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## Trial Transcript, Vol. 49, Morning Session

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File # 156

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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 )  
WYOMING. )

Civil No. 4993

FILED

5/20 1981  
*Margaret V. Hampton* CLERK  
DEPUTY

VOLUME 49

Morning Session

Tuesday, May 5, 1981

**ORIGINAL**

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APPEARANCES

FOR THE STATE  
OF WYOMING:

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

FOR THE UNITED STATES  
OF AMERICA:

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

and

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

FOR THE SHOSHONE  
TRIBE:

SONOSKY, CHAMBERS & SACHSE  
200 M. Street  
Washington, DC 20006  
BY: MR. HARRY SACHSE

CLERK TO THE  
SPECIAL MASTER:

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

1 THE SPECIAL MASTER: Please come to  
2 order. It has been brought to my attention  
3 that a clerical mistake exists in the  
4 transcript from the proceedings for April 24,  
5 the last week of hearing we had in April.

6 On Page 4313 of the transcript, line 1,  
7 an exhibit referred to by Dr. Mesghinna is  
8 reported as Exhibit WRIR C-204. That should  
9 read C-254.

10 On Page 4324 of the transcript, the series  
11 of maps prepared by Dr. Mesghinna to show his  
12 proposed drainage and irrigation projects  
13 were admitted into evidence. That page of the  
14 transcript does not include the Exhibit U.S.  
15 WRIR C-254 as having been admitted. That is a  
16 clerical oversight and is now corrected. U.S.  
17 Exhibit WRIR C-254, which is the proposed  
18 drainage system map for the Arapahoe study area  
19 is admitted into evidence.

20 Mr. White on cross-examination.

21 CROSS-EXAMINATION

22 BY MR. WHITE:

23 Q Morning, Dr. Mesghinna. Dr. Mesghinna, would  
24 you please refer to U.S. Exhibit WRIR C-245,  
25 mesghinna-cross-white

1 specifically Page 42, which contains your  
2 table 24.

3 MR. WHITE: While you're looking, can  
4 everybody hear me?

5 MR. ECHOHAWK: Yes.

6 MR. CLEAR: Yes.

7 THE SPECIAL MASTER: If they should have  
8 trouble you can hook it up.

9 MR. WHITE: Off the record.

10 (Off-the-record discussion.)

11 THE WITNESS: Did you say Page 42?

12 Q (By Mr. White) Yes, sir. Table 24.

13 A Yes.

14 Q Down at the bottom of that page you list  
15 diversion requirements for each of the five  
16 projects?

17 A Yes.

18 Q You don't include in those projects Owl Creek;  
19 is that correct?

20 A Yes, they are not included in Owl Creek.

21 Q Why is that?

22 A We'll come to it later on with the historic  
23 lands.

24 Q I don't understand your answer. Does it mean

25 mesghinna-cross-white

1 that your previous project design called  
2 Owl Creek is now included in the historic  
3 lands?

4 A We essentially have divided the overall work  
5 into three items. The first item are the five  
6 units; North Crowheart, South Crowheart, Big  
7 Horn Flats, Arapahoe and Riverton East, which  
8 are all included in this report. Our second  
9 part we include the historic lands, all but the  
10 Type VIII lands and the Arapahoe Ranch area.  
11 So all the Type VIII lands which are newly  
12 classified lands and the Arapahoe Ranch area,  
13 which is about 245 acres of land will be pre-  
14 sented later on.

15 Q What do you mean by Type VIII?

16 A Type VIII are lands which are newly classified  
17 within the boundaries of the Federal Indian  
18 Project lands.

19 Q Are those lands which have never been irrigated  
20 before, never developed before?

21 A Yes, they have never been developed before.

22 Q Okay. On Page 42 for the North Crowheart Project  
23 or unit, which do you refer to them as, project  
24 or units, your five that are listed on Table 42 --

25 mesghinna-cross-white

- 1           excuse me, table 24 on Page 42?
- 2    A    North Crowheart is a unit.
- 3    Q    A unit?
- 4    A    South Crowheart is a unit, Arapahoe is a unit,  
5           Riverton East is a unit, Big Horn Flats is a  
6           unit.
- 7    Q    We'll call those units and we'll be talking  
8           about the same thing?
- 9    A    Yes, except on the operation and maintenance  
10           work.
- 11   Q    I understand that you divided those into two  
12           groups.
- 13   A    Yes.
- 14   Q    Let's go to the diversion requirements for the  
15           North Crowheart Unit.
- 16   A    Okay.
- 17   Q    You list 147,767 acre-feet; is that correct?
- 18   A    Yes, sir.
- 19   Q    Does that all come out of the Wind River?
- 20   A    Yes.
- 21   Q    How many points of diversion?
- 22   A    One diversion.
- 23   Q    One point of diversion?
- 24   A    Yes.
- 25   mesghinna-cross-white



- 1 Q What's the first day during the irrigation  
2 season the water's diverted at that point of  
3 diversion?
- 4 A It will be sometime in May.
- 5 Q And the last day?
- 6 A Towards the end of September.
- 7 Q What's the average diversion c.f.s. which you  
8 have designed a system to take which results  
9 in 147,767 acre-feet?
- 10 A The overall designs c.f.s. at the head is about  
11 850 c.f.s.
- 12 Q So the design c.f.s. is 800 and what?
- 13 A Fifty.
- 14 Q But you don't divert 850 c.f.s. each day at  
15 that point?
- 16 A No, that is the maximum, that is the design  
17 capacity.
- 18 Q What's the average then?
- 19 A Well, you have for each month different --
- 20 Q Okay. Can you give me those monthly values?
- 21 A Okay. That will take some time.
- 22 Q Well, I'm going to ask you the same question  
23 about the other four units as well so we might  
24 as well pick out that information at the same  
25 mesghinna-cross-white

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time.

A Okay.

(Brief pause.

\* \* \* \* \*

mesghinna-cross-white

1 THE SPECIAL MASTER: While we are waiting, it  
2 just proves what can help settle a lawsuit. We've  
3 been advised we can use the courtroom the rest of  
4 the week; the second case has settled.

5 MR. WHITE: Very good.

6 Q (By Mr. White) Ready?

7 A Yes, I'm ready.

8 Q Okay. Do you have the diversion then broken down  
9 by month?

10 A Yes.

11 Q For North Crowheart?

12 A In May it would be 405 c.f.s.

13 Q June?

14 A June it would be 670 c.f.s.

15 Q Six hundred seventy?

16 A Yes. July it would be about 750 c.f.s. August it  
17 would be about 650 c.f.s. September it would be  
18 445 c.f.s.

19 Q I'm sorry, September is 445?

20 A Yes. South Crowheart --

21 Q Let me ask you one question: How many days have  
22 you designed your system to divert the 405 c.f.s.  
23 during May?

24 A The irrigation season starts sometime in May. You

25 mesghinna - cross - white

1 can say really the 1st of May, towards the beginning  
2 of May.

3 Q So, 405 is essentially the diversion each day of  
4 May then?

5 A Yes, on the average it would be during each day of  
6 May.

7 Q Is the same thing true of September, each day?

8 A Yes. Well, in September it would be about probably  
9 three weeks of the week, the first three weeks of  
10 the week.

11 Q First three weeks of the month?

12 THE SPECIAL MASTER: First three weeks of the  
13 month?

14 A Of the month, yes.

15 Q (By Mr. White) All right. South Crowheart, does  
16 all the 20,137 acre-feet listed on Page 42 come from  
17 the Wind River?

18 THE SPECIAL MASTER: Does it really make much  
19 difference to you where the water comes from?  
20 Your system design is based upon a taking from the  
21 Wind River?

22 THE WITNESS: Yes. I'm assuming we will get  
23 water from the Wind River. But really, as you said,  
24 it is -- this is a design criteria. This does not

25 mesghinna - cross - white

1 mean, for example, 405 c.f.s. is exactly what should  
 2 go in May. This is for the estimation of seepage  
 3 and so on.

4 Otherwise, the amount of water that goes in --  
 5 I mean, that is received during the months of May  
 6 is shown in acre-feet, you know.

7 Q (By Mr. White) I understand that. Okay.

8 A Okay, very good.

9 Q You designed how many points of diversion off the  
 10 Wind for this South Crowheart?

11 A There is only one point.

12 Q The same the first day and the last day of irriga-  
 13 tion?

14 A Yes. We can assume the same thing for the whole  
 15 Wind River.

16 Q And the design maximum diversion?

17 A I think I have shown it in the report.

18 Q Will you refer me to the page?

19 A I believe it is 115, but let me check it. Yes, on  
 20 Page 27, 115 c.f.s.

21 Q What is your design diversion for May?

22 A For May we have 60 c.f.s.

23 Q Okay. June?

24 A Ninety-two.

25 mesghinna - cross - white

1 Q July?

2 A One hundred.

3 Q August?

4 A Ninety.

5 Q September?

6 A Sixty.

7 Q For the 16,728 feet of the Arapahoe Unit, what

8 sources have you designed your system to derive

9 that water?

10 A From the North Fork Popo Agie River.

11 Q One point of diversion?

12 A Yes, sir.

13 Q The same the first and last days of diversion?

14 A Yes.

15 Q The same design maximum diversion as shown in the

16 report?

