Resources (hereinafter referred to as the "DNR"), are cooperating in the development of prescribed fire plans and prescribed fires, and their capabilities in fire management and suppression have increased as a result of that cooperation.

Many of the lands under jurisdiction of the Agencies and the DNR are located such that fire may simultaneously threaten resources in more than one jurisdiction. Coordinated action among the Agencies and the DNR is a proven method for the effective use and the protection of public resources.

The purpose of this instrument is to provide a basis for cooperation among the Agencies and the DNR on all aspects of prescribed fire and wildland fire use, and to facilitate the cooperative use of fire related resources for prescribed fires and wildland fire use within the State of Minnesota.

The Agencies and the DNR are authorized to enter into this instrument by the following:

1. Protection Act of 1992 (16 U.S.C. 594)
2. Memorandum of Understanding between United States Department of the Interior and the Department of Agriculture, dated January 28, 1943.
3. Reciprocal Fire Act of May 27, 1955 (69 Stat. 66; 42 U.S.C. 1856a)
4. Cooperative Funds and Deposits Act of December 12, 1975 (16 U.S.C. 565 al-a-3)
5. Granger-Thye Act of April 24, 1950, as amended (16 U.S.C. 572)
6. National Park Service Organic Act of August 1916 (16 U.S.C. 1)
7. National Wildlife Refuge System Administrations Act of 1966 (16 U.S.C. 668dd-668ee; 80 Stat. 927) as amended
8. Disaster Relief Act of 1974 (42 U.S.C. 1521)
9. Minnesota Statutes; 471.59, Subdiv. 1 (1994)

II. DEFINITIONS

Prescribed Fires – Any fire ignited by management actions to meet specific objectives.

Wildland Fire Use – The management of naturally ignited wildland fires to accomplish specific pre-stated resource management objectives in predefined geographic areas outlined in Fire Management Plans.

Prescribed Fire Plan – A plan required for each fire application ignited by managers. It must be prepared by qualified personnel and approved by the appropriate agency administrator prior to implementation. Each plan will follow specific agency direction and must include critical elements described in agency manuals.

Wildland Fire Implementation Plan – A progressively developed assessment and operational management plan that documents the analysis and selection of strategies and describes the appropriate management response for a wildland fire being managed for resource benefits.

Jurisdictional party – the DNR, or Agency, that possesses ownership and management authority for the land involved.

Protecting party - the DNR or Agency responsible for wildfire protection and suppression on the land involved, regardless of ownership.

III. OBJECTIVES AND ELEMENTS OF COOPERATION

- A. The Agencies and the DNR agree to cooperate in the use of prescribed fire and wildland fire use to achieve land management goals. Cooperative efforts will be designed to facilitate efficient use of personnel, supplies, and equipment. Those activities will include, but not be limited to:
 - 1. Training of personnel
 - 2. Planning activities
 - 3. Development and exchange of technology and data bases
 - 4. Development and distribution of cost information
 - 5. Use of Agencies and DNR's resources on prescribed fires and wildland fire use fires, to include contracted equipment.
- B. The objectives of the cooperative efforts undertaken pursuant to this agreement are:
 - 1. Development of coordinated interagency and DNR prescribed fire and wildland fire use management.
 - 2. Efficient use of fire personnel, equipment, and supplies to meet prescribed fire and wildland fire use goals.

IV. ADMINISTRATION

- A. *This instrument is effective as of March 1, 2007 and expires on February 28, 2012. Each organization is obligated to the terms and conditions of this Agreement, and their participation begins, upon their authorized signature. For the BIA, this Agreement will expire 5 years from the date of the final signature.*

- B. *Any Agency or the DNR may, with 60 days advance notice in writing, terminate their participation in this Agreement in whole, or in part, at any time before the date of expiration, unless extended.*
- C. *Modifications within the scope of this Agreement shall be made by mutual consent of each Agency and the DNR, by the issuance of a written modification, signed and dated by all participating Agencies prior to any changes being performed.*
- D. Meetings may be called by any party to this instrument after consultation with the other parties, at such time and place as agreed upon to discuss any problems related to prescribed fire activities arising under this instrument.

