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Case # 4993

File # 111

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

IN RE:)
)
THE GENERAL ADJUDICATION)
OF RIGHTS TO USE WATER)
IN THE BIG HORN RIVER)
SYSTEM AND ALL OTHER)
SOURCES, STATE OF WYO-)
MING,)

Civil No. 4993

FILED

2/6 1981

Margaret W. Hampton

CLERK

DEPUTY

VOLUME IV

Tuesday, January 27, 1981

Afternoon Session

ORIGINAL

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15
16
17
18
19
20
21
22
23
24
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INDEX TO EXAMINATION

PAGE

WITNESS:

James Merchant

5	Direct Examination	By Ms. Sleater	267
	Voir Dire Examination	By Mr. Merrill	274
6	Voir Dire Examination	By Mr. Merrill	287
	Direct Examination	By Ms. Sleater	290
7	Voir Dire Examination	By Mr. Fillerup	324
	Voir Dire Examination	By Ms. Yonkee	326
8	Voir Dire Examination	By Mr. Webster	327
	Voir Dire Examination	By Mr. Webster	348
9	Voir Dire Examination	By Mr. Merrill	352
	Direct Examination	By Ms. Sleater	371
10	Examination	By The Special Master	375
	Voir Dire Examination	By Mr. Webster	377
11	Voir Dire Examination	By Mr. Merrill	386
	Redirect Examination	By Ms. Sleater	397
12	Examination	By The Special Master	401
	Direct Examination	By Ms. Sleater	402
13	Voir Dire Examination	By Mr. Webster	406
	Voir Dire Examination	By Ms. Yonkee	00410
14	Voir Dire Examination	By Mr. Merrill	00412
	Direct Examination Cont.	By Ms. Sleater	437
15	Voir Dire Examination	By Mr. Webster	441
	Voir Dire Examination	By Mr. Sachse	445
16	Voir Dire Examination	By Mr. Radosevich	449
	Voir Dire Examination	By Mr. Merrill	450
17	Voir Dire Examination	By Ms. Yonkee	455
	Direct Examination Cont.	By Ms. Sleater	458

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

INDEX TO EXHIBITS

IDENTIFIED RECEIVED

U.S. Exhibit WRIR C-14	272	278
U.S. Exhibit WRIR C-14-A	286	290
U.S. Exhibit WRIR C-15	297	345
U.S. Exhibit WRIR C-15-A	319	
U.S. Exhibit WRIR C-16	345	
U.S. Exhibit WRIR C-19	431	429
U.S. Exhibit WRIR C-20	438	

1 (The following Proceedings
2 was continued at 1:30 p.m.)

3 THE SPECIAL MASTER: We will convene.

4 MR. MERRILL: Your Honor, before we begin,
5 I would like to mention two things: Number one,
6 during the recess Mr. Echohawk asked me if we intended
7 to recall Mr. Harbour as part of these proceedings
8 for further cross-examination. I don't think that
9 will be the case, and I would ask the Court to excuse
10 Mr. Harbour subject to his being recalled by the State
11 of Wyoming as an adverse witness when we put him on in
12 our Case in Chief.

13 THE SPECIAL MASTER: Is that understandable,
14 Mr. Harbour.

15 MR. HARBOUR: I'm not sure I heard it all.

16 THE SPECIAL MASTER: Would you please repeat
17 that, Mr. Merrill?

18 MR. MERRILL: Yes, Your Honor.

19 We have no objection to your being excused,
20 Mr. Harbour, on the understanding that you are still
21 subject to the jurisdiction of this Court and can
22 be recalled as an adverse witness to testify as part
23 of Wyoming's Case in Chief.

24 MR. HARBOUR: Understood.

25 MR. MERRILL: Is that agreeable to you?

1 MR. HARBOUR: Yes, that is.

2 THE SPECIAL MASTER: Is that agreeable to
3 you, Regina?

4 MS. SLEATER: With one qualification. I'm
5 not sure about the reservation of the existence of
6 an adverse witness under the current Rules of Pro-
7 cedure. But in terms of the Court's jurisdiction over
8 Mr. Harbour, Mr. Harbour is a resident of Lander, and
9 I think that goes without question that he is within
10 the jurisdiction of the Court.

11 THE SPECIAL MASTER: Whether he comes as
12 adverse or otherwise, I will suspect he will be happy
13 to come to help us solve our problems.

14 MR. MERRILL: The second matter, Your Honor,
15 concerns the order of witnesses for the remainder of
16 the week, and I discussed this with Mr. Echohawk and
17 Ms. Sleater over the break, and I would like to have
18 them state on the record who their next witness will
19 be. Very simply, our problem is upon invocation of
20 the rule on Monday, Wyoming's witnesses have
21 scattered to the four winds, and depending on who will
22 be the next witness to come in, we have folks in
23 California as well as several private parties who have
24 advised me they would like to be present during the
25 testimony of certain witnesses of the United States.

1 So if we could get a listing from Ms. Sleater
2 who she will call for the rest of the week -- not the
3 rest of the case.

4 THE SPECIAL MASTER: The next two or three?

5 MR. MERRILL: That would help.

6 THE SPECIAL MASTER: Can you do that,
7 Regina?

8 MS. SLEATER: Your Honor, this morning I
9 advised Mr. White and Counsel for the State of
10 Wyoming that in all probability our next witness would
11 be Oliver Page. The reason I said in all probability,
12 although Mr. Page is here, unforeseen circumstances
13 such as an auto accident or something like that might
14 cause a change, but other than that I anticipate him.

15 THE SPECIAL MASTER: All right. After him?

16 MS. SLEATER: Basically I can't go further
17 than that. In view of what has gone on today, we
18 may not have much time for another witness other than
19 Mr. Page, and until I have more of a feeling for what
20 time is left, I am not going to put someone on the
21 stand to get one-tenth of their testimony out or some-
22 thing like that, so we will have to make adjustments
23 depending on the time available, which we will have a
24 better feeling for after Mr. Page.

25 THE SPECIAL MASTER: Will Mr. Page be the

1 third witness?

2 MS. SLEATER: Probably.

3 THE SPECIAL MASTER: How many does that
4 leave on the list? Can you summarize maybe the
5 next one or two?

6 MR. MERRILL: I don't know who Ms. Sleater
7 plans on, but even a narrowing of the field would
8 be a great help.

9 THE SPECIAL MASTER: Well, you have listed
10 already from the letter she sent you about how many
11 names, eight, seven or eight that are to be called?

12 MR. MERRILL: At least that, Your Honor.
13 I'm not sure of the exact number. But if she could
14 tell the witnesses whom she is considering calling
15 after Mr. Page, that would be of some help to us since
16 we have so many people to shift around.

17 MS. SLEATER: Your Honor, the State of
18 Wyoming has already been advised of three people we
19 will not be calling. We have already called or have
20 indicated that we will call with Mr. Page three people,
21 and that doesn't leave that many people left out of
22 the original list to begin with, and I am just -- I am
23 not in a position right now to tell the Court who
24 my next witness is, and I'm not going to make a
25 representation I cannot live up to. I'm sorry.

1 I appreciate Mr. Merrill's problem, and at
2 a time when we have more of a feeling for how -- and
3 the State of Wyoming controls a lot of this -- how
4 the cross-examination is going to be going, I will
5 advise them who our next witness is as soon as we can
6 determine who he will be.

7 MR. MERRILL: That's fine, Your Honor.

8 THE SPECIAL MASTER: All right. Thank you.

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MR. WEBSTER: Your Honor?

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THE SPECIAL MASTER: Yes, Mr. Webster.

3

MR. WEBSTER: Not to belabor this point

4

any further than it already is, but it continues

5

with the request I made last evening as we were

6

about to adjourn for the evening.

7

I don't think that we need to cast

8

any stone as to any set order of witnesses,

9

and I certainly wouldn't want to do anything that

10

would not be fair as far as Ms. Sleater redoing

11

her order of witnesses, but it would help the

12

private counsel a tremendous amount if we had

13

some kind of a tentative list more than a couple-

14

three days in advance, and if someone gets in a

15

car accident or Ms. Sleater just gets the feeling

16

she doesn't want to call that witness right

17

then, that would be okay, but as I look at their

18

list of witnesses that they provided me with

19

last evening -- and I certainly appreciated that --

20

there's 15 or 16 witnesses on this list, and if

21

we could get some idea, tentative though it may

22

be, of the order of the witnesses, it would

23

certainly help the private parties who might be

24

able to select the ones they want to be here to

25

hear and have the opportunity to cross-examine.

1 I don't think there are any private parties
2 who feel that they can afford to be here all
3 the time, and it's going to kind of be a hit-
4 and-miss procedure.

5 THE SPECIAL MASTER: I appreciate that.
6 Regina, is the list that you handed to Mr.
7 Webster the same list that you are now preparing
8 to be mailed on the general mailing that we
9 ordered yesterday morning?

10 MS. SLEATER: What I am just doing is making
11 copies of letters that we sent to the State of
12 Wyoming listing witnesses and exhibits.

13 I might state at this time, which I forgot
14 about last night, is some of the names on there
15 were people who we are not intending to call, but
16 if at all, it was an overcaution regarding a
17 possible rebuttal case. There was no intent, and
18 those are people like Dr. Lamb from the Instream
19 Flow Group, and Mr. Keating from BLM, and who do
20 appear on that list, and until he mentioned
21 that, I was not aware of that.

22 We are not trying to add additional expense
23 to anyone's trial preparation or trans-
24 portation costs or anything like that.

25 We were taken quite off guard by having to

1 rearrange our case to adjust to the schedule
2 that was set up, and the main problem is these
3 first two isolated weeks that are far removed
4 from the other case.

5 As I explained yesterday when I was putting
6 Mr. Merchant on, we're trying to get the blocks
7 of the case that just are sort of blocks in and
8 have them up front and out of the way as much as
9 possible so that then we can devote full-time to
10 the things that require multiple witnesses.

11 However, these blocks, in and of themselves,
12 are of varying lengths. Until I can see what time
13 is available, I certainly don't want to put myself
14 in a position of having the State of Wyoming
15 having a month to prepare cross-examination, and
16 I just feel it would be a great disservice to my
17 client to say anything further.

18 As soon as I can truthfully represent who
19 my next witness is, I will certainly make it
20 available, and it's possible that when we get to
21 the larger block of the case, that then we will
22 be in a position to just say, "And here is the
23 list for the rest of the case as we see it."

24 That's what I anticipate.

25 THE SPECIAL MASTER: What is it that's being

1 prepared by your secretary now that Mr. Salazar
2 is waiting for now that is being mailed in
3 regard to yesterday's order?

4 MS. SLEATER: She's not preparing anything.
5 What we are doing is arranging for the printing
6 of the letters which we sent to the State and
7 which listed the exhibits and listed the witnesses.
8 She is preparing the printing. She is not
9 preparing a new document because --

10 THE SPECIAL MASTER: And that will contain
11 the names of those parties and those witnesses
12 you intend to call up?

13 MS. SLEATER: And the subject matter of their
14 testimony.

15 THE SPECIAL MASTER: And the subject matter?

16 MS. SLEATER: Yes, Your Honor.

17 THE SPECIAL MASTER: And you are presenting
18 matters ahead of acreage now because you like to
19 keep those unified and into a long term trial once
20 it begins in a few weeks?

21 MS. SLEATER: That's correct, Your Honor.
22 As you may have gleaned from my opening statement --
23 I don't know how clear it was -- we have a number
24 of witnesses who were involved in the practicably
25 irrigable acreage part of the case and, truthfully,

1 if they don't go together, it loses a lot of
 2 its sense. It's a straight progression, and if
 3 you just hear them laid out in a straight pro-
 4 gression, I think it would be easier for every-
 5 one.

6 THE SPECIAL MASTER: All right, Mr. Webster.
 7 I really believe, and I hope that the preparation
 8 of the letters that Regina alluded to will be
 9 of some help to other counsel for other defendants,
 10 and I don't know of a better way to do this, and
 11 I can appreciate that these factors, the aesthetics,
 12 conversion, land use, may be incidental to the
 13 main concept of finding the practicably irrigable
 14 acreage and that will come on after these first
 15 few days of hearing, but let's proceed and con-
 16 clude with Mr. Merchant and then go on with the
 17 remainder of the case.

18 If you find need to terminate these proceedings
 19 before Friday, there's no law that says you
 20 can't do that Thursday afternoon or so and then
 21 move to the next date once you feel you are
 22 completed with this phase of what you are offering.

23 MS. SLEATER: Thank you, Your Honor.

24

25

* * * * *

1 MS. SLEATER: Thank you, Your Honor.

2 THE SPECIAL MASTER: But if you do that,
3 we will presume that you are not coming back to these
4 subject matters, we'll go on to irrigable acreages.

