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File 130
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Case # 4993

File # 130

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

IN RE:

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

Civil No. 4993

FILED

3-17 1981

Margaret V. Hampton CLERK
DEPUTY

VOLUME 23

Morning Session

Thursday, March 12, 1981

ORIGINAL

APPEARANCES

FOR THE STATE OF
WYOMING:

MR. MICHAEL D. WHITE
Special Assistant Attorney General
2900 Energy Center One Building
Denver, CO 80202
ALSO: MR. STUART RIFKIN

FOR THE UNITED STATES
OF AMERICA:

MS. REGINA SLEATER
Attorney at Law
Land and Natural Resources
Division
Department of Justice
Federal Building
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and

MR. TOM ECHOHAWK
Attorney at Law
Land and Natural Resources
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1961 Stout Street
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FOR THE ARAPAHOE
TRIBE:

WILKINSON, CRAGUN & BARKER
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Washington, DC 20006
BY: MR. R. ANTHONY ROGERS

FOR THE SHOSHONE
TRIBE:

SONOSKY, CHAMBERS & SACHSE
200 M. Street, N.W.
Washington, DC 20006
BY: MR. WILLIAM PERRY

FOR THE PRIVATE
WATER HOLDERS:

MR. EDWARD WEBSTER
Attorney at Law
P.O. Box 69
Cody, WY 82414

1 THE SPECIAL MASTER: We'll please come to
2 order. Before beginning this morning, I think we
3 should discuss the schedule and we should also
4 announce that next week the hearings will not be in
5 this Courtroom, they will be across the street in
6 the Capital, in Room 302. And Friday, when we
7 adjourn, we will have 302 immediately open and will
8 ask all of you to get all of your exhibits and
9 material out of here and try to leave it the way you
10 found it, everything here. But you're welcome to
11 just move your stuff up to the Capital, and I'll
12 have a Jeep Wagoneer to help load some of the stuff.
13 I'll help you move your stuff up or at least have
14 the car available so you don't have to haul it.

15 Next week, all next week long we will have
16 Room 302 at our disposal, then we will be storing
17 the exhibits left with us and moving the exhibits
18 that are in our control over to H-10, H-11 in the
19 Capital, where they will stay for the next 11 months
20 without being disrupted.

21 What is your wishes regarding carrying
22 on March 30th, 31st, and April 1st? It's sort of
23 a truncated week, if you don't want to have the hearing
24 that week, we'll just as soon forget about it and use
25 our time for preparation on important matters like

1 settlement discussions.

2 MR. ROGERS: Well, Your Honor, my main
3 consideration is that it's somewhat of an expense,
4 additional expense to come out for a relatively brief
5 period of time, and that being the only real con-
6 sideration, I think I would favor deleting those
7 three days.

8 THE SPECIAL MASTER: Do you have any reason,
9 Mr. White, why we should not strike those three days
10 and use them for other purposes?

11 MR. WHITE: No, sir, I do not.

12 THE SPECIAL MASTER: The three days will be
13 stricken now, the three days of March 30th, 31st and
14 April 1st are hereby stricken from the schedule,
15 and we'll resume following, following all of next week.
16 We will resume on April 14th.

17 MR. WHITE: That's right, Your Honor -- oh,
18 where?

19 THE SPECIAL MASTER: In 302, the one or two
20 hearings set for that week. And the week of April 20
21 to 27 we'll see about location the week before that.
22 It would appear that it would be back in the Supreme
23 Court Chambers.

24 Next.

25 MR. ROGERS: Your Honor, I, yesterday

1 afternoon or noon time, the Tribes filed their
2 response jointly with the United States to Wyoming's
3 third request for entry onto the Reservation, and
4 although we had until March 19th to make that response,
5 in view of the form of response we made, I thought
6 it would be appropriate to file our response early
7 in order to have argument if the State wished to at
8 this early a date. The reason being that we have
9 asked for show-cause hearings to enter specific tracts
10 of the Reservation, and I thought that if the State
11 wished to stick with its schedule of hoping to enter
12 portions of the Reservation on March 30th, that they
13 might wish to have the ruling on this response made
14 before then so that if necessary, show-cause hearings
15 could be held before the date of the 30th. So if the
16 Court is open to hearing those this morning, we're
17 prepared to argue, but I'll leave it to the State as
18 to when and how they may wish to deal with it.

19 MR. WHITE: Let's go ahead and do it now.

20 THE SPECIAL MASTER: Mr. White, do you want
21 to proceed with the show-cause order right now or do
22 you want some time?

23 MR. WHITE: I might say, Your Honor, under
24 the rule, the State is under no obligation to show
25 cause, the United States and the Tribes are under an

1 obligation to show cause why the entry should not
2 be allowed. We have no evidence to put on now because
3 under the show-cause ruling, we're not required to do
4 so.

5 I would state to the Court, however, I
6 believe it's evident from what happened during the
7 last few days and last few weeks of trial, that it
8 simply would be inappropriate to deny the State the
9 opportunity as the evidence is refined, as new
10 evidence is presented to check that evidence in the
11 field.

12 THE SPECIAL MASTER: Well, the response
13 states that the United States for the Tribes cannot
14 consent to the entry without the prior written consent
15 of particular Indians who are living on, I suppose,
16 their own unalloted lands.

17 MR. WHITE: Well, Your Honor, we have no
18 intention of going on anything but trust lands.

19 THE SPECIAL MASTER: You have no intention?

20 MR. ECHOHAWK: That is trust land.

21 MR. ROGERS: Your Honor, may I suggest an
22 order for this; this is not a show-cause hearing, this
23 is an argument on the Tribes' response. And if I
24 might lead off on that, I'd like to make our points
25 since we're going to do it this morning. The principal

1 concern of the Tribes is to wholesale entry on the
2 Reservation, not just on tribal land, but on
3 individual allotted land which is also trust land
4 owned by individual Indians. We have in many cases
5 a wide range of people there living on those lands,
6 some relatively unsophisticated who don't appreciate
7 what in the world is going on in this lawsuit.

8 THE SPECIAL MASTER: Nobody appreciates a
9 lawsuit, Indian, non-Indian, anybody else, I suspect.
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MR. ROGERS: The situation, as the Tribes

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are feeling pressure from their own constituents, is

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that there are these massive entries by whole ranges of

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people coming on and digging holes in the land, and they

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are not fully appreciative of what in the world this is

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all about.

7

They know that the State of Wyoming filed a

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lawsuit against the United States and the Tribes, and

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that for some reason all of this invasion has had to

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occur somehow in connection with this lawsuit.

11

We fully appreciate that the State is entitled

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to physical examination of the premises, but our main

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point is that there was an entire field season last year

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when the State did, in fact, have entry on a large

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portion of the lands which are involved in this litigation,

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and those are primarily the future undeveloped acreages

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to which Mr. Kersich's testimony was initially directed.

18

We feel that entry onto those lands again is

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inappropriate since the State was fully advised of the

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boundaries of those lands --

21

THE SPECIAL MASTER: Let me interrupt you just

22

there. Does the State plan additional entry in and exam-

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ination of lands to which Kersich has already testified

24

that are the arable unirrigated lands now?

25

1 MR. WHITE: Only with respect to those that
2 find their way into the eventual claim for future PIA,
3 Your Honor. We have seen that claim go through a number
4 of transitions. It's changed substantially since the
5 first set of depositions, a major revision that was given
6 this January, two months ago.

7 THE SPECIAL MASTER: Well, it is not the Master's
8 intention to decree water for specifically identified
9 tract acreage by township, range, section, acre, and so on.

10 If the eventual acres under PIA will be a figure
11 and it will be up to the Reservation to decide which of
12 a given twenty-five or thirty or forty thousand acres they
13 wish to allocate to each area and put under the plow --
14 and I think that is whether it's Indian land or Hanover
15 Canal land or anybody else's land in Water Division Three,
16 and I think sooner or later we will find that many rights
17 owners on the Wind River may have a right to do 640 acres
18 and that gives him -- he cranks that at one foot per second
19 for seventy acres and he uses that much water. There are
20 those that complain that he hasn't been irrigating 640
21 acres.

22 In a given season, I think the evidence is begin-
23 ning to show that he has to put so much water on a less
24 acreage in order to get a viable crop, and he's been using
25

1 more water and less acreage for that reason, and that
2 doesn't mean that it should detract from his certificate.
3 That is not in the province of this lawsuit to do that.

4 It is merely to determine the right to use water,
5 and I think Indian-wise it will be the same thing, so you
6 won't need to enter the lands and go through every bit of
7 proposed arable lands, I don't think, Mr. White.

8 MR. WHITE: That's not what I said, Your Honor.

9 THE SPECIAL MASTER: And to make sure I don't
10 include in a decree and that you recommend particular
11 lands that you find that are not, in fact, arable -- you
12 see what I mean?

13 MR. WHITE: Your Honor, the only future lands
14 that we presently intend to do that are included within
15 Mr. Kersich's arable land base are those -- I think there
16 are roughly 55,000 acres to which Dr. Mesghinna has developed
17 future projects, and he's testified about those future
18 projects during his deposition in January.

19 Those future projects did not include the same
20 lands -- well, there is some overlap, but --

21 THE SPECIAL MASTER: All right. There are no
22 allotted Indians living on or near those lands now, gentlemen,
23 Mr. Rogers?

24 MR. ROGERS: No, Your Honor, I'm sure there are
25

1 not.

2 THE SPECIAL MASTER: Then I will rule now that
3 the State will have a right, and you prepare an order
4 accordingly, but you find the dates. Let us know the
5 dates that they want to go and they will --

6 MR. ROGERS: Let me address that a minute before
7 Your Honor rules on it.

8 THE SPECIAL MASTER: But I see no reason why it
9 can't be granted.

10 MR. ROGERS: Let me state the facts of the
11 matter.

12 The State has been aware of the boundaries of
13 those future acreages since last April or May when the
14 initial depositions were taken.

