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Trial Transcript, Vol. 15, Morning Session

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File 122
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Case # 4993

File # 122

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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 WYO-)
MING.)

Civil No. 4993

FILED _____
2/25 1981
Margaret V. Hanlyton CLERK
DEPUTY

VOLUME 15

Morning Session

Thursday, February 12, 1981

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APPEARANCES

FOR THE STATE OF
WYOMING:

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THE SPECIAL MASTER: Let's resume.

Q (By Mr. White) Mr. Kersich, during the time made available to you, have you made a determination of the total number of parcels which you classified as arable gravity which had no logged holes within their boundaries?

MR. ECHOHAWK: Your Honor, at this time, if I may make a statement, during the recess that we were allowed yesterday, we -- Mr. Kersich and his staff did make a review of the parcels provided to us, listed locations provided to us by Mr. White. And they made a thorough review of each of those parcels, and I think the reason, the idea of the recess was to see if we could reach some sort of an agreement or stipulation as to the amount of holes or amount of acreage contained therein and to clear up that point. The United States doesn't feel that it can stipulate to any set amount of acres or set amount of parcels where that is the situation simply because it's -- it would be somewhat misleading in that in certain instances there will be a certain small delineation, as Mr. Kersich will be able to testify, certain small delineations

kersich-cross-white

Handwritten notes in the left margin, including a vertical line of 'P' characters and other illegible markings.

1 within larger parcels where there is no hole,
 2 but there is a hole that relates specifically
 3 to that small delineation, and is broken up for
 4 other reasons. And we feel that as Mr. Kersich
 5 had testified to, that land classification has
 6 been done in a professional manner relying on
 7 certain other items besides holes that certainly
 8 is reasonable within the profession to do so, and
 9 we can go through each parcel and have Mr. Kersich
 10 explain that time and time again. And that's simply
 11 repetition of what we had in the past few
 12 days, or I believe what Mr. White is after is
 13 some tabulation of acreage for some purpose that
 14 he seems -- he sees as relevant.

15 I think Mr. White can certainly put that
 16 tabulation figure in through his own witness at
 17 a later time. We feel that it's somewhat a
 18 waste of time to continue on the way we've been
 19 going, but we're certainly prepared to do so.

20 THE SPECIAL MASTER: Well, I have no recourse
 21 but to proceed with it.

22 I assume there was no semblance --

23 MR. WHITE: We received no --

24 THE SPECIAL MASTER: No basis of a stipulation?

25 kersich-cross-white

1 MR. WHITE: We received no response, Your
2 Honor.

3 THE SPECIAL MASTER: Well, let's proceed.

4 Q (By Mr. White) The answer to the question, please.

5 A I don't have the parcels numbered because that's
6 not what we reviewed them for. We went through
7 them, there were some where there was information
8 on the aerial photographs which was served in lieu
9 of holes. There are other parcels that there
10 was a hole almost on the borderline or on the
11 borderline, and consequently I didn't break out
12 the parcels then predicated on whether or not they
13 had a hole directly in them.

14 Q So you cannot report to the Court the number of
15 parcels?

16 A That's correct. I would have to sit down and go
17 through my notes again.

18 Q Can you report to the Court then number of acres?

19 A No, because acres and delineations are pretty
20 much tied together.

21 Q Would your answer be the same if I asked you the
22 same two questions -- or three questions about
23 the lands which you classified as arable sprinkler
24 as opposed to arable gravity?

25 kersich-cross-white

1 A Yes, they would.

2 MR. WHITE: Your Honor, I would like at
3 this time to ask for a recess to allow Mr.
4 Kersich to do that. That was the purpose, the
5 main part of the recess yesterday afternoon.

6 THE SPECIAL MASTER: The request will be
7 denied. Mr. Kersich is being cross-examined,
8 and he said he doesn't know the number of parcels
9 and would be hard put to give a total acreage,
10 and that's the best he can do. And if there's
11 something you want to put in affirmatively
12 you're welcome, Mr. White, but I'm not going to
13 postpone the hearing.

14 Q (BY MR. WHITE) Mr. Kersich, in the Arapahoe
15 Unit --

16 A Yes, sir.

17 Q Did you find a logged hole within the 46 acre
18 parcel, Township 2 South, 3 East, Section 5,
19 located roughly in the NW 1/4 of the NW 1/4
20 classified 6 gravity, 2 sprinkler?

21 A NW 1/4 of the NW 1/4?

22 Q Yes. This was one of the ones that was on the
23 list. If you turn to the Arapahoe study area --

24 A Can I have the rest of the information first?

25 kersich-cross-white

1 Q 6 gravity, 2 sprinkler.

2 THE SPECIAL MASTER: What section?

3 MR. WHITE: Five.

4 Q (By Mr. White) The question is did you find
5 a logged hole within that area?

6 A May I look at my map?

7 Q Certainly.

8 THE SPECIAL MASTER: You look at what you
9 want to.

10 (Brief pause.)

11 Q (By Mr. White) While you're looking, let me
12 ask you,,did you make notes to that effect on
13 the sheets that we gave you?

14 A I got my own notes, sir.

15 Q It might be easier if you could refer to those.

16 A I'd like to work with this also. 2 South, 5 East,
17 just a minute.

18 Q I think that was 2 South, 3 East.

19 A I wrote it down -- 2 South, 3 East, excuse me.

20 Could I get the large photo, this is very
21 dark in this area.

22 Q Certainly.

23

end 1

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25 kersich-cross-white

1 MR. SACHSE: May it please the Court,
2 while the witness is looking for the evidence,
3 I want to move that the cross-examination of
4 this tract-by-tract business, whether a hole was
5 dug in a particular tract, be limited to another
6 half hour, and the grounds for that motion are
7 the following: There's already been full testi-
8 mony as to the basis of the soil classification
9 that was done and full cross-examination about it.
10 There has been full cross-examination about a
11 large sample of the particular tracts that have
12 been done.

13 It's been my experience that in suits where
14 one is dealing with tremendous detail such as
15 an accounting case, for instance, where it's a
16 question of the expenditure of money day by day
17 over a period of 20 years -- and there are such
18 cases -- that it's quite ordinary for the Court
19 or for the Master to permit cross-examination of
20 a sufficient sample of what was done to be able
21 to make conclusions as to the whole, but not to
22 require an accounting, for instance, that would
23 take a month to do to actually be done in the
24 Courtroom with everyone watching.

25 kersich-cross-white

1 MR. WHITE: I thought this would go very
2 quickly. I thought that was the purpose of the
3 recess yesterday afternoon.

4 THE SPECIAL MASTER: That's what I thought
5 too. I shouldn't think it would be all that
6 difficult to find some understanding that could
7 result in something mutually agreed upon in the
8 record as a result of this, but I suppose it's
9 folly on my part to try to raise it again.

10 We have spent most all of yesterday trying
11 to agree to this, so I'd say go ahead, Mr. White,
12 and if you are not through in an hour, we will
13 probably cut it off at that time and let you do
14 the balance of them on an offer of proof showing.

15 MR. WHITE: Your Honor, could I just have
16 a moment to ask Mr. Echohawk a question?

17 THE SPECIAL MASTER: Off the record for a
18 minute.

19 (Off-the-record discussion.)

20 THE SPECIAL MASTER: Do you want to go back
21 on the record?

22 MR. WHITE: Might as well, Your Honor.

23 THE SPECIAL MASTER: Let's do that.

24 THE WITNESS: Please excuse me. I'm just

25 kersich-cross-white

1 Now, as Mr. Echohawk said, this in no
2 way precludes Mr. White from getting into
3 evidence whatever he wants to as part of his
4 affirmative case to contradict what Mr. Kersich
5 has done or does it in any way preclude Mr.
6 White from testing the level of professionalism,
7 the level of activity in the field, that Mr.
8 Kersich went through because he's already tested
9 that, but at some point I think the Master has
10 to step in and draw some lines or this could
11 go on for three weeks.

12 THE SPECIAL MASTER: I had thought I drew
13 those lines yesterday, and I think Mr. White
14 recognizes that the lines were drawn, but I
15 reluctantly want to disapprove of any motion
16 that would say you have only got a half hour,
17 but I would suspect that about an hour and a
18 half from now I would want to wind this up.

19 MR. WHITE: Okay. At that time I can make
20 an offer of proof. Unless you want to grant
21 the motion now, and I can make the offer of
22 proof now.

23 THE SPECIAL MASTER: No, I don't want to
24 cut you off now.

25 kersich-cross-white

1 having a problem this morning.

2 MR. ECHOHAWK: Mr. White, are we inquiring
3 about 3 South, 2 East?

4 MR. WHITE: Yes.

5 MR. ECHOHAWK That might be shown on the
6 bottom of 1 South, 3 East.

7 THE WITNESS: Section 5, you inquired about
8 a tract in the NW 1/4 of Section 5, NW to NW, it's
9 6, 2, and it is 46 acres; is that correct, Mr.
10 White?

11 Q (By Mr. White) The question is is there a hole
12 within the exterior boundaries of that tract?

13 A Not in that particular tract, sir.

14 Q Okay. Would you go to Section 17, 20?

15 A But here again you cannot classify the lands
16 predicated on whether there is a hole in the
17 one tract. There is a hole north of that that is
18 120 inches deep and the lands are the same except
19 for the draw that goes down between them.

20 Q Mr. Kersich, I'd like to ask you if possible to
21 answer my questions yes or no, and if the answer
22 needs to be explained, go ahead and do so, but
23 if you want to talk about another tract that's
24 close by or some other feature other than that

25 kersich-cross-white

1 that I'm asking you about, that's appropriate
2 for redirect by your counsel.

