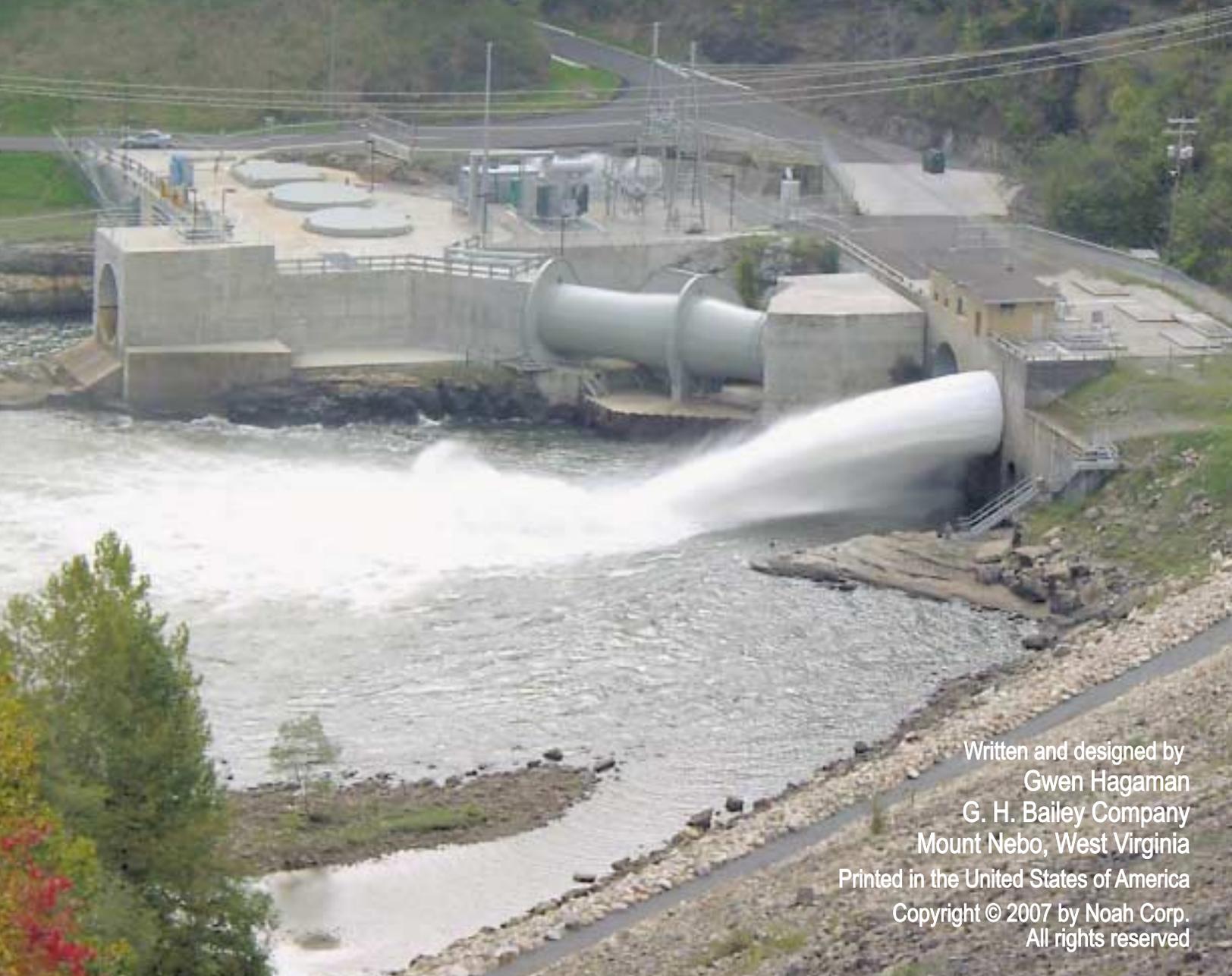


SUMMERSVILLE HYDROELECTRIC POWER PLANT

FIRST EDITION



Written and designed by
Gwen Hagaman
G. H. Bailey Company
Mount Nebo, West Virginia
Printed in the United States of America
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SUMMERSVILLE HYDROELECTRIC POWER PLANT

THIS BOOK IS DEDICATED TO ALL
THE PEOPLE WHO ARE WILLING TO WORK
TO MAKE THEIR DREAMS A REALITY

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SUMMERSVILLE HYDROELECTRIC POWER PLANT

INTRODUCTION

By Jim Price

President of Noah Corporation

July 2004

We set up Noah Corp. in 1980 to benefit from the law that passed in 1978, which required utilities to buy power from small power producers, which included hydroelectric projects less than 80 MW. After searching for existing dams that could be developed, we began to focus on existing federal dams in the eastern U.S., particularly in the Appalachian Mountains, where there were a number of flood control dams which did not have power generation facilities in place. We looked at federal projects in Virginia, West Virginia, Pennsylvania, Kentucky, Ohio, Indiana, etc.

In considering the power generating features of these dams, Summersville Dam stood heads above the crowd. It was being examined by the Army Corps of Engineers for a federal project and was receiving some consideration by private companies for development of hydropower.

I first visited the site in July 1980. I was captured by the power potential as evidenced by the water rushing out of its penstocks (tubes) below the dam. It was so impressive. We did not know at that time how difficult, expensive and time-consuming the development would be – with so many setbacks. We also had no idea of the multiple uses of the lake and Gauley River. At that time whitewater rafting was unknown as a commercial venture with anything like the public participation that now exists.

The dream of developing power at that site, the potential profit and our feeling of accomplishment sustained us through the next 21 years until the hydroelectric plant was operating commercially. The potential of the Summersville Hydroelectric Project has captured the imagination and enthusiasm of several other key parties and individuals. It has so much potential compared to other available projects that it eventually gained the support of the various parties necessary to make it a reality.

I am so pleased that our company was able to start it off and contribute importantly to its completion and successful operation.

SUMMERSVILLE HYDROELECTRIC POWER PLANT

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OVERVIEW

The Story of the Summersville Hydroelectric Project

This document recounts the story of the Summersville Hydroelectric Project from the inception of the idea in 1980 until commercial operation began in 2001. It is a story of the many people involved in the project's development and construction. Some of their viewpoints are represented in the text. Many others contributed, even though their names are not mentioned. The details of the development history show the difficulty of bringing a complex project, such as this, into being.

Now complete and operating, the Summersville Hydroelectric Plant provides many benefits to its community. It generates about 220 million kilowatt-hours annually – enough energy to power 22,000 homes. It avoids the emission of about 221,000 tons of carbon dioxide annually that would be emitted by an equivalent energy from fossil-fueled generation. The project has paid the federal government over \$2 million in annual fees from initial operation in 2001 through 2007.

Summersville Dam was built by the federal government in 1967 and is operated by the Army Corps of Engineers (the Corps) for

several purposes: flood control, low flow augmentation, lake recreation and fishing, enhancement of fish and wildlife, fishing in the river below the dam and whitewater rafting on the Gauley River. The hydropower addition to the dam had to be coordinated with these existing activities without adverse impact.

The story begins with the concept and basic actions described in the INITIAL PLANNING chapter. This section describes the competition for a preliminary permit to add hydropower at Summersville Dam. Obtaining a preliminary permit from the Federal Energy Regulatory Commission (FERC) is usually the first step in developing a hydropower project. It provides a priority to the holder for up to three years to conduct initial studies and prepare to file for a license to construct and operate the project.

A preliminary permit was issued to the City of Summersville (the City) in 1981 after extensive competition and a case in federal court. Then Noah Corp., the City's agent, began work on a LICENSE APPLICATION, which would allow construction of the plant, upon FERC approval. The license application outlined specifics of the projects design, location, operation and included extensive environmental review.

During license application preparation, there was further competition from other



potential developers and a federal hydropower project at Summersville Dam proposed directly by the Corps. These INTERVENTIONS caused a delay in the project's construction plans, while competitive issues were resolved. The possibility of designating the Gauley as a wild and scenic river became a major obstacle. This possible designation, which never occurred, caused the license application filed in 1983 to be dismissed by FERC in 1984.

In 1985 Noah Corp. challenged the FERC in federal court to reinstate the license application on behalf of the City. But the court upheld the dismissal. With the failure of this remedy, Noah Corp. began STARTING OVER in the development of the project. During 1986 through 1988, two preliminary permit and license applications (LICENSING) were filed. The need for multiple filings was created by competition for the license by a company and the City of Manassas, Virginia and FERC's failure to accept Summersville's second license application (filed in 1988).

A license was finally issued to the City in 1992, just about four weeks before the four-year deadline stipulated in the WV Rivers Bill, which established the Gauley River National Recreation Area. If the license had not been issued before that deadline, the project would probably never have been built. The Rivers Bill treated the Gauley as a wild and scenic river, requiring approval of the Department of Interior for any hydropower license. Such a requirement would likely have prevented any hydro project from ever being built at Summersville Dam.

With the license issued, Noah Corp. began trying to sell the power and finance the project (STRATEGIC AGREEMENTS). These efforts resulted in a power purchase agreement with American Electric Power (AEP) and a development contract with Catamount Energy Corp. (Catamount), a subsidiary of Public Service of Vermont. Both agreements were finalized in



Planning and development of the Summersville Hydroelectric Plant was a complex process taking 21 years to achieve.

early 1996. Catamount provided part of and arranged all project financing and managed construction and operation.

The project's cost indicated that a change should be made in the equipment installation. Also, a new transmission line route was needed to deliver the power to AEP. An amendment to the license was filed with FERC in Sept. 1995 to request the revised transmission line route and the change in equipment. Catamount began arranging project financing and took charge of the development and construction of the project.

The controversy that arose over the TRANSMISSION LINES almost prevented the project from being built. It caused significant delays in construction. Several of the 25 landowners along the new route opposed the line passing over their land. A necessary amendment to the transmission line and generating equipment was approved by FERC in late 1996.

Construction at the dam could have begun immediately, but the transmission line route was challenged by a group of affected landowners and interested parties, including American Whitewater Affiliation, which opposed the transmission line passing over

the Meadow River. This controversy resulted in a federal court case that eventually supported FERC's approval of the amendment in early 1998.

CONSTRUCTION at the site began in early 1999 and was completed in July 2001, several months behind schedule. The delay resulted in penalties to the builder, Black and Veatch of Kansas City, MO. They claimed that actions by Catamount caused part of the delay. An arbitration was planned to resolve this dispute, but the parties agreed to a settlement.

After about a year of commercial operation, Catamount decided that it wished to focus on wind energy and sold its interest in the project to Consolidated Hydro, Inc., a subsidiary of the large Italian utility, Enel. Since start of production, the plant has performed as expected.

INITIAL PLANNING

The Public Utilities Regulatory Policy Act of 1978 (PURPA)

In 1928 the United States Congress authorized the private development of hydropower at federal dams in the Federal Power Act. However, such development was infrequent until after passage of the 1978 Public Utilities Regulatory Policy Act (PURPA). This law stimulated development of renewable resources and cogeneration. One type of development was adding hydropower to existing dams without power production. There were many such dams in the eastern United States, including Summersville Dam.

The inspiration for PURPA? The United States was experiencing an energy crisis. The rising cost of crude oil and growing awareness of environmental pollution resulting from fossil-fired power generation, spurred Congress to enact legislation to encourage more energy-efficient and environmentally friendly energy production. PURPA was passed on Nov. 9, 1978 (Excerpts in Appendix A).

The new law created a market for power from non-utility power producers. It required utilities to purchase power from independent companies (qualifying facilities) that could produce power for less than the utility's

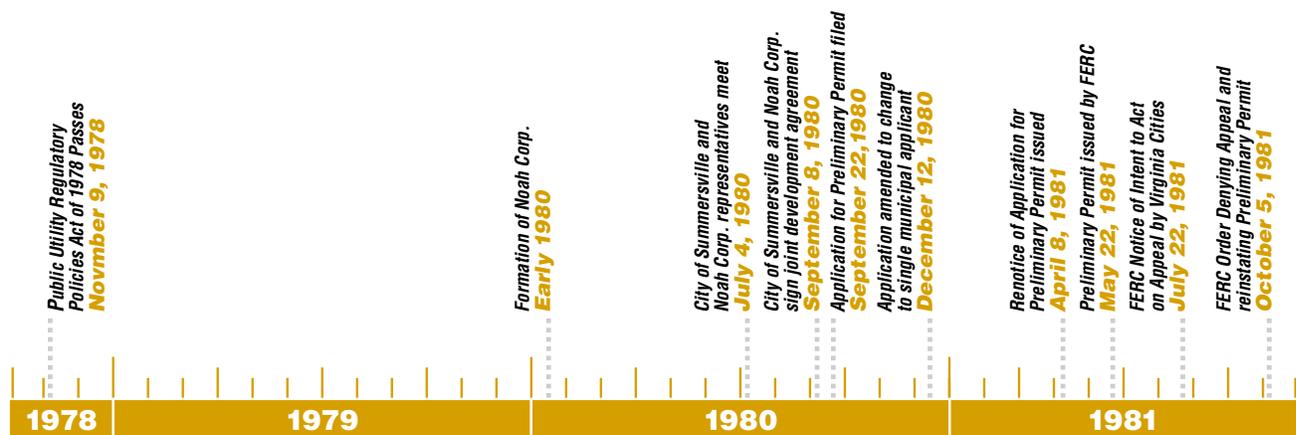
marginal generation cost (avoided cost). Qualifying facilities included small-scale producers, those generating power for sale or for their own needs but with surplus production, or those generating usable electric energy as a byproduct of other activity (cogenerators).

The revolutionary new law opened the door to competition by enabling non-utility power producers to generate power for sale to a utility at their avoided cost. This power sale possibility caught the attention of numerous parties that established companies to exploit this opportunity, including Jim Price and his associates who began Noah Corp.

Noah Corp.'s Early Hydropower Project Activity

Noah Corp. was formed in early 1980, shortly after PURPA began stimulating new power development. The company established itself in South Carolina and West Virginia to develop hydroelectric projects at existing federal dams in the eastern United States. Noah Corp. filed preliminary permits for hydroelectric projects in Illinois, Indiana, Kentucky, Oklahoma, Pennsylvania, Tennessee, Virginia and West Virginia.

Noah Corp. focused their efforts in the states of Pennsylvania and West Virginia because of the numerous federal flood control dams, such as Summersville Dam.





Summersville Dam is a 390 foot rolled-earth dam built at the mouth of a deep canyon of the Gauley River.



The three tunnels shown here are set at the bottom of the dam allowing strong capacity for hydroelectric power generation.

Noah Corp. and a related company, W.V. Hydro, Inc., filed license applications, using the priority of their preliminary permits, for hydropower projects at several existing dam sites in Kentucky, Illinois, North Carolina, Oklahoma, Pennsylvania, Virginia and West Virginia. Licenses on 13 of the sites were issued – four were in West Virginia. One project in Pennsylvania was licensed and sold in 1985, as construction began. Five projects were still under development in 2005.

After investigating dams in the eastern United States without existing power generating facilities, the new company focused on

Summersville Dam in West Virginia. It is the largest rolled-earth dam east of the Mississippi River and the largest lake in the State of West Virginia. The facility is owned and operated by the Corps for flood control, low flow augmentation and recreational purposes.

The Corps considered adding hydropower at Summersville Dam and some nearby locations before dam construction concluded in 1967. And they proposed adding hydropower again in 1982. That proposal met considerable political opposition and was abandoned.

Summersville Dam had the best potential for a successful hydroelectric project of any dam examined by Noah Corp. Because the pipes were pressurized, its three release pipes could be adapted to pass flow through hydro turbines without disrupting the existing dam structure. The lake, held by the dam's 390-foot height, gave impressive speed and power to released water flows. The setting was inspirational to whitewater rafters and kayakers who entered the Gauley River just below the dam.

