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File 132
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Case # 4993

File # 132

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IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT

WASHAKIE COUNTY, STATE OF WYOMING

IN RE:)
)
THE GENERAL ADJUDICATION)
OF RIGHTS TO USE WATER)
IN THE BIG HORN RIVER)
SYSTEM AND ALL OTHER)
SOURCES, STATE OF)
WYOMING.)

FILED

3/17 1981

Margaret V. Hampton CLERK
DEPUTY

VOLUME 25

Friday, March 13, 1981

ORIGINAL

APPEARANCES

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FOR THE STATE OF
WYOMING:

MR. MICHAEL D. WHITE
Special Assistant Attorney General
2900 Energy Center One Building
Denver, CO 80202
ALSO: MR. STUART RIFKIN

FOR THE UNITED STATES
OF AMERICA:

MS. REGINA SLEATER
Attorney at Law
Land and Natural Resources
Division
Department of Justice
Federal Building
Cheyenne, WY 82002

and

MR. TOM ECHOHAWK
Attorney at Law
Land and Natural Resources
Division
Department of Justice
1961 Stout Street
Denver, CO 80294

FOR THE SHOSHONE
TRIBE:

SONOSKY, CHAMBERS & SACHSE
200 M. Street, N.W.
Washington, DC 20006
BY: MR. WILLIAM PERRY

FOR THE PRIVATE
WATER HOLDERS:

MR. MICHAEL McCARTY
Attorney at Law
P.O. Box 589
Cody, WY 82414

MR. GEORGE RADOSEVICH
Attorney at Law
910 15th Street, Suite 866
Denver, CO 80202

1 THE SPECIAL MASTER: Are there any new
2 appearances this morning?

3 MR. McCARTY: Yes. My name is Michael
4 McCarty, and I am representing private irrigators
5 from the Big Horn Basin in conjunction with Ed
6 Webster, Larry Cozzens and other counsel.

7 THE SPECIAL MASTER: Very good, Mr. McCarty.
8 You missed quite a day yesterday.

9 MR. McCARTY: That's what I understand.

10 MR. WHITE: Your Honor, George Radosevich
11 is planning to be here. He asked me to do the
12 Popo Agie, to do that as the first thing. These are
13 where his clients are located. I wonder if we could
14 wait a few minutes until he gets here.

15 THE SPECIAL MASTER: Sure.

16 (Off the record.)

17 Q (By Mr. White) Mr. Billstein, have you had
18 an opportunity to examine the blue-line copies
19 of the overlays for Exhibit C-100 and 101, being
20 marked for identification as HB-1100 and 1101?

21 A Yes.

22 Q Do those, with the exception of certain tract
23 numbers, accurately reflect the information
24 contained on the overlay for those two exhibits
25 billstein-cross-white

- 1 C-100 and 101?
- 2 A They do reflect what's on the exhibits. However,
3 on C-101 I do have one modification I'd like
4 to bring out at the appropriate time as we go
5 through the tracts.
- 6 Q Okay. So it's a modification to the overlay on
7 100?
- 8 A Yes. The figure is contained in the backup
9 summary tables and shows up on the acreage in
10 use totals. It inadvertantly didn't show up
11 on the exhibit.
- 12 Q Do Exhibits C-100 and 101 and HB-1100 and 1101
13 contain tracts of land with the modifications
14 that you want to make which comprise the 450
15 acres in the Johnstown Unit shown on Exhibits
16 C-137?
- 17 A I reviewed that last night, that should be the
18 case. After we introduce the numbers we'll
19 check them again.
- 20 Q Okay. On Exhibit 1100, does Tracts C-1 contain
21 52.1 acres of Class 2 land?
- 22 A 52.1 acres.
- 23 Q Class 2?
- 24 A Of Type II.
- 25 billstein-cross-white

- 1 Q Type II, I'm sorry.
- 2 6-2 contains 6.9 acres of Type II?
- 3 A That's correct.
- 4 Q 6-3, 28.4 acres of Type II?
- 5 A Contains 28.4 acres of Type II plus 5.9 acres
6 of Type V.
- 7 Q Okay. 6-4, 26.7 acres of Type II?
- 8 A You're now moving to Exhibit 1101?
- 9 (Brief pause.)
- 10 A 6-4, 26.7 acres of Type II.
- 11 Q 6-5, 36.3 of Type II?
- 12 A Correct.
- 13 Q C-6, 16.5 acres of Type V?
- 14 A No.
- 15 Q What is it?
- 16 A 53.2 acres of Type II.
- 17 Q I'm sorry, go ahead and tell me.
- 18 A 16.4 acres of Type V and an additional 30.5
19 acres of Type V.
- 20 Q That was 16.4 Type V, 30.5 Type V and 53.2
21 Type II; --
- 22 A Correct.
- 23 Q -- is that right?
- 24 * * * * *
- 25 billstein-cross-white

- 1 Q (By Mr. White) Why did you divide the Type V lands
2 into two acreages?
- 3 A Well, without looking at my hydrographic copy, I would
4 assume they are on either side of the Type II. There-
5 fore, there's a natural delineation by land use type.
- 6 Q Isn't it true that the 30.5 acres is a Type V with a
7 circle around it?
- 8 A It's the same definition, incidental waters.
- 9 Q Why would you put a circle around it as opposed to
10 a bare Roman Numeral Type V?
- 11 A That had to do with lands that were investigated in
12 the soils portion of the study which will be spoken
13 to by Mr. Waples of our office. I believe that re-
14 flects some findings that he had relative to the
15 arability of those lands.
- 16 Q So he did a soils study on one of the blue parcels
17 in Exhibit 101?
- 18 A Every once in a while they put a hole down in an
19 existing use area, is my understanding.
- 20 Q Was any portion of your opinion based on the soils
21 work which was done even every once in a while on
22 lands which are unadjudicated currently in use?
- 23 A That was not a factor, in my opinion.
- 24 Q Did you make any determination as to whether or not
25 billstein - cross - white

