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File 119
4370
Box 10

Case # 4993

File # 119

4370

1 IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT
2 WASHAKIE COUNTY, STATE OF WYOMING
3

4 IN RE:)
5 THE GENERAL ADJUDICATION)
6 OF RIGHTS TO USE WATER) Civil No. 4993
7 IN THE BIG HORN RIVER)
8 SYSTEM AND ALL OTHER)
9 SOURCES, STATE OF WYO-)
10 MING.)

11 FILED _____
12 _____ 2/25 1981
13 _____
14 *Margaret V. Hampton* CLERK
15 _____ DEPUTY

16 VOLUME 12
17 Morning Session
18 Tuesday, February 10, 1981
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21
22
23

24 ORIGINAL
25

1 APPEARANCES

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4 WYOMING:

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BY: MR. R. ANTHONY ROGERS

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22 FOR THE SHOSHONE
23 TRIBE:

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Washington, DC 20006
BY: MR. HARRY SACHSE

24
25

1 THE SPECIAL MASTER: Yeah, I'm sorry, that
2 is the NE of the NE.

3 A Yes, we classified those lands gravity 2,
4 sprinkler 1.

5 Q (By Mr. White) Okay, how about Section 23 in
6 Township 2 North, 1 East, NW of the NE?

7 A That was classified as 3.

8 Q Township 5 North, 2 East, Section 27, NE of the
9 NE?

10 A Classified as 2.

11 One thing I might point out, last night
12 we went through and reviewed each of these in
13 detail and there are some squiggles. We are off
14 sometimes three-sixteenths of an inch or less in
15 the map, not in all cases of the map but in some
16 cases the map is off a little bit and there are
17 some trust lands there, and in all cases we
18 checked these. Not trust lands were included in
19 the acreage totals and, therefore, while there
20 may be an error in that conceptual land map that
21 we have shown, one line being off slightly, the
22 land base itself, the acreage totals is not
23 affected by that.

24 MR. WHITE: Okay. I think you misspoke.

25 kersich-cross-white

1 THE SPECIAL MASTER: Come to order, please.
2 You had three or four remaining questions,
3 Mr. White.

4 MR. WHITE: I'm sorry sir, I didn't hear you.

5 THE SPECIAL MASTER: You had about three
6 remaining questions, I believe.

7 MR. WHITE: Well, in one area at least,
8 Your Honor.

9 THE SPECIAL MASTER: Yes, the remaining area.

10 CROSS-EXAMINATION (RESUMED)

11 BY MR. WHITE:

12 Q Mr. Kersich, before we quit last night I believe
13 you indicated that you would check whether or not
14 you classified three parcels; have you done so?

15 A Yes. Can I read the descriptions so we make sure
16 we are in comparison here?

17 MR. WHITE: You bet.

18 THE WITNESS: 1 South, 3 East, Section 18 in
19 the NW 1/4 of the NE 1/4, I believe that was one
20 of them you asked me on.

21 Q 1 South, 3 East, Section 18 NE of the NE.

22 THE SPECIAL MASTER: Wait a minute. I have
23 the NW of the NE.

24 MR. WHITE: NE of the NE is what I asked about.

25 kersich-cross-white

1 but I would love to have the record stay as
2 you stated, but I think you meant to say there
3 was no fee lands included in the total.

4 THE WITNESS: That's correct. Thank you
5 for correcting me. But what I mean, the final
6 upshot is our 84,000 hundred and some acres is
7 still correct, that there are no fee lands included
8 within that total.

9 Q (By Mr. White) Correct.

10 Let's take a look at that. I direct your
11 attention to what has been admitted as Tribes
12 Exhibit M-1. Maybe we could just clear off the
13 table here in front of you, Al. That might be
14 the easiest thing to do.

15 A Okay.

16 Q You will notice that the caption or the legend
17 for the map shows fee lands to be shown in the
18 color that is described as Scarlet Lake No. 923
19 which is in common parlance, I think, red.

20 A All right, I'll accept your explanation.

21 Q All right. Now, would you check each of the
22 descriptions which I gave you to see whether or
23 not they appear as red on this map and then go to
24 your aerial photograph and explain to me how you

25 kersich-cross-white

1 excluded, how you classified those but then
2 excluded the acreage?

3 THE SPECIAL MASTER: Be sure I get that back.

4 THE WITNESS: Yeah.

5 MR. WHITE: We checked it out, Your Honor.
6 We are on the hook for it.

7 THE SPECIAL MASTER: Has this exhibit been
8 admitted, gentlemen?

9 MR. WHITE: Yes, sir.

10 MR. SACHSE: Uh-huh.

11 MR. WHITE: It was admitted during the July
12 hearings 14th through the 22nd of 1980 at Page 77
13 of that transcript, Your Honor.

14 THE SPECIAL MASTER: Thank you.

15 THW WITNESS: Okay. And exactly what do you
16 want me to do?

17 Q (By Mr. White) Okay, let's start at Township 4,
18 1 East, the first description I gave you yesterday.

19 A Okay.

20 Q Not the first description right before the break,
21 but when we started at the very first talking about
22 land descriptions: Township 4 North, 1 East,
23 Section 35, SE of the NW 1/4.

24 THE SPECIAL MASTER: Class 2.

25 kersich-cross-white

1 A Township 4 North -- what range, sir?
2 THE SPECIAL MASTER: 1 East.
3 MR. WHITE: 1 East.
4 THE WITNESS: Okay.
5 THE SPECIAL MASTER: The SE 1/4 of the NW
6 1/4.
7 THE WITNESS: And what section now was that,
8 please?
9 MR. WHITE: 35.
10 THE WITNESS: Section 35, this one here. So
11 it would be the SE 1/4 --
12 THE SPECIAL MASTER: Of the NW 1/4.
13 THE WITNESS: Of the NW 1/4.
14 THE SPECIAL MASTER: Is that right?
15 MR. WHITE: Uh-huh.
16 THE SPECIAL MASTER: I'd better let you do this,
17 I think.
18 MR. WHITE: Yes it is -- he's got the right
19 place.
20 Q (By Mr. White) What color is that?
21 A That is yellow here.
22 Q It is?
23 A Well, I'm going to write this down. Township 4
24 North, Range 1 East, Section 35, right, this is.
25 kersich-cross-white

- 1 Q (By Mr. White) Okay, you've got the right
2 section.
- 3 A This is Section 35.
- 4 Q Okay.
- 5 A Now, which 1/4 of that?
- 6 Q The SE of the NW.
- 7 A Okay. The SE of the NW would be this particular
8 area here. It is dark brown, which means govern-
9 ment owned.
- 10 Q Does that mean trust lands to you?
- 11 A Well, it appears on this map that there is a
12 differentiation between government owned and trust
13 lands.
- 14 Q All right, it is shown on Exhibit 1 as being
15 government owned, it is not shown as being trust
16 land, is that correct?
- 17 A That's correct, that's correct.
- 18 Q Let's go to the next parcel that's in Township 5
19 North, 2 East.
- 20 A Okay.
- 21 Q Section 27.
- 22 A Okay. I'm in Section -- I'm in Township 5 North,
23 2 East, yes.
- 24 Q NE of the NE.
- 25 kersich-cross-white

1 A Okay, this is --

2 Q Of Section 35.

3 A Wait a minute. That would be the NE 1/4 of
4 the NE 1/4.

5 Q That is land shown as red or fee land on M-1?

6 A That's correct.

7 MR. SACHSE: May it please the Court, this
8 is not an objection, but a request. Since the
9 witness is referring to a map that was one of
10 the Tribes' Exhibits, and apparently is finding
11 some errors in the map, that was one of the
12 Tribes' Exhibits or in perhaps one of the other
13 maps, it might be well for the witness to mark
14 on this Tribal Exhibit any areas where --

15 MR. WHITE: That's fine with me, Your Honor.

16 MR. SACHSE: -- the State claims there is a
17 discrepancy so that can be checked out. And my
18 own feeling on this, is that in comparison of maps
19 of this detail, there probably will be found some
20 small areas that will be different and if there
21 are, and if it's of any significance, in the case,
22 we'll try to get to the truth of it.

23 THE SPECIAL MASTER: How does Counsel wish
24 those, circle them in black pen?

25 kersich-cross-white

1 MR. WHITE: Circle them with a black pen.

2 THE SPECIAL MASTER: All right.

3 MR. WHITE: I would like to say something
4 though to correct Mr. Sachse's misinterpretation
5 of what we're doing here. We are not attacking
6 the validity of M-1, that was already admitted
7 without objection by the State, admitted after an
8 offer by the Tribes for the truth of its contents.
9 We are not attacking that exhibit, what we are
10 doing is saying that these are instances where the
11 arable land base, identified by Mr. Kersich,
12 includes other than trust lands, it includes private
13 or government lands.

