WELL REVIEW BOARD HEARING

VAN DAVIS VS. ASHLAND EXPLORATION COMPANY

AUGUST 4, 1983

WASHINGTON COUNTY, VIRGINIA

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DIVISION OF MINES

Harry Childress, Chairman The first hearing is an objection from Mr. Van Davis and Mr. Carl Horn to a proposed well being drilled by Ashland Exploration. I think all of you have received the letter on how we will conduct the hearing. Mr. Pruett, I guess you are representing Mr. Horn and Mr. Davis.

Tom Pruett, Attorney Yes sir I am. Are you Mr. Childress?

Harry Childress, Chairman Yes sir I am.

Tom Pruett, Attorney I guess then I direct you as Mr. Chairman. I believe we have some pre-hearing motions. Some that were filed and some that maybe we would like to address before the Board before we get started. I will let Mr. White go ahead and make his motion.

Harry Childress, Chairman Alright sir.

Robert White, Attorney I would like to file these for the record.

Harry Childress, Chairman Are they two different ones?

Robert White, Attorney One is a constitutional argument. I am not going to argue that this morning. The other objection is a motion to dismiss the appeal. The only matter that was raised in the petition for appeal was that the decision of the Oil and Gas Inspector was erroneously based upon the facts and the regulations. This matter was never brought up right as required by 45.1-325 and we respectfully submit that there is no matter that can be properly brought before this Board at this time.

Harry Childress, Chairman Tim, I will have to get a little advise from you on this request. Mr. Pruett would you care to go on with this then maybe we could.

Tom Pruett, Attorney Thank you Mr. Chairman. I believe a lot of this motion has already been filed with your office. Sorry I didn't file more than one copy. It is a reply to a motion to submit a petition for appeal. Statute 45.1-325(b) the language says, "No petition for appeal may raise any matter other than matters raised by the Inspector or which the petitioner put in issue either by application or by objections, proposals or claims made and specified in writing at the informal hearings." It is true that we did not specify our objections again in writing at the informal hearings. The office received a letter of objection from Mr. Carl Horn that stated both objections. Mr. Van Davis and Mr. Horn appeared at the hearings and stated their objections orally. Those objections were not withdrawn at any of the informal hearings. According to statute section 45.1-315(c) if you would look at that these objections become part of the permanent record when they are made and not withdrawn. Our petition for appeal, and I believe the language was cited on this that our basis for appeal on this was that the decision of the Oil and Gas Inspector was erroneous based upon the facts introduced at the hearings. The Inspector then at the end of the informal hearing reduced these objections to writing and filed a permanent report stating the objections to the proposed location of the well work permit. They are in writing and we did preserve them by objecting to his conclusions to that report. We feel that we have properly followed 45.1-325(b) which they cite by raising matters raised by the Inspector.

Harry Childress, Chairman Does anyone have any questions?

Richard Chew Did it happen that way?

Harry Childress, Chairman We have a decision of that case history in this package of material, if you will notice. The objections to it are in writing as such. This is Tom's decision, the Inspector's decision as he came about it after the informal fact-finding hearing.

Richard Chew What do you say to that Ashland?

Robert White, Attorney We reply that he is limited to the issues that were set forth in the petition for appeal. The sole issue broght forth there is that the Inspector's decision was erroneously based on the facts. This issue was never brought out in writing at the informal hearing, therefore, we feel he is precluded from raising that point on appeal. And the other points also is they were not specified in the petition.

Eugene Dickinson, Attorney It seems to me the problem is this being a new statute and certainly very vague regulations under it, the appeal process to the Well Review Board seems to be something of an anomaly. While the hearing is specified to be a de novo hearing, nevertheless the issues to be presented to the Board appear to be only those which are raised in the petition for appeal from the Inspector's decision. The basis of this argument is that the only specification in a petition for appeal was that the Inspector's decision was erroneous based upon the facts that he heard at the time. So it becomes a problem of what do you hear today? Can you hear the actual facts in testimony upon which the petitioner raises, wants to object to the well location or are you merely relegated to reviewing the facts found by Mr. Fulmer and confirm whether or not those are reasonable. If you look 45.1-325(e)(3) the statute very broadly states what can be considered at these hearings. It says, "the Board may consider the same matters timely and properly put in issue for the decision of the Inspector ...to the extent such matters have been preserved or otherwise raised by a petition for appeal." Now the issues at the Inspector's level were the location selected by Ashland Exploration to drill its well at a proper location. Now that presumably has not been put in issue by a petition for appeal.

Tom Pruett, Attorney, speaking to this matter The language in paragraph two, the counsel on the other side evidently is attempting to limit the appeal to that exact language. That language is the basis for the appeal or the reason for the appeal. The things being appealed are the objections that were listed in the Inspector's report. They objected to the location of the well site and matters discussed by the Inspector. This paragraph two in the petition of the appeal raised every issue surrounding the Inspector's decision that is recorded.

Richard Chew I have to confess that was my first reaction. I hate to see anvbody get after a pleading because it is short and simple and easy to read and comprehensive in its language. He says as based on the facts...erroneously based upon the facts.

Eugene Dickinson, Attorney I am suggesting that he would have to raise the issue in the petition for appeal. That the location selected by Ashland Exploration and applied for in this permit is a proper location. I think he has to at least say that much not just a broad based statement that it was erroneous. There is no record, except the findings of Mr. Fulmer.

Richard Chew Well I think that is it, isn't it?

Olin Prather May I make a suggestion. I have a motion that we go into

Olin Prather executive session and listen to Mr. Gresham before we go any farther in this thing.

Harry Childress, Chairman Do I have a second?

Ralph Gunter I'll second it,

Harry Childress, Chairman All in favor say "Aye".

Tim Gresham Before we do that let me say a little bit here. The Virginia Well Review Board is going into executive session pursuant to Section 2.1-344(a)(6) which says"a closed can be held for consultation with legal counsel and briefings by staff members, consultants or attorney's pertaining to actual or potential litigation or other legal matters within the jurisdiction of the public body and discussions for consideration in such matters without the presence of counsel, staff consultants or attorney's."

Harry Childress, Chairman We are now out of executive session back into an open hearing. We have discussed the matter and do I hear a motion concerning the matter from anyone.

Richard Chew Mr. Chairman, as I see this matter the petitioner would be limited in the manner that the statute sets forth as to what he can or cannot raise on the appeal, but I don't think he has to recapitulate each one of those in his petition which was broad and general enough to encompass whatever matters were, in fact, reduced to writing by the Inspector in his report. So I would move that the motion be dismissed, the petition for appeal be denied.

Olin Prather I'll second it.

Harry Childress, Chairman All in favor "Aye". With that taken care of as such, we will get on with the appeal the way it is Mr. Pruett.

Tom Pruett, Attorney Mr. Chairman, I would have one further jurisdictional objection to make for the Board's consideration. For the record we object to the Board's subject matter jurisdiction to consider this appeal at this time. By letter, Mr. Carl Horn and by letter from Mr. Jerry Tiller who has been a counsel for Mr. Van Davis on the issue of oil land gas ownership on this tract of land. The office of the Inspector was put on notice that there is a dispute as to the ownership of the oil and gas interest on this particular tract of land. This was brought up at one of the hearings. This objection I make now is jurisdictional. The objection is specifically this, in the Code Section 45.1-311(g), 45.1-311 itself sets out requirements and prerequisites for permit issuance and section G says, "In no event shall drilling be initiated or completed on any tract where the oil and gas underlying the tract have not been severed from the surface interest thereof by an appropriate title document, without the written consent of the person who owns the tract." Now this was discussed in the informal hearing and we agreed to cooperate at that level and suggest an alternate site for the permit in the event Ashland could prove their ownership of this interest. When the alternate site was rejected and Ashland has proceeded to push forward for the permit itself, we are in the position of having to object because we don't feel they have satisfied the requirements for a permit. If we hear evidence before you today, if the Board decides the proposed site is reasonable or if the Board decides to modify the drilling at the proposed site or even if the Board decides on an alternate site, the end result is that a permit issued from this Board or be allowed, we feel that 45.1-311(g) establishes a prerequisite or statutory requirement to be satisfied by Ashland before this permit can be issued. Therefore we are not asking the Board

Tom Pruett, Attorney to decide on the oil and gas ownership on this tract, we know that lies with the circuit court where the tract is located, but basically we are asking the Board to defer deciding whether the permit should be issued until Ashland can show that they do own the oil and gas interests.

Richard Chew Would you tell me again why you think that has to be done before the permit is issued.

Tom Pruett, Attorney It appears to me, sir, that Code Section 45.-311(g) states that in no event can they initiate the drilling....

Richard Chew But it doesn't say anything about the permit. Why couldn't a permit be issued that would be contingent upon resolution of the title problem.

Tom Pruett, Attorney I could think of a number of reasons. Primarily, change of circumstances would be one thing. We would consider here today factual issues to determine whether or not this permit is a valid, or this proposed site is a valid location, whether there is a danger of polution. Which is one of the issues raised. If the permit is approved by the Board and later challenged in court and Ashland is not found to have ownership interests, this proceeding is wasted. It is not the cleanest way to go about this. It is putting the burden on the landowner to file injunction proceedings, the person in possession of the property, the person who traces his ownership back to the fee interest would have the burden then of stopping these proceedings by an injunction. We feel the burden should be placed on Ashland since they are ....

Richard Chew You mean we would issue the permit and then the court would injoin the drilling until the resolution....

Tom Pruett, Attorney I think that would be the fact if we had the hearing today. I think the cleaner and the.....

Richard Chew You don't think we could do that?

Tom Pruett, Attorney I don't think that would be the most advisable route, I think the Board can do that but I am trying to encourage you that it would not be the most advisable because circumstances may change during the time ownership interest is decided by circuit court or the court with jurisdiction. Factual circumstances may change. It may not be the cleanest way to go about this. It seems to me the proper way would be to require Ashland to show their, or prove their oil and gas ownership on this tract and then have the hearing as to whether or not the proposed location is proper. I don't think that the evidence shows that they have written permission of the surface owner and then he is also the oil and gas interest owner. These proceedings would just be wasted.

Richard Chew Well you are, am I right, this title is going to be quieted, somehow, isn't it? I mean all of the parties are going to be pursuing it one way or the other.

Tom Pruett, Attorney I feel sir that the burden is really on Ashland to pursue that.

Richard Chew Someone is undoubtedly going to pursue it. You can't just leave it up in the air.

Tom Pruett, Attorney That is correct.

Richard Chew You can appreciate that we might be perturbed by the fact that it doesn't say in no event shall a permit be issued. It says in no event shall drilling be initiated.

Tom Pruett, Attorney I understand what you are saying. In other words you could approve the permit but stay the drilling. Is that what it is?

Richard Chew I think you can put reasonable conditions on the permit and one could very well be the showing of correct title interest. The language on that is unfortunate to...appropriate title document, but I think we know what they must have been driving at.

Eugene Dickinson, Ashland Attorney Mr. Chairman, Mr. Chew, Ashland has drilled some twenty-three wells on the lease already under which we have claimed title and as far as we are concerned there is no title dispute. Mr. Pruitt and Mr. Davis have told us that they think we don't have title. But we don't have any basis for thinking we don't have title. As far as the need to affirmatively prove we, I don't think we have to do that in the permit procedures at all. If anyone challenges the title, then they should do it in the courts. Mr. Pruitt told us at the time we had our original hearing that they were ready to file a title suit to challenge our title and it hasn't been done and I just don't know if it is going to be done or not.

Richard Chew Do you think we should ask to see an appropriate title document?

Eugene Dickinson, Ashland Attorney It could be supplied if that is necessary. Mr. White has done extensive title report under which we claim.

Richard Chew I say that facetiously but that is a good question and I dare say that the economics .....

Tom Pruett, Attorney Sir at the informal hearing our position was that that suit would be filed immediately. We were under the impression that it would be but we did not in any way compel our people to file. Our position at this point and time is they are in possession, I understand that the lease itself probably stems from several documents and that the land in question on this one particular site has been owned by this family for a number of years. They do in fact claim title and it appears to me that Ashland would be the one to assert it. I think it would be a prerequisite to the issuance of a permit that that title be shown. I don't think it would be proper to allow a certain party without title in the property to compel the landowner to go through these proceedings without first showing. I think it is a statutory prerequisite.

Richard Chew I don't want to spend all morning on this but it seems to me what they are saying is that they have something in the nature of a prima facie showing that they have a lease and then if there is any objection to it, then somebody ought to bring that objection into proper form. They sound to me like they are not going to do it.

Eugene Dickinson, Ashland Attorney We're not going to do it.

Tom Pruett, Attorney Our position is still the same. If the landowners are in possession and they have claimed it...

Eugene Dickinson, Ashland Attorney You are in possession of the surface. You are not in possession of anything underground.

Tim Gresham, Assistant Attorney General Is there an appropriate title document here that has severed the interests here. Have the interests been severed?

Eugene Dickinson, Ashland Attorney Yes it has.

Richard Chew Is that to be presented to us?

Eugene Dickinson, Ashland Attorney Yes, we can show it to the Board.

Olin Prather Do we need that?

Tom Pruett, Attorney Mr. Chairman, my client also would state in reply to the statement that there are 23 wells drilled that there have been no wells drilled on this particular lease.

Robert White, Attorney For the record I can set forth the recording information for the severence deed whereby Ashland succeeded to the interest, it is a deed from Mary Horne and James H. Horne, her husband, to Lon Rogers, trustee for Rogers Brother's Coal Company. The deed is dated January 28, 1921 was of record in Buchanan County Clerk's office, Deed Book 54, Page 256.

Olin Prather Well, I am moropolizing the Board's time. I would just like to say that I feel stuck by the language that this has to do with the initiation of drilling, not with issuance of permit. I'm not sure whether or not the appropriate title document is even related to the permit issuing process.

Tom Pruett, Attorney I would ask what would be the point in issuing a permit if there is no title? That is the exact point here.

Richard Chew You mean that the title is in dispute.

Olin Prather It is in dispute, there is bound to be a title.

Tom Pruett, Attorney No title to Ashland. I understand your point. Let me clarify this. If there is not title found in Ashland, what would be the point in issuing a permit, if you don't know that ahead of time? I think it would be clear and a more proper procedure to show title in this land before a permit is applied for. Otherwise the burden is on the person claiming, the landowner here in this case, the person in possession of the surface and claiming oil and gas interests. The burden is on him to defend his own property. I don't think that is a due burden.

Richard Chew Well it is an unfortunate one. It may prove to be an expensive one.

Olin Prather It looks like the landowner is going to have to do it.

Richard Chew There are all sorts of enjoinable rules.

Tom Pruett, Attorney I understand that.

Richard Chew You can't really set yourself in the position of saying that

Richard Chew none of those should be ruled upon on the grounds that they might be appealable or enjoinable in another forum.

Tom Pruett, Attorney I understand that sir. I think my position mainly is before the Board hear today, I think it would be more clean, more proper procedure to require this title. Show it for proof of title before the Board.

Richard Chew But we could not rule on it.

Olin Prather We shouldn't even try to influence it either.

Tom Pruett, Attorney We are not asking you to rule upon it, but to defer until they can show title.

