

Monacans offer commitments to water authority if project site is changed

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Body

The Monacan Indian Nation is making formal commitments to the James River Water Authority if the agency ultimately decides to move a controversial water project away from the Point of Fork area in Fluvanna County.

The tribe, through its attorneys, sent a letter to the authority board this week, to "provide assurances" to the authority and Louisa and Fluvanna counties' boards of supervisors.

In 2020, the authority board decided to study a potential alternative site for a project that has been slated to be built on land that was home to Rassawek, the historic capital of the Monacan nation. The water authority wants to build a raw water intake and pump station in Fluvanna County near Point of Fork, to help keep up with growth in the Zion Crossroads area.

In an interview, the attorneys said the Monacans have never been opposed to a project that removes water from the James River; they've just been opposed to it happening in "a way that destroys the tribe's history."

"But we understood that some of the members of the board questioned whether or not the tribe was going to get them to look at an alternative and then move the goalposts again, or that we were going to sue them for all of everybody's failures, even if they went ahead," said Greg Werkheiser, part of the legal counsel to the Monacan Indian Nation.

"This was an attempt to calm any conspiracy theories and to reaffirm what we've been saying all along, which is we can be your partner if you comply with the law and regulations and common sense and move this to a different place, and at minimum, we will not be an obstacle."

If JRWA engages consultant Gray & Pape (which it has) to identify and test for cultural resources in the alternative area, and the nation has an opportunity "to provide input on and review the testing plan in advance, to receive timely copies of the results, and to be notified immediately if human remains are discovered along the route," and the testing does not "confirm or strongly indicate" the presence of human remains on the alternative routes, then the Monacans make four commitments, the letter states.

The tribe will collaborate "fully and expeditiously" with JRWA toward reaching an agreement on a treatment plan for construction on alternatives, the letter says, including "no financial mitigation payments to the nation for any harms to cultural resources with which the Nation is associated, but the parties will endeavor to secure the agreement of landowners to turn over to the Nation any excavated artifacts."

It will also write to federal and state agencies stating that it supports JRWA's plans to build on an alternative site, urges "expeditious approvals" for all permits needed and waives all objections "to what it alleges are prior failures" of the Army Corps of Engineers or JRWA to comply with certain legal requirements, the letter states.

Sarah Curtis

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The tribe and authority also will explore the Monacans' or a third-party's purchase of land JRWA already purchased for the other site, and will "collaborate fully and expeditiously" in the development of the draft Anticipatory Burial Permit application or Unanticipated Discoveries Plan, if needed.

"What we said to the water authority is, as part of you agreeing to the alternative, you're made whole for this purchase, the nation will work with partners to buy it from you so that you can make your money back from that purchase," said Marion Werkheiser, another attorney for the Monacans.

At the authority board's meeting Wednesday, which was held virtually, it discussed the letter. One board member asked if there were any "red flags" in it.

"No, it's a helpful letter, and it's something that had been a draft for a while ... and we've made some suggested revisions and we suggested some revisions that they had made, and I think it's in our interest and there's no red flags," said Justin Curtis, an attorney for JRWA.

Curtis said some weather issues and river flows have delayed a bathymetric survey, but that should begin after permission from the landowner to access their property is secured.

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