6-19-1981

Trial Transcript, Vol. 84, Afternoon Session

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File 191
4442
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case # 4993

File # 191

4442

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 84

Afternoon Session

Friday, June 19, 1981

ORIGINAL

THE SPECIAL MASTER: Mr. White.

MR. WHITE: Your Honor, Mr. Merrill, who is in the bosom of his family this week, asked me if I would deliver the complete volumes of several books that were used during the deposition -- or excuse me, testimony or cross-examination of Mr. Dornbusch, I believe, and they have been marked with exhibit numbers which parallel the excerpt exhibit numbers. They are the following exhibits: 22 with the suffix A, 25 --

THE SPECIAL MASTER: ED?

MR. WHITE: That's right, ED, I'm sorry, Your Honor. Plaintiff's Exhibit WRIR ED, as in Echo Dog, 22-A; ED-25-A, ED-26-A and ED-28-A.

At this time I would offer those to supplement the excerpts which were used during Mr. Dornbusch's testimony.

THE SPECIAL MASTER: Mr. Echohawk?

MR. ECHOHAWK: No objection.

THE SPECIAL MASTER: All right, they are received into evidence. Thank you, Mr. White.

Mr. Donnell on cross-examination.

(Whereupon Plaintiff's
(Exhibits WRIR ED-22-A,
(ED-25-A, ED-26-A and ED-28-A
(were hereby admitted into
(evidence.

CROSS-EXAMINATION

BY MR. DONNELL:

Q Mr. Billstein, let me make sure, first of all, that I understand what your study does not do. As I understand it, this study does not reflect actual use of water on the ground as it exists now; is that right?

A The study was carried out to assess the ability to serve the government claims, specifically those claims on trust lands.

Q Okay. But -- But it isn't designed to reflect use of water or availability or impact on lands other than the government claims, for instance, in the Midvale Project; is that right?

A That's correct.

Q Does that study look at all at the effects that your operation would have at Boysen Reservoir?

A No.

Q Did it look at all at any of the effects below Boysen Reservoir?

A No.

Q Concerning the appropriated lands on the minor tributaries, where did you get the locations for these lands? I'm referring to these in blue.

THE SPECIAL MASTER: What do you mean "appropriated

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lands", Mr. Donnell?

MR. DONNELL: Certificated, adjudicated lands.

THE SPECIAL MASTER: Light blues?

MR. DONNELL: Yes, light blues.

Q (By Mr. Donnell) Where did you come up with the locations of those lands?

A Those locations were obtained from the legal descriptions which were part of the Certificates of Record of the State of Wyoming.

Q Okay. If you have a legal description on a Certificate of Record that specifies, for example, ten acres in a given 40, how do you figure out where that ten acres is at?

A A lot of cases on the map accompanying the permit, those, the location of the ten acres within a specific 40 is in fact delineated.

Q And you make reference to those maps then?

A The maps that accompany the permit were referenced.

Q Were there situations where lands within a 40 were not referenced on a map, did that ever come up?

A There was an occasional time where there wasn't an exact location specified. We tried to make a phone call to the State Engineer's office in those cases, and ask for clarification as to the exact location.

Q All right. Now, referring to your HEC-3 models, your

HEC-3 models, would you explain again how that works? I'm not sure I understand it.

A Conceptually?

Q Yeah.

A Certainly. It's an operational model, and it's built along the lines of what you call a traditional bookkeeping model. You have certain in-flows that enter the system, you have certain demands as part of the system. These are reflected in depletions. You have corresponding return flows coming from the diversions to those depletion areas. Those are accounted for, and it basically book-keeps the flow in a system at a particular location that you built in to the entire operation of an area.

It analyzes river flow, meeting the constraints in the upstream to the downstream area.

Q Is this a standard program?

A Oh, certainly.

Q Does that program, as standardized, has the ability to move upstream or down, either way?

A It moves down -- from upstream to downstream.

Q Can it go from downstream to upstream if you want it to?

A This is a sequential type of program and it goes upstream to downstream.

Q Okay. So it would be designed to handle sequentially the

geographic distribution of the water rather than, say if you're in a priority system, it would not handle that; is that right?

A It would be very difficult to use this particular program to analyze water rights by priority.

Q Okay. Now, I understand you modified this program somewhat when you used it.

A That's correct.

Q How did you modify it?

A The original HEC program simply accounted for return flows as a percentage of diversion and then distributed it along the temporal distribution of the diversion.

The return flow information that I received from Mr. Toedter showed that his recommended distribution of return flows was different than that. So what we did was develop what we call a dummy diversion, and this dummy diversion is built in to having the distribution of diversion which matches the distribution of the return flow that we wanted to utilize in the program. And what we did was build in a reference so that anytime we had a diversion for a particular node, it would be referenced back to that dummy diversion and the return flows would be generated based on that dummy diversion.

Q Now, if you know, why did Mr. Toedter not feel it

appropriate to use the program as standardized?

MR. ECHOHAWK: Objection, Your Honor, it's a question for Mr. Toedter.

THE SPECIAL MASTER: He said "If you know".

MR. DONNELL: If he knows.

THE SPECIAL MASTER: Do you know?

THE WITNESS: The HEC standard method of approaching return flows, he expressed to me, was not what he felt was the best estimate of what was occurring in the field.

Q (By Mr. Donnell) So let me make sure I understand this. What he wanted to do was account for return flows at a given point, say at Point 29 rather than along the whole system; is that right?

A Negative, Counsellor.

Q Okay. Well, I don't understand that so maybe you can explain it to me again.

A Okay. It just deals with the ability to account for return flows by month at a particular point. The original program was set up to give you return flows at a certain distribution. In other words, you divert water at a certain distribution based on the water duty schedules, for example, supplied by Mr. Stetson, and the return flows then come back to the return flow nodes on a certain temporal distribution.

The distribution that was coming back to the return flows using the basic HEC Program, Mr. Toedter did not feel represented the true conditions. So what we did was interjected an artificial dummy diversion which distributed the flows back to the distribution he felt was actually taking place in the system.

Q Okay. What sort of input data did you use for this program?

A There's all kinds of control cards that are utilized and those --

Q For instance, you utilized return flow data?

A That's right.

Q And where did you get that for this particular program?

A The return flow data was based on a percentage of return flow which was generated by Mr. Toedter. In other words, he gave us a particular percentage that we would apply above and beyond the efficiency, the overall efficiency of the system which relates back to the net irrigation requirement of the crop, and this would result in a total return flow volume.

Q Okay.

A Then we used the dummy diversion to distribute that total return flow over the months properly.