5 MS. SLEATER: Or some other subject.

6 Your Honor, I want you to understand that
7 the United States is making a claim based on live-
8 stock consumption, that also includes future expansion.
9 I don't want you to think that this is all --

10 THE SPECIAL MASTER: Let's talk about this
11 for a minute. I realize, of course, that the United
12 States is making a claim for livestock and livestock
13 consumption, so did the Indians in your claim and so
14 did you in your Statement of Claims, but I also
15 recognize that when there's 1,400 feet of evaporation
16 from watering troughs and from watering pens, that
17 that may be supplied by groundwater as well as
18 surface water, and it is my opinion that it may
19 affect to some degree whether groundwater is
20 included in our decree or not, but it is one of those
21 things that is met in that way.

22 I am primarily interested in what require-
23 ments you will be maintaining should be made in that
24 litigation from the groundwaters -- from the surface
25 waters, rather, not from the groundwater, as will be

1 needed for these various phases of the arts of
2 civilization that you are pursuing.

3 MS. SLEATER: Yes, sir. Thank you.

4 DIRECT EXAMINATION (CONTINUED)

5 BY MS. SLEATER:

6 Q Mr. Merchant, do you have a professional opinion
7 regarding the economic feasibility of expanding
8 the livestock operation on the Wind River
9 Indian Reservation of 50 percent?

10 A Yes.

11 MR. MERRILL: Objection, Your Honor,
12 foundation.

13 THE SPECIAL MASTER: What was the last word
14 or two of that question, I still don't hear,
15 Regina, but that's nothing new.

16 MS. SLEATER: Fifty percent.

17 THE SPECIAL MASTER: Can I have the whole
18 question read back.

19 (Thereupon the following
20 question was read back as follows:
21 "Q Mr. Merchant, do you have a
22 professional opinion regarding
23 the economic feasibility of
expanding the livestock operation
on the Wind River Indian
Reservation of 50 percent?")

24 THE SPECIAL MASTER: Extending the operation

25 merchant-direct-sleater

1 of 50 percent is your clause. Now, that doesn't
2 make sense to me. Can we ask for it to be
3 rephrased? Does he have an opinion regarding
4 the livestock operation, extension of it on the
5 Reservation.

6 MS. SLEATER: Okay, that's fine.

7 Q (By Ms. Sleater) Do you have a professional
8 opinion regarding the economic feasibility of
9 expanding the livestock operation on the Wind
10 River Indian Reservation?

11 A Yes.

12 MR. MERRILL: I'm going to object, Your
13 Honor, to his rendering any opinion until
14 foundation is laid for that opinion.

15 MS. SLEATER: Your Honor, I would like to
16 know what foundation is necessary when the
17 rules expressly state that without any evidence
18 being admitted at all on this subject the
19 witness was entitled to give his opinion. I
20 could have asked him that as soon as he was
21 qualified as an expert, and I will cite the
22 Court to --

23 THE SPECIAL MASTER: Regina, I'll save you
24 the trouble; I'll overrule the objection.

25 merchant-direct-sleater

1 MS. SLEATER: Thank you.

2 Q (By Ms. Sleater) What is your opinion, Mr.
3 Merchant?

4 A My opinion is that it's economically feasible
5 to expand the livestock industry by 50 percent
6 on the Wind River Indian Reservation.

7 Q Did you perform an analysis of livestock
8 operation on the Wind River Reservation?

9 A No, I did not.

10 Q Why didn't you?

11 A I felt that a financial analysis would include
12 elements that weren't appropriate. The Indians
13 on the Reservation receive subsidies that not
14 everyone can obtain, and I would feel that a
15 financial analysis would, is a less objective
16 type of analysis for this purpose.

17 This is a type of -- the economic analysis
18 is the kind of analysis used by the World Bank
19 and the U.S. AID, and the Water Resources
20 Council. It's a recognized type of analysis for
21 expanding or for evaluating a new project of
22 this type. If I had performed a financial analysis,
23 I think it probably would have shown greater
24 profits, but I haven't done that analysis.

25 merchant-direct-sleater

1 MR. MERRILL: Your Honor, I object to that
2 statement and ask that it be stricken, since
3 he admits that he performed no financial
4 analysis whatsoever, he's in no position to say
5 what it probably would have shown, and I would
6 ask the last sentence be stricken.

7 THE SPECIAL MASTER: I will sustain it for
8 the last sentence only.

9 MS. SLEATER: Thank you, Your Honor.

10 Q (By Ms. Sleater) Mr. Merchant, I hand you a
11 copy of U.S. Exhibit WRIR C-16, and ask you if
12 you can identify that, please?

13 A Yes, this exhibit shows -- the bottom line shows
14 the number of cattle presently on the Reservation,
15 and those we conclude potentially could be on
16 the Reservation in the first two columns.

17 The second two columns show the associated
18 water requirement for those numbers of cattle.
19 The four rows above the total row show how those
20 numbers are allocated by watershed within the
21 Reservation.

22 Q And are those figures based upon the operation
23 you previously described?

24 A Yes, they are.

25 merchant-direct-sleater

1 MS. SLEATER: At this time, Your Honor,
2 I would like to move U.S. Exhibit WRIR 17 into
3 evidence.

4 THE SPECIAL MASTER: I have a few questions
5 myself that I'd like to ask.

6 EXAMINATION

7 BY THE SPECIAL MASTER:

8 Q Does this exhibit purport to describe the water
9 requirement set down, a water requirement of
10 any particular water, of groundwater as it
11 pertains to surface water?

12 A No, Your Honor, I did not distinguish the two.

13 Q And in your studies of the cattle industry and
14 the grazing areas, what did you find is the
15 predominate source of water for the feeding of
16 cattle?

17 A There are both sources on the Reservation, it's
18 very difficult to say one is predominate, but
19 the evaporation --

20 Q My question wasn't on the Reservation.

21 A Oh, I'm sorry.

22 Q The question was on the grazing area.

23 A On the grazing area.

24 Q What did you find is a dominate source of water?

25 merchant-direct-sleater
merchant-examination-the special master

1 A I didn't find that one was over the other.

2 Q You did not find that water wells and feeding
3 troughs and drinking troughs were predominate
4 over streams that cows can drink out of?

5 A There are stock ponds as well.

6 Q And stock ponds?

7 A Yes.

8 Q Did you find any of them predominate -- well,
9 strike that question, please.

10 In your survey, does your expertise extend
11 to that segment of the livestock industry regarding
12 water sources and grazing cattle on the grazing
13 areas of the Reservation? If it doesn't, just
14 say so.

15 A It doesn't, but let me clarify one thing. The
16 evaporation aspect of these water requirements
17 are based on stock ponds only and not feeding
18 troughs, water troughs, windmills.

19 Q But were the stock pond's source of water well,
20 all water wells with windmills?

21 A No.

22 Q But were some made from direct flow?

23 A Some were made from direct flow.

24 THE SPECIAL MASTER: That's what I wanted
25 merchant-examination-the special master

1 to know.

2 Any other objections to this exhibit?

3 MR. WEBSTER: May I voir dire the witness?

4 THE SPECIAL MASTER: Yes, you may, pro-
5 viding it's all right with Mr. Merrill.

6 MR. MERRILL: Absolutely, Your Honor.
7 They're a party as much as we are.

8 MR. WEBSTER: I don't know what order we're
9 supposed to go in.

10 THE SPECIAL MASTER: Generally the way we're
11 going, I try to offer the majors first, but you
12 go right ahead.

13 VOIR DIRE EXAMINATION

14 BY MR. WEBSTER:

15 Q Your exhibit, and that's 17; is that correct,
16 Exhibit Number 17?

17 A Yes, sir.

18 THE SPECIAL MASTER: C-17.

19 Q (By Mr. Webster) C-17 indicates that the
20 number of cattle on the Reservation would be
21 increased by 50 percent, that's how you come
22 up with the figures in the second column; is
23 that correct?

24 A Yes, it is.

25 merchant-voir dire-webster

1 Q And how did you determine the potential to
2 come up with those figures?

3 A I think I described that earlier. It's based
4 on -- let me step back just a minute. What
5 we tried to do in this, in our analysis was
6 to evaluate the potential of a resource on
7 the Reservation, a particular resource, and that's
8 the carrying capacity of the Reservation. What
9 we first tried to do was -- well, let me also
10 say that the only reason we're doing this is
11 to establish these water requirements. The
12 first step in that was to look at the carrying
13 capacity in different seasons on the Reservation.
14 We found that in the summer, summer carrying
15 capacity could be expanded by 50 percent and
16 that with the advent of irrigated, new irrigated
17 agricultural development, the fall and winter
18 feeding periods would also be no problem.

19 It's the spring period then we encounter
20 difficulties with, and we found that we could
21 expand the carrying capacity by 50 percent in
22 the spring as well as by including a range
23 improvement in our operation, and that range
24 improvement is an element of the budget, the total
25 merchant-voir dire-webster

1 budget. So it's costed in there, so that's our
2 basis for the 50 percent expansion. Then we
3 did the budget to confirm --

4 Q Hold on just a second, if you wouldn't mind.
5 Where did you get the information for that 50
6 percent figure?

7 A That's from the range operation's officer on
8 the Reservation.

9 Q And you relied solely on his information?

10 A For the carrying capacity of the summer range
11 land, yes.

12 Q And that's one individual; is that right? That's
13 the only source you used?

14 A I confirmed that with the land operation's
15 officer.

16 Q Both in the same office basically?

17 A Yes.

18 Q On the Reservation?

19 A That's right.

20 Q Anybody else?

21 A No, they have the best information there is.

22 Q Well, I think that's up to the Master to decide.
23 But did you decide with anybody else?

24 A No, not on that 50 percent capability of expansion
25 merchant-voir dire-webster

1 in the summer range lands.

2 Q I cut you off and I apologize for that.

3 If there is something further that you'd
4 like to say, go ahead.

5 A Just to finish up, our last step then was to
6 determine that this expansion was not only
7 technically feasible but economically feasible,
8 so that was the purpose of the budgets that
9 you've seen for --

10 Q And technically feasible, you mean you went on
11 the ground and said, yes, there is in fact
12 this potential for increase?

13 A For that I relied on other experts on the
14 Reservation. That's the 50 percent ability
15 to expand in the summer, that's what I mean by
16 technical feasibility, that there is an under-
17 grazing now on the Reservation.

18 Q And that information again came from whom?

19 A From the range operation's officer and confirmed
20 by the land operation's officer.

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* * * * *

1 Q. (By Mr. Webster) Were you able to see any of
2 the date or information by which this information
3 was developed?

4 A. They did show me some of the information on
5 carrying capacities of different range units,
6 but I can't say I viewed that extensively enough
7 to form my own opinion based on that data. My
8 opinions are based primarily on the conversations
9 with range operations officers and --

10 Q. What was the nature of that data?

11 A. The data that I reviewed?

12 Q. (Mr. Webster is nodding his head affirmatively.)

13 A. It's the number of cattle on different range units.

14 Q. Do you know how that data was developed?

15 A. I believe it's -- it's the number of animals
16 permitted on different range units, and then I
17 believe they also count the actual number of --
18 but they have some indication of the actual
19 numbers that use the representative range units.

20 Q. So other than the existing use, did you analyze
21 any other data or see any other data by which
22 the 50 percent figure was developed?

23 A. No. For that I relied on the judgment of those
24 experts.

25 merchant - cross - webster

1 Q. It is my recollection, my notes so reflect,
2 that during your examination by Ms. Sleater that
3 you indicated that the daily consumption of
4 cattle was 15 gallons per day. Is that correct?

5 A. Yes.

6 Q. And is that how you developed the figures in
7 column number 3 and 4?

8 A. That's just one aspect of the development of
9 those columns. The other is the evaporation.

10 Q. Were all the cattle treated the same? I mean,
11 was a calf allocated 15 gallons a day, the same
12 as a bull, for instance?

13 A. They -- I should have explained.

14 Q. Maybe you can answer my question, then if you
15 want to explain you can go on ahead.

16 A. Yes, they were. My explanation is that the
17 number of animal units in the summer closely
18 coincides with the number of animals when these
19 animals are counted. The 25,000, in other
20 words, is a very close approximation of the
21 number of animal units that exist on the range
22 land in the summer. In fact, it might even be
23 a slight underestimation. So if we were to do
24 this animal by animal, in terms of animal units

25 merchant - cross - webster

1 we might come up with a slightly higher figure,
2 but it's very close.

3 Q. I'm not sure I understood what you said. Are
4 you saying that this determination in column 3
5 and 4 was done by animal units, AUMs?

6 A. No, I'm not. I'm saying that it's based on an
7 average of 25,000 animals at 15 gallons per day
8 per animal, but --

9 Q. And that's the number of animals that are
10 currently on the Reservation at the fall inventory
11 time, or over the winter feeding period.

12 A. There are more animals in the summer, however.

13 Some of the animals are heavier because they
14 have been gaining weight all winter, so the
15 number of animal units in the spring and summer
16 is greater than the number of animal units in
17 the winter.

18 Q. And is that because the calves are sold off in
19 the fall?

20 A. Yes, that's one of the reasons. There are
21 new calves born in the spring, and the calves
22 that become yearlings are gaining weight.

