

Record No. 5675

In the
Supreme Court of Appeals of Virginia
at Richmond

VIRGINIA ELECTRIC AND POWER
COMPANY

v

ALICE YOUNG FARRAR, ET AL.

FROM THE CIRCUIT COURT OF MECKLENBURG COUNTY

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

NOTICE TO COUNSEL

This case probably will be called at the session of court
to be held FEB - MAR 1964
You will be advised later more definitely as to the date.
Print names of counsel on front cover of briefs.

Howard G. Turner, Clerk

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5675

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 22nd day of April, 1963.

VIRGINIA ELECTRIC AND POWER COMPANY,
against Appellant,

ALICE YOUNG FARRAR; EULA YOUNG; JOHN
THOMAS WILLIAMS; W. R. BASKERVILLE, JR.;
W. R. BASKERVILLE AND SALLIE B. BASKER-
VILLE, Appellees.

From the Circuit Court of Mecklenburg County
Gus E. Mitchell, Jr., Judge

Upon the petition of Virginia Electric and Power Company an appeal is awarded it from an order entered by the Circuit Court of Mecklenburg County on the 15th day of October, 1962, in a certain proceeding then therein depending, wherein the said petitioner was plaintiff and Lucy Pettway Peete and others were defendants; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of one thousand dollars, with condition as the law directs.

RECORD

* * * * *

PETITION FOR CONDEMNATION.

To the Honorable G. E. Mitchell, Jr., Judge of the Circuit Court of Mecklenburg County, Virginia:

Your Petitioner, Virginia Electric and Power Company, a public service corporation organized and doing business under the laws of the Commonwealth of Virginia, having its principal office in the City of Richmond, Virginia, hereinafter called "Company", respectfully represents:

* * * * *

page 4 } (5) The uses and purposes for which the herein-
after described lands and improvements thereon, if any, of Owners are wanted are for the aforesaid hydro-electric project which is to be located on the Roanoke River; said project is to include a dam and hydro-electric facilities which are to be constructed at a point approximately 9 miles upstream from the City of Roanoke Rapids, North Carolina, together with a reservoir which may raise the waters to a height at the dam not exceeding 204 feet above mean sea level as determined from the bench marks of the United States Coast and Geodetic Survey, the operation of which for power and flood control purposes will involve raising and lowering the waters from time to time as may be deemed advisable by the persons operating it; a portion of the reservoir to be located upon the lands of Owners sought to be condemned herein.

The estate and interest sought to be condemned in the hereinafter described lands of Owners, together with the improvements thereon, if any, is the fee simple title together with all the privileges, appurtenances and riparian rights belonging or in anywise appertaining thereto; and all Owners' rights, title and interest in and to any private or public ways within said land and in and to the bed of the Roanoke River and all other lands, islands and shoals adjacent to or in the vicinity of said land, whether or not the same be now covered by the waters of the Roanoke River and the branches, creeks and streams flowing into it, which may be inundated by the construction, maintenance and operation on the Roanoke River of the aforesaid hydro-electric project; reserving to Owners, however, the easement hereinafter set forth.

Owners, their heirs and assigns, shall have the exclusive right reserved to them, except as hereinafter stated, to enter upon, occupy, and use for recreational or agricultural purposes any part of their lands herein sought to be acquired by the Company which may lie above the fluctuating water line of the said reservoir. Owners may construct, maintain and use on such shore land (subject to requirements by regulatory authority), and beyond the same into the waters of said reservoir upon the lands herein sought to be acquired by the Company, such piers, jetties or other recreational or protective structures as in the opinion of the Company are not detrimental to the said project, but shall not have the right to construct or maintain any structure for human habitation on any part of said lands. Owners shall not have the right to draw water from the said reservoir for any use beyond or removed from the aforesaid shore lands. The right reserved to Owners shall not exclude the right of the Company, through its employees or contractors, to enter upon and inspect such shore lands, clear the same, remove or keep the same clear of timber, brush, trash, crops, pollutants, structures or obstructions, or to carry out any other activities thereon that the Company may deem desirable for the purposes of the said project. Owners shall not cause pollutants to pass across or through the aforesaid shore lands nor cause any waste, refuse or trash to be or remain thereon, or maintain thereon any nuisance or permit any structures thereon to become dilapidated, unsightly or unsafe.

The awards of the commissioners are to be in full and total payment for the lands and improvements thereon, if any, of Owners, for all trees, undergrowth or other obstructions on said lands, for all the rights and privileges hereinabove set forth, and for any damages, if any, to the residue of Owners' land.

* * * * *

(7) The tracts or parcels of land to which the fee simple titles are sought to be condemned are described as follows:

* * * * *

page 11 } PARCEL NO. M-53: (Alice Young Farrar)

All that certain tract or parcel of land, lying and being in Boydton Magisterial District, Mecklenburg County, Virginia, containing 6.3 Acres, more or less, and being described as follows:

Beginning at a common corner of this property, property of Eula Young, property of Connie Williams and Divolah L. Williams and property of William P. Simmons, which point is at the intersection of the center line of Allens Creek with the center line of Reedy Branch; thence southwardly along the property line dividing this property and property of said William P. Simmons, following the center line of Allens Creek, as it meanders, a distance of 70 feet, more or less, to a property corner; thence continuing southwardly along the property line dividing this property and property of John Thomas Williams, following the center line of Allens Creek, as it meanders, a distance of 6150 feet, more or less, to a common corner of this property, property of said John Thomas Williams and property of George B. Blalock; thence N. 83° 22' W. 338 feet, more or less, along the property line dividing this property and property of said George B. Blalock to an angle therein; thence N. 70° 20' W. 248 feet, more or less, along said property line to the point of intersection of a line marking elevation 214 feet above mean sea level as determined from the bench marks of the United States Coast and Geodetic Survey with said property line; thence northwardly along said line marking elevation 214 feet, as it meanders, a distance of 6640 feet, more or less, to its intersection with the property line dividing this property and property of said Eula Young; thence N. 30° 47' E. 8 feet along said property line to a point in said line marking elevation 214 feet; thence northeastwardly along said line marking elevation 214 feet, as it meanders, a distance of 1920 feet, more or less, to a point in the property line dividing this property and property of said Eula Young; thence N. 78° 06' E. 28 feet, more or less, to the point of beginning.

Said parcel of land is a portion of the same property which was devised to Alice L. Young by Alice N. Young by will dated September 13, 1920, probated June 22, 1922 and recorded in the Clerk's Office of the Circuit Court of Mecklenburg County in Will Book 28, page 586.

page 12 } PARCEL NO. M-54A&B: (Eula Young)

All that certain tract or parcel of land, lying and being in Boydton Magisterial District, Mecklenburg County, Virginia, containing 3.14 Acres, more or less, and being described as follows:

Parcel No. M-54A

Beginning at the intersection of a line marking elevation

214 feet above mean sea level as determined from the bench marks of the United States Coast and Geodetic Survey with the property line dividing this property and property of Alice Young Farrar, which point is S. $30^{\circ} 47'$ W. 28 feet, more or less, along said property line from a point marked by a steel rod at elevation 220.70 feet; thence S. $30^{\circ} 47'$ W. 8 feet, more or less, along said property line to a point of intersection of said line marking elevation 214 feet with said property line; thence northwestwardly 300 feet, more or less, along said line marking elevation 214 feet to a point; thence southeastwardly 300 feet, more or less, along said line marking elevation 214 feet to the point of beginning; and containing 0.04 acre, more or less.

Parcel No. M-54B

Beginning at a common corner of this property, property of Connie Williams and Divolah L. Williams, property of William P. Simmons and property of Alice Young Farrar, which point is at the intersection of the center line of Reedy Branch with the center line of Allens Creek; thence S. $78^{\circ} 06'$ W. 28 feet, more or less, along the property line dividing this property and property of said Alice Young Farrar to the point of intersection of a line marking elevation 214 feet above mean sea level as determined from the bench marks of the United States Coast and Geodetic Survey with the last-mentioned property line; thence westwardly along said line marking elevation 214 feet, as it meanders, a distance of 5740 feet, more or less, to a point in the property line dividing this property and property of Robert Baskerville Young; thence N. $2^{\circ} 22'$ W. 25 feet, more or less, along said property line to a common corner of this property, property of said Robert Baskerville Young and property of Willie Belle Freeman, which point is in the center line of Allens Creek; thence eastwardly along the property line dividing this property and property of said Willie Belle Freeman, following the center line of said Allens Creek, as it meanders, a distance of 1370 feet, more or less, to a property corner; thence continuing eastwardly along the property line dividing this property and property of Katherine G. Lee, following the center line of said Allens Creek, as it meanders, a distance of 1820 feet, more or less, to a property corner at the intersection of the center line of Long Branch with the center line of said Allens Creek; thence continuing eastwardly along the property line dividing this property and property of said Connie Williams and Divolah L. Williams, following the center line of said Allens Creek, as it meanders, a distance of 2530 feet, more or

less, to the point of beginning; and containing 3.1 acres, more or less.

Said parcels of land are portions of the same property which was devised to Eula P. Young by J. W. Young by will dated March 17, 1937, probated August 7, 1940, and recorded in the Clerk's Office of the Circuit Court of Mecklenburg County in Will Book 30, page 307.

page 13 } PARCEL NO. M-62: (John Thomas Williams)

All that certain tract or parcel of land, lying and being in Boydton Magisterial District, Mecklenburg County, Virginia, containing 3.6 Acres, more or less, and being described as follows:

Beginning at a common corner of this property, property of William P. Simmons and property of Alice Young Farrar in the center line of Allens Creek; thence S. 55° 42' E. 15 feet, more or less, along the property line dividing this property and property of said William P. Simmons to the point of intersection of a line marking elevation 214 feet above mean sea level as determined from the bench marks of the United States Coast and Geodetic Survey with said property line; thence southwardly along said line marking elevation 214 feet, as it meanders, a distance of 8820 feet, more or less, to its point of intersection with the property line dividing this property and property of A. D. Floyd and Rosell Floyd; thence S. 74° 17' W. 21 feet, more or less, along said property line to a common corner of this property, property of said A. D. Floyd and Rosell Floyd and property George D. Blalock in the center line of Allens Creek; thence northwardly along the property line dividing this property and property of said George B. Blalock, following the center line of said Allens Creek, as it meanders, a distance of 1850 feet, more or less, to a property corner; thence continuing northwardly along the property line dividing this property and property of said Alice Young Farrar, following the center line of said Allens Creek, as it meanders, a distance of 6150 feet, more or less, to the point of beginning.

Said parcel of land is a portion of the same property which was conveyed to John T. Williams by Helen W. Martin and others by deed dated April 20, 1951, recorded in Clerk's Office of the Circuit Court of Mecklenburg County in Deed Book 138, page 197.

page 16 } PARCEL NO. M-96: (W. R. Baskerville, Jr.,
W. R. Baskerville and Sallie B. Baskerville, his
wife)

ALL that certain tract or parcel of land, lying and being in Buckhorn Magisterial District, Mecklenburg County, Virginia, containing 19.4 Acres, more or less, and being described as follows:

BEGINNING at a corner common to this property and property of Lucie Owney Jones and Mary Hester Harriss on property of John E. Chavis and Alma B. Chavis in the center line of Miles Creek; thence southeastwardly along the property line dividing this property and property of said John E. Chavis and Alma B. Chavis and this property and property of Jessie C. Williams and Pattie Williams and this property and property of James E. Dortch and following the center line of said creek, as it meanders, a distance of 5,240.0 feet, more or less, to a property corner at the intersection of the center line of said creek and the center line of a branch; thence southwardly along the property line dividing this property and property of James J. Jones and Jessie A. Jones, and following the center line of said branch, as it meanders, a distance of 280 feet, more or less, to a point; thence S. 34° 36' W. 15.1 feet through this property to a point, marked by a steel rod; thence N. 9° 52' E. 181.7 feet through this property to a point, marked by a steel rod; thence through this property the following courses and distances: N. 6° 29' E. 49.8 feet, N. 33° 30' W. 64.6 feet, N. 55° 51' W. 86.3 feet, N. 22° 52' W. 75.9 feet, N. 35° 44' W. 74.5 feet, N. 7° 20' W. 137.2 feet, N. 11° 07' W. 347.6 feet, S. 81° 08' W. 72.8 feet, S. 28° 20' W. 134.6 feet and S. 77° 48' W. 122.3 feet to a point, marked by a steel rod; thence N. 43° 29' W. 127.8 feet through this property to a point, marked by a steel rod; thence N. 68° 02' W. 324.3 feet through this property to a point, marked by a steel rod; thence through this property the following courses and distances: N. 12° 32' E. 382.6 feet, N. 61° 10' W. 112.0 feet, N. 31° 14' W. 264.0 feet, N. 2° 29' W. 137.2 feet, N. 21° 32' W. 100.1 feet, N. 22° 14' E. 217.0 feet, N. 35° 44' E. 291.0 feet, N. 3° 51' W. 199.1 feet, N. 67° 11' W. 165.2 feet, S. 61° 03' W. 218.3 feet, and N. 41° 16' W. 254.7 feet to a point, marked by a steel rod; thence N. 52° 44' W. 116.1 feet through this property to a point marked by a steel rod; thence N. 15° 18' W. 135.0 feet through this property to a point, marked by a steel rod; thence through this property the following courses and distances: N. 45° 51' W. 777.6 feet, N. 26° 56' W. 88.3 feet, S. 44° 48' E. 465.2 feet, S. 48° 14' E. 303.2 feet, S. 41° 44'

E. 234.8 feet, S. 74° 04' E. 153.2 feet, S. 43° 16' E. 119.2 feet, S. 82° 12' E. 121.9 feet, N. 37° 06' E. 124.2 feet, S. 67° 17' E. 251.6 feet and N. 5° 46' W. 175.2 feet to a point, marked by a steel rod; thence N. 16° 35' E. 218.4 feet through this property to a point, marked by a steel rod; thence N. 66° 54' E. 110.3 feet through this property to a point, marked by a steel rod; thence through this property the following courses and distances: N. 53° 58' W. 156.6 feet, S. 86° 15' W. 215.2 feet, N. 23° 04' W. 199.6 feet, N. 29° 35' W. 159.5 feet, N. 15° 44' W. 134.3 feet, N. 24° 36' W. 150.4 feet, N. 38° 04' E. 121.2 feet, N. 63° 40' W. 132.7 feet, N. 19° 31' W. 115.3 feet and N. 15° 36' E. 271.3 feet to a point, marked by a steel rod; thence N. 6° 04' W. 181.9 feet through this property to a point in the property line dividing this property and property of said Lucie Owney Jones and Mary Hester Harriss, which point is marked by a steel rod; thence S. 81° 54' E. 14.5 feet along said property line to the point of beginning.

BEING a portion of the same property conveyed to W. R. Baskerville, Jr., by W. R. Baskerville and wife, by deed dated January 26, 1948, recorded in the Clerk's Office of the Circuit Court of Mecklenburg County, Virginia, in Deed Book 128, page 36, and grantors having reserved a life estate.

* * * * *

page 18 } (8) That the above described lands to which the fee simple titles are herein sought to be condemned are shown by plats of survey hereto attached. There are no cuts and fills, trestles or bridges to be made in connection with the use of the said lands for the purpose of a hydro-electric development as hereinabove described.

Filed in the Clerk's Office the 4 day of Oct., 1961.

Teste:

N. G. HUTCHESON, Clerk.

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REPORT OF CONDEMNATION COMMISSIONERS.

To the Honorable G. E. Mitchell, Jr., Judge of the Circuit Court of Mecklenburg County, Virginia:

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* * * * *

And, after being duly sworn, upon a view of the property aforesaid, and upon a view of the adjacent and other property of said Owners and of the property of any other person or persons who will be damaged in their property by the construction and operation of the works of said Company, and upon such evidence as was produced before us, we are of the opinion and do ascertain that a just compensation for said lands, and the damages to the adjacent and other property of said Owners hereinafter named and to the property of other persons, if any, who will be damaged in their property by reason of the construction and operation of the works of said Company, beyond the peculiar benefits that will accrue to such properties, respectively, from the construction and operation of said works are:

page 60 }

	Compensation for property taken	Damages	Total amount of compensation and damages
PARCEL NO. M-54			
Eula Young	\$628.00	\$4,694.00	\$5,322.00

Given under our hands this 5th day of May, 1962.

Respectfully submitted,

ROBERT L. WALLACE
J. L. READ
J. L. McCALL
J. FRANK BROWN
T. W. GREGORY, JR.

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REPORT OF CONDEMNATION COMMISSIONERS.

To the Honorable G. E. Mitchell, Jr., Judge of the Circuit
Court of Mecklenburg County, Virginia:

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And, after being duly sworn, upon a view of the property aforesaid, and upon a view of the adjacent and other property of said Owners and of the property of any other person or persons who will be damaged in their property by the construction and operation of the works of said Company, and upon such evidence as was produced before us, we are of the opinion and do ascertain that a just compensation for said lands, and the damages to the adjacent and other property of said Owners hereinafter named and to the property of other persons, if any, who will be damaged in their property by reason of the construction and operation of the works of said Company, beyond the peculiar benefits that will accrue to such properties, respectively, from the construction and operation of said works are:

page 67 }

	Compensation for property taken	Damages	Total amount of compensation and damages
PARCEL NO. M-53			
Alice Young Farrar	\$1,260.00	\$2,020.00	\$3,280.00

Given under our hands this 5th day of May, 1962.

Respectfully submitted,

ROBERT L. WALLACE
J. L. READ
J. L. McCALL
J. FRANK BROWN
T. W. GREGORY, JR.

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REPORT OF CONDEMNATION COMMISSIONERS.

To the Honorable G. E. Mitchell, Jr., Judge of the Circuit Court of Mecklenburg County, Virginia:

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And, after being duly sworn, upon a view of the property aforesaid, and upon a view of the adjacent and other property of said Owners and of the property of any other person or persons who will be damaged in their property by the construction and operation of the works of said Company, and upon such evidence as was produced before us, we are of the opinion and do ascertain that a just compensation for said lands, and the damages to the adjacent and other property of said Owners hereinafter named and to the property of other persons, if any, who will be damaged in their property by reason of the construction and operation of the works of said Company, beyond the peculiar benefits that will accrue to such properties, respectively, from the construction and operation of said works are:

page 74 }

	Compensation for property taken	Damages	Total amount of compensation and damages
PARCEL NO. M-62			
John Thomas Williams	\$720.00	\$5,540.00	\$6,260.00

Given under our hands this 5th day of May, 1962.

Respectfully submitted,

ROBERT L. WALLACE
J. L. READ
J. L. McCALL
J. FRANK BROWN
T. W. GREGORY, JR.

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REPORT OF CONDEMNATION COMMISSIONERS.

To the Honorable G. E. Mitchell, Jr., Judge of the Circuit Court of Mecklenburg County, Virginia:

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page 80 }

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And, after being duly sworn, upon a view of the property aforesaid, and upon a view of the adjacent and other property of said Owners and of the property of any other person or persons who will be damaged in their property by the construction and operation of the works of said Company, and upon such evidence as was produced before us, we are of the opinion and do ascertain that a just compensation for said lands, and the damages to the adjacent and other property of said Owners hereinafter named and to the property of other persons, if any, who will be damaged in their property by reason of the construction and operation of the works of said Company, beyond the peculiar benefits that will accrue to such properties, respectively, from the construction and operation of said works are:

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Compensation for property taken	Damages	Total amount of compensation and damages
\$1,940.00	\$6,460.00	\$8,400.00

PARCEL NO. M-96

W. R. Baskerville, Jr.,
W. R. Baskerville and
Sallie B. Baskerville,
his wife.

Given under our hands this 8 day of May, 1962.

Respectfully submitted,

E. C. FEILD
T. W. GREGORY, JR.
J. L. READ
J. FRANK BROWN
W. R. LAMBERT

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EXCEPTIONS TO REPORTS OF THE CONDEMNATION
COMMISSIONERS.

The condemner, Virginia Electric and Power Company, by counsel, respectfully excepts to the Reports of Condemnation Commissioners filed in this cause on the 5th and 8th days of May, 1962, respectively, wherein the following awards were made:

	Compensation for property taken	Damages	Total amount of compensation and damages
PARCEL NO.			
M-53:			
Alice Young Farrar	\$1,260.00	\$2,020.00	\$3,280.00
PARCEL NO.			
M-54:			
Eula Young	\$ 628.00	\$4,694.00	\$5,322.00
PARCEL NO.			
M-62:			
John Thomas Williams	\$ 720.00	\$5,540.00	\$6,260.00

PARCEL NO.

M-96:

W. R. Baskerville, Jr.,	\$1,940.00	\$6,460.00	\$8,400.00
W. R. Baskerville and Sallie B. Baskerville, his wife			

The grounds for the condemner's exceptions as to the aforesaid awards for the aforementioned properties are as follows:

page 85 } (1) The aforesaid awards of compensation and damages are grossly excessive and, therefore, the Reports should be set aside;

(2) The aforesaid awards of compensation and damages are speculative, are based upon conjecture, and so far exceed the present fair market value of the lands as to indicate bias or prejudice;

(3) The aforesaid awards of compensation and damages are based upon erroneous principles;

(4) Items of improper evidence were introduced before the condemnation commissioners over the objection of the condemner. The transcript of the evidence presented before the commissioners and of the other incidents at the hearings, which show these various items of evidence and objections, will be filed with the Court;

(5) The condemnation commissioners arrived at their aforesaid awards of compensation and damages in an improper manner and without due consideration of the instructions by the Court; and

(6) Errors which may appear from an examination before the Court of the parties, the witnesses and the condemnation commissioners in this cause.

WHEREFORE, Virginia Electric and Power Company, the condemner herein, prays that the Court require each of the condemnation commissioners to appear as soon as a hearing date can be fixed for the purpose of explaining their aforesaid Reports and advise the Court as to how they made their awards; that the Court view the properties involved prior to the hearing upon these exceptions; and that the aforesaid awards be set aside and a new condemnation commission be

appointed by the Court to assess, in accordance
page 86 } with proper instructions, the actual compensation
and damages which should be awarded to the
aforesaid landowners.

Respectfully submitted,

VIRGINIA ELECTRIC AND
POWER COMPANY
By E. MILTON FARLEY, III
Counsel.

JAMES S. EASLEY
FRANK M. SLAYTON
EASLEY, VAUGHAN & SLAYTON
South Boston, Virginia.

E. MILTON FARLEY, III
EVANS B. BRASFIELD
HUNTON, WILLIAMS, GAY,
POWELL & GIBSON
1003 Electric Building
Richmond 12, Virginia
Of Counsel.

Filed 18 May 1962.

N. G. HUTCHESON, Clerk.

* * * * *

page 86-A } INSTRUCTION NO. 1.

The Court instructs the Commissioners that Virginia Electric and Power Company has the right to condemn the property and rights described in the petition filed in this case, and the Commissioners have no power to change in any manner the location of any part of the property sought to be condemned.

Granted 5/8/62.

G. E. M., JR.

Baskerville.

page 86-B } INSTRUCTION NO. 2.

The Court instructs the Commissioners that they are to determine two questions: First, just compensation to the landowner for the land taken by the Company; and, second, the damages, if any, to the remaining property of the landowner by reason of the property which is taken and the construction and operation of the company's works thereon.

Granted.

G. E. M., JR.

Baskerville.

page 86-C } INSTRUCTION NO. 3.

The Court instructs the Commissioners that in determining fair market value the same considerations are to be regarded as in a sale of property to private parties. Your inquiry must be, "What is the fair market value of the property which is being condemned" and not what the property or rights may be worth to Virginia Electric and Power Company. The use to which the property is to be put by the Power Company does not affect its present market value.

Granted.

G. E. M., JR.

Baskerville.

page 86-D } INSTRUCTION NO. 4.

The Court instructs the Commissioners that you are to determine market value as of the date of the making of your report.

The market value of property taken is the price it will bring when offered for sale by one who desires, but is not obliged, to sell, and is bought by one who is desirous, but is under no necessity of having it. In estimating market value all the capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered.

It is not a question of the value of the property to the Company or to the owner, nor can the value be enhanced by an unwillingness to sell it or because the Company needs the particular property. If, because of its surroundings, or natural

advantages, or its intrinsic character, the property is peculiarly adapted to some particular use, all the circumstances which make up this particular adaptability may be shown and the fact of such adaptation may be considered in estimating compensation. But the value for this especial and possible purpose, or for this highest and best use, is not page 86-E } the test, the commission should award only the fair market value of the land as it stands today, in view of all the purposes to which it is reasonably and naturally adapted, and not on a basis of future indications and investments. You are to inquire what a present purchaser would be willing to pay for the property in its present condition and not what a speculator might be able to realize out of a resale in the future.

Granted.

G. E. M., JR.

Baskerville.

page 86-F } INSTRUCTION NO. 5.

The Court instructs the Commissioners that in ascertaining the damages, if any, to that portion of the Owners' land outside of the property herein sought to be condemned, you shall award the Owners the difference between the market value of the same at the time of the taking of the property and its market value after the property has been taken.

Granted.

G. E. M., JR.

Baskerville.

page 86-G } INSTRUCTION NO. 6.

The Court instructs the Commissioners that in considering the damages, if any, which may result to the defendant's adjacent and other property, the commissioners must allow only such damages as, from their judgment and from the evidence, they may reasonably anticipate will result from the construction, operation and maintenance of the works of the Power Company on the land described in the petition.

Granted.

G. E. M., JR.

Baskerville.

page 86-H } INSTRUCTION NO. 7.

The Court instructs the Commissioners that damages to the residue may not be based on speculation, conjecture or guess but that the defendant, W. R. Baskerville, Jr., has the burden of proving by a preponderance or greater weight of the evidence, damage to the residue which is not disclosed by the Commissioner's view of the property.

Granted.

G. E. M., JR.

Baskerville.

page 86-I } INSTRUCTION NO. 8.

The Court instructs the Commissioners that while the parties to this proceeding have the right to present evidence, oral or otherwise, and you should consider all the evidence, you are not bound by the opinion of experts or by the apparent weight of the evidence but, taking into consideration what you saw upon your view of the land, you may determine the present fair market value of the land and fix compensation and damages in the manner set forth in the other instructions of the Court.

Granted.

G. E. M., JR.

Baskerville.

page 86-J } INSTRUCTION NO. 9.

The Court instructs the Commissioners that it is not necessary that all Commissioners shall agree upon the report to be made to the Court, but a majority have the right to reach a conclusion and file their report setting forth that conclusion. If the minority desires to do so, they may file a minority report.

Granted.

G. E. M., JR.

Baskerville.

page 86-K } INSTRUCTION NO. 10.

The Court instructs the commissioners that in determining the damages, if any, to the remaining property of the defendants in this proceeding, you are not to undertake to compute, consider or make an award for any possible future claims for flooding caused by the Power Company beyond the limits of the property to be acquired.

Granted.

G. E. M., JR.

Baskerville.

page 86-L } INSTRUCTION NO. B.

The Court instructs the commissioners that the power company has a license from the Federal Power Commission to construct its dam at its Gaston site. They will have a reservoir with a normal pool elevation of 200' for the generation of electricity and storage of water. In this proceeding the power company is taking land of the landowners up to the 210' elevation in fee simple. The commissioners therefore are to allow the landowners the fair market value of the land taken and damage, if any, to the residue of their lands for such taking and operation of the power company upon the land acquired in these proceedings.

Granted.

G. E. M., JR.

Baskerville.

page 86-M } INSTRUCTION NO. C.

The Court instructs the Commissioners that in fixing the damage, if any, to which the defendants are entitled they should take into consideration the fact that Virginia Electric and Power Company is entitled to occupy the entire area in accordance with the Petition filed.

Granted.

G. E. M., JR.

Baskerville.

page 86-N } INSTRUCTION NO. D.

The Court instructs the commissioners that in this taking the power company assumes no duty to operate or maintain the land taken to benefit the landowners. It may, if it desires, flood the property taken permanently or not as it chooses. The landowners will be entitled to no future damage to their other property remaining by the lawful use of the property taken. Therefore, the commissioners must now assess the damage to the landowners to compensate for all future damage they may suffer by the taking.

Refused.

G. E. M., JR.

VEPCO,

v.

Baskerville.

page 86-O } INSTRUCTION NO. E.

In ascertaining the damage, if any, resulting to the remaining property of the landowner by reason of the taking, you should consider whether or not because of its surroundings or natural advantages or intrinsic character the property was peculiarly adapted to some particular use, and you should consider whether or not as a result of the loss of the use of the land which is to be flooded with impair or destroy the natural advantage or peculiar adaptability of the residue of the property for such particular use, and you are to consider the effect, if any, which the flooding of that part of the land mentioned in the petition will have upon the fair market value of the residue of said land.

Refused.

G. E. M., JR.

VEPCO,

v.

Baskerville.

page 86-P } INSTRUCTION NO. 1.

The Court instructs the Commissioners that Virginia Electric and Power Company has the right to condemn the

property and rights described in the petition filed in this case, and the Commissioners have no power to change in any manner the location of any part of the property sought to be condemned.

Granted.

G. E. M., JR.

page 86-Q } INSTRUCTION NO. 2.

The Court instructs the Commissioners that they are to determine two questions: First, just compensation to the landowner for the land taken by the Company; and, second, the damages, if any, to the remaining property of the landowner by reason of the property which is taken and the construction and operation of the Company's works thereon.

Granted.

G. E. M., JR.

page 86-R } INSTRUCTION NO. 3.

The Court instructs the Commissioners that in determining fair market value the same considerations are to be regarded as in a sale of property to private parties. Your inquiry must be, "What is the fair market value of the property which is being condemned" and not what the property or rights may be worth to Virginia Electric and Power Company. The use to which the property is to be put by the Power Company does not affect its present market value.

Granted.

G. E. M., JR.

page 86-S } INSTRUCTION NO. 4.

The Court instructs the Commissioners that you are to determine market value as of the date of the making of your report.

The market value of property taken is the price it will bring when offered for sale by one who desires, but is not obliged, to sell, and is bought by one who is desirous, but is under no necessity of having it. In estimating market value all the

capabilities of the property and all the uses to which it may be applied or for which it is adapted are to be considered.

It is not a question of the value of the property to the Company or to the owner, nor can the value be enhanced by an unwillingness to sell it or because the Company needs the particular property. If, because of its surroundings, or natural advantages, or its intrinsic character, the property is peculiarly adapted to some particular use, all the circumstances which make up this particular adaptability may be shown and the fact of such adaptation may be considered in estimating compensation. But the value for this especial and possible purpose, or for this highest and best use, is not the
 page 86-T } test, the commission should award only the fair
 market value of the land as it stands today, in
 view of all the purposes to which it is reasonably and naturally adapted, and not on a basis of future indications and investments. You are to inquire what a present purchaser would be willing to pay for the property in its present condition and not what a speculator might be able to realize out of a resale in the future.

Granted.

G. E. M., JR.

page 86-U } INSTRUCTION NO. 5.

The Court instructs the Commissioners that in ascertaining the damages, if any, to that portion of the Owners' land outside of the property herein sought to be condemned, you shall award the Owners the difference between the market value of the same at the time of the taking of the property and its market value after the property has been taken.

Granted.

G. E. M., JR.

page 86-V } INSTRUCTION NO. 6.

The Court instructs the Commissioners that in considering the damages, if any, which may result to the defendant's adjacent and other property, the commissioners must allow only such damages as, from their judgment and from the evidence, they may reasonably anticipate will result from the

construction, operation and maintenance of the works of the Power Company on the land described in the petition.

Granted.

G. E. M., JR.

page 86-W } INSTRUCTION NO. 7.

The Court instructs the Commissioners that after you have arrived at the damages, if any, properly allowable to the owners, you should consider what peculiar benefits, if any, will accrue to the remaining property of the owners from the location and construction of the works and reservoir of the Company as distinguished from the benefits which will result to the general public, and you should offset the value of such peculiar benefits, if any, against any damages which you may consider the owners will sustain as the result of the construction of the works and reservoir of the Company.

Granted.

G. E. M., JR.

page 86-X } INSTRUCTION NO. 8.

The Court instructs the Commissioners that while the parties to this proceeding have the right to present evidence, oral or otherwise, and you should consider all the evidence, you are not bound by the opinion of experts or by the apparent weight of the evidence but, taking into consideration what you saw upon your view of the land, you may determine the present fair market value of the land and fix compensation and damages in the manner set forth in the other instructions of the Court.

Granted.

G. E. M., JR.

page 86-Y } INSTRUCTION NO. 9.

The Court instructs the Commissioners that it is not necessary that all Commissioners shall agree upon the report to be made to the Court, but a majority have the right to reach a

conclusion and file their report setting forth that conclusion. If the minority desires to do so, they may file a minority report.

Granted.

G. E. M., JR.

page 86-Z } INSTRUCTION NO. 9A.

The Court instructs the Commissioners that Virginia Electric and Power Company is not seeking to acquire any right to flood or otherwise occupy any property of the defendants outside of the property to be taken in fee simple in this proceeding.

The Court further instructs the Commissioners that you shall not allow any compensation or damages to the owners for any flooding which may occur to such properties outside the property to be acquired in this proceeding.

Refused.

G. E. M., JR.

VEPCO

v.

Young-Farrar-Williams.

page 86-aa } INSTRUCTION NO. 10.

The Court instructs the Commissioners that in determining the damages, if any, to be awarded the property owners, you are not to engage in speculation, conjecture or surmise, but your award, if any, must be based on the evidence presented and your view and investigation.

Granted.

G. E. M., JR.

page 86-bb } INSTRUCTION NO. I.

The Court instructs the Commissioners that where private property is taken under the exercise of the power of *eminent domain* the law requires that "just compensation" be made to the landowner.

“Just Compensation” means that the landowner is entitled to receive the full and fair equivalent of the loss sustained.

Granted.

G. E. M., JR.

page 86-cc } INSTRUCTION NO. II.

The Court instructs the Commission that you are required to award the landowner a sum equal to the fair market value of the land taken, and if you find that the residue of the land of the owners will be damaged as a result of the loss of that part which is taken or as the result of use to which the part taken will be put you are required to ascertain and award such additional sum as will compensate the owners for such damage to the residue of their land, if any.

Granted.

G. E. M., JR.

page 86-dd } INSTRUCTION NO. IX.

The Court instructs the Commissioners that a quit-claim deed does not convey a merchantable title to property.

Granted.

G. E. M., JR.

page 86-ee } INSTRUCTION NO. A.

The Court instructs the commissioners that the power company has a license from the Federal Power Commission to construct its dam at its Gaston site. They will have a reservoir with a normal pool elevation of 200' for the generation of electricity and storage of water. In this proceeding the power company is taking land of the landowners up to the 214' elevation in fee simple. The commissioners therefore are to allow the landowners the fair market value of the land taken and damage, if any, to the residue of their lands for such taking and operation of the power company upon the land acquired in these proceedings.

Granted.