Richard Chew What would be the point of showing title, I mean, if the title is in dispute; to show title is to get us to find title.

Tom Pruett, Attorney No the point is to get you to defer the issuance of a permit until title is proven in proper form.

Richard Chew And who would do that?

Tom Pruett, Attorney The person bringing on this matter.

Richard Chew They don't have anything to prove. They are already satisfied that they have it. Do you want them to bring a declaratory judgement in order to save you the trouble of filing ...

Tom Pruett, Attorney I think that would probably be proper sir because they are the ones pushing for this permit. Our people are also satisfied that they have the title. They stand equal on that point.

Ralph Gunter Doesn't the inspector check the title before he issues the permit.

Olin Prather No.

Tom Fulmer, Inspector Could I bring up one point to the Board. The application for a permit when reviewed by the inspector is reviewed on the basis of those things required by inspector on the permit and one of them is not the decision of whether who has title. The permit itself is issued that the well operator can drill a well as to the specified regulations set forth by the state. That is all. It doesn't grant them the mineral rights to anything.

Ralph Gunter You don't check the title at all.

Tom Fulmer Inspector The law doesn't require me to do that and it wasn't intended for the law to require me to do that.

Richard Chew Does he make any representations in the application.

Tim Gresham, Assistant Attorney General 3.11, 3.12 I mean on the well plat sets out what must be shown on the well plat. One of the things is the owner's of record of surface coal and other mineral rights on all tracts within 500' of the well. So I would assume it has been set out on the plat.

I. C. Spotte Mr. Chairman, I think we should stay with the two points that were brought up, the contamination of water and the amount of land that would be taken

I. C. Spotte for the site. I think those are the two points that the Board has to decide.

Harry Childress, Chairman Do I hear anything else on that?

Richard Chew This provision that you just referred to is for the protection of others really. It so happens that it has this effect.

Tim Gresham, Assistant Attorney General They have to show the tract they are drilling on, yes.

Richard Chew So a total stranger, if he is crazy enough to try it could walk in an apply for a well work permit for something he had no right to drill on at all. I mean if he could meet the tests of the inspector. He could grant him a permit. But if he went out on this fellows land and started drilling he might run into some problems with the true owner.

Tim Gresham, Assistant Attorney General There is also the notification procedures.

Tom Pruett, Attorney Sir in getting back to 45.1-311(g). It is true that it says no drilling will be initiated until such time as there is appropriate title document shown or the written consent is given. That seems to me that that puts the burden on Ashland itself, regardless.

Harry Childress, Chairman If they want to do drilling.

Olin Prather I am not sure it does.

Tim Gresham, Assistant Attorney General My reading of 311(g) is this only applies where the minerals are not severed from the surface. Ashland is saying it has been severed.

Richard Chew The other's are saying it hasn't. That doesn't help us too much.

Eugene Dickinson, Ashland Attorney What they are saying is the language of the severance deed doesn't include oil and gas. The language is coal and all other minerals that are recondite and our legal position is essentially that the Virginia Supreme Court has decided that those words include oil and gas and that seems to be the legal problem with the title.

Tom Pruett, Attorney I don't think that properly a matter to be considered by the Board. I think to put this in perspective, we are not asking the Board to rule on this issue of the ownership. There is no way that you can. It has to be in circuit court where the land is located. But, what is the point in Ashland obtaining a permit if they cannot drill until they prove this ownership.

Eugene Dickinson, Ashland Attorney We don't have to prove any thing.

Richard Chew They are saying that they are in compliance. It doesn't say, you use the word shown and then you use the word prove, and neither one of those are in there. It just says "when it has been severed or has not been severed." And they say everything is apple pie and lets get on with it and you say no it isn't. I am afraid you are going to have to.....

Tom Pruett, Attorney But the statute itself is a requirement put to them by the statute which says "in no event can they drill."

Richard Chew Oh yes, that is right. They cannot drill if you are right. But they don't think you are right.

Tom Pruett, Attorney Ultimately, where does the burden lie to prove that we are not right, then if they cannot drill. It is not with us, it is with them.

Harry Childress, Chairman Do I hear a motion.

Richard Chew Harry, let me just say this. It is not so much a question of whether they have to prove it but a question of to whom they have to prove it. I don't think they have to prove it to us and I think that is the sense of the Board here.

Tom Pruett, Attorney Well, our position is how would the Board have jurisdiction to allow, you are in essence saying the Board has jurisdiction to allow the permit but not the drilling until it is proven.

Richard Chew I think a permit could be issued to someone who has no connection to the piece of property at all. What he would do with it I can't imagine. But if he comes in and meets the requirements of the statutes and the regulations for the placement and drilling of a well, he's got himself a permit. Unfortunately he has a permit to drill a well on your land and that brings a whole new problem to him. He has got to deal with you. Which by way of illustration, so now here is some people with a permit and you are saying that they have a permit for something that they don't have any right to do. That may be, but we are not the ones to make that determination. I just don't see how we can do that.

Tom Pruett, Attorney I understand, our primary concern was that the burden appears to be placed upon our people.

Richard Chew Well, but fine. I don't know what you are going to do with that burden, but they apparently aren't going to assume it.

I. C. Spotte The ball is in your court.

Richard Chew That is your problem, that it is not a cheap ball.

Tom Pruett, Attorney Has this been ruled upon by the Board?

Richard Chew I think we are about to.

Olin Prather Do we need to have any other comments?

Harry Childress, Chairman I believe we need to rule on this question here.

Tom Pruett, Attorney This wasn't in the language of the motion, it was primarily an objection.

Harry Childress, Chairman We can note the objection.

Richard Chew We can vote on the objection.

Tom Pruett, Attorney What ever proceeding the Board normally follows, I wasn't sure whether procedurally if this was the next step down the line. Should I start my opening statements on the facts or has the Board finished discussion.

Harry Childress, Chairman As far as I am concerned I think he should just go ahead with his opening statement. So if you would just proceed with your opening statement

Harry Childress, Chairman We have noted your objection.

OPENING STATEMENT BY TOM PRUETT, ATTORNEY FOR VAN DAVIS AND CARL HORNE:
It is our position that the proposed location of this well will severely curtail he surface owners , independent of any mineral interst of the surface owner's ability to obtain necessary quantities of potable water that is needed to reasonably use and enjoy their intersts in this land because this reserve potable water will be endangered. We feel that the surface owners will suffer damage because of the sharp drop in property value. Specifically our objections to the inspector's decision, the facts at the informal hearing and the facts that we intend to present today, this being a de novo hearing are that a dam has been in the planning in the hollow where this proposed site is located. The purpose of the dam was to impound the water for use by homes in the area. Water is a very scarce commodity in that particular area. The inspector, on page two of his report, stated, "since the dam is not presently in existence, this office feels that this issue has no bearing on whether the well work permit is a present endangerment to the surface properties of the owner." We intend to show that although the dam isn't in existence at this point of time, actual plans have been made for the purpose of building a dam. If the well is located in the proposed site, it could lead to pollution and the loss of the site for an impoundment of waters with the loss of this water reserve to the surface owners whereby affecting the property values. Also, at the informal hearing facts indicated that there was an alternate site proposed near the adjacent property owner's lines. The inspector on page three of his report spoke to that and said, "As to the alternate location as suggested by Mr. Davis, it would appear an arbitrary exercise of this office to force Ashland Exploration to enter proceedings involving the permitting of another well. Since the location of the alternate well would place the location within 500' of a surface owner and royalty owner not subject to these proceedings, Ashland would have to permit an entirely new well. This office feels that this would be a case entirely of itself and has no bearing on the subject matter before it as to what decision it must make." Our objection to that is that it is not an arbitrary exercise, the authority to impose these additional requirements on Ashland, if the water resources are so critical at this point in time. We think the Office of the Inspector and this Board has the authority and it is set out in public policy of the Oil and Gas Act, 45.1-287.6 to insure that, I'll get the exact language of that, "to ensure that the water resources of the Commonwealth are protected." This is the statement of public policy in the Act. Therefore we object to the inspector saying that it's arbitrary exercise of his authority. We feel that it is properly within his authority to require these additional proceedings be instituted if they are shown to be necessary. In filing a statement of our view of the case, we intend to show to the Board that this impoundment of water on this particular site is vitally important to the surface owners. Also, that the alternate location as proposed by these people, the surface owners or the petitioners, is an acceptable location and that the additional permitting requirements would not be unduly burdensome in light of what is at risk here and that is the water reserve for this piece of land. We would show that Ashland's insistence upon this proposed permit site doesn't reflect the reasonable necessary use of the surface of the leasehold by the mineral owners. I understand that probably if they are shown to be mineral owners or oil and gas owners, they have the right to enter in upon a surface owner's property but that that right is limited by reasonable necessity. There is no exploiting there reserves. We intend to show they are not proceeding on those limitations.

A QUESTION IS PUT FORTH BY MR. RALPH GUNTER AT THIS POINT TO THE ATTORNEY
Let me interrupt just a second. You spoke of your plans to build a dam, have you got a permit from the Water Control Board yet?

VAN DAVIS RESPONDS TO THE QUESTION
I started in 1975 with the Southern Soil Commission to get help to build this dam. At that time they were giving out money to help build water supplies for people in that

VAN DAVIS area that needs extra water.

Ralph Gunter I was speaking about a permit from the Water Control Board which I understand is necessary.

Tom Pruett, Attorney No sir I don't believe our people have a permit at this time but they have made other plans.

Olin Prather Have they surveyed the dam and its impounded area?

Tom Pruett, Attorney They have located the site where they intend to build the dam. I suppose many of these questions could be better answered when I put my first witness, Mr. Davis, on the stand.

Olin Prather Alright, one thing I would like to ask though. Does this well, is this well site within the confines of this water.

Tom Pruett, Attorney It is immediately above the impoundment area and adjacent to....

Olin Prather How far?

Tom Pruett, Attorney I don't think that is determined as yet, sir. It is just in a very location. Perhaps it would be better to allow the witnesses to estimate that.

Olin Prather Alright. Is that in your hearing Tom?

Tom Fulmer, Inspector Yes.

Tom Pruett, Attorney That is my opening statement and brief and I would like to at this time call my first witness.

Harry Childress, Chairman Mr. Pruett, according to my letter, Mr. White would like to go?

Tom Pruett, Attorney Oh yes, I'm sorry.

OPENING STATEMENT BY MR. ROBERT WHITE, ASHLAND ATTORNEY

I will be very brief. The site chosen for Ashland, the site applied for will encompass approximately two acres, which is below the water springs that Mr. Davis was principally concerned with. There are no improvements in that area. That was an alternate site discussed at the informal fact-finding hearing. We will show that that site was totally unsuitable mainly because it was to be placed on a steep hillside resulting in unstable removal of rock. It was also within 500' of an adjoining mineral owner which may have subjected Ashland to a forced unitization agreement. We will also show that, like I say Mr. Davis has placed no improvements in that area. He had some vague plans to put a dam in, but as the evidence will show he has had these plans for approximately 12 years and nothing has been done. That concludes my statement.

TOM PRUITT CALLS HIS FIRST WITNESS MR. VAN DAVIS. THE FOLLOWING IS THE QUESTION AND ANSWERS DURING HIS TESTIMONY

Question: Would you state your name for the record.

Response: Van Davis

Question: Mr. Davis, where do you work?

Response: I work out of home for Panther Creek Limited Partnership.

Question: How long have you worked for them?

Response: Since '76.

Question: Could you briefly describe your job?

Response: Lets say I am production manager and overseer of gas wells for Panther Creek Limited Partnership.

Question: Do you supervise in your job capacity, do you at anytime supervise the placement of well sites?

Response: Well sites, drilling and completion.

Question: What is the extent of your drilling experience? Howmany years?

Response: Actually into the drilling I am going to say ten years but drilling experience goes back to 1950 for site building and laying pipeline. Actually getting into the drilling, boring the hole in the ground, ten years.

Question: In that amount of time howmany sites have installed?

Response: I would say 80 maybe 90 wells. In fact we done 15 last December.

Question: Mr. Davis will you describe the property for the members of the Board that this proposed well site is located on?

Response: This property is located low in a flat hollow and this particular flat hollow I have planned on water there since about 1975 when I purchased it. I have drilled wells on it. I have checked for other types of water supplies for our needs for that particular piece of property.

Question: Where is this property located?

Response: It is located on Blackey's Fork on Slate Creek in Buchanan County.

Question: You noted that it was located on a flat hollow, is that at creek level? What is the appropriate elevation of this property?

Response: Starting from about 2,240' from the ridge and down to a proposed well site I would say it would be in the 1,800', 1,900' level.

Question: Are any portions of this property on top of the mountain?

Response: Yes, most of the valuable property is located on top of the mountain because State Route 83 goes through that area and any flat land in that area there is very good orchards or trailer parks or anything you may want.

Question: For the record would you state your opinion of who owns the oil and gas interests on that tract of land.

Robert White, Attorney for Ashland: We object to that question.

Tom Pruett, Attorney for Van Davis: I was simply preserving that for the record.

Harry Childress, Chairman: Your objection has been entered earlier.

QUESTIONING BY MR. PRUITT OF MR. VAN DAVIS CONTINUES

Question: Do you live on this tract of land?

Response: Yes.

Question: I would like to show to Mr. Davis a copy of the modified operation plan on which I believe the members of the board would have. By letter from Stephen Parks of Ashland Exploration dated April 29, 1983 (counsel may want to see this). Gentlemen of the Board, I wish to allow Mr. Davis to mark certain locations upon this plat for the Board's consideration and would enter it as an exhibit. As I question Mr. Davis from time to time I may ask that he circle and put a number on a location and I'll submit that to the Board as part of the record. Mr. Davis, I believe I asked this question, but do you live on this particular tract of land?

Response: Yes.

Question: I am showing you now this plat that is attached to the modified operations plan of April 29th, 1983, it is the last page of the plan. I would ask you to take this red pen and put a little number one and circle the spot where your house is located on this property. Does anyone else live on this particular tract of land?

Response: Yes, Preston Mullins.

Question: Would you note and put a little number two where Mr. Mullins lives?

Eugene Dickinson, Ashland Attorney: Excuse me Mr. Pruitt, I have some copies of that map that have the outlines and some things colored on it. It might be helpful if you want to use those.

Mr. Pruitt: Thank you I appreciate that.

Eugene Dickinson: I have some for the Board so they can maybe follow.

QUESTIONING BY MR. PRUITT OF MR. VAN DAVIS CONTINUES

Question: Gentlemen of the Board, I have already obtained a couple of marks on this one modified plan. I would like to continue using this plan and perhaps address the plat you have from time to time as well. What is the approximate size of this tract of land?

Response: I have much land there joined together but this particular tract is 17 acres or less.

Question: I call your attention to the plat that has just been submitted to the Board by Mr. Dickinson. I note a red and a green line extending down topo elevation showing a hollow. What side of that line is your land located?

Response: On above or north.

Question: On the red side?

Response: Right

Question: How do you get your water?

Response: Water cistern and let me also say that I have built a home there costing bettern than $100,000. I have got a temporary metal tank for a water system that I am using now.

QUESTION BY MR. OLIN PRATHER, WELL REVIEW BOARD TO MR. VAN DAVIS

Question: Where is your home? Up on the ridge?

