

MEMORANDUM

June 21, 2018

TO: Ms. Kimberly Bose, Secretary
Federal Energy Regulatory Commission (FERC)
888 First Street N.E.
Washington, DC 20426

FROM: Ann Rogers, Section 106 Coordinator, Blue Ridge Environmental Defense League

CC: Roger Kirchen, Virginia Department of Historic Resources
Tom Klatka, Virginia Department of Historic Resources
Sonja Ingram, Preservation Virginia
Dale Angle & Family
Valerie Hauser, Advisory Council on Historic Preservation
William Dancing Feather, Advisory Council on Historic Preservation
Ira Matt, Advisory Council on Historic Preservation
Reid Nelson, Advisory Council on Historic Preservation
Charlene Vaughn, Advisory Council on Historic Preservation
John Eddins, Advisory Council on Historic Preservation
Kelly Fanizzo, Advisory Council on Historic Preservation
Andrea Ferster, Attorney-at-Law
Betsy Merritt, National Trust for Historic Preservation
Steve Vance, Cheyenne River Sioux Tribe
Ben Rhodd, Rosebud Sioux Tribe

SUBJECT: Objection to construction of Mountain Valley Pipeline (MVP) on property owned by Dale Angle **CORRECTED 6-21-18**
(This memo offers a correction of my memo dated June 20, 2018, Accession 20180620-5023, which incorrectly states that archaeological site 44FR0372 is located on property owned by Dale Angle. The site is located in close proximity to the archaeological sites on Dale Angle's property in the Blackwater River floodplain, on property adjoining Dale Angle's property.)

I am writing to request that FERC call a halt to all MVP construction activities on land owned by Dale Angle until consultations with the Cheyenne River Sioux Tribe and the Rosebud Sioux Tribe have been completed according to stipulations in the National Historic Preservation Act governing required consultation with tribes under Section 106.

CONSTRUCTION CURRENTLY UNDERWAY AT ANGLE FARM

The property in Franklin County, Virginia owned by Dale Angle is currently the site of ongoing MVP construction activities, including extensive excavation and dirt moving. Please see photo of construction at the Angle farm, below.



Photo: construction activities at Dale Angle farm, June 15, 2018, in an area where Preservation Virginia and the Virginia SHPO have indicated further archaeological investigations are warranted prior to pipeline construction

ANGLE FAMILY'S REQUEST FOR HALT TO CONSTRUCTION

On March 22, 2018, Dale and Mary Angle, owners of the property illustrated above, wrote to FERC requesting a halt to all tree clearing and pipeline construction activities on the MVP on their property until consultations with the Cheyenne River Sioux Tribe and the Rosebud Sioux Tribe had been completed. I quote the Angle's March 22 message to FERC in its entirety:

We are writing to request that FERC call a halt to all tree clearing and pipeline construction activities on the MVP until consultations with the Cheyenne River Sioux Tribe and the Rosebud Sioux Tribe have been completed according to stipulations in the National Historic Preservation Act governing required consultation with tribes under Section 106, as cited in the January 16, 2018 letter to FERC from the Tribal Historic Preservation Officer (THPO) representing the Cheyenne River Sioux Tribe, Steven Vance. Please see Mr. Vance's letter, attached.

On March 3-6, 2018, Mr. Vance accompanied Ben Rhodd, THPO/Archaeologist, Rosebud Sioux Tribe, on a visit to areas of southwestern Virginia through which the MVP has been routed. The two THPOs, accompanied by landowners and other concerned citizens of the MVP-

affected region, visited properties in Roanoke and Franklin Counties where the MVP has been routed through areas containing archaeological sites deemed eligible for listing on the National Register of Historic Places (NRHP) by archaeologists working under contract with Mountain Valley Pipeline, LLC. One of those properties containing NRHP-eligible archaeological sites that was visited by the THPOs is my farm in Franklin County. Additionally, the THPOs visited sites that have not yet been identified by MVP's archaeologists.

