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## Trial Transcript, Vol. 33, Afternoon Session

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case # 4993

File # 140

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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. Hampton* CLERK  
DEPUTY

VOLUME 33

Afternoon Session

Thursday, March 19, 1981

**ORIGINAL**

1 THE SPECIAL MASTER: Please come to order.

2 MR. WHITE: Your Honor, before resuming  
3 the cross-examination of Mr. Billstein, the State  
4 and the United States have stipulated that Exhibit  
5 22-A may be withdrawn -- Excuse me, HB-137-22-A may  
6 be withdrawn and replaced by Exhibit HB-137-22-B, and  
7 the -22-A may be withdrawn without prejudice because  
8 of the withdrawal, to the right of the United States  
9 subsequently reoffered.

10 If the Court would so order, I would make  
11 the change of the exhibit.

12 THE SPECIAL MASTER: All right. So ordered.  
13 I'm not sure what I'm doing but it's so ordered.

14 MR. WHITE: Well, we agreed on it.

15 THE SPECIAL MASTER: That's why I wondered  
16 if the order was necessary because you two agreed  
17 upon it, but it is nevertheless ordered.

18 MR. WHITE: We would make the same substitution  
19 with the same stipulation to substitute Exhibit 24 --  
20 HB-137-24-B for HB-137-24-A, and we'd ask the Court  
21 to order that be allowed to be done.

22 THE SPECIAL MASTER: Okay, so ordered.

23 Q (By Mr. White) Mr. Billstein, have you now had  
24 an opportunity to review HB-52 and determine that  
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1 it is a correct copy upon the document upon  
2 which you relied in developing your opinion?

3 A It's a copy with a designation of errors  
4 reflecting the work document that went into my  
5 review process.

6 Q With the notations which you have made, is it  
7 now accurate?

8 A To the scale that it's drawn, it's reasonably  
9 accurate.

10 Q I believe you have before you a group of  
11 photographs which was marked HB-53. Are those  
12 the SCS photographs and -- excuse me, strike  
13 that, let me start again.

14 You have before you a group of photographs  
15 labeled HB-56. Are those the BIA assessment  
16 photographs to which you referred during your  
17 testimony?

18 A These are xerox copies of those assessment  
19 maps.

20 Q Are those assessment maps which comprised HB-56,  
21 the documents which you relied in part in  
22 developing your opinion?

23 A They were part of my review process, that's correct.

24 Q On the floor in front of you, Ron, are several

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1 items, top sheet of, which is I believe marked  
2 HB-53.

3 A That's correct.

4 Q And there should be, I believe 26 boards also.  
5 What did you get?

6 A Twenty-seven.

7 Q I'll take 27.

8 Do those comprise the SCS photography  
9 roughly in 1968 to 1970 mounted on boards with  
10 an index sheet, which comprise the portion of  
11 those matters upon which you relied in developing  
12 your opinion?

13 A Those show the results that the SCS irrigated  
14 lands inventory conducted in 1968 to 1970,  
15 reflected on aerial photographs. These documents  
16 were utilized in my review process.

17 THE SPECIAL MASTER: Do you intend to use  
18 them either to introduce them or to offer them  
19 in evidence? Can we have some additional  
20 identification of them if we do?

21 MR. WHITE: I was going to offer them, Your  
22 Honor. I was going to offer them, however, with  
23 the right of Mr. Billstein to withdraw them if  
24 he needed them, and in the event of such a

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1 withdrawal, the State would arrange to replace  
2 them with copies.

3 THE SPECIAL MASTER: How do you want to  
4 identify them?

5 MR.. WHITE: They're identified, Your Honor,  
6 based on the index sheet which is marked as  
7 HB-53. And then the index sheet, or index map  
8 is keyed to the numbers which appear on the  
9 individual boards. There's a DC on the first  
10 board, for example, and it's shown on the index  
11 map which contains the exhibit number.

12 THE SPECIAL MASTER: Each of the 13 have a  
13 similar number?

14 MR.. WHITE: Twenty-seven.

15 THE SPECAIL MASTER: Each of the 27 have a  
16 similar number?

17 MR.. WHITE: Yes, sir.

18 THE SPECIAL MASTER: Okay, thank you.  
19  
20  
21

22 \* \* \* \* \*

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1 Q (By Mr. White) Mr. Billstein, the SCS photograph  
2 which is included in HB-53 contains Roman numerals  
3 indicating types of land, does it not?

4 A. That's right.

5 Q I hand you what's been marked for identification  
6 as HB-59 and ask you whether or not that contains  
7 the definition of those types which are included  
8 on the SCS photographs?

9 A. This is a description that I'm not totally familiar  
10 with. We had received a different description.

11 Q May I see the description that you received, please?

12 A. It has some of my --

13 Q Why don't you compare the two and see if they are  
14 the same?

15 MS. SLEATER: Your Honor, I would like to  
16 point out that until something is identified  
17 properly before the Court, the Court should not be  
18 making use of it as it is in evidence. I'm sure  
19 Your Honor knows that.

20 THE SPECIAL MASTER: Well, I just picked it  
21 up and looked at it and started to read it and  
22 looked over at you.

23 MS. SLEATER: That's why I was responding.

24 THE SPECIAL MASTER: That's about as far as I  
25 billstein-cross-white



1 can go with any lawyer in throwing hints in  
2 this business.

3 A. (By the Witness) They are basically the same as  
4 the guidelines we have received before. The guide-  
5 lines that we obtained in 1978 did have a Type VI  
6 water spreading, but that was only for Water  
7 Division Number 2.

8 Q (By Mr. White) So with respect to those types  
9 applicable to Water Division Number 3, is HB-59  
10 the same set of types which you used in your analysis  
11 of the SCS maps comprising HB-53?

12 A. There is some differentiation between the two.

13 Q Where did you obtain the types which you are refer-  
14 ring to?

15 THE SPECIAL MASTER: When you say "you are  
16 referring to," do you mean the types as contained  
17 in plaintiff's Exhibit WRIR HB-8?

18 MR. WHITE: No, sir. Mr. Billstein has another  
19 set of types which are applicable to the SCS  
20 aerial photographs which have been identified as  
21 HB-53. We had one set of those types. He has  
22 another set. He said they are substantially the  
23 same, but there are some differences, and I'm ask-  
24 ing him now where he got his, and I'm willing to use

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1 his.

2 THE SPECIAL MASTER: Differences in the  
3 descriptions of the classifications of irrigated  
4 lands?

5 MR. WHITE: Yes, sir. What you need to do on  
6 this one is put Waples' 'Deposition Exhibit -- I  
7 believe it's 8 -- or, excuse me, HB --

8 THE SPECIAL MASTER: This is a plaintiffs'  
9 exhibit number 8 now? It was in deposition number  
10 9 of Mr. Waples and it is very, very similar to  
11 this classification.

12 MR. WHITE: Your Honor, for the purposes of  
13 this discussion, you need to ignore HB-8.

14 THE SPECIAL MASTER: Well, I don't wish to  
15 ignore it because it's directly in point with what  
16 we are discussing, so I don't care to ignore it.

17 MR. WHITE: Okay, sir. Well, HB-59, or some-  
18 thing very similar to it, is a set of type  
19 definitions which are applicable to the types found  
20 on the SCS photography contained within HB-53  
21 that's on the floor here.

22 I'm not suggesting that these are the types  
23 that Mr. Billstein used or that were developed by  
24 him and Mr. Waples with respect to the lands on C-137.

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1                   What I'm trying to do is find out which types  
2                   -- what definition of types Mr. Billstein relied  
3                   on with respect to the typing shown on the photo-  
4                   graphs in HB-53.

5                   THE SPECIAL MASTER: Was he responsible for  
6                   the typing of areas on the photographs of HB-59,  
7                   or was that done by SCS?

8                   MR. WHITE: He was not responsible for that.

9                   THE SPECIAL MASTER: Then he can hardly comment  
10                  on what criteria was used that is applicable to  
11                  that.

12                  MR. WHITE: Well, Your Honor, he testified  
13                  that he used these or referred to these in develop-  
14                  ing his opinion. Referring to these --

15                  THE SPECIAL MASTER: He can indeed.

16                  MR. WHITE: -- required him to make some  
17                  interpretation of the types that are shown on the  
18                  photographs in HB-53, and I'm essentially asking  
19                  him what definition did he attach to the SCS types  
20                  in his review, and if HB-59 doesn't contain those  
21                  definitions, I'm going to ask him to share with us  
22                  the definitions which he used.

23                  THE SPECIAL MASTER: Very good.

24                  THE WITNESS: I used the SCS basically to  
25                  billstein-cross-white

1 delineate areas of use. Typing again was secondary,  
2 just as it is in this particular inventory.

3 I spoke to a set of guidelines that we received  
4 from SCS relative to that inventory and said they  
5 were quite similar to these. These were more  
6 detailed.

7 In answer to the question, HB-59 would have  
8 been used to review any of the typing that was on  
9 the SCS irrigated lands inventory.

10 Of course, the major disadvantage that you have  
11 is that you don't know how those field investigators  
12 carried out that typing, but again that was a  
13 secondary use of that document.

14 Q (By Mr. White) Is HB-59, for all practical purposes,  
15 a document which contains the same definitions of  
16 the SCS types which you received from SCS?

17 A That's correct.

18 MR. WHITE: Your Honor, at this time we would  
19 offer HB-52, -53, -56, -59, and -62 -- strike -62  
20 for the moment. We would offer HB-52, -53, -56, and  
21 -59, for the purpose of showing facts and data  
22 which Mr. Billstein relied on in part in forming his  
23 opinion.

24 THE SPECIAL MASTER: What is 56?

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1 MR. WHITE: Your Honor, 56 are the --

2 THE SPECIAL MASTER: He can tell me.

3 (Off-the-record discussion.

4 THE SPECIAL MASTER: All right. Without  
5 objection, and I hear none, the exhibits just refer-  
6 red to by Mr. White are hereby admitted into  
7 evidence.

8 (Exhibits HB-52, HB-53,  
9 HB-56 and HB-59 were  
received into evidence.)

10 MR. WHITE: Your Honor, we would offer --

11 THE SPECIAL MASTER: One of them subject to  
12 withdrawal, incidently, as --

13 MR. WHITE: Yes, I want to make that clear  
14 for the record, that the cover sheet and 27 boards  
15 with photographs mounted on them which comprise  
16 HB-53 are offered subject to the right of the United  
17 States to withdraw them in the event that Mr. Bill-  
18 stein should need them, and in the event that  
19 occurs, we would take the opportunity to provide the  
20 Court with a replacement copy.

21 (Pause.

22

23

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1 Q (By Mr. White) Mr. Billstein, I hand you what's  
2 been marked as HB -- Plaintiff's Exhibit HB-65  
3 and ask you if you --

4 THE SPECIAL MASTER: Did you say 55?

5 MR. WHITE: Six-five, Your Honor.

6 Q (By Mr. White) Ask you to determine whether or  
7 not that collection of memorandum are true  
8 and accurate copies of the telephone conversation  
9 record and memorandum which you described before  
10 the luncheon break, that took place between you  
11 and third persons or between your people  
12 working under your supervision and third persons  
13 which you relied on in part in determining your  
14 opinion?

15 MR. ECHOHAWK: Are these all of them?

16 MR. WHITE: Yes.

17 THE WITNESS: That's correct.

18 Q (By Mr. White) I hand you what's been marked  
19 for identification as HB-51 and ask you if that  
20 is a copy of a telephone conversation record  
21 between Mr. Gurney, a person in your employ,  
22 and Mr. Johnson, an engineer at the Midvale  
23 Irrigation District, which you also relied on  
24 in part in developing your opinion which you've

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1 given on direct examination?

2 A That's correct.

3 MR. WHITE: Your Honor, at this time we  
4 would offer HB-51 and HB-65 for the purpose  
5 of showing information upon which Mr. Billstein  
6 based his opinion given on direct examination.

7 MR. ECHOHAWK: No objection.

8 THE SPECIAL MASTER: The Exhibits, HB-51  
9 and HB-65 are admitted into evidence, hereby  
10 admitted into evidence.

11 (Whereupon Exhibits HB-51  
12 (and HB-65 were admitted.  
13 (into evidence.

14 (Brief pause.

15 Q (By Mr. White) Mr. Billstein, I direct your  
16 attention to what's been marked for identification  
17 as U.S. Exhibit C-78 and ask you if you are  
18 able to locate on that exhibit, a parcel that  
19 is shown as 28-1?

20 A Yes.

21 Q Is the base photograph upon which C-78 is  
22 mounted, a photograph taken in October, 1979?

23 A That's right.

24 Q Referring to the land covered by 28-1, are you  
25 able to explain -- Well, first of all, what type  
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1 is 28-1?

2 A It's Type IV.

3 Q And it has a distinct difference in color tone,  
4 color shading from the areas around it, does  
5 it not?

6 MR. ECHOHAWK: Objection, Your Honor.  
7 It appears Mr. White is again attempting to  
8 cover the lands that he said are light-colored  
9 lands, Type IV. We've been through those, we've  
10 been through numerous examples for the past  
11 three or four days. I believe the Court has a  
12 specific or has a good enough example of what  
13 type lands those are. I think Mr. Billstein  
14 has explained time and time again why he has  
15 included those lands. I believe that this line  
16 of questioning is repetitious and overly  
17 burdensome.

18 THE SPECIAL MASTER: I'm very strongly  
19 inclined to sustain the objection, Can you give  
20 me a good reason or give me an offer of what  
21 you intend to bring out other than what's already  
22 been attempted.

23 MR. WHITE: I think that by going through  
24 another, several more of these, it will become  
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1 clear that there can be no basis for showing  
2 these lands to be lands which were in irrigation  
3 during 1980. The usual explanation for these  
4 lands being in irrigation is that although no  
5 one saw water being applied to them in irrigation,  
6 the water which came to them would come so  
7 early in the year that it wouldn't been seen  
8 anyway. I think that requires a certain amount  
9 of speculation for which no foundation has been  
10 or in fact could be established simply because  
11 the evidence is that those persons who actually  
12 were in the field during 1980 were there only  
13 during a two or three week period in October  
14 and were in no position to make any actual  
15 observation of delivery of water or application  
16 of water to Clas 4 -- Type IV lands during the  
17 early part of the irrigation season.

18 And the purpose of the inquiry is to further  
19 illustrate the type of lands which have been  
20 included as irrigable and further illustrate  
21 that there can be no foundation for their  
22 inclusion and that their inclusion is speculation.

23 THE SPECIAL MASTER: My best judgment tells  
24 me that I should sustain the objection. Some

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1 of that area, being Type IV, may have been  
2 flood irrigated in April and no more water  
3 until the following year, and I have other --  
4 There's no certainty in looking at an aerial  
5 photograph where one mile is portrayed by an  
6 area five inches by five inches and saying a  
7 specific patch of ground because it's lighter  
8 than something else has not, is not justifiably  
9 included in the arable lands in use.

10 But I'm going to let you finish the one  
11 you're on, so I'll overrule for the last.  
12 Proceed with your question on the particular  
13 map you are on, Parcel 28-1 on C-78.

14 We'll have a look at it.

15 How big is that parcel?

16 THE WITNESS: Nine acres.

17 THE SPECIAL MASTER: That's what I thought.

18 (Off-the-record discussion.)

