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case # 4993

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IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT

WASHAKIE COUNTY, STATE OF WYOMING

IN RE:)
)
THE GENERAL ADJUDICATION)
OF RIGHTS TO USE WATER IN)
THE BIG HORN RIVER SYSTEM)
AND ALL OTHER SOURCES,)
STATE OF WYOMING.)

FILED

3/27

1981

Margaret V. Hanjstue

CLERK

DEPUTY

VOLUME 32

Morning Session

Thursday, March 19, 1981

ORIGINAL

APPEARANCES

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FOR THE STATE OF
WYOMING:

MR. MICHAEL D. WHITE
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ALSO: MR. STUART RIFKIN

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1 THE SPECIAL MASTER: Okay, we're underway,
2 ladies and gentlemen.

3 (Brief pause.

4 MR. WHITE: Mr. Billstein, good morning.

5 Off the record, Your Honor.

6 (Off-the-record discussion.

7 Q (By Mr. White) Mr. Billstein, who is Ross
8 Waples?

9 A Ross Waples is a soils scientist employed by
10 HKM Associates.

11 Q Isn't it true that he -- Isn't it true that he
12 made various determinations of arability of
13 lands?

14 MR. ECHOHAWK: Objection, Your Honor, this
15 is beyond the scope of direct.

16 MR. WHITE: I don't think it is. If you'll
17 allow me to proceed --

18 THE SPECIAL MASTER: He may answer if he
19 knows and he may say no if he doesn't.

20 THE WITNESS: Mr. Waples, under a separate
21 program distinct from the one that I am testifying
22 to, did arability studies.

23 Q (By Mr. White) Isn't it true that arability
24 studies were performed on a portion of the lands
25 billstein-cross-white

1 included within the totals on Exhibit C-137?

2 MR. ECHOHAWK: Same objection, Your Honor.

3 THE SPECIAL MASTER: I'll sustain that one.

4 Q (By Mr. White) You previously testified that
5 where the symbol circle five -- excuse me, the
6 Type Circle V, that there was a determination
7 made by Mr. Waples that had something to do with
8 arability. Do you recall that testimony?

9 It was last week over in the Supreme Court
10 Chambers, page 2399 of the transcript. I can
11 try to find a copy of the transcript for you.

12 MR. ECHOHAWK: What date is that, Sandy?

13 MR. WHITE: I don't know.

14 (Brief pause.)

15 Q (By Mr. White) I direct your attention to
16 page 2399 of the transcript, pages 9 through 15 (sic).

17 A Lines 9 through 15, Counsel?

18 Q Yes, thank you.

19 (Brief pause.)

20 A That refreshes my memory.

21 Could I have the question read back, please.

22 (Thereupon the following
23 question was read back as
24 follows: "Q You previously
25 testified that where the
(symbol circle five -- excuse
me, the Type Circle V, that

billstein-cross-white

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(there was a determination
(made by Mr. Waples that had
(something to do with arability.
(Do you recall that testimony?
(It was last week over in the
(Supreme Court Chambers, page
(2399 of the transcript. I can
(try to find a copy of the
(transcript for you."

THE WITNESS: I reviewed the transcript and
I do recall that I stated that the Circle V
designations were related to arability work done
by Mr. Waples.

Q (By Mr. White) Isn't it true that a Circle V
designation means that the lands so designated
are nonarable lands?

MS. SLEATER: Your Honor, I object. Mr.
Billstein hasn't testified about arability, he's
testified about lands in use and these are
inappropriate questions due to the fact that his
direct was limited to lands in use.

THE SPECIAL MASTER: Well, if some lands are
being irrigated that soils scientists can show
deserve to be classified as nonarable because
they are not, will not yield for reasons other
than benefit, you know, cost benefit ratio, some
of the man-made tests, I think it is appropriate

billstein-cross-white

1 that that be in the evidence, so I'm going
2 to overrule you.

3 MS. SLEATER: Your Honor, I'd like to
4 point out that Mr. Billstein has not testified
5 as a soils scientist.

6 THE SPECIAL MASTER: I know.

7 MS. SLEATER: He's not dealing with that,
8 and he's the inappropriate one to direct such
9 questions to.

10 THE SPECIAL MASTER: I appreciate that, and
11 I've already sustained the objections to the
12 earlier question, whether or not some of these
13 lands had been tested for arability or not, but
14 if he knows that some of these lands were
15 clearly found by his organization to be -- to be
16 nonarable, I think he should say so, and if he
17 doesn't, he should say so.

18 MR. ECHOHAWK: Your Honor, I think when we
19 discussed this last week, what Mr. White's
20 referring to, I believe it was established that
21 Mr. Billstein didn't rely upon any arability
22 determinations one way or the other, and I believe
23 that's the reason that you cut off that line of
24 questioning.

25 billstein-cross-white

1 THE SPECIAL MASTER: I believe it is too.
2 I'll suppose I'll cut it off at a given time
3 when it's no longer something to which he had
4 personal knowledge of or testified on direct.
5 So far I think that last question was permissible.

6 Q (By Mr. White) I think the last question was
7 isn't it true that lands typed as a Circle, Roman
8 Numeral V, are nonarable lands?

9 A To the best of my knowledge that means that
10 they're nonarable, referring to seepage lands.

11 THE SPECIAL MASTER: Do you mean the Circle V
12 is Type V?

13 THE WITNESS: It's a Type V.

14 Q (By Mr. White) But it's a Type V land that isn't
15 arable?

16 THE SPECIAL MASTER: You have answered that.
17 You have seven -- six, seven descriptions of
18 irrigated types used for identification of
19 irrigated lands, and one of them is irrigated
20 lands that is Type V.

