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## Trial Transcript, Vol. 88, Morning Session

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File # 4446  
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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 \_\_\_\_\_  
8/3 19 81  
*Margaret H. Hampton* CLERK  
DEPUTY

VOLUME 88

BE IT REMEMBERED that on this 16th day of July, 1981,  
at Room 302, State Capitol Building, Cheyenne, Laramie County,  
Wyoming, the above-entitled matter resumed for hearing before  
the Honorable Teno Roncalio, Special Master Presiding, where-  
upon the following proceedings were had, to wit:

PROCEEDINGS :

**ORIGINAL**



APPEARANCES

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FOR THE STATE  
OF WYOMING:

HALL & EVANS  
2900 Energy Center Building  
717 17th Street  
Denver, CO 80202  
BY: MR. SCOTT KROB

FOR THE UNITED STATES  
OF AMERICA:

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

and

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

FOR THE SHOSHONE TRIBE:

SONOSKY, CHAMBERS & SACHSE  
2030 M. Street, N.W.  
Washington, DC 20006  
BY: MR. HARRY SACHSE and  
MR. WILLIAM R. PERRY

FOR THE ARAPAHOE TRIBE:

WILKINSON, CRAGUN & BARKER  
1735 New York Ave., N.W.  
Washington, DC 20006  
BY: MR. R. ANTHONY ROGERS

CLERK TO THE  
SPECIAL MASTER:

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

**ORIGINAL**



1 THE SPECIAL MASTER: We will come to order, please.  
2 Mr. Echohawk.

3 MR. ECHOHAWK: Your Honor, I believe there are several  
4 preliminary matters to bring up this morning, and as I  
5 mentioned to you before, we had stated the United States  
6 has only one additional witness to call and that is a  
7 woman by the name of May Echman, Bureau of Indian  
8 Affairs, Titles and Records. And she has a small conflict  
9 in scheduling. She won't be available until 1:30 this  
10 morning, so with the Court's permission, I think we can,  
11 we should just take up the preliminary matters and  
12 resume this afternoon.

13 THE SPECIAL MASTER: At 1:30. All right.

14 MR. ECHOHAWK: It's my understanding the two  
15 preliminary matters to be discussed this morning is the  
16 Motion to Strike the United States' Brief, supplemental  
17 brief regarding the Motion to take Judicial Notice, and  
18 also the United States has filed a set of interrogatories  
19 with a Motion for Expedited Discovery and the United  
20 States hopes to take that matter up also this morning.

21 THE SPECIAL MASTER: Okay. I have them before me.  
22 There are one or two matters, one in particular I want  
23 to go off the record with right now for a minute.

24 (Off-the-record discussion.)

25 THE SPECIAL MASTER: All right, back on the record.



1 The two motions you mentioned are before me. Which do  
2 you wish to take first? The State of Wyoming has filed --  
3 Why don't we take the State's Motion to Strike the United  
4 States' motion in support of the amended motion to take  
5 judicial notice.

6 Has this worked itself out in the interim, Scotty?

7 MR. KROB: No, I regret to inform the Court that it  
8 hasn't.

9 THE SPECIAL MASTER: Very well. Do you want to take  
10 and present some degree of argument on it and then hear  
11 the rebuttal?

12 MR. KROB: Yes, Your Honor.

13 MR. ECHOHAWK: Yes, Your Honor. Mr. Membrino will  
14 argue it.

15 THE SPECIAL MASTER: Mr. Membrino will, very well.

16 MR. KROB: The controversy before the Court this  
17 morning is a curious controversy, not curious in the  
18 fact that it is legally intricate, but curious in its  
19 longevity and the number of times its come before the  
20 Court. Both sides seem to agree on what the issue is as  
21 far as the adjudicated lands go. As set forth in the  
22 United States' brief on the opening paragraph, the issue  
23 is really does the Board of Control in certificating a  
24 water right under State law make any determination as to  
25 the irrigability, as to the lands covered thereby.



1 I say it's curious because it would seem to imply  
2 a relatively simple solution. It's not a policy question  
3 of what should be done, it's merely a question of what  
4 does the law require you to do in adjudicating water  
5 rights. It would appear to merely require --

6 MR. MEMBRINO: Your Honor, I know this is irregular  
7 to interrupt at this stage, but what is before the Court  
8 is a Motion to Strike, not the substantive issue that  
9 surrounds the argument, and I think it's appropriate to  
10 limit the argument to what is --

11 THE SPECIAL MASTER: How can I listen to a Motion  
12 to Strike if I can't determine what it is that's supposed  
13 to be impertinent, immaterial and scandalous, if it is  
14 in the brief and is being moved to strike?

15 MR. MEMBRINO: We would welcome his describing what  
16 it is, but that is exactly the point, we do not believe  
17 that the irrigability or non-irrigability of lands is  
18 impertinent or scandalous. We're trying to focus in on  
19 what, in the brief, surrounding the substantive act is  
20 alledged to be impertinent and scandalous.

21 THE SPECIAL MASTER: I presume that we'll get to that.

22 MR. KROB: Yes, Your Honor, and you're right, we  
23 really can't talk about one without talking about the  
24 other. And the reason that it's immaterial and  
25 scandalous is because of the misplaced reliance on the



1 substantive aspects of the law by the United States.

2 As I was saying, apparently a simple solution to  
3 this whole question is you look at the Wyoming law, and  
4 see what it says. Does it say anything about irrigability,  
5 anything about the nature of the land.

6 Well, the United States looked at the law and it  
7 adamantly said, yes, it does say something about irrigability  
8 and it inquired into the nature of the land. Wyoming  
9 looked at the same law and adamantly said, no, it doesn't.  
10 That's why it's somewhat of a curious controversy that it  
11 lasted this long. Perhaps today we can elucidate the  
12 source of that curiosity.

13 The problem seems to be that there are really two  
14 Wyoming Statutes dealing with the adjudication of water  
15 rights. There is a statute that consists of the series,  
16 series of statutes at 41-4-300 and the other series, the  
17 41-4-500 series.

18 THE SPECIAL MASTER: Will you cite those again for  
19 me, please?

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2-1 M-1

1 MR. KROB: Yes, it's 41-4-300.

2 THE SPECIAL MASTER: All right. And 41-4-500,  
3 those are the chapter headings.

4 MR. KROB: Right.

5 THE SPECIAL MASTER: Are you going to get to the  
6 specific section?

7 MR. KROB: This seems to be the source of the problem.  
8 The United States, in its memorandum in support of its  
9 Motion to take judicial notice, has relied only upon the  
10 three hundred series of statutes, but as we will show,  
11 the three hundred series of statutes is irrelevant to  
12 all but five of the two hundred rights that the United  
13 States seeks to have the Master judicially notice. So  
14 after the 195, there's where we get to immateriality,  
15 because their brief is completely immaterial.

16 THE SPECIAL MASTER: What basis are they completely  
17 immaterial to this statute?

18 MR. KROB: The basis is that they have set forth  
19 two hundred rights which they wish to have judicially  
20 noticed as to being prima facie evidence of irrigability,  
21 but the statute they cite says when you adjudicate that  
22 right under this statute, you necessarily consider irri-  
23 gability applies to only five of those rights, that is  
24 the three hundred series applies to only five of the  
25 rights they are asking you to judicially notice. The



1 other 195 are all adjudicated under the five hundred  
2 series, which the brief doesn't even address, so as to  
3 those 195, the brief is completely immaterial.

4 THE SPECIAL MASTER: Now, can you get to the  
5 substance of those distinctions you made, rather than  
6 their numbers? Substantively, what is the difference  
7 between those five rights which you feel have a place  
8 under 4-300 and the 195 that have a place under 4-500?

9 MR. KROB: Okay, the difference is the difference  
10 in the statutes. Under one statute, under the statute  
11 cited by the United States, the three hundred series,  
12 there is admittedly a portion in there that you could  
13 make a good faith claim that the Board of Control --

14 THE SPECIAL MASTER: Do you have that statute  
15 readily available?

16 MR. KROB: I do, Your Honor. That the Board of  
17 Control looks at the irrigability. I believe it's also  
18 referred to in the brief as 305(a) (x). Mr. Membrino  
19 can correct me if I'm wrong.

20 THE SPECIAL MASTER: Just read it to me.

21 MR. KROB: Okay. 41-4-305(a) (x) provides -- Well,  
22 what (a) provides is that "Said division superintendent  
23 shall, in addition, enclose with said notice a blank form on  
24 which said claimant shall present in writing all  
25 the particulars showing the amounts and dates of



1 appropriations, to the use of water of said stream to  
2 which he lays claim; and the said statement shall --  
3 the said statement to include the following."

4 Subpart (x), "The character of sale and the kind of  
5 crops cultivated and such other facts as will show  
6 compliance with the law in acquiring the appropriation  
7 and in the rank of priority claimed."

8 THE SPECIAL MASTER: What does that have to do  
9 with irrigability?

10 MR. KROB: They talk about the character of soil,  
11 which seems to be one of the fundamental considerations  
12 in determining arability, which, in turn, is one of  
13 the first steps to determine irrigability. So there is  
14 a colorful claim under 305 for what they say is true,  
15 but remember 305(a) (x) applies to only five of the  
16 rights they have claimed.

17 We are going to put on Mr. Christopulos in a moment  
18 to show you why that is. In fact, even with regard to  
19 those five, as Mr. Christopulos will testify, what the  
20 Board of Control is looking at in (a) (x) is not to  
21 determine whether or not the lands are irrigable, but  
22 just as a source of general information, because the  
23 three hundred series or the general adjudication series,  
24 and they were enacted in 1890 with a purpose of getting  
25 a handle on all the territorial rights that were claimed



1 before statehood, so the State Engineer then went  
2 around the State and got all those territorial rights  
3 settled. Any rights claimed subsequent to that were  
4 to be claimed under the permit statute, which is the  
5 five hundred series, 41-4-500 series, and as we shall  
6 see, the grounds is the United States makes no reference  
7 to any idea of irrigability in the five hundred series,  
8 but there is none in it.

9 THE SPECIAL MASTER: In the 195 rights that were  
10 granted by the State Engineer under the permit, these  
11 permitting processes, how many of those flowered to  
12 full certificated rights?

13 MR. KROB: Well, all of them that the United States  
14 has claimed theoretically they say have been certificated.  
15 If they are not certificated, they are simply not in the  
16 amended Motion to take judicial notice. So we can assume  
17 that all of those have been adjudicated. We have no  
18 problem with that. What we have a problem with is that  
19 since they were done under the five hundred statute, you  
20 have to look at that statute to see if in adjudicating  
21 them, they had to consider the irrigability of the lands  
22 et al, and what we find is that no, they didn't, they  
23 had to do it when they were looking under the three  
24 hundred series.

25 In support of their assertion, they do cite one case,



1 which is the Nichols case. I don't have the cite in  
2 front of me, but it's in the memorandum. The problem  
3 Nichols case is, first of all, the issue that was before  
4 the court is whether the one cfs in seventy acres was  
5 the appropriate standard and could be proposed as a  
6 limitation. The issue there wasn't anything about  
7 irrigability, and as you will see, the only irrigability  
8 they are talking about there, and seeing what kind of  
9 problems there are --

10 THE SPECIAL MASTER: A battle on water duty instead  
11 of irrigability.

12 MR. KROB: Precisely. So what the United States  
13 has done is they have made a Motion for judicial notice  
14 of these adjudicated rights, and have relied for support  
15 on a statute which applies to only five of the two hundred  
16 rights. Now, as an additional scandalous nature of the  
17 brief, in reliance on the wrong statute, they have  
18 asserted that the Board of Control and the State Engineer  
19 have operated outside of the bounds of the law. The  
20 reason they asserted that is they didn't look at the  
21 right law, which is the five hundred series, which is  
22 what the Board of Control has been operating, and rightfully  
23 so, under.

24 The final element of pertinence and scandalousness  
25 is the United States has claimed these adjudicated rights



1 are prima facie evidence of irrigability, despite testi-  
2 mony by their own experts that their studies show many  
3 of the lands under these adjudicated rights are, in  
4 fact, nonarable.

5 That is what we plan to present to you this morning,  
6 is really three things: first of all, they relied on  
7 the wrong statute; second of all, they -- the assertions  
8 regarding the Board of Control are scandalous because  
9 they relied on the wrong statute, and third, even though  
10 they did all those things, they still ask you to judicially  
11 notice these lands on prima facie evidence of irrigability,  
12 in fact, when they have evidence or testimony from their  
13 own experts they were nonarable. To do that, we would,  
14 first, like to call Mr. George Christopulos.

