

3-11-1981

Trial Transcript, Vol. 22, Afternoon Session

Frontier Reporting Service

Follow this and additional works at: <https://digitalcommons.law.uidaho.edu/bighorn>

Recommended Citation

Frontier Reporting Service, "Trial Transcript, Vol. 22, Afternoon Session" (1981). *Bighorn*. 181.
<https://digitalcommons.law.uidaho.edu/bighorn/181>

This Transcript is brought to you for free and open access by the Hedden-Nicely at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Bighorn by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

File 129
4380
Box 10

case # 4993

File # 129

4380

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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
3/17 1981
Margaret W. Hampton CLERK
DEPUTY.

VOLUME 22
Afternoon Session
Wednesday, March 11, 1981

ORIGINAL

1 Q (By Mr. White) Mr. Billstein, with respect to
2 Tract 34-1, 34-2 and 34-3, are they served by
3 active or incidental irrigation?

4 MR. ECHOHAWK: Your Honor, at this time
5 I'd like to make an objection to this continuation
6 of this line of questioning. The information
7 that Mr. White is attempting to get at has been
8 supplied to the State of Wyoming through
9 discovery. Generally Mr. Billstein is referring
10 to what he calls his hydrographic photos and
11 that type of information is all contained on there;
12 the acreage figures, the land typing, the
13 systems, the permit numbers, so forth are all
14 contained on those photos. Copies of those
15 photos have been supplied to the State of Wyoming.
16 It's just a matter of someone recording it. It's
17 either we're going to do it this way and take
18 weeks or Mr. White's people could do that,
19 present this information in their case.

20 THE SPECIAL MASTER: Well, I think you're
21 reflecting what we commented on before lunch,
22 but let's let the question go now and as you say,
23 if this is one of those that will be asked on
24 similar exhibits, I'll welcome and confirm your

25 billstein-cross-white

1 objection on the next exhibit if this is
2 continued.

3 MR. ECHOHAWK: Okay.

4 MR. WHITE: Your Honor, I have to say for
5 the record that I cannot agree with Mr. Echohawk's
6 description of the material that was supplied to
7 us by way of discovery, and state that I believe
8 we're entitled to a full and complete cross-
9 examination with respect to the basis of the
10 numbers that are contained in Exhibit 137. And
11 I appreciate that you overruled this objection,
12 but I don't want my silence to acquiesce in the
13 statement of facts that were made by Mr. Echohawk
14 when the next objection comes along.

15 THE SPECIAL MASTER: I was not sure, but
16 maybe that may have been your position, the
17 fact that these came to you a little late, and
18 both may have had a place, and that's the reason
19 I say one or two more.

20 MR. ECHOHAWK: Your Honor, I believe that
21 the hydrographic photos that contained generally
22 the acreage figures that are written in each
23 parcel were supplied in January.

24 MR. WHITE: Your Honor, the hydrographic copies
25 billstein-cross-white

1 were supplied in January. They had different
2 acreages, different boundaries, some cases no
3 types, and certainly no tie into these particular
4 sets of figures that are Exhibit 137.

5 THE SPECIAL MASTER: Very well, The
6 objection is overruled, and the witness may
7 answer.

8 THE WITNESS: For Tract 34-1 and 34-2, those
9 are active. 34-3 is incidental.

10 Q (By Mr. White) Do you know what crop was grown
11 during 1980 on those three parcels?

12 A No, I don't. This was a mapping study, and
13 cropping pattern was not a prerequisite.

14 Q Directing your attention to Exhibit C-135 and
15 State's Exhibit HB-1135.

16 A I have my material.

17 Q Is it true that Exhibit 1135 is a blue-line
18 copy of the overlay on Exhibit C-135 with the
19 exception of the addition of an annotation for
20 a Tract 34-4?

21 A Yes. We can see the adjudicated acres delineated
22 in red, and the small tract of unadjudicated
23 lands in use identified by Tract No. 34-4.

24 Q Isn't it true that Tract 34-4 is located in
25 billstein-cross-white

1 Township 43 North, 98 West?

2 (Brief pause.

3 A It's located in Township 43 North, Range 98 West.

4 MR. WHITE: Your Honor, I would point out
5 to the Court that pursuant to the terms of
6 stipulation, that's outside the boundaries of
7 the Wind River Indian Reservation.

8 THE SPECIAL MASTER: Let's put this in the
9 same category as the prior one or two, and I
10 will wait on motions regarding these lands down
11 further in the trial, but I'm not going to exclude
12 them now.

13 MR. WHITE: I understand, Your Honor.
14 I wasn't making a motion, I got to get it into
15 the record.

16 Q (By Mr. White) Mr. Billstein, would you please
17 annotate Exhibit C-135 by indicating the location
18 of Tract 34-4.

19 (Witness complies.

20 Q Mr. Billstein, I direct your attention to
21 Exhibit C-136.

22 (Brief pause.

23 THE SPECIAL MASTER: Before he brings on
24 this, Mr. White, did you have an acreage total

25 billstein-cross-white

1 on the last exhibit?

2 MR. WHITE: Your Honor, I believe that was
3 5.59 acres. It wasn't a large one. Mr.
4 Billstein could perhaps confirm that.

5 THE SPECIAL MASTER: I'll accept that unless
6 there is some objection from Counsel.

7 MS. SLEATER: Your Honor, I think Mr.
8 Billstein should confirm that.

9 THE SPECIAL MASTER: Well, for five acres.

10 MS. SLEATER: What Mr. White says is not
11 evidence and if Your Honor is concerned about
12 the tract.

13 THE SPECIAL MASTER: All right.

14 THE WITNESS: 5.9 acres is correct, Your
15 Honor.

16

17

18

* * * * *

19

20

21

22

23

24

25

1 THE WITNESS: Okay.

2 MR. WHITE: I think I had a question pending,

3 but I'll ask it again because I'm not sure what I said.