21 THE WITNESS: That's right.

22 THE SPECIAL MASTER: And if it's an irrigated
23 land, the question I suppose is do you have some
24 evidence that it's a nonarable land, and I think

25 billstein-cross-white

1 you've answered that sufficiently by saying it
2 obviously has some crops on it, even though
3 it's not high yield, though it does provide
4 beneficial use, you said time and time again.

5 Q (By Mr. White) Mr. Billstein, I'm not talking
6 about the regular Type V lands, I'm talking
7 about the circled Type V lands. Isn't it true
8 that those are lands receiving water but are
9 nonarable?

10 A There were holes put down on some Type V's.
11 They were informational gathering type holes
12 to understand the soils makeup of certain portions
13 of the Type V study area.

14 I believe that these Type V were checked
15 against the arability standards that Mr. Waples
16 will later utilize in his testimony, and that
17 Circle V lands do reflect the nonarability
18 determination.

19 Q Now, Mr. Billstein, isn't it true that the total
20 number of -- the grand total number of acres
21 on Exhibit C-137 includes approximately 2,000
22 nonarable acres of Circle Type V?

23 A I don't know an order of magnitude.

24 * * * * *

25 billstein-cross-white

1 Q. (By Mr. White) Well, would you pull out of the
2 stack before you a copy of HB-12-A, your planimeter
3 sheets for the Coolidge System?

4 MS. SLEATER: Your Honor, before this goes
5 any further, I would like to reassert our
6 objection that Mr. Billstein's testimony is not
7 based on arability, and as he stated, this land
8 is performing a beneficial use. Whether or not
9 the standard used by Mr. Waples in another program,
10 this matter is more properly addressed later on
11 when Mr. Waples is here and does not reflect on
12 Mr. Billstein's testimony that this land is
13 performing a beneficial service to the person who
14 owns it, and at this time I would request that Your
15 Honor cut off this line of questioning as being
16 outside of the scope of direct and not relevant to
17 the witness' testimony.

18 THE SPECIAL MASTER: I concur that these lands,
19 3,971 acres, of Type 5 are performing a beneficial
20 use to the people who are irrigating them or are
21 benefiting from the pasture or seepage that they get,
22 but also I believe that Mr. Billstein could identify
23 his own exhibits and refer to them again, so I will
24 overrule, Regina.

25 billstein - cross - white

1 Q (By Mr. White) About a third of the way through
2 that stack is a page that I can't describe very
3 fairly, but I'll hand you, purely for informational
4 purposes, an exhibit that's been marked HB-12-1,
5 which is a copy of that page, and maybe that will
6 help you find that page.

7 A I see that.

8 Q Isn't it true that each of the lands for which
9 there is a Roman Numeral V with a circle around it
10 shown as a land type on what's been marked as HB-12-1
11 is included within the lands summarized on Exhibit
12 C-1377

13 Q That's true. Again, the nonarability designation
14 on this map does not detract from the fact that
15 there's beneficial use being made of these lands,
16 and we had talked before about the Wind Division
17 Report that was done in 1966, Your Honor, and
18 for instance, the findings of the Bureau of
19 Reclamation at that time in the LeClair-Riverton
20 Projection was that 2,605 acres of the assessable
21 lands in that project of a total of 11,850, or
22 approximately 22 or 23 percent, were 6-W, Class
23 6 Wet lands.

24 In my informal deposition with the project

25 billstein - cross - white

1 manager, Mr. Dale Cooper, he reinforced to me that
2 none of these people were missing their assessment
3 payments, that it was not having that significant
4 a level of impact on their ability to pay, and
5 although counselor has chosen to break the Indian
6 burden of proof different than the non-Indian, this
7 is another example of the nonarability of lands
8 actually playing a major role in the agricultural
9 community in the Basin.

10 Q Mr. Billstein, would you please pull out the spread
11 sheets -- excuse me, not the spread sheets, the
12 planimeter sheets -- for HB-13-A, that are marked
13 HB-13-A?

14 A I have those.

15 Q About a quarter of the way from the back there's a
16 page which I'm unable to describe orally, but I
17 have a copy which is marked purely for identification
18 purposes as HB-13-1.

19 A I see it in Exhibit HB-13-A.

20 Q Isn't it true that all of the lands shown on the
21 page marked HB-13-1 which are marked with a circle
22 V are nonarable lands included within the total,
23 grand total, shown on Exhibit C-139?

24 A That would be so. Again, I have mapped them
25 billstein - cross - white

- 1 as having a beneficial use.
- 2 Q Would you please remove from the stack of planimeter
3 sheets before you HB-16-A?
- 4 A I have found it.
- 5 Q About a third of the way from the back to that
6 exhibit do you find a page which corresponds with
7 what I'm handing you and which has been marked
8 purely for identification purposes as HB-16-1?
- 9 A I see that.
- 10 Q Isn't it true that all of the lands shown on HB-16-1
11 which are designated by V with a circle around
12 it are nonarable lands included within the grand
13 total on Exhibit C-137?
- 14 A Those are nonarable lands which were mapped as
15 showing the beneficial use.
- 16 THE SPECIAL MASTER: By whose definition are
17 they nonarable lands? By your definition?
- 18 THE WITNESS: That's a good point, Your Honor.
19 That's the reason that I feel very uncomfortable
20 about testifying to something that Mr. Waples
21 did. He has a set of criteria which he will testify
22 to, and he is in the best position to submit to
23 that testimony. Only from my personal knowledge
24 do I know that there was a breakout made. All the
25 billstein - cross - white

1 rationale as to why the breakout was made, I'm
2 not in a position to respond to.

