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## Trial Transcript, Vol. 63, Afternoon Session

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Case # 4993

File # 170

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

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

Civil No. 4993

FILED .....  
5/70 1981  
*Margaret D. Hampton* CLERK  
DEPUTY

VOLUME 63

Afternoon Session

Thursday, May 14, 1981

**ORIGINAL**



- 1 THE SPECIAL MASTER: Come to order, please. Mr.  
2 White?
- 3 Q (By Mr. White) Mr. Stetson, how did you determine mainten-  
4 ance and repair costs for existing structures?
- 5 A For existing structures?
- 6 Q Yes.
- 7 A We didn't. If there were -- We determined maintenance and  
8 repair costs for the structures for which we estimated the  
9 cost for new construction.
- 10 Q Okay. When alternative plans were developed for a particu-  
11 lar site, is there any -- for a particular tract, excuse me  
12 -- is there any way to tell which of those alternatives the  
13 economists developed the present values for on, I believe,  
14 it's HS-11, or do you know?
- 15 A I don't know.
- 16 Q Mr. Stetson, did your familiarity with the classes of land,  
17 the definition of the classes of land established by HKM,  
18 allow you to say whether or not Class 4 lands are restricted  
19 to pasture?
- 20 A I'm not sure whether they would all be restricted to pas-  
21 ture or not.
- 22 Most of them would be.
- 23 Q Would you turn to Page 102 of Exhibit HS-12, please?
- 24 A Yes, sir, I have it.
- 25 stetson - cross - white



1 Q Do you see the note which indicates that culvert, required  
2 culvert, should be the responsibility -- I guess it's the  
3 highway department?

4 A Yes, sir.

5 Q What was the basis for that determination?

6 A The basis of that was that the ditch was apparently cut  
7 off and obliterated by the construction of the new highway  
8 between Riverton and Lander. There's a big fill there, and  
9 my understanding was that no compensation had been awarded  
10 to the Indians for the loss of the ditch on the basis of  
11 it wasn't being used, or for whatever reason, and it was  
12 my judgment that if that land were brought back into pro-  
13 duction and were dependent upon a ditch through that fill,  
14 that State Division of Highways, or whatever state agency  
15 constructed that highway, state or local agency, should be  
16 responsible for the cost of jacking a pipe through there  
17 or some way of getting the water through.

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1 Q How did you determine, if you determined, the previous  
2 compensation did not include this particular matter?

3 A I just assumed it didn't.

4 Q With respect to the fields -- or the field on page 48  
5 of the same exhibit, can you tell me whether or not that  
6 field is included within or is excluded from the values  
7 on HS-4?

8 A Excuse me, I have to look at my copy. That field has  
9 been -- that is 15-A-X. That has been excluded. That is  
10 the one we corrected the record for the other morning.  
11 That was the first one we corrected on this.

12 Q Mr. Stetson, did you reduce either your diversion require-  
13 ments or your number of acreage by any percentage, such as  
14 five percent, as has been testified to by others, to account  
15 for such things as roads, farmsteads, haystacks, and other  
16 cultural and semicultural features that would take land  
17 out of irrigation?

18 A No. These are considered to be net acres on the assumption  
19 that they were once in irrigation. It was my understanding  
20 when HKM mapped these, they mapped the areas that had been  
21 irrigated.

22 Q Did you make any independent investigation to determine  
23 whether or not that assumption was in fact true?

24 A No.

25 stetson - cross - white



1 Q If in fact there are such things as farmsteads, roads, and  
 2 other types of cultural features within the fields and  
 3 within the acreages you have used, would that reduce the  
 4 amount of annual diversion requirements you have determined?

5 A If they were the type of structures, that rendered that  
 6 particular acreage nonirrigable, yes.

7 Q Are you able to tell the Court with respect to HS-4 how  
 8 many of the acres in the grand total of 7975 acres are  
 9 located north of the Wind River or east of the Popo Agie?

10 A North of the Wind River?

11 Q Yes, sir, or east of the Popo Agie.

12 A You want to include the project lands?

13 Q Yes, sir.

14 A 100 acres are in the LeClair Irrigation District.

15 THE SPECIAL MASTER: Mr. White, I think we know which  
 16 are north and which are south, having been confirmed by  
 17 the fact that they are all in the record on all, or at  
 18 least 50 exhibits in this case. So, we can draw our con-  
 19 clusions.

20 MR. WHITE: All right, Your Honor.

21 THE SPECIAL MASTER: Would you concur?

22 MR. WHITE: Maybe perhaps you can. I was not able to  
 23 and I tried to do so over the evening recess yesterday,  
 24 and that is why I asked the question, Your Honor.

25 stetson - cross - white



1 THE SPECIAL MASTER: You needn't answer that, unless  
2 you are dying to.

3 THE WITNESS: Unless I am what?

4 THE SPECIAL MASTER: Unless you are dying to.

5 THE WITNESS: I am not dying to answer.

6 THE SPECIAL MASTER: Okay.

7 Q (By Mr. White) Mr. Stetson, what computer programs did  
8 you use as part of your analysis which led up to the con-  
9 clusions and opinions which you have expressed?

10 MR. CLEAR: Your Honor, we have been through the  
11 computer program business before, I believe, and you  
12 decided not to require these computer programs be delivered.

13 THE SPECIAL MASTER: Well, he hasn't hit any objection-  
14 able question yet. I think the question can be answered.

15 A As far as the costs are concerned, no computer program  
16 data were used. Does that answer your question?

17 Q How about for the annual diversion requirements?

18 A The annual diversion requirements, the only part of the  
19 computer programs we would have used would have been the  
20 computer program results on the consumptive use analysis.

21 Q That would be the same program Dr. Mesghinna used?

22 A Yes.

23 Q Did you use any of the programs for on-farm systems  
24 or drainage or any of the other programs utilized by Dr.

25 stetson - cross - white





1 Mesghinna?

2 A I think not.

3 Q The only program you used was for the annual diversion  
4 requirements; is that correct?

5 A Yes.

6 Q Consumptive use?

7 A To the best of my knowledge, yes, sir.

8 MR. WHITE: Your Honor, I wonder if we could get a  
9 stipulation among counsel and approved by the Court that  
10 is the same computer program, or one of the same computer  
11 programs, over which we had the dispute during Dr. Mes-  
12 ghinna's cross-examination, and that the same information  
13 elicited from Dr. Mesghinna with respect to their pro-  
14 gram would be given by Mr. Stetson, and the Court's  
15 ruling would be the same with respect to it?

16 THE SPECIAL MASTER: What do you say?

17 MR. CLEAR: It is the computer program which we had  
18 the dispute over. I think it was the one obtained by the  
19 State.

20 THE SPECIAL MASTER: You agree to the stipulation?

21 MR. CLEAR: Yes, Your Honor.

22 THE SPECIAL MASTER: All right. Thank you.

23 MR. WHITE: Tribes?

24 MR. ROGERS: I am not even able to say. I don't know.

25 stetson - cross - white



1 Q (By Mr. White) Mr. Stetson, Dr. Mesghinna prepared, or has  
2 prepared, information concerning the monthly diversions  
3 in addition to the annual diversions for at least future  
4 programs, as already testified.

5 THE SPECIAL MASTER: For at least the future what?

6 MR. WHITE: At least the future programs.

7 Q Are you able to describe those -- excuse me. Are you able  
8 to describe your annual diversion requirements on a monthly  
9 basis?

10 A We could by going back and calculating out the monthly  
11 net irrigation requirements and proportioning -- making  
12 some additional analysis, but we did not do that.

13 Q If you were to do so, you would simply use the monthly  
14 net irrigation requirements and work it up?

15 A That would be the basis of building up to the monthly  
16 diversion requirements, but there would have to be some  
17 accounting for early months of irrigation, when you don't  
18 get as much return flow, and for later months, when you  
19 get more return flow, and that sort of thing.

20 Q With respect to the Type VII lands, is it true you made  
21 no determination as to whether those lands were within  
22 or without the reservation boundaries as established by  
23 the stipulation referred to yesterday?

24 A Yes, sir.

25 stetson - cross - white



1 Q Is it true that you made no determination with respect to  
2 any of the three general categories of lands you have des-  
3 cribed in your testimony -- adjudicated, nonadjudicated,  
4 Type VII -- concerning whether or not those lands are in-  
5 trust or in-fee ownership?

6 A We accepted them as being in-trust ownership. That is the  
7 way they were furnished to us.

8 Q You made no independent check?

9 A We made no independent check. No, that was not part of  
10 our work. I'm not sure the Court would have accepted it  
11 if we did it as engineers.

12 Q That would be certainly -- nevermind. Strike that, please.  
13 Likewise, you made no independent determination of whether  
14 or not the unadjudicated lands in the Type VII lands, for  
15 which you expressed your opinions, contained any over-  
16 lap with certificated or adjudicated lands?

17 A We did sit down with people from HKM, as recently as last  
18 week, to check figures with them, and we have, I think,  
19 their assurances that these lands -- there is no overlap  
20 of these lands. But we are not able to say, because we  
21 didn't do the basic work on it, that that is for certain.

22 Q Is it likewise true you made no independent investigation  
23 to determine whether or not the lands for which you ex-  
24 pressed your opinions are in fact covered by nonadjudicated

25 stetson - cross - white



1 permits?

2 A The only checking I have done on this was with the exhibits  
3 you showed me.

4 Q Is it not similarly true that you have made no independent  
5 investigation as to whether or not the lands for which you  
6 expressed your opinion were the subject of allotments?

7 A That's true.

8 MR. WHITE: Your Honor, I know that you probably  
9 would not let me cross-examine with respect to overlaps,  
10 allotments, permits, certificates, and fee or non-trust  
11 ownership, or go through an examination of the photo-  
12 graphs to see whether there are haystacks or farmsteads  
13 within these particular parcels that have been selected  
14 by and testified to by Mr. Stetson, but I would like to  
15 inquire of the United States, however, whether or not  
16 there will be other witnesses available or would be a  
17 part of their case in chief who will put on evidence with  
18 respect to the trust status with the question of whether  
19 or not lands are within or without the reservation, so  
20 that I can find out whether or not those matters can be  
21 the subject of future cross-examination of other witnesses,  
22 or whether I need to make an offer of proof with respect  
23 to them with this witness.

