Detail

AX-17-000-3891

## Citizen Information

Generate Control Slip

Citizen/Originator: 1). Delabreau, Joan - P.O. Box 910, Keshena, WI 54135-0910

Constituent:

Committee:

Sub-Committee:

## Control Information

View Correspondence

| | | | |
|---|---|---|---|
| Control Number: | AX-17-000-3891 | Alternate Number: | |
| Status: | Pending | Closed Date: | N/A |
| Due Date: | Feb 16 2017 | # of Extensions: | 0 |
| Letter Date: | Jan 23 2017 | Received Date: | Feb 02 2017 |
| Addressee: | AAD-Acting Administrator | Addressee Org: | EPA |
| Contact Type: | LTR (Letter) | Priority Code: | Normal |

File Code: 404-141-02-01_141_a(2) Copy of Controlled and Major Correspondence Record of the EPA Administrator and other senior officials - Electronic.

Signature: AAD - Acting Administrator (+)

CC: OCIR-ORO - Office of Regional Operations
R5 - Region 5 -- Immediate Office
Search CC

Signature Date: Date

Primary Subject: Requesting assistance from EPA to require meaningful tribal consultation between the State of Michigan with the Menominee Indian Tribe of Wisconsin

Secondary Subject:

Instructions: AAD-Prepare draft response for signature of the Acting Administrator

Instruction Notes:

General Notes:

## Lead Information

Lead Author: N/A

Lead Assignments:

| Assigner | Assignee | Office | Assigned | Due Date | Completed | Instructions |
|---|---|---|---|---|---|---|
| Ken Labbe | OITA | OITA | 02/02/2017 | 02/16/2017 | N/A | AAD-Prepare draft response for signature of the Acting Administrator |

## Supporting Information

Supporting Author: N/A

Supporting Assignments:

| Assigner | Assignee | Office | Assigned Date |
|---|---|---|---|
| | | No records found. | |

## History

| Action By | Office | Date | Action |
|---|---|---|---|
| Ken Labbe | OEX | 02/02/2017 | Assign OITA as lead office |
| Lakita Stewart | OITA | 02/02/2017 | Accepted the group assignment |

## Comments

| Commentator | Date | Comments |
|---|---|---|
| | | No records found. |

*: Required field

(+): Lookup field, press space bar for complete list

OK Cancel

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


January 23, 2017

***Sent Via USPS***

RECEIVED
2017 FEB -2 AM 11:16
OFFICE OF THE EXECUTIVE SECRETARIAT

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

Dear Environmental Protection Agency Director:

My name is Joan Delabreau and I serve as the Tribal Chairperson for the Menominee Indian Tribe of Wisconsin. I am writing to request assistance from the Environmental Protection Agency (herein referred to as "the Agency") to require meaningful tribal consultation between the State of Michigan with the Menominee Indian Tribe of Wisconsin (herein referred to as "the Tribe"). Furthermore, I am requesting that the Agency exercise its federal oversight in the permitting process of the Back Forty Mine Project, located in Stephenson, Michigan.

The Menominee River and lands surrounding this area are culturally significant to the Tribe as a part of our ancestral territory and documented by the 1836 "Treaty of the Cedars." While the State of Michigan has been delegated permitting authority under the Clean Water Act from EPA, the federal agency cannot delegate its trust responsibility to the state. The Tribe's cultural resources, burial sites, mounds, villages and funerary objects will be adversely impacted by mining activity on the Menominee River.

As you may be aware, the proposed "Back Forty" mine is subject to Michigan's permitting process for four required permits—a nonferrous metallic mining permit, a minor source air permit, a National Pollutant Discharge Elimination System permit, and a wetlands dredge-and-fill permit under Michigan law, pursuant to a federal delegation of authority to Michigan under Section 404 of the Clean Water Act. The Tribe is currently in a battle against time to protect our ancestral territory, which contains several documented burial sites, village and mounds sites, and funerary objects are of great cultural significance to the Tribe. This cultural constellation of villages and significant sites are miles from the Menominee Nation's place of origin at the mouth of the Menominee River. Michigan Department of Environmental Quality is not adequately protecting these areas with its December 28, 2016 approval of the Aquila Resources, "Back Forty" Mine Permit and associated air quality permit.

The Menominee Tribe has participated in public comment periods and hearings concerning the Aquila Resources Inc. approved "Back Forty" Mine Permit with the State of Michigan. Within these venues the Tribe has registered its opposition and identified the gross deficiencies contained within the permit application; which do not afford adequate protection of our cultural resources, the environment, air, water, threatened & endangered species, and existing wild and aquatic life in the area. Not only has our communication been with the Michigan Department of Environmental Quality, but we have also included those communications with our federal partners to keep them abreast of the issues concerning this project and impacts to the Great Lakes Basin. For example,

- The Tribe has provided comments on Aquila Resources, Inc. "Back Forty" Mine Permit Application and associated permits as made available by the Michigan Department of Environmental Quality.
- The Tribe has also furnished copies of said comments to officials at EPA-Region 5, U.S. Army Corps of Engineers – Detroit District, Michigan State Archeologist Office, Bureau of Indian Affairs – Midwest

Region, Assistant Secretary of Indian Affairs Office, U.S. Fish & Wildlife Service, Advisory Committee on Historic Preservation, and our members in Congress and the Senate to keep them informed of the issues and to make formal Tribal requests for federal intervention.

- The Tribe has participated in public hearings as made available by the Michigan Department of Environmental Quality.
- Additionally, on November 28, 2016, the Tribe requested greater federal oversight in the permitting process in accordance with the stipulations of the Clean Water Act Memorandum of Agreement between the U.S. Environmental Protection Agency and the State of Michigan.
- On November 28, 2016, the Tribe provided a response to the Michigan Department of Environmental Quality concerning additional protection for the Tribe's culturally significant sites located on the Menominee River.
- On December 13, 2016, the Tribe formally addressed Heidi Grether, Director of Michigan's Department of Environmental Quality, concerning the Department's inadequate measure and actions to meet a threshold of "meaningful tribal consultation."

On January 19, 2017, Heidi Grether, Director of the MDEQ, provided a response to the Tribe's December 13th letter addressing the Tribe's concerns regarding "meaningful tribal consultation." In her response concerning Part 303, Wetlands Protection of the Natural Resources and Environmental Protection Act, Director stated the following,
"*The MDEQ does not act as a federal agency and does not make a federal agency decision. Therefore, it is not obligated to follow the federal tribal consultation policy...This tribal consultation responsibility is retained by the U.S. EPA.*"

Again, I petition the U.S. Environmental Protection Agency for federal intervention concerning the permitting activity of the Back Forty Mine. Furthermore, I request that the U.S. Environmental Protection Agency engage in meaningful consultation with the Menominee Indian Tribe of Wisconsin concerning the Tribe's cultural resources that will be adversely impacted by this mining activity. Enclosed you will find communications between the Tribe, EPA, Michigan Department of Environmental Quality, and others. I have also taken some time to draft a memorandum concerning our request for meaningful tribal consultation for your consideration.

Thank you for your time and attention to this very critical request. I would also request you contact the Menominee Tribal Chairperson's office at (715)799-5114 with any questions or dialogue.

Sincerely,

Joan Delabreau

Joan Delabreau, Chairwoman
Menominee Indian Tribe of Wisconsin

Enclosures:
Memorandum to EPA Director
2015.11.4. MITW comments on SEIA Meeting
2016.1.5. MITW Testimony of Tribal Chairman Gary Besaw
2016.1.26. MITW-MDEQ Request for Groundwater Model Information
2016.2.16. MITW Comments on Aquila Resources Back Forty Mine Application
Menominee Indian Tribe of WI Resolution No. 15-93
2016.3.29. MITW Request for Groundwater Model Information
2016.7.14. Written Statement on Potential Impacts of Proposed Back Forty Mine on GLRI
2016.9.2. MITW Comments on NPDES Permit Application
2016.10.31. MITW Comments on Proposed Mining Permit and NPDES Permit Application
2016.11.28. MITW Submission of Cultural Protection Permit Stipulations
2016.11.28. MITW Communication to EPA Wetlands & Watershed Branch
2016.12.13. MITW Communication RE: Meaningful Tribal Consultation
2017.1.19. MDEQ Response to MITW 2016.12.13 Communication

**MEMORANDUM TO EPA DIRECTOR:**

I am 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 in the newly submitted Wetland 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 adequately consulted while it was constructed, despite 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 Menominee demonstrates its inadequacy.

I 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. There must be interviews with tribal elders and others who have knowledge of the cultural sites and areas where the Tribe performed 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, I 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.

Joan Delabreau

Joan Delabreau, Chairwoman
Menominee Indian Tribe of Wisconsin

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


November 4, 2015 ***Sent Via Electronic Mail & USPS***

Joe Maki
District Geologist
Upper Peninsula District Office
Michigan Department of Environmental Quality
1504 West Washington Street
Marquette, MI 49855

Re: Comments on SEIA Meeting

Dear Mr. Maki,

Thank you for holding the Scoping Environmental Impact Assessment meeting that the Menominee Indian Tribe of Wisconsin (MITW) recently participated at the Michigan Department of Environmental Quality (MDEQ), on October 15, 2015. The MITW will expect that the MDEQ will be consulting directly with us on all future matters related to the Back Forty project. Our Staff have compiled initial comments (see attached) as a result of the meeting and in conjunction with the agreed upon timeline.

If you have additional questions please contact me at 715-799-5114 or gbesaw@mitw.org. You may also contact Doug Cox with Environment Services Department at 715-799-4937 or David "Nahwahquaw" Grignon, Historic Preservation Director at (715)799-5258.

Thank you.

Sincerely,

Gary Besaw, Chairman
Menominee Indian Tribe of Wisconsin

Cc: file
David "Nahwahquaw" Grignon, Menominee Historic Preservation
Douglas Cox, Menominee Environmental Services Department

Attachments:
A: MITW Comments SEIA
B: MITW Comments Cultural Resources SEIA

# Comments and Issues from Scoping Environmental Impact Assessment Meeting held on October 15, 2015

Below you will find preliminary comments submitted by the Menominee Indian Tribe of Wisconsin, in regard to the information provided at the Scoping Environmental Impact Assessment Meeting hosted by Michigan Department of Environmental Quality (MDEQ) on October 15, 2015 in Marquette, MI. The Tribe recognizes that the impacts from a mine approximately 40 miles from its own water shed are potentially minimal, yet the scale and scope of mining activities in our State, as well as neighboring states and in our historic Menominee homelands are of great concern. We will continue to stay involved in expressing concern over mining activities, especially in those projects that are impacting our historic lands and upon lands that will surely impact our fellow Tribal Nations.

It is evident that the process for communicating with Tribal Nations is improving, but the Tribe would like assurance that there will be direct Government to Government exchanges in the future. We would expect the Menominee Nation to be included in all correspondence related to the mine, including but not limited to; meeting notifications, information availability, environmental reports and scoping materials. An appropriate Tribal consultation process should be identified that demonstrates MDEQ is meeting its obligations to all potentially impacted Governments, which includes Tribes.

Below you will find our general comments regarding issues that must be examined from here forward and during development of the pre EIA/EIS data collection. This list is very preliminary and the Tribe will be involved in continued examination of potential impacts and issues in more specific detail as the application and environmental review processes takes place.

- Will there be a Federal process that will involve Federal Regulatory Agency participation or permits?
- Michigan Department of Environmental Quality must development a clear process that outlines how it will include Tribal Governmental consultation within the permit review and development. To limit the scope of consultation to only Michigan Tribal Governments is falling short of the responsibility to carry the authorities for Environmental Protection within programs that have been delegated to Michigan by the U.S. Environmental Protection Agency and other Federal Agencies.
- MDEQ must publish a schedule that clearly identifies how the review and scoping will be timed. The schedule should include the EIA/EIS development and related consultation periods, public input timing including scoping meetings and document drafts availability.
- Please identify all other related permits that will apply to the mine development and operations along with the public input opportunities related to each specific permit.

- Provide identification of state or federally listed species within the project area of potential impact and roads that will be required for construction or transportation of materials to and from site.
- Provide identification of all streams and wetlands that may be impacted by sampling and road construction or maintenance.
- Provide identification of all streams and wetlands that may be impacted by contact or non-contact runoff from construction and operation and associated haul roads.
- Description of haul road design, e.g. width, base material, load capacity and how those parameters compare to the current roads.
- Provide detail of all water handling, storage, treatment and disposal.
- Identification of type and quantity of blasting material.
- Describe detail of control for ore and ore dust spillage.
- Provide detail of potential discharges related to any indoor leaching facilities, including cyanide use and waste generated.
- Description of site clearing and disposal of timber and spoils.
- Provide details of methods for dust control within the project area.
- A clear description of water quality impacts and how the project plans on meeting the requirements of water quality standards that include designated uses for aquatic resources, fish and wildlife that includes lake sturgeon.
- The Tribe will expect to see a demonstration of how cultural resources are going to be protected, including; lake sturgeon.

**Menominee Indian Tribe of Wisconsin**
**Comments and Issues relating to Cultural Resources**
**Scoping Environment Impact Assessment**
**Meeting held on October 15, 2015**

- We need copies of all reports relative to cultural resources
  The Tribe may have received a Phase I Survey Report written by CCRG. We were then told the project was "off" and have received nothing since then.
- Assuming these sites that have been recorded and evaluated as the SEIA presentation purports, what is the significance of the reported sites? Are they eligible for the National Register of Historic Places?
- Is there likely to be any federal involvement at some point. If so, will this trigger a compliance requirement for Section 106 of the National Historic Preservation Act of 1966 as amended?
- What are the specific boundaries of the sites identified? Can we secure a detailed map at a scale that will provide for an assessment of potential adverse effects to known cultural resources?
- Have any secondary impacts been identified? If so, what are they and how will they be mitigated?
- What effects will the mine operations have on the Sturgeon fishery in the Menominee River? The spiritual and cultural significance of the sturgeon fishery are well documented in Menominee oral traditions, as are many other traditions about the Sixty Islands locality on the Menominee River.
- Many Menominee Tribal members still conduct ceremonies at sites and locations on both sides of the Menominee River that are consistent with the term "Traditional Cultural Properties." Continuing activities are primarily tobacco offerings and other ceremonies including prayers and songs. Will the Tribal members continue to have access for ceremonial purposes?
- Can we secure all reports as well as comments from the Michigan SHPO?

**Michigan Department of Environmental Quality**

**Public Hearing on**
**Back 40 Project Permit**

**Testimony of**
**Gary Besaw**
**Tribal Chairman**

**Menominee Indian Tribe of Wisconsin**
**P.O. Box 910**
**W2908 Tribal Office Loop Road**
**Keshena, WI 54135**
**(715)799-5114**

**Tuesday January 5, 2016**
**Stephenson High School**
**Stephenson, MI**

Posoh Mawanew Weyak, My name is Gary Besaw and I serve as the Chairman of the Menominee Indian Tribe of WI. I would like to introduce my fellow colleagues: Tribal Historic Preservation Officer, David "Nahwahquaw" Grignon, Archeologist, Dr. David Overstreet, and Menominee Tribal Member, Guy Reiter. I am here today to speak on behalf of my tribe, the Omaeqnominniwuk… the People of the Wild Rice, who were created at the mouth of the Menominee River. I am here to preliminarily address concerns that we have relating to the Back 40 Mine permitting process, federal trust responsibility obligations and most importantly potential impacts to our cultural properties of antiquity and environment on the Menominee River and Back 40 Project Mine site. However, as is a traditional value of our people and critical to my testimony, I must first tell you where the Omaeqnominniwuk come from.

**Menominee History in Brief:**

The Menominee Tribe's history is unique because our origin or creation begins at the mouth of the Menominee River, a mere 60 miles east of our present Menominee Indian Reservation located in Wisconsin. This is where our five clans: ancestral Bear, Eagle, Wolf, Moose, and Crane were created. Not many tribes in this region can attest to a fact their origin place exists close to or near their present reservation. This is where our history begins.

According to early records, the Menominee lived in villages at the mouth of the Menominee River, and it was here the tribe had its beginnings. Awachsach (The Great Bear) in the village where the river empties into The Bay found himself alone. He decided to call Kine'u (Eagle/Thunderers) and said, "Eagle come to me and be my brother." While they were considering whom to call upon to join them, they saw a beaver approaching. The Beaver requested to be taken into the totem of the Thunderers, but being a woman, was called Nama' kukiu (Beaver Woman), and was adopted as a younger sister of the Thunderer. Soon afterward, as the Bear and Eagle stood on the banks of a river, they saw a stranger, the Nama'o (Sturgeon), who was adopted by the Bear as a younger brother and servant. In like manner Omas'kos (Elk) was adopted by the Thunderer as a younger brother and water-carrier.

At another time Bear was going up Wisconsin River and becoming fatigued sat down to rest. Nearby was a waterfall, from beneath which emerged Mahwaew (Wolf). While asking Bear why he was there Ota'tshia (Crane) came by. Bear called to him and said, "Crane, carry me to my people at the head of the river, and I will take you for my younger brother." As Crane was taking Bear, Wolf called out to Bear saying, "Bear take me also as a younger brother, for I am alone." This is how Crane and Wolf became younger brothers to Bear.

The Thunderers decide to visit the Bear village and ask the Bear to join them. They promised to give corn and fire in return for wild rice which was the property of the Bear and Sturgeon. From this time on the families untied into an organized body for mutual benefit.

According to these legends the Menominee came into possession of wild rice at the very inception of their tribal organization. When the Bear Clan and Eagle Clan got together to form the Tribe it was with the help of Meqnapus. To the leader of the Bear Clan Meqnapus said, "I give these things to you, and you shall always have them – the river, the fish, the wild rice and the sugar trees."

The Tribe continues to actively participate in educational and cultural activities at the site of our creation. More recently, the Tribe and City of Marinette have begun a collaboration to place educational kiosks in the area to educate on the Menominee Nation's creation and cultural connections to the area. Another example of our modern connection to the area occurred as

recently as November 3, 2015 when the Tribe in cooperation with the City of Marinette, held a reseeding ceremony of wild rice at the mouth of the Menominee River.

The Menominee Nation values the oral tradition over the written word; our history teaches us that this area where this mine is located is immersed in our antiquity. Our oral history is situated along this river and in the land. There is a reason this river and county is called Menominee. We are "Kiash Matchitiwuk" - the Ancient Ones.