Building Project Support

Noah Corp.'s business plan was to involve cities as partners in its hydropower projects to take advantage of FERC rules which gave priority to issuing preliminary permits or licenses to government entities. They also planned to finance projects using industrial revenue bonds which could be issued by cities or counties. Net revenues would be shared with the municipal partner on a 75 (Noah)/25 (City) basis.

The City of Summersville, led by Mayor Farrell Johnson and Councilman Steve LeRose, first met with Dr. Jim Price of Noah Corp. on July 4, 1980. The men were immediately supportive of the Summersville Dam hydroelectric project, visualizing both power supply and earning potential for the City. Negotiations for a joint development agreement began on July 10, 1980.

During the agreement negotiation process, Noah Corp. began work on technical issues for completion of a preliminary permit application. A preliminary permit issued by FERC would allow the City of Summersville and Noah Corp. to secure their priority of application while feasibility studies, technical and operational planning, and other details were compiled for completion of the FERC license application. Noah Corp. knew that competition was likely and it was important to act quickly.

At the City of Summersville Council meeting on Sept. 8, 1980, Councilman LeRose moved that the contracts with Noah Corp. for development of a hydroelectric power project at Summersville Dam be signed by Mayor Johnson and that resolutions attesting to the subject be entered into the minutes. Councilman Bernie Cogar seconded the motion and it passed unanimously. Thus began the endeavor of the City and Noah Corp. that resulted in an operating power plant almost 21 years later.

The preliminary permit application was filed with the FERC on Sept. 22, 1980 and was assigned Project No. 3493. It was a joint application between the City and Noah Corp. proposing a three-year schedule of activities. The first year would be used to conduct feasibility studies and generate reports including: surveys, investigations and data collection, alternative siting and power studies, cost estimates and layouts, economic and financial studies, environmental assessment, and preparation of feasibility reports. The second year would be spent preparing permit and FERC License applications. The third year would be used for the FERC review process.

By November 1980, it was decided that the Summersville/Noah Corp. application would have a stronger chance of FERC approval if it were converted to a single municipal applicant. The initial advice from FERC was that a joint application with a governmental entity (a

hybrid application) would receive the same preference in application competitions as an application by a governmental entity alone. Later policy clarification decided against equal preference for hybrid applications. The request to amend the Application for Preliminary Permit with the City as the sole applicant was sent to the FERC on Dec. 12, 1980.

Other parties were interested in developing power projects at Summersville Dam. Competitors who filed applications for preliminary permits included Mitchell Energy Company, Inc. of Boston, Massachusetts (P-3683) filed on Nov. 5, 1980; and, Old Dominion Electric Cooperative of Richmond, Virginia (P-3809) filed on Dec. 3, 1980. A Notice of Intent to File Competing Application was filed on Jan. 16, 1981 by the Municipal Electric Power Association of Virginia, consisting of several cities with small power systems. They later filed an application on March 18, 1981 (P-4361). In addition, the Corps was studying its own development of hydroelectric power at Summersville Dam.

In January of 1981, Mayor Johnson and Dr. Price began a letter-writing campaign to generate support from West Virginia legislators. They wrote to Senators Byrd and Randolph and Congressman Mick Staton. Letters went from Noah Corp. to Summersville, from Summersville to the Senate, from the Senate to the FERC. Letters went from the Congress to the Army Corps of Engineers, from the Corps to the FERC, from FERC back to the Senate and to Summersville. The letters contained statements of support, requests for information, clarifications on facts and processes, and calls for action.

On April 8, 1981 the FERC issued an official "Renotice of Application for Preliminary Permit" regarding the City's application. This document established procedures and a deadline of May 8, 1982 for competing applications, comments, protests, or petitions to intervene.

The FERC issued a preliminary permit to the City of Summersville, West Virginia and an order denying competing applications on May 22, 1981. The FERC stated that there were no significant differences in the competing plans and not enough information at this early stage to determine the best proposal. The City's application was approved and a preliminary permit was issued, simply because it was the first one filed.

Defending Against Permit Suspension

Shortly after issuance of the City's preliminary permit, on June 15, 1981, the FERC issued a Notice Granting Interventions which had been filed by the Cities and Towns of Bedford, Blackstone, Culpepper, Danville, Elkton, Franklin, Front Royal, Harrisonburg, Manassas, Martinsville, Radford, Richlands, Salem and Wakefield (Virginia Cities) against each of the other applicants including the City of Summersville, West Virginia. A week later the FERC suspended Summersville's preliminary permit pending action on the appeal for intervention filed by the Virginia Cities.

Mayor Johnson and the Councilmembers immediately drafted a response and delivered it to the appropriate FERC officials. The Virginia Cities had made accusations that the City of Summersville was not competent to operate the project under state law nor was the City intending to own and operate the hydroelectric facility. Mayor Johnson answered each issue and reaffirmed that the City of Summersville was the first municipal applicant and should be awarded the preliminary permit.

On Oct. 5, 1981, after a full discussion of the issues brought in the appeal, the Commission ruled that:

- Amendment of an application for preliminary permit or license is governed by §1.11(a) of the Commission's regulation. The amendment was accepted by the Director as of the date of its filing by Noah Corp., and the application was modified accordingly.
- The Commission need not investigate the relationships between an applicant and other entities which may underlie the application for preliminary permit. The permit issued to the City of Summersville is not transferrable



**Councilman
Steve LeRose**

Steve LeRose was one of the first supporters of the Summersville hydroelectric project as a City Councilman in 1979 and contributed to its development through the end of his Mayorship in 1999. He saw it as a feasible project that would contribute to Summersville citizens as a revenue source and power source for 30 to 50 years into the future. By helping to achieve the project, LeRose sought to fund the Muddlety fresh water project with the first \$1 million earned and to eventually reduce the local tax load. "Once we had transmission lines in place," Le Rose explained, "I had hoped we could develop additional power production facilities." LeRose helped to keep communications open throughout the development process including meeting with dissenting local organizations, meeting with Senators, Delegates and other legislators, testifying before Congress, and speaking with the Reagan and Bush, Sr. Whitehouses.

and the applicant must adhere to all requirements in order to retain its priority for licensing.

The FERC issued an order denying appeal which reinstated the City's preliminary permit and moved its issue date forward accordingly.

LICENSE APPLICATION

Competition Continues

On Nov. 4, 1981 the Virginia Cities continued their efforts to gain a preliminary permit to develop their own hydro project at Summersville Dam by filing for rehearing of the FERC's Order Denying Appeal. Their appeal challenged issuing a preliminary permit to the City of Summersville for five reasons:

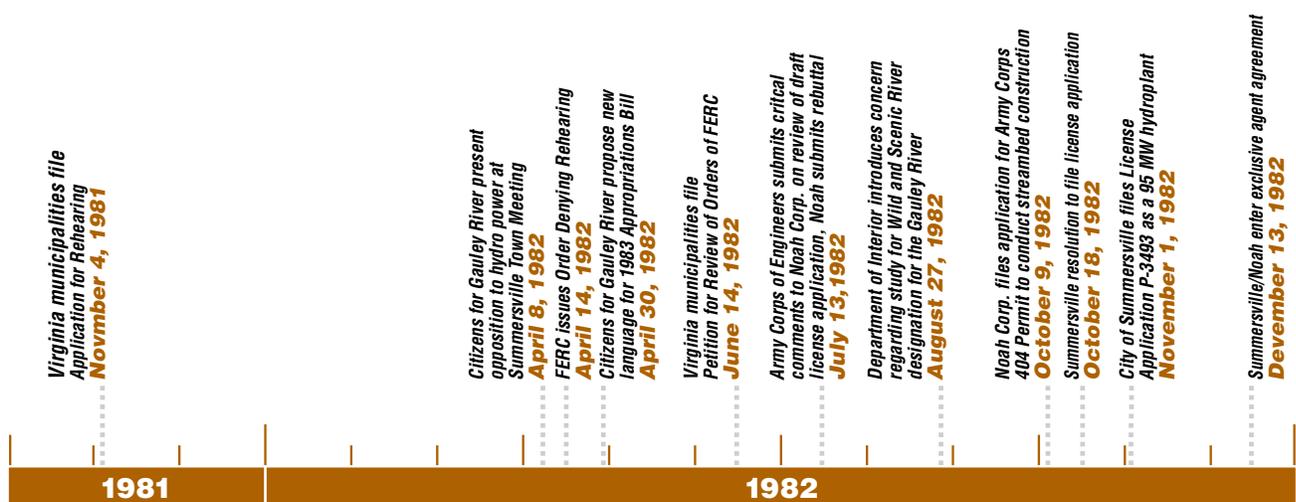
- Citing the need for FERC to investigate the contractual relationship between Summersville and Noah Corp., they alleged that the City was not a true municipal applicant but was instead some sort of “hidden hybrid” partnership with Noah Corp.
- They argued that in deciding among the competing applicants the FERC had relied on facts regarding “control” of the project which were conveyed in discussions between staff and parties to the proceedings and were not part of the official record.
- The Virginia Cities believed the amendment to the preliminary permit application by Noah Corp., to remove itself and retain Summersville as a sole municipal applicant, was invalid because it failed to

include a title and was not verified, as required by FERC regulations.

- The Virginia Cities argued that the FERC should have stated explicitly that they were a “municipality” under the Federal Power Act.
- The Virginia Cities claimed that their motion for initiation of an evidentiary proceeding to investigate the arrangement between the City of Summersville and Noah Corp. to determine actual control of the project and distribution of its benefits was not addressed in an adequate manner by the FERC.

The Commission gave its reply on April 14, 1982 upholding their original ruling and issuing an order denying rehearing. The City's preliminary permit was upheld for a second time. The FERC answered each issue as follows:

- The Commission need not investigate allegations of a “hidden hybrid” at the permit stage.
- Facts on record are sufficient to decide among competing applicants.
- Lack of title and verification is a harmless error.
- Municipal status of the Virginia group of towns and cities is not material.
- The Commission's denial of an evidentiary proceeding was proper.





Summersville Dam's valve house discharging water at 1700 cfs.

Planning the Project

With a permit finally in place after April 1982, the Noah Corp. team began conducting feasibility studies and collecting data needed to establish the project's feasibility. Energy from the Summersville Project No. 3493 could be used for municipal power needs, or could be sold to public and private utilities. The project included construction of:

- Penstocks which would utilize the existing outlet works
- A powerhouse containing three large and one small generating units

- A tailrace
- A new transmission line and switchyard

Approximately 150 energy calculations were made using monthly and daily data to examine different equipment installations. Exhibits and appendices were prepared for the license application, especially important was the coordination of releases with the growing whitewater recreation use of the Gauley River.

The Army Corps of Engineers

While PURPA encouraged installation of hydropower by non-federal entities at federal flood control projects, the Corps was conducting its own study to develop hydropower at Summersville Dam as a federal project, which it can do outside FERC authority. Their plan used a "long tunnel" design that would bypass three miles of the Gauley River directly downstream of the dam, raise the summer water level of the lake by 16 feet and raise the winter level by 62 feet.

After completion of its studies, environmental impact statement and Army approvals, the Corps was expected to seek funding for the project in the next Appropriations Bill.



C. J. Hamilton
Resource Manager
Army Corps of Engineers

Working with Ken Halsted, District Hydropower Coordinator for the Army Corps of Engineers, C. J. Hamilton was the principal point of contact for Corps Operations at Summersville Dam. "As a co-op student from Slippery Rock University I did a study of the Corps' long tunnel project in 1983 and got really interested in hydropower." C. J. felt most challenged in the engineering area of the project. For example, there were complicated issues to resolve in the relocation of the third Howell-Bunger Valve. In a public/private joint project he feels that the private interests are primarily concerned with cost and production. He sees his role as the public interest is to insure that safeguards are built into the program with an eye toward future issues. "As the federal steward of this resource, we make sure the project operation is 'run of river' as the license dictates," he said. "At the same time, I take great satisfaction in knowing clean, renewable energy is another benefit of Summersville Dam."

In contrast, the City's plan was to utilize the existing facility as much as possible, particularly the existing tunnels, discharging flow into the Gauley River at approximately the same location as the present dam outlet.

During the early part of the preliminary studies by Noah Corp., the Corps and the FERC were still working to define their interacting roles in determining the process that needed to take place to insure best use of facilities. On Nov. 2, 1981 the FERC and the Corps entered a memorandum of understanding regarding non-federal hydro-power development in an effort to recognize the directives and responsibilities of each department and expedite non-federal hydropower development.

The resulting procedure defined how the Huntington District of the Corps of Engineers would review Summersville's draft license application and provide their approval and recommendations to the FERC.

In May 1982 the City and Noah Corp. submitted a draft license application to the Corps and other agencies requesting their review. In July the Corps responded with specific comments on 11 points of technical judgements and requested a meeting with Noah Corp. to discuss them more fully. Their comments were as follows:

- Development of the Summersville Lake project as proposed in the draft application would result in a less than optimum utilization of the resources. The Corps' studies have shown that about 70 percent more energy can be produced through alternative scenarios that would also enhance other uses of the project particularly recreation and fishing both in the lake and in downstream areas.
- A minimum flow must be maintained from the project in order to avoid potential adverse impacts on recreation, water quality and the downstream ecosystem.

- Removal of the Howell-Bunger valves would severely limit downstream control and thereby would affect the safety and integrity of the dam. We cannot tolerate removal of the valves. (Note: For a 12-month period in 1968 each of the three Howell-Bunger valves were removed in sequence and machined to alter its critical dimension for flow improvement. One valve was out of service for 12 months.)
- Details for installation of the penstock in the existing tunnel are insufficient for proper evaluation. It should be noted that the forces on the temporary plug, at winter pool level, are tremendous. The system to resist these forces will of necessity be complex and it is doubtful that a temporary plug can be developed and constructed in a reasonable time frame.
- The intake gates are not designed to be operated under an imbalanced load condition. They must be either fully closed or opened and the tunnel must be flooded when this operation is accomplished.
- The proposed maximum flood release of only 9000 cfs is not in accordance with our policy of evacuating flood storage as rapidly as possible in anticipation of future storm events.
- Any reallocation of storage in the project must be carefully considered for impact on project purposes and may be subject to Congressional approval.
- The impact of rescheduling flows from the project on downstream industrial users and recreationists must be evaluated. This impact could be adverse to present hydro-generating facilities on the Kanawha River and to water supply, sewage treatment and cooling facilities in downstream areas. The water quality augmentation requirements on the Kanawha River are ignored in the proposed operating plan.

- Table B-3 indicates a flow of 6000 cfs is usable for whitewater boating while the EIS indicates a range of 1800 to 3500 cfs. Table B-3 is misleading and should be revised.
- It is unlikely that the proposal to pump 100 cfs from the lake, if construction interfered, could be implemented. There are numerous questions unanswered with this proposal.
- Use of explosives near the control structure is unacceptable.

Noah Corp. immediately penned a response to each of the issues and pointed out the bias of the concerns raised. It stated, “The Huntington District initiates its comments by what we feel is a most inappropriate comparison between the total energy output of its own proposal and the City’s... This appears to be an extreme position that may well have been more flexible had the Corps not wished to develop the site itself.” The Corps’ use of terms such as “cannot tolerate” and “unacceptable” were particularly disturbing to the City officials and to Noah Corp.

Mayor Tom Trent began a letter writing campaign to West Virginia’s Senators and Representatives asking for help to ascertain if

the federal government was in fact going to fund development of hydropower at Summersville Dam. And, if not, to please inform the Huntington District and thereby reduce the level of bias for their own project in order to get an objective review of the impacts of the Summersville plan.

The rescheduling of flows referred to in the Corps’ comments was a plan to increase generation during the peak period of electrical demand, increase flow availability for whitewater rafting during weekdays and weekends and for tailwater and river fishing on weekends.

