

IN THE SUPREME COURT OF THE UNITED STATES

Volume 19 of 25

STATE OF MONTANA

Plaintiff.

v.

STATE OF WYOMING

and

STATE OF NORTH DAKOTA

Defendants.

BEFORE THE HONORABLE BARTON H. THOMPSON, JR.
Special Master
Stanford, California

Oil & Gas Commission
2535 St. John's Avenue
Billings, Montana 59101
November 20, 2013

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P R O C E E D I N G S

(Open court.)

DEPUTY CLERK: Supreme Court Case 137 Original, State of Montana versus the State of Wyoming. The Honorable Barton Thompson, presiding.

SPECIAL MASTER: Good morning, everybody. Mr. Kaste, I know originally you were hoping to get seven witnesses in today, and, of course, there was one witness we weren't able to get to yesterday. What are your hopes and expectations?

MR. KASTE: Our hopes and expectations might be divergent.

SPECIAL MASTER: They probably are.

MR. KASTE: We have a witness scheduled and exhibit list that was provided to Montana as well. And I believe we have, what, five on there for today, or six.

SPECIAL MASTER: Six, including Mr. Carrel from yesterday.

MR. KASTE: We are hoping we can make it through that. But I think it's more probable that we end up having to push one of those individuals into tomorrow. And then we are hoping, but not absolutely sure, that we can get

1 through all the individuals we have listed for
2 tomorrow by the end of the day tomorrow. But
3 we'll do our best to be concise and see where we
4 go.

5 SPECIAL MASTER: Mr. Draper.

6 MR. DRAPER: Your Honor, are we going
7 to go until 5 tomorrow?

8 SPECIAL MASTER: I think I have made a
9 reservation for myself on a late flight. So I am
10 able to go as late as people want tomorrow.
11 Certainly, today, you know, subject to the court
12 reporter actually lasting, I will propose we go
13 as late as we need today in order to try to
14 actually get through the witnesses that are on
15 the calendar for today.

16 And, again, tomorrow I can stay as late
17 as people want. I don't know whether, Mr.
18 Draper, you're planning on flying home tomorrow.

19 MR. DRAPER: No, we're staying here
20 over the long break here.

21 SPECIAL MASTER: Okay. Then under
22 those circumstances, then, we can go as long
23 again tomorrow as we need to in order to squeeze
24 people in. I'll verify that in fact I do have, I
25 think, like, a 7:30 flight out tomorrow evening.

1 Okay.

2 MR. DRAPER: Very good.

3 SPECIAL MASTER: Great. So, Mr. Kaste,
4 I will turn it over to you and your fellow
5 counsel.

6 MR. KASTE: Well, we are now in the
7 part of the case where I don't have to talk for
8 maybe another three or four days. So all the
9 witnesses today, I think the first block will be
10 handled by Mr. Kuhlman and then Mr. Brown. I
11 will turn it over to Mr. Kuhlmann.

12 SPECIAL MASTER: Mr. Kuhlmann.

13 MR. KUHLMANN: Thank you, Your Honor.

14 SPECIAL MASTER: You're welcome.

15 MR. KUHLMANN: State of Wyoming would
16 like to call Mr. William Carrel.

17 SPECIAL MASTER: Okay. Mr. Carrel, come
18 forward.

19 Whereupon,

20 WILLIAM CARREL,
21 having been first duly sworn, was examined and
22 testified as follows:

23 DEPUTY CLERK: Please state your name
24 spell it for the record.

25 THE WITNESS: William Carrel,

1 C-a-r-r-e-l.

2 SPECIAL MASTER: Good morning, Mr. Carrel.

3 THE WITNESS: Good morning.

4 DIRECT EXAMINATION

5 Q (By Mr. Kuhlmann:) Good morning, Mr.
6 Carrel. Could you state for the record your
7 address?

8 A 7 Red Bluff Loop, Birney, Montana,
9 59012.

10 Q And what's your current occupation?

11 A I'm a rancher.

12 Q Do you operate a ranch?

13 A Yes.

14 Q What's its name?

15 A FL Ranch.

16 Q How long have you operated that ranch?

17 A I've lived there my whole life. I
18 operated it from, probably, the mid-'80s until now.

19 Q So you have a fair bit of experience on
20 your property?

21 A Yes.

22 Q Do you irrigate from the Tongue River?

23 A Yes.

24 Q How many acre to you irrigate?

25 A Roughly 100.

1 Q Has that always been the amount of
2 acreage you've irrigated?

3 A We've added some fields with our
4 contract water.

5 Q About what time period was that?

6 A I can't say accurately, but I'm
7 thinking around 2000, somewhere in there.

8 Q Okay. What kind of crops do you grow?

9 A We grow just hay to feed the cows in
10 the winter. And irrigate --

11 Q Now what -- sorry.

12 A We have some irrigated pasture, also.

13 Q And what sources of water do you use to
14 irrigate? Do you have water rights?

15 A Yes.

16 Q From the Tongue River?

17 A Yes.

18 Q And you mentioned you also have stored
19 water, correct?

20 A Yes.

21 Q Where does that stored water come from?

22 A Comes from the Tongue River Reservoir.

23 Q Do you have a contract with the Tongue
24 River Water Users Association?

25 A Yes, we have four.

1 Q I'll get into those in a little more
2 detail in a minute. I'd like to turn your
3 attention to an Exhibit Wyoming 244. Put it up
4 here and I think we'll try and have you answer
5 some questions using the laser pointer that
6 should be there in front of you. So when I ask
7 you questions, if you can indicate up on the
8 screen over here where we are talking about, and
9 I can zoom in a little bit, too.

10 SPECIAL MASTER: You have to be careful
11 not to kill anyone.

12 THE WITNESS: Don't hit anybody in the
13 eye?

14 SPECIAL MASTER: That's right.

15 Q (By Mr. Kuhlmann:) So do you recognize
16 this document?

17 A Yes.

18 Q What is this document?

19 A This is a map that the NRCS sent where
20 we were supposed to put in our fields so we would
21 have an idea where our fields are, what we are
22 growing.

23 Q Does this map -- well, I guess, does
24 this map show your fields accurately?

25 A You mean to point of diversion?

1 Q Well, it appears on the map you've got
2 different areas that have been outlined in black,
3 correct?

4 A Yes.

5 Q Do those correspond to the locations of
6 your fields?

7 A Yes.

8 Q Do I have your property on the screen
9 now?

10 A This is the irrigated property. We
11 have other rangeland.

12 Q But this is all of your irrigated
13 property?

14 A Yes.

15 MR. KUHLMANN: Your Honor, I'd like to
16 admit Exhibit Wyoming 244.

17 SPECIAL MASTER: Any objection?

18 MR. SWANSON: I still think a
19 foundation hasn't been laid, Your Honor, as far
20 as who actually made that map. We haven't heard
21 anything about that; whether Mr. Carrel knows
22 anything beyond this map other than what we are
23 looking at. The question would be, is there
24 foundation of who made the map, and I don't
25 believe that's been laid.

1 SPECIAL MASTER: Can I just ask some
2 real quick questions? Do you know who prepared
3 this map?

4 THE WITNESS: I believe the NRCS in
5 Forsyth.

6 SPECIAL MASTER: So you provided data
7 for them that was then used to prepare this map?

8 THE WITNESS: Yes. I outlined my
9 fields and sent it down to them. I did this
10 spring, too, some kind -- they want to know where
11 your fields are and what you're growing. They
12 have a name for it but I can't remember.

13 SPECIAL MASTER: So the lines here,
14 this was prepared by them, but you were the one
15 that actually provided the lines on this map?

16 THE WITNESS: They put in the lines,
17 most of them.

18 SPECIAL MASTER: Let me just ask. But
19 it was put together using data that you provided
20 them?

21 THE WITNESS: Right.

22 SPECIAL MASTER: And then did they send
23 you this?

24 THE WITNESS: Right, they sent this
25 with some other maps that have rangeland.

1 SPECIAL MASTER: Okay. I'm going to
2 admit it at this point. If you think any of the
3 lines are wrong, you are obviously free to ask
4 the witness. So Exhibit W-244 is admitted in
5 evidence.

6 (Received.)

7 THE WITNESS: These lines roughly show
8 the fields, but where there is a space in between
9 these fields, there is still grazing underneath
10 these trees and stuff.

11 Q (By Mr. Kuhlmann:) How many water rights
12 do you have from the Tongue River to irrigate
13 these properties?

14 A We got two water rights.

15 Q Can you indicate using the laser
16 pointer there and talk to us about those water
17 rights, where those water rights are located?

18 A We have a 152 water rights, starts out
19 152, and it's for this whole northwest side of
20 the river.

21 Q And how about your next water right?

22 A The water right starts with No. 162 and
23 it's for this side of the river.

24 Q And where do you divert water from the
25 river for your first water right?

1 A We have a diversion dam not on this
2 map. Not on your blowup. It's on mine.

3 Q I will move it a little bit.

4 A The diversion dam right there where you
5 see that white.

6 Q So to the west of your irrigated
7 properties on the river there you're pointing to
8 a little white line across the river?

9 A Yes. Right.

10 Q Do you know what the priority dates are
11 for your water rights?

12 A Yes.

13 Q What are they?

14 A The water right starting with No. 152
15 is 1894.

16 Q And which, just to remind us, which
17 water right, what parcel, the northwest side?

18 A The northwest side of the river.

19 Q And how about the priority date for the
20 water right on the southeast side of the river?

21 A Priority date for that southeast side
22 starts with No. 162 and it's 1896.

23 Q Looking at that northwest side of the
24 river, you mentioned you have a diversion dam,
25 correct?

1 A Yep.

2 Q And you also mentioned pumps on that
3 signed of the river, too, correct?

4 A Yes.

5 Q When you do you use -- well, do you use
6 the diversion dam to irrigate that side of the
7 river?

8 A When the high flow in the spring when
9 the water is running over the spillway, that's
10 when that ditch works the best.

11 Q Is that ditch an open ditch?

12 A Open, what do you mean?

13 Q Well, is there -- do you have a pipe or
14 is it open ditch from the diversion dam to your
15 property?

16 A Right. There's an in-stream reservoir
17 where you see the white. Then there's the mouth
18 of the ditch, we got a 4-inch culvert there. And
19 there's some other culverts, two on our property
20 right along the river. Is that what you want?

21 Q When do you start using pumps on the
22 northwest side of the river?

23 A Well, whenever the ditch is
24 ineffective, when there's low flow, it's very
25 flat, the ditch, because it was built before the

1 reservoir, the Tongue River Reservoir, and it's
2 almost -- it drops very little. So it's almost
3 flat. It doesn't work unless you have a high
4 flow. So when the flow decreases so much that
5 there's no head at the beginning, then I shut it
6 off usually and start pumping.

7 SPECIAL MASTER: Counsel, can I just
8 stop for a second? I realize there was one thing
9 said earlier that if the witness said I missed.
10 So I heard you say that you live in the Birney
11 area?

12 THE WITNESS: Yes.

13 SPECIAL MASTER: Where is the property?

14 THE WITNESS: The property is roughly
15 halfway between Birney, Montana, the town, and
16 the Tongue River Reservoir.

17 SPECIAL MASTER: Okay. Thanks.

18 Q (By Mr. Kuhlmann:) I guess this would
19 be a good time to pull out this large map right
20 behind you, if we can do that. Montana.
21 Demonstrative Exhibit No. 2.

22 A Do you want me to set it up here?

23 Q Yes, if you could, just briefly. Can
24 you find on that map about where you think the
25 property that you irrigate?

1 A Right about here (indicating).

2 Q So just right about halfway between the
3 Tongue River Dam and Birney?

4 A Yes.

5 Q All right. Thank you.

6 MR. SWANSON: I want to correct the
7 record, that isn't demonstrative Exhibit 2 from
8 Montana. It's a blowup of Exhibit 1 of M-5.

9 SPECIAL MASTER: Okay. Thanks.

10 Q (By Mr. Kuhlman:) How long have you
11 had pumps?

12 A Since 1992.

13 Q Why did you install the pumps?

14 A Mainly because of the ditch only works,
15 like I said before, when the water runs over the
16 spillway. It's the high flow to get it down to
17 our property.

18 Q And how many pumps do you run?

19 A Right now I have five pumps.

20 Q And what kind of pumps are those?

21 A I've got three flood pumps and two
22 pressure pumps.

23 Q Can you indicate on the map on the
24 screen around where you divert water with those
25 pumps from the Tongue River?

1 A At this time?

2 Q At this time.

3 A I've got a pump -- I can put a pump in
4 here, and got a pump here for the southeast side
5 of the river. I got another pump right down
6 here for the northeast side. And I can put --
7 these pumps are on wheels, so I can move them
8 around. Another one down here. Did I say four?
9 Four or five.

10 Q I think you said five.

11 A Okay.

12 Q So looking at that southeast side of
13 the river, you just have one pump there?

14 A Yes, one pump for the southeast side,
15 right.

16 Q Is that usually the same pump every year?

17 A Usually, except for this year. I'm
18 moving to pump some -- after I got my seed
19 started on the northeast side in this field right
20 here, I had some seed in there, once I got that
21 started with my sprinkler, I moved that pump over
22 and flooded that.

23 Q What is the type of pump that you
24 generally use on that southeast side of the river
25 up until this year?

1 A Yeah, it's a flood pump.

2 Q What's the capacity of that pump?

3 A 790 gallons per minute.

4 Q Do you have any other pumps with that
5 capacity?

6 A Yes, I have one that's larger.

7 Q How is it the pump on the southeast
8 side of the river, how is that fueled?

9 A That runs on propane.

10 Q You also mentioned a piece of property
11 up there in the far north, looks like it's a
12 little bit away from the river. Can you tell us
13 about that piece of property?

14 SPECIAL MASTER: Real quickly, which
15 piece are you referring to?

16 MR. KUHLMANN: I can indicate a little
17 better here.

18 SPECIAL MASTER: I just want to make
19 sure the witness and I and everyone else knows
20 exactly which parcel.

21 Okay.

22 MR. KUHLMANN: Okay.

23 Q (By Mr. Kuhlmann:) So I have got kind
24 of pointing to a piece of property that is
25 labeled Field 1. Can you tell us about that

1 piece of property?

2 A That is a field -- that was a huge flat
3 prairie dog town at one time, and I cleared it
4 and planted seed up there. That was after I got
5 contract water. And that's irrigated with
6 contract water.

7 Q And what pump do you use to irrigate
8 that piece of property?

9 A I use a PTO pump, pump that runs off a
10 tractor, and it's a sprinkler pump, runs 200
11 gallons per minute, or 300 if you don't use your
12 guns.

13 Q Do you have any other PTO pumps?

14 A Yes, I have a PTO flood pump that is
15 590 gallons per minute.

16 Q So for that --

17 SPECIAL MASTER: Just for my curiosity,
18 could you either tell me what a PTO pump stands
19 for or what it actually is?

20 THE WITNESS: Power take-off is what
21 PTO stands for.

22 SPECIAL MASTER: Okay.

23 THE WITNESS: It's the drive line
24 coming out of the back of your tractor and you
25 hook your pump to that. So your drive line from

1 your pump and that powers it.

2 SPECIAL MASTER: Okay. I know what
3 you're talking about now. Thank you.

4 Q (By Mr. Kuhlman:) So you just used
5 the PTO sprinkler pump that you have on Field 1?

6 A Currently, I do.

7 Q What did you use in the past?

8 A Before I got the PTO sprinkler pump I
9 had a -- I have a Chevy propane pump, pressure
10 pump. Same gallons per minute as the PTO
11 sprinkler pump, but it runs from a propane Chevy
12 engine.

13 Q When did you get the PTO sprinkler pump?

14 A I didn't get the PTO sprinkler pump
15 until I think 2006.

16 Q When do you typically start irrigating?

17 A Well, I start in May. Kind of depends
18 on the river, what's coming down the river. If
19 it's too high, I can't put my pumps in because --
20 if I put them in too early and the river raises
21 with the spring runoff in June, then it'd tear my
22 foot valves right off.

23 Q When do you generally stop irrigating?

24 A I have a water right -- well, the water
25 rights say it's through the first of November,

1 but I've never gone that far.

2 Q How far do you generally go?

3 A I've gone to the end of October.

4 Q How often is that?

5 A Well, those are years when there's
6 quite a bit of flow in the river. When the flow
7 drops, which is usually around the 15th through
8 the 30th of September, then a lot of times I
9 can't pump, unless I move my pump to some deeper
10 hole or something, deeper -- the river is not,
11 you know, just level anywhere. There's holes and
12 shallow places.

13 Q And sometimes your pumps intakes can't
14 reach the water in the river?

15 A Yeah, the intake is out of the water.

16 Q You mentioned earlier that you raise
17 alfalfa, correct?

18 A Yes.

19 Q How many cuttings do you get a year?

20 A Typically two. Sometimes three.

21 Q Maybe you can indicate on the map, can
22 you tell us a little bit about where you use
23 sprinklers and where you flood irrigate these
24 fields?

25 A This field up at the top, I use a

1 sprinkler pump on some of it and some of it is
2 laser level where I can flood it with the same
3 pump, just taking off the sprinklers.

4 Q And how about -- I guess, if you can go
5 through the fields kind of moving up the river.

6 A Well, if I'm starting to seed, a lot of
7 times I use the sprinklers to get the seed going,
8 if it's not going to rain. So that can happen
9 anywhere on those fields.

10 Q The sprinkler on any one of those
11 fields depending on what you need?

12 A Right. I have another field clear down
13 here at the south end on the north side of the
14 river, I use a sprinkler on that.

15 Q Are the rest of the fields ones that
16 you also flood irrigate?

17 A Yes.

18 Q How long do you have to irrigate your
19 fields before you can get a cutting of alfalfa?

20 A Well, I run the water across them once,
21 and then whatever grows, once it flowers, I cut
22 it.

23 Q Do you know about how long it takes to
24 get the water across the field?

25 A Each field is different. Fields that

1 are laser leveled, that have a slope, water runs
2 a little faster, of course, than the fields that
3 are not.

4 Q Do you irrigate -- try to irrigate all
5 your fields at one time?

6 A No, it takes me a little while to get
7 the pumps set up, and then hardly ever do I have
8 all the pumps running at once.

9 Q Is there any order that you try to
10 irrigate the fields?

11 A Well, if I got some new seed coming on,
12 those are the fields I want to sprinkle or get
13 water on if it's not going to rain.

14 Q Does the amount of water you take from
15 the river change from day to day?

16 A Yes.

17 Q And why is that?

18 A Don't always have the same pumps
19 running at the same time each day.

20 Q Okay. What are the reasons why you
21 wouldn't have pumps running on a particular day?

22 A Well, maybe I'm haying or maybe doing
23 something else, I guess.

24 Q So when you can have your pumps on
25 limited by the manpower you have to operate them

1 and irrigate?

2 A Could you say it once more?

3 Q When you can have your pumps on and
4 when they need to be off, is that sometimes
5 dictated by, I guess, how much manpower you have
6 to be able to irrigate the fields?

7 A Right, all manpower.

8 Q And is it all you?

9 A Yep.

10 Q You can only be in one spot at one time?

11 A Right.

12 Q How long do you typically have to stop
13 irrigating so you can hay?

14 A It depends on the soil. Some of the
15 fields are pretty gravelly, have very little top
16 soil, dry out pretty fast a couple days it's hot.
17 Other fields are heavier soil, which usually have
18 a better crop on them, might take a week.

19 Q Can you indicate on the map some of
20 those fields that you indicate dry out a little
21 quicker?

22 A This field here has very little top
23 soil. And it's gravel that is right underneath,
24 it dries out fast. This field dries out fast
25 because it's windy up there on that flat. The

1 soil isn't necessarily -- the soil isn't too bad
2 as far as gravel goes, but it gets a lot of wind
3 there. It will dry out in a couple days.

4 Q I think you just said on the flat.
5 What did you mean by that?

6 A It's up above, it's maybe 20 feet
7 higher than the fields on the bottom down there.

8 Q What were the fields that take a little
9 longer to dry out?

10 A That would be this field here in the
11 middle and all this down through here, real heavy
12 deep soil there.

13 Q Is that labeled Field 5 on the map?

14 A Yes, it's 5.

15 Q Does it take more water to get a crop
16 on one of those fields that dries out faster than
17 it takes to get on the fields that dry out slower?

18 A Well, on the -- I use a sprinkler on a
19 couple of these fields that dry out fast. Mainly
20 this one up here because it's high off the river
21 and it takes a lot of pressure to pump water up
22 there.

23 Q Does it take more water to get a crop
24 off that field than your other fields?

25 A No. No, it doesn't.

1 Q I'd like to talk about your reservoir
2 water. You mentioned that you have contracts
3 with the Tongue River Water Users Association,
4 correct?

5 A Yes.

6 Q How many contracts was that?

7 A Four different ones.

8 Q And how many shares does that give you
9 from all of those contracts?

10 A 212.5.

11 Q Have you ever leased -- how often do
12 you have those contracts? Is that every year?

13 A Yes, we've got -- we had all of those
14 since, I believe, 1999.

15 Q Have you ever leased water from other
16 folks?

17 A Yes.

18 Q Who have you leased water from before?

19 A Bill Musgrave and Christine Valentine.

20 Q What kind of a time frame was that?
21 Was that year to year?

22 A We paid year to year. We had the first
23 right to get it the next year. We pay in advance.

24 Q How often did you lease water from
25 those two people?

1 A We've had Christine Valentine's water
2 for, I think, since 2000. And there are years it
3 was dry, I know -- I can't remember exactly the
4 dates, years. It was in the 2000 to 2009 we had
5 190 acre feet from Bill Musgrave.

6 Q How much did that water cost to lease?

7 A Either \$5 or \$6 an acre is what I
8 think. Something like that.

9 Q Is that for both of those folks' water?

10 A I think Christine's was \$5 an
11 acre-foot, and -- I might be wrong there. I know
12 our bill we paid her was roughly \$99 a year
13 something. That might be right. Bill Musgrave's
14 water, I think we paid \$5 an acre-foot. Maybe
15 \$6. I have some -- well, you've got some
16 documents that probably show that.

17 Q I do indeed. Let's pull out W-245.
18 Do you recognize this document?

19 A Yes.

20 Q Is this your handwriting on this
21 document?

22 A This is my mother's handwriting on this
23 document.

24 Q So your mother created this document?

25 A Yes.

1 Q Is this a document that you possess?

2 A Yes. This is a copy. We were
3 subpoenaed for the deposition to bring in the
4 water we had, contract water, and this was all on
5 a couple sticky notes, looks like, and we stuck
6 them on there and copied it off right there in
7 the deposition.

8 Q These are accurate copies of the sticky
9 notes?

10 A Yes.

11 Q And this was done at your deposition,
12 correct?

13 A Correct.

14 MR. KUHLMANN: I'd like to admit W-245.

15 MR. SWANSON: No objection to the
16 sticky notes, Your Honor.

17 SPECIAL MASTER: W-245 is admitted.

18 (Received.)

19 Q (By Mr. Kuhlman:) Can you describe
20 what this document shows?

21 A This shows in the lower right, shows
22 our four water contracts, the numbers of the
23 contracts are what the Montana Water Users send
24 us a bill for each year, and then the total. Here
25 is Bill Musgrave's water that we bought and the

1 years we bought it.

2 Q When you say here, can you indicate
3 where --

4 A Upper right kind of a square sticky
5 note.

6 Q The table?

7 A H-m?

8 Q Is that kind of a table of numbers?

9 A Yeah, years and then what we paid that
10 year for each of those contracts. Well, the
11 contract was the same amount for each of those
12 years, \$190.

13 Q And are these all the years -- are
14 those all the years that you leased water from
15 Bill Musgrave?

16 A I currently, from 2009 to now, I've
17 been leasing 40 acre-feet from Bill Musgrave.

18 Q I'd like to turn now to an exhibit
19 that's already been admitted as Exhibit M-389.
20 This is a letter from Bill Musgrave dated July
21 19, 2004, to Pat Helms, secretary of the Tongue
22 River Water Users Association; is that correct?

23 A Yes.

24 Q And what does this letter say, or what
25 does it generally say?

1 A It's saying Bill Musgrave is leasing
2 190 acre-feet of water to the FL Ranch for the
3 year 2004.

4 Q And then it lists the contracts that
5 are being leased to you?

6 A Yes.

7 Q Now, I'd like to look at Exhibit W-142,
8 which has not been admitted yet. Do you recognize
9 this document?

10 A Yes.

11 Q Is this a document --

12 MR. SWANSON: I couldn't hear the number.

13 MR. KUHLMANN: W-142.

14 Q (By Mr. Kuhlmann:) Was this a document
15 that you received a copy of?

16 A Yes.

17 Q So you were sent a copy when it says
18 down on the bottom, cc, Bill Carrel?

19 A Right.

20 Q Is this document talking about your
21 leasing water from Bill Musgrave?

22 A Yes, same but for the next year, 2005.

23 MR. KUHLMANN: I'd like to move to
24 admit Exhibit W-142.

25 MR. SWANSON: No objection.

1 SPECIAL MASTER: Exhibit W-142 is
2 admitted.

3 (Received.)

4 Q (By Mr. Kuhlmann:) For the record,
5 what's the date on this letter?

6 A June 16, 2005.

7 Q When you want use water from the Tongue
8 River Reservoir, do you have to contact anybody
9 to have it delivered to you?

10 A Contract water you mean?

11 Q The contract water you lease or the
12 contract water you have shares for.

13 A Well, what usually happens is they call
14 us and tell us we are starting on contract water
15 and then we call back when we start each pump so
16 they know, we tell them which pump we are
17 starting and how many gallons a minute it is.
18 Then they do whatever they have to to get the
19 water down there.

20 Q Who are you contacting?

21 A Art Hayes, usually.

22 Q Do you ever have to ask for -- strike
23 that. Do you ever tell them a certain amount of
24 water that you're going to need on a certain date
25 in order to make that -- have that water be

1 available for you on that date?

2 A I generally tell them when I'm starting
3 my pumps, and they know which pump I have and how
4 much flow I have. So whether it's enough to open
5 it much, I don't know.

6 Q Is that storage water available at your
7 head gate when you need it?

8 A At head gate?

9 Q Well, at your pumps.

10 A Yeah, when they start the contract
11 water generally the river maybe comes up a little
12 sometimes. Usually have enough water to get it
13 over my foot valves and start the pumps.

14 Q Can you tell them in anticipation of
15 you starting the pump or when you started the pump?

16 A When I started the pump you call. You
17 can leave a message or there is an answering
18 machine, you leave a message on there, just a
19 number you call to let them know you've started
20 your pump, or you just call Bunny, Art Hayes, who
21 runs the Tongue River Reservoir.

22 Q Do you have any measuring devices on
23 your pumps?

24 A Each pump was measured in 2002, I
25 believe, by water commissioner. And they gave me

1 a reading of how much my pumps were pumping.

2 Q So they measured the capacity of the
3 pumps?

4 A Right.

5 Q Have they measured the capacity of the
6 pumps since 2002?

7 A I think when I got the pump, the
8 pressure pump, PTO pressure pump, in 2006, they
9 came and measured that one when I got it running.

10 Q Did your ditch have a measuring device?

11 A No.

12 Q Do you keep records of when you irrigate?

13 A Yes.

14 Q Do you keep records of how much water
15 you use?

16 A Yes, for these contract water, I do.
17 When I'm running the ditch, I don't.

18 Q Do you always keep records of every year?

19 A No. Years when there's -- when there's
20 -- unless they tell us to keep records, when it's
21 going to be commissioners checking, then you keep
22 notes. I have kept notes on years when there was
23 a hundred percent water, also.

24 Q And why did you do that?

25 A Well, the year started out dry and

1 thought we were going to be short where you have
2 to have a percentage. Turned out it started
3 raining and got a hundred percent of water.

4 Q In your answer you mentioned they. Who
5 are you referring to?

6 A Tongue River -- I got to hear the
7 question again.

8 Q When you mention, I think you said they
9 told us --

10 A Oh, that would be the Tongue River
11 Water Users, or these commissioners.

12 Q I would like to take a look at Exhibit
13 W-295. Do you recognize this document?

14 A Yes.

15 Q Go ahead and take a look through the
16 pages, this looks to be -- I guess I'll ask.
17 Did you create document?

18 A Yes.

19 Q What is this document?

20 A This is a water use log that the
21 commissioners told me to keep for all my pumps
22 for measuring of the contract water.

23 Q Is this a full copy of your records?

24 A Looks like it.

25 MR. KUHLMANN: I'd like to move to

1 admit W-295.

2 MR. SWANSON: No objection.

3 SPECIAL MASTER: Exhibit W-295 is
4 admitted.

5 (Received.)

6 Q (By Mr. Kuhlmann:) What period of time
7 do these records cover?

8 A I believe 2002 through part of 2008
9 maybe.

10 Q Generally, what do these records show?

11 A Well, there's a description of the
12 pump, gallons per minute for each pump -- or a
13 description of the pump, the gallons per minute
14 for that pump, the rpm's that this pump was
15 measured on, the start and stop time, the number
16 of hours, the total gallons.

17 Q And were you looking at a particular
18 page?

19 A Yeah, second page.

20 Q So you've got a start and stop time
21 listed here for different time periods. In
22 between the stop time that's listed and to the
23 next start time, does that mean the pump is off?

24 A Yes.

25 Q And how do you break down your

1 measurements between pumps? Are they on separate
2 pages?

3 A Yes, they are.

4 Q How did you measure water use to
5 create these records?

6 A I took the number of gallons per minute
7 time the hours, multiply that times the number of
8 hours, times 60, would give me gallons per
9 minute. And then divided that -- sometimes I
10 used 325,900, which is one acre-foot of water. I
11 may have used 326,000 on some of these.

12 Q Is there a reason you used one number
13 versus the other?

14 A No, I started out being very... and
15 later decided to leave 326,000.

16 Q Did that change situationally any of
17 the numbers you came out with?

18 A It could have, yes, I guess.

19 Q How much of a difference is there
20 between 325,900 versus 326,000?

21 A Well, there is a hundred.

22 Q Not too much on the scale of things?

23 A When you're figuring your total, yeah,
24 I guess it would change it a little.

25 Q Did you add up the total amount of

1 acre-feet, or did you add up your measurement
2 between the pumps for a given year?

3 A Yes, I totaled them up.

4 Q Was that to give yourself -- why did
5 you do that?

6 A Well, I have a certain amount of
7 acre-feet. In these dry years when we had to do
8 these records, there was usually a percentage of
9 the total acre-feet that you owned and leased,
10 and I didn't want to go over that.

11 Q Did you calculate the amount of water
12 you have available in a given year in these
13 records?

14 A Yes.

15 Q Looking through these records, they
16 appear to start in 2002; is that correct?

17 A Yes.

18 Q Do you know how much water you had
19 available to you in 2002?

20 A I will have to go to the page where I
21 totaled it. It looks like on the fifth page I
22 have a total, that year we had 55 percent water
23 available, looks to me like I had Christine's
24 water plus 200 acre-feet of our own water.

25 Q Do you know how much water you used in

1 2002, according to your records?

2 A Is that on the same page here?

3 Looks like -- do you want me to count
4 the pages?

5 Q Maybe if you can describe the page and
6 we can follow along and I will try to put it up
7 on the screen.

8 A Get to the pages unlike the other pages
9 that would show the pumps, the time, all that,
10 it's a total --

11 SPECIAL MASTER: What does it say at
12 the top of the page? That will probably help.

13 THE WITNESS: PTO sprinkler 292. I'll
14 show you. This 2001 here.

15 SPECIAL MASTER: Maybe in fact if you
16 show Mr. Kuhlmann, he can project that page up
17 and that will help everybody.

18 MR. KUHLMANN: Okay.

19 Q (By Mr. Kuhlmann:) Do I have the
20 correct page up on the screen now?

21 A Yes.

22 Q Zoom in a little bit.

23 MR. SWANSON: Can we get an idea which
24 page in the document itself?

25 MR. KUHLMANN: About three or four

1 pages after the last few he talked about.

2 Q (By Mr. Kuhlmann:) So this is the
3 correct page you were looking at?

4 A Yes.

5 Q Where does it say your total water use?

6 A In the far right bottom, 120.89.

7 Q So you had 121 acre-feet available to
8 you and you used 120.89; is that correct?

9 A Yes. You're getting that from this 55
10 percent, right?

11 Q Correct. Do you pay close attention to
12 how much water you use?

13 A I try to. I thought the judge is
14 going to have to see this document each year, so
15 I tried to be close as I could on this.

