

Tracts Nos. FR-465
1149
1151
Vol. No. 46-47238

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.

NO. 555

WILLIAM A. FRANKLIN
MARTHA E. FRANKLIN, his wife
MRS. FLORA HICKERSON
HENRY POSEY
PAUL FRANKLIN
IKE WELCH
JOHN BUCHANAN

RESPONDENTS

FILED

JAN 11 1946

CLERK U. S. DIST COURT

FINAL DECREE

This cause came on to be finally heard upon the petition for condemnation; declaration of taking; agreement between petitioner and the respondents William A. Franklin and Martha E. Franklin, his wife; disclaimer of Mrs. Flora Hickerson, Henry Posey, Ike Welch and Paul Franklin; 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 together with all claimants and parties interested therein are within the jurisdiction of this Court, which has the power and authority to enter this judgement.

III

At the time of filing of the declaration of taking in this cause the property herein condemned was owned by William A. Franklin in fee simple by virtue of deeds recorded in Deed Book 38, page 435; Book 35, page 4 and 223; Book 41, page 279; Book 64, pages 63 and 371; Book 65, page 91; and Book 42, pages 301 and 343, in the Register's office of Swain County, North Carolina.

Martha E. Franklin, wife of William A. Franklin had an inchoate right of dower in said property.

All taxes levied and assessed against 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 Nine Thousand Fifty Dollars (\$9,050) as its estimate of the value of the property herein condemned. Petitioner and respondents have since entered into an agreement that the sum of Ten Thousand Five Hundred Thirty-six Dollars and Sixty-two Cents (\$10,536.62), interest being expressly waived, is the true value of and just compensation for said property, Pursuant to this agreement petitioner has deposited in the registry of the Court the additional sum of One Thousand Four Hundred Eighty-six Dollars and Sixty-two Cents (\$1,486.62), making a total deposit of Ten Thousand Five Hundred Thirty-six Dollars and Sixty-two Cents (\$10,536.62); all of which fund is hereinafter ordered disbursed in paragraph 5 hereof.

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 agreement entered into by the parties in this cause be and the same is hereby fully and finally confirmed, and the sum of Ten Thousand Five Hundred Thirty-six Dollars and Sixty-two cents (\$10,536.62) is decreed to be the true value of and just compensation for the property herein condemned.
3. The original petition and declaration of taking filed in this cause be and the same are hereby amended by deleting therefrom the name of John Buchanan as a party-respondent and all references to him in the petition and

declaration hereto fore filed.

4. The divestiture of title as evidenced by the declaration of taking filed on August 26, 1944, by virtue of which all right, title, claim, and interest of every kind, nature and character in and to the following described property.

Tract FR-465

A tract of land lying in Forneys Creek Township of Swain County, State of North Carolina, on the right bank of Hazel Creek, approximately 1-1/8 miles north of the State Highway No. 288 bridge across Hazel Creek, and more particularly described as follows:

Beginning at a point in the center line of Hazel Creek, a corner of the lands of the J. E. Coburn Heirs, and Milley Vickry; thence with Milley Vickry's line N. 26°00' W., 70 feet, passing a white oak tree at 60 feet, to a point in the center line of the Possum Hollow Road; thence with the center line of the road as it meanders in a general northwesterly direction approximately 560 feet to a point; thence, leaving the road, S. 40°00' W., 76 feet, passing stakes at 8 feet and 71 feet, to a point in the center line of Proctor's Mill Creek; thence with the center line of Proctor's Mill Creek as it meanders downstream approximately 220 feet to a point in the prolongation of a fence line, a corner of the lands of Milley Vickry, and the Bland W. Coburn Heirs; thence with the Bland W. Coburn Heirs' line and the fence line S. 4°00' E., 140 feet to a fence angle; thence S. 30°00' W., 245 feet to a point; thence, leaving the fence line, N. 83°00' W., 240 feet to a point; thence N. 62°00' W., 405 feet to a chestnut stump at the top of a ridge, a corner of the lands of the Bland W. Coburn Heirs, and the S. Farley's line N. 78°00' W., 360 feet to a 10 inch chestnut tree; thence N. 38°00' W. E., 730 feet to a point in the center line of the Possum Hollow Road; thence with J. S. Farley's, and J. R. Bradshaw's line and the center line of the road as it meanders in a northwesterly direction approximately 550 feet to a point in the center line of Hickory Bottom Branch; thence with J. R. Bradshaw's line and the center line of the branch as it meanders upstream approximately 540 feet to a point witnessed by an 8 inch holly tree, a corner of the lands of J. R. Bradshaw and L. B. Calhoun; thence, leaving the branch, with L. B. Calhoun's and John Bivins et ux's line S. 80°00' E., 480 feet to a 24 inch beech tree, a corner of the lands of John Bivins et ux and the J. E. Coburn Heirs; thence with the J. E. Coburn Heirs' line S. 6°00' W., 585 feet to a point; thence S. 83°00' E., 685 feet to a point at the top of a ridge, a corner of the lands of the J. E. Coburn Heirs, and B. L. McMahan; thence with B. L. McMahan's, and the J. E. Coburn Heirs' line S. 83°00' E., 820 feet to a point in the center line of an old road, a corner of the lands of the J. E. Coburn Heirs, and J. G. Stikeleather et al; thence with J. G. Stikeleather's line and the center line of the old road as it meanders approximately along a bearing and distance of S. 37°00' W., 470 feet, to a stake; thence, leaving the old road, S. 20°00' E., 225 feet, crossing the Possum Hollow Road at approximately 30 feet and passing a white oak tree at 200 feet to a point in the center line of Hazel Creek a corner of the lands of J. G. Stikeleather et al, and the J. E. Coburn Heirs; thence with J. E. Coburn Heirs' line and the center line of the creek as it meanders downstream approximately 600 feet to the point of beginning. Except therefrom 0.4 acre, more or less, for the Farley Cemetery, lying within the boundaries of the land herein described approximately 170 feet south of the point at the top of a ridge which is a common corner of the lands of the J. E. Coburn Heirs, B. L. McMahan, and W. A. Franklin, the said cemetery being more particularly described as follows: Beginning at a fence corner, a corner to the land of W. A. Franklin; thence with W. A. Franklin's line and a fence line S. 14°00' W., 220 feet to a fence corner; thence due west 90 feet to a fence corner; thence N. 16°00' E., 230 feet to a fence corner; thence S. 82°00' E., 75 feet to the point of beginning.

