

ALABAMA POWER COMPANY

v.

M. C. LOVELADY, MABLE LOVELADY,
FIRST NATIONAL BANK OF COLUMBIANA
(MORTGAGEE), B. F. HATCHETT,
DOROTHY S. HATCHETT, HOMER J.
WALTON, ZERA WALTON, L. T. THORNTON,
JR., KATHERINE V. THORNTON, L. T.
THORNTON, SR., BESSIE P. THORNTON
AND OWNERS UNKNOWN

IN THE COURT OF PROBATE OF

SHELBY COUNTY, ALABAMA

FINAL ORDER OF CONDEMNATION

This cause coming on to be heard on this day for a decree confirming the report of the commissioners heretofore appointed in this cause, and for an order of condemnation in pursuance thereof as to the lands and waters, and all rights, interests and easements in such lands and waters, described in the application filed herein and more particularly in Tract Nos. 426, 470, 130 and 132 of Article Fourth of the application, as amended, heretofore filed in this cause.

And it appearing to the Court that on, to wit, the 1st day of July, 1966, this Court heard the allegations of said application as to the parties and lands and waters named and described in Article Fourth of said application, as amended, and all legal evidence offered by the parties, touching the same, and did on, to wit, the 1st day of July, 1966, make and enter an order granting said application, as amended, for the condemnation of the lands and waters, and all rights, interests and easements in such lands and waters therein described; and it also in and by said order and decree did appoint Milford Lee, A. M. Muncy and M. L. Orr, Sr., three citizens of said County of Shelby, in which county the lands sought to be condemned are situated, possessing the qualifications of jurors, and who are disinterested, to assess the damages and compensation to which the owners of the lands and waters described in Tract Nos. 426, 470, 130 and 132 of said Article Fourth of said application, as amended, are entitled;

And it further appearing to the Court that notice of the appointment of said three persons as commissioners was issued to said persons as required by law and in strict accordance with the former order of this Court made and entered in this cause on the 1st day of July, 1966;

And it further appearing to the Court that said commissioners, before entering upon the discharge of their duties in the premises, were sworn as jurors are sworn, and that they did thereafter receive all legal evidence offered by the parties touching the amount of damages the owners of, or the owners of an interest in, said lands and waters will sustain and the amount of compensation they are entitled to receive;

And it further appearing to the Court that applicant has, with leave of Court first had and obtained, amended said application by deleting therefrom Tract No. 495 and by striking as parties defendant the owners listed therefor, Chester Templin and Iva Jean Templin;

And it further appearing to the Court that applicant has, with leave of Court first had and obtained, amended said application by deleting therefrom Tract No. 105 and by striking as parties defendant the owners listed therefor, Roy M. Leeth and Mildred H. Leeth;

It is, therefore, ordered, adjudged and decreed by the Court that said amendments be and the same are hereby allowed;

And it further appearing to the Court, that said commissioners did, on, to wit, the 14th day of July, 1966, make their report in writing to this

Court, stating the amount of damages and compensation ascertained and assessed by them for the owners of, or the owners of an interest in, the lands and waters described in Article Fourth of said application, as amended, as follows:

To M. C. Lovelady, Mable Lovelady, First National Bank of Columbiana (Mortgagee), and Persons Unknown (the owners of, or the owners of an interest in, the lands described in Tract No. 426) \$800.00;

To B. F. Hatchett, Dorothy S. Hatchett, Homer J. Walton, Zera Walton and Persons Unknown (the owners of, or the owners of an interest in, the lands described in Tract No. 470) \$250.00;

To L. T. Thornton, Jr., Katherine V. Thornton, and Persons Unknown (the owners of, or the owners of an interest in, the lands described in Tract No. 130) \$350.00;

To L. T. Thornton, Sr., Bessie P. Thornton and Persons Unknown (the owners of, or the owners of an interest in, the lands described in Tract No. 132) \$350.00;

And it further appearing to the Court that said commissioners did also file a certificate along with their award that none of them had ever been consulted, advised with or approached by any person in reference to the value of the lands and waters or the proceedings to condemn the same prior to the assessment of damages and that they knew nothing of the same prior to their appointment;

It is, therefore, ordered, adjudged and decreed by the Court that the report of said commissioners be and the same is hereby ordered to be recorded, together with said application and all the orders and decrees made in this cause and the pleadings filed therein.

And it further appearing to the Court that the damages and compensation so ascertained and assessed by said Commissioners for the said defendants, the owners of, or the owners of an interest in, the lands and waters described in Tract Nos. 426, 470, 130 and 132 of Article Fourth of said application, as amended, have been deposited in money in this Court by the applicant, Alabama Power Company;

And it further appearing to the satisfaction of the Court that all things necessary and required by Title 19, Chapter I, of the Code of Alabama 1940 have been done and performed by the applicant, Alabama Power Company.

