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File 137
4388
Box 11

case # 4993

File # 137

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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 V. Hampton CLERK
DEPUTY

VOLUME 30

Morning Session

Wednesday, March 18, 1981

ORIGINAL

APPEARANCES

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1 MR. DONNELL: Jeff Donnell for private
2 parties.

3 THE SPECIAL MASTER: Okay, Mr. White.

4 Q (By Mr. White) Mr. Billstein, do you have a
5 copy of HB-61 before you?

6 A Yes.

7 Q I refer you to the last page. Do you find the
8 value, the grand total row for the Type IV column
9 of 6,326 acres of Type IV.

10 A Yes.

11 MR. WHITE: Off the record a minute.

12 (Off-the-record discussion.)

13 THE SPECIAL MASTER: What was your total
14 of Type IV?

15 MR. WHITE: 6,326.

16 Q (By Mr. White) Are the other -- The other totals
17 in that grand total row indicated the total number
18 of acres within the 34,850 acres shown on
19 Exhibit C-137, which fall into to each of those
20 types; is that correct?

21 A That's right.

22 Q With respect to the Type IV land, how many of
23 those acres did you personally observe under
24 irrigation during 1980?

25 billstein-cross-white

1 A I was not in the field in 1980.

2 Q Okay. How many of those acres were actually
3 observed under irrigation, meaning the application
4 of water to the land, by your field investigators
5 during 1980?

6 A All the acres met the definition that we had
7 for current use.

8 Q But I'm asking you about under irrigation right
9 now. How many of those acres did your field
10 investigators actually see having water applied
11 to them during 1980?

12 THE SPECIAL MASTER: If you know how many
13 they saw, just say so, and if you don't, say I
14 don't know.

15 THE WITNESS: I can't quantify it, Your
16 Honor.

17 THE SPECIAL MASTER: Just answer the
18 question.

19 Q (By Mr. White) Did they see less than the totals
20 shown there actually irrigated?

21 THE SPECIAL MASTER: He said he could not
22 quantify it, so he's answered your question.

23 MR. WHITE: Then, Your Honor, I'd move to
24 strike that portion of the claim for which
25 billstein-cross-white

1 Mr. Billstein is unable to testify that these
2 lands were seen under actual irrigation during
3 the field season 1980, since there's insufficient
4 foundation upon which to determine that those
5 lands are either under irrigation or candidates
6 for lands which eventually will be determined as
7 practicably irrigable.

8 THE SPECIAL MASTER: The motion is denied.
9 Type IV land is by its very definition occasionally
10 irrigated.

11 If you can make a showing that some of it
12 has not been irrigated at all and does not belong
13 in there, you can do so in your case in chief
14 not on cross.

15 MR. WHITE: Your Honor, I believe the burden
16 is on the government to show that it was. I'll
17 go ahead and ask another question in this area.

18 Q (By Mr. White) What is the difference between
19 being under irrigation and in use?

20 A As I spoke in my direct testimony, the vast
21 majority of lands that were investigated by
22 my field personnel were found to actually be
23 receiving irrigation. These are Type IV lands
24 I'm referring to. The vast majority of the lands

25 billstein-cross-white

1 are in the Wind River Federal Irrigation Project
2 and irrigation was going on at that time.

3 The main distinction that I made at that
4 time had to do with the spreader dike systems
5 and some of the systems that required high water
6 to enable the irrigation supply as to be fully
7 distributed over the use areas. Those were
8 interpreted by my field personnel as having
9 received current irrigation or not receiving
10 current irrigation.

11 So in those instances where they interpreted
12 the tracts as having current irrigation relative
13 to a function of water supply and they couldn't
14 make a determination of whether there was actual
15 use in 1980, they did make some provisions for
16 going back a year or two to make a conclusion.

17 Q Are those acres for which they made provisions to
18 go back a year or two -- You mean go back in time
19 a year or two, 1979, or 1978, or do you mean go
20 forward in time a year or two to '81 or '82?

21 A No, they projected backwards to what they felt
22 would have, that there would have been water being
23 applied to the land in recent times, approximately,
24 maybe the last two or three years.

25 billstein-cross-white

1 Q What number of acres of the total 34,850 of
2 unadjudicated lands in use were, under your
3 definition, in use as opposed to being actively
4 irrigated?

5 A Well, a minor portion of the spreader dikes and
6 perhaps an isolated three or four other systems.
7 I can only guess at a couple hundred acres is
8 my best estimate now.

9 Q Well, if we double that it would be around four,
10 five hundred acres in use as opposed to being
11 irrigated in 1980? The in use determination
12 may extend back to '78 or '79?

13 MR. PERRY: Objection. Mr. Billstein didn't
14 testify to doubling that, he gave a number and
15 Mr. White said let's double that.

16 MR. WHITE: I was trying to give him the
17 benefit of the doubt, Your Honor. I don't care.
18 Let's use 200.

19 THE SPECIAL MASTER: The objection is over-
20 ruled. I'm confused about the testimony to
21 the extent that I thought he stated that most of
22 it except the couple hundred acres, and you
23 concluded that it was all of it but a couple
24 hundred acres, and that leaves a little doubt that

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should be cleared.

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billstein-cross-white

1 MR. WHITE: Okay. Let me try again, Your
2 Honor.

3 Q (By Mr. White) You testified that 200 acres --
4 a couple hundred acres were in use as opposed to
5 being irrigated. Does that mean that roughly 33,000
6 acres were being irrigated of the total of roughly
7 35,000 acres that are shown on Exhibit 137?

8 A I said a couple hundred acres.

9 Q Okay. I'm sorry. I goofed it up.

10 So roughly 34,650 acres were being irrigated
11 and would not fall into the in-use categories; is
12 that correct?

13 A That's a reasonable estimate.

14 Q Okay. With respect to the Type V lands shown
15 towards the bottom of the last page of HB-61,
16 totaling 3,973 acres, isn't it true that you
17 personally observed none of those acres under irri-
18 gation during 1980?

19 A My field teams were evaluating the unadjudicated
20 lands in use in 1980. I was not a part of that
21 inspection in 1980.

22 Q With respect to your field teams, how many of the
23 3,973 acres in Type V lands, if you know, did they
24 actually observe under irrigation during 1980?

25 billstein-cross-white

1 THE SPECIAL MASTER: I think that's a trick
2 question. I'm going to have to observe that Type
3 V land isn't irrigated. It's not intentionally
4 irrigated by its very definition, so how can you
5 ask a man how many acres did you see being irrigated
6 when the definition says it is not intentionally
7 irrigated? It gets its water from seepage or sub-
8 irrigation, and I don't think anybody can see it
9 being irrigated, so there's a little problem there
10 I think I would like you to recognize.

11 MR. WHITE: The witness testified that all but
12 200 acres were irrigated.

13 THE SPECIAL MASTER: Are Type IV, and you are
14 asking about Type V.

15 MR. WHITE: Well, I believe, Your Honor, the
16 question was with respect to the total on Exhibit
17 137, but I'll start again.

18 THE SPECIAL MASTER: And out of the total how
19 much did you see irrigated is your question, and
20 Type V land is not intentionally irrigated, so I
21 object to your question.

22 Now, if I'm wrong, please let me know. If
23 you think I'm wrong, let me know. I have to be
24 educated too in this process of can one see Type

25 billstein-cross-white

1 V land being irrigated?

2 THE WITNESS: It is not being irrigated.

3 You're right, Your Honor.

4 MR. WHITE: So we would have to further --

5 THE SPECIAL MASTER: Let me make sure I'm fair
6 about this, Mr. White.

7 Does it occasionally receive adjacent water
8 from adjacent irrigated lands?

9 THE WITNESS: That's the definition, Your
10 Honor, and our field personnel mapped 3,973 acres
11 as receiving water from adjacent irrigated structures.

12 THE SPECIAL MASTER: All right. Did you see
13 any Type V land being so irrigated?

14 THE WITNESS: Our field investigators mapped
15 3,973. They personally viewed those tracts.

16 THE SPECIAL MASTER: That wasn't what I asked
17 you but that's -- go ahead, Mr. White.

18 MR. WHITE: Well, I'm going to pursue the same
19 line, Your Honor, picking up from where you left
20 off.

21 Q (By Mr. White) Is it your testimony that your field
22 investigators actually saw all 3,973 acres of Type
23 V lands receiving from adjacent lands?

24 A No, that's not the definition of Type V lands.

25 billstein-cross-white

1 Q How did you --

2 MR. WHITE: Excuse me just a second, Your
3 Honor.

4 Q (By Mr. White) The definition of Type V lands,
5 Mr. Billstein, is, is it not, those lands which,
6 quote, are not intentionally irrigated but receive
7 -- or received sufficient water from adjacent
8 irrigated lands, canals, or from streams to provide
9 beneficial use; is that correct?

10 A That's right.

11 Q How many of the 3,973 acres of Type V lands did
12 your field investigators actually see receiving
13 water -- receiving sufficient water from adjacent
14 irrigated lands, canals, and/or from streams to
15 provide beneficial use?

16 A 3,973 acres.

17 Q They actually saw that; is that correct?

18 A They visited every tract.

19 Q During what period of time did they make their visit
20 to each of those tracts?

21 A September-October of 1980.

22 Q And so during those two months in 1980 they actually
23 saw that water being received?

24 THE SPECIAL MASTER: The question is redundant.
25 It's been asked and answered.

billstein-cross-white

1 Q (By Mr. White) What does the term "beneficial use"
2 mean in the definition of Type V lands?

3 A That there was grass or pasture being obtained
4 from this seep and subirrigated land base rather
5 than it was not a series of swamp land, cottonwoods,
6 willows. There was actual beneficial use the
7 people were taking advantage of in terms of a grass
8 or pasture.

9 Q Of the 3,973 acres in Type V, what percentage, if
10 you know, were receiving water or was receiving
11 water from streams as opposed to adjacent irrigated
12 lands or canals?

13 A I really don't have that kind of breakout.

14 Q Is it correct to say that those Type V lands which
15 were receiving water from streams were being
16 naturally irrigated?

17 A The field investigators were to make a distinction
18 between lands that were solely naturally irrigated
19 versus those that were being irrigated from man-made
20 structures or man-induced irrigation.

21 In many cases you can differentiate the role
22 of a stream in this process. You will have a series
23 of canals that leak and seep down to a low area
24 which happens to be adjacent to a creek or stream.

25 billstein-cross-white

1 of old laterals.

2 In my field investigation I felt that those
3 laterals had not been used for many years, and I
4 could not qualify it for Type IV, but there was
5 some grass being developed on that tract, extending
6 south of it, and the source of that, I felt, was a
7 leakage from the Baylor and Purvis Ditch system
8 and accentuated by being in a flood plain.

9 That's an example of a commingling, if you
10 would, definition of Type V lands. Most of these
11 areas are usually pretty cut and dried as to seep-
12 age directly under a canal.

13 An example would be the Dinwoody Bench area
14 that cuts through a glacial moraine. There's a
15 lot of seepage. Approximately 20 percent of the
16 water that's diverted in Dinwoody canal does not
17 arrive at Dry Creek, which initiates its supple-
18 mental supply to the Dinwoody Bench area of the
19 Upper Wind unit, and you can see down below that in
20 any low point that the seepage water is surfacing,
21 and if there are good grasses in those, that would
22 be another fairly obvious example.

23 * * * * *

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1 Q (By Mr. White) Ron, is the area that you're
2 pointing to marked on Exhibit 132 as Parcel 34-3?

3 A That's the lower end of it, Counselor.

4 Q Is it true that you included the entire acreage
5 even though there was a commingled source of
6 water, of seepage water for that particular tract?

7 THE SPECIAL MASTER: I'm going to object
8 to that question on the basis it doesn't make
9 any difference where there's commingling of
10 water or not. If he feels it's land that has
11 irrigation, it's warranted.

12 Mr. White, we're on the ninth day of cross-
13 examining of a witness whose direct testimony
14 took two days, and you have used minutiae in
15 your examination of each minute detail of
16 everything he's testified to. If in this general
17 mainstream adjudication all parties are to be
18 treated fairly we will go back to Worland and
19 start some hearings on every one of the eight or
20 nine thousand water rights on this river and
21 we'll go to every damned acre of every rancher and
22 every foot of every ditch, and we'll see why
23 water's only put on 200,000 acres when the
24 Certificates of Appropriation asks for 450,000

25 Millstein-cross-white

1 acres and prove it.

2 Now, that's what you're courting with your
3 cross-examination. And I give you cool, calm
4 deliberate warning of what you're doing, Mr.
5 White, to your own client's case with this type
6 of a cross-examination.

7 I'm trying to be fair to everybody, and I
8 want to be, and I will let that statement stand
9 now as due warning of these proceedings and
10 some attempt to keep some fairness in it.

11 MR. WHITE: Well, I thank you for warning
12 me.

13 THE SPECIAL MASTER: That's quite all right.
14 I think it's warranted and a little bit over due.

15 MR. WHITE: I would like to ask to have the
16 Witness answer the question which I asked
17 because I think it is significant to know the
18 source of those waters. If land is receiving
19 water in the natural course of things, I fail to
20 see how it can be included within practicably
21 irrigable acreage or even a base for practicably
22 irrigable acreage. It's land that is naturally --
23 that causes natural depletions to the streams
24 and it's not land that should be the subject of --

25 billstein-cross-white

1 THE SPECIAL MASTER: What is your authority
2 for the fact that Type V land causes a natural
3 depletion of the stream if the stream's going
4 to seep and flood, and the canal floods into
5 a land, how can it be attributed to the -- and
6 charged off to that land?

7 MR. WHITE: My authority is the Witness'
8 own testimony. He testified that where lands
9 received water solely from streams, Type V lands,
10 they were not included. He's also testified
11 that where they receive water from a commingling
12 of sources, including streams, they were
13 included.

14 It appears to me, Your Honor, that there's
15 merit and certainly relevancy in inquiring as
16 to whether or not all the lands which were served
17 by a commingled source including the stream
18 or included in the lands which Mr. Billstein
19 has shown as being unadjudicated in use.

20 THE SPECIAL MASTER: Well, you asked him for
21 an exhibit, for an example and he gave you an
22 example.

23 Do you understand his question now?

24 THE WITNESS: I thought I answered it.

25 billstein-cross-white

1 THE SPECIAL MASTER: I thought you did too.

2 MR. WHITE: You objected to it, you wouldn't

3 let him answer.

4 THE SPECIAL MASTER: Will you go back and

5 read the question I took exception to, please.

6 (Thereupon the following
7 (question was read back as
8 (follows: "Q Is it true that
9 (you included the entire
10 (acreaage even though there
11 (was a commingled source of
12 (water, of seepage water for
13 (that particular tract?"

14 THE SPECIAL MASTER: Which particular tract?

15 MR. WHITE: Tract 34-3, Your Honor, the
16 tract we've been discussing.

17 THE WITNESS: As I said before in the
18 definition of Type V lands, any tract that I
19 felt was obtaining seepage or sub-irrigation as
20 a result of a man-made improvement like an irrigation
21 canal or conveyance system, was included in its
22 entirety.

23 There may be some influence with a natural
24 stream channel that helps contribute to this,
25 but the distinction that we made is if there was
no man-made influence we did not put that tract
in as part of the claim.

billstein-cross-white

1 We could not justify it and felt it would
2 be a burden to the Court to have to build that
3 into the adjudication.

4 Q (By Mr. White) Is the converse true, that if
5 there was any man-made influence you included
6 the acreage?

7 A If it was determined that there was a man-made
8 influence by the definition of Type V, it was
9 included.

10 I think if one looks at all the hydrographic
11 copies, it will become obvious that we did not
12 include every low point, every wet spot through-
13 out that Reservation, that this was a selected
14 process and it had to be an obvious beneficial
15 use.

16 Q If the man-made influence was ten percent or
17 less did you include it?

18 THE SPECIAL MASTER: Do you understand that
19 question?

20 THE WITNESS: From an engineering stand-
21 point that's -- You can't make a distinction
22 like that. If it was determined that there was
23 a man-made influence it was included, is the
24 answer, otherwise you're looking at an extensive

25 billstein-cross-white

1 groundwater program, deep holes, just on every
2 Type V piece of land.

3 Q (By Mr. White) Isn't it true from an engineering
4 standpoint you can make that determination, but
5 not with the time and money that you had available?

6 A I would qualify my answer to that. If I had an
7 unlimited budget and could set up a series of
8 observation wells around every piece of tract,
9 Type V land that was adjacent or in any proximity
10 to a stream, I suppose that could be accomplished.

11 I think we discussed yesterday that there
12 is a considerable amount of Type V lands under
13 State adjudicated rights.

14 Q What's that got to do with anything, Mr. Billstein?

15 MR. ECHOHAWK: Objection, Your Honor.

16 THE SPECIAL MASTER: I didn't hear that
17 question.

18 MR. WHITE: I asked him what that had to do
19 with anything.

20 MR. ECHOHAWK: Objection.

21 THE SPECIAL MASTER: I sustain the objection.
22 It was sotto vocci, and I don't permit those
23 kinds of questions.

24 MR. WHITE: I move that portion of his
25 billstein-cross-white

1 answer to which the question was directed be
2 stricken, Your Honor.

3 THE SPECIAL MASTER: All right. Strike it.

4 Q (By Mr. White) With respect to the Type VI
5 lands included in your total, 39 acres, how
6 did you make a determination that the water
7 supply for those lands was adequate? I'm
8 referring to the definition of Type VI lands.

9 A These are lands in two basic areas. Some are
10 located in the Federal Irrigation Project and
11 the others are associated with the Bawlin Bull
12 Sprinkler Irrigation Project.

13 Q You better spell that.

14 A B-a-w-l-i-n B-u-l-l. It's the sprinkler irrigation
15 project located above the upper reaches of the
16 LeClair Irrigation Canal.

17 In the one case, the lands were pointed out
18 to us in our interviews with the Bureau of
19 Indian Affairs people as requiring special
20 management. They were receiving water, but they
21 were being stressed due to a salt problem, and
22 the owner was trying to take care of that salt
23 problem. So that fell into the definition that
24 it needed a high level of irrigation management.

