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Trial Transcript, Vol. 27, Afternoon Session

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case # 4993

File # 134

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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.)

Civil No. 4993

FILED
3/27 1981
Margaret W. Hayston CLERK
DEPUTY

VOLUME 27
Afternoon Session
Monday, March 16, 1981

ORIGINAL

1 THE SPECIAL MASTER: We'll come to order,
2 please.

3 Okay, Mr. White.

4 CROSS-EXAMINATION (CONTINUED)

5 BY MR. WHITE:

6 Q Mr. Billstein, you testified earlier that you
7 had excluded from lands shown in blue on
8 Exhibits 56 through 136 lands which have been
9 adjudicated by the Wyoming State Board of Control;
10 is that correct?

11 A That's correct.

12 Q Why did you do that?

13 A The adjudicated water rights were felt to be
14 a test of irrigability, therefore were accepted
15 as such. Our main emphasis was then on the
16 areas outside of the adjudicated land basis.

17 Q Would you direct your attention to Exhibit C-133,
18 specifically that tract that's been marked as
19 33-3. It's located in the SW 1/4 of the SW 1/4
20 of Section 25, and explain how you determined
21 that the blue land in that location was not
22 covered by a Certificate of Appropriation.

23 A We would have obtained all the Certificates of
24 Appropriation for the South Fork-Owl Creek Basin,

25 billstein-cross-white

1 and would have plotted those rights on our
2 hydrographic copies. If the use areas fell
3 outside of those plotted adjudicated water
4 right boundaries, then they were defined as
5 being in the unadjudicated in use category.

6 Q Okay. I direct your attention to what's been
7 marked for identification as Wyoming Exhibit
8 HB-2000, which has certified copies of certain
9 Certificates of Appropriation, and ask you to
10 turn to proofs 14,028, 15,395, which should be
11 the last two proofs just before the map.

12 A I see them.

13 Q Isn't it true that the second entry on proof
14 14,028 shows 20 acres having been adjudicated
15 in the SW of the SW of Section 25?

16 A Yes. Under proof 14,028 it does show 20 acres
17 in the SW 1/4 of the SW 1/4 of Section 25.

18 Q Turning to proof 15,395, isn't it true that
19 an additional 19 acres was shown as being
20 adjudicated in the SW of the SW of Section 25?

21 A That shows on this proof.

22 Q Yet the entire 40 acres in the SW of the SW are --
23 almost the entire 40 acres of the SW of the SW
24 of 25 is shown as being unadjudicated in Exhibit 133;

25 billstein-cross-white

1 identification as Plaintiff's Exhibit 2007,
2 which is a certified copy of a Certificate of
3 Record which is shown as proof number, in the
4 upper right-hand corner, as 18,400, and ask you
5 whether or not -- or ask you if it isn't true
6 that 40 acres is shown as being adjudicated
7 pursuant to that certificate in the NE 1/4 of the
8 NW 1/4, Section 25, Twonship 4 North, 4 West?

9 A The numbers are offset on this, but going back
10 to the -- do you have a description?

11 Q It should be the NE of the NW, Section 25, 4
12 North, 4 West.

13 A Counselor, this is offset to where the 4 and
14 the 0 break between the NE 1/4 and the NW 1/4.
15 It's hard to ascertain whether those 40 should
16 be moved to the left or whether they are in fact
17 applicable 40 acres to the right.

18 Q The 0 of the 40 lies within the tract we're
19 talking about and the 4 lies outside of it?

20 A Right.

21 Q How did you interpret that when you reviewed
22 this certificate in preparing Exhibit C-67?

23 A Well, I'd have to check my -- my own permit number,
24 6628 file.

25 billstein-cross-white

1 (Brief pause.

2 Q Do you want some help, Ron?

3 A No, that's fine.

4 (Brief pause.

5 A My backup computer list shows that there is

6 a 40 in the NE of the NW.

7 Q Does that mean that the tract which we were
8 referring to in the NE of the NW of Section 25
9 on Exhibit C-57 should be colored red rather
10 than blue?

11 A Let me make one final check.

12 (Brief pause.

13 A That's correct, it should be colored in red.

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1 Q (By Mr. White) I direct your attention to Exhibit
2 C-88 and ask you whether or not you can locate a
3 tract of approximately 63 acres located in the
4 NE 1/4 of the NW 1/4 as well as the SW 1/4 of the
5 NW 1/4 of Section 10, Township 1 South, 1 West?

6 THE SPECIAL MASTER: One South what?

7 MR. WHITE: One West, Your Honor.

8 A (By the Witness) Would you repeat the legal
9 description?

10 Q (By Mr. White) Township 1 South, 1 West, Section
11 10, NE 1/4 of the NW 1/4 and the SW of the NW 1/4.

12 A I see the tract.

13 Q I direct your attention to what's been marked
14 for identification as Wyoming's Exhibit HB-2008,
15 specifically the second page, which shows proof number
16 18,423 in the upper right-hand corner and
17 ask you whether or not there's not 40 acres
18 adjudicated in the NE to the NW and 29-1/2
19 acres adjudicated in the SW to the NW?

20 A That shows on the certificate appropriation.
21 That should be included as adjudicated.

22 Q With respect to that approximately 60 acres on
23 Exhibit C-88, that should be red rather than
24 blue?

25 billstein - cross - white

1 A. That's correct.

2 Q I direct your attention to what's been admitted
3 as Exhibit C-89 and ask you whether you can locate
4 on Exhibit C-89 a tract of land comprising
5 approximately 96 acres located in Township 1
6 South, 1 West, Section 14, all in the NE 1/4,
7 being the NE to NE, the SW to the NE, and the
8 SE to the NE.

9 THE SPECIAL MASTER: You are too fast.
10 NE 1/4 --

11 MR. WHITE: I'll start it from the beginning,
12 Your Honor. It would be NE to the NE, the SW
13 to the NE, and the SE to the NE.

14 THE SPECIAL MASTER: Of Section --

15 MR. WHITE: Fourteen.

16 THE WITNESS: Did you give me the certificate
17 on that?

18 Q (By Mr. White) Is that shown in blue on Exhibit C-89?

19 A. Yes.

20 Q That means it's unadjudicated on C-89?

21 A. That's correct.

22 Q I hand you what's been marked for identification
23 as Exhibit HB-2009 and ask, turning to the second
24 page of that certified copy, whether or not

25 billstein - cross - white

- 1 on proof 18,596 there's not adjudicated lands
2 shown as follows: 28 acres in the NE of the NE,
3 3.4 acres in the SW to the NE, and 40 in the SE
4 to the NE?
- 5 A. That shows on this certificate of appropriation.
6 Q. Isn't it true then that the parcel which we have
7 been discussing should be shown in red rather
8 than blue? It should be shown as adjudicated rather
9 than unadjudicated in Exhibit C-89?
- 10 A. That's correct.

11 MR. WHITE: Your Honor, I wonder if I could
12 go through one more, then take a break, and I'll
13 take my dad to the hospital, and if I could confer
14 with Mr. Krob, he can probably get through the
15 next fifteen or so that we can get set up, if
16 that's all right with the United States to change
17 horses during cross-examination.

18 THE SPECIAL MASTER: Is there no way you might
19 be able to work out a stipulation what this total
20 acreage is? It isn't going to be all that much.
21 I'm keeping track of it myself. Is there any way
22 you might do that?

23 MS. SLEATER: Your Honor, the State of Wyoming
24 last night just gave us the final information on
25 billstein - cross - white

1 the things we are trying to work out a stipulation
2 on now, and we don't have that many people down
3 here.

4 THE SPECIAL MASTER: I can appreciate that
5 you are short-handed. I can appreciate that.

6 My thought is this is clearly land that ought
7 not to be included that I would think the total
8 acreage should be lopped off the exhibit total.

9 In any event, what you say is perfectly
10 fine. Go ahead for now, Mr. White. One more
11 exhibit now, and then we'll carry on.

12 MR. WHITE: It will take me a couple of
13 minutes to make sure that Mr. Krob and I are
14 thinking along the same lines.

15 Q (By Mr. White) Ron, I direct your attention
16 to what has been marked for identification as
17 Exhibit C-93 and ask you whether or not you can
18 find a tract of land of approximately 32 acres
19 located in Township 1 South, 1 East, Section 21,
20 in the NE 1/4 of the NE 1/4?

