

**Remarks of Marion F. Werkheiser, Managing Partner, Cultural Heritage Partners, PLLC,
and Legal Counsel to the Monacan Indian Nation
at the James River Water Authority Public Meeting
Spring Creek Golf Course
August 13, 2019**

Good morning. My name is Marion Werkheiser, and I am managing attorney of Cultural Heritage Partners, the law firm that represents the Monacan Indian Nation. I'm joined by my colleagues attorney Greg Werkheiser and archaeologist Dr. Ellen Chapman. I'm also joined by Chief Kenneth Branham of the Monacan Indian Nation, and I'd like to thank Chief Robert Gray of the Pamunkey Indian Tribe and Chief Frank Adams of the Upper Mattaponi Tribe for attending.

Today I'd like to explain to the taxpayers of Fluvanna and Louisa Counties how JRWA finds itself in this situation—it is a direct result of six major errors in judgment made by you, the members of the Water Authority.

It has become clear that you will attempt to pit the taxpayers of your county against the interests of those who believe that Rassawek is too important to destroy. Those taxpayers should understand that when the bill comes due for the additional money it costs to move this project, those extra dollars are the result of bad choices that YOU made—not the fault of Native Americans or others who are simply exercising their right to oppose the destruction of their history and the disturbance of their ancestors.

In 2015, you were told by Preservation Virginia, the Department of Historic Resources, and prominent archaeologists that you could not choose a worse location along the James River on which to site your project. In fact the project was so unpopular with your taxpayers that the Fluvanna Board of Supervisors voted against a permit for the project twice.

Mistake #1:

You ignored these clear, early indicators that you should find a more suitable site.

Mistake #2:

Federal law requires the Army Corps of Engineers to consult with community groups and impacted Tribes on the design of the project. You did not begin engaging with the Monacan tribe until 2017, a year after you had already purchased the land on which you propose to locate the pump station. To pretend now that you are surprised by their objections is disingenuous.

Mistake #3:

You played games with the permitting system. Your consultant, the Timmons Group, told you that despite there being a hugely important historic site that will be destroyed by your project, they could help you limit public input on the project. By hiding from the public, you are now putting the burden of your mistake back on the taxpayers and on native peoples.

Mistake #4:

You decided to take the risk of building a water treatment plant before you ever had a permit to pump water to the plant. You assured the Army Corps of Engineers that there were multiple viable locations for the pump station when you secured a permit for the treatment plant. Now you say Rassawek is the only location—were you lying to the Army Corps then, or are you lying to us now?

Mistake #5:

If you are going to disturb an important historic site with your project, federal law requires you to set forth a plan for how you will attempt to avoid, minimize, or mitigate the harms to that site. To do this right requires hiring a qualified cultural resource management firm, but to save money, you chose to hire a vastly underqualified consultant because they were the lowest bid. And as we have all learned, your consultant has repeatedly violated the terms of their permits, has copied the work of scholars and passed it off as their own, and has misrepresented who is actually on their project team. Clearly you do not take your own responsibilities under federal law seriously.

Mistake #6:

Once again you are putting the cart before the horse by approving development that you expect to rely on this water source before you have approval to build it. You are bootstrapping yourself into a crisis of your own making.

Be honest with your constituents about what you have done to create this problem and stop attacking the tribes for speaking up to defend their ancestors' burials and their heritage. Be assured that we will be taking that message directly to your constituents in the weeks ahead. The sooner you recognize that this dog won't hunt and move the location, the better. Save Rassawek.

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