

Tract No. FR-454-F

GRANT OF FLOWAGE EASEMENTS

THIS INDENTURE, made and entered into this 1 day of October, 1942, by and between Harley N. Ballew and wife, Zenia Jones Ballew, of Swain County, North Carolina, hereinafter called the "Grantors," and the UNITED STATES OF AMERICA, hereinafter called the "Grantee";

WITNESSETH:

That for and in consideration of the sum of ONE THOUSAND SEVEN HUNDRED EIGHTY-THREE and 35/100 Dollars (\$1,783.35), cash in hand paid, and other considerations, the receipt whereof is hereby acknowledged, the Grantors have this day bargained and sold, and do hereby grant, bargain, sell, transfer, and convey unto the Grantee, and its assigns, easement rights in and over the land hereinafter described, for the following uses and purposes: (1) Over that portion of the following described land which lies below contour elevation 1715.63, Mean Sea Level (all elevations referred to herein being based upon Mean Sea Level as established by the Southeastern Supplementary Adjustment of 1936, U.S.C. & G.S.), and containing 9.1 acres, more or less; (a) The right to permanently overflow, flood, and/or cover said hereinafter designated land with the flood, slack, or backwater created by the erection and operation of a dam or dams across the Little Tennessee River; (b) The right to enter upon said land, from time to time, and prepare the reservoir area for impoundage of the water, and clear and remove therefrom any timber or other natural growth and any obstructions, accumulations, trash, filth, or any other thing which would in any way interfere with navigation or flood control, or tend to render inaccessible, unsafe, or insanitary either the reservoir created by said dam or dams or the margin thereof; together with the right to prevent the draining or dumping into said reservoir of any refuse, sewage, or other material which might tend to pollute the same; (c) The right to enter upon said land and do such drainage and other work as, in the discretion of the Authority, may be necessary to carry out an adequate program of malaria control, including the maintenance of necessary patrols and the application of larvicides; (d) The right to enter upon said land and do such dredging, excavating, and other channel improvement work as, in the discretion of the Authority, may be necessary, together with the right to erect and maintain beacons or other signal structures as aids to navigation.

(2) Over that portion of the following described land which lies between contour elevation 1715.63 and elevation 1722.63 and containing 0.5 acres, more or less, the right to temporarily overflow the land and store water during flood periods.

The land affected by the easement rights above set forth is located and described as follows:

A tract of land located in Forneys Creek Township of Swain County, State of North Carolina, on the right side of Hazel Creek, approximately 1000 feet northeast of the State Highway No. 288 bridge across Hazel Creek, the said tract being more particularly described as follows:

Beginning at a point in a fence line, a corner of the lands of the J. E. Coburn Heirs, Grady Hall, Ollie Hall & the Hazel Creek Land Company, and Bill Cable et ux, and the most northeasterly point of the tract herein described; thence with Bill Cable's line and a fence line South 7° 00' West, 665 feet to a fence corner; thence South 72° 00' West, 100 feet to a point; thence, leaving the fence line, South 14° 00' East, 210 feet, crossing a road at approximately 140 feet, to a point in the north right of way line of the abandoned Smoky Mountain Railway, a corner of the lands of Bill Gable et ux, and J. G. Stikeleather et al; thence with J. G. Stikeleather's line and the said right of way line as it meanders in a general southwesterly direction approximately 620 feet to a point, a corner of the

lands of J. G. Stikeleather et al, and L. C. Calhoun; thence with L. C. Calhoun's line, leaving the right of way line of the abandoned railway, North 13° 00' West, 410 feet, crossing a road at approximately 40 feet, to a stake, a corner of the lands of L. C. Calhoun, and the J. E. Coburn heirs; thence with the J. E. Coburn Heirs' line North 31° 00' East, 830 feet to a point, thence South 83° 00' East, 360 feet to the point of beginning, and containing a total of 12.0 acres, more or less, of which 9.1 acres, more or less, lie below elevation 1715.63, and 0.5 acre, more or less, lies between elevations 1715.63 and 1722.63, giving a total of 9.6 acres, more or less, lying below elevation 1722.63.

The above described easement rights are acquired subject to such rights as may be vested in the county or state to a road which affects approximately 0.2 acre, and the land affected by the said easement rights is shown on Tennessee Valley Authority Land Map 19MS 421K 504-5, Fontana Reservoir, a copy of which will be filed in the office of the Register of Deeds of Swain County, North Carolina.

It is understood and agreed that 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' West, and the elevations given therein refer to Mean Sea Level Datum and are based on the U. S. Coast and Geodetic Survey's Southeastern Supplementary Adjustment of 1936.

Being a portion of the land described in a deed from A. J. Jones and wife, L. J. Jones to H. N. Ballew and wife, dated April 6, 1926, recorded April 22, 1926, in Deed Book 53, page 212, Swain County Register's Office.

Harley N. Ballew, one of the Grantors herein, is one and the same person as H. N. Ballew, named as one of the Grantees in the deed recorded in Book 53, page 212, Swain County Register's Office.

Zenia Jones Ballew, one of the Grantors herein, is one of the grantees in the deed recorded in Book 53, Page 212, Swain Register's Office.

TO HAVE AND TO HOLD the aforescribed easement rights unto the Grantee and unto its assigns forever.

The Grantors, for themselves, their heirs, executors, administrators, successors, and assigns, do hereby covenant to and with the Grantee that they are lawfully seized and possessed of the above described tract of land; that they have a good and lawful right to sell and convey the above described easement rights therein; that said land is free and clear of all encumbrances; and that they will forever warrant and defend the title thereto against the lawful claims of all persons whomsoever.

In further consideration of the purchase price above stated, and in order that the land affected by the above described easement rights and the remainder of Seller's land adjoining same may be thereby benefited and protected, the Grantors, for themselves, their heirs, personal representatives, successors, and assigns, do hereby covenant and agree that they will not use said adjoining land in any manner which will result in the draining or dumping into the reservoir created by the above mentioned dam or dams of any refuse, sewage, or other material which might tend to pollute the waters of said reservoir; and this covenant shall be a real covenant which shall attach to and run with said adjoining land and which shall be binding upon everyone who may hereafter come into ownership of said land, whether by purchase, devise, or descent.

As a further consideration for the payment of said purchase price, the Grantors for themselves, their heirs, personal representatives, successors, and assigns, do hereby release the United States of America and the County of Swain their successors, assigns, agents, and employees, from any and all liability for damages to the Grantors' remaining land by reason of any resulting loss of access facilities thereto. If, as a result of the highway plans