23 Q. It's my recollection that either you testified
24 or Mr. Harbour testified that the counts were

25 merchant - cross - webster

- 1 actually done in the spring and there was very
2 little change until the count was done in the
3 fall. Was that you who testified to that?
- 4 A. No, it wasn't.
- 5 Q. Do you know if that is correct or not?
- 6 A. I don't -- as to whether there is very little
7 change over the summer?
- 8 Q. Yes, over the summer until the count is completed
9 in the fall?
- 10 A. Well, except for the new calves, I imagine that's
11 pretty accurate, yes. But if you count before
12 calving, there are going to be a lot of new
13 animals.
- 14 Q. No, I didn't mean that. After the calving
15 in the spring.
- 16 A. I believe the count is done before calving,
17 but I should -- Mr. Harbour would know that better
18 than me.
- 19 Q. Thank you. Did you analyze the grazing area to
20 any extent that these animals would be put on,
21 this new potential?
- 22 A. The location?
- 23 Q. Yes.
- 24 A. Only in a general sense do I know approximately
25 merchant - cross - webster

1 where the summer grazing areas are.

2 Q Do you know the water availability in those
3 areas from streams?

4 A No. I didn't -- I didn't look at water availability.

5 Q How about the groundwater availability?

6 A Well, I think I will defer to Mr. Page on that.

7 Q You can answer the question for me, and then
8 I will ask Mr. Page maybe.

9 A No, I don't know the answer to that.

10 Q And if I understood your answers to the Master
11 correctly, you don't know how much of this
12 full potential of water requirement would be
13 supplied by the groundwater and surface water,
14 is that correct?

15 A That's correct.

16 MR. WEBSTER: I have no further questions.

17 THE SPECIAL MASTER: Thank you, Mr. Webster.

18 Let me ask one question while the next
19 attorney is getting ready.

20 Mr. Merchant, is the figure you quoted in
21 C-17 from an optimum expansion with range improvements?

22 THE WITNESS: Yes.

23 THE SPECIAL MASTER: All right. Without the
24 range improvements to which you earlier alluded,

25 merchant - cross - webster

1 what would that increased percentage be?

2 THE WITNESS: I suspect it would be in
3 the neighborhood of fifteen percent, but I didn't
4 explicitly study that. The reason I say that
5 is that the spring grazing is about 15 percent
6 underutilized now, and without any range
7 improvement that would become a constraint
8 on expansion of the livestock industry.

9 THE SPECIAL MASTER: Any further questions
10 of this witness?

11 MR. MERRILL: Yes, Your Honor.

12 THE SPECIAL MASTER: Mr. Merrill? On this
13 exhibit, that is, of course.

14 MR. MERRILL: I have lots more for this
15 witness.

16 THE SPECIAL MASTER: I imagine so.

17 VOIR DIRE EXAMINATION

18 BY MR. MERRILL:

19 Q Jim, I note that Exhibit C-17 reflects four
20 different watersheds from which water is to be taken
21 I presume, to satisfy these livestock needs,
22 is that correct?

23 A. Yes.

24 Q. Would you explain to the Court what facts and
25 merchant - voir dire - merrill

- 1 data you relied on to determine that the current
2 use of water or the water requirement in the
3 Wind River watershed is 580 acre-feet per year?
- 4 A. Yes. That's an allocation of the total figure
5 by watershed, and that allocation was based
6 on information from the range operations officer.
- 7 Q. Now, what you are telling me is the division of
8 cattle between the four basins, is that right?
- 9 A. Yes.
- 10 Q. My question is how did you determine through
11 calculations or whatever that 580 acre-feet of
12 water is now required annually for cattle in the
13 Wind River watershed? Can you explain how you
14 determined that to the Court?
- 15 A. Well, that's how I determined it, by allocating
16 the total of 1,820 to the various watersheds..
- 17 Q. In other words, you determined the total
18 requirement and then broke that up?
- 19 A. Yes, that's right.
- 20 Q. Why don't you describe the the Court how you
21 determined the total requirement.
- 22 A. That's based on 15 gallons per day per animal
23 times the number of animals plus a factor for
24 evaporation. The evaporation is based on a count
25 merchant - voir dire - merrill

1 of 280 stock ponds times an average of two
2 acre-feet per pond -- two acres, I'm sorry --
3 times an average of two and a half acre-feet
4 per acre of evaporation.

5 (Off-the-record discussion.)

6 MR. MERRILL: I believe about 360,000,
7 Your Honor.

8 THE SPECIAL MASTER: How many gallons in an
9 acre-feet is what I was asking my assistant, and
10 what is your answer?

11 THE WITNESS: 360 gallons, Your Honor.

12 THE SPECIAL MASTER: All right.
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1 Q. (By Mr. Merrill) So as I understand it, you
2 multiplied the actual 15 gallons per consumption
3 times the total herd count, 25,000 and then
4 put 280 stock ponds which you assumed the average
5 area of two acres per pond, and then you also
6 assumed two and a half acre-feet per acre
7 evaporation rate; is that right?

8 A. We didn't assume those. We found those or
9 we learned that information from people on the
10 Reservation.

11 Q. Who did you learn it from?

12 A. From the range operations officer.

13 Q. Anybody else?

14 A. Well, the evaporation rate was also learned from
15 information provided by HKM.

16 Q. Are these stock ponds scattered through the
17 length and breadth of the grazing areas on the
18 Reservation?

19 A. Yes, I believe they are.

20 Q. Altitude varies considerably between those
21 areas, doesn't it?

22 A. Yes.

23 Q. So, in fact, the rate of evaporation could
24 vary and be, in fact, quite different down in the

25 merchant - cross - merrill

1 low part of the Reservation than it would be in
2 the high part?

3 A. I would expect it to be quite different.

4 Q. Do you have the same amount of stock ponds in
5 each of the various water sheds on the Reservation?
6 Are they equally divided between the four?

7 A. Our allocation here is based on the fact that
8 they are fairly equally divided across the
9 Reservation, and as far as the evaporation
10 rates are concerned, we had a map showing lines
11 of equal evaporation around the Reservation
12 and matched that with the location of stock ponds
13 that Mr. Robertson told us about so that the
14 30 inches represents an average value and based
15 on that comparison of location with the
16 evaporation data.

17 Q. So some of the stock ponds are going to have
18 much higher rates of evaporation and some will be
19 lower; is that right?

20 A. Yes.

21 Q. How did you determine the current distribution
22 of cattle by number of cattle in the four water
23 sheds?

24 A. I believe I told you already. That was based
25 merchant - cross - merrill

- 1 on information from the range operations officer.
- 2 Q Isn't it true that these cattle move around during
- 3 the seasons of the year from low lands to high
- 4 lands?
- 5 A. Yes, it is.
- 6 Q Isn't it also true that these basins, the various
- 7 water sheds, doesn't each contain the same proportion
- 8 of low lands and high lands?
- 9 A. Not exactly the same, no.
- 10 Q So, in fact, the burden of the cattle on the
- 11 various areas, might vary depending on the season
- 12 of the year; isn't that correct?
- 13 A. That's right.
- 14 Q So how did you determine for just one figure
- 15 what the cattle population in each of these
- 16 four basins would be? Is this an average of
- 17 winter, spring, summer and fall, or is this
- 18 one time of year?
- 19 A. This is a year-around average.
- 20 Q How did you make that average?
- 21 A. We talked to Mr. Robertson about it.
- 22 Q Did you base your average on anything else than
- 23 the information Mr. Robertson gave you?
- 24 A. No. He's the person on the Reservation who's
- 25 merchant - cross - merrill

1 in charge of the range operations, and I think
2 he's in the best position to know that.

3 MR. MERRILL: Your Honor, I would ask that
4 the last comment of the witness be stricken as
5 not responsive to the question.

6 THE SPECIAL MASTER: I didn't hear it.
7 Would the reporter be kind enough to read the
8 answer?

9 (The last answer was read
10 (back by the reporter as
11 (follows: "Q. No. He's
12 (the person on the
13 (Reservation who's in charge
14 (of the range operations,
15 (and I think he's in the
16 (best position to know that.")

17 THE SPECIAL MASTER: Oh, that's all right.

18 Q. (By Mr. Merrill) Did I hear you say in response
19 to Mr. Webster's cross-examination that the
20 spring range land could only sustain a fifteen
21 percent increase in grazing load right now?

22 A. No, I stated that in response to the Master's
23 inquiry.

24 Q. Is that true -- I have got the inquirer wrong,
25 I guess. Is it true then that the spring grazing
lands can only sustain a fifteen-percent increase
in capacity?

merchant - cross - merrill

- 1 A. Without improvement, that's true.
- 2 Q. And how about the fall grazing lands?
- 3 A. Well, as they are now, that's equally true for
4 the fall grazing lands, but with the new irrigation
5 development there will be much more turning
6 capacity available in the fall so --
- 7 Q. Let's forget the future irrigation for a moment
8 and just talk about the fall grazing lands as
9 they are now.
- 10 A. As they are now?
- 11 Q. Do you know how much increase in grazing load
12 those lands can sustain?
- 13 A. Well, the fall grazing lands are generally
14 the same as the spring, so that's equally true.
- 15 Q. Fifteen percent?
- 16 A. Fifteen percent.
- 17 Q. Did you make any determination whether a
18 reseeding program such as the one you contemplate
19 in your hypothetical model could actually sustain
20 a fifteen-percent increase if a reseeding program
21 is implemented on the Reservation?
- 22 A. I checked with reliable sources about the carrying
23 capacity increase one might expect from reseeding.
24 I talked to people on the Reservation who had
25 merchant - cross - merrill

1 participated in reseeding programs and ascertained
2 that that was reasonable to expect on the
3 Reservation.

4 I should point out that our model is an
5 attempt that has been based on conditions on
6 the Reservation that might be expected in
7 the future and it's not a purely hypothetical
8 model.

9 Q. Mr. Merchant, did you actually verify that the
10 current water consumption for livestock on the
11 Reservation is 1820 acre-feet per year as
12 shown at the bottom of the third column on
13 Exhibit C-15?

14 A. Did I measure evaporation on each stock pond?
15 Is that the implication of your question?

16 Q. No, the question is did you verify that
17 1820 acre-feet per year are currently being
18 used to support the livestock operations?

19 A. No.

20 MR. MERRILL: Your Honor, I have no
21 further questions and ask that this exhibit
22 not be admitted.

23 Again, it bears no relation to what's
24 actually going on on the ground out on the

25 merchant - cross - merrill

1 Reservation nor has it been shown that there
2 is any feasibility outside of the hypothetical
3 assumptions that the witness has made to
4 expand the operations to the degree that he has
5 testified.

6 I think it has no prob^aative value since
7 it doesn't bear on the expansion of the operation.
8 It does not show what is going on on the ground
9 to date.

10 THE SPECIAL MASTER: Are there any other
11 attorneys who wish to voir dire this exhibit
12 or this witness regarding this exhibit?

13 (Pause.)

14 THE SPECIAL MASTER: If not, I will rule
15 on the objection. The objection has a valid
16 base in that it limits what this exhibit can
17 be used for, and the exhibit is not based upon
18 experience of raising livestock, but it is based
19 upon a continuance of the studies and modes that
20 this witness has made in an attempt to show the
21 need for more water, and for that purpose only,
22 it shall be admitted. So C-15 is in evidence.

23
24 THE SPECIAL MASTER: I have a couple more
25 merchant - cross - merrill

1 questions on it.

2 You did state that all of the information
3 contained in this exhibit you obtained from
4 Mr. Robertson; is that substantially correct?

5 THE WITNESS: Sir, the total numbers of
6 cattle are based upon our analysis of the ability
7 to expand the livestock industry. The
8 allocation of the totals across water sheds
9 is based on information from Mr. Robertson.

10 THE SPECIAL MASTER: Right, but at no time
11 did you see any studies made that distinguishes
12 between high loam soil and its characteristics
13 as distinguished from other soils in this
14 vast area? You make one generalization as to
15 grazing capacity for the entire grazing area?

16 THE WITNESS: We distinguished by summer
17 and spring, fall --

18 THE SPECIAL MASTER: By seasons, but not
19 by qualities or capacities of the land to sustain
20 livestock or to regenerate its feed?

21 THE WITNESS: We used the average values
22 for the different seasonal grazing areas.

23 THE SPECIAL MASTER: Okay. Thank you,
24 Mr. Merchant.

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REDIRECT EXAMINATION

BY MS. SLEATER:

Q. Is there anything else you did with respect to the livestock enterprise?

THE SPECIAL MASTER: Can you repeat the question, please, Regina?

Q. Was there anything else that you did with respect to the livestock enterprise?

A. I don't believe so.

Q. Let's move on to the next category you mentioned you were hired to examine, which is municipal, domestic and commercial uses.

MS. SLEATER: And, Your Honor, if we could have a few minutes' indulgence while my co-counsel moves around a couple of exhibits.

THE SPECIAL MASTER: Yes. Municipal, domestic and what?

MS. SLEATER: Commercial.

THE SPECIAL MASTER: Yes, thank you. You may take a minute for that. Do you want a ten-minute break?

MS. SLEATER: That would be fine, Your Honor.

THE SPECIAL MASTER: We shall have a ten-minute recess.

