



# **MENOMINEE INDIAN TRIBE OF WISCONSIN**

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**FOR IMMEDIATE RELEASE:** January 22, 2018

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### **Menominee Tribe Files Lawsuit Over Back Forty Mine Clean Water Act Wetlands Permit**

KESHENA, Wis.—Today the Menominee Tribe of Wisconsin filed a lawsuit in federal court against the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency. The Tribe asserts that the agencies have failed to take primary responsibility for a wetland permit that is key to the future of the controversial Back Forty Mine proposal.

This permit, if approved, would allow mine developer Aquila Resources, Inc., to fill and excavate Menominee River wetlands, as part of its plans to construct a large, open-pit mine and industrial minerals-processing facility on a site that borders the Menominee River.

The site is located within an expansive Menominee cultural landscape that includes tribal burial grounds, ancient agricultural sites and ceremonial sites of significance to the Menominee Tribe, some of which have already been deemed eligible for listing on the National Register of Historic Places.

For months, the Tribe has opposed the federal agencies' decision to allow the State of Michigan to oversee the Clean Water Act federal permitting process, pointing out that permitting fill and excavation on the Menominee River and its wetlands cannot be delegated to a state under the Act.

"The Menominee River and its wetlands are interstate federal waters, used in interstate commerce under the law," explained Janette Brimmer, the Earthjustice attorney representing the Menominee Tribe of Wisconsin. "So, under the law, this permit cannot be controlled by one state. The Clean Water Act is clear that the federal agencies must have the primary role and jurisdiction in this permitting process, and that they are legally obligated to comply with additional protections for the Menominee River under federal law."

The lawsuit, filed in U.S. District Court for the Eastern District of Wisconsin, asks the Court to require the federal agencies to assume primary control over the wetland permit and permitting process from the State of Michigan.

"This permit affects the interests of so many people and the environment in Wisconsin and Michigan, including sites critical to the Tribe's culture and history. Therefore, it is important that this process follow the Clean Water Act and not solely be controlled by the State of Michigan," said Menominee Tribal Chairman Gary Besaw. Besaw also noted, "Recognizing the importance of interstate waters, such as the Menominee River, the Clean Water Act requires the federal government to retain jurisdiction and apply federal safeguards for the shared benefit of all."

The proposed site borders the Menominee River, and the wetlands permit is of great concern because, under the current proposal, the mine pit would span 84 acres at a depth of 750 feet, reaching far beneath the river's natural waterline. According to the mine developer's own statements in the environmental assessment, it has the potential to negatively affect hydrology throughout the area for years. The mine could affect water quality many miles downstream, as well as destroy wetlands, forestland and the Tribe's traditional cultural and historic sites located there.

The State of Michigan continues to act on the wetlands permit over the Tribe's objections, with a public hearing scheduled in Michigan tomorrow (Jan. 23, 2018).

The Menominee Tribe will continue to oppose Michigan's permit process, and this lawsuit brings the issue into federal court.

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