17 A Yes.

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25 mesghinna - cross - white

- 1 Q (By Mr. White) What's the design diversion  
2 for May?  
3 A Forty-four c.f.s.  
4 Q June?  
5 A Seventy-two.  
6 Q July?  
7 A Eighty.  
8 Q August?  
9 A Seventy-three.  
10 Q September?  
11 A Forty-eight..  
12 Q Okay. For Riverton East what is the source of  
13 supply or sources of supply for the 17,536  
14 acre-feet?  
15 A Riverton East would be different from the rest  
16 and there are three diversions.  
17 Q Okay. Would you describe those, please.  
18 A The first diversion is on a pump station from  
19 Little Wind Unit -- I mean from Little Wind  
20 River, sorry. That serves about 150 acres.  
21 Q How much of the seventeen and one half thousand  
22 acre-feet is derived from that pump station on  
23 the Little Wind?  
24 A Let me check.  
25 mesghinna-cross-white

1 THE SPECIAL MASTER: I think he corrected  
2 himself, the Little Wind River.

3 MR. WHITE: I thought he changed it from  
4 the Little Wind River to the Little Wind Unit.

5 Q (By Mr. White) Is that pump station Big Wind  
6 River or Little Wind River?

7 A Little Wind River, the first pump station is  
8 from Little Wind River.

9 Yeah, it is from Little Wind River and  
10 there are 157 acres there.

11 Q What acre-foot diversion do you show?

12 A Four hundred ninety-six acre-feet.

13 Q Where is the second point of diversion?

14 A It is from Wind River itself. And --

15 Q Where?

16 A Wind River.

17 Q Thank you.

18 A And that's a pump station also. And there are  
19 272 acres there.

20 Q And the amount of diversion?

21 A And the amount of diversion is 861 acre-feet.

22 Q In the third diversion?

23 A The point of diversion is the canal in which  
24 there are 3385 acres.

25 mesghinna-cross-white



- 1 Q From what source does that divert?
- 2 A From the Wind River.
- 3 Q Could you give me the acre-foot amount again?
- 4 A Yes, sir, 16,179.
- 5 Q Have you developed schedules of diversion,  
6 monthly schedules of instantaneous diversion  
7 for each of those three points?
- 8 A Yes.
- 9 Q Could you give those to me, please.
- 10 A You mean in acre-feet?
- 11 Q C.f.s.
- 12 A Okay. I can give you for the canal; but for the  
13 pump stations they were designed for -- there  
14 is no conveyance efficiency there so they were  
15 designed for the distribution efficiency and  
16 application efficiency so I can't give you the  
17 maximum flow, but for the canal I can.
- 18 Q What's the maximum for the two pump stations?
- 19 THE SPECIAL MASTER: Why don't you give the  
20 canal. Now, you've been asked to, why doesn't  
21 he answer your first question.
- 22 MR. WHITE: Thank you.
- 23 THE WITNESS: Okay. For the canal in May  
24 it would be about 50 c.f.s., in June it would  
25 mesghinna-cross-white

1 be about 72 c.f.s., in July it would be about  
2 78 c.f.s.

3 Q Seven zero?

4 A Seventy-eight.

5 Q Oh, I'm sorry.

6 A In August, 72, and in September, 50.

7 For the pump stations, the maximum flow  
8 will be 2.78 c.f.s.

9 Q Which pump station is that?

10 A The first one.

11 Q That would be the one on the Little Wind?

12 A Yes, sir.

13 Q And I'm sorry, could you give me the figure  
14 again?

15 A 2.78.

16 Q And for the second one on the Big Wind?

17 A 4.58.

18 Q Turning to Big Horn Flats, you have 7,212  
19 acre-feet. From what source did you design  
20 your system to derive that supply?

21 A There are several sources on Big Horn Flats.  
22 Shall I go ahead?

23 Q Please tell me.

24 A Nine hundred and sixty-eight acres will be served  
25 mesghinna-cross-white

1 from Little Wind.

2 Q How many acre-feet?

3 A Nine hundred and sixty-eight acres, and the  
4 acre-feet will be 2,464. And those two pump  
5 stations in -- would you please excuse me, I  
6 will change the battery for the calculator.

7 (Brief pause.

8 MR. WHITE: Off the record.

9 (Off the record.

10 THE WITNESS: Okay. From the two pump  
11 stations located in Wind River, the total  
12 acreage is 1,702 acres.

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- 1 Q All right.
- 2 A And the total diversion in that area is 4,748
- 3 acre-feet.
- 4 Q I see. The pump stations, do you again have only
- 5 a maximum diversion rather than a schedule by month?
- 6 A Yes.
- 7 Q Of instantaneous diversion?
- 8 A Yes.
- 9 Q What is the maximum at the pump stations?
- 10 A Okay. There are two pump stations in the Upper Wind
- 11 Unit. The first one has 16.97 c.f.s. and the second
- 12 one, 11.69 c.f.s.
- 13 Q Do you have a schedule of monthly instantaneous
- 14 diversions for the Little Wind Diversion?
- 15 A We have the maximum diversion.
- 16 Q And what is that?
- 17 A For one of the pumps it is 13.11 c.f.s. and for the
- 18 other pump station it is 2.93 c.f.s. The pump
- 19 station is at the Little Wind. There are 968 acres
- 20 on the Little Wind.
- 21 Q From which you divert 2464 feet?
- 22 A Two thousand four hundred sixty-four feet.
- 23 THE SPECIAL MASTER: You've already stated
- 24 that.
- 25 mesghinna - cross - white

1 THE WITNESS: Did I?

2 Q (By Mr. White) Isn't it true, Dr. Mesghinna, that  
3 the instantaneous diversions out of, for example,  
4 the Big Wind during July, which you've just described,  
5 could accumulate to around 885 c.f.s.?

6 A Which area are you talking about?

7 Q For all units, taking either the design c.f.s.  
8 diversion for the pumps or the July diversion for  
9 the canals for North Crowheart, South Crowheart,  
10 Riverton East, and Big Horn Flats, out of the Wind  
11 River, doesn't that give you a maximum of around  
12 885 c.f.s.?

13 A That amount of water released from the Big Wind?

14 Q Yes.

15 A That's about right.

16 Q In your design work, what investigation did you  
17 make to determine whether 885 c.f.s. of water is  
18 actually available each day during July from the  
19 Big Wind?

20 A That part of the study is not up to me; it is up  
21 to HKM.

22 Q Has someone told you there are 885 c.f.s. available  
23 for diversion from the Big Wind in July?

24 A My work is on the side of the demand, the amount of

25 mesghinna - cross - white

1 water necessary for the crops.

2 Q I see. So, you've made no determination that the  
3 amount of water necessary for crops --

4 MR. CLEAR: He has answered the question, Your  
5 Honor, I think.

6 THE SPECIAL MASTER: You may answer.

7 Q (By Mr. White) Do you want me to try the question  
8 again?

9 So, you've made no determination that the  
10 amount of water required for crops is actually  
11 available from the river?

12 A Yes, that kind of water is not up to me; it is up  
13 to HKM.

14 Q Has HKM advised you that amount of water is avail-  
15 able --

16 MR. CLEAR: Objection, Your Honor. It is  
17 outside the scope of the direct examination.

18 THE SPECIAL MASTER: I'll sustain the objec-  
19 tion. You can ask HKM if there is. You can bring  
20 it out from them. That would be your best evidence.  
21 He has answered that it simply is not a part of his  
22 work.

23 Q (By Mr. White) Aside from the Big Wind River, have  
24 you made any determination with respect to water

25 mesghinna - cross - white

1 availability to meet the irrigation demands or  
2 diversion requirements you've established?

3 MR. CLEAR: Same objection, Your Honor. I  
4 think he has gone through that.

5 MR. WHITE: I asked him about the Big Wind  
6 before.

7 THE SPECIAL MASTER: He may answer.

8 A. As I've stated it earlier, my part of the work is  
9 on the demand side really. I don't have to go  
10 through the analysis of the determination of flows  
11 in the different streams and rivers.

12 THE SPECIAL MASTER: So when you answered it  
13 on the North Fork of the Popo Agie, that is also  
14 true?

15 THE WITNESS: That is also true.

16 MR. WHITE: Your Honor, at this time I move  
17 to strike the testimony of Dr. Mesghinna, as well  
18 as the exhibits that were introduced through him,  
19 as being entirely speculative.

20 THE SPECIAL MASTER: As being entirely what?

21 MR. WHITE: Speculative.

22 THE SPECIAL MASTER: Speculative?

23 MR. WHITE: Yes, sir. And it is replete with  
24 conjecture, since there is no evidence in the record

25 mesghinna - cross - white

1 to indicate that the amount of water required in the  
2 diversion requirements set forth in the bottom of  
3 Page 42, Table 24, is actually available.

4 THE SPECIAL MASTER: That motion is overruled.

5 Q (By Mr. White) Dr. Mesghinna, during your direct  
6 examination you made several references to computers,  
7 which you have used to assist you in your work.  
8 Would you please describe those specific systems  
9 in your work to which you employed the assistance  
10 of a computer?

11 And let me amend the question to limit your  
12 answer only to those for which, those steps, for  
13 which a specific program was created.

14 A The engineers have what we call the on-farm system  
15 design computer program.

16 THE SPECIAL MASTER: Computer program?

17 A On-farm. An on-farm system design program is a pro-  
18 gram that puts the evapotranspiration, which is the  
19 water use of the crops, the soil characteristics,  
20 and what you call the farm layout into a design of  
21 laterals, efficiencies, gross water requirements,  
22 due to irrigation, rate of application, and so on.

23 In a sense, what the program does, by entering  
24 the proper requirements, the soil characteristics,

25 mesghinna - cross - white



1 it really comes up with the amount of laterals re-  
2 quired, meaning the number of laterals required,  
3 efficiencies, gross water requirements, and the  
4 others that I've mentioned, and also an approximate  
5 cost of those laterals.

6 After the output of this program is received,  
7 then we have to go one by one, meaning there the farm  
8 plot by farm plot, and adjust costs and numbers of  
9 laterals required.

