

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA  
upon the relation and  
for the use of the  
TENNESSEE VALLEY AUTHORITY

Petitioner

v.

PHILIP G. RUST  
ELEANOR L. RUST, his wife  
RHODY C. HAYES WINCHESTER  
D. STREET WINCHESTER, her husband  
WILLIAM MCKINLEY WINCHESTER  
GRACE WINCHESTER, his wife  
WILBURN HOWARD  
BETTIE HOWARD, his wife  
GEORGE ANDREW LOWE  
LAURA BRANTON LOWE, his wife  
ANDREW (ANDY) HAYES  
BONNIE WILLIAMS HAYES, his wife  
JAMES FRANKLIN  
EMMA FRANKLIN, his wife  
CALVIN P. ARBOGAST  
WALTER W. JENKINS  
ABRAHAM COLE HYATT  
JAMES MADISON STILES  
FRANK HYATT, as Trustee  
GEORGE W. BALL, as Third Party

Respondents

FINAL DECREE

This cause came on to be finally heard upon the petition for condemnation; declaration of taking; answer of the respondents Philip G. Rust and Eleanor L. Rust by their attorney; decree pro confesso against all respondents not having answered; mandate of the United States Supreme Court; award of the Commissioners to which exceptions were filed by both parties, but which exceptions were later waived and a stipulation as to the value of the property entered; report of the Special Master; and the entire record in this cause, from all of which it appears that:

I

The Tennessee Valley Authority is a corporation created by and duly incorporated pursuant to an act of Congress approved May 18, 1933, and is authorized to exercise in the name of the United States of America the right of eminent domain and to condemn all real estate, and rights and interests therein, deemed necessary by it for carrying out the purposes of the Tennessee Valley Authority Act, and the property herein condemned is necessary for such purposes.

II

All the parties interested directly or indirectly in the land hereinafter described have been served with process personally or by publication, and the said land and all claimants and parties interested therein are within the jurisdiction of this Court, which has power and authority to enter this judgment.

III

At the time of the filing of the declaration of taking in this cause, Philip G. Rust was seized and possessed of the fee simple title to the said property, subject to the inchoate right of dower of his wife, Eleanor L. Rust, and the inchoate right of dower of Rhody C. Hayes Winchester in an undivided one-half interest in twelve (12) acres of the said property, and an undivided one-thirteenth fee simple interest held by Andrew Hayes in one acre of the said property. Bonnie Williams Hayes, wife of Andrew Hayes, had an inchoate right of dower in and to the interest in said land that was held by her husband.

No other respondent other than those hereinbefore mentioned had any right, title, interest or estate in the said property.

All taxes that constituted liens against the said property have been paid and the liens discharged.

IV

The petitioner, upon filing the declaration of taking in this cause, deposited the sum of Sixty Thousand Dollars (\$60,000) as its estimate of the value of the property herein condemned; and pursuant to the stipulation between the petitioner and the respondents, the petitioner deposited the further sum of Thirty-five Thousand Dollars (\$35,000), without interest, making the total sum of Ninety-five Thousand Dollars (\$95,000) deposited herein as

the true value of and as just compensation for the property condemned. All of such fund has been disbursed by proper order of this Court.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

1. The report of the Special Master, to which no exceptions were filed, be and the same is fully and finally confirmed.
2. The stipulation between the petitioner and the respondents agreeing that the sum of Ninety-~~Three~~ Five Thousand Dollars (\$95,000) represents the true value and is just compensation for the property herein condemned be and the same is hereby fully and finally confirmed.
3. The divestiture of title as evidenced by the declaration of taking filed on August 14, 1944, by virtue of which all right, title, claim, and interest of every kind, nature, and character in and to the following described property, to-wit:

Tract FR-1018

A tract of land lying in Forneys Creek Township of Swain County, State of North Carolina, on the right side of the Tuckasegee River, at the confluence of Indian Creek and Noland Creek, and more particularly described as follows:

Beginning at a point, a corner of the lands of J.B. Barnhardt, and the United States Department of Interior (Great Smoky Mountains National Park), and the most northeasterly point of the tract herein described; thence with the Park's boundary line S. 6° 03' W., 8681 feet to a point at the top of a ridge, a corner of the lands of the United States Department of Interior (Great Smoky Mountains National Park), and Miley Woodard; thence with Miley Woodard's, Ben Lollis et ux's, Ben Lollis', Ben Lollis et ux's, Fred & Arthur Lollis', and Charity Hyatt's line and the top of a ridge as it meanders approximately along the following bearings and distances, S. 25° 30' W., 820 feet to a stake in an old stump, S. 51° 00' W., 1480 feet to a 30 inch white oak tree, S. 71° 00' W., 480 feet, N. 75° 00' W., 440 feet to a shestnut snag, N. 89° 00' W., 830 feet to a 24 inch red oak tree, S. 31° 00' W., 740 feet, S. 50° 00' W., 780 feet, S. 67° 00' W., 1630 feet, S. 4° 00' W., 1540 feet, S. 38° 00' W., 800 feet, N. 87° 00' W., 1470 feet to a point, a corner of the lands of Charity Hyatt, and the Nantahala Power & Light Company; thence leaving the ridge and with the Company's line N. 4° 00' E., 580 feet to a point (previously described as a stake); thence S. 87° 30' W., 1879 feet to a point (previously described as a stake); thence N. 7° 30' E., 700 feet to a point in the center line of Noland Creek witnessed by a 6 inch locust stump, a corner of the lands of the Nantahala Power & Light Company, Glenn Lequire et ux, and A.E. Bradshaw; thence with A.E. Bradshaw's line and the center line of the creek as it meanders upstream approximately 1380 feet to a point; thence, leaving the creek, S. 66° 00' W., 395 feet, crossing a public road at approximately 80 feet, to a point at the top of a ridge; thence with the top of a ridge as it meanders approximately along the following bearings and distances: N. 43° 00' W., 360 feet, N. 68° 00' W., 570 feet to a 14 inch black oak tree, S. 1° 00' E., 310 feet, S. 13° 00' W., 345 feet to a stake, a corner of the lands of A.E. Bradshaw, Rubin Ball et ux, and Dave Ball et ux; thence leaving the ridge and with Dave Ball's line S. 84° 00' W., 875 feet to a 14 inch mountain oak tree, a corner of the lands of Dave Ball et ux, and the Phoebe Jane Bowers Heirs; thence with the Phoebe Jane Bowers Heirs' line S. 85° 00' W., 290 feet to a stone at the top of a ridge, a corner of the lands of the Phoebe Jane Bowers Heirs, and A.E. Bradshaw; thence with A.E. Bradshaw's line S. 85° 00' W., 1140 feet to a point at the top of a ridge; thence with the top of a ridge as it meanders approximately along the following bearings and distances: S. 15° 00' W., 396 feet, S. 50° 00' E., 500 feet, S. 19° 00' E., 360 feet, S. 43° 00' E., 360 feet to a point; thence, leaving the ridge, S. 85° 00' E., 490 feet to a point; thence S. 6° 00' W., 2000 feet to a point in the center line of Noland Creek and on the north side of a public road, a corner of the lands of A.E. Bradshaw, the Nantahala Power & Light Company, and W.T. Jenkins; thence with W.T. Jenkins' line N. 86° 00' W., 1040 feet to a point in the center line of a road; thence with the center line of the road as it meanders approximately along a bearing and distance of N. 76° 00' W., 810 feet to a point; thence, leaving the road, S. 6° 00' W., 560 feet, passing a 30 inch white oak tree at 50 feet and crossing Laurel Branch at approximately 160 feet, to a point at the top of a ridge, a corner of the lands of W.T. Jenkins, and S.B. Monteith; thence with S.B. Monteith's line and the top of a ridge as it meanders approximately along the following bearings and distances: S. 71° 00' W., 575 feet, S. 41° 00' W., 520 feet, S. 22° 00' W., 190 feet to a point, a corner of the lands of S.B. Monteith, and E.O. & A.J. Hall; thence leaving the ridge and with E.O. & A.J. Hall's line N. 82° 00' W., 495 feet to a point, a corner of the lands of E.O. & A.J. Hall, and Hampton Cole; thence with Hampton Cole's line N. 63° 00' W., 470 feet to a point at the top of Tunnel Ridge; thence with Hampton Cole's, A.C. Hyatt et ux's, and L.E. Hunter's line and the top of Tunnel Ridge as it meanders in a northerly direction approximately 5990 feet to a point, a corner of the lands of L.E. Hunter, and the United States Department of Interior (Great Smoky Mountains National Park); thence leaving Tunnel Ridge and with the Park's boundary line along the following bearings and distances: N. 20° 31' E., 330 feet; N. 47° 30' E., 307 feet; N. 30° 21' E., 446 feet; N. 47° 47' E., 282 feet; N. 49° 28' E., 278 feet; N. 63° 01' E., 153 feet; N. 47° 31' E., 280 feet; N. 64° 20' E., 279 feet; N. 78° 15' E., 250 feet; N. 15° 30' E., 246 feet; N. 19° 39' E., 97 feet; N. 8° 29' W., 350 feet; N. 14° 18' E., 117 feet; N. 20° 47' E., 173 feet; N. 1° 22' E., 431 feet; N. 7° 33' E., 463 feet; N. 7° 56' W., 222 feet; N. 24° 33' E., 507 feet; N. 3° 14' W., 307 feet; N. 7° 13' W., 499 feet; N. 46° 51' W., 79 feet; N. 13° 58' W., 873 feet; N. 6° 28' W., 402 feet; N. 35° 31' E., 295 feet; N. 19° 17' E., 278 feet; N. 10° 13' E., 334 feet; N. 8° 26' E., 247 feet; N. 9° 47' W., 132 feet; N. 22° 26' E., 359 feet; N. 60° 58' E., 544 feet; N. 66° 19' E., 181 feet; N. 62° 47' E., 183 feet; N. 53° 26' E., 251 feet; N. 41° 19' E., 282 feet; N. 67° 20' E., 211 feet; N. 51° 40' E., 238 feet; N. 32° 39' E., 154 feet; N. 44° 43' E., 256 feet; N. 79° 59' E., 536 feet; N. 82° 07' E., 291 feet; N. 80° 18' E., 380 feet; S. 84° 55' E., 54 feet; N. 48° 39' E., 165 feet; N. 78° 13' E., 5991 feet; N. 25° 27' E., 358 feet; N. 74° 00' E., 768 feet; S. 89° 16' E., 515 feet; S. 40° 02' E., 642 feet; S. 33° 06' E., 236 feet; S. 29° 16' E., 292 feet; S. 27° 09' E., 120 feet; N. 78° 08' E., 390 feet; S. 10° 50' E., 85 feet; S. 21° 31' E., 112 feet; S. 32° 50' E., 144 feet; S. 4° 43' W., 39 feet; S. 39° 23' E., 159 feet; N. 78° 48' E., 61 feet; S. 20° 57' E., 410 feet; S. 77° 00' E., 193 feet; N. 83° 35' E., 61 feet; N. 66° 20' E., 109 feet; N. 50° 35' E., 146 feet; N. 66° 05' E., 168 feet; N. 74° 20' E., 134 feet; N. 67° 35' E., 136 feet; N. 69° 20' E., 165 feet; N. 9° 35' E., 149 feet; N. 15° 20' E., 110 feet; N. 40° 20' E., 114 feet; N. 38° 35' E., 134 feet; N. 24° 35' E., 183 feet; N. 24° 20' E., 118 feet; N. 18° 05' E., 145 feet; N. 3° 50' E., 173 feet; N. 4° 25' W., 145 feet; N. 34° 20' E., 96 feet; N. 20° 05' E., 277 feet; N. 13° 05' E., 139 feet; N. 12° 05' E., 163 feet; N. 76° 25' E., 964 feet; S. 16° 53' W., 270 feet; S. 74° 27' E., 827 feet, crossing a public road at approximately 680 feet, to a point in the center line of Noland Creek, a corner of the lands of the United States Department of Interior (Great Smoky Mountain National Park), and J.B. Barnhardt; thence with J.B. Barnhardt's line S. 78° 00' E., 280 feet to a 34 inch maple tree; thence S. 78° 30' E., 540 feet to the point of beginning. Except therefrom 25 acres, more or less, owned by R.Q. Woody, and designated as Tract No. FR-1025, lying within the boundaries of the land herein described at the confluence of Indian Creek and Noland Creek, the said 25 acres being more particularly described as follows: Beginning at a point in the center line of Noland Creek at the mouth of Indian Creek, corner to the land of Phillip G. Rust; thence with Phillip G. Rust's line and the center line of Noland Creek as it meanders downstream approximately 690 feet to a point;

