



November 25, 2019

The Hon. Tristana P. Treadway
Clerk of the Circuit Court
Fluvanna County
72 Main St.
Palmyra, VA 22963

Re: James River Water Authority v. Virginia Department of Historic Resources, *et al.*,
CL 19000702-00

Dear Ms. Treadway:

Enclosed for filing please find the original and one copy of the Monacan Indian Nation's Motion for Leave to File an *Amicus Curiae* Brief, proposed *Amicus Curiae* Brief, and proposed Order for the Court's consideration.

Thank you for your assistance.

Sincerely,

Marion F. Werkheiser (VSB# 65454)
Gregory A. Werkheiser (VSB# 45986)
Cultural Heritage Partners, PLLC
1811 E. Grace St.
Richmond, VA 23223
Tel: 202.567.7594
Fax: 866.875.6492
Email: marion@culturalheritagepartners.com
Email: greg@culturalheritagepartners.com
Counsel for the Monacan Indian Nation

cc: Justin Curtis, Counsel for James River Water Authority
Donald Anderson, Deputy Attorney General for the Commonwealth of Virginia

VIRGINIA:

IN THE CIRCUIT COURT FOR FLUVANNA COUNTY

JAMES RIVER WATER AUTHORITY,)	
)	
Petitioner-Appellant-Plaintiff,)	
)	
v.)	CL19000702-00__
)	
VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,)	
)	
and)	
)	
JULIE LANGAN, in her official capacity as)	
Director of the Virginia Department of Historic Resources,)	
)	
Respondents-Appellees-Defendants.)	
)	

**MONACAN INDIAN NATION'S MOTION TO FILE AN *AMICUS CURIAE* BRIEF IN
SUPPORT OF RESPONDENTS**

The Monacan Indian Nation moves the Court pursuant to Rules 5:30 of the Rules of the Supreme Court of Virginia to grant this Motion to file the proposed *amicus curiae* brief in support of the Respondents, Virginia Department of Historic Resources and Julie Langan.¹ The brief addresses the following issues raised in the James River Water Authority's (JRWA) petition: the propriety of DHR's directions to JRWA to revise its burial permit application,

¹ The Monacan Indian Nation, though its counsel, certifies that we have sought to obtain the consent of all parties. Counsel for the Respondents DHR and Julie Langan have consented. Counsel for Petitioner JRWA has not responded.

including directing JRWA to hire a qualified archaeologist to properly identify and document human remains, directing JRWA to have a qualified archaeologist revise the research design and treatment plan so that the plan meets the approval of DHR and the Monacan Indian Nation, and directing JRWA to include landowner permissions as required by law.

For the reasons set forth below, the Court should grant the Monacan Indian Nation leave to file an *amicus curiae* brief because the Nation has a direct and significant interest in the Court's disposition of this appeal:

1. This appeal concerns issues of importance for the Monacan Indian Nation because JRWA's permit application, if granted, would allow JRWA to disturb and disinter Monacan ancestors.
2. The Monacan Indian Nation is an American Indian tribe recognized by the Commonwealth of Virginia and the United States of America. The Nation is headquartered on Bear Mountain in Amherst County, Virginia. The Monacan Indian Nation is participating in the state and federal environmental review process for the proposed JRWA project, including reviews required by Section 106 of the National Historic Preservation Act and National Environmental Policy Act and consultation on two state-issued burial permits, the latter of which is at issue in this case.
3. The Monacan Indian Nation is the only entity with specialized knowledge and expertise about the views of the Monacan Indian Nation with regard to treatment of the human remains of Monacan ancestors.
4. The Monacan Indian Nation and its counsel have specialized to share with the Court about the facts surrounding the burial permit application at dispute in this case.

5. The proposed *amicus curiae* brief provides background information about the significance of Rassawek that is essential for the Court to understand in evaluating the merits of the appeal.
6. The Monacan Indian Nation and its counsel have specialized knowledge and legal authority related to historic preservation and cultural resource law that will assist the Court in resolving issues on appeal, including but not limited to the reasonableness of DHR's requests for revisions to the burial permit application.
7. The Monacan Indian Nation and its counsel have specialized knowledge and expertise about the facts of this case that will demonstrate that the decisions being challenged on appeal are not arbitrary and capricious, but eminently reasonable, in light of events that have occurred between the issuance of the 2017 anticipatory burial permit and the application for the 2019 recovery burial permit.
8. WHEREFORE, the Monacan Indian Nation requests that the Court allow it to file the proposed *amicus curiae* brief filed contemporaneously with this Motion.

Respectfully submitted,



Marion F. Werkheiser (VSB# 65454)
Gregory A. Werkheiser (VSB# 45986)
Cultural Heritage Partners, PLLC
1811 E. Grace St.
Richmond, VA 23223
Tel: 202.567.7594
Fax: 866.875.6492
Email: marion@culturalheritagepartners.com or greg@culturalheritagepartners.com
Counsel for the Monacan Indian Nation

VIRGINIA:

IN THE CIRCUIT COURT FOR FLUVANNA COUNTY

JAMES RIVER WATER AUTHORITY,

Petitioner-Appellant-Plaintiff,

v.

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,

and

JULIE LANGAN, in her official capacity as
Director of the Virginia Department of Historic Resources,

Respondents-Appellees-Defendants.

CL19000702-00

[PROPOSED] ORDER

On November 25, 2019, the Monacan Indian Nation filed a Motion for Leave to File an *Amicus Curiae* Brief in Support of the Virginia Department of Historic Resources and Julie Langan, in her official capacity as Director of the Virginia Department of Historic Resources, Respondents-Appellees-Defendants.

For the reasons set for in the Nation's Motion and in light of their specialized knowledge that will assist the Court and the public interest in resolving this matter,

IT IS HEREBY ORDERED THAT the Motion for Leave to File an *Amicus Curiae* Brief is GRANTED.


Date: _____

Judge, Fluvanna County
16th Judicial Circuit of Virginia

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on November 25, 2019, (a) the original and (1) paper copy of the foregoing Motion for Leave to File an *Amicus Curiae* Brief, proposed *Amicus Curiae* Brief, and Proposed Order were hand delivered to the Clerk of Court of Fluvanna County and one copy of the filing was sent by electronic mail and first-class U.S. mail, postage prepaid, to the following counsel of record for the parties:

cc: Justin Curtis, Counsel for James River Water Authority
Donald Anderson, Deputy Attorney General for the Commonwealth of Virginia



Marion F. Werkheiser (VSB# 65454)
Gregory A. Werkheiser (VSB# 45986)
Cultural Heritage Partners, PLLC
1811 E. Grace St.
Richmond, VA 23223
Tel: 202.567.7594
Fax: 866.875.6492
Email: marion@culturalheritagepartners.com
Email: greg@culturalheritagepartners.com
Counsel for the Monacan Indian Nation

VIRGINIA:

IN THE CIRCUIT COURT FOR FLUVANNA COUNTY

JAMES RIVER WATER AUTHORITY,

Petitioner-Appellant-Plaintiff,

v.

VIRGINIA DEPARTMENT OF HISTORIC RESOURCES,

and

JULIE LANGAN, in her official capacity as
Director of the Virginia Department of Historic Resources,

Respondents-Appellees-Defendants.

CL19000702-00

MONACAN INDIAN NATION'S *AMICUS CURIAE* BRIEF
IN SUPPORT OF RESPONDENTS' DECISION TO REQUIRE JAMES RIVER WATER
AUTHORITY TO REVISE ITS BURIAL PERMIT APPLICATION

Marion F. Werkheiser (VSB# 65454)

Gregory A. Werkheiser (VSB# 45986)

Cultural Heritage Partners, PLLC

1811 E. Grace St.

Richmond, VA 23223

Tel: 202.567.7594

Fax: 866.875.6492

Email: marion@culturalheritagepartners.com or greg@culturalheritagepartners.com

TABLE OF CONTENTS

ARGUMENT.....	1
Background.....	1
Virginia Law Requires DHR to Give Priority to the Comments of the Parties Most Closely Connected with the Human Burials Subject to the Permit Application.....	3
DHR’s Decision to Require A Qualified Archaeologist on the Permit Application is Reasonable and Supported by Law and Public Policy	4
DHR’s Decision to Require the Burial Permit Application to Include a Plan for Identifying and Handling Human Remains that Meets the Approval of DHR and the Monacan Indian Nation is Reasonable and Supported by Law and Public Policy.....	5
DHR’s Decision to Require Landowner Permission is Reasonable and Required by Law and Public Policy.....	10
CONCLUSION.....	12

TABLE OF AUTHORITIES

STATUTES

Va. Code § 10.1-2305.....	4
---------------------------	---

REGULATIONS

36 C.F.R. 61	6
43 C.F.R. 7.....	6
48 Fed. Reg. 44716 (Sept. 29, 1983).....	5
17VAC5-20-30.....	3, 4
17VAC5-20-40.....	5, 6, 10
17VAC5-20-60.....	3, 4, 5, 7, 8, 12

OTHER AUTHORITIES

BALLENTINE’S LAW DICTIONARY (3d ed. 1969).....	11
John Smith & William Hole, <i>Virginia</i> (1624), https://www.loc.gov/item/99446115/	1
Encyclopedia Virginia, <i>Monacan Indian Nation</i> (2019), available at https://www.encyclopediavirginia.org/Monacan_Indian_Nation#start_entry	2
Jeffrey Hantman, <i>Monacan History and Archaeology of the Virginia Interior</i> in SOCIETIES IN ECLIPSE: ARCHAEOLOGY OF THE EASTERN WOODLAND, AD 1400-1700 107-124 (Smithsonian Institution Press 2001).....	2
GERARD FOWKE, ARCHAEOLOGICAL INVESTIGATIONS IN JAMES AND POTOMAC VALLEYS (U.S. Government Printing Office) (1894).....	2
Daniel Mouer, <i>1985 Archaeology at Point of Fork, Fluvanna County, Virginia</i> , FLUVANNA COUNTY HISTORICAL SOCIETY SPECIAL BULLETIN (1985).....	2
JEFFREY HANTMAN, MONACAN MILLENNIUM: A COLLABORATIVE ARCHAEOLOGY AND HISTORY OF VIRGINIA INDIAN PEOPLE 143-46 (U. Va. Press) (2018).....	2

ARGUMENT

The Court should dismiss the Appellants' complaint as not ripe because Respondent the Virginia Department of Historic Resources (DHR) has not made a case decision on the James River Water Authority's (JRWA) burial permit application; rather, DHR has decided that a JRWA consultant is not qualified to be the principal investigator for the work contemplated by the permit, which is not the same as denying the permit itself. If the Court decides the suit is ripe, however, the Court should uphold DHR's discretion to attach conditions to JRWA's permit application to disturb the final resting place of the ancestors of proposed amicus curiae the Monacan Indian Nation (Nation). The Nation supports DHR requiring a *qualified* archaeologist and *appropriate* research plan, which are consistent with the Nation's comments provided to DHR and to which DHR must give priority. In addition, the Nation supports DHR requiring landowner permissions for the burial permit application consistent with Virginia law.

BACKGROUND

The Monacan Indian Nation ("Nation") is a federally recognized sovereign tribe and a state-recognized tribe in the Commonwealth of Virginia, headquartered on Bear Mountain in Amherst County.¹ Christopher Newport made contact with the Monacans in 1608, and Captain John Smith documented the Monacans in his 1612 Map of Virginia, which shows Rassawek, the capital of the Monacans, was located at the confluence of the James and Rivanna Rivers.² At the time of the arrival of the English colonists, the Monacan Confederacy was a sophisticated

¹ The Monacan Indian Nation was recognized by the Commonwealth of Virginia in 1989. On January 29, 2018, the Nation received federal recognition when President Trump signed into law the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017.

² See Exhibit A. See also John Smith & William Hole, *Virginia* (1624), <https://www.loc.gov/item/99446115/>

political alliance whose territory spanned more than half of present-day Virginia.³ The town of Rassawek has been described in early historical accounts as the “chiefest village,” the town to which all other Monacan towns paid tribute.⁴ Rassawek likely had a king’s house, extensive dwelling and ceremonial buildings and landscapes, as well as burial grounds. In the 1880s, the Smithsonian Institution documented extensive burials and remains of many building complexes at Rassawek.⁵ Similar documentation of burials and the remains of a substantial village were recorded in the 1980s by leading Virginia professionals.⁶ Rassawek is comparable in terms of its political importance to the Powhatan Confederacy site of Werowocomoco, now part of the national park system.

In the years after the arrival of the English, the Monacans endured the taking of their land and the loss of their way of life.⁷ Yet even as members of the Tribe were expelled from their traditional homelands, care for their ancestors remained an important cultural value. Thomas Jefferson reports that in the 1750s Monacans were observed traveling from long distances back to the burial places of their ancestors along the Rivanna River to perform ceremonies.⁸ Reconnecting with their ancestors’ final resting places continues today to be a strong value of the tribe and an important link to their history on the landscape.

³ Encyclopedia Virginia, *Monacan Indian Nation* (2019), available at

https://www.encyclopediavirginia.org/Monacan_Indian_Nation#start_entry

⁴ Jeffrey Hantman, *Monacan History and Archaeology of the Virginia Interior* in SOCIETIES IN ECLIPSE: ARCHAEOLOGY OF THE EASTERN WOODLAND, AD 1400-1700 107-124 (Smithsonian Institution Press 2001).

⁵ GERARD FOWKE, ARCHAEOLOGICAL INVESTIGATIONS IN JAMES AND POTOMAC VALLEYS (U.S. Government Printing Office) (1894).

⁶ Daniel Mauer, *1985 Archaeology at Point of Fork, Fluvanna County, Virginia*, FLUVANNA COUNTY HISTORICAL SOCIETY SPECIAL BULLETIN (1985).

⁷ JEFFREY HANTMAN, MONACAN MILLENNIUM: A COLLABORATIVE ARCHAEOLOGY AND HISTORY OF VIRGINIA INDIAN PEOPLE 143-46 (U. Va. Press) (2018).

⁸ Encyclopedia Virginia, *Monacan Indian Nation* (2019), available at https://www.encyclopediavirginia.org/Monacan_Indian_Nation#start_entry (last visited November 24, 2019).

In June 2017 the Nation became aware that the James River Water Authority (JRWA) planned to construct a water intake, pumping station, and water pipeline at Point of Fork, the location of Rassawek at the confluence of the Rivanna and James Rivers in Fluvanna County.⁹ The Nation has subsequently participated in the state and federal environmental review process for the proposed JRWA project, including reviews pursuant to Section 106 of the National Historic Preservation Act and National Environmental Policy Act and consultation on two state-issued burial permits, the latter of which is at issue in this case.

Because JRWA's preferred location for construction would almost certainly necessitate the excavation and relocation of the buried remains of Monacan ancestors, JRWA was required to seek an anticipatory burial permit from DHR in 2017 (for preliminary site investigations) and in 2019 (for permission to excavate burials should the project proceed).¹⁰

I. Virginia Law Requires DHR to Give Priority to the Comments of the Parties Most Closely Connected with the Human Burials Subject to the Permit Application.

The Director of DHR reasonably applied Virginia law when she gave priority to the comments and recommendations made by the Nation regarding JRWA's application for a burial permit. The Commonwealth's burial permit regulations recognize the need for public comment and state that "the director shall give priority to comments and recommendations made by individuals and parties most closely connected with the human burials subject to the application." 17VAC5-20-60 (B). The human beings buried at Rassawek are the ancestors of the members of the Nation. Thus, the Director appropriately and reasonably exercised the discretion

⁹ Hantman, *supra* note 7, at 84-85.

¹⁰ 17VAC5-20-30. See Exhibit B (a letter from DHR to JRWA notifying JRWA of permit issuance), and Exhibit C (2019 Burial Permit Application).

afforded her by 17VAC5-20-60 to require revisions to JRWA's application for a burial permit consistent with the comments of the most closely connected party to those buried at Rassawek, the Monacan Indian Nation.¹¹

JRWA must apply for a burial permit prior to constructing its proposed pump station because the fact that Monacan ancestors are buried at Rassawek, also known as Point of Fork, is well documented, and Virginia law states, "It shall be unlawful for any person to conduct any type of archaeological field investigation involving the removal of human skeletal remains or associated artifacts from any unmarked human burial regardless of age of an archaeological site and regardless of ownership without first receiving a permit from the Director." Va. Code § 10.1-2305.

The Smithsonian Institution identified more than twenty-five burials at Point of Fork in the 1880s. Nearly one hundred years later, DHR officially identified Rassawek in its database of sites eligible for the National Register of Historic Places after artifacts and human remains were exposed by construction of nearby Columbia Gas infrastructure.¹²

II. DHR's Decision to Require A Qualified Archaeologist on the Permit Application is Reasonable and Supported by Law and Public Policy.