15 MR. MEMBRINO: Your Honor, we will object to the  
16 calling of any witnesses in that regard. The offer of  
17 Mr. Christopulos is to interpret the meaning of the  
18 statutes at issue here, and it's not at all the position  
19 of the witness to construe the statutes, it's an issue  
20 of law, not fact.

21 THE SPECIAL MASTER: The witness, to have him  
22 interpret the statutes for us, it would be improper to  
23 have him for that and that only, but he has a right,  
24 I think, to proceed and give such evidence as the State --  
25 Wyoming wishes to elicit regarding his procedures and



1 functions under the two statutes, and I think we can  
2 proceed with that much without error.

3 MR. MEMBRINO: I would like to add, before we proceed,  
4 that Mr. Christopulos has already been asked to testify  
5 and has testified about this. We are not at all concerned  
6 with additional testimony by Mr. Christopulos. The State  
7 had the opportunity to present its view of this -- through  
8 its witness and in its brief, and I think it has failed  
9 to be specific in putting on Mr. Christopulos' testimony,  
10 and it has failed to consider all the questions we con-  
11 sidered in our brief.

12 THE SPECIAL MASTER: It may have at the time, but  
13 I'm going to, in the interest of the wide latitudes that's  
14 been my policy, I'm going to overrule the Motion and  
15 proceed to let him be heard, providing he's not going to  
16 give us a lecture on how we should be reading the statute,  
17 and tell us how he operates under the statute.

18 MR. KROB: Your Honor, in fact, we will ask him  
19 how he operates under the statute, because that's where  
20 a lot of the scandalous nature of the brief comes in.

21 THE SPECIAL MASTER: I think when it comes to  
22 deciding this subject matter, I'm going to have to be  
23 governed by these statutes and resign and resolve the  
24 conflict, if there is one, of these two statutes under  
25 which the State Engineer works. I'm also going to give



1 the same legal significance to the presumption that a  
2 State Permit had been issued on some land, as is now in  
3 the law that we grant to the State of Wyoming waterholders  
4 as to the presumption for truth of the certificates that  
5 are on file, the presumption that we all agreed to at  
6 Worland in litigation. This is still a question I got  
7 to determine upon the law and upon the facts as you  
8 present them regarding some of these -- regarding some  
9 of the acreage in that area, and if you find some of it  
10 has in fact been testified to as being nonarable, then  
11 you should identify that by site and by acreage, because  
12 that in itself would be sufficient to take it out of the  
13 listing as land which has a right to a reserved water  
14 consideration.

15 MR. ECHOHAWK: Your Honor, in regard to that, to  
16 the last attempt of Mr. Krob to put on witnesses today  
17 regarding the arability or nonarability that's --

18 THE SPECIAL MASTER: I don't think he has any inten-  
19 tion to do that. Their only witness today is Mr.  
20 Christopulos, isn't it?

21 MR. KROB: No, Your Honor, we have two witnesses.  
22 First, we would call Mr. Christopulos to talk about how  
23 the laws have been operated under. Secondly, we will  
24 call Mr. Sommers to testify as to the study undertaken  
25 by the United States' witnesses showing that many of the





1 lands are nonarable; the purpose being that if, in fact,  
2 their motion is not carried, that is the adjudicated do  
3 not need to be prima facie evidence of irrigability, then  
4 the burden is back on the United States to show their  
5 arability.

6 MR. ECHOHAWK: Your Honor, it's totally ludicrous to  
7 have a witness for the State testify about what the United  
8 States has done. That is totally improper, especially --

9 THE SPECIAL MASTER: Make your objections at the  
10 right time. It seems to me one of you is going to try  
11 to assert all of this land should be accepted as having  
12 a reserved water right, and the other side is going to  
13 argue none of the lands should have a reserved water  
14 right. I don't think that is the fact. I think some of  
15 these may have, in fact, a reserved water right, and  
16 others that have not been irrigated for 20 or 30 years  
17 ought not to have a right to water or they would have  
18 been irrigated all that time, even though they had a  
19 permit, because under equity, I know the state law  
20 doesn't apply to the Reservation and has no jurisdiction.  
21 But if it did, there would have been long ago action for  
22 abandonment under nonuse.

23 MR. KROB: Your Honor, if I can address one point  
24 you mentioned. The State of Wyoming does not say that  
25 none of these lands deserve a reserved right, that's not



1 our position. All we are saying is that it may very  
2 well be true that they do deserve a reserved right.  
3 All we are saying is that they should be put to the  
4 same test all these other lands have been put to, and  
5 they shouldn't be allowed to leapfrog from being adjudi-  
6 cated to having a reserved right because the fact that  
7 they are adjudicated simply isn't a probative inquiry  
8 of whether or not they are irrigable for the purposes  
9 of this case.

10 THE SPECIAL MASTER: To the extent -- I will agree  
11 with you to the extent you say with one breath what you  
12 just said, but then you assert also in the same breath,  
13 you say that because we have a certificated right that's  
14 been entered here, that is prima facie evidence that is a  
15 valid right and should be confirmed.

16 MR. KROB: Exactly.

17 THE SPECIAL MASTER: The State of Wyoming's issuance  
18 of a right to non-Indian has been adjudicated and, there-  
19 fore, should be under a presumption of law confirmed, then  
20 that same basis ought not be denied from Indian land that  
21 has had an adjudicated water right at a particular time.

22 MR. KROB: We agree, Your Honor, and we welcome the  
23 Master confirming the state-awarded rights to the Indians  
24 as long as they are state-awarded rights, not federal  
25 rights, because that's a whole different ballgame.



1 THE SPECIAL MASTER: We are talking about two differ-  
2 ent things, but right now I will overrule your motion,  
3 Mr. Membrino, and you proceed with Mr. Christopulos on  
4 the stand and make your objections along the way with  
5 his evidence. But I would like to hear what the State  
6 proposes to have him testify to that isn't already in  
7 the record.

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1 THE SPECIAL MASTER: Mr. Christopulos, welcome again.  
2 You've been sworn much earlier in the case, have you not?

3 MR. CHRISTOPULOS: Yes, I have.

4 THE SPECIAL MASTER: You want to take the stand,  
5 please.

6 DIRECT EXAMINATION

7 BY MR. KROB:

8 Q Would you please state your name.

9 A I'm George L. Christopulos.

10 Q Are you the same George Christopulos who has previously  
11 testified in this adjudication?

12 A Yes, I am.

13 Q Are you still the State Engineer for the State of Wyoming?

14 A Yes, I am.

15 Q And are you still President of the Board of Control?

16 A Yes.

17 Q Are you familiar generally with the statutes under which  
18 water rights are adjudicated in Wyoming?

19 A Yes, I am.

20 Q Specifically are you familiar with the set of statutes  
21 beginning at 400 or 41-4-300 and continuing through  
22 the 300's?

23 A Yes, I am.

24 Q Likewise, are you familiar with the statutes beginning  
25 christopulos-direct-krob



1 with 41-4-500 and continuing through the 500's?

2 A Yes.

3 Q Would you briefly describe how the Board of Control has  
4 operated under those two statutes.

5 A Well, the 41-300 series is a set of statutes that was  
6 enacted in 1890 with the advent of statehood, and set out  
7 a procedure to adjudicate the claims to water that were  
8 initiated under territorial law and was intended to cover  
9 the water rights that were claimed prior to statehood.

10 MR. MEMBRINO: Your Honor, I'll object and move to  
11 strike the answer that's been given so far. We are  
12 inquiring into Mr. Christopulos' personal knowledge of the  
13 statutes and their operation, not his, not his  
14 interpretation of what was intended by the legislature,  
15 enacted by them. The question, I believe, went to how  
16 the Board of Control operated under them, and I think the  
17 question should be limited to Mr. Christopulos' tenure  
18 on other Board of Control.

19 THE SPECIAL MASTER: There's been no harm done; let's  
20 proceed with the next question.

21 MR. KROB: Your Honor, it also --

22 THE SPECIAL MASTER: There is no need to argue with  
23 the Witness, there is no need to argue with Counsel,  
24 you've been sustained, proceed with your question. That

25 christopulos-direct-krob



1 will be fine.

2 Q (By Mr. Krob) Okay. Would you continue with your  
3 answer.

4 A Well, as I indicated, the 41-300 series was the basis  
5 for adjudication of claims under territorial claims to  
6 water not covered by permit. The Board of Control in  
7 adjudicating these claims followed the process set out  
8 in the law whereby all the claims were invited in to  
9 submit their claims and the streams were adjudicated  
10 stream by stream. At the same time the law provided for  
11 surveys in identification of the irrigated lands that were  
12 irrigated under those claims.

13 MR. MEMBRINO: Your Honor, may we just require a  
14 continuing objection to this line of questioning?

15 THE SPECIAL MASTER: Yes, continuing objection is  
16 granted.

17 A The State was then adjudicated on that basis and all  
18 those claims were adjudicated as territorial water rights,  
19 and adjudication occurred during the period of about 1890  
20 up until about 1912, under that type of adjudication.  
21 Simultaneously the legislation, legislature enacted the  
22 41-500 series, which is a permitting process and set out  
23 that water rights acquired after statehood had to be  
24 acquired under application to the State Engineer and the  
25 christopulos-direct-krob



1 granting of a permit by the State Engineer. It set out  
2 a procedure whereby certain steps were taken and a final  
3 step was the adjudication of water rights under permit  
4 which was covered under 41-4-511. This procedure said  
5 that after you've completed all the steps that are  
6 necessary, then you submit a proof of appropriation to  
7 the Board of Control for adjudication of that water right  
8 under permit.

9 Q (By Mr. Krob) When you refer to the permit statutes is  
10 that the series 500, the 41-4-500 series of statutes?

11 A Yes.

12 Q Likewise, when you refer to general adjudication, is that  
13 the 300 series?

14 A Yes, it is.

15 Q Does the Board of Control presently utilize both of those  
16 series?

17 A No, then do not. As I indicated, the process that was  
18 followed was the adjudication of all claims and they  
19 were pretty well settled by 1912. And the orders of the  
20 Board were entered, adjudicating each of these streams  
21 and that work was finished. Concurrently with the  
22 adjudication of the water rights under claim, the Board  
23 was also adjudicating water rights under permit. There  
24 was a different process; that was following generally

25 christopulos-direct-krob



1 the same process, that was a proof process, but the  
2 adjudication was based not on a claim to water, but rather  
3 in the one instance, in the pre-statehood it was based  
4 on the claim, on post-statehood water rights was based  
5 on permits.

6 Q Handing you what has been marked WRIR GS-4, can you look  
7 at that please. Can you identify that, please?

8 THE SPECIAL MASTER: He doesn't have to identify it,  
9 we're familiar with it. If anyone isn't familiar with  
10 this now they better drop out of the lawsuit, I think.

11 Go ahead.

12 MR. KROB: For the record could we have it reflect  
13 that GS-4 is the amended motion to take judicial notice  
14 submitted by the United States.

15 Q (By Mr. Krob) Directing your attention to Page 3 through 6,  
16 would you examine that list of water rights the United  
17 States offers as adjudicated.

18 A It's a listing of water rights from various sources in  
19 various -- for a various number of acres under various  
20 permit numbers.

21 Q Now --

22 A And includes --

23 Q Go ahead, I'm sorry.

24 A It includes some rights that are shown as territorial

25 christopulos-direct-krob





1 water rights.

2 MR. ECHOHAWK: Your Honor, may I interpose an  
3 objection and point out that the United States has in  
4 fact supplemented the amended motion with what we had  
5 marked as United States Exhibit 303-ADJ and 304-ADJ,  
6 which is a listing of adjudicated water rights that we are  
7 asserting and --

8 THE SPECIAL MASTER: How are they different than  
9 those in the document before us, Mr. Echohawk?

10 MR. ECHOHAWK: They are identified in different  
11 format and some of the numbers have been changed.

12 THE SPECIAL MASTER: But aren't they substantively --

13 MR. ECHOHAWK: It would be more appropriate to  
14 correctly reflect --

15 THE SPECIAL MASTER: What is the difference  
16 substantively between this list and your list?

17 MR. ECHOHAWK: Some of the numbers in the amended  
18 motion have in fact changed.

19 MR. KROB: Your Honor --

20 THE SPECIAL MASTER: Just a second, please.

21 MR. ECHOHAWK: Certain numbers listed in the  
22 amended motion --

23 THE SPECIAL MASTER: Numbers of permits?

24 MR. ECHOHAWK: I think permit numbers, Your Honor, --

25 THE SPECIAL MASTER: Yes.



1 MR. ECHOHAWK: -- were changed and supplemented.

2 THE SPECIAL MASTER: Did you move to withdraw the  
3 amended motion that was to take judicial notice? It is  
4 another second amendment.