thence, leaving the creek, N. 59° 00' W., 890 feet, crossing a public road at approximately 160 feet, to a point; thence along the top of a ridge N. 23° 00' W., 510 feet to a point; thence N. 36° 00' W., 429 feet to a point; thence, leaving the ridge, N. 68° 00' E., 380 feet to a point in the center line of a branch; thence with the center line of the branch as it meanders downstream approximately along a bearing and distance of S. 67° 00' E., 577 feet to a point in the center line of Indian Creek; thence with the center line of the creek as it meanders downstream approximately 860 feet to the point of beginning. Also except therefrom 101 acres, more or less, owned by I. K. Stearns, and designated as Tract No. FR-1026, lying within the boundaries of the land herein described, approximately 1/4 miles northeast of the confluence of Indian Creek and Noland Creek, the said 101 acres being more particularly described as follows: Beginning at a point in the center line of Noland Creek, a corner to the land of Phillip G. Rust; thence with Phillip G. Rust's line N. 38° 00' W., 180 feet to a point at the top of a ridge; thence with the top of the ridge as it meanders in a northerly direction approximately along the following bearings and distances: N. 22° 00' W., 440 feet; N. 10° 00' E., 300 feet; N. 34° 00' W., 550 feet; N. 1° 00' W., 460 feet to a pine tree; thence, leaving the ridge, S. 71° 00' E., 660 feet to a point; thence S. 81° 00' E., 240 feet to a 24 inch buckeye tree; thence N. 86° 00' E., 150 feet to a point in the center line of Noland Creek; thence with the center line of the creek as it meanders upstream approximately 200 feet to a point; thence, leaving the creek, N. 84° 00' W., 743 feet to a point; thence N. 7° 00' E., 1450 feet to a point; thence S. 74° 00' W., 310 feet to a point at the top of a ridge; thence with the top of the ridge as it meanders approximately along the following bearings and distances: N. 19° 00' W., 560 feet, N. 14° 00' W., 510 feet to a point; thence, leaving the ridge, S. 89° 00' E., 2020 feet to a point at the top of a ridge; thence with the top of the ridge as it meanders approximately along a bearing and distance of S. 32° 00' W., 560 feet to a 14 inch chestnut tree; thence, leaving the ridge, S. 35° 00' W., 660 feet to a point in the center line of Noland Creek; thence with the center line of the creek as it meanders downstream approximately 740 feet to a point; thence, leaving the creek, S. 53° 00' E., 770 feet crossing a public road at approximately 180 feet, to a point; thence S. 13° 00' E., 570 feet to a point; thence S. 41° 00' E., 116 feet to a 14 inch black oak tree; thence with a line marked by hacked trees S. 83° 00' W., 980 feet, passing a 16 inch black oak tree at 680 feet and crossing a public road at approximately 800 feet to a point in the center line of Noland Creek; thence with the center line of the creek as it meanders downstream approximately 1440 feet to the point of beginning.