21 A Yes, I found it.

22 Q Is that shown as unadjudicated on Exhibit 93?

23 A That's correct.

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

1 as Exhibit HB-2010 and ask you whether or not
2 on the second page of that certification, proof
3 number 18,573, includes 24 acres located in
4 the NE 1/4 of the NW 1/4 of Section 21, 1 South,
5 1 East?

6 A. The certificate of appropriation shows 24 acres
7 in the NE of the NW of Section 21, 1 South, 1 East.

8 Q. How did you reduce the amount of land shown in
9 blue on Exhibit 93 to exclude those 24 acres that
10 are under certificate?

11 A. They were not reduced.

12 Q. That parcel of land on Exhibit C-93 should be
13 shown in red rather than blue; is that correct?

14 A. That's right.

15 MR. WHITE: This would be a good point
16 to stop, Your Honor, and give me about five
17 minutes to talk with Mr. Krob.

18 THE SPECIAL MASTER: All right. Very good.
19 We'll take a five-minute break.

20 (Thereupon a five-minute
21 break was taken.)

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1 MR. WHITE: Your Honor, thank you very
2 much for allowing me to excuse myself. I told
3 Mr. Krob I would call here if for any reason
4 I could not be back by four o'clock.

5 THE SPECIAL MASTER: Don't worry about
6 that. If he's finished his case and wants to
7 rest, we'll rest until tomorrow morning if
8 you're not back.

9 MR. WHITE: Thank you. Good luck, Scotty.
10 This is a maiden voyage.

11 THE SPECIAL MASTER: We have something in
12 common, this is my maiden voyage as a Special
13 Master.

14 All right, go ahead, Mr. Krob..

15 CROSS-EXAMINATION

16 BY MR.. KROB:

17 Q Mr. Billstein, directing your attention to
18 Exhibit C-68, you find there a parcel in the
19 29th Section, the West 1/2 of the SW 1/4 marked
20 in blue on the exhibit?

21 A Township and Range?

22 Q It would be 4 North, 3 West.

23 (Brief pause.)

24 MR. ECHOHAWK: Mr. Krob, could I have the

25 billstein-cross-krob

1 section number again?

2 MR. KROB: Yes, Section 29.

3 MR. ECHOHAWK: Thank you.

4 (Brief pause.

5 THE WITNESS: It's marked in blue.

6 Q (By Mr. Krob) Indicating unadjudicated land?

7 A Indicating lands that are currently being served
8 which lie outside of adjudicated boundaries.

9 Q Handing you the certificate that has been marked
10 HB-2014, would you examine that certificate.

11 (Brief pause.

12 Q Have you examined it?

13 A Yes.

14 Q With regard to the SW 1/4, and particularly the
15 West 1/2 of the SW 1/4 in the 29th Section of
16 Township 4 North, Range 3 West, according to the
17 proof number 18913, isn't that entire 1/2 of the
18 1/4 section adjudicated?

19 A The certificate shows the SW 1/4 of the SW 1/4
20 to be fully adjudicated.

21 Q And what about the NW 1/4 of the SW 1/4?

22 A Also to be adjudicated for 40 acres.

23 Q So that would account for the entire West 1/2
24 of the SW 1/4; is that correct?

25 billstein-cross-krob

1 A That's right.

2 Q Isn't it true that on Exhibit 68 the entire
3 half of the SW 1/4 of the 29th Section should
4 properly be marked red for adjudicated lands
5 rather than blue as unadjudicated status?

6 A The West 1/2 of the SW 1/4?

7 Q Yes.

8 A Yes.

9 Q Turning again to Exhibit C-68, this time in
10 the 30th Section, the East 1/2 of the SE 1/4,
11 do you locate a tract marked in blue on
12 Exhibit C-68 of about 78 or 80 acres?

13 A Which section?

14 Q Section 30, East 1/2 of the SE 1/4.

15 (Brief pause.)

16 A Yes, I see an area corresponding to the East
17 1/2 of the SE 1/4.

18 Q And on Exhibit 68, that area is marked in blue
19 indicating unadjudicated lands; is that correct?

20 A That's correct.

21 Q Returning your attention to proof 18913, the
22 second line down, now, doesn't that proof
23 indicate that that entire East 1/2 of the SE 1/4
24 was in fact adjudicated?

25 billstein-cross-krob

1 A It shows the NE 1/4 of the SW 1/4 to have 40
2 adjudicated acres.

3 Q And what about the SE 1/4 of the SE 1/4?

4 A Also to have 40 adjudicated acres.

5 Q Wouldn't that account for the entire East 1/2
6 of the SW 1/4 as being adjudicated?

7 A That's correct.

8 Q Therefore, is it true that on Exhibit C-68, the
9 tract in the East 1/2 of the SE 1/4 now marked
10 in blue is inaccurately marked and should be in
11 red as adjudicated land?

12 A Not the entire tract.

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billstein-cross-krob

1 Q (By Mr. Krob) Still on Exhibit 68, I direct your
2 attention to the Section 31 in the East 1/2 of the
3 NE 1/4 to a tract of roughly 44 acres. Can you
4 find that tract on Exhibit C-68?

5 A Is that Section 31?

6 Q Yes.

7 A Would you repeat the legal description?

8 Q In the 31st Section, the East 1/2 of the NE 1/4,
9 a parcel of about 44 acres.

10 A I see a tract in the NE 1/4 of the NE 1/4.

11 Q And roughly how large a tract there, would you
12 say?

13 A Approximately 40 acres.

14 Q Is that tract contiguous with a small tract of
15 land in the SE 1/4 of the NE 1/4 that shows
16 adjudicated, that is adjudicated?

17 A What legal description was that?

18 Q This would be in the SE 1/4 of the NE 1/4, about
19 a six-acre parcel, perhaps.

20 A That adjudicated tract is just south of the first
21 parcel.

22 Q Okay. If I could direct your attention once again
23 to proof 18,913, the third line down, with
24 reference to the 31st Section, isn't it true

25 billstein - cross - krob

1 that contained therein is a 38-acre parcel in
2 the NE 1/4 of the NE 1/4 which has, in fact,
3 been adjudicated?

4 MR. ECHOHAWK: Objection, Your Honor. The
5 document speaks for itself.

6 THE SPECIAL MASTER: He can ask what it
7 shows, but it's cross-examination, and he's been
8 using this mode for the last eight or nine exhibits,
9 so the objection comes late.

10 A. (By the Witness) The certificate of appropriation
11 shows 38 acres in Section 31 in the NE 1/4 of the
12 NE 1/4.

13 Q. (By Mr. Krob) Isn't it true that Exhibit C-68 is
14 inaccurate in that not only the small parcel to
15 the South of the 38 acres, but the 38 acres itself
16 should be shown in red rather than in blue?

17 A. That's not correct.

18 Q. Does Exhibit C-68 reflect the 38-acre parcel that
19 has been adjudicated in the NE 1/4 of the NE 1/4?

20 A. It reflects that parcel as unadjudicated in use.

21 Q. So it's marked in blue on the exhibit; is that
22 correct?

23 A. Right.

24 Q. Shouldn't that parcel actually be marked in red

25 billstein - cross - krob

1 as adjudicated?

2 A. Yes.

3 MS. SLEATER: Your Honor, at this point in
4 time I would like to interpose an objection to the
5 whole line of questioning. I have not gone
6 previously because I hoped it was going to tie in
7 with something, but I think the whole line of
8 questioning is irrelevant insofar as the questions
9 are going to should it be in red or should it be
10 in blue whereas both the reds and the blues are
11 being claimed.

12 In some areas there might be overlapping of
13 claims that is going to be broken out at a later
14 point in time, but at this point in time, since
15 the State of Wyoming has not even attempted to
16 ask or attempted to show that this was not a proper
17 portion of the claim, either as an adjudicated
18 right or as land that was in use, I think it's
19 wasting all of our time just sitting here and going
20 through what might, as nearly as I can determine,
21 be a double proof on some tracts.

22 It's not a doubling of the claim. There's
23 been no showing that it is not a parcel that is
24 not entitled to be claimed, and as such, I think

25 billstein - cross - krob

1 this line should be cut off at this time.

