



**U. S. Department of the Interior**  
**Bureau of Indian Affairs**  
Midwest Regional Office  
Whipple Federal Building, One Federal Drive, RM. 550  
Ft. Snelling, MN 55111

IN REPLY REFER TO:

Chris R. Larsen  
Assistant United States Attorney  
517 East Wisconsin Ave., Room 530  
Milwaukee, WI 53202

November 29, 2007

Dear Mr. Larsen:

The following report will summarize my expert opinions with respect to allegations that Menominee Tribal Enterprises, Marshall Pecore and Conrad Waniger submitted false or fraudulent invoices and documents in support of certain claims for BIA-funded road and fire work on the Menominee Indian Reservation.

Before describing my opinions, I will first provide the following summary of my education, training and experience which supports my ability to determine whether the road and fire work in question was performed as required by the project proposals.

**Education, Training and Professional Experience**

- Bachelor of Science Degree, Forest Management, University of Montana, 1973.
- Graduated with Honors.
- Wisconsin Department of Natural Resources, 1974 to 1979.
  - Hired as a Forester/Ranger, a position which combined forest management and fire protection functions. The position included extensive training in fire suppression, including the construction and use of fuel breaks, with approximately 240 hours of classroom training in fire suppression principles and tactics and an additional 240 hours of law enforcement training. Additional duties included administration of existing forest tax law program and federal cost-sharing programs, including inspections for approval and program compliance.
- Department of the Interior, Bureau of Indian Affairs, 1979 to Present.
  - Forester, Pueblo of Zuni (New Mexico) 1979 to 1981 – First forester hired at Zuni, responsible primarily for the reservation Forest Development program (greenhouse manager); other duties included timber sales and initial attack fire suppression (ICT4/Engine Boss), including the construction of small firelines.

Enforced tree planting and timber sale contracts including appraisals, inspections, penalties, closures, scaling and accounting.

- Forester, White Reservation (Minnesota) 1981 to 1983 – Primary duties were timber sales, forest inventory, forest development and initial attack fire suppression (ICT4/Engine Boss), including the construction of small firelines. Enforced timber sale contracts including appraisals, inspections, penalties, closures, scaling, and accounting.
- Forester, Menominee Reservation (Wisconsin) 1984 to 2007 – Primary duties included trust oversight of Menominee Forest Management program to ensure compliance with relevant Restoration Act documents and P.L. 93-638 Contracting Officer's Representative ("COR") or sub-COR duties to monitor the Forest Management and Forest Development Self-Determination Contracts awarded to the Menominee Indian Tribe of Wisconsin ("MITW") or Menominee Tribal Enterprises ("MTE"). BIA's Menominee Field Office established on the Reservation in 1985; position was the on-site contact for the MITW and MTE. I was the technical advisor for the BIA Contracting Officer to ensure all facets of the forestry contracts were properly performed to standards required under the contract and sufficient to meet the Secretary's trust responsibilities to the Tribe. Other duties included technical forestry and fire management assistance to the Menominee Tribe and other reservations in the Midwest Region or nationally (as needed or requested). During my 23 years as the Menominee Trust Forester, I provided technical assistance to MTE in locating and establishing firebreaks for a number of prescribed burns in grass and timber cover types.
- Forester, Midwest Regional Office 2007 to Present – Primary duties include administrative oversight of the Midwest Region's Forest Development Program. Provides technical and administrative leadership to the Agencies regarding Regional and National policy, direction and standards for forest development projects and activities on all reservations in the Midwest Region. Other duties include technical forestry and fire management assistance to the Midwest Regional Agencies or nationally (as requested).

In addition to this education, training and work experience, I have worked as a firefighter on numerous forest fires throughout the United States during the past 28 years. My supervisory or overhead fireline experience on large wildfires can be summarized as follows:

- |                                |                                     |
|--------------------------------|-------------------------------------|
| 1. Division/Group Supervisor – | 14 Wildfires/135 Operational Shifts |
| 2. Task Force Leader –         | 4 Wildfires/22 Operational Shifts   |
| 3. Field Observer –            | 9 Wildfires/116 Operational Shifts  |
| 4. Strike Team Leader Crews –  | 3 Wildfires/15 Operational Shifts   |

As a result of this firefighting work, I have had extensive first-hand experience evaluating the type of forest work necessary to create adequate fuel breaks for fire suppression purposes.

### **Statement of Opinions and their Basis**

In 2002, as part of my duties as BIA Trust Forester, I conducted multiple field inspections of Hazard Fuel Reduction and Fire Subsidiary project work allegedly performed by Menominee Tribal Enterprises (MTE) in connection with MTE's P.L. 93-638 contract with the Bureau of Indian Affairs (BIA) to verify compliance with the project proposals prior to reimbursement by BIA. These specific results of these field inspections are documented in various memos provided by me to the BIA's Midwest Regional Office.