V. FINANCIAL RESPONSIBILITY

- A. Each Agency and DNR shall make direct payment from its own funds for all liabilities it incurs under this instrument.
- B. Parties to this instrument are not obligated to expend funds under this instrument unless such funds are available for such purposes.
- C. Billing for reimbursement of prescribed fire or wildland fire use services rendered shall be mutually agreed to in the approval Agency/multi-agency Prescribed Fire Plan or Wildland Fire Implementation Plan.
- D. A party rendering assistance when requested by any other shall be reimbursed by the party responsible for the prescribed fire. Cross billing for wildfire suppression among the Agencies will not occur. Cross billing among the Agencies and the DNR for wildfire suppression is appropriate. Wildfire suppression costs resulting from an escaped prescribed fire ignited by the Jurisdictional party shall be the responsibility of the Jurisdictional party. The Protecting party will be responsible for management of the fire. For cooperative prescribed burns involving more than one party, joint funding and financial responsibility agreements shall be in accordance with section VI. C, of this agreement. Wildfire suppression costs resulting from wildland fire use, which escapes predetermined acceptable boundaries, shall be the responsibility of the Jurisdictional party.

VI. SPECIAL PROVISIONS

- A. When needed, Agencies and the DNR will develop cooperative arrangements to cover administrative and jurisdictional responsibilities which will be incorporated in the Prescribed Fire Plan or Wildland Fire Implementation Plan.
- B. Agency and DNR representatives shall exchange fire management plans including fire resource information on available personnel, equipment, and supplies.
- C. Agency and DNR representatives may agree to finance jointly any or all fire management activities on intermingled or adjacent Agency and DNR lands. Any Agency and DNR may agree to pay another (at a specified rate per acre or such other amounts as may be agreed upon) for fire management activities on lands under its

jurisdiction. On multi-party prescribed fires, financial responsibility for costs incurred due to escaped fire suppression and resulting damages shall be agreed upon by the parties involved and referenced in the prescribed burn plan.

- D. *Third parties may be utilized for fire management services by the Parties to this Agreement, when agreed to by the affected parties. Resource orders for third party's personnel and equipment will be made through and tracked by the Protecting agency. After ensuring that the conditions of the Protecting Agency's regulations have been complied with, the Supporting Agency will submit the invoice to the appropriate Protecting Agency and request payment.*
- E. Agencies and DNR will take the leadership role on their respective prescribed fires. On multi-party prescribed fires, the leadership role shall be agreed upon with the parties involved and identified in the Prescribed Fire Plan.
- E. Upon request, any party may render assistance in prescribed fires or wildland fire use, with its regular firefighting personnel and fire suppression facilities when suitable assistance is available and when such action shall not leave areas in its own protection unit unduly exposed to fire danger.
- F. When a request for assistance with conducting a prescribed fire is made, the requesting party shall provide a copy of the Agency/DNR specific Prescribed Fire Plan.
- G. Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).
- H. The Forest Service, Inspector General, or Comptroller General, through any authorized representative, shall have access to and the right to examine all records related to this instrument. As used in the provision, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- I. Improvements placed on National Forest System land at the direction of any of the Agencies/DNR shall thereupon become property of the United States, and shall be subject to the same regulations and administration of the Forest Service as other National Forest improvements of a similar nature. No part of this instrument shall entitle the Agencies/DNR to any share or interest in the project other than the right to use and enjoy the same under the existing regulations of the Forest Service.
- J. The Agencies/DNR have the legal authority to enter into this instrument, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the project.
- K. This instrument in no way restricts the cooperating Agencies/DNR from participating in similar activities with other public or private agencies, organizations and individuals.

- L. *By signature below, all signatories to this Agreement, except BIA, certify that the individuals listed in this Agreement, as Principle Contacts, are authorized to act in their respective areas for matters related to this Agreement. The BIA will authorize a representative via internal protocol and provide annual notification to all signatories.*
- M. Any contributions made by cooperating Agencies/DNR under this instrument do not by direct reference or implication convey endorsement of the Agencies/DNR's products or activities.

VII. NON-DISCRIMINATION CLAUSE

The Agencies/DNR shall comply with all State and Federal statutes relating to non-discrimination and all applicable requirements of all Federal laws, executive orders, regulations and policies. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, 2000e-16) which prohibits discrimination on the basis of race, color, disability, or national origin; (b) Title IX of the Education amendments of 1972, as amended (20 U.S.C. 1681-1883, and 1685-1686), which prohibits discrimination on the basis of sex; and Section 504 of the Rehabilitation Act of 1973 as amended (29 U.S.C. 794) which prohibits discrimination on the basis of disabilities.