The Monacan Indian Nation supports DHR's requirement that JRWA engage a qualified archaeologist to perform activities that would be authorized by the burial permit, which is mandated by 17VAC5-20-30(4). The regulations state, "No field investigation involving the removal of human remains or associated artifacts from any unmarked human burial on an archaeological site shall be performed except under the supervision and control of an

¹¹ See Exhibit D (the Nation's comments to DHR dated July 23, 2019 regarding the 2019 burial permit application)

¹² See *supra*, notes 5-6.

archaeologist meeting the qualifications stated in 17VAC5-20-40.”¹³ Identifying and excavating ancestral human remains is an extraordinarily sensitive endeavor that requires professional knowledge and skill. To permit an unqualified person to engage in such activities would be profoundly disrespectful to the Monacans’ ancestors and to their modern-day descendants. Indeed, 17VAC5-20-60(c) also requires the Director to consider the “qualifications of the applicants to complete the proposed research in a scientific fashion. The director shall consider the U.S. Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation, set out at 48 Fed. Reg. 44716 (Sept. 29, 1983), in determining the appropriateness of the proposed research and in evaluating the qualifications of the applicants.” As the Director has determined that Carol Tyrer does not meet the Secretary of the Interior’s Standards and Guidelines for Archaeology and Historic Preservation, she cannot be permitted to conduct activities contemplated in the burial permit application. Requiring JRWA to contract with an archaeologist who meets the standards set forth in the Virginia Administrative Code is eminently reasonable and required by law.

III. DHR’s Decision to Require the Burial Permit Application to Include a Plan for Identifying and Handling Human Remains that Meets the Approval of DHR and the Monacan Indian Nation is Reasonable and Supported by Law and Public Policy.

The Monacan Indian Nation further supports DHR’s requirement that a research design and data recovery plan reviewed and revised by a qualified archaeological consultant be submitted with JRWA’s burial permit application. Indeed, the Virginia Administrative Code

¹³ 17VAC5-20-40 states, among other requirements, that the archaeologist must have a graduate degree in archaeology, anthropology, or a related field.

requires, “A statement of goals and objectives of the project and proposed research design shall be provided as part of the permit application.” 17VAC5-20-40(B). The regulation goes on to articulate four lengthy criteria for determining adequacy of the proposed research plan, including appropriate osteological examinations. The regulation also requires submission of curriculum vitae “demonstrating that the persons planning and supervising the field excavation and subsequent analysis meet the minimum qualifications consistent with the federal standards as cited in 36 CFR 61 and 43 CFR 7, as follows...” 17VAC5-20-40(C). DHR cannot approve a burial permit without a plan that has been prepared by a professional meeting the minimum federal requirements. These regulations are important safeguards to ensure proper identification and handling of Monacan ancestors and must be followed.

JRWA misrepresents the position of the Nation in its petition for appeal by implying that JRWA submitted an incomplete application at the request of the Nation. JRWA’s implication that JRWA requested an extraordinary waiver of research design requirements¹⁴ at the request of the Monacan Indian Nation is false and hurtful to the Nation. The Nation is unaware of the source of the uncited quotation in JRWA’s petition, which states, “tribal representatives expressed to JRWA that if any previously unknown burials are discovered, the tribe would prefer that the matter ‘be handled in accordance with the tribe’s spiritual beliefs and traditions and that no archaeological excavation or examination be conducted on Native American remains.’” Pet’r’s Br. ¶ 36. Similarly, the Nation objects to JRWA’s burial permit application’s statement that osteological analysis will not occur “at the request of the Monacan Indian Nation.”¹⁵ JRWA is correct that the Nation prefers that no excavation or study be conducted on Native American

¹⁴ 17VAC5-20-40(D): “Under extraordinary circumstances, the director shall have the authority to waive the requirements of research design and professional qualifications.”

¹⁵ See Exhibit C, Section 12.

remains; indeed, the Nation is steadfastly opposed to any disturbance of its ancestors.¹⁶ If the Commonwealth permits Monacan ancestors to be disturbed, then they must be excavated in the most sensitive manner possible by qualified experts who can correctly identify, catalogue, and safeguard human remains. Ensuring that the Nation approves the research plan is within the discretion provided to the Director in 17 VAC 5-20-60(F). The regulations allow the Director to attach whatever conditions will best protect the remains and associated artifacts. Since it is Monacan ancestral remains and artifacts the excavation would uncover, it is a logical step to require the Nation's approval of the plan for how JRWA will handle ancestral remains. To approve JRWA's burial permit application without a plan to ensure proper identification and handling of Monacan ancestors endorsed by their descendants would be contrary to common decency and the law.

JRWA also implies that because the Nation did not oppose the 2017 anticipatory burial permit, that its objections to the 2019 permit application are somehow disingenuous and should be disregarded. Similarly, JRWA argues that DHR's decision to approve the 2017 permit and to attach conditions to the 2019 permit application are inconsistent and thus arbitrary and capricious. Nothing could be further from the truth. The more that the Nation has learned about JRWA's proposed project, the more they have grown concerned. After approximately one year of consultations with JRWA about its proposed pump station, and suspicious that they were not being told the whole truth about JRWA's plans, the Nation hired legal counsel to seek additional information about the project and to represent them in consultations with state and federal agencies.

¹⁶ See Exhibit D.

The Nation's counsel's subsequent fact-finding has revealed that JRWA violated the terms of the 2017 anticipatory burial permit at least twice, leading to a written complaint letter from DHR.¹⁷ The Nation discovered that JRWA's archaeological consultant, Circa, still (eighteen months after conclusion of field work) has not submitted final Phase I/Phase II reports detailing the work done under the 2017 anticipatory burial permit. The Nation became aware that Carol Tyrer, the principal investigator on the 2017 burial permit, submitted her curriculum vitae that falsified her academic degrees and qualifications for the permit. On October 16, 2019 a whistleblower stepped forward. Archaeologist Eric Mai was an employee of Tyrer/Circa for more than six years, including when assigned by Circa to perform archaeological testing at Rassawek related to the burial permit at issue here. Mr. Mai provided a sworn declaration to DHR¹⁸ containing voluminous evidence that Tyrer knowingly adversely affected cultural resources through testing without the expectation of securing decision-quality information so as to manipulate the entire permitting process. A small selection of the most shocking revelations from the affidavit includes:

- Tyrer sent an unqualified, untrained, unprepared, and unsupervised field crew to excavate at Rassawek. They lacked academic training, practical experience, direction and the supervision required by law.¹⁹

¹⁷ See Exhibit E. Virginia law allows the Director to deny a permit purely on the grounds that an applicant has violated a previous permit condition. 17 VAC 5-20-60(D). Here, JRWA violated permit conditions that alone justify DHR's decision either to deny the 2019 permit or subject the permit application to additional scrutiny.

¹⁸ Attached as Exhibit F.

¹⁹ Exhibit F, ¶¶ 17, 18, 20, 21, 31, 36, 38, 63, 69.

- Tyrer denied the crew's requests for appropriate technology, training, and guidance to conduct accurate surveys or recover archaeological information, resulting in tests being performed in the wrong places, mistreatment of artifacts, and destruction of resources.²⁰
- Tyrer lied to state officials and demanded that their staff lie about the presence of a supervisor on site and about the qualifications of the project lead and site crew, going as far as to falsify the whistleblower's resume without his knowledge.²¹
- Tyrer enlisted untrained construction workers to investigate the portions of the site targeted for construction. They lacked any experience, supervision, and used destructive equipment.²²
- Tyrer produced draft Phase I and II reports and a draft treatment plan without consulting the field staff. These reports downplay the scientific findings, mislead about the study techniques used, and contain plagiarism.²³
- Tyrer's conduct at Rassawek was representative of her approach to other work performed on projects requiring state and federal permits in Virginia, in which she falsified data and instructed staff to do so, and in which she downplayed or ignored critical cultural resources uncovered by staff during investigations of highly sensitive cultural sites in the Commonwealth.²⁴

Faced with this parade of horrors, the Nation has lost faith with JRWA and its consultant. If the U.S. Army Corps of Engineers allows JRWA's proposed project to proceed, and DHR issues a burial permit, the Nation should approve of the protocols for handling their

²⁰ Exhibit F, ¶¶ 20, 21, 23, 25, 26, 27, 36, 47, 53, 57, 63, 64.

²¹ Exhibit F, ¶¶ 32, 35, 36, 37, 40.

²² Exhibit F, ¶¶ 42, 43, 45, 46, 48.

²³ Exhibit F, ¶¶ 25, 27, 28, 29, 56, 57, 61.

²⁴ Exhibit F, ¶¶ 62, 65, 66, 69.

ancestors' remains. The Nation's detailed views on an appropriate research design are described in the Nation's comments to DHR on July 23, 2019.

The Nation is also deeply concerned about JRWA's omission of a reburial plan required by DHR's burial permit application. On JRWA's 2019 application, JRWA states that reburial will be accomplished on "Monacan Tribe Reservation Lands" in Amherst County, Virginia.²⁵ Yet the Monacan Indian Nation does not have a reservation. JRWA states that it will develop a reburial plan with the Monacans—eventually. Yet 17VAC5-20-40(E) requires that the permit application "include a statement describing the curation, which shall be respectful, and the proposed disposition of the remains upon completion of the research."

IV. DHR's Decision to Require Landowner Permission is Reasonable and Required by Law and Public Policy.

The regulations specifically require landowner permissions. The regulations state that an

"[a]pplication for a permit shall be in such form as required by the director, but shall include the following basic information . . . [a] written statement of the landowner's permission both to conduct such research and to remove human remains on the landowner's property, and allowing the director or the director's designee access to the field investigation site at any reasonable time for the duration of the permit"

17 VAC 5-20-40(A). Indeed, the burial permit application itself anticipates that such written landowner permission will be attached. Though JRWA does own one parcel within the area, there are several parcels in the Project footprint. JRWA did not include statements from the other landowners granting permission for such activity on their property in its burial permit application. It is not arbitrary and capricious for a director to follow her own regulations, and for

²⁵ See Exhibit C.

Director Langan to alert JRWA to this glaring deficiency in its application was simply an exercise of her duty as director.

JRWA claims the easement agreements executed with the surrounding landowners transform JRWA into a landowner under the regulations and allow JRWA to carry out the burial permit, but in reality, the easements do not allow access to the land for disinterment of human remains. First, JRWA is not a landowner simply by holding a right in an easement. A landowner is “an owner of real property”.²⁶ An easement, as a nonpossessory property interest, does not give the easement holder any ownership over the real property—merely the right to enter in accordance with the agreement. Second, even if JRWA were a “landowner” of those parcels in which it has an easement, the easement does not allow for the type of access described in the regulations. Nothing in the easement reserves the right to disinter human remains or associated artifacts. JRWA makes the assertion that the “right to enjoyment” language in the otherwise specific and narrowly constructed easement agreement²⁷ covers such broad activity as the uncovering of human remains and associated artifacts. Yet the terms of the easements negotiated between JRWA and landowners do not include permission to remove artifacts from landowners’ property. JRWA acknowledged as much in the handwritten settlement agreement it executed with landowner George Bialkowski on March 31, 2017, that resulted in the granting of the easements across Mr. Bialkowski’s property. In that settlement agreement, “JRWA and Louisa and Fluvanna Counties waive all claims to artifacts uncovered on the condemned property and right of way... .”²⁸ JRWA additionally made promises not to remove any artifact from Mr. Bialkowski’s property back in 2016.²⁹ It is clear that JRWA and at least landowner Mr.

²⁶ *Landowner*, BALLENTINE’S LAW DICTIONARY (3d ed. 1969).

²⁷ Exhibit G.

²⁸ Exhibit H.

²⁹ Exhibit I.

Bialkowski negotiated the question of artifact claims separately from the “right to enjoyment” granted in easements to JRWA. JRWA has already signed away its rights to properly recover and repatriate associated artifacts in at least one settlement agreement it executed pursuant to the easement agreement. So, even if JRWA could uncover Monacan ancestral remains under the easement agreement, it has no way under that agreement to recover and properly manage the associated artifacts, as required for the burial permit, without landowner permission. It is Director Langan’s duty to ensure that the requirements of burial permits can be carried out without issue. Landowner permission is needed to ensure that human remains and associated grave goods, if excavated, may be properly returned to the Nation.

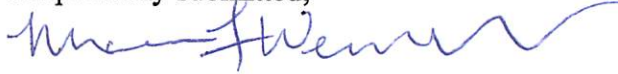
Even if the court finds that permission of the landowners is somehow not required by law, Director Langan was well within her rights and duties to attach such conditions to the permit application. The regulations clearly and specifically allow the Director to attach any conditions she deems necessary to protect remains and artifacts. 17VAC5-20-60(F) states “the permit shall contain such conditions which, in the judgment of the director, will protect the excavated human remains or associated artifacts.” Whether these conditions occur with the issuance of a permit or before makes no difference in the outcome. If the landowners do not approve of the plan, then JRWA would not be able to go forward without violating the permit conditions. Requiring the conditions be met before the permit is issued merely allows for the post-permitting actions to be streamlined.

CONCLUSION

This is not a typical case, for DHR or the Nation. The Nation does not speak out against JRWA’s project or its agents lightly. As the Nation’s ancestral capital, Rassawek is a

particularly significant site for the Nation. The Court should reject the petition and affirm DHR's decision.

Respectfully submitted,



Marion F. Werkheiser (VSB# 65454)
Gregory A. Werkheiser (VSB# 45986)
Cultural Heritage Partners, PLLC
1811 E. Grace St.
Richmond, VA 23223
Tel: 202.567.7594
Fax: 866.875.6492
Email: marion@culturalheritagepartners.com
Email: greg@culturalheritagepartners.com

Counsel for the Monacan Indian Nation

EXHIBIT A

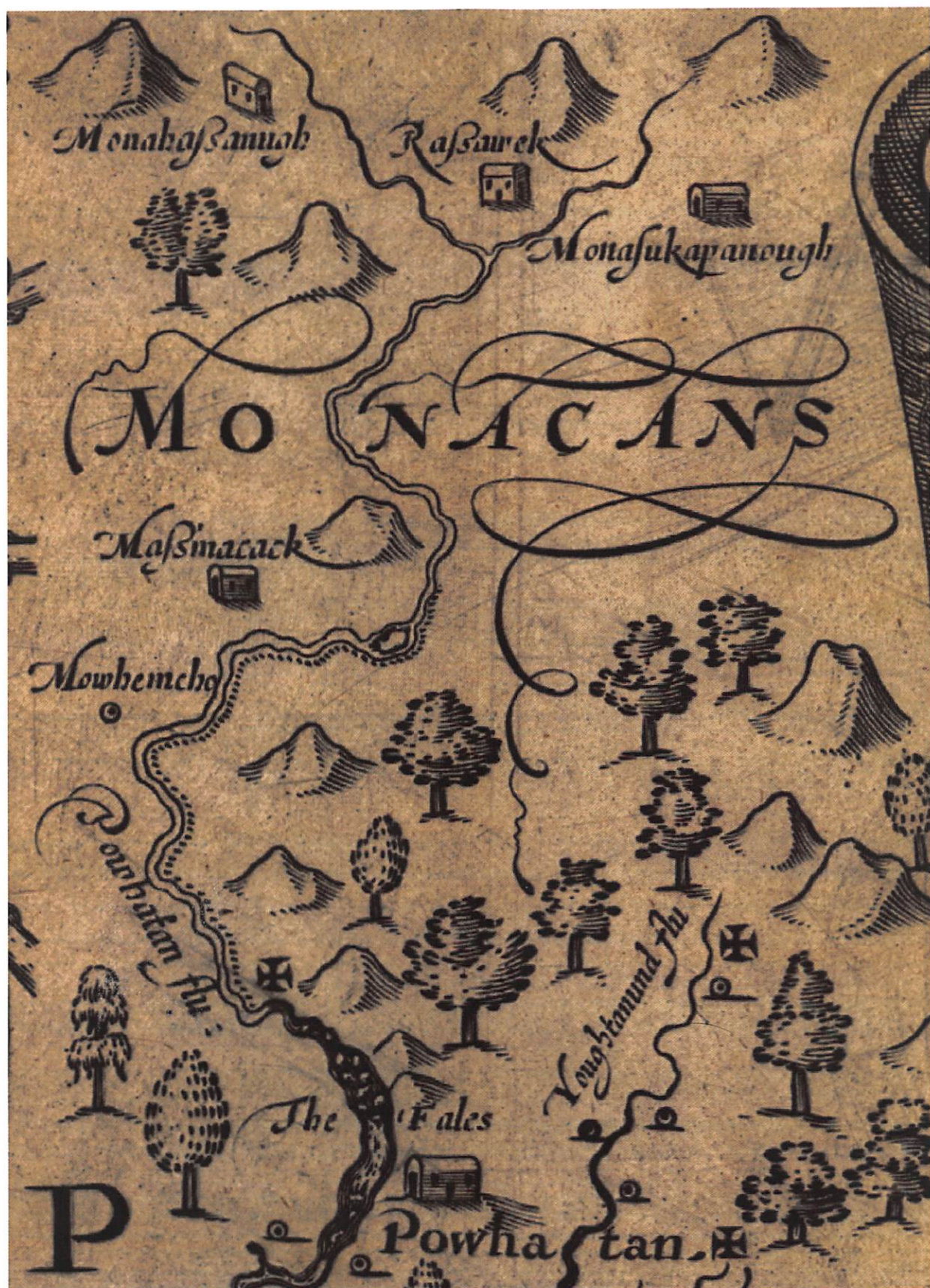


EXHIBIT B



COMMONWEALTH of VIRGINIA

Department of Historic Resources

Molly Joseph Ward
Secretary of Natural Resources

2801 Kensington Avenue, Richmond, Virginia 23221

Julie V. Langan
Director

Tel: (804) 367-2323
Fax: (804) 367-2391
www.dhr.virginia.gov

October 4, 2017

James River Water Authority
Attn: Mr. Steven M. Nichols
Fluvanna County Administrator
132 Main Street
Palmyra, VA 22963

Re: Application for the Removal and Temporary Curation of Human Remains Located at
Point of Fork, Fluvanna County, Virginia
DHR File No. 2015-0984

Dear Mr. Nichols:

In accordance with Section 10.1-2305 of the *Code of Virginia*, final regulations adopted by the Virginia Board of Historic Resources and published in the Virginia Register on July 15, 1991, and following review by the Department, the Department of Historic Resources on this 4th day of October, 2017, hereby grants to the James River Water Authority permission to remove and temporarily curate human remains that may accidentally be disturbed by, or identified during laboratory analysis resulting from, planned archaeological investigations in and around property associated with the James River Water Authority's proposed raw water intake and pipeline at Point of Fork in Fluvanna County, Virginia. Any such removal and temporary curation shall take place only after consultation with the affected Indian Tribes/Nations (defined below). This is not a recovery permit and does not provide legal permission for the purposeful archaeological recovery of buried human remains. Any such activity must receive a separate permit issued by this office. This permit is to be considered effective as of today's date.

