



IN REPLY REFER TO:

## United States Department of the Interior

NATIONAL PARK SERVICE  
Great Smoky Mountains National Park  
107 Park Headquarters Road  
Gatlinburg, Tennessee 37738



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August 31, 2010

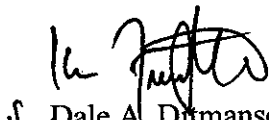
Michell Hicks, Principal Chief  
Eastern Band of Cherokee Indians  
P.O. Box 455  
Cherokee, NC 28719

Dear Chief Hicks:

Please find enclosed a signed original of Memorandum of Understanding No. G5460100005 between the National Park Service, Great Smoky Mountains National Park and the Eastern Band of Cherokee Indians for cooperative elk management to enhance habitat, protection, communication, and training opportunities on mutual issues of interest relative to the elk population.

We look forward to continuing our work with the Eastern Band of Cherokee Indians, and if there are any questions, please feel free to contact Kim Delozier at (865) 436-1248 or Judith Couch at (865) 436-1224.

Sincerely,

  
Dale A. Ditmanson  
Superintendent

Enclosure

**MEMORANDUM OF UNDERSTANDING**  
**Between the**  
**DEPARTMENT OF THE INTERIOR**  
**NATIONAL PARK SERVICE**  
**and**  
**EASTERN BAND OF CHEROKEE INDIANS**  
**for**  
**COOPERATIVE ELK MANAGEMENT**

This Memorandum of Understanding (MOU) is entered into by the Eastern Band of Cherokee Indians (EBCI) and the United States of America, acting through the Department of the Interior, National Park Service (NPS). EBCI and NPS may hereinafter be referred to as a “Party”, or collectively the “Parties”.

**ARTICLE I – BACKGROUND AND OBJECTIVES**

Prior to European settlement, approximately 10 million elk (*Cervus elaphus*) inhabited North America. Though once plentiful in the Carolinas, Eastern elk (*C. e. canadensis*) numbers began to decline in the 1700s because of large-scale habitat loss, unregulated hunting, and competition with domestic livestock. Although a few scattered animals were documented in the Black Mountains in North Carolina, in the bottomlands of west Tennessee, and in the Allegheny Mountains of Virginia, the Eastern elk was essentially extirpated by the mid-1800s.

The feasibility of elk restoration in Great Smoky Mountains National Park (GRSM) was studied for over a decade culminating with a University of Tennessee study entitled: “Feasibility Assessment for the Reintroduction of North American Elk into Great Smoky Mountains National Park.” Based on that assessment, the Park announced a decision in September 1998 to begin planning for an experimental release. Because of positive responses from the public and the positive environmental and disease risk assessments, NPS approved an experimental elk release in GRSM. In June 2000, GRSM released an Environmental Assessment for the planned experiment. Provisions of the experiment require that all elk released and all that are born in the Park are radio-collared and tracked to evaluate their breeding success, movements, food habits, habitat use and impact, causes of mortality, and human impacts including possible conflicts with farmers outside the Park.

The elk research project was conducted in the eastern portion of GRSM, centered on Cataloochee Valley in Haywood County, North Carolina. GRSM managers sought assurance that the reintroduction of elk would be successful, beneficial, and feasible over the long-term. NPS biologists were most concerned with the viability of the elk herd and potential impacts to vegetative communities and private lands adjacent to GRSM. To address those questions,

specific research was conducted to evaluate population dynamics (sex and age distribution, mortality rates, natality rates, recruitment), habitat use, home-range size and placement, and the feasibility of establishing a permanent elk population in GRSM.

Elk have utilized relatively small annual home ranges in GRSM, but were within ranges reported from other elk populations. Home-range dynamics of elk are influenced by the ability to traverse different habitat types and movements related to breeding and parturition, thus, elk movement and use of areas adjacent to the GRSM lands is to be expected and elk are currently utilizing EBCI lands within that home-range.

As a result of the eight year experimental evaluation of elk reintroduction, population modeling indicates the GRSM elk population should persist. The GRSM elk herd is small and slight changes in adult survival may have dramatic effects on the rate of increase in elk populations. GRSM has initiated the development of a long-term Elk Management Plan using an adaptive management strategy to address population perturbations and met with EBCI to discuss long-term management concerns.

To this end, EBCI and NPS have agreed that the elk shall be managed by them in a cooperative manner under the terms of this Agreement. The over-arching goals and vision for the management of elk shall be articulated in a deliberative, collaborative and cohesive fashion pursuant to the detailed terms of an Elk Management Plan to be determined by NPS in collaboration with EBCI, as more particularly referenced in subsection III.A.3. below. EBCI and NPS have further concluded that such cooperative management of the elk in accordance with the Management Plan would allow the identification, development and implementation of operational efficiencies resulting in enhanced protection of park and EBCI resources and improved service to the public.

