

6-19-1981

Trial Transcript, Vol. 83, Morning Session

Frontier Reporting Service

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

Recommended Citation

Frontier Reporting Service, "Trial Transcript, Vol. 83, Morning Session" (1981). *Bighorn*. 241.
<https://digitalcommons.law.uidaho.edu/bighorn/241>

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

File 190
4441
Box 12

Case # 4993

File # 190

4441

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

IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT

WASHAKIE COUNTY, STATE OF WYOMING

IN RE:

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

)
)
)
) Civil No. 4993
) FILED _____
) 6/23 1981
) Margaret V. Hampton CLERK
) _____ DEPUTY

VOLUME 83

Friday, June 19, 1981

ORIGINAL

409 West 24th Street
Cheyenne, WY 82001
(307) 635-8280

Frontier Reporting Service



201 Midwest Building
Casper, WY 82601
(307) 237-1493

APPEARANCES

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

FOR THE STATE
OF WYOMING:

HALL & EVANS
2900 Energy Center Building
717 17th Street
Denver, CO 80202
BY: MR. MICHAEL D. WHITE, Special
Assistant Attorney General

FOR THE UNITED STATES
OF AMERICA:

MR. JAMES CLEAR
Attorney at Law
Land and Natural Resources Division
Department of Justice
P.O. Box 7415
Benjamin Franklin Station
Washington, DC 20044

and

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

FOR THE SHOSHONE and
ARAPAHOE TRIBES:

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

FOR THE PRIVATE
WATER HOLDERS:

MR. JEFFREY DONNELL
Attorney at Law
P.O. Box 552
Worland, WY 82401

CLERK TO THE
SPECIAL MASTER:

MR. LEO SALAZAR
Attorney at Law
701 Rocky Mountain Plaza
Cheyenne, WY 82001



1 THE SPECIAL MASTER: We'll come to order, please.
2 We wish to announce the schedule, the final schedule,
3 and this is after due consideration of everybody's
4 interest, for the remainder of the summer and fall. We
5 will adjourn today, July 19th and we will not meet --
6 June 19th, I'm sorry, and we will not meet the week of
7 June 22nd or the week of June 29th. We will resume
8 hearings on Thursday, July the 9th at nine o'clock in
9 the morning for Thursday and Friday session that week
10 in court. We will then resume on Thursday, July 16th
11 for two days of hearing that work week.

12 The usual Cheyenne activities of the last two weeks
13 of July will mean no hearings on the week of the 20th or
14 the 27th. We have tried to hold August for family and
15 we are going to continue to, so we flip August without
16 hearings through the entire month.

17 We next resume hearings on Tuesday, September 1st,
18 through Friday the 4th and we then resume hearings on
19 Tuesday, September 8th through Friday the 11th. We will
20 not -- oh, what the hell did I do, I made a mistake,
21 I beg your pardon.

22 MR. WHITE: I have a trial the week of the 7th,
23 Your Honor.

24 THE SPECIAL MASTER: No, no, I promised it to you.
25 Please correct the record to show that when we adjourn :



1 on Friday, September 4th, we will reconvene on September
2 the 21st, and that's the accommodations we've made for
3 everybody concerned and Mr. Sachse, the Indian Tribes as
4 well as with others. So, we resume on September the 21st.
5 That will be a Monday, September 21st, when we resume
6 through Thursday the 24th only. We will not be in session
7 Friday, September the 25th.

8 We will then meet on Monday, the 28th of September
9 through Friday, October the 2nd unless, of course, there's
10 some settlement, amicability or agreement to shorten up
11 the sessions. I will tell all Counsel when that takes
12 place that these dates can be telescoped or allow the
13 State more time than they have now or the State can allow
14 more time for redirect than we think we may have now or
15 we can proceed with the Shoshone National Forest before we
16 think we are going to now; all of these possibilities we
17 must allow for.

18 So after we convene on, was it October 20th -- after
19 we convene on October the 5th -- We go through October
20 2nd, we resume on October 5th through the 9th of that
21 week. We resume on Columbus Day -- I can't come to work
22 on Columbus day. We resume on Tuesday, October 13th
23 through the 16th, and we will resume on -- We will resume
24 on Monday, October 19th through the 23rd, and we will
25 plan a work week beginning Monday, October 26th through



1 through Friday, October 30th. That should pretty much
2 bring this case practically ready for submission, I hope.

3 MR. WHITE: Your Honor, in all candor, I got to say
4 I don't think there's any way.

5 THE SPECIAL MASTER: I don't think we will either,
6 we'll all die along about October 22nd, be exhausted,
7 but let's give it a fair shot.

8 MR. WHITE: I meant we would be done.

9 THE SPECIAL MASTER: I think we'll be done, too,
10 frankly. This reminds me of combat, if you permit an
11 old man to reminisce a little bit. You plan a hell of a
12 campaign. Man, you got artillery lined up so you can't
13 see, you got some Air Force, you got some doggies, you
14 got this, you got that, and you start a fire fight and
15 it's over and two days later you got 110 prisoners, so
16 we don't know what we got here, but we got to plan this,
17 we just got to plan it this way.

18 MR. WHITE: We came from different wars, it always
19 took us longer than we thought.

20 THE SPECIAL MASTER: Anyway, I hope to God this is
21 over by the 19th of October. We've got it scheduled
22 with the taking of evidence. That takes us into
23 November, and I've got exactly the same thing with
24 November, with the exception of Veteran's Day on the 11th
25 and Thanksgiving on the 26th. We plan to begin Monday,



1 of each week of the five weeks in November for the
2 necessity of taking of evidence. If the case is over in
3 early October, we will then schedule maybe a week, Mr.
4 Donely -- Donnell, we'll schedule beginings, say, a
5 Monday in Worland and there'll be adequate time because
6 Counsel knows that coming up towards the end of the case,
7 for a few days of effect evidence and a few days of
8 arguments on the Doctrines of Estoppel or equitable
9 apportionment, or any other new concepts of new equity
10 that might creep into this lawsuit, upon which arguments
11 would be welcome.

12 That being the submission of the case, I hope by the
13 end of November, we leave December through Friday,
14 December 18th, for requests for final hearings, requests
15 for reconsiderations of a particular matter, a request
16 of some kind. Who knows what emergency there might be,
17 might require some time. The case, or the final on
18 BLM might be extra.

19
20
21
22
23 * * * * *



2-1 mn
sm1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. CLEAR: Your Honor, you said all of November except Veterans Day and Thanksgiving?

THE SPECIAL MASTER: Do you want the dates?

MR. CLEAR: No, I wonder, you mean we get Thanksgiving Day off or a couple days for it? Thanksgiving at Little America isn't too agreeable.

THE SPECIAL MASTER: You are not going to come back on the 27th, so let's omit November 27th, so we know you got Thursday, Friday and Saturday to go out of town. Veterans Day falls smack on Wednesday, so stay in Cheyenne that day and we will see if we can't do something social-able for all of us.

MR. WHITE: Your Honor, I'll waive Veterans Day if you will.

THE SPECIAL MASTER: Does anybody have any objections to going through that day? I sure don't.

MR. WHITE: No.

THE SPECIAL MASTER: All right, we will go the week of the 9th; we'll go all of the way through.

MR. WHITE: May I also suggest we consider the week after Frontier Days, which would be the 27th of July. We originally set that earlier in the week.

THE SPECIAL MASTER: That's up to you gentlemen. July 27th doesn't bother me one iota, and I will be glad to work July 27th, 28th, 29th and 30th, if you want to.



1 MR. WHITE: I think that would give some possibility
2 of the Tribes finishing up their case before September.

3 THE SPECIAL MASTER: I would suspect Mr. Sachse would
4 welcome that. We got this August stuff coming up; we've got
5 a week, two weeks of real burdens. We have no problem.

6 All right. All right. Following the 17th of July
7 we'll reconvene on the 27th of July. That's a very good
8 suggestion. And the 27th through the 31st, if necessary,
9 or certainly through the 30th, depending on what posture
10 that evidence takes. Then the August break. That sure
11 makes July a better work month, frankly, instead of only
12 four days of hearings.-- Judge Joffe thought 14 was too
13 many and four is too little.

14 All right. This will be done up in an order I
15 will issue and get in the mail to all, pro se and attorneys.
16 It will include the amendment of the reference because
17 the Judge asked for about 30 days for people if they had
18 any squawks about dropping the permit paragraph or ex-
19 tending my time for one more year. I haven't heard any-
20 thing from anybody, not even a letter, so we will assume
21 that it will go in the order. It will be his order, he
22 already signed it and sent it back to me, and said hold
23 off a month in case anybody notices. So that will include
24 his order, it will include this schedule for the remainder
25 of the lawsuit, and if -- okay. Well, I'm going to give



1 you the -- get it for the record.

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

3 (Off the record discussion.

4 MR. WHITE: I don't have any problems, Your Honor.
5 There's nothing in there. I'll go with the week.

6 MR. ECHOHAWK: That's ten weeks straight.

7 THE SPECIAL MASTER: You've got a break in October,
8 October 9 through the 20th, you've got a break. That's
9 a nice long stretch of time. I intend to use it for a
10 vacation.

11 MR. WHITE: No, Your Honor, you set the whole month
12 of October.

13 THE SPECIAL MASTER: No, no, I did not. I gave you
14 your time frame. Let's go back through that, Mr. White.
15 Good God, I couldn't do that to you. I maybe a mean old
16 guy, but not that mean. I've got October, we break on
17 the 9th and we resume on the 19th --

18 MR. ECHOHAWK: Oh, okay.

19 MR. WHITE: Your Honor, I would like to suggest that --

20 THE SPECIAL MASTER: Those are the figures you gave me
21 in an airplane not ten days ago.

22 MR. WHITE: If it makes a difference between the people
23 having time to put on their case or not, I'd just as soon
24 give it up. The problem is, Your Honor, we will have, when
25 the Tribes finish, probably about 15 weeks of hearings so



1 far, and the State's figuring its case will take eight
2 to twelve weeks, then there's two more cases, rebuttal
3 cases by the United States and Tribes, and rebuttal case
4 by the State, and I -- I may get shot for not going elk
5 hunting.

6 THE SPECIAL MASTER: You be the judge of that. If
7 sometime in September you haven't got a trip planned and
8 it falls through and you say, look, I just might as well
9 work the week of the 13th -- Good God, I see what I did.
10 Did I say we are going to work Tuesday the 13th, Columbus
11 Day?

12 MR. ECHOHAWK: Yes.

13 THE SPECIAL MASTER: I didn't mean that. I said we
14 will take a break on Friday, the 9th, and we return on Tues-
15 day, the 20th. That leaves us a break through the 19th.
16 There's no hearings the week of the 13th. Now, if you
17 find sometime in September you don't want that week and
18 it doesn't have to go out, let us know and we will put it
19 back in. Let's leave it that way.

20 MR. WHITE: All right. Thank you, Your Honor.

21 THE SPECIAL MASTER: Any other comments on that?

22 MR. KROB: Your Honor, I wasn't clear. Are we going
23 to start on the 20th or 19th? In October do we start the
24 19th or the 20th?

25 THE SPECIAL MASTER: We start on the 20th because the



1 19th is the last day that you wanted, Sandy.

2 MR. WHITE: Yes.

3 THE SPECIAL MASTER: All right. Okay, all right,
4 we are ready to proceed with the evidence, Mr. Echohawk.

5 MR. ECHOHAWK: Your Honor, before we start, I notice
6 you mentioned the amendment to Judge Joffe referring to
7 you about the permits and extending the time.

8 THE SPECIAL MASTER: Yes.

9 MR. ECHOHAWK: The United States has no objection to
10 that amendment. The only thing we would like to make
11 clear is that although the other water rights that are at
12 issue in this case won't be heard by you, we would just
13 like to make sure they are heard by someone else, that this
14 does continue to be a general stream adjudication and the
15 United States' rights are not the only ones that --

16 THE SPECIAL MASTER: It is my intention to recommend
17 to the Court that any hearings to terminate or to cancel
18 or -- or to bring about orders of abandonment of any State
19 Water Rights should be referred to the State Board of Control
20 and their action should begin thereon. We already have two
21 that I know of, one is Glen Nelsen and one is John Hinkley.
22 The evidence ought to be looked at for an amendment. I
23 don't think I have the right to bring an abandonment pro-
24 ceeding. I think I have the duty to recommend it to the
25 State Board of Control.



1 MR. ECHOHAWK: On unadjudicated permits will those
2 people have to prove their water?

3 THE SPECIAL MASTER: Unadjudicated permits, I would
4 rather be totally void.

5 MR. ECHOHAWK: Someone has to handle that, Your
6 Honor.

7 MR. WHITE: Your Honor, someone has to handle it.

8 MR. ECHOHAWK: We don't have the general adjudication --

9 MR. WHITE: It's still within the jurisdiction of the
10 Court.

11 THE SPECIAL MASTER: I see. I'll rely on whatever you
12 two agree on to submit to me to be the language that will
13 keep whole jurisdiction of the general mainstream adjudi-
14 cation, and we will do the problem of the adjudicating
15 of the permits, do the problem of an adjudication of the
16 unadjudicated permits now issued, but that will not be my
17 problem.

18 MR. ECHOHAWK: That's the concern of the United States.
19 Although you won't hear that, that is still maintained as
20 a part of this case, and this continues to be a general
21 stream adjudication.

22 THE SPECIAL MASTER: Gentlemen, it will be providing
23 you don't mean to infer that there can be no final report.
24 My referral requires a report to the Judge.