Q And what exactly did you get from Mr. Toedter physically,

computer printouts?

A No. He established a particular percentage of irrecoverable loss and he also gave us the distribution that goes into the dummy diversion.

Q And you used that material then in the preparation for this program?

A Certainly.

Q Do you have that material with you today?

A It's part of the printout.

Q Of the red --

A That's right.

Q Okay.

A It was built into that.

Q All right. Now, as far as the stream flow data went, you got that from Mr. Keene?

THE SPECIAL MASTER: As far as the stream flow data?

MR. DONNELL: Yeah.

Q (By Mr. Donnell) You received that from Mr. Keene; is that right?

A Mr. Keene's sites were utilized for stream flow.

Q Okay. And is the information that you received from him that is in evidence, is that the same material you used for your program?

A It should be one in the same.

Q Is there any additional data that you used that isn't in evidence?

A I can't think of any additional data that went into the Big Wind and Little Wind operational studies.

Q All right. Now, what do you get in terms of output on this program? Do you get a model so you can look at a given node on a stream for any given month, any given year and figure out what the flow is at that particular point?

A That's correct. You get the flow into the node, the disposition of the activity at that node, whether it be a diversion or a return flow, and the resulting exiting river flow.

Q I take it that means that after the diversion you can tell how much is left in the river?

A Correct, Counsel.

Q If anything?

A That's right.

Q Okay. Would that be shown on the computer printouts that we got this morning, how much is left in the river after diversion at a given point?

A Those summary tables show exactly that.

Q Okay.

THE SPECIAL MASTER: Those summary tables that you

just alluded to, being parts of 312 through 315?

THE WITNESS: Correct, Your Honor.

THE SPECIAL MASTER: Okay.

Q (By Mr. Donnell) Mr. Billstein, I'm going to hand you a red folder with a computer printout dated June 15, '81, Big Wind River, operation study final, copy 404. Now, does that contain the information you got from Mr. Toedter?

MR. ECHOHAWK: Could we mark that as an exhibit?

MR. DONNELL: I'll do that in just one second here.

MR. WHITE: Off the record.

(Off-the-record discussion.

THE SPECIAL MASTER: On the record, please.

Read the question to the Witness, will you please.

(Thereupon the following
(question was read back as
(follows: "Q Mr. Billstein,
(I'm going to hand you a red
(folder with a computer print-
(out dated June 15, '81, Big
(Wind River, operation study
(final, copy 404. Now, does
(that contain the information
(you got from Mr. Toedter?"

THE WITNESS: Yes, it contains the input information in the computer language.

Q (By Mr. Donnell) Could you show me how that works, please.

A In 1946, Control Point No. 27 you see a required diversion

through here. That reflects the temporal distribution of the return flows that Mr. Toedter wished to input into the program.

Q Would you mark that so we'll just know where you're pointing at.

(Witness complied.

Q Okay. Now, does it also reflect information you got from Mr. Keene, is that in this printout?

A That's right.

Q Where is that?

A That would be in this area called "in-flows".

Q Okay. That reflects all the numbers you got from Mr. Keene?

A That would reflect the in-flows that we obtained from Mr. Keene.

Q Okay. Would you just draw a line under that so we know where you're at.

THE SPECIAL MASTER: Are your lines on the second and third page of that exhibit or is there a page number?

THE WITNESS: It would be Page 3.

THE SPECIAL MASTER: All right, thank you.

THE WITNESS: I should point out on Station 31, that that utilizes a combination of three stations that Mr. Keene supplied; the Wind River at Crowheart Station, the

Little Dry Creek Station and the Crow Creek Station.

Q (By Mr. Donnell) All right.

A I should add those numbers that Mr. Keene supplied are in c.f.s. -- I mean that Mr. Toedter supplied are in c.f.s. in that printout.

Q Okay.

MR. WHITE: Off the record.

(Off-the-record discussion.

MR. DONNELL: Your Honor, we'll mark this Defendant's Hanover No. 1.

MR. ECHOHAWK: What is it called?

MR. DONNELL: Defendant Hanover No. 1.

Q (By Mr. Donnell) All right. Mr. Billstein, and I take it you utilized also the printout dated June 16, '81, entitled Fisheries Study?

A Yes.

Q And you utilized also a printout dated June 15, '81, entitled Little Wind River Operational Study --

A That's right.

Q -- in completing your study?

MR. DONNELL: All right. We'll mark these too, Your Honor.

Q (By Mr. Donnell) The Fisheries Study of June 16, '81, we would mark Defendant's Hanover No. 2; the Wind River,

Little Wind River Operation Study, June 15, '81, we would mark Defendant Hanover No. 3.

Mr. Billstein, is this a complete set of all the printouts you used in your study?

A Those printouts reflect the summary tables that were presented during the course of my direct testimony.

Q Actually the summary tables reflect data in these, don't they?

A Yes, they reflect those particular runs.

Q And this would be the complete set then; is that right?

A That would be the backup information that was summarized.

Q All right.

THE SPECIAL MASTER: Doesn't include the one behind you?

THE WITNESS: That's a copy, Your Honor, of that.

THE SPECIAL MASTER: Very well.

MR. DONNELL: Your Honor, at this time we would like to introduce these, Defendant's Hanover 1, 2 and 3.

MR. ECHOHAWK: Could I have one minute to --

THE SPECIAL MASTER: Surely. We would like to know for what purposes, the truth of their contents?

MR. ECHOHAWK: What purposes?

MR. DONNELL: For the truth of their contents. They're backup data used by Mr. Billstein in preparing his

statement, so I assume it will be for the truth of its contents.

THE SPECIAL MASTER: Do you want a minute to confer?

MR. ECHOHAWK: I just have some voir dire.

THE SPECIAL MASTER: Mr. Donnell, Mr. Echohawk has a couple of minutes of voir dire.

VOIR DIRE EXAMINATION

BY MR. ECHOHAWK:

Q Mr. Billstein, is the information -- Strike that. Is there any additional information contained within these printouts that are not contained within the summary tables that you identified earlier?

A Yes. There would be information showing the operation of the reservoirs themselves. The summary tables which show the river flows or the releases from those reservoirs, but would not show the operation of the storage capacity of the reservoir during the course of that month.

Q Is the document that's marked as Defendant Hanover No. 2, which is entitled Fishery Study, is that essentially a systems operation of the Popo Agie, Little Wind and Big Horn, similar to the systems operations done on the Big Wind and Little Wind?

A That's correct.

Q So essentially it's exactly the same operation, it's

not any special or reduced type study, is it?

