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Trial Transcript, Vol. I, Morning Session

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File 108
4359
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Case #4993

File # 108

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IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
WASHAKIE COUNTY, STATE OF WYOMING

FILED _____
2/1 1981
Margaret V. Hampton CLERK
Civil No. 4993

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

BEFORE: The Honorable Teno Roncalio, Special Master Presiding

BE IT REMEMBERED that on this 26th day of January, 1981,
Federal Building, Judge Kerr's Courtroom, Cheyenne,
Laramie County, Wyoming, the above entitled matter came
on for trial before the Honorable Teno Roncalio, Special
Master Presiding, whereupon the following procedures were
had, to wit:

P R O C E E D I N G S :

ORIGINAL

FRONTIER REPORTING SERVICE

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MR. GREG REED
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Lander, WY

APPEARANCES

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FOR THE STATE OF WYOMING:

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FOR THE UNITED STATE:

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MR. JOSEPH MEMBRINO
U.S. Dept. of JUSTICE
Washington, D.C.

FOR THE ARAPOHOE TRIBE:

WILKINSON, CRAGUN & BARKER
1735 New York Ave., N.W.
Washington, D.C. 2006
BY: MR. R. ANTHONY ROGERS

FOR THE SHOSHONE TRIBE:

SONOSKY, CHAMBERS & SACHSE
200 M. Street, N.W.
Washington, D.C.
BY: MR. HARRY SACHSE

1 THE SPECIAL MASTER: Ladies and Gentlemen,
2 will we please come to order. May we have appearances,
3 please, beginning with you on my left.

4 MR. TROUGHTON: I'm John Troughton,
5 Wyoming Attorney General.

6 MR. MERRILL: James L. Merrill, Special
7 Assistant Attorney General, State of Wyoming.

8 MR. WHITE: I'm Michael D. White, Special
9 Assistant Attorney General, State of Wyoming

10 MR. DONNELL: I'm Jeff Donnell for
11 various private parties.

12 THE SPECIAL MASTER: Repeat a little
13 slower.

14 MR. REED: I'm Greg Reed, I represent
15 H. D. Ranch and Langford Keith, Mr. and Mrs. Crow, Mr. and Mrs.
Allen.

16 THE SPECIAL MASTER: Yes.

17 MR. FILLERUP: Marvin Fillerup representing
18 Sidon Irrigation District and various private parties.

19 MR. GRAVES: Charles Graves, United States
20 Attorney for the District of Wyoming.

21 MS. SLEATER: Regina Sleater, U. S.
22 Department of Justice.

23 MR. MEMBRINO: Joseph Membrino, United
24 States Department of Justice.

25 MR. ECHOHAWK: Tom Echohawk, United States

1 Department of Justice.

2 MR. ROGERS: Tony Rogers for the Arapaho
3 Tribes. Mr. Sachse who is here is out of the room at the
4 present time. He was representing the Shoshoné tribe.

5 THE SPECIAL MASTER: Does anyone in the
6 audience wish to put in an appearance in their own behalf.

7 MS. YONKEE: I'm Ruth Yonkee and I represent
8 various individual water rights holders.

9 THE SPECIAL MASTER: Ms. Yonkee, you are
10 welcome to come through the gates and sit at the counsel
11 table and so are other counsel.

12 MR. AVERY: Steve Avery representing various
13 individual water rights users.

14 THE SPECIAL MASTER: Are there any other
15 parties present who desire to show an appearance?

16 (No response.)

17 THE SPECIAL MASTER: If not, we're ready
18 to proceed and I'm happy to report that for the first
19 time in at least the last six or seven sessions we do
20 not have filed motions to dispose of before proceeding
21 this morning.

22 I have about three statements that I think are
23 important enough to be made at this time to counsel and
24 to counsel for all major parties, to counsel for other
25 defendants and others interested in the litigation. This

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1 may be several months premature, but it's nevertheless
 2 necessary because it's my hope that these hearings will
 3 be concluded by June or July of this year and we'll begin
 4 the actual printing of the report; certainly outlines the
 5 preliminary material, introductory materials, boundary
 6 descriptions and matters upon which important material
 7 can be prepared and some are now prepared and ready to
 8 be submitted to a printer. We can also begin material
 9 regarding other somewhat routine material, and that, of
 10 course, will be followed by the material that will have
 11 have to be used in recommending findings of fact and
 12 conclusions of law. My assistants have made arrangements
 13 and I have visited the office also with Mr. Dan Cunningham
 14 with the State of Wyoming, DAFC printing plant here
 15 in Cheyenne. We understand that that plant is amenable
 16 to begin the printing and use those facilities which
 17 would appear to be the minimum expense possible for all
 18 parties concerned, but it does raise several points. And
 19 we have to be careful, perpetually of these overlapping
 20 nuances and points. One, technically I suppose it would
 21 be possible for somebody from the State of Wyoming to
 22 exert some influence to get their hands on a report
 23 before the parties. I think that can be negative and
 24 forbidden by instructions from the Attorney General to
 25 his staff and instructions by the State Engineer to his

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staff that they will abstain from making any inquiries
 or visits to the DAFC printing plant and allow those
 reports to come directly to the Master's office upon
 being printed.

* * * * *

1 THE SPECIAL MASTER: I know of no way to avoid
2 that, and if the attorney -- if the United States
3 Attorney's office objects to that, why, this is the
4 time to make it known. I welcome opinions from
5 Counsel regarding that arrangement. My thought
6 was that at least if Mr. Cunningham does it in this
7 plant and keeps track of his costs, as his cost
8 is submitted to me, I will levy a bill of one half
9 of that cost to the United States of America, which
10 carries out Judge Joffe's cost order, and we
11 probably will affect a savings of five or ten
12 thousand dollars, I suppose, for both parties.

13 On the other hand, if there are objections,
14 I would like you to please register them in the
15 next 30 days, and if none are registered in writing
16 to me or expressed now, for that matter, I will
17 assume that these printing arrangements referred
18 to are satisfactory to all Counsel and all parties
19 of interest.

20 MR. TROUGHTON: Mr. Master, let the record
21 reflect the State of Wyoming has no objection to
22 Wyoming DAFC printing, whatever branch
23 of the Department of Administration Fiscal
24 Control it is, to provide these services. Let
25 the record reflect I will instruct all of my staff

1 on threat of disciplinary action not to inquire
2 of DAFC as to this confidential matter.

3 I would further issue to DAFC instructions
4 that they may and should retain those matters
5 as confidential matters between the court. That
6 is as far as I can go, and the other parties I
7 think should make a similiar statement for the
8 record, if they agree.

9 MR. GRAVES: May it please the Court, the
10 United States has no objection to the procedure.
11 However, the United States would feel that perhaps
12 it would be appropriate for the Master to type
13 up an original of his order, which is recorded
14 in an official place, before copies are sent to
15 the printer in order to prevent any leaking of
16 the material. We think under those circumstances
17 the problem, any problem that might arise, would
18 be solved.

19 MR. RONCALIO: May I hear that again, please?
20 You think that I should --

21 MR. GRAVES: We see no reason, Your Honor,
22 why the Master could not prepare his decision and
23 file it sealed, for example, with the District
24 Court and have copies prepared by the printer;
25 the theory being, that the Master then has made his

1 decision and the publication thereof would be a
 2 procedure after the fact, rather than printing
 3 drafts of the decision and then making changes.
 4 That would be the only question that the United
 5 States would have about it.

6 MR. SACHSE: May it please the Court, Harry
 7 Sachse for the Shoshoni Tribe.

8 This is really just a point of information.
 9 I am trying to understand what your proposal is.
 10 I would assume, just from my experience with the
 11 printers, that if you prepared a part of your final
 12 report, that there would be no real reason to give
 13 that to a printer until you had the whole report
 14 prepared, because the printer can take a 150, 200
 15 page report and print it within a week or so.
 16 And in the time schedules that we are talking
 17 about, I wonder if part of the problem couldn't
 18 be avoided by simply not sending your preliminary
 19 drafts and sections of the report that you already
 20 worked up to the printer until you are ready to
 21 send the whole thing, then there is no problem
 22 of something leaking out ahead of time.

23 THE SPECIAL MASTER: Let me say to you and to
 24 Mr. Graves, the plan you suggest has the advantages
 25 you mentioned, but it has one glaring disadvantage

1 to a Special Master, and that is that once the
 2 original is sent to Judge Joffe and is pre-
 3 sented to him in fulfillment of my obligations,
 4 the exhibits are filed in his court as required
 5 by statute, and he has already, of course, asked
 6 for 2,000 copies. Every lawyer in this case is
 7 going to be screaming to me, "Where is my copy?
 8 I see in the newspapers what has happened, but
 9 where is my copy?" This is going to be difficult.

10 I was under the impression I was going to
 11 have all copies printed ready for distribution
 12 at the time the report is filed in Worland. Now,
 13 I welcome suggestions from Counsel or those
 14 who have been through this before or down the
 15 road before as to how this can be accomplished.
 16 I know it can be accomplished by finding an
 17 independent print shop either here in Wyoming or
 18 in Salt Lake or Denver or Billings or someplace
 19 and get the thing done that way.

* * * * *

1 MR. GRAVES: May it please the Court, again,
2 Your Honor, certainly Judge Joffe could order the orig-
3 inal document sealed until such time as the printing
4 is complete, which would preclude access to any of the
5 counsel and to the press and would solve that problem.

6 THE SPECIAL MASTER: All right. I believe
7 it can be worked out and I will proceed, unless I re-
8 ceive written objections from pro se or other counsel
9 in the next thirty days, until the end of February.

10 Would the record please show that since we have begun,
11 we have had appearances -- I call again for appearances.
12 Mr. Webster?

13 MR. WEBSTER: Ed Webster, an attorney for
14 private clients from Cody, Wyoming.

15 I'm sorry, Your Honor, the Order said that the
16 court was going to be held in the basement of the
17 Hathaway Building, the auditorium, I believe, and I
18 have been waiting over there.

19 THE SPECIAL MASTER: Well, Mr. Webster, I
20 get hell for an awful lot of things. You might as
21 well blame that on me.

22 MR. WEBSTER: I'm not blaming you. I'm
23 apologizing to you.

24 THE SPECIAL MASTER: Well, I'm sorry. We
25 thought it was here, and I'm sorry if there was an

1 ambiguity on that.

2 MR. WILGUS: I would also like to enter
3 an appearance, Van Wilgus from Cody, representing
4 various private adjudicators, appropriators in that
5 area.

6 THE SPECIAL MASTER: And Mr. Thomson?

7 MR. THOMSON: Bill Thomson, local counsel
8 for the Shoshone and Arapahoe Tribes, Cheyenne.

9 THE SPECIAL MASTER: And others that have
10 come in later?

11 (No response.)

12 THE SPECIAL MASTER: All right. The second
13 announcement for this morning is one dealing with a re-
14 cent event. Before proceeding, I would like to review
15 this case from its very first, as far as I was concerned,
16 and that was the meeting of the parties which took place
17 in August of 1979 in Worland, to its present posture to
18 date.

19 I believe we are turning the corner in this lawsuit.
20 We can see the end of the road, and we are now in the
21 crucial six months to its conclusion, and I should like
22 to think that by July this matter will be ready for
23 deliberation by the Special Master and ready for the
24 report to which I earlier referred.

25 In the past year and a half we have assembled a

1 record of over 6,000 pages. We've spent twenty-six days
 2 in full hearings, fourteen days in conferences -- I beg
 3 your pardon -- we have over 6,000 pages of pleadings
 4 filed since I have come into this case, and we have
 5 amassed a transcript of 2,854 pages to date, to give
 6 you some indication of the size of the lawsuit.

7 I have no idea how many exhibits are in evidence
 8 now. We have in addition to that endured, I think, a
 9 good bit of the inevitable conflict that was associated
 10 with this unprecedented litigation, and we believe we
 11 have sent it along its way to a lawful, orderly and, I
 12 hope, just trial at the Special Master level.

13 It remains a most important single issue in this
 14 case and in the related matter, and it's all contained
 15 in the parameters of the Pre-Trial Order for the claims
 16 of the United States of America on behalf of the Indian
 17 Tribes and of the Tribes themselves in their own behalf
 18 regarding reserved rights for water and the acreage on
 19 the Wind River Indian Reservation.

20 It appears that this is also a good time for me to
 21 review the sensitive relation of the Special Master to
 22 parties and to counsel.

23 So far only two matters have arisen that have re-
 24 quired attention in this regard, and I do not deny the
 25 fact that they did require attention, which is what they

1 received.

2 So far the first of these was the fact that I had
3 made arrangements at the outset with Dean Maxfield at
4 the University of Wyoming Law School for particular
5 research, either by student groups or faculty, for
6 which I would give some modest compensation.

7 Following one such event in which one faculty
8 member supplied me with a memorandum regarding, in his
9 opinion, the limitations of the conformation concept
10 by a Special Master, and following inquiry from counsel
11 on this matter, my practice was discontinued, and I be-
12 lieve that objection was stilled.

13 The second matter that was also raised by Wyoming
14 counsel was the fact that I had lobbied in Washington
15 as an attorney, and the law permits me to practice law
16 and be a Special Master, as all of you know.

17 I had lobbied for a group of oil companies that
18 had an interest in having a lease reinstated in the
19 Santa Barbara Channel of California.

20 If that legislation had been successful, one of
21 the parties that would have incurred a benefit in that
22 lease was the Husky Oil Company, and they are, of
23 course, a party defendant, as are some 20,000 other
24 people in Water Division No. 3.

