

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

| | | |
|----------------------------------|---|-------------|
| _____ |) | |
| Mountain Valley Pipeline, LLC |) | |
| |) | CP16-10-000 |
| Mountain Valley Pipeline Project |) | |
| _____ |) | |

**PRESERVE CRAIG’S MOTION FOR RECONSIDERATION AND CLARIFICATION
OF NOTICE TO PROCEED WITH CONSTRUCTION BETWEEN
MILEPOSTS 217.1 AND 283.9**

Pursuant to 18 C.F.R. § 385.212, Preserve Craig hereby requests that the Federal Energy Regulatory Commission’s (Commission) Office of Energy Projects (OEP) reconsider and clarify its “Notice to Proceed with Construction of Pipeline Segments between Mileposts 217.1 and 283.9 and at Certain Workspaces and Ancillary Areas in Virginia,” (Notice to Proceed), eLibrary 20180216-3040 (Feb. 16, 2018). The Notice to Proceed authorizes construction of “discontiguous portions of its pipeline between mileposts (MP) 217.1 and 283.9, and at 185 additional temporary workspaces, 62 access roads, 2 yards, 4 anode beds, and 2 points of intersection, in Craig, Franklin, Montgomery, and Roanoke Counties, Virginia” identified in Mountain Valley Pipeline, LLC’s (Mountain Valley) Request to Proceed No. 9. This appears to include the Adlai Jones Family Farm lands located in Newport, Virginia at MP 215 – 218, for which consultation and Treatment Plans have not been completed. As described below, there are outstanding issues related to historic resources on these lands that must be resolved before construction is allowed to proceed. Preserve Craig also renews its request that the Director of OEP not authorize construction in advance of the Commission’s decision on the merits of rehearing.

I. The Director of OEP Should Not Authorize Construction Affecting the Adlai Jones Family Farm Lands Until It Has Resolved the Potential Adverse Effects of the Project on Historic Resources Located on the Farm.

The Adlai Jones Family Farm lands includes several historical structures and resources, as described by Donald Wayne Jones and his father, George Lee Jones, who represent the seventh and sixth generations of the Jones family, respectively.¹ Messrs. Jones provided specific reports that many of these structures and features had been misrepresented and/or mislocated by Mountain Valley and its consultants.

In the revised Treatment Plan for the Greater Newport Rural Historic District (revised Treatment Plan), Mountain Valley indicates that it addressed concerns related to the Adlai Jones Family Farm lands in the Criteria of Effects Report.² The Criteria of Effects Report identifies the Adlai Jones Farm (house, pole barn, and road trace), listing it as 1,703 feet from the nearest project feature. However, the Criteria of Effects Report omits several other resources repeatedly identified by the Jones Family, including but not limited to the Fisher Cemetery (022-5039) which appears to be less than 275 feet from the pipeline center line³, the Denny Jones Farmstead Ruin which appears to be within 8 feet of the centerline⁴, the John Jones rock fence which will

¹ See letter from Donald Wayne Jones to Kimberly D. Bose, eLibrary no. 20161219-5105 (Dec. 17, 2016); letter from Donald Wayne Jones to Kimberly D. Bose, eLibrary no. 20170222-5043 (Feb. 20, 2017); letter from George Lee Jones to Kimberly D. Bose, eLibrary no. 20170508-5035 (April 23, 2017).

² Mountain Valley, “Revised Treatment Plan for Greater Newport Rural Historic District,” eLibrary no. 20180213-5337 (Feb. 13, 2018), p. 14; see also *id.* at Attachment 2 (Minutes from teleconference between Mountain Valley and Greater Newport Rural Historic District Committee and Members of Preserve Newport Historic Properties (Jan. 11, 2018)), p. 2.

³ Mountain Valley, “Addendum to the Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline: Summary Report, Pittsylvania, Franklin, Roanoke, Montgomery, Craig, and Giles Counties, Virginia” in “Attachment DR5 Cultural 9, Part 1,” eLibrary no. 20170330-5339 (March 30, 2017), p. 11.