4 Q (By Mr. White) Is it true that Exhibit 1136 is a blue-
5 line copy of the overlay for Exhibit 136 with the except-
6 ion of the additional tract number 34-5?

7 A Yes.

8 Q Would you please annotate with the tract number 34-5 the
9 appropriate location on Exhibit C-136?

10 A (Witness marked on document.)

11 Q Isn't it true that tract 34-5 is located in Township 44
12 North, 97 West?

13 A It's located in Township 44 north, Range 97 west.

14 MR. WHITE: The same observation with respect to
15 the stipulation, Your Honor.

16 Q (By Mr. White) Is it true that that's our one-acre tract?

17 THE SPECIAL MASTER: A one-acre tract?

18 MR. WHITE: Yes, sir.

19 A (By the Witness) I concur with that.

20 THE SPECIAL MASTER: I submit that that one acre
21 of land could have been bought from the Indians or from the
22 Government for what it's cost to do the plats, the tracts,
23 and the exhibits, regarding that one-acre tract, if they
24 were selling land.

25 billstein - cross - white

1 Not that that has anything to do with my delib-
 2 eration, but I thought it was an observation worthy to make.

3 MR. WHITE: All right.

4 Q (By Mr. White) Ron, I direct your attention to Exhibit
 5 C-130 as well as Exhibit HB-1130.

6 A I'm ready.

7 Q And ask you whether or not Exhibit 1130 isn't a blue-line
 8 copy of the overlay for Exhibit 130 with the exception of
 9 the annotation indicating tract 35-1?

10 A Yes.

11 Q Isn't it true that tract 35-1 contains 56 acres?

12 A 55.6 acres.

13 Q Class four -- excuse me -- Type 4?

14 A Type 4.

15 Q Do you know the source of supply for that particular tract,
 16 35-1?

17 A The hydrographic copy refers to it as an unnamed tributary.
 18 The seven and a half minute quadsheet shows it to be
 19 Riley Creek. We counted for it as a tributary of Mud Creek.

20 Q Isn't it true that a soils hole was logged on that tract?

21 A It appears that there was a soils hole.

22 Q Did you review the log of that hole in reaching your conclu-
 23 sion with respect to historic irrigation?

24 A No, I didn't. The field inspection showed that the ditch

25 billstein - cross - white

1 was in excellent condition, running water. The diversion
2 was operational, routing most of the creek's water into
3 the system.

4 My own observation was that it was rocky ground,
5 but there's evidence of use.

6 That was what my responsibility was. was to map
7 use.

8 Q Did you review the aerial photographs -- or, excuse me --
9 the infrared photographs for that particular area?

10 A Let's see. Yes, I did.

11 Q Do you have a copy of the infrared photographs which you
12 reviewed with you?

13 A It should be to the rear. I think it's photograph 8773.
14 I can use yours.

15 Q We had better use yours.

16 THE WITNESS: Is it all right, Your Honor, if I
17 have my assistants help me pull photographs? like this?

18 THE SPECIAL MASTER: Yes.

19 MR. WHITE: We have got no objection.

20 THE SPECIAL MASTER: Unless you can spare him the
21 need to do so.

22 MR. WHITE: I offered him mine, Your Honor, but
23 his counsel said she would rather have him use his own.

24 THE SPECIAL MASTER: Very well.

25 * * * *
(END)

billstein - cross - white

1 Q (By Mr. White) Have you located on the infrared
2 photograph?

3 A Yes, I have.

4 Q The photograph which you're referring, there
5 are large areas which showed a red color. Can
6 you describe what those areas are?

7 A Those areas reflect vegetation. They could
8 reflect water being applied on the land, streams
9 and natural phreatophytes, basically vegetation.

10 Q Isn't it true that the area we've marked as
11 Tract 35-1 shows no red on the infrared photograph
12 upon which you relied?

13 A There's no distinguishable red feature to that.
14 Again, as relative to use of a pictorial
15 photograph like this versus an infrared photograph
16 or previous study, it's just simply first
17 impression of the area. That's why you get on a
18 stereoscope, that's why you get to the field
19 and you make a determination.

20 Q From your hydrographic map, are you able to
21 identify the number of the log of the hole which
22 was bored on Tract 35 --

23 THE SPECIAL MASTER: I wonder if I'll
24 allow that question. Nothing on his direct

25 billstein-cross-white

1 testimony dealt with drilling of holes whatsoever,
2 Mr. White. It was all the witness, Mr. Kersich
3 who worked with and labored with it, but this
4 witness has never mentioned them. So I believe
5 I can feel that question is not appropriate on
6 cross. I suppose it would be in a couple of
7 months on redirect, but he simply didn't testify
8 one bit on the drilling of holes of any kind.

9 Q (By Mr. White) Directing your attention to
10 Exhibit 131,

11 (Brief pause.

12 A I'm ready.

13 Q And Exhibit HB-1131, isn't it true that HB-1131
14 is a blueprint copy of the overlay for Exhibit C-131
15 but having annotation for Tracts 35-2, -3, -4, -5,
16 -6, -7, -8, -9 and -10?

17 A There's some additional wordage at the bottom,
18 says "Index To Classification Sheet.

19 Q Why don't you take a red pen and just strike that.
20 I don't have the foggiest idea what that's doing
21 here.

22 (Witness complied.

23 A With that change, it should be the same map
24 except for 35-2 through 35-10.

25 billstein-cross-white

1 Q Okay. Would you please annotate 131 with the
2 appropriate tract numbers 32-2 through 35-10.

3 (Brief pause.

