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March 23, 2018

Ms. Kimberly Bose  
Federal Energy Regulatory Commission  
888 First Street NE  
Washington, DC 20426

Re: CP16-10-000

Dear Ms. Bose:

This letter is submitted on behalf of Elizabeth Reynolds, whose property (0 Bottom Creek Road, Roanoke County, VA) will be taken in order to construct the Mountain Valley Pipeline (“MVP”), concerning an ongoing violation of the Programmatic Agreement executed under Section 106 of the National Historic Preservation Act (“NHPA”) 54 U.S.C. § 306108.

Specifically, Ms. Reynolds property (identified by MVP as MVP Parcel No. VA-RO-054) is within the Bent Mountain Apple Orchard Rural Historic District, and also contains several National Register-eligible archeological sites, identified as 44RN400 and 44RN401 in the relevant treatment plans prepared pursuant to Section 106. By letter dated January 29, 2018, FERC staff gave MVP permission to implement site-specific treatment plans on Ms. Reynolds’ property and particularly with regard to archaeological sites 44RN400 and 44RN401. In its letter, however, FERC specifically noted that, “[i]n the case of all sites to be treated, Mountain Valley must have landowner permission or executed easement agreements prior to implementation of measures.” Letter to MVP from Paul Friedman, FERC (Jan. 29, 2018).

MVP has not obtained Ms. Reynolds’ permission to enter her property nor has MVP executed an easement agreement with Ms. Reynolds. And yet, MVP has entered Ms. Reynolds’ property, purportedly under an early access order granted by the court overseeing MVP’s condemnation action, and is currently in the process of removing artifacts from the ground. MVP’s contractors have shielded their work with tents that prevent any observation of their activities on Ms. Reynolds’ property.

The Programmatic Agreement (“PA”) executed for the MVP, which governs the Section 106 review for this project, provides that “Treatment measures shall not be implemented without written permission from FERC (or the appropriate federal land managing agency for sites on federal lands). PA, ¶ III.B.6. As noted above, FERC’s permission specifically precludes MVP from implementing treatment plans without landowner permission or

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executed easement agreements, neither of which have been obtained from Ms. Reynolds. MVP's ongoing activity on Ms. Reynold's property is therefore a blatant violation of the PA.

In addition to MVP's violation of the PA, FERC has violated Section 101(d)(6) of the NHPA, 54 U.S.C. § 302706(b). The sites on Ms. Reynolds' property have been identified by the Rosebud Sioux Tribe as an area in which the tribe has cultural ties. Accordingly, on March 4, 2018, Ben Rhodd, the Tribal Preservation Officer for the Rosebud Sioux Tribe, inspected Ms. Reynolds' property. During this visit, Mr. Rhodd confirmed that the sites within the MVP right of way, one of which is a burial site) are areas that the Tribe considers significant to its history. *See* Letter from Rhodd to Advisory Council on Historic Preservation ("ACHP") (March 9, 2018), attached hereto.

As the Section 106 regulations explain, Section 101(d)(6)(B) of the NHPA "*requires* the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking. This requirement applies regardless of the location of the historic property. Such Indian tribe or Native Hawaiian organization *shall be* a consulting party." 36 C.F.R. § 800.2(c)(2)(ii) (emphasis added). The Section 106 regulations further require that "[t]he agency official *shall* ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects." *Id.* § 800.2(c)(2)(ii)(A) (emphasis added). It is clear from Mr. Rhodd's letter that FERC has not consulted with the Rosebud Sioux, and has not undertaken the required "reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process." *Id.* 36 C.F.R. 800.2(c)(2)(ii). This blatant disregard for these core NHPA obligations must be rectified immediately before irreparable harm is done to these sites that have been specifically identified as sites as of concern to the Rosebud Sioux Tribe.

The PA provides that "If at any time during implementation of the measures stipulated in the PA, an objection pertaining to this PA should be raised by a member of the public, FERC *shall* notify the parties to this PA and take the objection into account, consult with the objector, and should the objector so request, with any of the parties to this PA to consider the objection." PA, ¶ VI.D (emphasis added). Accordingly, on behalf of Ms. Reynolds, an affected landowner and member of the public, I hereby request that the foregoing letter be treated as an objection under the PA, and request that FERC notify the parties to the PA to consult, consider, and take this objection into account. In the meantime, Ms. Reynolds requests that FERC immediately direct MVP to desist from implementation of any treatment plans or other activities on Ms. Reynolds' property until this objection has been resolved.