5 MR. ECHOHAWK: With Exhibit 304 we supplemented it  
6 with the final list broken down by proof number and permit  
7 number so just for point of clarification, I think it's  
8 more appropriate to refer to Exhibit 304-ADJ.

9 MR. KROB: Your Honor, I think the representations  
10 made by Counsel at the time they offered 304-ADJ was  
11 that the only change is that they had added the proof  
12 number and photo number, for the benefit of discussion,  
13 and in fact, that was the only substantive change.

14 THE SPECIAL MASTER: Is that what that difference was,  
15 was adding some different identifying numbers?

16 MR. ECHOHAWK: Yes, Your Honor.

17 THE SPECIAL MASTER: Acreage is the same, isn't it,  
18 and the location?

19 MR. ECHOHAWK: I think it is, Your Honor. The only  
20 point I'm trying to make is it's more appropriate to  
21 refer to the document that we are in fact relying on,  
22 that is broken down more clearly.

23 THE SPECIAL MASTER: Well, if the permit numbers are  
24 the same and the acreage is the same, why should we cloud  
25 our discussion and our problem with bringing up another



1 document that has proof numbers in it, something that has  
2 no substantive contribution?

3 MR. ECHOHAWK: Take for instance a certain permit  
4 number, as an example, I'm not sure if this is quite true,  
5 Permit No. 8065, may in fact contain more acreage than  
6 the 57 acres of which we are asserting and that's why we  
7 broke it down into proof number because the proof number  
8 we are asserting does contain 57 acres.

9 THE SPECIAL MASTER: What does your permit number in  
10 the amended motion contain in acreage?

11 MR. ECHOHAWK: We are asserting the 57 acres of  
12 trust land, but in certain situations there may be more,  
13 in fact more acreage covered under the permit that is in  
14 fact non-trust. And that's why we broke it down into the  
15 exact proof numbers containing the 57 acres.

16 THE SPECIAL MASTER: If you'll let the record show  
17 that you got that distinction between the two, why I think  
18 that would be adequate.

19 MR. KROB: If it will make the Court's job any  
20 easier, I have copies of the ADJ, 304-ADJ and if it's  
21 going to make it easier for the Court, I'll go from it.

22 THE SPECIAL MASTER: Do you have a copy you can hand  
23 the Witness?

24 MR. KROB: Yes, I have copies for everyone. It would  
25 seem appropriate, however, that the other motion should be



1 stricken if they're not going to rely on it anymore.

2 THE SPECIAL MASTER: That's the problem before us,  
3 Mr. Echohawk. The problem before me now is whether or not  
4 I take judicial notice of and consider your brief in  
5 support of the amended motion to take judicial notice.  
6 Now, if there's something curative, some fault to the  
7 amended motion to take judicial notice, then we ought to  
8 strike it and get it out of our way, proceed to use the  
9 documents 304-ADJ.

10 MR. ECHOHAWK: My intention, when I put in 304 was  
11 in fact to supplement and further clarify the point.

12 THE SPECIAL MASTER: Let's proceed then and use  
13 304-ADJ in place of the amended motion to take judicial --  
14 the amended motion to take judicial notice.

15 Q (By Mr. Krob) Handing you what is marked WRIR SS-3,  
16 would you look at that document.

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1 Q. (By Mr. Krob) Again, looking at the water rights listed  
2 in WRIR SS-3, also known as 304 ABJ SS-3, can you tell  
3 from looking at that, that listing, which of the rights  
4 were adjudicated under the 300 as compared to the 500  
5 series.

6 A. Yes. Those rights that are listed here that have permit  
7 numbers would have been irrigated under the 500 -- or  
8 adjudicated under the 500 series, and those rights which  
9 are identified as territorials would have been adjudicated  
10 under the --

11 THE SPECIAL MASTER: How is a right identified as  
12 territorial in document exhibit --

13 MR. KROB: If you look at Page 6, Your Honor, I  
14 believe there are a few --

15 THE SPECIAL MASTER: Why don't you let the witness  
16 tell me.

17 MR. KROB: All right. I'm sorry.

18 THE WITNESS: On Page 6 at about the middle of the  
19 page there are two water rights that are identified as  
20 territorial. They have proof number 11,695 and 11,697.  
21 On that same page towards the bottom of the page there  
22 are three additional water rights.

23 THE SPECIAL MASTER: Those are the only five in the  
24 entire document?

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1 THE WITNESS: I see some additional ones on Page 9.

2 THE SPECIAL MASTER: Four more?

3 THE WITNESS: Four more on Page 9.

4 THE SPECIAL MASTER: How many more besides those five  
5 or those four?

6 THE WITNESS: I see three more on Page 10. That  
7 appears to be maybe all of them.

8 MR. KROB: Your Honor, at this time I would reiterate  
9 my request that their amended motion be stricken, as it  
10 shows, I believe, only five territorial rights.

11 THE SPECIAL MASTER: That is probably the reason Mr.  
12 Echohawk wanted to supplement.

13 MR. KROB: It just seems like we need to know which  
14 one to go on. If it's the supplement, okay. If it's  
15 just --

16 THE SPECIAL MASTER: The supplement is now before  
17 us and I can hardly strike the amended motion because  
18 the document is just a handout, it isn't in the form of  
19 a pleading, it's simply adjudicated acres. I suppose I  
20 will use the list from 304 ABJ, which is also identified  
21 as WRIR Plaintiff's Exhibit -- what is that, SS-3?

22 MR. KROB: Yes.

23 THE SPECIAL MASTER: SS-3, and we will in the report  
24 and decree, we will take our identification and items  
25 from those in SS-3 rather than those listed in the



1 amended motion.

2 MR. KROB: Okay. It should also be pointed out to  
3 the Court the United States has offered no foundation for  
4 these changes that the witness has testified as to those  
5 changes.

6 MR. ECHOHAWK: It is not necessary, Your Honor.

7 THE SPECIAL MASTER: Go ahead with your witness.

8 MR. KROB: Okay.

9 Q (By Mr. Krob) Are those the only rights listed in SS-3  
10 that would have been adjudicated under the Series 300?

11 A. Yes.

12 Q What would the rest of them have been adjudicated under?

13 A. The rest of them would have been adjudicated under the  
14 Series 500.

15 Q Handing you what has been marked Plaintiff's Exhibit WRIR-  
16 GS-1, would you examine that document, please? The  
17 record should reflect WRIR GS-1, "The United States'  
18 Memorandum in Support of the United States' Amended  
19 Motion to Take Judicial Notice and for Order that  
20 Adjudicated State Water Rights Are Prima Facie Evidence  
21 of Irrigability in Determining Reserved Water Rights."

22 THE SPECIAL MASTER: I did not hear all of the  
23 question. Would you be nice enough to read that back?

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(Whereupon the reporter read  
(back: "Q: Handing you what  
(has been marked Plaintiff's  
(Exhibit WRIR GS-1, would you  
(examine that document, please?  
(The record should reflect WRIR  
(GS-1, "The United States'  
(Memorandum in Support of the  
(United States' Amended Motion  
(to Take Judicial Notice and for  
(Order that Adjudicated State  
(Water Rights Are Prima Facie  
(Evidence of Irrigability in  
(Determining Reserved Water  
(Rights."

MR. KROB: Directing your attention to Page 4 of  
the exhibit -- I'm sorry, Page 6 of the exhibit, towards  
the bottom of the page there's the next to the last  
indenting quotation, there's a reference of the Section  
41-4-305(a)(x) with regard to all of the rights listed  
in the United States' adjudicated acreage claims on  
trust lands. Other than those indicated as territorial  
rights, does 41-4-305(a)(x) apply to any of those?

MR. MEMBRINO: Your Honor, I object. He is -- the  
witness is not to be testifying about the effects -- about  
an interpretation of a Wyoming Statute.

THE SPECIAL MASTER: All right. May I hear that  
question, please? Read it back slowly.

(Whereupon the reporter read  
(back: "Q: Directing your  
(attention to Page 4 of the  
(exhibit -- I'm sorry, Page 6  
(of the exhibit, towards the  
(bottom of the page there's  
(the next to the last indenting





1 (quotation, there's a reference  
2 (of the Section 41-4-305(a)(x)  
3 (with regard to all of the  
4 (rights listed in the United  
5 (States' adjudicated acreage  
6 (claims on trust lands. Other  
7 (than those indicated as terri-  
8 (torial rights, does 41-4-305  
9 ((a)(x) apply to any of those?"

10 THE SPECIAL MASTER: He has already answered the  
11 question. Furthermore, I don't think it's applying to  
12 all of the water rights.

13 MR. KROB: Excuse me.

14 THE SPECIAL MASTER: I'm just addressing the objec-  
15 tion of Mr. Membrino. I can read this and know what to  
16 apply it to and what not to apply it to, gentlemen.

17 Q. (By Mr. Krob) Going on to Page 9 of that motion, would  
18 you examine Pages 9, 10 and 11?

19 MR. MEMBRINO: Your Honor, we will object to the  
20 witness being asked to argue or --

21 THE SPECIAL MASTER: He is not being asked to argue.  
22 You can't object to him being asked to examine Pages 9,  
23 10 and 11.

24 MR. MEMBRINO: This is a memorandum of law, Your  
25 Honor. It is not appropriate to a discussion by a  
witness. If there are statutory references or other  
things that they want to refer to, they can --

THE SPECIAL MASTER: I will overrule the objection.

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1 He was asked to examine Pages 9, 10 and 11 of the  
2 memorandum that is supposed to be a pleading. You may  
3 be right, maybe the witness has no business looking at  
4 our pleadings and is not concerned with facts and evi-  
5 dence to which he should be testifying. The matters  
6 involving law and law only are our concerns and not his,  
7 but I'm going to overrule you in the hopes it can be  
8 done quickly.

9 Will you please examine Pages 9, 10 and 11 and then  
10 go to the next question.

11 Q (By Mr. Krob) Is that testimony you gave this past  
12 March?

13 A. Yes.

14 MR. MEMBRINO: Your Honor, could we ask the question  
15 and the answer be a bit more specific. There is a lot  
16 more material on these pages than appears to be the  
17 transcript of anything Mr. Christopulos has testified to.

18 THE SPECIAL MASTER: All he asked is are those ques-  
19 tions to answers that were given, and I think his answer  
20 was "yes".

21 MR. MEMBRINO: He hasn't specified what.

22 THE SPECIAL MASTER: I don't think he has to. What  
23 was the -- the question was just: Are those answers, is  
24 that the transcript of what you testified? And he said,

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1 yes, it was.

2 MR. MEMBRINO: But, Your Honor, on Page 9 there's a  
3 lot more material.

4 THE SPECIAL MASTER: He wasn't talking about the  
5 material. He's talking about questions and answers.

6 MR. MEMBRINO: No, he didn't state that, Your Honor;  
7 he just said to examine the Pages 9, 10 and 11 and say  
8 if those are your answers, and there's also text --

9 THE SPECIAL MASTER: Well, the text is obviously --  
10 where it says "The Special Master", that's not him, he's  
11 the State Engineer, that's me; and we are getting a little  
12 bit carried away. I will overrule --

13 MR. MEMBRINO: There's legal argument as well there,  
14 Your Honor.

15 THE SPECIAL MASTER: I will overrule your objection.  
16 Go ahead with your question and let's get this over with.

17 Q (By Mr. Krob) Directing your attention to the last full  
18 paragraph on Page 9 beginning with the words, "The United  
19 States believes," would you please read that paragraph to  
20 the Court?

21 THE SPECIAL MASTER: Now, that's not necessary. I  
22 will strike that. I can read the memorandum.

23 MR. KROB: Your Honor, the reason I want that is  
24 because that's the very heart of the scandal, that is

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1 where he accuses this witness of operating outside the  
2 scope of the law.

3 THE SPECIAL MASTER: It does nothing of the kind.  
4 It shows I should rule notwithstanding the testimony of  
5 this man. It has nothing to say about ruling outside the  
6 scope of the law. Your statement is just as scandalous  
7 as you allege this petition is.

8 MR. KROB: I'm sorry, I was quoting the wrong para-  
9 graph. The one I meant to refer to was the last full  
10 paragraph on Page 11. I'm sorry.

11 In that paragraph he is directly accused of operating  
12 outside the scope of the law.

13 MR. MEMBRINO: Your Honor, we will object to any  
14 further reading of that document. It speaks for itself.  
15 It is for the Court to determine this issue, not for the  
16 witness to argue it.

17 MR. KROB: It is for the Court to determine.

18 THE SPECIAL MASTER: Please, Mr. Krob. Your objec-  
19 tion is overruled. Okay.

20 MR. KROB: Well, I don't want to overstep my bounds --

21 THE SPECIAL MASTER: Let me read it, please.

22 MR. KROB: All right.

23 (Brief pause.