⁴ *Id.*

be crossed by the pipeline, the William Archimedes Jones Home Place which appears to be within 300 feet of the centerline, the Jones Cemetery, the Adlai Jones' Family Place which will be adjacent to a proposed access road, and the Deeded Hand Dug Ditch.⁵

Based on Preserve Craig's review of the record, these errors and omissions have not been resolved by Mountain Valley's supplemental filings. For example, Preserve Craig has not located a specific response to information submitted by the Jones Family that historic features on the Adlai Jones Farm (house, pole barn, and road trace) are located 300 feet, not 1,703 feet from the centerline.⁶ On October 3, 2017, Donald Wayne Jones commented, "[d]istance and location of Jones Family Farm Land structures and historical features continue to be inaccurate."⁷

Mountain Valley representatives have suggested that these errors and omissions do not need to be corrected because the State Historic Preservation Officer (SHPO) concurred with the Criteria of Effects Report.⁸ However, in its response to that report, the SHPO recommended that Mountain Valley and the Commission consult with consulting and interested parties to correct any outstanding deficiencies: "DHR has been notified by several consulting and interested parties of their concerns regarding the validity and results of this analysis.... We recommend that

⁵ Letter from George Lee Jones to Kimberly D. Bose, eLibrary no. 20170508-5035 (April 23, 2017) (describing specific resources, including locations); Criteria of Effects Report, Table 4.2 "Historic Properties Located within 0.5-Mile of MVP."

⁶ Letter from Donald Wayne Jones to Kimberly D. Bose, eLibrary no. 20170222-5043 (Feb. 20, 2017), p. 2. *See also* "Amended Filing of Comments on Revised Treatment Plan by the Greater Newport Rural Historic District Committee, Jerry and Jerolyn Deplazes, Karolyn Givens, Shannon Lucas, Nathan Deplazes, Frances Collins, Michael Williams, Miller Williams and Tony Williams," eLibrary no. 20180223-5058 (Feb. 23, 2018), pp. 11-12.

⁷ Letter from Donald Wayne Jones to Kimberly D. Bose, eLibrary no. 20171004-5018 (Oct. 3, 2017).

⁸ Revised Treatment Plan for the Greater Newport Rural Historic District, Attachment 2 (Minutes from teleconference between Mountain Valley and Greater Newport Rural Historic District Committee and Members of Preserve Newport Historic Properties (Jan. 11, 2018)), p. 2 ("Ms. Tidlow explained that MVP relied on the best available information for the Greater Newport Rural Historic District to prepare its Criteria of Effects Report, and that the SHPO had concurred with the report.").

MVP and FERC review all comments received on the Criteria of Effects report and address any errors or omissions.”⁹ Neither Mountain Valley nor the Commission contacted the Jones Family regarding the errors and omissions in Mountain Valley’s analysis of the resources located on the Jones Family Farm lands.

As stated above, the Adlai Jones Family Farm lands are located in both Craig and Giles Counties. This is not reflected in the revised Treatment Plan or OEP Staff’s letter granting Craig County, Virginia consulting party status for purposes of Section 106 of the National Historic Preservation Act, which stated: “[n]o historic properties have been identified in Craig County to date that may be affected by the MVP; therefore, there are no current Treatment Plans to review for your county.”¹⁰ In fact, both the Fisher and Jones Cemeteries, as well as other historic structures and resources of the Adlai Jones Family Farm lands are located within Craig County.¹¹ Reports prepared by Mountain Valley’s consultants mis-characterized the cemeteries as being from the twentieth century, which is contrary to the evidence submitted that they contain markers dating to the Civil War era.¹² Despite this, neither Mountain Valley nor OEP Staff has consulted with Craig County regarding identification or resolution of adverse effects on these resources. This is contrary to the regulations implementing Section 106, which require consultation with

⁹ Letter from Roger W. Kirchen to Megan L. Neylon, eLibrary no. 20170721-5026 (July 7, 2017), p. 3.

¹⁰ Letter from James Martin to Clay Goodman, eLibrary no. 20180118-3008 (Jan. 18, 2018).

¹¹ Mountain Valley, “Addendum to the Phase I Reconnaissance Architectural Survey for the Mountain Valley Pipeline: Summary Report, Pittsylvania, Franklin, Roanoke, Montgomery, Craig, and Giles Counties, Virginia” in “Attachment DR5 Cultural 9, Part 1,” eLibrary no. 20170330-5339 (March 30, 2017), pp. 11-12, 29-30. *See also* Mountain Valley, “Attachment DR5 Cultural 9, Part 2,” eLibrary no. 20170330-5339 (March 30, 2017), pp. 95, 113.

¹² *See* letter from Donald Wayne Jones to Kimberly D. Bose, eLibrary no.20161219-5105 (Dec. 19, 2016), p. 1.

local governments.¹³ It appears that Craig County’s ability to effectively participate in the Section 106 consultation has been unduly limited by Mountain Valley not timely or accurately identifying historic properties within its jurisdiction that could be affected.

The revised Treatment Plan finds that the pipeline will have no adverse effect on the Adlai Jones Farm, and so does not include any avoidance, minimization, or mitigation measures specific to the farm.¹⁴ Again, the plan does not address the errors related to the Adlai Jones Family Farm lands identified above. Neither the SHPO nor the Advisory Council on Historic Preservation have provided review of the revised Treatment Plan yet.

