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Trial Transcript, Vol. 59, Afternoon Session

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File 166
4417
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case # 4993

File # 166

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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
5/20 19 81
Margaret V. Hampton CLERK
..... DEPUTY

VOLUME 59

Afternoon Session

Tuesday, May 12, 1981

ORIGINAL

1 THE SPECIAL MASTER: We will come to order, please.

2 You gentlemen can leave your coats off, if you wish.

3 MR. WHITE: Your Honor, should I go ahead?

4 THE SPECIAL MASTER: Yes.

5 CROSS-EXAMINATION (RESUMED)

6 BY MR. WHITE:

7 Q Mr. Stetson, I hand you what has been marked for identifi-
8 cation as Plaintiff's Exhibit HS-2 and ask you if you can
9 identify that?

10 A Yes, this is a set of fourteen worksheets that we used in
11 our office to prepare the consumptive use requirements for
12 the adjudicated trust lands and the unadjudicated in-use
13 trust lands.

14 Q Mr. Stetson, I hand you what has been marked for identifi-
15 cation as Exhibit HS-6 and ask you if you can identify
16 that?

17 A Yes, this is a set of six worksheets used in determining
18 the unit consumptive rates for the Type VII idle lands.

19 Q I hand you what has been marked for identification as HS-3
20 and ask you if you can identify that?

21 A Yes, this is a copy of the tabulation of the adjudicated
22 trust lands showing the acres, unit diversion requirements,
23 annual diversion requirement units, consumptive use re-
24 quirements, annual consumptive use requirements and overall

25 stetson - cross - white



1 efficiencies.

2 THE SPECIAL MASTER: From your files?

3 THE WITNESS: From my testimony this morning, yes, sir.

4 THE SPECIAL MASTER: Okay.

5 MR. WHITE: For the information of the Court, this
6 material was given to us yesterday. I thought it might be
7 easier for the Court to review this than to review your
8 handwritten notes, Your Honor.

9 THE SPECIAL MASTER: Thank you.

10 MR. WHITE: It also makes it easier for us.

11 Q (By Mr. White) Mr. Stetson, I hand you what has been
12 marked for identification as HS-4 and ask you if you can
13 identify that?

14 THE SPECIAL MASTER: You did not get a 2.

15 MR. WHITE: That's the one I started with -- Oh, I'm
16 sorry, I haven't made copies yet, but I will.

17 A Yes, sir, this is a copy of similar data for the Type VII
18 irrigable lands, except that it does not reflect the
19 changes that we have made yesterday and last night.

20 Q (By Mr. White) Okay, would you please indicate what
21 changes should be made in there, please?

22 A Shall I make them right on this exhibit?

23 Q Sure, go ahead and do it. If you have an ink pen, that
24 would be appropriate. And describe for the record the

25 stetson - cross - white



1 changes that you're making, please.

2 A. All right, I'm making a change on the second sheet of that
3 table under Item 1(g), which is Dry (Pasup) Creek. The
4 acreage should be 185; the unit diversion requirement should
5 be 5.06, the annual diversion requirement should be 936,
6 the average annual net irrigation requirement should be
7 1.77, and the annual net irrigation requirement should be
8 357. That will also carry forward to the subtotals, chang-
9 ing the subtotals of acres from 856 to 851. It will change
10 the subtotals of annual diversion requirements from 4592
11 to 4470. It will change the subtotal of the net irrigation
12 requirements from 1609 to 1565. And on Sheet 3 of that same
13 Table 5 the term "grand total", first of all, I have
14 changed that to nonproject total, and then the figure of
15 3,503 should be changed to 3,498. The annual diversion
16 requirement of 19,418 should be changed to 19,296. The
17 annual net irrigation requirement should be changed from
18 6,798 to 6,754, and then I have added the term "grand
19 total" near the bottom of the table and added in the
20 figures for the totals for the Type VII lands so that under
21 acres it would be 8,002. Under annual diversion require-
22 ment it should be 48,380 acre-feet, and under net irriga-
23 tion requirement in acre-feet it should be 15,147.

24
25 END

stetson - cross - white



1 THE SPECIAL MASTER: Let me ask a question about
2 Muddy Creek on page 3 of this table. Your annual diver-
3 sion requirement is a thousand forty-seven acre-feet;
4 is that correct?

5 THE WITNESS: Yes, sir.

6 THE SPECIAL MASTER: And you have to divert that
7 much annually in order to get 366 feet of it onto the
8 net irrigation -- on to crop fields?

9 THE WITNESS: That's not the amount that goes onto
10 the field, that is the amount that is consumed by the crop
11 on the fields, so you've had conveyance losses prior to
12 reaching the field plus you have depercolation losses
13 and miscellaneous waste and run-off.

14 THE SPECIAL MASTER: Is this 366 then your evapo-
15 transpiration?

16 THE WITNESS: That's evapotranspiration, yes, sir.

17 THE SPECIAL MASTER: Almost could be called consump-
18 tive use?

19 THE WITNESS: Yes, sir.

20 THE SPECIAL MASTER: The rest of it goes back to
21 nature someplace.

22 THE WITNESS: That is consumptive use minus net
23 precipatation.

24 THE SPECIAL MASTER: All right, thank you.

25 stetson-cross-white



1 Q (By Mr. White) Mr. Stetson, I hand you what has been
2 marked for identification as HS-5 and ask you to identify
3 that, please.

4 A This is a similar table for the unadjudicated trust lands
5 that reflects the information on which I testified.

6 Q Mr. Stetson, let's return to HS-3, please.

7 A Yes, sir.

8 Q You told me previously that the value of 347 acres shown
9 for the Ray Canal on HS-3 --

10 A Yes, sir.

11 Q -- came from page 30 of Exhibit HS-1; is that correct?

12 A Yes.

13 Q And that you combined the tracks shown by proof Number
14 18-242 and 18-593 into one 17.9 acre parcels; is that
15 correct?

16 A Yes, sir.

17 Q And that's in Fort Washakie climatic zone?

18 A Yes, as I recall.

19 Q And you had a net irrigation requirement of 1.73 for that?

20 A Yes.

21 Q In developing your net irrigation requirement such as for
22 the 17.9 acre tract, did you use the same climatic data
23 as Dr. Mesghinna?

24 A Yes.

25 stetson-cross-white



1 Q Did you use the same evapotranspiration or potential ET
2 calculations as Dr. Mesghinna?

3 A Yes. All of these are calculated on the computer program
4 that he used.

5 Q Dr. Mesghinna indicated he used crop coefficients from
6 Midvale only. Did you, in doing your work, determine
7 crop coefficients from anyone of the following: LeClair,
8 the Wind River Indian Projects or other projects?

9 A No. I accepted what Dr. Mesghinna determined.

10 Q What growing season and number of days did you use for
11 each of the climatic zones? Starting with Diversion Dam,
12 if you would, please.

13 (Brief pause.

14 A It would vary with each crop.

15 Q Right. Do you have that reduced to tabular form so we
16 don't have to go through it line by line?

17 A Yes, it's set out on Dr. Mesghinna Deposition Exhibit 17.

18 Q Well, I couldn't get that in evidence before, so maybe you
19 can show it to me and I'll try it again.

20 (Witness complied.

21 (Brief pause.

22 Q Mr. Stetson, I hand you what's been marked for identification
23 informally as HS-7. Off the record.

24 (Off the record discussion.

25 stetson - cross - white



1 Q (By Mr. White) And ask you if that's the document you just
2 described?

3 A Yes, sir, it is.

4 Q Let's leave it over in the corner, you can look at it if
5 you need to.

6 What values did you use for effective precipitation
7 in establishing your net irrigation requirement for the
8 Diversion Dam climatic zone?