G. E. M., JR.

page 86-ff } INSTRUCTION NO. A1.

The Court instructs the commissioners that in this taking the power company assumes no duty to operate or maintain the land taken to benefit the landowners. It may, if it desires, flood the property taken permanently or not as it chooses. The landowners will be entitled to no future damage to their other property remaining by the lawful use of the property taken. Therefore, the commissioners must now assess the damage to the landowners to compensate for all future damage they may suffer by the taking.

Refused.

G. E. M., JR.

VEPCO,

v.

Young-Farrar-Williams.

page 86-gg } INSTRUCTION NO. VI.

The Court instructs the Commissioners that in fixing the damage, if any, to which the defendants are entitled they should take into consideration the fact that Virginia Electric and Power Company is entitled to occupy the entire area in accordance with the Petition filed.

Granted.

G. E. M., JR.

page 86-hh } INSTRUCTION NO. VIII.

In ascertaining the damage, if any, resulting to the remaining property of the landowner by reason of the taking, you should consider whether or not because of its surroundings or natural advantages or intrinsic character the property was peculiarly adapted to some particular use, and you should consider whether or not as a result of the loss of the use of the land which is to be flooded will impair or destroy the natural advantage or peculiar adaptability of the residue of the property for such particular use, and you are to consider the effect if any which the flooding of that part of the land mentioned in the petition will have upon the fair market value of the residue of said land.

Granted.

G. E. M., JR.

page 86-ii }

INSTRUCTION NO. V.

The Court instructs the Commissioners that in determining the damage suffered by the landowners by reason of the flooding of a part of their property you should take into consideration every fact and circumstance present or in the reasonably near future disclosed by the evidence and by your view of the premises which affects the value of the remaining property of the landowners. Remote and speculative advantages and disadvantages are not to be considered. The measure of your award of damages, if any, to the land remaining after the flooding, is the difference in the market value of remaining land before and after the flooding.

Granted.

G. E. M., JR.

page 87 }

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FINAL ORDER.

This cause came on this day to be heard again upon the Exceptions to the Report of the Condemnation Commissioners filed herein by Virginia Electric and Power Company on the 18th day of May, 1962, to the Reports of Condemnation Commissioners filed herein on the 5th and 8th days of May, 1962, respectively, as to the awards made by the said commissioners to Alice Young Farrar, owner of Parcel No. M-53, in the total amount of Three Thousand Two Hundred Eighty Dollars (\$3,280.00); to Eula Young, owner of Parcel No. M-54, in the total amount of Five Thousand Three Hundred Twenty-two Dollars (\$5,322.00); to John Thomas Williams, owner of Parcel No. M-62, in the total amount of Six Thousand Two Hundred Sixty Dollars (\$6,260.00); and to W. R. Baskerville, Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, owners of Parcel No. M-96, in the total amount of Eight Thousand Four Hundred Dollars (\$8,400.00), respectively, and was argued by counsel.

After having considered the transcript of the testimony regarding values which was given at the hearing before said commissioners on May 4, 5, 7 and 8, 1962 (which transcript has been filed herein and is hereby made a part of the record in this cause), the condemner, by counsel, moved in
 page 88 } open Court, pursuant to one of the prayers contained in said Exceptions, that the Court require each of the condemnation commissioners to appear before the

Court for the purpose of explaining their aforesaid Report and to advise the Court as to how they made their awards.

UPON CONSIDERATION WHEREOF, the Court being of the opinion that neither the Court nor the condemner should examine the said condemnation commissioners for the purpose of having said commissioners explain their aforesaid Report and to advise the Court as to how they made their awards, the Motion of the Condemner to examine the said condemnation commissioners is overruled, to which ruling counsel for Virginia Electric and Power Company excepted; whereupon, the condemner, by counsel, asked leave of Court to examine the said condemnation commissioners for the purpose of perfecting the record in this cause for an appeal to the Supreme Court of Appeals of Virginia, which leave was denied, to which ruling counsel for Virginia Electric and Power Company excepted; whereupon, the condemner, by counsel, asked leave of Court to dictate a statement of what counsel expected to prove if they or the Court had examined such condemnation commissioners, which leave was granted on August 24, 1962 (which transcript of the proceedings on August 24, 1962, has been filed herein and is hereby made a part of the record in this cause), the Court doth

ADJUDGE, ORDER and DECREE that the aforesaid Exceptions filed by Virginia Electric and Power Company be, and they hereby are, overruled, to which ruling of the Court counsel for Virginia Electric and Power Company excepted.

IT IS FURTHER ADJUDGED, ORDERED and DECREED that the aforesaid Reports of Condemnation Commissioners filed herein on the 5th and 8th days of page 89 } May, 1962, be, and the same hereby are, confirmed as to the awards made therein to the said Alice Young Farrar, owner of Parcel No. M-53; to the said Eula Young, owner of Parcel No. M-54; to the said John Thomas Williams, owner of Parcel No. M-62; and to the said W. R. Baskerville, Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, owners of Parcel No. M-96, respectively, to which ruling of the Court counsel for Virginia Electric and Power Company excepted.

AND it further appearing to the Court that Virginia Electric and Power Company, the condemner herein, on the 22nd day of May, 1962, and the 2nd day of August, 1962, respectively, paid into the Court in this cause for Alice Young

Farrar the aggregate sum of Three Thousand Two Hundred Eighty Dollars (\$3,280.00); for Eula Young the aggregate sum of Five Thousand Three Hundred Twenty-two Dollars (\$5,322.00); for John Thomas Williams the aggregate sum of Six Thousand Two Hundred Sixty Dollars (\$6,260.00); and for W. R. Baskerville, Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, the aggregate sum of Eight Thousand Four Hundred Dollars (\$8,400.00), respectively, as the sums of money awarded against it by the said commissioners, as shown in the aforesaid Reports, the Court doth declare that the fee simple titles and the privileges, appurtenances and rights condemned in and to the properties described in this proceeding as Parcels Nos. M-53, M-54, M-62 and M-96, respectively, are vested in Virginia Electric and Power Company, as provided by law, and the Clerk of this Court is directed, in accordance with Section 17-28 of the Code of Virginia, 1950, to record this Final Order in the current Chancery Order Book of this Court; and

IT IS FURTHER ORDERED that the Clerk of page 90 } this Court record the said Report of the said commissioners, together with a copy of this Final Order, in the name of Virginia Electric and Power Company, as Grantee, and in the names of Alice Young Farrar, Eula Young, John Thomas Williams, W. R. Baskerville, Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, respectively, as Grantors, as shown in the aforesaid Reports, together with the plats of survey of the aforesaid properties in and to which the fee simple titles were condemned, which plats of the survey were filed in this proceeding.

IT IS FURTHER ORDERED that this cause be referred to E. A. Crowder, who hereby is appointed commissioner for the purpose and who is hereby directed to inquire into and report to this Court the persons to whom the said awards of said commissioners shall be paid and the amount to be paid to each, and the said commissioner shall further report any other matter deemed pertinent by any of the parties to this cause.

AND Alice Young Farrar, Eula Young, John Thomas Williams, W. R. Baskerville, Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, respectively, by counsel, having moved the Court to require Virginia Electric and Power Company, the condemner herein, to pay interest on the aforesaid awards

of Three Thousand Two Hundred Eighty Dollars (\$3,280.00); Five Thousand Three Hundred Twenty-two Dollars (\$5,322.00); Six Thousand Two Hundred Sixty Dollars (\$6,260.00); and Eight Thousand Four Hundred Dollars (\$8,400.00), respectively, from August 6, 1962 and August 9, 1962, respectively, three months after the filing of the aforesaid Reports of Condemnation Commissioners until the said awards are paid by the Clerk of this Court to Alice Young Farrar, Eula Young, John Thomas Williams, W. R. Baskerville Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, respectively, the Court doth

FURTHER ORDER that Virginia Electric and Power Company, the condemner herein, pay to Alice Young Farrar, Eula Young, John Thomas Williams, W. R. Baskerville, Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, respectively, the defendant owners herein, interest at the rate of Six Percentum (6%) per annum on the aforesaid awards of Three Thousand Two Hundred Eighty Dollars (\$3,280.00); Five Thousand Three Hundred Twenty-two Dollars (\$5,322.00); Six Thousand Two Hundred Sixty Dollars (\$6,260.00); and Eight Thousand Four Hundred Dollars (\$8,400.00), respectively, from August 6, 1962, and August 9, 1962, respectively, until the said awards are paid to the defendant owners by the Clerk of this Court as hereinabove directed.

The Final Order in this cause is suspended, on motion of counsel for Virginia Electric and Power Company, in order that an appeal may be presented to the Supreme Court of Appeals of Virginia, if it be so advised, and provided notice of appeal and assignment of errors are given within sixty (60) days from the date of the entry of this Final Order, and provided that the condemner execute a bond in the penalty of Five Hundred Dollars (\$500.00) conditioned as the law directs within sixty (60) days from the date of the entry of this Final Order, and that the appeal is perfected in the manner required by law.

AND the Virginia Electric and Power Company, by counsel, having moved the Court to permit the Clerk to deposit in an account in a banking institution within the jurisdiction of this Court the funds deposited by the condemner to the credit of the Court in this cause, the Court doth direct N. G. Hutcheson, Clerk of the Court, to deposit the funds to the credit of the Court in this cause in the Trust Department of the South Boston Bank and Trust Company, a banking institution within the jurisdiction of the

Court, but the limitations and restrictions now imposed thereon shall remain in effect.

Dated 10/15/62.

Enter this:

G. E. MITCHELL, JR., Judge.

I ask for this:

JOHN Y. HUTCHESON
Counsel for Owners of Parcels
Nos. M-53, M-54, M-62
and M-96.

Seen and objected to:

FRANK M. SLAYTON
JAMES S. EASLEY
E. MILTON FARLEY, III
Counsel for Virginia Electric
and Power Company.

* * * * *

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* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR
BY VIRGINIA ELECTRIC AND POWER
COMPANY.

(Alice Young Farrar, Eula Young, John Thomas Williams,
and W. R. Baskerville, Jr., et al. Cases)

Virginia Electric and Power Company, by counsel, hereby gives notice of its intention to appeal from that certain Final Order entered in this cause on the 15th day of October, 1962, wherein the awards of compensation and damages to the defendants, Alice Young Farrar, owner of Parcel No. M-53, in the total amount of Three Thousand Two Hundred Eighty Dollars (\$3,280.00); to Eula Young, owner of Parcel No. M-54A&B, in the total amount of Five Thousand Three Hun-

dred Twenty-Two Dollars (\$5,322.00); to John Thomas Williams, owner of Parcel No. M-62, in the total amount of Six Thousand Two Hundred Sixty Dollars (\$6,260.00); and to W. R. Baskerville, Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, owners of Parcel No. M-96, in the total amount of Eight Thousand Four Hundred Dollars (\$8,400.00), were confirmed by the Circuit Court of Mecklenburg County.

Virginia Electric and Power Company assigns as error the following:

I. The Circuit Court erred in overruling the motions by Virginia Electric and Power Company, made pursuant to one of the prayers contained in the Exceptions filed herein on May 18, 1962, to the Reports of Condemnation Commissioners filed herein on May 5 and 8, 1962, respectively, that the Court require each of the condemnation commissioners (who had been summoned for the purpose by the condemner and were present) to appear before the Court for the purpose of explaining the Reports of the said commissioners and to advise the Court as to how they arrived at the aforesaid awards.

II. The Circuit Court erred in overruling the motion by Virginia Electric and Power Company for leave of Court to make an offer of proof showing that if J. L. Reid, one of the commissioners who served herein, was allowed to testify as to how the commission arrived at the awards for Parcels Nos. M-53, M-54A&B, M-62 and M-96, respectively, he would state that the condemnation commissioners arrived at their aforesaid awards of compensation and damages by adding their separate figures, dividing that sum by the number of commissioners and reporting the result as their awards, contrary to the Court's instructions.

III. The Circuit Court erred in overruling the motion by Virginia Electric and Power Company, made pursuant to one of the prayers contained in the Exceptions filed herein on May 18, 1962, that the Court view the properties involved prior to the hearing upon the aforesaid Exceptions.

IV. The Circuit Court erred in overruling the Exceptions filed herein by Virginia Electric and Power Company on May 18, 1962 to the Reports of Condemnation Commissioners filed herein on May 5 and 8, 1962, respectively, and confirming said Reports as to the aforesaid awards made by the said commissioners to the aforesaid defendant landowners upon the grounds:

(a) That the awards of compensation and damages are grossly excessive, are speculative, are based upon page 97 } conjecture, and so far exceed the present fair market value of the lands as to indicate bias or prejudice;

(b) That the aforesaid awards of compensation and damages are based upon erroneous principles;

(c) That items of improper evidence were introduced before the aforesaid condemnation commissioners over the objection of the condemner; and

(d) That said condemnation commissioners arrived at the said awards of compensation and damages in an improper manner.

V. The Circuit Court erred in failing to appoint new condemnation commissions since the aforesaid awards of compensation and damages were based upon erroneous principles and should have been set aside.

VI. The Circuit Court erred in refusing Instruction No. 9A which was requested by the condemner and was refused because it was a correct statement of the law; the condemner was entitled to such an instruction under the evidence; and the Court's refusal to grant this instruction improperly increased the measure of the damages to the residue beyond that imposed by law.

VII. The Circuit Court erred in failing to sustain the objections to, and motions to strike by the condemner, certain items of improper evidence which were introduced before the said condemnation commissioners as to the taking and damaging of the lands of the defendants beyond the boundaries described in the Petition for Condemnation because of flooding arising out of the construction, operation and maintenance of the condemner's project.

VIII. The Circuit Court erred in confirming the Reports of Condemnation Commissioners filed herein on May 5 and 8, 1962, respectively, as to the awards made by the said commissioners to Alice Young Farrar, owner of Parcel No. M-53, in the total amount of Three Thousand Two Hundred Eighty Dollars (\$3,280.00); to Eula Young, owner of Parcel No. M-54A&B, in the total amount of Five Thousand Three Hundred Twenty-Two Dollars (\$5,322.00); to John Thomas Williams, owner of Parcel No. M-62, in the total amount of Six Thousand Two Hundred Sixty Dollars (\$6,260.00); and to W. R. Baskerville, Jr., W. R. Baskerville and Sallie B. Baskerville, his wife, in the total amount

of Eight Thousand Four Hundred Dollars (\$8,400.00), respectively.

Respectfully,

VIRGINIA ELECTRIC AND
POWER COMPANY
By E. MILTON FARLEY, III
Counsel.

E. MILTON FARLEY, III
EVANS B. BRASFIELD
HUNTON, WILLIAMS, GAY,
POWELL & GIBSON
1003 Electric Building
Richmond, Virginia.

JAMES S. EASLEY
FRANK M. SLAYTON
EASLEY, VAUGHAN & SLAYTON
South Boston, Virginia
Counsel for Virginia Electric
and Power Company.

CERTIFICATE OF SERVICE.

I certify that on the 12th day of December, 1962, I mailed a copy of the foregoing Notice of Appeals and Assignments of Error to John Y. Hutcheson, Esq., Attorney at Law, Boydton, Virginia, counsel of record for the owners of Parcels Nos. M-53, M-54A&B, M-62 and M-96.

E. MILTON FARLEY, III

Filed 12 Dec. 1962.

N. G. HUTCHESON, Clerk.

* * * * *

A stenographic report of all evidence adduced in the trial of the above case in the Circuit Court of Mecklenburg County, at Boydton, Virginia, on May 4 and May 5, 1962, before Honorable G. E. Mitchell, Circuit Court Judge.

Appearances: Evans B. Brasfield, counsel for petitioner.
Frank M. Slavton, counsel for petitioner.

John Y. Hutcheson, counsel for defendants.

Irby Turnbull, Jr.

* * * * *

Tr.
Vol. I
page 2 }

* * * * *

IRBY TURNBULL, JR.

a witness for the Petitioner, testifies as follows:

DIRECT EXAMINATION.

By Mr. Slayton:

Q. Will you state your name, sir?

A. Irby Turnbull, Jr.

Q. Where do you live, Mr. Turnbull?

A. Clarksville, Virginia.

Q. What is your occupation?

A. Real Estate Broker.

Q. How long have you been a real estate broker?

A. Seven years.

Q. Now, Mr. Turnbull, have you been employed by the Virginia Electric and Power Company to make certain appraisals of the property owned by Eula Young, Alice Young Farrar and John Thomas Williams?

A. Yes, I have.

Vol. I Q. Have you been on this property?

page 3 } A. I have.

Q. When did you go view this property?

A. May 2nd.

Q. Now were you furnished a plat in making your appraisal?

A. Yes, I was.

Q. Turning to the property of Eula Young, do you have a plat "M 54 a and b"?

A. Yes, I do.

Q. How much or how many acres are involved in parcel B of the taking?

A. 3.1 acres—three and one-tenth.

Q. And how many in parcel A?

A. Four hundredths of an acre.

Q. Turning then to the question of compensation, have you placed a value on the 3.14 acres being acquired by Virginia Electric and Power Company?

Irby Turnbull, Jr.

A. Yes, I have.

Q. What is the value of that property in your judgment?

A. Well, actually I placed a value of \$50.00 an acre on it, and in order that you have something to work with—in order to make it or give it a consideration as a sale.

Q. \$50.00 an acre—What is the total consideration?

A. 3.14 acres at \$50.00 an acre—\$157.00. That Tr. land was all covered by water and in the bottom of Vol. I the creek. Really I couldn't see any value to it be-
page 4 } cause it couldn't be used.

Q. Coming down to the next question of damages to the residue, what value, if any, did you assign that item?

A. No damage to the residue.

Q. This plat which we have been referring to is Exhibit No. 2, I believe?

A. That's right, yes.

Q. Turning next to the property of Alice Young Farrar which is M 53 and Petitioner's Exhibit No. 1, did you view that property?

A. Yes, I did.

Q. How many acres are involved in that acquisition?

A. That's Alice Young Farrar?

Q. Yes, sir.

A. 6.3 acres of creek bottom.

Q. What value did you place on the 6.3 acres, Mr. Turnbull?

A. There, again I put \$50.00 an acre on it.

Q. What is the total compensation?

A. \$315.00.

Q. Now what did you allow, if anything, to the damage to the residue?

A. None there either.

Tr. Q. All right, sir, Mr. Turnbull, the third parcel Vol. I under consideration here is parcel M 62, property
page 5 } owned by Mr. John Thomas Williams, have you
viewed that property?

A. Yes, I have.

Q. How many acres are in the taking?

A. Three and six-tenths acres of creek bottom.

Q. What did you allow for compensation for this acquisition?

J. R. Orgain, Jr.

A. There, again \$50.00 an acre or \$180.00.

Q. What, if anything, did you allow for damage to the residue?

A. None whatsoever.

Q. Why was that?

A. Because, again, it's strictly creek bottom in the taking.

Mr. Slayton: Your witness.

Mr. Hutcheson: No questions.

Mr. Slayton: We rest.

J. R. ORGAIN, JR.,

a witness for the defendant, being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. Mr. Orgain, I believe you were employed by the land-owners to go on these three tracts of land, were you not?

A. Yes, sir.

Tr. Q. Well, take the Eula Young land, have you been
Vol. I over that tract?

page 6 } A. Yes, sir.

Q. It's in evidence that they are taking 3.14 acres. Roughly, what does the land consist of?

A. It's part of the creek bottom.

Q. I am talking about the whole farm. Roughly view what the farm is to the Commissioners?

A. It's approximately 214 acres—let's see, which one did you say?

Q. Young land.

A. It's approximately 214 acres, 32 acres on the high land, approximately 30 acres on the creek, remainder is in growing pine and miscellaneous hard wood of approximately 155 acres. The farm is a tobacco and cattle farm. The low land fields are not in the highest land use, the corn allotment having been put in this Federal Grain Program. The fields adjacent to the creek give indication that they have been kept in corn and some pasture land down in the low land.

Q. Do you know the type of soil in it?

A. It's approximately 80 acres of congaree soil that is, part of it's fairly well drained and part of it's poorly drained.

J. R. Orgain, Jr.

Q. What is your *evaluation* on the land as it is now, the whole farm?

Tr. A. Well, taking the whole farm, the land and the Vol. I buildings—\$65,550.00.

page 7 } Q. Assuming that they take in the creek bed 3.14 acres, which comes to the 214 contour line, what, in your opinion, is the rest of the land worth?

A. I would say the remaining value, after that water comes to that point, would be \$32,450.00, the loss at \$33,100.00.

Q. \$33,100.00—let's go down to the Alice Y. Farrar. The taking there is 6.3 acres. Roughly, what does "A" consist of?

A. Approximately 214 acres total. Around 7 acres that is in open field, approximately another 7 acres partially grown up and approximately 20 acres of that in creek bottom is congarée soil. There is approximately 7 acres of bright tobacco land, approximately 180 acres of pine and miscellaneous timber. And my value there is \$28,100.00 and by reason of putting this water in the creek bottoms and the creek bed would be a loss of \$8,500.00.

Q. Now go to number 3 tract, Williams tract?

A. It's approximately 403 acres; around 250 open, some 90 acres in growing pine and hardwood and some 60 acres in the creek low grounds. In the creek low grounds there is approximately 25 acres of congarée soil which is in pasture and some 25 acres of the creek bottom that's in cut-over hardwood timber. The value on the property as a whole,

Tr. land and buildings—\$99,900.00. The remainder, Val. I value after taking of the creek bottom—\$68,900.00.
page 8 } A loss of approximately \$31,000.00.

Q. I notice you've got some jugs or something up there, Mr. Orgain, can you tell us what they are?

A. Well, this half gallon of water on the left I took out of Allen's Creek yesterday at the gauging station on Route 58 and you can notice—I think it's been sitting still since that time here in the law library—and there is some sedimentation in the bottom of it. The other is Boydton water that I put in a hand full of the soil deposit that was deposited on the bank of Allen's Creek just immediately adjacent to that gauging station. Allen's creek flows down across these lands approximately a mile down stream. I did that to satisfy myself that there is considerable silt—

Mr. Slayton: Your Honor, we want to object to this line of testimony. I don't know what it is supposed to show.

J. R. Orgain, Jr.

The Court: The Commissioners saw the water down there.

Witness: This creek flows from one of the intensely farmed sections of Mecklenburg County. The watershed is some 56,000, 58,000 acres which is in excess of 10 per cent of the total land area of Mecklenburg County. The water Tr. of Allen's Creek flows over these lands. On an Vol. I average rainfall of one inch, approximately a billion page 9 } 4 hundred million gallons of water would fall on this Allen's watershed in a one inch rain and that's based on 25,000 gallons per second multiplied by the low figure there of 56,000 acres calculated the watershed to be comprised of approximately.

(Referring to map)—These shaded lines are the watershed. That is approximately the watershed as near as I could draw it from the information that has been made available.

Mr. Hutcheson: We ask that this be marked Exhibit for the defense.

Mr. Brasfield: Your Honor, we don't believe the accuracy of the watershed map has been adequately shown to make this map admissable. We object to the introduction.

The Court: How did you get proof of this?

Witness: I drew this by following the soil map on the county and going in between the creeks where they begin on each of these watersheds and I have drawn in there the approximate outline midway between the creeks, where one creek comes into this creek and goes into another creek.

Mr. Brasfield: Your Honor, I believe unless he can lay his foundation in determining—

The Court: You better lay your foundation.

Tr. By Mr. Hutcheson:

Vol. I Q. Mr. Orgain, have you ever made watershed page 10 } maps? Have you studied watersheds?

A. Well, in designing irrigation equipment and engineering the equipment for farm lands and particularly tobacco, I have made a study of the watersheds that have been involved from a standpoint of stream flow in order to ascertain the size of pumps, motors and the amount of water that could be anticipated that could be used for irrigation purposes and then the next step would be to follow up and design the equipment, such that wouldn't give excessive run-off and at the same time it applies approximately one inch of water in three hours to fields—type that would be in this Allen's Creek watershed.

J. R. Orgain, Jr.

Q. I understand you took that off the soil map in the County Agent's Office?

A. I took it off the main soil map of the county which was compiled some 10 years ago and followed the contours, the outline and colors on that which indicated the water flow direction.

Q. There's nothing to it, just you draw it, practically all it is to do?

A. That's right.

By Mr. Brasfield:

Q. Could you calculate the area? You took it from that map over there?

A. I calculated that with the investigation that I made with the Soil Conservation Office.

Tr.

Vol. I

page 11 } Mr. Brasfield: Your Honor, am I to understand this is the watershed map that he copied this from, or he took the soil map following the contours to figure out in his own mind what the watershed was. If it's the latter, I submit his experience in designing irrigation equipment doesn't qualify him to—

Mr. Hutcheson: What it is, he just went to the Soil Conservation Office and he took the county road map and just followed those areas around—

Mr. Brasfield: There's nothing accurate about the thing, is it?

Mr. Hutcheson: It's accurate as the maker.

Witness: I have approximately—I used the minimum figures in my calculation.

Mr. Hutcheson: It's not the question of accuracy. He just drew it off.

Mr. Brasfield: What good is it if it's not accurate. The question is accuracy.

Mr. Hutcheson: On the county soil map all the watershed is shown. You only you got to do is impose it on this map here.

Mr. Brasfield: Who drew the county map?

Mr. Hutcheson: I reckon Washington folks. I

Tr. imagine it was drawn in Washington.

Vol. I Mr. Brasfield: Your Honor, we object not only
page 12 } to the introduction of it, but the evidence based on
and determined from this map of the watershed

J. R. Orgain, Jr.

area; and request that the Court strike his statement as to the watershed if it was based on that map.

The Court: It looks like to me it's only a question of gauging the point from one map on the other map.

Mr. Brasfield: But he didn't draw the original.

The Court: He didn't draw the original, that's true—

Mr. Hutcheson: We could get the surveyor to do it now, but it's prohibited.

Mr. Brasfield: But we except to the Court's ruling.

The Court: I think it's all right to let it go on to the commissioners. They understand fully what they are talking about.

Witness: I have before me a record of the gauging station that has been installed on Route 58—

Mr. Brasfield: Excuse me. Your Honor, Mr. Orgain or someone has made some notes on this map. We don't believe that should be included. They are in ink and I just don't believe this is proper as an exhibit.

The Court: Can you erase it so it can't be seen?

Tr. Mr. Brasfield: There's something drawn on the
Vol. I inside of this map—

page 13 } Witness: May I see it?

Mr. Brasfield: I don't know what this is and I don't know what this is supposed to represent. If you have another map which the Court could admit—but here's something drawn down here at the bottom—here's something—notes on here with regard to testimony, I suppose.

Witness: What about what's on the front of it? Might I testify to that, sir?

Mr. Hutcheson: Wait just a minute. I think we can clear that up. Will you adjourn just a second. I think we can clear that up by another witness.

Your Honor, we will substitute this map for that map and we'll identify this map by a land surveyor.

Mr. Brasfield: Your Honor, when the surveyor properly builds a foundation for the accuracy of this map we will reserve our objection until that time.

I assume it's not going to be presented at this time.

The Court: He wants Mr. Orgain to testify from it. This is the same map. You are going to connect it up.

Mr. Brasfield: We except and object to any evidence based on this map.

J. R. Orgain, Jr.

By Mr. Hutcheson:

Q. Mr. Orgain, this is all the same as your map?
Tr. A. Yes, sir, this is Allen's Creek watershed that
Vol. I comprises some 56 to 58 thousand acres of water-
page 14 } shed that flows down Allen's Creek adjacent to and
across the properties.

Q. Did you get any reading of the water flow in that watershed from any place?

A. Yes, sir, I have a reading of the water flow at Route 58 gauging station on January 6th to January 9th, 1962—reported a rate of two billion gallons per day flowing at that peak flow which is the highest peak staying that has been reached gauging since it was installed in September, 1961. Now at that particular point the gauging station gauges an area 53 3/10 square miles and it's approximately one mile below—

Mr. Brasfield: Your Honor, we object to Mr. Orgain's making a statement. I think Mr. Hutcheson ought to ask direct questions.

By Mr. Hutcheson:

Q. Mr. Orgain, did you make investigation as to who had owned the Young land, Farrar land for the last 25 or 30 years?

A. I did.

Q. Who has owned it?

A. Owned it?

Q. Who has operated it?

A. I discussed it with W. W. Crutchfield who is the most recent tenant that has been on the Young land and I talked with Silas Baskerville who has—

Tr.

Vol. I Mr. Slayton: Your Honor, it sounds very much
page 15 } like heresay.

Mr. Hutcheson: We are going to show the ownership of the land. I withdraw the question.

Mr. Slayton: It's cited in the petition.

Mr. Hutcheson: I just wanted to show the later—Withdraw the question. Witness with you.

J. R. Orgain, Jr.

CROSS EXAMINATION.

By Mr. Brasfield:

Q. Would you locate the Young property on this?

A. The Young property begins just below the bridge. It lays on Allen's Creek and runs down just below the horse shoe bend and thence back to—almost to 678. This is another landowner who owned the small tract of land immediately in front of Mrs. Eula Young's house next to her driveway, but some of the land does touch Route 678. To the south of that would be the lands of Mrs. Farrar and to the east of that, across the creek, the lands of John Thomas Williams.

Q. When you have pointed with your pin, you have designated the property—those colored in brown on this map?

A. That's correct.

Q. Now you will admit that the entire watershed which you outlined in pink, or someone outlined, does drain passed the Young property?

Tr. A. I would say approximately 85 per cent does.

Vol. I Q. But the figure you gave us of square miles—
page 16 } the acreage of the watershed was based on the
whole watershed of Allen's Creek?

A. In calculating I used the low figure.

Q. That low figure did include the watershed downstream from the properties in question?

A. It would be a very minor amount.

Q. You wouldn't want the Commission to be confused as to whether it was the whole amount or part?

A. I used general figures in the whole testimony so it wouldn't mislead.

Q. Now figuring generally, you figured that 1 billion 400 million gallons would flow down from the watershed in an one inch rainfall?

A. That's the approximate figure. There are several factors—Actually 27,500 gallons of water is required to cover one acre one inch depth, and I have used the figure 25,000 to be on the conservative side.

Q. Now continuing to speak generally and conservatively if you wish, how long a period would it take for the watershed to be drained of that amount?

A. Depending on the intensity of the rainfall. One inch would be, I would say, an average storm that we might get

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in this watershed. If you get three or four days of rain you would get four times of that.

Tr. Q. That's not my question. Suppose we had an
Vol. I average month, possibly one inch, would all of the
page 17 } water rush passed these properties at once or would
it extend over a period of time?

A. It depends on the concentrated area on which it would fall.

Q. So you wouldn't know how long it would take to go passed. So you can't say whether or not an average storm in this county would produce that flow there or not?

A. I would say that rain fall with that flow would give about three feet of water out of the banks in that general vicinity down there.

Q. Out of what banks?

A. Out of the banks of Allen's Creek which would flood these lands.

Q. What do you base that opinion on?

A. Having looked at the scouring condition that the banks are in, without appreciably any vegetation, and having just witnessed a very mild rainfall in the past few days. When I took the sample yesterday Allen's Creek was up about three feet over what it was on Monday when I went down and examined it.

Q. How many inches fell in this rainfall?

A. I don't know the accuracy of the location of it, although, I know rainfall fell in Allen's Creek to raise it approximately three feet and the South Hill, North View area—I

Tr. talked with people in this area, the rain wasn't
Vol. I there, but it was on the 56,000 acreage watershed.

page 18 } Q. You are basing your opinion that an average
storm would bring the waters three feet over the
creek, a storm the intensity of which you don't know, the
amount of rainfall which fell you don't know, the fact it raised
the level about three feet in the creek?

A. This past storm, yes, but it wasn't a widespread storm.

Q. You based it on similar storms you observed at this creek. When did you begin observing this creek?

A. I have been looking at this creek since October 28th when I first started working on some of these cases, knowing that this creek drained into the low land; that this creek would be completely flooded with this new reservoir. When I have been up in this area I have made it a point to note that.

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Q. And how much water flows in this creek passed these properties from a one inch rainfall?

A. Approximately 1 billion 400 million gallons.

Q. You just figure from what was gauged at the watershed down stream?

A. I would say a billion gallons if you would like to discount *approximately* 10 per cent of the watershed.

Q. Now you have testified that the Young property—I was a little behind you on these figures, so perhaps I have them wrong. Please correct me if I do that.
Tr. The just compensation to the Eula Young for loss
Vol. I page 19 } of 3.14 acres is \$33,100.00?

A. That's right.

Q. What value did you attach—what fair market value did you attach to the 3.14 acres taken—the 3.14 acres with water ponded up against the banks in Allen's Creek—the 3.14 acres approximately that you referred to with the water in Allen's Creek adjacent thereto? You assumed that the water will go ahead?

A. When this reservoir backs the water up in Allen's Creek—

Q. I am asking only the fair market value of the land taken. I am not into the question of damages to the residue. You had two questions—

A. Well, I have my damage based on the types of soil that are there. I have 32 acres of cleared land at \$300.00 per acre—

Q. Please answer my question. The question has to do with only the 3.14 acres of creek bottom land being acquired. How much it is worth to a willing buyer purchasing from a willing seller?

A. Well, the soil type it would be approximately \$300.00 per acre.

Q. Now what would you do with that land if you were a willing buyer and had paid \$300.00 an acre for it?

Tr. A. I would put it into corn or corn silage or into
Vol. I pasture.

page 20 } Q. Have you been on this property? Have you seen the markers which show the limit of the Company's acquisition?

A. I have seen a lot of markers down in the bottom. Some of them have been moved since I have been on it.

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Q. Are you familiar with the limit of the Company's acquisition?

A. I understand the limits at the present time are actually in the creek bottom.

Q. And you are going to grow sileage and what else on the creek bottom?

A. But there are the acres—

Q. We are talking about the 3.14. We are certainly not condemning any acres outside the creek bottom.

A. But in reviewing the exhibit that has been placed with me—

Q. What exhibit is that?

A. This one here; it's M 53.

Q. That's identified as Exhibit No. 1; that's the Farrar property.

A. That's right, it's adjacent—

Q. Mr. Orgain, let me ask you one time to limit your answer to this question, not to the adjacent land, but the land which the Company is seeking. As an appraiser you must know the one element of compensation which has to be determined is the fair market value of the property taken, then you go to the adjacent property. But first I Vol. I want to get how you value this property and what page 21 } you are going to use it for. If you are going to farm the creek bottom—

A. No, you had me off on something else. The fact that I would lose the creek bottom would be the ability to use the irrigation water that's there which I have set at \$5,000.00—

Q. Wait—this \$300.00 an acre that you are talking about. How did you reach \$300.00 an acre?

A. The adjacent land thereto—

Q. What is the value you place on the 3.14 acres the company is taking?

A. That would be the whole creek bottom adjoining her land which I would value at \$5,000.00.

Q. How much?

A. \$5,000.00—The ability to use that water for irrigation purposes—

Q. Well, are you aware that under the company's petition these landowners have the same right to irrigate that they have now? Are you aware of that?

