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File 145
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Case # 4993

File # 145

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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 WYO-)
MING.)

Civil No. 4993

FILED _____
5/1 1981
Margaret J. Hargrave CLERK
DEPUTY

VOLUME 38

Morning Session

Thursday, April 16, 1981

ORIGINAL

APPEARANCES

FOR THE STATE OF
WYOMING:

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MR. STUART RIFKIN and
MR. SCOTT KROB

FOR THE UNITED STATES
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and

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and

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APPEARANCES (CONTINUED)

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FOR THE ARAPAHOE
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BY: MR. R. ANTHONY ROGERS

FOR THE SHOSHONE
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BY: MR. WILLIAM PERRY

1 THE SPECIAL MASTER: May we come to order,
2 please. The -- We have prepared the first 17 pages
3 of the index of exhibits in this lawsuit, which will
4 be a part of the Master's Report, and we will now
5 hand a copy to the State of Wyoming in pursuance of
6 the stipulation and agreement that there are no
7 objections to doing this this way, which is really
8 divulging part of the report prior to its publication.

9 A copy for the United States of America,
10 a copy for the Shoshone Tribe and a copy for the
11 Arapahoe Tribe. We will send out, Mr. White, a notice
12 to all pro se and counsel of record that this has
13 been done. Should any of them desire this same
14 tabulation of exhibits, will they let us know in the
15 next 30 days and we will then find out how many
16 requests there are and reproduce that portion ahead
17 of time and distribute it to them, so there will be,
18 their treatment of the exhibits. We hope that there
19 won't be more than 17 more pages of exhibits, in
20 which case we'll do up the second 17 pages at what I
21 hope will be the conclusion of this trial when the
22 case is closed, but if it drags on further that we
23 should do this one more time before the case is closed,
24 we will do it.

25 MR. MERRILL: Your Honor, I would expect

1 there will be something more than 17 additional pages
2 of these, and I'd also offer the services of the
3 State of Wyoming in making copies of those 17 pages
4 available to any private parties on request.

5 THE SPECIAL MASTER: Well, if you let them
6 know that will be appreciated. They can maybe use
7 your facilities and ours.

8 I thought there wouldn't be until I looked
9 over in the left-hand corner of the room and saw that
10 batch.

11 The next item I've been asked to announce
12 is that on Monday, instead of 9:15, the coming Monday,
13 the Monday after Easter, we will be meeting at 10:30.
14 This gives time for some counsel that may have a
15 little trouble getting back up from Denver or some-
16 where on that day. Other than that we are ready to
17 begin, Mr. Echohawk.

18 MR. ECHOHAWK: The United States would call
19 as its next witness Mr. Ross Waples.

20 THE SPECIAL MASTER: You're welcome to leave
21 your coat off; I'm going to put mine on.

22 ROSS WAPLES
23 being first duly sworn, was examined and testified as
24 follows, to wit:
25

DIRECT. EXAMINATION

1

2 BY MR. ECHOHAWK:

2

3

Q Please state your name for the record.

4

A Ross Steven Waples.

5

Q Mr. Waples, where do you reside?

6

A At 2111 Santiago Boulevard, Billings, Montana.

7

Q Mr. Waples, what's your occupation?

8

A I'm a soils scientist and land classifier.

9

Q Where are you employed?

10

A At HKM Associates in Billings, Montana.

11

Q Is that the HKM Associates that Mr. Kersich is

12

employed and Mr. Billstein?

13

A Yes, sir, it is.

14

Q Are you employed in any particular division within

15

HKM?

16

A Yes. I work in water resources.

17

Q The water resources division Mr. Billstein and

18

Mr. Kersich are associated with?

19

A That's correct.

20

Q How long have you been employed at HKM?

21

A Four and a half years.

22

Q Four and a half years have you been associated

23

with land classification or other soils work there?

24

A Yes, I have.

25

waples-direct-echohawk

- 1 Q Would you please give us a description of your
2 educational background.
- 3 A Yes. I have a Bachelor of Science from Montana
4 State University in soils science.
- 5 Q Are you a member of any professional societies?
- 6 A Yes, I am. I'm a member of the Soil Conservation
7 Society of America, the Soil Science Society
8 of America, and the International Soil Science
9 Society.
- 10 Q Where were you employed prior to the time you went
11 to HKM?
- 12 A At the Water and Power Resources Service,
13 formerly United States Bureau of Reclamation.
- 14 Q And what were you -- What were your duties there?
- 15 A I was a land classifier trainee.
- 16 Q How long were you there?
- 17 A One season.
- 18 Q How long?
- 19 A One season.
- 20 Q Thank you. Mr. Waples, would you explain to us
21 what experience you have in land classification.
- 22 A Yes. Starting with the Water and Power Services --
23 Resources Services, excuse me, I did land
24 classification for potential strip mine reclamation;
- 25 waples-direct-echohawk

1 worked in Montana, North Dakota and Wyoming.

2 This involves testing the lands to determine
3 the potential quality of soils and lands for
4 strip mine reclamation.

5 Q In making these determinations, is there any
6 connection with the same types of determinations
7 that would be used in land classification for
8 irrigated agriculture?

9 A Yes, there is. The actual mechanical process
10 is all but identical. For reclamation purposes
11 we're interested in plant culture, we're interested
12 in all the various parameters that go into
13 allowing good plant growth. We're interested in
14 soil depth, soil chemical properties, parent
15 material, whether it's derived from shale, sand
16 stone, gravel, terraces, whatever. We're interested
17 in, of course, the soil depth, we're interested
18 in the topography, whether we have enough soil
19 for the purposes that are required. In general,
20 the same exact parameters that go into irrigation,
21 in drainage. Soil texture, of course, is a big
22 one.

23 * * * * *

24
25 waples-direct-echohawk

1 Q (By Mr. Echohawk) Mr. Waples, do you have any
2 experience in land classification, specifically
3 for irrigated agriculture?

4 A Yes, sir, I do.

5 Q Would you please describe for us, first of all,
6 in what states that has occurred in, in what
7 connection?

8 A Yes. In Montana I've worked on the Crow and
9 Northern Cheyenne Reservations.

10 In North Dakota I worked on the Fort
11 Berthold Reservation.

12 In New Mexico I worked on the Jicarilla
13 Apache Reservation.

14 Of course, the Wind Reservation in Wyoming --
15 Wind River Reservation.

16 Q Mr. Waples, let's take, for instance, first the
17 Crow Reservation. How many acres on the Crow
18 Reservation did you yourself personally classify?

19 A Approximately 50,000 acres.

20 Q How many on Northern Cheyenne Reservation? How
21 many acres did you personally classify?

22 A About 15,000.

23 Q You mentioned you did some work in the Fort
24 Berthold Reservation of North Dakota. What type

25 waples-direct-echohawk

1 of work was that?

2 A. This was a little bit different than a reserve
3 water rights case. This was specifically for the
4 purpose of designing an irrigation system.

5 We came up with a project that had about
6 8,000 acres of arable lands.

7 Q. And did you yourself classify all of that?

8 A. Yes, I did.

9 Q. How about for the Jicarilla Reservation in New
10 Mexico? How many acres did you personally
11 classify?

12 A. About 15,000.

13 Q. You said you did some work on the Wind River
14 Reservation. Is that in connection with this
15 lawsuit?

16 A. Yes, it is.

17 Q. How many acres did you personally classify on that?

18 A. About 40,000 acres.

19 Q. In this land classification work that you've talked
20 about here and you have just described for irri-
21 gated agriculture, what role did you play in those
22 various land classification programs?

23 A. It went everywhere from being a land classifier
24 to being a supervisor in the land classification

25 waples-direct-echohawk

1 program. Also, I did a certain amount of drainage
2 work, drilling and hydrologic conductivity, both
3 the actual testing and having overall responsi-
4 bility for them.

5 Q Mr. Waples, at HKM do you do any other soils-
6 related work other than the land classification
7 work for irrigated agriculture?

8 A Yes. We are a full service firm. We do many,
9 many type jobs, environmental jobs, that type of
10 thing.

11 One of the major soils jobs that I partici-
12 pated in was for the proposed Northern Tier
13 Pipeline.

14 In Montana for every perennial stream that
15 a pipeline must cross, a permit is required by
16 the State of Montana, and this permit requires
17 an environmental evaluation and a reclamation plan.

18 This is --

19 Q Is there any soils-related work involved in that?

20 A Yes, there is. It entails, number one, visiting
21 the site, looking at the soil, checking essential-
22 ly the same parameters that we are dealing with
23 for any type of irrigated agriculture.

24 Here again, we look at soil depths, texture,

25 waples-direct-echohawk

1 all of the various components that go into this
2 thing.

3 Then a reclamation plan is formulated to
4 make sure that once the pipeline is in that the
5 land can be put back to if not a natural state,
6 a state that will not deteriorate.