3 Q (By Mr. White) Also in Exhibit 16-A, I believe
4 the next page is what I'm handing you a copy of,
5 marked for identification as HB-16-2.

6 A. I see that page.

7 Q Isn't it true that the land shown on HB-16-2
8 as V with a circle around it are nonarable lands,
9 included within the grand total on Exhibit 137?

10 MR. ECHOHAWK: Again, Your Honor, I would like
11 to renew our objection that this is outside the
12 scope of direct and irrelevant and add to it that
13 it's further wasting the Court's time because
14 obviously that ground has to be covered with
15 Mr. Waples so we can get an actual determination.

16 THE SPECIAL MASTER: I will allow one more
17 question and I will probably sustain that objection
18 if he keeps on because the point has been made in
19 the record, and the point deals with Circle V and
20 does it warrant inclusion or not on the basis of
21 it having been described as nonarable, so the point
22 is in the record, and you can show it with a couple
23 hundred acres or a couple thousand. We don't need
24 more than a couple hundred because the concept is

25 billstein - cross - white

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there.

I'll overrule this last time.

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billstein - cross - white

1 MR. WHITE: Your Honor, I wonder if it's
2 true then that Mr. Waples would be available
3 for cross-examination. I believe he's going to
4 be called as a witness by the United States.
5 I'm wondering whether or not he will be available
6 for cross-examination as to the arable
7 determinations which he made on those lands
8 which are included in Mr. Billstein's analysis.

9 THE SPECIAL MASTER: Well, I would imagine
10 he'll be available for cross-examination on
11 any work that he did, no matter in whose department
12 it fell.

13 If I know you, I think you'll see to it
14 what he'll be testifying to.

15 MR. WHITE: He's not my witness, Your Honor.

16 THE SPECIAL MASTER: It's just like these
17 other past three or four areas or separate
18 segments of this case. We have good examples
19 in the record now of each one even though I did
20 cut you off after five or six cases of it and you
21 make your offer of proof on the remaining 17.
22 This is exactly the same type of a legal subject
23 matter. The question in issue here is should
24 this Circle V particular land described as

25 billstein-cross-white

1 nonarable be included in use totals for
2 consideration for water rights period. And
3 the total is 3,971 acres thereof, I think.

4 THE WITNESS: No, Your Honor, only a
5 portion of that --

6 THE SPECIAL MASTER: Is Circle V?

7 THE WITNESS: Is Circle V.

8 THE SPECIAL MASTER: Not all Circle V land
9 is Type V land?

10 THE WITNESS: Circle V land does not
11 constitute all of the Type V acreage, Your Honor.

12 THE SPECIAL MASTER: In any event, bring
13 out, if you will, how much lands is included
14 in your in use study to which you testified, how
15 much land is Circle V total or do you know?

16 THE WITNESS: It would have to be added up
17 from the respective tables because as I said
18 in my direct, it wasn't important to me that
19 distinction was made, and also in our previous
20 discussions, Your Honor, we talked about the
21 fact that at worse we were looking at a depletion
22 for these lands, recognizing depletion because
23 there was a beneficial use being made and that
24 should be recognized.

25 billstein-cross-white

1 THE SPECIAL MASTER: Okay. Well, you can
2 answer the question if Mr. White can remember
3 it or we'll have it reread.-- no, it was a
4 simple question, based on this 41.0 and 44.

5 THE WITNESS: It is a Circle V.

6 THE SPECIAL MASTER: That was the question.

7 Q (By Mr. White) Ron, isn't it true that there
8 are approximately 1,925 acres of Circle V
9 within the Circle V nonarable lands within the
10 grand totals shown on Exhibit C-137?

11 A I believe you have a Waples' Deposition Exhibit
12 to jog my memory.

13 Q I forgot about that one. Off the record.

14 THE SPECIAL MASTER: All right, I'm glad
15 to have that information.

16 MR. WHITE: Instead of having to go through
17 it sheet by sheet, maybe I could run down and
18 take a look at Waples' Exhibit --

19 THE SPECIAL MASTER: You probably don't
20 have to. It's in the record, 1925, and he said
21 I think that's right.

22 MR. WHITE: No, he didn't.

23 THE SPECIAL MASTER: Oh, he didn't. He
24 said I think you got a deposition.

25 billstein-cross-white

1 THE WITNESS: Your Honor, I said I believe
2 that Counselor obtained a figure from a
3 deposition exhibit earlier and that would
4 probably be a good approximation.

5 MR. WHITE: Your Honor --

6 THE SPECIAL MASTER: Well --

7 MR. WHITE: I neglected to look at the --

8 THE SPECIAL MASTER: Let's see if I can
9 save you a trip. Will you stipulate the 1925
10 is an approximate acreage of Circle V from your
11 depositions?

12 MR. ECHOHAWK: No.

13 MS. SLEATER: Your Honor, without seeing
14 the deposition exhibit that Mr. Waples gave to
15 the State, there was so many numbers that came
16 out in the depositions, to tell you the truth,
17 it would be difficult --

18 THE SPECIAL MASTER: All right. Thank you,
19 Regina.

20 Do you want five minutes, Mr. White?

21 MR. WHITE: We can either do it that way or
22 I can give Ron the sheets.

23 THE SPECIAL MASTER: If you can go find it
24 and save him the -- We'll be back in five minutes.

25 billstein-cross-white

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(Thereupon a five minute
recess was taken.