4 THE SPECIAL MASTER: I don't suppose you
5 can get acreage figures right now while you're
6 working on the paste-up, so I'll wait until
7 you're through on the nine parcels.

8 (Brief pause.

9 (Witness complied.

10 THE WITNESS: I'm ready.

11 Q (By Mr. White) Would you check the acreage
12 figures as I read them off to make sure that I
13 have them correct to the Master.

14 Starting with -2, Your Honor, and then
15 running through -10, 2, should be 8, .3, .3
16 excuse me, I'm sorry, I got the wrong one. 2
17 should be 7.5.

18 A 7.5 is correct.

19 Q Three should be 2.7.

20 A 2.7.

21

22

23

* * * * *

24

25

1 Q (By Mr. White) 4 should be 2.2?

2 A 2.2.

3 Q 5 should be 5.64?

4 (Pause.

5 THE WITNESS: Could you repeat that, please?

6 Q (By Mr. White) 5.64.

7 A Okay. Let's go to 35.6. Then I can switch to a different
8 ditch system delineation.

9 Q Okay. 35.6 would be 6.9?

10 A I checked that. Let's go back to 35.5.

11 THE WITNESS: Your Honor, these are by old water
12 rights. That's why it takes me time to find those.

13 THE SPECIAL MASTER: Did you get a total on 6?

14 MR. WHITE: It was 6.9, Your Honor.

15 THE SPECIAL MASTER: I'm still holding 56.4 on 5.
16 Are these acreage figures taken off of the approp-
17 riation certificates?

18 MR. WHITE: No, sir. The source for these values
19 that I'm asking Mr. Billstein about are planimeter sheets
20 which Mr. Billstein had given us --

21 THE SPECIAL MASTER: Confirming from?

22 MR. WHITE: On, I guess, late last week and on
23 Monday.

24 A (By the Witness) I have 5.64 for --
25 billstein - cross - white

1

THE SPECIAL MASTER: That's exactly --

2

THE WITNESS: Your Honor, these are areas outside

3

of certificates.

4

MR. WHITE: I didn't mean to mislead you, Your

5

Honor.

6

THE SPECIAL MASTER: That's all right. Very well.

7

Q (By Mr. White) 35-7, 14.7?

8

A 14.7.

9

Q -8, 2.9?

10

A 2.9.

11

Q -9, 25.1?

12

A 25.1.

13

Q -10, 1.7?

14

A 1.7.

15

MR. ECHOHAWK: Your Honor, I would like to again

16

renew my objection. This has shown that Mr. White has all

17

of this information and he can put it all together, which

18

he has already done, and it's just a waste of time for Mr.

19

White to read his list to Mr. Billstein and let Mr. Bill-

20

stein confirm it on the same information Mr. White has and

21

read it back into the record.

22

MR. ROGERS: Furthermore, Your Honor, the acreage

23

information that they are going over Mr. White has had in

24

his possession since January on those hydrographs.

25

billstein - cross - white

1

MR. WHITE: That simply isn't correct.

2

THE SPECIAL MASTER: Let Mr. Rogers finish his

3

statement.

4

MR. ROGERS: Counsel for the United States informs

5

me that that is the case, and I was not involved in that

6

transfer, but they informed me that that is the fact, that

7

the acreages are shown on those hydrographs.

8

I count fifteen people sitting in this room,

9

including Your Honor, being the most important of them,

10

while going through an essentially auditing task that two

11

or three of Mr. White's experts should have done or could

12

be doing, separately from us taking all this time, and I

13

also point out that I don't believe that the particular

14

exhibit we're going over at this point is in any question

15

about being off the Reservation.

16

THE SPECIAL MASTER: I could not agree more.

17

thoroughly and totally with your observation that this sort

18

of thing could have been done and with much more respect

19

for the time and the expense and the wear and tear that

20

this has occasioned upon fifteen or twenty other people

21

in this lawsuit besides Wyoming counsel, but I'm not going

22

to sustain the objection at this time. I may in another

23

two or three exhibits. I don't want to be overly rough in

24

cutting anybody off in this lawsuit.

25

billstein - cross - white

1 Mr. Billstein, do you have a total of the
2 acreage in 1131? Is it 121 acres more or less, or have
3 you totaled it all?

4 THE WITNESS: Your Honor, an easy way to do that
5 is to cross-check with the new handout that was given you
6 this morning.

7 THE SPECIAL MASTER: Well, will you give me the
8 photo number on the top of the photo?

9 A (The Witness) Yes Sir, "H4" -284.

10 THE SPECIAL MASTER: I'll do some more addition.

11 MS. SLEATER: Your Honor, if you have a copy of
12 the Table 55B which was provided during Mr. Billstein's
13 direct, it has by exhibit number as well as photo the
14 totals of the acreages in it also.

15 THE SPECIAL MASTER: I'm off one acre on it, so
16 thank you very much.

17 Q (By Mr. White) Mr. Billstein, have we now covered all of
18 the parcels which are included within the 341 acres on
19 Exhibit C-137 for the Owl Creek basin?

20 A I guess I would need a list of the exhibits that we've
21 discussed, counselor.

22 Q Let me ask you another question and maybe I can make it
23 shorter.

24 Do you have a list which describes the parcel for
25 billstein - cross - white

1 each of the parcels which comprise each of the line
2 entries and numbers of acres that are shown on Exhibit
3 137? In other words, have you developed such a list
4 since the deposition?

5 A No.

6 Q Now, the exhibits we've referred to are 129, 134, 133, 132,
7 135, 136, 130, and 131.

8 A I would have to code that to the photo identification
9 number, counselor.

10 Q Well, let me find 55B for you. I'm just concerned that we
11 find all the ones that are included there.

12 (Document handed Witness by
13 (Mr. White.