Response: Yes.

Mr. Tom Pruitt, Attorney: Let me say for the record, you see the area that is drawn by Ashland to show the impounded water spot. I believe that is the area marked in blue to left of that the elevation shows a flat spot I will mark that for the Board.

Olin Prather: And the dam is below it.

Mr. Tom Pruitt, Attorney: Number one on this plat as designated by Mr. Davis, is his home site.

Olin Prather: Is that it in the square?

Mr. Tom Pruitt, Attorney: No sir it is down on the flat from that square. The number two is up along the highway.

I. C. Spotte: The highway is on the ridge?

Mr. Tom Pruitt, Attorney: Yes sir.

QUESTIONING CONTINUES BY MR. PRUITT OF MR. VAN DAVIS

Question: Mr. Davis lets go back to one point because of a question from the member of the Board. Does the, where does the highway go?

Response: The highway usually follows the center of the ridge cutting through very close to the center of the ridge.

Question: What is the nature of your property up there adjacent to the highway? What is it like?

Response: On different sides of the roads there is small flat spots, where my house is there, where number two is marked there is another flat area you will notice there approximately two to three acres there. You fellows can more or less tell what a top of a mountain is. You've got some flat areas and then you go off a steep side on both sides.

Question: You stated, I believe, for the record that your valuable land did lie up there. Is that right?

Response: Right, anytime flat land approaches highway in our area it is valuable property.

Question: Lets go back to the point and restate for the Board how you are presently getting your water.

Response: I have a temporary metal tank and all this was pending facts I believe he said 12 years, but it went back to '74, '75 when I really started planning

Response continues by Mr. Davis: this. I got tied up with gas in planning the proposed dam site. I have been tied up....

Question: Excuse me a second Mr. Davis, you have a temporary tank, would you explain this to the Board?

Response: A temporary tank is a storage area in a cistern style that you catch rain from your roof top and store it into the tank and that is your water supply. It is runoff from where it falls on the roof of your house.

Question: Have you drilled any wells?

Response: Yes. I have a well drilled in my front yard and it produces about eight gallons per day.

QUESTION BY MR. I. C. SPOTTE: How deep is it?

Response: 417 feet.

Mr. spotte: Does it use a coal seam?

Response: Yes, I went through two or three layers of coal.

Ralph Gunter: You said eight gallons a day?

Response: Yes sir. In otherwords it is a dry hole.

Olin Prather: There are no aquifers in the area. For everybody's information there is no aquifers in this country except in the valley fill.

QUESTIONING CONTINUES BY MR. PRUITT OF MR. DAVIS

Question: Is that the only well you have?

Response: Yes this is the only one I have on my property.

Question: Do you have a sufficient amount of water right now for your home use?

Response: I am very short on water now. It is limited baths, limited bathroom use.

Question: Is this a normal situation?

Response: Through any period of six or eight weeks without a rain to restock your supply in your tank, then you are scarce on water.

Question: You had stated, and I am directing your attention to the pond now. What, if any, plans do you have to ultimately obtain more water?

Response: This was in the planning stage from the time I built my house. I was to have a pond there and that is why I have this particular area has no runoff, no state road drain pipes in it. This particular hollow, starting back in '74, '75 has been planned by me for water supply because all people in that mountain there, the ones that have water get it from a pond. They catch it through the winter months and store it and it is pumped into their houses as it is needed through the dry seasons of the years.

Question: Are you saying then that there are other ponds located up there of the same type that you have planned?

Van Davis Response: Yes, yes. Only I have planned this one a bit bigger than the ones that the others have because I have kids that someday will live on this piece of property that will need water as well as myself.

Question: Do you have any future plans other than your children moving on the property for development of this land?

Response: My plans and my wife's plans for retirement was for trailer space or building some rent houses, complexes, because on Slate Creek in the Town of Grundy is a very good area to rent by the buildup in Buchanan County.

Question: Can you carry out those plans with the basic supply of water.

Response: You cannot have rental property without water and there is no future plans of receiving any help from the county on water in that particular area. It is strictly go get it yourself. The only way I know of getting it is by a dam or reservoir to hold water for sufficient needs through the dry seasons of the summer.

Question: Can you say for the members of the Board's information, howmany different pond sites of this nature are on top of that mountain in the general area of that tract.

Response: I will start with the people I know. I have lived there all my life, let me say that. I have never lived any where else. Hobert Lester, pond, Margie or Orvill Allen, pond then that comes up to me, Gerald Davis, pond, Kenneth Horne, pond, Carl Horne, pond, Amos Randolph Viers, pond, Cecil Kennedy, pond, A. C. Mullins, pond, then we go into the Plateau Orchard area of Kennedy's it is all ponds.

Question: How far are these locations?

Response: Just the names I have named are within 1½ miles of this area.

Question: Let me call your attention to this plat presented to us by Mr. Dickenson with the colored markings. It shows the dam site and an impoundment area. Does this approximate the location of where you had your dam planned or would you change it.

Response: Very close, except it shows on this particular area right here it shows more blue on the right than on the left and also with the hollow being as level as it is, it would back the water on up above and below the location marked.

Question: You intend this pond to be for your use only.

Response: In partnership with the Horne family.

Question: Which ones are those?

Response: Carl Horne, Kenneth Horne, Bertha Horne and Michael Turner.

Question: Is that the Carl Horne that is a petitioner in this matter?

Response: Yes.

Question: Let me call your attention to this proposed well site located on the plat provided by Mr. Dickenson. Let me call your attention again to this modified operations plan of Ashland and this time the cross section and view of the site on the next to the last page states the proposed well site of the Lon B. Rogers, et al number 23 and gives elevation, now if you would consider this Mr. Davis, have you ever built a similar site such as this.

Response: No.

Question: Have you built well sites as the type required by this well?

Response: Yes.

Question: If you were to build this site, what are your objections to this site in the way that it is shown right here in the plat?

Response: What I see from this plat here, your well site, your ponds are updrainage from you well location and on the same level as your well location and any spillage on this well location would be going straight off into the creek instead of into this pond site. It is my theory and that of our company is to have our cement pond located below the proposed site so any spillage or drainage that is spilled on the flat area of the drilling site would be caught in the pits below the well drilled spot.

Question: Are you then saying on the left side of the top view of this plat that there is a possibility of spillage over that site. Is that your point?

Response: Yes

Question: Where would that spillage go?

Response: This spillage would go straight over the hill over the berm or the lower edge of the drill site and straight into the creek. Center is running below and down from the way they have got the proposed ditch line where it goes off here, that is downstream.

Question: Are there any other drainage or road drainage into this hollow area?

Response: No, there is no drainage in that hollow what-so-ever.

Question: Is that important to you?

Response: It is very important to me, because if you are going to build a pond for your drinking and for your water you will use, you don't want roads with muddy water or sewers or state road drainpipes running in to the particular area. That is why I have held this particular area, no timber cut on it what-so-ever or no drainage into it except what feeds from the springs and natural rainfall.

Question: Do you have another hollow site that would be suitable near this?

Response: I have about 200 acres up there and this is the only particular hollow where you can have almost twelve months per year water flow. The others are very dry and quick runoff with no springs in them. This particular hollow here was used by my grandfather for his water supply as well as it could be used for mine only I think I would need more if I develop the property.

Question: Mr. Davis, would you note on this plat with a red pen, to the best of your knowledge, where the water sources are coming in to this hollow. Are those blue spots noted to the best of your knowledge the general locations of the springs.

Response: Yes sir except for this one blue spot at the well location spot is directly below or down creek a bit from where it is located is the main source of water.

Question: Would you then draw a red spot there showing the location.

Question: Mr. Davis, other than the design of the pit and the well site itself, what other pollution concerns would you have regarding the drilling of a well in this spot?

Response: To begin with your runoff, your muddy water from the site would be one Any type of spillage on top of the ground that could be two. Then we will go into the drilling procedure of drilling a well 5,000' or what ever they have. I didn't even notice how deep they have got it listed. First off you have all cuttings that come from drilling a hole. You have the oil that is also injected from those cuttings from the air compressor which now there is five major air compressors and one booster to run this type of a drill. Which those boosters do put oil into the air for the working parts of the downhole hammers and anything in this drilling bit in. O.K. that comes into the pit from the actual drillin then my question and my bother is by doing this regularly every day myself is what is done in the stimulation, the acids and ingredients that are put into that well to stimulate and frac it being put in pumped and returned back into these particular pits . Over the years and periods of seepage from these pits, and they do in our area because it is soap stone and frac sand rock, and I don't think, which I have built pits myself, it is very hard to get a pit to hold two weeks in dry weather because it will seep out. I am telling that from honesty.

Question: What is the nature of the land on this site?

Response: It is sand rock and soap stone or shale. Now I will start from this starting from uphole, first off there has to be a surface conduit pipe to take care of the salt ground down to a solid formation. This is an area that really bothers me more than an because this well is approximately 50' higher than my dam. The biggest area of water comin out in that hollow, a spring, the supply of water it is about 50' uphill above it. This water could be gathering from any of these springs that is up hollow or up on the side of the hill, but there is one spring right above the proposed site here. If this water is coming off of your sandstone formation and leaking into the spillage rock, loose shale on your hillside, this hole pushed down through it, what is going to seep in this drilling procedure? By this hole going through this supply of water which is coming out below it from polluting it. I don't see anyway to keep from it because I have polluted other people's water .

Question: What is the nature of some of the pollutants you are talking about?

Response: Now I am going to get back to going downhole. First off they say Mr. Fulmer proposed cementing a conduit or water string pipe. I disagree with that 100% because any cement that goes into that has to be pumped downhole and lifted back around the outside of your casing to the top of the ground. It creates static pressure. If any of these streams that are in that area near this pipe is supplying my supply of water and by that concrete being injected into the ground could also create a groutting of the area. It could stop what water drainage I have coming into that particular area from that particular stream by it being under static pressure it will feed into the water supply, veins or whatever you may want to call it feeding out down there. I don't think that that would be, in my own opinion of drilling and experiences with drilling, I think that would be wrong. Now next thing is we go into stimulation. In that area most times you will have a maxton, ravencliff, maxton, formations where gas is mostly found in that area, lime and berea and the devonian shale. In our areas most of the wells are lime and berea wells. First off I will start off treating berea which I do it by the day and they probably do to. The lime formations are treated by hydrochloric acid. Probably 5,000 plus gallons to do an acidization of a well. This 5,000 gallons of acid plus gel and other ingredients, which I don't know their toxic value are, I'm just a country boy, but I do know hydrochloric acid is dangerous. This is injected into this formation and then it is swabbed and blown from gas pressure back out to these pits and it will be stored in these pits. Then if we go on downhole we go to the berea formation. That is water, sand, gel, acid and a few other items that go into this well. Now we are not talking about a few

Response by Mr. Davis continues: piece of land that I have got.

Question: What is the criteria for that site then?

Response: This area would be below the dam without any runoff, pits or anything to drain in the years to come into the proposed dam area or my proposed water supply area. Lets say it like that, that's what it really is.

Question: Would you describe the lay of this land to the members of the Board? What slope would you estimate the lands on?

Response: I think it would average from this particular area here probably, that is very hard, because you have benches. Lets say 12 to 15 percent slope area.

Question: You mention that you have benches. You are guessing 12 to 15 percent, just describe the benches.

Response: Usually in our area from each bed of shell, a layer of bedrock sandstone, you will have a bench because the shell would wear out faster than your sandrock did and you are going to have a flat area then you will go over steep again and maybe another, I call it a stair steep. Up it could be 150' between each layer or so and sowhat.

Question: Approximately how wide are these steps as you call them?

Response: Some are very narrow, Tom, and in some areas next to the top of the hill is a very good flat area.

Question: What is the nearest property line to this site?

Response: That is Mr. Horne's property line. I would say, I would guess, since they surveyed I would presume 500'.

Question: I note on the plat provided by Ashland that there are two dark lines, one on the upper side marked in yellow around this alternate site. What are those lines?

Response: I think that is what they call the 500 acre Harman-Bogle Grant and this particular line down here on the southside of the line, I have seen many different surveys there.

Question: Are both of these lines suppose to be the projected same line?

Response: They are suppose to be the same line.

Question: Who owns the oil and gas intersts on the south side of that line, to your knowledge?

Response: I would say Clinchfield and Georgia Pacific.

Question: It is not then part of this lease under which Ashland claims ownership.

Response: No

Question: I notice that there are two lines. Howmany different lines are their illustrating or trying to pinpoint the location of this property?

Response: thousand gallons of water, we are talking about roughly 800 bbls. or 35 or 40 thousand gallons of water that goes into this hole that has to come back out. If the well is a productive well it has to come out and be stored in these pits or blown or run over the hill, whatever. If these pits are going to be put on this property and it is going to be stored, hydrochloric acid, gel toxin of any sort or any other type of material then I will bring this particular matter up last. What if they inject isotope tracers? Isotope tracers is a radioactive material. That is used some.

Question: Have you ever injected those in wells you have drilled?

Response: Yes I have. I have and I think that you will find that most any well that is treated by Dowell, Schlumberger or any of those other, they will do that for the purpose...the purpose of the isotape treatment is to tell when this formation is busted where the, in other words down there when they put the pressure against it it can go up or it can go down or it can go out and by injecting the isotope material in the ground, they can run a probe from that and their scanner will tell whether the frac has went up, down or out flat or any type of spear head it may go to.

Question: In light of a summary here, what do you think the effect of these chemicals would have on your water supply at this site?

Response: I will ask them this question? Would you use water below a pit or pits containing hydrochloric acid, probably a ton of soap, oil, flushes and tracers?

Question: Then it is your opinion that it would pollute?

Response: Yes

Question: Let me direct your attention to the alternate site that was proposed at the informal hearing. On the plat provided by Mr. Dickinson from Ashland, would you put a little number three and circle showing the site of the proposed alternate location.

Response: On this proposed alternate location, I told Ashland anywhere below the flat area of this flat up here. Anywhere on the benches.

Question: Draw a shade in there showing the area you proposed to Ashland. Would you describe generally this area.

Response: The area, the proposed site to Ashland is off of flat, lets say on my investment land, but the terrain in this area, if you will notice on your topo map is no steeper than the location they proposed.

Question: Let me show this area to the members of the Board since we are not talking specifically about the point marked by an "X".

Mr. Chew asks a question: Is that the alternate?

Response: I gave a wide variety of alternate sites there. As long as the location would not create any drainoff into the area which is proposed to be dammed. In other words, I have much acreage around there. It doesn't have to particularly on this point it could be on up in this hollow over here or it could go on any other

Response: I have seen it surveyed numerous times. Harman-Bogle line I have seen shifted from the original point 200' either way plus line maybe. Because every-time they get a different engineer he will come up with a different survey. But the old original corner is still located in that hollow which was also the surface or the land at that time was bought by my grandmother, Mary Horne. It was established at that time and the 500 acre Harman-Bogle line joined at that particular area.

Question: Would you mark for the Board on the topo with a little number 4 the spot where one of the recognized southern lines are? I notice you have drawn two circles across the road and placed an "x", let me show this to Ashland. And I will show you, the Board, the areas marked by Mr. Davis.