- 1 your opinion was consistent with the findings of
2 those sporadic soils studies or scattered soils
3 studies?
- 4 A. The land was typed as a V. That means an incidental
5 water. That was the land base determination and that
6 was a part of my study.
- 7 Q. So you made no examination of a conflict, or you did
8 and there was no conflict?
- 9 A. The results of that soils study should not result in
10 any conflict.
- 11 Q. Okay. 6-7, 14.2 acres of Type II?
- 12 A. Correct?
- 13 Q. 6-8, 13.6 acres of Type II?
- 14 A. 113.6 acres, Type II.
- 15 Q. I am sorry. It is 113.
- 16 A. Plus 12.6 acres of Type V.
- 17 Q. 6-9?
- 18 A. 6.2 acres, Type V.
- 19 Q. I'm sorry. Okay. 6-10?
- 20 A. 8.0 acres, Type II.
- 21 Q. 6-11?
- 22 A. 9.5 acres of Type II, and I have an addition.
- 23 Q. Let's have the addition. This is 6-11?
- 24 A. This is a mutually exclusive parcel.
- 25 billstein - cross - white

1 Q Okay. Have you labeled it with any number?

2 A We can call it 6-12.

3 THE SPECIAL MASTER: What is meant by "mutually
4 exclusive"? That was not in the in-use totals or in
5 the --

6 THE WITNESS: No, Your Honor. What I meant was
7 mutually exclusive of any other parcel depicted. When
8 it is applied to the exhibit, it will be obvious that
9 it's a separate parcel.

10 THE SPECIAL MASTER: I see.

11 THE WITNESS: It is in the totals for the Johns-
12 town unit.

13 Q (By Mr. White) So the Johnston unit, 465 acres, in-
14 cludes a parcel which is not shown on either 100 or
15 101 right now, which you are going to put on there;
16 is that right?

17 A It includes a parcel not shown on 101.

18 Q Okay. Let's get out 101.

19 A All right. I have my worksheet that corresponds with
20 Exhibit C-101.

21 Q Why don't you just go ahead, Ron, and mark the parcel
22 on C-101 that is included in the 465 acres but not on
23 the exhibit. Do you have a marking pencil you can
24 use?

25 billstein - cross - white

1 Do you have a blue one of those so it will be
2 consistent in color? You can use red if you want to.

3 (Witness marking.)

4 MR. WHITE: Off the record, Your Honor.

5 (Off-the-record discussion.)

6 A. I have it delineated.

7 Q (By Mr. White) Okay. Let's cover it up with Scotch
8 tape so it doesn't rub off.

9 A. Do we need to apply the proper tract delineation to
10 it?

11 Q Sure, why don't you go ahead and do that while you
12 are there?

13 (Witness marking.)

14 Q (By Mr. White) Ron, on Exhibit 101 you have now
15 placed a tract 6-12, and there's a dark square in
16 the right-hand corner. That stands for unadjudicated
17 lands in use; is that correct?

18 A. That's correct.

19
20
21
22 * * * * *

1 Q (By Mr. White) And what is the -- this is a
2 Wind River source of water for this tract?

3 A Yes. That would be the mainstem Wind River
4 source of supply, otherwise designated as A
5 on this Exhibit C-101.

6 Q How many acres in Tract C-12?

7 A 34.6 acres of Type II.

8 Q Do the acreages which you have given me as well
9 as the parcel numbers you've given me or
10 responded to, comprise all the parcels and all
11 the acreages which are included within the 465
12 acres shown for the Johnstown Unit on Exhibit 137?

13 (Brief pause.)

14 MR. WHITE: Off the record, Your Honor.

15 (Off-the-record discussion.)

16 THE WITNESS: I get 465.1 acres for Parcel
17 6.1 through and including 6-12.

18 Q (By Mr. White) And there are no other parcels
19 included within the Johnstown Unit; is that
20 correct?

21 A With the addition of 6-12 that should be all the
22 parcels.

23 Q Okay. Let's turn to Popo Agie then.

24 MR. ECHOHAWK: Your Honor, before we continue,
25 billstein-cross-white

1 I'd like to again renew my objection to this
2 line of questioning. It appears that we are
3 going parcel by parcel, acre by acre. As I
4 said before, there's between two to three
5 thousand of these parcels. I think it's a
6 waste of the Court's time.

7 THE SPECIAL MASTER: Let me ask Mr. White,
8 before we begin our inquiry into these proceedings,
9 what is the purpose of the cross-examination of
10 this witness, of continuing the parcel by parcel
11 totals and comparing them with the total on 137?

12 MR. WHITE: Your Honor, 35,000 acres is
13 a lot of land, and while there are so many
14 parcels, the reason there are so many parcels is
15 the individual parcel acreages --

16 THE SPECIAL MASTER: I didn't ask you why
17 there are so many parcels. Why are you cross-
18 examining the witness the way you are?

19 MR. WHITE: The reason I'm doing it the
20 way I am is to try to determine which parcels
21 comprise the totals that are contained within
22 Exhibit 137. It seems to me that it's almost
23 fundamental that if it's not brought out in the
24 Case in Chief on cross-examination -- not brought

25 billstein-cross-white

1 out on direct examination, on cross-examination
2 you're entitled to know the bases for any
3 opinions expressed. I've not been repetitive
4 with respect to.--

5 THE SPECIAL MASTER: Is your purpose in
6 asking to check the accuracy of the arithmetic
7 and totals or to check for the -- or to check
8 for some other basis?