19 MR. WHITE: Your Honor, this case is a  
20 tyranny of nine-acre parcels.

21 THE SPECIAL MASTER: A tyranny of nine-  
22 acre parcels, that's correct.

23 Q (By Mr. White) That photograph was taken roughly  
24 a year before anyone visited that particular site,

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1 was it not?

2 A That's correct.

3 Q Specifically what, if you know, was the basis  
4 of any conclusion which was passed on to you  
5 by your field personnel, that that particular  
6 parcel was irrigated during the 1980 season  
7 when they had been there only in October?

8 A Okay.

9 (Brief pause.)

10 A First of all, Your Honor, in terms of being  
11 able to render a professional opinion about  
12 whether a tract had been irrigated before, it's  
13 certainly possible to go into an area in a  
14 late date like October, review the condition  
15 of the ditch system, the water line in the  
16 ditch. If a particular ditch system had run  
17 water that year it does leave a water line. This  
18 was a typical thing a field investigator looks  
19 at.

20 The condition of the on-farm facilities,  
21 the type of vegetation. Certainly they would  
22 be able to tell the difference whether something  
23 had been irrigated within that year or not been  
24 served for four or five years just by the condition,

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1 the level of the vegetation.

2 These were all components that went into  
3 the professional judgment of the field personnel.  
4 I've spoken to the quality of the field  
5 personnel in terms of their previous work in  
6 other adjudications, in doing the very same  
7 thing.

8 On this particular tract the notes are  
9 light in terms of the actual use areas. Again,  
10 my instructions were to develop your conclusions  
11 on the hydrographic copies, that would be the  
12 basis of their professional opinions. In my  
13 own review, in 1981 to the same area I noted a  
14 higher ditch system, which basically corresponds  
15 to the service tracts under the original permit.  
16 They've done, they've now come down as designated  
17 on the hydrographic copy with a lower service  
18 lateral which circles the Type IV area. My notes  
19 say Type IV served from lower lateral and not as  
20 well, supplied as the adjacent Type II's. However,  
21 laterals evident.

22  
23 \* \* \* \* \*

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1 THE SPECIAL MASTER: What class land was  
2 parcel 20-1?

3 THE WITNESS: It was Type IV, Your Honor.

4 THE SPECIAL MASTER: What type, I mean.

5 THE WITNESS: And again we are talking about  
6 the end of a distribution system in a relatively  
7 water-short area, although Spring Ditch in recent  
8 times has been able to get a supplemental supply  
9 from Trout Creek.

10 They had a forest fire in the Upper Spring  
11 Ditch area, and it destroyed the canopy in that  
12 area, and it's redistributed the late season ground  
13 water supply so that everything came early, and  
14 they were running into more of a late season short-  
15 age season than usual, so what's happened is that  
16 they have extended Trout Ditch number one approxi-  
17 mately a hundred yards upstream, and when they can,  
18 they do use it as a supplemental supply, and it was  
19 the feeling of the investigator and also my feeling  
20 that the lands at the end of this distribution  
21 system from a physical standpoint as well as an  
22 overall water supply standpoint are not getting as  
23 much water as the Type IIs and upper regions.

24 Q (By Mr. White) Mr. Billstein, without referring to  
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1 your instructions to your field investigators  
2 and without referring to your expectations of  
3 what they might do or how they might act or what  
4 they might view, are you able to state those  
5 specific facts upon which your field investigator  
6 formed his opinion upon which you rely that that  
7 particular parcel, 24-1, was actually irrigated  
8 in 1980?

9 A. The professional opinion is reflected in the typing  
10 and the parcel designation for Sub Three, or 28-1.

11 Q. But what facts did he rely on to develop that  
12 opinion, if you know?

13 A. First of all --

14 THE SPECIAL MASTER: What facts did he rely  
15 upon?

16 MR. WHITE: Yes, sir.

17 THE SPECIAL MASTER: If you know. If you don't,  
18 just say no.

19 A. (By the Witness) His field inspection, which  
20 followed up a stereoscopic analysis.

21 Q. (By Mr. White) Well, what did he see in the field  
22 inspection that allowed him to reach the conclusion  
23 upon which you relied?

24 THE SPECIAL MASTER: I don't think I can permit

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1 that question. I don't think you know what he  
2 saw. Do you know what he saw?

3 THE WITNESS: No, it wasn't important. His  
4 conclusions were to be placed on this document,  
5 this hydrographic document.

6 If we were to make notations on every acre of  
7 land throughout this Reservation as a means of  
8 justifying the drawing of a line on our aerial  
9 photographs, we're looking at literally man years  
10 of effort to do what we have done in a part of a  
11 field season.

12 MR. WHITE: Your Honor, this illustrates the  
13 very real problem, which is that when an opinion  
14 is based on another opinion or it becomes essentially  
15 a pipeline for another opinion, there may be  
16 effective insulation of the person that created  
17 the first opinion from cross-examination.

18 In other words, there's no way to cross-  
19 examine as to whether or not this particular tract  
20 was being irrigated in 1980 unless you allow me  
21 to find out what the facts and data are upon which  
22 the original person relied.

23 Now, the purpose in --

24 THE SPECIAL MASTER: I think I'm allowing you

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1 every latitude, prerogative, and right known to  
2 our science of law and to God and to man to find  
3 that out, Mr. White. I don't think I'm limiting  
4 you on that, but when you ask him what did the  
5 field inspector see, I don't think that's an  
6 appropriate question and that I ought to allow it.

7 If you can ask what did the field inspector  
8 tell you he saw, that's in the latitude.

9 MR. WHITE: I'll try again. I apologize. I  
10 misunderstood your ruling.

11 Q (By Mr. White) Mr. Billstein, with respect to  
12 Tract 28-1, do you know what facts and  
13 data, were relied upon by your field inspector in  
14 determining or developing an opinion upon which  
15 you in turn relied that Tract 28-1 was irrigated  
16 during 1980?

17 A. First of all, he utilized the results of a large-  
18 scale stereoscopic analysis which at least allowed  
19 him to have a visual perspective of the service to  
20 that tract.

21 He then performed a field inspection and  
22 utilized his professional judgment relative to the  
23 conditions that he saw to make a conclusion.

24 Q Specifically what conditions did he see during his  
25 billstein-cross-white



1 field inspection? Did he see the ditch full of  
2 water?

3 MR. ECHOHAWK: Objection, Your Honor. We are  
4 beating a dead horse.

5 THE SPECIAL MASTER: Specifically what condi-  
6 tions did he see? How can this witness answer  
7 that question?

8 MR. WHITE: Precisely, Your Honor. That's  
9 why this witness' opinion should be struck.

10 THE SPECIAL MASTER: That's not true at all.  
11 This man has testified to the best of his ability  
12 as a professional engineer and an expert within  
13 what the law allows, and he answered your question  
14 twice quite competently, I think. At least that  
15 is what I observe in these proceedings, but I  
16 can't let you ask a question about what another  
17 man saw.

18 MR. WHITE: Well, Your Honor, I don't believe  
19 it's within the framework of the expert opinion  
20 rules in Federal -- or the Wyoming Rules of Evidence,  
21 which are patterned after the Federal Rules of  
22 Evidence, to allow one expert to rely on another  
23 expert's opinion without being required to disclose  
24 the facts and data which underlay --

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1 THE SPECIAL MASTER: He has answered on the  
2 facts and data at least twice, but you insist on  
3 asking him what his field inspector saw. He's  
4 answered you that in the field inspector's profes-  
5 sional judgment his entries are made upon the work  
6 papers that govern this profession, and we're talk-  
7 ing about 9 acres of land that doesn't have to have  
8 been irrigated in 1980 anyway to be included.

9 There's nothing here that says this land has  
10 to have been irrigated in 1980 that I know of that  
11 has been brought before me.

12 MR. WHITE: Well, that was the witness's opinion.

13 THE SPECIAL MASTER: I have given you a world  
14 of latitude on this, as much as I can.

15 MR. WHITE: If I can draw an analogy, Your  
16 Honor, if a doctor took the stand as an expert  
17 testifying as to a disease which a child had, and  
18 he testified that the child had mumps and asked,  
19 "Well, what was the basis of your opinion that the  
20 child had mumps?" and he said, "Well, my colleague  
21 or partner observed the child and he told me the  
22 child had mumps," the question would then legiti-  
23 mately be asked, "Well, how did your partner or  
24 your colleague determine that the child had mumps?"

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1                   And if the answer was, "I can't tell you  
2 specifically, that was his professional judgment,"  
3 I think any Court would say, "No, that's not  
4 enough. You'd have to say" --

5                   THE SPECIAL MASTER: I think any Court in his  
6 right mind would say that's exactly what the  
7 doctor said and he was a doctor too and he said,  
8 "Fine, you accepted his professional judgment."

9                   How in earth you can call that an analogy,  
10 I'm not sure, but if a lawyer tells me he has  
11 researched an abstract, I'm not going to look at  
12 the pages in that title that he researched. If he  
13 tells me this is the chain of title and these are  
14 the only two mortgages and he's my partner or your  
15 partner or you and I are partners and that's what  
16 you said that abstract contained, I don't think  
17 anybody has a right to ask me what you saw with  
18 your eyes on that abstract examination.

19                   Maybe it's a weary long week that we have had and  
20 we are at a point that finds us discussing this  
21 with our less than professional knack, I don't know,  
22 but I think you have asked about enough questions  
23 on that.

24                   MR. WHITE: I would like to make an offer of  
25 billstein-cross-white

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proof then at this time, Your Honor.

THE SPECIAL MASTER: All right, sir, you may.

\* \* \* \* \*

billstein-cross-white

1 MR. WHITE: Your Honor, the State of  
2 Wyoming would offer proof or offers to prove  
3 that if allowed to continue the cross-examination  
4 of Mr. Billstein, with respect to lands depicted  
5 on the overlays and aerial photographs, Exhibits  
6 56 through 136, Mr. Billstein's testimony would  
7 reflect, with respect to 6,073 acres, that based  
8 on those aerial photographs, it's clear that  
9 the time the photographs were taken there was  
10 no active irrigation of each of the parcels  
11 making up that 6,073 acres; that during 1980,  
12 the time period which his opinion addressed, none  
13 of his field investigators actually saw those  
14 parcels being irrigated, that he himself did not  
15 view those, any of those parcels, and if that --  
16 If he did, it was not until February of the  
17 following year, 1981.

18 And that he would be unable to describe  
19 the facts and data upon which his field  
20 investigators made their conclusions or rendered  
21 their opinion as to those lands being irrigated  
22 during 1980, even though he relied on their  
23 opinions in forming his own.

24 THE SPECIAL MASTER: Mr. White, we've been  
25 down this road. This is the second time we've

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been down this road in the last two weeks.

I don't believe you are warranted to make your offer of proof containing the language you've contained. I have not foreclosed you from inquiring into the balance of 6,073 acres to show that some of it may not be properly included in the totals of 30 -- approximately 35,000 acres of land in use, but I have precluded you from looking further into parcel 28-1 of Exhibit C-78.

MR. WHITE: Okay, I'm sorry, Your Honor.

THE SPECIAL MASTER: I don't believe your offer of proof should go to the entire 6,073 acres.

MR. WHITE: I apologize.

THE SPECIAL MASTER: If you got a parcel, three, four hundred acres someplace, you have a right to proceed to examine it and look at it. I've certainly ruled that I have heard sufficiently on those diminimus parcels of seven, nine, one, two, and comparable areas, and we've been, this is the second offer of proof under this regard, and I'm not trying to stop you from inquiring into some other acreage if you feel qualified. But if your intent in making that offer of proof

1 is to leave an impression in the record that  
2 I foreclosed you from examining 6,000 acres  
3 of land and then I think you must know that  
4 that is not the result of my ruling.

5 MR. WHITE: Your Honor, I apologize.

6 THE SPECIAL MASTER: You don't have to  
7 apologize.

8 MR. WHITE: I misunderstood your ruling.

9 THE SPECIAL MASTER: I want to get my  
10 little balance in this thing too.

11 Yes, Mr. Perry.

12 MR. PERRY: Mr. White has stated the parcels  
13 comprising those 6,000 some odd acres are  
14 similar in nature to the type that he's been  
15 discussing to this nine-acre parcel. I think  
16 your allowing him today to do this Parcel  
17 28-1, or whatever this last one was, shows that  
18 basically what he's doing is repeating the same  
19 questions over and over for particular parcels  
20 that have the same nature and the same light  
21 color, the same Type IV. And he asks the same  
22 questions with respect to that, and with respect  
23 to the underlying facts from which Mr. Billstein  
24 derived his opinion.

25 I think we've been over this ground time and

1 again, and Mr. White fairly characterized  
2 the rest of this 6,000 acres as basically  
3 similar to what he's been doing.

4 I would suggest if he has something else  
5 in mind, some other line of questioning with  
6 respect to these 6,000 acres that he continue  
7 to do so, but if it's just a matter of going  
8 over additional parcels, and I don't think it's  
9 a matter of just what size those parcels are,  
10 it's a matter of repetition, of the continuing  
11 line of questioning, it's not being -- it's  
12 not adding anything to the Court's understanding  
13 of this case. And I think it really is repetitious.

14 Mr. White has represented as basically,  
15 as I understood his representation, that the  
16 rest of these 6,000 some odd acres were of the  
17 same nature as what we've been doing so far. I  
18 would suggest that you've been more than patient,  
19 you've heard enough examples to draw whatever  
20 point may be drawn from this line of questioning,  
21 and I would suggest that you should cut him off  
22 at this point and allow him to go ahead with his  
23 offer of proof.

24 THE SPECIAL MASTER: I thank you for your  
25 contribution. He's done, and he's made his offer,



1 and we were commenting on his offer and my  
2 comments are of record now.

3 MR. WHITE: Your Honor, I am tired and I'm  
4 sorry, I don't understand quite where we are.

5 THE SPECIAL MASTER: We are at the end of  
6 your offer of proof and you've made it, and it's  
7 been a substantial showing. And I wanted to get  
8 in my observation of the offer of proof language  
9 to show that in my opinion, and I believe in  
10 the -- Well, in my opinion that you have not  
11 been precluded from inquiring into other particular  
12 parcels that have been brought out on the case,  
13 on the direct testimony of Mr. Billstein, because  
14 parcels are parcels and land is land and land  
15 tracts can be different and they can be in variable  
16 degrees of use or non-use or absence of use.  
17 And you have a right to inquire over them all,  
18 so I'm not precluding you from any further  
19 inquiries providing there is some different basis  
20 of challenge in them other than what we've seen  
21 in the last four or five, which I think have  
22 been repetitious.

23 If you are about ready to wrap up your cross-  
24 examination this afternoon, you felt it was about  
25 a half an hour or 45 minutes or so, I would be

1 glad to try to work out with you something else  
2 on the offer of proof on the remainder of this  
3 land.

4 MR. ECHOHAWK: Your Honor.

5 THE SPECIAL MASTER: Yes.

6 MR. ECHOHAWK: Do I understand your ruling,  
7 if Mr. White intends to pursue the remainder of  
8 the 6,073 acres by asking the same types of  
9 questions that he has been asking, then he would  
10 be precluded?

