

3-16-1981

Trial Transcript, Vol. 26, 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. 26, Morning Session" (1981). *Bighorn*. 185.
<https://digitalcommons.law.uidaho.edu/bighorn/185>

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.

File 133
4384
Box 10

case # 4993

File # 133

4384

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

4 IN RE:)

5 THE GENERAL ADJUDICATION)

6 OF RIGHTS TO USE WATER)

7 IN THE BIG HORN RIVER)

8 SYSTEM AND ALL OTHER)

9 SOURCES, STATE OF)

10 WYOMING,)

Civil No. 4993

11 BEFORE: The Honorable TENO RONCALIO, Special Master
12 Presiding.

13 FILED

1981

CLERK

DEPUTY

14 VOLUME 26

15 Morning Session

16
17
18
19 BE IT REMEMBERED that on this 16th day of March,
20 1981, at Room 302, State Capitol Building, Cheyenne, Laramie
21 County, Wyoming, the above-entitled matter resumed for trial
22 before the Honorable Teno Roncalio, Special Master, Presid-
23 ing, whereupon the following proceedings were had, to wit:

24
25 PROCEEDINGS:

ORIGINAL

APPEARANCES

FOR THE STATE OF
WYOMING:

MR. MICHAEL D. WHITE
Special Assistant Attorney General
2900 Energy Center One Building
717 17th Street
Denver, CO 80202
ALSO: MR. STUART RIFKIN and
MR. SCOTT KROB

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
Department of Justice
1961 Stout Street
Denver, CO 80294

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. GEORGE RADOSEVICH
Attorney at Law
910 15 Street, Suite 866
Denver, CO 80202

MR. MICHAEL McCARTY
Attorney at Law
P.O. Box 589
Cody, WY 82414

1 THE SPECIAL MASTER: Shall we come to order,
2 ladies and gentlemen? This morning I believe our
3 scheduled order of business is to hear arguments on
4 the motion that was filed by the United States of
5 America last week to take judicial notice, and I believe
6 you will want to begin, Regina.

7 MS. SLEATER: Yes, sir. Before we begin,
8 Your Honor, although we had thought we had proof
9 read this a number of times before we filed, we noticed
10 a couple of discrepancies and errors in transcription
11 of numbers. We have an amended motion to correct
12 those discrepancies. Other than that, the motion is
13 identical.

14 MR. WHITE: Could we have about five or six
15 minutes to look at those changes?

16 THE SPECIAL MASTER: Can't we go through
17 them in open court?

18 MR. WHITE: Okay.

19 THE SPECIAL MASTER: I think we can all do
20 them together.

21 Do you want the motion to take judicial
22 notice, withdrawn, that was filed last week and substitute
23 this in its place?

24 MS. SLEATER: That will be fine, Your Honor,
25 but I don't really know that it is necessary.

1 THE SPECIAL MASTER: It is done, thank you.

2 Okay, Regina

3 MS. SLEATER: As Your Honor remembers, the
4 summer, starting last fall, I believe the State of
5 Wyoming introduced into evidence various Certificates
6 of Appropriation relating to adjudicated water rights
7 within the Big Horn River Basin. Included within
8 those certificates offered in evidence were numerous
9 certificates which applied to land held in trust by
10 the United States for the Tribes and individual
11 Indians on the Wind River Indian Reservation. I'm sure
12 if Your Honor thinks back to Houston Williams'
13 arguments on this point, you'll remember that according
14 to the attorneys for the State of Wyoming, it was
15 the position of the State of Wyoming that if a person
16 has an adjudicated water right that they have a vested
17 water right and that it is good unless some proceedings
18 for abandonment are brought at some point in time,
19 which has not been done. Your Honor will further
20 recall that hearings in June when the United States
21 was going to raise challenges to various adjudicated
22 water rights, all parties including the United States
23 stipulated to the validity of these rights, at least
24 conditionally. The condition being if at some point
25 in time rights were decreed which were earlier than

1 certain adjudicated rights and there was a certain
2 challenge with due notice after, you know, a period
3 of time to the owners of the rights, those rights
4 could be challenged, but for purposes of the action
5 as it stands now, the State of Wyoming, the United
6 States and the Tribes all stipulated that these
7 rights were valid.

8 From that we go to the point that if we
9 have a stipulation that the water rights listed in
10 the United States amended motion to take judicial
11 notice has been stipulated as valid for purposes of
12 this action as of now, which they have been, they
13 are part and parcel of the rights which Wyoming had
14 introduced, and they are adjudicated water rights
15 within the Basin. There's no question then that can
16 be brought up at this time as to the status of those
17 rights. Those rights, if they were just State
18 rights, they would be valid water rights that would be
19 part of a conditional confirmation that Your Honor
20 was so doing without objection by any party.