**Cultural Properties:**

It is important to reemphasize that our beginnings started here, at the mouth of the Menominee River and extended throughout Wisconsin, into Iowa and Minnesota. Our cultural identity is here where our villages occupied this territory and where our ancestors lay. Today, much of our identity and occupation in this territory remains visible to the trained eye. For example, along the Menominee River and on the site where the proposed Back 40 Mine is to be located are Dance Rings, the Chalk Hill Mounds and Village sites, White Rapids mound site and the Backlund Mounds and Village sites. Some of these date as far back as 500 B.C. These are documented within the archeological and historical record and continue to be a significant source of study for our people and archeologists.

The Tribe is concerned with the site evaluation and predictive models concerning the cultural properties. The technical reports of the CCRG and 106 Groups are only reconnaissance level surveys that provide a basic overview. We are concerned with the level of testing, if any, of the predictive models. Furthermore, it is clear that evaluations have not been conducted on many sites. For those sites that have, we do not agree with recommendations on which sites are eligible for the National Register of Historic Places. For example, there is existing evidence from work done by Bill Mognahan to indicate multiple building stages & episodes of the gardens. According to the technical reports, Me 61, the two miles of raised fields, are the only pristine raised fields left in Michigan.

To date, Section 106 of the National Historic Preservation Act has not been deemed to be applicable to the Project; however, the Tribe has serious concerns about the potential impacts to historically and culturally significant sites, artifacts or remains located at or near the project site.

While responsibility for issuing federal surface water discharge permits and wetlands permits has been delegated to the state, the federal trust responsibility owed to the tribes has not. Because the state permitting process does not afford the Tribes the same protections that would be available to them under Section 106, the Tribe seeks assurances from Michigan DEQ, Office of the State Archeologist, and Michigan State Historic Preservation Officer that the valuable and irreplaceable sites, artifacts and human remains at issue will not be destroyed.

Furthermore, we are asking for clarification from Michigan DEQ on what standards will guide their decisions relating to tribal trust issues, considering our Tribe's traditional cultural properties. Additionally, we are seeking clarification on what standards will protect and preserve identified and suspected burial sites. Moreover, we are asking that no ground be broken until these sites have been completely evaluated for listing qualification under the National Register of Historic Places.

**Permit Issues:**

The Aquila Back 40 Mine permit was determined to be administratively complete by Michigan Department of Environmental Quality on November 26, 2015. The Tribe is concerned that the timing and availability of this permit for public consumption is not adequate for a number of reasons.

1. The permit was deemed administratively complete during the Thanksgiving Holiday, a time when people are preoccupied with the holidays and family. We are not new to timing issues and view this as a strategic move to keep the Back 40 Mine permit under the general public's radar to prevent as little disruption to the permit approval process as possible.
2. The permit located on Michigan DEQ's website was not accessible to the general public due to a technical error in the links provided. Upon contacting the Michigan DEQ office, we were told that the technical error could not be corrected until IT staff returned to the office after the New Year. While the Tribe was able to get a digital copy of only Volume I of the permit directly from Aquila Resources, Inc., I suspect that others who had an interest and knew about the triggering of the public comment period did not have the same opportunity. We do however, want to express our gratitude to Aquila Resources,

Inc., specifically, Andrew Boushey, for his efforts to communicate with our Tribe on this very important issue.

The Tribe would like to go on record to request that Michigan Department of Environmental Quality grant an extension beyond the February 2, 2016 deadline for public comments on this permit application due to the concerns as stated above. In addition, the volume and complexity of the materials warrant an extension to allow for accessibility and adequate review by impacted parties.

**Environmental Issues:**

The Tribe would also like to go on record to address potential impacts to the environment, water, aquatic and wildlife. These potential impacts, when realized and if not properly mitigated will have a long-standing effects of destruction and contamination on critical resources in this area that will also impact Wisconsin.

We suggest that Aquila Resources (AR) should be required to provide additional information in multiple areas, including the following:

1. With regard to negative impacts to surface water, the application states that it will comply with the requirements of the Michigan Mining Regulations. However, the requirement is that when there is a release to surface water, a permittee must "implement a plan for response activity." It seems that there should be more concrete plans in place for spills or releases of hazardous materials, particularly as the surface water in the Project Area currently is not contaminated. (See V.II, §§ 3.5.2., 3.5.4.).
2. The application states that it does not expect to be impacted by any flooding and that there would be no negative impact to the floodplain resulting from the mine. This statement is insufficient and the mine should be required to have a plan in place to deal with any flooding. (See V. II, § 3.6.4.).
3. The application states that the improvement of existing roads may be required to support the project. This issue needs to be addressed in depth, and should include a review of any impacts that may be caused by road construction activity. (See V. II, § 3.10.2.3.).
4. The application states that there are "no public recreation areas located close to the property that will be affected by the proposed mining activities." However, it does not

address the potential impacts of an unexpected release into ground or surface waters to Shakey Lakes Park and its surrounding environment. (See V.II. § 3.11.2.).

5. The application does not address any possible secondary impacts of the mine such as decreased use of use of the river or Shakey Lakes Park for fishing, swimming or other recreation due to pollution or perception of pollution, or economic impact due to loss of fishing, hunting, and camping tourism caused by the changed land use and associated public perception. (See V. II. § 3.12.2.).
6. The application mentions that hazardous spills may occur, and that "prompt cleanup and correction is incorporated into the plans," but does not assess actual harm that may occur to aquatic life in the event of such hazardous spills. (See V.II. §3.13.).
7. The application proposes the "rescue and relocation of listed mussels at the treated water discharge outfall." This indicates that the conditions for mussels will be negatively impacted—is AR proposing to relocate affected mussels annually for the life of the mine? How will AR identify and relocate affected mussels? Is this a typical solution for this sort of issue? (See V.II. § 3.15.3.).
8. What effect will the mine have on lake sturgeon? The study at Attachment E-I merely stated that there were lake sturgeon in the area. AR should be required to provide information on the effect the discharge and/or other pollutants will have on the lake sturgeon population.
9. The groundwater flows into either the Menominee River or into Shakey Lakes then to the River. Is there a realistic way to prevent acid rock drainage and metal leachate from the mine from entering the River & lakes through the groundwater?
10. Is the proposed reclamation of the backfilled pit protective over the long term? Is the mine proposing to just dump limestone in the pit to neutralize the acidity? Is the effectiveness of the limestone diminished over time? Particularly as the proposal includes eventual flooding of the pit?
11. Will Alger-Delta supply power to the Project?
12. We would like DEQ to provide information on the current status of the Air Use Permit, NPDES Permit and Wetland Permit Applications.

**Conclusion:**

As I indicated earlier, the Tribe has not yet had adequate access to the entire volumes of the Back 40 permit deemed administratively complete by Michigan DEQ. We will also submit written comments to address our concerns and other related information. In conclusion, I would like to say waewaenen, which means thank you in our Menominee Language, for your time and consideration.

# MENOMINEE INDIAN TRIBE OF WISCONSIN
## CHAIRMAN'S OFFICE

P.O. Box 910
Keshena, WI 54135-0910


January 26, 2016

***Sent Via Electronic Mail & USPS***

Mr. Joe Maki
District Geologist
Upper Peninsula District Office
Michigan Department of Environmental Quality
1504 West Washington Street
Marquette, MI 49855

Mr. Andrew Boushey, Vice President
Aquila Resources, Inc.
414 10th Avenue, Suite 1
Menominee, MI 49858

RE: Request for Information – Groundwater Model

Posoh Gentlemen,

The Menominee Tribe continues its evaluation of the Back 40 Project permit, we observed a general absence of the models necessary for the Tribe to review and examine the groundwater modeling that was used to predict mine pit inflow during operations, groundwater drawdown during mining, and contaminant transport after mining activity occurs. On behalf of the Menominee Tribe, I would respectfully request the following information in order to make an informed determination concerning this portion of the Environmental Impact Analysis.

1. Steady state base conditions model, which would include MODFLOW2000 and GWV files for:
    a. Initial manually calibrated model
    b. Final PEST calibrated model
        i. Calibration target files and
        ii. PEST calibration files
2. Transient predictive operations model, which would include MODFLOW2000 and GWV files for:
    a. Years 1 through 7 predictive model runs
3. Sensitivity Models, which include MODFLOW2000 and GWV files for:
    a. Sensitivity to K, base model runs
    b. High K & high recharge transient predictive model run
4. Steady state post-closure model, which includes MODFLOW2000 and GWV files for:
    a. Post-closure predictive run

The Tribe would also request all GIS data that were used in the EIA and the associated maps and analysis. Finally, when will a schedule be developed for the planning of technical meetings that would include the groundwater modeling?

Thank you for your time and assistance with this information request.

Respectfully,

Gary Besaw
Tribal Chairman

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


February 16, 2016 ***Submission Via Electronic Mail***

Michigan Department of Environmental Quality
Office of Oil, Gas, and Minerals
1504 West Washington Street
Marquette, MI 49855

**RE: Menominee Indian Tribe of Wisconsin – Aquila Resources Back Forty Mine Comments**

Dear Mr. Joe Maki,

My name is Joan Delabreau and I serve as the Tribal Chairwoman of the Menominee Indian Tribe of Wisconsin. As you are aware, the Menominee Indian Tribe of Wisconsin is opposed to the Back Forty Mine proposal in Lake Township, Michigan. The proposed mine is situated along the banks of the Menominee River and will pose negative impacts to the Tribe's historical and cultural assets. These assets are located within the footprint of the mine and adjacent areas along the banks of the Menominee River. We are also concerned about impacts posed to the air, water, environmental, wild and aquatic life. Our comments will address each of these concerns. In addition, I have included a short synopsis of our historical, cultural, and modern-day connection to the area.

Thank you for your time. If you have any questions, feel free to contact me at (715)799-5114 or jodelabreau@mitw.org.

Sincerely,

for Joan Delabreau
Chairwoman, Menominee Tribal Legislature
Menominee Indian Tribe of Wisconsin

Enclosure: MITW Public Comments – Aquila Resources Back Forty Mine

## Historical & Modern-day Connection:

The Menominee Tribe's history is unique because our origin or creation begins at the mouth of the Menominee River, a mere 60 miles east of our present Menominee Indian Reservation located in Wisconsin. This is where our five clans: ancestral Bear, Eagle, Wolf, Moose, and Crane were created. Not many tribes in this region can attest to a fact their origin place exists close to or near their present reservation. This is where our history begins.

According to early records, the Menominee lived in villages at the mouth of the Menominee River, and it was here the tribe had its beginnings. Awaehsaeh (The Great Bear) in the village where the river empties into The Bay, found himself alone. He decided to call Kine'u (Eagle/Thunderers) and said, "Eagle come to me and be my brother." While they were considering whom to call upon to join them, they saw a beaver approaching. The Beaver requested to be taken into the totem of the Thunderers, but being a woman, was called Nama' kukiu (Beaver Woman), and was adopted as a younger sister of the Thunderer. Soon afterward, as the Bear and Eagle stood on the banks of a river, they saw a stranger, the Nama'o (Sturgeon), who was adopted by the Bear as a younger brother and servant. In like manner Omas'kos (Elk) was adopted by the Thunderer as a younger brother and water-carrier.

At another time Bear was going up Wisconsin River and becoming fatigued sat down to rest. Nearby was a waterfall, from beneath which emerged Mahwaew (Wolf). While asking Bear why he was there Ota'tshia (Crane) came by. Bear called to him and said, "Crane, carry me to my people at the head of the river, and I will take you for my younger brother." As Crane was taking Bear, Wolf called out to Bear saying, "Bear take me also as a younger brother, for I am alone." This is how Crane and Wolf became younger brothers to Bear.

The Thunderers decide to visit the Bear village and ask the Bear to join them. They promised to give corn and fire in return for wild rice which was the property of the Bear and Sturgeon. From this time on the families untied into an organized body for mutual benefit.

According to these legends the Menominee came into possession of wild rice at the very inception of their tribal organization. When the Bear Clan and Eagle Clan got together to form the Tribe it was with the help of Meqnapus. To the leader of the Bear Clan Meqnapus said, "I give these things to you, and you shall always have them – the river, the fish, the wild rice and the sugar trees."

The Tribe continues to actively participate in educational and cultural activities at the site of our creation. More recently, the Tribe and City of Marinette have begun a collaboration to place educational kiosks in the area to educate on the Menominee Nation's creation and cultural connections to the area. Another example of our modern connection to the area occurred as recently as November 3, 2015 when the Tribe in cooperation with the City of Marinette, held a reseeding ceremony of wild rice at the mouth of the Menominee River.

The Menominee Nation values the oral tradition over the written word; our history teaches us that this area where this mine is located is immersed in our antiquity. Our oral history is situated along this river and in the land. There is a reason this river and county is called Menominee. We are "Kiash Matchitiwuk" - the Ancient Ones.

**Cultural Properties:**

It is important to emphasize that the Menominee Indian Tribe's creation began at the mouth of the Menominee River and later extended throughout Wisconsin, into Iowa and Minnesota. Our Tribe, unlike most other Tribes in Wisconsin, does not have a migration story. Our cultural identity is here where our villages occupied this territory and where our ancestors lay. Thousands of years of Menominee history, culture, and identity lay beneath the surface along the banks of the Menominee River and more importantly, within the footprint of the Back Forty Mine site. Today, much of our identity and occupation in this territory remains visible to the trained eye. For example, along the Menominee River and on the site where the proposed Back 40 Mine is to be located are Dance Rings, the Chalk Hill Mounds and Village sites, White Rapids mound site and the Backlund Mounds and Village sites. Some of these date as far back as 500 B.C. These are documented within the archeological and historical record and continue to be a significant source of study for our people and archeologists.

It is the view of the Tribe that the predictive models and site evaluation to identify cultural properties are unacceptably inadequate. The technical reports of the CCRG and 106 Groups are reconnaissance level surveys that provide only a basic overview. We are concerned with the level of testing, if any, of the predictive models. Furthermore, it is clear that evaluations have not been conducted on many sites. For those sites that have been evaluated, we do not agree with recommendations on which sites are eligible for the National Register of Historic Places. For example, there is existing evidence from work done by Bill Mognahan to indicate multiple building stages & episodes of the gardens. According to the technical reports, Me 61, the two miles of raised fields, are the only pristine raised fields left in Michigan.

To date, Section 106 of the National Historic Preservation Act has not been deemed to be applicable to the Project; however, the Tribe has serious concern about the potential impacts to historically and culturally significant sites, artifacts or remains located at or near the project site. While responsibility for issuing federal surface water discharge permits and wetlands permits has been delegated to the state, the federal trust responsibility owed to the tribes has not. Because the state permitting process does not afford the Tribes the same protections that would be available to them under Section 106, the Tribe seeks stipulations from Michigan DEQ, Office of the State Archeologist, and Michigan State Historic Preservation Officer that the valuable and irreplaceable sites, artifacts and human remains at issue will not be destroyed.

Below are additional comments that expand on the discussion above.

- The Tribe would like clarification from Michigan DEQ on what standards will guide their decisions relating to tribal trust issues, considering our Tribe's traditional cultural properties. Additionally, we are seeking clarification on what standards will protect and preserve identified and suspected burial sites. Moreover, we are asking that no ground be broken until these sites have been completely evaluated for listing qualification under the National Register of Historic Places.
- Little attention is given to Menominee history and prehistory at this location and the traditional ties of the Tribe to the Sixty Islands area. This topic needs to be further developed and incorporated into EIA cultural resources documents.
- If Menominee history and prehistory at this location and the traditional ties of the Tribe to Sixty Islands area were to be better developed the need for a formal Traditional Cultural Properties study program would be obvious. The Tribe has previously developed a Traditional Cultural Properties for the Wolf River and respectfully recommends that the

same should be compiled for the Menominee River. Study should meet the criteria outlined in various National Register bulletins, guidelines and texts but minimally should be carried out by Menominee speaker(s) fluent in their native language. The Scope of work for the Traditional Cultural Properties should include consultation with the Menominee Tribal Historic Preservation Officer and/or others whom he might wish to include.

- What specific procedures will be employed to guarantee formal identification, evaluation, and protection of these cultural resources venerated and held sacred by Menominee Tribal members? Why don't the Menominee have a significant role in determining significance for National Register of Historic Places? The impact assessment is vague and more discussion needs to be directed to "unevaluated,", "eligible" and "not eligible" sites and the reasoning for this conclusion. Because so little is known about most of the sites within the project boundary it seems inappropriate to make management recommendations in the absence of comprehensive evaluation data. Dismissing a site described as a "lithic scatter" or because it "lacks diagnostic artifacts" is unacceptable.
- Predictive modeling or so-called "sensitivity zones" has limitations. Not enamored of the sensitivity model—there is insufficient discussion as required in Rule202 (1), (a), (iii) and Rule 202 (1), (e), (ii). We submit that the only test of the model is a vague statement of use in Northern Wisconsin and Minnesota "with success". This needs clarification and demonstration of validity of methods employed. Also we believe that remote sensing may have defined anomalies but those anomalies have not been adequately confirmed to be cultural or non-cultural.
- Rule 202 (2) requirements of sub-rule (1) (a) and (b) of this rule apply to natural and human-made conditions and features including but not limited to, the following. [Note: following are the two sub-rules for which the MITW needs additional information and clarification.]
    - (a) Topography—we believe that the topography of the mine locale has been significantly altered by the Menominee and their ancestors. There is no doubt that the topography with its extensive raised agricultural fields and multiple mound groups and village sites can be characterized as a cultural or as an archaeological landscape. This needs to be directly addressed in the cultural resources document.
    - (p) Residential dwellings, places of business, places of worship, schools, hospitals, government buildings, or other buildings used for human occupancy all or part of the year.

  There should be no doubt that the Menominee River generally and specifically the Sixty Islands locality are places of worship in every sense of the word. The topography referenced in subparagraph (a) above would include summer bark lodges known to have been utilized by the Menominee of the ethnographic present and their prehistoric ancestors during the so-called "Late Prehistoric" eras. Placement and archaeological signatures of these structures should be part of any evaluation phase.
- Characterization of 47Me61 and its associated components are incomplete and distorted. Data that were not available to CCRG and 106 Group have been compiled through the cooperative efforts of the Menominee Indian Tribe of Wisconsin, College of the Menominee Nation, and Menominee Tribal Enterprise during the past several years. On-going research both on and off the Menominee Reservation provides new information regarding an adaptive strategy best described as "agro-forestry". There is also new information regarding models of settlement that may serve to differentiate between eastern Wisconsin "Oneota" or "Upper Mississippian" groups and their interaction with regional Late Woodland populations.