According to Ben Rhodd's letter (please see attached), the THPOs “identified, evaluated, and recorded sites directly within the Right of Way (ROW) that are attributable to the Lakota, Dakota, Nakota peoples. These sites (including one that is a burial) are the same in design, function, and purpose as sites documented on the Northern Plains and in States between Virginia and South Dakota.”

Said Mr. Rhodd, “The previous negotiations, consultation efforts with Tribes, findings, and evaluation methodologies are insufficient to protect the common cultural patrimony of the Lakota,” and “the prior consultation invitation to Tribes excluded the descendants(s), now Plains and prairie boundary Tribes, from being involved, considered, or consulted.”

We are concerned about FERC's failure to consult with the Sioux Indian tribes as required under Section 106 of the National Historic Preservation Act. What we and our neighbors in Franklin and Roanoke Counties have learned is that Advisory Council on Historic Preservation (ACHP) offers very specific rules that federal agencies such as FERC must follow when dealing with Indian tribes in the Section 106 process. These ACHP rules state:

- Federal agencies, in carrying out their Section 106 responsibilities, are required to consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by an undertaking.
- Historic properties of religious and cultural significance to an Indian tribe, such as the archaeological sites visited by the THPOs in Virginia on March 3-6, may be located in ancestral lands of the tribes located a great distance from where the tribes now live.
- NHPA and ACHP's regulations require Federal agencies to consult with Indian tribes when they attach religious and cultural significance to a historic property regardless of the location of that property. The circumstances of history may have resulted in an Indian tribe now being located a great distance from its ancestral homelands and places of importance.
- Federal agencies must make a reasonable and good faith effort to identify tribes that attach religious and cultural significance to historic property. If such Indian tribes have not been invited by the agency to consult, the tribes may request in writing to be consulting parties and must be considered as such by the agency.

It is well known in our region that a group of Indian tribes lived in a large area of Virginia, including Roanoke, Floyd County, and Franklin County. They had different tribal names but spoke an ancient language known as eastern Sioux. Franklin County is recognized by historians as being home to an eastern Sioux tribe that inhabited our region in the 1600s.

The area of our farm visited by the Sioux historians on March 5 is a field alongside the Blackwater River. We find arrowheads and remnants of pottery nearly every time we set foot in that field.

In conclusion, we respectfully request that FERC call a halt to all tree felling and construction activities on the MVP until the completion of consultation with the Sioux tribes who have claimed cultural and religious significance of archaeological sites in the path of the Mountain Valley Pipeline, and who have requested consultation under Section 106 of the National Historic Preservation Act.

PRESERVATION VIRGINIA'S STATEMENT ON ARCHAEOLOGICAL SIGNIFICANCE OF ANGLE PROPERTY

On June 29, 2017, Sonja Ingram, Preservation Field Services Manager, Preservation Virginia, wrote to the Virginia SHPO and FERC citing concern about six prehistoric archaeological sites located inside the Area of Potential Effect for the MVP, five of which are located on the Angle property. Said Ms. Ingram (emphasis added in quotations, see **yellow highlighting**):

