

JUL 13 1972
ATTORNEY GENERAL
of Oklahoma

THE DISTRICT COURT IN CUSTER COUNTY, STATE OF OKLAHOMA
Courthouse, Arapaho, Oklahoma

FILED

JUL 17 1972

In the Matter of the Appeal as to
FINAL ORDER NO. 33 of the Oklahoma
Water Resources Board pertaining to
Stream System 1-8, Washita River
Stream System, dated August 12, 1969.

LIBBY L. McABEE, Court Clerk
CUSTER COUNTY OKLAHOMA
By Case Number 69-145

Appearances and Counsel:

Foss Reservoir Master Conservancy District, by D. W. Meacham,
Lawyer, Clinton, Oklahoma.

Earl Q. Gray, Pro se, Box 368, Ardmore, Oklahoma.

Oklahoma Water Resources Board, by Larry Derryberry, Attorney
General of Oklahoma, by Robert H. Mitchell, Assistant
Attorney General.

DATE: July 17, 1972.

DECISION OF THE COURT ON APPEAL

The Oklahoma Water Resources Board entered its Final Order No. 33 on August 12, 1969, which determined vested surface water rights in the Washita River Stream System which granted to Foss Reservoir Master Conservancy District 30,000 acre-feet as a vested right with priority date of February 9, 1951, and a permit of 36,900 acre feet with appropriative priority of July 25, 1968.

The Foss Reservoir Master Conservancy District filed its appeal of Final Order No. 33 in this Court on October 2, 1969, asking a modification of Final Order No. 33 which would establish the priority for the vested rights of the United States of America and the District in the amount of 66,900 acre feet as of February 9, 1951.

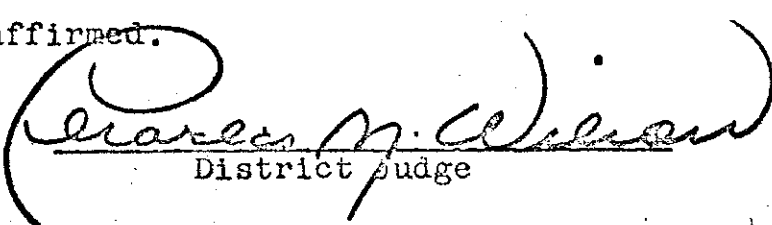
Voluminous records and documents have been agreed upon and made a part of the record in this appeal. On November 5, 1971, Mr. Meacham and Mr. Mitchell agreed to and signed a Stipulation of Facts which was filed in the appeal and agreed that the appeal be submitted to the Court for decision with the understanding that counsel would file briefs with the Court.

Mr. Meacham, Mr. Mitchell and Mr. Gray have furnished the Court their briefs which presented their position, argument and authorities and the briefs have been placed in the file.

The Court after reading and re-reading these briefs would finally conclude that the scales tip towards the position and argument of the Foss Reservoir Master Conservancy District in that the Robbins letter dated February 9, 1951 ("Exhibit 5"), the Attorney General's Opinion dated October 8, 1962 ("Exhibit 10"), the expenditure of approximately \$27,000,000 by the United States for the reservoir and aqueduct system ("Stipulation of Facts -9-") would leave a situation where the Oklahoma Water Resources Board would not be in a position to work out what it considered to be an equitable allocation of vested surface water rights in 1969 which would deny to the District the needed acre feet of vested rights which had been contemplated during the planning and construction of the project.

IT IS THE DECISION, ORDER AND JUDGMENT OF THE COURT:

That Final Order No. 33 of the Oklahoma Water Resources Board pertaining to Stream System 1-8, Washita River Stream System, dated August 12, 1969, is MODIFIED so as to establish the priority for the vested rights in surface waters in the United States of America and the Foss Reservoir Master Conservancy District in the amount of 66,900 acre feet as of February 9, 1951, otherwise Final Order No. 33 is affirmed.


District Judge

Copy mailed counsel this date. CMW

In the Matter of the Appeal of the
FORT COBB RESERVOIR MASTER CONSERVANCY
DISTRICT, from final order No. 33,
Oklahoma Water Resources Board, per-
taining to Stream System 1-8, Washita
River Stream System, dated August 12, 1969.

CASE NO. C-71-166
and
CASE NO. C-69-117

APPEARANCES:

Fort Cobb Reservoir Master Conservancy District, by
Haskell B. Pugh, Attorney, Anadarko, Oklahoma.

Earl Q. Gray, Pro Se, Box 368, Ardmore, Oklahoma.

Oklahoma Water Resources Board, by Larry Derryberry,
Attorney General of Oklahoma, by Robert H. Mitchell,
Assistant Attorney General, State Capitol, Oklahoma City,
Oklahoma.

JOURNAL ENTRY OF JUDGMENT

ON ADMINISTRATIVE APPEAL

On this the 18th day of August, 1972, the Court being
fully advised, finds:

This cause arose as an appeal from action taken by the
Oklahoma Water Resources Board when it entered its final Order No. 33
on August 12, 1969, determining vested surface water rights in the
Washita River Stream System. Final Order No. 33 set the appropriative
priority of the Fort Cobb Reservoir Master Conservancy District to
14,834 acre-feet of water per calendar year with a priority date of
February 9, 1951, and 14,566 acre-feet of water per calendar year
with a priority date of August 23, 1968. The Fort Cobb Reservoir
Master Conservancy District contends on appeal that the appropriative
priority date should have been February 9, 1951, as to the total of
29,400 acre-feet of surface water allocated to the district per
calendar year. All relevant records and documents have, by stipulation
of the parties, been made a part of the record on appeal.