A. I don't anticipate they will be able to get to the creek.

Q. Are you aware of that?

A. I have been so informed.

Q. Now tell me a little more about how you reached this

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Tr. value of \$5,000.00 for land actually taken? That
Vol. I works out \$2,000.00 an acre—sixteen something—
page 22 } A. Without the use of it—
Q. Wait, we are not talking about the damage.
We are talking about the value, the fair market
value of the property taken?

A. Well, for this farm with 5.65 acres of tobacco allotment approximately—

Q. Is it any tobacco growing on the creek bottom? Would a person ever grow anything in a creek bottom?

A. But they irrigate their tobacco and he will not be able to irrigate unless he builds a pond from here on out.

Q. Are you saying he is damaged by the taking? Then my question you recall was to ignore damage for the time being. We'll get to that. What about the fair market value of land being taken? You had first \$300.00 an acre. You are going to grow corn on it. Then you changed your figure to \$5,000.00. And, now you are saying that because of the damage to the residue—All I want to get from you is one answer: Your total of or per acreage basis of 3.14 acres of land partially under water, vertical creek bank which is—

A. I would list it at \$5,000.00.

Q. Why?

A. Simply because it's worth that to the owner for the source of water.

Q. Would you buy it for that? Would a willing buyer pay that?

A. I would say so to take the whole farm as a whole.

Tr. whole.
Vol. I Q. We are just buying the creek. Virginia Elec-
page 23 } tric & Power Company is not taking the whole
farm.

A. My values are derived from a price based on before and after the taking.

Q. So you didn't assign any fair market value to the 3.14 acres being taken?

A. I assigned to the land being taken, just the 3.14 acres—I assigned the creek enhanced the value of this property in its present creek stage in the sum of \$5,000.00 in my total appraisal.

Q. Have you ever testified in a condemnation suit before?

A. Yes.

Q. Are you familiar with the principals governing evaluations in these cases?

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A. To work out an appraisal before and after the taking and any damage thereto the residue.

Q. You say the value before and after the taking, and then you add to that the damages?

A. Well, I usually appraise these things from several viewpoints.

Q. Isn't that charging us twice for damages?

A. If you followed my testimony there—

Q. I have followed it very well.

A. You haven't permitted me to go into the breakdown of how I brought the \$32,000.00 loss.

Vol. I Q. We are taking 3.14 acres—

page 24 } A. Well, that 3.14 acres is flooded. The drainage on the adjoining land will make the adjoining land no longer suitable for farming—

Mr. Brasfield: Your Honor, can you order him to answer my question. If he has put no value on it—

The Court: I think he comprised it all as damages, rather than the value of the land, I suppose.

By Mr. Brasfield:

Q. Mr. Orgain, in your arriving at your figure in the Eula Young case, it was \$33,100.00; in the Farrar case—\$8,500.00; in the Williams case—\$31,000.00. One is 3.14 acres, one is 6.3 acres and 3.6, I believe. Did you assume that the property on this land was going to be flooded other than what is being acquired in this proceeding?

A. I assumed it's going to be a worse situation than flooded. It's not flooded in the sense—the creek land is going to be flooded—The creek bottom is going to flood and drain on these adjacent properties everytime that you get a one inch rainfall or more—

Q. Suppose we had a half inch rainfall, would it be flooded then? Is it flooded now?

A. It's possible it's flooded now.

Q. What magnitude of rainfall floods the property now? Does it take a one inch rainfall?

Tr. A. I would say approximately half an inch concentrated within three miles of Route 58 when Bugs
Vol. I Island Dam is turned loose its maximum flow so
page 25 } that half inch rainfall would flood the extent of the one inch rainfall aforesaid. I think he's going to get a good deal. It depends on where the rainfall is located. I located it on that basis.

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Q. Well, would you have allowed the same amount of damages if there were to be a greater flood there?

A. It is now and has been for the last some years since Bugs Island was built.

Q. How much damage would you have allowed if you had been convinced that there wouldn't be any greater flooding on these property owner's land after the building of Gaston project than there is today and over the last period of years?

A. I don't know that I follow your question. If there is not—

Q. Well, let me see if I can explain it to you. You have allowed \$33,000, \$8,000 and \$31,000 rounded off for flooding, is that correct?

A. That's damage to this farm from my viewpoint by reason of you taking the creek bottoms. If you are going to put water in that creek you are going to make this farmland where it can't be farmed.

Q. Suppose we don't put water into the creek bottom?

A. Well, I gave that figure—

Tr. Q. So we can acquire but as long as we acquire it
Vol. I this is the compensation due to these people, is that
page 26 } what you are saying?

A. I am saying that is due compensation.

Q. That's the equivalent of putting water on it. Suppose we don't put water in the creek bottom?

A. That's hypothetical.

Q. If we didn't put water in the creek bottom. Let's assume that we contract to acquire and don't build the dam. But we buy the property—we acquire it today or tomorrow and then we don't build the dam, so nothing is changed. How much are these people entitled to?

A. I still don't follow your reasoning or your question there.

Q. The situation I am picturing to you is Virginia Electric & Power Company comes in and buys 3.14 acres of creek bottom land and then doesn't flood it. How much has Eula Young been hurt?

A. You mean—

Q. I mean creek bed. Suppose Virginia Electric & Power purchases or acquires through condemnation that 3.14 acres of land shown on petitioner's exhibit No. 2 in the creek bed and then doesn't raise the water level but the stream flows as it does at this time, floods as it does today, everything like

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that, then how much are these people entitled to in this proceeding?

Tr. A. Well, if that was the situation your drain
Vol. I ditches could be maintained.

page 27 } Q. What drain ditches?

A. Across your bottom.

Q. Now where are they located on this property?

A. Well let me look at this a minute. I made this—

Q. Don't mark on it. Just point it out of the Commissioners?

A. Well this creek bottom flat extends around almost up back of the stable and as you go down through the gate behind the stable you turn left of the main drainage ditch that has frequently been flooded. Walking through here I could determine that the creek had left its bed and had actually began to establish a new path, thence down here and there are the existing drainage ditches are there now. Now they are partially filled.

Q. Are they effective drainage ditches?

A. They would be if they were cleaned out.

Q. Suppose we don't put any water in the creek, how much is the property worth?

A. I have given that break-down. 32 acres of cleared land—

Q. Wait, we are taking 3.14 acres of land. How much is the property worth and what is the damage to the residue; if we don't put any water on it; if you draw these situations where the creek bed is a dry bed.

Tr. A. It's not dry now.

Vol. I Q. Let's leave it exactly as it is today. What I
page 28 } am trying to find out is how much you think a willing buyer would pay for the 3.14 acres without the consideration of damages?

A. Well unless he is adjacent to the property he wouldn't have any use for it. Now in the broad appraisal that I have made on the property I attributed the creek being valued at \$5,000.00 to enhance the value of this property.

Q. You testified that the Young property it would be a loss of \$33,100.00?

A. That's right, sir.

Q. And that Farrar the loss would be \$8,500.00?

A. That's right, sir.

Q. How many acres are going to be taken from Farrar?

A. Well, it's pretty much a similar situation—

Q. No, the others concerned are not at all similar.

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A. It's a similar situation in that theoretically they are taking the creek bottom.

Q. How much acreage is being taken?

A. 6.3 is what is shown on M 53.

Q. And how many acres is being taken from Young?

A. Well, you described approximately 3 acres of creek bed here in petitioner's exhibit No. 2, I believe.

Q. Is that 2 or 1?

A. That's 2, Eula Young 3.1 acres, plus "A" .04 acres, Parcel A, the small part.

Tr. Q. And you said the Farrar property was 6.3
Vol. I acres?

page 29 } A. You asked me on Farrar—

Q. I asked you Farrar, 6.3—

A. 6.3, I believe, I read on petitioner's exhibit No. 1 that shows here—

Q. Do you challenge these figures as being incorrect?

A. I don't challenge these figures as being incorrect. I question whether that's the extent that the water is going to effect these lands.

Q. We are not concerned with that, are we?

A. Well we ought to be.

Q. What value did you put on 6.3 acres for the Alice Young Farrar—Well let me ask it this way to save time. For 3.14 acres of property you allowed \$33,000.00 in damage and for 6.3 acres you allowed \$8,500.00 in damage. How do you explain the discrepancy?

A. Well, I set up on Mrs. Farrar on that congaree soil there a value of \$200.00 per acre.

Q. Is that the soil being acquired for our company?

A. That will be effected.

Q. Is it acquired?

A. You say not.

Q. The Court says what we acquire in accordance with the petition. Well the Court will instruct the commissioners later.

The witness stands aside.

Tr.

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page 30 } Mr. Brasfield: Your Honor, we move to strike
Mr. Orgain's evidence of damages. As a principal
of law, we are required to pay the fair market value for the

Stuart G. Keedwell.

property to be taken and the damages to the residue resulting from that take and from our operation.

From Mr. Orgain's answers on cross examination it is evident that his appraisal was based on hypothetical, speculative and perhaps uninformed opinion, that much more than the property which is being taken will be flooded and we are not acquiring any right to do that flooding there. In the event, if it happens, which we say it can't, but if it does happen, the landowner is entitled to damages and trespass to the full extent that we cause such flooding; and therefore his damages are based on erroneous principals.

Mr. Hutcheson: I don't think counsel should be arguing the case in the presence of the commissioners.

The Court: I think the commissioners understand what the weight of the evidence is. It would be the question of whether any of the land is going to be flooded. There is nothing for the testimony that it will be flooded to be based on, but the commissioners know how to value the evidence.

Mr. Brasfield: We except, Your Honor.

Tr.

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STUART G. KEEDWELL,
a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. You haven't testified in one of these cases in Virginia?

A. Not in a VEPCO case.

Q. What is your name and occupation?

A. Stuart G. Keedwell, Consulting Forester, Land Surveyor and Real Estate Broker.

Q. Did you make this map attempting to show the watershed of Allens Creek?

A. Yes, sir.

Q. Where did you get your information from?

A. From this map.

Q. From this map?

A. In other words, Allen's Creek is shown on this County Highway map and the tributaries of Allen's Creek are shown and the other creeks and branches are shown, beginning and entire connection, and a line drawn between the branches and watershed.

Stuart G. Keedwell.

Q. And did you place them on the watershed? Did you calculate the area?

Tr. A. I did.

Vol. I Q. What is the area?

page 32 } A. The whole thing is approximately 68,000 acres.

Mr. Hutcheson: We ask you now to mark that Exhibit No. 1 for the defense.

Mr. Brasfield: We object. We don't believe the accuracy of this map has been proven by this witness any more than by Mr. Orgain.

The Court: You didn't make the measurement at all, did you?

Witness: No, sir, but—

Mr. Brasfield: The trouble is the accuracy of the map to begin with.

Mr. Hutcheson: What did you use to put the lines on there?

Witness: I followed—

Mr. Brasfield: Do you know where the watershed is—you yourself or do you—

Witness: It's correct—that is accurate as far as the accuracy of this map is. However, we do know—I do know that the area they consider, that's the Soil Conservation, in the Allen's Creek watershed is approximately 60,000 acres.

Mr. Brasfield: Do you know of your knowledge where the watershed is or did you get it off the County

Tr. Agent's map?

Vol. I Witness: No, I got it right from this map here
page 33 } which shows the branches and the tributaries, the
branches and the creeks.

By Mr. Hutcheson:

Q. How could you get the watershed on that map?

A. The direction in which the branches were running.

Q. You pick the branches from this map—

A. I could be 10 per cent off easily enough. Anything approximately around 60,000 is correct.

Q. If you delete 10 per cent, do you think that would be correct?

A. From what I know of the accuracy of it and from what I know of the Soil Conservation, I would say yes.

Q. That map is put out by the State Highway, isn't it?

A. Yes, sir.

Stuart G. Keedwell.

Q. Have you used that map to view and in making appraisals—

A. Yes, sir, in highway condemnation cases.

Mr. Brasfield: Your Honor, we would request the Court to make a ruling, otherwise, it wouldn't be any point in our objections because Mr. Hutcheson will have asked what he wants and the Commissioners would have heard.

The Court: I think he's familiar enough with that area.

Tr. Mr. Slayton: You can't use the highway map in Vol. I this case, it's not proper.

page 34 } The Court: I'll let it go for what it's worth.

The Commissioners know how to value it.

Mr. Slayton: We except to the ruling of the Court.

By Mr. Hutcheson:

Q. Mr. Kidwell, you have been on the Eula Young, Alice Farrar and John Thomas Williams property, have you not?

A. Yes, sir.

Q. You appraise the whole property?

A. Yes, sir.

Q. Can you put any value on the land taken, creek bottom?

A. I believe the petition shows they are taking up to the 214 contour line which—

Mr. Slayton: Is he familiar with land values in Virginia?

Mr. Hutcheson: He's a Land Surveyor and Broker.

By Mr. Hutcheson:

Q. Are you familiar with land in Virginia and values?

A. Yes, sir, I have appraised real estate in Virginia.

Q. How much in this section?

A. Well, I have been working in this section since 1948—approximately 1948. We did appraisals on Kerr Dam condemnation suits.

Tr. Q. Could you give me an estimate of how many Vol. I appraisals you have done in this section?

page 35 } A. I think that I have done around a dozen. And then I looked at several estates, made several estate evaluations and—

Q. Do you also appraise for individuals?

A. Yes, sir.

Q. And you have been appraising land since 1948 in this country. What is the general area you operate in?

Stuart G. Keedwell.

A. Generally in southeastern Virginia and northern North Carolina.

Q. And you appraise land and do you do anything for private individuals, appraise and value land and tell them how the land should be worked? Do you make such things?

A. We manage estates for absent landowners, yes, sir.

Q. The farm management goes under your work?

A. Yes, sir.

Mr. Hutcheson: I think that qualifies him.

Q. Now take, for instance, Eula Young, the 3.14 acres, suppose you put a value on that, the creek bed?

A. Mr. Hutcheson, when I was approached to make the evaluation of that land, right at first I could only see little damage there; but the more I went into it I realized that it's more than land that's being taken. The fact that the land is being taken to the 214 foot contour at the creek bed means that the people taking the land will have the right to flood to the 214 level. This gets into then, what determines the value of land around the creek. And Tr. it gets into if water comes up on land that is not Vol. I page 36 } now flooded and stands sedimentation begins.

Q. Did you take any other elevations there back—the low grounds—Take the Eula Young low grounds, did you take the elevation back there?

A. I believe the fact is that the creek banks are high—along the hill side is lower.

Q. What about that? Did you take the elevation?

A. Yes, sir.

Mr. Brasfield: Your Honor, we are going to object to this line of questioning. Virginia Electric & Power Company is required only to pay full and fair compensation for the land being acquired. Now we don't acquire any other rights from these people, and if the residue is not damaged by taking in this petition then there is no damage. If these people are damaged later as a result of this taking, it's the subject of another cause of action. Now evidence is coming in here on an assumption that's not established. It's not the subject of this lawsuit and we feel we are going to be prejudiced if the Court allows this line of testimony to be presented.

The Court: As you say, if this water does damage the residue of the property it should be the subject of another proceeding. If this water is carried to the 214 contour he

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believes the dike pockets will fill up. That's what he's got in mind.

Tr.

Vol. I

page 37 } By Mr. Hutcheson:

Q. Do you know from your last view taken what the gross of the water in the creek is?

A. Yes, sir.

Q. What was it?

A. It was between 211 and 212.

Q. And have you not taken it before today?

A. Yes, sir.

Q. Now what did you find on the Eula Young low grounds? What is the lowest elevation you found back from the creek?

A. Today the water elevation is about 212 feet at the Far-rar-Young corner and during the recent freshet pressure of the past few days enough water came in the creek to raise the water in the creek to about the level of the creek banks, and you can tell that because the mud is still damp around the edges of the creek, just below the top of the bank. Last week when I was up I noticed that the water at that time was below a certain log, which you may have or may not have noticed. It went across approximately at the corner. That water today is about 6 inches over the center of the log and it was 2 feet below the log the other day, which means that last week before this freshet, the water was about 208 and after the rain it raised it to approximately 218 which is just below the top of the bank. So it raised it approximately 10 feet,

Tr. this freshet we had which you are familiar with in
Vol. I the past two days. Now if the water level had been
page 38 } 214, which is the taking level, then you would have
had it at 224, which at this particular point would
put it, according to the elevation that I took, about 2 to 3
feet higher than the bank at this spot on the west creek bank
and several hundred feet away even and, therefore, it would
have been a considerable area flooded with this freshet we
had. If the water had been at the 214 rather than the 208
when the water coming out of Allen's Creek watershed came
down into the creek the flow would have flooded the banks
and spread. That 10 feet of water that was in the creek these
past few days would have gone above the banks and spread
out over the low grounds.

Q. I believe I asked you did you take the elevations on these properties, take the Young low grounds first?

Stuart G. Keedwell.

A. They ranged in the Young low grounds—on the line between Farrar and Young there was a point at 218 feet, which is 4 feet above the taking level. On the Farrar low grounds at points there are points there that are almost at the 214. The 214 goes through a marsh which is the same level as the taking line. On the John Thomas Williams property there are some points that are about 216 or a little under 216 which is about 2 feet on over the taking line.

Q. You say the point on the Young low grounds is 218; the Farrar low grounds is 214; and the Williams—216. Did you make an appraisal of the property before the taking?

Tr.

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page 39 }

A. Yes, sir.

Q. Can you tell us the fair market value of these as they are now, beginning with the Young property?

A. Yes, sir, in doing this now one of the things we are trying to determine is damage, and personally I don't know if we don't consider silting because of the water being able to be held at the 214, thus slowing. I just don't see how I'm going to determine the damage and that's the reason for this map showing that there are certain number of acres—It shows the watershed about 80 per cent north of the taking line, showing that the Roanoke River will be about half a mile from the property which means that the still water will be closer or on the property. Therefore, as water flows the sediment drops out and is going to fill eventually. I don't know when, but sometime. It's nothing to do but settle.

Q. Say they take to the 214 contour, in the best of your judgment, what is going to be the damage, the fair market value of the whole farm and the fair market value after the taking.

A. I can't qualify the damages because I don't know if you don't figure that as part of the damages as I see it may be a disarrangement. I certainly think that's one part of damages.

Mr. Brassfield: Can't you get in your mind that the Court says that we are limited.

Tr.

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page 40 }

Q. Considering that they own to the 214 contour and they do pretty much what they please to the 214 contour, does that damage the landowner?

A. Well, that goes back to the basis. If they have the right

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to have the water stand at the 214 contour, which I believe they will, taking in fee simple, they have the right to, then it will be an element of damage if water ponds there instead of somewhere down the Roanoke River and sedimentation—

The Court: They are acquiring only to the 214 contour. If they go over that, then they have to condemn again or pay for the damage.

Witness: Yes, sir, Your Honor, but if they flood to the 214 or close to it, if the water rises—

The Court: But that's new damage.

Witness: But if the water stands still on these low grounds—in this creek and when water is still at 214, this means the running velocity will slow and you will have dead water backing. Everytime you have a freshet or storm the water comes rushing down and piles all the debris, excess, at the 214.

The Court: Now if this water stands still at the 214 it might raise it some, but if it flows over that they have to pay for it.

Witness: Isn't it true that the water—they could use it to the 214?

Tr. The Court: They can use it, but if it goes
Vol. I over—

page 41 } Witness: If it ponds at the 214, it's dead water
there, right? Well, if it ponds there that means—

Let me quote you the figure—the rainfall of—

Mr. Slayton: We object to any figure. Mr. *Kidwell* has been established as a Land Surveyor and Appraiser and nothing has been said about his qualifications to testify as to rainfall and the effect it has on property.

Mr. Hutcheson: Well, he has drawn the watershed on this map—

Mr. Slayton: That has nothing to do with the amount of water in the watershed and what happens to it.

Mr. Hutcheson: Let me clear it up with a question, I believe.

By Mr. Hutcheson:

Q. Mr. Keedwell, do you know anything about the velocity of water, the sediment and certain speeds of water. Have you studies it? Do you know anything about it. Suppose it's running 20 miles per hour, do you know about the difference in drops of sediment?

A. The VEPCO attorney refers to my qualifications. I stated that I am a Forester. In our forestry course we had

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hydraulics, erosion and all phases of hydraulics, which included erosion and that's a part of the forestry course. In fact, soil conservation was my first job, public Tr. vocation. I don't consider I'm an expert in hydraulics, but I have a working knowledge of hydraulics. And in view of that I have used forestry handbooks, which are put out by and edited by the Society of American Foresters, which is the same as the American Bar Association is to you. And in doing that, in Vol. I working out these figures, if one inch of rain falls on Allen's Creek watershed you get, assuming, and this is a safe assumption, page 42 } according to the land, 162,924,000 gallons of water. That's one inch on the entire Allen's Creek watershed and that's a great big rain out here as you know. Actually 162 million—10 per cent is what our handbook considers—which we consider to be a safe figure for run-off. Of course, if the ground were heavily laden with water from rain before, the run-off would be a lot more than that. But under normal conditions of moisture content in the ground with the amount of tree growth we have and the amount of open land that we have on the watershed I feel the 10 per cent figure is really safe and will give 162 million gallons of water. This all comes right down all going in Allen's Creek. And now the amount of sediment with regard to the velocity of the water. When you get still water at 200 or somewhere over 200 and that water slows down to half of what it is now, the sediment drops out 32 times as fast. How fast that will fill up, I don't think anybody can sit here and say. And I do know as water slows down it generally causes the sediment to build up. This is going to Tr. cause the creek bed to fill up and well, the water Vol. I has got to go somewhere. page 43 }

Mr. Brasfield: Your Honor, we make the same objection. We are acquiring only up to the 214 contour. If this fills, it's going to be the case of—that's another cause of action.

The Court: If that happens, if it gets over the 214, they have to condemn again.

By Mr. Hutcheson:

Q. To the best of your knowledge, standing at the 214 contour, can you give us your opinion as to the damage?

A. Well, that tremendously creates a drainage problem and, as I have stated, sedimentation begins and makes it a danger spot for cattle. As it is now, it's a natural fence.

Stuart G. Keedwell.

Q. Would it increase the flooding?

A. Yes, but there is the question of sedimentation. The whole thing is based on that. Standing there at the 214 the waters coming in does raise the flood waters and you will have that water backed up.

Q. Now can you say what the fair market value of these properties is before the taking and after the taking?

A. Well, the way I feel about the settlement value is this: On the Eula Young land I have a value before the taking of \$56,855.00 and a value after the taking of \$40,955.00, which is damage of \$15,900.00.

Tr. I Q. How about the Farrar land?

Vol. I A. Value before taking of \$27,640.00 and value
page 44 } after taking of \$21,940.00, damage of \$5,700.00.

Q. How about the Williams?

A. Williams value before taking \$91,575.00, value after taking \$78,825.00.

Q. What is the damage?

A. Damage on that would be \$12,750.00.

Mr. Hutcheson: Witness with you.

CROSS EXAMINATION.

By Mr. Slayton:

Q. Mr. Keedwell, when was the last time you were on this property?

A. About *on* hour and half ago.

Q. When you were there did you see the stakes there?

A. The ones I found I did.

Q. Well, where are they? Where were they in relation to the water?

A. Half way up the bank from the water.

Q. And what is your understanding that they represent?

A. The taking point.

Q. And do all of these represent the 214 contour?

A. Well, those that are on top of it—those that are part way down the bank do.

Tr. Q. What about the ones found next to the
water?

Vol. I A. They're the ones I'm talking about, about two
page 45 } to three feet above the water today.

Q. Do you know where the 214 contour crosses the property of Miss Eula Young?

A. I have your map, yes, sir.

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Q. Have you been there?

A. Aha.

Q. Where does the 214 contour cross the property line?

A. I don't quite follow your question, "where does it cross the—". You mean that little piece of 3/100 acre, that's marked "Block A"?

Q. Isn't the contour, according to "Plat M 54 A and B" up at the Farrar property, at Robert M. Baskerville and Eula Young, isn't it 214 up there?

A. That's right.

Q. That crosses the creek up near the bridge?

A. Yes, sir.

Q. Do you know the height of the dam that Virginia Electric Power Company is proposing to build?

A. Around 200.

Q. Do you know whether or not it's that high or higher?

A. We had a map out here, but I don't know if it's the final one or not.

Q. Now wouldn't the height—you are a civil engineer, wouldn't the height of the dam—doesn't that determine what elevation the water could be raised to?

Tr. A. Oh, sure.
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page 46 } Q. Do you know how far this property is from the Roanoke River?

A. About five—four and half or five miles.

Q. Four and half or five miles—Now the distance this property is from the Roanoke River would have some bearing on whether or not it would be flooded by this *reservior*, would it not?

A. Certainly.

Q. Do you know the pool elevation of this reservoir?

A. I have heard several figures. I believe somewhere near Allen's Creek is about 206.

Q. Is that the elevation of the pool or clearing line—clearing elevation?

A. I believe—well, the elevation of the pool—Are you referring to normal or flood elevation? I expect 206 would be the flood elevation.

Q. Now what would be the normal elevation?

A. 200.

Q. Wouldn't all of that make a difference in your testimony—evidence given as to what's going to happen at Allen's Creek?

A. No, sir, it couldn't.

Stuart G. Keedwell.

Q. Do you know what the present elevation of the water at Roanoke River is?

Tr. A. No, I—

Vol. I Q. You are a surveyor, among other things, and page 47 } you, of course, understand what we are talking about much better than I do. But you understand I am sure that the rate of run-off that's currently existing at Allen's Creek cannot be effected unless the elevation of the river is changed, isn't that correct? Suppose the level of Roanoke River stays what it is now?

A. I would appreciate before you question me on this having that map—that big map that shows—

Mr. Slayton: I assume that's for the basis of showing different degrees—It's not introduced in evidence.

Mr. Hutcheson: Well, you are asking questions about it, so I would like to have it introduced.

Mr. Slayton: I am talking about the elevation of the Roanoke River now.

Mr. Hutcheson: We ask that this be marked Exhibit No. 2.

Mr. Slayton: Your Honor, we are going to object. It might be we want to introduce it later.

Witness: Without the map I don't know how I'm going to answer your questions.

The Court: He might refresh his memory.

Mr. Hutcheson: We are going to make this Exhibit No. 2.

Tr. By Mr. Slayton:

Vol. I Q. Fix it so the Commissioners can see. Let's page 48 } take it over and show the Commissioners what we are talking about.

Mr. Hutcheson: Would you like to put it on the wall. We can get some tape and put it on the wall.

The Court: I expect it's all right. They can look at it if they want to.

By Mr. Slayton:

Q. To get started orderly, will you point out for the Commissioners where the dam will be located, please?

A. This is the site.

Q. Now point out for the Commissioners the location of Allen's Creek?

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A. Right here on the west side.

Q. Can you point out for the Commissioners the approximate location of the property under consideration?

A. This is Allen's Creek flowing down here and the low grounds under consideration—John Thomas Williams is on the east, starting about here going up, and Eula Young is on this side, part of it comes down about here and Mrs. Farrar comes in here about like this.

Q. Now do you know what the shaded area represents on this map?

A. Area that is shaded to be purchased in fee to elevation indicated based on water release from Kerr Dam of 90,000 cubic feet per second.

Tr. Q. All right, sir, do you know what the normal
Vol. II release at Kerr Dam is?

page 49 } A. Under normal conditions—201 and half.

Q. 201 and half what?

A. Feet

Q. What is the normal release from Kerr Dam in terms of cubic gallons per second?

A. There, in the shaded area 90,000 feet per second.

Q. Do you know whether that's normal or flood?

A. That's normal.

Q. You know where the clearing line is?

A. I believe the clearing line is at the edge of the shaded area.

Q. But you don't know?

A. I haven't checked it out, no, sir.

Q. All right, sir, in using this map you say that your understanding is that the area in the shaded area represents the area to be flooded when Kerr discharges 90,000 cubic feet per second, is the land now owned by Mrs. Farrar, Mrs. Young or Mr. Williams within that shaded area?

A. No, sir.

Q. All right, sir, Mr. Keedwell, have you ever testified in a condemnation proceeding before?

A. Yes.

Q. What are the elements that you have to determine? Is one the compensation in fee for the land taken. Do you have to allow a certain amount of money for the property taken? Is that a consideration or principal in appraisals?

Tr. A. That's right.
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page 50 }

Q. Is another principal in appraisal in condem-

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nation proceedings making an allowance, if any, for damage to the residue?

A. Yes, sir.

Q. And is another one offsetting the damage to the residue and peculiar benefits?

A. Yes, sir.

Q. All right, sir, now in the appraisal you made of these three properties, did you consider all of these principals?

A. I did.

Q. What did you allow as compensation to these land-owners for the fee simple value of the land taken from each of them.

A. For the land alone?

Q. Only for—in the case of the Farrar property I want to know what you allowed for 6.3 alone?

A. \$100.00 an acre.

Q. What did you allow the owner of the Young property for the 3.14 acres?

A. \$100.00 an acre.

Q. And what about Mr. Williams for 3.6 acres?

A. \$100.00 an acre.

Tr. Q. What is the highest and best use for this land
Vol. I that we are talking about?

page 51 } A. To run that creek through there.

Q. And that is your judgment that a willing buyer would buy from a willing seller this land and pay a hundred dollars an acre for the privilege of running a creek through?

A. Mr. Attorney, a willing buyer wouldn't even buy and sell that land because it's a ridiculous purchase and ridiculous sale for a normal sale.

Q. Mr. Keedwell, if, as a desult of the acquisition, and construction of that dam, the water in that creek is not raised one inch, what are the damages to the residue of this property?

A. Before I answer that I would like to ask the proper person a question—

Q. If we don't raise the water at all?

A. That's a hypothetical question, it's obvious there wouldn't be any if it's not raised at all.

Q. And it's your judgment that a willing buyer wouldn't buy this land because it's not worth anything?

A. A willing buyer wouldn't particularly want the land be-

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cause you can't walk up the middle of the creek without crossing somebody else. In other words, in a normal purchasing sale if I were the owner of the land I wouldn't want to sell it because it would be the nuisance value and it would bother the sale of the property later on. That's the damage.

Q. Is that one of the elements you figured in this Tr. damage, because of the nuisance?

Vol. I A. Yes, I deal in land and I own land and I feel page 52 } that something of this kind is an encroachment. It detracts from the value.

Q. Have you read the petition filed by the Virginia Electric & Power Company in this case?

A. I hadn't read it before.

Q. Are you familiar with the rights and privileges given to the landowner by the Power Company to use this land after the taking?

A. I understand they can use the land as long as it's useable.

Q. You understand they can use the land as long as it's useable. Naturally, they don't want to use it if it become not able to be used.

A. The sedimentation etc.—

Q. Is it your understanding anything is being acquired—any property outside of the property you saw staked out along this creek?

A. No, they aren't acquiring any property outside of the 214 foot contour.

Q. Is it your understanding that the water in the creek could be up to the 214 contour during normal operation?

A. Since Virginia Electric & Power Company would have the right to use to the 214 if they buy to the 214—

Tr. Q. Is it your understanding that after the con-
Vol. I struction of this dam that under normal operating
page 53 } conditions the Virginia Electric and Power Com-
pany could cause the water in this creek to be at the
214?

A. Yes, sir.

Q. If you were to find it a physical impossibility because of the elevation of the dam would that change your appraisal?

A. Sir, I think there's one element you may have left off. It's possible to put an intermediate dam at Allen's Creek.

Q. Is that possible without acquiring a license or—

A. Well, it wouldn't be possible for you to raise the dam I

Mr. Gordon.

suppose higher than the 200 feet, not under the license, but I don't know what the license says. If you want me to answer that in concise terms—My approach is that you are taking to the 214 contour. You have the right to do whatever any other buyer could, that is, completely use it, so that the owner would have—the owner from whom you purchase it would have access to it if it were possible to get to it. But you have complete rights to use it any way. You purchase in fee simple just like any other purchaser. That's the basis on which I evaluated this property.

Q. How far is the 214 contour above the present level of the water?

Tr. A. Today it's approximately 2 to 3 feet.

Vol. I Q. Where is that?

page 54 } A. At the Farrar-Young farm.

Q. What about up at the bridge?

A. At the bridge—if the water is over normal at the Farrar-Young corner, I assume it's a little bit higher—

Q. So, if the water is at the 214 right now at the bridge you don't know it.

Mr. Slayton: Thank you, sir.

MR. GORDON,

a witness for the defendant, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. Mr. Gordon, are you familiar with the John Thomas Williams low grounds?

A. Yes, sir.

Q. Do you feel you could consider the value of per acre or by the whole?

A. Yes, sir, I think so.

Q. What do you value them at?

A. I have looked at his low grounds recently and I valued 30 acres of them at \$800.00 an acre and I valued 20 acres of wood land at \$100.00 an acre.

Q. You aren't familiar with the Young and Farrar low grounds. You wouldn't be able to value those?

Tr. A. No, I wouldn't. I expect it's been 15 or 20

Vol. I years since I was in those low grounds.

page 55 }

Mr. Hutcheson: Witness with you.

Mr. Gordon.

CROSS EXAMINATION.

By Mr. Brasfield:

Q. What was the total—\$26,000.00 for the low grounds, 50 acres of land.

Have you seen this, Mr. Gordon? This is Petitioner's Exhibit No. 3 which has been admitted in evidence to show the property to be acquired by the Company from Mr. Williams. Is that property shown on here, 3.6 acres, more or less, included in your evaluation of the low grounds?

A. Yes, I included it. I included the creek banks. I just looked at the open land and the wooded land I was talking about was, I would say, south of it, going between the railroad and creek bank.

Q. If I told you all of this land is within the creek banks, would you then say that it wasn't included in your evaluation of \$100.00 and \$800.00 per acre?

A. Well, now how was that question?

Q. If I told you that all of that land shown here which the Company is acquiring is included within the banks of the creek and doesn't go out on the low grounds at all, would you put the evaluation of \$100.00 an acre or \$800.00 an acre on that? This is creek bed, just creek bed.

Tr. Vol. I A. Well, yes, it would be valued as high.

page 56 } Q. Would it be \$100.00 an acre or \$800.00?

A. It would be \$800.00 an acre.

Q. Because it's cleared—

A. It's just like creek bank, but that land is necessary for the rest of the creek, necessity to the rest of it.

Q. So you would value this at the same figure—This wouldn't differ or anything from the other? Your evaluation of the 30 acres of low grounds included this 3.6 acres?

A. I don't know that I can say it would include the 3.6 acres, because I estimated the open land of 30 acres and then 20 acres of wood land. That—I wouldn't say that would include this in it.

RE-DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. To clear up what Mr. Brasfield asked—How did you get the value of the low grounds—productivity, location or what?