24 THE SPECIAL MASTER: You may ask them.

25 stetson - cross - white



1 MR. CLEAR: Your Honor, I think we are going to put  
2 on documents relating to lands outside the reservation,  
3 but I believe, as was mentioned yesterday, evidence has  
4 been put on through Exhibit M-1, I think, but the public  
5 records of the Bureau of Indian Affairs designation on this  
6 map are trust lands.

7 I also believe, Your Honor, with respect to reservation  
8 lands, the public statutes and treaties of the United States  
9 indicate that what are reservation lands were set aside for  
10 the Indians. And I think that creates a prima facie case  
11 but the lands in the reservation are still held in-trust  
12 for the Indians. What we have done is go out and find the  
13 ones that are no longer held in trust and eliminate those.

14 I think we have made, with respect to the lands on the  
15 reservation, a prima facie case of the trust status of  
16 those lands. And I think, insofar as the Exhibit M-1, it  
17 contains lands off the reservation.

18 You recall there was some discussion between Mr.  
19 Rogers and Mr. Membrino yesterday whether parcels Mr.  
20 White was referring to were on that map. Yes, they are  
21 on that map.

22 I think a prima facie case of the trust status has  
23 been made out.

24 Again, we may bring on -- if it is not on the maps,  
25 we will supply certified copies of the records of the



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Bureau of Indian Affairs, which is the official depository  
of land records for the Indian reservation.

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1 MR. WHITE: Well, I guess it's comforting in a  
2 way, Your Honor, but the point I'm making is you may  
3 be able to compare M-1 with M-2 with these particular  
4 exhibits in your own office and decide whether or  
5 not there is an overlap. I was just wondering whether  
6 or not there was going to be any witness brought for-  
7 ward that would do that work for you, and apparently  
8 not.

9 And let me ask the witness another question along  
10 this line.

11 Q (By Mr. White) Mr. Stetson, is it true that you have  
12 made no independent investigation with respect to the  
13 lands for which you have given your opinion as to  
14 whether or not those lands have been once in trust  
15 status and have left trust status and then been  
16 re-acquired and then replaced into trust status?

17 A No, I have not made any investigation of that.

18 MR. WHITE: Your Honor, I would like to inquire  
19 of the witness whether certain tracts are within  
20 or without the reservation as applies to the Type  
21 VII lands.

22 I would also like to inquire of the witness  
23 with respect to re-acquired lands in all three  
24 categories.

25 stetson - cross - white







1 through this witness by this witness' comparison  
 2 of the lands to which or about which he gave his  
 3 opinion and the lands shown in the various appropriate  
 4 statuses on Exhibits M-1 and M-2 which have already  
 5 been admitted.

6 For the unadjudicated -- excuse me -- for the  
 7 Type VII lands, a total of 40 acres would be located  
 8 on what is shown to be fee lands.

9 For the unadjudicated lands, a total of 340 would  
 10 be shown as being on fee lands.

11 THE SPECIAL MASTER: Would be fee lands?

12 MR. WHITE: Yes, sir. For the adjudicated lands,  
 13 204 would be shown as being in fee lands.

14 THE SPECIAL MASTER: Your offer includes in it the  
 15 fact that these fee lands would not be trust lands; is  
 16 that correct?

17 MR. WHITE: According to M-1 and M-2, yes, sir,  
 18 and then I should qualify the offer of proof to say  
 19 that in those totals are included tracts which are not  
 20 shown as fee lands, but they are shown as non-trust  
 21 government lands, and by the term "fee land", I mean  
 22 to include the non -- or the government owned non-trust.

23 With respect to the Type VII lands, 136 acres are  
 24 outside the reservation.

25 THE SPECIAL MASTER: Outside the stipulated



1 boundaries of the reservation?

2 MR. WHITE: Yes, sir; yes, sir. And with respect  
3 to the Type VII lands --

4 MR. CLEAR: Pardon me, Mr. White. What was the  
5 first category, the 136 acres?

6 MR. WHITE: That was Type VII, outside the  
7 reservation.

8 MR. CLEAR: Okay.

9 MR. WHITE: With respect to Type VII lands,  
10 347 acres of those are re-acquired lands.

11 THE SPECIAL MASTER: Re-acquired lands?

12 MR. WHITE: Yes, sir, lands that left trust  
13 status and have been re-acquired.

14 THE SPECIAL MASTER: And not trust.

15 MR. WHITE: Have been re-acquired and put back  
16 into trust, Your Honor.

17 THE SPECIAL MASTER: So they are trust, but not  
18 with a right to a water --

19 MR. WHITE: That's the State's position.

20 THE SPECIAL MASTER: And they are re-acquired  
21 lands? And if back in trust have no reserved right  
22 to a water right?

23 MR. WHITE: Yes, sir, that's our position.

24 MR. ROGERS: May I make an inquiry as to --

25 THE SPECIAL MASTER: Are you through with your offer?



1 Do you want to hold it or do you want it right  
2 now? Is it related to this last part?

3 MR. ROGERS: Yes, sir, it is.

4 Is that determined, Mr. White, on the basis of  
5 M-1 and M-2?

6 MR. WHITE: That's the offer.

7 With respect to unadjudicated lands, 403 acres of  
8 re-acquired lands; with respect to -- I'm sorry, Your  
9 Honor, that's the end of the offer of proof.

10 Before we end the cross, I will have an offer of  
11 proof with respect to the others.

12 THE SPECIAL MASTER: I would say with respect to  
13 the offer of claim, that the State will be allowed to  
14 inquire into these general areas from proper witnesses  
15 and that my ruling dealt with the exclusion now because  
16 I felt that Mr. Stetson was not a proper witness to discuss  
17 the status of lands. That was not within the regime of  
18 his employment or within his professional area.

19 MR. WHITE: If I can have a moment, Your Honor,  
20 I think I'm done. I'm just trying to put my exhibits  
21 together.

22 I'm sorry, Your Honor. If I could add to my offer  
23 of proof, with respect to overlap on re-acquired lands  
24 of the certificated -- excuse me -- the adjudicated  
25 lands, in the Mud Creek, Red Creek and East Fork of



1 the Wind River only, the State would offer to prove  
2 that there are in excess of 1320 acres of re-acquired --

3 THE SPECIAL MASTER: 1320 acres?

4 MR. WHITE: Yes, sir, but we have not finished  
5 our analysis.

6 THE SPECIAL MASTER: In the adjudicated?

7 MR. WHITE: Yes, sir.

8 (Off-the-record discussion.)

9 THE SPECIAL MASTER: These will be plaintiff's?

10 MR. WHITE: Yes, sir.

11 THE SPECIAL MASTER: F?

12 MR. WHITE: I am sorry. Most of them will be  
13 HS dash something.

14 THE SPECIAL MASTER: That's S-1 through --

15 MR. WHITE: 14 or 15.

16 (Off-the-record discussion.)

17 MR. WHITE: Your Honor, at this time, the State  
18 would offer --

19 MR. ECHOHAWK: Would you go slow?

20 MR. WHITE: -- WRIRHS-1 for the purpose of  
21 showing the certificated water rights and the  
22 acreages within those water rights considered to  
23 be as trust lands which are included within the  
24 opinions expressed by Mr. Stetson and for the  
25 purpose of showing facts and data upon which the



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witness relied.

HS-2 is offered --

THE SPECIAL MASTER: Mr. White, let me give these captions in case there's any objection from counsel because, Leo, what is the caption we would use in the index as to HS-1?

MR. SALAZAR: Adjudicated Lands by Location, Stetson Report.

THE SPECIAL MASTER: Yes, Stetson - Adjudicated Lands by Location.



1 MR. WHITE: The State would offer HS-2, Your  
2 Honor, for the purposes of illustrating -- not for  
3 purposes of illustrating, but for purposes of showing  
4 the facts and data in part relied upon for the  
5 drainage requirements by Mr. Stetson for unadjudicated  
6 lands in use and adjudicated trust lands.

7 THE SPECIAL MASTER: These will be captioned  
8 Stetson Work Sheets, Consumptive Use Requirements  
9 for Trust Lands.

10 MR. WHITE: HS-3 is offered, HS-3, HS-4, and  
11 HS-5, are offered for the purpose of illustrating  
12 in tabular form the opinions expressed by Mr. Stetson  
13 during his direct examination without benefit of the  
14 exhibits, for adjudicated trust land, types of  
15 unirrigatable land, and unadjudicated trust land,  
16 respectively.

17 THE SPECIAL MASTER: And we would note for the  
18 record within each of those three documents, HS-3, 4,  
19 and 5, they include both project land on Page 1 and  
20 non-project land on Pages 2 and 3. Three, 4, and 5,  
21 Stetson, Tabulation of Testimony, with the same  
22 caption as Mr. White just gave.

23 MR. WHITE: The State would offer HS-6 for the  
24 purpose of illustrating the facts and data and con-  
25 clusions which were arrived at or relied upon by



1 Mr. Stetson. It has the title at the top, "Net  
2 Consumptive Usage."

3 THE SPECIAL MASTER: HS-6, Stetson, Net  
4 Consumptive Use.

5 MR. WHITE: The State would offer HS-7 for  
6 the purpose of showing the facts and data concerning  
7 crops by climactic stations upon which Mr. Stetson  
8 relied and which has been --

9 THE SPECIAL MASTER: Exhibit 7, Stetson Work  
10 Papers, Crop Data, Climactic Stations.

11 MR. ROGERS: Your Honor, perhaps that should  
12 read, "by climactic station."

13 THE SPECIAL MASTER: Okay. Data by Climactic  
14 Stations.

15 MR. WHITE: The State would offer HS-8 for the  
16 purpose of showing the facts and data upon which  
17 Mr. Stetson relied in forming his opinions, which  
18 facts and data relate to irrigation consumptive use  
19 by climactic zone.

20 THE SPECIAL MASTER: Eight, Stetson Work Papers,  
21 Irrigation Consumptive Use, Historic Lands.

22 MR. WHITE: The State would offer HS-9 for the  
23 purpose of showing the facts and data upon which Mr.  
24 Stetson relied in arriving at the average annual  
25 diversion in terms of acre-feet per acre for the lands



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within the Wind River Federal Irrigation Project,  
Midvale Irrigation District, and LeClair Irrigation  
District.