3 MR. SACHSE: Your Honor --

4 THE SPECIAL MASTER: Please sit down,
5 Counsel. You don't have to -- that explanation
6 was not necessary, Mr. White.

7 MR. WHITE: Well, Your Honor --

8 THE SPECIAL MASTER: He answered his
9 question and he found something near enough to
10 the questioned subject matter that warranted his
11 explanation of it, and that's in full answer
12 to your question, and I don't think the lecture
13 was in order, but go ahead, Mr. White.

14 Q (By Mr. White) You say there is a draw going
15 between the two tracts?

16 A Yes.

17 Q Turn to Section 17 and 20.

18 THE SPECIAL MASTER: I might say yesterday
19 your questions followed in great sequence, is
20 this the same land form, and that is permitted
21 and he can say yes, it is, or no, it isn't, if
22 you want to do that.

23 Q (By Mr. White) Let me ask you: Is that the same
24 land form on the other side of the ravine?

25 kersich-cross-white

1 A Yes. Well, yesterday, when I used the term
2 "Land form," I used it very narrowly.

3 THE SPECIAL MASTER: You defined it.

4 MR. SACHSE: I object to the question.

5 Mr. Kersich said there was a draw. Mr. White
6 says a ravine. Is there another land form on
7 the other side of the ravine? There is no
8 testimony that there is a ravine there, and
9 Counsel shouldn't testify.

10 MR. WHITE: We must be getting hot, Your
11 Honor.

12 THE SPECIAL MASTER: Okay. Would you
13 answer the question? Is this the same land
14 form, was his question.

15 A (By Mr. Witness) In my discussion with my land
16 classifiers, the person that classified the land
17 said this was basically the same land form
18 through this area.

19 MR. WHITE: I would move to strike the
20 answer because it's based on hearsay.

21 THE SPECIAL MASTER: Motion denied.

22 THE WITNESS: I might say, if I could, about
23 land forms just to clarify everything, the way
24 I'm doing it today, land form, as I defined it

25 kersich-cross-white

1 yesterday, was a very narrow definition.

2 The land classifiers that were in the field
3 on the project tell me that land form in their
4 minds when they are classifying lands are lands
5 of similar masses --or mass of lands that have
6 similar characteristics, exhibit the same geo-
7 logic morphology or historical development.

8 Q (By Mr. White) Mr. Kersich, would it be fair
9 to say that for each of the parcels on the list
10 which the State provided you yesterday, you
11 found some bases aside from a hole within the
12 parcel upon which your land classifiers made
13 their determination?

14 A Yes.

15 Q Are there any other types of factors which were
16 used by your land classifiers or by you which
17 you have not described in your testimony concerning
18 these types of parcels on cross-examination?

19 A I can't answer whether or not there's something
20 I didn't describe. There are a number of things
21 that are used by the land classifiers in the
22 exercise of his judgment in the field as he views
23 a parcel, and whether I have covered everything
24 they have done, I cannot say.

25 kersich-cross-white

1 Q As we go through these parcels, would you please
2 indicate any additional factors which you relied
3 on for that particular parcel, and if there is
4 no change in the type of factors upon which you
5 relied, would you be able to simply state that
6 the same types of other factors resulted in the
7 classification assigned?

8 A Up to the best of my ability, I'll do that, yes.

9 Q Okay. Section 17, 20, the same Township, 2 South,
10 2 East. Do you find a 16-acre parcel classified
11 6 gravity, 3 sprinkler?

12 A Yeah. I'm off the bottom of the sheet here. I'm
13 going to have to get the sheet -- okay. I'm at
14 2 South, 2 East. Thank you.

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18 end 2

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1 A (Continued) We were talking about a parcel
 2 that's 40 -- 61 acres, sir?
 3 Q Yes, sir.
 4 A Yes, there's a parcel 61 acres, I've located
 5 it, sir.
 6 Q Are there any holes with -- logged holes within
 7 the boundaries of that parcel?
 8 A Not within the boundaries of that parcel, sir.
 9 Q Are there any other factors that you considered
 10 other than the type which you've previously
 11 described in making that classification?
 12 A Yes.
 13 Q What are they?
 14 A There's -- this is part of a large parcel
 15 that was delineated in this area. There were
 16 other delineations made within that parcel
 17 that changed the classification of those
 18 interdelineations. One of those delineations,
 19 for example, there is a deep hole of 13 foot
 20 in depth, there is another hole which has been
 21 logged as 72 inches, sir. Those are in the
 22 same parcel and were used to develop a general
 23 classification for the parcel.

24 The reason for the classification changing
 25 kersich-cross-white

1 in the 61-acre parcel appears to be primarily
2 topography, and it's downgraded from the rest
3 of the parcel. A portion of that parcel is
4 6 -- excuse me, 3 for gravity and as a 1 for
5 sprinkler. Another portion of that total
6 parcel is, I believe, 6 for gravity and 2 for
7 sprinkler, and the parcel that you're referring
8 to is 6 for gravity and 3 for sprinkler, so
9 obviously there are a few more concerns to
10 the land classifier within that area, and he
11 expressed those with his classification system.

12 Q What is the common land form which is represented
13 by the three parcels that you described?

14 A I can't tell the land form because I wasn't
15 there on the land looking at it. It's very
16 difficult for me to do it on this particular
17 photo.

18 Q So then you're unable to say those other holes
19 were in the same land forms; is that correct?

20 A This is one parcel, as I say, that contains
21 three separate individual delineations. Looking
22 at this photo here, I just can't delineate the
23 land form, but it's again, one parcel with
24 two holes in it.

25 kersich-cross-white

1 Q The 61 acres does not have a hole in it; is
2 that correct?

3 A That's correct.

4 THE SPECIAL MASTER: He said that.

5 MR. WHITE: I didn't understand his
6 last answer.

7 Q (By Mr. White) Let's go to the Riverton East
8 Unit, please, Township 1 North, 5 East.

9 A Okay, sir. 1 North, 5 East.

10 Q Section 17.

11 A Okay. I'm in Section 17, sir.

12 Q There's a 69-acre tract on the western side of
13 that, of that section. Do you find that?

14 I think it dips into fee lands.

15 A Is this the particular parcel you're referring
16 to?

17 Q We've got different maps again.

18 A Is this the parcel here?

19 Q Yes. And your work sheet that you're referring
20 to, the parcel that I gave you had a 41-acre
21 acreage.

22 A Yes. The 41 acres refers to the portion outside
23 the fee land. The 28 acres refers to the portion
24 inside the fee lands.

25 kersich-cross-white

1 Q So it's 41 acres?

2 A Yes.

3 Q Is there a logged hole within the exterior
4 boundaries of that 41-acre tract?

5 A No, sir, there's not. There is a probe.

6 Q Are there -- excuse me, I was going to ask you
7 if there are any other factors which you
8 considered other than those which you previously
9 described.

10 A Okay. There is a deep hole, 24 foot to sandstone
11 which is located due east of this parcel,
12 probably about three-quarters of a mile.
13 There are -- there is a probe hole within the
14 parcel itself. This again has been delineated
15 out as one large area of land with various inter-
16 delineations and changes in the classification.
17 This particular parcel has been classified 6-T;
18 3 sprinkler, showing light textured soils
19 within the top 12 inches, light textured soils
20 below that. Some gravel and a gradient feature,
21 which the gradient feature is the reason the
22 gravity classification has been reduced to 6.

23 There frankly are numerous holes all over
24 that area. Some of them I don't have the depth
25 kersich-cross-white

1 here, but we do have the deep holes to sandstone,
2 I said, which is located to barrier, and we do
3 have some other probes.

4 Q In what land form was your deep hole in?

5 A Here again, sir, I'm looking at about a second
6 generation aerial photograph, and I can't identify
7 the land form myself.

8 Q Is it true then that you do not know whether or
9 not the deep hole was in the same land form?

10 A At this point in time, I don't, but I do know --

11 THE SPECIAL MASTER: Yes it is true
12 or no it is not true, which is it?

13 THE WITNESS: At this particular time
14 I can't identify it.

15 THE SPECIAL MASTER: Yes, it is true.

16 Q (By Mr. White) Are you able to find a 34-acre
17 tract within that -- parcel within that same
18 Section 17?

19 A Would that be the tract you're referring to
20 in the SW 1/4 roughly of the SE 1/4 of that
21 particular section, sir?

22 Q Yes. What's the acreage that you show?

23 A I show 34 acres on this particular map.

24 Q Okay. Is there a hole within the boundaries of
25

1 that parcel?

2 A No, sir, there isn't.

3 Q Are there any other factors other than those
4 which you've generally described before which
5 you utilized in making your land classification
6 determination of that parcel?

7 A Our land classification of this parcel is made
8 basically by the same reasons I referred to
9 earlier. We have a deep hole located within
10 the basic parcel, that's hole no. 74, which
11 is 24 feet to sandstone. And we have other probes
12 and holes within the area. I believe we've got
13 one auger hole which is very close to that area.
14 It's about 120 inches in depth, sir.

15 Q Is the deep hole that you refer to hole no. 74?

16 A That's right. That hole's approximately 4,000
17 feet -- no, it's not that far, it's much less
18 than that, from that tract.

19 Q About 1,500 feet perhaps?

20 A I think the 1,500 would be correct, reasonably
21 correct.

22 Q Is it in the same land form?

23 A My answer to that question is the same as to
24 your previous question concerning that matter.

25 kersich-cross-white

1 Q Do you find a 14-acre tract classified 6 gravity,
2 2 sprinkler in that same Section 17?

3 A Yes, sir, I do.

4 Q Is there a logged hole within that tract?

5 A Not within the tract, sir. That delineates a
6 change --

7 THE SPECIAL MASTER: I think I will
8 overrule any further questioning on Section 17.
9 This is the third parcel within that section.
10 That answer will apply to this as it did the
11 prior 2. If not, please let me know, but I
12 think it reasonable to assume what you've been
13 testifying to applies to the rest of Section 17.