14 A (By the Witness) You referred to Exhibits 129 through 136?

15 Q (By Mr. White) Oh, let's see. That's correct.

16 THE WITNESS: Your Honor, I just noticed another
17 error for Exhibit number 136. That should read H6-225
18 rather than H6-255.

19 THE SPECIAL MASTER: Very well.

20 THE WITNESS: I apologize for that.

21 Q (By Mr. White) Would you read that again, 225 for H6; is
22 that correct?

23 A That's right.

24 To answer your question, that should include all

25 billstein - cross - white

1 the acreage in the totals for Owl Creek basin.

2 Let me make one final check.

3 (Pause.

4 A (By the Witness) That's correct.

5 Q (By Mr. White) So it's your testimony that you add up the
6 number of acres which you have given for each of those
7 tracts and it comes up to 341?

8 A There were perhaps a planimeter rounding. It should be
9 within an acre or two.

10 MR. WHITE: Okay. Your Honor, could I have about
11 five minutes? I need to get another set of exhibits and
12 we'll go off to another area.

13 THE SPECIAL MASTER: Let's take a five-minute
14 break.

15

16

17

18

19

20

21

22

23

24

25

* * * * *

1 THE SPECIAL MASTER: All right. Back on
2 the record.

3 THE WITNESS: Your Honor, I did find an
4 error in one of my previous descriptions for
5 Tract 35-9.

6 THE SPECIAL MASTER: 25.1?

7 THE WITNESS: Plus an additional 8.4 acres.

8 THE SPECIAL MASTER: Okay.

9 Q (By Mr. White) Ron, where are those 8.4 acres
10 located?

11 A They're designated as 2-4 under the Duncan Ditch.
12 We had a break between Type II lands and Type IV
13 lands, and the figure that I gave to you, which
14 matches your input number, was only for the
15 Type IV. We must include the Type II land of
16 8.4 acres on top of that to fill out that complete
17 parcel.

18 (Brief pause.

19 Q Mr. Billstein, during Mr. Kersich's direct
20 examination he testified that his arable land
21 base did not include lands previously irrigated
22 or adjudicated and deferred any questions about
23 any such overlap to you.

24 A Teriffic.

25 billstein-cross-white

1 Q And I now ask you to direct your attention to
2 Kersich Deposition Exhibit -- excuse me, not
3 exhibit, Kersich Exhibit 44, which is on the
4 easel, and Exhibit C-72 and ask you whether or
5 not --

6 THE SPECIAL MASTER: C-72? This is not one
7 of Kersich's, I don't think.

8 MR. WHITE: No, these are one of the ones
9 that have come in, Your Honor.

10 THE SPECIAL MASTER: Oh.

11 MR. WHITE: What I intend to do is ask him
12 to compare the areas that are covered in the
13 two exhibits to deal with those areas of overlay.

14 Q (By Mr. White) And ask you to examine in
15 Township 4 North, 2 West, Section 35, the NE 1/4
16 of the SW 1/4 and the SE 1/4 for a tract of land
17 of approximately 65 acres, which on Kersich
18 Exhibit 44 is classified 2 sprinkler and which
19 on Exhibit C-72 is also shown as adjudicated
20 and unadjudicated irrigable.

21 MR. ECHOHAWK: Objection, Your Honor, this
22 is irrelevant, whether or not there's any
23 overlaps as long as there's no double claim
24 asserted.

25 billstein-cross-white

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. WHITE: Your Honor, they stipulated.--

THE SPECIAL MASTER: Just a minute, gentlemen.
Let me hear the end of the question; adjudicated
and unadjudicated sprinkler, is that right?

(Thereupon a portion of
(the following question was
(read back as follows: "Q
(-- which on Kersich Exhibit 44
(is classified 2 sprinkler
(and which on Exhibit C-72
(is also shown as adjudicated
(and unadjudicated irrigable."

* * * * *

1 MR. ECHOHAWK: I would further add to my object-
2 ion that it's beyond the scope of Mr. Billstein's direct
3 examination where he didn't address the adjudicated lands
4 or the unadjudicated irrigable category. He only addressed
5 the in use category.

6 MR. WHITE: The problem is that counsel for the
7 Tribes and the United States stipulated that any overlaps
8 between what Mr. Kersich had done and previously adjudicated
9 lands or lands which had been historically irrigated could
10 be covered by cross-examination of Mr. Billstein.

11 That's the problem when you have an expert like
12 Mr. Kersich testify based on another expert's opinions,
13 that he was unable to answer the questions and deferred
14 them to Mr. Billstein, and everybody stipulated and you
15 ordered, and I think we are entitled to go ahead and make
16 the inquiry.

17 THE SPECIAL MASTER: Well, I'm not sure that all
18 that took place.

19 MR. WHITE: I will give you the page numbers.

20 THE SPECIAL MASTER: I will overrule the objection.

21 MR. ROGERS: I wish you would give us the page
22 numbers. I don't recall that stipulation.

23 THE SPECIAL MASTER: I overruled the objection,
24 and Mr. Billstein can attempt to answer the question the

25 billstein - cross - white

1 best he can, if he's able to.

2 THE WITNESS: It will take a little bit of time
3 just to check.

4 THE SPECIAL MASTER: Sure, sure.

5 When you get all the way through rechecking, if you want
6 the question re-read, please request it.

7 THE WITNESS: I understand, Your Honor.

8 MS. SLEATER: Your Honor, if I could ask that
9 perhaps while Mr. Billstein is checking, if Mr. White could
10 indicate where the parcel is since we aren't able to see
11 it, and then we could find it on the copy.

12 MR. WHITE: Why don't I just move this around so
13 you can see it. It's a big courtroom, but it's almost
14 impossible --

15 (Off-the-record discussion.)