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1 Q (By Mr. White) Mr. Billstein, I hand you what's
2 been marked for identification as HB-62 and ask
3 you whether or not that shows that within the
4 FIPs and only the FIPs there are 1,672.1 acres of
5 nonarable Class 5 land?

6 A. That's correct. I think if you add the two numbers
7 that comes up to about 3,900 acres, which is about
8 the total number of Type 5s identified on Exhibit
9 C-137.

10 Q It's true, however, that HB-62 only includes the
11 FIP lands and there are many other lands outside
12 the FIPs that are shown on Exhibit C-137; isn't
13 that correct?

14 THE SPECIAL MASTER: You mentioned that this
15 was, in your question, covering only FIP lands,
16 so it's been --

17 Q (By Mr. White) Mr. Billstein, I hand you what's
18 been marked for identification as HB-63, which is
19 a collection of pages out of several exhibits which
20 have already been admitted in evidence covering the
21 lands outside the FIPs, and those are pages from
22 the indicated exhibits HB-20-A, HB-23-A, HB-26-A,
23 HB-34-A, HB-35-A, and HB-44-A, and ask you if it is
24 not true that -- let me start it over again.

25 billstein-cross-white

1 at that time as nonarable. In the Riverton valley
 2 it was 27 percent, and in the whole entire Popo Agie
 3 watershed most would not meet arability standards.

4 MR. WHITE: Your Honor, I would move to strike
 5 the witness' statement on several grounds.

6 First of all, it's not responsive to my question.

7 Second, it's based on hearsay.

8 And, third, there's no foundation established
 9 for it in the record. If counsel for the United
 10 States wishes to establish foundation for that on
 11 redirect, he's certainly welcome to do so, but
 12 certainly it's inappropriate on cross-examination.

13 THE SPECIAL MASTER: Motion denied.

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billstein - cross - white

1 MR. WHITE: Off the record for just a
2 minute.

3 (Brief pause.

4 MR. WHITE: Your Honor, could we have about
5 three or four minutes. These are our stipulated
6 exhibits.

7 THE SPECIAL MASTER: We'll stay in session.
8 That might help us move along.

9 (Off the record for
10 (ten minutes.

11 Q (By Mr. White) Mr. Billstein, I hand you what's
12 been marked for identification as HB-137-1 and
13 ask you if that is a tabulation of parcel
14 numbers, acreages and types, among other things,
15 which was prepared pursuant to the stipulation
16 and for the purposes of the stipulation between
17 the United States and the State and the Tribes,
18 for Ray Unit?

19 A That's correct.

20 Q I hand you what's been marked for identification
21 as HB-137-2 and ask you if that's the same type
22 of tabulation for the Coolidge Unit?

23 A That's correct.

24 Q I hand you what's been marked as HB-137-3-A and
25 billstein-cross-white

1 ask you if that's the same type of tabulation
2 for the Sub Agency Unit?

3 A That's correct.

4 Q I hand you what's been marked as HB-137-4-A
5 and ask you if that's the same type of tabulation
6 for the Wind River A Canal?

7 A That's correct.

8 Q I hand you what's been marked for identification
9 as HB-137-5-A and ask you -- off the record,
10 Your Honor.

11 (Off-the-record discussion.)

12 MR. WHITE: Back on the record.

13 Q (By Mr. White) Which is the same type of
14 tabulation but for the Dinwoody Bench area?

15 A That's right.

16 Q I hand you what's been marked for identification
17 as HB-137-6-A and ask you if that's the same
18 type of tabulation but for the Johnstown Unit?

19 A That's correct.

20 Q I hand you what's been marked for identification
21 as HB-137-7-A and ask you if that's the same
22 type of tabulation but for the Lefthand Unit?

23 A That's right.

24 Q I hand you what's been marked for identification
25 billstein-cross-white

1 as HB-137-8-A and ask you if that's the same
2 type of tabulation for Midvale?

3 A That's correct.

4 Q I hand you what's been marked for identification
5 as HB-137-9-A and ask you if that's the same
6 type of tabulation but for LeClair?

7 A That's correct.

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billstein-cross-white

1 MR. WHITE: Off the record.

2 (Off-the-record discussion.)

3 Q (By Mr. White) I hand you what's been marked for
4 identification as HB-137-A and ask you if that's
5 the same type of tabulation but for the East Fork
6 Wind River?

7 A That's correct.

8 Q I hand you what's been marked for identification
9 as HB-137-12-A and ask you if that's the same type
10 of tabulation but for Dry and Little Dry Creeks?

11 A That's correct. The ultimate total would go into
12 Dry Creek.

13 Q Okay. On C-137?

14 A That's correct, counselor.

15 Q I hand you what's been marked for identification
16 as HB-137-18-A and ask you whether or not that
17 is the same type of tabulation but for Cottonwood
18 Creek?

19 A That's correct.

20 Q I hand you what's been marked for identification
21 as HB-137-21-A and ask you if that's the same type
22 of tabulation but for Fivemile Creek?

23 A That's correct.

24 Q I hand you what's been marked for identification

25 billstein - cross - white

1 as HB-137-32-A and ask you if that's the same type
2 of tabulation but for the Popo Agie?

