

FEB - 4 2002

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DIVISION OF WATER RESOURCES
1201 Greenbrier Street
Charleston, West Virginia 25311-1088
Telephone Number: 304/558-2107
Fax Number: 304/558-5905

West Virginia Department of Environmental Protection

Bob Wise
Governor

Michael O. Callaghan
Secretary

January 29, 2001

Mr. Bruce Peacock
Gauley River Power Partners, L.P.
71 Allen Street, Building A
Rutland, Vermont 05701-4570

Dear Mr. Peacock:

The West Virginia Department of Environmental Protection-Division of Water Resources has completed its review of the Memorandum of Agreement with the West Virginia Division of Natural Resources (WVDNR), the January 19, 2001 correspondence from the Chief of WVDNR-Wildlife Resources Section, as well as the September 18, 1991 State 401 Certification that was submitted to the Federal Energy Regulatory Commission.

As indicated in correspondence to Mr. James B. Price, Noah Corporation, by former Chief of Water Resources, Barbara S. Taylor, the certification was amended on October 17, 1997. Your payment of \$500,811.79 to WVDNR appears to satisfy the terms of the amended (December 10, 1998) Memorandum of Agreement and the March 7, 1996 State Certification to the U.S. Army Corps of Engineers, CEORH-OR-F 95-65.

Should you need anything further, please do not hesitate to advise.

Sincerely,



Lyle B. Bennett, Manager
Non-Point Programs

LLB/sas

Mr. Bruce Peacock

Page Two

January 29, 2002

Copies provided:

Mr. Robert Grieb

Federal Energy Regulatory Commission

Mail Stop: PJ-12.3

888 1st Street, N.E.

Washington, D.C. 20426

Mr. James Richmond

Chief, North Permit Section

U.S. Army Corps of Engineers

502 Eighth Avenue

Huntington, West Virginia 25701-2070

Curtis Taylor, Chief

WVDNR-Wildlife Resources Section

WVDEP-Division of Water Resources



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January 29, 2001

**The Secretary
Federal Energy Regulatory Commission
888 1st Street, N.E.
Washington D.C. 20426**

**Attention: Mr. Robert Grieb
Mail Stop: PJ 12.3**

Dear Secretary:

The West Virginia Department of Environmental Protection-Division of Water Resources, at the request of Gauley River Power Partners, L.P., for the Summersville Project, FERC No. 10813, has completed its review of the Memorandum of Agreement with the West Virginia Division of Natural Resources (WVDNR), the January 19, 2001 correspondence from the Chief of WVDNR-Wildlife Resources Section, as well as the September 18, 1991 State 401 Certification that was submitted to the Federal Energy Regulatory Commission.

As indicated in correspondence to Mr. James B. Price, Noah Corporation, by former Chief of Water Resources, Barbara S. Taylor, the certification was amended on October 17, 1997. Copies of this Memorandum of Agreement and the State Certification are being provided to you now as it was not forwarded at an earlier date.

Sincerely,

**Lyle B. Bennett, Manager
Non-Point Programs**

/sas

Enclosures

"To use all available resources to protect and restore West Virginia's environment in concert with the needs of present and future generations."



West Virginia
Department of
Environmental Protection

The Secretary
Page Two
January 29, 2002

Copies provided:

Mr. Bruce Peacock ✓
Gauley River Power Partners, L.P.
71 Allen Street, Building A
Rutland, Vermont 05701-4570

Mr. James Richmond
Chief, North Permit Section
U.S. Army Corps of Engineers
502 Eighth Avenue
Huntington, West Virginia 25701-2070

Allyn G. Turner, Director
WVDEP-Division of Water Resources
Curtis Taylor, Chief
WVDNR-Wildlife Resources Section
WVDEP-Division of Water Resources

Project 10/21



DIVISION OF ENVIRONMENTAL PROTECTION

CECIL H. UNDERWOOD
GOVERNOR

1201 Greenbrier Street
Charleston, WV 25311-1088

JOHN E. CAFFREY
DIRECTOR

October 17, 1997

Mr. James B. Price
Noah Corporation
120 Calumet Court
Aiken, South Carolina 29803

Dear Mr. Price:

The West Virginia Division of Environmental Protection (WVDEP), with the concurrence of the West Virginia Division of Natural Resources (WVDNR), has reviewed your letter where you explained the reason you wanted the State Certification (originally issued September 18, 1991) amended for the Summersville Hydroelectric Project, FERC Project No. 10813. You stated there are constraints caused by the National Park Service's Gauley River Management Plan and that you will not be able to construct the angler access trails and the administrative access road.

Due to these unforeseen circumstances, the following are amended:

1. 3. Recreation; Phase I; ii-This entire condition should be deleted.
2. 3. Recreation; Phase I; vii - This entire condition should be deleted.
3. 3. Recreation; Phase II, ii - This condition should be moved to Phase I.

