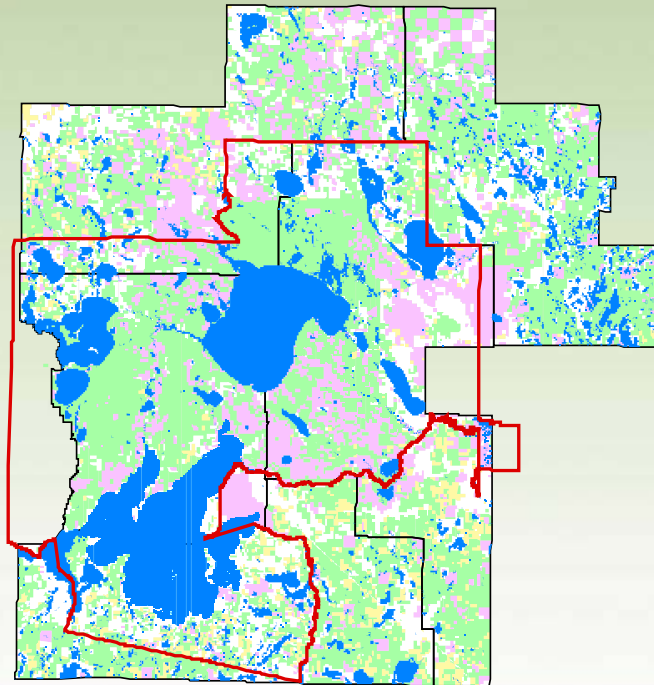


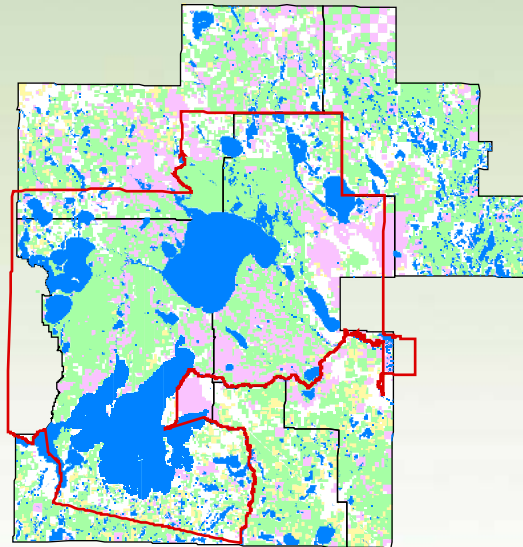
Legal Fundamentals -

The Relationship Between the Leech Lake Band of Ojibwe and the Chippewa National Forest



Chief's Letter

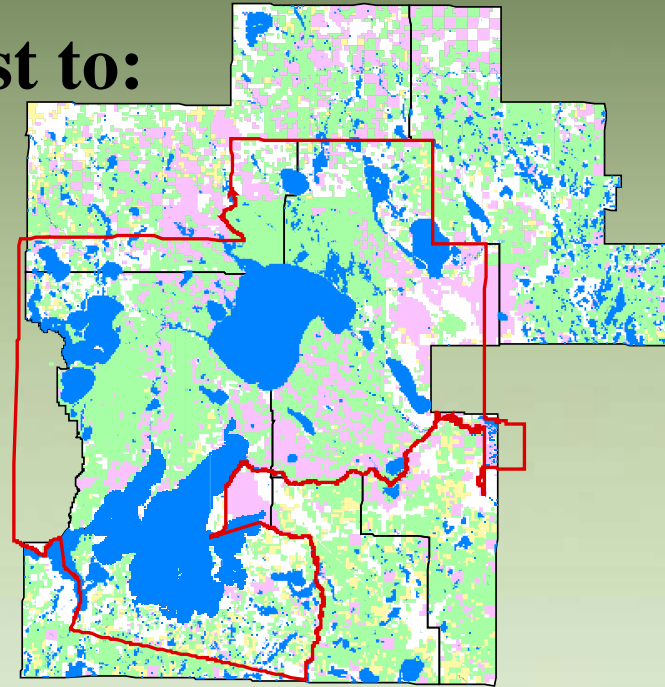
- In April 2016, the Leech Lake Band of Ojibwe sent a letter to the Chief of the Forest Service requesting a review of forest management practices on the Chippewa National Forest.
- In a September 2016 response letter to the Band, the Chief committed the Chippewa National Forest to entering into formal consultation.