15 Now, it is true that there have been some modi-
16 fications within those acreages, but it's on the basis of
17 a shrinkage of the land claim, but the boundaries of those
18 future lands were known for that entire field season.

19 THE SPECIAL MASTER: Well, isn't that what Mr.
20 White is saying? He's saying that somebody that I'm not
21 familiar with down the road that you people have already
22 had under depositions plans some future projects on some
23 of that land.

24 MR. ROGERS: Yes, but, Your Honor --

25

1 THE SPECIAL MASTER: And his testimony is yet
2 to come, and they would like --

3 MR. ROGERS: But they have known that as well.

4 MR. WHITE: Now, Your Honor,--

5 MR. ROGERS: They have known the general outlines
6 of even Dr. Mesghinna's proposed irrigation system layouts
7 since early on last summer. His deposition was initially
8 taken in June, 1980.

9 THE SPECIAL MASTER: Give me some reasons why
10 this Court should not okay an order for the State's
11 people to again visit these lands.

12 MR. ROGERS: Simply because, Your Honor, they
13 had the entire three months out there before, and they knew
14 the areas involved. They knew the broad areas, and they
15 have not grown any. They are the same exterior bounded
16 areas that we were talking about last year, and they could
17 have done it at that time.

18 THE SPECIAL MASTER: I find that reason in-
19 sufficient. There are many, many burdens on us in this
20 lawsuit, and I don't that's an adequate reason to deny them
21 entrance to these lands for one more look at them.

22 MR. ROGERS: Well, Your Honor --

23 THE SPECIAL MASTER: This may be the last look at
24 them because we are getting close to a determination.

25

1 MR. ROGERS: It's very unusual to do that kind
2 of discovery in the midst of trial when they have been on
3 notice for about a year as to the location of the lands
4 involved. I can't say any more than that, but it strikes
5 me as a very unusual type of discovery.

6 Now, I will agree that as to the lands which are
7 primarily the historic lands, the portion which Mr. Bill-
8 stein is testifying to, that the location of all of those
9 lands has not been known to the State and that they are
10 entitled to appropriate examination, there, but we have
11 taken the position we have about notice to individual
12 Indian landowners as well as to the Tribes and the restrict-
13 ions we have proposed in our response simply because; as
14 the response says, there is no way that the Tribes can
15 consent nor the United States can consent to entry on those
16 individually owned lands and --

17 THE SPECIAL MASTER: All right. The State knows
18 that and can be guided accordingly.

19 MR. WHITE: Your Honor --

20 MR. ROGERS: The fact is, Your Honor, that at least
21 half and maybe more of those historic lands are owned by
22 individual Indians, and I think those --

23 THE SPECIAL MASTER: But right now we are not
24 talking about those historic lands of Mr. Billstein. We
25

1 are talking about the arable lands that Mr. Kersich
2 has testified about.

3 MR. ROGERS: No, sir -- well, I was talking about
4 the historic lands because I'm saying the State is entitled
5 to examine those to the extent they didn't know their
6 location earlier, but the individual Indians who do own
7 those acreages are entitled to notice of the States' entry,
8 and they are entitled to accompany the State and know when
9 the State is going to be there and who from the State is
10 going to be there and what they are going to do with the
11 land when they are on it, whether they are going to backhoe
12 or drill holes --

13 THE SPECIAL MASTER: I will agree with that.
14 They have the right to know whether they will do any dig-
15 ging or just a visual observation or just walking the ditch.

16 MR. WHITE: Primarily visual observation. Let
17 me say, Your Honor, that we will be more than happy to
18 identify those parcels that we would like to visit once we
19 find out from Mr. Billstein exactly which parcels go into
20 that Exhibit 137.

21 THE SPECIAL MASTER: All right. Let's proceed
22 then with the trial and help resolve the specific areas you
23 want to get into and look at it.

24 Yes, Mr. Echohawk?
25

1

MR. ECHOHAWK: As soon as Mr. Rogers is done,

2

I would like further --

3

THE SPECIAL MASTER: Okay. Mr. Rogers?

4

MR. ROGERS: I'm not quite clear where we stand.

5

THE SPECIAL MASTER: Let's proceed with your

6

arguments. We are trying to fashion material on which I

7

can base an order allowing the State some opportunity to

8

finish up its examination of lands on the Reservation. I

9

don't intend to shut them out. I think that would be

10

wrong.

11

MR. ROGERS: That's not the thrust of our

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response, but we do think they have had their day as far

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as examination of lands they knew about and --

14

THE SPECIAL MASTER: I take respectful issue with

15

that because I don't think they have.

16

MR. ROGERS: Then that's Your Honor's ruling on it,

17

but we have drafted our response with a view that on lands

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they did not know about in sufficient time to do studies

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last year, they are entitled to enter and they will notify

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us as to what those lands are with the various forms of

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identification and demonstration we have set forth.

22

If Your Honor is going to rule that regardless

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of their previous opportunity to examine those lands that

24

they may go back on them, I hope Your Honor will at least

25

1 rule that we are entitled -- we and the individual Indians
2 who may be involved are entitled to notice of which lands
3 they want to go on.

4 THE SPECIAL MASTER: Yes. Do you want them
5 identified?

6 MR. ROGERS: And what they want to do.

7 THE SPECIAL MASTER: Do you want them identified
8 by tract and legal description?

9 MR. ROGERS: I think that's necessary, Your Honor,
10 because, like I say, we are dealing with a lot of individual
11 owners who are entitled to notice.

12 THE SPECIAL MASTER: I'm not sure what the word
13 "tract" means in that case, but I know what legal descrip-
14 tion means. Put it in the township and range and section.

15 MR. ROGERS: Well, I had in mind portions of
16 land that were contiguous to one another that they wished
17 to go into, but there may, in fact, in those situations be
18 more than one Indian owner. You might have two or three
19 different --

20 THE SPECIAL MASTER: Do you expect the State to
21 identify the legal owners and the beneficial owners and to
22 show the proof of notice to each individual Indian owner
23 that they have made --

24 MR. ROGERS: Your Honor, they are parties to this
25

1 case. These individual Indians are supposedly parties
2 to this case, and I think they are entitled to notice when
3 their land is open for inspection by the State of Wyoming.

4 MR. WHITE: We will be glad to give notice --

5 MR. ROGERS: We have to have the cooperation of
6 the Indians.

7 MR. WHITE: If they will give us the names, we
8 will be glad to give them notice.

9 THE SPECIAL MASTER: The rest of us have been
10 doing the best we can to inform, cooperate with, and assist
11 citizens who are also served and inconvenienced by this
12 lawsuit. We have held meetings here to do that in Worland.
13 We have run ads in the paper. I have answered hundreds of
14 letters of concerned citizens, so I think the Tribes and
15 their leaders have the same kind of a duty, the allottees
16 and others living there. Let them know that they are coming
17 to the close of a lawsuit that requires everybody's co-
18 operation.

19 MR. ROGERS: The Indians' land is the only land
20 that everybody is trudging across now.

21 THE SPECIAL MASTER: Mr. Rogers, that's not neces-
22 sarily true. We are casting possibilities of severe water
23 limitations on a lot of people's land, not unjustly, but
24 because the law is going to make it necessary that in order
25 to fulfill the Constitution of Wyoming, the State of Wyoming

1 has to equally guard all the various interests involved
2 and one of those interests involved, according to Article
3 I, Section 31, of Wyoming's Constitution, which governs
4 the people of the State of Wyoming and its State Engineer
5 and all of its officials and all of its judges, is the
6 fact that there was in existence an Indian Reservation
7 squarely within the boundaries of this State for many, many
8 years before a State ever had a Convention to adopt a
9 Constitution and before the Constitution was ever adopted.

10 To equally guard the various interests means the
11 guarding of interests of Indians as well as non-Indians,
12 and all of them have a right to reasonable notice of some-
13 thing which is going to limit the ownership of water and
14 the right to use it, which is a result of the duty to ful-
15 fill the initial Consitution of this State, and this
16 includes the non-Indians downstream, non-Indians upstream,
17 and Indians on the Reservation.

18 I'm stating the parameters now for what is going
19 to be my decree, and I hope that you can provide all the
20 Indians and their counsel what may be necessary by way of
21 identity of means to help Mr. White in fulfilling what he
22 just said will be his last entry.

23 This is the last entry as far as examination of
24 Indians' lands are concerned unless something might come
25 up to look at something --

1 MR. WHITE: If we have a big snowstorm in April
2 and we can't get in there, Your Honor --

3 THE SPECIAL MASTER: Of course, but I think the
4 Indians do have a right to know there aren't going to be
5 any two or three foot holes dug and anything that is done
6 is replaced, and replace all divots, and make sure there
7 aren't any utility lines damaged or anything else.

8 I do not believe that you have to demonstrate
9 that no other source will provide what is necessary. The
10 best way to do it is to go back up and look at it, so we
11 think that this is a little beyond the requirements, and
12 I don't believe it's necessary to show that the State had
13 no notice of the tracts' involvement when the State
14 previously entered the Reservation during the spring and
15 summer of '80. I think that's an unreasonably harsh re-
16 quirement.

17 You must designate, however, Mr. White, the
18 individual consultants, who they are. Identify them.

19 MR. WHITE: They are in the request.

20

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1 MR. ROGERS: Well, Your Honor, that's my
2 point. The individual request lists every single one
3 of the State's experts, all of them, and they're
4 obviously all not going to be there.

5 THE SPECIAL MASTER: How many are there?

6 MR. ROGERS: I think we're entitled to
7 know who the specific individuals are that are going
8 on these tracts. Obviously all these people aren't
9 soils experts.