7 Q Mr. Waples, I show you what has been marked for
8 identification as United States Exhibit WRIR
9 C-157. Would you please identify that exhibit?

10 A. It's a resume of -- it's my resume.

11 Q Is it a generally accurate reflection of your
12 background and experience?

13 A. Yes.

14 Q Mr. Waples, you mentioned earlier that you did
15 some land classification work on the Wind River
16 Indian Reservation?

17 A. That's correct.

18 Q I show you what has been marked as United States
19 Exhibit WRIR C-138, and I think that has been
20 admitted into evidence.

21 Would you please turn to page 2 of that
22 exhibit? Do you notice there on page 2 there is
23 a subheading of "Soils"?

24 Would you read that into the record, or those

25 waples-direct-echohawk

1 two paragraphs?

2 A. Yes, I will.

3 MR. MERRILL: Your Honor, if the exhibit has
4 already been admitted, we will stipulate to what
5 it says. It's already in evidence and it would
6 be redundant to read it into the record again.

7 MR. ECHOHAWK: I'm just trying to set the
8 stage to put it in line with Mr. Billstein's --

9 THE SPECIAL MASTER: I will let him read it.

10 THE WITNESS: It's pretty short.

11 A. (By the witness) "Although the largest contiguous
12 blocks of arable acreage on the Reservation are
13 found in the undeveloped land study areas, it was
14 reasonable to expect that other lands that are
15 not presently irrigated could be proven to be
16 arable.

17 "Of those lands, the acreage that should be
18 served from historic irrigation facilities was
19 deemed to have the highest probability of being
20 proved irrigable. Aerial photos from other time
21 frames -- 1936, 1939, 1948, 1954, and 1969 --
22 verified that many of these lands were, in fact,
23 irrigated in the past.

24 "There are many reasons that lands historically
25 waples-direct-echohawk

1 irrigated are no longer in use. Therefore,
2 arability of these lands was determined by a
3 land classification program."

4 Q. (By Mr. Echohawk) The land classification spoken
5 of in that last sentence that you read, did you
6 have anything to do with that land classification
7 program?

8 A. Yes, I did.

9 Q. Could you please describe your involvement in that
10 land classification program connected with the
11 historic land study?

12 A. Yes. I had several roles. Number one, I was a
13 joint supervisor of the land classification program.

14 THE SPECIAL MASTER: You were the joint
15 supervisor?

16 THE WITNESS: I was one of, along with Mr.
17 Channing Smith.

18 THE SPECIAL MASTER: Along with who?

19 THE WITNESS: Channing Smith.

20 A. (By the witness) I did land classification work
21 as a land classifier.

22 I did the overall review of the land classi-
23 fication program and made the final land classifi-
24 cation determinations.

25 waples-direct-echohawk

1 Q (By Mr. Echohawk) Mr. Waples, within the land
2 classification work you were just starting dis-
3 cussing involved in the historic lands program,
4 are there various components or subparts of the
5 land classification program?

6 A Yes, there are two major parts. Perhaps it would
7 be easier if we showed them on an exhibit. It
8 would be more clear.

9 Q You can step to the easel, and placed on the easel
10 is what has been marked and received into evidence
11 as United States Exhibit WRIR C-55, which is the
12 Historic Lands Investigation Study Area Base Map.

13 This map shows what was called the non-
14 project study area. You can see the grey squares
15 indicate aerial photos through the Reservation.
16 They concentrate along the major drainages and
17 indicate areas where historically irrigated lands
18 were located, and these formed the study base in
19 which we looked for historically arable lands.

20 The second part of this program --

21 Q Excuse me, Mr. Waples. You are now going to refer
22 to Exhibit WRIR C-5 that's been entered into
23 evidence?

24 A That's correct.

25 waples-direct-echohawk

- 1 Q Go ahead.
- 2 A. The second part of this program is concerned with
- 3 what we call the major project areas. That in-
- 4 volved the federal irrigation projects which
- 5 include the Upper Wind Unit, Johnstown Unit, and
- 6 Left Hand Unit on the Big Wind, and on the Little
- 7 Wind the Ray Unit, Coolidge Unit, and Subagency
- 8 Unit, as well as tract lands within the LeClair-
- 9 Riverton area, which lies along the Wind River
- 10 in this area. (indicating) and trust lands within
- 11 the Midvale Irrigation District (indicating).
- 12 Q So essentially, Mr. Waples, you had a two-part
- 13 program, the major project areas and then areas
- 14 outside of those projects?
- 15 A. That's correct.
- 16 Q Mr. Waples, let's talk about the major project
- 17 areas first. Those would be the federal irrigation
- 18 projects or sometimes referred to as the federal
- 19 Indian projects, the LeClair, Riverton, Midvale --
- 20 A. Yes.
- 21 Q How many acres were studied in those major project
- 22 areas?
- 23 A. Well, in excess of 8,000 acres, about 8,300.
- 24 Q And we have been having discussions as to land
- 25 waples-direct-echohawk

1 classification standards earlier in Mr. Kersich's
2 testimony. What land classification standards
3 were the lands found within the major projects
4 classified under?

5 A. These were classified under the same standards that
6 Mr. Kersich discussed, the land classification
7 project standards.

8 Q. Mr. Waples, I show you what has been marked as
9 United States Exhibit WRIR C-36-A. Would you
10 please describe what that exhibit is?

11 A. Yes, I will. The title of it is, "Table 1, Land
12 Classification Standards, Wind River Indian
13 Reservation, Wyoming."

14 These are the standards that were, in fact,
15 used on the project lands.

16 Q. Do you know whether or not these are the same
17 standards that Mr. Kersich has testified to earlier?

18 A. Yes, they are.

19 Q. Mr. Waples, what was your input into the formula-
20 tion of these land classification standards?

21 A. Okay. The base, of course, was WPRS. We took
22 those standards that were somewhat site specific
23 to the area to begin with and put together a set
24 of standards that we felt was appropriate for the

25 waples-direct-echohawk

1 work we were doing and the area that we were work-
2 ing in.

3 The team that put together the standards
4 was Mr. Kersich, Mr. Billstein, Mr. Toedter, Mr.
5 Smith and myself.

6 Q And what particular expertise or subject matter
7 could you bring to this formulation process?

8 MR. MERRILL: Your Honor, I object. At this
9 point I have been anticipating for some time that
10 Mr. Echohawk would lay a foundation and offer the
11 witness as an expert of some sort, and I think at
12 this point it would be appropriate to do so before
13 the witness starts testifying about what expertise
14 he offered.

15 THE SPECIAL MASTER: Do you want to do that,
16 Mr. Echohawk?

17 MR. ECHOHAWK: That's fine. I can do that
18 now or later. If Mr. Merrill would like for me to
19 do it now, I will.

20 THE SPECIAL MASTER: Why don't you do it now?
21 You do make an offer that he --

22 MR. ECHOHAWK: I make the offer that the
23 Court accept Mr. Waples as an expert in land
24 classification and soils science.

25 waples-direct-echohawk

1 THE SPECIAL MASTER: Do you wish to question
2 the witness?

3 MR. MERRILL: Yes, Your Honor. May I voir
4 dire?

5 THE SPECIAL MASTER: Fine.

6 VOIR DIRE EXAMINATION

7 BY MR. MERRILL:

8 Q Ross, I believe you stated earlier this morning
9 that you did some land classification work for the
10 Crow Reservation in Montana; is that correct?

11 A. That's correct.

12 Q When did that work occur?

13 A. 1977.

14 Q Approximately how much time did you spend classi-
15 fying land on the Crow?

16 A. I honestly can't remember. I would hate to hazard
17 a guess at this point.

18 Q Do you recall how many acres you classified on
19 the Reservation, on the Crow Reservation?

20 MR. ECHOHAWK: Asked and answered, Your Honor.

21 THE SPECIAL MASTER: Well, I believe it was,
22 but it wouldn't be any great error if he were
23 to test the number of acres and maybe test his
24 credibility too.

25 wapes-void dire-merrill

1 A (By the witness) About 40,000 acres.

2 THE SPECIAL MASTER: About forty?

3 THE WITNESS: Yes.

4 Q (By Mr. Merrill) Ross, isn't it true that there
5 are major differences between the land types and
6 soils series on the Crow Reservation and Wind
7 River Indian Reservation?

8 MR. ECHOHAWK: Objection, Your Honor. It's
9 irrelevant.

10 THE SPECIAL MASTER: Objection overruled.

11 A (By the witness) Certainly there are differences
12 wherever you go. In the Intermountain area
13 there are certainly differences, sure.

14 Q (By Mr. Merrill) Can you characterize those
15 differences?

16 MR. ECHOHAWK: Objection, Your Honor. The
17 question is ambiguous. Characterizing them as
18 what?

19 THE SPECIAL MASTER: The question is ambigu-
20 ous? "Can you characterize some of those
21 differences?"

22 I'll let it be answered.

23 MR. MERRILL: Your Honor, I can rephrase the
24 question.

25 wapes-voir dire-merrill

1 THE SPECIAL MASTER: That's all right.

2 Generally what are the characteristics of the

3 difference is all right.