10 That is one of our programs.

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25 mesghinna - cross - white

- 1 Q (By Mr. White) You adjust the output field  
2 manually?
- 3 A Yes, manually.
- 4 Q Who developed the program?
- 5 A Excuse me?
- 6 Q Who developed that program?
- 7 A Myself.
- 8 Q Any other programs?
- 9 A Well, we have other several programs, but some  
10 of them, we haven't used them in this study.
- 11 Q I'm only interested in programs used for this  
12 study.
- 13 A Well, one of them is the Jensen-Haise evapo-  
14 transpiration.
- 15 Q Were you also the programmer on that?
- 16 A Yes.
- 17 Q Any other programs you used?
- 18 A The other programs we used in this study was  
19 the drainage design. What it does by inputting  
20 the soil characteristics necessary and drainage  
21 coefficient minimal amount of evaporation and  
22 soil characteristics that I referred are the  
23 hydraulic conductivity and depth to barrier,  
24 the program determines the spacing of the drains.
- 25 mesghinna-cross-white

1 The program also continues from the output that  
2 we get from there to determine the sizing of  
3 pipes and so on.

4 Q Drain pipes?

5 A Drain pipes, yes.

6 Q Any other programs used in your analysis?

7 A To my recollection these are the programs that  
8 we have used in this.

9 THE SPECIAL MASTER: These three?

10 THE WITNESS: Yes.

11 Q (By Mr. White) Were you the programmer for  
12 the drainage design program?

13 A That was a combination of people.

14 Q Who were those people?

15 A Myself, and of course, this is through my  
16 direction; myself and Mark Williamson.

17 Q Mark Williamson?

18 A Williamson.

19 Q Williamsson.

20 A We have two drainage programs, one is For-  
21 tran-IV, Roman Numeral IV and the other one  
22 is program in TR-59 with about 476 steps.

23 THE SPECIAL MASTER: Both of those have  
24 applicability to this study, to this Reservation?  
25 mesghinna-cross-white

1 A The first one we haven't used it, we have used  
2 it on our initial studies, I mean the For-  
3 tran-IV, but since it was easier to convert it  
4 in this calculator we used this one in the final  
5 analysis.

6 Q (By Mr. White) And with respect to those three  
7 programs, the results derived therefrom was  
8 either the basis --

9 A I'm sorry, there is another program.

10 Q Okay.

11 A And that is the seepage analysis program.  
12 We call it really conveyance efficiency program.

13 THE SPECIAL MASTER: Conveyance efficiency?

14 THE WITNESS: Program.

15 Q (By Mr. White) What does it do?

16 A Oh, what does it do? Well, what it does is it  
17 does several things. It calculates the seepage  
18 in a canal and also in a sense it designs the  
19 canal by the final flow that it derives there.

20 Q Anything else?

21 A Well, in the final analysis really what it gives  
22 you, the final word for that is efficiency of  
23 the canal, conveyance efficiency of the canal.

24 Q Were you the programmer for that?

25 mesghinna-cross-white

1 A Yes.

2 Q Now, did the use of those four programs and the  
3 results which you derived from their use form  
4 a basis of or contribute to the professional  
5 opinion which you've expressed during your direct  
6 examination?

7 A Yes, sir.

8 THE SPECIAL MASTER: I would ask -- I would  
9 convey to you, Mr. White, the fact that any  
10 information you wish to know about each of the  
11 four programs you should ask now and elucidate  
12 it on cross-examination because it is my feeling  
13 that the petition to demand production of the  
14 programming information is going to be denied  
15 on what law I've researched so far, so it might  
16 be time --

17 Q (By Mr. White) Okay. Dr. Mesghinna, what is a  
18 program listing? I'll start again as soon as  
19 you get fixed up.

20 A The question is, what is a program listing?

21 Q Yes.

22 A A program listing is nothing but a listing of  
23 what the program does. Really, if someone gets  
24 the program listings, can be punched into a card

25 mesghinna-cross-white

1 and then programmed. You have everything there.

2 In a sense it is a program itself, more or less.

3 Q What does it look like?

4 A Well, do you want me to show you one listing?

5 It's just a computer listing.

6 THE SPECIAL MASTER: Computer printout?

7 THE WITNESS: Yeah, computer printout,

8 but not -- but not the output. This is the

9 skeleton of the -- of the --

10 THE SPECIAL MASTER: Soft ware?

11 THE WITNESS: Of the program. This is

12 really the brain of it. What it is is there

13 are all the formulas and all the directions

14 on how to solve the problem is there. By

15 reading that one can understand exactly what

16 you are doing and one can input any kind of

17 data he wants and get an output from it. In a

18 sense it is the program.

19 Q (By Mr. White) It describes what happens in the

20 program once you feed the raw data in and before

21 you get the results out; is that correct?

22 A Yeah, really. I mean it gives you -- in a

23 sense it has, if I have to go in detail, it has

24 three main sections. The first section is an

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1 input, meaning the reading, it says read this,  
2 read that and so on. The second part is the  
3 body, which is the compilation where it  
4 compiles it and you have all the formulas and  
5 all the necessary things. And the third part,  
6 the final part is the output part where it  
7 prints out, you know, the process of directing  
8 the program to print out what you want. For  
9 example, we said efficiency before, conveyance  
10 efficiency. Then I say in the final end, write  
11 the efficiency of what you have determined,  
12 then it writes out the efficiency.

13 Q Is it true that program listings exist for each  
14 of the four programs that you've described?

15 A Oh, yeah, there has to be. I mean in the form  
16 of cards and in the form of computer listings.

17 Q Are you able to describe from memory those  
18 listings?

19 A You mean how to do it? Sure I know.

20 THE SPECIAL MASTER: With what specific  
21 program are you talking about?

22 MR. WHITE: I was asking about all of them  
23 generally and I'll get to the specifics, Your  
24 Honor.

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1 THE WITNESS: Yeah, I know, it's no  
2 problem.

3 Q (By Mr. White) Okay. Then we'll get to them  
4 when we get to their use.

5 THE SPECIAL MASTER: Well, get to them when  
6 we come to their use, Mr. White, but I want to  
7 again let you know that it is not the intention  
8 of this Court that we will take one month to  
9 cross-examine this witness. If you can, later  
10 today, set a time-frame that -- in which your  
11 case can be completed on cross-examination, we  
12 will allot so many days for each subject  
13 matter you want, and the reason I'm saying this  
14 now is because I intend to limit your time in  
15 cross-examination that will require you to be  
16 the judge of how much depth you're to give each  
17 subject matter because I will limit your  
18 examination. I believe the law sustains me on  
19 this. But to say that we're going to give you  
20 a month or two months to go through this  
21 program material is -- would not be proper.

22 MR. WHITE: May I ask at this time how much  
23 time you're going to give me for cross-  
24 examination?

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1 THE SPECIAL MASTER: I don't know yet.  
2 I want to discuss that with you and try to  
3 come to what is a fair and a proper ruling.  
4 My reason for mentioning it now is that in the  
5 interest of -- and the physical necessities,  
6 the interest of terminating this complex,  
7 unprecedented difficult litigation, it is  
8 necessary to put a time restriction upon that --  
9 upon your cross-examination. It cannot be  
10 done in direct relation to time consumed on  
11 cross because that ignores substance, and  
12 therefore this is the reason why I want to  
13 discuss this with you a little later on. Maybe  
14 you can give me the benefit of some of your  
15 thoughts on how this can be done cooperatively.  
16 We can confer with the United States' attorneys  
17 sometime later on this.

18 MR. WHITE: Find out right away, Your  
19 Honor.

20 Q (By Mr. White) Dr. Mesghinna, do you have those  
21 program listings with you?

22 A I have the drain spacing with me.

23 Q Where are the others?

24 A The office.

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1 Q May I see the drain spacing program?

2 MR. CLEAR: Your Honor, I think Dr.  
3 Mesghinna should be instructed that it's my  
4 belief that he does not have to turn those  
5 over if he feels those are his trade secrets.  
6 Dr. Mesghinna is not -- he is not the United  
7 States Government, he is a witness and it is  
8 his work product. He developed these, and I  
9 don't think -- although I may misspeak it --  
10 that he developed these programs specifically  
11 for this project. I think a motion to  
12 produce is an improper to a witness. He can  
13 serve a motion to produce on the Government;  
14 the Government has turned over the computer  
15 programs that the Government has, but I think  
16 Dr. Mesghinna should be instructed that it is  
17 not incumbent on him to turn over his trade  
18 secrets to the State of Wyoming in this case.

19  
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21 \* \* \* \* \*

22  
23  
24  
25 mesghinna-cross-white

1 THE SPECIAL MASTER: I would concur with that,  
2 if they are trade secrets.

3 MR. CLEAR: I think it should be --

4 THE SPECIAL MASTER: But if they contain informa-  
5 tion dealing with the efficiency of the programs and  
6 the work he did on the Reservation, then I think they  
7 may be properly inquired into.

8 MR. CLEAR: I think he can inquire, but he is  
9 asking him to turn the program over.

10 THE SPECIAL MASTER: He is asking him if he  
11 got the material in them.

12 MR. CLEAR: No, Your Honor, he just asked if  
13 he would give him the program.

14 MR. WHITE: I asked if I could see the program,  
15 Your Honor, just to clarify it.

16 THE SPECIAL MASTER: The program we are talking  
17 about deals with drainage spacing on these different  
18 units which go into your report, 245; is that correct?

19 THE WITNESS: Yes.

20 THE SPECIAL MASTER: Now, will you tell me  
21 again what kind of a trade secret that is, if it  
22 isn't a property of a client, the Wind River Indian  
23 Reservation?

24 MR. CLEAR: It is not the property of the Wind  
25 River Indian Reservation; it is not a property of

1 the Tribe and not the property of the United States.  
2 It is the property of Dr. Mesghinna, and there are  
3 trade secrets involved. And maybe he would be will-  
4 ing to turn it over voluntarily, but he does not  
5 have his lawyer here.

6 But what I'm saying, Your Honor, is these are  
7 useful for other clients. That is, if someone wants  
8 to come to Stetson Engineering and say, "Design a  
9 drainage system for me," they may come because of  
10 Stetson and because Stetson does have this program  
11 and can do it cheaper. Let's say Stetson charges  
12 by the hour. They have the program and it may take  
13 them three hours to do it; but if someone doesn't  
14 have the program --

15 THE SPECIAL MASTER: I have sustained what you  
16 are saying. My point is that if these computer  
17 listings contain information about the drainage  
18 spacing that is projected in his report on the  
19 Reservation, the Wind River Indian Reservation, that  
20 is not already in evidence, I believe Mr. White has  
21 a right to inquire about it.

22 MR. CLEAR: I think you are right, Your Honor.

23 THE SPECIAL MASTER: That is what I want to  
24 sustain and what I am willing to allow. So, I  
25 think the answer is perhaps a question of Dr.

1 Mesghinna.

2 Does your computer listing on the drainage  
3 spacing contain any information that is not already  
4 in the record in this case, dealing with your report  
5 and these projects to which you have testified?

6 THE WITNESS: Let's take the drainage spacing.  
7 I have explained it here really fully, I mean, what  
8 it does, what the input is. And I have in a sense  
9 discussed it, the necessary data that you have to  
10 input.

11 THE SPECIAL MASTER: Have you discussed all  
12 of its applicability in 245 with regard to the Wind  
13 River Indian Reservation?

14 THE WITNESS: Yes. I have discussed -- You  
15 can't go into the details of how to design a pipe  
16 and so on, you know. It is very hard in a report.

17 THE SPECIAL MASTER: Yes.

18 THE WITNESS: But I have given the overall,  
19 what you call, criterias and methodology of design.

20 THE SPECIAL MASTER: In here?

21 THE WITNESS: In here. And someone by reading  
22 this can really design a system in the Wind River  
23 Indian Reservation.

24 THE SPECIAL MASTER: I will sustain the objec-  
25 tion to producing the listing, Mr. White.

1 Q (By Mr. White) Dr. Mesghinna, without having a copy  
2 of the listing, program listing, is it possible for  
3 anyone to determine that your program is accurately  
4 represented or accurately represents the methodology  
5 set forth in your report?

6 A It has been checked manually.

7 Q I'm asking you whether anyone besides yourself, with-  
8 out having the program listing, or anyone outside of  
9 Stetson, without having the program listed, can de-  
10 termine whether the program is accurately reflected  
11 by the methodology set forth in your report?

12 MR. CLEAR: Your Honor, I'll object to that  
13 question.

14 THE SPECIAL MASTER: I'll sustain the objec-  
15 tion. I can't even understand the question. And  
16 I'm not very bright, but I suppose I'm an ordinary  
17 citizen.

18 MR. WHITE: Let me try it a different way then,  
19 Your Honor.

20 Q (By Mr. White) How would someone not privvy to your  
21 program, not seeing the program listed, determine  
22 whether or not the methodologies that you've des-  
23 cribed in your report are actually accomplished or  
24 carried out by your program?

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1 MR. CLEAR: Your Honor, I'll object to that.  
2 I think what we have done is he has described the  
3 program, he has described the input, he has des-  
4 cribed the output, and he has said he checked it  
5 manually. And I think it's just like someone's  
6 thought processes, or an expert. You are saying,  
7 well, you bring a psychiatrist in court and we are  
8 all laymen here, and we say how do we check your  
9 thought processes; we are just laymen?

10 And we don't understand the psychiatric busi-  
11 ness. And you tell us you did this and you came to  
12 this conclusion. So, give us your thought process.  
13 How do we check into the process?

14 THE SPECIAL MASTER: I'm going to sustain the  
15 objection, Mr. White. If you have experts who can  
16 prove that the methodology Dr. Mesghinna used in  
17 coming to the figures he has in Exhibit 245 are un-  
18 scientific, inaccurate, agriculturally unsound,  
19 economically unsound, or physically impossible,  
20 welcome to it. But I think inquiring into the pro-  
21 gram, the computer listing or the computer program  
22 specifically, does tread on the proprietary or pro-  
23 fessional expertise of the Stetson company, I sup-  
24 pose, which they could claim is their right.

25 He stands by what he has come up with, and I

1 believe you have a right to prove him wrong by his  
2 own work. And I'm giving you every latitude in  
3 that regard, short of sustaining these objections.

4 MR. WHITE: Your Honor, I believe this may be  
5 the most important single evidentiary ruling in the  
6 case.

7 THE SPECIAL MASTER: I was waiting for it, and  
8 I didn't find much law on it either way. We are  
9 cutting an unprecedented chart again, and I've done  
10 some research on whether to sustain the scope of  
11 cross-examination and what discretion should be  
12 allowed in the area of computer program. So, let's  
13 move ahead as best we can on it and make the rulings  
14 we can.

15 MR. WHITE: I would like to make an offer of  
16 proof with respect to this area of inquiry, Your  
17 Honor.

18 THE SPECIAL MASTER: Very well.

19 MR. WHITE: If allowed to testify or answer my  
20 questions in this line of questioning, Dr. Mesghinna  
21 would indicate that without a copy of the program  
22 listing it would be impossible for anyone besides  
23 him or anyone who actually had a copy of the listing  
24 to determine whether the listing or the program  
25 actually carries out the methodologies described in



1 his report, and that without a copy of the program  
2 or the program listing, third persons are essentially  
3 required to take it on faith that the program actually  
4 carries out or effectuates the methodologies set  
5 forth in his report.

6 THE SPECIAL MASTER: Does your offer of proof  
7 also go to the fact that this will also pertain to  
8 the motion for production of computer programs?

9 MR. WHITE: No, I think the motion to compel  
10 deals with Mr. Toedter's program and not Dr. Mes-  
11 ghinna's program.

12 THE SPECIAL MASTER: I made the basic distinc-  
13 tion in the fact we are dealing with it in the mater-  
14 ial before us, in those cases cited in this brief,  
15 particularly the fact that there is a danger inher-  
16 ent in the introduction of computer generated evi-  
17 dence that simply does not exist for other types of  
18 evidence.

19 And I agree with that, except in one thing.  
20 Nothing is more basic to mankind than the burden of  
21 preparing some ground to grow a crop on which man-  
22 kind can exist. That is about as old as anything I  
23 know of.

24 And in planning and designing a system for irri-  
25 gation in an agricultural field, I simply don't

1 believe the computer adds that much difference. It  
2 gets back to the basic designs and plans for moving  
3 water and analysis of soil and those factors that  
4 are time-honored so far as salinity, drainage and  
5 matters we have discussed.

6 Now, what expertise has been used to come up  
7 with the totals. Dr. Mesghinna has used, you may  
8 knock them down, and you may do it, but I don't  
9 believe I can permit, in fairness, further inquiries  
10 into the Stetson programming used to come to the con-  
11 clusions we have so far.

12 MR. CLEAR: Your Honor, I kind of object to the  
13 offer of proof that "in a sense we have to take it  
14 on faith". They have their experts and they have the  
15 design system and they can say, "This won't work."  
16 And I think that is what we are involved with here.

17 THE SPECIAL MASTER: If they do that, do you  
18 think you have a right to inquire into their computer  
19 systems and what it shows?

20 MR. CLEAR: Well, if it is developed by a state  
21 expert, we will demand it from the State, like they  
22 got our computer programs from the United States.  
23 But I am talking about witnesses.

24 THE SPECIAL MASTER: All right. As long as I  
25 keep it fair, that is my realm, and I have ruled.

1 MR. WHITE: Your Honor, so I have a complete  
2 record, I believe my inquiry when I previously  
3 asked him for the production of a program was  
4 limited to the drainage design program. With the  
5 Court's indulgence, I would like to ask Dr. Mes-  
6 ghinna the following questions, to include the  
7 other three programs.

8 THE SPECIAL MASTER: All right. All he said  
9 is he doesn't have them here, but go ahead.

10 MR. WHITE: Maybe we can get a stipulation  
11 between the State and United States that if Dr.  
12 Mesghinna was asked the same questions with respect  
13 to the on-farm system design program, Jensen-Haise  
14 evapotranspiration program, and seepage analysis  
15 for conveyance efficiency program, his answers  
16 would be the same, except they are not here. And  
17 the United States would make the same objection and  
18 the Court would make the same ruling; and I would  
19 stand on the same offer of proof. It would save us  
20 a lot of time if we can do that, Your Honor.

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23 \* \* \* \* \*

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25

1 MR. CLEAR: I think I'm a little confused  
2 as to what he would answer.

3 THE SPECIAL MASTER: I think what Mr.  
4 White wants is the --

5 MR. CLEAR: I will not secede in his  
6 stipulation to his offer of proof, but I think  
7 basically the testimony is what the computer  
8 program is would be the same, but I think maybe  
9 the thing to do here is to ask Dr. Mesghinna  
10 whether in those areas his answer would be the  
11 same.

12 MR. WHITE: I'm willing to do it by the  
13 numbers.

14 MR. CLEAR: I don't think we have to do  
15 it by numbers. I think you're asking me to  
16 stipulate to what a third person would say.  
17 Why don't you just ask him if his testimony  
18 would be basically the same.

19 Q (By Mr.WWhite) Dr. Mesghinna, with the  
20 exception of the location, physical location  
21 of the program listings for the on-farm system  
22 design program, Jensen-Haise evapotranspiration  
23 program and the seepage analysis or conveyance  
24 efficiency program, if I ask you the same

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1 questions about those three programs that I  
2 did ask you with respect to the drainage design  
3 program, would your answers be the same?

4 A Previously in my deposition you have asked for  
5 some of the programs and Mr. Stetson himself  
6 has refused to give those programs.

7 Q But would your answers be the same or do we  
8 have to go through all those questions again,  
9 or would your answer be the same with respect  
10 to the other programs?

11 A In terms of what? Do you mean --

12 THE SPECIAL MASTER: In terms of the  
13 answers you just gave as to what they contain,  
14 vis-a-vis input, output, printout and so forth.  
15 I presume that's what Mr. White's asking.

