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Case # 4993

File # 197

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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 1981
Margaret V. Harpston CLERK
DEPUT

VOLUME 90

Friday, July 17, 1981

ORIGINAL



APPEARANCES

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FOR THE STATE
OF WYOMING:

HALL & EVANS
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717 17th Street
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BY: MR. SCOTT KROB

FOR THE SHOSHONE TRIBE:

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2030 M. Street, N.W.
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MR. WILLIAM R. PERRY

FOR THE ARAPAHOE TRIBE:

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CLERK TO THE
SPECIAL MASTER:

MR. LEO SALAZAR
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701 Rocky Mountain Plaza
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THE SPECIAL MASTER: May we come to order, please.
Go ahead with your pow-wow.

(Brief pause.)

MR. SACHSE: May it please the Court, Mr. Echohawk asked me to state to the Court that he will not be here this morning, but that the hearing should proceed without him.

THE SPECIAL MASTER: Very good, thank you, Mr. Sachse.

Would you like to wait a minute or two for the rest of counsel?

MR. KROB: I'm not sure if Mr. Radosevich is going to be here or not.

THE SPECIAL MASTER: Okay. I believe we concluded direct with Mr. Pius Moss, and that cross is available to the State.

MR. KROB: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. KROB:

Q Pius, you said that the water on your farm came from the Subagency Ditch; is that correct?

A. That's right.

Q Now, is that a federal government ditch or do you know?

A. Yes.

moss-cross-krob



1 Q Did you pay the federal government for that water?

2 A Pardon?

3 Q Did you pay the federal government so much for each
4 year for that water?

5 A Yes.

6 Q Was there an adequate water supply provided by that ditch?

7 A Yes.

8 Q Were there any years in which you couldn't obtain enough
9 water out of that ditch?

10 A Only one year I remember, because of the cold weather,
11 no run-off, the farmers were worried, and all of a sudden,
12 we have plenty of water when the run-off started.

13 Q And that would be one in about eleven years?

14 A Something like that, yes.

15 Q Could you summarize for me the source of your historical
16 knowledge of the Tribe, the Arapahoe Tribe?

17 MR. ROGERS: Objection, Your Honor, this question
18 is beyond the scope of direct.

19 THE SPECIAL MASTER: Let me hear the question,
20 please. I didn't -- I was going on a different thing.

21 (Thereupon, the following question
22 (was read back as follows: "Q
23 (Could you summarize for me the
(source of your historical knowledge
(of the Tribe, the Arapahoe Tribe?"

24 THE SPECIAL MASTER: Oh, I think that's permissible,

25 moss-cross-krob



1 summarize your historical knowledge of the history of
2 the Arapahoe --

3 MR. KROB: The source of that knowledge.

4 THE SPECIAL MASTER: The source of that knowledge.

5 MR. ROGERS: Your Honor, the only testimony he gave
6 about the history of the Tribes dealt with his own per-
7 sonal history of fishing.

8 MR. KROB: Your Honor, I believe it also dealt with
9 whether or not other people fished at that time. I
10 believe he testified --

11 THE SPECIAL MASTER: Oh, it's historical, it's
12 not factually probative, I think it's permissible. You
13 may answer.

14 THE WITNESS: As far as my knowledge of the Arapahoe
15 Tribe, it's been expressed to me by the elders of the
16 Arapahoe Tribe, and getting my information from my brother
17 in the Indian way of relationship, my cousin in the white
18 way of relationship. He is the grandson of Chief Black Coal,
19 and that's where my information has been coming.

20 Now, the information I received from him, because
21 of my affiliation with the Saint Stephens Indian School
22 to be expressed in history, language and all concerns with
23 the Northern Arapahoe Tribes, I get it orally and dispense
24 it orally.

25 moss-cross-krob



1 Now, we were in the Colorado area at one time
2 as far as my information comes, and then because of
3 what happened there one particular day, San Creek
4 Massacre, the Arapahoes, Northern Cheyennes left the
5 area. The belief in custom of the Tribe, they don't
6 go back to where death had occurred, especially in
7 that expanse.

8 So from there, they came up north into the
9 Laramie area and toward the Black Hills, western
10 Nebraska, eastern Wyoming, back and forth. Then
11 about that time the government was beginning to herd
12 the Indians down to Oklahoma, but Chief Black Coal was
13 on the move with his Tribe, and at the same time,
14 thinking where he should lead his Tribe for living.

15 He knew of the Wind River country, and he
16 decided to go there, but he knew that Chief Washakie
17 was already settled there with his Tribe.

18 Now, after having a council with the subchiefs
19 and the Tribe, he said that he wanted ten or twelve
20 men, no women, no children along on the trip, because
21 he said, "We may not come back. I'm going to go and
22 see my friend, Chief Washakie."

23 Now, the Tribes were enemies, but two chiefs
24 friends, and there's quite a bit to them being friends.

25 moss-cross-krob



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But there's also a reason for a man cleaning up going into an area such as that. If death occurred, he would be dressed with the best clothing that he had. That's the belief.

* * * * *



1 So he proceeded after a few days, volunteers,
2 ten or twelve. Then they proceeded from the Glenrock
3 area where they were situated, went west to Casper,
4 on west towards Shoshoni, Wyoming, and up through
5 Hudson, Wyoming, and then cut across northwesterly
6 toward the Fort Washakie area. Then directly south
7 of the springs, Hot Springs, there are hills, that's
8 where they came, and after noticing a lot of dust,
9 peering over into that grassy valley, he knew there
10 was some sort of pow-wow, celebration, horse races
11 going on. So he began to clean himself up in the
12 sense of combing his hair, putting on his best as
13 far as clothing, and he instructed the people with
14 him, "I'm going to go down there, talk to my friend
15 to see whether or not he will permit us to live here
16 with him and his Tribe."

17 Now, that's a big order, I would say. All right.
18 He instructed the men with him, "Give me enough time,
19 sufficient time. If I do not come out from the camp
20 area, if I do not wave my buffalo robe, then you better
21 get out of here, because they will probably have killed
22 me."

23 So he left his gun, he left his knife and anything
24 that would create thoughts of hurting someone he left.

25 MOSS-CROSS-KROB



1 THE WITNESS: Now, he proceeded down the hill, and
 2 at first the young people out on the outer edge didn't
 3 pay no attention until he got very close, then they knew
 4 that he was not a Shoshone, the way he was dressed, and
 5 then a whole group of them went around him, they wanted
 6 to kill him. But then he kept making signs that he wanted
 7 to see the chief, my friend. So finally one of them
 8 summoned the chief and then when Chief Washakie knew
 9 who it was, right away he come. Then he told the young
 10 people around Chief Black Coal then that anyone who hurts
 11 this man will have to answer to me, he told them, so then
 12 the crowd dispelled. So they had this council between
 13 the two. Chief Black Coal said, "My reason for being here,
 14 I would like to bring my people here, the Arapahoe, and
 15 have them under the protection of your wing."

16 So they talked about that, and then Chief Washakie
 17 said it would be all right, and then as their councils
 18 treated, these two men, just these two men now made the
 19 treaty, you don't find it in any history books, they
 20 finally concluded that Chief Washakie told them you can
 21 have the area from Hot Springs East, then my Tribe from
 22 the Hot Springs West along the mountain up toward the
 23 Crowheart area. And also if my people go into your area
 24 for hunting or for some other reason, I don't want them

25 moss-cross-krob



1 molested or bothered or hurt. The same way with your
2 people coming up the mountain for tepee poles, hunting
3 or whatever, we will not molest them, so that's the way
4 it was.

5 Now when they went back to Glenrock from there, and
6 they don't say how long a time it would take them to go
7 from the Glenrock area to the Wind River Reservation,
8 that was one time. But eventually they left the area
9 again because of being a nomadic people, and in that time
10 the U.S. Cavalry or soldiers tied up with them and
11 decided to take them back. Now, whether or not having a
12 knowledge of them being there before would kind of soften
13 and break the ice for the U.S. to leave them there for
14 supposedly one year, and when that year is up, well,
15 seemed like everybody forgot about that one year. So from
16 that day on the Arapahoes were there.

17 Q (By Mr. Krob) Is it Chief Black Cow, is that his name?

18 A Coal, Chief Black Coal.

19 Q When he was chief, that was roughly in the 1850's?

20 A Yes.

21 Q And at that time the Arapahoe Tribe was essentially a
22 nomadic tribe?

23 A They have always been a nomadic tribe.

24 Q And followed the buffalo?

25 moss-cross-krob



1 A Yeah, uh-huh.

2 Q The buffalo was the primary source of food and clothing?

3 A Food, clothing and shelter, yeah.

4 Q And I'm having a little difficulty getting a handle on
5 when they shifted from being this nomadic tribe relying
6 on buffalo to a more settled tribe that did no fishing.
7 Now, is that at the time they entered the Reservation
8 and settled there?