25 I don't know for sure, but I believe that that is

1 as totally remote from any possible conflict or impair-
2 ment upon my duties to serve as objectively, as fairly,
3 as anything I know. Yet, it was raised.

4 It's my understanding from those who inquired
5 about the Husky matter that upon learning that I am not
6 counsel to Husky and never have been, or to the family
7 that up until recently owned it, that has met the test
8 of their inquiry.

9 My activities as an attorney with an office in
10 Worland have now given rise to yet another inquiry.
11 Last summer I lobbied to help defeat, and I was rather
12 proud to help defeat, legislation adverse to Wyoming's
13 right to levy a coal tax, a severance tax, upon the min-
14 ing of surface coal.

15 How this can affect in any way my ability to serve
16 impartially in these proceedings, I do not honestly know,
17 but I know that it has been raised.

18 So in this regard, let me review from the very be-
19 ginning my relationship to this role that I have here
20 serving you as a Special Master.

21 Judge Joffe selected me in March of 1979, and he
22 ordered all defendants be given thirty days to file
23 written objections to my selection.

24 At that time I believe it was common knowledge in
25 Wyoming that I was a retired Congressman, that I had

1 returned to the practice of my profession, which I was
2 an enrolled member of and in good standing in this
3 State since 1948 and that I was doing this after a
4 tenure spent in the House of Representatives.

5 I don't believe that there's an objection to a
6 practicing lawyer serving as Special Master, and I
7 believe that my conduct in financial matters and in
8 avoiding acts covered under the generic term, "conflict
9 of interest", meets the highest test of this profession.

10 Now, if some of you feel otherwise about my work
11 in having lobbied on behalf of Wyoming on a severance
12 tax policy, or for any other reason, I think you should
13 step forth now and make your objections known. Other-
14 wise, your complaint will ultimately be unavailing, I
15 think, if you wait until a report is filed to make ob-
16 jections to a Special Master's activities.

17 I believe that my actions the past year and a half
18 have not only minimized the risk of a conflict of my
19 duties, but I fail to see how any of these activities
20 that I have mentioned conflict with any of my duties.
21 And, again, as I say, if you feel otherwise, this is
22 your time to speak up and be heard.

23 If you do not do so now, you may very well be pre-
24 cluded from making the objections at a later date.

25 I have no allusions, ladies and gentlemen, about

1 writing a report that will be acceptable to all three
2 major parties and to the thousands of other defendants.

3 I know that appeals will be almost inevitable, but
4 it is my hope that appeals will be based upon the con-
5 tents of the Master's report and not upon his behavior
6 as a Master. So to foreclose this latter likelihood, I
7 thought a few moments for this statement were in order,
8 and I hope that most or all of you will concur.

9 Again, now is the time to make your inquiry, and
10 if you don't have a complaint, but even an inquiry, if
11 you are at least raising an inquiry, I will, of course,
12 submit myself before Judge Joffe for an immediate in-
13 quiry under oath and the Judge can proceed and the Judge
14 will make his findings accordingly.

15 If no such inquiry is made, I believe this matter
16 also will be moot, as were the other two, and I think at-
17 tempts to raise it later will be denied.

18 Now, this matter was raised because I suppose some
19 perhaps felt it would place me too close to the Governor
20 of Wyoming, too close to the Attorney General.

21 Well, ladies and gentlemen, you can't be much
22 closer to people that you have been friends with all of
23 your life other than receiving compensation, but not as
24 a retainer. This was at \$75 a day for my work. Others
25 felt that is not appropriate because the State is a party

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to this lawsuit.

Well, I think all of you know I have been receiving a check from the United States of America every year now, but I like to think that it is my annuity and I earned it.

* * * * *

1 State of Wyoming is totally resolved.

2 THE SPECIAL MASTER: It's my intention
3 to continue the trial. That's what you asked.

4 MS. SLEATER: Well, I meant not have the
5 evidence this week.

6 THE SPECIAL MASTER: No, I'm not postponing
7 the hearing any more, Regina. I think, I really believe
8 I've been understanding, especially of the demands for the
9 seven week delay that we had and perhaps if I had been,
10 if I have a fault, I've been a little too condescending
11 to try to be a nice guy to everybody. And the day of
12 being a nice guy to everybody has come to an end as of
13 9:00 this morning, because what we have before us now
14 is a tough job of deviding water, how much for whom.
15 So I'm going to keep going with the trial.

16 MS. SLEATER: Your Honor, we anticipated
17 that and the United States is ready to commence trial
18 this morning.

19 THE SPECIAL MASTER: Mr. Rogers.

20 MR. ROGERS: Mr. Master, as you know, I
21 was in attendance last Thursday on the record in your
22 chambers where this matter was discussed. And I indicated
23 at that time that as an attorney for the Arapaho tribe
24 and I have the prior clearance for Mr. Sachse who is
25 the attorney for the Shoshone Tribe, that the two of us

1 THE SPECIAL MASTER: (Continued) Earned
2 for years in combat, three years in Europe and twenty-one
3 creditable years in my country either as a Congressman
4 or other things, and I think again that those things
5 couldn't have a bearing on my capacity to serve you
6 fairly in this matter. I have discussed this matter
7 with Judge Joffe and this procedure has his approval.

8 MR. WHITE: Your Honor, on behalf of the
9 State of Wyoming, I would like to say that we're very
10 appreciative of the forthright candid disclosures you've
11 made. It's an excellent disclosure, it's consistent
12 with the highest standards of our standards. You should
13 be complimented. And now the State of Wyoming expressly
14 and irrevocably waives any and all objections to any
15 of the matters of past or continuing nature which were
16 described in your statements.

17 THE SPECIAL MASTER: I thank you, Mr. White.
18 Could I hear from anyone else that might have had a
19 question of any kind in this regard?

20 MS. SLEATER: Your Honor, at this time
21 the United States has no question, but I would just like
22 to renew, for the record, the request that the United
23 States made last week in conjunction with other parties
24 in this matter that the trial be continued until the
25 notice time has run and this issue, as raised by the

1 had no objection to your continuing as the Master based
2 on what we knew of the situation with your relationship
3 with the State of Wyoming in this case. I also
4 indicated that it would be -- we felt we were obligated
5 to obtain the clearance of our clients as well, which
6 we have at this time not been able to do.

7 I, as an attorney for the Arapaho tribe, I'm not
8 sure what Mr. Sachse's views are on this, am prepared
9 as far as our situation is to proceed now, but our
10 clients are in town, we have quorum of both business
11 counsels, I understand here. And I believe that we can,
12 during the course of the week, obtain that clearance.
13 I do have to raise two other points though for the record.
14 One is to renew my -- I don't know what you call it, an
15 inquiry I suppose, as to the Master's intention concerning
16 continued responsibility in his contractual relationship
17 with the State of Wyoming and the lobbying matter.

18 THE SPECIAL MASTER: I'm prepared to
19 answer that now. The relationship of all of my
20 associates, Mr. McDaniel, Dennis Erhardt and myself
21 were the contractual ones with the government's office
22 whereby we earmarked \$25,000 during 1980 for these
23 functions. I don't know how much of that I received,
24 probably 7,000 or so. At the end of that time I was
25 asked to prepare another letter if I wished to continue

1 in 1981 because this legislature is not going to go away,
 2 this attempt of the Congress, of those from the big
 3 cities that are in Congress to roll back Montana from
 4 thirty percent to twelve percent and Wyoming from sixteen
 5 percent to twelve percent. I did not prepare such a
 6 letter. Somebody in the office prepared it and it was
 7 sent to the Governor's office. I do not have it back,
 8 Mr. Rogers, but I must say to you in good conscience,
 9 that if the governor of this state or the president of
 10 the senate or the speaker of the house said to me, can
 11 you help kill that bill, Roncalio, I could not say to
 12 them, no, I won't go to Washington and talk to some of
 13 the people in Washington. To let that bill pass, Mr.
 14 Rogers, to roll back Wyoming from sixteen percent tax
 15 to twelve percent would be to deny from eighteen to
 16 twenty-five million dollars a year to everybody in this
 17 state, Indian, non-Indian, plaintiff or defendant involved
 18 or not involved in our dispute, and I simply cannot see
 19 that. I may not get called by the Governor, I can see
 20 where we have some reason, that he might not want to
 21 call me anymore, but if push gets to shove and that bill
 22 can be defeated by my intercepting with my old friends in
 23 the House committees and he asks me to do it, I cannot in
 24 good conscience say to you or anyone else that I would
 25 say no, I'm not going to do that. Because it has, it's

1 been raised in a Special Master proceedings, Mr. Rogers,
2 so you should know that when you talk with your joint
3 tribe, joint tribal council.

4 MR. ROGERS: Thank you, Special Master,
5 and I think it is a matter we will have to raise with them,
6 and so therefore any final position of the tribe will have
7 to wait until after our discussion with them.

8 The second question I would raise is our concern,
9 assuming that our clients agree with their attorneys in
10 this regard, I still have a concern about the notice of
11 this matter and perhaps the matter relating to the oil
12 company representation which I assume is the extent of
13 any involvement with any parties in the case that your
14 office has had, but the notice of those two matters is,
15 I believe, a matter that must be noted to all the parties
16 in the case, and I would like, as you stated in your
17 statement, I don't understand what it was as to the
18 procedure, either you or the state will follow in getting
19 notice to all of the parties to this case or this matter.

20 THE SPECIAL MASTER: Let me ask before we
21 proceed, you asked if these are the only instances that
22 there are. I don't know how I could possibly tell you
23 all the instances. When Mrs. Florence Laird calls me
24 from Worland, Wyoming and I advise her about an oil and
25 gas lease, and say to her I can't employ you, but Florence,

1 I've known you all my life, if I can help you I'll do so,
2 and there's a discussion. I don't send her a statement,
3 she calls me as a friend. But that's a party in these
4 proceedings. I suppose there's been a hundred and fifty
5 people who have written to my office in the last year and
6 a half and I've referred the letter to you, Mr. Rogers or
7 to you, Mr. White or to you, Mr. Troughton or to the
8 State Engineer or to somebody, but to say these are the
9 only instances, I'm afraid you'll come around and find
10 something else, that in my opinion, will be no more than
11 a search, it will be no more than a -- I don't want to
12 use the word frivolous because it's not frivolous, but
13 they would not have a relationship or bearing upon one's
14 capacity to serve with a clear conscience and do his duty
15 as his conscience tells him with the evidence before me
16 in this case.

17 MR. ROGERS: Well, Mr. Master, in that
18 regard I realize that as a former Congressman from the
19 State that that sort of thing is bound to happen to you.
20 I think my concern is, and I'm speaking for myself, my
21 concern would be any formal and extensive contractual
22 relationships as an attorney/client relationship for
23 particular extended business reasons, as in the case of
24 your representation of the State of Wyoming as a lobbyist
25 that you may have had with any of the parties. I can

1 understand inquiries --

2 THE SPECIAL MASTER: I can give you my
3 assurances there has been none, I was not the attorney, for them,
4 never have been. I was an attorney for Crown Cork and
5 Steel, there's one that comes out of the past. They have
6 a plant in Worland, and they dealt with the OSHA
7 controversy, and I quit them, they didn't quit me. And
8 there may be one or two other matters like this, but
9 they are diminimous, and they are not relevant, in my
10 opinion, to the function that I have. But I didn't
11 want you to say these are the only two because you may
12 find something else in Thermopolis. Ruth is here, I
13 don't know. We may find -- but I can say I believe in
14 good conscience with the exception of things mentioned
15 here, I've been very careful to abstain from any inquiry
16 of those who are looking for water, for example, and
17 might run a quick pass by your office of about quality
18 division number 3. Division No. 3 is a sacrosanct thing
19 in my office, and I don't bother with those matters,
20 Santa Barbara channel is 2,000 miles away. Coal taxes
21 have no bearing on the reservation.

22 MR. ROGERS: My other inquiry at the
23 moment then, Your Honor, is what the procedure is that
24 you and -- on your own or with Judge Joffe have developed
25 in terms of notifying the other private parties.

1 Obviously our concern here is if our clients go along
2 with us, we're satisfied that there's no difficulty.
3 But we are concerned, however, that if other private
4 parties should raise an objection and had not had
5 proper notice at the proper time, that a great deal of
6 your time and our client's money --

7 THE SPECIAL MASTER: I'm glad that you
8 asked that. I think Mr. Thomson raised this same point
9 at our last conference. There is a prepared schedule
10 that I believe we are in agreement on; is that right,
11 Regina and Mr. White, the schedule that we last worked up?

12 MR. WHITE: You mean with respect to the
13 trial, Your Honor?

14 THE SPECIAL MASTER: Yes.

15 MR. WHITE: Yes, sir.

16 MS. SLEATER: Yes, sir.

17 THE SPECIAL MASTER: That we have not
18 mailed yet, anticipating that you'll want some notice
19 to all parties. That is now a mailing of about 850
20 people, attorneys of record in the case and a few pro ses.
21 That schedule will go out this week and it will contain
22 the notice that if there are anyone who wishes to make
23 an objection or inquiry regarding the capacity of the
24 Special Master or other conflicts they feel that should
25 be raised, they will be asked to do so in the next thirty

1 days or it may, it may -- I can't rule as a matter of
2 fact that it cannot. My propriety and decorum is at
3 your disposal for the rest of this case. I may run off
4 and do some abominable thing three or four months down
5 the road, so you can't foreclose yourself from objecting
6 down the road. But any objections that are made and
7 are now known and are part of the record must be made
8 in thirty days and that will be in that notice. Does
9 that sound like it meets approval? It will be mailed,
10 I'd say, this week, Friday.