THE SPECIAL MASTER: Exhibit 9, Stetson Work  
Papers, Water Due the Historic Lands by Units. Does  
that sound all right?

MR. WHITE: The State would offer HS-10 for  
purposes of showing the results of Mr. Stetson's  
interim conclusions with respect to the average  
acres irrigated and annual feet diverted in the  
FIPs, as well as the two districts just mentioned,  
during the periods of the studies shown in the  
footnotes, as well as the calculations or values  
used in the calculations of the diversion of water  
in acre-feet per acre.

THE SPECIAL MASTER: Let the record show,  
if not the exhibit itself, that HS-9 contains  
164 pages.

HS-10, Stetson Work Papers, Average Irrigated  
Acreage, FIPs.

MR WHITE: The State would offer HS-11 for  
the purpose of showing the field numbers and tracts  
included within the lands described on Exhibit HS-3,  
4, and 5, as well as for the purpose of showing the  
facts and data upon which Mr. Stetson in part relied





1 in reaching his opinion.

2 THE SPECIAL MASTER: HS-11, Stetson Work Papers,  
3 Supplementing HS-3, 4, and 5, including Subjects on  
4 Title VII Lands.

5 THE WITNESS: Type VII.

6 THE SPECIAL MASTER: Type VII Lands.

7 MR. WHITE: Yes, sir. Your Honor, the State offers  
8 HS-12 for the purpose of showing the facts and data and  
9 interim conclusions relied upon and reached by Mr.  
10 Stetson in his cost estimates for Type VII lands in  
11 and out of the FIPs, containing somewhere in excess of  
12 120 pages.

13 THE SPECIAL MASTER: All right. Twelve, the  
14 Sketch and Work Papers in Progress, as Mr. White  
15 has just described.

16 MR. WHITE: Your Honor, the State offers HS-13  
17 for the purpose of showing the location and shape of  
18 the diversion facilities and conveyance facilities  
19 associated with the lands about which Mr. Stetson  
20 has testified, as well as containing facts and data  
21 upon which he relied concerning the unadjudicated  
22 lands in a portion of his testimony.

23 THE SPECIAL MASTER: HS-13, Historic Lands  
24 Claimed Showing Diversion and Conveyance Facilities.

25 MR. WHITE: As well as including facts relied



1 upon in reaching his opinion.

2 THE SPECIAL MASTER: I am talking about the  
3 caption of the index, but for the record you may  
4 state whatever purposes you are introducing the  
5 evidence. That's all right. I am repeating only  
6 that part that would be used in the Master's Report,  
7 Index of Exhibits.

8 MR. WHITE: Your Honor, the State would offer  
9 HS-14 and 14-A for the purposes of showing interim  
10 conclusions, as well as facts and data relied upon  
11 by Mr. Stetson in reaching his opinions with respect  
12 to Type VII lands, all subject to the stipulation  
13 of counsel stated to the Court this morning.

14 MR. ROGERS: Excuse me, Mr. White. This is  
15 being designated what numbers?

16 THE SPECIAL MASTER: Fourteen and then 14-A.

17 MR. WHITE: And as I understand the stipulation,  
18 subject to approval by the United States counsel,  
19 14-A will be substituted for both 14 and HS-14.  
20 14-A and 14 are identical, except for the annotations.

21 MR. ROGERS: Shouldn't we call it 14-B when it  
22 is admitted?

23 THE SPECIAL MASTER: No, you have already made  
24 your stipulation and agreement this morning with regard  
25 to the marking and return of the originals to the witness.



1 THE WITNESS: I thought the attorneys made the  
2 stipulation.

3 THE SPECIAL MASTER: Yes, the attorneys.

4 MR. WHITE: Yes. We agreed to provide you a copy.  
5 It is all right with me and maybe it would make it  
6 easier to deal with in the record if it was 14-B.  
7 If the Court and counsel have no objection, I, at this  
8 time, will offer the replacement as 14-B, subject to  
9 the stipulation.

10 THE SPECIAL MASTER: All right. Then 14-B will  
11 also be admitted, and it will be the annotated copy.

12 MR. WHITE: The State would offer HS-15, an item  
13 of eight pages, for the purposes of showing the facts  
14 and data, as well as the interim conclusion reached  
15 by Mr. Stetson as part of the opinions which he  
16 reached or testified to during his direct examination.

17 THE SPECIAL MASTER: HS-15, Stetson Work Papers,  
18 Costs Showing Value of the Various Irrigation System  
19 Costs.

20 MR. WHITE: Finally, I offer GC-92 for the second  
21 time.

22 THE SPECIAL MASTER: GC-92 will be what? It will  
23 be the Adjudicated Water Rights Certificate. All right.  
24 I presume there is no voir dire of these exhibits?

25 MR. CLEAR: I think with respect --



1 THE SPECIAL MASTER: I am wrong again.

2 MR. CLEAR: -- with respect to Exhibits 3, 4, 5, and  
3 I believe 10, you recall there were some mathematical  
4 changes made on those.

5 THE SPECIAL MASTER: Yes, there were corrections  
6 made.

7 MR. CLEAR: Could we see those to make certain  
8 what the final testimony is?

9 THE SPECIAL MASTER: Do you want to see my work  
10 papers, or the actual exhibit?

11 MR. CLEAR: The actual exhibit to make sure we  
12 understand.

13 THE SPECIAL MASTER: All right.

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1 THE SPECIAL MASTER: If there is no further voir dire,  
2 United States' Exhibits WRIR HS-1 through 15, which include  
3 a 14-A and a 14-B, and Plaintiff's Exhibit GC-92, the  
4 same are hereby admitted into evidence.

5 (The instruments previously iden-  
6 (tified as U.S. Exhibits WRIR  
7 (HS-1, -2, -3, -4, -5, -6, -7, -8,  
8 (-9, -10, -11, -12; -13, -14,  
9 (-14-A, -14-B, -15, and Plaintiff's  
10 (Exhibit GC-92, respectively, were  
11 (received in evidence.

12 MR. WHITE: Could I have one minute, please?

13 (Pause.

14 MR. WHITE: We have no further questions, Your Honor.

15 MR. ECHOHAWK: Your Honor, at this time I would like  
16 to inquire of Mr. White, when he offers them for these  
17 specific purposes, is it limited to those purposes?

18 MR. WHITE: Yes.

19 THE SPECIAL MASTER: Unless you two wish to stipulate  
20 to the truth of the general contents or there's some general  
21 purpose that both of you will agree, they will just be ad-  
22 mitted for the purpose they were offered, I believe, unless  
23 you show me some law otherwise.

24 MR. ECHOHAWK: I just wanted to make sure.

25 THE SPECIAL MASTER: All right. Is there any re-  
direct of Mr. Stetson?

MR. ECHOHAWK: Your Honor, in light of Mr. White's  
last comment, we would move to strike any testimony from



1 Mr. Stetson relating to the HB-137 series exhibits.

2 You recall the testimony dealt with Type VII lands or  
3 what Mr. White alleged to be Type VII lands within adjudi-  
4 cated areas.

5 Within the transcript, on Page 2676 from Mr. Bill-  
6 stein's testimony when Mr. White offered that HB-137 series,  
7 he limited the offer specifically to show the election of  
8 remedies or choice of substantive rights to support his  
9 argument, and that is the sole purpose that those were  
10 offered for.

11 Therefore, I think it's improper for him -- for his  
12 inquiry from Mr. Stetson relating to the truth of their  
13 contents as to those lands being Type VII, and also I  
14 think, therefore, it reflects on his later offer of proof  
15 since there was absolutely no foundation. And those exhi-  
16 bits were offered for that limited purpose.

17 THE SPECIAL MASTER: Could I have a very quick look at  
18 those 137 series? I think I can make a ruling without hav-  
19 ing to hear arguments or briefs.

20 MR. WHITE: Your Honor, we will get one of those.  
21 Those were the foldout sheets, and they had various columns  
22 on them that showed permit numbers. It showed amount of  
23 land that was adjudicated in trust and fee.

24 I have sent Mr. Devine to get one. I think they have  
25 not yet been put away in our notebooks, so they should be



1 easy to get.

2 THE SPECIAL MASTER: May I see the transcript page  
3 you are referring to and would you read the page number  
4 again?

5 MR. ECHOHAWK: 2676.

6 (A document was handed to the  
7 (Special Master by Mr. Echohawk.

8 THE SPECIAL MASTER: I'm going to overrule that motion,  
9 and I'd like to state my reasons for that, Mr. Echohawk.

10 While at first it appears from the transcript that the  
11 offer by Mr. White was as they apply to the election of  
12 remedies or choice of substantive right argument, I'm not  
13 sure that I can -- if I accept the substantive right argu-  
14 ment, he can't use the very things he's tried to point out  
15 in the exhibits, and I'm afraid if I strike testimony now  
16 which may not have that much credibility really to what I'm  
17 going to do -- it tangentially touches it -- I'm at the risk  
18 of really, really writing a decision, whereas if I admit it  
19 and overrule you, I'm not going to commit any reversible  
20 error. I may be in error, but not reversible error, and I  
21 would rather go down that way.

22 MR. ECHOHAWK: I would point out that the pages prior  
23 to that and the discussion on the 137 series relate only to  
24 the permit numbers, and there's absolutely no discussion  
25 whatsoever of the meaning of the land types.



1 THE SPECIAL MASTER: But, you see, there is a series  
2 there that the State and I are maybe going to have differ-  
3 ent philosophies regarding permits, and I'm not sure that  
4 when he said he was going to offer those exhibits on the  
5 election of remedies on a permit discussion that he would  
6 not have a right to refer to them on an occasional question,  
7 so I appreciate your point, and there may be other types of  
8 law in different litigation where I would certainly sustain  
9 you, but this is a class action, and it's a breed of cat of  
10 their own field -- and this is a breed of cat in its own  
11 jungle. Change that, please. The Supreme Court just said  
12 so a couple months ago.