25 billstein-cross-white

1 That's why that small amount of acreage
2 was put into that category.

3 In the Bawlin Bull area we're talking
4 about a small series of tracts that are in a
5 relatively steep incline, and at the upper
6 reaches in the northeast direction, I believe,
7 of the eastern sprinkler system, that at the
8 present time it is very rolling and they're
9 struggling getting good coverage on those tracts.
10 So those acres were delineated as requiring
11 special management practices to enable that land
12 to have beneficial use. That's the 39 acres.

13 Q Would you please describe for the benefit of
14 the record what you mean by a "salt problem"?

15 A These lands did show crusting of salt on its
16 surface, and crops were being stressed. But,
17 however, the individual was still irrigating
18 and was trying to handle the problem through
19 a management or applying the water to land more
20 properly.

21 It appeared that what had happened is that
22 he had over applied water over time and now he
23 was going back and trying to see whether better
24 management might assist in clearing up the problem.

25 billstein-cross-white

1 Q What is the total number of acres that was
2 subject to the salt problem?

3 A Let's see.

4 Nineteen acres. They would be located on
5 photo no. 9159.

6 Q With respect to the 22,764 acres, Type II lands,
7 isn't it true that you personally observed none
8 of those acres under irrigation?

9 A I did not accompany my field teams who personally
10 observed all the 22,764 acres in 1980. I did
11 not accompany them to those tracts in 1980.

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billstein-cross-white

1 Q (By Mr. White) Is it true, if you know -- excuse
2 me. Strike that.

3 Do you know whether or not your field investi-
4 gators actually saw water being applied by way of
5 irrigation to all of the 22,764 acres in Type II?

6 A. The only exception that I can think of would be the
7 occasional plowed field that might not have been
8 receiving irrigated water during this 1980 season.

9 Q What percentage of the Type II land would be
10 attributed to the plowed fields?

11 A. In my field review I saw only two or three plowed
12 fields in the non-project areas in that most of the
13 project areas are in pasture and alfalfa. I don't
14 suspect much, but I can't give you an estimate on
15 that. I know it's not a great amount of acreage.

16 Q Were these observations of the actual irrigation of
17 Type II land by your field investigators also made
18 during the months of September and October of 1980?

19 A. I believe Mr. Waples got in in August in the Wind
20 River Federal Irrigation Project.

21 Q So with the exception of the Wind River Federal
22 Irrigation Project, which was viewed in August,
23 the remainder of the Type II lands were viewed in
24 September and October; is that correct?

25 billstein-cross-white

1 A. That's right.

2 Q. Let me ask you a question going back to Tract 34-3
3 on Exhibit C-132.

4 A. Okay.

5 Q. Isn't it true that that tract is irrigated within
6 the concept of irrigation that applies to Type V
7 lands -- receives water as a Type V land in part
8 from an adjudicated ditch?

9 A. That's right. We made no distinction between
10 adjudicated ditches and unadjudicated ditch.

11 Q. Did you make any determination as to whether the
12 amount of water adjudicated to that ditch was suf-
13 ficient to serve both the lands adjudicated under
14 that ditch as well as Tract 34-3?

15 MR. ECHOHAWK: Objection, Your Honor. Beyond
16 the scope of direct. Irrelevant.

17 MR. WHITE: The point is, Your Honor --

18 THE SPECIAL MASTER: I'm going to overrule the
19 objection, but I'm beginning to believe that all
20 of the testimony going back to Type V ought to be
21 -- you know, you passed over it once, but go ahead
22 and answer the question.

23 THE WITNESS: Could I have it read back, please.

24 (Thereupon the following
question was read back as

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follows: "Q Did you make any determination as to whether the amount of water adjudicated to that ditch was sufficient to serve both the lands adjudicated under that ditch as well as Tract. 34-3?"

THE SPECIAL MASTER: If the answer is no, please say no.

A. (By the Witness) No.

Q (By Mr. White) With respect to the six types of land that you have described on Exhibit HB-61, is it true that only the Type I lands as they are defined would include the crop of corn, such as corn?

MR. ECHOHAWK: Objection, Your Honor. It's irrelevant.

MR. WHITE: It's not at all. I'm asking about the definition.

THE SPECIAL MASTER: I'll overrule the objection, Mr. Echohawk, unless you give some reason why you feel it's irrelevant. We have the definitions in front of us, and we can all read them.

MR. ECHOHAWK: Mr. Billstein stated on his direct testimony that his sole purpose was to determine whether or not the lands were irrigated. The
billstein-cross-white

1 land typing was done for a whole other project
2 that will determine depletion that will be put on
3 in the hydrology.

4 THE SPECIAL MASTER: That's true, but Type II
5 concerns what is sometimes used on small grains.
6 I suspect the question goes to can corn be called
7 a small grain, in which case it will be on both
8 Types I and II, and he asked him is the definition
9 of Type I raising row crops or crops in rotation --
10 is all corn in Type I? Is that your question?

11 MR. WHITE: Let me start again. That's what
12 I was driving at, but I did it rather inartfully.

13 THE SPECIAL MASTER: Go ahead, and we'll go
14 ahead.

15 Q (By Mr. White) Mr. Billstein, under the definitions
16 of Types I and II, is it true that corn is included
17 as a row crop in Type I, but not as a small grain
18 in Type II?

19 A I believe that corn was only included in Type I.

20 Q With respect to the Type I lands, how did you
21 determine that they usually have an adequate or
22 nearly adequate water supply?

23 MR. ECHOHAWK: Objection, Your Honor. It's
24 irrelevant. Beyond the scope of direct.

25 billstein-cross-white

1 THE SPECIAL MASTER: Can I hear that question
2 again, please?

3 (Thereupon the following
4 question was read back as
5 follows: "Q With respect
6 to the Type I lands, how
7 did you determine that they
8 usually have an adequate or
9 nearly adequate water supply?")

10 THE SPECIAL MASTER: I'll sustain the objection
11 because the land that he felt had that type of
12 supply was classified as Type I, and he's answered
13 several times what his criteria was for classifying
14 certain lands in certain types, so it's sustained.

15 Q (By Mr. White) Mr. Billstein, I hand you a copy
16 of what's been marked for identification as HB-54
17 and ask you if that is not a copy of a document
18 upon which you relied in part in forming your opinion,
19 which was expressed on direct examination?

