

COOPERATIVE WILDFIRE AGREEMENT
between the
UNITED STATES OF AMERICA
DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
and
FOND DU LAC BAND OF CHIPPEWA INDIANS
and
STATE OF MINNESOTA
Department of Natural Resources

THIS AGREEMENT, effective the date of the last signature to this agreement, is entered into by and among the UNITED STATES OF AMERICA, Department of the Interior, Bureau of Indian Affairs, Minneapolis Area Office, hereinafter referred to as the "BUREAU", FOND DU LAC BAND OF CHIPPEWA INDIANS, hereinafter referred to as the "TRIBE", and the STATE OF MINNESOTA, Department of Natural Resources, hereinafter referred to as the "STATE":

WITNESSETH:

WHEREAS, the BUREAU is authorized to enter into this Cooperative Agreement pursuant to the Act of September 20, 1922, 42 Stat. 857, 16 U.S.C., 594 and the Act of May 27, 1955, 69 Stat. 66, 42 U.S.C., 1856 and 1856a, and the National Indian Forest Resources Management Act, P.L. 101-630, 25 U.S. C., 1301; and

WHEREAS, the TRIBE is authorized to enter into this Agreement pursuant to the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe and the Bylaws of the Fond Du Lac Band; and

WHEREAS, the STATE is authorized to enter into this Agreement pursuant to Minn. Stat. 84.025, subd. 7; 89.01, subd. 4 and 90.041 subd. 1; and

WHEREAS, the BUREAU has responsibility for wildfire protection on trust lands, which are within the boundaries of the Fond Du Lac Indian Reservation and

WHEREAS, the TRIBE has assumed the BUREAU'S wildfire protection responsibility on those lands subject to 25 U.S.C., 3120; and

WHEREAS, the STATE has responsibility for wildfire protection on lands other than those trust lands either within the Fond Du Lac Reservation or within the responsibility of another federal or local agency; and

WHEREAS, certain forest lands which the STATE has responsibility for wildfire protection are intermingled or adjacent to certain lands over which the TRIBE and BUREAU have

responsibility for wildfire protection; and

WHEREAS, it is advantageous to all parties to this Agreement to provide the most effective and economical wildfire protection system for those lands.

NOW THEREFORE, the BUREAU, TRIBE, and STATE do hereby agree to the following terms and conditions:

ARTICLE I

1.01 **TRIBE OBLIGATIONS:** To the best of its ability, within its authority, and dependent on appropriation of funds for such purposes, the TRIBE agrees to:

- a. Take initial actions on all wildfires occurring on trust lands within the Fond Du Lac Reservation;
- b. Promptly report all wildfires occurring on adjacent STATE protected lands to the Area Forestry Office, Cloquet, Minnesota;
- c. Cooperate, and when requested by the STATE, take initial action on such wildfires until relieved by the STATE provided the wildfire is within reasonable distance of the Reservation boundary and such action will not leave Indian lands unprotected;
- d. Assume control, as soon as practical, of that portion of any wildfire which burns onto Reservation lands and be responsible for suppression of that portion of the wildfire.
- e. Provide a Resource Advisor when sensitive cultural areas are threatened or when requested by the BUREAU or STATE. The Resource Advisor will work directly with the Incident Commander to identify critical cultural areas and advise on suppression line construction location.

ARTICLE II

2.01 **BUREAU OBLIGATIONS:** To the best of its ability, within its authority, and dependent on appropriation of funds for such purposes, the BUREAU agrees to:

- a. Assist the TRIBE in preparation of mutual aid and wildland reimbursable agreements, contracts, and/or memorandums of understanding;
- b. Provide resources when requested by the TRIBE or STATE;

- c. Coordinate large incident and numerous wildfire incidents occurring within the Fond Du Lac Reservation. The BUREAU will pay all direct expenses related to large incident wildfire and numerous wildfire situations on and off, but near and having potential impact to Fond Du Lac Reservation.

ARTICLE III

3.01 **STATE OBLIGATIONS:** To the best of its ability, within its authority, and dependent on appropriation of funds for such purposes, the STATE agrees to:

- a. Take initial action on wildfire or assume control of wildfires on lands other than lands in trust and trust lands outside the boundary of the Fond Du Lac Reservation.
- b. Cooperate, and when requested by the TRIBE, take initial action on wildfires on lands which are protected by the TRIBE until relieved by the TRIBE, provided the wildfire is within reasonable distance of the STATE facilities and such action will not leave STATE protected lands unprotected;
- c. Assume control, as soon as practical, of that portion of any wildfire which burns onto STATE protected lands and be responsible for suppression of that portion of the wildfire;
- d. Provide aerial detection and dispatching for wildfire protection within the Fond Du Lac Reservation.