(Brief recess.

merchant - redirect - merrill

1 THE SPECIAL MASTER: All right. We'll come
2 to order, please.

3 Regina.

4 MR. MERRILL: Excuse me for interrupting,
5 Your Honor. Before we resume, since we know who
6 the next witness is going to be, I want to make
7 sure we have all the exhibits so we don't have
8 to have a repeat of my objection that was made
9 this morning, and I'd just like the record to
10 reflect that the United States has thus far
11 served us, and maybe Ms. Sleater can look at
12 these with me and see if I've got them all.

13 (Brief pause.)

14 MR. MERRILL: We have four isopach maps,
15 which is i-s-o-p-a-c-h maps for four different
16 different types of rocks on the Wind River
17 Indian Reservation. And we have a summary of
18 the hydrogeologic characteristics of rocks and
19 deposits present on the Wind River Indian
20 Reservation.

21 We have something called Table four, source
22 and locations under the Wind River Indian
23 Reservation. And the last exhibit is Table 2,
24 estimated potential well yields from quarternary,

25

1 q-u-a-r-t-e-r-n-a-r-y, deposits. And I'm
2 wondering if there are any other exhibits in
3 addition to those, that we ought to know about
4 them now and we can foreclose having to make
5 these objections when Mr. Page's testimony
6 comes on.

7 MS. SLEATER: Your Honor, as Mr. Merrill
8 is aware, there are other exhibits which are
9 -- have been -- the State of Wyoming's experts
10 have been over there examining within the last
11 week. There are large scale exhibits with various
12 geological formations and other information
13 relating to groundwater that has been fully
14 available to the State of Wyoming and other parties
15 since the sixteenth of January.

16 THE SPECIAL MASTER: Very well.

17 MS. SLEATER: At this time I do not have
18 with me the letter which we sent to Wyoming
19 notifying them, and I don't even know if that's
20 all the tables we sent them because I don't
21 have the letter --

22 THE SPECIAL MASTER: Very well.

23 MS. SLEATER: -- with me on that.

24 THE SPECIAL MASTER: Very well. If there are
25

1 other exhibits besides those mentioned we'll
2 know you're saying they've been in the hands
3 of the State experts or technicians for at
4 least ten days.

5 MS. SLEATER: They are. In fact, they
6 are here available now as are all of the exhibits
7 that the United States thus far accumulated up
8 in the U. S. Attorney's Office. If any counsel
9 would like to go an view them before the trial,
10 they are more than welcome to go up.

11 THE SPECIAL MASTER: That's kind of you,
12 but it might not meet the requirements of the
13 pre-trial order, but nevertheless it is an
14 offer that counsel should take note of in case
15 they want to brouse through the exhibits that
16 are there.

17 MR. HERRILL: Thank you, Your Honor.

18 MS. SLEATER: As to Mr. Merrill's
19 concern about there possibly being others or
20 not, if he would like to wait until we adjourn
21 this evening and we can pull out the letter to
22 see what we supplied them, I'd be most happy to
23 meet with them.

24 THE SPECIAL MASTER: Before we go on with
25

1 new subject matter, municipal, domestic and
2 commercial, I'd like to ask a question or two of
3 Mr. Merchant.

4 EXAMINATION

5 BY THE SPECIAL MASTER:

6 Q. I notice that during the United States' statement
7 of claims, that a claim is made for total
8 irrigation for the livestock industry, and that
9 additional figure that was added on livestock
10 industry in the four drainage basins came to
11 2,773 acre-feet. Did you see this before you
12 ever completed your work?

13 A. Yes, I believe I did.

14 Q. I just wondered because you missed it by three
15 acre-feet a year, and I wondered what coincidence
16 that could have been. Apparently you had the
17 benefit of this pleading and your own work also.

18 A. What was the date of that pleading, Your Honor?

19 Q. The date of this pleading was -- that's a good
20 question.

21 MR. MERRILL: I believe it's in early
22 March of 1980, Your Honor, if I'm not mistaken.

23 THE WITNESS: We had done some additional
24 work on this, and I think that was the basis for
25 merchant - direct - special master

1 the pleading, so apparently that's the figure.

2 THE SPECIAL MASTER: You don't have that
3 handy, do you, the date of filing of the
4 United States' statement of claims?

5 MS. SLEATER: It was March 6th, 1980.

6 Q. (By the Special Master) March of 1980 was the
7 date set on that. So you had access to it.

8 A. I believe that's based on our preliminary work
9 because we've been working on the case prior
10 to that.

11 THE SPECIAL MASTER: Okay. Thank you,
12 Mr. Merchant.

13 DIRECT EXAMINATION (CONTINUED)

14 BY MS. SLEATER:

15 Q. Have you performed an investigation of the future
16 water requirements of the Indian population on
17 the Wind River Indian Reservation?

18 A. Yes, I have.

19 Q. Could you define Indian population for us as
20 it related to your work, please?

21 A. Yes. For this purpose we used the term
22 Indian population to mean enrolled members of
23 Shoshone and Arapahoe tribes and their immediate
24 families.

25 merchant - direct - sleater

1 Q Thank you. Could you briefly give us an
2 overview of what your work entailed in this area.

3 A. Yes. The first step was to locate those communities
4 that had common water systems, public water
5 systems, and determine what the water requirement
6 per capita per day for those systems was.

7 The next step was to forecast population
8 for the Reservation as a whole, and for each of
9 these communities. And in doing our research
10 into the community water systems, we also determined
11 the source of water for each of those systems.

12 Our conclusions follow from those two steps
13 with the exception of the people who live on the
14 Reservation who don't have access to a public
15 water system. These people live away from
16 communities and generally have their own wells.
17 We did estimate their population and also projected
18 water requirement for them.

19 Q. Thank you. I show you a copy of U. S. Exhibit WRIR
20 C-18 that's marked for identification.

21 THE SPECIAL MASTER: What's the caption on it,
22 Regina?

23 THE WITNESS: Population --

24 THE SPECIAL MASTER: I have one, thank you.

25 merchant - direct - sleater

1 Q. (By Ms. Sleater) I ask you if you can identify
2 that exhibit, please?

3 A. Yes. This is a table showing the Indian
4 population by community, those away from
5 communities, from public water systems, and
6 the Reservation total for the Indians in 1980,
7 2000 and 2020. There is also a column, showing
8 just for information, the total population of
9 several of these communities on public water
10 systems.

11 Q. Could you please go through the different
12 communities and explain where the information
13 came from that's reflected on this table.

14 A. Yes. The populations from Fort Washakie,
15 Boulder Flat, Ethete and Arapahoe were provided
16 by, through conversations with Jim Sorenson
17 of the Indian Health Service who provided us
18 with the number of Indian households connected
19 to the public water system.

20 Through discussions with him we ascertained
21 that there were approximately 5.2 people per
22 household, so we derived an Indian population
23 for those communities based on those two factors.

24 The Riverton and Pavillion populations are
25 merchant - direct - sleater

1 based on 1970 census data which breaks out
2 Indian population, and then that data was
3 shown as the rate of the tribal enrollment has
4 grown between 1970 and 1980.

5 The Reservation total population is based
6 upon a computer printout of enrolled members
7 of the Shoshone and Arapahoe tribes and their
8 immediate families. And we sifted through this
9 printout to locate those people who lived on the
10 Reservation and this total was a total of that
11 count.

12 The other total community population is
13 the residual, in other words, it's subtracting
14 all the community totals from the Reservation
15 total.

16 Q. Why have you identified six communities?

17 A. These are the communities within the
18 Reservation that have community water systems.

19 Q. I direct your attention to the column heading
20 2000, Indian Population.

21 A. Yes.

22 Q. Could you explain where those figures came from?

23 A. Well, both that column and the next column
24 are based upon growth rates of the numbers in the
25 merchant - direct - sleater

1 first column, and the growth rate we used was
2 the growth rate that has occurred over the past
3 thirty years among enrolled tribal members.
4 We had a figure for 1950 and 1980, tribal
5 enrollment, and we calculated the compounded
6 annual average growth rate, and then applied that
7 to future projection.

8 Q. What is a compounded annual average?

9 A. That's like if you put money in the bank it
10 accumulates at a compounded interest rate instead
11 of simple interest rate. They pay you interest
12 on the interest, in other words.

13 MS. SLEATER: At this time, Your Honor,
14 I'd like to move U. S. Exhibit WRIR C-18 into
15 evidence.

16 THE SPECIAL MASTER: If there are no
17 objections, it will be admitted. If there are
18 objections, please stand and I'll take them in
19 order. Mr. Webster.

20 VOIR DIRE EXAMINATION

21 BY MR. WEBSTER:

22 Q. What is the growth rate of the tribal members
23 over the last 30 years?

24 A. It's about 1.92 percent per year.

25 merchant - voir dire - webster

- 1 Q. And where did that information come from?
- 2 A. It's based upon enrollment figures for the
- 3 period. That information was from -- provided
- 4 by the Bureau of Indian Affairs office in
- 5 Fort Washakie by Joseph Smith.
- 6 Q. And do you have those, the basis for that
- 7 determination, do you have some kind of a
- 8 documentation of that?
- 9 A. Those were obtained over the telephone, but I
- 10 can tell you the 1950 enrollment was 3,151,
- 11 and the 1980 enrollment was 5,169.
- 12 Q. And that came from whom?
- 13 A. Joseph Smith, Fort Washakie.
- 14 Q. And what is his capacity?
- 15 A. Well, he's a BIA officer, I don't know his
- 16 title. The BIA keeps records as to enrollment.
- 17 So he was the one who provided those records to
- 18 us.
- 19 Q. You don't know his capacity at all?
- 20 A. No, I don't.
- 21 Q. How about Jim Sorenson, he's with the public
- 22 health service there?
- 23 A. Yes, the Indian Health Service.
- 24 Q. Indian Health Service. And in what capacity does he
- 25 merchant - voir dire - webster

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serve?

A. He's an Indian Health Engineer in Fort Washakie.

Q. And what information did you get from him by which you developed or made a decision that the average number of Indians per household was 5.2?

A. He provided us with that estimate.

* * * * *

1 Q (By Mr. Webster) Oh, I thought you said on
2 direct examination you made that determination
3 based upon figures or the information he sent
4 you?

5 A No, he provided us with that figure.

6 Q And you don't know the basis by which he came
7 up with those figures at all?

8 A No, I'm not familiar with that.

9 Q You don't know if there was a survey or some-
10 thing of that nature?

11 A I don't know if it's based on a survey.

12 MR. WEBSTER: I believe that's all the
13 questions I have.

14 THE SPECIAL MASTER: Mr. Merchant, what were
15 the 1980 census figures on the Wind River
16 Reservation? Everybody else in America is
17 unhappy with those figures; maybe you are, too.

18 THE WITNESS: Well, the problem with the
19 1980 census is it doesn't break out Tribal
20 enrollment or Tribal members.

21 Q From non-Tribal and non-Indians?

22 A That's right, not yet. There will be a
23 special Indian census aspect of the 1980 census,
24 but that won't be published for another year or

25 merchant-voir dire-webster

1 two.

2 THE SPECIAL MASTER: Did the Department
3 of Commerce publish a figure on the population
4 of the Wind River Indian Reservation in 1980?

5 THE WITNESS: Not yet that we have.
6 We have several divisions within Fremont County,
7 but there is no census population for the
8 Reservation.

9 THE SPECIAL MASTER: Thank you. Mr. Merrill?
10 All right, very fine. Ruth Yonkee.

11 VOIR DIRE EXAMINATION

12 BY MS. YONKEE:

13 Q I was wondering, this is stated Indian
14 population, and do you know the basis for
15 what is called enrolled members?

16 A I believe the Tribes' criteria is an enrolled
17 member must be one-quarter Indian blood.

18 Q And in making your projections, did you consider
19 any intermarriage so that, perhaps, this Indian
20 blood as the Indians might intermarry would
21 be decreased instead of increased?

22 A No. No, we looked at statistics of Tribal
23 enrollment over the past 30 years and projected
24 the future population based on that relationship.

25 merchant-voir dire-yonkee

1 Q I see. And no consideration was given to a
2 possible decrease?

3 A Well, if the decrease has occurred over the
4 past 30 years, then that would be reflected
5 in our projections.

6 MS. YONKEE: I see. Thank you.

7 MR. MERRILL: Your Honor, before I begin
8 my voir dire of this exhibit, I must once again
9 raise the ten-day objection. There have been
10 modifications between the exhibit which was
11 served on us by the United States and what has
12 been marked as Exhibit C-18. I don't know
13 exactly where the differences are, but the
14 Reservation total for 1980, for the year 2000,
15 for the year 2020 are all different. So once
16 again we are presented with the same problem.

17 THE SPECIAL MASTER: Well, can you read
18 the differences? What is the first one, the
19 1980, is it forty-five fifty-five, or what is
20 it?

