

3-12-1981

## Trial Transcript, Vol. 23, Morning Session

Frontier Reporting Service

Follow this and additional works at: <https://digitalcommons.law.uidaho.edu/bighorn>

---

### Recommended Citation

Frontier Reporting Service, "Trial Transcript, Vol. 23, Morning Session" (1981). *Bighorn*. 182.  
<https://digitalcommons.law.uidaho.edu/bighorn/182>

This Transcript is brought to you for free and open access by the Hedden-Nicely at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Bighorn by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

File 130  
4381  
Box 10

Case # 4993

File # 130

4381

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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

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

Civil No. 4993

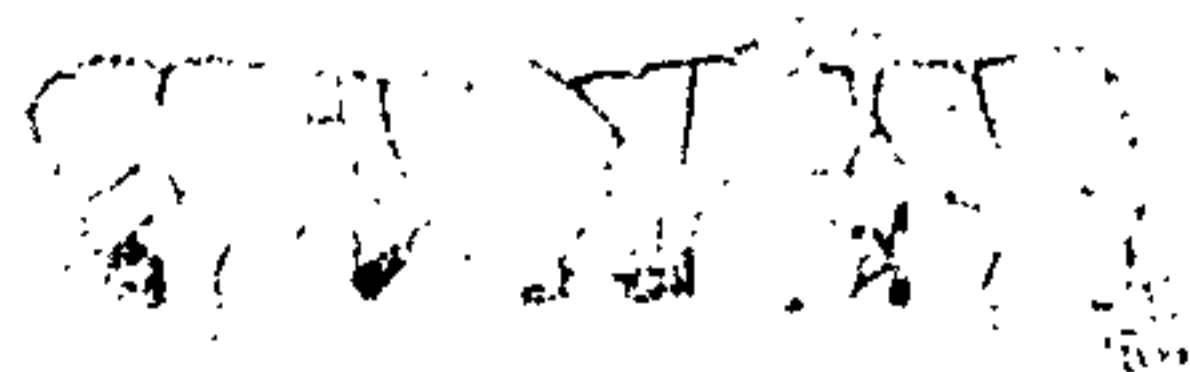
FILED  
3-17 1981

*Margaret W. Hampton* CLERK  
DEPUTY

VOLUME 23

Morning Session

Thursday, March 12, 1981



**ORIGINAL**

APPEARANCES

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

FOR THE STATE OF  
WYOMING:

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

FOR THE UNITED STATES  
OF AMERICA:

MS. REGINA SLEATER  
Attorney at Law  
Land and Natural Resources  
Division  
Department of Justice  
Federal Building  
Cheyenne, WY 82002

and

MR. TOM ECHOHAWK  
Attorney at Law  
Land and Natural Resources  
Division  
1961 Stout Street  
Denver, CO 80294

FOR THE ARAPAHOE  
TRIBE:

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

FOR THE SHOSHONE  
TRIBE:

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

FOR THE PRIVATE  
WATER HOLDERS:

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

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

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

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

1 settlement discussions.

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

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

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

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

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

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

24 Next.

25 MR. ROGERS: Your Honor, I, yesterday

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

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

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

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

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

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

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

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

19 THE SPECIAL MASTER: You have no intention?

20 MR. ECHOHAWK: That is trust land.

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



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

8 THE SPECIAL MASTER: Nobody appreciates a  
9 lawsuit, Indian, non-Indian, anybody else, I suspect.

10

11

12

13

14

\* \* \* \* \*

15

16

17

18

19

20

21

22

23

24

25

1 MR. ROGERS: The situation, as the Tribes  
2 are feeling pressure from their own constituents, is  
3 that there are these massive entries by whole ranges of  
4 people coming on and digging holes in the land, and they  
5 are not fully appreciative of what in the world this is  
6 all about.

7 They know that the State of Wyoming filed a  
8 lawsuit against the United States and the Tribes, and  
9 that for some reason all of this invasion has had to  
10 occur somehow in connection with this lawsuit.

11 We fully appreciate that the State is entitled  
12 to physical examination of the premises, but our main  
13 point is that there was an entire field season last year  
14 when the State did, in fact, have entry on a large  
15 portion of the lands which are involved in this litigation,  
16 and those are primarily the future undeveloped acreages  
17 to which Mr. Kersich's testimony was initially directed.

