

8-9-1982

Transcript of proceedings

Wayne C. Lenhart
Court Reporter

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF WASHINGTON

COLVILLE CONFEDERATED TRIBES,)
)
Plaintiff,)
)
v)
)
BOYD WALTON, JR., and JANE)
DOE WALTON, et al.,)
)
Defendants.)

Case No. 3421 ✓

FILED IN THE
U. S. DISTRICT COURT
Eastern District of Washington

AUG 30 1982

J. R. FALLQUIST, Clerk
RF Deputy

Consolidated with

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v)
)
WILLIAM BOYD WALTON, et ux.,)
et al.,)
)
Defendants.)

Case No. 3831

TRANSCRIPT OF PROCEEDINGS

Spokane, August 9, 1982 -- Honorable Robert J. McNichols

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EXHIBIT INDEX

FOR THE DEFENDANT WALTON:

Identified

Admitted

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v) Case No. 3831
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WILLIAM BOYD WALTON, et ux.,)
et al.,)
)
Defendants.)

Before:

The Honorable Robert J. McNichols, Judge

Date:

August 9, 1982

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APPEARANCES:

FOR THE TRIBE:

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v)
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WILLIAM BOYD WALTON, et ux.,)
et al.,)
)
Defendants.)

Case No. 3831

BE IT REMEMBERED:

That the above-entitled action came regularly
on for hearing re plaintiff's testimony on August 9, 1982,
before the Honorable Robert J. McNichols, Judge, in the
District Court of the United States, for the Eastern
District of Washington, Spokane, Washington, appearances
as heretofore shown;

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WHEREUPON, the following proceedings were
had and testimony taken, to wit:



1 THE COURT: I apologize, Counsel, for the slight
2 delay. A matter came up that I wasn't anticipating, so --

3 I might ask counsel, first of all, what
4 are your respective positions on the request for an extension
5 of the date for submission of the proposed findings.

6 Mr. Veeder? I understand that is --

7 MR. VEEDER: I see where the Department of Justice
8 has requested what amounts to a week's extension of the
9 time that I requested, and I would agree to that.

10 THE COURT: Is that adequate time for all of
11 you, then?

12 MR. SWEENEY: I would say this, Your Honor,
13 perhaps before Mr. Price responds. I ask that because
14 of peculiar problems that the government has in getting
15 everything approved, getting it back to the Court, through
16 the Department of Interior, and through the Department
17 of Justice. After I submitted that motion, I was called
18 by Miss Lin Cox, who is, was here at the last hearing,
19 from the Department of Interior, she asked that there
20 be an additional week after that, I said I would bring
21 that to the Court's attention, but if necessary, we will
22 go, and we could meet the time schedule that is suggested
23 in the government's motion.

24 THE COURT: Is that acceptable, then, Mr. Price,
25 to you?

1 MR. PRICE: Yes, Your Honor. I would not object
2 to the additional week's extension, since I'm going to
3 be in a couple of trials in the next week or so, that
4 assists me, as well.

5 THE COURT: Mr. Veeder, what do you think about
6 that. I gather you're requesting, in effect, two weeks,
7 Mr. Sweeney?

8 MR. SWEENEY: Well, an additional week, whatever
9 the dates were that were set forth in the government's
10 motion, Your Honor.

11 THE COURT: All right.

12 MR. VEEDER: What would that put it to, Your
13 Honor?

14 THE COURT: Pardon?

15 MR. VEEDER: What --

16 THE COURT: Well, the government's motion requests
17 that the time for the proposed findings and memorandum
18 be August 30. I gather you'd be talking about September --

19 MR. SWEENEY: 7th.

20 THE COURT: -- 7th, or whatever, and the response
21 stated the government's motion is September 13. I gather
22 you just slip everything two weeks.

23 MR. SWEENEY: Well, one week beyond those dates,
24 Your Honor.

25 THE COURT: I see, one week beyond the dates

1 in your motion.

2 MR. SWEENEY: Which was a week more than Mr.
3 Veeder has.

4 THE COURT: That would take us down to final
5 argument around the, near the end of September.

6 MR. VEEDER: Is that what you figured?

7 MR. SWEENEY: That is what it would be.

8 MR. VEEDER: We're most anxious to move this
9 thing along, Your Honor, and get it finally --

10 THE COURT: Yes, I know.

11 MR. VEEDER: I realize other people have other
12 things to meet, so, if we can be sure that that will be
13 the final date, we will accept it.

14 THE COURT: All right, everyone commit to that,
15 then?

16 MR. SWEENEY: Yes, Your Honor.

17 THE COURT: What does that do to our schedule,
18 do you know, Mr. Naccarato; it would slip a week past
19 August 30th and September 13th respectively on the briefing
20 schedule, and then we have to have some time, if counsel
21 want final argument sometime around the, near the end
22 of September.

23 THE DEPUTY COURTROOM CLERK: Depending on the
24 length, we could probably work it in.

25 THE COURT: All right. Well, do you want to

1 set a date for that now, then?

2 THE DEPUTY COURTROOM CLERK: How about September
3 30?

4 MR. SWEENEY: Satisfactory to the government.

5 MR. VEEDER: September 30?

6 THE COURT: You may want to check your respective
7 schedules; if that presents a problem, you can talk to
8 Mr. Naccarato, we are flexible. We probably should set
9 a date so you can plan on it.

10 All right, the next matters we have, as
11 I understand it, the wrap up of some of the testimony,
12 Mr. Price?

13 MR. PRICE: Yes, Your Honor.

14 THE COURT: I gather the question of Mr. Walton,
15 Sr.'s, testimony has been resolved and will be live testi-
16 mony here?

17 MR. PRICE: That is correct.

18 MR. VEEDER: Your Honor, there is one or two
19 matters that I would like to bring up at this point, that
20 I think should precede anything Mr. Walton, uh, Mr. Price
21 has in mind.

22 I have pending that motion to strike, in
23 regard to WWWW (sic).

24 THE COURT: Yes, I understand that.

25 MR. VEEDER: And we have gone through the file

1 once more with the people that have been viewing this
2 with me in the past and there appears to be data in there
3 that we have never seen before. There is, uh, in WWWW,
4 a, what appears to be a colored aerial that certainly
5 our experts would have noticed, and that colored aerial
6 indicates, if we understand what it says, that all of
7 the Walton land is number one prime land. I believe that
8 there has been a variation in the exhibit since we last
9 saw it, and certainly, we interpose an additional objection
10 to it. It is a very crucial exhibit, in our view, and
11 I would like to have the statement added to the motion
12 to strike before Your Honor, the statement that there
13 is additional material in that file that we had never
14 previously seen, which is highly detrimental to the trial.

15 THE COURT: Mr. Price, is that the fact? All
16 I know is there was an exhibit marked and we had a discus-
17 sion about it, and I admitted it for certain purposes,
18 but I don't think I went through and numbered each particu-
19 lar page, and there were a number of particular pages
20 in the exhibit, as I recall.

21 MR. PRICE: Yes, Your Honor. As to anything
22 being altered, I don't know, I have not had access to
23 that exhibit since we had it here. Both Mr. Veeder and
24 the government have requested and been allowed to check
25 that file out, so, any statements of alteration, or such,

1 will have to be forthcoming from them.

2 THE COURT: Mr. Sweeney?

3 MR. SWEENEY: Your Honor, the defendant checked
4 it out and copied it and sent copies to the other counsel.
5 I don't, I believe Mr. Price didn't get the copy that
6 we sent, I will give him a copy that I have, but I don't
7 believe there were any alterations made during the period
8 it was in the custody of the government.

9 THE COURT: I'm certainly assuming that when
10 an exhibit is checked out of the court, that nobody made
11 any alterations in it.

12 MR. VEEDER: Well, all I can say, Your Honor,
13 is, and I would like to refer to the matter now, that,
14 on the data that I received, and the material that was
15 there, in the files, this material which is clipped together,
16 I had never previously seen until Friday afternoon when
17 I went in there and observed it, and using the legend
18 that appears on there, it is, it is manifest that, to
19 us, I added to the objection that I have interposed, mainly,
20 that we have had no possibility of cross-examination with
21 regard to the people that made this, that there is no
22 foundation for it, so far as I'm concerned, a great deal
23 of that material is in addition to the material Mr. Sweeney
24 sent us, so --

25 THE COURT: Where did it come from, if it was

1 in the court file at the time the exhibit was introduced?

2 MR. VEEDER: I have no idea.

3 MR. SWEENEY: Your Honor, this is complete,
4 a complete surprise to me. May I ask Mr. Veeder, are
5 you saying that there is material in there --

6 MR. VEEDER: -- we have never --

7 MR. SWEENEY: (Inaudible.)

8 THE COURT: Just a minute, gentlemen, Mr. Lenhart
9 can only take one at a time.

10 MR. SWEENEY: Is there material --

11 THE COURT REPORTER: If you would use the podium
12 it would be so much easier.

13 THE COURT: Yes, please use the podium.

14 MR. SWEENEY: May I ask, is there material in
15 Exhibit WWWW, as it now stands, that was not in the copy
16 of the exhibit that I sent to you?

17 MR. VEEDER: Yes, that is correct.

18 MR. SWEENEY: I can't --

19 THE COURT: Well, let's do this, --

20 MR. SWEENEY: -- can't explain that.

21 THE COURT: Why don't you compare that among
22 yourselves, we're not dealing in a jury case here, and
23 we can sift these matters out. We don't have all that
24 much time today, and I would like to complete the record
25 on this case, and I don't think it's necessary to argue

1 a legal motion prior to, to the completing the record.

2 MR. VEEDER: All right. Now --

3 THE COURT: So let's do that, and see if you
4 can come to an understanding on what is and what isn't
5 in the exhibit.

6 MR. VEEDER: I raise one more --

7 THE COURT: Secondly, I would suggest that any-
8 thing that you're in dispute about, take a look and see
9 how, whether it's all that much of a problem, or if it's
10 duplicating something else in the exhibit. I just don't
11 know.

12 MR. VEEDER: I will talk to Mr. Sweeney about
13 it.

14 THE COURT: All right.

15 MR. VEEDER: There is, I wish to bring to Your
16 Honor's attention, in regard to Defendant's Exhibit VVVVV,
17 that was introduced, a diary. Now, in regard to that
18 diary --

19 THE COURT: What is that exhibit, five V's?

20 THE DEPUTY COURTROOM CLERK: Four.

21 MR. VEEDER: Four V's.

22 THE COURT: I wish you people would have used
23 numbers like everybody else.

24 MR. VEEDER: I wish they had, too; it would
25 save us a lot of time.

1 BARON BOND
2 Anyhow, this exhibit purports to be a diary
3 pertaining to the lands now occupied by the Defendants
4 Waltons. We, of course, didn't have an opportunity to
5 view this. I went through it, I find that there have
6 been additions to the exhibit, for example, Wednesday,
7 27th, Friday, 29th, in other words, those are dates in
8 the diary, but when I finished my examination there is
9 no relationship of this VVVVV --

9 THE COURT: Now, you got five V's there.

10 MR. VEEDER: -- to the land. Did I get five
11 in there? I move to strike one V.

12 THE COURT: It's got four V's, like in Victor?

13 MR. VEEDER: That's right, four V's; I struck
14 the last one. Where we are, is, that there is no relation-
15 ship to the lands of the Defendant Waltons. There is
16 language throughout this diary that I think belies any
17 relationship to it.

18 THE COURT: Was this admitted in evidence at
19 the hearing?

20 MR. VEEDER: This was admitted in evidence.

21 MR. PRICE: Yes, it was identified by Mrs. Johnson
22 as a record of her family, kept when they were living
23 on the reservation.

24 THE COURT: That is my recollection.

25 MR. VEEDER: And the point that I'm making is

1 that this exhibit, the pertinent part of it is 1923 and
2 1925. Now, all the way through, the witness, whoever
3 kept the diary, said this, we went to the lake and worked
4 on irrigated land. Certainly there is no lake on the
5 Walton property. All the way through here, all of us
6 went to the lake and cleared weeds, went to the lake and
7 worked on irrigated land. Got another one. Doug, Doug
8 somebody worked on boom, and Dad and I finished the work,
9 Dad and I made ditches and irrigated at lake. Now, another
10 one here says irrigated at lake, caught first mess of
11 suckers. Now --

12 THE COURT: You're not going to read that whole
13 diary, are you, Mr. Veeder?

14 MR. VEEDER: No, Your Honor, but I'm reading
15 enough so you will understand my objection. I'm saying
16 that there is no relationship between this diary and the
17 operations on the Walton property.

18 THE COURT: All right. Well, can't you point
19 that out in your written submittal?

20 MR. VEEDER: I certainly can, Your Honor, but
21 I want the record to show that I interposed an objection
22 at this time.

23 THE COURT: All right, because the exhibit was
24 introduced at the time Mrs. Johnson was testifying, and
25 I think what you're really saying is it has no weight,

1 it doesn't have any relevancy.

2 MR. VEEDER: Well, it has no, it has no relation-
3 ship whatever to this land.

4 THE COURT: I think that is a matter of argument
5 that counsel should present. It may be you're totally
6 correct, I don't know.

7 MR. VEEDER: Foundation is lacking, because
8 the exhibit was --

9 THE COURT: Well, let's --

10 MR. VEEDER: -- uh, the diary is 1925, the land
11 didn't come into the Wham's property, the people who testi-
12 fied didn't acquire the land until October of 1925, and
13 this is antecedent to 1924.

14 THE COURT: You can put that in perspective
15 in your written submittal.

16 Are you prepared now to wrap up the testi-
17 mony?

18 MR. PRICE: No, Your Honor. If I may.

19 THE COURT: Go ahead, Mr. Price.

20 MR. PRICE: With respect to Exhibit 4-W's, Your
21 Honor, there has been some confusion in my mind as to
22 why that exhibit was not in evidence as a part of the
23 original trial, and the document that is now in evidence.
24 I have asked Mr. Bennett, who was the original witness
25 who testified, who brought the Soil Conservation Service's

1 original file, and as Mr. Veeder has pointed out in the
2 excerpt from a transcript, he wouldn't let go of it without
3 court order, and was so instructed, and even though he
4 testified about it here, and he marched out of the courtroom
5 with it, apparently.

6 THE COURT: Was that in the first trial?

7 MR. PRICE: In the first trial. The Exhibit
8 WWW (sic) will be identified today by Mr. Wilson Walton
9 as his copy of it. Mr. Bennett is here in person, and
10 I would like to put him on to elicit testimony from him
11 as to whether or not he recognizes Exhibit WWW (sic) in
12 terms of whether it purports to be a Soil Conservation
13 Service plan, he was familiar with the Walton property
14 at one time, worked with his property, and is capable
15 of identifying it as a Soil Conservation Service plan.
16 That is the limited purpose I would put him on for.

17 THE COURT: All right.

18 MR. VEEDER: Of course, I object to this, Your
19 Honor, if we're going to open up a new area of evidence,
20 I request the opportunity to rebut it.

21 THE COURT: Well, you, the Tribe has moved to
22 strike an exhibit which has previously been introduced
23 in evidence, and it is Mr. Price's desire, I understand,
24 to shore up the basis for having that exhibit in evidence.
25 Now, if there is something you wish to meet, we will face

1 that when it comes up, but gentlemen, this case has been
2 in the courts now for a long number of years, and I think
3 it's only appropriate that it be resolved with as much
4 information as will be of assistance to me in resolving
5 it. Now, if this raises something, with a proper showing,
6 Mr. Veeder, and you feel it necessary to rebut it, obviously
7 I'm going to give you the opportunity to do it. I don't
8 want to decide this case on anything but the best record
9 you can make on both sides.

10 Okay, go ahead, Mr. Price.

11 MR. PRICE: Mr. Bennett.

12
13 WILLIAM BENNETT, called as a witness on behalf
14 of the Waltons herein, having
15 been first duly sworn, was
16 examined and testified as
17 follows:
18

19 THE DEPUTY COURTROOM CLERK: Would you please
20 state your full name to the Court, and spell your last.

21 THE WITNESS: William A. Bennett, B-E-N-N-E-T-T.

22
23 DIRECT EXAMINATION

24 BY MR. PRICE:

25 Q Mr. Bennett, where do you reside?

1 A Okanogan, Washington.

2 Q What is your current occupation?

3 A I'm retired from the Soil Conservation Service.

4 Q And when were you first employed with the Soil Conser-
5 vation Service?

6 A On February 2nd, I believe it was, in 1949.

7 Q And were you ever assigned to the Okanogan District
8 of the Soil Conservation Service?

9 A Well, not, it isn't the Okanogan District.

10 Q In the Okanogan area?

11 A I have been assigned to the town of Okanogan to work
12 with two different districts at that time, which
13 were located, or headquartered at Okanogan at that
14 time.

15 Q All right, and did those districts encompass, or
16 was the, were the Waltons' lands encompassed within
17 the district to which you were assigned?

18 A Yes, it was called the Southeast Okanogan District
19 at that time.

20 Q All right, and in connection with your employment
21 with the Soil Conservation Service, was one of your
22 functions, or did the Service compile conservation
23 plans for farmers?

24 A Yes, they did.

25 Q Showing you --

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MR. PRICE: If I may approach the witness, Your Honor.

THE COURT: Yes, go ahead, Mr. Price.

Q (By Mr. Price) -- what is marked 4-W's, 4-W's as an exhibit, can you identify that, looking at it, as to whether or not that is a soil conservation program developed by the Soil Conservation Service?

A This was the, the copy of the plan which was given to, to Wilson Walton. One reason I can tell it is Wilson Walton's plan rather than the Soil Conservation's plan is that the Soil Conservation Service would have a page stapled on the right-hand side where they would denote notes that they made on different farm visits to Wilson Walton. That is only on the Service's plan, and it is not present on that.

Q All right, but for that difference, are the plans, are, do both persons have the same plan to, to -- (inaudible).

MR. VEEDER: Object to the question, this witness is being asked to compare this material that he has before him with the records in the Soil Conservation office, and we object to it because we asked for that data and was refused by this Court to us in the original trial.