16 SPECIAL MASTER: When you say the
17 judge, you're talking about the water judge in
18 Montana?

19 THE WITNESS: Whoever was directing the
20 commissioners.

21 SPECIAL MASTER: Thank you.

22 Q (By Mr. Kuhlmann:) Take a look at
23 Exhibit N-382, which has already been admitted.
24 Can you see that up on the screen?

25 A Yes.

1 Q All right. This is a set of records
2 that Chuck Kepper -- do you know who Chuck Kepper
3 is?

4 A Yes, I do.

5 Q Who is he?

6 A He's one of the water commissioners.

7 Q Mr. Kepper testified earlier in the
8 trial and said these are records from 2002.

9 Turning to the second page. I
10 represent to you that this is the last page
11 that's been -- I guess, the latest page in this
12 document, and the date at the top says 1
13 September 2002. This document says there was a
14 cumulative usage in acre-feet by you of 127
15 acre-feet. Do you see that?

16 A Yes.

17 Q So that's different than the amount of
18 water you measured using 2002, correct?

19 A Yes.

20 Q Can you explain why there is a
21 difference between those numbers?

22 A No.

23 MR. SWANSON: Object. Foundation.
24 This is not his document. This is a document
25 from Mr. Kepper, not from the witness.

1 SPECIAL MASTER: I think it's fine for
2 the question he asked, whether or not he can
3 explain what the difference in the two numbers
4 would be, and I think he said that he actually
5 doesn't know what explains the difference.

6 Q (By Mr. Kuhlmann:) Did Mr. Kepper tell
7 you what he measured your water use -- did Mr.
8 Kepper tell you what he measured was your total
9 water use in 2002?

10 A No, I told him what my water use was in
11 2002.

12 Q Now, going back to your records,
13 Exhibit 295, moving on from the page that we were
14 just on, can you find where your records begin
15 for 2004? Going back four or so pages. In
16 looking through the pages after that, can you
17 find the total amount of acre-feet that you
18 measured as using the 2004?

19 A Yes.

20 Q At about eight pages in?

21 A About that.

22 Q What does it say at the top of the page?

23 A It says, 200 plus 190 equals 390 times
24 .48 percent equals 187.20. Below that says
25 actual amount, 212.5 plus 190 equals 402.5 times

1 48 percent equals 193.20.

2 SPECIAL MASTER: I'm sorry, Counsel,
3 I'm having problems finding this page.

4 Q (By Mr. Kuhlmann:) Do you know what
5 your total water use was in 2004?

6 A My number is 191.46.

7 Q And how much water did you have
8 available that year?

9 A 48 percent.

10 Q Do you know how many acre-feet that
11 would have been available?

12 A Yes, that's 193.20.

13 Q So you had 193.20 acre-feet and you
14 used 191.46?

15 A Yes.

16 Q Is that pretty close?

17 A That's pretty close. I could make a
18 mistake every now and then.

19 Q Take a look now at Exhibit N-386, which
20 has already been admitted. This is a set of
21 measurements made by the water commissioners for
22 2004. If you look at the last page, that page
23 should say -- should have the dates May 1st
24 through August 15th, 2004. And this is the
25 latest page that's in this document. Can you

1 tell us what it says next to your name as the
2 cumulative usage in acre-feet?

3 A It says 85.

4 Q So that's quite a bit different from
5 the amount of acre-feet you measured yourself,
6 correct?

7 A Yes, but is that through the whole
8 year?

9 Q Well, looking back at your
10 measurements, is there a date that you associated
11 when you were calculating your total? What I'm
12 seeing on here, August 22nd, 2004.

13 It was on the same page. I'm looking
14 at the same page that you did your total
15 calculation.

16 A Oh. Where does it say that?

17 Q I'm looking down at the very bottom.

18 A Oh, okay. Right. Yep, August 22nd.

19 Q So was that your usage through August
20 22nd?

21 A Yes. That's when I got so close that I
22 figured I better shut it off in case I made a
23 mistake.

24 Q Okay. And the date on Exhibit 386,
25 M-386, says -- Exhibit M-386 says August 15th; is

1 that correct?

2 A Yes.

3 Q Okay. So your records go through
4 August 22nd, and at least the records on here go
5 through August 15th, correct?

6 A Yes.

7 Q The differences between your numbers is
8 over 100 acre-feet between what the commissioner
9 measured you using and what you measured yourself
10 as using, correct?

11 A August 15th?

12 Q Well, do you have a number on the 15th,
13 or close to the 15th?

14 A I have the 14th here.

15 Q How much did you've calculate yourself
16 as using as of August 14th?

17 A 156.075.

18 Q That's still quite a bit more than the
19 commissioner had you measured at?

20 A Yes.

21 Q Do you know why he measured you using a
22 lot less than you had yourself measured?

23 A No.

24 Q Did he tell you what his measurement
25 was for that year?

1 A No. Again, I told him when I was about
2 out and informed him that I was pretty close to
3 out and this is what I used.

4 Q So you're saying you told him you used
5 85 acre-feet?

6 A No, 191.

7 Q So you don't know why he would say 85
8 and you would say 191, correct?

9 A I don't know.

10 Q All right. Keep going on here. Turning
11 about three more pages in your records, about
12 eight more pages, is there a page that at the
13 very top says, 7/13/05-9/30/05?

14 A Yes.

15 Q Is this for the 2005 season?

16 A Looks like it.

17 Q And how much water did you have
18 available then?

19 A Hundred percent.

20 Q So how much water would that have been
21 for you in total?

22 A It would have been our 212.5 plus 20 of
23 Christine's water, plus 190 acre-feet of Bill
24 Musgrave's water.

25 Q And there's a number here circled,

1 145.00. Is that the total amount of water you
2 measured yourself using in 2005?

3 A Yes.

4 Q So was this one of the years you
5 measured that you still had a full allocation?

6 A Yes.

7 Q Move on. The next page, you go to the
8 next page, at the top it says 790 gallons per
9 minute, gpm 2006. Is this the start of your
10 records for 2006?

11 A Yes, it looks like it.

12 Q If we go five pages further to page at
13 the top says 6-15-06-6-30-06. Is this a page
14 where you totaled up your water use in 2006?

15 A Yes, it looks like it.

16 Q And how much did you calculate you used
17 in 2006?

18 A 252.81.

19 Q And do you know how much water you had
20 available in 2006?

21 A I don't have a percentage on here.

22 Q Well, how many acre-feet would you have
23 had if you had a full allocation?

24 A Well, I would have to add that up.

25 Q Was 2006 the year you leased water from

1 Bill Musgrave?

2 A Yes, 212.5 plus 20 plus 190.

3 Q So you would have had some percentage
4 less than that?

5 A In 2006?

6 Q Yes.

7 A Yes, I guess. I don't know the answer
8 to that.

9 Q Well, I'll tell you that in earlier
10 testimony 90 percent allocation, or 90 percent of
11 full water rights was what was testified to in
12 this case. Do you know if that sounds right?

13 A Yeah, I've heard that number. That's
14 not a number I know about, though, on here.

15 Q Okay. It's not in your record?

16 A I heard it was 10 percent off or
17 something.

18 Q So that would be 90 percent of your
19 total?

20 A Right.

21 Q Okay. So was 10 percent of the water
22 you had available be quite a bit more than the
23 252.81 you calculated that you used? So the
24 total you had available versus the total you
25 used, is there quite a bit of difference there?

1 A Yes. It would help if we would do the
2 math.

3 Q Okay. I took a crack at it, which is
4 dangerous being a lawyer, but so in 2006 you said
5 you had 212 and half acre-feet of shares, correct?

6 A Correct.

7 Q Plus you had 90 --

8 A 190.

9 Q 190. Plus another 20?

10 A Yes.

11 Q So that's over 300 acre-feet, correct?

12 A Okay.

13 Q Does that sound about right?

14 A Yes.

15 MR. SWANSON: I just want to lodge an
16 objection. I think the math would be
17 significantly different from that.

18 SPECIAL MASTER: One lawyer's objection
19 to another lawyer's math.

20 MR. SWANSON: We are in dangerous
21 territory here, Your Honor.

22 THE WITNESS: I have it added up here
23 somewhere.

24 MR. SWANSON: We will stipulate it's
25 more than 258.81.

1 SPECIAL MASTER: I think everyone has
2 probably agreed it is more than was actually used
3 in this particular year by Mr. Carrel, and we can
4 all actually do the math ourselves later.

5 MR. KUHLMANN: We'll get that team of
6 scientists to help the lawyers calculate.

7 Q (By Mr. Kuhlmann:) So in 2006 you
8 didn't use all of the water you had available; is
9 that correct?

10 A That's correct.

11 Q We'll turn to Exhibit 394, which is
12 another set of commissioner records. M-394.
13 Taking a look at these records, I will have you
14 turn to a page, the date goes through September
15 30th, 2006. I believe it's page MT100035, and
16 it's towards the back of the document.

17 A I have that.

18 Q I will represent this is the latest
19 page for Chuck Kepper's records in this document.
20 What number is next to your name as far as
21 cumulative usage acre-feet on this document?

22 A It looks like 130.

23 Q So that's quite a bit less than 252,
24 correct?

25 A Yes.

1 Q Can you explain why that number is
2 quite a bit different?

3 A The date, June 21st, through September
4 30th, maybe he doesn't have all when I started.

5 Q Take a look at the other pages
6 following this, but if you go the second-to-the-
7 last page, says June 21st through August 16th,
8 and that has 85 acre-feet used next to your name,
9 and in the page before that goes through August
10 31st, that says 130. So we get to September
11 30th, and it says still says 130. So does that
12 seem to be totaling up your amount of water that
13 year, if it's growing?

14 A All these three pages are 2006?

15 Q Correct. That looks to be the total
16 that Mr. Kepper measured using by September 30th
17 of 2006.

18 A Looks like it.

19 Q Okay. And looking back at your records
20 on the page that you had your total for 2006, do
21 you know what date that would have been your
22 water use through, what date you calculated that
23 total?

24 A I believe the last date on here looks
25 like August 30th.

1 Q The latest one I'm seeing, you have a
2 measurement says, VU 8-30-98.

3 A Oh.

4 Q Would September 8th have been the last
5 date?

6 A Looks like it, yes.

7 Q So September 8th -- at least by
8 September 8th, you had measured yourself using
9 252.81 acre-feet?

10 A Right.

11 Q Did the commissioner ever tell you
12 about what amount of water he measured in 2006?

13 A I don't see 2006.

14 Q I thought it was 10 percent.

15 A 10 percent off 190.

16 Q How often did the commissioner come by
17 your property?

18 A I don't know. He could have come when
19 I wasn't there or when I was in a different field
20 or something. I don't know how many times.

21 Q Did he measure water use from your pumps?

22 A Yes.

23 Q Did he do that personally?

24 A He did that, him and Alan.

25 Q And that was your water use throughout

1 the summer?

2 A It was a one time thing on each pump
3 starting in 2002 until -- I used those same
4 numbers until I got another pump in 2006, and
5 they measured that one, too.

6 Q So those are the only times that you
7 know they measured your pumps?

8 A Yes.

9 Q So you mentioned that you had been
10 telling the water commissioner what your totals
11 were as you used water throughout the year,
12 correct?

13 A Yes. I called occasionally the
14 commissioners and Art Hayes wondering when we
15 were going to run out of water so I could try and
16 time my pumps -- my usage to when the entire dam
17 was going to be out, contract water was up.

18 Q Did he tell you when that happened?

19 A Yeah, they had kind of a guess on it.
20 You know, it's all rough. They don't know for
21 sure.

22 Q And you wanted to make sure you didn't
23 go over, right?

24 A Yes.

25 Q Did they ever give you a statement or a

1 receipt at the end of the year to let you know
2 how much water they measured that you had used?
3 And by they, I mean the Tongue River Water Users.

4 A How much I used?

5 Q Yes.

6 A No.

7 Q Would that have been something you'd
8 like to have?

9 A From the...

10 Q To know how much the commissioners are
11 measuring your water use so you could compare it
12 against your own?

13 A Well, my assumption was I would call
14 and let them know how much water I used.

15 Q If I can have a moment.

16 SPECIAL MASTER: Yes. In fact, let's
17 take the first morning break right now.

18 (Recess.)

19 SPECIAL MASTER: Back in session.

20 Q (By Mr. Kuhlmann:) I only have a
21 couple questions left.

22 I think you mentioned when we were
23 looking at the differences between the
24 commissioner's record numbers and your record
25 numbers, I think you indicated that it might be

1 because they didn't have your early season
2 amounts; was that correct?

3 A We would have to look through mine to
4 compare.

5 Q But you did call them when you started
6 taking records and using water, correct?

7 A They informed us when the contract
8 water was to begin. And sometimes I don't have
9 all my pumps set up just right then, but...so...

10 Q But you call them when you start your
11 pumps?

12 A They give us a date, they give me a day
13 of when the contract water begins.

14 Q When do you start keeping records?

15 A Usually I call them when I set up my
16 pumps, tell them I got my pumps set up, which
17 ones and how much...

18 Q You're ready to go to start using water
19 with the pumps?

20 A Right.

21 Q What was the year that you got storage
22 water for the first time?

23 A You mean the first contract?

24 Q Yes.

25 A We bought some water 50 acre-feet from

1 -- through the Montana water -- or through the
2 water users, but it was Indian water in 2001, I
3 believe.

4 Q Do you know how much water -- how much
5 that water cost you?

6 A I think it was \$5 an acre-foot, but I'm
7 not positive. That may be on one of these
8 documents here.

9 Q I won't worry about trying to ferret
10 that out. How long have you had your shares,
11 your annual shares, in the Tongue River Water
12 Users Association?

13 A I think by 1999 we had most -- we had
14 them all, I'm just almost positive.

15 Q Did you have some amount less than that
16 in years before?

17 A Yeah, we got them -- you know, those
18 dates I've tried to find, and just recently tried
19 to find them again, and I couldn't find them. I
20 don't know for sure which days we got each
21 contract.

22 Q But you had them in years before '99,
23 at least some --

24 A Yes.

25 Q -- some contracts?

1 A We tried to pick them up as we -- you
2 know, we bid on contracts and couldn't get them a
3 lot of times.

4 Q What do you mean by that?

5 A There was a meeting when Herb Mosley
6 sold his place, or was selling a lot of water, I
7 went to one of those meetings, and we had, like,
8 an auction almost bidding on his water. I
9 couldn't buy any of that water. There was a lot
10 of water, too.

11 Q So you had water contracts before they
12 had water commissioners on the river, correct?

13 A Yes.

14 Q At that time did you call anybody to
15 let them know when you started using the water?

16 A Before the commissioners? No.

17 Q So you were able to take stored water
18 when you needed it?

19 A Well, we used the ditch as much as we
20 could. And then I don't know when we got the
21 pumps and I can't remember the dates on the
22 contracts.

23 Q Okay.

24 A So...

25 Q Did you have to call anybody and say, I

1 need this amount of acre-feet to start using it
2 on this date?

3 MR. SWANSON: Objection. Could you
4 clarify what period of time we are talking about,
5 because I'm not clear on that.

6 MR. KUHLMANN: Prior to the water
7 commissioners being appointed.

8 THE WITNESS: Okay. No, I didn't -- I
9 didn't have to call anybody. We used the ditch.
10 That was really our only source of water before I
11 got the pumps, or the contracts.

12 MR. KUHLMANN: I don't think I have any
13 other questions. Thank you very much.

14 SPECIAL MASTER: Thank you. Mr. Swanson.

15 CROSS-EXAMINATION

16 Q (By Mr. Swanson:) Good morning, Mr.
17 Carrel.

18 A Good morning.

19 Q Got just a few things to follow up on
20 from Mr. Kuhlman's exam. To begin with, you
21 indicated on that large blowup map behind you the
22 area where you farm, and could you just describe
23 for us how far below the dam is, if you know, in
24 terms of water travel time? There's been a lot
25 of discussion about travel time of water coming

1 from the dam down the river. Are you familiar
2 with that concept?

3 A Yes.

4 Q And how long usually does it take the
5 water from release from the dam to come to your
6 point of diversion?

7 A It depends on how much head they have,
8 how much water is in the reservoir. If it's
9 pretty full, it comes in less than one day.

10 Q In less than one day. And we talked
11 about your water rights, and we don't need to
12 look at them, but you mentioned you have a 1894
13 and 1896 water right. I understand that you
14 actually share this water right with another
15 ranch; is that right?

16 A Yes.

17 Q And what's that other ranch?

18 A Diamond Cross.

19 Q So the acreage amount that you
20 indicated to us is not the full amount of acreage
21 used under those water rights; is that correct?

22 A It's a split right. It's adjudicated
23 and we each have our acreage. I'm not --

24 Q That's what I was asking. So there is
25 acreage under the Diamond Cross Ranch as well as

1 acreage under your ranch that were split out and
2 accounted for under those water rights, correct?

3 A That's correct, yes.

4 Q And that 1894 right, is that accurate
5 that that's the number 5 right on the river, is
6 that according to your recollection?

7 A There's a list on that final decree,
8 1914 decree. Just about fifth.

9 Q So in a normal year, you're able to get
10 a good amount of direct flow through your ditch
11 for irrigation; is that right?

12 A On a normal year, yes.

13 Q Now, in a dry year you mentioned that
14 you have trouble with your ditch actually getting
15 the water to the field. Do you use your ditch on
16 years when there's water commissioners regulating
17 the water?

18 A When they start -- when we are starting
19 on the contract water, when they say all contract
20 water, then I have to shut that ditch off.

21 Q Okay. Because you mentioned they've
22 never measured your ditch, the commissioners have
23 never measured your ditch, and is that because
24 you've never used it when the commissioners were
25 on regulating the river?

1 A That's correct.

2 Q I'm going to look at two exhibits that
3 Mr. Kuhlmann asked you about. The first one is
4 Wyoming 245. You should have it there before
5 you. Let me know if you want me to help you find
6 it. And the second one is Montana 389.

7 A What is the number again?

8 Q Montana 389. We'll start with that one
9 first. That's the letter from Mr. Musgrave to
10 the Tongue River Water Users. Do you have that
11 one?

12 A Yes.

13 Q I see it has a date of July 19, 2004,
14 and Mr. Musgrave is notifying the water users
15 that you have leased his water for the year 2004,
16 correct?

17 A Correct.

18 Q So you would have paid Mr. Musgrave for
19 the water by that point?

20 A Yes.

21 Q And then if we go to Wyoming 245, that
22 is actually -- I believe it's the sticky note
23 exhibit -- it is -- the handwritten notes on what
24 you paid for water over the years?

25 A Yes.

1 Q Wyoming 245. Do you see that sticky
2 note that's kind of in the center of the page
3 that has multiple years accounted one on top of
4 the other with lines between?

5 A Yes.

6 Q The top line is 8/24/04, do you see that?

7 A Yes.

8 Q And it says 190 acre-feet at \$6 per
9 acre foot for 2005. Do you see that?

10 A Yes.

11 Q And that's an amount of \$1140?

12 A Right.

13 Q So piecing these notes together, it
14 appears that in July you paid Mr. Musgrave an
15 amount of money, do you think it was \$1140 as
16 well for the first purchase?

17 A Yes.

18 Q And then a month later you pay him
19 again for use of that water for the following
20 year; is that right?

21 A Yes.

22 Q It looks like you were putting out a
23 lot of extra money in 2004 because of water
24 shortage; is that a fair assessment?

25 A Yes.

1 Q And that was money you weren't planning
2 on spending at the beginning of the irrigation
3 season?

4 A No. This water came available and I
5 jumped right on it.

6 Q You had to, right?

7 A Right.

8 Q So that water short year was a pretty
9 expensive year for you, wasn't it?

10 A Yes.

11 Q When we looked at records later on, and
12 we don't need to look now, but there was a note
13 on your records for 2002 that looked like you
14 were calculating based on 200 acre-feet available
15 as your water, do you recall that?

16 A Yes.

17 Q And you just testified earlier and just
18 a moment ago that you believe by the year 1999
19 you actually had 212.5 acre-feet available.

20 A Yes.

21 Q Do you recall which is the number we
22 should go with for 2002?

23 A 212.5.

24 Q Okay. Let's go ahead and look at
25 Exhibit M-386, that was the records of the 2004

1 usage that Mr. Kuhlmann had you look at. Now
2 I'll just represent to you, and I think Mr.
3 Kuhlmann may have already done this, that Mr.
4 Kepper actually has already been here and has
5 already testified in this case, and in fact
6 testified about these very documents, and I
7 believe his testimony was that these are not all
8 of his records and that these may or may not be
9 the records that were filed with the district
10 court. So the question is, do you have any
11 reason to disagree with Mr. Kepper about these
12 documents?

13 A No.

14 Q And in fact you've never seen these
15 documents before until you will were preparing to
16 come testify here; is that correct?

17 A That's correct.

18 Q So is it fair to say that Mr. Kepper
19 would be the best person to testify as to why he
20 accounted for certain things in these documents?

21 A Yes.

22 Q But since we are asking you to look at
23 documents that you know nothing about, I guess
24 I'll just ask one additional question. You were
25 leasing water in 2004 from Ms. Valentine and Mr.

1 Musgrave and I don't see them on the list here
2 for consumption. Do you see them on any of these
3 pages from Mr. Kepper for 2004?

4 A No.

5 Q So is it possible that he accounted for
6 their water and their consumption against your
7 account without listing it next to your number?

8 A Yes, it's possible.

9 MR. KUHLMANN: I think that's
10 speculation.

11 SPECIAL MASTER: I agree. I think it
12 is speculation at this particular point in time.

13 MR. SWANSON: I told him in advance
14 that I was going to speculate about the documents.

15 MR. KUHLMANN: I just wanted to make
16 sure you went through with it.

17 MR. SWANSON: You don't need to answer
18 that question, Mr. Carrel. I think we will let
19 the documents and Mr. Kepper's testimony speak
20 for itself.

21 THE WITNESS: Sounds good.

22 MR. SWANSON: All right.

23 Q (By Mr. Swanson:) Mr. Kuhlmann asked
24 you when we looked at your detailed records from
25 your particular diary, Mr. Kuhlmann asked you to

1 look at your 2006 records, and when you
2 calculated your amount of water used, he asked
3 you whether September 8th was the last day you
4 were irrigating. I think we'll need to flip
5 there. I found a notation two pages later that
6 said you were irrigating through September 18th.
7 I wanted you to verify that. I will probably
8 need to show you the exact document.

9 Actually, it would be better if we
10 count from the back of the document to find the
11 right page. If you go to the section that's
12 2007, near the back. Do you see that, first page
13 of 2007?

14 A Yes.

15 Q And then if you count four pages
16 forward, the top of the page, I will read it so
17 we are all on the same page literally. As I see
18 the top of the page, it says, a Zulu 1300 gpm,
19 and has the date, times column, and the top
20 column says, 830. The next column is 831. Do
21 you have that date?

22 A Yes.

23 Q So if you look down, do you see
24 irrigation, or do you see water use notes through
25 September 19 on that page?

1 A Yes.

2 Q And then if you turn three more pages
3 towards the back there's a notation that says,
4 PTO 590 gpm. Do you see the top of that page?

5 A Yes.

6 Q And looks like those notes go September
7 14 through September 26 for flood irrigation?

8 A Yes.

9 Q Would you agree that looks like you
10 were irrigating up to September 26?

11 A Yes.

12 Q So would you agree records that we
13 looked at are not the complete record of your
14 water usage in 2006 from the water commissioner?

15 A Yes. His records are incomplete, I
16 think.

17 Q And then, I guess, I want to follow up
18 on one thing you mentioned to Mr. Kuhlmann at the
19 end. You were explaining how you communicate
20 with the water commissioners and with Mr. Hayes
21 and near the end of the season in terms of
22 knowing when you would run out of water or when
23 you're getting close, but then you also mentioned
24 that you would talk to Mr. Hayes about when the
25 association or the dam would run out. Could you

1 explain what you mean by that?

2 A Well, they have measured flow coming
3 out. They know how much -- they have a rough
4 idea partway through the season when they might,
5 with everybody pumping, when they're going to run
6 out of stored water. So I wanted to know when
7 they were going to run out of stored water so I
8 could use as much my stored water, try to time it
9 as close as I could when they were going to run
10 out.

11 Q So that you don't save your water to
12 the end of the summer and then the dam itself has
13 to shut down before you can use all your shares?

14 A Right.

15 Q And has that ever happened to you, or
16 do you know personally any neighbors that that
17 happened to?

18 A Ran out of water before --

19 Q Well, basically the shutdown happened
20 prior to them actually running out of their
21 personal shares?

22 A I don't know that.

23 Q But it was something that you watched
24 out for?

25 A Yes.

1 Q And then in terms of when you would
2 irrigate and use your pumps, you mentioned your
3 pumps would shut off, you would shut your pumps
4 off when you were haying. Are there any other
5 times in the year when your pumps were off,
6 whether you intended them to be off or they came
7 off for some reason?

8 A Well, I'd shut them down and cleaned
9 the moss off. If I was going to be gone that day
10 or something, I'd shut them off, yeah.

11 Q Why does moss matter for the pump that
12 you're using out of the river?

13 A These flood pumps plug up with moss,
14 especially when it's hot out. There's more moss
15 in the river for some reason when it's hot. And
16 it plugs up the impeller of the pump, my pumps,
17 and I got to shut them off and clean all that out
18 and restart them.

19 Q Do you know whether when they have moss
20 build-up whether they are using the same amount
21 of water as they were when the moss was not
22 blocking the intake?

23 A They are using a lot less water when
24 they are plugged up. Some of them even shut off
25 because they are just not getting enough water.

1 Q And did the water commissioners account
2 for those times when they are plugged up and
3 reduce the amount of water charged to you? Is
4 there any way for the water commissioner to
5 actually do that?

6 A No. my records show when I started them
7 and stopped them but it doesn't show any
8 percentage of what the pump is when it's plugged
9 up or anything. It's the full amount when they
10 measured it. So it's based on when that pump is
11 clean and when you first start them, that's when
12 they pump the most.

13 Q But they are not always clean, are they?

14 A No.

15 Q Do you ever have to clean the intakes?

16 A Yes.

17 Q How often?

18 A This big pump I have, in the heat of
19 the summer, sometimes every hour. If I want to
20 keep it running and the water continuing across
21 the field, I got to get out there every hour a
22 lot of times and clean them.

23 MR. SWANSON: No further questions,
24 Your Honor.

25 SPECIAL MASTER: Okay. Thank you. So,

1 Mr. Carrel, I just have a couple very small
2 questions. I'm still trying to get a sense of
3 the way in which water rights actually operate in
4 the Tongue River Valley on the Montana side. And
5 you were talking earlier about the acquisition of
6 the shares in the Tongue River Water Users
7 Association that you own. And you said you had
8 to bid for them.

9 THE WITNESS: Right.

10 SPECIAL MASTER: So if you want to
11 acquire rights not on a short term lease but on a
12 permanent basis, then you pay a price up front
13 for the actual shares themselves?

14 THE WITNESS: Yes. Pay the person that
15 owns them, and then every year there's a fee from
16 the water users, it's like an operation fee, or
17 some of the contracts aren't completely paid up
18 and you may have to pay some on that, also.

19 SPECIAL MASTER: So that's exactly what
20 I wanted to know. So in the case of the shares
21 that you own outright, you've paid a certain
22 amount at the very outset for those rights, and
23 then in addition to that, you pay an amount each
24 year for the rights?

25 THE WITNESS: For the operation fee or

1 something, for those contract waters.

2 SPECIAL MASTER: Thank you. And then I
3 also just wanted to follow up on one of Mr.
4 Swanson's questions. So when the Tongue River
5 Water Users Association tells you that you need
6 to switch over to your contract storage rights,
7 at that point I understand you just testified you
8 shut down your ditch?

9 THE WITNESS: Yes.

10 SPECIAL MASTER: And so at that point
11 you're only using your contract rights?

12 THE WITNESS: Yes.

13 SPECIAL MASTER: You are no longer
14 using your direct flow rights?

15 THE WITNESS: That's right.

16 SPECIAL MASTER: Okay. And then you
17 might have testified about this at the very
18 outset, but I wasn't sure. Your storage contract
19 rights, do you use those rights on all of the
20 various fields that you irrigate?

21 THE WITNESS: Yes.

22 SPECIAL MASTER: Thank you. Those were
23 the only questions that I had. Mr. Kuhlmann.

24 MR. KUHLMANN: I just have one
25 question.

1 REDIRECT EXAMINATION

2 Q (By Mr. Kuhlmann:) 2005 you had a
3 hundred percent of your contract water?

4 A Yes.

5 Q But you still leased additional water
6 that year, too?

7 A Yes. We have to pay ahead.

8 Q Okay.

9 MR. KUHLMANN: That's all I have.

10 SPECIAL MASTER: Thank you. So, Mr.
11 Carrel, that's the conclusion of all the
12 questions, so you can step down. Thank you very
13 much for coming today and testifying.

14 (Witness excused.)

15 SPECIAL MASTER: Shall we take, like, a
16 two-minute break just to clear this up?

17 MR. KASTE: I have something.

18 SPECIAL MASTER: Yes.

19 MR. KASTE: I think I want to offer a
20 stipulation. I heard, and have heard, while we
21 don't have the court's records -- well, that's
22 not entirely true -- Montana in its exhibits has
23 the records filed with the water court, and I
24 would stipulate to their admission because they
25 are not any different than the ones we've talked

1 about. So if you would like to have that in the
2 record, I'll be happy to stipulate to the court
3 records. We can pick up the numbers and stick it
4 in. Frankly, I'm kind of surprised he didn't do
5 that with the water commissioners, but it wasn't
6 my case.

7 SPECIAL MASTER: So what are we talking
8 about now?

9 MR. DRAPER: That's my question.

10 MR. KASTE: There's a series of
11 exhibits that Montana had identified that has the
12 docket from the water court with the various
13 orders and documents that were filed with the
14 court in their list of exhibits. They haven't
15 been offered but I'm happy to let them in. I
16 want to take away this sort of ridiculous
17 uncertainty about, well, don't know what you
18 filed with the court.

19 MR. DRAPER: Well, I appreciate Mr.
20 Kaste's offer. It's not totally clear to me
21 what's involved with that, but I'll be glad to
22 discuss it with him and see if we might come to
23 some arrangement so we make sure we have a clear
24 record on it.

25 SPECIAL MASTER: That would obviously

1 be better if we had official records rather than
2 unofficial records for at least some items. So
3 if the two of you could talk and determine what
4 could be admitted by stipulation, that would be
5 great.

6 MR. DRAPER: Very good.

7 SPECIAL MASTER: Thank you. So we are
8 cleared up at the witness chair and so, Mr.
9 Kuhlmann, is it your witness again?

10 MR. KUHLMANN: Yes, it is, Your Honor.
11 Could I just have a couple minutes?

12 SPECIAL MASTER: Yes.

13 (Recess.)

14 SPECIAL MASTER: Back on the record.

15 MR. DRAPER: I wanted to mention as we
16 get started with the next witness, Mr. Kevin
17 Peterson, from the Department of Natural

18 Resources and Conservation State of Montana will
19 be handling our participation with this witness.

20 SPECIAL MASTER: Thank you very much.
21 Welcome to the table.

22 MR. PETERSON: Thank you, Your Honor.

23 SPECIAL MASTER: Been sort of relegated
24 to the side.

25 MR. PERSON: Actually, the adult table.

1 I don't have to sit at the kid's table.

2 SPECIAL MASTER: Mr. Kuhlmann.

3 MR. KUHLMANN: Call Raymond Harwood.

4 Whereupon,

5 RAYMOND HARWOOD,

6 having been first duly sworn, was examined and

7 testified as follows:

8 DEPUTY CLERK: Please state your name
9 and spell it for the record.

10 THE WITNESS: Raymond A. Harwood.

11 H-a-r-w-o-o-d.

12 SPECIAL MASTER: Good morning, Mr.

13 Harwood.

14 THE WITNESS: Good morning.

15 SPECIAL MASTER: Mr. Kuhlmann.

16 DIRECT EXAMINATION

17 Q (By Mr. Kuhlmann:) Good morning, Mr.

18 Harwood.

19 A Good morning.

20 Q Could you tell us your address?

21 A 7100 Moon Creek Road, Miles City,

22 Montana, 59301.

23 Q What's your current occupation?

24 A Rancher.

25 Q Do you operate a ranch along the Tongue

1 River?

2 A Yes.

3 Q If you could pull up the blown up
4 exhibit, demonstrative exhibit from Montana, a
5 map of the Tongue River in Montana. Can you
6 indicate for us where on the river you're located?

