

HISTORY OF LAKE WICHITA AND RELATED WATER PROPERTIES

From deeds, contracts and other instruments of record, a fairly complete narrative of the Lake Wichita venture can be inferred:

I

In 1900 and possibly in 1901, J. A. Kemp and C. W. Bean, as agents for Henry Sayles, Trustee, acquired a block of land in south Wichita and North Archer Counties in an area which is now largely covered by Lake Wichita. Mr. Sayles was acting as trustee for a syndicate, including Messrs. Kempner and Lasker of Galveston and himself.

Certain lands in excess of the lake outline were acquired and subsequently sold with titles running "to the water edge when the lake was full." In addition to such fee acquisitions, Mr. Sayles acquired certain easements, options and overflow agreements.

Construction of the dam is not of record in the instruments at hand but, from the tense of references in deeds it can be assumed that it was completed in or before 1901.

Upon completion of the major acquisitions, some parts of the properties were passed by the Trustee to the Lake Wichita Irrigation and Water Company, formed in 1900 for this purpose. No direct evidence of the incorporation, charter, or other history of this corporation is available. Reference to riparian rights, made in the preamble of a deed indicates that the original rights were obtained by I. H. Kempner, and later assigned to the Irrigation Company along with certain real property.

The individuals who formed the Irrigation Company apparently found it convenient to hold some lands in their own names, as full titles to all residual properties were not passed to the Corporation until June 1912, apparently in preparation for disposal, which was effected in July and August of that year.

The venture appears to have had considerable local support as evidenced by a copy of a resolution by the County Commissioners who agreed, apparently without time limit, to give the venture right of way across all public roads, and to build and maintain bridges across the ditches where necessary.

During the period 1901 to 1912, the Irrigation Company sold water rights and land, and entered into several related ventures. In a sale of "permanent water rights" the conveyance recites that the right covers a stated number of acre feet of storage capacity in the reservoir "forever." The corporation, however, agreed to maintain the ditches and reservoir for the "full life of its charter" only.

The sale of water rights tabulated below may or may not be complete; it does, however, check with the reservations made when final transfer of the lake was made, and from the estimates made of residual waters it appears that the total capacity of the lake was assumed to have been 10,350 acre feet. The various instruments confuse capacity of reservoir, yield, acre feet, and acre feet per year, but the general intent appears to have been acre feet per year in all cases.

While it has been generally assumed that the Wichita Falls Water and Light Company owned the only superior right to water, there is outstanding an additional 500 acre feet having pari passu standing with the rights of the

Water Company which came about through a deal not entirely defined by instruments available. In 1904, the Water and Light Company assigned to the owners of the Irrigation Company half of their superior right to 2,000 acre feet which they had acquired in 1903. This 1000 acre feet of right with superior claim was, on June 18, 1912, returned to the Water and Light Company in exchange for a new assignment of 500 acre feet, also with superior claim, furnished by the owners of the Water and Light Company. Just how this 500 acre feet right with superior status was obtained is now shown, and some question as to its validity may be inferred from the fact that in 1910 the Irrigation Company had sold, also to the Water Company, all of the then unappropriated waters. Later deeds, however, recognize the 500 acre feet claim and it is presumed to have been an oversight by and between the overlapping ownerships of the Irrigation and Water Companies.

The foregoing history brings the matter up to the summer of 1912 at which time Electric Bond and Share affiliates acquired the properties. It is of interest that, at the time of sale, the Irrigation Company, owning the land under Lake Wichita, but none of the water in it and apparently having sold 500 acre feet more than the total, again sold to Texas Utilities Corporation "All of the unappropriated waters." The effect of such sale was, however, of no interest since the water company, having a prior claim to "all unappropriated waters" was acquired at the same time by Texas Utilities Corporation.

II

Several instruments subrogating other grants or other water rights to the 2,000 acre feet right of the Wichita Falls Water and Light Company, dated early in August 1912, appear to be curative measures required in the negotiations for acquisition of the properties by Electric Bond and Share Company which was effected August 1, 1912 through the following transfers:

1. A deed from Lake Wichita Irrigation and Water Company to Texas Utilities Corporation covering Lake Wichita; a parcel of land in Archer County; a water supply canal and lateral from the lake to the waterworks reservoir; the dam on Lake Wichita, water rights (see above), easements, overflow rights, and franchises.
2. An indenture by Wichita Falls Water and Light Company granting to Texas Utilities Corporation certain real estate (plant site); the electric system and business in Wichita, and the electric franchises; power plant; and the 2000 acre feet water right in Lake Wichita.
3. An indenture by Wichita Falls Water and Light Company granting to A. S. Grenier certain real estate (reservoir site); a city lot; and the water franchise, water system and business in Wichita Falls.

