

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BLUE RIDGE ENVIRONMENTAL)	
DEFENSE LEAGUE,)	
)	
Petitioner,)	Case No. 18-1175
)	(Consolidated with Cases
FEDERAL ENERGY REGULATORY)	No. 17-1271 , 18-1002,
COMMISSION, and UNITED)	18-1177, and 18-1186)
STATES OF AMERICA,)	
Respondents.)	
_____)	

On Petition for Review of Order of the Federal Energy Regulatory
Commission, 161 FERC ¶ 61,043 (October 13, 2017)

[ORAL ARGUMENT NOT SCHEDULED]

**PETITIONERS' BLUE RIDGE ENVIRONMENTAL DEFENSE
LEAGUE *et al.* EMERGENCY MOTION FOR STAY**

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 18(a) and Circuit Rule 18, Petitioner Blue Ridge Environmental Defense League (“BREDL”), Ben Rhodd and Steve Vance (Tribal Preservation Officers (collectively, the “THPOs”) of the Rosebud Sioux Tribe and the Cheyenne River Sioux Tribe, respectively) Preserve Montgomery County VA (“PMCVA”), and Mike and Elizabeth Reynolds (hereinafter referred to collectively as “Preservation Petitioners”), seek an emergency stay pending review of the October 13, 2017 Federal Energy

Regulatory Commission (“FERC” or “the Commission”) Order issuing Certificates and Granting Abandonment Authority (“Order”) in *Mountain Valley Pipeline, LLC* (“Order”), 161 FERC ¶ 61,043 (2017), the order on Rehearing upholding the Certificate Order, 163 FERC ¶ 61,197 (June 15, 2018) (“Rehearing Order”),¹ and the Letter Order of April 6, 2018, attached hereto as Exhibit A, which refused the request of the THPOs for consultation under Section 101(d)(6)(B) of the National Historic Preservation Act (“NHPA”). 54 U.S.C. § 302706(b).²

Petitioner BREDL is a non-profit membership organization with chapters in Roanoke and Franklin County, Virginia, founded to serve the principles of earth stewardship, environmental democracy, social justice, and community empowerment. BREDL’s and PMCVA’s members reside near, visit, appreciate and/or own property in the areas to be traversed by the Mountain Valley Pipeline (“MVP”), a 303.5-mile natural gas pipeline that will connect Wetzel

¹ These orders are attached as Exhibits A and B to the Motion for A Stay filed by Appalachian Mountain Voices, *et al.*, in Case No. 17-1271, filed on July 20, 2018 (Document # 1741782)

² As required by Federal Rule of Appellate Procedure 18(a)(1), Petitioners BREDL and PMCVA moved for a stay of the Order before FERC on November 13, 2017, and all Preservation Petitioners moved for a stay specifically raising the issues pertaining to FERC’s failure to consult with the Sioux tribes on May 4, 2018. *See* Preservation Petitioners’ Rehearing and Stay Request, attached hereto as Exhibit B. The stay requests were denied in the FERC Rehearing Order, which also denied the THPOs’ requests to intervene. Preservation Petitioners have advised the parties of this emergency motion for a stay pending review via email. FERC and intervenors indicate that they will oppose this request for an emergency.

County, West Virginia to Pittsylvania County, Virginia. The Reynolds own land containing artifacts associated with the Siouan people, including archeological sites identified as 44RN400 and 44RN401 in the relevant treatment plans prepared by MVP, that will be adversely affected by the MVP, and are also members BREDL's chapter organization Preservation Roanoke. Petitioners Ben Rhodd and Steve Vance are the Tribal Preservation Officers of the Rosebud Sioux Tribe and the Cheyenne River Sioux Tribe, respectively, and are responsible for their Tribes' regulatory program for managing and protecting cultural resources, sacred areas, and sites within the exterior boundaries of treaty lands and the aboriginal homelands of their tribes.

The Preservation Petitioners hereby join the petitioners Appalachian Mountain Voices *et al.*, in these consolidated cases in seeking an emergency stay to prevent irreparable injury to their members and interests pending this Court's review of the petitions. An emergency stay is warranted as a result of the Commission's actions of August 10, 2018 and August 15, 2018, modifying its previously-issued "stop work order" to allow MVP to undertake "stabilization" measures along certain areas along the pipeline route, and then allowing MVP to resume and complete pipeline construction along a portion of the right of way.³

³ See Motion to Expedite filed by Appalachian Mountain Voices, et al., Exhibit E, filed on August 14, 2018 (Document #1745579) and Exhibit C to FERC's

These activities will irreparably harm historic and cultural resources, including a potential site of traditional and religious significance to the Siouan people, which will be adversely affected by these activities. *See* Letters from Dale Angle and Ben Rhodd (Attached hereto as Exhibits D and E)

FACTUAL BACKGROUND

Petitioners BREDL and PMCVA have challenged FERC's failure to comply with Section 106 of the NHPA, 54 U.S.C. § 306108, prior to approving the certificate, a statutory violation discussed in their emergency motion for a stay pending review filed on January 26, 2018 (Document # 1712676). The present motion for a stay pending review concerns subsequent issues that have arisen regarding FERC's noncompliance with Section 101(d)(6)(B) of the NHPA, a separate provision of the NHPA, which "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.. 54 U.S.C. § 302706(b).

In January and March 2018, the Rosebud and Cheyenne River Sioux Tribes advised FERC that the MVP would affect area which the Siouan tribes have traditional cultural ties. These tribes undertook repeated efforts to contact FERC

Response to the Motion to Expedite Stay, filed on August 16, 2018 (Document #1746031).

and secure information about the cultural resources identified during the Section 106 process for the MVP, efforts that were rebuffed by FERC staff. This correspondence is attached as Exhibit 1 to the Preservation Petitioners' Request for Rehearing (Exhibit B hereto).

Ultimately, on April 6, 2018, FERC issued a Letter Order to the THPO of the Cheyenne River Sioux Tribe indicating that FERC would not rescind the notice to proceed issued to MVP nor would it initiate consultation with the THPOs. *See* Exhibit A. The Letter takes the view that consultation with the Sioux THPOs was not warranted "because FERC staff found no documentation that your tribe ever occupied the project area or that your tribe had historical interest in West Virginia or Virginia." The FERC letter cited Volume 13 and 15 of the Handbook of North American Indians, as evidence supporting this conclusion.

Faced with this final determination by FERC refusing to accord the tribes their mandatory statutory rights to consult under the NHPA, on May 4, 2018, Ben Rhodd and Steve Vance filed motions to intervene in the FERC proceedings in their official capacities as THPOs for their respective tribes. *See* Exhibit C, attached hereto. The THPOs joined BREDL and other existing parties in seeking rehearing of the April 6, 2018 letter order and sought a stay of pipeline construction activities in affected historic districts and areas of interest and concern to the Sioux tribes. *See* Exhibit B, attached hereto. On June 15, 2018, FERC

issued its final order denying all pending rehearing motions, including the rehearing request filed by the Preservation Petitioners and denying the THPOs' motions to intervene.

On August 1, 2018, Petitioners filed with FERC a letter detailed the preliminary findings of a report being prepared by the THPOs (FERC Accession # 201804195301), which is attached hereto as Exhibit D. This letter preliminarily reports on the results of cultural resource investigations undertaken by the THPOs in an 8 (+/-) mile long survey of the Mountain Valley Pipeline, which found sites of significance and artifacts to the Siouan tribes, including burials, stone petroforms, cairns, offering stones, and water resource formations related to past and present lifeways.

ARGUMENT

I. Preservation Petitioners Satisfy the Requirements for a Stay.

A stay of an agency's proceedings is warranted where a movant establishes that (1) it is likely to prevail on the merits, (2) it is likely to suffer irreparable harm absent a stay, (3) other parties will be unlikely to suffer substantial harm if the stay is granted; and (4) the public interest lies in granting the stay. Circuit Rule 18(a)(1). The moving party "has the burden to show that all four factors, taken together, weigh in favor of the [stay]." *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009). This motion supports and incorporates by

reference the legal arguments advanced in the stay motion and petition filed by Appalachian Mountain Voices *et al.* in Case No. 17-1271 (Document # 1741782). Preservation Petitioners hereby provide the following additional reasons and arguments for why the requested emergency relief should be granted.

A. Petitioners Are Likely to Succeed on the Merits.

1. FERC's refusal to consult with the THPOs violates Section 101(d)(6)(B) of the NHPA, and the implementing regulations.

Section 101(d)(6)(B) of the NHPA, and the implementing regulations “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. 54 U.S.C. § 302706(b), 36 C.F.R. § 800.2(c)(2)(ii). “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).

FERC's reliance, expressed in the April 6, 2018 Letter Order, on the fact that the present day Sioux tribal lands are in the midwestern and western regions of the U.S. is immaterial to FERC's obligation to consult with the Sioux Tribes. *See* Exhibit A. The Section 106 regulations provide that the obligation to consult with the Indian Tribes “applies regardless of the location of the historic property.” 36 C.F.R. § 800.2(c)(2)(ii). The guidance developed by the ACHP further explains that “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.”

<http://www.achp.gov/regs-tribes.html>. As one court noted, “the [Section 106] regulations clearly contemplate participation by Indian tribes *regarding properties beyond their own reservations.*” *Attakai v. United States*, 746 F. Supp. 1395, 1408 (D. Ariz. 1990) (emphasis added) (holding that “[t]he conclusion of the defendants that the Navajo tribe is to be afforded no participation since the lands in question are Hopi lands and not ‘non-Indian lands’ is contrary to the language and evident intent of the regulations.”)

As demonstrated in the attached letter report, filed with FERC on August 2, 2018 (FERC Accession # 201804195301), the Siouan tribes have a demonstrable connection to the region of Virginia traversed by the MVP project. Of particular note, the THPOs undertook an investigation of Site RST-05142018-4, an archeological site containing a stone circle feature located on the Dale Angle property. The THPOs ascertained that this site is close proximity to an extensive, known, formerly recorded occupation site along the bottoms near the confluence of the Blackwater River and Little Creek, and that this stone circle is a type of feature considered significant to the Siouan Tribes as a place of supplication to a higher power where an individual sought spiritual guidance. As this letter also notes, the traditional and cultural connections of the Siouan tribes to the site were never

investigated in the cultural resource studies, which were undertaken by MVP and FERC without consultation with the THPOs, in violation of the NHPA.

2. FERC Failed to Undertake A Reasonable and Good Faith Effort to Identify Tribes For Consultation.

The Section 106 regulations require that FERC, prior to approving the Certificate, undertake a “reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process.” 36 C.F.R. 800.2(c)(2)(ii). Here it is clear that FERC has not undertaken the required “reasonable and good faith effort to identify Indian tribes” who must be consulted in the Section 106 process for the MVP.

The effort undertaken by FERC is described in FERC’s April 6 letter to Steve Vance, THPO, Cheyenne River Sioux. That letter states,

The Cheyenne River Sioux was not contacted by our agency for MVP because FERC staff found no documentation that your tribe ever occupied the project area or that your tribe had historical interest in West Virginia or Virginia. For instance, Volume 15 (Northeast) of the “Handbook of North American Indians” shows that West Virginia and Virginia were occupied by Algonquian and Iroquois peoples (not Siouan).

FERC’s utilization of the Handbook of North American Indians (“Handbook”) as described by FERC, above, is faulty. FERC claims that Volume 15 shows that Algonquians and Iroquois, not Siouans, occupied Virginia. As the Preservation Petitioners pointed out in Exhibit 2 of their rehearing request (attached as Exhibit B), while the map on page *ix* of Volume 15 does indicate the

presence of Algonquian and Iroquoian people in the *eastern coastal region* of Virginia, the MVP project area is in the *western* not the eastern part of Virginia.

The western region of Virginia is covered in Volume 14 (Southeast). The map in Volume 14 indicates Tutelo occupancy of the MVP project area. Passages in Volume 14 describing historical linguistics demonstrates the presence of the ancient Siouan language among the Tutelos. *Id.* This linguistic similarity further establishes the historic connection between the Siouans who long ago inhabited the MVP project area in Virginia and the contemporary Sioux tribes of South Dakota. FERC's failure to consult Volume 14 (Southeast) is an immense omission, considering that the MVP project is planned for construction through Virginia, a state in the southeastern U.S.

In short, FERC's own resource for identifying affected Indian Tribes establishes that the MVP project area is one of the places where forebears of the Cheyenne River and Rosebud Sioux resided in the distant past. A modest amount of additional research efforts would have further confirmed that the Tutelo groups were indisputably Siouan in origin. *See* Exhibit 3 to Rehearing Request (Exhibit B). Accordingly, the Sioux tribes should have been identified for possible consultation by FERC for the MVP.

3. FERC failed to Give the THPOs A reasonable Opportunity to Advise on the Identification of Traditional Religious and Cultural Properties.

The Section 106 regulations require that agencies grant THPOs “a reasonable opportunity to identify [their] 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.” 36 C.F.R. § 800.2(c)(2)(ii)(A) . FERC clearly failed to do this.

To the contrary, FERC refused repeated requests from the THPO’s for an opportunity to comment on the undertaking and its impacts on lands of historic and traditional interest to the Siouan people. *See* Exhibit 1 to Rehearing Request (Exhibit A). Indeed, FERC has even gone so far as to deny the THPOs the right to examine cultural resource reports that have already been prepared. *Id.*

FERC’s consultation failures are compounded by its denial of the THPO’s motion to intervene as being untimely and without good cause, thereby doubling the prejudice resulting from its own failure to discharge its affirmative duty to consult with the Siouan tribes.⁴ FERC cannot shift the burden on to the THPOs to

⁴ FERC’s claim in the Rehearing Order that the THPOs’ motions to intervene were untimely reveals a disturbing ignorance about its statutory responsibilities under the NHPA. Under the Section 106 regulations, FERC is obligated to identify the appropriate tribal historic preservation officers and invite them to consult, not vice versa. It was not until April 6, 2018 that FERC make a final determination that it would *not* consult with the THPOs. Within 30 days of that letter order, the

initiate this consultation. As one Court explained, “[t]he [Section 106] regulations contemplate a far more formal procedure, which includes, at minimum, written notification to the relevant SHPO accompanied by documentation supporting the agency's finding, . . .” *Committee to Save Cleveland’s Hulett’s v. U.S. Army Corps of Engineers*, 163 F. Supp. 2d 776, 790-91 (N.D. Ohio. 2001) Accordingly, FERC violated Section 101(d)(6)(B) of the NHPA and the implementing regulations by failing to initiate consultation with the THPOs or provide them with a reasonable opportunity to comment on the undertaking.

B. Petitioner Will Suffer Irreparable Harm in the Absence of a Stay.

As noted in several recent filings, on August 3, 2018, FERC issued a “stop work” order directing that “construction activity along all portions of the Project and in all work areas must cease immediately, with the exception of any measures deemed necessary by those land managing agencies or FERC staff to ensure the stabilization of the right of way and work areas.” *See* Document #1744057.

However, as noted above, on August 15, 2018, FERC agreed to modify its “stop

THPOs promptly sought to intervene in the FERC proceedings in order to have standing to raise these concerns to this Court. In effect, it is FERC’s position that a THPO must anticipate FERC’s future final refusal to accord them their statutory consultation role and formally intervene as a private party in order to formally invoke their statutory rights *not* to be treated by a private party in the NHPA proceeding. As this Court recently noted, “such a policy puts the Tribe in a classic Catch-22.” *Oglala Sioux Tribe v. United States NRC*, No. 17-1059, 2018 U.S. App. LEXIS 20215, at *2-3 (D.C. Cir. July 20, 2018).

work order” and allow it resume and complete pipeline construction along 77 miles of the total right of way. *See* FERC Letter to MVP dated August 15, 2018, attached as Exhibit C to FERC’s Response to the Motion to Expedite Stay (Document #1746031).

Moreover, as discussed in the letter of BREDL member Dale Angle, the stabilization measures authorized by FERC will adversely affect RST-05142018-4, an archeological site located on private property owned by Mr. Angle. *See* Exhibit E, attached hereto. The archeological site on Mr. Angle’s property was identified in the THPO’s letter report filed with FERC on August 1, 2018 as containing artifacts associated with traditional Siouan religious practice and is being further evaluated by the THPOs as a potential traditional cultural property. Pipeline construction and any related excavation of these artifacts will irreparably harm this potential traditional cultural property. Exhibit D. As Mr. Rhodd’s letter also notes, preliminary investigations have identified 27 sites of significance in their eight-mile survey area of the pipeline right-of-way. These other sites will also be affected by pipeline construction but are not being identified due to FERC’s refusal to provide assurances that the sites they located and recorded will be protected from testing and/or further validation efforts that would subject the sites to arbitrary evaluative measures. *Id.*

These adverse effects cannot be cured by legal remedies. *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). The Supreme Court has recognized that environmental harm, “by its nature, can seldom be adequately remedied by money damages and is often permanent or at least of long duration, *i.e.*, irreparable.” *Amoco v. Village of Gambell*, 480 U.S. 531, 545 (1987); *see also Nat’l Audubon Soc’y v. Dep’t of Navy*, 422 F.3d 174, 201 (4th Cir. 2005); *New Mexico v. Watkins*, 969 F.2d 1122, 1137 (D.C. Cir. 1992). Accordingly, FERC’s 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 of concern to the Rosebud and Cheyenne River Sioux Tribes.

C. A Stay Will Not Cause FERC or MVP Substantial Injury.

A stay pending review will not result in any substantial injury to MVP and certainly not to FERC in light of the stop work order currently in place.

D. A Stay Pending a FERC Decision on Rehearing is in the Public Interest.

In cases involving preservation of the environment, the balance of harms generally favors the grant of injunctive relief. *Amoco*, 480 U.S. at 545. There “is no question that the public has an interest in having Congress’ mandates in NEPA carried out accurately and completely.” *Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 26 (D.D.C. 2009). Here the improper clearing of mature trees and the resulting loss of ecological services they provide is an

environmental harm to the public interest in protecting natural resources pursuant to environmental and historic preservation laws.

Moreover, it is by definition in the public interest to ensure that the eminent domain power granted to MVP is exercised for the public benefit and for public use. The public has a fundamental interest in FERC's compliance with the.

CONCLUSION

For the foregoing reasons, Preservation Petitioners respectfully request that the Court stay FERC's Certificate.

Respectfully submitted,

/s/ Andrea C. Ferster
Andrea C. Ferster (DC Bar # 384648)
Attorney at Law
2121 Ward Court, N.W. 5th Fl.
Washington, D.C. 20037
(202) 974-5142
(202) 223-9257 (Facsimile)
aferster@railstotrails.org

Counsel for Petitioners BREDL, *et al.*

CERTIFICATE OF COMPLIANCE

This document complies with the type-volume limit of FRAP 32(a) and the word limit of FRAP 27(d) because, excluding the parts of the document exempted by FRAP 32(f), this document contains 3432 words.

This document complies with the typeface requirements of FRAP 32(a)(5) and the type-style requirements of FRAP 32(a)(6) because this document has been prepared with a proportionally spaced typeface using Microsoft Word 2017 in 14-point font size and Times New Roman type style.

/s/ Andrea C. Ferster
Andrea C. Ferster (DC Bar # 384648)
Attorney at Law
2121 Ward Court, N.W. 5th Fl.
Washington, D.C. 20037
(202) 974-5142
(202) 223-9257 (Facsimile)
aferster@railstotrails.org

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2017, a copy of the foregoing Motion to Stay was served by the CM/ECF system on all ECF-registered counsel via the Court's CM/ECF system.

:

/s/ Andrea C. Ferster
Andrea C. Ferster (DC Bar # 384648)
Attorney at Law
2121 Ward Court, N.W. 5th Fl.
Washington, D.C. 20037
(202) 974-5142
(202) 223-9257 (Facsimile)
aferster@railstotrails.org

TABLE OF CONTENTS

Exhibit A – FERC letter to Steven Vance dated April 6, 2018

Exhibit B –BREDL *et al.* Request for Rehearing and Stay filed May 4, 2018

Exhibit C – Motion to Intervene Filed by Ben Rhodd, filed Myr 4, 2018

Exhibit D – Letter to FERC from Ben Rhodd, filed August 1, 2018

Exhibit E – Letter to FERC from Dale Angle, filed August 16, 2018

Exhibit A – FERC letter to Steven Vance dated April 6, 2018

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/G3
Mountain Valley Pipeline LLP
CP16-10-000

April 6, 2018

Steven Vance
Tribal Historic Preservation Officer
Cheyenne River Sioux Tribe
P.O. Box 590
Eagle Butte, SD 57625

Re: Compliance with Section 106 of the National Historic Preservation Act

Dear Mr. Vance:

Thank you for your March 18, 2018 letter to the Federal Energy Regulatory Commission (FERC or Commission), commenting on the Mountain Valley Project (MVP) in West Virginia and Virginia, proposed by Mountain Valley Pipeline LLP (Mountain Valley) in the above-referenced docket. You provided a number of comments regarding FERC lack of effort to consult with your tribe, inadequate survey and reporting, and that FERC should restart Section 106 consultation because of the inadequate consultation and anticipatory demolition of historic properties. We have included some of the comments from the Advisory Council on Historic Preservation (ACHP) March 30, 2018 letter to you, in our response.

First, the Cheyenne River Sioux was not contacted by our agency for MVP because FERC staff found no documentation that your tribe ever occupied the project area or that your tribe had historical interest in West Virginia or Virginia. For instance, Volume 15 (Northeast) of the "Handbook of North American Indians" shows that West Virginia and Virginia were occupied by Algonquian and Iroquois peoples (not Siouan). Additionally, Volume 13 (Plains) of the "Handbook of North American Indians" illustrates that the ancestral, aboriginal, or ceded lands of the Lakota or Sioux Nation extended from Wisconsin westward to Wyoming, and from Iowa north to North Dakota.