9 MR. WHITE: Well, there's several purposes,
10 Your Honor, One of the purposes is to make a
11 record as to which parcels of what acreage is
12 included within each of the totals. I think
13 we're entitled to find out that, and to have
14 the record made on that, not just us to find out.

15 THE SPECIAL MASTER: That has been done on
16 about five of the units that make up 137. Do
17 you propose to go through every unit of 137?

18 MR. WHITE: Yes, sir. And I think it will
19 go fairly quickly. You may have noticed there's
20 been a distinct change as to the amount of time
21 it takes to get through these units, and the
22 reason is based on material, backup material which
23 we received the last of Monday. We have gone
24 through and made our best estimate as to which

25 billstein-cross-white

1 parcels are involved and their acreages. We have
2 then given those estimates to the United States,
3 and we were able to get a response very quick
4 as to whether or not we're right. We're entitled
5 to make a record on that, Your Honor. It
6 shouldn't take that long. I think we'd be done
7 within, oh, another five to six hours of cross-
8 examination.

9 THE SPECIAL MASTER: The objection of Mr.
10 Echohawk on the line is overruled. But I
11 continue to watch with close interest what we're
12 doing because I don't think -- If, for example,
13 the first unit of the Little Wind comprising
14 of 7,873 acres made up of parcels of sixes,
15 fives, nines, I would doubt very much if I would
16 permit a continuation of this line of cross-
17 examination to that total unit.

18 MR. WHITE: Well, perhaps --

19 THE SPECIAL MASTER: It may be that unit
20 is made up of four or five or six hundred-acre
21 parcels since that is in the heart of the Wind
22 River Federal Irrigation Project, so we'll see
23 when we get to them, Mr. Echohawk.

24 MR. WHITE: Thank you, Your Honor.

25 * * * * *

billstein-cross-white

- 1 THE WITNESS: I'm ready.
- 2 Q (By Mr. White) Do you have before you what
- 3 have been marked for identification as HB-1090,
- 4 1091, 1105, 1106, 1114?
- 5 MR. ECHOHAWK: Would you go a little slower?
- 6 MR. WHITE: 1090, 1091, 1105, 1106, and
- 7 1114.
- 8 A (By the witness) Could I have the numbers read
- 9 back, please?
- 10 Q (By Mr. White) I'm sorry. 1090.
- 11 A Yes.
- 12 Q 1091, 1105, 1106, 1114. Do you have those in
- 13 front of you?
- 14 A Yes.
- 15 Q Are those exhibits blue-line copies of the over-
- 16 lays with the exception of certain tract numbers
- 17 or parcel numbers as are contained within
- 18 Exhibits C-90, 91, 105, 106, and 114?
- 19 A I just need to check one exhibit. There appears
- 20 to be -- either this didn't print through
- 21 properly to show the proper delineation of the
- 22 tract or there's a difference between -- you
- 23 must be using an old copy versus the new exhibit
- 24 copy on Exhibit 1106.
- 25 billstein-cross-white

1 THE SPECIAL MASTER: Give me the number
2 of the historic lands on the overlay top, please,
3 of C-90.

4 MR. WHITE: That's "14" 179-71, Your
5 Honor.

6 THE SPECIAL MASTER: Thank you.

7 A (By the witness) Yes, there appears to be either
8 a problem with the copy that you had or you
9 had an earlier copy that had been revised, but I
10 have taken the liberty of drawing in roughly
11 where the adjudicated boundary tract lies and
12 the tracts that we're looking at basically in
13 this area, which I'll color in in a blue, and
14 that would be 32-2.

15 (Witness marked on the
16 document.)

17 Q (By Mr. White) Okay. Aside from that change
18 are the sheets blue-line copies of overlays?

19 A Just those annotations at the bottom of the
20 sheets, "Index to classification sheet," and
21 I'll go ahead and mark those out.

22 Q Why don't you just mark those out?

23 (Witness complied.)

24 A I have marked them out.

25 billstein-cross-white

- 1 Q Okay. Mr. Billstein, on Exhibit 1090 do you
2 find Tract 31-1?
- 3 A Yes, I do.
- 4 Q Does that contain 7.3 acres of Type II lands?
5 A Yes.
- 6 Q 31-2, 8.4, Type IV?
7 A Yes.
- 8 Q 31-3, 27.1 of Type II?
9 A I have 34.3, Type II.
- 10 Q 34.3. Okay. 31-4, 4.5 of Type V?
11 It should be on 91.
- 12 A Say it again, please?
- 13 Q Okay. 4.5, Type V?
14 A Correct.
- 15 Q The next one is "16" -111.
16 A "16" -160?
- 17 Q Yes. You're right.
- 18 THE SPECIAL MASTER: 116, right?
19 THE WITNESS: Yes, sir.
20 (Brief pause.)
21 THE WITNESS: I'm ready.
- 22 Q (By Mr. White) In Tract 31-5, 12.1 acres, Type V?
23 A Type IV.
- 24 Q Type IV. 31-6, 23.4 acres, Type II?
25 billstein-cross-white

1 A Correct.

2 Q 31-7, 8.5 acres of Type IV and 5.7 acres of
3 Type II?

4 A Correct.

5 Q 31-8, 3.7 acres of Type IV?

6 A Correct.

7 Q 31-9, 3.9 acres, Type IV?

8 A Correct.

9 Q 31-10, 24.2 acres, of Type II?

10 A Correct.

11 MR. ECHOHAWK: How many acres?

12 MR. WHITE: 24.2.

13 Q (By Mr. White) Do Tracts 31-1 through 31-10
14 comprise all parcels with the acreage that you've
15 described which are included in 128 acres on
16 Exhibit 137 for the North Fork Popo Agie?

