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Trial Transcript, Vol. 29, Afternoon Session

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Case # 4993

File # 136

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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 L. Hampton CLERK
DEPUTY

VOLUME 29
Afternoon Session
Tuesday, March 17, 1981

ORIGINAL

1 THE SPECIAL MASTER: Okay, Mr. White.

2 Q (By Mr. White) Mr. Billstein, directing your
3 attention to what's been admitted as Exhibit C-103,
4 particularly a tract of land that is shown in
5 blue thereon, about 260 acres, runs through
6 Section 12 on down to Section 13, do you find
7 that?

8 A Yes.

9 Q I direct your attention to lands in the northeast
10 portion of Exhibit C-103 that are very dark and
11 clearly irrigated. You see those?

12 A Yes.

13 Q Now, I direct your attention to those lands
14 and parcels that we are discussing, particularly
15 those in Section 12, and ask you if they are not
16 of a much lighter shade gray than the lands which
17 are clearly irrigated?

18 A They're a lighter shade.

19 Q What is the classification which you have
20 assigned to those lands?

21 A What typing?

22 Q I'm sorry, type.

23 A That's a Type V incidental water supply.

24 Q That light area?

25 billstein-cross-white

1 A Right.

2 MR. PERRY: Your Honor, I would renew my
3 objection to the continuation of this line
4 of questioning. We're back to the same things
5 we were on this morning. Unless Mr. White has
6 something else specific in mind, we have gone
7 through this on a number of tracts, and I see
8 no advantage and no benefit to the Court from
9 going through additional examples of the same
10 thing.

11 THE SPECIAL MASTER: Well, I'll overrule one
12 more time or twice. We don't know how many.
13 Mr. White, do we have totals and examples as
14 any other case of how many more similar tracts
15 that are light?

16 MR. WHITE: If I could just have a minute
17 to find it, Your Honor.

18 We've got 6,073 acres in this category.

19 THE SPECIAL MASTER: Acres. Does that
20 6,000 acres actually parallel the Type IV,
21 Type IV typing of land as contained in HB-61?

22 MR. WHITE: Well, I'm not qualified to say
23 so, Your Honor. I think for the most part it
24 does, although as Mr. Billstein's testified, there

25 billstein-cross-white

1 have been Type V's and Type II's involved in
2 that as well.

3 MR. PERRY: But, Your Honor, the point is
4 that whatever the type is, just the fact that
5 Mr. White is pointing out that certain areas are
6 lighter than certain other areas seems to me
7 to have no relevance. It's been explained by
8 Mr. Billstein.

9 THE SPECIAL MASTER: It has a relevancy
10 to inquire into. If the land is not in use, it
11 doesn't belong classified as such. If the land
12 is less than an irrigable acre, you know, we
13 have a duty to inquire, and so far these examples
14 have not met the test. Now, if the other two
15 or three more are not going to meet the test,
16 then I will probably entertain some kind of
17 arrangement where we can get, make an offer of
18 proof to move on, but I'm going to overrule it
19 for now.

20 Q (By Mr. White) With respect to that parcel in
21 Section 12, isn't it true that it is primarily
22 covered with brush?

23 A There's vegetation down there. I don't know
24 exactly the amount or the categorization of brush

25 billstein-cross-white

1 versus grass.

2 THE SPECIAL MASTER: When you say "Brush",
3 you're implying sagebrush on unbroken sod?

4 MR. WHITE: That's what it looks like, Your
5 Honor. Take a look at the map.

6 THE SPECIAL MASTER: I'm not competent to
7 tell you. I just wondered.

8 MR. WHITE: If you want to look at it,
9 I'm sure the same question would be raised in
10 your mind that was raised in mine.

11 THE SPECIAL MASTER: Of course, he's already
12 answered that.

13 (Brief pause.)

14 THE SPECIAL MASTER: Well, Mr. White, he
15 says they're Type V, therefore, they are not
16 intentionally irrigated but receive sufficient
17 water from adjacent irrigated land or canals or
18 from streams to provide some beneficial use.

19 THE WITNESS: That's right.

20 THE SPECIAL MASTER: Let me ask you, Mr.
21 Billstein. Have one good look at that exhibit
22 one more time and let me see if you think that
23 deserves to be called irrigated land. The one on
24 the wall I prefer.

25 billstein-cross-white

1 MR. WHITE: It's not that one. We changed
2 it.

3 THE SPECIAL MASTER: Oh, you changed on
4 me.

5 MR. WHITE: I'm sorry, we were getting ready
6 to go to the next one.

7 THE SPECIAL MASTER: I would just like you
8 to answer that one question.

9 THE WITNESS: First of all, Your Honor,
10 again I would never make a conclusion by looking
11 at a pictorial photograph. That only gives you
12 a first impression of what an area might look like.

13 We got into all the other possible ramifications
14 of why an area might have lighter texture than
15 another. We were talking about even the fact that
16 if it could be plowed, the field was plowed, that
17 would show white. By these standards that we're
18 evaluating it, then you would say there's no
19 beneficial use being made of that field.

20 Q (By Mr. White) Let me interrupt and let me ask
21 whether that field is plowed?

22 A No. By type, by definition it's Type V, so it's
23 receiving incidental waters. It gets some
24 benefit, people actually take advantage of that

25 billstein-cross-white

1 beneficial use.

2 THE SPECIAL MASTER: Because it is by the
3 stream? Is it a flood plain or do you know?

4 THE WITNESS: It was to be a direct result
5 of a man-made system, and it was determined
6 that it would be seepage water from these systems.
7 It can be somewhat influenced by a natural stream,
8 and, you know, if we're going -- I guess we're
9 going to start putting together the tests for
10 all challenges of water rights, there are a lot
11 of Type V lands as mapped in '68, '70 inventory
12 on adjudicated tracts throughout Water Division 3.
13 And if we're going to start setting the criteria
14 for something like this, you know, it's going
15 to have some very significant ramifications.

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1 MR. WHITE: Your Honor, I discussed that
2 particular matter with the State Engineer, and I
3 think it's important to indicate the position of
4 the State on that.

5 MS. SLEATER : Your Honor, I object to this
6 hearsay, rank hearsay, that's not even from a
7 witness under oath dealing with a substantive
8 matter in this case.

9 If Mr. White would like to put on the State
10 Engineer to talk about this as part of his case,
11 that's fine --

12 MR. WHITE: She hasn't even heard what I'm
13 going to say.

14 MS. SLEATER: When you start out saying, "It's
15 something somebody else told me." --

16 MR. WHITE: I didn't say that, Regina.
17 Listen.

18 THE SPECIAL MASTER: Let's not quarrel. Go
19 ahead, Mr. White.

20 MR. WHITE: The position of the State is that
21 Mr. Billstein is probably right, but the thing that
22 we need to remember here is that we are dealing
23 with two different types of water rights.