The regulations for implementing Section 106 of the National Historic Preservation Act, at 36 Code of Federal Regulations Part 800.2(c)(2)(ii), indicate that an agency should make a "reasonable and good faith effort to identify Indian tribes" that should be consulted. Agencies should recognize that historic properties of religious or cultural importance to tribes may be "located on ancestral, aboriginal, or ceded lands." In a March 30, 2018 letter to you, responding to your comments to the ACHP about the

MVP, the ACHP wrote that it “concluded that FERC made a reasonable and good faith effort to identify and consult with relevant tribes.”

Second, a number of cultural resources reports have been and still are being produced for the project. The work conducted and reports produced by Mountain Valley and its consultants were considered adequate by FERC staff and accepted by the Virginia State Historic Preservation Officer. From information filed with FERC, no cultural resources were identified by Mountain Valley or its contractors on the Martin or Chandler tracts. Four archaeological sites (44FR398, 44FR399, 44FR400, and 44FR404) were found on the Angle tract; all lithic scatters determined to be not eligible for nomination to the National Register of Historic Places (NRHP). Two archaeological sites (44RN400 and 44RN401) were identified on the Reynolds tract that are pre-contact camps eligible for the NRHP and require data recovery excavations as mitigation, which are being conducted under the Programmatic Agreement (PA) for the project. For a point of clarity, Mountain Valley has a court order conveying an easement to allow for investigations on the Reynold’s property. No other cultural resources were identified by Mountain Valley or its consultants during surveys of these tracts. Furthermore, the results of surveys in Roanoke and Franklin Counties, Virginia were summarized in our June 2017 FEIS (pages 4-462 to 4-465).

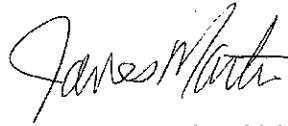
Four landowners (Angle, Chandler, Martin, and Reynolds) filed letters with FERC indicating that you and members from other tribes conducted cultural resources investigations on their property. Your March 18, 2018 letter to FERC indicated that you have information about occupation sites, encampments, villages, and ceremonial sites. However, a report of your investigations along the MVP pipeline route has not yet been filed with FERC; so there is no data for FERC staff to analyze. If your findings are germane to the analysis by FERC staff, then your cultural resources report should be provided expeditiously.

Last, with the execution of the PA as described by ACHP, FERC is not obligated to restart section 106 consultation. In its March 30, 2018 letter to FERC regarding your March 18 letter, the ACHP said that: “The Section 106 review process was formally completed by the execution of the PA.” Further, “...It is the ACHP’s opinion that when new stakeholders or consulting parties come forward, as they have in this case, a federal agency is not obligated to restart the Section 106 review or reconsider previously finalized findings or determinations.” Additionally, the ACHP stated: “that implementation of treatment plans for data recovery at archaeological sites under the terms of the PA as well as archaeological work for inventory survey and evaluation of eligibility do not constitute anticipatory demolition.”

If you have additional questions, feel free to contact Paul Friedman by telephone (202-502-8059) or email (paul.friedman@ferc.gov).

Again, we appreciate your interest in the MVP.

Sincerely,

A handwritten signature in black ink, appearing to read "James Martin". The signature is fluid and cursive, with the first name "James" and last name "Martin" clearly distinguishable.

James Martin, Chief
Gas Branch 3
Division of Gas – Environment and
Engineering

cc: Public File, Docket No. CP16-10-000

John Eddins
Advisory Council on Historic Preservation
401 F St. NW, Suite 308
Washington DC 20001

Ben Rhodd
Rosebud Sioux Tribe
P.O. Box 809
Rosebud, SD 57570

Dale Angle
1116 Iron Ridge Rd.
Rocky Mount, VA 24151

James Chandler
P.O. Box 20638
Roanoke, VA 24018

Andrea Ferster
2121 Ward Ct NW, 5th Floor
Washington DC 20037

Lois Martin
10808 Bottom Creek Rd.
Bent Mountain, VA 24059

Exhibit B.—BREDL *et al.* Request for Rehearing and Stay filed May 4, 2018

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mountain Valley Pipeline LLC,)	
)	
Docket No. CP16-10-000)	May 4, 2018
)	
Mountain Valley Pipeline Project)	
)	
and)	
)	
Equitrans, LP)	
)	
Docket No. CP16-13-00)	

**PETITION FOR REHEARING AND IMMEDIATE STAY OF THE ORDER OF
THE ROSEBUD SIOUX TRIBE, THE CHEYENNE RIVER SIOUX TRIBE, THE BLUE
RIDGE ENVIRONMENTAL DEFENSE LEAGUE, AND AFFECTED INDIVIDUAL
LANDOWNERS**

This request for rehearing is made on behalf of the Tribal Preservation Officers (“THPOs”) of the Rosebud Sioux Tribe and the Cheyenne River Sioux Tribe, the Blue Ridge Environmental Defense League (“BREDL”), including BREDL’s chapters, Preserve Roanoke and Preserve Franklin (jointly referred to as “BREDL”), and landowner and BREDL members Michael and Elizabeth Reynolds (collectively “Intervenors”). BREDL and Reynolds are intervenors in this proceeding. The THPOs are filing their motions to intervene simultaneously herewith.

Pursuant to 15 U.S.C. § 717r and 18 C.F.R. § 385.713, the Intervenors hereby request rehearing of the letter order of the Federal Regulatory Energy Commission (“FERC”) dated April 6, 2018, rejecting the Intervenors’ request that the FERC revoke the prior authorizations allowing Mountain Valley Pipeline, LLC, and Equitrans, LP (jointly referred to as “MVP”), to enter private lands in order to construct and operate the proposed Mountain Valley Pipeline

Project (“MVP Project” or the “Project”) in Virginia, in order to consult with the THPOs as required by the National Historic Preservation Act (“NHPA”) and implementing regulations, 36 C.F.R. Part 800. This request is submitted with thirty (30) days of the date of the Letter Order, as required by 18 C.F.R. § 385.713(b).

The Intervenor’s incorporate by reference, pursuant to FERC Rule 203, 18 C.F.R. § 385.203(a)(2), all evidence and arguments presented in their prior comments submitted to FERC.

All communications regarding this request should be addressed to and served upon the following counsel for Intervenor’s:

Andrea C. Ferster
Attorney at Law
2121 Ward Court, N.W. 5th Fl.
Washington, D.C. 20037
(202) 974-5142
(202) 223-9257 (Facsimile)
afferster@railstotrails.org

CONCISE STATEMENT OF ERRORS

1. FERC’s refusal to consult with the THPOs violates Section 101(d)(6)(B) of the NHPA, and the implementing regulations, which “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.. 54 U.S.C. § 302706(b), 36 C.F.R. § 800.2(c)(2)(ii).
2. FERC failed to make “a 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). .
3. FERC failed to provide the THPO’s “a reasonable opportunity to identify [their] 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)

STATEMENT OF ISSUES & SPECIFICATION OF ERROR

INTERESTS OF INTERVENORS

Intervenor Reynolds' land, which is within the Bent Mountain Apple Orchard Rural Historic District, contains archeological sites identified as 44RN400 and 44RN401 in the relevant treatment plans prepared by MVPO under MVP's historic preservation treatment plans, prepared under the Programmatic Agreement executed pursuant to Section 106 of the NHPA, 54 U.S.C. § 306108. Intervenor BREDL has many members who own land, use, and enjoy this historic district. BREDL and its members have grave concerns about the adequacy of FERC's compliance with its obligations to engage in meaningful consultation to identify and resolve adverse effects on historic properties. Steve Vance is the THPO of the Cheyenne River Sioux Tribe, and as such, manages and protects cultural resources, sacred areas, and sites within the exterior boundaries of Cheyenne River Sioux Tribe treaty lands and the aboriginal homelands of the Oceti Sakowin (Great Sioux Nation). Ben Rhodd is THPO for the Rosebud Sioux Tribe, and as such, manages and protects cultural resources, sacred areas, and sites within the exterior boundaries of Rosebud Sioux Tribe treaty lands and the aboriginal homelands of the Oceti Sakowin.

BACKGROUND

Prior to approving the certificate for the MVP project, FERC endeavored to reach out to several Indian Tribes in order to carry out its responsibilities under Section 101(d)(6)(B) of the NHPA, and the implementing regulations to consult with any Indian "that attaches religious and cultural significance to historic properties that may be affected by an undertaking." 54 U.S.C. § 302706(b). The Final Environmental Impact Statement ("FEIS") for the Project, however, demonstrates that no efforts were undertaken to consult with any Sioux Tribes. FIES, Table 4.10.5-1.

Following issuance of the certificate, FERC was contacted by Intervenor Vance and Rhodd, the THPOs from the Cheyenne River Sioux and the Rosebud Sioux Tribes, respectively, who advise FERC of their tribes' interest in and connection to the lands in Virginia traversed by the pipeline. *See* Exhibit 1. Over the course of past three months, the Intervenor have been engaged in efforts to protect areas that have been identified by these tribes as areas of concern. Among other things, by letter dated January 16, 2018, the THPO of the Cheyenne River Sioux Tribe contacted FERC and requested that FERC provided it with information about the cultural resources identified during the Section 106 process for the MVP. By letter dated January 30, 2018, FERC's environmental project manager refused to provide this information, instead directing the THPO to summaries of these studies contained in the environmental documents.

By letter dated March 9, 2018, Ben Rhodd, the THPO for the Rosebud Sioux Tribe wrote to the Advisory Council on Historic Preservation ("ACHP"), stating that on March 4, 2018, he had inspected this property and confirmed that the identified archeological sites within the MVP right of way, one of which contains a Native American burial attributable to "Lakota, Dakota, Nakota peoples") are areas that the Tribe considers significant to its history. *See* Letter from Rhodd to (March 9, 2018). *See* Exhibit 1. This letter was formally brought to FERC's attention. *See* FERC Accession ##201803145025, 201803265079. As the Intervenor have pointed out, these sites are located on parcels of land in Roanoke County, VA (111.00-01-62.01-0000 and 117.00-01-38.00-0000) in the path of the intended corridor (and an intended access road) for the MVP.

Mr. Rhodd elaborated on his findings in a letter to the ACHP dated March 23, 2018, in which he noted that the four locations that the THPOs visited on March 3 March 6, 2018, were areas of concern to the Siouan Tribes, and noted that these "locales have historical documentation of Siouan locations/presence and our oral history reiterates our existence within this region." Letter

to ACHP from Ben Rhodd, at 2 (March 23, 2018) (Exhibit 1). Moreover, Mr. Rhodd specifically advised that they had reason to believe that the artifacts contained in the identified sites were “newly identified Siouan places,” and also contained evidence of burial remains.

Nonetheless, by Order dated March 26, 2018, FERC issued a notice permitting MVP to commence construction of discontinuous portions of its pipeline in Giles, Craig, Montgomery, and Roanoke Counties, Virginia, including land owned by the individual landowner Intervenor. On April 6, 2018, FERC issued a Letter Order to the THPO of the Cheyenne River Sioux Tribe indicating that FERC would not rescind the notice to proceed nor would it initiate consultation with the THPOs. The Letter Order takes the view that consultation with the Sioux THPOs was not warranted “because FERC staff found no documentation that your tribe ever occupied the project area or that your tribe had historical interest in West Virginia or Virginia.”

FERC’s Letter Order of April 6, 2018 cited Volume 13 and 15 of the Handbook of North American Indians, as evidence supporting this conclusion. Intervenor asks FERC to rehear this letter order. On April 19, 2018, BREDL’s Section 106 coordinator filed with FERC a critique of FERC’s decision to exclude Sioux Indian Tribes from the Section 106 consultation process, and provided readily available and objectively verifiable sources including the Handbook of North American Indians (Chapter 14). *See* FERC Accession # 201804195301 (attached as Exhibit 2). The relevant excerpts from the Handbook of North American Indians, Chapter 14, are attached hereto as Exhibit 3.

ARGUMENT

1. FERC’s refusal to consult with the THPOs violates Section 101(d)(6)(B) of the NHPA, and the implementing regulations.

Section 101(d)(6)(B) of the NHPA, and the implementing regulations “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.. 54 U.S.C. § 302706(b), 36 C.F.R. § 800.2(c)(2)(ii). “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).

As the attached documents demonstrate, the Siouan tribes have a demonstrable connection to the region of Virginia traversed by the MVP project. The foundational reference work establishing the historic presence of Sioux tribes in the MVP project area in Virginia is James Mooney, whose 1894 work titled “The Siouan Tribes of the East” makes the claim that Sioux Indians inhabited an area in Virginia including all the land “west of a line drawn through Richmond and Fredericksburg, up to the Blue Ridge,” which includes the MVP project area. Mooney’s 1894 map titled, “Siouan Tribes of Virginia and the Carolinas” demarcates the area between the headwaters of the Roanoke River in Roanoke County and the Blackwater River in Franklin County, i.e., the MVP study area, as having been inhabited by Siouan tribes. A photo of that map appears in the attached “Historic Presence of Sioux Indians in Appalachian/Piedmont Virginia.”

John R. Swanton’s “Siouan Tribes and the Ohio Valley” (1945) states that Siouan language speakers lived in “the Piedmont country of Virginia and the Carolinas, extending to the . . . Appalachian Mountains.” He states that the origin of the Sioux tribes may have been the Appalachian Mountains, and that “remnants of Siouan tribes survived near the mountains in the regions of Virginia, North Carolina, and South Carolina until after the coming of the white race.” Swanton’s “The Indians of the Southeastern United States” (1946) states, “The northern Siouan people – the Tutelo, Saponi, Monacan and their allies – were probably late comers into the Piedmont region of Virginia, which they had apparently reached from the upper Ohio.”

Swanton's 1946 work continues, "These Siouan Indians were rather sharply divided on linguistic grounds into a northern branch which anciently occupied the Piedmont and mountain areas of Virginia and extended over much, and probably all, of West Virginia, and a southern branch in central North Carolina and the northern part of South Carolina." Swanton's 1946 work contains a map titled "Tribal movements according to the traditions and the earliest records". This map bears the inscription, "Virginia Siouans" in the region of the MVP project.

These and other works quoted in the attached materials, as well as the Swanton and Mooney maps discussed above and reproduced in the attached documents, establish incontrovertibly that authoritative 19th and 20th century American scholarship recognizes as historic fact the habitation by Siouan Indian tribes in the portion of Virginia crossed by the MVP project. (Exhibit 2). Accordingly, Section 101(d)(6)(B) of the NHPA, and the implementing regulations require FERC to consult with the Sioux tribes with respect to this undertaking, which clearly affects lands that are connected to and of concern to these tribes.

2. FERC failed to make a reasonable and good faith effort to identify Indian tribes that Must Be Consulted in the Section 106 Process.

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." 36 C.F.R. § 800.2(c)(2)(ii)(A) (emphasis added). The agency is required to undertake a "reasonable and good faith effort to identify Indian tribes and Native Hawaiian organizations that shall be consulted in the section 106 process." *Id.* § 800.2(c)(2)(ii).

Here it is clear that FERC has not undertaken the required “reasonable and good faith effort to identify Indian tribes” who must be consulted in the Section 106 process for the MVP. The effort undertaken by FERC is described in FERC’s April 6 letter to Steve Vance, THPO, Cheyenne River Sioux. That letter states,

The Cheyenne River Sioux was not contacted by our agency for MVP because FERC staff found no documentation that your tribe ever occupied the project area or that your tribe had historical interest in West Virginia or Virginia. For instance, Volume 15 (Northeast) of the “Handbook of North American Indians” shows that West Virginia and Virginia were occupied by Algonquian and Iroquois peoples (not Siouan). Additionally, Volume 13 (Plains) of the “Handbook of North American Indians” illustrates that the ancestral, aboriginal, or ceded lands of the Lakota or Sioux Nation extended from Wisconsin westward to Wyoming, and from Iowa north to North Dakota.

FERC’s utilization of the Handbook of North American Indians (“Handbook”) as described by FERC, above, is faulty to the point of negligence. FERC claims that Volume 15 shows that Algonquians and Iroquois, not Siouans, occupied Virginia. While the map on page ix of Volume 15 does indicate the presence of Algonquian and Iroquoian people in the *eastern coastal region* of Virginia, the MVP project area is in the *western* not the eastern part of Virginia. The western region of Virginia is covered in Volume 14 (Southeast). The map in Volume 14 indicates Tutelo occupancy of the MVP project area. Tutelo were indisputably Siouan in origin, as argued by multiple scholarly documents, including Raymond J. Demallie’s chapter in Volume 14 on “Tutelo and Neighboring Groups,” Swanton, and other sources recounted in the attached “Historic presence of Sioux in Appalachian/Piedmont Virginia,” attached as Exhibit 1. The chapter from Volume 14 on Tutelo is attached as Exhibit 3. A less hasty and superficial approach to the Handbook would have allowed FERC to become aware of the pre-historic and historic presence of Siouan tribes in the MVP study area in western Virginia, through these and other contributions: (1) Douglas R. Parks and Robert L. Rankin’s chapter in Volume 13; (2) Raymond J. Demallie’s chapter in Volume 14; (3) the map in Volume 14; (4)

Raymond J. DeMallie's chapter in Volume 14; and (5) Goodard's chapter in Volume 17. *See* Exhibit 2, at 2.

FERC also claims that Volume 13 of the Handbook (Plains) confines Sioux tribal history to the midwestern and western regions of the U.S. This claim reveals that FERC's review of the Handbook focused on current-day tribal groups, while failing to consider tribes' habitation in the distant past. Such an approach ignores not only the ancient history of the Siouan and other North American Indian tribes, but also the Section 106 regulations, which provide that the obligation to consult with the Indian Tribes "applies regardless of the location of the historic property." 36 C.F.R. § 800.2(c)(2)(ii). The guidance developed by the ACHP further explains that "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." <http://www.achp.gov/regs-tribes.html>.

FERC's failure to consult Volume 14 (Southeast) is an immense omission, considering that the MVP project is planned for construction through Virginia, a state in the southeastern U.S. Passages in Volume 14 describing historical linguistics offer significant insight on how the ancient Siouan language is indeed an indicator of historic relationship among those groups who spoke it. Such a linguistic and historic connection between the Siouans who long ago inhabited the MVP project area in Virginia and the contemporary Sioux tribes of South Dakota compels FERC to consult with the Cheyenne River and Rosebud Sioux THPOs for the MVP as the MVP project area is one of the places where their forebears resided in the distant past.

3. FERC failed to provide the THPO's A Reasonable Opportunity to Consult.

The NHPA regulations require that agencies grant THPOs "a reasonable opportunity to identify [their] 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)

Here, not only has FERC refused to consult with the THPOs, FERC has even gone so far as to deny the THPOs the right to examine cultural resource reports that have already been prepared. FERC’s 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 of concern to the Rosebud and Cheyenne River Sioux Tribes. Copies of the relevant correspondence is attached as Exhibit 1.

MOTION FOR STAY

In addition to their request for rehearing, Intervenor also hereby expressly move FERC to issue a stay of the Certificate Order pending resolution of Intervenor’s request for rehearing. FERC has the authority to issue such a stay under 5 U.S.C. § 705, and should do so where “justice so requires.” To prevent impacts during the pendency of the rehearing process that are indeed final with respect to Intervenor’s members, FERC should stay the Certificate Order and/or the Notice to Proceed issued to the MVP, based on the three factors that it considers in determining whether justice requires a stay. Those factors are “(1) whether the party requesting the stay will suffer irreparable injury without a stay, (2) whether issuing a stay may substantially harm other parties; and (3) whether a stay is in the public interest.” *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985).

Here, as noted above, the notice to proceed will result in immediate, irreparable injury to historic and cultural resources. As a result of this notice MVP has been authorized by FERC to proceed with right-of-way acquisition and clear-cutting activities in anticipation of pipeline construction. These activities will foreclose the ability of the THPO’s to have any meaningful

role in the avoidance of adverse effects under the as yet-uncompleted Section 106 process.

These ongoing construction activities, including grading and clearing of land, and removal of artifacts, will damage or destroy sites of great cultural or historical significance to the Tribes.

The irreparable injury associated with such activities was explained in a recent case: “[s]ites of cultural and historic significance are important to [the Siouan people] because they are a spiritual connection to our ancestors. . . . When such a site is destroyed, the connection is lost.”

Standing Rock Sioux Tribe v. U.S. Army Corps of Eng’rs (Standing Rock I), 205 F. Supp. 3d 4, 33 (D.D.C. 2016).

This irreparable harm to protected environmental and historic resources outweighs any financial consequences of a delay in the project. Finally-, the public interest in enforcement of Section 106 and the NHPA strongly favor of a stay of construction activities.

CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Intervenor respectfully request the following relief:

- A. Grant this Request for Rehearing;
- B. Rescind the Notice to Proceed issued in this matter, thus preventing MVP from irreparably harming artifacts and sites of cultural significance to the Siouan people.
- C. Direct MVP to cease and desist from all tree-clearing and removal actions
- E. Satisfactorily comply with Section 101(d)(6)(B) of the NHPA; and.
- F. Complete the consultation with the Sioux Tribes required under with Section 101(d)(6)(B) and Section 106 of the NHPA and implementing regulations.