2 They have made a point in some very limited
3 instances something is showing as in use, and
4 as Mr. Billstein has said, is in use and it also
5 is adjudicated.

6 MR. KROB: Your Honor --

7 MS. SLEATER: I just want to object at this
8 time to the entire line and state, as a matter of
9 fact, our adjudicated acreage is not in use but --
10 and we did try to break them out, but they have
11 made their point that at times there are slight
12 discrepancies in what should be colored red or
13 blue, but I don't think we should have to sit here
14 and go through what, as I gathered from what
15 Mr. White was saying before, might be another
16 two hours or questioning that just goes to this
17 point.

18 THE SPECIAL MASTER: Well, I can hear from
19 you, but it's not necessary. I would like to
20 overrule the objection, but I would like to give my
21 reasons for doing so: One, it is true that this land,
22 the acreage now being testified as being inaccurately
23 reflected, may come in for water under one in-use
24 concept or under an appropriation concept, one or

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the other. That's obvious.

I know that you are not trying to seek it both, but I have to have accurate totals in coming to a decree in this case, and I would like the decree to reflect accurately specifically how many acres are in a fairly close ballpark -- I just don't want a ballpark figure in what is the in-use area and what are the historical acres under State permit that should keep their date and areas, and if an 1868 is put to them, then it should detract from other Indian lands, so nobody gets a double dipping, so I don't think the State is trying to keep the Reservation from getting appropriate water for an acre of irrigable land or in-use land, and I would overrule the objection at this time for that reason.

MS. SLEATER: Then I think it might be appropriate for the State to submit an offer of proof insofar as the information they are dealing with are from public records that Your Honor has already taken judicial notice of or are in evidence, and the exhibits themselves are in evidence, and it might save us a lot of time since obviously the State attorneys have this list, if he could just

billstein - cross - krob

1 make an oral offer of proof on these particular
2 tracts.

3 THE SPECIAL MASTER: I would have hoped
4 that you two would have agreed to that, and
5 that would be a fine way to save a couple of hours,
6 and I don't know how many more of these there are,
7 but this under permit 6628 on this last one, so
8 far I've got 204 acres of the 244 total would be
9 in that category, and up until then I think
10 I have got about 110 or 120 acres.

11 Now, is the total going to be 415 or 822,
12 or do we know what it is?

13 If you two can agree to it, fine, we would
14 be happy to accept a stipulation, but as far as
15 an offer of proof, it's going to be in evidence.

16 MS. SLEATER: What I'm trying to point
17 out, however, an offer of proof is not in
18 evidence itself. However, in this particular
19 instance, the certificates that are being referred
20 to are in evidence. The exhibits are in evidence.

21 THE SPECIAL MASTER: The certificates are
22 in evidence?

23 MS. SLEATER: Yes, sir.

24 THE SPECIAL MASTER: Well, they are part of

25 billstein - cross - krob

1 about 24,000 of them, and I would have a devil
2 of a time.

3 MS. SLEATER: That's why I'm suggesting
4 an offer of proof insofar as the State would then
5 be identifying those. The United States would
6 agree to the State giving to Your Honor for your
7 convenience copies of the certificates they have
8 pulled and are planning to use at this session
9 of the trial.

10 The other exhibits are in evidence already.
11 There is no reason why the Court on its own,
12 without anyone saying anything to you, couldn't
13 make the comparison.

14 I think an offer of proof would be the proper
15 way for the State to indicate the direction it's
16 going in --

17 THE SPECIAL MASTER: I gather from that,
18 Regina, that you would agree to the fact that
19 there is some discrepancy in acreage totals?

20 MS. SLEATER: Your Honor, I can't agree to
21 that without going through and checking all of
22 these, and as I explained earlier, we don't have
23 the staff to do that because they are checking on
24 the --

25 billstein - cross - krob

1 THE SPECIAL MASTER: Then I would suspect you
2 will not get an agreement from the State.

3 MS. SLEATER: What I'm suggesting is that
4 the certificates that they have copies of should
5 be received by Your Honor. I'm just trying to
6 save us two more hours of listening to this.

7 MR. KROB: That's fine, but it sounds like
8 Ms. Sleater needs to decide whether she wants
9 Your Honor to have it as evidence or merely go
10 in as an offer of proof. I don't think she can
11 have it both ways, and if you are going to
12 consider it and analyze it in terms of the errors
13 on the exhibits that have been admitted, then
14 that's fine, but that would not be an offer of
15 proof.

16 THE SPECIAL MASTER: I concur in that
17 observation. Let's proceed. The objection is
18 overruled.

19 If you, Regina, can show that these permits
20 now before us are not included in the permits in
21 your earlier motion on which I am to take judicial
22 notice, there's one thing that may show there may
23 not be any error in, I don't know, but until that
24 time, I think I have to find out how many acres

25 billstein - cross - krob

1 are reported in both categories so I can make a
2 subtraction.

3 MS. SLEATER: I would like to point out that
4 a number of these weren't included. However, we
5 will probably wish to have them included as
6 adjudicated rights.

7 However, some portions of some of them are
8 and some aren't, but I would like to point out
9 that the State of Wyoming is well aware that this
10 portion of the case is not the claim itself and
11 at a later time later witnesses will be making
12 the subtractions and proving and showing that
13 there is no overlap, and since they are aware of
14 this, I just see no point to waste another two
15 hours.

16 THE SPECIAL MASTER: Let's move along as fast
17 as we can, Mr. Krob. That's our best bet.

18 Q (By Mr. Krob) Let's again turn to Exhibit 68.
19 Directing your attention to the 32nd Section, a
20 parcel in the NW 1/4 of the NW 1/4, 40 acres
21 inside, can you find that on Exhibit 68, C-68?

22 A. Would you repeat the legal description, counsel?

23 * * * * *

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25 billstein - cross - krob

1 MR. KROB: Yes, it's Section 32, the
2 NW 1/4 of the NW 1/4.

3 (Brief pause.)

4 THE WITNESS: I see that; it's reflected
5 in blue.

6 Q (By Mr. Krob) Indicating it's unadjudicated
7 lands?

8 A It's in use and was mapped as unadjudicated.

9 Q Directing your attention then to permit --
10 or proof, excuse me, 18913, you see there
11 located an adjudicated parcel in the NW 1/4 of
12 the NW 1/4?

13 A Yes.

14 Q In fact, isn't the entire NW 1/4 of the NW 1/4
15 adjudicated?

16 A Yes.

17 Q Therefore shouldn't the parcel, the 32nd Section
18 of the NW 1/4 of the NW 1/4 on Exhibit 68 be
19 mapped in red rather than in blue as in adjudicated
20 rather than unadjudicated lands?

21 A It shows to be adjudicated.

22 Q Well, my question is shouldn't it therefore be
23 properly mapped in red on the exhibit?

24 A Yes.

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1 Q Turning your attention now to Exhibit C-94,
2 are you able to locate a, it would be in
3 Section 34, NW 1/4 of the NW 1/4, Township 1
4 North, 1 East, a parcel of land indicated in
5 blue?

6 THE SPECIAL MASTER: What size in acreage,
7 Mr. Krob?

8 MR. KROB: Roughly 18 acres, Your Honor.

9 THE WITNESS: I see the parcel; it's marked
10 in blue.

11 (Brief pause.)

12 Q (By Mr. Krob) Handing you what has been marked
13 as Plaintiff's Exhibit HB-2012, would you
14 examine that document, please.

15 (Brief pause.)

16 Q Have you examined it?

17 A Yes.

18 Q According to that proof, I believe it's 18917 --

19 A No.

20 Q What proof number do you have?

21 A 18572.

22 Q Well, we are not even close then.

23 THE SPECIAL MASTER: You can use mine if you
24 want to.

25 billstein-cross-krob

1 Q (By Mr. Krob) I'm sure I gave you 2012.

2 THE SPECIAL MASTER: This is what you want
3 if you need it.

4 (Brief pause.)

5 MR. KROB: If I could have just a moment,
6 Your Honor, it appears we have a slight error in
7 our marking.

8 THE SPECIAL MASTER: No problem. In fact,
9 we've been in session about an hour, let's take
10 a five minute break.

11 MR. KROB: Thank you, Your Honor.

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1 THE SPECIAL MASTER: All right. We'll come
2 to order, please.