A It was carried out basically at the same level. However, I was not as meticulous in picking up some of the incidental return flows in the reaches of the Little Wind below its confluence with the Popo Agie and the Big Wind as well as some of the smaller return flows being picked up in the Big Horn River System. Those I felt were insignificant, therefore, I dismissed them from that study because it didn't make any difference to my conclusions.

MR. ECHOHAWK: No objection if they're to be offered for the truth of their contents.

MR. WHITE: May I voir dire, Your Honor?

VOIR DIRE EXAMINATION

BY MR. WHITE:

Q Mr. Billstein, with respect to Hanover No. 1, 2 and 3, the exhibits, that is, those reflect the facts and data upon which you relied in reaching your opinion?

A Yes.

MR. WHITE: Your Honor, we would have no objection to their admission for the purposes of showing facts and data upon which the Witness relied. We certainly do not believe an adequate foundation has been established by Mr. Echohawk's voir dire to support their admission for

the truth of their contents, and would state that if Mr. Donnell would agree to limit the offer for the purposes of showing the facts and data upon which the Witness relied, we will have no objection.

THE SPECIAL MASTER: I see --

MR. ECHOHAWK: It's Mr. Donnell's offer.

THE SPECIAL MASTER: I see only a fictitious, ephemeral distinction, frankly; either you have a truth of contents -- the truth of their contents is the fact that the computer spits out some materials on which he relied.

MR. DONNELL: I have no problems with Mr. White's request.

THE SPECIAL MASTER: Yeah, I have no problem with either one, it makes no difference to me.

MR. DONNELL: I'll withdraw the offer for the truth of its contents and make it on the facts and data upon which Mr. Billstein relied.

MR. PERRY: And the Tribes have no objection.

THE SPECIAL MASTER: All right, the three exhibits offered by Mr. Donnell, Han -- Defendant's Hanover 1, 2 and 3 being the same are hereby admitted into evidence.

(Whereupon Defendant's
(Exhibits Hanover 1, 2 and 3
(were hereby admitted into
(evidence.

THE SPECIAL MASTER: Are these to be returned to HKM when the case is over or do you have copies?

THE WITNESS: We have copies, Your Honor.

Q (By Mr. Donnell) Mr. Billstein, am I correct in saying that on the adjudicated lands on the minor tributaries you did not use the adjudicated date of priority in your study?

A That's correct.

Q And you did not use the adjudicated duty of water in your study; is that correct?

A The study was based on 1868 priority. The water duties were furnished by the agricultural consultant who has previously testified in this case.

Q Just as a matter of curiosity, and if you know, do you know why the water duty on the Upper Wind, apparently that's a project, Page 1 of C-306, is 12 acre-feet? It's more water that falls in the Amazon Jungle, I'm wondering why it's so much.

MR. ECHOHAWK: Objection. The evidence is already in the record. Mr. Stetson testified why that's 12 acre-feet.

MR. DONNELL: I wasn't here for all that.

MR. ECHOHAWK: Your Honor, that's a problem we've had all along.

THE SPECIAL MASTER: Just a minute, gentlemen. Read the question again, will you, Merissa. It began, do you know.

(Thereupon the following
(question was read back as
(follows: "Q Just as a
(matter of curiosity, and if
(you know, do you know why
(the water duty on the Upper
(Wind, apparently that's a
(project, Page 1 of C-306,
(is 12 acre-feet? It's more
(water that falls in the
(Amazon" --

THE SPECIAL MASTER: Objection overruled; he may answer.

THE WITNESS: That particular water duty reflects an efficiency of 16.2 percent, which I believe Mr. Stetson testified was representative of the historical efficiency in the Upper Wind Unit.

THE SPECIAL MASTER: Were you in the courtroom when that same question was asked of Mr. Stetson?

THE WITNESS: No, I wasn't, Your Honor.

THE SPECIAL MASTER: Do you recall -- Well, then you don't know who asked it, do you?

Okay, all right.

THE WITNESS: I don't what the comment about the Amazon River --

THE SPECIAL MASTER: No, that's all right; that's

aside. But your reason is because --

MR. DONNELL: That wasn't aside.

THE SPECIAL MASTER: -- your efficiency is one of the lowest efficiencies in the area?

THE WITNESS: He utilized what he felt the historical efficiency of the area was, which was exceedingly low, which was approximately 16 percent, which was super-imposed on the net irrigation requirements that he felt were adequate results in that type of a water duty.

Q (By Mr. Donnell) Mr. Billstein, what's the function of your control sites again, what purpose do they serve?

MR. ECHOHAWK: Objection, Your Honor; asked and answered.

THE SPECIAL MASTER: I didn't hear that. May I hear that again?

MR. DONNELL: Well, I'll withdraw it.

THE SPECIAL MASTER: All right, thank you.

Q (By Mr. Donnell) Mr. Billstein, the control points would need to be accurately located, or let's say the accuracy of the location would affect the accuracy of your study; is that right?

A That's right.

Q Can you tell me, Mr. Billstein, why you got a control point for Return Flow No. 29 on C-294 in the middle of

this area outlined in yellow instead of down on the end? It looks like you're going to have return flow coming back uphill.

THE SPECIAL MASTER: Did you say 29 or 39?

MR. DONNELL: 29. It's down at the bottom, Your Honor.

A Certainly. The last major diversion in the Little Wind Study Unit was to the Subagency Unit. It was only important to me to understand whether I had sufficient water available to meet the water requirements at that diversion point.

Yes, you're correct in saying that only a portion of the return flow returns to Node 29, which is just above the confluence of the Popo Agie River. And that level of distinction, of return flow is made in the study. However, of major additional importance is under 1868 priority we had the Popo Agie River System which was basically under-utilized or not being utilized at all to serve the government claims. This was an abundant water supply going into Node No. 29, therefore, there was no reason to deal with the small amount of c.f.s. that was coming off below this particular use point from the standpoint of trying to establish water availability in the Little Wind Unit.

This water is not, in fact, being picked up and reused in the Little Wind Unit study area. The diversion that serves this area is, in fact, Point 27. Therefore, the emphasis was on did Point 27 have the necessary inflow to serve the demands that were established at Control Point No. 27.

Q (By Mr. Donnell) So return flow below Point 29 is just left out?

A It was -- I believe in this particular case we collected all of the return flow from the Subagency Unit at Point 29 just as a matter of convenience.

As I said before, the dominating water resources of the Popo Agie System makes that almost a nebulous issue.

Q Um-hum. On No. 39 down on C-294, I take it No. 39 picks up all the return flow in the area outlined in orange; is that right?

A That's right.