7 A Down in here. Right about there.

8 Q Describe that in relation to the Birney
9 -- well, from Brandenburg it says on here?

10 A It would be approximately eight miles
11 down river.

12 Q So to the north?

13 A Yeah, to the north.

14 Q That's all I have with that. Thank
15 you.

16 How long have you been at your ranch.

17 A I've been there all my life.

18 Q So you have -- what's your experience
19 with irrigation?

20 A Irrigated about all my life.

21 Q You irrigate out of the Tongue River?

22 A Yes.

23 Q Can you generally describe your
24 irrigation operation?

25 A We pump with electric pumps and open

1 ditches and run it down through the border dikes.

2 Q And how many acres do you irrigate?

3 A Be about 245 acres total.

4 Q And you always irrigate that amount?

5 A We have irrigated as high as 300.

6 Q And when did that happen?

7 A That's about -- well, dad moved there
8 in 1950 and probably '52 on, more or less. Maybe
9 not the full 300 but be almost that.

10 Q About how many different fields do you
11 have?

12 A I believe there's about 12 fields all
13 together.

14 Q Do you have water rights that you use
15 on the Tongue River?

16 A Yes.

17 Q I tried to find a good map to help us
18 look through so we can all get an idea what your
19 irrigation looks like. And I found two that I
20 think we can work on. I have put up on the
21 display a page from Exhibit M-6, which was a
22 rebuttal report submitted by an expert from
23 Montana. This page has your name on it, correct?

24 A Yes.

25 Q Moving to the next page, and looking

1 through these, they've got at least two different
2 pictures here, one is a map and another is an
3 aerial photograph. Does that look familiar as an
4 area on your property?

5 A Yes. I believe it does, yes.

6 Q Do you recognize the documents that
7 have those, the map and the picture?

8 A Yes.

9 Q And what are those?

10 A The one is the water right and the
11 other is the map of the fields.

12 Q Okay. All right. Then there's another
13 one I wanted to show. This next page D-344, that
14 also has your name, correct?

15 A Yes.

16 Q If you follow through here there's a
17 map and three aerial photographs. Do you
18 recognize the area they depict as part of your
19 property?

20 A Yes.

21 Q Do you recognize the document that
22 contain those depictions?

23 A Yes.

24 Q So looking at those pictures, which one
25 do you think would be best for us to put up here

1 to then talk about what your whole irrigation
2 operation is?

3 A The picture you have up there now.

4 Q All right. We'll keep that one then.
5 I'm zoom in a little bit here.

6 This is a document from one of the
7 water rights documents. So can you tell me about
8 this water right? Tell me about what this shows.

9 A That shows the fields, the fields that
10 I irrigate.

11 Q Can you describe how you -- where you
12 take water and how you use water on those fields?

13 A We start pumping out of the river with
14 electric irrigation pump and start with the first
15 field closest to the pump and work our way down
16 river.

17 Q To help everybody see it, I have a
18 laser pointer here.

19 So you described that you start at the
20 first field and move down?

21 A Yes.

22 Q And is that to the northeast?

23 A Yes.

24 Q There's a little red dot on this map
25 down in the bottom left-hand corner next to the

1 river. Do you see that?

2 A Yes.

3 Q Do you know what that dot is showing?

4 A Pump site.

5 Q So that's where you take water for that
6 set of fields?

7 A Yes.

8 Q Do you have any other points of
9 diversion along the river for these fields?

10 A Yes.

11 Q Where would that be at?

12 A Well, that would be about a quarter of
13 a mile west of the dot there that you are
14 referring to.

15 Q Okay. So off the map?

16 A Yes.

17 Q Is that point of diversion you use for
18 the fields shown here or for different fields?

19 A It would be for different fields. It
20 would be for the upper fields.

21 Q Was that one of previous maps?

22 A It's on this map. It's only like a
23 quarter of a mile up river. I don't see a dot
24 there for it. Maybe it shows it on the other map.

25 Q Can you describe what other acreage you

1 irrigate in relation to this set of acreage?

2 A Well, what I call the upper pump that
3 irrigates about 33 acres, the upper bench.

4 Q Is this a map of that acreage that you
5 refer to as the upper acreage?

6 A Yes.

7 Q And this is a map located on page
8 D-340. Do you see where the point of diversion
9 is for this acreage?

10 A Where the red dot is.

11 Q Is that also a pump?

12 A Yes.

13 Q Now, there's some acreage that's at
14 least shaded further south of that point of
15 diversion. Do you irrigate that property?

16 A It can be irrigated.

17 Q Have you done so?

18 A Yes.

19 Q When have you done that?

20 A Well, we've always irrigated it. If we
21 have an in stream flow of water, we would
22 irrigate extra water.

23 Q And where do you take water to put on
24 that property? Where is the point of diversion
25 for that?

1 A Where the red dot is.

2 Q And then you pump it up river to get to
3 that property?

4 A Well, it pumps -- yeah, it would be
5 down river.

6 Q Okay. Okay. I'm looking at different
7 spot than you were. I'll stop there.

8 That other property you talked about
9 before with the other point of diversion on the
10 other water right, where is that in relation to
11 the map that we have up here?

12 A The 64?

13 Q There was another map we looked at
14 before this. Do you know where the property that
15 was shown on that map is?

16 A That's right next to it.

17 Q Okay. And can you describe what you
18 mean by next to it?

19 A Well, it would be kind of south of
20 that, towards the river.

21 Q Okay. So between kind of where the
22 blue lines are and the river?

23 A Yes.

24 Q There's a little mark kind of next to
25 the river, it says 2704, is that the area roughly

1 you're talking about?

2 A Yes.

3 Q So for all these fields that you've
4 talked about, these are all irrigated with border
5 dikes?

6 A Yes.

7 Q And how long have you had those in place?

8 A Oh, some of it was in probably when dad
9 was first there, and then we gradually put more
10 of it in. Some of it had to be releveled and
11 work done on it.

12 Q Okay. Do you know what the priority
13 dates are for the two water rights we've looked
14 at?

15 A Well, the priority dates now are -- 64
16 is 1946 and for the 65 is 1952.

17 Q And you said now. Was that different
18 than sometime before?

19 A Well, the previous right, the decreed
20 right, was 1903.

21 Q And that was for both of those water
22 rights?

23 A Yes.

24 Q Why did that priority or the date change?

25 A When they readjudicated the water, why

1 then the Bureau of Indian Affairs objected, there
2 were some objections to that water right.

3 Q So the changes to your water rights
4 were made while resolving those objections?

5 A Yes.

6 Q Do you know at what time that change to
7 those priority dates was made?

8 A I believe 2012 or '13 when that
9 started, roughly.

10 Q So if we had records here in this
11 report that were from prior 2012, would they
12 reflect that change?

13 A I don't believe so.

14 Q Do you use both of your water rights in
15 every year?

16 A Yes.

17 Q Do you use water from another source,
18 too?

19 A From the water users association.

20 Q And you have contracts with them?

21 A Yes.

22 Q How much -- how many shares do you have?

23 A 208 feet.

24 Q Have you ever leased more water?

25 A Yes.

1 Q And was that temporarily?

2 A Yes.

3 Q When was that?

4 A I believe 2004.

5 Q Who did you lease that from?

6 A Northern Cheyenne Tribe.

7 Q And how many acre-feet was that?

8 A 300 acre-feet.

9 Q How much did it cost?

10 A \$10 an acre foot.

11 Q Do you have any other water rights?

12 A Yes.

13 Q Can you describe those?

14 A There's one on Cottonwood Creek, it
15 runs into a dam.

16 Q From this map can you describe where
17 Cottonwood Creek is?

18 A It would be where that red dot is, kind
19 of north -- be northeast -- northwest where the
20 road is. Right across the dam there that you
21 see on the edge where the fields start. I
22 believe you can see the dam right there.

23 Q Okay. So it looks like there's a
24 little outlined area of blue?

25 A Yes.

1 Q Okay. You think that shows where the
2 dam is at?

3 A Yes.

4 Q And the reservoir right with the water
5 behind it?

6 A Yes.

7 Q If there wasn't the dam, would that
8 water flow into the Tongue River?

9 A Yes.

10 Q Do you know what the priority date
11 is -- well, you said you had a water right for
12 that dam. Do you know what the priority date is
13 for that?

14 A 1952.

15 Q Has anybody ever asked you or made you
16 open that dam to allow water to pass into the
17 Tongue River?

18 A No.

19 Q How do you use the water -- do you use
20 the water from that dam?

21 A Yes.

22 Q How do you use it?

23 A We divert it out of there through head
24 gates.

25 Q And then where does that water go?

1 A On to the fields to irrigate them.

2 Q Are you able to use your existing
3 ditches to carry that water?

4 A Yes.

5 Q When do you use that right?

6 A We usually use that first. If it fills
7 up with snow water, we will use that first.

8 Q And when does it usually fill up?

9 A In, oh, it could be the last of
10 February or first part of March, whenever it
11 melts, if we have snow.

12 Q You don't always have snow?

13 A No.

14 Q Does it ever fill up again?

15 A Yes, it might once from rain water.

16 Q So after your done using the reservoir
17 to irrigate, you close the headgate back up?

18 A Yes.

19 Q So if there's water that comes down
20 Cottonwood Creek it will reach and stop at that
21 headgate?

22 A Yes.

23 Q Around when do you start irrigating?

24 A Oh, about the 15th of May to the 20th,
25 depending on how wet the year is.

1 Q And generally when do you stop
2 irrigating?

3 A Around the end of August.

4 Q I apologize if I asked this already,
5 but what do you grow?

6 A Alfalfa and hay grain.

7 Q And how many cuttings of alfalfa do you
8 get a year?

9 A Normally two, sometimes three.

10 Q How many times do you have to irrigate
11 to get a cutting?

12 A Normally once before each cutting.

13 Q How long does it take you to irrigate a
14 field?

15 A Depends on the field.

16 Q Do you irrigate -- well, do you
17 irrigate all your fields all at one time?

18 A No.

19 Q And you said you start kind of up the
20 river and move down field by field?

21 A Yes.

22 Q How long does it take you to irrigate
23 from the top of your property to the bottom?

24 A Well, that depends on how dry it is,
25 but probably be at least a week or week and a half.

1 Q During the irrigation season do you
2 ever stop pumping water?

3 A Yes.

4 Q When do you do that?

5 A When I hay the ground. Cut hay.

6 Q And about how long would you stop
7 pumping?

8 A A week to ten days.

9 Q And you said you have two to three
10 cuttings, so that would happen two or three times
11 a summer?

12 A Yes.

13 Q So does the amount of water you take
14 out of the river change from day to day?

15 A I wouldn't say day to day the Tongue
16 maintains flow. It can.

17 Q Are there any other reasons why you
18 stop irrigating during the year, or stop your
19 pumps during the year?

20 A Well, if I run out of water I stop them.

21 Q When does that happen?

22 A In dry years.

23 Q Do you remember what years they were
24 that you describe as dry years?

25 A I believe, I'm not real sure, I think

1 it started in 2000 or 2001 there were a few there.

2 Q Do you remember how many?

3 A I believe a couple. I'm not sure. I
4 can't remember that far back.

5 Q I understand. Do you have any measuring
6 devices on your pumps?

7 A No.

8 Q Any measuring devices further down on
9 your ditches?

10 A No.

11 Q Do you keep records of when you use
12 water?

13 A No.

14 Q Do you keep records of how much water
15 you use?

16 A No.

17 Q Do you know how much of your Tongue
18 River Water Users water you use to irrigate every
19 year?

20 A Probably all of it.

21 Q Are you familiar with the priority --
22 are you familiar with the priority regulation of
23 water rights?

24 A Somewhat.

25 Q What would you describe as somewhat?

1 What's your understanding?

2 A Well, I guess if your date, if somebody
3 precedes you, they have water over you, you have,
4 like, where mine is now 1952, if somebody has a
5 prior right, they can take water before you do,
6 if it gets down to that.

7 Q Are you familiar with using the term
8 "call" in relation to priority regulations?

9 A No.

10 Q How does someone make sure if they've
11 got a senior water right that a junior isn't
12 using it and that they are using the water they
13 are supposed to have?

14 A I suppose you would be told. I'm not
15 sure.

16 Q Told by who?

17 A The water commissioner.

18 Q Has any water user ever contacted you
19 to turn off using your water rights so that their
20 senior priority could get water?

21 A No.

22 Q Do you know if any other time that's
23 happened on the river?

24 A Not that I can recall.

25 Q You mentioned water commissioners.

1 Were they ever appointed on the Tongue River?

2 A Yes.

3 Q Do you know when?

4 A I believe in 2001 or '2.

5 Q Do you know how many years there were
6 water commissioners?

7 A Four or five. I'm not sure.

8 Q Do you ever interact with the
9 commissioners?

10 A Yes.

11 Q Can you describe those interactions?

12 A Well, when they come through to check
13 the pumps we kind of discuss a little bit about
14 whether we are on stored water. Usually when
15 they come we are on stored water.

16 Q You heard Mr. Carrel talk earlier about
17 commissioners measuring the capacity of his pumps?

18 A Yes.

19 Q Did they do that for your pumps?

20 A Yes.

21 Q When do they do that?

22 A I'm not sure. I believe 2002, whenever
23 they started. When they first started having
24 water commissioners, that's when they measured it.

25 Q After they did that, those measurements

1 of your capacity, did they come back to your
2 property?

3 A Yes.

4 Q When did they come back?

5 A They come back the first summer that
6 they started measuring, and then they come back,
7 I don't know, how often it was, come back and
8 check to see how much water you were using.

9 Q Did they do that at the end of the year?

10 A Oh, several times through the summer.

11 Q Did you talk to them when they came
12 through?

13 A If I see them come through I talk to
14 them, yes. Sometimes they were there and I
15 didn't know when they were there sometimes.

16 Q So not every time?

17 A Not every time, no.

18 Q So you don't know how many times they
19 actually came?

20 A No, I don't.

21 Q So they were there to measure the use
22 of water, correct?

23 A Yes.

24 Q Do you know how they measured?

25 A Used what their measurement was when

1 they put the instrument on it, and I have hour
2 meters on my pumps, on the electric pumps on the
3 control panels, and they either use that or off
4 our REA meter, electrical meter.

5 Q Do you know how often they used those
6 different methods?

7 A Whenever they come to check, I imagine,
8 they wrote it down.

9 Q Well, do you know which one they used
10 more often?

11 A I believe they used the hour meter.

12 Q And where is the hour meter located?

13 A On the control panel, control box.

14 Q On the pumps?

15 A The starter box off the power pole
16 close to the pump.

17 Q So the nearest power pole?

18 A H-m h-m-m. Yes.

19 Q Describe, I guess, your use of your
20 stored water from the Tongue River Water Users
21 Association. When do you use it?

22 A Well, when the in stream flow, when we
23 are out of that water, the river starts getting
24 low, why then we go -- sometimes we go on stored
25 water.

1 Q Do you know when that typically happens?

2 A No.

3 Q Does anybody ever tell you when you're
4 on stored water?

5 A Yeah, usually -- sometimes we get a
6 letter when the water commissioners shows up,
7 usually we are on stored water.

8 Q Do you ever have to contact someone to
9 have your stored water delivered to your points
10 of diversion?

11 A I believe I've done that through the
12 water commissioners, and then I might have once
13 or twice contacted somebody.

14 Q Were those once or twice times, when
15 did those happen?

16 A I don't remember.

17 Q Were those years when there were water
18 commissioners?

19 A Yes.

20 Q In years when there weren't water
21 commissioners did you ever order delivery of
22 stored water?

23 A No.

24 Q So you were able to take your stored
25 water directly from the river when you needed it?

1 A I believe so.

2 Q The years when you had commissioners,
3 did you ever ask for water, stored water, but
4 never receive it?

5 A I don't believe so. I'm not certain
6 on that.

7 Q I got a little head of myself. Going
8 back to those years when there weren't
9 commissioners, are you able to determine or
10 distinguish when you're taking stored water from
11 the river and what water you're taking into your
12 direct flow rights?

13 A Probably not.

14 Q How about years when there were
15 commissioners?

16 A You mean as an individual?

17 Q Yes. You.

18 A No, I wouldn't be able to.

19 Q Do you know how you would be able -- or
20 do you know if there's a way you could?

21 A They probably would notify you. You'd
22 be notified.

23 Q Have you ever used more stored water
24 than you had shares for?

25 A May have.

1 Q Do you know when that might have been?

2 A No.

3 Q We'll take a look now at Exhibit M-394.
4 This is measurements by the water commissioners
5 from 2006. Can you turn to page, I believe it's
6 MT-100027. It's in the bottom right-hand corner.

7 A 27?

8 Q Yeah, 100027. Are you there?

9 A Yes.

10 Q All right. Turn to the page right
11 before that, there's -- it's a letter from Charlie
12 Gephart. Do you know who Charlie Gephart is?

13 A Yes.

14 Q Who is he?

15 A Water commissioner.

16 Q On this letter it says, attached is a
17 list of stored water consumption by Tongue River
18 Water Users Association September 4 through
19 September 30, 2006. Also says, no amount of
20 water contracted reflects a 10 percent reduction
21 in acre-feet due to the reservoir not filling to
22 capacity.

23 All right. If we turn to the next
24 page, are you listed on this page?

25 A On 27?

1 Q Correct.

2 A Yes.

3 Q Okay. And about where are you on the
4 page?

5 A About a third up; three up from the
6 bottom.

7 Q All right. If we look over in the
8 second to right-hand column, it says, amount of
9 water contracted acre-feet, and then down next to
10 you it says, 180 acre-feet. Do you see that?

11 A Yes.

12 Q So you have 200 acre-feet total, and
13 with the 10 percent reduction, that meant you
14 would have had 180 acre-feet left?

15 A Yes.

16 Q So you would have had 180 acre-feet you
17 could have used?

18 A Yes.

19 Q And the other column next to it, one of
20 them has an asterisk, and says 2.8, and it says
21 -- that's under the column contract water
22 remaining, and then the asterisk seems to be
23 explained in the comments line as amount over
24 contract. Do you see that?

25 A Yes.

1 Q So that's showing that the commissioner
2 measured you using 2.8 acre-feet over your
3 contract amount. And did you know about --

4 MR. PETERSON: Objection. Compound
5 question.

6 MR. KUHLMANN: I hadn't gotten the
7 question.

8 MR. PETERSON: He was asking two
9 questions, Your Honor.

10 SPECIAL MASTER: Why don't you rephrase.
11 I'm not actually sure you were, but at this point
12 the question has been interrupted anyway.

13 Q (By Mr. Kuhlmann:) Did you know about
14 this comment or about the 2.8 acre-feet?

15 A No.

16 Q Did Mr. Gebhart tell you about him
17 measuring that you had used 2.8 acre-feet more
18 than you had right for?

19 A No.

20 Q Turn next to M-398.

21 SPECIAL MASTER: M-398. Off the record
22 for a second.

23 (Discussion off the record.)

24 SPECIAL MASTER: Back on the record.

25 Q (By Mr. Kuhlmann:) Taking a look at

1 Exhibit 398 now. Mr. Harwood, have you ever seen
2 this document?

3 A No.

4 Q All right. If we turn to page -- I
5 guess it's the last page in this document. I
6 represent to you that these are water consumption
7 records from Mr. Gebhart in 2005, and on this
8 last page, the date at the top is October 7,
9 2005, do you see that?

10 A Yes.

11 Q And this says, the following is a
12 listing of stored water consumption by Tongue
13 River Water Users from September 17 through
14 September 30 of 2005. And are you listed on this?

15 A Yes.

16 Q That one says that you didn't use any
17 water that period, correct?

18 A Correct.

19 Q That seems to be a measurement from a
20 shorter time period, just from September 17
21 through September 30, correct?

22 A Correct.

23 Q If we look at the other pages in the
24 document, on the first page it says, 116.3
25 acre-feet, and the next page it says, next to

1 your name, and the next page it is 68.8
2 acre-feet, and next page says you didn't use any
3 from August 12 to August 30. Do you know if you
4 used water that time period?

5 A I don't know.

6 Q And the page after that, for August
7 31st through September 16, says, 73.8 acre-feet.
8 Did I read all those correctly?

9 A I believe so, if I'm on the right page.

10 Q I apologize. I started at the last
11 page and went back through the document.

12 A Yeah, the last page -- 73.8.

13 Q Okay.

14 A You read that correct.

15 Q Now, in 2005, there's been testimony
16 earlier that there was no reduction in the amount
17 of water shares, or no reduction applied to the
18 water shares of the Tongue River Water Users.

19 Did you know that?

20 A No.

21 Q So based on the previous testimony, in
22 2005 would you have had all 200 acre-feet of your
23 shares?

24 A In 2005?

25 Q Correct.

1 A I would assume I would have.

2 Q Okay. I'll represent, I did actually
3 have the figure for this one, did some math and
4 if we total up...

5 MR. PETERSON: I'm going to object,
6 Your Honor, because Mr. Harwood testified he had
7 never seen this documented before, so he had no
8 opportunity or has no knowledge of its content up
9 to this point. He's only confirmed what is being
10 stated on the document. But now he's being asked
11 to interpret what's in the document, and I don't
12 think this is the appropriate witness to be doing
13 that.

14 SPECIAL MASTER: I think, you know, at
15 this stage I think probably the easiest thing to
16 ask is probably whether or not Mr. Harwood was
17 told at any point during this year that he went
18 over the amount of contract water he was entitled
19 to.

20 MR. KUHLMANN: I think that's a good
21 question.

22 SPECIAL MASTER: Then you don't have to
23 refer to the document and you get to the same
24 place.

25 Q (By Mr. Kuhlmann:) Were you told at

1 any time in 2005 you went over the amount of
2 contract water that you had shares for?

3 A No.

4 Q Can you explain why that wouldn't have
5 been brought to your attention?

6 MR. PETERSON: Object. That now
7 assumes a fact not in evidence that he indeed was
8 even over, because, again, we are not referring
9 to the document. He's representing that he was
10 over. There's no evidence that he was over
11 that's been introduced. And this is -- I might
12 add, Your Honor, this is 2005, it's not one of
13 the relevant years in the case.

14 SPECIAL MASTER: I understand it's not
15 one of the years that's at issue, but I think
16 it's still a relevant line of inquiry.

17 MR. KUHLMANN: Can I ask him that
18 question I just asked him?

19 SPECIAL MASTER: Probably. Why don't
20 you ask him whether anyone ever talked to him in
21 that particular year about how many acre-feet he
22 ultimately used.

23 Q (By Mr. Kuhlmann:) Did anybody ever
24 tell you how many acre-feet they measured you
25 using in 2005?

1 A No.

2 Q Do you know why they didn't tell you?

3 A No.

4 Q Moving to M-386, this is another
5 document that's already in evidence. These are
6 records from 2004.

7 All right. If you will turn to --
8 there's a page on here that says, through August
9 15, 2004. This is the last page, the latest date
10 we have in this document. Next to your name it
11 says 246 acre-feet cumulative usage; is that
12 correct? I guess, can you find your name on
13 that page?

14 A Yes, I can find my name.

15 Q Okay. And it says 246 acre-feet. Do
16 you know how many acre-feet of water you had
17 available from your shares in 2004?

18 A I'm not sure.

19 Q Okay. Would it have been 200 minus
20 with some percentage reduction?

21 MR. PETERSON: Your Honor, he said he's
22 not sure and now he's being called to speculate
23 on producing a number when he wasn't sure.

24 Q (By Mr. Kuhlmann:) Did you pay for 200
25 acre-feet of your shares in 2004?

1 A Yes.

2 Q Okay. Anyone ever tell you will about
3 the number here, 246 acre-feet?

4 A No.

5 Q Did anybody talk to you about your
6 water use in 2004?

7 A No.

8 Q Do you remember when you bought the
9 water from the tribe?

10 A 2004.

11 Q Okay. So the water you would have had
12 would have been the water you bought from the
13 tribe plus the 200 acre-feet of shares you would
14 have bought from the Tongue River Water Users
15 Association minus some percentage?

16 A Yes. Correct.

17 Q That would have been the possible
18 starting possible total minus some reductions?

19 A I believe so.

20 Q Okay. So -- well, how many acre-feet
21 did you buy from the tribe?

22 A 300.

23 Q So it says 246 cumulative usage in
24 acre-feet, you had 300 acre-feet from the tribe
25 leased as well?

1 A Yes.

2 Q Did you know how much water in 2004 you
3 were going to use?

4 A Beforehand?

5 Q Well --

6 A Explain.

7 Q Did you know or did you think you were
8 going to be short of water under your shares in
9 2004?

10 A Yes, I believe halfway, however far we
11 got with our stored water, I believe, yeah,
12 that's when I bought the tribe water.

13 Q And that water was available for you to
14 lease that year?

15 A Yes.

16 Q So in a year when you thought you were
17 going to go over your shares, you were able to
18 lease water from the tribe?

19 A Yes.

20 Q Move to M-382. Do you have M-382 now?

21 A Yes.

22 Q Okay. And these are records based on
23 previous testimony in this case, these are
24 records from 2002 of water commissioners'
25 measurements. If you go to report, I believe

1 it's dated at the very top, this would be the
2 second page, very top there's a date 1 September
3 2002. Are you on that page?

4 A Second page?

5 Q Yes.

6 A What date?

7 Q 1 September 2002 and the page number at
8 the bottom is MT-09981?

9 A Okay. I'm on it.

10 Q Okay. Can you find your name on this
11 list?

12 A Yes.

13 Q Okay. And the number it says next to
14 your name, 159; is that correct?

15 A Yes.

16 Q I guess I'll clarify for the record, it
17 doesn't list you as your personal name, but does
18 it list your ranch?

19 A Yes.

20 Q It says 159 acre-feet. And in 2002 did
21 you buy -- pay for your 200 acre-feet of shares
22 from the Tongue River Water Users Association?

23 A Yes.

24 Q Do you know what the amount of water
25 was available to you in 2002 would have been?

1 A No, I don't.

2 Q Did anybody ever talk to you about your
3 use of water in 2002? Let me say that again.
4 Anybody ever ask you about or talk to you about
5 measurements of your use of water in 2002?

6 A No.

7 Q So do you know if this is the amount of
8 water you've used in 2002?

9 A No.

10 Q Do you know if you used more water than
11 you had shares in 2002?

12 A I don't know if I did or not.

13 Q Okay. All right. I got one good
14 recommended question here. Did anyone ever tell
15 you to stop using water?

16 MR. PETERSON: Objection. What time
17 period are we talking about here?

18 MR. KUHLMANN: Ever.

19 Q (By Mr. Kuhlmann:) Did anyone ever
20 tell you to stop using water?

21 A Stop using water? Well, the
22 commissioners might have. They might have told
23 me at the end of -- when they checked it that
24 maybe I was out of water.

25 Q Okay. I think you just mentioned the

1 people or that the commissioners didn't talk to
2 you at the end of the year, or didn't talk to you
3 during the year.

4 A No, not after they took the last
5 reading, no, not at the end of the year when this
6 was finalized. I never seen when these finalized
7 these papers, I never...

8 MR. KUHLMANN: Okay. That's all the
9 questions I have.

10 SPECIAL MASTER: Thank you.

11 Cross-examination.

12 CROSS-EXAMINATION

13 Q (By Mr. Peterson:) Good morning, Mr.
14 Harwood.

15 A Good morning.

16 Q I'm Kevin Peterson. I'm with the
17 Department of Natural Resources and Conservation,
18 and I'm from Helena. Do you recall that I was at
19 your deposition?

20 A Yes.

21 Q Okay. I just have a couple of brief
22 questions for you. You were asked about
23 Cottonwood Creek in your reservoir water rights.
24 Do you recall that?

25 A Yes.

1 Q And you indicated that that usually
2 fills very early spring, February, March, I
3 believe you said, if you have snow. Is that
4 what you said?

5 A Yes.

6 Q And when you irrigate, I believe you
7 stated that you use that water first?

8 A Yes.

9 Q When you use that water, does that
10 allow you then to take less water out of the
11 Tongue River?

12 A Yes.

13 MR. KUHLMANN: I guess I'd just ask for
14 a time frame.

15 MR. PETERSON: I think he's already
16 answered the question.

17 I'll clarify, Your Honor.

18 Q (By Mr. Peterson:) If you have water
19 available in your Cottonwood Creek Reservoir, is
20 that water then you don't need to pull out of the
21 Tongue River under your decreed rights?

22 A Yes.

23 Q In a dry year, you would agree with me
24 that the availability of your direct flow rights
25 from the river become unavailable very rapidly,

1 don't they?

2 A Yes.

3 Q At that point, then, when you no longer
4 have availability of your direct flow rights from
5 the river, then your option is to have stored
6 water; is that correct?

7 A That's correct.

8 Q And going from direct flow to storage,
9 that may occur in a very short period of time; is
10 that correct?

11 A Correct.

12 Q Now, I believe you were asked about
13 having 180 acre-feet available to you in a
14 contract year because your total had been
15 diminished by 10 percent where ordinarily you
16 have 200 contracted acre-feet of water; is that
17 correct?

18 A Yes.

19 Q And you were asked about going over 2.8
20 acre-feet on your 180 acre-feet that you were
21 allotted because of a 10 percent reduction. Do
22 you remember that question?

23 A Yes.

24 Q If I represented to you that that's
25 95 -- 98.5 percent accurate in reaching the

1 target of 180 acre-feet, would that be
2 disappointing to you?

3 A No.

4 Q You were also asked about 2004, I
5 believe, when you had tribal water and you had
6 contract water. You indicated you had 200
7 acre-feet of contract water; is that correct?

8 A Correct.

9 Q And you had 300 acre-feet of tribal
10 water; is that correct?

11 A Correct.

12 Q And that comes out to 500 acre-feet
13 available to you by contract?

14 A Yes.

15 Q And even if you were reduced by 50
16 percent of the availability, I think the acre
17 foot usage you were given was 246 acre-feet; is
18 that correct?

19 A Correct.

20 Q And that's less than half of 500, isn't
21 it?

22 A Yes.

23 Q Do the commissioners or Mr. Hayes on
24 years where you're using your stored water, do
25 they tell you when you're going to be on stored

1 water?

2 A Close to when -- sometimes, yeah.

3 Basically, they tell us close to when we might be
4 on stored water.

5 Q Do they keep in touch with you
6 throughout the irrigation season to let you know
7 when stored water is going to be required?

8 A Yes.

9 Q And do they also indicate to you when
10 you are near or at the end of your stored water
11 allotment?

12 A Sometimes, yes.

13 Q Do you know when you generally run out
14 of your stored water, what time of the irrigation
15 season?

16 A Depends on the year.

17 Q In 2004 do you recall when you were out
18 of stored water?

19 A I believe it was August. I'm not sure.

20 Q And if you're notified that your
21 allotment of stored water has been depleted, do
22 you stop irrigating at that point?

23 A Yes.

24 MR. PETERSON: Thank you for coming,
25 Mr. Harwood. I appreciate you being here. I

1 don't have any further questions for you.

2 SPECIAL MASTER: Mr. Harwood, I just
3 have a couple of questions.

4 So my understanding is that you
5 initially thought your water right had a priority
6 date, or both of your water rights had a priority
7 date of 1903; is that correct?

8 THE WITNESS: Correct.

9 SPECIAL MASTER: What was the basis of
10 your belief that they had a 1903 date?

11 THE WITNESS: Well, that's what our
12 water rights showed. That's what we filed on
13 in -- whenever we had to redo our water rights.
14 I believe was it 1975. I'm not certain on the
15 date.

16 SPECIAL MASTER: Go ahead.

17 THE WITNESS: We were led to believe
18 that's what our water rights were on the abstract
19 that we had.

20 SPECIAL MASTER: And then do you know
21 why the priority dates were changed?

22 THE WITNESS: Well, let's see if I can
23 explain this. The reason they were -- let me
24 think on this a minute. I believe the reason
25 they were changed is because when they

1 readjudicated them, or you had to file on them,
2 like the 1903 one, I'm not certain of the date,
3 1914 Miles City Canal, that decreed right, there
4 was something in there where they had to refile,
5 like the 1903 one, whoever had the place at the
6 time, and I believe what I was told, I don't
7 believe it was filed on at that time or they had
8 to appear in court. Nobody appeared to file on
9 those claims.