10 MR. WHITE: We might want to have somebody
11 besides a soils expert go on the tract.

12 THE SPECIAL MASTER: You better specifically
13 identify them..

14 MR. WHITE: We have them specifically
15 identified.

16 THE SPECIAL MASTER: How many are there in
17 the list? I thought there wasn't but eight or nine.

18 MR. WHITE: There are probably around 30.
19 Some of them may not go, some may go for a day or
20 half a day.

21 THE SPECIAL MASTER: Bring that close down
22 to identify which ones.

23 MR. WHITE: We'll be able to do that, we'll
24 be able to contact the Tribes' counsel and the United
25 States and say that of the people on this list, certain

1 people want to go on a particular day or days.

2 THE SPECIAL MASTER: Each party of the State
3 consultants will be required to afford a Federal
4 Government or Tribal representative an opportunity
5 to accompany that party on each of these visits, stop
6 and pick up your man, either at the BIA office or
7 from the Fort Washakie headquarters, that will be
8 expected of you, and, of course, restitution of any
9 land that's disrupted in doing that. There's no
10 question there, the need to have to pay appropriate
11 damages.

12 MR. WHITE: We will, if we do something
13 outrageous while we're working out there, we'll pay
14 for it.

15 THE SPECIAL MASTER: All right. And your
16 people are prohibited from making written or oral
17 inquiries of any of the officials, you know, that
18 shouldn't be necessary, but I guess maybe it is
19 necessary, we're getting down to --

20 MR. WHITE: I assume --

21 THE SPECIAL MASTER: The pushing now becomes
22 shoving, so the State consultants are prohibited
23 from making any written or oral inquiries of any
24 Federal or Tribal official regarding the subject matter
25 of this lawsuit.

1 MR.. WHITE: The subject matter of this
2 lawsuit, Your Honor, that's okay. I thought for a
3 minute we weren't going to be able to ask where a
4 gas station was.

5 THE SPECIAL MASTER: Now, Mr.. White.

6 MR. ROGERS: No, Your Honor, obviously
7 what we're concerned with is informal discovery.

8 THE SPECIAL MASTER: Yes. Mr.. Perry, you're
9 going to let Mr. Rogers finish?

10 MR. PERRY: Yes.

11 MR. ROGERS: I'm not sure I have everything
12 you ruled on. You ruled that they're not required
13 to show the tract -- Well, Number 6. In other words --

14 THE SPECIAL MASTER: Number 6?

15 MR. ROGERS: That's not part of the require-
16 ment. I gather you are allowing our conditions one
17 through five?

18 THE SPECIAL MASTER: I'm honoring some of
19 those; I'm denying six. The State should not have
20 to demonstrate that the tract involved is part of
21 what they want to look at. I think they got more to
22 do than look at land that is not immediately involved
23 in what we're working with.

24 MR. ROGERS: Your Honor has ruled favorably
25 on one through five and seven, eight and --

1 MR. WHITE: No, that's not right.

2 MR. ROGERS: Your Honor --

3 MR. WHITE: On two you said once we
4 identify the tracts --

5 MR. ROGERS: Your Honor, I would like to
6 address that. The State knows the individual
7 Indian owners of these tracts, they've been provided
8 with BIA title documents, and they've got the list
9 of Tribal rules as well, and I think they can supply
10 that, there's no reason we should have to go into
11 extensive examination.

12 THE SPECIAL MASTER: Can you try, Mr. White,
13 from the material you got on those lands?

14 MR. WHITE: That's a laugher, Your Honor,
15 there's no way we can do it from the material we
16 got.

17 THE SPECIAL MASTER: You can't from the
18 rules, but can you do it from the other material?

19 MR. WHITE: The only way is send some
20 people up to go through the title plant and see who
21 the people are. There's probably two, three weeks
22 worth of work. It's immediately available to the
23 Tribes, and there's no reason they shouldn't give it
24 to us.

25 THE SPECIAL MASTER: Is it immediately

1 available, do we know the exact lands that you want
2 to visit?

3 MS. SLEATER: Your Honor, the United States
4 knows only titles through the title plans, which
5 will require the same search the State of Wyoming will
6 do. Last week the State of Wyoming appeared at the
7 title plant and requested certified copies of all
8 title documents relating to the Reservation, which
9 documents are being provided to them. This involves
10 massive work of people who have other work to do up
11 in Billings. Now, from which documents which are the
12 only documents available to either party regarding
13 titles, the State can make their search here rather
14 than at the title plant. We would have to do exactly
15 the same thing, and since it's the State's request
16 for entry onto the Reservation, I think it would be
17 grossly unfair to have either the Tribes or the United
18 States do the work that the State needs to have done.
19 We have other things to do to get our case ready.

20 THE SPECIAL MASTER: Just a minute, Regina.
21 What should a state official do who wants to learn
22 the name of the individual Indian on a particular
23 land that they want to look at?

24 MS. SLEATER: Your Honor, I assume that they
25 would do what anyone else would do.

1 THE SPECIAL MASTER: Tell us specifically
2 what they would do, what they should do.

3 MS. SLEATER: Your Honor, how I would go
4 about doing it is get the title documents, look at
5 the title documents for the tract of land I am
6 interested in, where after that, maybe determine from
7 that title document, you know, the relative reason
8 or nonreasonness of the transfer, look at the Tribal
9 roll to ascertain if such persons are still on the
10 roll, and then send them a letter.

11 They were, by the way, also provided with
12 all of the addresses of all of the Tribal members
13 during the first week of this trial. If you'll recall,
14 during the end of Mr. Merchant's testimony we gave
15 them a copy of the computer printout, which has the
16 list of all the Tribal individuals and their names
17 and addresses. With that information that's the only
18 information we would have to put together to provide
19 this information too. So they have it.

20 THE SPECIAL MASTER: All right, Mr. White.
21 Can you take that and work with it?

22 MR. WHITE: Your Honor, I think the easiest
23 way to do this and probably would require some
24 cooperation, but I suspect we're still able to co-
25 operate among ourselves, is notice is really required

1 to enter these private lands. Mr. Billstein must
2 have given notice the time he did it. If we can get
3 copies of the notice he gave, then we can try to
4 update those, that will give us a starting point,
5 and if the United States will stipulate as to the
6 list which they gave us, then we'll have another cross-
7 check against a stipulated current document.

8 I'd further like to inquire as to whether
9 or not Tony and Bill represent these individual
10 Tribal Indians. If they do, why there may be other
11 ways to skin the cat, if they don't, why maybe we're
12 not --

13 THE SPECIAL MASTER: I assume --

14 MR. ROGERS: We do not.

15 THE SPECIAL MASTER: I assume that you
16 represent all Indians who are enrolled members of the
17 Tribes as well as the Tribal subdivision.

18 MR. ROGERS: That's not correct, Your Honor.
19 We have contracts to represent the Tribes, the Tribal
20 government. We have issued public notice that we
21 are, in setting forth, what the Tribal reserve water
22 rights are, we'll include in that claim, the lands
23 of individual allotted Indians as well as Indians who
24 own fee land who care to be, who care to have their
25 water right asserted as part of the Tribal water right,

1 but we are not representing those individuals directly.
2 We are not their attorneys.

3 THE SPECIAL MASTER: This is raising a very
4 serious issue in this lawsuit. Up until now I was
5 of the assumption that you represented all the members
6 of the Tribes as well as the structure of the Tribes
7 themselves, the governmental unit, entity, and to say
8 that you don't, raises a very serious question in my
9 mind, and a difficult one that we better resolve right
10 now. If you don't, who served notice upon them in
11 this lawsuit?

12 MR. ROGERS: By mail, Your Honor, the State
13 of Wyoming did.

14 MS. SLEATER: Your Honor, that's one of the
15 jurisdictional problems with this lawsuit. Initially
16 the United States was joined as trustee and the Court
17 ruled that it was proper. Under the McCarran
18 Amendment, the United States, of course, represents
19 as trustee, not only the Tribes but all the individual
20 Indians.

21 THE SPECIAL MASTER: That's exactly right.

22 MS. SLEATER: Now, the Tribes -- First of
23 all, not all of the individuals, as far as we know,
24 received notice of this lawsuit through the mail. In
25 fact, we have a tally of those who told us, that we

1 had asked for kind of a collection figure, and we
2 find this is a very grave defect in the whole litigation.
3 The Tribes requested before Judge Joffe that they
4 be allowed to intervene in this lawsuit through their
5 attorneys, and this request was allowed.

6 THE SPECIAL MASTER: Was granted.

7 MS. SLEATER: Which is why Mr. Rogers, Mr.
8 Sachse and Mr. Perry are participating. The individuals,
9 I believe some of them have entered appearances, I
10 believe that some of the private counsel -- in fact,
11 I know for a fact that some of the private counsel
12 represents Indians who are Tribal members on this
13 Reservation.

14 THE SPECIAL MASTER: Mr. Webster, do you
15 represent some private individual Indians on the
16 Reservation?

17 MR. WEBSTER: I do not.

18 THE SPECIAL MASTER: Do you know of any
19 counsel that we call or counsel for the other
20 defendants who represent Indians on the Reservation?

21 MR. WEBSTER: Not personally.

22 MR. ROGERS: I do. Ruth Clare Yonkee
23 represents some Tribal members. We've had recent
24 correspondence from her to them about representation,
25 and I believe --

1 THE SPECIAL MASTER: If she represents them,
2 how come you get correspondence from the Indians
3 about that?

4 MR. ROGERS: She --

5 THE SPECIAL MASTER: Are they like a citizen
6 of the United States who's living in Israel with a
7 split allegiance type thing that we have to recognize?