16 THE WITNESS: You mean I can describe the  
17 programs?

18 Q (By Mr. White) Well, let's go from the  
19 beginning. I'm sorry, I asked a very confusing  
20 question.

21 THE SPECIAL MASTER: Let me see if I can't  
22 help us out. Would your computer listings on  
23 the on-farm design program contain, in form, a  
24 similar structure as that in the drainage spacing

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1 listing?

2 THE WITNESS: Yeah, except those programs  
3 are on Fortran-IV, they are in that language,  
4 on a Fortran-IV language.

5 THE SPECIAL MASTER: I don't understand  
6 that. Just say it again and clearer.

7 MR. WHITE: Why don't you spell it?

8 THE WITNESS: Fortran-IV is spelled as --

9 THE SPECIAL MASTER: F-o-r-t-r-a-n?

10 THE WITNESS: For --

11 THE SPECIAL MASTER: Fore like in music?

12 THE WITNESS: F-o-r-t-r-a-n- Roman Numeral  
13 IV.

14 THE SPECIAL MASTER: Fortran-IV. What  
15 does that mean?

16 THE WITNESS: That is a language in program.  
17 There are several languages in program and one  
18 of them is Fortran-IV.

19 THE SPECIAL MASTER: What language is the  
20 drainage listing then?

21 THE WITNESS: The drainage listing is in  
22 TR-59 program.

23 THE SPECIAL MASTER: What is the difference,  
24 in layman's language, between the language of a  
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1 Fortran-IV and TR-59?  
 2 A Essentially what -- what you input data and get  
 3 the computations, when you approach the  
 4 computer it has a language. For example, if  
 5 you want to say to the computer if this thing  
 6 does not happen, go to the next step. There is  
 7 a special way of saying to it. So there are  
 8 sets of different languages in computers.  
 9 There are languages used by business outfits,  
 10 there are language mostly used by scientists and  
 11 engineers, which is Fortran-IV.

12 THE SPECIAL MASTER: Okay. Now, with the  
 13 program listing on the evapotranspiration,  
 14 which language is it in?

15 THE WITNESS: Fortran-IV.

16 THE SPECIAL MASTER: And the one on the  
 17 seepage analysis?

18 THE WITNESS: ForTran-IV.

19 THE SPECIAL MASTER: That's the difference  
 20 between those and the drainage?

21 THE WITNESS: Right.

22 THE SPECIAL MASTER: Let me take a ten  
 23 minute break. We'll stand in recess for ten  
 24 minutes.

end 7

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mesghinna-cross-white

(Thereupon a ten-minute  
 recess was taken.)

1 THE SPECIAL MASTER: All right. May we come  
2 to order, please?

3 I believe the arising at this time of the matter  
4 of the computer program and computer listing that we  
5 are on warrants my ruling, albeit a day or  
6 two ahead of time, on the motion to compel production  
7 of computer programs. Yes?

8 MR. SACHSE: I wonder if before you make your  
9 ruling I could make a statement and make the Tribe's  
10 position clear on this, and also to give you a cita-  
11 tion that I promised you yesterday, an Act of Congress.

12 THE SPECIAL MASTER: All right. You may.

13 MR. WHITE: Before you start, Your Honor, I had  
14 several more questions to ask about the computer  
15 program, so I would appreciate being able to ask  
16 those questions.

17 THE SPECIAL MASTER: I will wait until you make  
18 them, until you are through, Mr. White.

19 MR. SACHSE: First on the question of production  
20 of computer programs, as far as the computer programs  
21 for all of the work Dr. Mesghinna has done, the  
22 Tribes agree that it is unnecessary to produce those  
23 programs.

24 Our own experts find from the soil data and the  
25 mesghinna-cross-white



1 other data produced in Dr. Mesghinna's reports  
2 that they are able to duplicate what he has done  
3 and to either agree or disagree with what he has  
4 done. As you know, we disagree with some of his  
5 costs and some of his conclusions about drainage,  
6 but we do not find we need his computer programs  
7 to present evidence either in support or contrary  
8 to what he's done.

9 I want to make clear, however, this does not  
10 mean that in an entirely different situation we  
11 may not want to see a computer program.

12 For instance, I want to be perfectly frank  
13 about this, if the State comes out with an impact  
14 study based on a computer program that cranks  
15 out figures that cannot be duplicated by other  
16 people in the field simply looking at soils, and  
17 so on and so forth, we may very well want some  
18 details on what that program is.

19 So, to sum up, the Tribe's position is that  
20 you're Honor's ruling as to the computer program  
21 that have been presented so far in this trial,  
22 we agree that they are not necessary for cross  
23 examination. We would hold our opinion as to  
24 any other computer programs that may be presented

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1 later on.

2 Secondly, yesterday we referred to an Act  
3 of Congress that allowed producers of power from  
4 nonfossil sources to sell that power to the electric  
5 grids, to the companies that run the electric grids  
6 in the area. I stated that I would give you the  
7 citation of that act.

8 The Act is the Public Utilities Regulatory  
9 Policy Act of 1978, sometimes known for short as  
10 Purpa, P-U-R-P-A. It is found at XVI USC, 2601.  
11 It was omitted as to renewable energy resources  
12 by the Renewable Resources Act of 1980, Public  
13 Law 96,294, 94 Stat 6-11 at 715.

14 THE SPECIAL MASTER: Very well. Thank you  
15 very much, Mr. Sachse. If my ruling that I'm  
16 about to make, dealing with the compelling of  
17 production of computer programing, will apply  
18 not only to Dr. Mesghinna's testimony, but also  
19 to Toedter in the brief heretofore filed, I have  
20 a suspicion that it will apply also to what might  
21 be used down the road.

22 As to proof of impact, we have limitations,  
23 on it and I have already set some guidelines for  
24 what I hope will be the benefit of all counsel and

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1 of ranchers and farmers when that time comes.

2 I believe I will let you now, Mr. White,  
3 finish your question on it and I will read my  
4 rulings on these motions into the record.

5 MR. WHITE: Thank you, Your Honor.

6 Q (By Mr. White) With respect to the three programs,  
7 aside from the drainage, is it possible, without  
8 having the program listing for each of those  
9 programs, for anyone other than yourself where  
10 another employee of Stetson to determine whether  
11 the programs accurately carry out or are reflected  
12 by the methodologies set forth in your report?

13 MR. CLEAR: Your Honor, I think I objected to  
14 this question before on the drainage and you sus-  
15 tained it.

16 THE SPECIAL MASTER: Right.

17 MR. WHITE: That's right. I suspected the  
18 same thing would happen here, Your Honor. I just  
19 have to make a record on it.

20 THE SPECIAL MASTER: Mr. White, I'll sustain  
21 the objection again.

22 MR. WHITE: Your Honor, at this time I would  
23 make the same offer of proof as I made previously  
24 with respect to the drainage program.

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1 THE SPECIAL MASTER: Very good.

2 MR. WHITE: But with my reference, and without  
3 going through it again, but with respect to the  
4 other three programs, the on-farm system designed  
5 program, the Jensen-Haise evapotranspiration program,  
6 and the seepage analysis program. And I have two  
7 more questions to ask Dr. Mesghinna about all four  
8 programs, or any of them to which the programs may  
9 apply.

10 Q (By Mr. White) Dr. Mesghinna, were any of these  
11 programs used by you on any other design project  
12 other than the projects or units about which you  
13 have testified in this action?

14 A Yes. The on-farm system program has been used in  
15 the other two projects.

16 Q Was it used on those other two projects before or  
17 after in time its use on this project?

18 A It is within the span of time when I started the  
19 Wind River Water Diversion.

20 Q You mean roughly at the same time?

21 A Roughly within the same time.

22 Q Is it true, then, that the seepage analysis program  
23 and the Jensen-Haise evapotranspiration program  
24 have not been used on other projects?

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1 A The Jensen-Haise program, we use it almost every  
2 day when we are asked for crop consumption use.  
3 Not necessarily on a project, but if someone calls  
4 and asks, you know, about the crop consumptive use.

5 However, the seepage analysis was not used  
6 in other projects.

7 Q How about the drainage design program; was it used  
8 in other projects?

9 A We haven't used it in other projects.

10 Q From what source was the funding derived which  
11 supported you or Stetson Engineering during the  
12 development of each of the four programs that  
13 you've described?

14 THE SPECIAL MASTER: From what source was  
15 the funding derived?

16 MR. WHITE: Yes sir. Where did they get  
17 the money.

18 THE SPECIAL MASTER: To do the study?

19 MR. WHITE: To develop the programs.

20 MR. CLEAR: I don't think that is relevant,  
21 Your Honor. We are still --

22 THE SPECIAL MASTER: I don't think it is  
23 relevant either.

24 MR. WHITE: You see, if the United States  
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1 paid for it, Your Honor, if the taxpayers paid  
2 for it, I think it is pretty significant.

3 THE SPECIAL MASTER: Funding is a question  
4 that is up in the air in the entire litigation.  
5 The United States is objecting and reserved the  
6 question of having to pay half according to the  
7 orders of Judge Joffe.. Everyone seems to be  
8 looking with pointed fingers towards the vast  
9 expenses of the Special Master in this case. I  
10 have even heard some criticism of the State of  
11 Wyoming Counsel.

12 I don't know that the funding question has  
13 any place in this lawsuit. If you can show where  
14 it has a bearing on the subject matter, I would  
15 permit it.

16 MR. WHITE: What I want to find out is whether  
17 or not federal monies were used to support Dr.  
18 Mesghinna and/or his staff while they developed  
19 these particular programs.

20 THE SPECIAL MASTER: I don't think that is  
21 relevant to the finding. It would impute and re-  
22 flect upon their integrity, if it were, and I don't --  
23 I guess you can go ahead and inquire and impeach or  
24 attack their integrity or professionalism, but I

25 mesghinna-cross-white

1 don't think the question is proper.