14 THE WITNESS: That's correct. We're
15 really referring to interdelineations.

16 THE SPECIAL MASTER: Do you want to
17 refer to the next section, Mr. White?

18 Q (By Mr. White) Yes, Section 3.

19 A Section 3, sir?

20 Q Yes.

21 A Section 3.

22 Q Do you find a 38-acre tract in the northern
23 quarter?

24 A There's a 38-acre tract, sir, but that looks like
25 kersich-cross-white

1 it goes up to, would be 2 North, 5 East also.

2 Am I looking --

3 THE SPECIAL MASTER: 2 North, 5 East.

4 Q (By Mr. White) Yes, it looks like it extends on
5 to the northern portion of the section.

6 A Excuse me, it's right on the borderline, 1 North,
7 5 East of 2 North, 5 East and extends to 2 North,
8 5 East.

9 THE SPECIAL MASTER: Is that the one
10 you asked about, Mr. White?

11 MR. WHITE: Yes, sir, it is, and I'm
12 trying to match up the sections.

13 Q (By Mr. White) Do you find your 2 North, 5 East
14 plate.

15 A Yes.

16 Q It shows 29 acres of overlap in addition to the
17 38 acres when the parcel moves into 2 North, 5
18 East, Section 35; is that correct?

19 A Potentially, sir, it looks like it does.

20 Q Within the entire area of the 38 acres plus
21 29 acres, is there a logged hole?

22 A Well, on the photos that I have here, sir, there
23 does not appear to be a logged hole.

24 Q Would your answer to the following questions be
25 kersich-cross-white

1 essentially the same with respect to Section 17?

2 A Yes, This is, again, a portion of a larger area
3 and it at least appears on this photo, I don't
4 have a large photo here, I don't think, and within
5 that area there is a deep hole that's 12 foot to
6 sandstone. There's some other holes which --
7 Well, there's one that you probably haven't got
8 a log on that, but it was logged last Friday and
9 shows 72 inches and augered right next to the
10 12 foot to sandstone hole, hole no. 96, a deep
11 hole, sir, and there are numerous holes or
12 probes within the area.

13 Q Is the deep hole no. 96 that you refer to in
14 the same land form or is it in a level, former
15 level area to the northeast of the parcel you've
16 described.

17 A May I take a moment to check on this?

18 (Brief pause.

19 A Again, from these aerial photos I can't tell
20 you whether or not we're within the same land
21 form.

22 Q Could you turn to another parcel in Section 3,
23 being a 48-acre parcel roughly in the center of
24 Section 3, being classified as 3 gravity, 2 sprinkler.

25 kersich-cross-white

1 A I don't have a -- I don't have a 48-acre
2 parcel there, sir.

3 Q I meant to say 45.

4 A Okay, I can find a 45-acre parcel.

5 Q I apologize. Is there a logged hole within the
6 exterior boundaries of that parcel?

7 A Not within the exterior boundaries of that parcel.
8 When that parcel is delineated from a separate
9 parcel, from a larger parcel of 115 acres
10 directly south of that, this is an attachment
11 to it, sir.

12 Q Is the parcel directly to the south of it part
13 of the same land form?

14 A I don't know. Again, I'm having difficulty
15 describing whether it's part of the same land
16 form, but it's very obvious that the classifier
17 has classified one parcel of about 158 acres
18 and delineated a portion of that into Class 1
19 soils of about 113 acres, separated from that
20 45 acres of soils which he felt had some
21 waterholding capacity problems and some leveling
22 problems and made that Class 3 gravity and Class
23 2 sprinkler. Located within the boundaries of
24 that entire parcel is a logged hole, no. 11,
25 kersich-cross-white

1 which shows 72 inches in depth.

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kersich-cross-white

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- 1 Q (By Mr. White) Is there a hole within the 45-
- 2 acre parcel?
- 3 A No.
- 4 Q Is the 45-acre parcel part of the same land form?
- 5 A THE SPECIAL MASTER: He's already answered
- 6 that.
- 7 MR. WHITE: I'm sorry. I have asked that
- 8 question so many times.
- 9 Q (By Mr. White) Isn't it true that there's a
- 10 gully or a ravine that runs into those two parcels?
- 11 A I have difficulty making that out. There might
- 12 be a difference in slope and -- there might be a
- 13 change there, but I can't make it out on this
- 14 map, sir.
- 15 Q Okay. Section 20, please.
- 16 A The same Township?
- 17 Q Yes, sir. Do you find a 42-acre parcel in the
- 18 SE to the NW roughly?
- 19 A I find a 42-acre parcel that looks like it's
- 20 about the east half or three-quarters of the NW
- 21 1/4 of Section 20.
- 22 Q Is there a logged hole in the exterior boundary
- 23 of that parcel?
- 24 A No, there's not. However, there again, there are
- 25 kersich-cross-white

1 conditions here.

2 THE SPECIAL MASTER: What's the classification
3 of that parcel?

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

5 THE WITNESS: 6 gravity, 2 sprinkler, sir.

6 THE SPECIAL MASTER: All right.

7 Q (By Mr. White) Are any of the deep holes
8 surrounding that parcel in the same land form?

9 A Again, this is the same area between 17 and 20
10 that we were discussing previously, and this
11 whole area has been mapped as one large unit.
12 There is a deep hole located in a portion of
13 this unit. This particular area appears to be an
14 interdelineation to take into consideration the
15 fact that this appears to be on this map at
16 least a drainage way here beginning at the upper
17 part of a drainage way and the lands were
18 downgraded for gravity, for that matter, and
19 left two sprinkler.

20 Q Isn't it true that that 42-acre tract lies
21 between two gullies?

22 A Between two gullies? I'm not sure of that.
23 No, I couldn't say as to that from here.

24 Q Let's go to Township 2 North, 5 East.

25 kersich-cross-white

1 A Okay.

2 Q Sections 35 and 36. Do you find a 148-acre
3 parcel classified, I think, 3 gravity and 4
4 sprinkler?

5 A A 148-acre parcel -- the only 148-acre parcel I
6 have there is located in the NW 1/4 of Section 36
7 and a portion of the NE 1/4 of Section 35, and
8 it's classified as 3 S -- which would be 3 soils
9 topography -- or soils and 3 sprinkler and have
10 medium textured soils and medium sub-soils and
11 some gravels. Is that what you wanted?

12 THE SPECIAL MASTER: It's classified in
13 what gravity?

14 THE WITNESS: Three, sir.

15 THE SPECIAL MASTER: Three and three then?

16 THE WITNESS: Yes, sir.

17 Q (By Mr. White) Is there any logged holes within
18 the exterior boundaries of that parcel?

19 A There are no logged holes within the exterior
20 boundary of that parcel, sir, but again there are
21 the other factors.

22 Q Are any of the deep holes that surround it in the
23 same land form?

24 A Here again, it's very difficult for me to define
25 kersich-cross-whate

4-4

1 land form here. There is a deep hole located --
2 deep hole 98, which shows 20 foot to sandstone.
3 It's located east of the parcel, sir.

4 Q I notice directly north of that 148-acre parcel
5 there appears to be another parcel that's roughly
6 rectangular or square in form that's also
7 classified 3, 3, and there's an arrow between
8 the two parcels.

9 Does that mean that the acreage within the
10 northern parcel is included within the 148 acres?

11 A Right now, sir, I couldn't tell you without going
12 to our tab sheets. That's the same sheets that
13 we gave you a copy.

14 Q We'll go over those later on and maybe we can come
15 back to that.

16 In that parcel to the north are there any
17 logged holes?

18 A There appear to be none, no.

19 Q Directly to the south is another parcel, I believe,
20 of 44 acres classified 6 gravity, 3 sprinkler; is
21 that correct?

22 A That's correct.

23 Q Are there any logged holes within its exterior
24 boundaries?

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1 A No, sir, there is not. This appears -- this
2 particular parcel appears to be a change in
3 elevation between these tracts, and it has been
4 downgraded from 3 gravity to 6 gravity, and the
5 sprinkler classification of 3 remains the same,
6 sir.

7 Q Sections 33 and 34 of the same Township, please.

8 THE SPECIAL MASTER: Any size of parcel?

9 MR. WHITE: I'm trying to figure it out.

10 THE SPECIAL MASTER: I should not have asked.
11 Go ahead.

12 MR. WHITE: That's all right.

13 THE WITNESS: I wonder if I could ask to see
14 the large photo? This is very dark.

15 THE SPECIAL MASTER: You see whatever you
16 want to see.

17 MR. WHITE: I would like to see it too
18 because I'm having a difficult time reading my
19 copy. I can't tell whether it's 64 or 73 acres.

20 Q (By Mr. White) Do you find the 64-acre tract
21 that lies along the border between Sections 33
22 and 34 in Township 2 North, 5 East? It's class-
23 ified 2 gravity, 2 sprinkler.

24 A Yes, I do.

25 kersich-cross-white

1 Q Is there a logged hole within the exterior
2 boundaries of that parcel?

3 A No, sir, there is not. Again, there are the
4 same conditions though present here as in the
5 other parcels.

6 Q Could you point out the location of a deep hole
7 in the same land form as that parcel?

8 A I'm not sure that land form -- or, excuse me --
9 a deep hole was used here. This particular tract
10 was classified by Ross Waples. Chick Smith, our
11 senior classifier, was also there. Mr. Waples
12 informed me that there was a cut bank on the
13 edge of the parcel that he was able to view the
14 area, and the depth in his opinion he could not
15 find barrier in that position to be of concern.