3 MR. KROB: I apologize for the confusion. We
4 reversed a number in a couple of our exhibits, but
5 I think with a little work here we have got it
6 straightened out.

7 THE SPECIAL MASTER: No problem.

8 Q (By Mr. Krob) I'll hand you both Exhibits HB 2013
9 and 2012 and ask you to look at them.

10 (Whereupon an off-the-record
11 discussion was held.)

12 Q (By Mr. Krob) Turning first to Exhibit 2012, this
13 time, if luck serves me, it's proof 18572; is that
14 correct?

15 A 18572 is the proof number.

16 Q Okay. According to that proof, were there 20 acres
17 in the Northwest quarter of the Northwest quarter
18 of Section 34 adjudicated?

19 A There are 20 acres somewhere in the Northwest quarter
20 of the Northwest quarter which are adjudicated.

21 Q Okay.

22 THE SPECIAL MASTER: May I suggest -- and were
23 they marked otherwise on your Exhibit C-94?

24 MR. KROB: Well, I think, Your Honor, we can

25 billstein - cross - krob

1 clear that up with HB 2000 --

2 THE SPECIAL MASTER: I was trying to find a
3 faster route for you.

4 Q (By Mr. Robb) Now, turning to Exhibit 2013, accord-
5 ing to that proof, which I believe is number 18917,
6 were there an additional 20 acres adjudicated in the
7 Northwest quarter of the Northwest quarter?

8 A That's right.

9 Q According to the combined effects of those two,
10 isn't the entire Northwest quarter of the Northwest
11 quarter adjudicated?

12 A It should be adjudicated.

13 Q So all of the Northwest quarter of the Northwest
14 quarter which you have indicated in blue or all
15 portions of that section which you have indicated
16 in blue should, in fact, be indicated in red as
17 adjudicated lands; is that correct?

18 A Yes, that portion of the Northwest quarter of the
19 Northwest quarter should be reflected in red.

20 Q By "that portion," you mean the portion that is now
21 reflected in blue?

22 MR. ECHOHAWK: Your Honor, at this time I would
23 like to --

24 THE SPECIAL MASTER: Yes.

25 billstein - cross - krob

1 MR. ECHOHAWK: -- inquire of Mr. Krob whether
2 he could provide us with the maps that accompany
3 these. There could be some question as to whether
4 the 20 acres that are involved on each of these
5 exhibits is, in fact, the same 20 acres or whether
6 they are mutually exclusive.

7 THE SPECIAL MASTER: I thought of that too,
8 but one coming five months after the other one in
9 the same year would give proof to me that after
10 irrigating one year, he wanted some more land in
11 that area irrigated, and he filed a second one.
12 However, I suppose if you want maps, maps could be
13 forthcoming.

14 MR. KROB: Yes, we would like to do that, but
15 that is the import of the evidence that we wish
16 to have it carry.

17 MS. SLEATER: Whether that's the import he
18 wants, the maps are part of the certificates.

19 THE SPECIAL MASTER: We have already granted
20 the maps will be forthcoming.

21 MS. SLEATER: What I would like to point out
22 is I don't think this line of questioning can
23 continue unless the maps are here because Mr. Bill-
24 stein has no way of knowing, having not mapped

25 billstein - cross - krob

1 these particular rights, whether or not these 20
2 acres become 40 acres or whether it's the same 20
3 acres.

4 MR. KROB: I believe the witness has already
5 testified to his ability to identify it.

6 THE SPECIAL MASTER: The witness has agreed.
7 We would, however, like to have the maps.

8 MR. ECHOHAWK: We request the maps for each of
9 the ones we have gone over.

10 THE SPECIAL MASTER: No, we don't need them on
11 the other. You have a map on the first one, not on
12 the subsequent. I fail to see the logic of having
13 maps for the others after the strenuous argument a
14 few minutes ago that there should be an end to this
15 sort of exercise and now you want to add another
16 document to the exercise that would make it last
17 even longer.

18 MR. SLEATER: The problem is this goes back
19 to the original relevancy arguments.

20 THE SPECIAL MASTER: How would the presenting
21 of a map for everything that had not had one now
22 in evidence do anything about clearing up the rele-
23 vancy argument?

24 MS. SLEATER: That merely adds to the argument,
25 billstein - cross - krob

1 but now we don't even know whether this is on
2 trust lands or is it part of the acreage we were
3 claiming as adjudicated or what is it? As a matter
4 of fact, it was of less importance as long as we
5 were talking about the entire 40 acres within a
6 given area on one certificate, but now that we are
7 getting into less than the quarter of a quarter,
8 it's important to have the maps to identify the
9 location of these lands we're talking about.

10 MR. KROB: Your Honor --

11 MS. SLEATER: As Your Honor is well aware,
12 under the same permit number there are various
13 adjudications, and the adjudications then are filed
14 with different numbers.

15 What we would like and we feel entitled to
16 know is the location of the particular areas Mr.
17 Krob is talking about.

18 THE SPECIAL MASTER: You've got it.

19 MS. SLEATER: The State Engineer requires a
20 mapping that goes with each of these adjudications,
21 and from the piece of paper he has given us, we can-
22 not tell where --

23 THE SPECIAL MASTER: All right. Your request
24 for a map on each of the earlier ones is denied for

25 billstein - cross - krob

1 not having made it timely. Your request for a map
2 on this one is granted to alleviate the ambiguity,
3 and it will be forthcoming.

4 Go on, Mr. Krob.

5 MR. KROB: As for the answers of the witness
6 whether or not he's willing to identify the parcel
7 that I'm referring to as the parcel he has mapped
8 on the map should be within the province of the
9 witness.

10 THE SPECIAL MASTER: Proceed with your exhibits
11 and your cross-examination.

12 Q (By Mr. Krob) Turning to Exhibit 10, Mr. Billstein,
13 can you identify a portion of land that is partly
14 in the Northeast quarter of the Northwest quarter and
15 partly in the Southeast quarter of the Southwest
16 quarter -- excuse me. Okay. We'll begin with
17 Section 22, the Northeast quarter of the Northwest
18 quarter, a parcel of land of about two acres in that
19 section?

20 MS. SLEATER: Your Honor, at this time I would
21 object to the form of the question and require more
22 specificity insofar as he has asked for an identi-
23 fication of two acres out of 40 acres without ask-
24 ing for anything else and obviously --

25 billstein - cross - krob

1 THE SPECIAL MASTER: Well, let's see if the
2 witness can answer it first. He asked the witness
3 could he find it.

4 MS. SLEATER: Well, I'm objecting to the form
5 of the question now more than the answer at this
6 point.

7 THE SPECIAL MASTER: Objection overruled.

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1 THE SPECIAL MASTER: I would like to pose
2 an objection, anymore questions from either
3 side dealing with tracts of two acres or less,
4 when we get around to that one of these days,
5 later on in the case.

6 (Brief pause.)

7 THE WITNESS: There's a tract identified
8 as 4-4, approximately two acres in the NE 1/4
9 of the NW 1/4.

10 Q (By Mr. Krob) Is that tract marked in blue
11 on Exhibit C-106?

12 A Yes.

13 Q Indicating that it's mapped as adjudicated --
14 or unadjudicated irrigable?

15 A That's not correct.

16 Q As adjudicated in use?

17 A That's not correct.

18 Q How about unadjudicated?

19 A Yes, that's right..

20 Q By process of elimination.

21 Handing to you what has been marked as
22 Plaintiff's Exhibit HB-2003, examine that
23 document, please.

24 (Brief pause.)

25 billstein-cross-krob

1 A I've reviewed it.

2 Q According to that document, in the Section 22,
3 the NE 1/4 of the NW 1/4, has there been some
4 land adjudicated in that section?

5 A There's been some land adjudicated in Lot 3 of
6 the NE 1/4 of the NW 1/4.

7 Q Okay. In preparing Exhibit C-106, how did you
8 accommodate for the land that was adjudicated in
9 Lot 3?

10 A Let me look in my file.

11 (Brief pause.)