Olin Prather to Mr.Pruett: What you are saying then is that that present survey line on the plat is inaccurate?

Mr. Pruett: It is in dispute sir. Mr. Davis just stated that he has observed shifts of up to 200' either way, north or south.

Mr. Davis: If I may say to the Board, on the north line, I had to go to court against Pocohontas Land Company and they agreed that the line had been shifted and we reached an agreement a quick claim to each other and made a settlement to each other on the north line on this particular tract because it had been shifted.

MR. PRUETT CONTINUES QUESTIONING

Question: Mr. Davis this area marked with a nubmer four on the plat by yourself, is that the southern most survey of that line to your knowledge?

Response: Yes.

Mr. Pruett: No further questions of Mr. Davis, Mr. Chairman.

ASHLAND CROSS-EXAMINATION OF MR. DAVIS

Question: Mr. Davis, lets talk just a second about your present water supply. When did you build your house?

Response: The house started in 1974 and was finished in 1977.

Question: And that is when you put in the cistern and drilled the well?

Response: Right.

Question: And you say that at that time you began making plans to build this dam.

Response: Yes.

Question: They were somewhat vague plans.

Response: No they weren't vague....

Question: Let me finish the question please.

Response: Can I answer the question now? When I bought the property it was for the purpose of an orchard. I got into the coal business, construction, gas and oil and all through, if I could have got enough time there is a dozer sitting in my yard

Van Davis response continues: at anytime I can have enought time, when I sold out some of my mining equipment, I kept the dozer for the purpose of building this particular site. It has been setting there since because I cannot get enough time to go in there, because once you start that dam it has to be done. The spill ways have to be put in in order to be in compliance with the rules of the county and state. At the time this was proposed, at that particular time, I will tell it like it is. I intended to retire in 1978. I intended to go into raising an orchard, but as far as vague plans for a dam that is not true. Because the plans before I even built the house there was for water, a dam.

Question: How long have you had this bulldozer there?

Response: I have had the bulldozer sitting there ever since Imoved there.

Question: 1975?

Response: I moved there in the last part of 1976.

Question: Almost eight years and you have never built the dam yet.

Response: I haven't even had a vactation.

Question: When are you going to build the dam?

Response: As quick as the weather permits and me and Mr. Horne can take three dozers in there instead of one and do it faster.

Question: So you are going to build it right soon?

Response: I will build it when I have enough time.

Question: When will that be?

Response: I cannot give you a date. If this dry weather in our area continues and my water supply gets any lower, somewhere I am going to have to just quit long enough to have to obtain me some water from somewhere.

Question: If you do build this dam, I think you said the water from the pond created by building the dam would be used jointly by you and Mr. Horne for his dwelling house I presume.

Response: Right, for his family.

Question: Alright, you also said you proposed to build either a trailer court or rental housing upon the flat along the road.

Response: I have about three areas up there I planned for.

Question: Where would you get water for those?

Response: That is part of the purpose for the dam.

Question: It would supply enough water for the rental units as well as Mr. Horne's.

Response: I would say it would be up to the size and the gallons that it would that would have to be considered. Howmany houses it would really supply.

Question: Doesn't the Virginia-West Virginia state line run through or near your house there?

Response: Yes, very close.

Question: If you look at the map being used by the Commission, isn't that up on this upper most line?

Response: Here is the state line, runs almost with State Route 83.

Question: Oh, the state line runs almost with the road shown on here. The lease claimed or owned by Ashland extends up to the line which forms part of the "V" at the top of the paper, is that correct? I'm not sure, I'm just asking. Doesn't Ashland have ownership of the lease in West Virginia above the state line?

Response: The state line is on top of the hill, it couldn't be above it, it would be below it.

Question: Doesn't Ashland have a lease in West Virginia between the state line and approximately this line?

Response: Yes, a lease to Lon Rogers by Lucinda Rogers.

Question: Right and you as I understand, you own the minerals and the oil and gas rights, specifically , just north of that or just west of the lease claimed by Ashland Oil in West Virginia. How far is the edge of your lease from the property we are talking about?

Response: It adjoins.

Question: It adjoins. Now isn't it true that you drilled two or three wells yourself just on the state line?

Response: I didn't drill any wells. Panther Creek Limited Partnership drilled wells.

Question: Well, aren't you a member of that partnership?

Response: No I am not.

Question: Are you the royalty owner?

Response: I am the royalty owner.

Tom Pruett, Attorney for Van Davis: I think I will object to the relevancy of this, Mr. Chairman.

Mr. Chew: I think we ought to see where this is going.

Olin Prather: I do to.

QUESTIONING CONTINUES BY MR. DICKINSON OF ASHLAND OF MR. VAN DAVIS

Question: How close are those wells to the lease that is involved here in this case?

Respone: I don't know if I can give you an exact answer.

Question: Less than 500'.

Response: No, no not less than 500'.

Question: Not to the proposed well location, but the edge of your property? To the edge of Ashland's lease.

Response: Are we talking about Ashland's claim on my property or Ashland's claim onto other people's property.

Question: Ashland's claim onto your property.

Response: It would probably be 2200' or 2500'.

Question: From the edge of the lease?

Response: Yes.

Question: I understood that it was right next to it, maybe I am incorrect. How close are the two wells to the tract that you mentioned a minute ago located in West Virginia which Ashland derived from Lon Rogers?

Response: The two wells of Ashland?

Question: To the lease which is north of the West Virginia line. How close are the wells on the tract that you own the minerals right to the edge of the tract owned by Ashland?

Response: Probably three or four hundred feet, guess.

Question: So they are close to Ashland's wells and they are close to the lease of the tract on which you own the surface, 2200'.

Response: Yes

Question: So theoretically they are draining the property on which you own the surface to some extent, would that be true?

Response: Can I ask the Board on this question he is bring up here?

Question: I am just asking whether you know if it is draining?

Mr. Childress: Ask the question Mr. Davis?

Mr. Davis: Well I will answer this question like this, would yours that you have drilled close to mine, drain my minerals or my gas?

Eugene Dickinson, Ashland Attorney I am not answering questions, I am the lawyer Mr. Davis.

Mr. Davis: Alright.

Question by Mr. Dickinson: Do you know or not, I don't know whether you know or not?

Response: I couldn't say because I don't know.

QUESTIONING CONTINUES BY MR. DICKINSON OF ASHLAND TO MR. DAVIS

Question: You expressed concern in your direct testimony about the possibility of these materials which are used in the drilling of the well escaping from the pit and coming into the pond which will be formed by the dam which you hope to build someday. Is that correct?

Response: That is correct.

Question: Alright and you expressed that concern before the inspector did you not?

Response: Yes

Question: As a result of that concern isn't it true that Mr. Fulmer in his findings imposed certain conditions for keeping up the disposal pit and the drilling requirements above that which, or more stringent requirements, than that originally proposed by Ashland?

Response: I didn't see any difference in the requirements than what we do daily.

Question: Well didn't Ashland originally propose to have a two pit system that was lined?

Response: I don't know.

Question: Or do you know?

Response: I don't really know.

Question: Isn't it true that the alternate location for a well site proposed by you be within 500' of the lease tract south of your tract?

Response: That could be a matter of opinion of who does the survey. As I say you have it marked in one place the one that did this one another place. I have seen it surveyed from the time I was eight years old, so it would be a matter of opinion where the line is.

Richard Chew: May I just clarify something in my own head. What was the shift that was ascertained in that litigation?

Response by Mr. Davis: Pocohontas Land Company says about 286'.

QUESTIONING CONTINUES BY MR. DICKINSON OF MR. DAVIS

Question: Is that the surface?

Response: Pardon

Question: The shift, the 286' that you evidently had litigation with Pocohontas Land, was that the surface line?

Response: I own both sides on it so it didn't make any difference over there except for one tract.

Question: Alright, according to the lines which are on the plat, would the ultimate location be within 500'.

Response: It is according to how high you put it on that particular area there. If you put it up high, you can very well get 500' from the boundry line, but if you drop it down lower, then you are going to be moving down in closer to it, the property line, which would be the Harman-Bogle property line.

Question: But it may not be within 500' of the imaginary line you marked there?

Response: Like I said if you would take it up here where the point actually takes off it would be very easily outside of the 500' radius, maybe 600 or 700. But the farther you come down the hollow with it, the closer you are going to get to the mine.

Mr. Dickinson: That is all we have.

Mr. Childress: Do we have any questions from the Board?

Olin Prather: I do, Mr. Davis, what percentage acid do you normally use when you acidize your well?

Van Davis: You usually spear head with 15 and finish with 25.

Olin Prather: I use to do it the other way, but that is alright. You put 5,000 gallons of total acid, 28% is as high as you use and you go down to about 14% and cut it in half?

Van Davis: Yes

Olin Prather: Then in your fracturing you use around 800 bbls of fluid?

Van Davis: Not in the acidization of the line, you do in the fracing of the Berea. That is two different procedures.

Olin Prather: I understand that. In the additives that you put into your fracture, are they all biodegradable?

Van Davis: I couldn't say what you mean by biodegradable.

Olin Prather: They turn to water.

Van Davis: Some does, some don't.

Olin Prather: What ones don't?

Van Davis: Well, isotopes don't turn to water. Meet doesn't turn to water, I do know that. That is a tracer in front of your cementations.

Olin Prather: In other words you are talking about solids now?

Van Davis: No sir, it's not solids, it is still fluids. Solid fluid.

Olin Prather: In otherwords you build your frac system and then you put your solids in it, right.

Van Davis: When you are speaking of solids, I don't believe I am following you.

Olin Prather: In otherwords you design your frac system to hold so many gallons of sand right.

Van Davis: When you set your procedure up you don't really know, you don't know howmany pounds of sand that you can get. It is according to how far your formation is. It is according to how well your frac job is going. You watch your pressure, which I know you have done cause you are sitting here cross-questioning me about it,if your projection is 1,300 lbs., 2,200 lbs., you keep adding your sand additives in it. I do if I am treating the Berea formation up to maybe six or eight pounds per minute providing it will take it. Sometimes if it starts loading up you have to back off at four. If you are trying to get a maximum of 100,000 lbs or 90,000 of sand in your frac you have got to do it and you have to have enough water to continue it if it takes it at eight pounds or shorter at four, you would have to inject twice as much water to carry it in.

Olin Prather: In otherwords these are the solids carried by your frac fluid. Your frac fluid, you build it so it can carry these sands. Well when you are building the frac fluids isn't it true that all of those fluids are biodegradable?

Van Davis: Some is, some isn't. I have seen some of it break down and some I have seen the gel not break down and plug the well so that it would have to be drilled out with a surface drill.

Olin Prather: What caused that?

Van Davis: It could be water or any type of ingredient that could pick up down hole.

Olin Prather: Did they fail to put an agent in it to make it break.

Van Davis: You are questioning me about something which Dowell's engineers take care of they use their own fluids to specifications which they think will work the best in the area they are in.

Olin Prather: That is all.

Ralph Gunter: Mr. Davis, you spoke of numerous ponds located all over. How are those ponds fed, by runoff or by springs?

Van Davis: By springs and runoff of pasture. Most of them are fed by springs. We call them highwater springs. When you have a lot of wet weather these springs will break out and come out into your ponds. Through dry spells, most of them will dry up.

I. C. Spotte: I would like to bring up a point that was raised. Why have you waited so long to put this dam in?

Van Davis: I havn't had the time. By building a new house, you have debts and you just can't knock off and say I am going to take 30 to 60 days.

I. C. Spotte: But water is so important to you, I am familiar with that ridge and all the ridges up in that area and water is a problem. You certainly can't get it from wells. But, it does seem that you have waited since 1975 or 1976 you have waited a long time to put this dam in and still don't have it in. Now that the Ashland people want to drill a well you bring up the question of the dam.

Van Davis: The question of the dam by Ashland drilling this well, my dam was proposed before Ashland thought of drilling this well. I have a makeshift water system which I just told the Board there in the beginning. I have a makeshift water system which I can get by with on. Now if it come down to a desperate need of no

Response continues by Van Davis: water period, then I would tell the Company I would have to take enough time to get some water. But as it is, I have a makeshift supply.

Question by Mr. Spotte: Have you hauled water into your tanks?

Response: I have never hauled water, but as I said we have limited bathing and washing.

I. C. Spotte: According to Mr. Fulmer's part of the well work permit it says pits shall be located on the down slope side of the drill site with all drainage from the well site directed to the pits. According to this the pits are not located above the well.

Van Davis: Up stream of the well.

I. C. Spotte: Not according to this on the downslope side.

Van Davis: It may be but the proposed area here is up-slope side.

I. C. Spotte: If you follow his rules he set out for this well site it would have to be below.

B. T. Fulmer, Inspector: Let me mention the fact that on the modifications tha Ashland has submitted, I haven't accepted that modification yet. It does not fit my criteria in my decision. The decision called for the pits to be located on the down slope side.

Olin Prather: Up stream or down slope. I think you are right, I think they got confused.

B. T. Fulmer, Inspector: Down slope side of the drill site.

Ashland: Of the drill site. Maybe we submitted something wrong.

Olin Prather: It might drain in up stream because you put it lower elevation than the drill site, that is possible. I am not sure on the elevations though that we can determine that here, but at the same time I think what everybody is trying to say is that it should be down creek, not necessarily down slope. Isn't that.

Harry Childress, Chairman: It should be between the drill site and the propose dam by Mr. Davis.

Olin Prather: Right

B. T. Fulmer, Inspector: The purpose of it was that the pits would be below the drill site so that you would have drainage.

Olin Prather: Yes, but they could still be below the drill site and be up-stre

Tom Pruitt, Lawyer: I might ask what is the protection to the stream bordering the site then. There are not pits between it and the stream.

I. C. Spotte: Mr. Davis in your opinion there is no way that the materials in those pits can be contained in those pits. That there would be seepage out.

Van Davis: Yes,

I. C. Spotte: Would it be against the law?

Van Davis: Yes, it's against the law, because the gentleman there, I don't know his name.

Olin Prather: My name is Prather

Van Davis: The reason I say this is if you put hydrochloric acid, which Mr. Fulmer suggested plastic liners, then you know I am talking about a layer of plastic, hydrochloric against plastic will melt and dissolve. Then what is going to hold the materials in there from rains and from any other wet weather seepage to keep it from coming out. My question is, if you had clay beds or a level flat area where you could put it in a clay formation, you may not get that, but in our area it is rocky, slides and as that gentleman there said he was familiar with the area. The hollows are filled in with rock, shell and everything and the seepage is there that is the reason we have the springs there and I can't say that I know of any pond that ever really held.

Olin Prather: That is why I brought up the question of your dilution of your hydrochloric acid in the waters in the pit. If you dilute by a 1,000 gallons with 800 bbls., you don't have enough to hurt anything.

Van Davis: That is two different procedures. If you are doing a lime job, you don't inject the water. If you are doing a water sand frac job, that is when your water injection is.

Olin Prather: I am going to have to disagree with you a little bit. If you put acid down and your limestone is calcareous you nullify your limestone. Your acid is spent. You know that.

Van Davis: A certain percentage of it is spent.

Olin Prather: I have probably fraced and acidized more wells than you have, I am a little bit older than you..