24 With an appropriated water right, it takes its
25 billstein-cross-white

1 place in line with the priority system, has a
2 specific statutory test which must be met, which
3 is quite different from the case law test that is
4 applied to reserve rights, which don't take their
5 place in line necessarily based on the date of
6 beneficial use or date of application for permit,
7 but go to the head of the line, and so this is quite
8 fitting -- and this is argument, Your Honor -- it's
9 quite fitting that the test for the reserve right
10 be, as the case law makes it, far more severe than
11 the test for an appropriated right because it goes
12 to the head of the line.

13 THE SPECIAL MASTER: Well, the result of this
14 lawsuit may be some impositions of a lot of new
15 tests on acreage and rights and on their abandon-
16 ment when not properly used and on acreage not
17 therefore designated on the permit. A lot of changes
18 are in the air. It's just inevitable.

19 Go ahead, Mr. White.

20 Let me ask one question on the last thing we
21 were on. If an area is served by seepage from
22 delivery systems to adjoining lands, it doesn't
23 need a designation of a duty of water for that acre-
24 age, does it? The canal is going to seep a certain

25 billstein-cross-white

1 amount of water anyway in transmitting water to
2 the other areas?

3 THE WITNESS: We just want to ensure that the
4 depletion is recognized.

5 THE SPECIAL MASTER: Do you have any way of
6 measuring that depletion by acreage or by hundreds
7 of acres?

8 THE WITNESS: Again that is going to be followed
9 up by the agricultural consultant in the case, but
10 very definitely there will be a depletion or water
11 duty assigned to lands like that, and justly so
12 from a water planning standpoint.

13 You have to account for those kinds of deple-
14 tions and it is the beneficial use, and the people
15 are relying upon it today.

16 THE SPECIAL MASTER: Okay. Thank you.

17 Q (By Mr. White) Ron, let's see if you can get through
18 this without your hydrographic. If you can't, feel
19 -- directing your attention to what's been marked
20 for identification, or been admitted, rather, as
21 Exhibit C-90 and particularly the blue parcels in
22 Section 21.

23 A I see them.

24 Q Do you see the larger parcel in Section 21, and it
25 billstein-cross-white

1 looks like a beaver, I guess?

2 A. Right.

3 Q. And it's very light colored on the exhibit; is that
4 correct?

5 A. Yes.

6 Q. Is that Type IV land or Type II land? If you don't
7 know, let's get the hydrographic.

8 THE WITNESS: "14"-71.

9 THE SPECIAL MASTER: Is that a 9-acre tract
10 you are looking at?

11 MR. WHITE: No, it's got to be more than that,
12 probably about 27.

13 THE SPECIAL MASTER: Because I just noticed 9
14 acres there, and I had a suspicion it might be it.

15 A. (By the witness) Approximately 27 acres of Type II.

16 Q. (By Mr. White) And that Type II land is the land
17 that shows in the light color on the exhibit; is
18 that correct?

19 A. That's the one that's in relatively light color
20 showing the laterals and distribution system all
21 the way through.

22 Q. Now, down to the southwest of that parcel do you
23 find another parcel that's probably, oh, I guess
24 nine or ten acres, which I believe is Type IV?

25 billstein-cross-white

1 A. Right.

2 Q. Is there any significant difference between the
3 color tone on Exhibit 90 with the Type II lands
4 and the color tone for the Type IV lands?

5 MR. ECHOHAWK: Your Honor, I would like to
6 interpose an objection. It's irrelevant as to the
7 color tone.

8 Mr. Billstein has explained time and time again
9 that that's really not important, that the photo-
10 graph only depicts the condition of the land on
11 that particular date, and there's a lot more work
12 that goes into the final conclusion than just one.

13 THE SPECIAL MASTER: I sustain the objection.

14 MR. WHITE: I would like to point out, Your
15 Honor, that the Master can see for himself what
16 irrigated land looks like on those photographs,
17 and the question, if for no other reason, is approp-
18 riate because it goes to impeachment, and those
19 areas are clearly light. They are not in areas
20 that Mr. Billstein has testified receive only a
21 partial water supply. It appears to be right along
22 the Popo Agie, the banks of the Popo Agie and I
23 think it's appropriate.

24 THE SPECIAL MASTER: The objection is sustained.

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1 MR. WHITE: I was waiting for the witness
2 to --

3 Q (By Mr. White) On what facts would you know of
4 your personal knowledge did you base your opinion
5 of the two parcels in Section 21 to which we have
6 been referring were, in fact, actually irrigated
7 during the 1980 irrigation season, of your personal
8 knowledge?

9 A I didn't visit the tracts until February of 1981.
10 The notes that I had on the Type II was that we had
11 good extensive laterals throughout that area whereas
12 the lower Type IV had some laterals or sparse
13 lateral development.

14 The distinction between the II and the IV
15 was the level of on-farm distribution systems.

16 Q Of your personal knowledge do you know whether either
17 one of those tracts was irrigated in 1980?

18 MR. ECHOHAWK: Your Honor, I believe the
19 question has been asked and answered. Mr. Billstein
20 said that from his observations in 1981 he could
21 not make that determination.

22 MR. WHITE: He did not. He said that the
23 investigation in 1980 --

24 THE SPECIAL MASTER: Miss Reporter, let me
25 billstein-cross-white

1 hear that question again.

2 (Whereupon the following
3 question was read back as
4 follows: "Q Of your
5 personal knowledge do you
6 know whether either one of
7 those tracts was irrigated
8 in 1980?)

9 A. (By the Witness) I made no field investigation in
10 1980.

11 From my visitation in 1981, the diversion
12 works were intact. The ditch systems were opera-
13 tional. The laterals were extensive throughout
14 the use area, less well-defined in the Type IV.
15 There's no evidence of vegetation growing in the
16 ditches, which it would if you had a ditch system
17 that was not being operated. There was no evidence
18 of down cutting, isolation of diversion works.

19 From my 1981 review, I would concur with my
20 field personnel's mapping that it was, in fact,
21 irrigated.

22 Q (By Mr. White) Mr. Billstein, isn't it frequently
23 and, in fact, perhaps the normal practice that a
24 farmer or irrigator does not irrigate all of his
25 land in any one year and he may allow some of his
land to lay fallow?

A. That could happen, yes.

billstein-cross-white

1 Q How do you know that the 34,850 acres which your
2 opinion indicated were all irrigated during 1980
3 does not include land which was laying fallow --

4 THE SPECIAL MASTER: Does his testimony, in
5 fact, show that all 34,800 acres were irrigated
6 in 1980? I wasn't aware that it did.