3 A. That's correct. It includes the North Popo Agie as
4 well as the Main Stem Popo Agie.

5 Q. I hand you what's been marked for identification
6 as HB-137-34-A and ask you if that's the same type
7 of tabulation but for Owl Creek, the Owl Creek Basin?

8 A. That's correct, and it would include South Fork
9 Owl Creek, Main Stem Owl Creek, and Mud Creek.

10 MR. WHITE: Off the record for a moment.

11 (Off-the-record discussion.)

12 MR. WHITE: Your Honor, at this time I will
13 offer those exhibits which have just been
14 identified by Mr. Billstein for purposes enunciated
15 in the stipulation previously made on the record
16 between the State, the United States and the
17 tribes.

18 MR. ECHOHAWK: No objection.

19 THE SPECIAL MASTER: Is there some way,
20 Mr. White and Mr. Echohawk, that we can caption
21 or designate that stipulation so that it is
22 distinguished from other stipulations? Can we
23 refer to it by a reference number or point?

24 MR. WHITE: If you can give me about two or
25 billstein - cross - white

1 three minutes, I can look it up in the transcript
2 from last Friday and give you the book and page.

3 THE SPECIAL MASTER: I would like that so we
4 can have the continuity and see if we can't call
5 that the in-use stipulation number 1 or give it
6 a handle.

7 MR. WHITE: Off the record.

8 (Off-the-record discussion.)

9 THE SPECIAL MASTER: All right. Let's go on
10 the record. The stipulation I inquired about
11 was read into the record on Friday, the 13th, last
12 week, and it began on page 2432, continued through
13 page 2433, and was terminated on page 2434.

14 Okay, Mr. White. Thank you.

15 MR. WHITE: Off the record.

16 (Off-the-record discussion.)

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billstein - cross - white

1 THE SPECIAL MASTER: Mr. White, we have
2 prepared in the interim, copies of pages 2433
3 of the record for last Friday, March 13, 1981
4 because we found it had been omitted from the
5 transcript for that day. Beginning on page 2432,
6 Mr. Echohawk was asked by me if he would
7 announce the stipulation after the off-the-record
8 discussion whereby it was fashioned, and he
9 answered that he would attempt it. Mr. Echohawk
10 then read as follows, and I quote from page 2433:
11 "The United States, the Tribes and the State of
12 Wyoming have agreed that the State of Wyoming
13 will provide its interpretation as to the
14 identification of parcels, making up each of the
15 line items on Exhibit 137, the acreage for each
16 of those parcels, and the type for each of those
17 parcels.

18 "The United States will examine the
19 information presented by the State, make any
20 corrections which should be made to that
21 information.

22 "When those corrections are made, the
23 corrected information, as well as the original
24 information that was correct to begin with, will
25 in some form, yet to be agreed upon, be presented

1 to the Master, either through the narrative oral
2 testimony of Mr. Billstein or in writing which
3 will represent an agreement of the parties
4 named, that I have named, that the parcels
5 identified are all the parcels which are comprised
6 in the line entries on Exhibit C-137 and that
7 the acres attributed to each line entry represent,
8 one, the sum of the individual parcel acreages
9 and that the individual parcel acreages are those
10 acreages which were determined by the United
11 States' planimeter work.

12 "As I say, whether or not we can reduce
13 that to writing or whether it needs to be done
14 by oral narrative testimony is yet to be agreed
15 upon.

16 "The agreement further, I believe, is that
17 because it will take some time to do the checking,
18 on Monday Mr. Billstein will be recalled for
19 cross-examination in the afternoon session and
20 that the examination will continue on to other
21 areas aside from the parcel-by-parcel and acre-
22 by-acre verification of the items in 137.

23 "In the morning on Monday the parties have
24 agreed if the Master would allow us, to convene
25 at ten o'clock instead of 9:15 -- and I thank

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Counsel for" -- so on and so on and at the end,
"Does that clearly state the agreement?" That
was Mr. White stating that, and Mr. Echohawk
said, "Yes, Your Honor, it does."

Mr. White.

* * * * *

1 MR. WHITE: I assume, based on the stipulation,
2 that there's no objection to the offer of those
3 exhibits 137-1-A, et. seq., which were identified
4 and offered this morning.

5 MR. ECHOHAWK: That's correct.

6 MR. PARRY: No objection.

7 Q (By Mr. White) Mr. Billstein, have you had an
8 opportunity to examine the exhibits which have
9 been admitted as C-56 through C-136 since they
10 were annotated with tract numbers outside of the
11 Court's presence during the evening recess of
12 yesterday and this morning?

13 A Yes.

14 Q Do the tract numbers which appear in the series
15 of exhibits 137-1-A, et. seq., the stipulated exhibits,
16 appear in red handwritten numbers on Exhibits C-56
17 through 136?

18 A The tract numbers show on those exhibits.

19 Q Mr. Billstein, isn't it true that you based a
20 portion of your opinion with respect to those
21 lands which are summarized on C-137 on conversations
22 with third parties such as Mr. Twitchell and
23 Mr. Crook?

24 A I've described in my direct testimony the review
25 billstein - cross - white

1 process that I undertook. Discussions with
2 Mr. Twitchell and Mr. Crook were a part of that
3 review process.