10 SPECIAL MASTER: I don't want you to
11 try and get too much into the legal issues. I
12 was just curious.

13 THE WITNESS: That's what I've been
14 told on that.

15 SPECIAL MASTER: I understand you
16 probably don't have personal knowledge, you
17 weren't the lawyer representing yourself.

18 THE WITNESS: No.

19 SPECIAL MASTER: So if -- and in the
20 case of the Cottonwood Creek water right, had
21 that been 1952 throughout to your knowledge?

22 THE WITNESS: Yes.

23 SPECIAL MASTER: And, again, I
24 understand if there's snow to melt, then it
25 melts, you fill up your reservoir, and then you

1 generally use that water in the February and
2 March period; is that correct? No, I'm sorry,
3 it fills up in February and March.

4 THE WITNESS: Yes, it fills.

5 SPECIAL MASTER: Okay. And then,
6 again, you use that water first, that was your
7 testimony just now?

8 THE WITNESS: Yes.

9 SPECIAL MASTER: And then when you're
10 informed that you're on storage contract water,
11 at that point do you only use your contract water?

12 THE WITNESS: Yes.

13 SPECIAL MASTER: And so going back to
14 the Cottonwood Creek, you said that occasionally
15 that creek will, or the reservoir on that creek
16 will fill up with some rain water earlier in the
17 year?

18 THE WITNESS: Yes.

19 SPECIAL MASTER: Does that ever happen
20 after you're on only stored water?

21 THE WITNESS: It could happen. I
22 can't recall that it has. I don't really
23 remember. If you happen to have a cloud burst or
24 real fast rain, it could fill up when you are on
25 stored water.

1 SPECIAL MASTER: Okay. But you don't
2 recall at this point?

3 THE WITNESS: I don't recall.

4 SPECIAL MASTER: Okay. And how big is
5 that reservoir? How much water does it hold, do
6 you know?

7 THE WITNESS: Capacity is rated at 35
8 acre-feet.

9 SPECIAL MASTER: Okay. And when you
10 have these rain events, can that fill up the
11 reservoir entirely?

12 THE WITNESS: Yes.

13 SPECIAL MASTER: Okay. Those are my
14 only questions, Mr. Peterson.

15 Q (By Mr. Peterson:) Mr. Harwood, do you
16 recall, you said your capacity of the reservoir
17 is 35 acre-feet?

18 A Yes.

19 Q Do you know what your total volume
20 under the water right is that you're allowed to
21 use?

22 A I believe it's 110 acre feet.

23 MR. PETERSON: Thank you.

24 SPECIAL MASTER: Okay.

25 MR. KUHLMANN: No further questions.

1 SPECIAL MASTER: So, Mr. Harwood, thank
2 you very much for coming up here today. We very
3 much appreciate it.

4 So it's now about ten minutes to noon.
5 I would suggest maybe we take our lunch break now
6 and give everyone an opportunity to get to the
7 restaurants before they get too crowded. We'll
8 come back then at, say, about five to ten minutes
9 to 1 o'clock.

10 (Recess.)

11 (Afternoon session.)

12 SPECIAL MASTER: Mr. Kaste, who is next
13 on your list? You don't know. So, Mr. Kuhlmann,
14 who's next on your list?

15 MR. KUHLMANN: State of Wyoming would
16 like to call Kyle Shaw.

17 MR. DRAPER: Your Honor, for your
18 information, Mr. Swanson will be handling
19 testimony for Montana for this witness.

20 SPECIAL MASTER: Okay. Thank you.
21 Whereupon,

22 KYLE SHAW,
23 having been first duly sworn, was examined and
24 testified as follows:

25 DEPUTY CLERK: Have a seat, please.

1 State your name and spell it for the record.

2 THE WITNESS: Kyle Shaw, S-h-a-w.

3 SPECIAL MASTER: Good afternoon, Mr.

4 Shaw. Mr. Kuhlmann.

5 DIRECT EXAMINATION

6 Q (By Mr. Kuhlmann:) Thank you, Your
7 Honor. Good afternoon, Mr. Shaw. Can you tell
8 us your address?

9 A 2142 Tongue River Road, Miles City.

10 Q What's your current occupation?

11 A Rancher, farmer, trucker.

12 Q So you have an operation or ranch along
13 the Tongue River?

14 A Yes.

15 Q Okay. If we can pull out that large
16 board right back behind you. This is a
17 demonstrative exhibit, a map of the Tongue River
18 in Montana. Can you locate approximately where
19 your place is located?

20 A We are right here above the Garland
21 School.

22 Q Okay. Who are your neighbors on the
23 river?

24 A Bice Ranch and Hamilton Ranch are above
25 me and Les Hirsch is below me.

1 Q How long have you had your ranch?

2 A Moved down there in '96.

3 Q Where did you move from?

4 A About 15 miles west of there up on the
5 Tongue River divide.

6 Q How many acres do you have that you
7 irrigate?

8 A Approximately 256.

9 Q Has that been the number of acres
10 you've always irrigated?

11 A Since '99, I believe it is, yeah.

12 Q What changed in '99?

13 A Well, we changed some land and added
14 another 16 acres of irrigation that I personally
15 bought.

16 Q Do you have water rights from the
17 Tongue River?

18 A Yes and no. I lease the place from my
19 father-in-law and the water rights are in his
20 name --

21 Q What's his name?

22 A -- most of them. Ted Hirsch.

23 Q So you're a relation of Les Hirsch?

24 A I am.

25 Q What's the relation?

1 A He's my brother-in-law.

2 Q And neighbor?

3 A Yes.

4 Q I'm trying to get a map here that we
5 might be able to use to describe your property.
6 Turn to Exhibit M-6, which is an expert report
7 that the Montana expert has filed in this case.
8 And turn to a page here that says Ted Hirsch on
9 it, page --

10 MR. SWANSON: I want to inquire if the
11 witness has received a copy of that.

12 MR. KUHLMANN: I was going to try to go
13 off this --

14 SPECIAL MASTER: You just said turn to,
15 and so I think it was just clarify that you have
16 nothing to turn to. But you're going to be
17 putting it up on the screen so he can see it
18 there?

19 MR. KUHLMANN: Correct.

20 SPECIAL MASTER: Thanks.

21 MR. KUHLMANN: If you'd like him to, I
22 can...

23 Q (By Mr. Kuhlmann:) Do you have a copy
24 of Exhibit M-6 now, Mr. Shaw?

25 A Yes.

1 Q Do you see on that page D-388 it says
2 Ted Hirsch and water right No. 42C179649?

3 A Yes.

4 Q Are you familiar with that water right?

5 A Yeah.

6 Q Going to the next page, this document
7 indicates an aerial photograph for that water
8 right. Do you recognize this document?

9 A Yes.

10 Q And what is it?

11 A It's an aerial map of the fields that I
12 farm and part of it actually is Les Hirsch's that
13 are outlined.

14 Q Part of them are Les Hirsch's?

15 A Part of them are Les Hirsch's, yes.

16 Q From this map can we see all of the
17 fields you irrigate, outlined or not?

18 A Yes.

19 Q Let me zoom in a little bit here.

20 MR. SWANSON: Can you tell me the page?
21 I'm not sure what page we're on.

22 MR. KUHLMANN: We are on page D-387.

23 SPECIAL MASTER: 387 or 389?

24 MR. KUHLMANN: 389.

25 SPECIAL MASTER: Okay.

1 Q (By Mr. Kuhlmann:) Can you give us
2 sort of the overview about your irrigation and
3 where your ranch is on this map?

4 A As far as my irrigation practices?

5 Q Well, maybe you can describe what your
6 operation consists of.

7 A Well, we run a couple hundred cows and
8 raise primarily alfalfa hay.

9 Q On here where are your fields on this
10 map?

11 A You want to see how steady I am. These
12 fields here are mine and about this much across
13 the river.

14 Q So you have fields on both the east and
15 west side of the river?

16 A Correct.

17 Q For the east side of the river, where
18 is your point of diversion located?

19 A It's already marked there with that red
20 X.

21 Q Okay. How do you divert water for
22 those fields?

23 A We have a 10-inch Cornell pump.

24 Q Do you know what the capacity is on
25 that pump?

1 A When they ultrasound them they measured
2 it about 4,000 gallons a minute.

3 Q And what do you do with the water? How
4 do you get it to the field?

5 A Well, on this east side, my water
6 travels in the blue line that goes -- at that
7 point in time it was underground to here and then
8 it was an open ditch the rest of the way down
9 through here. It's since been changed to an all
10 underground system.

11 Q Do you have that -- how do you irrigate
12 those acres?

13 A Flood irrigated.

14 Q Do you have them divided up into
15 separate fields?

16 A Yes. There's, oh, I don't know.
17 There's like seven or nine fields on the east
18 side and six on the west side.

19 Q Can you find on this map where the
20 point of diversion would be for the lands you
21 irrigate on the west side of the river?

22 A Well, at the time period you're talking
23 about, it was right here.

24 Q What time period are you referring to?

25 A Well, I mean, in reference to '02, '04

1 water commissioner years.

2 Q Okay. So it was where that blue line
3 is to the west?

4 A Correct.

5 Q How did you get water from that point
6 of diversion to your fields on the west side?

7 A That side was all open ditch up
8 until -- I'm not exactly sure on dates, but about
9 '07 or '08 we moved the pump and put it all
10 underground.

11 Q Is that the same time you made changes
12 to put underground pipe on the east side?

13 A No. It was actually one or two years
14 previous to burying the underground line on the
15 east side.

16 Q You mentioned the point of diversion in
17 commissioner years, you said '02, '04, would be
18 where you'd indicated you're next to that blue
19 line for the west side. Where is the point of
20 diversion now?

21 A Oh, the water was moving away from up
22 here, so we moved it down to this part of the
23 river right here.

24 Q So a little closer to your fields?

25 A Closer to the fields and then we are

1 able to, with the underground system, pump it
2 uphill and downhill both, rather than all gravity.

3 Q And you flood irrigate those acres on
4 the west side, as well?

5 A Yes.

6 Q Looking at this map describing the east
7 side acres, and it also -- this map is in
8 reference to a water right, as we talked about
9 earlier, correct?

10 A Yes.

11 Q Do you know what the priority date is
12 for that water right?

13 A No. Without looking at it, no.

14 Q Have you seen water right abstracts?

15 A I have.

16 Q Have you seen water right abstracts for
17 this water right?

18 A Yes.

19 Q Do you recognize this document?

20 SPECIAL MASTER: You might want him to
21 look at it, page 516.

22 MR. KUHLMANN: That's fine.

23 THE WITNESS: Yes.

24 Q (By Mr. Kuhlmann:) Okay. Does this
25 refresh your recollection about what the priority

1 date would be for this right?

2 A Yes.

3 Q What is that date?

4 A It's 1912.

5 Q Okay. For the water right on the west
6 side of the river, are you familiar with the
7 priority date, or do you know the priority date
8 for that water right?

9 A Oh, I've seen it before.

10 Q Okay. This will be page D-620.

11 SPECIAL MASTER: No, it's 748, if you
12 look at the page numbers in the middle.

13 Q (By Mr. Kuhlmann:) Moving further to
14 page -- do you recognize this document?

15 SPECIAL MASTER: This is, again, page
16 748.

17 Q (By Mr. Kuhlmann:) Page 748.

18 A Yes.

19 Q And does this refresh your recollection
20 about what the priority date is for this right?

21 A It says 1940.

22 Q Okay. Is that the proper priority date
23 for it?

24 A I believe so.

25 Q Okay. Are there any other water rights

1 you use to irrigate your lands?

2 A Yeah, there's some water rights out of
3 side creeks that occasionally we can exercise.

4 Q How do you exercise those rights?

5 A Well, they are just creeks that only
6 run either when a big rain event or a runoff
7 event, and they run to the river and we can pull
8 water. We have no way to measure it exactly, but
9 we pull it back out of the river.

10 Q So when it's there you can try to use
11 it. How do you get the water from where it's at
12 to where you want to use it?

13 A From the river, you mean?

14 Q No, when it's coming down these creeks?

15 A It would be via the pumps that we
16 normally use.

17 Q Do you have any reservoirs on those
18 creeks?

19 A No.

20 Q Do you have any kind of dams on those
21 creeks?

22 A No.

23 Q Do you have any additional water rights
24 for any of the properties that we've talked about
25 here on the east side and west side that might

1 overlap with those properties?

2 A Not really. Not for irrigation
3 purposes, I don't believe.

4 Q Okay. What do you grow on your property?

5 A Primarily alfalfa, storage grains for
6 rotation.

7 Q How often do you rotate?

8 A Oh, that depends on the ground. Heavy
9 ground won't last as long as sandy ground.

10 Q Last as long for the alfalfa?

11 A The stand of alfalfa, yes.

12 Q And then how long do you go into grains?

13 A Typically one year and then back to
14 alfalfa.

15 Q And how many cuttings do you generally
16 get?

17 A Normally three.

18 Q Do you irrigate all of your fields at
19 one time?

20 A Well, that's not physically possible.

21 Q Okay. Explain why.

22 A Well, there's only so much water you
23 can pump at one time. If you don't deliver
24 enough water to get it to go through what we call
25 lands -- fields are divided into narrow strips --

1 so that you can get your water over that piece of
2 ground in, ideally, eight to 12 hours at the
3 most. And then you go to the next one and so on.

4 Q Is there an order you go as far as
5 across your property from field to field?

6 A Not necessarily, no.

7 Q You don't start at the top and go to
8 the next field down or anything that would be a
9 pattern like that?

10 A You know, after we put the underground
11 delivery system in, we are not hobbled in that
12 respect. When it was a gravity system, we were
13 more so made to go downhill.

14 Q When do you generally start irrigating?

15 A Early May, typically.

16 Q When do you stop?

17 A September probably, normally.

18 Q I forgot to mention or talk about the
19 pump on the west side of the river. What kind of
20 pump is that?

21 A They are both the same.

22 Q Same capacity, same type?

23 A Yes.

24 Q Are those both fixed pumps?

25 A Yes.

1 Q So they are always in that spot? You
2 can't move them around?

3 A True. Yes.

4 Q So if we are looking at the west side
5 properties, how long does it take you to irrigate
6 all of those fields?

7 A Oh, there's some factors that enter
8 into that, but typically ten days to two weeks.

9 Q And then for the east side fields, how
10 long does it take?

11 A Oh, a week to ten days.

12 Q Does the amount of water you're taking
13 from the river change from day to day?

14 A Not unless the suction plug up.

15 Q When does that happen?

16 A Varying things, if we get a wind storm
17 and the river is full of leaves, it plugs them
18 up. If the river is too clear and it's flowing
19 moss down the river, it plugs them up. You know,
20 varying events.

21 Q That will reduce the amount of water
22 you can pump?

23 A Yes.

24 Q Do you have to go clean those out?

25 A Yes, sir.

1 Q Do you have to shut them off before you
2 can try to stick your arm up and clean them?

3 A Mine depends on what the problem is.
4 Sometimes I can clean them with my arm, but
5 typically not.

6 Q Are there other times when you might
7 not be pumping water?

8 A Well, yeah, there's times when I'm not
9 pumping any water.

10 Q Can you describe some of those?

11 A Well, probably on an average we cut the
12 hay once a month. And it takes, depending on how
13 long it takes us to get -- what would I say?
14 Typically we hay one side of the river and then
15 the other. And it might not be the same start
16 point, but when we get done on one side, so that
17 we can start a pump, we have to start as soon as
18 we can to get the next crop to grow. So we'll
19 be irrigating while we are haying the other side.
20 And then hopefully there's a week to two-week lag
21 time between haying, cuttings, that we don't have
22 any pumps running.

23 Q Do you start irrigating one side of the
24 river before you start the other side?

25 A Sometimes. I mean, there's different

1 things that enter into that. In the spring
2 before we start haying, like the early irrigation
3 in May, we'll probably get them both done and get
4 through it all at once.

5 Q Do your pumps have measuring devices on
6 them?

7 A They do now.

8 Q When did those get put on?

9 A I don't know exactly. We had a DNRC
10 deal that they got a deal on a bunch of flow
11 meters, and I think that was in, I'm going to
12 say, '09 or '10.

13 Q 2009 or 2010?

14 A Yeah.

15 Q Do you keep any records of when you
16 irrigate?

17 A Not typically, no.

18 Q Do you keep any records of how much
19 water you use to irrigate?

20 A Since we put the flow meters in I have
21 beginning and ending meter readings.

22 Q What do you use those for?

23 A Just to make sure I'm on track.

24 Q What do you mean by on track?

25 A Well, just it tells me how many -- how

1 much water I'm using per acre.

2 Q How often do you check those meters?

3 A It all depends on whether I'm worried
4 about running out of water or not on a contract.

5 Q You keep track -- you try to keep track
6 of that as well?

7 A Oh, yeah.

8 Q But you said you didn't have the meters
9 before 2009 or 2010?

10 A No, we did not.

11 Q Did you try to keep track before that?

12 A Not until the water commissioners came
13 by with their ultrasound machine and measured the
14 flow of the pumps.

15 Q Do you know when that happened?

16 A It was -- I'm guessing it was '02 when
17 we had the first water commissioners on the river.

18 Q How many years were there water
19 commissioners?

20 A Oh, there's at least four.

21 Q Do you know which years those were
22 exactly?

23 A Well, I'd be lying if I said exactly.
24 I know they were there in '02 and '04, and we had
25 one last summer again.

1 Q In '02 and '04, did the commissioners
2 measure the use of the amount of water you used?

3 A They were tracking it, yes.

4 Q Do you know how they did that?

5 A As I said, they had their ultrasound
6 deal that measured the flow of each pump and then
7 they were just using the meter reading off the
8 electrical pole and charging you for a full flow
9 for every hour of usage.

10 Q You mentioned that sometimes you're not
11 able to get all of the full amount of water
12 through your pumps they could possibly take
13 because sometimes they get stuffed up. Is that
14 correct?

15 A Yes.

16 Q Do you know if the water commissioners
17 made any allowance in the reduction of the amount
18 of water you got through them?

19 A Not that I'm aware of.

20 Q Do you have contracts for stored water?

21 A Yes.

22 Q Where are those from? Where is the
23 stored water from?

24 A From the Tongue River Dam.

25 Q Do you have contracts with the Tongue

1 River Water Users?

2 A Correct.

3 Q How many shares do you have?

4 A Well, they are not -- maybe I should
5 clarify. They are not in my name, but they are
6 in my father-in-law, Ted Hirsch's, name.

7 Q And you lease those?

8 A Yes. 300 acre-feet.

9 Q Do you know how long your father-in-law
10 has had that amount of contracted water?

11 A No, I do not. It was a hundred
12 acre-feet that came with the place when we bought
13 it, and then he purchased the other 200 from his
14 son-in-law, my brother-in-law.

15 Q And those were transferred permanently?
16 They weren't just leased short term?

17 A Permanent.

18 Q When do you change from being able to
19 use your water rights to stored water?

20 A That varies on the year and what's
21 happening at the dam.

22 Q Can you use both at the same time?

23 A You know, we never have even thought
24 about that option, I guess.

25 Q So maybe you can describe when you

1 use -- strike that. Can you describe your
2 understanding of how stored water is administered
3 in the basin, in the Tongue River?

4 A Well, it's whenever the inflows to the
5 dam are less than the water they are delivering
6 to us, outflows, whatever you want to call them.
7 Then you're starting to use stored water.

8 Q How do you know?

9 A Normally it comes through Les Hirsch,
10 which he's on the border. He's in contact with
11 Art Hayes on a regular basis.

12 Q At times when you want to use storage
13 water, do you have to call or contact anybody to
14 ask for it to be delivered?

15 A In a couple of different years, I think
16 it was in '02 and '04, yes, we did.

17 Q Who did you contact?

18 A Well, those years the water
19 commissioners was through the yard two or three
20 times a week and we were in constant contact with
21 them so that you didn't have to order water
22 specifically from the dam. They knew if somebody
23 else was about done and the time you were going
24 to start. So you could -- they didn't have to
25 turn the dam up and down hourly to maintain,

1 which wouldn't do any good in our case anyhow.

2 We are too far from the dam.

3 Q How far are you from the dam?

4 A Approximately two weeks' delivery time.

5 Q Was there ever a time you asked for
6 stored water and weren't able to get it?

7 A Not when I thought I deserved it, no.

8 Q For years when there weren't water
9 commissioners, did you have to call and ask for
10 your stored water to be delivered to your point
11 of diversion?

12 A Typically, no.

13 Q How do you go about using your stored
14 water?

15 A It's just a matter of -- one way or the
16 other we are notified that, yeah, we are on
17 stored water now. But Roger at the T&Y is in
18 constant contact with them and if he's not
19 getting his water, dictates more of what the dam
20 is doing than if I call for enough to service one
21 pump.

22 Q So you're still able to get the stored
23 water you need out of the river when you need it
24 in those years?

25 A Usually, yeah.

1 Q Has anyone ever curtailed the use of
2 you using water under your water rights?

3 A Not other than the years we were
4 limited to a percentage of our contract water.

5 Q How about your stored water? Has
6 anyone curtailed you from being able to use that?

7 A That is a contract water right.

8 Q Okay. My first question was about your
9 direct flow rights.

10 A Oh, no.

11 Q So have you ever been asked to stop
12 using your direct flow rights for someone with a
13 senior right so they could get their water?

14 A No.

15 Q Have you ever temporarily leased any
16 stored water?

17 A Yes.

18 Q When did you do that?

19 A I'm not certain of the year. I think
20 it was '04 we leased water from the tribe.

21 Q Do you know how much you leased?

22 A I believe it was a hundred acre-feet,
23 but I'm not totally sure of that.

24 Q Do you know much it cost?

25 A I think it was ten bucks an acre.

1 Q In years there were commissioners on
2 the river, did the commissioners ever talk to you
3 about how much water they measured you as using
4 during that year?

5 A Oh, yeah, we talked to them on a fairly
6 regular basis. As I said, they went through the
7 yard two or three times a week. If I see them,
8 they were more than willing to tell you what the
9 scenario was.

10 Q At the end of the year did they ever
11 tell you how much water you had used that year?

12 A You know, I don't know that we ever had
13 what you would call a recap of the year. We knew
14 we were -- because we had used all the water that
15 we believed we could have by the time -- before
16 we typically would have quit irrigating.

17 Q So you believe you use all of your
18 stored water every year?

19 A Well, really close, yeah.

20 MR. KUHLMANN: I think I'm done with my
21 questions.

22 SPECIAL MASTER: Thank you.

23 Mr. Swanson?

24 CROSS-EXAMINATION

25 Q (By Mr. Swanson:) Good afternoon, Mr.

1 Shaw.

2 A How are you?

3 Q Very well. I just have a couple of
4 questions for you. You mentioned -- you talked
5 mostly about your haying operation, but I believe
6 you said you run cattle, as well?

7 A Yes.

8 Q Do you run them all year round?

9 A Yes.

10 Q So where do you winter those cattle?

11 A Closer to the river than where we
12 summer them.

13 Q You summer them up high in some other
14 pasture?

15 A Yes.

16 Q So do your cattle get water out of the
17 river during the winter?

18 A Part of the time in a couple different
19 pastures, yes.

20 Q So do you know about how many cattle
21 each winter get water out of the river?

22 A Well, every other year there's --
23 winter pastures, one of them is along the river
24 and one is not. But they can, virtually all of
25 them, water in the river every other year.

1 Q So do you have a number of how many
2 cattle you think that is?

3 A A couple hundred.

4 Q 200?

5 A Yeah.

6 Q When you were talking to Mr. Kuhlmann,
7 you talked about how the water users association
8 notifies you when you're on stored water.

9 A Right.

10 Q And you mentioned -- you said Roger at
11 the T&Y is the main factor, if he's not getting
12 his water. Can you explain what you mean by
13 that?

14 A As I understand, you know, the T&Y is
15 the No. 2 right on the river, whatever the case
16 is. But they have some sort of a measuring
17 device on the head of their canal. And so he
18 pretty readily can tell whether there's not
19 enough flow getting where he is on the bottom end
20 of the river.

21 Q So if he's not getting his full direct
22 flow amount, is that when everybody else goes on
23 stored water, I guess, including the T&Y going on
24 partial stored water?

25 A Probably yes and no. If they are

1 not -- they take into account, my understanding,
2 you know, the inflow to the dam. And then those
3 senior water rights, if they are not getting
4 satisfied, that pretty well tells the story
5 whether the rest of us are on contract water or
6 not.

7 Q So if those senior water rights are
8 getting satisfied but there is no more water,
9 then you're on contract water at that point; is
10 that right?

11 A Right.

12 Q And I thought you explained that. So
13 when Mr. Kuhlmann asked you a question, he said
14 has anyone ever asked you to curtail your direct
15 flow so someone senior could get their water, I
16 just wondered if you understood that question.
17 Because you said no to him, but you just
18 explained to us the fact that, in fact, that does
19 happen on a regular basis.

20 A Right, it's terminology, but everybody
21 on the river kind of understands the way it works
22 as far as the T&Y and that's concerned. So we
23 take that into account and when they say we are
24 on stored water, it doesn't mean that the T&Y is
25 on contract water or whatever, but the rest of us

1 are.

2 Q Okay. So they may or may not be
3 getting their full direct flow and they may or
4 may not be on storage, but you have shut off your
5 direct flow and you're on storage at that point;
6 is that right?

7 A Right.

8 Q Does that happen every year?

9 A Every year that I've been there, yes.

10 Q And you talked a lot about your
11 communications with the water commissioners. It
12 sounds like it was on a regular basis. Did you
13 ever feel they were overcharging you for the
14 amount of water that you used, other than we
15 talked about the moss situation?

16 A No, I think they were fair, other than
17 there was no way to guess at what the percentage
18 of moss was over -- if it was overnight and
19 suction started to plug up, there was no way to
20 monitor that.

21 Q Did you feel the commissioners did a
22 good job in the years that you worked with them?

23 A Yeah.

24 MR. SWANSON: No further questions,
25 Your Honor.

1 SPECIAL MASTER: I do not have any
2 questions. Mr. Kuhlmann?

3 MR. KUHLMANN: I have one follow-up
4 question.

5 REDIRECT EXAMINATION

6 Q (By Mr. Kuhlmann:) During the
7 irrigation season when you're told you're on
8 stored water, do you change your diversions in
9 any way?

10 A Not the diversions, no.

11 Q So you don't change what you're doing
12 with your pumps?

13 A Well, we change our irrigation
14 practices, but I guess, to clarify, on the years
15 that we knew we were limited to 50 percent or
16 whatever the case was, there are less productive
17 grounds that we choose not to irrigate so we can
18 get over the good ground.

19 Q In years when there aren't water
20 commissioners, do you change anything?

21 A Well, not typically, no.

22 MR. KUHLMANN: I don't have any other
23 questions.

24 SPECIAL MASTER: Thank you very much,
25 Mr. Shaw. I think you've actually set the record

1 so far for having the shortest period of time.

2 THE WITNESS: Well, when you don't know
3 anything, it don't take long.

4 SPECIAL MASTER: Thank you very much.

5 MR. KUHLMANN: We have one last
6 irrigator from Montana, Your Honor. That would
7 be Maurice Felton.

8 SPECIAL MASTER: Thank you. At this
9 time, then, Mr. Felton, you can come forward.
10 Whereupon,

11 MAURICE FELTON,
12 having been first duly sworn, was examined and
13 testified as follows:

14 DEPUTY CLERK: State your name and
15 spell it for the record.

16 THE WITNESS: My name is Maurice Felton,
17 F-E-L-T-O-N.

18 SPECIAL MASTER: Good afternoon,
19 Mr. Felton.

20 THE WITNESS: F-E-L-T-O-N.

21 SPECIAL MASTER: I said good afternoon.

22 THE WITNESS: Oh, good afternoon, sir.

23 SPECIAL MASTER: I like your turtleneck.
24 It looks like you're keeping warm.

25 THE WITNESS: Keeps the snow from

1 blowing down your neck.

2 SPECIAL MASTER: Mr. Draper.

3 MR. DRAPER: Just to let you and
4 Mr. Kuhlmann know, it will again be Mr. Swanson
5 handling our participation in the testimony.

6 SPECIAL MASTER: Thank you very much.
7 Mr. Kuhlmann, you can proceed.

8 THE WITNESS: Before we get started,
9 I'm a little hard of hearing. So you'll have to
10 speak up pretty good.

11 MR. KUHLMANN: I'll try to do that,
12 sir.

13 SPECIAL MASTER: Let me just tell you,
14 if at any point you don't think you're hearing
15 the question, you should feel free to ask for
16 that question to be repeated.

17 THE WITNESS: You'll probably see me
18 point to my ear.

19 SPECIAL MASTER: I want to make sure
20 when you hear a question you understand it before
21 you answer.

22 THE WITNESS: Okay.

23 SPECIAL MASTER: Okay.

24 DIRECT EXAMINATION

25 Q (By Mr. Kuhlmann:) Good afternoon, Mr.

1 Felton.

2 A Good day, sir.

3 Q Can you tell us your address?

4 A 591 Brandenburg Road, Miles City,
5 Montana, 59301.

6 Q What is your current occupation?

7 A Farmer-rancher.

8 Q Do you farm along the Tongue River?

9 A Yes, sir.

10 Q If we can take a look at this large map
11 here, that's a demonstrative exhibit. Can you
12 find where on the river there your property is
13 located?

14 A Brandenburg, we have land here, here,
15 and then along the river here.

16 Q How far along the river does your
17 property run?

18 A Seven miles.

19 Q Thank you.

20 SPECIAL MASTER: So just because a lot
21 of here, here, heres don't come out well on the
22 transcript when you're reading it later, you're
23 indicating lands up and down from the Brandenburg
24 Bridge; is that correct?

25 THE WITNESS: Yes, sir.

1 SPECIAL MASTER: Thank you.

2 Q (By Mr. Kuhlmann:) Do those lands go
3 from Brandenburg towards Ashland to the south?

4 A Both directions.

5 Q How long have you been irrigating along
6 the Tongue River?

7 A 1996.

8 Q When did you move to the area?

9 A That year.

10 Q Where did you move from?

11 A Big Timber, west of here a hundred
12 miles.

13 Q Were you a rancher-farmer over there?

14 A Yes, sir, all my life.

15 Q Do you have a lot of experience with
16 irrigation?

17 A Since I was about 12 years old. 50
18 years' worth.

19 Q I think that counts as a lot. How many
20 acres do you irrigate?

21 A Well, that depends on the year, how
22 much rain we get, but generally in the 5 to 600
23 acre amount.

24 Q Have you always irrigated that many
25 acres?

1 A Yes, sir.

2 Q Since you bought the place?

3 A Yes.

4 Q What do you grow?

5 A Alfalfa hay and a small patch of corn
6 each year.

7 Q Do you cycle those crops?

8 A Yes. Corn two years, back into alfalfa
9 hay, and then six, eight, ten years back into
10 corn again, the rotation, crop rotation.

11 Q Do you have direct flow rights from the
12 Tongue River?

13 A Do we have old water rights, is that
14 what your question is?

15 Q Do you have water rights that allow you
16 to take water from the Tongue River?

17 A Yes.

18 Q Those are for irrigation?

19 A Yes. Well, I think they are listed as
20 irrigation and stock water.

21 Q Okay. Can you describe for us how many
22 fields you have?

23 A How many fields do we have?

24 Q That you irrigate.

25 A Well, I have seven center pivots and

1 5500 acres of gated pipe, and approximately a
2 hundred acres of open ditch flood.

3 Q How many different points of diversion
4 do you use to irrigate those?

5 A Five.

6 Q Do you have pumps that you use?

7 A I have four pumps that pump directly
8 out of the river and there is also a free flowing
9 ditch built way back before anybody's time in
10 this room, and I pump out of that ditch and also
11 flood irrigate out of that ditch the hundred
12 acres that I just mentioned.

13 Q You said you pump out of the ditch. Do
14 you know how many acres you irrigate with the
15 pumps out of the ditch?

16 A 120.

17 Q Do you know what priority dates you
18 have for your water rights?

19 A Oh, golly, I think the oldest one is
20 1892. I'm not positive. It's probably in one of
21 these books someplace. I would recognize it if I
22 saw it.

23 Q Do you know how many irrigation water
24 rights you have?

25 A I think there are about five or six.

1 Q Do you have any irrigation water rights
2 with a priority date after 1950?

3 A I think there's one at 1958. I am not
4 positive what that calls for, but I can't keep
5 all of that stuff in my head.