16 Q Will Mr. Waples and Mr. Smith be available to
17 testify with respect to the personal --

18 MR. SACHSE: Objection. That's not a
19 question to ask a witness. That's up to the
20 attorneys.

21 MR. WHITE: I might ask Counsel for the
22 United States whether they will make them available
23 as witnesses?

24 THE SPECIAL MASTER: Why don't you ask that

25 kersich-cross-white

1 after you complete the witness because you are
2 running out of time?

3 MR..ECHOHAWK: I think it's appropriate
4 for the witness to rely upon his staff.

5 THE SPECIAL MASTER: No problem.

6 Go ahead, Mr. White.

7 Q (By Mr. White) Would you turn to 1 South, 4 East,
8 please?

9 THE SPECIAL MASTER: 1 North --

10 MR. WHITE: 1 South, 4 East, sir.

11 THE SPECIAL MASTER: Thank you.

12 Q (By Mr. White) Section 21.

13 A Section 21, sir? Yes.

14 Q Do you find a 15-acre tract in the north central
15 portion of that section?

16 A A 15-acre tract, yes, I do, sir.

17 Q Classified 6 gravity, 3 sprinkler?

18 A That's correct, sir.

19 Q Are there any holes within its exterior boundaries?

20 A Not within its exterior boundaries, but there
21 are certainly a number of holes within that entire
22 parcel that was delineated.

23 Q Are they within the same land form as that 15-acre
24 parcel?

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1 MR. ECHOHAWK: Objection, Your Honor. I
2 believe the witness has already testified that
3 he can't address particular land forms. That's
4 something that the professional land classifier
5 in the field on the ground can answer, and he
6 does so and he records his judgment on the aerial
7 photographs and that particular item goes into
8 the classification along with very many other
9 professional judgments that the classifier makes
10 on the land, and I think we've had enough of
11 this line of questioning of where he asks the
12 witness about the land form, the witness has
13 already expressed what he understands about the
14 land form, but he can't address a particular
15 thing that the land classifier can and has
16 recorded within his classification. I think
17 questioning along this line is improper from now
18 on.

19 THE SPECIAL MASTER: I appreciate the
20 objection. I'm going to overrule it only because
21 we have a few more minutes left of this and the
22 witness has on one or two occasions as we go
23 from different Township to Township expressed a
24 slightly different form of the land form answer,

25 kersich-cross-white

1 so we can let it stay for what few are left.

2 He has already answered some by saying the same

3 answer as to land form which should do the job.

4 Q (By Mr. White) Let's go to the North Crowheart
5 area, please.

6 A Can you give me a Township and Range, please?

7 Q Start with Township 2 North, 1 East, please.

8 Section 22. Do you find a 92-acre tract that's
9 primarily in Section 22, but overlaps a bit into
10 a section to the east, which would be 23, classified
11 6 gravity, 4 sprinkler?

12 A I find what appears to be a 92-acre tract, yes.

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end 4

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1 Q (By Mr. White) Is it classified 6 gravity,
2 4 sprinkler?

3 A Yes. Let me just state for the record, I'm
4 not sure whether that's 92 or 42. It's
5 difficult to read this sheet.

6 THE SPECIAL MASTER: Can you help on
7 your map?

8 MR. WHITE: Mine looks like 92, but
9 I'll let Al take a look at it if you like.

10 THE WITNESS: All right.

11 Q (By Mr. White) Is that 92?

12 A I think it is. Here again, you have to go
13 back to the tab sheets to find out.

14 Q Is there a logged hole within the exterior
15 boundaries of that parcel?

16 A Not within that parcel, no, sir.

17 Q In the NW 1/4 of that parcel do you find a
18 62-acre tract classified 2 gravity, 1 sprinkler?

19 A Yes, but I guess back on my other answer with
20 regards to that 92-acre tract, there's information
21 in that area, and I think that should be there.

22 Q In the same land form?

23 A Well, you've got my answer as to land form.

24 THE SPECIAL MASTER: What do you mean
25 kersich-cross-white

1 there is information in the area?

2 THE WITNESS: Okay, sir. Located just
3 to the south of the portion of that particular
4 area there's a 72 inch deep logged hole that's
5 located in Class 2 lands, and just to the north
6 of that there is pit that was dug 96 inches deep.
7 My note here says that roots were visible. And
8 this is the type of information I'm referring to.

9 And again, this is a part and parcel of a
10 larger parcel which has been downgraded to 6
11 gravity and 4 sprinkler. It appears to be
12 primarily a concern with topography, and the
13 note "barrier" is placed on it.

14 THE SPECIAL MASTER: Thank you.

15 THE WITNESS: Okay. I didn't mean
16 to interrupt, Mr. White.

17 THE SPECIAL MASTER: You didn't
18 interrupt him, I didn't.

19 THE WITNESS: Now, we're discussing
20 a 62-acre parcel located in the upper --

21 Q (By Mr. White) Northwest --

22 A -- portion of the NW 1/4, I see it.

23 Q Classified 2 gravity, 1 sprinkler?

24 A 2 -- I believe it's 3 gravity and 1 sprinkler, sir.

25 kersich-cross-white

1 Q Okay. We got different maps again.

2 Is there a logged hole within the exterior
3 boundaries of that parcel?

4 A No, there is not.

5 Q Is there any -- is there a logged hole within
6 the same land form?

7 A With regards to the land form, I'm not going
8 to answer that question because I can't from
9 this map. But I do point out there is a, just
10 due east of the hole, and I'm going to guess now,
11 about 1,500 feet, there is a deep hole that says
12 32 feet to cobbles.

13 Q But you don't -- I'm sorry.

14 A And obviously this is part of the information
15 that was used. Again, this particular 52-acre
16 parcel is an interdelineation of a larger area
17 that's been sketched out here by the land
18 classifier in the field. There is a probe
19 located just to the north and slightly to the
20 east.

21 There's another logged hole due south of
22 this parcel. There's been a change in
23 classification from -- the land directly to the
24 north of this, within that small interdelineation,

25 kersich-cross-white

1 has been classified 6 for gravity and 2 for
2 sprinkler, and this parcel has been classified
3 as 3 for gravity and 1 for sprinkler.

4 Q Are any of the holes you refer to in the same
5 land form?

6 THE SPECIAL MASTER: He's answered
7 that.

8 MR. WHITE: I didn't know whether
9 he referred to those same ones.

10 THE SPECIAL MASTER: He said he couldn't
11 answer that.

12 Q (By Mr. White) Okay. Same township, Sections
13 15 and 16 should be a 98-acre tract in there.

14 It lies among the common border of those
15 two sections, Class 6 -- excuse me, gravity,
16 Class 3 sprinkler.

17 A That's correct, sir, I have it here.

18 Q Is there a logged hole within that parcel or
19 the exterior boundaries of that parcel?

20 A No, there's not a logged hole within that
21 boundary.

22 Q Is there a logged hole within the same land form?

23 A My answer would be the same answer I had before.

24 I'm having problems mapping out the land forms,

25 kersich-cross-white

1 but I would point out that this is, again, a
2 portion of this real large parcel that was
3 sketched out and then various portions of that
4 parcel had different classifications predicated
5 on particular problems that our land classifier
6 noticed in the field. This particular parcel
7 is 6 gravity, 3 sprinkler, indicates a medium
8 topsoil, a light subsoil, shows gravel grade and
9 J factor, which has a problem with regards to
10 shape and size.

11 This is less than a mile away, the deep hole
12 that shows 32 feet to cobbles.

13 Q In Sections 9, 10 and perhaps 16, do you find
14 a 47-acre tract classified as 6 gravity, 3
15 sprinkler?

16 A How many acres is that, sir?

17 Q I believe it's 47, Al.

18 A Maybe I'm looking in the wrong place, but I
19 just can't seem to spot it right now.

20 THE SPECIAL MASTER: Was it in the
21 same sections, Mr. White, 16 and 15?

22 MR. WHITE: It was 9, 10, 15 and 16,
23 I believe, Your Honor.

24 Q (By Mr. White) This is the one I was looking at,
25 kersich-cross-white

- 1 Al, right here. We got a different map.
- 2 A Okay. I have a 30-acre portion outside of the --
- 3 Q (By Mr. White) Okay. Do you find a 30-acre
- 4 parcel on the common boundaries between Sections
- 5 9 and 16?
- 6 A Yes, I do.
- 7 Q Does that 30-acre parcel have a logged hole within
- 8 it?
- 9 A It does not have a logged hole within it.
- 10 Q Any other logged holes around it?
- 11 A Well, there's a logged hole just -- oh, east
- 12 and very slightly north of it. It's hole no.
- 13 6.
- 14 Q About a half a mile away?
- 15 A Oh, no, no. Maybe a quarter of a mile, three-
- 16 eighths, somewheres in there. That's what I'm
- 17 referring to.
- 18 Q Now, the classified land that I was referring
- 19 to was the land outside of the fee area:
- 20 A Well, that's right, sir.
- 21 Q Okay. And how far away from that land outside
- 22 the fee area is that logged hole 6?
- 23 A Okay, I'm sorry. Well, wait a minute, I'm
- 24 going to have to clarify that answer. The
- 25 kersich-cross-white

1 particular 30 acres you're referring to is
2 part of a large delineation of another 50
3 acres and when the classifier classified this
4 area he classified it through a fee boundary
5 because he was establishing the outside lines
6 of all the parcels and coming back and delineating
7 that. Later we got the boundaries of the fee
8 lands.