Van Davis: I don't question that. Since we are asking question, I don't know if I have a right to ask you questions, would you drink water from the creek after the spent acid is injected into the creek?

Olin Prather: Of course not.

Van Davis: Well, that is my question right there.

Olin Prather: Of course not, but I believe it is the law that they have to clean these pits up don't they?

Van Davis: No.

Olin Prather: They don't.

B. T. Fulmer: What law are you quoting from?

Van Davis: I am quoting the Virginia and West Virginia laws. When they dry up you take a dozer and level out and fill the pond in with top soil or over burden and you sow it in grass.

Olin Prather: By gosh we've got a bunch of tanks and things around here to suck it out of and we don't need them.

Tom Pruett, Attorney: Mr. Prather, may I ask a question. You mentioned that your acid was spent. If I remember my chemistry corectly, if you mix an acid and a base you come up with a salt. Is that not true.

Olin Prather: I would say that is sufficient.

Tom Pruett, Attorney: That is all that was my question. I didn't aks that to refute what you were saying.

Olin Prather: What I am saying is all of these systems have been very meticulously thought out and that is why you went to the biodegradable materials. The people in this industry have been very careful from trying to keep from contaminating the mines, the water wells and the streams. That is why we have Mr. Fulmer here. And that is why we have the Water Control Board. I know that you can get by with West Virginia and you can get by with things in Kentucky that you probably can't get by here with in Virginia. Because Virginia is tough on you.

Tom Pruett, Attorney: Being a native of this area and the coal mining region, I applaud that sir.

Olin Prather: I think they have great inspectors and what have you.

Tom Pruett: Mr. Chairman, there were a couple of questions raised on cross-examination that was sort of dropped. I wondered if I may ask one or two questions.

Harry Childress: Wait a moment.

Richard Chew: This creek is primarily spring fed?

Van Davis: This particular creek is spring fed. Some of the other creeks there where other people have houses that live out the ridge, you have drainage from county roads, dirt and gravel roads that come off into the hollows. This particular hollow has probably four or maybe five spring fed streams coming into this particular hollow.

I. C. Spotte: Wet weather springs?

Van Davis: Wet weather springs. Coming into this particular one with no road, county or otherwise runoff or state road drainage. The other hollows in that area by that state road running through the top of the hill has runoff from the county and state roads into it and I don't know how to say this any other way, but if I don't obtain water from there and I try to do anything up there, anything I try to do is going to be limited. Even like I have said, taking a shower is limited at house right at this particular time, because it has been a couple of months since we have actually had a rain ther to catch water from our roofs.

Richard Chew: What are the springs doing now?

Van Davis: There is a small stream of water which I was in there about two days ago and there is a small stream of water still running in the stream bed now.

I. C. Spotte: But you have never moved water from the creek bed to your house

Van Davis: No

Richard Chew: Did I hear you say earlier that one of these springs was situated where it would inevitably be contaminated whether there was a pond or not?

Van Davis: No it would be contaminated from the well because it is directly below. In fact on a slope of this degree it is 85' down hill just below the bore hole spot.

Richard Chew: I think they are saying that you have been talking about a pond and talking, and talking and talking and there is no dam as the years roll by. And they wonder howmany years you could be planning a dam and not building it and by saying you plan it prevent the drilling. As I understand you you are saying that you just haven't been able to get to it and the matter became urgent when they went for the permit. Is that right?

Van Davis: No, if I could answer this question if I may. Would you have built a $100,000 on an area where you know there is limited water supply without having plans on water for the future? I would like to answer that question in this particular way.

Richard Chew: Well I think they are wondering how long the future can be. In otherwords, one interest is preventing the other one. That one interst is dormat and it is only when they decided well heck lets get a well in there that this became a critical matter for you.

Van Davis: In one since yes, because this was in the planning stage before they came in with that particular well. Before this well came up, let me answer this to the best of my knowledge, I don't understand yet why they want a well site there because they have numerous wells around this particular area within 2,500 to 3,000 feet of it. I don't understand it. If you have three or four wells drilled in a particular area, why do you need a well in this particular area for. Like you asking me about my dam why I havn't got it drilled, I am asking why the urgency for that well there when you have wells all around it. Panther Creek Limited Partnership and Ashland is not my concern here. My concern here is probably 300 acres of land that I have bought and invested my lifes savings in and built my home. Someday I might develop it to live on if social security is not around or I need extra help, something that I can develop and have for the future for my kids or somebody else to come. I new the shortage of water there when I bought the property. I knew the shortage of water there when I built my house, because I have seen my neighbors have sufficient water by dams and ponds.

Richard Chew: But not by wells?

Van Davis: Not by wells.

Richard Chew: That would be another question I would ask you. Why did you drill a well when it was almost certain it wasn't going to be much good to you.

Van Davis: At the particular time at my house and not with the time to build a dam, a little water is better than none so I suggested that they drill a well and maybe if lucky hit a few gallons of extra water before I put in this temporary tank system which I have.

Richard Chew: You do pump what you have?

Van Davis: What I have now comes from the roof of my house.

Richard Chew: No on the well.

Van Davis: Like I said, all I have is a bucket you crank down. Like I said, eight gallons a day. You get a couple buckets of drinking and cooking water out of that well.

Mr. Chew: Is it your position before the board that if this well is drilled that you will never have drinking water there beyond what you have now?

Van Davis: I can very well say by neighbors which I have got that has wells more than one that none of them have got more than drinking water from the wells.

Mr. Chew: Let me say it again. Between the tank and the water well and with the situation with the springs, what I am asking you is, if they drill this well is it your position that you will never have adequate drinking water?

Van Davis: No sir, there is no way that I can have water if that particular hollow there is blocked. I will safely say that unless it is pumped a mile or a mile and a half from a major creek downstream below that and that would bring in other landowners which I would have to cross to get it there.

I. C. Spotte: Let me ask a question, I am not familiar with this maybe Mr. Olin there is. The fresh water string shall be extended to cover at least 500' of the bore hole depth. Cement shall be circulated and cemented to the surface and a cement bond log run immediately to determine whether you have a good bond. This log shall be submitted immediately to this office. Are you saying that if they do this it will seal off the water coming from the springs?

Van Davis: Very possibly.

I. C. Spotte: Are you certain?

Van Davis: If you grout to stop water from coming in to an area that is the way it will do it with concrete under pressure into the ground and that will stop up any crevices or veins of water.

I. C. Spotte: I am sure that this is done quite often.

Van Davis: Most times your conduit pipe is never concreted because when you run your water string to bedrock in our area, then the whole 11" string is cemented.

I. C. Spotte: Will that seal off the water?

Van Davis: Yes any drainage that might go downhole or any coal seam. That is why the water string, I call it, the 11" pipe is cemented to below any fresh water and below any coal seams. But the conduit pipe, which I think we are talking about here, which is a piece of pipe that will go through the surface of loose rock and materials above the solid sandstone bedrock or whatever it may be. By it being concreted if the concrete goes on the outside of that it can spread into the porous area wherever it may.

I. C. Spotte: How much pressure is used?

Van Davis: I couldn't figure the static pressure on a lift.

Olin Prather: Are you talking about the 16".

Van Davis: Yes. Did you ever cement on the outside of your 16".

Olin Prather: I do it all the time. There is a lot of ways of doing it. About the easiest way is put your hole full of cement and put your 16" in it.

Van Davis: It is strictly a grouting method that is what it is.

I. C. Spotte: That wouldn't contaminate or seal off the water, what Olin Prather is suggesting.

Van Davis: If this concrete will keep water from comming in, why won't it keep water from circulating through the main streams.

I. C. Spotte: All that does is put a seal around the well, it doesn't seal the springs.

Van Davis: That is right, what if you have this particular weight of this concrete down hole, lets say we have 60' of concrete 16" in diameter on a water bed down here. Static pressure down is going to let this concrete fill in any space or crevice which water may be running through.

Olin Prather: You are saying then that your water is coming from crevices and fractures. I am not sure that is true. And then you must remember that the size of these fractures would make a tremendous difference of whether you did the cementing or whether you would leave the cement. Now if you were filled into a void space, if you were drilling into a mine, it would be pretty hard to fill that mine up with cement. And that is what he is saying that you are liable to do here. I don't think that is true here. I have done considerable amount of study in the aquifer possibilities of that area and I don't think you have any aquifers at all that this water comes out of your vallye fill. As he says it accumulates from rain water and ground water. If you go on top of that head you are talking about, if you go the whole one inch you will have the same hydrostatic head on that thing as you would running the 16".

Van Davis: I am not an engineer.

Olin Prather: Well, I think the engineers here would all back me up on that. The size of the hole doesn't make any difference whatsoever on the hydrostatic head. So we do this all the time in the industry. Now the old cable tools didn't use to do it that way. My father would raise hell with me if he heard me talking like this, but in your modern methods of drilling, which we are using up here, I hope, I don't see how that could affect your spring.

Tom Pruett: Mr. Prather, are you speaking relative to the 16".

Olin Prather: Yes, and that is what he was talking about.

Tom Pruett: The 16" casing to a depth of 40' and in his testimony was below that adjacent to the well site which case come under that freshwater spring paragraph, if that well is injected under pressure.....

Olin Prather: Well, what they do say if his water is at 300' they would have the hydrostatic pressure the same as before, from the top to the bottom, not from the bottom to the top. As you come up you are relieving that pressure unless you close it in. You could put a bullhead squeeze out the top of the mountain if you had enough horsepower. But no, what he is saying isn't going to hurt his spring. That is my honest opinion.

Richard Chew: What is in your well now, what little there is?

Van Davis: I would say it comes from a coal seam there.

Richard Chew: How deep is your well?

Van Davis: Four hundred and some feet

CHANGED TAPE AND LOST ABOUT 1/2 MINUTE OF CONVERSATION AT THIS POINT

Van Davis: I wouldn't even suggest to my company to drill the well because we have found in the past throughout work that if there is not peace among the land-owners, you just cannot drill a well period. We usually have permission from the land-oweners before we do anything. Make any preparations. The second part of this thing, if according to this page "2" while this well is being drilled and this stuff is in the pit, what is going to keep the seepage from going into the ground while it is waiting to be hauled or transported off lets say for one, two, three or five days. Howmuch of this seepage could go into the crevices and the porous area of the earth while you are waiting to move it off if it doesn't go into metal tanks.

I. C. Spotte: If the well is drilled in the location that Ashland proposes could you still put the dam in? Will it interfere with the construction of the dam?

Van Davis: Not in construction of the dam but the backup of the water. Yes.

Olin Prather: Will it be over the location?

Van Davis: It will be in to the lower edge of their location.

Richard Chew: Where does that creek go after it leaves there?

Van Davis: It goes into Slate Creek and Levisa River that is the headwaters of Slate Creek.

Richard Chew: Should we be concerning ourselves exclusively with you? What about the lower owners, are you telling me that they are going to have contaminated water no matter whether you build a dam or not?

Van Davis: Anytime that stuff is injected in the ground you are going to have seepage which is going to go down stream, it may be such a minor amount that it will not be noticeable and again it might. I can't say, I really don't know.

Richard Chew: But you think the great burden will fall on you?

Van Davis: If it is downed and blocked at that particular area and the water, if the dam fills up, if this site is put exactly, which I build sites and these pits if this dam is full of water, the well site I don't think, I think 15' higher would put it up level with the bore hole site. It is that close to the creek. This dam site is located 85' on a 26% slope above the main creek by the time you go in 100' cut out 50' back into the mountain and push out 50' there is going to be overburden or spill into the main creek where, in fact I think I covered the particular area where me and him looked at where the major part of the water was coming out of the creek. The spring, you know what I am talking about....

Olin Prather: Well there is a 26% slope there?

Ashland makes comment: No that is not right.

Olin Prather: What is the new law in strip minning, Irvin, on these slopes?

I. C. Spotte: Fifty percent. Two to one.

Olin Prather: Two to one.

Ralph Gunter: Mr. Chairman, I would like to ask the assistant attorney general a question here. There has nothing been said about the Water Control Board which has very strict laws for human consumption. In this case wouldn't they step in and prevent pollution for human consumption?

Tim Gresham: Very possibly, yes they would have jurisdiction.

Ralph Gunter: I have had quite a bit of experience with them and have been on the Gam Commission they have very very strict laws in that respect. I don't see how they would permit this. I don't see how the Water Control Board would approve pollution by this.

Harry Childress, Chairman: Individuals they don't have to approve do they? For one family.

Ralph Gunter: Is that the way it is?

Tim Gresham: I do know they have regulation of drinking water.

Harry Childress, Chairman: It could possibly come into a great deal of affect later if he puts in a trailer park or builds houses. Something of that nature and then furnishes water to them.

Tim Gresham: There is a kind of cut off point.

Ralph Gunter: I didn't know about the one family.

Richard Chew: But that doesn't add to or take away our right to address ourselves to the conservation of drinkable water.

Harry Childress, Chairman: Are there any more questions for Mr. Davis, if not we will take a short five minute recess.

Tom Pruett: Mr. Chairman, there were a couple of quetions brought out in the cross about the drilling of an offset well, I was wondering if I could address that in redirect. I would ask the Board if I might.

Harry Childress: Lets take a break first.

Mr. Pruett: Mr. Davis on cross-examination there was a question asked concerning a couple of wells supposably drilled by Panther Creek and located close to Ashland's property. I would ask you do you have any ownership intersts in Panther Creek Limited Partnership?

Van Davis: None, other than royalty from the fee land.

Tom Pruett: What do you mean by that?

Van Davis: That is landowner's royalty for the minerals or the gas whichever they are.

Tom Pruett: Are they leased?

Van Davis: They are leasing these from me.

Tom Pruett: And they pay you royalties?

Van Davis: Yes

Tom Pruett: Were you the supervisor that put these two wells down?

Van Davis: W. E. "Smokey" Stover was.

Tom Pruett: There has been concern expressed by the Board by the fact that you have not built the dam in the six years you have been living in your home there. I would like to ask you, when would you start building the dam or what are your plans?

Van Davis: If these proceedings hadn't started, about 30 days ago whenever we had the shut-in, let me say this me and Mr. Horn, this is Mr. Horn, we are going to build this dam together. His property is on one side of the creek and mine is on the other, he does dozing work for Consolidated Gas Company, I work for Panther Creek. It is very hard to get our schedules together to where we can take our dozers in. He has two or three. Our schedules don't work out.

Tom Pruett: Are you saying then that you would have begun except for these proceedings?

Van Davis: Right, we have a shut-in with Columbia and we have a shut in with Consolidated Gas Company right now which is going to last probably seven weeks which I don't know what they told them it would last, but to me it would last through October 31st I believe from Consolidated.

Tom Pruett: Why has this proceeding stopped you?

Van Davis: Because with this proceeding started I was informed by my attorney that I shouldn't go ahead and start building this dam because the proceedings had done started or we would have had part of it done by now.

Tom Pruett: What do you think the effect would be on your dam had you built it before the well was placed.... I will withdraw that question. No further question. For my next witness I will call Mr. Carl Horn.

QUESTIONING OF MR. CARL HORN BY MR. TOM PRUETT:

Question: State your name?

Answer: Mr. Carl Horn.

Question: Mr. Horn where are you employed?

