

1973 WL 26707 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 19, 1973

*1 Colonel Robert C. Nelson
District Engineer
Corps of Engineers
Post Office Box 919
Charleston, South Carolina 29402

Dear Colonel Nelson:

In reference to Spoil Area Number 12 granted to the United States of America by the State of South Carolina on January 20, 1970, after extensive survey work and investigation, it has been determined that the State of South Carolina does not have title to the property since it is situate above the mean high water mark and that title to the property is in C. E. Graham Reeves, owner of Annandale Plantation.

It appears from the file that the Corps of Engineers contacted the State of South Carolina in 1967 in regard to the Corps' need for additional spoil areas on the Atlantic Intracoastal Waterway between Charleston and Georgetown. In 1961, Governor Robert E. McNair designated the South Carolina Water Resources Commission as the State agency to co-ordinate the procurement of spoil areas with the Corps and make recommendations to the State Development Board on the need for and desirability of granting specific marshes and other lands to be leased as spoil areas. The Water Resources Commission inspected the areas which were designated by the Corps as areas needed for spoil areas and to which the Corps desired grants from the State to the United States for spoiling purposes. After an extensive investigation and conferences with the Corps concerning the areas designated by the Corps, the Water Resources Commission prepared an Interim Report on the United States Army Corps of Engineers Request dated January 1969. In order to prepare its Report, the Water Resources Commission requested and received certain information from the Corps concerning the proposed spoil areas, which included a designation of the owners of the property desired by the Corps.

In regard to Spoil Area Number 12, the Interim Report stated:

The name given for ownership is Mrs. R. E. Reeves. The additional acreage requested is 130 acres.

As this area has very low priority and the Corps now has several small spoil leases in the general vicinity, it is recommended that this area not be provided to the Corps.

The Corps received a preliminary draft of the Interim Report and made comments on the Report. The Corps' comments were included in the final draft of the report, but the Corps did not comment on the provisions of the Report pertaining to Spoil Area 12.

In September of 1969, a topographical map was prepared by Exo Hilton, R.S., for the Water Resources Commission at the request of the State Development Board and Attorney General's Office in order to ascertain the elevation of the property as it compares with the mean high water mark. The map shows the elevation of the property to be substantially above the mean high water mark. Copies of the map were given to the Attorney General's Office.

Although the map prepared by Hilton showed that Spoil Area 12 was situate above the mean high water mark, the Governor and Secretary of State executed and delivered to the Corps of Engineers a grant conveying a 25-year acessement to the Corps on Spoil Area 12 dated January 20, 1970. A copy of the Hilton topo map was attached to the conveying instrument and recorded.

*2 Apparently, the State and the Corps were under the mistaken impression that spoil had been deposited on the area by the Corps on a previous occasion and that the spoil deposits had raised the elevation of the property, which was presumed to be below the mean high water mark in its natural condition, above the mean high water mark. Subsequent to the grant, C. E. Graham Reeves informed the State that the property of Spoil Area 12 was above the mean high water mark, that spoil had never been deposited on the property, that he was the owner of the property as had been indicated in the Interim Report, and that, indeed, he and others had collected a substantial sum from the State for the encroachment of salt water on the same tract of land that was designated as Spoil Area 12 at the time the Santee River was diverted. The Water Resources Commission was requested to make soil borings to determine if spoil had been previously deposited on the property, and if so, to make a determination of the elevation of the land prior to depositing spoil. The Water Resources Commission performed the necessary borings and determined that generally there had been no spoil deposited on the property except in two small areas, but even where the spoil had been deposited, the land in its natural condition was above the mean high water mark.

Based upon the surveys, soil borings and other information, it is the opinion of this office that the title to Spoil Area 12 is in C. E. Graham Reeves rather than the State of South Carolina. Therefore, the grant to the United States of America dated January 20, 1970, which purports to convey an easement for 25 years in fact conveys nothing since the State had no title to convey to the United States of America.

Therefore, the State of South Carolina requests that the United States of America release the State of South Carolina from the easement to Spoil Area 12.

Very truly yours,

Daniel R. McLeod
Attorney General

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