25 MR. WHITE: There's no problem with that, Your Honor.



1 MR. ECHOHAWK: I don't think there's a problem with
2 the report to the Judge on this particular part. What
3 concern we have is that that particular portion is what
4 gets kicked on up the system to the Supreme Court, and it
5 turns out the United States Water Rights are the only ones
6 adjudicated in this action.

7 THE SPECIAL MASTER: Mr. Echohawk, is there any
8 authority for the fact you cannot have a general main-
9 stream adjudication if all you do are the adjudicated
10 water rights held by states, cities, and their citizens
11 without going into their permits?

12 MR. ECHOHAWK: Yes.

13 MR. WHITE: Yes.

14 MR. ECHOHAWK: It's not a general stream adjudication
15 if everybody's water rights aren't determined.

16 THE SPECIAL MASTER: Everybody's water rights are
17 determined if they have been adjudicated by the State
18 Board of Control. We are not omitting anybody.

19 MR. WHITE: It's an area of so-called mysticism,
20 but one thing is clear, if your order no longer includes
21 them, it's not your problem, it's up to Judge Joffe to
22 look after them and make sure they're taking care of.

23 THE SPECIAL MASTER: Thank you.

24 MR. ECHOHAWK: That's the concern the United States
25 has, is those additional water rights are taken care of.



1 THE SPECIAL MASTER: I would think Judge Joffe would
2 want to think about an order looking to maybe the State
3 Board of Control, frankly. That's their statutory author-
4 ity under the State law, to get on with the adjudication
5 of permits.

6 MR. ECHOHAWK: The United States -- I'm not sure if
7 the United States is going to agree with that, but that
8 will be something -- when that comes up --

9 THE SPECIAL MASTER: It is no longer a concern in
10 this lawsuit to me.

11 MR. ECHOHAWK: To you, that's correct. We will take
12 that up with Judge Joffe.

13 THE SPECIAL MASTER: Any more than the concern of the
14 facts I sure don't want the United States Supreme Court
15 to categorically deny certiorari and throw this case
16 back on the assumption of the law that it was a grave error
17 of law for the Special Master to proceed into a long ad-
18 judication of these water rights devoting most of his time
19 to the Indian-Wyoming dispute, some of his time to the
20 adjudicated permits and none to the adjudicated water rights
21 and none to the permits.

22 MR. ECHOHAWK: That's the concern we have.

23 MR. WHITE: Your Honor, if you have no authority, it's
24 not an error for you to not deal with them, but it would
25 be an error for you to deal with them if your authority has



1 been reduced, and I agree with Mr. Echohawk, we have to
2 keep an eye on this thing, but I don't think it's some-
3 thing you have to worry about.

4 THE SPECIAL MASTER: I will look to you two to get
5 together and agree on them on non-court days to see what
6 you suggest in that regard.

7 MR. WHITE: Thank you.

8 MR. ECHOHAWK: One other point Mr. Clear raised.
9 In November at Thanksgiving we take off Thursday and Friday.
10 May we also have the Wednesday off, the day before Thanks-
11 giving?

12 THE SPECIAL MASTER: So you would want Wednesday, the
13 26th?

14 MR. ECHOHAWK: That's correct.

15 THE SPECIAL MASTER: That shortens that workweek to
16 November 23rd and 24th only.

17 MR. WHITE: Why don't we go a half a day, and that
18 way people can catch their planes back to D.C. and still
19 get in Wednesday night.

20 THE SPECIAL MASTER: A half day, is that all right?

21 MR. CLEAR: A half day is fine.

22 THE SPECIAL MASTER: All right. We will knock off
23 at noon, I'll put in here, on the 26th. All right. That
24 makes it -- that is done. Okay. Thank you.

25 MR. ECHOHAWK: Your Honor, in view of the schedules



1 we just set, specifically regarding July 9th and 10th,
2 as I mentioned yesterday, the additional government
3 witness, Mr. Toedter, has a conflict on Friday the 10th,
4 so what the United States would propose to do now is to
5 stop Mr. Billstein's testimony, put on Mr. Toedter, get
6 that testimony out of the way, it shouldn't take very
7 long, and then we start back with Mr. Billstein. And that
8 way we won't have a conflict for the 9th and 10th.

9 MR. WHITE: We can't agree to that, Your Honor.
10 That is one of those things that can only be done by
11 agreement of counsel. Once you get a witness on the
12 stand, you don't interrupt his testimony.

13 THE SPECIAL MASTER: Have you asked Mr. White about
14 this before?

15 MR. WHITE: We can't agree.

16 MR. ECHOHAWK: I mentioned it to him briefly this
17 morning.

18
19
20
21
22 * * * * *



1 MR. WHITE: Essentially we have one witness on the
2 stand that we are prepared to deal with; that we've
3 brought those experts whose help is necessary in dealing
4 with this witness. As I explained to you yesterday, we
5 do not have the technical consultants here to deal with
6 Mr. Toedter's subject of testimony.

7 THE SPECIAL MASTER: Is that what you want to do,
8 Mr. Echohawk, pull Mr. Billstein?

9 MR. ECHOHAWK: Yes.

10 THE SPECIAL MASTER: I think that's clearly something
11 I can't, in good conscience, permit.

12 MR. ECHOHAWK: That's what, in fact, Mr. White
13 requested when we got into the return flows.

14 MR. WHITE: No, sir, it's not, Your Honor.

15 MR. ECHOHAWK: We have here again, Your Honor,
16 opinion on opinion, either put that witness on or stop
17 and let's put him on right now, and that's exactly what
18 we propose to do.

19 THE SPECIAL MASTER: I don't believe, I don't think
20 I can permit that. If you can't proceed with Mr. Billstein,
21 I think you have to proceed with Mr. Billstein, that's
22 what this morning's hearing is all about, hopefully a
23 continuation of his testimony and the chance for the
24 State to begin to cross with Mr. Donnell.

25 MR. WHITE: I might also say, Mr. Master, that



1 Mr. Donnell traveled all the way from Worland.

2 THE SPECIAL MASTER: I know that.

3 MR. WHITE: Solely for the purpose of Mr. Billstein.

4 THE SPECIAL MASTER: I know that. Now, if you --
5 I don't know how this can be worked out, but I don't think
6 it's fair to permit you to pull Mr. Billstein from the
7 stand now and to substitute Mr. Toedter.

8 MR. ECHOHAWK: That's exactly what we did with
9 Mr. Kersich.

10 THE SPECIAL MASTER: You got by with it.

11 MR. ECHOHAWK: Substituted --

12 MR. WHITE: That was during cross-examination, Your
13 Honor, not on direct.

14 THE SPECIAL MASTER: We'd be glad to do it if you
15 can work it out, but I can appreciate the objection and
16 I recognize the objection and sustain it.

17 MR. ECHOHAWK: The problem we have, Your Honor, is
18 if we are finished with Mr. Billstein on Thursday the 9th,
19 then we have nothing to go on the 10th.

20 MR. WHITE: We can go on to the 16th, Your Honor, as
21 you already said, you just add an additional week this
22 month or next month on the 27th, it's not the kind of
23 timing problem that would sort of justify the interruption
24 of the normal flow.

25 THE SPECIAL MASTER: Mr. White would understand that



1 if we finish and there's nothing to go on the, 10th, we'll
2 come back on the 27th, but I'd rather loose that day than
3 discombobulate things, okay?

4 MR. ECHOHAWK: Okay.

5 THE SPECIAL MASTER: You're saying you would not be
6 ready to go with something that's come up with Mr.
7 Toedter.

8 MR. ECHOHAWK: Unless, of course, Mr. Billstein
9 carries over.

10 THE SPECIAL MASTER: All right. We recognize that if
11 there will not be something on the 10th, there will be no
12 great --

13 MR. WHITE: We won't complain, Your Honor.

14 THE SPECIAL MASTER: We won't be upset with you if
15 there is nothing for that day.

16 MR. ECHOHAWK: All right, that's fine. We will
17 resume with Mr. Billstein.

18 THE SPECIAL MASTER: All right, Mr. Billstein, would
19 you take the stand, please.

20 I have heard no objections from anyone on the
21 employment of Billie Ruth Edwards in the Special Master's
22 office, and I assume that --

23 MR. WHITE: Your Honor, the State has no objection
24 and needs to disclose, however, that based on conversations
25 with people in our firm, it does appear that she may have



1 done some work in the natural resource section, and she
2 did that work for Mr. Jankowski, who has worked off and
3 on on the Big Horn adjudication. There's no way, of
4 course, I can tell whether she worked on this case for
5 him or some other natural resource matter, but the
6 possibility exists.

7 THE SPECIAL MASTER: But in any event you have no
8 objection?

9 MR. WHITE: We have no objection.

10 THE SPECIAL MASTER: Mr. Echohawk?

11 MR. ECHOHAWK: Excuse me.

12 MR. WHITE: I think she was a secretary, maybe
13 secretary/para legal. She was a temporary secretary.

14 MR. ECHOHAWK: The United States has no objection.

15 MR. PERRY: And the Tribes have no objection.

16 THE SPECIAL MASTER: Thank you, gentlemen. Okay.

17 MR. WHITE: Off the record.

18 (Off-the-record discussion.)

19 THE SPECIAL MASTER: Okay. Good morning.

20 THE WITNESS: Good morning, Your Honor.

21 THE SPECIAL MASTER: Okay, Mr. Echohawk.

22 DIRECT EXAMINATION (RESUMED)

23 BY MR. ECHOHAWK:

24 Q Mr. Billstein, when we left off yesterday, you were giving

25 billstein-direct-echohawk



1 your conclusions regarding water availability for South
2 Fork of Owl Creek. I believe you also mentioned that you
3 had done an analysis of the mainstem of Owl Creek below
4 the confluence of the North Fork and South Fork; is that
5 correct?

6 A That's correct.

7 Q Did you do the same type of analysis that you had
8 described for the South Fork of Owl Creek?

9 A That's correct.

10 Q Are your conclusions the same as regarding the South Fork
11 of Owl Creek?

12 MR. WHITE: Objection; foundation, Your Honor.

13 MR. ECHOHAWK: What foundation is lacking?

14 THE SPECIAL MASTER: I'll overrule it, Mr. White.

15 THE WITNESS: Yes. I determined that there were
16 manageable shortages, therefore, that there was water
17 availability -- water available to serve the government
18 claims in that reach of stream.

19 MR. WHITE: I move the answer be stricken. We don't
20 know what the manageable shortages are, and, unless
21 they're brought out by further testimony, I think the
22 answer should be stricken.

23 THE SPECIAL MASTER: Well, we went into manageable
24 shortages a good bit yesterday as to management policies

25 billstein-direct-echohawk



1 of study and conferences that can be held to alleviate
2 them. I think he explained that pretty much.

3 MR. WHITE: I understand the manageable shortages.
4 However, that described yesterday was from a study area
5 to study area and varied significantly in percentages.
6 In each case he said they should be handled and less
7 duty water would be required by proper management
8 approaches, I think the Court's entitled to know, as are
9 the other parties, what sort of percentages and what month
10 he's talking about of this particular area.

11 THE SPECIAL MASTER: In Owl Creek particularly?

12 MR. WHITE: Yes. I think it's the South Fork of
13 Owl Creek.

14 THE SPECIAL MASTER: Mr. Echohawk, can the Witness
15 elaborate on that?

16 MR. ECHOHAWK: Yes, Your Honor.

17 THE SPECIAL MASTER: Along the line Mr. White asked?

18 MR. ECHOHAWK: I'm just trying to move it along.

19 Q (By Mr. Echohawk) Would you describe for us what month
20 or months the shortages occurred on the mainstem of Owl
21 Creek below the confluence of the North and South Fork?

22 A Relative to water supply in that reach, I obtain the
23 percent yield estimate from Mr. Keene, that he utilized
24 for his Owl Creek sites. I believe those are study group

25 billstein-direct-echohawk



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

Sites B.2.

THE SPECIAL MASTER: Put it up there for Mr. White.

MR. WHITE: That's all right. I waived that because it's an exhibit already in evidence and Ron showed it to me.

THE SPECIAL MASTER: I'm sorry, go ahead.

THE WITNESS: We utilized the percent yield analysis for Owl Creek downstream of the North Fork-South Fork confluence. The first portion of the analysis of water supply versus water duty was based utilizing the 80 percent chance flows based on that period yield distribution, again supplied to me by Mr. Keene. This particular table also, Your Honor, has been placed into evidence as part of Mr. Keene's report.

The acreage charged against that water supply consisted of that acreage on the South Fork of Owl Creek plus the additional acreage claimed by the government south of the mainstem of Owl Creek, which consisted of approximately 572 acres.

The water demand for the composite South Fork Owl Creek lands plus the mainstem Owl Creek lands were added and compared against the water supply estimate supplied by Mr. Keene.

The results were that, in May, 100 percent of the water
billstein-direct-echohawk



1 demand could be served. In June, 100 percent of the water
2 demand could be served. In July we could meet a 80 percent
3 chance water supply. In August we were approximately
4 a 60 water supply chance, and the September water supply
5 was approximately 80 percent. Therefore, we had
6 approximately the identical distribution as we had for
7 the South Fork of Owl Creek.