A. From a production standpoint.

Q. How did you compute the productivity standpoint?

A. Well, I have seen a number of crops grown on that

Edward James Morgan.

place for I don't know how long. I have seen crops of corn. I have seen other crops make over a hundred bushels to an acre when higher land wasn't making over 30 or 35. I've seen crops grown in the low grounds make 100 bushels where the others wasn't making over 30 or 40. I figure it's worth more than three times as much. And another thing, on one occasion particularly I went with Mr. Williams down there. It was a year when it was dry and we didn't have any crops, and he had a good crop of corn. But for this creek, do you think it would have made that corn?

Q. Therefore, you think down under water is just as valuable as up where the corn is growing?

A. Yes, sir.

The witness stands aside.

Mr. Brasfield: Your Honor, we move to strike the testimony of Mr. Gordon. By his own admission he didn't consider the pertinent issues before the Court. We are not going to move the creek. And he stated his estimate didn't include the land we are taking. He didn't go into the fair market value. His testimony doesn't pertain to anything in controversy.

The Court: That's all right to go to the Commissioners. They know how to value it.

Mr. Brasfield: Exception.

EDWARD JAMES MORGAN,
a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

Tr.

Vol. I By Mr. Hutcheson:

page 58 } Q. Mr. Morgan, state your name, residence and occupation?

A. Edward James Morgan, farmer.

Q. How well do you know John Thomas Williams' low grounds?

A. Well, I was raised right in sight. I been knowing them all my life, since I was a young boy.

Q. Were you born and raised on Allen's Creek and do you live on land on Cox Creek in the same neighborhood?

A. Yes, sir.

Edward James Morgan.

Q. Could you give any evaluation of those low grounds? Do you know what it would be worth an acre?

Mr. Brasfield: Your Honor, I don't think he has laid a foundation to establish whether Mr. Morgan is familiar with land values.

By Mr. Hutcheson:

Q. Are you familiar with land values in Mecklenburg County? Have you bought land?

A. Yes.

Q. You have attended sales?

A. Yes.

Q. Do you keep up with practically all the land sales?

A. I am especially interested to know what the value of land is.

Q. You say you own land. Do you rent land?

Tr. A. Yes, sir. I do say land like that is worth three
Vol. I or four times as much as hill side land.

page 59 } Q. And what would that be? What is good crop
hill side land worth?

A. Well, tell you the truth it's not none for sale much. I would say around \$300.00 an acre.

Mr. Hutcheson: Witness with you.

CROSS EXAMINATION.

By Mr. Slayton:

Q. Mr. Morgan, when were you asked to go on this property to make an appraisal?

A. I have been there.

Q. Do you know what part of this low ground is being acquired by Virginia Electric & Power Company?

A. I—well, I do know it's low grounds.

Q. Do you know what part of this land, this low ground that belongs to Mr. Williams is being acquired by Virginia Electric & Power Company?

A. Yes.

Q. What part of it?

A. Well, the creek bed.

Q. Do you have an appraisal of that particular land?

A. No, but I was speaking of the land that adjoins the creek.

Edward James Morgan.

Tr. Q. Have you ever seen this plat before, Exhibit No. 3. Have you ever seen this?

Vol. I A. No, sir.

page 60 } Q. Do you know what it is?

 A. No.

Q. Mr. Morgan, if this represents what Virginia Electric & Power Company is acquiring—You see this line here next to Mr. Williams property and the dotted line is the middle of the creek and that contains a total of 3.6 acres, all of it in that creek. Could you tell the Commissioners what you think the 3.6 acres in the creek is worth?

A. Well, I couldn't tell that. But if the water backs up the creek it's likely to damage the land which adjoins, the way I was speaking.

Q. Do you know what rights Virginia Electric & Power Company is acquiring by buying this little strip? Do you know what rights they are giving the landowner to use this creek after they have bought that in there?

A. No, sir.

Q. Do you know how high the Virginia Electric & Power Company is going to raise the water in this creek, if any?

A. Well, I would say you're supposed to raise it about three feet.

Q. Have you been down there and looked where this is staked?

A. No.

Mr. Slayton: Thank you.

Tr. RE-DIRECT EXAMINATION.

Vol. I

page 61 } By Mr. Hutcheson:

 Q. I believe you say you got your value from the productivity of the land—that's true, isn't it?

A. Yes.

Q. If this creek bed wasn't there, would the land be as productive as it is?

A. No.

Q. Then, would you say the water and the creek bed is just as important and just as valuable as the top land?

Mr. Slayton: Your Honor, I object. We aren't going to move the creek. We are just buying a little strip. We're not seeking the value of the creek. We are not going to take the creek bed. We taking to the 214—

W. W. Crutchfield.

The Court: The Commissioners understand that. They know what it is.

Witness:

A. From my standpoint that's worth just as much as the crop land is worth.

Mr. Slayton: After you told him.

The witness stands aside.

Tr. Mr. Slayton: Your Honor, we would like to
Vol. I move the Court to strike the testimony of Mr.
page 62 } Morgan for the reason that his testimony is the
value of something that's not within the acquisition or under consideration. We don't deny this bottom land is of this value or that the top land is of certain value, but he didn't even know what was being acquired, didn't put any value on it. The Commissioners are required to give a value, fee simple value, of the land being taken.

The Court: They can evaluate it. They know what's the fee. They are sensible men.

Mr. Brasfield: They are, right, but why should they be subjected to this sort of thing. We would like to ask the Court to strike the evidence of Mr. Morgan.

The Court: Just let it go to the Commissioners for what it's worth.

Mr. Brasfield: We except to the ruling of the Court.

W. W. CRUTCHFIELD,
a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. Your name is W. W. Crutchfield, I believe?

A. Yes, sir.

Q. And your address is Boydton?

A. Yes, sir.

Q. And your occupation is what?

Tr. A. Well, I farm and I run a little country store
Vol. I too.

page 63 } Q. Do you have any specialty in farming? Do
you have any stock?

A. Yes, sir, I raise registered Hereford cattle.

W. W. Crutchfield.

Q. Do you raise them for breeding purposes?

A. No, sir, I raise them exclusively for stock cattle. I raise them exclusively for stock cattle and they are all registered purebred Hereford cattle. I specialize in raising them and they go to a lot of places. When I was a young boy I bought a little herd to start with and use off, and then later on I got an improved herd.

Q. What kind of sales material have you got?

A. Well, I have had some on the sale with the Virginia State Hereford Breeding Association and sold some in the sale at Staunton, Virginia, and I have sold some privately as far as Norfolk and back to Roanoke. I have sold some in Danville. I have sold them all over the County. I have been doing it about 25 years. And most any Herdford cattle you see in the county most likely will have the blood of some of my Hereford cattle.

Q. Do you know these Young low grounds?

A. Yes, sir, I've been down there for 20 years myself.

Q. Have you been tending them?

A. For 20 years.

Q. Have You raised cattle down there? Who Tr. has been owning them during the last 20 years?

Vol. I A. They belong to Mrs. John Young.

page 64 } Q. You rent from her?

A. I rent from her.

Q. And what do you do down there?

A. There, I just have the low grounds, that's all. I rent the low grounds. And I go there and raise crops of corn and hay. I raise both there for to feed these cattle on.

Q. How much land do you have, Mr. Crutchfield

A. Well, I've always called it 50 acres of land cultivated there. But, although, last year and this year we put it in the soil bank and then we just have what is left over. I sow a little grass there and that's all.

Q. During this 20 years time, how many times have you completely lost a crop from flooding?

A. I have not completely lost a crop under no conditions. Although, one year, in 1955, that was a hard luck year for me. I lost my father, I lost my mother and I lost over half of the crop of corn. In 15 or 16 years I been tending it that's really the only time the water damaged it to any extent at all. The water went over top of all of it, but it just didn't stay on it very long. I didn't lose all of it. I have grown a crop there every year from 1942. We started in there early that

John Young.

spring. I have been there every year myself and brought the crop out of there.

Tr. Q. Say, for instance, have you ever seen the
Vol. I creek, since Bugs Island Dam was built, half full
page 65 } at the Mossville Road?

A. There at the bridge I have seen it in almost every stage.

Q. Assuming it's half full there, does any water pond in the low grounds? If it's right under the bridge, half full, does water stop running anywhere in those low grounds?

A. It's under certain circumstances of rain, but what happened—I have seen it, since the dam was built, the water would be about—it would be about half or three-fourths full and would back up on the other end at least four feet where it comes out the creek at. Where it goes into the low grounds, that's the lowest part. That's about 200 yards below the place where it goes in the low grounds, *between* there and the creek. And it has been water there backed up and come up to that bridge when the creek was up about half or three-fourths full.

Q. Ever done any damage by backing up so far?

A. Hasn't done any serious damage by backing up. I noticed since they put that dam in that it backs up more than it did before it was built. I thought that was something.

Mr. Brasfield: Your Honor, we renew our objection. We are not going to flood outside the property we are acquiring. We know that if we do, we have to pay for it at that time.

The Court: I understand he's showing what
Tr. actually exists there now.

Vol. I Mr. Hutcheson: We have a right to show what
page 66 } happens there now.

Witness with you.

Mr. Brasfield: No questions.

* * * * *

JOHN YOUNG,
a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. Mr. Young, I believe you are a son of Mrs. Eula Young?

A. Yes, sir.

John Young.

Q. You were born and raised on this property?

A. That's correct.

Q. Before I forget, I don't think it's a question of qualifications but what is your occupation and what is your schooling?

Tr. A. I graduated from V. M. I. in Electrical Engineering. I practiced Industrial Engineering for Vol. I page 67 } about 10 years and I have been a practicing accountant for the last 15 years.

Q. In your occupation and schooling are you qualified to read blueprints and maps?

A. Don't have the qualifications but I have had to read some of them.

Q. I don't think it was so much a question of qualifications, but will you look at this map. Assuming that the level of Allen's Creek at the mouth is 180, what would the drop be from this property, this 214 feet? Does the map do you any good on that? What's the drop between this property and the mouth of Allen's Creek?

A. I don't know that the map would help. It's a question of subtraction—subtracting 180 from 214—34 feet.

Q. It's 34 feet which represents the amount of drop that is eliminated with the basin. You are also a nephew of Mrs. Farrar?

A. That's correct.

Q. At the adjoining place?

A. That's correct.

Q. Who has been operating those farms for the last, say 20 to 30 years?

A. Well, my aunt, Mrs. Farrar, has operated that place for 25 to 30 years I guess and my mother, following my father's death in about 1941, has operated the property. Both have been substantially reduced in productivity during Tr. that time as it natural under the circumstances.

Vol. I Q. Do you remember the last time any ditching page 68 } was done in those low grounds?

A. Yes, it was prior to 1940. I don't remember whether it was 1935, 6, 7, 8, or 9, but it was in that period the last ditching was done and, at that time, the ditches in the low grounds went from as much as 4 to 6 feet deep in order to have proper drainage. As you can see now, or as you observed yesterday, many of those ditches can be driven through with a car. When they are properly ditched, which is necessary for full production, you can drive through none of them. But they are all covered by breaches. That's one of the things

John Young.

that gives us great concern—is the fact that when you put a 6 foot ditch in there, and having reduced his flow, the fact that whether we will be able to get satisfactory drainage in the first case, and in the second, with the loss in the drop or reduction in the flow elevation whether we will have a substantially greater length of time in which the water is over the property. That property down there water comes over it frequently. If it's over for a short period it's not going to do any substantial damage, but it it's going to stand on there for several days or going to be extended in its standing there, it's going to create greater damage to the property and to the crops.

Tr. Q. The Commissioners have seen the low
Vol. I grounds. You are familiar with all of them. What
page 69 } would you say is the productivity of them in regard
to the hill side?

A. Well, I'd have to go back to my very early years here, back in the early 30's or late 20's. There were about a hundred head of cattle being run on that property, the full low grounds.

Q. You are speaking of the Young?

A. I am speaking of the Eula Young property. The same kind of thing to a degree, no particular stock was run on the Farrar place. But the full place was under cultivation and the productivity of that whole place was very high. The low grounds themselves, well, we just didn't bother about planting corn and hay on high lands. It wasn't worth the effort, particularly since we had the low grounds, because the yield there was unusually high. How it compared with the high land, I don't know. We didn't put corn and hay on the high land.

Q. You think of anything else that would be helpful to the Commissioners?

A. No, I believe anything further would probably be repetitious of what's gone before and I don't believe that's necessary.

Mr. Hutcheson: Witness with you.

CROSS EXAMINATION.

Tr. By Mr. Brasfield:

Vol. I Q. Mr. Young, you, in your testimony made a
page 70 } mathematical calculation, subtracting 180 feet from
214 feet. What does the 180 feet represent?

John Young.

A. It's my understanding that was the elevation which I named, being the present level of the water from Allen's Creek into the present Roanoke River.

Mr. Hutcheson: That was brought out here yesterday. I think Mr. Slayton asked Mr. Kidwell and he didn't answer. I thought it ought to be answered.

The Court: But any way you've got your engineer here. You can show those things.

Mr. Brasfield: We don't recall that figure being used and—

The Court: You can correct it when you put your engineer on the stand. He will know what the present elevation is.

By Mr. Brasfield:

Q. Mr. Young, if, in fact, the elevation weren't 180 feet, but were 200 or 201, feet, would your concern—the present elevation, would your concern about this property be diminished any?

A. I think that less flow—Well, the first place, so far as that's concerned, if you are going—if you had a property with that little flow—

Q. What little flow?

Tr. A. From 214 to 200 or 201 feet for that distance
Vol. I then you would have the Cox Creek area.

page 71 } Q. Well, suppose today there is that little flow
and it's established that there is that little flow?

A. I don't know what the answer to your question is, because it's pretty much supposition. If you give me whatever the elevation is, no matter what it is, that elevation is lost, be it 11 feet, be it 30 feet. No it's enough to cut that bank and to reduce the sedimentation.

Q. If the construction and operation of the company's project doesn't change that elevation more than 2 or 3 feet, as opposed to 34 feet which has been testified to here, if that's the case would you think the same problem would exist that you have testified to?

A. Well, the first place, if you had that condition I don't think you would have the property involved here at all. I think it's the Cox Creek proposition of just a swamp.

Mr. Brasfield: Thank you, sir.

The witness stands aside.

Allen Young—John Thomas Williams.

ALLEN YOUNG,
a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Tr. Q. You are a brother of Mr. Young who just testified, are you not?

Vol. II A. Yes, sir.

page 72 } Q. You were also raised on this farm?

A. Yes, sir.

Q. Tell the Commissioners about what you think as to the productivity of these lands, John Thomas Williams land, your aunt's land and this land?

A. Well, I was raised on this farm and am familiar with the three properties that are involved. I do recall the period when this particular farm, speaking of the Young property, was in a condition of productivity that was enough to support a number of beef cattle and I do know that the acreage involved here is of far greater productivity than the highland, always has been. And it's my concern, as well as those who have testified before me, that this productivity will be completely lost at some time. This being the case, I don't see how any real use is obtained of the farm at all.

Mr. Hutcheson: Your witness.

Mr. Brasfield: No questions.

JOHN THOMAS WILLIAMS,
a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Tr. Q. Mr. Williams, I believe you are the owner of some 400 acres of land on the east side of Allen's Creek?

Vol. I A. Yes, sir.

page 73 } Q. Will you tell the Commissioners what you have been doing with that land?

A. Well, as a boy I was raised on that farm and I bought it about 10 years ago from the estate. I think it was in '51 and I rented part of it before I bought the estate. At the present time I have the low grounds in pasture and, naturally, you have a rotation—rotate your crops. And during the dry

John Thomas Williams.

weather—for several dry years I had to carry cows down and put them where it wasn't supplied enough grass on the hill side. And the land down there would produce about as much without the fertilizer as the hill side with fertilization; that's on a normal year. A year that's not normal it will produce about three times as much. This low grounds—if it's put up to 214 and held there I just—what's going to happen with the extra water is flooding. Like a case last Monday, they had a heavy rain up in northern end, anyway, upper end of Allen's Creek watershed; and we didn't have any rainfall—well, you might say whatever—at home, about a tenth of an inch. And Monday morning my creek banks were level with the bank and if we had had the water up to the 214, Monday morning it would have been out. That was just one case

like that. It happens sometimes when there is rain
Tr. up on the watershed and it comes over in the low
Vol. I grounds when we don't even have any rain.
page 74 } Q. Now, about your pasture in the low grounds?

A. Because I have the creek now, Mr. Hutcheson, the cows are put down there every twelve months. Last winter I put them down there for 90 days and they fed on the grass and that's all the feed they had.

CROSS EXAMINATION.

By Mr. Slayton:

Q. Mr. Williams, how far is the stake put there by Virginia Electric & Power Company from the water level of the creek?

A. Well, I'm not a surveyor or engineer—

Q. Just what you saw—How far is the stake, the 214 line, above the water level? Didn't you see the stake in the bank?

A. I saw it. Mr. Kidwell—I went with some people yesterday and I was standing there when he pointed out the stake.

Q. Did you see the iron pin—

A. Yes.

Q. How far is that from the water?

A. At one place it covers it. At other places likes about a foot and half or more of being up to it. Up neath the Antler bridge was covered up. Down my place liked about

Tr. a foot and half of being up to the stake.

Vol. I Q. How much land is the Power Company ac-
page 75 } quiring from you?

A. By your last surveying it's 3 and a few

James M. Hagood.

tenths. The first surveying they made up come to—it was 7 acres and something. And we tried to settle last year out of Court—

Mr. Brasfield: Your Honor, we object.
The Court: I sustain your objection.

By Mr. Slayton:

Q. Your understanding is it was 3.2 acres?
A. By the last survey.

Mr. Slayton: All right, sir, thank you.

The witness stands aside.

Mr. Hutcheson: We rest.

* * * * *

JAMES M. HAGOOD,
a witness for the petitioner, testifies as follows:

DIRECT EXAMINATION.

By Mr. Brasfield:

Q. Mr. Hagood, state to the Commission your name and address?

A. My name is James M. Hagood, Jr. I live
Tr. in Henrico County, just outside of Richmond, Vir-
Vol. I ginia.
page 76 }

Q. What is your occupation, Mr. Hagood?

A. I am a Senior Engineer for Virginia Electric
& Power Company.

Q. How long have you been in that position?

A. I have been Senior Engineer four years.

Q. What is your educational background?

A. —

Mr. Hutcheson: We admit he's qualified. He's a fully qualified engineer.

By Mr. Brasfield:

Q. Mr. Hagood, have you, in your capacity as Senior Engineer for the Power Company and other capacities, been connected with the Company's Gaston Dam Project?

James M. Hagood.

A. Yes, I have.

Q. What has been your duty with respect to this project?

A. Beginning about 1957 we started preparing for application for a license for this project with the Federal Power Commission. And for the two years prior to receiving that license, I worked almost continuously on various aspects of the project, such as, I prepared an operation and utilization study, and it was submitted before the Federal Power Commission to show how we would use this project in conjunction with the other hydroelectric projects we have of power by the Kerr facility system generating facilities on our system.

Tr. Vol. I page 77 } I did a study to determine the installed capacity that we should put in Gaston. The original application was about 87,000 kilowatts. Over the years we finally decided that the ultimate capacity of that project should be 200,000 kilowatts.

Q. Have you made studies of the effect of the Kerr Dam, the Roanoke River flow and do you know the amount of the release from Kerr Dam under various conditions

A. Yes, I do. I have studies. I know the releases.

Q. Now based on your studies, Mr. Hagood, can you tell the Commission what will be the height of the water at the mouth of Allen's Creek after this reservoir has been built under normal operating conditions and of the Gaston reservoir and under maximum power discharge of the Kerr Dam.

A. Under normal operating conditions of the Kerr Dam the elevation of the Gaston reservoir at the mouth of Allen's Creek will be between elevation 200 at normal power output and top 204. For most of the time the elevation will be something below, substantially below 204, because 204 is the elevation point at the reservoir with a maximum power discharge, maximum continuous power discharge at Kerr Dam of 40,000 cubic feet per second. If they release at 40,000 cubic feet per second of water continuously over a period of sustained discharge it would reach the 204. Virginia Electric & Power Company, of course, buys two-thirds of Kerr output and Carolina Power & Light buys the remaining third. So, we actually are operating two-thirds of Kerr Dam through the Federal Power System. When the peak low occurs during the day we increase the generation at Kerr to meet the system low. So that in the normal conditions Kerr Dam might during the course of a day reach 40,000 for an hour or so, but then it would come down as our low came down. This ele-

James M. Hagood.

vation of 204 is based on sustained discharge of 40,000 cubic feet per second.

Q. How many times since the construction of Kerr has a discharge of this volume been sustained sufficiently to raise the water at Allen's Creek to the level you have stated

A. Well, I was just talking about the conditions after the reservoir is established. This condition you are talking about is before the reservoir is established. Only once since Kerr Dam was constructed has the discharge been sustained at 40,000 cubic feet per second for a period longer than an hour or so in meeting the system low. That was under a test condition for which I contacted and co-ordinated with Stone & Webster, our corp of engineers to determine the elevation of the water down at the Gaston Dam. We upped the flow for the purpose of cofferdams around the construction area.

Q. Now, Mr. Hagood, let me get this first: When was Kerr Dam put into operation?

A. 1953.

Q. So in nine years it happened once under test conditions. Now under these maximum conditions if the dam—if the Virginia Electric & Power Company dam were built, this would raise the water level to 204 at the mouth of Allen's Creek. How high did it raise the water level at the time it actually took place under conditions of today without the Gaston Dam being constructed?

A. We had a gauge set up at the mouth of Allen's Creek which recorded elevation 201 under that condition.

Q. So the effect of the Gaston Dam in backing up water at Allen's Creek under the maximum power discharge from Kerr would raise the level there three feet?

A. That's correct.

Q. And that's only happened once in 9 years?

A. Only once since Kerr was constructed.

Q. Now how far from the mouth of Allen's Creek which you have just discussed are the properties which we are concerned with today?

A. Well, they vary. They are strung along the creek. The downstream boundary of the property of Eula Young is about 8.1 miles above the mouth of Allen's Creek.

Q. How about the other properties, do you have those?

A. Yes, the downstream boundary of Alice Farrar property is 7.1 miles above the mouth of the creek and the downstream

James M. Hagood.

boundary of John Thomas Williams property is 6.8 miles above the mouth of Allen's Creek.

Q. As far as these properties are away from the mouth of Allen's Creek, will the increase of the water elevation of three feet have any effect on the water in the creek upstream from these properties?

A. No.

Q. Now suppose you are having less than the maximum power discharge from the Kerr Dam. You have testified that the difference would be three feet. How would the comparison be—the comparison of the water level at the mouth of Allen's Creek be with the dam built as compared with the present conditions with the dam not built. Would it be three feet more, more or less, or can you tell?

A. Let me see if I get your question straight. You had three foot increased elevation—

A. No, excuse me. You didn't get it right. You have testified to a three foot increased elevation where the maximum power discharge comes from Kerr. Assuming an average discharge—you have testified the maximum only
Tr. occurred once,—assuming an average discharge,
Vol. I what would the difference of elevation at Allen's
page 81 } Creek be then, between present conditions and when
the dam is built?

A. It would have to be less than elevation 204, or less than the three feet. The difference in the elevation height between the present conditions and conditions after the dam is built would be less than three feet and, I would say, not more than two on the average and this—

Q. And what effect has this on the upstream properties concerned here?

A. It wouldn't have any effect at all.

Q. Mr. Hagood, since these sections with maximum power discharge from Kerr Dam won't be effected, why is Virginia Electric & Power Company acquiring this land?

A. Well, as in all of the property we are acquiring for the reservoir, we are seeking to acquire title in fee to the land that would be flooded with the discharge from Kerr Dam under the maximum flood conditions, which was the flood of 1940, the August, 1940 Flood.

Q. What would Kerr do in the event of a flood of that type according to your studies?

A. Well, the discharge from Kerr is not my responsibility. It's the responsibility of the Corp of Engineers. But we have, of course, in designing this project have worked very

James M. Hagood.

closely and had numerous conferences with the Corp of Engineers and the corp studies indicate that under the maximum flood conditions, as in the record flood of August, 1940, Kerr Dam would release at 80,000 or 90,000 cubic feet per second of water in order to control the flood to the maximum degree. The actual flow of that flood condition was about 260,000 cubic feet per second. So, Kerr would release that flow, 80 to 90,000, that amount being stored in the flood control pool.

Q. What effect would this flood condition have on the mouth of Allen's Creek?

A. It would raise the water elevation to elevation 213 to 214.

Q. Now what effect would it have on the properties we are concerned with?

A. I don't believe it would have any effect on the properties we are concerned with, because under this maximum flood condition which was produced by rain associated with a hurricane, the maximum discharge from Kerr Dam would not coincide with the peak flow down at Allen's Creek. In other words, the rainfall covers the entire watershed at Roanoke River, and after the rain had hit its peak and started subsiding it takes time for the peak flow to reach the area of Kerr Dam and Gaston, and the water would have already fallen in Allen's Creek and its peak would have passed so you wouldn't have the two things coinciding. Does that answer your question?

Tr. Q. That does, thank you. Is any portion of this creek going to be cleared?

Vol. I page 83 } A. Yes, the creek will be cleared back along contour 206, which means that it will not be cleared back to the property in question in this proceeding. It will be better than half way between the mouth of Allen's Creek and the downstream boundary of John Thomas Williams.

Q. What effect will this clearing have throughout Allen's Creek?

A. This clearing will eliminate the logs and debris that are present blocking the mouth of the creek. By removing all of these trees, logs and brush which now restrict the flow of the creek, the carrying capacity of the stream will be substantially increased.

Q. Mr. Hagood, there has been some testimony here based on the assumption that Virginia Electric and Power Company is going to maintain a water level in the creek adjacent to the property to be acquired—the creek bed to be acquired

James M. Hagood.

in this proceeding—Virginia Electric and Power Company will maintain a water level of 214 and that creek water rushing into this still elevated water will cause certain damaging effects to the remaining property of the landowners. Mr. Hagood, is it physically possible for Virginia Electric and Power Company to maintain the elevation of 214 adjacent to these properties except under the conditions you have described other than a brief period?

A. It is not possible to do so.

Tr.

Vol. I

page 84 } Mr. Brasfield: Your witness.

CROSS EXAMINATION.

By Mr. Hutcheson:

Q. Mr. Hagood, what is the present elevation at the mouth of Allen's Creek?

A. The present elevation—Well, sir, what flow condition of Kerr Dam do you mean—it varies.

Q. What would it be under the normal discharge if Kerr Dam discharged the whole day under normal conditions?

A. Kerr Dam doesn't ordinarily discharge at night or under whole day conditions. They run the little turbine all the time and two station power generators run.

Q. Under those conditions what would be the normal height of the water there at Allen's Creek?

A. About 190 to 195.

Q. I believe the dam is 190 to 200—the base at Kerr Dam is what?

A. The base of Kerr Dam is approximately elevation 200 from 190 to 200. The base at Kerr Dam is approximately at elevation 200.

Q. How far from the mouth of Allen's Creek will your normal waters be, up Allen's Creek in miles? In miles up Allen's Creek, how far in miles will it be up Allen's

Tr. Creek where your normal waters will be after the
Vol. I reservoir is established?

page 85 } A. I haven't actually made a measurement of
that, sir. I can give an approximation from this.
This is just an approximation—approximately 2 miles.

James M. Hagood.

Q. What land does the Government own down there that is effected? They own the island in the river, don't they?

A. I am not sure exactly what land the Government owns below Kerr Dam. I do know they own some.

Q. You do know they own the island?

A. I am not sure they own the island to tell you the truth.

Q. Did you do the negotiating with the Army engineers of the Federal Power Commission? Did you appear in those proceedings?

A. I have been in conference with the Army engineers in Norfolk on a number of occasions.

Q. You are familiar with the license you have?

A. Yes, sir.

Q. In that license the Federal Power Commission made no limitation on the discharge from Kerr Dam, did they not?

A. The license was not for Kerr Dam. It was for Gaston.

Q. But it specifically says there would be no limit to the discharge of Kerr Dam. They discharge as they please. The license says that, doesn't it?

A. I can't quote every article in the license. I think I know the article to which you are referring.
Tr. Vol. I though.

page 86 } Q. This is the license, is it not?

A. Yes, sir.

Q. Now will you turn to—you may be more familiar with it than I am—if you can find it before I can how about turning to it—On page 3 paragraph 1 it says that there will be no limitation on Kerr Dam discharge.

Now will you turn to Page 6 paragraph 5, I think it is. All right, sir, doesn't that say that due to your operation there the back waters may have some adverse effect on the Government land? It says it, doesn't it?

A. Yes, sir.

Q. Now if you turn to page 7 paragraph 22 and 23 it reserves to the United States the right of future determination for damage to its land caused by your operation, doesn't it?

A. That's right, sir.

Q. Why was that in there? Well, I'll explain it—isn't it because you didn't arrive at what the damage would be?

A. Well from the common sense standpoint, it's much easier to determine what land of the United States will be effected by the Gaston Project after the project is built than before.

Phillip S. Perdue.

Q. But you couldn't determine it to your satisfaction and the Army Engineers satisfaction at that time, could you?

Tr. Vol. I page 87 } A. That wasn't the consideration at all. This article is put in here, of course, to protect the land of the United States at the insistency of the Federal Power Commission. They didn't ask us prior to obtaining the license to make this determination. They said that there is probability that some land will be effected and this was put in here to protect the United States in the event some of them are.

Mr. Hutcheson: That's all.

Mr. Brasfield: We rest, Your Honor.

* * * * *

Tr. Vol. II page 2 }

* * * * *

PHILLIP S. PERDUE,
a witness for the petitioner, testifies as follows:

DIRECT EXAMINATION.

By Mr. Brasfield:

Q. Mr. Perdue, state to the commission your name, address and occupation?

A. Phillip S. Perdue—I am residing at 3721 Stratford Road, Chesterfield, just on the suburbs of Richmond. I am a professional appraiser and real estate broker and with business office at Richmond.

Q. How long have you been so engaged?

A. I have been President of the present company for approximately five years and prior to that I have been engaged in the real estate business or appraisal business

Tr. constantly since the end of World War II.

Vol. II Q. What, if you have any, is your specialty?

page 3 } A. My specialty, sir?

Q. Yes, sir.

A. Well, sir, I would say that I am recognized in the Richmond area as a professional appraiser and so employed—

Phillip S. Perdue.

Mr. Hutcheson: We'll admit the qualifications.

Q. Have you had any specific experience in reservoir property?

A. Yes, sir, I handled, within the last two years, the appraisal of the flowage easement to be acquired for the purpose of establishing the Chesterfield County Reservoir. Also, in that case, there was the fee simple title to be acquired.

Q. Have you had any particular experience in Mecklenburg County?

A. Well, sir, I have been engaged in the appraisal of a number of tracts up and down the river of course, for the purpose of the Virginia Electric and Power Company acquisition. And prior to that I have made on occasions appraisal of right many properties in Mecklenburg County for loan purposes.

Mr. Hutcheson: We ask you to strike out anything in connection with this project itself.

The Court: You couldn't count this particular project, but he has laid his foundation. That's all right.

Tr.

Vol. II

page 4 } By Mr. Brasfield:

Q. Have you been employed by Virginia Electric and Power Company to appraise Parcel No. M-96, W. R. Baskerville, Jr.?

A. Yes, sir, I was so employed.

Q. Did you make the appraisal?

A. Yes, sir, I did.

Q. Prior to making that appraisal, how did you prepare yourself to do so?

A. Well, sir, prior to the receipt of this particular assignment, it so happens that this—I believe the last property I have looked at in the whole project—

Mr. Hutcheson: If Your Honor pleases, you understand that he can't compare this or any similar with the other properties—

The Court: He understands that, but these commissioners have already heard testimony in cases—

Mr. Hutcheson: But you can't compare the sales with other property on this project and you can't give the experience the got on this particular project.

Phillip S. Perdue.

Mr. Brasfield: If he makes any comparisons you may have a valid objection at that time in connection with the land sales appraised for this project.

Tr. Mr. Hutcheson: My objection was that this particular project has nothing to do with this take.
Vol. II
page 5 } The Court: That's correct.

By Mr. Brasfield:

Q. Have you familiarized yourself with property values in Mecklenburg County through the County records office?

A. I think I have, sir. I have attended at least the catalog sales. And I, of course, have done that and in turn I have in most cases in individual property transferred free market in an attempt to analyze why the price shown on the record was paid for the given property.

Q. Now are you familiar with the petition filed by Virginia Electric and Power Company in this case?

A. Yes, I am.

Q. Are you familiar with the right to condemn in accordance with that petition?

A. I feel that I am, yes, sir.

Q. Are you familiar, as a professional appraiser, with the applicable rules governing the ascertainment of just compensation in condemnation cases?

A. I think I am, yes, sir.

Q. I hand you, sir, Petitioner's Exhibit A in this proceeding and ask you if you have been furnished with a copy of that?

A. Yes, I was furnished with this prior to any inspection of the property.

Tr. Q. What does it show?

Vol. II A. It shows briefly 19.4 acres of land lineated on
page 6 } the plat and described as the area sought to be acquired by Virginia Electric and Power Company.

Q. Now have you viewed this property?

A. I have, yes.

Q. How many times?

A. I have walked over the area to be taken on two occasions and I have been over the farm generally on one occasion.

Q. In connection with the whole farm, I hand you an exhibit, Petitioner's Exhibit B, and ask if you have been furnished with a copy of that and are familiar with it?

A. Yes, sir, I am familiar with it. It shows it per survey and also brought to my attention that the survey indicates a little bit more land there than the record indicates.

Phillip S. Perdue.

Q. Are these—After having seen on the property, do these fairly and accurately represent the land to be acquired by Virginia Electric and Power Company?

A. Yes, sir.

The Court: Does that already bear a number? It would be "C".

Q. I hand you a mounted aerial photograph entitled Parcel M-96, W. R. Baskerville, Jr., taken—clearly dated—1/13/58, which the Court has marked "Petitioner's Exhibit C". Are you familiar with this photograph?

Tr. A. Yes, sir, I am familiar with it. It shows an Vol. II outline of the perimeter of the entire property with page 7 } the area to be acquired all delineated in red. And I had a photograph similar to this for the purpose of helping me in my examination of the property.

Q. You took that similar photograph on the property with you?

A. I did, yes, sir.

Q. Does it fairly and accurately represent the land to be acquired by Virginia Electric and Power Company enclosed in red?

A. Yes, sir, with one exception. I believe that in the area generally to the north of the channel there, some timber has been cut out probably in the last 18 months and also down on the area to be acquired.

Q. Describe the general nature of the neighborhood in which this farm is located?

A. Well, sir, I think it's reasonable to classify the neighborhood generally as a rural neighborhood first, agricultural after that. I do feel that the farms and the land to the south of Route 615 and backing up the Roanoke River represent some of the best farms in the county. There are some little bit different types of soils, of course, on the riverside of 615. I think the area in which the subject farm is located enjoys the influence commensurately with that which these Tr. better properties in my judgment enjoy. And the Vol. II subject property is somewhat, in my opinion, en- page 8 } hanced or affected in the enhanced way by reason of its location along with the better more productive farms.