[Note: Menominee Indian Tribe of Wisconsin is willing to share this information with the applicants and their consultant(s) to ensure that their presence on the Menominee River throughout is addressed—the 1836 Treaty confirmed Menominee ownership of territory held exclusively for the Tribe's use and territories where seasonal resources were shared with other ethnicities. Furthermore, the Menominee Tribe never relinquished its usufruct rights in this territory ceded to the United States.]

- Densmore (1932) in her BAE Bulletin notes a tradition of pictographs made by twins on a quest on a west-facing rock outcrop—the reference is at "Menominee Falls." Are there pictographs on the Menominee River; and, is there another place-name for Menominee Falls on the Menominee River. The reference to these pictographs is in Densmore (1932, also 2015 reprint of *Menominee Music).*

**Environmental:**

The application for a permit to construct and operate the Back 40 Mine submitted by Aquila Resources (AR) should be required to provide additional information in multiple areas, and does not currently meet the requirements of Michigan's Nonferrous Metallic Mining Regulations (Part 632). We respectfully submit the following comments to the proposed permit.

- With regard to the possibility of negative impacts to surface water, the Environmental Impact Statement (EIS) states in §§ 3.5.2. & 3.5.4. that it will comply with the requirements of the Michigan Mining Regulations. However, the requirement is that when there is an unpermitted or unplanned release to surface water, a permittee must "implement a plan for response activity." Aquila Resources should be required to develop a more detailed plan for spills or releases of hazardous materials, particularly as the surface water in the Project Area currently is not contaminated.
- Water quality testing parameters are listed in Mine Permit Application (MPA), Volume I, Table 2-1, what factors were used in determining the list of parameters? What schedule is used to identify the parameters?
- What monitoring results will equate to changes in the noted parameters list in Table 2-1? Currently the list is indicated to have been developed based on baseline studies, but no other descriptions are provided. Please provide a description of what will determine the changes to the parameter list in Table 2-1.
- Mine Permit Application (MPA), Volume I, Section 3 Operations Water Quality Monitoring; this section is very general and does not define "operations water," which leads to confusion over the remaining language within the short section. Are samples collected from surface and groundwater at the identified locations? The plan indicates that chemical composition as a result of monitoring will assist in calibration of the water quality model predictions. There is no reference to what the model is or if it has already been developed based on the baseline data. Additionally there is no reference of how the National Pollutant Discharge Elimination System (NPDES) permit is being developed and how any of the baseline or operations monitoring will accommodate the permit development and compliance.
- Mine Permit Application (MPA), Volume I, Section 5; Surface Water Monitoring does not specify the sampling design or SOP's, only reference provided to R 425.406.
- Mine Permit Application (MPA), Volume I, Section 5.1 Monitoring Locations does not specify what the designed locations will be assessing as far as "potential impacts"? If locations are built around specific impacts, then they should be outlined in this section. For example; if turbidity is one of the parameters that are a "potential impact" then monitoring locations should be placed in an appropriate location so as not to biased the sample.

- Mine Permit Application (MPA), Volume I, Section 5.2.1 Surface Water Elevation Monitoring; what is the existing SOP? It is not clear from this description exactly how measurements will be taken and what quality assurances are in place.
- Mine Permit Application (MPA), Volume I, Section 5.2.2 Surface Water Quality Monitoring; there is reference to the DEQ Operational Memo, but that document isn't included for review. Please provide DEQ Operational Memo.
- The EIS states at § 3.6.4. That Aquila Resources (AR) does not expect the mine to be impacted by any flooding and that there would be no negative impact to the floodplain resulting from the mine. This statement is insufficient and the mine should be required to have a plan in place to deal with any flooding, including contingencies for a dam break upstream.
- The EIS § 3.10.2.3 states that the improvement of existing roads may be required to support the project. This issue needs to be addressed in depth, including any required permitting and/or public review process which should include analysis of any impacts that may be caused by road construction activity.
- In the EIS § 3.11.2, Aquila Resources (AR) states that there are "no public recreation areas located close to the property that will be affected by the proposed mining activities." However, it does not address the potential impacts of an unexpected release into ground or surface waters that may impact Shakey Lakes Park and its surrounding environment, and the loss of use of this park as a result. Decline in use of the park may result from the loss of public trust, which likely will result in loss of revenue to local businesses and units of government. In fact, the application does not address any possible negative secondary impacts to the surrounding community such as decreased use of use of the Menominee River, Shakey Lakes Park or other bodies of water or public lands for fishing, swimming or other recreation due to pollution or perception of pollution. Nor does the application address the likely economic impact due to loss of fishing, hunting, and camping tourism caused by the changed land use and associated public perception, and the reduction of property values of the landowners surrounding the mine or adjacent to potentially affected bodies of water. In fact, Aquila Resources (AR) rather cheerily suggests in EIS § 3.12.3. that any impacts to the land use in the surrounding area should be "relatively unaffected or affected in a positive manner." However, in Section 63202(c), the State of Michigan has acknowledged that waste materials associated with mining operations such as the proposed Back 40 mine, if "not properly managed and controlled,[...] can cause significant damage to the environment, impact human health, and degrade the quality of life of the impacted community." As discussed above, degradation of the quality of life of the impacted community has not been addressed in the permit application. While it is everyone's hope that releases of hazardous substances do no occur, it is the responsibility of Aquila Resources (AR) to fully assess such possibilities, and it is the responsibility of Michigan Department of Environmental Quality (DEQ) to ensure that it does so. Aquila Resources' dismissal of the very real possibility of environmental and economic damages with a one-paragraph assurance that the area will be "relatively unaffected" does not meet the requirements of Part 632.
- The groundwater flows either into the Menominee River or into Shakey Lakes then to the River. Is there a realistic way to prevent acid rock drainage and metal leachate from the mine from entering the Menominee River and nearby lakes through the groundwater over the long term?
- Which power company will supply power to the Project?
- What is the current status of the Air Use Permit, National Pollutant Discharge Elimination System (NPDES) Permit and Wetland Permit Applications?

- There is a reference to the National Pollutant Discharge Elimination System (NPDES) contained within Volume 1, to the Foth (2015b) NPDES application, but this document is not available for review within the mine permit application.
- If the application has not been prepared as part of the Mine Permit Application (MPA), then there should be specific language in the Mine Permit Application (MPA) detailing how the process is carried out and the associated schedule for the application/permit process.
- The Tribe would herein request that any public information available regarding the National Pollutant Discharge Elimination System (NPDES) permit application, in accordance with R 323.2117(2), draft and draft final permit, as well as any associated fact sheets, be provided to the Tribe immediately upon availability.
- According to the Mine Permit Application Volume I, Section 5.8.2.2, discharge volume is estimated at 1,080,000 gallons/day, which will enact the provisions of R 323.2121, indicating that the Department shall prepare and make available a fact sheet. The fact sheet requirements are listed in R 323.2122, but do not include information describing how the receiving waters standards may differ from the adjacent WI standards. Due to the immediate proximity of the WI waters, how will MDEQ comply with Wisconsin Water Quality Standards? The Tribe would request access to any pertinent information that the fact sheet lists for MI receiving waters and comparison to WI waters and compared to both States Water Quality Standards.
- The statement within section 5.8.2.2, "The WWTP will be designed such that the quality of the wastewater discharge will meet all numerical limits stipulated in the NPDES permit issued by MDEQ", is a general statement. What are the designated water quality standards that the quality of the discharge will have to meet?
- Pursuant to the Part 632 Regulations at Section 63202(4), a local unit of government may enforce ordinances, regulations, or resolutions affecting mining operations provided such ordinances, etc., do not duplicate, contradict, or conflict with Part 632. The local unit of government, Lake Township, in fact has a zoning ordinance, and a Mineral Extraction Ordinance. Nevertheless, Aquila Resources indicated in its permit application that no such ordinances apply to this project and has not addressed compliance with local zoning and Mineral Extraction requirements. AR should be required to address how it will comply with applicable local ordinances in its permit application.
- Pursuant to Section 63205(2) (c) (v), the proposed environmental protection plan shall include provisions to prevent acid-forming waste products from leaching into groundwater or runoff into surface water. While the application provides multiple mitigation measures, the long-term closure plan needs to clearly state how it will prevent leaching of acidic waste into groundwater. Is the proposed reclamation of the backfilled pit protective over the long term? Is the mine proposing to just dump limestone in the pit to neutralize the acidity? Is the effectiveness of the limestone diminished over time? Particularly as the post-closure proposal includes eventual flooding of the pit?
- Pursuant to Section 63205(2) (d), the application is supposed to include assessment of risk to the environment or public health and safety in the event of a potentially significant incident or failure. The application indicates in multiple places that risk of such incidents will be minimized via secondary containment, monitoring, etc. However, the application should address what happens to the water quality, aquatic life, flora, and what are the risks to the public health in the event of a catastrophic release into the river, groundwater, contamination of Shakey Lakes, etc. Merely stating that risk of such incidents is low is insufficient to provide actual information on the risks in the event such an incident does occur. The Contingency Plan at Appendix J only minimally addresses potential impacts of accidents or releases at the operation, and repeatedly characterizes potential impacts as

minimal. However, if there are accidental releases, there will be impacts and Aquila Resources should be required to discuss the actual impacts of such releases. Instead, the Contingency Plan repeatedly uses the same language to address each possible incident:

> *"Release of [pollutant] to the environment could pose a threat to wildlife in and near the Project Area by impacting surface water and/or groundwater quality. The Project Area is located in a remote, sparsely populated area, but a release of [pollutant] could potentially impact residents in the immediate vicinity of the Project Area by impacting surface water and/or groundwater quality."*

- This response provides almost no information as to what those impacts would be, how long the impacts would last, and whether the impacts could be reversed. This response does not meet the standard set forth in Section 63205(11)(b), which requires the applicant to make a showing that the operation will not pollute, impair, or destroy the air, water or other natural resources or public trust in those resources. In fact, it could be argued that the response clearly shows that there will be impairments to surrounding natural resources and/or the public trust in those resources, and fails to show whether such impairments would be corrected or permanent. The mine's proposed location in a remote area does not negate the responsibility to protect the surrounding resources; indeed, because of the current lack of impairments to the environment at the proposed site, Aquila Resources should be required to show that the environment will remain at least reasonably clean during and after operations and the provided Contingency Plan fails to do so. Discussing the mitigation of risk is not the same as assessing the damage in the event that risk mitigation measures fail and releases occur. In particular, Aquila Resources should assess the impacts to surrounding natural resources and public health both for catastrophic, one-time failures and for releases or leaks that may not be detected by the monitoring mechanisms and so continue over a long period of time. Pursuant to Section 63205(12), DEQ cannot approve a permit application if the proposed mining operation will pollute, impair, or destroy the air, water or other natural resources or public trust in those resources. The current application does not meet this standard.
- Pursuant to Section 63211(2), financial assurance requirements apply to all mining and reclamation operations, including remediation of any contamination of the air, surface water, or groundwater that is in violation of the permit. Appendix K of the application does not include financial assurance for remediation of contamination that violates the permit. Because of the mine's proximity to the Menominee River, Shakey Lakes and other bodies of water and the possibility of contamination of groundwater, Aquila Resources should be required to include in its Financial Assurances an adequate amount in the likely event that at some point during the construction, operation or post-closure period of the life of the mine, contamination to water in the vicinity of the operation will occur.
- Mine Permit Application (MPA), Volume I, Section 6 General Monitoring of Environmental Protection Measures; Are there other timelines for post-closure timelines to go beyond mine year 30? There are no descriptions of post-closure monitoring the Tailings Management Areas in this section.
- Mine Permit Application (MPA), Volume I, Section 9 Post closure Groundwater and Surface Water Monitoring; the plan indicates that monitoring of ground and Surface water will continue until mine year 30, but there are no other descriptions of what will occur after that point. The plan should identify what actions will be taken in the event of discovery of groundwater and surface water contamination. The plan should identify what the useful life of the liners in the Tailings and Waste Rock Management Facility is expected to be and what will the likely result of failure of liners equate to, listing catastrophic secondary.

**Aquatic Life, Flora, Fauna:**

- The EIS states in § 3.13. that hazardous spills may occur, and that "prompt cleanup and correction is incorporated into the plans," but does not assess actual results that may occur to aquatic life, flora or fauna in the event of such hazardous spills. Nor does it address how long such impacts may last, or how cleanup would be undertaken. This should be required, per Section 63205(2)(b), which requires the EIS for a proposed mine to include the potential impacts the proposed mining operation may have on the affected area, including, but not limited to, flora, fauna, hydrology, geology, and geochemistry. The application as a whole does not satisfactorily address the cumulative impacts of the mining operation as required under Rule 425.202(2).
- The application proposes the "rescue and relocation of listed mussels at the treated water discharge outfall" at EIS § 3.15.3. This indicates that the conditions for mussels will be negatively impacted—is Aquila Resources proposing to relocate affected mussels annually for the life of the mine? How will Aquila Resources identify and relocate affected mussels? Is this a typical solution for this sort of issue? Will United States Environmental Protection Agency be involved in managing the threat to this species? How will DEQ monitor whether AR is adequately protecting this species and whether, and how much, the mining operation is affecting the health and habitat of the listed mussels?
- During operations description indicates that monitoring will occur annually late summer to early fall for fresh water mussels. This seems very general in description and there should be specific reference to methods that will be used and what protocols will be established based on the goals of the sampling. It is unclear whether the sampling is just to "confirm baseline" and "document trends" or if the monitoring is to assess potential impacts and determine when the relocation efforts should take place as described above. Please add clarification and specific reference to methods, for example; *(Strayer, D. L., S. Claypool, and S. Sprague. 1997. Assessing unionid populations with quadrats and timed searches. Pages 163-169 in K. S. Cummings, A. C. Buchanan, C. A. Mayer, and T. J. Naimo, editors. Conservation and management of freshwater mussels II. Initiatives for the future. Upper Mississippi River Conservation Committee, Rock Island, Illinois*).
- Mine Permit Application (MPA), Volume I, Section 8 Monitoring of Flora, Fauna, Fish and Wildlife Habitats and Biodiversity; there is no mention of plans to address Northern Long-Eared Bat (NLEB), which is presently listed as a Federally Threatened Species under the Federal Endangered Species Act of 1973, in fact the report indicates that there have been no federally listed species identified. The Monitoring plan must be updated to address how the surveys will be conducted and what measures will be put in place to protect the Northern Long-Eared Bat (NLEB).
- Mine Permit Application (MPA), Volume I, Section 8.1.1 Aquatic Biota and Habitats; the statement, "treated water discharge from the facility is not anticipated to affect aquatic biota and habitats", is very general and nonspecific. There is no reference to support this statement.
- Mine Permit Application (MPA), Volume I, Section 8.1.2 Terrestrial Biota and Habitats Evaluation; there is reference to relocation of species prior to construction, but no reference to what type of methodology will be implemented for this plan. In many cases sensitive species are not able to be relocated, hence the reason they are listed as sensitive. Capture, movement and surrounding environmental conditions are all factors in survival of species that are captured and relocated. Generally, not all species are even able to be trapped successfully. This section does not address mortality and take of any listed species that

would be onsite, i.e. the Northern Long-Eared Bat. Taking of a federally listed species in prohibited unless very specific conditions can be met and generally a project with this size a scope would be challenged to meet such conditions for a species like the Northern Long-Eared Bat (NLEB).

- The last sentence discussed monitoring for confirmation of "baseline conditions' and "document trends" during operations. It will be impossible to confirm baseline conditions once operations have begun, as a disturbance this size and scope will likely have significantly changed most of the terrestrial biota patterns and habitat use in that area. Most wildlife will have moved away from the site due to habitat destruction or alteration, noise, lighting impacts and increased traffic.
- What effects with the mine have on lake sturgeon? The study at Attachment E-I merely stated that there was lake sturgeon in the area. Aquila Resources should be required to provide information on the effect the discharge into the Menominee River and any possible contaminants will have on the lake sturgeon population and the ongoing efforts to support the sturgeon population on the Menominee River. What other bodies of water in the state are comparable sturgeon habitats? Aquila Resources should be required to consult with N.E.W. Hydro Inc., The River Alliance of Wisconsin, U.S. Fish and Wildlife Service, the Wisconsin Department of Natural Resources, the Michigan Department of Natural Resources, and the Michigan Hydro Relicensing Team, and the Great Lakes Fishery Commission on whether the proposed mine will impact the fish passages on the Menominee River, work on which has been ongoing for more than ten years. The Lake Sturgeon is identified as a threatened species in Michigan, a species of special concern in Wisconsin, and a federal species of concern by the US Fish & Wildlife Service. Further, the sturgeon is of great cultural and spiritual significance to the Menominee Tribe and other tribes. Aquila Resources should be required to provide a fuller picture of potential impacts of its operations on this species, particularly in light of the current efforts to protect it and its habitat on the Menominee River. (See US Fish & Wildlife Service Finding of No Significant Impact on proposed construction of lake sturgeon passage facilities on the Menominee River (February 1, 2012) and Final Environmental Assessment (November 30, 2011) at: http://www.fws.gov/midwest/greenbay/hydropower/pdf/MenomineeRiverFishPassageEA.pdf )

**Threatened and/or Endangered Species:**

- The Mine Permit Application, Volume I – Threatened & Endangered Species 5.9 & Monitoring 5.10 does not include any reference or discussion on survey methods, occurrence, updated survey periods relating to the Northern long-eared bat (Myotis septentrionalis) or Gray Wolf (Canis Lupus) within the project area.
- It is not clear that all federally listed species were considered in the baseline surveys and no description has been provided to indicate that there are available habitats for several of the federally listed species.