9 A The Indians fished for food, they hunted for food, and
10 as far as roots, berries, they also had that for food.

11 Q Isn't it true that fishing didn't really become important
12 to them as a food until about 1878 when they entered the
13 Reservation and could no longer hunt the buffalo?

14 A I couldn't answer that, but they didn't depend I would say
15 on the fish entirely like they did the buffalo.

16 Q Have they ever depended heavily on fish?

17 A Well, I know I did in my growing up, my family, but there
18 on back I would say my first impression is maybe not as
19 much as the buffalo.

20 Q Plus, your reasons for thinking the treatment of the land
21 transfer from trust to fee status, you had two reasons
22 you thought that was unfair, as I understand it, the first
23 one being that you then had to pay taxes on the land, and
24 the second is the Tribal elders that you felt thought the

25 moss-cross-krob



1 land should be in trust rather than fee, is that correct? (sic)

2 A Yeah.

3 Q Okay. Why did the Tribal elders feel that way, why did
4 they think it should be trust land rather than fee, if
5 you know? (sic)

6 A Possibly just like me, more in the form of taxes involved.
7 And you get into the State area of jurisdiction once it's
8 in fee.

9 Q Now, other than these two reasons, first one being taxes,
10 second one being the belief the Tribal elders and yourself
11 thought it should be in trust rather than fee status, are
12 there any other reasons you feel the conversion or the
13 most forced conversion from fee to trust status was unfair?

14 THE SPECIAL MASTER: From fee to trust or from trust
15 to fee.

16 MR. KROB: I'm sorry, from trust to fee.

17 A Well, would you give me the question again?

18 Q Yes. Are there any other reasons other than the taxes and
19 yours and the elders belief it should be in trust status
20 that you feel making you take the land out of trust and
21 into fee status, are there any other reasons you feel that's
22 unfair?

23 A My reason is this: Being a fact, an actual fact it was
24 Indian held in trust, myself, I feel it should be back in

25 MOSS-CROSS-KROB



1 trust.

2 Q And those are all the reasons you think it's unfair?

3 A Yes.

4 Q So is it fair to say that concern over whether or not
5 water rights would be affected by this change in land
6 status was not of concern to you at the time that you
7 were forced to take the land in fee?

8 A I wasn't forced. I couldn't say I was forced, but I
9 didn't have no knowledge of it.

10 Q But at that time the effect of transferring it from fee
11 lands to trust lands, you weren't informed about what
12 effect that might have on water rights, our water rights
13 for the land, were you?

14 A Having a knowledge of other fee lands in the area, they
15 are having no trouble. I didn't think of having any
16 trouble about obtaining water.

17 Q Are the water needs for both the Arapahoe and the Shoshone
18 Tribes the same at the present time?

19 THE SPECIAL MASTER: What do you mean by the same,
20 identical in volume?

21 MR. KROB: Both volume and the variety of uses to
22 which they put the water at the present time.

23 MR. ROGERS: Is the question are the uses the same?

24 MR. KROB: Yes.

25 MOSS-CROSS-KROB



1 THE SPECIAL MASTER: Oh, are the uses --

2 MR. KROB: We will start with uses, that's probably
3 easier.

4 Q (By Mr. Krob) Are the uses of water by the Arapahoe and
5 Shoshone Tribes in terms of volume and types of uses, are
6 they the same at the present time?

7 MR. ROGERS: Your Honor, I object formally. This is
8 beyond the scope of direct.

9 THE SPECIAL MASTER: I guess it is beyond the scope
10 of direct, but I'm going to permit -- I will permit it.

11 I'm sorry, I took your mind off the question. Do
12 you want to read it for us.

13 (Whereupon, the Reporter read
14 (back, "Q Are the uses of
15 (water by the Arapahoe and
16 (Shoshone Tribes in terms of
17 (volume and types of uses,
18 (are they the same at the
19 (present time?"

20 THE SPECIAL MASTER: I'm going to object to the
21 question. Are the uses the same in terms of volume is
22 self-contradictory and conflicting. Are the uses the
23 same is one thing, is the volume the same is another
24 thing.

25 MR. KROB: Maybe we better take it one part at a time.

Q (By Mr. Krob) First, starting with the uses of water
on the Reservation by the Arapahoe and Shoshone Tribes,

moos-cross-krob



1 do they use roughly, as far as you know, about the same
2 amount of water?

3 MR. SACHSE: I object, Your Honor.

4 THE SPECIAL MASTER: I'm sorry.

5 MR. SACHSE: There is no reason --

6 THE SPECIAL MASTER: If the uses are the same, he
7 can describe and answer it. If the volumes are the same,
8 he can describe it, but he can't put the two in the same
9 question, I don't believe.

10 MR. SACHSE: Your Honor, I object to the question
11 even singly as to volume. We have had months of
12 testimony as to how much water is used by who and so
13 forth, and there's no reason Mr. Moss has knowledge as
14 to what volume of water is used by the Tribes.

15 THE SPECIAL MASTER: He hasn't answered volume yet.
16 If he knows about if the uses are comparable, he can
17 answer as between the two Tribes, similar in use. If one
18 Tribe is planning some phosphate development the other
19 one isn't and he knows of it, fine. He can mention those
20 things.

21 MR. KROB: That's really all I'm trying to get at,
22 Your Honor, but not too well obviously.

23 Q (By Mr. Krob) Can you answer the Master's question?

24 A Well, when we say uses, there are many uses when it comes

25 MOSS-CROSS-KROB



1 to water, but the issue here in this Court we all know
2 about is irrigation, and you might enter the volume
3 there as to I might irrigate ten acres and my neighbor
4 might irrigate 80 acres, there's where the volume
5 differs and time differs. Now, whether or not that
6 answers the question --

7 Q When you say "time difference," I don't understand that.

8 A Well, time, ten acres you can irrigate in one day.

9 Q I see, time in terms of --

10 A Eighty acres you can irrigate in seven or eight days.

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MOSS-CROSS-KROB

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1 Q (By Mr. Krob) Okay.

2 A. Again, depending on the volume of water that you're
3 using.

4 Q Okay. I may get in trouble again here, but we'll try
5 it. In terms of the future water needs of the Arapahoe
6 and Shoshone Tribes, do you foresee any difference in
7 the needs of the Tribes?

8 A. At one time the American Indian was considered vanishing,
9 now they've upped their population. We're here in this
10 Court today arguing as to who should have that water.
11 My thought, as far as the water's concerned, has been
12 expressed to me by my elders, by my dad. It belongs to
13 the Indian. There's very little that we cannot say is
14 all ours; from the western area beyond the exterior
15 boundaries of the reservation, there's a certain amount
16 of water that comes in. My dad says we don't own that,
17 but there's a good amount that we do own that comes off
18 the slopes of our reservation. All right.

19 As far as that is concerned, that's been my conten-
20 tion, that it belongs to the Indians, and as long as I
21 live, no one is going to ever change that thought.

22 Q When you say belonging to the Indians, are you meaning
23 all the water on the reservation belongs to both Tribes
24 everywhere or water on half the reservation belongs to

25 moss-cross-krob



1 the Arapahoes and the other half of the reservation
2 belongs to the Shoshones, what do you mean when you
3 say to the Indians?

4 A. Anything on the reservation, as far as minerals or
5 water at this time, jointly is owned by the two Tribes.

6 Q. Okay, that's what I needed to know.

7 THE SPECIAL MASTER: That is his opinion.

8 MR. KROB: That's right.

9 THE SPECIAL MASTER: One tribal member may feel
10 differently about that than another tribal member.

11 MR. KROB: Those are all the questions that I
12 have. The State of Wyoming would, however, request
13 that you strike the portions or all of Mr. Moss' testi-
14 mony on the following grounds: First, we would move
15 to strike those portions that depend on oral history
16 as being hearsay, again by a lay witness, and second,
17 we would object to his entire train of testimony regarding
18 the unfairness of transferring the lands from trust to fee
19 since the concern there was taxes, whether the Tribes
20 wanted it trust or fee. Although the State does have
21 sympathy for that line of questioning, the issue here
22 before us is one of water rights and what should be
23 done with water rights, and that obviously was not a
24 concern of Mr. Moss at the time of the transaction, and

25 MOSS-cross-krob



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we would therefore move to strike those portions of his testimony.

THE SPECIAL MASTER: I'll rule on both of those now. I will overrule the Motion to Strike based on the oral -- Oral is historic background, and frankly, quite fascinating and may not have much probative value, but it's certainly part of our American heritage, and we would be at a loss without it, so I'll admit that.

Secondly, Indian or non-Indian, all human beings acted the same when it comes to some management of land, and if a big western rancher settling the west could get his land under leases with his right to renew, he would much prefer that to a fee ownership, and that's how the -- how the west was settled. Both federal leases and state leases were massively important, because you didn't have to pay any taxes. And I suspect the Indians felt exactly the same way, if he can get a bunch of land in trust and live on it the rest of his life and no taxes, that's much better than fee ownership. And too, there's still a semblance of uncomfortableness, if not hostility between the civilization being set up to which the Indians had not yet been integrated, county courthouses, state management and state taxes and this sort of thing. So I would overrule that on the trust to fee thing.