This is to advise that all other amendments that have not been amended by the WVDEP, now or previously, are still in force and must be followed.

Sincerely,

OFFICE OF WATER RESOURCES

Handwritten signature of Barbara S. Taylor in cursive script.
Barbara S. Taylor, Chief

BST/sas

Mr. James B. Price
Page Two
October 17, 1997

Copies provided:

Town of Summersville
Federal Energy Regulatory Commission
U.S. Army Corps of Engineers (Hunt. Dist.)
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
WVDNR-Wildlife Resources Section
WVDEP-Office of Environmental
And Regulatory Affairs

AMENDMENT TO MEMORANDUM OF AGREEMENT

This AMENDMENT TO MEMORANDUM OF AGREEMENT (the "Amendment") is made and entered into on this 10th day of December, 1998, by and among the CITY OF SUMMERSVILLE (the "Licensee"), NOAH CORPORATION, a corporation formed under the laws of South Carolina, as agent for Licensee ("NOAH") and the WEST VIRGINIA DIVISION OF NATURAL RESOURCES ("WVDNR").

RECITALS

- A. Licensee, NOAH and WVDNR are parties to a Memorandum of Agreement (the "MOA") dated August 5, 1991 pursuant to which, among other things, the Licensee agreed to implement a Mitigation, Compensation and Enhancement Plan for the Summersville Hydroelectric Station (the "Plan") that was attached to the project license.
- B. Licensee, NOAH and WVDNR now desire to amend the Plan and consequently the MOA in accordance with the terms and conditions set forth in this Amendment.

NOW THEREFORE, the parties hereto agree as follows:

- 1. -- Amendment to Plan. Item 3 of the Plan shall be deleted in its entirety and the following language shall be substituted in lieu thereof:

3. Recreation — Construction and operation of the proposed facility will impact Summersville tailwaters. Anticipated impacts are:

- a. Temporary loss of fishing opportunity due to increased turbidity levels during construction;
- b. Loss of fishing opportunity due to restricted and/or loss of access to the plunge pool and portions of the tailwaters during and after construction; and
- c. Loss of fishing opportunity due to the physical presence of the powerhouse and the alteration of the lake's discharge (e.g., plunge pool changes and increased discharge velocities into the river from the powerplant).

The Licensee has agreed to the following mitigation, compensation and/or enhancement measures, which are to be implemented in two construction phases. The location and design of all developments in Phase I and Phase II shall be approved by WVDNR prior to installation. Phase I recommendations shall be built or implemented prior to operation of the Summersville Hydroelectric Project. Phase II measures are to be initiated in year 16 of operation. Expenditures for items to be provided in Phase II will be adjusted to reflect their values in 2000 dollars. All Phase I payments to WVDNR shall be made no later than 2000.

The Licensee has agreed to the following measures.

- C. Prior to any construction disturbances (e.g., access roads), the Licensee shall survey these areas for endangered species and/or coordinate with WVDNR and appropriate federal agencies regarding the location of endangered plants (e.g., *Virginia spiraea*, *Spiraea virginiana*) and animals (e.g., Peregrine falcon, *Falco peregrinus*).
- D. In addition, the Licensee shall be responsible for trash pick-up and maintenance of all recreational developments and signs, except where noted. An annual meeting, scheduled by the Licensee, shall be held with WVDNR to review maintenance requirements for all recreational facilities.

E. Phase I

- i. The Licensee shall design, erect, and maintain the necessary signs (temporary during construction and permanent after completion) which properly instruct public facility users regarding area rules and safe use of the facilities, and which direct them to parking, fishing areas, restrooms and other ancillary developments. Sign content and location will be subject to approval by WVDNR and, where applicable, the U.S. National Park Service (NPS) and the U.S. Army Corps of Engineers (COE) and, in these instances, will be designed in accordance with the NPS and/or COE standards.
- ii. The Licensee shall design and construct yet to be specified mitigation at a cost not to exceed \$250,000, in or adjacent to Summersville Lake. This may consist of boat access at Muddlety Creek, a new ramp at Salmon Run, winter courtesy docks at Salmon Run and/or Long Point, improvement of shoreline access to the upstream face of Summersville Dam, construction of a fishing pier on the upstream face of Summersville Dam and/or other angler access developments. The Licensee shall be responsible for trash pick-up and maintenance of these developments. If no such developments are possible, the Licensee shall pay the WVDNR \$250,000. If any developments are constructed but the aggregate cost of such developments are less than \$250,000, the Licensee shall pay the WVDNR the difference between the aggregate cost of the developments and \$250,000.
- iii. The Licensee shall construct a pathway around the powerhouse to accommodate angler access to both the east bank of the river and the existing plunge pool. The pathway shall be constructed of concrete and/or macadam and have guard rails. The pathway shall be designed and constructed to facilitate use by handicapped individuals. The location of the pathway shall be on the downstream face of Summersville Dam or be part of the access walkway to the powerhouse that is currently planned to provide access to the tailrace for handicapped individuals.