11 THE SPECIAL MASTER: That is right.

12 MR. WHITE: That's what I intended to do,  
13 Your Honor.

14 THE SPECIAL MASTER: That is correct. The  
15 fact that a particular parcel of land -- I  
16 believe that the witness has testified and  
17 answered the inquiries in questions you've  
18 raised on the last two or three, and that to  
19 pursue them would bring out the same answers  
20 that he's made on the others, and that's where  
21 we are.

22 We've been through a rather interesting  
23 analogy of the point regarding the questions  
24 that can be asked, what did your field inspector  
25 see when he saw this parcel, and I don't believe

1 I could put much credibility in an answer  
2 to a question like that. By what clairvoyant  
3 power does this man tell me that somebody  
4 else saw something?

5 If you wish to change those into what did  
6 your field inspectors say to you in regard to  
7 these parcels, fine. We've been down that road  
8 and there's not much more else to say.

9 MR. ECHOHAWK: May I inquire of Mr. White  
10 exactly how he intends to proceed because I  
11 think he intends to ask the same questions.

12 THE SPECIAL MASTER: Mr. Echohawk, we're  
13 all awaiting that, we're all tough professionals  
14 and we're in a tough lawsuit that I say may  
15 well be setting precedent for similar challenges  
16 to water rights throughout the Rocky Mountain  
17 West in this decade we now live in. This is the  
18 time of our lives in the Rocky Mountain West,  
19 so I'm trying to be careful in this as I know all  
20 of you are, being excellent and competent in  
21 presenting your case as it may be. And I've  
22 got a few things to say about that later, but  
23 right now I said to you if he raises inquiries  
24 into further acreage based on exactly the same,  
25 same direct line he's used in the last three or

1 four, he will be foreclosed. But if he has  
2 inquiries as to any parcel regarding their  
3 inclusion other than what did your field in-  
4 spectors report on this, I want him to know that  
5 he has not been foreclosed in making those  
6 inquiries.

7 You see my ruling has gone specifically to  
8 this business of lifting up a sheet, showing a  
9 lighter area and then saying how did you include  
10 this and getting an answer and continuing to  
11 bring out the same answer time after time from  
12 Mr. Billstein.

13 MR. ECHOHAWK: That's my point, I think  
14 that's what he intends to do.

15 THE SPECIAL MASTER: Well, let us wait and  
16 see. Let us wait and see. He's only got 6,073  
17 acres to go.

18 MR. WHITE: I think my offer of proof was  
19 correctly interpreted by Mr. Echohawk. While  
20 there are a number of parcels, remember that  
21 probably, there's several thousand parcels and  
22 there are 35,000 acres, and that means that they're  
23 not going to be very many large parcels.

24 The offer of proof was directed toward a  
25 large number of small parcels which had the

1 culmulative amount which I stated for which I  
2 would have the same questions for Mr. Billstein,  
3 seeing that that land is white or very light-  
4 colored on the photograph, how did you decide  
5 to conclude that it was irrigated in 1980, and  
6 if the decision was based on opinion of another,  
7 what facts and data did that person rely on.

8 THE SPECIAL MASTER: That's fine, those  
9 questions are permissable and they've been  
10 answered, and we've certainly had a sufficient  
11 amount of those.

12 Let me observe, Mr. White, that there's  
13 sometimes more harm to be made to the State's  
14 position in these matters in asking this  
15 question than there is to -- than there is to  
16 perhaps evade them. First, in the tracts you  
17 look at are light as they have been time after  
18 time this week and you say I direct your attention  
19 to the map on the exhibit or I direct your  
20 attention to the infrared maps which we used time  
21 and time again, and on the infrared maps there  
22 are beautiful, lush green areas along the river  
23 and the Special Master looks upon these and  
24 observes that in every one of them goes the lush,  
25 green lovely areas along the river are not a part

1 of the Reservation anymore. And then we look  
2 at some high ground that is grayish and in  
3 marginal volumn and Type VI, and you're  
4 challenging that for the right to have some  
5 seepage or some water, and I can't see where  
6 much good is going to come to the State from  
7 that sort of challenge. Maybe that is something  
8 to chew on during the weekend.

9 You have some other things to proceed on.  
10 Why don't we do it.

11 MR. WHITE: I'm afraid if I respond to that  
12 I would be just argumentative.

13 THE SPECIAL MASTER: Well, to some --

14 MR. WHITE: I'll take my lumps.

15 THE SPECIAL MASTER: No, to some extent  
16 legal argument is, has a proper place in our  
17 proceedings and is an important thing, especially  
18 on one, the theories of reserved right which  
19 we touched two or three times this week. Two,  
20 the procedure to test the right to water of the  
21 Reservation which we'll be going through on the  
22 forest in a couple months. I hope not so  
23 minutely, dear Lord, so I would say none of these  
24 things -- you know, you win them and you lose them.  
25 We give and we take in this business. We're

1 coming to the end, I hope, of the cross-  
2 examination of Mr. Billstein, and it's time  
3 for these kinds of observations. And I'm  
4 aware that a lot of you have been up nearly  
5 all night working on attempts at stipulations  
6 and exhibits.

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1 THE SPECIAL MASTER: And, Mr. White, you told  
2 me this morning that your case would be completed  
3 within three-quarters of an hour to an hour and a  
4 half. That would hardly square with your now go-  
5 ing into an inquiry of 6,073 acres of land in small  
6 parcels.

7 MR. WHITE: Well, the estimate was based on  
8 what I thought was an indication from you yesterday  
9 that you would allow me to make a few inquiries and  
10 that was all.

11 I anticipated that Mr. Echohawk and Mr. Perry's  
12 objection would be sustained and I would make my  
13 offer of proof, and I think I have appropriately  
14 made the offer of proof, and from all the conversa-  
15 tion, I'm not a hundred percent sure, but I think I  
16 have, and we'll go on.

17 THE SPECIAL MASTER: Fine. All right, sir.

18 MR. WHITE: I think we are pretty well wound  
19 up with the areas concerning the lands which were  
20 irrigated in 1980, Your Honor, according to Mr.  
21 Billstein's opinion, but I would like to now turn  
22 to the other part of his opinion, which is the  
23 sources of water for those lands.

24 Q (By Mr. White) Mr. Billstein, in the legend of  
25 billstein-cross-white



1 each of the exhibits, C-56 to 136, there's an  
2 indication given for the source of water for each  
3 tract.

4 How did you determine the source for each  
5 tract in a general way? Don't start tract by tract,  
6 at least yet.

7 A. We basically looked at the hydrographic copies,  
8 the hydrographic copies of the principal service  
9 facilities located on them. They are tied to the  
10 source of supply.

11 The source of supply is documented, as you  
12 see, in the right-hand corner of the respective  
13 exhibits.

14 Q Is that the source of supply for 1980?

15 A. You are starting to get into how are you going to  
16 break up commingling of water supply sources.

17 Q Well, not yet. Maybe you can answer that question,  
18 and when you get to the other one, you can tell me  
19 what you want to on that one.

20 A. That reflects my opinion as to what source of supplies  
21 or sources of supplies were utilized to serve the  
22 land in current irrigation.

23 Q In a general sense, what facts and data did you rely  
24 upon in forming that opinion?

25 billstein-cross-white

1 A. I have already answered that.

2 Q. Well, try it again. You have got a slow learner  
3 on this side of the podium.

4 MR. ECHOHAWK: Objection, Your Honor. Asked  
5 and answered.

6 THE SPECIAL MASTER: Would you read the ques-  
7 tion, please? I'm either getting hard of hearing  
8 or I sense some mumbling. Maybe we are all getting  
9 tired.

10 (Thereupon the following  
11 question was read back as  
12 follows: "Q In a general  
13 sense, what facts and data  
14 did you rely upon in form-  
15 ing that opinion?"

16 THE SPECIAL MASTER: Is that what you objected  
17 to?

18 MR. ECHOHAWK: Yes, Your Honor. I believe it's  
19 been asked and answered.

20 THE SPECIAL MASTER: On water sources?

21 MR. ECHOHAWK: Yes, Your Honor.

22 MR. WHITE: I don't remember.

23 THE SPECIAL MASTER: Well, if it has, Mr. Echo-  
24 hawk, I probably didn't get it all so I will over-  
25 rule.

26 You may answer.

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1 A. (By the Witness) Okay. As I spoke to earlier,  
2 the nonproject ditch systems were defined on the  
3 aerial photographs. They show a point of diversion.  
4 The point of diversion delineates the source of  
5 water supply or sources of water supply.

6 With respect to the project areas, the Wind  
7 River Federal Irrigation Project, you have irriga-  
8 tion facility maps, LeClair Irrigation District,  
9 the Main Canals, the laterals, Midvale Irrigation  
10 District, the Main Canals. Those dictate the source  
11 or sources of supply relative to the respective  
12 tracts.

13 Q. (By Mr. White) Did you make those determinations  
14 yourself, or did you rely on the opinions of others  
15 in making a determination of source or sources of  
16 water for each of the tracts shown on the Exhibits  
17 C-56 through 136?

18 A. I made the vast majority of those determinations  
19 myself. Areas that I was uncertain of, for instance,  
20 a complicated area in the Wind River Federal Irri-  
21 gation Project, I might have made some inquiries of  
22 the BIA personnel as to how the water was, in fact,  
23 delivered.

24 Q. On the overlays for those exhibits you have ditch  
25 billstein-cross-white

1 headgates, I believe, or diversions, all of these  
2 are indicated with a small black dot, is that  
3 correct?

4 A. Yes.

5 Q. How did you determine that the small black dot  
6 accurately portrays the location of those headgates  
7 or diversion facilities?

8 A. Those ditch systems were stereoscopically drawn in  
9 at a scale of approximately 16 inches to the mile,  
10 and during the field inspection the points of  
11 diversion and the primary service ditches were  
12 reviewed to determine whether they were basically  
13 in the proper location.

14 Q. Well, then, did you rely on your stereoscopic  
15 analysis or did you rely on what your field investi-  
16 gators told you?

17 THE SPECIAL MASTER: That's argumentative.  
18 He said he made the decision himself in a vast  
19 majority of the cases and told what he did, and I  
20 think your question is argumentative, Mr. White.

21 Q. (By Mr. White) Did you yourself conduct the stereo-  
22 scopic analysis?

23 A. No.

24 Q. Who did?

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1 A. Mr. Saunders of our office.

2 Q. Did you rely on his opinions in forming yours?

3 A. The true test of whether he did an accurate job,  
4 a reasonable job, in stereoscopic analysis is what  
5 you see in the field when you go out and check out  
6 his maps.

7 I was out in the field in February, 1981,  
8 looked at the systems that he laid out from the  
9 stereoscopic work together with any modifications  
10 that might have occurred during the field season,  
11 and found them to be accurate.

12 You don't need to sit down at a stereoscope  
13 and redo the work that someone else did. If you  
14 want to accurately check that, the true test is  
15 whether what is in the field accurately portrays  
16 what he interpreted by stereoscope.

17 THE SPECIAL MASTER: I have been waiting to  
18 ask you: What is a stereoscopic analysis? I  
19 think you just answered it.

20 Do you want to add more to answer my question,  
21 what is a stereoscopic analysis?

22 THE WITNESS: Well, in direct testimony, Your  
23 Honor, we discussed a stereoscope and its utility  
24 in being able to analyze physical features. It

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1 gives you a three-dimensional perspective of an  
2 area, and the particular stereoscope that we have  
3 has a three-time --

4 THE SPECIAL MASTER: You are talking about the  
5 camera now or the picture?

6 THE WITNESS: It's the --

7 THE SPECIAL MASTER: The actual instrument?

8 THE WITNESS: The instrument itself, Your Honor,  
9 and it has a magnifying glass, and it allows you  
10 to see the photographs in three-dimension, but  
11 allows you to enlarge it by means of a stereoscope  
12 itself, so instead of 5.3 inches per mile, you  
13 have essentially 16 inches per mile, and it's a  
14 very accurate way of delineating service facilities,  
15 relationships of ditch systems to the water supply  
16 source.

17 For instance, in the Type IV area, one of the  
18 reasons that we type a land as a 'IV' might be  
19 that there's a difference in elevation between the  
20 ditch itself and the water supply source.

21 We're talking about side tributaries that are  
22 in a dynamic or situation physically. You are  
23 having downcutting. People have to go in every so  
24 many years and build new diversion dams, this type

25 billstein-cross-white

1 of thing, and this allows you to get a perspective  
2 of that and establish an initial concept that in  
3 the late season perhaps this tract of land would  
4 not be able to receive water --

5 THE SPECIAL MASTER: All right. Thank you.

6 Q (By Mr. White) So then you visited all these head-  
7 gates yourself; is that correct?

8 A That's not what I said, counselor.

9 Q Well, I'm not sure.

10 MR. WHITE: He didn't answer the question.

11 THE SPECIAL MASTER: Well, that's meant.

12 Q (By Mr. White) What percentage of these headgates  
13 did you visit yourself?

14 THE SPECIAL MASTER: I don't recall the word  
15 headgates being mentioned in the last half a dozen  
16 questions or answers, Mr. White.

17 Q (By Mr. White) What percent of the diversion --

18 THE SPECIAL MASTER: What headgates are you  
19 talking about and where? I don't mean to strike  
20 your question if you will just make it clear.

21 Q (By Mr. White) Mr. Billstein --

22 THE SPECIAL MASTER: Which round dot on which  
23 map or which headgate or which installation  
24 characterized by the round dot?

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1 Q (By Mr. White) Of the ditches -- excuse me -- of  
2 the headgates and diversion facilities and of the  
3 ditches which serve the lands shown in blue on  
4 Exhibits 56 through 136, what percentage did you  
5 personally visit?

6 A. I previously testified that I visited all the non-  
7 project tracts. That was the February, 1980, field  
8 trip. I've flown along the LeClair Irrigation  
9 Canal, the Wyoming Canal, many times. I didn't  
10 have to visit the headgates in the Wind River  
11 Federal Irrigation Project. That's why we have a  
12 facilities map developed and that's what it's there  
13 for, so that you would have site specific inform-  
14 ation as to the location of diversion works or  
15 delivery on-farm system works.

16 Q If I recall your testimony, you correctly pointed  
17 out that you visited the tracts during your February,  
18 1981, field trip. My question, however, went to  
19 the headgates of the ditches which serve those  
20 tracts from the sources which you have indicated on  
21 Exhibits 56 through 136, not the tracts but the head-  
22 gates of the ditches.

23 A. I think basically in all cases we flew the entire  
24 area.

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1 Standard procedure is to look at the point  
2 of diversion, follow along the principal service  
3 facilities, see if there's any breaks in service,  
4 blowouts, as we talked about, then go to the use  
5 areas and utilize what you see in the field to  
6 relate to your map.

7 In answer to your question, the vast majority  
8 of the private systems were looked at from the  
9 headgate through the principal facilities and then  
10 onto the field.

11 Q Now, were your inspections done primarily by air-  
12 craft?

13 A That's right, helicopter.

14 MR. WHITE: Excuse me just a minute, Your  
15 Honor. I'll grab an exhibit.

16 (Pause.

17 Q (By Mr. White) How did you determine the names  
18 which you associated with the ditches on the over-  
19 lays accompanying Exhibits 56 through 136?

20 A That got back to the delineation of the study area.  
21 Most of the irrigation systems were a matter of  
22 record in terms of water rights, and we tried to  
23 use the same name that appeared on the water right  
24 of record to identify that particular system.