The granting of this permit signifies that:

1. The Department is aware that the recovery is part of the James River Water Supply Project, which is under review by the Review and Compliance Division (DHR Project Review No. 2015-0984).

Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5443
Fax: (540) 387-5446

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7029
Fax: (540) 868-7033

Eastern Region Office
2801 Kensington Avenue
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

2. The Department is aware that archaeological sites 44FV0019, 44FV0020, 44FV0021, and 44FV0022, all formally recorded in the VDHR's permanent archives, are located partially or entirely within the James River Water Supply Project. The Department is further aware that archaeological survey conducted in the early 1980s resulted in reports of exposed human remains within the boundaries of site 44FV0021, and that the area in general is believed to correspond to the Monacan village known as Rassawek.
3. The Department is aware that the federally-recognized Pamunkey Indian Tribe and Delaware Nation, as well as the Commonwealth-recognized Monacan Indian Nation, Rappahannock Tribe, and Upper Mattaponi Indian Tribe, have requested consulting party status pursuant to the federal project, and are hereinafter defined for the purposes of this permit as the "affected Indian Tribes/Nations".
4. The Department understands that the Permittee, an authority created pursuant to Code of Virginia Chapter 51, Title 15.2 §§ 15.2-5100 *et seq.*, incorporates two (2) municipal authorities (Fluvanna and Louisa Counties) that receive federal funding and thus meet the definition of "museum" under the Native American Graves Protection and Repatriation Act of 2001 (Public Law 101-601; 25 U.S.C. 3001-3013) (NAGPRA). As such, any action pertaining to the discovery, inadvertent disturbance, removal or subsequent treatment of human remains conducted pursuant to this permit must meet the terms and requirements of NAGPRA.
5. The Department has received from the Permittee and has approved a statement detailing the goals and objectives of the project.
6. The Department has reviewed the vita of the professionally-qualified archaeologist responsible for the proposed work and has found her qualified to complete the work.
7. The Department has received accurate information as to the location of the project area and the proposed investigations, to include both shovel and deep testing, designed to evaluate soil strata and composition, and to preliminarily identify archaeological deposits and features within the project area.
8. The Department has received assurances that there are adequate resources to carry out the research design and treatment plan, and to ensure the respectful treatment of all human remains and associated funerary items that may accidentally be disturbed during archaeological delineation of the possible unmarked cemetery.
9. The Department has worked with the federally-recognized Pamunkey Indian Tribe and Delaware Nation in the development and implementation of this permit pursuant to the terms and conditions of NAGPRA, and understands that the Pamunkey Indian Tribe and Delaware Nation have expressed their intent to participate in the federal process as consulting parties.

Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5443
Fax: (540) 387-5446

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7029
Fax: (540) 868-7033

Eastern Region Office
2801 Kensington Avenue
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

10. The Department has consulted with the state-recognized Monacan Indian Nation, Rappahannock Tribe, and Upper Mattaponi Indian Tribe at their request and in recognition of their interest in the project area.
11. The Department has concluded that issuance of this anticipatory burial permit is necessary in order to ensure that any and all buried remains and associated funerary items inadvertently disturbed during archaeological investigation of the James River Water Supply project area will be properly treated, and that important information about Fluvanna County's history will be properly recorded.

This permit is granted subject to the following conditions:

1. The Permittee shall ensure that the project archaeologist carries a copy of this permit at all times during fieldwork associated with this permit.
2. The Permittee shall proceed in accordance with the approved research design as proposed in the permit application, with the exception that no human remains or known/presumed funerary objects will be purposefully removed from the property absent the prior written approval from the Department and the affected Indian Tribes/Nations. Any changes to this methodology must receive the prior written approval of the Department.
3. Under no circumstances shall burial chambers be excavated or *in situ* human remains archaeologically recovered under this permit. Should it become necessary to disinter buried human remains, the Permittee must apply for a recovery permit in consultation with the Pamunkey Indian Tribe and Delaware Nation as required by NAGPRA and the Monacan Indian Nation, Rappahannock Tribe, and Upper Mattaponi Indian Tribe as required by Code of Virginia §10.1-2305 and its implementing regulations.
4. The Permittee shall ensure that all earthmoving activity within the project area takes place at the direction and under the supervision of the supervising archaeologist, who shall be allowed to dictate the terms under which soil is removed.
5. Upon discovery of human remains or funerary objects, all ground disturbance shall cease and the area of discovery shall be secured from further disturbance. The Permittee shall notify the Department and the affected Indian Tribes/Nations by telephone within twenty-four (24) hours of discovery. This notification must be followed up in writing (email is sufficient). The Permittee shall take all necessary precautions to avoid additional disturbance or displacement, including establishment of a minimum fifty (50)-foot buffer around the discovery location. There shall be no additional activity within the established fifty (50)-foot buffer until consultation with the affected Indian Tribes/Nations has concluded and an approved treatment plan is in place.

Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5443
Fax: (540) 387-5446

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7029
Fax: (540) 868-7033

Eastern Region Office
2801 Kensington Avenue
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

6. Posting or otherwise publishing written descriptions, digital images, or any other information about or involving human remains discovered on this site in print media, digital media, or in any other fashion is strictly forbidden. Any such action will result in immediate revocation of this permit.
7. The Permittee shall, in consultation with the affected Indian Tribes/Nations, prepare a plan for final disposition of any remains and associated funerary items and submit it to the Department for review and comment. The Department will itself consult with the affected Indian Tribes/Nations and will reach a decision on final disposition within sixty (60) days of receipt. No reburial or other disposition shall take place in the absence of the Department's prior written approval.
8. The Permittee shall inform the Department and affected Indian Tribes/Nations in writing of the commencement of field work conducted under this permit.
9. The Permittee shall inform the Department and affected Indian Tribes/Nations in writing of the completion of field work involving the recovery of human remains and/or associated funerary artifacts, and the completion of the final disposition of those remains and associated artifacts, within two (2) weeks of implementation.
10. The Permittee shall ensure that the architectural and archaeological resource forms, mapping, and other archival data associated with this property are updated and accepted by the Department prior to submittal of the final report.
11. Prior to April 4, 2018, the Permittee shall prepare a technical report(s) of the field investigations involving the recovery of human remains conducted under this permit and submit one copy of it (them) to the Department for review and approval, with a copy to affected Indian Tribes/Nations for review and comment. All reports shall meet the federal standards entitled *Archeology and Historic Preservation: Secretary of the Interior's Standards and Guidelines* (48 FR 44716-44742, September 29, 1983) and the Department's *Guidelines for Historic Resources Survey in Virginia* (2011 and as amended or revised). All comments received within thirty (30) days of report receipt shall be addressed in the final report(s).
12. All archaeological materials (with the exception of human remains and associated funerary or ceremonial objects) resulting from investigations conducted under this permit, including artifacts, field records and photographs, shall be placed in the Department's collections upon completion of the study and shall be curated in accordance with the Department's *State Curation Standards* (2011 and as amended or superseded).
13. The Department retains the right to revoke this permit upon the initiative of the Director, or upon the request of any interested party, for violations of any of the above conditions or if good cause is otherwise demonstrated.

Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5443
Fax: (540) 387-5446


Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7029
Fax: (540) 868-7033

Eastern Region Office
2801 Kensington Avenue
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

14. The Department retains the right to inspect the field investigations conducted under this permit. The Permittee shall make a reasonable effort to ensure that Department representatives have access to the work site during the field investigations

This permit shall be valid for six (6) months from the date of issuance. This permit is not transferable.

Sincerely,



Julie V. Langan
Director

Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5443
Fax: (540) 387-5446

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7029
Fax: (540) 868-7033

Eastern Region Office
2801 Kensington Avenue
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

EXHIBIT C



JAMES RIVER WATER AUTHORITY

132 Main Street, P.O. Box 540, Palmyra, VA 22963



BOARD OF DIRECTORS

D. D. Watson, Chair
Louisa County

Charles M. Dunning, Vice
Chair
Fluvanna County

Joe Chesser, Sec./Treasurer
Fluvanna County

Troy Wade
Louisa County

Christian Goodwin
County Administrator
Louisa County

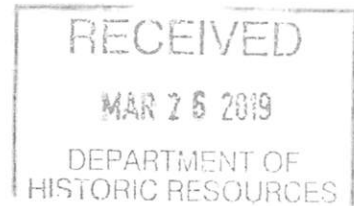
Steven M. Nichols
County Administrator
Fluvanna County

Brendan S. Hefty
Legal Counsel

March 22, 2019

By Email (joanna.wilson@dhr.virginia.gov) and FedEx

Joanna Wilson Green
Virginia Department of Historic Preservation
2801 Kensington Avenue
Richmond, Virginia 23221



Re: James River Water Authority Application for Recovery of Human
Remains Located at Point of Fork, Fluvanna County, Virginia
DHR File No. 2015-0984

Dear Ms. Green:

The James River Water Authority (JRWA) submits the enclosed Application for Recovery of Human Remains to cover all archeological fieldwork and monitored construction excavation within Sites 44FV0022, 44FV0024, 44FV0268, and, if necessary, 44FV0269 for this project in Fluvanna County, Virginia. The following documents are included in this application:

- Permit Application for Archeological Excavation of Human Remains Form
- Topographic map showing the location of the site
- Curriculum vitae for Principal Archaeologist Carol Tyrer
- Property easements

Due to the sensitive nature of this project, the JRWA is requesting that the public notice and research design requirements be waived. No public notice text or research design are enclosed.

Please note that additional information on the project, including a proposed Memorandum of Agreement, Treatment Plan, and Monitoring Plan, has previously been provided to the Department under DHR File No. 2015-0984. If additional copies of those documents are needed for your review, they will be provided at your request.

If you have any questions or require additional information, please contact Carol Tyrer at carol@circacrm.com/757.880.4187 or Justin Curtis at justin@aqualaw.com/804.716.9021 x204.

JRWA
March 22, 2019
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "S.M. Nichols".

Steven M. Nichols
James River Water Authority

Copy:

Ms. Julie Langan, VDHR Director
Mr. Roger Kirchen, VDHR
Mr. Greg LaBudde, VDHR
Mr. D.D. Watson, James River Water Authority Chair
Mr. Christian Goodwin, Louisa County Administrator

**VIRGINIA DEPARTMENT OF HISTORIC RESOURCES
PERMIT APPLICATION FOR ARCHAEOLOGICAL EXCAVATION OF HUMAN REMAINS**

Please print or type all information. If a request does not apply to your project, please print or type "N/A" in the space provided. If additional space is required, please attach as many extra sheets as necessary. Failure to provide a complete application (including requested attachments) will result in denial of the requested permit. Please forward any questions to Joanna Wilson Green (telephone 804-482-6098, email joanna.wilson@dhr.virginia.gov).

1. APPLICANT'S NAME AND CONTACT INFORMATION:

Name/Title: Steven M. Nichols, JRWA Board Member/Fluvanna County Administrator
Company/Organization/Affiliation: James River Water Authority (JRWA)
Street Address: 132 Main Street
City/State/ZIP: Palmyra, Virginia 22963
Mailing Address: P.O. Box 540, Palmyra, Virginia 22963
Telephone No.: (434) 591-1910 Fax No.: ()
Email: snichols@fluvannacounty.org

JRWA is the fee owner of the land on which the pump station will be constructed, which includes the majority of Site 44FV0022 within the area of potential effect. For the remainder of the Project area, JRWA holds utility line easements that grant "all rights and privileges reasonably necessary for the enjoyment and exercise" of the easement. Conducting archaeological excavations within the Project's right-of-way—including archeological excavation of any human remains that may be discovered—is "reasonably necessary" to construct the Project's raw water transmission main. JRWA therefore holds the necessary legal property rights of a to grant permission to conduct all activities proposed in this permit application in accordance with 17 VAC § 25-20-40(A)(3). Copies of the relevant easements are attached to this application. The owners of the properties traversed by JRWA's easements are listed below. If necessary, JRWA will obtain their signatures on landowner permission forms and provide them separately.

Site 44FV0022

PROPERTY OWNER'S NAME AND CONTACT INFORMATION (if different from above)

Name/Title: William Robert Hammond
Company/Organization/Affiliation: N/A
Street Address: 415 Gillums Ridge Road
City/State/ZIP: Charlottesville, VA 22903
Mailing Address: same as above
Telephone No.: (434) 327-8878 Fax No.: ()
Email: wrhammond12@gmail.com

Site 44FV0024

PROPERTY OWNER'S NAME AND CONTACT INFORMATION (if different from above)

Name/Title: G. Rodney Bialkowski, Sr.
Company/Organization/Affiliation: N/A
Street Address: 1215 Point of Fork Road
City/State/ZIP: Fork Union, VA 23055
Mailing Address: same as above
Telephone No.: (804) 512-5301 Fax No.: ()
Email: george_bialkowski@yahoo.com

Site 44FV0268

PROPERTY OWNER'S NAME AND CONTACT INFORMATION (if different from above)

Name/Title: Gary E. Wood, President/CEO
Company/Organization/Affiliation: Central Virginia Electric Co-op
Street Address: P.O.Box 247
City/State/ZIP: Lovington, VA 22949
Mailing Address: same as above
Telephone No.: (800) 367-2832 Fax No.: (434) 263-7900
Email: gwood@MyCV&C.com

Site 44FV0268

PROPERTY OWNER'S NAME AND CONTACT INFORMATION (if different from above)

Name/Title: Coleman Lyttle
Company/Organization/Affiliation: N/A
Street Address: 16251 Hunters Ridge Lane
City/State/ZIP: Mosely, VA 23120
Mailing Address: same as above
Telephone No.: (804) 347-4101 Fax No.: ()
Email:

Site 44FV0269

PROPERTY OWNER'S NAME AND CONTACT INFORMATION (if different from above)

Name/Title: Barbara Seay
Company/Organization/Affiliation: Point of Fork Farm, LP
Street Address: 1210 Point of Fork Road
City/State/ZIP: Columbia, VA 23038
Mailing Address: P.O. Box 847
Telephone No.: (434) 842-3677 Fax No.: ()
Email:

Principal Name/Title: Carol Tyrer/Principal Investigator

Company/Organization/Affiliation Circa~ Cultural Resource Management, LLC

Street Address: 453 McLaws Circle, Suite 3

City/State/ZIP: Williamsburg, Virginia 23185

Telephone No.: (757) 220-5023 Fax No.: ()

Email: carol@circacrm.com

Name/title of property on w

4A, and 53-A-62; Site 44FV0024 Parcel 53-A-61; Site 44FV0268 Parcel 53-11-19 and Parcel 53-11-

5; and Site 44FV0269 Parcel 53-A-62

County/independent city: Fluvanna County, Virginia

State archaeological inventory number: 44FV0022, 44FV0024, 44FV0268, 44FV0269

State architectural inventory number (if different from above): 32-0024 (44FV0022 and 44FV0024)

application in the event it is determined eligible.

(If yes) Clerk's name/telephone no: _____

(If yes) Clerk's name/telephone no: _____

City/County: _____ Docket Number: _____

Specify: James River Water Authority, Louisa County, and Fluvanna County

Specify: James River Water Authority, Louisa County, and Fluvanna County

DHR project review number (if applicable) 2015-0984

DHR project review number (if applicable) 2015-0984

If yes, describe the factors that suggest the presence of human burials on the subject property.

If yes, describe the factors that suggest the presence of human burials on the subject property

(attach additional pages as necessary):

44FV0268, which are a series of Native American sites with associated deeply-buried intact deposits beneath the plowzone. Dan Mouer of Virginia Commonwealth University identified human skeletal material partially exposed on the surface at Site 44FV022 (and nearby 44FV020 and 44FV021) in a 1980 study. Mouer had indicated that although they divided the sites on the floodplain into separate sites based on surface scatters, they believed that the whole floodplain consisted of one large site. The historic record indicates that this landform may be where the Native American village of Rassewek was located. The proposed JRWA pipeline and pump station will be located in this area and the possibility of finding human remains is moderate. In addition, the Point of Fork area and this section of the James River region has a long history of prior excavations. In the late 1880s, Gerard Fowke with the Bureau of Ethnology with the Smithsonian conducted limited excavations of the Point of Fork site. Unfortunately, there was no map in his report that showed

where these excavations occurred. His work noted that human remains were found in the vicinity.

7. IS A WAIVER OF THE PUBLIC NOTICE REQUIREMENT REQUESTED? Yes ☒ No ☐

If yes, describe the specific threat(s) to the human remains and associated funerary artifacts and why this/these threat(s) justify the requested waiver (attach additional pages as necessary):

The project area is remote and is difficult to protect from looting. The project area is located on the bank of the James River and the banks of the Rivanna River and can be accessed from the water. In addition, Site 44FV0268 is located roughly 50 feet to the south of Route 6 and be easily accessed from the road. The excavations will take several months to complete, with deep trenches that could create a hazard if people were attracted to the site. JRWA notes that VDHR waived the public notice requirement for the anticipatory burial permit issued for the Project in October 2017.

8. CURATION INFORMATION:

Name of facility providing temporary housing of human remains and associated funerary artifacts:

Circa~ Cultural Resource Management, LLC (available if necessary)

Type of facility: Cultural Resource Management office

Street address: 453 McLaws Circle, Suite 3

City/State/ZIP: Williamsburg, Virginia 23185

Name of contact person for facility: Carol Tyrer

Contact telephone number: (757) 220-5023 Email: carol@circacrm.com

Name of facility providing curation for original field notes and documentation (if different):

Type of facility: _____

Street address: _____

City/State/ZIP: _____

Name of contact person for facility: _____

Contact telephone number: () _____ Email: _____

9. REBURIAL INFORMATION:

Location for reburial (if known): Monacan Tribe Reservation Lands

Street address: _____

City/State/ZIP: Amherst, Virginia

10. IS A REBURIAL PLAN IN PLACE? Yes ☐ No ☒

If yes, specify and explain. If no, explain how you plan to approach this issue with descendants and/or other interested parties (attach additional pages if necessary).

JRWA intends to work with the Monacan Indian Nation to develop a protocol to be implemented in the event any Native American remains are discovered during construction of the project. During the Section 106 consultation process, Monacan representatives expressed their strong desire that any such discoveries be handled in accordance with the tribe's spiritual beliefs and traditions and that no archeological excavation or examination be conducted on Native American remains. The representatives further stated that the protocol should not be made public. JRWA expects that the protocol would include the following elements: (1) measures to protect discovered remains from

view and further disturbance; (2) notification of designated tribal representative; (3) procedure for the recovery and reinternment of the remains and any associated funerary objects by tribal members in a manner consistent with their beliefs; and (4) provision of appropriate notification and documentation to VDHR and the Corps. The reburial location will be updated in the VDHR V-CRIS system, with the locational data and information restricted. No further archeological examination of the remains would occur.

JRWA assumes that the Monacans are the appropriate party with which to develop a reburial plan. Through the course of the Section 106 consultation process, other tribes have generally deferred to the Monacans on matters pertaining to the Project site and have not, for example, commented on the proposed Memorandum of Agreement or Treatment Plan. Nevertheless, JRWA understands that VDHR may notify and solicit the views of other potentially affected tribes in accordance with 17 VAC § 5-20-50(E).

To facilitate the process outlined above, JRWA respectfully requests that the Director waive the research design and professional qualification requirements in accordance with 17 VAC § 5-20-40(D).

It is highly unlikely that non-Native American burials may be disturbed. In that event, however, JRWA will stop construction and prepare a reburial plan in accordance with applicable law and the Memorandum of Agreement.

11. IS A DISPOSITION OTHER THAN REBURIAL PROPOSED? Yes _____ No X

If yes, complete the attachment found on page 7 (Justification for Alternative (Non-Reburial) Disposition)

12. EXPECTED END DATES:

Excavation/Monitoring: 24 months

Osteological Analysis: None, at the request of the Monacan Indian Nation

Preparation and submittal of final report: 52 weeks

Final Disposition: Within 2 weeks of each burial removal

A monitoring plan was attached to the Memorandum of Agreement and will be implemented after the data recovery field excavations are completed. This application is intended to cover archeological excavations and subsequently monitored construction excavation at the three sites (and the fourth site, 44FV0269, if necessary). Construction will be phased among the archeological sites to complete the project in an efficient manner and consistent with the Memorandum of Agreement. JRWA conservatively expects that all archeological fieldwork and construction activity subject to monitoring will be completed within 24 months of the commencement of construction. JRWA requests that the burial permit remain in effect for that period.

APPLICANTS MUST SIGN

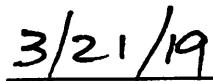
I hereby apply for the permit for the activities described herein. By my signature I hereby certify that I possess adequate resources, financial and otherwise, to ensure that the archaeological project is carried out in its entirety, up to and including the respectful recovery, temporary housing, and reburial or alternative disposition of any and all human remains and associated funerary artifacts recovered pursuant to the permit requested. I understand that work conducted under the permit is not complete until all permit requirements are met, including but not limited to submittal and approval of reports and documentation. I further understand that failure to complete the conditions of the permit within the allotted timeframe, or to obtain an extension of that timeframe from the Department, may result in revocation of the permit and constitute grounds for denial of future permit applications.

I hereby certify that the information submitted in this application is true and accurate to the best of my knowledge, and that I understand my responsibilities with regard to satisfaction of permit conditions and respectful treatment of any and all human remains recovered pursuant to a permit issued to me.



APPLICANT'S SIGNATURE

Steven M. Nichols, JRWA Board Member/
Fluvanna County Administrator
James River Water Authority




DATE

APPLICANTS MUST SIGN

I hereby apply for the permit for the activities described herein. By my signature I hereby certify that I possess adequate resources, financial and otherwise, to ensure that the archaeological project is carried out in its entirety, up to and including the respectful recovery, temporary housing, and reburial or alternative disposition of any and all human remains and associated funerary artifacts recovered pursuant to the permit requested. I understand that work conducted under the permit is not complete until all permit requirements are met, including but not limited to submittal and approval of reports and documentation. I further understand that failure to complete the conditions of the permit within the allotted timeframe, or to obtain an extension of that timeframe from the Department, may result in revocation of the permit and constitute grounds for denial of future permit applications.

I hereby certify that the information submitted in this application is true and accurate to the best of my knowledge, and that I understand my responsibilities with regard to satisfaction of permit conditions and respectful treatment of any and all human remains recovered pursuant to a permit issued to me.



APPLICANT'S SIGNATURE

Steven M. Nichols, JRWA Board Member/
Fluvanna County Administrator
James River Water Authority

3/21/19
DATE

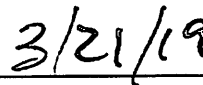
CONFIRMATION OF LANDOWNER PERMISSION

As legal owner of the property upon which the permitted archaeological excavation will take place, I hereby agree to allow the project archaeologist, project physical anthropologist, and all associated professionals to perform the archaeological excavation and recovery of any human remains and associated funerary artifacts from the property. I also agree to allow the duly authorized representatives of the Department of Historic Resources to enter the property at reasonable times to inspect and document site conditions and project progress.



LANDOWNER'S SIGNATURE

Steven M. Nichols, JRWA Board Member/
Fluvanna County Administrator
James River Water Authority



DATE

RESEARCH DESIGN

For projects in which human remains may be encountered but will not be purposefully disturbed or excavated, please provide a research design describing the larger project and including methodology to be implemented in the event that human remains are encountered.

For projects involving the excavation of human gravesites and recovery of human remains and funerary artifacts, please provide a data recovery plan.

Documents shall include, at minimum, the following information:

1. Reference to professionally-accepted standards, practices, methodologies, etc.;
2. Archival research pertinent to the location, type, and age of the resource in question;
3. Field and laboratory methodologies and documentation (data recovery plans must include specific discussion of the types of funerary data to be obtained);
4. Osteological inventory, analyses, and documentation (when applicable);
5. Conservation methods (when applicable).

Add additional pages as necessary.

Not applicable. As noted above, JRWA requests that the Director waive the research design and professional qualification requirements in accordance with 17 VAC § 5-20-40(D).

JUSTIFICATION FOR ALTERNATIVE (NON-REBURIAL) DISPOSITION
Add additional pages as necessary

Not applicable. Alternative disposition is not request.

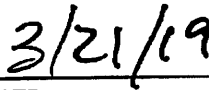
CONFIRMATION OF LANDOWNER PERMISSION

As legal owner of the property upon which the permitted archaeological excavation will take place, I hereby agree to allow the project archaeologist, project physical anthropologist, and all associated professionals to perform the archaeological excavation and recovery of any human remains and associated funerary artifacts from the property. I also agree to allow the duly authorized representatives of the Department of Historic Resources to enter the property at reasonable times to inspect and document site conditions and project progress.



LANDOWNER'S SIGNATURE

Steven M. Nichols, JRWA Board Member/
Fluvanna County Administrator
James River Water Authority



DATE

APPLICANT'S AND CONTRACTOR'S ACKNOWLEDGEMENT FORM

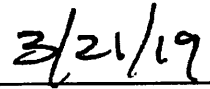
I, James River Water Authority, have contracted with Circa~ Cultural Resource Management LLC and Faulconer Construction Company to perform the work described in the above application signed by me and dated January 3, 2017.

We, the undersigned, hereby confirm that we will ensure the respectful and honorable treatment of any and all human remains and associated funerary artifacts from the time of their discovery through the archaeological recovery process, temporary housing, and reburial or agreed-upon alternate disposition. We understand that failure to treat human remains and associated funerary artifacts with respect at all times will result in revocation of the burial permit and possible legal action.

By our signatures we hereby confirm that we will read and abide by all condition and terms set forth in the approved permit as required for all actions described in this application. We understand that work conducted under a burial permit will not be considered complete until all documentation is submitted and approved by the Department, and that all other conditions are met including the respectful disposition of all human remains and associated funerary artifacts. We further understand that failure to complete the conditions of the permit within the specific timeframe or approved extension may result in revocation of the permit and may also result in denial of future permit applications.



Applicant's Signature
Steven M. Nichols, JRWA Board Member/
Fluvanna County Administrator
James River Water Authority



Date

Contractor's Signature
Carol D. Tyrer, President
Circa~ Cultural Resource Management, LLC

Date

Contractor's Signature
Edwin F. Stelter, Vice President
Faulconer Construction Company

Date

APPLICANT'S AND CONTRACTOR'S ACKNOWLEDGEMENT FORM

I, James River Water Authority, have contracted with Circa~ Cultural Resource Management LLC and Faulconer Construction Company to perform the work described in the above application signed by me and dated January 3, 2017.

We, the undersigned, hereby confirm that we will ensure the respectful and honorable treatment of any and all human remains and associated funerary artifacts from the time of their discovery through the archaeological recovery process, temporary housing, and reburial or agreed-upon alternate disposition. We understand that failure to treat human remains and associated funerary artifacts with respect at all times will result in revocation of the burial permit and possible legal action.

By our signatures we hereby confirm that we will read and abide by all condition and terms set forth in the approved permit as required for all actions described in this application. We understand that work conducted under a burial permit will not be considered complete until all documentation is submitted and approved by the Department, and that all other conditions are met including the respectful disposition of all human remains and associated funerary artifacts. We further understand that failure to complete the conditions of the permit within the specific timeframe or approved extension may result in revocation of the permit and may also result in denial of future permit applications.



Applicant's Signature
Steven M. Nichols, JRWA Board Member/
Fluvanna County Administrator
James River Water Authority

3/21/19
Date

Contractor's Signature
Carol D. Tyrer, President
Circa~ Cultural Resource Management, LLC

Date

Contractor's Signature
Edwin F. Stelter, Vice President
Faulconer Construction Company

Date

APPLICANT'S AND CONTRACTOR'S ACKNOWLEDGEMENT FORM

I, James River Water Authority, have contracted with Circa~ Cultural Resource Management LLC and Faulconer Construction Company to perform the work described in the above application signed by me and dated January 3, 2017.

We, the undersigned, hereby confirm that we will ensure the respectful and honorable treatment of any and all human remains and associated funerary artifacts from the time of their discovery through the archaeological recovery process, temporary housing, and reburial or agreed-upon alternate disposition. We understand that failure to treat human remains and associated funerary artifacts with respect at all times will result in revocation of the burial permit and possible legal action.

By our signatures we hereby confirm that we will read and abide by all condition and terms set forth in the approved permit as required for all actions described in this application. We understand that work conducted under a burial permit will not be considered complete until all documentation is submitted and approved by the Department, and that all other conditions are met including the respectful disposition of all human remains and associated funerary artifacts. We further understand that failure to complete the conditions of the permit within the specific timeframe or approved extension may result in revocation of the permit and may also result in denial of future permit applications.

Applicant's Signature
Steven M. Nichols, JRWA Board Member/
Fluvanna County Administrator
James River Water Authority

Date

Carol D. Tyrer

Contractor's Signature
Carol D. Tyrer, President
Circa~ Cultural Resource Management, LLC

March 21, 2019

Date

Contractor's Signature
Edwin F. Stelter, Vice President
Faulconer Construction Company

Date

APPLICANT'S AND CONTRACTOR'S ACKNOWLEDGEMENT FORM

I, James River Water Authority, have contracted with Circa~ Cultural Resource Management LLC and Faulconer Construction Company to perform the work described in the above application signed by me and dated January 3, 2017.

We, the undersigned, hereby confirm that we will ensure the respectful and honorable treatment of any and all human remains and associated funerary artifacts from the time of their discovery through the archaeological recovery process, temporary housing, and reburial or agreed-upon alternate disposition. We understand that failure to treat human remains and associated funerary artifacts with respect at all times will result in revocation of the burial permit and possible legal action.

By our signatures we hereby confirm that we will read and abide by all condition and terms set forth in the approved permit as required for all actions described in this application. We understand that work conducted under a burial permit will not be considered complete until all documentation is submitted and approved by the Department, and that all other conditions are met including the respectful disposition of all human remains and associated funerary artifacts. We further understand that failure to complete the conditions of the permit within the specific timeframe or approved extension may result in revocation of the permit and may also result in denial of future permit applications.

Applicant's Signature

Steven M. Nichols, JRWA Board Member/
Fluvanna County Administrator
James River Water Authority

Date

Contractor's Signature

Carol D. Tyrer, President
Circa~ Cultural Resource Management, LLC

Date



Contractor's Signature

Edwin F. Stelter, Vice President
Faulconer Construction Company

03/21/19
Date

REQUIRED ATTACHMENTS

- Copy of the relevant USGS 7.5 series topographic map showing the location of the property or site on which the archaeological excavation will take place. A supplemental map showing the area in greater detail may also be attached if appropriate and/or necessary.
- Original signed application.
- Original signed Statement of Landowner Permission.
- Original signed Applicant's and Contractor's Acknowledgement Form.
- Text of the public notice/notice of intent, and confirmation of publication (print and online). See guidelines for further information and explanation.
- Curriculum vitae (CVs) for the principal archaeologist and physical anthropologist associated with the proposed project.
- Detailed research design, including but not limited to the following:
 - field methods to be used during recovery
 - laboratory methods to be used during skeletal analysis
 - conservation methods to be used for both human skeletal remains and associated funerary artifacts.
- Statement justifying alternative disposition of human skeletal remains and associated funerary artifacts (if applicable).

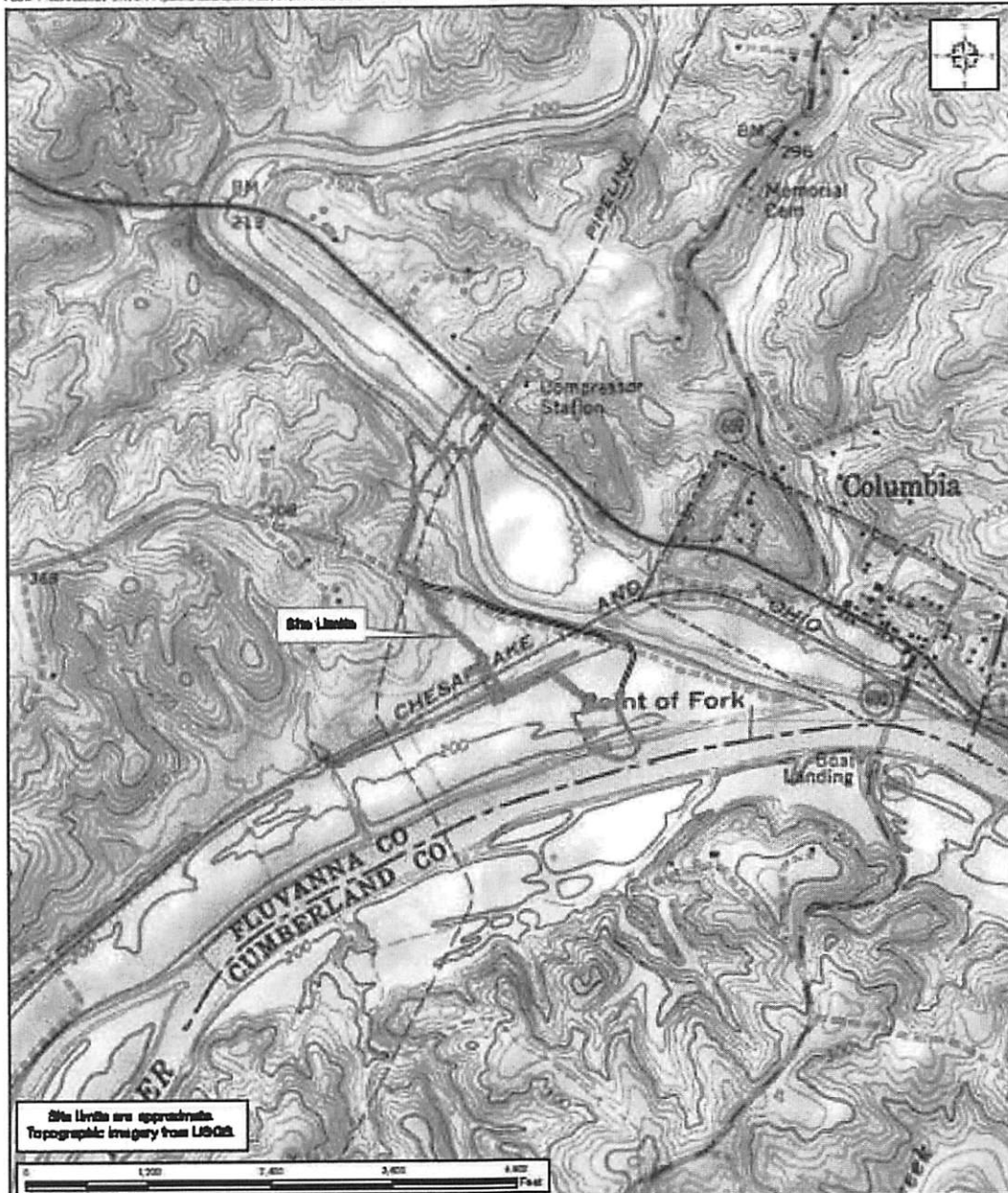
LIST OF ATTACHMENTS

Attachment A – Topographic Map of Project Site

Attachment B – Carol Tyrer Curriculum Vitae

Attachment C – Property Easements

Public Y:\004\33327-JRWA-Figures\GIS\Common Shared\Exhibit\Culture Resources\03327-NC-100 Permit Area.mxd



Site limits are approximate.
Topographic imagery from LIDAR.