4 A. (By the witness) There are both similarities and

5 differences. On the Wind, in the Wind River Basin,

6 there are large terraces, large gravel terraces.

7 On the Crow there are some large gravel terraces.

8 On the Wind there are many sandstone uplands,

9 residual type soils. On the Crow there are some

10 sandstone derived soils, but many of them are

11 more shale derived than sandstone derived.

12 There are upland soils, which isn't to say

13 there aren't some sandstone uplands on the Crow

14 because there are.

15 That is the major differences. The residual

16 soils tend to be shale derived as opposed to

17 sandstone derived.

18 * * * * *

19

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25 waples-voir dire-merrill

1 Q (By Mr. Merrill) Okay. Can you characterize
2 some of the major differences between the two
3 Reservations with respect to topography?

4 THE SPECIAL MASTER: With respect to what?

5 MR. MERRILL: Topography.

6 MR. PERRY: Your Honor, I object to the
7 continuation of this line of questioning. Mr.
8 Waples has been offered as an expert as a land
9 classifier and soils scientist, and this has
10 nothing to do with whether he's so qualified.

11 THE SPECIAL MASTER: I think it has every-
12 thing to do with being an expert soils scientist
13 and land classifier, the topography of the two
14 different Reservations. He may answer.

15 THE WITNESS: Okay. The previous question
16 was a somewhat difficult question to answer.
17 and this is somewhat difficult.

18 THE SPECIAL MASTER: There are some broad
19 areas involved too, but do the best you can in
20 answering.

21 THE WITNESS: Okay. Both Reservations have
22 a certain amount -- certain mountainous area
23 on them. They have everywhere from, from raw
24 alluvial plains in the lower elevations to

25 waples-voir dire-merrill

1 sandstone and shale uplands, to sloping foothills
2 and mountainous regions. Topographically they
3 are not all that dissimilar.

4 THE SPECIAL MASTER: Did each have broad
5 alluvial valley floors?

6 THE WITNESS: Yes, they do.

7 Q (By Mr. Merrill). Would you please characterize
8 the similarities and differences between the Crow
9 and Wind River Reservations with respect to
10 drainage.

11 A Drainage is for a function of agricultural design
12 than the inherent soil or topographic characteristics
13 of the land. It's a meaningless question unless
14 one asks it in terms of something specific.

15 Q Well, let me try to do that.

16 THE SPECIAL MASTER: That's a good answer.

17 Q (By Mr. Merrill) Let's start with surface
18 drainage characteristics on the Crow and the
19 Wind River. Are they similar or dissimilar?

20 A Where the topography is similar they are similar.

21 Q How about the subsurface drainage characteristics
22 such as hydrologic conductivity and depth to
23 barrier?

24 A Well, there again, it depends on where you're
25 wapes-voir dire-merrill

1 talking. I -- If you're talking in a gravel
2 terrace of similar type material they're going
3 to be the same.

4 If you're talking -- If you're talking a
5 heavy clay lowland along the river we have the
6 same, same type of thing in places on both
7 Reservations, they're going to be similar.
8 Without looking at this site specifically it's
9 very difficult to answer.

10 Q So in some areas --

11 A I'm not trying to avoid the questions.

12 Q In some areas there are similarities, in some
13 areas there are differences?

14 A Certainly.

15 Q Have you ever presented any testimony as an
16 expert witness as a result of your land
17 classification work on the Crow Reservation?

18 A No, I haven't.

19 Q Have you ever testified as an expert as a result
20 of your work on the Fort Berthold?

21 A No, sir.

22 Q How about the Jicarilla Reservation in New Mexico?

23 A No, sir.

24 MR. ECHOHAWK: Objection, Your Honor, it's

25 waples-voir dire-merrill

1 irrelevant.

2 THE SPECIAL MASTER: There is a first time
3 for everything, and I suppose it's the first
4 time here.

5 Q (By Mr. Merrill) Ross, in discussing the
6 classification work on the FIP's of the Wind
7 River Reservation, did you say you studied 8,300
8 acres or classified 8,300 acres in that area?

9 A That was roughly the -- Well, be more specific,
10 please. Study, classify, I don't see the
11 difference.

12 Q I believe in response to one of Mr. Echohawk's
13 questions concerning your land classification
14 work within the Federal Irrigation Projects,
15 you gave the figure 8,300 acres, and I'm simply
16 curious as to whether that referred to the
17 acreage of the entire study area within the FIP's
18 or whether that was the number of acres of land
19 you classified or classified as arable or some
20 other?

21 MR. ECHOHAWK: Objection, Your Honor, I
22 believe Mr. Merrill misstates the witness. I don't
23 think that statement was limited to the Federal
24 Irrigation Project. He was talking about the major
25 waples-voir dire-merrill

1 projects which include LeClair and Midvale.

2 THE SPECIAL MASTER: My notes show that it
3 was specifically dealing with FIP's, whether
4 Federal Irrigation or Federal Indian Projects,
5 8,000 acres was studied here.

6 MR. MERRILL: That was my thinking, Your
7 Honor, but in the context of the testimony I
8 wasn't sure.

9 THE SPECIAL MASTER: And the question deals
10 with clearing that up, so I think the question
11 is appropriate.

12 THE WITNESS: There were approximately
13 8,300 odd acres that were studied, what we would
14 call the major project area.

15 Q (By Mr. Merrill) Thank you. Ross, would you
16 define a land form?

17 A Well, if you sat 100 people --

18 MR. ECHOHAWK: Objection, Your Honor, this
19 isn't proper voir dire.

20 THE SPECIAL MASTER: I think that the
21 definition of land form is a good question on
22 voir dire.

23 THE WITNESS: Okay. As I say, if you sat
24 100 people up here, you'd probably get 100 different

25 waples-voir dire-merrill

1 definitions of land form.

2 THE SPECIAL MASTER: Even though they
3 weren't lawyers?

4 THE WITNESS: Yes, sir. For -- The term
5 land form depends on what use you're going to
6 put that term to. Now, in my case, in the
7 process of land classification two land forms
8 were to be considered similar if they have the
9 same type of morphological characteristics.

10 Q Morphological?

11 A Yes. Developmental.

12 Q What are morphological characteristics that you
13 consider in land forms?

14 A What we're talking about here is essentially
15 is both the geomorphology and the soils
16 morphology of a particular form in the landscape.
17 It can be -- It entails such things as the
18 materials from which soils are derived, it entails
19 the slopes, it entails the general characteristics
20 of that landscape. You can talk about macro
21 land forms, you can talk about micro land forms.
22 It's an imprecise term that is used -- Well, it's
23 incorrectly used oftentimes.

24 It's a lay term essentially, that need not
25 waples-voir dire-merrill

1 even be included in most discussions. Land
2 classification can be specific enough without
3 the lands that you're talking about that it
4 becomes more or less irrelevant.

5 Q I take it from your answer then that you don't
6 find, in the work you do you don't find the
7 term land form to be particularly descriptive
8 or helpful?

9 A Well, I'm interested in the -- When I classify
10 lands, now speaking from a land classifier's
11 standpoint, I'm interested in the general
12 landscape as it lies, but I'm also interested in
13 the individual tract. Now, whether that land
14 lies on one type of land form or another, as
15 long as it's arable, makes no difference to me.

16 Q Would you please describe the work you did in
17 classifying the roughly 40,000 acres of work --
18 or land, excuse me, that you testified you worked
19 on on the Wind River Indian Reservation.

20 MR. ECHOHAWK: CouI I have that question
21 read back, please.

22 (Thereupon the following
23 (question was read back as
24 (follows: "Q Would you
25 (please describe the work you
(did in classifying the
(roughly 40,000 acres of work --

waples-voir dire-merrill

1 (or land, excuse me, that
2 (you testified you worked
3 (on on the Wind River
4 (Indian Reservation?"

4 MR. ECHOHAWK: Objection, Your Honor,
5 improper voir dire; that's cross-examination.

6 MR. MERRILL: I believe --

7 THE SPECIAL MASTER: Technically may be,
8 but I'm going to permit it because I think
9 it will all bring out facts that will be
10 beneficial to all on the voir dire.

11 THE WITNESS: All right. I'll describe the
12 work in general terms. The specifics will come
13 out during -- during my direct testimony.

14 Q (By Mr. Merrill) If not on cross, I'm sure, yes.

15 A This work involves classifying land at what we
16 call a modified semi-detailed level based on
17 WPRS type standards. It's a similar type program.
18 It involves evaluating lands from topographic
19 soils and drainage points of view.

20 Q Did you personally participate in the field work
21 involved in that land classification?

22 THE SPECIAL MASTER: You probably are
23 drifting a little bit away from voir dire on this,
24 what you no doubt will be asking in a few hours.