Respectfully submitted,

/s/
/s/ Andrea C. Ferster (DC Bar # 384648)
Attorney at Law
2121 Ward Court, N.W. 5th Fl.
Washington, D.C. 20037
(202) 974-5142

(202) 223-9257 (Facsimile)
aferster@railstotrails.org

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I hereby certify that I have on this 4th day of May 2018 served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/
/s/ Andrea C. Ferster (DC Bar # 384648)
Attorney at Law
2121 Ward Court, N.W. 5th Fl.
Washington, D.C. 20037
(202) 974-5142
(202) 223-9257 (Facsimile)
aferster@railstotrails.org

REQUEST FOR REHEARING – EXHIBIT 1

Mnicoujou

ORIGINAL

Itazipco

CHEYENNE RIVER SIOUX TRIBE

Cultural Preservation Office
PO BOX 590 98 S. Willow St.
Eagle Butte, South Dakota 57625
Telephone: (605) 964-7554
Fax: (605) 964-7552



Steven Vance
Tribal Historic Preservation Officer
stevev.crstpres@outlook.com

Siha Sapa

Oohenumpa

Date: January 16, 2018

Federal Energy Regulatory Commission
Kimberly D. Bose, Secretary
888 First St. N.E., Room 1A
Washington, DC 20426

FILED
SECRETARY OF THE
COMMISSION
2018 JAN 24 P 2:42
FEDERAL ENERGY
REGULATORY COMMISSION

Re: Docket #CP16-10-000 (Mountain Valley Pipeline)

Secretary Bose,

It has come to my attention of the proposed Mountain Valley Pipeline to construct and operate a natural gas pipeline. I have read some of the comments from the public in regards to the environmental effects that could occur from its approval.

The Cheyenne River Sioux Tribe (CRST), Tribal Historic Preservation Officer (THPO), offers these comments to the proposed action.

The Federal Energy Regulatory Commission (FERC), must realize why they are discussing this topic with a Tribal Nation. The United States of America entered into treaties with Nations and a trust obligation to Native Nations. One such Nation is the Great Sioux Nation. Since separation of Tribes from aboriginal territories, the U.S. must now consult separately with Tribes as independent sovereign Nations from different regions of this continent. The CRST is a Nation within their ancestral territory which entered into treaty with the U.S. and continues to address concerns of effects to their homelands. FERC represents the U.S. in this trust obligation to the initiation of Section 106 Consultation process.

The National Historic Preservation Act, as amended through December 16, 2016 and Codified in Title 54 of the United States Code, Chapter 3001 – Policy states;

“It is the policy of the Federal Government, in cooperation with other nations and in partnership with States, local governments, Indian tribes, Native Hawaiian organizations, and private organizations and individuals, to” –

01/27/2010

(6) assist States and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust to expand and accelerate their historic preservation programs and activities.

Chapter 3027

Section 302706 - Eligibility for inclusion on National Register

- (a) In General – Property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.
- (b) Consultation – In carrying out its responsibilities under section 306108 of this title, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property described in subsection (a).

Chapter 3061 – Program Responsibilities and Authorities

Section 306108 – Effect of undertaking on historic property

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property.

The Section 106 process, as described in Subpart B of 36 CFR 800, consists of but not limited to four steps:

- (1) Initiation of the Section 106 Consultation Process (36 CFR 800.3)
- (2) Identification of historic or cultural properties (36 CFR 800.4)
- (3) Assessment of effects to historic or cultural property (36 CFR 800.5)
- (4) Resolution of adverse effects (36 CFR 800.6)

As the THPO, the designated representative for CRST for the Section 106 Consultation process, I am requesting FERC to provide me with any Class I, Class II, and Class III studies conducted for this project. Specifically what FERC has conducted or completed for the identification of cultural resources.

Respectfully



CRST THPO

Mnicoujou

Itazipco

CHEYENNE RIVER SIOUX TRIBE

Cultural Preservation Office
PO BOX 590 98 S. Willow St.
Eagle Butte, South Dakota 57625
Telephone: (605) 964-7554
Fax: (605) 964-7552



Steven Vance
Tribal Historic Preservation Officer
stevev.crstpres@outlook.com

Siha Sapa

Oohenumpa

ORIGINAL

Date: March 18, 2018

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First St. N.E., Room 1A
Washington, DC 20426

FILED
SECRETARY OF THE
DEPT. OF
2018 MAR 26 P 4:33
REGULATORY COMMISSION

Re: Docket #CP16-10-000 (Mountain Valley Pipeline)

Secretary Bose,

The Cheyenne River Sioux Tribe (CRST), submits these comments concerning the Mountain Valley Pipeline (MVP), under the review and permitting of the Federal Energy Regulatory Commission (FERC) and lead federal agency.

As The Tribal Historic Preservation Officer (THPO), and designated representative for the Section 106 Consultation process, on January 16, 2018 I requested any Class I, Class II, and Class III reports for the MVP project from FERC. The response from FERC was that the requested information is "privileged" and I was to review the Environmental Impact Statement (EIS), and the Programmatic Agreement (PA), for the information I was requesting.

I have already reviewed the EIS and PA and because there seemed to be insufficient work by the archaeologists was why I am requesting the archaeological Class III report for the identification and evaluation of cultural resources.

I am discouraged at the response from Paul Friedman's January 30, 2018 letter from FERC that a THPO cannot review MVP project reports. I am very sure FERC provided this same information I requested to the State Historic Preservation Officer (SHPO). Is FERC discriminating CRST?

I sent emails to FERC asking for a response to my request and again they referred me to the EIS and PA.

The PA states that the Section 106 Consultation Process was concluded by the execution of the PA. I disagree with this statement by FERC. PA's are developed as part of the 106 Process but does not conclude the 106 Process.

Because there has been limited communication with me on this project I have informed the Advisory Council on Historic Preservation (ACHP), of my concerns. I am waiting for ACHP and Office of Native American Affairs (ONAA), for their interpretation of a PA concluding the Section 106 and other questions of the way FERC has conducted consultation with Tribes who, as FERC states in their January 30th letter "Tribes that may have historically used or occupied the project area".

I have notified people that the Lakota "Sioux" have known historic and cultural association to the area and this is why I am requesting information to review. Because I have not been provided information to review I went to Virginia to visit some areas where the proposed pipelines Area of Potential Effect (APE), would be. Several landowners allowed me on their property to view their land. During the visit I observed what I deem occupation sites, encampments, or villages. On another property there was sites of ceremonial activity. None of this was in the EIS or the PA. The EIS states that no construction will be allowed until all identification measures have been completed. These newly located sites were not identified by the archaeological firm.

It has come to my attention that archaeologists are in the areas I visited after leaving Virginia. It appears that MVP is in the areas visited to remove or destroy the sites.

I called Paul Friedman and Anthony FERC on the telephone after a visit to Virginia and was told to leave a message as they were not in their offices.

Not being able to contact anyone at FERC I sent emails to ACHP that there will be adverse effects from the ongoing cutting of trees and archaeological diggings presently being done along the APE. I informed ACHP that the continued destruction is deemed anticipatory demolition and should stop until all cultural resources are sufficiently identified.

This letter is only repeating what has been addressed previously but I feel the previous emails, phone calls, and other requests are ignored and deem not official. The communication I am doing is far greater then what FERC has done to date to address consultation with Tribes.

Respectfully,



Steve Vance THPO

*Tribal Historic Preservation
Cultural Resource Management Office*

P.O. Box 809

Rosebud, South Dakota

Telephone: (605) 747-4255

Fax: (605) 747-4211

Email: rst.thpo@rst-nsn.gov

Benjamin K Rhodd
Officer

Kathy Arcoren
Administrative Assistant

Jennifer Galindo
Archaeologist

Bernadette Emery
GIS Recording Clerk



ad, Cultural,
tradition for
e Generation

March 23rd, 2018

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

Dear Ira,

The Rosebud Sioux Tribe Historic Preservation Program again sends its greetings. I am writing to follow up and expand on information from my letter of March 9th, 2018 to you. This continues to relate to letters, emails and communications from concerned individuals regarding the Mountain Valley Pipeline Project (MVPP) that transversely transects the States of Virginia and West Virginia. Regarding this project, Mr. Steve Vance, THPO for the Cheyenne River Sioux Tribe of South Dakota and I traveled to Virginia to visit and review areas of concern by landowners and organizations involved in historic preservation and cultural descendant affiliation to their lands March 3rd - March 6th, 2018.

As named in my last letter, these visits took us to areas of concern in Roanoke and Franklin Counties in Virginia, however, the areas of concern are not solely limited to the aforementioned two counties but the entirety of the region where the ROW of the MVP is proposed. Within this area are several historic districts documented/identified by area historic preservationists in these communities and the sites that we visited on March 3rd-March 6th, 2018.

As I described in my last letter we identified, evaluated and recorded sites within the Right of Way (ROW) that are attributable to the Lakota, Dakota, Nakota peoples. One new finding in Roanoke County is a burial. The other three (two in Roanoke and one in Franklin County) were determined and recognized as having attributes and characteristics of traditional culturally recognized Lakota encampments. Although each contains individually identified features, all of these sites are the same in design, function and purpose as sites documented on the Northern Plains and in States between Virginia and South Dakota.

As has occurred as of last Wednesday there is a new occurrence in the County of Roanoke that MVP is conducting an archeological investigation at one of the recognized encampment sites we visited. This activity, I am told, is in the hiding of a large tent structure without reporting any

findings to the citizens and perhaps destroying the evidence of this encampment site. There is concern for the preservation of these newly identified Siouan places and for those not fully evaluated by tribal participation where Mr. Vance and I visited this site.

Since writing to you it continues that Mr. Vance, despite his attempts to communicate with FERC, and the ACHP, the company has been using a proprietary stance of privileged information and not sharing cultural resources reports with our Tribe(s). We have vested interest in the area of this proposed pipeline and sites recorded/evaluated in compliance with Section 106 of the National Historic Preservation Act of (1966) (ammended-1992). Today I am restating that under Section 101 (d)(6)(B) of the Act; *"Section 101(d)(6)(B) of the act 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"* we assert our cultural, spiritual and physical tie to the particular Counties of Roanoke and Franklin. However, our presence is not limited to just these geopolitical entities as defined but other regional entities as currently described along the ROW in Virginia. These locales have historical documentation of Siouan locations/presence and our oral history reiterates our existence within this region.

We reaffirm our vested interest in this area and the four locations we visited (and others yet to be determined) with the understanding that this suggests the following. Those concerned landowners and individuals within the proposed MVP line/counties proposed to us that through their cultural attachment documentation and the development of their historic districts that the Siouan sites they have on their lands are valued and have been protected by the current landowner descendant families for generations. This is throughout the region along with the findings of artifacts that spans, in example from the uplands of Roanoke County across the plateau and through the Callaway road to Franklin County as we observed in our brief visit.

Mr. Vance and I continue to assert that previous negotiations/consultations with other Tribes contacted following Section 106 and the findings and evaluation methodologies are insufficient to protect the common cultural patrimony of the Lakota. So, we continue to petition 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 descendant(s), now Plains and prairie bounded Tribes, from being involved, considered or consulted.

The Rosebud Sioux Tribe has the supporting documentation for the four sites noted above and intends to report that documentation to FERC. Those interested individuals report intentions to file to FERC as well. We are aware of the threat of court decisions to allow MVP to occupy land which contains these sites, the threat of cutting trees and disturbing the land and landscapes in which these sites reside. Currently, a firm affiliated with MVP is excavating literally under the cover of a tent with no reporting of findings to the landowners. Therefore, we continue to call

for intercession by the ACHP for 30 days with FERC to start after this is acknowledged so we have an opportunity to review reports and findings and then we can consult with MVP.

We continue to note that the Programmatic Agreement (PA) which, as signed and in effect has issues in content, verbiage, vernacular and intent to a degree that damages, impacts and destruction will ensue and may be actually occurring at one site now. These sites we consider important to our history.

Moreover, the current EIS is also inadequate and incomplete regarding sites of significance not only to Lakota but to other ancestrally descendant Siouan Tribes as well. The EIS has severe discrepancies that are not conducive to proper protections and particularly the lack of Tribal participation regarding sites that remain unevaluated and not recommended to the National Register of Historic Places.

Please be aware that we will continue, as before, to remain vigilant concerning this project as we deem it a priority.

Thank you.

Sincerely,



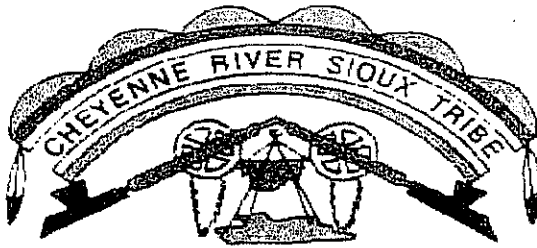
Ben Rhodd, BA, MS, RPA
Tribal Historic Preservation Officer
Archaeologist
Rosebud Sioux Tribe
PO Box 809
Rosebud, SD 57570
ph.-605-747- 4255
Email rst.thpo@rst-nsn.gov (Office)
brhodd1@yahoo.com(personal)

Mnicoujou

Itazipco

CHEYENNE RIVER SIOUX TRIBE

Cultural Preservation Office
PO BOX 590 98 S. Willow St.
Eagle Butte, South Dakota 57625
Telephone: (605) 964-7554
Fax: (605) 964-7552



Steven Vance
Tribal Historic Preservation Officer
stevev.crstpres@outlook.com

Siha Sapa

Oohenumpa

Date: April 11, 2018

Federal Energy Regulatory Commission
Kimberly D. Bose, Secretary
888 First St. N.E., Room 1A
Washington, DC 20426

Re: Docket #CP16-10-000 (Mountain Valley Pipeline)

Secretary Bose,

The Cheyenne River Sioux Tribe (CRST), Tribal Historic Preservation Officer (THPO), offers this response to the letter from the Federal Energy Regulatory Commission (FERC), dated April 6, 2018.

First I must reconsider my earlier comments about the studies conducted by the archaeologists for the Mountain Valley Pipeline (MVP). It is apparent that they are not the only ones to have not researched who can establish association to projects.

James Martin stated that the Lakota (Sioux), people were never in the eastern portion of this continent. He base this on the "Handbook of North American Indians". As a federal agency representative to tell a Tribal Nation their history from a book and where they can and cannot establish association wrong. No federal agency or non-Native person has the right to disassociate a person or Nation from its culture or history. This reminds me of when schools were teaching Native students, such as myself, that Columbus discovered America. It also reminds me of archaeologists today are stating that Natives came here through the Bering Straits. Again this is all wrong. Only Native people or Tribal Nations can establish association and cultural and religious significance.

Since FERC can now make this comment to a Tribal Nation wishing to conduct the Section 106 Process on a federal action makes me suspect FERC has taken sides with industry interests and not Tribes. Section 106 should be conducted with the interests of Tribes in mind.

I would like to ask FERC if their representative can go a little further out on the limb and explain cultural and religious significance of the Lakota.

The letter also states the recommendations made by the Advisory Council on Historic Preservation (ACHP). I have read many recommendation from ACHP to federal agencies and some of those agencies are now in court with Tribal Nations. Because some agencies ignore ACHP I go before the CRST Advisory Council to get my directions. Remember that Tribal Nations are not States of America but independent sovereign Nations who can establish their own governing bodies.

In the same letter on page 2, it states that "a number of cultural resources reports have been and still being produced for the project". Yet in the next sentence it states that the reports were considered adequate by FERC staff and accepted by Virginia SHPO. Reports which I have requested and have not been provided for review.

I don't want to put all of the regulations in this letter but it states;

800.4 Identification of historic properties.

(a) Determine scope of identification efforts. In consultation with the THPO, the agency shall;

- (1) Determine the area of potential effects, as defined in 800.16(d);
- (2) Review existing information on historic properties within the area of potential effects, including any data concerning possible historic properties not yet identified;
- (3) Seek information, as appropriate, from consulting parties, and other individuals and organizations likely to have knowledge of, or concerns with, historic properties in the area, and identify issues related to the undertaking's potential effects on historic properties; and
- (4) Gather information from any Indian Tribe to assist in identifying properties, including those located off Tribal lands, which may be of religious and cultural significance to them and may be eligible for the National Register, recognize that an Indian Tribe may be reluctant to divulge specific information regarding the location, nature, and activities associated with such sites. The agency official should address concerns raised about confidentiality pursuant to 800.11(c).

All communications with FERC to this point is accessible to the public. The sites that were unrecorded by the archaeologists but found by the Rosebud Sioux Tribe (RST), and CRST should be considered confidential until it is well known of their preservation and protection. Especially when company employees are presently in sensitive areas digging, cutting trees, and conducting surveys. Tribes have already seen destruction of Sacred site by companies without consequences. Until I am sure which side FERC is on I am not comfortable in providing specific details or locations of sites.

RST and CRST has association to the areas proposed for the MVP project and continues to state this to FERC, and now ACHP and Office of Native American Affairs. All I have received is resistance from FERC and letters that attempt to tell my Lakota history, origin, and beliefs.

As for the Programmatic Agreement concluding the Section 106 Process, this was all done with the assumption that there was proper identification for historic and cultural properties. Maybe it was the increasing pressure of the opposition to this project that the PA was concluded, I can only assume at this point. Regardless I still feel that there are known sites within the area of potential effect that FERC is not addressing but stalling.

The letter in the end states that I should contact Paul Friedman by phone or email. I tried that and I tried Eric Howard, FERC Tribal Coordinator, on March 7th they were both out of the office and to be back on the March 12th and 13th. I tried again on March 19th and they both again were out of the office and back March 21st.

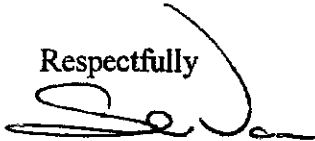
Since the phone calls and emails are not answered or responded to, this is the only way someone from FERC sends me a letter. So again I have to go through the eFiling system.

When there are multiple agencies involved on a project a lead agency is normally selected. Since there are other agencies for the MVP I feel FERC should be suspended as the lead agency and maybe the Forest Service or Army Corp of Engineers take the lead.

Question, what is the consequence for an agency who fails to, or refuses to consult?

I think I already know the answer.

Respectfully

A handwritten signature in black ink, appearing to be 'Se J', written over the word 'Respectfully'.

CRST THPO

REQUEST FOR REHEARING – EXHIBIT 2

April 19, 2018

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street N.E.
Washington, DC 20426

Dear Ms. Bose,

We are writing to offer criticism of Federal Energy Regulatory Commission (FERC)'s decision to exclude Sioux Indian Tribes from the list of tribes whom it invited to engage in the Section 106 process for the Mountain Valley Pipeline (MVP). We assert that the decision on the part of FERC to exclude the Sioux Indian Tribes has resulted in the Commission's failure to meet requirements under 36 CFR 800.2(c)(2)(ii) to make a "reasonable and good faith effort to identify Indian Tribes" that should be consulted under Section 106. We conclude that FERC's ongoing failure to engage with the Sioux Indian Tribes, after receiving repeated requests for engagement from the Cheyenne River and Rosebud Sioux Tribal Historic Preservation Officers in 2018, constitutes a violation of trust with the consulting parties who signed the Section 106 Programmatic Agreement for the MVP, rendering that Programmatic Agreement invalid.

Please note that for purposes of this discussion, we are using the term "Appalachian/Piedmont Virginia" to designate the portion of the MVP study area now claimed to be of cultural and religious significance by the Cheyenne River and Rosebud Sioux Tribes. It includes the area between the headwaters of the South Fork of the Roanoke River in the Appalachian Mountains in Roanoke County, VA, and the Blackwater River in the Piedmont farming area in Franklin County, VA.

FERC'S FLAWED USE OF THE HANDBOOK OF NORTH AMERICAN INDIANS

FERC's description of its process for identifying Indian Tribes

National Historic Preservation Act (NHPA) and Advisory Council on Historic Preservation (ACHP) 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."

The process used by FERC to identify Indian Tribe which it invited to become engaged in the Section 106 process for the MVP is described in an April 6 letter to Steve Vance, THPO, Cheyenne River Sioux Tribe, from James Martin, FERC. That letter states,

The Cheyenne River Sioux was not contacted by our agency for MVP because FERC staff found no documentation that your tribe ever occupied the project area or that your tribe had historical interest in West Virginia or Virginia. For instance, Volume 15 (Northeast) of the "Handbook of North American Indians" shows that West Virginia and Virginia were occupied by Algonquian and Iroquois peoples (not Siouan). Additionally, Volume 13 (Plains) of the "Handbook of North American Indians" illustrates that the ancestral, aboriginal, or ceded lands of the Lakota or Sioux Nation extended from Wisconsin westward to Wyoming, and from Iowa

north to North Dakota.

FERC misreads Volume 15 of Handbook

We find that FERC's utilization of the Handbook of North American Indians ("Handbook"), as described by Mr. Martin, is faulty to the point of negligence. To begin, we confirm that the compendium of volumes in the Handbook is generally considered to be the primary authoritative resource on Native Americans in North America, given that the archaeology, ethnology, and linguistic research on the various tribes is constantly being assessed and refined by scholars. Therefore, that FERC used the Handbook as a reference is not being contested. However, the conclusions drawn by FERC through its use of the Handbook are faulty.

First, FERC claims that only Algonquian and Iroquois people, not Siouans, had historically occupied West Virginia and Virginia. That claim is not supported by any scholarship in Volume 15 of the Handbook. The map, "Key to Tribal Territories" on page *ix* of Volume 15 indicates that the area of Virginia west and north of the Blue Ridge was populated by "Poorly Known Tribes of the Ohio Valley and Interior". The southern line of the area demarcated on the map as "Poorly Known Tribes" is unclear, but a natural geographical feature close to the southern boundary is that of the Blue Ridge, which accords with discussions of tribal locations in Volume 15. There is absolutely no indication that this area or the area immediately to the south of the boundary line was occupied by "Algonquian and Iroquois peoples".

The map does indicate the presence of Algonquian and Iroquoian peoples in the eastern, coastal part of Virginia, over 250 miles away from Appalachian/Piedmont Virginia. The erroneous claim by Mr. Martin quoted above therefore strongly suggests that FERC misread and therefore misinterpreted the map in Volume 15.