It is further ordered, adjudged and decreed by the Court that the lands and waters, and all rights, interests and easements in such lands and waters described in the application, as amended, and more particularly in said Article Fourth of said application, as amended, and the rights and interests therein described, be condemned, granted and awarded to said applicant, Alabama Power Company, with the rights and for the uses and purposes set forth in said application, as amended, and that all rights, title and interest prayed for in said application, as amended, which are now condemned, granted and awarded to the applicant, Alabama Power Company, in and by this decree, be and the same are hereby divested out of the said defendants, the owners, or the owners of an interest in, the lands and waters described in Tract Nos. 426, 470, 130 and 132 of Article Fourth of said application, as amended, and vested in the applicant, Alabama Power Company;

And it is further ordered, adjudged and decreed by the Court that Alabama Power Company be and it is hereby vested with title, subject to utility easements and easements for public roads and streets, (a) to the portions of the lands and waters constituting that part of Tracts Numbered 130 and 132 of Article Fourth lying above that certain datum plane of 382.2 feet, which will

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be covered by the water of the Coosa River and its tributaries when the level of such water is raised and backed to that certain datum plane of 397 feet and (b) to the portions of the lands and waters constituting any and all parts of Tracts Numbered 426 and 470 of Article Fourth which will be covered by the water of the Coosa River and its tributaries when the level of such water is raised and backed to that certain datum plane of 397 feet, all above mean sea level as established by the United States Coast and Geodetic Survey, as adjusted in January, 1955.

And it is further ordered, adjudged and decreed by the Court that Alabama Power Company be and it is hereby vested with and granted the right to flood or cover with water at intervals from time to time, and the right to prevent the construction, use, occupation or habitation of any structures except fences, docks, wharves and boathouses not capable of human habitation (including the right to tear down or remove any such prohibited structures) on all those portions of (i) Tract No. 426 which lie above such datum plane of 397 feet and which would be flooded or covered by the waters of the Coosa River and its tributaries should the level of such water be raised and backed up to that certain datum plane of 398 feet above mean sea level and (ii) Tract No. 470 which lie above such datum plane of 397 feet and which would be flooded or covered by the waters of the Coosa River and its tributaries should the level of such water be raised and backed up to that certain datum plane of 400 feet above mean sea level; all above mean sea level as established by the United States Coast and Geodetic Survey, as adjusted in January, 1955.

And it is further ordered, adjudged and decreed by the Court that Alabama Power Company be and it is hereby vested with the right of ingress and egress sought to be condemned in said application, as amended.

And it is further ordered, adjudged and decreed by the Court that applicant, Alabama Power Company, be and it is hereby granted all the relief, rights, interests, lands, waters, privileges, and easements set out, described and prayed for in said application, as amended.

It is further ordered, adjudged and decreed by the Court that the applicant, Alabama Power Company, pay all costs incurred in this cause.

Done in open court, this the 25 day of July, 1966.

Conrad M. Fowler
Judge of the Court of Probate of
Shelby County, Alabama

Filed 25 July 1966

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ALABAMA POWER COMPANY

v.

OSCAR J. CARDWELL, ET AL.

IN THE COURT OF PROBATE OF

SHELBY COUNTY, ALABAMA

AMENDMENT NO. 3

Comes Alabama Power Company, applicant in the above condemnation proceeding, and with leave of court first had and obtained, amends its application, heretofore filed as follows:

1. By deleting from Article Fourth of the application herein the following tract: No. 105.
2. By striking from said application wherever the same may appear the following: Roy M. Leeth and Mildred H. Leeth.

Applicant further requests that the matters set out in this amendment to the application be incorporated where applicable in all orders, notices and reports entered in the cause subsequent to the filing of said application.

ALABAMA POWER COMPANY

By Carey J. Chitwood
Its Attorney

Martin, Balch, Bingham, Hawthorne & Williams

Carey J. Chitwood

Karl C. Harrison
Attorneys for Applicant,
Alabama Power Company

STATE OF ALABAMA }
JEFFERSON COUNTY }

Before me, the undersigned authority, personally appeared Carey J. Chitwood, who, being by me first duly sworn, deposes and says that he is attorney for the applicant, Alabama Power Company, and has authority to make this affidavit and to institute and prosecute the foregoing amendment to the application for the condemnation of the lands, rights and interests therein described, and that the statements contained in the foregoing amendment are true and correct as therein alleged.

Carey J. Chitwood

Sworn to and subscribed before me,
on this the 19th day of July,
1966.