THE COURT: Where is the original, Mr. Sweeney,

1 does anybody know?

2 MR. SWEENEY: At the last hearing we made a
3 request to the Okanogan office and they said they didn't
4 have the original file.

5 THE COURT: Well, Mr. Bennett, let me ask you
6 this, when a study of this nature was prepared by the
7 Soil Conservation Service, was it customary to provide
8 the property owner with a copy of the plan as it was main-
9 tained in your office?

10 THE WITNESS: Yes, they would be identical except
11 for this one sheet that I mentioned, which is a record
12 of future visits to be made to the farm.

13 THE COURT: All right, well, the objection is
14 going to be overruled, but what we're going to be talking
15 about here, gentlemen, is weight to be given, if any,
16 to these exhibits.

17 Go ahead.

18 Q (By Mr. Price) Mr. Bennett --

19 MR. VEEDER: May I -- I'm going to have another
20 objection. We have examined this record, as I stated
21 in the, earlier today. Now, is this man testifying that
22 the data he has before him is identical with the records
23 that cannot be found in the Soil Conservation Service?

24 THE COURT: We will permit Mr. Price to ask
25 a question about that. Obviously we have to find out

1 what the facts are, as well as Mr. Bennett can recite
2 them.

3 Go ahead.

4 MR. PRICE: Thank you, Your Honor.

5 Q (By Mr. Price) Mr. Bennett, in looking at the docu-
6 ments in that file, are you able to identify those,
7 all of those documents in there, as Soil Conservation
8 Service prepared documents?

9 A Yes, they are.

10 Q You testified previously in this court, and brought
11 the file with you, from the Soil Conservation Service
12 in Okanogan, is that not correct?

13 A That is true.

14 Q And you walked out of this courtroom with that file,
15 is that correct?

16 A That is true.

17 Q You were instructed by the government not to let
18 loose of that file without court order?

19 A By our personnel in our state office, yes.

20 Q All right, and what did you do with that file after
21 you left this courtroom?

22 A It was taken back to Okanogan and put back in the
23 files.

24 Q All right. And do you know what happened to that
25 file after this time?

1 A I can't tell now, I have been out of the Service
2 for, well, about two and a half years.

3 Q All right. Part of the documents in that file relate
4 to identification of soil types on the Walton property,
5 specifically, do they not?

6 A Yes.

7 MR. VEEDER: I'm going to have an objection,
8 Your Honor, that I interpose on the basis that this, there
9 is no evidence that this record that he has before him,
10 that is, this WW, WW -- four W's, is the same document
11 that cannot be found in the Soil Conservation Service,
12 and I think this becomes extremely important, if they're
13 trying to get this in as a government document.

14 THE COURT: Well, it's pretty clear from my
15 involvement in this proceedings that this document has
16 been in possession, as I understand it, of Mr. Walton,
17 Sr., and it is not the original that was, obviously, is
18 not the original that was in the government's office.
19 Mr. Bennett has testified that the records in there are
20 all records that were prepared by the Soil Conservation
21 Service, and I want to get this testimony out, you can
22 protect your record, Mr. Veeder, but I'm going to overrule
23 the objection.

24 Q (By Mr. Price) Mr. Bennett, what is the purpose
25 of the Soil Conservation Service in classifying Mr.

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Walton's lands?

A The purpose of any of the soil surveys is really twofold. One is to get a national inventory of what our soils are in the United States, so that, so that we know how much land we have that can be cultivated, how much can be irrigated, and so forth. However, for the individual farmer, the interest there is to get to him basic data, basic soil data that he can use in making a plan, and what needs to be done to this land to protect it and to get it to yield to its ultimate.

Q And to develop it?

A And develop it if it isn't already developed.

Q All right. Is there any purpose in the development of the soil types in these plans for the purpose of future litigation?

A To my knowledge there is none whatsoever. We have been, in fact, we are told to try to keep out of any litigation.

Q And according to the materials in Exhibit 4-W, does it depict the lands that are susceptible of development for farming?

MR. VEEDER: I object to this. I would like to ask some questions on voir dire, if I may.

THE COURT: Well, he is going into the contents

1 now. Are you going into his opinion?

2 MR. PRICE: We might be able to dispense with
3 that, Your Honor. I think he has identified the purpose,
4 what the file, how it's developed, what the purpose of
5 it is.

6 Let me rephrase that question.

7 Q (By Mr. Price) Does Exhibit 4-W identify the soil
8 types on Mr. Walton's lands?

9 MR. VEEDER: I object, because I want to ask
10 questions on voir dire of this witness.

11 THE COURT: Well, I think you're confounding
12 voir dire with cross. You can cross-examine him, Mr.
13 Veeder, but I think we ought to have his direct testimony
14 first. I don't think that would be proper voir dire at
15 this juncture.

16 Go ahead.

17 MR. PRICE: Thank you, Your Honor.

18 A Would you ask me that question again.

19 Q (By Mr. Price) Does Exhibit 4-W identify the soil
20 types on the Walton property?

21 A Yes, it does.

22 MR. VEEDER: I renew my objection, Your Honor,
23 this witness has no foundation, he didn't make the investi-
24 gation, he didn't analyze the soil, he didn't make the
25 land classification, he did none of those things, and

1 he is not in a position to testify in regard to them.

2 MR. PRICE: I don't want to open that up, Your
3 Honor, I think I'm right at the end of the questioning;
4 I want to identify the file.

5 THE COURT: All right.

6 MR. VEEDER: Where are we now, he's got a question,
7 I've got an objection.

8 THE COURT: Well, I'm going to permit you to
9 cross-examine him about his background and how he comes
10 to that conclusion, but I'm going to permit the witness
11 to finish his testimony. Your objection is overruled.

12 Q (By Mr. Price) Was there a question to you, Mr.
13 Bennett?

14 A No, I answered your question.

15 Q That's what I thought.

16 MR. PRICE: I think that's all I have. Thank
17 you, Mr. Bennett.

18 THE COURT: All right. Mr. Veeder?

19

20

CROSS-EXAMINATION

21

BY MR. VEEDER:

22

Q Now, you have testified that Defendant's Exhibit
23 four W's shows the land classifications, is that
24 correct?

25

A Yes, they do. They show them by a color code, which

1 indicates land use capability.

2 Q Now, did you do this work?

3 A I did not.

4 Q And who did it?

5 A I can only guess at that --

6 Q All right, if you can't answer --

7 A -- because of how --

8 Q You're not to answer the question, you said you can
9 only guess at it, and --

10 MR. VEEDER: -- and he said he doesn't know who
11 did it.

12 Q (By Mr. Veeder) So you can only guess at who did
13 this work?

14 A At the individual.

15 Q Now, so, as a matter of fact, you don't know whether
16 the land classifications, as set forth, and the soil
17 surveys as set forth in the exhibit, Defendant Walton
18 4-W's is correct, do you, you don't know that?

19 A Oh, yes, I do. I can tell that from what the soil
20 surveyors indicated.

21 Q So you are, you are testifying now that the water-
22 logged lands of the Defendant Waltons' property are
23 irrigable, is that correct?

24 MR. PRICE: Your Honor, I object to the form
25 of the question as being argumentative. There is no founda-

1 tion for that question at this point.

2 MR. VEEDER: The record is full of the proof
3 of the wet character of this land, the waterlogged character
4 of this land.

5 MR. PRICE: Too general, doesn't identify any
6 waterlogged lands, what he is talking about.

7 THE COURT: Well, I will, I will permit him,
8 this is cross-examination.

9 I might tell you, gentlemen, my present
10 thinking is, with respect to this, the precise accuracy
11 of it, the precise nature of the soil in the various areas,
12 I don't think is all that relevant, the reason why this
13 exhibit was admitted in the first place. It strikes me,
14 one of the functions of the Court on the remand from the
15 Circuit is to make certain determinations. I think it's
16 a matter of what weight can be given. Obviously Mr. Bennett,
17 himself, did not personally prepare this report.

18 MR. VEEDER: Your Honor, may I respond to that?

19 THE COURT: I'd just as soon you finished your
20 cross-examination.

21 MR. VEEDER: Excuse me.

22 THE COURT: I have overruled your objection,
23 you may proceed.

24 Q (By Mr. Veeder) Now, will you state into the record,
25 Mr. Bennett, your personal familiarity with the lands

1 in question?

2 MR. PRICE: Your Honor, I'm not objecting to
3 that, form of the question, except I didn't open that
4 up, if he wants to go into it, I think Mr. Bennett is
5 perfectly capable of going through that, but I asked Mr.
6 Bennett to identify that as a file of Soil Conservation
7 Service, not to identify the particular lands as individual
8 knowledge of them.

9 THE COURT: Well, it might be helpful to know.

10 Q (By Mr. Veeder) What is your familiarity with the
11 lands, did you, you didn't make the soil survey,
12 and the land class yourself?

13 A Not the soil survey; that wasn't my duties.

14 Q So, when you, when you testify in regard to the symbols
15 as shown on this exhibit, you have no personal know-
16 ledge as to either the acreage or the propriety of
17 the symbols that were used, is this correct?

18 A I know what the symbols mean.

19 Q You don't know whether they were correctly applied
20 to a particular piece of land, do you?

21 A I would be forbidden, actually, to question that
22 they were incorrect.

23 Q Now, would you answer the question, do you personally
24 know that these are correct?

25 A I have tested some of them for my own use afterwards,

1 and found -- and others I have not tested. I have --

2 Q Now, when you say --

3 THE COURT: Just a minute, let him finish the
4 answer.

5 MR. VEEDER: All right, fine.

6 MR. PRICE: Your Honor --

7 Q (By Mr. Veeder) You have tested some, you said?

8 MR. PRICE: Your Honor, could Counsel use the
9 podium. I'm not so sure --

10 THE COURT: Yes, I would appreciate it if you
11 would, Mr. Veeder, and I apply that to all of you, then
12 we get a decent record.

13 You can finish your answers, Mr. Bennett;
14 let me ask you a question, do you, did you personally
15 go out on the Waltons' land on one or more occasions?

16 THE WITNESS: Yes, I have designed some irrigation
17 systems on the land.

18 THE COURT: All right.

19 MR. VEEDER: Talking about soil conser- -- we're
20 talking about soil surveys and land classifications, now,
21 and he says he is not an expert on that, and hasn't done
22 the work, and that is the thrust of this exhibit.

23 MR. PRICE: Excuse me, Your Honor, I don't know
24 that he testified that he wasn't an expert on anything
25 this morning.

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THE COURT: Well, I assume no one has any objection if I would ask Mr. Bennett a question or two.

MR. PRICE: The Waltons would not, Your Honor.

THE COURT: I'm not taking a narrow approach to any of this, I have a job to do which I have been told to do, and I intend to do it.

EXAMINATION

BY THE COURT:

Q Mr. Bennett, I asked you earlier, you had been on this land, I gather, during the period of time that the soil study was being made, either before or after?

A I have been on the land, yes, sir; I don't know whether it was before or after this particular soil survey, but --

Q All right.

A I know I have gone on it several times after it was made.

Q You indicated --

A -- because the date of this original soil survey would have been near 1953, this one that is in color.

Q Um-hum.

A I can tell that, because our soil coding for the symbols was changed shortly after that, and this particular nomenclature was not used, the one that

1 is shown on this soil --

2 Q Yes, I think the original study was 1949, and then

3 was updated.

4 A Uh, the date I am not sure.

5 Q Well, it's in the exhibit, but I just want to establish

6 that you had been on the land itself, and then you

7 indicated earlier that you had done some testing

8 of the soil yourself. Would you just elaborate on

9 that?

10 A Merely, I had dug some holes merely to determine

11 the amount of water for specific fields to, in order

12 for my irrigation systems that I was designing on

13 it.

14 Q Um-hum, and you were, in effect, designing those

15 for Mr. Walton, Sr.?

16 A Yes.

17 Q All right. All right, you can go ahead.

18 A At that time, however, I think his son was working

19 with him on the farm, and --

20 Q All right.

21 A -- but essentially it was Wilson Walton, Sr.

22 THE COURT: You can go ahead with your cross-

23 examination.

24

25

1 CROSS-EXAMINATION (Continuing):

2 Q (By Mr. Veeder) But the soil, the holes you dug
3 was not to make a determination as to the soils classi-
4 fication or the soil surveys?

5 A No.

6 Q They had nothing to do with it?

7 A Just, just water holding capacity, and depth of soil
8 was what I was looking for.

9 Q So you're not testifying as to the accuracy of this
10 statement, from your own personal knowledge and back-
11 ground?

12 A No.

13 Q You're not; you said you are not?

14 A I don't make up the soil capabilities, that is done
15 by the soils men.

16 Q So your testimony does not pertain to the land classi-
17 fication and soil surveys that appear on Defendant
18 Waltons' 4-W's?

19 A I recognize them as being Soil Conservation Service
20 surveys.

21 Q Sir, I asked, you're not testifying as to the accuracy
22 of them?

23 A Oh, I -- no.

24 MR. VEEDER: That's all the questions.

25 THE COURT: Mr. Sweeney, do you have questions?

1 MR. SWEENEY: Just have one question -- one
2 or two, Your Honor.

3 MR. VEEDER: May I approach the witness and
4 return this?

5 THE COURT: Yes.

6 MR. VEEDER: (Does so.)

7

8 CROSS-EXAMINATION

9 BY MR. SWEENEY:

10 Q Mr. Bennett, at the original trial you had the official
11 file from the Soil Conservation Service regarding
12 Mr. Walton's plan?

13 A Yes.

14 Q And then you took it back to Okanogan, is that correct?

15 A Had to.

16 Q At that time you were still employed by the Department
17 of Agriculture, before you retired?

18 A That's right.

19 Q And then you returned it to the records there, to
20 the records of the Soil Conservation Service?

21 A Well, you know, I can't specifically say I did, but
22 I, I would have had no reason not to.

23 Q I'm not challenging that, I mean --

24 A I mean -- it's just that I can't remember the detail
25 of actually putting it in the file, but I took it

1 back to Okanogan for that purpose. I know I took
2 it out with me.

3 Q At the last hearing, this year, during that hearing,
4 the office of the United States Attorney asked that
5 office if they could find the original file; we were
6 informed it wasn't there. Have you checked to see
7 whether or not it's there, in the past few weeks?

8 A No, I haven't. I will say one thing, and that is,
9 that as an enterprise changes, and as farm plans
10 do get old, they are taken from the files and destroyed.
11 Now, they usually take from them important data like
12 soils maps and signature sheets and so forth, but
13 these farm plans do become outdated over a period
14 of years, and they are destroyed by the Service.

15 Q Is that a normal procedure, --

16 A That is the normal procedure.

17 Q -- is that what you're saying?

18 A That is what I'm saying.

19 Q And you're suggesting that is what might have happened
20 in this instance?

21 A I'm just giving it as a possibility, I'm not suggesting
22 that is what happened.

23 Q Yes, sir.

24 A But a possibility, if it can't be found.

25 Q All right.

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THE COURT: When was the last entry in that file?

MR. SWEENEY: Was during the last hearing, Your Honor, when was it, in May?

MR. VEEDER: The last interview?

THE COURT: No, the last entry in the file itself, do you know?

MR. VEEDER: I think it was 1956, as nearly as we can tell.

MR. SWEENEY: All right.

THE COURT: All right.

MR. VEEDER: Now, somebody can check for sure, but that is the number that I get out of it.

THE COURT: It's not all that unusual that it would be, I suppose there is a records destruction, but in any event, that is where we are. Is there any redirect, Mr. Price?

MR. PRICE: None, Your Honor.

THE COURT: All right, then, Mr. Bennett, you may be excused. Thank you.

MR. PRICE: Thank you, Mr. Bennett.

MR. BENNETT: You bet.

MR. PRICE: Call Wilson Walton to the stand.

1 WILSON WALTON, called as a witness in his
2 own behalf, having been
3 first duly sworn, was examined
4 and testified as follows:
5

6 THE DEPUTY COURTROOM CLERK: Would you please
7 state your full name to the Court, and spell your last.

8 MR. PRICE: Mr. Walton is extremely hard of
9 hearing. Everybody is going to have to speak up quite
10 loudly.

11 THE COURT: State your name, Mr. Walton, for
12 the record, would you please.

13 MR. PRICE: Maybe if I can stand by the witness.

14 THE COURT: Yes, I think maybe you should, Mr.
15 Price.

16
17 DIRECT EXAMINATION

18 BY MR. PRICE:

19 Q Mr. Walton, would you state your name for the record,
20 please?

21 A Wilson W. Walton.

22 Q Would you spell your last name, please; spell your
23 last name.

24 A Yes, W-A-L-T-O-N.

25 Q Mr. Walton, you reside on the property that is the

1 subject matter of this litigation; you reside on
2 the Walton property?
3 A Yes.
4 Q And how long have you lived there?
5 A Since July the 1st, 1948.
6 Q All right. You purchased the land in 1948?
7 A Yes.
8 Q Where were you living before you, just before you
9 purchased that land?
10 A I lived in Oak Ridge, Tennessee.
11 Q Just immediately prior to purchasing the property
12 where were you residing?
13 A At Wenatchee, my father's place.
14 Q All right. How did you learn about the property
15 that you purchased in 1948?
16 A From Mrs. Wham, a neighbor, living about two doors
17 from my mother, in Wenatchee.
18 Q Is this the Mrs. Wham who had actually lived on the
19 property previously?
20 A Yes, they had owned it.
21 Q All right, and she told you about the property?
22 A Yes.
23 Q As a result of that, did you go up and look at the
24 property?
25 A I did.

1 Q Did your father go with you?

2 A Yes.

3 Q Can you tell the Court how old you were at that time,
4 and how old your father was?

5 A I was 41, and my father was 63.

6 Q All right. And what was your father's occupation
7 at that time?

8 A At that time he owned a cattle ranch at Malaga.

9 Q He was a rancher?

10 A Yes.

11 Q All right. Did you physically go out and inspect
12 the property?

13 A I did.

14 Q And for what reason, for what purpose did you look
15 at the land?

16 MR. VEEDER: Object to this, Your Honor, this
17 is, has nothing to do with the matters on remand here.
18 I have just, there is no reason for him getting his grand-
19 father in here; what has that got to do with the whole
20 issue?