2 MR. WHITE: I don't mean to attack Dr.  
3 Mesghinna's integrity or professionalism.

4 THE SPECIAL MASTER: I think if I allowed  
5 the question, it would lead to a reflection of that  
6 kind. I sustain the objection.

7 MR. WHITE: Why don't you go ahead and rule,  
8 Your Honor. May I make an offer of proof?

9 THE SPECIAL MASTER: I've already ruled; I  
10 said I would sustain the objection.

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1 MR. WHITE: I would offer to prove, if  
2 allowed to testify, Dr. Mesghinna would  
3 indicate that with respect to the four programs  
4 which he has described, that they were developed  
5 by himself or in conjunction with others  
6 through the auspices of Stetson Engineers based  
7 on funding provided by the United States in  
8 whole or in part through this litigation.

9 THE SPECIAL MASTER: I think your offer of  
10 proof is in the record and I think it's just as  
11 irrelevant as it would be for the record to  
12 show that the increased return of mineral  
13 royalties from the Federal lands in Wyoming that  
14 have benefitted the State of Wyoming these last  
15 several years has made possible, for which the  
16 State used to pay your fee and mine. I just  
17 don't think it has any bearing.

18 MR. WHITE: That's all the questions I  
19 sought to ask about the computer programs. If  
20 you have a ruling this would be the time to  
21 make it.

22 THE SPECIAL MASTER: All right, Mr. White.  
23 The motion filed by the State of Wyoming, dated  
24 May 1, 1981 and in caps Motion to Compel  
25 Production of Computer Program, is denied, and



1 my denial is based solely upon the briefs  
2 submitted and oral arguments heard on this  
3 issue. I believe the State has already acquired,  
4 through discovery, much data that has been  
5 used by U.S. experts in the presentation of their  
6 material. The State has also received printouts  
7 which analyze that data and I think that  
8 constitutes the purpose of the discovery rules.

9 It would seem to me that only the State's  
10 experts as competitors of the U.S. experts  
11 would stand to gain a benefit from a public  
12 production of computer programs. It seems to  
13 what I, in my limited ability to grasp, that  
14 computer program is nothing more than an expert's  
15 mental processes and abilities set down in a  
16 programable format. These processes and abilities  
17 are the very livelihood of the experts and I  
18 would imagine they would lose their tremendous  
19 value completely if made public.

20 A computer program can be analyzed  
21 to a trade secret used in connection with  
22 expert's work for other clients, and as such,  
23 I would rule that they're confidential and have  
24 protection from discovery.

25 Okay. Mr. White, next subject matter.

1 Q (By Mr. White) Dr. Mesghinna, we have before  
2 you what has been marked for identification  
3 as the -- or Plaintiff's Exhibit FM -- by the  
4 way, FM stands for future Mesghinna, FM-1249  
5 through 1255, and ask you whether or not those  
6 exhibits are accurate copies of what's been  
7 previously admitted in this action as U.S.  
8 Exhibit C-249 through 255 with the addition  
9 of annotations showing the field notes which you  
10 have assigned to each field as shown by the  
11 maps which you shared with us a week ago last  
12 Friday?

13 A May I ask what the first number refers to?

14 Q Probably the plate number.

15 Are those not the numbers that you used?

16 MR. WHITE: Maybe we can take about ten  
17 minutes and look at it, Your Honor. I thought  
18 it was exactly the same.

19 THE SPECIAL MASTER: Let's stay in recess  
20 and have him look.

21 (Brief pause.)

22 Q (By Mr. White) Dr. Mesghinna, on the Exhibits  
23 FM-1249 through 1255, the numbers appear often  
24 in hyphenated form. Is it true that the number  
25 mesghinna-cross-white

1 in front of the hyphen refers to pump number,  
2 the number after the hyphen refers to field  
3 number, which you have assigned to those fields?

4 A Yeah, from what I have seen, roughly, I think  
5 they resemble the same field number and pump  
6 number.

7 MR. WHITE: Okay. Your Honor, at this time  
8 we would offer FM -- Plaintiff's Exhibit FM-1249  
9 through 1255 for solely illustrative purposes,  
10 for ease of reference in referring to particular  
11 fields by number. And for the purposes of the  
12 record, the numbering of these exhibits parallels  
13 exactly the numbering by the United States in  
14 that the U.S. Exhibit C-249 is the same except  
15 for the annotation as the Plaintiff's Exhibit  
16 FM --

17 THE SPECIAL MASTER: FM means field markers  
18 or for Mesghinna?

19 MR. WHITE: That's future Mesghinna.

20 THE SPECIAL MASTER: I wanted to learn the  
21 code. They are hereby offered?

22 MR. WHITE: Yes, sir.

23 THE SPECIAL MASTER: Any voir dire?

24 MR. CLEAR: I don't think so, Your Honor.

25 mesghinna-cross-white

1 No objection.

2 THE SPECIAL MASTER: They are hereby  
3 admitted into evidence. for the purposes offered.

4 (Whereupon Plaintiff's  
5 (Exhibits FM-1249 through  
6 (1255 were hereby admitted  
7 (into evidence.

8 MR. WHITE: Just one moment.

9 (Brief pause.

10 Q (By Mr. White) Dr. Mesghinna, isn't it true  
11 that the field which you've laid out as  
12 depicted by U.S. Exhibit C-249 through 255 and  
13 Plaintiff's Exhibit FM-1249 through 1255 include  
14 some lands which were classified as Class 6 or  
15 nonarable by HKM?

16 A In squaring off processes, which you cannot  
17 escape in any work of this kind, we might have  
18 included a very small portion of Class 6 lands,  
19 and with the same token, we have omitted large  
20 lands which are classified as arable by HKM.

21 Q Isn't it true that in the North Crowheart Unit,  
22 approximately 51 percent of your fields  
23 include some Class 6 lands?

24 A Fifty-one percent?

25 Q Um-hum.

mesghinna-cross-white

1 A No.

2 Q Do you know what number of your fields does  
3 include Class 6 lands or what percentage do  
4 you include Class 6 lands?

5 A I don't believe we have 51 percent Class 6 lands.

6 THE SPECIAL MASTER: He didn't ask that.  
7 He asked 51 percent of your fields include  
8 some Class 6 lands. That was his question.

9 THE WITNESS: Okay. That is possible.

10 Q (By Mr. White) Isn't it true that approximately  
11 50 percent of your fields in the Big Horn Flats  
12 Unit include Class 6 lands?

13 A All that I have gone through, what we have done,  
14 that is possible.

15 Q Isn't it true that approximately 39 percent of  
16 your fields in the South Crowheart Unit include  
17 Class 6 lands?

18 A There is a possibility.

19 Q Isn't it true that 57 percent of your fields  
20 in the Arapahoe Unit include Class 6 lands?

21 A That is also a possibility.

22 Q Isn't it true that approximately 69 percent  
23 of your fields in the Riverton East Unit  
24 include Class 6 lands?

25 mesghinna-cross-white

1 A All that I can say is that is possible.

2 Q Okay. Let me hand you, direct your attention  
3 to what's been marked for identification as  
4 Plaintiff's Exhibit FM-1249-A and 1250-A,  
5 after I've had a chance to show them to your  
6 counsel.

7 (Brief pause.

8 Q Dr. Mesghinna, let me -- I've already referred  
9 you to these exhibits, and ask you whether or  
10 not the areas shown in red or orange, sort of  
11 a redish-orange, are those areas within your  
12 fields which were classified as nonarable or  
13 Class 6 by HKM for the North Crowheart Unit  
14 only?

15 MR. SACHSE: Your Honor, I object to this  
16 question on the following grounds: The witness  
17 has already testified that he can't state  
18 exactly what -- which fields might have some  
19 small portion of Class 6 lands in them and  
20 which may not --

21 THE SPECIAL MASTER: May I have the  
22 question reread to me, please.

(Thereupon the following  
(question was read back as  
(follows: "Q Dr.  
(Mesghinna, let me -- I've  
(already referred you to  
(these exhibits, and ask

25 mesghinna-cross-white

1 (you whether or not the  
2 (areas shown in red or  
3 (orange, sort of a redish-  
4 (orange, are those areas  
5 (within your fields which  
6 (were classified as non-  
7 (arable or Class 6 by  
8 (HKM for the North Crow-  
9 (heart Unit only?"

10 THE SPECIAL MASTER: Does the area marked  
11 in the red or orange indicate the field or the  
12 actual acreage in the field, Mr. White?

13 MR. WHITE: Well, let me ask the question  
14 again, I meant to make it --

15 THE SPECIAL MASTER: I want an answer to  
16 my question.

17 MR. WHITE: It just represents those  
18 portions of the field.

19 THE SPECIAL MASTER: Which are Class 6?

20 MR. WHITE: Which is Class 6. You may  
21 recall that the original exhibit, the original  
22 Exhibit C-249 had some shading and then white  
23 areas, and what's happened here, we just  
24 colored in the white areas since the white areas  
25 were Class 6. And I'm asking Dr. Mesghinna  
whether or not the areas, the land areas, the  
acreages shown in red or redish-orange on  
these exhibits are, or represent the nonarable

mesghinna-cross-white

1 or Class 6 lands as established by HKM within  
2 its field.

3 I think it's remarkably important, Your  
4 Honor, because it will come up with respect  
5 to the question of yields.

6 THE SPECIAL MASTER: I think it's remarkably  
7 important, but the parallel map ought to be in  
8 the Court at the same time in case he needs to  
9 refer to it.