8 Q (By Mr. Echohawk) Mr. Billstein, your analysis concerned
9 80 percent chance of flow; is that correct?

10 A That's correct.

11 Q So when you said in July that you could meet the 80
12 percent chance flow --

13 A That meant the criteria that was established for water
14 availability at that point.

15 Q So that would be the same as the previous months?

16 A That's right.

17 Q As May and June?

18 A That's correct.

19 Q And September would be the same?

20 A That's correct.

21 Q So the only month you had a shortage was August?

22 A That's correct.

23 Q That would meet the 60 percent chance flow; is that correct?

24 A That's correct. Then to analyze how to manage that

25 billstein-direct-echohawk



1 particular shortage, I took a look at the fact that the
2 significant portion of the South Fork Owl Creek lands
3 would return to the study area of the mainstem of Owl
4 Creek. I took a proportion of that, approximately 30
5 percent of those lands, accounted for the return flow of
6 those lands, then reviewed an increase of efficiency
7 from 35 to 50 percent and this allowed the entire
8 shortage to be alleviated and water supply to be maintained.

9 A cross-check was effected, that we were only
10 charging 572 acres against this particular increment of
11 stream using the whole entire water supply source of
12 the North Fork of Owl Creek, which has an excess of
13 1,000 acres of land being currently served.

14

15

16

17

18

19

20

21

22

23

24

25



1 MR. WHITE: I would move the answer be stricken on
2 two bases, Your Honor. There's no evidence to support
3 a fifty percent return flow value, and the answer is
4 in direct contradiction with Mr. Stetson's testimony
5 as to thirty-five percent efficiency. In order to
6 reach the conclusions this witness has reached, he has
7 to up the thirty-five percent to fifty percent. You
8 can't have it both ways.

9 THE SPECIAL MASTER: The Motion is overruled. The
10 witness has explained precisely in response to the
11 questions to give his specifics on managing shortages
12 in this particular area, and he did so.

13 Mr. Echohawk:

14 Q (By Mr. Echohawk) Once again, Mr. Billstein, as your
15 previous analyses have shown, where the supply for
16 any month would go -- would go below the demands set
17 by the agricultural engineer in this case, those
18 shortages could be managed, is that right?

19 MR. WHITE: Objection, Your Honor.

20 THE SPECIAL MASTER: It calls for a conclusion.

21 MR. ECHOHAWK: That's exactly the conclusions that
22 Mr. Billstein is allowed to make.

23 THE SPECIAL MASTER: That's about what he testified
24 to, so I think the objection would be duplicative, and
25 billstein-direct-echohawk



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

the question has been answered.

MR. WHITE: Also, it's in direct contradiction of the previous witness the United States has put on.

MR. ECHOHAWK: It's not, Your Honor.

THE SPECIAL MASTER: See if you can rephrase the question and, you know, without bringing out a duplication of what he already testified to.

MR. ECHOHAWK: All right.

Q (By Mr. Echohawk) Mr. Billstein, have we covered all the areas in the Owl Creek portion of your analysis?

A. That's correct.

THE SPECIAL MASTER: Isn't Owl Creek, in fact, the last of all the areas of the reservation you are testifying to or do you have some more?

MR. ECHOHAWK: We have the minor tributaries yet still to come.

Q (By Mr. Echohawk) Mr. Billstein, let's move on to that particular portion of your testimony. Would you please step to the map which is marked Exhibit C-305 and take the pointer and generally describe for us what areas this next portion of your study deals with?

A. The next portion of the study dealt with what we call minor tributaries, and this has to --

billstein-direct-echohawk



1 THE SPECIAL MASTER: Pardon me for just a minute.
2 I have to get this map out of the way. You can't talk
3 while I'm doing this.

4 (Brief pause.

5 THE SPECIAL MASTER: Okay. Now you may proceed,
6 Mr. Billstein. Thank you.

7 THE WITNESS: The minor tributaries involved those
8 lands north of the Big Wind River that are within the
9 Cottonwood Creek watershed, and its tributaries, the
10 Muddy Creek watershed and its tributaries, the Fivemile
11 Creek watershed, the Dry Pasup Creek watershed, Crow
12 Creek watershed and the Sage Creek watershed typically.
13 There were some selected points in the study that also
14 involved some of the upper drainages contributing to
15 the Big Wind River, specifically Meadow Creek.

16 MR. ECHOHAWK: Just to set the stage, Your Honor,
17 for this next small portion of the testimony, you recall
18 that in the analysis conducted regarding these lands,
19 Mr. Stetson indicated on to Mr. Dornbusch, based upon
20 information supplied by HKM, that certain of these
21 areas are what they called water short, and they have
22 indicated that on certain exhibits, and Mr. Dornbusch
23 had adjusted his yields and so forth to take into account
24 the water supply situation here whereas there's a large

25 billstein-direct-echohawk



- 1 supply early in the year, and it dwindles off.
- 2 Q (By Mr. Echohawk) Mr. Billstein, in HKM's work regarding
- 3 the water supply for these minor drainages, was there
- 4 any field interviews conducted to get a feel for what
- 5 the situation was there?
- 6 A. Yes, there was a series of either field interviews or
- 7 telephoned logged interviews. This was done to try to
- 8 get local input into the study and to allow local
- 9 conditions to be input properly into the determinations
- 10 that were to follow.
- 11 Q Generally, would you give us a brief overview of the
- 12 information that was collected in those interviews?
- 13 A. Basically, we asked the individual farmer-ranchers
- 14 when the timing of the stream flows were in their
- 15 respective drainages, did they use all the water;
- 16 how did they use the water. With respect to the
- 17 timing of those runoff events, did that fit into the
- 18 historical practice of that area in terms of the
- 19 farming-ranching, and we did get into some concept of
- 20 how they do operate in those areas north of the Big
- 21 Wind River. We also consulted the Federal agencies,
- 22 specifically the BIA, the people who administered the
- 23 water and conservation programs up there, and also
- 24 got their input as a cross-check against the interview
- 25 billstein-direct-echohawk



1 information that was being submitted to us so that
2 we would feel secure with that data.

3 Q What did you find regarding timing of flows, when
4 did the flows occur and what happens later on in the
5 irrigation season?

6 MR. WHITE: Objection, Your Honor. The question
7 calls for a hearsay answer that's beyond the scope
8 of the rule permitting hearsay answers or answers
9 based on hearsay by experts. This isn't one of those
10 areas of hearsay.

11 THE SPECIAL MASTER: Let me hear the question
12 again, please.

13 (Whereupon, the reporter
14 (read back the following:
15 ("Q. What did you find
16 (regarding timing of flows,
17 (when did the flows occur
18 (and what happens later on
19 (in the irrigation season?"

17 THE SPECIAL MASTER: The objections are overruled.
18 You may answer.

19 THE WITNESS: The use in the areas correspond
20 to the runoff patterns. They basically use the water
21 when it's there, and they build their farming enter-
22 prise around that.

23 Q (By Mr. Echohawk) We have had testimony before from
24 the people from Stetson Engineers that water supply
25 billstein-direct-echohawk



1 information was passed --

2 THE SPECIAL MASTER: That what, Tom?

3 MR. ECHOHAWK: That water supply information from
4 HKM was given to them, is that correct?

5 THE WITNESS: That's correct.

6 Q (By Mr. Echohawk) What specifically was the water
7 supply -- What was the supply information that they
8 received from HKM?

9 A. First of all, it took the format of estimation of total
10 annual flow on a long term average and the monthly
11 distribution of such. The significant portion of that
12 information was developed by Mr. Keene in his Group B.1
13 ungauged sites. In the course of that study, the long
14 term average flows were established and the monthly
15 distributions were allocated. In certain areas where
16 there was field information either in the form of field
17 observations or input from interviews taken during the
18 field portion of the hydrographics study, we were able
19 to add additional input on such things as contributing
20 springs, and this reinforced the water supply estimate
21 and some of the smaller drainages where there was little
22 or no contributing watershed, but there had been a
23 history of use. So this particular set of information,
24 the ability to allocate stream flows, allocate them by

25 billstein-direct-echohawk



1 month, which were developed by Mr. Keene together with
2 the basic information that we picked up in the field,
3 as well as with interviews, were consolidated summaries
4 and then passed on to the engineering and agricultural
5 economic consultants.

6 THE SPECIAL MASTER: Why should these be of moment
7 in this litigation? These streams, Dry Pasup, which
8 would not even be known except for at least their
9 reconnaissance, but Crow, Dry Creek, all the others all
10 over to the east are, indeed, minor tributaries, they
11 are intermittent streams, and yet they are very lovely
12 streams, and given a year-in year-out area, they make
13 excellent habitat. Why should there be a problem that
14 that historic that's up there now that there are no
15 claims for new projects, shouldn't be historic and
16 take the water duty that it has? If there's one area
17 on the reservation we should agree on, that ought to
18 be it. I would think --

19 MR. ECHOHAWK: We would agree. We would certainly
20 agree, Your Honor.

21 THE SPECIAL MASTER: Well, your claim up there is
22 what, practically for the run of the stream, isn't it?

23 MR. ECHOHAWK: It's for the supply that is -- Mr.
24 Stetson set out certain water duties per month. Early

25 billstein-direct-echohawk



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

in the year the water is there and it meets Mr. Stetson's demands, and it's as Mr. Billstein is testifying, that those people take the water there, use it early on in the season when there's an abundance of water, then as Mr. Dornbusch has allowed for in his budgets, they convert, maybe get one cutting of hay, and then convert on to pasture, and that's essentially what we are asking for, is the water that's there when it's available and to use whatever water comes down late in the season.

* * * * *



1 THE SPECIAL MASTER: Is that any problem, Mr. White?

2 MR. WHITE: Well, Your Honor, I think the State
3 would be prepared to agree, and I don't know if I have
4 authority to make this kind of agreement, but we will be
5 prepared to agree that on the minor tributaries that Mr.
6 Billstein has defined, the current and historical levels
7 of use of water by all persons could continue.

8 THE SPECIAL MASTER: Yeah, by all persons, Indian
9 or non-Indian.

10 MR. WHITE: And that we don't have to get into a
11 squabble, a minor squabble that might take up time that
12 could be put into other parts of the case.

13 THE SPECIAL MASTER: I should think we could do that,
14 and if we can't agree on that, I guess we'll agree on
15 nothing. They are relatively small totals compared
16 to the others, there is not --

17 MR. ECHOHAWK: The question is, Mr. White's
18 proposal is whether historic use includes the lands,
19 the adjudicated lands that the United States is serving.
20 He's trying to give us --

21 THE SPECIAL MASTER: I see. You got some of the
22 light blue as well as the dark blue.

23 MR. WHITE: Well, we'll give them exactly what
24 they've used.

25 THE SPECIAL MASTER: Well, would you give him exactly



1 what they used plus idle lands that were at one time,
2 were irrigated?

3 MR. WHITE: I think as far as I can go, in terms of
4 saying this would be a settlement on the part of the
5 Attorney General, that if the historic situation is
6 preserved with respect to all parties, we can hardly
7 complain, that would be my recommendation to the Attorney
8 General.

9 THE SPECIAL MASTER: Do I understand that the
10 historic position to all parties would include not lands
11 now idle that had at one time been irrigated by the
12 Tribes and Indians under State permits?

13 MR. WHITE: I think what typically happens in minor
14 tributaries like that is that there usually is a total
15 amount of land in at one time in irrigation, comes and
16 and land goes out, and it's continually shifting as it
17 depends on the specific population of acres that at any
18 time are being irrigated, it's just simply limited to the
19 number of acres that are being limited by the water
20 supply. And to agree that the historic conditions can
21 continue with respect to the lands involving diversions
22 out of the minor tributaries for both, by Indians, by the
23 Federal Government, by non-Indians, everybody, is something
24 that I'd be fully prepared to recommend to the Attorney
25 General.



1 MR. ECHOHAWK: Your Honor, first, several questions
2 come in. There is a certain amount of land the United
3 States is asserting water rights claims for that is
4 currently not in production, the Type VII's and I think
5 some of the adjudicated lands up there. Mr. White, as I
6 understand his proposal, wants to maintain status quo
7 and let it go as it's been. One problem that certainly
8 arises is the priority date. The Indians are asserting
9 the early priority date. If the Indians are able to
10 take what land, the adjudicated land base and land that
11 is currently in use and the land that, idle land in the
12 Type VII's with an 1868 priority date, we'll certainly
13 agree to that.

14 MR. WHITE: Our agreement is far from that. I think
15 the record speaks for itself, that this is an area that
16 has such small consequences that we can avoid a legal
17 argument and simply say we preserve the status quo, we're
18 willing to agree to that. I think it ought to be clear
19 the State's purpose isn't to take away water from any-
20 body, and the preserving of the status quo is certainly
21 in line with that general policy.

22 MR. ECHOHAWK: What we're doing here, Your Honor,
23 we all seem to loose sight of it once in awhile, we are
24 trying to determine the practicably irrigable acreage
25 that there is on the Reservation to create water rights



1 for the Reservation for that purpose.

2 THE SPECIAL MASTER: That is what we're trying to do,
3 but we're not limited to that.

4 MR. ECHOHAWK: The water right decreed to the
5 Indian Reservation, that's what we're doing.

6 MR. WHITE: I disagree with Mr. Echohawk. I thought
7 this was an area where we might put aside the legal
8 jargon and the engineering and just reach an agreement
9 that we'll preserve the status quo.

10 THE SPECIAL MASTER: I'm sorry I brought the subject
11 up, let's go on with the trial.

12 MR. ECHOHAWK: We were close.

13 MR. WHITE: Off the record.

14 (Off-the-record discussion.)

