

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISIONUNITED STATES OF AMERICA
upon the relation and
for the use of the
TENNESSEE VALLEY AUTHORITY

Petitioner

v.

No 635

JAMES KIRKLAND
 DORA KIRKLAND, his wife
 WILL KIRKLAND
 CORA J. KIRKLAND, his wife
 ELLA CRISP
 ALLEN CRISP, her husband
 JOHN KIRKLAND
 MOSSIE KIRKLAND, his wife
 HATTIE GUNTER
 LANDEN KIRKLAND
 WILLIE M. KIRKLAND, his wife
 CLYDE KIRKLAND
 VIRGIE LEE KIRKLAND, his wife
 SAMANTHA POLLOCK
 FRANK POLLOCK, her husband
 BERTHA BROWN SILVER
 ROSCOE SILVER, her husband
 CLYDE JOHNSON
 CORA LEE JOHNSON, his wife
 BIRDELL HERRON
 ETHEL MOOSE
 THOMAS MOOSE, her husband
 PAULINE SUTTON, a minor
 RUSSELL SUTTON, her husband
 PAUL JOHNSON, a minor
 MARY E. MOODY
 EDGAR H. MOODY, her husband
 R.E.L. MONTEITH, administrator of the
 estate of W.M. Kirkland, deceased
 SCOTT ANTHONY
 UNKNOWN CREDITORS OF THE ESTATE OF W.M.
 KIRKLAND, deceased.
 UNKNOWN PARTIES IN INTEREST

Respondents

FINAL DECREE

This cause came on to be finally heard upon the petition for condemnation; declaration of taking; answer of James Kirkland, Dora Kirkland, his wife, Will Kirkland and Cora J. Kirkland, his wife; answer of Mary E. Moody and Edgar H. Moody, her husband; answer of Pauline Sutton and Paul Johnson, minors, by their duly appointed guardian ad litem; answer of Clyde Johnson, unknown creditors of the estate of W.M. Kirkland, deceased, and unknown parties in interest serving in the armed forces of the United States by their duly authorized attorney; decree pro confesso against Ella Crisp, Allen Crisp, Bertha Brown Silver, Cora Lee Johnson, Birdell Herron, Russell Sutton, Scott Anthony, Ethel Moose, Thomas Moose, John Kirkland, Mossie Kirkland, Hattie Gunter, Landen Kirkland, Willie M. Kirkland, Clyde Kirkland, Virgie Lee Kirkland, Samantha Pollock, Frank Pollock, unknown creditors of the estate of W.M. Kirkland, deceased, and unknown parties in interest who were not serving in the armed forces of the United States; 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 cause title to the property herein condemned was held as follows:

Mary E. Moody was seized and possessed of the fee simple title to twenty acres of Tract FR-1069 and fifty-five acres of Tract FR-1071 subject to tax liens of Swain County in the sum of \$132.27, which sum has now been paid out of

the funds in this cause and the liens discharged.

The heirs at law of W.M. Kirkland, deceased, were seized and possessed of the fee simple title to the remaining thirteen acres of tract FR-1069 and twenty-five acres of Tract FR-1071, and the entire seventy acres of tract FR-1374. These heirs are Samantha Kirkland Pollock, Landen Kirkland, and Clyde Kirkland who each owned an undivided 1/21 interest John Kirkland, W.M. Kirkland, Hattie Kirkland (formerly Hattie Gunter), Ella Allen Crisp and James Kirkland who each owned an undivided 1/7 interest; Bertha Brown (Silver) Mathis, Clyde Johnson, Birdell Herron Watkins, Ethel Moose, Pauline Sutton and Paul (Hall) Johnson who each owned an undivided 1/42 interest.

Willie M. Kirkland, wife of Landen Kirkland, Virgie Lee Kirkland, wife of Clyde Kirkland, Mossie Kirkland, wife of John Kirkland, Cora J. Kirkland, wife of W.M. Kirkland, Cora Lee Johnson, wife of Clyde Johnson, and Dora Kirkland, wife of James Kirkland, had inchoate rights of dower in and to the interest in said property of their respective husbands.

Sherman Johnson, husband of Essie Kirkland Johnson, deceased, had a courtesy estate in the interests in said property of Bertha Brown (Silver) Mathis, Clyde Johnson, Birdell Herron Watkins, Ethel Moose, Pauline Sutton and Paul (Hall) Johnson.