20 A This was a document that I furnished during my
21 deposition approximately two weeks ago, which I
22 said I reviewed but didn't much utilize.

23 Q Did you utilize it at all?

24 A As I expressed in my deposition, I could not find
25 the backup data that went with these names of ditches,
and since I didn't have the backup files, I got very
little utility out of it.

billstein-cross-white

1 Q Could you describe how you obtained it or, first
2 of all, what it is, and then how you obtained it?

3 A Okay. It's been so long since I even looked at it
4 that I'll give you my best recollection.

5 About 1947, I believe, the Bureau of Indian
6 Affairs, as part of their Missouri River Basin
7 Investigation Studies, did an inventory of ditches
8 on the Reservation, and they came up with a numerical
9 code for these ditches and assembled a table that
10 was used to document the results of their study.

11 The backup information relative to where these
12 ditches were located by map number and such, as
13 well as the backup information that went into the
14 determination of the basic data, I could never bring
15 together, so I just used it to see if there was a
16 name in there that I didn't have a water right of
17 record on or if there was a name in there that some
18 other BIA document had identified in some manner and
19 tried to cross-reference in that way so that I would
20 get the proper local name associated with the ditch
21 that I identified from my study area.

22 Q Where did you obtain the document?

23 A Don Crook of the Washakie Agency, Bureau of Indian
24 Affairs, had a vault in his workshop, and as I dug

25 billstein-cross-white

1 through the vault, I found a copy of this and
2 asked if I could take it back to study, and he
3 said that I could.

4 Q Mr. Billstein, I hand you what's been marked for
5 identification as HB-55.

6 THE SPECIAL MASTER: Are you going to offer
7 these in evidence later?

8 MR. WHITE: I eventually will, Your Honor.

9 THE SPECIAL MASTER: Lord God the stuff, and
10 you can put that in the record if you want to.

11 THE WITNESS: Off the record.

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

14 Q (By Mr. White) Mr. Billstein, would you please
15 identify Exhibit HB-55?

16 A Yes, it corresponds to Billstein deposition Exhibit
17 144, which is the 1980 water user ledger for the
18 trust acres in the LeClair Irrigation District.
19 They show the designation which was developed in
20 1958, in terms of total number of acres and the
21 breakouts of those acres into the assessability
22 classes, and there's a record of what lands paid
23 O & M Water to the District for 1980.

24 * * * * *

25 billstein-cross-white

1 Q (By Mr. White) How did you obtain this, the
2 document which is a copy?

3 A I tried to get it out of the LeClair Irrigation
4 District without any success. I went back to
5 the Bureau of Indian Affairs and Don Crook
6 supplied it to me.

7 THE SPECIAL MASTER: How many pages in this
8 document, Mr. White?

9 MR. WHITE: I don't know, Your Honor.

10 THE SPECIAL MASTER: How many pages, Mr.
11 Witness?

12 THE WITNESS: I would have to count them,
13 Your Honor. Would you like me to count them?

14 THE SPECIAL MASTER: No, I'll count them.
15 Thank you.

16 Q (By Mr. White) Mr. Billstein, I hand you --
17 Excuse me, let me ask one other question. Isn't
18 it true that you relied, at least in part in
19 forming your opinion expressed on direct
20 examination, on HB-55?

21 A Yes. This was a screen mechanism that I used
22 to relate the lands that we mapped as in use
23 versus lands which were paying O & M water to
24 the district for water service.

25 billstein-cross-white

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1 THE SPECIAL MASTER: You testified even on
2 cross a time or two that in your research you
3 would find that if you had a question about a
4 particular land, the fact that some assessments
5 were paid on it would help you to include it
6 rather than exclude it in your total, is this
7 what this document is that's now in evidence?

8 THE WITNESS: That's right, Your Honor.
9 It helps direct me to the particular use areas
10 where I felt there would be lands that fell into
11 the current irrigation category.

12 MR. WHITE: I think, for the record, my
13 recollection of Mr. Billstein's testimony was
14 that he relied or he was not able to say whether
15 a particular tract actually paid assessments
16 during 1980 for water, but he felt from the
17 information available to him that they were
18 classified as assessable.

19 Q (By Mr. White) Ron, I hand you what's been
20 marked for identification as HB-50-B and ask you
21 if you can identify that?

22 A Relative to that previous comment, Your Honor,
23 that is the official record that there were
24 assessments paid on those lands.

25 billstein-cross-white

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1 THE SPECIAL MASTER: All right.

2 Q (By Mr. White) What is the official record,

3 Mr. Billstein? The exhibit --

4 A HB-55.

5 Q Okay. But not the maps you were talking about

6 or the aerials? It's HB-55 that's the official

7 record, is that correct?

8 A Yes. The maps weren't available for the LeClair-

9 Riverton, therefore, I went to the water user

10 ledgers.

11 Q Would you please identify Exhibit 50-B.

12 A That's I believe a complete copy of Book B

13 which relates to, I believe, Mr. Saunders'

14 field notes for his private ditch inventory.

15 Q That indicates that Mr. Saunders' work in the

16 field began on October 13, 1980 and it concluded

17 on October 24, 1980?

18 A That's correct. Almost all his time was spent

19 in the helicopter.

20 Q Was Mr. Saunders one of the field investigators

21 that you testified had actually viewed the

22 irrigation or receipt of water by some of these

23 lands?

24 A That's correct.

25 billstein-cross-white

1 Q Okay. I hand you what's been marked for
2 identification as HB-5-A.

3 MR. WHITE: Excuse me, Your Honor, I had
4 a staple come out.

5 Q (By Mr. White) Would you please identify
6 Exhibit 55-A.

7 A This would be Mr. Johnston's field notes. I
8 should point out for both Mr. Saunders and Mr.
9 Johnston, that the hydrographic maps themselves
10 are an extremely important part of their field
11 notes, that their conclusions are reflected on
12 these hydrographic copies, and these notes
13 were just general descriptions as they were
14 undertaking the development of their conclusions
15 on these hydrographic maps.