You may raise, and undoubtedly will raise, in your



1 argument that reserved water rights for the fee land
2 ought not be there, and we would cross that bridge when
3 we get to it, but for the time being, I see the reason
4 for this being in the record, and it is now and I'll leave
5 it in the record.

6 MR. KROB: Okay. I'm not arguing with your ruling,
7 I just want to make the position of the State clear, that
8 is, granted, there may have been advantages to having
9 leases as compared to fee lands as compared to trust
10 lands, but our concern is water rights, and that's not
11 what his testimony went to, it's the feeling of the
12 State that it didn't go to water rights, and that's what
13 we're concerned about.

14 THE SPECIAL MASTER: We'll respond to that in the
15 report.

16 What does cause me some problems, and I guess we'll
17 get to it while the Indian case is on, let's assume that
18 certain fee owners of land want to convey that eighty acres
19 not to his daughter, but to a non-Indian, and that non-Indian
20 says to The Special Master, "I've got a right to inherit
21 his water right, whatever it was, and if he has a
22 reserved right, then that's my reserved right." And that's
23 why Mr. Radosevich is here in the lawsuit.

24 Now, how do you respond to that? I'll look forward
25 to that when that evidence comes up, because there's already



1 in the record, I think, some cases of non-Indians on
2 the reservation owning the land in fee which they took
3 from deeds from Indians, and they do not have a State
4 water right, and they're drawing that -- their problem
5 also must be put to rest in this lawsuit if it's humanly
6 possible.

7 All right. Any other questions of this witness?

8 MR. ROGERS: No further questions from us.

9 MR. KROB: We have no further questions.

10 THE SPECIAL MASTER: All right. Thank you, Mr.
11 Moss, very, very much.

12 I want to comment on one of your observations. I
13 don't think anyone in Wyoming or in the United States in
14 the judicial system questions the fact that the Indians
15 have a right to water. This involves many, many ramifica-
16 tions of how much water, how do we face the next century
17 with all the demands upon water, and it may be in the
18 best interest of everybody that sooner or later somebody
19 will say, "Okay, this is how much you really own, you
20 know, you own this, you own -- you own it without control
21 by the State Engineer, whether you irrigate in five
22 years or not, it's still yours. What leaves your reserva-
23 tion you don't own any more even though you may have had
24 some claim on it, ground water; this is yours, here, this
25 may be, this is --" I think it's time that this thing had



1 to come, and I hope that all Indians can appreciate that,
2 and that's why I believe that you have to have some
3 faith in the processes that dispense justice or dispense
4 with justice in the nation. But we'll try -- And I think
5 you -- I hope you will have some faith in these proceedings
6 and look to what the outcome of it is, because the time
7 has come when we can't quarrel with what separated us
8 in the last century, we got to work for a better life in
9 the next century for all of us, and I think this lawsuit
10 will ultimately do that.

11 Next witness.

12 MR. SACHSE: The next witness is Mr. Frank Enos.

13 THE SPECIAL MASTER: You were sworn in, Mr. Enos,
14 yesterday?

15 MR. ENOS: Yes.

16 THE SPECIAL MASTER: Very good, take a seat, please.

17 FRANK ENOS

18 having been previously duly sworn, was examined and testified
19 follows, to wit:

20 DIRECT EXAMINATION

21 BY MR. SACHSE:

22 Q Mr. Enos, would you give the Court your full name.

23 A Frank Louis Enos.

24 Q Are you a member of the Shoshone Tribe?

25 enos-direct-sachse



1 A. Yes, I am.

2 Q. Is your father also a member of the Shoshone Tribe?

3 A. Yes, he is.

4 Q. What's his name?

5 A. Frank Cordova Enos.

6 THE SPECIAL MASTER: Cordova?

7 THE WITNESS: Um-hum.

8 Q. (By Mr. Sachse) Do you and your father farm and ranch
9 together?

10 A. Yes.

11 Q. Where is your land?

12 A. We are located about five miles west of Fort Washakie
13 on the North Fork of the Little Wind.

14 Q. That's some of the land that the Master and some of us
15 landed on with the helicopter?

16 A. Yes, right by the home place.

17 Q. Is all of your land trust land?

18 A. No. We own eighty acres of fee land.

19 Q. How do you happen to have that fee land?

20 A. Well, in the early sixties, I think it was 1961, my
21 father purchased a piece of land from a neighbor lady
22 that was an Indian lady. She held the land in trust
23 and they went to the agency, as Mr. Moss' similar
24 experience, to consummate the transaction. They made

25 enos-direct-sachse



1 the deal between them and went down there, and he was
2 informed that he had to take that piece of land in fee,
3 and that's what happened.

4 Q Do you irrigate your land?

5 A Yes.

6 Q Do you have any State water rights for the fee land?

7 A No, we do not.

8 Q Where do you get your water?

9 A North Fork of the Little Wind.

10 Q Is that part of one of the federal Indian projects?

11 A No.

12 Q That's a private ditch?

13 A Yes, it is.

14 Q Is there any water master, anyone who you have to account
15 to for that water?

16 A No. We just go to the headgate and open it up when we
17 need the water. We maintain the ditch ourselves.

18 Q If Master Roncalio held that you had no reserved water
19 right for that fee land which you have, do you think
20 that would be a fair ruling?

21 A No.

22 Q I just want you to --

23 THE SPECIAL MASTER: He got that in pretty quick.

24 MR. KROB: I'll move that that answer be stricken.

25 enos-direct-sachse



1 THE SPECIAL MASTER: I've already heard it; it
2 can be stricken, but it's obvious and understandable.

3 Q. (By Mr. Sachse) I'll ask a second question. Why don't
4 you think it would be a fair ruling?

5 MR. KROB: If the first one is stricken, then the
6 second one could hardly follow.

7 THE SPECIAL MASTER: I've been pretty good to you
8 this morning, I'll be pretty good to him.

9 Go ahead and answer, I'll permit it.

10 A. Well, I guess it all goes back to, you know, the history
11 of the reservation. Our ancestors were promised, you
12 know, that the reservation would be their homeland and
13 the water would be theirs to use as they needed it, and
14 for -- from the time the reservation began in 1868 until
15 1961, that was a piece of land that we owned in fee, was
16 a trust piece of land that had a promise that went with
17 it, and in 1961, it then became fee and an Indian still
18 owned the land, and I think the promise should still be
19 with the land.

20 THE SPECIAL MASTER: Let me ask a question right
21 about there. Let's assume that that Indian lady, instead
22 of coming to you and your dad, had gone down the stream
23 about two hundred yards, as I remember, and bumped into
24 a young, very, very confident lawyer named Gerry Spence

25 enos-direct-sachse



1 and said, "Mr. Spence, I want to sell you these forty
2 acres or eighty acres instead of to the Enoses." And
3 let's assume Mr. Spence bought that and added it to
4 where he's got his cabin down there by your place. Do
5 you believe that, that he has a right to take everything
6 that the Indian lady has to sell to him and that would
7 have included some right to water?

8 A. I think he should have got some right with the land, yes.
9 I don't know what, it isn't up to me to decide that, but
10 the reason I think that --

11 THE SPECIAL MASTER: How did he get his land? I
12 might as well ask, how did he get the land that he got
13 next to you?

14 THE WITNESS: He bought it from another individual.
15 It's been --

16 THE SPECIAL MASTER: Out of Indian ownership?

17 THE WITNESS: Out of Indian ownership from a number
18 of owners.

19 MR. ROGERS: Your Honor, off the record.

20 THE SPECIAL MASTER: Off the record.

21 (Off-the-record discussion.)

22 THE SPECIAL MASTER: On the record. Thank you.

23 Q (By Mr. Sachse) Mr. Enos, I'd like to carry on a bit
24 along the line the Master opened up. You and Mr. Moss

25 enos-direct-sachse



1 have both testified that you bought land from other
2 Indians, and that's how that land got into fee.
3 Now, suppose this situation, that an Indian had an
4 allotment and that that Indian, say in the 1930's
5 sold that allotment to a non-Indian or lost the allot-
6 ment in some way, went to a non-Indian --

7 MR. KROB: Your Honor, the State will object at
8 this time to the use of a hypothetical with a non-expert
9 witness. We're interested in his answer, but not during
10 the hearings. I'm just not sure that it's a proper
11 form of question for this witness.

12 MR. SACHSE: There's no reason that you can't
13 ask a hypothetical question to a witness to make the
14 fact situation clear, and I'm just really -- You yourself
15 asked a hypothetical question.

