

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 07-C-316

MENOMINEE TRIBAL ENTERPRISES,
the principal business arm of the Menominee Indian
Tribe of Wisconsin, MARSHALL PECORE, and
CONRAD WANIGER,

Defendants.

**UNITED STATES' RESPONSE TO DEFENDANT MENOMINEE TRIBAL
ENTERPRISES' THIRTEENTH SET OF REQUEST FOR PRODUCTION OF
DOCUMENTS**

The United States serves these responses to defendant Menominee Tribal Enterprises' ("MTE") Thirteenth Set of Request for Production of Documents, pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure.

Introductory Statement and General Objections

The Introductory Statement and General Objections set forth in the United States' Responses to defendant MTE's Interrogatories (Sets 1-3) and Requests for Production of Documents (Sets 1-4) are incorporated by reference as if fully set forth below.

Responses and Objections to Interrogatory Requests

REQUEST NO. 1: The BIA Midwest Regional Office's Regional Program/Project Management Handbook as it relates to Forestry Invoice Review and Approval Procedures in effect on February 27, 2002 (hereinafter, "Handbook").

Although certain internal BIA documents refer to the creation of an invoice review handbook, the BIA did not create a final version of such a handbook.

REQUEST NO. 2: Each amendment, modification or change to the Handbook as it relates to Forestry Invoice Review and Approval Procedures since February 28, 2002 to the present.

See the United States' response to Request No. 1, above.

REQUEST NO. 3: *The current version of the BIA Midwest Regional Office's Regional Program/Project Management Handbook as it relates to Forestry Invoice Review and Approval Procedures.*

See the United States' response to Request No. 1, above.

REQUEST NO. 4: *In connection with a letter from Larry Morrin, Regional Director to Superintendents, Midwest Region dated February 28, 2002, Bates Numbered USA0016419 - USA0016423, and hereto attached as Exhibit A, produce all communications to Indian Tribes or Tribal Organizations, as defined at 25 CFR Part 273.2(g) & (v), respectively, located within the Midwest Regional Office's jurisdiction as those communications relate to the then new Forestry Invoice Review and Approval Procedures (hereinafter "Procedures").*

The United States objects to this document request to the extent it demands the production of information pertaining to the thirty-six other Indian Tribes within the BIA's Midwest Region, on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of admissible evidence under Fed.R.Civ.P. 26 (b)(1).

REQUEST NO. 5: *All documents related to the BIA's Midwest Regional Office's policies and procedures for Forestry Invoice Review and Approval in effect between April 1, 2000 through January 31, 2002.*

The United States objects to this document request as duplicative of Document Request No. 8, set 12. The BIA is unaware of the existence of formal written policies and procedures pertaining to forestry invoice review procedures during this time frame, beyond what are required by federal law, regulations, and all applicable agreements and contract proposals. All documents related to the BIA's invoice review and approval procedures would be located in the BIA files, which have been made available for inspection.

REQUEST NO. 6: *All documents related to the development of the Procedures by the BIA's Midwest Regional Office.*

The United States has located, within BIA electronic records, a draft of the Invoice Review and Approval Interim Procedures, which is attached as Bates Nos. USA0019625 - 19628. Additional drafts of the proposed procedures, and internal correspondence relating to their development, may be contained in the BIA's electronic records, including employee email. However, the United States objects to this document request on the grounds that the burden of searching for and producing all such documents outweighs any arguable relevance of the documents. The United States further objects on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of

admissible evidence under Fed.R.Civ.P. 26 (b)(1). The United States further reserves the right to raise all applicable privileges, including the deliberative process privilege, should the government be ordered to search for and produce such electronic documents.

REQUEST NO. 7: Documents sufficient and necessary to illustrate the identity of all persons who participated in the development of the Procedures.

See the United States' response to Request No. 6, above. In addition, attached is an email dated February 5, 2002, which identifies the persons who participated in the development of the Procedures. USA0019624.

REQUEST NO. 8: All documents illustrating each draft version of the Procedures.

See the United States' response to Request No. 6, above.

REQUEST NO. 9: All documents illustrating the efforts of the Midwest Regional Office to explain consult with or provide technical assistance to Indian Tribes and Tribal Organizations with respect to the Procedures.

See the United States' response to Request No. 6, above. In addition, the United States objects to this document request to the extent it demands the production of information pertaining to the thirty-six other Indian Tribes within the BIA's Midwest Region, on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of admissible evidence under Fed.R.Civ.P. 26 (b)(1).

REQUEST NO. 10: All documents illustrating any BIA Midwest Regional Office Contracting Officer's imposition of higher reporting and supporting documentation standards to any Hazardous Fuels Reduction Program invoice between February 28, 2002 and the present related to any effort to ensure that payment is an allowable cost in accordance with the Federal Acquisition Regulation.

Any such documents, to the extent they pertain to Menominee Tribal Enterprises, would be located in the BIA files which have been produced for inspection. The United States objects to this document request to the extent it demands the production of information pertaining to the thirty-six other Indian Tribes within the BIA's Midwest Region, on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of admissible evidence under Fed.R.Civ.P. 26 (b)(1).

REQUEST NO. 11: All Hazardous Fuels Reduction Program invoices and supporting documentation submitted to Midwest Regional Office for payment by each Indian Tribe or Tribal Organization during the period May 2000 through October 2000, respectively.

The United States objects to this document request to the extent it demands the production of information pertaining to the thirty-six other Indian Tribes within the BIA's

Midwest Region, on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of admissible evidence under Fed.R.Civ.P. 26 (b)(1).

REQUEST NO. 12: All Hazardous Fuels Reduction Program invoices and supporting documentation submitted to Midwest Regional Office for payment by each Indian Tribe or Tribal Organization during the period May 2001 through October 2001, respectively.

The United States objects to this document request to the extent it demands the production of information pertaining to the thirty-six other Indian Tribes within the BIA's Midwest Region, on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of admissible evidence under Fed.R.Civ.P. 26 (b)(1).

REQUEST NO. 13: All Hazardous Fuels Reduction Program invoices and supporting documentation submitted to Midwest Regional Office for payment by each Indian Tribe or Tribal Organization during the period May 2002 through October 2002, respectively.

The United States objects to this document request to the extent it demands the production of information pertaining to the thirty-six other Indian Tribes within the BIA's Midwest Region, on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of admissible evidence under Fed.R.Civ.P. 26 (b)(1).

REQUEST NO. 14: All Hazardous Fuels Reduction Program invoices and supporting documentation submitted to Midwest Regional Office for payment by each Indian Tribe or Tribal Organization during the period May 2003 through October 2003, respectively.

The United States objects to this document request to the extent it demands the production of information pertaining to the thirty-six other Indian Tribes within the BIA's Midwest Region, on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of admissible evidence under Fed.R.Civ.P. 26 (b)(1).

REQUEST NO. 15: All documents relating to any rejection of any Hazardous Fuels Reduction Program invoice submitted to Midwest Regional Office for payment by any Indian Tribe or Tribal Organization, except Menominee, during the period May 2000 through October 2003.

The United States objects to this document request to the extent it demands the production of information pertaining to the thirty-six other Indian Tribes within the BIA's Midwest Region, on the ground that the request lacks relevance to a claim or defense of the parties, and the information sought by this request is not reasonably calculated to lead to the discovery of admissible evidence under Fed.R.Civ.P. 26 (b)(1).

Respectfully submitted,

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Dated: 3-24-08