

**Michigan Department of Environmental Quality**

**Public Hearing on  
Back 40 Project Permit**

**Testimony of  
Gary Besaw  
Tribal Chairman**

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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. 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' kuki (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 united 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 reseeded 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.