



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

1200 New Jersey Avenue, SE.

Washington, DC 20590

In Reply Refer to: HCR-20  
DOT# 2020-0001

JAN 21 2020

**Subject:** Dismissal of Complaint DOT# 2020-0001

Dear [REDACTED],

This letter is to inform you that the Federal Highway Administration (FHWA) Office of Civil Rights has determined that it will dismiss the above complaint, which alleges violations that may be related to Title VI of the Civil Rights Act of 1964, the U.S. Department of Transportation (USDOT) Title VI implementation regulations at 49 C.F.R. Part 21 and/or FHWA's Title VI regulations at 23 C.F.R. Part 200 (hereinafter Title VI). Title VI prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance.

To be accepted for investigation, a complaint must meet the jurisdictional requirements provided by 49 C.F.R. § 21.11, as well as the legal standards discussed in the U.S. Department of Justice Title VI Legal Manual. First, complaints must be filed within 180 calendar days of the alleged discriminatory act, unless the time for filing is extended by FHWA. Second, the matters must concern recipients of federal financial assistance for a program or programs authorized under a law administered by FHWA. Finally, the complaint must describe an alleged discriminatory act or acts that, if true, would fall under FHWA's jurisdiction and potentially violate FHWA's Title VI regulations.

You allege that the West Virginia Department of Transportation (WVDOT) and the Jefferson County Commission discriminated against the descendants of people buried at the Boyd Carter Memorial Cemetery by allowing pipeline construction activities near the cemetery on Granny Smith Road in Kearneysville, WV. The Route 9 Extension is Mountaineer Gas Company's 4.85-mile gas pipeline project. The West Virginia Department of Environmental Protection issued a State General Water Pollution Permit to Mountaineer Gas on March 31, 2019. You allege that Mountaineer Gas damaged cemetery property and restricted access to the cemetery during construction activities on Granny Smith Road in April and May of 2019. In regard to WVDOT, you allege that the agency discriminated against the cemetery descendants by granting right-of-way access to the Route 9 Extension project. In regard to Jefferson County, you allege that the county failed to properly review the pipeline project and that it failed to keep accurate property records.

After careful consideration, FHWA has determined the allegations and facts in your complaint do not meet the minimum criteria under which FHWA could establish a case of disparate impact

under Title VI. The available information is insufficient to show that cemetery descendants were disparately impacted by a WVDOT program or activity. Furthermore, FHWA has determined that it does not have jurisdiction over the Jefferson County Commission because the Commission is not a recipient of financial assistance from the FHWA. For these reasons, the complaint will be dismissed by FHWA and closed with no further action.

If you have any questions, please contact Nichole McWhorter at (202) 366-1396.

Sincerely,



Nichole McWhorter  
Title VI Team Leader  
Office of Civil Rights

cc: Brain Hogge, Division Administrator, FHWA WV Division Office  
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