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## Trial Transcript, Vol. 32, Morning Session

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case # 4993

File # 139

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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. )

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*3/27*

1981

*Margaret V. Hanjstun*

CLERK

DEPUTY

VOLUME 32

Morning Session

Thursday, March 19, 1981

**ORIGINAL**

APPEARANCES

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FOR THE STATE OF  
WYOMING:

MR. MICHAEL D. WHITE  
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ALSO: MR. STUART RIFKIN

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OF AMERICA:

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and

MR. TOM ECHOHAWK  
Attorney at Law  
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FOR THE SHOSHONE  
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FOR THE PRIVATE  
WATER HOLDERS:

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1 THE SPECIAL MASTER: Okay, we're underway,  
2 ladies and gentlemen.

3 (Brief pause.

4 MR. WHITE: Mr. Billstein, good morning.

5 Off the record, Your Honor.

6 (Off-the-record discussion.

7 Q (By Mr. White) Mr. Billstein, who is Ross  
8 Waples?

9 A Ross Waples is a soils scientist employed by  
10 HKM Associates.

11 Q Isn't it true that he -- Isn't it true that he  
12 made various determinations of arability of  
13 lands?

14 MR. ECHOHAWK: Objection, Your Honor, this  
15 is beyond the scope of direct.

16 MR. WHITE: I don't think it is. If you'll  
17 allow me to proceed --

18 THE SPECIAL MASTER: He may answer if he  
19 knows and he may say no if he doesn't.

20 THE WITNESS: Mr. Waples, under a separate  
21 program distinct from the one that I am testifying  
22 to, did arability studies.

23 Q (By Mr. White) Isn't it true that arability  
24 studies were performed on a portion of the lands  
25 billstein-cross-white

1 included within the totals on Exhibit C-137?

2 MR. ECHOHAWK: Same objection, Your Honor.

3 THE SPECIAL MASTER: I'll sustain that one.

4 Q (By Mr. White) You previously testified that  
5 where the symbol circle five -- excuse me, the  
6 Type Circle V, that there was a determination  
7 made by Mr. Waples that had something to do with  
8 arability. Do you recall that testimony?

9 It was last week over in the Supreme Court  
10 Chambers, page 2399 of the transcript. I can  
11 try to find a copy of the transcript for you.

12 MR. ECHOHAWK: What date is that, Sandy?

13 MR. WHITE: I don't know.

14 (Brief pause.)

15 Q (By Mr. White) I direct your attention to  
16 page 2399 of the transcript, pages 9 through 15 (sic).

17 A Lines 9 through 15, Counsel?

18 Q Yes, thank you.

19 (Brief pause.)

20 A That refreshes my memory.

21 Could I have the question read back, please.

22 (Thereupon the following  
23 question was read back as  
24 follows: "Q You previously  
25 testified that where the  
(symbol circle five -- excuse  
me, the Type Circle V, that

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(there was a determination  
(made by Mr. Waples that had  
(something to do with arability.  
(Do you recall that testimony?  
( It was last week over in the  
(Supreme Court Chambers, page  
(2399 of the transcript. I can  
(try to find a copy of the  
(transcript for you."

THE WITNESS: I reviewed the transcript and  
I do recall that I stated that the Circle V  
designations were related to arability work done  
by Mr. Waples.

Q (By Mr. White) Isn't it true that a Circle V  
designation means that the lands so designated  
are nonarable lands?

MS. SLEATER: Your Honor, I object. Mr.  
Billstein hasn't testified about arability, he's  
testified about lands in use and these are  
inappropriate questions due to the fact that his  
direct was limited to lands in use.

THE SPECIAL MASTER: Well, if some lands are  
being irrigated that soils scientists can show  
deserve to be classified as nonarable because  
they are not, will not yield for reasons other  
than benefit, you know, cost benefit ratio, some  
of the man-made tests, I think it is appropriate

billstein-cross-white

1 that that be in the evidence, so I'm going  
2 to overrule you.

3 MS. SLEATER: Your Honor, I'd like to  
4 point out that Mr. Billstein has not testified  
5 as a soils scientist.

6 THE SPECIAL MASTER: I know.

7 MS. SLEATER: He's not dealing with that,  
8 and he's the inappropriate one to direct such  
9 questions to.

10 THE SPECIAL MASTER: I appreciate that, and  
11 I've already sustained the objections to the  
12 earlier question, whether or not some of these  
13 lands had been tested for arability or not, but  
14 if he knows that some of these lands were  
15 clearly found by his organization to be -- to be  
16 nonarable, I think he should say so, and if he  
17 doesn't, he should say so.

18 MR. ECHOHAWK: Your Honor, I think when we  
19 discussed this last week, what Mr. White's  
20 referring to, I believe it was established that  
21 Mr. Billstein didn't rely upon any arability  
22 determinations one way or the other, and I believe  
23 that's the reason that you cut off that line of  
24 questioning.

25 billstein-cross-white

1 THE SPECIAL MASTER: I believe it is too.  
2 I'll suppose I'll cut it off at a given time  
3 when it's no longer something to which he had  
4 personal knowledge of or testified on direct.  
5 So far I think that last question was permissible.

6 Q (By Mr. White) I think the last question was  
7 isn't it true that lands typed as a Circle, Roman  
8 Numeral V, are nonarable lands?

9 A To the best of my knowledge that means that  
10 they're nonarable, referring to seepage lands.

11 THE SPECIAL MASTER: Do you mean the Circle V  
12 is Type V?

13 THE WITNESS: It's a Type V.

14 Q (By Mr. White) But it's a Type V land that isn't  
15 arable?

16 THE SPECIAL MASTER: You have answered that.  
17 You have seven -- six, seven descriptions of  
18 irrigated types used for identification of  
19 irrigated lands, and one of them is irrigated  
20 lands that is Type V.

21 THE WITNESS: That's right.

22 THE SPECIAL MASTER: And if it's an irrigated  
23 land, the question I suppose is do you have some  
24 evidence that it's a nonarable land, and I think

25 billstein-cross-white

1 you've answered that sufficiently by saying it  
2 obviously has some crops on it, even though  
3 it's not high yield, though it does provide  
4 beneficial use, you said time and time again.

5 Q (By Mr. White) Mr. Billstein, I'm not talking  
6 about the regular Type V lands, I'm talking  
7 about the circled Type V lands. Isn't it true  
8 that those are lands receiving water but are  
9 nonarable?

10 A There were holes put down on some Type V's.  
11 They were informational gathering type holes  
12 to understand the soils makeup of certain portions  
13 of the Type V study area.

14 I believe that these Type V were checked  
15 against the arability standards that Mr. Waples  
16 will later utilize in his testimony, and that  
17 Circle V lands do reflect the nonarability  
18 determination.

19 Q Now, Mr. Billstein, isn't it true that the total  
20 number of -- the grand total number of acres  
21 on Exhibit C-137 includes approximately 2,000  
22 nonarable acres of Circle Type V?

23 A I don't know an order of magnitude.

24 \* \* \* \* \*

25 billstein-cross-white

1 Q. (By Mr. White) Well, would you pull out of the  
2 stack before you a copy of HB-12-A, your planimeter  
3 sheets for the Coolidge System?

4 MS. SLEATER: Your Honor, before this goes  
5 any further, I would like to reassert our  
6 objection that Mr. Billstein's testimony is not  
7 based on arability, and as he stated, this land  
8 is performing a beneficial use. Whether or not  
9 the standard used by Mr. Waples in another program,  
10 this matter is more properly addressed later on  
11 when Mr. Waples is here and does not reflect on  
12 Mr. Billstein's testimony that this land is  
13 performing a beneficial service to the person who  
14 owns it, and at this time I would request that Your  
15 Honor cut off this line of questioning as being  
16 outside of the scope of direct and not relevant to  
17 the witness' testimony.

18 THE SPECIAL MASTER: I concur that these lands,  
19 3,971 acres, of Type 5 are performing a beneficial  
20 use to the people who are irrigating them or are  
21 benefiting from the pasture or seepage that they get,  
22 but also I believe that Mr. Billstein could identify  
23 his own exhibits and refer to them again, so I will  
24 overrule, Regina.

25 billstein - cross - white

1 Q (By Mr. White) About a third of the way through  
2 that stack is a page that I can't describe very  
3 fairly, but I'll hand you, purely for informational  
4 purposes, an exhibit that's been marked HB-12-1,  
5 which is a copy of that page, and maybe that will  
6 help you find that page.

7 A I see that.

8 Q Isn't it true that each of the lands for which  
9 there is a Roman Numeral V with a circle around it  
10 shown as a land type on what's been marked as HB-12-1  
11 is included within the lands summarized on Exhibit  
12 C-1377

13 Q That's true. Again, the nonarability designation  
14 on this map does not detract from the fact that  
15 there's beneficial use being made of these lands,  
16 and we had talked before about the Wind Division  
17 Report that was done in 1966, Your Honor, and  
18 for instance, the findings of the Bureau of  
19 Reclamation at that time in the LeClair-Riverton  
20 Projection was that 2,605 acres of the assessable  
21 lands in that project of a total of 11,850, or  
22 approximately 22 or 23 percent, were 6-W, Class  
23 6 Wet lands.

24 In my informal deposition with the project

25 billstein - cross - white

1 manager, Mr. Dale Cooper, he reinforced to me that  
2 none of these people were missing their assessment  
3 payments, that it was not having that significant  
4 a level of impact on their ability to pay, and  
5 although counselor has chosen to break the Indian  
6 burden of proof different than the non-Indian, this  
7 is another example of the nonarability of lands  
8 actually playing a major role in the agricultural  
9 community in the Basin.

10 Q Mr. Billstein, would you please pull out the spread  
11 sheets -- excuse me, not the spread sheets, the  
12 planimeter sheets -- for HB-13-A, that are marked  
13 HB-13-A?

14 A I have those.

15 Q About a quarter of the way from the back there's a  
16 page which I'm unable to describe orally, but I  
17 have a copy which is marked purely for identification  
18 purposes as HB-13-1.

19 A I see it in Exhibit HB-13-A.

20 Q Isn't it true that all of the lands shown on the  
21 page marked HB-13-1 which are marked with a circle  
22 V are nonarable lands included within the total,  
23 grand total, shown on Exhibit C-139?

24 A That would be so. Again, I have mapped them  
25 billstein - cross - white

- 1 as having a beneficial use.
- 2 Q Would you please remove from the stack of planimeter
- 3 sheets before you HB-16-A?
- 4 A I have found it.
- 5 Q About a third of the way from the back to that
- 6 exhibit do you find a page which corresponds with
- 7 what I'm handing you and which has been marked
- 8 purely for identification purposes as HB-16-1?
- 9 A I see that.
- 10 Q Isn't it true that all of the lands shown on HB-16-1
- 11 which are designated by V with a circle around
- 12 it are nonarable lands included within the grand
- 13 total on Exhibit C-137?
- 14 A Those are nonarable lands which were mapped as
- 15 showing the beneficial use.
- 16 THE SPECIAL MASTER: By whose definition are
- 17 they nonarable lands? By your definition?
- 18 THE WITNESS: That's a good point, Your Honor.
- 19 That's the reason that I feel very uncomfortable
- 20 about testifying to something that Mr. Waples
- 21 did. He has a set of criteria which he will testify
- 22 to, and he is in the best position to submit to
- 23 that testimony. Only from my personal knowledge
- 24 do I know that there was a breakout made. All the
- 25 billstein - cross - white

1 rationale as to why the breakout was made, I'm  
2 not in a position to respond to.