Noah Corp. initially designed the power generation scheme to optimize on-peak generation and flows suitable for whitewater rafting during the off-peak periods for rafting and fishing. This proposal was abandoned because of opposition from the Corps and West Virginia Division of Natural Resources (WV DNR).

Citizens for Gauley River

A recreation industry organization called Citizens for Gauley River (CGR) was formed to influence legislation and protect the interests of downstream recreation, particularly whitewater boating. CGR was a coalition of West Virginian



Jeff Proctor
Class IV River Runners

Jeff Proctor was at the first public hearing in 1979 when the Army Corps proposed its long tunnel plan. He and other outfitters were very vocal, making sure that Congressman Rahall understood the economic potential of whitewater rafting and that local outfitters were willing to go “toe-to-toe” with the Corps. “I always felt Jim Price had integrity, but political activities left outfitters feeling unsure of the outcome,” said Proctor. “We wanted to make sure the focus didn’t shift to maximizing power production at the expense of the rafting industry.” The outfitters became Intervenor in the development process. Proctor was put in charge of working with Congressman Rahall and keeping the outfitters informed. Their goals were to: 1) retain ability to put-in at Summersville Dam, and 2) maintain usual river flows including the 20-day fall draw down. Proctor believes the outfitters’ discussion and input resulted in accomplishing both goals and establishment of the the Gauley River National Recreation Area.

sportsmen including hikers, fishermen, backpackers, rafters (private and commercial), kayakers, canoeists, and hunters who use, enjoy and appreciate the Gauley River. They were concerned with the responsible management of the river and the wild lands surrounding it. They did not want hydropower to interfere with these uses.

CGR's first action was a proposal to the Corps to regulate weekend flow rates to provide dependability for whitewater rafting trips. They estimated the economic benefit of such regulated flows at \$2-3 million a year.

The group was quick to voice its concern over hydropower development at Summersville Dam. On Apr. 8, 1982 a public meeting was held at the Summersville Municipal Building to discuss the City's project and CGR's concerns. Mayor Tom Trent, Recorder Dale Bailes and Councilmen John Clevenger, Clarence Flesher and Steve LeRose represented the City of Summersville. Jim Price of Noah Corp. was there, along with eight representatives of the whitewater rafting industry: Don Weidemann, Ed Rhett, Paul Breuer, Kathy Lukacs, Frank Lukacs, Kim Casto, Christopher Dragan, and P. R. Brisell.

CGR expressed its support for wild and scenic river designation of the Gauley River and its inclusion in the West Virginia Natural Streams Preservation Act. They expressed their opposition to hydroelectric development at Summersville Dam if it would detract from the recreational or aesthetic potential of the lake or river. They also expressed opposition to any further development of the Gauley River canyon which would alter its wild nature.

CGR also presented their proposal for regulated water releases to enhance the whitewater rafting use of the river and supporting statistics.

Jim Price presented Summersville's plan to use the existing tunnels for hydropower development. The resulting facility would have very few alterations to the downstream section of river. He outlined how the development would maintain the recreational opportunities provided by the Gauley River. At that time Noah Corp. was proposing flow rescheduling, as stated above, to optimize recreational use and power generation of the dam release.

On Apr. 11, CGR sent a letter to Noah Corp. supporting the Summersville development



Len Hanger
Songer Whitewater

In 1982 Len Hanger was a river guide with New River Scenic Whitewater of Hinton (joined Songer Whitewater in 1987). He was also president of WV Professional Outfitters, an industry association to promote whitewater rafting in the region. As president, Hanger's personal role was to be the liaison between Noah Corp. and local outfitters. He kept the outfitters informed including construction tours. "The Corps' long tunnel idea was a huge concern," Hanger explains. "My initial reaction was concern for loss of the fall rafting season which is a significant part of our business. Although I remained skeptical, Noah's development followed a reasonable process. The construction team was accommodating as to river access, use of parking lots and ramps during construction; and we were able to work out all major issues." Hanger's one regret is loss of the exciting put-in at the base of the dam with the tubes shooting out water. He does, however, acknowledge benefits of the new launch ramp and improved river access.

and stating its opposition to the Corps' plan. They requested continued cooperation toward weekend flow regulation to provide a dependable whitewater experience to enhance tourism.

CGR began sending letters of opposition to the Corps of Engineers' plan to legislators and the press. They cited as reasons: ruin of the east's premier whitewater river, reduction of the area's tourism economy, tremendous costs, and small amounts of power production. In addition, CGR expressed that the sentiment of citizens, locally and nationally, was against the Corps' project.

On April 30, 1982 the group proposed an Amendment to the 1983 Appropriations Bill to add language requiring the Corps to operate Summersville Dam in such manner to "enhance whitewater recreational opportunities on the Gauley River downstream of the Summersville Dam." CGR met with Congressman Nick Rahall who issued his encouragement to the Corps to consider weekend releases to regulate a dependable flow in the Gauley River.

Wild and Scenic River Study

In August 1982, Mayor Trent opened communication with the Secretary of the Interior, James Watt, regarding their wild and scenic river study of the Gauley River. The complication was the timing. The City's preliminary permit would expire in October 1983. That was the same month the wild and scenic river study was to be completed. This study of the Gauley River had been underway for a number of years and was not required to be completed until 1985.

The City's position was that their project would not affect wild and scenic designation should the Department of the Interior (DOI) decide to designate the Gauley River as such.

Mayor Trent requested that Secretary Watt send acknowledgement of "no conflict" so that licensing review might proceed without delay.

In response, the DOI explained that it was premature for them to make a decision whether there was a conflict or not. They requested to be apprised of progress with project design and operation plans. In addition they expressed concern for impact on fisheries and wildlife.

Filing the License Application

On Oct. 18, 1982 Mayor Trent and the Summersville City Council held a meeting and decided to move ahead. A resolution was passed to authorize application for license to produce hydroelectric power at Summersville Dam.

A few days later, on Oct. 21, work began on refinement of the agreement between Noah Corp. and the City. Jim Price and Howard Hickey represented Noah Corp. Councilmen Clarence Flesher and Steve LeRose, along with City Attorney Carroll Lay, Recorder Dale Bailes, and Secretary Jackie Keiffer represented Summersville. Tim Murphy, President of the Chamber of Commerce also attended the meeting. It was agreed that Noah Corp. would assume all financial and legal risk that might arise as the project proceeded or was abandoned.

With the City's approval, Noah Corp. filed a license application with the FERC on Nov. 1, 1982. It's FERC review process would finally begin only eight days short of two years from the initial agreement between the City and Noah Corp.

After making the revisions required by the City leaders, an agreement was signed on Dec. 13, 1982 authorizing Noah Corp. to act as Summersville's agent (Appendix B). The agreement remains active.

INTERVENTIONS

More Competition

In 1983 the Corps continued to pursue federal development of hydropower at the Summersville Dam site. A recommendation whether to authorize their proposal was needed from the Subcommittee on Water Resources and the U.S. Army's Bureau of Engineers for Rivers and Harbors. The subcommittee held hearings to review support and opposition to the "Proposed Water Resources Projects of the Army Corps of Engineers."

On Feb. 14, 1983 the Corps' plan for Summersville Dam was publicly examined including testimony from Howard Hickey of Noah Corp. "I am here on behalf of the City of Summersville to oppose the Federal Authorization of the Corps of Engineers' proposal to produce hydropower at the Summersville Dam in West Virginia," he told members of the Subcommittee. He cited the following reasons for opposition:

- The City of Summersville was already working to develop non-federal hydropower at the site with a license to construct already pending with the FERC.
- Federal development would cost much more than the City's project in lost sale of

power due to a longer schedule, and in delay of job creation.

- Summersville's plan has already worked through the complex environmental setting and usage issues of the lake and river to the satisfaction of all involved.
- Income from power production will provide the City of Summersville with funds to stabilize the area's fresh water supply.

Congressman Bob Wise led a town meeting in Summersville in early March 1983. It was held at Nicholas County High School and was well attended. "It is obvious that many people feel strongly about this issue," said Wise. "This meeting was important because the testimony that was presented will provide the Public Works Subcommittee on Water Resources, which has jurisdiction over the project, a clear record of the views of the people who live in the area."

In May 1983, Citizens for the Gauley River published a press campaign accusing the Corps of overstating the economic benefits of their development plan by 50 percent. They presented contradictory power marketing projections from independent engineering consultants who questioned the power production levels and price projections for power sales.

The House Public Works Committee passed the 1983 Omnibus Budget Resources



Legislation (H.R. 3678) on Aug. 3. The Corps' Summersville hydropower project was not authorized or funded. But, according to Congressman Wise, the Corps would be moving ahead with project design in hopes that it would be approved in the future.

April 1, 1983 was the five-month mark from the day the City filed their license application with the FERC. Why the long delay in acceptance? That's exactly the question Mayor Trent and other City leaders were asking. On April 11 they passed a resolution encouraging accelerated review and acceptance from the FERC.

The City sent copies of their resolution with letters requesting political help to all federal and state legislators who represented the region. FERC replied citing that Summersville had filed several supplements that were taking additional time to review, that the proposal was quite lengthy requiring extensive technical and environmental analyses, and that the Virginia Cities had made allegations that needed to be resolved prior to acting on the license application. There was no indication of how long their review might take.

August arrived and nine months had passed with still no decision from the FERC. Mayor Trent once again appealed to Senator Byrd and other legislators to push for licensing acceptance. Finally, on Aug. 23 the FERC announced that the City's license application had been accepted for filing. Notices were sent to all the agencies that needed to review the plans, legislators and other involved parties. A 60-day period began for comments to be submitted to the FERC before issuance of a license to construct the facility. These same agencies had commented on the draft license application before it was filed.

The coalition of Virginia Cities, which had been a competing applicant since the outset of the hydropower project, filed an Application for Rehearing on Sept. 30, 1983 after receiving

notice of the Summersville application's acceptance. It states that the FERC erred in issuing acceptance without first ruling on their motion to hold the proceedings in abeyance. The FERC rejecting the rehearing request only a few days later, on Sept. 30.

If persistence is a virtue, then virtue abounds in the Virginia Cities. On March 1, 1984 the Virginia Cities once again took legal action to thwart the development of the project by the City and Noah Corp. by filing a Petition for Declaratory Order. In response, Noah Corp. claimed that the Virginia Cities simply missed the deadline for submitting a competing license application and were looking for a way to extend their filing opportunity and defeat Summersville's application without spending the risk money to prepare their own application.

A competing application was filed by Southeastern Renewable Resources (SRR), a private developer from New York. Noah Corp. reviewed the plan and filed its comments with the FERC. In Summersville's opinion the SRR project was a repackaging of a previous Corps plan, including documents which were publicly available. It also included two diagrams that had been plagiarized from Summersville's own November 1983 filing.

Interventions and Responses

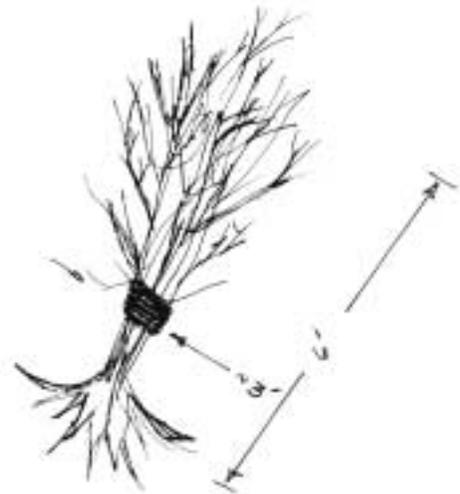
Once an application for license has been filed with the FERC, any party with an interest "which may be directly affected by the outcome" of a proceeding may petition for intervention. If intervention is granted, the FERC is required to consider the opinions presented before making a decision to issue a license. The City's accepted license application had many interested parties, which requested to be named as intervenors.

- Friends of the River Foundation
- Citizens for the Gauley River

- State of West Virginia Department of Natural Resources
- WV Council of Trout Unlimited
- Friends of the Earth

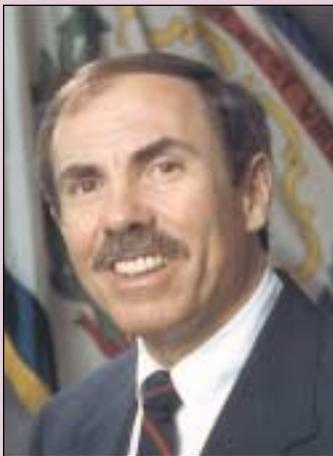
In addition to the interventions, the FERC requested additional information, which was supplied by Noah Corp. on Jan. 5, 1984. The information included a copy of the contract between the City and Noah Corp., the City's intended ownership of permits, land and equipment, proposed financing arrangements, duties and responsibilities of the City and Noah Corp. and a copy of the City's resolution to construct the facility.

The Corps reviewed the Summersville project and returned a long list of harshly critical comments. In summary they stated, "... we have serious reservations concerning the applicant's design proposal. Therefore, as presently formulated, this proposal is unacceptable." On March 8, 1984 the Corps requested that the FERC delay issuance of a license to allow time for a study of whitewater boating below Summersville Dam. Noah Corp. responded immediately stating the financial and job loss hardships that such a delay would cause. Unemployment in Nicholas County in 1983 was 26 percent.



To make fish attractants, brush is tied together with nylon rope into bundles. Groups of 100 bundles are placed in desired locations of the lake and river.

Representatives of Noah Corp. and WV DNR met on Jan. 31, 1984 to discuss project details. WV DNR agreed to issue state water quality certification and submit their project comments to the FERC in early March. They requested \$500,000 in recreational enhancements be included when the project was built. The enhancements included two boat launch facilities, fish stocking roads, fisherman access trails, a walkway crossing the river below the dam, fish attractant structures, and game development areas. Noah Corp. agreed to these conditions, believing these were good additions to the project.



Bob Wise
Governor

"When I first learned of this project, adding hydro power production to Summersville Dam seemed reasonable. I became very interested because of the intensity of local support for the project," said Governor Bob Wise. "Congressman Staton, Mayor LeRose and the community were enthusiastic." Serving as a Congressman during early project development, Wise participated in town meetings to allow people's questions and concerns about the hydro project to be answered. Working with Congressman Rahall, Wise made a strong case for the importance of the project in providing clean renewable energy and economic strength for the region. He was convinced that needs of concerned parties could be met. The two worked together to provide legislative opportunity for the project to be completed. "This project is an example of how many groups with a variety of interests can come together to accomplish something in the best interest of their community," Wise explained.