24

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\* \* \* \* \*



1 THE SPECIAL MASTER: I think that's an argument,  
2 that's not scandalous, they're making citations and want  
3 to support what they claim, the facts.

4 MR. KROB: It says either one or two things. It  
5 says if his testimony is truthful they operated outside  
6 the scope of the law and by implication the only way they  
7 can operate inside the scope of the law --

8 THE SPECIAL MASTER: You want to bring an action  
9 against the attorneys and disbar them because what you  
10 claim is an immoral act or something, go ahead and do it,  
11 but I'm not going to make any big hassle out of this  
12 lawsuit.

13 MR. KROB: But to accuse the State Engineer based on  
14 the wrong statute is to operate outside of the scope of  
15 the law and --

16 THE SPECIAL MASTER: If he is the only man that  
17 gets an accusation in this case he's a lucky man. We'll  
18 all be in the same category, including Mr. White and me  
19 and the attorneys for the United States, we're all getting  
20 near the end of a difficult complex massive lawsuit and  
21 the shouting and the pushing is getting to shoving, but  
22 I'm not going to strike these matters. I'm going to read  
23 them and make my adjudication and judgment accordingly.

24 I recognize the difference between those rights given  
25 under a territorial review or the 300 series and those



1 water rights that were granted since then and that have  
2 not been -- and that have gone to an adjudication and  
3 may still be in permit for all I know. My problem is I've  
4 got to be even-handed, to treat the Indian who has a  
5 state water right the same as I treat a non-Indian who  
6 has a state water right, and that's going to take a little  
7 doing because a non-Indian, since he is subject to state law,  
8 if there is no use after five years it can be terminated.

9 Now, I'd like to ask some questions, but not today,  
10 later in the case when Mr. Christopulos will spend a day  
11 or two on the stand, while I ask a few questions about  
12 the permitting process, and may well have to go into some  
13 hearings on the permitting because that's part of my job  
14 too. I was hoping to get relieved of those two paragraphs  
15 that deal with permits and not have to have an adjudication  
16 of the status and nature of permits, but maybe we will.

17 I'd like to think that each of these matters can be  
18 reviewed and can be either confirmed a reserved right or  
19 denied a reserved right, depending pretty much on the  
20 facts of the irrigation and non-irrigation of the acres  
21 over the years, and that's how I would like to determine  
22 that matter.

23 MR. MEMBRINO: Your Honor, is it then your ruling  
24 that the alledged material in the memorandum is not  
25 scandalous? I think if that's the case --



1 THE SPECIAL MASTER: Right now I want Mr. Krob to  
2 finish up with his witness, and if you have any questions  
3 you wish to ask you can.

4 MR. MEMBRINO: Well, I think we could save the Court  
5 and the parties time if your ruling is that that it is not  
6 scandalous, there is no further reason to continue with  
7 this examination. The only other issue is the pertinency  
8 of the material.

9 THE SPECIAL MASTER: I'll make my conclusions when  
10 I'm through. I'm not going to strike anything that's been  
11 filed so far from the purvue of the Court when it comes  
12 time to make a conclusion. So in that instance I'm not  
13 going to remove any documents as having been scandalous.

14 MR. MEMBRINO: That's all that's before the Court  
15 today, Your Honor.

16 THE SPECIAL MASTER: Let's proceed.

17 MR. KROB: I'm probably going to get in trouble for  
18 going this way, but let me try it.

19 Q (By Mr. Krob) Referring to Page 11, does the United  
20 States' characterization of the Board of Control, "as  
21 operating out -- questionably in violation of the expressed  
22 statutory responsibilities" strike you as a fair  
23 representation of the manner in which your Board has  
24 operated?

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1 MR. MEMBRINO: Your Honor, I object.

2 THE SPECIAL MASTER: I would sustain the objection  
3 on that. The assertion doesn't deal so much with a  
4 personal attack on how this man's running his office,  
5 it's dealing with the difference between two sets of  
6 statutes and whether or not there is to be a presumption  
7 that would bind me as to the fact that a land is entitled  
8 to a water right because it has, because it has -- that  
9 lands should be determined to be irrigable and therefore  
10 entitled to a reserved right because it has a water right  
11 on it. And it does not directly reflect on him, and I  
12 think you're overreacting to the arguments that are  
13 raised in the case.

14 MR. KROB: If I might respond to that briefly, Your  
15 Honor. This memorandum is not a comparison of the two  
16 statutes. There is not a single citation of the 500  
17 series in this whole memorandum. This memorandum was  
18 written in apparent ignorance of the 500 statute without  
19 a single citation --

20 THE SPECIAL MASTER: Let's be careful, let's not  
21 call each other too many more things. You're calling  
22 their lawyers ignorant and they're calling the State  
23 Engineer careless, so let's terminate that. This can go  
24 on and on.

25 MR. KROB: All right. I just didn't want you to





1 think this was a comparison of the two because it clearly  
2 is not.

3 THE SPECIAL MASTER: We may be back to a day of  
4 argument on this when we come to determining it, but it's  
5 one of the less -- Well, it's not one of the lesser  
6 important issues, I guess it's one of the more important  
7 issues on determining the total acreages that is PIA.

8 Well, all right.

9 MR. KROB: I just have a couple more quick questions.

10 Q (By Mr. Krob) Mr. Christopoulos, when you testified in  
11 March, on the questioning of Mr. White regarding whether  
12 or not the Board looks at the nature of the land, chemical,  
13 physical natures, things like that and that, and you gave  
14 your answers, were those answers based on series 300  
15 statutes or the series 500 statutes?

16 MR. MEMBRINO: Your Honor, I object.

17 THE SPECIAL MASTER: I would sustain that objection.  
18 We'll go back and look at what he said. He was under  
19 oath then.

20 MR. KROB: At that time the two statutes weren't made  
21 known.

22 THE SPECIAL MASTER: You better hand him a record,  
23 hand him the page you're talking about, and the exact  
24 specific questions and exact specific things because your  
25 question is way too vague and too general.



1 MR. KROB: Okay.

2 THE SPECIAL MASTER: You see, for an answer now.

3 Q (By Mr. Krob) Okay. Let's limit it to that portion of  
4 your testimony which is shown on Pages 9, 10 and 11 of  
5 this memorandum.

6 MR. MEMBRINO: Your Honor, the testimony speaks for  
7 itself, so I'd object to the Witness being asked --

8 THE SPECIAL MASTER: Objection's overruled.

9 Q (By Mr. Krob) When you gave those answers and that  
10 testimony, were you talking about the statute contained  
11 in the 300 series or 500 series?

12 A Well --

13 THE SPECIAL MASTER: Or does it make any difference?

14 A Well, I was going to say I believe it applies to both,  
15 really. I think the answers that were given here were  
16 primarily in connection with the 500 series.

17 MR. MEMBRINO: Well, if that's the case, Your Honor,  
18 I believe the matter should really be put to rest. Our  
19 position is vindicated, really, by the Witness' own  
20 testimony.

21 MR. KROB: The Witness' own testimony is that there  
22 was no inquiry made by the Board into the nature of the  
23 land or the irrigability of the land.

24 THE SPECIAL MASTER: Gentlemen, I thought we were  
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1 going -- If we're going to have an argument between you  
2 two, we'll have it, but that's not the nature of this  
3 thing, let's proceed and he's answered the question.

4 Next question, Mr. Krob.

5 Q (By Mr. Krob) If you're asked those same questions today,  
6 would your response be the same?

7 A Yes, they would be.

8 MR. KROB: I have no further questions of this  
9 Witness.

10 MR. MEMBRINO: May we have a moment, Your Honor?

11 THE SPECIAL MASTER: Sure. Let me ask a few questions  
12 while you're here, maybe help me in my work. If you  
13 can't answer these, just say so. If you need to check  
14 your records and get back to me, just say so, please.

15 How many uncanceled permits do you feel there are on  
16 file in the office of the State Engineer?

17 THE WITNESS: Within Water Division 3?

18 THE SPECIAL MASTER: Within Water Division 3.

19 THE WITNESS: I do not have that information at hand.

20 THE SPECIAL MASTER: If you get that for me, and  
21 you'll be around again soon, if you have it next time  
22 that will be fine.

23 Have all of those permits, no matter what their  
24 number, have all of the permits which have been issued by  
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1 the office of the State Engineer carried with them a  
2 right to use some water in the Big Horn River System or  
3 have some been just permits for construction or for other  
4 purposes?

5 THE WITNESS: I don't believe I understand the  
6 question.

7 THE SPECIAL MASTER: There have been permits applied  
8 for and granted as late as the last few years on the taking  
9 of water from numerous streams in Wyoming, some within  
10 our jurisdiction, some without. Does -- Do those -- Is  
11 there such a thing as a permit issued by your office which  
12 does not carry with it the right to use water immediately?  
13 Can I file a permit next week and immediately have a right  
14 to use water that I file a permit on?

15 THE WITNESS: If you file -- You would first file an  
16 application and if the application were approved, you  
17 would then have a right to take the water if it was there  
18 for that priority.

19 THE SPECIAL MASTER: If your office concludes that  
20 there's not a prior right?

21 THE WITNESS: There can be a prior right, but the way  
22 the system works, if there is a prior right and there's  
23 not enough water -- only enough water for the prior right  
24 and not for the later right, then the later right does not  
25 christopulos-examination-the special master



1 get water.

2 THE SPECIAL MASTER: Does your office still grant --  
3 receive applications and have hearings and grant permits  
4 on -- in Water Division No. 3?

5 THE WITNESS: Yes.

6 THE SPECIAL MASTER: In view of the fact that it  
7 seems -- it would appear from the evidence that there is  
8 a massive over-appropriation now of water with yet a right  
9 to be determined of reserved rights, which may be quite  
10 substantive on the entire capacity, is it -- is it  
11 prudent that that policy continue or is that something  
12 beyond the scope of your office or is that something for  
13 somebody else to determine?

14 THE WITNESS: I think the availability of water,  
15 laying aside the question of what might happen as far as  
16 reserved rights are concerned, the availability of water  
17 is a vagrant thing, and it's going to be available one  
18 season one year and it's not going to be the next; it's  
19 going to be available part of a year and not the rest of  
20 the irrigation season or period, so that to say that there  
21 is not water available, that we're fully over-appropriated  
22 is not true. There is water available some places and  
23 sometimes and basically I guess the way the system works  
24 is that if somebody wants to expend the funds, their own  
25 christopulos-examination-the special master



1 money on diverting or storing water and later it proves  
2 out there is no water there, it's their loss. As I say,  
3 I don't believe it's a proper statement to make that  
4 we're fully over-appropriated.

5 THE SPECIAL MASTER: In your opinion then you would,  
6 you probably want some time to, certainly to confirm the  
7 statements of this kind once -- before the case is over,  
8 but you would feel that the water of the Water Division  
9 No. 3 are not over-appropriated?

10 THE WITNESS: In certain places they're fully over-  
11 appropriated and in certain places there is --

12 THE SPECIAL MASTER: Mainstem of the Wind.

13 THE WITNESS: Mainstem of the Wind, there is certain  
14 water there under the present circumstances, but most of  
15 that would be waters that are available during high  
16 runoff periods, there would be some surplus there.

17 THE SPECIAL MASTER: And if those could be stored  
18 from year to year, what would be the result regarding the  
19 evening out of low water years to serve everybody's rights  
20 that are now certificated?

21 THE WITNESS: Certainly if you store surplus waters,  
22 water surplus at this time under today's circumstances,  
23 any water that's stored there certainly is going to help  
24 even out and level out the demand or meeting the demand

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under the present right, but as you're well aware, a lot depends on what happens with the reserved rights and the priorities that are given to these rights and so on.

\* \* \* \* \*

christopulos-examination-the special master



1 THE SPECIAL MASTER: Has your office cancelled  
2 any permits in the last five years?

3 THE WITNESS: Yes, I believe we have.

4 THE SPECIAL MASTER: About how many?

5 THE WITNESS: I couldn't tell you that.

6 THE SPECIAL MASTER: Will you put down as Question  
7 No. 2 how many permits have been cancelled, and for what  
8 amounts of water or acres, in the last five years?

9 Has your office proceeded to have -- Has your  
10 office engaged in hearings for the determination of  
11 certificated water rights in the last five years?

12 THE WITNESS: Probably.

13 THE SPECIAL MASTER: Would you make that Question  
14 No. 3, Mr. Christopulos, and if so, how many?

15 Off the record for a minute.

16 (Off-the-record discussion.