16 Q Is it true that Exhibit 55-A indicates -- You
17 say this was Mr. Saunders' notes?

18 A Mr. Johnston.

19 Q Mr. Johnston began his field work in October 3,
20 1980 and concluded it in October 22nd, 1980?

21 Ron, the last date I can find is on page 186.
22 There may be one later than that.

23 A That appears to be correct.

24 THE SPECIAL MASTER: Do you find a page 186
25 billstein-cross-white

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in this Exhibit No. 50-A?

MR. WHITE: Yes, sir.

THE WITNESS: Yes, sir.

MR. WHITE: It's the fourth page from the back.

THE SPECIAL MASTER: That's page 160 and 161 in my copy.

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

THE SPECIAL MASTER: Of HB-50-A.

MR. WHITE: That explains where the --

THE SPECIAL MASTER: I have no doubt but that they've fallen apart since there's approximately 175 pages in here and my staple is loose in the corner.

MR. WHITE: The copy with the original is correct, Your Honor. I will trade you copies and make sure that you have a correct copy.

THE SPECIAL MASTER: Scratch out that "TR's copy", and give me one when you find it, Sandy. No problem, just so mine is complete. We'll get some thick rubber bands or something if you have them to hold them together, would probably help us. Here's one.

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MR. WHITE: Here we go, Your Honor.

This might be a good time to take our hourly
break.

THE SEPCAIL MASTER: Very good. These
are Johnston's field notes you said just now?
HB-50-A, didn't you just say were Mr. Johnston's
field notes?

THE WITNESS: That's right.

THE SPECIAL MASTER: Okay, let's take a
ten minute break.

(Thereupon a ten minute
recess was taken.)

* * * * *

billstein-cross-white

1 THE SPECIAL MASTER: Let's convene.

2 MR. RADOSEVICH: Mr. Roncalio?

3 THE SPECIAL MASTER: Mr. Radosevich?

4 MR. RADOSEVICH: I had a discussion with the
5 counsel for the Tribes and the U.S. Government and
6 the State with respect to our notice as to who is
7 representing who in this matter, and we've agreed
8 that we should wait until the 14th. By then we
9 should have the statement drafted out because the
10 wording is very important.

11 THE SPECIAL MASTER: Is that the one that
12 began with Mr. Webster?

13 MR. RADOSEVICH: No, this is with respect to
14 notifying the individuals owning or operating
15 rights on the Indian Reservation as to who is
16 representing them in this matter.

17 THE SPECIAL MASTER: But it can wait until the
18 14th?

19 MR. RADOSEVICH: Yes. There's a question on
20 the part of the U.S. Government as to certain verbi-
21 age that should be in here and also with respect to
22 the Tribes.

23 THE SPECIAL MASTER: Okay. Thank you, Mr.
24 Radosevich.

25 Yes, Mr. White?

billstein-cross-white

1 Q (By Mr. White) Mr. Billstein, I hand you what's
2 been marked for identification as HB-32A and ask
3 you whether or not you can identify that?

4 A Yes, it appears to be a complete Xerox copy of the
5 Muddy Creek drainage, including the planimeter
6 sheets and the results of the planimeter readings,
7 interview forms filled in if an interview took
8 place, also a form for field notes, and if there
9 were interviews, those were written under the notes
10 portion, and also a page, trust acres and land
11 types, which were simply work papers and were not
12 utilized to any great extent.

13 We started to develop some information on
14 them and didn't feel it was necessary, and so this
15 is basically -- well, additional data that really
16 utilized or it was utilized in other sources.

17 Q Could you tell me again what it means on the second
18 of the four pages under the notes area, who prepared
19 those notes, and upon what those notes were based?

20 A Those notes would reflect the field investigator's
21 notations. He would go into Book A and Book B, make
22 some transcriptions on this particular sheet, and
23 also if we did interview a local user, the results
24 of that interview would also show in this area, and

25 billstein-cross-white

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that would be identified by that individual's

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signature associated with it.

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If you don't see an individual signature, then

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you know that this is solely the field investiga-

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tor's notations.

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1 Q (By Mr. White) About ten pages from the
2 back, on HB-32-A I see a note, "We flew near
3 the area but it was not investigated."

4 A Let's see. Do you want to help me locate that?

5 THE SPECIAL MASTER: It's called 204, and
6 it's about 12 to 14 pages from the end.

7 THE WITNESS: Okay. That would have been
8 this individual's notations for his field season.
9 That was another reason that we went back in
10 February to pick up any of those areas that
11 these individuals had missed.

12 Q (By Mr. White) Now, how would you tie that
13 note into a particular parcel that's shown on,
14 that note or any other note into a particular
15 parcel which is shown on Exhibit C-56 through
16 136? Would you go to the planimeter sheet?

17 A We've got an identification number on sheet 4
18 of 4, right in the front of that that says
19 Type IV-I. It shows the acreages and on the
20 second sheet you see unnamed spreader dikes,
21 5 North, 2 East, Section 33. That identifies
22 it.

23 Q Okay.

24 A The hydrographic copy would reflect the findings,
25 billstein-cross-white

- 1 and as a result, the entire package comes back
2 to us into a parcel.
- 3 Q Okay. I hand you what's been marked for
4 identification as HB-33-A and ask if you can
5 identify that?
- 6 A These would be the investigation forms reflecting
7 notes and planimeter sheets for the Five Mile
8 Basin.
- 9 Q These are your general comments with respect
10 to 32-A, would be applicable to the types of
11 information that are included in 33-A?
- 12 A That's right. The notation would either be
13 by the field investigator or an interviewee,
14 and the planimeter sheets would reflect the
15 findings, and the identification on here would
16 allow you to go to that tract onto the hydro-
17 graphic copies.
- 18 Q I hand you what's been marked for identification
19 as HB-34-A. Can you identify that?
- 20 A It appears to be a xeroxed copy of all the
21 investigative notes relative to the North Fork-
22 Little Wind River. Same general comments apply.
- 23 Q I hand you what's been marked for identification
24 as HB-35-A and ask you if you can identify that?
- 25 billstein-cross-white

1 A This would be the investigative note package
2 with planimeter sheets for the South Fork-
3 Little Wind River.

4 Q I hand you what's been marked for identification
5 as HB-36-A and ask you if you can identify that?

6 THE SPECIAL MASTER: Looks like they were
7 drug through the Black Butte's Mine at Atlantic
8 Richfield.

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

10 THE WITNESS: Appears to be the investigative
11 form notes and associated planimeter sheets
12 associated with the Little Wind Main Stem.