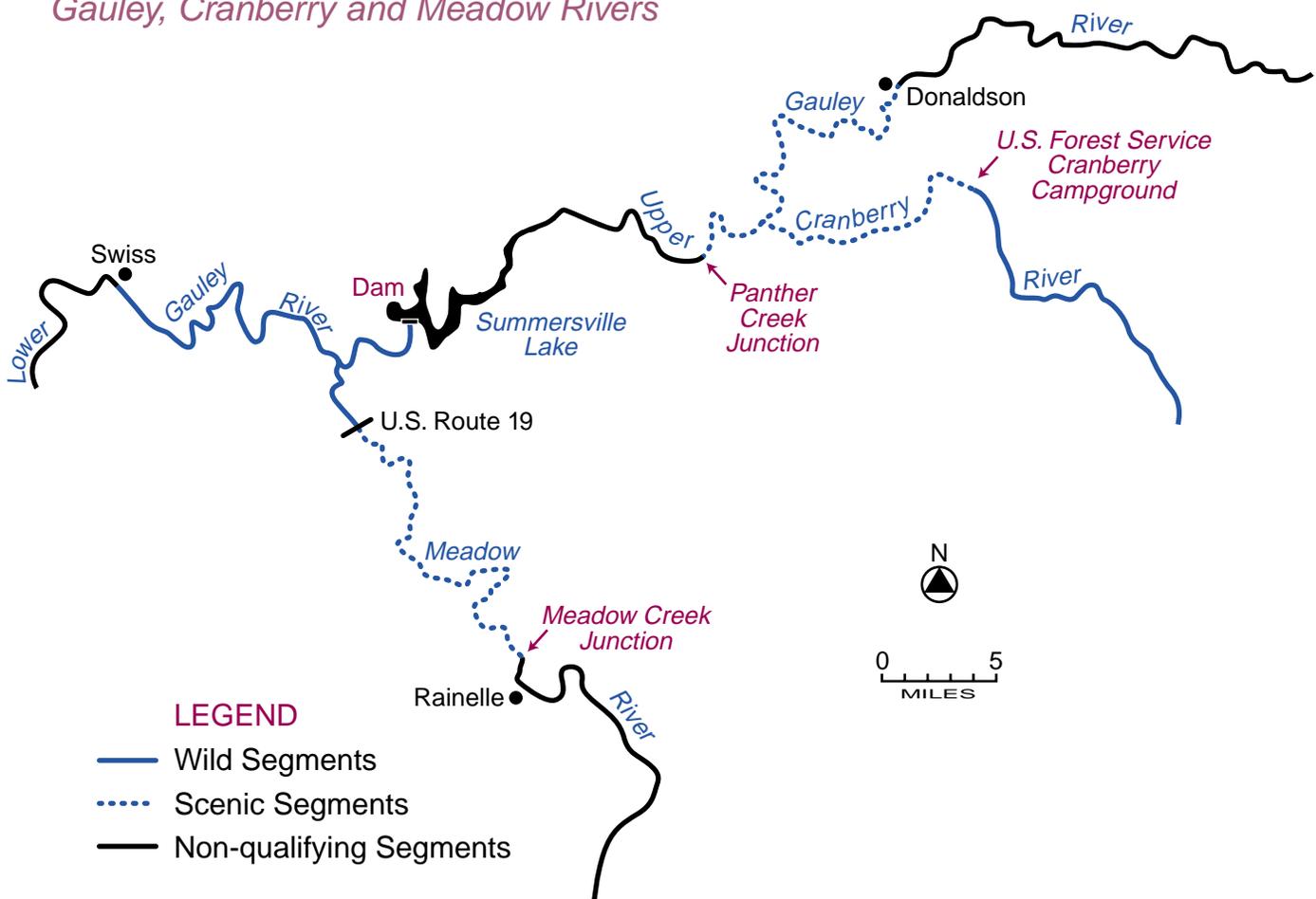
Wild and Scenic River Study Kills Licensing

The DOI reviewed Summersville's license application and submitted its comments on Jan. 11, 1984. DOI stated general support of the project and requested clarification on relatively minor points. The big problem was its position that the FERC could not legally issue a hydro-power license, as the Gauley River was under study for inclusion in the Wild and Scenic Rivers Act. The study period would end on Sept. 30, 1984 with a three year Congressional review period following. According to the DOI, a license for Summersville's project could not be issued until Oct. 1, 1987, over three and a half years after their comments.

Ironically, in DOI's draft study their recommendation was that the Gauley River not be designated a wild and scenic river, and Congress did not designate the river after the DOI study was complete. The moratorium on hydropower development expired in 1987, because Congress had not acted to either accept DOI's recommendation of no designation, or acted in opposition to designate the Gauley as a wild or scenic river.

Mayor Trent appealed to DOI for its help in enacting legislation to remove the Summersville Dam area of the Gauley River from their wild and scenic river study. Senator Byrd and other legislators were also asked to help. On March 6, 1984 the DOI responded to

Qualification and Classification of the Gauley, Cranberry and Meadow Rivers



Mayor Trent, explaining that legislation could not be introduced to amend the study until the President had reviewed their recommendations.

In spite of diligent efforts to exclude Summersville Dam from the wild and scenic river study, the FERC dismissed the City's license application on May 9, 1984. The SRR license application was also dismissed. Noah Corp. and the City, and SRR, appealed the dismissal and FERC granted rehearing on July 6.

Anticipating a loss of their appeal, the Summersville City Council passed a resolution on July 23, 1984 to file all appropriate documents to continue its efforts to develop hydropower at Summersville Dam. A new preliminary permit application was filed with the FERC on Aug. 7 to preserve the City's ability to develop the project.

On Aug. 24, 1984 the FERC upheld its decision to dismiss Summersville's license application. With no other recourse, Noah Corp. sued FERC in federal court on behalf of the City to overturn their decision to dismiss the license application, citing the fact that DOI had indicated that the Gauley River was eligible for designation as a wild river despite Summersville Dam, but had not recommended designation. Noah Corp. also claimed that FERC had issued a preliminary permit to the City and accepted its license application; all this work would be wasted if the dismissal was upheld. Noah Corp. further claimed that FERC could have waited a few months until DOI had issued its report on the designation of the Gauley River, or even held the application in abeyance for three years to let the Presidential and Congressional action periods expire. FERC could have saved the license application in several ways, but they chose to dismiss it. The case was heard by the U.S. Court of Appeals on Oct. 10, 1985.

Regrettably, the District Court did not agree with Noah Corp. and found that FERC had acted within the jurisdiction of its discretion to dismiss the license application. So even though the Gauley River was never designated as a wild river, the possibility brought three years of work on the project to an unsuccessful end.

STARTING OVER

Legislative Issues

Who could help? The City of Summersville launched intense efforts to raise political awareness and support for excluding the project area from the wild and scenic river study. Their efforts focused on the federal level with Senators Byrd and Randolph and Congressman Wise. Meetings were held and letters were exchanged. However, the session of Congress had ended, and the issue could not be introduced until January 1985.

1985 was an election year. Congressman Wise was looking for re-election. On April 12, 1985, he brought a mobile office to the Nicholas County Courthouse in Summersville where members of the community could discuss issues and ideas including the hydroelectric development at Summersville Dam. The City of Summersville elected a new mayor, Steve LeRose. He had been serving as deputy mayor under Mayor Trent, and had acted as mayor after Mayor Trent's death from a heart attack. Mayor LeRose had been a strong supporter of the hydropower project from its beginning.

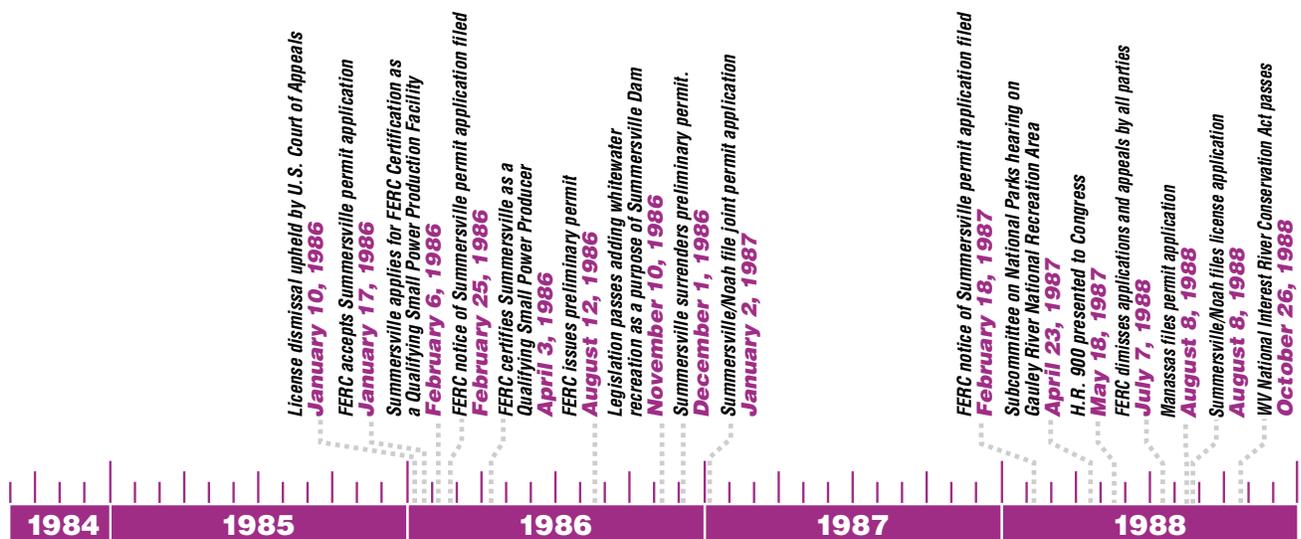
Persistently, the legislative campaign to revise the wild and scenic river legislation

continued. In June 1986, Noah Corp sent letters encouraging legislators to take action. This round of letters explained that the delay in the development of hydropower – and resulting delay in income – had prevented a fresh water supply project, which would provide drinking water to citizens of Nicholas County.

Mayor Steve LeRose, Councilman Mike Hughes and Jim Price of Noah Corp. met with representatives of Senator Byrd and Congressman Wise on June 9, 1986 in Washington, DC. The Nicholas County Commission sent letters to the legislators in July asking for their support of the project.

Congressman Nick Rahall was planning to introduce a bill to create a National Recreation Area surrounding the Gauley River. Noah Corp. and the City were hopeful that this legislation would eliminate the wild and scenic river moratorium period and allow immediate issuance of an FERC license. But like the wild and scenic river study, the version introduced to Congress on Jan. 10, 1987 would exclude new development at Summersville Dam and include the hydro power development area within park boundaries.

A Congressional hearing was held on April 23. Mayor LeRose made a statement requesting an upstream boundary revision that would allow construction of the hydropower





On Sept. 17, 1984 a meeting took place in Senator Byrd's office to discuss the impact the Wild and Scenic Rivers Study had made on development of hydroelectric power at Summersville Dam. Present are (left to right) Gerald Rader, owner Rader's Flying Service, Councilwoman Donna Mazzei, Councilman Steve LeRose, Senator Robert C. Byrd, Mayor Thomas Trent, Summersville Fire Chief Joe Boso, and Jim Price of Noah Corp.

facility and still support recreational uses of the dam and river. He requested that the committee express its intent to allow the addition of hydropower at Summersville Dam in its report.

Jeff Proctor of Class VI Whitewater also addressed the committee, focusing on the economic importance of whitewater rafting to the area. The issues he discussed were:

- New River National River boundary modifications
- The Cunard access
- Flow management of the New River out of Bluestone Dam
- Hydropower at the Summersville Dam

When submitted to Congress by the Committee, the bill provided a four-year time period to allow Summersville, or any other party, to receive a license to construct a hydropower facility, including opportunity for the City of Manassas, Virginia to compete. The bill was passed on Oct. 26, 1988 setting a deadline of Oct. 26, 1992 for any license to be issued.

Congressman Bob Wise was instrumental in getting this provision included in the WV Rivers Bill (West Virginia National Interest River Conservation Act of 1987, Public Law 100-534, 102 Stat. 2699). The WV Rivers Bill established national recreation areas on the Gauley River below Summersville Dam and on the New River, and provided restrictions on other rivers within the state.

The uses of Summersville Dam grew more complex as time passed. On Nov. 10, 1986 Congress passed the Water Resources Development Act of 1986, which revised the project purpose of Summersville Dam to include whitewater recreation.

Permits and Licensing

After the license application was dismissed in 1984, Noah Corp. filed a preliminary permit application at the first opportunity. With an application for preliminary permit pending, Noah Corp. appealed to the FERC to issue a three-year permit to coincide with the wild and

scenic river study period. That would allow a license application to be accepted about the time the three-year legislative action period would expire.

In December 1984 Noah Corp. received a letter of application deficiencies from the FERC. The issues in question were immediately addressed with the issuance of revised exhibits and clarification of points in West Virginia law.

To receive benefits outlined in PURPA, the City needed to be recognized by FERC as a “Qualified Small Power Production Facility.” On Jan. 17, 1986, Summersville submitted their application for certification by FERC. Certification went through the same process as a permit application, with opportunity for interested parties to intervene. On April 3 the FERC granted certification, stating that the Summersville project met all criteria of the Commission’s regulations.

FERC issued Notice of Application Filed for the Summersville Preliminary Permit on Feb. 25, 1986. Once again comments, protests and interventions were invited.

The DOI reminded the FERC of the moratorium period for legislative action on the wild and scenic river study ending April 26, 1988. The DOI supported issuing a preliminary

permit as long as no ground disturbing activities were to take place until after the moratorium period ended.

WV DNR filed comments stating that, although they had fully worked through all issues with the identical project prior to its dismissal, some regulations had changed and there were new concerns to be addressed if a new permit was issued.

Comments were also received from the Corps. They requested close involvement with project engineering and construction phases to assure uninterrupted operation of the dam.

With the intervention period almost at an end, the FERC extended the filing deadline for the Virginia Cities to intervene because a Section 4(f) notification may not have been sent to them. The opportunity for comments, intervention or competing applications would expire on Aug. 4, 1986.

Project Financing Plan

On Aug. 12, 1986 FERC issued the City a preliminary permit, which was valid for a three-year period. This was a short-lived success.



Donna Mazzei
Summersville City
Councilwoman

From its beginning, Donna Mazzei was a continuous supporter of the City of Summersville’s group effort to construct the hydropower facility. “I never thought it would take so long,” said Ms. Mazzei. “Jim Price was very dedicated and kept everyone on board.” She remembers their important trip to Washington to ask for help overcoming the Wild and Scenic River Study from Senators Randolph and Byrd. “I didn’t see why the Gauley was being considered as a wild and scenic river when it already had a dam on it,” she explained. Two of her most challenging issues were finding project funding and exercising the eminent domain process. “Now that it’s complete, the hydropower facility is a great project and runs very smoothly,” she said. “The City’s new fresh water project is a direct result of income received from our hydropower plant.”

The original plan to finance the project using municipal revenue bonds became impractical with 1985 changes in federal tax laws. Financing the project as a West Virginia Limited Partnership would allow private financing and appropriate liability protection for the City. In addition, Summersville would receive an annual royalty payment, which was not dependent upon the financial performance of the facility.

On Sept. 22, 1986, the Summersville City Council decided to amend the permit application from a single municipal applicant to a joint application between the City and Noah Corp. To accomplish this amendment, the City had to surrender its permit and reapply – again. Once surrendered, it would be 30 days before a new permit application would be accepted by the FERC. The first day Summersville could file again would be Jan. 2, 1987.

This was just the opening that the City of Manassas, Virginia was waiting for. During a telephone conversation, the Mayor of Manassas had advised Mayor LeRose and Jim Price of Noah Corp. that Manassas was no longer intending to pursue the hydropower development at Summersville Dam. But when the day came, the Summersville representative arrived at the FERC office first and filed only a few minutes before the Manassas application was filed. A complaint was filed with FERC by Manassas claiming that the check-in process had been unfair. Noah Corp. responded at the request of the City, stating that they filed first because they arrived earlier and waited for some time for the filing office to open.

On Feb. 18, 1988, the FERC issued Notice of Summersville's Permit Application Filed with the commission. On April 7, the FERC issued Notice of Manassas' Permit Application Filed with the commission.

Two weeks later Manassas filed a Motion for Clarification or, in the Alternative, Appeal

from Staff Action of the City of Manassas, Virginia. Their issue was still the timing of not filing first. They wanted their application to be considered "initial" instead of "competing". The same day they filed a Motion to Reject, Protest, Comments, Motion for Waiver of Rules, Motion to Intervene, and Better Adapted Statement of the City of Manassas, Virginia.

The City and Noah Corp. answered the issues raised by Manassas in a Response to the FERC on April 30, 1987. Noah Corp. responded stating that the Manassas motion "... was characterized as a request for expedited issuance, but was instead a restatement of the competing applicant's position." Further, that Summersville was also eager for a FERC decision, which could be made if Manassas removed their appeal. Manassas replied with a rebuttal letter.