9 THE SPECIAL MASTER: Did his total
10 include any fee land?

11 THE WITNESS: No, sir, that's what
12 I'm going to point out. Later we put the
13 boundaries of the fee lands on and we separated
14 that tract, as a portion outside of the fee
15 land and portions inside the fee land, but the
16 parcel of land itself is an interdelineation of
17 a larger parcel and that parcel has later been
18 split by boundary lines, so the proper portion
19 of land would be assigned to trust and assigned
20 to fee.

21 THE SPECIAL MASTER: Could it be
22 practicably -- I have no question but that it's
23 all arable by your definitions, but as a practical
24 matter it could hardly be irrigable, could it,

25 kersich-cross-white

1 if it belonged to two different owners that way?

2 MR. ECHOHAWK: Your Honor --

3 THE SPECIAL MASTER: You wanted to
4 object to my question; you probably got a good
5 reason. I want to strike my own question.

6 Let's go on with what you're doing.

7 MR. WHITE: I'll ask the question,
8 Your Honor.

9 THE SPECIAL MASTER: We'll cross that
10 bridge down the road a little bit, I suspect,
11 so please disregard the question. But you
12 confused me a little bit with the business of
13 imposing the fee land boundaries over the study
14 of your arable land.

15 THE WITNESS. The thing I see here,
16 you'd have to classify the land as a group, then
17 you put the boundaries on, then you break it
18 down into the tracts that lie within and without,
19 and then, of course, the other portion as to
20 whether that would eventually be irrigated,
21 that's the question here.

22 THE SPECIAL MASTER: What classification
23 did you give that 30-acre tract?

24 THE WITNESS: That 30-acre tract is
25 kersich-cross-white

1 classified 6 for gravity and 3 for sprinkler.

2 THE SPECIAL MASTER: Okay. Go ahead.

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1 Q (By Mr. White) Are there any other holes in the
2 area around that 30-acre tract?

3 A No, this is classified all as part of this much
4 larger area that we're looking at. It appears
5 we are on a bluff above the river here, or at
6 least some rise above the river. I can't tell
7 from this aerial photo.

8 This is an instance where the land classi-
9 fier may have been able to use an exposed bank
10 or did very likely use an exposed bank to
11 determine where the barrier would be in this
12 area.

13 MR. WHITE: Your Honor, I would move to
14 strike the answer on the basis of speculation.

15 THE SPECIAL MASTER: Overruled.

16 Q (By Mr. White) The same Township, on the common
17 border between Sections 26 and 35, do you find
18 a 67-acre parcel classified 6 gravity, 2 sprinkler?

19 A Yes. I'm sorry. Excuse me.

20 Q Is there a logged hole within the boundaries
21 of that parcel?

22 A No, I do not see a logged hole within the
23 boundaries of that parcel, sir.

24 Q Are there any other logged holes in the area?

25 kersich-cross-white

1 A This parcel again is part and parcel of a much
2 larger parcel, and the land directly north,
3 for example, is 3 gravity, 3 sprinkler. There is
4 some land located around as 2 gravity. This
5 particular parcel has been downgraded to 6
6 gravity, 2 sprinkler.

7 The notation of grade and leveling has been
8 put on it, which is probably the reason that it
9 was downgraded.

10 The textures of light, coarse to light soils
11 have also been put on it, and that's one of the
12 reasons for downgrading it for gravity. There is
13 a 72-inch deep logged hole due north of the parcel
14 though.

15 Q Are any of the logged holes to which you referred
16 in the same land form?

17 A No, sir, not here.

18 THE SPECIAL MASTER: That sustains my over-
19 ruling you a little bit ago because he can
20 answer yes or no once in a while on that land
21 form question. Retired old Special Masters like
22 to spot that once in a while that we are going in
23 the right direction occasionally in the rulings.

24 Go ahead, Mr. White.

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1 Q (By Mr. White) Do you find a 35-acre tract,
2 same parcel -- excuse me -- 15-acre tract in the
3 NW 1/4 of Section 35 in the same Township classi-
4 fied 3 gravity, 6 sprinkler?

5 A Yes, I find that.

6 Q Is there any logged hole within the boundaries
7 of that parcel?

8 A No, sir, there's not.

9 Q Are there any logged holes in the area?

10 A It appears that this parcel again is part of a
11 very large parcel, and in that other parcel there
12 are two logged holes.

13 Q Are either of those logged holes within the same
14 land form?

15 A I can't answer that. I'm having difficulty --
16 I cannot answer that question.

17 Q Let's go to 1 North, 1 East, please, still in the
18 South Crowheart area.

19 THE SPECIAL MASTER: What section?

20 MR. WHITE: It's Section 13, Your Honor.

21 Q (By Mr. White) And it's classified --

22 A Can I have a second to catch up on my notes here?
23 1 North, 1 East?

24 THE SPECIAL MASTER: Yes.

25 kersich-cross-white

1 THE WITNESS: Okay. I have 1 North, 1 East.

2 Q (By Mr. White) Do you find a 127-acre parcel
3 there classified 2 gravity, 3 sprinkler?

4 A Yes, I do.

5 Q Is there a hole within the exterior boundary of
6 that parcel?

7 A No, there does not appear to be.

8 Q Are there any holes in the area?

9 A Well, again this parcel has been classified as
10 a delineation of a much larger parcel, and there
11 are holes within the total parcel, yes, logged
12 holes.

13 Q Are any of those logged areas in the same land
14 form?

15 A I can't answer that from this photo.

16 Q Witnin that 127-acre parcel do you find a 20-acre
17 parcel that's classified 2 gravity, 1 sprinkler?

18 A Yes, I do find an interdelineation within that
19 parcel that's been upgraded to 2 gravity, 1 sprinkler.

20 Q Is there any hole within the exterior boundaries
21 of that parcel?

22 A Again that parcel is a portion of that total
23 parcel and there is no holes within that --

24 THE SPECIAL MASTER: Is that parcel within
25 kersich-cross-white

1 the 127-acre parcel?

2 THE WITNESS: Yes.

3 THE SPECIAL MASTER: What reason is the
4 upgrading there for the 6 G to 2 G?

5 THE WITNESS: Okay, sir, on the parcel that's
6 6 gravity and 2 sprinkler, the notation of
7 gradient has been placed. In other words, it
8 has a medium textured surface soil, medium textured
9 subsurface soil. He has a gradient in there
10 which appears to be somewhat more than eight
11 percent because it's 6 for gravity and he had
12 a J factor. On the particular parcel here that
13 he upgraded to 2 and 1 he had medium textured
14 soils in both the surface and subsurface. He
15 had a J factor --

16 THE SPECIAL MASTER: How did he know that
17 about subsurface?

18 THE WITNESS: He puts in probes. Not all
19 the probes would be listed, sir, and there may
20 be other physical evidence such as a cut bank
21 or something of that nature within the area, but
22 it's interesting that within this entire area
23 that the primary soils are both medium textured
24 surface and medium textured subsurface.

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1 There is one exception here on the right-
2 hand side where he has a light surface soil and
3 a medium textured subsurface soil.

4 THE SPECIAL MASTER: Thankyou.

5 Or do you want to thank me?

6 MR. WHITE: I was going to thank you, Your
7 Honor.

8 I'm trying to remember where I was.

9 Q (By Mr. White) Are there any other holes in the
10 general area?

11 THE SPECIAL MASTER: He's answered --

12 A Yes, there are some holes in the general area,
13 yes.

14 Q (By Mr. White) Are any of the other holes in
15 the same land form?

16 A This I cannot answer.

17 Q Within that same parcel there's a 56-acre tract,
18 is there not, that lies on the boundaries between
19 Sections 13 and 14 that's classified 6 gravity,
20 3 sprinkler?

21 A Yes.

22 Q Is there any hole within the exterior boundaries
23 of that 56-acre tract?

24 A No, there's no holes within the boundaries of that
25 kersich-cross-white

1 particular tract. It lies again as part of this
2 bigger tract.

3 Q What was the basis of the classification of
4 that parcel?

5 A Well, that parcel is located between holes 3
6 and 4, and it's then -- the parcel on the left
7 or the west side is classified as 3 gravity, 1
8 sprinkler. The parcel directly to the east of
9 that is classified as 6 gravity, 2 sprinkler.

10 This has been classified as 6 gravity, 3
11 sprinkler, which means it has some deficiencies
12 from the sprinkler standpoint, and this has
13 been brought to the attention of the agricultural
14 engineer.

15 Q Isn't it true that there is no fractional map
16 symbol for that 56 acres which would describe
17 those deficiencies?

18 A That's very true, but in an instance like this
19 normally the soils themselves are the same as
20 the soils on either side, and in this instance
21 this could either be a small beginning of a
22 drainage way or things of this nature which might
23 be a little bit rougher to irrigate, and, therefore,
24 the class has been downgraded to accommodate that

25 kersich-cross-white

1 potential deficiency.

2 Q How do you know that the soils in what you
3 thought might be a drainage way would be the
4 same as the parcels on either side?

5 A Well, the land classifier that was in the field
6 looked at all of these things. He did an inter-
7 delineation to bring to the attention of the
8 people involved that there are some higher
9 deficiencies here in his estimation.

10 Had the soils been different in texture
11 or form or whatever, he would have reported that.

12 Q Just to the east of that 56-acre tract isn't
13 there an 18-acre tract that's classified 1
14 sprinkler and has no hole in it and has no map
15 symbol fraction describing the soil in it?

16 A That's correct.

17 Q And about an eighth of a mile to the north of
18 the 56-acre tract -- that would be in Section 14 --
19 isn't it true that there's a 24-acre tract that's
20 classified 6 gravity, 3 sprinkler, no holes in
21 it, and no fractional symbol?