18 We feel that entry onto those lands again is  
19 inappropriate since the State was fully advised of the  
20 boundaries of those lands --

21 THE SPECIAL MASTER: Let me interrupt you just  
22 there. Does the State plan additional entry in and exam-  
23 ination of lands to which Kersich has already testified  
24 that are the arable unirrigated lands now?

25

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

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

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

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

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

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

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

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

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

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

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

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

1

not.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 MR. ROGERS: Well, Your Honor --

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

25

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

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

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

19 MR. WHITE: Your Honor --

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

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

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

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

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

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

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

24 Yes, Mr. Echohawk?

25



1

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

2

I would like further --

3

THE SPECIAL MASTER: Okay. Mr. Rogers?

4

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

5

THE SPECIAL MASTER: Let's proceed with your

6

arguments. We are trying to fashion material on which I

7

can base an order allowing the State some opportunity to

8

finish up its examination of lands on the Reservation. I

9

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

10

wrong.

11

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

12

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

13

as examination of lands they knew about and --

14

THE SPECIAL MASTER: I take respectful issue with

15

that because I don't think they have.

16

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

17

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

18

they did not know about in sufficient time to do studies

19

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

20

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

21

identification and demonstration we have set forth.

22

If Your Honor is going to rule that regardless

23

of their previous opportunity to examine those lands that

24

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

25

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 MR. WHITE: They are in the request.

20

21

\* \* \* \* \*

22

23

24

25

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

5 THE SPECIAL MASTER: How many are there?

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

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

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

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

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

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

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

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

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

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

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

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

20 MR. WHITE: I assume --

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

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

5 THE SPECIAL MASTER: Now, Mr. White.

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

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

10 MR. PERRY: Yes.

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

14 THE SPECIAL MASTER: Number 6?

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

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

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



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

2 MR. ROGERS: Your Honor --

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

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

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

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

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

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

25 THE SPECIAL MASTER: Is it immediately

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

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

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

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

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

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

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

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

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

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

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

13 THE SPECIAL MASTER: I assume --

14 MR. ROGERS: We do not.

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

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

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

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

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

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

21 THE SPECIAL MASTER: That's exactly right.

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

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

6 THE SPECIAL MASTER: Was granted.

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

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

17 MR. WEBSTER: I do not.

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

21 MR. WEBSTER: Not personally.

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

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

4 MR. ROGERS: She --

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

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

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

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

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

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

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

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

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

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

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



1 all that difficult for you.

2 Yes, Mr. White.

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

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

10 THE SPECIAL MASTER: Ms. Sleater.

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

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

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

22 MR. WHITE: Your Honor --

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

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

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

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

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

25

\* \* \* \* \*

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

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

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

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

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

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

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

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

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

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

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

17 MR. WHITE: Maybe less.

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

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

22

23

24

25

1

CROSS-EXAMINATION (RESUMED)

2

BY MR. WHITE:

3

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

6

A That's right.

7

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

9

A Primarily.

10

Q Did you touch down at all -- deliberately?

11

MR. WHITE: That's an inside joke.

12

THE SPECIAL MASTER: No engine-out procedures.

13

A I think we set down four or five times.

14

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

17

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

24

If the people wanted additional information or

25

billstein - cross - white

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

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

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

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

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

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

24 THE SPECIAL MASTER: Do you have time?

25 billstein - cross - white

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

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

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

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

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

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

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

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



1 We will accommodate them on that.

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

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

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

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

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

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

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

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

1 use and benefit of the Tribes as an aggregate.

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

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

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

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

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

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

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

3 MS. SLEATER: No, we are not.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 I do not represent the individual Indians. I

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

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

\* \* \* \* \*

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

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

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

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

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

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

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



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

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

12 MR. ECHOHAWK: Not exactly.

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

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

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

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

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

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

15 MR. ECHOHAWK: Your Honor.

16 THE SPECIAL MASTER: Yes.

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

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

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

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

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

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

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

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

4 THE SPECIAL MASTER: And now to me.

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

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

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

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

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

24 We have no problem; is that correct?

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

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

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

14 MS..SLEATER: In what category?

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

17 MS. SLEATER: How many allotments are there?

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

21 MS. SLEATER: We have no idea.

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

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

1 trust ownership of the local land?