9 A I don't have the effective precipitation data with me.
10 It was the same as Dr. Mesghinna put into his computer
11 program for all of the calculations of net irrigation
12 requirements.

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1 A. (Continued) I have the net irrigation requirement tabula-
2 tion, but I do not have the effective precipitation.

3 MR. WHITE: Your Honor, I would ask that the witness
4 be directed to provide that information to us.

5 THE SPECIAL MASTER: I'm not sure I can grant that,
6 Mr. White. It was material that Dr. Mesghinna used in
7 his computation and this man used it and has said so, and
8 I think that that would be -- when Dr. Mesghinna comes up,
9 wouldn't that be the more appropriate time since it is not
10 really within the scope of his direct examination? He
11 came to the conclusion on net irrigation requirement but
12 he -- the precipitation factor was nothing he testified to
13 on direct.

14 MR. WHITE: Well, let me ask a couple of questions to
15 see where we come out.

16 THE SPECIAL MASTER: All right, if they are proper.

17 Q. (By Mr. White) Mr. Stetson, in developing net irrigation
18 requirement, didn't you use the value or effective precipi-
19 tation or a value for effective precipitation to reduce the
20 crop consumptive use?

21 A. Yes, the crop consumptive use is reduced by the effective
22 precipitation on a monthly basis for each crop in order to
23 derive the net irrigation requirement.

24 Q. And you used some specific values for effective precip,
25 stetson - cross - white



1 one value for each climatic zone, isn't that correct?

2 A That would be correct and it is slightly different from
3 crop to crop.

4 Q Right.

5 A Within that climatic zone.

6 Q Did your effective precip vary by crop?

7 A Yes, it depends upon the growing season of the crop
8 for one thing.

9 Q And it's those values which you used for effective precipi-
10 tation or effective precip which you do not have with you?

11 A I do not have those values with me. Those were part of
12 the computations through the computer module.

13 MR. WHITE: Your Honor, I would renew my request
14 for the witness to produce those values for effective
15 precipitation by climatic zone and by crop within each
16 climatic zone which he himself used in arriving at his
17 conclusions which he shared with the Court on direct-
18 examination.

19 THE SPECIAL MASTER: I thought you said earlier on
20 cross-examination, Mr. Stetson, that Dr. Mesghinna had
21 cranked these into the computer?

22 THE WITNESS: That's correct. I used the results
23 of his study.

24 THE SPECIAL MASTER: You used the results of his
25 stetson - cross - white



1 study?

2 THE WITNESS: He did all of the analysis of the --

3 THE SPECIAL MASTER: Precipitation?

4 THE WITNESS: -- of the precipitation in determining
5 consumptive use.

6 THE SPECIAL MASTER: And you used that?

7 THE WITNESS: As a result of his values that we've
8 been using, yes, sir.

9 THE SPECIAL MASTER: I'll stay put on my ruling at
10 the risk of being in error.

11 MR. WHITE: Your Honor, at this time I would move
12 to strike Mr. Stetson's testimony in that contrary to
13 Wyoming Rules of Evidence, he's unable to provide those
14 facts and data upon which his opinion is based.

15 THE SPECIAL MASTER: Well, your motions are over-
16 ruled. He's testifying and answering your questions
17 on cross-examination on those matters which were the
18 total scope of his direct-examination and you're welcome
19 to continue to ask him questions thereon.

20 Q (By Mr. White) Mr. Stetson, did you develop net irriga-
21 tion requirements on a parcel by parcel basis?

22 A Only insofar as the parcel may be in two climatic zones.
23 In other words, all parcels within the same climatic zone
24 would be given the same net irrigation requirement for

25 stetson - cross - white



1 the respective crops and ours is a weighted net irrigation
2 requirement for that particular crop pattern for that
3 particular climatic zone. But if in a particular unit
4 there was more than one climatic zone there would be a
5 different net irrigation requirement in each of the cli-
6 matic zones.

7 Q How did you determine the appropriate climatic zone for
8 each parcel?

9 A We took the climatic zone map and used that as a guide
10 in going through the HKM Associates' maps that show the
11 historic lands and then looked at the parcels, and if
12 the parcels fell in Fort Washakie, it was put in the
13 Fort Washakie, if it did not, it was put in Lander or it
14 was put in Diversion Dam or wherever it happened to
15 fall.

16 Q What net irrigation requirement did you use for alfalfa
17 in Diversion Dam?

18 A It would be 25.46 inches. Do you want it in acre-feet
19 per acre?

20 Q Yes, if you have it.

21 A It would be 2.12 acre-feet per acre for alfalfa.

22 Q Do you have the net irrigation requirement for each crop
23 within the cropping patterns by climatic station in
24 tabular form?

25 stetson-cross-white



1 A Yes, sir.

2 Q May I see it, please?

3 (Instrument handed to counsel by
4 (the witness.

5 (The instrument hereinafter des-
6 (cribed was identified as State's
7 (Exhibit HS-8.

8 Q (By Mr. White) Mr. Stetson, I hand you what has been
9 informally marked as HS-8 and ask you if that is the
10 document which you just described?

11 A Yes, it is.

12 Q Would you put that on the corner of your desk, too, please?

13 A Over there?

14 MR. WHITE: During the next break we'll make copies.

15 Q (By Mr. White) Let's go back to your net irrigation
16 requirements for the parcels that fell between or on
17 the border between two climatic zones.

18 A Yes.

19 Q How did you come up with the net irrigation requirement
20 for those multizone parcels?

21 A We would take the amount of the acreage in each zone
22 and its net irrigation requirement and multiply them
23 out to get the net irrigation requirement in acre-feet
24 per year. That is, if we had some in Dubois and some in
25 Burris, they would be calculated out using a separate

stetson - cross - white



1 net irrigation requirement units and we would convert
2 that to acre-feet per year and then aggregate those
3 for the net irrigation requirement for that particular
4 unit.

5 Q How did you determine the number of acres within each
6 zone?

7 A Took them off the maps. The maps show the acreages on
8 the parcels and by using the climatic zone boundaries as
9 a guide, we would go through and take those off in the
10 one zone and those off in the other zone.

11 Q So where you had a parcel falling on the border between
12 or a boundary between two zones, you planimetered the
13 amount of acreage in each zone?

14 THE SPECIAL MASTER: No, he didn't say that. He said
15 he took it off the map. He said nothing about planimeter-
16 ing.

17 MR. WHITE: Well, let's try one at a time then, Your
18 Honor.

19 THE SPECIAL MASTER: All right.

20 Q (By Mr. White) When you have that parcel that overlaps
21 two zones and you had one acreage value for the entire
22 parcel, how did you determine how many acres were in
23 one zone and how many acres were in the other zone?

24 A On those where the line -- a climatic zone boundary line
25 stetson - cross - white



1 went through a parcel, if most of the parcel was in one
2 zone, we put it in that zone.

3 Q So, did you upon any occasions split a parcel between cli-
4 matic zones?

5 A Oh, I'm sure that on some occasions if it was a large
6 parcel we probably divided it.

7 Q How, then, did you determine how many acres went in each
8 of the climatic zones?

9 A By adding all those figures up for that particular --
10 in other words, going over the map and adding them up,
11 parcel by parcel.

12 Q So, did you ever have occasion then to split a parcel and
13 determine the number of acres within that parcel that fell
14 within one of two climatic zones?

15 A I imagine if it was a large parcel, we would have had
16 occasion to do that; if there were small parcels, for
17 example, a 17 acre parcel and 15 acres was in one zone,
18 we would probably throw it all in that zone. We did
19 it as carefully as possible without getting, you know,
20 overkill on it.