I based my field inspections of the Hazard Fuel Reduction (HFR) and Fire Subsidiary project work allegedly performed by MTE on project proposals developed by the MTE forestry staff and agreed to by MTE and BIA officials. The approved project proposals contained detailed information describing the work MTE would perform, the amount MTE could spend for the work performed (actual costs up to the approved limit) and the reporting procedures MTE agreed to follow upon completion of the projects.

Two HFR project proposals were the primary focus of my field inspections:

1. Fiscal Year 2000 - Fuel Break and Fire Access Road Maintenance throughout the Menominee Reservation
2. Fiscal Year 2001 - Fuel Break Maintenance throughout the Menominee Reservation

Under the FY '00 HFR project proposal, MTE agreed to "Maintain[] a Fuel Break and Fire Access Road system to and around established pine plantations and naturally regenerated White Pine stands in high hazard areas. The project also maintains Fuel Breaks and Access Road systems in pine pole and small sawtimber cover types that are or have undergone silvicultural treatment (thinning, release, pruning, weeding or cleaning), and pine shelterwood harvest areas within the Menominee Indian Reservation." The HFR proposal further included the following "Project Objectives": (1) "Remove encroaching roadside vegetation which impedes Road maintenance travel. This will enable maintenance equipment to produce a surface Fuel Break combined with a crown to crown fuel break in high hazard fuel areas of the reservation"; (2) "Grade 141 miles of Fuel Break and Fire Access road surface in pine plantation and pine shelterwood areas"; (3) "Grade 273 miles of Fuel Break and Fire Access road surface in pine release areas"; (4) "Gravel mud holes and soft spots in road-bed where necessary to provide fire control access in high risk areas of the reservation"; and (5) "Replace or install culverts where necessary to maintain adequate access for fire control equipment during the fire season."

The proposed project work was to provide access to "the most fire prone and high risk areas on the Menominee Reservation." The proposed project budget included fixed costs for equipment (grader, chipper, backhoe, loader, dump truck, brush cutters and operators) and culverts. The project would brush and chip along 134 miles of road at \$480.00/mile, grade 555 miles of road surface at \$56.00/mile and install 16 culverts at \$575.00/culvert with an additional machinery

cost of \$130/culvert for installation and 23 days of loader and dump truck to haul gravel at a cost of \$400.00/day and \$360.00/day, respectively. A post-project accomplishment report was to be prepared by the MTE Forest Protection Officer (title later changed to the Fire Management Officer (FMO)) and submitted to the Minneapolis Area Office (later changed to the Midwest Regional Office) by December 30, 2000.

Similarly, under the FY '01 HFR project proposal, MTE agreed to "Maintain[] a Fuel Break system around and within established pine plantations, Pine Shelterwoods and naturally regenerated White Pine stands in high hazard areas. The project also maintains Fuel Breaks systems in pine pole and small sawtimber cover types that are or have undergone silvicultural treatment (thinning, release, pruning, weeding or cleaning) within the Menominee Indian Reservation." The proposal included the following objectives: (1) "Remove encroaching vegetation which jeopardizes fuel break effectiveness. This will enable maintenance equipment to produce a surface Fuel Break combined with a crown to crown fuel break in high hazard fuel areas of the reservation." (2) "Disk 30 miles of Fuel Break surface in pine plantation and pine shelterwood areas"; (3) "Disk 45 miles of Fuel Break surface in recently regenerated pine shelterwood site"; and (4) "Disk 53 miles of Fuel Break surface in pine release areas"; and (5) Project will be inspected by the FMO (or delegate), for Menominee Tribal Enterprises during and upon completion of project to insure the Fuel Breaks are properly constructed." Again, this project was targeted to "the most fire prone and high risk areas" of the Menominee Reservation.

Also, the project proposal states "all of the fuel breaks considered in this plan either protect or are located in areas where pine plantations exist or where a silvicultural treatment has been implemented in the pine type." The proposed project budget includes fixed costs for a dozer and operator at \$70.00/hour, brush cutter and operator at \$70.00/hour, chipper operation at \$50.00/hour with a cost of \$480.00/mile for brush cutting and chipping and \$56.00/mile for fuel break disking. A post-project accomplishment report was to be prepared by the MTE Fire Management Officer and submitted to the Minneapolis Area Office (later changed to the Midwest Regional Office) by December 30, 2001.

In addition, I inspected work allegedly performed in connection with several subsidiary fire plans to provide Road Grading/Improvement Work under the existing P.L. 93-638 Forest Management Contract with MTE. There were ten (10) Subsidiary Fire Plans funded by BIA with the funds added directly to MTE's Forest Management Contract. These Fires Subsidiary projects can be broken into two types of project objectives:

1. Fiscal Year '91, '92, '93 '94,'95,'96,'98 and '00 – Road Grading/Improvement
2. Fiscal Year '93 and '95 – Fire Road Access Improvement

As an example, the FY '95 Fire Subsidiary Road Grading/Improvement project proposal objectives was for "road maintenance allowance to provide access to pine plantations, pine pole and small sawtimber cover types that are or have undergone silvicultural treatment (thinning, release, pruning, weeding or cleaning), and pine shelterwood harvest areas within the Menominee Indian Reservation." This proposal provided the fixed costs of MTE equipment (grader, loader, dump trucks) as well as the number and cost of new culverts and the miles of

road to be graded (515 miles). This proposal provided a budget for Grading at \$56.00/mile, Loader and Operator at \$50.00/hour, Dump Truck and Operator at \$45.00/hour and 10 culverts at \$425.00/culvert.