15 Q (By Mr. Echohawk) Mr. Billstein, do you have an opinion
16 regarding the timing of, timing of the water that is
17 available in these streams? Do you have an opinion
18 regarding whether the timing is appropriate to serve the
19 irrigation needs the way that those farmers operate
20 their systems?

21 THE SPECIAL MASTER: What do you mean the "timing of
22 these streams"?

23 MR. ECHOHAWK: Timing, whether there is water
24 available in the early months to be applied as the people

25 billstein-direct-echohawk



1 in those tributaries apply that water.

2 MR. WHITE: I object to the question on the grounds
3 of ambiguity. It's a perfectly valid question if the
4 tributary is identified. As the Court knows, there is
5 often significant fluctuation from tributary to tributary
6 and if Counsel can simply identify which tributary he's
7 interested in, whether it's Cottonwood --

8 THE SPECIAL MASTER: It's the west half of these
9 five or six of these that drain into the Owl or the east
10 half, is that what you're talking about?

11 MR. ECHOHAWK: Again, what I was trying to do is
12 move things along and talk in generalities. I think we
13 can go through each one, but we have quite a few of them.

14 THE SPECIAL MASTER: Let's split the group into
15 east and west.

16 MR. WHITE: At least we could identify each one for
17 the record.

18 THE SPECIAL MASTER: Discuss Crowheart, Crow Creek,
19 Dry Pasup, if they're adequate. I presume the witness'
20 answer is going to be what were already said, in the
21 spring months you do have quite sufficient amounts; it
22 drops in August.

23 MR. ECHOHAWK: I think that's generally the situation
24 around there.

25 billstein-direct-echohawk



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

Could I have a minute to get some water?

(Brief pause.)

THE WITNESS: In the analysis of Dry Pasup Creek, the acreage claims, claimed corresponds to the respective summary of the claims of the historic in use, the adjudicated and the Type VII's that were involved with respect to the entire Dry Pasup system. A stream gauging point was located just above the confluence of Dry Pasup Creek with the Big Wind River for below all of the existing irriageton. The water duties identified by Stetson Engineers were applied to the acreage that I have spoken to, and an ideal demand water requirement was specified. The natural runoff or water supply was supplied by Mr. Keene as part of one of his Group B.1 sites. Then we simply evaluated the water supply by month against the water requirements based on the demand established by Mr. Stetson for the acreage delineated in the claim.

In May the water demand was roughly 1,700 acre-feet. The natural runoff estimate was 3,125, so there was 100 percent of demand met.

In June there was a demand of 2,487 acre-feet. Natural runoff estimate was 4,875 for again anoter 100 percent.

billstein-direct-echohawk



1 In July there was a water demand of 3,200 acre-feet.
2 The natural runoff receded at this particular point in
3 time to about 1,750 acre-feet, and we assumed at this
4 particular point in time there's approximately 90 percent
5 of that that was divertable. And there's also
6 approximately 400 acre-foot of storage in the drainage
7 that takes place below the Joline Sheer operation at the
8 bottom of Dry Pasup Creek. She runs a small reservoir,
9 it's called the Old Highway Supply System. It has an
10 adjudicated water right on it and it serves trust land.
11 So we added the supplement supply from that reservoir
12 and a small amount of carry-over moisture and came out
13 with approximately 80 percent of the demand being met
14 at that particular time. Now, none of these figures, of
15 course, take into account return flow from the previous
16 month's irrigation. So with that considered, it would
17 even push it up higher.

18 In the later season the flows again recede, we had
19 a water duty demand of roughly 2,700 acre-feet with a
20 runoff of 600, so we start to see that discrepancy between
21 the ability to serve the demand with the water supply
22 as receding.

23 The conclusion that I made in this particular water-
24 shed is that in the early season there was, when runoff

25 billstein-direct-echohawk

409 West 24th Street
Cheyenne, WY 82001
(307) 635-8280

Frontier Reporting Service



201 Midwest Building
Casper, WY 82601
(307) 237-1493

1 was greatest, there was water available and that this
2 particular set of data was then sent to the agricultural
3 economist and the agricultural engineer. They evaluated
4 how this particular type of runoff pattern would affect
5 the agricultural economics of this particular area and
6 made their analysis on that basis. So my function was to
7 perform this estimate of water supply versus water demand,
8 send that estimate to the agricultural engineer and the
9 economist. They would then take that and evaluate the
10 particular results that I submitted to them in terms of
11 an agricultural economic study, the practicality of
12 developing these lands.

13 THE SPECIAL MASTER: Do you see, Mr. Echohawk, we're
14 going into inevitably phases and new answers of what is
15 a practicably irrigable acre. A practicably irrigable
16 acre is one thing which when it's downstream on a perfectly
17 flat land with a fine cash crop, and it certainly does
18 qualify, but when you have an acre that's up on Dry
19 Pasup or on Crow Creek that has a water shortage
20 traditionally and can be used just for about some, some
21 feed for livestock, by flooding it a couple times in
22 April and May or maybe catching one or two cuts of hay,
23 it's practicably irrigable acre, but it will take a lot,
24 lot less water and it will take interrupted water, so
25 before we can make this categorical finding of BIA's,



- 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

there has to be a breakdown of what class, what type, what water duties, and it would make a lot of different findings on my part other than just merely there is sufficient water. You see how complex it's going to get?

MR. ECHOHAWK: I know, we've discussed it.

* * * * *



1 Q (By Mr. Echohawk) In assessing practicably irrigable
2 acreage, is it economically feasible, and Mr. Dornbusch
3 in his assessments and analysis took this into consideration,
4 and that's when he developed his water short budgets
5 and reduced his yields and so forth, and we are claiming
6 those acres that are economically feasible in these
7 particular drainages --

8 THE SPECIAL MASTER: But I haven't seen too many
9 acres excluded on economic feasibility.

10 MR. ECHOHAWK: There were quite a number of acres
11 excluded.

12 MR. WHITE: Well, with free money and free labor,
13 it's not difficult to leave them in, Your Honor.

14 MR. ECHOHAWK: Your Honor --

15 THE SPECIAL MASTER: Now we are back in argument.
16 Go ahead with the question.

17 MR. ECHOHAWK: Your Honor, I don't think there's
18 any question in the situations where this occurs there's
19 that problem because the water supply does go in the law,
20 but the United States asserts the right for the water
21 that is up there to irrigate those lands.

22 THE SPECIAL MASTER: All right. Go ahead.

23 MR. ECHOHAWK: And that, in turn, goes into the
24 total of the water rights that would be decreed to the

25 billstein-direct-echohawk



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

reservation.

THE SPECIAL MASTER: Go ahead with your questions.

THE WITNESS: Your Honor, I also submitted interviews, results of interview information to the agricultural engineer and the agricultural economist, and this particular set of data, for example, we have a primary farmer in Dry Pasup, and he confirms that that snowmelt occurs anywhere from May 10th to July 1st.

MR. WHITE: I move this be stricken.

THE SPECIAL MASTER: Overruled. Go ahead with your testimony. Is this an Indian or non-Indian citizen of Dry Pasup?

THE WITNESS: This is an Indian.

THE SPECIAL MASTER: Are there non-Indians on Dry Pasup?

THE WITNESS: I know of no non-Indian users on Dry Pasup. I can't think -- If there is any, Your Honor, it would be a very small user. Then we talked about during the course of the interview whether he was in the position to divert all the available flow that was coming down during the high runoff period, and he said, "Certainly not," that there was excess flow going down the stream and that it was far beyond his particular needs or his father who operates the billstein-direct-echohawk



1 next big system down below the confluence of Red
2 Creek. We then talked about --

3 MR. WHITE: Your Honor, could I have a continuing
4 objection? This is the rankest form of hearsay, and
5 I want to make sure I got my record.

6 THE SPECIAL MASTER: You may. It is probably the
7 least of evidence a man could have, but what's the
8 damage?

9 THE WITNESS: We then talked about why certain of
10 the lands weren't being utilized, and his father had
11 wanted to bring back a large tract in that mid-portion
12 of the watershed through here (witness indicating), and
13 at the particular time the Tribe was holding up his
14 ability to do that. He felt the water was there, and
15 he was ready to make the investment, but they had cate-
16 gorized it right now as a grazing unit, and until they
17 convert that to an assignment which allows him to farm
18 that particular tract of land, it could not be brought
19 back into production. So these kinds of interviews also
20 went in and helped support the conclusions that I made.

21 THE SPECIAL MASTER: Were all of the conclusions
22 that you and Mr. Keene made here based on B.1 analyses
23 and not on actual gauges?

24 THE WITNESS: In Crow Creek, Your Honor, there were --
25 There is an A.1 gauge above the Crow Creek Canyon, and



1 Mr. Keene, I believe, made a transfer which would be an
2 A.2 bookkeeping site, so that particular estimate is
3 based upon gauge information.

4 MR. WHITE: Your Honor, Exhibit NK-300 shows those
5 areas in red, and I think if you looked at it, you would
6 find just the top portion of Crow Creek was included.

7 THE SPECIAL MASTER: With gauges?

8 MR. WHITE: A.1 or A.3.

9 THE SPECIAL MASTER: Go ahead, Mr. Echohawk.

10 MR. ECHOHAWK: Your Honor, do you want us to go
11 through each of the minor tributaries with the same
12 type information?

13 THE SPECIAL MASTER: No, no. I think he has
14 covered the tributaries sufficiently, in my opinion.
15 There aren't more than about six of them, and I think
16 that pretty much is what the situation is on about
17 each.

18 Q (By Mr. Echohawk) Mr. Billstein, is it generally the
19 same situation on each of the minor tributaries that
20 you analyzed where United States claims are regarding
21 the timing of the available water?

22 A We utilized water supply information supplied by Mr.
23 Keene or utilized field observations in the case of
24 Steamboat Springs, and compared that against that plan.

25 billstein-direct-echohawk



1 That typically was explained in the Dry Pasup review,
2 was the basis of the assessment of water availability
3 in those minor drainages.

4 THE SPECIAL MASTER: Don't all of these minor
5 drainages have their head waters at about the same
6 latitudes traversed generally from a north area to
7 south area level of basin or comparable, and they
8 come down to the lower areas and all have in common
9 the characteristics, as far as high months for runoff
10 and low months for shortages, generally speaking?

11 THE WITNESS: Generally speaking, Your Honor,
12 although I got some local influences due to springs
13 and such, which in certain regions can be a dominating
14 factor.

15 THE SPECIAL MASTER: Do you want to take a couple
16 minutes to check your notes?

17 MR. ECHOHAWK: Yes, Your Honor.

18 THE SPECIAL MASTER: All right. Let's take a
19 five-minute break.
20

21 * * * * *

22

23

24

25



1 MR. WHITE: Before Mr. Echohawk starts again, I'd
2 like to request the pages which Mr. Billstein would have
3 referred to with respect to the other small tributaries,
4 and you required him to go through those tributaries,
5 also be pulled out so that we could see them because he
6 gave general conclusions rather than specific conclusions,
7 and it could only be appropriate to save us some time.

8 MR. ECHOHAWK: I don't think that's quite appropriate
9 at all. He did not refer to them to refresh his memory.
10 I think that's totally beyond what he has testified to.

11 THE SPECIAL MASTER: I don't think so either; but if
12 you want to provide a few of them; I'm not going to order
13 that you do. It's been a policy to do that, and --

14 MR. WHITE: It's sort of 'twixt and between. I would
15 withdraw the request since the lawyers will instruct him
16 not to do it. We'll get it on cross.

17 THE SPECIAL MASTER: All right, go ahead, Mr.
18 Echohawk.

19 (Brief pause.)

20 Q (By Mr. Echohawk) Mr. Billstein, let's turn to your
21 analysis regarding the industrial and municipal claims
22 of the United States.

23 MR. ECHOHAWK: Your Honor, I'd like to point out,
24 I believe we've already had testimony from Mr. Page

25 billstein-direct-echohawk



1 during the first week of the trial regarding groundwater
2 availability to serve, to serve these particular claims.
3 The United States is just putting on additional evidence
4 regarding surface water availability.

5 THE SPECIAL MASTER: You're now going to ask
6 questions of this witness on industrial and municipal
7 claims on surface water?

8 MR. ECHOHAWK: Surface water availability.

9 THE SPECIAL MASTER: Availability.

10 MR. WHITE: Your Honor, I'd like to ask Counsel for
11 the United States whether they now assert a claim for
12 surface water as opposed to the claims which were
13 predominately for groundwater for these particular
14 purposes that were set out in their Statement of Claims?

15 MR. ECHOHAWK: We assert groundwater; we're just
16 merely putting on additional evidence that there's --

17 THE SPECIAL MASTER: If it doesn't take very long;
18 I don't want to be here too much because I don't need to
19 be.

20 MR. ECHOHAWK: It will just take five minutes.

21 MR. WHITE: Let me object now and have a continuing
22 objection on the basis of relevancy, and that the basis
23 was for groundwater and it's outside the claim.

24 THE SPECIAL MASTER: Your objection is noted. Go
25 ahead, Mr. Echohawk.



1 Q (By Mr. Echohawk) Mr. Billstein, did you make an
2 anlaysis surface water availability regarding certain
3 of the industrial claims asserted by the United States?