Furthermore, the map in Volume 14 indicates Tutelo occupancy of the Blue Ridge areas of Roanoke County, VA. Tutelo were indisputably Siouan in origin, as argued by multiple scholarly documents, including Raymond J. Demallie's chapter in Volume 14 on "Tutelo and Neighboring Groups," Swanton, and other sources recounted below.

That there would be discrepancies between the maps in Volumes 14 and 15 is to be expected, given their focus. However, that FERC did not consult Volume 14 on Southeast Indian tribes is more than puzzling. It suggests haste and inability to read the sources accurately.

FERC's failure to consider full range of cultural and linguistic evidence offered in Handbook

Further, that the Cheyenne River and Rosebud Sioux do, indeed, have prehistoric claims to the archaeological provenance in Appalachian/Piedmont Virginia is indisputable when the full range of cultural and linguistic evidence offered in the Handbook is considered.

Mr. Martin states in his April 6 letter, "Volume 13 (Plains) of the 'Handbook of North American Indians' illustrates that the ancestral, aboriginal, or ceded lands of the Lakota or Sioux Nation extended from Wisconsin westward to Wyoming, and from Iowa north to North Dakota." This claim of "ancestral" lands is contradicted in the same volume on page 94, in the chapter by Douglas R. Parks and Robert L. Rankin, which says, "Siouan languages spoken outside the Plains area included Winnebago (Wisconsin), Ofo and Biloxi (Mississippi), as well as Tutelo, Saponi, and probably Occaneechi and Moniton (Virginia)." The use of "Moniton" here is a variant spelling of "Monacan".

Raymond J. DeMallie's chapter on the Sioux in Volume 13 posits more recent ancestry than one supported by linguistic affinities and other archaeological claims. However, that Siouan people, the prehistoric ancestors of contemporary High Plains Sioux, were located in the Southeastern United States and specifically in Appalachian/Piedmont Virginia is strongly supported by DeMallie's chapter in Volume 14, "Tutelo and Neighboring Groups." It is also strongly supported in Volume 17 (Languages), as follows:

For its part, Tutelo was placed in a subgroup with geographically distant Dakota and Hidatsa, along with the southern outliers, Biloxi and Ofo The importance of Swanton's classification lay in demonstrating the complexity of the relationships among the Siouan-Catawba languages and the way the relationships cut across geographic lines. Swanton drew on the new classification and ethnohistorical resource to formulate the hypothesis that the Siouan-Catawba peoples had originated in the Ohio valley (Swanton 1936). The Tutelos went to Virginia from there, perhaps by way of the Kanawha River, while the Catawbias had presumably arrived in the Carolinas at a much earlier time (Goodard, vol. 17, pp. 101)."

FERC failure to consider linguistic connection described in Handbook

A quotation from Volume 14 provides a key to understanding how the ancient Siouan Indian language, shared by many North American tribal groups over millennia, is indeed an indicator of historic relationships among those tribes and tribal groups:

Historical linguistics provides models of how languages are 'genetically' related to one another by showing how they diverged over time from a shared ancestral protolanguage. While linguistics and social changes do not necessarily correlate directly, family-tree models of linguistic relationship suggest the contours of historical relations between groups over time While historical linguistics is a specialized field, knowledge of linguistic relationships has become a basic principle used more widely as a way of describing historical relationship among groups."

In his article in *American Anthropologist* titled "Siouan Tribes and the Ohio Valley" (1945), John R. Swanton states, "The language of the Virginia Siouans is, or rather was, much closer to the western dialects." The linguistic connection between the Virginia and western Siouans suggested by Swanton indicates that the Siouan-speaking Tutelo, Saponi, and Monacan, all of whom are shown in Volume 14 of the Handbook to have resided in Appalachian/Piedmont Virginia, have a linguistic, and thus historic, relationship to the western Sioux, i.e., the forebears of the Cheyenne River and Rosebud Sioux Tribes who now express an interest in the MVP study area in Appalachian/Piedmont Virginia.

Such a linguistic and historic connection between the Siouans of Appalachian/Piedmont Virginia and the western Sioux tribes legitimizes the desire on the part of the Cheyenne River and Rosebud Sioux Tribes to participate in the Section 106 process for the MVP as, indeed, the MVP study area is one of the places where their forebears resided in the distant past. The relationship of the Cheyenne River and Rosebud Sioux tribes to Appalachian/Piedmont Virginia is precisely the type of relationship addressed by the NHPA when it says, "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."

FERC'S FAILURE TO CONSIDER AUTHORITATIVE ETHNOGRAPHIES

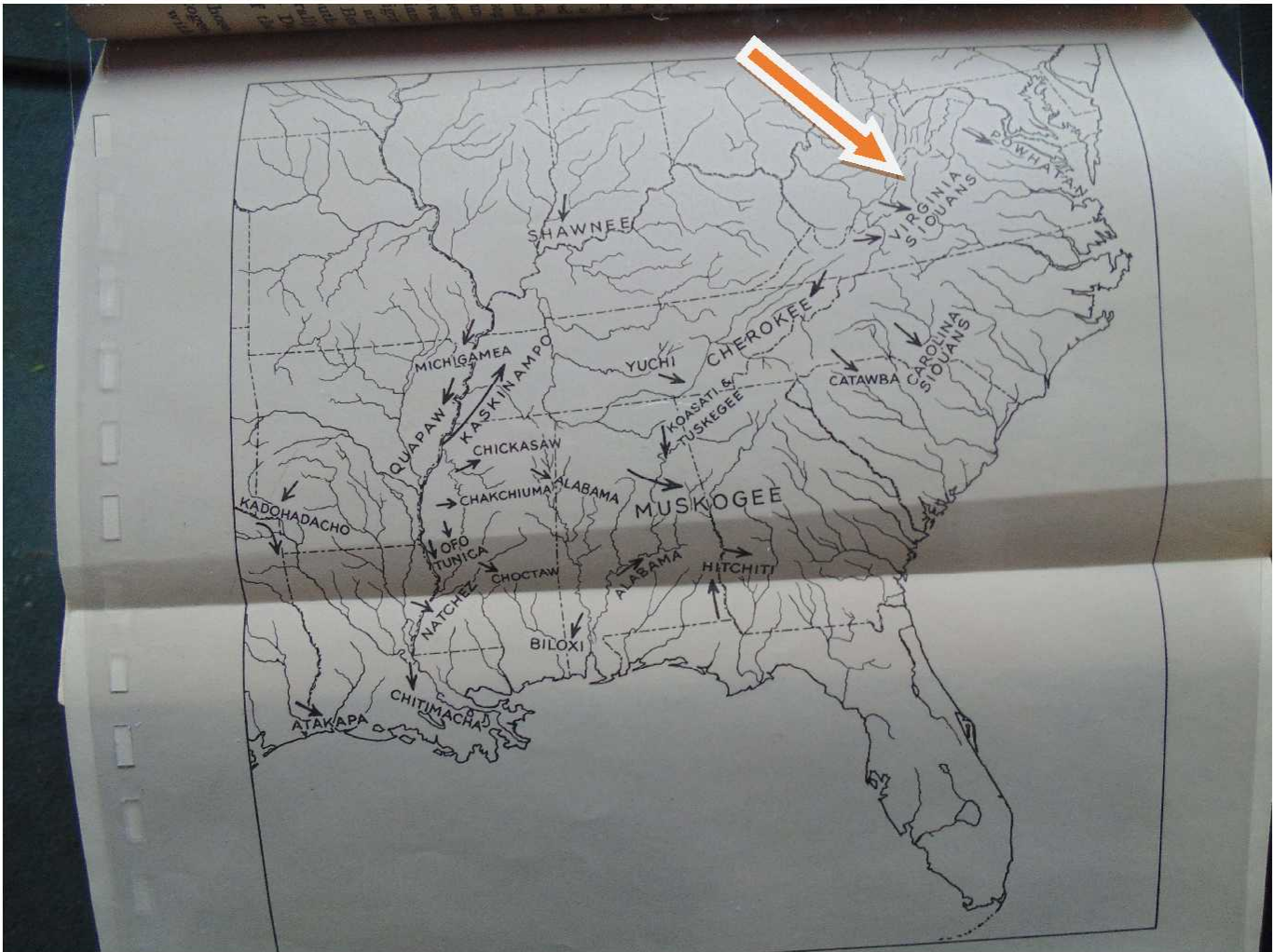
FERC ignores the Handbook's reference to Swanton

Swanton's "The Indians of the Southeastern United States" is cited prominently in the Handbook, including the first paragraph of the first page of both Volume 14 and Volume 15:

- Page 1, paragraph 1, Volume 14 (Southeast) → "A number of important synthetic works on the Native American Southeast preceded this volume, among them Swanton's (1946) *The Indians of the Southeastern United States*, J. B. Griffin's (1952b) *Archaeology of Eastern United States*, and Hudson's (1976) *The Southeastern Indians*."
- Page 1, paragraph 1, Volume 15 (Northeast) → "Because of the lack of any single, uniform set of ethnographies covering this area (such as may be found for the Southeast in Swanton 1946, *The Indians of the Southeastern United States*), the Planning Committee for this volume decided that the tribal sketches should be as detailed as possible."

The Handbook's citation of Swanton's *The Indians of the Southeastern United States* at the top of page one of both Volume 14 and 15 indicates that a "reasonable and good faith effort to identify Indian tribes" on the part of FERC could and should have included a review of the work of Swanton.

The prominence assigned to Swanton's work by the Handbook also justifies our use here of Swanton's map -- which clearly labels Appalachian/Piedmont Virginia as "VIRGINIA SIOUANS" -- as legitimizing the Sioux interest in that portion of the MVP study area. Please see Swanton's map, reproduced below (orange arrow points to the area of Appalachian/Piedmont Virginia labeled "VIRGINIA SIOUANS").



*Map: Tribal movements according to the traditions and the earliest records
(source: Swanton, John R., The Indians of the Southeastern United States, 1946)*

FERC fails to consult authoritative ethnographies outside the Handbook

FERC's exclusive reliance on the Handbook has given them an incomplete understanding of the migration patterns, habits, and tribal relationships of the Sioux. A review of readily-available American scholarship on the pre-historic and historic Indian occupation of Appalachian/Piedmont Virginia would have identified classic works such as James R. Mooney's "The Siouan Tribes of the East," John R. Swanton's "Siouan Tribes and the Ohio Valley" and, as discussed above, Swanton's "The Indians of the Southeastern United States". These works, which would have been readily available to FERC staff at the Smithsonian Institution, DC Public Library, university libraries in the DC area, and probably in FERC's own reference collection, would have informed FERC of the Siouan pre-historic and historic presence in Appalachian/Piedmont Virginia, as well as the inclusion in the Sioux family of tribes those groups discussed in Volume 14 of the Handbook, namely the Tutelo, Saponi, and Monacan.

The attached document, "Historic Presence of Sioux Indians in Appalachian/Piedmont Virginia" offers citations from the works of Mooney and Swanton, as well as Douglas Brown, Guy E. Gibbon, Doane Robinson, and T. Keister Greer. These works establish incontrovertibly that authoritative 19th and 20th century American scholarship recognizes as historic fact the habitation by Siouan Indian tribes of the

geographic area which we have named Appalachian/Piedmont Virginia. The Mooney and Swanton maps as reproduced above and in the attached document confirm the Sioux prehistoric/historic presence in the MVP study area in Roanoke and Franklin Counties, VA.

The scholarship and mapping of Mooney, Swanton, and others -- combined with the unambiguous federal requirements for considering an Indian Tribe's interest in a historic property regardless of the property's distance from the tribe's contemporary location -- create an imperative that the Cheyenne River and Rosebud Sioux Tribes' interest in the Roanoke/Franklin County, VA portion of the MVP study area be recognized by FERC to the fullest extent allowable under Section 101 and Section 106 of the NHPA.

Instead of offering to recognize the Sioux as required under federal law and regulation, FERC has refused to do so, citing its critically flawed research utilizing the Handbook of North American Indians as justifying not only (1) its refusal to engage with the Sioux as requested by the Cheyenne River and Rosebud Sioux Tribal Historic Preservation Officers in 2018, but also (2) its failure in 2015-16 to invite the Sioux to participate in the Section 106 process when it invited the tribes listed on Table 4.10.5-1 of the Final Environmental Impact Statement for the MVP.

CONCLUSIONS

In light of FERC's failure to provide a reasonable and good faith effort to identify Indian tribes with an interest in the MVP study area in Virginia, the Commission should now, at the very least, invite the Cheyenne River and Rosebud Sioux Tribes to participate as consulting parties in the Section 106 process for the MVP, now that those tribes' legitimate claims to having an interest in Appalachian/Piedmont Virginia have been made.

FERC's continuing refusal to invite the Cheyenne River and Rosebud Sioux Tribes to participate in the Section 106 process for the MVP is an abrogation of FERC's duties under federal law and regulation, and compounds the Commission's earlier error in failing to invite the Sioux to participate at the appropriate time in the Section 106 process.

The Section 106 process is not concluded with the approval of a Programmatic Agreement, albeit this claim -- made officially by FERC and ACHP and supported by the Virginia SHPO -- is now being used as a rationale for refusing to involve the Sioux in the Section 106 process for the MVP. FERC's claim that Section 106 is completed with its approval of the Programmatic Agreement further compounds its failure to conduct a "reasonable and good faith effort" to engage with the Indian tribes under Section 106.

We conclude that FERC's repeated failure to invite the Sioux Indian Tribes to participate in the Section 106 process for the MVP constitutes a violation of trust with the consulting parties who signed the Programmatic Agreement for the MVP, rendering that Programmatic Agreement invalid.

Thank you for your prompt attention to this matter.

Sincerely,

Anita Puckett

Anita Puckett
Section 106 Coordinator
Preserve Montgomery County

Ann Rogers

Ann Rogers
Section 106 Coordinator
Blue Ridge Environmental Defense League

Attachment: "Historic Presence of Sioux Indians in Appalachian/Piedmont Virginia," April 2018

Introduction

The research presented in this document is offered as evidence that Siouan Indians lived in the geographic area of Virginia between the headwaters of the South Fork of the Roanoke River on Poor Mountain in Roanoke County and the Blackwater River in the Piedmont area of Franklin County. For purposes of this research, we will call the geographic area defined above as “Appalachian/Piedmont Virginia”.

The foundational reference work establishing the historic presence of Sioux tribes in Appalachian/Piedmont Virginia is James Mooney, whose 1894 work titled “The Siouan Tribes of the East” makes the claim that Sioux Indians inhabited an area in Virginia including all the land “west of a line drawn through Richmond and Fredericksburg, up to the Blue ridge”. Mooney’s 1894 map, “Siouan Tribes of Virginia and the Carolinas” demarcates the area between the headwaters of the Roanoke River in Roanoke County and the Blackwater River in Franklin County as having been inhabited by Siouan tribes.

John R. Swanton’s two works quoted herein are “Siouan Tribes and the Ohio Valley” (1945) and “The Indians of the Southeastern United States” (1946). The 1945 work states that Siouan language speakers lived in “the Piedmont country of Virginia and the Carolinas, extending to the . . . Appalachian Mountains.” He states that the origin of the Sioux tribes may have been the Appalachian Mountains, and that “remnants of Siouan tribes survived near the mountains in the regions of Virginia, North Carolina, and South Carolina until after the coming of the white race.” The 1946 work states, “The northern Siouan people – the Tutelo, Saponi, Monacan and their allies – were probably late comers into the Piedmont region of Virginia, which they had apparently reached from the upper Ohio.”

Swanton’s 1946 work continues, “These Siouan Indians were rather sharply divided on linguistic grounds into a northern branch which anciently occupied the Piedmont and mountain areas of Virginia and extended over much, and probably all, of West Virginia, and a southern branch in central North Carolina and the northern part of South Carolina.”

Swanton’s 1946 work contains a map titled “Tribal movements according to the traditions and the earliest records”. This map bears the inscription, “Virginia Siouans” in the region of Appalachian/Piedmont Virginia.

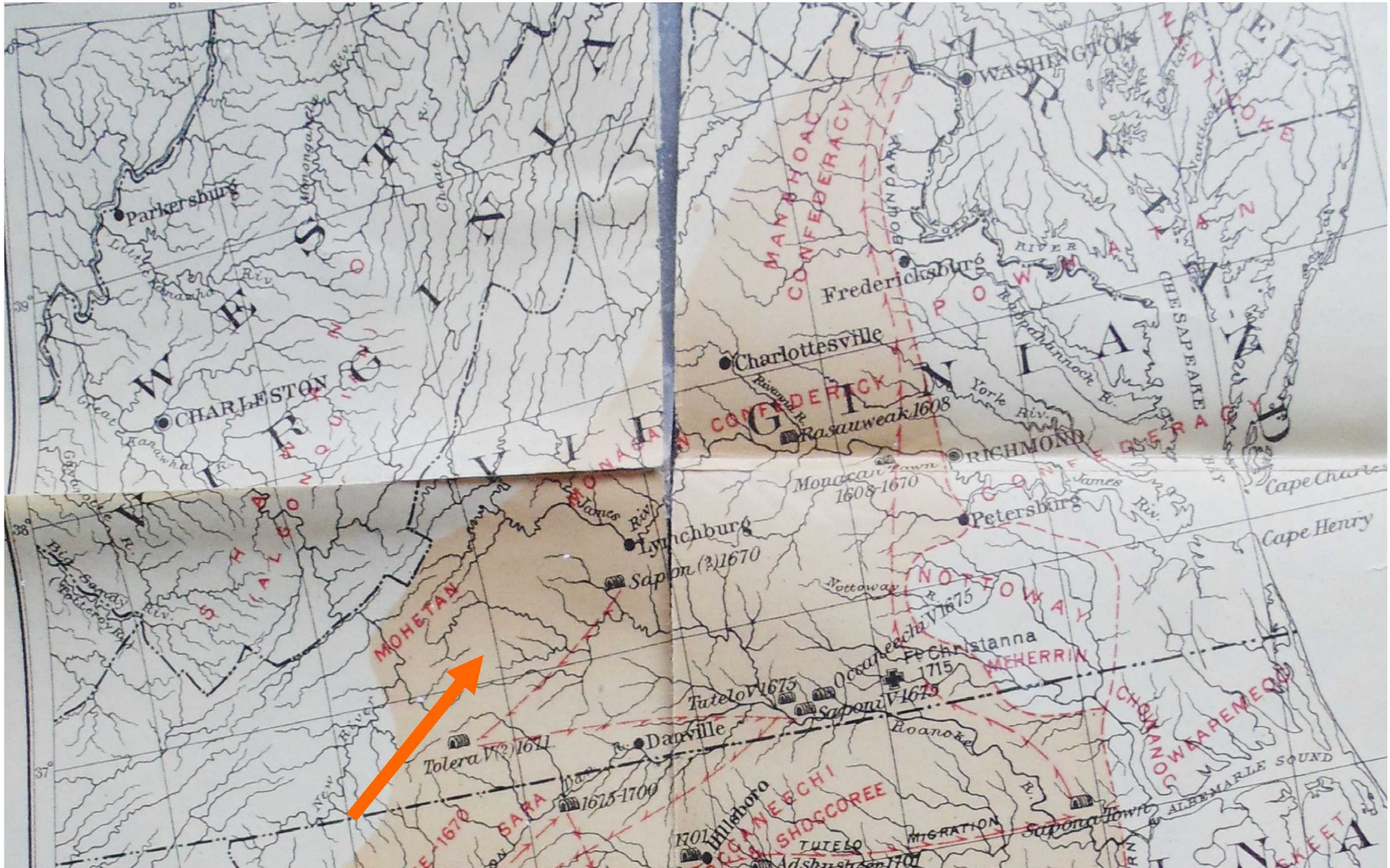
These and the other works quoted below, as well as the two maps reproduced below, establish incontrovertibly that authoritative 19th and 20th century American scholarship recognizes as historic fact the habitation by Siouan Indian tribes of the geographic area which we have named Appalachian/Piedmont Virginia.

1. Mooney, James. The Siouan Tribes of the East. Smithsonian Institution. Bureau of Ethnology. Government Printing Office, Washington DC, 1894.

- ✓ page 8 - "Turning now from the tribes whose affinities are thus well known, it will be found, by referring to the map [see photos of Mooney's map, below], that we have still to account for a large central area. In Virginia this territory includes all west of a line drawn through Richmond and Fredericksburg, up to the Blue ridge, or about one-half the area of the state."
- ✓ page 9 -- "Who were the Indians of this central area? For a long time the question was ignored by ethnologists, and it was implicitly assumed that they were like their neighbors, Iroquoian or Algonquian in the north and "Catawban" in the south. It was never hinted that they might be anything different, and still less was it supposed that they would prove to be part of the great Siouan or Dakotan family, whose nearest known representatives were beyond the Mississippi or about the upper lakes, nearly a thousand miles away. Yet the fact is now established that some at least of those tribes, and these the most important, were of that race of hunters . . . and the concurrent testimony of the Siouan tribes themselves to the effect that they had come from the east, all now render it extremely probable that the original home of the Siouan race was not on the prairies of the west but amidst the eastern foothills of the southern Alleghanies."
- ✓ A photo of Mooney's 1894 map, "Siouan Tribes of Virginia and the Carolinas" appears below. Additionally, we provide a close-up photo of a portion of Mooney's map showing the area representing Roanoke and Franklin Counties, Virginia as part of the Siouan tribal area.
- ✓ page 9 - "Horatio Hale, to whom belongs the credit of first discovering a Siouan language on the Atlantic coast, noted the evidences that the Tutelo language was older in its forms than the cognate dialects of the west, and predicted that if this should prove true it would argue against the supposition, which at first seemed natural, that the eastern Siouan tribes were merely offshoots from a western parent stock. Investigation might result in showing that the western Siouan, like the western Algonquian tribes, had their original home in the east."
- ✓ page 10 - "More than sixty years ago Major Sibley, one of the best authorities of that period in regard to the western tribes, obtained from an aged chief of the Osage - a well known Siouan tribe, speaking the same language as the Kwapa - a statement which confirms that of Gravier. The chief said that the tradition had been steadily handed down from their ancestors that the Osage had originally emigrated from the east, because the population had become too numerous for their hunting grounds."
- ✓ page 11 - "The most probable cause of this great exodus was the pressure from the north and from the south of hostile tribes of alien lineage, leaving to the weaker Siouan tribes no alternative but to flee or to remain and be crushed between the millstones. They chose to abandon the country and retreated across the mountains, the only direction in which a retreat was open to them."