Chief's Letter

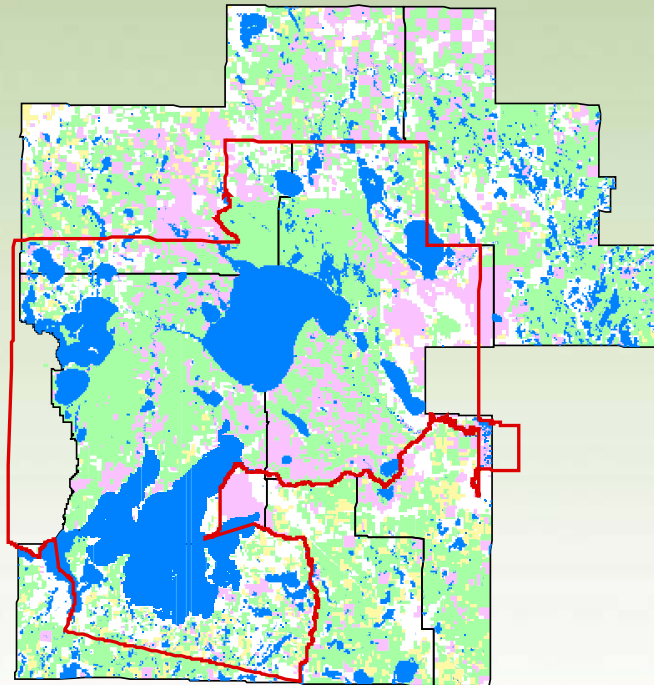
Directed the Chippewa National Forest to:

- Discuss & understand the Band's desired vegetation condition on National Forest System Lands on the Reservation to achieve the balance of resources to sustain Ojibwe lifeways.
- Development of a Decision making model that:
 - Reflects unique history and legal situation of LLBO/CNF, and
 - Gives both Governments ownership in decisions



Legal Fundamentals -

The Relationship Between the Leech Lake Band of Ojibwe and the Chippewa National Forest



The Unique Relationship Between the Leech Lake Band of Ojibwe and the Chippewa National Forest

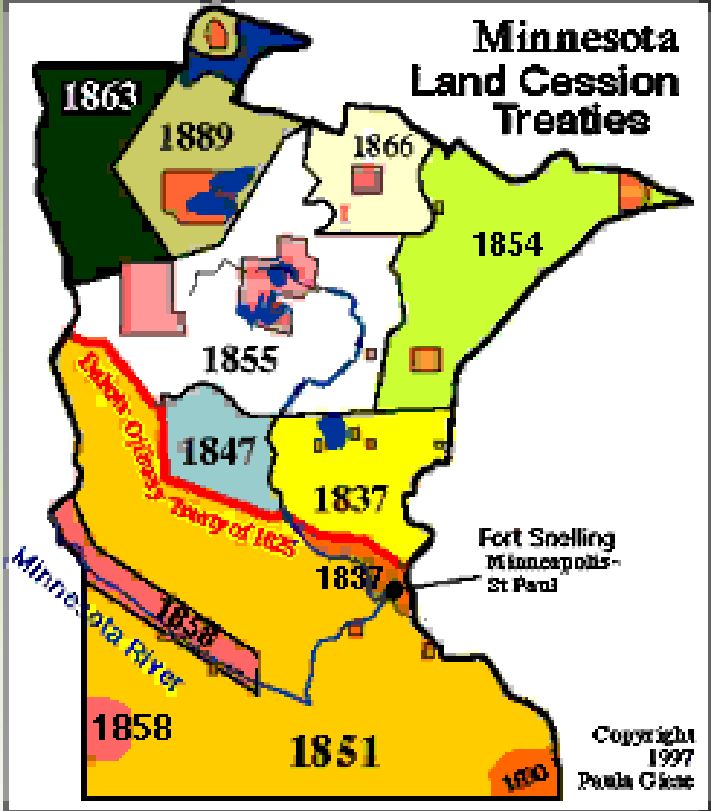


- **90% of the Leech Lake Indian Reservation falls within the Chippewa National Forest, binding the management and condition of the Forest with the social, economic and cultural well-being of the Band.**
- **45% of the Chippewa National Forest is within the Reservation.**

“This isn’t just another forest, it is our Homeland.”