0 1,000 2,000 3,000 4,000 Feet

JRWA - SECTION 106 PERMIT AREA
FLUVANNA COUNTY, VIRGINIA
FIGURE 1: VICINITY MAP

TIMMONS GROUP JOB NUMBER: 33327
PROJECT STUDY LIMITS: 14.8 ACRES
LATITUDE: 37°43'00" 17N
LONGITUDE: 78°10'18.55W

TIMMONS GROUP

YOUR VISION ACHIEVED THROUGH OURS.

U.S.G.S. QUADRANGLES: COLUMBIA & LAKESIDE VILLAGE
DATE: 2018
WATERSHED: FLUVANNA & MOORE JAMES-BUFFALO
HYDROLOGIC UNIT CODE(S): 02060204 & 02060205

©2018 Timmons Group LLC. All rights reserved. This map is a representation of the information provided to Timmons Group by the client. Timmons Group is not responsible for any errors or omissions in this map. This map is for informational purposes only and should not be used for any other purpose without the express written consent of Timmons Group.

Attachment A. Approximate location of project area on USGS Columbia and Lakeside Village quads.

EXHIBIT D



July 23, 2019

Julie Langan, Director
Virginia Department of Historic Resources
2801 Kensington Avenue
Richmond, VA 23221

Re: Monacan Indian Nation's Objection to the James River Water Authority's Application for the Removal and Temporary Curation of Human Remains Located at Point of Fork, Fluvanna County, Virginia, DHR File No. 2015-0984.

Dear Director Langan:

My law firm represents the Monacan Indian Nation ("the Nation"), a federally recognized sovereign tribe, regarding the James River Water Authority's ("JRWA") planned water pipeline and pump station at Point of Fork, Virginia. The Nation requests that the Virginia Department of Historic Resources ("DHR") deny JRWA's Application for the Removal and Temporary Curation of Human Remains, DHR File No. 2015-0984, dated March 22, 2019.¹ **It is critical to note at the outset that under no circumstances will the Nation support the issuance of a burial permit to JRWA for this project.**

I. Virginia Law Requires Denial of the Burial Permit.

Virginia law empowers DHR to issue or deny permits for the archaeological removal of human remains. Virginia's Administrative Code states at 17VAC5-20-60(B) that the Director shall "give priority to comments and recommendations made by individuals and parties most closely connected with the human burials subject to the application." It goes on to state:

In making a decision on the permit application, the Director shall consider the following:

1. The level of threat facing the human skeletal remains and associated cultural resources.
2. The appropriateness of the goals, objectives, research, design, and qualifications of the applicants to complete the proposed research in a scientific fashion. The director shall consider the U.S. Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation, set out at 48 FR 44716 (September 29, 1983), in determining the appropriateness of the proposed research and in evaluating the qualifications of the applicants.

¹ DHR has the power to deny burial permits based on several enumerated considerations laid out in Va. Code §10.1-2305 and expanded upon in 17VAC5-20-60, as discussed herein.

3. Comments received from the public.
4. The appropriateness of the proposed disposition of remains upon completion of the research. The director may specify a required disposition as a condition of granting the permit.
5. The performance of the applicant on any prior permitted investigation.
6. The applicability of other federal, state and local laws and regulations.

17VAC5-20-60(C). The regulations also state that “Failure to adequately meet all conditions in a previous permit shall be grounds for denial of any subsequent permit applications.” 17VAC5-20-60(D).

Application of the six considerations enumerated in 17VAC5-20-60(C) – especially when coupled with the fact that the Nation, the party most closely connected with the burials, stridently opposes this project – requires DHR to deny the burial permit on multiple grounds:

1. **Level of Threat.** The human remains at the sites are not currently at risk or under threat – except those posed by the proposed project. JRWA grossly downplays the threat the project poses to Monacan burials, stating merely that the “possibility of finding human remains is moderate” while admitting that the site is difficult to protect from looting. To the contrary, the Nation knows that human remains are buried on this site. Burials have been located there numerous times; for example, in the 1880s, Gerard Fowke of the Smithsonian Institution identified 25 Indian burials uncovered by flooding, and in 1980, construction of a gas line in the area uncovered additional burials. Exposing this known burial site and its associated cultural objects by constructing a pump station will threaten the human skeletal remains and associated cultural resources, and will create significant risks that could be avoided entirely.
2. **Appropriateness of the goals, objectives, research, design, and qualifications of the applicants to complete the proposed research in a scientific fashion.** JRWA has hired a consulting firm, Circa~ Cultural Resource Management, LLC, to conduct archaeological testing and an abbreviated archaeological excavation at Rassawek. Circa~’s initial plan failed to cite any archaeological work performed in the area in the last 30 years, or to sufficiently describe Rassawek or its importance to Monacan and Virginia history. As discussed in the Nation’s recent comments regarding the draft Memorandum of Agreement, Treatment Plan, and Monitoring Plan circulated by the Army Corps of Engineers (MOA), Circa~’s plan to excavate the impacted sites involves considerable use of construction machinery and does not commit to excavating all features and layers that may be destroyed. Circa~ proposes to screen only around 5% of the part of Rassawek being destroyed by the project, meaning that isolated human remains are likely to be missed. Multiple senior archaeologists have expressed concern to the Nation, JRWA, and DHR that three or four highly stratified floodplain deposits will not be adequately excavated under Circa~’s approach.

Circa~ also violated its anticipatory burial almost as soon as DHR issued it. As reported in DHR’s October 17, 2017, letter to JRWA, a DHR representative visited the project location on two occasions the week after the agency issued the permit. The DHR representative

reported that Circa~ failed to meet certain permit conditions during his visits, and that the archaeologists responsible for the field investigations were not directly supervising the work.

The Nation also notes that the Principal Investigator on the project, Carole Tyrer, is not a Registered Professional Archaeologist. Her failure to register means that she is not subject to grievance procedures within the profession, and DHR's denial of the burial permit is the only way to achieve some accountability for her failure to meet professional standards. Inexplicably, the current permit application proposes to waive Secretary of Interior qualifications for the Principal Investigator, citing "extraordinary circumstances" (17 VAC Section 5-20-40(D) which are not listed or detailed. Given the cultural and spiritual sensitivity of the project location and Circa~'s previous disregard of burial permit requirements, the Nation is profoundly concerned about the quality of Circa~'s work and JRWA's failure to commit enough funding to achieve proper results. It is reasonable for DHR to require that anyone responsible in the future for disinterment of Monacan remains, when unavoidable, abide by the highest professional standards and hold a membership in the Register of Professional Archaeologists (RPA).

Circa~'s violations of the anticipatory burial permit, paired with the applicant's stated desire to sidestep research design and professional qualification requirements, provide ample grounds for DHR to deny the requested permit.

3. **Public Comment.** The Nation notes that more than 1,300 individuals and organizations to date have signed a letter to the Army Corps and Governor Northam opposing the project and requesting that DHR deny the burial permit. Hundreds of these signatories are professional archaeologists and preservationists concerned about the excavation of burials and potential damage to the sites. The Nation's opposition to this burial permit is shared by the six other federally recognized Indian tribes in Virginia, the Alliance of Colonial Era Tribes, and the Inter-Tribal Women's Circle. Multiple non-tribal organizations have likewise requested that DHR deny the burial permit, including the Council of Virginia Archaeologists, the City of Charlottesville Human Rights Commission, Preservation Virginia, and the Piedmont Chapter of the Sierra Club. We enclose herewith a letter requesting that DHR deny the burial permit, along with signatures and public comments.

The Nation believes that by requesting that DHR waive the public notice requirement, JRWA seeks to avoid this broad public opposition to disturbing Monacan burials. JRWA should be required to post public notice that they intend to disturb Monacan ancestors, and taxpayers should be made aware that their government is conducting such a shameful act.

4. **Appropriateness of the proposed disposition of remains upon completion of the research.** JRWA has not proposed any particular disposition of remains, stating in the application only that it "intends to work with the Monacan Indian Nation to develop a protocol to be implemented in the event any Native American remains are discovered during construction of the project." This proposal is neither sufficient nor appropriate. JRWA has demonstrated a lack of willingness to cooperate with the Nation in good faith in other aspects of the permitting process (see comment letters to the Army Corps of Engineers dated November 27, 2018, December 21, 2018, and June 5, 2019), and the Nation cannot be

compelled to cooperate with JRWA to disturb and disinter its ancestors against its will. Accordingly, DHR must deny the permit.

5. **The performance of the applicant on any prior permitted investigation.** As noted above (para. 2), Circa~ violated the anticipatory burial permit almost as soon as it was issued, thus establishing that it cannot be trusted to comply with the terms of any future burial permit. Circa~'s blatant violations are grounds for DHR's denial of the permit application.
6. **The applicability of other federal, state and local laws and regulations.** DHR has consulted with the Army Corps regarding the proposed project. As a result, DHR should be fully aware of the Nation's concerns about the Corps using the wrong permitting process (a Nationwide permit rather than an Individual permit, and illegally segmenting the project) and the Corps's failure to consider alternatives that would not disturb Monacan burials. DHR should not issue a burial permit as a result of such a flawed process. To issue a burial permit would be perceived as approval of the Corps's process, which has been inconsistent with federal law, and which the Nation reserves the right to challenge in court.

The Nation also notes that JRWA did not submit with its application notarized statements from landowners granting permission to remove human remains from their property and to conduct research on those remains, as required under 17VAC5-20-40(A)(4). The Nation understands that certain landowners do not wish to cooperate with this permit and are likely to refuse to sign it.

If DHR does not deny this permit application, in its current state and with the current applicants, it is unclear what permit ever would be sufficiently out of compliance with Virginia law and regulations to warrant denial.

II. The Balance of Equities Demands Denial of the Burial Permit.

A. Disturbing the Monacans' Ancestors Should Be A Last Resort.

Disturbing human remains should never be a developer's first resort, yet JRWA has offered no alternatives to disturbing the Monacans' ancestors – despite JRWA's admission that it could move the proposed pump station to any of at least three other locations. JRWA has known since at early as 2015 that the Point of Fork site is archaeologically, historically, and spiritually sensitive, but JRWA did not reach out to the Nation until June 2017. By that point, JRWA had finalized site plans and purchased the land for the future pump station, even though it knew that the project would likely disinter Monacan ancestral remains.

Though JRWA is well-aware that this project will destroy Monacan remains, it has yet to explain to the Nation why it must disturb these burials. Disturbing these graves should not be tolerated except for the most compelling reasons, which JRWA does not have.

B. Repatriation Is A Traumatic Experience the Nation Should Not be Forced to Endure.

JRWA has no understanding of the deep and unavoidable trauma that the Nation will suffer as a result of repatriation of its ancestors' remains. Tribes often have their ancestors' bones returned in cardboard boxes, having been handled unceremoniously by strangers. Careful treatment and rehabilitation of these remains is something that drains the Nation of emotional, financial, and mental resources and attention. The Nation has already had to endure several somber and traumatizing repatriation ceremonies in the past, and it does not wish to experience that again – especially when JRWA has the ability to avoid these issues by relocating the pump station.

C. JRWA Cannot Promise to Return All Monacan Cultural and Human Remains to the Nation.

JRWA does not commit to using thorough screening techniques and proposes to leave most features outside of the planned excavation trenches unexcavated. As a result, JRWA cannot claim to be providing the Nation with all human remains from the sites. Instead, it is highly likely that some remains of Monacan ancestors will be churned-up in fill and discarded as trash on a project site or wherever the fill is deposited. This outcome is unacceptable to the Nation, and should be unacceptable to the Commonwealth of Virginia and to the Army Corps, which has federal trust responsibilities to the Nation.

In addition, the Nation previously expressed to the Corps how important it is to the tribe to be able to preserve and store cultural archaeological remains at their tribal museum in Amherst, close to the majority of their tribal members. JRWA has stated that they will *try* to negotiate with landowners so that any artifacts found as a result of the excavation *might* be given to the Monacans for permanent curation. JRWA refuses to promise this outcome, however, and its negotiations on this front do not seem to be going well. Even if JRWA can come to an agreement with landowners, the Nation fears that JRWA's inadequate planning will result in the haphazard and disrespectful treatment of human remains.

D. Procedures for the Careful Recovery of Human Remains at Site 44FV0269 are Unclear.

The burial permit application states that the permit will cover “Sites 44FV0022, 44FV0024, 44FV0268, and, *if necessary*, 44FV0269” (emphasis added). The Corps recently determined that 44FV0269 is not eligible for the National Register, although DHR has not yet concurred with this determination due to substantial report deficiencies.

If 44FV0269 is not slated for data recovery, what will the procedures be for identifying and protecting human remains? Regardless of a site's National Register status, the Nation has a strong interest in the respectful treatment and systematic recovery of human remains from any Monacan site. Construction monitoring alone will lead to poor outcomes for recovery of any human remains on that site, and it is likely that JRWA simply plans to destroy that site if it is not legally required to excavate. DHR should require data recovery at 44FV0269 as a condition of any permit, to ensure that any Monacan ancestors on the site are recovered.

III. Should DHR Issue the Burial Permit Despite the Above, Conditions of the Permit Must Provide Adequate Care and Mitigation for the Removal of Monacan Ancestors.

If DHR declines to exercise its authority to deny the burial permit, despite the overwhelming reasons to do so, various conditions must be attached to such a permit, as discussed below. The Nation reserves its rights to challenge any burial permit issued to JRWA regardless of whether these conditions are attached.

- 1. The burial permit should not be approved until basic issues of mitigation, site excavation methodology, treatment of human remains, curation, and inventory are appropriately resolved and finalized in a Memorandum of Agreement, Treatment Plan, and Monitoring Plan.** The Nation has profound concerns that the project proponent is pushing to have agreement documents finalized without providing adequate and detailed commitments regarding human remains and archaeological recovery. The Nation is concerned that 14 months after the submission of the Draft Phase I/Phase II report for this project, which had significant deficiencies, no consulting parties have been provided with a revised or final version of the report. The Nation is also concerned that the Corps may be moving towards concluding Section 106 consultation despite persistent concerns regarding archaeological methodology. The Nation asks DHR, as the state historic preservation office, to continue to press the Corps regarding the lack of clarity and commitments in these documents. Complying with the finalized agreements and providing final reports should be a condition of the burial permit.
- 2. The archaeological resources consultant used for the excavation and human remains recovery should be chosen with concurrence from the Monacan Indian Nation.** Monacan burials will be identified and recovered through archaeological methods, and the Nation must have confidence in the archaeologists doing this critical work. There is no way to separate the excavation of human remains from the wider archaeological investigation; many remains are likely to be recovered in bundled contexts or found as isolated bone from previous disturbances. The current archaeological recovery methods (as the Nation discussed in its June 5, 2019 comments to the Corps and in a July 10, 2019 meeting with DHR staff), are insufficient to preserve and recover all human remains. The Nation strongly objects to Circa~ conducting any further work on such significant and sensitive sites.
- 3. Before issuing the burial permit, DHR should consult with the three North Carolina tribes that also share Eastern Siouan background.** The Sappony Tribe, the Occaneechi Band of the Saponi Nation, and the Haliwa-Saponi Indian Tribe have an ancestral affiliation with the site of Rassawek and should be consulted on this burial permit. The Nation and other Eastern Siouan tribes who descend from the Monacan Confederacy are the parties most connected with the human burials, and these tribes may have additional perspectives that DHR should consider.
- 4. Before receiving a burial permit, JRWA should provide a surety bond as requested in the Nation's June 5, 2019 comments.** The bond amount should be determined by the archaeological consultant's estimate of the funds needed to ensure completion of site analysis

and report completion, as well as funds to cover all of the costs of repatriation and reburial in the event the project is abandoned.