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1 Q Where a ditch has no name, was it simply left  
2 blank along the ditch with no name being given  
3 to the ditch?

4 A We tried to give it an identification designation  
5 of some sort, no name ditch, unnamed ditch. Some-  
6 times we gave it a designation 032, I believe, on  
7 one. An attempt was made to identify each ditch  
8 system.

9 Q What investigations did you make to determine  
10 specifically for the year 1980 that the land shown  
11 in blue on Exhibits 56 through 136 were, in fact,  
12 served by water through the ditches shown from the  
13 sources shown on those exhibits?

14 A You've overlapped two very complex issues. I  
15 think we spoke to the question of truant irriga-  
16 tion for the respective ditch systems. In terms  
17 of the water supply sources for those systems that  
18 are solely on one supply, then it was not all that  
19 difficult to designate. For those that have com-  
20 mingling alternatives, I chose to list the respect-  
21 ive water supply sources that could have been  
22 utilized to supply that tract.

23 \* \* \* \* \*

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1 Q (By Mr. White) Have you then concluded that  
2 during 1980, water from those sources indicated  
3 on Exhibits 36 through 156 was diverted through  
4 the facilities shown on those exhibits in order  
5 to irrigate the lands shown in blue on those  
6 exhibits?

7 MR. PERRY: Objection, Your Honor, that's  
8 the same question he just asked.

9 THE SPECIAL MASTER: You mean 56 through  
10 136?

11 MR. WHITE: I sure do, Your Honor. Thank  
12 you for the help.

13 MR. PERRY: I object. That's the same  
14 question he asked immediately prior to this.

15 THE SPECIAL MASTER: Yes, but it can be  
16 answered yes or no, and it's easier to let --  
17 you know, you may answer.

18 THE WITNESS: Would you read back the  
19 question?

20 (Thereupon the following  
21 question was read back as  
22 follows: "Q Have you  
23 (then concluded that during  
24 (1980, water from those  
25 (sources indicated on  
(Exhibits 36 through 156  
(was diverted through the  
(facilities shown on those

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(exhibits in order to  
(irrigate the lands shown  
(in blue on those exhibits?)"

THE WITNESS: In my professional judgment  
that's correct. You must recognize that not  
all those lands may not have been irrigated in  
1980.

The other thing is anytime you have a tract  
at the end of a complex irrigation system where  
you could have four sources of supply commingling,  
it's very difficult to state positively that  
certain water from every one of those four  
sources might have made its way to that tract.

Q (By Mr. White) How much time did you spend in  
making that determination for all 35,000 acres --  
excuse me -- yeah, roughly 35,000 acres shown  
in blue on Exhibits 56 through 136 and summarized  
by acreages on Exhibit C-137?

THE SPECIAL MASTER: Are you calling for  
a total of all of his time studied?

MR. WHITE: All of his time spent in  
determining the source of water as applied to  
those lands in 1980.

THE SPECIAL MASTER: Very good.

billstein-cross-white

1 THE WITNESS: Probably two to three weeks,  
2 recognizing though that the information portrayed  
3 on Exhibit C-137 does not deal with distinct  
4 commingling relative to each tract. It says  
5 that these are the possible sources of supply.

6 Q (By Mr. White) I understand that, but I'm  
7 asking you about your determinations with respect  
8 to the sources of supply as shown in the blue  
9 parcels, roughly 35,000 acres, aggregated  
10 among Exhibits 56 through 136.

11 THE SPECIAL MASTER: And he answered it.

12 MR. WHITE: I just wanted to make sure that  
13 he understood the question.

14 Q (By Mr. White) Do you understand, Ron?

15 A I understand.

16 Q During what time period was that two or three  
17 weeks spent, was it during 1981?

18 A No, it was in, sometime in 1980, probably two  
19 weeks; a week in 1981 for refinement.

20 Q Was it in the winter of 1980?

21 MR. ECHOHAWK: Objection, Your Honor.

22 THE SPECIAL MASTER: It's carrying it -- it's  
23 a bit much, it's a bit much, Mr. White.

24 MR. WHITE: I think my question's pretty  
25 billstein-cross-white

1 appropriate. Are you sustaining his objection,  
2 Your Honor?

3 THE SPECIAL MASTER: Well, he's told us a  
4 half dozen times what months of 1981 he was  
5 there. He said February, I don't know how many  
6 times.

7 Go ahead and answer one more time, what  
8 month in 1981 was this done?

9 MR. WHITE: I think the question was 1980.

10 THE SPECIAL MASTER: What month in 1980  
11 would those weeks have been in that you testified  
12 to, or were they spread --

13 THE WITNESS: They were spread over in time;  
14 basically November, maybe late October. Refine-  
15 ments were made in one week in February, 1981.

16 Q (By Mr. White) That time was spent, was it not --  
17 Excuse me. That time was spent, was it not,  
18 after the irrigation season and that area was  
19 for all practical purposes over.

20 THE SPECIAL MASTER: I would almost object  
21 to that question because to ascertain a source  
22 doesn't require that there be irrigation taking  
23 place, and I think the question serves no good  
24 purpose, so I'm going to object to that one,

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1 Mr. White, and not permit it.

2 MR. ECHOHAWK: Your Honor, perhaps this  
3 would be an appropriate time for a break.  
4 We've been going at it for a little over an  
5 hour and a half.

6 THE SPECIAL MASTER: I was hoping we could  
7 knock it in the head. How much more do you  
8 think you'll need, Mr. White?

9 MR. WHITE: I don't think it will take  
10 more than half an hour, maybe not even that.

11 THE SPECIAL MASTER: Would you like a  
12 break, ten minutes?

13 MR. WHITE: Why don't we take a break.

14 THE SPECIAL MASTER: We'll take a break for  
15 ten minutes and we'll reconvene at 3:15.

16 (Thereupon a 15 minute  
17 recess was taken.)

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1 THE SPECIAL MASTER: Okay. Shall we convene?

2 Q (By Mr. White) Mr. Billstein, after you determined  
3 the acreages which are reflected on Exhibit 137,  
4 did you verify the planimeter work which resulted  
5 in the acreages on 137 by doing an actual field  
6 survey of any one or more of the tracts which are  
7 located on Exhibits 56 through 136 and shown in  
8 blue?

9 MR. ECHOHAWK: Objection, Your Honor. This  
10 has been covered in cross-examination before.  
11 I believe Mr. Webster went through this whole line  
12 before.

13 THE SPECIAL MASTER: He did, but let me permit  
14 it, if it doesn't take too long.

15 A (By the Witness) There were no field surveys under-  
16 taken relative to respective tracts. The scale  
17 accuracy of the photos was utilized throughout.

18 Q (By Mr. White) Isn't it true that the acres shown  
19 on Exhibit C-137 are not necessarily arable?

20 MR. ECHOHAWK: Objection, Your Honor. Beyond  
21 the scope of Mr. Billstein's direct.

22 THE SPECIAL MASTER: You may answer. Is it  
23 true or is it not true?

24 THE WITNESS: I don't know.

25 billstein-cross-white



1 MR. WHITE: That's a fair answer, Your Honor.

2 Q (By Mr. White) Isn't it true that the lands sum-  
3 marized on Exhibit C-137 are not necessarily  
4 practicably irrigable acres?

5 MR. ECHOHAWK: Objection, Your Honor. Calls  
6 for a legal conclusion.

7 THE SPECIAL MASTER: I'll sustain that  
8 objection.

9 MR. WHITE: Your Honor, I would --

10 THE SPECIAL MASTER: He had already testified  
11 they were in use, and we went through quite a  
12 colloquy, you and I did, on whether or not land  
13 in use is, by its very use, irrigated or not, so we  
14 are repeating ourselves.

15 MR. WHITE: Let me try it a little different  
16 way and you will see what I have in mind.

17 Q (By Mr. White) Mr. Billstein, I show you what's  
18 been marked for identification as HB-80 and tell  
19 you that it is a portion of the United States'  
20 answers to Wyoming's eighth set of interrogatories  
21 and request for production, and direct your attention  
22 to page 2 at the top, the top three lines, where  
23 the answers to the United States defined the term  
24 practicably irrigable acres as, quote, those areas

25 billstein-cross-white

1 susceptible of sustained irrigation at reasonable  
2 cost and ask you now whether the acreage shown on  
3 Exhibit 137 is necessarily practicably irrigable  
4 acres?

5 THE SPECIAL MASTER: Now more than ever I  
6 object to the question and will sustain the object-  
7 ion because none of his direct dealt with whether  
8 this could be done at reasonable cost. None of  
9 his direct had to do with it being -- your term  
10 is PIAs, and I like that.

11 MR. WHITE: That's the answer I wanted anyway,  
12 Your Honor. Thank you.

13 Q (By Mr. White) Isn't it true that the lands  
14 summarized on Exhibit C-137 include lands which  
15 are shown on what's already been admitted as  
16 Exhibit M-1 as lands which are in fee ownership?

17 MR. ECHOHAWK: Objection, Your Honor. We  
18 have covered this before.

19 THE SPECIAL MASTER: May I have the question  
20 read to me, please?

21 (Thereupon the following  
22 question was read back  
23 as follows: "Q Isn't it  
24 true that the lands sum-  
25 marized on Exhibit C-137  
include lands which are

billstein-cross-white

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shown on what's already been admitted as Exhibit M-1 as lands which are in fee ownership?"

THE SPECIAL MASTER: It may have been asked or answered, but I believe it's proper that it could be answered again even if it is duplicative because I think the answer is pretty obvious.

A. (By the Witness) I believe there's a minor number of instances where there was some fee ownership involved.

THE SPECIAL MASTER: Do you recall the acreage? If you don't, just say so.

Is in Indian fee or non-Indian fee, Mr. White? Does your question have any distinction?

MR. WHITE: No distinction, Your Honor.

MR. ECHOHAWK: Was the question specifically directed to trust lands on Tribal Exhibit M-1?

MR. WHITE: Yes.

THE SPECIAL MASTER: Gentlemen, you have me thoroughly confused. Is the question the totals on Exhibit 137, do they contain some fee land, and the answer is yes, they do some, and I said how much acreage specifically.

Do you know?

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1 THE WITNESS: I don't know exactly, Your  
2 Honor. It was around eighty to a hundred acres,  
3 I believe, something of that order of magnitude.

4 THE SPECIAL MASTER: And do you know if it  
5 was Indian fee land or non-Indian fee land?

6 THE WITNESS: Some of that land, Your Honor,  
7 I do know is part of that Harpoon Cattle Company  
8 purchase.

9 MR. WHITE: Your Honor, I move that that  
10 answer be stricken. It's unresponsive to the  
11 question.

12 It's also an answer to which there's been no  
13 effective foundation and it also requires a legal  
14 opinion.

15 THE SPECIAL MASTER: The objection is over-  
16 ruled and the answer may stay in.

17 A. (By the Witness) It would seem like there were two  
18 other tracts, a small amount of acreage on the  
19 North Fork of the Popo Agie -- I believe that was  
20 16 acres, two small tracts -- and I believe there  
21 was a 19-acre tract, something on that order of  
22 magnitude, in the FIPs.

23 \* \* \* \* \*

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25 billstein-cross-white

1 MR. WHITE: Your Honor, when I have a  
2 chance I'll refer you to that transcript page  
3 because the question to which I don't believe  
4 there was a responsive answer isn't it true  
5 that there was a conflict or an overlap between  
6 the lands in C-137 and the fee ownership shown  
7 on M-1, and I didn't ask for the Witness'  
8 interpretation, and I'll be glad to give you  
9 those pages where he answered with respect to  
10 the specific overlaps.

11 Q (By Mr. White) Isn't it true, Mr. Billstein,  
12 that the lands summarized in Exhibit 137  
13 contain lands which have in fact been the subject  
14 of an adjudicated water right?

15 MR. ECHOHAWK: Objection, Your Honor, we've  
16 covered this before.

17 MR. WHITE: Your Honor, these are summary  
18 questions at the end of cross-examination;  
19 they're perfectly appropriate.

20 THE SPECIAL MASTER: Objection is overruled.  
21 I would like the question to contain the acreage  
22 numbers, if you know the acreage numbers, Mr.  
23 White, for the sake of clarity.

24 MR. WHITE: I don't know them, but I will  
25 billstein-cross-white

1 give you the transcript pages.

2 THE SPECIAL MASTER: Best you can.

3 MR. WHITE: I had those with me, I don't  
4 know where they've gone.

5 THE SPECIAL MASTER: Best you can, no  
6 problem.

7 THE WITNESS: Yes.

8 Q (By Mr. White) Isn't it true --

9 THE SPECIAL MASTER: How many acres?

10 Q (By Mr. White) Do you recall the number of  
11 acres of adjudicated overlap to which you  
12 previously testified?

13 A Four to five hundred acres is an estimate.

14 Q Isn't it true that the lands described on  
15 Exhibit C-137 include lands that have legal  
16 descriptions which are other than Wind River  
17 Meridian and therefore outside of the Reservation  
18 boundaries as stipulated to by the parties?

19 MS. SLEATER: Your Honor --

20 THE SPECIAL MASTER: I object to that  
21 question myself. They may have a Wind River  
22 Meridian designation and still be a part of the  
23 Reservation.

24 MR. WHITE: Could I ask the basis for the  
25 billstein-cross-white

1 objection, Your Honor, because the stipulation  
2 between the parties indicates that those lands  
3 within the Reservation include only Wind River  
4 Meridian lands.

5 THE SPECIAL MASTER: Lands described by the  
6 Wind River Meridian, there's no question about  
7 the boundary. There was a lot of hassle that  
8 preceeded an agreement upon the boundaries.

9 MR. WHITE: Let me ask the question again.

10 THE SPECIAL MASTER: All right. Try it  
11 without the Wind River Meridian.

12 Q (By Mr. White) Isn't it true that Exhibit C-137  
13 includes lands which are outside the boundaries  
14 of the Wind River Indian Reservation as stipulated  
15 to by the parties herein?

16 MR. ECHOHAWK: Objection, Your Honor, the  
17 witness is incompetent to testify as to what  
18 was stipulated to between counsel.

19 MS. SLEATER: Your Honor, and in furtherance  
20 of that objection, that's not relevant so far  
21 as direct testimony clearly states part of this  
22 area was in the area of purchase by the govern-  
23 ment for the use of the Tribes, in fact north  
24 of Owl Creek.

25 billstein-cross-white

1 MR. WHITE: Well, Your Honor. --

2 THE SPECIAL MASTER: That's a good question,  
3 and it's a good objection. What do I do?

4 MR. WHITE: The thing to do is give me  
5 a chance to get the stipulation. This is a  
6 competent witness. I will allow him to read  
7 the stipulation --

8 THE SPECIAL MASTER: Well, I believe he  
9 knows the boundaries of the Reservation, he  
10 worked with them closely, he worked up to the  
11 boundary time after time. He worked near the  
12 boundary time after time. I'm going to allow  
13 him to answer the question if he's able to.

14 MR. WHITE: Your Honor, before he does,  
15 let me say that the boundaries that Mr.  
16 Billstein established on his exhibits are not  
17 the boundaries contained in the stipulation.

18 THE SPECIAL MASTER: The only differences  
19 lie, do they not, on the north end?

20 MR. WHITE: Yes, sir.

21 THE SPECIAL MASTER: And I think he's  
22 familiar with that. I think we had a discussion  
23 with that on direct. So, let's see if he can  
24 answer that with that distinction.