Q Now, No. 30, that picks up all the return flow in the area outlined in green, correct?

A Well, the return flow, what it says is the return flow is accounted for at those particular points for the study area boundaries above it. In this particular case in Control Point 39 it was established that a good deal of the return flow from the Lefthand Unit did in fact come

into the Little Wind Unit. We have groundwater isopleths of that area and it confirmed that. In this particular case we made a distribution based on acreage as to how much would come in to the Big Wind and how much would go in to the Little Wind. The amount that would go in the Big Wind was accounted for in Control Point No. 39; the amount that was going in to the Little Wind I chose to neglect in my Popo Agie, Little Wind, Big Horn System, again, because of the dominance of the water resources of the Popo Agie which makes that an inconsequential amount.

Q What I'm interested in, Mr. Billstein, is the area above Point 36 in orange. Now, why isn't the return flow picked up at Point 36 instead of going on clear down to the end of 39? They're both on the same river and it seems like it would make more sense to me to pick it up more likely where it would hit the river.

A In that particular case, Counselor, we made distinctions for control points as a matter of convenience for the computer program.

THE SPECIAL MASTER: As a matter --

THE WITNESS: Of convenience to the computer operator; in this particular case myself.

It wasn't important to me that I account for all

this return flow in this small reach. This was the, a major diversion here. I felt that I had sufficient river flow to easily meet the needs of the Lefthand Unit. For ease of convenience to me I collected all that return flow at Point 39.

The particular study area boundaries show where I collected that return flow. The point is, all the return flow could be collected at that point. If I chose not to collect it any earlier than that, that was just an operational parameter that I superimposed. That's not to say that it does not come in earlier than that. I chose to say it was not important to me for the purposes of my study.

Q (By Mr. Donnell) In that particular area, would that fact that you picked up groundwater, operationally, at a much later point, does that affect your determination for the purposes of fisheries at all?

Maybe I'm not making myself clear.

A I understand the question.

Q Isn't the fact that you picked up 39 going to show less water in the river above 36 than is in fact going to be there?

MR. ECHOHAWK: Could I have the question read back, please?

THE SPECIAL MASTER: He said he understands the question.

Go ahead and read it back, if you will, please, Merissa.

(Thereupon the following (question was read back as (follows: "Q Isn't the fact (that you picked up 39 going (to show less water in the (river above 36 than is in (fact going to be there?"

(Brief pause.

Q (By Mr. Donnell) Well, Mr. Billstein, in order to save time, I don't know that's it's necessary --

A My answer to that, Mr. Donnell, is I made a decision at this particular case that this particular volume of water was not important to me in terms of at this location and for the purposes of the fishery study, that it still didn't have any overriding considerations such that I would want to move a series of new return flow collection points upstream. Volumemetrically it did not have that much impact on the remaining river flowing, going through this reach. Once Bull Lake Creek came into the system we had a surplus of water supply all the way through that reach.

Q But that would nave some impact, would it not, maybe not much, but some?

A If you wanted to get site specific, in any segment of the reach on a river mile basis and start cataloging the differences between a particular river mile and collection point, which is several miles downstream, there undoubtedly -- or could be some differences.

Q Okay. Well, I'm not going to take the time to do that, I'm sure the Master would be happy to hear.

MR. WHITE: Excuse me, before we go on, could I ask that the Witness pull those pages out of his notebook that he referred to, please?

THE SPECIAL MASTER: Well, he didn't do much testifying, he didn't get a chance to. Mr. Donnell said let it go, he looked at it with a computer and then didn't bother to tell anything from it, so --

MR. WHITE: We'll get back to it on cross then, Your Honor.

THE SPECIAL MASTER: All right. If the thing has some merit or reason on cross.

Go ahead, Mr. Donnell.

Q (By Mr. Donnell) Mr. Billstein, what this study is is it's, in effect, a house of cards, it's based on the accuracy of your stream flow data, based on the accuracy of your return flow data, based on the accuracy of your various control points, and if any of those are wrong,

the whole study tends to come apart, doesn't it?

MR. ECHOHAWK: Objection, Your Honor. The question's argumentative.

THE SPECIAL MASTER: Are you objecting because it's rather illustrative or don't you like the analogy?

MR. ECHOHAWK: It's argumentative, Your Honor.

MR. DONNELL: It's not argumentative. I want to know whether or not these things are necessary to make an accurate study.

THE SPECIAL MASTER: I think the Witness may and is perfectly capable of answering the question and I think he should.

THE WITNESS: That's an erroneous conclusion.

Q (By Mr. Donnell) Well, what would be correct then? Assuming for purposes of the question, your return flow data is wrong at some point. Isn't that going to affect the accuracy of the overall study?

A Again, you've got to get into what you would call level of significance relative to the overall study. We've talked about the stream flows as input data. Its been said that -- everyone agrees, the United States and the State of Wyoming, as to the reasonableness and the accuracy of the stream flow records.

MR. WHITE: Wait a minute. Your Honor --

THE SPECIAL MASTER: Let the Witness finish, please, Mr. White.

A That is one particular input. The return flow estimates do have some impact in terms of the volume that you assign to return to the stream as well as the temporal distribution. But you have to be able to go into a study such as this, take a look at the relative importance of the parameters and see how they interplay with one another.

It certainly does not follow that if you were off in a matter of a few percentage points in one of these components that it detracts totally from the significance of the output.

THE SPECIAL MASTER: Mr. Donnell, let me ask a question along the lines of yours.

But if in the work of Mr. Toedter, which was on depletion --

THE WITNESS: Right.

THE SPECIAL MASTER: When it was cranked into the work of Mr. Keene, which was on natural flows and we found that there was not factual data to support the B:2 deductions based upon other factors to conclude a river flow and found some error between natural flow and historic flow, wouldn't that, in fact, have a direct -- if it was substantial enough, not diminimus -- wouldn't

it have a substantial bearing upon your conclusions as to availability?

* * * *

THE WITNESS: The B.2 flow stations, Your Honor, that you're talking about, I believe are on the minor tributaries, and those particular inflows are not built into this operational study. They are dismissed from the operational study as being insignificant. So that --

THE SPECIAL MASTER: Who dismissed them from the operational studies as being insignificant?

THE WITNESS: I did.

THE SPECIAL MASTER: Okay. Go ahead, Mr. Donnell.

MR. WHITE: Your Honor, could I say one thing?

THE SPECIAL MASTER: Yeah.

MR. WHITE: The State of Wyoming has not yet hired Mr. Billstein as an expert. We'd love to have him on our team, but he's not in power to say that the State agrees with the stream flow figures of Mr. Keene, and -- as he did state in his next to last answer. I will represent to the Court, however, that --

THE SPECIAL MASTER: Mr. Keene's not your witness.