17 THE SPECIAL MASTER: Okay. Thank you. I have  
18 no further questions.

19 MR. MEMBRINO: Your Honor, if you are prepared  
20 to rule on this without further evidence, we don't  
21 have any -- we'll not have any further questions of  
22 Mr. Christopulos. We would point out only that from  
23 what has been adduced so far, the material in the  
24 brief regarding -- as regards the scandalous nature  
25 of it is clearly not the case. Mr. Christopulos has





1 testified that his testimony applied to both the three  
2 hundred and the five hundred series, and the five hundred --  
3 the five hundred statute, I believe it's five hundred,  
4 speaks for itself -- or the three hundred statute speaks  
5 for itself in what it considers, and that includes the  
6 character of the land. As to the pertinency of this  
7 material, it's clear that as to twelve of the permits,  
8 it is pertinent. We believe it applies across the board.  
9 We did not distinguish the statutes between three hundred  
10 and five hundred, because there was nothing in the testi-  
11 mony that specified one statute or another that Mr.  
12 Christopulos was referring to. The bald statement was  
13 made that the board does not consider the character of  
14 the land and things such as the chemical and soil analysis.  
15 We have presented in our brief Supreme Court, Wyoming  
16 Supreme Court, decisions or a decision that clearly  
17 speaks to the contrary. We are not here to cast any  
18 personal aspersions on Mr. Christopulos, we just think  
19 that the original testimony was nonspecific. We have  
20 responded to that very point of whether or not the  
21 character of the soil is considered.

22 I believe Mr. Christopulos has testified that it  
23 doesn't; the statute shows that it does, and we are  
24 prepared to leave it there, remembering that all that  
25 is before the Court right now is a Motion to Strike.



1 It is up to you to determine the weight, the relative  
2 weight of our arguments once you rule on the Motion to  
3 Strike. We think the material should not be stricken,  
4 it should be left to your consideration to what weight  
5 they should be given.

6 THE SPECIAL MASTER: Do you want to sum up, Mr.  
7 Krob?

8 MR. KROB: Your Honor, before you answer that, we  
9 do have another witness we are prepared to call, if we  
10 would be allowed to, and in addition, we do have a closing  
11 statement to make.

12 THE SPECIAL MASTER: Proceed with your argument, if  
13 you have one.

14 MR. MEMBRINO: As to any further testimony from  
15 other witnesses, Your Honor, I think you have already  
16 stated that the question is whether the certificates  
17 and adjudicated rights are entitled to prima facie weight  
18 in the case. It is fine if the State, with that under-  
19 standing, wants to put on evidence, but we'll rebut  
20 our prima facie evidence, that's standard practice. But  
21 as far as the relevance of that testimony to a Motion to  
22 Strike, we have no use -- we see no use for it at all,  
23 and believe it's much more appropriate in the State's  
24 case in chief. That should be the way those things are  
25 done. We presented our case, we have a ruling from you



1 this is prima facie evidence of irrigability, and it's  
2 up to the State, as you said, to show that it isn't.

3 THE SPECIAL MASTER: Okay. Do you wish to ask  
4 any questions?

5 MR. MEMBRINO: We don't, Your Honor.

6 THE SPECIAL MASTER: All right. You may proceed  
7 with the other witness then, and then your closing  
8 argument.

9 MR. MEMBRINO: It is understood that they will  
10 put on their other witness at this time?

11 THE SPECIAL MASTER: They are going to put on  
12 their other witness at this time, unless you object.

13 MR. MEMBRINO: We do, Your Honor. We object to  
14 any other witness testifying as to the Motion to Strike.  
15 The question of irrigability and evidence that would  
16 rebut your conclusion that these certificates represent  
17 prima facie evidence of irrigability is something for  
18 the State to put on. not now in the consideration of  
19 a Motion to Strike, but later in its case in chief.  
20 That goes to the substance of -- this witness will go  
21 to the substance of our argument, not to the Motion to  
22 Strike.

23 THE SPECIAL MASTER: What is the purpose of the  
24 other witness?

25 MR. KROB: Yes. If I may make a suggestion, I



1 think we can alleviate the problem; that is, if I  
2 describe to you why I want to call the witness, if then  
3 you rule on it, if you are not going to let me call him,  
4 we will go on to an offer of proof, and we can be done  
5 with it. The purpose of calling the other witness is  
6 to show the impertinence of their Motion, and the  
7 impertinence stems from the fact the United States has  
8 offered these adjudicated rights as prima facie evidence  
9 of irrigability at the same time they had evidence and  
10 had a study done by their own experts showing that many  
11 of those lands were nonarable.

12 THE SPECIAL MASTER: Now, if you have -- this is  
13 important -- if you have evidence of studies, either  
14 done by them or by you to show that there is a serious  
15 question of the lack of -- of the qualification necessary  
16 for an irrigable acre to some of these acres, it's up  
17 to you to assert that.

18 MR. KROB: I understand that, but our position --

19 THE SPECIAL MASTER: The time to do that is up to  
20 you, not up to me.

21 MR. KROB: Our position is it's impertinent for  
22 the United States to file the brief claiming these  
23 lands are arable when they have studies showing they  
24 are not.

25 THE SPECIAL MASTER: No. Both sides are fighting



1 for every inch you can, and both sides are fighting for  
2 every drop of water you can, and I'm not going to rule  
3 that's a impertinent pleading. We recognize it for what  
4 it is.

5 MR. KROB: Okay, then it's best I go to my offer of  
6 proof then, Your Honor.

7 THE SPECIAL MASTER: All right.

8 MR. MEMBRINO: I should point out, Your Honor, that  
9 impertinence means it does not pertain, it does not mean  
10 it is a rude kind of presentation, and I think we have  
11 clearly shown this is pertinent to the case.

12 THE SPECIAL MASTER: I appreciate that. Gentlemen,  
13 I'm trying to get to -- I wish everybody was here, counsel  
14 for everybody. I'm trying to get to the conclusion of  
15 this matter before it results in a continuing disarray,  
16 lack of confidence of people of our society in the  
17 legislature -- in the judiciary process. We have already,  
18 if I may say so, consumed probably more of a record than  
19 was taken up in Nebraska vs. Wyoming, a serious and  
20 the largest lawsuit in the history of the West on a  
21 water adjudication. We are about there now on the number  
22 of pages and exhibits, and I'm just trying to shorten  
23 this process, if I can, without doing serious damage to  
24 the substantive rights of the parties involved, but I

25



1 would say to you, you make your offer of proof now,  
2 and let's move on to the next point.

3 MR. ECHOHAWK: Your Honor, before Mr. Krob proceeds  
4 in his offer of proof, I would strongly request the offer  
5 of proof be made in writing and submitted to the Court,  
6 just be made part of the record, and not be made orally,  
7 as to unduly prejudice the Master.

8 THE SPECIAL MASTER: I won't -- I won't --

9 MR. ECHOHAWK: My concern is, Your Honor, there are  
10 going to be certain allegations made by Mr. Krob, which  
11 he has previously alluded to, about certain studies  
12 conducted by the United States. As we have all pointed  
13 out, that testimony, if it is ever to come, is to be  
14 within the State's case in chief, and the position of  
15 the United States will be then that there will be --  
16 there is no foundation for such allegation, and until  
17 those allegations can be substantiated at the proper time,  
18 that any information relating to that should not be before  
19 the Master.

20 THE SPECIAL MASTER: Mr. Krob is a professional,  
21 and I think we all are, and I think you can have some  
22 respect for his feelings. You may make your offer of  
23 proof within the confines of being a professional.

24 MR. KROB: The State of Wyoming's offer of proof  
25 is as follows: If allowed, it would call Mr. Craig Sommers



1 to testify in regards to the soils studies survey and  
2 classification study undertaken by the experts of the  
3 United States with regard to the adjudicated lands.

4 THE SPECIAL MASTER: Which ones, which parcels,  
5 which tracts, which acreage?

6 MR. KROB: I believe it covers all the adjudicated  
7 lands, Your Honor; that based on testimony of the United  
8 States' experts, both at depositions and at trial, as  
9 well as the exhibits from both the depositions and trial,  
10 if allowed, Mr. Sommers would testify that he has a  
11 professional opinion as a soils scientist that of the  
12 17,411.1 acres claimed as adjudicated lands by the  
13 United States, 5,011.9 are Type II; 2,108.6 are Type IV,  
14 V and VI; three thousand --

15 THE SPECIAL MASTER: Just a minute, please. How  
16 many acres are Type II?

17 MR. KROB: Excuse me, 5,011.9.

18 THE SPECIAL MASTER: All right.

19 MR. KROB: Type IV, V and VI is 2,108.6, that's  
20 IV, V and VI; Type VII, there are 3,035.5 acres; Type  
21 VIII are 13 acres; Type IX are out, which Mr. Sommers  
22 would testify, and the United States' experts have  
23 testified; Type IX are nonarable, out, and Mr. Sommers'  
24 testimony would also indicate that those nonarable  
25 lands of those Type IX or out lands, there are 796.9 acres;



1 Class 6, which also has been defined as nonarable, 2,944.7  
2 acres as untyped, and Mr. Sommers would testify that that  
3 implies nonarable, 2,529.8; and as a special category  
4 referred to as untyped, though previously typed --

5 THE SPECIAL MASTER: Untyped or unclassified?

6 MR. KROB: Untyped.

7 THE SPECIAL MASTER: You went from untyped to  
8 unclassified, and now you went back to untyped.

9 MR. KROB: Well, unclassified. They are not  
10 classified by type or by class. The last category is  
11 unclassified, though previously classified as six paren  
12 six by Mr. Waples, there are 970.7 acres; there are 195.5  
13 acres of fee lands, and 1,926.0 acres of lands outside  
14 the boundaries of the Wind River Indian Reservation, and  
15 that --

16 THE SPECIAL MASTER: Well, Mr. Krob, I tell you  
17 that's going to be one thing we are going to have to  
18 take some time with when we get to the State's case.

19 MR. KROB: I understand, Your Honor, and it may  
20 be that we will reassert that at that time.

21

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1 THE SPECIAL MASTER: I can't see why you can't sit  
2 down with the engineers from the Reservation and go over  
3 this acreage and if you got a couple thousand acres of  
4 obvious Class 6 lands, I don't believe you can assert, in  
5 good conscious, that's entitled to a reserved right,  
6 gentlemen.

7 MR. KROB: Well, I haven't finished my offer of  
8 proof.

9 THE SPECIAL MASTER: Go ahead and finish your offer  
10 of proof, I'm sorry.

11 MR. KROB: The remainder of the offer of proof would  
12 be a presentation, including one piece of adjudicated  
13 land that was viewed by the Master on his trip to the  
14 Reservation, showing that it was classified as Type VI  
15 nonarable.

16 THE SPECIAL MASTER: That has little to do with the  
17 case, you know, that's -- that's overreaching. I don't  
18 know whether what I saw was Class 6 or nonarable or not.

19 MR. KROB: We were going to show a parcel you had  
20 landed on and we were going to show how the United States  
21 had classified it as Type VI, nonarable. That would have  
22 been our offer of proof.

23 THE SPECIAL MASTER: I thought the purpose of the  
24 trip to the Reservation was not to try to use that type  
25 of influence on the Special Master, just to observe a



1 general understanding of what is type -- what is  
2 adjudicated, where are some examples of adjudicated lands,  
3 where the projects are, what the projects are, a few  
4 people involved.

5 Now, if you're going to come back and say to me what  
6 you saw is a proof of the fact that --

7 MR. KROB: No, we did not want to rely on your  
8 observations as the proof. What we would offer to do is  
9 show you that parcel you had landed on and then show you  
10 the proof by the United States that it was shown to be  
11 nonarable, and then finally we would offer these materials  
12 to show that at the time that it filed its amended motion  
13 for judicial notice it was aware that many of these lands  
14 were in the categories as indicated.

15 THE SPECIAL MASTER: All right. Your offer of proof  
16 is in.

17 MR. ECHOHAWK: On the nature of a counter offer of  
18 proof by the United States, I would merely say that Mr.  
19 Summers was not employed by the United States and did not  
20 take part in any land typing or classification.

21 THE SPECIAL MASTER: We'll be hearing more from Mr.  
22 Summers.

23 Okay. Mr. Krob, thank you. We go to the --

24 MR. KROB: I'd like to make just a conclusion  
25 statement.



1 THE SPECIAL MASTER: You're entitled to one, I'm  
2 sure I want to hear it.

3 MR. KROB: What that statement is, we've heard a lot  
4 of objections from the United States and tried to hear  
5 some testimony from the State of Wyoming about these two  
6 sets of statutes. And as Your Honor said, you can read  
7 the memorandum and as usual, I've asked that you read this  
8 one with particular care because that memorandum makes  
9 not a single cite to the 500 series of statutes. It cites  
10 only the 300 series of statutes, that is the only basis  
11 asserted by the United States that's in the record to  
12 support their motion to take judicial notice of these  
13 claims. Yet that basis applies to only 12 out of  
14 roughly 200 of the rights that we want judicially noticed.  
15 As for the rest of those, they provide the Master with  
16 no basis, no discussion of the series 500 under which  
17 those rights were adjudicated, nothing to give you an  
18 inkling of information from which you should conclude  
19 that when the State Board, under Mr. Christopulos,  
20 adjudicates a water right, they look at the irrigability  
21 of the lands. In fact, the basis they relied on hasn't  
22 been used since 1912. The majority of claims they  
23 asserted are after 1912 or were adjudicated after 1912.