11 MR. ROGERS: Your Honor, this notice is
12 going to counsel of record?

13 THE SPECIAL MASTER: Usual 840, 850,
14 whatever it is.

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1 THE SPECIAL MASTER: Inevitably some come
2 back, some move, some die, some change address. I
3 would like to reserve judgment on this.

4 I would welcome you drafting the notice,
5 if you wish. Do you want to do that?

6 MR. ROGERS: I don't think it is my
7 obligation.

8 THE SPECIAL MASTER: I know it isn't.

9 MR. ROGERS: I think it is the spirit of
10 Wyoming's and perhaps the Master's to do so. I am
11 taking under consideration for discussion with our
12 clients whether or not the protections down the road
13 from others objecting will be covered when pro se
14 defendents are not notified.

15 Mr. White stated on the record in your
16 office last Thursday that he had a professional
17 responsibility to notify all the parties in this case
18 of this contractual situation, and at this time that
19 has -- that self-claimed responsibility has not been
20 fulfilled.

21 THE SPECIAL MASTER: All right. We will see
22 that it will be fulfilled, and it will go into the
23 notice I will make this week.

24 Now, there is one more matter I would like
25 to mention that I think is appropriate, and this is,

1 ladies and gentlemen, you can't change stripes in
2 life in your 64th year. My lifestyle is an open one
3 with an open office. I don't keep people waiting if
4 I can help it, I welcome people and I believe there
5 is a good strong valid line in professional law
6 between a procedural thing and a substantive ex parte
7 discussion going into the guts of a lawsuit, and I
8 think we can keep that line on a friendly basis.

9 When you are visiting my office, any of you,
10 I don't think there has been a breach of that in the
11 past year and a half, and I don't think there will be
12 in the year to come.

13 I would admonish my two assistants right
14 now that any further discussion anywhere -- now, I
15 have heard this coming back, and I don't know if it
16 is true or not, that there has been a great debate
17 in dialog going on between the Special Master and
18 his staff regarding the two most important issues we
19 are now in deliberations on, and I will certainly
20 admonish my assistants that what we do in our office
21 stays in my office, even between the closest of
22 friends. We will make a steady effort in our office
23 to see that we'll at least not contribute to problems
24 in the next year and a half or the next year until
25 we finish this lawsuit.

1 With that, Ms. Sleater, I welcome you to
2 continue the trial and the case.

3 Oh, Mr. Troughton?

4 MR. TROUGHTON: Excuse me, Mr. Master. You
5 have heard from the State of Wyoming and you have
6 heard from the Arapahoe Tribe and the United States
7 on the question of your statement. We have not heard
8 from the Shoshoni nor have we heard from private
9 counsel, and it might be appropriate to yield the
10 floor to them on that same issue. Thank you.

11 THE SPECIAL MASTER: Mr. Troughton: I would
12 be happy to.

13 Mr. Sachse or any Counsel for any other
14 defendants, I would be happy to recognize you.

15 MR. SACHSE: I think I can keep it short by
16 just saying: For the Shonshoni Tribe, we agree
17 basically with what Mr. Rogers said for the Arapahoe
18 Tribe, that our desire is not to stop this case
19 in the middle and change Masters, but to proceed and
20 get to judgment and get through it.

21 THE SPECIAL MASTER: Take it to appeal?

22 MR. SACHSE: But I do also reserve the right
23 to discuss this fully with the Tribal Council, which
24 is here, and with whom I have not yet discussed it
25 in detail.

1 THE SPECIAL MASTER: Thank you very much.

2 Mr. Reed?

3 MR. REED: For the purposes of the record,
4 Your Honor, I believe I have to state the objection
5 of your continuing in this case while you still have
6 a contractual obligation to the State of Wyoming. I
7 would reserve the right, however, to have my clients
8 and counsel in the -- in the Basin area present
9 possible questions that you should answer under oath
10 before Judge Joffe, but I would also like to object
11 that this is being held in Cheyenne, Wyoming, rather
12 than in the Basin and Worland area where all of the
13 people are -- many of them who are interested in this
14 case and where all the water is rather than having it
15 here.

16 I think what happened this morning is another
17 example of how the independent defendants or the
18 individual defendants in this case have been looked
19 upon throughout the last few months. We don't get
20 notices of hearings that are going on; we get notices
21 of depositions the day they are being taken. There
22 are numerous defendants in this case, not only the
23 Tribes and the United States, but there are many of
24 them who stand to lose a lot by your decision in this
25 case or gain a lot, as the case may be, but they have

1 not been given, I think, the due that they are entitled
2 to, the rights that they have equal to the Tribes and
3 to the United States, and for the purposes of the
4 record, I make that objection.

5 THE SPECIAL MASTER: Does anyone else wish
6 to be heard?

7 MR. DONNELL: Mr. Master, for the purposes
8 of the record, and based on your disclosure this
9 morning, my client certainly has no objection to your
10 continuing in this matter. I would like to, for
11 purposes of the record, again make the venue objection
12 that Mr. Reed just made, and since he has pretty
13 well said it all, I won't say it again or add to it.

14 THE SPECIAL MASTER: Gentlemen, you know that
15 the long hearings of a week or so each that were held
16 were held in Worland. You know that at the time Judge
17 Joffe appointed me and at the time of our first
18 meeting it was virtually an instruction from the
19 beginning that the hearings shall be in Cheyenne,
20 Wyoming, except those dealing with the confirmation
21 of the State Adjudicated Water Rights. Those were
22 held in Worland. In our Pre-Trial we stayed upon
23 the conclusion that of this phase here we revert to
24 Worland for at least two days, if not more of the
25 impact, to affect hearings. We are doing the best we

1 can. We hope to do this in a way that will be fair
2 with all concerned, and we give certainly some con-
3 sideration to the warnings you two have raised.

4 MR. DONNELL: Your Honor, I realize your
5 position on this, and we appreciate the fact some of
6 these hearings have been held in Worland. I just
7 want to make it for the purposes of the record, and
8 that's all.

9 THE SPECIAL MASTER: Thank you, Mr. Donnell.

10 MS. RUTH YONKEE: Mr. Master?

11 THE SPECIAL MASTER: Yes?

12 MS. RUTH YONKEE: I also raise this objection,
13 and just for the record, we have no objection to your
14 continuing serving as Master as far as my clients are
15 concerned. I wonder, at what time-- I do believe that
16 your determination should include certain additional
17 items in addition to what you have said in your Pre-
18 Trial Order. Should I mention those also at this time?

19 THE SPECIAL MASTER: Do you wish to make a
20 motion regarding the 10 square miles in the Thermopolis
21 area that were conveyed away from the Reservation in --
22 what year was that?

23 MS. RUTH YONKEE: 18 -- let's see -- I can't
24 remember now. 1897, I believe.

25 THE SPECIAL MASTER: In 1897?

1 MS. RUTH YONKEE: Yes. And also one other
2 motion, and that is that whether the reserved water
3 rights on the Indian Reservation lands follow the
4 land to non-Indian ownership as currently -- which
5 are currently owned by non-Indians, and if it does,
6 the date of priority and the amount thereof. That's
7 such as the type of land that was passed back to the
8 United States, then came back to the people through
9 the Homestead Act, Carey Act and other Acts, and
10 whether that reserved right goes with the land.

11 Then the second was what reserved water
12 rights, if any, passed to the United States Government
13 in the Treaty preceeding the 10 mile square acreage
14 sold to the United States in 1897, and it was
15 regarding the Big Horn-Hot Springs area.

16 THE SPECIAL MASTER: You make those motions
17 at this time?

18 MS. RUTH YONKEE: Yes.

19 THE SPECIAL MASTER: All right. I will take
20 them under advisement and they will be answered for
21 you in open court hopefully this week.

22 MS. RUTH YONKEE: Thank you.

23 THE SPECIAL MASTER: If not, certainly as
24 soon as I can.

25 Mr. Webster?

1 MR. WEBSTER: Your Honor, as far as my clients
2 are concerned, we would certainly waive any problem
3 that might have developed by reason of your disclosure,
4 and we would appreciate going forward. We also feel
5 that it is a definite hardship upon the individual
6 water users who really are the ones that we feel are
7 the ones that are going to lose in this case, if any-
8 body is going to lose, having the hearings here in
9 Cheyenne. We understand your position on this, and I
10 would just join the others who have raised that
11 objection.

12 THE SPECIAL MASTER: All right. Perhaps we
13 can have a conference later today or tomorrow or some-
14 time this week to see about moving some up to Worland
15 before it gets too cold.

16 All right, any other Counsel?

17 (No response.)

18 THE SPECIAL MASTER: Regina, you may
19 continue.

20 MS. SLEATER: At this time, I request the
21 Master's permission to refer to certain exhibits --

22 THE SPECIAL MASTER: Not yet in evidence?

23 MS. SLEATER: -- not yet in evidence, yes,
24 sir, for the purposes -- purely for purposes of
25 illustrating my opening statement.

1 MS. RUTH YONKEE: May we ask, Your Honor,
 2 if Ms. Sleater could talk loudly so we could hear
 3 her?

4 THE SPECIAL MASTER: Yes.

5 MS. SLEATER: Is the mike on?

6 THE SPECIAL MASTER: We can hook it up.
 7 Thank you, John, for doing that.

8 MS. SLEATER: It's not turned on.

9 THE SPECIAL MASTER: Well, maybe Chuck knows.
 10 Off the record until we get this straightened out.

11 (Off-the-record discussion.)

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1 MS. SLEATER: Your Honor, this morning be-
2 gins what the United States regards as probably one of
3 the most important cases that has ever occurred in the
4 history of the United States in relation to the Shoshon
5 and Arapahoe Tribes and the Wind River Indian Reserva-
6 tion.

7 This case, basically, this hearing, will resolve,
8 hopefully, the rights of the Tribes to the water that
9 is necessary for them to continue as a viable community
10 of people in the area which has been their home since
11 well before the history books record the Treaty of 1868.
12 For the Shoshon s, as you remember, this summer, there
13 was evidence in that that tribe had been living in the
14 area of the Wind River well before the treaty. The
15 Arapahoes have been making their home on this reserva-
16 tion since the 1870's.

17 Water, as we all know, is critical and crucial to
18 life in the Wind River Basin, in the Big Horn Basin.
19 That's why we are all here.

20 The important thing to remember -- and this, I
21 think, is why we need to go back to the hearings that
22 were held this spring and last fall -- is that there
23 were people there first who had rights that were pro-
24 mised them by a government who said, "If you will do
25 what we want, which is stay in this area, we will

1 guarantee you, in the language of Article IV of the
2 treaty, a permanent home."

3 The Supreme Court has since said the area of the
4 reservation was not just given to the Tribes for a
5 surface interest, for some ephemeral interest that
6 could be taken, but was, in fact, an actual and real
7 ownership of the entire reservation, a right to the
8 profits from the minerals, the timber resources, every-
9 thing that was there.

10 They are in the same situation as any of us who
11 are lucky enough to own land. If we own the land, we
12 can develop it, as much as we are legally able.

13 The United States in this action is trying to as-
14 sure that the Tribes receive from the Special Master
15 and from the Court everything that was promised them
16 under the Treaty of 1868.

17 Again, I'm referring to the evidence that was put
18 on this summer to set a background for what is going on
19 today.

20 It had many provisions, but the most important one,
21 I think, from everything that we heard was that the
22 Shoshones would agree to stay in an area that centered
23 around the Wind River.

24 If you'll look at what has been marked Exhibit No.
25 4, which is the brown-and-orange colored map, that is

1 the reservation boundaries stipulated to by Wyoming and
2 the United States. It's an area that consists of beauti-
3 ful mountains, vast clean areas, and water. It includes
4 mineral resources, fishery resources, and, more important-
5 ly, the community and homes of the tribes who live there.

6 The evidence in this case, as presented by the
7 United States will amplify what resources that are there,
8 which will set forth which resources need water.

9 Under previous rulings of the Supreme Court, if
10 Indian tribes are granted a right, if that right requires
11 water to fully accomplish its purpose, then that water
12 has been set aside as of the date of the promise by the
13 federal government.

14 The evidence that the United States will be putting
15 on is in furtherance of this. We will try to explain
16 what the reservation looks like, what its resources are,
17 what are its present and future water needs.

18 Now, I have here a schematic diagram, which we've
19 marked as Exhibit 1, that illustrates how the United
20 States went through this stage, and it's useful because
21 it will give you the framework that the evidence will
22 be in.

23 We will be placing on the stand experts, nationally
24 and, to some extent, internationally known water resource
25 planners, agricultural engineers, economic analysts.

1 The primary firms involved are Stetson Engineers,
2 which is a firm out of San Francisco that was established
3 by Tom Stetson, who is one of the preeminent names in
4 the whole area of water, planning, agricultural water
5 uses, water design.

6 We hired the firm of HKM Associates, whose personnel
7 will be testifying, out of Billings, Montana. They also
8 have vast experience in the West dealing with the uses
9 of water, water availability, soils, soil^s planning, irri-
10 gation planning.