8 MR. ROGERS: She sent a copy of the letter
9 she wrote to her clients advising them that she
10 thought she might have difficulty representing the
11 Indians since she also represented some non-Indians
12 and felt that perhaps her representation of the
13 Indians who might want a claim under the reserved
14 right might conflict with the interests of her other
15 clients, and she was simply advising them of the
16 statement I just made, that we are representing the
17 Tribes and are willing to claim for individual
18 Indians, as part of the Tribal right, any reserved
19 rights they care to participate.

20 She also informed them they were free to
21 obtain other counsel. So we are aware, from that
22 conversation and correspondence, and I believe also
23 that Mr. Barrett may represent some individual Indians.

24 MR. WEBSTER: Your Honor, I have some
25 knowledge of that, and I think what we're talking about

1 are people who are successors in interest to Indian
2 allotments but they are not Indians per se, and I
3 believe that's correct.

4 THE SPECIAL MASTER: They took title from
5 Indians and title in fee simple and were able to
6 convey it that way?

7 MR. WEBSTER: I'm familiar with several
8 individuals, particularly on Owl Creek that Ms. Yonkee
9 represented and subsequently Mr. Barrett is representing,
10 that this is the case.

11 MR. ROGERS: That's true, Your Honor, but
12 Ms. Yonkee also represents some enrolled Tribal
13 members, and there may be other counsel that do.

14 THE SPECIAL MASTER: Well, I still think
15 that if you can facilitate the State's request to
16 enter the Reservation, look at some lands by helping
17 them identify those individual Indians who ought to
18 be given notice under what I'm proposing to order,
19 I think it should be done. And I will ask you to do
20 that.

21 MR. ROGERS: Your Honor, we're willing to
22 cooperate, but I don't think we should have to do
23 the work and identify them for them.

24 THE SPECIAL MASTER: If they give you the
25 description of the land, it doesn't make that search

1 all that difficult for you.

2 Yes, Mr. White.

3 MR. ROGERS: It has to do with something
4 that they should have to do.

5 MR. WHITE: I would like to find out for
6 the record, Your Honor, whether or not the United
7 States does represent these individuals as trustee or
8 what is the relationship between the Department of
9 Justice and the individual Tribal members.

10 THE SPECIAL MASTER: Ms. Sleater.

11 MS. SLEATER: Your Honor, the United
12 States is trustee for all the individual members on
13 the Reservation. However, the terms of this trust
14 relationship, as Your Honor is well aware is very
15 subscribed by both law and regulation. One of the
16 things that has particularly been defined over the
17 years is when or when not the United States can allow
18 people to enter into land, especially allotted land
19 which for all intents and purposes is land owned by
20 that individual. The United States merely holds legal
21 title as trustee. Now, in that situation, as Mr.
22 White would like to read in 25 CFR, the regulations
23 regarding the right of way and permit requirements
24 on individual allotted lands, the situation is if the
25 allottee does not consent to the entry, the United

1 States may not consent to the entry. Therefore, it
2 is necessary that these people have notice.

3 Now, Mr. White is the one who wants to get
4 on this land. The employees of the United States
5 are very occupied, both because of this lawsuit and
6 other work that's going on. We are quite willing,
7 and in fact have already made available to the State
8 of Wyoming all the documents necessary to identify
9 the owners and the tracts. We would have to do exactly
10 the same work that the State of Wyoming would have to
11 do, make this identification, in which case it seems
12 grossly unfair to take time away from our trial
13 preparation and work we are doing to require us to do
14 an action for the State of Wyoming, that they are
15 perfectly competent and capable of doing with the
16 information that has been provided them. And the
17 United States feels very strongly on this point, and
18 also wants to reiterate that although we represent
19 those individuals because of our trust duty, we cannot
20 say as to any individual's allotment that anyone
21 can go out there unless that individual owner consents.

22 MR. WHITE: Your Honor --

23 THE SPECIAL MASTER: I find that, I find that
24 unacceptable, Regina. I find that absolutely unacceptable
25 in this lawsuit, that you will not use your good offices

1 with allottee and Indians living on the Reservation
2 to cooperate in this lawsuit so that the State can
3 render an inspection of land to prove some claims made
4 in this case, to looking to the Reservation of water
5 for that Indian and his land on that Reservation.

6 I will not accept that, it's an unacceptable
7 proposition. I find it offensive.

8 MS. SLEATER: Your Honor, I'm not saying
9 we won't cooperate. We have in fact cooperated by
10 giving the State of Wyoming every title document they
11 have asked for and the entire list of not only the
12 rules, but the addresses of all of those parties out
13 there. The reason we did this was so the State of
14 Wyoming could in fact ascertain what was going on out
15 there.

16 Furthermore, Your Honor, I am willing to
17 state that we have in the past provided this to
18 experts to the State of Wyoming out on the Reservation.
19 We have waiting for them, when they arrive at the
20 Reservation at the BIA offices, a letter of introduction
21 so that when they're out there and anyone asks them
22 a question, they say here, the United States is telling
23 you we get to go out and do this if we can. We do
24 cooperate.

25

* * * * *

1 THE SPECIAL MASTER: Why can't that be done
2 one more time? That's all Mr. White is saying.

3 MS. SLEATER: No, no, Your Honor. I'm sorry.
4 I hate to disagree with you. He wants the United States
5 to tell him who owns every parcel of land, and what I'm
6 trying to tell you is --

7 THE SPECIAL MASTER: I didn't find that in the
8 application. Show me where Mr. White says he wants the
9 United States to supply the names of the owners of each
10 parcel.

11 MR. ROGERS: He didn't say it in his request
12 because he was not aware of our response, which is ask-
13 ing that he notify the individual owners, so he would not
14 have been advised of the need to --

15 THE SPECIAL MASTER: Can you narrow down your
16 request to the number, to the identification of each
17 tract by legal description that you intend to spend some
18 time on?

19 MR. WHITE: Fairly close, Your Honor. We can
20 get it down to township, range, section --

21 THE SPECIAL MASTER: Can you do that between
22 now and the next -- and the April meeting? Can you do
23 that in the next week or ten days?

24 MR. WHITE: When do we first get together in
25 April? The 14th?

1 THE SPECIAL MASTER: If you will do that much,
2 we will solve this one step at a time. If you will get
3 that list ready, we will go through this person by per-
4 son, place by place, to see if you have -- but I'm pre-
5 disposed to practically sign the order right now that I
6 request Mr. White to draft in this matter.

7 MR. WHITE: Your Honor, April 14 will be half-
8 way through the month. We wanted to get out there. I
9 wonder if I could inquire of Mr. Billstein a couple of
10 matters in this regard because just two months -- or last
11 month he made essentially the same inspection for the
12 lands shown on Exhibits 56 through 136 that we propose
13 to do; and if I could just ask him generally what he did
14 to get that, it might help.

15 THE SPECIAL MASTER: Do you propose to heli-
16 copter fly and maybe land at about a third or fourth --

17 MR. WHITE: Maybe less.

18 THE SPECIAL MASTER: Why don't we see if that
19 can't be worked out. Ask that, Counsel.

20 You are still under oath from the past many days
21 and weeks.

22

23

24

25

1

CROSS-EXAMINATION (RESUMED)

2

BY MR. WHITE:

3

Q Ron, you conducted a field inspection of roughly
4 25 percent of the unadjudicated lands currently in
5 use last month, did you not?

6

A That's right.

7

Q And did you conduct that inspection primarily by
8 helicopter?

9

A Primarily.

10

Q Did you touch down at all -- deliberately?

11

MR. WHITE: That's an inside joke.

12

THE SPECIAL MASTER: No engine-out procedures.

13

A I think we set down four or five times.

14

Q (By Mr. White) Did you obtain any sort of written
15 consent of each of the owners or allottees or opera-
16 tors of those tracts that you flew over?

17

A The procedure that we utilized was that I went to
18 the tribal council and explained the program. We
19 received a tribal resolution to go on tribal trust
20 land, and there was an advertisement in the tribal
21 newspaper, and I believe the Bureau of Indian Affairs
22 sent out a letter with respect to our field program
23 to all people on the tribal rolls.

24

If the people wanted additional information or

25

billstein - cross - white

1 did not want us on the land, they were to notify us.
2 We had a certain duration of time that we waited.
3 We had some telephone calls from individuals who
4 wanted more information.

5 We then proceeded with the field program, and
6 at any time that an individual allottee did flag us
7 down out there and wanted to ask questions and such,
8 we certainly accommodated him and used good field
9 procedures as well as, of course, to make sure we
10 did not disrupt his operation; but with respect to
11 our particular program, that's how that was under-
12 taken.

13 Q When did you appear before the tribal council or the
14 joint business council?

15 A It would have been -- let's see -- the first time,
16 it would have been two, two and a half years ago,
17 previous to the soils work.

18 Then I think we had another request in June,
19 I think, of this year -- of 1980, something of that.

20 MR. WHITE: Your Honor, I think it would be
21 appropriate for the State experts to be required
22 to follow the same procedure that Mr. Billstein had
23 to follow.

24 THE SPECIAL MASTER: Do you have time?

25 billstein - cross - white

1 MR. WHITE: Well, it seems to me that there's
2 no reason why counsel for the Tribes could not re-
3 quest such a resolution from the tribal government.

4 THE SPECIAL MASTER: Could counsel for the
5 Tribes -- and I'm happy that Mr. Harris is still
6 here. Maybe he could help us a little bit in this
7 dilemma.

8 Could we make an appointment at the next meet-
9 ing of the tribal council for someone to appear and
10 make this request?

11 MR. WHITE: I don't think it would be appropriate
12 for me to appear.

13 THE SPECIAL MASTER: No, I didn't say for you
14 to appear. I said somebody from the State side to
15 appear.

16 MR. WHITE: I think it would be appropriate
17 for the lawyers representing the Tribes in this
18 matter simply to pass on this request. I don't
19 think it would be right for us to go talk to the
20 Tribes or the Tribes to talk to us.