25 wapes-voir dire-merrill

1 But go ahead and answer that question.

2 MR. MERRILL: Your Honor, the reason I'm
3 asking the question is because I think it's
4 implicit in the direct testimony of the witness
5 thus far that his experience is in classifying
6 land on the various Reservations is being
7 offered in part for the basis of his expertise.

8 THE SPECIAL MASTER: That's right, and it
9 is limited, and I appreciate that, and that's
10 why I'm permitting the question.

11 MR. MERRILL: Thank you, Your Honor.

12 THE WITNESS: Yes. I participated in the
13 field program.

14 Q (By Mr. Merrill) Would you characterize your
15 participation as intense or supervisory only?

16 A It was very intense. I did much of the field
17 work as well as acted, as I said, in a super-
18 visory role, plus I made the final land
19 classification determination. Now, we're speaking
20 on the historic arable lands.

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waples-voir-dire-merrill

1 THE SPECIAL MASTER: When you speak of
2 historic arable land, is that the 8,300 acres,
3 or is that the remainder that could include as
4 much as 40,000 acres?

5 THE WITNESS: The 8,300 acres is a part of
6 the historic arable lands that fall within the
7 major projects.

8 Q (By Mr. Merrill) Where was the remainder of the
9 40,000 acres?

10 A. It involved both lands in the -- what we call
11 the non-project study areas and in the future
12 lands that Mr. Kersich has previously testified
13 to.

14 Q And with respect to those areas, you formed many
15 of the final opinions concerning the land class-
16 ifications; is that correct?

17 A. For the historic arable program, yes.

18 Q Excuse me, Ross. I meant for the future lands to
19 which Mr. Kersich testified previously. I'm
20 wondering if some of the final land classifications
21 described by Mr. Kersich in his testimony reflect
22 your professional opinions.

23 MR. ECHOHAWK: Objection, Your Honor.

24 Irrelevant.

25 wapes-voir dire-merrill

1 THE SPECIAL MASTER: It's a good question.

2 A. (By the witness) I did a lot of the land classi-
3 fication on the future lands.

4 THE SPECIAL MASTER: Whose judgment was final?
5 His or yours, in the event there was a question
6 of some degree of difference? In other words,
7 who was the boss?

8 THE WITNESS: Mr. Kersich.

9 Q. (By Mr. Merrill) Do some of the land classifica-
10 tion opinions which Mr. Kersich gave in his direct
11 testimony reflect professional opinions that you
12 reached and relayed to him?

13 MR. ECHOHAWK: Objection, Your Honor. This
14 is not proper voir dire.

15 THE SPECIAL MASTER: Well, it's sure a
16 proper question somewhere in these proceedings,
17 and you may have a point. It may not be voir dire.

18 MR. ECHOHAWK: These are proper questions
19 for Mr. Kersich.

20 THE SPECIAL MASTER: Well --

21 MR. ECHOHAWK: And we have covered this ground
22 with Mr. Kersich.

23 THE SPECIAL MASTER: If the witness knows
24 the answer, he should give it, if he knows the

25 wapes-voir dire-merrill

1 answer. If Mr. Kersich's totals and judgment
2 in some cases overrode this witness, then we
3 have a right to know about it on the voir dire
4 as to which one was the expert and what degree
5 of expertise was involved.

6 I may be getting close to sustaining you
7 pretty soon.

8 MR. ECHOHAWK: I think we covered this with
9 Mr. Kersich when he said he helped formulate the
10 program, oversaw the program, oversaw the quali-
11 fied people in the field, they did the work,
12 rendered their opinions and came back, and he
13 went over it with them, and they reached a final
14 conclusion.

15 I think those questions have been asked and
16 answered of Mr. Kersich.

17 THE SPECIAL MASTER: Not this specific
18 question wasn't.

19 Read the question again, would you, please,
20 Vi?

21 (Thereupon the following
22 question was read back as
23 follows: "Q Do some of the
24 land classification opinions
25 which Mr. Kersich gave in his
direct testimony reflect pro-
fessional opinions that you
reached and relayed to him?"

waples-voir dire-merrill

1 THE SPECIAL MASTER: Objection overruled.

2 A. (By the witness) The answer is yes, I did much
3 of the work.

4 I would like to perhaps preface that with
5 the comment that, as Mr. Echohawk said, there
6 were reasons for Mr. Kersich's input into this,
7 offered in that vein.

8 Q. (By Mr. Merrill) Of the acreage testified to by
9 Mr. Kersich as being arable, approximately what
10 percentage of that acreage reflects your work and
11 your opinions?

12 A. I've never added it up.

13 Q. Can you give me a rough fraction or percentage?

14 MR. ECHOHAWK: Your Honor, the witness has
15 stated he can't do it.

16 THE SPECIAL MASTER: No, he just said he
17 never added it up. He can certainly give some
18 thought as to whether he can give a general figure
19 or a ball park figure or some relative percentage.
20 Did he do 50% of the total or 90% of the total?
21 Did he work on about half? Something like that
22 I think is appropriate.

23 THE WITNESS: I can give the units in which
24 I did most of the work.

25 waples-voir dire-merrill

1 MR. MERRILL: That would be fine.

2 THE SPECIAL MASTER: Do so.

3 THE WITNESS: Okay. The Riverton East Unit,
4 the Arapahoe Unit, the South Crowheart Unit, and
5 -- I didn't do all the work in these units. I
6 did the majority of the work, and then plus a goodly
7 portion of the Big Horn Flats Unit.

8 Q (By Mr. Merrill) Now, in response to one of the
9 Master's questions, you said that between you and
10 Mr. Kersich, Mr. Kersich was certainly the boss.

11 How many times were your professional
12 opinions concerning final land classification
13 overridden by Mr. Kersich?

14 MR. ECHOHAWK: Objection, Your Honor.

15 THE SPECIAL MASTER: If you'll add two words,
16 I'll overrule the objection, "if any."

17 MR. MERRILL: If any. I would be happy to
18 add those two words, Your Honor.

19 MR. ECHOHAWK: Same objection, Your Honor.
20 Improper voir dire.

21 THE SPECIAL MASTER: Overruled.

22 A (By the witness) During the various review
23 processes, review sessions, I can think of several
24 times when Mr. Kersich had a question, and after

25 waples-voir dire-merrill

1 discussion and in some places field review, we
2 changed the classification.

3 Q (By Mr. Merrill) Do you know approximately how
4 many acres were involved in the changes in class-
5 ification?

6 A No, sir, I don't.

7 Q Can you recall roughly how many tracts?

8 A Well, sir, this has been going on for several years.
9 I don't know, no.

10 MR. MERRILL: Your Honor, we have no
11 objection to qualifying Mr. Waples as offered.

12 THE SPECIAL MASTER: I will admit you, Mr.
13 Waples, as an expert witness.

14 THE WITNESS: Thank you, sir.

15 THE SPECIAL MASTER: You may proceed, Mr.
16 Echohawk.

17 Let me ask a question or two that I still
18 don't have clear in my mind.

19 Did you go back over an area that had been
20 irrigated at some time or another over the last
21 half a century and that was no longer irrigated
22 and reevaluate it?

23 THE WITNESS: That's correct. If you recall

24 Mr. Billstein's testimony, we had a hydrographic

25 waples-voir dire-merrill

1 team that mapped the lands and separated the
2 irrigated lands from the idle lands, and these
3 idle lands that were formerly irrigated became
4 a large part of the base that we studied.

5 THE SPECIAL MASTER: Were the criteria in
6 US Exhibit C-36-A, which was handed to you earlier
7 today by Mr. Echohawk, the criteria you used only
8 in the 8,300 acres and not in the remaining, or
9 was it used in all of your work on this Reserva-
10 tion?

11 THE WITNESS: Okay. These standards were
12 used in the work I did on the future lands that
13 Mr. Kersich testified to and the historically
14 arable lands, the 8,300 acres within the major
15 project areas.

16 As direct testimony goes on, it will become
17 more clear, I think.

18 THE SPECIAL MASTER: Well, I wonder why then
19 that the criteria for the four cases of land set
20 out in Exhibit 36-A were not a part of similar
21 land classification standards called Table 2 on
22 pages 10, 11 and 12 in Mr. Kersich's Exhibit C-43.

23 Are you familiar with the latter references
24 I made?

25 waples-voir dire-merrill

1 THE WITNESS: Yes, but I don't know where
2 they differ, Your Honor.

3 THE SPECIAL MASTER: Okay. I guess we'll
4 find out as we go along.

5 Go ahead, Mr. Echohawk.

6 MR. ECHOHAWK: Your Honor, I thought they
7 were the same standard. I think they are the
8 same standards as within Mr. Kersich's report.

9 MR. ROGERS: Mr. Waples testified early on
10 in his testimony this morning that they were,
11 in fact, the same standards.