Filed 25 July 1966

Elsie W. Roberts
Notary Public
Jefferson County, Alabama

SEAL

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ALABAMA POWER COMPANY

Y.

OSCAR J. CARDWELL, ET AL.

IN THE COURT OF PROBATE OF

SHELBY COUNTY, ALABAMA.

REPORT OF COMMISSIONERS

We, the undersigned Commissioners, duly and regularly appointed by the Court of Probate of Shelby County, Alabama, by decree rendered on the 1st day of July, 1966, do hereby report in writing as follows, to wit:

That after each of us had been sworn as jurors are sworn, we executed our duties in strict accordance with the conditions of the commission issued and the decree of this said Court which appointed us, and we herewith set forth the amount of damages and compensation ascertained and assessed by us for the owners and other parties claiming or holding some right, title or interest in the tracts of land as set out in said commission issued to us, to wit: 426, 470, 130, 132 and 105.

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TRACT NO. 426

DESCRIPTION:

The N $\frac{1}{2}$ of SW $\frac{1}{4}$, the SE $\frac{1}{4}$ of SW $\frac{1}{4}$ and the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of
Section 12, Township 22 South, Range 1 East, Shelby County, Alabama.

ACREAGE TO BE AFFECTED:

1.9 acres, more or less, of this tract will be completely
submerged by Lay Reservoir when it is raised to its new elevation
of 397 feet above mean sea level. An additional 1.1 acres, more
or less, of such tract will be subject to flooding from time to
time when Lay Reservoir is raised to an elevation of 398 feet above
mean sea level.

NAMES AND ADDRESSES OF OWNERS:

M. C. Lovelady

Montevallo, Alabama

Mable Lovelady

Montevallo, Alabama

First National Bank of
Columbiana (Mortgagee)

Columbiana, Alabama

Owners Unknown

Names and Addresses Unknown.

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To the above listed owners: \$ 800.00

CR. 3663

TRACT NO. 470

DESCRIPTION:

The NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 27, Township 21 South, Range 1
East, Shelby County, Alabama.

ACREAGE TO BE AFFECTED:

2.2 acres, more or less, of this tract will be completely
submerged by Lay Reservoir when it is raised to its new elevation
of 397 feet above mean sea level. An additional 0.3 of an acre,
more or less, of such tract will be subject to flooding from time
to time when Lay Reservoir is raised to an elevation of 400 feet
above mean sea level.

NAMES AND ADDRESSES OF OWNERS:

B. F. Hatchett	Columbiana, Alabama
Dorothy S. Hatchett	Columbiana, Alabama
Homer J. Walton	Columbiana, Alabama
Zera Walton	Columbiana, Alabama
Owners Unknown	Names and Addresses Unknown

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To the above listed owners: \$250.00

CR 366d

TRACT NO. 130

DESCRIPTION:

A tract of land in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34, Township 24 North, Range 15 East, Shelby County, Alabama, being more particularly described as follows: To reach a point of beginning, commence at the southwest corner of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 34; thence run east 300 feet for the point of beginning; from said point run north 150 feet; thence east 50 feet; thence south for a distance of 225 feet, more or less, to a point on the north water's edge of Lay Lake; thence in a northwesterly direction along the edge of Lay Lake to a point south of the point of beginning; thence run north for a distance of 60 feet, more or less, to the point of beginning.

ACREAGE TO BE AFFECTED:

0.1 of an acre, more or less, of this tract will be completely submerged by Lay Reservoir when it is raised from elevation 382.2 feet to its new elevation of 397 feet above mean sea level.

NAMES AND ADDRESSES OF OWNERS:

L. T. Thornton, Jr.	1001 Fairfax Avenue South Bessemer, Alabama
Katherine V. Thornton	1001 Fairfax Avenue South Bessemer, Alabama
Owners Unknown	Names and Addresses Unknown

To the above listed owners: \$ 350.00

CR 3665

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TRACT NO. 132

DESCRIPTION:

A tract of land in the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 34, Township 24 North, Range 15 East, Shelby County, Alabama, being more particularly described as follows: To reach a point of beginning, commence at the southwest corner of the SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of such Section 34; thence east for a distance of 250 feet to the point of beginning; thence from said point run north 150 feet; thence east 50 feet; thence south 210 feet, more or less, to a point on Lay Lake; thence run in a northwesterly direction along the edge of Lay Lake with its meanderings to a point south of the point of beginning; thence north for a distance of 33 feet, more or less, to the point of beginning.

ACREAGE TO BE AFFECTED:

0.1 of an acre, more or less, of this tract will be completely submerged by Lay Reservoir when it is raised from elevation 382.2 feet to its new elevation of 397 feet above mean sea level.