22 A That's correct, because he also downgraded that.
23 If you'll look, the particular parcel that
24 surrounds that parcel that you are discussing at

25 kersich-cross-white

1 this point in time has a 3 gravity, 1 sprinkler,
2 classification. This particular portion has a
3 6 gravity and 3 sprinkler, so he's downgraded
4 the gravity to 6 on this one. He's downgraded
5 the sprinkler from 1 to 3, so in his estimation
6 there are obviously more deficiencies there.

7 There was nothing there to report with
8 regard to the soils texture, but he wanted to
9 alert the agricultural engineers that that land
10 would have the characteristics of Class 3
11 sprinkler rather than Class 1.

12 Q What does the dashed line following the
13 northern portion of that boundary, comprising
14 the northern portion of that boundary, mean?

15 A That particular line signifies the boundary of
16 the parcel in his estimation.

17 Q Is that estimated boundary or --

18 A No, that's a boundary that he's reported in the
19 field as he walked along and did that.

20 Q I was just curious why in some places you use
21 a solid line and other places a dashed line.

22 A I don't know that I can answer that directly
23 now, but it certainly delineates the boundaries
24 in his estimation, in his professional opinion.

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1 Q Immediately to the north of the 36-acre tract --
2 excuse me -- the 18-acre tract we just discussed,
3 and that would be in Section 12, the same Town-
4 ship, 1 North, 1 East, do you find a 36-acre
5 tract which is part of a larger tract which
6 extends to the next Township to the east? That
7 would be 1 North, 2 East.

8 A Yes, I do.

9 Q Is there any logged hole within that parcel,
10 that 36-acre parcel?

11 A The tract we are looking at here now, is on the
12 boundary of 1 North, 1 East, so I believe before
13 I answer that question I need the time to go
14 look at 1 North, 2 East.

15 THE SPECIAL MASTER: While he's doing that,
16 I notice that the time is 10:30, Mr. White, and
17 in reviewing the past hour we have 20 examples
18 covering probably more than 1,000 acres of the
19 7,000 acres that you stated earlier, and that
20 added to the acreage and examples of yesterday
21 gives, I think, the Master sufficient material
22 in which to base a judgment call, and from here
23 on out you may make an offer of proof.

24 MR. WHITE: Do you want to take a break before

25 kersich-cross-white

1 I do that?

2 THE SPECIAL MASTER: Do you need some time,
3 young lady?

4 THE REPORTER: Yes.

5 (At this time a recess
6 was taken.)
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MR. WHITE: Okay, Your Honor, we would now at this time make an offer of proof that if asked, Mr. Kersich would testify that within the following parcels of land, which he classified as either gravity or sprinkler, and I will indicate which --

MR. SACHSE: Your Honor, I hate to do this, but I have to object to this offer of proof. Mr. White can't offer as evidence that he would put in, that Mr. Kersich would testify a certain way. Mr. White later on in the case will be able to -- to have his own witness testify that these sections do not have this kind of a hole in it, but there's no reason why the Court or the trial should accept as true, if Mr. Kersich were asked about a whole series that he has not been asked about, that he would testify that there was no hole in some of these. Some he's been asked about, he said, yes, there is a hole or there's a hole in the larger tract or there have been probes in it, which are holes, and it seems to me that Mr. White really has gone as far as he can go in the cross-examination, and that the rest of this properly belongs to his case in chief.

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MR. WHITE: Do you want me to respond?

THE SPECIAL MASTER: It may be, but I'm going to overrule your objection, Mr. Sachse, on the basis that I've already permitted as of yesterday this offer of proof, and I'd have to reverse myself, and I'm not inclined to do that. And the reason I'm not inclined to do that is there is in evidence now, I think, close to forty specific examples of parcels where an answer is either no probe or no hole or qualified matter of that or nothing in the area or other factors or criteria considered or something other than that that was considered. I think the evidence is sufficient for me to conclude, to make conclusions regarding the credibility, competence, probative value of that evidence and I don't want to hear another hour or two or day or two of it, but I will permit Mr. White to give a list of those areas that he would ask about and in which he feels the answer would be similar to what's been given, that way he doesn't have to put words in the witness's mouth as he goes on to his offer of proof. And I think that's what he's trying to do.

Now, you may use the word triggered off

1 the objection by saying if Mr. -- the witness
2 were permitted to answer, he would answer that
3 there were no holes. We would not serve that.
4 The offer of proof is that you would have in-
5 tended, if you were permitted to do so, ask
6 about these, and you may conclude that the
7 answers would have been similar as to those
8 given in the prior forty instances. That's what
9 I'm permitting.

10 MR. SACHSE: I ask then, Your Honor,
11 that the offer of proof be as precise as Mr.
12 White can make it, that he at least say that
13 the witness would testify that there's no
14 logged auger hole whatsoever. We're not talking
15 about probes, as to which --

16 THE SPECIAL MASTER: Probes.

17 MR. SACHSE: As to which --

18 THE SPECIAL MASTER: Probes are
19 excluded. The witness has already said there
20 are many probes which are not even part of a
21 record, but most of the questions that Mr. White
22 has asked have been specifically was there a
23 hole, looking to proof, that of depth to barrier.
24 And I think that's what you wish to establish
25 by the offer of proof.

1 All right, let's go ahead, Mr. White, and
 2 if you'd be careful in your words, I'd appreciate
 3 it.

4 MR. WHITE: I might say, Your Honor,
 5 it's up to me, not Mr. Sachse of what offer of
 6 proof I make. It's not a part of the record
 7 that's considered by you; the liberty is
 8 completely mine.

9 THE SPECIAL MASTER: I have given it
 10 to you. All I'm asking is please don't try
 11 to abuse it.

12 MR. WHITE: Okay. Your Honor, our
 13 offer of proof is as follows: If I were allowed
 14 to question Mr. Kersich, he would testify that
 15 with respect to the following parcels which
 16 have been classified by -- as arable land in
 17 the classes which I will indicate, he would
 18 state, one, that within the exterior boundaries
 19 of those classified parcels there are no logged
 20 holes. And two, that he does not know whether
 21 or not any logged holes in the area of that
 22 parcel, but outside its boundaries, are within
 23 the same land form.

24 The parcels which I referred are as
 25 follows: Starting in the South Crowheart area,

1 study area, Township 1 North, 1 East, Section 12,
2 a parcel of approximately 36 acres lies roughly
3 in the SE 1/4, it's classified 2 gravity and
4 1 sprinkler. That parcel also continues into
5 Township 1 North, 2 East, Section 7, which is
6 approximately in the SW 1/4 of the SW 1/4 com-
7 prising 16 acres, additional 36.

8 The second parcel would be in Township 1
9 North -- excuse me, I'd like to stay in -- Let
10 me start again. Second parcel is Township 1
11 North, 2 East, still in South Crowheart, Section
12 4, approximately SW 1/4 of --

13 MR. MEMBRINO: May I interpose a remark
14 at this point. I'm concerned about this offer
15 of proof in the context of Wyoming Rules of
16 Evidence 103, which says rulings on evidence:
17 Error may not be predicated upon a ruling which
18 admits or excludes evidence unless a substantial
19 right of a party is affected. And moving down
20 to two, Offer of Proof: In case the ruling is
21 one excluding evidence, the substance of the
22 evidence was made known to the Court by offer
23 or was apparent from the context within which
24 questions were asked. And it sounds to me like
25 that's exactly what's happening here, the substance

1 of the evidence is being made known to the Court
2 in this offer of proof.

3 MR, WHITE: That's what an offer
4 of proof is all about, Your Honor,

5 THE SPECIAL MASTER: The substance
6 of the evidence is precisely what I am
7 excluding because I've heard enough of the
8 substance of the evidence, and I said
9 yesterday, in denying several motions to
10 terminate this line of cross-examination,
11 that I wanted to hear the reasonable amount
12 of this type of evidence, and I think I have now,

13 All I want really from Mr, White is acreage
14 totals, and that's all I'm making.

15 I have listened to evidence covering
16 perhaps a thousand to two thousand acres. Now,
17 he probably has evidence of another thousand
18 to two thousand more acres, and that's all
19 I'm interested in.

20 MR. MEMBRINO: Overriding this area
21 is the Government's objection, Your Honor,
22 that the characterization of the parcel as not
23 having a hole is irrelevant to --

24 THE SPECIAL MASTER: It may be to
25 it's being classified as arability, that may

1 be true. This entire line of reasoning may not
2 have any bearing on whether this is arable, but
3 I can't deny the asking on this basis now.

4 MR. WHITE: May I go ahead?

5 THE SPECIAL MASTER: The case in chief
6 coming up will have direct bearing on this. I
7 think Mr. White can continue with his offer of
8 proof.

9 MR. MEMBRINO: I have just one more
10 point, and that is that the citations that Mr.
11 White is giving should not themselves be given
12 as evidence; they are not evidence.

13 THE SPECIAL MASTER: Well, they're not
14 in evidence. Of course, I think he can go
15 down the list if he wishes and say we have
16 the following parcels one in 36, one in 9,
17 whatever he wishes, but if he wants to throw
18 in the sections, I'm not going to object to
19 that. This is what I hoped the two parties
20 could have agreed to when we took an afternoon
21 off yesterday and not having that agreement,
22 I wish to permit it now.

23 * * * * *

1 MR. WHITE: Your Honor, I cannot remember
2 where I left off.

3 THE SPECIAL MASTER: You left off on Section
4 4, No. 2, South Crowheart. We got two in so far, one
5 36 acres and 16 acres.