14 THE SPECIAL MASTER: Whatever.

15 MR. WHITE: There will be a number of these.

16 Q (By Mr. White) Okay, so why don't you mark the
17 SE 1/4 of the NW 1/4 of Section 35, Township 4
18 North, 1 East on Exhibit M-1.

19 A Just about -- let's see. Go back. Township 4
20 North, 1 East?

21 Q Section 35.

22 A Section 35. Okay, the SE 1/4 --

23 Q Of the NW.

24 A Okay. This area right here.

25 kersich-cross-white

1 THE SPECIAL MASTER: That's the very first
2 one. You already --
3 MR. WHITE: You marked in 34, A1. I think
4 you meant to mark in 35.
5 THE WITNESS: I didn't -- I did, right there.
6 MR. WHITE: Okay.
7 THE WITNESS: Okay.
8 Q (By Mr. White) Then go to Township 5 North, 2 East.
9 A Yes.
10 Q Section 27.
11 A Yes, I have done that.
12 Q NE of the NE.
13 A That's correct.
14 THE SPECIAL MASTER: That's correct, is it not?
15 MR. WHITE: Okay.
16 Q (By Mr. White) Then let's go to Township 1 South,
17 3 East.
18 A Okay. 1 South, 3 East, okay.
19 Q Section 10.
20 A Section 10; 7, 8, 9, 10. Right here.
21 Q Okay.
22 A Okay. Right there.
23 Q Uh-huh, okay, NW of the SE.
24 A Okay, this is -- is this the SW 1/4 of the Se 1/4
25 kersich-cross-white

1 in --

2 Q The NW of the SE.

3 A NW of the SE.

4 Q Okay, that's also red, isn't it?

5 A Uh-huh, that's correct.

6 Q Let's go to Township 1 South, 3 East.

7 A 1 South, 3 East. Okay, I'm in that Township.

8 Q Section 18.

9 A Okay, Section 18.

10 Q NE, NE.

11 A All right. All right, that's Section 13, 14 --

12 18, NE of the NE, that's right here. Okay.

13 Q Okay, that's also red, isn't it?

14 A Yes.

15 Q 1 North, 2 East.

16 A 1 North, 2 East, yes, sir, I'm in that Township.

17 Q Section 5.

18 A Section 5, right here.

19 Q Right.

20 A Uh-huh.

21 Q NW of the NW.

22 A NW of the NW, right there.

23 Q That's also red, isn't it?

24 A Yes.

25 kersich-cross-white

- 1 Q Township 2 North, 1 East.
- 2 A 2 North, 1 East, right.
- 3 Q Section 23.
- 4 A Okay. Let's see that's Section -- 25, 23, I
5 believe. Okay.
- 6 Q Okay. NW of the NE.
- 7 A NW of the NE, right here.
- 8 Q That's also red, isn't it?
- 9 A Yes.
- 10 Q Township 1 North, 5 East.
- 11 A Okay.
- 12 Q Section 4.
- 13 A Okay, right in this Section.
- 14 Q SE of the NE.
- 15 A Right.
- 16 Q Shouldn't that be a 1/4 Section higher, A1?
- 17 A Can I extend it, just like this?
- 18 Q Yes, that's fine. That's also red, isn't it?
- 19 A Yes, it is.
- 20 Q Okay, Section 1 -- excuse me, Township 1, 3 East.
- 21 A Okay.
- 22 Q Section 25.
- 23 A Let's see, I believe this will be Section 25.
- 24 Q SE of the NE.
- 25 kersich-cross-white

1 A SE 1/4 of the NE 1/4 would be right there.

2 Q That's also red, isn't it?

3 A Yes.

4 Q Again, in 1: South, 3 East -- well, let's stay
5 inside Section 25 there.

6 A Okay.

7 Q How about the NE of the SE of 25?

8 A North --

9 Q Is that red?

10 A Yes, sir.

11 Q Circle it there and the SE of the SE.

12 A Okay. That's red also.

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END 1

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- 1 Q (By Mr. White) (Continued) 2 North, 5 East.
- 2 A Okay.
- 3 Q Section 26.
- 4 A That's this section here.
- 5 Q SW of the SE.
- 6 A SW of the SE. Here's the SE. It must be this
- 7 little portion here (indicating).
- 8 Q That is also red?
- 9 A Yes.
- 10 Q How about -- excuse me, I'm just checking to
- 11 make sure I haven't given you duplications.
- 12 A That's fine.
- 13 Q Okay. Now, those parcels that we've gone
- 14 through, you indicated you made classification
- 15 in those parcels?
- 16 A Within those areas, yes.
- 17 Q And that those areas were shown as fee land or
- 18 government owned land on Exhibit M-1; is that
- 19 correct?
- 20 A That appears to be correct.
- 21 Q Now, you explained that you did not, however,
- 22 include those totals, those acreage amounts
- 23 that were fee land within your total.
- 24 A That's right.
- 25 kersich-cross-white

1 Q Would you please show us how you excluded the
2 land which you classified within those red
3 areas from the total that you gave in your
4 opinion.

5 A We made up a tab sheet for each of these
6 townships and in that tab sheet you go to a
7 particular parcel, see where it's located, what
8 it's classified, and whether either fee or trust.
9 Anything that was fee land and not trust land
10 was not included in the final totals.

11 Q Okay. Let's take -- Do you have that copy of that
12 tabulation with you?

13 A I don't have it here yet. I sent Ross back to
14 the room to get it.

15 Q Was it here in the building?

16 A It isn't here yet, that's what I'm telling you.
17 It went to the motel.

18 Q Okay. So you'll be able to look at the tab
19 sheet when he comes and tell us whether or not
20 you excluded from your totals --

21 A That's right.

22 Q -- the lands that you classified in the red or
23 brown areas?

24 A That's right.

25 kersich-cross-white

1 Q Okay. Now, so why don't we come back to that
2 when that gets back, Al.

3 A Okay.

4 Q Now, let me ask you another question about the
5 types of lands that were included in your --

6 A Could I roll this up?

7 Q Why don't you leave it out.

8 Included in your arable land base. Did you
9 include lands which were once in fee but then
10 reacquired --

11 A By the Tribes?

12 Q -- back into trust?

13 A I would -- I would think we did, yes, because
14 I don't recall we ever did historical analysis
15 on the lands.

16 Q That's a pretty substantial amount of lands,
17 the reacquired lands on an arable land base.

18 A Within the arable land base I couldn't tell you
19 actually.

20 Q Directing your attention to what's been admitted
21 as Tribes Exhibit M-2, which is an overlay for
22 M-1.

23 A Okay.

24 Q Now, you notice that the lower right-hand corner
25 kersich-cross-white

1 of M-2 has a legend, and it indicates that the
2 green on M-2 is land in trust which was once
3 out of trust.

4 A Yes.

5 MR. ECHOHAWK: Excuse me, Sandy, has
6 this exhibit been admitted previously?

7 MR. WHITE: Yes. I can give you a page
8 number if you like.

9 MR. ECHOHAWK: That's all right.

10 Q (By Mr. White) And I would point out to you
11 that the green areas lie in those portions of the
12 reservation which are variously described as
13 open or ceded, north of the Wind River and
14 east of the Popo Agie.

15 Now, your testimony is that you did not make
16 any attempt to exclude the reacquired lands in
17 your -- from your arable land base?

18 A As I recall we did not.

19 Q Well, let's work through those.

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kersich-cross-white

1 O (By Mr. White) Now, it looks, sir, like your table
2 may have come back.

3 A Why don't we finish this and then go to the table?

4 O You may want to use the table for this as well.

5 MR. WHITE: Excuse me just a second,
6 Your Honor. I have to keep my papers in order
7 or I'm lost. Why don't we go off the record for
8 a second?

9 THE SPECIAL MASTER: Do you want a five-
10 minute break?

11 MR. WHITE: That would be fine, Your
12 Honor. I think the witness --

13 THE SPECIAL MASTER: Very good. We are
14 off for five minutes.

15 (Thereupon a 5 minute recess
16 was taken.)

17 THE SPECIAL MASTER: We are back on the
18 record.

19 MR. WHITE: Let's go back on the record.

20 O (By Mr. White) Mr. Kersich, while we are waiting
21 for your tables and photography to get here, let's
22 run through a number of parcels, and I direct your
23 attention first to Exhibit 51, C-51.

24 A Okay. I'm sorry, it's up here.

25 kersich-cross-white

- 1 Q How about 2 North, 5 East?
- 2 A Okay.
- 3 Q I have to check to see if I have my right notes
- 4 here.
- 5 A Okay.
- 6 Q I have got to go to a different exhibit, I think.
- 7 1 North, 5 East. I'm sorry. I was reading
- 8 the section number instead of a township number.
- 9 Section 2.
- 10 A Section 2?
- 11 Q Yes. North half of the NW 1/4.
- 12 A Section 2, the north half of the NW 1/4. Yes.
- 13 Q Is that shown as being classified as Class 2 on
- 14 Exhibit 51?
- 15 A It is.
- 16 Q Would you now turn to Exhibit M-2 and tell me
- 17 whether or not it's shown as being reacquired
- 18 lands in green?
- 19 A Okay. This is Exhibit M-2, and now we are at
- 20 Township -- 1 North, 5 East, way over here, sir
- 21 (indicating). And that would be Section 2, and
- 22 the north half of the NW 1/4, it does show in
- 23 green as reacquired trust.
- 24 Q Okay. Let's stay in Section 2.