5. The permit should ensure the careful and respectful recovery of human remains from the project area, which include:

- a. Assembly of a peer review process for excavation and human remains recovery on the project, as recommended in guidance from the President's Advisory Council on Historic Preservation.
- b. Geospatial recording of all sites excavated using a total station and geospatial analysis in ArcGIS or equivalent software, to ensure accuracy of site data for future analysis.
- c. Development (in conjunction with the spiritual preferences of the Monacan Indian Nation) of methodologies for human remains recovery, curation, and inventory by a trained osteologist meeting the Secretary of Interior standards and with experience in recovering prehistoric human skeletal remains in Virginia or the Mid-Atlantic.
- d. Screening of 100% of cultural layers encountered during data recovery through a 1/8th inch screen or smaller.
- e. Screening of 100% of non-burial feature fill encountered through a 1/16th inch screen or using a water flotation tank.
- f. Recovery of 100% of burial feature fill pending further negotiations with the Nation.
- g. Commitments that during site monitoring, a monitor shall have responsibility for only one piece of equipment operating at a single time.
- h. Greater description of requirements and guidance regarding how features discovered via monitoring should be identified, assessed, and recovered, in conjunction with peer review panel.
- i. Principal Investigators at the site, for both the excavation elements and the osteological recovery, should be Secretary of Interior qualified and hold memberships in the Register of Professional Archaeologists.
- j. Overnight security at the site throughout the entire excavation to ensure that human remains are not looted.

6. JRWA should provide the Nation with the financial resources to pay for the reburials that will be required for the remains. The budget for reburials includes the cost of funeral services to prepare the human remains, transfer and transportation of the bones, construction equipment to excavate grave shafts, feasting ceremonies associated with a reburial event, cost of items and containers used to reinter the remains, any associated headstone, plaque, or landscaping needed, and provisions for the perpetual care of the reburial sites. Attached is a budget description of what would be needed, which estimates the costs to total \$305,000. (See Appendix A, enclosed herewith.)

* * *

For the reasons stated herein, under no circumstances will the Nation support the issuance of a burial permit to JRWA for this project and the Nation strongly urges DHR to deny JRWA's application, as required by applicable laws and regulations. The Nation welcomes further consultation with DHR as your office considers these issues. Please feel free to reach out to me with any questions or additional information requests.

Sincerely,



Marion F. Werkheiser
Attorney at Law

Enclosures

cc: The Honorable Matt Strickler, Secretary of Natural Resources
The Honorable Kelly Thomasson, Secretary of the Commonwealth
Office of U.S. Senator Tim Kaine
Office of U.S. Senator Mark Warner
Nekole Alligood, NAGPRA Officer, The Delaware Nation
Chief Robert Gray, Pamunkey Indian Tribe
Executive Director Dante Desiderio, Sappony Tribe
Chief B. Ogletree Richardson, Haliwa Saponi Indian Tribe
Chairperson William Hayes, Occaneechi Band of Saponi Nation
Chief Anne Richardson, Rappahannock Tribe
Chief Frank Adams, Upper Mattaponi Indian Tribe
Chief Gerald Stewart, Eastern Chickahominy Indian Tribe
Chief Stephen Adkins, Chickahominy Tribe
Chief Samuel Bass, Nansemond Indian Tribe
Joe Hines, Principal, Timmons Group
Carol Tyrer, President, Circa~ Cultural Resource Management, LLC
Steve Nichols, Fluvanna County Administrator
Greg Krystyniak, Faulconer Construction
Christian Goodwin, Louisa County Administrator

Appendix A: Anticipated Repatriation and Reburial Costs

Equipment Cost	\$15,000
Perpetual Care of Site	\$100,000
Transfer and Transportation of Bones	\$2500 plus \$4.00 per mile
 Individual Prep Supplies Total	 \$250 per Individual/ Approximately 150 individuals
<i>Sage</i>	
<i>Cedar</i>	
<i>Tobacco</i>	
<i>Eagle Feather</i>	
<i>Red Cloth</i>	
Total	\$37,500
 Staff to Prepare Remains	 Minimum 50 people for approximately 2 days
<i>Time/Labor</i>	\$150/day per person for a minimum of 50 people
<i>Hotel Costs</i>	\$99/day for minimum of 10 people
<i>Food Costs</i>	\$61/day at Federal Per Diem Rate for Lynchburg Va. Min 50 people
<i>Travel Reimbursement</i>	0.545 per mile for all travel. Min 50 people
Total	Approximately \$250 - \$350 per person per day/ \$25,000 to \$35,000 total
 Staff/Spiritual Leader for On-site Monitoring	 On-site Monitoring anytime Remains are found (estimate of 60 days)
<i>Time/Labor</i>	\$200/day for Spiritual Leader and Assistant (estimate of 60 days)
<i>Hotel Costs</i>	\$99/day for 2 people
<i>Food Costs</i>	\$61/day at Federal Per Diem Rate for 2 people
<i>Travel Reimbursement</i>	0.545 per mile for all travel for 2 people
<i>On-site Monitoring professional</i>	\$25/hr for the duration of the project (est. \$45,000 to \$ 55,000)
Total	\$90,000
 Feast Cost	 Minimum of 500 people in attendance
<i>Time/Labor</i>	\$150/day minimum of 20 people for 2 days (\$6,000 total)
<i>Supplies (non food items)</i>	\$5,000
<i>Food items</i>	\$10,000
<i>Facilities Cost</i>	\$2,500
Total	\$23,500
 Approx. Total	 305,000

EXHIBIT E



Department of Historic Resources

Joseph Ward
Secretary of Natural Resources

301 Kensington Avenue, Richmond, Virginia 23221

J. Langan
Director
Tel: (804) 367-2323
Fax: (804) 367-2391
www.dhr.virginia.gov

October 17, 2017

Mr. Steven M. Nichols
County Administrator
Fluvanna County
Palmyra, VA 22963

Dear Mr. Nichols:

I am writing to alert you that the Department of Historic Resources (DHR) has concerns regarding the archaeological study being conducted at Point of Fork, Fluvanna County, Virginia, under the anticipatory burial permit issued to the James River Water Authority on October 4, 2017. These concerns result from two monitoring visits to the site that took place last week that suggest the possibility that not all of the permit conditions are not being met. I recommend that you review the language of the burial permit, investigate the matter for yourself and then report back to me as quickly as feasible.

On the afternoon of Thursday, October 12, and again during the afternoon of Friday, October 13, a DHR representative inspected the ongoing field investigations. Based on these observations and conversations with Charles Rutledge, who identified himself as the Crew Chief for Circa~ Cultural Resource Management, LLC, it is our understanding that the study is not being conducted by, or under the direct supervision of, a qualified professional archaeologist meeting the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-39). It appears that Mr. Rutledge, who does not meet the Secretary of the Interior's Professional Qualification Standards, is not being directly supervised by someone who meets the Standards. Further, it appears that Mr. Rutledge is providing supervision to other employees who do not meet these Standards.

As noted in Item 6 of the permit, DHR has reviewed the vita of the professionally-qualified archaeologist responsible for the proposed work and found her qualified to complete the work. Our concern has to do with the fact that the archaeologist responsible for the work is apparently not directly supervising the investigation. Condition 4 of the permit reads "The Permittee shall ensure that all earthmoving activity within the project area takes place at the direction and under the supervision of the supervising archaeologist, who shall be allowed to dictate the terms under which soil is removed."

As such it appears that all of the permit conditions are not being met. Given the archaeological sensitivity of the survey area, as well as the stated concerns of the federally-recognized and Virginia Indian tribes, it is our opinion that direct supervision by a professionally-qualified archaeologist is both imperative and expected, not just by DHR, but by the tribes who have expressed an interest in this property.

Administrative Services
10 Courthouse Ave.
Petersburg, VA 23803
Tel: (804) 862-6408
Fax: (804) 862-6196

Eastern Region Office
2801 Kensington Avenue
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5443
Fax: (540) 387-5446

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7029
Fax: (540) 868-7033

I am confident that you will share my concerns and take the steps necessary to ensure that the investigation is conducted in compliance with the permit. Kindly respond to this notice at your earliest convenience with detailed information regarding what steps have been taken to address the situation.

Sincerely,

Sincerely,

A handwritten signature in black ink, reading "Julie U. Hangan". The signature is fluid and cursive, with the first name "Julie" being more prominent and the last name "Hangan" following in a similar style.

Director

Administrative Services
10 Courthouse Ave.
Petersburg, VA 23803
Tel: (804) 862-6408
Fax: (804) 862-6196

Capital Region Office
2801 Kensington Avenue
Richmond, VA 23221
Tel: (804) 367-2323
Fax: (804) 367-2391

Tidewater Region Office
14415 Old Courthouse Way 2nd
Floor
Newport News, VA 23608
Tel: (757) 886-2818
Fax: (757) 886-2808

Western Region Office
962 Kime Lane
Salem, VA 24153
Tel: (540) 387-5443
Fax: (540) 387-5446

Northern Region Office
5357 Main Street
PO Box 519
Stephens City, VA 22655
Tel: (540) 868-7029
Fax: (540) 868-7033

EXHIBIT F

DECLARATION OF ERIC MAI

**Commonwealth of Virginia
City of Richmond**

Eric Mai declares and certifies:

Professional Background

1. My name is Eric Mai. I am 33 years old. I reside in Richmond, Virginia.
2. I am a full-time graduate student in the Virginia Commonwealth University Master's program in Urban and Regional Studies and Planning. I earned a Master of Archaeology and Heritage degree from the University of Leicester in 2017, a Graduate Certificate in Geographic Information Systems from Virginia Commonwealth University in 2018, a Bachelor of the Arts degree in Art History from Christopher Newport University in 2011, and attended an archaeological field school at Tel Dor, Israel with Haifa University in 2011.
3. I was employed by Circa- Cultural Resource Management LLC ("Circa") for over six years from January 2012 to May 2018 as a full-time hourly worker in the position of archaeological field technician. Circa is a cultural resource management ("CRM") firm which performs archaeological and architectural history investigations to comply with federal, state, and local regulations regarding historic preservation. During my employment I had daily exposure to the work practices of Circa and its President, Carol Tyrer.
4. For nine months between May 2017 through January 2018, I was assigned by Tyrer to conduct archaeological survey and testing in advance of the James River Water Authority's ("JRWA") proposed construction project at Point of Fork in Fluvanna County, Virginia. Circa and the JRWA rely on this survey and testing in a proposed Treatment Plan that would guide treatment of the cultural resources at the site should the project proceed.
5. I resigned my position at Circa in May 2018, motivated by my deep concerns about Circa's practices arising from my experiences excavating at Point of Fork and my cumulative experiences during my employment.
6. At no point during my employment did Circa state any concerns to me about the quality of my work nor were any disciplinary actions taken against me.

Purpose

7. I am coming forward because I believe it is the right thing to do. I have prepared this declaration of my own volition, without pressure by or compensation from any party.
8. I offer these facts based on my reasonable, genuine, and good faith belief in their truth. To the extent that I offer limited opinions, I also do so in good faith based on my observations and experience.
9. My intent is to report an urgent concern about what I believe to be illegal, unethical, unprofessional, and unscientific practices by Circa in its work generally and at Point of Fork specifically. These practices include lying to government officials, instructing employees to lie to government officials, assigning unqualified and untrained personnel to perform sensitive investigations, failing to supervise unqualified personnel, misrepresenting professional and academic qualifications in official filings, falsifying research data, failing to use appropriate technology to obtain reliable data and then massaging the data to look scientific, plagiarizing the work of unaffiliated professionals, minimizing archaeological discoveries, and handling cultural resources inappropriately in the field and in the laboratory.
10. I sincerely regret that I did not come forward sooner. My job at Circa was my first professional employment in CRM. It was not until I pursued advanced education in the field and gained exposure to the work of other CRM firms that I began to understand that the way things are done at Circa is not, as we were told by Tyrer, acceptable or common practice in the CRM field. I did not fully and timely appreciate how harmful the methods Circa employs are to the public interest.
11. I understand that other former Circa employees have resigned for similar reasons.

Background of Archaeological Investigations on Point of Fork

12. The archaeological investigation conducted by Circa at Point of Fork is flawed, inadequate, and unreliable, the reports of the investigation are misleading and inaccurate, and the proposed treatment plan based on those reports is inappropriate and unsupported. On this basis I conclude that the continued participation of Tyrer in the JRWA project will negatively impact the quality of the proposed treatment of sensitive cultural resources.
13. In 2017 and 2018, as an employee of Circa, I was part of a crew assigned to conduct archaeological investigations in the area proposed by the JRWA for the construction of a water pump station. The investigation was intended to assess the eligibility of known cultural resources for listing in the National Register of Historic Places and to identify unrecorded cultural resources including archaeological sites. Should the JRWA's proposed water pump station be constructed at this specific site, it would require significant disruption of the earth, which could contain significant archaeological evidence and cultural resources including artifacts and human remains. The purpose of the Circa investigation was to determine, preliminarily, what might be on or in the earth, what might be its cultural importance to the public and to interested parties (like affiliated Native American tribes), and to recommend a plan of treatment.
14. Circa was engaged to conduct this work by the Timmons Group ("Timmons"), an engineering consulting firm headquartered in Richmond, Virginia. JRWA had engaged Timmons as their project lead for the proposed pump station. Circa has also performed CRM work as a subcontractor to Timmons for other Timmons clients.
15. Part of our crew's charge was to search for unrecorded sites by excavating archaeological shovel test pits in a grid of regular survey lines called transects. We also were to conduct deeper testing in the lower floodplain areas with the assistance of a geoarchaeological subconsultant. Deep testing involves using heavy machinery to dig a trench to record soil stratigraphy (color and texture changes) indicative of different periods of human activity on the site and archaeological features indicative of human occupation and use.
16. I was present on site from the commencement to the end of initial testing. I was present for most shovel testing. I was present for all deep trench testing that was conducted at the proposed pump station and was instructed to excavate most of the archaeological features that we found in the trenches.

The Primary Crew Was Untrained, Unqualified, Unprepared, and Unsupervised

17. Prior the start of our work, Tyrer provided the field crew little background information on Point of Fork. We were not provided materials related to the prior documentation of Point of Fork as the historical chief city of the Monacan Indian Nation. We were not provided the map showing the location of Rassawek at this location prepared by Captain John Smith, nor any information related to the subsequent documentation by archaeologists associated with the Commonwealth of Virginia or the Smithsonian. Tyrer did say that human burials had previously been uncovered and documented on the site and suggested the site might be of great importance to Native Americans but provided no additional details.
18. Of the initial crew on the project, I was the only person with a master's degree and a BA in archaeology or a related field. The other two crew members do not have college degrees or any formal training investigating Native American sites; both were hired as a result of family friendships with Tyrer. They have both also since resigned from Circa.
19. Tyrer has expressed to me and colleagues that she avoids hiring people with master's degrees because they ask for too much money. Based upon my observations, she also prefers to hire young, inexperienced people as field technicians because they will not question her requests or approaches.
20. Notwithstanding my degrees, I have never taken a university course on Native American history or archaeology. I had no prior experience excavating Native American archaeological features in trenches when I was directed to work at Point of Fork. Tyrer did not train us how best to excavate such features prior to assigning us this work.
21. Tyrer did not accompany us to the site. She handed us a map with markings indicating where we should conduct shovel test pits and instructed us to drive to the site and begin work. We rarely saw her on site for the first five months of our work on site. During my employment, she almost never accompanied her crews into the field.

The Crew Lacked Appropriate Technology, Training, and Guidance to Conduct Accurate Surveys

22. In Tyrer's description of Circa on her LinkedIn page she asserts, "In addition to staff skills and experience, the firm is also equipped with specialized computer support services including mapping software. Our use of technology enables the firm to report results and exchange data in a cost efficient, accurate, and timely manner." This was certainly not true while I was employed by Circa to perform excavations at Point of Fork.
23. During my entire tenure at Circa, we did not employ technologies to ensure accurate documenting of the locations of archaeological resources, such as GPS, total station, or transit, even though these technologies have been available in the CRM field for at least the last 15 years. I made repeated requests to Tyrer for a Trimble GPS, for transit use at Phase II and Phase III excavations, and iPad technology so that Circa's work could be more accurate, efficient, and higher quality. She turned down my requests citing costs. Instead, crew members used basic compasses to attempt to map the transects along which we dug shovel test pits. Circa did not train crew members to properly use compasses; we did our best to figure it out for ourselves. Circa owned a GPS but used it to record metal detector responses, not to verify shovel test pit transects. Consequently, many times on projects, including on the JRWA project, our shovel test pit survey transects were inaccurate.
24. I lobbied Tyrer for several years to adopt current mapping technology. She acquired mapping software just before I resigned and after completion of the JRWA project work. Instead, Tyrer commonly provided maps with hand-drawn locations of the shovel test pits crews were to conduct. She did this on the JRWA project; the initial transects located at the pump station were hand-drawn. After beginning shovel testing based on our guess of project boundaries, our hand drawn transects were submitted to Timmons to create a map with intended shovel test pits. The maps created by Timmons were not based on a scientifically accurate location of shovel test pits.
25. Because of this mapping deficit, there were several times on the JRWA project when we conducted shovel test pits in the wrong location, well outside of the project area targeted for construction. I believe it very likely that listed locations in the archaeology reports of shovel test pits on the site are inaccurate and the quality and usefulness of those shovel test pits is poor. I believe the site boundary delineation may be influenced by insufficiencies in the shovel test pit survey.
26. Further, according to Virginia guidelines, shovel test pits should be excavated down to culturally sterile soil (soil showing no evidence of human habitation, frequently found *below* layers of human habitation). Tyrer neglected to tell us that we were digging on several areas in a flood plain, so we almost certainly mistook flood deposits as sterile soil and stopped digging before getting to archaeological evidence. That is, most of our test pits were too shallow to have revealed site features which, if present, would be destroyed when future construction disturbs the ground more deeply than our test pits. Later deep trench testing revealed that many areas of the site contained what is known as a Buried A Horizon, an early living surface buried under a subsequent flood event.
27. Virginia Department of Historic Resource ("VDHR") guidelines require the use of Munsell Soil Color Charts when evaluating a site. A Munsell book contains soil color swatches and descriptions that crew members use to differentiate site stratigraphy over large areas. Site stratigraphy is important to identifying the location, size, and boundaries of areas of occupation. Tyrer possessed a single long-outdated Munsell book which was often unavailable during field projects because it was in use on other projects. While an updated Munsell book was purchased in the latter half of 2017, it was not consistently used at the Point of Forks site. We were not properly trained to use the Munsell book and were not allotted time in the field to conduct Munsell assessments.
28. Tyrer did not invite me to review or verify the maps of purported test areas created by Timmons for the Point of Fork site or to review for accuracy the report drawing conclusions from these tests. Tyrer also did not, in my experience, discuss her conclusions regarding a site's sensitivity or eligibility with the field crew who surveyed or tested it, and field crew were almost never given the opportunity to review drafts of field reports before they were submitted to clients and agencies.
29. I have read correspondence sent to the VDHR by the geoarchaeological subconsultant hired by Tyrer to assist on the site. He stated various objections because Tyrer credited him with co-authorship of the Treatment Plan, and he similarly was never provided the opportunity to review the draft Treatment Plan in advance and object to its conclusions.