21 MR. PRICE: Your Honor, the offer of proof is
22 that Mr. Walton's father was a rancher/farmer and knew
23 about soil types, knew about irrigation. One of the reasons
24 they went up to look at the land was to determine whether
25 or not it would be suitable for development.

1 THE COURT: Yes, I will overrule the objection.

2 Q (By Mr. Price) What was the purpose in going out
3 and physically inspecting the land before you bought
4 it?

5 A What was that?

6 Q What was the purpose of you and your father going
7 out and physically inspecting the land before you
8 purchased it?

9 A To see if the land was capable of making a living.

10 Q Any particular kind of living?

11 A I had in mind either going into dairy or beef.

12 MR. PRICE: Could we have Exhibit 4-X mounted
13 on the board, please.

14 Q (By Mr. Price) Mr. Walton, showing you Defendant's
15 Exhibit 4-X's, can you identify this exhibit, please?

16 A Yes.

17 Q Did you prepare that exhibit?

18 A No, I did not.

19 Q Who prepared it?

20 A My son.

21 Q He actually drew the outline of the property on the
22 exhibit?

23 A He did.

24 Q All right. And who numbered the fields?

25 A My son.

1 Q All right. And you worked with him while he did
2 that?
3 A Yes.
4 Q All right. And Exhibit 4-X's purports to --
5 MR. VEEDER: May I examine at the board?
6 Q (By Mr. Price) -- show a schematic of your property
7 in broad outline?
8 A Is what?
9 Q -- purports to show a schematic of the fields on
10 your property?
11 A Yes.
12 (Mr. Veeder at the board looking at the exhibit.)
13 THE COURT: Was that an exhibit in the trial?
14 MR. PRICE: No, it was not, Your Honor. It
15 closely approximates Exhibit T-W, one very similar to
16 it, one that Mr. Walton, Boyd Walton testified from.
17 It's really offered for demonstrative purposes only.
18 THE COURT: All right.
19 MR. VEEDER: Say that again.
20 MR. PRICE: It's offered for demonstrative pur-
21 poses only.
22 (Pause.)
23 THE COURT: Go ahead, Mr. Price, with the ques-
24 tioning.
25 Q (By Mr. Price) All right, Mr. Walton, on your physical

1 inspection of the property, was anybody else along
2 with you on any of those inspections, besides your
3 father?
4 A What was that?
5 Q Did anybody else accompany you on these inspections
6 of the property, besides your father?
7 A No.
8 Q All right. From whom were you, who owned the property
9 when you went to look at it?
10 A (Inaudible.)
11 Q Did he --
12 (Interruption by court reporter.)
13 A Lao Moomaw, M-double O-M-A-W.
14 Q (By Mr. Price) Did Mr. Moomaw accompany you, show
15 you the premises on any occasion?
16 A He didn't the first day we were there, we were showed
17 the property by his son.
18 Q All right. When you viewed the property, did you
19 see any evidence of cultivation on the proeprty?
20 A We did.
21 Q And that would have been in what year?
22 A 1948.
23 Q All right. Would you describe for the Court what
24 evidence, if any, of cultivation you saw, referring
25 to Exhibit 4-X's.

1 MR. VEEDER: Your Honor, this entire, this is
2 entirely accumulative. Mr. Walton testified with exacti-
3 tude in regard to this same material. He has, in the
4 record which I have before me, statements identical with
5 the course we are going now. Exhibit T-W, offered by
6 Mr. Walton, is in the record. We have another exhibit
7 which sharply conflicts with T-W, that is here. Once
8 again, --

9 THE COURT: What is the basis of your objection,
10 Mr. Veeder?

11 MR. VEEDER: My objection, totally accumulative,
12 and the whole thing is to rehash and buttress the testimony
13 that Mr. Walton offered before.

14 THE COURT: Well, I gather this is not going
15 to be lengthy.

16 MR. PRICE: No.

17 THE COURT: I will overrule the objection.
18 I want to hear this whole story.

19 Q (By Mr. Price) Mr. Walton, would you describe for
20 the Court, please, the evidence of irrigation you
21 saw on the property when you came there in 1948?

22 A (No response.)

23 Q -- of cultivation.

24 A Of cultivation?

25 Q Yes.

1 A I can only do it by reference to the map.

2 Q All right, to Exhibit 4-X.

3 A Field number one.

4 Q That is the Roman numeral number one?

5 A -- was cultivated, planted in rye.

6 Q All right. Was there any evidence of irrigation
7 facilities on field number one?

8 A Yes.

9 Q Would you describe for the Court what those were,
10 please?

11 MR. VEEDER: Counsel, have you offered this
12 yet?

13 MR. PRICE: Yes, I will offer Exhibit 4-X for
14 demonstrative purposes, to assist the Court in seeing
15 what field he is talking about.

16 THE COURT: I gather the exhibit is primarily
17 just to develop Mr. Walton's testimony?

18 MR. VEEDER: I'm going to interpose an objection
19 to this, this is entirely hearsay. The witness admits
20 that his son did all of this. I'm going to say it's accumu-
21 lative, and certainly in conflict with two other exhibits
22 in the record.

23 THE COURT: Well, if there wasn't some conflict
24 in this case I would be surprised, but I'm going to permit
25 it for the purpose of --

1 MR. VEEDER: The Waltons are in conflict with
2 one another, that's the problem.

3 THE COURT: Mr. Veeder, I'm going to permit
4 this exhibit as demonstrative for the purpose of Mr. Walton's
5 utilization during this testimony.

6 MR. PRICE: Thank you, Your Honor.

7 Q (By Mr. Price) You may proceed, Mr. Walton.

8 A When I went up, inspected this field, with Leo
9 Moomaw, he showed me an irrigation pipe, starting
10 at this corner, next to the creek, running east along
11 the north border of that field, to the road.

12 Q That would be along the north boundary line of your
13 property?

14 A That's right.

15 Q All right.

16 A This was about, or this was a six-inch line, with
17 dials coming out of it, every 20 feet.

18 Q All right, would that have been for rill irrigation
19 as --

20 A That was for rill irrigation.

21 Q -- as opposed to sprinkler irrigation?

22 A No sprinklers.

23 Q All right. Now, would you tell the Court any other
24 evidence of cultivation you saw on the property?

25 A Any other?

1 Q -- evidence of cultivation.

2 A Yes, field number three was under cultivation.

3 Q All right. Can we go in order, Mr. Walton, was there
4 any evidence of cultivation on field number two?

5 A There was evidence at the north end of cultivation.

6 Q In what manner was it evident?

7 A At that year, it was being summer fallowed.

8 Q All right. Any other evidence of cultivation on
9 field number two?

10 A No.

11 Q Calling your attention to the house property, you
12 depicted some small drawings in here, does that depict
13 the house?

14 A That's representing the houses.

15 Q Did you see any evidence of orchard trees on the
16 property, Mr. Walton?

17 A We did.

18 Q Where were they located?

19 A Just, just north of the main house.

20 Q Would that be in field number two?

21 A Approximately 20 feet.

22 Q All right. Would that be in the area that you demar-
23 cated as field number two?

24 A That's right.

25 Q And can you tell the Court how many, or the size

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and type of the orchard, please?

A What was --

Q Can you tell the Court the size and type of the orchard, please?

A The size was approximately one acre. It contained three apple trees, three apricot trees, two prune trees, and a pear tree.

Q Could you tell how old those trees were?

MR. VEEDER: Object, no foundation for this man, there is no evidence that he can judge the age of a tree by, if he is an orchardist, maybe you should have a foundation.

THE COURT: Let's ask him.

Q (By Mr. Price) Mr. Walton, do you have any experience growing trees or knowing how old a tree is?

A Approximately.

Q And on what basis?

A Three ways to approximate the age of a tree. One is the size of the trunk, the condition of the bark, the height of the tree, and in an orchard, the spread and size of the branches.

Q Based on what you saw in evidence when you looked at the property in 1948, could you estimate the age of those trees at that time?

A I would estimate them somewhere between 25 and 30

1 years of age.

2 Q Were they bearing fruit?

3 A Yes.

4 Q Did you see any evidence or any means to irrigate
5 that orchard to keep those trees alive?

6 a I did.

7 Q And would you describe to the Court what that evidence
8 was, please?

9 A Starting at this point in the creek --

10 Q That is at the northern boundary of your property?

11 A At the northern boundary of the property, coming
12 down, following the creek, and gradually getting
13 an elevation, was an open ditch. That ditch came
14 down, made that curve, went out in here, came back
15 in here, following the contour of the land, came
16 down across above the orchard, down here, cut in
17 to the west side of the house, and into that field.

18 Q Basically followed the contour of the creek across
19 field two on Exhibit 4-X?

20 MR. VEEDER: I object --

21 A It followed --

22 MR. VEEDER: The witness, Counsel is testifying.
23 Now, when he recites what the witness testified to, it's
24 wholly improper.

25 THE COURT: All right, I will sift those things

1 out. I think he is merely trying to summarize.

2 MR. PRICE: No, I'm trying, Your Honor, to make
3 the record so somebody looking at it can identify where
4 it was.

5 MR. VEEDER: Well, I don't think Counsel has
6 a bit of right, or should be permitted to testify as to
7 what he is testifying now.

8 THE COURT: I think he is merely clarifying
9 the testimony, Mr. Veeder. Let's not get all excited
10 now, I'm --

11 MR. VEEDER: I'm excited about losing a lawsuit
12 under circumstances that are ongoing here.

13 THE COURT: All right. Well, your objection
14 is overruled.

15 Q (By Mr. Price) Now, did you finish your question,
16 the answer, now, Mr. Walton?

17 Let me ask another question. Did you see
18 evidence of other cultivation, now, in any other
19 fields besides field one and two?

20 A One, and -- one, two and three?

21 Q We have talked about field one, we have talked about
22 field two.

23 A Two --

24 Q Did you see any evidence of cultivation in field
25 three?

1 A In field three, yes.

2 Q And what was that, please?

3 A This whole field, at that time, was put into rye.

4 Q All right, was there any evidence of irrigation prac-
5 tices in connection with field number three?

6 A There was.

7 Q And what evidence was that?

8 A The evidence was this ditch that I explained that
9 came back by the orchard cut down by the house into
10 the north end of that field.

11 Q Of field three?

12 A Field three, and then spread out toward the creek,
13 back this way, so that it could be rilled.

14 Q Did you see evidence of any other cultivation at
15 that time on the property?

16 A Yes.

17 Q Will you explain what that was, please?

18 A That was in field five.

19 Q All right, now, you have dropped down further, lower
20 in your property, is that correct, to field five?

21 A Yes.

22 Q All right, what evidence of cultivation was in field
23 five?

24 A That field had been plowed, under cultivation, and
25 was planted in rye.

1 Q All right. Was there any evidence of irrigation
2 practices being employed in connection with field
3 five?

4 A Evidence of water coming from a large sprinkler that
5 came down and flooded the lower end of this field.

6 Q All right. Was there evidence of any other cultivation
7 on the property at that time?

8 A None.

9 Q All right. You can sit down, please.

10 Mr. Walton, do you have, can you estimate
11 for the Court the number of acres that might have
12 been irrigated at the time you looked at the property?

13 MR. VEEDER: Once again, Your Honor, I want
14 to interpose objection in regard to the cumulative aspects
15 of this, which goes beyond the normal objection of matters
16 cumulative. In the final decree of this court it is
17 declared that there were 32 acres of land irrigated at
18 the time, in 1942, between 1942 and '46. Now, this witness,
19 in my view, and the Waltons are bound by that final judgment
20 of this court, and I object to any effort to try to change
21 that acreage, because I think it's res adjudicata in regard
22 to this matter.

23 THE COURT: That's a matter of argument, Mr.
24 Veeder. You may well be right, I don't know, but I'm
25 going to hear the testimony of Mr. Walton.

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MR. VEEDER: My objection is overruled?

THE COURT: All right, your objection is overruled, and I think it's more a matter of argument and weight that you're talking about, but it is overruled, and we will proceed with the testimony.

Q (By Mr. Price) Mr. Walton, will you, can you tell the Court as to whether or not you can estimate the approximate number of acres under irrigation in 1948, when you came on the property?

A The number of acres that was irrigated, or, or was possible to irrigate?

Q First of all --

MR. VEEDER: I object to this, now.

Q (By Mr. Price) -- first of all, was being irrigated.

A In the summer of 1948?

Q Right.

A In that particular summer there was none of this land that was irrigated.

Q And why was that?

MR. VEEDER: Object to this, he has no way of knowing what was in Mr. Moomaw's mind about irrigating.

THE COURT: I don't know, Mr. Veeder, but let's let the testimony come in here. If he knows, why, he can answer; if he doesn't, he can say so.

Q (By Mr. Price) Why was that, Mr. Walton?

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MR. VEEDER: The objection is overruled?

THE COURT: Yes.

A In the spring of 1948, during the huge flood through this country, Omak Creek had feathered over and come down through here.

Q (By Mr. Price) Through No Name Creek?

A That's right.

Q All right.

A And --

MR. VEEDER: I object again to this --

A (Inaudible.)

MR. VEEDER: Object again to this --

THE COURT: Just a moment.

MR. VEEDER: This is pure hearsay, he wasn't there, he didn't know that Omak Creek flooded, he had no way of knowing.

MR. PRICE: Your Honor, this testimony is being offered for his looking at the property, as to whether or not he would purchase it, and I think he is not testifying as to the truth or accuracy of it, but what was told him as to why it was not being irrigated at that particular time when he was looking at it.

MR. VEEDER: May I recite what the issue is here, we're saying that this land was not irrigated in 1948, and he is saying without any personal knowledge

1 that the ditch was washed out in 1948, and I think that
2 is hearsay, has to be hearsay.

3 THE COURT: Well, it may be. It may be hearsay.
4 Mr. Walton, did you, can you hear me, sir?

5 (Sliding towards each other.)

6 THE COURT: Can you hear me?

7 THE WITNESS: I can.

8 THE COURT: You may sit down, sir, if you would
9 like. What inquiry did you make about the land and the
10 area prior to making your decision to buy?

11 THE WITNESS: Two. One is, I went over it with
12 my father, we walked over, took a shovel, and inspected
13 different parts of the land that had been farmed, and
14 parts that was under, in grass, for the prospect of pasture
15 grass.

16 Also, for the possibility of developing
17 land in which you could raise hay and irrigate. And in
18 this ditch, that I have described, that parts of that
19 ditch are still there, we could go out in the field and
20 I could show you the ditch running from here clear down
21 around that point, it's that wide and that deep.

22 THE COURT: Where did you learn your information
23 about the flood, where did you obtain the information
24 about the flood in 1948?

25 THE WITNESS: (Laughter.) Very evident.

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THE COURT: So, you could observe --

THE WITNESS: You could see where the flood water just come right down --

MR. VEEDER: (Inaudible.)

THE WITNESS: -- and cut, it had, it cut the whole bank from up into these fields that at that time belonged to the mission, down approximately to where, from two feet to four feet deep, right on down through here, and had deposited this material that had been cut out of that, from this point on down through here, --

THE COURT: (Nods yes.)

THE WITNESS: -- in places in this field, the creek bed had completely filled up until the water spread out.

THE COURT: (Nods yes.)

THE WITNESS: And then gradually drained back to the creek bed.

THE COURT: Did you have to remove some of that material later?

THE WITNESS: I did.

THE COURT: I see. All right, thank you.

Q (By Mr. Price) Mr. Walton, was the flood of '48 something that anybody who lived in north central Washington knew about?

A Everybody did.

1 Q Was, in fact, Omak, did it lose a bridge, was it
2 cut off from, from access to outside points?
3 A They had a wooden bridge, it was completely washed
4 out.
5 Q Do you know whether or not '48 was one of the highest
6 water marks ever recorded in north central Washington?
7 A I do.
8 Q And was it?
9 A Yes.
10 Q Did anybody tell you that the irrigation works had
11 been washed out, apart from what you saw yourself?
12 MR. VEEDER: I object, this is purely hearsay,
13 did somebody tell you, that is the clearest kind of hearsay.
14 MR. PRICE: I'm not asking what was said, just
15 asking if anybody told him at this point, Your Honor.
16 THE COURT: I think technically Mr. Veeder is
17 right, I think it would be hearsay, but I think you have
18 covered it.
19 I might say that anyone who has lived around
20 here knows that 1948 was one of the big flood years.
21 Most of us can remember.
22 MR. VEEDER: Your Honor, this ties back, and
23 I'm going to have a record on this, this ties back to
24 the issue that the land was not irrigated, he was raising
25 barley, a non-irrigated crop, I think it's extremely impor-

1 tant in regard to the, to the crucial, the single crucial
2 issue here on remand, the amount of water that was used,
3 and I think -- (inaudible, Counsel speaking from far counsel
4 table, not reportable.)

5 THE COURT: Well, you're arguing the case.
6 What I'm trying to do is get the testimony out of the
7 way, and then we will sift out what testimony to accept
8 and what weight to be given to it.

9 Go ahead.

10 Q (By Mr. Price) Mr. Walton, how many years have you
11 been in the farming business, before you retired?

12 A In this?

13 Q On the Walton property.

14 A Thirty years.

15 Q Did you have experience growing different types of
16 crops on your land during that time?

17 A I did.

18 Q All right. Do you know, is it possible to determine
19 whether a field has been cultivated for the first
20 time, for only one year, or whether it's been in
21 cultivation for a number of years?