25 billstein-cross-white



1 Do you want to try it?

2 THE WITNESS: I'm pretty confused as to  
3 the question now.

4 MR. WHITE: Let me start again, Your Honor.

5 Q (By Mr. White) Let me ask you, Mr. Billstein,  
6 to assume that the boundaries of the Wind River  
7 Indian Reservation include only those lands which  
8 have a legal description based on the Wind  
9 River Meridian. Isn't it true that Exhibit C-137  
10 contains lands other than those within the  
11 Reservation?

12 A That's right.

13 THE SPECIAL MASTER: Can you give us an  
14 acreage figure of those lands, Mr. White?  
15 Can you ask a question regarding acreage totals?

16 MR. WHITE: I'm embarrassed because I  
17 don't have my sheet here, Your Honor. If I  
18 could ask a leading question or if Ron knows  
19 the answer, perhaps he can tell us. I'm going  
20 to get my sheet in just a second.

21 THE SPECIAL MASTER: Mr. Witness, can you  
22 tell us the acreage totals you feel makes your  
23 answer complete?

24 (Brief pause.)

25 billstein-cross-white

1 THE WITNESS: I can estimate from a  
2 quick review of my hydrographic copies.

3 Q (By Mr. White) Mr. Billstein, let me suggest  
4 that you might want to take a look at Tracts  
5 33-1, 34-1, 34-2, 34-3, 34-4, 34-5. I think  
6 that will get you in the right area.

7 A Could I ask someone to bring me my master list  
8 of tracts with acreage?

9 THE SPECIAL MASTER: Master list of tracts  
10 with acreage?

11 THE WITNESS: It's work papers, Your Honor,  
12 that I had.

13 THE SPECIAL MASTER: I thought I had  
14 something like that, but mine is in types and  
15 photos, not in tracts.

16 (Off-the-record discussion.)

17 MR. WHITE: Your Honor, while Mr. Billstein  
18 is looking for those tracts, with respect to  
19 the overlap on Exhibit M-1, with fee lands in  
20 Exhibit M-1, I would direct the Court's attention  
21 to the following transcript pages: 2311 through  
22 2316 -- excuse me, 18, 2311 through 2318 where  
23 there were --

24 THE SPECIAL MASTER: What date, Mr. White?

25 billstein-cross-white

1 MR. WHITE: I can't remember, Your Honor.  
2 Those are the pages of the transcript. Maybe  
3 Leo can tell us.

4 I think you'll find there are four parcels  
5 described in there, Your Honor.

6 THE SPECIAL MASTER: Okay, thank you.

7 MR. WHITE: Your Honor, with respect to  
8 the adjudicated overlap, I can also give you  
9 the transcript pages. That would be pages 2477  
10 through 2539, in which there were over 15 tracts  
11 described, and since part of that was not my  
12 cross-examination, that's when Mr. Krob took  
13 over for me, I can't tell you specifically.

14 THE SPECIAL MASTER: All right. Thank you  
15 for that.

16 (Brief pause.)

17 THE WITNESS: What photo did your Tract 3-1  
18 show up on?

19 MR. WHITE: I don't have it in my notes.  
20 Let me look at the, try to look for that  
21 stipulated tabulation, Ron.

22 MS. SLEATER: Your Honor, this was already  
23 gone over in great detail before in the transcript,  
24 and I'd like to object at this time to this whole

25 billstein-cross-white

1           repetitiveness, this quote "Summary questions",  
2           which I don't think are allowed in cross-  
3           examination. And they're clearly adding great  
4           length to this proceedings when the matter's  
5           already been more than adequately covered in  
6           cross previously.

7           THE SPECIAL MASTER: Regina, I couldn't  
8           agree with you more, but it is at the end of  
9           two weeks of a long session. We're in the  
10          eighth day of cross-examination, we're surely  
11          within the last half hour of it, so let me  
12          hope this will bring a conclusion to it without  
13          having to interject objections that are  
14          motivated more by weariness than reason of law.

15          MS. SLEATER: Your Honor, it's not just  
16          that. This is totally irrelevant as far as  
17          the United States has clearly stated that it is  
18          making a claim for water for lands held in  
19          trust managed by BIA that are not part of the  
20          Reservation, particularly speaking. As such  
21          this whole questioning is irrelevant because  
22          it doesn't go to whether or not --

23          THE SPECIAL MASTER: Had that excellent  
24          objection been timely made it would have been

25          billstein-cross-white

1 sustained and we would have been on the next  
2 point. It wasn't, so let's proceed with the  
3 answers and we'll have it over with, I'm sure,  
4 in a minute or so.

5 THE WITNESS: I estimate that to be about  
6 55 acres.

7 Q (By Mr. White) Mr. Billstein, I hand you pages  
8 1 through 3 as well as pages 15 of the Statement  
9 of Claim in this action and ask you whether or  
10 not, or ask you if it isn't true that the  
11 following areas or source of water shown on  
12 Exhibit C-137 in Bull Lake Creek, Spring Creek,  
13 Big Horn Draw and Main Stem of the Big Horn  
14 River are not shown on this Statement of Claim?

15 MS. SLEATER: Your Honor, --

16 THE SPECIAL MASTER: I'll sustain the  
17 objection because it's not in his area, not in  
18 his expertise, not on direct. So I sustain  
19 the objection.

20 I'm sure that will be brought out before  
21 long one way or another.

22 MR. WHITE: Well, Your Honor, I'd make an  
23 offer of proof that --

24 THE SPECIAL MASTER: Very good.

25 billstein-corss-white

1 MR. WHITE: -- the four water sources  
2 named which are shown on Exhibit C-137 are  
3 not contained within the Statement of Claim,  
4 and therefore, even granting the most liberal  
5 instruction to the pleadings, the lands served  
6 by those sources are not within the issues raised  
7 by the pleadings and I would further offer to  
8 prove --

9 THE SPECIAL MASTER: If there had been a  
10 couple hundred acres and a couple dozen Indians  
11 were making a living off of those four streams  
12 and their forebearers were for 100 years, would  
13 you exclude them from this water because they  
14 were omitted from this Statement of Claims?  
15 You don't really mean for me to do that or ask  
16 that of a judge?

17 MR. WHITE: Not if those facts were in  
18 evidence, Your Honor, but they aren't. And I'd  
19 also offer to prove, Your Honor, that the  
20 answer to that question, which would have been  
21 either yes or no, would have taken maybe one-  
22 tenth of the time as the offer of proof.

23 I have no further questions.

24 THE SPECIAL MASTER: All right. Very good,  
25 billstein-cross-white

1 Mr. White. We're getting it done little by  
2 little, we're getting through, and that's  
3 important.

4 (Off-the-record discussion.)

5 MR. DONNELL: Your Honor, for the record,  
6 I might state that Mr. White's cross-examination  
7 has been more than sufficient and certainly  
8 adequate for our purposes, and I don't intend  
9 to conduct any cross-examination at this time.

10 THE SPECIAL MASTER: I thank you. I have  
11 some comments I want to make about both the  
12 witness and Mr. White that I think are worthy  
13 of being stated at this time, after the conclusion  
14 of the cross-examination though..

15 MR. WHITE: I'm through with cross, Your  
16 Honor.

17 THE SPECIAL MASTER: All right. Mr.  
18 Billstein -- Any other parties desire cross-  
19 examination of Mr. Billstein?

20 MR. PERRY: No, Your Honor.

21 THE SPECIAL MASTER: I wanted to make sure  
22 that's in the record.

23 Now, Mr. Billstein, the cross-examination  
24 is completed upon the -- your direct testimony.

25 billstein-cross-white

1 and matters put in evidence in this case.  
2 I want to say to you that I respect and  
3 commend you on your professionalism and what  
4 I think was your honesty that came through  
5 time after time and calling the shots and the  
6 evidence the way it is, sometimes to the totals  
7 and sometimes detracting from your totals, as  
8 it should be.

9 And as to you, Mr. White, and your cross-  
10 examination, I've learned an awful lot just  
11 observing you. I recognize that we're in a  
12 very important historical role here because  
13 you were a Special Master in Colorado where  
14 a lot of law was made, and I'm a Special Master  
15 here where some additional law will be made,  
16 and we find our roles somewhat reversed. I  
17 go from being a law maker after 10 years to  
18 try to be a judge of the law in an area where  
19 there isn't much law to judge, frankly, because  
20 there's never been an application of integretion  
21 of water rights with state management before.

22 And I don't have one iota of criticism of  
23 your examination. I find it insistent, determined,  
24 dogged, but who am I to say it isn't supposed  
25 to be at that level.



1           The one opinion I have -- where is that  
2 Colorado Decision -- I studied recently, said  
3 that America must find -- This is an opinion,  
4 a Colorado opinion -- must find a way in the  
5 '80's, either by intrastate compacts or interstate  
6 compacts, or by some other means than  
7 extensive litigious lawsuits to find an answer  
8 to these questions, but we can't do that in  
9 Wyoming because we have to go through this lawsuit  
10 now. We know of no other way to go.

11           So I hope we can continue this hearing,  
12 perhaps the next time with a little less time  
13 to the cross or maybe a few more stipulations  
14 that some of you did this time and shorten up  
15 these next chapters, next innings of this  
16 litigation. But I don't feel that we've wasted  
17 these days. We've put in about nine of them,  
18 and I don't think we're setting any examples,  
19 I hope, in the fact that what took less than  
20 one day in direct will require eight days of  
21 cross, but nevertheless, this has to be done and  
22 we're doing it according to what each of us  
23 thinks is our professional requirement.

24           That's what I wanted to say to both of you  
25 about your work, gentlemen, and I feel the same

1 way toward you on this counsel table over  
2 here for the United States. It's been detailed  
3 and its been tough, and the burden is going  
4 to be mine to determine what acreage stays  
5 in and what acreage goes out, and what water  
6 applies to what acreages, and what dates apply  
7 and whether or not the adjudicated state  
8 right will apply to given land or not, whether  
9 the Reservation wishes to switch a reserved  
10 water right to another area and transfer that  
11 right to another area, all of these things are  
12 going to have to be answered in this opinion.

13 So if all of you got any extra drag  
14 upstairs, you might ask for a little help for  
15 the Special Master in a few months when we get  
16 to working on it.

17 Does anyone have anything now before we  
18 adjourn these proceedings?  
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1 MR. ECHOHAWK: I do have a few housekeeping  
2 matters with Mr. Billstein to clear up a few  
3 points.

4 THE SPECIAL MASTER: Oh, redirect?

5 MR. ECHOHAWK: Yes, Your Honor.

6 THE SPECIAL MASTER: Very good.

7 MR. ECHOHAWK: However, if we could take a  
8 few minutes, I have some pages I need to have  
9 xeroxed.

10 THE SPECIAL MASTER: Okay. We will take a  
11 10-minute recess and reconvene at five to four.

12 MR. ECHOHAWK: It will take a few more minutes  
13 than 10 minutes.

14 THE SPECIAL MASTER: We will reconvene at  
15 4:00.

16 (Recess.

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1 THE SPECIAL MASTER: May we come to order,  
2 please?

3 MR. WHITE: Your Honor, I have one  
4 housekeeping matter before Tom starts his  
5 redirect, and that is last week you advised  
6 me and several other people indicated that they  
7 had received a supplemental brief concerning  
8 the non-reserved water rights from the State  
9 of Wyoming, and the brief was missing attachment  
10 A. We sent out attachment A. If anyone has  
11 not received it, I got a whole batch of  
12 attachment A's now.

13 THE SPECIAL MASTER: I'll take one more  
14 even though I received one in the office.

15 MR. WHITE: How about anyone else?

16 THE SPECIAL MASTER: Thank you.

17 (Off-the-record discussion.)

18 THE SPECIAL MASTER: Mr. Echohawk, are you  
19 ready to begin your short redirect?

20 MR. ECHOHAWK: Just about. I'm putting  
21 the exhibit stickers on right now.

22 THE SPECIAL MASTER: Very good. Thank you.

23 MR. ECHOHAWK: I'm not exactly sure how  
24 short it will be, but I'm sure you'll appreciate  
25 it when I'm done.

1 MR. WHITE: From the number of exhibits,  
2 Your Honor, it's going to be awhile.

3 (Brief pause.

4 MR. ECHOHAWK: I'm ready to proceed, Your  
5 Honor.

6 THE SPECIAL MASTER: Thank you, Mr. Echohawk.  
7 Please proceed.

8 MR. ECHOHAWK: Mr. Master, let me explain  
9 what it is I would like to do because it may  
10 in the long run take awhile to do it. What I  
11 propose to do is go back and clear up any matters  
12 that through our analysis and our review we  
13 found that need to be corrected based on the  
14 review that's been going on in the past couple  
15 weeks.

16 THE SPECIAL MASTER: Okay.

17 MR. ECHOHAWK: In addition to what we have  
18 done, we have prepared some charts that explain  
19 the corrections to arrive at a corrected acreage  
20 total for lands currently in use. It's a matter  
21 of a few hundred acres, and it shows how we  
22 arrived at the new revised totals. In addition  
23 to this, what I would propose to do, with the  
24 Court's permission, is to once we get the types  
25 of changes out, is to request, say, a recess of

1 an hour, hour and a half, to annotate the  
2 exhibits, the main exhibits, the 56 through 136,  
3 annotate those. Not change them or take  
4 anything off of them, just annotate them to  
5 show what changes have been made. For example,  
6 there would be certain lands that we have  
7 found were in fact fee lands which we are certainly  
8 not entitled to a Certificate of Claim for, so  
9 we would therefore correct those and show they are  
10 fee, those sorts of corrections, and that will  
11 take I'm told about an hour and a half. With  
12 the Court's permission, I'll proceed.

13 THE SPECIAL MASTER: Very well.

14 REDIRECT EXAMINATION

15 BY MR. ECHOHAWK:

16 Q Mr. Billstein, during the past couple weeks  
17 Mr. White has gone through quite a bit of  
18 information, and we have been going through  
19 quite a bit of review during the past couple  
20 of weeks. Have you found as a result of the  
21 review conducted by you and your staff any  
22 errors which would cause a change in the final  
23 in use acreage asserted by the United States?

24 A Yes, I have.

25 billstein-redirect-echohawk

1 MR. WHITE: I would object to the question  
2 and move the answer be stricken on the basis  
3 of foundation, upon what facts and data were  
4 those changes made, and I would also object on  
5 the grounds that the question is overly broad  
6 and general and ambiguous. "What changes."  
7 are not described.

8 THE SPECIAL MASTER: Well, I'll concur on  
9 the over-broadness. What specific area of  
10 his testimony will this apply to that you stated?  
11 Will it be on, for example, the appropriated  
12 lands marked in blue that were -- that should  
13 not be in blue or correcting, or will they be  
14 a little on each of the areas?

15 MR. ECHOHAWK: It was a preliminary type  
16 of question, general type question.

17 MR. WHITE: I'll withdraw the objection.

18 THE SPECIAL MASTER: Very "good."

19 MR. ECHOHAWK: It was just a preliminary  
20 question.

21 Q (By Mr. Echohawk) Mr. Billstein, will you please  
22 describe for us specifically what areas the  
23 change would come in?