17 A I'll go ahead and add those.

18 THE WITNESS: I would like to introduce
19 at this time -- we had discussion yesterday,
20 Your Honor, on the Harpoon Cattle Company
21 purchase relative to the area on the Sioux
22 Ditch at the end of the Sioux Ditch. I think
23 I was instructed to obtain the Warranty Deed
24 for that and --

25 billstein-cross-white

1 THE SPECIAL MASTER: Who instructed you?

2 THE WITNESS: I thought that the Court
3 asked that the deed for that property be
4 obtained. I believe it was Tuesday or Wednesday,
5 Your Honor.

6 If not, I'll just --

7 MR. WHITE: I think that's appropriate for
8 redirect, Your Honor. If Counsel for the
9 United States wants to bring out an error --

10 MR. ECHOHAWK: We will do it on redirect.

11 THE SPECIAL MASTER: I'm not sure where
12 that fits in in this mosaic of eight weeks'
13 evidence, but if you will hold it for whatever,
14 they will bring it out in a few minutes, I
15 think, but go ahead with these totals.

16 THE WITNESS: I'll add these right now,
17 Your Honor.

18 THE SPECIAL MASTER: As to the totals of
19 Popo Agle, North Fork.

20 A (By the witness) That should comprise all the
21 parcels.

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billstein-cross-white

1 Q (By Mr. White) Okay.

2 THE SPECIAL MASTER: I think he asked
3 for a total on that.

4 MR. WHITE: I just asked him whether or
5 not --

6 THE SPECIAL MASTER: Oh, all right.

7 Let me ask a question. If that comprises
8 all the parcels, your computation sheet shows
9 for 16-116, 53 acres of Type II and 28 acres
10 of Type IV for a total of 44 acres. The
11 Exhibit C-137 shows the North Fork Popo Agie,
12 128 acres.

13 THE WITNESS: You would have to add all
14 three of the exhibit numbers, Your Honor, to
15 arrive at the --

16 THE SPECIAL MASTER: What were the two?

17 THE WITNESS: Fifteen, 19 and --

18 THE SPECIAL MASTER: Just a half a second,
19 please. That's only for 4 acres of Type IV?

20 THE WITNESS: Right. And 1471.

21 THE SPECIAL MASTER: 1471 has got about
22 530 and 42 acres in it.

23 THE WITNESS: But only on a portion of that.

24 THE SPECIAL MASTER: Only on a portion,

25 billstein-cross-white

1 thank you.

2 MR. WHITE: You might observe that's one
3 of the reasons we're trying to get these tracts
4 because there's no way to say certain photographs
5 go with certain totals.

6 Q (By Mr. White) Ron, turning to the mainstem
7 Popo Agie, I think you'll want to look first at
8 Photograph 1763.

9 (Brief pause.)

10 THE SPECIAL MASTER: Shall we take a five
11 minute break?

12 MR. WHITE: It would be a good time.

13 THE SPECIAL MASTER: All right, let's take
14 a five or ten minute recess.

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

17 Q (By Mr. White) Beginning with Exhibit HB-1106,
18 Tract 32-1, does that have 4.3 acres of Type II
19 lands?

20 A Before we get into that, on the Tract 31-3,
21 when I heard your acreage total, I wrote it
22 down wrong. It should have been 27.1 acres,
23 and the total does come out to 128.8 acres
24 with that addition on Tract 31-3, 34.3 to 27.1.

25 billstein-cross-white

1 So it does match what's shown on the Exhibit
2 137.
3 Going back to Exhibit 1106.
4 Q 32-1 is on 1106, is it not?
5 A Yes. 4.3 acres of Type II.
6 Q 32-2, 2.0 of Type IV?
7 A I have 3.5 acres. There's two separate tracts,
8 one of 2.0, one of 1.5, culmulatively coming
9 to 3.5 acres of Type IV.
10 Q Okay. 32-3, 18.3 acres of Type II?
11 A 17.9 acres Type II.
12 Q Photograph 1836, which would be C-1114 --
13 excuse me, HB-1114.
14 A All right.
15 Q Tract 32-4, 6.98 acres of Type V circled?
16 A Seven acres Type V.
17 Q Seven acres, 7.0 Type V.
18 32-5, 12.3 Type IV?
19 A Correct.
20 Q 32-6, 13.6 Type V?
21 A Plus 15.2 Type IV.
22 Q Okay. Do we have all the parcels now of the
23 32 series which comprise the acreage of 74
24 acres shown on Exhibit 137 for the mainstem
25 billstein-cross-white

1 Popo Agie?

2 A Yes. My total comes to 73.8.

3 Q Okay.

4 (Brief pause.)

5 THE SPECIAL MASTER: While the conference
6 is taking place, let me ask you a question,
7 Mr. Billstein. Is it, am I correct in the
8 assumption that none of the work in arriving
9 at the 34,850 acres in use was accomplished
10 by actual ground measurement, not in your surveying,
11 but any other ground measurement from marker to
12 marker or any other fashion, and that every
13 bit of it was done from helicopters and from
14 various and varied uses of aerial photographs
15 by the aid, by the use of planimeter?

16 THE WITNESS: Yes. The aerial photographs
17 were scale rectified to a scale of one inch
18 equal a1,000 feet, and the acreages were
19 planimetered from those photographs.

20 THE SPECIAL MASTER: One inch equals 1,000
21 feet?

22 THE WITNESS: That's right, or 5.28 inches
23 per mile.

24 THE SPECIAL MASTER: Okay. Go ahead,
25 billstein-cross-white

1 Mr. White.

2 MR.. WHITE: Your Honor, Mr. Radosevich
3 had asked whether or not he could cross with
4 respect to the Popo Agie, which is the area
5 in which his clients are most interested, and
6 that way it wouldn't be necessary for his to
7 wait until the very end of my cross some days
8 hence to deal with that area, and if Counsel --

9 THE SPECIAL MASTER: I know that the end
10 of your cross is only going to be just a few
11 minutes.

12 MR.. WHITE: It won't take long at all.

13 THE SPECIAL MASTER: You want to let him
14 in now?

15 MR.. WHITE: I'd have no objection.

16 THE SPECIAL MASTER: All right, very good.
17 Mr. Radosevich, go ahead.

18

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billstein-cross-white

1 MR. RADOSEVICH: Thank you, Your Honor. I just
2 have a few questions, Your Honor, with respect to the
3 202 acres. I realize we are talking about a small
4 amount, but nonetheless, it will affect my clients.