4 A Yes, I did.

5 Q And what --

6 THE SPECIAL MASTER: What did you find? Okay?

7 Q (By Mr. Echohawk) Which claims did you analyze?

8 A I analyzed a claim for secondary oil recovery of 1,030
9 acre-feet per year to be diverted at Diversion Dam.

10 THE SPECIAL MASTER: Isn't that going on for some
11 45 years?

12 THE WITNESS: That's an existing use, Your Honor.

13 THE SPECIAL MASTER: 1,000 how many?

14 THE WITNESS: 1,030.

15 THE SPECIAL MASTER: Acre-feet per year. Is that
16 returned to the river after it's used in secondary
17 recovery?

18 THE WITNESS: The assumption was that there was no
19 return flow.

20 THE SPECIAL MASTER: That's quite an assumption.
21 The water is going to someplace, it isn't going to stay
22 in that oil well.

23 THE WITNESS: Well, they're going to, I believe it's
24 going into the deep strata. My input parameters that I

25 billstein-direct-echohawk



1 Q (By Mr. Echohawk) Mr. Billstein, did you make an
2 anlaysis surface water availability regarding certain
3 of the industrial claims asserted by the United States?

4 A Yes, I did.

5 Q And what --

6 THE SPECIAL MASTER: What did you find? Okay?

7 Q (By Mr. Echohawk) Which claims did you analyze?

8 A I analyzed a claim for secondary oil recovery of 1,030
9 acre-feet per year to be diverted at Diversion Dam.

10 THE SPECIAL MASTER: Isn't that going on for some
11 45 years?

12 THE WITNESS: That's an existing use, Your Honor.

13 THE SPECIAL MASTER: 1,000 how many?

14 THE WITNESS: 1,030.

15 THE SPECIAL MASTER: Acre-feet per year. Is that
16 returned to the river after it's used in secondary
17 recovery?

18 THE WITNESS: The assumption was that there was no
19 return flow.

20 THE SPECIAL MASTER: That's quite an assumption.
21 The water is going to someplace, it isn't going to stay
22 in that oil well.

23 THE WITNESS: Well, they're going to, I believe it's
24 going into the deep strata. My input parameters that I

25 billstein-direct-echohawk



1 asked from the industrial expert was how much, what is
2 the timing of those demands and is there any return flow.
3 His response to me was there was no return flow to the
4 surface water.

5 THE SPECIAL MASTER: Who is "he"?

6 THE WITNESS: Mr. Merchant.

7 MR. WHITE: Objection, Your Honor, Mr. Merchant is
8 not an industrial expert, he's an economist.

9 THE SPECIAL MASTER: Well, on the Powder River, on
10 Sand Creek, on other streams near here it's common
11 knowledge that, that not only is the water used for
12 secondary oil and gas recovery and returned to the main
13 flow, but there is permits filed for subsequent use after
14 it gets into the mainstream.

15 THE WITNESS: For the purpose of my analysis, Your
16 Honor, if anything, the decision to show no return flow
17 would be a limitation on the water supply of the overall
18 study, and that really had no consequence as to the
19 answer relative to whether there was water available or
20 not.

21 THE SPECIAL MASTER: Yeah, but Mr. Billstein and
22 Mr. Echohawk, there comes a point when the attitude,
23 and it is one that is unfortunately harsh, if not worse,
24 that you can continue with the attitude that the water,
25 billstein-direct-echohawk



1 we are going to use it for every purpose that we want
2 to, willy-nilly, regardless of whether it could be
3 returned for subsequent use, and so we let it go into
4 sump holes. And this is what bothers me about a claim
5 for industrial water without anything more than a little
6 hearsay as to whatever, 1,030 acre-feet per year that is
7 used to recover some oil. The water can come up with the
8 oil, it comes into -- goes into industrial or sump or
9 reinjected or it gets back into the stream. And you don't
10 know what it does, but you were told that it stays in,
11 it's put back into, back into the lower strata?

12 THE WITNESS: That's right. I was given a zero
13 return flow response to my question as to the distribution
14 of return flows from this particular service.

15 THE SPECIAL MASTER: Okay, go ahead, Mr. Echohawk.

16 Q (By Mr. Echohawk) What additional areas did you evaluate
17 besides the secondary or of recovery?

18 A There was an ammonia plant that was being served in the
19 vicinity of the LeClair Canal, quantity was 4,250 acre-feet.

20 A power plant, which was to be served in the vicinity
21 of the Pilot Butte oil field, and this has a total --

22 THE SPECIAL MASTER: What was used to fuel the
23 power plant, was it coal-fired or was it hydro or was it
24 nuclear?

25 billstein-direct-echohawk



1 THE WITNESS: I believe it was a coal-fired -- I'll
2 cross-reference. Coal-fired.

3 THE SPECIAL MASTER: What size?

4 THE WITNESS: One hundred fifty megawatt.

5 There was a phosphate processing plant reserved from
6 the LeClair Canal, total quantity, 825 acre-feet of
7 water.

8 THE SPECIAL MASTER: Per year?

9 THE WITNESS: Per year.

10 THE SPECIAL MASTER: What did you feel was the
11 water requirements to cool the coal-fired power plant
12 and for steam?

13 THE WITNESS: Your Honor, that was a -- the water
14 requirements were given to me, just as water duties from
15 the agricultural engineer were supplied to me for the
16 agricultural claim analysis. Industrial water requirements
17 are supplied to me from the Dornbusch firm for the
18 industrial water claim.

19 I had no role in determining what the water
20 requirements were for the return flows or the return
21 flows associated with those.

22 Q (By Mr. Echohawk) What figure did they give you for the
23 four plants?

24 MR. WHITE: Objection, Your Honor. I do not believe --
25 billstein-direct-echohawk



1 Excuse me. The information received from an economist
2 with respect to water demands for industrial purposes
3 hardly seems to be the type of hearsay that an expert,
4 even an expert can rely on, and I would object to the
5 question in that it calls for hearsay.

6 THE SPECIAL MASTER: I'm inclined to sustain the
7 objection, Mr. Echohawk. If all Mr. Billstein can say
8 to us is I got this, my field is agricultural expertise,
9 and I've testified to it now, but I understand that there
10 is to be a phosphate plant and it takes 825, and I'm
11 told a coal-fired power plant will put 150 megawatt power
12 and will require some water, but I don't know how much.

13 MR. ECHOHAWK: As you recall --

14 THE SPECIAL MASTER: Doesn't have much value to me.

15 MR. ECHOHAWK: Two things we point out. Mr.
16 Billstein was qualified, he was qualified as a water
17 resource planner and what he does is take the various
18 amounts supplied to him by other people and that's when
19 he makes his judgments.

20 THE SPECIAL MASTER: Mr. Echohawk, if your question
21 is, "Mr. Billstein, if 4,200 acre-feet per year of water
22 were to be pulled off of the Kinnear for an ammonia
23 plant, would it jeopardize the remaining agricultural
24 water requirements?" His response could be yes or no
25 and --



1 MR. ECHOHAWK: That's the only judgment that he is
2 making, Your Honor.

3 THE SPECIAL MASTER: All right, ask him.

4 MR. ECHOHAWK: The figures he's giving have already
5 been entered into evidence in this case by -- through
6 Mr. Merchant.

7 THE SPECIAL MASTER: Right.

8 MR. ECHOHAWK: He's just laying out what figures
9 were given to him, what figures are already in evidence.

10 THE SPECIAL MASTER: What figures we'll have on the
11 demand to -- for agricultural water?

12 MR. ECHOHAWK: That's correct, that's all he's doing.

13 THE SPECIAL MASTER: All right.

14

15

16

17

* * * * *

18

19

20

21

22

23

24

25



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

THE SPECIAL MASTER: What effect will that have on agricultural water if 825 acre-feet a year is used for a phosphate plant?

THE WITNESS: I don't know.

THE SPECIAL MASTER: That's what I heard.

MR. ECHOHAWK: All we need to do is lay out what the use is and how much it is, and the question is whether he evaluated it and is there water available. That's essentially all we are going to do.

Q (By Mr. Echohawk) Okay, Mr. Billstein, I think you left off with the phosphate plant.

A I believe we got through that to the point where we introduced the 825 acre-feet total.

Q Did you give us a figure on the power plant, quantity?

A Yes, twenty-four ninety acre-feet.

Q Did you evaluate anything else?

A There was a wallboard plant served out of the LeClair Canal, 300 acre-foot total quantity.

THE SPECIAL MASTER: Served out of what, Mr. Billstein?

THE WITNESS: LeClair Canal.

Q (By Mr. Echohawk) Can you make an analysis as to whether there was water available at the points of diversion after the industrial -- excuse me, after the agricultural claims by United States would satisfy?

MR. WHITE: Objection, Your Honor. What period, what



1 priority date?

2 THE SPECIAL MASTER: I'll overrule it for now.

3 THE WITNESS: Yes, I did.

4 Q (By Mr. Echohawk) What is your conclusion?

5 A My conclusion is there's no impact on the agricultural
6 claims by service for these industrial uses.

7 Q Could you evaluate anything else -- any municipal claims?

8 A There was one other industrial claim, this took place on
9 Crow Creek.

10 THE SPECIAL MASTER: What on Crow Creek?

11 THE WITNESS: There was a uranium processing plant.

12 THE SPECIAL MASTER: My broken neck. Go ahead, Mr.
13 Echohawk.

14 Q (By Mr. Echohawk) What was the quantity given to you for
15 the uranium processing plant?

16 A 475 acre-feet.

17 Q What was the --

18 THE SPECIAL MASTER: Per year?

19 THE WITNESS: Yes, sir. Approximately 40 acre-feet
20 per month, which is less than 1 cfs.

21 Q (By Mr. Echohawk) Excuse me?

22 A Which is less than 1ccfs demand.

23 Q What is the results of your analysis there?

24 A Our review of the Crow Creek water supply is that the
25 billstein - direct - echohawk



1 agricultural claims would not be impacted by service to
2 this industrial use.

3 THE SPECIAL MASTER: Can you cite me to Crow Creek
4 gauging station figures on Mr. Keene's report?

5 THE WITNESS: Yes, sir.

6 THE SPECIAL MASTER: And your claim for this plant
7 would be 40 acre-feet per month?

8 THE WITNESS: Yes, sir.

9 THE SPECIAL MASTER: Year-in and year-out? Well,
10 if you have to increase efficiency 35 to 50 percent in
11 order to meet even 60 percent of irrigation requirements
12 in the month of August on Crow Creek, how on earth can
13 you take another 40 or 50 feet and run a uranium plant
14 and tell me that doesn't have an affect on agriculture?

15 A It can be managed.

16 THE SPECIAL MASTER: Oh, anything can be managed.
17 All you have to do is have something give someplace, but
18 my God, I can't adjudicate the last drop of water on these
19 streams, and that's what we are talking about now, a plan
20 on Crow Creek when you haven't got water to do more than
21 one or two cuttings of hay in the spring.

22 THE WITNESS: In every month except August, and per-
23 haps September, we run into a conflict between the two.

24 Standard practice in most use areas is to have some type of
25 billstein - direct - echohawk



8-4

1 a holding pond or a supplemental source, be it groundwater:
2 to serve or allow you to have back-up water, carry-over
3 water.

4 THE SPECIAL MASTER: Virtually any depth after 50
5 feet, 75 feet, I guess the Wind River alluvium holds its --
6 what was the figure Mr. Kersich gave us, four million --
7 many millions of acre-feet of water recharged annually.
8 At several thousand feet some of the finest aquifers in
9 the world hold unknown acre-feet of water for industrial
10 purposes. You don't really expect a reasonable Special
11 Master to allow you to put a uranium plant in areas like
12 this and give you the right to take surface water from
13 a river?

14 MR ECHOHAWK: If you recall, as I stated, Your Honor,
15 the United States is asserting the claim primarily for
16 groundwaters. All I'm doing is putting in additional evi-
17 dence there's water.

18 THE SPECIAL MASTER: I see, you are just dropping in
19 a few sweetners?

20 MR. ECHOHAWK: That's correct.

21 THE SPECIAL MASTER: Okay, go ahead, Mr. Billstein.

22 Q (By Mr. Echohawk) Mr. Billstein, does that cover all the
23 industrial areas that you evaluated?

24 A That's correct.

25 billstein - direct - echohawk



- 1 Q Did you evaluate any municipal water requirements?
- 2 A Yes, I did.
- 3 Q What was that?
- 4 A There was a proximate total acre-foot claim of 40 out of
- 5 the Big Wind River to serve the Indian population of
- 6 Riverton, and also a total requirement of 972 acre-feet
- 7 to serve Fort Washakie out of the Little Wind River.
- 8 Q What were your conclusions regarding service of the Indian
- 9 population of Riverton out of the Wind River?
- 10 A There is water available for that.
- 11 Q What is your conclusions regarding service of Fort Washakie
- 12 out of the Little Wind River?
- 13 A Historically the service of the Fort Washakie area is
- 14 taken care of from storage out of Washakie Reservoir, and
- 15 we established previously that there was water available
- 16 for the agricultural claims in the Little Wind unit, and
- 17 in particular, with respect to manageable shortages and
- 18 what usually happens during periods of low flow is that
- 19 there is a small storage allocation given in Washakie
- 20 Reservoir to meet the needs of Fort Washakie, and that is
- 21 given a senior or a first priority right. What would im-
- 22 pact the total service of approximately three cfs in the
- 23 entire Little Wind unit, which was a small percentage of
- 24 what the overall demand was on that basis, we felt there
- 25 billstein - direct - echohawk



1 little conflict. It's simply being carried out today and
2 will be continued to be carried out as part of the storage
3 allocation of Washakie Reservoir when direct flow is not
4 able to be utilized.