Q. Have you taken the farms' influence into account in making your appraisal?

A. Yes, I did.

Phillip S. Perdue.

Q. Describe the Baskerville farm itself?

A. The farm consists of 336.1 acres of land by recent survey. It has a long frontage on two roads, being Route 709 and also a short frontage on Route 615. My judgment of the land area involved would break the classified areas down approximately as follows: I had an estimate of about approximately 4 acres of land in what I call the homestead, approximately 175 acres of crop land or pasture land. That area is predominantly of Appling and Durham type soils, with some Cecil soils. It is, in my judgment, describable by saying that it's generally rolling in topography. I would estimate that approximately half of the hundred and seventy-five acre area is poor land and should very likely not be cropped—should be grazed as much as possible. The balance of the area, or about one-half of the hundred seventy-five acres is a better class of land in my opinion by reason of the fact that it has been protected against erosion in a better manner. Then there are approximately 157 acres of land classifiable as cut-over woods land, and this area is the area through

Tr. which the two creeks travel and from which the ac-
Vol. II quisition is to be made. There is an area of about
page 9 } 30 acres of land I would judge between the two
creeks, which I call rough or steep land. Roughly toward the center of this land is a high ridge. The woods in that area have been very severely cut—all of the re-growth there, the hardwood saplings—Of course, the older wood in there which has been cut out, but I believe the area is fairly well descriptive of the other wooded area, that is, in my judgment on taking the whole, in trying to average the condition, it's constituted largely of cut-over wood. In my judgment the farm generally would be adaptable to—as I understand it has slightly over 6 acres of tobacco allotment—it would be adaptable to tobacco and beef farm. I do feel that if it had proper buildings it could also be used for dairy.

Q. But you say beef would be the best livestock and growing of tobacco?

A. I say this because the types of soil are conducive to grain and hay crops and, therefore, as I stated, there is a good amount of land which would be best set in pasture more or less continuously. In the area there where the two creeks flow, we might describe it as first bottom land, or more commonly referred to creek bottom. In what I call the flats along

Phillip S. Perdue.

Tr. the creek banks, the soil there is alluvial type soil.
 Vol. II It's described in the various soil manuals, as most
 page 10 } of us would automatically say it's Piedmont Al-
 luvial. It varies in color. Generally speaking, it's
 very low in organic content. It's very avid in-
 herently. It's fairly productive soil. It's poorly drained by
 nature—that is, in drain I am talking about draining from the
 surface downward. Generally speaking, it suffered a poor
 runoff drainage. It's not a common thing to find this type
 soil cultivated anywhere in Virginia. The best use for it,
 after removing the wood regrowth, in my judgment would be
 possibly some clearing of it for use and adaptation in the
 farming shape of summer pasture of the meadow land.

Q. Mr. Perdue, would you point out on the aerial photo-
 graph the land that you have just described. You might bring
 it over here where the Commissioners can see.

A. The Wehadkee type soil in the creek I was speaking of is
 down Miles Creek in the smaller branch here. It is found out
 into the flats and, of course, in various widths on either side
 of the two creek channels.

I didn't finish, sir, the answer to your question in so far
 as the improvements are concerned.

Q. Please continue.

A. I didn't go into the main dwelling, nor all of the build-
 ings on this particular property for one very large reason.
 The technique of the reporting—of my report is first to esti-
 mate the value of the entire property before any

Tr. land is considered for acquisition. In as much as
 Vol. II in my judgment there are no damages attributable
 page 11 } to the buildings by reason of acquisition, I did not
 consider it necessary to very minutely arrive at the
 depreciated value of each and every building. But the build-
 ings do consist of a rather large main dwelling, a tenant
 dwelling, four tobacco barns, a poultry shed containing 3744
 square feet, another poultry shed containing 4680 square feet,
 a combination hay shed and stable, and several scattered
 buildings, consisting of a small machine shed and other
 smaller sheds. I considered in my before evaluation the value
 of the improvements at a figure of \$17,900.00.

Q. Have you—you have made an appraisal of this prop-
 erty. Do you have an opinion satisfactory to yourself as to
 the compensation to be paid for the acreage to be acquired in

Phillip S. Perdue.

fee, that is, the 19.4 acres along Miles Creek; this being the first question before the commissioners?

A. Yes, sir. I considered 19.4 acres to be acquired in fee at a value of \$60.00 per acre, which will reflect a total compensation of \$1,164.00.

Q. Does this figure include timber, if any?

A. It does, yes, sir.

Q. What sort of timber is there?

A. Well, sir, I would question strenuously that there was timber on the land to be acquired. There are some gums, occasionally white oak, and that type hardwood growth along the creek bank especially. I don't see any that are marketable.

Tr. growth along the creek bank especially. I don't
Vol. II see any that are marketable.

page 12 } Q. Now in arriving at this figure of \$60.00 an acre, or a total of \$1,164.00, how did you get these figures? On what did you base your appraisal?

A. Well, sir, of course, in arriving at my before value, as I stated a while ago, I considered what I call comparison sales for property of which I made an analysis. My study of the sale of cutover wooded land, also to include the kind of land that people buy and have reset in seedlings, showed me that the market paid from \$40.00 to \$60.00 an acre for this kind of land.

I have two sales which involve very recent transactions, in both cases land I considered to be right much superior to the 19.4 acres, which I consider wooded land. That in turn is the best—the future check use and I have related therefore the \$60.00 indicated by these two and other sales to the area in the acquisition.

Q. Would you cite those sales?

A. Yes, sir. R. F. Ford sold to Halifax Timber Company, by deed dated February 20, 1958, 174.2 acres for the consideration of \$10,500.00. This sale indicates a price of a little over \$60.00 per acre. In this particular case—tract there were 92.6 acres in Graham County, North Carolina and 81.6 acres in the tract in Mecklenburg County, Virginia.

Tr. Now this same property sold in 1957 along with
Vol. II river bottom ground, and immediately after that
page 13 } time the 174 acres I have just referred to was set in young pipe seedlings and then sold to Halifax Timber Company. I consider this land and the condition of it at the time of the sale superior to the land I am appraising here. This property is located down river, I would say, about three miles southeast of—immediately up river from the

Phillip S. Perdue.

Davis property which I think most everybody is familiar with.

By deed recorded November 3, 1960, in Deed Book 171, at page 508, Julius Reakes and wife sold to Ola B. Andrews 101.1 acres, situated on both sides of Route 58 at Allen's Creek for a consideration of \$6,000.00, reflecting a price paid of about \$60.00 an acre. This property lies partly of course, on the road to the—and to the north of 58. No buildings or improvements are included in the sale and the land at the time of the sale was partly cutover wood land and partly open land. It, of course, would be upland, considering the fact that part of it was cleared and part of it wooded. Irrespective of what the condition of the wooded land might be in, I would also consider it to be superior land to the 19.4 acres I am appraising.

Q. Now turn your attention to the other question before the commissioners of what, in your opinion, will be the damage to the remaining property of the landowner by reason of the acquisition of this 19.4 acres?

Tr. A. I have estimated no damage to the residue by Vol. II reason of this acquisition, because in my judgment, page 14 } the surrounding area and to include the building compliment can still be utilized as before. Therefore, the value before the acquisition—Going a little bit further, there is more than adequate compliment of wooded land on this property and in no chance do I feel that the loss of 19.4 acres would effect in any way the value of the residue parcel.

Q. Now to tie these two questions together, have you appraised the whole farm on the basis of what it is worth before the acquisition by the Company and what it will be worth after the acquisition?

A. Yes, sir, I have.

Q. Would you give to us and explain those figures please?

A. In my before evaluation I valued the 4 acres of farmstead at \$250.00 an acre. That figure, of course, is to cover the landscape as well as the septic systems and that sort of thing, for a total of a thousand dollars. I had 175 acres of crop land and pasture, \$125.00 an acre, a figure of \$21,875.00. I had 157.1 acres of wooded land valued at \$60.00, gives a figure of \$9,426.00, or a total before value of the land alone at \$32,301.00. I valued the main dwelling at \$6,000.00, the tenant dwelling at \$1,000.00 and the four tobacco barns at \$2,400.00, the smaller of the the poultry buildings at \$3,500.00 and the larger poultry shed at \$4,500.00 and I had

Phillip S. Perdue.

Tr. \$500.00 on the remainder of the miscellaneous
Vol. II buildings, for a total of \$17,900.00.

page 15 } In my judgment there is quite a strong question
in my mind as to if the building complement is the
proper complement and if the market would pay depreciated
value for the buildings. Of course, if the whole property was
sold at free market—to make a long calculation short, I have
estimated the building complement by reason on function and
obsolescence in the amount of \$6,500.00, which gives me a
figure of \$11,400.00 as the value of the building complement
to the land. So we have \$32,301.00 for land and \$11,400.00
for buildings and making a total of \$43,701.00, which I have
rounded to a before value of \$43,700.00.

Q. Now in arriving at this figure, Mr. Perdue, did you investigate any sales of similar property?

A. Yes, I did.

Q. Will you cite us those you think comparable?

A. By deed recorded in Book 174, at page 255, on May 13, 1961, J. L. Read and wife sold to L. B. Hardage 160 acres for a consideration of \$23,500.00. This price would indicate that a price paid per acre of approximately \$125.00 for land and buildings. There is a good stand of timber, growing timber and merchantable, on this property. It also has a small tobacco allotment and it included three rather good small tobacco barns and a tenant dwelling of some little value and another tenant dwelling of very little value.

Tr. The second tenant dwelling was relatively new but
Vol. II vandalized and I didn't consider the market would
page 16 } have paid much for that. The same property was
sold about a year earlier in May, 1960, by a Special
Commissioner's sale to J. L. Read, who in turn sold it to Mr.
Hardage.

By deed recorded in Deed Book 169, at page 145, on January 12, 1960, Florence M. Strother and others sold to C. R. Watkins 120 acres, consisting of approximately 60 acres of open land in a high state of cultivation; and it included approximately 3 acres of tobacco allotment; the balance of the land was generally cut-over wood land at the time of the sale, but there was one small area which was very well set with timber, I would say was getting ready to get out of the pulp growing stage, young merchantable saw timber stage. On this property now and included with the sale was a 6 room dwelling with modern conveniences, two small rather new tobacco barns, a small farm tenant dwelling. This sale—\$15,-

Phillip S. Perdue.

000.00 would indicate about \$125.00 per acre paid for the land including the buildings. This property is located about two and half or rather, I would say, about three to three and half miles south of Bugs Island Dam.

By deed dated February 27, 1962, recorded February 28, Roger G. Norwood and wife sold to Henry J. Seaman 178 acres situated on both sides of Route 58. Most of the farm lies to the north of Route 158. That transaction took place at the rate of \$30,500.00, which will show approximately \$170.00 per acre paid for the property including land and buildings. And in this case there were about 130 acres of open land. Included in the open land I believe was approximately six and a half acres of tobacco allotment. This same property was transferred on two other occasions. The same property was sold by V. C. Daniel to John W. Montague about a year earlier for \$24,000.00.

I believe that is all I want to cite, sir.

Q. Now in arriving at the figure from which you completed the before value of the Baskerville property, did you compare your studies of these sales you have cited and others, and compare the property physically by going on them and thereby reaching an evaluation?

A. I did, yes, sir.

Q. Have you determined what will be the fair market value after the Company has acquired this property and constructed its dam?

A. Well, sir, there are no damages by my estimate. Of course, the residue value is determined by the take value of the land to be acquired, estimate of the before value—in my mathematics it indicates \$42,636.00.

Mr. Brasfield: Your witness.

CROSS EXAMINATION.

By Mr. Hutcheson:

Q. Are you familiar with this plat?

Tr.

Vol. II Mr. Brasfield: Your Honor, we object to reference page 18 } once being made to this map. It has not been introduced. It's not a part of this case.

Phillip S. Perdue.

Mr. Hutcheson: That's the same one used before, isn't it?

Mr. Brasfield: Wait a minute. Perhaps at this particular time we ought to make a statement. We don't want it in evidence unless it's properly introduced.

The Court: You want to have the jury retire?

(Whereupon, the commissioners retired from the courtroom).

Mr. Brasfield: Your Honor, we are going to object to the introduction of this map. It has not been properly introduced. Mr. Perdue is in the real estate business. The map was prepared by Stone & Webster for Virginia Electric and Power Company for a specific purpose. Now he is not qualified to testify as to that map and foundation to get it in can't be laid through him.

I realize it was introduced in the other cases. But a lot of things happened then that we are going to try to prevent happening here today. If certain errors were committed the other day, that's just what we are going to try and see that they are not committed here today.

Tr. We are going to ask the Court to rule on all of Vol. II these maps and things that we objected to coming page 19 } in evidence Friday and Saturday. I think the past performance will certainly indicate that something was wrong, we don't know what. So, we are going to try to keep out everything that we don't think is proper. We are going to object to save our point, make timely objections to keep out things even though they were introduced at that time.

So we are going to object to the introduction of this map because Mr. Perdue is not qualified to testify to it.

Mr. Hutcheson: If Your Honor pleases, this is the map he went by. This is the map he based his negotiations on. That's the map if he did his work, that's the map they followed. Certainly it should properly be admitted in evidence.

The Court: What does the map propose to show?

Mr. Hutcheson: They come here with just this—a little piece of map—take it off, it shows nothing. We want to show the relationship of the whole project, which we certainly have

Phillip S. Perdue.

a right to show. That's the purpose of that map. That map is made by them. They made it themselves. We think this project is one of a large project and we have a right to show the connection of this in the whole project. They Tr. have just this little piece and they ask that it be Vol. II taken for that purpose, for the whole dam, and we page 20 } think the commissioners have a right to see what the whole dam is. They have already seen this map. Most of the commissioners have served over several of these cases. This shows the whole project and we certainly think it ought to go in evidence.

The Court: It's not in the papers. It's not made a part of the papers.

Mr. Hutcheson: It's marked as an exhibit in the other cases. It's referred to in the whole project. It's referred to in the proceedings, but the map is not in the proceedings. We think the plaintiff himself should put the map in the proceedings—but they have this isolated parcel out here by itself. We think the commissioners should see where it fits in the whole scheme. The map is accurate—You did use it, didn't you?

Witness: May I look at it, sir?

Mr. Hutcheson: You used it in the other cases.

Witness: No, sir, I have never used it before. I have, however, used a sectional map that shows—would be a sheet of reproduction paper as large as this and it would show several tracts of land, but I have never worked on any shown on a scale this small. I think it shows probably Tr. in much smaller detail about everything that would Vol. II be shown on the project that I worked, but I have page 21 } not worked with the map.

Mr. Hutcheson: I am mistaken. I won't get that in. We'll try by some other way. I think they ought to agree to it.

(Whereupon, the commissioners returned to the courtroom)

Mr. Hutcheson: I have no further questions of him.

The witness stands aside.

IRBY TURNBULL, JR.,
a witness for the petitioner, testifies as follows:

DIRECT EXAMINATION.

By Mr. Slayton:

Q. State your name, age and address?

A. Irby Turnbull, Jr., 50 years old, Clarksville, Virginia.

Q. What business are you in, Mr. Turnbull?

A. In the real estate business.

Q. How long have you been in real estate business?

A. Seven years.

Q. What business were you in before that?

A. I have been a merchant—

Mr. Hutcheson: We admit his qualifications.

Tr.

Vol. II Q. You were a merchant before that?

page 22 } A. I have been a merchant in Clarksville for the
last 18 years.

Q. How long have you lived in Mecklenburg County?

A. Most of my life—I would say 42 or 43 years.

Q. Are you familiar with land values in this county?

A. I feel like I am.

Q. What specialty do you have in real estate, if any?

A. Well, I suppose I have been dealing more in lake-front and residential property and farms, and other types, principally the sales *ans* some appraisal work.

Q. Were you employed by Virginia Electric and Power Company to make an appraisal of the property belonging to Mr. W. R. Baskerville, Jr.?

A. Yes, I was.

Q. What did you do to prepare yourself to make this appraisal, if anything?

A. Well, I have been down and viewed the property and walked over the area in the taking and checked it against comparable land that I now have listed for sale.

Q. Were you furnished with a plat to assist you in determining what property was to be taken?

A. Yes, I was.

Tr. Q. I hand you Exhibit A—W. R. Baskerville
Vol. II property, and ask you if you have seen that plat
page 23 } before?

A. Yes, I have.

Q. And now I hand you a plat marked "Exhibit B" and ask you if you have seen that?

Irby Turnbull, Jr.

A. Yes, I have seen them both.

Q. For what purpose were they given to you?

A. Well, in order that I could locate the property and see just which part of it was being purchased by Virginia Electric and Power Company.

Q. Describe to the commissioners please, sir, the nature and the kind of property that is being acquired?

A. The type of property being acquired from Mr. Baskerville is principally low grounds that are along Miles Creek and another small creek that comes in from the northwest. The property is—I would call it—of a swampy nature. At the present time it's grown up in honeysuckle and weeds and whatnot. I do think that it's subject to very frequent floods by freshets that are probably very short duration of time. I notice that there is debris on either side of the creek in this entire area that is being taken by Virginia Electric and Power Company.

Q. What do you consider its highest and best use to be?

A. For the purpose of grazing cattle.

Q. Grazing cattle—For what purpose is it being used now?

Tr. Vol. II A. I couldn't see any evidence of it being used page 24 } for anything at the present time.

Q. Is there any timber on the property?

A. It has been cut over recently. I wouldn't say there is any merchantable timber on that land.

Q. Turn then to the first question before the commissioners, that being one on compensation for property taken? Are you familiar with the petition filed by Virginia Electric and Power Company in this proceeding?

A. Yes, I am.

Q. Do you know what are to be acquired by the Power Company?

A. I understand that this land is to be within the area that's for the purpose of construction of this reservoir.

Q. Do you understand what estate or title will be acquired by the Power Company to the 19 acres?

A. Fee simple.

Q. And what rights, if any, will be given the landowner?

A. Well, the landowner, as I understand, will be able to use the land as he is doing now if he so desires.

Q. Now coming to the matter of compensation for the fee simple value of the 19.4 acres to be acquired by the Virginia Electric and Power Company, please tell the commis-

Irby Turnbull, Jr.

sioners what value you placed on that property?
Tr. A. I placed a value of \$75.00 an acre on this
Vol. II 19.4 acres?
page 25 } Q. What is the total of that?
A. \$1,455.00.

Q. How did you arrive at the figure of \$75.00 per acre?

A. Well, I feel that good grazing land, and I do think this would be good grazing land if it were cleared up, even though it's subject to these frequent floodings that I speak of, should be worth \$75.00 an acre for the purpose of grazing and that, as I see it, is about the only value that that land has.

Q. Now coming then to the next question before the commissioners and that would be the damage, if any, to the residue, what amount did you allow Mr. Baskerville for damage to the residue of this property?

A. I didn't allow him any for the simple reason that this land will be available to him to use as he is using it now. It will not be flooded any more than it's flooded now. There will be no difference in the useage of it. I don't feel that it's property that could be used for any kind of agricultural purposes other than that of grazing. I feel that he still has that same privilege and, at the same time,

Tr. he will not have to pay taxes on that 19.4 acres of
Vol. II land. He is being compensated for it. Therefore,
page 26 } I have no damage figured in.

Q. Mr. Turnbull, did you undertake to appraise the entire farm of Mr. Baskerville?

A. Yes, I did.

Q. Do you have a before evaluation on it?

A. I have a before evaluation of \$55,610.00.

Q. What is the value you have given it after the take?

A. After the taking—\$54,155.00.

Mr. Slayton: Your witness.

CROSS EXAMINATION.

By Mr. Hutcheson:

Q. You have done a lot of appraising for VEPCO, have you not?

A. Possibly eight or ten times.

Q. Did they give you a map showing the whole project?

A. I have seen it.

Irby Turnbull, Jr.

Q. You are familiar with the map showing the whole project?

A. I think I am.

Q. Will you look at this and see if this is the map you are familiar with?

Mr. Slayton: We are going to object to the introduction of this map for the same reason we gave a few minutes ago.

Tr.

Vol. II Q. Look at it, see if that's the map you are
page 27 } familiar with?

A. The only thing—I have seen a map similar to this, but if I have looked at the same map, I couldn't say positively.

Q. Could you say that this is a map made for VEPCO?

Mr. Slayton: Objection.

The Court: I expect I better sustain the objection under those circumstances.

Mr. Hutcheson: We except.

Q. Mr. Turnbull, you testified in the cases here on Friday and Saturday—Those lands were lands in the headwaters of the stream, were they not?

A. No—didn't you say Young?

Q. I am talking about the headwaters of the taking of the dam. The Young land was furthest up the stream of the take—

A. Oh, yes, the Young property—

Q. This is also a further up the stream take on Miles Creek. And you are familiar with Robbins Creek—

A. Is that the stream that comes up—is in front of the Baskerville place?

Q. I am talking about the dam, down here at the dam, the small creek that takes over just before you get to the dam.

Tr. The Government owns that land up around Robbins Creek, doesn't it?

Vol. II A. Are you talking about the one at Kerr Dam—
page 28 } creek? I know where it is.

Q. The Government owns the land up that creek, does it not?

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A. I really don't know. I suppose they do because it's near the dam and I know it's near the village.

Q. All these properties are in the headwaters of this dam—

A. Now I don't know about the Robbin's Creek, because like I say, I am not familiar with it.

Q. Its water is running under the bridge going to the dam, is it not?

A. I never got out and looked. I don't know that either.

Mr. Brasfield: We rest.

The witness stands aside.

S. G. KEEDWELL,
a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. You are S. G. Keedwell of Emporia, I believe?

A. Yes, sir.

Q. What is your occupation?

Tr. A. Consulting Forester, Land Surveyor and
Vol. II Real Estate Broker.

page 29 } Q. Are you also a Real Estate Broker?

A. Real Estate Broker.

Q. What experience have you had in values of land in Mecklenburg County and this section?

A. I made evaluations during the time when land was being taken by the U. S. Government for Kerr Dam.

Q. How many times you think you've testified in Circuit Court and Federal Court with regard to land values in this case?

A. I would say about a dozen times.

Q. How long have you been familiar with the land values in this county?

A. Since 1948—I started working here and making timber and land evaluations.

Q. Have you been in close touch with land values in this county since that time?

A. This is our area of operation and I get here into this area quite often.

Q. Does forest management take in rainfall and water flow and silt deposit?

A. Yes, sir.

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Mr. Hutcheson: I think that qualifies him, Your Honor.

Tr. Mr. Slayton: Your Honor, we don't know what
Vol. II he's qualified for. He is certainly not an expert
page 30 } generally and—

The Court: What did you want to show—the amount of rainfall in this territory?

Mr. Hutcheson: Flowage, rainfall, silting—He said he is qualified in forestry—

The Court: If he knows about it, I reckon it's all right.

Mr. Slayton: We don't think he has qualified in this field.

The Court: Go a little further.

By Mr. Hutcheson:

Q. How about rainfall and flowage of streams, silting and erosion and things of that kind?

A. Well, in the course I had in forestry all aspects of land and water are covered. We have courses in hydrology and soils and, in fact, my first public job was in soil conservation service.

Q. You say soil conservation service—How long did you work in there?

A. I was in that job during the summer of 1937.

Q. To be more specific, does that profession of forester—does it cover water flowage, erosion, silting, floodage—does it do that?

A. Yes, sir, those are in the courses that I mentioned.

Q. Have you made any study down in this particular area?

Tr. A. Well, sir, in forest management—in that
Vol. II area, which, of course, we have been doing in—
page 31 } involves the runoff of water and soils and silting
streams, and rainfall, of course, is one of the most
important things affecting the growth of trees.
Therefore it is important from our—

The Court: All right, go ahead.

Mr. Slayton: We except.

Q. Have you been engaged by W. R. Baskerville, Jr. to appraise his property, especially due to what is being taken by Virginia Electric and Power Company in this proceeding?

A. Yes, sir, I have.

Q. Please tell the commissioners what you found and then about the damages. Go into it and point out the fair damages due for the land and the value of the land taken and damages to the residue and the fair market value before and the

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fair market value after the taking—point out whatever you think—

Mr. Slayton: Your Honor, we would like to have questions put to this gentleman one at the time so we can object if the questions are improper. He is going into the area that we don't think is proper consideration—the element of damage.

The Court: He is the expert. Let him go ahead—

Mr. Slayton: I don't think that's the proper way to handle a witness. We want Mr. Keedwell questioned directly and to answer questions, not to make a general statement. We have a right to object to questions that are improper. We can't do this if he is cut free and asked to make a general statement with regard to the property owned by Mr. Baskerville. We don't want to keep anything from the commissioners that's proper, but we don't know what's proper until after we hear what he is going to say. If he is asked specific questions then we can control what's going on.

Mr. Hutcheson: Mr. Perdue made a speech on the stand.

Mr. Slayton: You could have made the same objection. You asked him about the value before and the value after and the fair damages and then you said something about rainfall. Now we don't know where this gentleman is going to start. We don't know what he's going to say.

By Mr. Hutcheson:

Q. You are familiar with the land taken?

A. Yes, sir.

Q. What is the value of the land taken, in your opinion?

A. Did you ask me the value?

The Court: The value of the 19.4 acres?

A. Value of the land taken?

The Court: Yes.

Tr.

Vol. II } A. Well, actually, I figured the value of the prop-
page 33 } erty—the entire property before the taking and
after the taking.

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By Mr. Hutcheson:

Q. Now, we have got to get the value of the land actually taken; that is one of the questions before the Commissioners, the actual value of the land taken?

A. The actual value of the land taken, I figured at \$100.00 an acre of the 19.4 acres—\$1,940.00.

Q. What is the damage to the residue?

A. In figuring the damages to the residue I will have to qualify to be able to do it. In looking at this farm I considered it a cattle farm and crop farm, mainly tobacco, and the upland fields are where the tobacco was grown and the low land is where you—would be used for pasture and corn crops, etc. for feeding cattle. And that when this land is taken and that other low ground that is left—adjoining land, that land adjoining the land being taken will be damaged because of the decrease in ability to drain, which will mean that there will be a loss in the low grounds as far as the use of it, about the entire value of the low grounds taken. The residue of that farm being just an upland farm and, therefore, when it would be offered for sale, or even at the evaluation now, which is the same thing as being offered for sale, that this farm is devaluated because it is limited in its use and that—

Tr.

Vol. II The Court: What did you say the value before page 34 } the taking was and the value after the taking?

A. The entire farm is \$61,000.00. The value after the taking is \$46,250.00, which makes the value of the loss—the difference before taking and after taking \$14,750.00.

By Mr. Hutcheson:

Q. Now subtracting the \$1,940.00—must you, or shouldn't you subtract that?

A. Subtracting \$1,940.00 from \$14,750.00 leaves a value of \$12,810.00. In that I have the value for fencing the area, because of the fact that if its going to be—if it is used, which the new owner will have the right of using the land to where they take it, they are going to have flooding and that will—

Mr. Slayton: I object.

A. —make it dangerous and necessary if you are going to use the land for any type of livestock, hogs or cattle or any—

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thing, to fence it, which means about a mile of fencing at about \$2,500.00.

Mr. Slayton: We object—

Q. Did you include that in your damages?

A. The whole damage is included in the \$14,750.00, not including the land—\$12,810.00 without the land.

Q. What about the watershed in this stream? Do you know what the watershed is?

Tr. Mr. Slayton: Your Honor, we object—

Vol. II The Court: He knows about it—

page 35 } Mr. Slayton: No, sir, we want to be heard on this before we go into it for any extent.

The Court: Did you calculate it yourself?

Witness: Your Honor, I calculated it myself from the use of the highway map and the soil conservation map and that's the way I arrived at my value. I didn't actually survey the entire watershed, but it was determined from these base maps.

The Court: All right, let's get it straight. They want to be heard on it.

(Whereupon, the commissioners retired from the courtroom)

Mr. Hutcheson: If Your Honor pleases, if they are objecting I would like to mention this: Take this map right here, now this map was made by the VEPCO engineers and calculated—I assume it was calculated, I'm pretty sure the Certified Land Surveyor that closed the survey calculated it, the latitude etc. In doing this he used tables. Now we don't have the tables used in working this up, so therefore they don't have a base for it and, therefore the map is wrong. What I am getting at, we have got to start somewhere. Here we have the accepted State Highway Map, which, I assume and I think that most reasonable people assume, is correct.

Tr. Mr. Slayton: I have corrected distances between points on highway maps.

Vol. II The Court: What did you use with the highway map? page 36 }

Witness: I used the highway map and the soil conservation map of Mecklenburg County.

The Court: Do you have the map with you?

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Witness: No, I don't, Your Honor, not the highway map.

Mr. Slayton: We believe that Mr. Keedwell is getting into the evidence that's inadmissible and we would like to know the purpose of this examination and if it is getting into the evidence we think is inadmissible—

Mr. Hutcheson: We want to show the watershed and approximate rainfall, show the flow of the stream.

Mr. Brasfield: Why doesn't Mr. Hutcheson ask the questions and let the Court hear what this gentleman has to say. Then we can state our objections.

By Mr. Hutcheson:

Q. You have made calculations of the watershed of this Miles Creek, have you not?

A. Yes, sir.

Q. Have you taken into consideration Dockery Creek to the east of U. S. Highway No. 1 that also flows in this stream?

What is the watershed?

Tr. A. Including Dockery?

Vol. II Q. Not including Dockery Creek.

page 37 } A. About 23,000 acres.

Q. Do you know the rainfall approximately in this County?

A. The average rainfall ranges around 50 to 60 inches a year.

Q. Well, an inch of rainfall on this 23,000 acres, under normal conditions how much would bring the flow on this property?

A. An inch of rain on 23,000 acres and assuming a ten per cent runoff, which, according to information available is conservative, would give approximately 80 million gallons of runoff for one inch of rain over the entire area, which would flow down Miles Creek.

Mr. Brasfield: Your Honor, we are going to object to this for several reasons: One, it's speculative conjecture and, with all respect to Mr. *Keedwell*, the figures are not correct as to the rainfall—average rainfall in this county. The amount of runoff is not in accordance with documentary information available. It's forcing Virginia Electric and Power Company to buy something it's not seeking to acquire in the petition, which is contrary to the law of this state. We are not required to pay for rights or for property outside of the prop-

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erty we seek to acquire in this petition. The amount
Tr. of rainfall doesn't come at one time or all of this
Vol. II rainfall doesn't come at one time, the amount
page 38 } varies.

The Court: He is talking about over the period
of a year.

Mr. Brasfield: I know he is talking about over a year,
sir.

The Court: That's just an average. Isn't that about cor-
rect.

Mr. Brasfield: No, sir, it's not correct by quite a bit.

Mr. Slayton: We submit in the first place he's not qualified
to testify, in the second place, it's irrelevant and immaterial
and in the third place it's information that shouldn't be pre-
sented to these commissioners so that they can consider it.

The Court: I don't know exactly what you are driving at.
You want to show how the—

Mr. Hutcheson: We just want the location of the land and
the physical—We withdraw the question.

The Court: What did you want to show?

Mr. Hutcheson: I understand we have the right to show
any physical facts in connection with this land. We can
show the watershed beyond it and anything—

The Court: You can show the watershed. How about the
rainfall. They say it's not accurate that you have
Tr. and, of course, that's an average thing over a
Vol. II period of a year.

page 39 } Mr. Hutcheson: We will show the watershed—
not the rainfall.

The Court: The commissioners know the rainfall.

Mr. Slayton: That is not the accurate watershed.

The Court: What objection is there to that? You show
how much water is coming down the creek down into this
place.

Mr. Slayton: Your Honor, all Virginia Electric and Power
Company is trying to acquire is 19.4 acres. Now we are not
acquiring this land outside of this area of the creek. Whether
or not this thing has got X number of gallons flowing down
the creek doesn't have any bearing on this land. It's not a
produced result of this acquisition. And if you can inject
this element, where do you stop. What difference does it
make how much it rains?

The Court: The witness wants to make a statement.

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Witness: I would like to ask the attorney—he says it's all conjecture—how he claims I am not an expert, how can he say if he's not an expert. I have studied since 1912.

Mr. Hutcheson: I withdraw the whole question.

(Whereupon, the commissioners returned to the courtroom).

Tr.

Vol. II By Mr. *Hutcheson*:

page 40 } Q. You are familiar with the watershed in a general way at Miles Creek, are you not?

A. Yes, sir.

Q. In your opinion, is the dam—I believe that the markers on this property show that the clearing line, which I understand is the water line, comes into this property—

A. There are orange markers which have been told to me are—is the clearing line of the certain contour. In this case it was 206 contour.

Q. It has been testified to by the plaintiff's witnesses that it frequently overflows. Is that your opinion of it? What is your opinion of the flood waters coming down —

Mr. Brasfield: We object. It ought to be based on a study or some expert calculation.

The Court: Can you lay more foundation for that?

Mr. Brasfield: We object even if it is laid. Your Honor, if we are going into it, let's not go into it now.

The Court: What kind of study did you make as to whether the water overflows.

Mr. Hutcheson: It's been admitted that it overflows.

By Mr. Hutcheson:

Q. What can you place as an intelligent opinion on this as to the natural cause of silt or washout, erosion or what—

Tr.

Vol. II Mr. Slayton: Your Honor, he is leading the page 41 } witness.

The Court: What is it he wants to show?

Mr. Hutcheson: I am asking him to testify as to the silt, fillup, etc., what it does. It overflows now, everybody agrees to that.

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The Court: You would have to show the overflowing is greater.

By Mr. Hutcheson:

Q. Assuming that the same overflow in the future, as it has been in the past—

A. I believe I can answer that this way. It is being cleared to the 206 contour which comes on to this property and they have—will have the right to flood to the 206 contour and if they do, then the water will be still at 206 feet which will mean the water which flows down the creek—

Mr. Brasfield: Objection.

The Court: Let him state it. I think it's all right.

Witness: —will start to go into the still pond at this point on the property, rather than at present 2 miles down below the property on the river.

The Court: You are assuming they are going to flood to the contour line at 206 feet?

Tr. A. I am assuming that they are buying the prop-
Vol. II erty to the 210 foot contour in fee simple and I
page 42 } understand they are going to clear to the 206 which
 means the flood elevation or close to it, and that it
will be high water there, or they wouldn't clear it. That's the
basis of my assumption—

Mr. Slayton: Wait just a minute. Your Honor, Mr. Hutcheson is not getting an answer to his question. There is a lot of assumption in general statement and this is the kind of thing we want out of this proceeding. We want to limit facts to evidence, to what we know is going to happen. And the assumption that the thing is going to be raised to the 206 is incorrect. We don't want to start on this basis. And we ask the Court to direct counsel for the defendant to state his question directly to the witness.