6 Q I understand. Where do you use that
7 water right?

8 A I think it's on the lower end of the
9 ranch and there are several water rights and they
10 all have overlapping places of use. The reason
11 being, so hearsay tells me, the main ditch that
12 comes out of the river, the free flowing ditch,
13 years ago, and I don't know when, the people that
14 were on the various places had a big water fight.
15 Somebody put a dam in the ditch. So, well, the
16 heck with you, I'll just go put a pump in the
17 river down here at my irrigated acres and pump
18 from there. And about four of those -- yes,
19 about four of those sites, those people just
20 said, the heck with you, and put a pump in the
21 river rather than fight with the upstream owner.

22 Q And that was after 1950?

23 A No, that water fight occurred way, way
24 before then. Or hearsay tells me that.

25 Q So you said, I believe, you think you

1 have or you remember having a water right with a
2 priority date of 1958; is that right?

3 A Well, most all of the rest of them
4 would be previous to 1950, except for that one,
5 which is on the very bottom of the ranch. It
6 would be the very north end.

7 Q Is that on property that overlaps with
8 other rights or is that on its own property?

9 A Yes.

10 Q It overlaps?

11 A Yes, to your first question.

12 Q Can you tell when you're using water
13 from under your earlier rights on that property
14 versus water you're using under your post-'50
15 right on that property?

16 A No.

17 Q Have you ever needed to?

18 A No.

19 Q Do you know how you would?

20 A No.

21 Q Do you water with direct water -- do
22 you water with direct flow rights all of your
23 lands?

24 A When there's enough water in the river.

25 Q Are there any lands that you irrigate

1 with stored water?

2 A When the river gets low, then we have
3 to irrigate everything with stored water.

4 Q Are there any lands you irrigate only
5 with stored water?

6 A No.

7 Q You were just talking about your water
8 rights. Have there been any changes made to your
9 water rights as a result of the adjudication
10 process on the Tongue River?

11 A Yes. The first water right that you
12 talked about, 1892, I think that's correct, that
13 was for 58 point something or other cfs, and the
14 state cut that about in half here in the last
15 couple -- last two years, three years, something
16 like that.

17 Q Pretty recently?

18 A Yes.

19 Q Do you know why?

20 A No.

21 Q Sounds like you didn't agree with that
22 change.

23 A Pardon?

24 Q Sounds like you didn't agree with that
25 change.

1 A No, I didn't, but it would be pointless
2 to take it to court because you wouldn't win.

3 Q We talked about you have multiple pumps
4 that you use to irrigate, correct? Can you
5 describe those pumps for us?

6 A Well, they are all centrifugal pumps.
7 They are all Cornell pumps. One pump is 1300 and
8 some-odd gallons a minute. Let's see, I'm
9 starting at the upper end of the ranch going
10 downstream. The next one would pump 400 gallons
11 a minute. The next one would be 500 gallons a
12 minute. One at 1100 gallons a minute. One at
13 900 gallons a minute. And a flood pump pumps
14 into the gated pipe that I mentioned earlier
15 would be 1750 gallons a minute.

16 Q Do you irrigate all of your property at
17 the same time?

18 A Well, that's pretty hard to get
19 everything going all at one time, but when I
20 start, I get everything going as fast as I can.
21 Sometimes it takes me two or three days,
22 sometimes it will take me up to a week, but
23 generally try to get everything going as near to
24 the same date as possible.

25 Q Is there any pattern you follow on when

1 you try to irrigate fields?

2 A No.

3 Q Just whichever field --

4 A Whatever I feel needs to be irrigated
5 first, that's where I start.

6 Q Does the amount of water you take from
7 the river change from day to day?

8 A Not very much.

9 Q Are there times when you aren't pumping
10 water during the year?

11 A When we're putting up hay. We try to
12 take the field and put that up, get the hay off,
13 get the water right back on it as quick as we
14 possibly can.

15 Q How long do you keep -- do you stop
16 irrigating to allow yourself to hay?

17 A Week to ten days.

18 Q Are there any other times when you stop
19 pumping in the middle of the irrigation season?

20 A Yeah, when you get about eight inches
21 of rain in the spring.

22 Q So if you get rain you turn your pumps
23 off?

24 A If we get enough, yes. Like last
25 spring, we got by pretty well, we didn't -- I

1 don't think we started until middle of July or
2 something like that. Took our first crop of hay
3 off and then we started irrigating.

4 Q Do you have measuring devices on your
5 pumps?

6 A I have micrometers on all my pumps.

7 Q How long have you had those?

8 A Ten years. Kind of a guess at ten
9 years.

10 Q Can you describe just briefly how those
11 work?

12 A Well, there's a little impeller inside
13 of the pipe water has to rush past, similar to a
14 propeller on a box fan in your house. And that's
15 fastened to a shaft, and then there's a gauge up
16 on the top that tells you how many gallons per
17 minute you're pumping. And they are approved in
18 most states. Most water courts will approve
19 those micrometers as being accurate.

20 Q Do you have any measuring devices on
21 your ditch?

22 A No.

23 Q Do you frequently measure how much
24 water you're using?

25 A In the ditch or -- I don't get your

1 question.

2 Q Well, we'll talk about the pumps. Do
3 you frequently measure how much water you're
4 using in your pumps?

5 A Well, that's a constant figure at each
6 pump. That doesn't change.

7 Q Do you measure how much water you use
8 over the course of a season?

9 A No, I don't. When I start, I just go
10 when I need to and stop when I can.

11 Q Do you measure -- do you keep records
12 of when you are irrigating?

13 A No. Electrical co-op could give you
14 that answer a whole lot better than I could,
15 because they turn the pumps on in the spring and
16 they turn them off late in the fall, usually
17 first of October. Usually we are done irrigating
18 or we quit irrigating by the first of September
19 most years.

20 Q Do you know if there have been water
21 commissioners appointed on the Tongue River in
22 the past?

23 A Yes, sir.

24 Q Do you know when?

25 A No, sir.

1 Q Do you know about how many years there
2 have been commissioners?

3 A Oh, from 2001 until probably 2006. And
4 then we were told we were going to have a water
5 commissioner this past summer, and they did show
6 up there once early in the season.

7 Q Did the commissioners measure your use
8 of water during the year?

9 A They did the first two years that they
10 were there. They did not this past year.

11 Q When they did measure your use, do you
12 know how they measured it?

13 A Well, just the same way the previous
14 gentleman testified. They put a band around the
15 pipe electronically, I think it was, and they had
16 a wand that they stuck in the ditch with a little
17 impeller on it and they read that and measured
18 the flow, feet of travel per minute.

19 Q Do you know when you're using direct
20 flow water versus when you're using storage water?

21 A No. Other than hearsay up and down the
22 ditch, we are on stored water now. But, well, a
23 few times they have called, one of the board of
24 directors or Art Hayes himself has called that we
25 are on stored water now. So that means to me be

1 a little more careful and cautious in your use.
2 Don't waste any.

3 Q When you want to use your stored water,
4 do you have to call and -- do you have to contact
5 somebody to have that water delivered to your
6 points of diversion?

7 A If we have a water commissioner, yes.
8 If there's no water commissioner on duty, no.

9 Q So in years when there isn't the water
10 commissioner and you're on stored water, are you
11 able to take the stored water you need out of the
12 river when you need it?

13 A Yes.

14 Q Have you ever -- well, I guess we
15 haven't talked about the amount of contract you
16 have with the Tongue River Water Users
17 Association.

18 A We have 925 acre-feet.

19 Q Is that every year?

20 A Yes.

21 Q And you've had that since you got the
22 place?

23 A That came with the place, yes.

24 Q Have you ever leased additional water?

25 A Yes.

1 Q When did you do that?

2 A I'm not sure but it was sometime
3 between 2001 and 2006, two different occasions we
4 bought 200 feet -- 200 acre-feet of water each
5 time at \$10 per acre foot.

6 Q Who did you buy it from?

7 A Northern Cheyenne.

8 Q Have the water commissioners or anyone
9 else ever talked to you about how much water you
10 used over the course of a year?

11 A Yes, the water commissioners kept a
12 pretty good record of that and would inform me
13 whenever they came by that you have got so many
14 acre-feet left or you have used so many acre-feet.

15 Q Would they tell you how many acre-feet
16 you had used total over a year?

17 A I don't believe so, no.

18 Q Have they ever told you if you've used
19 more storage water than you had a right to?

20 A I remember one time we got a call and
21 said you are out of stored water, and so we shut
22 our pumps off at that point in the ditch and went
23 to the Northern Cheyenne and bought 200 more
24 acre-feet. And we were told then, well, the
25 water commissioner will be getting ahold of you,

1 and he did, and we started irrigating again.

2 What year that was, I don't know.

3 Q And that water was available when you
4 needed it?

5 A From the Northern Cheyenne, yes.

6 MR. KUHLMANN: I don't have any other
7 questions. Thank you.

8 SPECIAL MASTER: Mr. Swanson?

9 CROSS-EXAMINATION

10 Q (By Mr. Swanson:) Good afternoon, Mr.
11 Felton.

12 A Good day, sir.

13 Q Mr. Kuhlmann asked you about a water
14 right with a date of 1958.

15 A Yes.

16 Q And do you know if you may have a water
17 right with a date of 1952 as well?

18 A It's very possible.

19 Q And to your knowledge in times in the
20 summer when you're on stored water, have you ever
21 used direct flow water out of the river under the
22 1958 right or the 1952 right?

23 A Kind of hard to keep all those water
24 rights separate when it's flowing down the river.
25 You pump water, and so, probably, yes. But there

1 would be enough -- there's enough water in the
2 direct flow ditch to irrigate everything that I
3 have.

4 Q Oh, were you using that water on your
5 storage account coming out of the dam?

6 A Maybe yes, maybe no, depending on early
7 spring or late summer. Early spring it's
8 probably free flow water or runoff water. If
9 it's late summer, I'm sure it's going to be
10 reserve water out of the dam.

11 Q And then you mentioned the
12 commissioners came and measured your pumps and
13 then you said they put a wand in your ditch. Was
14 that measuring your free flow ditch you talked
15 about?

16 A Yes.

17 Q And do you have any livestock?

18 A Do we have livestock?

19 Q Yes.

20 A 500 cows.

21 Q And so you raise hay to feed the
22 livestock?

23 A Pardon?

24 Q You raise the hay to feed your
25 livestock?

1 A Yes.

2 Q And where do you winter your livestock?

3 A Right there on the ranch. That's the
4 purpose of the hay.

5 Q Do they winter along the river?

6 A Yes.

7 Q Do you know if they water out of the
8 river in the wintertime?

9 A Not too much because we have six
10 artesian wells that flow out of 400 feet deep
11 that are a constant 55 or 60 degrees. Cattle
12 much prefer that water to the river water. Not
13 nearly as cold.

14 MR. SWANSON: No further questions,
15 Your Honor.

16 SPECIAL MASTER: Thank you, Mr.
17 Swanson. So I don't have many questions, Mr.
18 Felton, but there was this one part of your
19 irrigation operation that I would like to know
20 just a little bit more about.

21 So I understand, you have what you
22 called a free flowing ditch?

23 THE WITNESS: Yes, sir.

24 SPECIAL MASTER: So could you describe
25 what you mean by a free flowing ditch?

1 THE WITNESS: Well, there's a
2 breastworks in the river bank with a head gate in
3 it. Open that up and the water just flows down
4 an open ditch. Does that answer your question,
5 sir?

6 SPECIAL MASTER: Yes, it does. And are
7 there times when you will shut the head gate?

8 THE WITNESS: Not generally in the
9 summertime. It's shut now. But once I open that
10 up, middle of May usually, it's pretty much on
11 all the time. And where I have my one pump site
12 on the furthest south end of the ranch, there is
13 also some gates drop into the ditch. I can drop
14 those gates clear down and that will back the
15 water clear to the river and then nothing will
16 flow down the river. So it's virtually a dead
17 lake.

18 SPECIAL MASTER: So let's talk a moment
19 about the pumps that you're using to get the
20 water directly out of the Tongue River. When
21 you're told that you're on stored water, is it
22 your understanding that any water you pump at
23 that point comes out of your contract right?

24 THE WITNESS: That's correct, sir.

25 SPECIAL MASTER: Okay. And to your

1 knowledge no one has permitted you additional
2 water for your direct flow right in the river at
3 that point?

4 THE WITNESS: No.

5 SPECIAL MASTER: Okay.

6 THE WITNESS: Other than the water we
7 bought from the Northern Cheyenne, which we just
8 talked about.

9 SPECIAL MASTER: Okay. And when you're
10 told that you are on stored water, do you
11 continue then to also use water from the free
12 flowing ditch?

13 THE WITNESS: Yes.

14 SPECIAL MASTER: And some of that water
15 is pumped out of the ditch?

16 THE WITNESS: Yes, sir.

17 SPECIAL MASTER: And is the water that
18 you pump out of the ditch at that point, is that
19 measured?

20 THE WITNESS: It's measured at the pump
21 with the micrometer water meters that I have on
22 the pump.

23 SPECIAL MASTER: Okay. Does that
24 amount of water that you're pumping out of the
25 ditch also count towards your stored right?

1 THE WITNESS: I believe it would.

2 SPECIAL MASTER: Just to be clear, then,
3 the pump that you get water out of the ditch from
4 is measured by the water commissioners; is that
5 correct?

6 THE WITNESS: Since I put that
7 micrometer meter up there nobody has been by to
8 look at it. It was after we had the water
9 commissioners that I put the micrometers on all
10 of the pumps. Made it easier for them and it
11 made it easier for me because I could look at
12 that micrometer, oh, I've used 50 acre-feet or
13 I've used 20 acre-feet, whatever. I could keep
14 kind of a running tally in my head so I didn't
15 exceed my 925 acre-feet, or allotted amount,
16 whatever it was, 55 or 50 percent of whatever it
17 was for that year.

18 SPECIAL MASTER: Okay. But if I
19 understood your testimony, in the years between
20 2001 and 2006, when there were water
21 commissioners, the water commissioners were
22 calculating how much water you were using through
23 your pumps?

24 THE WITNESS: Yes, sir.

25 SPECIAL MASTER: And did that include

1 the pump out of your free flowing ditch?

2 THE WITNESS: Yes. I had to stop and
3 think a little bit.

4 SPECIAL MASTER: Okay. And so it is
5 water from the pump that you then use to irrigate
6 your fields?

7 THE WITNESS: Yes, sir.

8 SPECIAL MASTER: Okay. I think that's
9 all the questions I had. Mr. Swanson?

10 MR. SWANSON: No further questions.

11 SPECIAL MASTER: Okay. Mr. Kuhlmann?

12 MR. KUHLMANN: No questions.

13 SPECIAL MASTER: Okay. Thank you. It's
14 quite possible -- actually, I do have one other
15 question I don't think anyone is going to object
16 to, and I forgot to make earlier. I've just been
17 trying -- I have a list of the various water
18 rights and I'm just trying to keep track of whose
19 water rights are whose. So I notice on the list
20 of various water right claims that were made,
21 there are several for the Felton Angus Ranch.

22 THE WITNESS: That's correct. That
23 would be me.

24 SPECIAL MASTER: That would be you.
25 Great. So anyway, with that, I was just

1 evaluating, you know, Mr. Shaw a moment ago set
2 the record for the shortest period of time in the
3 chair. But I actually think you just stole it by
4 about three minutes.

5 THE WITNESS: Suits me fine.

6 SPECIAL MASTER: So congratulations.
7 You can step down now. Thank you very much for
8 coming here today. I would suggest that we take
9 our first afternoon break now for ten minutes and
10 then we'll come back.

11 (Recess.)

12 (Open court.)

13 SPECIAL MASTER: So, Mr. Brown, you're
14 going to be examining the next witness?

15 MR. BROWN: Yes, Your Honor, I am. A
16 couple things before we call our next witness.
17 First of all, I'm going to do a little bit of a
18 preemptive apology. I didn't anticipate the
19 rapid pace of the last couple of witnesses.

20 SPECIAL MASTER: It is unusual.

21 MR. BROWN: It is. So I have an excuse
22 to agree, I suppose. We have two Wyoming
23 witnesses available for this afternoon and I
24 certainly can't promise that they are going to
25 take up the remainder of our time. So we may

1 have some open space this afternoon.

2 The second thing is, just to introduce
3 kind of the next topic of folks that we will be
4 wading into, generally Wyoming irrigators, there
5 will be a set of those folks. First, we're going
6 to have a gentleman who is associated with the
7 CBM industry, and is a production manager for a
8 CBM company that produces CBM water on Prairie
9 Dog Creek. So we have some information specific
10 with regard to that CBM production. His name is
11 John Steir, and we would like to call Mr. John
12 Steir to the stand.

13 SPECIAL MASTER: Mr. Steir, you can
14 come up and be sworn in.
15 Whereupon,

16 JOHN STEIR,
17 having been first duly sworn, was examined and
18 testified as follows:

19 SPECIAL MASTER: Mr. Draper.

20 MR. DRAPER: Your Honor, just to let you
21 know, I'll be handling the testimony for us on
22 this witness.

23 SPECIAL MASTER: Okay. Thank you, Mr.
24 Draper.

25 DEPUTY CLERK: Please state your name

1 and spell it for the record.

2 THE WITNESS: John Steir, S-T-E-I-R.

3 SPECIAL MASTER: Good afternoon, Mr.

4 Steir.

5 DIRECT EXAMINATION

6 Q (By Mr. Brown:) Mr. Steir, how are you?

7 A I'm doing good.

8 Q Thank you for coming up. I hope
9 you're able to make it back home tonight. Can
10 you tell us what your current occupation is?

11 A I'm a production manager for Storm Cat
12 Energy.

13 Q I'll warn you right off the bat, you
14 and I both have of a tendency to talk fast, so
15 the court reporter is going to yell at both of
16 us if we do that too much. We need to slow down
17 just a little bit.

18 How long have you been a production
19 manager for Storm Cat Energy?

20 A Since December of '06.

21 Q What is your business address?

22 A 51 Coffeen Avenue.

23 Q And where is that?

24 A Sheridan, Wyoming.

25 Q I want to back up a little bit. I'm

1 going to ask you some questions about your
2 background so the special master can understand a
3 little bit about where you come from. Where did
4 you grow up?

5 A Sheridan, Wyoming.

6 Q And did you go to college or attend any
7 kind of training after high school?

8 A I went to a technical in Laramie,
9 Wyoming.

10 Q And what was that for?

11 A Mechanics.

12 Q When did you complete that?

13 A In '87.

14 Q And what did you do after -- is that
15 WyoTech?

16 A It is WyoTech.

17 Q What did you do after you graduated
18 from WyoTech?

19 A Went to work for Plains Tire in
20 Sheridan, Wyoming.

21 Q How long did you do that?

22 A Oh, about seven months.

23 Q Just wasn't for you?

24 A No, I got offered a different job.

25 Q What was that?

1 A I went to work for Lange Drilling in
2 Salt Lake City, Utah.

3 SPECIAL MASTER: One of the advantages
4 of slowing down, too, is it makes sure you have
5 an opportunity to hear the question and think
6 about it before answering.

7 Q (By Mr. Brown:) Probably a good idea.
8 What was Lange Drilling?

9 A An exploration drilling company out of
10 Salt Lake that drilled -- well, I drilled in
11 Nevada most of the time.

12 Q Drilling for what?

13 A Mainly it was coal -- or gold
14 exploration.

15 Q Drilling for gold?

16 A Gold, yes. Exploration, you know,
17 looking for gold.

18 Q Okay. And where did you do that?

19 A Elko, Nevada, Reno, Nevada.

20 Q Did you find any?

21 A Well, not where I could physically look
22 at it and steal it. We did find some, yes.

23 SPECIAL MASTER: So you were not out
24 with your pan?

25 THE WITNESS: No, I wanted to be.

1 Q (By Mr. Brown:) How long did you do
2 that?

3 A I did that for two years.

4 Q So that brings us to 1989 or about?

5 A Close. Yep.

6 Q What did you do after that?

7 A I bought a drilling rig and started
8 drilling water wells.

9 Q For gold?

10 A No. I drilled for water. I drilled
11 water wells in and around Sheridan, Wyoming.

12 Q Was that your own business?

13 A Yes.

14 Q How long did you do that?

15 A Nine years.

16 Q And generally describe what, I guess,
17 the operation that you ran up there drilling for
18 water, what was it like drilling for water in
19 that area?

20 A I drilled water wells for, of course, a
21 lot of ranchers and landowners, and drilled the
22 well and then had a backhoe and also did the
23 hookups, tied them into houses and stock wells.

24 Q What aquifers were you drilling into?

25 A All kinds. A lot of them were sand,

1 gray sand. Coal, the same kind of coal we deal
2 with at coal-bed methane. Mainly them were the
3 two aquifers.

4 Q How long did you do that?

5 A Nine years.

6 Q So that brings us to 1991? No.

7 A No.

8 Q That's horrible math. Another lawyer
9 that can't do math. At any rate, what did you do
10 after that?

11 A Went to the railroad for two years.

12 Q What did you do for the railroad?

13 A I was an engineer and conductor.

14 Q How did you like that?

15 A I hated it.

16 Q Why is that?

17 A On call all the time and not knowing
18 when you had to work and kept laying you off. It
19 was all seniority based.

20 Q Okay. What did you do after that?

21 A Went to work for J.M. Huber as a
22 contract pumper.

23 Q A contract pumper for what?

24 A The coal-bed methane wells, CBM wells.

25 Q Okay. Where was that at?

1 A Started out in Recluse, Wyoming.

2 Q Where is Recluse?

3 A About 83 miles east of Sheridan
4 somewhat, 43 miles north of Gillette.

5 Q Out in the middle of nowhere?

6 A Kind of.

7 Q It's in the Powder River Basin?

8 A Correct.

9 Q You said you were a pumper?

10 A Yes.

11 Q What does that mean?

12 A We actually went out and pumped the
13 wells, basically watched over the pumps, tried to
14 produce -- well, we pumped out water to make gas.
15 So we watched wells. I don't know how else --

16 Q So the pump that you were taking care
17 of was the pump that removed the water from the
18 coal seam.

19 A Correct. It was a submersible pump in
20 a well, yes.

21 Q How long did you do that?

22 A Oh, I did that for probably eight
23 months and then I went to a production supervisor
24 for J.M. Huber.

25 Q What did you do as a production

1 supervisor for J.M. Huber?

2 A Supervised all the pumpers. So I just,
3 your know, talk to them daily and met with J.M.
4 Huber and supervised them.

5 Q Okay. How long did you do that?

6 A I did that until I went to work for
7 Baker Energy, which is in 2003.

8 Q So you went to work for Baker in 2003?

9 A Yes.

10 Q And doing what?

11 A Same thing.

12 Q Where at?

13 A Sheridan, Wyoming, Recluse -- well, I
14 lived in Sheridan but most of my operations was
15 in Recluse.

16 Q Did Baker have any operations in the
17 Tongue River Basin?

18 A They were a service company. So all I
19 did was supply people.

20 Q Describe how that works, a service
21 company supplying people?

22 A Well, J.M. Huber had too many contract
23 employees, so all the people working for them
24 were contract. So they had to get a company
25 because they didn't want to own -- or they didn't

1 want to hire anybody. They wanted somebody else
2 to hire them. So they hired Baker Energy, and
3 basically everybody from Baker Energy worked
4 for -- like four guys worked for Huber in that
5 area.

6 Q So were you doing the same job for Huber?

7 A Yes.

8 Q You were just working for a different
9 employer?

10 A Yes.

11 Q Okay. So you were still a production
12 manager for J.M. Huber in the Recluse area?

13 A Correct.

14 Q Okay. And how long did you do that?

15 A Until December of 2006. Then I went to
16 work for Storm Cat Energy?

17 Q And Storm Cat Energy, is that another
18 CBM production company?

19 A Yes.

20 Q Where are they based out of?

21 A Denver.

22 Q And in what area were you working for
23 them?

24 A Recluse.

25 Q Still in Recluse?

1 A Yes.

2 Q Okay. And what was your position with
3 them?

4 A Production manager.

5 Q Same kind of position?

6 A Same kind of position, yes.

7 Q Okay. Did the job duties change at all
8 when you moved over to Storm Cat?

9 A Yes. I started dealing more with the
10 gas marketers and then I took care of the budget.
11 I still take care of the budget. And a lot of
12 the other jobs are the same. We still deal with
13 producing gas on a daily basis.

14 Q Okay. Describe to me -- for me the
15 interaction you had with the gas marketer. What
16 did that involve?

17 A I have to give him flows, you know,
18 when we have down time and we are off gas because
19 we got to do imbalances at the end of the month.
20 So we can't be too long or short because one way
21 will cost you money, the other way you have to
22 make up gas. So I deal with the marketer on a
23 daily basis on selling gas.

24 Q What other things, if you haven't
25 already mentioned everything, does a production

1 manager do?

2 A I deal with water management. I deal
3 with gas calibrations. The day-to-day basis --
4 daily basis -- day-to-day operations with the
5 pumpers. You know, we deal with guys every day,
6 human resources, you know, vacations.

7 Q In that position as a production
8 manager did you have any occasion to deal with
9 regulatory agencies?

10 A Yes, I deal with them daily.

11 Q What regulatory agencies do you
12 typically deal with?

13 A DEQ, BLM, OSLI, SEO.

14 Q What is OSLI?

15 A Office of State Lands.

16 Q For what purpose would you deal with
17 them?

18 A Usually wells and reservoirs on state
19 leases.

20 Q So that's the real property owner for
21 some of your leases?

22 A Correct.

23 Q And the Office of State Lands, that's
24 in Wyoming, right?

25 A Correct.

1 Q So that would be the agency that you
2 would have to work through as the property owner?

3 A Yes.

4 Q Is that right?

5 A Yes.

6 Q Okay. You said DEQ. Is that Wyoming
7 DEQ?

8 A Yes.

9 Q And for what purpose would you have to
10 work with the Wyoming DEQ?

11 A They mainly deal with air quality and
12 water, water quality and volume. I mean, they
13 regulate quality -- they regulate the water
14 quality and volume of water.

15 Q When you say the DEQ regulates the
16 volume of water, what do you mean? Do you know
17 what they do?

18 A Well, each permit, I mean -- just
19 depends. We'll have a permit on an outfall that
20 will have a volume associated with it and will
21 have a quality of water associated with it. And,
22 like yesterday, I spent all day with them and we
23 go around and went to 16 outfalls, which an
24 outfall is a place where water comes out from the
25 wells. And they will sample it and make sure the

1 sample is within the permit requirements.

2 Q So you have to get a permit from DEQ to
3 produce CBM?

4 A Yes, a WYPEES permit.

5 Q You said air quality, as well, with
6 DEQ?

7 A Yes.

8 Q What air quality concerns are there?

9 A We have compressors.

10 Q What is a compressor?

11 A Compressor is how we move our gas.

12 Q Those compressors create gas in the
13 air, right?

14 A Emissions, yes.

15 Q Emissions. So that's what DEQ regulates?

16 A Yes, it's the same thing as a permit.
17 And they regulate that, also.

18 Q State engineer's office, I think you
19 mentioned as a regulatory agency you deal with?

20 A Yes.

21 Q You said SEO?

22 A Yes.

23 Q And what regulatory activities do you
24 deal with the SEO for?

25 A Getting permits for reservoirs.

1 Q Okay. Can you describe that process?
2 Do you yourself deal with the permitting?

3 A No. I might sign it, but I don't
4 create it. Most of the time -- I can't describe
5 how it works.

6 Q What's your understanding? Do you have
7 an understanding what has to be permitted through
8 the state engineer's office?

9 A Reservoirs do, yes.

10 Q And what about the reservoirs, do you
11 know? If you don't, that's fine.

12 A I know you got to apply for it, you
13 have a size, how many acre-feet and storage and
14 how big and whatnot.

15 Q And do you still work in the Recluse
16 area?

17 A I still do work there, too, yes.

18 Q You say, too. Do you work somewhere
19 else --

20 A Sheridan.

21 Q -- now?

22 SPECIAL MASTER: If you can both try not
23 to talk at exactly the same time, that would be
24 helpful to the court reporter. I will try and
25 watch out for that, too.

1 Q (By Mr. Brown:) I will do my absolute
2 best to wait until you're done with your answer
3 if you can wait for me to get done with my
4 question.

5 A I will.

6 Q So I think as we were talking over one
7 another, you said that you work in the Sheridan
8 area now as well?

9 A Yes.

10 Q And when did that start happening?

11 A From 2007.

12 Q Is that with Storm Cat?

13 A Yes. We drilled 19 wells out in the
14 Prairie Dog area.

15 Q At some point in time did Storm Cat
16 purchase J.M. Huber in the Prairie Dog area?

17 A Yes, they did that in December of 2011.

18 Q Okay. And so in December of 2011 Storm
19 Cat purchased J.M. Huber; is that right?

20 A Correct.

21 Q And so any of the CBM interests that
22 J.M. Huber had in the Tongue River Basin then
23 went over to Storm Cat; is that accurate?

24 A Yes, all of it.

25 Q But you had done some work as early as

1 2007, as far as drilling wells?

2 A Yes, we drilled 19 wells in that area.

3 Q Did you have any experience with CBM
4 water production in the Tongue River Basin at
5 that time, 2007?

6 A Yes.

7 Q Describe that.

8 A Well, we had the 19 wells, which went
9 into a reservoir.

10 Q All 19 wells went into one reservoir?

11 A Correct.

12 Q How big was that reservoir?

13 A Hundred acre-feet.

14 Q Since 2011, when Storm Cat purchased
15 out J.M. Huber, have you been Storm Cat's
16 production manager in the Tongue River Basin?

17 A Yes.

18 Q Can you just generally in a geographic
19 sense describe where Storm Cat's holdings are in
20 the Tongue River Basin, their CBM production
21 operations?

22 A Where all our leases are?

23 Q Where is your operation at? Are you at
24 Prairie Dog Creek or are you on Big Goose Creek?

25 A We are on Prairie Dog Creek, Badger

1 Creek, all that area out there. We got stuff in
2 Recluse. I mean, there are several creeks.

3 Q And what I mean is just in the Tongue
4 River Basin?

5 A Oh, just the Tongue River. Okay.
6 We've got stuff up and down Prairie Dog Creek,
7 Badger Creek.

8 Q And that's predominantly in the Prairie
9 Dog Creek vicinity, right?

10 A Correct. Yes.

11 Q Do you know, is Storm Cat Energy the
12 only CBM production company doing CBM production
13 in the Tongue River Basin?

14 A We are not.

15 Q Do you know of the others?

16 A Fidelity and Marathon.

17 Q Have there been others in the past that
18 you know of?

19 A That's the main ones, unless there are
20 some small ones that I don't...

21 Q Okay. Do you know which company had
22 the most CBM production or the largest CBM
23 production operation in the Tongue River Basin?
24 Do you know?

25 A No. At one time it had been close to

1 Huber or Fidelity.

2 Q Okay. I am going to show you an
3 exhibit. It's a map, and it is marked as Exhibit
4 W-223. And it's incredibly difficult to read at
5 this scale, but we are going to put it up on the
6 screen and see if we can't aid that. Do you
7 recognize Exhibit W-223?

8 A Yes.

9 Q What is it?

10 A It's our -- we call it our PDC water
11 management area.

12 Q When you say we, you mean Storm Cat?

13 A Storm Cat, yes.

14 Q So do you use that map as part of your
15 regular work with Storm Cat Energy?

16 A Yes.

17 Q And is that map accurate with regard to
18 Storm Cat's CBM water production operation as of
19 the date of the map?

20 A Yes.

21 Q Do you know what the date of the map is?

22 A Well, it's around April of 2012.

23 Q I'd like to offer Exhibit W-223.

24 MR. DRAPER: Your Honor, we object to
25 admission of this exhibit. It's a 2012 map.

1 Doesn't relate to this case.

2 SPECIAL MASTER: So I'm going to permit
3 the map, recognizing, of course, that it is 2012,
4 and that, therefore, it doesn't necessarily say
5 what things looked like at a previous point in
6 time.

7 MR. DRAPER: Okay. As of 2012, a
8 current map --

9 SPECIAL MASTER: I understand it has
10 limited relevance, but I'm interested in where
11 Mr Brown will go with it.

12 MR. DRAPER: With that understanding, I
13 have no objection.

14 (Received.)

15 SPECIAL MASTER: So Exhibit -- just to
16 finish up here, Exhibit W-223, is admitted.

17 (Received.)

18 Q (By Mr. Brown:) Mr. Steir, do you
19 know, when Storm Cat Energy purchased J.M. Huber
20 did it purchase all of its files and records and
21 things of that nature?