24 A Relative to overlaps with adjudicated acreage on  
25 billstein-redirect-echohawk

1 unadjudicated in use tracts, also overlaps with  
2 fee acreage, both Indian and non-Indian fee  
3 relative to unadjudicated in use acres. I  
4 might add that in this determination we have  
5 not only taken into account those overlaps  
6 presented by the State, but I have also within  
7 the last week been advised of revisions in the  
8 Indian fee ownership schedules that the Tribal  
9 experts are working with and have included those  
10 overlaps so as not to burden the Court at a  
11 later time with this type of problem. We have  
12 instances where we have acreages that are counted  
13 in the summary tables reflected on the Exhibit  
14 137, but were inadvertently not put on the  
15 exhibits. We would like to be able to place that  
16 acreage on the exhibits. It does show on the  
17 planimeter sheets; that has been stipulated to.

18 Another category were parcels that appeared  
19 on the exhibits and the planimeter sheets, but  
20 were not included in the summary tables, and  
21 the summary tables which we would like to present  
22 at the conclusion of this correction exercise  
23 would reflect that information. And we have one  
24 other instance of approximately a 12-acre

25 billstein-redirect-echohawk



1 subtraction error that we need to correct to  
2 the summary tables. Those are the five main  
3 categories, and I believe we are talking about  
4 a net reduction of something in the order of  
5 45 -- 450 acres on our totals.

6 THE SPECIAL MASTER: Go ahead.

7 Q (By Mr. Echohawk) Okay. Mr. Billstein, in  
8 regard to the first area of change we talked  
9 about where there is an overlap between the  
10 adjudicated lands and the in use lands, have you  
11 prepared a table which reflects those changes?

12 A Yes, I have.

13 Q I'll show you what has been marked as United  
14 States Exhibit C-142. Mr. Billstein, would you  
15 please identify this exhibit?

16 A Yes. Exhibit C-142 reflects the adjudicated  
17 acreage deletions that we would like to have  
18 made. It defines the United States Exhibit  
19 number, the respective photo number and parcel  
20 number affected; the drainage that the change  
21 relates to. It shows the original acreage  
22 claimed before the error was found. Then the  
23 adjudicated acreage that impacted that particular  
24 original acreage claimed, and the last column

25 billstein-redirect-echohawk

1 which says "In use" or "Revised claim in use"  
 2 reflects how our original acreage is diminished  
 3 by the adjudicated tract. And the first  
 4 example under C-68, Parcel No. 569, we had an  
 5 original acreage of 108 acres. It has been  
 6 reduced because it fell into an adjudicated  
 7 tract by six acres. The difference between  
 8 the acreage defined in the adjudicated column,  
 9 107, and the difference between the two reflects  
 10 just small changes in the level of use that  
 11 we define versus the total amount of adjudicated  
 12 acreage affected.

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1 A (Continued) But the two key columns are  
2 the original acreage claimed in use and the  
3 reduction as revised in the in use column.

4 THE SPECIAL MASTER: So the claim is  
5 going from the original acreage claim in use  
6 to the figure that is found in the in use  
7 column; is that correct?

8 THE WITNESS: That's correct. In this  
9 particular instance we're reducing the claim  
10 by 102 acres.

11 THE SPECIAL MASTER: Should that 107 be  
12 102?

13 THE WITNESS: Your Honor, the adjudicated  
14 acreage is just shown, is basically illustrative,  
15 it reflects the amount of adjudicated acreage  
16 that impacted that original acreage claim. The  
17 reason that you can subtract the two columns  
18 is because the amount of use in this instance  
19 did not equal the amount of adjudicated acreage.

20 THE SPECIAL MASTER: I understand. Thank  
21 you.

22 THE WITNESS: Down below in the last three  
23 examples, we see that they do in fact match.

24 MR. ECHOHAWK: Your Honor, I might point

25 billstein-redirect-echohawk

1 out that at a later time the United States  
2 will file a supplement to the motion to take  
3 judicial notice of the adjudicated lands that  
4 would reflect the other information.

5 THE SPECIAL MASTER: You want to offer it  
6 now or wait until you're all through?

7 MR. ECHOHAWK: I'll offer it later. It  
8 might speed things up.

9 Q (By Mr. Echohawk) MR. Billstein, have you  
10 prepared a table showing the changes to be  
11 made where the situation arose that fee lands  
12 were included?

13 A That's correct.

14 Q I show you what's been marked United States  
15 Exhibit WRIR C-143. Would you explain for us  
16 what that table shows.

17 THE SPECIAL MASTER: C-143.

18 THE WITNESS: Again, it's site specific  
19 to a particular parcel and defines the fee  
20 acreage deleted with the remaining trust  
21 acreage defined relative to that parcel.

22 THE SPECIAL MASTER: All right.

23 THE WITNESS: I might add this included that  
24 Indian fee lands that we added.

25 billstein-redirect-echohwak

1 THE SPECIAL MASTER: Our discussion about  
2 it earlier?

3 THE WITNESS: That's right, Your Honor.  
4 That was above and beyond the fee land that  
5 was pointed out to us by the State.

6 Q (By MR. Echohawk) Mr. Billstein, have you  
7 prepared a chart that shows, reflects the  
8 situation where information for the acreage  
9 would have been accounted for in the summary  
10 table C-137 but was not shown on the exhibits?

11 A Yes, I have.

12 Q I show you what's been marked United States  
13 Exhibit C-144. Would you please identify that  
14 Exhibit 144.

15 A It again is site specific to a parcel by photo,  
16 by U.S. Exhibit No. and reflects the acreage  
17 that has been accounted for in the summary  
18 table but it is not shown on the exhibits.

19 We need the information on the exhibits  
20 so that the total number of parcels identified  
21 in the stipulation can be shown.

22 THE SPECIAL MASTER: How, from Parcel 6-12  
23 on that aerial photo 16108 could there have  
24 been an omission of 34 acres?

25 billstein-redirect-echohawk

1 THE WITNESS: It was probably adjacent  
2 to a fee land area and it just wasn't picked  
3 up by our graphics people and in the review  
4 process, again was not.

5 THE SPECIAL MASTER: Corrects clerical  
6 errors?

7 THE WITNESS: Basically allows one to go  
8 from the planimeter sheets with the respective  
9 parcels to the exhibits and have total verification.

10 Q (By Mr. Echohawk) Mr. Billstein, have you  
11 also prepared exhibits or prepared a summary  
12 chart where a situation arose where a parcel  
13 was included on the exhibits but not reflected  
14 in the summary table 137?

15 A Yes. There was instances where parcels prepared  
16 on the exhibits and the planimeter sheets  
17 but were not reflected in the summary table.

18 Q I show you what's been marked as United States  
19 Exhibit C-145. Would you please identify that  
20 exhibit.

21 A This again, is site specific to a parcel, and it  
22 shows the acreage that appears on the exhibits  
23 and on the planimeter sheets so we do have an  
24 acreage to tract relationship, but it did not fall

25 billstein-redirect-echohawk

1 through and was -- and was allowed to be  
2 totaled in the summary table.

3 Q Each parcel reflected on Exhibit C-145 is  
4 actually in use?

5 A That's correct.

6 Q Mr. Billstein, I place before you what has  
7 been marked as United States Exhibit C-137-A.  
8 Would you please identify that exhibit.

9 A Yes,. This exhibit reflects all the modifications  
10 to the summary tabulations defined in the  
11 previous exhibits C-142 through C-145.

12 Q Mr. Billstein, in addition to the acreage  
13 modifications, is there -- are there additional  
14 modifications?

15 A There is one other modification. Three of the  
16 drainages that have previously been reflected  
17 under Wind River Basin have now been transferred  
18 to the Big Horn River Basin. The reason for that  
19 related back to some of the earlier testimony  
20 where I had originally established the delineation  
21 for the beginning of the Big Horn River Basin  
22 below Boysen Reservoir. I changed my mind and  
23 moved it upstream to enable our records to more  
24 closely approximate those of the State Engineer's

25 billstein-redirect-echohawk

1 and inadvertently those three watersheds were  
2 not transferred to the new point of division.

3 Q Mr. Billstein, I place before you two exhibits,  
4 United States Exhibit C-140 and United States  
5 Exhibit C-141. Would you please describe those  
6 for us.

7 A Those correspond to --

8 MR. WHITE: Just a second, Mr. Billstein,  
9 would you please until we get a copy.

10 Excuse me, thank you.

11 THE WITNESS: Beginning again, those  
12 correspond to the format of the two tables  
13 contained in the historic lands report. They  
14 contain the changes relative to acres in use  
15 by project and non-project category in Table 1.  
16 Similarly the changes and net results by  
17 photograph are shown in Table 2 in acres in use  
18 by photo. This will serve to update the tables  
19 in the historic lands report.

22 \* \* \* \* \*

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1 Q (By Mr. Echohawk) Mr. Billstein, I also notice  
2 sitting on your table a large pile of photographs.

3 MR. ECHOHAWK: At this point, Your Honor,  
4 they are not marked, but I would propose during  
5 the break to mark those hydrographic photos in  
6 sequence that would correspond to the main exhibits  
7 which would be I think C-56 through 136. I would  
8 mark them 56-A through 136-A.

9 THE SPECIAL MASTER: So that would be correlated  
10 --

11 MR. ECHOHAWK: So they would be correlated,  
12 correspond to the photos.

13 Q (By Mr. Echohawk) Mr. Billstein, would you describe  
14 for us what those photos are briefly?

15 A These are the work aerials relative to our irri-  
16 gated lands in-use study. The photograph is basically  
17 the same as that which formed the base for the  
18 individual exhibits. However, it does show a lot  
19 more detail relative to the derivation of the  
20 overlay presented on that exhibit.

21 MR. ECHOHAWK: Your Honor, may I have one  
22 moment?

23 (Off-the-record discussion.)

24 MR. ECHOHAWK: Your Honor, at this time I

25 billstein-redirect-echohawk

1 would request a brief --

2 THE SPECIAL MASTER: Would you like to offer  
3 them into evidence now or later?

4 MR. ECHOHAWK: I'll go ahead and do that now,  
5 and then if we could take a break we could correct  
6 the exhibits.

7 THE SPECIAL MASTER: All right. Do you wish  
8 to offer in evidence the exhibits to which you have  
9 had identified beginning with 141, 142, 143, 144  
10 and 145 and correlating with C-137A?

11 MR. ECHOHAWK: Yes.

12 THE SPECIAL MASTER: Are there objections?

13 MR. WHITE: I would like to voir dire, Your  
14 Honor.

15 MR. ECHOHAWK: In addition, Your Honor, we  
16 would like to offer what we will mark as the hydro-  
17 graphic photos, the 56-A through 136-A.

18 THE SPECIAL MASTER: All right. Let's include  
19 those in the motion, too, and you have spent the  
20 time identifying them, so the motion will include  
21 the hydrographic photographs. They will carry a  
22 name correlated to 56 to 136.

23 MR. ECHOHAWK: That's right.

24 MR. WHITE: Bill, do you want to voir dire?

25 billstein-redirect-echohawk

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MR. PERRY: No.

VOIR DIRE EXAMINATION

BY MR. WHITE:

Q Mr. Billstein, with respect to Exhibit 142, the adjudicated acreage deletions from the in-use claim --

A Yes.

Q -- would you please give me the proof number for the certificate upon which you based that correction in each of those rows?

\* \* \* \* \*

1 A There are four: C-68, parcels 5-69, 5-70; the permit  
2 No. 6628.

3 THE SPECIAL MASTER: Why don't you just give  
4 him the proof numbers he asked for.

5 THE WITNESS: Proof number 18913.

6 MR. ECHOHAWK: Your Honor, I believe to speed  
7 this up, I think these are the exact same ones Mr.  
8 White identified already. It's in the transcript,  
9 and the witness can verify that if that is not  
10 correct.

11 Q (By Mr. White) Did you include any others other  
12 than those I identified during your cross-examination?

13 A There was one additional inclusion, that would be  
14 relative to U.S. Exhibit 133, South Fork, Owl  
15 Creek for the 100-acre total.

16 THE SPECIAL MASTER: Mr. White, you ought to  
17 be pleased with that, that's a deletion of 100  
18 acres.

19 MR. WHITE: Well, I was just curious where it  
20 came from, Your Honor. I'm going to scold somebody  
21 for not finding it.

22 THE WITNESS: The proof numbers for this total  
23 were 14028, 15395 and 10907.

24 Q (By Mr. White) Okay. Did you exclude from C-142  
25 billstein-voir dire-white

1 any of the proof numbers which you and I have  
2 discussed during your cross-examination or which  
3 Mr. Krob may have raised during his portion of  
4 the cross-examination?

5 A. To the best of my knowledge, any areas that Mr.  
6 Krob and I agreed we had overlap were included,  
7 plus I included the area in the Bear Paw Ditch  
8 permit which was inconclusive during the testimony  
9 on that subject, but upon further study by me I  
10 felt was a legitimate overlap.

11 Q. Is Exhibit C-142, in all other respects than that  
12 instance that you just described, completely  
13 consistent with your testimony during cross-  
14 examination with respect to adjudicated overlap  
15 or overlap between the blue lands and the lands  
16 which have been adjudicated?

17 A. I believe I also gave Mr. Krob another few acres  
18 under proof number 11685.

19 Q. Are there any deletions which were described during  
20 your cross-examination which are not also made on  
21 Exhibit C-142?

22 A. If there was a deletion which basically reflected  
23 a withdrawal of that overlap complaint by the  
24 State, it does not reflect on here. I think we had

25 billstein-voir dire-white

1 one or two instances where Mr. Krob saw that we  
2 did not in fact have an overlap, and that was  
3 not included.

4 MR. WHITE: Let me check with my lawyer, Your  
5 Honor.

6 (Off-the-record discussion.)

7 THE WITNESS: I believe it was on the O'Neil  
8 Ditch system.

9 MR. WHITE: We have no objection to C-142,  
10 Your Honor.

11 THE SPECIAL MASTER: And all the others, too?

12 MR. WHITE: Nope. Haven't gotten to those yet.

13 THE SPECIAL MASTER: You had all agreed we  
14 were not going to work tomorrow, so then we will  
15 go late tonight.

16 MR. ECHOHAWK: I prefer to go late tonight,  
17 Your Honor, because we can probably get this cleared  
18 up shortly. We are just trying to be helpful and  
19 clear up the record.

20 THE SPECIAL MASTER: Go ahead, Mr. White.

21 Q (By Mr. White) With respect to C-143, Ron, the  
22 acreage deletions, you mentioned that you deleted  
23 some lands that did not show as being in fee status  
24 on Exhibit M-1. Would you please describe those  
25 billstein-voir dire-white

1 lands and the basis for the deletions?  
2 A. Okay. Parcels numbers 5-59 and 4-26 and 22-19  
3 were established by telephone communications with  
4 Elsie Kolstad of the Bureau of Indian Affairs  
5 within the last week and verified again this  
6 morning to contain lands that are in Indian fee  
7 ownership. These would be fairly recent purchases  
8 of Indian fee land. The one parcel that has the  
9 asterisk had been designated as fee previously  
10 and somehow ended up on the exhibit but was never  
11 in the acreage totals on the planimeter sheets or  
12 in the summary tables. That's why it's shown as  
13 "00". There is no net deletion there.