4 Q Did you make any written memorandum or memoranda
5 of the discussions with Messrs. Twitchell and
6 Crook?

7 A Just as with the 1980 hydrographic program, the
8 results are, in fact, the hydrographic maps. At the
9 time of my discussions with Mr. Twitchell and Crook
10 in '69, the work maps that we had at that time
11 reflected the results of those conversations. I
12 have had --

13 Q Excuse me. Did you mean to say in '69?

14 A Seventy-nine. Since that time, I have spoke to
15 Mr. Twitchell and Mr. Crook relative to the Wind
16 River Federal Irrigation Project many times and
17 do have phone logs for several of those conversations.

18 Q Do you have those with you?

19 A Yes.

20 Q May I see them, please?

(Brief pause.)

21
22 A Also included would be phone logs to Bob Robertson,
23 who is the Range Manager for the Bureau of Indian
24 Affairs, Fort Washakie, and also copies of

25 billstein - cross - white

1 phone logs of conversations with Mr. Twitchell by
2 people under my supervision. Such telephone call
3 was made at my direction.

4 THE SPECIAL MASTER: Is it your practice to
5 keep phone logs in all of your professional work of
6 this kind?

7 THE WITNESS: I screen it as to those that I
8 think are meaningful. If they are meaningful and
9 I don't have a map or something to reflect the
10 results of that, I usually use telephone conversations.

11 THE SPECIAL MASTER: Does your company have a
12 directive as to what logs should be made of and
13 what they should not be made of and how they should
14 be structured?

15 THE WITNESS: No directives. That's up to
16 the professional judgment of the individual.

17 THE SPECIAL MASTER: I would like to ask
18 you, Mr. White, have you already seen these logs
19 that you are asking for?

20 MR. WHITE: No, I asked about them, but
21 apparently not directly enough during the deposition,
22 and I recieved a log of a telephone conversation
23 between Mr. Gurney, Loren Gurney, who is right
24 over there, and Carl Johnson, an engineer with

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Midvale Irrigation District, and it's the only such log I received.

And I do not want to imply that Mr. Billstein was hiding anything. I think I just unartfully asked during the deposition.

THE WITNESS: I also have a memo of a conversation to Tommy King, Water Commissioner.

(Witness handed documents to Mr. White.

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1 THE SPECIAL MASTER: I'm glad you two
2 gentlemen have agreed to stipulate on the
3 contents of those telephone memos.

4 MR. WHITE: I haven't finished reading
5 them. To speed things up I will take a look
6 at them over the lunch break.

7 THE SPECIAL MASTER: If you want to do that.
8 We can move on to some other subject matter.

9 MR. WHITE: We can move on to something
10 else.

11 Q (By Mr. White) Mr. Billstein, was your pro-
12 fessional opinion based on any other conversations
13 with third parties other than those which you
14 have already described and which were contained
15 in the memorandum which you handed me?

16 A I believe I've discussed in previous testimony,
17 any other third party that I had contact with
18 to arrive at my conclusions.

19 Q And I believe you testified that your 1979
20 conversations with Messrs. Twichel and Cook
21 were not memorized in a memorandum; is that
22 correct?

23 A No. As I said, the work maps reflected results
24 of those meetings just as these hydrographic

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1 copies reflects the results of the 1980 meetings.

2 Q Are you able to state with any specificity the
3 results of those 1979 meetings which were
4 reflected on the work maps?

5 A Those respective work maps were updated in the
6 1980 field program, in the Wind River Federal
7 Irrigation Project, therefore, the basic data
8 has been improved upon and it would be very
9 difficult to trace what was mapped in 1978 versus
10 what was concluded as under current irrigation
11 in 1980.

12 Q Would you take a look back at Exhibit HB-62,
13 which was the exhibit from Waples' Despoition.

14 THE SPECIAL MASTER: What was HB-62, a
15 drawing or --

16 MR. WHITE: It was a chart.

17 THE SPECIAL MASTER: -- document?

18 MR. WHITE: It was a chart from the Waples'
19 Deposition. I think it was Waples Deposition
20 Exhibit 10.

21 THE SPECIAL MASTER: I have HB-62. I'll
22 lend you my copy, Mr. White.

23 MR. WHITE: You just --

24 THE SPECIAL MASTER: Thanks to Leo Salazar

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1 we found that rapidly.

2 MR. WHITE: I'll give you this copy, I'll
3 give Mr. Billstein a copy of mine.

4 THE SPECIAL MASTER: Well, I can let him
5 use this if it will save you some time.

6 MR. WHITE: It will just take a minute.
7 I'd sure like you to be able to look at it while
8 I ask him about it.

9 Q (By Mr. White) Mr. Billstein, on HB-62, which
10 was also shown as being Waples Deposition
11 Exhibit 10, do you see a column which is headed
12 by an asterisk right next to the Roman Numeral
13 Circle V?

14 A Yes.

15 Q Isn't it true that the number of acres shown
16 as a total under the asterisk column, which I
17 believe is 234 acres, was land which was never
18 visited during the 1980 field investigation?

19 A I believe that asterisk refers to idle lands
20 and as such, was not part of the irrigation in
21 use portion of the study.

22 Q Did you include any lands in, among those that
23 are shown on Exhibit C-137, which were typed
24 with an asterisk?

25 billstein-cross-white

1 A I can't believe that any of those acres would
2 have shown up in Exhibit C-137. Those are
3 undeveloped lands, I believe, and as such, would
4 not be recorded as historic use lands.

5 (Brief pause.)

6 Q Mr. Billstein, would you please take a look at
7 what's been admitted as HB-26-A, planimeter
8 sheets for Meadow Creek. I should say planimeter
9 sheets and field notes.