12 THE SPECIAL MASTER: Why are they called
13 Table 2 in one exhibit and Table 1 in another
14 exhibit?

15 MR. ECHOHAWK; Because as we get through
16 the rest of our exhibits, this particular table
17 which is now labeled Table 2 is found within a
18 report prepared by Mr. Waples.

19 THE SPECIAL MASTER: I still have a problem
20 with the fact that there was a footnote 4 which
21 we referred to yesterday on Table 2, which is not
22 included in my exhibit nor is it, in fact, on the
23 36-A you handed me today. Yet it is a footnote
24 on the original.

25 MR. ECHOHAWK: Footnote 4 is on Exhibit 36-A.

1 THE SPECIAL MASTER: I beg your pardon.

2 It is. I just saw it on page 3. I just noticed
3 it. The only one it is omitted from is --

4 MR. ECHOHAWK: Is in C-43, and I believe Mr.
5 Kersich during his testimony made that correction
6 on the Court's copy.

7 THE SPECIAL MASTER: Very well. You have
8 cleared that up for me, Mr. Echohawk. Thank you.
9 Go ahead with this witness.

10 (FURTHER) DIRECT EXAMINATION

11 BY MR. ECHOHAWK:

12 Q Mr. Waples, I believe the last question we had
13 before we were interrupted was the formulation
14 of the standards. You said that it was input of
15 various people.

16 What expertise did you bring to this formula-
17 tion process?

18 A That of --

19 THE SPECIAL MASTER: That's not necessary as
20 far as proving him as an expert. He's been
21 admitted as an expert.

22 MR. ECHOHAWK: I would just like to set the
23 stage that Mr. Waples has --

24 A (By the witness) My expertise involved both the
25 waples-direct-echohawk

1 important parameters that are of interest to a
2 soils scientist and the area of land classifica-
3 tion.

4 There are certain parameters that need to
5 be included in a set of standards such as these
6 that come from the science of soils and from
7 expertise in land classification.

8 Q (By Mr. Echohawk) Mr. Waples, the Master touched
9 upon this point that the standards that are in
10 36-A were the same standards used to classify
11 the future lands and those lands in the historic
12 portion of your program that you indicated were
13 the major project areas.

14 Why would it be necessary to use the same
15 land classification standards in future lands
16 and these historic projects?

17 A This was necessary because the future lands are
18 large project units, so a set of standards is
19 necessary to ensure they meet all the criteria for
20 a large project.

21 The arable lands within the major projects
22 are, in fact, in project developed lands, so it
23 stands to reason that the same standards would be
24 necessary for one project as to another as long

25 waples-direct-echohawk

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as they are in the same area.

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waples-direct-echohawk

1 Q (By Mr. Echohawk) Mr. Waples, in your professional
2 opinion, is it proper to use the standards in
3 36-A for both the future projects and historic
4 projects?

5 A Yes, it is.

6 Q Mr. Waples, I think we were in the middle of
7 discussing the work that was done on this, on
8 this historic major project. Would you please
9 describe for us the field program that was
10 conducted in the major project of the historic
11 program.

12 A Yes. In general terms --

13 THE SPECIAL MASTER: I'm having problems,
14 Mr. Echohawk, problems with when you say in the
15 major project areas. In the major project areas,
16 when you say that term, that includes the six
17 land classifications of Crowheart through Arapahoe
18 as well as the Federal Indian Projects?

19 MR. ECHOHAWK: No, Your Honor.

20 THE SPECIAL MASTER: Just the FIP's?

21 MR. ECHOHAWK: The historic major projects
22 which include the FIP's plus LeClair and Midvale.

23 THE SPECIAL MASTER: But excluding the six?

24 MR. ECHOHAWK: Yes. Those would be referred

25 waples-direct-echohawk

1 sometimes to as the future or proposed projects.

2 THE SPECIAL MASTER: All right, thank you.

3 MR. ECHOHAWK: I believe Ms. Sleater
4 outlines in her opening statement the United
5 States has split this claim essentially into
6 future lands, those that currently have no
7 history of irrigation, which Mr. Kersich did
8 the land classification work for, and then now
9 Mr. Billstein set the stage for the historic
10 work, which has the various components of those
11 acres that are currently receiving water. That's
12 the 35,000, 35,000 acres he testified about.

13 And then Mr. Waples will begin the building
14 block process for the additional portion of the
15 historic claim, which will be the arable acreage,
16 then we will have another witness testify about
17 certain engineering considerations, and we'll
18 have an economist testify as to the economic
19 feasibility.

20 THE SPECIAL MASTER: Thank you for refreshing
21 my memory on that.

22 Q (By Mr. Echohawk) Please describe for us the
23 field program that was conducted in the major
24 historic projects.

25 waples-direct-echohawk

1 A As I said, I'll describe it in general terms,
2 we'll get into the nitty gritty here after a
3 bit.

4 It's a program similar to that described
5 by Mr. Kersich. The same type of program, as
6 a modified, semi-detailed program that was
7 based on the WPRS type standards and same type
8 of program. It involved sending experienced
9 land classifiers out to the field where they
10 made evaluations as to the arability of the land
11 topographic -- As we talked about before, all
12 the various components that go into saying whether
13 land is arable; the topography, the soils
14 characteristics, the drainage, the soil chemicals,
15 the whole works.

16 Holes were augered, a good deal of holes
17 were augered, and a good deal of time spent on
18 the Reservation. Now, there were, in the major
19 project areas, there were about 224 holes augered,
20 and this -- Well, if one looks at the standards
21 required for semi-detailed type classification,
22 we're looking at approximately four holes per
23 section. This is not exactly, but 17 or 18 holes
24 per section. I would say that it was a rather

25 wapes-direct-echohawk

1 intensive program to determine the arability
2 of these lands.

3 Q Was there a laboratory program conducted?

4 A Yes, there was. Many of the holes were sampled.
5 The samples were transported to the soils
6 laboratory in Billings where analysis was run on
7 them.

8 We had, I believe, 100 -- 1,084 samples in
9 the entire historic arable lands program.

10 Q That 1,084 figure includes land that would be
11 found outside of the major projects; is that
12 correct?

13 A Yes.

14 THE SPECIAL MASTER: Lands in the future?

15 THE WITNESS: No, sir. The lands in the
16 major project areas plus the non-project areas,
17 but this is simply the historic arable as
18 opposed to the future.

19 Q (By Mr. Echohawk) Mr. Waples, when did this
20 land classification work take place in the historic
21 arable lands?

22 A It was done in September and October of 1980.

23 Q And for the entire historic lands classification
24 program on idle lands, which we're now talking

25 waples-direct-echohawk

1 about, that were inside the major historic
2 projects and historic lands outside the major
3 projects, how long did it take to do that?

4 A Well, approximately three man-months.

5 Q How many people were working on this project?

6 A Land classifiers, there were four; Chick Smith,
7 Frank Monan, Reed Hanson and myself.

8 Q Mr. Waples, talking somewhat about land
9 classification, is it your testimony -- throughout
10 Mr. Kersich's -- Would you please explain to us
11 what's involved in actual land classification
12 work, what things do you consider when you
13 classify land?

14 A Yes. This is a, kind of a complicated question,
15 perhaps because there's more to this thing than
16 meets the eye, there's certainly more than appears
17 on a given log sheet, soil log.

18 There are two, I like to think of it as two
19 phases really. The first of which involves a
20 general study of the landscape. It involves
21 study of the drainages in which you work. It
22 involves the materials from which the soil's
23 derived, the general topography, it's a general
24 evaluation.

25 waples-direct-echohawk

1 This gives the classifier, as he works
2 throughout the area, it gives him a good knowledge
3 of the area, it gives him an idea what to expect
4 on a given parcel of ground before he's ever
5 drilled a hole on it. It may not be the final
6 word, but he has a good idea of what's going on.

7 The second part is the actual classification
8 of a parcel of ground, a site specific spot. In
9 this case a field, one that was formerly irrigated
10 or lay under a ditch. In this process -- Well,
11 perhaps I could use just by way of example, Crow
12 Creek on the Reservation. If I could show the
13 Court --

14 THE SPECIAL MASTER: Yes, you may.

15 THE WITNESS: On the exhibit where this lies.

16 Crow Creek is a tributary of the Wind River,
17 runs from north to south roughly in the western
18 portion of the Reservation.

19 I formed classification in that drainage as
20 well as other classifiers. The actual process
21 of classification, as I said before, the general
22 characteristics of the drainage are noted. In the
23 case of Crow Creek, in many places it's deep in
24 size, you can see how deep the soils are, you can

25 wapes-direct-echohawk

1 see if there are gravels, you can see bedrock
2 outcrops, whatever. So that's the first part
3 of this program.