16 THE SPECIAL MASTER: I'll overrule the objection.

17 * * * * *



1 MR. ROGERS: Will you begin again?

2 Q (By Mr. Sachse) Just to make it -- it's a simple thing.
3 It doesn't have to be a hypothetical question. What I'm
4 saying is if there was land that was an Indian allotment
5 to start with, and somehow that went out of Indian owner-
6 ship and a non-Indian got it, and an Indian then repurchased
7 that land so it got back to being Indian ownership, and
8 that Indian who has repurchased it holds it in fee, do
9 you believe that Indian should have a reserved right for
10 that land?

11 THE SPECIAL MASTER: I will sustain the objection
12 to that because it's carried to the third party, and it's
13 a legal question.

14 Q (By Mr. Sachse) Is not having to pay taxes why you would
15 rather have land in trust than in fee?

16 A Well, that's kind of a side benefit, but that wouldn't be
17 the primary reason I would feel that way.

18 Q What are the primary reasons?

19 A Well, water does enter my mind because -- mainly because
20 of the fear that we have had with the fee lands when this
21 water case began. Immediately we saw that the United
22 States was not addressing fee lands that was owned by
23 the Indians, and the State of Wyoming certainly wasn't
24 addressing it, and it was lands that we felt that were
25 enos - direct - sachse



1 sitting there owned by Indians that should have the same
2 promise that the trust lands right next door to them have,
3 and they have had it for all these years, and then through
4 no fault of ours they had to be changed to fee property.
5 You know, I just feel that that is a great concern of mine,
6 that the water right that goes with a piece of trust property
7 is more secure than that piece of fee land.

8 Then the other thing is a jurisdictional thing. On
9 the reservation a piece of fee land is more or less a no
10 man's land, and I don't like that situation. I would rather
11 have it under the jurisdiction of the rest of the lands where
12 we live. The county sheriff doesn't have that much interest
13 in it if there's a problem that occurs on a piece of fee
14 land sitting out there in the middle of the reservation.
15 They say they do, but it just don't work.

16 Q Did you help in the Tribe's effort to locate the fee lands
17 owned by Indians on the reservation?

18 A Yes, I did.

19 Q Would you describe what you did in that effort?

20 A Well, in some of the meetings that we had with our attorneys,
21 Mr. Harris and I attended them, one particular meeting in
22 talking among ourselves we felt fee lands were not being
23 addressed, and we asked the Federal attorneys and our own
24 attorneys, what are you going to do about the Indians

25 enos - direct - sachse



4-3

1 that own fee lands on the reservation. One of the attor-
2 neys for the United States said, does Indian owned fee --

3 MR. KROB: Objection, Your Honor, he's about to
4 testify to hearsay, it sounds to me.

5 THE SPECIAL MASTER: Just say what you learned from
6 the discussion without quoting the attorney.

7 THE WITNESS: All right. Well, anyway, we discovered
8 that they weren't addressing the fee land thing, so then
9 we brought it to their attention, then they told us to,
10 you know, look into it further, which we did. We -- the
11 Business Council gave me the assignment to do what I could
12 do, you know, find out how much fee land was owned by
13 Indians on the reservation, so I went to the County
14 Assessor in Fremont County, I copied -- with her per-
15 mission I copied the county records of the school dis-
16 trict -- of the tax and records on the school district
17 on the reservation. We made two copies, I gave one to
18 the Arapahoe Business Council and one to the Shoshone
19 Business Council, and asked each member to read those
20 through, pick out all the names of Indians, and once
21 they did that, I forwarded that information to Elsie
22 Kolstad, and then I didn't have anymore to do with it
23 after that. But we compiled the initial names --

24 THE SPECIAL MASTER: Did you not run the comparison
25 enos - direct - sachse



1 of those lists with the names on the enrollment?

2 THE WITNESS: No, Elsie did that later. My job
3 was through once we picked out the ones that we identi-
4 fied as Indians, then she took it from there.

5 Q (By Mr. Sachse) Thank you. Are there a number of
6 Indians on the reservation who have bought land back
7 that non-Indians at one time had owned?

8 A I can't answer that. I don't know of any other than
9 Tribal, you know. I know of the Business Council's
10 buying fee lands from non-Indians, but I don't know of
11 individuals.

12 Q Do you think it's proper for the Tribes to be required
13 to quantify their water rights?

14 MR. KROB: Objection, calls for an opinion.

15 THE SPECIAL MASTER: I will sustain that objection.
16 I may have changed his mind with my appeal a minute ago
17 to Mr. Moss, but I'm still going to sustain the objection.

18 MR. SACHSE: I have one further question. Do you
19 think water is needed by the Tribes for the future, in
20 addition to their present use of water?

21 A Yes, I do.

22 Q And why do you think so?

23 A Well, for a number of reasons. I think probably the pri-
24 mary one would be that our population is growing, and the

25 enos - direct - sachse



1 way things look right now, there's, you know, we have
2 other means of income that are substantial, that farming
3 doesn't appeal to all of the members of the Tribe. It
4 does to some of us, but not to everyone. But I just feel
5 in the future one day we are going to have a lot more
6 people returning to the land, and I think we need the
7 water for our children and our grandchildren and our
8 great grandchildren. They are the ones that are going
9 to need it a lot worse than we do, so I think for future
10 generations that is why we need the water.

11 MR. SACHSE: Thank you, Mr. Enos. I have no further
12 questions.

13 THE SPECIAL MASTER: Questions by the United States?
14 I guess Mr. Echohawk waives those.

15 Questions by counsel for the defendants? Mr. Radose-
16 vich.

17 MR. RADOSEVICH: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. RADOSEVICH:

20 Q Mr. Enos, you mentioned that where you get your water from
21 the stream, you have no water master or ditch rider that
22 actually opens your headgate, is that correct?

23 A No, we don't, that's right.

24 Q Who actually controls how much water that you divert?

25 enos - cross - radosevich



1 A It's just -- we take water out of both sides of the North
2 Fork of the Little Wind, and it's just the people who
3 irrigate from those ditches. We just work together in
4 unison, more or less.

5 Q Then is there a collective group that shares the con-
6 struction of this ditch?

7 A Oh, yes.

8 Q About how many people are on your ditch?

9 A Well, on the north side of the river there's four families.
10 On the south side I would just be guessing, but there must
11 be ten or twelve. We have a lot more people on the south
12 side.

13 Q Have you constructed a headgate?

14 A Yes, sir.

15 Q A formal type of structure?

16 A Yes, sir.

17 Q In other words, you have more like an informal water
18 users association?

19 A Yes. There's nothing organized, it's just an informal
20 type thing. We just do anything by agreement, if it's
21 time to work on the ditch, we work on the ditch.

22 Q What happens during low flow periods, how do you decide
23 the division of the water?

24 A It gets pretty tough once in a while, we get into a few
25 enos - cross - radosevich



1 arguments from time to time. Nothing serious has come
2 of it, but problems begin.

3 Q Fortunately.

4 A Yeah, that's true.

5 Q Are there other individuals or groups of individuals
6 above you that have a similar type of arrangement in
7 terms of jointly constructing and sharing ditches?

8 A We have two of the top ditches on the north fork of the
9 Little Wind.

10 Q Are you quite familiar with the other areas of the
11 reservation?

12 A Not really well, hugh-uh.

13 Q Do you know how expensive this practice might be on
14 other parts of the reservation?

15 A You mean as far as private ditches, like that?

16 Q Right.

17 A Oh, there's a lot of them, yes, I know that.

18 Q Does the Business Council ever discuss the division of
19 water among these various individuals?

20 A Now, I'm not on the Business Council anymore.

21 Q You were on the Business Council?

22 A I was on the Business Council last year, but I'm not now.

23 Q At that time did they ever discuss the allocation of
24 water among the various user groups?

25 enos - cross - radosevich



- 1 A You mean these private ditches again?
- 2 Q Right.
- 3 A No.
- 4 Q So that's outside of the purview?
- 5 A Right.
- 6 Q So no one actually tabulates or administers this water?
- 7 It is a self-governing type of situation?
- 8 A Right.
- 9 Q During your testimony Mr. Sachse was asking some questions
- 10 with respect to ownership of land. I don't -- I didn't
- 11 quite get the answer, but do you know of any non-Indians
- 12 who own land on the reservation in fee?
- 13 A Non-Indians?
- 14 Q Right.
- 15 A Oh, yes, I know of a lot of those.
- 16 Q Have you any estimate about how many there are?
- 17 A No, I couldn't tell you that.
- 18 Q More than 20, 30?
- 19 A Oh, I'm sure of that, yes.
- 20 Q Okay. Do you know of very many Indians who have fee
- 21 land on the reservation?
- 22 A Yes, through my efforts. I didn't count the number
- 23 that we come up with. I know there was around 15,000
- 24 acres of land we came up with. I didn't count, you know,
- 25 enos - cross - radosevich



1 the number of people, but there was a considerable number.