13 Q (By Mr. White) I hand you what's been marked
14 for identification as HB-37-A and ask if you can
15 identify that?

16 THE SPECIAL MASTER: All these exhibits,
17 Mr. White, I presume -- or Mr. Billstein, I
18 presume the identification on the front of them
19 is also locked into the photo numbers; is that
20 correct? For example, 11-166 on the one handed
21 to you now on Sage Creek; 16-110 on Little Wind.

22 THE WITNESS: Sage Creek would be the
23 primary identification number. As you thumb
24 through this particular exhibit you will see an
25 billstein-cross-white

1 additional identifier as Sage Creek, 12-144.
2 So this entire package refers to Sage Creek
3 and all of its tributaries, and each separate
4 package refers to the photo number associated
5 with that.

6 THE SPECIAL MASTER: Right. Thank you.

7 THE WITNESS: This appears to be the
8 investigator form notes and associated planimeter
9 sheets relative to Sage Creek and all its
10 tributaries.

11 Q (By Mr. White) I hand you what's been marked
12 for identification as HB-38-A and ask you to
13 identify that.

14 MR. ECHOHAWK: This is 38-A?

15 MR. WHITE: Right. It should be at the
16 bottom.

17 THE WITNESS: This document appears to be
18 the investigator form notes and associated
19 planimeter sheets relative to Crooked Creek
20 above its confluence with Trout Creek.

21 Q (By Mr. White) I hand you what's been marked for
22 identification as 39-A and ask if you can
23 identify and describe that?

24 A It appears to be the investigator forms associated
25 billstein-cross-white

1 with Trout Creek as well as the planimeter
2 sheets. This would be for that portion of the
3 Trout Creek watershed exclusive of Crooked
4 Creek and I believe Spring Creek.

5 Q I hand you what's been marked for identification
6 as HB-40-A and ask you to identify that.

7 A It appears to be investigator form notes and
8 associated planimeter sheets relative to the
9 Spring Creek Watershed.

10 Q I hand you what's been marked for identification
11 as HB-41-A and ask you to identify that.

12 A It appears to be investigator form notes,
13 associated planimeter sheets relative to Big
14 Horn Draw, which is a tributary of the Little
15 Wind River.

16 Q I hand you what's been marked for identification
17 as HB-42-A and ask you to identify that.

18 A Field investigator forms and associated planimeter
19 sheets relative to lands served from the Main Stem
20 of the Big Horn River.

21 Q I hand you what's been marked for identification
22 as HB-43-A and ask if you can identify that?

23 A Appears to be the investigator form notes and
24 associated planimeter sheets relative to the

25 billstein-cross-white

1 North Fork of the Popo Agie River.
2 Q Handing you what's been marked for identification
3 as HB-44-A and ask you to identify that.
4 A Appears to be investigator form notes, associated
5 planimeter sheets relative to the Main Stem of
6 the Popo Agie River.
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1 Q (By Mr. White) I hand you what's been marked for
2 identification --

3 THE SPECIAL MASTER: Mr. White, give me two
4 minutes.

5 MR. WHITE: I'm sorry. I was just trying to
6 get these in as fast as I can.

7 THE SPECIAL MASTER: That's all right. I
8 know you are. I want to make sure that I can get
9 some idea of what this is all about.

10 (Pause.

11 THE SPECIAL MASTER: Okay, Mr. White. I'm
12 sorry.

13 MR. WHITE: I'm sorry, Your Honor. I didn't
14 hear you. Are you ready to go?

15 THE SPECIAL MASTER: Yes, Mr. White.

16 Q (By Mr. White) Mr. Billstein, I hand you what's
17 been marked for identification as 45-A and ask you
18 to identify that?

19 A. This appears to be the investigative form notes
20 and associated planimeter sheets relative to the
21 South Fork of Owl Creek and its tributaries.

22 Q I hand you what's been marked for identification as
23 HB-46-A and ask you to identify that?

24 A. It appears to be investigative form notes and
25 associated planimeter sheets relative to the main
billstein-cross-white

1 stem of Owl Creek.

2 Q I hand you what's been marked for identification
3 as Exhibit HB-47-A and ask you to identify that?

4 A It appears to be investigative form notes and
5 associated planimeter sheets relative to Mud Creek,
6 which is a tributary of Owl Creek.

7 Q I hand you what's been marked for identification
8 as HB-11-A and ask you to identify that?

9 MR. ECHOHAWK: This is 11-A?

10 MR. WHITE: Yes.

11 A (By the Witness) It appears to be the investiga-
12 tive forms and associated notes plus planimeter
13 sheets relative to the Ray System, which is a unit
14 of the Little Wind unit of the Wind River Federal
15 Irrigation Project.

16 Q (By Mr. White) I hand you what's been marked for
17 identification as HB-12-A.

18 MR. ECHOHAWK: Your Honor --

19 THE SPECIAL MASTER: Yes?

20 MR. ECHOHAWK: The United States would stipulate
21 all these in. Mr. White could read these into the
22 record. This is merely information that we gave
23 him during Mr. Billstein's deposition. I don't
24 think we need to take up the Court's time now on this.

25 billstein-cross-white

1 THE SPECIAL MASTER: I would appreciate that,
2 but I will leave that up to Mr. White.

3 MR. ECHOHAWK: There is a large amount of
4 these still to come in other documents.

5 MR. WHITE: It's not what the State knows at
6 this point as what the record shows, and we need
7 to have the record show what each one of these are.
8 We are going pretty fast, about as fast as we
9 could if we stipulated.

10 THE SPECIAL MASTER: May I ask the witness,
11 you mentioned that the Ray System is a part of the
12 what?

13 THE WITNESS: Little Wind --

14 THE SPECIAL MASTER: Little Wind unit --

15 THE WITNESS: -- unit of the Wind River Federal
16 Irrigation Project.

17 THE SPECIAL MASTER: And is it separated on
18 the Master Exhibit, C-137?

19 (Witness pointed to exhibits.)