3 Q (By Mr. White) Also in Exhibit 16-A, I believe  
4 the next page is what I'm handing you a copy of,  
5 marked for identification as HB-16-2.

6 A. I see that page.

7 Q Isn't it true that the land shown on HB-16-2  
8 as V with a circle around it are nonarable lands,  
9 included within the grand total on Exhibit 137?

10 MR. ECHOHAWK: Again, Your Honor, I would like  
11 to renew our objection that this is outside the  
12 scope of direct and irrelevant and add to it that  
13 it's further wasting the Court's time because  
14 obviously that ground has to be covered with  
15 Mr. Waples so we can get an actual determination.

16 THE SPECIAL MASTER: I will allow one more  
17 question and I will probably sustain that objection  
18 if he keeps on because the point has been made in  
19 the record, and the point deals with Circle V and  
20 does it warrant inclusion or not on the basis of  
21 it having been described as nonarable, so the point  
22 is in the record, and you can show it with a couple  
23 hundred acres or a couple thousand. We don't need  
24 more than a couple hundred because the concept is

25 billstein - cross - white

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there.

I'll overrule this last time.

\* \* \* \* \*

billstein - cross - white

1 MR. WHITE: Your Honor, I wonder if it's  
2 true then that Mr. Waples would be available  
3 for cross-examination. I believe he's going to  
4 be called as a witness by the United States.  
5 I'm wondering whether or not he will be available  
6 for cross-examination as to the arable  
7 determinations which he made on those lands  
8 which are included in Mr. Billstein's analysis.

9 THE SPECIAL MASTER: Well, I would imagine  
10 he'll be available for cross-examination on  
11 any work that he did, no matter in whose department  
12 it fell.

13 If I know you, I think you'll see to it  
14 what he'll be testifying to.

15 MR. WHITE: He's not my witness, Your Honor.

16 THE SPECIAL MASTER: It's just like these  
17 other past three or four areas or separate  
18 segments of this case. We have good examples  
19 in the record now of each one even though I did  
20 cut you off after five or six cases of it and you  
21 make your offer of proof on the remaining 17.  
22 This is exactly the same type of a legal subject  
23 matter. The question in issue here is should  
24 this Circle V particular land described as

25 billstein-cross-white

1 nonarable be included in use totals for  
2 consideration for water rights period. And  
3 the total is 3,971 acres thereof, I think.

4 THE WITNESS: No, Your Honor, only a  
5 portion of that --

6 THE SPECIAL MASTER: Is Circle V?

7 THE WITNESS: Is Circle V.

8 THE SPECIAL MASTER: Not all Circle V land  
9 is Type V land?

10 THE WITNESS: Circle V land does not  
11 constitute all of the Type V acreage, Your Honor.

12 THE SPECIAL MASTER: In any event, bring  
13 out, if you will, how much lands is included  
14 in your in use study to which you testified, how  
15 much land is Circle V total or do you know?

16 THE WITNESS: It would have to be added up  
17 from the respective tables because as I said  
18 in my direct, it wasn't important to me that  
19 distinction was made, and also in our previous  
20 discussions, Your Honor, we talked about the  
21 fact that at worse we were looking at a depletion  
22 for these lands, recognizing depletion because  
23 there was a beneficial use being made and that  
24 should be recognized.

25 billstein-cross-white

1 THE SPECIAL MASTER: Okay. Well, you can  
2 answer the question if Mr. White can remember  
3 it or we'll have it reread.-- no, it was a  
4 simple question, based on this 41.0 and 44.

5 THE WITNESS: It is a Circle V.

6 THE SPECIAL MASTER: That was the question.

7 Q (By Mr. White) Ron, isn't it true that there  
8 are approximately 1,925 acres of Circle V  
9 within the Circle V nonarable lands within the  
10 grand totals shown on Exhibit C-137?

11 A I believe you have a Waples' Deposition Exhibit  
12 to jog my memory.

13 Q I forgot about that one. Off the record.

14 THE SPECIAL MASTER: All right, I'm glad  
15 to have that information.

16 MR. WHITE: Instead of having to go through  
17 it sheet by sheet, maybe I could run down and  
18 take a look at Waples' Exhibit --

19 THE SPECIAL MASTER: You probably don't  
20 have to. It's in the record, 1925, and he said  
21 I think that's right.

22 MR. WHITE: No, he didn't.

23 THE SPECIAL MASTER: Oh, he didn't. He  
24 said I think you got a deposition.

25 billstein-cross-white

1 THE WITNESS: Your Honor, I said I believe  
2 that Counselor obtained a figure from a  
3 deposition exhibit earlier and that would  
4 probably be a good approximation.

5 MR. WHITE: Your Honor --

6 THE SPECIAL MASTER: Well --

7 MR. WHITE: I neglected to look at the --

8 THE SPECIAL MASTER: Let's see if I can  
9 save you a trip. Will you stipulate the 1925  
10 is an approximate acreage of Circle V from your  
11 depositions?

12 MR. ECHOHAWK: No.

13 MS. SLEATER: Your Honor, without seeing  
14 the deposition exhibit that Mr. Waples gave to  
15 the State, there was so many numbers that came  
16 out in the depositions, to tell you the truth,  
17 it would be difficult --

18 THE SPECIAL MASTER: All right. Thank you,  
19 Regina.

20 Do you want five minutes, Mr. White?

21 MR. WHITE: We can either do it that way or  
22 I can give Ron the sheets.

23 THE SPECIAL MASTER: If you can go find it  
24 and save him the -- We'll be back in five minutes.

25 billstein-cross-white

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(Thereupon a five minute  
recess was taken.

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1 Q (By Mr. White) Mr. Billstein, I hand you what's  
2 been marked for identification as HB-62 and ask  
3 you whether or not that shows that within the  
4 FIPs and only the FIPs there are 1,672.1 acres of  
5 nonarable Class 5 land?

6 A. That's correct. I think if you add the two numbers  
7 that comes up to about 3,900 acres, which is about  
8 the total number of Type 5s identified on Exhibit  
9 C-137.

10 Q It's true, however, that HB-62 only includes the  
11 FIP lands and there are many other lands outside  
12 the FIPs that are shown on Exhibit C-137; isn't  
13 that correct?

14 THE SPECIAL MASTER: You mentioned that this  
15 was, in your question, covering only FIP lands,  
16 so it's been --

17 Q (By Mr. White) Mr. Billstein, I hand you what's  
18 been marked for identification as HB-63, which is  
19 a collection of pages out of several exhibits which  
20 have already been admitted in evidence covering the  
21 lands outside the FIPs, and those are pages from  
22 the indicated exhibits HB-20-A, HB-23-A, HB-26-A,  
23 HB-34-A, HB-35-A, and HB-44-A, and ask you if it is  
24 not true that -- let me start it over again.

25 billstein-cross-white



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at that time as nonarable. In the Riverton valley  
it was 27 percent, and in the whole entire Popo Agie  
watershed most would not meet arability standards.

MR. WHITE: Your Honor, I would move to strike  
the witness' statement on several grounds.

First of all, it's not responsive to my question.

Second, it's based on hearsay.

And, third, there's no foundation established  
for it in the record. If counsel for the United  
States wishes to establish foundation for that on  
redirect, he's certainly welcome to do so, but  
certainly it's inappropriate on cross-examination.

THE SPECIAL MASTER: Motion denied.

\* \* \* \* \*

billstein - cross - white

1 MR. WHITE: Off the record for just a  
2 minute.

3 (Brief pause.

4 MR. WHITE: Your Honor, could we have about  
5 three or four minutes. These are our stipulated  
6 exhibits.

7 THE SPECIAL MASTER: We'll stay in session.  
8 That might help us move along.

9 (Off the record for  
10 (ten minutes.

11 Q (By Mr. White) Mr. Billstein, I hand you what's  
12 been marked for identification as HB-137-1 and  
13 ask you if that is a tabulation of parcel  
14 numbers, acreages and types, among other things,  
15 which was prepared pursuant to the stipulation  
16 and for the purposes of the stipulation between  
17 the United States and the State and the Tribes,  
18 for Ray Unit?

19 A That's correct.

20 Q I hand you what's been marked for identification  
21 as HB-137-2 and ask you if that's the same type  
22 of tabulation for the Coolidge Unit?

23 A That's correct.

24 Q I hand you what's been marked as HB-137-3-A and  
25 billstein-cross-white

1 ask you if that's the same type of tabulation  
2 for the Sub Agency Unit?

3 A That's correct.

4 Q I hand you what's been marked as HB-137-4-A  
5 and ask you if that's the same type of tabulation  
6 for the Wind River A Canal?

7 A That's correct.

8 Q I hand you what's been marked for identification  
9 as HB-137-5-A and ask you -- off the record,  
10 Your Honor.

11 (Off-the-record discussion.)

12 MR. WHITE: Back on the record.

13 Q (By Mr. White) Which is the same type of  
14 tabulation but for the Dinwoody Bench area?

15 A That's right.

16 Q I hand you what's been marked for identification  
17 as HB-137-6-A and ask you if that's the same  
18 type of tabulation but for the Johnstown Unit?

19 A That's correct.

20 Q I hand you what's been marked for identification  
21 as HB-137-7-A and ask you if that's the same  
22 type of tabulation but for the Lefthand Unit?

23 A That's right.

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

1 as HB-137-8-A and ask you if that's the same  
2 type of tabulation for Midvale?

3 A That's correct.

4 Q I hand you what's been marked for identification  
5 as HB-137-9-A and ask you if that's the same  
6 type of tabulation but for LeClair?

7 A That's correct.

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billstein-cross-white

1 MR. WHITE: Off the record.

2 (Off-the-record discussion.)

3 Q (By Mr. White) I hand you what's been marked for  
4 identification as HB-137-A and ask you if that's  
5 the same type of tabulation but for the East Fork  
6 Wind River?

7 A That's correct.

8 Q I hand you what's been marked for identification  
9 as HB-137-12-A and ask you if that's the same type  
10 of tabulation but for Dry and Little Dry Creeks?

11 A That's correct. The ultimate total would go into  
12 Dry Creek.

13 Q Okay. On C-137?

14 A That's correct, counselor.

15 Q I hand you what's been marked for identification  
16 as HB-137-18-A and ask you whether or not that  
17 is the same type of tabulation but for Cottonwood  
18 Creek?

19 A That's correct.

20 Q I hand you what's been marked for identification  
21 as HB-137-21-A and ask you if that's the same type  
22 of tabulation but for Fivemile Creek?

23 A That's correct.

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

1 as HB-137-32-A and ask you if that's the same type  
2 of tabulation but for the Popo Agie?