2 MS. SLEATER: Your Honor. --

3 MR. WHITE: Your Honor. --

4 MR. ECHOHAWK: Your Honor. --

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

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

11 MS. SLEATER: No, Your Honor.

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

13 THE SPECIAL MASTER: Okay. Well, all right.

14 Did your exhibits get here yet?

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

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

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

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

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

3 THE SPECIAL MASTER: Yes.

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

21 THE SPECIAL MASTER: Surely.

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

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

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

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

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

25 MR. ECHOHAWK: I believe the request the



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

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

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

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

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

9 THE SPECIAL MASTER: Yes.

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

14 THE SPECIAL MASTER: Yes.

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

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

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

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

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

24 MR. PERRY: Excuse me, Your Honor.

25 THE SPECIAL MASTER: I want you to know,

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

9 MR. WHITE: We are --

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

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

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

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

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

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

17 THE SPECIAL MASTER: Certainly, yes.

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

enough.

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

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

\* \* \* \* \*

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

6 MR. WHITE: Barrier.

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

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

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

18 MR. ECHOHAWK: And in addition --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 THE SPECIAL MASTER: Are your exhibits here?

2 MR. WHITE: Yes, they are.

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

5 (Whereupon a recess was taken.)

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

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

9 MR. WEBSTER: Your Honor --

10 THE SPECIAL MASTER: Mr. Webster?

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

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

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

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

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

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

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

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

1 in connection with this case.

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

18           THE SPECIAL MASTER: Mr. Webster?

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

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

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

1 going on for two or three years.

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

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

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

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

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

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

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

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

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

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

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

9 MR. WEBSTER: That would be fine.

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

16 MR. WEBSTER: Thank you, Your Honor.

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

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

25 billstein - cross - white

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

3 MR. WHITE: Yes.

4 THE WITNESS: Approximately how many acres?

5 MR. WHITE: Eighteen.

6 A (By the Witness) I see it.

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

10 (Pause.

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

14 THE SPECIAL MASTER: No problem.

15

16

\* \* \* \* \*

17

18

19

20

21

22

23

24

25 billstein - cross - white

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

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

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

9 Do you want that again, Ron?

10 A Yes.

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

13 THE SPECIAL MASTER: Eighty acres?

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

15 THE WITNESS: What section?

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

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

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

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

21 Q Is it colored red on M-1?

22 A On M-1 it is.

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

25 billstein-cross-white



1 but which are blue in Exhibit C-105?

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

4 Q I'm sorry?

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

10 Q I understand that, Mr. Billstein.

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

12 THE WITNESS: Okay.

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

21 (Brief pause.)

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

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

1 tracts in the North 1/2 of 20 -- North 1/2 of  
2 23?

3 A Four acres, and the land under sprinkler is about  
4 24.

5 Q So in addition to the first four, there is  
6 another four plus 24, is that correct, that's  
7 red on M-1?

8 A Using M-1 as an ownership guide, that's --  
9 they do fall in the red designation.

10 Q And those two which you just described are  
11 located in Section 23?

12 A The first one is in Section 23, the second one  
13 is in Section 24.

14 Q Mr. Billstein, I direct your attention to  
15 Exhibit C-90.

16 MR. ROGERS: Your Honor, may I state at  
17 this point, that while this obviously is in  
18 evidence, give an explanation to the Court --

19 MR. WHITE: If it's in evidence I don't  
20 think there ought to be any statement about it.

21 THE SPECIAL MASTER: Mr. Rogers, please  
22 proceed.

23 MR. ROGERS: The two tracts, to what we have  
24 mentioned earlier, I believe early this week,

25 billstein-cross-white

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

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

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

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

13 A Could I have the legal description read back?

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

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

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

19 (Brief pause.)

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

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

23 A Okay.

24 (Brief pause.)

25 billstein-cross-white

1 A Yeah, I see it.

2

3

4

5

\* \* \* \* \*

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

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

2 A Yes.

3 (Off-the-record discussion.)

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

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

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

20 (Witness complied.)

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

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

24 MR. WHITE: I'll scratch it.

25 billstein-cross-white

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(Mr. White complied.

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

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

MS. SLEATER: All right.

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

THE SPECIAL MASTER: Very well.

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

I'm not sure whether you answered the  
billstein-cross-white

1 previous question. I may have interrupted you.

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

5 A Yes.

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

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

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

16 END OF MORNING SESSION

19 \* \* \* \* \*

25