VIII. LIABILITY

- A. Each party agrees that it will be responsible for its own acts and omissions the results thereof to extent authorized by law and shall not be responsible for the acts and omissions of the other parties and the results thereof. The State's liability shall be governed by the provisions of the MINNESOTA TORTS CLAIM ACT, MINNESOTA STATUTE SECTION 3,736 (1992) and other applicable law. The Federal Agencies liability shall be governed by the provisions of federal law including the Federal TORTS CLAIM ACT, 28 U.S.C. SECTION 2671 thru 2680, and any other applicable law.
- B. The parties to this instrument agree to waive all claims against each other for compensation for any loss, damage, personal injury, or death occurring in consequence of the performance of this instrument.
- C. Nothing in this instrument shall be understood to impair the right of the United State, Tribes, or the State of Minnesota to recover costs, damages, or penalties from third parties under applicable Minnesota, Federal, or Tribal law.

IX. PRINCIPAL CONTACT

MNICS Prescribed Burn Committee

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the dates written below.

U.S. Fish and Wildlife Service

By James T. Fack
 Title Refuge Supervisor
 Date 2-12-07

National Park Service
 Voyageurs National Park

By _____
 Title _____
 Date _____

National Park Service
 St. Croix Nat'l Scenic Riverway

By _____
 Title _____
 Date _____

National Park Service
 Isle Royale National Park

By _____
 Title _____
 Date _____

Bureau of Indian Affairs
 Midwest Region Office

By _____
 Title _____
 Date _____

Minnesota DNR
 Division of Forestry

By _____
 Title _____
 Date _____

U.S. Forest Service
 Region 9

By John Phipps
 Title Deputy Regional Forester
 Date 3/29/07

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U.S. Fish and Wildlife Service

By _____

Title _____

Date _____

National Park Service
St. Croix Nat'l Scenic Riverway

By _____

Title _____

Date _____

Bureau of Indian Affairs
Midwest Region Office

By _____

Title _____

Date _____

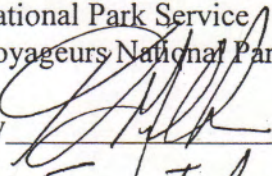
U.S. Forest Service
Region 9

By _____

Title _____

Date _____

National Park Service
Voyageurs National Park

By  _____

Title Superintendent

Date 02/09/07

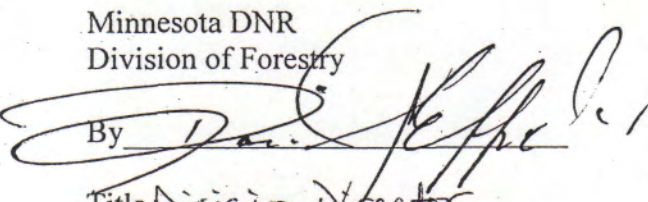
National Park Service
Isle Royale National Park

By _____

Title _____

Date _____

Minnesota DNR
Division of Forestry

By  _____

Title Division Director

Date 4/5/2007

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the dates written below.

U.S. Fish and Wildlife Service

By _____

Title _____

Date _____

National Park Service
St. Croix Nat'l Scenic Riverway

By _____

Title _____

Date _____

Bureau of Indian Affairs
Midwest Region Office

By Terrance L. Verde

Title Regional Director

Date 2-5-07

U.S. Forest Service
Region 9

By _____

Title _____

Date _____

National Park Service
Voyageurs National Park

By _____

Title _____

Date _____

National Park Service
Isle Royale National Park

By _____

Title _____

Date _____

Minnesota DNR
Division of Forestry

By _____

Title _____

Date _____

APPROVED MAR 29 2007

Montey Ashley
Regional Grants &
Agreements Specialist

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the dates written below.

U.S. Fish and Wildlife Service

By _____

Title _____

Date _____

National Park Service
St. Croix Nat'l Scenic Riverway

By Tom Brady

Title Sup

Date 2/7/07

Bureau of Indian Affairs
Midwest Region Office

By _____

Title _____

Date _____

U.S. Forest Service
Region 9

By _____

Title _____

Date _____

National Park Service
Voyageurs National Park

By _____

Title _____

Date _____

National Park Service
Isle Royale National Park

By _____

Title _____

Date _____

Minnesota DNR
Division of Forestry

By _____

Title _____

Date _____

APPROVED MAR 29 2007

Monty Ashley
Regional Grants +
Agreements Specialist

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U.S. Fish and Wildlife Service

By _____

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Date _____

National Park Service
St. Croix Nat'l Scenic Riverway

By _____

Title _____

Date _____

Bureau of Indian Affairs
Midwest Region Office

By _____

Title _____

Date _____

U.S. Forest Service
Region 9

By _____

Title _____

Date _____

National Park Service
Voyageurs National Park

By _____

Title _____

Date _____

National Park Service
Isle Royale National Park

By Phyllis A. Green

Title Park Superintendent

Date 2/7/07

Minnesota DNR
Division of Forestry

By _____

Title _____

Date _____