5 CROSS-EXAMINATION

6 BY MR. RADOSEVICH:

7 Q Mr. Billstein, the question that I have is with res-
8 pect to the acreages --

9 THE SPECIAL MASTER: Can I ask, before you get
10 started, not only will it affect, but your clients
11 have been living with it in existence ever since they
12 have been on the place? They are neighbors to the
13 202 acres now?

14 MR. RADOSEVICH: This is the concern that I
15 have, particularly the Class 4 and 5 land that he
16 discussed which appears to be a significant amount.
17 I didn't get the totals exactly.

18 Q (By Mr. Radosevich) Mr. Billstein, do you happen to
19 have the total of the 200 acres which are Class 4 and
20 5 lands out of the 202?

21 A That would take me a little bit of time, Your Honor.
22 It's in the record now. I suppose we could pull it
23 out.

24 Q Then can I ask you with respect to those lands, was
25 billstein - cross - radosevich

1 your investigation -- am I correct in my understanding
2 that your investigation was conducted in 1980?

3 A. Yes.

4 Q. And at that time were those Class 4 and 5 lands being
5 irrigated?

6 A. Only Class 4 lands were being irrigated. The Class 5
7 lands are incidental lands or seepage or subirrigated
8 lands --

9 THE SPECIAL MASTER: You really don't mean Class
10 4? You mean Type IV?

11 THE WITNESS: No, that's the proper terminology.

12 Q. (By Mr. Radosevich) In any of your investigations,
13 was there any evidence as to how many years preceding
14 that that these Type IV lands -- or Type V lands were
15 being irrigated?

16 A. This particular study documented the 1980 level de-
17 velopment. One could cross-reference with, say, the
18 SCS land inventories of the '68-70 period. You could
19 cross-check.

20 We had some aerial photographs of the area. Some
21 of that went into the hydrology studies that were per-
22 formed by us to establish depletions over time, but
23 this particular study was geared at establishing the
24 use in 1980.

25 billstein - cross - radosevich

1 There were laterals there, improvements for all
2 lands typed I, II, III, IV and VI, therefore, implies
3 that -- and these were, as I recall, from my field
4 visitations, were not new developments other than in
5 the Sioux Ditch we have got a new pump station above
6 the Sioux Ditch for a tract of land that's now come
7 under sprinkler, and that's been in the last couple
8 of years, but everything else appeared to me to have
9 been there for a long time.

10 Q Okay. With respect to the certain acreages, they
11 could have been put into production within the last
12 few years?

13 A It appears that one tract may have been put in in
14 the last couple of years. It's pumping above the
15 old Sioux Ditch.

16 Q And, Ron, is this pumping surface water or ground-
17 water?

18 A This is all surface water that we are referring to.

19 Q Was there any economic analysis done on these Class
20 4 and 5 lands to determine the level of productivity?

21 A Again, you are talking about class versus type.

22 Q I'm sorry. The type land. I'm sorry, of these lands
23 that you have got typed IV and V.

24 A No, there was no economic analysis. We were simply

25 billstein - cross - radosevich

1 documenting the beneficial use in the field.

2 It's an interesting point. At the time of the
3 Wind Division Report, for example, they went into the
4 Popo Agie watershed and were reviewing those lands
5 for arability to see if they could sell some supple-
6 mental storage water as they were looking at some
7 massive storage in the Basin, and I believe that
8 three-quarters of the land --

9 THE SPECIAL MASTER: Who are "they"?

10 THE WITNESS: The Department of Interior,
11 Bureau of Reclamation at that time. And according
12 to the Wind Division Report, I think 70 percent of
13 the Popo Agie watershed failed to meet the arability
14 standards of the Bureau of Reclamation at that time.
15 So, you know, that's a very delicate issue to get
16 into in terms of the economics.

17 Q (By Mr. Radosevich) But, nonetheless, your study
18 did not incorporate looking at the economic produc-
19 tivity of those lands?

20 A No, we were to map current use.

21 Q Okay. Ron, again, and yesterday we disclosed, or it
22 was disclosed, that there may be some overlap between
23 the adjudicated and unadjudicated and perhaps some of
24 the unadjudicated and the irrigable.

25 billstein - cross - radosevich

1 In your professional opinion, on the 202 acres
2 that we are talking about, does that occur with res-
3 pect to this acreage? Is there any overlap between
4 your adjudicated and the unadjudicated acreages?

5 A. There should be no overlap between the adjudicated
6 and the unadjudicated acres. The adjudicated boundaries
7 were plotted as accurately as possible to avoid that
8 kind of overlap situation.

9 Q Of these 202 acres, are any of the acreages extended
10 -- say, extended borders or extended lands that are
11 not even covered by permit?

12 THE SPECIAL MASTER: By permits or by adjudicated
13 rights?

14 MR. RADOSEVICH: Pardon?

15 THE SPECIAL MASTER: By permits?

16 MR. RADOSEVICH: Yes, it's a permit, but un-
17 adjudicated, but as the custom or the practice that
18 quite frequently occurs is very often borders will
19 be extended and acreages as far as irrigated acreages
20 may be beyond what the permit says.

21 A. Just briefly going through my hydrographic copies --
22 there appears to be a few tracts -- without getting
23 into a great amount of detail, I can see a few
24 tracts that appear to have no permit of record with

25 billstein - cross - radosevich

1 the State of Wyoming.