**EIS, Volume IIG, Appendix E – Biological Resources:**

- Most of the studies and data were collected from 2007 to 2009, which seems relatively old for some parameters and results to be used today.
- The EIS p. ES-2 indicates that there are no aquatic macrophytic state endangered, threatened or special concern species identified in surveys on Resort, East or Baker Lakes, which apparently is only associated with the 2009 baseline data. Up to date surveys must be collected to assure that species composition hasn't changed and that methodologies for data collection are up to date and accurate. Cross reference should be made to assure that

any new species that have been added to the list of state or federal endangered, threatened or special concern species since 2009 have new surveys conducted for occurrence.

- EIS p. ES-3, it indicates that surveys 2008 and 2009 for mussels species have found two on state endangered species list (black sandshell and hickorynut) and one on the threatened list (slippershell) and two on species of concern list (elktoe and round pigtoe). No Federally listed species have been found. Up to date surveys must be collected to assure that species composition hasn't changed and that methodologies for data collection are up to date and accurate. Cross reference should be made to assure that any new species that have been added to the list of state or federal endangered, threatened or special concern species since 2009 have new surveys conducted for occurrence.
- Fishery surveys in the Menominee River indicate that the only listed species is lake sturgeon, which is listed as state threatened. Up to date surveys must be collected to assure that species composition hasn't changed and that methodologies for data collection are up to date and accurate. Cross reference should be made to assure that any new species that have been added to the list of state or federal endangered, threatened or special concern species since 2009 have new surveys conducted for occurrence.
- Fish contaminant tissue testing results were considered low for all water bodies sampled, yet there is reference in the water quality sampling results that there were high results for mercury detected in several samples. A summary should be provided that correlates mercury detections in surface waters with results listed for all fish species included in the sample set. In addition fish contaminant sampling should be designed to fish targeted for consumption and the appropriate size classes of those species. According to the report, Aquatic Biota Report, Environmental Baseline Studies, Aquatic Resources Inc. Oct. 2011, fish species were collected based on taxa present at the time of sampling, which limits the ability to acquire representative samples that would provide a quality data set to adequately assess the potential for contribution to fish contaminants in the surrounding water bodies.

# MENOMINEE INDIAN TRIBE OF WISCONSIN
# RESOLUTION NO. 15-93
# OPPOSITION TO MINING ACTIVITY THAT THREATENS MENOMINEE CULTURAL RESOURCES AT TRIBES PLACE OF ORIGIN

**WHEREAS,** we, the Menominee people, are indigenous to what is now known as the State of Wisconsin, our place of origin was at the mouth of the Menominee River where the five clans of the Menominee were created and include the Awäēhsaeh (Bear), Kenēw (Eagle), Mahwāēw (Wolf), Mōs (Moose), and Otāēchiah (Crane), and we continue to live on our ancestral land that was granted by the Māēcawāēhtok (Great Spirit); and

**WHEREAS,** the Menominee Indian Tribe of Wisconsin (the "Tribe") is a federally recognized Indian Tribe as provided by the Menominee Restoration Act, Act Dec. 22, 1973, Pub. L No. 93-197, 87 Stat. 770, which appears generally as 25 U.S.C. §§ 903 et seq.; and

**WHEREAS,** the Tribe, acting through its duly elected governing body, the Menominee Tribal Legislature (the "Legislature"), has powers to make and enforce laws, negotiate with Federal, State and Local governments and otherwise exercise its powers consistent with the limitations imposed by its Constitution and Bylaws; and

**WHEREAS,** Aquila Resources, Inc. is seeking approval from Michigan DEQ to mine gold, zinc, copper, silver and other minerals upstream from the mouth of the Menominee River on Michigan's Upper Peninsula, known as the "Back Forty Project";

**WHEREAS,** the location on the Menominee River is historically and culturally significant to the Menominee people due to the existence of cultural properties by way of raised agricultural fields, funerary objects, multiple mounds, burial sites, and villages and is an area that is the place of origin for the Menominee People; and

**WHEREAS,** Aquila Resources, Inc. will utilize open-pit mining for extraction and removal processes, a process which has historically caused detrimental impacts to water, environment, wildlife, animals, and cultural properties as demonstrated with other mines of similar nature; and

**WHEREAS,** the Menominee Tribe has demonstrated its stewardship to protect the Tribal Culture and Resources, neighboring Tribal Nations, water, environment, wildlife, and animals that occupy these lands within our historical range;

**NOW, THEREFORE, BE IT RESOLVED,** that by this Tribal Resolution, the Menominee Indian Tribe declares

1. The Tribe's opposition to mining activity within the Tribe's historical range, specifically that mining activity that threatens the Tribe's place of origin at the mouth of the Menominee River;
2. The Tribe is dedicated to committing resources and technical support to protect the Tribe's cultural and historical resources within its historical range;
3. The Tribe is dedicated to assisting our neighboring Tribes in protecting the environment, water, wildlife, animals and cultural properties; and

**NOW, THEREFORE, BE IT FURTHER RESOLVED,** that the Menominee Tribal Legislature hereby directs the Chairman of the Tribe to take necessary action to become involved in the Back Forty Project permitting process, to include the following:

1. Attending relevant meetings pertaining to the issue;
2. Submitting comments on the project permit by the February 2, 2016 deadline;
3. Contacting the Native American Liaison of the Detroit Corps of Engineers to intercede on the Tribe's behalf; and
4. Explore contact with other potential federal agencies that may intercede.

## CERTIFICATION

We, the undersigned officers of the Menominee Tribal Legislature hereby certify that the foregoing resolution was duly adopted at a meeting held on December 03, 2015 with a quorum present, by a vote of 7 for, 0 opposed, 0 abstentions and 1 absent

The undersigned further certify that the foregoing resolution has not been amended or rescinded in any way.

MENOMINEE INDIAN TRIBE OF WISCONSIN

GARY BESAW, TRIBAL CHAIRMAN
MENOMINEE TRIBAL LEGISLATURE

CRAIG CORN, SECRETARY
MENOMINEE TRIBAL LEGISLATURE

DATE: December 17, 2015

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


March 29, 2016

***Sent via Electronic Mail & USPS***

Mr. Joe Maki
District Geologist
Upper Peninsula District Office
Michigan Department of Environmental Quality
1504 West Washington Street
Marquette, MI 49855

**RE: Meeting with Menominee – Groundwater Modeling**

Dear Mr. Maki,

My name is Joan Delabreau and I serve as the Chairperson for the Menominee Indian Tribe. I was elected to the Chairperson's position on February 9, 2016. Our Tribal Legislature and Executive Team undergoes reorganization each year in accordance with the parameters of our Tribal Constitution.

I would like to thank you for your letter dated March 23, 2016, regarding a meeting request with the Menominee Indian Tribe of Wisconsin to discuss our January 26, 2016 request for files specific to groundwater modeling. Please allow this letter to serve as a receipt and acknowledgment of that request. The Tribe would respectfully request the following documents in advance of a meeting with the Michigan Department of Environmental Quality in order to make an informed determination on the information relayed through the Environmental Impact Analysis of this application. Without these documents, it is difficult to understand the basis for assessments and conclusions on impacts. Please accept this as our formal request for access to the following documents.

1. Steady state base conditions model, which would include MODFLOW2000 and GWV files for:
    a. Initial manually calibrated model
    b. Final PEST calibrated model
        i. Calibration target files and
        ii. PEST calibration files
2. Transient predictive operations model, which would include MODFLOW2000 and GWV files for:
    a. Years 1 through 7 predictive model runs
3. Sensitivity Models, which include MODFLOW2000 and GWV files for:
    a. Sensitivity to K, base model runs
    b. High K & high recharge transient predictive model run
4. Steady state post-closure model, which includes MODFLOW2000 and GWV files for:
    a. Post-closure predictive run

The Tribe would also request all GIS data that were used in the EIA and the associated maps and analysis. It is my belief that once we are in receipt of these documents and have had time to review and analyze them, we will be better able to engage in a meaningful discussion

I would like to thank you for your time and consideration of our request for further information. I would also ask that you contact my office with any questions or concerns relating to this request. I can be reached via telephone at (715)799-5114 or email and jodelabreau@mitw.org. I would also ask that you include the Tribe's Intergovernmental Affairs Manager, Tasha Caldwell, on all communication requests/responses. She can be reached at (715)799-5114 ext. 1263 or via email at tmcaldwell@mitw.org.

Sincerely,

Joan Delabreau

Joan Delabreau, Tribal Chairwoman
Menominee Tribal Legislature

**To:** Rita Cestaric, Designated Federal Officer

**From:** Menominee Indian Tribe of Wisconsin
River Alliance of Wisconsin
Save the Wild U.P.
Michigan Environmental Council
Front 40 Environmental Group
Chippewa Ottawa Resource Authority
Wisconsin Resources Protection Council

**Date:** July 14, 2016

**Re:** Written Statement on Potential Impacts of Proposed Back Forty Mine on the Great Lakes Restoration Initiative *submitted via email*

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The Michigan Department of Environmental Quality (MDEQ) currently is reviewing an application for a non-ferrous metallic mining permit,[1] submitted by Aquila Resources Inc. for the Back Forty Project, a proposed open pit mine 150 feet from the Menominee River near Stephenson, Michigan. The permit application process is subject only to oversight and approval by the State of Michigan, due to the State's assumption of authority to issue National Pollutant Discharge Elimination System (NPDES) and Clean Water Act Section 404 dredge-and-fill permits. We are voicing our concerns to the MDEQ,[2] but have received a response that MDEQ *must* approve the permits if Aquila Resources complies with Michigan's regulations. The overwhelming public response has been in opposition to approval of the mine permit[3]; however, it is not clear whether, or how, MDEQ factors these comments into its permitting process.

We believe the proposed mine location near the river, the amount of dewatering that is projected to occur, the long-term impacts of the tailings proposed to be left on site, lack of appropriate historical and cultural resources review required under the state permitting processes, the potential for this project to pollute a bi-state waterway which empties into Lake Michigan and potential impacts to human health and the environment merit some input from the GLAB. Additionally, we believe that input from stakeholders and citizens is vital to the decisionmaking process, and the overwhelming public outcry for protection of the Menominee River should be taken into account.

The Menominee River is a focus area under the Great Lakes Restoration Initiative (GLRI). One of the GLRI's long-term goals is to try to prevent the release of toxic substances and eliminate

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[1] In addition to the application for a non-ferrous metallic mining permit, Aquila Resources also has submitted an Air Permit to Install application and a Wetlands Permit application and also will be required to submit a National Pollution Discharge Elimination System Permit application.

[2] Copies of comments submitted to MDEQ by the Menominee Tribe and the Great Lakes Indian Fish and Wildlife Commission are attached.

[3] A summary of the public comments submitted to MDEQ on the Back Forty Project is attached.

the release of persistent toxic substances. The Back Forty mine would include use of multiple toxic substances including cyanide and frother and flotation chemicals and would release mercury and other toxic substances via discharges to the air and water. The permit application does not adequately address scenarios involving breaches or accidental releases to the river or groundwater. Finally, the permit application estimates a far shorter life of the mine than the materials Aquila Resources provided to potential investors, suggesting that Aquila Resources actually is intending for the mine to operate differently and for a different length of time than it has represented in its applications to MDEQ.

In just a few short years, the GLRI has funded multiple projects on the Menominee River, representing millions of dollars invested restoration and protection efforts. Millions more in GLRI funds have been spent on projects in the Bay of Green Bay and surrounding watersheds. The Back Forty mine, if approved, threatens the progress already made and the health of the Menominee River, Bay of Green Bay, and Lake Michigan for hundreds, if not thousands, of years. Given the massive GLRI investment in the Menominee River alone, and the continued planned restoration activities, any proposed mining operations should be subject to intense scrutiny with regard to how the mining activities may affect the restoration and preservation projects.

The US - Canada Great Lakes Water Quality Agreement (Agreement) stresses accountability to the public, prevention of pollution, public engagement, and virtual elimination of releases of chemicals. To our knowledge, there has been no discussion of the applicability of the Agreement to Michigan's permitting process. We suggest that regulatory authorities making decisions on permit applications for activities with the potential to result in pollution incidents affecting the Great Lakes should be required to consider how the proposed activity will comply with the objectives of the Agreement. Further, if it has not already done so, the GLAB should notify the Canadian government of potential mine activity through the Great Lakes Executive Committee pursuant to Article 6(c) of the Agreement. This notification should occur prior to any approval so that the interests of all parties may adequately be considered. Aquila Resources is, after all, a Canadian company.

We are submitting these comments to request greater federal oversight of MDEQ by EPA in the permitting process; at a minimum, EPA, and any of the other federal agencies that make up the Great Lakes Interagency Task Force should be reviewing and commenting upon all of the permit applications related to this project. MDEQ should be required to address how it has considered the provisions of the GLRI and the Agreement, and incorporated them into the decisionmaking process on these permits. Specifically, MDEQ should consider the potential impacts of the project to the goals of restoration, protection and preservation of the Menominee River and Lake Michigan with regard to release of toxics, degradation of ecosystem, and impact on threatened or endangered species including lake sturgeon, mussels, the long-eared bat and other species.

Finally, we hope GLAB will listen to the concerns voiced by the people in the communities surrounding the proposed mine site and downstream, and that GLAB will ensure that there is appropriate consideration of these concerns. MDEQ has not yet responded to any public comments submitted. MDEQ, to our knowledge, has not incorporated consideration of the GLRI

or the Agreement into its permitting process. The State of Michigan should not be allowed to act alone in making a decision that will impact the waters of surrounding states, tribes and countries and thus we implore the GLAB to bring this matter to the attention of the EPA Administrator, EPA Region V Administrator, appropriate Canadian officials, and Great Lakes Interagency Task Force to ensure that the aims of the GLRI and the US - Canada Great Lakes Water Quality Agreements are duly considered, and that the concerns of protection, preservation and restoration of the Great Lakes voiced by so many be considered in addition to the economic interests of the few.

Encl. (4)

SIGNED:

Menominee Tribe of Indians of Wisconsin

By: _____

Joan Delabreau, Chairwoman

Michigan Environmental Council

By: _____

Brad Garmon, Director of Conservation and Emerging Issues

River Alliance of Wisconsin

By: _____

Denny Caneff, Executive Director

Save the Wild U.P.

By: _____

Kathleen Heideman, President

Front 40 Environmental Group

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SIGNED:

Menominee Tribe of Indians of Wisconsin

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Michigan Environmental Council

By: _____

Brad Garmon, Director of Conservation and Emerging Issues

River Alliance of Wisconsin

By: _____

Denny Caneff, Executive Director

Save the Wild U.P.

By: K. Heideman

Kathleen Heideman, President

Front 40 Environmental Group

Great Lakes Advisory Board
July 14, 2016

By: _____

Ron Hendrickson

Chippewa Ottawa Resource Authority

By: _____

Jane TenEyck, Executive Director

Wisconsin Resources Protection Council

By: _____

Al Gedicks, Executive Secretary

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


September 2, 2016 ***Submitted via USPS & Electronic Mail***

Alvin Lam
Permits Section
Water Resources Division
Department of Environmental Quality
P.O. Box 30485
Lansing, MI 48909

Re: Comments on NPDES Permit Application #MI0059945, submitted via email to *lama@michigan.gov*

Dear Mr. Lam:

Attached are comments on the NPDES Permit Application submitted to Michigan Department of Environmental Quality ("DEQ") by Aquila Resources for the Back 40 Project on behalf of the Menominee Indian Tribe of Wisconsin. Please note in addition to the attached comments, the Tribe has been informed that MDEQ will be noticing a public hearing for the draft NPDES permit, that will include an open comment period and timelines. During the upcoming public hearing process we will be submitting additional comments regarding the NPDES permit. In addition to review and consideration of the comments, listed below, a public hearing on the NPDES permit absolutely is essential, particularly as there has been considerable local opposition to the proposed degradation of the water quality. This public hearing should be just on the NPDES permit and not combined with public hearings on other permit issues, because of the complexity of the issues and length of the permit application documents.

**Comments on Narrative NPDES Permit Application**

Section 1.2, p.3, mentions that an "optional pretreatment system addressing the Oxide TWRMF leachate is under consideration to enhance operations." Under whose consideration is the pretreatment system, and what are the circumstances under which this pretreatment system would be required, as opposed to optional? If the pretreatment system is constructed, how will the operations be "enhanced," and what modifications to permit conditions would result?

Section 1.4, p. 6, states that, "In the event recycled water within the mills develops contaminant concentrations that significantly interfere with the milling processes and that interference cannot be eliminated through appropriate treatment of the recycle water, the MDEQ may allow a discharge in an amount necessary to correct the interference problem after installation of appropriate treatment." This appears to be a reference to 40 C.F.R. § 440.104(b)(2)(ii), which also says, "This discharge shall be subject to the limitations of paragraph [40 C.F.R. § 440.104 (a)]. The facility shall have the burden of demonstrating to the permitting authority that the discharge is necessary to eliminate interference in the ore recovery process and that the interference could not be eliminated through appropriate treatment of the recycle water." Please explain under what circumstances, and how often, the facility would be allowed to make such discharges, what DEQ's criteria would be for making a determination that the discharge was necessary, and how it would be determined that any such discharges are below the limits set in § 440.104(a)? What assurances have been or will be provided that such discharges

would be rare, rather than routine? Has the permit applicant provided any information on the basis of the projected frequency of such discharges? If not, how will DEQ make a determination as to the actual level of pollutants that will be discharged in a set period of time, say, a month or a year?

Section 2.1, p. 8, indicates that the groundwater inflow modeling is described over a seven year mine life. However, in the land swap proposal currently posted for public comment, the estimated life of the mine is listed as sixteen years. Given this discrepancy that also is present in the mining permit currently pending before DEQ, and which is referenced in the NPDES permit application, how will DEQ determine whether the mine drainage water characteristics, groundwater flows down exposed pit walls, and constituent concentrations currently projected are representative of the actual concentrations and characteristics of the groundwater that will occur over the life of the mine?

Section 2.3, p. 9, states that contact water will be routed into the Contact Water Basins, which will be lined. Will the ditches routing the contact water to the Contact Water Basins be lined? If not, what are the estimates for potentially reactive material leaching from and/or escaping the ditches, both during normal operations and times of greater precipitation, flooding, snowmelt, etc.? Further, Table 2-1, estimating the water quality characteristics, also is based on an estimated seven year life of mine. Aquila Resources' stated projection of a sixteen-year life of mine calls into question the validity of these estimates. The sixteen-year life of mine estimates should be required as well.