- “We are concerned about six archaeological sites . . . located in Franklin County, Virginia that appear to be in areas of significant prehistoric use and habitation. We consider these sites to have not been fully evaluated and may be adversely affected by the Mountain Valley Pipeline and we encourage further testing and possibly more stringent mitigation measures.”
- “Site 44FR0372 was evaluated at the Phase II level and was found to contain intact, buried cultural deposits and was considered potentially eligible for National Register of Historic Places. No features were recovered during the Phase II. However, due to the buried cultural deposits, **there is a high probability that intact features associated with a campsite or village exist that could provide important information on prehistoric people of Virginia.** The fire-cracked rock recovered from the buried deposit may indicate hearths that could provide carbon samples to help date the site. **It is also not uncommon to find Woodland-era burials in association with sites located in floodplains in Virginia.”**
- “All of the sites’ boundaries appear to have been delineated by means of negative shovel test pits. Shovel test pits void of artifacts are a typical way to delineate site boundaries, however, **defining boundaries for many archaeological sites can be difficult due to unknown subsurface artifacts and features.”**
- “Prehistoric artifacts including stone tools and lithics, fire-cracked rocks and prehistoric pottery sherds that date from the Paleo-Indian to the Late Woodland time periods have been recovered from the entire floodplain by the landowners for over fifty years. The sites identified during the Section 106 review show a similar wide-ranging temporal assemblage of artifacts.”
- “The fact that a large number of artifacts dating from approximately 15,000 B.C. – 1600 A.D. ago have been found widely distributed on the surface of all parts of the floodplain would indicate, without further subsurface testing, that **the entire landform is culturally significant with the likelihood of many, possibly overlapping sites with blurred boundaries,** that date from the Paleo to Woodland time periods. Because of this **we believe the boundaries of all of the currently recorded sites are tenuous and only further subsurface testing can determine if substantial intact archaeological evidence extends outside of the current sites’ boundaries.”**
- “The most recent path of the pipeline is approximately 200 feet distance from the sites. If the current sites’ boundaries are inaccurate, **there is the high probability that important intact**

archaeological features may be destroyed by vehicular movement and subsurface disturbance during the excavation of the pipeline trench.”

VIRGINIA SHPO’S STATEMENT ON ARCHAEOLOGICAL SIGNIFICANCE OF ANGLE PROPERTY

After receiving Sonja Ingram’s letter quoted above, the Virginia SHPO wrote to MVP and Tetra Tech in a letter dated August 18, 2017: “A letter from Preservation Virginia dated June 29, 2017 raises several concerns regarding numerous sites in Franklin County that should be addressed. Specifically, we would be interested in better understanding how the potential for deeply buried cultural deposits along Blackwater River has been assessed in the new right-of-way established to avoid site 44FR0372. The shovel test data for that section do not appear to reflect the augering proposed to investigate such depositional areas.”

MVP’S AVOIDANCE AND CONTINGENCY TREATMENT PLANS

On December 20, 2017 Mountain Valley Pipeline, Inc. issued a report titled, “Mountain Valley Pipeline Project, Site 44FR0372 Avoidance Plan and Contingency Treatment Plan, Franklin County, Virginia”. The report states, “Tetra Tech has prepared an avoidance plan for site 44FR0372 that entails boring beneath identified archaeological deposits. In the event the bore fails, Tetra Tech has developed a contingency treatment plan that involves data recovery investigations and site protection measures that would serve as mitigation for adverse effects at site 44FR0372.”

As described in the report, Tetra Tech’s plan does not elucidate the criteria that will be used to determine whether or not the proposed bore has failed. What does “failure” mean in this context? Neither Mountain Valley Pipeline, Inc. nor Tetra Tech offers any explanation. This failure to explain the meaning of “fail” lends an aura of inscrutability to the Tetra Tech proposal, which is inappropriate for a project of such significance to the study of archaeology and tribal history.

Even if Tetra Tech had clearly explained their criteria for judging whether “failure” has occurred in the planned bore underneath 44FR0372, their proposal restricts boring to a relatively small area within the Blackwater River floodplain. Thus the proposed bore does not address the need identified by Preservation Virginia and the Virginia SHPO to expand the breadth and depth of archaeological surveying to encompass the full riparian landscape alongside the Blackwater River.

CONCLUSION

In light of concerns about the archaeological sites on the Blackwater River floodplain expressed by the Angles, Preservation Virginia, and the Virginia SHPO, it is imperative that FERC bring a halt to the construction of the MVP on the Angle property and a neighboring property containing 44FR0372. Ongoing pipeline construction threatens the significance of the Angle property as a repository of tribal history and abjectly disregards the religious and cultural significance assigned to properties within the MVP project area by the Cheyenne River Sioux and Rosebud Sioux Tribes.

Your prompt attention to this matter would be appreciated.