MR. WHITE: I understand, but Mr. Billstein said he understood there was no significant difference between the stream flow values, and the truth is that what comes out of the end of the system, according to Mr. Keene, is very close to what we think comes out

of the end of the system. But there is significant variations along very critical stretches of the Wind River and out of some tributaries.

MR. ECHOHAWK: Your Honor, that is --

THE SPECIAL MASTER: That's for you to bring out.

MR. WHITE: I understand, I just wanted --

MR. ECHOHAWK: That's totally for the witness to bring out.

THE SPECIAL MASTER: One at a time, please, Mr. White.

MR. WHITE: And I would ask that two portions of the transcript be stricken. First what I have just said, and second what the witness said about the position of the State of Wyoming since he wasn't authorized to say it.

THE SPECIAL MASTER: I don't have to strike it. What's in the record stays in the record on any of these discussions.

Go ahead, Mr. Donnell.

Q (By Mr. Donnell) Mr. Billstein, if you took into account actual use on this study, for instance in Midvale and on fee land and that sort of thing, that would significantly affect the outcome of that study, wouldn't it?

MR. ECHOHAWK: Objection, Your Honor; outside the scope of direct, calls for speculation.

MR. DONNELL: It's a hypothetical.

THE SPECIAL MASTER: Let me think about that for a minute, will you gentlemen?

MR. DONNELL: It's a simple hypothetical, and he's got the expertise to answer it.

THE SPECIAL MASTER: If you would consider the withdrawals and returns of Midvale and of what else?

MR. DONNELL: Various private uses within that study area.

THE SPECIAL MASTER: Various private uses. This would have affected the outcome of your study, would it not.

MR. ECHOHAWK: I would add further my objection, Your Honor, it's irrelevant. Mr. --

THE SPECIAL MASTER: It may be a little bit on the irrelevant side considering what this man's duties were, but I think he can answer the question. Maybe he can throw some light on it.

MR. ECHOHAWK: Your Honor, may I point out, this is Mr. Donnell's first entry into --

THE SPECIAL MASTER: Effects?

MR. ECHOHAWK: Yes, as to impact.

THE SPECIAL MASTER: That's what I mean; he wants

you to wait until November in Riverton, Mr. Donnell.

MR. ECHOHAWK: It's been the position of the United States all along, and we feel the case law supports us on impact and --

THE SPECIAL MASTER: I appreciate the objection, and I'm going to overrule it nevertheless and let him answer that much of this question: Is there some way that, that having cranked into Midvale's storage as well as Midvale's -- Midvale takes a whapping depletion up at the dam, the taker of its irrigation. I presume he didn't take in the flow, going into the flow as well as the flow coming back, so I think he should answer that. Let's have a professional overview of your considerations vis-a-vis the existence of non-Indian irrigation projects on this river. I'll ask it and overrule the objection.

MR. ECHOHAWK: And I would strenuously object. This is totally beyond the scope of what Mr. Billstein's testimony was about, it's totally irrelevant to the case.

THE SPECIAL MASTER: Mr. Echohawk, it's not totally irrelevant to the case, and it's not much removed from what he was testifying about.

I would like to know, and I'll ask these kinds of questions. Now, object if you hear them. One, did you crank out of your totals, the diversion that

takes place at the dam for -- that goes into the Wyoming Canal for the initial irrigation of the first Riverton systems?

THE WITNESS: The Midvale Irrigation Project --

THE SPECIAL MASTER: Yes.

THE WITNESS: -- was not considered.

THE SPECIAL MASTER: All right. If you did not consider the Midvale diversion, then you certainly did not consider the Midvale return flow, did you or didn't you?

THE WITNESS: I did not.

MR. ECHOHAWK: Again, as Mr. Billstein pointed out, the analysis was done using 1868 priority, first right on the river.

THE SPECIAL MASTER: We're talking a factual matter here now, you see. You know, he did it with an 1868 priority, but there was diversion taking place halfway down the river, and it is not an illegal one.

MR. ECHOHAWK: With a junior priority right.

THE SPECIAL MASTER: Well, whether that's --

MR. DONNELL: That's an assumption.

THE SPECIAL MASTER: Whether it's junior or not is irrelevant. We're talking volumes of water right now.

MR. DONNELL: 1868.

THE SPECIAL MASTER: And we wanted to know --

MR. ECHOHAWK: Mr. Billstein's testimony related to the availability of water to serve the United States' claim in an 1868 priority date.

THE SPECIAL MASTER: Well, Mr. Echohawk, you're presuming that this case has to end by giving an 1868 priority date, and that's what I'm hired for and not you; that's my decision.

MR. ECHOHAWK: But that is the position that the United States is asserting.

THE SPECIAL MASTER: Of course it is, but that doesn't mean you can throw out all the evidence that might come in based upon some other assumption. I'm not even basing my assumption upon some other priority date. I'd just like to know if, in this man's professional engineering studies, he took into account some of the diversions or return of any water for non-Indian projects, and he said no, he didn't. There's nothing wrong with that. So let's go on to the next point. Mr. Donnell.

MR. DONNELL: I want to know the second half of that question; is whether the failure to take those into account would affect the outcome of that study.

MR. ECHOHAWK: Certainly wouldn't, Your Honor.

THE SPECIAL MASTER: Just a minute. Let me think

about the question, let me see if the witness should answer that question.

How do you mean affected the outcome of your study?

MR. DONNELL: I just wanted to know --

THE SPECIAL MASTER: Pin it down a little bit.

MR. DONNELL: -- if -- and this is hypothetically, but if he accounted for Midvale and the other private uses of that area, if he would still be of the opinion that there's enough water to serve what is actually going on up there.

THE SPECIAL MASTER: All right. You may answer that question or take a stab at it.

THE WITNESS: Okay, Your Honor. I'll look at it a couple ways. The outcome of the study, based on an 1868 priority, would stay the same. You could still serve the Indian lands and perhaps some upstream development of storage could be brought on to serve as makeup water to the junior water user, given that the Court decides to go with a 1868 priority.

One would have to study the sites such as Blue Hose, and operated through a priority system of water rights, exchange waters with Boysen to make that kind of determination.

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With respect to the basic premise of an 1868 senior water right, that doesn't change.

If all lands were treated the same, with an equal priority or if the Indians came in or the trust lands, that is, with a much later priority, then a withdrawal such as what occurs to the Midvale Irrigation Project as well as the LeClair-Riverton Valley Project would severely impact the ability to serve the trust lands as defined by the Government's claim.