Map 1: Mooney's "Siouan Tribes of Virginia and the Carolinas" 1894



Map 2: close-up of Mooney's 1894 map, "Siouan Tribes of Virginia and the Carolinas". The tan coloration on the map indicates areas inhabited by Siouan tribes. The red arrow points to Appalachian/Piedmont Virginia, shown on the map as the area between the headwaters of the Roanoke River in Roanoke County and the Blackwater River in Franklin County, VA

2. Brown, Douglas (Summers). The Catawba Indians: The People of the River. The University of South Carolina Press, Columbia, 1966.

- ✓ page 14 – "The same author, as if to confirm an ancient legend designating a prehistoric mountain habitat, says, of the Virginia Indians of the eastern Siouan group, 'The Apalataean mountains were called in Indian, Poemotinck (or the origin of the Indians)'".

3. Swanton, John R. Siouan Tribes and the Ohio Valley. *American Anthropologist*, N.S. 45, 1945.

- ✓ page 49 – "When tribes speaking Siouan languages first came to the knowledge of Europeans, they were living in two main divisions with two or three detached tribes. The largest single area occupied by them lay mainly west of the Mississippi River between Lake Winnipeg and the

mouth of the Arkansas and covered the greater part of the eastern plains and the valley of Missouri River. The area second in size was in the Piedmont country of Virginia and the Carolinas, extending to the coast in one section and into the Appalachian Mountains in another.”

- ✓ page 49 – “Contact between eastern and western Siouans can have occurred in only one of four ways: (1) the eastern Siouans may have moved into Virginia and the Carolinas from a point or points near the western Siouans, (2) the eastern Siouans may have remained stationary and the western Siouans may have done the moving, (3) both may have emigrated from some intermediate area of contact, or (4) contact between them may have been through other Siouan tribes which subsequently dropped out.”
- ✓ page 49 – “The language of the Virginia Siouans is, or rather was, much closer to the western dialects.”
- ✓ page 49 – “According to the traditions of western Siouan tribes, they, or at least some of them, formerly lived toward the east.”
- ✓ page 50 – “Speaking of the western Siouan tribes in general, Fletcher and La Flesche say: All of the traditions [of these tribes] speak of a movement from the east to the west covering a long period of time. The primordial habitat of this stock lies hidden in the mystery that still enshrouds the beginnings of the ancient American race; it seems to have been situated, however, among the Appalachian mountains. . . . Remnants of Siouan tribes survived near the mountains in the regions of Virginia, North Carolina, and South Carolina until after the coming of the white race.”
- ✓ page 53 – “Lederer's account of the Indians is based on his experiences during three expeditions in the years 1669-1670 into the Western parts of Virginia and the Carolinas. With the exception of brief visits upon the Tuscarora and Nottoway Lederer's contacts were mainly with Siouan tribes.”
- ✓ page 54 – “Traditions among the western Siouans indicated a former home in the east toward the country of the eastern Siouans . . . while traditions among the eastern Siouans pointed to a home toward the west in the direction of the western Siouans.”

4. Gibbon, Guy E. *The Sioux: the Dakota and Lakota Nations*. Blackwell Publishers, Ltd., 2003.

- ✓ page 17 – “While oral traditions and written accounts by historians generally agree that Minnesota was the core late prehistoric homeland of the Sioux, they disagree about where the Sioux originally came from. For the sake of brevity, these contending views can be divided into three groups, each of which shares a common geographical theme. According to the most popular geographical theme, the ancestors of the Sioux came from the east Treuer (1994:17) captures the tone of these claims: it 'is fairly certain that the Dakota had lived for many years east and south of the Minnesota-Wisconsin lake area' and did not fully occupy the Upper Mississippi watershed until the seventeenth century. In general, the Dakota's original homeland was thought to be the Appalachian Mountains or somewhere further to the north and east.”

5. Robinson, Doane. Dakota or Sioux Indians. State of South Dakota, 1904. Reprinted by Ross & Haines, Inc., Minneapolis, MN, 1956.

- ✓ page 18 – “The American ethnology assumes that the Siouan people originated on the American continent east of the Appalachian mountains, in the present states of Virginia, North Carolina and South Carolina, where the Catawbias, and Tutelos, small tribes, were of the Siouan family.”

6. Greer, T. Keister. Genesis of a Virginia Frontier: The Origins of Franklin County, Virginia, 1740-1785. History House Press, Rocky Mount, VA, 2004.

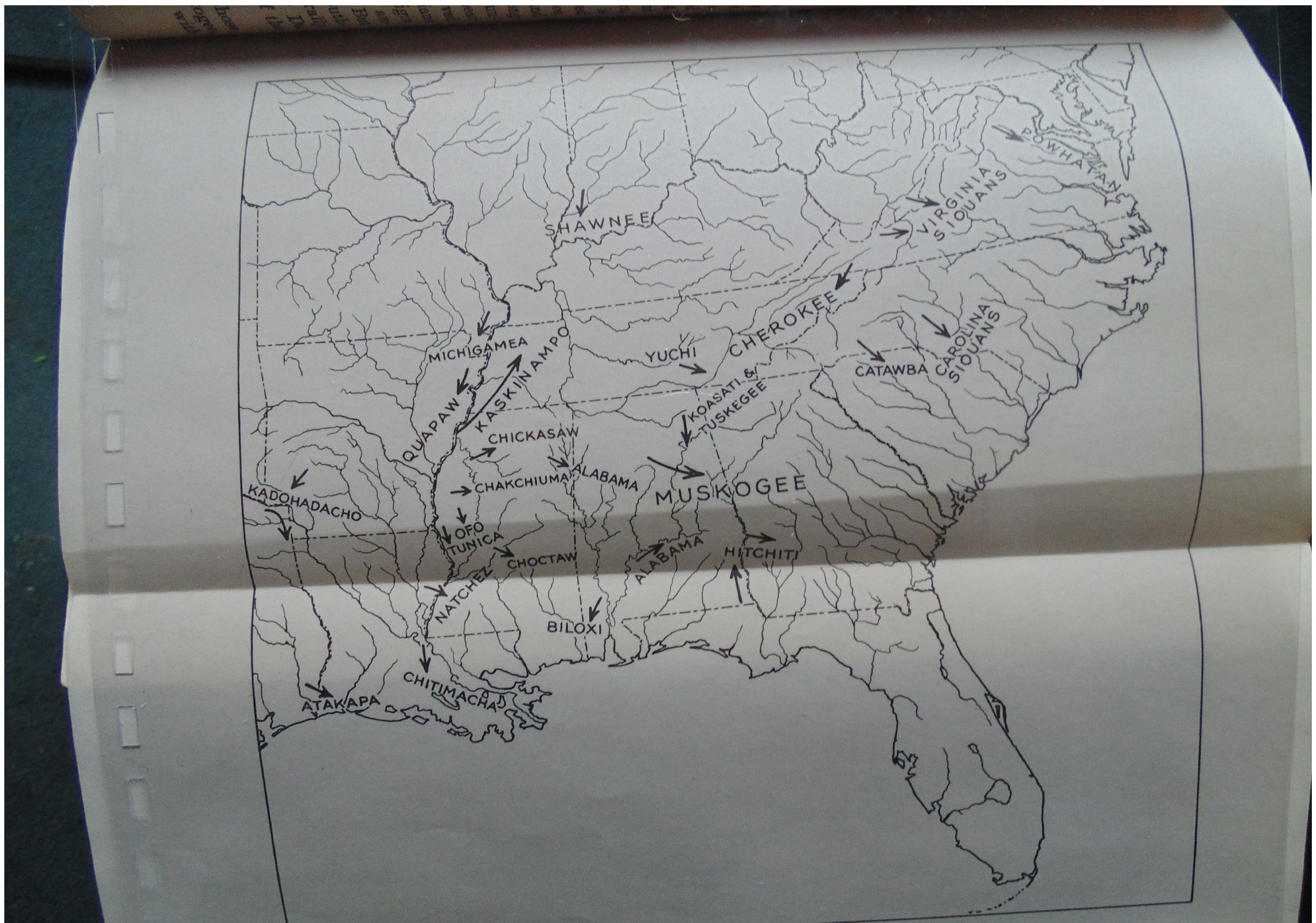
- ✓ page 1 – “The Indian once made his home in Franklin; this is not to be doubted. It has already been established that one principal Indian thoroughfare led through the county. The influence of the Iroquois' Great Warrior Trace upon the redman of the milder Sioux strain who are generally considered to have lived in this country, must have been severe. From earliest times Virginia and Carolina Indians had lived in fear of the Five Nations, but the Indians of Franklin County lived right on these fierce northern tribes' main warpath.”
- ✓ page 2 – “The tribe or tribes most frequently identified with Franklin, and the Southside in general, are the Saponies. The Staunton River was once known as the Sapony. These Indians seem also to have been known as Nahyssas. They were of the same basic Siouian strain as the more easterly Occaneechees and the nearby Tutelos, or Toteros.”
- ✓ page 3 – “No other references to Indian towns in Franklin have been found, but there are several to their fields, cleared for farming by the squaws. Possibly among these was one on 'Potters Creek,' 'above the great fork.' If this be the Potters Creek known in Pittsylvania today (near the mouth of Pigg), the latter field was not in Franklin. But if the conflux of Pigg and Staunton rivers was not implied, then the 'great fork' is almost certainly the conjunction of Pigg and Chestnut Creek, the most sizable of the former's tributaries. Other fields cleared by the aborigines are mentioned along the south side of the Blackwater. This latter stream, as has been noted, derives its name from the original Indian appellation.”

7. Swanton, John R. The Indians of the Southeastern United States. Smithsonian Institution Bureau of American Ethnology, Bulletin 137, Washington DC, 1946.

- ✓ page 30 – “The northern Siouan people – the Tutelo, Saponi, Monacan and their allies – were probably late comers into the Piedmont region of Virginia, which they had apparently reached from the upper Ohio.”
- ✓ page 800 – “The Siouan peoples were represented in four different areas. Two of these were occupied by single tribes, and a third by 20 tribes or more which covered most of the Piedmont region of Virginia and North and South Carolina besides the Coastal Plain of South Carolina between Cape Fear River and Bull Bay. It also extended over most of West Virginia and an indefinite distance westward. These tribes formed two distinct dialectic groups: a northern, in Virginia and to the westward; and a southern, in the Carolinas.”
- ✓ page 813 – “These Siouan Indians were rather sharply divided on linguistic grounds into a

northern branch which anciently occupied the Piedmont and mountain areas of Virginia and extended over much, and probably all, of West Virginia, and a southern branch in central North Carolina and the northern part of South Carolina. It is believed that the culture of these two branches differed considerably, but our information regarding them, particularly regarding the Virginia Siouans, is so meager that it is possible to enumerate few cultural differences except speech on which this opinion is based. Lawson implies, although not certainly, that the Virginia Siouans lacked community ceremonial buildings such as the southern tribes had, and Lederer's description of four exogamous divisions may perhaps have applied merely to the northern group, but both points are very uncertain. So many of the industries and customs of these Siouans are like those found either north or south of their territories that we get the impression of groups which had borrowed rather than originated."

- ✓ between pages 22 and 23 appears a map titled, "Tribal movements according to the traditions and the earliest records". This map bears the inscription "Virginia Siouans" in the region of Appalachian/Piedmont Virginia which is the focus of the present research. Please see below.



Map 3: Swanton's "Tribal movements according to the traditions and the earliest records", 1946

REQUEST FOR REHEARING – EXHIBIT 3

Handbook of North American Indians

WILLIAM C. STURTEVANT

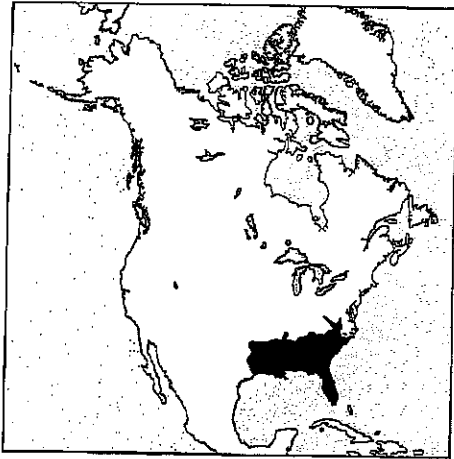
General Editor

VOLUME 14

Southeast

RAYMOND D. FOGELSON

Volume Editor



DEPOSITED BY
U.S. GOVERNMENT

DEC 7 2004

VPI & SU
UNIVERSITY LIBRARIES

SMITHSONIAN INSTITUTION

WASHINGTON

2004

Tutelo and Neighboring Groups

RAYMOND J. DEMALLIE

The Piedmont area of Virginia and the Ridge and Valley region immediately to the west were the homeland of several peoples, the best known of which are the Tutelo ('tōōtə,lō), Saponi (su'pōnē), and Occaneechi (,äke'nēchē), of the Roanoke-Staunton River and perhaps some nearby areas. To their north were the poorly known Monacan ('mäne,kən) and the even less well known Manahoac (,mäne'hōwuk), who shared some social and historical ties with them.

Language*

The Tutelo and Saponi are known from direct linguistic evidence to have spoken similar dialects of a Siouan language† most closely related to Biloxi and Ofo, which were first encountered on the Gulf Coast of Mississippi and on the Mississippi River (vol. 13:94, 102–105; Oliverio and Rankin 2003). The closely associated Occaneechi are reliably reported to have spoken the same language (W. Byrd 1929: 308–310; Spotswood 1882–1885, 2:88), and the tribal name Monyton attests another language of this group spoken probably on the Kanawha River of West Virginia.

The long-held assumption that the Monacan and Manahoac, whose languages are undocumented, also spoke Siouan languages (Mooney 1894) derives from the speculative analysis

*This section was written by Ives Goddard, incorporating some material from Raymond J. DeMallie.

†The phonemes of Tutelo are: (aspirated stops and affricate) *pʰ, tʰ, cʰ, kʰ*; (unaspirated stops and affricate) *p, t, c, k, ʔ*; (voiceless spirants) *s, x, h*; (nasals) *m, n*; (lateral) *l*; (semivowels) *w, y*; (short oral vowels) *i, e, a, o, u*; (long oral vowels) *i:, e:, a:, o:, u:*; (nasal vowels) *i, e, a, o, u*; ("accent") *˘*.

This phoneme inventory was established by Oliverio (1996) on the basis of phonetic recordings and comparative analysis.

of a few place-names and a statement from 1670 by John Lederer (1958:10) that "One Language is common to" all the nations of the piedmont, "though they differ in Dialects." Lederer's list of these "nations," indicated not to be complete, has the Siouan-speaking Tutelo and their congeners, the Iroquoian-speaking Nottoway-Meherrin-Tuscarora ("Mangoack"; vol. 15:288), the Monacan ("Monakin," a town on the James River), the "Mahoc" (the town Mahock on the James River above Monakin after 1656), and unidentified groups named "Nuntaneuck, alias Nuntaly," and "Managog." The names Mahoc and Managog have both been equated to Manahoac (Hodge 1907–1910, 1:796), but no evidence supports this. Most likely Lederer was referring to the general use of Occaneechi as a regional lingua franca, described in the eighteenth century as "understood by the chief Men of many Nations," whose "Languages differ very much" (Robert Beverley in vol. 17:119). Linguistic diversity is also indicated by John Smith's 1612 listing of the Monacan and Manahoac among several Iroquoian and Algonquian groups, none of whom understood any of the others "but by Interpreters" (P.L. Barbour 1969, 2:344), and his statement that the numerous component peoples of the Manahoac were "all confederats with the Monacans though many different in language" (P.L. Barbour 1969, 2:360).

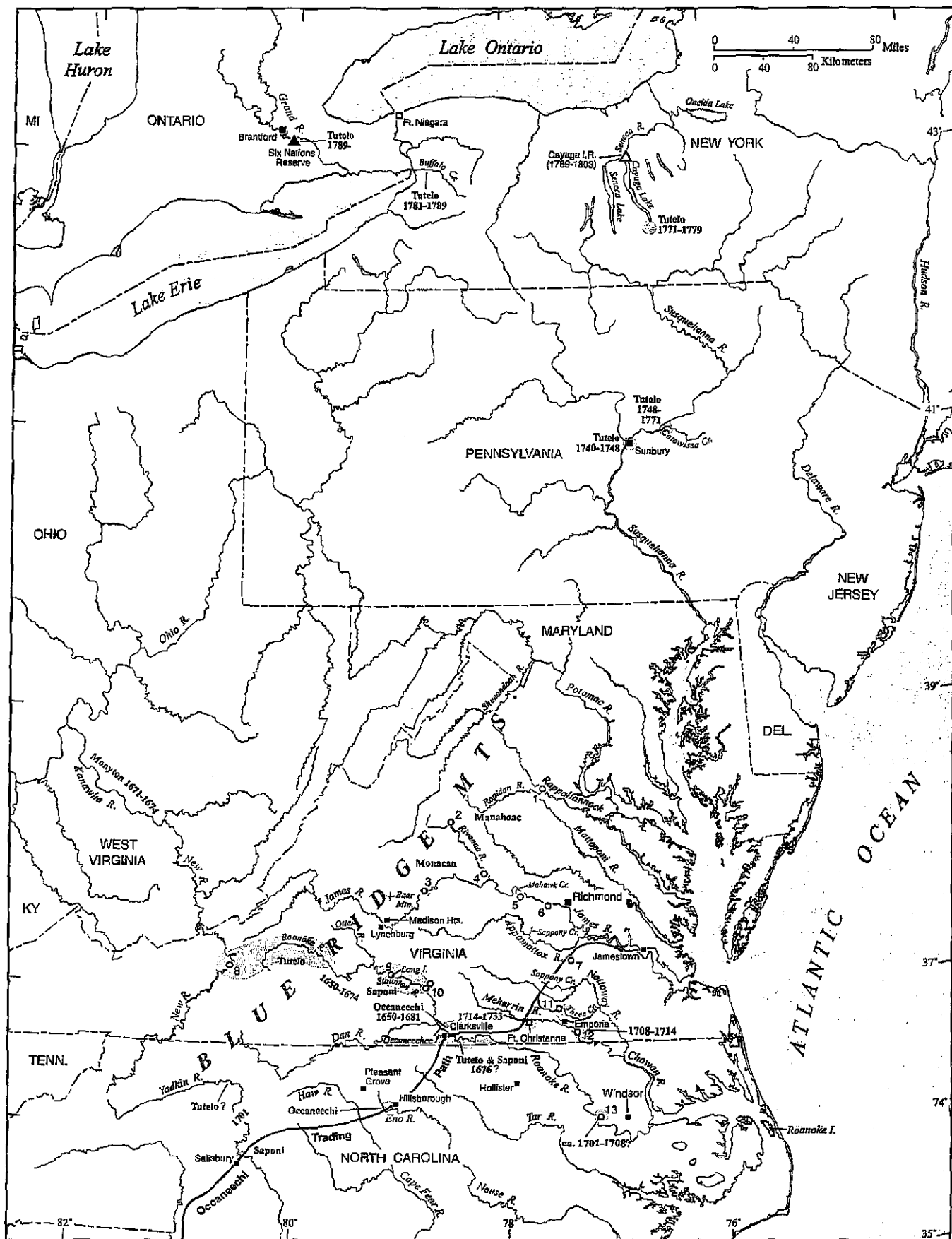
Territory and Environment‡

In the seventeenth century the territory occupied by the Tutelo and their neighbors was delimited on the north by the

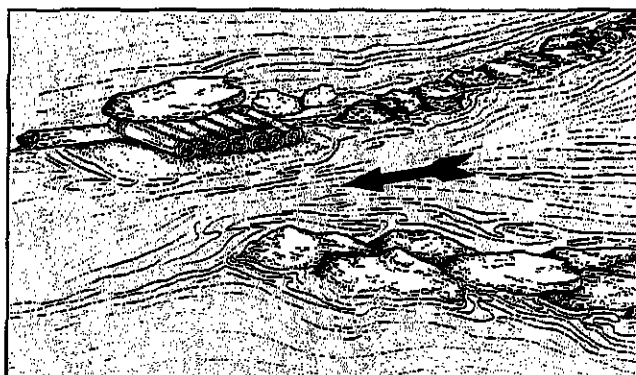
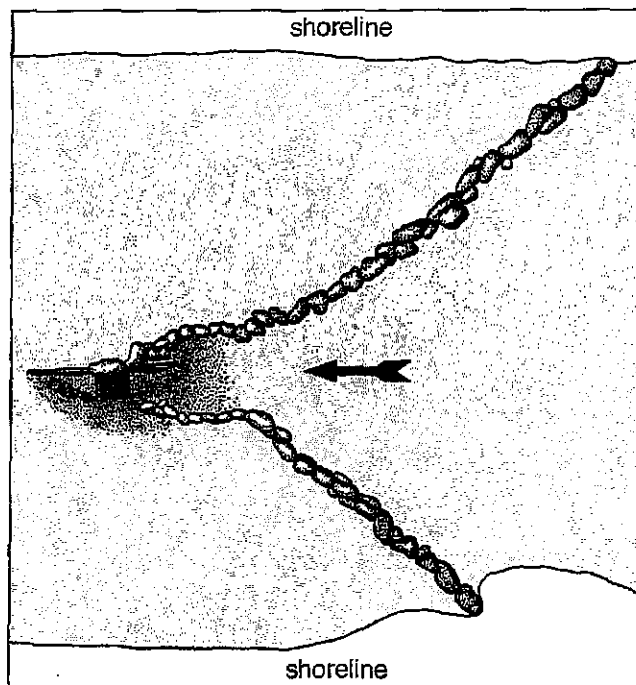
‡This section, Situation in the 1990s, and Sources were coauthored by Jason Baird Jackson.