On July 7, 1988 the FERC issued its decision to dismiss both the Summersville and Manassas permit applications and appeals. The decision was based on a case precedent where a license had been dismissed because of a Congressional study. FERC set a new date to accept permit applications for the Summersville Dam site on Aug. 8, 1988, which was intended to give all parties fair opportunity to file.

On Aug. 8 the City of Manassas filed a new application for preliminary permit. On the same date, the City and Noah Corp. filed an application for licensing. Initially, a FERC docketing error indicated that Summersville had filed on Aug. 9, but that was later corrected based on the evidence of docketing provided by Noah Corp.

Interventions on the Second License Application (1988)

Once the Summersville/Noah and Manassas permit applications had been dismissed and the City's license application refiled in August

1988, the City of Manassas filed a Motion to Intervene and to Reject or Deny License Application, which was sent to Summersville and Noah Corp. Their response was sent to FERC on Dec. 15, 1988.

Another intervention came from a local team of the Fayette County Chamber of Commerce, West Virginia Outfitters, and Eastern Professional River Outfitters (EPRO). Although members of these groups had been working closely with Noah Corp. throughout the planning process, they wanted to insure their position to negotiate, if needed, by being recognized as official intervenors.

LICENSING

Competing with Manassas

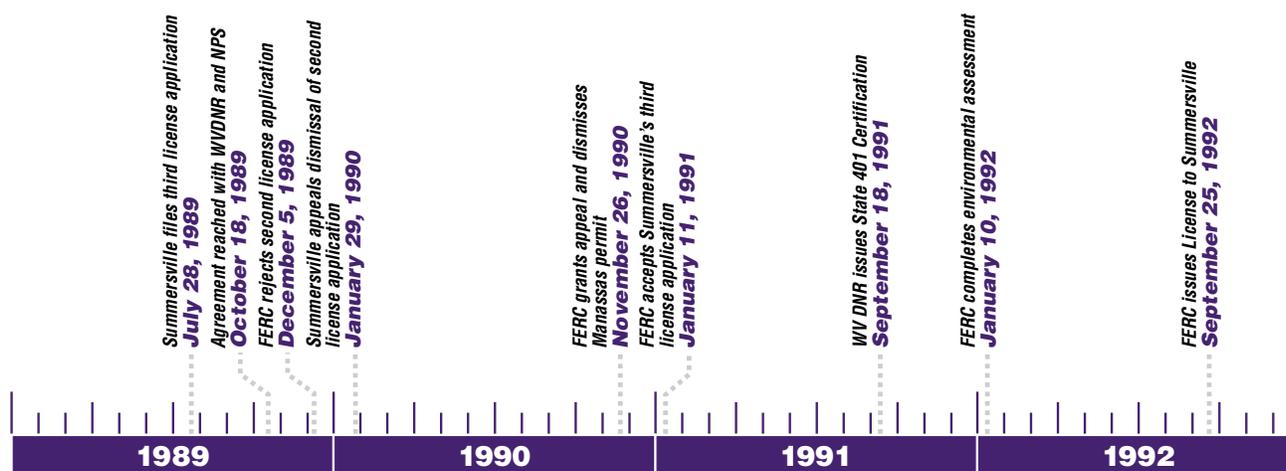
In early 1989, the FERC had two applications for development at Summersville Dam. One was for a preliminary permit from the City of Manassas, Virginia filed on Aug. 8, 1988. Manassas' permit application was accepted for filing by the FERC with a public notice on Jan. 30, 1989. The other application was for a license from the City and Noah Corp. The FERC found deficiencies in the application and on Jan. 5, 1989 Noah Corp. filed the requested information with the FERC. Additional supplements were submitted to FERC on Jan. 12 and 23.

The FERC had not taken action to accept the license application. The deadline was approaching for submission of license applications competing with Manassas' accepted preliminary permit application, so on July 31, 1989 Noah Corp. filed an additional license application on behalf of the City, docketed as Project 10813. It was similar to the previously filed license application, but had considerably more information resulting from recent consultation and studies. This license application was also the subject of a request for additional information by the FERC on Dec. 1, 1989.

A few days later, Summersville was informed that the information it supplied to the FERC to cure deficiencies in its first license application (Project 10635) had not covered all the issues, and FERC dismissed that application. The City appealed the decision.

The issues found deficient and the subsequent dismissal and appeal were, surprisingly, not about the development plan itself. The first was a delivery issue. FERC had rejected both applications and reset a filing date of Aug. 8, 1988. When Congress enacted the West Virginia National Interest River Conservation Act of 1987, establishing the Gauley River National Recreation Area, it allowed a four-year window for hydropower development. It also contained a clause limiting development to project applicants with a permit or license application on file as of Aug. 8, 1988. Together, these two rulings meant there was only ONE DAY that a permit or license application could be filed.

Manassas sent a messenger with their permit application and it was stamped received by FERC personnel on Aug. 8. Summersville's license application was sent using courier delivery by the U.S. Postal Service, who documented delivery at 9:30 am on Aug. 8. However, the application was stamped received by FERC personnel on the following day, Aug. 9 – one day too late. FERC later corrected the docketing date to Aug. 8.



The next issue was about conformance to the consultation process outlined by FERC in three stages. Although the City and Noah Corp. had extensive consultation over eight years with the key agencies and had, in fact, achieved mutual understandings with all involved, they failed to put the steps taken into the form FERC required. These issues were addressed and resolved to the FERC's satisfaction in the Project 10813 application which was still pending at date of this appeal.

Competition and FERC policy were addressed in the appeal. FERC policy is to favor a development or license application over the preliminary studies planned during the term of a preliminary permit. The question at hand was whether Manassas should have been issued a preliminary permit, while the Summersville license application was still being examined by the FERC.

The City of Manassas accused Summersville of abusing Municipal Preference and claimed that Noah Corp. was using the City to obtain a license for the project that it would actually own and operate. This was not a new charge. It had been part of Manassas' competitive strategy since the first permit applications were filed in 1980.

On Nov. 26, 1990, the FERC announced its decision on the appeals. The issues were resolved in this way.

- The docket entries for Project 10635 were corrected to show submission for filing on Aug. 8, 1988.
- Project 10813 would be accepted for filing.
- The notice accepting Manassas' preliminary permit application was rescinded; the application was dismissed two months later.
- FERC indicated it would examine project ownership by Summersville during the license review.

On the day after Christmas 1990, the City of Manassas filed a Request for Rehearing, maintaining that the FERC was mistaken in dismissing the acceptance of their preliminary permit application. On May 23, 1991 the FERC ruled on Manassas' rehearing, reinstating acceptance of their preliminary permit but taking no action against the Summersville license application in progress.

The tone of the decision was clearly in favor of Summersville's diligent and extensive efforts to develop the site. The ruling stated, "Summersville and Manassas have known of each other's interest in developing this site since 1980, and have been competing with each other ever since. Intervening legislation gave both applicants fresh and equal opportunities to renew that competition on an equal footing in 1988. The inequality of their respective present postures derives not from actions taken by this Commission but, fundamentally, from the strategies pursued by the competitors themselves. Manassas chose to file an application for a preliminary permit, while Summersville chose to file an application for a license. Since competition for the Summersville Project began in 1980, Summersville and Manassas have each had 11 years in which to prepare and file an acceptable application for a license."

Working Through Licensing Process Issues

Summersville and Noah Corp. had spent 11 years preparing a development plan and discussing project issues with interested parties and agencies. They had arrived at agreement, or were very close to agreement, with most parties. However, among the most complex, was addressing environmental and recreational concerns of the National Park Service (NPS) and WV DNR. The NPS had been brought into the project by formation of the Gauley River National Recreation Area in

the WV Rivers Bill, and they had authority over recreation issues downstream of the dam.

In addition, Section 401 of the Federal Clean Water Act requires applicants for federal licenses or permits to conduct activities that involve discharges into waterways to obtain certification from the appropriate state agency, in this case WV Division of Environmental Protection (WV DEP), which deferred to WV DNR on wildlife issues.

Memorandums of Understanding between the City and Noah Corp. and NPS and another with WV DNR were developed to minimize and compensate for any impacts of the hydropower construction and operation. A Mitigation, Compensation and Enhancement Plan, an integral part of the agreement with WV DNR, addressed operational procedures to reduce potential effects on fish and wildlife resources as well as providing cash for enhancement measures approaching \$1 million.

The City passed a resolution approving the Memorandum and embedded Mitigation, Compensation and Enhancement Plan on July 22, 1991. WV DNR issued 401 Certification on Sept. 18, 1991.

Finally A License Is Issued!

Motions to Intervene in the accepted license application for Project 10813, all filed on March 19, 1991, were received from the whitewater rafting community including:

- Fayette County Chamber of Commerce, West Virginia Professional River Outfitters (WVPRO) and Class VI River Runners
- American Rivers, Inc.
- American Whitewater Affiliation

This group of intervenors shared concern for protecting the quality of the whitewater raft-

ing experience available on the Gauley River including:

- Locations, construction style and access of commercial and public put-ins
- Protection of access to the first rapid
- Loss of access and intrusion of equipment into staging areas during construction
- Effects on river flows
- Loss of nation's most dramatic put-in
- Clarification of schedule



Rafters participating in the growing whitewater industry carrying rafts down a gravel pathway to the original launch area.



Whitewater rafts were put-in just below the dam's release tubes providing an exciting start for their trip down the Gauley River.

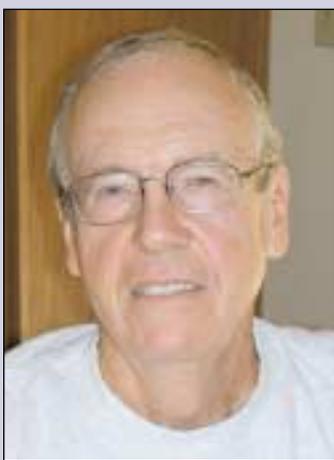
A meeting was held at Summersville City Hall on April 30, 1991 to discuss and agree on recreational aspects of the project. It was attended by the following: Frank Pelurie, Barbara Taylor, Dan Cincotta, Bert Pierce, and Mike Shingleton, all of WV DNR; Dan Haas, Linda Romola, and Lorrie Sprague, all of NPS; Jody Hoffman, U.S. Fish and Wildlife Service; Vince Yearick, FERC; Jim Price, and Anne Price of Noah Corp.; Mayor Steve LeRose, Gary Evans, Director of Public Service, and Larry Persinger, Assistant Director of Public Service, all of the City of Summersville; Jeff Proctor, Class VI River Runners; Anita Adams, American Whitewater Affiliation; Matthew Huntington, American Rivers, Inc.; Roger Harrison, WV Rivers Coalition; Keith Spangler, New/Gauley Expeditions; and Skip Heater, New River Adventures.

Attendees discussed project economics including local tax revenues, location of the transmission lines, establishing hours for construction to avoid interference with raft launching, use of access roads, restroom and other public facilities, fish stocking roadways and the elimination of a fish passage study. The group relocated to the site below the dam and visually inspected affected areas. The attendees left with a fuller understanding of

the project site and expressed willingness to work through the remaining issues, which they did.

An environmental assessment (EA) was completed by FERC staff on Jan. 10, 1992. The FERC characterized the project as not being a “major federal action”; however, NPS disagreed stating its position that an environmental impact statement should be required rather than an assessment. The whitewater community also had comments regarding the EA report. Noah Corp. answered their concerns with a Response to the FERC dated May 7, 1992. There was insufficient time for FERC to complete an environmental impact statement before the legislative deadline for licensing; the choice of the level of study is determined by the authorizing agency, in this case the FERC.

On Sept. 25, 1992, only one month before the legislative deadline imposed by the West Virginia National Interest River Conservation Act of 1987 (WV Rivers Bill), the FERC issued a License to the City of Summersville. Although pleased to accomplish licensing after 12 years of effort, there were two license articles that Noah Corp. suggested should be revised. A Notice Requesting Rehearing of these articles was promptly filed with the



Bert Pierce
Summersville Lake Biologist,
WV DNR Fishery Manager

Bert Pierce was Supervisor of Reservoir Management for West Virginia Division of Natural Resources (DNR) and later became the DNR Fisheries Chief. “It was my responsibility to review anything that impacted public waters,” explained Mr. Pierce. “When there is private use of a public resource, DNR’s goal is to enhance the resource, or to provide mitigation for unavoidable damages.” The DNR had done most of their investigation for this project during the earlier Army Corps feasibility study. Pierce admits that the DNR staff did not believe this project could be built because of the complexity of purposes already in place at Summersville Lake. “Always a gentleman, Jim Price was very persistent with questions and efforts to resolve issues,” said Pierce. “I believe we negotiated the best deal that could happen.” Mitigation enhancements that Pierce was pleased with include a new fishing access trail that crosses the Gauley at the tailwaters and improved boating access to enter the lake at Persinger Creek.



Upon receiving a license approval in 1991, Jim Price and a National Park Service representative visit the hydropower site in preparation to begin construction.

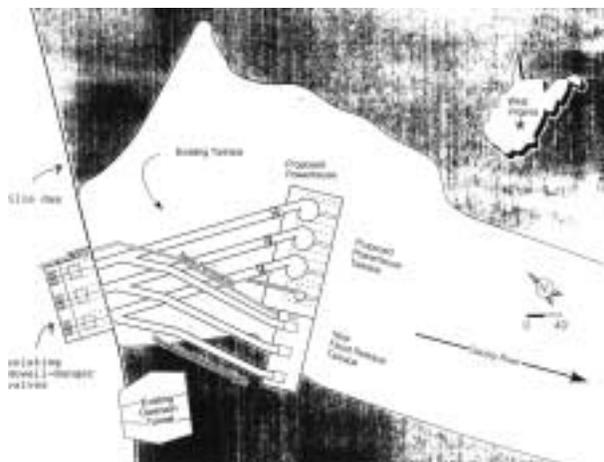


This photograph shows the development site in 1991 before any construction took place.

FERC. Article 303 required a Board of Consultants to be hired to review project structures. This was redundant and expensive, because the Corps was already performing that function for Summersville Dam, which they operate.

Secondly, article 309 granted the Corps unlimited rights to modify the dam's structures or operation. The broadness of this privilege was a concern as it potentially could decrease the ability to obtain a construction loan.

Rehearing was granted for reconsideration by the FERC on Nov. 25, 1992 and then denied on both requests on April 7, 1993.



The powerhouse and equipment arrangement is shown as it was approved in the Sept. 1992 license.

STRATEGIC AGREEMENTS

Selling Electric Energy

The product of the planned hydropower facility was electric energy. Selling power for a price that would support the cost of construction was an economic necessity for this project, which was being financed as a private venture. It was not supported or funded by any governmental funds; in fact, the project had to pay fees or taxes to state, local and federal governments for the right to operate. The project never received any governmental funds or grants.

Finding a buyer for the energy produced was a critical step. Because of their close proximity to Summersville Dam, Allegheny Power Systems was approached. They were not in the market for additional capacity at that time, and declined the proposal.