2 Q Do you know of any individuals at all who are Indians who
3 purchased land from non-Indians?

4 A That's a question that Mr. Sachse asked, and I don't know.

5 Q No, Mr. Sachse was asking you how many. But do you know
6 of any individuals?

7 A No.

8 Q Okay. You also testified that you discovered in the dis-
9 cussions that you had that this case, at least at the initial
10 stages, was not taking into account the interests of the
11 Indians who owned fee land, is that correct?

12 A Right.

13 Q Was there a discussion at all, at least that you were in-
14 volved in, as far as the interest of the non-Indians who
15 owned fee land?

16 A No. We were -- this was in the BUSINESS Council, and we
17 were concerned about the Indians that owned fee land.
18 We were concerned about all Indians with the trust lands
19 and fee lands.

20 Q I see. Was there ever an expression of interest of the
21 non-Indians who also owned fee land? Was this incorporated
22 at all in terms of the Business Council?

23 THE SPECIAL MASTER: He said no.

24 Q (By Mr. Radosevich) Okay. I have one last question.

25 enos - cross - radosevich



1 You directed your comment to why you felt that there
2 should be a reservation reserving some water for future
3 uses, and particularly for now in terms of maintaining
4 a homeland for the Indians. What is your feeling as
5 far as the existing water users above the reservation
6 that might be affected by taking some of this water for
7 expanding --

8 THE SPECIAL MASTER: Mr. Radosevich, could you get
9 a little more specific about that and put it either on
10 the Big Wind or on the mainstem?

11 MR. RADOSEVICH: I'll put it on the middle fork
12 of the Popo Agie.

13 THE SPECIAL MASTER: The middle fork of the Popo
14 Agie.

15 Q (By Mr. Radosevich) Mainly, for example, the people who
16 live in Lander, the users of water who are above the
17 reservation who actually use the water before it gets
18 down to the reservation, what is your feeling as far as
19 their rights to continue to use this water?

20 A Well, I just -- you are talking about rights. I feel
21 that our right was there first, and I think that we
22 should exercise that right if we need that for farming.

23
24 * * * * *

25 enos - cross - radosevich



1 Q (By Mr. Radosevich) Even to the extent that it may prevent
2 them from using water?

3 A If that's what it comes to, yes.

4 MR. RADOSEVICH: Okay, Your Honor, I have no further
5 questions.

6 THE SPECIAL MASTER: Okay. State of Wyoming?

7 MR. KROB: Just a couple quick ones.

8 THE SPECIAL MASTER: All righty.

9 CROSS-EXAMINATION

10 BY MR. KROB:

11 Q Frank, during your direct testimony you expressed a
12 feeling that you were concerned of the impact on the
13 water rights, of the transfer from trust status to fee
14 status of that 80-acre parcel; is that correct?

15 A Right.

16 Q And when did you obtain that land, was that 1961?

17 A Yes. My father purchased it in 1961 and it was in 1975
18 that I started a partnership with my father, and I'm
19 in the process of purchasing that land now. It's still
20 in his name, but it's -- I am buying it from him.

21 Q And this concern you have for the impact or transferring
22 it from trust to fee status, when did that concern first
23 arise?

24 A It's always been, you know, when we bought it in fee.

25 enos-cross-radosevich
enos-cross-krob



1 He was disgruntled with it at the time.

2 Q So at the time he bought it he was concerned about what
3 happened to the water rights?

4 A Yes, that was part of it.

5 Q And what did he think or what did you think would happen
6 to those water rights or any water rights that went with
7 it?

8 THE SPECIAL MASTER: What did he think, that the
9 Witness would think?

10 MR. KROB: What did Frank or his father, if he knows,
11 think would happen to the water rights due to the
12 conveyance.

13 THE SPECIAL MASTER: Well, okay, I guess.

14 THE WITNESS: Well --

15 THE SPECIAL MASTER: If you know.

16 THE WITNESS: I can't say what he would think, but
17 I've told you what I feel, that it was a concern and then
18 when the water case started, then it was a great concern.

19 Q (By Mr. Krob) I understand that, because exactly --

20 A We didn't know what was going to happen, that was the
21 reason for the concern, we don't know what's going to
22 happen and that's why we're concerned.

23 Q Let's turn for a moment to your involvement in locating
24 the fee lands on the Reservation. You said that the
25 enos-cross-krob



1 determination that you or the people you gave the, gave
2 the task to as to who owned fee lands on the Reservation
3 was made from looking at the County Assessment Records;
4 is that correct?

5 A Yes.

6 Q Did you or anyone that you know of examine the actual
7 land records to determine those fee owners?

8 A Not in the set time that we had it. What we did was just
9 identify the Indians and then it was turned over to
10 Elsie Kolstad, and from then on, you know, she'll have to
11 testify to that because I don't know what was done. I
12 know considerable work was done.

13 Q Now, going back to the point before that in this process
14 of locating the fee land owners, in looking at assessment
15 records, how can you tell from looking at that record
16 that an owner of a particular parcel of land is an
17 Indian?

18 A Well, the same way that you would know who your cousin
19 was, who your father or mother was.

20 Q You'd recognize them?

21 A Right. If you have, take 12 people from the business
22 council there, from all over that Reservation and I would
23 dare say that out of the 12 people, they can just about
24 identify everybody that's on the Reservation.

25 enos-cross-krob



1 Q And do all 12 of those people look at those assessment
2 records?

3 A Yes.

4 Q You also expressed some concern about the increase in
5 population and what would happen to those people.

6 Do you have an idea of how much the population is
7 increasing on the Reservation?

8 A It varies, you know, but all I can say is that it
9 increases each year. I don't have any percentages.

10 Q Is the number of enrolled members of the Tribe increasing
11 also?

12 Q Amongst those enrolled members, do they all live on the
13 Reservation?

14 A No.

15 Q How many do not live on the Reservation?

16 A I don't have that information, I'm sorry.

17 Q Do you know who might have that information?

18 A I suppose BIA would have it.

19 MR. KROB: I have no further questions, Your Honor.

20 THE SPECIAL MASTER: Thank you.

21 MR. RADOSEVICH: Your Honor, I have one additional
22 question.

23 THE SPECIAL MASTER: Yes.

24

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enos-cross-krob



RECROSS-EXAMINATION1
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BY MR. RADOSEVICH:

Q Mr. Enos, as far as the reserved water right --

THE SPECIAL MASTER: As far as what?

Q (By Mr. Radosevich) As far as this reserved water right that we were talking about, do you feel it should go with the land or it should go with the individual who owns the land?

MR. SACHSE: I object to that question. I can't understand it and I suspect that Mr. Enos will have trouble understanding.

MR. RADOSEVICH: The question I'm concerned about, Your Honor, is particularly as the ownership changes from Indian to non-Indian, perhaps back to Indian. In other words, the point I'm trying to get at, is an Indian should repurchase fee land from a non-Indian, should the reserved water right still be on that parcel of land that he repurchased?

THE SPECIAL MASTER: I denied a similar question not 20 minutes ago to somebody, so I better deny it to you because it carries to the third party and really doesn't, it might even add to my confusion and I've got enough of that in me now on this matter of return conveyance to the Indian from a non-Indian who took it

enos-cross-radosevich



1 from an Indian. I'd like to cut my inquiry after the
2 second place on this place, if possible, hoping it's not
3 going to make that much difference.

4 Okay. Any further questions of Mr. Enos?

5 (No response.)

6 THE SPECIAL MASTER: All right, thank you very much.
7 You'll stay under the jurisdiction of the Court in case
8 they need you again; someone will call you.

9 Next witness.

10 MR. PERRY: May we have a moment to set up Ms.
11 Kolstad?

12 THE SPECIAL MASTER: We've been at it an hour, let's
13 take a break.

14 {Thereupon a ten-minute
15 {recess was taken.

16

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

2 MR. PERRY: Your Honor, before beginning the
3 questioning of Ms. Kolstad, I would first like to present
4 to you a stipulation which has been signed by the Tribes,
5 the United States and the State of Wyoming. It concerns
6 Tribal enrollment of certain individuals. These are the
7 people who own -- Indians who own land in fee on the
8 Reservation, and this has been agreed to by the parties.
9 This is based on an affidavit by the Tribal enrollment
10 officials.

11 THE SPECIAL MASTER: Do you wish to make an exhibit
12 of it?

13 MR. PERRY: I believe it can be filed and --

14 THE SPECIAL MASTER: A pleading, a stipulated
15 pleading.

16 MR. PERRY: Yes. In addition, Your Honor, I would
17 like to move at this time the admission into evidence
18 of the Tribes Exhibit No. 4. These are certified copies
19 of the tax roll and ledger account sheets.

20 THE SPECIAL MASTER: I will just take that one.

21 MR. PERRY: These are from the County Treasurer's
22 office. These are official tax records concerning land
23 ownership.