13 Any redirect?

14 MR. CLEAR: Yes, Your Honor, just a very little bit.

15 REDIRECT EXAMINATION

16 BY MR. CLEAR:

17 Q Mr. Stetson, do you have Exhibit HS-11 before you, or do  
18 you want --

19 A What is HS-11?

20 Q Those are your worksheets.

21 A Yes, I have that.

22 Q You can use this if you want.

23 A Well, I have mine.

24 THE SPECIAL MASTER: We have it here if you don't have.

25 stetson - redirect - clear





1 Have you got it?

2 Q (By Mr. Clear) As I understand this exhibit, this relates  
3 to the Type VII lands and shows each unit by aerial photo  
4 with a field number, and it also shows the present value of  
5 cost per acre and present value return per acre; is that  
6 correct?

7 A. Yes, and it shows other data as well.

8 Q Right. The present value returned and present value costs  
9 were both determined by Mr. Dornbusch; is that right?

10 A. Yes, that's true.

11 Q And as a result of those determinations, you've eliminated  
12 some acres or some tracts from your final determination;  
13 is that right?

14 A. Well, the economist came up with present value of cost  
15 exceeding present value of returns, so those were not in-  
16 cluded in our tabulation of acreage for which we were  
17 determining water requirements.

18 They were listed in the unfeasible acreage column.

19 Q Do you know whether these values will be the final values  
20 of the present values of returns and present value costs  
21 that Mr. Dornbusch will testify about?

22 MR. WHITE: Objection, Your Honor. This witness  
23 certainly can't answer for Mr. Dornbusch on redirect if  
24 he can't answer for Mr. Dornbusch on cross-examination.

25 stetson - redirect - clear



1 MR. CLEAR: Your Honor, I'm just asking whether he knew  
2 or not. I'm not asking him --

3 THE SPECIAL MASTER: You can ask him whether he knows,  
4 but I don't think he should be permitted to --

5 THE WITNESS: I think if I will answer the question  
6 it will clear it up. I have no idea.

7 THE SPECIAL MASTER: All right.

8 MR. CLEAR: Your Honor, I want to do -- and I'm not  
9 sure if it is really proper redirect, but --

10 THE SPECIAL MASTER: Well, I appreciate your candor.

11 MR. CLEAR: Since we don't know these are Mr.

12 Dornbusch's final figures, and there may be some changes  
13 in the figures and we may take some of these parcels out  
14 and put some back in, and vice versa, I thought it would  
15 be well to have Mr. Stetson explain if there was a method  
16 that we could change his final figures if some of these  
17 figures are changed without calling him back.

18 Q. (By Mr. Clear) Could you explain if there is a method to  
19 do that? If there are changes made on this, only the  
20 final Type VII lands, could we determine the acreage and  
21 water duty?

22 MR. WHITE: I object, Your Honor. It calls for  
23 speculation. We don't know that there are going to be  
24 changes, and, secondly, if there are changes, we are  
25 stetson - redirect - clear



1 entitled to cross-examine this witness about those changes.

2 THE SPECIAL MASTER: I believe I can frame a question  
3 that will meet the objections, and get your point that you  
4 would like to make.

5 If, on a final analysis there are to be certain areas  
6 of Type VII lands taken out of this compilation, what would  
7 your procedure be to do it?

8 THE WITNESS: My procedure would be to look at which  
9 field was taken out, which climatic zone it was located in,  
10 what the unit consumptive use was in that climatic zone,  
11 go back to the unit diversion rate for that particular rate,  
12 multiply it by the acreage, and take out the acreage and the  
13 diversion requirements.

14 This could not only be done for the Type VII, but if  
15 there were things like Mr. White referred to overlaps and  
16 fee lands, instead of trust lands, it could be done in  
17 either the adjudicated or the unadjudicated in use.

18 THE SPECIAL MASTER: Using the formula you just  
19 recited?

20 THE WITNESS: Using that same approach, yes.  
21 The figures from which to do it are all in these exhibits  
22 that were admitted. They are at various places, but they  
23 are in there.

24 THE SPECIAL MASTER: And by the same token, if you  
25 stetson - redirect - clear



1 were to add in, it would be cranked into the system?

2 THE WITNESS: Yes.

3 MR. CLEAR: Thank you.

4 That's all I have.

5 MR. ROGERS: The tribes have no re-whatever --

6 recross.

7 THE SPECIAL MASTER: Mr. Echohawk?

8 MR. ECHOHAWK: No, Your Honor.

9 THE SPECIAL MASTER: Mr. Membrino?

10 MR. MEMBRINO: No, Your Honor.

11 THE SPECIAL MASTER: If that's it --

12 MR. WHITE: You said that if they didn't get into  
13 these certificates we were talking about as being outside  
14 the reservation on redirect, you would allow me to do  
15 so on cross.

16 MR. CROSS: No, he said just the opposite.

17 THE SPECIAL MASTER: I thought if they touched on  
18 them on redirect --

19 MR. WHITE: I misunderstood. Then we have no  
20 objection to the witness being excused and subject to  
21 being under the jurisdiction of the Court.

22 THE SPECIAL MASTER: Thank you for the week you have  
23 put in with us, and we will see more of you.

24 MR. RADESOVICH: I reserve the right -- I have not had  
25 stetson - redirect - clear



17-9

1 an opportunity of looking at the transcript of either  
2 direct or part of cross. I would reserve the right to ask  
3 the witness some questions after --

4 MR. ROGERS: I object to that. Mr. Radesovich could  
5 come to the Court at any time. The witness has now  
6 concluded his testimony. We have been through redirect  
7 on the government, and he's been sitting in Court here  
8 all day today.

9 THE SPECIAL MASTER: Gentlemen, I appreciate your  
10 all rising in unison and in chorus objecting, and maybe you  
11 have got a procedural point but this is a difficult  
12 situation with thirty-five or forty lawyers in the Big  
13 Horn Basin who can't afford to come down and take in  
14 every day and every week of these proceedings. They have  
15 tried to make up a roster and come down and audit, and  
16 they are doing it as best they can.

17 I'm not reserving the right for Mr. Webster, Mr.  
18 Donnell, Mr. Housell, for everybody else in the Big Horn  
19 Basin to come down and cross-examine, but if one is here  
20 and might want to reserve a right to ask a few questions  
21 on Mr. Stetson's return, I think it is a proper reservation  
22 and I hope you can appreciate it.

23 MR. ROGERS: What do you mean by "upon his return"?  
24 Is the witness to wait around until Mr. Radesovich --  
25 stetson - redirect - clear



1 THE SPECIAL MASTER: Of course not. This witness  
2 is under the jurisdiction for recall by any of you as we  
3 proceed in the case as your witness. The State can call  
4 Mr. Stetson for their witness if they have something  
5 they think they can prove with him, and in that event,  
6 if Mr. Radesovich happens to be in Court at that time,  
7 he can ask a question or two.

8 That's about all you are reserving?

9 MR. RADESOVICH: I'm not asking to call back Mr.  
10 Stetson so the federal government is going to have to  
11 pay his way back here. If there is a legitimate question  
12 that I have, I will exercise my right to do so if Mr. Stetson  
13 is back here.

14 MR. ROGERS: At what time?

15 MR. RADESOVICH: And I'm sure I will be checking  
16 with --

17 THE SPECIAL MASTER: If no one asks for this witness  
18 again, there will be no opportunity to recross. All  
19 he asked was in the event that this witness is brought  
20 in for any further proceedings in this litigation -- and  
21 he always has that right. He doesn't have to ask for  
22 that.

23 MR. ROGERS: He may call him in his own case. Is  
24 that what we are referring to?

25 stetson - redirect- clear



1 THE SPECIAL MASTER: I have no idea what he has in  
2 mind, whoever he represents. He's counsel of record. I  
3 have no idea who he represents, or that the City of  
4 Lander and the others are none of my business. That's  
5 between him and his clients.

6 MR. ROGERS: I want to make sure that whatever he's  
7 reserving his right to call Mr. Stetson back relates  
8 only to the time that he's presenting his case for his  
9 clients and would be calling him as an adverse witness.

10 THE SPECIAL MASTER: I think that's a fair  
11 reservation, and that's about all he called him back.

12 MR. WHITE: I think he might want to do it if the  
13 State called him back, but I think that is the only  
14 circumstance.

15 THE SPECIAL MASTER: I think you can understand  
16 why I'm trying to be fair in that ruling.

17 Thank you very, very much.

18 THE WITNESS: Am I excused temporarily?

19 THE SPECIAL MASTER: Many happy returns.

20 All right. Proceed. Do you want to pick up papers  
21 or maps?

22 MR. WHITE: Your Honor, we have been going a while.  
23 I wonder if I might ask the indulgence of the Court so  
24 I can switch the pile of papers on my desk.

25 stetson - redirect - clear



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THE SPECIAL MASTER: Let's take a fifteen-minute recess to get ready for the next witness.

(Short recess.)

stetson - redirect- clear





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25WOLDEZION MESGHINNA

was recalled as a witness by the United States and, having been previously duly sworn, testified as follow, to-wit:

DIRECT EXAMINATION (RESUMED)

THE SPECIAL MASTER: Dr. Mesghinna, you are the same Dr. Mesghinna who has been testifying earlier in this case?

THE WITNESS: Yes.

THE SPECIAL MASTER: Fine. Welcome to the witness stand. Take off your coat, if you want to.

MR. CLEAR: Your Honor, we have a stipulation with the State about recalling witnesses and I think we ought to state it for the record. These people know more about it than I, but basically both the United States and the State will have the opportunity to recall their own witnesses to testify on a different subject matter than they testified to before.

Dr. Mesghinna is the first person we will recall. At this time we thought we should get your approval.

THE SPECIAL MASTER: And you may do so without objections by the other side?

MR. WHITE: That is the stipulation.

THE SPECIAL MASTER: Even though it wasn't on the notice of witnesses?

MR. ROGERS: I understood, Your Honor, that this also extended to witnesses of the Tribes, although we don't



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presently plan to do that sort of thing.

THE SPECIAL MASTER: All right.

MR. WHITE: The record should reflect that the State of Wyoming agreed to that.

THE SPECIAL MASTER: Yes. Thank you, Mr. White.