21 THE SPECIAL MASTER: Well, it isn't all that
22 much --

23 MR. ROGERS: There isn't any issue, frankly,
24 as far as the Tribes are concerned. It's not neces-
25 sary for them to appear to request the permission.

1 We will accommodate them on that.

2 It's the individual trust land that we are
3 concerned about, that those people know what's go-
4 ing on and --

5 THE SPECIAL MASTER: Well, the individual trust
6 lands --

7 MR. ROGERS: I might add, Your Honor, that we
8 have recently -- on a couple of occasions where we
9 have tried to call general meetings of particular
10 classes of tribal members, those who owned fee land
11 or otherwise -- and I don't think that would be a
12 solution to the problem because the attendance is
13 not that good.

14 THE SPECIAL MASTER: You say those that own
15 fee lands. Yet, Regina says they don't really own
16 the land in fee simple. Now, who owns that land?

17 MR. ROGERS: We are talking about two entirely
18 different classes of people.

19 THE SPECIAL MASTER: Give me an answer. Who
20 owns the land of an allottee and that is the inci-
21 dent of ownership?

22 MS. SLEATER: There are three types of owner-
23 ship on the Reservation.

24 There is what we call tribal trust land, which
25 is land legally held by the United States for the

1 use and benefit of the Tribes as an aggregate.

2 Then there is what is sometimes called private
3 trust land or individual Indian allotments. That
4 land is also legally held by the United States,
5 but it's held for the use and benefit of a particu-
6 lar Indian individual.

7 There is a third category, which is referred
8 to as either fee lands or Indian fee lands, which
9 is land owned by an individual Indian in his own
10 capacity. The United States has no interest in
11 that land at all. The land is included as part of
12 the Reservation.

13 THE SPECIAL MASTER: That's fee simple land in
14 my understanding.

15 MS. SLEATER: Yes, yes, sir. In the past some
16 of that land was allotments. It was allotted, and
17 then the Indians through a showing of competency
18 petitioned to have their land changed to fee status,
19 and it was, in fact, changed to fee status.

20 Some other of that land may have been purchased,
21 but there are three distinct categories.

22 The United States only represents the Tribes,
23 and those individuals who have trust property.
24 There's this whole other category that we do not
25 represent.

1 THE SPECIAL MASTER: But you are not maintaining
2 some claims for water in No. 3 --

3 MS. SLEATER: No, we are not.

4 THE SPECIAL MASTER: Then why do you want to
5 look at it?

6 MR. WHITE: We don't want to look at it.

7 THE SPECIAL MASTER: We are finally making some
8 headway. You are not planning to look at land in
9 fee simple, whether taken from the United States of
10 from --

11 MR. WHITE: That's correct, Your Honor.

12 THE SPECIAL MASTER: All right. Then I will
13 ask the Tribes to make the application to the joint
14 tribal council and get permission for Mr. White to
15 visit those lands owned in Status No. 1 or No. 2,
16 to which Regina just referred, and complete his
17 inspection.

18 MR. ROGERS: We can only do it with respect to
19 Category 1. The Tribes have no way of granting con-
20 sent to land by individual tribe --

21 THE SPECIAL MASTER: Maybe the Tribes don't,
22 but the United States does.

23 MS. SLEATER: We can't without the consent of
24 those owners. Now, I have no objection to the State
25 using the procedure that was used by Mr. Billstein.

1 They have the rolls with the addresses. They can
2 send the individuals letters telling them about
3 their program. That's all we are saying. Give those
4 people notice.

5 MR. WHITE: I would like to say two things.
6 First, of all, affirmative consent of the persons
7 residing or operating on the Class 2 types of land,
8 the second category of lands that you have written
9 down there, I believe, they didn't give affirmative
10 consent to Mr. Billstein.

11 The Government wrote to them and said, "If you
12 have got any questions, call them up," but there was
13 no affirmative consent required.

14 The second point is that Ms. Sleater has indi-
15 cated that she represents those people, and there's
16 no reason in litigation why one party has to go out
17 and contact the clients of another lawyer. Notice
18 to that lawyer is notice to his clients, or her
19 clients, as the case may be.

20 So, it seems to me, Your Honor, that you are
21 on absolutely solid ground with respect to the
22 tribal trust land, which is the first category.
23 Let's call it individual trust land, which was the
24 second category, and you are absolutely right to
25 say that we have got no right to expect the Tribes

1 or the United States to give us permission for the
2 third category, the fee land. We don't have that
3 right.

4 As a practical matter, Your Honor, if it would
5 make the decision easier for you, we would agree not
6 to touch down on any individual --

7 THE SPECIAL MASTER: That will make the work
8 a little more acceptable, or less objectionable, and
9 we appreciate that.

10 MS. SLEATER: Your Honor, if the State does
11 not physically go upon any allotted lands, then the
12 question becomes fairly irrelevant at this time.

13 MR. ROGERS: It does slightly, but I would like
14 to --

15 THE SPECIAL MASTER: We have answered the
16 question. You can overfly as close as you wish to
17 the surface, but obviously don't get too close to
18 the house. That causes a lot of hassles when you
19 hover over there for five minutes.

20 MR. WHITE: We don't want to make anybody --

21 MS. SLEATER: I would like to correct the one
22 thing that Mr. White said because the relationship
23 of the United States to the Indians of the Reservation is
24 a very technical area.

25 I do not represent the individual Indians. I

1 represent the United States as trustee. As trustee
2 we have certain duties towards these individuals,
3 but the individuals are totally entitled to have
4 their own lawyers.

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1 THE SPECIAL MASTER: Regina, if you represent
2 the United States as trustee, they are the owners
3 of that land and if they are the owners of the
4 land, you have the right of egress and ingress at
5 any time, not the tenant on that land. We must
6 describe the unique legal description.

7 MS. SLEATER: No, Your Honor, I'm afraid
8 when it comes to the Indian trust duty, that's
9 not the correct case, but there's no point since
10 Mr. White has already agreed. All I want to
11 clear up is the record, I do not represent the
12 individual Indians, they are entitled to their
13 own representation and to their own lawyers.

14 THE SPECIAL MASTER: One or two found local
15 lawyers, but I gather they're also on close
16 relationship with the Tribal counsel because they
17 are members, they are enrolled members of the
18 Tribe, and I can't conceive that they're not on
19 the excellent close relationship with the leaders
20 that they elected to run their affairs on the
21 Reservation. Their land is being considered and
22 is a part of the land on which there is going to
23 be a decree that grants water rights under the
24 Winters' Doctrine, and to say they're not
25 represented by you people at this table after I've

1 been in this case a year and a half, comes to
2 me as a rather jolting surprise because if
3 they're not represented in here when you come
4 to these trials, we better find out in hurry
5 who's representing them, if they stay unrepresented,
6 and you contain the very unique surprise that you
7 can upset a decree if you don't like it on the
8 basis that these people were never given notice,
9 never came into this case, nobody represented them
10 through all these hundreds of hours and trials
11 and years we've been at this. I won't buy that
12 now.

13 MS. SLEATER: Your Honor, we stated this to
14 Judge Joffe long before you were involved in the
15 case, and it is certainly not a surprise to any
16 of the counsel or to the Court, because this was
17 the thrust of one of the early arguments in this
18 matter.

19 MR. WHITE: They also tried it with Judge
20 Kerr, Your Honor, and they didn't buy it either.

21 THE SPECIAL MASTER: Well, it isn't the
22 case of who's buying it or not. I will not accept
23 the proposition that the owners or that the
24 individuals in Class Category Number 2 on those
25 trust lands are not represented in this litigation.

1 I will not buy that. They're either represented
2 by the joint Tribal Council leaders who have
3 been attending these proceedings, they're either
4 represented by the counsel for the Tribes or
5 they're being represented by the counsel for the
6 United States of America as trustees, as guardians
7 for these, the old guardian-trust relationship
8 that exists.

9 Mr. Echohawk, I got a suspicion you kind of
10 agree with me, and I think some others at that
11 table agree with me.

12 MR. ECHOHAWK: Not exactly.

13 MR. WHITE: I don't think he wants to say
14 anything.

15 MR. ROGERS: I want to say for the record
16 more clearly the attorneys, Wilkinson, Cragun,
17 and Barker and Sonosky, Chambers and Sachse has
18 contracts with only the Tribal members, they
19 only represent the Shoshone and Arapahoe Tribes
20 and not the individual members, and I think
21 under federal law we will be required to have
22 written contracts with those individuals before --

23 THE SPECIAL MASTER: What is a Tribe if it
24 isn't the entity made up of the component totals
25 of its individual members?

1 MR. ROGERS: It's the same thing as a city.
2 The city is an entity.

3 THE SPECIAL MASTER: I don't think the
4 Tribes are a political subdivision, I don't buy
5 that.

6 The Tribe has never been treated as a
7 political subdivision in this Nation, its been
8 treated as a lawful spokesman for those who make
9 up that tribe and they've been given the right
10 to identify those members and have been given
11 the right to set the criterion for Tribal member-
12 ship, and those rights have been to the leaders
13 of that tribe. And I don't believe that I'm
14 going to buy that proposition that they don't.

15 MR. ECHOHAWK: Your Honor.

16 THE SPECIAL MASTER: Yes.

17 MR. ECHOHAWK: The Supreme Court has
18 recognized since the 1800's that Indian Tribes
19 are quasi-sovereign nations, and with that it
20 goes, there is a whole different situation that
21 you apply, and it's something that, it appears
22 that you don't quite understand.