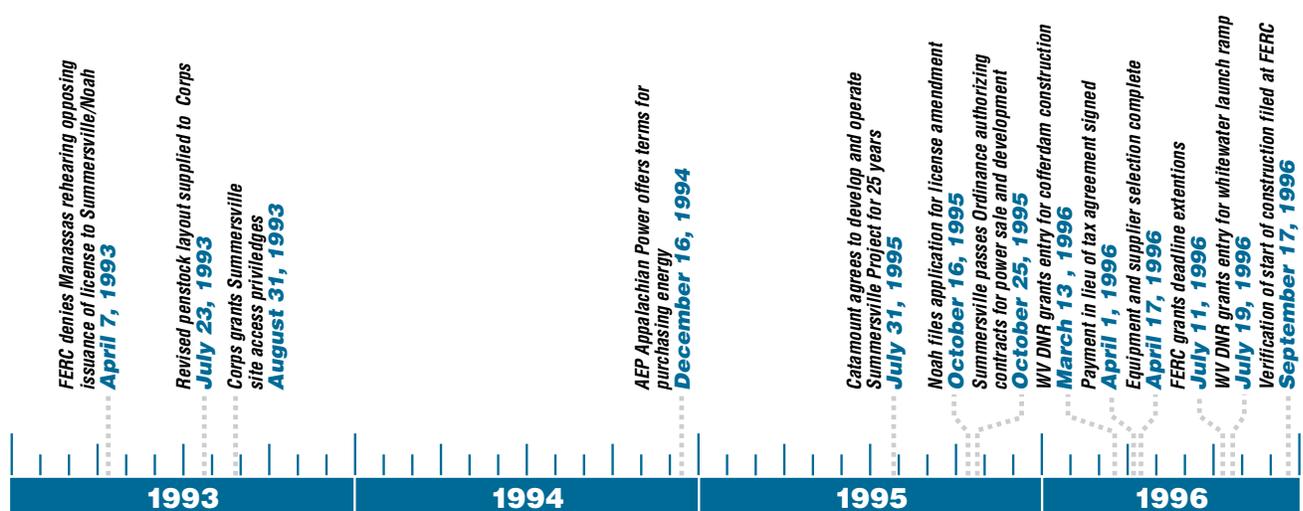
Several other utilities and large power users were approached about buying the power. In July 1993, Elkem Metals Company, operator of nearby Hawks Nest Hydropower facility, met with Noah Corp. in hopes of supplementing their fall production. To insure the steady 24 MW of power needed by Elkem, the Summersville plant would need to be supple-

mented with a gas-fired generator. The cost of a secondary power source made the energy cost too high to be practical.

During 1993 power sale proposals were sent to Duke Power Co., Appalachian Power Co. (APCo), Carolina Power and Light Co., the City of Philippi, AMP-Ohio (a municipal group in Ohio), and Blue Ridge Power Authority (a municipal group in Virginia).

A proposal to purchase power was received from Duke Power Company. However, Duke refused to pay as much as it paid to hydro-power producers in North Carolina, because the Summersville power was delivered from outside Duke's system. Noah Corp.'s attorneys disagreed with this position and a complaint proceeding was filed with the North Carolina Utility Commission (NCUC). Duke won that case in early 1995, because the NCUC agreed that the project was ineligible for the in-state power price.

On Jan. 11, 1994 Noah Corp met with Ray Maliczewski, senior vice president of American Electric Power (AEP) Service Corp. and his staff. AEP is the parent for APCo. Maliczewski, clearly a decision-maker, viewed the project in a positive light because of the low price offered and the renewable aspect of the power. AEP was not currently purchasing power from any qualifying facilities and had opposed PURPA before the Supreme Court in 1979.



In December 1994, AEP met with Noah Corp. and presented an alternative power purchase proposal, which appeared to be feasible. On Sept. 5, 1995 representatives of Noah Corp., APCo and Catamount (a firm being contracted by the City and Noah Corp. to finance, construct and operate the facility for its first 25 years) met and discussed power sale. APCo requested a reduction in the cost paid for energy to 90 percent of their avoided energy after year 20 of the contract. This concern was resolved. By the end of September, the power purchase agreement was nearing its final form.

The City had their attorney, Dennis Vaughan of Vaughan & Withrow, examine the contract. They engaged Southern Engineering to review the design proposal and offer their comments. Suggestions to the power sale contract proposal were drafted and sent to APCo. Most of the suggestions were accepted. Lee Hill of Jackson & Kelly Law Firm helped the parties find agreement on the few remaining issues.

The Power Purchase Agreement (PPA) was authorized by passage of a City Ordinance on Oct. 25, 1995. In early February 1996, the agreement was presented to the Public Service Commission (PSC) for approval. Instead of the immediate approval expected, it was denied on April 27. The issues found deficient were addressed in a revised joint application to the PSC, and the PPA was approved in early May 1996.

Project Financing

A likely power purchase agreement made the hydropower development attractive to investors that would supply at least \$5 million in equity funds. The project needed funding through commercial debt from a bank and equity providers. American Tractebel, a Belgian utility, became interested in providing the

equity. Their representatives visited the site and began feasibility studies.

A second interested party was Catamount Energy Corp., a subsidiary of Central Vermont Public Service Company. Their representatives visited the site in March 1995.

Noah Corp. contacted the Jackson & Kelly Law Firm, which had been involved with negotiating financing for the hydropower project at Hannibal Dam on the Ohio River. They helped develop a simple financing structure that would allow beneficial ownership to the investor and provide more cash flow to the City, which provided no equity and took no credit risk.

By July 31, 1995 Catamount was chosen and had agreed to finance and construct the project. Catamount submitted an independent contract to the City and Noah Corp. They were prepared to provide \$7 million as equity to the project and arrange a commercial loan for the balance of costs estimated at \$28 million. The City and Noah Corp. would receive royalty payments and Catamount would be beneficial owner with all tax benefits and net profits for the first 25 years of operation.

Summersville would own title to the project, but Catamount would finance, construct, operate and receive all revenues for the first 25 years. Catamount would then exit the project with no further interest or income due.

Catamount president Bob Young flew into Summersville to meet informally with City Councilmembers in early August 1995. But by Sept. 21 the City had still not taken action to execute a contract with Catamount. Catamount wrote a letter to Noah outlining the many tasks with deadlines to be met, cost increases associated with delay, and the need to resolve any issues keeping the City from signing an agreement.

On Sept. 25, Jim Price wrote to Mayor LeRose with some facts. The City had hoped

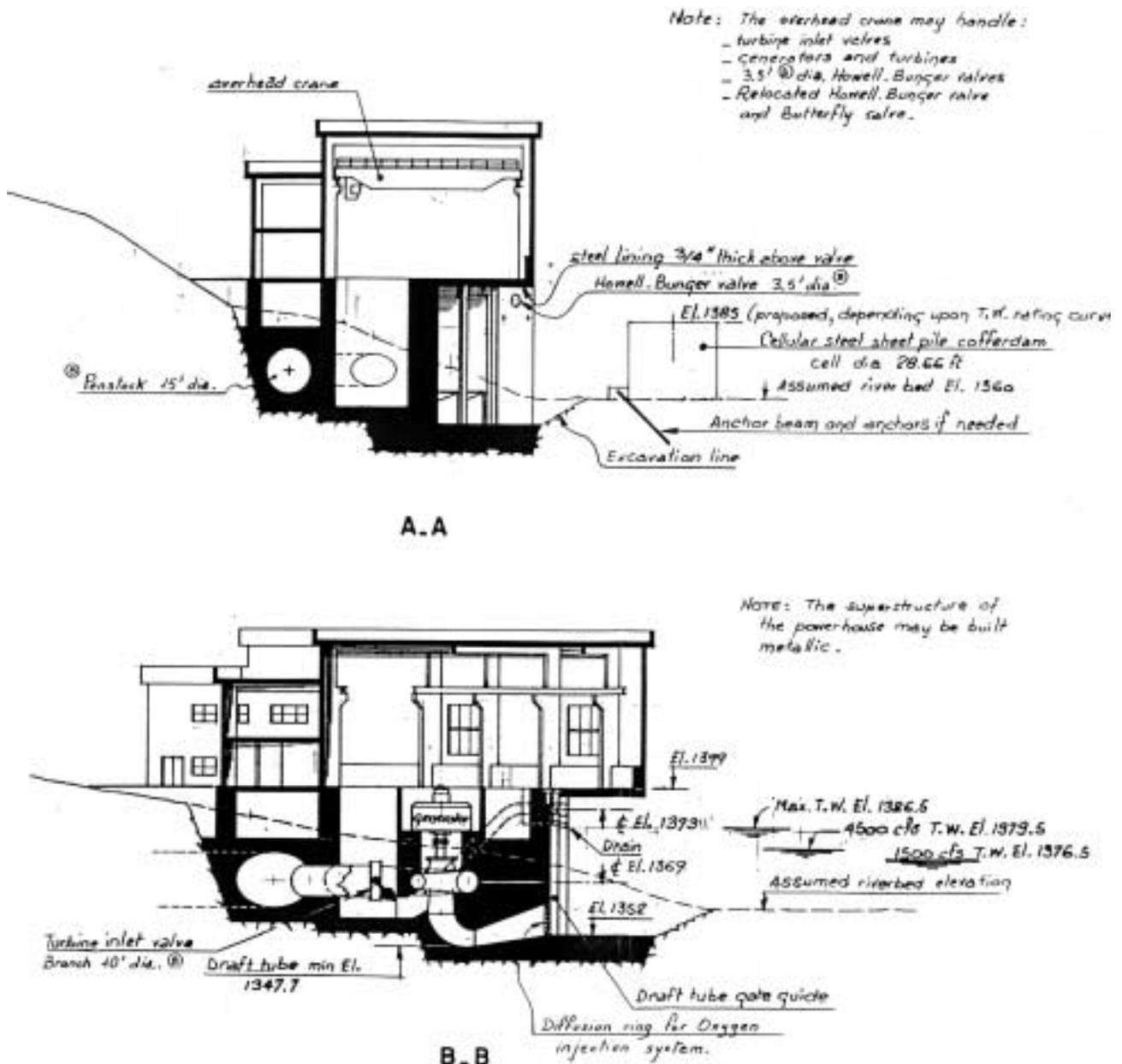
to fund a new fresh water project with initial proceeds from the project. They needed about \$1.5 million. Price said, "If we try to force a large initial payment for a water project on Catamount, there will be no hydro project; the project simply cannot afford it."

On Oct. 25, 1995, the City passed an Ordinance authorizing many transactions which were required for the development of the hydropower project. Among them were the contracts for Catamount's participation. By

month's end, Catamount was already shopping for commercial lenders.

West Virginia Tax Law

In mid-March 1995, the West Virginia Legislature revised the B&O tax law, removing the exemption for utility property. The change would add an expense of \$725,000 a year, crippling chances of financing the Summersville project. Jackson & Kelly Law Firm requested the



These 1993 drawings show details of the powerhouse design.



A penstock in the valve house.

WV Tax Commission to rule on exemption from B&O taxes for the new hydropower project. The exemption from B&O taxes was granted because the City was owner of the facility.

In addition, a Payment in Lieu of Taxes (PILOT) agreement was needed to keep property taxes low during the early years of the project, a period with initially lower power sale prices. Although the project would be owned in title by the City and potentially exempt from property taxes, it would be used beneficially by a private company, Catamount, acting through its subsidiary Gauley River Power Partners (GRPP). Nicholas County is the primary taxing agent. Fayette County was also involved, because two miles of transmission line crossed over the county boundary to connect with the closest APCo substation at Meadow River Mining.

A draft PILOT agreement with the Nicholas County Commission was prepared by Jackson & Kelly and sent to Noah Corp., Catamount and the City in early 1996. The payment sched-



A generator being placed on a turbine during project construction.

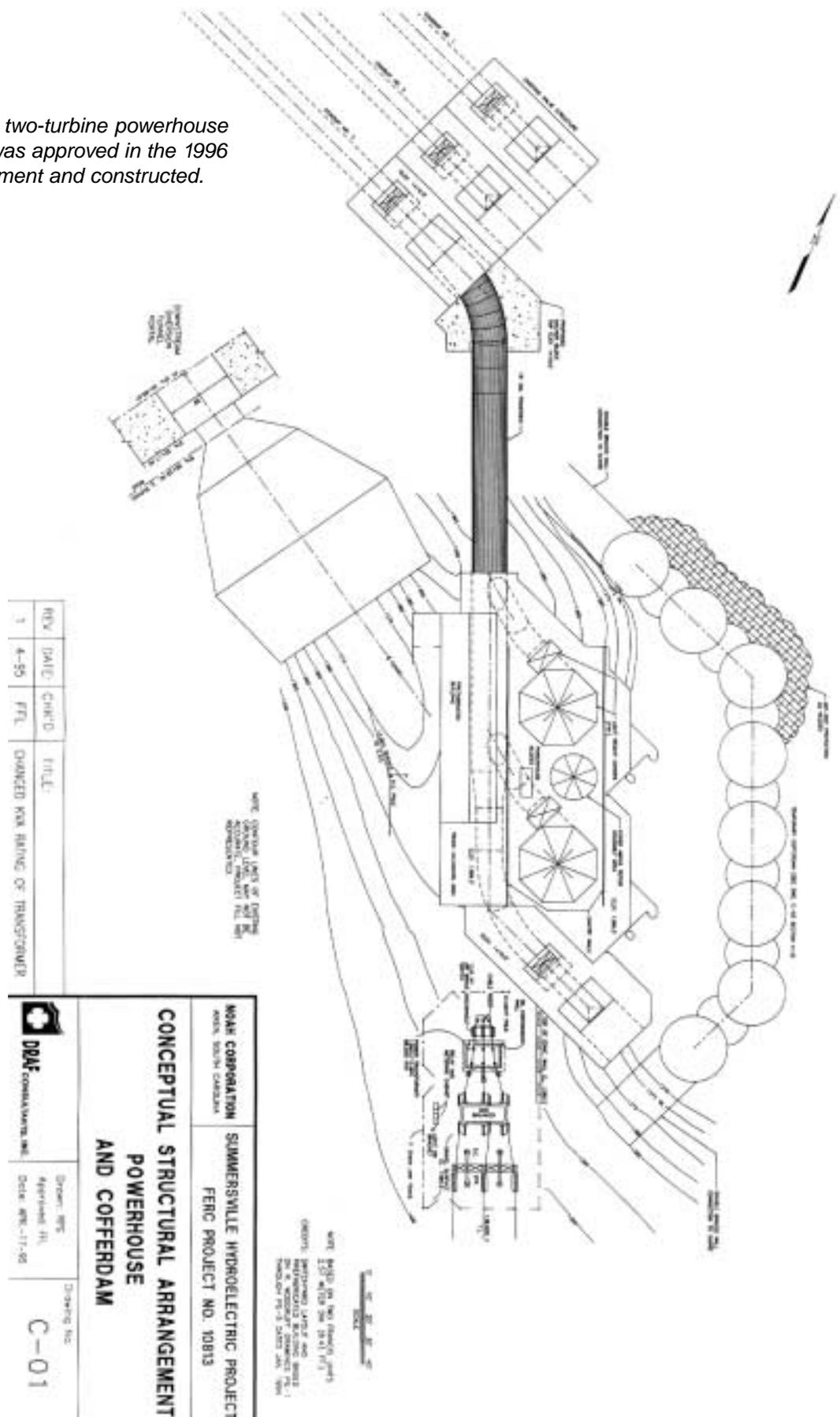
ule to Nicholas County was based on a fixed amount that increased each year. The payment to Nicholas County in the first year was \$40,000, gradually increasing to \$190,000 in year 21. The agreement was signed by all parties on April 29, 1996.

Nicholas County received no tax revenue from Summersville Dam because it was owned by the federal government. The PILOT agreement allowed the County to receive tax revenue on the hydropower facility, even though it was owned by a government entity, the City, and was located on federal property. The Nicholas County Commission shares this income with the Board of Education.

Project Design and Engineering

Sogreah Engineering was working closely with the Corps to finalize details of using a temporary plug in an existing tunnel during construction of the powerhouse. Sogreah, a French engineering firm, was chosen for this

Drawing of the two-turbine powerhouse design which was approved in the 1996 license amendment and constructed.



difficult task by Noah Corp. because of their extensive experience in hydropower projects. Details of a concrete tunnel plug were submitted to the Corps on March 18, 1992. The benefit of such a plan would be a cost saving, simpler powerhouse layout. The Corps liked the idea, as did Noah Corp.