21 Q For the 17.9 acre parcel which we have previously dis-
22 cussed as a portion of the Ray Unit adjudicated trust
23 lands, is it true that you used an average overall effici-
24 ency of 32.7 as shown on HS-3, the last column?

25 stetson - cross - white



- 1 A Did I use the 32.7 efficiency?
- 2 Q Yeah.
- 3 A In determining water requirements?
- 4 Q Yes.
- 5 A No, sir, I did not.
- 6 Q You did not?
- 7 A No, sir.
- 8 Q What part did the efficiencies play in your development
- 9 of your opinion?
- 10 A For the project lands which the Ray Unit would be -- in
- 11 which it would be included, we used the average annual
- 12 diversion requirement based on historic average for each
- 13 of those respective units and multiplied that by the
- 14 acreage to get the annual diversion requirement.
- 15 Q So, you determined that the 1.74 was an average annual
- 16 net irrigation requirement for the Ray Unit and multiplied
- 17 that times your acreage for what; how did you come up with
- 18 the 604 acre-foot annual net irrigation requirement?
- 19 A By multiplying the net irrigation requirement in acre-
- 20 feet per acre times the acreage.

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25 stetson - cross - white



1 Q (By Mr. White) Now, tell me in detail how you arrived at
2 the value 1.74 for the Ray Unit?

3 A For the Ray Unit we had 18 acres, which is that 17.9 in
4 the Fort Washakie climatic zone. We had 75 acres, another
5 parcel of 75 acres in the Fort Washakie zone, we had a
6 parcel of 171 acres in the Fort Washakie zone and 20 acres
7 in the Lander zone, which would have been that 120-acre
8 parcel or that's the last two parcels on the page. We had
9 63 acres in the Fort Washakie zone. We took each of those
10 acreage figures and multiplied them by the net irrigation
11 requirement for the Fort Washakie climatic station if this
12 were in the Fort Washakie zone.

13 The Lander climatic station was in the Lander zone,
14 so 20 acres was in the Lander zone. It was multiplied by
15 a slightly higher net irrigation requirement.

16 Q What was that, I've forgotten?

17 A 1.89 acre-feet per acre.

18 Q And the rest were 1.73?

19 A Yes, sir. And then we summed those up and got 603.5
20 acre-feet to which we rounded it to 604 acre-feet.

21 Q On direct examination you mentioned that you developed
22 certain costs associated with the development of the
23 lands; is that correct?

24 A Only for the Type VII lands.

25 white-cross-stetson.



1 Q Only for the Type VII. You developed no cost for the
2 adjudicated lands?

3 A No, sir.

4 Q Why was that?

5 A We weren't requested to, for one thing.

6 Q Any other reasons?

7 A That's reason enough for me.

8 Q Okay. With respect to your 604 acre-foot diversion require-
9 ment--or net irrigation requirement, excuse me, have you
10 divided that into the same sort of monthly values as did
11 Dr. Mesghinna?

12 A No. It could be done, but we didn't do it.

13 Q How would you do that?

14 A Go back to the monthly net irrigation requirements and
15 simply make five calculations instead of one calculation
16 for the year.

17 Q With respect to these 347 acres under Ray Canal, did you--
18 How did you assume the water was going to get to the Ray
19 Canal from those acres?

20 A I did not make any assumption of that. I assumed that if
21 it was an adjudicated right the water would be made avail-
22 able to it.

23 MR. WHITE: Excuse me one minute, Your Honor.

24 (Brief pause.)

25 white-cross-stetson



1 Q (By Mr. White) Mr. Stetson, would you take a look at Page
2 2 of Table-- Excuse me, Page 2, of HS-3, first line, East
3 Fork of the Wind River.

4 A. Yes, sir.

5 Q Where you show 259 adjudicated acres.

6 A. Yes, sir.

7 Q Isn't it true that all of those acres are in actuality
8 Type VII or idle lands?

9 A. Not insofar as I know.

10 Q Let me hand you what's been-- a copy of what's previously
11 been admitted as HB-137-10 and as you if-- Let me start over.
12 I'll tell you that's an exhibit that came in through Mr.
13 Billstein's cross, and ask you if it isn't true that all
14 of the adjudicated trust lands shown on that exhibit for
15 the North Fork and the East Fork of the Wind River are Type
16 VII or idle lands?

17 A. This exhibit or tabulation indicates that there's 267.3
18 acres in one parcel that's Type VII, and we're dealing
19 with 259 acres. I don't know if it's the same parcel.

20 Q Isn't it true--

21 A. I just don't that that's the same parcel.

22 Q What parcel is it? Is--

23 THE SPECIAL MASTER: He said he didn't know.

24 THE WITNESS: You gave me a figure that doesn't

25 white-cross-stetson



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match the figure I have. I don't know what parcel it is.

Q (By Mr. White) Let me see. Had you received any information at all from HKM with respect to the idle or currently in use status of these adjudicated trust lands?

THE SPECIAL MASTER: On the East Fork Wind River?

MR. WHITE: On any of the areas.

THE WITNESS: No.

Q (By Mr. White) No, you didn't?

A. No, I have received nothing from them on-- other than the acreage and the location of the adjudicated lands, and the tabulations which are now in Exhibit HS-1.

Excuse me, I do have one set of tabulations from them which I mentioned to you earlier, based upon photo number for adjudicated lands.

(Brief pause.)

Q. You see on Exhibit HS-3 the value of 166 adjudicated acres for Meadow Creek?

A. Yes, sir.

Q I hand you what's previously been admitted as HB-137-14, which also shows 166 acres adjudicated trust land on Meadow Creek, and ask you if--Go ahead.

A. Well, it's two pages, okay.

Yes, it shows a total of 166 under adjudicated trust column.

white-cross-stetson



1 Q Isn't it true that roughly a quarter of those lands are
2 in Type VII or idle status?

3 A. It indicates 37.8 acres in the column marked VII.

4 THE SPECIAL MASTER: Mr. White, would that indicate
5 to you, duplication of 37 acres included in some other
6 tabulation testified to?

7 MR. WHITE: I don't know, Your Honor. I suspect not.
8 In all honesty, I suspect not. I suspect the Type VII within
9 the adjudicated lands that are on all these HB-137 series
10 exhibits are not the Type VIIs that Mr. Stetson is testifying
11 about. I have no reason to believe that there is an overlap
12 there.

13 The only point I'm trying to make is lands included
14 within the adjudicated lands are, in significant part,
15 presently idle.

16 THE SPECIAL MASTER: Okay, thank you.

17 Q. (By Mr. White) Mr. Stetson, in HS-1, where is the page which
18 -- What is the page number, rather, which relates to the
19 269 acres on the east fork of the Wind River?

20 A. HS-1?

21 Q. Is that page fourteen?

22 A. Which one are you asking me about?

23 Q. East fork of the Wind River, the 259 acres.

24 A. Yes, I believe it's the east fork Wind, page fourteen.

25 white-cross-stetson



1 Q. On page fourteen, isn't it true that permit No. 8482 is shown
2 as one of the parcels which you considered?

3 THE SPECIAL MASTER: I wonder if that question is
4 appropriate. There has been nothing on his direct that
5 dealt with permits whatsoever.