24 And finally, I would like to move the admission into
25 evidence of Tribes' Exhibit --



1 THE SPECIAL MASTER: Just a second. What is Tribes'
2 1?

3 MR. PERRY: I believe the initial exhibits were
4 numbered M-1 through 3, and those were --

5 THE SPECIAL MASTER: Master's 1, 2 and 3?

6 MR. PERRY: Those were maps prepared by Ms. Kolstad
7 for the dates and boundaries trial last summer.

8 THE SPECIAL MASTER: They are 1, 2 and 3?

9 MR. PERRY: The convention I think they will use
10 from now on is Tribes' Exhibit beginning with No. 4
11 consecutively.

12 THE SPECIAL MASTER: I beg your pardon. I was
13 confused. This is Tribes' 4 that you began with today,
14 and you have introduced it and it is the sheaf of papers
15 that are identified as tax roll and ledger account from --

16 MR. PERRY: That's right.

17 THE SPECIAL MASTER: -- the County Assessor's office.

18 MR. PERRY: That's right.

19 THE SPECIAL MASTER: And Tribes' 5 is coming up?

20 MR. PERRY: Right. And this is a package of deeds
21 and other title documents.

22 Your Honor, the Tribes would move that these Exhibits,
23 No. 4 and 5 respectively, which have just been identified,
24 be admitted into evidence at this time. They are
25 certified copies of public record.



1 THE SPECIAL MASTER: Is there any voir dire?

2 MR. KROB: Well, I'm not sure foundation has been
3 laid for them, Your Honor. I agree, they are certified,
4 so the State has no problem with authenticity, but I'm
5 not sure what they are offered for or their connection
6 with the case.

7 THE SPECIAL MASTER: I would admit them when I do
8 for the purposes of -- for the truth of their contents
9 as being official documents and conveyances and records
10 of the county or of the appropriate authorities.

11 MR. PERRY: These do serve as the foundation for some
12 of Ms. Kolstad's work.

13 MR. KROB: Perhaps Ms. Kolstad can lay the foundation.

14 THE SPECIAL MASTER: Normally they would be handed
15 to her and each one would be identified and offered one
16 by one, but this might save a little bit of time.

17 MR. KROB: Even if she just laid the foundation
18 narratively, the State would have no objection, but to
19 offer them as they are with no testimony from the Witness
20 as to how they relate to the case at all seems a bit
21 premature.

22 THE SPECIAL MASTER: I was about to ask, Tribes'
23 Exhibit 5 are warranty deeds through those -- through
24 those Indians who hold land in fee simple on the
25 Reservation, is that what these pertain to?



1 MR. KROB: We have no evidence of that, Your Honor,
2 whether they are or not.

3 MR. PERRY: They are deeds.

4 THE SPECIAL MASTER: Why don't you use them with
5 this Witness to identify them, and after they have been
6 identified, they can be admitted.

7 MR. PERRY: I was hoping to save some time.
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ELSIE KOLSTAD

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having been previously duly sworn, was examined and testified

3

as follows, to wit:

4

DIRECT EXAMINATION

5

BY MR. PERRY:

6

Q. Mrs. Kolstad, would you state your full name, please.

7

A. Elsie Kolstad.

8

Q. K-o-l-s-t-a-d?

9

A. Right.

10

Q. And your address, please.

11

A. 2932 Chapman Lane, Billings, Montana.

12

THE SPECIAL MASTER: Miss Kolstad, did you
testify earlier in this case?

13

14

THE WITNESS: Yes, I did.

15

THE SPECIAL MASTER: And you remember taking the
oath at that time?

16

17

THE WITNESS: Yes.

18

THE SPECIAL MASTER: I just want to remind you
of that, you're still under oath.

19

20

Q. (By Mr. Perry) And your occupation, Mrs. Kolstad?

21

A. Presently I'm working as a title consultant.

22

Q. And prior to that?

23

A. I worked for the Bureau of Indian Affairs as a title
examiner for twenty years.

24

25

kolstad-direct-perry



1 Q And you worked in the Billings area office?

2 A Yes.

3 Q And is that this office that's responsible for title
4 records on the Wind River Indian Reservation?

5 A Yes.

6 Q Okay. In your work with the BIA, did you deal with
7 title matters concerning fee as well as trust lands
8 on the reservation?

9 A Yes, I did.

10 Q Could you give us an example of how that work came
11 about.

12 A Well, probably there are four or five different occasions.
13 One involved some east of the Tongue River, the Northern
14 Cheyenne Reservation boundary. There are a few allotments
15 that were made east of the reservation boundary, and I
16 had to research the county records for conflicts.

17 Q Thank you. In doing title work concerning fee lands on
18 Indian reservations, is it necessary to consult county
19 records?

20 A For fee lands?

21 Q That's right.

22 A Yes.

23 Q And why is that?

24 A The Bureau of Indian Affairs is only for, as trustee for
25 kolstad-direct-perry



1 trust lands, and once land becomes fee, the county
2 records are the official recording offices.

3 Q And, Mrs. Kolstad, have you already been qualified
4 as an expert witness in this case with respect to title
5 matters on the Wind River Indian Reservation?

6 A Yes, I believe so.

7 Q Okay. I call your attention to Tribes' Exhibit 7.
8 Would you identify that, please.

9 A This is a map to show the lands that are involved in
10 this case, the fee lands owned by Arapahoe and Shoshone
11 and tribal members and their descendants.

12 Q And the darkened areas then are the ones --

13 A Yes.

14 Q -- the lands you're speaking of?

15 Was this map prepared under your direction?

16 A Yes, it was.

17 Q Okay. I hand you what has been marked for identification
18 as Tribes' Exhibit 6 and ask you to please identify that
19 for the record.

20 A These are supplements to the map, and they're numbered
21 on the map with circles around the numbers, and they show
22 the boundaries of tracts that it was quite impossible to
23 show on that scale, either metes and bounds descriptions
24 or exceptions, legal subdivisions that we couldn't show

25 kolstad-direct-perry



1 on a large map.

2 Q And was Tribes' Exhibit 6 also prepared under your
3 direction?

4 A Yes, it was.

5 Q Would you explain for us how you went about identifying
6 which tracts were fee lands owned by tribal members or
7 their direct descendants.

8 A Initially, I received the list that Dr. Enos was speaking
9 about where the Tribes had indicated on the assessor's
10 list about eighty or ninety pages of the assessor's list,
11 their findings as to which tracts were owned by members
12 of the Tribes, but I was told to do an independent investi-
13 gation of the county records, and that is what I did, I
14 obtained the copies of the per capita payroll of both
15 Tribes to ascertain tribal members, and I compared them
16 with the complete assessor's work list for all the school
17 districts on the reservation.

18 Q Okay. Are those assessor's lists the official county
19 records with respect to land ownership?

20 A Well, actually they're work lists. They aren't official
21 records, but they are the basis for the treasurer's records
22 which are certified copies that you introduced.

23 Q Okay. Then the official records are known as the county
24 tax roll and ledger accounts?

25 kolstad-direct-perry



1 A. Yes.

2 Q. And did you in fact examine those to verify your work
3 against the official county records?

4 A. Yes, I did.

5 Q. So the lands that you mapped are those that are listed
6 on the official county records?

7 A. Yes.

8 Q. And are the tax ledger sheets you used the ones which
9 are contained within Tribes' Exhibit No. 4?

10 A. Yes. There may be one or two that we didn't use in
11 the exhibit, but the ones we did use are there.

12 Q. But that includes all the ones that you used?

13 A. Yes.

14 Q. In some cases was it necessary for you to get additional
15 information to pinpoint the exact location of the lands
16 owned in fee by tribal members or their direct descendants?

17 A. Yes, it was.

18 Q. And in those cases, did you obtain deeds to do that?

19 A. Yes, deeds and plats, supplemental plats.

20 Q. And are those documents included within the package which
21 has been marked as Tribes' Exhibit No. 5?

22 A. Yes, they are.

23 Q. Okay. And are these tax roll records and the deeds and
24 plats which you used, the kinds of documents which an

25 kolstad-direct-perry



1 expert like you would normally rely on in determining
2 who owns fee lands?

3 A. Yes, I think so.

4 Q. Okay. Mrs. Kolstad, did you map every single tract of
5 fee land owned by members of the Tribes or their direct
6 descendants, or did you exclude certain small tracts?

7 A. We did exclude most of the tracts that were under five
8 acres.

9 Q. Okay. And was that on the instructions of your attorney?

10 A. On instructions of the attorneys, yes.

11 Q. Mrs. Kolstad, are there any tracts of land which you
12 determined to be owned in fee by tribal members or their
13 direct descendants which are not listed on that map, but
14 which, in fact, should be?

15 A. Yes, there are two.

16 Q. Would you read into the record the descriptions and
17 acreages of those tracts, please.

18 A. Okay. The first is in Township 1 South, Range 1 West,
19 Section 7 -- Sorry, wrong one. In Section -- In
20 Township 2 South, Range 1 East, Section 6, the
21 SE1/4 of the SE1/4, a forty-acre tract.