Section 2.4, p. 10, states that the CWBs are designed for a 100-year, 24-hour storm event. Given the proximity of the proposed facility to the Menominee and Shakey Rivers, the floodplain, and regulated wetlands, it is only prudent that the CWBs should be designed for a 500-year storm event.

Section 2.5, p. 10, mentions that a Storm Water Pollution Prevention Plan and Pollution Incident Prevention Plan will be developed at some time in the future "when further information becomes available." This section is vague and provides the public no opportunity to review and comment on these aspects of the permit application.

Section 3.1.6., p. 12 states that to meet the required effluent PH limit, sulfuric acid or sodium hydroxide will be added to the water, which will then be discharged into the Menominee River. Sulfuric acid is highly corrosive, known to contribute to acid rain, and known to be toxic to aquatic life. Sodium hydroxide, which is corrosive, known to cause eye and skin irritation, and is used for oven and drain cleaners, is known to be toxic to aquatic life. Were any other alternatives considered, or is the addition of these chemicals the only option prior to discharging the effluent into the Menominee River?

Section 3.1.8, p. 12, discusses the optional pretreatment system, which is projected to be assessed at a later date, as a "part of final engineering." At what point will the public be provided with the information on the "optional pretreatment system," who will determine whether or not it is optional, and based on what criteria?

Section 3.3.2, p. 14, requests waivers for Biochemical Oxygen Demand – 5 days and Chemical Oxygen demand, stating that these two parameters are not expected in mine waters. Please explain why they are not expected and whether DEQ will grant the waivers, and on what basis.

Section 3.4, p. 14, states that a Mussel Rescue Plan will be developed and implemented. This Plan needs to be drafted and published for public comment, and should discuss the long-term effects of heavy metals and other pollutants on the mussels, which constitute a critical filtration component of the aquaculture, both in the long- and short term.

**Antidegradation Demonstration**

Background

The Draft Permit includes a section stating that The Department has determined that the permittee's Antidegradation Demonstration, based on information required by Subrule (4) of R 323.1098, shows that lowering of water quality is necessary to support the identified important social and economic development in the area.

The Antidegradation Demonstration is required under the Federal Clean Water Act, Section 303, 33 U.S.C. 1313, and was developed to protect the public health and welfare, enhance the quality of water, and meet the objective of the Act to "restore and maintain the chemical, physical and biological integrity" of the nation's waters. Pursuant to the Federal Antidegradation requirements at 40 C.F.R. § 131.12(a)(2)(ii), "Before allowing any lowering of high water quality, pursuant to paragraph (a)(2) of this section, the State shall find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located. The analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity. When the analysis of alternatives identifies one or more practicable alternatives, the State shall only find that a lowering is necessary if one such alternative is selected for implementation."

Determination of Benefits

EPA's Antidegradation guidance stresses the importance of identifying and protecting Tier 2 (high-quality) waters and of obtaining local input into the NPDES permitting process. The CWA Antidegradation provision was put into place as an additional protective measure and should not be easily bypassed if the applicant can merely make a showing that there will be some short-term increase in economic activity.

Michigan's analysis of whether the lowering of the water quality is "necessary to accommodate important economic or social development in the area in which the waters are located," requires more than a showing that the degradation will result in some economic gain. It also requires a showing that the economic and social development is "important." The importance of the asserted economic and social development should be determined based on analysis of both the amount estimated gains, and by whom the gains will be realized; and the economic and social costs of the operation, and who will bear short-and long-term costs of those burdens.

While it seems clear that there will be a real, if temporary, local economic boost, the actual amount of capital and operating purchases that will be supplied by local vendors, the actual amount of taxes that will be generated, and the actual effect on the economy from the mining operations are unclear. There is no indication that DEQ considered the loss of property value to the adjacent property owners and others nearby that will be subjected to the noise and light pollution that will accompany the blasting, excavating, crushing and hauling of tons and tons of material, much of it toxic or reactive, for years. Economic and social losses also will affect those who reside across the Menominee River in Wisconsin where the tax revenue to the local and state governments will not be realized. There also is the loss of the quiet enjoyment of the property of the adjacent and downstream landowners, and for those who frequent the nearby public areas for fishing, boating and other recreation. Finally, there will be a currently unquantified loss of the cultural resources known to be located on the proposed mine site, which is an area sacred to the Menominee Tribe of Wisconsin, and which will represent a depletion of the cultural resources in the area for both tribal members and Non-Indians.

There almost certainly will be a loss to the local tourism economy, which is difficult to quantify, particularly because such losses are likely to extend beyond the life of the mine. Currently, the longest estimate

of the mine life is sixteen years. The degradation of the water after continual discharge of toxic materials for the life of the mine, coupled with the likelihood that contamination of groundwater will continue after mine closure, will affect the long-term social and economic character of the area. The DEQ's consideration of whether, the economic and social benefits are important should include an assessment of whether the benefits will continue to exist after the mine closes, and whether the degradation of the water quality, loss of use of the Menominee River, at least in part, for recreation, fishing, swimming, loss of irreplaceable cultural resources and diminishment of the quality of life over the long-term are less important than the short-term economic benefits.

It is nearly impossible to evaluate the loss of the character of the area from a quiet, recreational, rural area to a loud, bright, industrial site where toxic chemicals are continuously discharged into the water, air and soil, and heavy trucks carrying toxic waste pass by homes multiple times a day on narrow, curving rural roads. The determination of whether the proposed economic and social benefits are "important," therefore, must be based, on public input from people "in the area in which the waters are located." The only fair way to even attempt such a complex evaluation is to allow for a public hearing on the NPDES permit alone. In particular, the public hearing should address the issue of whether, in the face of the social and economic losses that will accompany the discharge into the Menominee and Shakey Rivers, the short-term economic and social benefits are, in fact, important to the people in the area in which the waters are located.

Characteristics of Pollutants

Many of the chemicals that will be discharged are either known to be toxic to aquatic life and/or are heavy metals which will remain in the riverbed for years to come. Reviewing the characteristics of the chemicals listed in material safety data sheets is sobering, when the impacts to human health and the environment are considered over the long term. Some of the toxic materials pose risks to human health such as toxicity to the liver, pancreas, lungs, kidneys, central nervous system, damage to skin and eyes, fetal morbidity and reproductive impairments and, most frightening of all, risks that have not been determined or have not been studied with regard to combined exposure of multiple pollutants. Further, many of the listed pollutants are toxic to aquatic life.

The proposed permit set parameters for some of these pollutants at levels meant to protect human health and the environment. But in waters designated for swimming, agriculture, public water supply, and fish habitation, these pollutants, discharged continuously for a period of years, cause real concerns to the people using the Rivers and eating the fish. The possibility of accidental spills, operational malfunctions, flooding, and impact of storms needs to be included in the benefit analysis, as well as the social and economic benefits of the alternative of denial of the permit. As discussed in the previous section, the local community, and those downstream, must be provided with a public hearing on the NPDES permit to assist DEQ with its determination of whether, in the face of the long-term health and environmental effects of the discharges, the possibility of the economic benefits are important.

Sincerely,

Joan Delabreau

Joan Delabreau, Tribal Chairwoman
Menominee Indian Tribe

Cc: Joe Maki, DEQ
Tiffany Myers, DEQ

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


October 31, 2016

***Submitted via USPS and Electronic Mail***

DEQ Back Forty Comments
Office of Oil, Gas, and Minerals
1504 West Washington Street
Marquette, MI 49855

Alvin Lam
Permits Section
Water Resources Division
Department of Environmental Quality
P.O. Box 30485
Lansing, MI 48909

Re: Comments on Proposed Mining Permit to Aquila Resources, and NPDES Permit Application #MI0059945, submitted via email to *lamu@michigan.gov and DEQ-Mining-Comments@michigan.gov*

Dear Sir:

Please find below the Menominee Tribe's comments to the proposed decision to grant a mining permit to Aquila Resources for the Back Forty Mine under MCL 324 63205. The Tribe maintains that if the proposed permits are approved, Aquila Resources will pollute, impair, or destroy the air, water, other natural resources and erode public trust in the management of their resources. Furthermore, the Tribe maintains its opposition and concern for our tribal ancestors burial sites, ancestral ceremonial and village sites, cultural and other funerary objects located within the footprint of the mine in what we view as a comprehensive cultural landscape. In addition, these comments include concerns with the NPDES Permit Application and the air use permit for the Back Forty Mine.

The Menominee Tribe's interest in the proposed mine site is unique because our origin or creation begins at the mouth of the Menominee River, 60 miles east of our present Menominee Indian Reservation located in Wisconsin. This is where our five clans: ancestral Bear, Eagle, Wolf, Moose, and Crane were created. Not many tribes in this region can attest to a fact their origin place exists close to or near their present reservation. This is where our history begins. The Tribe actively participates in educational and cultural activities at the site of our creation. More recently, the Tribe and City of Marinette have begun a collaboration to place educational kiosks in the area to educate on the Menominee Nation's creation and cultural connections to the area. Another example of our modern connection to the area occurred as recently as November 3, 2015, when the Tribe in cooperation with the City of Marinette, held a reseeding ceremony of wild rice at the mouth of the Menominee River. The Menominee Nation values the oral tradition over the written word; our history teaches us that this area where this mine is located is immersed in our antiquity. Our oral history is situated along this river and in the land. There is a reason this river and county is called Menominee. We are "Kiash Matchitiwuk" - the Ancient Ones.

One of the basic tenets in Indian law is the enforceable fiduciary trust relationship between the federal government and tribal governments. Virtually every piece of modern legislation dealing with Indian tribes contains a statement referencing the trust relationship the federal government shares with the tribe. *See* Cohen Handbook of Federal Indian Law at 414 – 15 (2012). The federal government has delegated authority related to certain permitting on projects that can affect waterways and historical sites to the state of Michigan. The federal government cannot circumvent its responsibilities under the trust relationship by delegating that authority to the

state. Accordingly, if a State applies to stand in the place of the federal government, the state has an obligation to engage in full and fair consultation with tribes regarding the mine and its implications to the Menominee Tribe under that delegated trust responsibility.

## Government-to-Government Consultation

The State of Michigan's Department of Environmental Quality staff has claimed that they have engaged the Menominee Indian Tribe of Wisconsin on several occasions throughout the process. However, the Menominee Tribe disagrees with this statement. Incremental contact with individual members of the Tribes does not constitute adequate consultation with the Tribe's government. The only person with the authority vested by the Menominee Tribal Legislature to speak on behalf of the Menominee Indian Tribe is the Tribal Chairperson. What is the State of Michigan's definition of government-to-government consultation?

Furthermore, meaningful consultation includes the recognition of tribal sovereignty by the respective government. However, this too has been lacking as early on as 2011, when the Tribe reached out to the State Historic Preservation Office for information on the status of any Phase II Archeological Survey of the Back Forty project. At that time, the only contact the Tribe received was from the Company and not the State of Michigan. The Tribe was told as recently as October 2016, that the Department places this responsibility on the Company. Why has the Michigan Department of Environmental Quality attempt to place this responsibility of government-to-government consultation on Aquila Resources, Inc., a private entity, is entirely inappropriate. Aquila Resources cannot speak on behalf of the State of Michigan.

To date, Section 106 of the National Historic Preservation Act has not been deemed to be applicable to the Project; however, we do not agree with this determination as the Lower Menominee River has been designated as an "Area of Concern" under the Great Lakes Restoration Initiative (GLRI). The area of concern receives water directly from the planned point of discharge from the proposed Back Forty mine site. Under the GLRI, the Lower Menominee River includes management actions targeted for completion during GLRI Action Plan II. The United States Congress has appropriated millions in federal dollars to restore and protect the Great Lakes Basin, which includes designated areas of concern, from existing and future damage. The State of Michigan is issuing permits pursuant to authority delegated by the federal government under the Clean Air Act and Clean Water Act, and the impacts of these activities on the federally-funded restoration activities just a few miles downstream have not been sufficiently studied through the DEQ's process. The Menominee Tribe has interests in cultural resources on site, as well the cultural resources of sturgeon and wild rice that will be affected downstream, more fully discussed below. It is the Tribe's position that a full NHPA 106 review is therefore required.

## Wild Rice and Lake Sturgeon's Significance to the Menominee

The Menominee Tribe's history begins at the mouth of the Menominee River. The Menominee came into possession of wild rice at the very inception of their existence, and the wild rice is still vital to them today. *See* David Beck, *The Struggle for Self-Determination: History of the Menominee Indians Since 1854* at xii, 5, 20. Lake sturgeon is also culturally significant to the Menominee people as the keepers of the wild rice. The Menominee people would gather each spring near Keshena Falls to harvest lake sturgeon. The creation of dams in the early 20th century led to the extirpation of lake sturgeon on the Menominee Reservation, but recent efforts by the state have seen a resurgence of lake sturgeon on the Menominee Reservation. See A. Runstrom, R.M. Brunch, D. Reiter, & D. Cox, *Lake sturgeon on the Menominee Indian Reservation: an effort toward co-*

*management and population restoration*, J. of Applied Ichthyology (December 17th, 2002). The establishment of this mine threatens the resurgence of both of these deeply important parts of Menominee ways and culture.

Mich. Admin Code R 323.1098 requires the water quality level to be maintained at a level that will protect existing uses. As mentioned above, growing wild rice in the mouth of the Menominee River has been a practice by the Menominee Nation since time immemorial, and continues to this day. *See* David Beck, *The Struggle for Self-Determination: History of the Menominee Indians Since 1854* at xii, 5, 20. In addition, both Michigan and Wisconsin currently are looking to work with tribes to ensure harvesting wild rice is protected. *See* Karen H. Usher, *New effort to track wild rice in Michigan*, GREAT LAKES ECHO (Oct. 10, 2016) http://greatlakesecho.org/2016/10/10/new-effort-to-track-wild-rice-in-michigan/. Aquila's Antidegradation Demonstration does not guarantee that mercury will not runoff into the river, which would affect the Menominee Nation's ability to grow wild rice and adversely impact the Sturgeon.

**Characteristics of Pollutants**

Many of the chemicals that will be discharged are known to be toxic to aquatic life and are heavy metals which will remain in the riverbed for years to come. Reviewing the characteristics of the chemicals listed in material safety data sheets is sobering, when the impacts to human health and the environment are considered over the long term. Some of the toxic materials pose risks to human health such as toxicity to the liver, pancreas, lungs, kidneys, central nervous system, damage to skin and eyes, fetal morbidity and reproductive impairments and, most frightening of all, risks that have not been determined or have not been studied with regard to combined exposure of multiple pollutants. Further, many of the listed pollutants are toxic to aquatic life.

The proposed permit sets parameters for some of these pollutants at levels which MDEQ states are meant to protect human health and the environment. But in waters designated for swimming, agriculture, public water supply, and fish habitation, these pollutants, discharged continuously for a period of years, cause real concerns to the people using the Rivers, drinking the water and eating the fish. The possibility of accidental spills, operational malfunctions, flooding, and impact of storms needs to be included in the benefit analysis, as well as the social and economic benefits of the alternative of denial of the permit.

In review of the draft permit there are two issues that should be addressed:

1. It is evident that there is no permit limit for sulfate, nor does the State of MI even have a Sulfate standard, and
2. Arsenic is definitely going to be discharged in limits that are significant enough to impact resources important to the Tribe.

In both instances these specific pollutants (sulfate and arsenic) are harmful to wild rice and to the people that use it.

It has been reported by "Authority Nutrition" that inorganic arsenic, which is the more toxic form, accumulates in significant amounts in rice. The report goes on to indicate that long term ingestion of inorganic arsenic may cause an increased risk of chronic diseases that include: Cancer, high blood pressure, vascular disease and type 2 diabetes.

Studies conducted by Dr. John Pastor of the University of Minnesota have demonstrated that wild rice is experiencing significant impact from increased levels of sulfate when it is converted to hydrogen sulfide in the

sediment. Impacts to wild rice have been shown to occur when surface water sulfate levels are within 4 - 16 parts per million.

Per US Fish and Wildlife Service the Lake sturgeon are listed as either threatened or endangered by 19 of the 20 states within its original range in the United States. Lake sturgeon are the only sturgeon species endemic to the Great Lakes basin and are the largest freshwater fish indigenous to that system. Lake sturgeon can be considered a nearshore, warmwater species with water temperature and depth preferences of low 50s to mid-60°F and 15-30 feet, respectively. Lake sturgeon are benthivores, feeding on small invertebrates such as insect larvae, crayfish, snails, clams, and leeches. A Plan needs to be drafted and published for public comment, and should discuss the long-term effects of heavy metals and other pollutants on the Lake Sturgeon habitat, which requires assessment both in the long-and short term.

In Aquila Resources response to MDEQ's request for further information, they indicate that a wild rice monitoring plan is not included in the current monitoring plans. How will the Michigan Department of Environmental Quality guarantee that the Menominee Tribes' ability to grow wild rice on the Menominee River will not be impacted by the mine discharge into the River? How and when will the MDEQ provide an analysis of the impacts that will occur to the wild rice and sturgeon as a result of the discharge of arsenic and sulfate into these waters from this proposed mining operation?

**Historic Places**

The Tribe's ancestral territory in Michigan included lands located in what is now known as Dickinson, Menominee, and Delta Counties. These lands were ceded to the United States in the Treaty of 1836. The Tribe retains a historical connection to the land, which includes the creation of the Menominee Indian Tribe at the mouth of the Menominee River and territorial use along the same. This area along the Menominee River remains significant to the Tribe and preservation of our history, culture and site of our ancestor's remains is of utmost concern.

There are approximately 25 known culturally relevant sites located within the footprint of the proposed mine. This area has never been defined as a "Cultural landscape" or surveyed as such. We believe the previous survey findings to be incomplete due in part to the reconnaissance-level techniques and the dismissal of this landscape as a comprehensive "cultural landscape." The proposed mine site includes pre-contact village sites, ceremonial dance rings, raised garden beds, and areas containing mounds which may be burial sites. The presence of these structures symbolizes the functional importance of this communal landscape of our ancestors and is not a mere scattering of "unevaluated sites." Ignoring the most basic communal concept of Native American culture demonstrates the lack of knowledge and understanding of customary tribal life. Furthermore, the Tribe was not involved in formal consultation during any surveying activity with the Commonwealth Cultural Resources Group (CCRG) or Section 106 group on the project site.