EBCI and NPS have similarly concluded that the commitment of their respective resources for the management of elk in the Cherokee area can enhance the common protection of all park and EBCI visitors (in terms of public safety) and resources, as well as the appropriate enjoyment and appreciation of the elk by the public.

EBCI and NPS would benefit by greater efficiency and cost savings derived from cooperative management procedures and practices and law enforcement (both resource and visitor protection), as well as standardized signs and rules, and thereby promote less confusion.

EBCI and NPS desire to enter into this MOU to provide for the cooperative elk management on EBCI lands in order to obtain such benefits.

## **ARTICLE II – AUTHORITY**

Title 43 of the *Code of Federal Regulations* (CFR) part 24 describes the four major systems of Federal lands administered by the Department of the Interior. Section 24.4(f) states that “Units of the National Park System contain natural, recreation, historic, and cultural values of national significance as designated by Executive and Congressional action.” In describing appropriate activities, it states that “[a]s a general rule, consumptive resource utilization is prohibited.” In addition, section 24.4 (i) instructs all Federal agencies of the Department of the Interior, among other things, to “[p]repare fish and wildlife management plans in cooperation with State fish and wildlife agencies and other Federal (non- Interior) agencies where appropriate.” It also directs agencies to “[c]onsult with the States and comply with State permit requirements ... except in instances where the Secretary of the Interior determines that such compliance would prevent him from carrying out his statutory responsibilities.”

Title 36 of the *Code of Federal Regulations* provides the regulations “for the proper use, management, government, and protection of persons, property, and natural and cultural resources within areas under the jurisdiction of the National Park Service” (36 CFR 1.1(a)).

Pursuant to 16 U.S.C. § 1a-2(l), NPS is authorized to cooperate with state and local park agencies, including political subdivisions of the State, for the more effective and efficient management of adjacent park areas owned by NPS and such local or state agency, respectively, so long as the administrative responsibilities for any unit of the National Park System are not transferred by NPS to the local or state agency.

EBCI Fisheries and Wildlife Management; and

Pursuant to other authority specifically set out in any addenda that fall under this MOU, EBCI and NPS mutually agree as follows:

## **ARTICLE III – STATEMENT OF MUTUAL INTERESTS AND BENEFITS**

1. It is the mutual intent of the parties that elk management on EBCI lands shall ultimately be the responsibility of EBCI.
2. It is a mutual desire of the NPS and EBCI to work cooperatively and jointly for the purpose of resource management.
3. Therefore, NPS and EBCI shall cooperatively manage elk so as to enhance habitat, protection, communication and training opportunities on mutual issues of interest relative to the elk population.

#### **ARTICLE IV - RESPONSIBILITIES**

Accordingly, to the extent authorized by law and consistent with EBCI and NPS management objectives, the Parties agree to:

1. Utilize their respective resources, staff, equipment and facilities assigned to elk management for the common protection of elk utilizing EBCI lands, as well as for the appropriate enjoyment and appreciation of the same by the public.
2. Designate a staff liaison to each other for purposes of discussing and resolving coordination matters between each other. The EBCI assigns the staff liaison position to the wildlife biologist in the EBCI Fisheries and Wildlife Management department, who will be the point of contact for supervising all elk management activities on EBCI lands. The NPS shall designate a staff liaison in writing within ten (10) days after the date of this Agreement. Agency heads (i.e., the Superintendent of the Great Smoky Mountains National Park, and the Principal Chief, Eastern Band of Cherokee Indians) will resolve substantive issues, including issues not resolved at the liaison level. Liaisons will meet on a quarterly basis to discuss and resolve coordination matters.
3. Review the Elk Management Plan and Environmental Assessment, which includes provisions for the cooperative management of the elk on EBCI lands that addresses management objectives, operational procedures and visitor interaction/protection.
4. Cooperatively develop and employ EBCI management procedures to ensure the protection of elk, while still providing for public safety. Management procedures may include elements relative to: Visitor and resource protection, public safety, public information, interpretation, volunteer management, resource management, and the development of policies.
5. Maintain an open channel of communication between each other and share information in advance, as appropriate. Share basic information on monitoring and management actions taken each year to ensure accurate documentation of population dynamics.
6. Conduct joint training/information sessions so as to provide information to NPS and EBCI staff on elk handling and management and inform the community on current elk issues.
7. NPS agrees to:
  - a. Take lead responsibility for managing elk on the NPS-owned lands;
  - b. In coordination with EBCI, accomplish all NEPA and NHPA compliance for proposed management actions associated with elk;
  - c. Train EBCI staff on elk management practices;

- d. Cooperate with EBCI in the preparation of any ECBI elk management planning documents.
8. EBCI agrees to:
    - a. Take lead responsibility for managing elk on EBCI-owned lands;
    - b. Cooperate with NPS in the preparation of the NPS Elk Management Plan/EA;
    - c. Contribute staff and resources for elk management and to work with NPS in elk management practices on EBCI lands for the purposes of training EBCI staff;
    - d. Develop a plan for elk management on EBCI lands.