7 MR. WHITE: That was his opinion, I believe,
8 Your Honor.

9 THE SPECIAL MASTER: It was land in use, and
10 he testified time and time again that this is land
11 in use. That may include a year or even two of
12 a rotation of crops, idling, summer fallow. The
13 practices of agriculture could be included in that,
14 I think.

15 MR. WHITE: Let me ask --

16 THE SPECIAL MASTER: That may be a small
17 distinction I'm making, but I think it's appropriate.

18 MR. WHITE: Let me ask the question.

19 THE SPECIAL MASTER: Sure.

20 Q (By Mr. White) Mr. Billstein, when you described
21 land in use, wasn't your testimony directed prim-
22 arily to lands behind spreader dikes rather than those
23 allowing direct irrigation?

24 A I mentioned spreader dikes. We also got into other
25 billstein-cross-white

1 areas, say Type IV service areas, this type of
2 thing, where it was evident from the condition of
3 the facilities that there was very recent use with-
4 in the last year or two.

5 MR. WHITE: Let me ask you a question with the
6 aid of the blackboard.

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1 Q (By Mr. White) Mr. Billstein, I want you to
2 assume that the square I'm drawing on the
3 blackboard is a section, and it's divided into,
4 assume the irrigated quarter sections, and I
5 want you to assume that the practice of the
6 person that irrigates this section is to allow
7 one of those quarter sections to remain fallow
8 each year, not the same one each year, but a
9 different one each year, so one of them remains
10 fallow. Is your opinion with respect to land
11 irrigated or in use for 1980, include three
12 sections or if it were covering a section, does
13 it include three quarters or does it include
14 four quarters?

15 A It would include all four quarters. That would --
16 that's very much the exception rather than the
17 rule, in that most of the use in the Basin is
18 pasture grasses, at least on the trust lands,
19 and alfalfa, which is not rotated that often.

20 Q So your definition of any use includes land
21 which may be lying fallow during a particular
22 year; is that correct?

23 A There were --

24 Q During 1980, rather?

25 billstein-cross-white

1 A There were a few fields that were mapped as
2 in use that fell into that category.

3 Q Now, is the water demand for this section of
4 land under this rotational scheme based on the
5 water required for three sections or for four
6 sections?

7 MR. ECHOHAWK: Objection, Your Honor. This
8 is beyond the scope of Mr. Billstein's direct.
9 He didn't testify anything about water demand.

10 THE SPECIAL MASTER: The objection is
11 sustained, but I have a suspicion we'll be back
12 to the subject matter later in the hearing.

13 MR. WHITE: I just wanted to get the seed
14 planted.

15 THE SPECIAL MASTER: All right. We will
16 want to impose the same burden of water as we
17 do the other on all users in Water Division No. 3.

18 Q (By Mr. White) Ron, let's go back for a minute
19 to Exhibit 103.

20 A Okay.

21 Q I direct your attention to a 1/4 1/4 of a section,
22 which should be the NE of the NW of Section 11,
23 as well as the 1/4 1/4 of the section just below it.

24 Let me shift gears for just a minute here and

25 billstein-cross-white

1 ask you how much land you deduct from that
2 parcel as being attributable to the road and
3 farmstead at which the road leads, roughly on
4 the boundary between the NE 1/4 of the NW and the
5 SE 1/4 of the NW?

6 (Brief pause.

7 A I'm not so sure that's a farmstead. I rather
8 think it's a hayfield, haystack.

9 Q How much did you deduct from that -- for that?

10 A None. First of all, the road is the width of a
11 black line, we're talking about a small tract
12 at best, probably about two wheel lengths of a
13 pickup, and the haystack may have been located
14 there this year, it could be located somewhere
15 else next year.

16 Q So you counted lands underneath haystacks and
17 within stack yards as being in use for the
18 purposes of your opinion?

19 A If there was anything significant in terms of
20 a major physical obstacle we tried to eliminate
21 it from the totals.

22 MR. WHITE: Your Honor, could I ask you to
23 take a look at this particular example.

24 (Brief pause.

25 billstein-cross-white

1 Q (By Mr. White) Mr. Billstein, in the NW 1/4 --
2 or the NW corner of the SE 1/4 of the NE 1/4
3 there appears to be some sort of a large yard
4 for which there appear to be shrubs or trees as
5 a windbreak, around what you described as a hay-
6 stack. Did you include or exclude from your
7 area attributable to that particular tract, the
8 notch in the NW 1/4 of that particular parcel?

9 A Let me check my irrigation facilities map.

10 (Brief pause.)

11 A The facilities map, show a structure at that
12 location. That may be a service lateral.

13 THE SPECIAL MASTER: If you can't identify
14 it, please say so. If you're not sure, please
15 say so.

16 THE WITNESS: I'm not sure. It could
17 possibly be a service lateral as well.

18 Q (By Mr. White) The question is did you include
19 or exclude within your acreage for that particular
20 parcel --

21 THE SPECIAL MASTER: It's already been
22 answered. He already answered, he said he did
23 not exclude any --

24 MR. WHITE: He did not, I'm sorry. I apologize.

25 billstein-cross-white

1 THE SPECIAL MASTER: No need to apologize.
2 If that's your worst duplication, you're a
3 lucky man, a case this complicated.

4 Is that 1471 up there now, Mr. White?

5 THE WITNESS: "16" -112, Your Honor.

6 THE SPECIAL MASTER: All right, I beg
7 your pardon, go ahead.

8 MR. WHITE: You want me to find it?

9 THE SPECIAL MASTER: No. I had a little
10 question about it, it doesn't have to be --
11 it can wait.

12 THE WITNESS: Okay.

13 Q (By Mr. White) On Exhibit C-130, do you see
14 what has been marked for identification or
15 marked as Parcel 35-1, --

16 A Yes.

17 Q -- in blue? Isn't it true that that land is
18 shown as a light shade of gray on the photograph
19 underneath that parcel?

20 A Again, with the, all the realm of reservation
21 that that implies, it is light.

22 Q Did you personally visit that site?

23 MR. ECHOHAWK: Objection, Your Honor. It
24 appears that we are getting back in the same line
25 billstein-cross-white

1 of questioning. It's repetitive.

2 THE SPECIAL MASTER: I'm sorry, I'd like
3 to hear the question Mr. White stated.

4 (Thereupon the following
5 (question was read back as
6 (follows: "Q Did you
7 (personally visit that site?"

8 THE WITNESS: That was part of my February --

9 THE SPECIAL MASTER: And you objected to
10 the question?

11 MR. ECHOHAWK: We're going into the same,
12 the coloring of the land, whether he visited it
13 or not, same line of questioning we've been
14 pursuing all morning and this afternoon.