16 Q (By Mr. White) Is there an overlap?

17 A There's an overlap.

18 Q Staying with --

19 THE SPECIAL MASTER: What do you mean by that?

20 THE WITNESS: Your Honor, it means that in terms
21 of Mr. Kersich's overall study area of base where he
22 established arable lands which, of course, will not neces-
23 sarily be broken down into irrigable lands for the future
24 categories --

25 billstein - cross - white

1 THE SPECIAL MASTER: All right.

2 THE WITNESS: -- there are certain portions of
3 the tracts identified by myself as adjudicated and un-
4 adjudicated in irrigable status that overlap with the same
5 land base.

6 THE SPECIAL MASTER: That he had identified as
7 arable?

8 THE WITNESS: That's right.

9 THE SPECIAL MASTER: How many acres do you find
10 in that --

11 MR. WHITE: I asked you about 65 acres. Is that
12 correct?

13 THE SPECIAL MASTER: Give or take a few. You
14 don't have to go by a minute --

15 THE WITNESS: That's correct.

16 Q (By Mr. White) Staying with Exhibit C-44, Mr. Kersich's
17 exhibit, and also referring to Exhibit C-80, isn't it true
18 that in Township 4 North, 2 West, Section 36 in the South
19 half of that section -- South half of the southwest of that
20 section -- there are roughly 70 acres classified 2
21 sprinkler which are shown on Exhibit C-80 as unadjudicated
22 irrigable?

23 THE SPECIAL MASTER: While the witness is searching,
24 Mr. White, let me ask you a question.

25 billstein - cross - white

1 MR. WHITE: Yes, sir.

2 THE SPECIAL MASTER: What difference does it
3 make that there's an overlap of specific or particular
4 acreage in the arable lands by class that Mr. Kersich
5 testified to and that may or may not be included in the
6 use testimony of Mr. Billstein?

7 MR. WHITE: Your Honor, Mr. Kersich testified
8 that there was no such overlap so, first of all, it goes
9 to the general thoroughness of the work that they were
10 doing under his supervision.

11 THE SPECIAL MASTER: I see.

12 MR. WHITE: Second, the lands which are shown
13 on the Kersich exhibits such as 44, while they have not
14 been indicated specifically, Mr. Kersich indicated that
15 some of those lands, without identifying which ones, would
16 go into future projects, part of the future FIP claim, I
17 believe, and I want to make sure there's no double-dipping.

18 THE SPECIAL MASTER: Well, all right. I felt the
19 question was necessary, and I appreciate the answer.

20 MR. ROGERS: Your Honor, I'm not sure that Mr.
21 White represented it correctly.

22 My recollection is that Mr. Kersich testified
23 that there might indeed be some instances like this, but
24 as a general proposition, that was not --

25 billstein - cross - white

1 THE SPECIAL MASTER: It's nothing for anybody
2 to get excited about yet because it's involving so far
3 about 138 acres out of 84,469, but if it begins to show
4 a pattern of sloppy operation, then I can see why Mr.
5 White would be making a search for it.

6 MR. ROGERS: I understand that, Your Honor. I
7 think this may be premature, however, because when the
8 final irrigable claim for the lands is developed then
9 that sort of inquiry --

10 THE SPECIAL MASTER: All right. It is getting
11 to be a fine line of what goes in on cross and what goes
12 in the direct case. Let's keep moving the way we are,
13 and if we give more time under this, it will be time saved
14 along the way, I believe.

15 MR. ECHOHAWK: That's why it becomes important,
16 just because we happen to double study something, there's
17 nothing wrong with that.

18 THE SPECIAL MASTER: No problem; no problem.
19 Even though we lawyers recognize the infallibility and
20 one hundred percent accuracy of our devotions and contri-
21 butions, we recognize that engineers and land classifiers
22 occasionally err, to quote Mr. Kenneth Hamm in one of his
23 cases.

24 We are not on the record, are we?

25 billstein - cross - white

1

MR. WHITE: Yes.

2

THE SPECIAL MASTER: I was afraid we were.

3

Please do me a favor, ladies.

4

Go ahead, Mr. Billstein, with your answer.

5

6

7

8

* * * * *

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE WITNESS: Thank you, Your Honor. Yes,
2 there is a slight overlap. My statistics show
3 approximately 43 acres of land that Mr. Kersich
4 would have contained in his arable landbase,
5 which is also shown in the historical land base.
6 There are about four or five overlap areas,
7 and again, to reinforce what Mr. Echohawk said,
8 being that we are dealing with relatively minor
9 acreages and these were going to be alleviated
10 in the final determinations, so that there was
11 no overlap, we didn't think it was necessary
12 to pull exhibits back from Cheyenne, for example,
13 to make a change of this kind of nature.

14 Q (By Mr. White) What other areas of overlap are
15 you acquainted with, Mr. Billstein?

16 A I think we have a slight one on Sage Creek in
17 the Gurna Tewon area.

18 Q Is that the one I started with on Mr. Kersich
19 during his direct -- or cross-examination?

20 A I believe it may be the same one.

21 Q We'll get to that one. Let's pick up several
22 small parcels still on Exhibit 44. Do you find,
23 let me give you all of them so that we don't
24 have to waste time going back and forth in

25 billstein-cross-white

1 Township 4 North, 2 West, Section 21, North 1/2
2 of the SW, small amount, probably around ten
3 acres, classified 2 sprinkler. Also on your
4 Exhibit 72 as unadjudicated irrigable.

5 Then in Township 3 North, 2 West, Section 1,
6 in the NE and NW 1/4's two ten-acre parcels each
7 classified 2 sprinkler and shown on your Exhibit 80.
8 Were those among the ones that you realized the
9 overlap?