11 And we have hired the firm of Dornbusch & Company,
12 an economic firm headed by David Dornbusch. And David
13 Dornbusch and Jim Merchant, one of his associates, will
14 be testifying before you, talking about setting forth
15 the feasibility of the various proposals, the various
16 needs of the reservation.

17 As Your Honor knows, the Supreme Court test for
18 water rights involves, I believe the term is, practi-
19 cability. The United States will be placing on the
20 record this economic evidence in order to meet that
21 test established by the Court.

22 As you can see from the scale up, the first thing
23 we did was planning through the Department of Justice
24 and the Bureau of Indian Affairs in conjunction with
25 Tribes, how we were going to set this up.

1 We then went out and hired these firms I have just
2 mentioned. Testimony at this hearing will show that the
3 first thing that was done by the various firms was to
4 review all of the information available on the reserva-
5 tion, whether written or physical, through personal in-
6 spection.

7 This review led these experts to come up with a
8 natural resources inventory, for lack of a better term.
9 They inventoried everything that had been going on out
10 there. Then a determination was made as to which of
11 these areas needed water to accomplish the purposes, to
12 best utilize the resources to allow the Tribes to have
13 the greatest options for their continued and future
14 livelihood, growth.

15 Basically, these assessments were broken down at
16 the level of we looked to see what water was available
17 on the reservation. The United States realizes, although
18 there may be needs that require water, if at the time the
19 reservation was established there is no water, you have
20 a more removed approach to establishing a reserved
21 right.

22 In this reservation, the evidence will show, in
23 1868 there was plenty of water. As Chief Washakie said
24 when he was signing the treaty, which again was intro-
25 duced this summer, he chose this land because the people

1 had always loved it as a home and the waters there were
2 precious to them. This was the prime reason he chose
3 this area was because of its water.

4 We have also looked into the groundwater supply to
5 see whether there was available groundwater that could
6 satisfy some of these needs. There was a study of the
7 soils, a land classification study done at what the
8 testimony will reflect was a modified semi-detailed
9 level.

10 The modification is that it was actually more de-
11 tailed than semi-detailed normally requires.

12 A semi-detailed standard, as will be shown, is
13 established by the Bureau of Reclamation, or what is
14 now the Water and Power Resources Services. This is
15 how the United States, and I might add, most other, if
16 not all other in this country, major irrigation planners
17 go about establishing whether or not land is capable of
18 sustaining irrigation. This we did.

19 We had people out on the ground for the last two
20 years studying, placing test bores, doing soils analyses,
21 covering the reservation, looking to see if there was
22 land there that was capable of sustaining irrigation.

23 We also inventoried non-agricultural water uses,
24 such as the mineral resources. As we are all aware,
25 and have been aware of for some time, there are many

1 mineral possibilities on the reservation, some that
 2 are actively producing, some that are not yet in pro-
 3 duction, but could be.

4 These are things like oil and gas resources, the
 5 coal resources, the phosphate and gypsum in developable
 6 quantities. There are uranium reserves on the reserva-
 7 tion.

8 Some of these minerals, the testimony will show,
 9 require water to allow them to be developed. Some re-
 10 quire water to allow the land to be reclaimed after they
 11 are mined.

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1 MS. SLEATER: (Continued) This was added
2 into the claim because the United States got -- felt
3 very strongly that what we had to do was to assure that
4 the tribes received everything they had in 1868. Other
5 resources that were there that have been looked into are
6 the fisheries resources. There are certain areas of
7 the reservation that because of their beauty, because
8 of the fact that they are rugged and mountainous and
9 majestic, we felt should be, have the water that's there,
10 the high mountain streams and the high mountain lakes
11 preserved; that the evidence will show that that water
12 used which is an instream flow use basically will not
13 affect what is going on in the Basin today, that that
14 water will do what it's doing now, which is flowing
15 out of the mountains.

16 After this assessment was made of the various
17 resources and the study made and ready to go, we went
18 to the next step of development, and there will also be
19 witnesses who will tell you about this in great detail,
20 which was to break down the various facets of
21 agricultural water needs, how do you determine
22 agricultural water needs. In this instance the water
23 for agricultural use will fall into three basic areas.
24 There is water that has been historically used at some
25 point in time, and in that instance the water duty

1 obviously is the amount of water that has been being
2 used. And the historic acreages on the reservation is
3 something a little over 60,000 acres, according to the
4 results of the studies that have been going on.

5 The second category of land, which is land that can
6 be developed today, land that the engineers can design
7 a system, this system can serve this land, it can be put
8 on the ground today. In that category, which at a later
9 step when we get into the economics broken down again,
10 was originally approximately 78,000 acres.

11 Engineers and water resource planners assessed the
12 need for this. Although the position of the United
13 States is that the tribes are entitled to as much water
14 as they reasonably need or can use, we felt that it was
15 imperative at that point in time to be -- to minimize
16 any disruption that would occur. This was done by
17 designing a very sophisticated system for the future lands.

18 You will hear testimony concerning this design. It
19 is not a design, it is not a system that occurs on a large
20 scale project in the Big Horn Basin today, it is one step
21 beyond that. It is highly efficient. The reason for this
22 is because the more efficient the water delivery system
23 is, the less water that is required, so you will notice
24 from the evidence that we are claiming that less water
25 need be diverted for these future lands than is being

1 diverted for the historic lands. We also had experts
2 on the ground who conducted a water use survey, as it
3 were, of what was going on in the reservation in regards
4 to both Indian and in some instances non-Indian water
5 use, so that we could determine what were the agricultural
6 practices, what were the water that was available in
7 1868.

8 Hydrologists for the United States have been
9 actively involved and will testify concerning the
10 reconstruction of what is termed the virgin flow, that
11 is the water before man took -- influenced it, and that
12 was basically the situation in 1868, was basically in
13 the Wind River Basin very little diversions by man
14 prior to 1868. The nonagricultural requirements were
15 assessed by various experts, fisheries biologists from
16 United States Department of Fish and Wildlife, determining
17 instream flows necessary for fisheries using a method
18 that's called the incremental method for instream flow
19 determination that has been developed in Fort Collins.
20 This is a method, the evidence will show, that is used
21 by many states. Many states have been involved in this,
22 including the State of Wyoming. We feel that it's
23 probably one of the most sophisticated systems for
24 analyzing the needs for fisheries. We will be putting
25 on specific testimony relating to some of the major

1 drainages that have fisheries needs, and we will have
2 quantified the individual needs. And the aesthetics
3 area, Richard Harbour, who is the land operations officer
4 on the reservation and has been involved in the land
5 use planning of this reservation and other reservations
6 for many years has assessed what he feels would be the
7 use for those areas, these mountainous areas at this
8 time. Now, I wish to point out to the Court with all
9 of these claims we are not saying and the testimony will
10 not reflect that this is going to be done at any point
11 in time. That option is the tribe's option, the
12 United States feels that the law as established by the
13 Supreme Court is very clear that if there are present
14 or future needs for water, then that water is reserved
15 for the tribes, there is no requirement of actual
16 development, although obviously if the development does
17 not occur, persons with junior priority dates can use
18 the water until such development does occur. The United
19 States' case is based upon the fact that these developments
20 are reasonably foreseeable today. In sum, the Court
21 has an obligation to confirm these water rights.

22 After a system was designed for the agricultural
23 lands, stringent economic analysis was performed. This
24 economic analysis led to a breakdown within the lands
25 that indicated that today, using today's economics you

1 could develop 53,000 acres of that future land, that
2 it had a benefit cost ratio greater than one, which
3 means in fact the returns would outweigh the expenses,
4 to put it in economic terms.

5 Of the remaining land that, if you will remember
6 I said it was about 78,000 to 80,000 acres that could
7 have a system designed for it, the testimony will show
8 that the experts feel that that land will, in the future,
9 be developed, although today it is not feasible.
10 Engineering, it's feasible, economically, it's not.
11 Additional 18,000 acres will, at some point in time, be
12 developed, for which reasons they also should have a
13 category set aside or at the very least, the Court
14 should leave the decree open for such time when that
15 does become a feasible alternative.

16 The United States, having done all of this, having
17 shown the feasibility of developing resources on the
18 reservation, which is to begin its case by reminding
19 the Master that not only the government of the United
20 States, but this Court, the Master and all of the people
21 have an obligation to the tribes of the Wind River
22 Reservation, which obligation was expressed for us by
23 our government in 1868, which obligation has never been
24 canceled, and which in this case we are to uphold.

25 Thank you.

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(Whereupon a recess was taken.)

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THE SPECIAL MASTER: Do the Tribes have opening statements?

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MR. SACHSE: No, Your Honor, the Tribes would prefer to wait until the beginning of their own case to make opening statements. They reserve their right to do so until then.

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THE SPECIAL MASTER: Mr. Rogers, does that concur with you?

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MR. ROGERS: Yes, Your Honor.

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THE SPECIAL MASTER: In that case, does the State of Wyoming have opening statements?

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MR. ROGERS: Your Honor, I have to note the absence of Counsel for the United States.

14

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THE SPECIAL MASTER: I will be happy to wait.

16

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(Brief pause.)

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MR. TROUGHTON: Mr. Master, the State of Wyoming desires to reserve a detailed opening statement until the conclusion of the Case in Chief of the United States and the Indian Tribes, but I would like to make a few general comments. I would hope that they would take 10 minutes or less, if I might.

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THE SPECIAL MASTER: Very well. Your reservation is on for at the conclusion of the case of the

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1 United States and of the Tribes?

2 MR. TROUGHTON: Yes.

3 If it may please the Court and Counsel: I
4 think that it is appropriate at this time, Mr. Master,
5 that as Attorney General of the State of Wyoming, in
6 behalf of all of the attorneys in this suit, be they
7 attorneys representing the State of Wyoming, the
8 United States Government, the Indian Tribes or the
9 private parties, to express to you the feeling that
10 the burden that you bear in this case is tremendous.
11 The seat may be warm now, Mr. Master, but the chair
12 in which you sit is truly the hot seat. This is
13 true because as lawyers we are advocates, and as
14 lawyers who have advocated and tried cases, we know
15 that the higher the stakes, the more we advocate, and
16 the hotter our feelings become and the stronger our
17 feelings become and the more, then, the more con-
18 tentious we become.

19 The stakes in this case are very, very
20 high, Mr. Master. We know, for example, from the
21 evidence that will be presented that the Big Horn
22 River and its tributaries is probably over appropriated,
23 particularly in the up stream areas around the Wind
24 River Indian Reservation. We know from some of the
25 evidence that we will present in behalf of the State of

1 Wyoming, for example, that the present costs to non-
2 Indian irrigators in Fremont County alone, the cost
3 to those irrigators in the event that the claims of
4 the Tribes and claims of the United States made in
5 behalf of the Tribes, if they are superimposed over
6 the existing uses on the Wind River -- or on the Big
7 Horn River and its tributaries, will result in a
8 loss in Fremont County alone in the area of one
9 hundred million dollars.

10 Now, we all know that next to money, the
11 dearest thing to the hearts of people in Wyoming is
12 water. So we know that this is going to be a very
13 difficult case, and the feelings are going to be
14 strong on the part of the attorneys, and they will
15 be contentious with you, Mr. Master. I think it is
16 only appropriate that I say to you, don't hold our
17 advocacies against us, don't hold the advocacies of the
18 Tribes or the United States attorneys or the private
19 attorneys against them. We are going to fight hard
20 for our clients, and we mean no disrespect to you or
21 the Court and we do not mean to increase your already
22 heavy burden.

23 I think that another point that needs to
24 be made in behalf of all parties, and that is the
25 very basic nature of the case that you are about to

1 hear. It will be a battle of experts. There is
2 no question about that. The magnitude of the area
3 involved, the complexity of the legal issues involved,
4 the technical aspects of development and use of water
5 requires the services of experts. There is no way
6 this case could be handled without the very considerable
7 talents of experts. But experts cause problems for
8 Courts and Special Masters. They cause problems for
9 advocates. There isn't a good trial attorney in the
10 United States who hasn't said that if I'm up against
11 the number, I can find an expert who can testify my
12 way to things that I want.

13 In addition to that, experts, with all of
14 their expertise, and God love them, we couldn't live
15 without them, because they know more than we do,
16 but the opinions of experts, no matter how sophisticated
17 they might be, are no better or no worse than the
18 underlying facts upon which they are based.

19 Now, in terms of this lawsuit, that presents --
20 those aspects of the case present real problems for
21 both the Special Master, the Court and the attorneys.
22 It means for all of us that the rules of evidence
23 in this case become critical. We cannot afford to have
24 this case decided on the basis of mere speculation,
25 on an unfounded -- on the unfounded opinions of experts

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24 this case decided on the basis of mere speculation,
25 on an unfounded -- on the unfounded opinions of experts

1 battling each other, but it must be decided on the
 2 basis of the best, most objective, fair and impartial
 3 analysis that these experts can give to us with the
 4 situation in the Big Horn River. So in attempting
 5 to achieve that, the rules of evidence which were
 6 designed to take into account the uncertainties of
 7 proving complex issues need to be watched with
 8 particularity because the protections that those
 9 rules afford have been the cornerstone and the key to
 10 cases such as this arising by reason of development
 11 over centuries.

12 In addition to that, detailed cross-examination
 13 on all sides becomes very, very important, it becomes
 14 critical in order that each party to this litigation
 15 has an opportunity to test and measure the practicality
 16 of the evidence, the impartiality of the evidence,
 17 and the underlying facts upon which those opinions
 18 of experts are based.