Please feel free to contact me at (202) 974-5142, or via email at [afferster@railstotrains.org](mailto:afferster@railstotrains.org) if you have any questions or need any additional information.

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Sincerely,

A handwritten signature in black ink, appearing to read 'A. Ferster', with a large, stylized flourish at the end.

Andrea C. Ferster

Enc.

cc: Mr. Ben Rhodd, THPO, Rosebud Sioux  
Roger Kirchen, VDHR  
John Eddins, ACHP  
Charlene Vaughn, ACHP



*Tribal Historic Preservation  
Cultural Resource Management Office*

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Protecting the Land, Cultural,  
Heritage and Tradition for  
the Future Generation

Benjamin K Rhodd  
Officer

Kathy Arcoren  
Administrative Assistant

Jennifer Galindo  
Archaeologist

Bernadette Emery  
GIS Recording Clerk

March 9<sup>th</sup>, 2018

Mr. Ira Matt  
Senior Program Analyst  
Office of Native American Affairs  
Advisory Council on Historic Preservation  
(202) 517-1481  
[imatt@achp.gov](mailto:imatt@achp.gov)  
<http://www.achp.gov/nap.html>

Dear Ira,

The Rosebud Sioux Tribe Historic Preservation Program sends its greetings. We are in receipt of several letters and email communications regarding the Mountain Valley Pipeline Project (MVPP) that transversely transects the States of Virginia and West Virginia. Regarding this project, as you may or may not be aware from Mr. Steve Vance, THPO from the Cheyenne River Sioux Tribe of South Dakota, he and I traveled to Virginia to review areas of concern by landowners and organizations involved with historic preservation, additionally the invitation was inclusive of with concerned citizens of that region.

Our travel was from March 3<sup>rd</sup> – March 6<sup>th</sup>, 2018 to observe previously recorded sites, historic properties, and the APE. In so doing, as has been stated by Mr. Vance, the company has been using a proprietary stance of privileged information and not sharing the cultural resources reports with our Tribe(s). We have vested interest in the area of this proposed pipeline and sites recorded and evaluated in compliance with Section 106 of the National Historic Preservation Act of (1966) (amended- 1992). Before I discuss this further I am stating that under Section 101 (d)(6)(B) of the Act, we assert our cultural tie to that particular (but not limited to) area (Franklin County) of Virginia via historical documentation and our oral history.

We 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.

We assert that the previous negotiations, consultation efforts with Tribes, findings, and evaluation methodologies are insufficient to protect the common cultural patrimony of the Lakota. Therefore, we are petitioning for comment and support from the ACHP in our efforts with the Federal Energy Regulatory Commission (FERC) that the prior consultation invitation to



Tribes excluded the descendent(s), now Plains and prairie boundary Tribes, from being involved, considered, or consulted.

The Rosebud Sioux Tribe has the supporting documentation for the sites currently encountered and a report of that documentation will be submitted to FERC and to Mountain Valley Pipeline by early next week. We are cognizant of court decisions to let bids, timber clearing, etc. along the ROW. Therefore we are calling for interceding from the ACHP for 30 days with FERC until we have had opportunity to review reports and consult with the agency and Mountain Valley Pipeline.

A Programmatic Agreement (PA) has been signed and supposedly is in effect. We have issue with the content, verbiage, vernacular, and intent of the PA to a degree that damages, impacts and destruction will ensue under this PA to sites we consider significant to our history.

Moreover, the current accepted EIS is inadequate and incomplete regarding sites of significance to not only the Lakota but other related Siouan Tribes as well. The EIS has severe discrepancies that are not conducive to proper protections and particularly the lack of Tribal participation in sites that remain unevaluated nor recommended as eligible to the National Register of Historic Places.

Please be aware that we will continually be vigilant concerning this project as we deem it a priority.

Thank you.

Sincerely,



Ben Rhodd, BA, MS, RPA  
Tribal Historic Preservation Officer  
Archaeologist  
Rosebud Sioux Tribe  
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Document Content(s)

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