21 MR. MERRILL: On the copy served upon us
22 it was 4,405.

23 THE SPECIAL MASTER: Would you forget that
24 rather small porportion?

25 merchant-voir dire-yonkee

1 MR. MERRILL: I imagine Your Honor will.

2 THE SPECIAL MASTER: Your other figures,
3 6,660, what is it on the one you were served?

4 MR. MERRILL: 6,440, Your Honor. And the
5 last one is ninety-four twenty rather than ninety-seven

6 THE SPECIAL MASTER: I hope you understand
7 I don't think those are significant departures.

8 MR. MERRILL: That's fine. I just wanted
9 the record to reflect our objection.

10 THE SPECIAL MASTER: Thank you.

11 VOIR DIRE EXAMINATION

12 BY MR. MERRILL:

13 Q Mr. Merchant, I believe you stated on direct
14 examination that you determined the growth
15 rate for enrolled members of the Tribes from
16 the years 1950 to 1980, is that correct?

17 A Yes.

18 Q Did you make any determination of whether the
19 standards for who can be an enrolled member
20 of the Tribe changed during that period of time?

21 A I'm not aware of any change.

22 Q Did you investigate whether any changes have
23 actually taken place in the standards or
24 requirements for enrolled members?

25 merchant-voir dire-merrill

1 A I have talked to people about the standards. I'm
2 not sure I asked that specific question, but
3 I'm not aware of any changes that occurred.

4 Q So you didn't necessarily make a determination
5 that there have not been any changes in the
6 requirements to be an enrolled member of the
7 Tribe?

8 A No, I haven't.

9 Q So, in fact, if there have been changes in the
10 standards, some of the growth or decrease, for
11 that matter, in the number of the enrolled
12 members of the Tribe would not be significant
13 to the change, isn't that correct?

14 A If there had been such a change, yes.

15 Q As I understand it, you based your 1980 Indian
16 population total on a printout of the enrollment
17 lists, is that right?

18 A Yes.

19 Q Do you recall in the deposition in which we
20 discussed this matter a couple weeks ago, I
21 asked you to produce a copy of the enrollment
22 list which you used?

23 A Yes.

24 Q To your knowledge, has such a copy been produced?
25 merchant-voir dire-merrill

1 A We have requested the Billings office of the
2 BIA to provide you with such a copy.

3 MR. MERRILL: Your Honor, the record should
4 reflect that no such copy of the underlying
5 data which Mr. Merchant relied upon has yet
6 been provided to the State of Wyoming.

7 MS. SLEATER: Your Honor --

8 THE SPECIAL MASTER: It is not necessary.
9 Go ahead.

10 MS. SLEATER: Okay.

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1 Q (By Mr. Merrill) Mr. Merchant, is tribal enroll-
2 ment over a historic period of a time a commonly
3 accepted technique for projecting future population
4 changes?

5 A For projecting Indian population changes, I
6 would think it would be.

7 Q You would think that it would be?

8 A Yes.

9 Q To the best of your knowledge, is it a commonly
10 accepted technique?

11 A Yes.

12 Q On what do you base that statement?

13 A Review of many population projections over the
14 course of my work as an economist.

15 Q Now, we're talking about Indian tribe populations;
16 is that correct?

17 A Well, I think basing Indian population changes on
18 tribal enrollment would only be valid for Indian
19 populations. I guess I don't understand your
20 question.

21 Q My reason is with respect to only projecting
22 future Indian populations, is historic data con-
23 cerning tribal enrollment a commonly accepted
24 method of projecting future populations?

25 merchant - cross - merrill

1 A. Yes.

2 Q. In reviewing the data for the past thirty years,
3 did you make any determination as to whether the
4 growth rate has been the same for the past ten
5 years, say, as opposed to the past thirty?

6 A. No.

7 Q. So you took the average rate for the past thirty
8 years and assumed that that would apply for the
9 next forty years and in the future; is that cor-
10 rect?

11 A. Yes, we're looking for a long-term, again a stable
12 relationship.

13 Q. Did you consider the actual statistics concerning
14 births of members of the Indian tribes or births
15 of children to enrollment members of the Tribes?

16 A. No, we --

17 Q. Did you consider any statistics concerning deaths
18 of members of the Tribes?

19 A. We could find no such statistics.

20 Q. Did you use any statistics concerning net migra-
21 tion either into or out of the area by persons
22 who are enrolled members of the Tribes?

23 A. We considered that issue.

24 Q. Did you rely on any specific data regarding

25 merchant - cross - merrill

1 migration?

2 A. Only discussions with people on the reservation.

3 Q. Did you factor it into the actual projections
4 that you made or the rate of growth which you
5 assumed?

6 A. We determined that this technique was reasonable
7 because we felt that there had been no large
8 migration one way or the other over the period.

9 Q. On what did you base that feeling?

10 A. Discussions with people on the reservation.
11 There was no statistics on migration.

12 Q. With whom did you discuss this?

13 A. I can't recall right now.

14 Q. So you are unable to tell me the people who gave
15 you the information on which you relied?

16 A. No, I can't remember right now who I discussed
17 that with.

18 Q. Would it be possible for you to refresh your recol-
19 lection by consulting your notes?

20 A. I don't think I have it in notes with me now.

21 Q. But you said you did consider what migration informa-
22 tion was available in projecting future populations;
23 is that right?

24 A. Well, these population projections are based upon
25 merchant - cross - merrill

1 an assumption of no net migration one way or the
2 other, so that it's based upon that fact. And
3 the information I received helped us confirm our
4 assumption.

5 Q So you did rely on it, at least to the extent that
6 you were reinforced in your assumption that there
7 was no net migration either way?

8 A. Yes, it does enforce our assumption.

9 Q Did you use any other technique of population
10 forecasting, such as the Cohort-Survival Method?

11 A. No, we didn't have the data to do that.

12 Q Did you rely on any other lists of names or informa-
13 tion which might likely show the number of Indians
14 in the various areas for which you were projecting
15 populations?

16 A. The printout I spoke of did have addresses for each
17 of these towns. However, we felt it wasn't valid
18 to use those addresses as a basis for determining
19 the population of these communities because many
20 people have an address in a certain town and don't
21 actually live in the town. Some of the addresses
22 were in terms of bank boxes and such things.

23 Q I can sympathize with your problem.

24 Did you check the growth rate that you

25 merchant - cross - merrill

1 projected, this 1.92 percent per year, by compar-
2 ing it with census data from any previous time
3 with, say, 1970?

4 A. We did look at census data, but felt that this
5 was a better indication of Indian growth rates.

6 Q. Did you actually verify the results that you ob-
7 tained through your projections for the growth
8 rate projection by going back and computing his-
9 torical growth, say, from the 1950 to 1970 census?

10 A. Census data, no, because we felt that census data
11 wasn't as good an indication of tribal population
12 as this data was.

13 MR. MERRILL: Your Honor, I object to the
14 introduction or the admission of U.S. Exhibit
15 WRIR C-18 on a variety of grounds --

16 (Off-the-record discussion.

17 THE SPECIAL MASTER: Is there an alarm button?
18 I thank you. Now, everything is okay. All right,
19 I'm glad to know that in case somebody gets real
20 mean with me. I beg your pardon and I'm sorry
21 about that question.

22 MR. MERRILL: I'll repeat it, Your Honor.
23 I just wish I had an alarm button, too.

24 Let me start over again, Your Honor. Wyoming
25 merchant - cross - merchant

1 objects to the receipt of U.S. Exhibit WRIR C-18
2 into evidence for a variety of reasons, and I
3 presume that this exhibit is being offered for
4 the truth of its contents since no qualifying
5 language was made to the offer.

6 The first ground is that the witness has
7 testified that he's unable to disclose now in
8 open court all of the facts and data on which he
9 relied and, more specifically, the sources on
10 which he relied concerning his migration assump-
11 tions.

12 Number two, some of the facts and data on
13 which this exhibit is based were agreed to be
14 supplied to the State two weeks ago. And, as
15 of this date, it's not been supplied.

16 Number three, the witness has made no deter-
17 mination that the base information on which he
18 relied, that being the standards for tribal en-
19 rollment from 1950 to 1980, in fact, did not
20 change during that time.

21 For example, were the Tribes to relax their
22 standards of degree or percentage of blood from
23 1/4 to 1/8 being full-blooded Indians, it would
24 be fair to assume that a number of additional
25 Indians who otherwise would not qualify for

1 tribal enrollment would join the rolls.

2 This does not increase the number of people;
3 it just increases the numbers that are Indian
4 that are enrolled, and it's clearly not --

5 THE SPECIAL MASTER: Do you assert that there
6 was a change in criteria in blood quantum from
7 1950 to 1980?

8 MR. MERRILL: I can't give evidence from the
9 podium, but I'm saying the witness did not deter-
10 mine that there was a standard population on which
11 he based his future projections. And I think
12 based on that, his projections are defective,
13 or at least suspect, and, therefore, should not
14 be accepted for the truth of their contents.

15 For those reasons, I don't think that Exhibit
16 C-18 ought to be admitted, and I think that the
17 witness' testimony concerning it should be stricken.

18 THE SPECIAL MASTER: Let me ask a question or
19 two about it.

20 Did the printout on which this is based con-
21 tain the names of enrolled members who, in fact,
22 by the address shown, lived in other cities, areas,
23 towns, and states?

24 THE WITNESS: Yes, it did.

25 THE SPECIAL MASTER: Was any adjustment made

1 to compensate for that and reduce these figures
2 accordingly?

3 THE WITNESS: Yes, we subtracted any person
4 on that list whose address was off the reservation.

5 THE SPECIAL MASTER: How many of those subtrac-
6 tions were made?

7 THE WITNESS: Oh, we did it the other way
8 around. We added up all the people we felt
9 were on the reservation, but I think the difference
10 is about 1,000 or 1500 people.

11 THE SPECIAL MASTER: Yes, do you have more
12 objections?

13 MR. MERRILL: No, I have stated all the
14 objections I have, Your Honor.

15 THE SPECIAL MASTER: All right, Mr. Webster?

16 MR. WEBSTER: Your Honor, on behalf of my
17 client, I would like to make an objection to the
18 introduction to this particular exhibit. I think
19 the witness is entitled to rely on other experts
20 for his information, but it's clear from the tes-
21 timony that he has presented that he had no valid
22 foundation on which to rely on some of the informa-
23 tion he has used to present this exhibit. And I
24 refer the Court exclusively to the growth rate,
25 which is the very basis of that exhibit.

1 His only information that he could give on
2 cross-examination, as well as direct examination,
3 is that it came from some BIA official. And we,
4 of course, have no idea or basis for that BIA
5 official's expertise. And we would object on the
6 basis of foundation that it contains the rankest
7 form of hearsay, and we will object.

8 THE SPECIAL MASTER: Yes. Regina? I am
9 troubled with this and I am going to have to ask
10 you some -- Yes, Regina?

11 MS. SLEATER: I would like to state that, in
12 the first place, the rules clearly provide that an
13 expert may testify based on hearsay evidence. And,
14 in the second place, an expert may testify based
15 on facts and data which are inadmissible in evidence,
16 which I think disposes of most of the objections
17 being raised.

18 Secondly, I would like to state that insofar
19 as allegations have been made regarding changes
20 of standards in Indian blood necessary for tribal
21 enrollment, or things of that nature, that is more
22 appropriately for cross-examination if there is
23 evidence to support it.

24 Mr. Merchant is an expert, has been qualified
25 in this matter, and he has done population

1 statistics and growth statistics. He has stated
2 that in his professional opinion this is the way
3 to do it, and these are the results of his analysés.

4 I think that's clearly admissible in this mat-
5 ter, and I don't think any of the objections raised
6 go to that, and what we are supposed to be address-
7 ing is the exhibit itself.

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1 THE SPECIAL MASTER: Mr. Sachse.

2 MR. SACHSE: I'd like to speak to the
3 admissibility of this. As someone who's worked
4 with Indian populations for some time, I'm
5 aware of the difficulties sometimes in saying
6 who is an Indian and who isn't an Indian, and
7 thus predicting population because of those
8 difficulties, it seems to me what Mr. Merchant
9 has done is the most reliable of any sort of
10 prediction. And he's being criticized now really
11 for being conservative and careful in what he's
12 done. He's taken a list of enrolled members in
13 the tribe 30 years ago who lived on the Reservation,
14 compared that to a list of the enrolled members
15 of the tribe now who live on the Reservation.
16 Both lists are official governments lists, they're
17 lists used for other purposes, not just for this
18 purpose. They're basically used for payment of
19 per capita.

20 THE SPECIAL MASTER: Per capita distribution.

21 MR. SACHSE: So from those two lists he has
22 done a mathematical computation as to the growth
23 and enrolled membership.

24 Now, the water rights that are at issue here
25 merchant -

1 have not to do with whether someone calls
2 themselves an Indian or not when the census taker
3 comes around, it has to do with whether he is an
4 enrolled member of these tribes, so this seems to
5 me to be the most accurate method that he could have
6 used to predict the increase that has already
7 occurred in enrolled members who live on the
8 Reservation, and to project into the future who's
9 likely to be there. And the criticism about migration
10 in or out is just a red herring because these figures
11 from which he's made a projection conclude that,
12 they're just the figures of the people who stayed.
13 So you don't have to ask someone how many people
14 left, how many people came back, they're there
15 mathematically within those figures.