21 * * * * *

1 MR. TROUGHTON: If great care and attention
2 are not devoted to these two aspects of the case by
3 all parties to this case, then we run the risk of
4 allowing what is designed to be an advocacy test
5 measure of the contentions of the parties to be de-
6 cided by experts rather than by the Special Master
7 and the Court.

8 So I don't want to belabor that, but I would ask
9 you to remember who has the burden of proving the is-
10 sues in this case, be it the State of Wyoming or the
11 Indian tribes or the private parties, and hold our
12 feet to the fire in that regard, because, unless we
13 do, the experts can decide the case for us.

14 Now, the last point that I would like to address,
15 Mr. Master, in just general is that the evidence as it
16 develops will begin to focus on one broad and overlying
17 issue in this case, and that broad and overlying issue
18 in this case will be who bears the financial burden.

19 You've heard Ms. Sleater in her opening statement
20 tell us that, as best I understood it, now is the time
21 to quantify the water that was to be reserved to the
22 Indian tribes in 1868, almost as if in 1868 a vacuum
23 existed and that somehow or other we can turn back the
24 clock more than 100 years.

25 We have already received evidence in this case

1 concerning the boundaries and the date of the reserva-
2 tion, and from that evidence and from the evidence
3 which you will receive over the coming weeks, a clear
4 picture will evolve, a picture that in 1868 there was
5 not much development in the Big Horn River Basin of
6 Wyoming at the time that the Wind River Indian Reser-
7 vation was created, but over the intervening years the
8 development increased, both Indian and non-Indian de-
9 velopment. And you have already seen from the evidence
10 and you will see with more particularity from the evi-
11 dence that the federal government in behalf of the
12 Indians attempted to address the issue of development
13 of water for the Indian tribes around the period of
14 1900 and that there was disestablishment of the reser-
15 vation or portions of the reservation for that purpose
16 to change the land from land to money to utilize the
17 money for development of water for the Tribes, and that
18 that effort went on for a number of years and then just
19 sort of seemed to fade out into the sunset.

20 The evidence will also indicate and has indicated
21 that during the same period of history there was also
22 water development going on in the Big Horn Basin of
23 Wyoming by non-Indian appropriators and that that de-
24 velopment was ongoing by reason of such enactments of
25 the Federal Congress as the Carey Land Act, the Homestead

1 Act, the Reclamation Acts, and that the non-Indian
2 appropriators, as well as the Indian appropriators,
3 were given the hope and the enticement by the federal
4 government of the United States to develop land and to
5 develop water.

6 The Indians were given hope by the federal govern-
7 ment in 1868 and today that under the Winters Doctrine
8 sufficient water for the purposes of the reservation
9 were employed by the creation of the reservation.

10 I'm saying to you that the evidence will also indi-
11 cate that the non-Indians were given similar hope. And
12 so, as this case is tried, you will find that great
13 overriding issue: Now that there is not sufficient
14 water to go around, who bears the financial burden of
15 100 years of history?

16 Will it be the Indians? Will it be the non-Indian
17 appropriators in the Big Horn River Basin of Wyoming?
18 Or will it be the federal government?

19 I'm saying to you, Mr. Master, that there is some
20 responsibility in this matter on the
21 shoulders of those federal officials who held out hope
22 under the Winters Doctrine to the Indian tribes and
23 held out hope to the non-Indian irrigators under the
24 Carey Acts, the Homestead Acts, and the Reclamation
25 Acts, I think that that will be the single-most decision

1 for you to make in this case and for the Court to make
 2 in this case of who bears the burden.

3 On behalf of all of the attorneys in this case,
 4 Mr. Master, let me say that we do not envy the respon-
 5 sibility that you have, but our prayers are with you
 6 that you have the judgment of Solomon and the patience
 7 of Job. And, thank you, Mr. Master.

8 THE SPECIAL MASTER: Well, a very eloquent
 9 statement. I don't know but what a line or two of res-
 10 ponse is in order.

11 It might be easy to say that the cost should pro-
 12 perly be borne by the agency that made it all possible,
 13 the United States of America.

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1 THE SPECIAL MASTER: (Continued) And that
2 may be, it could be done by the building of ten or
3 twelve dams on the reservation with the cost mostly
4 coming from the United States of America, and the
5 storage of spring surplus runoff could be stored and
6 shared for the Indian and non-Indian. But I suppose
7 that's too Utopian and too much Solomon-like to cut
8 through the beaurocratic morass, the tremendous
9 competition for water and the beaurocratic burden that
10 that would entail, but I hope that before too many
11 years that Indian and non-Indian, state official and
12 federal official and the private sector could all get
13 together and make surveys of this area and find where
14 there are two or three more Bull Lake, two or three
15 more fine impoundments that could store 300, 400, 500,000
16 acre feet a year easily just as Buffalo Bill, the listing
17 of the column on Buffalo Bill Dam will do for the upper
18 portion of Water Division 3, and that is the right way,
19 Mr. Troughton that this matter could be shared and
20 burdens shared by everybody, because we all relied on
21 the same promise from the same governing authority at
22 the time. I appreciate your statement.

23 Any counsel for other defendants wish to make
24 statements at this time? If not, Regina -- Mr. Donnell?

25 MR. DONNELL: We would just like to

1 reserve our opening for when we present our case.

2 THE SPECIAL MASTER: Very well. Proceed,
3 Ms. Sleater.

4 Oh, I think I have an appearance. Yes, sir, Mr.
5 Palma.

6 MR. PALMA: Thank you, Mr. Master. On
7 behalf of the Shoshone-Hart Mountain Irrigation District,
8 Mr. Master, I would like to enter my appearance. My
9 name is Jack Palma, P-a-l-m-a, and we would also like
10 to reserve our opening statement until the United States
11 puts on their case in chief.

12 THE SPECIAL MASTER: Welcome back to the
13 case in another capacity, Mr. Palma.

14 Regina?

15 MS. SLEATER: At this time, the United
16 States would like to call Richard Harbour as its first
17 witness.

18 MR. WHITE: Your Honor, while Mr. Harbour
19 is taking the stand, at this time the State of Wyoming
20 would invoke the rule, 619 -- excuse me, 615.

21 THE SPECIAL MASTER: To exclude witnesses?

22 All right. Do you have other witnesses to be sworn
23 at this time besides this witness?

24 MS. SLEATER: Excuse me?

25 THE SPECIAL MASTER: Do you have other

1 witnesses being sworn at this time besides this witness?

2 MS. SLEATER: Do you want to swear them
3 in all at one time?

4 THE SPECIAL MASTER: If you have them in
5 the room, I would do that now, and take their names and
6 remind them that they've been sworn.

7 Any other witnesses?

8 (Brief pause.)

9 MS. SLEATER: Mr. Master, this is Richard
10 Harbour, James Merchant and David Dornbusch.

11 THE SPECIAL MASTER: What is your name?

12 MR. MERCHANT: James Merchant.

13 THE SPECIAL MASTER: Your name?

14 MR. DORNBUSCH: David Dornbusch.

15 THE SPECIAL MASTER: Dornbusch.

16 All right. Will you three raise your right hand,
17 please.

18 (Thereupon Richard Harbour,
19 (James Merchant and David
20 (Dornbusch were duly sworn
(in by the Special Master
(to testify on their oath.

21 THE SPECIAL MASTER: Will you take the
22 stand over here and the other two are excluded from the
23 courtroom. All persons in the courtroom who are to be
24 witnesses in these proceedings, please take --

25 MS. SLEATER: There are numerous witness

1 rooms.

2 THE SPECIAL MASTER: There are rooms in
3 the rest of the courtroom that you can wait in while
4 waiting your chance to be called.

5 I rely on counsel to see that the rule is enforced,
6 Mr. Merrill.

7 MR. WHITE: We've already sent our
8 witnesses home. They were leaving at the time.

9 MS. SLEATER: This applies to all witnesses
10 in the case for any party?

11 MR. SACHSE: May it please the Court, I
12 want to ask a ruling on this. It is possible that as
13 a rebuttal witness at some stage in this case, Mr. Robert
14 Harris, the chairman of the Shoshone tribe might be called,
15 but he's a party to the case. We almost have the entire
16 Shoshone Tribal Council here. It's conceivable that
17 at some point in this case one of them may be called
18 as a witness, but I think they all have the right to
19 stay here as parties to the case. It's their water.

20 MR. WHITE: Your Honor, they have no
21 right, but we will waive any objection to their staying.

22 MS. SLEATER: The United States will also
23 waive.

24 THE SPECIAL MASTER: Very good, proceed.

25

1 RICHARD HARBOUR

2 having been previously duly sworn, was examined and
3 testified as follows, to wit:

4 DIRECT EXAMINATION

5 BY MS. SLEATER:

6 Q Please state your name and address.

7 A Richard Harbour, 795 South 9th, Lander, Wyoming.

8 Q What is your occupation, Mr. Harbour?

9 A I'm the land operations officer, Bureau of Indian
10 Affairs, Wind River Indian Reservation.

11 Q And what does being land operations officer entail
12 on the Wind River Indian Reservation?

13 A My job primarily entails taking care of all the
14 natural resources and their planning on the Wind
15 River Reservation.

16 Q Do you have any other duties?

17 A Yes, ma'am. I am the superintendent's representative
18 to the Tribal Council in areas of my expertise with
19 other federal agencies, state agencies and any
20 other people with whom we work.

21 Q What division do you supervise, Mr. Harbour?

22 A Supervise the Division of Soil and Moisture
23 Conservation, Soil Scientists, Forestry, Range,
24 Environmental Investigations and Irrigation.

25 Q Do you have any responsibilities with respect to

1 minerals or land use planning on the reservation?

2 A Yes, I do. I oversee the surface part of the
3 mineral extraction and production for all of the
4 minerals on the reservation.

5 Q And with respect to land use planning?

6 A And with respect to the planning thereof, yes.

7 Q Could you please give us an example of the type of
8 land use planning activity that you're involved in.

9 A Well, specifically we could get into the area of
10 soil conservation. And our involvement is in the
11 protection of that resource so that it does provide
12 the most income for the landowner and maintain it
13 in its state to where it will continue to provide
14 that income and not deprive the landowner of his
15 future rights.

16 Q And, of course, in your work are you involved in
17 determining which of several uses might occur on
18 a given piece of land?

19 A Yes, ma'am. We always have to make a determination
20 as to which is the better use for a resource or
21 how it will affect another use of a resource, and
22 in so doing, try to insure that our trust
23 responsibilities to these people have been met in
24 the fact that their income is sustained.

25 Q How long have you been the land operations officer

1 at Wind River?

2 A I've been at the Wind River as land operations
3 officer for seven years.

4 Q Have your duties remained the same throughout
5 that period?

6 A No, my duties have increased over that period of
7 time.

8 Q In what way have they increased?

9 A We get more and more involved in land use planning
10 because of public laws that have been passed, the
11 Environmental Protection Act and such as that, plus
12 we get involved into issues such as this, which are
13 part of our job.

14 Q What professional or technical jobs did you hold
15 before becoming land operations officer on the
16 Wind River Reservation?

17 A I have been a soil scientist on both Wind River and
18 the Black Feet Reservation. I've been a soil
19 conservationist on the Fort Peck Reservation and the
20 Flathead Reservation. I did an irrigation
21 redesignation on the Flathead Reservation.

22 I was a realty officer at Fort Peck in charge
23 of all the surface and subsurface leasing.

24 Q Did you have any jobs outside of the government
25 that were professional in nature?

1 A Yes, ma'am. I worked for the United States
 2 Steel Corporation and Agricultural Chemical
 3 Division as manager of their local plant located
 4 in Center, Colorado.

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1 Q (By Ms. Sleater) Please explain what a soils
2 scientist does as it is related to the job that
3 you have.

4 A A soils scientist's job is to map and classify
5 soils according to their ability to produce
6 and sustain any given crop.

7 Q And could you compare that with the job of a
8 soils conservationist?

9 A A soils conservationist's is to insure those
10 crops that are placed on those lands do not
11 deprive or take away from the land in its future
12 use; that, you know, they will go for a sustained
13 use, and it does not -- arose from uses by man,
14 its ability to go ahead and produce a crop.

15 Q What did you do as realty officer at Fort Peck?

16 A As realty officer, I was in charge of all of
17 the surface and subsurface leasing.

18 Q I believe you said you were also involved in an
19 irrigation redesignation of the Flathead
20 Reservation. What is that, please?

21 A That is a determination of those lands which
22 are capable of sustaining or supporting irrigated
23 crops. It has a technical field that you go
24 into the soils, into the lay of the land, and
25 that type of thing, to determine which areas will

1 be charged to water use.

2 Q Do you have any other experience besides your
3 personal experience and working for the Govern-
4 ment?

5 A Yes, sir, I was raised on a farm at San Luis
6 Valley in Colorado, and in 1965 resigned from
7 the Government to go back and run that farm due
8 to the death of one of my parents. I ran that
9 farm for one year prior to going to work for the
10 United States Steel Corporation.

11 Q What type of farm was that?

12 A It's an irrigated integrated farming operation,
13 both. We raised potatoes, malting barley, feed
14 barley, alfalfa, peas, oats, that type of thing.
15 We also ran cattle and hogs.

16 Q Mr. Harbour, could you please tell us briefly
17 your educational background?

18 A I graduated from Sargent Consolidated High
19 School, a school located in Monte Vista,
20 Colorado in 1947. I graduated from the Colorado
21 State University in 1957 with a Bachelor's
22 Degree in Agriculture.

