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May 5, 2011

VIA FEDERAL EXPRESS

Board of Indian Appeals, Office of Hearing and Appeals
United States Department of the Interior
801 North Quincy Street
Arlington, VA 22203

OBJECTION TO THE RECORD AS CONSTITUTED

Re: MENOMINEE TRIBAL LEGISLATURE (IMPROPERLY IDENTIFIED AS "MENOMINEE INDIAN TRIBE OF WISCONSIN") AND MENOMINEE TRIBAL ENTERPRISES V. MIDWEST REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS

Dear Board of Indian Appeals, Office of Hearing and Appeals:

Menominee Tribal Enterprises ("MTE") respectfully files this **OBJECTION TO THE RECORD AS CONSTITUTED** pursuant to 43 C.F.R. § 4.336.

This **OBJECTION TO THE RECORD AS CONSTITUTED** is timely filed because it was deposited into the United States Mail, via Federal Express on May 5, 2011, which date is within 15 calendar days after the date of receipt of the Order Setting Briefing Schedule. The Order Setting Briefing Schedule contains the information required to be included in a "Notice of Docketing." See 43 C.F.R. § 4.336. For reasons that are unclear, MTE was not timely served with the Order Setting Briefing Schedule. Instead, the Board served counsel for the Menominee Tribal Legislature ("MTL"), the other appellant, via facsimile transmission, but not MTE. MTE received a copy of the Order Setting Briefing Schedule via facsimile from MTL's counsel on April 21, 2011. MTE received proper service from the Board by regular United States mail on April 26, 2011.

OBJECTION

MTE appeals Midwest Regional Director Rosen's decision disapproving of the Forest Management Plan for the Menominee Indian Reservation ("FMP") submitted by MTE on behalf of the Menominee Indian Tribe of Wisconsin for approval by the United States Secretary of the Interior. On information and belief, the BIA has previously considered and approved FMPs for

managing the Menominee forest lands submitted by MTE on at least three prior occasions, but the administrative record submitted by Midwest Regional Director Rosen does not contain the documents upon which those prior decisions were based. Consequently, the administrative record does not comply with applicable regulations. *See* 43 C.F.R. § 4.335(a) (“The record on appeal shall include . . . all documents upon which all previous decisions were based.”).

Separate and apart from whether the administrative record as constituted contains all documents required by § 4.335(a), the record is missing a number of documents that are relevant to MTE’s appeal. These documents include, but are not limited to, the following:

1. Written communications relating to the 1968 and (Amended 1972) Forest Management Plan for the Menominee Indian Reservation;
2. Written communications relating to the 1968 and (Amended 1972) Forest Management Plan for the Menominee Indian Reservation;
3. The 1982 Forest Management Plan for the Menominee Indian Reservation;
4. Written communications relating to the 1982 Forest Management Plan for the Menominee Indian Reservation;
5. The 1996 Forest Management Plan for the Menominee Indian Reservation;
6. Written communications relating to the 1996 Forest Management Plan for the Menominee Indian Reservation;
7. The 2005 extension of the 1996 Forest Management Plan for the Menominee Indian Reservation;
8. Written communications relating to the 2005 extension of the 1996 Forest Management Plan for the Menominee Indian Reservation; and
9. All of the written communications relating to the current proposed Forest Management Plan for the Menominee Indian Reservation, irrespective of submission by Menominee Tribal Enterprises or the Menominee Tribal Legislature.
10. All written communications relating to the current proposed Forest Management Plan for the Menominee Indian Reservation between the BIA Midwest Regional Office and BIA Central Office, Washington DC, including, but not limited to communications with the Secretary of Interior and the Assistant Secretary - Indian Affairs.

Proper review of Midwest Regional Director Rosen's decision is not possible without a complete administrative record identifying the party within the Menominee Indian Tribe of Wisconsin who BIA communicated with on issues related to the FMP and showing the scope of BIA's historically review of FMPs submitted by MTE relating to managing the Menominee forest lands. Accordingly, MTE has contacted the BIA and requested that the BIA supplement the record or, in the alternative, provide MTE with the documents identified above. In the event the BIA does neither, MTE reserves the right to seek appropriate relief from the Board. MTE also reserves the right to supplement the administrative record pursuant to *Olson v. Portland Area Director*, 31 IBIA 44, 44 (1997), in which the IBIA observed that "the Board's normal practice is to allow the parties to supplement the record provided by the deciding official as long as opposing parties have the opportunity to respond to any documents submitted."

MTE further objects to the administrative record on the grounds that it contains numerous documents that are not relevant to the subject matter of this appeal. These documents include, without limitation, Administrative Record Tab Nos. 16, 27-28, 30-31, 33, 42, 44, 55-59, 61-64, 66-68, 71-72, 75, 88, 91-92, 104, Yellow Tab, Handbook 53 IAM, and 105-06. MTE requests that IBIA make a relevance determination as to each document comprising the administrative record and, in particular, strike for the administrative record the documents identified above.

MTE also objects to BIA's descriptions concerning the FMPs submitted by MTE and MTL on behalf of the Menominee Indian Tribe of Wisconsin at Tab Nos. 14, 19, 20, 21, and 23 on two grounds. First, BIA describes the FMP submitted by MTL as the "Menominee Indian [T]ribe of Wisconsin, Forest Management Plan" (see e.g., Tab Nos. 14, 19, 20, & 21) without identifying it as the MTL submission. Second, BIA's administrative record description omits any clear statement that MTE submitted an FMP. Moreover, the only description of an FMP submitted by MTE, Tab No. 23, is misleading in that it suggests that MTE's submission is limited to only a "Letter to Diane Rosen from MTE, RE: Menominee Tribal Enterprises Forest Management Plan 2010" and fails to state that MTE submitted an FMP on behalf of the Menominee Indian Tribe of Wisconsin.

Please feel free to contact me if you have any questions or need additional information. In this regard, my complete contact information is as follows: Joshua Jay Kanassataga, Esq. Assistant Professor of Law, c/o Gonzaga University School of Law, 721 North Cincinnati Street,

[NO FURTHER TEXT APPEARS ON THIS PAGE]

United States Department of Interior
Interior Board of Indian Appeals, Office of Hearing and Appeals
May 5, 2011
Page 4

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Very truly yours,

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jjk/JJK

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United States Department of Interior
Interior Board of Indian Appeals, Office of Hearing and Appeals
May 5, 2011
Page 5