25 kersich-cross-white

1 A Let me just make a note of that here if I might.

2 Q Right.

3 A Section 2, yes.

4 Q SW of the NW 1/4.

5 A SW of the NW 1/4. That's here (indicating).

6 Yes, it shows as green or reacquired trust.

7 Q On Exhibit M-2?

8 A Yes.

9 Q Is that shown as Class 2, arable land on Exhibit
10 C-51?

11 A That's right.

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kersich-cross-white

- 1 Q (By Mr. White) (Continued) Let's go to Section
2 3.
3 A Section 3. The same township?
4 Q Yes, sir.
5 A Okay.
6 Q NE 1/4.
7 A NE 1/4.
8 Q Um-hum.
9 A Yes.
10 Q Does that show on Exhibit C-51 as having Class 1
11 and Class 3 arable lands in it?
12 A Class 1 and Class 3, that is correct.
13 Q And what's the land status shown on Exhibit M-2?
14 A It shows as green, which would be reacquired trust.
15 Q Still in 1 North, 5 East, still in Section 3,
16 the SE 1/4 of the NW 1/4.
17 A Now, this is Section 3?
18 Q Yes.
19 A SE 1/4 of the NW 1/4, okay.
20 Q Is that shown as Class 2 on Exhibit C-51?
21 A Yes. There might be some Class 3 in it too.
22 Q What's it shown as being on M-2?
23 A It shows as green.

24 MR. SACHSE: May it please the Court,
25 kersich-cross-white

1 I wish to object at this time to this line of
2 cross-examination on the following grounds: The
3 witness has testified as to whether lands on the
4 reservation are arable or are not arable. The
5 witness has expressed no legal opinions, he's
6 been asked to express no legal opinion as to
7 the priority date of reserved rights for lands
8 reacquired by the United States for the Tribes
9 or indeed whether there is a reserved right for
10 land reacquired by the Tribes. We could go
11 through the exercises of his pointing out lands
12 that admittedly now are held in trust by the
13 United States for the Tribes and that he has
14 studied and that he has classified as Class 2 or
15 3 or Class 1. Mr. White can go through it and
16 point out on those maps that some of those lands
17 have never been out of trust and other of those
18 lands were reacquired in 1920, 1910, 1980. Some
19 of them have state adjudicated rights that are
20 reacquired at the same time. None of that has
21 anything to do with the testimony of this witness,
22 and since cross-examination, one of the elementary
23 rules of courtroom procedure is limited to the
24 subject of the direct examination. This is getting

25 kersich-cross-white

1 Township 2 North, 5 East.

2 A Okay, sir.

3 Q Section 25.

4 A Okay.

5 Q SW of the SW.

6 A Section 25 would be over in this area, that's 25.

7 Okay, the SW of the --

8 Q -- SW.

9 A Okay.

10 Q Is that green on M-2 or -- yeah, M-2?

11 A Yeah, there's a portion of it that's green.

12 Q And the northern portion is green?

13 A Northern portion.

14 Q I can't tell from where --

15 A No, it appears that it's the very southwesterly

16 portion of that section that's green here on this

17 particular --

18 Q Is it in the same area that is colored blue on

19 Exhibit C-51?

20 A No. As a matter of fact, in this instance it

21 appears that our map shows that as being outside

22 any arable designation. In other words, I'm

23 looking -- I won't mark on this map, but let me

24 show you with this pencil here the way I understand

25 kersich-cross-white

1 into a matter which we don't object to in the
2 sense that we're not trying to hide this from
3 the Court, it's there on these maps, but it
4 has nothing to do with the witness's testimony.
5 It's a waste of time for him to repetitiously
6 point out each of these tracts that are covered
7 in green on that map. So we object to a
8 continuation of the cross-examination along these
9 lines.

10 THE SPECIAL MASTER: I'm going to
11 overrule your objection. There's a distinction
12 between the two classifications, and I think it's
13 well that it be brought out. If the parties feel
14 that there's a stipulated total acreage that falls
15 in this category, fine, that might save us a few
16 hours, but I'm not even concerned about that.

17 MR. WHITE: Your Honor, I'm not even
18 sure what the total acreage is. These things
19 we did pretty well random in two of the areas.
20 There may well be no others, but they're the ones
21 we'd like to point out and we'd like to make the
22 record on it.

23 THE SPECIAL MASTER: Yeah.

24 Q (By Mr. White) Okay. Al, let's switch now to
25 kersich-cross-white

- 1 it, looking at the map that the Master has there.
2 This portion here is colored green, and that would
3 be the 1/4 of the SW 1/4, Section 25.
4 Q Okay.
5 A So we don't have a classification.
6 Q You don't have a classification there?
7 A That's correct, sir.
8 Q All right. Show's you what happens when you
9 let a lawyer loose at a map, fouls it up
10 from time to time.
11 A You got to win some of them too.
12 Q Okay. Let's go to Section 26.
13 A Section 26 in the same township, sir?
14 Q Same township.
15 A Okay.
16 Q Is the SW 1/4 of the SW 1/4 green on M-2?
17 A There's a little tad of it, yes, that's green, sir.
18 Q And is there a small portion of blue on Exhibit C-51
19 in that one quarter of that section?
20 A I don't believe that any of the part that's colored
21 blue is green on this map.
22 Q We can check that when you get your photographs
23 here, can't we?
24 A You bet -- No, wait a minute. I'm going to back
25 kersich-cross-white

1 up on this point. We did not, on our photographs,
2 we did not have the reacquired trust --

3 Q We can find which quarter quarter section your --

4 A Oh, yes.

5 THE SPECIAL MASTER: I think that's
6 an example of what Mr. Sachse had in mind. He's
7 working, neither charged to make a distinction
8 nor would he care to make a distinction of trust
9 lands acquired or after acquired, and that's
10 exactly the case in point that Mr. Sachse mentioned.

11 THE WITNESS: Let me just make a note.

12 Now, I'm not sure I'll have all these
13 photographs, although I'll get them at noon.

14 Q Okay. We have plenty of other things to keep us
15 busy till then.

16 A That's all right. Okay.

17 Q Same township, 2 North, 5 East.

18 A Yes, sir.

19 Q Section 34.

20 A Okay, sir, I'm in Section 34.

21 Q South half of the SE.

22 A Okay.

23 Q That's shown in green on M-2?

24 A There is a small portion down below your finger
25 kersich-cross-white

1 there which is, it would be further down than
2 that. It's less than half a quarter.

3 Q South half of the SE 1/4?

4 A Um-hum.

5 Q Is that shown as Class 2 land on Exhibit 51?

6 A That's correct.

7 Q I direct your attention to the same township,
8 2 North, 5 East, Section 35, NE of the SW.

9 A NE of the SW, Section 35, okay.

10 Q Is that shown in green on M-2?

11 A Yes, it is.

12 Q Is it shown as being classified Class 2 on
13 Exhibit C-51?

14 A Correct.

15 Q Township 2 North, 5 East, again, Section 35, same
16 section, south half of the SW.

17 A Okay, sir.

18 Q Is that shown as being green, reacquired on
19 Exhibit M-2?

20 A Yes.

21 Q Is it shown as being Class 2 land on Exhibit C-51?

22 A Yes, a portion of that is.

23 Q Same section.

24 A Um-hum, same section?

25 kersich-cross-white

1 Q Yes, sir. That would be Section 35, 2 North,
2 5 East.
3 A Um-hum.
4 Q SE of the NW.
5 A Okay.
6 Q That's shown as green on M-2?
7 A Yeah, a portion of it is, um-hum.
8 Q Is it shown as Class 2 on C-51?
9 A A portion of it is, yes.
10 Q Same section, the NE of the NE.
11 A Okay.
12 Q Is it shown as green on M-2?
13 A Yes, a very small portion.
14 Q Is it shown as Class 2 and 3 on C-51?
15 A Yes, sir.
16 Q Now, let's move to the east, Section 36 in
17 Township 2 North, 5 East.
18 A Okay.
19 Q I direct your attention to the north half of the
20 NE.
21 A Okay, of the NE, I'm with you.
22 Q Is that green on M-2?
23 A A portion of it is.
24 Q Is it classified as Class 2, a portion of it on
25 kersich-cross-white