22 A Yes.

23 Q Do you know whether that included the
24 data that went into making this map that we are
25 looking at?

1 A I would say yes.

2 Q As far as -- are you experienced with
3 the information that's depicted in the map, and
4 when I say that, I mean Storm Cat's water
5 production operation?

6 A Yes.

7 Q And was the information contained in
8 that map accurate as far as what you observed
9 when Storm Cat purchased J.M. Huber?

10 A Yes.

11 Q I want to be very clear. That was as
12 of December of 2011, right?

13 A Yes.

14 Q You didn't have any experience with
15 their water production or handling prior to that
16 point in time?

17 A No.

18 Q Okay. Let's zoom in on the legend at
19 the bottom of this map. If you would, and I
20 don't know if you can read the paper copy that I
21 have given you or if we can get that big enough
22 to read, could you just describe generally the
23 information contained on this map using the
24 legend or -- just describe what's on the map?
25 What's contained on it?

1 A Okay. The blue lines are definitely
2 the water gathering system. So that's our
3 underground lines going from wells/reservoir to
4 reservoir. There's reservoirs on there. It will
5 say existing water bodies and it will have
6 inactive water bodies, which -- and then we --
7 we've got irrigated areas that we irrigate
8 with -- or irrigate out there in the PDC area.
9 Some of the stuff on the legend is not on this
10 map because it's mainly I use this as a water
11 management map, because that's -- I took all the
12 wells and roads and all that stuff on the
13 left-hand side off.

14 Q Okay. So there's another map that
15 would be more descriptive of the actual gas
16 production sides of your work?

17 A Correct.

18 Q Okay. Do you see on the far right-hand
19 corner of the legend box something labeled SDI?

20 A Yes.

21 Q What is that?

22 A Sub-drip irrigation.

23 Q What does that mean?

24 A We irrigate -- well, we use Ben Tero,
25 you know, it's -- we irrigate from underground.

1 We take our water and put -- basically what we
2 are doing right now is we take 10,000 barrels a
3 day and put it underground and have alfalfa
4 fields.

5 Q Where do you go that?

6 A In the Prairie Dog Creek area on
7 Carlton Perry's land.

8 Q Is that up Dutch Creek? I'm not sure.
9 That's where it looks like it's at on the map,
10 too.

11 A Well, it's in the area. But I don't
12 recall Dutch Creek. I don't know that.

13 Q Okay. That's fine. And so looking at
14 Exhibit W-223, all of the blue polygons, are
15 those CBM reservoirs?

16 A Yes.

17 Q And then I think the legend indicates
18 that the blue polygons that are wrapped in a red
19 line, those are inactive CBM reservoirs?

20 A Correct. They are still there. We
21 just don't use them.

22 Q So this map just generally describes
23 the plumbing of your water production operation?

24 A All the underground lines we have, yes.

25 Q Why do you have underground lines?

1 A To get the water from the wells to the
2 reservoirs and then maybe from reservoir to
3 reservoir. It just depends.

4 Q So you can move water between reservoirs?

5 A Yes.

6 Q Do you have more than one CBM well
7 hooked up to a single reservoir?

8 A We got more wells -- we have more than
9 one well going to a reservoir, yes.

10 Q Do you have multiple wells going to one
11 reservoir?

12 A Yes.

13 Q So that's just kind of described by the
14 plumbing --

15 A Yes.

16 Q -- that's on this map. In your
17 experience with CBM production, what is the goal
18 of the CBM companies with regard to the produced
19 water?

20 A Well, our goal is -- to produce water
21 we get it out of the well bore and try to get rid
22 of it because it's a byproduct. We don't want
23 it. And we want the gas that the well produces.

24 Q So generally describe the process that
25 Storm Cat uses, at least, of trying to get rid of

1 that water?

2 A We put it in reservoirs is our main
3 thing. And then we want them to infiltrate,
4 evaporate, and then if they don't do that fast
5 enough, we irrigate.

6 Q So one of the goals of putting the
7 water in the reservoirs is to have it infiltrate?

8 A Yes.

9 Q You want a leaky reservoir?

10 A We'd love a leaky reservoir, yes.

11 Q Is there ever a time that you had a
12 reservoir that wasn't leaky?

13 A No, most of them do.

14 Q Have you ever had one that didn't
15 infiltrate?

16 A Had some that infiltrated very slowly.

17 Q What did you do with those reservoirs?

18 A Well, we eventually tried not to use
19 them because we want to go to the ones that
20 infiltrate. We need the ones that leak, that
21 don't hold water.

22 Q Sure. And so if you had one that
23 didn't leak, you'd find another one?

24 A Yes, or we would pump it out of that
25 one into one that would infiltrate.

1 Q Okay. Can you use -- and looking
2 back -- let me ask: On Exhibit W-223, does that
3 depict all of the water production facilities for
4 Storm Cat in the Prairie Dog Creek area?

5 A Yes.

6 Q And do you know about how many CBM
7 reservoirs you have in the -- Storm Cat has in
8 the Prairie Dog Creek area?

9 A 59.

10 Q 59?

11 A 59.

12 Q Total reservoirs?

13 A Yes.

14 Q Out of those reservoirs, do you know
15 how many are lined?

16 A Five.

17 Q Do you use any of those lined reservoirs?

18 A We do not.

19 Q Why not?

20 A Because once you fill them up, the
21 water goes nowhere unless you pump it out.

22 Q Again, you want a leaky reservoir, right?

23 A We would love to take the liners out,
24 but we have not. They are too hard.

25 Q How big are most of these CBM reservoirs?

1 A I'm going to say 10 to 20 acre-feet.

2 Q They obviously get bigger. You
3 discussed a hundred acre-foot earlier?

4 A Correct.

5 Q What is the biggest one Storm Cat has?

6 A In the Prairie Dog area, probably a
7 hundred acre-feet. What did I say? Prairie Dog
8 Creek? Yeah, I did.

9 Q What other -- other than just putting
10 the CBM water in the reservoir, what other
11 methods or techniques does Storm Cat use to try
12 to get rid of the CBM water?

13 A We irrigate with it, so we got big
14 pivots, side rolls, and then we call them big
15 guns. They're portable.

16 Q Do you know about how many acres is
17 irrigated with Storm Cat CBM water in the Prairie
18 Dog Creek area? Do you have any idea?

19 A I don't remember exactly how many acres.

20 Q How is it that you find ground to put
21 the CBM water on?

22 A Well, a lot of it is we give it to
23 ranchers, and then -- because they will have
24 areas. We try to find flat areas where you can
25 run pivots or side rolls, you know, so we can

1 grow grass, hay, whatever they want to grow.

2 Q So you try to reach some kind of
3 agreement with the landowners?

4 A Correct.

5 Q What's entailed in those agreements?

6 A They are very simple. Some of them are
7 just verbal. Hey, can we irrigate out here?
8 Some landowners want hard copy or signed copies
9 and they are very simple. I mean, there is not
10 much to them.

11 Q So you can have either a verbal
12 agreement or a written agreement with landowners
13 to irrigate their ground with CBM water?

14 A Yes.

15 Q Does Storm Cat only irrigate land that
16 was previously irrigated with either direct flow
17 water or some other type of storage water or do
18 you guys irrigate other land?

19 A We irrigate other land.

20 Q How do you go about finding that land
21 to irrigate?

22 A Same thing. Usually the flat places
23 where they can hay it, usually, is what we
24 irrigate.

25 Q Once you have an agreement with a

1 landowner to irrigate their land, who does the
2 irrigation, typically?

3 A We do. Well, Wood Group. We hire Wood
4 Group that runs our operations. They do the
5 irrigating.

6 Q You hire a third party contractor to
7 come do the irrigating for you?

8 A Correct. Yes.

9 Q And do you have any occasions where the
10 landowners do the irrigation with the CBM water?

11 A Actually, yes, we just started that in
12 2013. Would have been the first year that the
13 landowners are taking our equipment and they are
14 operating it because they are out there. It was
15 a cost savings idea for us.

16 Q So in 2011 and 2012 it was exclusively
17 Storm Cat that operated the equipment?

18 A Yes.

19 Q Once you find a piece of land to do the
20 irrigation, does Storm Cat do any kind of soil
21 testing?

22 A We do get a baseline. And then we
23 sample it every year to see what type of
24 amendments we need to put on the surface.

25 Q And when you say amendments, what do

1 you mean?

2 A We call them amendments. We put sulfur
3 or gypsum on there which just -- water has a lot
4 of salts in it and we are just trying to keep the
5 salts from creating a hard pan because we want
6 the water to go down in the ground.

7 Q With regard to the land that Storm Cat
8 irrigates with the CBM water, is the landowner
9 able to use other water on that same land, as
10 well?

11 A No.

12 Q At least through the irrigation
13 facilities that Storm Cat uses?

14 A They are not.

15 Q And why not?

16 A Because they have no way to put the
17 water in the reservoir.

18 Q So how does that preclude the landowner
19 from using the irrigation equipment?

20 A Okay. From using our irrigation
21 equipment?

22 Q Right.

23 A Because our irrigation equipment is
24 tied to our infrastructure, our stuff. There's
25 no way they could tie into it.

1 Q Okay. Is Storm Cat able to dispose of
2 all of its CBM produced water through irrigation?

3 A We don't irrigate all of it. Some
4 reservoirs we leave set. Once they are full and
5 they don't infiltrate quickly, we'll just leave
6 them set, and they will infiltrate or evaporate
7 over time.

8 Q At some point you gave a copy of this
9 map that's Exhibit W-223 to the state engineer's
10 office; is that right?

11 A Yes.

12 Q Who was it you gave it to?

13 A Dave Schroeder.

14 Q Why did you give it to him?

15 A Because it was right after we took over
16 J.M. Huber. He called and said, hey, I've been
17 out in your area and I see some reservoirs that
18 have more water in them than they normally have.
19 Could you explain why and how? How are you
20 putting more water in? I said, we are operating
21 different than Huber is. We are trying to use
22 more -- we are trying to use more of the
23 reservoirs for irrigation instead of going into
24 the SDI system because they were putting, like,
25 16,000 barrels in the SDI system. So we

1 switched that so he was seeing more water in
2 reservoirs because of that. So he wanted to know
3 how the system worked and asked if I would come
4 out and show him. I said, how about if I give
5 you a map and show you? And that's what I did.

6 Q Okay. And so it sounds like he had a
7 pretty good understanding of where the reservoirs
8 were?

9 A Correct.

10 Q He just didn't know how your system
11 operated?

12 A Yep.

13 Q He wasn't familiar with the plumbing?

14 A Exactly. And we probably also --
15 because you can transfer from reservoir to
16 reservoir, we might have transferred water, moved
17 it around, and that's what he was seeing also.
18 So we explained to him and gave him a map and
19 showed him how we were doing that.

20 Q Okay. Did you also provide a copy of
21 this map at some point in time to a gentleman by
22 the name of Doyle Fritz?

23 A Yes, I did.

24 Q Did that include the electronic state
25 files that go with the map?

1 A Yes.

2 Q Let me back up a second. When Storm
3 Cat Energy at least is thinking about developing
4 some new CBM wells, does it do any planning with
5 regard to its water production disposal techniques

6 A Yes.

7 Q Describe that. How does that work?

8 A Well, we figure out how many wells.
9 You will pick an area and, you know, take an
10 average what you think, how many barrels each
11 well is going to produce. So if you are doing 20
12 wells and they're at 250 barrels apiece, you have
13 to calculate how much water you can manage
14 through the year with that. So that is how many
15 reservoirs we need, how much irrigation, how much
16 infiltration, how much evaporation, all of that
17 is calculated. There's formulas to figure all
18 that out.

19 Q So it sounds like you try to find a way
20 to make sure you have enough opportunity to
21 dispose of that water?

22 A Correct.

23 Q Are you familiar with gentleman by the
24 name of Joe Pilch?

25 A Yes.

1 Q How do you know him?

2 A Well, I've known him for a long time.
3 I grew up with his kid. And he's a landowner out
4 there in lower Prairie Dog. So we deal with the
5 landowners.

6 Q Okay. Does Storm Cat Energy irrigate
7 any of Mr. Pilch's land?

8 A Yes, we do.

9 Q And is that the land you just described
10 in Lower Prairie Dog?

11 A Yes.

12 Q So that would be the end of Prairie Dog
13 closest to Montana?

14 A Yeah.

15 Q The north end of Prairie Dog in Montana?

16 A Yes.

17 Q Do you know -- are you aware if J.M.
18 Huber was irrigating Mr. Pilch's land prior to
19 Storm Cat purchasing J.M. Huber in 2011?

20 A They were.

21 Q And when Storm Cat purchased J.M. Huber
22 was there already irrigation equipment at Mr.
23 Pilch's place?

24 A Yes, it was already set up.

25 Q Can you describe Storm Cat's irrigation

1 of Mr. Pilch's property?

2 A How we irrigate on Joe's?

3 Q Just a general description of how Storm
4 Cat goes about irrigating Mr. Pilch's place.

5 A We put it in certain reservoirs that
6 are on this map and then he's got side rolls, big
7 guns, and pivots that we use.

8 Q I'm going to show you another document.
9 Just standing here realized I only had one. This
10 is a page from Exhibit W-2. It is from Exhibit
11 W-2 Bates number WY 043250. Unfortunately, Mr.
12 Fritz's appendices were not page numbered. It's
13 around page 177. It's broke down as far as I
14 think he did the Tongue River --

15 SPECIAL MASTER: Let's go off the record.

16 (Discussion off the record.)

17 SPECIAL MASTER: Okay.

18 Q (By Mr. Brown:) Mr. Steir, do you
19 recognize the image that's depicted in that
20 aerial photograph that I just gave to you?

21 A Yes.

22 Q And what do you recognize it to be?

23 A Part -- this is Joe Pilch's irrigated
24 land.

25 Q And it was just what we were discussing

1 as far as his ground on up the Prairie Dog Creek?

2 A Yes.

3 Q Lower Prairie Dog Creek, I apologize.

4 A Yes.

5 Q I'm going to stick this on the ELMO, so
6 that other folks can see it. I will see if I can
7 figure out how to run this thing. Can you see
8 that all right, Mr. Steir?

9 A Yes.

10 Q What I want to do -- it looks like to
11 me the way that this aerial photograph is
12 oriented, is it accurate to say Prairie Dog Creek
13 enters the lower left-hand corner of the
14 photograph?

15 A Yes, it is.

16 Q And then it generally trends to the
17 northeast up into the right-hand corner of the
18 photograph?

19 A Yes.

20 Q And then there's some polygons
21 identified on the photograph that look to be
22 irrigated fields. Do you agree with that?

23 A Yes.

24 Q And I want to go through this, and at
25 least with your experience as far as Storm Cat

1 irrigating on Mr. Pilch's place, I just want to
2 ask you a few questions with regard to it. First
3 of all, if you'll take a look, and if you'll look
4 up here, I'm going to point up on the big screen,
5 can you tell me what that is?

6 A A reservoir.

7 Q What kind of reservoir?

8 A A CBM reservoir that we put water in.

9 Q So that's one of Storm Cat's reservoirs?

10 A Yes.

11 Q What about this one over here?

12 A One of our reservoirs.

13 Q How about here?

14 A One of our reservoirs.

15 Q How about this one?

16 A One of our reservoirs.

17 Q How about that?

18 A One of ours.

19 Q Okay. What is this right here?

20 A That is a compressor station.

21 Q Is that, as you were describing
22 earlier, so you could move the coal-bed gas?

23 A Yes.

24 Q Can you tell me with regard to this
25 field that I'm indicating, does Storm Cat

1 irrigate that with CBM water?

2 A Yes.

3 Q How is that irrigated?

4 A That one is a side roll.

5 Q How about this field here?

6 A That would be side rolls.

7 Q So does Storm Cat irrigate that with
8 CBM water?

9 A Yes.

10 Q And how about this center pivot?

11 A Pivots, yes. Irrigated.

12 Q That's irrigated with CBM water?

13 A Yes.

14 Q How about this center pivot?

15 A Irrigated with CBM water.

16 Q Do you see this mark over here that is
17 off this center pivot?

18 A Yes.

19 Q Do you know, does Storm Cat irrigate
20 that?

21 A Yes.

22 Q How is that irrigated?

23 A With big guns.

24 Q How about this triangle that's over
25 here?

1 A Same thing.

2 Q Okay. And how about this area over
3 here?

4 A That could be a side roll or a big gun.

5 Q You're not sure which?

6 A No, I don't remember exactly.

7 Q How about this field up here?

8 A That would be a side roll.

9 Q Do you know if this area right in here
10 gets CBM water? If you don't know, that's fine.

11 A I don't know for a fact. But probably
12 not. I don't know that.

13 Q You don't do any irrigation over on
14 this side of Prairie Dog Creek for Mr. Pilch?

15 A We do not.

16 Q And you don't do any CBM irrigation
17 through here for Mr. Pilch?

18 A No.

19 Q Okay. Is there any other land owned by
20 Mr. Pilch that Storm Cat does irrigation for?

21 A I think this is it, but I'm --

22 Q Is there land outside of Prairie Dog
23 Creek bottom that Storm Cat does some irrigation
24 for Mr. Pilch, up away from Prairie Dog Creek?
25 Do you know?

1 A No, I don't think so.

2 Q Okay. Do you know how many CBM
3 reservoirs are used to irrigate Mr. Pilch's land?

4 A Which reservoir? No, I don't keep
5 track of it.

6 Q Is it more than one?

7 A Oh, yeah. Definitely.

8 Q Can you bring CBM produced water from a
9 reservoir from a distance to irrigate Mr. Pilch's
10 land?

11 A Yeah, it's all -- all our system is
12 tied together. So if I wanted to get water to
13 that reservoir, I could get it clear from Badger
14 Creek, which is miles away.

15 Q Okay. And I think you mentioned with
16 regard to other irrigators, but in particular
17 with regard to Mr. Pilch, is he able to plug into
18 the irrigation equipment on his property and
19 irrigate with anything but CBM water?

20 A No, he's not.

21 Q Can you just describe for us what the
22 current state of CBM production is in Prairie Dog
23 Creek area in Wyoming? Is it going up? Is it
24 going down?

25 A It's all going down. No new wells.

1 Q How about the water production?

2 A It's going down also.

3 Q Is Storm Cat plugging any wells?

4 A We are currently plugging, yes. Ten of
5 them this year.

6 Q And are you familiar with any of the
7 other CBM companies? Are they doing the same
8 thing?

9 A Yeah, they are all plugging wells.

10 MR. BROWN: That's all I have.

11 SPECIAL MASTER: Thank you, Mr. Brown.
12 Mr. Draper?

13 CROSS-EXAMINATION

14 Q (By Mr. Draper:) Good afternoon, Mr.
15 Steir. I'd like to turn our attention to the map
16 that you discussed with Mr. Brown initially. And
17 that is this Exhibit W-223. Did you prepare this
18 map?

19 A I did not.

20 Q Do you know who did?

21 A I don't know who put all the data
22 together to create the map. But I had Wood
23 Group, you know, take layers off and put on there
24 what I wanted to put on there before I gave it to
25 Mr. -- to Dave Schroeder.

1 Q And you referred to a Wood Group. Is
2 that a separate entity from Storm Cat?

3 A Yes.

4 Q What did you ask them? Apparently you
5 asked them to prepare this map?

6 A I asked them to give -- create a water
7 management map of Prairie Dog Creek so I could
8 give it to Dave Schroeder.

9 Q To show him what currently is happening
10 with respect to water management by the company?

11 A Correct.

12 Q With respect to the current use, did
13 you check this map in terms of determining
14 whether it was accurate with all of the
15 designation of irrigated area?

16 A Have I -- no, I have not done that. I
17 mean, I could tell you by going out to the field,
18 and knowing what goes on, that I'm pretty sure
19 it's pretty accurate because we have to do as
20 bills after we put all the pipelines and the
21 locations of reservoirs and everything. So it's
22 GPS'd for them to create an as bill.

23 Q And that's the type of information that
24 the Wood Group used, as you understand it, to
25 construct the map?

1 A Yes, but it would have been pre-Wood
2 Group. All the data that was collected would
3 have been pre-Wood Group. It would probably have
4 been some Baker employees and some contract
5 employees that supplied all the data to Huber to
6 build these maps.

7 Q So it's been handled by different
8 companies and different people over the years?

9 A Yes.

10 Q And it's your understanding that the
11 intention was to give the current 2012, I think
12 you said April of 2012 --

13 A Yes.

14 Q -- status of the things that are shown
15 on it; is that right?

16 A Yes.

17 Q Did you differentiate -- did you ask
18 them to differentiate between what's currently
19 being used and what's been irrigated or not
20 irrigated in the past?

21 A No, I think everything on here is
22 something that has been irrigated at one time. I
23 didn't state, say, hey, just give me what's being
24 irrigated today. I did not say that.

25 Q So there might be lands on there that

1 are not irrigated today but were at some point in
2 the past?

3 A Correct.

4 Q And did you determine which lands were
5 currently irrigated and which ones aren't?

6 A I haven't sat down and went over it,
7 no. I mean, we track all that, but I don't have
8 it. I don't know all of it.

9 Q And you're not sure who actually
10 prepared this at this Wood Group?

11 A Well, I know who did that. I know who
12 put the map together. He just took data that was
13 already in a database and took off layers and
14 added layers to give me what I wanted, what we do
15 there on a daily basis, every map I need him to
16 do.

17 Q And for the record, who was that person?

18 A Manny Rodriguez.

19 Q And did he have personal knowledge of
20 where each of these irrigated areas were out in
21 the field?

22 A No, he would just have information that
23 was supplied to us when we purchased Huber in a
24 database.

25 Q What was the source of that information

1 in the database?

2 A What do you mean? You want to know
3 where it come from?

4 Q Yes.

5 A It come from these guys doing -- they
6 take out high-quality GPSes, basically, and would
7 go out and when a line was installed they would
8 drive them. They would map the areas. They
9 would go around each reservoir. So it's very
10 accurate on where everything is at.

11 Q These were various people over the
12 years doing that?

13 A The one guy that worked there probably
14 worked there the longest, Larry Bridger, was a
15 guy that worked there. He probably did most of
16 that, and he worked there for several years. So
17 I can't say he did all that, but he could have
18 done most of it. It might have been one, two,
19 three people. I don't know that.

20 Q So you don't -- might have been Mr.
21 Bridger, might have been other people?

22 A It could have.

23 Q Did they -- in building that database,
24 did they rely on agreements with the landowners
25 as to where this water was supposed to go?

1 A He didn't need to. There would have
2 been no reason he would have to worry about an
3 agreement. We would have abided by the
4 agreement, you know, whatever we made with the
5 landowner. And he would have went out and GPSed
6 wherever we were irrigating or wherever the rest
7 of it was or the water lines. It would have been
8 done pre his going to the field.

9 Q Now, you testified that your purpose in
10 putting water into reservoirs was to -- or
11 irrigation systems was to further the overall
12 purpose of disposing of the produced water from
13 the CBM operations, correct?

14 A Yes.

15 Q And you mentioned that that was partly
16 achieved through infiltration and partly through
17 evaporation?

18 A Both of them, yeah.

19 Q Did you ever engage in any practice to
20 enhance evaporation, like aeration systems, for
21 instance?

22 A No. I mean, we just -- no.

23 Q Just had as much surface area as
24 possible to evaporate as much as possible?

25 A Exactly.

1 Q One of your ways that you've described
2 of disposing of this water is to provide it to
3 irrigators to use in their operations, correct?

4 A Mainly it was our irrigation system,
5 not their irrigation. The only time we let the
6 landowners use ours was in 2013. They used our
7 equipment and they monitored the pivots and the
8 side rolls themselves.

9 Q I see. You have the plumbing system
10 currently that's shown on the map and the -- at
11 the end of the plumbing, as you take it from
12 producing wells to disposal, are either reservoirs
13 or irrigation systems?

14 A Yes.

15 Q Do you know how much acreage you're
16 irrigating right now?

17 A I don't know the exact number, no.

18 Q Isn't it true a lot of irrigators are
19 wary of putting CBM water on their existing
20 irrigated lands because of water quality concerns?

21 A They were in the beginning. But you
22 talk to anybody that we've done that to now, any
23 landowner, they love it. I mean, there's
24 landowners that -- there was a specific landowner
25 that said, I don't want any, and he's in Prairie

1 Dog Creek, which is Tom Pilch -- or Tom Kovetka,
2 and he just took over another one that we
3 irrigate, which is the Huttons, and he called me
4 when he first started irrigating, and he said,
5 this is one of the best lands we've seen. He
6 said, I am not afraid of CBM water now. With
7 your amendments and everything, this stuff is
8 good ground. He really likes it. So most of
9 them -- not most of them, all of them, if they
10 are irrigating, they love it.

11 Q The ones who are taking your water,
12 they are fine with it. But not everybody, not
13 even a majority of the landowners are using your
14 water; isn't that right?

15 A Oh, well, landowners that we don't deal
16 with could be. The ones that we irrigate on that
17 I know of, yeah. Not every landowner we have is
18 using our water. No, because we don't need to.

19 Q I think I've seen that you'll put water
20 out on areas that have never been irrigated
21 before if you can find a flat enough area to put
22 it on?

23 A Yes.

24 Q And the water that you're disposing has
25 a fairly high sodium content, doesn't it?

1 A Yes.

2 Q And that tends to seal up ground when
3 it gets on it. Don't you have that problem with
4 your reservoir system to some extent? You find
5 they seal up and you have to go to other means of
6 disposal?

7 A No, some of them slow down. I don't
8 think it's because of the sodium. Some of them
9 still infiltrate. Some of them never seal, don't
10 even slow down. Some of them you can put water
11 on them and they never fill up. But, yes, you're
12 right. Sodium does do that. And that's why we
13 amend on the surface. But a lot of our
14 reservoirs that we've had out there for years
15 still infiltrate.

16 Q Your amendments that you're referring
17 to go to the water that you're putting out for
18 irrigation pumps?

19 A Yeah, we amend on -- yes, where we
20 irrigate.

21 MR. DRAPER: Your Honor, I'd like to
22 take a moment, with your permission.

23 SPECIAL MASTER: That will be fine.

24 (Pause.)

25 MR. DRAPER: Your Honor, if I may.

1 SPECIAL MASTER: Yes.

2 Q (By Mr. Draper:) Mr. Steir, you talked
3 a little bit about the fact that this is a
4 current map, this W-223 map as we've designated
5 it in this case. Can you tell from this map what
6 was irrigated with CBM water in 2001?

7 A I can't specifically tell you, but, I
8 mean, it is on here probably.

9 Q Can you tell which ones were and which
10 ones weren't in 2001?

11 A In 2001? No, I can't tell you which
12 ones were.

13 Q Can you do that in 2002?

14 A No.

15 Q Or 2004?

16 A No.

17 Q Or, finally, 2006?

18 A No, I can't tell you exactly which ones.

19 MR. DRAPER: I think that will do it
20 for the moment, Your Honor.

21 SPECIAL MASTER: Thank you, Mr. Draper.
22 I just have a couple of questions, first of all,
23 with respect to the map. So this is a map that
24 you had Wood Group prepare for you?

25 THE WITNESS: Correct.

1 SPECIAL MASTER: When did they prepare
2 it for you?

3 THE WITNESS: What did they prepare?

4 SPECIAL MASTER: No. When?

5 THE WITNESS: I had them do this April
6 of 2012.

7 SPECIAL MASTER: And what did you give
8 them in order to prepare it?

9 THE WITNESS: I called him up and say,
10 hey, I want a map of our water management system.
11 Because they have all the database already built
12 from pre-2012. So it might have been built in
13 2006, 2005, whenever something was new was added
14 into this database to build this. So I just
15 said, hey, I need a map of our water management.
16 I don't need any of the wells or the roads. I
17 just want water management, and that's basically
18 what he did.

19 SPECIAL MASTER: So it is the Wood Group
20 that has the database?

21 THE WITNESS: It would be stored at
22 their office, yes.

23 SPECIAL MASTER: Stored. So the data
24 from which the map was prepared is at Wood Group,
25 then?

1 THE WITNESS: They would have it, yes.

2 SPECIAL MASTER: And is there data there
3 as to when various fields were irrigated?

4 THE WITNESS: We would have -- yes.

5 SPECIAL MASTER: You would have that
6 data?

7 THE WITNESS: Yes, we would have that
8 data. I don't know how far back, but we would
9 have data, some data.

10 SPECIAL MASTER: Okay. Then I'm also
11 interested the lining of reservoirs. So as I
12 understand your testimony, you would prefer
13 unlined reservoirs because you get some
14 infiltration with unlined you wouldn't with
15 lined; is that correct?

16 THE WITNESS: Correct.

17 SPECIAL MASTER: So I'm curious: Why do
18 you have any lined reservoirs?

19 THE WITNESS: Some of them were done
20 because the permitting -- you didn't have to
21 permit -- there are certain ways to permit them
22 and you could do them quicker or faster. So
23 people did lined reservoirs, lined pits they
24 called them, I guess. We have never -- I have
25 never -- since I've been working with Storm Cat,

1 we have never lined anything. This was done
2 years ago. And since I've been there, we've
3 never used any of the liners.

4 SPECIAL MASTER: You've been there
5 since --

6 THE WITNESS: I've been with -- I've
7 been with Storm Cat since 2006, but we purchased
8 Huber in 2011.

9 SPECIAL MASTER: When you say you
10 haven't used any, you haven't used in your period
11 of time -- I'm sorry. So at what point in time
12 did you stop using the lined reservoirs?

13 THE WITNESS: We never used them. We
14 purchased December 1st of 2011. We have never
15 used the lined reservoirs that were purchased
16 from Huber.

17 SPECIAL MASTER: And you haven't used
18 them since 2011?

19 THE WITNESS: Correct. I don't know, I
20 can't tell you a day they quit using them. I
21 don't know that.

22 SPECIAL MASTER: Okay. Those are the
23 only questions I have. Mr. Draper, do you have
24 any more?

25 MR. DRAPER: Nothing further, Your

1 Honor.

2 SPECIAL MASTER: Okay. Thank you.

3 REDIRECT EXAMINATION

4 Q (By Mr. Brown:) Just a couple quick
5 questions, if I might.

6 Mr. Steir, Mr. Draper asked you quite a
7 few questions about that map and then the special
8 master asked you a couple questions with regard
9 to Wood Group. Let's explore Storm Cat's
10 relationship with Wood Group a little bit. What
11 relationship does Storm Cat have with Wood Group?

12 A They take care of our day-to-day
13 operations for us.

14 Q Tell me what that means.

15 A It means we hire all their -- we have
16 office people to take care of invoicing, we got
17 pumpers that go out in the field, we've got
18 supervisors that supervise over them, we've got
19 roustabouts that work for them. All this is
20 directed by two guys, James Hanson and I from
21 Storm Cat.

22 Q And so you had mentioned as a
23 production manager you supervise folks, right?

24 A Correct.

25 Q And the folks you supervise, is there

1 any other employees at Storm Cat that you
2 supervise?

3 A No, they're all Wood Group.

4 Q And so Wood Group, is it your
5 understanding they are a contractor with Storm
6 Cat?

7 A Basically, yes.

8 Q And as far as Storm Cat's operation in
9 Prairie Dog Creek, does Wood Group employees
10 basically do all the work for Storm Cat?

11 A Yes.

12 Q And the folks that made this map for
13 you, that's one of those folks?

14 A That is one of those folks, yes.

15 Q And do you understand, is it your
16 understanding that Wood Group had the same
17 relationship with J.M. Huber?

18 A Yes.

19 Q And so is that why Wood Group has the
20 database with regard to the J.M. Huber information
21 that Storm Cat purchased?

22 A That's exactly what happened, yes.

23 Q I think you testified that you've used
24 that map in your work, right?

25 A Yes.

1 Q And you've used it out there as part of
2 your water production work?

3 A Yes.

4 Q And did you find it to be accurate in
5 doing that work?

6 A It's very accurate. This is what we use.

7 Q And I think I was pretty clear that
8 that's, as far as you know, since 2011, right?

9 A Yes.

10 Q Mr. Draper talked to you with regard to
11 whether you had received complaints from any
12 irrigators. Do you remember that?

13 A Yes.

14 Q Have you ever received any complaints
15 from landowners that you were using or irrigating
16 CBM water with that you were using too much water?