It is of interest that the three instruments are unilateral; no signature for any Electric Bond and Share Company representative appears. Any obligations existing on the part of the vendors, particularly in regard to maintenance of Lake Wichita or the stewardship of water rights previously sold by the vendor were not passed on in the transaction. It can be assumed that Electric Bond and Share Company acquired no obligations in the transaction other than those running from the general laws.

On the 16th of August, 1912, Texas Utilities Corporation conveyed to the Wichita Falls Electric Company, by indenture:

SALE OF WATER RIGHTS, LAKE WICHITA

Date	Grantor	Grantee	Quantity
January 1903	Lake Wichita Irrigation and Water Company	Wichita Falls Water Works Company	2000 acre feet superior right to all others
June 1903	Lake Wichita Irrigation and Water Company	Henry Sayles	2000 acre feet
June 1904	Wichita Falls Water and Light Company (Name was changed from Wichita Falls Water Works Co.) (Kemp & Kell)	Henry Sayles, M. Lasker I. H. Kempner, J. A. Kemp	1000 acre feet out of the 2000 acre feet acquired in January 1903
May 1910	Lake Wichita Irrigation and Water Company	Highland Irrigation and Land Co. (J.A. Kemp, Pres.)	850 acre feet
September 1910	Lake Wichita Irrigation and Land Company	Wichita Falls Water and Light Company (J.A.Kemp, Pres.)	All unappropriated waters estimated at 5000 acre ft.
June 18, 1912 cited in preamble of instrument dated June 18, 1912	Lake Wichita Irrigation and Water Company	Henry Sayles I. H. Kempner	500 acre feet, rights pari passu with the original 2000 acre feet superior
June 18, 1912	Henry Sayles; M. Lasker I. H. Kempner, J. A. Kemp	Wichita Falls Water and Light Co. (J.A.Kemp, Pres.)	1000 acre feet being the abrogation of the assignment dated June 1904 above
August 1, 1912	Lake Wichita Irrigation and Water Company	Texas Utilities Corporation	"All unappropriated waters being all waters except: 2000 AF to FW&L Co., '03 2000 AF to H. Sayles '03 850 AF to Highland '10 500 AF to Kempner '12

1. Certain real estate (plant site),
2. Franchise, electric system and electric business in Wichita Falls,
3. Water right to 2000 acre feet of water in Lake Wichita.

On the same date, Texas Utilities Corporation granted to Wichita Falls Electric Company, by separate indenture:

1. The land forming Lake Wichita,
2. A parcel of land in Archer County,
3. The main water supply canal or ditch,
4. The dam at Lake Wichita,
5. All the "unappropriated waters" of Lake Wichita (estimated at 5000 acre feet in 1910).
6. Overflow rights, easements, etc.

On the same date, A. S. Grenier conveyed to the Wichita Falls Water Company:

1. Certain real estate (reservoir site),
2. A city lot,
3. The franchise, water system, water business, and easements in Wichita Falls,
4. Interest in a contracted "executed by J. A. Kemp and Frank Kell bearing date August 3, 1912 - - - being in respect to lands - - - adjacent to Lake Wichita."

In the above series of transactions there may be a flaw in the chain of title to the "unappropriated waters" due to the relatively loose wording of instruments conveying this right (5000 acre feet per year more or less with inferior claim) to and through Texas Utilities Corporation and A. S. Grenier. The weakness, however, is probably of no consequence as the City of Wichita Falls appears to have acquired these waters from one company or the other.

III.

On completion of the transfers and assignments of 1912 above, titles appear to have remained fixed until November of 1920, when the following transfers were made;

1. The Wichita Falls Water Company, by deed dated November 9, 1920 sold to Wichita Falls Electric Company the oil storage tank site near the water plant; the pumping station, and the .78 acre on which it was located.

2. The Wichita Falls Water Company, by indenture dated November 20, 1920 sold to the City of Wichita Falls:

- a. Water plant site including reservoir site and a city lot,
- b. Water distribution system,
- c. Other water works equipment.