- 1 Exhibit C-51?
- 2 A Yes.
- 3 Q Same section, north half of the NW.
- 4 A Okay, sir.
- 5 Q That would be Section 36, 2 North, 5 East.
- 6 Is it green on M-2?
- 7 A Yes, a portion of it is.
- 8 Q And classified as Class 3 on C-51?
- 9 A Correct.
- 10 Q Let's turn to Section -- excuse me, Exhibit C-51,
- 11 which is the Riverton East area, gravity land
- 12 classification.
- 13 A Okay.
- 14 Q 51, as I recall, was Riverton East, sprinkler
- 15 land classification.
- 16 Let's go back to Township 1 North, 5 East,
- 17 and I ask you whether or not the NW 1/4 of the
- 18 NW 1/4 of Section 2 is shown on Exhibit C-50?
- 19 A Okay, here's Section 2, NW 1/4 of the NW 1/4.
- 20 Q Is it shown on Exhibit C-50 as being in part
- 21 classified as Class 3?
- 22 A That's correct.
- 23 Q And what's the land status shown on Exhibit M-2?
- 24 A Green.
- 25 kersich-cross-white

1 Q I direct your attention to the same section,
2 the SE 1/4 of the NW 1/4.

3 A Yes.

4 Q Is it classified as Class 3, arable land on
5 Exhibit C-50?

6 A That's the SE 1/4 of the NW 1/4?

7 Q Yes, sir.

8 A It shows Class 3 there, yes.

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- 1 Q (By Mr. White) Is it green on it too?
- 2 A Well, maybe a very little portion of it.
- 3 Q Well, we'll check that when we get your book.
- 4 A Okay.
- 5 Q Moving one section to the west, Section 3,
6 Township 1 North, 5 East --
- 7 A Okay, Section 3, sir.
- 8 Q The NE 1/4. Does that show as Class 2 land in
9 part on Exhibit C-50?
- 10 A Okay, yes.
- 11 Q What does it show on M-2?
- 12 A It shows green.
- 13 Q The same section, the NE of the NW, Section 3,
14 1 North, 5 East.
- 15 A NE of the NW?
- 16 Q Yes. Is a portion of that classified as Class 2
17 on Exhibit C-50?
- 18 A Yes.
- 19 Q What color is it on M-2?
- 20 A Well, a portion -- maybe all of it -- I can't tell
21 from the scale on it -- is green.
- 22 Q That overlay slides around a little bit too.
- 23 A Can we take just a second?
- 24 There we are. All right.
- 25 kersich-cross-white

- 1 Q Okay. Did we just do the NE of the NW on
2 Section 3?
- 3 A My note shows NE to the NW.
- 4 Q Let's go to the South 1/2 of the NW.
- 5 A The South 1/2 of the NW. Okay.
- 6 Q On Exhibit C-50 is that in part classified as
7 Class 3?
- 8 A A small portion, yes.
- 9 Q And how about on M-2? What's the land status
10 shown?
- 11 A It looks green here. I'll have to say it's all
12 green.
- 13 Q Let's go to Section 2 North, 5 East.
- 14 A Section 2. Wait a minute. You said --
- 15 Q Or, excuse me. Township 2 North, 5 East.
- 16 A Township 2 North, 5 East. Section 2?
- 17 Q Section 35.
- 18 A Oh, Section 35. Okay.
- 19 Q The NE of the SW.
- 20 A Wait a minute. Okay. I'm in Section 35.
21 Would you give me the Section breakdown, please?
- 22 Q NE, SW.
- 23 A Okay. I'm at the NE, SW 1/4, Section 35.
- 24 Q On Exhibit C-50 is that in part classified as Class 3?
25 kersich-cross-white

- 1 A Yes.
- 2 Q And what's the land status shown --
- 3 A It appears to be green here, sir.
- 4 Q On M-2?
- 5 A Yes.
- 6 Q The same Section, 35, 2 North, 5 East, the SE
7 of the NW.
- 8 A Okay. I'm in the SE of the NW, yes.
- 9 Q Okay. On Exhibit C-50 does that show as being
10 in part classified Class 3?
- 11 A Yes.
- 12 Q Maybe a smidgen of Class 2?
- 13 A You gave me the SE of the NW 1/4, I thought.
- 14 Q I'm sorry. It's all Class 2 classified in that
15 1/4, isn't it?
- 16 A Yes.
- 17 Q And what's the status --
- 18 A Well, this is one of those iffy areas. It could
19 be a little bit of the southern portion that
20 might be green.
- 21 Q So we'll put a question by that and come back.
22 The same Section, the NE to the NE.
- 23 A Okay. The NE --
- 24 Q NE to the NE.
- 25 kersich-cross-white

- 1 A Right.
- 2 Q On Exhibit C-50 is that classified as 2 and a
3 portion in Class 3?
- 4 A A portion of 2, a portion of 3.
- 5 Q And what's it shown on 2?
- 6 A Here it shows all green.
- 7 Q Let's move one section to the east then to
8 Section 36, 2 North, 5 East, the North 1/2, and
9 I direct your attention to the North 1/2 of the
10 NE 1/4 on Exhibit C-50. Is that shown as Class 3
11 lands?
- 12 A Just a minute, please. Yes.
- 13 Q And what's the status shown on M-2?
- 14 A It's green.
- 15 Q The same Section, North 1/2 of the NW, was that
16 land status shown as being Class 3 on C-50?
- 17 A Okay. That's the North 1/2 to the NW 1/4. It
18 is shown as Class 3 on 50.
- 19 Q C-50, right.
- 20 A And it's shown as green on M-2.
- 21 Q And let's jump back a couple sections to Section 34,
22 2 North, 5 East.
- 23 A Section 34, 2 North, 5 East.
- 24 Q The North 1/2 to the SE. Is that shown as Class 3
25 kersich-cross-white

1 on Exhibit C-50?

2 A Portions of it, yes.

3 Q And its land status on M-2?

4 A It appears to be green.

5 Q Now, let's go to 2 North, 6 East.

6 A Okay.

7 THE SPECIAL MASTER: 2 North, 6 East, did
8 you say?

9 MR. WHITE: I think I'm going to drop that
10 one, Your Honor. I'm not sure what I was thinking
11 of when I went to that map.

12 THE WITNESS: Okay. You dropped that one?
13 Okay.

14 Q (By Mr. White) Let's go to North Crowheart, a
15 big area, and I direct your attention to what's
16 been admitted as U.S. Exhibit C-44.

17 A Just give me a second to write down -- C-44, sir?

18 Q Yes, sir.

19 A Okay.. Here we go.

20 Q Township 3 North, 2 West, Section 1.

21 A Okay.

22 Q NW 1/4.

23 A Okay.

24 Q There's a portion of that that is shown as Class 3
25 kersich-cross-white

1 on Exhibit 44?

2 A A very small portion, yeah.

3 Q About 80 acres or so in there?

4 A Oh, I don't think so. I don't know. A small
5 portion.

6 Q What's it shown on M-2?

7 A Green.

8 Q 3 North, 1 West.

9 A 3 North, 1 West. Okay, sir.

10 Q Section 7.

11 A 3 North, 1 West, Section 7. Okay. I'm here, sir.

12 Q There's a small portion of the NW of the SE
13 shown as Class 2 on 44?

14 A It appears that way, yes.

15 Q And what's that land status on M-2?

16 THE SPECIAL MASTER: I wouldn't call that the
17 NE of the SE.

18 THE WITNESS: No, I have got the NW of the SE.

19 Q (By Mr. White) This is the 1/4 quarter line that
20 comes down like this and there's --

21 A In looking at it I thought there was a very small
22 portion in the NW 1/4.

23 Q And what's the land status of that on --

24 A Let me find it again. I have lost it. Okay.

25 kersich-cross-white

- 1 We are looking at the NE 1/4 of the SE 1/4.
- 2 Here again it appears there's a small portion
- 3 that is green.
- 4 Q The same Township, 3 North, 1 West, Section 18.
- 5 A Okay. That's the next section just due south
- 6 of that.
- 7 Q Wait a minute. Now, I'm lost here. You said
- 8 that's the next section just due south?
- 9 A Well, normally it would be, yes, wasn't it?
- 10 See, this is Section 7 here, and you add 11 to it,
- 11 and it should come out to be Section 18 there.
- 12 Q Okay.
- 13 A Okay. I'm with you now.
- 14 Q SW 1/4 to NE 1/4.
- 15 A SW 1/4 NE 1/4.
- 16 Q Is that shown as Class 3 land on Exhibit 44?
- 17 A Yes.
- 18 Q And what's the land status on M-2?
- 19 A A portion of it appears to be green again.
- 20 Q 4 North, 3 West.
- 21 A 4 North, 3 West -- excuse me just a minute until
- 22 I get caught up here.
- 23 Okay. I'm in the Township.
- 24 Q Section 11.
- 25 kersich-cross-white

1 A Okay, sir. I'm in Section 11.

2 Q SW 1/4 of the SW 1/4.

3 A SW 1/4 of the SW 1/4. Okay. I'm in the SW
4 1/4 of the SW 1/4.

5 Q Is a portion of that shown as Class 2 land on
6 Exhibit 44, C-44?

7 A Yes, a small portion.

8 Q What's the status on M-2?

9 A It's green here, sir.

10 THE SPECIAL MASTER: Give the estimated
11 acreage of that portion.

12 MR. WHITE: Oh, I don't know, Your Honor.

13 THE SPECIAL MASTER: Mr. Kersich, can you
14 give the estimated acreage? One of those is
15 less than five acres, and we are getting awfully
16 minute.