5 Q Did that conclude your results of the municipal and indus-
6 trial claims of the United States?

7 A That's correct.

8 Q I believe you testified regarding that you had analyzed
9 water requirements concerning the fish flows for mainten-
10 ance of fish habitat asserted by the United States, is that
11 correct?

12 A That's correct.

13 Q Would you tell us -- describe briefly for us how you per-
14 formed that analysis?

15 A The results of the operational studies for the year --
16 for the years 1946 to 1979 were compiled and summarized
17 by the respective control nodes as shown on Exhibit C-305
18 and C-294. In other words, that shows what the river flow
19 by month is at those respective control nodes during the
20 entire period of record period. Those results were com-
21 pared against the recommended fishery flows as supplied
22 by Mr. Vogel, and areas of conflict in terms of whether it's
23 a minor conflict, major conflict or no conflict were ident-
24 tified.

25 billstein - direct - echohawk



1 MR. WHITE: Excuse me, Tom, I have to ask you to ask
2 the witness whether or not the results he's talking about
3 are the results after the agricultural, municipal and
4 industrial diversions or before? It wasn't clear, and I
5 don't want to make an objection, I just ask you to ask him.

6 Q (By Mr. Echohawk) All right. Mr. Billstein, did you hear
7 Mr. White's question?

8 A Yes.

9 Q What is the answer?

10 A It was after the results of the agricultural claims were
11 operated through the system. With respect to the indus-
12 trial claims, they were so small, compared to the total
13 flow in the system that there was no need to make a complete
14 new computer run just to subtract those out. So they
15 were taken into account in the review, but the particular
16 summary tables that were utilized don't reflect that, and
17 the reason is they were insignificant.

18
19
20
21 * * * * *

22
23
24
25 billstein - direct - echohawk



1 Q (By Mr. Echohawk) Mr. Billstein, can you provide for us
2 in the Big Wind System, the areas of Mr. Vogel's fish
3 flows to where there are -- that you described as no
4 conflict between agricultural flows and the fishery
5 flows.

6 THE SPECIAL MASTER: Is that something on a document
7 that might be copied and introduced into evidence and
8 save us a few minutes or is it just a reference to eight
9 or ten places that you'd rather point out on a map and do
10 orally?

11 THE WITNESS: We could sure do it, Your Honor. I
12 don't have any problem.

13 MR. ECHOHAWK: Any objections, Mr. White?

14 MR. WHITE: Well, I'd like to see it.

15 (Brief pause.

16 MR. WHITE: Your Honor, I think we can save some
17 time. I'll waive the five-day objection. I'm sure Mr.
18 Echohawk will do the same when the times comes.

19 THE SPECIAL MASTER: Okay.

20 (Brief pause.

21 THE SPECIAL MASTER: Okay.

22 Q (By Mr. Echohawk) Mr. Billstein, I show you what we'll
23 mark --

24 MR. CLEAR: 309, this will be 309.

25 billstein-direct-echohawk



1 THE SPECIAL MASTER: C-309?

2 MR. CLEAR: C-309.

3 MR. ECHOHAWK: C-309, 310 and 311.

4 THE SPECIAL MASTER: Okay, U.S. WRIR?

5 MR. ECHOHAWK: That's correct.

6 Q (By Mr. Echohawk): Mr. Billstein, I show you what has been
7 marked as United States WRIR C-310, C-309 and C-311.
8 Would you please identify those for us and describe what
9 they are.

10 A U.S. Exhibit WRIR C-309 is a summary table showing the
11 results of my fishery claim review for the Big Wind
12 system after the agricultural claims were satisfied. It
13 identifies nodes on the left-hand side that corresponds
14 to reaches of stream that have recommended fishery flows
15 as defined by Mr. Vogel.

16 Q Are the nodes indicated, the same nodes that correspond
17 to the study that you previously testified about?

18 THE SPECIAL MASTER: Between 94 and 305?

19 THE WITNESS: That's correct, Your Honor. To
20 further add clarity, there's descriptions which define
21 the exact reach of stream. Then there is a comment or
22 conclusion column that has some general components that
23 reinforce the rating system that's applied. The rating
24 system that shows up on this particular exhibit is

25 billstein-direct-ecnohawk



1 handwritten, either to the bottom or to the left-hand
2 side of the respective node numbers.

3 WRIR C-310 is the same type of table for a fish
4 review of the Little Wind River Study Unit after
5 agricultural claims were satisfied. The rating appears
6 to the left-hand side of the nodes.

7 Exhibit C-311 corresponds to the Popo Agie, Little
8 Wind and Big Horn Reach, same general format, and the
9 rating appears to the left of the node.

10 Q (By Mr. Echohawk) Would you please describe for us what
11 the rating system is and what it means.

12 A The rating system is set up into three categories. The
13 "no conflict" category responds to the fact that at a
14 particular node, after the agricultural claims and
15 industrial claims are satisfied there is still sufficient
16 water available in that reach of stream to reach the
17 recommended flows as established by Mr. Vogel.

18 The "minor conflict" category corresponds to
19 reach of streams where there's been some agricultural
20 depletion made and it's rather minor level of agricultural
21 depletions, and this is identified as a minor conflict.
22 In no case did I say that there was no conflict unless
23 we had a need that identified a natural condition or
24 reflected a river flow at a node location which had a

25 billstein-direct-echohawk



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

summary of flow which was in excess of what Mr. Vogel's recommended values were.

And a good example of a minor conflict area would be on the East Fork of the Big Wind River. We have a very small number of acres, I believe it was 300 acres being irrigated out of a stream that runs 200,000 acre-feet of water. The depletion is very minor. Consequently, the terminology is a minor conflict.

The third category dealt with "major conflicts", and this dealt with --

THE SPECIAL MASTER: Third category on 311?

THE WITNESS: On all of the exhibits, Your Honor.

THE SPECIAL MASTER: I see. C --

THE WITNESS: 309, 310 and 311.

THE SPECIAL MASTER: All right.

THE WITNESS: Deals with major conflicts, and this would take place, for instance, in a reach of stream below the North Crowheart Diversion where you would be watering a stream by approximately 600 c.f.s., like during the month of August or July, that has a major competition with fishery flows. I have just identified the areas of conflict and made no conclusions as to whether that is totally detrimental to the fishery. I just simply said there was a conflict.

billstein-direct-echohawk



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

THE SPECIAL MASTER: That's less than maximum habitat?

THE WITNESS: That's right, Your Honor.

MR. ECHOHAWK: With regard to that particular situation, where there is what Mr. Billstein says, a conflict in that, and that he is not qualified to make that particular conclusion, the United States anticipates bringing Mr. Vogel back to make those particular assessments as to whether the conflict that has, Mr. Billstein has identified is detrimental to the fish.

THE SPECIAL MASTER: All right.

MR. WHITE: I think we're entitled to have, before Mr. Billstein leaves the stand, this subject, find out what the values were for those areas of conflict. In other words, what flows were remaining as compared to the fishery flows.

THE SPECIAL MASTER: You may cross-examine him in a minute. We've been waiting for an hour in hope that you would begin.

MR. ECHOHAWK: Could I have one minute, Your Honor?

(Brief pause.)

THE SPECIAL MASTER: All right, go ahead, Mr. Echohawk.

Q (By Mr. Echohawk) Mr. Billstein, in your analysis of the billstein-direct-echohawk



1 various systems operations and the fisheries analysis,
2 you stated that you've used computers, and I assume from
3 that you get computer printouts; is that correct?

4 A That's correct.

5 MR. ECHOHAWK: Your Honor, what we have is the
6 computer, in two instances we have the summaries that come
7 out of the computers. Additionally we have one, one
8 summary regarding fish flows on the Popo Agie and we have
9 one run, a complete run.

10 THE SPECIAL MASTER: You're talking about fish runs
11 or stream flows?

12 MR. ECHOHAWK: I'm talking overall. These are the
13 outputs that result from Mr. Billstein's system operations
14 regarding agricultural claims for the Big Wind and Little
15 Wind. In addition we have one fish flow on the Popo
16 Agie and also in the Little Wind we have, where Mr.
17 Billstein talked about that there would be, you could get
18 by the shortages in certain selected years by increasing
19 your efficiencies by ten percent, he also has the computer
20 output for the 45 percent efficiencies.

21 As I discussed this last night with my co-counsel,
22 I think it's necessary for a complete picture, that these
23 be entered into evidence. However, I have not supplied
24 them previously to Mr. White. In view of the fact that

25 billstein-direct-echohawk



- 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

we are an hour away from probably quitting for the day and we're not going to return until July, I would like to have Mr. Billstein identify these, offer them into evidence and defer voir dire on those particular exhibits until we return July 9th.

* * * * *



1 MR. WHITE: Let's see what happens, Your Honor.
2 We will have an objection to the five-day rule.

3 THE SPECIAL MASTER: Surely, you will. We will
4 identify them now and see what you think.

5 MR. WHITE: I suspect cross-examination will
6 begin before the day is out. We are not going to
7 waive the last --

8 THE SPECIAL MASTER: If you have any cross-
9 examination on any documents, you may, but I guess
10 you probably want to work on most of the evidence.
11 All right. You said you want to identify them now
12 and mark them?

13 MR. ECHOHAWK: Yes, Your Honor.

14 THE SPECIAL MASTER: Is it just one printout?

15 MR. ECHOHAWK: There are four printouts.

16 THE SPECIAL MASTER: Four printouts?

17 MR. ECHOHAWK: Yes.

18 THE SPECIAL MASTER: And they would be identified --
19 Could we have a stipulation that all parties agreed
20 these four documents deal with the matters that Mr.
21 Echohawk just alluded to, and that they would show
22 that with better management corrections that there would
23 be no impairment to fish habitat on the stream to which
24 they apply?

25 MR. WHITE: We can't do that until we have seen them,



1 Your Honor.

2 THE SPECIAL MASTER: Okay.

3 MR. WHITE: Your Honor, with respect to all these
4 exhibits, in order to save time, can I just have a
5 continuing five-day rule objection, please?

6 THE SPECIAL MASTER: Granted.

7 Q. (By Mr. Echohawk) Mr. Billstein, I've placed four
8 exhibits in front of you. Would identify those for
9 the record?

10 A. I think we need a few more of these.

11 MR. ECHOHAWK: May we have a minute, Your Honor?
12 I have these things all messed up.

13 THE SPECIAL MASTER: I'm going to try to save some
14 time, if I can, but do you want to take a five-minute
15 break?

16 MR. ECHOHAWK: It will just take a minute. I got
17 them all piled up here.

18 THE SPECIAL MASTER: Let's stand in recess for five
19 minutes.

20 (Whereupon, a five-minute
21 recess was taken.)

22 THE SPECIAL MASTER: Mr. Echohawk.

23 Q. (By Mr. Echohawk) Mr. Billstein, I placed in front of
24 you several exhibits. Would you please read the
25 billstein-direct-echohawk



1 exhibit number and identify the exhibit for us?

2 A. U. S. Exhibit WRIR C-312 is a computer printout of
3 the Little Wind River agricultural study run.

4 THE SPECIAL MASTER: Agricultural --

5 THE WITNESS: Study --

6 THE SPECIAL MASTER: Study --

7 THE WITNESS: Run.

8 THE SPECIAL MASTER: Run.

9 THE WITNESS: Yes. Using forty-five percent

10 efficiencies for selected low flow years, specifically
11 1946, 1958, 1960, 1977.

12 Q. (By Mr. Echohawk) That's the computer printout that
13 reflects water availability for times of shortage that
14 you testified that were manageable shortages?

15 THE SPECIAL MASTER: That's just what he said.

16 THE WITNESS: That's correct. U. S. Exhibit WRIR
17 C-313 shows the results of the Big Wind system study
18 and it's in summary format, it's given by node number
19 with the years of results specific to that node number
20 listed for 1946 through 1939 (sic) by their respective
21 months.

22 THE SPECIAL MASTER: 1946 to 1939?

23 THE WITNESS: To 1979, Your Honor.

24 U. S. Exhibit WRIR C-314 shows the results of the
25 billstein-direct-echohawk



1 Little Popo Aggie, Little Wind and Big Horn system
2 agricultural study, sometimes referred to as the
3 Popo Aggie fishery study. This again shows the
4 results summarized by node for the years 1946 to
5 1979 by month.

6 U. S. Exhibit WRIR C-315 shows the results of
7 the Little Wind operational study by node for the
8 years 1946 through 1979 for the respective months.

9 THE SPECIAL MASTER: What's the difference
10 between what 314 shows and what 315 shows?

11 THE WITNESS: 314, Your Honor, is on the --
12 basically, it shows no difference. They rated the
13 agricultural claims and the remaining stream flows
14 as printed out in 314, and 315 shows the remaining
15 flows after the agricultural claims have been served.
16 The reason that we sometimes refer to Exhibit 314 as
17 the fishery computer run was the -- from the stand-
18 point that I did not need the computer run to make
19 my conclusions on water availability. This was done
20 as a supplement to --

21 Q. (By Mr. Echohawk) Mr. Billstein, before we finish up,
22 I think what we need to, since Mr. White is concerned
23 about cross-examination of Mr. Toedter on the return
24 flows, I think it's only fair to him that we understand

25 billstein-direct-echohawk



1 exactly what it is you did so he can cross-examine
2 you to the extent that he feels it's necessary.

3 THE SPECIAL MASTER: Could I suggest we leave
4 that unless Mr. White asks him to bring it out? It's
5 really not necessary -- Wouldn't it be redundant or
6 duplicative if we go through that now?