15 THE SPECIAL MASTER: Okay. Let me again
16 have one or two more inquiries into this line
17 to see, and when and if it's appropriate that
18 it be cut off at all. Overruled for now, but the
19 question was just did you visit the site.

20 Q (By Mr. White) Did you visit the site during
21 1980?

22 A No.

23 Q Did you use infrared photography upon which to
24 base your opinion in part as to the character
25 of that land as being in use?

billstein-cross-white

1 A I used infrared photography as well as SCS,
2 as well as pictorial aerial photographs to get
3 an initial impression.

4 Q Did you use color infrared photograph 8773?

5 A Yes.

6 Q On 8773, isn't it true that that area is shown
7 in the same general shade as the surrounding
8 range land?

9 A This was flown in September, and infrared for
10 September 9th of 1978, for that day shows no
11 measureable distinction between that area and
12 the surrounding terrain.

13 Q There are other tracts of land in the same
14 general area, however, that do show a shade of
15 red on that day, are there not?

16 A Certainly you got different water supply sources,
17 different lengths of water supply in a given
18 year, perhaps different management, perhaps
19 different physical conditions. A person may be --
20 we're talking about a dynamic system in these
21 drainages. Diversion works get washed out,
22 people go back in and put in diversion works.
23 There could be any number of physical inputs
24 that could account for the difference. That's

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why you go to the field.

* * * * *

1 Q (By Mr. White) And that's why you have a different
2 amount of acreage in-use each year, isn't it?

3 A. It's a dynamic. Agriculture is a dynamic. It
4 reacts to physical conditions.

5 You take a look at a watershed like Crow Creek
6 or Dry Pasup Creek, and you get into situations
7 where the high spring runoff in an exceptionally
8 high year can impact the diversion works, wash them
9 out, take them out for a few months.

10 People are continuously going back in and
11 modifying their diversion systems.

12 If you happen to take an aerial photograph or
13 an infrared shot in a duration when these people
14 are repairing diversion works, it is certainly not
15 evidence to take away a person's water right who
16 has been irrigating for 35 or 40 years and happens
17 to be repairing his physical works during that
18 particular day that you shot a photograph.

19 Q With respect to parcel 35-1, do you have any know-
20 ledge that that's been irrigated for 35 or 40 years?

21 A. I was referring to Crow Creek and Dry Pasup Creek.

22 Q What kind of a water year was 1980?

23 THE SPECIAL MASTER: I think I would be inclined
24 to -- well, go ahead and answer. Do you know what

25 billstein-cross-white

1 kind of a water year 1980 was?

2 THE WITNESS: I would have to go back and
3 research it, Your Honor. Again, we are mapping
4 irrigated acreage.

5 Q (By Mr. White) Isn't it true that, as you've
6 testified, I believe, the amount of land in use
7 in any particular year is a function of the amount
8 of water available during that year?

9 A That's one of the parameters that would reflect the
10 amount of acreage.

11 Q Isn't it true then that as the amount of water
12 varies from year to year, the amount of land
13 currently in use during that year will also vary?

14 A That doesn't necessarily follow because you are
15 talking about the way people operate in this part
16 of the country. A lot of them will take advantage
17 of early season water, get one cutting, for example,
18 and that's the way they have set up their agricultural
19 enterprise, and whether you have flow in September
20 or not may not impact whether water got on all that
21 land. It's a question of duration of time, how much
22 time the water was actually being applied.

23 Q Isn't it true, Mr. Billstein, that while your opinion
24 is that 34,850 acres of unadjudicated lands were in

25 billstein-cross-white

1 use in 1980, you do not know the amount of land
2 that was in use during any other year?

3 MR. ECHOHAWK: Objection, Your Honor. That's
4 irrelevant.

5 THE SPECIAL MASTER: Well, I'm inclined to
6 agree with it, but I think he can ask -- it's pretty
7 obvious. He's testified to the year he testified
8 to.

9 Q (By Mr. White) If you can, answer the question,
10 Ron.

11 A. The year we were mapping irrigation was 1980. We
12 had looked at other photographs over time in certain
13 areas to help us delineate the physical systems and
14 how various tracts were being served, but never
15 from the standpoint of coming up with an acreage
16 total to compare one year against another.

17 THE SPECIAL MASTER: You said you used three
18 sources to make your judgment on this blue area in
19 C-130 and your judgment call on that was that it
20 was a what type land?

21 THE WITNESS: I believe that's a Type IV land.

22 THE SPECIAL MASTER: And that it merited in-
23 clusion; is that correct?

24 THE WITNESS: Yes, sir.

25 billstein-cross-white

1 MR. WHITE: Your Honor, it's my purpose to
2 continue as long as you will let me go to talk
3 about these areas that have distinct textural or
4 shade differences surrounding the areas.

5 THE SPECIAL MASTER: I'm inclined to let you
6 go because I frankly want to let you know that I'm
7 not trying to preclude your making any points here,
8 and they may be very small ones which we haven't had
9 too many so far, so you are welcome to proceed.

10 MR. WHITE: Thank you, Your Honor. May I have
11 a moment to get some exhibits in order?

12 THE SPECIAL MASTER: Sure, sure. We have been
13 45 minutes. Do you want to take a 5-minute break?

14 MR. WHITE: That would be fine.

15 THE SPECIAL MASTER: We will be in recess.

16 (Recess.

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

3 Q (By Mr. White) Ron, on Exhibit C-131, a parcel,
4 35-3.

5 (Brief pause.

6 MR. WHITE: While we are waiting for that
7 hydrographic, I could do a short area of
8 examination in another non-specific area that
9 might take care of the time.

10 THE SPECIAL MASTER: All right. On the
11 same, on C-131?

12 MR. WHITE: No, it's just general.

13 THE SPECIAL MASTER: Okay.

14 Q (By Mr. White) Mr. Billstein, did you supply
15 any information concerning the lands currently
16 in use to any other consultant for the United
17 States for the purpose of allowing him to
18 determine the amount of water required to serve
19 those lands?

20 THE SPECIAL MASTER: Did you say could you
21 or --

22 MR. WHITE: Did he.

23 THE SPECIAL MASTER: Did you.

24 MR. ECHOHAWK: Objection, Your Honor, this
25 billstein-cross-white

1 is beyond the scope of direct examination.

2 MR. WHITE: Well, it may or may not be.
3 It's in the gray area, but the important reason
4 for asking, is that I think we'd be all sadly
5 disappointed if another consultant showed up
6 and said that he did his water requirement
7 analysis, developed his opinions based on
8 information that Mr. Billstein gave him when
9 Mr. Billstein is then not available for cross-
10 examination on that information. And I think
11 the Court's entitled to know the answer to the
12 question.