THE SPECIAL MASTER: Would they impair the trust lands as defined by the claims or would they impair the trust lands if all of the future land were developed and had been drawing water?

MR. ECHOHAWK: Your Honor, I would also, for point of clarification, indicate that the United States is making a water rights claim for all of this acreage. We broke it up into future and historic for ease and convenience, for an accounting method so we could tell what we're talking about. But generally, the claim of the United States is one amount of water for one amount of acreage.

THE SPECIAL MASTER: And in consideration of that, I will withdraw my question before I start committing my own errors. So my question is withdrawn.

MR. WHITE: I'll ask the same question on cross.

THE SPECIAL MASTER: I'll overrule it. I think we've taken this about as far as a priority would permit us.

Okay, Mr. Donnell.

Q (By Mr. Donnell) Mr. Billstein, we talked a lot about shortages and increasing efficiencies and that sort of thing. What happens to efficiency in a water transmission system when you got a shortage, when the weather's hot, the water's down, what happens to efficiency under those conditions?

MR. ECHOHAWK: Objection, Your Honor; question's unclear. What does he mean by "transmission system"?

THE SPECIAL MASTER: He meant the questions -- The objection is overruled, he may answer.

MR. DONNELL: I can clarify it.

Q (By Mr. Donnell) Aren't you going to lose more water out of the ditch than you're carrying in?

MR. ECHOHAWK: Your Honor, this assumes also that all are unlined or unopened ditches.

THE SPECIAL MASTER: He may answer. If the witness is able to, he may answer.

THE WITNESS: Well, you're basically speaking about the loss of efficiencies early in the year, during

the initial wetting, this type of thing. And basically the flow, as we've specified in for purposes of the study, is that we, for all practical purposes, have high early season flows, so the conditions of high flow generally occur late in the irrigation season. So that would not be as critical of a problem.

Q. (By Mr. Donnell) Would efficiency be affected at all under those conditions?

A. There are a tremendous amount of additional factors that go into an overall efficiency; be it conveyance or on-farm, that have equal or as much impact as that. One would have to take a look at all the management decisions that are going on at that time so you can come close to making a decision.

Q. I don't mean management decisions, I mean just strictly as a physical matter. If you've got less water in a ditch than you might normally have and the weather is hot, does that have an effect on how much water gets down the ditch at all?

THE SPECIAL MASTER: I think he answered that question pretty much. There's a world of factors in there, whether it's conveyance facility or whether they're on-farm, you know. It's almost too vague for a specific answer, Mr. Donnell.

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Q. (By Mr. Donnell) Okay. Mr. Billstein, referring to a particular tract of land in the -- in the Hidden Valley Area, Township 2 North, Range 6 East, tracts, I believe are No. 87, 88 and 89. Those are served, as I understand, by the Pilot Canal; is that right?

A. That would be right.

Q. And do you know what the duty of water is on those tracts? Would it be safe to say five feet, give or take a foot? That's what most of them are.

A. Our research of the Midvale Irrigation Project puts it somewhere in there.

Q. Now, the Pilot Canal diverts approximately fifty miles from those particular parcels, doesn't it? Doesn't it divert at -- what is it, Control Point 32?

A. Pilot Canal?

THE SPECIAL MASTER: Pilot Butte.

Q. (By Mr. Donnell) Pilot Butte.

A. No.

Q. Where does the water for these lands divert from?

A. It diverts from a main Diversion Dam canal, the Wyoming Canal, but not the Pilot Canal.

Q. All right. Where's that at, the control point?

A. The diversion is taken in account from Control Point 32.

It -- The Pilot Canal itself goes through Pilot Butte

and then gives water over.

Q. It's a considerable distance at any rate, isn't it?

A. That's right.

Q. Now, how are you going to divert five acre-feet of water, more or less, whatever the duty is up there, and carry it forty to fifty miles, which is about the distance, and get five acre-feet of water on that land? Aren't you going to have to divert considerably more than that to get it?

MR. ECHOHAWK: Objection, Your Honor, the question is for Mr. Stetson or Dr. Mesghinna.

MR. WHITE: It's not a question for --

THE SPECIAL MASTER: Just a minute. I'm going to sustain the objection because this goes beyond the scope of the direct testimony of this witness.

MR. DONNELL: Your Honor --

THE SPECIAL MASTER: That's the reason I'm going to do that.

MR. DONNELL: The witness has testified to the data he used, which is the duty of water which was specified to him.

THE SPECIAL MASTER: Right.

MR. DONNELL: For any parcel of land, and I want to know how that duty of water is going to make it

fifty miles down the --

THE SPECIAL MASTER: All right. You may ask him about the duty of water at any one of the twenty-six projects on any of the exhibits or any of the hundreds of places he's testified in the two study areas. That's what his direct testimony was about. You're off of it at least by ten or twelve miles, so I'm going to rule that your cross-examination questions have gone beyond the scope and are, therefore, improper of the material covered in the direct examination.

Q. (By Mr. Donnell) Did you in fact study those two parcels, Mr. Billstein?

A. Study, in what way?

Q. Are they, in part, one of your study areas?

A. That's right.

Q. Which study area is that?

A. The Wind River -- Big Wind River Study Unit.

THE SPECIAL MASTER: Will you point to the acreage again, please, that he's talking about.

(Witness complied.

THE SPECIAL MASTER: And they are part of the big study unit outlined in red?

THE WITNESS: That's right, Your Honor.

THE SPECIAL MASTER: What happened to your right

boundary of that study area --

THE WITNESS: Well, there's --

THE SPECIAL MASTER: -- you have?

THE WITNESS: There is a small amount of acreage that falls outside of those study unit boundaries which return into the Big Horn River system. So for ease of presentation, any of those lands that the return flows didn't return to the Big Wind Study Unit, we just showed those outside of the --

THE SPECIAL MASTER: Well, in that case, I have no basis for ruling the way I did. It's cut out from under me. So I guess the question must be answered.

THE WITNESS: I should add though, Your Honor, the control point descriptions document that those lands are in fact served as part of the Big Wind System.

THE SPECIAL MASTER: Very well. Then you can go ahead and answer his question on those particular acres.

THE WITNESS: We've got to get back into the analysis of what I was charged to do. I operated a river system based on a series of diversion points with water claims given to me. My job was to analyze whether I could furnish five acre-feet or whatever the water duty for those particular tracts were at that location in the river system and nothing more.

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Q. (By Mr. Donnell) I take it you relied entirely on Mr. Stetson, is it?