7 MR. WHITE: I have no objection.

8 MR. ECHOHAWK: The only thing, I don't want Mr.
9 White to get into the situation when he gets Mr.
10 Toedter on the stand, to find out Mr. Billstein had
11 some other portion and he had foregone his chance to
12 cross-examine him on it.

13 THE SPECIAL MASTER: But I fail to understand
14 why you are showing at this late date in the trial
15 such concern for Mr. White's procedural well-being.

16 MR. WHITE: There's a method in this madness,
17 Your Honor, he's about two steps ahead, and if I've
18 got the third step figured out, I'm just as glad for
19 him to do it. I have no objection.

20 THE SPECIAL MASTER: Go ahead, Mr. Echohawk.

21 Q. (By Mr. Echohawk) Would you please describe for us
22 briefly what it is you did regarding return flows in
23 systems operation study?

24 A. As I selected the return flow --

25 billstein-direct-echohawk



1 THE SPECIAL MASTER: Mr. Billstein, I thought what
2 you did is what you have been spending the last two
3 days telling us you did. Now, isn't that true?

4 THE WITNESS: I think counsel wants me to go into
5 a little more detail.

6 MR. ECHOHAWK: I just want to hit exactly the
7 areas you have something to do with so Mr. White can
8 cross-examine you on those areas.

9 THE WITNESS: I selected the representative nodes
10 and reviewed the contributing service areas above
11 those nodes from the available data, whether it be
12 seven and a half minute topographic maps, USGS ground-
13 water study records or available water table ground-
14 water isopleth work, and tried to define the study
15 boundaries wherein all of the return flow above a
16 particular node would, in fact, return. Further, I
17 investigated the existing operations of the use areas,
18 in specific terms the Little Wind Unit and the Upper
19 Wind Unit, to categorize where historically return
20 flows have been selected and re-used within the system.
21 I made an initial determination of the boundaries,
22 and then brought Mr. Toedter in and he took my initial
23 work, reviewed it, applied the necessary technical
24 assessments to it, and set the final boundaries of the

25 billstein-direct-echohawk



1 contributing study units to the return flow control nodes.
2 Q. (By Mr. Echohawk) Mr. Billstein, does Exhibit C-294
3 accurately depict the areas that you considered for
4 return flows, and does it designate the collection
5 return flow point that you used in your systems operations
6 study?

7 MR. WHITE: Objection. The witness just testified
8 Mr. Toedter did the final determination on the return
9 flow areas. Only the nodes were established with
10 specificity by this witness.

11 THE SPECIAL MASTER: Well, was 294 prepared under
12 your direction or Mr. Toedter's or both?

13 THE WITNESS: We both contributed to it, Your Honor.
14 I located the return flow nodes and basically --

15 THE SPECIAL MASTER: Okay. You may answer.

16 THE WITNESS: I located the return flow nodes --

17 THE SPECIAL MASTER: No, you can answer his
18 question. Does it accurately show -- What was your
19 question, the fact it shows the return flow nodes?
20 return flow nodes?

21 MR. ECHOHAWK: The return flow nodes considered
22 and the areas for collection.

23 MR. WHITE: And my objection only went to the areas,
24 Your Honor, since Mr. Toedter defined those.

25 billstein-direct-echohawk



1 MR. ECHOHAWK: I will withdraw my question,
2 Your Honor. We will put the exhibit in through Mr.
3 Toedter.

4 THE SPECIAL MASTER: All right.

5 MR. ECHOHAWK: Your Honor, at this time the
6 United States would offer into evidence what has
7 been marked as United States Exhibit WRIR C-305,
8 which is a systems operation study map that Mr.
9 Billstein has been referring to. I offer it for
10 illustrative purposes of Mr. Billstein's testimony;
11 Exhibit 306, which is the water duty schedule that
12 is illustrative for what Mr. Billstein plugged in,
13 just generally a compilation of the water duties
14 supplied to him by the agricultural engineers.

15 THE SPECIAL MASTER: Just half a minute.

16 (Brief pause.)

17 THE SPECIAL MASTER: Go ahead.

18 MR. ECHOHAWK: Exhibit C-307, which is the
19 control point description, Big Wind River operation
20 study, for illustrative purposes showing the way
21 Mr. Billstein -- excuse me, Your Honor, I withdraw
22 that, strike that -- for the truth of its contents.
23 It shows Mr. Billstein's descriptions that he assigned,
24 and what functions he carried out at each of his
25 control point; Exhibit C-308, which is a control point



- 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

description for the Little Wind operation study I offer
 for the truth of its contents; Exhibit 309 ---

* * * * *



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

THE SPECIAL MASTER: We have that, 309.

MR. ECHOHAWK: Okay. Which is the --

THE SPECIAL MASTER: We'll staple that together, it's a three-page document.

MR. ECHOHAWK: It's three separate exhibits.

THE SPECIAL MASTER: 309, 310, 311, okay.

MR. ECHOHAWK: Summary table regarding fishery for the Big Wind; C-10, which is a summary table regarding fisheries for the Little Wind; summary tables regarding fishery for the Popo Agie. Eleven was Little Wind and Big Horn.

THE SPECIAL MASTER: All right.

MR. ECHOHAWK: C-312, which is a computer printout of the Little Wind study.

THE SPECIAL MASTER: Are you offering those now?

MR. ECHOHAWK: Yes, Your Honor.

THE SPECIAL MASTER: Twelve, 13, 14, 15?

MR. ECHOHAWK: Yes, Your Honor, with the understanding that the United States will stipulate that Mr. White and Mr. Donnell have a chance to voir dire those exhibits when we return in July.

THE SPECIAL MASTER: All right.

MR. ECHOHAWK: C-312 is 45 percent efficiency for the selected low flow.

C-313 is a Big Wind Study summary table for the



1 years 1946 through 1979.

2 C-314, which is the computer printout for Popo Agie,
3 Little Wind, Big Horn by node by month, 1946 to 1979.

4 Exhibit C-315, which is computer printout, Little
5 Wind operations study, 1946 to 1979, by node by month.

6 THE SPECIAL MASTER: All right. Do you wish to voir
7 dire any of these, Mr. Perry?

8 MR. PERRY: No, Your Honor.

9 THE SPECIAL MASTER: Do you have any voir dire of
10 the exhibits, Mr. --

11 MR. WHITE: I think Mr. Donnell -- I do, Your Honor,
12 but I think Mr. Donnell has some voir dire and I'd like
13 to ask what the purpose of the offer was for 309 through
14 315 since no purpose was stated.

15 MR. ECHOHAWK: 309, 310, 311 shows the, it's the
16 results of the comparisons of the agricultural requirements
17 and the fishery requirements.

18 312, 313, 314, 315 is the results of the various
19 operation studies that Mr. Billstein conducted.

20 MR. WHITE: Are those for the truth of their
21 contents or illustrative purposes or --

22 MR. ECHOHAWK: Truth of their contents, facts and data.

23 THE SPECIAL MASTER: All right. Mr. Donnell.

24 MR. DONNELL: Very briefly.
25



VOIR DIRE EXAMINATION1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. DONNELL:

Q Ron, these are all summaries; is that right?

A Summary of results.

Q What exactly are those summaries of?

THE SPECIAL MASTER: Are you referring to 312 through 315?

MR. DONNELL: Yes, sir.

THE WITNESS: Those summarize the actual computer runs that were made.

Q (By Mr. Donnell) Okay. Where are those computer runs?

A They're in the Courtroom.

Q Is that the red folders back here?

THE SPECIAL MASTER: I thought the computer runs were the exhibits, are they not?

THE WITNESS: Just in the case, Your Honor, of the 45 percent efficiency run on the Little Wind. The rest of those are summaries of the results of the computer runs.

Q (By Mr. Donnell) And these red folders are actually the computer runs; is that right?

A That's correct.

MR. DONNELL: Your Honor, I'd like to object to these exhibits at this time since they're only summaries based
billstein-voir dire-donnell



1 on the data which has not been testified to and not in
2 evidence. The base data would be the best evidence here,
3 not the summaries.

4 MR. ECHOHAWK: He has certainly testified to it.
5 If Mr. Donnell wants more paper --

6 MR. DONNELL: If that's the case, then we'd like to
7 obtain actual printouts.

8 THE SPECIAL MASTER: I'll overrule the objection.

9 MR. DONNELL: We would like to get the copies of the
10 base data, etcetera.

11 THE SPECIAL MASTER: They're available if you want to
12 attach them or reach them, you can.

13 How about the other exhibits, 305 --

14 MR. DONNELL: I don't have any objection to those,
15 Your Honor.

16 THE SPECIAL MASTER: All right.

17 VOIR DIRE EXAMINATION

18 BY MR. WHITE:

19 Q Ron, with respect to 309 through 311 --

20 THE SPECIAL MASTER: Mr. White, let me interrupt
21 you. You still have reservation against 304 and 302 --
22 301 and 302? You reserve the right to move to challenge
23 those?

24 MR. CLEAR: No, Your Honor, I think we took care of
25 billstein-voir dire-white



1 that.

2 THE SPECIAL MASTER: Did we? Well, all right.

3 MR. CLEAR: Your Honor, when Mr. Keene testified --

4 THE SPECIAL MASTER: Was that taken care of, Mr.
5 White? Am I in error?

6 MR. WHITE: Yes, sir, there is a dispute of the
7 five-day rule and it has been resolved.

8 THE SPECIAL MASTER: Thank you. Go ahead.

9 MR. WHITE: Isn't that right?

10 MR. CLEAR: Yes. Your Honor, I believe those are
11 admitted.

12 THE SPECIAL MASTER: Okay.

13 MR. WHITE: I think --

14 THE SPECIAL MASTER: Admitted with the reservation
15 is what I was trying to call your attention to.

16 MR. WHITE: There once was a reservation, then you
17 admitted them over my five-day rule objection.

18 THE SPECIAL MASTER: Okay, all right.

19 MR. CLEAR: I want to clarify that because he's
20 taking two chits. Mr. Keene was on the stand Tuesday,
21 I believe, and we did get into a hassle about the five-
22 day rule on those, but -- and I think you ruled with
23 respect to the report that they were admissible but not
24 to the computer printout, which is the supplement. But I
25 did not offer them until the following Thursday which was



1 yesterday, which was within the five-day rule. And at
2 that time Mr. White did cross-examine and voir dire
3 on those exhibits.

4 THE SPECIAL MASTER: Okay.

5 MR. WHITE: I do get two chits because it's at the
6 time they were used. Maybe we ought to straighten out
7 what the rule is because I'd like to know whether the
8 five-day rule is still in existence.

9 THE SPECIAL MASTER: The five-day rule is being
10 diminished. First there was a ten-day rule for the first
11 six months. It was quite important that nothing be done
12 by surprise, and we come into the case and we've
13 introduced mountains of evidence, three roomfuls, five
14 roomfuls now of exhibits and God knows how many pages of
15 records. It becomes less and less a chance that anybody's
16 going to get taken very much by surprise, so the ten-day
17 rule is now a five-day rule and it's almost diminished
18 to a one and two-day rule, but it's still in existence
19 in case somebody tries a real quick element of taking
20 somebody else by total surprise or unfairness; that we're
21 past the depositions, we're beyond all that now.

22 MR. ECHOHAWK: So it's still a five-day rule?

23 THE SPECIAL MASTER: So it's still a five-day rule,
24 but it's getting less and less enforced.

25 MR. ECHOHAWK: In each instance where this comes up,



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

the problem has arisen where there's a summary of the entire testimony. All the information has been testified to and it's generally a summary, and in an instance where we present these computer printouts, Mr. White has several weeks in which to analyze that sort of thing. So what I don't want to have happen is all of this stuff built up and get nailed when it comes to his portion of the case with a one-day rule.

THE SPECIAL MASTER: Well, it's going to be pretty hard to nail anybody on anything; we've got nothing left but the presentation of -- when the only thing you can get nailed on which would be new evidence, which the State may present during its case in chief, and that's when you have a right to the five days on some of these matters, but we must remember that there are going to be a list of exemptions, that Mr. White calls chits, which means he'd like a little fairness practiced regarding the remainder of the five-day rule.

MR. WHITE: We'll claim them and go along as we come to them.

THE SPECIAL MASTER: I'm not going to keep book on you. But there is still a five-day rule, to answer your question.

Q (By Mr. White) Let me start my question over, please.
billstein-voir dire-white



1 Ron, with respect to Exhibits C-309, 310, 311, which are
2 the, your hand notes concerning the impacts on fish
3 flows from agricultural development, you must have
4 compared Mr. Voge'l's recommended flows against some
5 flows that remained in the river at those particular
6 nodes to arrive at the conclusions that are set forth in
7 the exhibits I've just named; is that correct?

8 A That's right.

9 Q Are the values which you made the comparison against,
10 as to the amount of water remaining in the river,
11 contained in any of the other exhibits which have been
12 offered?

13 A I believe it's Exhibit 312, 313 and 314. If I could see
14 the exhibit list, please.

15 THE SPECIAL MASTER: The computer list we don't have.

16 Q (By Mr. White) They're right in front there, Ron.

17 A Those comparisons would have been made utilizing Exhibits
18 315, 314, and 313.

19 Q Could you show me just quickly what number out of those
20 printouts you referred to when you made your comparison,
21 just show me where it appears in the format.

22 A This is Node No. 27. These are the results of Node No. 27;
23 matching that with the recommended fishery flow for a
24 particular reach, which one could right down here.