6 MR. WHITE: I'm sorry, we're talking about certificates
7 rights here, Your Honor, adjudicated lands, the way they've
8 been identified in these various documents is by permit and
9 then by proof number, and if I could take it serially I'll
10 go from the permit number to the proof number. It's a valid
11 observation, I just --

12 THE SPECIAL MASTER: I think it can be appropriate.
13 Go ahead.

14 THE WITNESS: Could I have your question again, sir?

15 Q. (By Mr. White) Isn't it true that on both HB-137-10 and on
16 page fourteen of HS-1, permit No. 8482 appears?

17 A. Yes, it does.

18 Q. How about permit No. 3110E?

19 A. 3110E also appears on both.

20 Q. And permit No. 12979?

21 A. 12979 also appears on both of those exhibits.

22 Q. Isn't it true that with respect to permit No. 311E, nine
23 acres is shown on both exhibits?

24 A. Yes, sir.

25 white-cross-stetson



14-7-MR-vlb

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Q. And with respect to permit No. 12979, nine -- excuse me, ten acres is shown in both exhibits?

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A. Yes, as trust land.

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Q. Now, with respect to permit 8482, isn't it true that HS-1 shows a reduction in the total amount of land included within the certificate represented by that permit number?

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A. HS-1 shows a lesser figure, yes.

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1 Q For 8482, HS-1 shows 239 1/3 acres, is that correct, in
2 trust?

3 A That's correct.

4 Q And HB-137-10 shows 267 --

5 A That's correct.

6 Q -- acres, is that correct?

7 A That's correct, because the other 28 are indicated to be
8 fee.

9 Q All right, isn't it true that the parcels shown on Page 14
10 of HS-1 for the East Fork of the Wind River are the same par-
11 cels as are shown on HB-137-10 with the exception that Page
12 14 of HS-1 has reduced some amounts to account for fee
13 lands?

14 A The total acres match between the two and the permit num-
15 bers match between the two.

16 Q Isn't it true that all of the lands shown for those permit
17 numbers on HB-137-10 are shown as Type VII or idle lands?

18 A They are shown in the caption under a Roman Numeral VII on
19 HB-137-10.

20 Q Assuming that these lands shown for the East Fork on the
21 Wind River in the amount of 259 acres are idle lands, do
22 you know how the water will be taken from the East Fork of
23 the Wind River to these lands?

24 MR. CLEAR: Objection, Your Honor. He testified he
25 didn't look into this on direct examination.
stetson - cross - white



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THE SPECIAL MASTER: He testified it wasn't a part of his work.

MR. CLEAR: Yes, Your Honor.

THE SPECIAL MASTER: Objection, sustained.

Q (By Mr. White) On your Exhibit HS-1, Page 14, it is shown that there are three ditches which will -- or which apparently serve those lands, the Mozel Ditch, the enlarged Mozel Ditch, and the Snow Ditch, is that correct?

A. That's correct.

THE SPECIAL MASTER: Mr. White, did you call that HS-14?

MR. WHITE: I'm sorry, I meant to say Page 14 of HS-1. I'm sorry, Your Honor.

THE SPECIAL MASTER: I didn't-- which I still don't have a copy of.

MR. WHITE: I'm sorry, Your Honor. Why don't we take a break and we'll --

THE SPECIAL MASTER: We don't have to.

Well, let's take a break for ten minutes anyway. If you find one, fine; if you don't, don't worry about it. Let's take a short break, five minutes will do it.

(Recess, 2:22 p.m. to 2:44 p.m.)

THE SPECIAL MASTER: All right. We will come to order, please.

stetson - cross - white



1 Q (By Mr. White) Mr. Stetson, would you turn to Page 13 of
2 Exhibit HS-1, please?

3 A Yes, sir.

4 Q Isn't it true that on Page 13 of HS-1 the total of 17 acres
5 for Dinwoody Creek as it appears on HS-3 is all within the
6 certificated portion of Permit No. 17865?

7 A Yes, it appears to be, they are both 17 acre-feet.

8 Q And I direct your attention to what's been admitted as
9 HB-137-11 and ask you if you find the same permit number
10 there for the Phillips Ditch?

11 A 17865, yes, 17.2 acres.

12 Q And isn't it true that all 17.2 acres are under the column
13 Roman Numeral VII?

14 A Yes, that's correct.

15 MR. CLEAR: Your Honor, he's asking Mr. Stetson to
16 read from documents which he's testified he's never seen
17 before and --

18 THE SPECIAL MASTER: Well, he's handing him the docu-
19 ment and Mr. Stetson is reading from the document and he's
20 not indicating anything about the truth or -- he's merely
21 concurring, yes, that is what the document shows. If he
22 starts asking questions about that document, I think I
23 would listen to your objections, but I'm not going to ob-
24 ject now because, among other things, your objection comes

25 stetson - cross - white



1 about five documents late. This is his fifth time of doing
2 that, so let's let them in for whatever it is worth.

3 Q (By Mr. White) Mr. Stetson, would you turn to Page 9,
4 please, of HS-1?

5 A Crow Creek.

6 Q Does the information contained on Pages 9, 10 and 11, those
7 three pages of HS-1, constitute the facts and data upon
8 which you relied in determining that there were 2927 acres
9 of adjudicated trust lands for Crow Creek?

10 A Yes.

11 Q I hand you a copy of what has been marked for identification
12 -- excuse me, what's been admitted as HB-137-16 and which
13 is also annotated as Crow Creek and ask you whether the
14 same permit numbers which appear on Pages 9, 10 and 11 of
15 HS-1 also appear with the similar acreages for the entries
16 found on HB-137-16?

17 A Do you want me to check each one or are you asking me --

18 Q I would like to know whether the ones that appear in HS-1
19 also appear in 137-16?

20 THE SPECIAL MASTER: Of how many items? Because you
21 have about 20, 25 on each page.

22 Q (By Mr. White) Well, let's just do the first page.

23 A All right, 11566 permit number, 140 acres trust land ap-
24 pears on HB-- somebody has punched a hole in the number so

25 stetson - cross - white



1 I don't know the --

2 Q 16.

3 A Oh, that's --

4 Q 137-16.

5 A All right.

6 Permit 8242 is on that HB-16 as 110 acres of trust,
7 adjudicated trust, as it is on HS-1.

8 I don't see -- Oh, yes, one minute. Now, here's one
9 that has a different number -- no, I'm sorry, the same
10 number 4088-E . Permit No., 399 acres of trust lands is
11 on both of them. 3703-E, 105 acres of trust land is on
12 both of them. 7439 Permit No., 64 acres is on both of
13 them.

14 Q There's just two more.

15 A 15660 doesn't appear to be on the first page, maybe it's
16 on another -- yes, 15660 Permit, 81 acres, correct, is on
17 both of them. 8243 Permit No., 21 acres is on both of
18 them.

19 Q Okay. Thanks.

20 THE SPECIAL MASTER: What was the last one, 8243?

21 MR. WHITE: Yes, sir.

22 THE WITNESS: Yes, sir.

23 Q (By Mr. White) With respect to Page 9 of HS-1 as well as
24 HB-137-16, isn't it true that of the 140 acres shown for

25 stetson - cross - white



1 Permit 11566 as Certificate D, 134 of those are Class 7?

2 A. A hundred and --

3 THE SPECIAL MASTER: Do you know if any of those
4 lands are Class 7?

5 THE WITNESS: I don't think he means Class 7.

6 MR. WHITE: I mean -- I meant Type VII.

7 MR. CLEAR: Your Honor, I object. Again, he's asking
8 him to interpret. Now, he's asking him to interpret Mr.
9 Billstein's document.

10 MR. WHITE: I am not --

11 THE SPECIAL MASTER: If he is, I sustain the objection,
12 but that's what I want to know in asking: Do you know if
13 the percentage of those 140 acres are Type VII lands?

14 THE WITNESS: Well, all I can tell from the document
15 is that it shows 140 acres of adjudicated trust lands under
16 that permit number of which they have 133.7 listed under
17 Type VII, 1 acre under Type IV, and 5.3 acres under Type II.