23 Q Did you have any minors?

24 A Most -- the areas that I concentrated in in my
25 study at Fort Collins was agronomy, soils science,

- 1 biological sciences and animal production.
- 2 Q Have you attended any seminars or shop courses
- 3 related to your profession?
- 4 A I have attended quite a few, probably in the
- 5 neighborhood of a dozen, part of them in soils
- 6 and the rest of them in management.
- 7 Q Do you recall who sponsored those and where these
- 8 soil seminars were?
- 9 A The soils seminars were held at the University of
- 10 Montana and the Montana State University, and
- 11 they were sponsored by, I'm assuming, the Federal
- 12 Government and the schools in combination.
- 13 Q And the management seminars you attended?
- 14 A The management seminars were attended by United
- 15 States Steel Corporation and the United States
- 16 Government.
- 17 Q Have you ever testified before, Mr. Harbour?
- 18 A I have testified in one court before.
- 19 Q What court was that?
- 20 A In Judge Brimmer's Court.
- 21 Q Here in Cheyenne?
- 22 A Here in Cheyenne.
- 23 Q In that case what did you testify in general terms,
- 24 what was the area of your testimony?
- 25 A The area of my testimony was basically in the

1 population distribution around a specific
2 location.

3 Q Were you qualified as an expert in that case?

4 A No, I was not.

5 Q I would like to hand you a copy of what has been
6 marked for identification purposes as U.S. Exhibit
7 WRIR C-2. For clarification purposes, I would
8 like to explain the designation. The designation
9 of the C is for ease of the record in separating
10 the exhibits at this hearing from the exhibits
11 at the boundary hearing this summer.

12 THE SPECIAL MASTER: How do you propose
13 to make that distinction again?

14 MS. SLEATER: U.S. Exhibit WRIR C-2, which
15 stands for Claim, followed by a number.

16 THE SPECIAL MASTER: Oh, the C will
17 distinguish those from those that have appeared
18 heretofore?

19 MS. SLEATER: Yes, sir. Previously the
20 United States' Exhibits were United States'
21 Exhibits WRIR.

22 THE SPECIAL MASTER: Right.

23 MS. SLEATER: If I may approach the
24 Witness?

25 THE SPECIAL MASTER: Yes, you may.

1 Q (By Ms. Sleater) I will ask you to please look
2 at that exhibit and ask you if you can identify
3 it?

4 A Yes, ma'am, I can identify it as a resume of
5 my experience and background.

6 Q Does that fairly and accurately represent your
7 education and background?

8 A Yes, ma'am.

9 MS. SLEATER: At this time, Your Honor, I
10 will move that U.S. Exhibit WRIR C-2 be admitted
11 into evidence.

12 MR. MERRILL: Your Honor, the State of
13 Wyoming has no objection.

14 THE SPECIAL MASTER: It will be admitted.
15 United States' Exhibit WRIR C-1 is admitted into
16 evidence.

17 MS. SLEATER: Thank you.

18 THE SPECIAL MASTER: Number 2 or C-1?

19 MS. SLEATER: C-2, Your Honor.

20 THE SPECIAL MASTER: Indulge my correction,
21 C-2 is admitted into evidence.

22 MS. SLEATER: At this time I move that
23 the Special Master accept Richard Harbour as an
24 expert in natural resources management and planning
25 based on his education, knowledge and experience

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as set forth in the Wyoming Rules of Evidence,
and allow him to so testify in this action.

MR. MERRILL: Your Honor, could we have the
offer read back again? I would like to get the
exact language of the offer.

THE SPECIAL MASTER: Will you read that back,
please?

(Whereupon, the Reporter read
back, "At this time I move
that the Special Master accept
Richard Harbour as an expert
in natural resources manage-
ment and planning based on his
education, knowledge and
experience, as set forth in the
Wyoming Rules of Evidence, and
allow him to so testify in this
action.")

MR. MERRILL: Thank you.

May I voir dire the Witness, Your Honor?

THE SPECIAL MASTER: What?

MR. MERRILL: May I voir dire the Witness?

* * * * *

1 VOIR DIRE EXAMINATION

2 BY MR. MERRILL:

3 Q Rich, isn't it true that you have had no previous
4 experience in designating wilderness for aesthetic
5 areas of land?

6 A For this purpose?

7 Q Yes.

8 A That is correct.

9 Q Isn't it also true that you don't consider your-
10 self to be an expert in the area of aesthetics?11 A No, sir, that is not true. In my deposition I
12 explained to you that I do object to the word
13 expert, but it has nothing to do with my qualifi-
14 cations in the area of expertise.15 MR. MERRILL: Your Honor, if I may take a
16 moment to review the transcripts of the depo-
17 sitions which were taken of Mr. Harbcur? We did
18 not learn until this morning who Ms. Sleater's
19 first witness would be as part of their case,
20 and, consequently, did not bring over all of the
21 depositions of the dozen and a half witnesses
22 and would therefore request time to obtain those.23 THE SPECIAL MASTER: How much time, Mr.
24 Merrill? Fifteen minutes?

25 MR. MERRILL: That would be fine.

1 THE SPECIAL MASTER: Fifteen-minute recess.

2 (Whereupon a 15 minute recess
3 was taken.)

4 Q (By Mr. Merrill) Rich, isn't it true that you
5 have never had any formal education or training
6 to be an expert in the area of aesthetics?

7 A Not formal training, no.

8 MS. SLEATER: I would object to this line
9 of questioning. We are not qualifying Mr. Harbour
10 in aesthetics, but as a natural resources
11 manager and planner.

12 MR. MERRILL: What it all boils down to,
13 Your Honor, is we are very much in the area of
14 aesthetics with the very broad tender of the
15 witness as an expert in natural resources
16 management and planning.

17 THE SPECIAL MASTER: The objection is over-
18 ruled. He may answer if he can, whatever the
19 distinction.

20 Q (By Mr. Merrill) Rich, on what experience do
21 you base or claim that you have any particular
22 expertise, or if not expertise, knowledge or
23 special knowledge in the area of aesthetics?

24 A As we covered in my deposition, I was raised in
25 an area where there are aesthetic values that I,

1 in my judgment, am able to make as to whether
2 they are or are not, in my own estimation, fit
3 the definition of aesthetics.

4 In all of the experience and work that I
5 have done over the years, I have lived in these
6 areas that are very similiar to this, and I think
7 that, you know, having all of this experience
8 and living in these areas plus the fact that I
9 was a licensed guide in the State of Colorado
10 gives me some more background to support that I
11 do know what I'm looking at.

12 MR. MERRILL: Your Honor, the State of
13 Wyoming has no objection to the tender of Mr.
14 Harbour as an expert in natural resources
15 planning and management except insofar as that
16 very broad tender may encompass Mr. Harbour
17 giving a professional opinion or an opinion that
18 may be accorded the weight of a professional
19 concerning what is the definition of an aesthetic
20 area and, consequently, what area is an aesthetic
21 area.

22 With respect to everything else in natural
23 resources planning and management, we have no
24 objection to the tender, but he is not an expert
25 in aesthetics by his own admission.

1 MS. SLEATER: I think Mr. Merrill has mis-
2 stated what Mr. Harbour has just said and, further,
3 I think, as Mr. Merrill noted, aesthetics involves
4 land use planning, and in that sense, because Mr.
5 Harbour is, as admitted by Wyoming, clearly an
6 expert in natural resources planning and manage-
7 ment, he should be accepted as such as a professional
8 for all purposes.

9 MR. MERRILL: The best that I could think of
10 as an analogy to that is what Mr. Justice Brennan
11 of the United States Supreme Court said in
12 evaluating a case in which the Court was ruling
13 on whether a certain film constituted pornography,
14 and he said, "Pornography is in the eye of the
15 beholder," and I think that the same situation
16 may apply here.

17 THE SPECIAL MASTER: To aesthetics?

18 MR. MERRILL: That's right.

19 THE SPECIAL MASTER: Let me ask a question
20 of the witness. Would you define aesthetics for
21 me?

22 THE WITNESS: Aesthetics, to me, is something
23 that is unique and beautiful in the strictest
24 sense of the word.

25 THE SPECIAL MASTER: I'm going to overrule the

1 objection to him being an expert in aesthetics
2 and will permit his testimony on matters of
3 aesthetics for what they may be worth considering
4 his qualifications.

5 MS. SLEATER: Thank you, Your Honor.

6 DIRECT EXAMINATION (RESUMED)

7 BY MS. SLEATER:

8 Q Mr. Harbour, I would like to direct your attention
9 to what has been marked U.S. Exhibit WRIR C-3,
10 indicated thusly, and ask if you can identify
11 that exhibit, please?

12 A That exhibit is a satellite photograph of the
13 Wind River Indian Reservation and surrounding
14 area.

15 Q Thank you.

16 MS. SLEATER: Your Honor, at this time I
17 would request your permission to have the witness
18 step down from the witness stand and approach
19 the exhibit?

20 THE SPECIAL MASTER: Certainly.

21 (Witness complied.)

22 Q (By Ms. Sleater) Could you explain the legend
23 on that exhibit, please, Mr. Harbour?

24 A This legend was on the back of this particular
25 photograph that was Xeroxed so that everything

1 is off of the back of the photograph that does
2 show, and it was placed here.

3 Q And does that legend show the date at which that
4 photograph was taken?

5 A Yes, ma'am, it does. It was taken September 5,
6 1973.

7 Q Now, I note that photograph is mostly blue and
8 red. Can you explain why that is, please?

9 A This is an infra-red photograph, if I'm not
10 mistaken, that we have that the red areas will
11 show areas of concentration for particularly
12 agricultural purposes.

13 Q Have you had occasion to use similiar photographs
14 in your work?

15 A Well, we have some of these that are almost
16 identical to this in our office. However, the
17 ones that we use are not usually taken from this
18 high up. They are taken from a more controlled
19 elevation.

20 Q Can you say, based on your experience with working
21 with photographs, that this fairly and accurately
22 represents an aerial view of the Wind River
23 Indian Reservation?

24 A Yes, ma'am, it does.

25 MR. MERRILL: I object and ask that the answer

1 be stricken. There's no foundation that he knows
2 that fairly and accurately depicts an aerial
3 view --

4 THE SPECIAL MASTER: I would sustain that,
5 but I would like a few more questions of what
6 it does depict rather than does he know.

7 MS. SLEATER: Certainly, Your Honor. I
8 was going to --

9 THE SPECIAL MASTER: I would like directions,
10 orientation, identity, obvious marks, ridges,
11 that sort of thing identified.

12 Q (By Ms. Sleater) Mr. Harbour, could you please
13 indicate, using U.S. Exhibit WRIR C-3, the
14 boundaries of the Wind River Indian Reservation?

15 A Approximately -- these are not going to be all
16 that easy to see on a photograph of this scale,
17 but this is the East Fork of the Wind River,
18 and the boundary of the Reservation goes up the
19 East Fork of the Wind River to this point
20 (indicating), up to a point this way, and down.

21 THE SPECIAL MASTER: What are you pointing
22 out now before you started down?

23 THE WITNESS: This is the northwest corner
24 of the Reservation, and then down Owl Creek to a
25 point west of Thermopolis, and then south, and then

1 across Owl Creek -- excuse me -- across Wind
2 River Canyon, and then south along Boysen
3 Reservoir to a point in this area (indicating),
4 almost straight east of Hudson, and then back
5 to the Popo Agie River and then up the Popo Agie
6 River across to the beginning of the North Folk
7 Canyon and then a point straight up to the
8 Continental Divide, and then following the
9 Continental Divide for about 10 miles and then
10 straight north to the point of beginning on the
11 Wind River.

12 THE SPECIAL MASTER: Thank you.

13 Q (By Ms. Sleater) I note, Mr. Harbour, that when
14 you said "due" you gave a straight line direction
15 but, in fact, pointing to the photograph, you
16 were slanting your line. Can you explain that?

17 A Well, one thing about this particular photograph
18 is it's not corrected for true north. It is
19 just as it came out of the film from the satellite.

20 Q So the lines that you were drawing were accurate
21 in regards to true north?

22 A Well, I certainly hope so.

23 Q Thank you. Could you also, using the photograph,
24 indicate some of the major physical features,
25 if you would, please?

1 A Yes, ma'am. The light on this is pretty bad.
2 This is the Owl Creek Range. This is
3 Owl Creek, Boysen Reservoir, the Withdrawal Area
4 in which Ocean Lake is in, and this is the Wind
5 River, and this is the Wind River Range, Din-
6 woody Lakes, Bowl Lake, Washakie Reservoir, Ray
7 Lake, and the City of Lander is down in this
8 vicinity (indicating).

9 This pretty much comprises the major
10 physical features.

11 Q I'll ask you again, Mr. Harbour, can you state
12 that that photograph fairly and accurately
13 represents an aerial view of the Wind River
14 Indian Reservation?

15 A Yes, ma'am, it does.

16 MS. SLEATER: At this time, Your Honor, I
17 would renew my motion that U.S. Exhibit WRIR C-3
18 be admitted in evidence.