17 A No, they ask for more.

18 Q Have you ever talked to Tanna Ankney?

19 A I have talked to Tanna Ankney.

20 Q Has she ever expressed to you concerns
21 about using too much water?

22 A No. Because they had everything
23 plugged out on Tanna when we took over.

24 Q Okay. So Storm Cat never actually did
25 any irrigation on Tanna's place?

1 A We did not.

2 MR. BROWN: That's all I have. Thank
3 you.

4 SPECIAL MASTER: Thank you very much.
5 You can step down. So this would be a good point
6 for another ten-minute break and we can come back
7 for the last witness of the day.

8 (Recess.)

9 SPECIAL MASTER: Okay. Mr. Brown, is
10 Mr. Pilch your next witness?

11 MR. BROWN: Yes, Your Honor, we would
12 call Joe Mr. Pilch. State of Wyoming would like
13 to call Joe Pilch.

14 MR. DRAPER: Mr. Wechsler will be
15 handling our participation in the testimony.

16 SPECIAL MASTER: Thank you.

17 Whereupon,

18 JOE PILCH,
19 having been first duly sworn, was examined and
20 testified as follows:

21 DEPUTY CLERK: State your name and
22 spell it for the record.

23 THE WITNESS: Joe Pilch, P-i-l-c-h.

24 SPECIAL MASTER: Good afternoon, Mr.
25 Pilch.

1 THE WITNESS: Good afternoon, Your
2 Honor.

3 DIRECT EXAMINATION

4 Q (By Mr. Brown:) Hello, Mr. Pilch. You
5 might want to scoot up a little bit closer to the
6 microphone so the court reporter can hear you.

7 SPECIAL MASTER: You're welcome to have
8 some water any time you'd like.

9 Q (By Mr. Wechsler:) Thanks for coming
10 up in this whether. I appreciate it.

11 A I hope I get back tomorrow.

12 Q Mr. Pilch, I'm just going to ask you
13 some general questions about your background
14 first. Can you tell us what your current
15 occupation is?

16 A Retired rancher, self-employed
17 part-time now.

18 Q Where at? Where do you live?

19 A Sheridan, Wyoming.

20 Q And where is your ranch?

21 A On Lower Prairie Dog Road, 789 Prairie
22 Dog Road is the physical address.

23 Q How long have you lived in Sheridan?

24 A Oh, let's see, probably about 60 years
25 out of 74.

1 Q So you grew up in Sheridan?

2 A Yes.

3 Q Did you grow up upon Prairie Dog Creek?

4 A Yes.

5 Q Did you grow up in the same place that
6 you're ranching today?

7 A Yes.

8 Q You graduated high school in Sheridan?

9 A Yes.

10 Q What did you do after high school?

11 A Went to college.

12 Q Where at?

13 A University of Wyoming.

14 Q What did you study?

15 A Animal science, animal science degree.
16 Agriculture.

17 Q So you graduated from the University of
18 Wyoming with a bachelor's degree?

19 A Yes.

20 Q What did you do after that?

21 A Well, came back -- no, I got drafted in
22 the army my senior year in college and had to go
23 to Germany for two years. I hate to say, it was
24 a very sad day for me 50 years ago, two years I
25 was in Germany where our commander in chief was

1 assassinated Texas and I had two more months left
2 in the army. Then I came back and ranched for a
3 while and then I went and went away from the
4 ranch five years, Farmers Home Administration in
5 Riverton Wyoming.

6 Q Farmers Home Administration?

7 A Yes.

8 Q In Riverton?

9 A Yes.

10 Q What did you do there?

11 A I was in charge of agriculture loans,
12 farm ownership loans, emergency loans for the
13 Native Americans in Riverton and Lander, the
14 Shoshones and Arapahoes.

15 Q That's close to the Wind River Indian
16 Reservation in Wyoming?

17 A Yes, sir.

18 Q And I think you said you did that for
19 five years?

20 A Almost five years.

21 Q About what time period was that, do you
22 remember?

23 A '69 to '74.

24 Q So what did you do in 1974?

25 A My dad came over in Riverton in March

1 and told me he would need me at the ranch and I
2 moved back to Sheridan. Been there ever since
3 then.

4 Q So you've been ranching on the Prairie
5 Dog Creek ranch since 1974?

6 A Yes.

7 Q I'm going to show you just a
8 photograph, and I probably should have done this
9 with Mr. Steir, just to get a better idea where
10 your place is at. I'm going to put up on the
11 monitor here a page out of M-6, which was Mr.
12 Book's rebuttal report. Page 39 of M-6. Do you
13 kind of recognize what's depicted in the diagram
14 on that screen up there, Mr. Pilch?

15 A Yes.

16 Q And do you recognize this to be Prairie
17 Dog Creek through here?

18 A Yes.

19 Q And you see here there's some grounds
20 that's darkened and the name Pilch next to it?

21 A Yes.

22 Q Is that the location of your ranch on
23 lower Prairie Dog?

24 A Yes.

25 Q Can you tell us approximately how many

1 acres your ranch is?

2 A 3240 acres, total acres.

3 Q And it's all in that general area on --

4 A Yes.

5 Q Mr. Pitch, could you please wait for me
6 to finish my question before you answer?

7 A I'm sorry.

8 Q Your fine. The court reporter has a
9 real hard time writing down what we are saying if
10 we're talking at the same time.

11 SPECIAL MASTER: It is difficult because
12 we are used to talking over each other a lot of
13 the time. It's not necessarily natural but it's
14 really important for the record.

15 Q (By Mr. Brown:) So I think you said
16 3240 acres.

17 A Yes.

18 Q And do you know approximately how many
19 acres you have that are irrigated?

20 A Approximately 180 to 200, somewhere
21 around that vicinity.

22 Q Somewhere around 200?

23 A Yes.

24 Q Do you raise cattle?

25 A No, not now.

1 Q Did you used to?

2 A Yes.

3 Q When did you stop that?

4 A In 2001.

5 Q You were here for Mr. Steir's
6 testimony; is that right?

7 A Yes.

8 Q And we've discussed irrigation of some
9 of your property with CBM water. Is some of your
10 property irrigated with CBM water?

11 A Yes.

12 Q Is there -- was there a company that
13 you dealt with as far as irrigation with CBM
14 water prior to Storm Cat?

15 A Yes.

16 Q Who was that?

17 A J.M. Huber.

18 Q And when did it change from J.M. Huber
19 over to Storm Cat?

20 A Oh, I think it was the end of December
21 of 2011, if I recall.

22 Q Do you recall when CBM water was first
23 used to irrigate your property?

24 A Let's see, they started probably 2002,
25 2003.

1 Q Okay. When J.M. Huber came to irrigate
2 your property with CBM water, was it all done at
3 the same time or did it kind of phase in with
4 CBM?

5 A They did pretty fast. Took probably
6 about, I'd say, three, four years. Pretty fast.

7 Q And so from the time they started using
8 CBM water on your property it took three to four
9 years for all of the CBM water to be installed?

10 A Yes.

11 Q How is that CBM water applied on your
12 property?

13 A Through side rolls, pivots, and latest
14 is big guns now, but mostly it was side rolls and
15 pivots.

16 Q And prior to CBM being used to irrigate
17 your property, did you use center pivots?

18 A I don't understand.

19 Q Did you irrigate there same property
20 prior to the CBM water?

21 A No, not with -- pivots you talking
22 about? No. We flood irrigate prior to CBM
23 water.

24 Q So prior to the land being irrigated
25 with CBM water, you flood irrigated?

1 A Yes.

2 Q Did you flood irrigate out of ditches?

3 A Yes.

4 Q So you didn't use center pivots?

5 A No.

6 Q Did you have any side roll sprinklers?

7 A Yes, one.

8 Q And tell us from the north to south on
9 your place where was that?

10 A Located on the south side of the ranch.

11 Q And you only had one?

12 A One.

13 Q When the CBM water came to be applied
14 in irrigation on your property, did the CBM
15 company buy that irrigation equipment?

16 A They bought some. But to speed the
17 process, we will to buy some 2002 or '3, we
18 bought them side rolls for the irrigation to
19 irrigate the land with water rights. Started
20 tearing up all the ditches with the land plan,
21 and from the pivots we did buy there. All the
22 other side roads and the hills and land, winter
23 wheat, winter fields of alfalfa, they bought that.

24 Q Okay. There's a lot of information on
25 what you just said there. And you described side

1 rolls and pivots for winter wheat up in the
2 hills. Did I say that accurately?

3 A Yes.

4 Q Describe that for us. What do you mean
5 by that?

6 A We raised about 500 acres of winter
7 wheat, 250 acres in each year. We quit raising
8 winter wheat in 2000. Then we put it all into
9 dry land alfalfa. Like 40-acre fields, 50-acres
10 fields, and we put in alfalfa and grass mixture.
11 And later after that, we relied on mother nature
12 for water. They came in 2003, '4, '5, '6 with
13 pivots and side rolls.

14 Q With regard to the winter wheat, is
15 that on property that you don't have other water
16 rights for?

17 A Yes.

18 Q So is the only time that that property
19 ever received water was it CBM water?

20 A Yes.

21 Q Then later in the statements you just
22 made, you said the side rolls and pivots, is that
23 on your land along Prairie Dog Creek?

24 A Yes, they started that first.

25 Q Okay.

1 A Then they expanded.

2 Q Okay. With regard to the side rolls
3 and the center pivots and the big guns that the
4 CBM companies used to irrigate your property with
5 CBA water, are you able to put Prairie Dog Creek
6 water into that equipment?

7 A No.

8 Q Why not?

9 A We didn't tie it in. How are we going
10 to do it? We were told we couldn't do it. So
11 that's from J.M. Huber.

12 Q So since the time that that equipment
13 was installed, you've not been able to put any of
14 our other water rights water into that equipment?

15 A Yes, that's correct. We tried to and
16 they wouldn't let us.

17 Q What is your experience with how much
18 water J.M. Huber used to irrigate your property?
19 Was it too much, too little?

20 A I think it was some years wasn't too
21 bad. Some years they over irrigated. Then they
22 finally got regulation after my brother -- there
23 are three of us are on the ranch. It's Pilch
24 Ranch, LLC. Through my brother and I we kind of
25 told them, pivots go around and they get stuck in

1 a hole. It's hard on hay fields, hard on dry
2 land fields. And then side rolls, they had
3 irrigators, contract irrigators out, and we told
4 them to move and cycle it every 12 hours. When
5 we had side rolls we would do it more. When you
6 flood irrigate, set some to go fours, some set
7 for six, some set fast. We kind of guided them,
8 too.

9 Q Generally, what was your experience
10 with irrigation with CBM water? Did you like
11 it?

12 A Yes.

13 Q Let me back up a little bit. You
14 mentioned something with regard to Pilch Ranch
15 LLC, is that right?

16 A That's correct.

17 Q Is that actually who owns the property
18 that you irrigate?

19 A Yes.

20 Q Who is involved with that company?

21 A I am the agent. My brother Ed and my
22 sister Marilyn, we were brothers and sisters.
23 Brother and sister.

24 Q And so the three of you siblings own
25 the ranch now?

1 A Yes.

2 Q Have your parents passed?

3 A Yes.

4 Q What kind of crops do you grow with the
5 CBM water?

6 A Alfalfa, grass mixture only.

7 Q No other crops?

8 A No.

9 Q Do you harvest the crop that's grown
10 with the CBM water or does the CBM company?

11 A CBM companies do not harvest. In 2005
12 or '6 we did the harvesting and then we sold our
13 equipment, haying equipment. We lease it out.

14 Q But the CBM company doesn't harvest?

15 A Never did.

16 Q How do you coordinate with the CBM
17 company as far as when it's time to harvest?

18 A We tell them better shut the sprinklers
19 off about a week before we going to get in the
20 fields, probably middle of June.

21 Q Do you recall if you had any written
22 agreements with any CBM company with regard to
23 the use of CBM water on your property?

24 A We have a lots of agreements with
25 sprinkler systems, soil testing, potash -- not

1 potash, gypsum and sulfur. There's equipment
2 repairs and so forth. We got a list, probably a
3 stack full of it from all different types of
4 agreements.

5 Q Okay.

6 A The right-of-ways, what they can do,
7 what they are can't do. Stay out of the hay
8 fields, damaging the crops. They cannot drive,
9 they can walk, or use a four wheeler.

10 Q What's your understanding of those
11 agreements and the CBM companies use of water on
12 your property?

13 A I don't understand.

14 Q Does it describe who is in control of
15 the irrigation and how much they can use and
16 things of nature, do you know?

17 A No.

18 Q Or is it more simple?

19 A We let them handle it. I mean, the
20 methane companies.

21 Q I'm going to show you ever the same
22 photograph that I showed Mr. Steir.

23 Do you recognize the land that's
24 depicted in that photograph?

25 A Yes, Pilch Ranch, LLC.

1 Q And is that your property on Prairie
2 Dog Creek?

3 A Yes.

4 Q Do you recognize the fields there as
5 your fields on Prairie Dog Creek?

6 A Yes.

7 Q What I'd like so do, Mr. Pilch, look at
8 each of these individual fields, and then I'm
9 going to ask you whether or not they were
10 irrigated with CBM water at a particular point in
11 time. Okay.

12 A Okay.

13 Q So if you need to reference back to the
14 photo in your hand, please do. Otherwise I'm
15 going to be indicating and you'll be able to see
16 on the screen up here. Okay?

17 A Okay.

18 Q And I'm going to start down in the
19 lower left-hand corner of the photograph. And is
20 that Prairie Dog creek that runs through the
21 photograph up to the upper right-hand corner of
22 the picture? So like this, is that Prairie Dog
23 Creek that generally runs through there?

24 A Yes.

25 Q Do you have land on both sides of the

1 creek?

2 A Yes.

3 Q I want to take a look at this field
4 right here. Do you see where I'm indicating?

5 A Yes.

6 Q Was that field irrigated with CBM water?

7 A Yes.

8 Q How about --

9 SPECIAL MASTER: I'm sorry, just so the
10 record is clear later on, to the degree you can
11 will reference anything in the way of landmarks
12 in that particular case, the field that's marked
13 15.4 acres that, would be helpful.

14 Q (By Mr. Brown:) Yes, sir. And, Mr.
15 Pilch, that field that I was just pointing to has
16 got a label on there, 15.4 acres. Do you see
17 that?

18 A Yes.

19 Q And has that field been irrigated with
20 CBM water?

21 A Yes.

22 Q Do you know whether or not that field
23 was irrigated with CBM water in the 2004?

24 A Yes.

25 Q It was?

1 A Yes.

2 Q Do you know if it was irrigated with
3 CBM water in 2006?

4 A Yes.

5 Q Okay. Let's move up so we are moving
6 down Prairie Dog Creek, and I'm going to indicate
7 the next field up here that's generally marked
8 with 31 acres and it's a rectangular shaped
9 field. Do you see that field I'm indicating?

10 A Yes.

11 Q And has that field been irrigated with
12 CBM water?

13 A Yes.

14 Q Do you know if that field was irrigated
15 with CBM water in 2004?

16 A Yes.

17 Q Do you know if that field was irrigated
18 with CBM water in 2006?

19 A Yes.

20 Q I'm going to move down Prairie Dog
21 Creek some more and I'm indicating the southern
22 pivot or southern circle that's on here. Do you
23 see it?

24 A Yes.

25 Q Has that field been irrigated with CBM

1 water?

2 A Yes.

3 Q Was that field irrigated with CBM water
4 in 2004?

5 A Yes.

6 Q Was that field irrigated with CBM in
7 2006?

8 A Yes.

9 Q Okay. And I'm going to move up just
10 above or down the creek. Just to the right hand
11 of that pivot that we were just talking about
12 there's a triangle shape. Do you see that?

13 A Yes.

14 Q Is that irrigated with CBM water?

15 A Yes.

16 Q How is that irrigated, do you know?

17 A Side roll.

18 Q Okay. And do you know if that triangle
19 shape was irrigated with CBM water in 2004?

20 A Which one?

21 Q Look up on the screen, I'm showing
22 which one I'm pointing at?

23 A Yes. Okay. Yes.

24 Q Okay. You think that was irrigated
25 with side roll?

1 A That's a side roll.

2 Q Okay. Do you know if that was
3 irrigated with CBM water in 2004?

4 A Yes.

5 Q And let's move across between the two
6 pivots or the other side next to Prairie Dog
7 Creek. And there's a funny-shaped parcel. Do
8 see that?

9 A Yes.

10 Q And it's directly adjacent to the
11 northern pivot, right?

12 A Yes.

13 Q Has that been irrigated with CBM water?

14 A Yes.

15 Q Do you know if that was irrigated with
16 CBM water in 2004?

17 A Yes.

18 Q It was?

19 A Yes.

20 Q Was it irrigated with CBM water in 2006?

21 A Yes.

22 Q Let's move to the northern pivot. Do
23 you see that one?

24 A Yes.

25 Q Has that been irrigated with CBM water?

1 A Yes.

2 Q Was it irrigated with CBM water in 2004?

3 A Yes.

4 Q Was it irrigated with CBM water in 2006?

5 A Yes.

6 Q Okay. And the field that is directly
7 to the northeast of that northern pivot, do you
8 see that shape?

9 A Yes.

10 Q That has that been irrigated with CBM
11 water?

12 A Yes.

13 Q Was it irrigated with CBM water in 2004?

14 A Yes.

15 Q Was it irrigated with CBM water in 2006?

16 A Yes.

17 Q Now, let's jump across and up here to
18 the very northern portion of your fields depicted
19 on this photo. There's a rectangular-shaped
20 field that's identified with the No. 23.9 acres.
21 Do you see that?

22 A Yes.

23 Q Can you tell me if that field has been
24 irrigated with CBM water?

25 A Yes.

1 Q Was it irrigated with CBM water in 2004?

2 A Yes.

3 Q Was it irrigated with CBM water in 2006?

4 A Yes.

5 Q Now, let's back up a little bit. Let's
6 move back down to the southwestern field where
7 Prairie Dog Creek enters into this photograph,
8 close to the field that's identified with 15.47
9 acres. Do you see that?

10 A Yes.

11 Q Now, there's some area that is outside
12 the blue printer area. Do you see that? It's
13 within the black line.

14 A Black line?

15 Q Do you see kind of in between these
16 areas?

17 A Yes.

18 Q That's in between the blue perimeter
19 area and the black perimeter area. Did you do
20 any other additional irrigation in there besides
21 CBM water in two thousand --

22 A No.

23 Q So any in 2004, 2006?

24 A No.

25 Q Let's take a look at the next field

1 moving to the northwest -- northeast, excuse me.
2 It's next to the rectangular field identified
3 with 31 acres. Do you see that? I'm talking
4 about the land through here. So it's just to the
5 left. I guess that would be the northwest of
6 the rectangular field. Do you see that?

7 A Yes.

8 Q Do you irrigate that --

9 A We did --

10 Q -- parcel?

11 A Excuse me.

12 Q Do you irrigate that parcel?

13 A A long time ago I did.

14 Q What do mean by a long time ago?

15 A We put it in 2001, '3, and '4.

16 Q So you think that this area along here
17 that I'm indicating just to the northwest of that
18 rectangle field identified with 31 acres, you
19 think you irrigated that with Prairie Dog water?

20 A Yes, we had a ditch going through
21 there, and that was part -- the reason we did it
22 because the side rolls wouldn't get close enough
23 to the creek. So we had to ditch to flood
24 irrigate. And the reason we did it for a couple
25 years and then we just gave up. It was kind of a

1 waste of time and money.

2 Q But that general area you think you
3 irrigated in 2004?

4 A Yes.

5 Q And you used Prairie Dog water to do
6 that with?

7 A Yes.

8 Q Okay. And let's jump across the creek.
9 Is this the creek that runs through here next to
10 what appears to be this house?

11 A Yes.

12 Q And it's a parcel that's labeled with
13 actually the permit number P216228B, do you see
14 that, it's labeled at 29 acres?

15 A Yes.

16 Q Have you ever irrigated that parcel?

17 A Where you get 29 acres? 2 acres. The
18 rest is hills. Big steep banks.

19 Q So anywhere within that 29 acres have
20 you irrigated?

21 A No. Can't.

22 Q Okay. And you see this house right here?

23 A Yes.

24 Q Whose house is that?

25 A The main ranch house.

1 Q So within that 29 acre parcel the
2 structure is the main ranch house?

3 A Yes.

4 Q And have you ever irrigated in that
5 area just to the southwest of the main ranch
6 house?

7 A Yes.

8 Q Do you know if you irrigated that in
9 2004?

10 A Yes.

11 Q Are did you irrigate it in 2006?

12 A I think we quit because when my folks
13 were alive, we added on to the house and she
14 didn't want no water going down by the house.
15 And '50 years when I was growing up, we would
16 pump water out of the basement because we let the
17 water too long in the field. The foundation, we
18 didn't have vapor barriers. We decided just
19 kind of safe for my sister, we agreed we would
20 quit irrigating that and we bypassed it.

21 Q Okay. So you think you did irrigate a
22 portion of this --

23 A About five, six acres.

24 Q Five or six acres in the 29-acre piece?

25 A Yes.

1 Q In 2004 but not 2006?

2 A No. But we did -- there's another
3 field down there by the creek over there, we
4 irrigate that, too. That's part of the
5 irrigation, too, of the ditch.

6 Q We'll move up and down the creek. Did
7 you have a question?

8 SPECIAL MASTER: Yes. Only because I
9 was looking at the map and trying to follow on
10 the map as you were speaking rather than watching
11 what you were actually locating up there. Where
12 is the area that was not irrigated according to
13 this?

14 MR. BROWN: In what time period?

15 SPECIAL MASTER: There was a period the
16 witness testified you can't irrigate this.

17 THE WITNESS: Go ahead.

18 Q (By Mr. Brown:) Mr. Pilch, in this
19 area, in polygon, this rather funny-shaped
20 polygon, identified as 29 acres, are you able to
21 irrigate all of that 29 acres?

22 A No.

23 Q And what portion of that 29 acres are
24 you able to irrigate? Is it just this area below
25 the house?

1 A That we cannot irrigate that. We can
2 irrigate but we decided not to irrigate at the
3 present time.

4 Q But in 2004 you irrigated somewhere in
5 this area?

6 A Yes.

7 Q And how many acres in 2004 do you think
8 you irrigated?

9 A I think around five acres, five, six
10 acres, somewhere around there. I don't have my
11 U.S.D.A. map.

12 Q Does your U.S.D.A. map indicate how
13 many acres you irrigated in 2006 or '4?

14 A Same ranch.

15 Q Let's move over to, and it's still
16 within that 29 acre parcel. But do you see what
17 looks like this ox bow and Prairie Dog Creek?

18 A Yes.

19 Q You see this field that points out here
20 just directly east of the main ranch house?

21 A Yes.

22 Q Do you irrigate that?

23 A Yes. It's tall grass. We call it bull
24 pasture grass for horses and so forth. I would
25 irrigate it during the summer.

1 Q And did you irrigate that in 2004?

2 A Yes.

3 Q And did you irrigate that in 2006?

4 A Yes.

5 Q And let's just move directly north of
6 that ox bow and Prairie Dog Creek takes another
7 turn back to the east. Do you see that?

8 A Yes.

9 Q And then there's another kind of
10 peninsula on that ox bow on the other side of the
11 creek. Do you see that?

12 A Yes.

13 Q Do you irrigate at that field?

14 A Yes, because that line, that creek,
15 that's an old creek channel. That's been
16 eliminated a long time ago.

17 Q This is an old creek channel?

18 A Old creek channel there. That's all
19 crack grass and swamp.

20 Q So the ox bow is no longer the creek
21 channel?

22 A No, creek goes straight across now. We
23 irrigate it from the west side of the house, the
24 other side of the creek.

25 Q But you did you irrigate --

1 A Yep.

2 Q You have to wait for me to get done.

3 A All right.

4 Q Did you irrigate that particular parcel
5 in 2004?

6 A Yes.

7 Q And did you irrigate in 2006?

8 A Yes.

9 Q If you'll take a look, and you see the
10 two center pivots that are depicted on this
11 photo? Right?

12 A Yes.

13 Q That you said are irrigated with CBM
14 water?

15 A Yes.

16 Q You see this open area that's just to
17 the west of the southern pivot. Do you see that?

18 A Yes.

19 Q It's between Prairie Dog Creek and the
20 southern pivot?

21 A Yes.

22 Q Do you irrigate that?

23 A Not with creek water.

24 Q Okay. So --

25 A The big guns and pivots, they pretty

1 close down there. But you don't want to get too
2 close to the creek bank.

3 Q Okay. I wanted to make sure, you don't
4 irrigate any of that Prairie Dog water?

5 A No. We used to.

6 Q Okay. Prior to CBM?

7 A Yes.

8 Q Let's move up to the north.

9 MR. WECHSLER: Can you point out where
10 that was again?

11 MR. BROWN: I was just looking, you see
12 the red circle doesn't extend all the way over
13 here. I was just interested to see if there was
14 some additional irrigation going on in the area
15 directly to the west of that southern pivot. I
16 don't know how to better describe that.

17 MR. WECHSLER: But excluding the ox
18 bow?

19 MR. BROWN: He already said he
20 irrigated this.

21 MR. WECHSLER: Got you. Thank you.

22 MR. BROWN: And that is the ox bow
23 peninsula directly to the west of the southern
24 pivot. I don't know how to better to describe
25 that.

1 MR. WECHSLER: I understand now. Thank
2 you.

3 Q (By Mr. Brown:) Let's move northeast.
4 You see where I'm indicating is directly above
5 and a little to the west of the northern pivot
6 looks to be one big continuous field that is not
7 contained within the perimeter of the black line.
8 Do you see that?

9 A Yes.

10 Q Do you irrigate that field?

11 A Yes.

12 Q And do you irrigate that with Prairie
13 Dog Creek water?

14 A Yes.

15 Q And does that field extend all the way
16 down just directly top east of the field that's
17 marked 23.9 acres?

18 A Yes.

19 Q And so you irrigate all of that with
20 Prairie Dog Creek water?

21 A Yes.

22 Q Do you know about how many acres you
23 believe that is?

24 A Around 60 acres. 63, something like
25 that. 65. 60, 65 acres.

1 Q Okay. Let's move directly north of
2 that. You see the rectangular field that's
3 marked with a 23.9 acres?

4 A Yes.

5 Q And then just on the lower left-hand
6 corner of that rectangle, you will see a little
7 finger that looks likes a field?

8 A Yes.

9 Q Do you irrigate that?

10 A No.

11 Q Do you know if the CBM water reaches
12 that?

13 A No.

14 Q Can you -- do you have any idea why it
15 appears to be irrigated on this photo?

16 A Well, alfalfa and we put that in and
17 probably moisture it shows green. But it's only
18 about a couple acres, I'd say, because what
19 happens side rolls goes straight across. You go
20 from the side roll it will cave down the ditch
21 bank over there. And, again, you could probably
22 unhook the risers and put a gun there. Two or
23 three acres.

24 Q But you don't irrigate that?

25 A No.

1 Q Now, with regard to that north 23.9
2 acres that you said was irrigated with CBM
3 water --

4 A Yes.

5 Q -- is that still irrigated with CBM
6 water?

7 A Not this year. It might being next
8 year. Depends on what water. I have no idea
9 what they are planning on.

10 Q Do you irrigate with Prairie Dog Creek
11 water then?

12 A No. Did a long time ago in the '40s.

13 Q Let's take a look again at that field
14 that's directly to the south of the 23.9 acre
15 rectangle you were looking at. So this field
16 that you said that you irrigated with Prairie Dog
17 Creek water.

18 A Yes.

19 Q And you irrigated all the way over to
20 the east hand side of that rectangular field. Do
21 you know what water right is associated with that
22 field?

23 A Well, part of it -- early water rights.

24 Q What do you mean?

25 A 1800 something, 1884, '5, somewhere

1 around in there.

2 Q Where is that water right from. What's
3 the source, do you know?

4 A Prairie Dog.

5 Q Do you own any shares in Prairie Dog
6 Ditch Company?

7 A I one own share.

8 Q And how many acres can you irrigate
9 with that one share, do you know?

10 A No.

11 Q And --

12 A Two and a half acre-feet per second, or
13 2 cubic feet per second. And we have one share.
14 There's only 60 shares total in Prairie Dog.

15 Q Is it your understanding that you can
16 irrigate that field with that Prairie Dog Ditch
17 Company water?

18 A Yes.

19 Q Okay.

20 SPECIAL MASTER: So, Mr. Brown, just for
21 completeness sake at this stage, when you were
22 talking about the little triangle to the south --

23 MR. BROWN: This one here?

24 SPECIAL MASTER: Yes. You asked Mr.
25 Pilch whether that was irrigated with CBM water

1 in 2004. You didn't say anything about 2006. I
2 don't know whether you intentionally --

3 MR. BROWN: I did not intentionally
4 omit that. So let me ask.

5 Q (By Mr. Brown:) The parcel of land
6 that the special master was just talking about is
7 this triangle that is just to the southeast of
8 the northern pivot. Do you see that, Mr. Pilch?

9 A Yes.

10 Q And you told us that that was irrigated
11 with CBM water?

12 A Yes.

13 Q Do you know if that was irrigated with
14 CBM water in 2006?

15 A Yes.

16 Q Okay.

17 SPECIAL MASTER: And one other question.
18 I notice there are things that look like fields
19 down in the bottom left-hand corner. You're
20 going to come to that?

21 MR. BROWN: I wasn't, but I can
22 definitely have him try to explain that.

23 SPECIAL MASTER: If it's not relevant,
24 don't worry about it.

25 MR. BROWN: I don't think it is.

1 SPECIAL MASTER: Okay. It's up to you.
2 I just wanted to make sure that you covered all
3 the areas.

4 MR. BROWN: I believe I've covered...

5 Q (By Mr. Brown:) When we were
6 discussing all these parcels of land on your
7 property, Mr. Pilch, did we talk about everything
8 that serves irrigation water?

9 A No.

10 Q We didn't talk about everything?

11 A I assume there's water -- we got water
12 other places, CBM water.

13 Q Sure.

14 A Is that what you mean? I don't
15 understand what you're trying --

16 Q I think you said before you mentioned
17 that you had CBM water up in the hills away from
18 Prairie Dog Creek?

19 A Yes.

20 Q Is that what you were just talking about?

21 A Yes.

22 Q What I'm asking is, at least with your
23 ground down in the bottom of Prairie Dog Creek,
24 that's depicted in this photo, have we talked
25 about all the land that you irrigate?

1 A Yes.

2 Q Okay.

3 DEPUTY CLERK: What Exhibit number is
4 that?

5 MR. BROWN: This is from Exhibit W6 --
6 excuse me, W-2, and it is Bate stamp No. WY
7 043250. So I guess the record is clear all that
8 long discussion we had with regard to the aerial
9 photo deals with that Bate stamp number out of
10 Mr. Fritz's report.

11 SPECIAL MASTER: I don't see that Bate
12 stamp on here. But I assume it's in the report.

13 MR. BROWN: Yes, sir. These are better
14 copies.

15 Q (By Mr. Brown:) Mr. Pilch, prior to
16 CBM water coming to your property, how did you
17 irrigate?

18 A Flood irrigation by ditch.

19 Q Out of ditches?

20 A Yes.

21 Q When the CBM company came in with its
22 irrigation equipment, what happened to those
23 ditches?

24 A Got plowed in, leveled off.

25 Q Are there any that remain on your

1 property?

2 A Yes.

3 Q How many?

4 A One major one on the west side of the
5 creek.

6 Q And is that the ditch you used to
7 irrigate the field that you indicated you
8 irrigate with your Prairie Dog Ditch Company
9 water?

10 A Yes.

11 Q Prior to using CBM water, were you able
12 to irrigate all of the acres you wanted to
13 irrigate?

14 A No.

15 Q Why not?

16 A Didn't have enough time. Didn't have
17 enough water. When you flood irrigate, we didn't
18 have enough ditches. I mean, you can only move
19 lateral. I heard people say the same thing, you
20 can only grow so fast. With side rolls or big
21 guns or pivots, you push a button, move them
22 around. You've got to change water ever four or
23 five six hours. Sometime you put the dam in the
24 bottom of the ditch. Go back the next morning,
25 the ditch is dry, or you plug up the ditch.

1 There's not much to it.

2 Q I think you mentioned as part of that
3 there wasn't always enough water.

4 A Yes.

5 Q Is that true?

6 A Yes.

7 Q Have you personally ever called a
8 fellow irrigator and asked him to turn off so you
9 could get water?

10 A No.

11 Q Have you ever called the Wyoming State
12 Engineer's Office or anybody with them and ask
13 them to shut somebody off so up could get water?