18 THE SPECIAL MASTER: Is that your work paper you're
19 referring to?

20 THE WITNESS: No, I'm just referring to that --

21 THE SPECIAL MASTER: 137-16?

22 THE WITNESS: 137-16, yes, sir.

23 THE SPECIAL MASTER: All right, I'll sustain the
24 objection.

25 stetson - cross - white



1 MR. WHITE: Your Honor, I would like to say that the
2 purpose of this is not to examine the internal calculations
3 which Mr. Stetson made, but to really examine the assumption
4 which he's already testified that he made, and that is that
5 water could be made available without cost to these lands.
6 He was directed not to make that kind of a determination,
7 what cost might be involved, and the purpose of this is to
8 show through exhibits like HB-137-16, I'll give you a copy,
9 our copy, Your Honor, that are already in evidence through
10 Mr. Billstein, showing for adjudicated trust lands a break-
11 down by permit of the various types which Mr. Billstein
12 testified to as Type VII being identical lands. And the
13 purpose of the area of inquiry is to show that while it
14 may not have been Mr. Stetson's decision to ignore costs,
15 it's a decision that severely affects the weight and
16 credibility of the evidence.

17 THE SPECIAL MASTER: It does have a direct bearing
18 upon the conclusion of whether there is an economic
19 feasibility to so many PIAs that will be -- how much of a
20 water claim will be made. It does not have a bearing on
21 the totals of figures that Mr. Stetson has worked with on
22 HS-1. That is our issue. And the document in evidence
23 does speak for itself and constitutes an adequate basis
24 for you to challenge the assertion that there is no cost
25 involved. But this witness can hardly be a proper person



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to bring that out because it is already in evidence.
There is our problem.

* * * * *



1 MR. WHITE: Well, as is true with respect to most
2 cross-examination of experts, the legal terminology is
3 impeachment. It's not to say Mr. Stetson is not a good
4 engineer, it's to impeach the assumption that he was
5 forced to make, and I would ask the Court to allow us,
6 either to go forward in developing the number of Type
7 VIII acres within each of the lands which he includes
8 adjudicated lands.

9 THE SPECIAL MASTER: Yes, I will permit you to in-
10 troduce into evidence, if you wish, by your statement
11 from the HB-137 series of exhibits on the total number
12 of acres you have found in the trust lands that are
13 in fact idle lands.

14 MR. WHITE: Okay.

15 MR. CLEAR: Your Honor, I don't think that exhibit
16 shows that they are in fact idle lands.

17 THE SPECIAL MASTER: Well, you two, now if Mr. White
18 makes a misrepresentation, it's up to you to see that he
19 doesn't make it and it's permitted to go in the record.
20 I'm trusting you both as officers of the court that what
21 you say will be a valid reflection of what's in those
22 exhibits.

23 MR. WHITE: That's what Mr. Billstein said.

24 THE SPECIAL MASTER: All it takes is ten minutes in
25 the little computer and Mr. Salazar will help you, and



1 you can show how many acres of the entire trust land in
2 Crow Creek or if you wish, through the entire testimony
3 this morning, are in fact idle lands that are included
4 in the figures that Mr. Stetson has totaled and refers
5 to. That's a figure of evidence that should be -- is
6 for my concern, and I will permit that.

7 MR. WHITE: I would have to do that by offer of
8 proof, Your Honor, and I would like permission to come
9 back to that area --

10 THE SPECIAL MASTER: Very good.

11 MR. WHITE: -- after I've had a chance to do that.

12 THE SPECIAL MASTER: It will be granted, and you can
13 do that tomorrow, and it saves you having to do that on
14 your own case.

15 MR. WHITE: Could I have about three minutes so I
16 can get somebody started on this work, because I just
17 stumbled into it?

18 THE SPECIAL MASTER: Yes. We won't break up, we'll
19 just stay in session while we're here.

20 This doesn't go to acreage of water, it goes to costs.

21 MR. CLEAR: Yes, Your Honor, but I think Your Honor
22 understands our position.

23 THE SPECIAL MASTER: Oh, sure, and I sustained your
24 objection. This is not the man to take two and a half
25 days with to go through every acre when all he wants is a



1 total figure that he's challenging.

2 (Off the record.)

3 THE SPECIAL MASTER: All right. We're back on the
4 record, please.

5 Q (By Mr. White) Mr. Stetson, how did you determine the
6 5.32 average annual diversion for the Ray Unit as shown
7 in the second column of figures on HS-3?

8 THE SPECIAL MASTER: I thought that question had been
9 asked this morning and it had been answered this morning,
10 Mr. White. Wasn't it about the second question asked when
11 you began your cross?

12 MR. WHITE: I don't believe so, Your Honor.

13 THE SPECIAL MASTER: Well, go ahead anyway. It will
14 be fresh in your mind.

15 THE WITNESS: It was calculated by taking the historic
16 annual acreage irrigated and the historic annual quantity
17 of water diverted, averaging it for the years that we had
18 a record for it, which happened to be about eight years
19 of record.

20 It was dividing the acreage during that period by
21 the quantitative diverted during that period and you
22 would get 5.32 acre-feet per acre is the average diver-
23 sion over the, what you would get.

24 Q What values did you use for average acres irrigated and
25 stetson - cross - white



1 average acre-feet diverted for those eight years?

2 A The average acres irrigated was 6,611, the average acre-
3 feet diverted was 35,160.

4 Q And for what eight years were those values arrived?

5 A 1938, 1939, 1940, skip a year, we had 1942 and 1943,
6 skipped to 1946 and we had 1948 and 1949.

7 Q Why were those years in the late 30s and 40s selected?

8 A Because we didn't have data for the other years.

9 Q What is the source of that data?

10 A BIA records.

11 Q Do you have those records with you?

12 A Yes.

13 THE SPECIAL MASTER: Mr. Stetson, were those records
14 given to anybody during your deposition?

15 THE WITNESS: Not during my deposition.

16 THE SPECIAL MASTER: All right. I'm just trying
17 to ask a question that might save some time.

18 Q (By Mr. White) Go ahead. Do you have them with you?

19 A Yes, sir.

20 Q May I see them, please?

21 A You want them for Ray Unit?

22 Q Yes, for the eight years that -- If you've got the --
23 or records upon which you based your other diversion per
24 acre values, your average annual acre-feet per acre

25 stetson -- cross - white



16-5

1 values for the rest of the FIP's as well as Midvale and
2 LeClair, you might -- we might as well deal with those
3 now. You've got them all there?

4 A Yes, that was the file.

5 THE SPECIAL MASTER: Mr. White, I have a question,
6 and I'm asking it with the best professional motivation.
7 This witness has had his deposition taken twice, once in
8 Denver and once here. And if figures dealing with arriv-
9 ing at the duty of water from the years 1936 to '43
10 weren't asked from him during two depositions, what is
11 their relevance to the case now?

12 MR. WHITE: Well, Your Honor, as the witness, I'm
13 sure will confirm, at the time of neither of those
14 depositions had he embarked in enough detail on his
15 analysis of historic lands to even, to sketch out any
16 firm parameters, let alone give specific values.
17 And the reason the questions weren't asked and the infor-
18 mation wasn't provided was that he simply hadn't gotten
19 that far. It's not his fault, he just hadn't gotten
20 that far.

21 THE SPECIAL MASTER: Hadn't gotten so far as to
22 determine the 5.3 item on the Ray Unit, even though
23 certificates were based on historical data, the BIA
24 offers forty years ago?