3 A. That's correct. It includes the North Popo Agie as  
4 well as the Main Stem Popo Agie.

5 Q. I hand you what's been marked for identification  
6 as HB-137-34-A and ask you if that's the same type  
7 of tabulation but for Owl Creek, the Owl Creek Basin?

8 A. That's correct, and it would include South Fork  
9 Owl Creek, Main Stem Owl Creek, and Mud Creek.

10 MR. WHITE: Off the record for a moment.

11 (Off-the-record discussion.)

12 MR. WHITE: Your Honor, at this time I will  
13 offer those exhibits which have just been  
14 identified by Mr. Billstein for purposes enunciated  
15 in the stipulation previously made on the record  
16 between the State, the United States and the  
17 tribes.

18 MR. ECHOHAWK: No objection.

19 THE SPECIAL MASTER: Is there some way,  
20 Mr. White and Mr. Echohawk, that we can caption  
21 or designate that stipulation so that it is  
22 distinguished from other stipulations? Can we  
23 refer to it by a reference number or point?

24 MR. WHITE: If you can give me about two or  
25 billstein - cross - white

1 three minutes, I can look it up in the transcript  
2 from last Friday and give you the book and page.

3 THE SPECIAL MASTER: I would like that so we  
4 can have the continuity and see if we can't call  
5 that the in-use stipulation number 1 or give it  
6 a handle.

7 MR. WHITE: Off the record.

8 (Off-the-record discussion.)

9 THE SPECIAL MASTER: All right. Let's go on  
10 the record. The stipulation I inquired about  
11 was read into the record on Friday, the 13th, last  
12 week, and it began on page 2432, continued through  
13 page 2433, and was terminated on page 2434.

14 Okay, Mr. White. Thank you.

15 MR. WHITE: Off the record.

16 (Off-the-record discussion.)

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1 THE SPECIAL MASTER: Mr. White, we have  
2 prepared in the interim, copies of pages 2433  
3 of the record for last Friday, March 13, 1981  
4 because we found it had been omitted from the  
5 transcript for that day. Beginning on page 2432,  
6 Mr. Echohawk was asked by me if he would  
7 announce the stipulation after the off-the-record  
8 discussion whereby it was fashioned, and he  
9 answered that he would attempt it. Mr. Echohawk  
10 then read as follows, and I quote from page 2433:  
11 "The United States, the Tribes and the State of  
12 Wyoming have agreed that the State of Wyoming  
13 will provide its interpretation as to the  
14 identification of parcels, making up each of the  
15 line items on Exhibit 137, the acreage for each  
16 of those parcels, and the type for each of those  
17 parcels.

18 "The United States will examine the  
19 information presented by the State, make any  
20 corrections which should be made to that  
21 information.

22 "When those corrections are made, the  
23 corrected information, as well as the original  
24 information that was correct to begin with, will  
25 in some form, yet to be agreed upon, be presented

1 to the Master, either through the narrative oral  
2 testimony of Mr. Billstein or in writing which  
3 will represent an agreement of the parties  
4 named, that I have named, that the parcels  
5 identified are all the parcels which are comprised  
6 in the line entries on Exhibit C-137 and that  
7 the acres attributed to each line entry represent,  
8 one, the sum of the individual parcel acreages  
9 and that the individual parcel acreages are those  
10 acreages which were determined by the United  
11 States' planimeter work.

12 "As I say, whether or not we can reduce  
13 that to writing or whether it needs to be done  
14 by oral narrative testimony is yet to be agreed  
15 upon.

16 "The agreement further, I believe, is that  
17 because it will take some time to do the checking,  
18 on Monday Mr. Billstein will be recalled for  
19 cross-examination in the afternoon session and  
20 that the examination will continue on to other  
21 areas aside from the parcel-by-parcel and acre-  
22 by-acre verification of the items in 137.

23 "In the morning on Monday the parties have  
24 agreed if the Master would allow us, to convene  
25 at ten o'clock instead of 9:15 -- and I thank

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Counsel for" -- so on and so on and at the end,  
"Does that clearly state the agreement?" That  
was Mr. White stating that, and Mr. Echohawk  
said, "Yes, Your Honor, it does."

Mr. White.

\* \* \* \* \*

1 MR. WHITE: I assume, based on the stipulation,  
2 that there's no objection to the offer of those  
3 exhibits 137-1-A, et. seq., which were identified  
4 and offered this morning.

5 MR. ECHOHAWK: That's correct.

6 MR. PARRY: No objection.

7 Q (By Mr. White) Mr. Billstein, have you had an  
8 opportunity to examine the exhibits which have  
9 been admitted as C-56 through C-136 since they  
10 were annotated with tract numbers outside of the  
11 Court's presence during the evening recess of  
12 yesterday and this morning?

13 A Yes.

14 Q Do the tract numbers which appear in the series  
15 of exhibits 137-1-A, et. seq., the stipulated exhibits,  
16 appear in red handwritten numbers on Exhibits C-56  
17 through 136?

18 A The tract numbers show on those exhibits.

19 Q Mr. Billstein, isn't it true that you based a  
20 portion of your opinion with respect to those  
21 lands which are summarized on C-137 on conversations  
22 with third parties such as Mr. Twitchell and  
23 Mr. Crook?

24 A I've described in my direct testimony the review  
25 billstein - cross - white

1 process that I undertook. Discussions with  
2 Mr. Twitchell and Mr. Crook were a part of that  
3 review process.