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OKLA WATER RESOURCES BOARD

CARDO COUNTY
FILED

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HAROLD RODGERS
COURT CLERK
DEPUTY

Extensive briefs have been filed by the parties and made a part of the file and record herein.

Upon consideration of the entire record and briefs of the parties, the Court concludes the decision of the agency, the Oklahoma Water Resources Board, in promulgating its Final Order No. 33, was clearly erroneous in view of the reliable, probative, substantial and competent evidence considered, and that errors of law were committed by such agency when it applied statutory provisions to establish the priorities in this cause in its Final Order No. 33, which were enacted subsequent to February 9, 1951. The Court further concludes that Final Order No. 33 should be modified to set an appropriate priority date of February 9, 1951, for the entire 29,400 acre-feet of surface water per calendar year allocated to the Fort Cobb Reservoir Master Conservancy District and the United States of America, and that all other findings of facts and conclusions of law in Final Order No. 33 be affirmed.

It is therefore ORDERED, ADJUDGED AND DECREED by the Court that Final Order No. 33 of the Oklahoma Water Resources Board, pertaining to Stream System 1-8, Washita River Stream System, dated August 12, 1969 be, and the same is hereby modified so as to set an appropriate priority date of February 9, 1951, for vested rights to 29,400 acre-feet of surface water per calendar year in the Fort Cobb Reservoir Master Conservancy District and the United States of America, and that all other agency findings of fact and conclusions of law in Final Order No. 33 be affirmed.

/S/ SAM M. WILLIAMS

District Judge.

I, Harold Rodgers, Court Clerk for Caddo County, Okla., hereby certify that the foregoing is a true, and complete copy of the instrument herewith set out as appears of record in the Court Clerk's Office of Caddo County, Okla. this _____ day of _____, 19____.
Harold Rodgers, Court Clerk



OKLAHOMA WATER RESOURCES BOARD

P.O. BOX 53564 • FIFTH FLOOR • JIM THORPE BUILDING • OKLAHOMA CITY, OKLA. 73105

March 21, 1975

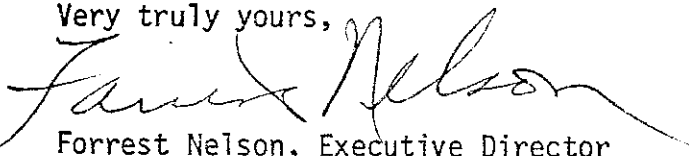
County Clerk
Grady County
Chickasha, Oklahoma 73018

Dear Sir:

The Oklahoma Water Resources Board's Final Order No. 33, dated August 12, 1969, establishing vested stream water rights in the Washita River Stream System 1-8, has been amended per the enclosed Journal Entries of Judgment of the District Court of Caddo County (Case No. C-71-166 and Case No. C-69-117) and Custer County (Case No. C-69-145). These Journal Entries were also affirmed in the Oklahoma Supreme Court on October 1, 1974, in Case No. 45,982 (Caddo County) and Case No. 45,960 (Custer County).

Please file the enclosed Journal Entries with Final Order No. 33 so it will correctly reflect the actual priorities presently existing. The final order was mailed to each county involved in September of 1969. Attached is the record of these filings.

Very truly yours,



Forrest Nelson, Executive Director
OKLAHOMA WATER RESOURCES BOARD

FN(jw)

Encls. 3

P. S. See Page 36, Final Order No. 33

GERALD E. BORELLI, Chairman
BERT L. CASTLEBERRY, Member
DON ARCH KING, Member

W. EARL WALKER, Vice-Chairman
LLOYD E. CHURCH, D.D.S., Member
O.B. SAUNDERS, Member

L. L. MALES, Secretary
JACQUES CUNNINGHAM, Member
BILL SETTLE, Member

OKLAHOMA WATER RESOURCES BOARD

March 21, 1975

COUNTY CLERK FILINGS OF OKLAHOMA WATER RESOURCES BOARD'S FINAL ORDER ESTABLISHING VESTED SURFACE WATER RIGHTS IN THE WASHITA RIVER STREAM SYSTEM - August 12, 1969

COUNTY	FILED OF RECORD
Beckham	--
Bryan	Sept. 22, 1969, 10:15 a.m., Book 502, page 423, #285,331
Caddo	Sept. 22, 1969, 8:00 a.m., Book 517, page 453, #5310
Canadian	--
Carter	Sept. 22, 1969, 10:46 a.m., Book 602, page 257
Comanche	--
Custer	Filed Sept. 22, 1969, time, book and page not designated
Dewey	Sept. 15, 1969, 11:00 a.m., Book 240, page 127
Garvin	--
Grady	Sept. 12, 1969, 8:10 a.m., Book 864, page 705
Johnston	Sept. 15, 1969, -- Book 4, page 400, Misc. Instruments File #10,197
Kiowa	Sept. 15, 1969, 9:00 a.m., Book 437, page 375
Marshall	--
McClain	Sept. 22, 1969, 8:10 a.m., Book 455, page 1
Murray	--
Pontotoc	Sept. 16, 1969, -- Book 1, page 1
Roger Mills	--
Stephens	Sept. 12, 1969, 11:29 a.m., Book 1033, page 114
Washita	--