14 Q. With the exceptions of parcels 5-59, 4-29 and  
15 22-19, are all the conflicts between your blue  
16 lands on Exhibits C-56 through 136 and the fee  
17 lands as shown on what's been admitted as Tribes  
18 Exhibit M-1?

19 A. There is one exception. It goes back to the Harpoon  
20 Cattle Company that I tried to introduce on my  
21 own, I guess, Your Honor. That is not reflected  
22 in this tabulation.

23 \* \* \* \* \*

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25 billstein-voir dire-white

1 Q (By MR. White). You found only two conflicts  
2 with M-1?

3 A There's three conflicts; Tract 31-1, 31-2 and  
4 5-66.

5 Q Okay.

6 A My records show that that was all the conflicts  
7 other than the Harpoon Cattle Company.

8 Q Did you delete conflicts within M-1 based on  
9 what you know of the Harpoon Cattle Company  
10 transaction?

11 A Let me check my notes.

12 MR. ECHOHAWK: Your Honor, I think we're  
13 getting far afield. I don't think Mr. Billstein  
14 ever said he checked the stuff against M-1  
15 other than the ones Mr. White pointed out.  
16 He obtained additional fee deletions --

17 THE SPECIAL MASTER: I would concur in  
18 your observation.

19 Q (By Mr. White) Mr. Billstein, do you want to  
20 say something?

21 THE SPECIAL MASTER: If you wish to put  
22 it in a form of a motion I'll sustain it and  
23 we can skip the Harpoon.

24 MS. SLEATER: Your Honor, the Harpoon Cattle  
25 billstein-voir dire-white



1 Company acreage was already in evidence, that  
2 was in fact a discrepancy that was not mapped  
3 on M-1. I believe the objection goes to the  
4 fact that Mr. Billstein has never testified  
5 that he checked his title records against M-1  
6 except for the few areas that Mr. White brought  
7 up.

8 He has, in fact, gone and checked it  
9 against a better title source. As we pointed  
10 out earlier there have been changes in the  
11 title status over the time and M-1 is, in  
12 fact, not an accurate depiction as far as we  
13 are aware.

14 MR. WHITE: Unfortunately, Your Honor,  
15 M-1's the only evidence before the Court that's  
16 been admitted as to the status of the lands.

17 I withdraw any questions I may have asked  
18 Mr. Billstein which suggested that I expected  
19 him to do an independent analysis of M-1,  
20 but I specifically ask him now whether or not  
21 the conflicts described in pages 2311 through  
22 2318 of the transcript during his cross-  
23 examination are reflected on Exhibit M-1?

24 THE SPECIAL MASTER: I think it's a bit much,  
25 billstein-voir dire-white

1 Mr. White. The C-143 has 19 acres on Dinwoody  
2 Bench, none on Dinwoody Bench under the second  
3 photo class and 16 acres on the other two that  
4 are applicable. And I'm not sure that a question  
5 about M-1 is appropriate on redirect -- on  
6 voir diring this exhibit.

7 MR. WHITE: I'm just trying to find out  
8 where it came from, Your Honor.

9 THE SPECIAL MASTER: On recross.

10 MR. WHITE: If he wants to tell me it's  
11 not consistent with the parcels described in  
12 cross-examination, which it isn't --

13 THE SPECIAL MASTER: Where did the acreage  
14 figures come from that you deleted on the last  
15 two items on this exhibit?

16 THE WITNESS: They came from the cross-  
17 examination.

18 THE SPECIAL MASTER: All right.

19 MR. WHITE: Then I think I'm entitled to  
20 inquire into that.

21 THE SPECIAL MASTER: You already got your  
22 answer. They came from your cross-examination,  
23 and that's due to your good work that those 16  
24 acres were found and deleted.

25 billstein-voir dire-white

1 Q (By Mr. White) Isn't it true that on page 2313  
2 of the transcript there's another parcel on  
3 Exhibit C-105 which was described as being  
4 deleted but which does not appear on Exhibit  
5 C-143, which parcel I believe is now marked as  
6 31-9? I'm not sure that that's the present  
7 parcel identification because we didn't have  
8 the parcel identifying numbers then.

9 Would you check on that.

10 A Do you have a photo number?

11 THE SPECIAL MASTER: Would you hand him  
12 the page of the transcript if you have it, any-  
13 one.

14 (Brief pause.)

15 THE WITNESS: I recall that tract.

16 Q (By Mr. White) Isn't it true that that tract  
17 is not included in C-143?

18 A That's correct. That's part of that Harpoon  
19 Cattle Company land, and being that it was  
20 within my knowledge to know that it was now  
21 in trust ownership, I did not include it in  
22 the table. It's approximately eight acres.

23 Q On pages 2314, 2315 I believe we discussed  
24 another parcel of approximately 28 acres,

25 billstein-voir dire-white

1 which may have been broken down, I can't  
2 recall for sure, into two sub-parcels, four  
3 and 24, also in Exhibit C-105. I believe  
4 that parcel is now referred to as Tract No.  
5 31-8.

6 THE SPECIAL MASTER: That is or is not  
7 on C-143?

8 MR. WHITE: It is not, Your Honor.

9 THE WITNESS: Somebody have a tract book  
10 for me?

11 (Brief pause.)

12 THE WITNESS: On this exhibit there are  
13 three tracts that fall in the Harpoon Cattle  
14 Company purchase area; 31-8 of 3.7 acres;  
15 31-9 of 3.9 acres; 31-10 of 24.2 acres.

16 MR. WHITE: Your Honor, the State would  
17 object to C-143 on the grounds that it does  
18 not accurately reflect cross-examination of  
19 Mr. Billstein; that there are three parcels in  
20 the approximate amount of 32 -- 32.2 acres  
21 total which are omitted from C-143, which are  
22 shown as fee on M-1. And there is absolutely  
23 no evidence in the record to -- competent  
24 evidence in the record that Exhibit M-1 is

25 billstein-voir dire-white

1 incorrect. It was admitted for the truth  
2 of its contents, it was offered by the Tribes  
3 for the truth of its contents.

4 This witness is a very competent engineer  
5 although he certainly isn't someone who can  
6 give evidence as to land ownership.

7 THE SPECIAL MASTER: Mr. White, would your  
8 objection to C-143 be removed if it were agreed  
9 upon that the omissions to which Mr. Billstein  
10 has referred be added as a postscript to the  
11 exhibit and if Mr. Echohawk agrees to that?

12 MR. ECHOHAWK: I wouldn't agree to that.  
13 The exhibit isn't designed to illustrate Mr.  
14 White's cross-examination because we think he  
15 was dead wrong on his cross-examination. It  
16 is trust lands and the United States will offer  
17 evidence to show that it is trust.

18 If Mr. White will stipulate and waive  
19 objections to the authenticity I'll introduce  
20 the uncertified copy of the -- Excuse me, it  
21 is certified. I'll offer this right now, the  
22 Harpoon Cattle Company, and that will take care  
23 of it.

24 MR. WHITE: It would have saved us a lot  
25 billstein-voir dire-white

1 of trouble if we had it earlier, Your Honor.

2 (Brief pause.

3 MR. WHITE: Your Honor, I will withdraw  
4 my objection to Exhibit M-1 based upon the  
5 offer by the United States of a certified  
6 copy of the Warranty Deed which brings the  
7 land which Mr. Billstein has referred to as  
8 the Harpoon Cattle Company land into trust as  
9 of June 26, 1979.

10 THE SPECIAL MASTER: I presume that's  
11 the date you want to give that land too.

12 MR. ECHOHAWK: Your Honor, if I could put  
13 a sticker on it.

14 THE SPECIAL MASTER: Yes.

15 MR. ECHOHAWK: I believe we left off at  
16 146, next exhibit is 146?

17 THE SPECIAL MASTER: Yes.

18 MR. ECHOHAWK: We would then offer also,  
19 then, Your Honor C-146.

20 THE SPECIAL MASTER: He has not objected  
21 to that and asked that it be admitted in  
22 evidence to remove the objection of this from  
23 the last one, so U.S. Exhibit WRIR C-146, having  
24 been examined, is now admitted into evidence.

25 billstein-voir-dire- white

1 (Whereupon U.S. Exhibit  
2 (WRIR C-146 was admitted  
(into evidence.

3 Q (By Mr. White) Mr. Billstein, with respect  
4 to Exhibit C- --

5 THE SPECIAL MASTER: We only got one  
6 copy.

7 MR. ECHOHAWK: That's the only copy I  
8 have, Your Honor.

9 THE SPECIAL MASTER: Go ahead. I'm sorry,  
10 Mr. White.

11 Q (By MR. White) 144, do the parcels have --  
12 Excuse me, do the parcels which are described  
13 in the third column of C-144 appear on the  
14 Exhibit C-56 through 136 as they were identified  
15 by you this morning during cross-examination?  
16 In other words, are these parcel numbers or  
17 were these parcel numbers on those exhibits,  
18 C-56 through 136 when you indicated the parcel  
19 numbers had been added to the exhibits this  
20 morning?

21 (Brief pause.

22 THE SPECIAL MASTER: Off the record.

23 (Off-the-record discussion.

24 \* \* \* \* \*

25 billstein-voir dire-white

1 THE WITNESS: Most are not included at the  
2 present time. There is one I saw that was.

3 MR. ECHOHAWK: I might point out these are  
4 the ones we propose to put on the exhibits, that's  
5 why they are not on there.

6 MR. WHITE: Your Honor, I would like to reserve  
7 my objections to C-144 until I see what it looks  
8 like on the exhibits. I can't imagine that we  
9 would have too much of an objection.

10 THE SPECIAL MASTER: Why don't I admit it  
11 subject to your reopening that objection and give  
12 you the right to do that that way.

13 MR. WHITE: That's fine, Your Honor.

14 Q (By Mr. White) Mr. Billstein, with respect to  
15 Exhibits C-145, C-141 and C-140, is it true that  
16 you now seek to increase the claims over those at  
17 the beginning of your direct -- or given during  
18 your direct examination for Five Mile Creek, Main  
19 Stem of the Little Wind and Sub Agency?

20 A. That's correct.

21 MR. WHITE: Your Honor, we would object to  
22 that as being, one, outside the scope of cross,  
23 and two, singularly inappropriate to increase claims  
24 -- excuse me -- increase claims on redirect examination.

25 billstein-voir dire-white



1 We won't say it's unheard of, but I have never  
2 heard of it and I can't imagine the Court has ever  
3 heard of it, and it's certainly beyond the scope  
4 of the cross. However, I would like to reserve my  
5 objection or any other grounds for objection until  
6 I actually see these on the exhibit and have them  
7 pointed out to me. I would ask the Court not to  
8 provisionally admit these until such time I can  
9 take a look at them.

10 THE SPECIAL MASTER: You want all three held  
11 out until such time --

12 MR. WHITE: Yes, sir. They all go to the  
13 same thing, an increase with respect --

14 THE SPECIAL MASTER: I would say the first  
15 two just include considerably more than the mere  
16 three you mentioned.

17 MR. WHITE: I would have no objection to their  
18 admission except where the amounts for any use  
19 area, such as on 140 for Five Mile Creek, Little  
20 Wind and Sub Agency, or on any photographs such as  
21 on photograph -- or on Exhibit 141 for photographs  
22 14-53, 19-258 and -- excuse me, just those two --

23 THE SPECIAL MASTER: Same acreage.

24 MR. WHITE: -- show any increase over those

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1 alleged during the direct examination, and I would  
2 reserve my objections with respect to those three  
3 drainages and have no objection to the admission  
4 with respect to the others.

5 THE SPECIAL MASTER: All right. With those  
6 reservations, these three exhibits are admitted.

7 Q (By Mr. White) With respect to Exhibit C-137A,  
8 Mr. Billstein, are there similar increases over  
9 C-137 for the acreage claimed in the current use,  
10 unadjudicated, for Five Mile Creek, the Little Wind  
11 Main and Sub Agency?

12 A. Those acreages additions as per Exhibit 145 are  
13 reflected in 137A.

14 MR. WHITE: We have no objection to 137A,  
15 Your Honor, except for those portions which show  
16 an increase in those three areas, and I would  
17 reserve my objection until I see those particular  
18 parcels.

19 MR. ECHOHAWK: Your Honor --

20 THE SPECIAL MASTER: Yeah. I will move its  
21 admission and leave a reservation and he can  
22 raise the objection at that time. This way the  
23 record after today will be complete with all of  
24 these exhibits that have been offered in evidence.

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1 MR. ECHOHAWK: Okay. May I address the areas  
2 Mr. White said about increasing the claims on  
3 redirect? I think that these were a part of the  
4 cross-examination. Mr. White crossed on supposedly  
5 every parcel, that's what resulted in the stipula-  
6 tion. These acreages came about as a result of  
7 that stipulation.

8 THE SPECIAL MASTER: I believe that the  
9 increase in it was not out of order, Mr. White.  
10 If they were nothing more than clerical errors, I  
11 suppose you could amend by subsequent -- a-ider, a-i-d-e-r,  
12 by if not subsequent pleadings, certainly by  
13 evidence.

14 MR. WHITE: Well, I still reserve my objection  
15 with respect to that evidence.

16 THE SPECIAL MASTER: Your reservations are  
17 granted.

18 Q (By Mr. White) With respect, Mr. Billstein, to  
19 Exhibits 56-A through 136-A, isn't it true that you  
20 are unable to state --

21 THE SPECIAL MASTER: You are going to ask a  
22 question that has nothing to do with the exhibits  
23 -- well, I beg your pardon. I didn't hear --  
24 please omit that. Go ahead, Mr. White.

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1 Q (By Mr. White) Isn't it true you are unable to  
2 state for the record the portions of those exhibits  
3 which are correctly attributable to the information  
4 which he received from Mr. Twichel?

5 THE SPECIAL MASTER: Unless you can show a  
6 relationship of Mr. Winton [sic] --

7 MR. WHITE: Twichel, Your Honor.

8 THE SPECIAL MASTER: -- Twichel to the exhibits  
9 just offered on redirect by Mr. Echohawk, I won't  
10 permit the question.

11 MR. WHITE: Well, I'll try that.

12 Q (By Mr. White) Mr. Billstein, isn't it true that  
13 you have since 1979 had conversations with Messrs.  
14 Twichel and Crook? And isn't --

15 MR. WHITE: I got a nod.

16 THE SPECIAL MASTER: Well, I'm not sure that  
17 question has anything whatsoever to do about the  
18 -- not yet, anyway.

19 MR. WHITE: I better start asking compound  
20 questions, I guess, Your Honor.

21 Q (By Mr. White) Isn't it true those conversations  
22 with Mr. Twichel and Mr. Crook gave you information  
23 which was transferred to some, if not all, of  
24 Exhibits 56-A through 136-A, your hydrographic

25 billstein-voir dire-white

1 photos?

2 THE SPECIAL MASTER: The hydrographic photos  
3 he is referring to.

4 Q (By Mr. White) Did you put any information on there  
5 you got from Twichel or Crook?

6 A As previously stated, I had HKM field personnel  
7 individually inspect all the lands in the Wind  
8 River Irrigation Project. Mr. Twichel and Mr.  
9 Crook were involved in a verification process. I  
10 talked to them over a number of matters during my  
11 review process, particularly relative to Type IV  
12 lands, a type of irrigation that was carried out  
13 on those just from an informational standpoint.  
14 The conclusions are basically those that were  
15 developed by the field program and reflected on the  
16 hydrographic copies.