25 stetson - cross - white



1 MR. WHITE: That's my recollection, Your Honor, and
2 I believe that's true, isn't it, Mr. Stetson?

3 THE WITNESS: We had considerable problems finding
4 records of FIPs, and I'm not sure exactly when we got
5 those records but it wasn't --

6 THE SPECIAL MASTER: Too long ago?

7 THE WITNESS: It wasn't early in the case, that's
8 for sure, it was late in the case.

9 THE SPECIAL MASTER: Thank you both, gentlemen.

10 Q (By Mr. White) Mr. Stetson, is the folder which I have
11 informally marked as HS-9, the compilation of records which
12 you just furnished me?

13 A Yes, sir.

14 Q Could you tell me, did you receive all these documents
15 or all these records which are included in the folder,
16 about an inch and a half thick folder, from the same
17 source or from a variety of sources?

18 A They probably came from -- if they were FIPs, they would
19 have come from the BIA, probably at the Fort Washakie
20 office, or it could have been actually obtained through
21 some searches up there by HKM's associates and sent to
22 us by them. I couldn't tell you exactly who furnished
23 them to us.

24 The data on LeClair and Midvale came from records of
25 stetson - cross - white



1 the Department of the Bureau of Reclamation from Midvale
2 and of the LeClair Irrigation District.

3 MR. WHITE: Excuse me, Your Honor, I think I have a
4 table and if we use it it may save us a half an hour or
5 so of questions.

6 THE SPECIAL MASTER: All right. What is the yellow
7 paper entitled that is on the top of that sheet of docu-
8 ments that you just --

9 MR. WHITE: I think that is HS-9. Is that it, Tom?

10 THE WITNESS: HS-9.

11 (Brief pause.

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1 Q (By Mr. White) Mr. Stetson, I hand you what has been
2 marked for identification as HS-10. Can you identify
3 that?

4 A. Yes, that's a table showing the historic average annual
5 irrigated acreage and the historic average annual diver-
6 sions in acre-feet and the computed average diversion in
7 acre-feet per acre for each of the FIPs and Midvale Irri-
8 gation District and LeClair Irrigation District along with
9 footnotes that give the periods of records used.

10 Q Does that Exhibit HS-10 correctly and accurately set forth
11 the values which you used as well as the results for your
12 calculation of diversions in acre-feet per acre?

13 A. Yes, sir.

14 Q And do the first two columns Average Acres Irrigated and
15 Average Acre-feet Diverted correctly reflect the conclu-
16 sions and results which you reached from the raw data that's
17 contained in HS-9?

18 A. Yes, sir.

19 MR. WHITE: We'll make a copy of this, too, Your Honor.

20 THE SPECIAL MASTER: Do you intend to offer a group
21 tonight or are you waiting?

22 MR. WHITE: When we're done with cross, we'll offer
23 the whole bunch for different purposes, Your Honor.

24 THE SPECIAL MASTER: When you're all done. All right.

25 stetson - cross - white



- 1 Q (By Mr. White) Mr. Stetson, do you know where within the
2 Ray Unit the 347 acres, which are shown on HS-3, are
3 located?
- 4 A The 347 acres?
- 5 Q Yes, sir.
- 6 A I know where they are by photo number.
- 7 Q Okay, can you -- Are you finding that information by
8 reference to an exhibit that we have already marked?
- 9 A Yes.
- 10 Q Is that HS-2?
- 11 A Yes, HS-2.
- 12 Q Okay, what are those photo numbers?
- 13 A Part of it is on 13-104, 14-67, 15-21 and what I believe
14 is 14-69.
- 15 Q And those photo numbers are shown on what has been used
16 for illustrative purposes as United States Exhibit WRIR
17 C-276?
- 18 A Yes, sir.
- 19 Q Are all of those lands served, according to your informa-
20 tion, out of the Ray Canal?
- 21 A Yes, it would indicate that they are.
- 22 Q Do you know where the headgate of the diversion facilities
23 for the Ray Canal is located?
- 24 A I would have to have a map or the aerial photo to --
25 stetson - cross - white



1 Q Isn't it true that the diversion requirement for a parti-
2 cular parcel of land is a function of the length of the
3 canal or ditch from the source of water to the land itself
4 or at least it is in part a function of that distance?

5 A Yes, it is, especially if it is an unlined canal.

6 Q Did you make any determination -- Well, let me back up.
7 Strike that, please.

8 Isn't it true then that the diversion requirement for
9 a parcel of land towards the end of an unlined canal is
10 much higher than a diversion -- than the diversion require-
11 ment for a parcel of land close to the diversion facilities?

12 A If the conveyance losses per mile are significant, yes, the
13 longer the water had to travel through the canal, the more
14 water would be lost to reach the lower lands.

15 Q Isn't it true that the aerial photograph numbers which you
16 gave me stretch over an area approximately 15 miles or more
17 in length? Do you want to read those back again?

18 A Yes, that's true, approximately.

19 Q And isn't it true, however, that you used the same diver-
20 sion requirement for each of those parcels?

21 A That's correct.

22 Q What investigation, if any, did you make to determine that
23 the diversion requirement would remain constant among those
24 parcels throughout that length of canal? For the purposes

25 stetson - cross - white



1 of that question, let's assume 15 miles.

2 A. That's just basic to the calculation. We are calculating
3 the average diversion unit per acre within that unit. We
4 are not attempting to calculate it for each little parcel.

5 Q So then, you have not calculated the diversion requirement
6 for each parcel, is that correct?

7 A. We have calculated an average unit diversion for the whole
8 unit, divided that by the acreage. So that's the average
9 requirement in that unit, and that's as far as we've gone
10 with it.

11 Q Do you know -- Let me ask you -- Strike that.

12 Let me ask it this way: What is the variation of
13 diversion requirements in acre-feet per acre within -- or
14 for the parcels within the Ray Unit, if you know?

15 THE WITNESS: Could you read that question back?

16 (The above question was read back
17 (by the reporter as follows:
18 ("Q: Do you know -- Let me ask
19 (you -- Strike that. Let me ask it
20 (this way: What is the variation
21 (of diversion requirements in
22 (acre-feet per acre within -- or
23 (for the parcels within the Ray
24 (Unit, if you know?")

21 A. Do you mean which parcel would have the least unit rate of
22 diversion versus which parcel would have the greatest unit
23 diversion rate?

24 MR. WHITE: (Nodding head affirmatively).

25 stetson - cross - white



- 1 A. I don't know.
- 2 Q. You don't know?
- 3 A. No.
- 4 Q. Do you know the values, the upper and lower values of the
5 unit diversion rate or diversion requirement?
- 6 A. No.
- 7 Q. How did you determine that the parcels which comprise the
8 347 acres which you listed under the Ray Unit are, in fact,
9 located within the Ray Unit?
- 10 A. How do I know they are located in the Ray Unit?
- 11 Q. Yes.
- 12 A. Because they appear on the maps.
- 13 Q. Okay, what maps are you referring to?
- 14 A. The maps made from the aerial photos, the maps furnished
15 by HKM Associates on historic lands.
- 16 Q. Do you have a copy of those maps with you?
- 17 A. There is a copy here, yes.
- 18 Q. Could I see it, please?
- 19 (Off-the-record discussion.)
- 20 A. We would have to go by the photo numbers.
- 21 Q. (By Mr. White) Okey doke. Let's take the 17.9 acres in
22 the Ray Unit, would that be convenient?
- 23 A. That would be on 13-104.
- 24 Q. Okay.
- 25 stetson - cross - white



1 A. And there are two parcels. I may need the other -- We
2 would have to look over this map until we found a parcel
3 with a triangular symbol in it, and that would be an ad-
4 judicated -- a parcel of an adjudicated trust land.

5 Q. Mr. Stetson, do you know whether or not the maps which you
6 are referring to are simply reduced versions of the over-
7 lays from the aerial photography introduced through Mr.
8 Billstein, having been Exhibit Nos. 56, C-56 through 136?