16 So, I support the proposition that this is
17 a reasonably accurate estimate of population
18 growth. Nobody can tell you the individual.
19 We've argued with Mr. Merchant at one time or
20 another, how you would project it, but it seems to
21 me this is clearly admissible evidence, and that
22 all of us can argue about whether it's accurate
23 five people, a hundred people or a thousand people.

24 MR. MERRILL: Your Honor, Wyoming's objection
25

1 not only go to the accuracy of the survey,
2 but also the admissibility of the results based
3 on the Wyoming rules of evidence.

4 One of the rules concerning expert testimony
5 says that while under direct examination a witness
6 need not rely or state all of the facts and data
7 upon which he relied. He may, in any event, on
8 cross-examination, be required to disclose the
9 information on which he relied. And we now have
10 three different pieces of information on which
11 Mr. Merchant relied, which he is unable to tell
12 us today what they are. The first one being the
13 qualifications and information he got from the BIA
14 official concerning the enrollment, and therefore,
15 computed the growth rates.

16 The second one would be a copy of the
17 enrollment list which was promised to be furnished
18 to the State and has not yet been received.

19 And the third one is the -- that he can't
20 disclose the facts and data on which he relied
21 in making his assumption, that there hadn't been
22 any migration. Now, it may be that migration is
23 not an issue, but if he can't tell me the facts
24 and data upon which he relied, his opinion as
25

1 an expert is not admissible into evidence.

2 MS. SLEATER: I'd like to try to clarify
3 a couple of issues. First of all, this is
4 not cross-examination, and the rule states that
5 the -- they should be disclosed on cross-
6 examination.

7 Mr. Merchant has disclosed facts and opinions
8 and data upon which he relied. He's not been able
9 to conjur up from his memory a list of people. I
10 think he's been doing remarkably well with names
11 that he's been able to remember with all the people
12 he's talked to in the course of his investigation.
13 There's nothing in the rule that says an expert
14 must remember everything he has ever heard or
15 done.

16 Secondly, the depositions of Mr. Merchant,
17 which I might add we received copies of yesterday,
18 so Mr. Merchant has not even had a chance to
19 review, are probably -- any mention of them is
20 prejudicing this proceedings since, under the
21 rules a witness has 15 days to review his
22 deposition before it can be used in any proceedings,
23 and that's 15 days from date of receipt; he
24 has that time to review it to determine its
25

1 accuracy.

2 THE SPECIAL MASTER: Is the printout on its
3 way to the State?

4 MS. SLEATER: We requested the printout
5 within, I think it was the next day after it was
6 requested by the State; we requested that printout
7 be run giving the exact information. I received
8 a printout from Billings, I reviewed it with
9 Mr. Merchant and it turned out they sent the wrong
10 information, it was just not the information that
11 was requested that he sent to him.

12 We have called back and asked for it as an
13 expedited matter, and was fully expecting to have
14 it before now to deliver to the State. However,
15 at the time Mr. Merrill requested it, he was
16 advised that this came out of the Billings
17 office, and we had no way of guaranteeing the
18 time of delivery at all on it.

19 THE SPECIAL MASTER: What document did you
20 use that was the basis for changing the figures
21 in the three columns to which we referred to
22 earlier today?

23 MS. SLEATER: Your Honor, I think you should
24 address that question to Mr. Merchant.

25

1 THE SPECIAL MASTER: Mr. Merchant --

2 MS. SLEATER: I'm not ducking out.

3 THE SPECIAL MASTER: Did you get the
4 question all right?

5 THE WITNESS: Would you repeat it, please?

6 THE SPECIAL MASTER: What documents did
7 you rely upon for changing the totals slightly
8 in the three columns that I referred to earlier
9 today in finally admitting that, and not excluding
10 it under the ten-day rule?

11 THE WITNESS: I relied upon that printout that
12 is under discussion.

13 THE SPECIAL MASTER: And the printout that
14 was found to be erroneous?

15 THE WITNESS: No, the printout we used
16 earlier.

17 THE SPECIAL MASTER: Earlier?

18 THE WITNESS: Yes, sir.

19 THE SPECIAL MASTER: Well, it's easy for
20 me to sustain the objections to this, but what
21 does that leave us with? It leaves us with the
22 fact that we're not to admit that the population
23 center of 3500 or 4000 or 4500 people may grow
24 to 8500 or 9000, 9500 in the next 40 years, and
25

1 if the Wind River flowing near as it does today,
2 and all of the tributaries can't provide some
3 domestic water for 9000 people 40 years from
4 now, then I better get off this lawsuit in a hurry.
5 And I think that's what the purpose of this is,
6 to show the need of some water for some population
7 growth, whether it's up 500 or down 500 I don't
8 think it's all that important.

17 * * * * *

1 Now, if the State knows of a better way
2 to give us a more accurate figure, it will be
3 welcome, but if those being the circumstances, I
4 don't think I have the right to exclude this from
5 coming into the evidence for whatever it may be
6 worth, and it may not be worth very much by the
7 way you gentlemen attacked it.

8 You see my point, we know there is a
9 population there, we can take judicial notice of
10 that. I don't know whether it's 4,550 people;
11 that's been referred to before, I think in this case.
12 And I don't know what it's going to be 20 years from
13 now. About all this shows is that you made a pro-
14 jection over the past 30 years of 1.92 growth per
15 year in the enrolled members, and by projecting that
16 you come up with these figures.

17 THE WITNESS: Yes, sir.

18 THE SPECIAL MASTER: And for that reason,
19 that purpose I think I will permit it and overrule
20 the objections.

21 I welcome an opportunity to hear something
22 otherwise on the rebuttal case, if it's thoroughly
23 wrong, but again, if that's the only water that's going
24 to be in issue in this case we have no case, we might
25 as well start drawing up a judgment.

1 MS. SLEATER: I think we have a little
2 more.

3 THE SPECIAL MASTER: I'm afraid you do.
4 Go ahead.

5 DIRECT EXAMINATION (CONTINUED)

6 BY MS. SLEATER:

7 Q Mr. Merchant, I direct your attention to what
8 has been marked for identification purposes
9 as U.S. Exhibit WRIR C-9, and it's entitled
10 Population on Community Water Systems, 1980.
11 I wonder if, at this time, you could identify
12 that exhibit, please.

13 A Yes. That exhibit graphically shows the infor-
14 mation portrayed in Exhibit C-18. The red
15 interior circles around each community are
16 drawn to scale to show the relative sizes of
17 Indian populations among the communities.

18 Q If I could interrupt at this point, would it
19 be, Mr. Merchant --

20 THE SPECIAL MASTER: What are you calling
21 that exhibit now before us with the red dots
22 on it?

23 MS. SLEATER: I thought I was calling it 19.

24 THE SPECIAL MASTER: I thought you said 9.

25 merchant-direct-sleater

1 MR. MERRILL: It's marked C-9. should I
2 put a one in front of it?

3 MS. SLEATER: I appreciate that, Jim.

4 THE SPECIAL MASTER: That becomes C-19
5 not C-9, correct?

6 MS. SLEATER: Yes, sir, it's C-19. C-9
7 was admitted as one of the feed rations earlier.

8 THE WITNESS: This simply shows the --
9 each of the communities with water systems;
10 Riverton, Arapahoe, Pavillion, Ethete, Fort
11 Washakie and Boulder Flat. And as I said, the
12 interior red circles show the size of the
13 Indian population in these communities, and the
14 outer dark rings show the total population.
15 See, Riverton is this, the largest.

16 Q (By Ms. Sleater) Were you responsible for the
17 preparation of this exhibit?

18 A Yes.

19 Q Have you personally reviewed that exhibit?

20 A Yes.

21 Q Does it accurately portray the information
22 depicted thereon?

23 A Yes, it does.

24 Q At this time, Your Honor, I would like to move
25 merchant-direct-sleater

1 U.S. Exhibit WRIR C-19 into evidence.

2 THE SPECIAL MASTER: I would presume the
3 objections will prevail -- I mean objections
4 will be raised with this exhibit for the same
5 reason they were on the past one, that is based
6 upon the information he learned in supplying
7 C-18, and put in a different graphic form --

8 THE WITNESS: Yes, sir..

9 THE SPECIAL MASTER: -- on C-19. And if
10 those are the only objections to be raised to
11 C-19, they are and will be -- also they will
12 not prevail, because I think the C-19 does a
13 little more than put into graphic terms what
14 C-18 says.

15 MR. WEBSTER: That relates to my objection,
16 Your Honor, and I question the relevance or at
17 least the purpose of this exhibit.

18 THE SPECIAL MASTER: It may not have very
19 much relevancy. If you were to compare the
20 total water we are talking about with what
21 overall figures are going to be for irrigation
22 and other uses, but I think we might as well
23 let it in for whatever it's worth. I wonder
24 about what is to be said for the Indians who live

25 merchant-direct-sleater

1 further up on the area. I know some of the
2 Indians live up in Crowheart, in the areas in
3 the northwest portion. Why are they not
4 represented on this exhibit?

5 THE WITNESS: Because they're not tied into
6 a public water system. These represent only
7 the community water systems.

8 THE SPECIAL MASTER: I see.

9 MR. MERRILL: Your Honor, the State of
10 Wyoming has no objection to the introduction
11 of Exhibit C-19 as long as the tender is for
12 illustrative purposes only. I would not -- some of
13 the information contained on Exhibit C-19 does
14 not match that shown on C-18, specifically
15 the Indian and total population for the town of
16 Pavillion. Based on that discrepancy, the Court
17 shouldn't be faced with having to resolve
18 conflicts between the two exhibits offered by
19 the same party. And I would ask that you admit
20 them only for illustrative purposes.

21 THE SPECIAL MASTER: So ordered: It will
22 be admitted for illustrative purposes only.

23 (The instrument received herein-
24 before U.S. Exhibit WRIR C-19
was admitted into evidence.)

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(CONTINUED) DIRECT EXAMINATION

BY MS. SLEATER:

Q I believe you said the second part of your analysis that dealt with the municipal, domestic and commercial requirements involved determining per capita water consumption?

A Yes.

Q Would you please tell us how you did that?

A Yes. We interviewed people familiar with these area community water systems to determine an average per capita daily rate of water use. We could obtain data for Riverton and Fort Washakie, but that information was not available for other communities. So to derive figures for the other communities, we conducted a survey of communities throughout central Wyoming to ascertain an average rate for water consumption. That rate so ascertained was thought reasonable by us, so we adopted that for the other communities.

Q Approximately how many communities did you survey?

A We talked to about a dozen, and perhaps about two thirds of those provided us with credible merchant-direct-sleater

1 information.

2 Q When you say you talked to the community, did
3 you talk to the city engineer?

4 A City engineer in general.

5 Q At this time I will hand you a copy of what
6 has been marked as U.S. Exhibit WRIR C-20 and
7 ask you if you can identify that?

8 A Yes. This is a table --

9 Q Why don't you wait until everyone gets a copy
10 before you go over it.

11 (Brief pause.)

12 Q (By Ms. Sleater) Mr. Merchant, could you please
13 explain this exhibit?

14 A Yes. This is a table showing the daily per
15 capita water uses for various communities. As
16 I said, the first two were obtained directly
17 from those communities. The other -- the next
18 four are rates resulting from our survey, and
19 the last for Other Rural is a rate, an estimate
20 taken from some regional publications.

21 Q I notice that the figures for Fort Washakie
22 seems much higher than the other figures for
23 per capita consumption. Is that a natural
24 figure received from the water system?

25 merchant-direct-sleater

1 A The Indian health engineer provided us with the
2 data on water consumption for various periods
3 of the year, and this constitutes an annual
4 average figure.

5 MS. SLEATER: At this point, Your Honor, I
6 would move that U.S. Exhibit WRIR C-20 be
7 admitted into evidence.

8 THE SPECIAL MASTER: I would have to raise
9 a serious objection to letting this go into
10 the record, and that's on the 325 from Fort
11 Washakie, unless I know what it is based on.
12 I can't believe a citizen, Indian or non-Indian,
13 living in Riverton or Ethete can use 165 or
14 185 gallons of water per day for requirement and
15 the same citizen, Indian or non-Indian, at
16 Fort Washakie uses 325. Some of that water
17 must be used for more than such things as gardening
18 or other requirements of homes or the swimming
19 pool at Fort Washakie. There has to be some
20 explanation for that figure, and I think before
21 you crank into any total here, that ought to
22 be addressed. Can the witness address my observation?

23 MS. SLEATER: Your Honor, you may inquire
24 of the witness certainly.

25 merchant-direct-sleater

1 THE WITNESS: Well, I believe there is
2 more outdoor use than is typical in the out-
3 door area and, of course, it's the outdoor use
4 that is the high water consumer.

5 THE SPECIAL MASTER: Can you tell how
6 projections for the need for irrigation water in
7 the immediate Fort Washakie area will contain
8 figures that could easily include some of the
9 325 that is here and figures that would be
10 difficult to remove because of the **virtually**
11 impossibility of -- because of the overlapping
12 of these statistics?