A. He assigned --

Q. In determining the water duty?

A. He assigned the water duties to that area. That is a particular -- That demand component is a given in this study.

Q You talked this morning about an industrial development, I think it was the uranium development was going to be fed from the LeClair Canal; is that right?

A. That's right.

Q. And that was 480 acre-feet a year?

A. I'll consult my notes.

THE SPECIAL MASTER: My notes show that his testimony said that the uranium plant was to be on Crow Creek. Maybe there is a canal close to it, I don't know.

MR. ECHOHAWK: I believe that is correct, Your Honor. The uranium processing plant is on Crow Creek.

THE WITNESS: That's right.

Q. (By Mr. Donnell) I'm wondering which development it was that served in the LeClair Canal?

A. Which development?

Q. Isn't there one being served?

A. There is a phosphate processing plant and wallboard processing plant respectively programmed as well as an ammonia plant programmed, counsellor.

Q. And how much water are those three using?

MR. ECHOHAWK: Objection, Your Honor; asked and answered. We covered this this morning.

THE SPECIAL MASTER: Two were asked, one was not. He may answer if he can.

THE WITNESS: That's already been read into the testimony.

THE SPECIAL MASTER: How much was it for the aluminum plant, that was not read in the testimony? There's an ammonia plant.

THE WITNESS: I meant to say ammonia plant, Your Honor.

THE SPECIAL MASTER: We're having a bad time this afternoon.

All right. The ammonia plant is in the record, and he asked you how much is that, and you may answer. He has a right to ask questions on occasion to test --

THE WITNESS: 4,250 acre-feet distributed at roughly 354 acre-feet per month.

THE SPECIAL MASTER: Twelve months a year?

THE WITNESS: Yes, sir.

THE SPECIAL MASTER: Thank you.

Q. (By Mr. Donnell) Roughly, Mr. Billstein, how many cfs is that 354 acre-feet a month?

A. It's between, it's over five cfs.

Q. Now, how are you going to get five cfs of water down in the LeClair Canal in the wintertime when it's twenty below, and there's not otherwise water in it?

A. The -- I should clarify one point. The point of diversions that were given to me --

THE SPECIAL MASTER: You don't have to answer that question. I'm surprised it's been permitted.

MR. WHITE: Your Honor, I'd like to ask that you direct him to answer.

THE SPECIAL MASTER: The question -- answer will be that he leaves that up to the people that are running the plat period. That's their responsibility not his.

MR. DONNELL: The point I'm trying --

THE SPECIAL MASTER: My God, he doesn't have to answer that question.

MR. DONNELL: The point I'm trying to make, Your Honor, this is not necessarily an entirely practical sort of layout.

THE SPECIAL MASTER: That can come on your case

and not on his cross-examination.

MR. DONNELL: I think it's fair to bring it in on his cross-examination; he's represented that this is an accurate and workable operation.

THE SPECIAL MASTER: No. Mr. Donnell, I take --

MR. ECHOHAWK: The question is --

THE SPECIAL MASTER: I take -- You're going to make me buy a gavel yet, aren't you, guys?

The question is the amount of water, and is it, therefore, respective United States' claims. The United States has claimed some water for an ammonia plant, and he says it is available and will do the job at that amount. How it's going to be run in the wintertime is irrevelant to his testimony, and the question is overruled.

MR. DONNELL: That's fine, I'll go on to something else.

THE SPECIAL MASTER: All right.

MR. ECHOHAWK: We could move this a little quicker if Mr. Donnell would stop taking breaks and conferring with Mr. White, and we could keep this going.

MR. DONNELL: I'm just about finished.

THE SPECIAL MASTER: It's a two-man operation, their cross, the same kind of thing. Go ahead with your cross.

Q. (By Mr. Donnell) Now, Mr. Billstein, we heard quite a bit of discussion about periods when there is a time of shortage and how that could be taken care of by management.

A. Right.

Q. That would be, as I understand it, management of the government lands; is that right?

A. No, not entirely.

Q. Okay. Who would be involved in this management?

A. Well, let's take a case study.

Q. All right.

A. The Little Wind Unit, for example, or the Little Wind Study Unit. The private water users in that area, specifically the North Fork water users of the Little Wind River, the South Fork Little Wind users, we got the Trout Creek water users, the water -- as well as the Wind River Federal Irrigation Project water users, who utilize the water supply in the Little Wind Unit. All those people have had to work together in the past to allow sufficient waters to be available to serve all their needs. They set up delivery schedules between each other, and they trade off in terms of irrigation, if necessary, to enable water to go a little bit farther. In particular, the North Fork water users, they are

just below the diversion of the North Fork of the Big Wind to the South Fork of the Big Wind, which serves the Ray Canal, which is one of the priority conveyance systems in the Little Wind Unit. Now, it's very important that the federal irrigation project people work with the North Fork irrigation people so that when they have a large call with that transbasin canal, that they don't dry up the stream.

And during drought year 1977, when, in fact, the federal irrigation project people met, the respective private water users was also involved because they have had a history of cooperating in the area, and their particular demands were built into the overall demands of the water plan for that low flow year.

Q. Okay. Now, the question I have is this, as long as we are talking about private people: Assume we've got a situation like you've talked about, where we've got a fifteen percent shortage in a given month, and that's fifteen percent short of serving only the federal lands. Now, I assume if you bring the private people into that, you're going to have a greater shortage than that, aren't you?

A. Counsel, when you say "federal lands", are you talking

about trust lands?

Q. I mean the lands claimed and as taken in under your study.

MR. ECHOHAWK: Could I have the question read back, the previous one?

THE SPECIAL MASTER: He meant trust lands, and he says if there's fifteen percent shortage, from his testimony, if you were to consider the non-Indians on the river, wouldn't there be, in fact, a little higher than fifteen percent.

MR. ECHOHAWK: Mr. Billstein's testimony relates to asserting the 1868 priority date.

THE SPECIAL MASTER: Once again I appreciate that. Once again I overrule that, and once again he may answer that, if he can.

THE WITNESS: Your Honor, it's obvious, any time you bring on additional acres with the corresponding additional demands, that it's going to impact your management strategy as to how to make water go a little bit farther during low flow periods.

Q (By Mr. Donnell) And it is possible, is it not, that given sufficient private acreage to be added into this system, that management would no longer be feasible? Isn't it possible --

MR. ECHOHAWK: Objection.

THE SPECIAL MASTER: I would think that that question goes a little too far, Mr. Donnell. He's answered the question that it requires cooperation between the trust land owner and fee land owner in short water periods.