Ben Benoit, Environmental Director, Leech Lake Band of Ojibwe Division of Resource Management

1855 Treaty

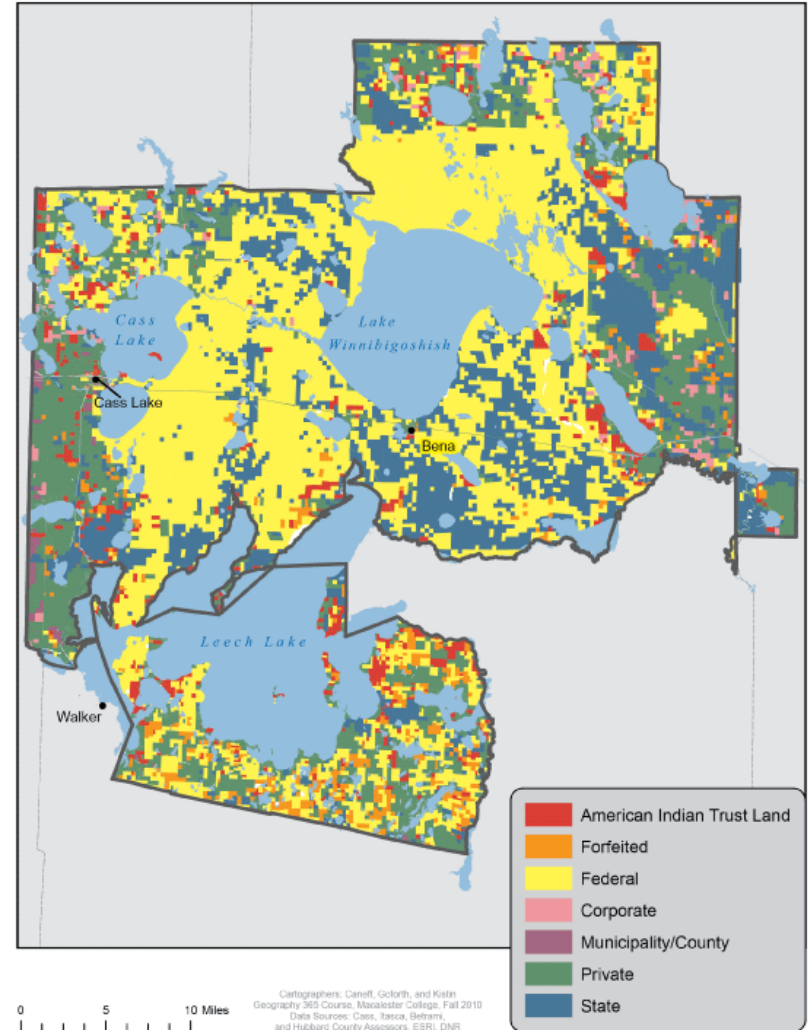


1889 Nelson Act

- Nelson Act was devised to open reservation lands in Minnesota.
- Tribal families and tribal members received grants of 40 to 160 acres, with “surplus” lands opened for settlement.
- Result: Immense land loss and checker-boarded ownership within the Leech Lake Indian Reservation.



Land Tenure - Leech Lake Reservation



Battle of Sugar Point



Tensions arose from ongoing pressures on the Leech Lake Indian Reservation's timber resources.



Ojibwe Delegation to D.C. February 1, 1899

“We desire to impress upon you, and through you, upon the Congress of the United States, that this is a matter of the gravest importance to us and our people. The Chippewas of Minnesota are dissatisfied with these arrangements, as now existing, for sale of our pine timber.”



Ojibwe Delegation to D.C.

February 1, 1899

Delegation Requested:

- **Dead & Down Timber** issue be addressed.
- **Minimum price for pine** be raised from \$3 to \$4 MBF.
- **Indians** be employed in the logging industry on the forest.



Morris Act of 1902

Created Minnesota Forest Reserve

Stated Intent of upholding United States' Trust Obligation, including provisions providing:

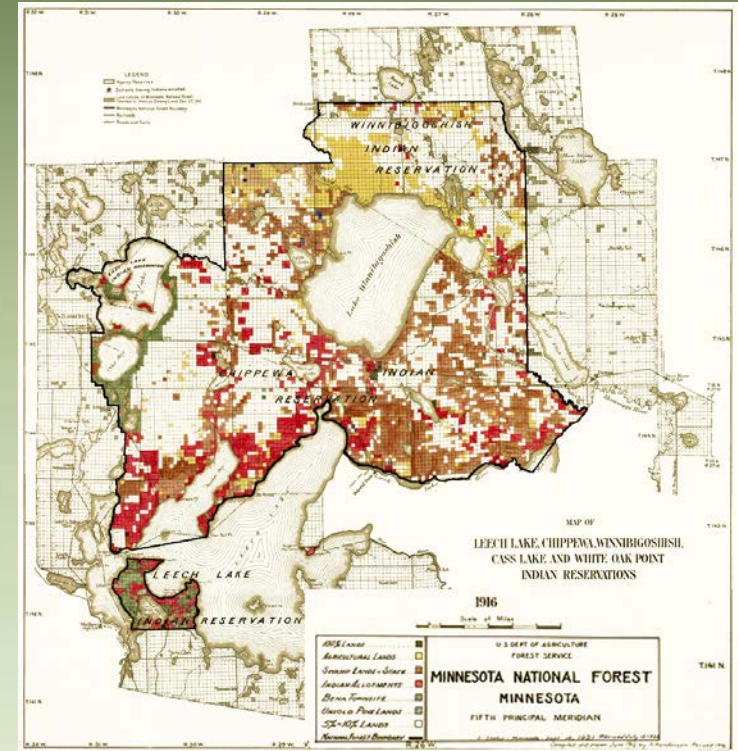
- Encouraging employment of Indian Labor
- Dedicating timber sale receipts to a trust account
- Minimum price for pine was raised from \$3 to \$4 MBF.



These provisions amplify the legal trust obligation owed by the Forest Service to the Leech Lake Band.

Minnesota National Forest Act

- Officially established the Minnesota National Forest in 1908.
- Sharing decisional authority with the Leech Lake Band in oversight of timber valuation.
- Protected Indian graves with continued right to bury their dead on the National Forest



- *Only National Forest created for the benefit of Indian people.*
- *First National Forest created by Act of Congress.*

Coincides with Early 20th Century Assimilation Era – Nelson Act of 1889



- **Designed to force the cession of Minnesota Ojibwe lands to open reservation lands for settlement and resource extraction.**
- **Goal of moving Minnesota Ojibwe onto the White Earth Reservation.**
- **Land and timber sales were suppose to benefit the Ojibwe.**

Coincides with Early 20th Century Assimilation Era – Boarding Schools

University of Minnesota
Morris



Pipestone Indian Training School



Drexel Indian School, White Earth


Illegal Extension of State Jurisdiction over Tribal Resources



FREE ADMISSION! " " FREE ADMISSION!

Bud Grant Night

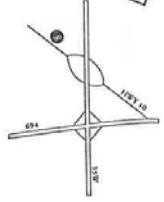
4TH ANNUAL PERMITREATY CASE FUNDRAISER



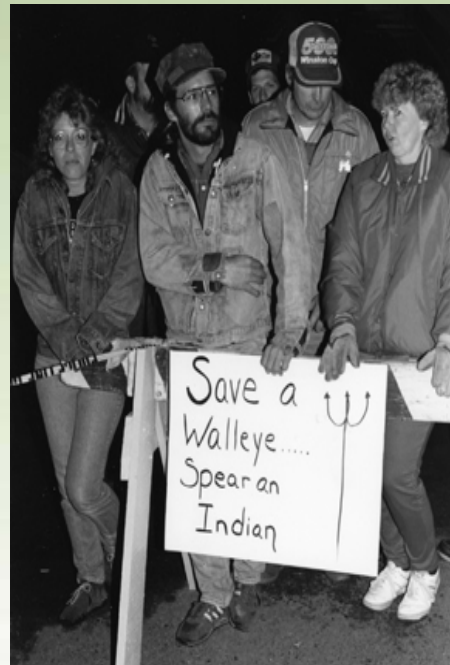
Bud Grant

Thursday, ruary 6, 19

- Cash Bar
- Catfish Shore Supper or Chicken Available
- Live Music
- Raffles
- Silent Auction