10 A I'll have to refer to my Exhibits 72 and 80.

11 Q They're right here.

12 MR. ECHOHAWK: Your Honor, I'd like to
13 renew my objection for the record. Mr. Billstein
14 didn't testify to this on direct.

15 MR. WHITE: I admit it's beyond the scope
16 of Mr. Billstein's testimony, I believe it's
17 within the scope of Mr. Kersich's. Mr. Kersich
18 deferred it to Mr. Billstein, and everybody
19 stipulated.

20 THE SPECIAL MASTER: Well, you may answer.

21 (Brief pause.

22 THE SPECIAL MASTER: We're identifying
23 acreage, Mr. Echohawk, but we're a long way from
24 drawing water. There are some steps down the
25 billstein-cross-white

1 road yet before we assign --

2 MR. ROGERS: Just for the record, would
3 Mr. White please furnish us with a page number
4 of the stipulation. He's mentioned it twice
5 now and I have stated I don't recall it.

6 MR. WHITE: It's either at 1411 or 1424, I
7 can't tell from my scribbled notes.

8 THE SPECIAL MASTER: The hearing of what
9 date, do you know?

10 MR. WHITE: I don't remember, Your Honor.
11 I have a copy --

12 THE SPECIAL MASTER: Obviously the last,
13 of the Kersich days, March --

14 MR. WHITE: Starts on 1424. I can read it
15 aloud if you like.

16 THE SPECIAL MASTER: Kersich testimony,
17 February 6th through the 9th.

18 MR. WHITE: February '69?

19 THE SPECIAL MASTER: February 6th through
20 the 9th, I'm not too sure.

21 (Brief pause.)

22 THE WITNESS: With respect to Exhibit 72,
23 I didn't find any overlap. With respect to 80,
24 I see the area of overlap, but I have no way of

25 billstein-cross-white

1 quantifying it.

2 Q (By Mr. White) Are you, based on your
3 experience, are you able to approximate the
4 amount of the overlap?

5 A It appears to be 20 acres is approximately right.

6 Q With respect to Section 21, would you please
7 check your hydrographic photograph, "12" 179-138
8 and see whether or not you find that overlap
9 there under unadjudicated irrigable.

10 A Okay.

11 (Brief pause.)

12 A I see what appears to be a slight overlap. This
13 matches the line for the top of the historic
14 claim. That may not be exactly drawn right.

15 THE SPECIAL MASTER: How many acres does that
16 overlap involve, approximately? Does it look
17 like it could be ten?

18 THE WITNESS: Possibly ten, Your Honor.

19 THE SPECIAL MASTER: All right, I think
20 that's good.

21 Q (By Mr. White) You might want to jot this down;
22 why don't I give you all the questions with
23 respect to Exhibit 45 and you can look at them,
24 consolidatedly.

25 billstein-cross-white

- 1 All with respect to Exhibit C-45; Township 4
2 North, 2 West, Section 35.
- 3 A Okay.
- 4 Q In the NE of the NW, and the SE, approximately
5 65 acres classified 3 gravity, which should be
6 shown on your Exhibit C-72, most of which can
7 be shown as adjudicated, some of which is
8 unadjudicated irrigable.
- 9 A You had a description, NE of the SW and then the
10 SE?
- 11 Q Then in the SE, so it laps over in those two
12 areas.
- 13 A Okay.
- 14 Q NE of the SW, and the SE, sort of a backwards
15 order.
- 16 A Okay.
- 17 Q Again, in 4 North, 2 West, Section 21, small
18 parcel of approximately ten acres in the North 1/2
19 of the SW, classified 3 gravity, and that should
20 be on your hydrographic map "12" 179-138;
21 In Township 3 North, 2 West, Section 1,
22 North 1/2 of the NW. Again, a small parcel, again
23 ten acres, classified 2 gravity on your Exhibit
24 C-80, all adjudicated.
- 25 billstein-cross-white

1 A Counsel, could you give me just the photo
2 identification number if you have it with you?
3 Q I sure will. For 72 it should be "12" 179-140;
4 for the second parcel I gave you, that's not on
5 Exhibit C-80, "12" 179-138; for the third parcel,
6 in Section 1, it's "13" 170-112; fourth parcel on
7 C-45 would be 4 North, 2 West, Section 36,
8 South 1/2 of the SW 1/4, approximately 70 acres,
9 classified 2 gravity, located on C-80, photograph
10 number "13" 179-112.

11 A What section was the previous one, Section 2 in
12 Township 3 North, Range --

13 Q Section 1.

14 A Section 1.

15 Q That does it on 45. You should have four.

16 MR. WHITE: Your Honor, This might be a
17 good time to take a short recess while Mr. --

18 MR. ECHOHAWK: Your Honor, before we do,
19 I'd like to inquire, I thought I heard Mr. White
20 say to one of his parcels that it was not on one
21 of Mr. Billstein's historic exhibits, it was
22 overlap on his hydrographic copies.

23 MR. WHITE: That's true. I'm cross-examining
24 based on Mr. Kersich's testimony not on Mr.

25 billstein-cross-white

1 Mr. Billstein's.

2 THE SPECIAL MASTER: What was your objection
3 to that, Mr. Echohawk?

4 MR. ECHOHAWK: It doesn't have anything to
5 do with Mr. Billstein's work product that he's
6 presented here in Court.

7 THE SPECIAL MASTER: Well, if that's true,
8 then I shouldn't have been allowing the last
9 two questions.

10 MR. ECHOHAWK: This doesn't have anything to
11 do with anything on Mr. Billstein's exhibits.

12 MR. WHITE: It has everything to do with
13 Mr. Kersich's exhibits, and since I was not able
14 to examine Mr. Kersich about it, he deferred me
15 to Mr. Billstein. Mr. Billstein is more than
16 able to do it.