22 A I believe so.

23 Q Were you able to determine in your own mind whether
24 or not the areas of cultivation you saw on the Moomaw
25 property in 1948 had been cultivated over a period

1 of time, or were brand new cultivations?
2 A Over a period of time.
3 Q And why do you say that?
4 A Let's take, for instance, this square here.
5 Q You're pointing to field number five?
6 A All I want is a square.
7 Q All right.
8 A We will say we have a square field. Now, when a
9 farmer goes on that field to plow it, he will generally
10 start going around like that, and in doing so, his
11 plow turns the earth outward. Now, if you have a
12 fence around here, the first time it's turned out,
13 you have a furrow out there that is not worked.
14 The second year you do that, you have two furrows
15 out there. In other words, you heaped it up once,
16 you heaped it up again. If you had cultivated the
17 field, say, ten years, as a general rule, your field
18 will slope gently toward the center, where you have
19 been throwing the dirt out.
20 Q What did you evidence about the fields that were
21 cultivated when you looked at the property in 1948?
22 A This field showed strong evidence of long cultivation.
23 Q That is field number one?
24 A Field number one.
25 Q All right.

1 A Field number three did.

2 Q All right.

3 A And also field number five.

4 Q Thank you. Mr. Walton, when did -- well, maybe I
5 can speed this up. You were responsible for bringing
6 power into, into the No Name Creek Valley, is that
7 correct?

8 A Would you state that again?

9 Q You were responsible for bringing power, electric
10 power into the No Name Creek Valley, is that correct?

11 A That is correct.

12 Q There was no electric power to the property when
13 you purchased it from the Moomaws, was there?

14 A No.

15 Q All right. When you purchased the property in 1948,
16 did you undertake any activities to start to develop
17 that property?

18 A Immediately.

19 Q For -- give us a -- what did you do, please, in terms
20 of trying to develop the property?

21 A Well, the first thing I did, when I bought the place,
22 we had no running water.

23 Q No domestic water?

24 A No domestic water, running water, and there was a
25 large spring up here that was off our land, but we

1 tapped it, got permission to tap it, and came down
2 with domestic water by gravity, to the house.
3 Q All right. Did you, did you --
4 A And no sewage system, no inside toilets, or anything
5 like that, which we established and put in.
6 Q Okay. In connection with the development of the
7 land for agricultural purposes, did you apply for
8 any water rights?
9 A I did.
10 Q When?
11 A Sometime the fall of 1948.
12 Q And for what purpose did you apply for water rights?
13 A For the sole purpose of assuring myself irrigable
14 water, if possible.
15 Q Did you determine how many acres of potentially irri-
16 gable land were available to the property when you
17 purchased it, or reasonably soon thereafter?
18 A I did.
19 Q And how many acres did you determine you felt were
20 irrigable, susceptible of irrigation?
21 A Approximately 155.
22 Q Did you undertake to develop those lands for irrigation
23 in your program?
24 A I did.
25 Q As part of that program, did you contact the Soil

1 Conservation Service?

2 A Immediately, in the very early spring of 1949.

3 Q For what purpose?

4 A For the sole purpose of scientific advice, experience,
5 to develop the land to the best of its ability.

6 Q Asking you to look at Exhibit 4-W's, can you identify
7 that exhibit for the Court, please?

8 A Yes.

9 Q Tell the Court what that is.

10 A That is a Soil Conservation Plan.

11 Q And do you know whether that is your copy or the
12 Soil Conservation Service's copy?

13 A I couldn't say whether it's my copy or not.

14 Q Okay. Did you utilize the Soil Conservation Service
15 plan?

16 A Did I -- ?

17 Q Did you utilize the soil conservation plan?

18 A No, I didn't get it then, please.

19 Q Did you utilize the material in Exhibit 4-W's?

20 A I did.

21 Q As part of the plan that they developed for you,
22 did they purport to classify your soil types?

23 MR. VEEDER: I object to this, Your Honor.

24 A Uh --

25 MR. VEEDER: We went through this earlier with

1 Mr. Bennett, and it was agreed that they didn't know who
2 made the soil survey. Now, we have been denied, in other
3 words, the right to cross-examine in regard to those soil
4 surveys. Now, we're circumventing here the objection
5 that I interposed, the fact that there is absolutely no
6 foundation in regard to these soils, and now we're having
7 a witness get on the stand who says I don't know whether
8 this is my personal copy or not, but I'm going to testify
9 in regard to the irrigable acreages, and the classifica-
10 tions, on the soil classifications. Now, I think there
11 is a point, Your Honor, where objections should be sustained
12 in regard to materials of this character which are crucial.
13 This witness doesn't know.

14 THE COURT: Well, your objection is basically
15 hearsay, Mr. Veeder, is it not?

16 MR. VEEDER: My objection goes beyond hearsay.
17 My objection --

18 THE COURT: Maybe you should state --

19 MR. VEEDER: -- goes to that this man cannot
20 qualify --

21 THE COURT: Maybe you should state your objection.
22 I don't know what you're objecting to.

23 MR. VEEDER: (Inaudible.)

24 THE COURT: Just a moment --

25 MR. VEEDER: -- I got my objections in here.

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THE COURT: All right, are you all through, then?

MR. VEEDER: No, no.

THE COURT: Well, then, if you will please --

MR. VEEDER: -- I'm not through, I'm going to testi- -- I'm going to put in my objections now. We have objected originally to this document, which is not a document at all, but it's a series of documents, on the basis that it is the purest kind of hearsay. Secondly, it is full of opinion evidence, all of it is opinion evidence, in fact, in regard to soils, both as to the kind and character of the soils, and a number, and uh, the number of acres of each category.

Now, this witness is not a qualified soil scientist, he didn't prepare this data, the man, Bennett, who incidentally apparently has left us, says that he didn't know who prepared this data. Now, I renew my objections that there is no foundation, and that this is a pure kind of hearsay.

THE COURT: All right, now, are you finished?

MR. VEEDER: Yeah.

THE COURT: All right, now, from now on, Mr. Veeder, I would like you to speak, and if someone else is speaking, please don't interrupt, either myself or counsel. Now, I'm reasonably familiar with the provisions

1 of the hearsay rule. I don't think anyone is contending
2 here that this document was not prepared by the Soil Conser-
3 vation Service.

4 Now, the question of what particular quality
5 any given soil was, obviously, the person who actually
6 made those tests is apparently not available, no one knows,
7 --

8 (Witness speaking to his counsel.)

9 THE COURT: -- this is a document --

10 MR. VEEDER: Now, we're having the witness
11 approached for a minute.

12 THE COURT: Just a minute, I would appreciate
13 if you didn't interrupt. There is nothing wrong with
14 a lawyer talking to his witness, as long as he is not
15 interfering with court proceedings. But, I will cover
16 this more carefully when we hear you on these matters
17 fully. But I indicated earlier that for certain purposes
18 this document was admissible in evidence. Initially I
19 think we discussed about to show the intent of the parties
20 is a clear exclusion to the hearsay rule, but I think
21 more importantly, the question is, that insofar as, and
22 I haven't reviewed that with a great deal of care, the
23 exhibits we're talking about, but the purpose of the Court
24 in trying to reconstruct something that has transpired
25 over a period of many, many years, and this has, and

1 evaluating documents of this kind, and testimony, is to
2 determine the question of the trustworthiness of it.
3 True, it comes under an exception to the hearsay rule,
4 and true, it does restrict, if not to some extent, eliminate
5 the right of cross-examination, but insofar as this soil
6 report having been prepared by the Soil Conservation Service
7 with respect to this land, I don't see any legitimate
8 question on that. I'm going to admit it, and you can
9 talk about the weight, or have admitted it, and you can
10 argue the weight of it when you make your presentation,
11 but for the moment I'm going to permit Mr. Walton to testify,
12 and I will determine, and you can protect the record with
13 short concise objections, but I'm going to hear this,
14 and I will sift out later what portions of it are relevant
15 or not relevant to any issue in this case.

16 Go ahead, Mr. Price.

17 MR. PRICE: Thank you, Your Honor.

18 Q (By Mr. Price) Mr. Walton, Exhibit 4-X's, whose
19 name is on the front of that exhibit, please?

20 A (No response.)

21 Q Whose name appears, whose name appears on the front
22 of Exhibit --

23 A That is my name, Wilson W. Walton.

24 Q Strike the question. Whose name appears on the front
25 of Exhibit 4-W's?

1 A On this exhibit?

2 Q Yes.

3 A My name.

4 Q Would you read that for the record, please?

5 A Wilson W. Walton.

6 Q All right.

7 THE COURT: Mr. Price, might I interrupt, and
8 ask Mr. Veeder and Mr. Sweeney also, how much time do
9 you think you're going to want today, or need?

10 MR. SWEENEY: Well, for the government, Your
11 Honor, we have no witnesses to present on this portion
12 of the hearing.

13 THE COURT: Well, we have, I had another brief
14 matter scheduled now, and then we do have a, I think will
15 be a short criminal calendar at 1:30, but I don't want
16 to rush you on this, because I want to, I want to get
17 this case resolved as much as you gentlemen do.

18 Would you rather take a quick recess now,
19 I note Mr. Perry and Mr. Chastik are here for our 11:30
20 conference.

21 MR. SWEENEY: Yes, Your Honor.

22 THE COURT: Or would you rather adjourn until,
23 say, 2:30, and we wouldn't have anything interfering.

24 MR. VEEDER: 2:30 would be fine with us.

25 THE COURT: What do you think, Mr. Price?

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MR. PRICE: That would be fine.

THE COURT: And then we won't impose on other counsel. I probably should have scheduled more time for this, but I do want it fully heard, and I'm sure Mr. Veeder will have cross-examination.

MR. VEEDER: Are you going to use the courtroom, or -- you want us to get these materials out of here?

THE COURT: No, no, that won't be necessary. You can just set it aside, Mr. Veeder, or you can stack it right on the table. There won't be any trial or anything. We just have several motions, and hearings.

Mr. Perry, and Mr. Sweeney, do you prefer to discuss -- (etc., etc., etc.).

You don't have to remove it, Mr. Price, it will be safe there, or Mr. Veeder, so we will see you gentlemen, then, at 2:30, on this case. All right.

THE BAILIFF: Please rise.

(Court recessed this case to hold other matters before and after lunch.)

1 AFTERNOON SESSION

2 August 9, 1982

3
4 THE COURT: Counsel, I again apologize. Monday
5 is such a fire drill around here, I sometimes just can't
6 control it. We will do the best we can.

7 You weren't finished yet with Mr. Walton.

8
9 WILSON WALTON, the witness on the stand
10 at the time of recess, having
11 been previously duly sworn,
12 resumed the stand and
13 testified further as follows:
14

15 CONTINUED DIRECT EXAMINATION

16 BY MR. PRICE:

17 Q Mr. Walton, when we left off you had filed for a
18 water right and you had contacted the Soil Conserva-
19 tion Service, is that correct?

20 A That is correct.

21 Q And that was just as soon as you came on the property?

22 A (No response.)

23 Q And that was when you first came on the property?

24 A Yes.

25 Q Did the Soil Conservation Service do anything when

1 you contacted them?

2 A Yes, they, first thing they do is send out a soil
3 scientist. We went over all of the property, and
4 picked out the best land.

5 Q What was the purpose in picking out the best land?

6 A Coming onto the place with the cattle, my first purpose
7 was to obtain hay to feed those cattle over the winter.

8 Q You were looking for the best land to get the most
9 hay you could to get your stock through the winter?

10 A Exactly.

11 Q All right. Did you, how were you financing this
12 operation, where were you getting the money to develop
13 this property?

14 A I had a little, I saved up, and the rest of it had
15 to come from the proceeds of the property.

16 Q Of what you could generate from the farm?

17 A Selling milk.

18 Q Did you receive anything from the Soil Conservation
19 Service as a result of the soil study?

20 A Yes, I received a conservation plan.

21 Q That's what has been identified as Exhibit 4-W's?

22 A Yes.

23 Q Did you undertake to implement this plan?

24 A Yes.

25 Q And when did you, in your opinion, complete implemen-

1 tation of that plan?

2 A I completed the first part of this in two years.

3 Q That would have been by 1951?

4 A Yes.

5 Q In 1951 how many acres of hay land did you have under

6 irrigation?

7 A Approximately 65.

8 Q All right. Did you have any other lands under irriga-

9 tion at that time?

10 A Yes, I had pasture land.

11 Q And approximately how many acres?

12 A I'd say close to 90.

13 Q All right. Was there ever a second plan developed

14 by the Soil Conservation Service?

15 A Yes.

16 Q And what was the purpose of that?

17 A The purpose of that plan was to redistribute the

18 water on the pasture land, to drain some parts, and

19 make better use of the water in dry part.

20 Q All right.

21 MR. VEEDER: Could I have the answer read back

22 on that, I couldn't understand.

23 THE COURT: He said the first purpose was to

24 redistribute the water on the pasture lands and use --

25 MR. VEEDER: -- pasture --

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THE COURT: -- for more beneficial purposes
on other lands.

Q (By Mr. Price) Do I take it, then, you weren't putting
additional acreage under irrigation, but just redis-
tributing --

A Yes.

MR. PRICE: Somewhere there is a word in there.

Q (By Mr. Price) What did it take to implement this
plan, these plans, could you just go out and do it
all at once, or how did you do it?

A No, I did it as fast as I could, which meant that
I took the part that was the easiest to accomplish
first, and made my distribution, and as I accom-
plished that, I went to the harder parts and worked
on that.

Q All right. What did it take to get the water to
the fields?

A One of the places it took building a dam in the creek.
Another time it took opening ditches.

Q Opening what ditches?

A Ditches that the beavers had made.

Q Were there beaver dams on the property on No Name
Creek when you acquired the property?

A Yes.

Q Did you utilize those ditches for irrigation purposes?

1 A Did what?

2 Q Did you utilize the ditches that were there from
3 the beavers for irrigation purposes?

4 A Yes.

5 Q And on what fields would that have been?

6 A That would have been field six.

7 Q All right. How else did you get water on the land?

8 A Some of it was subirrigated.

9 Q And what fields would that have been?

10 A That was part of six, part of eight, and where it
11 was subirrigated, that would be too much water.

12 Q What did you do about that?

13 A I would ditch it, run it, by gravity, out to the
14 dry parts.

15 Q Were you able to use the land, then, that you removed
16 the water from?

17 A What?

18 Q Were you able to utilize the land that you removed
19 the water from?

20 A Yes.

21 Q For pasture or for hay land?

22 A No, for pasture.

23 Q And would crops grow on that land?

24 A Some would.

25 Q All right.

1 A I didn't try to grow crops.

2 Q All right. A crop, as opposed to -- do you differen-

3 tiate grass from crops?

4 A Yes.

5 Q All right, grass utilizes water, does it not?

6 A It did.

7 Q And you grazed your herd on these pastures?

8 A Yes.

9 Q How else did you get water to the property?

10 A I got some from a spring, up at the head of, uh,

11 plat five.

12 Q Did you utilize any electric pumps to get water to

13 the property?

14 A Yes, as soon as I got electric power, I put in pumps,

15 electric pumps.

16 Q What did you have to do to get electric power?

17 A I had to guarantee the REA \$360 a year plus clearing

18 a right-of-way for the power line.

19 Q Did you clear the right-of-way?

20 A I did.

21 Q How long did that take?

22 A Approximately a month.

23 Q Did you complete the second plan that the Soil Conser-

24 vation Service developed?

25 A Yes.

1 Q In what year?
2 A About 1952, '53.
3 Q Did you receive any awards form the Soil Conserva-
4 tion Service at that point in time?
5 A Did --
6 Q Did you receive any awards from the Soil Conserva-
7 tion Service at that point in time?
8 A Yes, my wife and I was made conservationists -- Conser-
9 vationists of the Year for Okanogan County.
10 Q Do you know whether or not that was based in part
11 on your completion with the plans that they had
12 developed?
13 A It was.
14 Q Would you go to Defendant's Exhibit 4-X's, please,
15 and indicate by the year 1951 how many acres of hay
16 land you had under irrigation and how many acres
17 of pasture land you had under irrigation, please?
18 A You said 1951?
19 Q 1951.
20 A Number one.
21 Q Field number one?
22 A Which was ten and a half acres. Number two.
23 MR. VEEDER: Your Honor, may I bring this to
24 Your Honor's attention, this all, to the precise words
25 that are being, being utilized, precise exhibits, is already

1 in the record, T-H, and Mr. Walton testified in detail,
2 referring even to the same acreages now, that is all in
3 the record, every bit of it.

4 THE COURT: As I said this morning, Mr. Veeder,
5 I wasn't involved in the previous trial. I know there
6 may be some duplication here.

7 MR. VEEDER: Didn't hear.

8 THE COURT: I say there may be some duplication
9 in the testimony, I was not involved in the first trial,
10 and if I'm going to intelligently resolve this case, I
11 think I will hear the testimony from the witnesses who
12 have the knowledge. If that was an objection, it's over-
13 ruled.

14 MR. VEEDER: It was an objection.

15 THE COURT: All right.

16 Q (By Mr. Price) You may proceed, Mr. Walton.

17 A Number two is approximately 15 acres.

18 Q And how was that being irrigated?

19 A (No response.)

20 Q How was that being irrigated, in what method?

21 A Right at this spot I installed a five-horsepower
22 pump.

23 Q You're pointing to a point between fields one and
24 two?

25 A It was in the creek between one and two.

1 Q All right.

2 A And there was a T line from the bottom of the creek
3 going to both sides, one to one, and one to two.

4 Q All right.

5 A And I would sprinkle this one, change my pipe over
6 here and sprinkle this field.

7 Q All right.

8 A With the same source.

9 Q All right. What other irrigation were you doing,
10 please?

11 A Number three.

12 Q How many acres?

13 A About 15 acres.

14 Q And how was that being irrigated?

15 A I have installed a five-horsepower pump right at
16 the lane in the creek.

17 Q The lane is the driveway that connects --

18 A That is at the driveway.

19 Q -- that connects your house to the county road?

20 A Yes, and it did the same as this up here, it sprinkled
21 field number four, and field number three.

22 Q All right. How many acres were being irrigated in
23 field number four?

24 A Field number four, about 8 acres.

25 Q All right. Any other irrigation at that point in

1 time?