The Tribe has been asked by the Michigan Department of Environmental Quality to identify how the cultural sites will be impacted by mining activity. However, in the absence of an independent comprehensive archeological assessment and survey of the full project area, the Tribe is unable to provide a response. Until our request for an independent assessment and survey is completed and with the Tribes' active participation, no one, including Michigan Department of Environmental Quality, Michigan State Historic Preservation Office, the Canadian-based Aquila Resources company, or the Tribe, can fully understand the archeological value of this entire cultural landscape.

The Tribe is troubled about the disposition of our burial and cultural sites and the lack of commitment from the State of Michigan Department of Environmental Quality on the protection and preservation of such sites. Currently, there is no protection under Michigan Law that would provide for repatriation of human remains contained within burial sites or any associated funerary objects located within the cultural sites, when located on private property whether individual or business ownership exists.

The State of Michigan does not adhere to policies established by the National Historic Preservation Act and Native American Graves & Repatriation Act. These Acts provide the basis for protection and preservation of such sites and require formal consultation with affected Tribes. The Tribe has formally submitted documentation establishing a cultural affiliation claim on our ancestral lands. When approved, it is the Tribe's position that any Menominee human remains or funerary objects discovered or disturbed must be properly handled in accordance with federal law.

Michigan Public Act 247 took effect September 22, 2016, and provides, in part, that the Michigan Department of Natural Resources (DNR) is to:

> "work collaboratively with tribal governments...to [...]: assist and promote the making of applications for inclusion in the National Register of Historic Places and for Michigan historical markers for places significant to the history of Native Americans in this state; and assist and develop partnerships to seek public and private funds to carry out activities to protect, preserve, and promote the awareness of Native American cultural heritage in this state."

There is significant evidence that this site is eligible for inclusion in the National Register of Historic Places. Its unique attributes make clear that this site is "significant to the history of Native Americans." By not applying the parameters of Act 247, Michigan Department of Environmental Quality is only proposing cursory protections for inadvertent discovery of archaeological or historical resources during construction of the mine.

We believe that Act 247 is applicable to this area and project parameters due to the voluntary withdrawal of the Wetland Permit by Aquila Resources, which now renders the application incomplete. There are no grandfather clauses stated within Act 247 that would exempt these lands.

Pursuant to Section 72117, the Menominee Tribe believes that:

1) no permits should be issued until the site has undergone a comprehensive cultural resources survey in accordance with the requirements of Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108);
2) DEQ must collaborate with the DNR so that DNR may fulfill its obligations to assist with the preparation of an application for inclusion on the National Register of Historic Places, if such an application is warranted;
3) DEQ must ensure that identification of cultural resources on-site is done with the assistance of qualified experts adequately familiar with Menominee tribal cultural and archaeological resources which should absolutely include the expertise of the Menominee Tribal Historic Preservation Officer (THPO); and
4) No land swap should be approved prior to appropriate survey of the cultural and historical resources on the site.

When will the Michigan Department of Environmental Quality complete an independent traditional cultural properties investigation and ensure that the proposed "administratively complete" mine permit application does not violate established Michigan laws concerning government-to-government consultation and collaboration to promote, preserve, and protect historic and cultural places that Tribes hold significant?

## Comments on Air Permit

It has been recommended by others that MDEQ accept the options provided by Aquila for the control of fugitive emission, such as enclosed covers on conveyors and chutes, conical covers over stockpiles, minimizing drop point from shovel to truck, watering roads, minimizing traffic speeds and maintaining a minimum moisture level in materials during transport, but also with the consideration that these may be the minimum standards applicable. If better control measures exist, MDEQ is urged to require those controls to minimize fugitive particulate emissions to protect human health and the potential deposition of toxic pollutants in the air and on soils and water.

A requirement that a staff position be in place specifically to insure daily compliance with pollution control measures on an ongoing basis, particularly for activities such as drop point distance and traffic speeds. Additionally, logbooks that chronicle these routine compliance checks should be kept on site and available for inspection.

The air permit should require regular opacity readings and that individuals assigned with taking opacity readings proposed as a control measure must be fully trained and have current certification in EPA Method 9 smoke school, and copies of certifications are kept on file and current.

Emission controls for mercury (Hg) from the Hg retort process are stated as being 99.50% effective for the condenser and 99.99% for the carbon adsorption. The Tribe believes that this control efficiency rate is very optimistic. The final air pollution permit should require stack testing for mercury emissions after operations begin to demonstrate the stated control efficiency is accurate.

There isn't anything in the air permit application suggesting what happens to the charcoal used to filter Hg in the Hg retort process. Is this handled in another section of the combined permit application? The paragraph at the bottom of page 2, carrying over to page 3 of Appendix I of the permit begins to somewhat address this concern but the sentence doesn't appear complete.

Table 5-3 appears to have an error for the PSD Class II increment for the 3-hour averaging period. Shouldn't this read 512 μg/m3 rather than 325?

## Comments on Narrative NPDES Permit Application

According to the 2011 Memorandum of Agreement between the United States Environmental Protection Agency and State of Michigan, Section 3 **does not permit** the United States Environmental Protection Agency (USEPA), United States Army Corps of Engineers (USACE), or the United States Fish & Wildlife Service (USFWS) to waive the requirements of Section 404(j) for the following classes or categories of discharge:

- Section 3(c); Discharges with reasonable potential for affecting endangered or threatened species as determined by USFWS;
- Section 3(d); Discharges with reasonable potential for adverse impacts on waters of another state;
- Section 3(e); Discharges known or suspected to contain toxic pollutants in toxic amounts (Section 101(a)(3) of the CWA) or hazardous substances in reportable quantities (Section 311 of the CWA);
- Section 3(h); Discharges within critical areas established under state or federal law, including national and state parks, fish and wildlife sanctuaries and refuges, national and historical monuments, wilderness

areas and preserves, sites identified or proposed under the National Historic Preservation Act, and components of the National Wild and Scenic Rivers System.

Under Section 3(c), the point of discharge will impact State endangered species and a species of concern. To date, Aquila Resources has not provided the MDEQ with a relocation plan. There is no way to measure the true impact of Aquila Resources "rescue and relocation" activity will have on the threatened and endangered species. According to their own response, they do not intend to submit the relocation plan for approval by MDEQ until a time before construction. How can the Department or any federal agency adequately evaluate the impacts on threatened and endangered species without such a plan that includes the site of relocation, habitat conditions, known predators, and if the species will survive such a disruption? This has the potential to dramatically impact the diversity and ecosystem of the River.

Furthermore, there is no indication that surveys concerning the following threatened and endangered species that are known to or are believed to occur in Menominee County, Michigan, have been completed:

- Bird: Red Knot (Calidris canutus rufa); USFWS identified threatened species
- Flowering plants: Dwarf lake iris (iris lacustris); USFWS identified threatened species
- Insects: Hine's emerald dragonfly (Somatochlora hineana); USFWS identified endangered species
- Mammals: Gray Wolf (Canis lupus); USFWS identified endangered species
- Mammals: Canada Lynx (Lynx Canadensis); USFWS identified threatened species
- Mammals: Northern Long-Eared Bat (Myotis septentrionalis); USFWS identified threatened species

Under Section 3(d), the point of discharge is located on the Menominee River, which is border water between the states of Michigan and Wisconsin.

Under Section 3(e), the discharge will contain toxic substances as previously identified. The long-term exposure to such substances has yet to be evaluated for combined exposure to multiple pollutants. Has the MDEQ tested the validity of discharge levels? If MDEQ has not, has the Department requested an independent assessment of the pollutant discharge levels identified in the permit? If neither action has been taken, why not?

Under Section 3(h), mining activity and discharge may adversely affect the Tribe's historic, cultural, and burial sites; sites which have been identified as being eligible for the National Historic Places registry. While the Tribe has requested that an independent traditional cultural properties investigation be conducted of the entire project site and adjacent islands on the Menominee River, the Tribe has received the response from the Department that it is too late to complete such an investigation and that they cannot compel the property owner to complete this action. MDEQ is asking for solutions to a problem/concern when the extent of the problem or area of concern is not yet being fully identified.

Furthermore, under Section 3(h), why has Aquila Resources not been required to identify wild and scenic rivers in Wisconsin that are contained within the Menominee River watershed? The EIA only identifies that there are no wild and scenic rivers within Michigan that are close to the project site. However, the EIA fails to take into account the Pine and Popple Wild Rivers, located within Florence County and within the Menominee River Watershed. Both Rivers were designated by the Wisconsin State Legislature as Wild Rivers in 1965[1]. Will there be any assessment of discharge implications on these two "wild and scenic" river designations of Wisconsin? The EIA also fails to identify the Pike Wild River, located in Marinette County, Wisconsin. While

[1] Wisconsin Department of Natural Resources. 2016. http://dnr.wi.gov/topic/Lands/WildRivers/pinepopple/

this Wisconsin designated wild river flows into the Menominee River, there is a potential for impacts as sturgeon from the Menominee River migrate into the Pike River from downstream.[2]

Why has there not been a direct review of the permits by USEPA, USACE, and USFWS? Has there been a joint review of the permits between the identified federal agencies and the MDEQ?

Has the MDEQ transmitted a copy of the complete permit application received to include the Aquila Resources response to MDEQ's request for additional information? If not, when does the MDEQ intend to transmit such information to the United States Environmental Protection Agency for review?

How has MDEQ and Aquila Resources, Inc. responded to the federal objection issued in August 2016 from UDEPA to the approval of the permit?

Why was there no public involvement in the meeting between USEPA, the MDEQ and Aquila Resources, Inc., which occurred in September 2016 for the purposes of addressing the federal objection to permit issuance?

The Tribe understands that the 2011 Memorandum of Agreement is related to Section 404 and wetlands permitting, but the Tribe is including these comments herein as a demonstration of the connection between the mine operation and its impact to wetlands as a result of drawdown". The Tribe objects to the issuance of a permit to mine without the available information and draft wetlands permit application which would demonstrate any impacts between the mine operations and wetlands both onsite and near the proposed mine. For this reason the Tribe is submitting these comments regarding the MOA and wetlands issues that are overlapping with the mining permit.

Upon further review, the Tribe has identified the following within the NPDES draft permit:

On the top of page 5; there is reference to a Pollution Incident Prevention Plan, but no details as to when this plan would be developed or what types of parameters with would be addressing.

Section 1.2, p.3, mentions that an "optional pretreatment system addressing the Oxide TWRMF leachate is under consideration to enhance operations." Under whose consideration is the pretreatment system, and what are the circumstances under which this pretreatment system would be required, as opposed to optional? If the pretreatment system is constructed, how will the operations be "enhanced," and what modifications to permit conditions would result?

Section 1.4, the first paragraph references the designated uses to be protected, but there is no explanation or reference as to how the applicant plans on protecting those listed uses. There is a permit requirement noted for Part 41 Waste Water Construction Permit and the applicant states that this with be pursued as part of the final design to the Waste Water Treatment Plant final design. Although this appears to be consistent with the regulatory requirements, it is unclear what role the public has for opportunity in reviewing these details of the construction and the specific final design. Please clarify how the public is involved in this part and what timelines are included.

Section 1.4, p. 6, references to the use of cyanide in the process to extract gold, but gives no further details or reference as to how the WWTP will address cyanide. Please provide details or reference where the details for WWTP cyanide treatment process is located. Wisconsin waters are immediately adjacent and downstream from the discharge point. Please define the regulatory role of Wisconsin in the NPDES process when the State is the recipient of discharge waters.

[2] Wisconsin Department of Natural Resources. 2016. http://dnr.wi.gov/topic/Lands/WildRivers/PikeRiver/

Section 1.4, p. 6, states that, "In the event recycled water within the mills develops contaminant concentrations that significantly interfere with the milling processes and that interference cannot be eliminated through appropriate treatment of the recycle water, the MDEQ may allow a discharge in an amount necessary to correct the interference problem after installation of appropriate treatment." This appears to be a reference to 40 C.F.R. § 440.104(b)(2)(ii), which also says, "This discharge shall be subject to the limitations of paragraph [40 C.F.R. § 440.104 (a)]. The facility shall have the burden of demonstrating to the permitting authority that the discharge is necessary to eliminate interference in the ore recovery process and that the interference could not be eliminated through appropriate treatment of the recycle water." Please explain under what circumstances, and how often, the facility would be allowed to make such discharges, what DEQ's criteria would be for making a determination that the discharge was necessary, and how it would be determined that any such discharges are below the limits set in § 440.104(a)? What assurances have been or will be provided that such discharges would be rare, rather than routine? Has the permit applicant provided any information on the basis of the projected frequency of such discharges? If not, how will DEQ make a determination as to the actual level of pollutants that will be discharged in a set period of time, say, a month or a year?

Section 1.6, as stated above the State of Wisconsin is adjacent to the mine site, yet there is no mention of this fact or how the site impacts any of Wisconsin land or water resources. Please provide clarification on those projected impacts

Section 2.0, Figures 2-1 and 2-2 are based on annual average precipitation, but there is no reference to where the actual precipitation data is derived. The scale of precipitation can vary greatly across the region and even across the State. Note 2 in Figure 2-1 indicate that the average maximum rainfall is 1.06 m/yr., but there is no reference to where this data is produced.

Section 2.1, p. 8, indicates that the groundwater inflow modeling is described over a seven year mine life. However, in the land swap proposal currently posted for public comment, the estimated life of the mine is listed as sixteen years. Given this discrepancy that also is present in the mining permit currently pending before DEQ, and which is referenced in the NPDES permit application, how will DEQ determine whether the mine drainage water characteristics, groundwater flows down exposed pit walls, and constituent concentrations currently projected are representative of the actual concentrations and characteristics of the groundwater that will occur over the life of the mine?

Section 2.2.1, Mill Reagents; what is the consumption rates based on? Once again if the mine life is the driving factor and it is estimated at seven years, but other information in the MPA indicate it could be 10 years or longer, would this change these consumption rates? If so please provide the alternative rates.

Section 2.2.3, Make-up Water; the description in this section should add estimates of additional volume that will be added to the process as a result of the make-up water. This could change contaminant loadings and composition of discharge as a result of additional water. Please add details to address this.

Section 2.3, p. 9, states that contact water will be routed into the Contact Water Basins, which will be lined. Will the ditches routing the contact water to the Contact Water Basins be lined? If not, what are the estimates for potentially reactive material leaching from and/or escaping the ditches, both during normal operations and times of greater precipitation, flooding, snowmelt, etc.? Further, Table 2-1, estimating the water quality characteristics, also is based on an estimated seven year life of mine. Aquila Resources' stated projection of a sixteen-year life of mine calls into question the validity of these estimates. The sixteen-year life of mine estimates should be required as well.

Section 2.3.4, TWRMF Leachate; there are several general statements made in the two paragraphs that should be specified to provide details on issues like volumes, contaminants, model inputs and options selected. The Tribe submitted a request for information on January 22, 2016 that detailed specific modeling questions and a request for the model (see attached letter). The Tribe is awaiting the information and is again requesting it be provided in order that our experts may better determine how water quality will be managed as part of the TWRMF and treatment of wastes during mine operations.

Section 2.4, p. 10, states that the CWBs are designed for a 100-year, 24-hour storm event. Given the proximity of the proposed facility to the Menominee and Shakey Rivers, the floodplain, and regulated wetlands, it is only prudent that the CWBs should be designed for a 500-year storm event.

Section 2.4.1, Basin Designs; please provide description of how monitoring will occur after operations. What is the expected life of the HDPE liner? Monitoring well CW-13 appears to be in the Tailings Management Facility? Please provide clarification as to how this well will function if it is in the boundaries of the waste rock management area.

Section 2.5, p. 10, mentions that a Storm Water Pollution Prevention Plan and Pollution Incident Prevention Plan will be developed at some time in the future "when further information becomes available." This section is vague and provides the public no opportunity to review and comment on these aspects of the permit application. Please describe how the SWPPP will be reviewed before finalization and the Tribe would request that a draft copy be provided prior to approval. Will the discharge wetlands from the non-contact storm water areas experience a community type change? This type of impact should be assessed as it will result in potential loss in functional values. See comment above under Section 2.4. This comment applies to both the NCWB and CWB.

There are no discussions related to factors associated with climate change predictive models. These types of predictive data could significantly impact the volume of storm water currently calculated through the CWB Design Procedure. Please provide a discussion that details how predictive climate change models are factored into the procedure.

During reclamation the plan states that alternative methods could include periodic pumping to tanker trucks for disposal at a local WWTP. Please specify where this plant is located and how the local WWTP plans on treating and disposing of excess waste materials and volume. Have all local permits to utilize the local WWTP been applied for?

Section 3.1.3, Reactor Tanks; Will optimization of the facility during operation, require additional public notice and comment period?

Section 3.1.6., p. 12 states that to meet the required effluent PH limit, sulfuric acid or sodium hydroxide will be added to the water, which will then be discharged into the Menominee River. Sulfuric acid is highly corrosive, known to contribute to acid rain, and known to be toxic to aquatic life. Sodium hydroxide, which is corrosive, known to cause eye and skin irritation, and is used for oven and drain cleaners, is known to be toxic to aquatic life. Were any other alternatives considered, or is the addition of these chemicals the only option prior to discharging the effluent into the Menominee River? How will the addition of sulfuric acid be treated within the facility before discharge occurs? The statement regarding pH effluent limits should be referencing the actual limits. Please provide a reference to pH limits set for the discharge and what the expected pH of discharge water will be.

Section 3.1.7, Solids Handling System; there are no specific details provided for the offsite disposal facility or characterization of the waste that will be sent to the disposal site. Please provide the location of the facility and waste characterization information for the solids.

Section 3.1.8, p. 12, discusses the optional pretreatment system, which is projected to be assessed at a later date, as a "part of final engineering." How will DEQ assess this facility after the fact (issuance of a permit)? How will the public have an opportunity to get comments in when there will only be DEQ Staff reviewing final engineering plans after a permit is issued? At what point will the public be provided with the information on the "optional pretreatment system," who will determine whether or not it is optional, and based on what criteria?

Section 3.2, Estimated WWTP Influent Water Quality; the last sentence is ambiguous and out of place for this section, which is "influent water quality". The statement should be removed unless reference is provided to details of the previous sections and address specifics of the effluent as stated in above comments provided by the Tribe. Why are BADT's referenced here? Since the BADT's aren't enforceable, the only reference to standards should be the MDEQ rules that would eventually result in the permit limits if issued.