19 MR. MERRILL: Your Honor, I have a few
20 questions, if I may voir dire?

21 THE SPECIAL MASTER: Voir dire, all right.

22 VOIR DIRE EXAMINATION

23 BY MR. MERRILL:

24 Q Rich, do you know the angle from true perpen-
25 dicular to the surface of the earth at that point

- 1 that that satellite photograph was taken?
- 2 A No, I do not.
- 3 Q Do you know the altitude from which the photograph
- 4 was taken?
- 5 A I'm not privy to that information either.
- 6 Q What is the scale of miles to a certain distance
- 7 on that photograph?
- 8 A I have not measured this photograph in that
- 9 context, so I can't answer that. I can give you
- 10 a general idea, but as far as a scale, I cannot
- 11 do that.
- 12 Q You don't know the scale?
- 13 A No, I don't.
- 14 Q Why do the various colors show up on that photo-
- 15 graph the way they do, the red and the blue
- 16 areas?
- 17 A That's because of the photography that's used by
- 18 the satellite and, you know, this is an infra-
- 19 red photograph.
- 20 Q And what does that mean with respect to this
- 21 photograph?
- 22 A That means that the areas that are, you know,
- 23 water and that type of thing show up specifically
- 24 for that purpose.
- 25 Q Are you then saying that the colors as shown on

1 this photograph are not the colors that would
2 appear to a naked eye viewing of the scene?

3 A That is correct; that is correct. These areas
4 would normally be green; the areas that are red
5 would normally be green.

6 Q So this photograph doesn't depict the ground as
7 we would see it if we were up in the satellite?

8 A That's right. Well, through your own eye it
9 would not.

10 Q Rich, do you know the amount of magnetic declination
11 from magnetic north and true north in the area
12 depicted on this photograph?

13 A Well, since I'm not an engineer, but I do believe
14 it's about 14 degrees.

15 Q Do you know the degree of distortion either in the
16 center of the photograph or toward any of the
17 edges based on the curvature of the lens through
18 which the photograph was taken?

19 A No, I do not. That would, however, have an effect
20 on the scale of it.

21 MR. MERRILL: Your Honor, we'll object to the
22 admission of U.S. Exhibit WRIR C-3 on two grounds;
23 First, the exhibit is not competent in that it
24 does not show what an observer at the point the
25 photograph was taken would really see and, secondly,

1 there has been no showing at all that this photo-
2 graph relates to any of the natural resources
3 about which Mr. Harbour may testify. It has not
4 been related to any portion of the case this far.

5 THE SPECIAL MASTER: I would agree that a
6 little more foundation of who took it and where
7 and when and why and a little more about it might
8 be in order, but it would appear to me that
9 there's no question from its features that it's
10 a representation taken from the satellite, and
11 for whatever value it may have, I think it
12 ought to be admitted. I will overrule the
13 objection.

14 MR. MERRILL: I would simply point out that
15 it was offered to show that it was a fair and
16 accurate representation of the area, and since
17 the witness has testified that it's distorted on
18 the edges and that the colors are not correct,
19 it ought to be admitted then subject to those
20 limitations.

21 THE SPECIAL MASTER: Of course, that's under-
22 standable. It's admitted for whatever probative
23 value and as for an understanding of what it is
24 and what it is not.

25

1 DIRECT EXAMINATION (RESUMED)

2 BY MS. SLEATER:

3 Q Mr. Harbour, did you testify that the photograph
4 was distorted at the edges?

5 A No, I did not.

6 Q Thank you.

7 THE SPECIAL MASTER: I have one question.
8 May I ask Regina?

9 MS. SLEATER: Certainly.

10 THE SPECIAL MASTER: Take your pointer and
11 run it on the center line from the center of the
12 left boundary, a straight line down to the center
13 of the bottom line. It looks to me like the
14 line at the edge of a ridge of mountains to the
15 center of the first -- twist the bottom over a
16 little more, over a little more, to the center
17 of the bottom line of your picture, a little more.

18 Now, look at that range of mountains that
19 parallels your stick and define what is off of
20 that and what is the white to the southwest?

21 THE WITNESS: Okay. Your Honor, this is
22 the top of the Wind River Mountains. This area
23 in here is the front and if you'll notice Bull
24 Lake here, these are not up on top. They are a
25 lower elevation. This is snow in this area (indicating).

1 THE SPECIAL MASTER: All right. That's what
2 I wanted to know. The snow comes up white?

3 THE WITNESS: Yes, sir.

4 THE SPECIAL MASTER: Thank you.

5 Q (By Ms. Sleater) Mr. Harbour, while you're off
6 the stand, I direct your attention to what has
7 been marked for identification U.S. Exhibit WRIR
8 C-4 and ask you if you can identify that, please?

9 A This is a base map of the Wind River Indian
10 Reservation on a three-quarter inch to the mile
11 scale.

12 Q Do you know by whom that map was prepared?

13 A This map was prepared by Stetson, Stetson
14 Engineering.

15 Q Do you know where the original material came
16 from? Was it based on county highway maps or --

17 A The base map itself was based on county highway
18 maps, yes, ma'am.

19 Q Are you aware of what the coloration of that
20 exhibit is?

21 A Yes, sir. They are all elevations taken from
22 USGS quadrangles.

23 Q Could you please indicate for the Court what the
24 different colors mean in terms of the elevations?

25 A The real dark, dark browns, which are here (indicating),

1 are the 12 to 13,000 foot elevations. The one
2 up here, the chocolate brown, which are these
3 areas like this (indicating), are 11 to 12,000
4 foot elevations. The light browns are 10 to 11,000
5 feet. The brownish orange are 9 to 10,000.
6 Yellow, or the greenish yellow, is 7 to 8,000
7 feet. The yellows are 5,900 to 7,000 feet. The
8 light yellow is 5,000 to 5,900 feet, and this
9 really, really light yellow over here (indicating),
10 is the 5,000 feet and below.

11 Q Thank you, Mr. Harbour. Are you aware where the
12 topographic information as presented on this
13 map came from?

14 A The topographic information on this map is taken
15 from the USGS quadrangles which are a standard
16 accepted in all of our proceedings.

17 Q Have you personally reviewed that map and the
18 information portrayed thereof?

19 A Yes, ma'am, I have.

20 Q Can you state that that is a fair and accurate
21 representation of the topologic features of
22 the Reservation?

23 A Yes, ma'am, it's fairly accurate as far as the
24 topographic features and the lines are con-
25 cerned, delineations.

1 Q With respect to the base map?

2 A Yes, ma'am.

3 Q Can you make a similiar reservation or do you
4 have any qualifications which you would like
5 to note?

6 A This map is not entirely accurate as it is
7 presented here on the ground today. On this map
8 there's a railroad running from Riverton to
9 Hudson. That railroad is no longer in existence.

10 The new highway from Riverton to Lander
11 comes around this way (indicating), and it does
12 not show on this map.

13 Q Other than that, can you state that that map
14 is a fair and accurate representation of the
15 information which it portrays?

16 A Yes, ma'am, it is.

17 MS. SLEATER: At this time, Your Honor, I
18 would like to ask that U.S. Exhibit WRIR C-4
19 be admitted into evidence.

20 THE SPECIAL MASTER: Any voir dire?

21 MR. MERRILL: Just a few questions, Your
22 Honor.

23

24

25

VOIR DIRE EXAMINATION

1
2 BY MR. MERRILL:

3 Q Rich, did you say that the contours showing
4 elevation on Exhibit C-4 conform exactly to
5 the USGS quad sheets?

6 A I said they come very close.

7 Q So there may be some degree of difference
8 between this map and the quad sheets?

9 A Well, there's a possibility within a few feet
10 because this scale is entirely different than
11 a quad sheet scale.

12 Q And on what do you base your statement that
13 other than the two exceptions that you pointed
14 out, this map is an accurate representation of
15 the remainder of the Reservation?

16 A Because of my knowledge of what is there and
17 having reviewed the map itself.

18 MR. MERRILL: Your Honor, we have no
19 objection to the admission of the Exhibit C-4
20 for illustrative purposes, but since there are
21 discrepancies between it and the quad sheets and
22 the primary feature that this map seeks to show
23 is elevation, we believe that it ought to be
24 admitted for illustrative purposes only or subject
25 to impeachment by the use of quadrangle maps to

1 point out with more accuracy the topographic
2 features as well as the discrepancies.

3 THE SPECIAL MASTER: Well, I think with
4 those reservations, I will admit it, and you
5 may indeed attack it for that purpose of topo-
6 graphic elevations alone. All right. U.S.
7 Exhibit WRIR C-4 is admitted into evidence.

8 MS. SLEATER: Thank you, Your Honor.

9 (The instrument received
10 hereinbefore U.S. Exhibit WRIR
C-4 is admitted into evidence.)

11 MS. SLEATER: At this time we will show
12 the witness what has been marked for identification
13 U.S. Exhibit WRIR C-5.

14 THE SPECIAL MASTER: I would remind you
15 only that 1 is still out, Regina.

16 DIRECT EXAMINATION (RESUMED)

17 BY MS. SLEATER:

18 Q If you would stay down here for a moment, Mr.
19 Harbour, and can you identify WRIR C-5, please?

20 A Yes, ma'am. This is the same base map that
21 we talked about before, but it has the Federal
22 Indian Projects located on it in green.

23 Q Can you identify those areas for us, please?

24 A Yes, ma'am. This is the Upper Wind Unit, the
25 Johnstown Unit, the Ray Lake Unit, Coolidge Unit,

1 Subagency Unit, and the Lefthand Unit (indicating).

2 Q Mr. Harbour, you can go back to the stand.

3 Thank you.

4 Can you tell us, please, what a Federal
5 Indian Project is?

6 A A Federal Indian Project is an irrigation project
7 under the direction of the Bureau of Indian
8 Affairs that serves those water users, both Indian
9 and non-Indian, located within those boundaries.

10 Q So, as I understand it then, the areas colored
11 green are not necessarily all trust land?

12 A That is correct.

13 Q I have noticed on both Exhibit 4 and Exhibit 5
14 that there's been an area outlined north of
15 Owl Creek that's outlined on both of the base
16 maps. Can you tell what that area is, please?

17 A Yes, ma'am. That's the Arapahoe Ranch Head-
18 quarters area, which was purchased and added
19 to the Reservation in 1940, held in trust by the
20 Shoshone and Arapahoe Tribes.

21 Q In your responsibilities as land operation officer,
22 are you responsible for the operations or
23 supervising the operation of Federal Indian
24 Projects?

25 A Yes, ma'am, I have the general supervision of those

1 projects.

2 Q Are you aware of who prepared Exhibit WRIR C-5?

3 A It was also prepared by Stetson.

4 Q I ask you, Mr. Harbour, if you can state does
5 U.S. Exhibit WRIR C-5 fairly and accurately
6 represent the general location of the Federal
7 Indian Projects with respect to the Reservation?

8 A Yes, ma'am.

9 MS. SLEATER: At this time, Your Honor, I'd
10 request that U.S. Exhibit WRIR C-5 be admitted
11 into evidence.

12 THE SPECIAL MASTER: Mr. Merrill?

13 MR. MERRILL: Just a couple of questions,
14 Your Honor.

15 VOIR DIRE EXAMINATION

16 BY MR. MERRILL:

17 Q Rich, can you step down and approach Exhibit C-5
18 and point out to the Court the boundaries between
19 the four units which are continuous to one
20 another, the Ray Lake, Coolidge, Subagency, and
21 Lefthand?

22 A Pretty much so. Here again is a scale map that
23 we are going to have problems with if you want
24 to get very specific. The Ray Lake Unit is
25 basically here (indicating). There's a canal that

1 comes around this lake. This lake comes around
2 here that separates the Ray Unit from the
3 Coolidge Unit.

4 Down here we have another diversion that
5 would come out of the Little Wind River and
6 serve the Lefthand -- or Subagency Unit (indicating).

7 Some of the water around here does go into
8 this area, but most of the water is diverted
9 over here to serve this unit (indicating). We
10 do have water running across the top.

11 Q Are the boundaries between those four units shown
12 on Exhibit C-5?

13 A I don't see that they are, no.

14 Q Do you know of your own personal knowledge that
15 the exterior boundaries of the Federal Indian
16 Projects depicted on Exhibit C-5 are absolutely
17 accurate?

18 A They appear to me that they are.

19 Q There's no question in your mind that the
20 boundaries shown on Exhibit C-5 for the Federal
21 Indian Projects are correct?

22 A That's my statement.

23 MR. MERRILL: Your Honor, the only objection
24 I have to the admission of this exhibit is
25 relevant in that it has not been tied into anything

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that has been presented to the Court by the
Statement of Claims in this case.

THE SPECIAL MASTER: Do you want to ask a
question or two regarding its relevance?

MS. SLEATER: Your Honor, I would just like
to respond that in a case dealing with the water
rights on the Wind River Indian Reservation, if
locations of the Federal Indian Irrigation Projects
are not relevant, perhaps we are all in the
wrong place.

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1 THE SPECIAL MASTER: They may be relevant
2 if these are the areas that contain all of what is
3 to be practicably irrigable acreage, and is that the
4 case?

5 MS. SLEATER: They do not contain all,
6 Your Honor, but there are water claims that relate
7 to the irrigation activities in those areas.

8 THE SPECIAL MASTER: I think she met
9 relevancy.

10 MR. MERRILL: Your Honor, if Ms. Sleater
11 is saying she is going to tie Exhibit C-5 into the
12 Statement of Claims, then we have no relevancy
13 objection, but if she's not going to, then we do
14 object on relevancy. It has to tie in somehow
15 to the issues formed by the pleadings which will
16 be the Statement of Claims in this case.