12 A I didn't because unadjudicated acreage in use
13 does not correspond with Lot 3.

14 Q So on Exhibit C-160 (sic), how was Lot 3 shown?

15 A Being that it's in fee land it's not shown at all.

16 Q And it's not included as part of your unadjudicated
17 in use base; is that correct?

18 THE SPECIAL MASTER: It's not treated as
19 part of your unadjudicated in use; is that correct?

20 THE WITNESS: Lot 3 you're referring to?

21 Q (By Mr. Krob) Right.

22 A That's correct. It's in this location right here.

23 Are you finished with this ditch system or
24 should I keep my file out?

25 billstein-cross-krob

1 Q Well, let's see. I'm not sure if it's in your
2 same ditch system. We will be moving to a
3 different section, Section 15, in the SE 1/4 of
4 the SW 1/4, a parcel of about 14 acres.

5 MR. PERRY: Would you repeat that description,
6 please.

7 MR. KROB: Sure. Section 15, the SE 1/4 of
8 the SW 1/4.

9 MR. PERRY: Thank you.

10 (Brief pause.)

11 THE WITNESS: I see the tract on Exhibit
12 C-106.

13 Q (By Mr. Krob) And how is that tract indicated
14 on Exhibit C-106, is it marked in blue?

15 A It's marked in blue, referring to the fact that
16 it's in use and it's unadjudicated.

17 Q Returning then to Exhibit HB-2003,

18 A All right.

19 Q Isn't it true that that exhibit shows 25 acres
20 as having been adjudicated in the SE 1/4 of the
21 SW 1/4 of Section 15?

22 A It shows that there are 25 acres within the SE
23 1/4 of the SW 1/4 that are adjudicated.

24 Q Are any of those 25 acres included in the parcel
25 billstein-cross-krob

1 of land indicated in blue on C-106 in Section 15,
2 SE 1/4 of the SW 1/4?

3 (Brief pause.

4 A The vast majority of those 25 acres are south
5 of that tract.

6 Q Is any portion of the 25 acres indicated in the
7 proof, included in the parcel you have marked
8 as unadjudicated in use?

9 (Brief pause.

10 A Being that there is approximately 25 acres out
11 of the 40 acres, there could be approximately
12 5 acres of adjudicated land out of that tract.

13 Q So it's your testimony, as far as you can tell,
14 there are approximately 5 acres of overlap?

15 MR. ECHOHAWK: Objection, Your Honor. He
16 misstates the witness. The witness said there
17 could be.

18 Q (By Mr. Krob) Mr. Billstein, can you estimate
19 the acreage of the overlap?

20 THE SPECIAL MASTER: I think he's answered.
21 He said there could be as much as 5.

22 THE WITNESS: That's my best estimate.

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1 Q (By Mr. Krob) Mr. Billstein, directing your
2 attention to Exhibit C-123, do you find therein
3 in Section 10, SW 1/4 of the NW 1/4, a parcel
4 of approximately 13 acres?

5 MR. ECHOHAWK: Could we have the Township
6 and Range?

7 MR. KROB: Yes, 5 North and 5 East.

8 THE SPECIAL MASTER: Section number again,
9 please?

10 MR. KROB: Section 10.

11 A (By The Witness) I find the tract, yes.

12 Q (By Mr. Krob) Is that tract delineated in blue
13 on Exhibit C-123 indicating unadjudicated in use?

14 A Yes.

15 Q Handing you what has been marked for identification
16 Plaintiff's Exhibit HB-2004, would you examine
17 that document, please?

18 (Brief pause.)

19 THE SPECIAL MASTER: Mr. Krob, did you have
20 relatives who worked for the State as a surveyor
21 in 1912?

22 MR. KROB: Not that I know of.

23 THE SPECIAL MASTER: It has two B's. No,
24 that's an A too, I think.

25 billstein-cross-krob

1 MR. KROB: Mine is spelled with a K anyway,
2 Your Honor. I'm off the hook this time.

3 (At this time Mr. Radosevich
4 (left the hearing.

5 (Brief pause.

6 THE SPECIAL MASTER: Does anyone here know
7 if the Morrison or Four Mile Spring is a
8 tributary to the Wind River?

9 MR. KROB: I don't, Your Honor.

10 THE WITNESS: Say it again, Your Honor?

11 THE SPECIAL MASTER: Do you know if the
12 Morrison or Four Mile Spring -- see, this was a
13 water right granted for water from a tributary
14 to Dry Muddy Creek from some springs, and I
15 assume that the diversion point or the taking
16 point of this water was from the origin springs
17 somewhere before it got to Dry Muddy Creek, and
18 if it is, do we have jurisdiction over this
19 water, was my thought?

20 THE WITNESS: Where specifically are you
21 reading, Your Honor?

22 THE SPECIAL MASTER: I'm reading from the
23 certificate and also from the map. They both
24 show Morrison or Four Mile Spring. The Four Mile

25 billstein-cross-krob

1 Spring was added in 1928 to the certificate of
2 1912, but it's on there by a memo of some kind.

3 MR. KROB: Your Honor, there is an indication
4 on the permit that the spring --

5 THE SPECIAL MASTER: Is tributary to the
6 Big Horn River -- so ultimately I guess we do
7 have, yes.

8 THE WITNESS: It goes into what is now
9 Boysen, but used to be directly Big Horn. That's
10 when the definition of the Big Horn River was
11 beginning at the confluence of the Big Wind and
12 Little Wind. If you went back to the old
13 definition of the wedding of the waters, then it
14 would have been the Big Wind River System, but
15 under the State System where it's defined as
16 beginning at a point just below the confluence
17 of Little Wind and Big Wind, it is, in fact, the
18 Big Horn River System, and that's the system
19 we are using here.

20 THE SPECIAL MASTER: I was trying in some
21 way to throw this exhibit out, but I guess I
22 can't find it.

23 (Brief pause.)

24 THE WITNESS: I'm trying to find a little
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better map, Counselor. Just bear with me a second.

MR. KROB: That's fine. Just take all the time you need.

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1 Q (By Mr. Krob) Have you examined Exhibit HB-2004?

2 A Yes. I guess one needed a water right to find
3 the merits of using large-scale aerial photography
4 to find use areas. I think we found one.

5 Q According to proof 11669, isn't it true that
6 ten acres of the SW 1/4 of the SW 1/4 of Section 10
7 are adjudicated lands?

8 A Yes. Ten acres within the entire SW 1/4 of the
9 NW 1/4 of Section 10 are adjudicated.

10 Q Based on the maps contained in Exhibit HB-2004,
11 and the maps that you have with you, can you
12 testify to the Court that there's no overlap
13 between the 10-acre parcel for which there is an
14 adjudicated certificate and the 13-acre parcel
15 illustrated by Exhibit C-123?

16 THE SPECIAL MASTER: I'm sure the witness
17 knows what you mean and I know what you mean,
18 but if we could not use the word "Overlap" it
19 would keep us from getting into the differences
20 we had in the prior subject matter.

21 Q (By Mr. Krob) All right. Are any of the lands
22 included in the 10-acre parcel that was adjudicated
23 included in the 13-acre parcel on Exhibit 123?

24 (Brief pause.)

25 billstein-cross-krob

1 A That 10 acres could fall within the adjudicated
2 area that would show south of our use area.

3 Q Did you take steps to make sure that 10-acre
4 parcel was excluded from your 13-acre parcel
5 indicated in blue on Exhibit 123?

6 A It was mapped to exclude it. If you look at the
7 10 acres in the SW 1/4 of the NW 1/4 and look
8 at that map for the Bear Paw Ditch, it's very
9 difficult to rationalize where those 10 acres
10 are in the SE 1/4 of the NW 1/4.

11 Q We're really only concerned with the 10 acres
12 in the SW 1/4 of the NW 1/4.

13 A We felt those were south of those 13 acres, the
14 way it's mapped in our work maps.

15 Q Do those work maps correspond with HB-2004?

16 A Let me check one other source.

17 (Brief pause.)

18 A Some of that acreage could fall within the
19 unadjudicated in use.

20 Q Mr. Billstein, could you approach Exhibit 123
21 with the HB-2004.

22 (Witness complied.)

