

TVA 2586 LA 6-42
Hazel Creek

Tract No. Fr-479-F

GRANT OF FLOWAGE EASEMENTS

THIS INDENTURE, made and entered into this 1st day of October, 1942, by and between John Freeman and wife, Caroline Freeman, and Sam Jenkins and Robert Freeman, 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 THIRTY-ONE and 05/100 Dollars (\$1, 031.05), cash in hand paid, 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 5.8 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 1.1 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:

The land affected by the above described easement rights is that portion of the following described tract of land which lies below elevation 1722.63 MSL, and is located in Forneys Creek Township of Swain County, State of North Carolina, on the right side of Hazel Creek, approximately 5/8 miles west of the State Highway No. 288 bridge across Hazel Creek, the said tract being more particularly described as follows:

Beginning at a 12 inch locust snag, a corner to the land of the J. E. Coburn Heirs, and the most westerly point of the tract herein described; thence with the J. E. Coburn Heirs' line N. 50° 00' E., 1485 feet, passing a 24 inch ash tree at 612 feet, to a point; thence S. 59° 30' E., 1485 feet to a point; thence S. 50° 00' W., 1485 feet to a point; thence N. 59° 30' W., 1485 feet to the point of beginning, and containing a total of 48.9 acres, more or less, of which 5.8 acres, more or less, lie below elevation 1715.63, and 1.1 acres, more or less, lie between elevations 1715.63 and 1722.63, giving a total of 6.9 acres, more or

less, lying below elevation 1722.63 subject to such rights as may be vested in the county or state to rights of way for public roads. The above described tract of land is shown on Tennessee Valley Authority Land Map 19MS 421 K 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' W., 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.

The consideration hereinbefore set forth is understood to be the full value of the easement rights hereinabove described and the rights granted by the terms of the contract between the parties hereto, dated the 20th day of July, 1942. It is agreed that \$10 thereof is the share of Sam Jenkins, tenant, and \$100 thereof is the share of Robert Freeman, tenant. The said tenants join in the execution hereof for the purpose of subordinating any rights by virtue of their rental agreements to all of the provisions of the contract above mentioned.

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 abovescribed 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 payment 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. Of, as a result of the highway plans ultimately adopted by the Grantee, the Grantors' remaining land should be furnished with access, then in consideration of the furnishing of such access, the Grantors shall grant, execute, and deliver, without the payment of additional money consideration, a conveyance of a right of way easement not exceeding 100 feet in width, sufficient for use in the construction of said access road.

The Grantors understand and hereby agree that all buildings, structures, or other improvements, tents and house trailers, located on that portion of the above described land lying below 1715.63 elevation, Mean Sea Level, either constitute potential hazards to navigation or otherwise interfere with the program for the preparation of the reservoir for

the above mentioned dam or dams, and must be ultimately removed. This conveyance is made, however, upon the condition that the Grantors may retain said buildings, structures, improvements, tents, and house trailers on said land until December 1, 1943, provided that: (1) No buildings, structures, or other improvements, tents, or house trailers on the property shall be used for human habitation unless sanitary facilities, determined to be adequate by the Tennessee Valley Authority (the corporate creature and agent of the Grantee, which is hereinafter referred to as "Authority"), are provided in connection therewith. If the Authority determines that the sanitary facilities are not adequate, it may require the vacation of any and/or all buildings, structures, or other improvements, tents and house trailers, and require their removal or remove them if after 10 days' notice the owner has failed to correct the situation by installation of necessary sanitary facilities specified in the Authority's notice. (2) If, in the opinion of the Authority's sanitary engineers, the water supply is inadequate for the purpose for which the property is being used, or if they determine that it is contaminated, the owner, on 10 days' notice, must provide a new and adequate supply or upon failure to do so, the Authority may require the vacation of any and/or all buildings, structures, or other improvements, tents, and house trailers, and require their removal or remove them. (3) No buildings, structures, or other improvements, tents or house trailers shall be used for any purpose or to carry on any business which might tend to lower the morals of the community or be incompatible with the development of the area through the expenditures of public funds, which restriction in the use if the property shall include the sale of wine, beer, and other beverages of alcoholic content. (4) No additional improvements to be used for human habitation shall be placed on the property unless the Authority approves of the sanitary facilities to be provided in connection therewith. (5) All buildings, fences, structures, or other improvements, tents and house trailers, may be salvaged by the Seller provided he removes the same from the land prior to December, 31, 1943.

Wherever the context hereof requires, the plural number, as used herein, shall be read as singular, and the masculine gender as feminine or as neuter.

IN WITNESS WHEREOF the said John Freeman and wife, Caroline Freeman, and Sam Jenkins and Robert Freeman, grantors, have hereunto set their hands and seals, this the day, month and year first above written.

(Documentary Stamps \$1.65 Cancelled)

Witness to mark of John Freeman:

Joseph L. Auten, Bryson City, N. C.

Ike Freeman, Gastonia, N. C.

Witness to mark of Sam Jenkins:

W. E. Winston, Bryson City, No C.

James Denman, Bryson City, N. C.

his
John x Freeman (SEAL)
mark John Freeman

Caroline Freeman (SEAL)
Caroline Freeman

his
Sam x Jenkins (SEAL)
mark Sam Jenkins

Robert Freeman (SEAL)
Robert Freeman

NORTH CAROLINA ACKNOWLEDGMENTS

STATE OF NORTH CAROLINA

SWAIN COUNTY

I, James Denman, a Notary Public in and for the State and County aforesaid, do hereby certify that Sam Jenkins and Robert Freeman, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 12 day of October, A.D., 1942.

(Notarial Seal)

My commission expires: Oct. 6, 1943.

James Denman
Notary Public

STATE OF NORTH CAROLINA

GRAHAM COUNTY

I, Joseph L. Auten, a Notary Public for said County and State, do hereby certify that John Freeman and Caroline Freeman his wife, personally appeared before me this day and acknowledged the due execution of the foregoing instrument; and the said Caroline Freeman, wife of John Freeman, being by me privately examined, separate and apart from her said husband, touching her voluntary execution of the same, does state that she signed the same freely and voluntarily, without fear or compulsion of her said husband or any other person, and that she does still voluntarily assent thereto.

WITNESS my hand and official seal this 1st day of October, A.D., 1942.
(Notarial Seal)

My commission expires; 2/6/44.

Joseph L. Auten
Notary Public

STATE OF NORTH CAROLINA

SWAIN COUNTY

The foregoing certificates of James Denman, a Notary Public of Clay County and Joseph Auten, a Notary Public of Graham County, attested by their official seal are adjudged to be correct. Let the instruments, and the certificates, be registered.

WITNESS my hand this 12 day of October, A.D., 1942.

Frank Hyatt
Clerk Superior Court

Filed for registration at 11:35 o'clock A. M. Oct. 12, 1942 and registered in the office of the Register of Deeds for Swain County, North Carolina, in Book 66, page 236, October 12, 1942.

Register of Deeds