10 MR. WHITE: I'll be glad to make it  
11 available.

12 MR. SACHSE: I want to continue my objection  
13 to this and I want to make clear the reasons for  
14 my objection. I do not object to the State  
15 when it puts on its case, presenting these maps  
16 and having their experts testify that they have  
17 gone over Dr. Mesghinna's work and this is what  
18 they find amounts to the Class 6 land in the  
19 field. In fact, from the minute amount that  
20 these maps show, we might want to introduce them  
21 if the State's experts didn't introduce them.  
22 On the other hand, Dr. Mesghinna has already  
23 testified that he doesn't know offhand precisely  
24 which corners might or might not be Class 6 land..

25 mesghinna-cross-white



1 So to ask him then to give a positive  
2 identification of the red marks on the State's  
3 map is to ask him to testify as to something  
4 as to which he's already stated that he's not  
5 sure. The only way he could then make himself  
6 sure would be to stop the trial for time enough  
7 to examine each one of these, piece by piece  
8 against each map, and it strikes me, this is  
9 improper cross-examination though quite proper  
10 testimony in the State's case in chief if the  
11 State wants to present it.

12 THE SPECIAL MASTER: I will sustain the  
13 objection in that the Witness' answers stated  
14 there is quite possible that these are the  
15 lands that could have 6, and I will sustain  
16 the objection for the reasons Mr. Sachse has  
17 just given.

18 MR. SACHSE: Your Honor, in connection with  
19 my objection, I then ask also that the previous  
20 exhibits, FM-1249 through 1255 be withdrawn.  
21 When Mr. White presented these exhibits he said  
22 they were the same as the maps already presented  
23 by the United States except that he put in the  
24 numbers for the fields, but what he's just

25 mesghinna-cross-white

1 demonstrated is they're not the same. He's.  
 2 also tried to show the area, unless I mis-  
 3 understand, the area that may be Class 6, if  
 4 these maps do purport to show that, then they  
 5 are.

6 THE SPECIAL MASTER: I will not order them  
 7 withdrawn, Mr. Sachse. They show what they  
 8 show for whatever their probative value may be  
 9 for the -- to the Court.

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 25 mesghinna-cross-white

1 MR. WHITE: I would like to state for the record,  
2 Your Honor, the maps we are referring to now that  
3 have the Class 6 lands indicated in reddish-orange  
4 are new exhibits. They are 1249 through 1255-A  
5 series. The previous exhibits carried no such suf-  
6 fix.

7 And I would also ask the Court to reconsider  
8 its determination that this witness could not be  
9 questioned about Class 6 lands which he included  
10 in his report.

11 THE SPECIAL MASTER: This witness can be  
12 questioned about Class 6 lands and, indeed, I've  
13 permitted your questioning of him on them, and he  
14 has said it is quite possible. He has answered  
15 them.

16 You want him to come up and specifically iden-  
17 tify each jot and tittle within it, and he said that  
18 is not his work, that is not a requirement of him.  
19 He has answered your questions in Class 6 lands in  
20 these areas.

21 A. Can I go ahead and say something about this?

22 THE SPECIAL MASTER: Yes.

23 A. In my direct testimony I have clearly stated that  
24 there areas that will be included in it in this area.

25 mesghinna - cross - white

1 And, in fact, I am really proud to see we have done  
2 this much good really. We have included extremely  
3 small amounts of lands.

4 In other works that I've seen, and it would be  
5 probably three or four times more than this, includ-  
6 ing this squared area. This is something you do in  
7 design. You cannot escape it. This is -- You can't  
8 fight with nature, you know. I mean, you have land;  
9 and when it is cut off, you include something and  
10 you leave something out.

11 For example, in East Crowheart we have left out  
12 almost 10,000 acres, you know, just to, what you  
13 call, squaring off and so on.

14 So, there is a possibility, of course, what we  
15 see here might be true, you know. It is perfectly  
16 the standard of what everyone uses in this profes-  
17 sion.

18 THE SPECIAL MASTER: The witness had made it  
19 unnecessary for me to reconsider my ruling. You've  
20 got it yourself into the record.

21 MR. WHITE: Thank you, Your Honor.

22 THE SPECIAL MASTER: That's all right.

23 Q (By Mr. White) Isn't it true, Dr. Mesghinna --

24 A As to how much it is, you know, I can't say what

25 mesghinna - cross - white

1 we've done there, but for a matter of discussion, we  
2 can discuss it.

3 Q Isn't it true, Dr. Mesghinna, that the inclusion of  
4 nonarable land within a particular field may very  
5 well affect the yield, crop yield, which one would  
6 derive from that field?

7 A. This question does not pertain to me, although I  
8 can get an answer to it.

9 Q Thank you.

10 A. As to my feeling about it. If you go out and see  
11 lands that are irrigated anywhere in the United  
12 States, or anywhere in the world, you can never  
13 find lands that are perfectly okay, Class 1 to  
14 Class 4, or something like that. There is always  
15 something.

16 In fact, if you see from a plane or a car, you  
17 will see areas, spots, where you see Class 6 lands.  
18 I mean, this is perfectly the case.

19 And when they report they yields, they report  
20 the yields based on these kinds. They, indeed,  
21 have this Class 6 within Class 1 to Class 4 lands.

22 Q Dr. Mesghinna, let me direct your attention to what  
23 has been marked for identification as FM-1251-A,  
24 and specifically Field No. 12, which contains only

25 mesghinna - cross - white

1 Class 6 lands, as shown by the reddish-orange color  
2 on this exhibit.

3 MR. CLEAR: Can you slow up a minute until we  
4 get the map out here?

5 MR. WHITE: Yes.

6 MR. CLEAR: What field was it again?

7 MR. WHITE: Twelve. It is almost dead-center.

8 MR. SACHSE: That is 2-12?

9 MR. WHITE: Yes, 2-12.

10 Q (By Mr. White) Isn't it true, Dr. Mesghinna, that  
11 if the entirety of that field was Class 1 lands,  
12 the yield from that field would be greater, the crop  
13 yield would be greater, than it would be if this  
14 field is, as indicated, approximately one quarter  
15 Class 6 nonarable land?

16 MR. CLEAR: Your Honor, he has testified that  
17 the yields of these lands was not his assignment or  
18 expertise in what he has testified.

19 THE SPECIAL MASTER: I sustained that objection  
20 and he answered that, yes, there are ground effects  
21 inevitable there.

22 MR. WHITE: Your Honor, I need to make reference  
23 to a number of these similar exhibits. I expect you  
24 to rule the same way, but I need to make the offer.

25 mesghinna - cross - white

1 THE SPECIAL MASTER: Go ahead. Make your re-  
2 cord.

3 Q (By Mr. White) Dr. Mesghinna, with respect to what  
4 has been marked as Plaintiff's Exhibit FM-1251-A,  
5 isn't it true that the lands colored in a reddish-  
6 orange within your field boundaries are lands which  
7 HKM classified as Class 6 or nonarable?

8 A Yes, that is possible.

9 Q Isn't the same true with respect to Plaintiff's  
10 Exhibit FM-1253-A?

11 A Yes, that is possible.

12 Q And that applies to the South Crowheart Unit?

13 A Yes.

14 Q Is the same thing true with respect to what has  
15 been marked for identification as FM-1254-A, appli-  
16 cable to the Arapahoe Unit?

17 A Yes, that is true.

18 Q Is the same thing true with respect to what has  
19 been marked for identification as Plaintiff's  
20 Exhibit FM-1255-A with respect to the Riverton  
21 East Unit?

22 A Yes, that is a possibility.

23 Q Finally, is the same thing true with respect to  
24 FM-1252-A with respect to the remainder of the Big

25 mesghinna - cross - white

10-6

1 Flats Unit?

2 A. Yes, that's a possibility.

3 Q. Dr. Mesghinna, on Exhibits C-249 through 255,  
4 isn't it correct that you show an HKM irrigable  
5 land base, or arable land base, excuse me, by  
6 shading, over which some of your fields are lying?

7 A. Yes, they are shown by shading.

8 Q. That is the sprinkler arable land base, isn't it?

9 A. Not all only sprinkler, you know; all gravity irri-  
10 gation. I mean, all gravity irrigable land or  
11 sprinkler irrigated. So, we also include gravity  
12 irrigation and irrigable land within a sprinkler.

13 Q. When and from whom did you get the arable land base  
14 which is shown on your Exhibits 249 through 255?

15 A. That was about, I believe, 1979 from HKM.

16 Q. How did you make the transfer of the arable land  
17 base from the information given to you by HKM to  
18 these exhibits?

19 A. We transferred -- they gave it to us on mylar, I  
20 believe, on the same scale as we have used, which  
21 is 1 inch equals 2,000, the U.S.G.S. quad maps,  
22 and we transferred these onto our scale.

23 Q. Would it surprise you to learn the arable land base  
24 over which your fields are lying, as provided to you

25 mesghinna - cross - white



1 by HKM in 1979, is not the same arable land base  
2 that was testified to by Mr. Kersich in this action?

3 A. It wouldn't surprise me, because probably I know  
4 what you're trying to say on this.

5 Q. In other words, the arable land base shown in your  
6 exhibits isn't the same arable land base that was  
7 testified to by Mr. Kersich; isn't that correct?

8 A. I don't know that one very well, but the 1979 was  
9 the ones with this.

10 Q. Yes.

11 A. Okay. But there might be, you know, some changes  
12 probably during the last few months, you know.

13 Q. Let me direct your attention to what has been  
14 marked as -- or admitted through Mr. Kersich as  
15 U.S. Exhibit WRIR-C-51, and ask you in general to  
16 compare C-51 in the Riverton East area sprinkler  
17 land classification map, and ask you to compare it  
18 to your field layout on FM-1255-A, and tell me  
19 whether or not Field 56, your Field 56, lays on  
20 land not classified as arable by HKM?

21 A. According to this map, yes, I can see that from  
22 here.

23 Q. How many acres are in Field 56?

24 A. I have to look at my notes.

25 mesghinna - cross - white

1 Q You might keep your notebook out because I've got  
 2 a few more right there to run.

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mesghinna - cross - white

1 A Field No. 56 is 82.6 acres of gross arable  
2 acres.

3 Q Dr. Mesghinna, I'm going to annotate on Exhibit  
4 1255-A, field 56 with the symbol NA-51, which  
5 stands for nonarable on Exhibit U.S. Exhibit  
6 C-51.