25 billstein-voir dire-white



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

THE SPECIAL MASTER: You're looking at Page 2 of which exhibit?

THE WITNESS: Looking at Page 1 of Exhibit 313.

MR. ECHOHAWK: Your Honor, perhaps for clarity, if Mr. Billstein could mark, for an example, what section of numbers that he used to compare these.

Q (By Mr. White) I hand you a red pen. Why don't you mark by large circles, the numbers which you used to compare the chart which contains that set of numbers which I believe you have described as long-term average demand.

A It would be the whole set of numbers that's compared against the recommended fishery.

Q That's in Exhibit C-313?

A That's right.

MR. WHITE: Your Honor, could I see his notes, there is only one copy?

THE SPECIAL MASTER: Yes, right here, Mr. White.

* * * * *

billstein-voir dire-white

409 West 24th Street
Cheyenne, WY 82001
(307) 635-8280

Frontier Reporting Service



201 Midwest Building
Casper, WY 82601
(307) 237-1493

1 Q (By Mr. White) In your rating system you used in
2 Exhibits 309, 310 and 311, can you give us any of the
3 quantitative parameters which you used to decide whether
4 the impact was as you have indicated there? For example,
5 what would be a minor impact in general?

6 A Okay, with respect to Node No. 9, which corresponds to
7 this location (witness indicating) are basically the
8 A.1 stream flow site on the East Fork of the Big Wind
9 River, those results which were input from water supply
10 and reduced by operating the small amount of irrigated
11 acreage, which is 300 acres, are reflected in the
12 printout shown under Node No. 9. That should show the
13 river flow using the East Fork of the Big Wind River.
14 Comparing that against the recommended fishery flows of
15 Mr. Vogel for the reach of the East Fork of the Wind River
16 below the confluence of the Wiggins Fork, which is, in
17 fact, this reach (witness indicating), Wiggins Fork, comes
18 in here --

19 THE SPECIAL MASTER: Is that off the Reservation?

20 THE WITNESS: Wiggins Fork is off the Reservation,
21 then has its confluence with the East Fork of the Big
22 Wind River, which is a boundary stream of the Reservation.

23 Q (By Mr. White) Let me ask you, did you use any percentages?
24 In other words, a minor would be one or two percent, major
25 billstein-voir dire-white



1 would be 50 percent? That's what I'm really driving at,
2 any quantitative parameters you used.

3 A Basically it was the function of the level of upstream
4 depletion relative to the total flow. One of the
5 problems in interpreting the particular fishery studies
6 is that in the January months, for example, or the non-
7 irrigation months, we have a recommended flow which has
8 recurrence intervals of one out of every two years, which
9 means even in its natural condition you are going to have
10 a lower flow over on a long-term average for one of the
11 two years of study. So with respect to the non-irrigation
12 season, we are basically dealing with a natural flow
13 condition. There's no agricultural claim impact to that,
14 but then we get into the irrigation season, and I
15 compared that against the recommended values of Mr. Vogel
16 as set forth in his testimony. Again, when I get into
17 flow months where even in the natural flow conditions
18 you are going to have low numbers, so without being a
19 fishery biologist who would make an interpretation of
20 the level of segregation of impact, what I did was merely
21 say in a reach of stream that typically carries 100 c.f.s.
22 of water, which relates out to roughly 6,000 acre-feet of
23 water in that month, a depletion of less than 167 acre-feet
24 would have some minor impact.

25 billstein-voir dire-white



1 THE SPECIAL MASTER: All righty.

2 Q (By Mr. White) So when you describe things as major
3 or minor impacts, you went through that sort of judgmental
4 rather than a procedurally quantitative approach to reach
5 your conclusions, is that correct?

6 A It was judgmental, but in the respect of reaches,
7 Counselor,, that we are evaluating, it's pretty obvious
8 as to the level of impact, that to take one from a minor
9 to a possible -- and I certainly didn't feel qualified
10 to make any conclusions about those areas where there
11 were possible conflicts.

12 THE SPECIAL MASTER: Any objections to the offers,
13 Mr. White?

14 MR. WHITE: Yes, I will have in just a moment.

15 THE SPECIAL MASTER: I was afraid there would be.

16 MR. WHITE: I can say easily with respect to the
17 illustrative exhibits we have no objections.

18 Q (By Mr. White) 307 and 308, your control point
19 descriptions, these are the descriptions which you used
20 in your study, is that correct?

21 A In my agricultural analysis?

22 Q Yes.

23 A Yes.

24 Q Why didn't you have similar descriptions for those which
25 billstein-voir dire-white



1 you used in your fishery study?

2 THE SPECIAL MASTER: I hardly think that's an
3 appropriate question on voir diring 307 and 308. They
4 are what they are. Why he didn't do them for something
5 else is really not applicable to 307 and 308.

6 MR. WHITE: Switch to computer printouts, Your Honor,
7 then.

8 Q (By Mr. White) Do one of these computer printouts have
9 to do with the fishery study?

10 A Yes.

11 Q Did you use control points in that work?

12 A Yes.

13 Q Does the printout contain a description of the control
14 point?

15 A The printout identifies the control point.

16 Q Does it contain a description of the control point?

17 A Not on the printout.

18 Q Is there another description of those control points which
19 is not in evidence?

20 THE SPECIAL MASTER: I don't understand how it fails
21 to describe it if it contains and identifies it. If it
22 identifies it, it must have to identify it with some sort
23 of description, for goodness sakes. How else can it
24 identify it?

25 billstein-voir dire-white



1 You are talking about 314 now?

2 THE WITNESS: 314, 315, any of those, Your Honor.

3 Yes, there is a node, an identification number, and we
4 have developed descriptions for each one of those nodes
5 to thoroughly describe the location of it.

6 THE SPECIAL MASTER: All right.

7 MR. ECHOHAWK: Your Honor, I believe what Mr. White
8 is getting at is the fact for those control points Mr.
9 White is concerned about there is a written description
10 for those that havenot been introduced into evidence.

11 THE SPECIAL MASTER: It's something Mr. White is
12 seeking by these means?

13 MR. ECHOHAWK: That's what he's seeking. I supplied
14 him a copy of it, I just did not offer it in evidence.

15 MR. WHITE: What I'm leading up to is the printout
16 lacks foundation without the description of the control
17 points because there is a certain difficulty in using
18 the printout or what does the printout stand for without
19 the control point descriptions.

20 THE SPECIAL MASTER: I'm going to permit them to
21 come into evidence. If you want to draft the control
22 point descriptions, you are certainly free to do so.
23 The absence doesn't prohibit the documents from being
24 admitted in evidence.

25 MR. WHITE: I'll have a foundation objection on that,



1 Your Honor, when I get to it.

2 THE SPECIAL MASTER: All right, that's fine.

3 Q (By Mr. White) What was the exhibit number of your
4 fishery study?

5 A The analysis of fishery, Counsel, took place utilizing
6 information on Exhibits 313 and 314 and 315.

7 MR. WHITE: Thank you. Your Honor, as I understand
8 it, we are entitled to make copies of the base printouts
9 from which the summaries came, and with that understanding,
10 we have no objection based on the Rules of Evidence to
11 those summaries so long as we can have the basic data from
12 which they were developed. So we have no objection with
13 respect to the Exhibits 312, 13, 14 and 15 -- that's
14 C-312, thirteen, fourteen, and fifteen -- based on
15 foundation insofar as we now have the basic data. I'm
16 a little troubled by the offer for the truth of its
17 contents because it's difficult to cross-examine or to
18 deal with the truth of its contents in voir dire. On
19 the other hand, I'm satisfied that if we have those basic
20 printouts and have an opportunity to cross-examine on
21 those printouts, we probably can waive our objection at
22 least for the time being. I would like to reserve that
23 right to come back and look at those again, Your Honor.

24 We also reserve the same right to come back and look
25 billstein-voir dire-white



1 at the fish tables again, C-309 through 311, but at this
2 time have no objection with respect to foundation for the
3 fisheries table or with respect to the Rules of Evidence.
4
5
6
7
8

9 * * * * *
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



1 MR. WHITE: I do have an objection that
2 involves 309 through 315, and that is that the
3 fishery study control point descriptions are not
4 included, and to the extent that they are not
5 included in Mr. Echohawk's offer, a foundation is
6 lacking, and I object to the basis of that and
7 that only at this time, Your Honor.

8 THE SPECIAL MASTER: All right. The objection's
9 notwithstanding, the exhibits heretofore offered by
10 Mr. Echohawk into evidence, beginning with C-305
11 and consecutively numbered to 315, being the same,
12 are hereby admitted into evidence for the purposes
13 offered.

14 (Whereupon, Exhibits WRIR
15 (C-305, C-306, C-307, C-308,
16 (C-309, C-310, C-311, C-312,
17 (C-313, C-314, C-315 were
18 received into evidence.

19 MR. WHITE: I assume it wasn't necessary for me
20 to repeat my five-day rule objection I've made all
21 along?

22 THE SPECIAL MASTER: No, we have that understanding.
23 Does that conclude --

24 MR. ECHOHAWK: From my understanding, Mr. White
25 is requesting a control point description of the
Popo Agie fishery study. As I stated, Your Honor, I
have those control point descriptions in a similar form



1 as the other control points.

2 THE SPECIAL MASTER: Would you just like to hand
3 those to Mr. White.

4 MR. ECHOHAWK: I've given him a copy last night.

5 MR. WHITE: He has given me a copy. What I'm
6 trying to do, Your Honor, frankly, is put Mr. Echohawk
7 in a position of giving me another chit because these
8 things are all outside the five-day rule.

9 THE SPECIAL MASTER: At least he has one.

10 MR. ECHOHAWK: Okay, Your Honor. In that instance,
11 I'll mark it as Exhibit C-316 and offer it for the same
12 purposes as the other control point descriptions.

13 THE SPECIAL MASTER: All right. We'll also admit
14 it knowing that it's clearly in violation of the five-
15 day rule, but substantively, I don't think it causes any
16 problems to the State.

17 (Thereupon, the Exhibit
18 (marked WRIR C-316 was
(received in evidence.

19 MR. WHITE: I'd also like to reserve the right of
20 cross-examination once we get into cross-examination.

21 THE SPECIAL MASTER: Yes, that is granted, Mr.
22 White.

23 Does that complete your cross-examination at
24 this time of this witness?

25 MR. ECHOHAWK: It's not clear what Mr. White



1 has reserved. If he's reserving voir dire, then perhaps --

2 THE SPECIAL MASTER: 316 has been admitted into
3 evidence.

4 MR. WHITE: I'll change the reservation and make
5 it clear. I will reserve a Motion to Strike until
6 cross-examination.

7 THE SPECIAL MASTER: That's what you did with these;
8 you reserved a Motion to Strike.

9 MR. WHITE: I think that solves the problem.

10 THE SPECIAL MASTER: If you don't use those Motions
11 to Strike, they evaporate, they disappear.

12 MR. CLEAR: Your Honor, I want to clarify --

13 THE SPECIAL MASTER: 301 and 302 again.

14 MR. CLEAR: There's no reservation on a Motion
15 to Strike on those.

16 MR. WHITE: That reservation of Motion to Strike
17 has evaporated, I concede that.

18 THE SPECIAL MASTER: I guess that happens in any
19 lawsuit, if you're in trial long enough and have enough
20 exhibits.

21 Okay. I will not again refer to ... and ..., I
22 promise you all.

23 MR. CLEAR: They're just in, and there's no reser-
24 vation.

25 MR. WHITE: That's correct. That was true. Your



1 observations were true on Monday, and we didn't make
2 a big deal out of it, and they went away.

3 THE SPECIAL MASTER: Mr. Echohawk.

4 MR. ECHOHAWK: At this time, that concludes the
5 direct examination of Mr. Billstein. I would suggest
6 that due to the fact that it's twenty minutes to
7 twelve, we recess and resume July 9th.

8 THE SPECIAL MASTER: I think maybe we should use
9 this afternoon for some cross.

10 MR. DONNELL: I was going to say I could finish
11 this probably in an hour and a half at the outside.

12 THE SPECIAL MASTER: You want to go to lunch and
13 come back or do you want to go for half an hour and
14 take a quick lunch at twelve?

15 MR. ECHOHAWK: Could we come back at 12:30?

16 THE SPECIAL MASTER: Or you can adjourn now and
17 come back at 12:30. You don't get very good service
18 in these fast food places. Let's adjourn now and
19 come back at one o'clock and knock off by three or
20 four.

21 MR. KROB: Your Honor, before we adjourn, there
22 is one quick administrative matter that the State of
23 Wyoming would like to do, having become obvious to the
24 State that the United States does not intend to withdraw
25 its memorandum in support of its amended Motion to take



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

judicial notice, the State would, at this time, like to serve an offer to the Court, its Motion to strike that memorandum of the United States.

THE SPECIAL MASTER: Okay. That will be addressed not sooner than two weeks from now.

MR. KROB: As I understand it, that was then, according to Mr. White's request yesterday, was set to be heard when we resumed hearings next time.

THE SPECIAL MASTER: That's going to be a couple weeks from now.

MR. KROB: Is that all right with the United States?

MR. ECHOHAWK: I'm a little lost. You're moving to strike the brief that we filed?

MR. KROB: Right. It was entitled memorandum in support of your Motion to take judicial notice, and we are now moving to strike it.

THE SPECIAL MASTER: Let's have it, let's have it. It's a Motion, and we can take care of it with the pleadings.

Okay. We'll adjourn until one o'clock.

(Lunch recess.)

* * * * *