Fig. 1. Locations of the Tutelo and neighboring groups, with dates of known occupancy. The Manahoac, the Monacan, and their villages are shown where they were placed in 1612 by Capt. John Smith, as interpreted by Bushnell (1930:7, 1935) and Rountree (1993:97). The Tutelo, Saponi, and Occaneechi are located individually according to data from 1650, 1670–1674, 1676, 1681, and 1701 and correlations with terrain and archeological sites (Davis 2002; Briceland 1987:133–136; Cumming in Lederer 1958:77; Rights and Cumming in Lederer 1958:117). Later locations are those of their amalgamated successors, who were at Sapona with the Keyauwee and Shoccoree, on the Meherrin with the Stukanox, and at Ft. Christanna with the Meipontsky and Stukanox. For these locations the dates of residence are inclusive, as not all groups moved at the same time.

Selected villages and sites: 1, Hassinnungas; 2, Monasukapanough; 3, Monahassanugh; 4, Rassawek; 5, Massinacack (Mahock 1670); 6, Mowhemcho (Monakin 1670); 7, Manks Nessonicks old fields (1650); 8, Totero (1671, 1674; placed at the Trigg site); 9, Sapon (1670), Hanathaskies (1671); 10, Saponi West and Saponi Indian Town (1671); 11, Tutelo town and fort (1712–1714); 12, Saponi town and fort (1708–1714); 13, Sapona.



TUTELO AND NEIGHBORING GROUPS



after Bushnell 1935: fig. 11.

Fig. 2. Fish trap at Skinkers Ford (44CU17) on the Rapidan R., Va. This boulder trap funneled fish through a chokepoint where they could be netted, speared, or caught in basketry traps. In the narrow end, a log foundation was used, possibly to facilitate rebuilding after washouts. top, Plan showing the line of boulders running across the river from bank to bank. The arrow points downstream. bottom, Cutaway section, detail, showing the log foundation at the mouth, cleared of sand and elevated above the water for clarity.

Rappahannock River and on the east by the fall line, both of which served as boundaries with Coastal Algonquians (fig. 1). The western boundary was the Blue Ridge Mountains. Beyond the mountains to the southwest were Cherokee and Muskogean-speaking peoples, while to the south was a cluster of groups whose languages are unknown (see "Catawba and Neighboring Groups," this vol.).

Most of the lands occupied by the Tutelo and their neighbors were within the Virginia piedmont, a region of mixed oak-hickory-pine forest. On the west their territory converged with the uplands, characterized by hardwood forest. Game animals and fish (fig. 2) were abundant. Rivers facil-

itated movement east-west, while major trails passed roughly north-south. Most prominent among them was the Occaneechi Trading Path that passed from Jamestown southwestward through the Occaneechi homeland toward the lands of the Catawba and the Muskogean peoples beyond (R.P.S. Davis 2002:142).

History and Culture, 1607–1740

The Tutelo and their neighbors were poorly documented in the written record of European explorers and settlers. Never very populous, they were rapidly decimated by European diseases, alcohol introduced by European traders, and warfare—particularly by Iroquois attacks. It was a period of dislocation and continual social and cultural change. Most of the survivors of these groups came together and ultimately sought the protection of their former enemies, the Iroquois.

Monacan

The earliest references to the peoples on the Virginia piedmont are mentions of the Monacan and Manahoac groups by the Jamestown colonists in 1607. Powhatan told the English that the Monacans lived on the headwaters of the James River, above the falls at present Richmond, Virginia, and that they "came Downe at the fall of the leafe and invaded his Countrey" (J. Smith 1624:23, 25, 33; P.L. Barbour 1969:88). However, at another time Powhatan stated that he "was no professed enemy" of the Monacan (P.L. Barbour 1969:196).

John Smith's map of 1612 locates five of the confederated Monacan villages (fig. 3), although he indicated that other "nations" also "pay tribut[e]s" to them (P.L. Barbour 1969:360; Bushnell 1930:3). Mowhemcho (Mowhemminche, Mowhemenchouch, Mouhemenchughes) was located on the south bank of the James, about 15 miles above the falls. It was first visited by a Jamestown expedition led by Capt. Christopher Newport in 1608 (J. Smith 1624:68; Arber and Bradley 1910, 2:438). Bushnell (1930:9) concluded that the village was composed of scattered habitations and was not palisaded. It later became known as Monacan Town. In 1699 a Huguenot colony took possession of the land, although some Indians continued to live there (Bushnell 1930:9). In 1669 the village was reported to house 30 warriors. A year later Lederer was greeted there with a volley of shots, indicating that the Monacans were already in possession of firearms. Near the village Lederer observed "a Pyramid of stones piled up together, which their Priests told us, was the Number of an Indian Colony drawn out by Lot from a Neighbour Countrey over-peopled, and led hither by one Monack, from whom they take the name Monakin" (Lederer 1672:9, 1958:19).

Francis Louis Michel in 1702 described Monacan Town as a trade center where Indians went to exchange skins, pottery, and corn. He reported that the Indians went naked in



Lib. of Congress, Geography and Map Div.: G3880 1624.S541.

Fig. 3. Detail of "Virginia, Discovered and Discribed by Captayn John Smith," originally published in *A Map of Virginia, with a Description of the Countrey, the Commodities, People, Government and Religion* (J. Smith 1612). North is to the right. The Tuscan crosses indicate the westernmost limits of Smith's explorations, and the dotted line along the James River represents Christopher Newport's 1608 expedition into Monacan territory (G.M. Lewis 1998a:210). The map is a major source for the names and locations of the towns of the Monacan, on the upper James R. (Powhatan flu), and the Manahoac on the upper Rappahannock. Photographed is the sixth state of the plate, printed in 1624 (Verner 1980:154).

their houses, and wrote the following description of the dress of a returning hunter: "He had nothing but his gun, knife and powder horn, except a linen rag which covered his sexual parts a little, and a deer skin protecting his feet. . . . He had also a tuft of feathers behind his ear" (quoted in Bushnell 1930:9).

Massinacack (fig. 1) was the second village visited by the Newport expedition in 1608. The Smith map places it on the south bank of the James on a northward bend in the river, and it was reported to be 14 miles above Mowhemcho (J. Smith 1624:33, 68; Arber and Bradley 1910, 2: facing p. 384, Strachey 1953:131). Mowhemcho and Massinacack were the only Monacan villages reported to have been visited by Europeans.

Rassawek (Russawmeake) was said in 1607 to be the "chiefe habitation" of the Monacan (P.L. Barbour 1969, 2:360; Arber and Bradley 1910, 1:71). It was located farther up the James, at the confluence of the Rivanna River (Bushnell 1930:12).

Monahassanugh (Monahassanuggs) is shown on the Smith map of 1612 as farther up the James on the south bank. Bushnell (1930:7) located it on the north bank just above the site of Wingina in Nelson County.

Monasukapanough (Monasickapanoughs) is shown on the Smith map of 1612 on the east bank of the Rivanna River. Archeologically, the site has been located on both sides of the river north of Charlottesville (Bushnell 1930:7, 18). It was there that Thomas Jefferson excavated a large burial mound (Jefferson [1787]1955:98-106; Bushnell 1930:18-20).

Manahoac

The Manahoac lived on the headwaters of the Rappahannock River, northwest of the Monacan. They were characterized as "very barbarous, living for the most part on wild beasts and fruits" (J. Smith 1624:33; P.L. Barbour 1969:360). The Manahoac were reported to be at war with Powhatan and to be allied with the Monacan.

The Manahoac villages were never visited by Europeans, and knowledge of them comes solely from information given by a captured Manahoac in 1608 to a Jamestown exploring expedition led by John Smith. The English were attacked by the Manahoac of the village of Hassinnunga (Hassininga) near the falls of the Rappahannock because, as they later learned from their captive, the Indians had heard that "we were a people come from under the world, to take their world from them" (Arber and Bradley 1910:427). After skirmishes, some 400–500 Manahoacs carrying only bows and arrows, tobacco bags, and pipes, and led by four "kings," made peace with the colonists.

The following groups were listed as "contributors" to the Manahoac, allied with the Monacan, and linguistically diverse: Tauxsnitanias (Tanxsnitania), Shackaconias, Outponcas, Tegoneaes, Whonkentyaes, Stegarakes, Hassinnungas, and "diverse others" (P.L. Barbour 1969, 2:360, map facing p. 374).

About 1656 some 600–700 Indians identified by Lederer as Mahocks and Nahyssans (Saponi) came and settled near the falls (Bushnell 1930:16; Lederer 1958:16). In 1656 the Virginia government sent a military expedition under Col. Edward Hill, with a force of Pamunkeys, to confer with the newcomers. A bloody battle ensued, later blamed on Hill's misconduct, in which the English and their allies were defeated, and Totopotami, the Pamunkey chief, was killed. In 1670 Lederer (1958:20, 22, map) was told that the Mahocks were still on the James at Mohawk Creek, and he found the Nahyssans on the Staunton River (Bushnell 1935:13–14).

On his third expedition in 1670 Lederer (1958:87–90) traveled up the Rappahannock River to the mountains and did not report seeing any Indians. Bushnell (1935:10–13) inferred that the Manahoac had by this time dispersed from their earlier location because of pressure from the Iroquois, at least some of them joining the Monacan on the James.

Mohetan, Tomahitan, and Monyton

In 1671 and 1674, west of the Tutelo village that was on or near the headwaters of the Roanoke River, across the Appalachian Mountains in present southwestern Virginia, West Virginia, and northeastern Tennessee, there lived peoples of whom little is known. Thomas Batts and Robert Fallam left the Tutelo village heading west on September 12, 1671, and crossed the mountains. The next day they reported seeing "old fields," evidently an abandoned town. On September 16 they came to the headwaters of a river and found more abandoned fields, with cornstalks yet in the ground. This they were told had not long before been occupied by the "Mohetans." They returned to the Tutelo village on September 19 and found "Mohetan Indians" who had come there to learn the purpose of the Englishmen's visit, being afraid they intended to fight. The Mohetans reported that, on their trip, the explorers had gone beyond the mountains "half way to the place they now live at" (Alvord and

Bidgood 1912:187–193), which by their reckoning would be about 150 miles roughly west of the Tutelo.

In 1673 James Needham and Gabriel Arthur visited the "Tomahitans," who lived west of the mountains. The Tomahitan appear to have been in the same area as the Mohetan and were likely closely related to them, if not in fact identical. They appear to be the group incorporated into the Creek confederacy as the Tamahita, identified as a division of the Yuchi by Swanton (1922:184–191). The only account of Needham and Arthur's visit to them is a letter written by Abraham Woods, their employer, in which their route is poorly described, but it evidently followed the Great Trading Path across the Blue Ridge Mountains (vol. 4:392). They met a party of Tomahitans at the Occaneechi village on Occaneechi Island in the Roanoke River, just below the confluence of the Dan and the Staunton, and were guided by them nine days "west and by south" past nine eastward-flowing rivers and creeks to "Sitteree" (Sutere), apparently located on the headwaters of the Yadkin (Alvord and Bidgood 1912:81). Sitteree may have been a Saraw village (Frank Siebert, personal communication 1976) or a separate group. From there they traveled 15 days farther over the mountains and reached the Tomahitan village on the far side of the sixth river from the mountains, which they indicated seemed to run "more westerly than the other five." This is likely to have been an upper tributary of the Tennessee.

The village was protected by river cliffs on one side and was palisaded on the other three, with scaffolds and parapets to defend the walls; "this forte is foure square; 300: paces over and the houses sett in streets." The village had 150 canoes, the smallest of which carried 20 men. These were used in warfare against "many nations of Indians" living downriver. The travelers observed that "many hornes like bulls hornes lye upon theire dunghills," evidently an indication that these people were buffalo hunters. They also were reported to have a store of dried fish. The Indians told them that eight days down the river lived Whites and Blacks with whom the Tomahitan had had unfriendly relations. Two mulatto women lived in the village. The Indians had brass kettles and about 60 guns.

Arthur remained with the Tomahitan over a year, going on raids with them against other Indians and against the Spanish settlements. He reported that fire was their god and that the Tomahitan leader swore by the fire that he would not harm the English. Virtually no description of these people is given other than the detail that they kept their hair cut close "so the enemy may not grab them by it."

With the Tomahitan leader, Arthur visited the town of the "monyton" ("monetons"), friends of the Tomahitan, 10 days' north "upon a very great river att which place the tide ebbs and flowes." The account identified it as the same river whose headwaters were visited by Batts and Fallam—probably the New-Kanawha. The name Monyton was explained as "mony signifying water and ton great in theire language" (Alvord and Bidgood 1912:211–222). From this linguistic evidence it is certain that the Monyton spoke a language of

the Ohio Valley branch of Siouan, in which these words are precisely *mané* 'water' and *it'á* 'big' (Oliverio and Rankin 2003:165; Robert L. Rankin, communication to editors 2003).

Since the Monyttons were "friends" of the Tomahitan chief, despite living 10 days' journey to the north, there is a good possibility that these two groups were culturally and linguistically close, but more than that is conjectural. The similarity in names and apparent location appear to link the Mohetan of Batts and Fallam with the Tomahitan of Woods (Alvord and Bidgood 1912:81), but it has also been assumed that it is the Monyttons that should be equated with the Mohetans (Alvord and Bidgood 1912:87; Speck 1935:212; Swanton 1946:152). There is no evidence that either of these groups was connected to the Tutelo or later joined them (Speck 1935:212; Swanton 1946:152).

Occaneechi, Tutelo, and Saponi

The first mention of these groups is by the explorer Edward Bland in 1650. At the falls of the Roanoke River his Appamatuck guide told him that many people lived up the river, "being the Occonacheans and the Nessoneicks, and that where some of the Occanacheans lived, there is an Island within the River three dayes journey about [evidently from the falls of the Roanoke River], which is of a very rich and fertile soile" (Alvord and Bidgood 1912:126).

Lederer (1958:23) made the first recorded visit to a Saponi village in 1670, one he referred to as "Sapon, a Village of the Nahyssans," described as 50 miles up the Staunton River from Occaneechee Island. The Nahyssans were clearly the Saponi, the people Bland called Nessoneicks. On the same river, "not far distant from" Sapon, Lederer wrote, was Pintahæ, the village of the Nahyssan "King": "This nation is governed by an absolute Monarch; the People of a high stature, warlike and rich. I saw great store of Pearl unbored in their little Temples, or Oratories, which they had won amongst other spoys from the Indians of *Florida*, and hold in as great esteem as we do" (Lederer 1958:23-24). Lederer (1958:22) remarked that the Nahyssan "had been in continual Hostility" with the English for 10 years.

From Sapon, Lederer went to visit the Occaneechi at their island village in the Roanoke, now under the waters of John H. Kerr Reservoir, near Clarksville, Virginia. He described the island as small, naturally fortified with mountains and water on every side, and maintaining many inhabitants. They grew corn on the north shore of the river, and Lederer reported that they always had a year's supply stored against invasion by their powerful neighbors. While Lederer was there a Rickohockan (Erie) "ambassador" arrived with five "attendants" and all were murdered by the Occaneechis in the midst of a celebration. Fearing for his own life, Lederer (1958:26) fled the village.

According to Lederer, the Occaneechi "Government is under two Kings, one presiding in Arms, the other in Hunting and Husbandry." He described the village as a

communal society. "They hold all things except their Wives, in common; and their custome in eating is, that every man in his turn feasts all the rest" (Lederer 1672:13, 1958:25).

Although Lederer provided considerable detail concerning culture and religion, including information on matrilineal clans, Speck (1938a:11) and Feest (1975:152) pointed out that this information was obtained from Lederer's guides and refers to the Pamunkey or Susquehannock of the coastal plain rather than to the piedmont Siouans, which view had been accepted previously (Mooney 1894; Dorsey 1894a; Swanton 1905). There is no evidence that Virginia Siouan society was organized in clans. What was later recorded of Tutelo kinship terminology suggests bilateral social organization (Speck and Schaeffer 1942:574).

On September 4, 1671, Batts and Fallam arrived at "the Sapiny [Saponi] Indian town" at two o'clock, then took a "south and by west course till even[ing] and came to Saponeys west," a second town. There they were joyfully received by the Indians, who fired guns as a salute and feasted the visitors. The next day they traveled west by north 25 miles to the town of the Hanahaskies (Hanahaskies), on an island in the Staunton River (Alvord and Bidgood 1912:185), a third Saponi town. Most likely the first two Saponi towns were near the hairpin turn of the Staunton southwest of Charlotte Court House, and the third town was on Long Island, between Altavista and Brookneal (Cumming in Lederer 1958:77; Rights and Cumming in Lederer 1958:117; Briceland 1987:135-136; R.P.S. Davis 2002:150). The location Lederer implies for the town he called Sapon corresponds to the location of Batts and Fallam's Hanahaskies (Ives Goddard, personal communication 2003), but other studies generally identify Lederer's Sapon with the first and easternmost of Batts and Fallam's Saponi towns and have placed it as far west as the Otter River, southwest of Lynchburg (Mooney 1894:30), and as far east as the upper Nottoway River (Binford 1967:206).

Batts and Fallam set out again on September 6 and on the ninth arrived at the "Toteris," a Tutelo town that their estimates placed 100 miles west of the Hanahaskies, "in a very rich swamp between a branch and the main River of Roanoke circled about with mountains." This village was evidently located west of the Blue Ridge Mountains near the head of the Roanoke (the upper end of the Staunton), perhaps at the Trigg site (44MY3) on the New River near Radford or at the Graham-White site (44RN21) near Roanoke (Ives Goddard, personal communication 2003). There they were "exceedingly civilly entertain'd" by the Tutelo and left their horses, as well as one of the Appamatuck guides who was sick, while they continued west through the mountains in search of the Mohetan (Alvord and Bidgood 1912:185-187).

In 1673 Needham and Arthur visited the Occaneechi on their way to the Tomahitan. Needham was slain the following year by his Occaneechi guide (Alvord and Bidgood 1912:215). Woods, in writing of Needham and Arthur's

explorations, commented that "the island where the Occaneechees are seated, [is] strongly fortified by nature and that makes them so insolent for they are but a handful of people, besides what vagabonds repaire to them it beeing a receptacke for rogues" (Alvord and Bidgood 1912:224-225). This location was advantageous for the Occaneechi, whose island village was an important trading center "for all the Indians for at least 500 miles" (CMHS 1871:167).

The Tutelo and Saponi moved downriver to join the Occaneechi after the 1671 visits of Batts and Fallam, in fact at least in the case of the Tutelo after a visit from the Tomahitan chief in July 1674 (Mooney 1894:54; Alvord and Bidgood 1912:225). There were three islands in the Roanoke at the site of the Occaneechi village, and according to William Byrd (1901:286-290) the Tutelo occupied the uppermost, the Occaneechi the middle, and the Saponi the lower island.

In 1676 the Susquehannock, driven from their home at the head of Chesapeake Bay by both the Iroquois and the English, sought refuge at Occaneechi Island. The two peoples had been friendly to one another, and the Susquehannock evidently were the source from which the Siouan groups received firearms (Lederer 1958:41). The Susquehannock were received kindly, but they turned on the Occaneechi and attempted to dispossess them of their village. In a battle, the Susquehannock were driven off the island. In May 1676, when Nathaniel Bacon's troops arrived in pursuit of the Susquehannock, the Occaneechi volunteered their aid. In another battle the Occaneechi again defeated the Susquehannock and killed their chief. The English subsequently turned on their Occaneechi allies, being covetous of the stores of beaver skins they had seen in the village (CMHS 1871:167-168; Mooney 1894:54-55; Washburn 1957:43-45).

According to Bacon's account, his forces attacked the three forts in the Occaneechi town after midnight and continued to fight until the middle of the next afternoon. The Occaneechi "king," named Persicles or Posseclay, "was killed with most of his men, soe that wee reckned, wee destroyed about 100 men and 2 of their kings, besides women & children" (Anonymous 1900, 2:7; Washburn 1957:193).