13 MR. ECHOHAWK: The proper foundation will
14 be laid at the proper time when our witnesses
15 make their conclusions as to water requirements,
16 and it's up to us to put on our case as how we
17 choose.

18 MR. PERRY: I don't think Mr. Billstein
19 is competent to testify about what other experts
20 have done.

21 THE SPECIAL MASTER: He was not asked to.
22 His question was purely and simply did you give
23 some information to others.

24 MR. ECHOHAWK: I believe it's getting into,
25 billstein-cross-white

1 it's opening a door to go and pursue what Mr.
2 Billstein thinks other consultants have done.

3 MR. WHITE: I'm not asking that question,
4 Your Honor.

5 THE SPECIAL MASTER: I'm going to rule that
6 the question may be answered, but I will
7 probably sustain objections if it gets into what
8 was said to other experts, being in the realm
9 of what other experts should testify to. But I
10 will permit that question to be answered.

11 Did you -- You want to have the question
12 read to you?

13 THE WITNESS: Please, Your Honor.

14 THE SPECIAL MASTER: Would you please,
15 Merissa.

16 (Thereupon the following
17 (question was read back as
18 (follows: "Q Mr. Billstein,
19 (did you supply any infor-
20 (mation concerning the
21 (lands currently in use to
22 (any other consultant for
23 (the United States for the
24 (purpose of allowing him to
25 (determine the amount of water
(required to serve those
(lands?"

23 THE SPECIAL MASTER: Good question.

24 THE WITNESS: I've supplied copies of my
25 billstein-cross-white

1 overlays to Stetson Engineers, which depict the
2 location of the lands in use.

3 THE SPECIAL MASTER: Do you know for what
4 purpose you submitted those to them? That's
5 the full question, it has to be answered.

6 MS. SLEATER: Your Honor, I'd like to object
7 to that.

8 THE SPECIAL MASTER: You want to object to
9 my question?

10 MS. SLEATER: Yes, Your Honor.

11 MR. WHITE: I'm going to sit down.

12 MS. SLEATER: I must say that the witness'
13 transport information as directed by attorneys
14 for the United States and don't necessarily know
15 the purpose, and I know Mr. Billstein might have
16 an idea that this is one of the purposes. It
17 may not be the entire purpose and I don't want
18 him to mislead the Court.

19 THE SPECIAL MASTER: All Mr. Billstein has
20 to do is answer the question of Mr. White, not
21 of me. And when I permitted it to be asked and
22 answered, I'd like it to be answered, you know,
23 totally.

24 Now, let's go back and read the question one
25 billstein-cross-white

1 more time, read back the original question,
2 please.

3 (Thereupon the following
4 (question was read back as
5 (follows: "Q Mr. Billstein,
6 (did you supply any infor-
7 (mation concerning the lands
8 (currently in use to any other
9 (consultant for the United
10 (States for the purpose of
11 (allowing him to determine
12 (the amount of water required
13 (to serve those lands?"

14 THE WITNESS: I supplied him acreage of
15 lands in use which he needed to complete his
16 program.

17 Q (By Mr. White) Mr. Billstein, I'd like you to
18 think very carefully. Did you supply any other
19 information in connection with that other than
20 that that appears on the face of Exhibits 1 --
21 excuse me, Exhibit 56 through 136?

22 MS. SLEATER: Your Honor, at this time I'd
23 like to interpose an --

24 THE SPECIAL MASTER: I would sustain that
25 objection, what he supplied, I think I'll
sustain the objection, Mr. White. It's so
complex.

MS. SLEATER: Thank you, Your Honor.

THE SPECIAL MASTER: There's so many hundreds

billstein-cross-white

1 of exhibits and hundreds of overlays, and he
2 said he did supply -- He answered your question.

3 Has H-4284 arrived?

4 THE WITNESS: Yes, Your Honor.

5 Q (By Mr. White) Ron, with respect to Tracts
6 35-3 and 35-7, are those both Classified 4?

7 A Both Typed IV.

8 Q Type IV, excuse me.

9 Was Tract 35 -- excuse me, 35-4 also
10 Typed IV?

11 A Yes.

12 Q Why, if you know, are those three tracts of land
13 all Typed IV?

14 A Reviewing my notes, the Type IV's had less
15 intensive lateral systems, plus were located at
16 the respective ends of the ditch systems and
17 showed problems with, physical problems with
18 delivery.

19 Q What physical problems of delivery were associated
20 with those particular tracts?

21 A The ditches were quite small in those reaches.
22 I felt they could probably stand to have some
23 enlargements.

24 They're probably constricted or confined,
25 billstein-cross-white

1 the amount of water that was being delivered
2 to those tracts.

3 Q What do you mean by intensities of laterals?

4 A Number of laterals, the condition of the laterals.

5 Some laterals are well cut, well maintained, a
6 significant number contained within the tract.
7 Others are widely spaced and are there just to
8 distribute, generally distribute water over the
9 tract when it's available.

10 Q How did you make the determination, when you
11 identified these by types, that irrigation was
12 sporadic or irregular?

13 THE SPECIAL MASTER: I believe I'll object
14 to the question. He said he typed it as Type IV,
15 and I presume his reasons were the same as they
16 were for a dozen other instances of system
17 typing of similar lands that we've heard about
18 already. If there's something new raised we'll
19 allow it, Mr. White.

20 MR. WHITE: I'd like to ask you to reconsider
21 because I don't believe I asked him that particular
22 question before about Type IV lands, how he
23 determined that these lands were sporadically
24 or irregularly --

25 billstein-cross-white

1 THE SPECIAL MASTER: You read the definition
2 of Type IV's and said how did you determine this,
3 and he's been determining that for the last
4 week or two on other lands. I presume -- well,
5 go ahead and answer the question. How did you
6 determine this to be Type IV land? Is that the
7 question?

8 THE WITNESS: I already answered.

9 THE SPECIAL MASTER: I thought you had too,
10 but go ahead one more time.

11 THE WITNESS: Again, the typing is a
12 secondary portion of this analysis for unadjudicated
13 in use. We're there to map lands that were
14 receiving irrigation but relative to the typing.
15 If the on-farm system was less intensive or there
16 was less of a total delivery system on-farm,
17 then a Type II, typical Type II, then that would
18 have been a reason.

19 Also in this particular case we're looking
20 at some consolidation of ditches and also the
21 ditches at the lower ends of the reaches are
22 quite small, and it was my feeling that they
23 were having difficulty getting water down to the
24 lower ends of these irrigation tracts and that they

25 billstein-cross-white

1 probably weren't getting as much water as the
2 upper portions of the irrigation service area,
3 and therefore, they were restricted on that
4 basis.