Mr. Hutcheson: If Your Honor pleases, this is an experienced witness. But, let me say Mr. Slayton is wrong. They are taking to the 210 approximately; that's where the take line is. I thrashed that out long ago. They have got a right to put it there and keep it there all the time. This expert assumes—they don't know, but assume they are coming to the clearing line where they say they are going to. He is an expert witness and we are assuming less than the right they

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are taking. So, he certainly has a right to answer.
Tr. The Court: Of course, they have the engineer to
Vol. II show exactly what will happen there. I think for
page 43 } him assuming it's going to be flooded up to the
206 if the commissioners understand that then you
can put your engineer on to explain what—

Mr. Slayton: Your Honor, we have put our case on. We are not required to come forth with any more. We can stand on the evidence we have presented.

We would like to have Mr. Hutcheson phrase the question directly to his witness.

Mr. Hutcheson: If Your Honor pleases, I think I have a right—I believe Mr. Brasfield said in his opening statement that the orange line is the clearing line. That's where the water will be.

Mr. Brasfield: He misunderstood. I said that is above where the water will be. That's the clearing line.

Mr. Hutcheson: Well, that's about where the water will be.

Mr. Brasfield: That's the clearing line. I didn't say that's where the water will be.

Mr. *Hutcheson*: I apologize if you didn't say that. I thought you did.

The Court: All right, go ahead.

Mr. Hutcheson: Let him answer this question.

By Mr. Hutcheson:

Tr. Q. Assuming that the Power Company decided
Vol. II to put the water where the clearing line is and keep
page 44 } it there, what effect would that have? Would that
effect the flood waters coming down—

Mr. Brasfield: Your Honor, I object.

The Court: I think it's all right.

Mr. Brasfield: It's not, it's erroneous assumption and it's a physical impossibility. And before the witness answers the question if the Court wants to go into it in more detail we have the law we want to present to the Court to the effect that we can't be presumed to take greater rights than we are asking for in the petition and that we are not required to pay for rights based on assumption which is drawn from a fact of physical impossibility. There are certain things that are a physical impossibility in the taking under our license.

The Court: Well, you are going to show that, because you have the engineer.

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Mr. Brasfield: Well, we are not required to put the engineer on. We can stand on the evidence presented. And if you allow speculation, conjecture and surmise to come in here that has no basis and then we present the fact it can't occur—the commissioners don't know what the truth is and that's why we don't want to get into this kind of thing. Now be-

Tr. before Mr. Keedwell assumes—proceeds to answer
the question we want to be heard if the Court is
Vol. II going to allow him to do so.
page 45 }

Mr. Hutcheson: Your Honor, they are taking up to a certain point. If they take it they're assuming they're going to use it. If they didn't think they were going to use it they wouldn't take it. They are not clearing any higher than they expect the water to stand. That's the experience of another dam.

The Court: They have the engineer here. He can tell you what it will be.

Mr. Hutcheson: The petition says what land they've got a right to take and if they clear to that point, we certainly have a right to assume—

Mr. Slayton: No, you don't, contrary to that. Your Honor, we would like to be heard on this.

The Court: I think it's all right for him to show what he asked the witness.

Mr. Brasfield: Can we be heard out of the presence of the commission? We have some cases on this point.

The Court: You can put your engineer on to show what it will do.

Mr. Brasfield: Even if we could keep the level at 206, which we can't and the engineer can show that, we can't be charged for any additional flooding caused by that, because

Tr. we are not acquiring the right to take any additional flooding. And we have a great number of
Vol. II cases that say just that. We would like to be heard
page 46 } on that.

The Court: If you want to get your case in the record, I think it's all right.

(Whereupon, the commissioners retired from the courtroom).

Mr. Brasfield: I have here a number of cases from a number of States, including Virginia, and the jest of what they say is summed up here in *Corpus Juris*. I will read this and it is Volume 29, Section 154, and it states: "The general rule

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is that damages for condemnation to be recoverable must be direct and certain or proximate, so that contingent, remote, imaginary, speculative or merely possible damages, such as the loss of speculative profits or recovery in advance for torts which may be committed will not be allowed." I would like to tell you this principle has been applied in other condemnation cases.

In the case of *Arnerich v. Elmaden Vineyard Corporation*, California case, 126 Pacific Sec. 121, the plaintiff seeking to condemn a right of way for a pipe line across the property up and adjacent landowner who also had great use for water and the only thing the plaintiff was seeking was to condemn this right to have the pipes into the ground. Just like the

Tr. only thing we are seeking is the right to flood the property shown on that plat. Well, the evidence
Vol. II for the defense showed substantial damage and
page 47 } cross examination it was shown that these dam-
 ages were based on a consideration of the fact that

by making use of this pipe line, pumping water, these appraisers thought there would be damage done in lessening the amount of water the adjacent landowner could get himself. It was in fact they were basing their damages on compensation for infringement of water rights. The Court struck the evidence of all of these witnesses for the defense and said: "There witnesses predicated their estimate as to the depreciation on their opinion that there was not enough water in that area to supply both plaintiff and defendant; that the pumping of water on plaintiff's land would lessen the water in the creek; that as a result of competition between plaintiff and defendant, the latter would lose some of its profits from the sale of water; and that the litigation of water rights has lessened the value of Defendant's lands. Those elements have no relevancy at all to this proceeding. The plaintiff was not seeking to condemn any water rights of defendant". And, Your Honor, we are not seeking the right to flood outside of this. "If the plaintiff has water rights superior to those of defendant, she has the legal right to use those rights and

Tr. to sell the water and to transport it to her customers. If the defendant's water right is prior
Vol. II and superior to that of plaintiff it may restrain
page 48 } plaintiff from improperly using the water, or com-
 pel her to condemn the water right. Defendant
may not convert this action to condemn a 10 foot strip 211 feet long across the corner of its property for the purpose of placing water pipes therein, into an action wherein it may

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secure damages for injury to its water rights caused, not by the pipe line where it crosses defendant's property, but by pumping on the plaintiff's property. If the defendant has recovered \$25,000.00 in this action based on the theory that the easement constituted a threat to its water rights, and then instituted an action against plaintiff for an injunction or for damages on the theory that defendant's water rights were superior to those of plaintiff, this judgment would enable a bar to that action. The fundamental fallacy in defendant's position is the assumption that this is an action affecting its water rights." We will affect just the land we are intending to condemn. "This issue may be determined in a proper proceeding, but not in this proceeding. In this proceeding plaintiff cannot be compelled to pay for something she not only does not desire to condemn, but would not receive by the judgment."

Tr.

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page 49 } Now a similar case, a case on different facts involved a transmission line and the evidence for the defendant was that there was substantial damage and this damage was based—brought out on cross examination—was based on a number of considerations: That the gates and fences might be left open; that the employees might trespass upon the land outside of the right of way and do damage to the remainder of the pasture. Well, here this is based on the possibility that our dam may cause the water to flow on other lands. In that case the Court said: "The inquiry goes only to the damage sustained by reason of the taking, and does not in any way contemplate a recovery in advance for any torts that may be subsequently committed. All subject matters are contingencies which, if they ever happen, are the fit and proper subject for damage suits. Either the law affords defendant's—— and whatever damages they may later suffer, or else plaintiff has covenanted in its petition to pay for the same opinion and infliction."

There is also the law of Virginia as set forth in *Appalachian Power Company v. Johnson*, 137 Virginia 12. That's a transmission line also. The award was based on the

Tr.

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page 50 } fear that the transmission line might injure someone and the Court held: "Future apprehended damages due to negligent construction or operation of the works of the condemner cannot, as such, be legally included in the award of the commissioners; for the law functions a remedy in the future for the recovery of all such damages and the right to such recovery is not at all affected by the condemnation proceedings."

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We submit that is the authority, that represents the law. And if this evidence is allowed to be introduced of flooding to adjacent lands, then it's improper, it's erroneous and it's also very unfair to Virginia Electric and Power Company.

The Court: You are going to show by your engineer what will actually happen.

Mr. Brasfield: These cases say that evidence can't be heard. And one of these cases the evidence was struck and excluded. It's information for the exercise of rights which are not acquired in this proceedings, the take of water rights or right to go on the land—

The Court: But you are taking in fee simple up to the 206—

Mr. Brasfield: And we are paying the fee simple.

The Court: Well, I think he is entitled to tell what will happen if you make full use of it. You are entitled to show that you are not going to make full use of it.

Tr. Vol. II page 51 } Mr. Brasfield: He can if he wishes to do so, but if he is talking about adjacent property—Now, of course, this whole thing is based on the fact that we think we can prove that nothing is going to happen and if we didn't we would have acquired more land in this proceeding.

The Court: Of course, I understand.

Mr. Brasfield: The thing is prejudicial for the commissioners to hear this sort of evidence. The commissioners should not be allowed to hear this because it's improper evidence and it's making us take a flowage easement which we don't want and don't get when the case is concluded.

Mr. Slayton: Your Honor, there is one other thing Mr. Brasfield failed to mention and that is: Under the section of Damage to Remaining Property the Court says here: "The general probability of the potential uses which may be made and damage to the remainder raises the question similar to those discussed heretofore. It should be noted that the discussion in this section is restricted to the potential use, which is the permissible potential use—beyond the scope of the original take of the taking charter or in the petition for condemnation may not be considered in awarding damages in condemnation proceedings." Now Virginia Electric and Power Company is acquiring here this 19

Tr. Vol. II page 52 } acres and Mr. Keedwell can testify that a lot of things are going to happen and we can put our engineer on to say these things are not going to

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happen and the commissioners are going to go out and they are going to make this enormous award, assuming that might happen and then if it does, this gentleman can come and sue Virginia Electric and Power Company again. He's got a cause of action. He should recover and he will recover. So, injection of that element into this proceeding is erroneous for that reason. We are being forced to pay for something we are not getting. We are being forced to take something we don't want. If the commissioners hear that evidence, they are going to make an award on that basis and the Court correctly says you can put him on, but that to no avail when they don't believe him. They would believe him. This is an area, Your Honor, that's beyond the scope of the taking and it forces us to pay for something we don't want. Because it makes us liable twice, it should be excluded.

Now, Mr. Keedwell doesn't believe that 19 acres is all that Virginia Electric and Power Company will flood. If he did he wouldn't be asked these questions. Obviously, if he is right, the Power Company is wrong. Then, Baskerville can sue each time the water encroaches on his property as a result of the construction of this dam. And the law is here. The Court in these other proceedings has excluded this kind of testimony and it should be excluded here.

Mr. Brasfield: I would like to point out that we are not limiting our objection to Virginia Electric and Power Company will back up water on the land shown here, but to any extent Virginia Electric and Power Company may cause by its take water to back up at all, whether adjacent to this property or not. Because to the extent it's caused by Virginia Electric and Power Company in the future that is the fit subject of another proceeding. If a rainfall left the water at the 206 or 204 or 200 and more of Mr. Baskerville's land was flooded than it would have been without the dam, if that's the case, we are liable. But that should be excluded because we are not acquiring the right to do that. That is what these cases say.

Mr. Hutcheson: They are perfectly correct. I agree with them to this: If all is settled in this case, if we receive what is due by the decision of the commissioners, that's all we are asking for.

In this case, we pay only one time. Any cause of action—The Blalock case is a perfect example. Blalock was in the

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Tr. headwaters. The landowner down from him did
Vol. II some ditching, I believe about a mile down below
page 54 } his property and the water drained into these low
grounds. As long as the landowner below you used
lawful use—don't do anything to hurt you. But
nature comes in and as the water slows down and as it flows
down by these other properties it gathers silt and deposits
it on the Blalock property. There is nothing Blalock can
do.

We are concerned that from time to time they will flood
this land as well as somewhere up the creek.

If Miles Creek flooded up—silted up they don't have to
ditch it. They have the right to have this dam at 200 feet
and if this is caused by nature there is nothing we can do to
make them clean it out. We have no suit.

The Court: We can't speculate on what will happen, as-
suming it fills up.

Mr. Hutcheson: Here we are not speculating. This witness
can say what is going to happen when fast water hits still
water. He can give velocity of water.

The Court: But the water is not going to stand up at the
206.

Mr. Hutcheson: In this case, they become lower land-
owners. If they have the dam at 200 feet that's all right. If
nature did that we don't get a chance. We would

Tr. be out of Court then. As long as they make lawful
Vol. II use of the land they get, they're within their rights.
page 55 } The Court: But if they flooded any of yours,
that's a separate cause of action.

Mr. Hutcheson: If the property that comes in there—As
long as they have the dam at 200 feet contour down here at
Gaston, then there's nothing further to do about it.

I may buy it and I have the right to ditch. If I had that
farm and Slayton came down and bought the property and
ran a ditch straight through and it caused this silting and
flooding, there's nothing I can do about it. As long as they
make lawful use of their land—

The Court: I think as it stands, you are entitled to maxi-
mum use they could make—what would happen, and they are
entitled to rebutting that, showing they are not going to do
that. I think they might show if you keep it up at the 206
whatever damage it would do. I don't know whether it would
flood more then or it wouldn't. If they could show that it
would, why I think that's damage to the residue.

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Mr. Brasfield: Isn't that a separate take?

The Court: If you put your witness on and he shows exactly what will happen—If their evidence is not correct—but the engineer hasn't testified yet as to what Tr. will happen.

Vol. II Mr. Brasfield: But we have put on our case and page 56 } we can stand on that under the proper rules of law.

The Court: But you have got your engineer. I think he has the right to show conditions under maximum use of the property.

Mr. Brasfield: Even though we are not acquiring the right to do anything to the property beyond the borders—

The Court: I think in this case I believe the evidence would be proper. Of course, you put your engineer on why that will establish the facts.

Mr. Brasfield: In the event we did cause additional flooding by maximum use that would be tort, wouldn't it? If this results, that is not a proper element to be considered now. It's not considered here. If you let this evidence in you are going beyond—

The Court: That is let in subject to your evidence to rebut it. You are going to show what's going to actually happen.

Mr. Brasfield: The point I am making, these cases excluded this evidence. Even though we feel we can prove to the satisfaction of the reasonable man that it will not happen, it's still unfair, when by law we are not required Tr. to do it.

Vol. II The Court: Suppose they raise the water to the page 57 } 206 level, what is your evidence to show?

Mr. Hutcheson: We will show it's going to silt up, naturally.

The Court: That it will silt?

Mr. Hutcheson: Yes, sir.

Mr. Slayton: We are going to object to that because Mr. Keedwell is not qualified to give that testimony, based on the previous testimony the Court heard that silting depends on water carried by a stream. And this gentleman has made no studies. It is his opinion that this would happen. But I point out to the Court that in The Law of Evidence an expert, and this gentleman is an expert, can not give testimony based on—that's not based on facts and not based on a study and not based on an experiment or common knowledge, but a supposition that he draws from a hypothetical question of

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this kind put to him. The question is not proper. He doesn't know the rainfall in the area; he doesn't know what the creek carries; he doesn't know the nature of the type of soil in the watershed; he doesn't know the amount of open land and the amount of wooded land, all of which goes into determining how much silt a creek carries. Now he is an expert in a field.

I imagine that some of what he said is correct,
Tr. but you have got to know these things before you
Vol. II can make a valid conclusion.

page 58 } Now the law is very clear if you want me to take
more time and read it to you. I took the time and
trouble to look it up for this reason—that these people can't
draw conclusions that are not based on facts, even if they are
experts. And so Mr. Keedwell doesn't have his own knowl-
edge—the information on which he can draw this conclusion
and for that reason this testimony should be kept out of
this trial and from these commissioners.

The Court: You have to put your engineer—except to
rebut you wouldn't have any reason to put the engineer on.

Mr. Slayton: Mr. Keedwell as an expert at common knowl-
edge is not enough. Here's the law: He can't testify that
the stream is going to silt; he has made no study; he doesn't
know what it carries; he doesn't know how often the thing
floods, if it ever flooded, he hasn't studied.

Mr. Hutcheson: His witness testified it floods very fre-
quently.

Mr. Slayton: We are objecting now to this testimony
coming in with regard to silting because this man has no
knowledge of what this stream is going to do if

Tr. he hasn't made a study of the facts, he can't draw
Vol. II the conclusion, and that is what he's asking to do.
page 59 } Section 131—Examination of Expert Witness.

The Court: Now you are not going to—If Mr.
Keedwell doesn't testify, you are not going to put your ex-
pert on to show what it will do?

Mr. Slayton: We may.

The Court: You won't have anything to rebut.

Mr. Slayton: We are not rebutting something that is not
there. If there is no evidence or testimony of that kind, then
we don't have anything to rebut in that regard.

The Court: You would be better off with the evidence
shown by your witness as to exactly what will happen. If
you are not, it will be all right to exclude this.

Mr. Slayton: We are not agreeing not to put our witness
on. We realize we can only put him on to rebut evidence pre-

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sented by the defense that's admitted. We realize that's all we can put him on for, but we are not saying here and now we are not going to put him on. We may use him to rebut the evidence which has come in and which might come in and that's the extent of which we anticipate using him. We may not use him, but then again, we may rebut some of the evidence that Mr. Orgain may put on or something of that sort, or something else that comes in. If it doesn't come in, we can't rebut it.

Tr. Vol. II page 60 } The Court: All right, I'll sustain your objection.

Mr. Hutcheson: What they are driving at is that we are going to put our engineer on, not to rebut, but to show there is no damage. They say no damage and their engineer is going to testify to all these facts to show no damage. They are trying to get us out of Court.

The Court: We'll have to see what they are going to show. All right, I'll sustain the objection. You might have to bring your witness back; that's the only trouble.

Mr. Hutcheson: Well, Your Honor, I would like for you to—if they are going to put the engineer on to prove all these things—

The Court: They can't except in rebuttal to something else.

Mr. Hutcheson: I don't know what they might do.

The Court: Let's sustain it right now.

(Whereupon, the commissioners returned to the courtroom).

By Mr. Hutcheson:

Q. Mr. Keedwell, you have been familiar with this project for sometime in this section, have you not?

A. Yes, sir.

Tr. Vol. II page 61 } Q. Have you been supplied with plats of the whole project by the Corp of Engineers, Stone & Webster? I will ask you are you familiar with this plat?

A. I have seen a large map of the whole project.

Q. Have you been supplied with a plat—

A. I have seen that one, yes, sir.

Q. Has Virginia Electric and Power Company or Stone & Webster given you a plat of this type?

A. They have one like it. I have seen it over at the office at Warrenton—

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Mr. Slayton: Objection.

Q. This is the plat that you—

Mr. Slayton: We object.

A. I will say that I had it in my possession temporarily and gave it back.

Q. Did you ever deal with the engineers at Roanoke River of the Power Company on that plat?

Mr. Slayton: Your Honor, we object—

A. We have discussed it at Warrenton.

Q. You discussed this plat with the engineers to this—

Mr. Slayton: Your Honor, we object to this—

A. I have seen the map. I know what it is.

The Court: I think we had better exclude the map.

Q. Are you familiar with the Young case and the other cases we tried last week?

Tr.

Vol. II Mr. Slayton: We object.

page 62 } The Court: That hasn't got anything to do with this case.

By Mr. Hutcheson:

Q. Are you familiar with the water at Robbins Creek, the little stream that goes across over just before you get to John Kerr Dam?

A. No, sir, I don't know that one.

Mr. Hutcheson: Witness with you.

Mr. Brasfield: Your Honor, prior to cross examination we move to strike the evidence of Mr. Keedwell as to the damages to the residue on the grounds it is based on consideration that is not proper and not admissable in evidence and—

The Court: Well, he stated what he based it on, so I will overrule you and let it go. I will overrule your motion and let it go to the jury for what it is worth. The commissioners

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went out and viewed the property. They are thoroughly capable.

Mr. Brasfield: Well, here's a man who has testified, a real estate expert presumably, and he has testified to a figure of \$12,810.00 damage and we believe that we have shown that was arrived at through improper consideration and the commissioners should not be allowed to take that figure into consideration like they shouldn't hear the evidence.

The Court: Let's let it go for what it's worth.

Mr. Brasfield: A conclusion such as this is inadmissible, just as much as the facts themselves. That's stated in The Law of Evidence of Virginia and West Virginia in Section 131. And we appreciate that the commissioners can take all these things in consideration, but something—such an important factor as all of the damage and compensation that he has testified to and it's based on consideration which you have excluded from the commissioners. We believe that it should be struck and the commissioners instructed to disregard it.

The Court: I'm going to overrule you at the present time.

Mr. Brasfield: We except, Your Honor.

No questions.

The witness stands aside.

J. R. ORGAIN, JR.,

a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. Mr. Orgain, please state your name and occupation?

A. J. R. Orgain, Jr.—I am a realtor, real estate broker, specialty—farm sales.

Q. Have you ever undertaken any flood control surveys, water flowage and rain with reflection to runoff?

A. Yes, I have made a study of it and done engineering work in designing of irrigation equipment for five or six years. In fact soil types and rainfall—the design of equipment to reproduce rainfall, all these factors come in consideration in irrigation of bright tobacco.

Q. Have you ever of your own knowledge made any study

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of the sedimentation of water from rainshed, watershed coming off in still water—in ponded water?

A. Yes, sir, I watched one watershed in the last ten years. I have seen two strands of barbed wire disappear—I have seen three strands of barbed wire disappear from sedimentation in the watershed of approximately 7,000 acres.

Q. Where was that watershed?

A. On the Big Buffalo Creek in Mecklenburg County.

Q. And what is the condition prevailing there?

A. It is—

Mr. Slayton: Your Honor, I want to object to this. It's testimony about water going in a watershed—no part of this proceeding.

The Court: I will overrule you. I think he is entitled. You haven't put your engineer on.

Mr. Brasfield: Are we concerned with the watershed on Buffalo Creek?

Tr. Vol. II The Court: No, this is comparable things, page 65 } that's the only thing.

Mr. Brasfield: We except to the ruling of the Court.

By Mr. Hutcheson:

Q. Can you compare that watershed with the Miles Creek watershed above the Baskerville property in question?

A. This particular watershed has approximately—

Mr. Slayton: Your Honor, I want to object again and I want to be heard in the absence of the commissioners. I think the law entitles us to go into this a little more with Mr. Orgain to determine his qualifications.

The Court: He has given his qualifications. He observed one watershed for ten years. We want to move on. I think we are all right there.

Mr. Slayton: We would like to be heard.

The Court: All right, I will overrule you at this time.

Mr. Slayton: We except.

By Mr. Hutcheson:

Q. How do the two watersheds compare?

A. The Miles Creek watershed is approximately 26,000 acres of which some 15,000 acres drains on over the Baskerville land. The Buffalo Creek watershed is approximately

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Tr. 7,000 acres in area and there would be approxi-
Vol. II mately twice the water flow over the Baskerville
page 66 } land as it would be in the Buffalo Creek watershed.
That is the Big Buffalo Creek aspect of it. Now
adjacent to this Miles Creek watershed is the
Allen's Creek watershed which is approximately four times
the size—

Mr. Slayton: We object to what's going in the Allen's Creek watershed.

The Court: How does Allen's Creek tie in?

Mr. Hutcheson: Because of the Government gauge. We compare the Government gauge by the watershed on Allen's Creek. It's the only one that has a government gauge on it.

The Court: Well, it might be entirely different in this creek and the other creek, depending on the elevation of the land. I reckon I will sustain that.

By Mr. Hutcheson:

Q. Compare the Miles Creek watershed and Big Buffalo watershed before the property in question—How about it—you are familiar with both creeks I imagine.

A. Yes, sir.

Q. How long have you been familiar with the creeks, Buffalo and Miles?

A. I have known these two, I would say, for 20 or 25 years and I have examined both of them in the past 10 years in coming back and forth to the Bugs Island Reservoir lining up fishing possibilities. That was my first interest.

Q. Well, the soil, the washability of the soil of the two watersheds, are they any way similar?

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page 67 } Mr. Slayton: I object. Mr. Orgain stated he was interested in the streams because of the fishing possibilities.

The Court: Well, he also observed—He knows the conditions and types of soil above it and all that kind. You save your point in the record.

A. The Miles Creek watershed and the Big Buffalo Creek watershed both are in one of the most intensively farmed sections of the County. And in intensive farming, the seasons of the year the land is plowed before the new crop is

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established. Normal rainfall of one to two inches will take off a terrific amount of top soil in the sheet erosion and approximately remove maybe a third of the top soil from some fields, which means the water that flows into these watersheds will be heavily loaded in with silt, which will be readily deposited on that water brought to the slow-down stage either on this property or the standstill point.

Q. Has that been done in the Buffalo watershed?

A. Yes, sir, the experience that I have seen up there, or what I have observed has been the fact that these strands of barbed wire had actually disappeared in the low ground lands. The farmer had attempted to fence off his stock and the silt and muck has developed to the extent that one and two strands of barbed wire have completely disappeared and in one place three strands of barbed wire has disappeared.

Q. Can you put that in feet or inches?

A. The depth is anywhere from—right at the barbed wire where the one strand has disappeared would be around 12 inches, then another 12 inches, and it would be 3 or 4 feet in these lowest spots which have already silted in.

Q. Do you know the course that has been?

A. That has been since 1952.

Q. That's been since John Kerr—Bugs Island Dam was impounded. Do you know the elevation of the Baskerville property—the land acquired or being acquired now?

A. Yes, sir, the elevation is around 210 to 212 from the exhibit that was introduced here in this suit. That shows the 210 and 212 elevation. The 210 being along the creek bank and out in the low ground land of W. R. Baskerville, Jr.

Q. Do you know what the orange line means—what the Power Company says that the orange line means?

A. I understand it's the clearing line.

Q. Is that on this property?

A. Yes, sir, I have seen it on there. Now I have also seen the yellow lines and I have seen chopped lines that extend back considerably from the creek.

Q. While you are looking on that map—that gives the present road as the boundary line. Do you know whether that is the boundary line of the property or not?

A. It's my understanding the boundary line runs to the west of the road and several acres above Church Branch—

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Mr. Slayton: Your Honor, I object. We are concerned only with what is in the fee take.

Mr. Hutcheson: We include a boundary line.

The Court: You mean the outside boundary line is not correct.

Mr. Hutcheson: The old road is the line, I just want to show that.

The Court: I think that would be all right. You take the whole value of the place and if the boundary line is wrong, why, of course, it ought to be corrected.

Mr. Slayton: What Mr. Orgain understands—I am objecting to the *heresay* testimony of Mr. Orgain and not to what he is saying about the line.

Mr. Hutcheson: He made the investigation. Mr. Baskerville pointed out the lines to him.

By Mr. Hutcheson:

Q. Down there at Church Branch how much would you say is outside of the boundary on the plat that, in your opinion, may be affected by the take?

Mr. Slayton: Objection. It ought to be by somebody who knows what it is.

The Court: Well—

Tr. Mr. Hutcheson: We didn't have it surveyed.

Vol. II Anybody could do that.

page 70 } Mr. Slayton: Just a minute—

The Court: I'll sustain your objection to that.

By Mr. Hutcheson:

Q. In your profession—your occupation, are you qualified to make calculation of acreage on land?

A. Yes, sir, by known acreages and going in and looking at them, also, comparing them to soil maps, farm plans and aerial photos, is generally the way I set my estimate.

Q. Is that one of the requirements of a real estate broker, to approximate—know the acreage of land?

A. That's right.

Q. Now with that qualification could you tell how much—Well, first this: Did you make a calculation of all the land that you thought within the taking outside of the take of this property would be affected?

Mr. Brasfield: Objection.

The Court: We got it definite I suppose.

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By Mr. Hutcheson:

Q. Mr. Orgain, suppose we say that the Power Company is taking to that line they show as the take line on that map, is there any land adjacent to that that would need ditching and couldn't be ditched?

A. Yes, sir, it's approximately 80 acres affected on the drainage standpoint, that is, if they utilize up to the line they show on that map or survey.
Tr. Vol. II page 71 }

Q. If they utilize all the land on the map?

A. Yes, sir, it will affect the drainage on approximately 80 acres.

Q. Suppose you drop back to the 206 contour line, the clearing line, would it then affect any land outside of the take—the drainage?

A. Yes, sir, when water is on the 206 it's going to affect the drainage of the lower point, that which they have designated here as the swamp. To get this lane in its highest and best use it requires ditching maintained and the water to be able to flow away from these lands so that it doesn't keep the lower lands in a muddy and mucky condition.

Q. Well, now how many acres did you say is not included in the 19.4 acres would be affected on drainage?

A. My estimate it's going to be around 80 acres.

Q. Is that including the 19.4 acres?

A. Yes, sir, it would be 80 acres.

Q. In making calculations, did you go outside that map you have before you?

A. Yes, sir, I walked over it and followed these chopped lines and the area up Church Branch—it's all an area where they proposed to pond, which is shown along the line in the right center section.
Tr. Vol. II

Q. In that did you go beyond the bounds of that map on Church Branch?
page 72 }

A. Yes, sir, approximately three acres would be affected to the west of the road.

Mr. Brasfield: Your Honor, I object to that. If the Power Company does any damage or takes any land outside of the area in that plat we have got to pay for it in another proceeding. We are getting to the area that we have been in before. Mr. Orgain can have his opinion as to what land the Power Company may affect outside of the 19 acres, but that is the subject of another proceeding. It's another tort and the Power Company is liable for it in another action. It is not proper consideration in this proceeding.

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The Court: Damage to the residue would be a proper consideration. Of course, another suit would be brought for tort and trespass and things of that kind. I think I'll overrule you.

Mr. Brasfield: We object to the ruling of the Court.

The Court: All right, you stayed your point.

Mr. Brasfield: We except.

By Mr. Hutcheson:

Q. Mr. Orgain, of course, you were employed by Mr. Baskerville to make the appraisal of the property in showing in your opinion the value of the land taken Vol. II and the damage to the residue. Could you give those page 73 } figures? Have you gone over the property? Can you give the commissioners the value of the land taken, the 19.4 acres, I believe it is?

A. Well, taking the value of the whole farm before and after, my appraisal on the whole farm as presently constituted is \$65,000.00. The farm value remaining after these lands are acquired by Virginia Electric and Power Company is \$47,000.00.

Q. That leaves damage of what?

A. \$18,000.00.

Q. Did you try to get it in another way? Did you try to get the value in any other way, by break-down or otherwise?

A. Yes, sir, breaking it down on a basis of 19.4 acres, I valued the land at \$100.00 an acre, a total of \$2,000.00; the creek bed itself for irrigation purposes at \$5,000.00. And the damages to the residue by reason of a dangerous condition from silt and muck—\$5,000.00; fencing that would be required to keep animals out of the creek bottom—\$3500.00, approximately 7200 feet; and enhanced value of the creek to the farm of \$5,000.00, the total of \$20,500.00 by that approach.

Mr. Brasfield: Your Honor, we object to and request that his evidence as to damage for the deposit of silt and muck on the residue be struck, because if it's caused by rainfall alone, then Virginia Electric and Power Company is not required to pay it. If it's caused by the Power Company, it will be required to pay it when it's so deposited. It will be a trespass at that time.

The Court: Not unless it's on land other than what you are taking. If you deposit silt in your creek bed—

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Mr. Brasfield: If that \$5,000.00 refers to deposit on the land we are taking, I withdraw my objection. If it refers to deposit on the land adjacent to the land we are taking, I would like the Court to rule on that objection.

The Court: What does it mean?

Witness: That would be the silt and muck deposited on the approximately 20 acres. I think it would be a condition that's dangerous that will require the whole bottom land to be fenced off and you are going to have a drainage effect there on that in addition.

The Court: I think it's all right.

Mr. Brasfield: Well, if it's limited to that, I withdraw my objection.

By Mr. Hutcheson:

Q. Do you have any other phase on damage or enhancement of what this taking will do to the farm?

Tr. A. Well, this land to be in its highest and best
Vol. II use—which is of mixed alluvial soils—it would re-
page 75 } quire ditching and its highest and best use would
be for pasture land.

Q. Well, if this soil is not on the land taken, as testified to by Mr. Perdue, would that change your idea as to the value of the land taken?

A. Yes, it would increase my valuation from \$100.00 an acre to \$200.00 an acre. But the best information I have is that it's alleuvial mixed soils and that's the basis upon which my estimate is made.

Q. But if you did make a mistake—

A. I would increase the value—the total of the land valuation, I would increase it \$2,000.00.

Q. Make it \$4,000.00?

A. That's right.

Mr. Hutcheson: Witness with you.

CROSS EXAMINATION.

By Mr. Slayton:

Q. Mr. Orgain, you are an expert on rainfall, runoff, silting, you have told the commissioners. Where did you study hydrology?

A. I testified I had seen this condition develop.

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Q. Do you have any information about the study of hydrology?

Tr. A. None but in a general nature—understanding
Vol. II in geological courses that we have had in preparing
page 76 } for B. S. Degrees and so on.

Q. How long ago was that?

A. 1939.

Q. Have you had any courses in forestry?

A. No courses in forestry, but in the design of irrigation equipment I attended three courses at V. P. I. that dealt with this subject.

Q. What do you know about the rainfall in Mecklenburg County?

A. The rainfall averages about 42 inches a year round—that's the total year basis in inches. It does go as high as 60 inches.

Q. How often does that occur?

A. I think the most recent would have been the flood of 1940, but the stream condition—

Q. Do you know what time of the year these various rainfalls come?

A. They are generally in the Spring and Summer and your late winter and in the agricultural standpoint it seems to be the very desirable characteristic your fall months are often fairly light in rainfall.

Q. Are you familiar with the soil survey conducted in Mecklenburg County by the Department of Agriculture?

A. That's right.

Tr. Q. You are familiar with that?

Vol. II A. That's right.

page 77 } Q. Do you have a copy of it?

A. Not with me. I have a copy in my records down in the car.

Q. Did you study this rainfall chart?

A. Not the chart—I generally covered that information that was in there that had to do with soil and I was already familiar with the rainfall.

Q. The amount of runoff depends on when the rain comes, doesn't it?

A. Well, approximately four factors determine the amount of runoff. And in my estimates I have used the most conservative figures that I could possibly bring into focus. I have used the minimum watershed and I have also used the minimum figure as defined by records from the gauging station.

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Q. What is the percentage of runoff?

A. I would say that would depend on the relief of the land it covered, your soil types and the actual available storage or the condition in which the soils are in at the time of the rainfall.

Q. Do you have information with regard to all of these factors of Miles Creek?

A. All of these factors will vary from time to time during the year.

Tr. Q. How can you give the commissioners your
Vol. II opinion with regard to silting of Miles Creek if you
page 78 } don't know the answer to all these questions I im-
posed?

A. When two billion gallons of water runs off the watershed. I would say approximately half a billion gallons of water will run in the low grounds of W. R. Baskerville, Jr.

Q. That's the course of one year?

A. That would be in the course of one good old fashioned rain of two or three days. It might happen several times a year.

Q. You have studied the pamphlet. You said you are familiar with that. Do you deny that on page 5 there is a chart of the average rainfall and precipitation in this County?

A. No, I won't deny that, but here is your average for a year, 42.25 inches average precipitation, which I mentioned earlier in this testimony.