The above described tract of land contains 4365 acres, more or less, subject to such rights as may be vested in the county or state to rights of way for public roads, and also subject to outstanding burial rights in and to the Upper Noland Private Cemetery, and also subject to any outstanding mineral rights not owned by the respondents herein.

NOTE: The bearings given in the above description are based on the North Carolina State Coordinate System, Lambert Projection, as established by the U.S. Coast and Geodetic Survey. The central meridian for this coordinate system is located at Longitude 79° 00' W.

Tract FR-1231

A tract of land lying in Forneys Creek Township of Swain County, State of North Carolina, on the right side of the Tuckaseegee River, approximately 2 1/2 miles northeast of the confluence of Indian Creek and Noland Creek, and more particularly described as follows:

Beginning at a point in the center line of Noland Creek, a corner of the lands of Phillip G. Rust, and the United States Department of Interior (Great Smoky Mountains National Park); thence with the Park's boundary line and the center line of the creek as it meanders upstream approximately along the following bearings and distances: N. 48° 16' W., 88 feet, N. 21° 09' E., 601 feet, N. 56° 18' E., 182 feet, N. 56° 00' E., 315 feet, S. 80° 15' E., 305 feet, to a point; thence, leaving the creek, S. 6° 03' W., 1040 feet to a point, a corner of the lands of the United States Department of Interior (Great Smoky Mountains National Park), and Phillip G. Rust; thence with Phillip G. Rust's line N. 78° 30' W., 540 feet to a 34 inch maple tree; thence N. 78° 00' W., 280 feet to the point of beginning, and containing 17 acres, more or less, subject to such rights as may be vested in the county or state to rights of way for public roads.

NOTE: The bearings given in the above description are based on the North Carolina State Coordinate System, Lambert Projection, as established by the U.S. Coast and Geodetic Survey. The central meridian for this coordinate system is located at Longitude 79° 00' W.

and every part thereof, was divested out of each and every respondent in this cause and vested in the United States of America in fee simple, free of all liens, claims, and encumbrances, except as hereinabove shown, is hereby fully and finally confirmed.

4. The Clerk of this Court shall furnish to the petitioner a certified copy of this decree which shall serve as a muniment of title.

DONE this 2 day of January, 1948.

/s/& E.Y. Webb Judge

THE UNITED STATES OF AMERICA )  
 )SS  
WESTERN DISTRICT OF NORTH CAROLINA)

I, O.L. McLurd, Clerk of the District Court of the United States, within and for the District aforesaid do hereby, certify that the foregoing printing and typewriting is a true, full, correct, and complete copy of the original final decree entered in Do. Book 5, page 151, on the 3rd day of January, 1948, on file and remaining of record in my office in the matter of United States ex rel. Tennessee Valley Authority v. Philip G. Rust et al., No. 549.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of the said District Court, at Asheville, North Carolina, this 5 day of January, A.D., 1948.

O.L. McLurd Clerk  
By V.E. Bartlett Deputy Clerk

Court Seal Affixed.