ARTICLE IV

- 4.01 The parties to this Agreement agree to pay all reimbursable wildfire suppression costs incurred when a party responds to a request to suppress wildfire on lands over which the requester has wildfire protection responsibilities. Reimbursable costs shall be defined as those extra costs incurred by the responding party. Reimbursable costs shall include, but are not limited to hired contract equipment, aerial suppression costs, fire department costs, etc. Salaries of the TRIBE, BUREAU, and STATE personnel shall not be reimbursed during the first burning period. After the first burning period, salaries of TRIBE, BUREAU, and STATE personnel shall be reimbursed. The first burning period is the first day of the wildfire up until midnight.
- 4.02 The party with authority to make the initial decision regarding suppression will be responsible for all suppression costs in the event that the initial deciding party takes limited suppression action (or none) and as a consequence the wildfire burns onto the

lands over which the other party has responsibility and requires suppression by that party.

- 4.03 Reimbursement will be made as soon as possible after costs become known on each wildfire. Such reimbursement will be paid upon submission to the TRIBE, BUREAU, or the STATE of a bill showing:
- a. The name and date of each wildfire.
 - b. The location of each wildfire.
 - c. The itemized cost of each wildfire.
- 4.04 Access to Information: The books, records, documents, and accounting procedures of the TRIBE, BUREAU, and STATE relevant to this Agreement shall be subject to examination by the other party and its authorized agents upon request and as provided by law.

ARTICLE V

- 5.01 Nothing in this Agreement shall be understood to impair the right of the United States, the Fon Du Lac Band of Chippewa Indians, or the State of Minnesota to recover costs, damages or penalties from third parties under applicable Minnesota, Federal, or Tribal law.
- 5.02 No State, Federal, or Tribal Official, shall be admitted to any share or part of this Agreement or any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to such Agreement if made with a corporation for its general benefit.
- 5.03 Nothing in this Agreement shall be construed as binding any party hereto to expend any sum in excess of available appropriations.
- 5.04 The parties 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 Agreement.
- 5.05 The liability of each party with regard to employee and third party claims will be in accordance with applicable law, i.e. Minnesota law for the State, and federal law, including the Federal Tort Claims Act (FTCA) and Federal Employee Compensation Act (FECA) for the BUREAU as well as federal and tribal law for the TRIBE. (Tribal employees carrying out BUREAU functions are considered to be federal employees acting within the scope of their employment for purposes of FTCA and FECA coverage).

ARTICLE VI

- 6.01 The TRIBE, BUREAU, and STATE agree that at least once each year, prior to March 15, they will meet to inter alia:
- a. Discuss and prepare annual work and contingency plans;
 - b. Exchange both an updated list of all personnel responsible for fulfilling the obligations of this Agreement and a list of all equipment available to those personnel;
 - c. Apprise one another of the name (s) of Resource Advisors designated for purposes of Section 1.01; and
 - d. Provide one another maps indicating any new land acquisitions by either party and, in particular, update the map of Indian trust lands outside the Fond Du Lac Reservation.

ARTICLE VII

DURATION - TERMINATION

- 7.01 This Agreement shall be effective as of the date of the last required signature and shall remain in full force and effect for five (5) years from that date unless canceled by not less than sixty (60) days written notice from one party to any other party.
- 7.02 This Agreement may at any time be terminated, in writing, by mutual consent.

IN WITNESS WHEREOF, the parties hereto, BUREAU through the Area Director of the Minneapolis Area Office, TRIBE through the Fond Du Lac Chairman, Fond Du Lac Band of Chippewa Indians and the STATE through the Commissioner of Natural Resources, State of Minnesota, have executed this Agreement intended to be bound thereby.

STATE OF MINNESOTA
Dept. of Natural Resources

UNITED STATES OF AMERICA
Dept. of the Interior
Bureau of Indian Affairs
Minneapolis Area Office
MIDWEST REGIONAL OFFICE

Approved:

Approved:

BY:

BY:

Director ~~Commissioner of Natural Resources~~ *Forestry*

Vernon L. Verdu
Minneapolis Area Director

Date:

Date:

10/30/07

STATE OF MINNESOTA
Comm. of Administration

~~BUREAU OF INDIAN AFFAIRS
Mpls. Area Contracting Officer~~

Approved:

Concur:

By:

By:

Date:

Date:

Lynn A. Klessig

12/5/07

*Not Required
Jan 9 2008*

Fond Du Lac BAND OF CHIPPEWA
INDIANS
Approved:

By:

Chairperson of the Band

Date:

Karen R. Oliver

5/15/07