Q. You have been talking about rainfall. How much of that was snow?

A. Well, precipitation is water, some part of it could be, but it's water flow that I am referring to in my testimony occurring between January 6 and January 9th.

Q. Not in this creek—let's stay with Miles Creek.

A. That's right, but I am using a fourth of the gauging record.

Tr. Q. If your approximation of a fourth of the
Vol. II water that falls runs off there, and you are correct,
page 79 } is that right?

A. Well, I am using basically in my whole testimony the one inch, approximately one inch rainfall. Now if you get four inches imposed it would come on up to these figures. I am trying to be conservative all the way through with it.

Q. You are?

A. Yes, sir.

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Q. How much soil would you say one cubic foot of water carries?

A. It would be probably two or three grams. It would depend on—

Q. Do you know that, or are you just guessing?

A. I am estimating from this water that set up here the other day.

Q. Did you calculate the watershed? Did you measure it?

A. Now the quantitative chemical courses we had—that is part of the course, to estimate watershed—the double check estimation.

Q. What test did you run in quantitative chemical courses?

A. It would just be typical in water analysis—

Q. Which one of the tests, if any, did you run on this particular water that you had?

A. I didn't run any on it. I just looked at it and judged and compared it to the type of tests that I ran in these courses in order to get my estimate on page 80 } the amount that was there.

Q. So you don't really know what amount of silt was in there?

A. Nothing except from the estimate.

Mr. Slayton: Your Honor, I move that the Court strike the evidence of Mr. Orgain with regard to silting and all of this testimony along that line. He has just testified everything he has done is estimate.

The Court: Of course, the jury will consider that.

Mr. Slayton: He is testifying here as an expert and everything he has done is based on guess and speculation.

The Court: All right, I will overrule you.

By Mr. Slayton:

Q. You say you didn't bother to get this chart and study. You didn't bother to study this chart on precipitation?

A. Studied it generally and used that figure of 42 inches in the annual rainfall and precipitation for the County.

Q. And you didn't bother to go into detail to find at what time of the year this precipitation fell to make up your—

A. I went down there and read the thing. First, basically, your dry seasons are generally in fall in this particular area, which is common in all South-side Virginia counties.

Q. Well, for the months of June, July and Au-

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gust 19.7 inches of precipitation and in the winter, December, January and February there were 24 inches.

A. That's December and January?

Q. That's right. Describe to the commissioners this land that you went on that belongs to Mr. Baskerville?

A. Well, I first went up around his home; and then later on went down across the bridge on Church Branch and we went to the west of the bridge and he pointed out the lines—the chopped lines to the west of the bridge. Then we walked on over the wooded area or cut-over timber land area toward Miles Creek and then we came back down and walked down the Church Branch section, the creek bed—the branch bed being three or four feet at that time below the branch and then we walked down across the bridge pretty much at the mouth of Church Branch and Miles Creek; and then we walked up the creek to the line on the north side of the creek and could occasionally see the orange indications that that was to be cleared.

Q. Now describe to the commissioners, Mr. Orgain, the 19.4 acres in this take, please?

Tr. A. So, then we came on—Well, the point up
Vol. II there at the branch was approximately, I would
page 82 } say, six feet deep on Miles Creek was about six
feet deep at the upper point. Then we went back
down the creek across Church Branch and walked around
the hillside to look at these chopped lines.

Q. Mr. Orgain, do you know who put the chopped lines there?

A. No, I don't.

Q. Do you know how long they've been there?

A. No, I don't.

Q. Do you know what they indicate?

A. They would, in this instance, be the fee taking.

Q. What was there to indicate the limit of the fee taking as told to you by VEPCO or one of its representatives?

A. Well, the yellow stakes inserted in there occasionally, some of them high, some down low.

Q. Did anybody representing Virginia Electric and Power Company tell you the chopped line represents the fee taking?

A. No, but I have a general knowledge of the taking from looking at your map. From it, I would say it's pretty much the outline you show here, where I indicated.

Q. You don't know who made the chopped lines there or what they represent then?

A. All of the property I have examined—

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Q. So they don't have any bearing at all in this proceeding, do they?

Tr. Vol. II A. From my viewpoint they have been common
page 83 } to all of maps that have been showed me—the plats
of the proposed land that's to be taken.

Q. All right, now tell me what kind of soil is involved in this 19.4 acres?

A. It's mixed alluvial, Wehadkee—

Q. Didn't you testify on direct examination that it was mixed alluvial and if there was Wehadkee you were going to raise your estimate \$100.00 per acre?

A. Well, I found Wehadkee on the general soil map and checked it out with the soil conservation office and Wehadkee and the mixed alluvial were closely associated.

Q. What do you mean by that?

A. Well, the mixed alluvial is what they describe as undifferentiated in the sense it can't be positively defined and Wehadkee would be one of the particular type that would not be closely associated with the other soils that—

Q. Have you made a study of this map you are talking about?

A. Yes, I studied the individual soil map more in detail.

Q. Have you ever seen this map before? Do you have a copy of it?

A. Yes, I have a copy of it.

Tr. Vol. II Q. What does that indicate as to soil on Mr.
page 84 } Baskerville's property?

A. That shows down next to Miles Creek your Wehadkee and shows mixed alluvial.

Q. Now getting back to—

Mr. Hutcheson: We would like to mark that as an exhibit and introduce it in evidence. You have used it.

Mr. Slayton: All right, just suits me fine.

Mr. Hutcheson: It's Slayton's exhibit, he testified to it.

Mr. Slayton: It would be my exhibit "C".

By Mr. Slayton:

Q. You stated if it was Wehadkee soil it's going to be worth twice as much per acre, is that right?

A. Yes, because I think you can establish a better pasture on it than you could from mixed alluvial. Mixed alluvial contains a lot of light soils and wouldn't have the good water holding qualities of Wehadkee.

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Q. Which of the two soils of consideration—which is supposed to be the best?

A. Well, from my viewpoint, from the past, the Wehadkee. If you haven't got to Wehadkee, you have to use what you have, which would be your mixed alluvial.

Q. In the chart on page 17 of this manual, will you agree that these are the principal characteristics of the soil series of Mecklenburg County, Virginia:
 Tr. Vol. II Wehadkee—Topographic Position—low first bot-
 page 85 } toms subject to periodic overflow, Dominant Relief—level or nearly level, Drainage—poor, Parent Material—young alluvium, Color—light yellowish brown or brown mottled with light gray, gray or very pale brown—

A. What page are you on?

Q. The chart on 17.

A. Yeah, I would say that it is generally. I wasn't following your reading, but sounds like it was about right.

Q. Okay, turn over to page 56 then, please?

A. All right.

Q. Now the next to the last—that paragraph which begins: "Wehadkee soils"—would you say that this is a description of this kind of soil and that it says what its best use would be?

A. I would say that paragraph deals with fertility being high and highest and best use is pasture. I would say that's the cleared area, but you can get a lot of good grazing in the winter on wooded pasture land which as right now this particular farm bottom—creek bottom would be excellent for cows at the present time. What this is going to be like in the future, I don't anticipate he will be able to use it.

Q. Begin, if you will, at the paragraph second from the bottom and read.

Tr. A. Well, you have got several sections in here
 Vol. II on Wehadkee.

page 86 } Q. On page 56.

A. This: "Wehadkee silty clay loam, fertility—high, use the cleared area as pasture—

Q. Mr. Orgain, that is not the soil we are talking about from that soil map.

A. Where is your paragraph you speak of?

Q. It's on page 56, right down in dark bold print, "Wehadkee Soils". Do you see that?

A. Yes. "These soils differ in texture and consistence but occur in small intricately associated areas that it is not possible to show them separately on a map of the scale used—

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Q. Mr. Orgain, you are not listening to me, sir. I asked you to begin right down next to the bottom which begins: "The content of organic matter is relatively low"—and then continue from there.

A. "The content of organic matter is relatively low, and most of the soils are strongly acid, though some may be less acid. The soils are slowly to very slowly permeable; water-holding capacity is good; and fertility is generally high."

Q. Go on please.

A. You want me to read the rest of that?

Tr.

Q. Yes.

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A. "Like Wehadkee silty clay loam, these page 87 } Wehadkee soils have a narrow range of use suitability because of poor drainage. Trees growing on the land are chiefly willow, sycamore, beech, alder, ironwood, and sweetgum. Other vegetation includes water-loving plants, as water lilies, cattails, and reeds. These are fourth-class soils, and in their poorly drained condition, summer grazing is their best use. Where practical, artificial drainage would be a great help toward their improvement for crop use, though workability would be poor."

Q. Didn't you say a minute ago that these would be fine winter pastures?

A. Yes, sir.

Q. And doesn't that manual say it's good for summer pasture?

A. Well, if it was mine I would graze it when you can get the advantage of the honeysuckle and vegetation that will maintain a cow.

Q. So you are disregarding the study of the Department of Agriculture and the information being put out by the County Agent's Office?

A. No, I am not.

Q. And say that pasture is winter instead of summer?

A. I would use the upland in the summer and use this in the winter.

Tr.

Q. And you say if this is Wehadkee instead of Vol. II } alluvial that you think this is going to make it page 88 } better?

A. Yes, sir.

Q. And you didn't bother to get this map and study it to find out what it was before you drew your conclusion?

A. Well, I was conservative, Mr. Slayton. I think there was some Wehadkee and some mixed alluvial and mixed alluvial is the most frequent soil—I did the best I could to

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place the appraisal on the lowest type soil, which is the alluvial.

Q. What management group does it fall in? Do you know?

A. Well, it's in group 11, isn't it?

Q. It's in the fourth class type of soil—

A. That's right, but what he has, he has to make the best use he can possibly get.

Q. What do you value fourth class soils at?

A. \$100.00 to \$200.00 an acre.

Q. Do you know the principles of making an appraisal?

A. Before and after the take.

Q. Do you know the commissioners award compensation for the 19.4 acres?

A. They also award damages to the residue.

Q. That's true, if there are any. Is that right?

A. That's right.

Q. Are there always damages to the residue when there is a take?

Tr. Vol. II A. In this instance there are. Sometimes there page 89 } are none.

Q. So, in your opinion, there are not always damages to the residue when there is a take?

A. If in the take it enhanced the value of it, no.

Q. Suppose you don't enhance the value of it, are there then damages to the residue?

A. You have damages in this case, when you take the man's creek away.

Q. I want to know are there always damages to the residue when there is no peculiar benefit conferred?

A. Well, it's a fine point there if you want to deal with it, but I would say that generally when you take land away from a farm, you are going to depreciate it in value; you are going to make it harder to sell.

Mr. Slayton: Your Honor, I move that this witness' testimony be struck because he doesn't know the principles of appraisal. The law is very clear in this State that there may be or may not be damages to the residue, regardless of peculiar benefits.

The Court: He says it is in this particular instance.

Mr. Slayton: Well, if his concept is that there are always damages, unless peculiar benefits are conferred, then his testimony is not worthy of consideration.

The Court: I overrule you.

Mr. Slayton: We except.

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Tr.

Vol. II

page 90 } Q. Now, Mr. Orgain, how do you handle peculiar benefits as opposed to damages to the residue when you have got peculiar benefits conferred as a result of a take?

A. Well, it depends on what the peculiar benefits—what are you speaking of?

Q. Well, the money—that's the only reason we are here. Now if you have peculiar benefits which amount to a certain amount of money and you determine there are damages to the residue, what do you do then?

A. Well, I would say if you had peculiar benefits and you had damages, you would subtract one from the other. So, if you had peculiar benefits larger than the damage, you are going to subtract the damage from the peculiar benefits. If your peculiar benefits are larger than your damage you would have a net enhancement. If you have no enhancement, you certainly couldn't ascribe anything.

Q. Now you say that this 19.4 acres is group 4 soil under the classification followed by the County Agent in this county and you say it's worth between \$100.00 and \$200.00 an acre?

A. That is to this farm. This farming operation is a beef cattle operation. I think it's very desirable to have it on this farm.

Q. Mr. Orgain, I want to talk about the compensation for the land being acquired by Virginia Electric and Power Company. All we are interested in at this moment is what the fair market value of that 19.4 acres is and that is determined by what, in your judgment, a willing buyer would pay to a willing seller. Do you understand that? We agree that that's the fair market value, don't we?

A. That's right, you want to sell it as part of this farm.

Q. No, Mr. Orgain, Virginia Electric and Power Company is not buying this farm. We are buying 19.4 acres. Do you say that this 19.4 acres of swamp land is worth between \$100 and \$200 an acre?

A. I do to this farm.

Q. What are damages to the residue, if you are so interested in what this 19.4 acres is worth to this particular farm. We are going to buy it. We are going to pay for it. We are going to pay what it's worth and you are going to charge us \$200 an acre because it's part of this farm and

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then you are going to come through with all other kinds of figures or damage. Is that fair, Mr. Orgain?

A. I think it is. You are going to leave a dangerous unsafe condition. As it is he could get his tractor—back his tractor and the irrigation pump to the water. After this silting he will have to build a road on his property—something of a temporary nature. He could get the tractor and irrigation pump in there, but with this
Tr. Vol. II added silt he won't be able to do that. Also, with
page 92 } this added silt there is the danger of cows drowning. If they got down there it would be impossible to get them out.

Q. Mr. Orgain, what would a willing buyer pay Mr. Baskerville for this 19.4 acres in your judgment if that's all he wanted to buy?

A. Well, if that's all he wanted to buy, I don't see why a man would damage his farm by selling him a creek which is a very valuable asset to his farm.

Q. Mr. Orgain, what would a willing buyer pay for that 19.4 acres?

A. Well, if I owned the land I wouldn't want to sell it simply because the creek would have to go with the farm.

Mr. Slayton: Your Honor—

By the Court:

Q. The actual thing you have to determine is the value—what a willing buyer would be willing to do and what a willing purchaser would be willing to do. That's the fair market value—not the value to this particular farm or any other farm. See, that goes into the damages. Do you have an idea as to that?

A. I don't think you have a sale.

Q. I am talking about what is it worth for a person that wanted to sell, but didn't have to and a
Tr. Vol. II person that wanted to buy, but didn't have to buy—
page 93 } what this particular 19.4 acres would bring if it were divorced from the rest of the farm. It's not damage to the rest of the farm.

A. It would have to go with the farm.

Q. Then you can't put a value on it, is that it? Is that right?

A. From my viewpoint I don't think a purchaser would come, nor would the owner sell. You wouldn't have a willing buyer, you wouldn't have a willing purchaser.

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The Court: This witness doesn't know. He doesn't think it would have a value.

Mr. Slayton: Well, now, at this point he is not qualified to testify or the information he has given to these commissioners—

The Court: The commissioners will be instructed. They know how to value—

Witness: I have given the value of the land after the taking.

Mr. Slayton: That's damages to the residue.

By Mr. Slayton:

Q. Are you familiar with the report that has to be filed by these gentlemen?

A. Yes, I gave you this figure of \$1,940.00 for the 19.4 acres.

Tr. Q. Well, I have been trying to get you to tell me whether or not you value it at \$100 or \$200 an acre.

Vol. II A. That's the value I put in on the original testimony, if you approach it from that viewpoint.

Q. Mr. Orgain, you are a real estate broker, do you know of any sales in which this kind of land has sold for \$100.00 an acre?

A. You mean separate from a farm?

Q. Yes.

A. Not separate from a farm, no.

Q. So, you don't have any figures at all to base this \$100.00 an acre on, do you?

A. I have it in conjunction with the sale of a farm with creek land on it. When you go in there you set a value on all the types of soils that you have, all field types it is on the land, uses being made, and possible potential that could be produced from it.

Q. You couldn't sell this for \$100.00 an acre, could you?

A. I don't think anybody would want it unless it was part of the farm.

Q. So, what you want is for Virginia Electric and Power Company to buy the man's entire farm, is that right?

A. Not necessarily, I think they are due him his damages, based on the before and after value.

Tr. Q. Mr. Orgain, are you familiar with this little item?

Vol. II A. Yes.

page 95 } Q. Where is it printed?

A. In my office.

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Q. You print it? What does it represent?

A. Farms that are available through my listing for sale.

Q. Farms?

A. Yes.

Q. Do you consider these to be prices that people are willing to pay for farm land?

A. Yes, sir.

Q. Could I have that back?

A. I wanted to mark some that have been sold there on those prices.

Q. I want to ask you about some you are trying to sell. You have got here "34 F.B.T.—150 acres of cut-over timber land, fast growing pine section of Virginia—\$9,000.00, cash or terms". That comes out to \$60.00 an acre.

A. Let me see that. I have got my files down in the car. To carry 90 farms in your head, I don't try to do. Which one are you talking about?

Q. I am talking about this: "34 F.B.T."

A. That's part of a 558 acre tract in which the owner told me to cut the open land into one tract and endeavor to sell the small tract off separately and get a total of \$33,000.00 for the whole.

Tr. Vol. II page 96 } Q. Well, now—so in doing that you put a figure of \$60.00 an acre on 150 acres of cut-over timber land, haven't you?

A. Yes.

Mr. Hutcheson: If Your Honor pleases, he is just taking time.

The Court: He is cross examining on the value of this particular tract. I think it's all right.

By Mr. Slayton:

Q. Well, you've got another 35 F.B.T. of 250 acres of cut-over timber land, fast growing pine section of Virginia—\$15,000.00, cash or terms. Doesn't that come out to \$60.00 an acre? That's the next one right there, 35—

A. That's the same farm. I told you all that's cut off the 558 acre tract.

Q. You have got another one down here, "38 F.B.T., 50 acres of cut-over timber land, fast growing pine section of Virginia—\$3,000.00, cash or terms", \$60.00 an acre.

A. You are looking at all the same ones. I told you all these came off the same farm of 558 acres. These are in-

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dividual offerings that the owner wanted to make separate.

Q. Well, it's all timber land, isn't it?

Tr. A. This particular land is rolling, hilly, eroded
Vol. II and I doubt seriously that you could hardly keep
page 97 } the land in, its highest and best use would be grow-
 ing pine trees.

Q. But it's not river bottom that pine trees wouldn't grow in. It's not swamp either is it—of course, some portion of it could be swamp?

A. Some portions of it are swamp.

Q. Some portions could be used?

A. Yes.

Q. And you are selling it for \$60.00 an acre, and here you are telling us that swamp land is worth \$100.00 and \$200.00 an acre?

A. That tract would be—with the Wehadkee and associated with the Congaree soils that are there—I would value it at \$500.00 an acre, but they would have to clear it to bring it to that.

Q. You got anything in here for \$500.00 an acre?

A. I don't think it would average out—I got a place higher than that—

Q. Doesn't it include buildings and land and everything?

A. This price is on land—

Q. Virginia Beach property—

A. No, it's farm land, making four crops a year off of it.

Q. Now we come to your figures with regard to damages, you figure the silting condition and then what do
Tr. you do, you figure the enhancement of the creek—
Vol. II creek bed—you value the creek bed at \$5,000.00—
page 98 } the land at \$2,000.00, the creek bed at \$5,000.00,
 the damages at \$5,000.00, the fencing that it will
require at \$3,500.00 and the enhanced value of the creek to the farm—\$5,000.00, for a total of \$20,500.00. How many times are you charging for this dangerous condition which it will—

A. Just one time.

Q. \$5,000.00?

A. That's right. I haven't set anything in this, you might say on land value that irrigating and value of the creek for drainage etc. to the \$5,000.00.

Q. But you have land and the creek bed at \$7,000.00, dam-

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age and fencing and enhanced value—\$13,500, for the total of \$20,500.00. What is the enhanced value designation?

A. Well, if a man wanted the 330 acres of land, he certainly needs to have a creek on it. Like it is he won't have a creek any more, it will be yours.

Q. Have you read the petition? Does it say he can use it?

A. But it's not his.

Q. Does it say he can go there and use it for agricultural purposes?

A. It might say so, but it's still not his. He couldn't when you are going to have water on it.

Q. Do you realize the petition states what property we have title to and we are bound by every-

Tr. Vol. II page 99 } thing in it?

A. I am sure that if it was mine, I wouldn't go in and ditch and spend money and expect you all to keep water off my land.

Q. You were talking about getting water out of there for irrigation a minute ago.

A. Now, we will have a drainage problem.

Q. That drainage problem you are talking about is characteristic of this Wehadkee soil—Wehadkee soil means a drainage problem, doesn't it?

A. But it can be put to a higher and better use by draining it.

Q. But it's not being put to that use, is it?

A. I wouldn't advise the owner to go in there and do anything as long as someone else is going on the land—I wouldn't do anything at all.

Q. Let's come back to the business about the petition. Are you familiar with the fact that this gentleman can get water from that creek as long as he wants it for agricultural or any other purposes?

A. If he can get to it, I reckon, but I don't think he will be able to get to it. Well, with three feet of mud between you and the water you can't very well get a tractor and irrigation pump through there to pump it out.

Q. Are you being bound by the facts, or are you making things up as you go along?

Tr. Vol. II page 100 } A. I am going by what I have seen down there in endeavoring to put the facts in focus.

Q. Didn't you testify a minute ago that your damage for silting wasn't damage for silting on the adjacent property?

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A. Well, you have got a drainage problem. You are going to get silting. You are going to have a drainage problem.

Q. Didn't you testify a few minutes ago that your damage for silting wasn't damage on the adjacent property?

A. Well, that particular break-down that you speak of, I think it's 80 acres effected.

Q. Let's talk about the silting that you testified to just a minute ago, Mr. Orgain.

A. You are going to get silting on the whole 20 acres approximately and you are going to get drainage affecting that and you are going to get drainage affecting approximately 60 more acres. You are going to have a problem there.

Q. Have you ever run a topographic survey of this area?

A. No, but I have seen your maps and used them in testifying. You have got a contour map that comes fairly close to it and it appears to me the drain is going to be affected on the adjacent land to what you are taking.

Q. Is there any contour at all on this that runs on the 202 contour around on here?

A. It was at the pond site here, also around Tr. the Church Branch here.

Vol. II } Q. Do you know whether or not this land floods?
page 101 } A. It gave evidence of flooding occasionally.

Q. Is it marshy?

A. It is in spots, but generally I could walk over most of it all.

Q. Not all of it?

A. No, but it sure does grow pretty honeysuckle for beef cattle to graze on in the winter time. It makes it impossible for him to get there with his irrigation pump.

Q. You are going to charge Virginia Electric and Power Company \$5,000.00 for the creek and then they are going to have to buy the land the creek goes through, is that right?

A. No, I had the creek enhanced the value of the whole farm by \$5,000.00 by reason of the creek being there. It serves as good permanent drainage, it provides irrigation water and provides water for the cattle.

Q. Have you got your notes?

A. Yes.

Q. Get them out, please? All right, now we have got 1, 2, 3, 4, 5 items, is that right?

A. All right, I have got the land at \$2,000.00 and—

Q. What's the creek bed?

A. \$5,000.00.

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Tr. Q. That's \$7,000.00—that's your land. We are
Vol. II paying \$2,000.00 for 19.4 acres of land, is that
page 102 } right? And paying \$5,000.00 for creek bed—\$5,-
000.00 for land under water. Now that land is—
all right, under water, what is the highest and best
use for that land?

A. Draining the farm properly and that low land in here properly.

Q. That's the land under water. How much land is that in the creek bed—How much is that an acre?

A. That's probably approximately \$7,000.00 for the 20 acres that's immediately affected.

Q. I want to know how much an acre Virginia Electric and Power Company is being asked to pay for the bottom of this creek that's all under water?

A. Well, the division of the amount of land that's affected there—

Q. So you just dropped the figure of \$5,000.00?

A. Certainly it enhanced the value of the farm at least \$5,000.00.

Q. Didn't you put that down again, the \$5,000.00, the enhanced value of the creek to the farm?

A. The \$5,000.00 I put there was the ability for that creek to drain this adjoining—19.4 acres and 80 acres, inclusive, which includes your 20 acres.

Q. Now if the creek doesn't have that ability to drain that farm there is a dangerous condition too and you threw in another \$5,000.00 for that?

Tr. A. That's right, because when this creek has
Vol. II got your water in it and then the branch and the
page 103 } Miles Creek watershed floods that water is going
to stop at that point and begin to slow down and
drop silt. Eventually the creek bed will fill and will silt up
and then the water will just fan out over the whole low ground.

Q. We have bought that 19.4 acres that fans out, got to pay \$7,000.00 for that, which \$5,000.00 of that includes an undetermined amount of land under water—that's the drainage characteristic for the creek bed that on—OK, now if we are going to make that creek so it can't drain we are going to pay \$5,000.00 for the dangerous condition. We are going to pay \$3,500.00 for the man's fence that's going to be required to keep the animals out of this dangerous condition. The fact of the matter is you are asking these commissioners to allow Mr. Baskerville \$2,000.00 and \$15,000.00 for the creek, isn't that right?

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A. No.

Q. All right, enhanced value of the creek to the farm—\$5,000.00—

A. That's right.

Q. Dangerous condition—\$5,000.00, creek bed itself—\$5,000.00—that's fifteen, isn't it? Is this dangerous condition enhanced value of the creek—

A. The dangerous condition is not enhancement in my judgment.

Tr. Q. What you want is for these commissioners
Vol. II to allow \$15,000.00 for a creek bed, don't you?
page 104 } A. No, this man is going to have to put up \$3,500.00 worth of fencing—

Q. So you threw in another \$3,500.00—that makes it \$18,500.00—

A. It should have been \$20,000.00—you haven't got the cost of the land in there yet.

Q. It's about \$1,940, isn't it?

A. By your way of calculation—The total comes out to me the same. It's \$20,000.00 here that's involved.

Q. Let's see, what you want is \$15,000.00 for the creek bed, is that right?

A. Now, I have given that break-down about three times.

Q. You haven't answered the question—Is this \$15,000.00 for the creek bed, or isn't it?

A. Now you have a dangerous condition of \$5,000.00, \$3,500.00 worth of fencing that he doesn't need if you don't take the land.

Q. All right, aren't we being charged in your estimate for fencing to keep man and beast off this dangerous condition and then we are paying for the dangerous condition, that's \$8,500.00, isn't it?

A. That's right.

Tr. Q. Now in your experience with the real estate
Vol. II business, have you ever sold or heard of a sale in
page 105 } which somebody ever paid \$15,000.00 for a creek bed.

A. Well, I would say the value is in there. Mr. Slayton, on all of the farms that are for sale, in your sale price you can't overlook the value that a creek ascribes to the farm. If a man is going to run animals on it, he has got to have water; if he is going to irrigate tobacco, he has got to have water.

J. R. Orgain, Jr.

Q. You said the before value of this farm is \$65,000.00; and now you come along and say that because the Power Company is going to acquire \$2,000.00 worth of land this creek is so valuable that you think it's worth \$15,000.00 of that \$65,000.00 farm. Isn't that what you are saying, that this creek is worth \$15,000.00 of the \$65,000.00?

A. If you want to break it down on that basis. From my viewpoint it's \$45,000.00 after you get that land in the bottom.

Q. What I want is the truth and I want to be treated fairly is all I want and I want to know if all that total value of \$45,000.00—you think the creek is worth \$15,000.00 of that \$65,000.00 to this 300 acre farm?

A. Well, I haven't ascribed it in that manner, but it certainly would be worth fifteen per cent of the farm to have access and free access and use it as you wanted to use on the cattle farm. This is the highest and best use of this farm.

Tr. Vol. II page 106 } Q. Is there anything in this proceeding that's going to take from Mr. Baskerville the privilege to use this creek?

A. It's going to take the title. It won't be his, it will be yours.

Q. You are not answering my question. Is there anything in this proceeding that says he can't use the creek and water from this creek—

A. You say no, but I question whether he will be able to use it.

Mr. Slayton: Your Honor, I move this witness—

The Court: He says you couldn't get to the creek—

Mr. Slayton: I move this witness' testimony be struck for the reason that it's not worthy of creditability and it's not worthy of belief. He sits up here as an expert and says that this stream that we are talking about that it's worth \$15,000.00 and he gives that pyramid of figures as to this 19.4 acres of swamp land and it's not evidence that should be considered in this proceeding. As a matter of fact, it's an insult to these people.

The Court: The commissioners, of course, know how to evaluate—

Mr. Slayton: The law requires the defendant to prove by

William R. Baskerville, Jr.

Tr. preponderance of the evidence damages to the
Vol. II residue, which are not clearly visable to the com-
page 107 } missioners when they go on the view. And the
 burden is on the defendant to prove those dam-
 ages, and in view of that, I am asking the Court
to strike this evidence.

The Court: Yes, I know the commissioners will know how
to value it. So, I will overrule you.

Mr. Slayton: We except to the ruling of the Court.

No further questions.

Mr. Hutcheson: No questions.

The witness stands aside.

WILLIAM R. BASKERVILLE, JR.,
a witness for the defense, testifies as follows:

DIRECT EXAMINATION.

By Mr. Hutcheson:

Q. I believe you are William R. Baskerville, Jr.?

A. Yes, sir.

Q. You are the owner of this property and you live on
it?

A. Yes, sir.

Q. What use have you made of this property since you
have been there?

A. I have grazed it.

Q. You mean all the property, the whole farm?

A. Well, mainly I have tried to get it back into
cultivation—farmed it in tobacco and pasture.

Tr. Q. Before you came there who managed the
Vol. II page 108 } farm—tenants?

A. It had been rented out and washed very
badly.

Q. Now about the lines on it—You have before you a plat
of the true lines along the road—

A. It seems that this line down the dirt road in front of
the house is used as the property line, but the old road is the
property line. In two places here it makes a difference of
about seven acres as this line is run.

Q. Where is most of that difference?

A. On Church Branch, down the bridge on Church Branch
—the little creek.

William R. Baskerville, Jr.

Q. Can you estimate how many acres is not included there on Church Branch?

A. Well, in the low grounds part I would say it's two acres.

Q. You have that map before you taking at approximately the 210 contour line—Do you know whether there is any clearing line on your—

A. Well, they have the clearing line all the way up the creek, if they say the yellow mark means the clearing line—orange or whatever color—maybe I'm colorblind—but the trees are marked with orange paint.

Q. Well, say they take that line shown on the map there, what effect would it have on the residue of your land, can you drain it?

Tr. Vol. II page 109 } A. It will ruin everything in these creek bottoms.

Q. How about the 206, which they say is the clearing line, what effect would that have on the rest of the land?

A. Well, if they are going to put water to the 206 where they are clearing it's going to be on over the other land anyhow, because water floods over the land when the creek banks are not even full—

Mr. Slayton: Objection, Your Honor.

The Court: He's just showing the existing conditions—

Mr. Slayton: That's right, but he is charging us for damage resulting from that flood which is improper—

The Court: All right, sir, I'll sustain you.

Witness: If you back water up that creek—

Mr. Slayton: The same objection.

Witness: Judge, I figure VEPCO is only acquiring that to put water on it and they are not buying or they are not figuring to take it unless they are going to put water on it. I assume if they get the land they are going to put water on it.

The Court: They will put the engineer on to show where the water is going. I don't know—it's a matter of expert testimony.

Tr.

Vol. II By Mr. Hutcheson:

page 110 } Q. How long have you been familiar with this farm?

A. All my life.

William R. Baskerville, Jr.

Q. Do you know the bridge called Morgan's Bridge that runs on Number 1 Highway and back across the Radcliff's?

A. Yes, sir, I do.

Q. Have you ever seen water back up to that bridge from the river?

A. I have.

Q. Did you observe where it was in your low grounds when that was done?

Mr. Slayton: Objection. That's water that floods now. That's out of the picture.

The Court: Well, you will put your engineer on to show—

Witness: Where it has been backed up to the bridge from your turnoff from Bugs Island Dam—when it's backed up that creek now it's two feet of stray water in it when they release the water at Bugs Island Dam. Of course, it reaches the flood stage when you have a rain up above the river, as it comes down the water covers the land but it runs right off. But if your river is full of water like it is now water will stay on that land for a week at a time—nowhere for it to go. And there is no where for the water to go is they are going to fill that creek up.

Tr.

Vol. II Q. Have you got any idea about the damage—
page 111 } the value of the land, the damage to the residue,
 or do you leave that to the expert witnesses or
have you made calculations yourself on that?

Mr. Slayton: Objection.

The Court: He is the owner; he can tell what he thinks.

Witness: It's pretty hard to figure damages when you don't want to sell from the beginning.

Mr. Slayton: You have got to be a willing seller. The law makes you a willing seller.

Witness: Well, Castro at least gave the land back.

Mr. Slayton: I object to this inflammatory remark.

The Court: I sustain your objection.

By Mr. Hutcheson:

Q. Would you like to try to put some evaluation on it with a willing seller and willing buyer of the land taken?

A. Well, it seems they think because I haven't used the land to the fullest ability that it ought to go for nothing. But I think that the land they have paid—

William R. Baskerville, Jr.

Mr. Slayton: I object.

The Court: I will sustain your objection for what they have paid for other land.

Tr. Witness: I would say you got 19.4 acres in-
Vol. II volved here that's worth \$200.00 an acre. You are
page 112 } damaging 80 acres of land, less 20 would be 60
 acres of land and every piece of that land is
 worth \$200.00 an acre or more.

Mr. Hutcheson: Witness with you.

CROSS EXAMINATION.

By Mr. Brasfield:

Q. Mr. Baskerville, since you have been on this farm what have you done to bring it back in a cultivative—

A. Worked it a little.

Q. Have you cleared any land?

A. As much as I could.

Q. How much?

A. Well, approximately 45 acres of open land was on it when I came back there in '49 and pasture and cultivated land to it was about 6 acres of land being cultivated when I came there in '49. And I have approximately 150 acres—between 150 and 175 acres of land now either in cultivation or in cultivated pasture.

Q. So you have cleared the difference between 45 acres and 150 acres. So you have cleared about 105 acres since you have been there?

A. And cut over practically the whole place.

Q. How much was that land that you have cleared worth, in your opinion, before you cleared it?

Tr. A. Well, I reckon any farm land as a whole is
Vol. III worth \$150.00 an acre with a farm, as acreage
page 113 } for a farm.

Q. So it was worth \$150.00 an acre before you cleared it?

A. That's right.

Q. Now this land down in the low grounds which has not been cleared is worth \$200.00 an acre, is that right?

A. Yes, if not more.

Q. How would you get maximum productivity out of the low grounds?

A. Clean it up and ditch it.

William R. Baskerville, Jr.

Q. Would the low grounds then be worth more than the upland that you cleared?

A. Sure it would.

Q. Well, if the low grounds is worth so much more than the upland, both cleared and uncleared, why is it that you cleared the upland and haven't cleared the low grounds?

A. It wasn't as much stuff on the land on the hillside as it was on the low grounds.

Q. There's a lot of stuff on the low grounds, is that right?

A. It wasn't as much on the hillside as it was on the low grounds. It wasn't wooded.

Q. What condition was the upland in before Tr. you cleared it?

Vol. II A. It had just grown up in small undergrowth
page 114 } and bushes.