MR. ROGERS: Your Honor, also it was intended by this originally, and we have run into an exception to that already, but the cross-examination of the witness would be closed out. In other words, if Dr. Mesghinna testified about future lands earlier, this is a new subject, and his cross-examination should be closed out at the time he originally testified about future lands, and it should be closed out on the subject, so that when he returns to the stand it would be devoted to the new subject.

We have made one exception to that under your Master's ruling earlier in the week with respect to Mr. Dornbusch's testimony, but that is the intent in which we entered the original stipulation.

THE SPECIAL MASTER: I appreciate that. And certainly I am not implying Mr. White would ask some questions of Dr. Mesghinna on future lands. He wouldn't do anything like that.

MR. WHITE: I would do more than imply, Your Honor. I might use the previous testimony by the same witness to contrast with an approach or a result or something he



1 is saying about present lands. I would not cross-examine  
2 with respect to that previous testimony, but I would use  
3 that previous testimony.

4 THE SPECIAL MASTER: If it applies to the subject  
5 testimony before you.

6 MR. WHITE: Just like I might use a deposition.

7 THE SPECIAL MASTER: I think we are in agreement.

8 Go ahead, Mr. Clear.

9 DIRECT EXAMINATION

10 BY MR. CLEAR:

11 Q Dr. Mesghinna, you testified before about what has been  
12 referred to as the future project lands. Can you tell the  
13 Court what you are going to testify to now?

14 A At this time I am going to testify on the Type VIII lands  
15 and the irrigable lands of the Arapahoe Ranch area.

16 MR. WHITE: I'm sorry, I didn't hear.

17 MR. CLEAR: Irrigable lands of the Arapahoe Ranch.

18 MR. WHITE: Type VIII lands and the irrigable land  
19 of the Arapahoe Ranch.

20 Q The Arapahoe Ranchlands, have they been sometimes referred  
21 to as the Owl Creek lands?

22 A Yes. I'm referring to these, but these are newly classified  
23 lands.

24 THE SPECIAL MASTER: Newly classified lands?

25 mesghinna - direct - clear



1 THE WITNESS: Yes.

2 Q Explain to us what Type VIII lands are.

3 THE SPECIAL MASTER: Yes, now we can do that which  
4 I asked earlier.

5 A Okay. Type VIII lands are newly classified lands. They  
6 are irrigable lands, within the boundaries of the Federal  
7 Irrigation Project.

8 These lands have never been developed before. They  
9 are newly classified lands.

10 The lands that I'm going to discuss are in the  
11 Upper Wind Unit, in the Coolidge Unit, in the Ray Unit,  
12 and in the Subagency Unit.

13 THE SPECIAL MASTER: What?

14 THE WITNESS: Subagency Unit.

15 THE SPECIAL MASTER: Subagency?

16 THE WITNESS: Subagency Unit. And the Johnstown  
17 Unit. And also the ones that I referred to before, the  
18 Arapahoe Ranch area.

19 Q What did you do with respect to these lands? What type  
20 of study did you make and what type of determinations  
21 did you come up with?

22 A The studies that I've done on these areas is quite the  
23 same as the studies I made on the future land areas.

24 So, we determined the proper requirement or diversion  
25 mesghinna - direct - clear



1 requirements for the areas, and also we estimated the costs  
2 necessary to bring these lands into full production.

3 Meaning that we have estimated the costs for facilities,  
4 such as on-farm systems, pipe network, pump and pumping  
5 plants, canals, and related -- well, I don't want to say  
6 canals, because the canals for the Type VIII lands are  
7 existing canals. But for the Arapahoe Ranch area, there  
8 is a small ditch that we have also estimated the cost on  
9 it. And also drainage costs.

10 This being the investment costs. We also have esti-  
11 mated operation and maintenance costs, such as, of course,  
12 the operation and maintenance of the area, plus the demand  
13 or power costs, and also energy costs.

14 So, this is what we have done in a sense.

15 Q You said you didn't develop any canal costs for the Type  
16 VIII lands, and I take it, then, the Type VIII lands are  
17 feeding off existing canals?

18 A Yes. The Type VIII lands are very few lands and they  
19 receive water from the existing canals of the units that  
20 I just mentioned, such as Upper Wind and so on and so on.  
21 So, canals are not necessary for those lands.

22 However, we have the pipeline network that goes  
23 from the canals and subcanals.

24 THE SPECIAL MASTER: Pardon me. Did your similar  
25 mesghinna - direct - clear



1 work include cropping patterns in this area?

2 THE WITNESS: Yes. The cropping pattern is exactly  
3 the same. The irrigation water requirement is exactly the  
4 same. That is why I don't want to go through all that,  
5 because I have done it and I said it before this time,  
6 unless someone wants me to say it again.

7 THE SPECIAL MASTER: Did your work bring out a study  
8 of evapotranspiration of these lands, because these lands  
9 were different than other lands?

10 THE WITNES: The reason why we separated these lands  
11 was to escape from confusion, first of all. The other  
12 lands, the future lands, the lands you call future lands,  
13 are big chunks of land that have their own canals, their  
14 own systems, and have administration, and so on.

15 But these lands, the Type VIII lands, are administered  
16 within the Federal Irrigation Project lands. So, that  
17 is the reason that we separated them.

18 THE SPECIAL MASTER: Go ahead, Mr. Clear.

19 Q (By Mr. Clear) Earlier when you were discussing the  
20 future lands you went through the ten or eleven steps  
21 and you talked about the climate zones, cropping patterns,  
22 evapotranspiration, on-farm systems, et cetera, et cetera.  
23 Did you do exactly the same type of things here, using the  
24 same formulas and so on, with respect to these Type VIII

25 mesghinna - direct - clear



1 lands?

2 A Yes. They are essentially the same, except those areas  
3 that I've said there are some differences.

4 One of the main differences is all the lands that --  
5 all the Type VIII lands in the Arapahoe Ranch are designed  
6 for hand moved sprinkler irrigation systems. There are  
7 no side roads there.

8 The reason for this is because these lands are small  
9 tracts and we have essentially used the hand moved irriga-  
10 tion systems.

11 The estimation of, for example, like, the conveyance  
12 efficiency for the existing canals, as I have stated it  
13 in the summary report, we have used, for example, 63 per-  
14 cent of the conveyance efficiency in the canals.

15 In our future lands we determined really the effie-  
16 ciencies, conveyance efficiencies, using formulas. But  
17 on this one we have used the projected Soil Conservation  
18 Conveyance Efficiencies for lands on those on the Wind  
19 River areas.

20 Q What is that conveyance efficiency?

21 A For the year 2000 it is depicted to be about 63 percent.  
22 So, we used 63 percent, or about 63 percent. So, we  
23 have used a 63 percent.

24 Other than that, the application efficiency is 67  
25 mesghinna - direct - clear



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percent in all lands.

The distribution efficiency -- that means the efficiency between the on-farm system and the pumps -- is assumed to be 95 percent of the same as the future lands.

\* \* \* \* \*

mesghinne - direct - clear





1 Q (By Mr. Clear.) Could you give us your conclusion  
2 as to the number of acres in each unit and the water  
3 duty for the diversion requirements for those acres  
4 in each unit?

5 MR. WHITE: Objection, Your Honor. Object on  
6 several grounds.

7 One is a general foundation objection, but the  
8 other is there's been no showing yet that the Type  
9 VIII lands or the Arapahoe Ranch lands to which Dr.  
10 Mesghinna has been -- or about which Dr. Mesghinna  
11 has been asked to give his opinion are lands, A,  
12 within the boundaries of the reservation as stipulated  
13 by the parties and, B, if they are within those  
14 boundaries, whether or not they are on trust lands.

15 In other words, there's been no showing that  
16 they are within the stipulation or within the lands  
17 shown on M-1 and M-2.

18 THE SPECIAL MASTER: I would sustain and even  
19 go a little further. I would like to have something  
20 in the record -- I think it's appropriate that the  
21 record contain something showing that the Type VIII  
22 newly classified arable lands were newly classified  
23 arable lands. Who said they are Type VIII? Who  
24 worked over these lands? Who gives us some evidence  
25 of depth to barrier and hydrologic conductivity?



1 Who says these lands are arable lands? There comes  
2 to my mind a natural doubt, and if a natural doubt  
3 arises in my mind, God only knows what is going on  
4 in their mind.

5 MR. WHITE: The record should reflect he was  
6 pointing at me, and I was going to show the Master  
7 what I have in my inside pocket here (indicating).

8 THE SPECIAL MASTER: I think I will sustain  
9 the objection. We can bring that out.

10 Acreage, we can begin with acreage, but I  
11 would like to know that too on each of these. You  
12 may stipulate on whether -- you know some of this  
13 is in the Owl Creek later acquisitions, so maybe  
14 in two or three minutes of a stipulation we can  
15 pin that down right now.

16 MR. CLEAR: I think we can just ask the witness,  
17 Your Honor.

18 Q (By Mr. Clear) With respect to the lands you have  
19 referred to as Type VIII lands, on what basis did  
20 you determine that these were Class 8 lands, or where  
21 did you get your information?

22 A Well, to start with, they are not Class 8. They are  
23 Type VIII lands.

24 Q I am sorry.

25 mesghinna - direct - clear



1 A And these lands were given to us from HKM, and  
2 the lands range from Class 1 to Class 4.

3 However, when we received these lands, we  
4 deleted out the Class 4 lands. We used only  
5 Class 1 and Class 3 lands in our study.

6 MR. WHITE: Your Honor, I think that the  
7 general foundation objection might be resolved  
8 if the witness were just asked if the lands  
9 which he considered the Type VIII lands, are  
10 the same lands that Mr. Waples testified to in  
11 part during his examination.

12 THE SPECIAL MASTER: Do you know if these  
13 are the same lands that Dr. Waples testified to  
14 on his direct, a part of them?

15 THE WITNESS: I believe so.

16 Q (By Mr. Clear) Do you know if --

17 A With the exception of Arapahoe Ranch. Arapahoe Ranch  
18 was under Mr. Kersich.

19 THE SPECIAL MASTER: Mr. Kersich?

20 THE WITNESS: Yes.

21 THE SPECIAL MASTER: All right. That's what  
22 Mr. White wanted to know.

23 Go ahead, Mr. Clear.

24 Q (By Mr. Clear) Now, once you got what's been designated  
25 mesghinna - direct - clear



1 the Type VIII lands from Mr. Waples and Mr. Kersich,  
2 what did you do with them?