Q. (By Mr. Donnell) I understand it, you use natural flows in your computations; is that right?

A. That's right.

Q. Did you also use storage, man-made storage?

A. That's right.

Q. Why did you do that if we are looking at a natural flow condition where man-made storage doesn't exist?

MR. ECHOHAWK: Objection, Your Honor. As Mr. Billstein has testified, it's not that they're using the natural system, they're set out to use a system to operate first priorities.

MR. WHITE: That's 1868, Your Honor --

MR. DONNELL: That's 1868, Your Honor --

MR. ECHOHAWK: We're talking of first priority.

THE SPECIAL MASTER: Gentlemen, we don't need a duet.

MR. DONNELL: Might I make my return comment, and that's all I'll have to say. We are using an

1868 priority, we are using natural flow conditions except where, as I understand it, the water is short and there is storage available and it's not convenient to use natural flow, then we pick up the man-made storage.

MR. ECHOHAWK: Your Honor --

THE SPECIAL MASTER: Mr. Donnell, we had three or four or five days of which, which went into depletions, return, credit for return higher than depletion and vice versa, the simulation of natural flow and historic flow and back and forth, and it's all a process and a formula, and I think if you can sharpen up your questions onto that process, I'll permit them to be asked.

MR. ECHOHAWK: Your Honor, I think we need to clear up the understanding. The reason that the natural flows were established is so we could find out what the system is like to operate a first priority, and that's all we're doing.

THE SPECIAL MASTER: What the system was like, you're saying before there was a taking of any water?

MR. ECHOHAWK: Which is a system. If everyone else goes out of priority, you take everyone else out of priority and let the first person on the system operate it as it is there today, that's what we're

doing. We're not trying to take it back to the creation of the reservation or anything like that. We're taking first priorities.

MR. DONNELL: That's my point, Your Honor. They're going backwards and forwards, depending on what's convenient.

THE SPECIAL MASTER: Ask your question again and see if you can't get it specific, either to a particular place or study, or particular application of a technique or particular methodology.

Q. (By Mr. Donnell) Mr. Billstein, as I understand in this adjudicated area, there's a reservoir that was used to provide storage water on the minor tributaries; is that right? I don't remember the name of it. You mentioned it this morning.

THE SPECIAL MASTER: I don't think there's a reservoir there that could hardly provide storage for the fields upstream of it, Mr. Donnell.

Are you pointing to Stagner Ridge or something in that area? Steamboat Butte Reservoir?

Can you identify what you looked at?

Q. (By Mr. Donnell) How about Washakie Reservoir, is that programmed into the study?

A. Yes, it is.

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Q. And is Washakie Reservoir a natural reservoir or man-made?

A. That's a man-made reservoir.

Q. So you're using both natural flows and man-made storage that occurred after 1868?

A. In this particular case, this reservoir was built into the system.

Q. Are there other instances where that was done?

A. Ray Lake.

Q. Any others?

A. Well, the particular example that you chose initially on Dry Pasup Creek, is that you have a block of trust land being operated by Joline Sheer, who is a farmer-rancher in the lower part of Dry Creek. She has a storage facility in place to -- she uses to serve her land. Looking at the overall ability of Dry Pasup Creek, that particular storage facility was recognized. In this particular case, in terms of the early season flow relationship between demand and water availability, it made little or no difference because just like most reservoirs in the minor tributaries, they're extremely small.

Q Did you use the HEC-3 Program in, in your computations in the minor tributaries?

A. No.

Q. How did you go about -- go about that process?

A. We took a look at study sites. Those study sites have previously been introduced in Mr. Keene's testimony.

We established water flow estimates for those study sites, either from Mr. Keene's work or field observations, and the water supply in those cases was compared against the demand for the lands that would be served above those particular sites or which would be charged against the water supplies at that particular location.

Q. So it was done by hand, essentially?

A. That's right.

Q. All right. On these adjudicated lands, as they operate right now, do they use a priority system on those lands currently?

MR. ECHOHAWK: Objection, Your Honor, irrelevant.

THE SPECIAL MASTER: I would say he's not the witness who would know.

MR. DONNELL: He's testified that --

THE SPECIAL MASTER: The point is there are too many areas of adjudicated acres that are being irrigated. If you can specify some particular place on

the tributaries, north or somewhere in the FIP's, or somewhere in which system.

Q. (By Mr. Donnell) I'll ask the question the other way around. Do you know of any areas on the minor tributaries, Mr. Billstein, these light blue areas, where the priority system is in effect?

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

MR. DONNELL: It's not --

THE SPECIAL MASTER: It may be irrelevant, but if he can answer, let him. I'll allow him to answer if he can, if he knows.

THE WITNESS: That wasn't part of my study research.

Q. (By Mr. Donnell) You did not, in the course of your conversations with all these people, ask them about that?

A. That wasn't the purpose of my study. I can't recall any of them speaking to the fact that they have a priority system on any of the minor tributaries.

Q Apparently even though it's adjudicated land, they don't work it that way?

THE SPECIAL MASTER: Now, you're getting argumentative. He said, no, he didn't talk to them; he

said, no, he didn't find out. He said they didn't say anything to him.

MR. DONNELL: I think that is all I have, Your Honor.

THE SPECIAL MASTER: Okay. Mr. White.

MR. WHITE: Could I have about a five-minute recess? We've been going about an hour, Your Honor. I'll get my notes together and be ready.

MR. ECHOHAWK: Could we go off the record?

(Off the record discussion.

THE SPECIAL MASTER: In that case, let's go carry out what you two have agreed to. Next time you make an agreement, include me.

We'll stand in recess.

MR. ECHOHAWK: The word I'd gotten was we were going to quit at two o'clock.

THE SPECIAL MASTER: We'll stand in recess until the next meeting.

(Thereupon, the proceedings were recessed at 2:15 p.m.

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We, Merissa Racine and Mary Nelson, Registered Professional Reporters and Notaries Public in and for the First Judicial District, State of Wyoming, hereby certify that the facts as stated in the caption hereof are true; that we did at the time, date and place, as set forth, report the proceedings had before the Honorable Teno Roncalio, Special Master Presiding, in stenotype; that the foregoing pages, numbered 7333-7488, inclusive, constitute a true, correct and complete transcript of our stenographic notes as reduced to typewritten form under our direction.

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

Dated this 19th day of June, 1981.

Merissa Racine
MERISSA RACINE
Registered Professional
Reporter

MERISSA RACINE - NOTARY PUBLIC
COUNTY OF LARAMIE STATE OF WYOMING
My Commission Expires Mar 10, 1984

Mary Nelson
MARY NELSON
Registered Professional
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