10 (Brief pause.)

11 A Found it.

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1 Q (By Mr. White) On approximately the fourth page
2 from the front is a page which I have prepared a
3 copy and marked as HB-26-2, purely for identification
4 purposes, and I ask you whether or not you can
5 find that page?

6 A I see it.

7 Q Do you see the statement: Mr. O'Neal said he
8 doesn't remember when this field was last irrigated?

9 A Yes.

10 Q What field does that refer to?

11 A I'm talking about some Type 7 lands. As you see
12 the notation behind both South Fork Meadow No. 1
13 and Jackson No. 6624, those lands are not part
14 of the claim. Mr. Johnston was just getting some
15 basic information about when the last time those
16 idle lands had been served.

17 Q Would you turn on about two-thirds of the way
18 through Exhibit 26-3 and find a page which I have
19 made a copy of and marked solely for identification
20 purposes as HB-26-3? Do you find that page?

21 A Yes, I do.

22 Q Do you see the note at the bottom apparently by
23 Mr. Johnston that says: No field investigations;
24 I thought lands were served by FIP?

25 billstein - cross - white

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- 1 A. Right.
- 2 Q. What lands are those referring to?
- 3 A. I'll get my hydrographic copy and show you.
- 4 Q. Well, are they included in the claim?
- 5 A. That's right. We visited them in February.
- 6 Q. That was in 1981?
- 7 A. Yes, sir.
- 8 Q. Do you happen to know the tract number that applies
- 9 to?
- 10 A. I could get that. Calhoun, that would be 10-200.
- 11 On 10-200 it's part of tract 5-46, which
- 12 does show it as part of the Wind River Federal
- 13 Irrigation Project.
- 14 What Mr. Calhoun does in this ditch system
- 15 is that he picks up water from a drainage. He calls
- 16 it Calhoun Creek, I suppose after himself, and
- 17 moves the water into the land base of the Wind
- 18 River Federal Irrigation Project.
- 19 What I think confused Mr. Johnston at the time
- 20 of his visitation is that he was looking down into
- 21 Meadow Creek, and although Mr. Calhoun has several
- 22 ditches down there, he did not find this particular
- 23 tract that Mr. Calhoun was referring to in his
- 24 interview, and we had to go to the interview to
- 25 billstein - cross - white

1 establish that he was using basically a drainage
2 rather than the Wind River Federal Irrigation Project
3 facilities to serve that tract.

4 Q How many acres are in that tract or that portion
5 of tract 5-46 which was not visited during the
6 1980 field season?

7 A I don't know how many acres. Mr. Calhoun has out of
8 that whole tract. My best recollection of that
9 was 20 acres, plus or minus, somewhere in there.

10 Q Why don't you leave that handy?

11 Ron, in Exhibit 26-A, I believe four pages
12 on beyond the last page we referred to, is another
13 page which I have marked as HB-26-4, purely for
14 identification purposes.

15 Do you find that within 26-A?

16 A Yes.

17 Q At the bottom of that page, do you see where
18 apparently Mr. Johnston indicated that there's no
19 field investigation for this tract because he
20 similarly thought that the area was served by the
21 FIP?

22 A Right.

23 Q That would have been no field investigation during
24 1980; is that correct?

25 billstein - cross - white

1 A. That's right. We picked that one up in 1981 also.

2 Q. What tract number does that involve, if you know?

3 It should be in the same area.

4 A. Fourteen-seven.

5 Q. Going on about another four pages, a page which

6 I have made a copy of and marked purely for

7 identification purposes as HB-26-5, do you find

8 that page?

9 A. Yes.

10 Q. Does it similarly indicate that the tract

11 referred to in there was not the subject of a

12 field investigation during 1980?

13 A. Not by Mr. Johnston. I had Mr. Waples go back

14 and look at the Washakie Ditch.

15 Q. So Mr. Waples visited that tract in 1980; is

16 that correct?

17 A. That's right.

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1 Q (By Mr. White) Ron, would you please find
2 Exhibit 31-A and look at a couple pages there.

3 A Okay.

(Brief pause.)

4
5 A I have it.

6 Q Ron, the second page from the back of that
7 exhibit is a page which I have marked purely
8 for identification purposes as HB-31-1 and ask
9 you if you can find that?

10 A I see it.

11 Q Are the lands which are described in the notes
12 below as being large fields having a hilly
13 area on the eastern side, the stress of which
14 caused the breakdown of two sections in the
15 sprinkler, are those lands included within the
16 totals shown on Exhibit C-137?

17 A The notation said that it appears that the
18 stress of the hill completely broke down the
19 two sections.

20 Q Okay.

21 A This is the Bawlin Bull Sprinkler Irrigation
22 Project, and as I identified yesterday on the
23 northeastern end, there is a fairly significant
24 slope and the field review showed that there were

25 billstein-cross-white

1 alfalfa fields throughout it except at the very
2 top of those hills where we typed them Type VI,
3 where we needed special management.

4 The sprinkler systems were broken down at
5 the time of the visitation and it's unknown
6 whether they were going to go in and look at
7 modifying the way they were serving those tracts
8 or perhaps do a little land leveling or something
9 like that. It was just a notation that the
10 sprinklers were out there, however, they weren't
11 operating at the time of the visitation. But
12 the Bawlin Bull Project is a very fine sprinkler
13 irrigation project, and its acres are shown in
14 C-137. And the areas that we felt were not as
15 good as the others were broken out as Type VI.