17 THE SPECIAL MASTER: All right. We will one
18 more time overrule the objection.

19 We're in recess for about ten minutes.

20 (Thereupon a ten minute
21 recess was taken.)

22

23

24

25

billstein-cross-white

1 THE SPECIAL MASTER: Let us begin then, Mr.
2 White, and you make your next question or two on this
3 line of questioning.

4 We will please come to order and, Mr. White, will
5 you continue?

6 Q (By Mr. White) Mr. Billstein, is it true that on Exhibit
7 C-44 you have found four areas of overlap between the arable
8 land base established by Mr. Kersich and adjudicated lands,
9 unadjudicated lands in use or unadjudicated lands irrigable
10 contained either on the exhibits which have been admitted
11 during your direct or in your hydrographic photos?

12 MR. ECHOHAWK: Objection, Your Honor. It appears
13 that we're going to start another long line of questions
14 where Mr. White is going to attempt to elicit the same
15 type of information.

16 I might suggest that at this point, rather than
17 going through the motions for an additional, I think, 17
18 parcels, that he may make an offer of proof to accomplish
19 his purpose.

20 I would also point out that it appears that the
21 parcels that he is denoting on Exhibit C-45 are generally
22 the same parcels that he denoted on C-44, which is the
23 gravity map, as opposed to the sprinkler map, and I think
24 those are generally the same type of areas; in fact, the

25 billstein - cross - white

1 very same areas, just a different type of classification:
2 THE SPECIAL MASTER: That may have been the same
3 areas, but I think they might be different -- in any event,
4 I will sustain your objection on the basis that a continua-
5 tion of this line of questioning is a redundancy and is
6 excessive and is not necessary to establish that which has
7 been established by the prior similar questions. Because
8 they would tend to be tediously repetitive and duplicative,
9 the motion is granted.

10 Mr. White, you may make an offer of proof for the
11 balance of the 17 exhibits.

12

13

14

15

* * * * *

16

17

18

19

20

21

22

23

24

25

1 MR. WHITE: It will be more than 17 then,
2 Your Honor, but in any event the -- our, Wyoming's
3 offer of proof is that if allowed to testify, in
4 response to questions similar to those which I have
5 previously propounded, concerning some portions of
6 the roughly 85,000 acres of arable land base, Mr.
7 Billstein would testify that there were the following
8 overlaps between the arable land base which Mr. Kersich
9 testified to and the indicated types of lands
10 associated with each of the following parcels: With
11 respect to Exhibit C-45, covering North Crowheart area,
12 in Township 4 North, 2 West, Section 35, in the NE 1/4
13 of the SW 1/4 and as well as in the SE 1/4, Mr. Billstein
14 would testify that there is a parcel of approximately
15 65 acres classified 3 gravity, which is overlapped by
16 adjudicated and unadjudicated, but irrigable lands,

17 In the same exhibit, in the North Crowheart
18 area, Township 4 North, 2 West, Section 21, in the
19 North 1/2 of the SW 1/4, North 1/2 of the SW, if
20 allowed to testify, Mr. Billstein would testify
21 approximately 10 acres classified 3 gravity, which
22 contains unadjudicated irrigable lands as established
23 by him.

24 Still in Exhibit 45, North Crowheart area,
25 Township 3 North, 2 West, Section 1, North 1/2 of the

1 NW 1/4, a parcel approximately 10 acres, classified 2
2 gravity, comprised of adjudicated lands;

3 Section 45 -- excuse me, Exhibit C-45, still in
4 the North Crowheart area, 4 North, 2 West, Section 36,
5 South 1/2 of the SW 1/4, a parcel of approximately of
6 70 acres.

7 THE SPECIAL MASTER: How many?

8 MR. WHITE: Seven zero, Your Honor, cassified 2
9 gravity, would be previously adjudicated lands.

10 On Exhibit 51, Riverton East area, Township 2
11 North, 5 East, in Section 25, the South 1/2 of the
12 SW 1/4; Section 26, the SE of the SE 1/4, a parcel of
13 approximately 30 acres, classified 3 sprinkler, which
14 is previously adjudicated lands.

15 On Exhibit C-51, also in the Riverton East
16 area, Township 2 North, 5 East, Section 26, in the
17 NE of the SW 1/4 of the SW 1/4, a parcel approxmiately
18 five acres, classified 3 sprinkler, previously
19 adjudicated lands.

20 On Exhibit 50, which is the Riverton East
21 area, in Township 2 North, 5 East, Section 25, in the
22 South 1/2 of the SW 1/4; Section 26 and SW of the SW
23 1/4 there is a parcel of approximately 30 acres, most
24 of which is classified 3 gravity, some of which is
25 classified 2 gravity, all of which is previously

1 adjudicated.

2 In Exhibit C-50, still the Riverton East
3 area, Township 2 North, 5 East, Section 26, in the
4 East 1/2 of the SW parcel, approximately 10 acres,
5 roughly half of which is classified 2 gravity, the
6 other, 3 gravity, all of which is previously
7 adjudicated.

8 On Exhibit 54, C-54, which is the Arapahoe
9 area, Township 1 South, 3 East, Section 19, North 1/2
10 of the NE 1/4 and the NE of the NW 1/4, there is a
11 parcel of approximately 35 acres, classified 2 sprinkler,
12 and it's unadjudicated but irrigable.

13 On Kersich Exhibit 54, in the Arapahoe area,
14 1 South, 2 East, Section 15, NW 1/4 of the SW 1/4, an
15 area of approximately 20 acres, classified 1 sprinkler,
16 which is unadjudicated irrigable lands.

17 On Exhibit 53, which is also the Arapahoe
18 area, Township 1 South, 3 East, Section 19, North 1/2
19 of the NE 1/4 and the NE of the NW 1/4 there is a
20 parcel approximately 35 acres, classified 3 gravity
21 and overlaps with unadjudicated irrigable lands.