2 A Yes. Number five was being irrigated.

3 Q How many acres, please?

4 A Thirty-five.

5 Q And in what manner was it being irrigated?

6 A It was being irrigated at that time from a dam in
7 the creek right here, with a 20-horsepower pump,
8 and a main line going up the center of the field,
9 and irrigated this way.

10 Q All right. Any other irrigation at that point in
11 time?

12 A That consisted of all of the irrigation of the hay
13 land.

14 Q All right. Any other irrigation?

15 A I did use this pump to irrigate pasture land.

16 Q And where was that located?

17 A That was on field six.

18 Q How many acres were being irrigated on field six?

19 A I'd say about 35 acres.

20 Q Any other irrigation at that time?

21 A Yes, I had irrigated all of field seven.

22 Q How many acres did that consist of?

23 A (No response.)

24 Q How many acres, in field seven, were being irrigated?

25 A I'd say about 20 acres.

1 Q Okay.

2 A Wait a minute, no, about 40 acres.

3 MR. VEEDER: Say that again?

4 THE WITNESS: About 40 acres.

5 Q (By Mr. Price) And that was pasture land?

6 A That was pasture land.

7 Q And method of irrigation?

8 A I had placed a dam in the creek right up in here,
9 and ditched it.

10 Q All right. Any other irrigation underway at that
11 time?

12 A Number eight.

13 Q Was that pasture land, also?

14 A That was pasture land.

15 Q Approximately how many acres?

16 A About 15.

17 Q And the method of irrigation?

18 A It was irrigated by ditching. There was a beaver
19 dam in here that flooded this upper end. The water
20 came out and came back around in here, and I tapped
21 it and ditched it like that.

22 Q All right, you can take your seat, please.

23 A (Does so.)

24 Q From 1951, how long did you continue to operate that
25 property after 1951?

1 A What?

2 Q How long did you continue to operate the property
3 after 1951?

4 A Until 1966.

5 Q And what happened in 1966?

6 A I took my older son into partnership with me and
7 turned over most of the management to him.

8 Q When did he take completely over, what year did he
9 take completely over from you?

10 A 1967.

11 Q Okay. Did you continue to irrigate the property
12 that you described here, in one form or another,
13 from 1951 on through 1966?

14 A Yes.

15 Q And were you operating a dairy farm during that entire
16 period?

17 A I did.

18 Q Was, when you, from the time you purchased that pro-
19 perty did you, was it your intention to develop that
20 property to the fullest extent you could, within
21 your means?

22 A Yes.

23 Q And did you do so?

24 A I did.

25 Q Were there lands on that property that were not

1 susceptible of irrigation?

2 A (No response.)

3 Q Were there lands on the property that you purchased

4 that were not susceptible of irrigation?

5 A You mean you couldn't get water to them?

6 Q Whether you could get water to them or not, wouldn't

7 make any difference, wouldn't produce a crop or grass.

8 A Oh, all of the bottom land down through here.

9 Q And what was the problem with the bottom land?

10 A Some of it was alkali.

11 Q Were you able to recapture any of that land through

12 development?

13 A Yes.

14 Q And how did you do that?

15 A The biggest problem was in number six.

16 Q Field six?

17 A Yes. Some of the alkali was extremely high.

18 Q Readings as high as --

19 A And --

20 Q -- how high were the readings, Mr. Walton, how high

21 were the alkali readings?

22 A Did I say number six?

23 Q Yes.

24 A I meant number seven.

25 Q All right.

1 A Number seven, on the upper part, like that, this
2 section in here ran 9.5.

3 Q Is that a high reading on the alkali scale?

4 A Seven, 7.5, I believe, is neutral. Seven is slightly
5 acid. From neutral, as you go up, it becomes alkali,
6 or gives a lye action.

7 Q Is 9.5 high, moderate, or a low alkali reading?

8 A 9.5 is extremely high. In fact, it's so high that
9 practically nothing will grow.

10 Q Did you recover any of that land?

11 A I did.

12 Q How did you do that?

13 A I recovered practically all of it.

14 Q By what method?

15 A The method I used was the purchase of tall wheat
16 grass, which was extremely tolerant to high alkali
17 ground, and actually wheat grass has the ability
18 to put its roots down 20, 25 feet into the soil,
19 and one of the objects of getting rid of your alkali
20 is to form drainage, is to open up your soil so that
21 the water can drain down, and in this ground down
22 here, about five to six feet down was a layer of
23 green clay, approximately 18 inches thick, which
24 just acted like a waterproof blanket, and by putting
25 tall wheat grass on that, bringing water out of the

1 creek, rill irrigating it, getting it to grow, I
2 finally got a stand of it where it would go down
3 and its roots would penetrate this clay.

4 Q Did that allow the flood irrigation, then, to pene-
5 trate and wash the salts down into the ground?

6 A That did, plus the fact that I left the grass on
7 the surface, year after year, and what the cattle
8 ate and tramped down would decay, rot, and in doing
9 so, form an acid, which in turn helped neutralize
10 the alkali.

11 Q Over how many period, over how many year period would
12 you say it took to turn this land from an alkali
13 area into usable soil?

14 A Five years after I planted this land, I checked this
15 piece up here. That piece was 9.5. Five years later
16 I checked it, it was 7.5.

17 Q Which is neutral?

18 A It was neutral. I plowed it up and planted it in
19 alfalfa.

20 Q Would that land have appeared boggy or soggy or water
21 laden prior to the time you purchased it?

22 A Was it what?

23 Q Would that land have appeared boggy, or water soaked,
24 prior to the time of your developing it in the manner
25 you just described?

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A Yes.

Q In your experience has a farmer, does it take a number of years to develop a farm program, depending on the soil type you have, and the availability of water, and the availability of money?

A It could take a whole lifetime, depending upon the problems that you have to meet, and the capital you have to work with.

MR. PRICE: I have no further questions. Thank you, Mr. Walton.

MR. VEEDER: May I proceed, Your Honor?

THE COURT: Yes, Mr. Veeder.

MR. VEEDER: May I approach the witness, he has a hard time hearing.

THE COURT: Yes, you can get over there where it's convenient for him to hear you.

CROSS-EXAMINATION

BY MR. VEEDER:

Q Mr. Walton, I observed that you applied for a water rights permit from the State of Washington for 65 acres, is that correct?

A No.

Q How much did you petition the State for for a water right, what acreage?

1 A So much water.

2 Q I didn't hear.

3 A So much water. Land had nothing to do with it.
4 Applied for a certain amount of water.

5 Q And you didn't designate any acreage?

6 A None whatsoever.

7 THE COURT: Would you fix the time, Mr. Veeder,
8 that you're discussing.

9 MR. VEEDER: Well, the record is very clear,
10 I think he bought the land in July of 1948, and made appli-
11 cation two weeks later to the State of Washington for
12 a water rights permit.

13 THE COURT: So we're talking about an application
14 filed in 1948, though?

15 MR. VEEDER: Yeah.

16 THE COURT: Okay.

17 Q (By Mr. Veeder) Now, did you get a certificate of
18 water right from the State of Washington?

19 A I did.

20 MR. PRICE: Your Honor, could Counsel show the
21 exhibit to the witness? Apparently he is asking questions
22 from an exhibit.

23 THE COURT: It might be helpful.

24 MR. VEEDER: Yes, I would be glad to show it
25 to him.

1 Q (By Mr. Veeder) This is Colville witness, I mean
2 Colville Exhibit R-W. Now, I hand you a copy of
3 the Certificate of Surface Water Right to which you
4 just alluded, which was offered in evidence by the
5 Waltons, R-W, and does that not relate to a particular
6 piece of land rather than to a water right without
7 regard to any particular land?

8 MR. PRICE: Your Honor, the exhibit probably
9 will speak for itself. I don't know if this would be --

10 MR. VEEDER: I asked a question.

11 MR. PRICE: Excuse me, I was making an objection
12 to the Court. I believe the exhibit will speak for itself.

13 THE COURT: Well, I suppose I should look at
14 it.

15 MR. VEEDER: I would like to have you look at
16 it, Your Honor.

17 THE COURT: Keep in mind, gentlemen, as I said
18 earlier, I wasn't involved the first time around in this
19 controversy. It's fairly clear, it says it's 1.0 cubic
20 feet per second for the purpose of irrigating 65 acres.

21 MR. VEEDER: With a land description.

22 THE COURT: Yeah. Well, it has a land descrip-
23 tion; whether that is 65 acres, or not, I don't know,
24 but I'm just reading the text of the exhibit.

25 MR. VEEDER: That's correct.

1 Q (By Mr. Veeder) So, as a matter of fact, the applica-
2 tion that you made was for a specific description
3 of land, was it not, rather than for an application
4 in bulk for an entire --
5 A I made the application completely for the water right.
6 That is what they allowed me, one cubic foot per
7 second.
8 Q To the land described in the water rights permit,
9 isn't that right?
10 A Well, I can't remember when I applied if I applied
11 for the purpose of irrigating 65 acres. I applied
12 for a cubic foot of water.
13 Q And you're, and you are granted a right for 65 acres?
14 A I had 65 acres under irrigation, er, 65 acres of
15 hay land.
16 Q And how many total acres did you irrigate then?
17 A All of that.
18 Q How many?
19 A Well, that.
20 Q Only 65?
21 MR. PRICE: Hay land, Counsel.
22 A Sixty-five is hay land. Sixty-five acres is hay
23 land. That, that is the part, what these pumps right
24 there, this piece, this piece, this piece, and that
25 piece.

1 MR. PRICE: Mr. Walton, would you refer to the
2 field number?

3 THE WITNESS: Field number one, two, three,
4 four, and five, they consist of the hay land, and if you
5 remember from this --

6 Q (By Mr. Veeder) I don't remember.

7 A -- first and foremost problem was to get hay.

8 Q Yeah.

9 THE COURT: Mr. Walton, did you say that the
10 one cubic foot per second was for the hay lands in fields
11 one, two, three, four and five, or did you -- you might
12 go through that again.

13 THE WITNESS: Fields one, two, three, four,
14 and five.

15 THE COURT: All right.

16 THE WITNESS: -- was the hay land.

17 THE COURT: Okay.

18 Q (By Mr. Veeder) Then you proceeded to irrigate,
19 you say, you have got a second foot of water for
20 65 acres, and you irrigated all the rest of this
21 land, is that correct?

22 A That is correct.

23 Q Without regard to the limitations in the state law,
24 right?

25 A No. This land was irrigated when I was not using

1 my sprinklers. You make three cuttings a year.

2 Q Now, what I'm trying to --

3 A You're no farmer.

4 Q What I'm trying to get from you, Mr. Walton, is that

5 you proceeded to farm 165 acres, is that it, you,

6 you farmed 165 acres, did you?

7 A If you call watering pasture grass farming, yes.

8 Q Um-hum. Now, how much water is in the stream, Mr.

9 Walton; you were using only surface water, right,

10 isn't that correct?

11 A I used all of my surface water, one cubic foot, but

12 I never did exceed that.

13 Q You never took more than a second foot, right?

14 A That's right.

15 Q On all of the lands?

16 A That's right. Now --

17 Q Now, would you tell us --

18 MR. PRICE: Excuse me, I think the witness was

19 going to continue his answer.

20 THE COURT: Yes, you can finish your answer,

21 Mr. Walton.

22 (No response.)

23 MR. PRICE: Mr. Walton, you may finish your

24 answer.

25 A (Continuing) Mr. Veeder, when you have hay in here,

1 with alfalfa, you cut that three times a year.

2 Q (By Mr. Veeder) I totally agree, if you can raise
3 that much hay.

4 A Well, now, wait a minute, let me get through with
5 my statement. You cut your hay three times a year,
6 you cut it, it lays in the field for a week to dry,
7 you bale it, and you haul it off the field to your
8 barn, which is from ten days, at the least. Now,
9 during that ten days, I took this cubic foot of water
10 that had been used to irrigate that land, and used
11 it to irrigate my pasture land.

12 Q Now, Mr. Walton, are you telling this Court that
13 there was a second foot of water in No Name Creek?

14 MR. PRICE: At what point in time, Counsel?

15 MR. VEEDER: Now, just --

16 MR. PRICE: Excuse me, Your Honor, I would like
17 to have a time identified so the witness could pinpoint
18 it.

19 Q (By Mr. Veeder) When you acquired the land, I will
20 say this, how much water was in No Name Creek when
21 you purchased the land, that is how much surface
22 water was in No Name Creek?

23 A You don't know?

24 Q I'm asking you. You said you used a second foot.
25 The record shows there was never more than half a

1 second foot, so what you're saying is you used twice
2 as much water as is in the creek, is that it?

3 MR. PRICE: Your Honor, I would ask that Counsel,
4 that the witness be allowed to answer one question at
5 a time.

6 MR. VEEDER: Okay.

7 MR. PRICE: I believe the question was --

8 THE COURT: Yes, I think the only testimony
9 that has come out has been heard from Mr. Veeder on this
10 point. If you would propose a question to the witness.

11 Q (By Mr. Veeder) Would, would you --

12 THE COURT: Propose a question to Mr. Walton.

13 MR. PRICE: (To the witness) Calm down.

14 Q (By Mr. Veeder) Are you telling the Court that there
15 was, there was a natural flow of a second foot of
16 water in No Name Creek during the irrigation season?

17 A More than a cubic foot.

18 Q I'm saying, are you stating to the Court that there
19 was a second foot of water in No Name Creek?

20 A One second foot?

21 Q That's right.

22 A Flowing?

23 Q Yes.

24 A Yes.

25 Q Now, have you looked at the actual records of flow,

1 Mr. Walton, in regard to the availability of water
2 in No Name Creek?
3 A Have I?
4 Q Yes.
5 A I can't recall definitely.
6 Q In other words, if there was a half second foot of
7 water, by actual proof in this case, then you are
8 grossly in error when you say you used a second foot,
9 right?
10 A No, no, I am not. When this, when this permit was
11 issued to me, the State sent a hydrologist out.
12 I applied for the water right in November of 1947.
13 Q You applied in August.
14 A Yes.
15 Q Right?
16 A Now --
17 Q Now, and you asked for a second foot for 75 (sic)
18 acres, right?
19 A Now, wait a minute --
20 THE COURT: Now, wait a minute, gentlemen, hold
21 on. Now, let Mr. Walton answer the question and then --
22 A (Continuing) I applied for it in the fall of 1947.
23 A hydrologist from the State came out and measured
24 the flow of the creek. I asked him about the permit,
25 and he said, "I can't issue it, we have to find out

1 how much water will flow next summer during the hot
2 season." He came back in the spring of 1949, measured
3 the flow of the creek again, he came back in the,
4 August or September, sometime, in the latter part
5 of the summer, measured the flow of the creek the
6 third time. Now, a water permit was not issued to
7 me until 1950, which reverted back to the application
8 of 1948, and it left enough water in the creek that
9 I could take out my cubic foot and still have water
10 flowing down the creek.

11 Q (By Mr. Veeder) Now, Mr. Walton, the record in the
12 case shows, based upon the official records, there
13 has been no objection to it, that there is only a
14 half, half a second foot of water, one-half as much
15 as you're talking about, in the stream.

16 A When?

17 Q During the irrigation season.

18 A What year?

19 Q Every year, it's the average flow is a half second
20 foot. If that's the case, is it not true that you
21 are in error telling this Court that you used a second
22 foot of water?

23 MR. PRICE: Your Honor, Mr. Walton, excuse me,
24 Your Honor, it's an argumentative question, it's a point
25 that Counsel can argue in his submission. It's not a

1 point that this witness, if he claims the witness is in
2 error, that is his right, it's argumentative.

3 THE COURT: Yes, if the record shows something,
4 I will consider it. I think it is a little argumentative,
5 Mr. Veeder.

6 MR. VEEDER: Are you saying we cannot proceed
7 in this line of questioning?

8 THE COURT: I didn't say you couldn't proceed,
9 I said your last question, when you're telling the witness,
10 or suggesting to the witness that other evidence in the
11 case indicates a lesser quantity than his, you're getting
12 argumentative. He has testified that he may have other
13 evidence. You can call it to my attention.

14 Q (By Mr. Veeder) Are you saying that there is evidence
15 in the record, Mr. Walton, showing that there is a
16 second foot of water in No Name Creek?

17 MR. PRICE: That wasn't his answer, Your Honor.
18 He answered as to what he found and what the state hydro-
19 logist's department did.

20 THE COURT: I think I --

21 MR. VEEDER: I have a right to ask the question,
22 I just asked him a question.

23 THE COURT: Well, he has testified clearly that
24 at the time that he applied for his permit, his testimony,
25 Mr. Walton said that the State came out on several occasions

1 spring and fall, measured the creek, and issued a permit,
2 and that at that time he could draw a second foot of water
3 out of the stream and still leave water flowing. Now, --

4 MR. VEEDER: Now, I --

5 THE COURT: -- you say there is other evidence
6 that is opposed to that, that may very well be, but I
7 think you're getting into an argumentative area with the
8 witness.

9 Now, rephrase the question and we will rule
10 on that one.

11 Q (By Mr. Veeder) Mr. Walton, assuming that the record
12 shows clearly, or shows that there is only a half
13 second foot natural flow in the stream, and that
14 all of the official records in this court show that
15 there is a half second foot, would you be inclined
16 to change your testimony in regard to the utiliza-
17 tion of the water?

18 A I will not. I still maintain that when the hydro-
19 logist came out and tested and measured the flow
20 of water in that creek, and issued me one cubic foot
21 of water, he never gave me the exact figures of how
22 many cubic feet was flowing, but he said there was
23 more than enough water to continue to flow down the
24 creek after you take your one cubic foot.

25 Q Now, did he put that in writing to you?

1 A No.

2 MR. PRICE: Your Honor, I --

3 MR. VEEDER: What, uh, what --

4 MR. PRICE: I object, did he put it in writing,
5 it's in the form of a permit for one cubic foot a second,
6 and it's in evidence what Counsel is referring to.