6 MR. WHITE: Okay. I'm still in the South
7 Crowheart area. Township 1 North, 1 East, Section 4,
8 8-acre parcel, classified 3 gravity, 3 sprinkler, in
9 the SW 1/4 of Section 4;

10 Township 1 North, 2 East, Section 4 again,
11 21-acre parcel in the SW 1/4, classified 6 gravity,
12 3 sprinkler;

13 Remaining in the same Township until I
14 indicate differently, in Section 13, Township 1 North,
15 2 East, 87-acre tract, classified 3 gravity, 3 sprinkler,
16 located in the NE 1/4 of the SE 1/4;

17 The next parcel, same Township, Sections 4
18 and 9, comprising 10 acres, classified 3 gravity, 3
19 sprinkler, located in the SE 1/4 of the NE 1/4;

20 Same Township, Section 6, 10-acre tract
21 classified 2 gravity, 1 sprinkler, located in the NW
22 1/4 of Section 6;

23 Township 1 South, 3 East, Section 8, 29-acre
24 parcel, classified 6 gravity, 2 sprinkler, located in
25 the SE 1/4;

1 Still in Township 1 South, 3 East, in
2 Sections 10 and 11, a 152-acre parcel, classified 6
3 gravity, 3 sprinkler, located in roughly the NE 1/4
4 of Section 10 and the North 1/2 of Section 11;

5 In the North Crowheart study area, Township
6 3 North, 1 West, Section 18, in the NE to NW 1/4s,
7 61-acre parcel, which is classified 3 gravity, of
8 which 45 acres is classified 2 sprinkler;

9 Section 16, 40-acre parcel, in the NW 1/4,
10 all of which is classified as 3 gravity, 2 sprinkler;

11 Section 7, 192-acre parcel in the SE 1/4 --

12 THE SPECIAL MASTER: 192 acres?

13 MR. WHITE: 192, Your Honor. Classified 2
14 gravity, and 173 acres of 192 are classified 2
15 sprinkler.

16 THE SPECIAL MASTER: Also in Section 7?

17 MR. WHITE: Same parcel, just --

18 THE SPECIAL MASTER: Oh, I beg your pardon.

19 MR. WHITE: It's 192 acres is the outer
20 perimeter, and that's classified 2 gravity, and within
21 that 172 are 3 sprinkler;

22 Township 3 North, 2 West, Section 4, 40
23 acres located in the NE 1/4, classified 3 gravity,
24 6 sprinkler;

25 Section 6, 88 acres, located in the NW 1/4

1 classified 3 gravity, 2 sprinkler;

2 Still in Section 6, 62 acres in the SE 1/4

3 classified 2 gravity, 3 sprinkler;

4 Section 9, 90 acres in the NW 1/4 classi-
5 fied 3 gravity, 2 sprinkler.;

6 Township 3 North, 1 East, Sections 1 and 2
7 is a 270-acre tract that falls along the common line
8 of those two sections, classified 3 gravity, 1 sprinkler;

9 The same Township, Section 11, 135-acre
10 tract located in the NE 1/4 and the NW 1/4, which was
11 classified 3 gravity, 1 sprinkler;

12 Sections 3, 10, and 11, a 191-acre tract
13 which overlaps all of these sections classified 3
14 gravity and 1 sprinkler;

15 Section 9, a 43-acre parcel located in
16 approximately the NW 1/4, classified 2 gravity, 6
17 sprinkler;

18 Township 4 North, 1 West -- this is still in
19 North Crowheart -- Section 30, a 116-acre parcel
20 classified 2 gravity and 2 sprinkler being located
21 in an area that overlaps the NW, SW, and the SE 1/4s --
22 excuse me --

23 Township 4 North, 2 West, 91-acre parcel
24 overlapping Section 17 and 18, classified 2 gravity,
25 2 sprinkler;

1 Section 17 alone is a 35-acre parcel in the
2 SW 1/4 classified 2 gravity, 6 sprinkler;

3 Section 19 and 30 contain a 44-acre parcel
4 that overlapped the two sections classified 3 gravity,
5 6 sprinkler;

6 Section 16 contains a 99-acre parcel that
7 overlaps the NW and SW 1/4s, classified 3 gravity,
8 3 sprinkler;

9 Section 15 contains a 69-acre parcel in the
10 NE 1/4, all of which is classified 3 gravity, 56 acres
11 of which is classified 2 sprinkler.

12 Your Honor, I'm going to have to check one
13 thing here.

14 THE SPECIAL MASTER: Okay.

15 MR. WHITE: Still in the North Crowheart
16 area, continuing on with Township 4 North, 2 West,
17 a 72-acre tract in Sections 14 and 15, all of which
18 is classified 3 gravity, 35 acres of which is
19 classified 2 sprinkler.

20 THE SPECIAL MASTER: Total acreage on that
21 was what?

22 MR. WHITE: Seventy-two of which all was
23 classified as 3 gravity.

24 Section 22 in the same Township, 4 North, 2
25 West, a 139-acre tract, classified 3 gravity, 2 sprinkler;

1 Section 35, a 34-acre tract from the NE 1/4
2 classified 2 gravity, 6 sprinkler;

3 Sectons 27 and 34, an 82-acre tract that
4 overlaps the SW 1/4 of the NW 1/4 in the NE 1/4, all
5 of which is classified 3 gravity, 46 acres of which
6 is classified 2 sprinkler;

7 Section 25, 36-acre tract in the NE 1/4
8 classified 2 gravity, 2 sprinkler;

9 Township 4 North, 1 East, Section 11, 16-acre
10 tract located in the SE 1/4 classified 2 gravity, 2
11 sprinkler;

12 In Section 20 and 21 there's a parcel of
13 161 acres which overlaps those two sections class-
14 ified 2 gravity, 3 sprinkler;

15 Again, Section 20 and 21, a 56-acre overlapping
16 parcel classified 3 gravity, 2 sprinkler;

17 Sections 27 and 32 contain a 156-acre over-
18 lapping parcel classified 3 gravity, 2 sprinkler;

19 Sections 24 and 25 contained a 33-acre
20 overlapping parcel classified 3 gravity, 2 sprinkler --
21 excuse me, Your Honor, the 24 and 25, 33-acre parcel
22 I gave you should be in 4 North, 2 East, as well as
23 the next and following parcels.

24 THE SPECIAL MASTER: Okay.

25 MR. WHITE: The second parcel in 4 North,

1 2 East, in Section 23, 30 acres classified 6 gravity,
2 3 sprinkler;

3 Sections 22 and 23 containing an overlapping
4 parcel of 116 acres classified 2 gravity, 1 sprinkler;

5 Sections 10 and 14 contain an overlapping
6 parcel of 67 acres classified 3 gravity, 2 sprinkler;

7 Section 21 contains an overlapping --
8 excuse me -- contains a parcel of 23 acres in the SE
9 1/4 being classified as 2 gravity, 1 sprinkler;

10 Section 24 contains a 109-acre parcel in
11 the SW and SE 1/4s, being classified 2 gravity, 1
12 sprinkler;

13 Section 25 contains a 40-acre parcel in the
14 NE 1/4 being classified 2 gravity, 1 sprinkler;

15 Township 5 North, 1 East, still in North
16 Crowheart, a 51-acre parcel located in the SE 1/4
17 of Section 12, of which the entire parcel is classi-
18 fied 3 gravity, 45 acres of which is classified 2
19 sprinkler;

20 In Sections 12 and 13, an overlapping parcel
21 of 73 acres, all of which is classified 3 gravity, 61
22 acres of which is classified 2 sprinkler;

23 Sections 24 and 23, an overlapping parcel
24 of 64 acres, all of which is classified 3 gravity and
25 2 sprinkler;

1 Sections 23 and 26, an overlapping parcel
2 of 72 acres, all of which is classified 3 gravity,
3 2 sprinkler;

4 Section 26 and 25 contain an overlapping
5 parcel of 156 acres, all of which is classified 3
6 gravity, 3 sprinkler;

7 Section 26 contains a 25-acre parcel in the
8 NE 1/4 classified in its entirety as 6 gravity, 3
9 sprinkler;

10 Section 35 contains a 56-acre parcel of
11 approximately the SW 1/4 classified 3 gravity, 6
12 sprinkler;

13 Township 5 North, 2 East, Section 20 contains
14 a 131-acre parcel in the NW NE 1/4, classified 3 gravity,
15 2 sprinkler;

16 Sections 15 and 22 contain an overlapping
17 parcel of 130 acres, which is classified 2 gravity,
18 6 sprinkler;

19 Sections 18 and 19 contain a 66-acre parcel,
20 all of which is classified 6 gravity, 3 is classified --
21 excuse me -- 66 acres of which all of it is classi-
22 fied Class 6 gravity and Class 3 sprinkler;

23 Sections 20 and 29 contain an overlapping
24 parcel of 206 acres, of which 3 is classified -- I'm
25 sorry, Your Honor, I'm getting tongue-tied here --

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1 206 acres, all of which is classified 3 gravity,

2 197 acres of which is classified 2 sprinkler.

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MR. WHITE: (Continued) Sections 20,
21 and 28 containing an overlapping parcel
of 210 acres, all of which is classified as
6 gravity, 3 sprinkler;

Section 14 contains a 78-acre parcel in
the SE and SW quarters, classified as 3 gravity,
2 sprinkler;

Sections 23 and 26, containing an over-
lapping parcel of 41 acres, classified as 3
gravity, 2 sprinkler;

Section 32 contains an 11-acre parcel in
NE 1/4, classified 2 gravity, 6 sprinkler;

Section 32 also contains a 36-acre parcel
in the NE 1/4 of which all of it's classified
2 gravity; 30 acres -- 38 acres classified 1
sprinkler.