The above described tract of land contains 36.7 acres, more or less, subject to such rights as may be vested in the county or state to a road which affects approximately 0.5 acre, and to any other rights of way for public roads traversing the described land.

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-114 9

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 mile east of the confluence of Pinnacle and Eagle Creeks, and more particularly described as follows:

Beginning at a 14 inch black oak tree at the top of Pinnacle Ridge, a corner of the lands of Jack Welch, and the J. E. Coburn Heirs, and the most easterly point of the tract herein described; thence with the J. E. Coburn Heirs' line S. 55°00' W., 1130 feet to a stake at the top of Pinnacle Ridge, a corner of the lands of the J. E. Coburn Heirs, and the North Carolina Exploration Company; thence with the Company's line S. 79°16' W., 2552 feet to a point, a corner of the lands of the North Carolina Exploration Company, and the J. E. Coburn Heirs; thence with the J. E. Coburn Heirs' line S. 79°30' W., 650 feet to a point; thence N. 10°00' W., 1360 feet, crossing Soapstone Branch at approximately 750 feet to a point, a corner of the lands of the J. E. Coburn Heirs, and the North Carolina Exploration Company; thence with the Company's line N. 78°58' E., 3178 feet to a dead 20 inch chestnut tree, a corner of the lands of the North Carolina Exploration Company, and Jack Welch; thence with Jack Welch's line N. 66°00' E., 740 feet to a point; thence S. 28°00' E., 1100 feet to the point of beginning, and containing 119 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-1151

A tract of land lying in Forneys Creek Township of Swain County, State of North Carolina, on the right side of Hazel Creek, approximately 1 mile northwest of its confluence with Proctor's Mill Creek, and more particularly described as follows:

Beginning at a point in the center line of Shehan Branch witnessed by a 3 inch spruce tree, a corner of the lands of the J. E. Coburn Heirs, and L. N. Hickerson, and the most westerly point of the tract herein described; thence with L. N. Hickerson's line N. 49°00' E., 650 feet to an oak stump at the top of a ridge; thence with the top of the ridge as it meanders approximately along a bearing and distance of N. 14°00' E., 1300 feet to a point at the top of Potato Patch Ridge, a corner of the lands of L. N. Hickerson, the J. E. Coburn Heirs, and the J. R. Cogdill Heirs; thence with the J. R. Cogdill Heirs' line and the top of the ridge as it meanders in a southwesterly direction approximately 1600 feet to a point, a corner of the lands of the J. R. Cogdill Heirs, and the J. E. Coburn Heirs; thence leaving the ridge and with the J. E. Coburn Heirs' line S. 77°00' W., 740 feet to a pine stump at the top of a ridge; thence with the top of the ridge as it meanders approximately along a bearing and distance of S. 14°00' W., 640 feet to a point on the north edge of a public road; thence, leaving the ridge, S. 8°00' E., 90 feet to a point in the center line of Shehan Branch; thence with the center line of the branch as it meanders upstream approximately 1200 feet to the point of beginning, and containing 36 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.

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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.

5. The Clerk of this Court is directed to issue a check in the sum of Ten Thousand Five Hundred Thirty-six Dollars and Sixty-two Cents (\$10,536.62) payable to William A. Franklin and Martha E. Franklin and mail the same to William A. Franklin, Andrews, North Carolina.

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

Done this 10 day of January, 1946

/s/ E. Y. Webb

JUDGE

Filed for Registration at 1:10 O'clock P. M. Feb. 14 1946 and registered in the Office of the Register of Deeds for Swain County, North Carolina, in Book 69, page 589 Feb. 16, 1946.

J. R. Welch
DEPUTY REGISTER OF DEEDS

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

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 Minute Book 11, page 313 on the 11 day of January, 1946, on file and remaining of record in my office in the matter of United States ex rel. Tennessee Valley Authority v. William A. Franklin, et al, Civ No 555.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of the said District Court, at Asheville, North Carolina, this 28 day of Jan. A. D., 1946.

J. Y. Jordan
STATE OF NORTH CAROLINA
COUNTY OF SWAIN

The foregoing certificate of J. Y. Jordan, Clerk, 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 14 day of February, 1946.

Annie Mae Truett
Deputy Clerk Superior Court
Swain County, N. C.