2 MR. RADOSEVICH: Okay. Thank you, Your Honor.

3 I have no further questions on it.

4 THE SPECIAL MASTER: Okay, Mr. White?

5 (Off-the-record discussion.)

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- 1 Q (By Mr. White) Mr. Billstein, do you have before
2 you Exhibits HB-1061, 1064, 1065 and 1067?
- 3 A Yes.
- 4 Q Do those exhibits constitute blue-line copies
5 of the overlays which are part of respectively
6 Exhibit C-61, 64, 65 and 67?
- 7 A Other than the cross-out for "Indexed to
8 classification sheet" they're one and the
9 same.
- 10 Q Okey-doke. You located Tract 4-1?
- 11 A Yes.
- 12 Q Does that contain 21.3 acres of Type IV lands?
- 13 A 22.1 for 4-1. I think you're on Tract 4-2.
- 14 Q Tell me again, how many acres and what type
15 in 4-1?
- 16 A 4-1, 22.1 acres, Type IV.
- 17 Q Then 4-2 is 21.3, Type IV; --
- 18 A Correct.
- 19 Q -- is that right?
- 20 Dkay. 4-3, 21, Type II?
- 21 A Correct.
- 22 Q 4-4, 37.4, Type II? Ron, that should be on
23 "9" 159.
- 24 A 4-4, 37.4 acres, Type II.
- 25 billstein-cross-white

- 1 Q 4-5, 30.1, Type II?
- 2 A Correct.
- 3 Q 4-6, 13.0, Type II?
- 4 A Correct.
- 5 Q 4-7, 30.4, Type II?
- 6 A There's several types.
- 7 Q Okay. Why don't you break them out for me.
- 8 A 30.4, Type II; 32.3, Type IV; 18.3, Type II.
- 9 Q How many Type IV, please?
- 10 A 32.3.
- 11 Q 4-8, 19.9, Type II?
- 12 A Correct.
- 13 Q 4-9, 26.6, Type II, and 14.5, Type IV?
- 14 A Correct.
- 15 Q Fifteen?
- 16 A I see it.
- 17 Q 37.5, Type II?
- 18 A Yes.
- 19 Q 14-14, 85.1, Type II?
- 20 A Correct.
- 21 MR. ECHOHAWK: What was the acreage again?
- 22 MR. WHITE: 85.1.
- 23 Q (By Mr. White) 4-16, 5.9, Type II?
- 24 A Correct.
- 25 billstein-cross-white

- 1 Q 4-17, 37.5, Type II?
- 2 A 4-17 is a very small tract, and it shows 3.8
- 3 acres. Let me refer to, from my worksheet to
- 4 your exhibit.
- 5 Yes, 4-17 is that small tract of 3.8 acres.
- 6 Q 3.8. Is that Type II?
- 7 A Yes.
- 8 Q 4-18, 16 acres, Type II?
- 9 A Correct.
- 10 Q 4-10, two parcels, 3.9 Type IV; 21.4, Type II?
- 11 A Correct.
- 12 Q 4-11, two parcels, 28.3, Type II and 10.9,
- 13 Type IV?
- 14 A Okay.
- 15 Q 4-12, 12.9, Type IV?
- 16 A Correct.
- 17 Q 4-19, 1.5, Type II?
- 18 A Right.
- 19 Q 4-20, 30, Type II?
- 20 A That's correct.
- 21 Q 4-21, 17.9, Type II?
- 22 A I forgot to write down 4-21, 4-22. I'll have to
- 23 go back to my notes.
- 24 Q Okay.
- 25 billstein-cross-white

(Brief pause.)

1
2 A What was your number on 4-21, Counsellor?

3 Q 27.9, Type II.

4 A That's correct.

5 Q Okay. Twenty-two I think has four parcels in
6 it. 71.1, Type II -- Why don't I give them to
7 you.

8 A Just give them to me consecutively, and I'll
9 be able to check those within a few seconds.

10 Q 71.1, Type II; 10.1, Type VI; 40.0, Type V, and
11 9.0, Type VI.

12 THE SPECIAL MASTER: That one tract
13 contains virtually all of the Type VI in the
14 entire area.

15 THE WITNESS: What acreage did you have
16 on Type V?

17 Q (By Mr. White) 40.0.

18 A Okay.

19 Q Are they all right?

20 A My records show 40.0 for the Type V, 9.0, Type
21 VI, 10.1; Type VI -- I'm sorry, it wasn't 9.0 --
22 it was 9.0.

23 Q I'm not sure. It is 9.0, Ron?

24 A Yes, that's correct.

25 billstein-cross-white

- 1 Q I guess that leaves the Type II, 71.1.
- 2 A 71.1 matches for the Type II.
- 3 Q Okay. 4-23.
- 4 A 12.6 acres, Type IV.
- 5 Q 4-24, go to "9" 151, I believe.
- 6 A My copy doesn't have it written down, I'll have
7 to pull them out.
- 8 (Brief pause.
- 9 Q Do you want me to just give you a run on those
10 numbers that we've figured, to see whether or
11 not we're right?
- 12 A Go ahead for 4-24 and 4-25.
- 13 Q Twenty-four, 66.2, Type II; 4-25, 29.4, Type II.
- 14 A 4-25 is 66.2, Type II; 4-25 is 29.4, also
15 Type II.
- 16 Q Okay. Let's go to 10-200. Look for parcel
17 14-13. It should have four parcels on there,
18 14-13 -- excuse me, 4-13, 4-26, which is in
19 two parts and 4-27.
- 20 A My copy doesn't have it written down.
- 21 Q Do you want me to give you the numbers?
- 22 A I'll just pull the number.
- 23 Why don't you go ahead and give me the
24 numbers.
- 25 billstein-cross-white