It is uncertain to what extent Tutelos and Saponis may have been among the Occaneechi attacked by Bacon (C.F. Miller 1957:182-183; R.P.S. Davis 2002:150-151). An eyewitness account refers to a single island and describes the three forts as those of the Occaneechi "king," but it also names the otherwise unknown "Haykolotts" and "Anna-lecktons" in addition to the Monacan, as his allies (Anonymous 1900:2; Washburn 1957:44). In the peace made in 1677 by the Virginia government, only the Saponi are named among the tribes given the status of tributary Indians and hence nominally under the protection of the colonial governor (W.S. Robinson 1959:60). One interpretation of these events is that the Tutelo and Saponi were not attacked with the Occaneechi in 1676 and may well not then have been on the neighboring islands until later, and

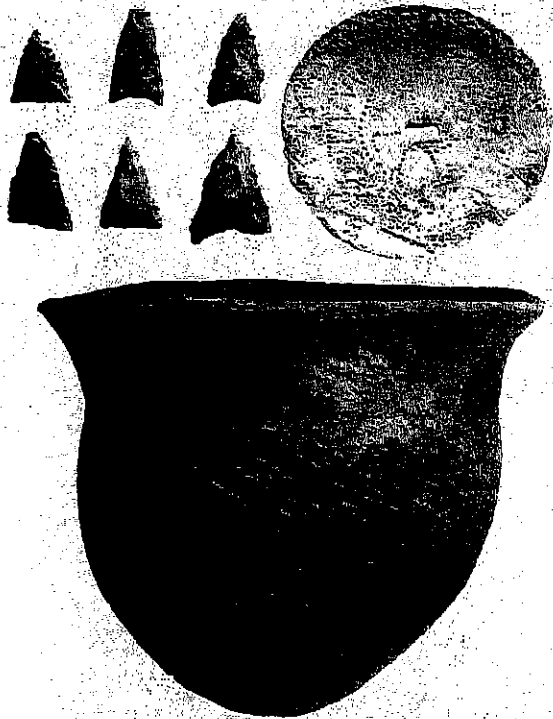
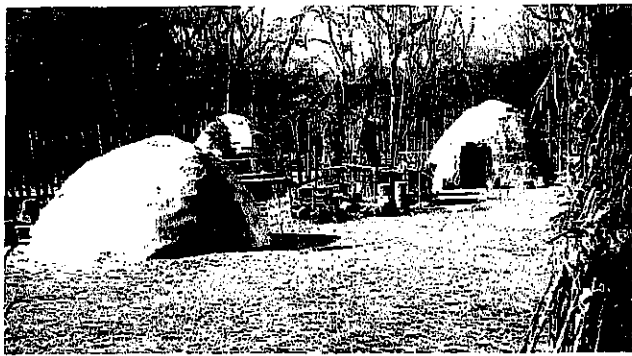
that the Saponi alone signed the 1677 treaty because it was only with the tribes nearest the English settlements (Feest 1974a).

With the Susquehannock barrier broken on the north, the Virginia Siouans were directly in the path of Iroquois war parties (Fenton 1940:239). In the summer 1678 a war party attacked Occaneechee Island and "destroyed a Town or two farther up the [Roanoke] River" (John Banister in Ewan and Ewan 1970:39). Sometime after this the Siouans moved away from the Roanoke, although the Occaneechi, at least, were still on their island as late as 1681. For short times in the 1670s and 1680s there was a Saponi town on Sappony Creek north of the Appomattox River in Chesterfield County and apparently also one in the area of the Meherrin River (Feest 1974a). When William Byrd (1901:286) visited the abandoned islands in the Roanoke River in 1733 the were overgrown, although he mentioned the remains of peach trees the Indians had planted.

The Virginia Siouans were next mentioned by John Lawson in 1701. He visited "Sapona Town and Fort" on the Yadkin River near present Salisbury, North Carolina. Lawson described the village as situated in a cleared field about a mile square, with several stone sweathouses nearby. Guards were continually posted. Lawson learned that the Saponis had recently captured five Senecas whom they intended to burn. However, the Tutelos "came down from the Westward Mountains" and asked to be given the prisoners so that they might send them home to reciprocate for some Tutelo prisoners who had recently been returned to them by the Senecas. The Saponi agreed. Lawson explained: "At that time, these Toteris, Saponas, and Keyauwees, 3 small Nations, were going to live together, by which they thought they should strengthen themselves, and become formidable to their Enemies." One night, while Lawson was in their village, a strong wind blew down all the palisades. The Saponi leader ran to the middle of the village and conjured, after which the weather became calm; he reported that "the Devil" was angry at them because they had not put the Senecas to death. The Saponi were about to move from this village and offered to sell the land to Lawson.

Lawson recorded a few cultural details. Beaver were abundant in the area and the Saponi trapped them. They showed Lawson two horses that they owned, which he described as very fat, implying that they did not ride them. While he was with the Saponi some Tutelos arrived, "tall, likely Men, having great Plenty of Buffelos, Elks, and Bears, with other sort of Deer amongst them, which strong Food makes large, robust Bodies." He learned that they used bezoars which, when pulverized, were blown into the eyes to strengthen the sight and brain (J. Lawson 1967:52-55).

Lawson visited the Occaneechi village on the Eno River, near present Hillsborough, North Carolina (fig. 4) (J. Lawson, 1967:59-61, 64; Ward and Davis 1993:1, 9). There he met a party of Tuscaroras on their way to trade carved wooden bowls and ladles to the Occaneechi and Shoccoree in exchange for deerskins. He noted that the



bottom, U. of N.C., Research Lab. of Archaeol., Chapel Hill: center left, 2351a7243, 2351a5621, 2351a7243, 2351a5806, 2351a1658, 2351a1500; center right, 2351a535; bottom 2351p428.

Fig. 4. Occaneechi Town, N.C., 1680–1710. top, Reconstruction of the town, containing 10–12 houses, bent-pole frames covered with matting. The sweatlodge, left, is separated from the houses, rear and right, by a hearth and work area. The palisade, of widely spaced vertical logs fastened with woven vines, encircles the town. The reconstruction was a joint project of the Occaneechi Band of the Saponi Nation, the U. of N.C. Research Labs. of Archaeology (R.P.S. Davis et al. 1998), Orange County, N.C., and the town of Hillsborough, N.C. Photograph by Forest Hazel, 2002. bottom, Artifacts from 31OR231. The Occaneechi retained many elements of their traditional crafts into the early 18th century. top left, Chipped projectile points made of locally available stone, used to tip arrows; length of top left about 1.8 cm, rest to same scale. top right, Marine shell pendant or gorget with drilled dots in a geometric motif, a traditional status artifact that was probably obtained by trade with coastal groups (H.T. Ward and R.P.S. Davis 1999:247). These were replaced by European brass and copper disks. Width about 6.3 cm. bottom, Fredricks Check Stamped pottery vessel, coil-made with fine-sand temper used for cooking. Rim diameter about 12.6 cm.

TUTELO AND NEIGHBORING GROUPS

Occaneechi cabins were well provisioned with fat bear meat and dried venison.

Soon after Lawson's visit the Saponi moved toward the Carolina settlements and built "Sapona town" east of the Roanoke, about 15 miles west of present Windsor, North Carolina (Mooney in Hodge, 1907–1910, 2:855). There they were constantly at war with the Tuscarora, Meherrin, and Nottoway. In all, five nations moved there, amounting to 750 people: "Totero's, Sapona's, Keiauwee's [Keyauwees], Aconechos [Occaneechis], and Schoccories [Shoccorees]" (J. Lawson 1967:242). Of these, the Keyauwee and Shoccoree had been residents of the North Carolina piedmont, and most of them soon moved south to join the Catawba and the Saraw, although some may have accompanied the Virginia Siouans when they returned north in 1732 ("Catawba and Neighboring Groups," this vol.; Mooney 1894:50, 61, 64).

By 1708 at least some of the Siouan people had returned to Virginia, for in July of that year the "Saponie King" presented a petition to the Council of Virginia asking to become tributaries. The Council found that they had already been granted that status in 1677, "till upon some misunderstanding they withdrew towards the mountains" (EJCCV 1928–1930, 3:188). The Saponi built a town and fort on either side of the Meherrin River, about 10 miles southeast of Emporia, where the Meherrin town Unote (Ennoty) had been (D.S. Brown 1995; Sasser and Hudgins 1995; Binford 1967:155), and where they had perhaps lived before moving to North Carolina (Feest 1974a). The Tutelo apparently were then still in North Carolina, as in November 1708 the Nottoway reported being attacked by them and were given permission by the Council of Virginia to retaliate, along with the ammunition to do so (EJCCV 1928–1930, 3:202).

In 1711 the Saponi were joined in the same area by the Occaneechi and Stukanox; on December 19 the leaders of the three tribes appeared before the Council of Virginia to ask permission to live together on the north side of the Meherrin River above the Tuscarora Trading Path. The last to arrive from North Carolina were the Tutelo, whose "king" on April 24, 1712, asked permission to settle the remnants of his people with the Saponi. The Council journal indicates that the Tutelo appeared "to have always been faithful and friendly to her Majesty's subjects" (EJCCV 1928–1930, 3:296, 310). The Tutelo built a town and fort on Three Creek north of the site of Emporia midway between the Nottoway and Meherrin rivers (Sasser 1998:map 9; D.S. Brown 1995:3).

Alcohol proved to be a disastrous effect of close contact between the Siouans and the colonists. On April 28, 1712, the Saponi asked the Council to prohibit the sale of rum in their town (EJCCV 1928–1930, 3:312).

In 1712 Gov. Alexander Spotswood of Virginia reported that there were nine tributary Indian nations in Virginia: Pamunkey, Chickahominy, Nansemond, Nottoway, Meherrin, Saponi, Stukanox, Occaneechi, and Tutelo. Their total population was given as 700, including 250 fighting men

and turkey were boiled together the spirit would drive all the game from sight (W. Byrd 1967:178).

According to Byrd, the Tutelo were extinct, the only daughter of the last "king" having committed suicide by poisoning herself with a root (W. Byrd 1967:310). This may be interpreted as reflecting the extinction of a chiefly class among the Tutelo, not of the tribe as a whole.

The Saponi were suffering from contact with colonial society. Girls were prostituted to the Whites; "one could buy the charms of a princess for a pair of red stockings." The Saponi were also being demoralized with rum, "which kills more of them than the Northern Indians do" (W. Byrd 1841:89-90, 1967:308, 311).

In 1727 the Tuscarora were accused of killing some Saponis, an Englishman allegedly killed a Saponi (EJCCV 1928-1930, 4:133), and the Meherrin claimed to have been attacked by the Saponi and the "old Occaneeche King" (EJCCV 1928-1930, 4:26, 132, 133, 152-153). In the following year the Nottoway and Saponi each complained of murders committed by the other, and the Council ordered offenders on both sides to be jailed (EJCCV 1928-1930, 4:185-186). One of the Saponis to be jailed was a leader named Tom. The Saponi threatened that if he were hanged they would move their families to safety across the Roanoke, then drive the English north of the James. One Saponi complained that the English had no business to concern themselves in the matter of Indians killing one another (Mooney 1894:50).

Byrd, writing in 1728, recorded that a Saponi headman, while drunk, killed a White man. He was hanged for the crime, which Byrd reported to be a form of death particularly abhorred by the Indians. The Saponis shortly thereafter left Fort Christanna and moved south to join the Catawba (W. Byrd 1967:310). In spring 1732 the Saponi returned to Virginia and asked the governor to be permitted to settle under the protection of Virginia. The Saraw (who came to be known as the Cheraw, originally an incorporated town) also wished to join them. The Council of Virginia recommended that they be allowed to select uninhabited land on the Roanoke or Appomattox equal to that they formerly held at Fort Christanna (EJCCV 1928-1930, 4:269). The Tutelo were evidently with them, for in 1733 the Conoy were reported to have taken some Tutelo scalps (Schaeffer 1942:xi).

In 1732 and 1733 the Council of Virginia heard various complaints about hostilities between the Saponi and the Nottoway. In 1733 headmen from both groups visited the Council to state that in order to end the fighting they had made peace with one another and with the Tuscarora. The Saponi asked and received permission to incorporate with the Tuscarora, with the stipulation that if they decided not to do so they would be assigned uninhabited land between the Roanoke and the Appomattox (EJCCV 1928-1930, 4:303). In the end, the Saponi must have decided not to join the Tuscarora since a reference in 1736 indicated that they were still in Virginia (Mooney 1894:50).

History and Culture, 1740-1950

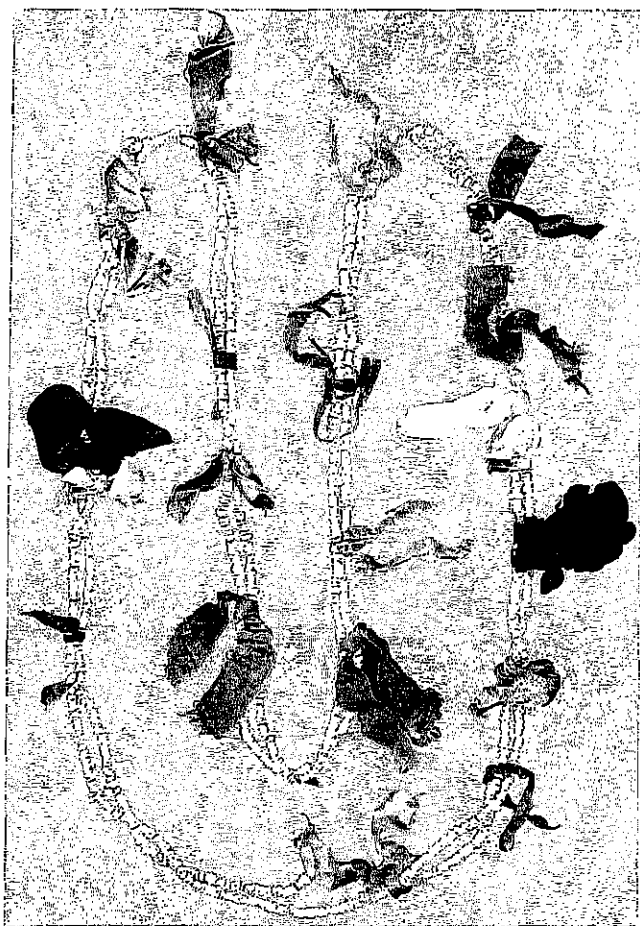
About 1740, most of the Tutelo, Saponi, and other remnant Siouan groups who joined with them moved north and settled at Shamokin, a village founded by migrant Delawares, situated on both banks of the Susquehanna River at the site of present Sunbury, Pennsylvania (Schaeffer 1942:xii; Mooney 1894:50). They were first mentioned there in 1744; the following year, when the Presbyterian missionary David Brainerd visited Shamokin, he reported more than 50 houses, with 300 people, of whom half were Delaware and the remainder Seneca and Tutelo. The inhabitants of the village were characterized as "drunken, mischievous and ruffian-like," and it quickly became a focus of Moravian missionary activity (Brainerd 1822:233).

Shamokin seems to have been a loosely organized village of remnant peoples speaking different languages who were affected by alcohol and disease. The inhabitants suffered from famine and smallpox, and by 1748 the Tutelo had moved farther north, up the Susquehanna to Skogari, a village at the mouth of Catawissa Creek. The missionaries David Zeisberger and John Martin Mack stopped there in July 1748, but finding all the Indians drunk, they moved on (Zeisberger and Mack 1893:431).

The Tutelo were formally adopted into the League of the Iroquois in 1753, the Cayuga acting as sponsors (NYCD 1853-1887, 6:811). Cayuga traditions of the event were recorded by Hewitt (1917-1936) and Speck (1935:208). The political status of the Tutelo, in the Iroquois metaphor, was as "a 'prop,' or 'support between the logs' in the side wall of the League of the Iroquois." The Tutelo were entitled to send a chief to participate in the League council, although he could only speak in matters pertaining to the Tutelo themselves (Speck 1935:211). In 1754 the Tutelo were still at Skogari. During the French and Indian War they continued their gradual move northward; by about 1760 at least some of the Siouans were settled near Tioga Point and the adjacent area along the East Branch of the Susquehanna in New York (Schaeffer 1942:xiii). In 1763 the male population of the Tutelo, Saponi, Nanticoke, and Conoy was reported at 200 (NYCD 1853-1887, 7:582-584). In 1770 the Tutelo population dependent on the Six Nations was reported to be 78 individuals (Schaeffer 1942:xiv).

By 1771 most of the Siouans seem to have moved toward the Cayuga settlements in New York. Their main village was Coreorgorel or Toderighrono, located at the head of Cayuga Lake, near present Ithaca, New York. This village, with the neighboring Cayuga villages, was destroyed by colonial armed forces in 1779, and the Indians were driven toward Fort Niagara (Schaeffer 1942:xiv). At this time the Saponi and Tutelo were reported to have separated from each other (H. Hale 1883:8, 10).

In 1781 a group of Tutelos under a leader named Pekaraghka were "sent to Buffalo Creek to plant." In 1789 there were 75 "Teddeoghrones" reported on the Buffalo Creek



top, Smithsonian, Natl. Mus. of Amer. Ind.:#N20826; bottom, Smithsonian, Dept. of Anthr.:E391953.

Fig. 5. Ceremonial leader and ritual paraphernalia. top, John Buck, Sr. (b. 1858, d. 1935), the last chief of the Tutelo, and child. Buck, who fathered 13 children, was the political and ceremonial representative of the 7 family heads who carried on Tutelo identity within the League of the Iroquois on the Six Nations Reserve in Ont. (Speck 1942:3). He was a consultant for Frank G. Speck on ceremonialism, tracing his Tutelo ancestry through his father, in contrast to the Iroquois custom of tracing descent through the maternal line. His paternal grandmother was a Tutelo born among the Iroquois about 1802. Photograph by Frank Speck, 1933–1934. bottom, Double strand of white shell beads, with colored ribbons tied on at intervals, used in the Tutelo Reclotting and Adoption ceremony. The beads, called Tutelo wampum, differ from Iroquois wampum. The string, worn across the chest from the left shoulder to the right waist, symbolized the return of the deceased in the personality of the adoptee. This string, or at least some of the beads, was said to have been brought north by Tutelos fleeing Va. after 1733. Collected by William N. Fenton, 1941. Length about 66 cm.

Most of the Tutelo followed Joseph Brant to Canada and settled at the Six Nations Reserve on Grand River (Mooney 1894:51). John Buck (fig. 5) told Dorsey (1882) that the Tutelo were led in their northward move by a loyalist chief named Harris. During the 1830s the Tutelo numbered about 200 people, living on the Tutelo Heights near Brantford, Ontario. Their cabins were built surrounding a longhouse. The cholera epidemics of 1832 and 1848 wiped out most of the group, and the survivors took refuge among the Cayuga (H. Hale 1883:9; Mooney 1894:52).

Although the total population of individuals claiming Tutelo descent had shrunk to about 50 (Speck 1942:3), Tutelo ethnicity continued to be expressed in three ceremonies carried out at Grand River—the Reclotting and Adoption ceremony (fig. 5), the Fourth Night Spirit Release, and the Tutelo Harvest rites. The Reclotting and Adoption ceremony was practiced by a large number of the Six Nations Reserve Iroquois. The purpose of this rite, held in a longhouse, was to bring back the spirit of a Tutelo who had recently died, and to adopt a living person in place of the deceased as his or her earthly representative. Speck reported that the entire Tutelo tribe was considered as hosting the ceremony; all the souls of deceased Tutelos were believed to be present. The ceremony lasted through the night and at dawn the spirit of the deceased was sent “upon its final journey over the pathway of the rising sun’s rays to the permanent celestial abode of spirits” (1942:10). Speck believed the ceremony to be of southern origin, probably an old Siouan trait, but it had been entirely taken over by the Iroquois. However, it is reported that the Tutelo themselves explained the ceremony as originating in an attempt to prevent extinction of their tribe in the face of declining population and intermarriage (Speck 1942:10; Gabor 1960:11).

census. They were listed as members of two clans, Snipe and Wolf, indicating that the Siouans had at least superficially adapted to the Iroquois clan system. The names of 11 men are recorded in Siouan and English, but only three of them are easily translated using the available Tutelo vocabularies (Schaeffer 1942:xiv–xvi).

In 1789 the Paanese (interpreted by Mooney as the Sapooneese), the “adopted brethern” of the Cayuga, were mentioned in the Cayuga treaty made at New York. They were then living on the Cayuga reservation on the Seneca River in New York (Mooney 1894:51).

The Spirit Release ceremony was held on the fourth night after a Tutelo's death, usually the day after the funeral. Relatives and friends gathered to share a meal with the spirit before sending it on its way to the home of the dead (Kurath 1954). According to Rioux (1951), the Spirit Release ceremony was only held if the death took place in the summer, and thus served as an interim ceremony until the Reclothing and Adoption ceremony could take place. That rite was prohibited during the summer since the spirits returning to earth would affect the growth of crops.

The Harvest rites were historically a four-day ceremony, but by the time they were described (Kurath 1953) they occupied only an hour at the conclusion of the Onondaga and Cayuga harvest ceremonies.

Each of these ceremonies was conducted in an Iroquois language, but each was characterized by a series of songs of Tutelo origin, with Tutelo words whose meanings were no longer known. The songs were the final symbols of Siouan ethnic identity preserved among the descendants of those Tutelos and their congeners who left their native country over two centuries previously and fled north to seek cultural preservation under the protection of the League of the Iroquois.

Situation in the 1990s

In the 1990s Halifax and Warren counties, North Carolina, were home to the Haliwa-Saponi Indian Tribe, which claimed descent from a confederation of Saponi, Tuscarora, Tutelo, and Nansemond dating to the early eighteenth century. The group received state recognition in 1965. Their population was 3,800 in 2002 (Jason B. Jackson, personal communication 2002).

A small community asserting historical descent from the Tutelo, Saponi, and Occaneechi who confederated at Fort Christanna established an annual powwow in 1995 and took the name Occaneechi Band of the Saponi Nation. They were centered at Pleasant Grove, North Carolina. The Haliwa-Saponi and Occaneechi Band of Saponi are described in "Indians of the Carolinas Since 1900," this volume.

The Monacan Indian Nation was located in Amherst County, Virginia, centered at Madison Heights. In 2002, membership numbered about 1,100 people. Bear Mountain was the heart of the Monacan community and the site of an early tribal church and an Episcopal mission that became a school and later the Monacan Ancestral Museum. In 1989 they received state recognition as an Indian tribe; in 1997 they began their appeal for federal recognition. Like other groups in the region, the Monacan are linked into a social network through participation in the Virginia Council on Indians, as well as a regional powwow circuit and informal social ties. Their annual powwow was the main source of revenue for the group, with which they purchased the original settlement site at Bear Mountain. They worked with local museums to develop exhibits representing Monacan history and culture (K. Wood and D. Shields 1999; Monacan Indian Nation 2002).