4 Then going to a specific tract of land to
5 be classified, first thing that I do is make a
6 general evaluation of that tract. I look at the
7 slope, I see if there's any small gulleys, any-
8 thing that would affect the application of water
9 from a topographic standpoint; is the land too
10 steep, does it need leveling, whatever.

11 The next part includes usually or often
12 augering a hole on this piece of property. The
13 hole is augered, the soil is brought up from
14 the hole and laid out and all the important
15 characteristics of the soil are noted; the texture,
16 of course, the color, structure, soil parent
17 material, whether it's gravel, whether it's shale,
18 whatever. With this information, along with --
19 Well, then from there a sample is taken, usually.
20 It's sent off to the lab and the three parts of
21 information, the topographic evaluation, the
22 initial evaluation, the general evaluation of the
23 drain and the soils information all go into the
24 classification of that land as a preliminary

25 waples-driect-echohawk

1 classification. Once the lab data is back,
 2 and there's a drainage consideration, all these
 3 items go into making a final land classification
 4 determination.

5 THE SPECIAL MASTER: Mr. Echohawk, do you
 6 mind if we take a break for ten minutes?

7 MR. ECHOHAWK: No, that's fine.

8 THE SPECIAL MASTER: Why don't we do that.

9 (Thereupon a ten minute
 10 recess was taken.

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1 THE SPECIAL MASTER: Okay, Mr. Echohawk.

2 MR. MERRILL: Before Mr. Echohawk resumes
3 his direct examination, I would like to request
4 the indulgence to break by twenty to noon, if
5 not sooner. My client has asked to meet with
6 myself and Mr. White for lunch.

7 THE SPECIAL MASTER: It shall be done.

8 Q (By Mr. Echohawk) Mr. Waples, we just finished
9 the discussion of what things went into land
10 classification.

11 Do you need to put a hole in every parcel
12 to make an accurate land classification?

13 A No, sir, not at all.

14 Q Why not?

15 A As we discussed when we went through the procedure
16 of land classification, many, many things go into
17 this: a general feel of the landscape, the more
18 site specific feel the land classifier gains from
19 a particular drainage, a particular landscape,
20 oftentimes there's other information available
21 to that man in the field that doesn't show up on
22 the log form -- on a log form.

23 There are many, many things that go into this
24 process, and you put your holes where they will
25 do you the most good.

waples-direct-echohawk

1 So if one considers -- well, the man's job
2 in the field is to know what he's doing. That's
3 the most important thing. There's judgment
4 involved and, therefore, a hole is not required
5 in every parcel.

6 Q Could you make a determination of how deep the
7 soil is if no hole is drilled?

8 A There are several ways. Oftentimes, especially
9 along the tributary drainages, there are indica-
10 tions of how deep the soil is through cutbanks,
11 whatever, and also just in general, the example
12 we used before on Crow Creek, I know that drain-
13 age very well. I know what to expect.

14 There are several holes throughout that
15 drainage up and down the drainage, and we know
16 the area well enough to know that in most places
17 it is --

18 THE SPECIAL MASTER: Why did you put the
19 holes where you did in the Crow Creek area? Why
20 did you drill the holes where you did?

21 THE WITNESS: We need certain base informa-
22 tion. Most parcels of any size will have a hole
23 in them.

24 THE SPECIAL MASTER: My observation was only
25 waples-direct-echohawk

1 this, that when you use the language, "We put
2 the holes where they will do the most good," I
3 hope you were speaking as an objective party
4 and not as an advocate.

5 THE WITNESS: That's correct, yes.

6 THE SPECIAL MASTER: A slight distinction
7 there.

8 THE WITNESS: More specifically what I meant
9 is you try to put them in the larger parcels and
10 also parcels that may have a problem of some
11 kind, trying to get an accurate classification
12 here, and that's the purpose.

13 Q (By Mr. Echohawk) Mr. Waples, as one of the
14 supervisors of the land classification work done
15 on the historic idle lands, did you have a chance
16 to review the land classification work done?

17 MR. MERRILL: Objection, Your Honor --
18 not an objection, but what land classification
19 work? Are we talking about other studies or parts
20 of this one?

21 MR. ECHOHAWK: I'll rephrase it.

22 Q (By Mr. Echohawk) In regards to the historic idle
23 lands classification that you have discussed here
24 today, did you have a chance to review that

25 waples-direct-echohawk

1 particular land classification work?

2 A. Yes, I did.

3 Q. Would you please describe that review process?

4 A. Yes. It was in three basic forms.

5 First, while the classification was going on,
6 I spent time in the field with the individual
7 classifiers. If there was a tract that there was
8 some question about, we would meet and come to
9 some consensus and try to clear up any problems
10 as the classification went on.

11 The second part was the review after the
12 classification was completed. This involved my
13 looking at the various parcels, checking the
14 classification, augering some holes, checking
15 the soils, checking everything, the topography,
16 seeing if that classification met the standards,
17 whether the symbol agreed with what was there in
18 reality.

19 A lot of it was done with a helicopter,
20 which allowed me to view many, many parcels of
21 land in a relatively short time and yet do a
22 complete and comprehensive job.

23 It allowed, in fact, a very good quality
24 control procedure.

25 waples-direct-echohawk

1 The third part involved a review in the
2 office. It involved checking the laboratory
3 data, going through and making sure things jibed
4 with each other, going through the logs and the
5 field sheets and placing a final land classifi-
6 cation determination on the lands.

7 Now, Mr. Toedter, the drainage engineer,
8 accompanied me during some of this review, which
9 allowed a consensus of opinion on drainage
10 questions.

11 Q Mr. Waples, in regard to the land classification
12 work in the historic program regarding the major
13 projects, that would be federal irrigation pro-
14 jects, LeClair and Midvale, was the work done
15 there done in a manner acceptable to your pro-
16 fession?

17 A Yes, sir, it was. The set of standards are the
18 type of standards that are used in the profession.

19 The people involved were very experienced
20 in their professions. The work was done in the
21 manner that I can be assured was proper. It was
22 a proper classification.

23 Q Mr. Waples, let me skip back just a bit to the
24 field work that was conducted when the people

25 waples-direct-echohawk

1 were out drilling the holes.

2 We've had testimony previously by Mr. Kersich
3 that a person would drill a hole and then mark
4 it down on an aerial photograph.

5 Is that the way that the work was conducted
6 in this historic program too?

7 A. Yes, it's the same process. Holes are drilled and
8 logged and the initial -- the preliminary land
9 classification is noted on the photograph to be
10 finalized later in the office when the rest of
11 the information is available.

12 Q. This process of using aerial photographs in the
13 field to delineate the lands classified and make
14 your notations on, is that commonly accepted
15 practice in the land classification work?

16 A. Yes, sir, it is. It's the most accurate way of
17 delineating whatever land boundaries. It allows
18 the people in the field to locate themselves.
19 It proves landscape data.

20 You can see the various land forms or what-
21 ever. It allows an accurate way of doing this
22 business.

23 Q. Does the Water and Power Resources Service in
24 their land classification work also use aerial

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1 photographs?

2 A. Yes, sir, they do.

3 Q Mr. Waples, let's move on ahead to the areas
4 that -- the idle lands that were classified in
5 the historic program that are outside of the
6 historic projects, those Midvale, LeClair and
7 the FIPs, what was your involvement in that work,
8 in that phase of the program?

9 A. My roles were essentially the same as discussed
10 during the project phase, that of a joint super-
11 visor, land classifier, and making the final land
12 classification determinations.

13 Q With these lands -- we are now speaking of what
14 we could refer to now as the non-project historic
15 lands, those outside all the projects -- were
16 these lands classified in accordance with the
17 same standards that are identified in Exhibit
18 C-36-A, those used by Mr. Kersich?

19 A. No, sir, they weren't. We used a modified set of
20 standards.

21 Q An additional set of standards?

22 A. Yes, sir.

23 Q Mr. Waples, I show you what has been marked as
24 United States Exhibit WRIR C-156.

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1 Mr. Waples, would you please identify this
2 exhibit for us?

3 A Yes, I will. C-156, entitled, "Land Classifica-
4 tion Standards, Non-project Irrigated Lands,
5 Wind River Indian Reservation, Wyoming."

6 Q Mr. Waples, this document contains three pages.
7 Are these the land classification standards used
8 in the land classification work of the non-
9 project historic land?

10 A Yes, sir, they are.

11 Q Mr. Waples, why was it necessary to use a differ-
12 ent set of standards as opposed to those we have
13 discussed previously?

14 A Okay. When we started classifying the lands in
15 the non-project study areas, it became obvious
16 that there were lands that were being irrigated
17 in those areas, especially on the tributary
18 drainages that would not meet the project land
19 classification standards, so after this was noted
20 in the field, the people who work on land class-
21 ification standards in the office -- Mr. Kersich,
22 Mr. Billstein, Mr. Smith, Mr. Toedter, and myself
23 -- got together and came up with a new set of
24 standards that would more closely approximate the

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conditions in the field.