- 1 Q 4-13 I get 44 acres, Type V.
- 2 A All right.
- 3 Q 4-26, 52.4 acres, Type V; 55.5 of Type IV and
- 4 4-27, 71 acres Type V.
- 5 A I think my 10-200's are back here.
- 6 Q Okay.
- 7 (Brief pause.
- 8 A Tract 4-13, 44.4 acres, Type V.
- 9 Q Okey-doke.
- 10 A Tract 4-26, 52.0 acres of V; 55.5 acres of
- 11 Type IV.
- 12 Tract 4-27, 71 acres of Type IV.
- 13 Q Okay. Do the tracts which you have described
- 14 in the 4 series, be 4-1 through 4-27 and the
- 15 acreages that you have testified to for each
- 16 tract, comprise all of the tracts which are
- 17 included in the 1,023 acres for the Wind River
- 18 A Canal on Exhibit C-137?
- 19 A I'll check the totals. What were the totals I
- 20 read into the record for 4-24 and 4-25?
- 21 Q I have them as 66.2 and 29.4.
- 22 (Brief pause.
- 23 A Yes, they do. They total 1,023.3 acres.
- 24 Q Why don't we go to the Lefthand Unit, start with
- 25 billstein-cross-white

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Photo 18-34.

THE SPECIAL MASTER: Mr. White, may I let it be known that up through now we have verified by this process just about 10 percent of the 34,850 acres to which this witness had testified, and while I am by no means getting exhausted or petulant, I hope you can appreciate that we're somewhere between the 10 percent and a larger factor, there comes a point where reason would dictate that a good verification and check has been made on cross-examination of his accuracy, integrity, professional standards, and I might have to sooner or later figure that we've come to enough acreage.

MR. WHITE: Your Honor, I'm not, at this point, don't expect to question Mr. Billstein's integrity or professional standards.

THE SPECIAL MASTER: I assume there's been a little bit of that in every question you asked. If not, what is the reason for the questions?

MR. WHITE: I think we're entitled, everyone is entitled to have a record which shows how each of the larger acreages were derived, which

billstein-cross-white

1 appear on Exhibit C-137, otherwise what's
2 happening is that a different standard approved
3 would be applied to someone who presents a
4 large number of acres than a small number of
5 acres.

6 THE SPECIAL MASTER: Your cross-examining
7 has very competently dealt with every phase
8 of that exhibit, not just the large acreages.
9 It began with the acres into 74, the mainstem
10 of the Popo Agie. You looked at units of one,
11 ten and smaller numbers, and, of course, we're
12 now into rather larger numbers.

13 My point was just somewhere along the line --

14 MR. WHITE: I think it will go pretty
15 fast, Your Honor.

16 THE SPECIAL MASTER: Very good, very good.
17 We're hopeful.

18 MR. WHITE: I hoped that we could make a
19 record as to where these various numbers came
20 from with specificity. I don't mean to go back
21 and belabor each individual tract. I'm just
22 trying to find out which tract goes where and
23 why.

24 THE SPECIAL MASTER: I appreciate that,

25 billstein-cross-white

1 and I have a suspicion you appreciate my point
2 of view, you've been through the same thing
3 in other cases in other years.

4 MR. WHITE: I understand, Your Honor. I
5 might say everyone is cooperating to make it
6 go as fast as possible, instead of asking the
7 witness what parcels are comprised in the 1,023
8 acres. I think we knocked off a few thousand
9 acres in about 20 minutes.

10 THE SPECIAL MASTER: Very good.

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billstein-cross-white

1 THE WITNESS: We are now transitioning into the
2 maps that we didn't get last night to work on, so
3 we'll do it by the numbers.

4 MR. WHITE: Why don't we take a short break,
5 Your Honor, and maybe I can go to something else?

6 THE SPECIAL MASTER: All right. We will have a
7 ten-minute break.

8 (Recess.

9 (Off-the-record discussion.

10 THE SPECIAL MASTER: Let the record show that
11 there was much travail.

12 MR. ECHOHAWK: We have reached an agreement,
13 Your Honor.

14 THE SPECIAL MASTER: All right, Mr. Echohawk,
15 would you like to announce it?

16 MS. SLEATER: Why don't you announce it, Tom?

17 MR. WHITE: Your Honor, I'm not sure I can do
18 it very fluently, but Tom is right here, so if I
19 make a mistake --

20 THE SPECIAL MASTER: Mr. Echohawk, do you want
21 to attempt it or Mr. White?

22 MR. ECHOHAWK: Let Mr. White and I'll correct
23 him.

24 MR. WHITE: That's the way it always works,
25 Your Honor.

1 The United States, the Tribes and the State of
2 Wyoming have agreed that the State of Wyoming will
3 provide its interpretation as to the identification
4 of the parcels, making up each of the line items on
5 Exhibit 137, the acreage for each of those parcels,
6 and the type for each of those parcels.

7 The United States will examine the information
8 presented by the State, make any corrections which
9 should be made to that information.

10 When those corrections are made, the corrected
11 information, as well as the original information
12 that was correct to begin with, will in some form,
13 yet to be agreed upon, be presented to the Master,
14 either through the narrative, oral testimony of Mr.
15 Billstein or in writing which will represent an agree-
16 ment of the parties named, that I have named, that
17 the parcels identified are all the parcels which are
18 comprised in the line entries on Exhibit C-137 and
19 that the acres attributed to each line entry repre-
20 sent, one, the sum of the individual parcel acreages
21 and that the individual parcel acreages are those
22 acreages which were determined by the United States
23 planimeter work.

24 As I say, whether or not we can reduce that to
25 writing or whether it needs to be done by oral

1 narrative testimony is yet to be agreed upon.