Of these Siouan groups, the Tutelo were the best documented during the first half of twentieth century. However, in 2003 no substantive information concerning the preservation of a distinctive Tutelo identity among Six Nations of Grand River Reserve, Ontario, Canada, was available.

Synonymy⁸

• **MANAHOAC** The name Manahoac (Mooney 1894:18; Hodge 1907–1910, 1:796), Manahoacs (Jefferson 1955:96), was written Mannahòacs by Charles Thomson (in Jefferson 1955:202). It also appears as Manahockes, Manahokes, Mannahoackes, Mannahoacks (P.L. Barbour 1969, 2:267, 341, 344, 360). The variant Topmanahocks (P.L. Barbour 1969, 1:185) has not been explained, unless it was simply influenced by Topahanock, the name of the Rappahannock River in the same passage.

This name was learned from speakers of Virginia Algonquian and includes the Algonquian plural suffix /-ak/. It may have been a borrowing or a descriptive term, but its etymology is unknown.

• **MONACAN** The name Monacan (Mooney 1894:25; Hodge 1907–1910, 1:930), Monacans (P.L. Barbour 1969, 1:243; Jefferson 1955:97), was written Mònacans by Thomson (in Jefferson 1955:202). It appeared first as Monanacah, 1607 (P.L. Barbour 1969, 1:87). Other early forms are: Monocan, Manacan, Monacum, Monacon (P.L. Barbour 1969, 1:186, 192, 196, 245). Lederer, 1672 (1958:19) used Monakins.

This name is also apparently of Algonquian origin, possibly descriptive.

• **OCCANEECHI** The name Occaneechi (Hodge 1907–1910, 2:103) appears as: Achonechy, Aconechos (J. Lawson 1709:55, 234); Akenatzy, Akenatzys, 1670 (Lederer 1958: 10, 13, 24); Hockinechy, 1676 (Anonymous 1900:2); Occaneches, Occaanechy, 1728 (W. Byrd 1929:308, 312); Occhonechee, 1674 (Alvord and Bidgood 1912:211); Occonacheans, 1650 (Bland in Salley 1911:16); Occoneechee, 1711 (EJCCV 1928–1930, 3:296); Ockanechees, 1676 (Abraham Wood in Washburn 1957:46); Ockanigee, 1679 (John Banister in Ewan and Ewan 1970:39); Oke-nechee, 1671 (Alvord and Bidgood 1912:184; NYCD 1853–1887, 3:193). Other spellings include: Acconeechey, Occaneeches, Ochineechees, Ockinaggee (Mooney 1894:53).

The meaning and language of origin of the name Occaneechi are unknown.

• **SAPONI** The name Saponi (Hodge 1907–1910, 2:464) was first used in this form (also Sapponi) by William Byrd, 1728 (W. Byrd 1929:160, 159). It first appeared as the village name Sapon, 1670 (Lederer 1958:22). In the accounts of the Batts and Fallam expedition it is spelled Sapiny, Sapeny, Sapony, Sepiny, Sapiny's, Saponys, Sapony's (Alvord and

⁸This synonymy was written by Ives Goddard, incorporating materials from Raymond J. DeMallie and Jack B. Martin.

Exhibit C – Motion to Intervene Filed by Ben Rhodd, filed May 4, 2018

Mountain Valley Pipeline LLC,
Docket No. CP16-10-000
Mountain Valley Pipeline Project
and
Equitrans, LP
Docket No. CP16-13-00

Introduction

Discussion

1

adversely affected by the proposed pipeline in Roanoke and Franklin Counties, VA 54 U.S.C. § 302706(b), 36 C.F.R. § 800.2(c)(2)(ii). The obligation to consult with tribes “applies regardless of the location of the historic property.” 36 C.F.R. § 800.2(c)(2)(ii) (emphasis added).

FERC engaged in consultation with other parties, issued a certificate approving the pipeline, and executed a Programmatic Agreement governing the treatment of historic and cultural resources, all without any consultation with the Rosebud Sioux Tribe. The proposed pipeline was independently brought to Mr. Rhodd’s attention after these efforts had already occurred. Mr. Steve Vance, THPO of the Cheyenne River Sioux Tribe, promptly contacted FERC in January 2018, and requested to see cultural resource reports prepared by MVP. This request was refused.

On March 3 - March 6, 2018, Mr. Rhodd travelled to Virginia along with Mr. Vance, and identified four locations traversed by the pipeline that were areas of concern to the Siouan Tribes. These “locales have historical documentation of Siouan locations/presence and our oral history reiterates our existence within this region.” Letter to ACHP from Ben Rhodd, at 2 (March 23, 2018). Rather than initiate consultation with the Tribe, FERC dismissed these concerns, and denied these claims following a cursory review of and misleading references in the Handbook of North American Indians.

The Rosebud Sioux Tribe strongly takes issue with FERC’s refusal to acknowledge the traditional religious and cultural associations of the Siouan people with area in Virginia through which the pipeline will be built. FERC failed to undertake a reasonable and good faith effort to identify the Siouan presence and ancestral association in these lands through readily available and objectively verifiable sources including the Handbook of North American Indians (Chapter 14). The map in Volume 14 indicates Tutelo occupancy of the MVP project area. Tutelo were

indisputably Siouan in origin, as argued by multiple scholarly documents, including Raymond J. Demallie's chapter in Volume 14 on "Tutelo and Neighboring Groups," Swanton. FERC's selective and after the fact reliance on Chapters 13 and 15 of the Handbook, while ignoring the obviously applicable Chapter 13, demonstrate the FERC failed to discharge its responsibility under Section 106 to undertake a "reasonable and good faith effort to identify Indian tribes . . . that shall be consulted in the section 106 process." *Id.* 36 C.F.R. 800.2(c)(2)(ii)

. FERC compounded this violation by continuing to refuse to consult with the Rosebud Sioux Tribe even after this error was repeated brought to FERC's attention. In continuing to ignore the request by the Rosebud Tribe to consult, FERC has violated the command of the Section 106 regulation 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).

Interest of Mr. Rhodd

The Rosebud Sioux Tribe (Sicangu Oyate) is a sovereign Indian Tribe, recognized by the United States. The government and lands of the Rosebud Tribe are located in South Dakota and Nebraska. We are a member tribe of the Oceti Sakonwin, a Lakota title incorporating seven fires (fire implies "nation, group, tribe, kindred, band") comprised of Lakota peoples.

The Sicangu are a sub-division of the Tetonwan (Prairie Dwellers) Oyate of which there are *in toto* seven (7) bands. Structurally, the Sicangu Lakota are, in conjunction with the Nakota, descendents of the Dakota Oceti Sakowin. Politically, socially, historically, and customarily, the

Sicangu are a member tribe of the Lakota branch of the Oceti Sakonwin, also commonly referred to as the Great Sioux Nation. To grasp and explain this, the Dakota have 7 fires (bands), the Lakota have 7 fires (bands), and the Nakota are comprised of 7 fires (bands), twenty-one (21) in total. Linguistically they speak the same language with only the L, D, and N exchanged in words to denote tribal affiliation.

The presence of the ancestral Dakota in Virginia, which has been refuted by FERC by implying that there is no written reference to “origin of the Dakota” within this region, is incongruous with the Lakota assertion of presence. In all letters to the ACHP and or to FERC, it was never implied nor inferred by the Rosebud Sioux Tribe or the Cheyenne River Sioux Tribe that this was the Dakota origin place. Oral history accounts that the Dakota presence was part of a journey, not an origin locale.

Mr. Rhodd is the Tribal Historic Preservation Officer for Rosebud Sioux Tribe. He was appointed THPO on November 29th, 2017.

As THPO, Mr. Rhodd manages the regulatory office that manages and protects cultural resources, sacred areas, and sites within the exterior boundaries of Rosebud Sioux Tribe treaty lands and the aboriginal homelands of the Oceti Sakowin. Mr. Rhodd received his education at the _University of South Dakota, Vermillion, 1984, BA and Central Washington University, Ellensburg, 2012, M.S. and has 30 years of experience consulting with tribal, state and federal agencies. As a member in good standing of the Register of Professional Archaeologist (RPA), Mr. Rhodd meets the Secretary of the Interiors Standards for professional archaeologists.

The Tribal President and Vice President have approved Mr. Rhodd taking this action in his official capacity as THPO.

Conclusion

For the foregoing reasons, Mr. Rhodd hereby requests that the Commission grant his motion to be admitted as an intervenor in the extant proceeding and further requests that a formal hearing be held on the merits of the issues raised herein.

Respectfully submitted,

/s/

/s/ Andrea C. Ferster (DC Bar # 384648)
Attorney at Law
2121 Ward Court, N.W. 5th Fl.
Washington, D.C. 20037
(202) 974-5142
(202) 223-9257 (Facsimile)
aferster@railstotrails.org

I, Ben Rhodd, do declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Ben Rhodd, THPO
Rosebud Sioux Tribe

May 4th, 2018

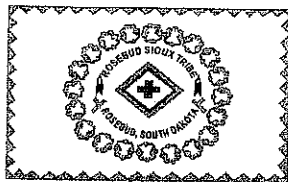
date

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010, I hereby certify that I have on this 4th day of May 2018 served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

_____/s/_____
/s/ Andrea C. Ferster (DC Bar # 384648)
Attorney at Law
2121 Ward Court, N.W. 5th Fl.
Washington, D.C. 20037
(202) 974-5142
(202) 223-9257 (Facsimile)
aferster@railstotrails.org

Exhibit D – Letter to FERC from Ben Rhodd, filed August 1, 2018



*Tribal Historic Preservation
Cultural Resource Management Office*

P.O. Box 809

Rosebud, South Dakota

Telephone: (605) 747-4255

Fax: (605) 747-4211

Email: rst.thpo@rst-nsn.gov

Benjamin K Rhodd
Officer

Kathy Arcoren
Administrative Assistant

Jennifer Galindo
Archaeologist

Bernadette Emery
GIS Recording Clerk

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

Paul Friedman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

July 24, 2018

Re: Adverse Effect to historic properties – Mountain Valley Pipeline Project.

Mr. Friedman,

The Rosebud Sioux Tribe (RST) sends its greetings. The enclosed is a prelude to a formal report being generated as the base document for intervening in the on-going activities associated with the construction of Mountain Valley Pipeline. This document is specific to Franklin and Roanoke Counties, Virginia, however, it has overarching implication to the entirety of the pipeline per se. These two counties are the extant of the Tribes exercise of their historical interest to date. The RST and Cheyenne River Sioux Tribe (CRST) (hereafter designated as “the Tribes”) has a historical and present day interest in the on-going activities presently occurring along the platted pipeline route as designed.

It is the contention of the RST and CRST that the Federal Energy Regulatory Commission (FERC) has failed in its mission to protect sites of cultural significance to the Tribes under the guidelines of Section 106. Specifically, FERC failed to consult with the western Lakota, Dakota, and Nakota descendant groups associated with sites encountered that are inclusive of burials, stone petro-forms, cairns, stone lithic scatters, plants used as traditional medicines, offering stones, and water resource formations related to past and present lifeways.

The Mountain Valley Pipeline, LLC, which is a joint venture of EQT Midstream Partners, LP; NextEra US Gas Assets, LLC; Con Edison Transmission, Inc.; WGL Midstream; and RGC Midstream, LLC. EQT Midstream Partners are proposing a 303 mile long natural gas pipeline from West Virginia through SW Virginia. Addressing the cultural and natural resource disturbances within the pristine landscapes by pipeline infrastructure installation is addressed as the primary concern of the Tribes.

Defined natural resources as determined by the National Environmental Policy Act and cultural resources under the National Historic Preservation Act is the context of concern for the Tribes. Additional resources of concern included herein are water and particularly the effects upon wildlife/plant regime habitat and the extenuating environmental effects processes resulting from access road construction and reconstruction, and other surface disturbing modifications.

Effects to historical or present day use of medicinal and food resource plant communities includes reduction of landform surface obstacles/obstructions not conducive to pipeline installation. Sites of ancestral descendant Tribal groups, whether those still residing within the ancestral landscape(s) or as a result of a Tribal journey is an undeniable part of Native history within the United States as the current geo-political entity. There are Tribes who left and returned to traditional origin/emergence homelands as is the case contained within a report in current development. The results of a limited access Traditional Cultural Property (TCP) survey at the behest of private landowners upon their lands by qualified Traditional Cultural Specialists of the Tribes clearly demonstrates the inadequacy of a previous Class III archaeological survey conducted along the ROW corridor.

Descendant groups holding intact oral histories; knowledge of their cosmology and astronomy; speaking their ancestral language which describes their history and origin; knowing their customary ancestral practices and why these exist; is a markedly differing approach to defining heritage site types and their cultural purpose. This, coupled with linguistic association to present Tribal groups continuing to reside within localities that were historically occupied during a limited episode of a Tribes history can still be found in the present day. Time and space notwithstanding, cultural association is ever present if the forgoing serves as the marker(s) for defining association and culturally demarcated lineal heritage features.

The project as currently designed and administratively proportionally initiated was to be completed under a variety of laws specifically designed to perform two differing aspects of application to pipeline development and cultural heritage preservation. The National Environmental Policy Act of 1972 (NEPA) and the Natural Gas Act of 1938 (NGA) exist in a juxtaposed position to each specific laws purpose. Both are regulatory in context, however, each was originated to standardize effects to and on either the economy or monopolization (NGA); and to control effects, typically detrimental, to the natural world commons affecting the populations within a state, region, or country (NEPA).

The format of Traditional Cultural Property (TCP) reporting are not set to standards as within the archaeological discipline. However, the reports contain similar or duplicated information such as the scholarship found in archaeological reporting narratives. Reporting of TCP findings serves the purpose of informing professionals, avocationals, historians, ethnologists, and those interested in heritage resources of intact Native knowledge systems still in existence and used to define properties of significance. The qualifications for a researcher (Traditional Cultural Specialist –TCS), whether as field personnel, field supervisor, or principle investigator, is living and learning within an environment of Tribal knowledge and applying the worldview to the physical, tangible resources which often contain intangible functions or purposes. Additional classroom and field training, complete with a certificate of accomplishment, occurs to satisfy governmental and private entities requirements of certification. These requirements are meant to limit Tribal individuals participating in the defining of their own histories which are viewed to be the purview of the archaeologist and other formerly trained professionals.

The document being generated and the principle information contained in the report presently being developed has a three-fold component objective:

First: Sites within traditional use areas that are significant to descendant Tribal people have feeling and character essential to Native existence in the present day. The presence of these sites affirm a historical continuity to the past and to the future. In essence there is no conceptual integration of "prehistory" within Native worldview i. e. - observed sites substantiate and validate both the past and the present in sequential, interrelated, perpetuity.

Second: Disclosure of the total embodying descriptions of a TCP's significance to the discipline of archaeology or anthropology has led to sites considered culturally significant and important to Tribes being tested and destroyed out of existence. The disciplines seek to affirm via Western perceptions and means what and how and why a site deemed culturally significant to Native historicity is formed and what is its function. This is despite the assertion of a sites' value to a descendant Tribe as essential to their unique identity and distinctive perpetuation. Fundamentally, it denigrates the Native people by assuming that they do not know their own history and therefore what they describe must be authenticated by academically or empirically trained authorities to be true.

Third: Site descriptions embodying a lifeway which has been ancestrally communicated through oral tradition, when transmitted to a professional of non-native descent, has typically been diminished as knowledge that is *incidental information or addendum* that is relevant but not essential to determine a sites significance or eligibility to the National Register of Historic Places. Eligibility criterion determinant measures are not inclusive of those Native attested descriptive tangible or intangible values of a sites content. This condition prompts the non-native communities of researchers to seek to determine validation by scientific weights, measures, research of non-native theses and dissertation, and lastly, replication. In previous projects where Native TCS have disclosed site information has led to Tribal knowledge being appropriated without Tribal permission. Perceptions engendered by the non-native researcher becomes an erroneous depiction that is cited and compounded by citation and reference over time. Essentially, Tribal knowledge is not a commodity that an academic degree can validate, or be owned via non-native scholarly research objectives and thereby be discounted of historical/cultural relevance.

A total of twenty-seven (27) sites of significance were discovered and recorded by the TCS of the Tribes in a total of 8 +/- miles of controlled linear transect pedestrian ROW survey. The sites include cairns, stone circles, petro-forms, springs (a traditional cultural property), lithic scatters, quarry locations, offering stones, plants, and burials. In high likelihood topographically defined locations, sites' were discovered utilizing a methodological technique applied in western states archaeology involving the use of a gas powered leaf blower capable of 200 mph wind force. The technique is non-intrusive as the method exposes sites buried under deciduous leaf or coniferous needle forest duff and detritus without impacting the integrity of the sites' value. The sites are then returned to their previous state via moving the leaf or needle material back over the exposed surface.

As a comparison, archaeological survey of the approximate 32.0 miles of ROW corridor, produced a total of fifty-two (52) newly recorded sites in **Franklin County**, forty-five (45) of which are determined to be pre-contact. If compared to the total number recorded by the TCP

surveyors in eight (8) miles investigated, the figure of sites recorded should be one-hundred eight +- (108). This figure is caveated by acceding that this figure is according to the amount of lands impacted during the historic era i. e. – farming, industrial, recreational, mining, etc. activities versus pristine undeveloped landscape(s).

Clearly, the methods employed by the MVP hired third party archaeological companies involved in the cultural resources investigations of the pipeline corridor are inadequate. The recognition of sites by TCS personnel and the field principle investigator demonstrates the site recordation shortfall of the previous Class III survey's strictly visual reconnaissance methodology. To clarify, the TCS survey has recognized and recorded a multiplicity of culturally attributable site types within the limited access private lands (8 +- miles) linear corridor. This demonstrates beyond a doubt the defective methods employed to date that leads to the destruction of sites considered significant to Native tribes and descendants.

As example; Site RST-05142018-4 a stone circle feature located on the Dale Angle property and in close proximity to an extensive, known, formerly recorded occupation site along the bottoms adjoining where the Blackwater River and Little Creek confluence. A highland feature consisting of a single stone circle 2.5 x 2.3 meter in diameter situated on the third terrace slope slanted at 5 degrees and facing in a southerly aspect overlooking where the occupation was located within the ROW corridor. This type of feature is a place considered significant to the Tribes, not simply for the constructed value of the stone configuration but for its significance as a place of an individuals' supplication to a higher power. This site type is a place where an individual stood in a spiritual mode fasting for guidance and direction in their life. This site type contains a tangible element (stones) and an intangible component (prayer) that cannot be scholarly assessed without Native knowledge of what the site contained in the past and in the present.

A full report is in preparation to support the assertions made in this communicate'. However, the Tribes are hesitant to submit the report until assurances are made to the Tribes that sites located and recorded will be protected from testing and/or further validation efforts that result in any of the site's integrity to not be subject to arbitrary evaluative measures. Furthermore, as asserted within this document, a full and complete TCP survey needs to be conducted along the entirety of the platted 303 mile long route to ensure avoidance of significant sites to the Native, archaeological, historical, and heritage related communities.

Thank you for your time and consideration of this informational intimation of sites significant to the Tribes.

With Regards,



Ben Rhodd
Rosebud Sioux Tribe
Tribal Historic Preservation Officer

Exhibit E – Letter to FERC from Dale Angle, filed August 16, 2018

August 16, 2018

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

Dear Ms. Bose,

I am writing to express opposition to the Temporary Stabilization Plan proposed by Mountain Valley Pipeline (MVP) and approved by FERC on August 10, 2018.

The continuation of pipeline construction work, as approved in MVP's Temporary Stabilization Plan, will cause damage to our farm and its croplands and priceless springs and pond. In addition, the approved construction work will continue MVP's ongoing destruction of archaeological sites of significance to the Cheyenne River and Rosebud Sioux Tribes. In his July 24, 2018 letter to FERC, Ben Rhodd, Tribal Historic Preservation Officer, Rosebud Sioux Tribe, describes the tribal significance of our farm:

Clearly, the methods employed by the MVP hired third party archaeological companies involved in the cultural resources investigations of the pipeline corridor are inadequate. As example; Site RST-05142018-4, a stone circle feature located on the Dale Angle property and in close proximity to an extensive, known, formerly recorded occupation site along the bottoms adjoining where the Blackwater River and Little Creek confluence. A highland feature consisting of a single stone circle 2.5 x 2.3 meter in diameter situated on the third terrace slope slanted at 5 degrees and facing in a southerly aspect overlooking where the occupation was located within the ROW corridor. This type of feature is a place considered significant to the Tribes, not simply for the constructed value of the stone configuration but for its significance as a place of an individual's supplication to a higher power. This site type is a place where an individual stood in a spiritual mode fasting for guidance and direction in their life. This site type contains a tangible element (stones) and an intangible component (prayer) that cannot be scholarly assessed without Native knowledge of what the site contained in the past and in the present.

I request that FERC call a halt to all MVP construction activities on our property that will occur as part of MVP's Temporary Stabilization Plan until consultations with the Cheyenne River Sioux Tribe and the Rosebud Sioux Tribe have been completed according to the requirements of Section 106 of the National Historic Preservation Act. FERC's prompt action is needed to prevent harm to our farm, its cropland, its aquatic features, and its significance to the Sioux Indian Tribes. Please do not allow construction activities approved under MVP's Temporary Stabilization Plan to proceed.

Sincerely,



Dale Angle
1116 Iron Ridge Rd.
Rocky Mount, VA 24151