DEPARTMENT OF THE ARMY
DETROIT DISTRICT, CORPS OF ENGINEERS
477 MICHIGAN AVENUE, 7TH FLOOR
DETROIT, MICHIGAN 48226

September 28, 2017

Gary Besaw
Chairman, Menominee Indian Tribe of Wisconsin
P.O. Box 910
Keshena, Wisconsin 54135-0910

Dear Chairman Besaw:

I am writing in response to your August 21, 2017 letter concerning Aquila Resources' proposed Back Forty Mine project in Menominee County, Michigan. You requested tribal consultation with the U.S. Army Corps of Engineers (Corps) and the U.S. Environmental Protection Agency (EPA) and that both agencies make a jurisdictional determination on wetlands adjacent to the Menominee River within the Back Forty project area.

At this time, the Corps does not have the authority to initiate tribal consultation regarding Aquila Resources' permit application, nor determine jurisdiction on the adjacent wetlands as the conditions required for the Corps to review the application have not yet occurred (33 USC 1344(j) and 40 CFR 233.50(j)).

The EPA is the lead federal agency in administering the Clean Water Act (CWA) and retains oversight of the Section 404 program (33 U.S.C. 1344(g)-(l)) whether it is implemented by the Corps or transferred to the states. Section 404, implementing regulations, and the 2011 Memorandum of Agreement between the EPA and Michigan Department of Environmental Quality (MDEQ) provide the terms under which the state can assume the Section 404 program, and the process for review and comment by federal agencies. Even in state-assumed waters, the EPA has authority to object to a project that does not conform to Section 404 and in particular, the 404 (b)(1) Guidelines. If the objection is not resolved, and MDEQ does not deny the permit, Section 404 authority transfers to the Corps. Ongoing involvement in the state's program by the EPA ensures that federal statutory obligations are met.

Please contact me if you have any further questions.

Sincerely,

Dennis P. Sugrue
Lieutenant Colonel, U.S. Army
District Engineer

CF:
U.S. Environmental Protection Agency, Region V