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1 Q (By Mr. White) My inquiry, Mr. Billstein, is not
2 with respect to the condition of the system or
3 the size of the system, but with respect to the
4 timing of the irrigation, as sporadic or irregular.
5 How did you know that the irrigation for these
6 particular Type IV tracts was sporadic or irregular?

7 THE SPECIAL MASTER: I'd object to the question
8 that you asked first. Do you know whether the
9 irrigation of this area was sporadic or irregular?

10 MR. WHITE: Okay. I'll ask that question,
11 Your Honor. It's a better question.

12 Q (By Mr. White) Do you know whether the irrigation
13 in this area was sporadic or irregular?

14 A It was my impression, looking at the physical evidence
15 in the field, that it was.

16 THE SPECIAL MASTER: That's all. That took
17 care of that.

18 MR. WHITE: I'm sorry, Your Honor. I went
19 through my list one time, and I'm trying to make
20 sure I don't duplicate my questions.

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

22 MR. WHITE: Your Honor, can we take about five
23 minutes and synchronize my exhibits with his hydro-
24 graphic photos?

25 billstein-cross-white

1 THE SPECIAL MASTER: We will take a break
2 until five until three.

3 (Recess.

4 THE SPECIAL MASTER: Okay. We are ready to
5 proceed. Mr. White?

6 MR. WHITE: We are waiting for photos.

7 THE SPECIAL MASTER: Let's stay in session
8 while you are here.

9 Q (By Mr. White) I hand you what's been marked for
10 identification as HB-137-24. Does Exhibit HB-137-24
11 indicate those permit numbers which include lands
12 which are unadjudicated in use in the Little Wind
13 River main stem portion of your opinion?

14 A. There would have been a listing of what unadjudicated
15 lands in use had a permit of record with the State
16 of Wyoming at the time this was put together. I'm
17 not sure if this has been modified since then.

18 Q Well, this was provided to us last month. Are you
19 familiar with any modifications in the last month
20 that would involve permits other than those listed
21 here? I'm just asking you about the --

22 A. Permit numbers?

23 Q. Permit numbers.

24 A. Not unless a number was changed as part of a final
25 billstein-cross-white

1 review process, and I can't recall that it was.
2 Q I hand you what's been marked for identification
3 as HB-137-20 and ask you whether or not the permit
4 numbers shown on that exhibit accurately reflect
5 the permit numbers for the indicated lands under
6 the unadjudicated in-use portion for Muddy Creek?

7 THE SPECIAL MASTER: There are over 90 said
8 numbers. Does he need some time to check each one,
9 or are you asking this as a general question?

10 MR. WHITE: I'm asking it as a specific
11 question, but the point is that this came from the
12 United States in the way of discovery, and it ought
13 to be a relatively easy thing for him to tell us.

14 MR. ECHOHAWK: I would like to object on the
15 similar grounds that we did this morning as to
16 relevancy. The only relationship the permit numbers
17 bear to Mr. Billstein's work is the very initial
18 laying out of study areas and doesn't really go to
19 the heart of his conclusions at all.

20 THE SPECIAL MASTER: Well, I allowed it in the
21 record this morning so I suppose, for consistency'
22 sake --

23 MR. ECHOHAWK: But I believe we also cut that
24 line of questioning down.

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1 THE SPECIAL MASTER: The question having been
2 the Hobgoblins of small minds, but at this time
3 it's a foolish consistency.

4 MS. SLEATER: I would like to point out that
5 Your Honor did cut it off.

6 THE SPECIAL MASTER: That's right, and I intend
7 to do that again. I'm just not sure where the right
8 point is.

9 I will overrule for the time being.

10 If you can answer this, please do so, and if
11 you can't, please say so.

12 THE WITNESS: I would want to check every
13 number.

14 Q (By Mr. White) Well, let me hand you what has been
15 marked for identification as 137-16, 137-10 --

16 MR. WHITE: I'll sort these out and give them
17 to counsel in just a minute.

18 Q (By Mr. White) -- 137-13, 137-17, 137-30, 137-34,
19 137-11, 137-14, 137-21, -23, -25, -32, -26, -18,
20 -12, -8, -28, -33, -35, and that's it.

21 And I will ask you whether or not those exhibits
22 were prepared by you or under your supervision or
23 by --

24 THE SPECIAL MASTER: How many exhibits are you
25 proposing to hand the witness, Mr. White?

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1 MR. WHITE: I'm not sure. I will count them
2 in a second.

3 THE SPECIAL MASTER: You counted an awful lot.
4 I'm not going to permit you to hand him that many
5 exhibits. I don't think a reasonable man can be
6 made to answer a question about that many exhibits
7 at the time unless it was one at a time or two at
8 a time.

9 MR. WHITE: I just wanted to get them all before
10 him at this time.

11 THE SPECIAL MASTER: But I think you are over-
12 whelming him unless you ask him are these plaintiffs'
13 exhibits or something of that kind. I suppose he
14 can answer that, but --

15 MR. WHITE: Well, let me try it one by one,
16 Your Honor.

17 THE SPECIAL MASTER: I can't let you hand him
18 a stack of paper like that and expect to get any
19 reason or order out of our proceedings.

20 MR. WHITE: I have a great amount of faith in
21 Mr. Billstein, Your Honor.

22 Q (By Mr. White) I think I said I handed you 137-28
23 and ask you whether or not you recognize that docu-
24 ment?

25 billstein-cross-white

1 A. This is a copy of a worksheet that we had in our
2 work papers.

3 THE SPECIAL MASTER: Are you reading from
4 HB-127-28?

5 THE WITNESS: Yes, Your Honor.

6 THE SPECIAL MASTER: And this is a copy of a
7 worksheet you had in your papers?

8 THE WITNESS: Yeah. I'm still confused how
9 this ever got to the State of Wyoming.

10 MR. WHITE: It was given to us by counsel for
11 the United States, Your Honor. We have relied on
12 the information contained therein and I think we
13 are entitled to find out whether or not it continues
14 to be accurate.

15 THE SPECIAL MASTER: Well, proceed to. Proceed to.

16 Q. (By Mr. White) Was the information which appears
17 on Exhibit 137-28 correct at the time the exhibit
18 was prepared?

19 A. To the best of my knowledge, it was.

20 Q. Do you of your personal knowledge know of any changes
21 to the information in that exhibit with respect to
22 permit numbers?