24 So what we have is we have two statutes, one  
25 that deals with 180 some of the rights, one that deals



1 with 12. One that deals with 12 they rely on, and the  
2 one with 182 we rely on. And the testimony in the record  
3 is that of Mr. Christopulos' which clearly shows the  
4 difference between the statutes, and that the series 500  
5 does not consider the irrigability of the rights when they  
6 are adjudicated.

7 THE SPECIAL MASTER: And if it doesn't, Mr. Krob,  
8 then is not the duty upon the State of Wyoming to rebut  
9 the presumption that they do when you get to your case?

10 MR. KROB: No, sir, Your Honor, because it is the  
11 burden of the United States to show three things.

12 THE SPECIAL MASTER: Whose burden is it to show that  
13 a water right down on Hanover Canal in Worland or one of  
14 Mr. Radosevich's clients in Lander is invalid because  
15 there has been nine years of non-use or using it on  
16 undesignated acres?

17 MR. KROB: That's open to the challenge of anyone;  
18 it's an objector that could come in and challenge that.

19 THE SPECIAL MASTER: In this case the United States  
20 is the only one around to do any objecting of that kind,  
21 but there's a presumption that says that once they've  
22 agreed to an area, that if they get a certain adjudicated  
23 right on the Reservation, they will abide in the  
24 confirmation of all those water rights.

25 MR. KROB: And that presumption only goes to the fact



1 that they have a state awarded right on that land that  
2 they can use the water. It doesn't go to irrigability  
3 at all, not one iota.

4 THE SPECIAL MASTER: That's a hollow difference,  
5 that's a distinction without a difference. The only  
6 argument here is that they got a right to put some water  
7 on some land, but what you're saying is if that land is not  
8 irrigable then they do not have a right to that water,  
9 you're saying that a presumption in your case takes a  
10 different test than an identical presumption in the  
11 United States' case.

12 MR. KROB: Yes, it does, because the burden that's  
13 borne in the State's case is borne entirely by the  
14 individual. When the State awards a right and says okay,  
15 this is irrigable, you're going to have a right on that  
16 land forever. He's saying I want a right on that land.  
17 If it doesn't work out I bear the burden, I bear the loss.  
18 I'm not claiming that's irrigable, I'm claiming I got a  
19 right to use that water and put it on there.

20 What the United States is claiming under the reserved  
21 right is those lands are irrigable, therefore we have a  
22 right indefinitely to put water on it.

23 THE SPECIAL MASTER: I understand this much of what  
24 you're saying, that you can't have it both ways on a  
25 piece of adjudicated land, this Tribal land that's trust



1 land, and if you're going to go with a water right, then  
2 you ought to have a law that says if you haven't used it  
3 for 20 years you're not entitled to a reserved right, I  
4 buy that and I will probably rule that way. But that's  
5 a pretty small percentage of the total acreage involved,  
6 and if you're saying that there is additional acreages  
7 that ought not have any because its been -- and you give  
8 other reasons that they are unclassified or something else  
9 or maybe idle for a few years, that, I don't know, I  
10 think we're trying to generalize too much with too many  
11 parcels of land, gentlemen.

12 MR. KROB: Well, that's what we're asking, is that  
13 they not be allowed to generalize and to say that these  
14 lands are adjudicated, therefore ipso facto they're  
15 irrigable. We're trying to say, that look, they've  
16 already done the study, determined the irrigability of  
17 those lands, why can't they go through and determine  
18 arability, engineering feasibility and economic  
19 feasibility, just like they did with the --

20 THE SPECIAL MASTER: With the futures?

21 MR. KROB: Right.

22 THE SPECIAL MASTER: That's a pretty good question,  
23 and we're going to get to that, I think pretty soon,  
24 right after the Tribal case.

25 MR. KROB: The motion to strike can be on three



1 bases -- Well, it can be on several, but three in  
2 particular are impertinence, immateriality and scandalous  
3 nature. All right. Now, I think you've already pretty  
4 well let us know what you're going to say about the  
5 scandalous natures. We understand. We interpreted it  
6 differently and presented the evidence accordingly.

7 As far as the impertinence, that goes to our offer  
8 of proof and it's not before the Master therefore, but as  
9 to immateriality, we have shown that at least with regard  
10 to all but 12 of the 20<sup>0</sup> rights, the motion, the  
11 memorandums submitted by the United States is completely  
12 immaterial. The only case they cite is based on that  
13 same statute they were relying earlier on, and all it  
14 talks about is whether or not 170, or one c.f.s. per 70  
15 acres is reasonable or not.

16 If you look at the legislative history, at the  
17 series 300, what they're talking about when they said you  
18 need to let them know about the kind of soil, the nature  
19 of the land and crops you're growing, that was merely  
20 intended to gain general information, because these rights  
21 have been under territorial claim for years, they're not  
22 going to look at that point to try and determine whether  
23 it is irrigable or not.

24 So the point is with regard to the vast majority of  
25 the rights claimed, the brief, the memorandum of the



1 of the United States is immaterial and should therefore  
2 be stricken.

3 THE SPECIAL MASTER: I thank you for your argument,  
4 and it was very competently and capably presented, and  
5 tenacity of both sides. I'm ready to rule on the Wyoming  
6 Motion to Strike, and I will move that the Motion to  
7 Strike the United States' brief is denied. I'm not  
8 familiar with cases where motions to strike a brief are  
9 granted, but I believe because of the nature of all of us  
10 involved in this matter, I can overlook certain matters  
11 that may be overstatements or of charges in enthusiasm,  
12 and I'm convinced that neither Counsel nor anybody  
13 involved here is questioning the ability or the integrity  
14 of any State official, and I think Mr. Christopulos  
15 recognizes that as well as everybody else. So I will  
16 rule that way, Mr. Krob.

17 MR. KROB: Thank you.

18 THE SPECIAL MASTER: And I thank all of you for a  
19 good argument on it. I think we've opened up one of the  
20 very fascinating parts of the State's case to which  
21 we'll all apply and we'll all pay particular attention  
22 to, and to the adjudicated lands.

23 I've been so absorbed in not so much the historic  
24 but to the futures, those three, four, five big futures  
25 that I have frankly have not given much thought lately





1 to the adjudicated lands on the Reservation, as is  
2 certainly now will have to be required.

3 Okay. So you want to stay and sit over there.

4 MR. KROB: Your Honor, if I may make one request.  
5 Wyoming has the continuing right that if you do finally  
6 decide not to change your ruling and do agree that these  
7 are prima facie evidence of irrigability, I think the  
8 State of Wyoming record reflects that the State still  
9 has the right to respond to the specifics as to whether  
10 they have the right ditch indicated and the right proof  
11 number with the right adjudication.

12 THE SPECIAL MASTER: Oh, yes. You always got a right  
13 to that, I believe. Once again, I'm aware of the massive  
14 complications and technical detail and size really of  
15 what we're working with.

16 Okay. Thank you both for that, and now let's proceed  
17 to the Motion for Expedited Discovery on the United  
18 States' Fifth set of Interrogatories and requests for  
19 production directed to the State of Wyoming.

20 MR. ECHOHAWK: Your Honor, before we move on to the  
21 discovery, I'm not quite sure, you've indicated back and  
22 forth that you're not quite sure, but at this time, Your  
23 Honor, you're aware that this afternoon the United  
24 States will rest its case in chief?

25 THE SPECIAL MASTER: Yes. The United States will



1 rest about 1:30, two o'clock, after the lady, two, 2:30.

2 MR. ECHOHAWK: The United States would request at  
3 this time some specific ruling regarding our Motion to  
4 Take Judicial Notice. As you know, we first brought this  
5 up in March of this year, hopefully early enough to where  
6 we could get it resolved, so in case we did not prevail  
7 we could put on some additional evidence to cover it.

8 Now, we've come to the close of our case which would  
9 be this afternoon, and the United States needs to know  
10 whether or not additional evidence is required. If that  
11 is the case, Your Honor, we will have no choice but to  
12 move for a continuance in order to prepare.

13 THE SPECIAL MASTER: I'm not ready to rule on whether  
14 or not I -- I can take judicial notice of the fact that  
15 there have been rights on them, that you have a different  
16 set of different type of water rights on the adjudicated  
17 lands, of course. And I will take that, but I'm not going  
18 to make the final determination within the decree at this  
19 time as to each and every parcel of those lands.

20 MR. KROB: If I may address that. The State of  
21 Wyoming's position has been clear, and that if they just  
22 want to rely on the adjudicated lands, that's fine, it's  
23 up to them to present their own case in chief, and to  
24 ask for a ruling that early is somewhat premature.

25 THE SPECIAL MASTER: I will sustain that observation.



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I want to hear Wyoming's case before I make the final adjudication.

MR. ROGERS: May I add something in support of Mr. Echohawk and the situation he is in? I would -- It would seem appropriate to me and prejudices no party here that I can conceive of, if the Master would officially grant the motion to take judicial notice of these adjudicated rights and they are prima facie evidence of irrigability.

THE SPECIAL MASTER: Let's stop right there. That is obvious. I have to, I have to recognize them judicially, I'm bound to because they are records of the State of Wyoming.

\* \* \* \* \*



1 THE SPECIAL MASTER: Secondly, and there is a  
2 presumption which abides in their correctness, but what  
3 you are asking, and that much I will do, period. I don't  
4 conclude from that that every acre that is there, ipso  
5 facto is a practicably irrigable acre and is entitled to  
6 a reserved water right, that I will not do.

7 MR. ECHOHAWK: Your Honor, that is the point that  
8 we are somewhat caught by, we don't quite understand  
9 what the Court's ruling is. On Page 5190 of the  
10 transcript you stated, "The fact that the water rights  
11 were issued in 1905 creates a prima facie fact situation  
12 that these lands are irrigable lands. That is not to say  
13 that the State cannot refute that, but the burden, in  
14 my opinion, is not upon the United States to prove the  
15 irrigability or arability. Now, we are having briefs on  
16 that because you may be in error." We did file the briefs  
17 on that.

18 THE SPECIAL MASTER: Do you say upon the State of  
19 Wyoming?

20 MR. ECHOHAWK: Right. What we want to know is whether  
21 or not we have, in fact, got a prima facie case to shift  
22 the burden to the State where they can attack those lands  
23 in their case in chief, and if that is the situation,  
24 then on our rebuttal portion of the case we can come in  
25 and try to refute what they said.



1 THE SPECIAL MASTER: Mr. Krob, doesn't that fairly  
2 state the situation?

3 MR. KROB: I don't think it does, Your Honor.

4 MR. ECHOHAWK: That's the fact we are seeking.

5 MR. KROB: What he is seeking is to have you say,  
6 look, did we carry our burden or not. He wants you to  
7 rule that right now. Well if they didn't, that's their  
8 problem. Their decision is to decide how much evidence  
9 they are going to put on. They should read the law and  
10 they should be able to determine from the law how much  
11 case they need to put on. Now, if they think they  
12 presented enough and the Master is going to rule on that,  
13 fine, but to have the Master say, "Well, you presented a  
14 good enough case that you get past this stage," is  
15 completely premature.

16 THE SPECIAL MASTER: I have to -- I have to abide  
17 in what Mr. Krob just said and pretty much sustain it.  
18 What will determine whether or not all of this acreage  
19 is going to carry with it a reserved water right is if it  
20 is a practicably irrigable acre, and I'm going to  
21 determine that from all the evidence in the case, not  
22 just from the presumption a water right was filed on it  
23 back in 19<sup>0</sup>5, 1909 or 1912. That is what you just read  
24 to me.

25 MR. KROB: The State has no problem with the Master



1 taking judicial notice of those rights, they have been  
2 certificated.

3 THE SPECIAL MASTER: You have no problem with the  
4 fact the presumption is they are irrigable acreage, but  
5 you are going to have to rebut that presumption.

6 MR. KROB: That is where we have the problem, because  
7 that is a presumption of irrigability.

8 THE SPECIAL MASTER: What you are saying is that's  
9 true on 12 only on the character of this soil type thing  
10 and so on, and you are saying because there's no evidence --  
11 you are saying that a granting of a permit on land doesn't  
12 necessarily prove it's a practicably irrigable acre,  
13 whether it's to Indian or non-Indian.