Answer: I do construction work mostly for Consolidated Gas.

Question: Howlong have you done this type of work?

Answer: I have dozed ever since 1948.

Question: What type of dozer work are you doing for Consolidated?

Answer: I do the road work, sites and backfill for Consolidated Gas.

Question: Let me show you one of our exhibits which is the modified well plan showing the well site. Have you ever done construction on a site similar to that?

Answer: No I sure haven't.

Question: How would you construct a site?

Answer: On this lower side here we build a pond so everything will run off. Everything from the site will run over into the pit. In this one here from the picture of this one it looks like it will all have to run sorta up hill to get to it. All these trucks running in here is going to create mud and you can at least shove it over the hill in the pit.

Question: Mr. Horn you sat here and heard the testimony of Mr. Davis concerning his objections to this design, do you agree with those objections? Would you add anything other than what you just said to those objections?

Answer: Yes I agree. That is about all I can say.

Question: Would you describe briefly your property and I would hand to you right now the plat contributed by Ashland and ask that you put a little circle with a number five inside of it where your tract of land is?

Answer: I own all of it up in here. I own 45 acres to the right.

Question: While I am showing this location to the members of the Board, would you describe the lay of this land Mr. Horn?

Answer: Well, some of it is a little steep and some of it is level on the flats.

Question: So you have a combination of steep and level land? How do you get your water?

Answer: I get my water I am getting from a spring.

Question: Do you have any wells?

Answer: Yes sir. My father had two, hand dug wells and they didn't work. I dug one here about two years ago, 269' and went into the hollow to drill it and the fellow said what do you want to do with the casing and I said take it with you. So there wasn't no water in it.

Question: Howmany people live on your tract of land?

Answer: My mother, it is not on my property, she owns a piece she gets water from this spring. I got a son that gets it from another spring and I have a daughter that gets it off of one of the buildings, rainwater.

Question: All toll Mr. Horn, you mentioned I believe four wells plus handdug wells. Is that correct?

Answer: No I have three machine dug and one hand dug.

Question: What is your total flow from those wells?

Answer: Ain't none of them in use.

Question: What is your water situation right now?

Answer: Right now it is pretty scarce. My sons went dry and I have pumped it up son.

Question: What is the flow from the spring?

Answer: Well, I couldn't tell you but I would say right now as dry as it is maybe 20 gallons an hour. Right now it is doing three houses.

Question: Mr. Davis expresses plans to build a pond. What do you know about those plans?

Answer: Well, Van come and talked to me when he built his house out there and talked about building a dam. I own half of the property where it hits the creek and I told him we would build one. So far he has been working and I have been working until December. They laid me off in December and we were talking about it the other day only they didn't want us to do it.

Question: So you say you had already planned doing it?

Answer: Yes

Question: Let me direct your attention to what has been marked by Mr. Davis as alternate well site. The red marks on the plat contributed by Ashland. Is that in agreement with what you understand the alternate proposed sites to be?

Answer: Yes sir.

Question: Could you describe the lay of that land?

Answer; I would say where I have been over that land it is sort of benched. Shell and sandrock is sorta benched. I would say that this land is no steeper than the other one. I don't see why it shouldn't be a good site to build.

Richard Chew: Are there other sites, do you mind if I ask?

Carl Horn: This alternate site.

Richard Chew: Are there others that you all have talked about?

Carl Horn: No this one here. I didn't offer them no site. But Mr. Davis has offered them a site on his property and I have looked at it.

Richard Chew: Has anybody proposed any other sites?

Tom Pruett: We weren't certain whether the Board would consider other than this one proposed alternate site.

Richard Chew: Why is that?

Tom Pruett: That is a good question because we might be limited to the considerations at the informal hearings.

Richard Chew: You mean there was only one discussed at the informal hearing?

Tom Pruett: That is correct.

Tom Fulmer, Inspector: I stand to correct that.

Tom Pruett: I understand your correction, let me explain. Several sites were mentioned by the inspector, Tom Fulmer, and they were located on flat areas and were

Tom Pruett continues: rejected by Mr. Davis. He felt he was in a position, I guess you could say, cutting off his nose to spite his face. If you take the valuable property then there is no incentive to save the water and that was the position he found himself in on this 17 acre tract. That why were limited ourselves.

Richard Chew: He has a $100,000 house up there. Sounds to me like he has some incentive. He suggested quite a bit of incentive there.

Tom Pruett: It was right below that house location marked on the plat where the site was suggested.

Olin Prather: It is about 1,000'.

Van Davis: About 400'.

Richard Chew: So there was one other?

Tom Pruett: Mr. Fulmer suggested that Mr. Davis consider the spot right above the area marked as the alternate site, the flat area on the point.

Richard Chew: On the corner?

Tom Pruett: Below the area marked, I can show the Board.

Harry Childress, Chairman: What about out here. You are increasing the distance away from the pond.

Tom Pruett: Mr. Davis has offered areas right down below that. Below the crest basically. Below his home. That is the area marked in red on this plat right here. So he has offered down.

Eugene Dickinson, Ashland: I may also point out to the Board there is another alternate site discussed at the original hearing which occurred this way. Before the permit was applied for Ashland went to Mr. Davis to talk about a site and we had selected the site up on the site close to the road and he objected to that because of his intention sometime to build other things and we moved down the hill at his request. We moved this once.

Tom Pruett: I might speak to that, that was as you say prior to when the permit was applied for or anything.

Eugene Dickinson, Ashland: That is correct.

Van Davis: That is in West Virginia.

Stephen Parks: No it was not in West Virginia.

Eugene Dickinson: It was out from your house along the flat part where you planned to build trailer parks in there.

Van Davis: It was in West Virginia where you marked the spot up there.

Stephen Parks: When we met you there was a location on the ridge in Virginia that we offered as a proposed location.

Van Davis: That location wasn't in Virginia.

Harry Childress, Chairman: Lets get on with this other. This is dragging out to long.

MR. PRUETT CONTINUES QUESTIONING

Question: Mr. Horn, you stated that you had built a number of sites. Howmany have you built?

Answer: Well, I guess I have built 25 or 30 of them.

Question: Have you built sites similar to this one offered as an alternate site?

Answer: I have built in a lot worse places.

Question: Are you familiar with the south line what is known as the Harman-Bogle 500' survey?

Answer: Yes

Question: Mr. Davis has stated that there is a dispute to the location of that line and may be a shift north and south in an excess of 200'. Is that correct?

Answer: There are, yes sir. It is 300' off.

Tom Pruett: I have no further questions.

CROSS EXAMINATION BY Mr. Dickinson, Attorney for Ashland

Question: I do want to ask one question of Mr. Horn. You speculated on what the well location site might do if it were built according to the drawing. Is that correct?

Answer: Yes.

Question: Now you say you have never built a site like that. So what you said is pure speculation?

Answer: No.

Question: It is only your opinion? It's your opinion?

Answer: Well I haven't buit one like that.

Question: That is what I am saying. It is a guess?

Answer: I guess it would be.

Mr. Dickinson: That is all.

Harry Childress, Chairman: Any questions from any of the Board?

Mr. Pruett: Mr. Chairman, a short re-direct.

Harry Childress, Chiarman: Yes, make it very short.

Tom Pruett: Mr. Horn.....

Mr. Dickinson: I object unless he is an engineer or something you fellows

Mr. Dickinson continues: are engineers you can read these....

Richard Chew: Lets hear his question.

Tom Pruett: Mr. Horn I will show you this well site as drawn by the modified plan. You stated you had never buit a site like this.

Carl Horn: No sir.

Tom Pruett: Did you mean you had never built a similar site or were you criticizing this site?

Carl Horn: I was criticizing this site. I have built sites. But the way they have their ponds, pits.

Tom Pruett: What is your concern with the pits?

Carl Horn: I would say the way it is built here, anything on this will not run up this way.

Harry Childress: Mr. Pruett, I think Tom has stated the fact that he has some problems with this. This has never really been entered into the evidence either. It has been submitted but it wasn't considered at any other time.

Tom Pruett: Since we have discussed it to this extent and have looked at it we should definitely enter it into the evidence before the Board at this point. I have no further questions. I would like to call Paul Kennedy.

Question: Would you state your name?

Answer: Paul Kennedy

Question: Mr. Kennedy, where do you live?

Answer: I live in Paintsville.

Quetion: Is that near Mr. Van Davis's tract?

Answer: It is within a mile and a half.

Question: Howmuch property do you own there?

Answer: Close to 1,200 acres.

Question: How do you get your water on that property?

Answer: We mostly catch it when it is plentiful by means of ponds and concrete water systems.

Question: You do have ponds installed?

Answer: Yes, we have three ponds.

Question: How is that water used that you collect?

Answer: Used as utility water mostly.

Question: How do you use your property?

Answer: We raise an orchard.

Question: Are you familiar with Mr. Davis's plans to build a pond?

Answer: Yes, he mentioned that to me several times.

Question: When were you first aware of those plans?

Answer: We worked on Mr. Davis's house. We also do some carpentry work. He mentioned that during the time we were working on the house.

Question: Have you seen the site where Mr. Davis has suggested building the pond.

Answer: No I have not.

Mr. Pruett: No further questions.

Mr. Dickinson: We have no questions

Mr. Pruett: I would call Mr. Emory Horn.

Question: Would you state your name for the record?

Answer: Emory Horn

Question: Mr. Horn, what is your occupation?

Answer: I am retired at the present.

Question: What have you done in the past?

Answer: Since 1947 I did dozer work until 1953. From 1953 until 1980 I did well drilling.

Question: What type of wells did you drill?

Answer: I guess every kind. But mostly water?

Question: Mostly water wells?

Answer: I have drilled commercial drilling around mines.

Question: Have you drilled any wells around the area that has been discussed today.

Answer: Yes sir. I drilled one for Mr. Davis.

Quetion: Have you drilled any others besides that one?

Answer: Several

Question: Are you familiar with the area on top of Bradshaw Mountain.

Answer: I was born and raised there and this particular tract of land I have worked with my father in farming it, I have hunted over it and played over it. I feel like I know every bit of it.

Question: I notice your last name is Horn are you related to Mr. Carl Horn and Mr. Van Davis?

Answer: I am their uncle.

Question: Have you ever seen the proposed well site by Ashland?

Answer: Yes

Question: Have you seen the proposed pond site by Mr. Davis? The alternate site?

Answer: Yes sir.

Question: Have you seen both of those.

Answer: I havn't seen the second site but I know about where it is. I didn't go to it but I know all the area.

Question: When did you last see the proposed well site and pond site?

Answer: About three days ago.

Question: Who were you with at that time?

Answer: With Van Davis and Carl Horn.

Question: Describe to what extent you saw it. Did you go down there?

Answer: We kind of walked down to it. I knew where it was before I went but I wanted to see just exactly

Question: Could you describe for the members of the Board the lay of the land where the pond is to be as such?

Answer: The pond is in the hollow under the site and the dam itself being below the proposed well site, the water if it was as deep as I would guess it would be it would reach farther up the creek than where the well site is.

Question: Have you ever constructed a pond of this nature?

Answer: Yes

Question: How many?

Answer: I would guess between six and ten.

Question: Were any of those located on top of Bradshaw Mountain?

Answer: Yes sir

Question: Based upon your experience in building these ponds and your viewing of this site, do you have an opinion as to whether or not this is a suitable site?

Answer: Yes, by that I mean the water is there and it is level and where they were talking about building across the hollow, it is close. It wouldn't take too much work, it wouldn't take as much work as with a lot of other places they might have.

Question: Is it your opinion that it is a suitable site?

Answer: Yes sir it is.

Question: Is it also your opinion that the water, I believe you stated, may possibly back up as far as the well? Is that true, is that your opinion?

Answer: I don't understand that question.

Question: Let me rephrase it....I have no further questions.

ASHLAND CROSS-EXAMINS MR. HORN

Question: Is it Mr. Horn?

Answer: Sir

Question: Is your name Mr. Horn?

Answer: Yes

Question: Mr. Horn is the proposed well site higher than the surface of the ground that the location where you suggested the dam to be built.

Answer: In altitude?

Question: Yes

Answer: I don't know exactly how high they will build the dam.

Question: What would you think?

Answer: I would say, in otherwords, if the dam was built the water would not run into the proposed site, I don't think.

Question: They would have to build a 70 or 80 foot high dam to do that wouldn't they?

Answer: It is just according to howmuch they are going to use the water out of it. If they are going to use a whole lot of water for trailers or houses or something you are going to have a fairly high dam.

Question: Are there any dams 70 or 80 foot high in that area for use as house ponds?

Answer: Not to my knowledge. Not over 80 feet.

Question: Are there any as much as 80 feet?

Answer: I don't know of any 70 foot dam.

Mr. Dickinson: That is all

Harry Childress, Chairman: Any questions from the Board?

Richard Chew: Your side must have a concept of what the impoundment area would look like if this thing is built and I didn't hear any testimony I just asked one of these other members how high the dam was going to be and, therefore, what it was going to do. It seems to me that that is pretty important.

Mr. Pruett: May I ask Mr. Davis, I had asked him once before, directing his attention to the impoundment area marked by the plat by Ashland in what if he considered that to be accurate. I will put it to him again.

Richard Chew: Let me just do this very quickly. How high were you planning on?

Van Davis: I propose probably 20 to 22 foot of dam above the creek bed and I also see this marked in here. If you will look at your contour line, they stopped this water at the corner of mine and Carl Horn's line, if you look at your contour line, your contour will go on up into the hollow much higher than what they have got colored in.

Richard Chew: Would you like to indicate on there something where you think it will be?

Tom Pruett: I have an orange marker, or would you prefer something different?

Richard Chew: No that is fine.

Tom Pruett: (Talking to Van Davis) Would you indicate on there where you think the impoundment would be.

CONVERSATION HERE DISCUSSING THE MAP AND CONTOURS ON THE MAP BETWEEN BOARD MEMBERS, ASHLAND AND MR. DAVIS

I. C. Spotte: Mr. Davis, do you have any idea howmuch water you would impound, acre, feet?

Van Davis: I would be happy if I could get 100,000 gallons.

Harry Childress: You are going to have a permit from the Corp of Engineers. It will have to be up to their specifications.

I. C.Spotte: A dam of that size certainly would require, like the Chairman pointed out, approval from the Corp of Engineers as well as the Commonwealth of Virginia.

Tom Pruitt: I would note for the Board that the contours are pretty wide.

Richard Chew: Well, I see that. It is a little misleading.

Tom Pruitt: It is a fairly level area.

Olin Prather: Yes, but you go up 40' from that line to this line. There is no way that dam down here from this line to this one should ever get up there.

Harry Childress: It is a shear face, not a flat area.

I. C. Spotte: The feasibility of the dam I don't think is our problem.

Olin Prather: No it isn't.

I. C. Spotte: That will be up to the other agencies.

Tom Pruitt: We have presented evidence that many of the neighbors have done this and supposedly the agencies are aware of it.

Van Davis: Can I ask a question. This dam when you are talking about the contours above it, when you start dozing, you use the dirt above your dam area and push it out to make as much as you can without it being wet. That is one reason we need to wait for dry weather, because anything above that we have it as dry as we can so we can put it, which will back the water on further up the creek.