22 THE SPECIAL MASTER: Why is it omitted, Mrs.
23 Kolstad?

24 THE WITNESS: My error, I think. It was one of

25 kolstad-direct-perry



1 those --

2 MR. PERRY: It's a tract which she identified
3 as being owned in fee by a tribal member or direct
4 descendant and inadvertently left it off.

5 THE SPECIAL MASTER: I'd like her to tell me.

6 Okay, go ahead.

7 A. The other is in Township 1 South, Range 1 East, Section
8 13, the SW1/4 of the NE1/4, and that's another 40-acre
9 tract.

10 THE SPECIAL MASTER: Omitted by the same --

11 THE WITNESS: By error.

12 THE SPECIAL MASTER: -- happening?

13 THE WITNESS: Yes.

14 Q (By Mr. Perry) Are there any other tracts, Mrs. Kolstad,
15 which, which appear on that map which need to be -- Are there
16 any other additional tracts inadvertently left off that
17 map?

18 A. No, but there is one error. In adding one tract which
19 would have only been four acres, we colored in forty. Do
20 you want me to identify that one?

21 Q Please.

22 A. That's in Township 4 North, Range 3 West, Section 33,
23 the NE1/4 of the SW1/4.

24 THE SPECIAL MASTER: Give it to me again, please.

25 kolstad-direct-perry



1 THE WITNESS: In Township 4 North, Range 3 West.

2 THE SPECIAL MASTER: Section?

3 THE WITNESS: Section 33. The NW1/4, SW1/4.

4 THE SPECIAL MASTER: Yes.

5 THE WITNESS: That map indicates a forty-acre tract,
6 actually it's only a four-acre tract there. We have a
7 deed to support the description on that.

8 THE SPECIAL MASTER: Okay, thank you.

9 MR. PERRY: Your Honor, if you would like, Mrs.
10 Kolstad could perhaps mark on the exhibit the changes
11 that have been read into the record.

12 THE SPECIAL MASTER: That would be good, if you
13 do it during the next break, why don't you mark with
14 some indication on the exhibit that little change you
15 just referred to.

16 Q (By Mr. Perry) Okay. Then is this map, which is Exhibit
17 7 --

18 THE SPECIAL MASTER: Pardon me, and while we're at
19 it, you ought to staple onto Exhibit 7 the two omissions
20 so that we know there's an additional eighty acres that
21 are not contained there, and where they might be. That
22 would bring it up to date and accurate.

23 Q (By Mr. Perry) Mrs. Kolstad, is this map, which is
24 Exhibit 7 and the supplements to it which are Exhibit 6,
25 kolstad-direct-perry



1 along with the modifications you just read, do they
2 constitute your professional conclusion as to which
3 fee lands are owned by members of the Tribes or their
4 direct descendants on the reservation?

5 A. Yes.

6 MR. PERRY: I have no further questions, Your
7 Honor.

8 THE SPECIAL MASTER: Cross-examination?

9 MR. PERRY: Oh, I'm sorry, I have not moved the
10 admission of Exhibits 6 and 7. I believe you may have --

11 THE SPECIAL MASTER: Exhibits 6 and 7 are now
12 identified and are offered along with 4 and 5, heretofore
13 identified into evidence, and is there voir dire of
14 these exhibits before your cross, or do you want to
15 do both at the same time?

16 MR. RADOSEVICH: Your Honor, my only objection
17 would be that Exhibit 7 fails to have a legend on it
18 that states --

19 THE SPECIAL MASTER: It does indeed, and I noticed
20 that, and I would like to think that either under the
21 words "Wind River Indian Reservation" there could just
22 be the legend, which is a map of dark areas, indicate
23 lands owned in fee on the reservation by members of
24 the Tribes or their descendants. And if that's done,

25 kolstad-direct-perry



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that would remove that objection.

* * * * *



1 MR. KROB: Your Honor, I would just as soon combine
2 our voir dire with cross-examination if there's no
3 objection.

4 THE SPECIAL MASTER: You may proceed.

5 CROSS-EXAMINATION

6 BY MR. KROB:

7 Q Ms. Kolstad, I think we finally got an expert here that
8 I've been waiting for, and that is one who can define
9 for us -- we have heard several definitions, some
10 consistent and some not as to what is meant by fee
11 allotted lands. Could you just summarily define what
12 is meant by fee allotted lands?

13 A I think a lot of it refers to land that's still held in
14 trust by the United States for the benefit of an Indian.
15 Fee land is land that is no longer under the jurisdiction
16 of the United States, its been --

17 THE SPECIAL MASTER: As a guardian of anybody. Fee
18 land I think we can all know who spent those long and
19 immemorable hours studying the property, and with the
20 season in passage.

21 MR. KROB: I really thought I understood it until
22 I started working on this case, Your Honor.

23 THE SPECIAL MASTER: I will join your club. Okay.

24 Q (By Mr. Krob) Now, when you refer to fee land, did you
25 kolstad-cross-krob



1 confine that just to fee land owned by Indians in your
2 testimony?

3 A Well, that's --

4 Q Your testimony doesn't deal with fee land owned by non-
5 Indians, is that correct?

6 A I don't believe it does. I don't --

7 THE SPECIAL MASTER: What he's --

8 THE WITNESS: I don't anticipate any questions that
9 would.

10 THE SPECIAL MASTER: What he is asking is a good
11 question. There's involved in this case a problem of
12 some fee land on the Reservation that is owned by non-
13 Indians that may have been in the chain of title at one
14 time owned by Indians, having passed from allotted land
15 to an Indian to non-Indian and back to Indian. But you're --
16 when you refer to fee land, as Mr. Krob asked, you were
17 talking about fee land owned by Indians?

18 THE WITNESS: Yes.

19 Q (By Mr. Krob) Now, does Exhibit 7 also show, purport
20 to show, lands owned in fee by descendants of Tribal
21 members?

22 A Yes, in a few cases.

23 Q Now, when you say "Descendants," how far does that go down
24 the line as far as children, grandchildren?

25 kolstad-cross-krob



1 A I can't answer that.

2 MR. PERRY: Objection, Your Honor. The State has
3 already stipulated who are the members and who are the
4 direct descendants. I don't see any reason for going into
5 this any further.

6 MR. KROB: Well, we have -- I just want to get an
7 idea when she did her study. We are all using the same
8 terms when we say "descendants" here. She did the study and
9 she should be able to testify how far she went.

10 THE SPECIAL MASTER: I would sustain the objection
11 because I think the stipulation renders it duplicative.

12 MR. KROB: Well, I understand, but the stipulation
13 to me renders it unclear because it simply says members
14 or descendants, direct descendants of enrolled members.
15 and I'm just trying to find out in doing her study, which
16 supposedly includes these same folks, how far that went.
17 Maybe I should have made it more clear in our stipulation.
18 But if we don't do it now, I don't think we will get it
19 clarified.

20 THE SPECIAL MASTER: Give me a minute. The
21 stipulation is signed by --

22 MR. PERRY: Mr. Merrill.

23 MR. KROB: Mr. Merrill.

24 THE SPECIAL MASTER: By an attorney for the State of
25 kolstad-cross-krob



1 Wyoming, so it is binding, and it says, "It is hereby
2 stipulated and agreed by and between the Tribes and the
3 United States and the State of Wyoming that for the
4 purpose of this case the following persons are enrolled
5 members (or direct descendants of enrolled members) in the
6 designated Tribes," and then it begins with the Shoshone,
7 Arapahoes --

8 MR. ROGERS: Your Honor, it also further designates
9 on Page 3 that direct descendants of enrolled members of
10 the Shoshone Tribes, so we have segregated out -- the
11 stipulation even segregates out the members of the direct
12 descendants

13 MR. PERRY: Further, it tells what the relationship
14 is between the direct descendants, and in each case --

15 THE SPECIAL MASTER: I think that's Page 3.

16 MR. KROB: I missed the designation of the relation-
17 ships on the following pages. I apologize.

18 THE SPECIAL MASTER: No problem. Could we have
19 another copy of the stipulation, please?

20 THE WITNESS: I have two copies.

21 THE SPECIAL MASTER: Thank you very much.

22 MR. KROB: Your Honor, I have to apologize for my
23 own lack of experience and perhaps preparedness, but I
24 could take about a five-minute break, and I think I can
25 finish up with Ms. Kolstad rather quickly.



1 THE SPECIAL MASTER: You may, indeed. We will stay
2 in recess for about five minutes.

3 (Whereupon, a short recess
4 (was taken.)

5 THE SPECIAL MASTER: We will come to order, please.
6 Before we proceed, Mr. Salazar has brought up the fact
7 that the four boxes constituting the last United States
8 exhibit, which is numbered 317 -- WRIR 317, contained
9 the abstracts of virtually every transaction in the
10 office with the BIA, and the State of Wyoming made a
11 request that those be checked out. They contain thousands
12 of documents and we have no way of knowing whether they
13 will all be in there or not, but I believe Mr. Echohawk
14 has no objection to this, Mr. Sachse. So if you will
15 check with Mr. Echohawk, and he can tell me how he feels,
16 let me have that approval, send me a letter for the files,
17 and that will be sufficient. That is all you need to
18 check those out from the storage room and make your
19 copies. All right.