7 THE COURT: Well, I understand, I know what
8 the permit says, and I know --

9 THE WITNESS: Now, remember, there was two years,
10 or more --

11 MR. PRICE: Wait.

12 MR. VEEDER: There is no question.

13 Q (By Mr. Veeder) Now, --

14 THE COURT: You can sit down, sir, if you wish.

15 Q (By Mr. Veeder) Now, Mr. Walton, when you were
16 utilizing the water in No Name Creek, were you aware
17 that there were uses downstream, claims for water
18 by the Colville Confederated Tribes downstream?

19 MR. PRICE: Your Honor, I'm going to object.

20 A Was I aware?

21 THE COURT: Just a minute, just a minute, gentle-
22 men.

23 Q (By Mr. Veeder) Were you aware --

24 THE COURT: Just a moment, we have an objection.
25 What is the objection?

1 MR. PRICE: Going beyond the scope of direct
2 examination to due diligence. I put Mr. Walton on for
3 testimony as to what he found when he came there, and
4 what he did when he was there, and what other people were
5 doing is not anything that I put on in my direct examina-
6 tion.

7 THE COURT: Well, I'm going to, I want the record
8 in this case closed, so it can be decided, and I'm going
9 to allow a certain amount of flexibility. So you can
10 go ahead, Mr. Veeder.

11 Q (By Mr. Veeder) You were aware, were you not, Mr.
12 Walton, that there had been water used from No Name
13 Creek down in the Timentwa properties, in 901 and
14 903, right?

15 A No.

16 Q You don't know that?

17 A No.

18 Q You never went down there and never saw any irriga-
19 tion fields, hum?

20 A Pardon?

21 Q Did you see any areas where ditches were below the,
22 your place?

23 A Any evidence of ditches?

24 Q Yeah.

25 A Not that I remember.

1 Q You never saw any?

2 A No.

3 MR. PRICE: Could we ask Counsel to identify
4 what period of time?

5 A In fact, when I moved on the place, there was nobody
6 living there.

7 MR. PRICE: What period of time he has reference
8 to.

9 THE COURT: I was about to say, if you want
10 the record complete, I think it would be a good idea to
11 pin down the time we're discussing here. I assume that
12 your question implies 1949, 1950?

13 MR. VEEDER: That's right. I'm saying at the
14 time that he acquired the land, or anytime subsequent
15 thereto, did he go down.

16 THE COURT: You mean including today?

17 MR. VEEDER: What?

18 THE COURT: Including today?

19 MR. VEEDER: 1948, and down to today.

20 THE COURT: All right, just so the record is
21 clear.

22 MR. PRICE: I think the witness should be told
23 that question so he hears it and can respond to that ques-
24 tion.

25 THE COURT: All right. Mr. Walton, you have

1 indicated that in the time that you were developing this
2 land, and so forth, you did not observe any downstream
3 uses, ditches, and so forth. Now, Mr. Veeder's question,
4 now, as I understand it, was at any time up until, including
5 today, have you observed downstream use of the water out
6 of the No Name Creek?

7 THE WITNESS: Up to today?

8 THE COURT: Um-hum.

9 THE WITNESS: Oh, yes, they started to use the
10 water down there, um, oh, some ten years ago, or more.

11 THE COURT: All right.

12 Q (By Mr. Veeder) Now, when you went on the property,
13 did you at any time observe ditches on both the east
14 and west side of No Name Creek in what we call the
15 Allotment 901 and 903; you didn't see any ditches
16 down there?

17 A When?

18 Q When you went on the land.

19 A What?

20 Q When you went on the land.

21 A When I bought the land?

22 Q Yeah.

23 A In 1948?

24 Q Right.

25 A You mean when I got this land in 1948 did I see any

1 evidence of ditches?

2 Q That's right.

3 A No.

4 MR. VEEDER: I have no further questions.

5 THE COURT: Mr. Sweeney, do you have cross-
6 examination?

7 MR. SWEENEY: Yes, Your Honor.

8 Could I have the easel changed to show
9 Exhibit XX, XX --

10 THE COURT REPORTER: Is that four, four X's?

11 MR. SWEENEY: Four X's. I guess just turn the
12 easel.

13

14

CROSS-EXAMINATION

15 BY MR. SWEENEY:

16 Q Mr. Walton, can you hear me?

17 A Yes.

18 Q On Exhibit 4-X's, that's on the easel, that was not
19 drawn by you?

20 A No.

21 Q Was that Boyd Walton?

22 A Boyd.

23 Q Now, those field numbers are one, two, three, four,
24 five, and so forth; are those the numbers that you
25 put on the fields, you and Boyd?

1 A Uh, those numbers have been carried over from previous
2 maps and records.

3 Q They don't, do they correspond to the field numbers
4 that appear in Exhibit 4-W's, the conservation plan?

5 A I don't remember whether they do on the conservation
6 plan. We started numbering these fields sometime
7 afterwards, but I can't remember.

8 Q Okay. Now, when you first went on the property in
9 1948, and you looked at the property with your father,
10 as I understand it, is that correct?

11 A Yes.

12 Q And on field number one, you said was cultivated
13 to rye, is that correct?

14 A Field number one was what?

15 Q Planted or cultivated on a rye planting?

16 A Yes.

17 Q Was that being irrigated at that time; it was not,
18 I think you testified.

19 A On that particular summer, no.

20 Q Okay. Was that ordinarily an irrigated crop, rye?

21 A It had been irrigated.

22 Q That field had been irrigated?

23 A Yes.

24 Q And you testified there was evidence of a, of an
25 irrigation pipe?

1 A Yes.

2 Q Along, along the north end of the field. And approxi-
3 mately how many acres was that?

4 A That, this field up here is 10 and a half acres.

5 Q And I think you said that irrigation, er, field number
6 two, that there was an orchard, some orchard trees
7 on the property?

8 A Yes, an orchard.

9 Q Of about an acre?

10 A Yes.

11 Q And what, what happened to the trees, are they still
12 there?

13 A The pear tree is there, and the stump of one apple
14 tree which has put out new limbs, and two apple trees
15 are taken out, and the apricot trees are taken out.

16 Q I see. You or Boyd took them out after you took
17 over the property?

18 A Yes.

19 Q Did you expand, did you or Boyd expand the irrigable
20 land on field number two after you purchased the
21 property?

22 A We did on two. Three is about the same.

23 Q Is one about the same also, going back to field number
24 one, you said about ten and a half acres was irrigated.
25 Is that about the same today?

1 A Yes.

2 Q And number two was expanded, is that correct?

3 A Yeah.

4 Q You said by about '51 there were about 15 acres irri-
5 gated?

6 A Yes.

7 Q And you expanded that from about one acre, or about
8 how many acres?

9 A I would guess between five and six acres we expanded
10 it.

11 Q I see. Okay. And did I understand that field number
12 three is about the same as before?

13 A Yes.

14 Q So that was field number one, two, and three that
15 you saw had been irrigated when you came on the pro-
16 perty in 1948, that we have just talked about, I
17 mean?

18 A That was irrigated when I came?

19 Q Yes. I mean, Mr. Walton, I mean previously irrigated.

20 A Oh, yes.

21 Q Even though they were not irrigated that year; I
22 understand.

23 A Yes.

24 MR. PRICE: I believe he testified to other
25 acreages as well.

1 MR. SWEENEY: Yes.

2 Q (By Mr. Sweeney) What I meant, Mr. Walton, we have
3 just discussed one, two, and three, about previous
4 irrigation. Also, I think you testified that field
5 number five was irrigated, had been irrigated when
6 you came on the property, is that right?

7 A (Inaudible.)

8 Q As I recall, what you testified to, I believe this
9 morning, was there was also cultivation on field
10 number five that was planted in rye?

11 A Yes.

12 Q And that water, however, didn't come from No Name
13 Creek, did it not?

14 A It what?

15 Q The water to irrigate field number five did not come
16 from No Name Creek?

17 A No, no.

18 Q It was flood irrigated from a spring?

19 A From the spring.

20 Q Okay. And how many acres were in that field, number
21 five, I mean.

22 A Approximately 35.

23 Q I think this morning you said about 32, which --

24 A Something like that.

25 Q Okay.

1 THE COURT: You said 35 a few moments ago, on
2 number five, as I recall?

3 THE WITNESS: I, I approximate this from the
4 size of this field here. I know definitely that that
5 is ten and a half acres.

6 Q (By Mr. Sweeney) The 35 you testified to a little
7 bit ago, as to field number five, I thought, was
8 as of 1951, after you implemented the Conservation
9 Service plan?

10 A Yes.

11 Q Okay. So that, that irrigation remained about the
12 same, is that correct?

13 A That is correct.

14 Q Okay. So, if I can recapitulate here --

15 MR. PRICE: I object to that.

16 (Laughter.)

17 Q (By Mr. Sweeney) So there was about ten and a half
18 acres in field number one that had been irrigated
19 when you came on the property, and approximately
20 how many acres in field number two?

21 MR. VEEDER: What happened, haven't we all been
22 over this once, just now?

23 A Approximately 15.

24 Q (By Mr. Sweeney) And that was what you expanded
25 to there, there was about --

1 A There was what?

2 Q Isn't that what you expanded to, but prior to your
3 coming to that, to the property, how many acres was
4 irrigated on field number two?

5 A Prior to?

6 Q Yes.

7 A It couldn't have been over ten. About ten.

8 Q Okay. And did you tell us how many acres in field
9 number three that was irrigated prior to that time?

10 A About 15.

11 Q You don't know for how long a period that might have
12 been irrigated prior to your coming to the property
13 in 1948?

14 MR. VEEDER: Object to the question, goes beyond
15 the direct examination, totally beyond any question asked
16 on direct examination.

17 THE COURT: You weren't examining him on direct,
18 you were examining him on cross.

19 MR. VEEDER: What? I didn't hear.

20 THE COURT: I said he is not your witness.

21 MR. PRICE: My objection, Your Honor, is that
22 I object to the form of the question; misstates the testi-
23 mony that was already given, specifically by looking at
24 the contour of the ground and the plow and furrow marks.
25 He did give an opinion as to whether that land had been

1 irrigated in years previous.

2 THE COURT: Well, let's, as far as the scope
3 is concerned, as I indicated earlier, I can't conceive
4 of anything being beyond the scope of this case, so far
5 as the water and land up there is concerned, but, I'm
6 not going to hold too much to that, because, as I said,
7 I want to get all of the testimony in the record in this
8 case. Maybe you can repeat your question.

9 MR. SWEENEY: Yes, Your Honor.

10 THE COURT: Rephrase it, or whatever.

11 Q (By Mr. Sweeney) Now, as I understand it, Mr. Walton,
12 you testified that there was evidences, to your eye,
13 when you came to the property in 1948, there was
14 approximately 35 acres that had previously been irri-
15 gated in the fields one, two and three?

16 A Yes.

17 Q Plus this additional acreage in field five, which
18 was irrigated from a spring. Now, as to fields one,
19 two, and three, do you know of your own knowledge,
20 or how long before that land might have been irrigated?

21 MR. VEEDER: Object to this, Your Honor. We
22 have repeatedly asked the Department of Justice be aligned
23 as, against the Tribe, which it is, what Mr. Sweeney is
24 attempting to prove is due diligence, on the part of the
25 Waltons.

1 THE COURT: Mr. Veeder, he asked him, he asked
2 him a question as to whether he knows something of his
3 own knowledge.

4 MR. VEEDER: May I just finish my objection,
5 because --

6 THE COURT: If you would just state your objection,
7 and not make a speech.

8 MR. VEEDER: I'm stating it now. We're objecting
9 to this line of cross-examination by the Department of
10 Justice by reason of the fact it goes beyond any of the
11 direct examination, as offered by this witness, or any
12 questions in regard to it. Now, we watched the Department
13 of Justice bail Mr. Walton out throughout this trial,
14 and I want it very clear --

15 MR. PRICE: I take offense to that.

16 MR. VEEDER: -- that --

17 THE COURT: Mr. Veeder, stop a moment. Now,
18 I'm aware, and you asked me before, to enter an order
19 declaring that the government was in an adversary position
20 to the Tribe. I declined to do that. The United States
21 government is a trustee for the Tribe. And I see nothing
22 in Mr. Sweeney's question which changes my view on that.
23 Now, if you have an objection to the question --

24 MR. VEEDER: I made the objection.

25 THE COURT: All right, the objection is over-

1 ruled.

2 MR. VEEDER: I object to the fact that it's
3 outside of the direct examination.

4 THE COURT: All right, I have a great deal of
5 discretion in what is the scope, and I'm going to follow
6 it in this case, and your objection is overruled, and
7 Mr. Sweeney, you can continue.

8 Q (By Mr. Sweeney) Mr. Walton, -- well, I will get
9 away from that area, then.

10 When you came on the property in 1948,
11 and finally purchased the property, you then went
12 forward with getting the report from the Conservation
13 Service, is that correct?

14 A Yes.

15 Q And it was your intention, and what you worked on
16 was to implement that, what they suggested that you
17 should do, is that correct?

18 A Now, I didn't get that.

19 Q Excuse me, within the next few years you attempted
20 to put in to -- I'm sorry, after you came to the
21 property, in 1948, you received, eventually, a report
22 from the Conservation Service, did you not?

23 A Yes.

24 Q Okay, which pointed out to you how you might develop
25 the property?

1 A Yes.

2 Q And that is what you were doing in the next couple
3 of years, up to 1951, as far as developing the fields
4 on the property?

5 A That's right.

6 Q Okay. Do you have before you Exhibit 4-W's?

7 A Yes.

8 Q Have you gone through it recently?

9 A This?

10 Q Yes.

11 A Partially. I have gone through the maps, and the
12 types of soil that was put into hay land, but I haven't
13 checked over the fine points and the readings.

14 Q Okay, I don't want to ask you about the fine points,
15 but I wanted to ask you, it indicates within that
16 exhibit that there were several plans prepared by
17 the Soil Conservation Service, is that correct?

18 A There was two complete plans prepared.

19 Q Okay. Now, the initial one that you received in
20 1949, is that correct?

21 A One of them. The first one.

22 Q And then you mentioned in your testimony about how
23 these fields were being irrigated as of 1951, --

24 A Yes.

25 Q -- is that correct? In the exhibit it shows, it

1 indicates that an additional plan -- now, wait a
2 minute, was the, was that in accordance with the
3 initial plan, what you testified to, as you were
4 doing in 1951?

5 A That, the initial plan was strictly to take the best
6 land, set aside for hay, and to irrigate. That was
7 my first problem, because I had to have the hay to
8 winter my cows.

9 Q And then -- but in the Exhibit 4-W's, it indicates
10 there was a plan as of 1956. Was there another plan,
11 then?

12 A There was another plan about 1952.

13 Q I see. Was there another plan in 1956, at all?

14 A No, that was just the two plans.

15 MR. SWEENEY: Well, if I could approach the
16 witness and ask him to look at the exhibit.

17 THE COURT: Yes.

18 Q (By Mr. Sweeney) If you could look at Exhibit 4-
19 W's, for instance, on one of the pages it's identi-
20 fied as range site guide, as Okanogan area, July,
21 1956.

22 A Yes.

23 Q Was that, was that in reference to a subsequent plan
24 that you received?

25 A That was in reference to number two.

1 Q Well, that was done in 1956, then, probably?

2 A Well, I started, I finished, number one, and then
3 they came out and outlined number two.

4 Q All right.

5 A And then as I proceeded on number two, different
6 reports were made out, as I proceeded through, and
7 then in 19- -- I think we said 1954, '55, we made
8 conservation --

9 Q Award.

10 A -- award. And that was due to the accomplishment
11 of number two.

12 MR. PRICE: Your Honor, I would like to pose
13 an objection, or maybe a clarification. A range site
14 guide, Counsel's asking the witness as though it were
15 a plan. It doesn't appear to be a plan at all, but rather
16 description of various types of soil types found in
17 different locations, and is merely a guide utilized by
18 the Soil Conservation Service in terms of classifying
19 different types of soils. It does not appear to be a
20 plan, as such.

21 MR. SWEENEY: Well, that could well be, Your
22 Honor. I was just trying to get the date straightened
23 out as to --

24 THE COURT: Well, there is a document in there,
25 whatever it means, that was apparently prepared in 1956.

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MR. SWEENEY: Yes, Your Honor. Could I ask that --

THE COURT: -- that we found this morning.

THE WITNESS: I was on the Soil Conservation board for ten, fifteen years.

MR. SWEENEY: I see.

Q (By Mr. Sweeney) Now, if I could go back to the Exhibit 4-W's -- well, the portion that is stapled down on the right page of Exhibit 4-WWW (sic), and dated 12-7-49 --

A Um-hum.

Q That's the original plan of the --

A That's the original plan.

Q -- (inaudible). Okay, thank you.

MR. SWEENEY: I have no further questions.

THE COURT: All right, Mr. Sweeney. Is there any redirect, Mr. Price?

MR. PRICE: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. PRICE:

Q Mr. Walton, you testified that the number of irrigable acres on field five were about the same when you came on the property as it was after you implemented the plans?

1 A Yes.

2 Q But was the source of the water the same?

3 A Yes.

4 Q Was the source of water after you implemented the
5 plan still from the spring, or were you using water --

6 MR. VEEDER: Object -- (inaudible).

7 Q (By Mr. Price) (Continuing) -- from the surface
8 flow of the creek?

9 (Totally unreportable.)

10 THE COURT: Hold it. Hold it. Just a moment,
11 gentlemen, we have a question, and we have an objection.
12 State your objection.

13 MR. VEEDER: The objection is this, that Counsel
14 is now arguing with his own witness. The witness said
15 yes, the same land, yes, the same source of supply, and
16 now Counsel says, well, didn't it come from a different
17 spring. Now, I object to that whole line of testimony,
18 because it really amounts to Mr. Price testifying for
19 the witness.