Section 3.3.1, Certified Wastewater Treatment Operator; there are conflicting statements in the descriptions of certified operators. In the first sentence is identifies one or more, yet later in the paragraph it is clear that there will be multiple operators required that will handle operations for industrial, storm water and construction. Please add clarification to this section to identify how many operators will be employed.

Additionally the last sentence is confusing to the extent that the classifications are identified, yet there are no definitive criteria provided that reference what is actually required by MDEQ for an operator classification in an Industrial Wastewater Operation. Please provide proper reference to the actual MDEQ or other Michigan rules that regulate Industrial Operators.

Section 3.3.2, p. 14, requests waivers for Biochemical Oxygen Demand – 5 days and Chemical Oxygen demand, stating that these two parameters are not expected in mine waters. Please explain why they are not expected and whether DEQ will grant the waivers, and on what basis.

Section 3.3.2, Monitoring; effluent monitoring should be conducted at the outfall location and not somewhere within the discharge line. Additionally there is no mention of surface water monitoring in the river. There are no references to a mixing zone or plans for sampling at mixing zone location. Will Wisconsin Department of Natural Resources be part of the monitoring plan since the adjacent water is within the WDNR jurisdiction?

Section 3.4, Outfall for Treated Water Discharge to the Menominee River; there in no mention of Wisconsin Department of Natural Resources, 401 Certification, mixing zone or Total Maximum Daily Loads. Please provide clarity regarding these aspects of the discharge.

There is a listing provided for Michigan special status mussel species, but no reference to potentially listed Wisconsin mussels? Please include a description of how other species will be protected. There is no mention of any other listed species (Federal or States) or potential impacts as a result of discharge; a listing and description should be provided for any invertebrates, fish, amphibians or reptiles. A description should be included to address long term impacts that will result due to the discharge of pollutants and additional large volume of water to the system.

Section 3.4, p. 14, states that a Mussel Rescue Plan will be developed and implemented. This Plan needs to be drafted and published for public comment, and should discuss the long-term effects of heavy metals and other

pollutants on the mussels, which constitute a critical filtration component of the aquaculture, both in the long- and short term.

**Antidegradation Demonstration**

Background

The Draft Permit includes a section stating that The Department has determined that the permittee's Antidegradation Demonstration, based on information required by Subrule (4) of R 323.1098, shows that lowering of water quality is necessary to support the identified important social and economic development in the area.

The Antidegradation Demonstration is required under the Federal Clean Water Act, Section 303, 33 U.S.C. 1313, and was developed to protect the public health and welfare, enhance the quality of water, and meet the objective of the Act to "restore and maintain the chemical, physical and biological integrity" of the nation's waters. Pursuant to the Federal Antidegradation requirements at 40 C.F.R. § 131.12(a)(2)(ii), "Before allowing any lowering of high water quality, pursuant to paragraph (a)(2) of this section, the State shall find, after an analysis of alternatives, that such a lowering is necessary to accommodate important economic or social development in the area in which the waters are located. The analysis of alternatives shall evaluate a range of practicable alternatives that would prevent or lessen the degradation associated with the proposed activity. When the analysis of alternatives identifies one or more practicable alternatives, the State shall only find that a lowering is necessary if one such alternative is selected for implementation." Mich. Admin. Code R. 323.1098(4)(i). If no practicable alternative is available, the discharger must evaluate and implement enhanced treatment techniques that have been demonstrated to eliminate any BCC's at a reasonable cost. R 323.1098(4)(ii).

Determination of Benefits

EPA's Antidegradation guidance stresses the importance of identifying and protecting Tier 2 (high-quality) waters and of obtaining local input into the NPDES permitting process. The CWA Antidegradation provision was put into place as an additional protective measure and should not be easily bypassed if the applicant can merely make a showing that there will be some short-term increase in economic activity.

Michigan's analysis of whether the lowering of the water quality is "necessary to accommodate important economic or social development in the area in which the waters are located," requires more than a showing that the degradation will result in some economic gain. It also requires a showing that the economic and social development is "important." The importance of the asserted economic and social development should be determined based on analysis of both the amount estimated gains, and by whom the gains will be realized; and the economic and social costs of the operation, and who will bear short-and long-term costs of those burdens.

Presently, there has been no demonstration of the accuracy and/or validity of the alleged economic and social benefit determinations made by Aquila Resources, Inc. While Aquila Resources, Inc.'s commissioned their own Research Report in November 2015, this report lacks pertinent information to access the true negative impact of nonferrous mining on the tourism industry, which is a major contributor to the economic base of this area, and lacks identification of the true impact to property values in the region. A presentation in June 2016 on the economic and social benefits of the Back Forty Project was a mere regurgitation of information asserted by

Aquila Resources, Inc. with no external validation of the information. In the past, the Tribe has requested ground water modeling files and other pertinent information from the Michigan Department of Environmental Quality who later acknowledged that they did not have the time, resources, or wherewithal to validate the Aquila Resources submission concerning ground water modeling and validity; has the Department taken the same approach concerning validation of the social and economic gain alleged by Aquila Resources, Inc.?

Aquila's Antidegradation Demonstration states that "on site personnel requirements during operations are expected to be approximately 100 employees during full production." See App. B Antidegradation Demonstration at Economic and Social Development. Roughly twenty of the employees will be hired from outside of the region resulting in a population increase, which Aquila considered a social benefit. Moreover, the Demonstration states there will be increased local revenue and consumer spending due to the investment. While it seems clear that there will be a real, if temporary, local economic boost, it is difficult to see how 100 jobs and a population increase of 20 people is "important" to a county of over 23,000 and has an unemployment rate below 5%. Further, it is unclear what the actual amount of capital and operating purchases that will be supplied by local vendors, the actual amount of taxes that will be generated, and the actual effect on the economy from the mining operations will be. Moreover, there is no indication that DEQ considered the loss of property value to the adjacent property owners and others nearby that will be subjected to the noise and light pollution that will accompany the blasting, excavating, crushing and hauling of tons and tons of material, much of it toxic or reactive, for years. Economic and social losses also will affect those who reside across the Menominee River in Wisconsin where the tax revenue to the local and state governments will not be realized. There also is the loss of the quiet enjoyment of the property of the adjacent and downstream landowners, and for those who frequent the nearby public areas for fishing, boating and other recreation. Finally, there will be a currently unquantified loss of the cultural resources known to be located on the proposed mine site, which is an area sacred to the Menominee Tribe of Wisconsin, and which will represent a depletion of the cultural resources in the area for both tribal members and Non-Indians.

There almost certainly will be a loss to the local tourism economy, which is difficult to quantify, particularly because such losses are likely to extend beyond the life of the mine. Currently, the longest estimate of the mine life is sixteen years. The degradation of the water after continual discharge of toxic materials for the life of the mine, coupled with the likelihood that contamination of groundwater will continue after mine closure, will affect the long-term social and economic character of the area. The DEQ's consideration of whether, the economic and social benefits are important should include an assessment of whether the benefits will continue to exist after the mine closes, and whether the degradation of the water quality, loss of use of the Menominee River, at least in part, for recreation, fishing, swimming, loss of irreplaceable cultural resources and diminishment of the quality of life over the long-term are less important than the short-term economic benefits.

It is nearly impossible to evaluate the loss of the character of the area from a quiet, recreational, rural area to a loud, bright, industrial site where toxic chemicals are continuously discharged into the water, air and soil, and heavy trucks carrying toxic waste pass by homes multiple times a day on narrow, curving rural roads. The determination of whether the proposed economic and social benefits are "important," therefore, must be based, on public input from people "in the area in which the waters are located." The only fair way to even attempt such a complex evaluation is to allow for a public hearing on the NPDES permit alone. In particular, the public hearing should address the issue of whether, in the face of the social and economic losses that will accompany the discharge into the Menominee and Shakey Rivers, the short-term economic and social benefits are, in fact, important to the people in the area in which the waters are located.

Ample Alternatives and Enhanced Treatment Techniques

the process by which Aquila eliminated each of these options and whether Aquila missed another plausible alternative. Further, MDEQ should consider whether there is another alternative that was not evaluated by Aquila that would eliminate the need for the point source discharge as required by Mich. Admin. Code R. 323.1098(4)(B)(i) With regards to Enhanced Treatment Techniques, Aquila stated in the Demonstration that it is evaluating a pretreatment system to reduce the more concentrated mercury that will be present in the wastewater, but Aquila has not guaranteed to use the pretreatment system. R. 323.1098(B)(ii) requires Aquila to implement this treatment system if the cost is reasonable; thus, the treatment system should be evaluated to determine if the cost is reasonable before a NPDES permit is granted

The Tribe would like a response to the comments provided herein. Thank you for your time and attention to this submission.

Sincerely,

Joan Delabreau

Joan Delabreau, Chairwoman

Menominee Indian Tribe of Wisconsin

Cc: Joe Maki, DEQ

Tiffany Myers, DEQ

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


November 28, 2016 ***Sent via Electronic Mail & USPS***

Mr. Joe Maki
District Geologist
Upper Michigan Peninsula District
Michigan Department of Environmental Quality
1504 West Washington Street
Marquette, MI 49855

RE: Cultural Protection Permit Stipulations

Dear Mr. Maki,

In a previous meeting, you requested additional information from the Menominee Tribe that would identify cultural protection stipulations to be placed within the permit. The Tribe has compiled the following information, which has been previously submitted within the Tribe's public comment submissions. However, at your request, we are submitting the following that would assist in the effort to protect and preserve the Tribe's cultural resources within the footprint of the Aquila Resources Back Forty Mine Permit site. Please note that the submission of these stipulations, the Tribe is in no way deviating from our position that any approval of the Aquila Resources Back Forty Mine Permit threatens irreparable harm and devastation not only to cultural resources, but also to the water, environment, wildlife and aquatic life.

Permit Stipulations for inclusion include the following:

1. The Tribe is requesting a detailed independent assessment be made of known cultural resources located within the proposed Back Forty Mine foot-print and those potentially adversely affected if the mine goes forward, and that the assessment be made by qualified professionals acceptable to MITW. That assessment should include GIS/GPS accuracy to ensure that site locations and extents are accurate. The assessment should also include a comprehensive summary of material culture and culture history of the location. Minimally, the assessment should include:
    a. Specific locations of Spaulding's 1956 excavations. (Univ. of MI)
    b. Specific locations of Buckmaster (1979) excavations. (Northern MI Univ.)
    c. Specific locations of Brashler's (2007) excavations. (Grand Valley)
    d. Specific locations of Mognahan's profiles on upper and lower terraces
    e. Delineation of CCRG and 106 Group shovel probed areas.
    f. Determination (in so far as possible) of the site boundaries.
    g. Integration of these data within some common grid system.
    h. Comprehensive summary of material culture assemblages from sites, particularly ceramics, floral, and faunal assemblages with special emphasis on potential contexts of association of Mero complex, Heins Creek and Point Sauble wares and potentials for phytolith analyses of ceramic residues and 14C dating.
2. We are requesting a Traditional Cultural Property study of the Sixty Islands area; defined in Menominee oral traditions as "Namacachure" (the dog's belly) to be completed by an appropriately qualified

ethnographer (someone conversant with Central Algonquian languages, preferably Menominee) and acceptable to the Menominee Indian Tribe of Wisconsin.

3. Request a provision for archaeological monitors from the Menominee Tribe to be present for all earth-moving activities.
4. Following the detailed independent assessment cited in stipulation 1 as defined above, we are requesting a research design be developed and implemented to evaluate the constellation of cultural properties. That evaluation research design should apply the context of an "archaeological landscape" as defined by the National Park Service and Department of the Interior guidelines for Treatment of cultural sites and properties. The research design should be reviewed and determined acceptable by the Menominee Indian Tribe of Wisconsin and the Michigan State Archaeologist.
5. We are requesting that any and all human remains and any associated funerary objects be returned to Menominee Indian Tribe of Wisconsin for final disposition that will include reburial at a location designated by Menominee Indian Tribe of Wisconsin.
6. Furthermore, we are requesting that enrolled and descendant members of the Menominee Indian Tribe are allowed ample opportunity to conduct ceremonies at sites and locations considered sacred by those Tribal members at all times.
7. Finally, we request that any approved permit assign all costs associated with the above stipulations be borne by the Permit holder and that Michigan Department of Environmental Quality and Michigan State Archeologist Office consult with the Menominee Indian Tribe of Wisconsin regarding regular inspections to ensure that these stipulations are being appropriately addressed.

Thank you for your attention to this very important matter. If you have any questions, please contact me via electronic mail at jodelabreau@mitw.org or telephone at (715)799-5114. Please also copy the Menominee Indian Tribe's Intergovernmental Affairs Manager, Tasha Caldwell, and Menominee Tribal Historic Preservation Officer, David "Nahwahquaw" Grignon, electronically. Both can be reached respectively at tmcaldwell@mitw.org and dgrignon@mitw.org.

Sincerely,

Joan Delabreau

Joan Delabreau, Chairwoman
Menominee Tribal Legislature

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


November 28, 2016

***Sent via Electronic Mail & USPS***

Peter Swenson, Chief
Wetlands and Watersheds Branch
U.S. Environmental Protection Agency (ww-16j)
77 W. Jackson Blvd.
Chicago, IL 60604-3590

Re: Aquila Resources Back Forty Project Stephenson, Michigan

Dear Mr. Swenson:

I am writing to express the concerns of the Menominee Indian Tribe of Wisconsin about Aquila Resources' Back Forty Project, a proposed open pit mine to be located on the banks of the Menominee River near Stephenson, Michigan, and to request greater federal oversight of this project. As you may be aware, the proposed mine is subject to Michigan's permitting process for four required permits—a nonferrous metallic mining permit, a minor source air permit, a National Pollutant Discharge Elimination System permit, and a wetlands dredge-and-fill permit under Michigan law, pursuant to a federal delegation of authority to Michigan under Section 404 of the Clean Water Act.

The Tribe has submitted comments to Michigan multiple times, both in writing and verbally, expressing its concerns about this project, and has engaged with Michigan's State Archaeologist, Michigan and Wisconsin DNR, Michigan and Wisconsin elected officials, EPA Region V, the U.S. Army Corps of Engineers in Detroit, the Advisory Council on Historic Preservation and the Great Lakes Advisory Board. Copies of the Tribe's written comments that were submitted to Michigan Department of Environmental Quality (DEQ) are attached hereto. However, it is the position of the Tribe that its concerns still have not been addressed.

The Tribe hereby requests that the EPA and the Army Corps of Engineers exercise federal oversight over this project because the State of Michigan has given insufficient consideration to the Tribe's interests and protection of human health and the environment. It is the Tribe's position that Michigan DEQ is obligated under Michigan's Part 632 regulations to reject Aquila Resources' non-ferrous metallic mining permit and related permits for the following reasons:

- The application is incomplete and contains insufficient information upon which Michigan DEQ could adequately base a determination of the proposed project's protectiveness.
- The initial application and Aquila Resources' May 9, 2016 responses to Michigan DEQ's follow-up questions about the application were wholly inadequate; in many cases consisting only of an assertion that critical plans or procedures would be developed at a later date (for example, Cyanide Management Plan, Wastewater Treatment Plant plans; plan for on-site mixing or storage of blasting agents; Spill Prevention and Pollution Control Plan, Mussel Relocation Plan, etc.). This information is required under Part 632 and should have been provided in the application process for public review and comment.
- Aquila Resources' mine permit application refers to a life of mine of seven years; multiple other sources of information published by Aquila Resources project a much longer life of mine; accordingly, the true environmental impacts of the proposed mine have been misrepresented in the permit application and have not been fully considered by MDEQ. MDEQ has not provided a response to this concern, which has been voiced repeatedly, or required Aquila Resources to address this discrepancy.

- Insufficient time was provided for public comment; due to the volume and complexity of the materials, additional time should have been provided and separate public hearings should have been provided for each of the three pending permit applications. Members of the public, including myself, were cut off at the public hearings and time to speak was reduced. Also, various documents were removed from the Michigan websites, including critical documents related to the NPDES permit, or were inaccessible for periods of time.

- No consideration has been given to the Tribe's repeated requests that the site undergo a full cultural resources survey prior to any final decision on the permit applications. Michigan's proposed nonferrous metallic mining permit provides only that in the event of inadvertent discoveries of cultural resources, work should stop. The idea that a bulldozer or backhoe operator will be qualified to accurately identify cultural resources such as burial or ceremonial sites, or village or agricultural sites, is illogical at best.

- The proposed mine site is adjacent to the largest watershed in the Upper Peninsula of Michigan, emptying directly into Lake Michigan, with the potential to pollute millions of gallons of public drinking water supply and Michigan DEQ has not required Aquila Resources to sufficiently address the risks of accidental spills into surface waters and ongoing groundwater pollution, and the attendant risks to human health and the environment, including to a number of species that are either endangered or listed as species of concern.

- Michigan DEQ has proposed to justify the degradation of the surface water downstream of the project based upon economic benefits; however, the economic costs including loss of property values, loss of tourism revenue, and loss of recreational use of the Menominee River and surrounding areas were not considered. Currently, EPA is funding studies in Michigan to determine the economic value of water quality of lakes and rivers; meanwhile, MDEQ has not considered the value of clean water in the economic analysis it used to justify the degradation of the surface water. Accordingly, Aquila Resources' antidegradation demonstration submitted with its NPDES permit application is insufficient.

- This proposed project threatens numerous projects funded by the Great Lakes Restoration Initiative – for example, it threatens to undo the work of recently completed projects to clean up heavy metals and other contaminants from the Menominee River, and ongoing projects to support the restoration of the breeding population of lake sturgeon in Lake Michigan, among other restoration initiatives.

It is critical that EPA exercise federal oversight over this project to the greatest extent possible to protect both the Menominee River and the larger Great Lakes watershed. In particular, we request that the wetlands dredge-and-fill permit (which was already deemed insufficient by both EPA and U.S. Army Corps of Engineers and has been withdrawn) and the NPDES permit, which will degrade the water quality of a major bi-state waterway emptying into Lake Michigan, be subject to vigorous federal oversight on the basis of the above-listed concerns and other concerns, included in more detail in the Tribe's comments to MDEQ. To meet the federal trust responsibility to the Menominee Tribe notwithstanding the delegation of CWA Section 404 to the State of Michigan, your agency must take every step within its authority to ensure this project is not approved until a full cultural resources survey is conducted with the assistance and expertise of Menominee Tribal Historic Preservation Office; and until the actual human health and environmental risks of this project, due to its location a mere 30 yards from a major watershed are fully addressed based upon an accurate representation of what the actual life of the mine is anticipated to be; and unless and until it can show the "proposed mining operation will not pollute, impair, or destroy the air, water, or other natural resources or the public trust in those resources" pursuant to MCL § 324.63205(11) & (12).