17 Q Isn't it true that the information on Exhibits 56-A  
18 through 136-A reflect the opinions of your field  
19 investigators?

20 A They reflect the results of their field programs;  
21 again, subject to my review process.

22 Q Isn't it true that with respect to the annotations  
23 on 56-A through 136-A you are unable with speci-  
24 ficity to describe these facts and data upon which --

25 billstein-voir dire-white

1 THE SPECIAL MASTER: The what?

2 MR. WHITE: Facts and data, specific facts  
3 and data upon which your field investigators based  
4 their opinion which was reflected by the annota-  
5 tions on those exhibits?

6 MR. PERRY: Objection, Your Honor.

7 THE SPECIAL MASTER: I'm going to sustain  
8 that objection.

9 MR. WHITE: On what grounds, Your Honor?

10 THE SPECIAL MASTER: We have been through this  
11 at least five, if not six or seven times in the  
12 last two weeks regarding Mr. Billstein's profes-  
13 sional papers and work, how information got added  
14 to them, and if that's the basis to your approach  
15 of voir dire of those exhibits, I'm not going to  
16 permit the question.

17 MR. WHITE: I'll make an offer of proof, then.

18 THE SPECIAL MASTER: I think he has already  
19 testified time and time again on what those hydro-  
20 graphic maps are, what they contain, how the work  
21 got put on them, and I don't think it's proper on  
22 voir dire, Mr. White. If you have any specific  
23 error of information on one point or two of those,  
24 or the whole batch are defective because of a

25 billstein-voir dire-white

1 particular serious defect, you may pursue that  
2 inquiry.

3 MR. WHITE: Your Honor, the State would  
4 offer to prove that if allowed to answer the  
5 question, Mr. Billstein would indicate that he  
6 was and is unable to provide those specific facts  
7 and data requested by the question.

8 THE SPECIAL MASTER: I also take issue with  
9 your offer of proof. It just simply isn't the  
10 truth, Mr. White. That's not what Mr. Billstein  
11 would -- that's not what could be adduced by you  
12 from your continuation of your questioning, and I  
13 will let you ask questions until midnight, if you  
14 want to, and you can't bring that out of Mr.  
15 Billstein because he said time and time again in  
16 his professional judgment that he's interpolated,  
17 extrapolated, and based upon these exhibits of the  
18 field people who work for his firm that have been  
19 paid in the hundreds of thousands of dollars as  
20 lawyers to do their professional work. That is the  
21 point, Mr. White.

22 MR. WHITE: I understand, Your Honor. And,  
23 of course, it's impossible for me to develop that  
24 information if you do not permit the witness to

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1 answer the question or for me to ask the question.

2 THE SPECIAL MASTER: He's answered your ques-  
3 tion on this at least six times in the last two  
4 weeks. Is there a person in the courtroom who  
5 disagrees with me, including counsel at your own  
6 table?

7 MR. WHITE: These exhibits have not yet been  
8 offered. This is the first time they have been  
9 offered, Your Honor.

10 THE SPECIAL MASTER: This is the one hundred  
11 first time they've been worked with in this trial  
12 on tables and looked at by you and me and others  
13 over the last two weeks, Mr. White.

14 MR. WHITE: Well, I've made my offer of proof,  
15 Your Honor. You have not let me ask the question,  
16 and the record speaks for itself.

17 THE SPECIAL MASTER: All right.

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billstein-voir dire-white



1 MR. WHITE: Your Honor, we would object  
2 to the admission of Exhibit 56-A through 136-A  
3 on the grounds thought to be elicited by the  
4 question which was the subject of the offer of  
5 proof, and on the grounds that we have not yet  
6 received what we would expect to receive, a  
7 copy --

8 THE SPECIAL MASTER: Copies?

9 MR. WHITE: -- of those exhibits and I  
10 would state to the Court that we have copies  
11 of similiar exhibits which have since been  
12 changed in some respects to end up on those  
13 and we would withdraw our second objection if  
14 we could get an assurance from the United  
15 States that we would get a copy of these  
16 particular exhibits.

17 THE SPECIAL MASTER: Both objections would  
18 be overruled, but I wish the United States  
19 would supply a set of copies.

20 MR. ECHOHAWK: Your Honor, through discovery,  
21 not really very long ago, we supplied them copies  
22 of the hydrographic copies, and it turns out  
23 that there are very small minimal changes,  
24 you know, which we've talked about during  
25 depositions. They've been given a chance to

1 conform their copies. We certainly would allow  
2 them access to these to check them out and  
3 do it. But it seems to me overly burdensome  
4 to the United States because the cost is about  
5 \$5,000 to reproduce those on special film for the  
6 very small minimal changes that it would be  
7 worth.

8 THE SPECIAL MASTER: As Mr. White said,  
9 if he can have access to them, and I think you  
10 said even during the recess, that's what Mr.  
11 White, I think would --

12 MR. WHITE: No, I want copies, Your Honor.  
13 If that's the precedence in this case with  
14 respect to furnishing copies, so be it.

15 MR. ECHOHAWK: If you order it we'll make  
16 a whole other batch.

17 THE SPECIAL MASTER: I'm not sure that this  
18 Court has a duty to order a set of those printed  
19 up. Somewhere somehow this case has got to come  
20 to an end and so do the expenses. We can go  
21 on spending three million dollars a year for  
22 another ten years.

23 I don't believe it prejudices the State's  
24 case one iota to make the comparisons between  
25 the set of pictures they have and those in

1 evidence, to find these varied differences  
2 that you've referred to that have already been  
3 brought to your attention, Mr. White in the  
4 deposition proceedings up to the trial.

5 MR. WHITE: Your Honor, I would suggest  
6 before you take Mr. Echohawk's statement at  
7 face value, examine the deposition and see just  
8 exactly what things were brought up to our  
9 attention and --

10 THE SPECIAL MASTER: I was advised by  
11 two federal judges not to get my nose into  
12 depositions, and I'm going to stick with what  
13 they told me.

14 MR. WHITE: I would withdraw my objection  
15 and offer a compromise. If we could deliver  
16 our hydrographic copies to the United States  
17 and ask them to conform our copies --

18 THE SPECIAL MASTER: Would you do that,  
19 Mr. Echohawk? It would take a little bit of  
20 work, but not too much.

21 Let me ask the witness, how much would it  
22 take to conform those exhibits to what you have?  
23 Are you talking about a matter of one draftsman  
24 for a couple weeks?

25 THE WITNESS: You would be looking at --

1 THE SPECIAL MASTER: There'll be a recess  
2 for a couple of minutes while you look for  
3 that.

4 THE WITNESS: I'll check, Your Honor.

5 (Off-the-record discussion.)

6 THE SPECIAL MASTER: Could I have an answer  
7 to my inquiry, gentlemen? Is there anyway,  
8 gentlemen, we can find out what we are talking  
9 about in work time?

10 THE WITNESS: Between two to three man  
11 weeks, Your Honor; probably pushing three.

12 MR. WHITE: Your Honor, if it's that  
13 for HKM, it's that for us. And I think the  
14 custom in this case is that other parties get  
15 informed, and if that's not going to be the  
16 custom in the case, I'd like to know it. I  
17 would think that it would be appropriate for the  
18 Court to order the United States to make those  
19 conformations. That's a lot of time, a lot  
20 of changes to be made if it takes that number  
21 of man weeks.

22 THE SPECIAL MASTER: What are we talking  
23 about in substansive changes here in acreage,  
24 Mr. Echohawk?

25 MR. ECHOHAWK? Fairly minimal, but it's

1 just you have to go through each and every  
2 parcel and see if there is some sort of small  
3 change.

4 I might point out, Your Honor, Mr. White  
5 also offered some of our work papers today.  
6 Is he going to provide us copies?

7 MR. WHITE: I told him the offer was made.  
8 The United States could withdraw them if they  
9 wanted to, and then the State of Wyoming would  
10 provide copies to the Court, and that's perfectly  
11 consistent --

12 THE SPECIAL MASTER: I believe I'm ready  
13 to rule on this matter. I'm going to rule that  
14 the United States is not required to make a  
15 set of exact copies or to put engineers at work  
16 to make the addendums and modest changes referred  
17 to on the Wyoming set of these exhibits, which  
18 Wyoming already has and with which they've  
19 already been provided.

20 I do not believe that constitutes an unfair  
21 observation. I think it's one that will save  
22 perhaps five to ten thousand dollars in costs  
23 and I don't believe it will add that much of a  
24 burden to anybody nor affect the just outcome  
25 of acreage descriptions.

1 MR. WHITE: We'll govern ourselves  
2 accordingly, Your Honor.

3 THE SPECIAL MASTER: If it's erroneous,  
4 it's erroneous, but I got to start calling them  
5 like I see them.

6 All right. With the reservations that  
7 are on record now to those specific exhibits,  
8 all the exhibits you have offered on redirect,  
9 Mr. Echohawk, are in evidence.

10 MR. ECHOHAWK: Thank you, Your Honor.

11 THE SPECIAL MASTER: Does that complete  
12 your case in redirect?

13 MR. ECHOHAWK: That's correct.

14 THE SPECIAL MASTER: We will now stand in  
15 recess until Tuesday, April 14th, and we'll  
16 resume a week of hearings that week in this  
17 room and we'll begin at 9:15 that morning and  
18 each morning that week unless changed during our  
19 hearings.

20 MR. WHITE: Are we going to start with  
21 Mr. Billstein, with the changes to the exhibits,  
22 Your Honor, because I will have recross-  
23 examination on these new parcels that are being  
24 added to the totals.

25 THE SPECIAL MASTER: You've already completed

1 your recross, you already completed that with  
2 the exhibits.

3 MR. WHITE: That was voir dire, Your Honor.  
4 I've completed voir dire.

5 THE SPECIAL MASTER: I can't believe you  
6 want more time with Mr. Billstein.

7 MR. WHITE: If they're going to increase  
8 their claim, I'm going to want to recross-examine  
9 him on those.

10 THE SPECIAL MASTER: They increased the  
11 claim something like 37 acres and you mean to  
12 tell me you want more time to cross-examine  
13 him? Take it now.

14 MR. WHITE: I don't know where those  
15 parcels are, Your Honor. The arrangement was  
16 we're going to take about an hour and a half  
17 recess and get the parcels --

18 THE SPECIAL MASTER: All right. Take your  
19 recess. We'll stand in recess until you find  
20 them.

21 MR. ECHOHAWK: Okay.

22 THE SPECIAL MASTER: We're in recess.

23 We're going to stay here until midnight if  
24 we have to to get this finished.

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1 THE SPECIAL MASTER: Let's convene. We are  
2 convening at 6:15 p.m., after recess permitting  
3 the copying of the exhibits.

4 Okay, we're underway.

5 MR. WHITE: We're not ready yet, Your Honor.

6 (Brief pause.

7 MS. RACINE: May I leave and come right back?

8 THE SPECIAL MASTER: I'd rather you stay.  
9 We are in session. We're waiting for Mr. White to  
10 proceed.

11 Mr. White, I noticed, I just wonder if it  
12 would be possible for your assistant to keep the  
13 search up for what you need and begin with the ones  
14 you already have in the interest of --

15 MR. WHITE: I certainly can, Your Honor.  
16 The United States has kindly allowed me to talk  
17 with their experts concerning the parcels that are  
18 involved in both the offer with respect to the  
19 exhibits that were offered and with respect to  
20 potential areas of cross-examination, and based on  
21 that conversation and the demonstration made by  
22 the experts during the recess, I withdraw my object-  
23 ions which I reserved. I understand you overruled  
24 one objection I stated at the time with respect to  
25 certain of the exhibits involving the lands or new



1 total in claim, and I likewise waive my cross.

2 THE SPECIAL MASTER: Very good. I thank you,  
3 Mr. White.

4 Mr. Echohawk.

5 MR. ECHOHAWK: Your Honor, my understanding  
6 is we can continue to finish the minor annotations  
7 to the exhibits that are reflected in the exhibits  
8 that I just offered and were accepted into evidence.  
9 I don't think there'll be any problem with those.

10 MR. WHITE: That's right, Your Honor. I've  
11 seen what they've proposed to do.

12 THE SPECIAL MASTER: You're identifying on  
13 the set of -- you're marking on the set of hydro-  
14 graphs?

15 MR. ECHOHAWK: We're marking the set of hydro-  
16 graphs and on the Exhibits 56 through 136, in a  
17 situation where it would be like fee land, we have  
18 a little annotation that says "fee".

19 THE SPECIAL MASTER: Is this witness to be  
20 excused from the proceedings in April?

21 MR. WHITE: Subject to recall for cross-  
22 examination.

23 THE SPECIAL MASTER: Subject to recall.

24 MS. SLEATER: Your Honor, I would object. If  
25 the State of Wyoming is going to call him during

1 their case, it won't be for cross-examination.

2 THE SPECIAL MASTER: You mean subject to  
3 calling them as your witness on your case?

4 MR. WHITE: Your Honor, but it would be  
5 interrogation by cross-examination under the Rules,  
6 Your Honor. He'd be our witness --

7 MS. SLEATER: That rule is not in effect any  
8 more.

9 THE SPECIAL MASTER: Well, the two --

10 MR. WHITE: We can argue about it when the  
11 time comes.

12 THE SPECIAL MASTER: You two authorities argue  
13 about it, but the point is you want the right to  
14 call him as your witness or as a witness further  
15 in the proceedings.

16 MR. WHITE: Yes.

17 THE SPECIAL MASTER: But not in the April term?

18 MR. WHITE: It would be after the United States  
19 rests, Your Honor.

20 THE SPECIAL MASTER: Right. And now then, why  
21 don't we see if this is correct. Will Mr. Kersich  
22 be with us to complete his --

23 MS. SLEATER: Yes, Your Honor, on the 14th.

24 THE SPECIAL MASTER: On the 14th of April.

25 And following him?

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MS. SLEATER: Mr. Waples, Your Honor.

THE SPECIAL MASTER: We have who on deck?

MS. SLEATER: Mr. Waples.

THE SPECIAL MASTER: And who's in the hole,  
as we say in baseball?

MS. SLEATER: I think it will be Dr. Woldezion  
Mesghinna. That's not as definite as Mr. Waples.

THE SPECIAL MASTER: Okay. All right. I  
thank all of you for having made possible finishing,  
and we'll see you all on the 14th.

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State of Wyoming )  
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County of Laramie )

We, Merissa Racine, Viola J. Lundberg and Mary Nelson, Registered Professional Reporters and Notaries Public, hereby certify that the facts as stated in the caption hereof are true; that we did at the time, date and place, as set forth, report the proceedings had before the Honorable Teno Roncalio, Special Master Presiding, in stenotype; that the foregoing pages, numbered 2807-2976, inclusive, constitute a true, correct and complete transcript of our stenographic notes as reduced to typewritten form under our direction.

We further certify that we are not agents, attorneys or counsel for any of the parties hereto, nor are we interested in the outcome thereof.

Dated this 19th day of March, 1981.

Merissa Racine  
MERRISSA RACINE  
Registered Professional Reporter

Viola J. Lundberg  
VIOLA J. LUNDBERG  
Registered Professional Reporter

Mary Nelson  
MARY NELSON  
Registered Professional Reporter

