

Via Email

March 14, 2022

Mr. D.D. Watson, Chair
James River Water Authority
132 Main Street
Palmyra, VA 22963
dwatsonmortician@aol.com

Re: James River Water Authority Water Supply Project Alternative Site

Dear Mr. Watson:

My firm's client, the Monacan Indian Nation (the "Nation"), understands that the James River Water Authority (JRWA) Board is preparing to vote on a proposal from your project team to relocate the pump station and water line to a site (Alternative 1C) that is distinct and distant from your original planned site, to which the Nation has long objected out of concern for adverse impacts on its historic capital at Rassawek. The Nation commends and strongly endorses JRWA's vote to seek permitting for the project at Alternative 1C.

On January 12, 2021, I provided a letter to attorneys for JRWA outlining conditions under which the Nation would support relocating the project to Alternative 1C. The conditions were as follows:

- 1) JRWA engages Gray & Pape, Inc. to identify and test for cultural resources along the entirety of the area of ground disturbance anticipated for Alternative 1C, and the Nation has an opportunity to provide input on and review the testing plan in advance, to receive timely copies of the results, and to be notified immediately if human remains are discovered along the route; and
- 2) The testing does not confirm or strongly indicate the presence of human remains on the alternative routes (*even if it indicates that other types of tribal cultural resources will be impacted, as expected*).

My letter outlined certain assurances the Nation was prepared to give if JRWA satisfied those conditions:

- 1) The Nation will collaborate fully and expeditiously with JRWA toward reaching an agreement on a Treatment Plan for construction on Alternative 1C, which plan will:
 - a. Endeavor to give full and proper treatment to any cultural resources documented or discovered on the route without unnecessarily driving up costs or consuming time; and
 - b. Include no financial mitigation payments to the Nation for any harms to cultural resources with which the Nation is associated, but the parties will

- endeavor to secure the agreement of landowners to turn over to the Nation any excavated artifacts.
- 2) The Nation will write to all relevant federal and state agencies stating that the Nation:
 - a. Supports JRWA's plans to build on Alternative 1C and urges expeditious approvals for all permits needed by JRWA;
 - b. Feels that an EIS is not warranted for the route; and
 - c. Waives all objections to what it alleges are prior failures of the Army Corps of Engineers and/or JRWA to comply with legal requirements of the National Historic Preservation Act's Section 106 or the National Environmental Policy Act or any other federal law, and waives all other claims that, if advanced, may delay the project.
 - 3) The Nation and JRWA will collaborate to explore the purchase by the Nation or partner third parties of any lands on the Point that JRWA purchased in anticipation of construction on the prior route.
 - 4) If an Anticipatory Burial Permit application or Unanticipated Discoveries Plan is to be prepared by JRWA at its discretion or as a condition of a Memorandum of Agreement, the Nation will, upon JRWA's request, collaborate fully and expeditiously in the development of the draft application or plan. The objective of this cooperation is to produce a final application or plan that provides a reasonable and mutually agreeable protocol in the event unexpected tribal cultural resources are discovered during project-related activities. Provided agreement is reached on the application or plan, both parties will represent that agreement to the relevant agencies.

Consistent with the Nation's conditions in the January 2021 letter, JRWA engaged Gray & Pape to conduct a cultural resources study of the Alternative 1C pump station site and water line route. The Nation had the opportunity to provide input on the study plan and observe the study while it was in progress. We received a copy of Gray & Pape's final report titled, *Phase I History/Architecture, Archaeological, and Geoarchaeological Investigations for the James River Water Authority's Proposed Water Pump Station and Associated Facilities, Alternative 1C, Fluvanna County, Virginia*. The Nation has reviewed the report and is pleased that no burials were found. Nor were any sites identified that present an increased likelihood that burials will be found if a water supply system is constructed at this location.

The Nation fully supports the relocation of the project to Alternative 1C. To assist JRWA in expeditiously completing the project at that location, the Nation commits to implementing the assurances made in the January 2021 letter and restated above.

Best regards,



Marion F. Werkheiser
Attorney at Law
Counsel to the Monacan Indian Nation