Q. You didn't clear hardwood and that sort of thing—

A. It was cleared—freed of that. It had been cultivated before.

Q. I'm sorry I misunderstood you.

Q. You stated that when you have a heavy rainfall now water will stay on the property for a week, is that right?

A. It depends on the condition of your river. After this dam is built I think it will be on it all the time every day anyhow.

Q. And you are basing your figures and your opinion of the damage to you on the conclusion that all of your low ground is going to be flooded by Virginia Electric and Power Company?

A. At certain periods of the day.

Q. Even though Virginia Electric and Power Company is taking only to the 210 mark, you are of the opinion that it's going to flood the whole low ground?

A. If you take to the 210 it won't be very little while before the rest of the land will be swamp or flooded, because you don't have any place for your water off the property to go.

Mr. Brasfield: Your Honor, I believe that Tr. Mr. Baskerville should be instructed that is not
Vol. II a proper consideration in this case.

page 115 } The Court: Well, we don't have the evidence
as to where it will go at this point.

Mr. Brasfield: If the whole low ground is flooded, we are not acquiring the right to flood it and that's a separate matter altogether.

William R. Baskerville, Jr.

The Court: If it silts in or something of that kind, of course, it will be damage—I think at this time we have to allow it. You can show by your engineer.

Mr. Brasfield: We except to the ruling of the Court.

By Mr. Brasfield:

Q. You have based this conclusion as to the low grounds being flooded on the understanding that the creek will be flooded to the 206 contour by Virginia Electric and Power Company?

A. Well, that's what you all say.

Q. You are basing it on what someone has told you?

A. May I ask you a question. If you are going to fill the creek to the 206 mark, where is the rest of the water going, except on this land?

Q. I will reserve that to the engineer.

A. That's the only thing I'm basing my opinion on.

Q. If we don't fill the creek up to the 206—

Tr.

A. Why are you buying the land.

Vol. II

page 116 } Q. Just assume we have good reasons for buying the land, but Virginia Electric and Power Company is not going to fill it up to the mark you base your opinion on, would that change your mind?

A. Let me ask you—are you going to fill it or is the water from Bugs Island going to fill it up—

The Court: From what he says, neither one is going to fill it up.

By Mr. Brasfield:

Q. I am asking you if the water level in the creek flowing past your property is not raised to 206, will this change your opinion as to the extent to which you are damaged?

A. I don't understand why you have the 206 line and say you are going to put water there and then say you are not going to put water in there. If you don't have any water up there, it couldn't possibly damage me any. If you don't put any water up there, I don't have any damages.

Mr. Brasfield: Thank you, sir.

Mr. Hutcheson: We rest.

The witness stands aside.

• • • • •

Tr. JAMES M. HAGOOD, JR.

Vol. II a witness for the petitioner, testifies as follows:
page 117 }

DIRECT EXAMINATION.

By Mr. Brasfield:

Q. Mr. Hagood, state your name and address and occupation?

A. My name is James M. Hagood, Jr. I reside in Henrico County, outside of Richmond, Virginia. I am Senior Engineer with Virginia Electric and Power Company.

Mr. Hutcheson: We admit his qualifications—save time and go on to something else.

Mr. Brasfield: I would like to bring out one or two things about his familiarity with the Gaston Dam Project.

By Mr. Brasfield:

Q. As a Senior Engineer for Virginia Electric and Power Company have you been connected with the Gaston project?

A. Yes, I have been connected with it since 1957.

Q. Have your duties in connection with the Gaston project led you to an investigation of the water flows which will influence the water level of the Gaston project?

A. Yes, it has.

Q. How extensively have you gone into this area?

Tr. area?
Vol. II A. Since 1957 when the Company began activity
page 118 } to seek a license from the Federal Power Commission, I made various studies of the flows there at the reservoir of what Kerr Dam would discharge under varying conditions, and how this water would be utilized at the Gaston Dam for elevation.

Q. Are the conditions on the Roanoke River in the area of the reservoir such with controlled releases in Kerr Dam that you can pin point the elevation of the water at different points along the banks of the reservoir?

A. Yes, it is.

Q. Now are you familiar with the W. R. Baskerville property?

A. Yes, I am.

Q. Have you been on that property?

A. Yes, I have.

Q. Have you seen on that property trees marked orange—trees with an orange band painted or similar marking?

A. I haven't been on the entire Baskerville property. As

James M. Hagood, Jr.

a matter of fact, I didn't get down to where the clearing line—the orange marking to which you refer is.

Q. What do these orange markings represent? If you had seen markings on the property, what would it have indicated to you?

A. Orange markings on the trees indicate the extent of clearing that the Company intends to do for this project.

Tr. Vol. II Q. Now do you know on the Baskerville prop-
page 119 } erty what the extent of the clearing will be?

A. The extent of clearing at this point on the reservoir will be to elevation 204.

Q. Are all of the orange markings on the trees at elevation 204?

A. Not precisely, because you can't always find trees on the 204 contour.

Q. Are any of them on trees below 204?

A. The clearing would be up to 204 and possibly a little bit beyond.

Mr. Hutcheson: Your Honor, this is rebuttal. I don't object, but why take up the Court's time. This came in on direct.

The Court: I think the commissioners understand what the markings are.

Mr. Brasfield: It was brought out by Mr. Hutcheson that the 206 was the clearing line, but we are establishing 204 as the clearing line. The orange markers indicate that it's the 204 line—there or below there.

Mr. Hutcheson: I stand corrected. This should be rebuttal evidence.

Mr. Brasfield: This is rebuttal of that point. Now I will move on to another point.

By Mr. Brasfield:

Tr. Vol. II Q. Will the water be maintained at the clear-
page 120 } ing line?

A. It will not.

Q. What affect will the construction and operation of the Gaston project have on Miles Creek adjacent to—

Mr. Hutcheson: Your Honor, that is not rebuttal evidence.

Mr. Brasfield: Your witness testified that water is going to be constantly at the 206.

James M. Hagood, Jr.

Mr. Hutcheson: Your Honor ruled they have the right to flood up to the take line.

The Court: He is entitled to testify as to what he's going to do.

Mr. Hutcheson: This is not rebuttal. This should have been direct.

The Court: I think it's rebuttal in that these witnesses have testified under the assumption it's going to be up to that point. If he can show the contrary is going to prevail, I think he is entitled to do that.

Mr. Hutcheson: Showing contrary that they have a legal right to have the creek up to there, that's certainly not rebuttal.

The Court: I will overrule you at this point.

Mr. Hutcheson: We except.

Tr. By Mr. Brasfield:

Vol. II Q. What will be the effect of the construction
page 121 } of the Gaston Dam and operation of it under
normal conditions, what effect will that have on
Miles Creek at the Baskerville property?

A. It won't have any effect on the Baskerville property under normal operating conditions.

Q. For what portion of time, under the historical conditions of flow from Kerr Dam and the water studies which you have had of the Roanoke River, for what portion of time will normal operating conditions prevail?

A. According to the study I have made, normal operating conditions will prevail about 99.95 percent of the time.

Q. Now that being the case, why does Virginia Electric and Power Company—why is it acquiring this property which you have testified will not be flooded 99.95 percent of the time?

A. Well, if we take it in steps—The Gaston project has three feet of flood storage above the normal power level of 200—top of the flood gate—203 and present elevation is 200. There is flood storage capacity which is designed to take care of the runoff from the intervening watersheds so that under conditions of a flood or heavy rainfall in the area, properties downstream on Roanoke River will not be flooded any worse than they were under the natural condition.

Tr. In utilizing the flood pool at Gaston with maxi-
Vol. II mum power discharge from Kerr Dam of 40,000
page 122 } cubic feet per second we would obtain an eleva-
tion at the mouth of the creek at about 204.6. Now

James M. Hagood, Jr.

the reason we are buying the property that is shown on the prints I suppose have been introduced in evidence is to cover the maximum flood condition and we have done this throughout the reservoir and we have ascertained under the 1940 flood condition with Kerr Dam in the picture—

Mr. Hutcheson: If Your Honor pleases, their intended use is not evidence in this case. The legal right to use it is evidence in this case—

The Court: What they are going to do would have a bearing on the case.

Mr. Hutcheson: The petition says what they are going to do. He is testifying what will happen there under certain conditions.

Mr. Brasfield: This is not intent. Mr. Hagood is showing the physical possibilities. It's impossible to do anything else.

The Court: Under the present dam as constructed.

Mr. Hutcheson: What they have the right to do is maintain the dam at 200 feet level. They have that right. They are bound to pay for the operation to the residue.

The Court: It has been the established fact they are not going to do more than that.

Mr. Hutcheson: We except.

Tr.

Vol. II

page 123 } By Mr. Brasfield:

Q. Continue, Mr. Hagood.

A. I think I said that throughout this reservoir we are acquiring land to take care of the maximum flood condition with Kerr Dam in the picture. Of Course, the maximum flood record is the flood of 1940 and under that flood condition Kerr Dam would release 80 to 90,000 cubic feet per second of water and we assume that under that condition we would also be utilizing flood storage capacity at Gaston which would make the elevation at the dam 203, at the top of the gates. So, under that condition the elevation of the water would be at this point—would be 210 and that is why we are acquiring land up to that point. But as I pointed out this is a very rare occurrence. It's the only one—that maximum flood in a 50 year period of record and, according to investigation by the Corp of Engineers, nothing except this flood on Roanoke River since the settlement of this country by the white man. But if we will possibly flood this land sometime in the future, we

James M. Hagood, Jr.

want to pay for it, so under this flood condition the water would rise almost to the 210 on this property.

Q. Mr. Hagood, except for this condition which Tr. you have described and stated would occur not Vol. II more than .51 of a per cent, is it physically possible for the water level at the Baskerville property to be maintained at the 204, or the clearing line—206, or the take line—210?

A. It is physically impossible to keep the water at those levels.

Mr. Brasfield: Your witness.

CROSS EXAMINATION.

By Mr. Hutcheson:

Q. Is this a map that was made under your supervision?

A. No, sir, it wasn't made under my supervision.

Q. It was made by Stone & Webster for Virginia Electric and Power Company, was it not? It was either made by Stone & Webster or Virginia Electric and Power Company or made for them, was it not?

A. It appears to be the reservoir map Stone & Webster Engineer Corp made in connection with the construction of Gaston.

Q. You were connected with the office at Warrenton, North Carolina, were you not, in this project?

A. No, sir, the office at Warrenton was a Stone & Webster Office and a Virginia Electric and Power Company real estate office. I wasn't directly connected with either one of those.

Q. But you know this is a map of the whole project?

A. Just from casual observance of it, it appears to be the map of the Gaston project which Tr. shows the elevation of the water under the maximum flood condition. Vol. II page 126 }

Mr. Hutcheson: I would like to introduce this as Defendant's Exhibit No. 1.

The Court: You all have no objection.

Mr. Brasfield: No objection.

By Mr. Hutcheson:

Q. Mr. Hagood, you are familiar with the license under which the dam will be operated, are you not?

James M. Hagood, Jr.

A. As I told you the other day I am acquainted with it. I couldn't quote every passage. I have read it a number of times.

Q. You know that under this license you have no right to say what the water release at Bugs Island Dam, do you?

A. Virginia Electric and Power Company has some control over the release at Kerr Dam because it purchases 2/3 of the power output at Kerr. As such, we, in a sense, operate 2/3 of the generated capacity at Kerr to fit our system load.

Q. I hand you what is supposed to be a copy of your license. Can you turn to that about the release from the—

A. Turn to what, sir?

Q. The releases from Kerr Dam. I think you find it on page 3, paragraph one. I don't think that paragraph is numbered.

Tr.

Vol. II A. I have it.

page 127 } Q. Does that say that it will be any restriction? Doesn't it say there will be no restriction on the release?

A. Well, as I said before, we have some control over the releases from Kerr Dam because we buy 2/3 of the power output—power generated by Kerr, so to the extent that we tell Kerr Dam how to operate their generating equipment—the part which we contract for we have some control over the releases from Kerr Dam.

Q. That could be changed. I am talking about in your license you have no say so as to what should be released from Kerr Dam, do you?

A. Actually the Corp of Engineers—

Q. Will you read what it says there?

A. You want to read the whole paragraph?

Q. Well, read what it says about the releases—the last part.

A. I think probably it would be clearer to read the whole paragraph. This part says: "The Secretary of the Interior in reporting on the application in Project No. 2009 informed the commission that the United States Fish and Wildlife Service concurs in the provisions contained in the stipulation regarding Project 2009 and stated that it is the understanding of the Department of the Interior that Paragraph (2)

James M. Hagood, Jr.

Tr. (b) of the stipulation does not stipulate or pre-
scribe in any way what releases should be made
Vol. II from the Kerr reservoir." As I started to say,
page 128 } the Corp of Engineers actually controls the
amount of water that's going to be released from
Kerr Dam, then we use that quantity of water which the
Corp prescribes in the electric generation to fit our system
load.

Q. Now in referring to Kerr Dam—land belonging to the
Kerr Dam on the watershed, that has the same position that
this land has on Miles Creek, doesn't it?

A. What was that again, sir?

Q. The Kerr Dam has the same position in the watershed as
this land has on Miles Creek. It's the head of your water-
shed. Kerr Dam is the head of Gaston Lake, and that prop-
erty at Miles Creek is the head of Gaston Lake?

A. No, sir, it's downstream from the head.

Q. I am talking about your watershed. Will you look
at the plat again. You don't acquire any property beyond
this Baskerville property, do you?

A. Oh, you are talking about the—What was your ques-
tion again, sir?

Q. Now the Kerr Dam in this project is in the same position
as the head of the watershed at the head of your taking, is it
not?

A. Well, if you mean is this property near the head of Miles
Creek. Kerr Dam is not near the head of Roanoke River.

Q. But it's the head of your take. Kerr Dam
Tr. is the head of Gaston Lake and this is the head of
Vol. II Gaston Lake?
page 129 }

A. Well, I guess in one sense you could say
that. It doesn't come into the confluence of Miles
Creek and Roanoke River. Kerr Dam is 35 miles down-
stream.

Q. You mind turning to page 6 and read paragraph 5 in the
license?

A. Page 6, paragraph 5.

Q. All right, sir, will you read that paragraph to the com-
missioners?

A. "The backwater of the proposed Gaston development,
under certain conditions, may have an adverse affect on the
natural tailwater elevation of the Federally-owned Kerr
project; and except for this possibility, the proposed Gaston
development would not affect any Government dam, nor will
its inclusion in the license for the Roanoke Rapids develop-

James M. Hagood, Jr.

ment, as hereinafter provided, affect the development of any water resources for public purposes which should be undertaken by the United States."

Q. Now will you turn to page 7 and read paragraph 22 and 23?

A. Paragraph 22 says: "It is desirable to reserve for future Commission determination the question of what land of the United States are affected by the Gaston development, the license conditions which are appropriate for their proper utilization and protection, and the amount of annual charges to be fixed for the use thereof."

23—"It is desirable to reserve for future Commission determination the question of what additional transmission lines and appurtenant facilities, if any, should be included in the license, together with additional terms and conditions, if any, relating thereto."

Mr. Hutcheson: That's all.

The witness stands aside.

* * * * *

A stenographic report of the argument of exceptions in the above case in the said Circuit Court at Boydton, Virginia, on August 24, 1962, before Honorable G. E. Mitchell, Circuit Court Judge.

Appearances: E. Milton Farley, III, Evans B. Brasfield, Jr., Frank M. Slayton, Y. M. Hodges, John Y. Hutcheson, Frank Banzet.

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Hrg.
8/24/62
page 35 }

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The Court: Let's see, the Young, Farrar and Baskerville—they are not here. I don't think it's necessary for them to be here.
Mr. Hutcheson: We asked them to come if they could, but I reckon they're all busy.

Mr. Slayton: May it please the Court. Your Honor, Virginia Electric and Power Company, appearing on the exceptions filed to the report of the condemnation commissioners, and asks that the Court sustain the exceptions which have been filed and set aside the report of the commissioners as to Parcel M-53, which is owned by Alice Young Farrar, Parcel M-54, which is owned by Eula Young, and Parcel M-62, owned by W. R. Baskerville, Jr. and Sallie B. Baskerville, his wife.

Now the reason for the exceptions, Your Honor, is that, in accordance with the language filed in the exceptions, we believe in this instance also that the commissioners proceeded upon improper principles; that they considered, or arrived at their award in an improper manner; that the award is grossly excessive, and we ask the Court, in accordance with these exceptions filed, to allow us to call one of the commissioners to explain the manner in which this report was arrived at. And we believe that after hearing the evidence the Court will be convinced that the commissioners here applied improper principles, contrary to instruction of the Court, in arriving at the figures which they arrived at in these cases for compensation for property taken and for damages.

Hrg. ages.

8/24/62

The Court: Now you don't have any other evidence other than what you might get out of the commissioners?

Mr. Slayton: No, sir, that's all the evidence we have.

The Court: I just want to get that in the record.

Mr. Slayton: We would like, if Your Honor pleases, if the Court would permit counsel to do so to call one of the commissioners, J. L. Read, with regard to the manner in which this award was arrived at and to explain the report of the commissioners to the Court and, if the Court on the other hand would prefer to examine, then we would like to have the Court ask Mr. Read certain questions with regard to how the figure was arrived at.

The Court: I will overrule your motion in both respects.

Mr. Slayton: Well, we except to the ruling of the Court; and call again to the Court's attention that there is ample authority for permitting these—this procedure.

The Court: That was all stated in the first case and I think if you want to combine that argument with this—

Mr. Slayton: We just want to be sure at this time that the record shows—

The Court: The Court understands the authorities that you show. What you would prove by Mr. Reid if he was called—

Hrg. Mr. Slayton: We would like to have Mr. Read
8/24/62 called with regard to the manner in which this
page 38 } award was arrived as the statement of proof and
for the record.

The Court: No, I think in opening statement you can say
you expect him to testify to thus and so. See, the Court has
refused to call the commissioner. It's just the statement of
counsel in opening statement. Did you want to make this
same statement you made, or you just want to relate that to
this case.

Mr. Slayton: If Your Honor pleases, the other case I didn't
go into the details in the conversation we had with Mr. Reid.

The Court: Well, you want to state the same thing here.

Mr. Slayton: Well, if the Court won't allow us to call
him.

Well, we except to the ruling of the Court in that re-
gard.

The Court: If the Court had called him he would have
testified to thus and so—

Mr. Slayton: Your Honor, if the Court had allowed us to
call this particular commissioner, we feel that he would tes-
tify that the commissioners were unable to agree on figures
for both compensation and damages and, as a result of this
inability to agree, they agreed to have each commissioner
write down his figure for both compensation and
damages; that these figures were added separately,
8/24/62 the figures for compensation being totaled, the fig-
page 39 } ures for damages being totaled in each particular
case; and that they were added up and divided by

five; and that the commissioners agreed to accept the figure—
the average that they arrived at. And based on that, they
made the award for compensation and damages in each one
of these five cases. And we believe this to be an erroneous
method of making an award. It doesn't represent the in-
dependent judgment of any of the commissioners. It's not
based on what they concluded to be the fair market value of
the land. It has this effect, if Your Honor pleases, in that
the commissioners who would insist on a higher award would
raise his figure and the commissioner who felt the land was
worth considerably less would lower his figure. So that the
average would be what they all expected it to be. So there is
no fairness at all in it. We might as well be submitting these
figures to some machine and having them all added up and
divided by five. If the Court would allow us to call this man,
this is the kind of evidence we submit to the Court. So the
Court having heard that evidence could then exercise its
sound discretion granted to it under Section of the Code

25-18.1. This section gives the Court this authority and the Court, then having this information, could decide whether or not these awards were grossly excessive.

Hrg. Now I submit to the Court that the awards on 8/24/62 their face are grossly excessive and we ask the page 40 } Court to go and to view this property, to go and look at it today, because the Court, in determining whether or not the awards were grossly excessive, should see the property.

The Court: But the Court can't put itself in the place of the Commissioners. They are experts and know the values in the community. I can't say whether it was worth less unless it was so grossly excessive that everybody would know it.

Mr. Slayton: We feel the Court would go there and it would be so grossly excessive as to shock the conscious of the Court and the Court would therefore be compelled to set aside—

The Court: Was it within the range testified to by the owners and by their witnesses as to the values and damages?

Mr. Slayton: That part of the argument will be discussed by Mr. Brasfield. The figures that I testified to were within it, but the Court struck the basis of the testimony of Mr. Keedwell and disqualified him and allowed his figures to stand. We submit on that basis, they are not in the realm of the testimony of the witnesses.

But to go on, Your Honor, Parcel M-53 owned by Alice Young Farrar, about 6.3 acres of land, all of this property, every square inch of it, is a creek bank. And all Virginia

Electric and Power Company seeks to acquire is the bottom of the stream bed to the existing level Hrg. 8/24/62 of the creek. And the commissioners awarded \$1,- page 41 } 260.00 for a creek bed over which this stream has flowed since time began.

The Court: You don't have to have the creek bed. You still got a right to have the water flow over—

Mr. Slayton: Your Honor, if Virginia Electric and Power Company were a free agent and didn't have to operate under license for the construction of this dam, it might do that. But we are in the middle. We are bound to take the property according to the terms of that license. We have got to have it. We have bought the land above it. This land is between the land we have acquired at the reservoir and the land we have acquired below it. This is right in the middle. In addition the Court instructed that if we did anything in the creek bed in the raising the level of the water it would be additional take. In addition to paying \$1,260.00 for a creek

bed over which there is water flowing now, we have to pay \$2,020.00 for damages—\$3,280.00 for 6.3 acres of land over which a creek has flowed since time began.

I submit to Your Honor if the Court would go there and look this is so grossly excessive as to shock the conscious of the Court and the Court without any further action would set this award aside. We are in a Court of law here, seeking justice. Just because Virginia Electric and Power Company is a big corporation with a lot of money—we are entitled just treatment.

I suggest to the Court the award for the Eula Young property, which is the same creek, just right down next to it. The Court could stand there and see it all. But it requires us, for the same creek bed now, right adjoining, to pay \$628.00. Now, you see, it's not a different creek in there with anything different. But why is it this woman got half of what these other people got. That's what's wrong when you add them up and divide them by five. These people, the commissioners, may have taken this first one first, and some of them apparently were a little shocked with the twelve hundred compensation, so, when they got to this one, they really dropped the bottom out and when they added it up it averaged out \$628.00. And—but, then they came along and took care of her for damage. They gave her \$4,694.00 in damages—totaled \$5,322.00 for a creek bed that's been there always and we are not going to disturb in any degree, and, if we do disturb it, for which she has a separate course of action as the Court repeatedly said when these matters are being submitted by the commissioners.

I suggest it shocks the conscious of fair-minded men for anybody, including a large corporation, to have to pay \$5,322.00 for 3.1 acres of land that's under water. Now this is the kind of thing that happened in Florida in the thirties, but it's not the kind of thing I think you expect to have happen to you in Virginia in a Court of law.

The next one, Your Honor, the property of John Thomas Williams, Parcel M-62. Mr. Williams property apparently was not as valuable as the property of Mrs. Farrar because the commissoiners only allowed \$720.00 for the land, which was under water. But, then when they came to damage they gave him \$5,540.00, for the total of \$6,260.00. Your Honor, that's for 3.6 acres of land. The total is \$2,000.00 an acre for land and it's under water. It doesn't excite me. It incenses me. If it's not under water, it's vertical creek bank. We are talking about two or three inches of land that's holding the world together. I say to you in all respect, Your

Honor, if the Court would go there and look at this, the Court would be shocked. The Court would be shocked as fair minded men I think are shocked. I do not imply in any way that the commissioners are not honest and scrupulous men, but I say, Your Honor, this is the kind of result that comes about when people can not agree but want to present a unanimous report to the Court and that they therefore—

The Court: We instructed they could bring in a minority report. We did that in some of the cases.

Mr. Slayton: That's right, they were instructed they didn't all have to agree. But I suggest when people attempt to agree and can't agree and are forced to
Hrg. 8/24/62 } indulge in this kind of abortive reasoning that
page 43 } these men were in adding their figures and being bound by the result, regardless of whether it was reasonable or not, then this is what we get. Now I can't imagine any man, anybody with any intelligence at all arguing or suggesting to the Court that land in this County or any County in the State of Virginia lying where this does, being submerged the way this is, sells for \$1,200, \$600 or \$700 for seven acres.

This land of Mr. Williams was almost \$100.00 an acre for compensation—

The Court: But you include the damages and whatever they are—

Mr. Slayton: There are none. The Power Company doesn't purpose to raise the water in that stream by one inch, and, if they do, they have got to pay again. It's a separate procedure. The Court has recognized this principle through all three of these cases—all four of them. Everytime the question came up, the Court recognized that as additional taking by the Power Company and would be another action.

Now we are here within the bounds of the petition which was filed and we, the petitioner, can't have imposed on it an additional taking. We are seeking land within well-defined boundaries and that's all we want, and that's all
Hrg. 8/24/62 } we should be required to pay for. And to say to
page 44 } this petitioner that you have got to pay \$100.00 an acre for creek bottom, submerged creek bottom, and that you have then got to pay a total of over a thousand dollars an acre when you add in damages for this taking, is completely unreasonable and unjust.

I ask the Court on the face of these awards to set them aside and to grant us a new trial and to have the commissioners award these people a full and fair award, but not make the Power Company subject to this kind of thing.

Now I don't think the Court needs any evidence, but I respectfully urge upon Your Honor, of your time to go out there and look. We can drive almost down to it. The Court from one position can see all of this land of Mr. Williams, lands directly across the creek from the other land that we are talking about, the Young and Farrar property. You can see it all, walk right down there through a pasture, walking is not difficult. It won't take much time. It's a cool day. I am sure if the Court goes down there, the Court will be shocked as I have been.

Your Honor, with regard to the size of these awards, that's all I have to say. Mr. Brasfield is going to discuss with the Court the other exception that we filed which dealt in the admission of certain evidence that we deemed to be improper testimony of certain of the witnesses.

Hrg. 8/24/62 } But before I sit down, the one other consideration, the one other case before the Court for consideration is the price the Commissioners assessed page 45 } the Power Company for the swamp that lies on the property of Mr. Baskerville. Now there wasn't any question but the land was swamp area. The Power Company didn't make it that way. I don't know why it's a swamp except that creek there that flows through it overflows frequently—

The Court: In the passed trials, the Baskerville may be the one you got the bargain in.

Mr. Slayton: After all of these other cases, we might be entitled to one bargain. And the Court may feel very strongly about that particular case, but I can't understand at all how an award of this kind for the land the Power Company acquired and rights it has acquired over a stream bed that exists, has always existed, over which nothing will be done whatever to alter this thing, why this Company has to pay over \$10,000.00. There is no justice in it. And I respectfully ask the Court to set aside these awards and to grant us a new trial so that we can pay what is fair and reasonable.

The Court: Now that's all you want to say about calling the commissioners as witnesses. I just want to get them away as quick as we can.

Mr. Brasfield: Your Honor, this is more along the line of what I was going to present to the Court. But we believe that if the commissioners were summoned in this case—we have reason to believe that they would testify that they took into account certain things, certain evidence, which was admitted before them and which page 16 } we think improper and which is improper and the Court has ruled improper. I am referring to evi-

dence to the effect that the taking by Virginia Electric and Power and construction and operation of its dam would cause flooding in conjunction to the creek on other things—It would cause flooding on property other than what Virginia Electric and Power Company is seeking to acquire. In other words, it would cause a backing up and flowing out on to these persons low grounds.

The Court: Didn't we instruct and argue that they would have to be bound by what the engineer testified as to what that result would be?

Mr. Basfield: Not in these three cases, Your Honor.

The Court: I told them not to speculate on the thing.

Mr. Brasfield: Well, regardless of whether the commissioners were instructed to that effect or not, it's our position if we were entitled to examine the commissioners, it's our belief that they would testify that a substantial portion of this award is based on the fact that they thought there was some possibility of flooding beyond the area which the Company seeks to acquire and we offer in that regard a show of proof as to what the commissioners would say. And we believe that

Hrg. if the commissioners did testify to that, the Court
8/24/62 would be obliged to set aside their award, their
page 47 } award being based on improper evidence. That is
all I have to say with respect to examination of
the commissioners. However, I would like to go
into it a little further after we have a ruling on that point.

The Court: I think we just well let the commissioners go on. If there is nothing else for the commissioners, I will call them up and excuse them.

Mr. Brasfield: We except.

Your Honor, I believe before we go any further on this we would like to urge you to go view the property or at least rule on our motion.

The Court: I doubt that the view—I couldn't measure my judgment to that of the commissioners. And, if I would go, it wouldn't mean anything at all to me I am sure. The commissioners viewed and I don't think we could get more able or more conscientious men than we had. I think the Court is bound by that. I don't think the Court should go out there now at this late date and view the premises.

Mr. Brasfield: We except to Your Honor's ruling on the ground a view by the Court would be evidence which we believe would clearly show the awards to be grossly excessive.

The Court: Now is there anything else you want to say—other exceptions?

Mr. Brasfield: Yes, sir, Your Honor.

As Mr. Slayton has indicated these are these three cases.
 This is the plat of the Farrar property to be taken.
 Hrg. This is a plat of the Young property to be taken.
 8/24/62 And this is the plat of the Williams property,
 page 48 } all of which is filed in the record. The only
 reason I don't give that to you is because
 it's bound in such a way they can't be unfolded. And you will
 see that in all of these cases the portion to be acquired is a
 narrow strip of land which the evidence has shown was all
 contained in the boundaries of this particular creek. I be-
 lieve Your Honor will recall in this case that from time to
 time during the case and over the objection of the petitioners
 the witnesses for the defense were allowed to testify that
 what the Power Company would do—and they testified very
positively to this, without special knowledge—that what the
 Power Company proposed to do would cause flooding in the
 grounds outside of this creek and there would be sedimenta-
 tion and an unhealthy condition outside of the creek, not with-
 in the creek bed, and it would damage a large number of acres
 and substantially damage—it would substantially depreciate
 the value of the farm.

Your Honor will recall that for the Eula Young property,
 which was 3.1 acres, the total confined within the creek. Mr.
 Orgain testified that total compensation and damage should
 be \$33,100.00. And the bulk of his testimony was as to the
 water rushing down the creek and by reason of what Vir-
 ginia Electric and Power Company has done downstream
 flooding out on to the low grounds of Mrs. Young. Mr. Keed-
 well, on similar reasoning, testified that the com-
 Hrg. pensation and damages should be \$15,900.00. And
 8/24/62 the Farrar property, where the lands concerned
 page 49 } were 6.3 acres, Mr. Orgain testified on the same
 sort of reasoning the compensation and damage
 should be \$8,500.00. Mr. Keedwell testified it should be \$5,-
 700.00. And the Williams case where we were dealing with
 3.6 acres of creek bottom, Mr. Orgain testified \$31,000.00 com-
 pensation and damages. Mr. Keedwell testified \$12,750.00.
 And each one of these figures, Your Honor, was based on this
 testified flooding beyond the take that the Power Company
 came to Court to get. And it's perfectly clear—you admitted
 this in chamber and I believe you even suggested to the com-
 missioners, although you let the evidence in—that if Virginia
 Electric and Power Company caused flooding beyond the
 boundaries it was a separate taking, a tort and trespass. It
 was something that the landowner could recover for.

The Court: I believe the commissioners were told not to
 go beyond what the engineer said.

Mr. Brasfield: It's perfectly obvious, I believe, Your Honor, if we told the commissioners that, I'm sorry—if we told the commissioners that it was disregarded.

I would like to state that it's perfectly clear in law of Virginia and everywhere else, it has been decided that a future possible tort and the damage resulting therefrom are not a proper element of damage in condemnation cases.

The case of *Appalachian Power Company v. Johnson* in 137 Virginia 12 is direct tort for that. Hrg. 8/24/62 I cite you to Nichols *Eminent Domain*, 41-241.2 page 50 } which states this with no qualifications whatsoever.

There are a number of cases closely impounded to this one, which I cited to the Court in the Baskerville case, but not the cases we are discussing now. I believe you will recall that they state—I will refer to two of them: *Missouri Light and Power Company v.*, a Missouri case at 32 Southwest Sec. 783 and *Arnerich v. Elmaden Vineyard Corporation*, 126 Pacific Sec. 121, a California case. These two cases stated that when evidence is admitted to show that the award should be based—or damage to be suffered is to some extent based on the prospect of possible future tort, for which a cause of action would exist at that time, and when the award is based on that it's improper. In the Appalachian case it was because the commissioners on examination were requested to so so showed that they did base their award on that sort of testimony and that it wouldn't be fair. It wouldn't be proper to allow the landowner to be paid for something now, they have a right to be paid for it later in a future action. And these cases are without exception I believe, and I think the law is well established to this effect. So when Your Honor permitted this evidence to go before the commission, even if later they were instructed that they could

not consider this sort of thing, the damage had Hrg. been done. And we submit that the awards on 8/24/62 their face show that they relied on the testimony page 51 } of witnesses who based their appraisal on this theory and that, because of this, the awards are based on erroneous principles and that's clearly the basis on which to set aside the awards.

Mr. Hutcheson: I have nothing further to say that hasn't been said, so I won't—

The Court: I think, considering the caliber of the commissioners, I know they are outstanding citizens, they have served from time to time, I think what they did was proper and the Court should overrule your exceptions and enter a judgment on their finding.

Mr. Brasfield: We except to the ruling of the Court, Your Honor.

We haven't talked about the Baskerville case in particular, but I assume that Your Honor would make the same ruling.

The Court: I think we have the same ruling.

Mr. Brasfield: I think to preserve the record, we ought to go down the line and we would reserve our exception. In connection with the Baskerville case, Parcel M-69, we also move the Court to examine the commissioners in that regard.

The Court: Yes, sir, overruled.

Mr. Brasfield: And we would inquire if the Court would examine the commissioners?

Hrg. The Court: Same ruling.

8/24/62 Mr. Brasfield: Then we move that we be permitted to examine the commissioners by way of offer of proof?

The Court: All right, sir, I'll overrule you.

Mr. Brasfield: We note the exception.

By way of offer of proof in this particular case, Your Honor, we would expect the evidence to show Your Honor, if we had been permitted to examine Mr. Reid, or if the Court had examined him, that he would have testified in respect to the Baskerville case that they used the method of adding up their separate figures and divided it by five. And we would expect to develop testimony to show that in this particular case also the commissioners took into account in arriving at their damages the fact that the Company would flood more land than it was seeking to acquire in this proceeding.

The Court: That would apply to all of those, I reckon, wouldn't it?

Mr. Brasfield: Yes, sir.

The Court: I think for the most part, the argument that Mr. Slayton and Mr. Brasfield made with respect to excessiveness to those other three awards, would also apply to the Baskerville. We are hearing all four of those together. Let it apply to all.

Mr. Brasfield: To which I except.

Mr. Farley: We would like to suspend the final order pending an appeal if we be so advised.

A Copy—Teste:

H. G. TURNER, Clerk.

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