23 A. There may have been some. I'm not aware of any if
24 there were.

25 billstein-cross-white

1 THE SPECIAL MASTER: You have lost me, Mr.
2 White. There are two permit numbers on this
3 document?

4 MR. WHITE: That's all.

5 THE SPECIAL MASTER: One is 6517 and one is
6 6597 and one is, 1882; is that correct?

7 MR. WHITE: Yes sir.

8 THE SPECIAL MASTER: Where does that leave us
9 with regard to 137-20 and 137-24?

10 MR. WHITE: I'm getting there, Your Honor.

11 Now, let's see. Were those the ones that were
12 earlier -- the purpose of those exhibits was to show
13 the amount of land, Your Honor, under permit. The
14 purpose of these exhibits is to show the permit
15 numbers associated with the lands which are shown
16 on these exhibits --

17 MS. SLEATER: Your Honor --

18 MR. WHITE: -- as unadjudicated trust in use,
19 and if these are not correct, I think we are
20 entitled to know they are not correct because they
21 are provided to us by the United States.

22 MR. ECHOHAWK: The same objection. It's
23 irrelevant as to whether the permit numbers --

24 THE SPECIAL MASTER: I would sustain that
25 billstein-cross-white

1 objection. Numbers of the permits and the totals
2 have little to do with his testimony.

3 MR. WHITE: If it goes to the PIA claim, it
4 has everything to do with his testimony because of
5 the selection of substantive rights or the election
6 of substantive rights and the election of remedies.

7 MR. ECHOHAWK: That has nothing to do with
8 Mr. Billstein.

9 THE SPECIAL MASTER: That has nothing to do
10 with Mr. Billstein. It's a legal argument.

11 MR. WHITE: It's his testimony. If it's not
12 his, I don't know who else it is, but we will abide
13 by the ruling.

14 THE SPECIAL MASTER: I fail to see the link
15 between the inquiry into the permit numbers and
16 the total to his testimony on acreage in use?

17 MR. WHITE: Here it is, Your Honor. He has
18 testified that there are 35,000 acres in use in
19 1980. I assume that the purpose of the testimony
20 is to lay a foundation or a basis for eventual
21 testimony that says that these are practicably
22 irrigable acres. I assume that's what we are here
23 for.

24 The State is entitled to inquire of the witness
25 as to any facts which he knows of surrounding the
billstein-cross-white

1 areas to which he's testified which bear on the
2 question which I'll grossly describe as election
3 of remedies. It's more specifically described as
4 selection or election of substantive right.

5 THE SPECIAL MASTER: I see we are back to that
6 again.

7 MR. WHITE: That's right.

8 THE SPECIAL MASTER: Then I have no question
9 but I'm making the proper ruling in ruling that
10 these are not admissible.

11 MR. WHITE: Could I ask the grounds of the
12 ruling?

13 THE SPECIAL MASTER: You may make an offer of
14 proof and proceed with an offer of proof, Mr. White.

15 MR. WHITE: Just for the record, could I inquire
16 as to the grounds of the ruling? I might be able
17 to work a way around it if I know it.

18 THE SPECIAL MASTER: It goes back to our col-
19 loquy this morning regarding the selection of
20 remedies, and at the present time I cannot conclude
21 that because somebody in 1905 elected to irrigate
22 a few acres of hay in one direction have forever
23 precluded themselves from something that may have
24 been intended by Congress years ago or approved by

25 billstein-cross-white

1 the Supreme Court a few years later.

2 This is my essential basic feeling on this,
3 and it's the same, and it's a rather strong feel-
4 ing, frankly.

5 We have listened with a lot of patience this
6 week to see that figures can be cut down. I have
7 no intention to grant double-dipping to anybody,
8 but neither can I deny them essentially what the
9 lawsuit is all about, and that's the right to some
10 water on a given area if it's proved historically
11 in use.

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1 MR. WHITE: Let me make the offer of
2 proof then, Your Honor.

3 THE SPECIAL MASTER: Yes, sir.

4 (Brief pause.

5 MR. WHITE: Your Honor, if I could have
6 a moment to put these in numerical order.

7 THE SPECIAL MASTER: Yes. We're also
8 waiting for H-4284 and H-5264?

9 MR. WHITE: I think they've caught up with
10 us.

11 THE WITNESS: They're here now, Your Honor.

12 THE SPECIAL MASTER: All right.

13 (Brief pause.

14 MR. WHITE: We're going to try it a little
15 different way, Your Honor.

16 THE SPECIAL MASTER: Okay.

17 Q (By Mr. White) Mr. Billstein, I hand you what's
18 been marked as HB-137-8 and ask you if that
19 is a document prepared by you as a consultant
20 for the United States in preparation for this
21 litigation or by your firm or by persons under
22 your supervision?

23 A It's one of our worksheets for our study areas,
24 yeah.

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1 Q Is the same thing true with respect to Exhibit
2 HB-137-10?

3 THE SPECIAL MASTER: What was the first
4 one?

5 MR. WHITE: -8, Your Honor.

6 THE SPECIAL MASTER: Okay.

7 THE WITNESS: Correct.

8 Q (By Mr. White) Same thing true with respect to
9 137-11?

10 A Yes.

11 Q Same thing true with respect to -12?

12 A Yes.

13 Q -13?

14 A Yes.

15 Q -14?

16 A Yes.

17 Q -16?

18 A Yes.

19 Q -17?

20 A Yes.

21 Q -18?

22 A Yes.

23 Q -19?

24 A Yes.

25 billstein-cross-white

1 Q -20?

2 A Yes.

3 Q -21?

4 A Yes.

5 Q -23?

6 A Yes.

7 Q -24?

8 A Somebody wrote in pencil on this.

9 Q That's my writing, I apologize, I'll erase it.

10 Where it says Little Wind, Mainstem?

11 A Right.

12 THE SPECIAL MASTER: You're erasing the
13 question mark from the back of it?

14 MR. WHITE: No, sir, just on the face of it.
15 I had written on the top of it where I thought
16 that that page went for which streams.

17 THE SPECIAL MASTER: Well, there was a
18 question mark after it.

19 MR. WHITE: Yes, sir, there was. I thought
20 you meant on the back of the page, I apologize.

21 THE WITNESS: Yes.

22

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1 Q (By Mr. White) -25?

2 A Yes.

3 Q -26?

4 A Yes.

5 Q -27?

6 A Yes.

7 Q -28?

8 A Yes.

9 Q -30?

10 A Yes.

11 Q -32?

12 A Yes.

13 Q -33?

14 A Yes.

15 Q -34?

16 A Yes.

17 Q And -35?

18 A Yes. And these were all work maps at the time

19 that they were submitted to you.

20 Q Not maps. You mean charts?

21 A I'm sorry. Tables.

22 MR. WHITE: Your Honor, at this time we

23 would offer HB-137-8, -10 --

24 THE SPECIAL MASTER: Won't they be the

25 billstein-cross-white

1 exact numbers you just had him identify?