4 Q Did you make any written memorandum or memoranda  
5 of the discussions with Messrs. Twitchell and  
6 Crook?

7 A Just as with the 1980 hydrographic program, the  
8 results are, in fact, the hydrographic maps. At the  
9 time of my discussions with Mr. Twitchell and Crook  
10 in '69, the work maps that we had at that time  
11 reflected the results of those conversations. I  
12 have had --

13 Q Excuse me. Did you mean to say in '69?

14 A Seventy-nine. Since that time, I have spoke to  
15 Mr. Twitchell and Mr. Crook relative to the Wind  
16 River Federal Irrigation Project many times and  
17 do have phone logs for several of those conversations.

18 Q Do you have those with you?

19 A Yes.

20 Q May I see them, please?

(Brief pause.)

21  
22 A Also included would be phone logs to Bob Robertson,  
23 who is the Range Manager for the Bureau of Indian  
24 Affairs, Fort Washakie, and also copies of

25 billstein - cross - white

1 phone logs of conversations with Mr. Twitchell by  
2 people under my supervision. Such telephone call  
3 was made at my direction.

4 THE SPECIAL MASTER: Is it your practice to  
5 keep phone logs in all of your professional work of  
6 this kind?

7 THE WITNESS: I screen it as to those that I  
8 think are meaningful. If they are meaningful and  
9 I don't have a map or something to reflect the  
10 results of that, I usually use telephone conversations.

11 THE SPECIAL MASTER: Does your company have a  
12 directive as to what logs should be made of and  
13 what they should not be made of and how they should  
14 be structured?

15 THE WITNESS: No directives. That's up to  
16 the professional judgment of the individual.

17 THE SPECIAL MASTER: I would like to ask  
18 you, Mr. White, have you already seen these logs  
19 that you are asking for?

20 MR. WHITE: No, I asked about them, but  
21 apparently not directly enough during the deposition,  
22 and I recieved a log of a telephone conversation  
23 between Mr. Gurney, Loren Gurney, who is right  
24 over there, and Carl Johnson, an engineer with

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Midvale Irrigation District, and it's the only  
such log I received.

And I do not want to imply that Mr. Billstein  
was hiding anything. I think I just unartfully asked  
during the deposition.

THE WITNESS: I also have a memo of a  
conversation to Tommy King, Water Commissioner.

(Witness handed documents  
to Mr. White.

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1 THE SPECIAL MASTER: I'm glad you two  
2 gentlemen have agreed to stipulate on the  
3 contents of those telephone memos.

4 MR. WHITE: I haven't finished reading  
5 them. To speed things up I will take a look  
6 at them over the lunch break.

7 THE SPECIAL MASTER: If you want to do that.  
8 We can move on to some other subject matter.

9 MR. WHITE: We can move on to something  
10 else.

11 Q (By Mr. White) Mr. Billstein, was your pro-  
12 fessional opinion based on any other conversations  
13 with third parties other than those which you  
14 have already described and which were contained  
15 in the memorandum which you handed me?

16 A I believe I've discussed in previous testimony,  
17 any other third party that I had contact with  
18 to arrive at my conclusions.

19 Q And I believe you testified that your 1979  
20 conversations with Messrs. Twichel and Cook  
21 were not memorized in a memorandum; is that  
22 correct?

23 A No. As I said, the work maps reflected results  
24 of those meetings just as these hydrographic

25 billstein-cross-white

1 copies reflects the results of the 1980 meetings.

2 Q Are you able to state with any specificity the  
3 results of those 1979 meetings which were  
4 reflected on the work maps?

5 A Those respective work maps were updated in the  
6 1980 field program, in the Wind River Federal  
7 Irrigation Project, therefore, the basic data  
8 has been improved upon and it would be very  
9 difficult to trace what was mapped in 1978 versus  
10 what was concluded as under current irrigation  
11 in 1980.

12 Q Would you take a look back at Exhibit HB-62,  
13 which was the exhibit from Waples' Despoition.

14 THE SPECIAL MASTER: What was HB-62, a  
15 drawing or --

16 MR. WHITE: It was a chart.

17 THE SPECIAL MASTER: -- document?

18 MR. WHITE: It was a chart from the Waples'  
19 Deposition. I think it was Waples Deposition  
20 Exhibit 10.

21 THE SPECIAL MASTER: I have HB-62. I'll  
22 lend you my copy, Mr. White.

23 MR. WHITE: You just --

24 THE SPECIAL MASTER: Thanks to Leo Salazar

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1 we found that rapidly.

2 MR. WHITE: I'll give you this copy, I'll  
3 give Mr. Billstein a copy of mine.

4 THE SPECIAL MASTER: Well, I can let him  
5 use this if it will save you some time.

6 MR. WHITE: It will just take a minute.  
7 I'd sure like you to be able to look at it while  
8 I ask him about it.

9 Q (By Mr. White) Mr. Billstein, on HB-62, which  
10 was also shown as being Waples Deposition  
11 Exhibit 10, do you see a column which is headed  
12 by an asterisk right next to the Roman Numeral  
13 Circle V?

14 A Yes.

15 Q Isn't it true that the number of acres shown  
16 as a total under the asterisk column, which I  
17 believe is 234 acres, was land which was never  
18 visited during the 1980 field investigation?

19 A I believe that asterisk refers to idle lands  
20 and as such, was not part of the irrigation in  
21 use portion of the study.

22 Q Did you include any lands in, among those that  
23 are shown on Exhibit C-137, which were typed  
24 with an asterisk?

25 billstein-cross-white

1 A I can't believe that any of those acres would  
2 have shown up in Exhibit C-137. Those are  
3 undeveloped lands, I believe, and as such, would  
4 not be recorded as historic use lands.

5 (Brief pause.

6 Q Mr. Billstein, would you please take a look at  
7 what's been admitted as HB-26-A, planimeter  
8 sheets for Meadow Creek. I should say planimeter  
9 sheets and field notes.