There were outstanding mineral rights in tract FR-1071 held by third parties not respondents to this cause, and the aforementioned holders of the title to FR-1071 held their titles subject to these outstanding mineral rights which were not condemned.

The interests of the heirs at law of W.M. Kirkland, deceased, were also subject to tax liens of Swain County in the sum of \$137.34, which sum now been paid out of the funds deposited in this cause and the liens discharged.

IV

The petitioner, upon filing the declaration of taking in this cause, deposited the sum of Two Thousand Six Hundred thirty-one Dollars and Ninety Cents (\$2,631.90) as its estimate of the value of the property herein condemned. The Commissioners awarded the sum of Two Thousand six Hundred Thirty-one Dollars and Ninety Cents (\$2,631.90) as the true value of and as just compensation for said property, all of which 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 report of the Commissioners, to which no exceptions were filed, awarding the sum of One Thousand Two Hundred Ten Dollars and Ten Cents (\$1,210.10) for tract FR-1069, Seven Hundred thirty-eight Dollars and Thirty Cents (\$738.30) for tract FR-1071, and Six Hundred Eighty-three Dollars and Fifty Cents (\$683.50) for tract FR-1374, as the true value of and just compensation for the properties herein condemned, be and the same is 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-1069

A tract of land lying in Survey's Creek Township, of Swain County, State of North Carolina, on the right side of the Little Tennessee River, approximately 3 miles northwest of Bushnell, and more particularly described as follows:

Beginning at a point in the center line of a branch witnessed by a poplar stump, a corner of the lands of H.S. Anthony, and J.E. Brooks, and the most westerly point of the tract herein described; thence with J.E. Brooks' line N. 86° 30' E., 265 feet to an oak stump at the top of Perry Ridge; thence with the top of the ridge as it meanders in a northerly direction approximately 700 feet to a pine stump at the top of Piney Ridge, a corner of the lands of J.E. Brooks, and Sallie Sutton; thence with Sallie Sutton's line and the top of Piney Ridge as it meanders in a general easterly direction approximately 990 feet to a point; thence, leaving the ridge, N. 49° 00' E., 110 feet, crossing David Welch Branch at approximately 80 feet, to a fallen apple tree; thence N. 52° 00' E., 100 feet to a point at the top of Jack Cove Ridge; thence with the top of the ridge as it meanders in a northeasterly direction approximately 30 feet to a point in the center of a road, a corner of the lands of Sallie Sutton, and the land in dispute between James Kirkland et al and Mary E. Moody; thence with a line of the land in dispute between James Kirkland et al and Mary E. Moody and with the center line of the road as it meanders approximately along the following bearings and distances: S. 27° W., 175 feet, S. 27° E., 460 feet, S. 24° W., 235 feet, S. 4° E., 305 feet, S. 53° W., 100 feet, S. 9° W., 115 feet to a point in the center of a drain, a corner of the land in dispute between James Kirkland et al and Mary E. Moody, and the lands of Harve Dills et ux; thence with Harve Dills' line and the center line of the drain as it meanders downstream approximately along a bearing and distance of S. 83° W., 230 feet to a point in the center of David Welch Branch witnessed by a 2 inch dogwood tree; thence with the center line of the branch as it meanders downstream approximately 300 feet to a point, a corner of the lands of Harve Dills et ux, and Burlin Dills; thence leaving the branch and with Burlin Dills' line S. 70° 30' W., 265 feet to a point at the end of a fence; thence with the fence line S. 39° W., 115 feet to a fence angle; thence S. 40° W., 170 feet, leaving the fence at approximately 130 feet, to a point in the center of a branch, a corner of the lands of Burlin Dills, and H.S. Anthony; thence with H.S. Anthony's line and the center line of the branch as it meanders upstream approximately along a bearing and distance of N. 26° W., 1010 feet to the point of beginning, and containing 33 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 Project, 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-1071

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 3 1/4 miles northwest of Bushnell, and more particularly described as follows:

Beginning at a 30 inch white oak tree at the top of a ridge, a corner of the lands of the Andy Pilkerton Heirs, Harve Dills, and Albert Henely, and the most northwesterly point of the tract herein described; thence with Albert Henely's line S. 84° 00' E., 1590 feet, crossing David Welch Branch at approximately 1490 feet, to a 16 inch hickory tree; thence N. 45° 30' E., 1475 feet to a stone at the top of Bear Pen Ridge, a corner of the lands of Albert Henely, and the W. J. McClure Heirs; thence with the W.J. McClure Heirs' line and the top of the ridge as it meanders in a southeasterly direction approximately 1020 feet to a point, a corner of the lands of the W.J. McClure Heirs, and the D.G. Fisher Heirs; thence with the D.G. Fisher Heirs' line S. 68° 00' W., 1065 feet to a stake; thence S. 50° 00' E., 810 feet to a point at the top of a ridge; a corner of the lands of the D.G. Fisher Heirs, and Sallie Sutton; thence with Sallie Sutton's line and the top of the ridge as it meanders approximately along the following bearings and distances: S. 58° 00' W., 365 feet, S. 42° 30' W., 250 feet to a point; thence leaving the ridge, S. 33° 00' W., 90 feet to a stake in the center line of the David Welch Branch; thence S. 85° 00' W., 100 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. 71° 30' W., 650 feet, S. 82° 00' W., 540 feet, S. 72° 00' W., 425 feet to a 24 inch white oak tree at the top of Sallie Sutton, and J.E. Brooks; thence leaving the ridge and with J.E. Brooks' line N. 66° 00' W., 1070 feet to a 24 inch chestnut tree at the top of a ridge, a corner of the lands of J.E. Brooks, and the Andy Pilkerton Heirs; thence with the Andy Pilkerton Heirs' line and the top of the ridge as it meanders approximately along the following bearings and distances: N. 23° 00' E., 670 feet, N. 28° 00' W., 210 feet to the point of beginning, and containing 82 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 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-1374

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 2 3/4 miles northwest of Bushnell, and more particularly described as follows:

Beginning at a chestnut stump at the top of a ridge, a corner of the lands of Bryson City Bank, and Harve Dills et ux, and the most southerly point of the tract herein described; thence with Harve Dills' line N. 76° 30' W., 30 feet to a point in the center of a drain; thence with the center line of the drain as it meanders downstream approximately along the following bearings and distances: N. 76° 30' W., 410 feet, N. 72° W., 510 feet, S. 82° W., 610 feet to a point in the center of a road, a corner of the lands of Harve Dills et ux, and James Kirkland; thence with James Kirkland's line and the center line of the road as it meanders approximately along the following bearings and distances: N. 9° E., 115 feet, N. 53° E., 100 feet, N. 4° W., 305 feet, N. 24° E., 235 feet, N. 27° W., 460 feet, N. 27° E., 175 feet to a point at the top of Jack Cove Ridge, a corner of the lands of James Kirkland and Sallie Sutton; thence with Sallie Sutton's line and the top of the ridge as it meanders in a northeasterly direction approximately 1150 feet to a point, a corner of the lands of Sallie Sutton, and the D.G. Fisher Heirs; thence leaving the ridge and with the D.G. Fisher Heirs' line S. 50° E., 1640 feet to a 6 inch locust tree, a corner of the lands of D.G. Fisher Heirs, and the Bryson City Bank; thence with the Bank's line S. 46° E., 120 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: S. 52° W., 745 feet, S. 32° W., 600 feet to the point of beginning, and containing 70 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 19th day of April, 1947.

/s/ E.Y. Webb
Judge

THE 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 138, on the 21 day of April, 1947, on file and remaining of record in my office in the matter of the United States of v. Tennessee Valley Authority v. James Kirkland, et al., No. 635.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of the said District Court at Asheville, North Carolina, this 29 day of April, A.D., 1947.

U.S. Dist. Court Seal Affixed

J.Y. Jordan Clerk

STATE OF NORTH CAROLINA, SWAIN COUNTY

By O.L. McLeod Deputy Clerk

The foregoing certificate of J.Y. Jordan, by O.L. McLeod, 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 16 day of May, 1947.

Annie Mae Truett
Deputy Clerk Superior Court
Swain County, North Carolina

Filed for Registration at 10:02 o'clock A.M., May 16, 1947 and registered in the office of the Register of Deeds for Swain County, North Carolina, in Book 71, page 585, May 24, 1947.

E.J. Ley Register of Deeds