13 THE WITNESS: I don't think the 325 would
14 include any water that we would claim for
15 irrigation.

16 THE SPECIAL MASTER: What would it include?

17 THE WITNESS: This includes water delivered
18 to Indian homes hooked up to the community water
19 system, and any incidental outdoor uses that
20 they would have, but not irrigation of large
21 scaled plots.

22 MS. SLEATER: Your Honor, I would renew my
23 motion at this point.

24 THE SPECIAL MASTER: Any objections?

25 merchant-direct-sleater

1 MR. WEBSTER: I would like to ask some
2 questions.

3 THE SPECIAL MASTER: Mr. Webster? All right.

4 VOIR DIRE EXAMINATION

5 BY MR. WEBSTER:

6 Q I would like to have you define for the record
7 what you meant in response to the question by
8 the Master that the figures in Fort Washington --
9 Washakie -- sorry -- could possibly have included
10 outdoor use?

11 A These figures I'm sure include outdoor use
12 incidental to the homes hooked up to the
13 community water system.

14 Q What kind of outdoor use?

15 A Apart from lawns, I'm sure it includes some
16 incidental irrigation of family gardens, things
17 such as this.

18 Q And you are saying it would not include those
19 things in Pavillion and Riverton?

20 A No, I'm not saying that. I'm simply trying to
21 explain why the Fort Washakie figure might be
22 so much higher. This may be a more common
23 practice there.

24 Q How about stock watering, would it include stock
25 merchant-voir dire-webster

1 watering?

2 A I'm sure it includes some incidental stock
3 watering.

4 Q With regard to incidental irrigation and garden
5 use, how big irrigation plots would you con-
6 template it would include?

7 A I can't tell you the size of the plots. Those
8 associated with homes is what I'm referring to.

9 Q Would you anticipate those being any different
10 size than they are in Pavillion or Riverton?

11 A Probably in Riverton they -- with land -- with
12 the density of population higher, you will see
13 smaller garden plots.

14 Q Okay. How about Pavillion and the other small
15 communities?

16 A No. I don't see any reason to expect plots to
17 be smaller in Pavillion than in Fort Washakie,
18 but we simply didn't have water use data for
19 Pavillion, Ethete and the other communities on
20 the town.

21 Because the Fort Washakie figure was higher
22 than, say, the average water use nationwide,
23 we questioned whether that was a good figure to
24 apply for other communities without actually knowing
25 merchant-voir dire-webster

1 that they used that much water. So that is what
2 prompted our survey. But because the 325
3 represents actual use in Fort Washakie, we
4 felt justified in using that figure.

5 Q Isn't it true that they have had a lot of
6 problems with the water system in Fort Washakie
7 and there have been a lot of leaks and those
8 kinds of engineering problems?

9 A I'm sure there are leaks associated with this
10 system.

11 Q Are there any independent wells or groundwater
12 sources that are included in the systems at
13 Fort Washakie, Boulder, Ethete, and so forth?

14 A Independent wells apart from the community water
15 systems?

16 Q Yes.

17 A Not that I'm aware of.

18 Q Do you know what the --

19 MR. WEBSTER: I think that is an improper
20 question. We better put that on cross-examination.

21 I have no further questions, except, Your
22 Honor, I would at this time enter an objection
23 to that 325 figure as it is represented in the
24 system, and it does not accurately reflect water

25 merchant-voir dire-webster

1 consumption on the basis of the witness' own
2 testimony, but rather probably includes some
3 leaks and problems like that. Therefore, it
4 has no probative value and is an objectionable
5 exhibit.

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1 MR. ECHOHAWK: Your Honor, at this time I
2 assume that the private counsel is prepared to
3 put on evidence backing up his insinuation that
4 it does contain leaks. I don't think that's what
5 Mr. Merchant testified.

6 MR. WEBSTER: I think the record will show,
7 Your Honor, that when I asked him if it wasn't
8 true that there were some leaks and problems with
9 that system, he said, "I am sure there are," and
10 I think that's what the record will show. And,
11 and on the basis of that, that is why I entered
12 the objection.

13 THE SPECIAL MASTER: To that one item, to the
14 one item.

15 MR. SACHSE: I would like to voir dire the
16 witness on this exhibit.

17 VOIR DIRE EXAMINATION

18 BY MR. SACHSE:

19 Q Mr. Merchant, have you been to Fort Washakie?

20 A Yes, I have.

21 Q Is the headquarters of the Shoshone and Arapahoe
22 Tribe located there?

23 A Yes, it is.

24 Q What kind of building is that in?

25 merchant - voir dire - sachse

1 A. It's a large -- I recall it's a brick building.

2 Q. Is there a lawn around that building?

3 A. Yes, there is.

4 Q. Are the BIA headquarters located in Fort Washakie?

5 MR. MERRILL: I object to this line of ques-
6 tioning. This is examination being conducted by
7 counsel who is closely in line with his own side
8 of the case.

9 THE SPECIAL MASTER: I think it's proper.
10 Overruled. Is the BIA headquarters at Fort
11 Washakie? If I can't listen to an answer to that,
12 why --

13 A. Yes, it is.

14 Q. (By Mr. Sachse) Is there an independent health
15 service clinic at Fort Washakie?

16 A. Yes, I believe there is.

17 Q. Can you describe those buildings?

18 A. There are varied buildings over there. There are
19 numerous buildings with lawn areas in front.

20 Q. Is it possible that the larger water use in
21 Fort Washakie has something to do with the ratio
22 between public buildings there and the smaller number
23 of private homes that you would find in other
24 communities?

25 merchant - voir dire - sachse

1 MR. MERRILL: Objection, Your Honor. Any-
2 thing is possible.

3 THE SPECIAL MASTER: That might be --

4 MR. WEBSTER: It calls for a speculative
5 answer.

6 THE SPECIAL MASTER: I agree with him.
7 Maybe Mr. Sachse can reword it.

8 Q (By Mr. Sachse) Do you attribute any relevance
9 between the location of the Indian government
10 and the BIA government in Fort Washakie and the
11 larger water use there?

12 A Yes, I do. Most of the BIA personnel, non-Indian
13 personnel, commute from outside of Fort Washakie,
14 and so they are not reflected in the population
15 figures, but would contribute to water use during
16 the day.

17 MR. SACHSE: Thank you.

18 MR. ROGERS: May I just state one remark?
19 Is this Mr. Webster?

20 THE SPECIAL MASTER: Yes. Mr. Webster.

21 MR. ROGERS: I missed the cast of characters
22 earlier.

23 His objection, I believe, as I understood
24 him was that he was objecting to the exhibit on

25 merchant - voir dire - sachse

1 the basis of the 325 figure.

2 THE SPECIAL MASTER: No, he was objecting
3 only to the 325 figure for Fort Washakie.

4 MR. ROGERS: Well, that's right, and that's
5 what I understood him to say. The witness has
6 stated that that is the fact; It's not a matter
7 of dispute of whether the exhibit is admitted or
8 not.

9 The gentleman has offered no proof that it's
10 not true. He may not like the figure, but the
11 witness has stated that is, in fact, what the fact
12 of life is at Fort Washakie.

13 THE SPECIAL MASTER: No, the witness stated
14 that that's what he was told the fact of life is
15 at Fort Washakie. There's a little bit of differ-
16 ence.

17 MR. ROGERS: I understand, Your Honor. But
18 Mr. Webster has set forth no factual basis to dis-
19 agree.

20 THE SPECIAL MASTER: That is true. He will
21 have his turn.

22 MR. ROGERS: And that's not a basis for re-
23 jecting the exhibit.

24 THE SPECIAL MASTER: Well, I don't want to
25 reject the exhibit, but I want to call attention

1 to the fact that item required the discussion I
2 think that it deserved.

3 Mr. Radosevich?

4 MR. RADOSEVICH: May I ask a few questions
5 of the witness?

6 THE SPECIAL MASTER: Certainly.

7 VOIR DIRE EXAMINATION

8 BY MR. RADOSEVICH:

9 Q. What's the national average per capita water
10 consumption?

11 A. I believe it's around 180-190 gallons per day per
12 capita.

13 Q. Do you know if the water diversion device in
14 Fort Washakie is an accurate measuring device?

15 A. No, I don't know that.

16 Q. The figures that you were provided you, are they
17 provided as a result of in-house metering devices?

18 A. The system is metered. That's the way those figures
19 were described to me, but I don't know that each
20 house is metered or the system in entirety.

21 Q. Do you know if any of the other -- well, Riverton,
22 in particular, is a metered system?

23 A. I believe it is.

24 Q. Okay. You stated that, to the best of your

25 merchant - voir dire - radosevich

1 knowledge, you don't know if there are independent
2 wells serving for non in-house uses in the Fort
3 Washakie area in particular?

4 A. I don't know that to be true.

5 Q. As far as any of the other towns, Ethete or Ara-
6 pahoe or Pavillion, do you know if there are any
7 wells?

8 A. Apart from the community water systems?

9 Q. Yes.

10 A. No, I do not.

11 MR. RADOSEVICH: Thank you, Your Honor.

12 THE SPECIAL MASTER: Do you know, Mr.
13 Merchant, how many taps there are at Fort Washakie?

14 THE WITNESS: No, sir.

15 THE SPECIAL MASTER: Well, I'm ready to rule
16 on the exhibit unless someone else wishes to be
17 heard.

18 MR. MERRILL: I have these a little bit of
19 voir dire, Your Honor?

20 THE SPECIAL MASTER: All right.

21 VOIR DIRE EXAMINATION

22 BY MR. MERRILL:

23 Q. Mr. Merchant, does the average per capita consump-
24 tion reflected on Exhibit C-20 include any

25 merchant - voir dire - radosevich
merchant - voir dire - merrill

- 1 industrial uses whatsoever?
- 2 A. No, I don't think they do.
- 3 Q. What steps did you take to ensure that those
- 4 figures did not include industrial uses?
- 5 A. Well, there are no industrial uses in any town
- 6 but Riverton, and in any of these towns the
- 7 Riverton water system is independent of the
- 8 major industrial uses in Riverton.
- 9 Q. Who did you speak to in Riverton to get your
- 10 figures?
- 11 A. The City Engineer.
- 12 Q. Who is that?
- 13 A. Oh, I don't remember his name. He is the City
- 14 Engineer though.
- 15 Q. Was that a telephone call interview?
- 16 A. Yes.
- 17 Q. Who did you speak to in Fort Washakie?
- 18 A. That was Jim Sorenson.
- 19 Q. In your conversation with the Riverton City
- 20 Engineer did you make any inquiry as to whether
- 21 they would be interested in having a reserve
- 22 water rights serve their municipal water supply
- 23 system?
- 24 MS. SLEATER: I'm going to object to that
- 25 merchant - voir dire - merrill

1 question. It has nothing to do with the exhibit
2 that's before the court for motion. I think Mr.
3 Merrill can ask that question at some other time.

4 MR. MERRILL: I'll save it for cross-examination,
5 Your Honor.

6 THE SPECIAL MASTER: I would imagine if it's
7 objectionable now, it would be later, and we can
8 get to the substance of that if it were relevant.
9 I have suspicions it's not relevant.

10 MR. MERRILL: I will move on.

11 MS. SLEATER: It's probably not that either,
12 Your Honor.

13 Q (By Mr. Merrill) Mr. Merchant, in the interviews
14 that were conducted with the folks in these various
15 cities that you contacted, did you ask them to give
16 you an average per capita consumption over a
17 specific period of time?

18 A Yes, an average daily per capita rate over a year.
19 In other words, averaged over the year.

20 Q For what year?

21 A We asked for their most recent year.

22 Q And what year did you receive?

23 A I think they told us a figure based upon our in-
24 quiry. I don't believe they gave us a year

25 merchant - voir dire - merrill

1 Q So these figures will represent an annual average
2 consumption in each of the cities that are listed?

3 A If an average daily consumption --

4 Q I'm sorry. An average daily consumption averaged
5 over the year?

6 A Yes.

7 Q Isn't it true that during your survey of the water
8 uses in municipalities in Wyoming, you contacted a
9 number of city personnel who gave you figure
10 ranges from about 90 gallons per day to 23,000
11 gallons per day per capita?

12 A Yes.

13 Q And isn't it true that you went through the informa-
14 tion that you gleaned from those telephone inter-
15 views and struck certain portions of it as not be-
16 ing credible?

17 A Yes, we did.

18 Q How did you determine whether an amount of water
19 was credible or not?

20 A Based upon our knowledge of the water consumption
21 in various towns and the average national water
22 consumption per capita, daily water consumption,
23 there were some figures that we thought were
24 either incredible or that could represent some

25 merchant - voir dire - merrill

1 other use that we thought might bias our
2 average figures. The 23,000 gallons per day we
3 thought there must have been some mistake in
4 the person's calculation or he misunderstood our
5 question or some problem, so we rejected that
6 figure and did not include it in our average.

7 Q What steps did you take to confirm any of the
8 consumption figures that were given to you by
9 personnel in these cities?