2 MR. WHITE: Yes, sir. I'll offer the
3 HB-137- series which were identified by Mr.
4 Billstein as admission by an agent or an
5 employee of a party with respect to the issue
6 of the lands included within the category of
7 unadjudicated trust in use that are described
8 thereon --

9 THE SPECIAL MASTER: With regard to the
10 issue of the lands in trust, did you just say?

11 MR. WHITE: The lands included in that
12 category unadjudicated trust in use, the acreage
13 figures.

14 THE SPECIAL MASTER: Yes.

15 MR. WHITE: And with respect to the permit
16 numbers that are contained in the second column
17 of those series of exhibits --

18 THE SPECIAL MASTER: Yes.

19 MR. WHITE -- as they apply to the election
20 of remedies or choice of a substantive right
21 argument, and I know Your Honor doesn't agree
22 with our legal argument here.

23 On the other hand, and you may not rule
24 with us, at least with respect to the permits

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1 that were issued prior to Winters on this
2 argument, but nevertheless I believe these are
3 relevant to that argument, and whether you
4 eventually agree with us or disagree with us
5 does not affect that relevancy.

6 THE SPECIAL MASTER: Very good.

7 MS. SLEATER: Your Honor --

8 THE SPECIAL MASTER: I also recognize that
9 my duty is to pass judgment on the status of all
10 permits, so I guess we have got a few of those
11 to do here too.

12 MS. SLEATER: If I could just respond to
13 Mr. White's offer, which you have not yet ruled
14 on --

15 THE SPECIAL MASTER: Well, I have pretty
16 much ruled on it.

17 MS. SLEATER: The work papers of a witness
18 hired by the United States is not entitled to
19 be received as an admission of the United States.
20 A witness in a case hired by the United States
21 and their work papers -- in fact, there's case
22 law on this which I don't have with me, but I
23 recently looked into admissions by parties.

24 They are not under the definition of an agent
25 billstein-cross-white

1 or employee of the party, so I would like to
2 point that out.

3 Secondly, I would like to point out that
4 contrary --

5 THE SPECIAL MASTER: You wouldn't deny that
6 they have some probative value in the hearing,
7 would you?

8 MS. SLEATER: Your Honor, Mr. Billstein
9 has stated that they were worksheets which may
10 or may not have been corrected since the time
11 they were submitted to the State. I think if
12 they have any probative value, it is to be
13 considered limited by that, and I think further
14 that insofar as this area is totally outside of
15 the direct testimony of Mr. Billstein and
16 totally outside of the work efforts to which
17 he has testified, any testimony on this and any
18 proof in this area, if it's to be pursued by
19 the State of Wyoming, should be pursued in their
20 Case in Chief and not as a side issue to a cross-
21 examination that's already quite extensive.

22 MR. WHITE: Your Honor. --

23 THE SPECIAL MASTER: I appreciate the
24 objection, and I suspect we'll hear about it

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1 again in the Case in Chief, but I have ruled
2 on it, so thank you both for that.

3 MR. WHITE: I just wanted to clarify one
4 thing. It was not Mr. Billstein that gave me
5 this information, it was Ms. Sleater.

6 THE SPECIAL MASTER: Very good. We can
7 proceed.

8 MR. WHITE: Your Honor, could I inquire of
9 the Court whether, since Mr. Kersich has not
10 come this week, it would cause any substantial
11 inconvenience to the Court and Counsel if we
12 obtained the fruits of the stipulation between
13 the United States and the State of Wyoming and
14 the Tribes regarding the numbering of tracts
15 and indicating the type assigned to that tract
16 and the number of acres?

17 That was the agreement, that we would work
18 up that information. By doing that, we could
19 cut down substantially on the amount of cross-
20 examination with respect to the identification
21 and classification of particularly Type IV lands.

22 Mr. Billstein is going to have to be here
23 this week anyway as part of that work, and I'm
24 wondering if it might not be appropriate to recess

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1 until we get that done, and I think it would
2 cut perhaps 60 or 75 percent of the time off
3 in cross-examination.

4 THE SPECIAL MASTER: Well, if you wish to
5 recess now until -- when do you want to convene?

6 MR. ECHOHAWK: You mean recess until it's
7 completed?

8 MR. WHITE: He said tomorrow.

9 MS. SLEATER: Not until Wednesday night.

10 THE SPECIAL MASTER: Do you want to
11 adjourn until Thursday morning?

12 MR. ECHOHAWK: It's up to Mr. White.

13 THE SPECIAL MASTER: And put it in Thursday
14 and see what we can do then?

15 MR. WHITE: I'm not sure it would go much
16 faster.

17 MR. ECHOHAWK: I'm not sure what difference
18 it would make. We have people working on it,
19 and we will bring down additional people tonight.

20 THE SPECIAL MASTER: Do you have any
21 material that we can be presenting in evidence
22 in the interim, or is that pretty much the end of
23 the Billstein cross-examination?

24 MR. WHITE: I have some things that I could

25 billstein-cross-white

1 work with tomorrow morning that would not
2 require that, Your Honor. Again, it would
3 be easier to have it, and perhaps we could
4 find out from Ron how far along they are and
5 which of these use areas they are, and we could
6 begin to work in those use areas.

7 MR. ECHOHAWK: That's probably the most
8 expeditious way is work on the ones we already
9 have finished.

10 THE SPECIAL MASTER: Couldn't you reconvene
11 tomorrow at ten instead of 9:15?

12 MR. WHITE: Yes.

13 THE SPECIAL MASTER: Okay. We will stand
14 in recess until 10:00 tomorrow morning and
15 hopefully finish up Thursday -- finish up
16 Wednesday and hopefully finish up Thursday
17 night?

18 MR. WHITE: I think we will finish Thursday
19 night, Your Honor.

20 THE SPECIAL MASTER: All right. We are in
21 recess until 10:00 tomorrow morning.

22 (Whereupon the proceedings
23 (concluded at 3:25 p.m., and
24 (will reconvene at 10:00 a.m.,
25 (Wednesday, March 18, 1981.

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REPORTERS' CERTIFICATE

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

4 We, Merissa Racine and Viola J. Lundberg, Registered
5 Professional Reporters and Notaries Public, hereby certify
6 that the facts as stated in the caption hereof are true;
7 that we did at the time, date and place, as set forth,
8 report the proceedings had before the Honorable Teno
9 Roncalio, Special Master Presiding, in stenotype; that
10 the foregoing pages, numbered 2547-2681, inclusive, con-
11 stitute a true, correct and complete transcript of our
12 stenographic notes as reduced to typewritten form under
13 our direction.

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

17 Dated this 17th day of March, 1981.

18
19 Merissa Racine
20 MERISSA RACINE
21 Registered Professional
22 Reporter

23 Viola J. Lundberg
24 VIOLA J. LUNDBERG
25 Registered Professional
Reporter