17 THE SPECIAL MASTER: Oh, I think I'll
18 overrule the objection; it can go in for what it's
19 worth, Mr. Merrill.

20 Q (By Ms. Sleater) Mr. Harbour, could you state,
21 do you know approximately how many tribal members
22 there are in the reservation?

23 A There are approximately 4,500.

24 THE SPECIAL MASTER: Will you define a
25 tribal member by age and blood quantum so we

1 have it in the record.

2 THE WITNESS: Your Honor, by age we
3 know anyone who is enrolled so that would be from
4 birth to death, and the blood quantum would be
5 the same, the one-quarter that is set forth in
6 there.

7 Q (By Ms. Sleater) Does your count include only
8 tribal members or also their immediate families?

9 A It includes tribal members and their immediate
10 families that are located on the reservation.

11 MR. MERRILL: Your Honor, I'm going to
12 object. There's no foundation shown at all thus
13 far in the record that Mr. Harbour has any
14 knowledge, personal or otherwise as to how many
15 members are enrolled.

16 THE SPECIAL MASTER: Your objection,
17 I better sustain it. He's testifying about other
18 expert matters, so I'm going to sustain that, and
19 I probably shouldn't have asked my question.

20 Q (By Ms. Sleater) Mr. Harbour, under your
21 responsibility as land operations officer, do
22 you have any responsibility relating to the
23 accumulation of statistics regarding the number
24 of persons on the reservation or do you in any
25 other way, have knowledge of that number?

1 A I'm the coordinator for the computer program on
2 the reservation and as such I have access to all
3 of the statistics that are in that program.

4 Q And some of those statistics, are statistics
5 relating to population on the reservation?

6 A Yes, they are.

7 Q Are those statistics broken down with respect
8 to Indian, non-Indian tribal members and similar --

9 A Yes, ma'am, by tribe.

10 Q Was your statement as a general number based upon
11 this knowledge you have?

12 A It is knowledge that is from these statistics, yes,
13 ma'am.

14 MR. DONNELL: Your Honor, I'm going to
15 object. If he's got records, those should be put
16 in evidence, they're the best evidence, not his
17 general estimates based on the records that are
18 not even here.

19 MS. SLEATER: Do I understand that we're
20 being ordered --

21 THE SPECIAL MASTER: You're not being
22 ordered to, but it might be a good thing to do,
23 simply to prove population totals. I'm not sure
24 they're necessary, but it would be a more appropriate
25 way to proceed, it would be the best evidence. And

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I would, for the purposes of moving ahead, I'll overrule the objection, but I would suggest that some records --

MS. SLEATER: Your Honor, we are getting the records now.

THE SPECIAL MASTER: You don't have to get them now for that matter.

Q (By Ms. Sleater) Mr. Harbour, do you, of your own personal knowledge, know where general population centers are with respect to the tribal members and their families?

A Yes, ma'am. Generally the Shoshones live on the west part of the reservation in this area, and in an area approximately from this line west.

This is, the Arapahoes live basically east in this particular vicinity, the majority of them, not all of them, but the majority.

Q Thank you, Mr. Harbour, you may resume the stand.

(Witness complied.)

THE SPECIAL MASTER: Could I ask a question, Regina, please?

MS. SLEATER: Sure.

THE SPECIAL MASTER: What were the dates that these Federal Indian Projects were established as such, as irrigation projects?

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THE WITNESS: Your Honor, I'm not sure I can exactly give you the dates, but they were established early in the century, but I don't have those at my command at this time.

MS. SLEATER: Your Honor, if I could, I believe that's shown in the Code of Federal Regulations relating to these projects.

THE SPECIAL MASTER: Proceed.

Q (By Ms. Sleater) Mr. Harbour, based on your knowledge and your position as land operations officer, are you aware of what is the basic operation or the more general occupation of people on the Wind River Indian Reservation?

MR. MERRILL: Your Honor, I hate to impose another injection, but some definitions might clarify his testimony just a little bit as to basic operation. I don't know what that means.

MS. SLEATER: I'm sorry, the most general occupation on the reservation, if there is such an occupation.

MR. MERRILL: Well, Your Honor, until the witness has shown that he has some personal knowledge of the demographic or statistics concerning the reservation population, there's no

1 evidence showing he's competent to testify as
2 to who does what.

3 Q (By Ms. Sleater) Mr. Harbour, from your personal
4 knowlege, do you know who does what out there?

5 A Generally, yes.

6 Q Could you tell me generally what most of them do.

7 A Most of the operators on the reservation are in
8 a cattle operation.

9 Q From your personal knowledge, do you know what
10 type of cattle operations are most prevalent?

11 A The most prevalent operation is cow/calf operation.

12 Q What do you mean by "cow/calf operation"?

13 A It is the raising and selling of calves in the
14 fall by the operator.

15 Q And then they're sold in the fall?

16 A Sold in the fall on a cow/calf operation, yes, ma'am.

17 Q What is the normal place of sale?

18 A The normal place of sale is at the Riverton Auction,
19 providing that they haven't been contracted for
20 earlier by a private firm.

21 Q Okay. Have you any professional responsibility
22 with respect to the cattle operations on the Wind
23 River Indian Reservation?

24 A Yes, ma'am. I have the range under my supervision.

25 Q Have you any responsibility with regards to

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1 Arapaho Ranch?

2 A Yes, ma'am. I have a general oversight of that
3 ranch.

4 THE SPECIAL MASTER: I didn't hear the
5 answer.

6 THE WITNESS: I have a general oversight
7 of that ranch.

8 Q (By Ms. Sleater) Could you tell me how the ranges
9 are managed?

10 A Ranges are managed on a -- well, you want to talk
11 about seasonal use, that's how they're managed, they
12 are rotation -- rotational use by season.

13 Q Could you explain that a little more, please.

14 A Yes, ma'am. The cattle are turned out in the spring
15 and run in an area for a specified length of time
16 depending on what the area is, where it is. Then
17 they're moved to summer range for a like specified
18 period of time, then moved back on a range in the
19 fall to where they began. Most of the time it is
20 a spring/fall use. Then they're taken off of the
21 range entirely in the winter with the exception
22 of Arapaho Ranch which they are permitted to run
23 their cattle on, some of the cattle operation some
24 of the time.

25 Q With respect to your responsibility as to range

1 management, and general operation on the
2 reservation, are you aware of the approximate
3 number of head that's on the reservation?

4 A Yes, ma'am. We do a cattle count every year and
5 there are approximately 25,000 head.

6 Q At what period of time?

7 A We do our cattle -- well, that 25,000 head is
8 usually in the fall, but we count them in the
9 spring. It's not a great deal of change from fall
10 and prior to turnout time, except for deaths, loss
11 and that type of thing.

12 Q Can you tell me how are the cattle on the trust
13 lands distributed, by river drainage?

14 MR. MERRILL: Objection, foundation,
15 Your Honor.

16 THE SPECIAL MASTER: I did not get the
17 full question.

18 MS. SLEATER: I asked Mr. Harbour if
19 he could tell me how the cattle are distributed
20 on trust lands, according to the various river
21 drainages on the drainages.

22 THE SPECIAL MASTER: We better find out
23 what trust lands are, and if he is aware of a
24 distinction between grazing on the trust lands
25 and nontrust lands, if you will.

1 MS. SLEATER: Certainly, sir.

2 Q (By Ms. Sleater) Mr. Harbour, could you explain
3 it to us the various types of lands, the
4 definitional terms relating to the land status
5 on the Wind River Indian Reservation. Is this
6 an area that falls within your responsibility as
7 land operations officer?

8 A Yes, it is. Trust lands are those that are held
9 in trust by the United States government with the
10 Shoshone and Arapahoe tribes, and those individuals
11 holding their land in an allotted status. The
12 remainder of the lands on the reservation that
13 do not fit into this category are fee status.

14 THE SPECIAL MASTER: Are what, fee status.

15 THE WITNESS: Yes, ma'am -- yes, sir,
16 they pay taxes on it.

17 THE SPECIAL MASTER: Proceed.

18 Q (By Ms. Sleater) Are you aware of how many
19 cattle are run on trust land?

20 A Yes, ma'am.

21 Q Is that a part of your professional responsibility
22 as land operations officer?

23 A It is.

24 Q Would you please tell us then how these cattle
25 are distributed by river basin on the reservation.

1 MR. MERRILL: Your Honor, I'm going to
2 object again. Mr. Harbour testified a few
3 minutes ago that the cattle are moved from
4 various parts of the reservation during the
5 seasons of the year, and there is going to be a
6 need for clarification in the record for, to know
7 either what time of year we're talking about or
8 average or something.

9 MS. SLEATER: I mean the question to
10 reflect an average overall year.

11 THE SPECIAL MASTER: Oh, he may answer.

12 THE WITNESS: I'm going to have -- that's
13 just a statistical thing, and I'll have to refer
14 to it as a percentage.

15 By drainages, the Wind River Drainage has
16 approximately thirty-two percent; the Little Wind
17 Drainage, thirty-two percent; the Owl Creek
18 Drainage, thirty-four percent, and Popo Agie
19 Drainage, two percent.

20 Q (By Ms. Sleater) Thank you. Now, I believe you
21 stated that except for Arapahoe Ranch there's no
22 utilization of range in the winter?

23 A No, I said there is a utilization of range, there is.

24 Q Could you explain that, please?

25 A Well, I'm not sure I understand your question,

1 but as I interpret what you're saying to me, the
2 Arapahoe Ranch does run their cattle year round
3 on range. Not all of them are run out there at
4 all times, but they are permitted to run their
5 cattle on range during the winter.

6 Q Other than the Arapahoe Ranch, is there other
7 utilization of rangelands during the winter periods?

8 A By whom?

9 Q Anyone that's --

10 A No. The Arapahoe Ranch are exclusively the only one
11 that run on range in the wintertime.

12 Q Thank you. What is the practice in the winter
13 relating to the cattle?

14 A Cattle are taken from range and put on either trust
15 land that's leased or owned by the operators and
16 wintered there. They either pick up the grazing
17 there is on that land or they are supplementally
18 fed hay, straw, protein supplement. In some cases
19 some of them have fed, silage.

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1 Q (By Ms. Sleater) Would you describe for us,
2 please, the Arapahoe Ranch operation, give us
3 a little background on the ranch, if you would?

4 A The Arapahoe Ranch is a Tribal enterprise
5 operated by the Arapahoe Tribe. It consists
6 of about 300,000 acres in the northeast corner
7 of the Reservation; it runs approximately 7,000
8 head of cattle.

9 Q Who is employed up there?

10 A The main employment on that ranch is the Arapahoe
11 Indian members of the Tribes, but there are at
12 times other people that are employed on that
13 ranch besides Arapahoes. But it is primarily
14 an Arapahoe employment.

15 Q Thank you. Now, are there any areas on the
16 Reservation which have any use restrictions
17 at all?

18 A Yes, ma'am, there is.

19 THE SPECIAL MASTER: That have any what?

20 MS. SLEATER: Use restrictions or limitations
21 on them.

22 MR. MERRILL: Your Honor, a definition of
23 that term might be appropriate.

24 THE SPECIAL MASTER: Well, proceed with another
25 question or two so we can see if that is the case,

1 of use restriction.

2 Q (By Ms. Sleater) Mr. Harbour, do you understand
3 the term use restriction?

4 A Yes, ma'am.

5 Q Could you please state for the record what your
6 understanding of that is?

7 A Use restriction is there is some restriction
8 put upon an area of use that something cannot
9 happen in that area, that is a restriction to use.

10 Q Is there such an area on the Wind River Indian
11 Reservation?

12 A Yes, ma'am, there is.

13 Q And what is that area?

14 A It is called the roadless area.

15 Q I will hand you a copy of what has been marked
16 for identification purposes as U.S. Exhibit WRIR
17 C-6, and ask you if you can identify that, please.

18 THE SPECIAL MASTER: Who established this denial of
19 use, may I ask?

20 THE WITNESS: It was established by Congress.

21 (Brief pause.)

22 THE SPECIAL MASTER: I asked the question
23 while you were working of who established this
24 denial of use, and the answer was, "It was
25 established by Congress."

1 Q (By Ms. Sleater) Mr. Harbour, I have handed you
2 what has been marked for identification as U.S.
3 Exhibit WRIR C-6. I wonder if you can identify
4 that, please?

5 A Yes, ma'am. It is an excerpt, the title 25 Code
6 of Federal Regulations.

7 Q And what does that excerpt relate to, please?

8 A It defines the roadless area located on the Wini
9 River Reservation in a legal definition.

10 Q Thank you. Does this document also indicate the
11 size of the area?

12 A Yes, ma'am, it does. It has within its boundaries
13 180,387 acres.

14 MS. SLEATER: At this time, Your Honor, I
15 would like to request that U.S. Exhibit WRIR C-6
16 be admitted into evidence.

17 MR. MERRILL: No objection, Your Honor.

18 THE SPECIAL MASTER: It is admitted.

19 Q (By Ms. Sleater) Mr. Harbour, I give you one of
20 these four --

21 THE SPECIAL MASTER: Do you have more than
22 a few more minutes with this witness, Regina?
23 Another 15 or 20 minutes or so?

24 MS. SLEATER: Yes, sir, at least that.

25 THE SPECIAL MASTER: Why don't we adjourn in

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the interest of -- I'm sorry, we got into the noon hour. Why don't we adjourn for noon until 1:30. Is that all right?

MS. SLEATER: Okay.

THE SPECIAL MASTER: We will stand in recess for lunch until 1:30.

(End of Volume I.)