The major differences lie in two areas. On page one where it says soil depth to clean sand, gravel or cobbles, we took out the sentence that says "of good free-working soil."

* * * * *

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1 Q (By Mr. Echohawk) You're speaking of the
2 differences of the project standards that are
3 contained within C-36-A and the non-project
4 standards of C-156; is that right?

5 A Yes, I am.

6 Q Okay.

7 A Perhaps -- excuse me.

8 THE SPECIAL MASTER: Was that the only
9 change on page 1 of the differences in the two
10 sets of standards?

11 THE WITNESS: Yes. That was the only tillage
12 consideration.

13 The other change is on page 3 under drainage.
14 On C-156, if I may read it, under drainage it
15 says: Both surface and subsurface drainage are
16 entirely the responsibility of the individual
17 water user.

18 That's one of the changes, and the second
19 change under drainage is the fact that in Class
20 4 the depth to barrier was raised from six to
21 four feet.

22 Q (By Mr. Echohawk) Mr. Waples, you mentioned that
23 the first difference between the standards was a
24 tillage consideration, that change is contained

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1 on page 1. Could you tell us in a little more
2 detail why it was necessary to make a tillage
3 adjustment?

4 A Yes, sir. Many of the lands in the tributary
5 drainages are derived from glacial outwash
6 deposits and terrace materials that are very,
7 very stoney, very cobbly, which may ordinarily
8 preclude them from being tilled in a conventional
9 manner. However, many lands in these drainages
10 are being irrigated, the ones that aren't too
11 rocky for pasture.

12 THE SPECIAL MASTER: That aren't too rocky
13 for pasture?

14 THE WITNESS: Excuse me, that are too rocky
15 for conventional cultivation. They're being used
16 for pasture.

17 Now, where I was raised, our ranch, there are
18 pasture lands that probably wouldn't meet any
19 arable standards. We're in a similar type
20 situation, right along the mountains where the
21 stones are very prevalent, but I would not be too
22 impressed with some yahoo from out of state that
23 would come and classify my land and say it was
24 not arable when I know very good and well I take

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1 forage off it every year and it provides needed pasture
2 and increases the value of my property. So that
3 was a major consideration.

4 The second --

5 THE SPECIAL MASTER: But virtually in every
6 instance that type of land you just described
7 is pasture only, isn't it?

8 THE WITNESS: Yes, that's correct.

9 THE SPECIAL MASTER: You turn out your
10 livestock and horses and eat the grass?

11 THE WITNESS: Yes.

12 THE SPECIAL MASTER: Flood it in the spring-
13 time?

14 THE WITNESS: Right. There's no mechanical
15 harvesting.

16 Q (By Mr. Echohawk) Okay. There was another
17 change or difference you referred to in drainage.

18 Why was it necessary to make this adjustment?

19 A Okay. The tracts that we're discussing on the
20 nonproject -- in the nonproject areas are
21 usually rather small, usually rather isolated.
22 They usually lie right along a stream, often
23 they are raised above the stream. Often they are --
24 are draws or actually the stream that will act

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1 as a natural drain for these lands.

2 They do not have the requirement of meeting
3 project type drainage. The reason we have
4 drainage requirements in project type standards
5 is if large blocks of land that interact with
6 each other, the water table rises in one place,
7 it's going to affect another parcel of land;
8 position must be considered.

9 And that's why we have project drainage.
10 On these small 20, 40, 60 acre pieces of ground
11 it was just not feasible, that's why it became
12 the responsibility of the water user, which is
13 in fact what happened in reality.

14 The other change of the drainage was raising
15 the depth to barrier from six feet to four feet
16 for Class 4 lands.

17 Now, these are only pasture lands. They are
18 lands that -- that as the Master said may have
19 a shot of water in the spring. You get what you
20 can from them, but they are certainly viable,
21 they provided needed pasture, they may provide
22 the pasture that would allow a person to make it
23 or not make it. And even though they do not
24 meet the arable standards, they most certainly --

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1 they are most certainly arable for a limited
2 type use.

3 Q You said they don't meet the arable standards.
4 What do you mean?

5 A Yes, excuse me. I meant the project standards,
6 they do not meet the six feet depth to barrier.

7 THE SPECIAL MASTER: Is it premature of me
8 to ask how many sum acres you have found of non-
9 project historic lands on the Reservation, total
10 acreage in that classification?

11 THE WITNESS: Of the Class 4? Okay. We
12 didn't break out the Class 4 by depth to barrier,
13 land can be Class 4. It can be Class 4 for other
14 reasons other than depth to barrier. If it has
15 cobbles, if it has steep topography, rough
16 topography. But as far as nonproject Class 4
17 lands, we had 1,594 acres.

18 THE SPECIAL MASTER: Thank you.

19 Q (By Mr. Echohawk) Mr. Waples, approximately how
20 much land in this historic nonproject area, was
21 classified under these modified standards?

22 A About 12,000 acres.

23 Q When was this work performed?

24 A At the same time as the other historic, in the
25 waples-direct-echohawk

1 September, October, 1980.

2 Q Was that performed by the same people?

3 A Yes, sir, it was, with the exception of Mr.
4 Monan. He worked only on the project lands.

5 Q Okay. Is there any distinction between the
6 field work done in the historic project areas
7 and the historic nonproject areas?

8 A Not really in substance. It is the same type
9 of program, we were after the same information.
10 The bottom line is whether the lands are arable.

11 The lands were subjected to -- to a
12 field program. Let's see, I think I have the
13 number of holes. There were 147 holes put down,
14 which is about eight per section. It's -- it is
15 certainly at least as intensive as a semi-
16 detailed study.

17 It involved the same type of things, the
18 topography, the soils, the general land
19 evaluation, the laboratory analysis. All these
20 things went into forming the final determination
21 of arability.

22 Q Was there laboratory work conducted on this
23 phase of the program also?

24 A Yes, there was.

25 waples-direct-echohawk

1 Q Okay. As one of the supervisors of this project,
2 did you have a chance to review this portion of
3 the land classification work, the historic non-
4 project areas?

5 A Yes. It was a similar type review as was done
6 on the project lands, the review during the
7 classification process, the review after the work
8 was done. There again holes were put down,
9 checked the classification, checked the parcels.
10 There again we used a helicopter and checked,
11 you know, most of the parcels for quality
12 control.

13 I redid some of the classification, and
14 then the third phase the office review where the
15 final determinations were made.

16 Q Was the -- this portion of the work in the
17 project historic areas, was this work done in
18 a professional manner or manner accepted by your
19 profession?

20 A Yes, it was.

21 Q Mr. Waples, do you have a professional opinion
22 as to the amount of arable acreage contained
23 within the program that we've been talking about,
24 entire historic arable lands area?

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1 THE SPECIAL MASTER: Let me have that
2 question redefined again to make sure what
3 you're asking for, a total acreage, so try it
4 again one more time, Mr. Echohawk. Do you have
5 an opinion --

6 Q (By Mr. Echohawk) Do you have a professional
7 opinion as to the amount of arable acreage
8 contained within the historic acres that we have
9 discussed thus far that would include the
10 historic major projects in the historic non-
11 project area?

12 A Yes, sir, I do. The total arable acreage in
13 the historic arable lands program was 12,139
14 acres, of which the major project areas, a total
15 of 7,221 acres were deemed arable. The nonproject
16 lands, 4,918 acres.

17 I'll break these into Class 1, 2, 3, and 4,
18 land Class 1, 2, 3 and 4.

19 The nonproject Clas 1, 88 acres; Class 2,
20 1,279 acres; Class 3, 1,959; Class 4, 1,594 acres.

21 The project lands were zero lands in
22 Class 1, 1,419 acres, 1,419 acres in Class 2,
23 4,408 acres in Class 3, and 13 -- excuse me,
24 1,394 acres in Class 4.

end 7

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1 THE SPECIAL MASTER: Are these figures just
2 given available in tabular or statistical form?

3 MR. ECHOHAWK: Yes, Your Honor. I was just
4 about to get to that.

5 Actually, Your Honor, I probably have them
6 in every tabular form you could imagine.

7 THE SPECIAL MASTER: All right. You name
8 it, you've got it. All right.

9 MR. ECHOHAWK: Perhaps, Your Honor -- what
10 I have is four sets of tabulations. If I could
11 distribute them all at once, it may save a little
12 time.

13 Q (By Mr. Echohawk) Mr. Waples, I show you what
14 has been marked United States Exhibit WRIR C-223,
15 224, 224-A, and Exhibit 225.

16 MR. ECHOHAWK: Give me a second to pass
17 these out.

18 Q (By Mr. Echohawk) Mr. Waples, would you identify
19 for the record, please, what the exhibits are
20 that I just handed you?