NAMES AND ADDRESSES OF OWNERS:

L. T. Thornton, Sr.

528 Fairfax
Bessemer, Alabama

Bessie P. Thornton

528 Fairfax
Bessemer, Alabama

Owners Unknown

Names and Addresses Unknown

To the above listed owners: \$ 350.00

CR. 3666

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TRACT NO. 105

DESCRIPTION:

Lot No. 10 of Rice Acres Subdivision situated in the NW $\frac{1}{4}$ of Section 18, Township 24 North, Range 16 East, according to the map thereof recorded in Map Book 3 at page 117 in the Office of the Judge of Probate of Shelby County, Alabama, together with a boat house and pier located on Lay Reservoir easterly from said Lot No. 10, less and except that part of said Lot No. 10 conveyed by deed from Roy M. Leeth and wife Mildred Leeth to E. J. McCullers dated October 17, 1958 recorded in Deed Book 196 at page 285, and also less and except that part of said Lot No. 10 conveyed by deed from Roy M. Leeth and wife Mildred Leeth to B. G. Sirles, Sr., dated October 17, 1958 recorded in Deed Book 196 at page 286, both in the Office of the Judge of Probate of Shelby County, Alabama.

ACREAGE TO BE AFFECTED:

0.11 of an acre, more or less, of this tract will be completely submerged by Lay Reservoir, when it is raised to its new elevation of 397 feet above mean sea level.

NAMES AND ADDRESSES OF OWNERS:

Roy M. Leeth	2108 - 46th Place West Birmingham, Alabama
Mildred H. Leeth	2108 - 46th Place West Birmingham, Alabama
Owners Unknown	Names and Addresses Unknown

Settled between owners and Alabama Power Company

To the above listed owners: \$ _____

(acquired by purchase)
CR. 3619

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We herewith file a certificate along with this award that none of us has ever been consulted, advised with, or approached by any person in reference to the value of the lands or the proceedings to condemn the same prior to the assessment of damages and that we knew nothing of the same prior to our appointment.

A. M. Muncy

M. L. Orr

M. Lee

Sworn to and subscribed
before me, this the 14
day of July,
1966.

Conrad M. Fowler
Judge of the Court of Probate
of Shelby County, Alabama

CERTIFICATE OF COMMISSIONERS

We, the undersigned commissioners, duly and regularly appointed in this cause, do hereby certify that none of us has ever been consulted, advised with, or approached by any person in reference to the value of the lands, or the proceedings to condemn the same, prior to the assessment of damages, and that we knew nothing of the same prior to our appointment.

This the 14 day of July, 1966.

M. L. Orr

A. M. Muncy

M. Lee

Sworn to and subscribed before
me, this the 14 day of
July, 1966.

Conrad M. Fowler
Judge of the Court of Probate of
Shelby County, Alabama

Filed 14 July, 1966

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ALABAMA POWER COMPANY

v.

OSCAR J. CARDWELL, ET AL.

IN THE COURT OF PROBATE OF
SHELBY COUNTY, ALABAMA

AMENDMENT NO. 2

Comes Alabama Power Company, applicant in the above condemnation proceeding, and with leave of court first had and obtained, amends its application, heretofore filed as follows:

1. By deleting from Article Fourth of the application herein the following tract: No. 495.
2. By striking from said application wherever the same may appear the following: Chester Templin and Iva Jean Templin.

Applicant further requests that the matters set out in this amendment to the application be incorporated where applicable in all orders, notices and reports entered in the cause subsequent to the filing of said application.

ALABAMA POWER COMPANY

By Carey J. Chitwood
Its Attorney

Karl C. Harrison

Martin, Balch, Bingham, Hawthorne & Williams

Carey J. Chitwood
Attorneys for Applicant,
Alabama Power Company

STATE OF ALABAMA)
JEFFERSON COUNTY)

Before me, the undersigned authority, personally appeared Carey J. Chitwood, who, being by me first duly sworn, deposes and says that he is attorney for the applicant, Alabama Power Company, and has authority to make this affidavit and to institute and prosecute the foregoing amendment to the application for the condemnation of the lands, rights and interests therein described, and that the statements contained in the foregoing amendment are true and correct as therein alleged.

Carey J. Chitwood

Sworn to and subscribed before
me, this the 6th day of July,
1966.

Lillian Hadnot
Notary Public
Jefferson County, Alabama

Filed 7/6/66

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1966 MAY -8 PM 2 58

Thomas A. Shanks, Jr.
JUDGE OF PROBATE

RECORDING FEES

Recording Fee	\$ <u>30.00</u>
Index Fee	<u>14.00</u>
TOTAL	\$ <u>44.00</u>