Tyrer Lied to State Officials and Demanded That Her Staff Do So

30. Early in the JRWA project, Tyrer provided the crew with a burial permit issued by VDHR, which required her to be on site and supervising the crew's work. The purpose of the requirement is to ensure that burials, if encountered, are recognized as such and that timely and proper protocols are followed for addressing such discoveries. Tyrer was aware that burials were previously documented on the site.
31. Tyrer did not travel to Point of Fork and was largely absent from the site for the first five months of our work. Her absence was consistent with my experience as a crew member on several previous Circa projects that excavated human remains. Tyrer did not remain on site for any of those excavations.
32. On October 12, 2017, Greg LaBudde, a professional with VDHR, visited the site while our crew was working. He asked who was supervising, for which we had no immediate answer since Tyrer's practice was not to designate a field supervisor, even in her absence. When a crew member informed Tyrer of LaBudde's visit, Tyrer was said to have become concerned and bothered. She demanded that a member of the crew inform LaBudde that Tyrer was typically at the site and that she had just left the site temporarily that day. I understood this to mean that Tyrer was asking the entire crew to lie on her behalf.
33. LaBudde returned to the site the following day, October 13, 2017, and Tyrer was again absent. A crew member, following Tyrer's directive, told LaBudde that Tyrer had only temporarily left the site but that she was supervising our work closely—both false statements. The crew member to whom Tyrer spoke by phone that day—one of her longest serving employees—later resigned, explaining to me that her asking him to lie was a major reason for that decision.
34. After LaBudde's second visit, Circa staff learned that Tyrer had received a letter of complaint from VDHR because the project was not complying with the requirement of the burial permit that Tyrer directly supervise work on the site.
35. Soon thereafter, Joe Hines, project lead for Timmons, came to the site and asked me about my professional and academic credentials. Tyrer then instructed me to send her my resume. Tyrer suggested that she might forward my resume to VDHR as "part of modifications to the burial permit." I was concerned about her motivations for the request, because I believed Tyrer had been dishonest previously when communicating with clients and agencies on prior projects. I sent her a copy of my resume in PDF format as that format is harder to manipulate.
36. About two years later, in July 2019, I received a copy of my resume that Tyrer submitted to VDHR. It is substantially modified, and grossly mischaracterizes and exaggerates my experience with prehistoric sites. I have not surveyed and analyzed Native American sites of all periods, as the resume states. My expertise is not in Native American archaeology as the resume states; my master's thesis focused on enslavement of African Americans on Virginia plantations in the antebellum period. While I earned a Master in Archaeology and Heritage degree, I never took a university course on Native American history or archaeology. Further, the submitted resume identifies me as a Field Supervisor, but I was never promoted to or paid as a Field Supervisor during my time at Circa. I was never given the responsibilities of site supervision at Point of Fork or on other projects consistent with that position. I believe Tyrer intentionally mischaracterized my career and expertise to create the appearance of the presence of a highly qualified on-site crew member to lessen the implications of her failure to supervise or guide her employees in this important investigation.
37. In October 2019, I had the opportunity to review a letter from Tyrer to VDHR dated October 20, 2017 in which she insinuates that LaBudde's surprise site visits were inappropriate and that he was hostile or intimidating to our crew. LaBudde was, in fact, very professional. Tyrer's letter, like the unauthorized reworking of my resume, exaggerates my credentials. For example, she states: "Please note that Mr. Mai has performed surveys and analyzed Native American sites of all periods, including Paleoindian to Late Woodland." While I have worked on field crews on several Native American sites, I do not possess enough knowledge to differentiate between Native American site periods and have not investigated all periods, as Tyrer is fully aware.
38. After the VDHR letter of complaint, Tyrer was present more frequently on site, though she typically sat in her vehicle completing reports for other projects. Tyrer did not directly supervise the work we were doing. While I personally excavated most of the Native American cultural features at the proposed pump station, for which I did not possess expert knowledge, Tyrer did not observe my excavations nor did she have direct contact with any Native American cultural feature. The conclusions that she made in the archaeological report are based on the notes that I took on these cultural features, which may be insufficient due to my inexperience in excavating Native American cultural features.
39. After the VDHR letter of complaint, Tyrer replaced two crew members at the Point of Forks site who both lacked academic credentials with two new field crew members who possessed at least a BA in anthropology or a related field. Neither new member had worked for Circa previously. Before long they were reassigned to other sites. One resigned after a short period, stating to other crew members that she was uncomfortable with Circa's methods.

40. I have read the public reporting beginning in September 2019 that VDHR, after an investigation, determined that Tyrer had falsified her academic credentials and qualifications on her CV, which was used to help JRWA secure an anticipatory burial permit for Point of Fork and possibly numerous prior project contracts. Specifically, I have read that she claimed to have two master's degrees, including one in archaeology, but, that VDHR discovered that she has only one master's degree which is not in archaeology, anthropology, or a related field, on which basis VDHR concluded that Tyrer is not qualified under the U.S. Secretary of Interior's standards to lead the work she conducted at Point of Fork.
41. Tyrer was consistently vague when discussing her academic degrees in my presence during my employment. She never referred to having taken any specific archaeology or anthropology courses. She never referred to specific faculty from whom she has learned in her claimed master's in archaeology program. She did state that she was enrolled in a degree program that was ending due to some issues at the educational institution, but that they were going to allow her to complete her degree.

Tyrer Enlisted Untrained Construction Workers to Conduct Archaeological Investigation on Portions of the Site Targeted for Construction

42. During shovel testing on the entire portion of the site where JRWA plans the most ground disturbance—surrounding the proposed water pump station location itself—Tyrer enlisted unoccupied construction workers from Faulconer Construction (vendors to JRWA engineering consultant, Timmons) to perform sensitive archaeological investigations.
43. These workers had never excavated or tested an archaeological site of any kind. They had no educational background or training in archaeology.
44. It is my understanding that Circa did not pay these workers – they were paid by Faulconer Construction.
45. Faulconer Construction workers dug shovel test pits and screened the soil for artifacts, although they told me they had no idea what they were looking for. I was concerned that they would not accurately recognize soil changes and that stratigraphy in the shovel test pits they recorded would be inaccurate.
46. I observed Faulconer Construction workers using inappropriate and destructive equipment, such as a post-hole digging bar, to excavate shovel test pits. Such a tool is heavy and would have a greater chance of damaging artifacts and features before they could be revealed and recovered.
47. I attempted to reduce the harms of using unskilled and untrained persons to conduct sensitive tests by urging them to use proper equipment and trying my best to monitor their work while also doing my own tests. But I was regularly directed by Tyrer to excavate archaeological features in the deeper testing trenches away from this critical area; therefore, there were many times when these construction crew were excavating or screening with no supervision whatsoever.
48. In summary, to the area of greatest proposed disturbance by JRWA, Tyrer sent the least qualified and supervised people to conduct testing.

Archaeological Sensitivity at Point of Fork

49. I have read recent public statements by legal counsel for JRWA that Point of Fork is likely not the location of Rassawek, the Monacan Indian Nation's capital city, and that there is low likelihood of burials at the site. I am not familiar with any scientific evidence or data that would make such assertions reasonable, especially considering the voluminous documentary evidence that places Rassawek on Point of Fork, and the uncovering by a storm of numerous human burials at the site in a prior decade.
50. While my knowledge of Native American archaeology is limited, based on my personal experience with excavations at Point of Fork, the area where the pump station is proposed represents a significant Native American occupation. Tyrer herself stated at the beginning of the project that the proposed construction was on a major site with likely burials, but, as detailed above, left us in the dark as to what we might find and without time or resources to do the background research ourselves.
51. In almost every deep trench we dug at Point of Fork we found archaeological features indicative of significant human habitation (shelter floors and supports, hearths), culture (decorative pottery, including with crenulations), and industry (stone tool construction).
52. While, as I have stated, I am not an expert on Native American sites, I believe the number and types of artifacts and features uncovered were unusual in their archaeological richness. The archaeological remains we found during testing, for example soapstone bowl fragments, were among the most impressive I saw during my more than six years with Circa, and the sites continued to be on my mind after I left Circa.

53. Based on the type and number of features we found during testing, I believe there are numerous features that would be identified by a full-scale data recovery on the site, and at many different depths across the site. I do not believe that machine stripping as contemplated by the Treatment Plan would effectively identify these features because many of them were not visible in our trenches until machine stripping had already removed significant portions of these features. Fine variations in soil color and texture were often difficult to determine at the pace and scale of machine excavation, and it was not until artifacts were seen and sometimes damaged that features could be discerned.
54. Even if the Army Corps of Engineers somehow determines that excavating this site in advance of its destruction is appropriate, a full and scientific excavation would require far more work, and far more careful and costly work, than is proffered in the proposed Treatment Plan.

Circa's Site Report and Treatment Plan Are Inaccurate, Misleading, Unreliable, and Contain Plagiarism

55. After resigning from Circa, I obtained and reviewed a copy of Circa's Phase I/II archaeology report and their proposed site Treatment Plan.
56. Phase I/II report is not a full and accurate assessment of what we found during survey and testing. For example, even with the flawed survey methodology and flawed mapping accuracy and the use of untrained and unsupervised workers, the crew nonetheless found significant evidence of Native American occupation at the JRWA site, including in areas that are downplayed or not acknowledged in the report. For example, we found concentrations of fire-cracked rock (evidence of cooking, as in hearths), debitage (evidence of stone tool production), and other cultural material during shovel survey (and laying on the surface of the ground) by the power line easement near the top of the upper floodplain area. I do not believe the Circa report accurately characterizes the site's cultural richness in this area.
57. The methodology used to analyze the artifacts we found is also misstated. For example, the careful methods used to investigate artifacts in the laboratory Tyrer claims to have followed were not, in fact, used. All artifacts sent to the lab were treated the same, regardless of type, importance, or condition. This approach was consistent with Circa's approach on prior projects. One of my colleagues on the JRWA project crew also served as Circa's lab manager. He was responsible for all artifact processing. However, he does not have training in handling artifacts. He does not have any educational background that would have prepared him for those responsibilities. He has now resigned from Circa.
58. Circa's proposed Treatment Plan (their proposal for how they plan to mitigate the damage to the sites if the plans to build on the site are authorized) also contains promises for quality of care of treatment that is contradicted by Circa's prior practice and capacity. For example, the plan promises that screening will be done using 1/8th inch mesh, which would be preferred at such a sensitive and important site. Screening methods that use smaller mesh screens tend to result in greater quantities of artifacts collected and greater quantities create increased opportunities for rare or underrepresented artifacts to be collected. But I cannot recall Circa ever using such tight screens on a site, no matter how important or sensitive the site.
59. The large trenches proposed in Circa's Treatment Plan will require substantial set-backs due to the depth of the excavations. The plan does not make clear how and whether these step backs will be mitigated.
60. The plan promises extensive monitoring. Based on my experience working with Circa, particularly at Point of Forks, Tyrer herself almost never shows up to monitor work. Also, Circa has lost many of its more experienced staff over the last year. As a result, it is unlikely that Tyrer will have available Circa staff with monitoring experience.
61. In summer 2019, it became publicly known that an important and lengthy section of Tyrer's proposed Treatment Plan for the Point of Fork site was plagiarized from the dissertation of a former graduate student unaffiliated with the project or Circa. I was not at Circa when the Treatment Plan was written. However, during my employment at Circa only Tyrer or the architectural historian on staff authored such documents.

Circa's Approach to Point of Fork Was the Rule, Not the Exception: Pervasive Inadequacies of Methodology, Ethics, and Expertise

62. After having spent more than six years at Circa at the start of what I hoped would be a long career in CRM, the ethical and professional lapses in Circa's work that I observed were pervasive. Circa's problematic work at Point of Fork was consistent with Tyrer's approach on most sites.
63. Direct staff training was virtually nonexistent at Circa. Tyrer never instructed me on how to properly excavate test units or features, how to assess soil typology, or how to correctly fill out test unit or shovel test pit forms that created the written record for the archaeological investigations we conducted.
64. Because the position at Circa was my first experience in American archaeology and in CRM, I initially learned most of my archaeological approaches from the more senior field staff at Circa, who had no formal archaeological schooling and little archaeological training outside of Tyrer's instruction or that of previous Circa staff.
65. Circa's information recording and collection was spotty, at best, and outright fabricated at worst. On multiple occasions, staff were instructed to create documentation after-the-fact, and even to create paperwork for shovel test pits that had not been dug or to invent data about shovel test pits that were not gathered.
66. For example, during Circa's survey in Nokesville, Virginia of a project reviewed by the Virginia Department of Environmental Quality ("VDEQ"), Tyrer directed staff to excavate every 100 feet instead of every 50 feet as required by the VDHR archaeological survey guidelines. Tyrer directed Circa staff to falsify these shovel test pits by creating non-existent shovel test pit records so that it would appear that all areas were surveyed every 50 feet. Also, when VDEQ reviewed Circa's work at Nokesville and found no Munsell soil color descriptions on the shovel test pits forms, Tyrer directed Circa staff to guess at Munsell values and add them to test pit paperwork in the lab.
67. There was nervousness among the young staff around these regular directions to falsify records. On one occasion, a staff member joked about rubbing dirt on the forms so they would appear to have been used in the field.
68. I understand that a former Circa employee possesses one or more voice recordings of Tyrer discussing falsifying shovel test pit forms.
69. As happened at Point of Fork, Tyrer typically does not visit archaeological sites during fieldwork to supervise or guide the methodology or approach of Circa staff. Tyrer works from home or at the office and writes the reports, frequently without visiting the places about which the reports are written.
70. Tyrer frequently changes the people assigned to crews from week to week, sending out crews of people who have no prior knowledge of the site or the situation in the field. This frequent turnover has caused crew to survey incorrect locations and generated other methodological issues.
71. Sometimes Tyrer will pause fieldwork at a site mid-survey and move the crew to another site for months at a time, without taking precautions to protect the first site during the delays. When the crew returns to these abandoned sites, they must address deteriorated conditions from exposure to bad weather. In some cases, these delays damaged cultural resources present at the original site.
72. I have read the public statements made by the JRWA's legal counsel that Tyrer *must* have been qualified to lead the Point of Fork work—notwithstanding her falsified resume—because Tyrer had performed so many prior investigations in Virginia. From my own observations I can attest that one doesn't become qualified to do quality work by repeatedly getting away with doing poor work. When I suggested more efficient and scientifically accurate ways of completing work, Tyrer responded to me that the way she conducted work was the way it has always been done. I and other crew members often suggested ways in which to do the work in a way that we felt was more accurate; however, Tyrer always rejected our suggestions in favor of her established methods.

Circa's Priorities Are Project Speed and Money, Not Quality or Discovery

73. My experience leads me to conclude that the priorities at Circa are money and speed in assistance of developer timelines over the quality of the work or value of discoveries.
74. Circa would take on multiple projects simultaneously without enough staff to complete the work, or where the budget submitted was inadequate relative to the work required once an investigation began.
75. As just one example, for work in advance of a housing development in Mechanicsville, Virginia, I went into some trees on the site and found a historic house foundation, chimney, and associated archaeological site. The house was on historic maps, but

Tyrer had not been aware of it before our field visit. The recording of the site was then rushed because Circa had not anticipated or apparently budgeted money or time to document a significant site.

76. Circa also prematurely ended archaeological testing required as part of the construction of the Redskins training camp in Richmond on Broad Street. The project area contained a site that had been a Civil War encampment and later became a freedman's community. We found features that several staff members considered likely to have been part of Civil War fortifications. I was present for all excavations at this site, as well as the machine monitoring. I believe that the archaeological investigations undertaken were rushed and features ignored.
77. Based on the Circa projects with which I have direct experience, I believe there are many more examples where state archaeological guidelines and proposal commitments were not followed as required by the terms of the contracts received by Circa.
78. Salary at Circa was not high enough to attract or retain trained archaeologists. For example, I was paid \$10.50 per hour at the start of my employment in 2012 and approximately \$16.50 per hour when I left in 2018, having obtained a master's degree and a graduate certificate in the interim. My colleagues and I were all hourly employees entitled to overtime for work over 40 hours per week. However, Tyrer required us to falsify our hours reports by moving excess hours onto other weeks to avoid Circa paying overtime.
79. Circa has conducted several projects for Timmons. A Circa colleague shared with me that Timmons had expressed interest in acquiring Circa.