Environmental Condition 15 provides:

Mountain Valley ... **shall not begin construction** of facilities and/or use staging, storage, or temporary work areas and new or to-be-improved access roads **until**:

- a. Mountain Valley ... files with the Secretary:
- b. remaining cultural resources survey reports;
- c. site evaluation reports, avoidance plans, or treatment plans, as required; and comments on the reports and plans from the appropriate State Historic Preservation Offices ... and other consulting parties.
- d. the Advisory Council on Historic Preservation has been afforded an opportunity to comment if historic properties would be adversely affected; and
- e. the FERC staff reviews and the Director of OEP approves all cultural resources reports and plans, and notifies Mountain Valley ... in writing that either treatment measures ... may be implemented or construction may proceed.¹⁵

There are outstanding issues that must be resolved before the Commission can reasonably conclude that the MVP Project will not have adverse effects on historic resources located on the

¹³ See 36 C.F.R. §§ 800.2(c)(3), 800.4, 800.5, 800.6.

¹⁴ Criteria of Effects Report, Attachment 2 – Correspondence, Master List Historic Properties (Part 3 of 4) - Construction-Related Effects, Master List Historic Properties (Part 4 of 4) - Operation-Related Effects and Application of Criteria of Effects.

¹⁵ “Order Issuing Certificates and Granting Abandonment Authority,” 161 FERC ¶ 61,043 (Oct. 13, 2017), Appendix C, pp. 6-7.

Adlai Jones Family Farm lands. Preserve Craig requests that OEP Staff clarify and revise the Notice to Proceed to exclude these lands until these issues can be addressed in consultation with the Jones Family and Craig County.

II. The Director of OEP Should Not Authorize Construction Until the Commission Issues a Decision on the Merits of Rehearing Requests.

On January 9, 2018, Preserve Craig and other non-governmental organizations objected to Mountain Valley's Request to Proceed No. 1 on the grounds that it would be unjust for the Director of OEP to authorize construction in advance of the Commission's decision on the merits of Preserve Craig's and other pending rehearing requests.¹⁶ Those rehearing requests argued that the "Order Issuing Certificates and Granting Abandonment Authority" did not comply with applicable law, and requested that the Commission vacate and remand the Certificate Order to its Staff for further procedures. They also requested that the Commission stay the effectiveness of the Certificate Order pending the decision on rehearing. By authorizing construction in advance of decisions on the request for stay and on the merits of rehearing, OEP Staff is effectively denying Preserve Craig's requested relief before the administrative rehearing has been completed. Accordingly, Preserve Craig renews its request that the OEP Director not authorize construction in advance of the Commission's decision on the merits of rehearing.

CONCLUSION

Preserve Craig requests that the Director of OEP reconsider and clarify the Notice to Proceed to exclude the Adlai Jones Family Farm lands pending resolution of potential adverse

¹⁶ "Answer in Opposition to Request for Notice to Proceed No. 1 By Preserve Craig, Greater Newport Rural Historic District Committee, Indian Creek Watershed Association, Preserve Bent Mountain, Preserve Giles County, Protect Our Water, Heritage and Rights, Save Monroe, Summers County Residents Against the Pipeline, Preserve Montgomery County VA, and Preserve Monroe," eLibrary no. 20180110-5021 (Jan. 10, 2018), pp. 2-4.

effects to historic resources on those lands. It also requests that the Director of OEP reconsider the decision to issue the Notice to Proceed in advance of the Commission's decision on the merits of rehearing, especially to the extent it may prejudge the Commission's substantive decision on rehearing.

Dated: February 26, 2018

Respectfully submitted,



Richard Roos-Collins
Julie Gantenbein
WATER AND POWER LAW GROUP PC
2140 Shattuck Ave., Suite 801
Berkeley, CA 94704
(510) 296-5588
rrcollins@waterpowerlaw.com
jgantenbein@waterpowerlaw.com

Attorneys for PRESERVE CRAIG

DECLARATION OF SERVICE

Mountain Valley Pipeline, LLC's Mountain Valley Pipeline Project (CP16-10-000)

I, Tiffany Poovaiah, declare that I today served the attached "Preserve Craig's Motion for Reconsideration and Clarification of Notice to Proceed with Construction Between Mileposts 217.1 and 283.9" by electronic mail, or by first-class mail if no e-mail address is provided, to each person on the official service list compiled by the Secretary in this proceeding.

Dated: February 26, 2018

By:



Tiffany Poovaiah
Paralegal/Firm Administrator
WATER AND POWER LAW GROUP, PC
2140 Shattuck Ave., Suite 801
Berkeley, CA 94704
(510) 296-5591
office@waterpowerlaw.com