- iv. The Licensee shall design and construct angler access at Persinger Creek. This work shall include upgrading approximately 1 mile of road (Nicholas County 5/1), which shall include (but is not limited to) widening, establishment and maintenance of an all-weather surface, construction of pull-offs and a turnaround, ditch cleaning, culvert placement and other maintenance. The standards utilized must be sufficient to permit passenger car travel. A parking area with trash receptacles shall also be developed at a location agreed to by WVDNR. Maintenance and trash pick-up shall be performed by the Licensee. Parking area size will be dependent on site availability and projected need.
- v. The Licensee shall design and construct (or provide funds for WVDNR to design and construct) unspecified wildlife management activities or developments, at a cost of \$40,000, on the Summersville Wildlife Management Area. Maintenance of the unspecified wildlife management activities or developments shall be performed by WVDNR.
- vi. The Licensee shall design and construct a boating access to the Gauley River in the Summersville tailwater at the nearest possible location to the powerhouse. This facility shall replace the existing tailwater launch area.
- vii. The Licensee shall procure (or construct) and install, to WVDNR specifications, fish attractant structures at a cost of \$10,000 in three areas of Summersville Lake. The maintenance of these structures shall be performed by WVDNR.
- viii. The Licensee shall provide the WVDNR \$80,000 to construct unspecified recreational enhancement measures (e.g., a fish cleaning facility) within the immediate project vicinity. The Licensee shall maintain any such development and provide trash pick-up.
- ix. The Licensee shall design, construct, and make available, for 365 days each year, modern sanitary facilities in the vicinity of the main parking area at the tailwaters (or alternatively, operate and maintain the COE's existing toilet facilities located at the northwest end of the parking area). If new facilities are built, the Licensee shall coordinate this activity with the NPS.
- x. Until commencement of Year 16, the Licensee shall annually provide the WVDNR \$30,000 to be dedicated to management of fish and wildlife resources in the project vicinity. Such payment shall be annually adjusted to correspond to changes in the Consumer Price Index for All Urban Consumers.
- xi. The Licensee shall design and construct, or provide funds to design and construct, a residence and/or storage building (not to exceed a cost of

\$100,000 in 2000 dollars). The design shall be approved by the WVDNR. The WVDNR will assume the operation and maintenance of this structure after construction.


- xii. The Licensee shall provide to the WVDNR \$7,000 to purchase certain fishery equipment to be utilized in the fishery management program at Summersville Lake.
- xiii. The Licensee shall provide angler access adjacent to the tailwaters. This area will be designed to be accessible using the existing tailwater path by physically challenged individuals.

D. Phase II (Year 16)

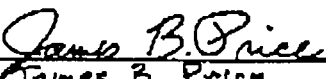
- i. Beginning in Year 16, the Licensee shall pay WVDNR an annual amount equal to the sum of \$70,000 (in 2000 dollars) plus the amount paid by Licensee under C.x. above in Year 15 for management of fish and wildlife resources in the project vicinity. Such annual payment will thereafter be adjusted to correspond to annual changes in the Consumer Price Index for All Urban Consumers.
 - ii. The Licensee shall provide the necessary funds (\$250,000 in 2000 dollars) to complete unspecified improvements to an existing WVDNR hatchery. Said improvements will increase hatchery production to provide increased stocking allotments for the Summersville Lake tailwaters. Operation and maintenance of said improvements will be assumed by WVDNR.
 - iii. The Licensee shall provide the WVDNR funds necessary (\$35,000 in 2000 dollars) to purchase certain equipment to be utilized in fishery and wildlife management programs (e.g., hatchery truck, farm tractor, boat, outboard motor). Operation and maintenance responsibility of said equipment will be assumed by the WVDNR.
2. **Governing Law.** The rights and responsibilities of the parties signing this Amendment shall be governed by the laws of the State of West Virginia.
 3. **Miscellaneous.** The MOA together with this Amendment is the entire agreement between the parties, and no modification or addition to it shall be binding unless signed by all parties hereto. The MOA and the Amendment are binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the undersigned have caused this Amendment to be executed as of the date first written above.


CITY OF SUMMERSVILLE, WEST VIRGINIA

By: 
Name: John Strawn L.R. Rep
Title: Mayor

NOAH CORPORATION

By: 
Name: James B. Price
Title: President

WV DIVISION OF NATURAL RESOURCES

By: 
Name:
Title: