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December 15, 2016

USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Dear Director McCarthy:

I am an enrolled member of the Menominee Nation and formerly served as Assistant Secretary, Indian Affairs, in the Clinton administration. I am contacting you today about an impending danger and disaster confronting not only the Menominee people, but all people in the Lake Superior watershed.

The purpose of this letter is to ask for your support and assistance in helping my tribe, the Menominee Nation of Wisconsin, prevent the Aquila Resources Mining company from poisoning and destroying the Menominee River and desecrating our traditional and cultural properties. Aquila Resources, a Canadian exploratory mining company, is trying to establish a mine to extract gold, zinc, copper, and other minerals, which would be located near the banks of the Menominee River which is only twelve miles from Lake Superior! This mining project is not only a potential threat to the Menominee Nation, but also, equally important, could poison every living thing in the Lake Superior watershed.

Mining companies always promise and proclaim that their practices will protect the land and water, but their records do not back that up. This is an ecologically fragile area, as noted in Aquila Resource's *own* report. One failure in their systems would poison and kill all water, land, and fish, including the sturgeon, a pre-historic species of fish, of great significance to Menominee culture.

The Menominee Nation finds itself in a difficult position. Currently, the reservation of the Menominees is in Wisconsin, as agreed upon in the treaty of 1854. But, in 1836, in the Treaty of the Cedars, the Menominees were forced to cede some of their most cherished land of origin, including burial sites, raised agricultural beds, dancing rings

and ceremonial sites, well-documented by archaeologists and tribal historians in territory which is now in the state of Michigan.

Because Michigan is one of two states in which CWA regulation has been delegated from the EPA to the state level, the Menominee Nation has been directed to work with *only* the state of Michigan officials, rather than federal agencies. Yet, despite repeated requests, so far, the state of Michigan has refused to consult with the Menominee Nation because, under their state law, they are only required to consult with tribes which reside within their state. This gross denial of agency intent to consult with the tribes is a reversal of best practices, painstakingly established after decades of effort. To deny the Menominee voice defies common sense and continues the pattern of historic injustice that your agency has worked so hard to address and redress.

I sincerely desire and would deeply appreciate your attention and intervention to prevent another injustice. Consultation with the Menominees is crucial! For you and your staff, I am attaching a memo, requesting a programmatic agreement which mandates consultation and addresses this failure in policy. I am also contacting Secretary Jewell and her staff.

Finally, you have my deep respect, gratitude, and thanks for all your service and all your contributions!

Happy Holidays!

Sincerely,

[redacted]

Enclosure: Memo

MEMO to Director McCarthy:

We are writing to ask for a site-specific programmatic agreement to be arranged between the Menominee Indian Tribe of Wisconsin, the EPA, and the State of Michigan that will ensure full consultation with the Menominee Nation before the Aquila Resources Back Forty Project may continue. Since the wetlands permit has been withdrawn after receiving comments from EPA, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service that indicated there has been insufficient review of existing cultural resources, we would ask that EPA require Michigan to enter into the programmatic agreement in order to resolve the federal agency objections to the 303 permit. The programmatic agreement should require a section 106 study of the traditional and cultural properties which will be impacted if the mining project moves forward.

While Aquila Resources has submitted a cultural resources study to the Michigan DEQ, the Menominee Nation was not consulted while it was constructed, despite repeated requests. Nevertheless, the report concluded that further study of the site was warranted. Because of the lack of involvement of the Menominee tribal historical preservation officer, many important features of traditional and cultural significance were not mentioned. Without a full consultation and interviews with tribal elders, it is impossible to offer a full critique of the submitted study, but the reduction of a sacred landscape to twenty-two isolated sites and the lack of consideration of the impact of mining drainage into the Menominee River which would severely impact the viability of the sturgeon, a cultural resource of the Menominees, demonstrates its inadequacy.

We would ask that a section 106 analysis of the impact of the mining project be completed, with full consultation and involvement of the Menominee Nation. This investigation must follow the guidelines set forth in the National Park Service Bulletin 38. We must do interviews with tribal elders and others who have knowledge of the cultural sites and areas where the tribe did ceremonies and cultural activities. These areas must be documented and mapped into the Traditional Cultural Properties Inventory.

The NCAI just released its compilation of testimony from tribal leaders and representatives about improved consultation practices which was triggered because of too many cases in which consultation did not occur or occurred inadequately. The key recommendation from the testimony was the need to consult with tribes early in the permitting process for the good of all parties involved. In that spirit, we would like to request this inclusion in a programmatic agreement so that, moving forward, the Menominee Nation's interests and concerns are also reflected and become part of whatever permit is granted.

Thank you for your attention.

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