3 A. Well, we designed a system for these lands, and we also  
4 determined the crop requirements and the operational  
5 requirements as is shown on my summary report, and  
6 as I have said earlier, we threw out those Class 4  
7 lands because we didn't think that those Class 4 lands  
8 are fit for the cropping patterns that we have on  
9 these lands.

10 The cropping pattern is the same as the future  
11 lands.

12 The irrigation requirements, net irrigation  
13 requirements are the same as the future lands.

14 The differences in net irrigation requirements come  
15 from the conveyance efficiencies that I mentioned  
16 before, which is 63 percent on this Type VIII lands.

17 However, on that ditch, the small ditch that I said  
18 in Arapahoe Ranch, the conveyance efficiency is from  
19 May to September, '79, I believe 81, 81, 81, and 80  
20 percent.

21 MR. WHITE: Your Honor, could I ask that the  
22 answer to the last question be read back because I  
23 didn't understand what the witness said. I apologize.

24 (Thereupon, the following  
25 (answer was read back as follows:

mesghinna - direct - clear



1 ("A. Well, we designed a system  
 2 (for these lands, and we also  
 3 (determined the crop requirements  
 4 (and the operational requirements  
 5 (as is shown on my summary report,  
 6 (and as I have said earlier, we  
 7 (threw out those Class 4 lands  
 8 (because we didn't think that those  
 9 (Class 4 lands are fit for the  
 10 (cropping patterns that we have on  
 11 (these lands. The cropping  
 12 (pattern is the same as the future  
 13 (lands. The irrigation require-  
 14 (ments, net irrigation requirements  
 15 (are the same as the future lands.  
 16 (The differences in net irrigation  
 17 (requirements come from the convey-  
 18 (ance efficiencies that I mentioned  
 19 (before, which is 63 percent on  
 20 (this Type VIII lands. However,  
 21 (on that ditch, the small ditch  
 22 (that I said in Arapahoe Ranch,  
 23 (the conveyance efficiency is  
 24 (from May to September, 79, I  
 25 (believe 81, 81, 81, and 80 percent.

14 THE SPECIAL MASTER: And irrigation requirement was  
 15 net irrigation, but that's all right.

16 MR. WHITE: And how many 81's?

17 THE SPECIAL MASTER: Three.

18 MR. WHITE: I'm sorry, Your Honor.

19 THE SPECIAL MASTER: This is in the climatic zone  
 20 as far North as Burris?

21 THE WITNESS: Arapahoe Ranch has a climatic zone --

22 THE SPECIAL MASTER: Of its own?

23 THE WITNESS: Of Diversion Dam.

24 THE SPECIAL MASTER: Of Diversion Dam?

25 mesghinna - direct - clear



1 THE WITNESS: Yes.

2 THE SPECIAL MASTER: Of Diversion Dam. Okay.

3 THE WITNESS: I have explained the reason why  
4 it has the Diversion Dam before this time. The  
5 reason why we have Diversion Dam Climatic Zone  
6 for the Arapahoe Ranch area is because the nearest  
7 climatic station to Arapahoe Ranch is Thermopolis,  
8 but Thermopolis is in a very low elevation and the  
9 temperature is quite warm -- hot, so if we used that  
10 temperature to determine the crop requirements, we  
11 would overestimate the water duty for the Arapahoe  
12 Ranch, so the Arapahoe Ranch is almost in the same  
13 or similar elevation as the Diversion Dam, and we  
14 have used the Diversion Dam Climatic Zone.

15 THE SPECIAL MASTER: Mr. Clear, I didn't mean  
16 to disrupt you from your plan of direct when you  
17 asked for acreage. You may proceed with acreage now,  
18 and I think there's no objection.

19 MR. WHITE: I do have an objection, Your  
20 Honor.

21 THE SPECIAL MASTER: Do you wish to proceed  
22 with acreage? The question is on acreage. You  
23 may want to change your strategy.

24 MR. CLEAR: The problem is, as he has testified,  
25 the study he did is very, very similar as to the future



1 study except he didn't find it necessary to design  
2 a canal system nor did he use side-roll sprinklers,  
3 and that's a question of how much do we want to  
4 repeat.

5 THE SPECIAL MASTER: If he gives the acreage  
6 in these areas and the water duty for each -- and  
7 that's when we hit a string of objections, but they  
8 have been disposed of, most of them, and we are  
9 back to acreage, and I welcome your question if you  
10 wish to make it.

11 MR. WHITE: I have two objections, assuming  
12 the same question.

13 THE SPECIAL MASTER: He may not want to make it.

14 MR. CLEAR: I'm anxious to hear the objection,  
15 so I'll ask it.

16 THE SPECIAL MASTER: Okay. Mr. White, what are  
17 your objections to the question on Dr. Mesghinna  
18 proceeding to acreage now?

19 MR. WHITE: Two parts, Your Honor. First is lack  
20 of foundation, and the lack of foundation would be --  
21 the objection would be obliterated if Mr. Clear could  
22 simply ask Dr. Mesghinna if, to Dr. Mesghinna's personal  
23 knowledge, the arable land base that he's placing his  
24 fields on in Type VIII in the Arapahoe Ranch are of  
25 his personal knowledge the same arable lands testified



1 to by Mr. Kersich and Mr. Waples so we don't  
2 run into the same problem we had last time.

3 If he says they are the same lands, I  
4 believe him. I believe they are. It isn't  
5 quite the same as I know they are.

6 And the second ground is relevancy until  
7 there is a showing that these particular lands  
8 about which Dr. Mesghinna is about to testify  
9 are first; within the boundaries of the  
10 reservation as established by the stipulation  
11 and, second, on trust land that is not re-acquired  
12 trust land that has been in continual trust status  
13 since the 1960's --

14 THE SPECIAL MASTER: The objections are  
15 sustained and recognized.

16 Proceed, Mr. Clear, to remove them with a few  
17 questions, and gentlemen at counsel table can  
18 probably come up with a stipulation or two on the  
19 second part.

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1 MR. WHITE: You might be able to do it all by  
2 stipulation.

3 THE SPECIAL MASTER: Do you want to try?

4 MR. WHITE: If we can take a couple minutes, we will  
5 try.

6 THE SPECIAL MASTER: All right. Take a couple minutes.  
7 You may be able to do it all.

8 (A recess was taken from 3:30 p.m.,  
9 (until 3:40 p.m.

10 THE SPECIAL MASTER: Let's get back on the record.  
11 Yes, Mr. Clear?

12 MR. CLEAR: Your Honor, Mr. White has agreed that  
13 they are all inside the reservation boundaries and that  
14 they are all lands currently held in trust by the United  
15 States for the benefit of either the tribes or the  
16 individual Indians.

17 THE SPECIAL MASTER: The benefit of the tribes or  
18 individual Indians?

19 MR. CLEAR: For the benefit of the tribes.

20 THE SPECIAL MASTER: Or for the benefit of  
21 individual Indians. All right.

22 MR. CLEAR: He now wants to check whether they are  
23 lands which are reacquired; that is, lands, which at one  
24 time had passed out of federal ownership and have been

25 stetson - redirect - clear



1 reacquired by the federal government.

2 MR. WHITE: That was part of my objection, and Mr.  
3 Clear is absolutely right.

4 We will withdraw the objection insofar as it goes  
5 to the reservation boundaries and insofar as it goes to  
6 the present trust status of those lands, although we may  
7 raise issues later concerning this trust status as to  
8 allotments.

9 They are either in trust for the tribe or in trust  
10 for the benefit of individual Indians.

11 But what my objection also covered was whether they  
12 were reacquired lands.

13 THE SPECIAL MASTER: And what the date of acquisition  
14 was on what lands?

15 MR. WHITE: We want to know what the date of  
16 reacquisition is and if they came in M-1 and M-2, as they  
17 did for others, before I would be willing to stipulate  
18 they are not.

19 I would remove my objection on the reacquired aspect.  
20 I think it is a good objection on the reacquired lands,  
21 and I am asking we take the time to look at them and  
22 maybe we will be able to have a stipulation, rather than  
23 going through cross-examination.

24 THE SPECIAL MASTER: Can we proceed now with a  
25 stetson - redirect - clear



1 description of the acreages?

2 MR. CLEAR: No, as they have just said none of the  
3 lands were reacquired.

4 MR. WHITE: Then I will withdraw my objection.

5 THE SPECIAL MASTER: Very good. We will proceed with  
6 the question, Mr. Clear.

7 MR. CLEAR: They are all part of the reservation  
8 and none have been reacquired.

9 MR. WHITE: The best thing to do, I'll just withdraw  
10 my objection.

11 THE SPECIAL MASTER: All right.

12 MR. ROGERS: We also have a stipulation, do we not now?

13 MR. WHITE: No, I don't --

14 THE SPECIAL MASTER: There is nothing to stipulate to.

15 MR. WHITE: Your Honor, I will go ahead and make a  
16 stipulation, to make it easier on the record.

17 I will stipulate that a comparison of the Type VIII  
18 lands and the Arapahoe ranch lands with the Exhibits M-1 and  
19 M-2 would disclose that those lands are currently in trust  
20 either for the tribes or individual Indians, or within the  
21 boundary of the reservation, as set forth in the stipulation,  
22 and are not reacquired.

23 I want to reserve the right to challenge the  
24 information on M-1 or M-2, but that is what is shown by that  
25 stetson - redirect - clear



1 examination.

2 THE SPECIAL MASTER: All right. Fine.

3 Proceed, Mr. Clear.

4 MR. ROGERS: May I add one point to what Mr. White  
5 just commented on? At the time M-1 and M-2 were admitted  
6 into evidence in the boundary trial, I don't have a  
7 transcript back with me today, but we reviewed it yesterday  
8 in connection with other matters, and the transcript  
9 disclosed the State of Wyoming had no objection to the  
10 admission of that exhibit.

11 THE SPECIAL MASTER: I think we mentioned that a  
12 moment ago.

13 MR. WHITE: I would point out you make an objection  
14 when there is some evidentiary problem arising, if there  
15 is no foundation or something like that, but that the  
16 lack of an objection is no admission.