9 A. I don't know the numbers, but they are.

10 Q. They are? Okay. On those overlays there was a red shading
11 for adjudicated lands --

12 A. I have never --

13 Q. You have never seen those overlays --

14 A. Seen those, no, sir.

15 Q. Okay.

16 A. All I have is this reduced version of it.

17 Q. Well, show me how you would find the two parcels, the ten
18 acres and the 7.9 acre parcels.

19 A. Well, I would have to go around here until I find the
20 little triangle.

21 Q. Okay.

22 A. We did not do this. We were furnished a list of the par-
23 cel numbers or the photo numbers and the acreages, and we
24 made the calculations from that.

25 stetson - cross - white



1 Q Well, let me make -- I may have misunderstood your answer
2 then. Is it true that you made no determination whether or
3 not these acreages were within or without the FIPs, you
4 simply relied on information provided to you?

5 A That's correct.

6 Q Okay. I'm sorry.

7 A That's correct.

8 THE SPECIAL MASTER: Okay. That's fine.

9 MR. WHITE: Your Honor, I would move to strike Mr.
10 Stetson's testimony with respect to --

11 THE SPECIAL MASTER: For having gone to a map?

12 MR. WHITE: -- adjudicated lands.

13 THE SPECIAL MASTER: Oh, all of it?

14 MR. WHITE: Well, maybe I'd better ask some more
15 questions before I do that.

16 THE SPECIAL MASTER: I would be happy to strike the
17 answer, which I think was the case of a mistake. Perhaps
18 it was my fault for not catching it there when he said,
19 "I knew these were in the Ray Unit because I've got it on
20 the map." That's been qualified. He got it from the
21 material presented to him which was laid out from their
22 work, and that is appropriate to strike that answer.

23 * * * * *

24

25



1 Q. (By Mr. White) Now, Mr. Stetson, isn't it true that with
2 respect to the other acres shown in the first column of
3 values on both pages of HS-3, you yourself ... no personal
4 knowledge of whether or not those lands are actually
5 included within the irrigation projects, the districts or
6 the drainage areas which are shown on HS-3?

7 MR. WHITE: Your Honor, do you need a copy of HS-3?

8 THE SPECIAL MASTER: I have it here someplace, Sandy.
9 I want to have the question read back too when we get
10 through shuffling papers.

11 THE WITNESS: Could I take a moment?

12 MR. WHITE: Yeah.

13 THE SPECIAL MASTER: Do you want to take a break, Mr.
14 Stetson?

15 MR. WHITE: We need to check with a consulting witness,
16 Your Honor.

17 Off the record.

18 (Off-the-record discussion.)

19 THE SPECIAL MASTER: May I hear the question again,
20 please?

21 (Thereupon, the following question
22 (was read back as follows:
23 ("Q. Now, Mr. Stetson, isn't it
24 (true that with respect to the
25 (other acres shown in the first
(column of values on both pages
(of HS-3, you yourself have no
(personal knowledge of whether or

stetson - cross - white



1 (not those lands are
2 (actually included within
3 (the irrigation projects, the
4 (districts or the drainage
5 (areas which are shown on
6 (HS-3?"

7 Q. (By Mr. White) Let me amend the question, Mr. Stetson,
8 to refer to all three pages. I think I said two pages,
9 there are, in fact, three pages.

10 A. The answer is no, that is not true.

11 Let me explain. We were furnished the tabulations of
12 the adjudicated lands by drainage basin and by photo
13 number.

14 Q. That's HS-1, is that correct?

15 A. Yes.

16 Q. Okay.

17 A. We then had to go through, or our people, on the maps,
18 to plot them to make sure which climatic zones they were in.
19 So in doing so they went through them on the maps and
20 would have noticed if they were inside or outside of the
21 FIPs, because that's the way we tabulated the data, and
22 that's the way we made our calculations of consumptive use
23 and water requirements.

24 Q. So you assumed that the FIP boundaries shown on those maps
25 are correct, right?

A. Yes.

statson - cross - white



- 1 Q. What about on page two and three of Exhibit HS-3, where acres
2 are shown by what appeared to be drainage units such as
3 the east fork of the Wind River?
4 A. Those would be checked on the maps to see which climatic
5 zone they were in as well as on the -- those maps as well
6 as our topographic maps, our own USGS maps.
7 Q. Then you made an independent determination or confirmation
8 that, let's take 259 acres for the east fork Wind River,
9 that all of these acres are located within that drainage
10 unit?
11 A. I'm not sure I can say that. We looked at the maps that
12 HKM furnished for that, covered east fork Wind River and
13 covered those particular aerial photos and those particular
14 parcels, but we did not independently check HKM's map, if
15 that's what you're asking.
16 Q. Well, let me ask another question. When it says, east
17 fork Wind River for 259 acres, does that mean 259 acres are
18 served out of the east fork of the Wind or that 259 acres
19 lie within the drainage basin of the east fork of the Wind?
20 A. I think in this instance it may mean both. That would be
21 the drainage basin served by them.
22 Q. Are you aware --
23 A. It specifically refers to the source of water, but some
24 of the lands could be in -- some could be over a slow
25 stetson - cross - white



18-4-MR-vlb

1 divide.

2 Q. But where it says east fork or Dry Creek or any of the
3 entries there, it indicates the source of the water which
4 services the acres shown in the first column of numbers?

5 A. It's from that stream or the drainage basin, yes.

6 Q. Now, I'm not sure I understand the answer about
7 confirmation of the values given you. Let me ask what may
8 be a repetitive question, if it is, I apologize.

9 Did you independently confirm that the 259 acres for
10 east fork of the Wind River that are listed under east
11 fork of the Wind River in HS-3 are actually served or were
12 actually served out of the east fork of the Wind River?

13 A. Let me just check that a minute, please.

14 (Brief pause.

15 A. Well, I don't have that photo map here so I can't tell.

16 Q. Well, they're not in evidence, Mr. Stetson, I've got
17 another set here that you might want to look at that might
18 be more complete.

19 (Brief pause.

20 A. I'm looking for photo 628 and if -- Yours seem to be in the
21 same order mine are, in numerical order, but it isn't here.
22 So I can't tell you what the answer to your question is.

23 In checking them for climatic zones, though, we would
24 have looked at the maps and the maps would show where they
25 stetson -cross - white



1 were shown from.

2 Q. What photographs are you looking for, six --

3 A. 6228.

4 Q. Is the same thing true with respect to a number of acres
5 shown as being served out of the other sources which are
6 shown on pages 2 and 3 of HS-3?

7 A. Is what the same thing true?

8 Q. That you --

9 A. We would have --

10 Q. -- examined the maps provided to you by HKM and by those
11 maps verified that as part of your climatic zone work,
12 that the acres were in fact served from the sources shown
13 on pages 2 and 3 of HS-3?

14 A. We would have verified what climatic zone it was in.
15 We would not particularly attempt to verify which ditch
16 served which parcel because we were doing nothing on these
17 parcels, we were doing no engineering work cost estimates
18 on them. We were simply checking the acreage for
19 climatic zones in order to determine the water requirements,
20 that's all we did with the adjudicated lands was
21 determine water requirements.

22 Q. Did you, at any time, have occasion to refer to the
23 certificates themselves?

24 A. No, sir.

25 stetson - cross - white



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(Brief pause.)

Q. Mr. Stetson, would you examine the tabular pages beginning with page five through page thirty-six on Exhibit HS-1, and determine whether all the facts and data upon which you relied concerning the location and acreage of the adjudicated lands is contained in that.