23 THE SPECIAL MASTER: That's understandable,
24 that may well be possible. I make no pretense
25 of understanding niceties and subtleties, and

1 I've been rassling with them for 20 years as a
2 lawmaker and now as a judge.

3 I met with the Indians over the years on
4 some of these hassles and tried to do something
5 with them, but this comes as a distinct --
6 something that I don't want to accept because I
7 don't think it's proper that we should have to
8 accept this in this litigation.

9 MR. WHITE: Your Honor, I don't think --

10 THE SPECIAL MASTER: It's a little different
11 if you're passing out things from an Indian
12 claims commission judgment, it's a little different
13 if you're working towards legislation, being
14 drafted with specific areas, individuals on
15 lands involved in management. This is a matter
16 affecting the use of waters in Water Division 3,
17 and in it I think every Indian on the Reservation,
18 be he a member of the tribe with land, without
19 land, trust status and not trust status, it has
20 been served, and that this case has jurisdiction
21 over him. And that he ought to cooperate when a
22 simple request is made to allow a helicopter to
23 land and look at some land.

24 MR. WHITE: Your Honor, I don't think what-
25 ever the law is on this particular matter, I don't

1 think it matters right now. I think the Tribes
2 and the United States have made their argument
3 to Judge Kerr and Judge Joffe and --

4 THE SPECIAL MASTER: And now to me.

5 MR. WHITE: -- notices of publication. The
6 only thing we're talking about right now is what
7 has to be done so we can get our experts into
8 the Reservation, and I'm suggesting to you, Your
9 Honor, that we would like to have an order saying
10 that we can visit the Reservation and touch down
11 on the Tribal trust land.

12 Now, with respect to those lands still held
13 in trust, but occupied or operated by allottees
14 of some sort. --

15 THE SPECIAL MASTER: You agree not to touch
16 down.

17 MR. WHITE: -- we want the right to over-
18 fly it. We don't want to disturb them, we don't
19 want the right to touch down. We may come back
20 in later and say there is a very important tract
21 right there that we're interested in.

22 THE SPECIAL MASTER: If you identify it at
23 the time you make that request, at that time.

24 We have no problem; is that correct?

25 MR. WHITE: I don't think we have.

1 MR. ROGERS: That's all we were asking for,
2 Your Honor.

3 THE SPECIAL MASTER: Well, we took an hour
4 to get through it, to discuss it, It was an
5 enlightening discussion. I think it was worthy
6 of the hour we spent on it. I'm yet not
7 satisfied, but what we have to do something
8 about making sure the service is understood by
9 all. The -- in the first place, how many Indians,
10 individual Indians or heads of families are we
11 talking about in that category, Mr. Echohawk,
12 or you can ask Mr. Harris or anybody else around
13 the table if you want.

14 MS..SLEATER: In what category?

15 THE SPECIAL MASTER: In Category 2, in your
16 Category 2.

17 MS. SLEATER: How many allotments are there?

18 THE SPECIAL MASTER: Not how many allotment,
19 how many heads of families, 150, 200 of the whole
20 Reservation?

21 MS. SLEATER: We have no idea.

22 MR. ECHOHAWK: More than that, Your Honor.

23 THE SPECIAL MASTER: What percentage of
24 population would you say are individual allottees
25 as distinguished from regular members under the

1 trust ownership of the local land?

2 MS. SLEATER: Your Honor. --

3 MR. WHITE: Your Honor. --

4 MR. ECHOHAWK: Your Honor. --

5 THE SPECIAL MASTER: You see, you're educating
6 me, and I think I need to be educated on this.

7 Is the goal of the Tribes to eventually
8 almost have all land in this type of incident
9 of ownership rather than to own it themselves as
10 a Tribe?

11 MS. SLEATER: No, Your Honor.

12 MR. ECHOHAWK: No, that's not right.

13 THE SPECIAL MASTER: Okay. Well, all right.
14 Did your exhibits get here yet?

15 MR. WHITE: They did Your Honor, and. --

16 MR. ECHOHAWK: Your Honor, before we move,
17 I would still like to address, I hope you haven't
18 overruled --

19 THE SPECIAL MASTER: Come to the podium
20 and please do.

21 MR. ECHOHAWK: I think we've got some of
22 this, we appear to be making progress in
23 straightening out the entry into the historic
24 lands, but I would again like to address the State's
25 additional entry to the areas known as the future

1 lands. We had discussions earlier on this, this
2 morning about this.

3 THE SPECIAL MASTER: Yes.

4 MR. ECHOHAWK: But my point is that as Mr.
5 Rogers stated, the State has had a full field
6 season last year, and they conducted depositions
7 last, I think it was spring, of Mr. Kersich, and
8 he laid out his overall arable land maps and so
9 forth that they were supplied those at that time.
10 Then they deposed Stetson Engineers and Doctor
11 Mesghinna, supplied his irrigation system designs
12 that have the parcels actually delineated on the
13 land and so forth. And with that, the State then
14 went out to the Reservation. I think they made
15 several, I think three entries at various times.
16 With that they took Dr. Mesghinna's irrigation
17 designs with them and delineated on those, certain
18 parcels that they didn't think were any good.
19 And they supplied those back to us so we could
20 have a little discussion and so forth.

21 THE SPECIAL MASTER: Surely.

22 MR. ECHOHAWK: So, Your Honor, my point is
23 the State has had their chance to go out and
24 investigate the parcels, and certainly the parcels
25 have changed somewhat a little bit in design or

1 shape or whatever, but the systems have decreased.
2 So, Your Honor, the Tribe, in talking to Mr.
3 Harris, as far as I can represent, the Tribes
4 feel strongly and the United States must back
5 that position that, you know, enough is enough.
6 The State has had their chance out there so far
7 as the future lands are concerned, and I think
8 that we are entitled to, you know, cut the State's
9 off at that point for lands that they haven't
10 yet seen. I think you know we're reaching an
11 agreement on that, but so far as the future lands
12 are concerned, enough is enough.

13 THE SPECIAL MASTER: Mr. Echohawk, I agree
14 with you that enough is enough, only we haven't
15 defined what is enough. And I don't believe it's
16 unreasonable or harsh that the State be granted
17 one more opportunity to fly the future lands in
18 a helicopter and to study them. And we will have --
19 and I want to order that, and then I will agree
20 with you that enough is enough on those lands.

21 MR. ECHOHAWK: So long as it's limited to
22 flying the lands I have no problem.

23 THE SPECIAL MASTER: That's all Mr. White's
24 asked for.

25 MR. ECHOHAWK: I believe the request the

1 State made is asking to go upon the land to take
2 soil samples.

3 THE SPECIAL MASTER: No, that may be the
4 case, but --

5 MR. ECHOHAWK: It's very unfair and --

6 THE SPECIAL MASTER: -- on the Billstein one.

7 MR. WHITE: Can I explain what our request
8 is all about, Your Honor?

9 THE SPECIAL MASTER: Yes.

10 MR. WHITE: What we'd like to do is visit
11 two types of lands, the lands that are claimed
12 for historic PIA, and the lands that are claimed
13 for future PIA. And now --

14 THE SPECIAL MASTER: Yes.

15 MR. WHITE: With respect to future PIA lands,
16 we would like permission to enter the Reservation
17 to inspect the future lands, lands that are
18 claimed for the future, to touch down on those
19 lands that are claimed for the future which are
20 not in Category 2. We only want to be able to
21 go on Category 1 lands. The Tribes can give that
22 consent.

23 With respect to the historic lands, we want
24 the same opportunity, we don't want to go on
25 lands that are on Category 2, we want to over-fly

1 them, we just want to go on lands in Category 1.
2 It's both future and historic, and we want to
3 go on Category 1, we want to be able to over-
4 fly Category 2. I don't agree with Mr. Echohawk's
5 rendition of the facts, but even assuming that
6 he's right, that all of the discovery disclosed
7 what he said it disclosed, I still think there is
8 no reason why we can't go back out there again.
9 He said we made three entries, gosh, that's not
10 too inconvenient.

11 THE SPECIAL MASTER: If you will draft an
12 order and submit it to me and a copy to Regina
13 and Mr. Echohawk and counsel for major parties
14 and Mr. Webster who is here, I will sign that
15 order providing I don't get in a great howl that
16 it contains what it should not contain. You'll
17 see that the order is drafted along the lines
18 you requested.

19 MR. WHITE: I'll get the transcript, I'll
20 prepare the order, I'll circulate it to Counsel
21 and see if we can agree about it beforehand. If
22 we can't, then we'll come back to you during the
23 trial next week. How does that --

24 MR. PERRY: Excuse me, Your Honor.

25 THE SPECIAL MASTER: I want you to know,

1 Mr. White, that I know pretty much after this
2 next inspection, I believe it will be done with
3 decorum, with some courtesy. I hope you'll spend
4 a few minutes with those who are on the flight
5 to understand the sensitive nature of this visit,
6 and to treat people accordingly with a modicum
7 of commonality with regard to people's and their
8 interests and their feelings.

9 MR. WHITE: We are --

10 THE SPECIAL MASTER: And this will be the
11 last time, I think. Then enough will be enough,
12 unless you've got one hell of a problem on a
13 certain ditch that we can all take a look at it,
14 maybe take along the Special Master too. I'd
15 like to do that, if we need to.

16 MR. WHITE: Your Honor, there may be other
17 occasions that come up. If there are new lands
18 that have been described that we haven't been
19 able to inspect, I anticipate no difficulty with
20 the Tribes concerning the Tribal members fee
21 lands. We don't know specifically what they are
22 yet, but that's Category 3, and it's not involved
23 right now.

24 I assume that the order allows us to
25 introduce ourselves to folks who are there and

1 explain what we are doing, not just barge in
2 with tape over our mouths and not talk to them
3 at all. I assume the order is to keep us from
4 discussing the substance of the litigation and
5 attempting to make informal discovery. It
6 doesn't keep us from being civil and pleasant
7 to folks that we encounter.