22 Still in 53, Arapahoe area,
23 there's in Township 1 South, 3 East, Section 15, in
24 the NW of the SW 1.4, a parcel approximately 20 acres,
25 classified 2 gravity, which overlaps unadjudicated

1 irrigable lands.

2 In Exhibit C-49, which is Big Horn Flats
3 area, there is a parcel in Township 2 North, 2 West,
4 Section 18, North 1/2 -- excuse me, in the NE 1/4
5 of the SW 1/4, and the North 1/2 of the SE 1/4,
6 comprising approximately 20 acres. It's classified
7 1 sprinkler, which overlaps with both unadjudicated
8 lands in use and unadjudicated irrigable lands.

9 In Exhibit C-49, Big Horn Flats, Township 2
10 North, 2 West, Section 17, in the North 1.2 of the
11 SW 1.4, a parcel of approximately 60 acres, classified
12 1 sprinkler, which overlaps in roughly equal
13 proportions with previously adjudicated lands, un-
14 adjudicated lands in use and unadjudicated lands that
15 are irrigable.

16 Exhibit 49, Big Horn Flats, Township 2
17 North, 2 West, Section 17, SW 1/4 of the SW 1/4, a
18 parcel of approximately 40 acres, --

19 THE SPECIAL MASTER: I thought that was
20 exactly the same description of your prior 60 acres,
21 Mr. White. Is it a little bit different?

22 MR. WHITE: I'm sorry, I may have misread
23 it. The previous 60 acres also is in 17, but it
24 should have been in the North 1/2 of the SW, and the
25 40 acres should be in the SE of the SW.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE SPECIAL MASTER: All right.

MR. WHITE: Forty acres is classified 2 sprinkler, and is distributed in overlap between previously adjudicated lands, unadjudicated lands in use, unadjudicated lands that are irrigable, most of the lands overlapping in the last two categories.

In Exhibit C-49, Big Horn Flats area, Township 2 North, 2 West, Section 20, North 1/2 of the NW, ten-acre parcel classified as 2 sprinkler. That overlaps with unadjudicated irrigable lands.

In Exhibit C-49, Big Horn Flats area, Township 2 North, 3 West, Section 14, in the SE 1/4 of the SE 1/4, and the North 1/2 of the SE 1/4 is a parcel of approximately 33 acres that's classified 1 sprinkler, and it overlaps with unadjudicated irrigable lands.

Exhibit C-49, Big Horn Flats area, Township 2 North, 3 West, Section 13, in the SW 1/4 of the SW 1/4 as well as the NW 1/4 of the SW 1/4, a parcel about 20 acres, classified 1 sprinkler and it overlaps with unadjudicated irrigable lands.

In Exhibit C-48, Big Horn Flats area there is a parcel in Township 2 North, 3 West, Section 14, the SW of the SW 1/4 as well as in the SE 1/4, of approximately 60 acres, which is classified 3 gravity,

1 and it overlaps with unadjudicated irrigable lands.

2 In Exhibit 48, Big Horn Flats area, in
3 Township 2 North, 3 West, Section 13, in the West 1/2
4 of the SW 1/4 of that section there is a 35-acre
5 parcel classified 3 gravity and it overlaps with
6 unadjudicated irrigable lands.

7 With respect to all of the above overlaps,
8 the witness would testify, if allowed to testify,
9 that the overlap is with respect to the complete amount
10 of acreage.

11 Now, Your Honor, if I could ask for another
12 recess, even though I'm going to get blown out of the
13 water so quickly. I need to get another --

14 THE SPECIAL MASTER: I'm not sure you're
15 getting blown out of the water at all, Mr. White.
16 I think we've consolidated and saved some time with
17 evidence that you have in the record for purposes
18 you want served by it.

19 MR. ECHOHAWK: Your Honor --

20 MR. WHITE: Can we take about five minutes?

21 THE SPECIAL MASTER: My purpose is to blow
22 nobody out of the water.

23 MR. ECHOHAWK: It appears between the
24 gravity maps and the sprinkler maps --

25 MR. WHITE: Your Honor --

1 MR. ECHOHAWK: -- they're talking about the
2 same parcels, only different classifications. It would
3 appear to be that they would be in the same quarter
4 sections.

5 MR. WHITE: Your Honor, that's not necessarily
6 true. In addition, Mr. Echohawk should not be allowed
7 to make comments about offers of proof which he required
8 by his objection in the first place, and I would move
9 that any comments about my offers of proof be stricken.

10 THE SPECIAL MASTER: Well --

11 MR. WHITE: It's a two-headed sword when you
12 require somebody to go to an offer of proof, and I
13 don't think the United States realizes that.

14 THE SPECIAL MASTER: We're aware of differences
15 between the gravity identification and sprinkler
16 identification, and we followed Mr. Kersich's testimony
17 closely with virtually every acre to which he can
18 testify, so we can take appraisal of that.

19 Go ahead, Mr. White.

20 MR. WHITE: I need about five minutes to
21 change the exhibits, Your Honor.

22 THE SPECIAL MASTER: All right.

23 (Thereupon a five minute
24 recess was taken.)

25

* * * *

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

THE SPECIAL MASTER: This is a convenient place to adjourn for the night and we'll stand in adjournment until 9:15 tomorrow morning.

(Whereupon the proceedings were recessed at 3:55 p.m.)

* * * * *

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 2135-2242, 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
16 interested in the outcome thereof.

17 Dated this 11th day of March, 1981.

18
19 *Merissa Racine*

MERISSA RACINE
Registered Professional
Reporter

20 *Viola J. Lundberg*

VIOLA J. LUNDBERG
Registered Professional
Reporter