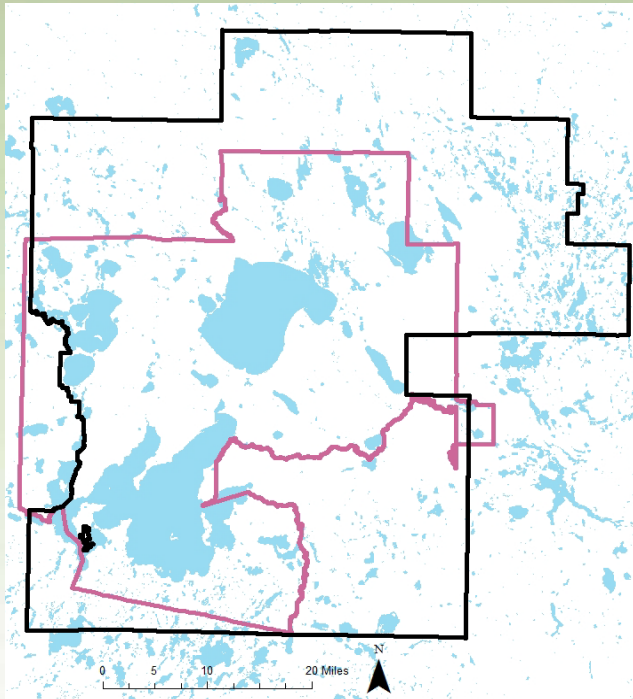


Win one of three ice fishing trips to Lake of the Woods donated by olson's *Jake's Northwest Angle*, Mike Trueman's *Borderview Lodge*, an Jerry Hennem's *Sportsman's Lodge*.



Herbst Litigation - 1971

- **Political and Jurisdictional Integrity of the Leech Lake Reservation Remains.**
- **Affirmed on-reservation rights of the Leech Lake Band to Hunt, Fish and Gather.**



- **Minnesota now Compensates the Band for the Non-Tribal Public to have the privilege to Hunt, Fish, and Gather on the Reservation.**
- **On behalf of the Band, U.S. Asserted that these Rights are Property Rights.**

Trust Responsibility – What is it?



The trust relationship imposes fiduciary duties on the Forest Service as trustee, meaning the Forest Service owes the beneficiary (LLBO) a legal duty of care in managing tribal resources.

Elements of a Common Law Trust Present

- A network of statutes and regulations may impose judicially enforceable fiduciary duties on U.S. in management of Tribal resources. *U.S. v. Mitchell, 1983*



Courts will find a fiduciary duty if Tribe can establish statutory language supporting a fiduciary relationship and federal power over the resource at issue. *U.S. v. White Mountain Apache, 2003*



What are the elements of a Trust Relationship?

- **Trust**: fiduciary arrangement allowing a third party, or trustee, to hold assets on behalf of a beneficiary.
- **Fiduciary Duty**: The fiduciary(CNF) owes the duty, and the person or entity to whom the duty is owed is the beneficiary (LLBO).
- **Corpus**: the property (National Forest lands) that is set aside for the benefit of the beneficiary (LLBO).
- **Standard of Care**: fiduciary is held to a very high standard, meaning that you must pay even more attention to management of the corpus than you would for your own accounts.



Foundational – Why do we Consult?

- To Fulfill our Trust Responsibility.
 - Executive Order 13175
 - Departmental Regulation 1350-002
 - FSM1500
 - FSH 1509.13
- **The Forest Service fulfills its Trust Responsibility through consultation with tribes, and acknowledging and integrating retained treaty rights in management decisions.**

When is Consultation Required?

- Does the Tribe have an interest in area affected by a planned activity?
 - Will there be a substantial Direct effect?
 - Are there possible direct effects?
 - In all cases, err on the side of more rather than less consultation, and document the rationale for your decision. FSM 1563.1
- Are there Tribally reserved rights that may be affected by the action?
- Are there general cultural, spiritual, and economic interests of the Tribe that might be affected?



Balancing Relationship with LLBO with Interests of the Public

The Rights of Tribal Governments and their Officials are not the same, nor should they be treated the same as the general public. FSM 1563

Consultation is a government-to-government engagement, and does not include constituents or partners.



Affirmation of Tribal Rights has a Long Arc

- 116 years to affirm LLBO's Treaty Rights to hunt, fish and gather.
- 114 years for the U.S. government to acknowledge its responsibility to consider LLBO's on-Forest property rights in management decisions and implementation.





How is Chippewa National Forest's Management Impacted by These Rights

- **Overlap of the Chippewa National Forest and the Leech Lake Reservation results in a unique relationship between the USFS and the Leech Lake Band.**
- **In addition to the practical implications of this overlap, the fact that the Chippewa National Forest was created by statute amplifies the legal trust obligation owed by the USFS to the Leech Lake Band.**
- **Therefore, there is the potential for compensatory (financial) liability by the USFS to the Leech Lake Band if the USFS does not live up to its legal duties as a trustee on the Chippewa National Forest.**
- **In litigation, the United States has asserted that the treaty protected rights to hunt fish and gather on the Chippewa National Forest are property rights.**
- **Almost all management activities of the Chippewa National Forest affects these property rights.**
- **As a fiduciary to the Leech Lake Band, the Chippewa National Forest must choose management alternatives that are in the interest of the Leech Lake Band or face potential liability.**

Bowstring River Ricing, 2018.



Courtesy of Marcie Gotchie, Archaeological Technician, CNF, and Leech Lake Band member