17 MR.. WHITE: I understand, Your Honor, but
18 this is a study that was done with great precision,
19 as he pointed out with the direct case, and I think
20 we need to deal with precision --

21 THE SPECIAL MASTER: What are we talking about,
22 five acres?

23 THE WITNESS: If that portion over there is
24 six, that's smaller than that, so four or five acres.

25 kersich-cross-white

1 MR. ECHOHAWK: But again, Your Honor, this
2 matter is totally irrelevant when it was re-
3 acquired lands, so his precision, according to
4 that --

5 THE SPECIAL MASTER: I have already ruled.
6 on that. Go ahead.

7 Q (By Mr. White) Are you ready for the next one
8 now?

9 A Yes, sir.

10 Q Again in 4 North, 3 West, Section 12.

11 A Okay. All right.

12 Q The South 1/2 of the SW. There is again a very
13 small portion in Class 3 shown in that area on
14 Exhibit 44; isn't that correct?

15 A That's correct.

16 Q Now, let's go to Section 13 in 4 North, 3 West.

17 A Okay. That will be the section just due south
18 of the one you just pointed to.

19 Q The whole section there, the major portion of that
20 section, is classified as either 2 or 3 in Exhibit 44?

21 A Yes.

22 Q What's its land status on M-2?

23 A Looking at the map I am, it looks like the NE
24 1/4 of Section 13 is colored in green and a small
25 kersich-cross-white

1 portion of the SE 1/4 and possibly a little
2 bit in the NW 1/4 on the top here.

3 Q It sort of slants across from NW to SE?

4 A Yes, more of that section is not green though.
5 Let me make a note of that. That's the total
6 section we talked about.

7 Okay.

8 Q Section 14.

9 A Yes.

10 Q East 1/2 of the NE 1/4.

11 A East 1/2 of the NW 1/4?

12 Q NE.

13 A NE 1/4. Okay. Let me find myself.

14 All right. I'm in Section 14.

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1 Q (By Mr. White) (Continued) Okay. On Exhibit C-44,
2 is a portion of the East 1/2 of the NW of that
3 Section classified as 2 and 3?

4 A There's a small portion, yes.

5 Q And what's the land status on M-2?

6 A It's green.

7 THE SPECIAL MASTER: We'll take a five
8 minute break.

9 (Thereupon a five minute
10 recess was taken.)

11 THE SPECIAL MASTER: All right, let's come
12 to order. We're on the East 1/2, North 3/4 of 14.

13 MR. WHITE: I think we just finished that.

14 THE WITNESS: Yeah.

15 Q (By Mr..White) Let's go back to Section 13.

16 A Let's see, that's Township?

17 Q 4 North, 3 West.

18 A Section 13.

19 Q 4 North, 3 West.

20 A Yeah.

21 Q And the whole section you said before, the
22 Section was only partially green, but when you
23 were referring to that partially green section
24 you were referring to Township 4 West instead of
25 kersich-cross-white

- 1 3 West, weren't you?
- 2 A Well, let me check that.
- 3 Yes, I'm sorry.
- 4 Q Section 13 and 4 North, 3 West is entirely green,
5 isn't it?
- 6 A Yes, let me go back and check my notes.
- 7 Yeah, okay.
- 8 Q Let's stay in the 4 North, 3 West.
- 9 A Okay.
- 10 Q Section 14 again.
- 11 A Okay..
- 12 Q West 1/2 of the West 1/2.
- 13 A The West 1/2 of that Section?
- 14 THE SPECIAL MASTER: West 1/2 of the West 1/2.
- 15 Q (By Mr. White) West 1/2 of the West 1/2. In other
16 words, the strip 1,328 feet across going North
17 and South.
- 18 A 1,328? 1,320, that's correct.
- 19 Q 1,320. On Exhibit C-44 are small portions of that
20 parcel classified as Class 2 and 3?
- 21 A Yes.
- 22 Q What's the color shown on M-2?
- 23 A That entire section appears to be green.
- 24 Q Let's go to Section 24 of the same Township.
25 kersich-cross-white

- 1 A Okay. Section 24, that's 20, okay. I'm at
2 Section 24, Township 4 North, Range 3 West.
3 Q North 1/2 of the NE.
4 A North 1/2 of the NE 1/4.
5 Q Is that classified in part as 2 and 3 on Exhibit
6 44?
7 A Yes.
8 Q And what color is it shown on M-2?
9 A It's green.
10 Q 4 North, 2 West.
11 A Township 4 North, Range 2 West, okay.
12 Q Section 16.
13 A Okay, Section 16.
14 Q Is that the one with Dry Creek running right
15 through it there?
16 A I believe so, yes.
17 Q SW 1/4.
18 A SW 1/4, uh-huh.
19 Q On Exhibit 44, is that classified, in major
20 part as Class 3?
21 A Uh-huh.
22 Q What's the color on M-2?
23 A Appears to be all green here.
24 Q Let's go to Section 17.
25 kersich-cross-white

- 1 A In the same Township?
- 2 Q Yes, 4 North, 2 West.
- 3 A Okay, Section 17.
- 4 Q Is that classified in major part as Class 2 and
- 5 Class 3 on Exhibit 44?
- 6 A Yeah, there's Class 2 and Class 3 in that, um-hum.
- 7 Q What color is it on M-2?
- 8 A Section 17 is green.
- 9 Q Whole section?
- 10 A On this map it appears to be, yes.
- 11 Q Go to Section 18, same Township.
- 12 A Okay.
- 13 Q On Exhibit C-44 is it classified in major part
- 14 as Class 2 and 3?
- 15 A That's correct.
- 16 Q What color is it on M-2?
- 17 A That whole section appears to be colored green.
- 18 Q Let's go to Section 19.
- 19 A Okay.
- 20 Q Same Township, 4 North, 2 West.
- 21 A Right.
- 22 Q North 1/2.
- 23 A North 1/2 is colored -- Well, it's classified as
- 24 2 and 3.
- 25 kersich-cross-white

- 1 Q On Exhibit 44?
- 2 A Yes.
- 3 Q What color is it on M-2?
- 4 A It appears the whole half of that section is
5 green. North 1/2 of that section I should have
6 said.
- 7 Q Again, with respect to Section 19, same section,
8 what color does M-2 show in the NE of the SE?
- 9 A NE 1/4 of the SE 1/4 appears to be green.
- 10 Q Okay. Is it classified as 2 and 3?
- 11 A Possibly 2 and 3, yes.
- 12 Q Section 20.
- 13 A Same Township again?
- 14 Q Yes.
- 15 A All right.
- 16 Q North 1/2.
- 17 A North 1/2, Section 20 there are some Class 2 and
18 3 and 6 lands in that.
- 19 Q What's the color on M-2?
- 20 A Whole North 1/2 of Section 20 appears to be --
21 Wait a minute, let me back up on that answer a
22 moment.
- 23 Q You're in 4 North, 2 West.
- 24 A Yeah, I got that. Okay, I'm right. North 1/2.
25 kersich-cross-white

6-7

- 1 Q Is it green on M-2?
- 2 A Yes, it appears to be green here.
- 3 Q Okay. Same Township, 4 North, 2 West, but go
- 4 to Section 35, please.
- 5 A Section 35, I'm there.
- 6 Q West 1/2 of the SE.
- 7 A Okay.
- 8 Q On Exhibit 44 is the West 1/2 of the SE in part
- 9 classified as Class 3 and in part Class 2?
- 10 A Yes.
- 11 Q How is it shown on M-2?
- 12 A It appears that the West 1/2 is colored green.
- 13 Q That same Section, 35, the SE of the SE. On
- 14 Exhibit 44 --
- 15 A Okay.
- 16 Q We're in Section 35, 4 North, 2 West, SE of the
- 17 SE. On Exhibit 44 is that classified as 2 and 3?
- 18 A Yes.
- 19 Q What's it shown as on M-2?
- 20 A It's green.
- 21 Q Now, let's go to Section, East of Section 36,
- 22 South 1/2 of the SE.
- 23 A The South 1/2 --
- 24 THE SPECIAL MASTER: SW 1/4.
- 25 kersich-cross-white

- 1 Q All North 1/2 is green?
- 2 A 1/2 North is green.
- 3 Q Let's go to Section 21.
- 4 A Hang on just a minute, please.
- 5 Okay, Section 21, and that's still Township
- 6 4 North, 2 West?
- 7 Q That's right. NW of the NW.
- 8 A NW 1/4 of the NW 1/4.
- 9 Q Is it classified as 3 on Exhibit 44?
- 10 A Yes.
- 11 Q And is it green on M-2?
- 12 A Yeah.
- 13 Q Okay.
- 14 A Yes.
- 15 Q Exhibit -- excuse me, Section 21, same section.
- 16 A Yes.
- 17 Q NE of the SW.
- 18 A NE 1/4 of the SW 1/4, okay.
- 19 Q Is a portion of that classified as Class 3 on
- 20 Exhibit 44?
- 21 A Well, that 1/4 again is a very small portion.
- 22 It's mostly Class 6.
- 23 Q But there is a portion in there that's Class 3?
- 24 A Right.
- 25 kersich-cross-white

1 THE WITNESS: Of the SW 1/4, okay.

2 Q (By Mr. White) Is that classified as 2, Class

3 2 on Exhibit 44?