23 Q Would you visually compare the 10 acres adjudicated
24 in HB-2004 to the 13-acre parcel of land in

25 billstein-cross-krob

1 Section 10.

2 A The map is supposed to be 20 acres.

3 Q I'm just speaking about the 10 acres in the
4 NW -- or the SW 1/4 of the NW 1/4.

5 THE SPECIAL MASTER: Please speak up a
6 little louder, both of you.

7 MR. KROB: Yes.

8 Q (By Mr. Krob) Just the 10 acres of the SW 1/4
9 of the NW 1/4 is all we're talking about.

10 A The map appears to indicate that somewhere in
11 roughly this reach are 10 acres of adjudicated
12 land.

13 Q Are we looking at the same map? This would be
14 the last page of the exhibit.

15 A I was looking at the Bear Paw Ditch map, 7491.

16 Q I believe there's a large map in there that
17 might cover this.

18 A Okay. These are lands covered by Permit 7491,
19 roughly 100 acres which, of course, does not imply
20 which of those 100 acres is in fact 10 acres,
21 that's why I chose to use the previous map that
22 showed roughly the outline of the 10 acres. This
23 is the original permit acreage not the certified
24 acreage.

25 billstein-cross-krob

1 Q Now, doesn't that map include lands covered
2 by the proposed application in this legend?

3 A It shows land covered by Permit 7491. My point
4 is it also shows 100 acres, and there's 10 acres
5 certified, and the only map reflecting those
6 certified acres is the previous map which covers
7 roughly this entire land tract of which there's
8 10 acres in it, some of which we've defined as
9 adjudicated, others which we have defined as
10 unadjudicated in use. Adjudicated boundaries was
11 our best estimate of where those 10 acres were.

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billstein-cross-krob

1 Q (By Mr. Krob) So you have taken steps to exclude
2 the 10 adjudicated acres; is that correct?

3 A Steps were taken to try to map the location of
4 those 10 adjudicated acres shown in red.

5 MR. KROB: Could I have just a moment, Your
6 Honor?

7 THE SPECIAL MASTER: We'll stand in recess for
8 ten minutes.

9 (Recess.)

10 THE SPECIAL MASTER: All right. Shall we
11 proceed?

12 Q (By Mr. Krob) Mr. Billstein, all I'm really trying
13 to get out which is, I'm sure, obvious to all of
14 us by now, is with respect to the 13-acre parcel
15 that's on Exhibit 123, are any of the 10 acres
16 that were adjudicated in Exhibit HB 2004 included
17 within that 13-acre parcel?

18 MR. ECHOHAWK: Objection, Your Honor. I
19 believe Mr. Billstein has already answered the best
20 he could. He said that there could be.

21 A (By the Witness) We didn't choose to map them as
22 such. Our adjudicated acres were mapped south of
23 that area.

24 THE SPECIAL MASTER: So you feel the answer is
25 billstein - cross - krob

1 no?

2 THE WITNESS: Right.

3 THE SPECIAL MASTER: All right.

4 MR. KROB: Thank you.

5 Q (By Mr. Krob) Directing your attention to Exhibit
6 C-93, do you find thereon in Section 32, the North-
7 east quarter of the Southwest quarter, a parcel of
8 approximately 12 acres mapped in blue?

9 A Section 32?

10 Q Yes.

11 MR. ECHOHAWK: Do you have the township and
12 range?

13 MR. KROB: One North, One East.

14 A (By the Witness) I don't have my hydrographic copy,
15 and this description is a little bit too nebulous
16 for me to locate the exact tract you are talking
17 about.

18 Q All right. Well, why don't we pass it over for the
19 moment and we can perhaps provide you with a more
20 specific description for it.

21 Okay. Let's go back to Exhibit 67. Directing
22 your attention to Exhibit C-67, Section 6 in the
23 Southeast quarter of the Northeast quarter, is there
24 delineated a parcel in blue comprising approximately

25 billstein - cross - krob

- 1 5 acres, Township 4 North, 3 West?
- 2 A. In that that one stands alone, I can identify it.
- 3 THE SPECIAL MASTER: You can?
- 4 THE WITNESS: I can.
- 5 THE SPECIAL MASTER: And you do?
- 6 THE WITNESS: I do.
- 7 THE SPECIAL MASTER: And does it?
- 8 A. It contains approximately six acres.
- 9 Q (By Mr. Krob) And do those 6 acres delineated in
10 blue indicate unadjudicated in-use lands?
- 11 A. They are designated as such.
- 12 Q Handing you what has been marked for identification
13 Plaintiff's Exhibit HB 2001, could you examine that
14 document, please?
- 15 A. I see it and have examined it.
- 16 Q Isn't it true that according to Exhibit HB 2001,
17 specifically proof 19133, that 8.2 acres were
18 adjudicated in the Southeast quarter of the North-
19 east quarter?
- 20 A. The certificate of appropriation shows 8.2 acres
21 adjudicated in the Southeast quarter of the North-
22 east quarter.
- 23 Q And by examining Exhibit HB 2001, as well as the
24 maps you have before you, and by visually comparing
25 billstein - cross - krob

1 the Exhibit HB 2001 to Exhibit C-67, can you tell
2 us whether or not any of the 8.2 acres adjudicated
3 under proof 19133 were included in the 5-acre
4 parcel in the Southeast quarter of the Northeast
5 quarter on Exhibit 67?

6 A. Let me reference my files and then I'll give you a
7 decision.

8 THE SPECIAL MASTER: While he's doing that,
9 can you tell me, Mr. Krob, how many additional
10 examples you have of tracts of five acres or less,
11 or do you know?

12 MR. KROB: Well, we have, as far as we have
13 been able to examine the exhibits thus far -- as
14 you know our experts have only had them a few days
15 and we have only been able to go so far.

16 Of those I have now, there was only one other
17 tract of five acres or less.

18 THE SPECIAL MASTER: And how many more do you
19 have to introduce today?

20 MR. KROB: I believe, until we can get a more
21 adequate description on the one that Mr. Billstein
22 indicated he couldn't identify, I believe I only
23 have three more, Your Honor.

24 THE SPECIAL MASTER: Okay.

25 billstein - cross - krob

1 THE WITNESS: Okay. I reviewed my files.

2 Q (By Mr. Krob) And have you made the comparison
3 between the 8.2 adjudicated acres and the parcel
4 indicated on Exhibit 67?

5 A. Yes.

6 Q Do either of those parcels include the same acres?

7 A. Yes.

8 Q To what extent?

9 A. The entire five or six acres shown as unadjudicated
10 in-use, active irrigation, relates to the adjudicated
11 acreage under 41-40E for the proof number 19133.

12 Q Therefore the parcel indicated in blue on Exhibit
13 67 should actually be indicated in red; is that
14 correct?

15 A. It is adjudicated and in use.

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1 Q (By Mr. Krob) So the answer is yes?

2 A Yes.

3 Q Directing your attention to Exhibit C-84, in
4 Section 35, the NW 1/4 of the NW 1/4, can you
5 locate a parcel of approximately 8 acres?

6 A I wasn't ready to write down the description.

7 Q Okay, I'm sorry. It's Section 35, NW 1/4 of
8 the NW 1/4, an 8-acre parcel.

9 A Eight acres.

10 (Brief pause.)

11 THE SPECIAL MASTER: Township 7, Range 1
12 West; is that right?

13 MR. KROB: I believe so, Your Honor.
14 Seven North, 1 West, yes.

15 (Brief pause.)

16 THE WITNESS: You're only concerned with
17 the parcel in Section 35?

18 Q (By Mr. Krob) Actually it would be two parcels
19 in Section 35, both of them have about 8 acres,
20 or do you have a single 16-acre parcel?

21 (Brief pause.)

22 A There's a blue parcel that goes in Section 35
23 into Section 26, and there's one isolated parcel
24 entirely within Section 35 and not entirely within
25 billstein-cross-krob

1 the NW of the NW.

2 Q All right. We'll make it simple and somewhat
3 quicker and cover both parcels at the same time.
4 You've located both of those parcels then which
5 are in or at least in part of the NW section of
6 the NW section of Section 35?

7 A Are you also including the parcel that extends
8 into Section 26?

9 Q Yes, or at least that portion of it that's in 35.
10 I understand it's all one parcel, but I believe
11 we're primarily concerned with the portion that
12 extends into 35.