17 THE SPECIAL MASTER: Why don't we cross that when we  
18 get to it. Who knows, we may never have M-1 and M-2  
19 mentioned again, unless they are discussing World War II  
20 or unless it is in a different context. So, why don't  
21 we go ahead and proceed now on acreages and on watering.

22 Q. (By Mr. Clear) Dr. Mesghinna, can you give us for each  
23 unit in the federal indian project and for the Arapahoe  
24 ranch the number of acres, in your opinion, which can

25 mesghinna

clear



1 be irrigated? Can you give us the water needs for the  
2 acres in each of those units?

3 A. The net acres in the Coolidge Unit, we have about 200  
4 acres --

5 THE SPECIAL MASTER: Not so fast, please.

6 A. Okay. Two hundred acres, with about 1001 diversion  
7 requirement, acre-feet of diversion requirement.

8 In the Johnstown Unit we have about 190 acres, with  
9 951 acre-feet.

10 THE SPECIAL MASTER: Annually?

11 THE WITNESS: Yes, annual. These are all annual.

12 THE SPECIAL MASTER: Annual requirements.

13 A. In Subagency we have about 306 acres, with 1531 acre-  
14 feet of water.

15 THE SPECIAL MASTER: One thousand five hundred fifty-  
16 one?

17 THE WITNESS: One thousand five hundred thirty-one.

18 In the Upper Wind Unit we have 492 acres, with 2056 acre-  
19 feet of water.

20 In the Ray Unit we have 28 acres, with 118 acre-feet  
21 of diversion.

22 In the Arapahoe Ranch we have 245 acres, with  
23 855 acre-feet of water.

24 Q. Do you have a total?

25 mesghinna clear



1 A. In total we have 1461 acres and 6,512 acre-feet of water.

2 THE SPECIAL MASTER: Six thousand five hundred even?

3 THE WITNESS: And 12.

4 THE SPECIAL MASTER: And 12?

5 What is the source of water? Is the source of water on  
6 all of these the same creek, namely Owl Creek?

7 THE WITNESS: The source of water for the Arapahoe  
8 Ranch is the south fork of Owl Creek, and for Johnstown  
9 it's the Wind River. It's the Wind River through the  
10 Johnstown Canal.

11 THE SPECIAL MASTER: I was going to say I was confused.  
12 Okay. Coolidge?

13 THE WITNESS: Coolidge, it's from the Little Wind.

14 THE SPECIAL MASTER: Subagency?

15 THE WITNESS: Subagency is also Little Wind.

16 THE SPECIAL MASTER: Upper Wind Unit?

17 THE WITNESS: Wind River and Dinwoody. Mainly  
18 Dinwoody. Dinwoody Lake.

19 THE SPECIAL MASTER: And Ray Unit?

20 THE WITNESS: Ray Unit is Little Wind.

21 THE SPECIAL MASTER: Thank you.

22 Go ahead, Mr. Clear.

23 MR. CLEAR: Dr. Mesghinna has some plats showing the  
24 location of the units and the canals from which they

25 mesghinna

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1 are served. I didn't want to burden the Court with more  
2 large-size maps, but if you want those, if that will  
3 clarify his answer --

4 THE SPECIAL MASTER: Only if you intend to put  
5 them in evidence anyway. But he has a report coming in  
6 anyway and I will wait until his report comes in.

7 Q. (By Mr. Clear) Dr. Mesghinna, would you give us a rundown  
8 of costs for each unit?

9 A. It is a long list.

10 Q. Can you just give us the total?

11 A. Total investment costs?

12 Q. For each unit, yes.

13 MR. WHITE: I'd object to that question for lack of  
14 foundation. I think we are entitled to know the  
15 incremental parts of that.

16 THE SPECIAL MASTER: Why don't you introduce into  
17 evidence the table that will give us the answer to  
18 Mr. White's questions and give us a chance to look at  
19 the incremental costs.

20 MR. CLEAR: Yes, sir, Your Honor, I have marked  
21 an exhibit for identification, U.S. Exhibit WRIR C-277,  
22 which is a very short report. It is about four pages and  
23 has --

24 THE SPECIAL MASTER: US WRIR C-277 is the Mesghinna  
25 mesghinna clear



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report on this area?

MR. CLEAR: As to Type VIII lands and Arapahoe Ranch.

THE SPECIAL MASTER: And how many pages?

MR. CLEAR: It is four pages, Your Honor. And it is basically tables which he could refer to. He can read them into the record, if you wish.

THE SPECIAL MASTER: The net irrigation requirements?

MR. CLEAR: I gave them copies yesterday. It was not within the five-day rule.

THE SPECIAL MASTER: All right. Fine. May I have a look at that one?

MR. CLEAR: It has the maps in the back, Your Honor.

THE SPECIAL MASTER: All right.

MR. WHITE: For the record, Your Honor, I want to object to the use of the exhibit because of the violation of the five-day rule. I know what your ruling will be, but I just ask that we get another credit.

THE SPECIAL MASTER: Yes, you do. Let's go ahead with the hearing. You are building up a pretty good total of credits there. All right.

Now, the breakdown appears at what page?

THE WITNESS: Appears at page 4, sir.

MR. CLEAR: Page 4, table 3, shows the cost of diversion requirements, Your Honor.

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21-1-V-vlb

1 THE SPECIAL MASTER: Do you have an extra copy?  
2 Does the United States have another copy for me that I might  
3 use for a markup copy?

4 (Off-the-record discussion.)

5 THE SPECIAL MASTER: Dr. Mesghinna, let me ask you  
6 a question or two about this.

7 Was your methodology and are your computations  
8 identical in having prepared table 24 of page 42 of your  
9 earlier report, C-245 as was used in page 4, table 3 of  
10 C-77?

11 THE WITNESS: The method is generally the same, with  
12 the exception of a few items.

13 The on-farm systems as I have indicated before, is  
14 hand-moved sprinkler irrigation.

15 THE SPECIAL MASTER: In the latter -- in this case?

16 THE WITNESS: Yeah, in the latter case whereas in the  
17 former one we had mainly side-roll sprinkler irrigation  
18 systems.

19 The pipe network is the same, similar to the one I  
20 have discussed in my future lands.

21 Pumps and pumping plants are the same.

22 Canals and related structures we don't have  
23 canals and related structures except a small ditch in  
24 Arapahoe Ranch.

25 Mesghinna - cross- white



L-2

1 Drainage is exactly the same approach.

2 Engineering and contingencies is the same.

3 So that finishes the investment costs.

4 The operation and maintenance costs, which is \$6.50  
5 we used the Federal Irrigation Project, which is less than  
6 this, but we increased it by one dollar just to be on the --

7 THE SPECIAL MASTER: Which irrigation project, the  
8 Federal?

9 THE WITNESS: The Federal Irrigation Project.

10 The energy cost is similar to the future lands.

11 The demand cost is the same, similar.

12 And that's it, and our net acreages are ninety-five  
13 percent of our gross acreage, so the requirements --  
14 the diversion requirements are based on net acreages.

15 Q. (By Mr. Clear) The five percent you deducted, why did  
16 you deduct the five percent?

17 A. Well, that was the same as the future lands for farmstead,  
18 roads and --

19 THE SPECIAL MASTER: Did Mr. White hear that?

20 MR. WHITE: I was just wondering if you heard the  
21 same question to Mr. Stetson when he said he didn't.

22 THE SPECIAL MASTER: Well, the deletions were made by  
23 these planners and not Mr. Stetson. He put the duty of water  
24 on the net figures he got. The five percent takes care of  
25 mesghinna-cross-clear





1 table 3 such as canals, and related structures?

2 A. Yeah, they would include --

3 Q. And because these lands are within the FIPs where canals  
4 have already been constructed, then these lands are  
5 charged with no canal cost?

6 A. Well, first of all, we discussed this matter as to the  
7 capacity of the canals, if it would handle this extra  
8 acres with the BIA people and they have told us that there  
9 is enough capacity for them and plus the canals and other  
10 structures have been built for maximum acreages in the  
11 FIP lands.

12 Q. When Mr. Stetson allocates costs of canals for ditches  
13 to be constructed to adjacent lands that enjoy the  
14 benefits of those costs or the benefits of those canals  
15 or ditch structures, why haven't you allocated a portion  
16 of the original cost of building these canals to the lands,  
17 which you have testified to which essentially tag along  
18 just like the adjacent lands for Mr. Stetson?

19 They tag along without the allocation of costs?  
20 They would have gotten a free ride. Why haven't you  
21 allocated from those costs to your lands so that they  
22 don't get a free ride?

23 A. Well, I believe Mr. Stetson has included the cost of the  
24 facilities which are parallel to our distribution system,  
25 mesghinna-cross-white



21-5

1 parallel to our distribution system, meaning that the  
 2 ditches that take water from the main canals, they, for  
 3 example, Ray Canal -- and if there is no ditch for type  
 4 VII lands, that he has included that cost, but for the  
 5 Ray Canal itself, I don't believe so.

6 Q. Well, let me ask you to assume that Mr. Stetson allocated  
 7 or attributed certain costs to adjacent adjudicated  
 8 land, the construction of the ditch, 600 acres of adjacent  
 9 adjudicated lands to the exact -- he allocated those  
 10 costs associated with the ditch to his Type VII lands  
 11 to those adjacent -- a portion of the costs to those  
 12 adjacent adjudicated lands. They, under his analysis,  
 13 were going to pick up part of the tab.

14 Why shouldn't the same thing be done for your lands,  
 15 within the FIP?

16 Why shouldn't they be charged with part of the canal  
 17 and structure costs originally involved? Let's say for the  
 18 Ray Canal.

19 MR. CLEAR: Your Honor, I object. It was clear that  
 20 Mr. --

21 THE SPECIAL MASTER: State your objection, Mr. Clear,  
 22 please.

23 MR. CLEAR: I think he's misstating and misleading the  
 24 witness as to Mr. Stetson's testimony.

25 mesghinna-cross-white



2-15  
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1 Mr. Stetson was testifying as to costs that would have  
2 been incurred to bring the existing canals up to snuff to  
3 service the new lands, and these were Type VII lands where  
4 the canals and headgates and so forth had fallen into a  
5 state of disrepair.