7 MR. CLEAR: Your HONOR, we object to the  
8 annotation NA standing for nonarable. The  
9 reason those lands were excluded was that the --  
10 as I understand it, HKM was under the impression  
11 that those lands had been taken by the Bureau  
12 of Reclamation, and we have checked into that  
13 and found that while the lands have been taken  
14 by the Bureau of Reclamation, the Indians --

15 THE SPECIAL MASTER: What do you mean they  
16 had been taken by the Bureau?

17 MR. CLEAR: They had been taken for the  
18 Boysen Reservoir, condemned through Act of  
19 Congress, but in the Act of Congress, the  
20 Indians obtained the right of exclusive  
21 possession as long as those lands were not  
22 actually inundated, and for that reason I  
23 think the misunderstanding, that HKM drew a  
24 legal conclusion and excluded those lands, but  
25 mesghinna-cross-white

1 the exclusion was not based on nonarability,  
2 it was the basis of nonownership. And we will  
3 present evidence of the fact that the Indian  
4 retained --

5 THE SPECIAL MASTER: Were the Tribes  
6 paid a consideration when the acreage went  
7 into the flood plain, the Boysen Reservoir?

8 MR. CLEAR: They were paid a consideration,  
9 but under the Act of Congress and memorandum  
10 of understanding between the, I guess the Bureau  
11 of Indian Affairs and Bureau of Reclamation,  
12 which is incorporated into the Act. The Indians  
13 retained a right, exclusive right to possession  
14 of the surface, as I recall, exclusive of non-  
15 Indians, as long as lands were not actually  
16 flooded by the Reservoir. This came up in the  
17 last session. We've checked, in the meantime,  
18 with the Bureau of Indian Affairs title plant  
19 in the Billings, and they can furnish us a  
20 copy of their title records showing the retention  
21 of the surface interest by the Indians.

22 We are also prepared to bring back the  
23 appropriate people from HKM to testify that  
24 that land was not excluded on the grounds of --  
25 was excluded -- bring them back to testify that

1 they excluded the land not on the grounds of  
2 nonarability, but on the mishappenings --

3 THE SPECIAL MASTER: The legal --

4 MR. CLEAR: Legal title.

5 MR. WHITE: The United States is entitled  
6 to do that, and I don't think they can, and I  
7 think I'm entitled to cross-examine based on --

8 MR. CLEAR: The --

9 THE SPECIAL MASTER: One at a time,  
10 gentlemen.

11 MR. WHITE: Based on the evidence which  
12 the United States itself has submitted. If  
13 they want to come back and correct their  
14 evidence later on, that may well affect the  
15 cross-examination of Dr. Mesghinna. For the  
16 time being there is no evidence as to the  
17 arability of lands generally in this area, the  
18 upper right-hand corner of the Riverton East  
19 Unit.

20 THE SPECIAL MASTER: Was the total sum  
21 60 some acres or --

22 MR. WHITE: There's a lot more, Your Honor,  
23 and I want to keep going and ask him to do  
24 that.

25 mesghinna-cross-white

1 MR. CLEAR: Your Honor, my objection was  
2 not to the questioning, my objection was to  
3 the classification of those lands as nonarable.

4 THE SPECIAL MASTER: I appreciate that.

5 MR. WHITE: Wait a minute, Your Honor.  
6 Down in the legend of Exhibit C-51 shows that  
7 anything that's white is Class 6. According to  
8 Mr. Kersich, Class 6 is nonarable.

9 THE SPECIAL MASTER: I appreciate that.  
10 Obviously there's a mistake and is something  
11 to be resolved in this matter. So proceed and  
12 show the rest of the acreage that falls in  
13 this unique legal category of flood plain for  
14 Lake -- for Boysen Reservoir that Dr. Mesghinna  
15 has obviously used because it was fit land  
16 for an arable project.

17 Go ahead, Mr. White.

18 MR. WHITE: My point is, Your Honor,  
19 there isn't any evidence to that.

20 THE SPECIAL MASTER: Okay.

21 Q (By Mr. White) Dr. Mesghinna, isn't it true  
22 that Field No. 55 shown on Exhibit FM-1255-A  
23 also is not classified as arable on Exhibit  
24 C-51?

25 mesghinna-cross-white

1 A Yeah. Without going to all the details, all  
2 those from 52 to 56 are within those categories.

3 THE SPECIAL MASTER: All from 52 to 56?

4 THE WITNESS: Yeah.

5 THE SPECIAL MASTER: In the category?

6 THE WITNESS: Are in that category.

7 Q (By Mr. White) What's the acreage for 52?

8 A Fifty-two is 115.7.

9 Q Fifty-three?

10 A 33.1.

11 Q Fifty-four?

12 A 43.5.

13 Q Fifty-five?

14 A 68.2.

15 THE SPECIAL MASTER: Sixty-eight --

16 THE WITNESS: -- .2. So the total is

17 343.1 gross irrigable, this is not net.

18 Q (By Mr. White) Isn't it true that Field 51 on

19 Exhibit 1255-A is also shown in white as

20 Class 6 on Exhibit C-51?

21 THE SPECIAL MASTER: Gentlemen --

22 Q (By Mr. White) It's in the Northwest corner

23 of 29.

24 A That one is also part of it.

25 mesghinna-cross-white

1 Q Where is the acreage for Field No. 51?

2 A It's 18.2.

3 Q Isn't it true that Field 50 is likewise  
4 classified as Class 6 or nonarable on C-51,  
5 and that is Field 50 which appears on Exhibit  
6 1255-A -- FM-1255-A, and it's located roughly  
7 in the North 1/2 of Section 30 in the upper  
8 right-hand corner of Exhibit C-51?

9 A Yes, that is also included there.

10 Q And what's the acreage for Field 50?

11 A Forty-four.

12 Q Isn't it true that Field 49 is also located in  
13 an area which is shown as being Class 6 or non-  
14 arable on Exhibit C-51?

15 A Yeah, that one is also.

16 Q What's the acreage for Field 49?

17 A 18.5.

18 THE SPECIAL MASTER: What was that?

19 THE WITNESS: 18.5.

20 Q (By Mr. White) One eight point five?

21 A Yes.

22 Q Isn't it true that Field 46 is also located  
23 in an area shown on Exhibit C-51 as being white  
24 or Class 6 or nonarable?

25 mesghinna-cross-white



1 A Let me check that one.

2 (Brief pause.)

3 A Yes. Fifty, 46 is.

4 Q And what is the field acreage for 46?

5 A It's 55.1.

6 Q Isn't it true that the north part of Field 41  
7 is within an area shown on Exhibit C-51 as  
8 white, Class 6 or nonarable?

9 A I would like to check the --

10 Q Why don't you check that one as well as 40, 41  
11 and 48.

12 A I would like to check the gravity irrigation.

13 Q Okay. I don't have it. I may have a copy.  
14 I think --

15 A If they were included there, then --

16 Q We'll bring that this afternoon. My recollection,  
17 Wold, is there is nothing over in Township 6  
18 East, 2 North that is classified for gravity.

19 THE SPECIAL MASTER: Is this a convenient  
20 time for a lunch break?

21 MR. WHITE: I can keep going as long as  
22 you want to. I'd like to keep going.

23 THE SPECIAL MASTER: I want to eat. We have  
24 to leave early because -- well, the Judge wants  
25 mesghinna-cross-white

1 to use these chambers at 1:15, so let's adjourn  
2 for lunch until 1:30 and maybe we can have a  
3 chance to visit informally after we break now  
4 for a few minutes about a little informal  
5 discussion about examining the subject matter  
6 you have left, Mr. White, and the days left  
7 in May that you want to, you feel that you will  
8 be using for cross-examination.

9 When do you anticipate your next witness,  
10 United States, and who is it?

11 MR. WHITE: I can tell the Court now, Your  
12 Honor. I have approximately -- approximately  
13 30 areas, general areas of inquiry.

14 THE SPECIAL MASTER: You have approximately  
15 30 general areas of inquiry. Each one sub-  
16 stantively take about the same time to look at  
17 them?

18 MR. WHITE: Some will be very short, Your  
19 Honor.

20 THE SPECIAL MASTER: Some will be longer?

21 MR. WHITE: Some longer. If Dr. Mesghinna  
22 answered all my leading questions, yes, which  
23 I'm not sure that he would, it could take no  
24 more than say by tomorrow noon. If we end up  
25 going through the bits and pieces for some of

1 those areas, it could take, say to the middle  
2 of next week or so.

3 THE SPECIAL MASTER: But you feel that  
4 reasonably adequate with the way we're progressing  
5 so far that you think it's possible you just  
6 might be completed with him by the middle of  
7 next week?

8 MR. WHITE: That would be my best guess  
9 right now, Your Honor.

10 THE SPECIAL MASTER: That's what I want  
11 to know.

12 Who is your next witness, United States?

13 MR. ECHOHAWK: Mr. Dornbusch the economist.

14 THE SPECIAL MASTER: And when do you  
15 reasonably anticipate that he would be on?

16 MR. ECHOHAWK: Well, as soon as Mr. White's  
17 done, depending on whether we have redirect.

18 THE SPECIAL MASTER: You're not ready to  
19 put him on any sooner than that?

20 MR. ECHOHAWK: We're ready as soon as Mr.  
21 White's done.

22 THE SPECIAL MASTER: I see.

23 MR. ECHOHAWK: We're ready to proceed.

24 THE SPECIAL MASTER: Let's go to lunch now  
25 and let's come back at 1:30 and continue.

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(Thereupon a lunch recess  
was taken at 11:35 a.m.)

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