21 A Yes, sir, I will. WRIR C-223 is entitled, "Table
22 8, Historic Arable Lands Totals."

23 WRIR C-224 is entitled, "Table 9, Historic
24 Arable Lands, Major Irrigation Projects by Land

25 waples-direct-echohawk

1 Class."

2 C-224-A is entitled, "Historic Arable Lands,
3 Non-project Lands Totals by Land Class." That's
4 Table 11.

5 And C-225 entitled, "Table 10-A and 10-B,
6 Historic Arable Lands, Major Irrigation Projects."

7 Q Does this also include the non-project areas?

8 A Pardon me. That Table 10-A is the major irri-
9 gation projects, and Table 10-B is the non-project
10 lands.

11 Q Okay. On Exhibit 225, the first column, does
12 that also have an exhibit number?

13 A Yes, it does. It refers to the exhibits that I
14 have in the corner here. There is one exhibit
15 number for each exhibit.

16 THE SPECIAL MASTER: Why don't you total
17 those?

18 MR. ECHOHAWK: Of those exhibits?

19 THE SPECIAL MASTER: Yes.

20 MR. ECHOHAWK: I think there are sixty-four.

21 THE SPECIAL MASTER: And they are keyed to
22 tables 10-A and 10-B of 225; is that correct?

23 MR. ECHOHAWK: That's correct. Your Honor,
24 could I have a brief moment to discuss something

25 waples-direct-echohawk

1 with Mr. Flint?

2 THE SPECIAL MASTER: Yes, of course.

3 (Brief pause.

4 THE SPECIAL MASTER: All right. Let's
5 convene.

6 Q (By Mr. Echohawk) Mr. Waples, the tables that
7 you just identified, 223, 224, 224-A, and 225,
8 reflect the accurate totals in various manners.
9 Are those acreage totals accurate to the best of
10 your knowledge?

11 A Yes, they are.

12 Q Are they a true and accurate representation as
13 to the acreages, arable acreages, found as a
14 result of the land classification work that you've
15 testified to here today on the historic idle
16 lands?

17 A Yes, they are.

18 Q Mr. Waples, I place before you on the easel what
19 has been marked for identification as United
20 States Exhibit WRIR C-158.

21 Would you please identify that exhibit?

22 A Yes, sir, I will. C-158 is entitled, "Historic
23 Arable Lands on USDA Aerial Photo, '6' 379-226
24 dated 6-25-80." This particular one shows the

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1 Wind River Indian Reservation boundary.

2 It shows the township and range that it
3 covers. In this case it's Township 6 North,
4 Range 6 West.

5 In that township and range portions there
6 are four sections, 26, 27, 34, and 35, and Town-
7 ship 5 North, 6 West, portions of sections 2
8 and 3.

9 The legend at the bottom of the exhibit
10 shows the symbology that is used on the exhibit.

11 The first number is 10-1X, is the tract
12 number. We numbered these tracts in a similar
13 manner to that which Mr. Billstein did.

14 Each drainage has a number, which is the
15 first number. Each tract has a number, which is
16 in this case the 1X.

17 As Mr. Billstein similarly -- similarly to
18 what Mr. Billstein did, the second number is the
19 tract -- excuse me, excuse me -- the second
20 number is the land class. In this case it's 4/6,
21 meaning it's four for gravity and nonarable for
22 sprinkler.

23 The third number is the acreage. It also
24 shows up down here. In this case it's 14.2 acres.

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Boundaries are shown. In this case, as I said before, we have the Reservation boundary, and we have the section corners also marked.

Other than the actual tract of land which is being claimed -- excuse me -- which is called arable, that is the information on the photo.

Also a North arrow is shown.

* * * * *

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1 Q (By Mr. Echohawk) Mr. Waples, what's the
2 scale of this particular map?

3 A The scale is one inch equals 1,000 feet.

4 THE SPECIAL MASTER: Mr. Echohawk, is it
5 your intention to have this witness identify
6 each of the 64 -- each of the 63 remaining
7 exhibits of this series this way?

8 MR. ECHOHAWK: No, Your Honor. What I
9 would attempt to do is ask if he prepared
10 similar exhibits in a similar manner, similar
11 information reflected on them.

12 THE SPECIAL MASTER: And offer all at one
13 time?

14 MR. ECHOHAWK: And offer them all at one
15 time.

16 THE SPECIAL MASTER: I'm grateful to you.

17 Q (By Mr. Echohawk) You can have a seat, Mr.
18 Waples.

19 Mr. Waples, I hand you what has been marked
20 United States Exhibit WRIR C-222. Would you
21 please identify Exhibit C-222 for us.

22 A C-222, the title of it is Wind River Indian
23 Reservation. What it shows are the -- the first
24 nine numbers are the major project study areas

25 waples-driect-echohawk

1 and how they are delineated on the exhibits.
 2 Again, Ray Canal would be labeled or a tract
 3 of land served by Ray Canal would be labeled
 4 1-1X.

5 Q So this exhibit there is a relationship to
 6 C-158 in the parcel numbers?

7 A Yes.

8 THE SPECIAL MASTER: I'm getting lost,
 9 gentlemen. Let's go back again to the Ray
 10 Canal. What does the No. 1 before the Ray
 11 Canal portend?

12 THE WITNESS: That's the drainage number,
 13 sir. A tract of land that is served by Ray
 14 Canal will have the identifying number 1, then
 15 the tract number such as 1X.

16 THE SPECIAL MASTER: Will that appear on
 17 all 64 of these exhibits that are prefaced?

18 THE WITNESS: It will become more obvious
 19 here, sir. On Exhibit C-158 note the tract
 20 number 10-1X. The 10 refers to the East Fork
 21 of the Wind River. The tract number follows.
 22 If we had say Ray Canal on this exhibit, the
 23 first number would be 1.

24 THE SPECIAL MASTER: One, I see. Thank you,

25 waples-direct-echohawk

1 I understand that now.

2 Q (By Mr. Echohawk) Mr. Waples, Exhibit C-222
3 has a listing of the major projects or the
4 drainages on the Wind River Reservation; is that
5 right?

6 A Yes.

7 Q And do these numerical listings correspond to
8 the first, first digit of the tract numbers on
9 Exhibit C-158 and similar exhibits that will
10 soon be identified?

11 A Yes, they do.

12 MR. ECHOHAWK: Your Honor, I believe, for
13 the record, I think this numbering system
14 1 through 36 is the same corresponding numbers
15 for the tract numbers that were assigned to
16 Mr. Billstein's exhibits.

17 Q (By Mr. Echohawk) Mr. Waples, looking at
18 C-158, have you prepared similar exhibits
19 reflecting the location acreages and tract
20 numbers for the remainder of the historic idle
21 lands that you have testified about here today?

22 A Yes, I have.

23 Q Those be exhibits including 158 through Exhibit
24 WRIR C-221?

25 waples-direct-echohawk

1 A Yes, they are.

2 Q Are those exhibits all prepared in a similar
3 manner?

4 A Yes.

5 Q They all reflect similar information?

6 A Yes, they do.

7 Q They all of a similar scale?

8 A Yes, they are.

9 Q Are they all of similar accuracy?

10 A Yes.

11 Q Are they all prepared under your direction?

12 A Yes, they were.

13 Q Mr. Waples, if you'd refer back to Exhibit C-225,
14 I notice the exhibit number column on the far
15 left-hand side of the exhibit C-225, there are
16 certain exhibit numbers shown there. Those
17 exhibit numbers and -- correspond to the exhibit
18 numbers of the large exhibit such as is on the
19 easel?

20 A Yes, they do. This particular C-158 does not
21 show in table 10A, it shows rather in 10B.

22 Q So they're not sequential; is that right?

23 A That's correct.

24 THE SPECIAL MASTER: Are you offering them
25 waples-direct-echohawk

1 into evidence at this time?

2 MR. ECHOHAWK: Let me check my list and
3 see if we've got them all offered. I think I
4 do.

5 (Brief pause.)

6 THE SPECIAL MASTER: Do they begin with
7 C-159?

8 MR. ECHOHAWK: 158.

9 THE SPECIAL MASTER: They begin with 158,
10 right. And they end with 221?

11 THE WITNESS: That's correct.

12 THE SPECIAL MASTER: And I presume they'll
13 be no voir dire on these exhibits or do you
14 want to wait and do that after lunch?

15 MR. MERRILL: Your Honor, there's going to
16 be a lot of voir dire.

17 THE SPECIAL MASTER: In that case it's
18 11:25 and let's adjourn for lunch, if that's
19 all right with you, Mr. Echohawk?

20 MR. MERRILL: He hasn't offered them yet.

21 MR. ECHOHAWK: That's fine. I have one
22 additional exhibit to identify and discuss, but
23 that may take awhile, so we can adjourn now.

24 THE SPECIAL MASTER: Let's stay adjourned

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until 1:30.

(Thereupon a lunch recess
(was taken from 11:25 until
1:30.)

* * * * *

W. J. ...
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