4 A Yes, um-hum.

5 Q Is it green on M-2?

6 A Yes.

7 Q Let's go to 5 North, 1 East.

8 A Township 5 North and 1 East, okay, sir.

9 Q Section 12.

10 A Right.

11 Q NE of the SE.

12 A NE of the SE, okay.

13 Q Is that Class 3 on Exhibit 44?

14 A Appears to be all Class 3.

15 Q Is it green on M-2?

16 A Yes.

17 Q Let's go to 5 North, 2 East.

18 A Okay.

19 Q Section 7.

20 A Section 7, 5 North, 2 East. Section 7, I'm there.

21 Q NW of the SW.

22 A NW 1/4 of the SW 1/4.

23 Q Is a portion of that classified as Class 3?

24 A Some are 3 and some are 6, right.

25 kersich-cross-white

1 Yeah, I said some 3, some 6.

2 Q On Exhibit -- that's on Exhibit 44; is that
3 correct?

4 A Yes, uh-huh.

5 Q What color is it on Exhibit M-2?

6 A It appears to be green here, sir.

7 THE SPECIAL MASTER: Is that 1 -- isn't
8 that one of those diminimus types again, five-acre
9 jobs?

10 MR. WHITE: It may be, Your Honor, but we
11 won't be able to tell until Mr. Kersich reviews his
12 photographs, because these maps may be 3 centimeters
13 off or so.

14 THE WITNESS: I think it should be understood,
15 sir, these lands would not be on our photographs. We'd
16 have to go and actually locate them from this map because
17 this map was not used. I'm speaking now, the Tribes'
18 Exhibits with regard to the trust lands.

19 Q (By Mr. White) Isn't it true, Al, you can tell us
20 the amount of land that is classified in this
21 blue area from your photographs, can't you?

22 A We can tell you the total piece, but that doesn't
23 mean anything until we get -- you're going to want
24 to know the green stuff.

25 kersich-cross-white

1 Q We're going to ask you whether or not that total
2 piece overlaps the green stuff and you can point
3 it out, and maybe we can figure out the acreages
4 ourselves.

5 THE SPECIAL MASTER: In that Section 7, if
6 you're talking about the SW 1/4 of the whole Section,
7 I follow you.

8 THE WITNESS: No, he's not.

9 MR. WHITE: We're just talking about--

10 THE SPECIAL MASTER: You're talking about
11 the NW 1/4 of the SW 1/4, that's terribly small.

12 MR. WHITE: I know it's small, Your Honor.
13 The point is though what's happening with these water
14 rights, the claims as we're finding in our work,
15 there's about an acre for acre transfer, an acre of
16 land that goes into irrigation takes another acre out,
17 and that's why we're interested in small numbers as
18 well as specifics.

19 THE SPECIAL MASTER: Very good.

20 MR. WHITE: Okay.

21 MR. SACHSE: Your Honor, I move that that
22 last statement by Mr. White be stricken from the
23 record. If he's going to testify about taking an acre,
24 putting an acre takes an acre out, he should be put on
25 kersich-cross-white

1 the witness stand, put under oath and made to state
2 the basis for his testimony.

3 MR. WHITE: Well, I'd be glad to do that,
4 Your Honor, especially if Mr. Sachse cross-examined
5 me.

6 THE SPECIAL MASTER: We'll take it off the
7 record, and if he wants to put it in under oath.

8 MR. SACHSE: I'll have the opportunity to
9 cross-examine him as a witness.

10 MR. WHITE: I'm sure they're looking forward
11 to that, Your Honor.

12 THE SPECIAL MASTER: Let's proceed then.

13 THE WITNESS: We were in Section 7, NW 1/4.

14 Q (By Mr. White) Let's look at the SE of the SW.

15 A Same Section, in the SE 1/4 of the SW 1/4?

16 Q Yep.

17 A I got to find myself again, just a moment, please.

18 Okay, I'm there.

19 Q Is that green on M-2?

20 A Yes, that's green, um-hum.

21 Q And on 44 is roughly half of that 1/4 Quarter
22 in blue?

23 A Yes.

24 Q Class 3?

25 kershic-cross-white

- 1 A Yes.
- 2 Q Let's go to Section 27.
- 3 A Okay, just a moment, please. Will this be in
- 4 5 North, 2 West?
- 5 Q You bet.
- 6 A What was the section again now, sir?
- 7 Q Twenty-seven.
- 8 A Section 27, all right. Okay, I'm in the section.
- 9 Q Is that the one with Muddy Creek running through
- 10 it on your map?
- 11 A Yeah, Muddy Creek.
- 12 Q South 1/2 of the SW.
- 13 A South 1/2 of the SW 1/4, I'm there.
- 14 Q Is that green on M-2?
- 15 A It is.
- 16 Q Is it in major part classified as Class 2 on 44?
- 17 A I believe it's Class 1, --
- 18 Q I'm sorry, you're right.
- 19 A -- Mr. White.
- 20 Q Hit the jackpot.
- 21 (Brief pause.)
- 22 Q Okay. I direct your attention to C-45, the last
- 23 exhibit, and we'll go through those reacquired
- 24 lands and ask you to start with Township 3 North,
- 25 kersich-cross-white

1 2 West, and this is North Crowheart sprinkler
2 land classification:
3 A Okay. I'm in the Township.
4 Q Section 1.
5 A Okay.
6 Q NW of the NW.
7 A NW 1/4 of the NW 1/4.
8 Q Is that green on M-2?
9 A There's a very small portion that is green, yes.
10 THE SPECIAL MASTER: You're talking -- The
11 question was on M-2.
12 THE WITNESS: Excuse me, let me correct that.
13 That entire 1/4 Quarter seems, 1/4 of a Quarter is
14 green.
15 Q (By Mr. White) I'm sorry, is there a small
16 portion of the northern end of that 1/4 Quarter
17 on 45 that's --
18 A Yes.
19 Q That's classified as Class 2?
20 A Class 2, that's correct.
21 Q Let's go to 3 North, 1 West.
22 A Okay, sir.
23 Q Section 7.
24 A Section 7. Okay, I'm in the section.
25 kersich-cross-white

- 1 Q West 1/2 of the SE 1/4. Is that green on M-2?
- 2 A West 1/2 of the SW 1/4 is green on M-2.
- 3 Q Is a small portion of that shown as Class 2 --
- 4 A Yes.
- 5 Q -- on Exhibit 45?
- 6 A Yes.
- 7 Q Same Section, 3 North, 1 West.
- 8 A Yes, I'm in -- Let's see, give me a minute.
- 9 Section 18, directly south of that.
- 10 Q The SW of the NE.
- 11 A SW of the NE.
- 12 Q Is that green on M-2?
- 13 A Yes. Portions of it is. There's a wiggly line
- 14 thorough there.
- 15 Q Probably Dry Creek.
- 16 Is it shown as Class 2 lands on Exhibit 44?
- 17 A Yes.
- 18 Q Let's go to Section 13, it's the one we looked
- 19 at before.
- 20 A Still the same Township and same Range?
- 21 Q 4 North, 3 West.
- 22 A 4 North, 3 West or 1 West?
- 23 Q 3 West. I've just gone to a new Township.
- 24 A Range 3 West, Township 4 North. Range 3 West, I'm
- 25 kersich-cross-white

1 in that now, and the Township, Section 13, yes.