10 (Brief pause.

11 A Found it.

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1 Q (By Mr. White) On approximately the fourth page  
2 from the front is a page which I have prepared a  
3 copy and marked as HB-26-2, purely for identification  
4 purposes, and I ask you whether or not you can  
5 find that page?

6 A I see it.

7 Q Do you see the statement: Mr. O'Neal said he  
8 doesn't remember when this field was last irrigated?

9 A Yes.

10 Q What field does that refer to?

11 A I'm talking about some Type 7 lands. As you see  
12 the notation behind both South Fork Meadow No. 1  
13 and Jackson No. 6624, those lands are not part  
14 of the claim. Mr. Johnston was just getting some  
15 basic information about when the last time those  
16 idle lands had been served.

17 Q Would you turn on about two-thirds of the way  
18 through Exhibit 26-3 and find a page which I have  
19 made a copy of and marked solely for identification  
20 purposes as HB-26-3? Do you find that page?

21 A Yes, I do.

22 Q Do you see the note at the bottom apparently by  
23 Mr. Johnston that says: No field investigations;  
24 I thought lands were served by FIP?

25 billstein - cross - white

10-2

- 1 A. Right.
- 2 Q. What lands are those referring to?
- 3 A. I'll get my hydrographic copy and show you.
- 4 Q. Well, are they included in the claim?
- 5 A. That's right. We visited them in February.
- 6 Q. That was in 1981?
- 7 A. Yes, sir.
- 8 Q. Do you happen to know the tract number that applies
- 9 to?
- 10 A. I could get that. Calhoun, that would be 10-200.
- 11 On 10-200 it's part of tract 5-46, which
- 12 does show it as part of the Wind River Federal
- 13 Irrigation Project.
- 14 What Mr. Calhoun does in this ditch system
- 15 is that he picks up water from a drainage. He calls
- 16 it Calhoun Creek, I suppose after himself, and
- 17 moves the water into the land base of the Wind
- 18 River Federal Irrigation Project.
- 19 What I think confused Mr. Johnston at the time
- 20 of his visitation is that he was looking down into
- 21 Meadow Creek, and although Mr. Calhoun has several
- 22 ditches down there, he did not find this particular
- 23 tract that Mr. Calhoun was referring to in his
- 24 interview, and we had to go to the interview to
- 25 billstein - cross - white

1 establish that he was using basically a drainage  
2 rather than the Wind River Federal Irrigation Project  
3 facilities to serve that tract.

4 Q How many acres are in that tract or that portion  
5 of tract 5-46 which was not visited during the  
6 1980 field season?

7 A I don't know how many acres. Mr. Calhoun has out of  
8 that whole tract. My best recollection of that  
9 was 20 acres, plus or minus, somewhere in there.

10 Q Why don't you leave that handy?

11 Ron, in Exhibit 26-A, I believe four pages  
12 on beyond the last page we referred to, is another  
13 page which I have marked as HB-26-4, purely for  
14 identification purposes.

15 Do you find that within 26-A?

16 A Yes.

17 Q At the bottom of that page, do you see where  
18 apparently Mr. Johnston indicated that there's no  
19 field investigation for this tract because he  
20 similarly thought that the area was served by the  
21 FIP?

22 A Right.

23 Q That would have been no field investigation during  
24 1980; is that correct?

25 billstein - cross - white

1 A. That's right. We picked that one up in 1981 also.

2 Q. What tract number does that involve, if you know?

3 It should be in the same area.

4 A. Fourteen-seven.

5 Q. Going on about another four pages, a page which

6 I have made a copy of and marked purely for

7 identification purposes as HB-26-5, do you find

8 that page?

9 A. Yes.

10 Q. Does it similarly indicate that the tract

11 referred to in there was not the subject of a

12 field investigation during 1980?

13 A. Not by Mr. Johnston. I had Mr. Waples go back

14 and look at the Washakie Ditch.

15 Q. So Mr. Waples visited that tract in 1980; is

16 that correct?

17 A. That's right.

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1 Q (By Mr. White) Ron, would you please find  
2 Exhibit 31-A and look at a couple pages there.

3 A Okay.

(Brief pause.)

4  
5 A I have it.

6 Q Ron, the second page from the back of that  
7 exhibit is a page which I have marked purely  
8 for identification purposes as HB-31-1 and ask  
9 you if you can find that?

10 A I see it.

11 Q Are the lands which are described in the notes  
12 below as being large fields having a hilly  
13 area on the eastern side, the stress of which  
14 caused the breakdown of two sections in the  
15 sprinkler, are those lands included within the  
16 totals shown on Exhibit C-137?

17 A The notation said that it appears that the  
18 stress of the hill completely broke down the  
19 two sections.

20 Q Okay.

21 A This is the Bawlin Bull Sprinkler Irrigation  
22 Project, and as I identified yesterday on the  
23 northeastern end, there is a fairly significant  
24 slope and the field review showed that there were

25 billstein-cross-white

1 alfalfa fields throughout it except at the very  
2 top of those hills where we typed them Type VI,  
3 where we needed special management.

4 The sprinkler systems were broken down at  
5 the time of the visitation and it's unknown  
6 whether they were going to go in and look at  
7 modifying the way they were serving those tracts  
8 or perhaps do a little land leveling or something  
9 like that. It was just a notation that the  
10 sprinklers were out there, however, they weren't  
11 operating at the time of the visitation. But  
12 the Bawlin Bull Project is a very fine sprinkler  
13 irrigation project, and its acres are shown in  
14 C-137. And the areas that we felt were not as  
15 good as the others were broken out as Type VI.