20 MR. PRICE: I ask for the Court's indulgence
21 in terms of Mr. Walton being able to understand the question.
22 I would just ask for some indulgence. I believe he has
23 testified earlier that they were from different sources,
24 and I'm trying to clarify that one way or the other.

25 THE COURT: And I'm going to overrule the objec-

1 tion, and I might say, Mr. Veeder, I'm not going to consider
2 any evidence from anyone other than the witness, and we
3 have to face the fact here that this thing can get very
4 confusing, and I think some clarification may be necessary
5 on occasion. The objection will be overruled. Go ahead,
6 Mr. Price.

7 Q (By Mr. Price) Mr. Walton, what was the source of
8 water for irrigation on field five when you first
9 purchased the property?

10 A It was from a spring and a little creek that ran
11 down through there and flooded out.

12 Q All right. What is the, what was the source of the
13 water for irrigation on field five after you imple-
14 mented the Soil Conservation Service plans?

15 A On the soil conservation plan, this had washed out
16 into a gully.

17 Q Can you just answer my question as briefly as possible,
18 what was the source of the water?

19 A Oh, from the creek.

20 Q Thank you. Now, Mr. Walton, at one point you testi-
21 fied in response to Mr. Veeder that you applied for
22 a water permit in 1947.

23 A Is what?

24 Q You testified to Mr., in response to Mr. Veeder's
25 question, that you applied for a water permit in

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1947.

A Yes.

Q Did you mean 1948?

A Er, 1948 I meant.

Q Thank you.

A Yes.

MR. PRICE: That's all I have, Your Honor.

THE COURT: Anything further with Mr. Walton?

MR. VEEDER: No, I have no further questions.

MR. SWEENEY: Nothing, Your Honor.

THE COURT: All right, you may be excused, Mr. Walton. Thank you. You may step down.

MR. PRICE: That would complete our presentation.

THE COURT: All right, does anyone else have testimony?

MR. VEEDER: Your Honor, I would like to refer to testimony that went in on rebuttal by Mr. Boyd Walton, and call a witness to respond to that testimony.

THE COURT: Was this testimony at the recent hearing, or the recent trial?

MR. VEEDER: Yes, this hearing right now, where Mr. -- and I would like to call a witness, if I may.

THE COURT: All right. Would you give me the designation of the record, Mr. Veeder?

MR. VEEDER: The designation of the record is

1 May 7, 1982, and pages, starts on page, well, I'm not
2 just sure, we'll start really on page 622, and the testi-
3 mony by Mr. Walton on, in rebuttal, pertain to the produc-
4 tion of alfalfa on the two systems, that is, the Tribe's
5 Colville Irrigation Project, and the Walton property.

6 I would like to call Mr. Mel Tonasket.

7 MR. PRICE: Your Honor, before he takes the
8 stand, I was unaware there was any further testimony being
9 provided, that this hearing was scheduled specifically
10 for Mr. Walton, Sr., to complete the hearing. The previous
11 hearing was completed. Any, any rebuttal to Mr. Boyd
12 Walton, ample opportunity to do that at the previous hearing.
13 He is not here for us to respond to what Mr., whatever
14 Mr. Veeder proposes at this point in time. There is no
15 knowledge or any indication anywhere that any witnesses
16 would be called except Mr. Walton.

17 MR. VEEDER: I put in, I put it in the motions
18 that I filed that we were going to call witnesses.

19 MR. PRICE: This was scheduled for Mr. Wilson
20 Walton, Sr. The previous hearing was ended. Everybody
21 was present.

22 THE COURT: Yes, was there a notice of additional
23 witnesses?

24 MR. VEEDER: Yes, I said I was going to call
25 additional witnesses.

1 THE COURT: Well, in any event, I'm going to
2 permit it, I'm just going to have to sift some of this
3 stuff out later, but I don't want to rehash this whole
4 case.

5 MR. VEEDER: No, there's not going to be a rehash,
6 Your Honor. There is an additional element I wish to
7 bring to Your Honor's attention that has been held in
8 abeyance likewise, predicated by your earlier rulings,
9 in regard to the diversion of water by Mr. Walton.

10 THE COURT: All right.

11 MR. VEEDER: I bring it to your attention that
12 Your Honor has withheld a ruling as to whether Mr. Walton
13 would be required to pay for the water that he has diverted
14 and taken from the Tribe, the waters that are pumped into
15 the system by the Tribe, and diverted by Mr. Walton.

16 THE COURT: Yes, I did that when there was a
17 massive dispute going on, and I decided to reserve that
18 until the primary issues are resolved.

19 MR. VEEDER: Well, and that is an element that
20 is going to be before Your Honor before this is through.

21 THE COURT: All right.

22 MR. VEEDER: But I just wanted the record clear
23 on that point.

24 THE COURT: All right.

25 MR. VEEDER: Now, in regard, for, just for back-

1 ground, in this testimony, over our strenuous objection --

2 THE COURT: All of your objections are strenuous,
3 Mr. Veeder, I will say that.

4 MR. VEEDER: Well, I hope they are going to
5 be effectively heard here in about, uh, --

6 MR. PRICE: Your Honor, I, I'm going to object
7 to background. I think if there is a witness, the witness--

8 MR. VEEDER: All right, I will call the witness.
9 Will you get on the stand, Mr. Tonasket, please.

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MELFORD TONASKET, called as a witness on behalf
of the Tribe, having been
first duly sworn on oath,
was examined and testified
as follows:

THE DEPUTY COURTROOM CLERK: Would you please
state your full name to the Court, and spell your last?

THE WITNESS: My name is Melford Cordell Tonasket

DIRECT EXAMINATION

BY MR. VEEDER:

Q Would you state into the record your position, Mr.
Tonasket, on the governing board of the, or the business
counsel of the Colville Confederated Tribes; what

1 is your present status on that?
2 A I'm presently the vice chairman of the Colville Tribal
3 Business Council.

4 Q Would you state into the record your responsibilities
5 as a member of the Tribal Council in regard to the
6 construction, operation, -- and operation of the
7 Coilville Irrigation Project?

8 A Yes, sir. I have been assigned by the Tribal Council
9 to manage or oversee the operation of the farm in
10 the No Name Creek Basin.

11 Q Now, would you state into the record the agency --
12 MR. PRICE: Your Honor, could we have some founda-
13 tion for that question, as to what point in time?

14 THE COURT: At what point in time Mr. Tonasket
15 had that position, you mean. Maybe you can answer that,
16 Mr. Tonasket, when did you become involved with the r pon-
17 sibility for operating this system, or overseeing it?

18 THE WITNESS: From the very beginning.

19 THE COURT: Well, what date would that be?

20 THE WITNESS: Well --

21 THE COURT: Approximately. I know it wouldn't
22 be (inaudible) exact.

23 THE WITNESS: Approximately, I have been involved
24 since about 1976 when the clearing of the land was started
25 to take effect and the farm plans were starting to be

1 put together; the development of the irrigation project
2 itself.

3 THE COURT: All right. Does that answer your
4 question, Mr. Price?

5 MR. PRICE: Well, apparently he was authorized
6 by the Tribal Council by resolution to specifically oversee
7 it, rather than just being familiar. I would like to
8 know the date that that occurred.

9 THE COURT: Well, can you answer that?

10 THE WITNESS: There is no resolution. I was
11 assigned that responsibility by the chairman of the Tribal
12 Council, Mr. Al Aubertin, A-U-B-E-R-T-I-N.

13 THE COURT: And that was sometime in 1976, around
14 there?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. Go ahead, Mr. Veeder.

17 Q (By Mr. Veeder) Now, Mr. Tonasket, would you state
18 into the record the agency of the Colville Tribes
19 that, under your direction, administers the Colville
20 Irrigation Project, the operation of the Colville
21 Irrigation Project, and all aspects of those operations?

22 A It's directly under our Tribal Land Management Program
23 Office, and that is under our Physical Resources
24 Department, and that is under the Tribal Business
25 Council.

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MR. VEEDER: Where is our clerk?

THE COURT: He went to tell the landlord not to shut the air off.

(Clerk comes in.)

THE DEPUTY COURTROOM CLERK: Did you want to mark an exhibit?

MR. VEEDER: Yes. Would you mark Exhibit --

MR. PRICE: Your Honor, I don't know if I made the record clear before, but I would like to object to, specifically to this entire line of inquiry, and identification, or admission of any further exhibits.

THE COURT: Yeah, I don't know, where are we going, Mr. Veeder?

MR. VEEDER: We're going, as I said, when I tried to outline to Your Honor, there was an objection made to it, so I proceeded. On rebuttal, a whole new phase of inquiries were presented in regard to the comparison by Mr. Boyd Walton on production on the lands of the Waltons as it related to the Colville, the land of the Colville Confederated Tribes. The record, as it appears, based upon the testimony by Mr. Walton, is that the production of alfalfa on the Walton property is, to use his term, very close to equal. Now, this was, of course, -- the matter was never closed at the time of the testimony. I, of course, was unprepared for such a statement,

1 because it's totally untrue.

2 THE COURT: I thought we had completed this
3 trial except for the testimony of Mr. Walton. Now, I
4 said that we would be somewhat flexible, but are we opening
5 a whole new area now?

6 MR. VEEDER: No, no, no.

7 THE COURT: What does this have to do with Mr.
8 Walton, Sr.'s, testimony?

9 MR. VEEDER: It has this to do with the record,
10 Your Honor, that we have a man get on rebuttal, I object
11 to it, you say let him go ahead and testify, and I certainly
12 have a right to respond to it. This, he opened up a whole
13 new area.

14 THE COURT: Well, go ahead with it.

15 MR. VEEDER: Yes. Yes.

16 THE COURT: I don't want to retry this case.

17 MR. VEEDER: I don't want you to retry the case,
18 Your Honor.

19 THE COURT: (Inaudible.)

20 MR. VEEDER: I'm simply saying that --

21 THE COURT: Well, go ahead.

22 MR. VEEDER: -- we're confronted with problems,
23 and we meet them.

24 Q (By Mr. Veeder) Now, would you state into the record,
25 Mr. Tonasket, I hand you Exhibit, Colville 69, and

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ask you to state into the record, what is the, what is the content of that exhibit?

A This exhibit was put together by our staff at the Tribal office and it shows the allotments that we have in alfalfa production in the No Name Creek area, and it shows the acreage of production in each allotment, 526, 892, 901 and 903, and it shows the tonnage of alfalfa cut, and the average of each allotment average, average ton per allotment for 1979, 1980, 1981, and 1982 -- so far into 1982.

MR. VEEDER: I served copies of this on counsel for the defendants.

THE COURT: All right.

MR. VEEDER: And we offer this exhibit in evidence to show the production for the last four years, Your Honor.

MR. PRICE: I would object, Your Honor. First of all, we have no establishment -- may I voir dire, Your Honor?

THE COURT: Yes, go ahead, Mr. Price.

VOIR DIRE EXAMINATION

BY MR. PRICE:

Q Mr. Tonasket, who prepared this report?

A Mr. Dave Barr.

Q And who is Mr. Dave Barr?

1 A Dave Barr is the gentleman from the Land Management
2 office who is the specific line director over this
3 operation.
4 Q And where did he get the records to compile this
5 exhibit?
6 A From the people working in the field.
7 Q When was this exhibit compiled?
8 A It was started last week, about, uh, Tuesday.
9 Q Well, Mr. Tonasket, the people who have worked in
10 the field since 1979, through the present, have varied
11 greatly, they have not always been the same people,
12 have they?
13 MR. VEEDER: Didn't hear what you said, Counsel.
14 MR. PRICE: The people who worked in the field
15 from '79 to the present time have varied greatly, they
16 have not been the same people, individuals?
17 A No, they haven't.
18 Q (By Mr. Price) But you said this was compiled last
19 week?
20 A This was compiled by Mr. Barr last week, started
21 to be compiled last week by Mr. Barr.
22 Q All right. At whose directionw as this compiled?
23 A At mine.
24 Q I notice on here that it indicates wording in various
25 places, new seeding, water shortage, reflects substan-

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tial -- reduced production, due to age of crop and significant water shortages in previous years, how was that information compiled?

A By compiling the records from the field that was in the office.

Q Does this record reflect the weeks that the walking 40 was shut down because it broke in 1981 and 1982?

A It shows the shortage in the working documents, yes it does, that is why you see a decline in tonnage.

Q We would not be able to tell from this record why there was a water shortage, whether it was due to the system being broken down, pumps burned out, just like this summer, you have had a difficult time with the system, have you not?

A Not in these particular figures here, no, you can't.

Q And where would I look to find the figures that would be able to break those down for me?

A In our office, in our records, uh, with Mr. Watson's records, all of the copies of all of the records that we compile are sent to Mr. Watson except for the last two cuttings of 1982.

Q And I notice that this includes Allotment 526 for which water, at this stage of the proceedings, has not been allocated in this court proceedings.

MR. VEEDER: That calls for a legal conclusion,

1 and arguing with the witness, and I object to this line
2 of voir dire.

3 MR. PRICE: Well, Your Honor, the system, the
4 irrigation system has been inoperable significant periods
5 of time --

6 MR. VEEDER: I object to this --

7 MR. PRICE: -- during the irrigation season.

8 THE COURT: One at a time.

9 MR. PRICE: -- and I believe we're entitled
10 to see the records upon which this document was based
11 to be able to test the accuracy of it as to that fact.
12 I object to it for any comments about water shortages
13 in terms of it wasn't offered for that purpose, it's offered
14 for the purpose of showing tonnage taken off the property.
15 I would not object to that as long as we can be provided
16 the original documents which were used in compiling this.

17 THE COURT: When are we going to bring this
18 thing to an end?

19 MR. PRICE: Well, it's totally irrelevant to
20 due diligence, Your Honor, and I ask you again to reconsider
21 that we are going beyond any relevance that the 9th Circuit
22 asked us to pry into.

23 THE COURT: Well, I think, what I was attempting
24 to do was let everybody have their say in this case, so
25 I could figure it out. What is the number of this proposed

1 exhibit?

2 THE DEPUTY COURTROOM CLERK: 69.

3 THE COURT: We're back into numbers now. All
4 right, was there anything further on this exhibit, then?

5 MR. SWEENEY: I would just like a chance to
6 look at the copy, Your Honor.

7 THE COURT: All right. I think I will reserve
8 ruling on it, but I want you to complete your identifi-
9 cation process.

10 MR. VEEDER: I wanted, let the record show that
11 I'm in total agreement with counsel for the Waltons that
12 the issue that was introduced by the Waltons is totally
13 foreign to the issue of due diligence, but I can't let
14 the record stand the way he left it.

15 THE COURT: Well, if we have you and Mr. Price
16 in agreement, at least we're making some progress.

17 MR. VEEDER: I feel we have come a long way,
18 Your Honor.

19 MR. PRICE: The reason that came into the record
20 was, they were indicating they were putting on testimony
21 that the land was --

22 MR. VEEDER: Waterlogged.

23 MR. PRICE: -- waterlogged, and we were putting
24 this in evidence to show that crops were being grown on
25 the property. Now, from that, I don't think we generated

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the --

THE COURT: I recall the testimony, and the reason for admission. Okay, go ahead.

MR. VEEDER: We offer in evidence Colville's exhibit marked 69 for identification.

THE COURT: Yes, I will reserve ruling on that, as I indicated.

DIRECT EXAMINATION (Continuing):

Q (By Mr. Veeder) Now, Mr. Tonasket, have you observed, down through the years, and down to date, the kind and type of production on the lands of Mr. Walton, as compared with the production on the lands of the 165 acres of irrigated land by the Colville Confederated Tribes?

A Yes.

Q And what have been your observations in regard to the comparison of the production of the Colville Confederated Tribes as it relates to the lands of the Defendant Waltons?

MR. PRICE: Your Honor, I'm going to object, we need a foundation for a point in time, what fields we're talking about, what crops we're talking about.

MR. VEEDER: I said during the period to which we have made reference. We're speaking about the 165

1 acres of the Colville Confederated Tribes that are now
2 in production.

3 THE COURT: What's the relevance to the basic
4 issue in this controversy now?

5 MR. VEEDER: The basic issue and the relevancy
6 of it is the statement made by Mr. Walton that the produc-
7 tion on his waterlogged land is very close to equal of
8 that of the Colville Confederated Tribes.

9 THE COURT: All right. Now, so we have got
10 testimony on both sides of that coin, what does that do
11 to the issues that I have to decide here?

12 MR. VEEDER: Well, I think it has this to do,
13 Your Honor, that you are confronted with a very difficult
14 decision in regard to whether you award a water right
15 to land that, in our view, is large areas, non-irrigable.

16 THE COURT: No, but we could be off and running
17 on all types of land husbandry and farming practices and
18 crops and years. Is it significant whether Mr. Walton
19 is a better farmer than the Tribal people, or not?

20 MR. VEEDER: I don't know, but he certainly
21 testified that into the record, that is obviously going
22 on appeal.

23 THE COURT: Well, let's do this; Mr. Tonasket,
24 I gather, is going to testify that the people who are,
25 the farming of the parcels which the Tribe is operating

1 gets better production than Mr. Walton, okay.

2 MR. VEEDER: I would like to have the witness
3 testify, yes.

4 THE COURT: But I don't see that that has anything
5 to do with anything.

6 MR. VEEDER: I don't see what Mr. Walton's testi-
7 mony has to do with it, but it's in the record.

8 THE COURT: Well, if we're going to be rebutting
9 everything, whether it's relevant or not, well -- well,
10 we're not going to be here very long. Put your question,
11 and get the answer.

12 Q (By Mr. Veeder) Would you state into the record,
13 Mr. Tonasket, if you had the opportunity to observe
14 down through the period in question, from 1976, to
15 date, the comparative production of alfalfa on the
16 lands of Mr. Walton and the Colville Confederated
17 Tribes?