14 MR. KROB: Right. And it's their burden, if they  
15 are claiming it is a practicably irrigable acre, is to  
16 show if the adjudication shows it, to show where in the  
17 law it says that if you get it adjudicated under the 500  
18 series, as they adjudicate most of them, that that  
19 necessarily implies they're arable.

20 MR. ROGERS: Your Honor, it seems to me the  
21 procedure is perfectly orderly for you to recognize  
22 through judicial notice that these Certificates of  
23 Appropriation show that it's proof of irrigability, then  
24 shift the burden, as Mr. Echohawk has said, to the State  
25 to come in and show that is not the case, then the United



1 States and the Tribes may rebut that in their rebuttal  
2 case to the extent they can. That will conclude the  
3 necessary proof as to what is either in or not. Mr.  
4 Echohawk is in a position this morning of either having  
5 to rely on your recognition of judicial notice or to come  
6 forward with considerable additional proof at this time,  
7 which he has indicated will cause a continuance or cause  
8 him to ask for a continuance of the trial to prepare that.  
9 He brought the motion --

10 THE SPECIAL MASTER: Gentlemen, what you are doing  
11 is asking me to make decisions or judgment calls on how  
12 you proceed with your own lawsuit, and I don't think that  
13 is part of my job.

14 MR. ROGERS: But the United States had asked this,  
15 Your Honor, back in March when it would have been, you  
16 know, we thought we had had that ruling as Mr. Echohawk  
17 quoted on Page 5190 at that time. It became slightly --

18 THE SPECIAL MASTER: What he just read is still  
19 exactly what I feel is my place, and I would sustain it  
20 again today.

21 MR. ECHOHAWK: Your Honor, I think the point is that  
22 all we want to find out, and I think it's certainly  
23 proper to do that by way of motions, which we have done,  
24 is whether or not there is enough evidence in to defeat  
25 a Rule 41-B motion which we assume the State is going to



1 file. That is all we want to know now, is whether or not  
2 we have enough evidence in to cover that particular  
3 portion to shift the burden to the State, and that is the  
4 only thing we want to know.

5 MR. KROB: Your Honor, that's entirely a decision  
6 to be made by you after you hear the Rule 41 motion.

7 MR. ROGERS: No, he can decide that now, and you know  
8 he can.

9 THE SPECIAL MASTER: Gentlemen, please, one at a time  
10 and it will help everyone involved.

11 MR. SACHSE: Could I be recognized? I haven't said  
12 a word all morning for the record.

13 THE SPECIAL MASTER: All right. Mr. Sachse.

14 MR. SACHSE: The reason the State asked you to rule  
15 a number of months ago on whether the proof of a State  
16 adjudication would be a prima facie case of practicably  
17 irrigable acreage is that the -- did I say "State"? I  
18 meant to say United States -- is that the United States  
19 had to make a decision, to either take another several  
20 of trial to present proof as to all these tracts of land,  
21 or is it sufficient because of the State adjudications to  
22 assume that these lands are good unless the State comes  
23 in and proves otherwise? You ruled on that. You ruled  
24 that this was prima facie evidence, only prima facie,  
25 rebuttal, clearly rebuttal, but prima facie evidence that





1 this was practicably irrigable acreage and that you were  
2 not going to use weeks of trial having us prove again  
3 what the State had already agreed to in its adjudication.  
4 Now, based upon your ruling at that time, the United  
5 States did not present evidence on this issue.

6 Now, it seems to me that there's only one ruling  
7 that you can make -- there are really two choices of  
8 rulings that accord due process: One is that you stick  
9 with the ruling that you made, which is what I recommend,  
10 and what that then means is not that you have agreed that  
11 all land that has an adjudication is going to have a  
12 reserved right, but it's up to the State to come in and  
13 show you which of that land should not have a reserved  
14 right, and then the United States, if it has any rebuttal  
15 to that, can put that on in its rebuttal case. Now, that  
16 is precisely what I think you have already ruled and what  
17 should happen in this case.

18 What the State is trying to do is very tricky here.  
19 They want to let the United States close its case, then  
20 have them not put on any evidence at all, you see, then  
21 the United States would have been sort of -- I'm trying  
22 to remember the word in poker, but I can't quite think  
23 of it -- but the United States would have been faked out  
24 on this. Then the State would present absolutely nothing,  
25 and you would be left with no evidence except the



1 adjudications themselves on that land, and the State  
2 would move that you have to not grant a reserved water  
3 right for it, and the United States would have completed  
4 its case and would have no chance to do it.

5 THE SPECIAL MASTER: I pretty much indicated to the  
6 State of Wyoming there's obviously going to be a good  
7 portion of this land that will have a reserved right on it.

8 MR. SACHSE: What I'm saying is on the day that the  
9 United States is about to close its case, it's no longer  
10 good enough, and I think you have already ruled on this,  
11 that the adjudications are prima facie evidence that that  
12 is practicably irrigable acreage.

13 THE SPECIAL MASTER: Which is rebuttal.

14 MR. SACHSE: Which is entirely rebuttal. The State  
15 would have its opportunity in its case in chief to present  
16 whatever evidence it wants to the the contrary, and that  
17 is your ruling, and you should not be vague about it.

18 THE SPECIAL MASTER: Let's understand -- I'm not being  
19 vague about it, and I'm not qualifying or second  
20 guessing what I said in the record that was read earlier  
21 by Mr. Echohawk. Let's review this much of what we are  
22 dealing with, gentlemen: The test to whether you get a  
23 reserved water right on land that you claim through land  
24 that is irrigable and arable, and therefore, should have  
25 a reserved water right is a strong test. It required



1 excellent expertise from a lot of engineers on arability,  
2 depth to barrier, permeability, economic feasibility, and  
3 its been a very, very strong test that we have required  
4 to add to the historic and to the adjudicated a bunch of  
5 land that claimed new water rights for us in some new  
6 areas. I don't believe you have the same test to prove  
7 something that has on it a water right that has on it a  
8 water right that's been granted for many years and sometime  
9 or another had been irrigated. So there's a distinction  
10 between what that test is, and that distinction is I have  
11 taken judicial notice of the fact there was granted to  
12 these adjudicated rights water rights which presumes as  
13 prima facie evidence that they are irrigable acres, but  
14 it's rebuttable by you. Now, if the United States has  
15 abstained from presenting evidence because they have the  
16 benefit of presumption flowing in their benefit, that's  
17 their business. I am not going to give you a ruling on  
18 what you asked this morning, Mr. Echohawk, because it's  
19 not my job to make judgment calls on the strategy of your  
20 lawsuit. I'm going to deny your motion to strike the  
21 brief because I have a right to read whatever you  
22 gentlemen are filing, and I'm mature enough not to be  
23 blind-sided on what is being read.

24 MR. KROB: Two points I would like to make --

25 THE SPECIAL MASTER: Let me finish.



1 MR. KROB: I'm sorry.

2 THE SPECIAL MASTER: I believe that leaves you to  
3 move ahead, and you are the captains of your own ships  
4 in the direction you are going to take in the strategy  
5 of your own lawsuit.

6 MR. KROB: Two points, Your Honor.

7 THE SPECIAL MASTER: Let Mr. Krob speak now.

8 MR. KROB: In response to what Mr. Sachse said.  
9 First of all, I don't think he can claim that we have  
10 exactly sandbagged the United States, that the Master  
11 has, by leading him to think there's this presumption  
12 when there isn't or it's a different presumption that  
13 what you set forth in the record. They have obviously  
14 gone ahead and studied the lands, they have obviously  
15 gone ahead and briefed the matter time and time again.

16 The second point, which is almost a question. What  
17 they are saying is that the fact that a water right has  
18 been adjudicated under state law is prima facie evidence  
19 of its irrigability. My question is where in the record,  
20 and that's all we can go on is what's in the record,  
21 where in the record is the evidence that says when a  
22 water right is asserted under the series 500 statute,  
23 which most of them were, where in the record does it  
24 say that necessarily -- they considered facts that would  
25 lead you to the conclusion of irrigability?



1 THE SPECIAL MASTER: I will make the assumption that  
2 I can take judicial notice of the fact that a permit was  
3 granted and an adjudication made, and when an adjudication  
4 is made upon a permit granting a water right, you are  
5 going to have the burden to fall on your shoulders to  
6 argue me out of the fact that's irrigable acreage.

7 MR. KROB: That's the point. The statute, I believe,  
8 is 41-4-512 that deals with adjudication under the permit  
9 system. Nowhere in that statute does it talk about the  
10 nature of the land, physical nature, chemical nature or --

11 THE SPECIAL MASTER: I don't think it needs to to  
12 support Mr. Christopulos in an adjudication; either does  
13 he, or he wouldn't have granted the adjudication.

14 MR. KROB: Right. All he has to do is say the water  
15 will replace -- the statute will replace him.

16 MR. KROB: According to the United States' own  
17 experts, that is what you have to do to determine whether  
18 the land is arable or not. You have to look at the land.

19 THE SPECIAL MASTER: I said there is a difference in  
20 tests. The United States comes along now and says, okay,  
21 we have to prove up to get the water for the Indians  
22 over and above what is historic, what they need for their  
23 new areas, and I agree with you, there's a new test on  
24 their shoulders on that, and it's a pretty hard one, and  
25 we have been watching and listening for low these many



1 months and months and weeks and weeks of cross-examination  
2 on it, every foot of it, every out-house, literally. You  
3 say there is 40 acres, how about this road, how about this  
4 fence, so the test is a hard one when it comes to saying  
5 we have got new lands that we want to consider and add  
6 to and claim a right for, used a different test compared  
7 to historic. There is no question about what is being  
8 used now. The State isn't questioning that. I don't  
9 believe you are anyway.

10 MR. KROB: We are, but --

11 THE SPECIAL MASTER: But it's mild, it's a relative  
12 minor thing. But on this type of land it's a test far  
13 less I think than the severity put on the United States  
14 or to the Indians because that permit was granted 40 or 50  
15 or 60 years ago.

16 MR. KROB: Even if it's a lesser test, the fact is  
17 they presented nothing other than the fact it's  
18 adjudicated. They haven't done anything with regard to  
19 the lesser test even.

20 THE SPECIAL MASTER: I'm going to rule I can take  
21 judicial notice of the fact the water right at issue could  
22 include the adjudicated lands, and in my opinion, that  
23 constitutes a prima facie presumption of its irrigability.

24 MR. ECHOHAWK: So we accept that, Your Honor. Thank  
25 you.



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MR. SACHSE: Let's have a five minute break.

THE SPECIAL MASTER: Yeah, we will take a short  
recess.

\* \* \* \* \*



THE SPECIAL MASTER: We'll come to order, please.  
Just a half a second, Mr. Echohawk.

Okay. The motion next before is for expedited discovery, and the United States moves for an order requiring the State to respond to the fifth set of interrogatories within 20 days from the service, and when were they served?

MR. ECHOHAWK: July 9th.

MR. KROB: Your Honor, the State of Wyoming objects to hearing the motion at this time since it is not within the 10-day rule and is not set to be heard.

MR. ECHOHAWK: I believe it's been seven or eight days, Your Honor. A matter such as this just merely, I don't think requires the entire 10-day period.

MR. KROB: The problem is we are under a 10-day rule. We modified the rule with regard to exhibits, but you were asked at that time if it applied to motions and you said it did not. We're still under the 10-day rule and the problem is this is Mr. White's motion because he relied on the 10-day rule and didn't think we'd hear it today.

MR. ECHOHAWK: Your Honor, we've all -- there are several lawyers attending the case, and the understanding has been that various lawyers for various parties could also, could handle whatever situations came up.





1 MR. SACHSE: Your Honor, it's my understanding that  
2 we never had a 10-day rule for motion to expedite anything.  
3 It's almost a conflict in terms. If you need to have  
4 something done quickly, you can't wait 10 days to get to  
5 the judge to see if you can get it done quickly. I can  
6 think of a number of instances where we've all got together  
7 within a day or two because there was something that had  
8 to be resolved at that time. Some of those were motions  
9 by the State, some by us, but it's not ingenuous to invoke  
10 a 10-day rule on a motion to expedite.

11 MR. KROBE: Well, Your Honor, the problem is it  
12 either applies to motions or it doesn't, one. Secondly,  
13 if it doesn't apply to a motion for expedited discovery  
14 for the unique nature of a motion for expedited discovery,  
15 they should have at least set it. This wasn't even set.

16 Those instances where we have had emergency hearings,  
17 and there have been instances, it has generally been agreed  
18 upon by all counsel to set a date. There has been no  
19 such agreement.