16 Q Did any -- Did you or any person acting under
17 your supervision see those areas on the eastern
18 side, those fields described on HB-31-1, under
19 irrigation or receiving water during 1980?

20 A Now we're getting into a professional judgment,
21 Counselor. The mere fact that you don't see a
22 sprinkler moving and distributing water, the
23 mere fact that you got good vegetation cover,
24 here he's talking about alfalfa fields, alfalfa

25 billstein-cross-white

1 fields in good condition, I think the mere
2 fact that it wasn't spraying the day that he
3 was there certainly doesn't decrease his ability
4 to make a judgment that that crop was being
5 raised in 1980.

6 Q What would cause a sprinkler to be stressed by
7 a hill? I don't understand what would cause
8 that. Is it because the sprinkler has to go
9 over a hill and the sections break or what's the
10 reason for that?

11 A You're asking an agricultural engineering
12 interpretation, which first of all I'm not
13 familiar with their design, and I'm not totally
14 familiar with the system nor have I studied the
15 topography of the particular tract. I think
16 I'm really not in a position to answer that
17 question.

18 THE SPECIAL MASTER: You probably can find
19 a dozen farmers between here and Lusk who can
20 answer it for us, but it takes somebody with
21 the experience.

22 THE WITNESS: There's a number of parameters,
23 Your Honor, to what could have possibly caused
24 the breakdown.

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1 Q (By Mr. White) But that was the professional
2 judgment of whoever or Mr. Johnston, the
3 field investigator at the time, am I correct,
4 that the hill -- that the hill appeared to be
5 stressing your sprinkler system or that
6 sprinkler system in causing it to break?

7 A It was an observation.

8 Q Mr. Billstein, I hand you what's been marked
9 for identification as HB-52 and ask you whether
10 or not that is not a copy of certain documents
11 upon which you relied in forming your opinion?

12 A It was a source of my review. It shows the
13 irrigation facilities in the Wind River Federal
14 Irrigation Project.

15 Q On the original, or excuse me, on the copy that
16 bears the sticker, the exhibit sticker, there
17 are colors drawn in. Do those match the colors
18 which you drew in on your copy of the maps,
19 and if so, what do they stand for?

20 A Are you asking me to compare HB-52 to Billstein
21 Exhibit 142?

22 Q Deposition exhibit, yes.

23 (Brief pause.)

24 A There appears to be some discrepancy. I'll try
25 billstein-cross-white

1 to highlight those.

2 Q If you'll just note those discrepancies in
3 color on that exhibit so it's clear whoever
4 would review that exhibit, what those changes
5 are.

6 (Brief pause.)

7 A Okay, I've made the notations in Exhibit
8 HB-52.

9 Q Do the colors show the different sources of
10 water, in your opinion, that served those lands?

11 A This was a work map that delineated the different
12 water supply sources that I defined at this
13 particular point in time relative to the water
14 sources that were serving different tracts in
15 the Wind River Federal Irrigation Project. As
16 we discussed before, we're talking about
17 commingling of sources, and I tried to color
18 code it to assist the delineation of those
19 respective sources.

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1 Q (By Mr. White) And are annotations made on those
2 maps showing what the color codes stand for from
3 map to map?

4 A On most of them, yes.

5 Q If there are any glaring omissions, would you put
6 them in, please?

7 THE SPECIAL MASTER: Weren't the omissions
8 dealt with when you took care of the discrepancies
9 earlier?

10 THE WITNESS: They should be reflective of
11 what is on the exhibits, Your Honor.

12 THE SPECIAL MASTER: I just wonder if they
13 are necessary again, Mr. White.

14 MR. WHITE: I just want to make sure it's
15 accurate because it will be offered for purposes
16 showing a document which Mr. Billstein reviewed
17 and relied upon in reaching his opinion.

18 THE WITNESS: I don't see where the
19 commingling of sources allowed me to reach a
20 conclusion on irrigated lands.

21 Q (By Mr. White) Mr. Billstein, would you look
22 at the lower right-hand portion of the legend on
23 Exhibit 67, for example? While I recognize this
24 is outside of the FIP project, isn't it true that

25 billstein - cross - white

1 you made, even within the FIPs, a water supply
2 source determination which often contains
3 commingling -- commingled courses of water?

4 A. That's true.

5 Q. Would you please check to make sure that the
6 sources shown on HB-52 by color code are correctly
7 indicated?

8 A. Okay.

9 MR. WHITE: Your Honor, at this point it might
10 be a good time to take about a ten-minute break.
11 There are a couple more exhibits that are similar.

12 THE SPECIAL MASTER: It's 11:15. If you can
13 go another 15 minutes, then we could recess for
14 lunch early, or are you still shooting to finish
15 before noon?

16 MR. WHITE: I was going to try to finish by
17 lunch. I would guess that I have another 45 minutes
18 to an hour and a half. It's hard to guess, but
19 that's what I expect to have on my cross.

20 THE SPECIAL MASTER: Well, if you think you
21 can finish by 12:00 or 1:00, we can go ahead if
22 you want to and we will give you a ten-minute break
23 and come back in. Okay. Take a ten-minute recess.

24 (Thereupon a 30-minute recess
25 (was taken.)

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THE SPECIAL MASTER: Let's recess then until

1:30.

MS. SLEATER: That's fine, Your Honor.

(Thereupon a recess was
(taken at 11:45 to
(reconvene at 1:30.

* * * * *

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