

Westphal, Chuck (USAWIE)

From: DavidCongos@bia.gov
Sent: Wednesday, September 12, 2001 3:35 PM
To: StuartMani@bia.gov
Subject: Stumpage Meeting
Attachments: Trust Protection_stumpage meeting.doc

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[] Return receipt

Stu,

Here is a copy of the memo I sent to Jay following a meeting with Waukau and Pecore. As we discussed today, this has now escalated to the level where Waukau has instructed his staff not have direct conversations with me on any MTE (and personal matters, I believe). I believe the intent is to prevent me from learning any more than I already do regarding how MTE expends federal dollars and meets federal trust protection standards.

Dave

----- Forwarded by David Congos/MINNEAPOLIS/BIA/DOI on 09/12/01 03:24 PM

David Congos
02/21/01 10:36 AM
To: Jay West/MINNEAPOLIS/BIA/DOI@BIA
cc:
Subject: Stumpage Meeting

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[] Return receipt

Jay,

Attached is a summary of my meeting yesterday with Waukau and Pecore. I recommended we begin a review of this question with Field Solicitor. These guys aren't playing games anymore.

Dave(See attached file: Trust Protection_stumpage meeting.doc)

MEMORANDUM

Menominee Tribal Enterprises Forestry Center
Bureau of Indian Affairs
P.O. Box 670
Keshena, Wi. 54135

TO: Jay West
FROM: David Congos
DATE: February 21, 2001
RE: MTE Stumpage Meeting

I met yesterday with Lawrence Waukau and Marshall Pecore to discuss my January 25, 2001 letter to Mr. Waukau regarding MTE's need to pay stumpage.

I emphasized that the purpose of my letter was to clarify the facts concerning MTE's need to pay fair market value to the Tribe for the standing timber harvested by MTE. I explained that I believed the BIA had an obligation, as trustee, to ensure that the trust assets (timber value) were shared equally by all the tribal members. I based my belief upon the broad trust principles applied by the Secretary on all Indian forest land across the nation and Secretarial Order No. 3215, Principles for the Discharge of the Secretary's Trust Responsibility.

Mr. Waukau stated that MTE is not required to pay "stumpage", rather is only obligated to share excess profits according to the Mill Plan. He said there were a number of legal opinions supporting this position and that our Field Solicitor should have these opinions on file. He did send my January 25 letter to M. Shulstad for her legal opinion, but he would not share her response with me other than to say that the questions I raised were not appropriate.

During our "conversation", Mr. Waukau indicated that Terry Virden had been contacted and requested by MTE to intercede on this issue. Discussions included Mr. Virden directing me to "drop the issue" and "to have me removed from my position". My response to this was "don't threaten me".

Additionally, Mr. Waukau stated that if for any reason the "stumpage issue" resulted in a mill shutdown, he would inform every mill employee that "Congos and the BIA are responsible". This was prefaced by Mr. Waukau's description of "death threats" he has received in the course of "doing his job" as MTE President. Apparently a few death threats against me might change my perspective about how things work on Menominee.

Further, he stated that Ms. Shulstad said if I had initiated such an action while she was the Field Solicitor, she would not have been able to defend me and that my career in the BIA would have

been in jeopardy. Mr. Waukau also quoted from Ms. Shulstad's legal opinion to MTE that I lacked the legal authority to raise the stumpage question.

I suggested that if MTE wanted a quick resolution to my stumpage question, a joint resolution from the MTE Board of Directors and the Menominee Tribal Legislature approving a stumpage payment methodology would likely be supported by the Regional Director. Mr. Waukau responded that any attempt by the Regional Director to contact MTL on this issue would result in an immediate lawsuit against the Regional Director for violating MTE's "sovereign rights". I likewise was warned against making any attempt to discuss this issue with MTL.

Before the meeting ended, I asked if Mr. Waukau would agree to have a meeting to review the documents and attempt to clarify the true intent of the Restoration Act language. I explained that my question was not designed to expand the BIA's control over MTE, but rather to establish exactly how the Secretary would "protect the tribal assets from waste" in a way that would enable the BIA to effect the federal governments trust oversight responsibility consistently in the future. Without such clarification, the BIA might fail to protect the beneficial interests of the tribal membership and create a liability on the part of the federal government. Not asking the "stumpage" question could be construed as a breach of trust. Mr. Waukau indicated he would consider such a meeting sometime in the next several weeks.

Several points were clearly exposed in the meeting:

- 1) Mr. Waukau and his legal staff interpret the Restoration Act documents to mean that MTE is not required to pay (and will not pay) the tribal members fair market value for the timber assets harvested and utilized by MTE.
- 2) Mr. Waukau believes that MTE is the only tribal entity that may discuss the federal trust protection responsibilities toward the tribal timber assets.
- 3) Mr. Waukau prefers threats and intimidation to constructive dialogue.
- 4) MTE will go to court to block any BIA or MTL attempt to clarify the intent of the Restoration Act documents as it pertains to the "stumpage" question.

I strongly recommend that we ask the Field Solicitor to review and answer the question raised by internal memorandum several years ago. Further, the Field Solicitor should determine if the Restoration Act actually authorizes MTE to harvest \$8 million of tribal timber stumpage annually without obligation to pay the membership for these timber assets. And, how does the Secretary "protect the tribal assets from waste" when apparently the Tribe is not entitled to fair market value for the timber resource.