2 Q Exhibit 45, is the major portion of Section 13
3 classified as Class 2?

4 A I'd say approximately 50 percent of that.

5 Q Is the entire section green?

6 A Yes.

7 Q Is -- still in 4 North, 3 West.

8 A Um-hum.

9 Q Township 24.

10 THE SPECIAL MASTER: Section.

11 MR. WHITE: I'm sorry, Section 24, Your Honor.

12 THE WITNESS: Okay. Just give me a minute
13 to locate it.

14 Okay, I'm in Section 24.

15 Q (By Mr. White) North 1/2 -- Let's see; make sure
16 I got the right one.

17 North 1/2 of the NE 1/4.

18 A Section 24, the North 1/2 of the NE 1/4, okay.

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20
21
22 End 6

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25

1 Q (By Mr. White) Is a portion of that classified
2 as Class 1 land?

3 A Yes.

4 Q Is it green on M-2?

5 A It appears to be, yes.

6 Q 4 North, 3 West again, Section 14.

7 A Okay.

8 Q Is that classified on Exhibit 45, for the most
9 part, Class 2 with a small portion Class 3 --
10 Class 1, 6?

11 A 1, 2, and 6, yes.

12 Q But the major portion is classified as arable,
13 correct?

14 A Yes.

15 Q Is that entire section green on M-2?

16 A Yes.

17 Q Section 18, 4 North, 2 West.

18 THE SPECIAL MASTER: 4 North, 2 West?

19 MR. WHITE: Yes, sir.

20 A (By The Witness) Okay, 4 North, 2 West, Section 18.
21 Okay.

22 Q The entire section is green on M-2, isn't it?

23 A That's correct.

24 Q And virtually the entire section is classified
25 kersich-cross-white

1 as Class 2 on Exhibit 45?

2 A A substantial portion of that section is Class 2,
3 that's right. I'm looking at the right one now,
4 so I agree with you.

5 Q I'm sorry?

6 A I'm looking at the right one now, so I agree with
7 you.

8 Q Section 17, 2 North -- excuse me, 4 North, 2 West,
9 same township.

10 A 4 North, 2 West, Section 17. Okay.

11 Q That's entirely green on Exhibit M-2, isn't it?

12 A Yes.

13 Q And has substantial portions, probably something
14 less than a half, but substantial portions of
15 Class 3 and Class 2 lands?

16 A Yes, and a small portion Class 3.

17 Q A small portion Class 3 and a larger portion Class 2?

18 A Yes.

19 Q Section 19 in 4 North, 2 West, on Exhibit 45, maybe
20 three-quarters of that section.

21 A Section 19?

22 Q Yes, classified --

23 A Just a minute. 19. I'm in the section now.

24 Q Classified as Class 2?

25 kersich-cross-white

1 A Yes.

2 Q And with respect to the north half in the NE to
3 the SE of that section on M-2, those are green,
4 are they not?

5 A That's right.

6 Q Section 20.

7 A Okay.

8 Q North half.

9 A Yes.

10 Q A portion of that is classified Class 2 on Exhibit
11 45?

12 A Yes.

13 Q Is it green on M-2?

14 A Yes.

15 THE SPECIAL MASTER: Is it really the
16 north half, or is it the NW 1/4, Mr. White?

17 MR. WHITE: Well, I was asking the
18 NW 1/4, which is substantially all green, Your
19 Honor, and I was asking about the entire north
20 half simply because it was easier for him to
21 pick it up off M-2, but you are right, the green
22 on Exhibit 45 for Class 2 is limited to the
23 NW 1/4.

24 THE SPECIAL MASTER: All right.

25 kersich-cross-white

1 Q (By Mr. White) Let's go to Section 21.
2 A Okay.
3 Q NW of the NW again.
4 A NW 1/4 NW 1/4, yeah.
5 Q And that's classified in part as Class 2 on Exhibit
6 45?
7 A Right.
8 Q And is it green on M-2?
9 A Yes, portions of it are green. It's very
10 difficult to see if it's the full quarter corner.
11 Q Section 35, same township, SE of the SE.
12 A The SE 1/4 to SE 1/4. Just a moment, please.
13 Okay.
14 Q Class 2 on Exhibit 45?
15 A Yes.
16 Q Green on M-2?
17 A Yes, the SW 1/4 to SW 1/4 is green on M-2.
18 Q Okay, the last one, Section 36.
19 A Okay.
20 Q South half of the SW.
21 A Section 36, the south 1/2 of the SW 1/4. Okay.
22 I'm there.
23 Q Is that classified as Class 2 on Exhibit 45?
24 A Yes.
25 kersich-cross-white

1 Q Is it green on M-2?

2 A Yes.

3 Q Okay. Thank you. We'll come back when you get
4 your photos. You can roll that up if you like
5 and get it out of your way.

6 Mr. Kersich, in your arable land base, which
7 is illustrated by the large maps that we have
8 been referring to, did you exclude or include
9 lands that have already enjoyed irrigation
10 development, have already been irrigated?

11 A That are being irrigated now?

12 Q Yes.

13 A To the best of my knowledge, yes.

14 THE SPECIAL MASTER: Yes what?

15 Q (By Mr. White) You excluded --

16 A We excluded them.

17 Q What about lands that have been irrigated in
18 the past?

19 A There may have been some lands that weren't
20 covered by any permit or any state rights,
21 but it might have been attached to some of the --
22 that I say undeveloped lands that have never been
23 irrigated, those were classified. In some
24 instances those were included, yes.

25 kersich-cross-white

1 Q Do you have any knowledge of the amount of
2 land which had been historically irrigated
3 which was included in your future arable base?

4 A No, I would not.

5 Q How would such a determination be made?

6 A The only way I know would be to go back to our
7 records and find where those were and add them
8 up.

9 MR. WHITE: Excuse me, Your Honor. I
10 need to get a couple maps out here.

11 Your Honor, would you mind if I asked
12 questions from over here so I can ask the
13 questions from my own map?

14 THE SPECIAL MASTER: That's all right.
15 Just speak up nice and loud for the reporter.

16 Q (By Mr. White) On Exhibit C-49, have you classified
17 as Class 1 land in 2 North 2 West in Sections 17
18 and 18 as shown on Exhibit 49?

19 A It appears so from that exhibit, yes.

20 Q Isn't it true that that is served by the Sage No. 1
21 Ditch, permit no. 13426?

22 A I can't tell you that, no.

23 Q How did you then make a determination that these
24 arable lands, that are shown on C-49 and similar
25 kersich-cross-white

1 exhibits were not served by existing permits?

2 A There would have been a hydrographic study
3 done on those areas.

4 Q Do you have that hydrographic study with you?

5 A Not here in the courtroom, no, sir.

6 Q So you are unable to tell me whether or not
7 that is served or is not served by that particular
8 ditch; is that right?

9 A At this point in time, no.

10 MR. WHITE: Your Honor, I would move to
11 strike Exhibit C-49 and the testimony relating
12 to it since the witness is unable --

13 THE SPECIAL MASTER: The motion to
14 strike is overruled.

15 MS. SLEATER: Your Honor --

16 THE SPECIAL MASTER: I have already
17 ruled.

18 MS. SLEATER: I would like to strike
19 Mr. White's testimony and any further testimony
20 relating to permits or information which is not
21 provided here so that we can determine for
22 ourselves if this has any relevance to what is
23 going on.

24 Mr. White cannot just conjure up a number
25 kersich-cross-white

1 and ask a question about it. Before the question
2 is proper he should be --

3 THE SPECIAL MASTER: Well, I think he
4 should be permitted to once, and he did ask,
5 and this witness doesn't have any knowledge
6 whether permits or adjudicated water rights were
7 in existence in given areas, and he's so stated,
8 and I think that was brought out.

9 I would concur in your objection to further
10 inquiries along the same line unless this witness
11 can be made to show that he took into consideration
12 state water rights and permits and adjudicated
13 water rights in his land classification, and I
14 believe he said he did not do that.

15 MR. WHITE: Well, Your Honor, I believe
16 he indicated that he excluded from the arable land
17 base lands which were under adjudicated water
18 rights, and if he didn't, maybe I ought to ask
19 him the question again.

20 THE SPECIAL MASTER: Arable land base
21 were irrigated, they were excluded, and you asked
22 him whether it was excluded or included.

23 MR. WHITE: And I think I have the
24 right to know how he made the determination.

25 kersich-cross-white

1 THE SPECIAL MASTER: And you did in the
2 two parts -- was it Section 17? But that is a
3 big map and a lot of land, and I'm not going to
4 throw the whole exhibit out on the basis of that
5 one area.

6 Q (By Mr. White) Let me ask you, Mr. Kersich,
7 whether you made any investigation at all
8 that you can describe to us of those lands
9 which are irrigated within the study area shown
10 on Exhibit 49?

11 A Yes, there was an investigation made of those
12 lands.

13 Q Precisely how did you determine that there was
14 not an overlap between the lands that are
15 irrigated and the lands that you show as being
16 arable but unirrigated?

17 A We had two teams working on this, one team
18 which was doing the arable base predicated on
19 the undeveloped lands, and the other team that
20 was developing the information on permits, ditches,
21 and things of this nature, and we tried to
22 interchange information and tried as much as
23 possible to get out of it lands that were
24 presently covered by a system.

25 kersich-cross-white

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THE SPECIAL MASTER: Was your answer then to Section 17 a moment ago indicate that there are some margin of errors in your work?

THE WITNESS: There could be a margin of error.