I. C. Spotte: Mr. Davis you aren't going to get any dryer weather than what we are having now.

Harry Childress: If we do we are all in bad trouble. Mr. Pruitt, do you have any further witnesses.

Tom Pruitt: No sir.

Harry Childress: Mr. Dickinson do you want to proceed now you are Mr. White either one.

MR. WHITE QUESTIONS MR. STEVE PARKS BOTH OF ASHLAND

Question: State your name to the Board please.

Answer: My name is Stephen Parks.

Question: Where are you employed?

Answer: With Ashland Exploration.

Question: What is your position?

Answer: I am a civil engineer in the Civil Engineering Department.

Question: How long have you been so employed?

Answer: I have been with Ashland for over two years.

Question: Approximately howmany drilling programs have you participated in as supervisor?

Answer: Drilling programs I have been involved with two years worth of programs, roughly 50 wells or so. Two years plus getting in to the tail end of the 1981 program.

Question: And you are presently involved with the gas well location we are concerned with today?

Answer: That is right.

Question: The site that was applied for, was that your first choice on this tract?

Answer: No the first choice on the tract was an area up on the ridge which as far as we would be concerned would be a lot easier location to make and grade and would be a better choice for us. But upon meeting with Mr. Davis he objected to that location and wanted us to move down in the hollow away from his valuable land upon the ridge which we felt like we should do and had no problems with that.

Question: Is the proposed site in the general area that he indicated?

Answer: Yes sir.

Question: Is this principally why you chose this site?

Answer: Down in the hollow, yes.

Question: Could you describe a little bit the topography?

Answer: It is in a hollow. We are on the right side of the hollow there is a road part of the way up the hollow that turns up and goes up the right hand fork around the side of a small point. The ground there has approximately a 20% cross slope up at the top of the point and that is about where we would be constructing our location would be in that area.

Question: How large of an area would you need?

Answer: We usually try to get something about 100 x 200 for a location and then a pit something around 20 x 50 or so.

Question: You were considering the site that you later applied for a permit for, did Mr. Davis raise any objections concerning the water supply in that area?

Answer: The only concern he had when we were doing our work there was pollution to his water well at his house. At the time we did our work in the area we had not heard of a lake or spring that would present a problem to us.

Question: I believe Mr. Fulmer proposed some modifications at that site is that correct?

Answer: Right, as the result of our second meeting with Mr. Fulmer there is a list here he wanted us to have a two-pit system which we have complied with. There seems to be a little bit of question over whether it is in the exact right spot. But it is downslope of our location. We can grade the location back that way. Where we are at the contours themselves, the ground itself is not raised that drastically or much as you go on up that hollow. We are really on a side hill location so we can grade a ditch on the hillside of this location and drain to these pits that we have proposed. If Mr. Fulmer's office doesn't think that is possible, I am sure we can change or do something to modify this to meet his requirements. As far as we are concerned we think this system would work. Our drilling engineer and people had looked at this and agree with it also.

Question: So you are willing to follow Mr. Fulmer's recommendations?

Answer: Right, if he does not agree with this we can change.

Mr. White: I have no further questions.

MR. PRUITT CROSS-EXAMINES

Question: Mr. Parks you mentioned approaching Mr. Davis about a previous site. That was prior to the permit application was it not?

Answer: That is right.

Question: Wasn't Mr. Davis' objection at that time that it was his prime real estate location that you picked?

Answer: Right up on the ridge.

Question: Wasn't that site in West Virginia along State Route 83.

Answer: There was a site at one time in West Virginia. The last time we met with Mr. Davis we had another site that was proposed in the Virginia side. A site up on that ridge and Mr. Davis did not agree.

Question: So you are saying that there was more than one meeting that you had in the past?

Answer: This has been carried on for two or three years. We have had abstract work done on the property.

Question: You say Mr. Davis suggested you move over into the hollow, did you ask him at the time your surveyor's went up there to survey the well site if this was the location he had in mind?

Answer: We had a spot circled on the map which Mr. Davis said would be to his o.k. and agreement and that is the spot where we put our location.

Question: Did you confirm that spot that was circled by someone with Mr. Davis?

Answer: When we got there we told Mr. Davis that we wanted to go survey the location as he had proposed to us at Elizabeth and we proceeded to go from there.

Question: Let me direct your attention to the modified plan, cross-section double A on your elevation and the cross-view of your pit level. What is the slope on this proposed well site?

Answer: The proposed well grade we would try to keep that as flat as possible. You don't want too much slope on it.

Question: Basically it is a level line you have across there isn't it?

Answer: Basically, yes. If we are going to have a ditch on the uphill side we would put enough slope on the well site to allow the water to go toward that ditch. But basically it is a level grade.

Question: I might direct your attention to the outside edge there. I don't see any berm, is there not one planned.

Answer: On this proposed well grade we did not show a proposed berm. What the intention would be from that point where we would be filling on a two-one slope down to the existing ground you would have then just enough slope on the well grade to drain everything toward the ditch line..

Question: If I look at your proposed plan and scale the thing from the outside point to the inside point, it appears to be level without any grade, then what you are saying is there is nothing to stop drainage from the well site over the edge into the center line of Blackey's Fork. Is that correct?

Answer: Other than the fact that when we made the location we would grade it to drain toward the ditch.

Question: And what ever grade you would have on there at that time would have to be sufficient?

Answer: It wouldn't be very much because you would want the location level.

Question: This dotted line running from the center line of Blacky's fork and

Question by Mr. Pruitt continues: approximating a 20 degree slope, the area above that line on the left side of your site, that is fill area isn't it?

Answer: That is right.

Question: How far would you say the fill extends from the actual hole location or the casing location? How far from it does the fill begin?

Answer: Changed tape and didn't get answer.

Question: So what you are saying ten feet from the casing going toward Blacky's Fork. The modified plan also called for, aside from our confusion about the location of the pit, it called for pit liner. What type of liner do you usually use?

Answer: Mostly plastic liners. Max is more familiar with that than I am so he can tell you all the different liners that are used and what they are made out of.

Mr. Pruitt: I have no further questions.

Harry Childress, Chairman: Any questions from the Board?

Olin Prather: (To Mr. Parks) Did you consider putting a dike on the lower side of your location?

Answer: On the stream side, we hadn't considered that. It can be done with no difficulty at all but it is not shown on here. That would further eliminate any problem of water or mud or silt coming from the well location over the slope and into the creek, but it was really the intention to grade it toward the ditch line with just enough slope that it would drian that way.

Richard Chew: How would you access the situation if the dam existed now?

Answer: If the dam existed now?

Question by Mr. Chew: What would you have done different? Where would you have put the well?

Answer: I don't know whether we would have tried to put it up there or not. It would create an initial pollution situation. You would have to agree to that. When you are in there constructing and before you get this area reclaimed, put back to a pretty decent situation with grass, you would create erosion there. So if that dam was there I don't know whether we would try to put a location in there or not.

Richard Chew: You mean the whole area?

Answer: No above the dam.

Richard Chew: What do you consider to be the best of the one or possibly two locations suggested?

Answer: Well, in this immediate area by far the best place to drill would be up on the ridge because it was flat.

Richard Chew: That was your first choice?

Answer: Yes, another pretty good place to drill would be on the flat area in behind Van Davis' house about where the switch back is in the road on your map there.

Stephen Parks Continues: That would be a good area to drill.

Richard Chew: And that is the one he indicated would not be acceptable to him?

Answer: Right.

Van Davis: That is prime land too.

Stephen Parks: In so far as the alternate that was suggested or given to us, myself another engineer, Max, we have all looked at the location with Van and as far as we are concerned it is just completely unacceptable. We did not run a line up to tell exactly what the slope was but it has to be at least twice as steep as where we are at. It is a steep hillside, there are benches in the hillside, but they are not much more than a 5 or ten foot. If you are going to try to build a 100' location, that doesn't offer you much of a head start on the location.

Richard Chew: What about the other one that was mentioned earlier up on the corner there?

Stephen Parks: That is the one I am talking about. It is a very steep hillside. We don't feel like we can do anything except cut the complete location in there. We just couldn't bring fill out and level off a spot and expect it to stay on the hill. It is so steep it would continue to slide on down the hill.

I. C. Spotte: Are you talking about the location below the dam, the proposed dam?

Stephen Parks: The alternate location.

Richard Chew: Well there were two.

Harry Childress: Mr. Parks, what does the area look like from the shaded area that Mr. Pruitt had here to the left toward the road. From his proposed alternate coming back toward the road, what does the lay of the land there look like. On this it appears it should flatten out some. From this come back toward the road where you are talking about the switchback.

Stephen Parks: It does flatten out some but it doesn't flatten out much. That location right there (referring to one Mr. Chew pointed out) it looks like that would possibly he a decent location without having looked at it.

Richard Chew: Wasn't that discussed by anybody?

Stephen Parks: That was in an area he considers.....

Van Davis: I consider that my backyard. That is what it is.

Stephen Parks: That general area there was suggested by Mr. Fulmer. Mr. Davis doesn't think he wants us to have it.

Richard Chew: How far is that from the house?

Harry Childress: How far would that be from your house Mr. Davis?

Van Davis: No answer at this point...

Eugene Dickinson: An additional problem we have with that is getting close to well #15 over there.

Van Davis: I gave them an option of the whole area in below my dam to pick a site that would be suitable to theirself. They say it is either to close to somebodies boundary line or they are too close to an adjoining well. It does look to me like the alternate site wouldn't be a shift of over 400 or 500 feet either way. I got no particular site. I said any where off of my real flat areas. One of the benches below it. Just as long as the drainage would go below and not off into the dam area. In fact even over in the next hollow as long as it is below my water supply.

Richard Chew: Going back to my question of the one up on the top, how far is that from your house?

Van Davis: It depends on where you put it. I would say any spot there would be within 1,000' of my house.

Harry Childress: Mr. Parks on this shaded in area rather than one proposed location, as you come up toward the top of the ridge or toward the flat, the darker line I'm talking about there. The contour between it and it widens out. Have you looked at the possibility of that location?

Stephen Parks: We have not looked up on that point. That was not an area that was offered to us.

Harry Childress: You would consider that Mr. Davis?

Van Davis: As long as they get out of the hollow where there is no drain off to go in my dam I would accept it. If you will look there is an existing road into that hollow that would eliminate them if they would move around in the direction of here, any where they would move in that direction it would save an extra road. The road is practical built there. I own all the land. It would take Mr. Horn out of the picture and the only thing I ask them is don't go up on my flat land and ask for a proposed well site because under the new law the 200' radius, a 400' radius circle, that there can be nothing near that well. And if you go on the flat area then you have two acres and you bore a hole in there, the law will not allow you to have nothing within 200' of each side of that so you are talking about a 400' circle that I can't even put an apple tree or garden or nothing else. I would be in violation of the law. That is the reason I would like to get it in an area where I can use some of the flat area.

Olin Prather: This is a 2200 foot contour I believe. This is a pretty wide contour here. Now if you could get a decent location below the 2,200' line into this, these two are fairly large, and you come straight off....

Stephen Parks: We walked pretty much out from his home right here on this hillside....

Olin Prather: You have no place you can get at?

Stephen Parks: It is pretty steep. The contours don't show that.

Olin Prather: That is our problem, the contour maps are off a little bit.

Stephen Parks: That was the general reason for going back to the field to look at these areas. We were rather pleased after coming from the first hearing to think we had an alternate given to us and thought maybe it would be o.k. We would have been glad to move it there, but upon looking at that area we just can't get a location.

Olin Prather: What about right in the head of that hollow up in the curve.

Olin Prather continues: You are 1,500' from this line, but suppose we gave, would you drill it there. You are still within the law to drill it within 1,500' if you stay 500' of that property line. There is some drainage you might have on a 2,500' agreement you might have, whoever has this well.

Stephen Parks: You should not be asking me really.

Harry Childress: That is something really we can't decide and force you to it?

Olin Prather: Let me ask you is the head of that hollow acceptable?

Stephen Parks: I don't think so. It gets too steep too.

Conversation continues among all concerned

MR. WHITE CALLS MAX LEWIS

Question: Mr. Lewis where are you employed?

Answer: Ashland Exploration.

Question: Howlong have you been so employed?

Answer: Thirty-four years.

Question: What are your duties with Ashland?

Answer: I am a foreman in exploration. Building locations, well production, maintenance.

Question: Are you involved with the well site which we are concerned with here today?

Answer: Yes sir.

Question: I believe in the course of your employment concerning this well site you were shown an alternate location on the property?

Answer: Yes sir.

Question: Would you describe what you found at the alternate site?

Answer: On this alternate site, on this map you can see it right here. The water runs down on each side of this point here comes down on each side. Whenever you leave out of that creek, I wouldn't call it a creek it is more of a branch on each side, you would be doing good to get up it to begin with. Then it levels off about 25% grade anyway. It is real steep and it is nothing but rock cliff after you get on above that, maybe 10 foot wide, it is just cliff all on through there. There is no way you are ever going to get a location there. Just haul it off, you are going to have to haul it off you can't put it, there is a hollow there and it is straight down.

Question: Are you familiar with the modifications which Mr. Fulmer proposed for the applied site?

Answer: Yes sir.

Question: Do you see any problem with Ashland complying with those modifications?

Answer: No we will comply with these or any others that he has. If there are any changes, we will be glad to comply with them.

Question: What type of pit liners do you use?

Answer: We usually use N52 scattered over the pit with maybe some aqua gell and line it with plastic liner.

MR. White: That is all the questions we have.

MR. PRUETT CROSS-EXAMINATION OF MR. LEWS

Question: Mr. Lewis when you viewed the alternate site did you take a surveying crew with you?

Answer: They were with me whenever we looked at it.

Question: Did they run any slope measurements up on the top of the hill?

Answer: We didn't have to we could look at it and tell.

Question: The contour map seems to indicate that it widens out near the top near the 2,200' mark. Isn't it possible that the hill sort of crowns before you get into the area called the back yard of Mr. Davis?

Answer: You talking about the proposed site, the alternate site?

Question: I think you stated that the slope dropped to about 25%?

Answer: Yes it does.

Question: What is the life of your pit liners that you described?

Answer: I have never had one of them yet to deteriorate.

Question: Do you know their effect on anything like an isatope tracer?

Answer: No I don't.

Mr. Pruett: No further questions.

I. C. Spotte: The point was made that Ashland has several wells in this area. Is this well necessary?

Answer by Mr. Lewis: I think so.

I. C. Spotte: Why do you think so. What is the nearest well to this.

Mr. Lewis: Rogers 15, about 2,000 or 2,500' I don't know. But it is the closest well.

I. C. Spotte: It's the closest well.

Mr. Lewis: Yes sir it is the closest one we have to it.

Eugene Dickinson, Ashland: Mr. Spotte we can offer the geologist to testify about the necessity of the well.

I. C. Spotte: I am sure Ashland wouldn't drill a well unless they thought it necessary, but sometimes they do drill too many wells. We in the coal industry have found that out. The point was made that they didn't need another well in this area and I was just pursuing that point.

Harry Childress: Any other questions.

ROBERT WHITE, ATTORNEY FOR ASHLAND CALLS JOE CATHEY

Question: Would you state your employment for the Board.