18 A Yes.

19 Q And you affirmly answered yes?

20 A Yes.

21 Q Would you state, based upon those observations, whether
22 the Tribe's production exceeds that of Mr. Walton?

23 A The Tribe's production far exceeds Mr. Walton's in
24 total production. The northern Allotments 526 and
25 892 have enough right there, today, stacked, that

1 is far more than what Mr. Walton has produced so
2 far this year, and we have got, down in 901 and 903
3 allotments, that much more hay stacked already this
4 year, so there is really no comparison in volume,
5 total volume that is grown.

6 Q Now, is your testimony for this year the same as
7 it would be in regard to all of the other years,
8 in comparing the production of Mr. Walton's property
9 with the Tribe's property?

10 A Yes, sir.

11 Q Would you say that again?

12 A Yes.

13 Q Now, counsel for Mr. Walton has referred to the state-
14 ment at the bottom of page two, if you look at that,
15 Mr. Tonasket, in which reference is made to the
16 reseeding the crop, and then significant water shortages
17 in previous years. Now, are you acquainted with
18 the processes of delivering water down to Colville
19 Allotments 901 and 902 and the Lahontan cutthroat
20 trout fishery?

21 A Yes.

22 MR. PRICE: Excuse me, Your Honor, we have gone
23 beyond the scope of Mr. Walton's rebuttal testimony.
24 Apparently this is what the whole case is about, whether
25 there is a shortage there or not, and what to do about

1 it, if there is, between the disputed parties. I ask the
2 Court not to go and open up the case all over again.
3 We are well beyond any rebuttal of Mr. Boyd Walton at
4 this point.

5 THE COURT: Mr. Veeder?

6 MR. VEEDER: I am, it is my view, Your Honor,
7 that the issue has been opened up by the Defendant Waltons
8 in regard to the production of alfalfa, in which he says
9 he produced an equal amount, which is totally wrong.

10 THE COURT: You're saying now that if you raise
11 an issue now, that Mr. Price can come back a week from
12 now and have another hearing in this case?

13 MR. VEEDER: Not a bit of it, Your Honor.

14 THE COURT: I don't think it has any relevance,
15 we have tried this case, we have had the evidentiary hearing,
16 I gave you all of the time that everybody needed, we kept
17 it open only because Mr. Walton, Sr., was out of the country,
18 and in fact we were just going to cover that by deposition
19 until there was an objection from the Tribe, and we elected
20 to let him testify, but Counsel, we're just not going
21 to go back to these issues again, now, it's as simple
22 as that. We have to bring this matter to a conclusion
23 one way or the other, or we will, this thing will go on
24 for the rest of our lives. I just don't see what all
25 of this has to do with the present problem here, present

1 issue that the Court is going to resolve.

2 MR. VEEDER: Well, I, I have a series of questions
3 I would ask him.

4 THE COURT: How long do you, what do you --

5 MR. VEEDER: I assume my questions will not
6 last more than three minutes at the outside.

7 THE COURT: Let's go ahead, then, so you can
8 make your record.

9 Q (By Mr. Veeder) Mr. Tonasket, are you familiar with
10 the means of delivering water down the Colville
11 Allotment 901 and 903?

12 A Yes.

13 Q And how is that done?

14 A There is water pumped into the system from the, from
15 the Peters Well. It's run down the No Name Creek,
16 and delivered down below what is called the granite
17 lip. Then it's, the water is piped from, pumped
18 from the creek into 901 and 903 fields, and there
19 is some left over to run to the, to the fisheries
20 down below.

21 Q What transpires in regard to the production of alfalfa
22 on 901 and 903 from the standpoint of the water
23 delivered to No Name Creek by the Colville Confederated
24 Tribes and the quantity of water being down there
25 available for the use on 901 and 903?

1 A Well, that is where we're running into problems.
2 We wind up with a shortage of water. I have gone to
3 the, to where they, where we put in the water in
4 the system, to compare what is coming out of that.
5 I don't take the measurements, but it's very evident
6 by anybody looking at it that there is a lot more,
7 a lot more water being pumped into that system than
8 we get down below, that we can pump to 901 and 903,
9 so many times we have a shortage of water. As a
10 matter of fact, this week, the sprinkler heads on
11 those 901 and 903 fields were barely, barely had
12 pressure.

13 Q What causes the shortage?

14 A In my opinion, what is very evident that the shortage
15 is caused by, by the taking of water by Walton in
16 the process from the time we put it in until the
17 time it's delivered to the lower end of Walton's
18 property.

19 MR. PRICE: Object to the form, er, the question
20 as no foundation, and ask that the answer be stricken,
21 Your Honor.

22 THE COURT: Well, I think it probably goes to
23 the weight. I will overrule it, go ahead.

24 Q (By Mr. Veeder) And what is the consequences, from
25 the standpoint of production, on 901 and 903, when

1 Walton takes the water?

2 A Our production goes down, significantly.

3 MR. VEEDER: I have no further questions.

4 THE COURT: All right, any cross-examination,
5 gentlemen?

6

7

CROSS-EXAMINATION

8

BY MR. PRICE:

9

Q Mr. Tonasket, you said the Tribe has exceeded Mr.
10 Walton's production every year. You started your
11 production under this irrigation program in '76?

12

A We didn't start production in '76; that was when
13 the plans and the clearing and that sort of thing
14 started to develop.

15

Q So you were actually planting the seed, alfalfa seed
16 from scratch, and everything?

17

A Yes, on the, on a large portion of it, yes.

18

Q And the first year that you took cuttings off of
19 that land, you're telling this Court that you out-
20 produced Mr. Walton on a per-acre basis?

21

A No.

22

MR. VEEDER: Could I hear that again; you have
23 to speak up. I didn't hear the question.

24

THE COURT: The question was whether he was
25 testifying that the Tribe outproduced Mr. Walton during

1 that period of time, and Mr. Tonasket said no, that was
2 not what he was saying, as I understood it, sir, is that
3 right?

4 THE WITNESS: Yes, I, I don't know what Mr.
5 Walton produced in tonnage. Our figures go back, accurate
6 figures go back to 1979 season, and I testified that the
7 tonnage, or the stacks that we get, the volume, the total
8 volume at the end of the, uh, the season, we have more
9 total volume than what Mr. Walton has.

10 Q (By Mr. Price) Not in the first year of your cuttings,
11 though, did you?

12 A No.

13 Q And you don't know on a per-acre basis who outproduced
14 whom, you're talking about at the end of the year
15 when you got the stacks to look at?

16 A The total volume, yes.

17 Q All right. And in describing how the system works
18 for 901 and 903, water comes from other wells than
19 just the Peters Well, does it not?

20 A Yes.

21 Q Water comes from the Paschal-Sherman Well up on 526,
22 and intermediate wells, does it not?

23 A Well, they pretty much irrigate that area. The lower
24 well itself is what pumps into the, into the system.

25 Q Doesn't water also go into the creek from the upper

1 wells on occasion?

2 A Not that I have ever seen.

3 Q You have never been aware that the Paschal-Sherman
4 pumps a significant amount of water on various years
5 into the stream?

6 A What I have done, I have walked, where the pipe comes
7 out of the well, down where it discharges into that
8 pond that feeds the creek.

9 Q And you didn't take any intermediate measurements,
10 in your testimony about seeing what went in up in
11 the upper end of Walton's property, what came down
12 over the granite lip?

13 A No, sir, I did not, personally.

14 Q All right. Did you make any calculations for evapora-
15 tion or seepage?

16 A No, sir, I did not.

17 Q All right.

18 MR. PRICE: Thank you, Mr. Tonasket.

19 THE COURT: Mr. Sweeney, do you have any questions?

20 MR. SWEENEY: No, Your Honor, I do not.

21 THE COURT: All right, that's all of Mr. Tonasket,
22 then, gentlemen?

23 MR. VEEDER: That's all we have.

24 THE COURT: You may be excused, then, sir.

25 THE WITNESS: Thank you.

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THE COURT: All right, is there any further, gentlemen?

MR. VEEDER: Well, I didn't bring up the point about the cost of pumping the water, and I reserve that, Your Honor.

THE COURT: All right. Yes, I think that should more properly be reserved until we resolve the fundamental issues.

Well, can we say that this case has been finally submitted, gentlemen?

MR. PRICE: Defendant Waltons would so agree, Your Honor.

MR. SWEENEY: The government would so agree. I have only one question about Exhibit 4-W's, there was mention about alterations, or something. Maybe we ought to get that cleared up.

THE COURT: Well, I don't know what we can do; Mr. Veeder indicated that for one reason or another he thinks there is something in there that wasn't there before.

MR. VEEDER: Well, that is certainly the case.

THE COURT: Well, let me finish, Mr. Veeder. As far as I know, the exhibit was lodged with the clerk, and then was subsequently released to the government, I believe, Mr. Sweeney, and I can't answer that question for you. I, I think if it's contended that someone tampered

1 with an exhibit after it was taken out of the court pursuant
2 to and order of the court, that the person claiming such
3 tampering has the burden of proving it.

4 MR. VEEDER: Just don't know how it happened.
5 I know this, Your Honor.

6 THE COURT: I don't know that it's all that
7 material, but --

8 MR. PRICE: I believe, Your Honor, all of the
9 documents were identified as being USCS documents that
10 were in that exhibit.

11 THE COURT: Yes, they were.

12 MR. SWEENEY: I would like to make one statement,
13 Your Honor.

14 THE COURT: Yes.

15 MR. SWEENEY: The government, through myself,
16 made a motion and represented to the Court that it was
17 agreeable with the parties that the government obtain
18 the exhibit, 4-W's, and make a copy, and send it to the
19 other parties. This was done at the request of Mr. Veeder.
20 I talked to Mr. Price, and they all agreed, I got the
21 document, I gave it to my secretary, she copied it, she
22 told me, and we returned the document and sent notices
23 of the return of the exhibit to the Court. I do know
24 that the secretary, at my direction, she said, should
25 I copy everything that is there, I said yes, she said

1 there are some duplications within the exhibit, I said,
2 well, if there are duplication of documents in that exhibit,
3 don't copy those, just copy the originals, and that's
4 what I believe has been submitted, and there was, as far
5 as I could tell, there was no alterations, at least by
6 this office.

7 THE COURT: Well, obviously there is a lot of
8 duplication in the exhibit, I noticed that, but --

9 MR. VEEDER: The point I made, Your Honor, I
10 renew the statement, I have got a witness I can put on
11 the stand, I didn't want to delay it, simply saying that
12 part of that exhibit that is in the clip, the colored
13 exhibit which may be important to you, the colored aerial,
14 based upon my conversation with my experts in this matter,
15 and based upon my own recollection, were not in there
16 when we first looked at it.

17 THE COURT: Well, when did you first look at
18 it?

19 MR. VEEDER: First time I looked at it was,
20 what's his name, Bloomdahl, is that his name, you called
21 him?

22 MR. PRICE: Yes.

23 MR. VEEDER: And I think he brought it in.
24 I had never seen it prior.

25 THE COURT: This was at the time the case was

1 tried on the merits?

2 MR. VEEDER: No, this was before Your Honor,
3 the first time.

4 THE COURT: Oh.

5 MR. VEEDER: We were not permitted to look at
6 it in the first instance.

7 THE COURT: We'd probably be better off if we
8 would have held to that ruling. No, I was kidding.

9 Well, I don't know how you expect me to
10 handle this, I guess all I can say is you should address
11 that in your written presentation and I will just have
12 to make a decision. I don't know. It may be, Mr. Veeder,
13 that it won't be of all that significance anyway, but
14 if I attach significance to something that you contend
15 was not there, and if you're aggrieved by it for any reason,
16 I will so indicate so that if I'm wrong somebody can correct
17 me on it.

18 MR. VEEDER: I think --

19 THE COURT: -- but I just don't know how other
20 to handle it.

21 MR. VEEDER: I think Your Honor relies upon
22 the exhibit with the land classifications in it. There
23 are two land classifications, bear in mind. If you are
24 relying upon the one, the aerial photograph that is colored,
25 I'm sure the Court's going to hear from us about it, because

1 we didn't want to delay this any further, perfectly willing
2 to go ahead, but I do believe that there is data, the
3 aerial photograph was certainly not viewed by me, I have
4 asked the experts it, and they said they hadn't seen it.
5 Now, we were not in the process of making a federal case
6 out of this, because I don't know how much reliance you're
7 going to place on it, but I do say that the aerial photo-
8 graph was never viewed by us, and by our witnesses.

9 THE COURT: Well, does that mean that it was
10 not included in the exhibit?

11 MR. VEEDER: I would think so, because we went
12 through it, Your Honor. I show Mr. Sweeney what I am
13 talking about.

14 MR. PRICE: Your Honor, if I may comment while
15 he is looking. I believe Mr. Veeder is trying to build
16 a straw man here, the exhibit was identified today by
17 two different witnesses, the witnesses identified the
18 documents therein as Soil Conservation Service documents,
19 Mr. Veeder was present with his experts, he had the right
20 to cross-examine. I don't know if he wants to file a
21 motion, fine, but I don't know where it gets him, because
22 I don't think it prejudices him, and I don't think it
23 could disqualify the exhibit in any event. This hearing
24 was held and that exhibit was identified.

25 MR. VEEDER: Your Honor, the witness Bennett

1 testified he knew nothing about land.

2 THE COURT: No, but Mr. Price's point is, he
3 testified that all of the documents in this record came
4 from the Soil Conservation Service, all the documents
5 in that exhibit.

6 MR. VEEDER: Well, I, I don't know that.

7 THE COURT: Well, I don't know where you leave
8 me, gentlemen; you lodge an exhibit with the Court, and
9 I can assure you that no one in the court structure is
10 going to mess with the exhibit, and add to it, or take
11 away from it. Mr. Sweeney indicates that he copied it
12 except for duplication, as it was, and returned it to
13 the court file, and then you're telling me that your experts
14 don't recall having seen it, you don't recall having seen
15 it, one or two pieces of evidence.

16 MR. VEEDER: This is our business.

17 THE COURT: I don't know where that leaves us.

18 MR. SWEENEY: One statement, Your Honor. Mr.
19 Veeder is referring to an aerial photograph that is in
20 the exhibit, which is colored, and partly in green and
21 pink and yellow, and I would state to the record that
22 the copy that we made in that exhibit, sent to Mr. Veeder
23 and to Mr. Price, contained a Xerox copy of that particular
24 document, so when we got it, it was in the exhibit, and
25 was in the exhibit when it was returned.

1 THE COURT: Your Xerox doesn't operate in techni-
2 color, I gather.

3 MR. VEEDER: No.

4 MR. SWEENEY: But you can readily see it's the
5 same map.

6 THE COURT: All right. Are there any other
7 loose ends? Now, are you in agreement now, on the schedule
8 for the memorandum.

9 MR. SWEENEY: Yes, Your Honor.

10 MR. PRICE: Yes, Your Honor.

11 THE COURT: Now, I don't need a great deal of
12 legal research in this thing any further, gentlemen, I'm
13 sure you're aware of that. What I -- I wanted to give
14 you the opportunity to pull together your respective posi-
15 tions as to what has been established with respect to
16 the issues which the Circuit mandated this Court to decide,
17 and the formality of it I will leave largely up to you,
18 it's just helpful to me if you can point out the significant
19 things, because this case is a little confounding, or
20 more confounding to someone who is new to it than it is
21 to you people who have been living with it for a third
22 of your lives.

23 MR. SWEENEY: Well, Your Honor, if I could ask
24 one question. The submissions I, it's my understanding
25 that the initial submission by the parties would be proposed

1 findings and conclusions as well as a brief in support
2 of the position.

3 THE COURT: Yes.

4 MR. SWEENEY: Is that correct?

5 THE COURT: Or a memorandum, whatever you want
6 to call it.

7 MR. VEEDER: What is the date on that?

8 MR. PRICE: September 7.

9 THE COURT: Everything is set down a week ahead
10 of the dates in Mr. Sweeney's motion, I gather.

11 MR. SWEENEY: Right.

12 MR. PRICE: I have it, Your Honor, initial findings
13 September 7th, responsive findings September 20, and argument
14 on September 30.

15 THE DEPUTY COURTROOM CLERK: Change that to
16 October 1st, the following day.

17 THE COURT: What day of the week is that?

18 THE DEPUTY COURTROOM CLERK: That's a Friday,
19 Judge, October 1st.

20 THE COURT: October 1st, is that a problem to
21 any of you?

22 MR. VEEDER: (Nods no.)

23 THE COURT: All right, if these things become
24 a problem for all counsel, and you can agree on it, but
25 I think absent an agreement between counsel we should

1 hold to that schedule, and get this matter finally resolved,
2 and then I can come to a final conclusion on it.

3 All right, thank you, gentlemen. We will
4 look forward to having your memorandum, and after we have
5 received it, we will try to get something done.

6 Now, I might tell you, I don't know if
7 there is any crisis in the winter, but I am going to be
8 out of the district for the entire month of November,
9 so if we wrap this up on the 30th of October, I won't
10 be able to get at it, at the earliest, until sometime
11 in December.

12 MR. VEEDER: Sometime next summer?

13 THE COURT: In December.

14 MR. VEEDER: Oh, December.

15 THE COURT: No, hopefully we'll have this done
16 in December.

17 MR. VEEDER: If we had another summer, I'm worried
18 about the number I have left.

19 THE COURT: At this level, at this judicial
20 level, this will be disposed of before next summer.

21 MR. VEEDER: I hope so.

22 THE COURT: Thank you, gentlemen.

23 THE BAILIFF: Please rise; --

24 * * * * *

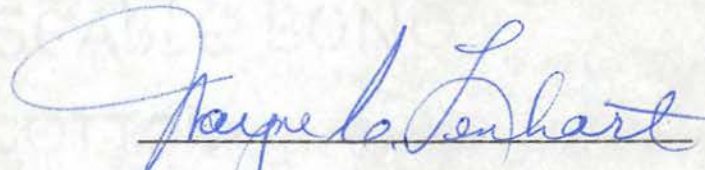
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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of my notes taken in the entitled proceeding and on the date stated.

I further certify that the transcript was prepared by me or under my direction.



WAYNE C. LENHART
Official Court Reporter