

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

O.K.

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

Petitioner

v.

ROXIE McCLURE
CLARENCE KIRKLAND, a minor
MATILDA KIRKLAND, a minor
ROXIE K. KIRKLAND
JACK KIRKLAND, her husband
ETTA KIRKLAND
ANNIE KIRKLAND CALHOUN
CLIFFORD CALHOUN, her husband
MINNIE KIRKLAND FLEMING
HUBERT D. FLEMING, her husband
JOSEPH H. McCLURE
NOLA McCLURE, his wife
STATE OF NORTH CAROLINA, a sovereign state
THE UNKNOWN HEIRS, DEVISEES, EXECUTORS
ADMINISTRATORS, CREDITORS, AND SUCCESSORS IN
TITLE, of Cordelia McClure Johnson, deceased)

Respondents

No. 634

FILED MAY 21, 1947

CLERK, U.S. DIST. COURT

FINAL DECREE

This cause came on to be finally heard upon the petition for condemnation; declaration of taking; answer of Etta Kirkland; answer of Clarence Kirkland and Matilda Kirkland, minors, by their duly authorized guardian ad litem; decree pro confesso against all other respondents; report of the Special Master; award of the Commissioners; 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 case title to the undivided 96/504 interest in the property herein condemned was held as follows:

Roxie McClure held the fee simple title to an undivided 44/504 interest and was also entitled to dower in the remaining undivided 52/504 interest; Clarence Kirkland and Matilda Kirkland, minors, each held an undivided 14/504 interest; Roxie K. Kirkland, Etta Kirkland, Annie Kirkland Calhoun, and Minnie Kirkland Fleming each held an undivided 3/504 interest; Joseph H. McClure held an undivided 12/504 interest; all of these interests composing the undivided 52/504 interest were subject to the dower interest of Roxie McClure as hereinabove shown.

Nola McClure, wife of Joseph H. McClure, had an inchoate right of dower in and to the interest of her husband in the said property.

All of the interests in the undivided 96/504 interest in the said property were subject to the lien of the State of North Carolina for inheritance tax due on the estate of William Jasper McClure, deceased, in the amount of \$65.52, with interest thereon at six (6%) per cent per annum from April 20, 1940 until paid. These taxes have since been paid and the lien discharged by order of distribution entered pursuant to the recommendations of the Special Master.

There was an outstanding undivided 1/2 interest in the minerals in both tracts which was not sought to be condemned.

No other respondents had any right, title, claim, or interest in the property herein condemned.

All taxes levied and assessed against said land by Swain County have been paid and the liens discharged.

IV

The petitioner, upon filing the declaration of taking in this cause, deposited the sum of Eight Hundred Seven Dollars and Sixty-Seven Cents (\$807.67). Of this sum Six Hundred Ninety-four Dollars and one cent (\$694.01) was

0592 its estimate of the value of the property herein condemned, and One Hundred Thirteen Dollars and Sixty six Cents (\$113.66) was a sum that had been withheld for the payment of State inheritance taxes. The Commissioners awarded the sum of Six Hundred Ninety-four Dollars and One cent (\$694.01 as the true value of and as just compensation for said property. All of the fund heretofore deposited in this cause 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 report of the Commissioners, to which no exceptions were filed, awarding the sum of Six Hundred Ninety-four Dollars and One Cent (\$694.01) as the true value of and as just compensation for ~~the~~ 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 May 21, 1945, 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-1062

A tract of land lying in Forneys Creek Township of Swain County, State of North Carolina, on the right side of the Little Tennessee River, at the confluence of the Little Laurel Creek and the Indian Camp Creek tributaries of Chambers Creek, and more particularly described as follows:

Beginning at a 12 inch white oak tree at the top of Bear Pen Ridge, a corner of the lands of Albert Henely, Harve Dills, and the Bryson City Bank, and the most westerly point of the tract herein described; thence with the Bank's line and with a hacked line for the first 1990 feet N. 54° 00' E., 3510 feet, passing a 36 inch chestnut tree at 1990 feet and crossing Little Laurel Creek at approximately 2030 feet, to a point; thence S. 37° 00' E., 330 feet to a point; thence N. 43° 30' E., 1000 feet, crossing Indian Camp Creek at approximately 980 feet, to a hickory stump; thence S. 44° 00' E., 1540 feet to a point at the top of Trail Ridge, a corner of the lands of the Bryson City Bank, and the D.G. Fisher Heirs; thence with the D.G. Fisher "eirs" line and the top of the ridge as it meanders in a southerly direction approximately 1780 feet to a point thence, leaving the ridge, S. 43° 30' W., 870 feet to a point in the center line of Little Laurel Creek at the mouth of an unnamed branch; thence with the center line of the branch as it meanders upstream approximately along the following bearings and distances: S. 86° 00' W., 1120 feet, S. 56° 00' W., 440 feet, S. 13° 30' E., 650 feet to a point; thence, leaving the branch, S. 68° 00' W., 240 feet to a point at the top of Bear Pen Ridge, a corner of the lands of the D.G. Fisher Heirs, and the W.M. Kirkland Heirs; thence with the W.M. Kirkland Heirs', and Albert Henely's line and the top of the ridge as it meanders in a northerly direction approximately 3340 feet, passing a stone at approximately 1020 feet, to the point of beginning, and containing 259 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.

The above tract is subject to an undivided one-half (1/2) interest in the minerals outstanding in third parties under reservations contained in deeds recorded in said Register's office in Deed Book 4, page 539, Deed Book 19, page 451, Deed Book 19, page 455, and Deed Book 31, page 522.

Tract FR-1296

A tract of land lying in Forneys Creek Township of Swain County, State of North Carolina, on the right side of the little Tennessee River, approximately 1/4 mile southwest of the confluence of the Little Laurel Creek and Indian Camp Creek tributaries of Chambers Creek, and more particularly described as follows:

Beginning at a point in the center of a branch, a corner of the lands of the W.J. McClure Heirs, and the D.G. Fisher Heirs, and the most easterly point of the tract herein described, the said point being S. 76° W., 590 feet from the mouth of the branch at Little Laurel Creek; thence with the line claimed by the W.J. McClure Heirs at their boundary to S. 43° W., 1090 feet to a point in the center of the branch, a corner of the lands of the D.G. Fisher Heirs, and the W.J. McClure Heirs; thence with the line claimed by the D.G. Fisher Heirs as their boundary and with the center line of the branch as it meanders downstream approximately along the following bearings and distances:

N. 13° 30' W., 650 feet, N. 56° E., 440 feet, S. 81° E., 520 feet to the point of beginning, and containing 10 acres, more or less.

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.

The above tract is subject to an undivided one-half (1/2) interest in the minerals outstanding in third parties under reservation contained in Deed recorded in said Register's office in Deed Book 19, page 455.

and every part thereof, was divested out of each and every respondent in this cause and vested 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.

Donethis 21 day of May, 1947.

/s/ E. Y. Webb
Judge

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

I, J.Y. Jordan, 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 Docket Book 6, page 139, on the 21 day of May, 1947, on file and remaining of record in my office in the matter of the United States ex rel. Tennessee Valley Authority v. Roxie McClure, et al, No. 634.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of the said District Court at Asheville,
North Carolina, this 21st day of May, A.D., 1947.

J.Y. Jordan Clerk
W.A. Lytle Deputy Clerk

U.S. Dist. Court Seal Affixed

STATE OF NORTH CAROLINA,
SWAIN COUNTY

The foregoing certificate of J.Y. Jordan, By W.A. Lytle, Deputy Clerk of the District Court
of the United States for the Western District of North Carolina, duly authenticated by the official seal
of said court thereto affixed, is adjudged to be correct, in due form, and according to law.

Let the instrument, and the certificates, be registered, this 29th day of May, 1947.

H.J. Trustt
Clerk Superior Court
Swain County, North Carolina

Filed for Registration at 10:00 o'clock A.M. May 29, 1947, and registered in the office of the Register of Deeds for Swain County, North Carolina, in Book 71, page 591, June 11, 1947.

Register of Deeds