6 Dr. Mesghinna, when he excludes canal costs, he  
7 excludes it because the canal is already there. It's been  
8 built and is paid for.

9 THE SPECIAL MASTER: The distinction between the Type  
10 VII and the Type VIII, I think, is that the Type VII may  
11 be idle, but it may be restored. Type VIII is virgin lands,  
12 can we say, as far as --

13 MR. WHITE: So far as the evidence is so far, Your  
14 Honor, that's correct.

15 THE SPECIAL MASTER: That being the case, it would  
16 appear that I ought to sustain the objection.

17 MR. WHITE: Before you make a final ruling, let me  
18 tell you why -- I would like to be able to respond to  
19 the objection.

20 THE SPECIAL MASTER: All right.

21 MR. WHITE: What I would like to do is elicit from  
22 this witness the inconsistency between his analysis  
23 and that of Mr. Stetson, and the reason I believe there is  
24 an inconsistency is that Mr. Stetson had to spend money to

25 mesghinna-cross-white



1 get water to his Type VII land and the same facility would  
2 benefit some adjacent lands -- for example, 9600  
3 adjudicated acres that we went over in his testimony --  
4 and this witness was here during the testimony, I believe;  
5 he's not misled: -- he reduced the amount -- the number of  
6 dollars that were charged to his Type VII land because  
7 the adjudicated land next door would get a benefit out  
8 of it.

9 That seems reasonable as long as it's a consistent  
10 practice by the United States, and I'd like to show  
11 for the record that with respect to the FIP, if you will  
12 glance at that table 3 on page 4 of Dr. Mesghinna's report,  
13 when you look at canals here, it's zero all the way across.

14 THE SPECIAL MASTER: That's right, except for one.

15 MR. WHITE: Except for the Arapahoe Ranch and I'm  
16 talking about the zeros in the FIP there. What happened  
17 there is the canal is already constructed. It's already  
18 there and instead of saying that all the lands that are  
19 going to be able to benefit from that canal have to be  
20 charged with a portion of the cost as Mr. Stetson did,  
21 he said if there were other lands besides my Type VII  
22 lands, that get a benefit out of the ditch, they pay a  
23 part of the freight.

24 Here we are tacking on additional lands that enjoy

25 mesghinna-cross-white



21-8

1 the benefits of the canal, but they are not paying part  
2 of the freight.

3 In one case Mr. Stetson used the costs associated  
4 with his lands, which is involved in a feasibility  
5 determination, but assuming some cost to other lands,  
6 making them bear part of the freight.

7 Here the lands that are being evaluated have no  
8 costs attributed to them, and they are essentially getting  
9 a free ride.

10 THE SPECIAL MASTER: I think you have a right to  
11 point out an inconsistency there.

12 Yes, Mr. Clear.

13 MR. WHITE: That's all I'm trying to do.

14 MR. CLEAR: The analogy falls down because Mr. Stetson  
15 did not apply to the Type VII lands or to the adjudicated  
16 lands any costs for existing canals, and neither has  
17 Dr. Mesghinna so there was no cost applied to the Type VII  
18 lands or adjacent lands by Mr. Stetson to cover the  
19 cost of canals which have been built and Dr. Mesghinna  
20 has except those canals that have needed repair, but the  
21 existing canals that don't need repair, there was no  
22 cost applied to the Type VII or the adjudicated lands by  
23 Mr. Stetson and in that respect Dr. Mesghinna's testimony  
24 is similar.

25 mesghinna - cross - white





1 MR. WHITE: My point, Your Honor, is that that is a  
2 distinction that makes a difference. If you are going  
3 to repair a canal and attribute it to the land that gets  
4 the benefit of it, wouldn't you do the same thing if you  
5 had to build a canal from scratch, and what's happened  
6 here is that this canal has already been built. The  
7 land just sort of enjoys both the benefit of this  
8 pre-existing canal within any allocation of costs to the  
9 land.

10 All I'm trying to do is point out that inconsistency  
11 by the question. I'm not trying to get him to admit  
12 that's good, bad or indifferent. I will ask the Court  
13 to make its own conclusions.

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THE SPECIAL MASTER: Mr. Rogers?

MR. ROGERS: Can I get my two-bits in, Your Honor?

THE SPECIAL MASTER: Indeed. Take the podium.

MR. ROGERS: It's not that dramatic a statement.

MR. WHITE: We are all waiting.

MR. ROGERS: I think the inconsistency is not there, because Mr. Stetson's testimony related to the improvement required in certain canals, and that is when there was a sharing of costs, but not in connection with the lands that -- Type VII lands in FIPs. He did not share costs of the existing canals that needed nor improvement. And that is precisely the same.

THE SPECIAL MASTER: You would say that is not an inconsistency.

MR. WHITE: But the point is Mr. Stetson didn't indicate that those canals had to be improved for the benefit of those adjacent lands. There's no testimony that the canal or ditches, as it was, wasn't perfectly adequate for the adjacent land. It seems to me there is nothing to argue about. All I want to do is ask a question. We make our point and you are the person that decides. The witness doesn't have to decide whether it is good, bad, or indifferent.

THE SPECIAL MASTER: Proceed with the adequacy. Well, you've already asked your question and you've



1 already got your answer.

2 MR. WHITE: I think so, Your Honor.

3 THE SPECIAL MASTER: It is in the record. Proceed  
4 with the next question.

5 Q (By Mr. White) Dr. Mesghinna, do you know of your per-  
6 sonal knowledge that the fields which contained the  
7 acreage described in your report for the Type VIII lands  
8 include irrigable lands testified to in this action and  
9 evidence in this action by Mr. Waples? Of your personal  
10 knowledge do you know that in this case?

11 A Well, I know that Mr. Waples must have testified on Type  
12 VIII lands.

13 Q Yes. But are the Type VIII lands he testified about,  
14 do they include the lands that lie under your fields,  
15 to your personal knowledge? Have you checked that your-  
16 self? I'll take your word for it if you've checked it  
17 out yourself.

18 MR. CLEAR: I think Mr. White stipulated to that  
19 fact.

20 MR. WHITE: No, I didn't, Your Honor. The stipulation  
21 went to the land status, trust or non-trust.

22 A Mr. Waples' office gave us the Type VIII lands, and based  
23 on what they gave us, we came up with these lands.

24 Q Do you know of your own personal knowledge whether what  
25 mesghinna - cross - white.



1 they gave you is the same Type VIII irrigable land as  
2 that which they gave the Court? That is what I am asking.  
3 Are you working with the same information that the Court  
4 has, or do you know? I'm asking of you're personal know-  
5 ledge.

6 THE SPECIAL MASTER: Would you believe you are, but  
7 you are not sure?

8 A. All I can say is it seems Mr. Waples gave me those  
9 acreages and Mr. Waples testified here in this Court. They  
10 have to be the same.

11 Q. When did he give you those acreages?

12 A. We've been discussing it back and forth all the time.

13 THE SPECIAL MASTER: For how long?

14 THE WITNESS: Oh, I can only estimate probably until  
15 two or three weeks ago, or two weeks.

16 Q. With respect to the Arapahoe Ranch fields which you have  
17 laid out, do you know of your personal knowledge that those  
18 fields are located on irrigable land about which Mr.  
19 Kersig testified in this action?

20 A. What else can they be?

21 Q. Well, I don't know. We have found out there are some  
22 differences with respect to future lands and that is the  
23 problem we are trying to avoid.

24 If you tell me you know of your personal knowledge that  
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22-4-

1 your fields are located over Mr.,Kersich's land, that is fine.  
 2 If you don't know of your personal knowledge, then, I am  
 3 going to check it. That is essentially what is happening.  
 4 A. I did not check Mr.,Kersich's exhibits, which have been  
 5 entered in here. However, they sent us their land  
 6 classifications for those lands for the areas that I'm  
 7 testifying about today and we based it on those.

8 MR. WHITE: Your Honor, I could think we could save  
 9 a remarkable amount of time, with the Court's indulgence, if  
 10 we could recess for the evening and I could check those  
 11 two items to see if they overlap.

12 THE SPECIAL MASTER: All right.

13 MR. WHITE: That would avoid some problems later on.

14 MR. ROGERS: Your Honor, I was going to say, I wondered,  
 15 if Mr. White doesn't have that much more to do, if a short  
 16 recess couldn't resolve this matter and he would be able  
 17 to conclude this matter tonight.

18 MR. WHITE: I don't think that is possible, Your Honor.

19 THE SPECIAL MASTER: What have we got tomorrow?  
 20 Tomorrow is Friday, isn't it?

21 MR. ROGERS: Yes.

22 THE SPECIAL MASTER: And your thought is we could finish  
 23 up now and you could go home for the weekend?

24 MR. ROGERS: I had entertained that notion.

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22-5

1 MR. WHITE: I have people that have worked virtually  
2 around the clock on Mr. Stetson's material, which, as you  
3 know, we didn't have before the trial. I would like to  
4 have them work on this material.

5 I don't think it is fair to us then to do it in the  
6 state of a few minutes. I am not sure they are even still  
7 here. I could get it done over the evening.

8 THE SPECIAL MASTER: You feel you can do that and  
9 maybe you can get it out of the way in the morning in the  
10 matter of an hour or two?

11 MR. WHITE: I think the odds are very much in favor  
12 of being able to be done by noon.

13 THE SPECIAL MASTER: Let's shoot for that, then.  
14 At least, we know you can get out for your two o'clock  
15 airplanes.

16 We will stand in recess until 9:15 tomorrow morning.

17 (The trial was recessed at 4:15  
18 (p.m.)

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6 Professional Reporters and Notaries Public, hereby certify that  
7 we did at the time, date and place, as set forth, report the  
8 proceedings had before the Honorable Teno Roncalio, Special  
9 Master Presiding, in stenotype; that the foregoing pages,  
10 numbered 5477-5616 inclusive, constitute a true, correct and  
11 complete transcript of our stenographic notes as reduced to  
12 typewritten form under our direction.

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

16 Dated this 14th day of May, 1981.

17 *Viola J. Lundberg*  
18 VIOLA J. LUNDBERG  
19 Registered Professional  
20 Reporter

21 *John Boverie*  
22 JOHN BOVERIE  
23 Registered Professional  
24 Reporter