I declare under penalty of perjury that the foregoing is true and correct.

Eric V. Mai
Signature of Declarant

ERIC V MAI
Name of Declarant

Subscribed and sworn to before me this 16th day of OCTOBER, 2019.

VIRGINIA NOTARY ACKNOWLEDGMENT

Commonwealth of Virginia

City of Richmond

The foregoing instrument was acknowledged before me this 16th day of October, 2019, by Eric Mai (name of person acknowledged).

Susan Wager Williams 10/16/2019

Signature of Notarial Officer

Notary Registration Number: 4138154

My Commission Expires: March 31, 2023

(Seal)

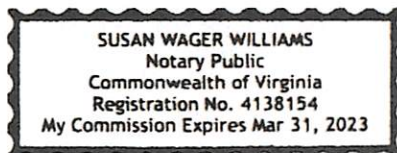


EXHIBIT G

THE LAW FIRM OF
WALDO & LYLE
A PROFESSIONAL CORPORATION

EMINENT DOMAIN & PROPERTY RIGHTS

MEMBER OWNERS' COUNSEL OF AMERICA

301 WEST FREEMASON STREET
NORFOLK, VIRGINIA 23510
TELEPHONE: (757) 622 5812
FACSIMILE: (757) 622-5815
www.waldoandlyle.com

May 22, 2017

G. Rodney Bialkowski, Sr., Trustee
c/o George R. Bialkowski, Jr.
1215 Point of Fork Road
Union Fork, VA 23055

Re: James River Water Authority
v. G. Rodney Bialkowski, Sr., Trustee of the
G. Rodney Bialkowski, Sr. Trust, dated
September 11, 2003
Case No.: CL17000102-00

Dear Mr. Bialkowski:

In accordance with our policy of providing clients with copies of all correspondence related to their cases, enclosed for your records please find a copy of a certified Final Order Confirming Settlement and Confirming Indefeasible Title received by my office on your behalf entered May 12, 2017 with regard to the above-referenced matter.

Very truly yours,

by 
Stephen J. Clarke

SJC:mag
Enclosure(s)

VIRGINIA:

IN THE CIRCUIT COURT OF FLUVANNA COUNTY

1548

In the matter of the Certificate of Take,)
 filed by the James River Water Authority in)
 the Circuit Court of Fluvanna County, and)
 recorded as Instrument No. 1603931)
 relating to the acquisition of certain utility,)
 access and temporary construction)
 easements for water supply purposes by the)
James River Water Authority from)
G. Rodney Bialkowski, Sr., Trustee of the)
G. Rodney Bialkowski, Sr. Trust, dated)
September 11, 2003.)

Case No. 17CL102

FINAL ORDER CONFIRMING SETTLEMENT
AND CONFIRMING INDEFEASIBLE TITLE

This cause came on this day to be heard upon the *Petition to Dismiss Pursuant to Section 25.1-317* of the James River Water Authority ("Petitioner" or "JRWA"), this day filed herein and upon the exhibits filed therewith.

UPON CONSIDERATION WHEREOF, it appearing to the Court that the James River Water Authority has filed a Certificate of Take ("Certificate") in the amount of \$5,200.00 which was recorded on December 29, 2016 as Instrument No. 1603931 in the Clerk's Office of this Court, which Certificate relates to the acquisition, for water supply purposes by the James River Water Authority, of certain easements in land from the Landowner, G. Rodney Bialkowski, Sr., Trustee of the G. Rodney Bialkowski, Sr. Trust, dated September 11, 2003, herein, as described in the Certificate; that after the recording of the Certificate but before the institution of condemnation proceedings, the James River Water

Authority and G. Rodney Bialkowski, Sr., Trustee of the G. Rodney Bialkowski, Sr. Trust, dated September 11, 2003, the owner of the property described in the Certificate, agreed as to the compensation to be paid, all of which is set forth in a written Agreement properly executed by the parties, a copy of which is attached to Petitioner's *Petition to Dismiss* and marked "Exhibit A." On April 6, 2017, the Petitioner approved the terms of this Agreement pursuant to paragraph 4.

Upon the filing of the Certificate and pleadings and there being no objection by the Landowner, the Court finds that a public necessity for the acquisition exists, that a bona fide but ineffectual offer to purchase the land was made by the Petitioner prior to the commencement of these proceedings and that the easements acquired will be devoted to a public use.

WHEREFORE, the Court hereby confirms the right to use of the Water Line easement, the Joint Use Utility Easement, the Access Easement and the Temporary Construction Easement as follows:

Water Line Easement:

A nonexclusive perpetual 20' Water Line Easement, labeled "Proposed 20' Water Line Easement" on a plat by Timmons Group dated September 6, 2016 titled "Plat Showing Proposed 15' Joint Use Utility and Access Easement, Proposed 15' Access Easement, Proposed Variable Width Access Easement, Proposed 20' Water Line Easement and Proposed Variable Width Construction Easements Across the Properties of G. Rodney Bialkowski, Sr. Trust " ("the Plat"), a copy of which was attached to and recorded with the Certificate. Reference is made to the Plat for a more complete description of the area and location of said easement, and shall include the right to erect, construct, install and lay and thereafter use, operate, inspect, repair, maintain, replace, and remove utility lines for the purposes of provision and conveyance of water and appurtenances thereto, including, but not limited to, manholes, valves and related equipment and appurtenances on the land of the Landowner as shown on

the Plat. However, the JRWA does not have the right to erect any structures above ground within the easement area.

The JRWA, its agents, employees and successors and assigns, shall have full and free use of the said easement and rights for the purposes named herein and all rights and privileges reasonably necessary to the enjoyment and exercise of the Water Line Easement, including the right of reasonable access to and from the easement area over the remaining land of the Landowner by such private roads as may now or hereafter exist on the property of the Landowner. The right, however, is reserved to the Landowner to shift, relocate, close or abandon such private roads, if any, at any time. If there are no public or private roads reasonably convenient to the Water Line Easement, then the JRWA, its agents, employees, successors and/or assigns shall have such right of reasonable ingress and egress over the lands of the Landowner adjacent to or within the Water Line Easement.

Joint Use Utility Easement:

A nonexclusive perpetual 15' Joint Use Utility Easement, labeled "Proposed 15' Joint Use Utility and Access Easement," on the Plat. Reference is made to the Plat for a more complete description of the area and location of said easement. The 15' Joint Use Utility Easement shall be for the purpose of allowing by permit the installation, construction, operation, maintenance, inspection, rebuilding, repair, improvement, relocation, alteration, replacement or removal of the following facilities:

- a. An underground electrical system to be installed, operated, owned and maintained by Virginia Electric and Power Company d/b/a Dominion Virginia Power, its agents, successors or assigns, for the purpose of transmitting and distributing electric power by one or more underground circuits, telephone and other communications systems relating thereto, consisting of wires, conduits, cables, transformers, transformer enclosures, concrete pads, manholes, hand-holes, connection boxes, accessories and appurtenances desirable in connection therewith.
- b. A communication system to be installed, operated, owned and maintained by Century Link, its agents, successors or assigns, for the purpose of providing telephone, cable television and high speed internet services, consisting of buried cables, buried wires, posts, terminals, pedestals, vaults, conduits, manholes, hand-holes, and related aboveground facilities including, but not

limited to, cables, wires, poles, posts, terminals, location markers, cabinets, equipment housings, remote terminal units, and other appurtenances as may from time to time be required

The JRWA and its permittees shall have the full and free use of the said easement and rights for the purposes named and all rights and privileges reasonably necessary for the enjoyment and exercise of the Joint Use Utility Easement, including the right of reasonable access to and from the easement area over the remaining land of the Landowner by such private roads as may now or hereafter exist on the property of the Landowner. The right, however, is reserved to Landowner to shift, relocate, close or abandon such private roads, if any, at any time. If there are no public or private roads reasonably convenient to the Joint Use Utility Easement, then the JRWA and its permittees, shall have such right of reasonable ingress and egress over the lands of the Landowner adjacent to or within the Joint Use Utility Easement.

Access Easement:

A nonexclusive perpetual Access Easement being 15 feet on either side of the centerline of the existing gravel road as shown and identified on the Plat as "Proposed 15' Access Easement", "Proposed 15' Joint Use Utility and Access Easement" and "Proposed Variable Width Access Easement." Reference is made to the Plat for a more complete description of the area and location of said easement. This easement shall be for the purposes of ingress to and egress over and across the aforesaid area to allow the JRWA, its agents, permittees, successors and assigns reasonable access to construct, operate, maintain, inspect, rebuild, repair, improve, relocate, alter, replace and remove any and all facilities as part of the Project.

Temporary Construction Easement:

A Temporary Construction Easement, labeled "Proposed Variable Width Temporary Construction Easement" on the Plat, running parallel to the aforementioned 20' Water Line Easement, which shall include the temporary right and easement to use this area shown on said Plat as being for the proper construction of the utility facilities and containing 107,453 square feet, more or less. Reference is made to the Plat for a more complete description of the area and location of said easement. The Temporary Construction Easement shall terminate at such time as the construction of JRWA's project is complete. JRWA shall have the right to trim, cut, and remove trees, shrubbery, fences, or other obstructions or facilities in or near the aforementioned easements being conveyed

deemed by it to interfere with the proper construction, operation, and maintenance of its utility facilities or access within the easement areas; provided, however, that the JRWA at its own expense shall restore, as nearly as possible, the premises to its original condition, such restoration shall include, backfilling of trenches, replacement of shrubbery, re-sodding, and reseeding of lawns and pasture areas, but not the replacement of structures, trees, or other obstructions, with the exception of mailboxes, which may be reasonably relocated as part of the replacement.

Being a portion of the same property described in the Certificate of Take recorded December 29, 2016 in the Clerk's Office of this Court as Instrument No 1603931.

in the James River Water Authority and directs that this Order be spread in the current deed book in the Clerk's Office of this Court and indexed in the names of **G. RODNEY BIALKOWSKI, SR., TRUSTEE** of the **G. Rodney Bialkowski, Sr. Trust dated September 11, 2003** and **JAMES RIVER WATER AUTHORITY**, a **political subdivision of the Commonwealth of Virginia** as Grantee.

It further being represented that no funds under the Certificate have been previously withdrawn and that the Clerk is holding the amount of the original deposit under the Certificate, \$5,200.00, plus interest, if any; and that the Petitioner has tendered with the Motion to Dismiss Check No. 1117 payable to the Clerk of this Court in the amount of \$94,800.00, the difference between the amount of the Certificate (\$5,200.00) and the amount of settlement (\$100,000.00); it is **ORDERED** that the Clerk draw from the appropriate account a check in the amount of \$100,000.00, plus all accrued interest, if any, payable to "G. Rodney Bialkowski, Sr., Trustee of the G. Rodney Bialkowski, Sr. Trust,

The Clerk shall also mail a certified copy of this Order to F. Adam Cherry, III, Randolph, Boyd, Cherry and Vaughan, 14 E. Main Street, Richmond, Virginia 23219, as counsel for the Petitioner.

The Court further **ORDERS** that upon compliance with the directions of this Order James River Water Authority shall be relieved of all further obligations by virtue of having filed the Certificate of Take and this cause shall be removed from the docket of this Court and placed among the ended causes.

Michael E. Moser
Judge

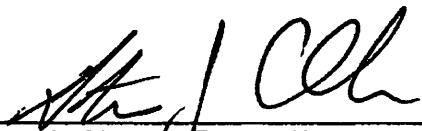
E. A. Hagg

Francis A. Cherry, Jr. (VSB #12595)
F. Adam Cherry, III (VSB #70890)
Randolph, Boyd, Cherry and Vaughan
14 East Main Street
Richmond, Virginia 23219
Phone: (804) 643-6611
Fax: (804) 783-2765

6

986 754

Seen and Agreed:



Stephen J. Clarke, Esq. (VSB #72835)
Waldo & Lyle, P.C.
301 West Freemason Street
Norfolk, Virginia 23510
Phone: (757) 622-5812
Fax: (757) 622-5815

*Counsel for G. Rodney Bialkowski, Sr., Trustee
of the G. Rodney Bialkowski, Sr. Trust, dated September 11, 2003*

CIVIL ORDER BOOK 16
PAGE(S) 759-765

INSTRUMENT 1701548
RECORDED IN THE CLERK'S OFFICE OF
FLUVANNA COUNTY ON
May 16, 2017 AT 03:24 PM
TRISTANA P. TREADWAY, CLERK
RECORDED BY: SAP

A Copy
Teste: Sandra A. Pannish, CDC
Tristana P. Treadway, Clerk 5/16/17
Fluvanna County Circuit Court
Palmyra, Virginia

EXHIBIT H

James River Water Authority

✓
G. Rodney Bialkowski, Sr. Trustee
of G. Rodney Bialkowski, Sr. Trust
McComman # 2017000 412

It is Agreed that all matters arising out of the action by the James River Water Authority (JRWA) to take by eminent domain certain property rights of The Aloue Trust for the construction, maintenance and operation of a water line, including all rights of any associated therewith under certificate filed in the Circuit Court of Gloucester County, hereby are settled on the following bases:

"The Trust is entitled to just compensation in the aggregate amount of \$ 100,000 of which \$ 22,322 shall be considered just compensation for the taking of the land of Timber with the balance for damage to the Residence.

2. JRWA and Louisa and Gloucester Counties waive all claims to artifacts uncovered on the condemned ~~land~~ ^{Property} and Right of way. Such artifacts, if any, are to be considered owned & will be distributed to such person or persons as the Applicable law of Virginia or the law of the United States provides.

(1 of 3)

3. This settlement is to remain strictly confidential until the settlement is presented to and considered by the J.R.W.A. and the Tourist and Fluvanna Boards of Supervisors to the extent such matter is deemed necessary or appropriate for consideration/approval of such bodies.
4. This settlement is contingent upon approval by the J.R.W.A. Board and such other local boards, if any, as may be required by law.
5. Tender of the settlement proceeds, if approved, is contingent on the Trustee of the Trust securing subordination requirements from any lenders holding deeds of trusts, notes or liens on the premises/property covered by the Certificate(s) of Title.
6. Once the settlement has been approved, it is agreed that the J.R.W.A. and its agents and contractors are entitled to such access as the law provides w/out interference.

(2 of 3)

7. The owner, trustee or occupier of the Trust Property may contract any contractor for the purpose of removing firewood that could be harvested from timber that is the subject of the take. This provision shall not be construed as a direction from the ARWA that such contractor must agree to such harvesting nor shall it be construed as a prohibition from such agreement.

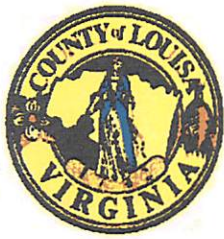
3/31/17

Jones River Water Walk
by [Signature]
[Signature]
Council for ARWA

G Rodney Bialkowski,
Sr. Trustee of the
G Rodney Bialkowski, Sr
Trust
by [Signature]
[Signature]
Council for the
Trustee's Trust

(393)

EXHIBIT I



JAMES RIVER WATER AUTHORITY



c/o Steve Nichols
132 Main Street
Post Office Box 540
Palmyra, VA 22963

March 31, 2016

Mr. Rodney G. Bialkowski
1215 Point of Fork Rd
Fork Union, VA 23055

Property Access Authorization: Parcel(s): 53 A 61 and 53-A-63

Dear Mr. Bialkowski:

This letter confirms our agreement that you will provide the James River Water Authority (JRWA), its consultants and agents, and any regulatory agencies and authorities with authorization to enter your property described above for a period of six weeks commencing on April 6, 2016 for the purposes of conducting due diligence assessments including: (1) geotechnical, environmental, archeological, threatened and endangered species evaluations, (2) property appraisals, design, permitting and survey work, and (3) other activities as required to implement the project.

In return for providing access, the JRWA agrees to pay you \$3,000 and agrees to the following conditions:

1. You will not be liable for any injuries that may be suffered by the JRWA or any of its contractors working on the properties.
2. Mr. Joe Hines, Timmons Group Engineer, will not access your property during any of the survey/engineering period.
3. The tree that was previously damaged on your property near the deer stand when during a previous inspection contractors drove multiple nails into the tree and tacked up signs/survey tape will be repaired and in the future stakes will be used adjacent to the tree without damaging the tree itself.
4. The JRWA understands that this access requires JRWA to replace or repair any disturbed areas back to original condition.
5. Neither the JRWA, nor its consultants and agents, will remove any artifact or any other item or part of the property.
6. You shall be notified immediately in the event any portion of your property is damaged during the survey and testing work.
7. Each day, you will be sent an email specifically identifying those who will be entering the property and what work they will be performing.

By signing below, the parties evidence their agreement to the terms and conditions described above.

Authorized Signature & Date:

*Carlingend Mrs. Sea signs her
Property Access Authorization for*
Rodney G. Bialkowski
Rodney G. Bialkowski

JRWA Signature & Date:

SMN 4/10/16
Steve Nichols, JRWA Board Member

04/10/2016