And I should say the question is prompted by my going through HS-3 and being unable to find coverage for all the lands shown there.

THE SPECIAL MASTER: Would you --

Q. (By MR. White) If it's complete, just tell me it's complete.

THE SPECIAL MASTER: Would you be good enough to read the question to me, please?

(Thereupon, the following question was read back as follows: "Q. Mr. Stetson, would you examine the tabular (pages beginning with page five through page thirty-six on Exhibit HS-1, and determine whether all the facts and data upon which you relied concerning the location and acreage of the adjudicated lands is contained in that.")

THE WITNESS: I think that would take considerable time to do. I have to go through and check all the acreage for each drainage area. For example, starting with stetson - cross - white



1 Big Horn, it shows a hundred acres of trust land on page
2 five of Exhibit HS-1. On the -- On Exhibit 3 it shows 100
3 acres on main stem Big Horn. I can, if you want, go
4 through them page by page.

5 Q. (By Mr. White) No, why don't I wait until tomorrow when
6 I have the little charts back with me.

7 A. One other comment on that. Attached to HS-1, the first two
8 pages is the tabulation summarizing the acreage of, for the
9 FIPs, and, in other words, the project lands and non-
10 project lands. Those figures check with HS-3.

11 So the only way I could verify, when you say you can't
12 find them all or whether they're all there, we'd have to
13 go through them.

14 Q. I'll ask the specific questions.

15 A. All right.

16 Q. Mr. Stetson, would you get out HS-4, which I believe is
17 your table V for Type VII irrigable lands. Is that correct?

18 A. Yes, sir.

19 Q. These are the lands about which Mr. Waples testified;
20 isn't that correct?

21 A. Yes, sir.

22 Q. Do you know the parcel numbers of the lands about which
23 Mr. Waples testified which are included within the 1775
24 acres shown on HS-4 for the Ray Unit?

25 stetson - cross - white



- 1 A. Do I know the parcel numbers for those 1775 acres?
- 2 Q. Yes, sir. Do you have that information with you? If you
- 3 have it in tabular form it might make it a lot easier.
- 4 (Brief pause.)
- 5 A. By parcel number, do you mean field number, --
- 6 Q. Yes.
- 7 A. -- photo number and field number?
- 8 Q. Well, we talked about parcel number, but field number is
- 9 probably synonymous. It would be like a number like 38-1
- 10 or 12-7 with an X.
- 11 It should have an X.
- 12 MR. ECHOHAWK: It should have an X.
- 13 Q. (By Mr. White) An X associated with it.
- 14 A. I note photo No. 13-104 with a parcel like 1-11X through
- 15 about 1-19X, that's part of them. Some are on photo
- 16 14-67 with numbers like 2-33X through about 2-41X --
- 17 I'm sorry, I was in the wrong column.
- 18 On photo 14-67, parcel -- field No. 142X through
- 19 163X and on 14-71, field No. 1-1X through 1-9X. Some are
- 20 on photo 15-19, 1-10X. Some are on 15-21, 1-28X through
- 21 1-31X.
- 22 Q. Do you have that information in tabular form --
- 23 A. Yes, sir.
- 24 Q. -- with you for each of the acreage entries in the first
- 25 stetson - cross - white



1 numerical column on HS-4?

2 A. Yes. It wasn't prepared for that purpose, but it happens
3 to be on this summary table that I have.

4 Q. Could I see that, please?

5 (Witness complied.)

6 THE SPECIAL MASTER: It is therefore on all of the
7 Type VII irrigable lands set up in HS-4; is that right?
8 Go through all of them from Wind River Irrigation Project
9 down through Midvale and down through LeClair and into
10 non-project lands?

11 THE WITNESS: All of those shown on HS-4 are on those
12 worksheets as well as some that aren't shown on HS-4.

13 Q. (By Mr. White) Mr. Stetson, I hand you what's been
14 informally marked as HS-11 and ask you whether or not
15 that compromises -- comprises, excuse me, the eight pages
16 numbered one through eight which --

17 A. Yes, it's sheets 1 through 8 of eight sheets.

18 MR. WHITE: Your Honor, if I might stay up here, we
19 only have one copy, so I could ask the witness a couple
20 questions from the stand?

21 THE SPECIAL MASTER: All right. If it's agreeable
22 with the witness.

23 THE WITNESS: Yes.

24

25

stetson - cross - white



1 Q Mr. Stetson, we are both looking at HS-11. I wonder if
2 you could describe for me how you would determine the par-
3 cels within the 1775 acres shown for the Ray Unit on HS-4
4 by reference to HS-11?

5 A Because on HS-11 we have tabulated each parcel of land of
6 Type VII that we analyzed by aerial photo number, by field
7 number, by climatic zone, and there's some other data on
8 here, such as present value returns and present value costs,
9 whether it is feasible or not by the major irrigation pro-
10 jects, the major stream systems and their tributaries. And
11 if you follow down the column of Ray Unit on each of these
12 sheets, you will find some entries, which means that that
13 particular field is part of that total acreage. That's
14 what that shows.

15 Q Okay.

16 THE WITNESS: Excuse me.

17 THE SPECIAL MASTER: That's all right.

18 MR. WHITE: Do you want to look at this?

19 THE SPECIAL MASTER: No. Does the total of that par-
20 ticular column tab for the Ray Unit show 1775 as his con-
21 clusion?

22 THE WITNESS: It may not because I don't believe we
23 ran totals on these. For one thing, some of these were
24 determined to not be --

25 stetson - cross - white



1 THE SPECIAL MASTER: Not be usable?

2 THE WITNESS: Not be qualified.

3 THE SPECIAL MASTER: Yeah, right. Very good.

4 THE WITNESS: So they might be a larger total than the
5 1775, depending on which unit it is in.

6 Of the qualified acreage on there, it should match
7 the 1775.

8 THE SPECIAL MASTER: I have a suspicion tomorrow, if
9 it doesn't, we'll know about it.

10 (Laughter in the courtroom.)

11 MR. WHITE: Your Honor, can we take about, oh, a five-
12 minute break? I'll make a copy of one page so we can talk
13 about it.

14 THE SPECIAL MASTER: All right.

15 MR. WHITE: And we'll try to make a complete copy of
16 it by tomorrow.

17 (Recess, 3:44 p.m.)

18 THE SPECIAL MASTER: Will it facilitate matters, Mr.
19 White, if we were to adjourn now for today so you can make
20 copies and get them back into the possession of the witness
21 today for tonight?

22 MR. WHITE: Yes, sir.

23 THE SPECIAL MASTER: Any objections to that?

24 MR. CLEAR: No, Your Honor.

25 THE SPECIAL MASTER: Hearing none, it is so ordered.



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We are in adjournment until tomorrow morning at 9:15.

(Proceedings recessed, 3:45 p.m.)

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INDEX TO EXAMINATION

PAGE

WITNESS: THOMAS M. STETSON

Direct Examination	By Mr. Clear	5208
Voir Dire Examination	By Mr. White	5219
Direct Examination Resumed	By Mr. Clear	5220
Cross-Examination	By Mr. White	5268

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

INDEX TO EXHIBITS

IDENTIFIED REC'D WITHDRAWN

U. S. WRIR C-276 5224
HS-1 5279
HS-2 5290
HS-3 5290
SH-4 5291
HS-5 5294
HS-7 5295
HS-8 5301
HS-9 5325
HS-10 5327
HS-11 5342


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9 Roncalio, Special Master Presiding, in stenotype; that
10 the foregoing pages, numbered 5206-5345, inclusive, con-
11 stitute a true, correct and complete transcript of our
12 stenographic notes as reduced to typewritten form under
13 our direction.

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

17 Dated this 12th day of May, 1981.

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