#### **ARTICLE V – TERM OF MOU**

This MOU takes effect on the date it is fully executed and will expire fifteen (15) years from its effective date.

#### **ARTICLE VI – KEY OFFICIALS**

1. For NPS:
  - A. Dale A. Ditmanson, Superintendent  
Great Smoky Mountains National Park  
107 Park Headquarters Road  
Gatlinburg, TN 37738
  - B. E. Kim DeLozier  
Supervisory Wildlife Biologist  
Great Smoky Mountains National Park  
107 Park Headquarters Road  
Gatlinburg, TN 37738  
Office: (865) 436-1248  
Mobile: (865) 850-1905  
Fax: (865) 430-0341  
E-Mail: kim\_delozier@nps.gov
2. For EBCI:
  - A. Michell Hicks, Principal Chief  
Eastern Band of Cherokee Indians  
P.O. Box 455  
Cherokee, NC 28719

B. Mike LaVoie  
Eastern Band Cherokee Indians  
Fisheries and Wildlife Management  
P.O. Box 455  
Cherokee, NC 28779  
Office: (828) 497-1802  
Mobile: (828) 788-3427

**ARTICLE VII – IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND BETWEEN THE PARTIES THAT:**

1. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between or among parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors, if any, will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority, and specifically, this MOU does not establish authority for a noncompetitive award to (“list names of all partners”) of any contract or other agreement.
2. Nothing in this agreement shall obligate the agencies of the United States to any current or future expenditure of resources in the absence or in advance of the availability of appropriations from Congress.
3. This MOU in no way restricts (“list names of all partners”) from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
4. No member of, or Delegate to, Congress shall be admitted to any share of part of this MOU or any benefits that may arise therefrom; but this provision shall not be construed to extend to the MOU if made with a corporation for its general benefit.
5. This MOU in no way grants (“Partner”) or any of its members any preferential treatment, exclusive use rights, or other privileges at or on NPS facilities, its lands or waters, over and/or above those which are accorded the general public.
6. The parties hereto agree to meet as necessary, to discuss all matters relevant to this MOU.

**ARTICLE VIII – PROPERTY UTILIZATION AND DISPOSITION**

Any tools, equipment, material or other personal property supplied by NPS shall remain the property of the NPS. Similarly, any tools, equipment, material or other personal property supplied by EBCI shall remain the property of EBCI.

## **ARTICLE IX – MODIFICATION AND TERMINATION**

1. This MOU may be modified only by a written instrument executed by the Parties.
2. Either Party may terminate its participation in this MOU by providing at least sixty (60) days advance written notice (a “termination notice”) to the other Party.

## **ARTICLE X – GENERAL AND SPECIAL PROVISIONS**

1. EBCI must obtain prior government approval from NPS for any public information releases that refer to the Department of the Interior, any bureau, park unit, or employee or this MOU. The specific text, layout, photographs, etc., of the proposed release must be submitted with the request for approval.
2. All activities pursuant to this MOU shall be in compliance with the requirement of Executive Order 11246; Title VI of the *Civil Rights Act of 1964*, as amended, (78 Stat. 252; 42 U.S.C. §§ 2000d *et seq.*); Title V, Section 504 of the *Rehabilitation Act of 1973*, as amended, (87 Stat.394; 29 U.S.C. §794); the *Age Discrimination Act of 1975* (89 Stat. 728; 42 U.S. C. §§ 6101 *et seq.*); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.
3. Liability-Without waiving any defenses, including sovereign and official immunity, each Party accepts responsibility for any property damage, injury or death that occurs in connection with its implementation of this MOU to the extent that such damage, injury or death is caused by its own negligent acts or omissions, or willful misconduct, or the negligent acts, omissions, or willful misconduct of its officers, employees and/or agents acting within the scope of their employment, agency or official capacity, to the fullest extent permitted by law.

Except as expressly provided for herein, nothing in this MOU shall be construed as creating joint liability with regard to any of the activities undertaken in implementation of this MOU. Nothing in this MOU shall be construed as giving either of the Parties the right or ability to bind the other or create any joint liability with regard to, or as a result of, the activities undertaken to implement this MOU.

All employees or agents of a Party shall remain employees or agents of that Party and shall be subject to the laws, procedures, rules and policies governing that Party’s employees and/or agents.



**ARTICLE XI – AUTHORIZED SIGNATURES**

IN WITNESS HEREOF, the Parties hereto, by their duly authorized signatories, have executed this Memorandum of Agreement as of the date first set forth above.



*for* Dale A. Ditmarson, Superintendent  
Great Smoky Mountains National Park

Date 9/1/10



Mitchell Hicks, Principal Chief  
Eastern Band of Cherokee Indians

Date 9-24-10