13 A You're excluding Section 26?

14 Q Well, we will include it for now and if it gets
15 excluded we'll exclude it.

16 A I don't understand that.

17 THE SPECIAL MASTER: I don't either.

18 Q (By Mr. Krob) Have you located the two parcels,
19 one of which is partly in 26 and partly in 35?

20 A Yes.

21 Q And have you located the one that's entirely in
22 Section 35?

23 A Yes.

24 Q Now, are both of those parcels marked in blue,
25 billstein-cross-krob

1 indicated unadjudicated in use lands?

2 A Yes.

3 Q Handing you what has been marked and identified --
4 marked as Plaintiff's Exhibit HB-2005 and HB-2006,
5 would you examine those documents, please.

6 (Brief pause.

7 THE SPECIAL MASTER: You know, if you can't
8 make this out, there's no law that says it's a
9 hardship to say I can't make it out. There's no
10 error in your so saying if that's the truth.

11 Q (By Mr. Krob) In fact, I'd prefer it rather than
12 stray in any of the descriptions.

13 THE SPECIAL MASTER: You've got 51 acres in
14 that NW 1/4 of the NW 1/4 according to the exhibits
15 before you, and if it gets a little difficult to
16 find the eight in question, why you're free to
17 say so.

18 (Brief pause.

19 THE WITNESS: Okay.

20 Q (By Mr. Krob) Have you examined Exhibits HB-2005
21 and 2006?

22 A Yes.

23 Q Turning first to Exhibit HB-2005, isn't it true
24 that according to proof 11685, 21 acres was

25 billstein-cross-krob

1 irrigated or adjudicated in the SW 1/4 of the
2 SW 1/4, Section 26; 16 acres to the NW 1/4 of
3 the NW 1/4 of Section 35, and 10 acres in the SW
4 1/4 of the NW 1/4 of Section 35?

5 A That's correct.

6 Q Of those 47 acres, are any of those 47 acres
7 included in either parcel indicated on Exhibit
8 C-84?

9 (Brief pause.)

10 A A small portion of the lower tract in Section 35.

11 Q That would be the tract, the SW 1/4 of the NW
12 1/4 of Section 35?

13 A It would be in the NE 1/4 of the SW 1/4 of the
14 NW 1/4.

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1 A. (Continuing) Or maybe a few acres that fall within
2 that adjudicated boundary.

3 Q (By Mr. Krob) Are you able to determine from the
4 maps before you and by visual comparison of the
5 two exhibits, C-84, approximately the number ad-
6 judicated acres that are indicated as being within
7 the parcel that is in blue on Exhibit C-84?

8 A. My estimate of how many adjudicated acres fall
9 within that blue parcel?

10 Q Yes.

11 A. Approximately two.

12 Q Okay.

13 A. The main problem, George Ditch wasn't built as
14 originally set out under the permit... Therefore,
15 the adjudicated land base is set too far to the
16 West.

17 The George Ditch was actually built to the
18 East approximately an eighth of a mile, which allows
19 for the unadjudicated in-use lands, and that ex-
20 tends up into Section 26 also.

21 Q Turning to Exhibit HB 2006, have you examined this
22 document also?

23 A. Yes.

24 Q According to HB 2006, the proof number -- what proof
25 billstein - cross - krob

1 number do you have on your exhibit?

2 A. 17188.

3 Q. Okay. Doesn't that proof indicate that 16 acres
4 were adjudicated in the Northwest quarter of the
5 Northwest quarter of -- I'm sorry. Let me back up
6 for a moment.

7 THE SPECIAL MASTER: It's a public record and
8 it ought to speak for itself. It's in evidence.

9 MR. KROB: Okay.

10 MS. SLEATER: Your Honor, I would also like to
11 point out that the copy we have been given indicates
12 it's a supplemental supply for the area served by
13 the George Ditch and is not to include any lands
14 that weren't previously adjudicated to the George
15 Ditch.

16 THE SPECIAL MASTER: Where did you find that
17 it's supplemental water?

18 MR. KROB: I believe it's on the proof, Your
19 Honor.

20 MS. SLEATER: Your Honor, the writing under the
21 legal description, there's a typed-in --

22 THE WITNESS: Right here, Your Honor (indicat-
23 ing).

24 THE SPECIAL MASTER: Got it.

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1 MS. SLEATER: The language is --

2 THE SPECIAL MASTER: There is hooked onto it
3 the Hosie Ditch instead of to the George Ditch,
4 so those have to be switched; is that right?

5 MS. SLEATER: No, Your Honor. What it is is
6 supplemental supplies under State law is when the
7 original source of supply cannot supply all of the
8 water that's necessary for the land base that was
9 previously adjudicated.

10 You can get a supplemental supply. You still
11 have the same acreage, which is why they say
12 supplemental supply for 63 acres, which is the 63
13 acres under the George Ditch, and then after they
14 give the legal descriptions they say, "Supplemental
15 Supply for Lands under George Ditch, certificate
16 recorded 33, Page 353," which is to point out that
17 at least insofar as the line of questions that
18 go to the Hosie Ditch are concerned, we are talking
19 about exactly the land we were talking about in the
20 George Ditch, and I would object as being redundant
21 and repetitive.

22 THE SPECIAL MASTER: I think I will sustain
23 the objection on this.

24 MS. SLEATER: Thank you.

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1 MR. KROB: On the grounds the land is covered
2 by the last exhibit?

3 THE SPECIAL MASTER: Duplicative.

4 MR. KROB: Okay.

5 THE SPECIAL MASTER: At worst it's an 8-acre
6 spread if the ruling were the other way.

7 MR. KROB: Your Honor, before I proceed, if I
8 may be permitted to inquire, I am down to the parcel
9 of two acres that I spoke of earlier, and to save us
10 all time, I'm wondering if I will be permitted to
11 proceed.

12 THE SPECIAL MASTER: Yes, I will permit you to
13 proceed. I want you to get through everything that
14 you have been assigned, but if you and others for
15 the State can hold off on the 2-acres, I don't think
16 there's too much of a loss, and that goes to the
17 United States on 2-acre matters.

18 MS. SLEATER: Your Honor, we have been putting
19 in 35,000 at a time.

20 THE SPECIAL MASTER: I see that. Hope springs
21 eternal.

22 Q (By Mr. Krob) Mr. Billstein, directing your attention
23 to Exhibit C-80, do you find thereon a 2-acre parcel
24 in Section 19 in the Northwest quarter of the Northwest
25 billstein - cross - krob

1 quarter?

2 A. I see it.

3 Q. And on Exhibit C-80 is that parcel indicated in
4 blue?

5 A. It is.

6 Q. Indicating unadjudicated in-use lands?

7 A. That's correct.

8 Q. Handing you what has been marked for identification
9 Plaintiff's Exhibit HB 2002, would you examine that
10 document, please?

11 THE SPECIAL MASTER: Off the record.

12 (An off-the-record discussion
13 was held.)

14 THE SPECIAL MASTER: We can go back on the
15 record.

16 Let me ask this question: I find on the
17 certificate of appropriation of water that the docu-
18 ment asserts 36 acres in the Northwest quarter of
19 the Northwest quarter. Is that where your two
20 acres are located also that you say are unadjudicated?

21 THE WITNESS: Yes. On the work map that I
22 find in the files there's a line of demarkation in
23 the lower left-hand corner, and I don't have notes
24 to track why that line was drawn there, but it may be
25 billstein - cross - krob

1 that there was some conversation with the State
 2 Engineer's Office, but that's the reason that two
 3 acres was shown there because of this line break
 4 on our particular work map.

5 Q (By Mr. Krob) Have you examined HB-2002?

6 A Yes.

7 Q What is the proof number on that exhibit?

8 A 16834.

9 Q According to the map contained in that exhibit, are
 10 the lands included in the 2-acre parcel on Exhibit
 11 C-80 --

12 THE SPECIAL MASTER: I would object to that
 13 question. If the map is the same as the one you
 14 handed me, it's totally marked as if to indicate
 15 that it's -- it isn't keyed, but it's totally flooded
 16 in both sections in the North -- the North half of
 17 the Northwest quarter of Section 19 is all indicated.