20 MR. KROB: Thank you, Your Honor.

21 THE SPECIAL MASTER: Go ahead, Mr. Krob.

22 Q (By Mr. Krob) Ms. Kolstad, I just have a couple of
23 very brief questions. Now, in the process of deciding
24 who was a fee land owner on the Reservation, did you ever

25 kolstad-cross-krob



1 refer to the County Clerk's records? You said you had
2 to go to them to be sure.

3 A No. Determining who was Indian?

4 Q No, in determining which are fee lands. I think we
5 decided who are Indian and who are descendants and are
6 through with that, but in deciding who owns fee lands.

7 A We accepted as what was on the county records as being
8 fee, and later when I prepared the data for mapping, I
9 checked it against the Bureau of Records to determine that
10 was fee.

11 Q Now, when you say you checked against the county records,
12 you mean the deeds on file in the county?

13 A I used the assessor's list basically and the tax ledgers.

14 Q So it's the tax records of the county you relied on?

15 A Yes.

16 Q Do you know how current these tax records are?

17 A This was as of January 1, 1980, I believe.

18 Q Are you aware of any changes of any of this land ownership
19 since then?

20 A I think in working -- the Tribal attorneys and Tribes
21 worked with the individual owners, and they added a
22 couple tracts that I wasn't aware of that weren't on the
23 assessor's list at the time.

24 Q Those additions, are they delineated as such in the
25 kolstad-cross-krob



1 exhibits we have discussed so far today?

2 A They are included.

3 Q Is there any way we can tell--

4 A I think there are two deeds. I think in addition to the
5 tax ledgers, there are two deeds to support this.

6 Q Okay. And those two deeds will not show up on the tax
7 ledgers because they came afterwards?

8 A I believe that's right.

9 Q In using the tax records of the county, did you ever
10 come across any problems with using those records?

11 A Well, there were a few errors that I found.

12 Q Would you describe what those errors were briefly?

13 A I think on Darwin Griebel's, one of his tracts, there was
14 a mistake on the section. It was shown as being in
15 Section 15, which and always has been trust land, but
16 the deed itself, I obtained the deed itself and it was
17 a different section. The other tract, the metes and
18 bounds conveyance had eliminated a lot from -- I think
19 it's Arthur Nippen's land, and the county wasn't aware
20 of it because they weren't aware of the boundaries the
21 metes and bounds description covered.

22 Q And how did you confirm that, did you go to the deed
23 then?

24 A The deed, yes, contains the metes and bounds description.

25 kolstad-cross-krob



1 MR. KROB: I have no further questions. The State
2 has no objection to the admission of these documents.

3 THE SPECIAL MASTER: Thank you. And one more
4 question along the lines of Mr. Krob's.

5 In your diagram that constitutes Exhibit 6 where
6 there was a doubt I noticed, for example, on Page No. 7,
7 if the exact location was not determined and you found
8 that to be the case, you merely said so, did you not?

9 THE WITNESS: Yes. There were about three of those
10 where we couldn't determine the boundary, but we know
11 the number of acres and within what subdivision they are
12 located.

13 THE SPECIAL MASTER: Okay. No further questions.

14 MR. RADOSEVICH: Your Honor, I just have one or two
15 questions.

16 CROSS-EXAMINATION

17 BY MR. RADOSEVICH:

18 Q Ms. Kolstad, when you identified the fee land held by an
19 Indian, did your investigation go back to determine if
20 that land had previously been owned by a non-Indian?

21 A No.

22 Q So at no point in time have you made a determination of
23 any of the amount of land owned by -- fee land held by
24 Indians now that was held by a non-Indian previously?

25 kolstad-cross-radosevich



1 A No I didn't make that determination.

2 Q Secondly, in identifying the fee land when you were going
3 through particularly what was entered as perhaps
4 Exhibit No. 5, the warranty deeds, did you examine any
5 water deeds in the process? Did your investigation
6 incorporate examining any of the water deeds?

7 A No, not as such, not a water deed.

8 THE SPECIAL MASTER: What do you mean by a water
9 deed?

10 MR. RADOSEVICH: In the area, particularly in
11 Division 3, and throughout the State, in addition to
12 warranty deeds for land very often those water deeds
13 transfer, a water deed would be made up transferring the
14 water rights from an individual. It may be specified
15 in the warranty deed itself, as most of these -- many of
16 these have which water and water rights, what the
17 specific water deed is, and are very often incorporated
18 in the transfer and recorded for the tract of land.

19 THE SPECIAL MASTER: That is not an official
20 recordation in the State Engineer's office, is it?

21

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* * * *

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kolstad-cross-radosevich



1 MR. RADOSEVICH: It is recorded in the county with
2 the county records.

3 THE SPECIAL MASTER: Yes.

4 MR. RADOSEVICH: Occasionally they're sent down to
5 the State Engineer's office, but it is, they're recorded
6 in the county record..

7 THE SPECIAL MASTER: Okay, thank you.

8 MR. RADOSEVICH: Thank you.

9 THE SPECIAL MASTER: The Tribe's Exhibits Number 4,
10 5, 6 and 7 being the same are hereby admitted into evi-
11 dence.

12 (Tribe's Exhibits Number 4, 5,
13 (6 and 7 were thereby received
(into evidence.

14 MR. PERRY: Your Honor, I'd just like to point out
15 for the record that during the break Mrs. Kolstad did
16 make on Exhibit 7 the changes which she has already
17 read into the record and has put on a legend indicating
18 what this map shows.

19 THE SPECIAL MASTER: Very good.

20 MR. PERRY: As requested.

21 THE SPECIAL MASTER: Okay, thank you very much.

22 MR. ROGERS: Your Honor, that concludes the witnesses
23 the Tribes had available, and if by agreement with the
24 Court we would not call in our next witness.

25 THE SPECIAL MASTER: Till the 27th of July, 9:15 in



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the morning.

MR. ROGERS: In addition, Your Honor, I would like to mention to the Court, this is subject to confirming with Mr. Merrill who apparently will handle our next witness, deals with the scheduling of our next two witnesses. We're expecting Mr. Higginson will be our next witness. We're expecting that his testimony may take at least a day, his direct and his cross, possibly more. In the event that it should be shorter than a day, we have asked Mr. Krob if he could foresee any objection on the State's part to nonetheless holding off putting on our next witness who will be Mr. Bliesner until Tuesday morning at the earliest, and if the Court has no objection to that, and assuming Mr. Merrill doesn't, that's what we'll arrange to do.

THE SPECIAL MASTER: All right.

MR. ROGERS: Thank you.

THE SPECIAL MASTER: I thank all of you for the way we are moving along, and we will be in recess then until Monday morning, July 27th at 9:00 in this room.

MR. ROGERS: Thank you, Your Honor.

MR. SACHSE: Thank you.

(Proceedings recessed at 11:00 a.m.)



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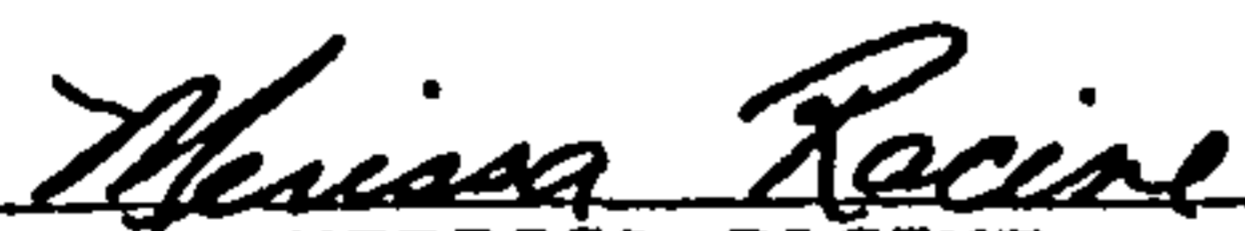
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1
2 State of Wyoming)
3 County of Laramie) : SS

4 We, Merissa Racine and Mary Nelson, Registered Pro-
5 fessional Reporters and Notaries Public in and for the First
6 Judicial District, State of Wyoming, hereby certify that the
7 facts as stated in the caption hereof are true; that we did
8 at the time, date and place, as set forth, report the proceed-
9 ings had before the Honorable Teno Roncalio, Special Master
10 Presiding, in stenotype; that the foregoing pages, numbered
11 7964-8031, inclusive, constitute a true, correct and complete
12 transcript of our stenographic notes as reduced to typewritten
13 form under our direction.

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

17 Dated this 17th day of July, 1981.

18
19 
20 MERISSA RACINE
21 Registered Professional
22 Reporter

18
19 
20 MARY NELSON
21 Registered Professional
22 Reporter