The above instrument cites, as a part of the consideration of this sale, the assumption by the City of the obligations expressed in the "Pumping Contract" and the "General Contract." No reference to any water rights in Lake Wichita appears in the instruments.

The "General Contract," an instrument between Wichita Falls Water Company and Wichita Falls Electric Company, dated November 9, 1920, gives the Electric Company the right to " - - - maintain and operate a spray cooling system in Water Company's storage reservoir at such location as may be determined upon from time to time by the Electric Company as the most suitable - - - and hereby grants - - - a permanent - - - easement across Water Company's property for the necessary piping - - -,"

Also " - - - the right to store in Water Company's storage reservoir and to take therefrom untreated water in such quantities as may be necessary or desirable for any and all uses and purposes for which it may be required in the operation and maintenance of the plant of the Electric Company" (including the right to take out boiler water after 1930).

It is also set out that the Electric Company agreed to take over and maintain the reservoir if it is abandoned for water supply use and to "reimburse the owner thereof for all taxes accruing thereon against said the time of - - -"

owner during such period." So long as the City is owner, no presently effective tax laws will accrue taxes on the property, however, and the clause was apparently entered to anticipate a claim if the reservoir reverted to private ownership. The contract also allows the Electric Company to keep the channel open and otherwise modify the existing reservoir to serve the purpose of the steam plant.

3. The Wichita Falls Electric Company by deed dated November 20, 1920 sold to the City of Wichita Falls:

- a. The land under and forming Lake Wichita,
- b. A parcel of land in Archer County,
- c. The water supply canal or ditch,
- d. The dam and dam site,
- e. The 2000 acre feet of superior water right (with reservations),
- f. The rights to the "Unappropriated waters" (total less 5350),
- g. Overflow rights and easements.

This instrument conditions the title conveyed upon the acceptance by Grantee of the obligations in the "Pumping" and "General" Contracts above noted. The instrument contains the following conditions:

" - - But the City of Wichita Falls shall be obligated to convey for the Grantor herein, through such canal, such quantities of untreated water as may be now or hereafter required in the operation and maintenance of Grantor's power plant as the same now is or may hereafter be from Lake Wichita to Grantor's power plant site and to the storage reservoir of Wichita Falls Water Company adjacent thereto; it being understood, however, that if the use of said canal shall hereafter be abandoned for all purposes for or in connection with the supply of water to the City of Wichita Falls, Texas, Grantor agrees to take over and assume the maintenance of said canal for and during the time of any such abandonment and to reimburse the owner thereof for all

taxes accruing thereon against said owner during such period, and to pay therefor during such period a rental of one dollar per annum, but with the understanding that the owner of said canal shall have the right and privilege of resuming the use of said canal, and upon such resumption Grantor shall be relieved of the maintenance thereof and the taxes and rental thereon. All the stipulations above contained with respect to said canal shall insure to the benefit of and be binding upon Grantor and Grantee herein, their respective successors and assigns."

The instrument also contains a reservations in the transfer of the 2000 acre feet of superior claim as follows: "- - - reserving, however, therefrom and not hereby conveying same such quantities of untreated water as may be necessary or desirable for any and all uses and purposes for which it may be required in or in connection with the operation and maintenance of the steam electric generating plant - - - as the same now is or may hereafter be."

The additional provision is added: "- - - and particularly that it (the city) will convey, deliver, furnish and supply to the Grantor (the Electric Company) - - - waters of the kinds and to the amounts and in the manner and for the purposes specified in said General Contract and in this conveyance."

Briefly the acceptance of the deed binds the City to:

1. Convey through the canal any quantity of water required by the power plant,
2. Reserve, out of the 2000 acre feet of superior claim, any quantity required by Grantor,
3. Observe the General Contract and assume all of the obligations therein.

From the above excerpts it is apparent that the Electric Company reserved and intended to reserve, free of charges (other than possible maintenance),

1. Any quantity of water useful in the operation of the Wichita Falls Steam Plant, including but not limited to a superior claim on 2000 acre feet per year.
2. The use of the facilities then available to get this water, whether used by others or not.

It may be of interest to set out that the maximum probable requirements of the Wichita Falls Steam Electric Generating Station, when operating at 25,000 kw, will be in the order of 360,000,000 gallons per year, or approximately 1,000,000 gallons per day (700 gallons per minute) which is only 55 per cent of the 2000 acre feet superior claim. On a ratio basis, the superior claim alone appears adequate for a plant of 45,000 kw.