8 THE SPECIAL MASTER: And you make the trips
9 no longer than is necessary for the purposes
10 which you're making them.

11 MR. PERRY: Your Honor, if I could ask for
12 a clarification. If after this period of
13 inspection, after April 30th, barring some
14 exceptional circumstance, that will be the end
15 of it and no more entry will be allowed? That's
16 how I understood you.

17 THE SPECIAL MASTER: Certainly, yes.

18 MR. ECHOHAWK: Your Honor, in addition to,
19 I would still like to review my request to cut
20 off any additional soils samplings, that we are
21 right in the middle of Mr. Kersich's cross-
22 examination. I think they've had more than enough,
23 they've been out there and they've dug soil pits
24 and backhoe pits, and again, Your Honor, the Tribes
25 feel quite strongly that, you know, enough is

1 enough.

2 MR. WHITE: Your Honor, whether we're in the
3 middle of Mr. Kersich's cross-examination or not
4 makes absolutely no difference under the rules.
5 The rules say that frequency is not a significant
6 feature. The point is that what's happening here
7 is the Tribes clearly have something to hide,
8 and what we'd like to do is go on there and make
9 whatever borings are necessary. We'll pay any
10 compensation that's appropriate, we'll reclaim
11 the land, replace our divots, if you will. There's
12 no problem there. I don't see what the concern is
13 except to keep us from developing the evidence
14 which helps you find out what the truth is.

15 Now, that's the purpose of this litigation,
16 to find out what the truth is. There's no
17 significant inconvenience that's been caused to
18 the Tribes in the past, no significant inconvenience
19 that's caused to them in the future. There is
20 no reason why we ought not be allowed to do some
21 confirmatory soils work. We may find out Mr.
22 Kersich's opinion is absolutely right. On the
23 other hand, we may find that in some areas we are
24 obliged to disagree.

25

* * * * *

1 THE SPECIAL MASTER: Well, we have listened to
2 a world of evidence on this, and I can't see that it would
3 be an unreasonable burden on the Tribes or on those in
4 Status 2 for a few more tests here and there to find
5 whether six foot is the area to --

6 MR. WHITE: Barrier.

7 THE SPECIAL MASTER: -- barrier or whether it's
8 four and a half or whether it was classified two that was
9 in one -- there will be hundreds of acres, Mr. Echohawk,
10 where there will be those modifications down the road, so
11 you might as well face it. You may lose a few acres, but
12 you will pick up a few acres.

13 MR. ECHOHAWK: I would just like to make one
14 point. It's not that we are doing this because we have
15 anything to hide. It's just that --

16 THE SPECIAL MASTER: The Tribe is getting a little
17 tired.

18 MR. ECHOHAWK: And in addition --

19 THE SPECIAL MASTER: Everybody here is getting a
20 little tired of this lawsuit.

21 MR. ECHOHAWK: In addition, I have a few other
22 points. Aside from the future lands and the historic lands,
23 as you are aware, we have made a claim for an aesthetic
24 and also the claims that will be put on later on for the
25 fishery areas.

1 Now, again, Wyoming experts have been out
2 there, and they visited the areas of the streams and the
3 reaches of the streams and the aesthetic areas, Your
4 Honor, and again they have had their chance.

5 MR. WHITE: Let me talk about that, Your Honor.

6 THE SPECIAL MASTER: Let's not talk about the
7 aesthetic area right now because it's down the road.

8 MR. WHITE: They have already put on their case-
9 in-chief about it.

10 MR. ECHOHAWK: They have requested their experts
11 to go out there.

12 MR. WHITE: We would just like to over-fly the
13 aesthetic area. We don't intend to land on it.

14 With respect to the stream flows for fisheries,
15 there are three or four or five hundred cfs in some cases.
16 We would like to be able to go out there, and the reason
17 is, although there has been no amendment to the pleadings,
18 there have been opinions expressed by the expert for the
19 United States that he intends to testify that they are
20 entitled to more than the pleadings request, and that testi-
21 mony has, by and large, come since the appropriate time for
22 stream work.

23 Now, let me explain what you have to do in stream
24 work. You have to work on the stream during various stages
25 of flow. You can't just go out and make a visit. You have

1 to get a variety of flows to calibrate the model that
2 the United States is using or the model that the State
3 of Wyoming may use.

4 The point is that we ought to be able to go out
5 there. That's a lot of water. Everybody above the
6 Reservation contributes to the flow there.

7 I'm sure if Mr. Radosevich were here, he would
8 support me with great vigor, and I think we are entitled
9 to go out and make that stream investigation, you know, in
10 the stream.

11 Now, in respect to the aesthetic area we just
12 want to fly around a little bit.

13 MR. PERRY: Your Honor, I think that all of this
14 discussion points out the need for Mr. White to come for-
15 ward with some more specifics and what exactly he wants
16 to do and where. I mean, he represents it's not going to
17 be a very intrusive inspection and this kind of thing, but
18 let's hear from him where he wants to go, what he wants to
19 do, how many holes he wants to put in, and then we can see
20 and we can more have a reasonable determination of what we
21 are talking about.

22 THE SPECIAL MASTER: You prepare the order, Mr.
23 White, and we will sign it.

24 MR. WHITE: Your Honor, may we take a recess?
25 I have to find some aspirin.

1 THE SPECIAL MASTER: Are your exhibits here?

2 MR. WHITE: Yes, they are.

3 THE SPECIAL MASTER: All right. We will resume
4 in ten minutes.

5 (Whereupon a recess was taken.

6 THE SPECIAL MASTER: Shall we resume our amicable
7 and friendly discussion?

8 Okay, Mr. White, we are ready with the witness.

9 MR. WEBSTER: Your Honor --

10 THE SPECIAL MASTER: Mr. Webster?

11 MR. WEBSTER: I appreciate that. I wonder if I
12 could cover one thing before we go on, as long as we are
13 in such an amiable mood this morning.

14 I think the type of thing that has gone on this
15 morning is frustrating to me, but it points out a problem
16 which has been expressed by a number of my clients through-
17 out the last two or three years, and that's a problem of
18 the Federal Government coming onto their land and doing
19 exactly the type of thing that has taken up an hour and a
20 half of our time this morning.

21 And I would like to request the Court set down a
22 time when we can go through a procedure similar to what we
23 went through this morning as far as restricting the entry
24 of the Federal Government, their agents -- I'm talking about
25 the Forest Service, the BLM, the people from the Water and

1 Power Resources; I'm talking about the State of Wyoming --
2 restricting them from coming on and inspecting my clients'
3 land and not their clients' land, other parties to this
4 lawsuit, without some type of permission and some type of
5 notice.

6 That's been a very real problem. It's been ex-
7 pressed to me not only coming on their land, but seeking
8 permission to go across their land to have access to some
9 of the Federal BLM land.

10 And I would like to have the Court set down a
11 time when we can go through a procedure now so we, you
12 know, as long as we are playing this game, I think it
13 should apply to the private landowners the same as to the
14 Indians or anybody else.

15 MR. WHITE: Your Honor, if the State has caused
16 its employees or agents or consultants to do that to Mr.
17 Webster's clients, we apologize. I will personally make
18 sure it doesn't happen again, and we would encourage the
19 Court to have that sort of proceeding so we can make -- I
20 think it would facilitate people not getting so angry as
21 they have gotten if we could have that kind of proceeding.

22 MS. SLEATER: Your Honor, I would like to point
23 out that we instructed all of our people who are working
24 on this case not to interfere with private land ownership,
25 and we would likewise apologize to Mr. Webster if they have

1 in connection with this case.

2 However, due to the agencies he mentioned in
3 what was going on, I anticipate that what has happened is
4 that agencies of the Government, in pursuit of their normal
5 governmental access totally separate and apart from this
6 case, are doing what has been going on in the past, and I
7 would request that Mr. Webster make his clients aware of
8 the fact that, you know, the BLM I know has gone in formally
9 and asked for access ten years ago out there, and my esti-
10 mation would be that if this has occurred in the last two
11 years, it has been pursuant to whatever has been going on
12 for ten years in connection with the normal land management
13 things, and it's really outside of this Court or anyone to
14 get into the day-to-day operations that have to be handled
15 on the ground, but I would like to restate again in terms
16 of the people who have been working on this case with us,
17 we have instructed them not to interfere with private land.

18 THE SPECIAL MASTER: Mr. Webster?

19 MR. WEBSTER: If it please the Court, Your Honor,
20 that simply isn't what has been happening out in the field.
21 I know personally of Forest people coming in and requesting
22 to go across their land. I know personally --

23 THE SPECIAL MASTER: On matters stemming from
24 this lawsuit?

25 MR. WEBSTER: Yes, sir; yes, sir. And that's been

1 going on for two or three years.

2 I know of situations where the BLM has gone out
3 and surveyed the land without any request or anything else.

4 The thing that I guess -- some of that I'm sure
5 there are some instances where permission has been request-
6 ed in connection with this lawsuit of the individual, but
7 it seems to me that under the criteria that has been kind
8 of set forth this morning, that when we get to a point
9 where the BLM or Forest Service wants to go on a private
10 party's land, it would be incumbent upon the United States
11 to determine who is the owner of that land, if they have
12 counsel representing them, that they should contact that
13 counsel to request, because if some of the Indians don't
14 know exactly or don't really appreciate the significance
15 of what is going on, that situation is amplified in the
16 case of private parties, and where they are represented, I
17 think it is incumbent upon the Federal agencies and the
18 State of Wyoming to seek requests from the private parties,
19 and I would like to prepare an order along that line if
20 that is not an unreasonable request and submit it --

21 THE SPECIAL MASTER: Prepare a draft order and
22 get it ready for the hearing and we will have a hearing on
23 it, as we have done this morning.