The FY '95 Fire Subsidiary Fire Road Access Improvement project proposal objectives included: (1) "Widen existing fire roads that are too narrow to accommodate a grader"; and (2) "Improve access to areas of the reservation that contain a concentration to high risk fuels." The project description again indicated the work would occur in "pine plantations, pine release areas and shelterwood cuts" and "would benefit the fire protection program by insuring access to the most fire prone areas on the reservation." Further, the proposal said "logging would not be affected since haul roads are maintained by Menominee Tribal Enterprises" and "all of the roads considered in the proposal access or are located in areas where pine plantations exist or where a silvicultural treatment has been implemented in the pine type." This proposal provided a budget for a dozer (150 hours at \$75.00/hr) and hand labor (240 man days at \$60.00/hr).

In both Fire subsidiary project plans funded by BIA, the MTE Forest Protection Forester (title later changed to Fire Management Officer (FMO)) will prepare a post-project accomplishment report and submit it to the Minneapolis Area Office (now the Midwest Regional Office) by November 30 (Road Grading) or September 30 (Road Access), 1995. No record of either report could be found on file.

Using the project descriptions and objectives described above, I conducted field inspections at locations depicted on the following maps MTE provided to the BIA in support of the invoices, requests for reimbursement, or draw-downs of fire subsidiary funds described in the Complaint:

(1) The final accomplishment report maps prepared and submitted by MTE to BIA showing all work performed under the specific HFR project. I matched the HFR project proposal (FY 00 or FY 01) to the work locations reported on the map, and then inspected and photographed those locations to verify whether the work reported as being accomplished (or partially accomplished) was actually performed. All of the photo locations I relied on in rendering my opinions are identified on maps I prepared during the field inspection process, and color copies of the photographs themselves were retained as evidence, in either electronic or hard-copy form; and

(2) Monthly Fire Subsidiary project expenditure/accomplishment reports, with attached maps received from MTE in support of its drawn-down of the fire subsidiary funding described above.


As described in several memos to the BIA Midwest Regional Office, based upon my education, training, experience and personal inspections of the areas depicted on the maps provided by MTE and documented in part through my photographs, it is my opinion that at the work locations I inspected:

1. Substantial areas of work reported as fully or partially completed was not done at all; in some areas, for example, no passable roads could be found in the area depicted on the MTE accomplishment map;

2. Substantial areas of work reported as fully completed was only partially completed; and in many cases the partially performed work actually increased the fire risk such as when cut timber or "slash" was left on the roadside, thereby providing a ready fuel source for an approaching fire; and/or
3. Substantial areas of work reported as fully or partially completed provided no fire protection benefits; for instance, because work was being performed in a hardwood timber-harvest area instead of pine plantation areas which pose a greater risk of forest fire.

In most instances, all of the above results were intermingled throughout a project compartment or within a contiguous segment of road. For example, a segment of road or firebreak work found to be acceptable would be adjacent to work not performed or work not providing fire protection benefits. Under a wildfire situation, a segment of defendable fireline flanked by segments of indefensible fireline renders the entire fire line indefensible. This situation must be corrected before the entire fire line (or in the HFR project, a firebreak) can be considered adequate. An additional problem was identified when the HFR or Fire Subsidiary project proposal was compared to the invoice maps, monthly accomplishment maps or final accomplishment report maps. The majority of these funds were to be spent on project work associated with pine cover types (the dominant tree vegetation comprised of pine seedlings, saplings, and poletimber or sawtimber size classes). Typically, the pine cover types comprised the highest fire risk acres on the Reservation because: (1) the pine cover types were associated with drier sites (soils with lower water holding capacity); (2) the drier sites accumulated more understory litter that dried quickly, particularly the thick layers of pine needles that contributed to fire potential; and (3) increased ground fuel buildup raised the opportunity for uncontrolled ground wildfire to enter the crowns of live pine, creating difficult fire suppression problems and potential catastrophic wildfire. Much of the project work reported occurred within hardwood cover types that were growing on soils with higher water holding capacity, reduced litter layers and less volatile litter layers. Also, deciduous hardwood posed no threat of a running crown fire (compared to the live needled pine) and, therefore, less extreme fire behavior would result should a wildfire occur in this cover type. Fire occurrence maps on the Reservation support the likelihood of lower fire risk (and occurrence) associated with hardwood cover types and it was generally accepted by BIA and MTE that the hardwood areas of the Reservation required a much lower fire management effort than the pine cover type. Consequently, the amount of HFR and Fire Subsidiary fire project work in the hardwood cover type was inconsistent with its actual fire risk and that any work performed in the hardwood cover type was, more often than not, associated with non-fire timber harvest activities.

**Submitted by:**

  
David L. Congos