Q (By Mr. White) What margin of error is there associated with the inclusion -- or the exclusion of irrigated lands from the arable land base?

A What margin of error?

Q Yes.

A I don't know. I mean we've been working on this for a long time. We checked it, we've constantly checked it. We've tried to give you the corrections as we find them. We gave you some last week, we gave you some more again Monday morning. We went through, for example last night and it appears that none of those areas there was any fee lands included, the maps may have not gotten done.

I think there's just, there's a potential that some of this -- but I feel very strongly, the error's are very small. We're talking about 84,000 acres. I think our errors, if

kersich-cross-white

1 any, are very small, but I couldn't testify
2 that there were no errors, and I wouldn't
3 testify that there were no errors.

4 Q You still haven't described how you personally
5 insured that there was no overlap between
6 irrigated and arable lands.

7 A I did not check every section, but I did check
8 some of the maps which required further checking
9 on our part, sir, but I can't say that I checked
10 boundary and every map and every delineation
11 personally.

12 MR. WHITE: Your Honor, could I have
13 just a moment?

14 THE SPECIAL MASTER: Surely.

15 (Brief pause.

16 Q (By Mr. White) Mr. Kersich, I direct your
17 attention to --

18 MS. SLEATER: Your Honor, may we
19 see what exhibit they're going to show?

20 MR. WHITE: As soon as he identifies
21 them.

22 THE SPECIAL MASTER: As soon as he
23 unravels them. Can you unravel them so
24 everybody can see it?

25 kersich-cross-white

1 Everybody come forward, others that want
2 to see it.

3 Q (By Mr. White) I want to show you what is
4 identified as Aerial Photograph 179-166 and
5 ask you whether or not you recognize that
6 photograph?

7 A Not this photograph, no.

8 Q Isn't that the photograph that was supplied
9 during discovery by your firm?

10 THE SPECIAL MASTER: Before you go
11 any further, I see a 164 and I see a 168.

12 MR. WHITE: I'm referring to the
13 numbers in the upper right-hand corner, Your
14 Honor.

15 THE SPECIAL MASTER: All right, thank
16 you.

17 THE WITNESS: It may have been, yes.

18 Q (By Mr. White) Do you know whether or not your
19 firm prepared any photographs such as that?

20 A Oh, yes, I know that.

21 Q Are you able to locate Sections 13 and 14 in
22 Township 2 North, 3 West on that photograph?

23 A There are some section numbers here whether
24 they're 13 or 14 I wouldn't vouch for that.

25 kersich-cross-white

- 1 A Okay. And this is the portion here that's
2 shown uphill from the ditch, this portion right
3 here (indicating),
4 Q How about into Section 14?
5 A That was Section 14,
6 Q All right, 13, excuse me.
7 A It's shown above the ditch in here somewheres
8 (indicating).
9 Q So you're saying that those are above the ditch;
10 How can you tell that from that photograph
11 to which you're referring?
12 A I believe it refers to a ditch right here,
13 Q The Gurna Tewon Ditch.
14 A That's what appears. We didn't have any
15 information for some time,
16 Q And you have 42 acres shown as above that
17 ditch; is that right?
18 A That's correct, yes. Yes, um-hum.
19 Q Okay.
20 A We have lands here which appear to be idle or
21 not irrigated at the time they were classified,
22 and we show 53 acres there, 3T-1, so it would
23 be three gravity and one sprinkler.
24 Q Okay. Now, are you able, based on the review
25 kersich-cross-white

1 you've made of your notes, are you able to
2 locate that land that's shown in yellow on
3 Exhibit 49, running between Sections 13 and 14
4 on the aerial photograph that I initially
5 showed you?

6 A Approximately in here somewheres, and in here
7 somewheres. It would take a little bit of
8 work to check that all out completely, but
9 that's what it appears to be, right here.

10 I don't know what this means right there,
11 I don't know what that means, but what it appears
12 is that we picked up some of these lands in the
13 historic study and those lands which had been
14 classified and not under irrigation of that
15 ditch were added on the arable land base data.

16 Q Now, how did you treat this 28 acres right there?

17 A I don't know what that 28 acres refers to. I'm
18 not familiar with this photograph.

19 Q You're not, all right. Are you generally
20 responsible for the work that's done by your
21 firm in this case?

22 A Why yes, but in a job this large and time
23 constraints, I can't look at everything and
24 do everything. I've got good people working

25 kersich-cross-white

1

for me.

2

Q Who would know about this photograph and

3

explain the relationship between --

4

THE SPECIAL MASTER: Why don't we get

5

back in our relative positions so we can sit

6

down.

7

MR. WHITE: I'm sorry.

8

THE SPECIAL MASTER: That's okay.

9

Q (By Mr. White) Who would know about the photograph

10

marked 179-166?

11

A There are two or three people that would have

12

knowledge of the information on that photograph.

13

Q Who would be able to explain exactly what acreage

14

was included in your arable lands and excluded

15

from your arable lands under the Gurna Tewon Ditch?

16

A Ross Waples would, I'm sure.

17

Q But you can't?

18

A Not at this time, no.

19

Could we have about a five-minute break?

20

THE SPECIAL MASTER: Can we take a

21

five-minute break?

22

MR. WHITE: You bet.

23

THE SPECIAL MASTER: We'll take a five-

24

minute break.

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kersich-cross-white

(Thereupon a 5 minute recess
was taken.)

1 THE SPECIAL MASTER: All right. We shall
2 convene, please.

3 Q (By Mr. White) Mr. Kersich, on Exhibit C-48 and
4 in Sections 17 and 20 of Township 2 North, 2 West --

5 A Yes.

6 Q -- I notice that you have two areas of Class 3
7 arable lands; is that correct?

8 A That's 2 North, 2 West, Sections --

9 Q It should be 17 and 20.

10 A 17 and 20, right, 17 and 20.

11 Q Would you take a look at your photograph and see
12 how you dealt with any adjudicated or permitted
13 ditch in that area, if any?

14 A This wouldn't show it.

15 I think this is the time to point out some-
16 thing for your edification, if I might?

17 Q You bet. I'm always willing to be edified.

18 A There are two studies that are being done, one
19 having to do with historic lands, and that's be-
20 ing run by Ron Billstein, and those are under
21 irrigation or have been under irrigation or per-
22 mits, things of that nature. All of that data
23 has been accumulated and put on those photos.
24 He will be testifying about that.

25 kersich - cross - white

1 I have not had the time and I have not been
2 available to get into the work with that.

3 Now, we have tried to constantly check these
4 potentials of interface, if you see what I'm talk-
5 ing about, of undeveloped arable lands, winding up
6 in that particular program. But the point is that
7 for the information on the ditches and things of
8 this nature, that will be testified to by other
9 people on my staff.

10 MR. WHITE: Your Honor, maybe the most effi-
11 cient thing to do would be to postpone this line
12 of questioning until Mr. Billstein comes on. The
13 problem is I doubt that Mr. Billstein will testify
14 on direct as to the arable land base, and what I
15 have been trying to drive at is that arable land
16 base really aren't future lands. They are really
17 historic irrigated lands.

18 Now, if counsel for the United States will
19 stipulate, as well as the Tribes would stipulate,
20 that we could examine Mr. Billstein about any over-
21 laps between historically irrigated lands and
22 arable land base, maybe we ought to wait and ask
23 Ron Billstein those questions. If not, I think we
24 need to get it from Mr. Kersich.

25 kersich - cross - white

1 MR. ECHOHAWK: I have no objection to Mr.
2 White cross-examining on that so long as he
3 doesn't go into the entire arable base. If he
4 has certain problems where he thinks there is
5 some overlap, he can examine Mr. Billstein about
6 that because the witnesses have taken great pains
7 to try not to have any overlap.

8 THE SPECIAL MASTER: Mr. Echohawk --

9 MR. ECHOHAWK: Well, it's our witness.

10 MR. SACHSE: The Tribes have no objection to
11 Mr. Billstein being examined with the limitation --

12 THE SPECIAL MASTER: Yes, that Mr. Echohawk
13 put on.

14 MR. WHITE: The arrangement then is --

15 THE SPECIAL MASTER: All right. You have
16 the right to put Mr. Billstein on direct and in-
17 quire regarding the overlap or the interface.

18 MR. WHITE: Between historically irrigated
19 lands or --

20 THE SPECIAL MASTER: And what is called the
21 arable on these maps.

22 MR. WHITE: Let me put everything away.

23 THE SPECIAL MASTER: It's 11:30, if you think
24 this is the time to break on this matter.

25 MR. WHITE: This might be a good time to

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End T-9

break, Your Honor. The next part will probably take a couple hours to go through.

THE SPECIAL MASTER: We have got a bad day to get around, and maybe you could use a half hour to get to lunch or find your way around. It's 20 below zero out there.

We are going to knock off until 1:30 and then we will carry on then.

(Proceedings recessed at 11:35 a.m. to reconvene at 1:30 p.m.)

* * * * *