16 Q Did any -- Did you or any person acting under  
17 your supervision see those areas on the eastern  
18 side, those fields described on HB-31-1, under  
19 irrigation or receiving water during 1980?

20 A Now we're getting into a professional judgment,  
21 Counselor. The mere fact that you don't see a  
22 sprinkler moving and distributing water, the  
23 mere fact that you got good vegetation cover,  
24 here he's talking about alfalfa fields, alfalfa

25 billstein-cross-white

1 fields in good condition, I think the mere  
2 fact that it wasn't spraying the day that he  
3 was there certainly doesn't decrease his ability  
4 to make a judgment that that crop was being  
5 raised in 1980.

6 Q What would cause a sprinkler to be stressed by  
7 a hill? I don't understand what would cause  
8 that. Is it because the sprinkler has to go  
9 over a hill and the sections break or what's the  
10 reason for that?

11 A You're asking an agricultural engineering  
12 interpretation, which first of all I'm not  
13 familiar with their design, and I'm not totally  
14 familiar with the system nor have I studied the  
15 topography of the particular tract. I think  
16 I'm really not in a position to answer that  
17 question.

18 THE SPECIAL MASTER: You probably can find  
19 a dozen farmers between here and Lusk who can  
20 answer it for us, but it takes somebody with  
21 the experience.

22 THE WITNESS: There's a number of parameters,  
23 Your Honor, to what could have possibly caused  
24 the breakdown.

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1 Q (By Mr. White) But that was the professional  
2 judgment of whoever or Mr. Johnston, the  
3 field investigator at the time, am I correct,  
4 that the hill -- that the hill appeared to be  
5 stressing your sprinkler system or that  
6 sprinkler system in causing it to break?

7 A It was an observation.

8 Q Mr. Billstein, I hand you what's been marked  
9 for identification as HB-52 and ask you whether  
10 or not that is not a copy of certain documents  
11 upon which you relied in forming your opinion?

12 A It was a source of my review. It shows the  
13 irrigation facilities in the Wind River Federal  
14 Irrigation Project.

15 Q On the original, or excuse me, on the copy that  
16 bears the sticker, the exhibit sticker, there  
17 are colors drawn in. Do those match the colors  
18 which you drew in on your copy of the maps,  
19 and if so, what do they stand for?

20 A Are you asking me to compare HB-52 to Billstein  
21 Exhibit 142?

22 Q Deposition exhibit, yes.

23 (Brief pause.)

24 A There appears to be some discrepancy. I'll try  
25 billstein-cross-white

1 to highlight those.

2 Q If you'll just note those discrepancies in  
3 color on that exhibit so it's clear whoever  
4 would review that exhibit, what those changes  
5 are.

6 (Brief pause.)

7 A Okay, I've made the notations in Exhibit  
8 HB-52.

9 Q Do the colors show the different sources of  
10 water, in your opinion, that served those lands?

11 A This was a work map that delineated the different  
12 water supply sources that I defined at this  
13 particular point in time relative to the water  
14 sources that were serving different tracts in  
15 the Wind River Federal Irrigation Project. As  
16 we discussed before, we're talking about  
17 commingling of sources, and I tried to color  
18 code it to assist the delineation of those  
19 respective sources.

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1 Q (By Mr. White) And are annotations made on those  
2 maps showing what the color codes stand for from  
3 map to map?

4 A On most of them, yes.

5 Q If there are any glaring omissions, would you put  
6 them in, please?

7 THE SPECIAL MASTER: Weren't the omissions  
8 dealt with when you took care of the discrepancies  
9 earlier?

10 THE WITNESS: They should be reflective of  
11 what is on the exhibits, Your Honor.

12 THE SPECIAL MASTER: I just wonder if they  
13 are necessary again, Mr. White.

14 MR. WHITE: I just want to make sure it's  
15 accurate because it will be offered for purposes  
16 showing a document which Mr. Billstein reviewed  
17 and relied upon in reaching his opinion.

18 THE WITNESS: I don't see where the  
19 commingling of sources allowed me to reach a  
20 conclusion on irrigated lands.

21 Q (By Mr. White) Mr. Billstein, would you look  
22 at the lower right-hand portion of the legend on  
23 Exhibit 67, for example? While I recognize this  
24 is outside of the FIP project, isn't it true that

25 billstein - cross - white

1 you made, even within the FIPs, a water supply  
2 source determination which often contains  
3 commingling -- commingled courses of water?

4 A. That's true.

5 Q. Would you please check to make sure that the  
6 sources shown on HB-52 by color code are correctly  
7 indicated?

8 A. Okay.

9 MR. WHITE: Your Honor, at this point it might  
10 be a good time to take about a ten-minute break.  
11 There are a couple more exhibits that are similar.

12 THE SPECIAL MASTER: It's 11:15. If you can  
13 go another 15 minutes, then we could recess for  
14 lunch early, or are you still shooting to finish  
15 before noon?

16 MR. WHITE: I was going to try to finish by  
17 lunch. I would guess that I have another 45 minutes  
18 to an hour and a half. It's hard to guess, but  
19 that's what I expect to have on my cross.

20 THE SPECIAL MASTER: Well, if you think you  
21 can finish by 12:00 or 1:00, we can go ahead if  
22 you want to and we will give you a ten-minute break  
23 and come back in. Okay. Take a ten-minute recess.

24 (Thereupon a 30-minute recess  
25 (was taken.

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THE SPECIAL MASTER: Let's recess then until

1:30.

MS. SLEATER: That's fine, Your Honor.

(Thereupon a recess was  
(taken at 11:45 to  
(reconvene at 1:30.

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