Answer: My name is Joe Cathey I am the geologist for Ashland Exploration.

Question: How long have you been so employed?

Answer: Twenty-seven years.

Question: Are you familiar with the proposed drilling site on the Lon Rogers tract?

Answer: Yes I am.

Question: Would you state to the Board why this well is necessary.

Answer: The reason we are drilling this well is because Mr. Van Davis drilled or caused to be drilled two wells to the north directly offsetting properties Ashland had the lease on so we are drilling this well to protect our interest. The original location we picked in Virginia.....

I. C. Spotte: In otherwords they are draining your gas?

Joe Cathey: In otherwords we are drilling this well because of the wells that were drilled offsetting our leases. That is correct.

Robert White: That is all the questions we have.

MR. PRUETT CROSS-EXAMINES MR. CATHEY

Question: The oil bearing foundation or strata, is it laminator?

Answer: This is gas not oil.

Question: Alright, oil and gas, is it laminator strata?

Answer: It depends on what you are talking about. The shells, the Berea sandstones which is the main reservoir in the area a sandstone as such is not necessarily laminator.

Question: Are you drilling a massive anticline?

Answer: No, stratagraphic.

Question: So it is a stratagraphic formation. Let me hand you a plat, part of the maps provided in the well work permit certifying Mr. Nelson Light, Certified Engineer

Mr. Pruett continues: The scale is 1" a thousand foot. This language over here to the left, what is the number 10193.53?

Answer: That is the total acreage.

Question: So that is the acreage in this area of relatively flat formation you have under this lease. Is that correct?

Answer: That is the total acreage under the Lon Rogers lease.

Question: You stated that your purpose for drilling the well at this site was to offset two wells that Panther Creek Limited Partners, and I believe you said Mr. Van Davis had drilled. Is that correct?

Answer: Drilled in conjunction with or caused to be drilled or has an interest in royalties, at least.

Question: So then are you saying out of 10,193 acres you have chosen a tract of approximately 17 acres.

Answer: We don't chose a tract to drill on. We choose a location to drill. It happens that it falls on this tract.

Question: And that location just happens to belong to Mr. Van Davis, employee of Panther Creek Limited Partnership?

Answer: Because we are offsetting that well that was drilled up there as close as we can.

Mr. Pruett: No further questions.

Harry Childress, Chairman: Any questions from any of the Board?

I. C. Spotte: Just to clarify on my mind, the only purpose of this well is to offset the wells that were drilled over on the West Virginia side?

Mr. Cathey: Right sir.

Harry Childress: Do you, the Board, feel we need to have closing arguments or do you think we have heard enough?

Richard Chew: I think we are about to get them.

MR. PRUETT'S CLOSING ARGUMENTS

Mr. Chairman, members of the Board, Ashland has expressed an interest in drilling this well on the tract belonging to Mr. Van Davis it appears for the purpsoe of offsetting some wells drilled by Panther Creek Limited Partnership. Other than certain spacing requirements this appears to be the only reason for selecting this one spot out of the approximately 10,000 acres of the surrounding area. The particular holder of the land of the approximately 17 acres by coincidence happens to be the drilling supervisor for a company they feel has been draining underlying oil from their tracts. Mr. Davis and Mr. Horn, on the other hand, their intersts in this matter is ultimately the preservation of the water which is a critical matter. It is understood from the evidence and some of the members of the Board in that area that drinking water or bathing water or any potable water is a premium. Without water these landowners can't develop their surface intersts any further than they are now. In fact they are barely living at subsistence level. You heard the evidence of using laundermat

restricting showers. A question that has been brought up by the Board and it is a very good question. It is a key question. Why hasn't this pond been built up to this time? Van Davis has stated that he began construction on his house back in 1974 and completed it in 1977. There is testimony that he was considering the pond at that time. Since that time six years have passed. The pond is not built. The Lon Rogers lease agreement that Ashland claims ownership of oil and gas interest under this tract was signed sometime in 1920 and there has been no drilling on this tract attempted since that time. I will submit to the Board that six years here isn't an unusual or unreasonable delay on the part of the landower. They have explained the reasons for the delay. It hinged upon available time, resources and dry weather. They have also expressed their desire to be under construction now. But I would ask you, would you begin construction, expend resources to put into this facility knowning there is a good possibility that this well will be located where it is now. They have good reason for delay. We have literally beat the question of pollution to death this morning. I think the conclusion we will all have to make is there is a possibility and we have expressed some real concerns. Not only with the design of the well site which is still under the control of Mr. Fulmer, the Oil and Gas Inspector but with the location of the site itself being near these water sources. I would ask the Board do they consider it a reasonable risk to position the well in this spot. Maybe it would be a reasonable risk if this land were located near the Levisa River or the Big Sandy or if water were available, but because water is such a premium and because of the devastating result when it is not, results of losing the water supply in that area, I would submit that this is critical and that it is an unreasonable risk to take in positioning that well so close to the pond site. Ashland's insistence upon this location I feel is not what is termed reasonable necessary use of the surface owner's intersts by a mineral holder. That is a restriction that is applied to the mineral holder in that they have to protect the surface owners interst to that extent. Not exploiting the surface anymore than reasonably necessary. I can't see from the facts that it is reasonably necessary that they place the well site right where they have proposed. In addition it is not in line with the public policy of the Commonwealth as set out in the act to conserve the water resources of this state. Addressing our question of the alternate site. You have heard their testimony that it is too steep and unacceptable. Mr. Max Lewis is a man with much experience he states that the site is too steep. Mr. Van Davis and Mr. Carl Horn also have a lot experience in constructing sites, they say that it can be done. The surveyors went to the site with Max Lewis and they walked the site but did not take any slope calculations. When the Board mentioned the fact that the topo map appeared to flatten out in certain areas is the topo doesn't accurately show what is there. As far as the opinion who are qualified who have constructed these sites in the past they are in complete disagreement here. Mr. Max Lewis did state that near the top he thought that the slope in that area approximated 25%, I believe was his statement. You look at the modified operations plan of Mr. Stephen Parks, at the location they have suggested, the slope shown there is 20%. One foot in five as oppossed to one foot in four. Another argument against the alternate site is that the adjoining royalty owner is within 500' of that site. The tetimony before says that that property line is in dispute. The plat submitted by Ashland shows two lines. It is quite possible that certain sections of that site near the crown of the hill where the topo shows it to be flat, it is possible it is not within 500' of the adjoining tract, but even if they are. This additional notice requirement, additional permit, required of Ashland is not an undue burden placed upon them when the consequences of drillin in the location are as severe as they are. The shortage of water is the key. I think that the Board, and I would submit to the Board, that certain locations within the alternate site is acceptable and that the proposed location is an undue risk to the water interests in that spot would be in line with public policy of the state of Virginia as set forth in the Oil and Gas Act.

MR. DICKINSONS, ASHLAND, CLOSING-ARGUMENTS

Gentlemen I go back to the original motion to dismiss the appeal and I question the Board's function in this case and ask you to consider the suggestion I make. This is a Well Review Board. The case is here on appeal by the petitioners and in that petition they raised a certain question and that was whether or not the decision of the Inspector was erroneous based upon the facts introduced at the hearing. I submit to you that while you have heard and listened to testimony that really went, which was the same testimony submitted to the inspector, you also heard before you as part of the evidence in this case the opinion of the decsion itself of the Inspector. While that is not, while we are not here, while it is not given presumptive correctness by the Statute, I submit to you that never-the-less your job is not to decide necessarily the merits of the case as presented here in this appeal but whether or not in the way that the petitioners filed their petition and noted the error I think your question should be whether or not the decision of the Inspector was clearly erroneous under these conflicting facts. That would seem to me to be the function of a review board even though you are given power to decide litigated issues which are properly before it. Again I submit that many of these issues are not properly before you on a pleading and that your decision should be confined to whether or not Fulmer in making his decision was clearly erroneous based upon these same facts. Any reasonable person can differ on interpretation of facts, but he is your inspector, he is an expert. He is given the responsibility under the statute to make the initial decision based on the facts, and you as the Review Board, I submit in the absence of clearly unlitigated issues before him or in the absence of a decision by him on certain issues, and I think he covered all the issues in his decsion. I think then your function, especially the way this petition was filed is to decide whether or not he was clearly erroneous in making the findings he did. I submit to you that your decison in this case should be to issue the well permit at the location proposed by Ashland subject to modifications or acceptance of modifications filed by Ashland in order to comply with the modifications Mr. Fulmer required in order to have the well drilled. Thank you very much.

Richard Chew: Mr. Chairman may I ask a question or two for clarification. Would you kindly tell me when those two wells up on the other side of the line were constructed?

Van Davis: 1979

Richard Chew: Counsel you can represent something if you want to and not if you don't but why do you think there motive, what ever it might have been is relative to this. What if it were pure spite. Does that bare on whether they have a right to this permit if they can meet the terms of the statute.

Tom Pruett: I think it does sir because the Board's job, understanding the arguement Mr. Dickinson has put forth, the Board is doing right by the statue to consider this matter de novo. We hear the evidence all over again. You consider the evidence it appears to me that the Board should weigh in this instance the reasons that Ashland may have for the geologic, spite or whatever, weigh those reasons against the dangers or the intersts of the surface owner in this particular area. That should be part of their criteria in deciding whether or not this well is to be issued, this well permit is to be issued on this particular location. I think that is in line with the public policy that I cited.

Richard Chew: You did bring that up against the contrasting background these lapses of time that if you waited six years or however many it was to build a dam, look how long they waited to drill a well. Maybe they did not have any incentive to drill a well until the offset question was perceptated by other people. Maybe Mr. Davis didn't

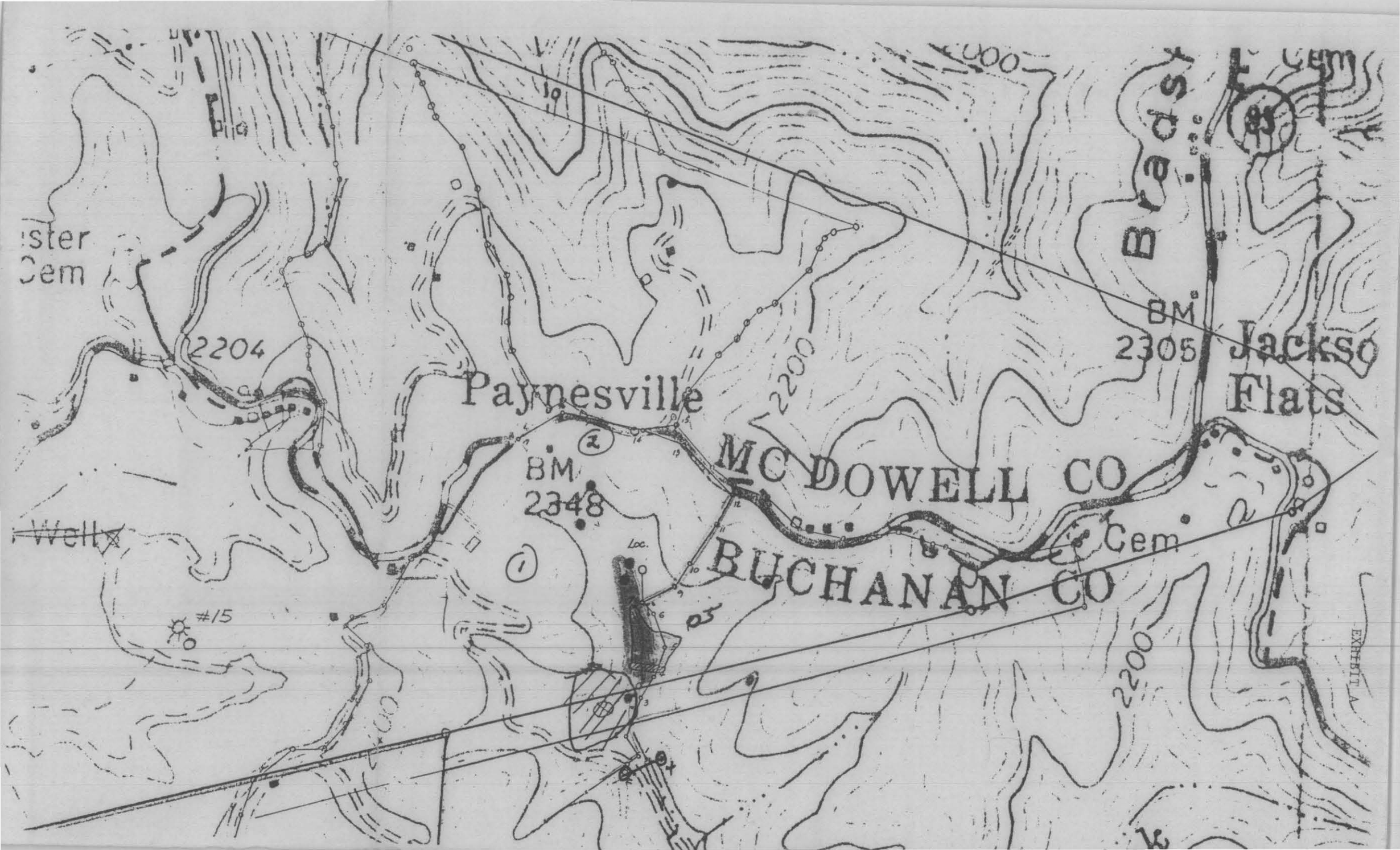
Mr. Chew continues: realize how urgently he needed a dam until they wanted this well site. Incidentally I would like to say I reject Mr. Dickinsons' intentions about, I personally, about the nature of the hearing. For whatever benefit that is to you. I just don't see in my own mind there reasons for wanting what they are entitled to, they own the rights presumably. They are attempting apparently to comply with the rules of the game and how is it relevant to us that he selected Mr. Davis' 17 acres, when he had all this other wonderful property available. They didn't choose the other property they chose this property. They certainly did explore some other locations and he rejected some of that and now that it is getting down to the wire, he is pretty uncomfortable about the results.

Mr. Pruett: Your point is well taken. I think in essence I had mentioned matters of this sort, surface owners intersts is subservient normally to intersts of the holder of any oil or gas intersts. Now that person who holds the oil or gas interests can exploit the surface for the purpose of getting to their intests but they have to do it only to the extent that is reasonably necessary. The relevence goes to whether or not it is reasonably necessary for Ashland to place this well at this one particular site, 17 acres out of 10,000. The site right adjacent to the pond location is relevant because it is not reasonable necessary use of the surface their own admission .....

Richard Chew: You are saying, there are really two parts to the question. One is whethere they should be on this tract and the second is if on this tract where on this tract? I am concerned that your side has established some standards by which it decided we don't want here, we don't want it here and we don't want here but we let it be here, let it be here and let it be here. I don't know whether you are asking us to pass judgement on that kind of negotiation or not. I don't know whether it is better to have a well in your back yard rather than in your pond. But Mr. Davis called that shot, they didn't call that shot.

Mr. Pruett: I am not asking you in essence or the Board to pass judgment or rather to weigh the reasoning here for objecting to this well site. The rational for placing it where it is as oppossed to the rational behind the objections of that location.

Harry Childress, Chairman: The hearing is closed. We have to give a decision to you in thirty days.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