Eventually, the plan was abandoned in favor of using one of the three outlets from the dam. A new penstock would be attached to the existing pipe, just downstream of the closure valve and conduct water to a powerhouse on the bank. The existing Howell-Bunger valve on that pipe would be relocated to a new pipe ending beside the powerhouse. The new design, with two turbines instead of four, reduced the 1993 estimated construction costs substantially. This simpler powerhouse and equipment installation allowed a competitive price for the sale of energy that made the project feasible under the AEP power sale contract. The design revision required going through FERC's review process once again.

The new layout plan was sent to the Corps on July 23, 1993 along with a letter requesting a meeting to discuss design options. The plan contained options for a powerhouse with two or three units. The least cost facility, based on the price per unit of energy, would be built. When completed in 2001, the project cost about \$58 million for an 80 MW plant.

Richard Woodruff, a hydropower consultant formerly of Southern Company Services, was retained by Noah Corp. to review the Sogreah conceptual design and verify the cost estimates. Mr. Woodruff also was invited to attend the meeting with the Corps. The Corps was represented by their engineering, hydraulics and structural groups who were very positive in their review of the revised powerhouse and equipment.

By May 1995, more detailed designs of the simpler, two-unit powerhouse were completed

and used to acquire preliminary equipment bids and revised construction costs. Catamount, acting as the project developer, selected Kleinschmidt Associates of Maine to pre-qualify suppliers and prepare technical specifications for a "water-to-wire" hydroelectric generation package. In April 1996, the package was sent to several suppliers to receive bids and select the lowest costs.

Amending the License

During the summer of 1995, a license amendment was prepared and submitted to agencies for their comments regarding revisions to the powerhouse size, location and generating equipment and to revise the transmission line route to deliver power to AEP. Changes in the powerhouse location and layout proposed the simpler two-turbine plan, rather than the four turbines and extensive piping in the approved license.

Changing the transmission line route was more involved. The route had to connect to the APCo substation about 10 miles south of the dam, so the route proceeded south from the dam rather than north. It needed to avoid the National Recreation Area (NRA) as required by the NPS. The West Virginia Division of Transportation (WV DOT) would not allow use of their right-of-way along U.S. Route 19 south of the dam.

The amendment application was filed with FERC in September 1995 with new plans for the powerhouse and equipment and the new transmission line route. Letters showing the proposed transmission line route were sent to all affected landowners.

A survey was conducted to avoid disturbance of endangered plants. The Gauley River NRA was avoided by locating the transmission line route within developed areas near the dam. On Oct. 16, 1995 the FERC sent out a

Notice of Application Filed to initiate a period of comments and interventions regarding issues in the license amendment.

There were project benchmarks and FERC deadlines to meet. The FERC had granted several extensions of deadlines. In the July 1996 extension, the following deadlines were set:

- Final contract drawings by Sept. 16, 1996
- Start of construction by Sept. 24, 1996 (required by WV Rivers Bill)
- Filing of approved cofferdam construction drawings by Oct. 15, 1996
- Complete construction by Sept. 24, 1999

In March 1996, WV DNR issued an entry permit for the purpose of constructing a temporary cofferdam so the powerhouse could be built. In July, an entry permit was issued for constructing a new whitewater launch ramp facility.

Noah Corp. filed Verification of Commencement of Construction paperwork with the FERC on Sept. 17, 1996, one week before the critical deadline. This filing showed that GRPP (Catamount) had begun equipment fabrication by paying the equipment provider, IMPSA of Argentina, approximately \$200,000 to begin manufacturing the initial equipment.

TRANSMISSION LINE

Public Protest

When the draft license amendment application was circulated for comments, whitewater interests were concerned about changing from four to two larger generating units believing it would reduce the amount of flexibility in flow released for power production. Potentially, they stated, placing more importance on power profitability might be at the expense of recreational interests. Their concern was unfounded, because the license required the project to operate with the flow normally released by the Corps. The amount and timing of flow releases is chosen solely by the Corps, not the licensee.

The most contentious issue was the change in transmission line route, caused by the need to deliver power to APCo. The revised transmission line was almost two miles longer and ran in a different direction than the original plan, which was to connect with the Monongahela Power Company, the closest potential energy buyer.

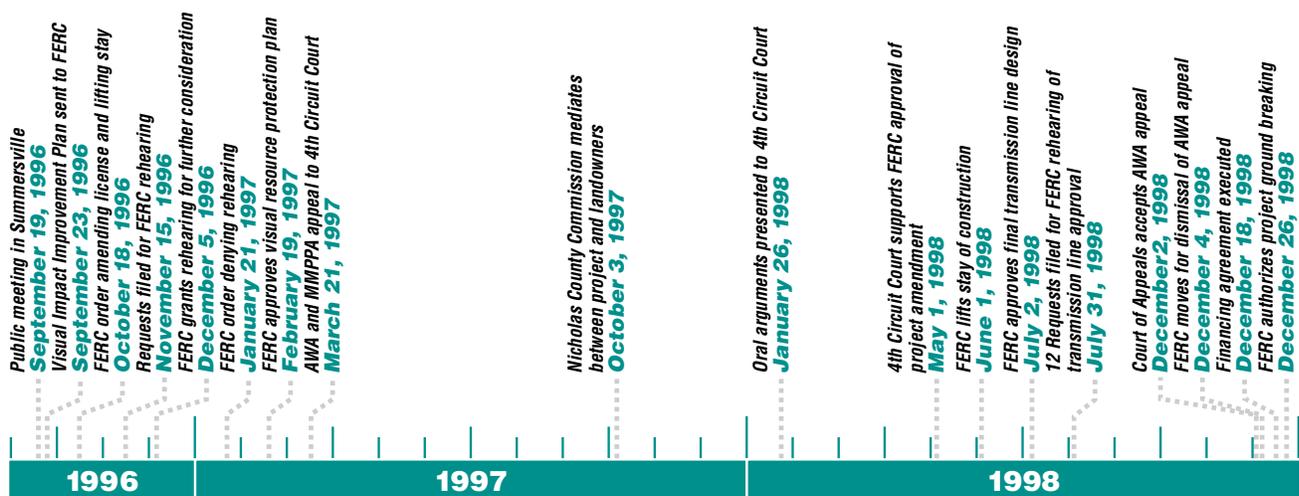
To answer questions of affected property owners, Catamount and Noah Corp. held a public meeting in Mount Lookout in the spring of 1996 to discuss the expected location and impact of the transmission line. It was attended

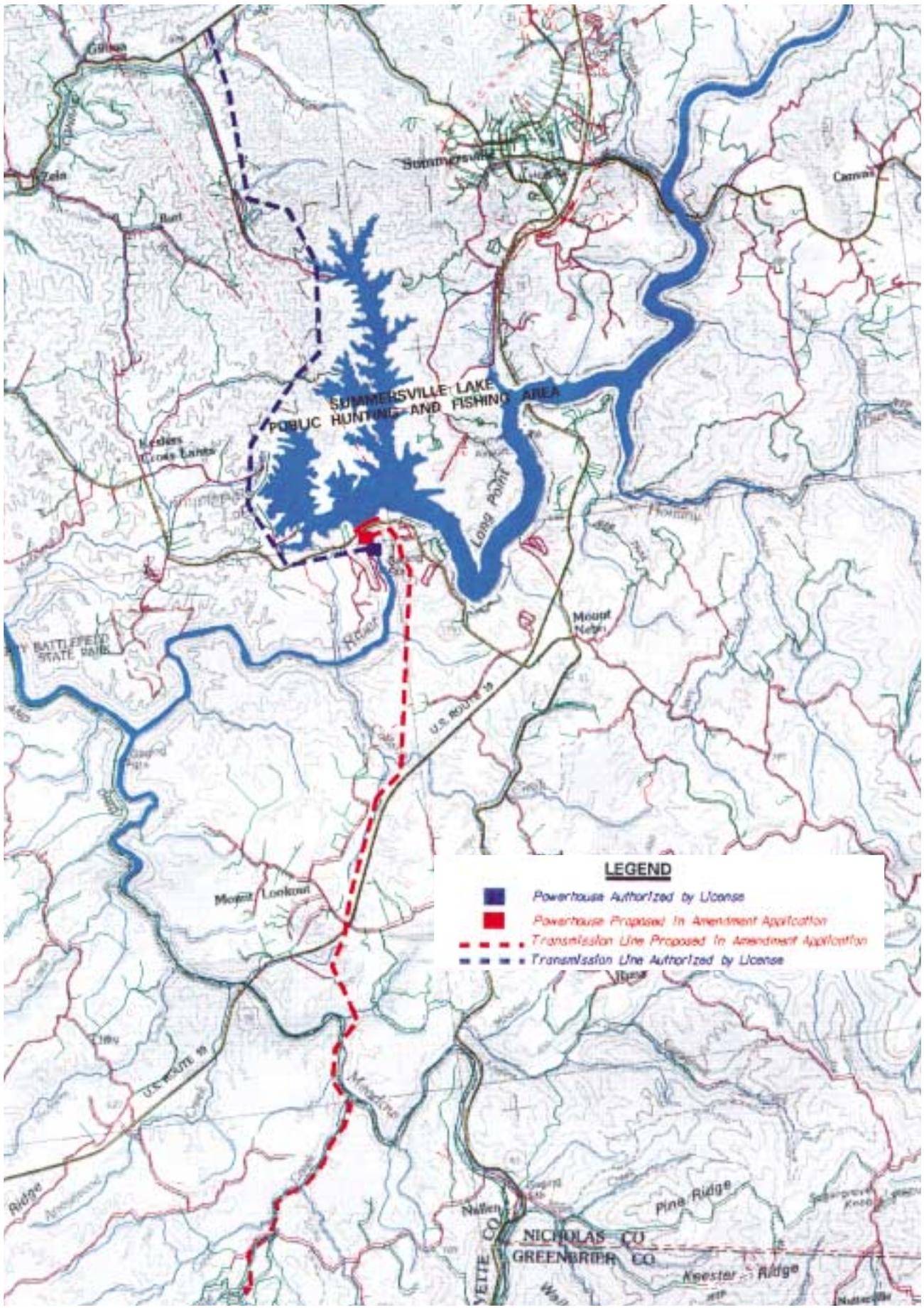
by about 30 residents, including some parties interested in whitewater rafting.

The amendment application was originally published by FERC in October 1995 with comments due by December. No adverse comments were filed. An agreement on the transmission line route was resolved with NPS, which insisted that the Gauley River NRA be avoided by the transmission line and that the view of the line be minimized from the NRA. FERC prepared an environmental assessment which was noticed in April of 1996. Comments on the assessment were due by the end of May.

As the FERC began preparing a final environmental assessment, they began to receive questions from residents along and around the transmission line route, who were concerned about whether their comments were being heard. Numerous comments were filed. In an effort to be fair, FERC held a public meeting in Summersville to allow public comments to become part of the record. They sent notice to landowners by Priority Mail, which was delivered on Thursday, Sept. 12, one week before the meeting date. The meeting was also announced in local newspapers.

The public meeting was held on Thursday, Sept. 19, 1996. Heather Campbell and Mohamad Fayyad, FERC representatives, conducted the meeting. Speakers making comments were: Steve LeRose, Summersville





Mayor; Jim Price, Noah Corp.; Councilman Mike Hughes; Jim Marsh, Associate Superintendent of Schools, Nicholas County; Councilwoman Mary McCallister; Spurgeon (Jenks) Hinkle, Nicholas County Commission; Len Hanger, WVPRO President; Dan Boone, local businessman and Chamber of Commerce member; Greg Johnson, Administrator Summersville Memorial Hospital; Roy Henderson, retired broadcaster and local resident; Donna Mazzei, local resident and Councilwoman; Dale Jones, local resident; J. B. Boso, City of Summersville Fire Chief; Thomas Smith, county resident; Mike Mathews, representing local trades unions; Steve Fairchild, local resident and businessman; Kathy Zerkle, local resident and rafting guide; Richard Lilly, local resident and rafting outfitter; Gary Normoyle, Catamount Energy Corp.; James Neil, WV DNR fishing and boating representative; and, Steve Ferguson, President Summersville Convention and Visitors Bureau.

A firestorm of public protest was set off by this meeting. Several landowners along the transmission line route presumably did not realize their properties would be affected until notice of the public meeting was delivered. Some were upset by the short notice they had received. On the following Monday, Sept. 23, 1996 more than 35 letters of protest were filed at the FERC – including a petition with more than 250 signatures. A group of landowners had earlier formed a coalition called "Mount Nebo-Mount Lookout Property Protection Association" (MMPPA). The group hired an attorney and began doggedly opposing the new route of the transmission line.

A radio show, answering questions from callers, was held by Gary Normoyle of Catamount, C. J. Hamilton of the Corps of Engineers, Mayor Steve Le Rose and Jim Price of Noah Corp.

Summersville, Noah Corp. and Catamount were busy responding, too. On Sept. 23, they filed a Visual Impact Improvement Plan with



Land owners along the transmission route placed high value on the pristine views of their properties. The route crossed large areas of undisturbed forest.

FERC, addressing many of the concerns expressed by property owners.

The MMPPA took their case to the West Virginia Public Service Commission (PSC) and the NPS. The PSC was being pressured to require the project to acquire a certification of public convenience prior to constructing the transmission lines. The question was one of jurisdiction. The FERC apparently had jurisdiction of transmission lines that were included in a federal hydropower license. On Sept. 28, 1996, Governor Arch Moore issued Executive Order 12-88 to require the PSC to insist on certification. The PSC later conceded that FERC had jurisdiction and dismissed the complaints on Feb. 7, 1997.

Congressman Rahall and West Virginia Professional River Outfitters (WVPRO) began to question the project's compliance with the law establishing the Gauley River National Recreation Area. Congressman Rahall asked the FERC to give him information about the project's compliance with established deadlines.

American Whitewater Affiliation (AWA) filed comments and a motion for late intervention with the FERC on Oct. 7, 1996 (this filing was made almost a year after the deadline for intervention). A similar intervention request was filed by Attorney James McNeely, representing

MMPPA, who kept working on the PSC certification issue. FERC granted the intervention requests, which allowed the parties to later challenge FERC's amendment approval in federal court.

In the meantime, FERC staff continued their work on the final environmental assessment. On Oct. 17, they issued notice of its availability. The next day the FERC issued an order allowing the license amendment, lifting the stay of construction and granting interventions for AWA and MMPPA, even though the requests were filed more than a year late. On Nov. 15, both intervenors filed requests for rehearing challenging FERC's order approving the license amendment on the grounds of inadequate notice.

In his quarterly report to the City of Summersville, Dr. Price of Noah Corp. expressed concern at the protest of landowners. He feared the appeals of FERC decisions could mean long delays in obtaining project financing. Mick Staton led a public information campaign for the project including political support, media advertising and an informational video.

The project continued to make required filings during this period while FERC considered the rehearing requests. On Nov. 22 the recreation monitoring plan was approved. On

Dec. 5 rehearing was granted to AWA and MMPPA. Several deadline extensions were needed by the project, because of the appeals. On Jan. 21, 1997 the FERC denied both rehearings. On Feb. 19, 1997, the project's visual resource protection plan was approved. MMPPA was quick to request rehearing of this FERC decision, too.

AWA and MMPPA both appealed to the Circuit Court of Appeals challenging FERC's refusal to reverse its decision to authorize the license amendment. Construction and financing could not proceed with the potential regulatory reversal in the Court of Appeals, which could rescind FERC's approval of the planned installation.

All the delays resulting from continuous appeals required updates in all the related agreements including the Power Purchase Agreement, WV DNR Rights of Entry, WV DNR Memorandum of Agreement, and the Independent Contract with Catamount Energy Corp. After their renegotiation, the changes to all of these agreements had to be approved by the various appropriate agencies... again.