10 A We relied on their knowledge as City Engineers.

11 Q For each city then you spoke only to the City
12 Engineer?

13 A Well, or a person referred to us by him.

14 Q What steps did you take to ascertain that that
15 person knew what they were talking about.

16 A If they are referred by someone knowledgeable,
17 we have to rely on that person's ability to re-
18 fer us to a person who knows.

19 Q Even though one of those people who knew told
20 you 23,000 gallons per day; isn't that right?

21 A Well, the other -- Yes, that's right.

22 MR. MERRILL: No further questions, Your
23 Honor. We would endorse Mr. Webster's objections
24 to the introduction of Exhibit 20.

25 merchant - voir dire - merrill

1 THE SPECIAL MASTER: Ms. Yonkee?

2 VOIR DIRE EXAMINATION

3 BY MS. YONKEE:

4 Q Did you obtain the information about Fort Washakie
5 by phone?

6 A Yes, that was a telephone conversation.

7 Q Is there any chance you could have misunderstood
8 this number over the telephone?

9 A I don't believe so.

10 Q Did you verify it later or at any time?

11 A I don't think we talked to him about the same
12 figure, no.

13 Q In any of your telephone interviews, did you verify
14 them in writing later or at any time?

15 A For these water consumption figures?

16 Q Yes.

17 A No.

18 Q You say you have been to Fort Washakie?

19 A Yes,

20 Q Have you seen various homes there?

21 A Yes.

22 Q Do they have extra large yards?

23 A Some have yards.

24 Q Do they have --

25 merchant - voir dire - yonkee

1 A. I wouldn't call them extra large.

2 Q. Do they have grass, most of them?

3 A. Some do.

4 Q. Some do and some don't?

5 A. Yes.

6 Q. And they are not extra large yards?

7 A. I wouldn't call them extra large.

8 Q. Compared to those in Riverton or Ethete -- or

9 have you been to those places?

10 A. Yes, I have. I wouldn't say the yards were larger

11 than Riverton or Ethete. Many of the houses around

12 Fort Washakie have larger parcels of land particu-

13 larly than those in Riverton, but they are not all

14 lawns.

MS. YONKEE: That's all.

* * * * *

25

1 THE SPECIAL MASTER: The objection to
2 the Fort Washakie figure is going to be recognized
3 and left in limbo, frankly. The balance of this
4 exhibit will be admitted, and I suspect we can
5 adjust the Fort Washakie figure at a later date.

6 I recognize that the Fort Washakie population
7 figure constitutes almost twenty-five per cent of
8 the population of the Indian community, and it
9 makes this very, very important.

10 Next item.

11 MS. SLEATER: Excuse me, I'm making a
12 note of your --

13 THE SPECIAL MASTER: Anyone want to
14 take a break?

15 (No response.)

16 THE SPECIAL MASTER: If not, we'll go
17 right on through.

18 MS. SLEATER: Your Honor, I think we're
19 about finished with this, with just maybe another
20 half hour or more on the direct on this section,
21 and perhaps we could break for the day, if it's
22 okay with you.

23 THE SPECIAL MASTER: Very well. Take
24 all the time you need.

25

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DIRECT EXAMINATION CONTINUED

2

BY MS. SLEATER:

3

Q Mr. Merchant, I'm going to hand you what has been marked as WRIR C-21 and ask if you can identify that, please, after everyone gets their copy.

4

5

6

(Brief pause.

7

THE SPECIAL MASTER: Did you want a break?

8

THE WITNESS: We can go on a little longer.

9

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MR. MERRILL: If we are going to go

11

straight through with the remainder of the

12

municipal and domestic uses, I would ask that

13

we take a break; I have a telephone call that

14

we need to make.

15

THE SPECIAL MASTER: I appreciate that.

16

Let's take a ten minute recess.

17

(Thereupon a 15 minute recess
was taken.

18

19

THE SPECIAL MASTER: Court will come to

20

order, please.

21

Q (By Ms. Sleater) Mr. Merchant, I believe before

22

the break you were handed a copy of an exhibit

23

that's been marked for identification as U.S. WRIR C-21.

24

A Yes.

25

merchant-direct-sleater

1 Q Is that correct.

2 A Yes, I was.

3 Q I believe copies were distributed.

4 (Brief pause.

5 Q Could you explain what that exhibit is?

6 A Yes. This exhibit is a table showing the annual
7 water requirements of the communities on the
8 Wind River Reservation, and also a total amount
9 for other rural water use on the reservation.

10 Then, the bottom line shows the reservation
11 total for all communities plus other rural.

12 Q I note this has headed Municipal, Domestic and
13 Commercial Water Needs. Could you please tell
14 us what that means.

15 A Municipal water needs are those required by the
16 municipality for such things as fire control,
17 street washing, park maintenance, city, building
18 maintenance, things such as that.

19 Domestic is household use, both inside and
20 outside. And commercial is the incidental uses
21 associated with commercial establishments such as
22 retail stores, motels, whatever.

23 Q I note the information is broken down under
24 certain headings such as surface water, infiltration

25 merchant-direct-sleater

- 1 galleries and other wells. Could you please
2 explain those headings.
- 3 A Yes. Those breakdowns differentiate the water
4 needs according to the source of water.
- 5 Q Could you explain where you got that information?
- 6 A Most of that is from Jim Sorenson of the Indian
7 Health Service. The Riverton information is from
8 the City Engineer, and the other rural is our
9 assumption that rural households will gain
10 their water from household wells.
- 11 Q What is an infiltration gallery?
- 12 A That is a shallow well field in the alluvium of
13 a river.
- 14 Q And is it your professional opinion that the
15 total municipal, domestic and commercial water
16 needs today are 1,041?
- 17 A Yes.
- 18 Q What is your professional opinion regarding the
19 municipal, domestic and commercial water needs
20 for the year 2000?
- 21 A That 1,524 acre-feet will be needed.
- 22 Q And for the year 2020?
- 23 A 2,226 acre-feet per year.
- 24 Q Are these conclusions and opinions based upon
25 merchant-direct-sleater

1 the study and information that you have previously
2 described here today?

3 A Yes.

4 MS. SLEATER: At this time, Your Honor,
5 I would ask that U.S. Exhibit WRIR C-21 be
6 admitted into evidence.

7 THE SPECIAL MASTER: Voir dire anyone?

8 MR. MERRILL: Your Honor, I probably
9 have worn out my welcome on the ten day objection,
10 but this time I think I've got a real zinger,
11 and with consent of the United States, I would
12 like to show the Court the exhibit that was
13 served on us in advance of the trial in order
14 that the Court may compare it in both its format
15 and substantive contents with the exhibit that
16 is being presented to you today, so you can
17 make a ruling.

18 THE SPECIAL MASTER: I'm handed a
19 table 3 that has a total in the first column,
20 1980 of 1,032 with changes in each tabulation,
21 with subtotals even differently. And it's not
22 unlike the prior tables in that about the only
23 thing that's the same is the headings.

24 MS. SLEATER: Your Honor, if I could

25 merchant-direct-sleater

1 suggest that the witness be asked to explain
2 the differences so that Your Honor will have a
3 better grounds for ruling.

4 THE SPECIAL MASTER: Why was there a
5 total groundwater column, either in the one now
6 offered and, why is it not in the one you offered,
7 Regina?

8 MS. SLEATER: Your Honor, I think the
9 witness can best explain this, and I don't have
10 a copy of the exhibit that Mr. Merrill just gave
11 you.

12 THE SPECIAL MASTER: Well, Mr. Merrill,
13 are you raising an objection on the basis that
14 it's a violation of the ten day rule under the
15 pre-trial order?

16 MR. MERRILL: Yes, Your Honor. Not
17 only a technical violation, but as you can see
18 for yourself, the columns and breakouts are
19 different. This new exhibit includes numbers
20 for Pavillion, it splits up surface water
21 and infiltration galleries, which the other
22 one does not. It simply prejudices Wyoming's
23 preparation for voir dire and cross examination
24 of the experts to come in at the day of trial

25 merchant-direct-sleater

1 and force us to redo our work.

2 THE SPECIAL MASTER: I'm going to agree
3 with Mr. Merrill. I think the fact that you
4 can withhold from an adversary party a document
5 and then hit him at a trial with the word
6 infiltration galleries, something he's supposed
7 to have knowledge at the same time of trial is
8 really taking a little bit of advantage of him,
9 an unfair advantage, frankly, so I will ask that
10 if you two can't agree on what to introduce
11 between these two documents by tomorrow morning,
12 that you proceed to prove the contents of C-21
13 in some other fashion with this witness, and
14 we can get it into the record, so that what you
15 want to say, that these totals can be read, and
16 be part of my deliberations without my having
17 to let you come into infiltration galleries
18 two minutes before the State had a chance to
19 know what it's all about, and also changing
20 the sub, subheads. It does make it a different
21 document; the objection's sustained.

22 MR. MERRILL: Thank you, Your Honor.

23 MS. SLEATER: Your Honor, I'd like the
24 record to reflect though that the United States

25 merchant-direct-sleater

1 provided the State of Wyoming with a copy yesterday
2 as soon as the new exhibit was prepared.

3 THE SPECIAL MASTER: I appreciate that.
4 And if Mr. Merrill was to say that in light of the
5 purpose served by these exhibits, and in the best
6 interest of moving along expeditiously he might
7 object -- he might be kind enough to remove his
8 objection now that it's sustained, I would be
9 grateful to him.

10 MR. MERRILL: Your Honor, at this point
11 without having --

12 THE SPECIAL MASTER: You didn't hear a
13 word I said.

14 MR. MERRILL: Yes, I did. I was trying
15 to compare the two exhibits plus listen to you
16 at the same time.

17 If you would give me overnight, let us check
18 these out and perhaps we can remove our objection
19 by the morning. But I think it's prejudicial to
20 any party to have exhibits put on which a party's
21 expected to voir dire and cross examine, then come
22 in with a different exhibit the day of trial and
23 rely on the witness to explain the differences
24 between the two, and thereby subvert the purposes

25 merchant-direct-sleater

1 of the ten day rule.

2 THE SPECIAL MASTER: You have been
3 sustained in your objection. Now, during the
4 break we had a discussion with counsel on these
5 exhibits in a generic nonex parte way, and we
6 find there's bigger picture of what they portend,
7 what they signify. And if we can keep that bigger
8 picture in mind and keep the pictures towards the
9 general finding that can be made, that they can
10 give us some substance, we don't need to be crossing
11 each of these t's and dotting each of these i's so
12 meticulously as to the ten day rule and other
13 niceties of combat, legal combat.

14 All right, next, Regina.

15 MS. SLEATER: Well, Your Honor, I
16 certainly didn't mean to subvert the State of
17 Wyoming's preparations.

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1 MS. SLEATER: Mr. Merrill (sic), have you
2 formed a professional opinion relating to --
3 I'm sorry.

4 I bet Mr. Merrill has a professional
5 opinion or two.

6 MR. MERRILL: Your Honor, I may not be very
7 smart, but I'm not getting on the witness stand.

8 THE SPECIAL MASTER: You don't want to hear
9 his professional opinion? Well, in view of the
10 difficulty today, if you want to call off this --
11 do you want to prepare materials for tomorrow
12 and adjourn for the day, or do you want to go
13 ahead with other matters?

14 MS. SLEATER: Well, Your Honor, I was going
15 to have the witness testify as to just his
16 professional opinion relating to the water need,
17 which I don't think the exhibit is necessary for,
18 and perhaps we will remove the problem that way.

19 THE SPECIAL MASTER: The witness has been
20 crucial and necessary in the introduction of
21 some ten exhibits today, I believe, and I think
22 he certainly could have opinions that could be
23 listened to going to these general purposes
24 of these exhibits, if that's what you have in
25 mind.

1 MS. SLEATER: Well, Your Honor, I was
2 going to ask him his opinion relating to the
3 water that was required for the future municipal,
4 domestic and commercial needs out of the Wind
5 River to satisfy the needs of the Indian
6 population. However, if you feel at this time
7 it is more appropriate to take a break at this
8 time until tomorrow for the parties to resolve this
9 issue, I'm certainly in favor of attempting to
10 resolve anything we can.

11 THE SPECIAL MASTER: Well, if the State and
12 the United States can use the next 30 minutes
13 to -- we are going to quit at 4:30 anyway --
14 can use the next 30 minutes to come to a
15 resolution of this last item regarding total acre-
16 feet per year for the three subject matters, that
17 will be time well spent and might help us in
18 the morning.

19 MS. SLEATER: We can certainly try, Your
20 Honor.

21 THE SPECIAL MASTER: Why don't you do that
22 and let us reconvene at 9:15 in the morning.
23 I know it keeps the witness over one more day,
24 but hopefully we can make more progress that way
25 tomorrow than doing otherwise. And then the

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witness after this one will be the name you
give.

MS. SLEATER: Oliver Page, Your Honor.

THE SPECIAL MASTER: You have one name,
Oliver Page. Do you want to give an additional
name at this time?

MS. SLEATER: Your Honor, the way this
trial is going, I assume Oliver Page will be
on the stand until the end of the week.

THE SPECIAL MASTER: All right. We will
stand in recess until tomorrow morning at 9:15.

(Whereupon, the Proceedings
were recessed for the evening.)

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