24 Maybe we can alleviate some misunderstandings and
25 save some harsh events, and if we can, that's our purpose too.

1 MS. SLEATER: Your Honor, I'm concerned about
2 the situations Mr. Webster mentioned insofar as they have
3 never been brought to my attention before and they are
4 contrary to what we have asked people to do, and I would
5 request that he please document those so I could check
6 that out and see what really happened and make appropriate
7 apologies if apologies are in order.

8 THE SPECIAL MASTER: It will be a good day in my
9 life when we have completed all of the evidence on the
10 Reservation and I can start working on the Decree and ask
11 for your suggested findings of fact and conclusions of law
12 and then move on to Shoshone National Forest where I think
13 most of the trouble has occurred, and the BLM --

14 MR. WEBSTER: Well, the BLM more than the Forest,
15 Your Honor.

16 THE SPECIAL MASTER: And we will look forward to
17 that, but in the meantime prepare the draft that you are
18 talking about and hopefully we will have an hour to go
19 into that soon.

20 MR. WEBSTER: I would like to have some kind of
21 notice on that, Your Honor. I'm limited in my ability to
22 be down here day after day.

23 THE SPECIAL MASTER: Mr. Webster, if you will tell
24 us what day you would prefer to do it, we will do that, like
25 April 23, 24, or 25, if you can make it down.

1 MR. WHITE: Could I suggest that we would make
2 available the facilities of the Attorney General for the
3 preparation of such a draft, and Mr. Webster is going to
4 be here today, and he's not planning to be here again for
5 some time. He's part of a private counsel rotation schedule,
6 and we would have no objection if some time were taken
7 during the afternoon to review a draft order and deal with
8 it. Would that be all right?

9 MR. WEBSTER: That would be fine.

10 THE SPECIAL MASTER: Whatever you do here, that's
11 fine. That's up to you gentlemen, but if you want, Mr.
12 Webster, a specific day within those days already set,
13 either in April or in May or in June to discuss this, let
14 us know and we will discuss that, and if you want to do it
15 either today or tomorrow, we will do that.

16 MR. WEBSTER: Thank you, Your Honor.

17 THE SPECIAL MASTER: All right. Mr. White?

18 Q (By Mr. White) Mr. Billstein, I direct your attention to
19 what's already been admitted as Tribes' Exhibit M-1 which
20 is on the table before you, and ask you to determine --
21 well, first of all, I ask you whether or not you are able
22 to locate on Exhibit C-67 a tract of land in the South half
23 of the Southwest quarter of Section 29, Township 4 North,
24 3 East, of approximately 18 acres in size?

25 billstein - cross - white

1 MR. ECHOHAWK: Is that the South half of the
2 Southwest quarter?

3 MR. WHITE: Yes.

4 THE WITNESS: Approximately how many acres?

5 MR. WHITE: Eighteen.

6 A (By the Witness) I see it.

7 Q (By Mr. White) Would you please refer to Tribes' Exhibit
8 M-1 and indicate whether or not that area is shown as being
9 in red or fee on that exhibit?

10 (Pause.

11 THE WITNESS: The hydrographic copy is presented
12 on a different exhibit here, and that's why I have to
13 cross-reference it, Your Honor.

14 THE SPECIAL MASTER: No problem.

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1 Q (By Mr. White) Is it on red -- is it in red
2 on M-1?

3 A Yes, it's in red on M-1.

4 Q Directing your attention to Exhibit C-105, do
5 you find a tract of land approximately eight
6 acres colored blue in roughly the North 1/2
7 of the NE 1/4 of Section 23, Township 2 South,
8 1 East?

9 Do you want that again, Ron?

10 A Yes.

11 Q Two South, 1 East, Section 23, North 1/2 of the
12 NE, about eight acres.

13 THE SPECIAL MASTER: Eighty acres?

14 MR. WHITE: No, eight; seven, eight.

15 THE WITNESS: What section?

16 Q (By Mr. White) Twenty-three.

17 A I show four acres for this extension in blue.

18 Q Okay. Would you refer to Exhibit M-1 and see
19 whether or not that four acres is colored red.

20 A We're in that area of the Harpoon Cattle Company.

21 Q Is it colored red on M-1?

22 A On M-1 it is.

23 Q On M-1 are there any other parcels in the North
24 1/2 of Section 23 which are also colored red

25 billstein-cross-white

1 but which are blue in Exhibit C-105?

2 A While I'm doing that, could you give me some
3 background as to M-1?

4 Q I'm sorry?

5 A I don't understand M-1. It appears to be a
6 graphic representation of ownership. My owner-
7 ship was developed from actual plats. This map
8 was developed over by people I had no control
9 over.

10 Q I understand that, Mr. Billstein.

11 THE SPECIAL MASTER: Don't worry about that.

12 THE WITNESS: Okay.

13 Q (By Mr. White) By way of explanation, it was
14 offered by the Tribes' for the truth of its
15 contents, admitted without objection by the
16 State during, I think a hearing in September of
17 last year, and Ms. Kolstad, from the Billings
18 Title Office, was the person who said it was
19 true and accurate. So that's why I'm asking you
20 about it.

21 (Brief pause.

22 A Both of these additional tracts are shown in
23 red on the Tribes' exhibit.

24 Q What is the acreage associated with those additional
25 billstein-cross-white

1 tracts in the North 1/2 of 20 -- North 1/2 of
2 23?
3 A Four acres, and the land under sprinkler is about
4 24.
5 Q So in addition to the first four, there is
6 another four plus 24, is that correct, that's
7 red on M-1?
8 A Using M-1 as an ownership guide, that's --
9 they do fall in the red designation.
10 Q And those two which you just described are
11 located in Section 23?
12 A The first one is in Section 23, the second one
13 is in Section 24.
14 Q Mr. Billstein, I direct your attention to
15 Exhibit C-90.
16 MR. ROGERS: Your Honor, may I state at
17 this point, that while this obviously is in
18 evidence, give an explanation to the Court --
19 MR. WHITE: If it's in evidence I don't
20 think there ought to be any statement about it.
21 THE SPECIAL MASTER: Mr. Rogers, please
22 proceed.
23 MR. ROGERS: The two tracts, to what we have
24 mentioned earlier, I believe early this week,
25 billstein-cross-white

1 are purchases by the Tribes of land from the
2 Harpoon Cattle Company, which records of the
3 transfer were not available in Billings when
4 that map was made up.

5 THE SPECIAL MASTER: Go ahead, Mr. White.

6 MR. WHITE: I might observe, Your Honor,
7 it's the only evidence before the Court offered
8 by the Tribes as being true and correct.

9 Q (By Mr. White) On Exhibit C-90, are you able
10 to find a parcel of blue land in Township 2 South,
11 1 West, Section 21, in the South 1/2 of the SW
12 1/4 of approximately 15 acres?

13 A Could I have the legal description read back?

14 Q Section 21, South 1/2 of the SW.

15 THE SPECIAL MASTER: I think he wanted it
16 read.

17 MR. WHITE: I'm sorry, Your Honor, I
18 thought he was talking to me.

19 (Brief pause.)

20 THE WITNESS: You did say 2 South, 1 East,
21 didn't you?

22 Q (By Mr. White) No, 1 West.

23 A Okay.

24 (Brief pause.)

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1 A Yeah, I see it.

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1 Q (By Mr. White) Is it in red on M-1?

2 A Yes.

3 (Off-the-record discussion.

4 Q (By Mr. White) Mr. Billstein, I hand you what
5 have been marked for identification as Exhibits
6 HB-- and I believe they are in this order; you
7 might check with me -- 1083, 1082, 1084, 1097,
8 1099, 1098, 1111, 1110, and ask you whether or
9 not -- or ask you to please examine those and
10 indicate to the Court whether or not they are
11 blue-line copies of the overlays contained within,
12 respectively, C-83, 82, 84, 97, 99, 98, 111,
13 and 110, which I believe are on the easel next
14 to you, with the exception of having tract
15 identification numbers written on them.

16 A There's a comment on 1083 which says, "Indexed
17 to classification sheet."

18 Q You might scratch that out again. I don't know
19 how that got on there. It doesn't need to be.

20 (Witness complied.

21 Q (By Mr. White) If you find that comment again,
22 please scratch it.

23 A I think it's on all of them.

24 MR. WHITE: I'll scratch it.

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(Mr. White complied.

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MS. SLEATER: Your Honor, I note the time, and if we are going to go through all of these in a similar fashion as yesterday, I again note that we don't have copies, but we could annotate our copies if we took a break now and combined it with lunch so then we wouldn't have to get up each time and go through all of this.

MR. WHITE: Your Honor, if we could have about five more minutes, I think I can ask a couple of questions. Then we are going to try to get copies made over the lunch hour for you.

MS. SLEATER: All right.

MR. WHITE: I will be done within five minutes and we can break for lunch at that time.

THE SPECIAL MASTER: Very well.

Q (By Mr. White) Mr. Billstein, would you please examine Exhibits HB-1083, 1082, 1084, 1097, 1099, 1098, 1111 and 1110 and determine whether or not the parcels identified by number in the handwritten number are those parcels which comprise the acreage of 1,204 acres for Muddy Creek contained on Exhibit 137?

I'm not sure whether you answered the
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1 previous question. I may have interrupted you.

2 Are those the blue-line copies of the
3 overlays contained in the exhibits to which I
4 referred?

5 A Yes.

6 MR. WHITE: Now, that might be a good time
7 to take a lunch break, Your Honor.

8 THE SPECIAL MASTER: All right. We'll be in
9 recess until about -- how about 1:15? I may
10 be late because I have an engagement -- we'll
11 stand in adjournment until 1:30. You can use the
12 time in resolving the problems.

13 (Whereupon the proceedings
14 (recessed at 11:35 a.m.

15
16 END OF MORNING SESSION

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