18 MR. KROB: Right, Your Honor, but the 2-acre
 19 parcel, according to the exhibit, there's a 2-acre
 20 parcel in there that is, in fact, unadjudicated
 21 according to Mr. Billstein --

22 THE SPECIAL MASTER: That's exactly my point.
 23 The certificate shows there's only 36 acres in there
 24 in this document you handed me, but the map shows

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1 that all 40 are covered, and I think that the
2 certificate governs.

3 MR. KROB: Okay. If the certificate governs,
4 then there's an error in the exhibit that we need
5 to get on the record.

6 THE SPECIAL MASTER: I don't follow that.

7 MR. KROB: If there is, in fact, 40 acres in
8 this parcel that are, in fact, unadjudicated, we
9 can't just take for granted that they happen to be
10 the four that correspond to the two that he's got
11 marked there.

12 THE SPECIAL MASTER: No, but until you show me
13 they don't include the two, I assume that the two
14 acres and the 40 acres doesn't grow anything or is
15 not in use and appropriated, and also two acres on
16 which there is not a certificate --

17 MR. KROB: But, Your Honor, the exhibit purports
18 to say that those particular two acres are the two
19 that are unadjudicated at this point, or two of the
20 four that are unadjudicated.

21 What I would like to inquire of the witness is
22 how he knows that those two are two of the four --

23 THE SPECIAL MASTER: That's an excellent question
24 and altogether appropriate.

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1 Q (By Mr. Krob) But you do not know the basis
2 for the line; is that correct?

3 A There's nothing in this file that defines it.
4 They had considerable amount of conversation
5 with the State Engineer's office, that could be
6 the primary source, but I'm not in a position
7 to document that.

8 Q So we in fact have no way of knowing where the
9 40 adjudicated acres are?

10 THE SPECIAL MASTER: I think he answered
11 that his work papers show there was an omission
12 of a complete 40 down in the corner and he gathered
13 from that, I believe he said -- if you can show
14 the work papers to him, Mr. Billstein, that
15 might answer that question.

16 He drew a conclusion that that was --

17 THE WITNESS: I assume one of my investigators
18 drew that line with good reason.

19 Q (By Mr. Krob) With regard to all the exhibits
20 that we've gone through this afternoon, isn't
21 it true that you yourself did not review the
22 State Board's -- State Board of Control's files?

23 A I did not specifically review the State Board
24 of Control's files. My instructions to my

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1 investigators were to obtain all the Certificates
2 of Record from the State Engineer's office, first
3 of all utilizing the computer printout that was
4 given to us by the State of Wyoming, purported
5 to be a comprehensive listing of such, then
6 following up with conversations with individuals
7 like Phil Valez at the State Engineer's office,
8 and attempt to make sure that we had everything
9 of record.

10 I did participate in some of the plotting
11 and some of the checking of the plotting, but
12 I did not go to the State Board of Control's files
13 specifically.

14 Q Isn't it true that you relied on the work of
15 others in reaching your conclusions as to the
16 adjudicated or unadjudicated nature of the lands
17 about which you've been testifying?

18 THE SPECIAL MASTER: That question has been
19 asked and answered at least once in the past
20 several days.

21 MR. KROB: All right, I'll withdraw the
22 question.

23 THE SPECIAL MASTER: Thank you. The answer
24 was "Yes", of course, but its been asked and

25 billstein-cross-krob

1 answered several times.

2 THE WITNESS: Well, Your Honor, I should say
3 I have plotted a significant portion of these
4 water rights and checked them. So it wasn't an
5 entire break between myself and my technical
6 people.

7 MR. KROB: I'm not sure I understand the
8 response. Is the question proper or has it
9 already been answered?

10 THE SPECIAL MASTER: Well, the question has
11 been asked and answered. He wanted to state it
12 a little further. And read his response, would
13 you, please?

14 (Thereupon the following
15 (response was read back as
16 (follows: "The Witness:
17 (Well, Your Honor, I should
18 (say I have plotted a
19 (significant portion of these
20 (water rights and checked
21 (them. So it wasn't an
22 (entire break between myself
23 (and my technical people."

24 Q (By Mr. Krob) And is that all you did with
25 respect to this work?

A With respect to what work?

Q You just told us you did some plotting and things
like that. What all did you do with respect to

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1 the work where you determined whether it was
2 adjudicated or unadjudicated?
3 A Set up a program to make that determination,
4 instructed my people to assimilate all Permits
5 of Record from the files of the State Engineer
6 to accomplish this. We obtained two sets of
7 computer listings, the last one from approximately
8 June of 1980, given to me by legal representatives
9 of the State of Wyoming.

10 We then undertook the assimilation of all
11 the Permits of Record relative to that listing as
12 well as followed up with requests for any
13 additional water rights of record not contained.
14 We obtained the official computer listings, most
15 current at that time from the State Engineer's
16 office. This was a way of checking the information
17 that we had versus what we needed to obtain to
18 complete our inspectional gathering.

19 I was aware that the legal descriptions and
20 such were not totally accurate, that's why we
21 went to the State Engineer's office to get best
22 information or primary information instead of
23 relying simply on computer printouts.

24 I instructed my staff to plot the water rights
25 **billstein-cross-krob**

1 of record, to identify such as adjudicated or
2 unadjudicated.

3 In certain portions of the Reservation I
4 participated in the plotting, in many portions
5 of the Reservation I reviewed and checked. We're
6 talking about literally thousands of water
7 rights of record, I certainly didn't check every
8 single one of them.

9 There's one area like the Wind River Federal
10 Irrigation Project where I wish I would have.

11 The hydrographic maps were developed from
12 the plotted water rights of record and the exhibits
13 from the same hydrographic maps. My involvement
14 was to require individuals to review and map
15 locations of adjudicated acreages. I did do some
16 cross-checking, for example, in the Crow Creek
17 area, also the Dry Pasup area. I was involved
18 in Muddy Creek, Popo Agie watersheds, give myself
19 a cross-section of various portions of the
20 Reservation from a review standpoint.

21 I've already spoken, I believe, in direct
22 and cross to my involvement in the unadjudicated
23 in use categories in terms of not only developing
24 the program but also doing review and field

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1 verification work myself.

2 Q Okay. Now, so you did do some of the plotting
3 yourself; is that true?

4 A Certain parts of the Reservation I plotted.

5 Q Out of all the parcels that were plotted on the
6 Reservation, could you give us a rough estimate
7 as to what proportion you personally plotted?

8 A You're talking adjudicated rights?

9 Q Adjudicated, unadjudicated, out of all those
10 that were plotted, what proportion did you personally
11 plot?

12 A I would guess between two and five percent.

13 MR. KROB: Your Honor, with the Court's
14 indulgence, I believe I have hit a fairly good
15 stopping place from our standpoint and would ask
16 that we recess until tomorrow morning.

17 THE SPECIAL MASTER: All right, Mr. Krob,
18 that's fine. Let's convene at 9:15 unless there's
19 any objection that you know of.

20 MR. KROB: None that I know of.

21 THE SPECIAL MASTER: We'll stand in recess
22 until 9:15 tomorrow morning.

23 Do you know how much time you'll need of this
24 witness?

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MR. KROB: I would hope that we would be through with this witness by Wednesday, finish it on Wednesday.

THE SPECIAL MASTER: If we're lucky, Tuesday, and Wednesday if not.

MR. KROB: Right.

THE SPECIAL MASTER: Okay, that's it. Thank you.

(Proceedings recessed at
4:35 p.m.)

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REPORTERS' CERTIFICATE

1
2 State of Wyoming)
3 : SS
4 County of Laramie)

5 We, Merissa Racine and Viola J. Lundberg, Registered
6 Professional Reporters and Notaries Public, hereby certify
7 that the facts as stated in the caption hereof are true;
8 that we did at the time, date and place, as set forth,
9 report the proceedings had before the Honorable Teno
10 Roncalio, Special Master Presiding, in stenotype; that
11 the foregoing pages, numbered 2441-2546 inclusive, con-
12 stitute a true, correct and complete transcript of our
13 stenographic notes as reduced to typewritten form under
14 our direction.

15 We further certify that we are not agents, attorneys
16 or counsel for any of the parties hereto, nor are we inter-
17 ested in the outcome thereof.

18 Dated this 16th day of March, 1981.

19 Merissa Racine
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22 Reporter

23 Viola J. Lundberg
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