EPA-R5-2017-011805_0000647

MENOMINEE INDIAN TRIBE OF WISCONSIN
CHAIRMAN'S OFFICE
P.O. Box 910
Keshena, WI 54135-0910

August 21, 2017

Robert A. Kaplan
Acting Regional Administrator
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Lt. Col. Dennis P. Sugrue
U.S. Army Corps of Engineers
Detroit District
477 Michigan Ave.
Detroit, MI 48226

Re: Consultation Regarding Aquila Resources, Inc. Back Forty Mine Project PermittingPursuant to Section 404 of the Clean Water Act

Dear Mr. Kaplan & Lt. Col. Sugrue:

The Menominee Indian Tribe of Wisconsin requests consultation with the Environmental Protection Agency ("EPA") and the United States Army Corps of Engineers ("USACE") in regard to 404 permitting related to the Back 40 mine project. The Back 40 mine project consists of an open pit (2,000 ft. wide, 2,500 ft. long and 750 ft. deep) gold-zinc sulfide mine located 150 feet from the banks of the Menominee River, near the creation site of the Menominee people. Construction and operation of the mine threatens to destroy significant historical and cultural resources of the Tribe, and presents significant harm to the Menominee River environment.

The United States of America owes a trust responsibility to the Menominee Indian Tribe of Wisconsin. The EPA and USACE as departments of the federal government are required to carry out that trust responsibility. Normally, EPA and USACE would carry out that responsibility as part of the federal permitting process pursuant to Section 404 of the Clean Water Act. As part of that permitting process, EPA and USACE would apply provisions of the National Historic Preservation Act and National Environmental Protection Act. Those provisions would allow for a full and fair investigation and review of the Menominee Indian Tribe's concerns regarding threats to its cultural properties and to the environment of the Menominee River. However, the mine site is located in Michigan and authority over certain 404 permitting has been delegated from the United States to the State of Michigan.

The State of Michigan has stated that it owes no trust duty to the Menominee Indian Tribe, and is not required to follow National Historic Preservation Act and National Environmental Protection Act standards protective of the Tribe's interests. As a result, the United States delegation of 404 permitting to Michigan acts as a diminishment of its trust responsibility to the Tribe.

The Tribe is conscious that the Clean Water Act prohibits the United States from delegating 404 permitting authority to the State of Michigan in regard to certain waters of the United States. As a result,