14 A No.

15 Q Why not?

16 A Well, how are we going to -- my folks,
17 we take what we get and we are happy to still be
18 alive. Why go up, where are you going to start?
19 I don't know. I don't want to blame somebody
20 else. Our problem is our problem. We did back
21 in the '40s. They laughed at us.

22 Q Back in the '40s was that you making
23 that call or your dad?

24 A My folks.

25 Q And it wasn't successful?

1 A No.

2 Q Now, we talked about the CBM irrigation
3 on your property. And we talked about the parcel
4 that you use the Prairie Dog Ditch Company water
5 on. Do you know if you have any other water
6 rights?

7 A Yes, we do.

8 Q Can you describe those for us?

9 A We have -- you mean source of water,
10 like Layton Smith?

11 Q No, let's start out with -- do you have
12 any other water rights out of Prairie Dog Creek
13 itself?

14 A Yes.

15 Q And describe those for us.

16 A I have -- small here and there. We had
17 301 acres. I can't find 301 acres.

18 Q You don't think you irrigated that many
19 acres?

20 A No.

21 Q Do you know if you have a 1903 right?

22 A Yes.

23 Q And do you know what ground you
24 irrigate with that right?

25 A No, not offhand.

1 Q And do you know if you have some post
2 1950 rights as well?

3 A Yes.

4 Q And do you know what ground those are
5 associated with?

6 A Yes, across the creek. East side of
7 the creek.

8 Q Okay.

9 A I assume that was a pump ditch or
10 pumping. I don't know if we have any on the
11 west side. It's hard to read the legal
12 description what your water rights are, Section
13 3, or cross-section. I just don't pay much
14 attention to that.

15 SPECIAL MASTER: Mr. Brown, again, I'm
16 thinking about the record. Across the creek
17 doesn't help very much when I'm reading the
18 record, Supreme Court is reading the record,
19 unless you know where you are starting from.

20 MR. BROWN: Well, Your Honor, I don't
21 know if it's necessary to get into Mr. Pilch with
22 regard to the exact locations in some of those
23 water rights. I think Mr. Book and Mr. Fritz
24 have looked at the records and they can figure
25 out the polygon. So I don't know if it's really

1 valuable for Mr. Pilch to say where the boundary
2 is of those exact permits.

3 SPECIAL MASTER: You said across the
4 creek. I had no idea what side that meant.

5 Q (By Mr. Brown:) Well, let's clarify
6 for the special master. When you say across the
7 creek, which side of the creek did you mean?

8 A The west side.

9 Q So on the west side. So that would be
10 generally in this area where the center pivots
11 are?

12 A That's the east side.

13 Q That is the east side. You're right.
14 Is this the only property on the west side?

15 A Yes. All the way down.

16 Q Down through here. Do you know what
17 water rights you have associated with this
18 property that's on the west side of the creek?

19 A I have no idea. I assume 1950s. I
20 don't know. I don't pay attention. I know we
21 have a lot of water rights, but I don't know
22 whether -- should have some 1890s would have been
23 better off.

24 Q I think you mentioned that you have
25 some Lake Desmet water. Do you know how much

1 water you own in Lake Desmet?

2 A 50 acre-feet.

3 Q Do you use that water every year?

4 A We call for it every year. Some years
5 we don't. Depends on what the situation is.

6 Q Maybe I didn't understand. You said
7 you call for it every year?

8 A Yes.

9 Q But you may not use it every year?

10 A Yes.

11 Q How is it that you go about calling for
12 that water?

13 A Call some -- my sister calls some lady
14 in Gillette that we want our Lake Desmet water.
15 And she says, when do you want it. We want it in
16 July sometime.

17 Q And you said that your sister calls
18 somebody in Gillette?

19 A No, Buffalo, I meant.

20 Q So you think your sister calls somebody
21 in buffalo for that water?

22 A Yes.

23 Q Do you know when it usually gets called
24 for every year?

25 A It varies. In July. I mean, some

1 years we don't call. Some years we don't need
2 that water.

3 Q Do you have any idea if you called for
4 that water in 2004?

5 A No, I sure don't.

6 Q Do you know if you called for that
7 water in 2006?

8 A I don't know.

9 Q If you would have needed that water to
10 irrigate, would you have called for it?

11 A Yes.

12 Q Do you know how the Lake Desmet water
13 gets into Prairie Dog Creek?

14 A Well, exchange of water from Lake
15 Desmet to Piney Creek, and that's part of the
16 Powder River Basin water. It changes water use.
17 Am I correct?

18 Q Well, is it your understanding it's an
19 exchange agreement?

20 A From Lake Desmet to Piney Creek.

21 Q Through Piney Creek?

22 A Yes.

23 Q Do you do anything to try to make sure
24 your Lake Desmet water gets to you?

25 A Not really.

1 MR. BROWN: That's all I have.

2 SPECIAL MASTER: Thank you. Sorry for
3 my extra questions. I just wanted to make sure
4 the record is as clear later as it is now.

5 MR. WECHSLER: Your Honor, before I
6 start, I may clear up one point just by using one
7 of the joint exhibits that I doubt that you have
8 before you. J-61.

9 SPECIAL MASTER: Let's go off the record
10 for one second.

11 (Discussion off the record.)

12 CROSS-EXAMINATION

13 Q (By Mr. Wechsler:) Thank you. Good
14 afternoon, Mr. Pilch. My name is Jeff Wechsler.
15 It's a pleasure to meet you.

16 A Thank you. Good to meet you.

17 Q You just spoke with Mr. Brown about
18 whether or not you used your stored water in Lake
19 Desmet. I think there is a to clear that up. I
20 just put before you what's been marked as J-61.
21 If you could turn, please, to page 12 of that
22 document. And at the very top of page 12, it
23 says -- there's a table, says, shareholder
24 exchange water, and then it indicates Pilch
25 Prairie Dog. Do you see that?

1 A Yes.

2 Q Do you understand that to be referring
3 to you?

4 A Yes.

5 Q And then it indicates that you own 50
6 acre-feet, which is what you testified to.

7 A Yes.

8 Q And then it says in 2004 you used the
9 50 acre-feet, correct?

10 A Yes.

11 Q So in 2004 you did call for that water;
12 is that right?

13 A I don't recall. I mean, I was busy. I
14 don't know what happened. We have irrigation was
15 going in, the ground was being put back in by
16 J.M. Huber and side rolls and pivots. I don't
17 know if we did or not. I can't answer that.

18 Q Fair enough. I will just represent
19 that I think J-62 is the 2006 hydrographer's
20 report and we can look there and see what the
21 record shows as far as your use of Lake Desmet
22 water.

23 So, Mr. Pilch, I understand that we are
24 talking about a number of years from long ago.
25 Unfortunately, we are very concerned about those

1 years and so we have to jog your memory about
2 them. My understanding from having heard you
3 today and also having read your deposition, you
4 don't have a great memory for exactly when you
5 started using CBM water on your property; is that
6 correct?

7 A Yeah, but you had it written down on a
8 book someplace. I mean, you hear verbal, you
9 know, 2001, '2, '3, '4, it changes fast and
10 furious. I'm sorry about that. I just don't
11 recall.

12 Q No problem. And you don't have any
13 documents showing exactly when the CBM started on
14 your property, right?

15 A I don't have documents, but I know what
16 year they started in 1999 and 2000. The water
17 was being put in prior to 2004. I do know that.
18 But I don't know when exactly it all got completed.

19 Q In your deposition you actually said,
20 well, the water started maybe in 2003, maybe
21 2004, and maybe 2005; is that right?

22 A Yes. But I researched that out with
23 2003 when I got close to full production in 2004.

24 Q So what did you research?

25 A I went to a irrigator contractor that

1 put -- sold equipment to the pivots and side
2 rolls. We bought the side rolls in 2002 and '3,
3 and J.M. Huber put in the side rolls and pivots
4 in 2003 and it was all production in 2003 and
5 2004 on the Prairie Dog Creek and they will kept
6 going all at once.

7 Q Now you -- in 1999 was when CBM started
8 on your property?

9 A Yes.

10 Q That's when you signed the leases,
11 correct?

12 A My mom did.

13 Q Your mom signed the leases. We don't
14 have a copy of those leases; is that right?

15 A I'm not aware of them. I have no
16 idea. It was really J.M. Huber right off the
17 bat. It might have been original contract, I
18 mean, and J.M. Huber, they are gone. Maybe
19 Storm Cat storm has them. I have no idea where
20 to get a hold of that.

21 Q In 1999 they started the process of
22 putting in the CBM wells; is that right?

23 A Yes, as I think about it, about --
24 that's when they had the leases, we had a lot of
25 things to get agreement first. And it goes down

1 in 2002, '3, '4, and so forth. I mean, how they
2 were going to do with their water. We just let
3 them do, and we had agreements, we had oral
4 agreements, and then we had written agreements,
5 and then we had amendments and so forth. I
6 found out in 2003 and '4 it was full blast. Then
7 they start spreading out on the dry lands.

8 Q Right. So in '99, 2000 they start
9 putting in the CBM wells, correct?

10 A Yes.

11 Q And then after that the CBM wells
12 started to increase on your property?

13 A Yes.

14 Q So they didn't all come all at once,
15 right?

16 A Yes.

17 Q And they also needed to do something
18 with the water. So they gradually started to put
19 in reservoirs, right?

20 A Correct.

21 Q And electric lines, correct?

22 A Correct.

23 Q And they had to be putting in irrigation
24 equipment, right?

25 A Correct.

1 Q So starting in 2003 they gradually
2 started to ramp up their irrigation on your
3 property, right?

4 A Yes.

5 Q And so in 2003 they weren't doing a
6 hundred percent of the property that they are
7 doing, say -- well, what do you consider the
8 maximum time that they did CBM? In other words,
9 the most acres?

10 A I think they did it all within a matter
11 of 2000 to 2004. 2005 maybe on the dry land
12 from -- as the wells, they started on Section 3,
13 4, and then they went east, they went and added
14 wheat fields later on. That's after 2004.

15 Q So getting back to my question, my
16 question, I mean to be really talking about the
17 irrigated land along Prairie Dog Creek. So I'm
18 ask you to just set aside the upland part of your
19 property, which isn't really relevant for our
20 purposes.

21 A I agree with that.

22 Q So in '03 they start doing irrigation.
23 And then they are gradually ramping up their
24 irrigation, right?

25 A Yes.

1 Q And that happened over a couple of years?

2 A From 2002 to 2004.

3 Q So you keep saying 2002. Now your in
4 deposition --

5 A I mean, they go, about 2004 came in was
6 already having irrigation on the irrigated land.

7 Q But not the entire portion, right?

8 A Of what?

9 Q Of your irrigated land.

10 A Yes.

11 Q You think that in 2004 they had all of
12 the irrigation done?

13 A With water rights. You mean all the
14 home ranch?

15 Q I'm asking you, let's say in 2008 you
16 testified with Mr. Brown, you testified to --
17 basically, you walked through and all of the
18 areas with the red cross hatches, right?

19 A Yes.

20 Q And you said those were irrigated in
21 2004. Now in your deposition what you said
22 maybe 90 percent of those were irrigated in 2004.

23 A I researched it. I was off 10 percent.
24 I researched it out and found out I was 2003.

25 Q 2003 was 90 percent of this?

1 A Yes.

2 Q So in 2001 and 2002 no irrigation from
3 CBM water; is that right?

4 A No, because it took them that long to
5 get into production in water. They can't do it
6 overnight. This took about two or three years.
7 They started off on this because they wanted it
8 for irrigated land for what we have crops on and
9 then they spread out.

10 Q So your testimony today is in 2001 and
11 2002 there was no CBM water used for irrigation
12 on your property, right?

13 A No. Correct.

14 Q 2003 there was maybe 90 percent. So
15 today you're telling us, well, hundred percent of
16 what's shown here was irrigated with CBM water?

17 A That's what -- I say it's hundred
18 percent in -- by 2004 came in we had hundred
19 percent irrigated on 2004.

20 Q You're the last irrigator on Prairie
21 Dog Creek, right?

22 A Yes.

23 Q And --

24 A Well, there is one ranch below us. The
25 old Trembass place. They've just had flood

1 water rights. There was one ranch below us.
2 We're only about three miles from them. They
3 said they had flood water rights. They don't buy
4 water rights or anything from Prairie Dog
5 shareholders. What I understood back in the '40
6 and '50s they had flood water rights. What flood
7 water rights, at that time the water commissioner
8 said that wasn't left over to go here. That's
9 flood water yet.

10 Q So I think my only question really was,
11 and I appreciate all the history, but my only
12 question was really it sounds like you're the
13 second-to-last irrigator on Prairie Dog Creek; is
14 that right?

15 A Yes.

16 Q So there's one below you and their name
17 is Trembass. So you've been there quite a long
18 time, right?

19 A Correct.

20 Q In recent years there's no return flows
21 in Prairie Dog Creek, right?

22 A Yes.

23 Q There were in the past?

24 A Yes.

25 Q But there aren't any more, right?

1 A Yes.

2 Q Now, as I understand it, there's direct
3 flow available to you down at the bottom of
4 Prairie Dog Creek up until sometime in July, and
5 it sounds like that's when you called for your
6 stored water; is that right?

7 A Right.

8 Q You testified with Mr. Brown you've
9 never seen a water commissioner in Prairie Dog
10 Creek, right?

11 A Correct.

12 Q And you've never --

13 A I haven't maybe. I haven't talked to
14 anybody.

15 Q You're not aware of any regulation
16 being done by the State of Wyoming?

17 A No.

18 Q And you haven't asked anybody to shut
19 down since the 1940s, is my understanding?

20 A No.

21 Q Is that right?

22 A Correct.

23 Q You testified with Mr. Brown that your
24 total irrigation was 200 acres. I understood
25 having looked at your water rights the total

1 irrigation that you do, if you're irrigating all
2 of your acres, is more like 300 acres. Is that
3 right?

4 A Yes, that's because of the dry land
5 pivots and side rolls are methane water.

6 Q I understand. I'm not making a
7 distinction between the source of water. I'm
8 just trying to get a handle, my arms around what
9 the total irrigated acres of your ranch is. And
10 my understanding it's 300 acres; is that right?

11 A Right. Well, with the water rights,
12 are you talking about water rights?

13 Q Shown here in the fields that you went
14 over with Mr. Brown, which is a figure from Mr.
15 Fritz's report, that is marked as WY 043250, all
16 of those fields that you ever went over with Mr.
17 Brown actually total up to 300 acres; is that
18 right?

19 A Not down in here they don't.

20 Q They don't. So you think this is just
21 200 acres?

22 A I say 180, 200 acres. Some maps, my
23 U.S.D.A. shows more acres than this. Aerial
24 photos, I have no idea how they come up with
25 this. My best knowledge of all the years back

1 in the '50s and '60s, I had all these fields
2 marked with a grain drill. We were pretty
3 close. What they tell me right here, it says, 23
4 acres. I always called it 34 acres.

5 Q Is it fair to say you don't know
6 exactly how many acres you're irrigating?

7 A Plus or minus. I don't know. My
8 concern about this is this shows less water on
9 here than acres for these fields. They draw maps
10 that way, I guess. I have no idea how they come
11 up with different figures.

12 Q I also understand you do not understand
13 fully what permits you use on your lands; is that
14 right?

15 A What do you mean?

16 Q Do you understand your water right
17 permit and where you use that water?

18 A I don't know exactly where. I do know
19 we do have permits for water on appropriated land.

20 Q You understand you have permits, right?

21 A Yes.

22 Q You don't know exactly which ones of
23 these lands are identified with which permits?

24 A I used to. I don't have my map with
25 me that says 1884 water right, 1907, 1903. I

1 just -- it's down around the creek, I do know
2 that.

3 Q Fair enough. When you're irrigating
4 you're able to refer to that document, right?

5 A Yes.

6 Q Sitting here today you can't help us
7 figure out exactly where which water rights are
8 associated with which acreage, right?

9 A That's correct.

10 Q You don't have any measuring device on
11 any of your diversions, correct?

12 A No.

13 Q And you use water from the tributaries
14 when it's available, right?

15 A Correct.

16 Q I want to talk a little bit about the
17 stored water before I move back to the CBM. I
18 understand you have 50 shares of water from Lake
19 Desmet, right?

20 A 50 acre-feet.

21 Q 50 acre-feet. Is that equivalent to 50
22 shares?

23 A I have no idea. I call it 50 acre-feet.

24 Q You don't know the details of the
25 permit for the exchange water, right?

1 A I probably heard it once before but I
2 can't remember right now.

3 Q We don't have any documents you can
4 look at about that?

5 A I don't know. I don't have any.

6 Q Someone --

7 A Somebody could find out if they wanted
8 to.

9 Q Someone from your operation calls for
10 that water every year?

11 A Yes.

12 Q Who do they call?

13 A Somebody in Buffalo. My mom used to do
14 that. We leave it to my sister. I say, make
15 sure you call for water for Lake Desmet. Whether
16 she did or not, I have no idea. They told her we
17 didn't have to call. Is it better to say if we
18 use it or don't use it.

19 Q You don't have any records related that
20 exchange water, right?

21 A No.

22 Q Do you know how long it takes for the
23 water to get from Piney Creek down to your
24 property?

25 A No.

1 Q Do you know if there's any transit
2 loss?

3 A No, but it don't raise it, the water up
4 any.

5 Q I'm sorry?

6 A We call for 50 acre-feet of water,
7 generally the creek doesn't rise. So we assume
8 that we have 50 acre-feet coming and we can use
9 it.

10 Q And then you just go ahead and use your
11 water?

12 A We use it. A lot of times there's not
13 enough water to use it. We just -- 50 years ago
14 everybody had flood irrigation. We had overflow
15 from one ditch and hay fields goes back in
16 Prairie Dog. It kept regenerating. Now there's
17 so many sprinklers and so many pivots, it don't
18 generate enough underground storage water.

19 Q Makes it hard on the down stream user
20 like you?

21 A Yeah. If you're up, you got all the
22 water you want.

23 Q Sounds like there's not much control
24 above you; is that right?

25 A No, must not be, because -- I shouldn't

1 say we had a lot of water, Prairie Dog or
2 storage, they had too much water going over. So
3 they had to cut down to 60 acre-feet of water.
4 60 shareholders. That was it. Used to be around
5 80 or 90. That kind of reduces the flow of the
6 stream. But generally Prairie Dog is early
7 spring and late summer and August, September,
8 it's a lot of water. And then you put cattle on
9 the creek and start freezing over, what happens
10 to your ground?

11 Q But there's become less and less water
12 available to you as that downstream the user are
13 right?

14 A Right.

15 Q Your awful close to the state line?

16 A Yes.

17 Q Going back to that Lake Desmet water,
18 in any given year do you know how much water that
19 Lake Desmet water you've used?

20 A No.

21 Q You don't know throughout the
22 irrigation season how much you've used, right?

23 A No, have know way to control. Use
24 just use 50 acre-feet of it.

25 Q Nobody ever comes and tells you how

1 much you've used?

2 A No.

3 Q Do you get a receipt at the end of the
4 year?

5 A No. Receipt, we paid for it. 50
6 acres, we call for it. That's our receipt. I
7 have know idea how they monitor it. I don't
8 know. I can't answer that question.

9 Q So you don't get a report at the end of
10 the year?

11 A No. Unless somebody else does. I
12 haven't no knowledge about it.

13 Q Turning from the storage water, let's
14 go over to that CBM. Now, you don't keep records
15 of your water use, correct?

16 A Yes.

17 Q You also don't keep records of the CBM
18 water that was used on your property?

19 A No, but we don't have records. They
20 have the records. I mean, what do you mean
21 records?

22 Q Documents that indicate how much water,
23 CBM water, was actually used on your property.

24 A No.

25 Q So there is no document to help your

1 memory to show exactly which year?

2 A Maybe they do. I don't know. I have
3 no idea what their regulations are.

4 Q You're not aware of any documents?

5 A No.

6 Q You actually -- as I understand it, you
7 actually looked for those documents before your
8 deposition, right?

9 A Yes.

10 Q You didn't find any?

11 A No.

12 Q I understand the agreement that you had
13 with Huber, that was a verbal agreement, right?

14 A It was until 2004.

15 Q In 2004 it became a written agreement?

16 A Yes. We had an amendment to it.

17 Q What changed?

18 A The writing that we all agreed, it's a
19 writing, my brother and I, we signed a document
20 that all the verbal agreements will stand in
21 order when methane started in 1999 to present and
22 then continue on agreements we had, like,
23 irrigation equipment, reservoirs, pits, blinds,
24 electric lines, right-of-ways, easements,
25 roadways, what we agreed to, what we got paid

1 for, so many dollars per rod for roadways and so
2 forth. We finally got that in writing.

3 Q In 2004 when they came to you and gave
4 you a written agreement, were they adding some
5 acreage to the property?

6 A No.

7 Q The document that you're talking about,
8 are those ones that you have since found since
9 your deposition?

10 A Yes. I went and got them.

11 Q You got them from?

12 A From Western Water Resources. I was
13 looking for the years what the water was and so
14 forth. We had to have someplace, could be
15 accountant's office or lawyer's office. It's the
16 same document that my brother and I signed in
17 2004. I had it, but I thought I better find
18 mine. It might be this place or gone. Might be
19 still in my possession. I got one now.

20 Q So in your deposition you described how
21 as the CBM water was coming in over a number of
22 years, you were irrigating acreage, and then as
23 they would come in and fill in that acreage, they
24 would take that over and then you would stop
25 irrigating; is that right?

1 A I don't follow what you're saying.

2 Q I mean to say, when CBM first came in,
3 they weren't irrigating all your acreage, correct?

4 A Correct.

5 Q And the acreage that the CBM was not
6 irrigating, you were irrigating, correct?

7 A Correct.

8 Q And you were flood irrigating that
9 land?

10 A Yes.

11 Q And then over a period of years CBM
12 came in and irrigated more land, correct?

13 A Correct.

14 Q And when they started irrigating a
15 parcel of land, then you would stop irrigating
16 that parcel?

17 A No, we didn't -- we didn't -- when they
18 irrigated across the creek, east side of the
19 creek, they did the whole thing. We didn't do
20 anything except go by the west side, and we flood
21 irrigate, that's the only ditch we had. That
22 was it. We didn't touch -- Huber, when they put
23 that in, that's their problem. We bought the
24 side rolls, they put the service in, the side
25 rolls. We didn't mix up with them period.

1 Q I understand. So once they started
2 irrigating a field, that was their field to
3 irrigate and you moved on and irrigated different
4 acreage, right?

5 A Same on the appropriated water rights.
6 But they would irrigate. Because that was -- we
7 knew we could do that because it was a long
8 narrow field and it was down of the west side of
9 the house, we told them we don't want no lines,
10 no wells, my mom put a stop to all that. No
11 wells within 500 yards of the house and do not go
12 in hay fields, and so forth. And we did. That's
13 our agreement. Written agreement. They can do
14 whatever they want, except roadways, but not in
15 our irrigated croplands which we have water
16 rights for period.

17 Q The acreage that's not irrigated by
18 CBM, in your deposition you said you will think
19 it's approximately somewhere between 70 and 100
20 acres, right?

21 A Yes.

22 Q And you irrigated that 70 to 100 acres --

23 A Well, really, not 70 to 100. I think
24 it was around 65. Probably around -- well, we
25 had 45, this here they say is only 45 acres. I

1 always said 66 acres. So there you go.

2 Q So you're not exactly sure how many
3 acres, right?

4 A Well, 60, 70 range. That's our water
5 rights. So methane don't have anything to do
6 with that.

7 Q Have you ever had that acreage surveyed?

8 A Oh, yeah, we done it so many different
9 times. Like this map here, everything surveyed,
10 aerial photos, I had U.S.D.A., one field says 45
11 acres, one says 62 acres, one says 64. Depends
12 how it is on the creek. A lot of these fields on
13 the creek is wasteland.

14 Q Unfortunately, we don't have the
15 benefit of those surveys here today. And so
16 you're telling us it is make 60, 70, maybe more
17 acres; is that right?

18 A Of what?

19 Q Of the land that is not irrigated by
20 CBM?

21 A Yes. If I would say, it would be
22 between 50 to 70 acres.

23 Q And that acreage was irrigated every
24 single year, right?

25 A Yes.

1 Q Including 2004 and 2006?

2 A Yes.

3 Q So you walked through these years on
4 all of this acreage with Mr. Brown, 2004 and
5 2006.

6 A H-m h-m-m.

7 Q I don't need to walk through every
8 single field. But I want to ask you, all of
9 those acres that are not irrigated by CBM, those
10 were irrigated by you in 2001 and 2002, right?

11 A Yes.

12 Q And they were irrigated by you in every
13 year besides 2004, right?

14 A Right.

15 Q And if you had water available, you
16 used it, right?

17 A Yes, not with the CBM, Prairie Dog.

18 Q Right. You used your other water
19 rights, your other sources. And it wasn't CBM
20 water?

21 A We had no trouble there. We had only
22 50, 60 acres. Trying to irrigate 200 acres
23 without CBM we'd be in big trouble. We'd still be
24 irrigating until Christmas.

25 Q The CBM water has a high FAR, right?

1 A Correct.

2 Q What do you understand FAR to be?

3 A High in salt and sodium.

4 Q Does that have an impact on the soil?

5 A Yes, it will. That's why we have an
6 agreement with sulfur and gypsum. That one tract
7 of land, I can tell you where the gypsum pile is
8 on the map.

9 Q Sure. Let me give you a pointer.
10 There's a button there you can use. You can show
11 us where the pile is.

12 A Right there, that's not our property.
13 Right there, that's gypsum right there. That's
14 a bridge. There's a corner section right there
15 is somebody else's property. Goes right down
16 through here.

17 Q Does that help?

18 A Right at the corner in here. It's on
19 the edge of it. Part of the Pilch Ranch. Hard
20 to read the map. Right in here. Right in there.
21 That's where the gypsum is located. We irrigate
22 that not any more.

23 Q That's because it has --

24 A Sulfur and gypsum.

25 Q That's for the treatment from the CBM

1 water?

2 A Yes.

3 Q And do you understand that there are
4 other irrigators who don't like to use CBM water?

5 A I don't know. I haven't heard anybody.

6 Q You don't know any of them?

7 A No.

8 Q If you don't treat the water does it
9 have an impact on your production?

10 A I couldn't answer that. Probably would
11 be if it turns all hardpan, salt. It would be
12 white. Nothing would grow, I assume. I'm not a
13 geologist, I'm not a -- I know what salt can do
14 to soil.

15 Q One moment.

16 SPECIAL MASTER: Sure.

17 MR. WECHSLER: Thank you very much. I
18 appreciate your testimony.

19 THE WITNESS: Thank you, sir.

20 SPECIAL MASTER: I just have one
21 question since I'm actually still trying to
22 understand this myself. But my only question is
23 the various fields when you went over with Mr.
24 Brown, you indicated you now irrigate with CBM
25 water. Did you irrigate those fields before you

1 brought CBM water on to them?

2 THE WITNESS: Yes.

3 SPECIAL MASTER: Okay. That's the only
4 question. Thank you, Mr. Brown.

5 REDIRECT EXAMINATION

6 Q (By Mr. Brown:) Let me follow up
7 immediately with regard to that question the
8 special mater just asked you. You also had
9 indicated to Mr. Wechsler that you had irrigated
10 in 2001 and 2002 the same fields that later were
11 irrigated with CBM water; is that right?

12 A Yeah, before -- we had to get off them
13 fields. That's when the equipment comes in. We
14 still -- we didn't irrigate, I guess. We paid
15 what we can and tear everything out and got
16 everything done.

17 Q Let me ask you this: Prior to the CBM
18 water coming to your property, did you irrigate
19 all the same acres that was irrigated with CBM or
20 fewer acres?

21 A Fewer acres.

22 Q Fewer acres?

23 A Yes.

24 Q Do you think you used as much water as
25 they did with CBM or less? Do you have any idea?

1 A I sure don't.

2 Q You just know there were fewer acres?

3 A Yeah. We probably used less water.

4 Had to be. I mean, we were flood irrigating, we
5 had to use a lot more water. We were so happy
6 that we don't have to jump on a four wheeler and
7 pack irrigation dams around.

8 Q You don't have to chase the water down
9 the ditch, and that's fine?

10 A Yes. Chase beavers out of the canals.

11 Q Mr. Wechsler asked you a few questions
12 about your Lake Desmet water. Do you remember
13 that?

14 A Yes.

15 Q Do you pay for your Lake Desmet water
16 every year?

17 A No.

18 Q Why not?

19 A I have no idea. I don't know, maybe I
20 should have researched that. I don't know when
21 my dad back in the '50s they bought it from some
22 individual, Johnny Bice and sons, and I don't
23 know what agreement they had or what happened,
24 how much he paid for it. We were kids. I
25 didn't pay much attention.

1 Q But as far as you know, you don't pay
2 for that water every single year?

3 A Unless somebody's paid for it, I have
4 no idea. I could find out. I could ask around
5 what happened. I could call and find out what
6 the deal is. I assumed we own the water and was
7 paid probably back when we bought it. That's it.

8 Q All right.

9 A I don't know.

10 Q Okay.

11 A I'm just guessing.

12 Q You also had a discussion with Mr.
13 Wechsler with regard to the fact that there is
14 less water now available to you at the bottom of
15 Prairie Dog Creek than there had been in years
16 past. Do you remember that?

17 A Yes.

18 Q You briefly mentioned the fact there is
19 less water coming through tunnel hill. Do you
20 remember that?

21 A Yes.

22 Q Can you describe that to more for us?

23 A Well, it started with a lawsuit, I
24 think, way back, I don't know, '90s. Washed
25 somebody's property away down and that's where

1 the problem started. You probably heard about
2 it. I don't know exactly.

3 And then we were assessed thousands of
4 dollars, we shareholders, to fix the diversion
5 going over the tunnel hill and we had to rip-rap
6 the creek. I moved boulders up there by hand.
7 I could get water from Piney Creek to Prairie Dog
8 in the '50s and '60s.

9 Q So is it your recollection they had to
10 do some rehabilitation for the water that was
11 coming over from Piney Creek? They had to put
12 it in the tube, right?

13 A Yes.

14 Q And after they did that, they weren't
15 able to bring over as much water from the Powder
16 River Basin as they had before?

17 A I can't -- I don't know. I assume,
18 or -- I don't know. I mean, I wish -- we had a
19 lot of water but it was way too much. I don't
20 know how they regulated 50 shares. I don't know
21 what 50 shares, how much feet per second it is
22 measured in. I don't know. I have no idea how
23 they measure is that.

24 MR. BROWN: That's all I have, Mr.
25 Pilch. Thanks for coming.

1 SPECIAL MASTER: Thank you. So, Mr.
2 Pilch, those are all the questions. Thank you
3 very much for coming all the way up here.

4 THE WITNESS: I've enjoyed myself.

5 SPECIAL MASTER: I hope you are able to
6 get back down tomorrow. Are you headed down
7 tomorrow or are you going to try today?

8 THE WITNESS: No, my wife said I can't
9 go tonight.

10 SPECIAL MASTER: My wife wouldn't let me
11 go either.

12 THE WITNESS: My wife tells me what to
13 do after 50 years.

14 SPECIAL MASTER: I've only been married
15 for 30 and my wife does the same. Thank you very
16 much.

17 Okay. So, Mr. Kaste, I assume that's
18 the last witness then for today, and we'll come
19 back tomorrow. I'm actually impressed, we made
20 it through all the witnesses today. Six. Which
21 is a record.

22 MR. KASTE: We are working on Wyoming's
23 time schedule now and it's a lot faster.

24 MR. WECHSLER: Less information.

25 MR. KASTE: Focus is the right term.

1 (Hearing adjourned.)

2
3 REPORTER'S CERTIFICATE

4 I, Richard L. Mattson, Certified Court
5 Reporter, certify that the foregoing proceedings
6 were reported by me in machine shorthand and
7 thereafter reduced to typewriting via
8 computer-aided transcription; and that it is a
9 true and correct record of the proceedings
10 contained herein.

11 I further certify that I am not attorney for,
12 nor employed by, nor related to any of the
13 parties or attorneys to this action, nor
14 financially interested in the action.

15 IN WITNESS WHEREOF, I have set my hand and
16 seal at Billings, Montana, this 10th day of
17 January 2014.

18 /s/ Richard L. Mattson

19
20 Richard L. Mattson
21 Certified Court Reporter
22 Notary Public for the
23 State of Montana
24 Residing at Billings

25 (Seal)
My Commission expires:
June 15, 2015