20 THE SPECIAL MASTER: I see. Thank you.

21 Q (By Mr. White) I hand you what's been marked for
22 identification as HB -- I'm sorry. I didn't get
23 through this one. I'm sorry.

24 Which one are you referring to now, 12-A, Ron?

25 billstein-cross-white

1 Please identify that.

2 A. Exhibit HB-12-A appears to be investigative forms
3 and associated planimeter sheets relative to the
4 Coolidge Unit of the Little Wind Unit.

5 MR. WHITE: Your Honor. Do you really want a
6 duplicate copy of these, have two of them in your
7 files?

8 THE SPECIAL MASTER: No, one in my files and
9 one in the files of the lawsuit.

10 MR. WHITE: I'm sorry, Your Honor. I didn't
11 count on that, and I didn't make enough copies of
12 that, and I apologize to the United States and the
13 Tribes, and I'll get -- I have at least one for
14 them, and I will get extra copies later on.

15 Q (By Mr. White) I hand you what's been marked for
16 identification as 13-A and ask you if you can ident-
17 ify that?

18 A. It appears to be the investigative form notes and
19 associated planimeter sheets relative to the Sub-
20 agency Unit of the Little Wind Unit.

21 Q I hand you what's been marked for identification as
22 HB-17-A and ask you if you can identify that?

23 A. It appears to be investigative form notes and
24 associated planimeter sheets relative to the Johnstown

25 billstein-cross-white

1 Unit of the Wind River Federal Irrigation Project.

2 Q I hand you what's been marked for identification as
3 HB-18-A and ask you to please identify that?

4 A It appears to be investigative form notes and
5 associated planimeter sheets relative to the left-
6 hand unit of the Wind River Federal Irrigation
7 Project.

8 Q I hand you what's been marked for identification as
9 HB-19-A and ask you to identify that -- whoops, I'm
10 sorry. I gave you the wrong copy, Ron.

11 MR. WHITE: Can I swap with you, please, Your
12 Honor?

13 THE SPECIAL MASTER: Okay.

14 A (By the Witness) It appears to be the investiga-
15 tive form notes and associated planimeter sheets
16 associated with lands within the Midvale Irriga-
17 tion District plus private lands served from facil-
18 ities of the Midvale Irrigation District.

19 (Pause.

20 THE SPECIAL MASTER: Has the State completed
21 cross-examination of Mr. Billstein?

22 MR. WHITE: No, sir. We are ready to make
23 offers of proof, Your Honor.

24 THE SPECIAL MASTER: You may proceed.

25 billstein-cross-white

1 Q (By Mr. White) I hand you what's been marked for
2 identification as HB-28 and ask you to identify
3 that?

4 A. It appears to be the planimeter sheets for the
5 LeClair -Riverton area, specifically associated
6 with trust lands under the LeClair Irrigation
7 District.

8 Q I hand you what's been marked for identification
9 as HB-22-A and ask you to describe what that is.

10 MR. ECHOHAWK: There's no 21-A?

11 THE SPECIAL MASTER: I have got a 22-A -- I
12 have got two of them.

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

14 A. (By the Witness) It appears to be investigative
15 form notes and associated planimeter sheets for the
16 East Fork Wind River Drainage.

17 THE SPECIAL MASTER: Is that 10 acres up
18 there or 37?

19 THE WITNESS: Ten acres, Your Honor.

20 I think it's interesting to note that we had
21 17 acres of ravines in those 10 acres submitted
22 yesterday in offer of proof.

23 Q (By Mr. White) I hand you what's been marked for
24 identification as HB-23-A and ask you to identify

25 billstein-cross-white

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that?

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A. It appears to be investigative form notes and associated planimeter sheets relative to lands served from Dinwoody Creek. It includes those lands lying within the Basin plus those associated with service ditches initiated from Dinwoody Creek but lying along the main stem of the Wind River.

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Q. I hand you what's been marked for identification as HB-24-A and ask you to identify that?

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A. It appears to be investigative form notes and associated planimeter sheets relative to Dry Creek, this being the Dry Creek Drainage south of the Big Wind River, not to be confused with Dry Pasup Creek.

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- 1 Q (By Mr. White) I hand you what's been marked
2 for identification as HB-25-A and ask you to
3 identify that, please.
- 4 A It appears to be investigator form notes and
5 associated planimeter sheets for lands served
6 from Bull Lake Creek.
- 7 Q I hand you what's been marked for identification
8 as HB-26-A and ask you to identify that.
- 9 A It appears to be the investigative form notes
10 and associated planimeter sheets relative to
11 Meadow Creek.
- 12 Q I hand you what's been marked for identification
13 as HB-27-A and ask you if you can identify that?
- 14 A Appears to be investigative form notes and
15 associated planimeter sheets relative to Pasup
16 Dry Creek.
- 17 THE SPECIAL MASTER: Pasup Dry Creek?
- 18 THE WITNESS: Otherwise known as Dry Pasup
19 Creek.
- 20 THE SPECIAL MASTER: I see, 56 acres.
- 21 Q (By Mr. White) I hand you what's been marked
22 for identification as HB-28-A and ask you to
23 identify that.
- 24 A Appears to be the investigative form notes and
25 billstein-cross-white

1 associated planimeter sheets for the Crow Creek
2 Watershed.

3 Q I hand you what's been marked for identification
4 as HB-30-A and ask you to identify that.

5 A Appears to be investigative form notes and
6 associated planimeter sheets relative to the
7 Cottonwood Creek Drainage.

8 Q I hand you what's been marked for identification
9 as HB-31-A and ask you to identify that.

10 A Appears to be the investigative form notes and
11 associated planimeter sheets relative to the
12 Main Stem of the Wind River.

13 MR. WHITE: Your Honor, that would be a
14 good place to take a break for us. We have
15 some more exhibits and --

16 THE SPECIAL MASTER: You have quite a few
17 more?

18 MR. WHITE: Not too many more. There would
19 be the exhibits arising out of the stipulation
20 with the United States.

21 THE SPECIAL MASTER: All right. Why don't
22 we adjourn until 1:30. Is that agreeable?

23 MS. SLEATER: That's fine with use, Your
24 Honor.

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THE SPECIAL MASTER: So be it.

(Thereupon a lunch recess
(was taken from 11:50 a.m.
(until 1:30 p.m.

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