2 The agreement further, I believe, is that because
3 it will take some time to do the checking, on Monday
4 Mr. Billstein will be recalled for cross-examination
5 in the afternoon session and that the examination will
6 continue on to other areas aside from the parcel-by-
7 parcel and acre-by-acre verification of the items in
8 137.

9 In the morning on Monday the parties have agreed
10 if the Master would allow us, to convene at 10:00
11 instead of 9:15 -- and I thank counsel for the United
12 States because I have a personal matter I need to take
13 care of early Monday morning -- and that at 10:00 we
14 will take up the United States' motion that the
15 Special Master take judicial notice of certain certi-
16 ficates, and the morning would be devoted to argument
17 and evidence with respect to that motion.

18 Does that clearly state the agreement?

19 MR. ECHOHAWK: Yes, Your Honor, it does.

20 THE SPECIAL MASTER: Well, I want to thank
21 counsel very much and sincerely because I appreciate
22 anything you can do like this, and especially that
23 which really benefits everybody involved by shorten-
24 ing our lawsuit and bringing our work to a closer
25 end.

1 All right, in that case do you wish to proceed
2 now, or should we adjourn now until Monday morning
3 at 10:00?

4 MR. WHITE: I think that Mr. Billstein has gotten
5 me squared around, Your Honor, and we can probably go
6 through and get Cottonwood taken care of.

7 THE SPECIAL MASTER: Let's proceed.

8 MR. WHITE: I wanted to ask one thing about the
9 motion, Regina, and that is, by "irrigable" -- you
10 say "irrigable" in your motion. Do you mean irrigable
11 -- I assume you mean irrigable as defined by Al
12 Kersich in his testimony.

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1 MS. SLEATER: Mr. Kersich's testimony,
2 as I remember, dealt with arable --

3 THE SPECIAL MASTER: I think he gave the
4 classic definition.

5 MR. WHITE: He defined arable and how that
6 differed from irrigable.

7 MS. SLEATER: If you mean including not only
8 soils but facilities thereon and the --

9 MR. WHITE: The general nature of the land.

10 MS. SLEATER: Yes.

11 MR. WHITE: I just wanted to find that out.
12 It might save us some time.

13 THE SPECIAL MASTER: Okay. We now proceed
14 to Cottonwood.

15 Q (By Mr. White) Mr. Billstein, do you have before
16 you what's been marked for identification as
17 Exhibits HB-1115, 1122, 1123 and 1128?

18 A Yes, I do.

19 Q Are those blue-line copies, except for annotations
20 of tract numbers or parcel numbers, for the
21 overlays which are part of Exhibit C-115, 122,
22 123 and 128 respectively?

23 A There again there's some small phrases on each
24 sheet.

25 billstein-cross-white

- 1 Q Why don't you go ahead and strike those.
- 2 A I will strike them.
- 3 Q And as those exhibits appear after that information
- 4 is stricken, do they correctly represent the
- 5 overlays in the C series exhibits which I've
- 6 described?
- 7 A With that they should reflect the exhibits,
- 8 Q Okay. What is the -- Do you have 1115 in front
- 9 of you now?
- 10 A I'm now looking at 1115.
- 11 Q Okay.
- 12 A There's a Tract 18-1 identified. It's 10.2
- 13 acres of Type II.
- 14 Q Okay.
- 15 A Going to Exhibit 1122, Tract 18-2, 122 acres
- 16 of Type IV.
- 17 Now to Exhibit 1123, Tract 18-3, 5.7 acres
- 18 Type V; 18-4, 132.6 acres, Type IV; 18-6, 18.2
- 19 acres, Type V; 18-7, 6.9 acres, Type V.
- 20 Q 16 or 6.9?
- 21 A 6.9.
- 22 Q Okay. And the Type, V?
- 23 A Type is V.
- 24 Q Did you get 18.5 in there?
- 25 billstein-cross-white

- 1 A I believe I skipped that. 18-5, 4.4. acres,
2 Type V.
- 3 Q Okey-doke. 18-8.
- 4 A 5.4 acres, Type V; 18-9, 7.7 acres, Type V;
5 18-10, 0.6 acres, Type IV; 18-11, 1.4 acres,
6 Type IV; 18-12 consists of two types. One is
7 9.1 acres of Type IV, the other is 4.0 acres
8 of Type IV.
- 9 Q Same types for both; is that right?
- 10 A That's correct.
- 11 Q 18-11 -- or 18-13, excuse me.
- 12 A Now, on Exhibit 1128 it's identified as 36-1.
13 Perhaps we should modify it to 18-13.
- 14 Q Okay.
- 15 A To reflect the proper drainage.
- 16 Q All righty, please do that.
- 17 A That is 12.4 acres, Type IV. That should complete
18 all the parcels.
- 19 Q Okay. Do parcels 18-1 through 18-13 on Exhibits
20 HB-1115, 1122, 1123 and 1128 contain --
21 constitute all the parcels and all the acreage
22 which is included for Cottonwood Creek, 337,
23 acres, I believe, on Exhibit 137?
- 24 A Yes.
- 25 billstein-cross-white

1 MR. WHITE: It would be a good place to
2 take a break until ten o'clock on Monday
3 morning.

4 THE SPECIAL MASTER: We will stand in
5 recess until ten o'clock a.m., on Monday and
6 that will be in the Capital, across the
7 street, Room 302. Thank you very much.

8 (Thereupon the proceedings
9 (were recessed at 11:33 a.m.)
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25 billstein-cross-white

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INDEX TO EXAMINATION

3

PAGE

4

WITNESS: RON BILLSTEIN

5

6

Cross-Examination (Resumed) By Mr. White 2396

7

Cross-Examination By Mr. Radosevich 2417

8

Cross-Examination (Resumed) By Mr. White 2423

9

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