Sincerely,

Joan Delabreau

Joan Delabreau, Chairwoman
Menominee Indian Tribe of Wisconsin

Attach. (2)

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


December 13, 2016 ***Via Electronic Mail & USPS***

Michigan Department of Environmental Quality
Attn: C. Heidi Grether, DEQ Director
P.O. Box 30473
Lansing, MI 48909-7973

**RE: Meaningful Tribal Consultation**

Dear Ms. Grether,

My name is Joan Delabreau and I serve as the Tribal Chairwoman of the Menominee Tribal Legislature. I am writing to express my concern regarding the interpretation by staff of the Michigan Department of Environmental Quality of what constitutes "meaningful tribal consultation." It is the position of the Tribe that the Michigan Department of Environmental Quality, and by extension the State of Michigan, has not honored its own pledge to engage affected Tribes in decisions that adversely affect our cultural resources. Specifically;

1. The Michigan Department of Environmental Quality acting under authority delegated to them pursuant to the *Memorandum of Agreement between the Michigan Department of Environmental Quality and the United States Environmental Protection Agency, Region 5, Administration of Section 404 of the Clean Water Act by the State of Michigan*, has not adequately engaged with the Tribe in meaningful tribal consultation. "Meaningful consultation means tribal consultation **in advance** with the decision maker or with intermediaries with clear authority to present tribal views" to the agency decision maker. *Lower Brule Sioux Tribe v. Deer*, 911 F. Supp. 395, 401 (D.S.D) 1995) (citing *Hoopa Valley Tribe v. Christie*, 812 F. 2d 1097 (9th Cir. 1987) (emphasis added.) Meaningful consultation thus usually comprises of a meeting or series of meetings, during which the federal agency or its delegated authority notifies the tribe of the proposed action and justifies its reasoning. *Id.* The tribe may then issue a motion of support for the decision, or reject the decision, pursuant to tribal law or procedure. *Id.*

This concern comes on the heels of the pending decision to approve various permits required for Aquila Resources, Inc.'s request to mine the Back Forty, located in Menominee, Michigan. This area is of great significance to the Menominee Indian Tribe due to our historical and modern day connection to this territory. Additionally, this territory is the home to sturgeon, wild rice, burial sites and cultural items of significance to the Menominee people. To be clear, the current status of engagement with the Tribe has failed to appropriately and adequately address the Menominee Tribe's Leadership, who is by mandate of the Tribe's Constitution, to be the only spokesperson for the Menominee Indian Tribe. Rather than engage the Tribe's Leadership, it appears that the Michigan Department of Environmental Quality has considered indiscriminate contacts with individual members of the Menominee Tribe and staff who are employed by the Tribe, as meeting the threshold of the original intent of "meaningful tribal consultation."

To be clear, my expectation is that any informal communication with tribal members or staffers, or a single unofficial meeting with the tribe, is not meaningful consultation. Rather, the Menominee Indian Tribe of Wisconsin should be formally notified of any proposed action by the responsible agency and the responsible agency should formally justify its reasoning. The Tribe will then send an official response in writing.

Furthermore, with regard to the Menominee Tribe's concerns regarding our ancestral place of origin, the identification and repatriation of Menominee tribal cultural items, and the impact on the health of the environment and water, I ask for meaningful consultation with the appropriate decision-maker throughout the long process under the authority of the EPA's own regulations and policies in accordance with Executive Order 13175-*Consultation and Coordination with Indian Tribal Governments* and *EPA Policy on Consultation and Coordination with Indian Tribes* respectively.

I would like thank you for your immediate attention to this very important issue and request a written response. If you have any questions, please contact me at your earliest convenience.

Sincerely,

Joan Delabreau

Joan Delabreau
Menominee Tribal Chairwoman

Cc:
Joe Maki, Michigan DEQ, District Geologist
Dr. Dean Anderson, Michigan State Historic Preservation Office, State Archeologist
Rick Snyder, Michigan Governor
Robert Kaplan, EPA Region 5, Administrator
Barbara Wester, EPA Region 5, Associate Regional Counsel
Kestutis Ambutas, EPA Region 5, Tribal Affairs Director
Curtis Sedlacek, USACOE, Detroit District
Tom Melius, USFWS, Regional Director
Katie Steiger-Meister, USFWS-GLRI
Larry Roberts, Department of Interior, Assistant Secretary of Indian Affairs
Reid Ribble, House of Representatives – Wisconsin's 8th Congressional District
Tammy Baldwin, U.S. Senator, Wisconsin
Ron Johnson, U.S. Senator, Wisconsin
file

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING

RICK SNYDER
GOVERNOR

C. HEIDI GRETHER
DIRECTOR

January 19, 2017

VIA E-MAIL

Chairwoman Joan Delabreau
Menominee Indian Tribe of Wisconsin
P.O. Box 910
Keshena, Wisconsin 54135-0910

Dear Madam Chairwoman Delabreau:

Thank you for your December 13, 2016, letter regarding Aquila Resources Inc.'s Back Forty Mine Project. Your letter expressed concern regarding the Michigan Department of Environmental Quality's (MDEQ) consultation with your tribe on the project, specifically with regard to the level and manner of consultation.

The "meaningful tribal consultation" standard that you reference in your letter was set by the federal government to govern tribal consultation by federal agencies with respect to federal agency decision-making. For example, when the United States Environmental Protection Agency (U.S. EPA) considers a wetlands permit under Section 404 of the Clean Water Act, it is bound by the federal consultation policy. But the MDEQ is not required to meet this federal standard of tribal consultation with respect to the Back Forty project. The MDEQ is an agency of the State of Michigan, not the United States. As you note in your letter, the MDEQ operates under "delegated" authority in making decisions about wetlands permits. But when the MDEQ considers a wetlands permit, it does so as a state agency administering state law, specifically Part 303, Wetlands Protection, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451) [See, e.g., 33 U.S.C. § 1344(g)(1)]. The MDEQ does not act as a federal agency and does not make a federal agency decision. Therefore, it is not obligated to follow the federal tribal consultation policy. Region 5 U.S. EPA staff have confirmed that the MDEQ's understanding on this issue is correct, and they specifically have informed the MDEQ that the U.S. EPA would never have delegated this authority to the State. This tribal consultation responsibility is retained by the U.S. EPA.

The MDEQ's tribal consultation obligations stem from the 2002 Government-to-Government Accord signed by then Governor John Engler and the twelve federally-recognized Michigan tribal governments. Enclosed is a copy of the Accord for your convenience. This Accord has been reaffirmed by Governor Rick Synder as the means by which state agencies shall engage the Michigan Tribes. It includes reference specifically to tribal consultation (see Section V), and this is the process the state agencies are directed to follow. Additionally, in 2012 the MDEQ enacted a new Mining Policy outlining a process we have elected to follow in sharing information on mining permit applications with interested Michigan-based tribes and the U.S. EPA early in the permit review process.

While the MDEQ does not have an obligation under either the Government-to-Government Accord or the 2012 Mining Policy to engage Wisconsin's tribal governments in consultation, we have engaged in consultation with the Menominee Indian Tribe of Wisconsin on

numerous occasions over the course of our review of the Back Forty application. These meetings have included you as the Tribal Leader, along with several of your key staff. Our staff has even traveled to Wisconsin to meet with you. In addition, your tribe has provided written comments and feedback on the Back Forty application multiple times. Because we understand how important this issue is to you and your tribe, we elected to reach out and engage in government-to-government consultation, not because we were required to do so, but rather out of respect and courtesy to the Menominee Indian Tribe.

Given that the consultation responsibility for a Wisconsin-based tribal government rests with the U.S. EPA, we encourage your continued outreach and engagement with them on this issue.

Thank you for your correspondence on this important matter. If we can continue to provide clarity on Michigan's regulatory mining authority under Part 632, Nonferrous Metallic Mineral Mining, of Act 451, please do not hesitate to contact us. Mr. Joe Maki, who you already have met with from our Upper Peninsula District Office, is our Mining Coordinator, and can be reached at 906-250-4015; makij13@michigan.gov; or MDEQ, Oil, Gas, and Minerals Division, 1504 West Washington Street, Marquette, Michigan 49855. You may also contact Mr. James Goodheart, our Tribal Liaison, at 517-284-6706 or goodheartj@michigan.gov; or you may contact me.

Sincerely,

C. Heidi Grether

C. Heidi Grether
Director
517-284-6700

Enclosure
cc/enc: United States Senator Tammy Baldwin
United States Senator Ron Johnson
United States Representative Reid Ribble
Governor Rick Snyder
Mr. Larry Roberts, Assistant Secretary of Indian Affairs, U.S. Department of the Interior
Mr. Robert Kaplan, Acting Regional Administrator, U.S. EPA, Region 5
Mr. Kestutis Ambutas, Tribal Affairs Director, U.S. EPA, Region 5
Ms. Barbara Wester, Associate Regional Counsel, U.S. EPA, Region 5
Mr. Tom Melius, Regional Director, U.S. Fish and Wildlife Service
Ms. Katie Steiger-Meister, U.S. Fish and Wildlife Service-GLRI
Mr. Curtis Sedlacek, U.S. Army Corps of Engineers, Detroit District
Mr. David Nyberg, Director, Governor's Northern Michigan Office
Mr. Robert Reichel, Michigan Department of Attorney General
Ms. Kelly Drake, Michigan Department of Attorney General
Dr. Dean Anderson, Michigan State Historic Preservation Office
Mr. Robert Wagner, Environment Deputy Director, MDEQ
Ms. Sarah M. Howes, Legislative Liaison, MDEQ
Mr. Harold R. Fitch, MDEQ
Mr. James Goodheart, Tribal Liaison, MDEQ
Mr. Joe Maki, MDEQ

DEPT. OF THE
ATTORNEY GENERAL

DEC 17 2002

Assigned to

STATE OF MICHIGAN
OFFICE OF THE GOVERNOR
LANSING

JOHN ENGLER
GOVERNOR

December 9, 2002

To the Members of the Michigan House of Representatives
To the Members of the Michigan Senate

**Executive Message of Governor John Engler Regarding the 2002 Government-to-Government Accord between the State of Michigan and the Federally Recognized Indian Tribes in the State of Michigan**

Dear Members of the Michigan Legislature:

Pursuant to Article V, Section 17, of the Michigan Constitution, I write to formally transmit to the Legislature the 2002 Government-to-Government Accord between the State of Michigan and the Federally Recognized Indian Tribes in the State of Michigan ("State-Tribal Accord"). I also transmit a copy of Executive Directive 2001-2, which is incorporated within the State-Tribal Accord. It is my hope that these documents will be published in the official journals of the Michigan House of Representatives and the Michigan Senate.

As these documents demonstrate, the relationship between the State of Michigan and the twelve federally recognized sovereign Indian tribes within our state continues to evolve and mature. I am proud of the many steps we have taken in recent years to improve this relationship. It is my hope that the principles articulated in the negotiated State-Tribal Accord will guide leaders of the state into the future. In that vein, I urge the leadership of the Michigan Legislature to create standing committees on State-Tribal Affairs, to provide a forum for legislative interaction and policymaking on the varied issues that confront the state and the tribes.

In addition to transmitting a copy of the State-Tribal Accord to the Legislature, I am also sending the original document to the Michigan Secretary of State for filing with the Office of the Great Seal of the State of Michigan. As each tribe ratifies the State-Tribal Accord, those ratified documents will also be transmitted to the Secretary of State.

Sincerely,

John Engler
Governor

DEPT OF ATTORNEY GENERAL
RECEIVED

DEC 19 2002

NATIVE AMERICAN AFFAIRS DIVISION

JE/jlf

Enclosures

cc w/enc: The Honorable Maura Corrigan, Chief Justice of the Michigan Supreme Court
The Honorable Candice Miller, Secretary of State of the State of Michigan
The Honorable Jennifer Granholm, Attorney General of the State of Michigan
Michigan Tribal Chairs

means for governments to resolve differences is through a process of discussion and negotiation, resorting to litigation only when this course is unavoidable.

In accordance with these operative facts, I hereby direct the following:

1. The Governor's Deputy Legal Counsel, or such other individual as the Governor may designate, shall serve as the Governor's Advisor on State-Tribal Affairs and be responsible for the implementation of this directive.

2. The Governor's Advisor on State-Tribal Affairs shall work with tribal representatives and representatives of the Executive Branch of the state of Michigan as may be appropriate to develop a State-Tribal Accord defining the relationship between the state of Michigan and the federally recognized tribes within her borders.

3. Each executive department having substantial interaction with tribal governments shall designate an individual serving in the executive office of that department to be responsible for department-wide coordination of the department's interactions with tribal governments. This coordinator shall regularly report departmental interaction to the Governor's Advisor on State-Tribal Affairs. This provision is not intended to supplant effective existing relationships with tribal governments. Likewise, it is not the intent of this directive to displace ongoing cooperative efforts and lines of communication between the state and tribes.

4. Each executive department engaged in a dispute with a tribal government and contemplating litigation shall first consult with the Governor's Advisor on State-Tribal Affairs and thereafter with that tribal government to negotiate a resolution prior to resorting to the court system.

5. The state of Michigan shall participate in an annual meeting at which appropriate representatives of the state and the tribes may work together to achieve mutual goals.

6. As Governor, I will support legislation to authorize intergovernmental agreements between tribal governments, state government and instrumentalities of the state.

Through cooperation, state and tribal governments can achieve more for all of our citizens, and when possible, avoid costly and disruptive disputes. It is my hope that these principles will guide the state of Michigan for many years to come.

(4) The development of strong, reliable government-to-government relationships between the state of Michigan and the tribes will be beneficial to all of the citizens of Michigan.

The tribes acknowledge that:

(1) The state of Michigan operates under authority granted by the United States Constitution and by the people of Michigan through the Michigan Constitution of 1963, and state laws and regulations;

(2) The state of Michigan is divided into three independent branches of government: executive, judicial, and legislative. Under the Michigan Constitution of 1963, the executive power is vested in the governor;

(3) The state of Michigan has a responsibility to provide for and protect the health, safety and welfare of all of the citizens of Michigan;

(4) Actions undertaken by the tribes that affect or may affect Michigan citizens who are not tribal members must be implemented in an informed and sensitive manner, respectful of individual rights; and

(5) The development of strong, reliable government-to-government relationships between the tribes and the state of Michigan will be beneficial to all of the citizens of Michigan.

## IV. PURPOSES AND OBJECTIVES

This accord illustrates the commitment by the parties to implementation of the government-to-government relationship, a relationship reaffirmed as state policy on May 22, 2001, by Governor John Engler's Executive Directive 2001-2, "Policy Statement on State-Tribal Affairs." This relationship respects the sovereign status of the parties, enhances and improves communications between them, and facilitates the resolution of issues.

This accord commits the parties to the initial tasks that will translate the government-to-government relationship into more efficient, improved and beneficial services to Indian and non-Indian people. This accord encourages and provides the foundation and framework for specific agreements among the parties outlining specific tasks to address or resolve specific issues.

The parties recognize that implementation of this accord will require a comprehensive educational effort to promote understanding of the government-to-government relationship within their own governmental organizations and with the public.

Each tribe will develop and engage in an effective process for consultation with the state concerning tribal action significantly affecting state interests.

## State-Tribal Forum and Task Forces

The state and the tribes shall establish a State-Tribal Forum consisting of tribal government political leaders and their designees and the Governor's Policy Advisor on State-Tribal Affairs and appropriate officials from other executive departments of state government. The members of the forum will be charged with monitoring the implementation of this accord and organizing the annual meeting described below.

The parties can also form Tribal Leaders Task Forces on matters that impact tribes across the state on issue-specific matters such as education, natural resources or health care or any other issues of common concern. In each instance, the desirability of a Task Force and the composition of the Task Force shall be determined jointly by the state and the tribes. Each Task Force may develop its own reporting schedule and protocols and procedures.

## Annual Meeting

While this accord addresses the relationship between the parties, its ultimate purpose is to improve the services delivered to people by the parties. The parties shall meet on at least an annual basis to establish goals for improved services and identify the obstacles to the achievement of those goals. At the annual meeting, the parties will develop joint strategies and specific agreements to outline tasks, overcome obstacles and achieve specific goals.

As a component of the system of accountability within the state and tribal government, the parties will also review and evaluate at the annual meeting the implementation of the government-to-government relationship. A management report summarizing this evaluation will be drafted by authors selected by both the tribes and the state. The report will include mutually acceptable strategies and agreements to outline tasks, overcome obstacles, and achieve specific goals.

## Accountability and Identification of Key Contacts

The parties recognize that a key principle of their relationship is a requirement that individuals working to resolve issues of mutual concern are accountable to act in a manner consistent with this accord.

The Governor's Advisor on State-Tribal Affairs is accountable to the governor for implementation of the accord. Tribal coordinators within the executive departments are accountable to the governor through the director of their

under state or federal law. Through this accord, the parties strengthen their collective ability to successfully resolve issues of mutual concern.

While the relationship described by this accord provides increased ability to solve problems, it likely will not result in a resolution of all issues. Therefore, inherent in their relationship is the right of each of the parties to elevate an issue of importance to any decision-making authority of another party, including, where appropriate, that party's executive office.

Representatives of the signatory parties have executed this accord on the date of October 28, 2002, and upon its taking effect agree to be duly bound by its commitments. This accord is effective as between the state of Michigan and each individual signatory tribe at such time as the accord is approved pursuant to the applicable ratification process of that tribe. Upon tribal approval, each tribe shall send notice of approval to the Office of the Governor for filing with the Office of the Secretary of State of Michigan. This accord continues in effect unless modified by mutual agreement or terminated by any party. In the event that one or more tribal signatories, but less than all tribal signatories, terminates their participation in the accord, the accord shall continue in effect between the state and remaining tribal signatories.

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