The FERC granted a rehearing for further consideration to MMPPA on approval of the visual resource protection plan. Then denied their appeal on July 1, 1997.



Jack McClung
Mount Lookout
Landowner

"We got a puzzling letter that said the license was already granted," explains Jack McClung, a Mount Lookout landowner who did not want transmission lines crossing his land. "Several landowners formed an association and we started to get attention." McClung notes "crossing your land" means clear-cutting an 80-foot wide strip along with any branches or trees that reach into that area. The group of landowners did not feel that alternate routes were fully considered and that FERC was ready to approve the project regardless of dissent. Landowners found the public meetings informative but were disappointed that the County Commission did not help represent their position. "We felt bullied," said McClung. When it was clear the transmission route would not be changed, McClung and others negotiated their best deal and the project moved ahead. "I hope the City of Summersville makes good money from the hydro plant," concludes McClung. "The structures are a sore spot in the gorgeous view of my family's homeplace."

Nicholas County Commission contacted the City, Noah Corp. and Catamount on Oct. 3, 1997. They had been asked by MMPPA to act as mediators to help negotiate alternate routes for the transmission lines. This was not successful, because there was no practical alternative to the route chosen, as stated in FERC's order approving the license amendment.

Oral arguments were presented to the Court of Appeals on Jan. 26, 1998. The Appeals Court's May 1, 1998 ruling upheld FERC's decision approving Summersville's license amendment. On June 1, the FERC removed their stay of construction and on July 2 approved the final transmission line design.

By the end of July 1998 there were a dozen requests for rehearing submitted to the FERC including the AWA, MMPPA and several private citizens. They were all rejected on Aug. 28, 1998. Only AWA requested rehearing on the rejection. In addition, AWA appealed to the U.S. Court of Appeals. The FERC filed a motion to dismiss AWA's federal appeal, as they had not yet ruled on the most recent request for rehearing.

A long awaited moment came, when FERC authorized commencement of ground breaking on the day after Christmas 1998. The persistent delays had seriously jeopardized the project's feasibility.

Financing the Project

Catamount Energy Corp. was looking for a lender to finance the balance of the project. Before approval of the license amendment in October 1996, two lenders were interested pending the outcome of FERC's decision. They were Canadian Imperial Bank of Commerce, Inc. and GE Capital Corporation.

The long delays created by continuous appeals caused the cost of building the project to climb. Not only were costs of material, equipment and labor rising, costs for renegoti-

ating strategic contracts, additional mitigation requirements, and legal fees to defend in court were all putting the project at financial risk. Project costs had risen by nearly \$5 million. Catamount told the City and Noah Corp. that they had found a new lender, New York Life Insurance Company. But to make the project feasible, it was necessary to extend the debt term to 26 years.

Because Catamount was to exit the project at the end of 25 years, the new debt term was a problem. Catamount requested extension of their independent contract to 30 years to allow sufficient returns in the last five years to make the project feasible. In July 1998 Summersville, Noah Corp. and Catamount renegotiated the independent contract and participation agreements to keep the project viable for financing.

As a concession for the extended term, Catamount agreed to provide \$800,000 to the City for a water supply project when the hydro project was financed. The five-year extension resulted in less revenue to the City and Noah Corp. from year 26 through 30 of operation because a portion would go to Catamount. Summersville's funding of a water supply project was made more likely by the payment for the extension.

On Sept. 1, 1998 Catamount gave draft copies of a financial term sheet to Summersville from New York Life Insurance Co. The City and Noah Corp. both approved the agreement, first verifying that Summersville had not pledged any taxpayer assets or assumed any debt for the project.

New York Life Insurance Co. had a period of "due diligence" in making sure all the agreements and amendments were acceptable and fully in place. By Dec. 18, 1998, the financing agreement was fully executed, and closing took place on Jan. 15, 1999. Dr. Price of Noah Corp. told Summersville City Council that Catamount Energy was to be commended for their commitment to the project.

CONSTRUCTION

Ground Breaking

After 19 years, it was time to start building. Black and Veatch Construction, Inc. (B&V) was selected to construct the powerhouse and transmission line. They were the successful bidder and had done some preliminary work. In early January 1999, B&V submitted the

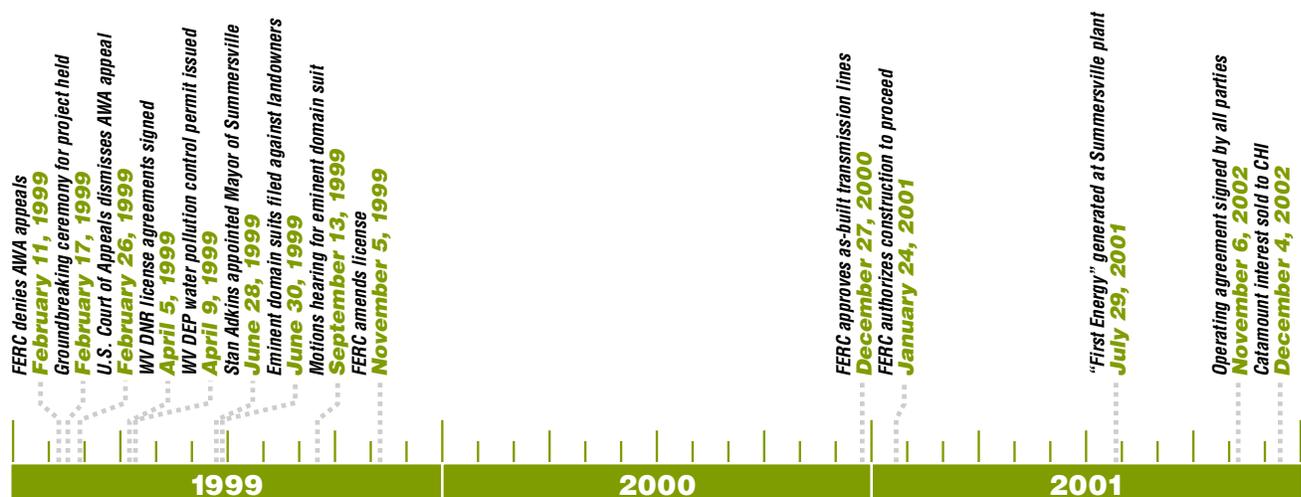
necessary bonds to the City of Summersville and began site work.

It was also time to recognize the great achievement of the project team including personnel from the City, Noah Corp., Catamount and many others – whose 19 years of efforts had been responsible for reaching this important benchmark. A Ground Breaking Dedication was held on Wednesday, Feb. 17, 1999. It began with a luncheon at Nicholas County Memorial Park Dining Room, followed by a ceremony at Summersville Dam. The invitation list held the names of more than 200 community and political leaders. A private dinner was held the evening before for core project participants.



Legal and Contractual Details

Although the project had a green light to get started building, FERC had not acted on the American Whitewater Affiliation's (AWA) motion to intervene in and oppose the final transmission line design. Anticipating a negative decision from FERC, AWA filed an appeal with the U.S. Court of Appeals to challenge rejection of their rehearing request. FERC ruled that the AWA appeal was premature, as they had not yet rendered a decision.



On Feb. 26, 1999 the U.S. Court of Appeals dismissed AWA's case.

AWA challenged FERC's refusal to grant intervenor status with a petition for review in the U.S. Court of Appeals in April 1999. The City intervened in their proceeding. Catamount offered to take the cost they and AWA would together spend on legal fees and use it instead to benefit kayaking and rafting. AWA agreed to this proposal and the funds were provided to NPS to augment whitewater boating on the Gauley River.

Negotiations for right-of-way easements along the transmission line route continued in 1999. Several property owners held out. The City began eminent domain suits in late June 1999. Mayor Stan Adkins, newly elected, pursued the right-of-way agreements as required. A hearing was held at the U.S. Court in Charleston, WV on Sept. 13, 1999. By November, all of the right-of-way issues had been resolved.

In April 1999 the project received license agreements from WV DNR Public Land Corporation for the transmission line route and a water pollution control permit from WV DEP.

By 2001, deadline extensions and shifts in responsibilities made it necessary to amend the Power Purchase Agreement between GRPP, the City, Noah Corp. and APCo.

Catamount Sale to CHI

In February 2001, James Moore became President of Catamount Energy Corp. (CEC) and Senior Vice President of parent Central Vermont Public Service Corp. In August he announced his strategy to pursue wind power projects exclusively.

In February 2002 CEC announced its intent to sell its interest in the Summersville project to CHI Energy, Inc. (CHI), a large hydroelectric company headquartered in Connecticut. CHI was owned by Enel, a large Italian utility. The City and Noah Corp. would need to approve the sale, which they did. The sale was finalized on Dec. 4, 2002.

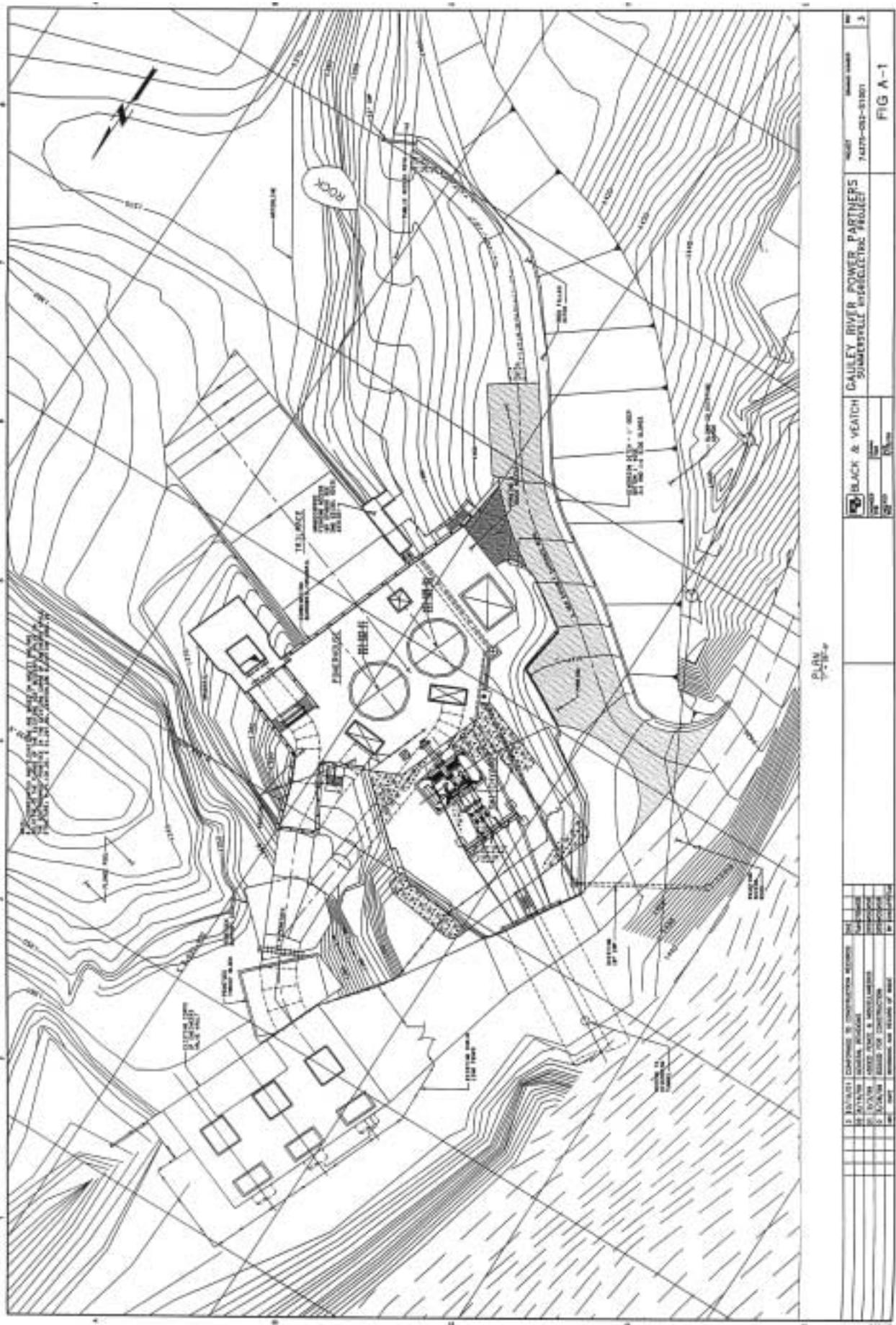
Putting the Plant into Operation

Design revisions and construction were a collaborative effort. Each portion of the project required the review and approval of both the Corps and the FERC prior to its construction.



Stanley Adkins
Summersville Mayor

When the project began in 1980 Stanley Adkins was the City of Summersville's independent accountant. He attended all the early discussion meetings. "It seemed like a pipe dream. It was like one man against the world," Adkins explains his first impression of the project. "But if the hydropower project could happen, it would be really amazing." Although completed and put into operation during Adkins' tenure as mayor, he says the person that really made the project happen was Jim Price, who conceived and kept the project alive. Adkins is pleased to see a renewable energy source being operated in Summersville. He said early operational income will be used to pay the debt for construction, but that future income could fund fresh water projects, health care expansion, improved sewer facilities and environmental protection programs. "The people who started this project in the early 80's provided benefits for our citizens that will continue more than 50 years into the future," Adkins said.



On a site visit, FERC inspectors found construction had moved ahead of the allowed protocol with support piers for the penstock in place before the plans had been approved. On April 28, 1999 FERC sent a stern warning letter to Catamount reiterating the process of plan submissions and required approvals. This was corrected immediately.

Project construction remained close to the projected schedule until early 2000. Work on pouring concrete and installing embedded turbine parts was delayed by poor weather. GRPP continued holding progress meetings with the Corps and interested agencies to discuss the construction schedule and any other issues.

There was concern among the rafting outfitters that construction might interfere with river access during the height of rafting season. Construction activities were suspended on some weekends to avoid inconvenience during periods of heavy rafting traffic.

By April 2000, clearing was completed in preparation for construction of the transmission line. B&V was testing for leaks on the scroll case of one turbine prior to pouring concrete around it. Several tests were required to determine the strength of the concrete to be used prior to pouring penstock anchor blocks.

B&V was having difficulty with the Corps' approval process and requested a meeting to resolve a number of construction issues, including:

- Concrete mix design
- Marine support structures
- Encapsulation of existing marine support structures
- Required anchorage

- Howell Bunger valve structure
- Penstock pressure testing
- Ownership and maintenance of all new construction
- Corps of Engineers' list of required submittals
- Other issues and concerns relevant to completion of the project

Difficulties in obtaining the Corps' approval of the concrete used in penstock anchor blocks caused significant construction delays by August 2000. GRPP became concerned about meeting the sunset date in the Power Purchase Agreement.

The schedule was really slipping by September; there was little hope of meeting the November schedule for completion. B&V indicated to Catamount that they were entitled to additional fees due to delays in construction and increased costs required by the Corps. A second shift was added in an effort to get the project back on schedule.

The powerhouse and transmission line were both essentially complete by February 2001. In mid-May 2001 the concrete work and most of the new piping had been



Summersville City Council constructed a plaque in 2005 to memorialize the effort and accomplishment of building the hydropower plant.

completed. Final testing and commissioning of the generating equipment was complete in June. One structural part failed during testing and had to be replaced.

Catamount generated the “First Energy” required by the Power Purchase Agreement on July 29, 2001. It was about a month later than allowed by the agreement – a hefty penalty was paid by Catamount – but everyone was pleased to have the plant operating commercially. By August, all work except some minor finishing was complete.

From start of generation in early July 2001 through the end of June 2007 (six years of operation), the fully operational Summersville Hydropower Production Facility generated and delivered 1,264,000,000 kilowatt-hours of electric energy.

REFERENCES

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