20 MR. ECHOHAWK: If we don't do it today, we'll merely  
21 have to set it for next Tuesday.

22 MR. KROB: That's fine.

23 THE SPECIAL MASTER: If the motion for expediting dis-  
24 covery is denied, what will the time run on the discovery  
25 on these set of interrogatories?



1 MR. ECHOHAWK: First week of August, I believe.

2 MR. KROB: Even that may be unclear.

3 THE SPECIAL MASTER: You're only talking about  
4 one week's difference.

5 MR. ECHOHAWK: Talking about expediting production  
6 within ten days, answers within -- ten days early.

7 THE SPECIAL MASTER: You want answers by the 29th  
8 of July, to 220 questions, if I grant the Motion to  
9 expedite.

10 MR. ECHOHAWK: That is correct, Your Honor.

11 MR. KROB: Three hundred questions, counting subparts,  
12 Your Honor.

13 THE SPECIAL MASTER: Pardon?

14 MR. KROB: Three hundred questions counting subparts.

15 THE SPECIAL MASTER: All right, three hundred questions  
16 counting subparts. If I deny the Motion, if I refuse  
17 to hear it by honoring the ten-day rule, which I've  
18 been pretty strict on, then you will want, you will  
19 expect your answers and want them at the end of the  
20 first week in August?

21 MR. ECHOHAWK: I believe that's correct, Your Honor.  
22 And the reason that we're asking for the ten-day  
23 difference is we discussed last time, in which we will  
24 bring it up again, is the depositions scheduled that  
25 the United States wants to conduct, we got to get these



1 interrogatories, get with the experts, digest them  
2 and go to our --

3 THE SPECIAL MASTER: All right. I am ready to  
4 sustain the objection of Mr. Krob that this is -- a  
5 ten-day rule is a ten-day rule, on these matters, and  
6 we've been in it too long to object now, so I will not  
7 be hearing the Motion for expedited discovery today.

8 MR. KROB: Thank you.

9 THE SPECIAL MASTER: If I were to hear it, I  
10 would doubt, frankly very much, if I would grant it  
11 because I think a few more days into August isn't going  
12 to be all that much of a burden on these set of interroga-  
13 tories of this size. So --

14 MR. ECHOHAWK: Well, is that your ruling, if we're  
15 going to argue it, I would like to --

16 THE SPECIAL MASTER: It's not my ruling, but that's  
17 going to be the substantive result of this, because we're  
18 not going to get into the Motion today, and we won't  
19 get into it tomorrow, because it's only nine days, is it,  
20 tomorrow?

21 MR. KROB: Eight.

22 THE SPECIAL MASTER: What?

23 MR. KROB: Eight.

24 THE SPECIAL MASTER: Today's the seventh day?

25 MR. ECHOHAWK: It was filed one week last Thursday,



1 seven or eight days.

2 THE SPECIAL MASTER: Well, in that event, gentlemen,  
3 I can't hear it till the ten days are up, period.  
4 Let's put it that way.

5 MR. ECHOHAWK: Could we have a hearing set on  
6 Tuesday then, Your Honor?

7 THE SPECIAL MASTER: No, and the reason for that,  
8 Mr. Echohawk, is that crazy week in Cheyenne when there  
9 is no rationality. You can't get to the courtroom,  
10 you got to have a pony and a saddle, and take in a  
11 rodeo. And that, for me to try to set it for then  
12 only to have somebody answer any questions during  
13 Frontier Week is totally --

14 MR. ROGERS: Your Honor, doesn't that mitigate  
15 the reason for waiving the ten-day rule at this point?  
16 It's almost an impossibility, at this point, in order  
17 to do it, the United States is, in effect, being denied  
18 its Motion for a lack of opportunity to argue it.

19 MR. KROB: For lack of filing it earlier, Your  
20 Honor.

21 THE SPECIAL MASTER: I've ruled on it, and I will  
22 not change my mind on it now.

23 If the parties want to ask me to please modify the  
24 ten-day rule for Motions as well as we did for exhibits  
25 because we are getting near the end of the lawsuit now,



1 I'll gladly entertain that suggestion and cut the  
2 notice to a five-day period, especially through October,  
3 November, when we'll be in session almost every week.  
4 I may change the ten-day rule fairly soon myself, but  
5 it would not be wise to do it now, it would not be fair  
6 to do it now, in my opinion, but we can bring it down  
7 to a seven-day rule, six-day rule, in view of the fact  
8 that we are compressing everything else towards the  
9 conclusion of the case to comply with the order establishing  
10 a schedule, which I mean to adhere to. And I'll give  
11 you some reasons why I mean to adhere to it when we  
12 review the analysis made that Miss Edwards made on the  
13 case so far; the witness examination, total summary of  
14 days spent so far, of witnesses, of time for each witness,  
15 time consumed by the various parties, and you will see  
16 that we are quite, we are in good shape.

17 MR. ECHOHAWK: Your Honor, if I may speak to this  
18 additionally. It's vitally important to the United  
19 States to have some determination on the expedited matter  
20 and furthermore, the reason for that is during the  
21 depositions that were conducted of the Tribal experts  
22 this past week, Mr. Merrill, attorney for Wyoming, has  
23 indicated that he was not intending to answer the United  
24 States' interrogatories, and I specifically heard him  
25 instruct one of his witnesses not to worry about answering



1 these interrogatories. If we are --

2 MR. KROB: Your Honor, I'd object to that as being  
3 privileged.

4 MR. ECHOHAWK: He said it to me in open Court -- I  
5 mean during the deposition.

6 If we are to wait the entire thirty-day period  
7 and have Mr. Merrill come walking in here, object to  
8 the interrogatories and not answer it, the United States,  
9 we're caught short again.

10 THE SPECIAL MASTER: No. I thought I understood  
11 from you the interrogatories will be answered some time  
12 in the first week in August.

13 MR. ECHOHAWK: That's when the thirty-day period  
14 will run. Mr. Merrill has indicated to me and to his  
15 witnesses that he was not intending to answer these  
16 interrogatories. There needs to be a determination,  
17 and the only way to do it is to expedite that matter.

18 MR. KROB: He's arguing a Motion now that you've  
19 already ruled that we're not going to hear the Motion.

20 MR. ECHOHAWK: Your Honor, I implore you to either  
21 set the Motion for next Tuesday or waive the ten-day  
22 rule in this instance and to argue it today.

23 THE SPECIAL MASTER: I can't do that, Mr. Echohawk,  
24 I've already ruled on it.

25 All right. That clears the deck until about 1:30



1 this afternoon for your next witness.

2 MR. ECHOHAWK: No, Your Honor. When will the  
3 Motion for expedited discovery be heard, on the 27th?

4 THE SPECIAL MASTER: It will be heard on the 27th  
5 of July.

6 MR. ECHOHAWK: Okay. One additional matter, Your  
7 Honor. Yesterday the United States and the State of  
8 Wyoming had reached partial agreement or reached agreement  
9 for --

10 MR. ROGERS: Excuse me. May I make one point here  
11 on this? Since the Master has now agreed to hear the  
12 Motion for expedited consideration on the 27th, could we,  
13 at least on behalf of the Arapahoe Tribe, move that the  
14 Court require the State at that time, at the time of  
15 the hearing on the Motion to expedite, whether they  
16 intend to either answer the interrogatories or to make  
17 objection to answering at that time so we would know  
18 whether we would be in a position of getting answers  
19 within whatever time is set, or whether we're going  
20 to have to be faced with a Motion to compel discovery,  
21 because we are under a very tight time limit of getting  
22 these answers by the time the depositions begin.

23 MR. KROB: Your Honor, it hardly seems appropriate  
24 that the Tribes move to essentially amend the United  
25 States' Motion. If the United States wants to make that



1 amendment, that might be all right.

2 MR. ECHOHAWK: The United States amends.

3 MR. KROB: Additionally, it seems a little out of  
4 time to ask the State of Wyoming to make commitments that  
5 have never been imposed on the other side, that is make  
6 commitments with regard to interrogatories before the  
7 time has run.

8 MR. ECHOHAWK: But no one has ever openly stated  
9 that they did not intend to answer anyone else's  
10 interrogatories.

11 THE SPECIAL MASTER: Yeah. I would assume that  
12 they propose to answer your interrogatories, but they  
13 don't want to be hurried in them, that's what I assume.

14 Now, if there's some substantive reason that you  
15 don't care to -- that you're not going to respond to  
16 the request for production, I would presume you would  
17 raise that, in good faith, right now and not use it as  
18 another dilatory tactic.

19 MR. KROB: If we have any substantive objections, we  
20 will bring it to the Court's attention as soon as we  
21 have them.

22 THE SPECIAL MASTER: That's the best assurance I  
23 can give you, Mr. Echohawk.

24 MR. ECHOHAWK: As I stated yesterday, Mr. Krob and  
25 I reached an agreement for deposition schedules of certain





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of the State's witnesses. I believe there are still about seven others that we haven't yet set to be conducted in the free periods where we do not have any trial. The only condition that affects this agreement is set out in the first sentence, and that is "subject to the Special Master permitting depositions during the month of August", and if we could get a resolution of that, of that from you at this time, Your Honor, then we can proceed with the depositions.

It's the position of the United States that we have made every effort to not conflict with the vacation schedules of the State's experts. We, in fact, have gotten their vacation schedules as to when they're available. They have agreed to the schedule, and it's just merely, Your Honor, a determination by you as to whether or not the depositions will be permitted.

Mr. Krob is available, the lawyers for the United States are available, and the State's experts are available.

\* \* \* \* \*



1 THE SPECIAL MASTER: I'm not going to deny the  
2 taking of depositions in the month of August or any other  
3 time.

4 MR. KROB: May I respond to that before you make  
5 your final ruling, Your Honor?

6 THE SPECIAL MASTER: Yes.

7 MR. KROB: Mr. Echohawk and I have reached the  
8 agreement before and appreciate the indulgence of the  
9 United States in arranging around the various vacations  
10 scheduled. The objection of the State is a general one,  
11 and that is the taking of depositions during the month  
12 of August. The State of Wyoming had been led to believe  
13 and had represented to its experts the month of August  
14 was a month you were to completely take yourself away  
15 from this adjudication.

16 THE SPECIAL MASTER: I never told you you would be  
17 taken away from the adjudication; the only thing I said  
18 was we wouldn't have hearings in August. And what you  
19 do with your time in August is up to you.

20 MR. KROB: We understood it to be a time meant to  
21 be spent with families. And essentially, if we are going  
22 to be sitting in depositions rather than a hearing room,  
23 I think the purpose of the August break from hearings is  
24 defeated.

25 THE SPECIAL MASTER: That's hardly my concern. I



1 can't help that. I have accommodated everybody, every  
2 lawyer in this case, at least once on personal family  
3 matters of deep importance, of hunting and fishing trips,  
4 on other lawsuits which required you being somewhere for  
5 other clients, and I sure can't hold now -- you must  
6 agree with me because you signed it, Scott. You agree  
7 with me, but some of your co-counsel don't, right?

8 MR. KROB: I'm the one that signed it, I'm the one  
9 that handled the whole thing. All I'm saying is that we  
10 generally do not want to have depositions at all and we  
11 thought it was a time away from the case. But if we do  
12 have to have them, I appreciate the indulgence of counsel  
13 in working with us to arrange that schedule that you have  
14 done.

15 THE SPECIAL MASTER: All right. I will not intervene  
16 to prohibit depositions in August.

17 MR. ECHOHAWK: Thank you, Your Honor.

18 MR. KROB: Thank you.

19 MR. ECHOHAWK: Your Honor, I believe that takes care  
20 of all the preliminary matters, and we will have our wit-  
21 ness regarding the title information on the Reservation  
22 available at 1:30 this afternoon.

23 THE SPECIAL MASTER: Does anyone want to do any dis-  
24 cussing regarding the possibility of settlement talk? We  
25 are favored this morning with a good representation of



1 tribal members and tribal officials. Do you want to see  
2 if -- Do you want to discuss some settlement possibility,  
3 gentlemen, or is it not in order?

4 MR. ECHOHAWK: I don't think it's in order, Your Honor.  
5 I believe the only way we could discuss it is probably with  
6 Mr. White.

7 THE SPECIAL MASTER: Or the Attorney General.

8 MR. ECHOHAWK: Right.

9 THE SPECIAL MASTER: What we need is the Governor  
10 and the President of the United States for about an hour  
11 and maybe that would work.

12 MR. KROB: I would be happy to listen, but I don't  
13 think it would be agreeable.

14 THE SPECIAL MASTER: We will be in recess until  
15 1:30.

16 (Whereupon the noon recess was  
17 taken.)

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