Sections 34 and 35 contain an overlapping
parcel of 123 acres, all of which is classified
2 gravity and 102 acres classified 1 sprinkler;

Sections 35 and 36 contain an overlapping
parcel of 62 acres, all classified 3 gravity
and 2 sprinkler;

Sections 17 and 18 contain an overlapping
parcel of 87 acres, all of which is classified
as 3 gravity, 2 sprinkler;

1 Sections 17 and 18 contain an overlapping
2 parcel of 87 acres, all of which is classified
3 3 gravity, 2 sprinkler;

4 Section 20 contains a parcel, 69 acres,
5 approximately in the SE 1/4, all classified
6 2 gravity, 1 sprinkler;

7 Sections 29 and 30 contain a 98-acre parcel,
8 roughly, an overlapping 98-acre parcel, all of
9 which is classified 2 gravity, 90 acres which
10 are classified as 1 sprinkler, that's 90 acres.

11 5 North, 3 East, new Township, Section 31
12 contains a 86-acre parcel in the SW 1/4 which
13 is classified 3 gravity, 6 sprinkler;

14 Sections 29 and 32 have an overlapping
15 parcel of 137 acres in size, classified 2 gravity --
16 all of which is classified 2 gravity, 130 acres
17 which are classified 2 sprinkler;

18 Section 31 is a 53-acre parcel in the
19 SE 1/4, classified 3 gravity, 2 sprinkler;

20 Section 20 has a 24 acre parcel in the NW
21 1/4, classified 3 gravity, 2 sprinkler.

22 Now, Big Horn Flats.

23 THE SPECIAL MASTER: You don't have
24 acreage totals by units, do you?

25 MR. WHITE: Not on these work sheets,

1 Your Honor. I will. The problem is I've not
 2 given you those that he's testified about already,
 3 and I'm not sure what the relative total
 4 acreage would be between those he testified to
 5 and those he didn't.

6 In the Big Horn Flats study area, Township
 7 1 North, 1 East, Section 7, 25 acres located in
 8 the SE 1/4, classified 1 -- excuse me, strike
 9 that. I've already asked about that on cross-
 10 examination.

11 Still in Section --

12 THE SPECIAL MASTER: 7?

13 MR. WHITE: No, I'm going to have
 14 to drop down here and pick up one I haven't
 15 covered.

16 Township 2 North, 1 East, Section 11,
 17 87-acre parcel in the north half, classified
 18 3 gravity, 2 sprinkler;

19 Section 12, 20-acre parcel in the SW 1/4,
 20 classified 6 gravity, 2 sprinkler;

21 Section 6, 24-acre parcel in the south half,
 22 classified 6 gravity, 3 sprinkler;

23 Section 7, 31-acre parcel in the NW 1/4,
 24 classified 6 gravity, 4 sprinkler.

25 Now, I'm in Township 3 North, 2 West, Your

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Honor, Section 34, 71-acre parcel in the NW 1/4,
classified 6 gravity, 4 sprinkler;

Section 33, 20-acre parcel in the south half,
classified 2 gravity, 2 sprinkler.

Still in Section 33, a 45-acre parcel in
the south half, classified 6 gravity, 3 sprinkler;

Section 33, a 25-acre parcel in the SW 1/4,
classified 3 gravity, 3 sprinkler;

Section 33 again, finally, 91-acre parcel
in the NW 1/4, classified 3 gravity, 2 sprinkler;

Section 28, south half of the 137-acre parcel
classified 2 gravity, 2 sprinkler;

Section 7, 5-acre parcel in the west half
of the west half, classified 3 gravity, 3 sprinkler.

Township -- excuse me, Your Honor, still in
Township 3 North, 2 West, in Sections -- sorry,
moving to Township 3 North, 3 West -- I'm sorry,
2 North, 2 West.

THE SPECIAL MASTER: That's all right.

MR. WHITE: Sections 3 and 11, there's
a parcel of 165 acres which overlaps two sections,
all of which is classified 6 gravity, 4 sprinkler.

There's, in Section 9, a 51-acre tract
classified 3 gravity, 2 sprinkler.

THE SPECIAL MASTER: 51 acre?

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MR, WHITE; 51, Your Honor. Also in
Section 9 there's a 19-acre tract classified
6 gravity, 3 sprinkler in the NW 1/4,

In Section 5, there's a 198-acre tract in
the east half, classified 2 gravity, 2 sprinkler,

Continuing with Township 2 North, 2 West,
Section 5, a 42-acre tract in the NW 1/4,
classified 6 gravity, 3 sprinkler,

Still in Section 5, 15-acre tract in the
east half, classified 3 gravity, 3 sprinkler;

Section 6, 202-acre tract in the NW 1/4,
202 acre quarter in the NW 1/4, all of which
is classified 3 gravity, 136 acres which is
classified 3 sprinkler;

Section 8, 120 acres in the north half,
all of which is classified 2 gravity, 2 sprinkler;

Section 8, 35 acres in the NE 1/4, all of
which is classified 6 gravity, 3 sprinkler;

Section 9 contains a 29-acre parcel in the
SW 1/4, classified 6 gravity, 2 sprinkler;

Sections 8 and 9 contain an overlapping
parcel of 142 acres, classified 3 gravity, 3
sprinkler;

Section 20 contains a 62-acre parcel in the
SE 1/4, classified 3 gravity, 2 sprinkler.

1 That's my offer of proof, Your Honor.

2 THE SPECIAL MASTER: Alrighty.

3 MR. WHITE: Could we take a short break
4 while I recover my voice?

5 MR. ECHOHAWK: Your Honor, I'd like --
6 for the record I'd like to renew the objection
7 to this line of questioning, that --

8 THE SPECIAL MASTER: The objection to
9 my having ruled that this had to be an offer
10 of proof and not admissible in evidence?

11 MR. ECHOHAWK: No, I'm just renewing
12 the objections for the record that I made
13 previously to Mr. White's line of questioning,
14 and again point out that Mr. White's statements
15 are not evidence and cannot be considered as
16 evidence and are merely made for the record.

17 THE SPECIAL MASTER: Very well.

18 Give me some time to total while you take a break
19 for a few minutes.

20 (Off-the-record discussion.)

21 MR. ECHOHAWK: Your Honor, before we
22 recess, I can't help but notice the last comment
23 that you made about totaling up the acreage
24 amounts and so forth, and my real concern is
25 that although Mr. White has put this information

1 in has to what he, you know, what he perceives
2 it to show, it cannot be considered by the
3 Court. He's made the substance of what he
4 intends to show, and that you have in fact
5 ruled that that evidence is to be excluded.

6 THE SPECIAL MASTER: That is correct,
7 Mr. Echohawk. I merely do have in evidence the
8 fact that -- Well, I guess it isn't in evidence,
9 it's a statement of Mr. White's as to his total
10 acreage in 100 parcels in which he felt there
11 was no logged holes.

12 MR. ECHOHAWK: That's our point, that
13 Mr. White --

14 THE SPECIAL MASTER: That was Mr.
15 White's statement; it's not in evidence.

16 MR. ECHOHAWK: He can't put that into
17 evidence. He can put that information on in his
18 case.

19 THE SPECIAL MASTER: I see. All right.
20 I appreciate your reminder.

21 MR. WHITE: I probably ought to extend
22 my offer of proof a bit farther to include the
23 totals, Your Honor. If I might, the offer of
24 proof is to be extended to indicate that the
25 totals of the parcels which Mr. Kersich has

1 testified to on cross-examination as well as
2 those which are included in the offer of proof,
3 by my corrected figures indicate 7,580 acres of
4 Class -- gravity classified land in 87 parcels,
5 and 9,743 acres for sprinkler classified lands
6 in 100 parcels.

7 THE SPECIAL MASTER: You've been
8 picking up some acreage on this in the last
9 two days. Okay. We'll recognize it.

10 MR. WHITE: Can I just take a short
11 break?

12 THE SPECIAL MASTER: We'll stand in
13 recess for ten minutes.

14 (Thereupon a 10 minute
15 recess was taken.)

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1 THE SPECIAL MASTER: Let's go back on the
2 record for a minute.

3 What do we have left for this week, for
4 my own guidance? This is Thursday, February 12.

5 MR. WHITE: I suspect we will go over until
6 the next time.

7 THE SPECIAL MASTER: Can we, by staying an
8 extra half hour now, shorten up Friday afternoon?

9 MR. WHITE: I suspect we will go on beyond
10 Friday in the cross-examination of this witness.

11 THE SPECIAL MASTER: Then that carries over
12 to the next week, which is not the coming week.

13 MS. SLEATER: The week of March 9.

14 THE SPECIAL MASTER: All right, but for the
15 rest of this week, can we serve any good purpose by
16 staying in all day today in order to alleviate some
17 Friday afternoon for those of you that would like
18 Friday noon off?

19 MR. ROGERS: I would like to request, if
20 we could, that we finish up by one o'clock on Friday
21 so that those of us who reside elsewhere can get back.
22 I'm prepared to stay if necessary.

23 MR. WHITE: I will be glad to stop and
24 interrupt the cross-examination any time, but I just
25 want to be able to keep going and get done sometime.

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1 THE SPECIAL MASTER: I just want to make
 2 sure that we will be adjourning Friday at noon, if
 3 not earlier, so that those who have airplanes to
 4 catch in the afternoon can do so.

5 With that understanding, let's stay in
 6 recess until two o'clock today, and if you can use
 7 this time to make stipulations, you will earn the
 8 undying gratitude of the Special Master for some of
 9 these things.

10 (Whereupon Court recessed
 11 at 11:32 a.m. and will
 reconvene at 2:00 p.m.)

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 14 END 10

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