21 I might also note that as well as the
22 certificates themselves, there was mention made at
23 the earlier hearings of various background information
24 that related to water rights that were on public
25 record with the State, and there was some suggestion

1 about should those records also be in evidence, and
2 the general agreement was, well, they're public
3 records of the State and as such the Court can take
4 judicial notice of what the Court needs to take
5 notice of. These records consist of --

6 THE SPECIAL MASTER: Are these records you're
7 referring to adjudicated water rights?

8 MS. SLEATER: Yes.

9 THE SPECIAL MASTER: Well, they're already
10 in evidence.

11 MS. SLEATER: Yes, sir.

12 THE SPECIAL MASTER: They're in Master's
13 Number 1.

14 MS. SLEATER: Well, sir, there are certain
15 backup materials that are part and parcel of the
16 public records relating to these adjudicated rights
17 which were not, which copies of these pieces of paper
18 have never been given to Your Honor, and I don't
19 think it's necessary to do so. These are the original
20 permit applications that related to the water right,
21 the map that goes with the permit application, the
22 proofs of appropriation which are then filed by a
23 party after water has been applied on the land. To
24 some of the rights there are then a statement made by
25 the superintendent, the water district or one of the

1 commissioners who states that he has examined it,
2 there is with them the Order of Certification which
3 is different than the certificate, which is the
4 finding of the State Board of Control. These orders
5 usually contain a statement of the field findings
6 or any relationships of the water rights in the Basin
7 and they are issued by the State Board of Control
8 before the certificate is sent out to the water
9 rights holder. That's the information we would like
10 you to take judicial notice of, and I think, as a
11 matter of fact and earlier in these proceedings the
12 Court has already said it would take judicial notice
13 of whatever information was needed.

14 These are public records in the State Board
15 of Control and in the State Engineer's offices.
16 They're available to all parties.

17 Now, for ease and convenience of everyone,
18 I think the judicial notice is the appropriate way
19 to go. If we start copying, it would involve every
20 piece of information that related to these water
21 rights and tearing through the State Engineer's office,
22 and it is a public record regularly kept by a state
23 entity, and as such, is entitled to judicial notice
24 under the Wyoming Rules of Evidence. Now, that's the
25 first part of the motion.

1 And the second part is why do we want you
2 to take judicial notice of all these things. As you
3 can recall the United States was quite vociferous
4 in its challenges to the water rights before the
5 stipulation was entered into. However, there was a
6 stipulation entered by all parties that any adjudicated
7 water rights would be treated as valid for purposes
8 of this adjudication.

9 THE SPECIAL MASTER: I don't recall the
10 word was valid, but whatever the stipulation said it
11 says.

12 MS. SLEATER: I think that no one would
13 object to the confirmation and there would be no
14 challenges mounted until some later point in time.

15
16
17
18
19 * * * * *

1 MS. SLEATER: (Continuing) Besides that,
2 the fact of adjudication is an official action by the
3 State of Wyoming. Under the laws of Wyoming that deal
4 with water, as stated by attorneys for the State of
5 Wyoming earlier -- and I would not want to contradict
6 Mr. Houston Williams on this point -- to get a water
7 right, it's a vested right.

8 Therefore, the State of Wyoming is saying that
9 for these lands described under these adjudicated rights,
10 they are entitled to a permanent water right.

11 That is what we would like the Court -- the
12 information the Court would glean from these records
13 in the Engineer's Office.

14 THE SPECIAL MASTER: No water right is a
15 permanent water right, is it?

16 MS. SLEATER: It's vested until such time as
17 an abandonment proceedings is brought.

18 THE SPECIAL MASTER: I would suspect that's
19 a pretty important condition.

20 MS. SLEATER: My understanding is we are not
21 dealing with an abandonment proceedings at this point.

22 THE SPECIAL MASTER: But you wanted a
23 conclusion that these were permanent water rights,
24 and my point is they couldn't be any more permanent
25 than anything else.

1 MS. SLEATER: I overspoke, I think. These
2 records in the State Engineer's Office show that the
3 State of Wyoming considers -- has certified that
4 there was placed upon this land a water delivery system,
5 and this water delivery system was such that the State
6 of Wyoming in its official capacity would grant to the
7 applicant a vested water right subject to the normal
8 conditions of Wyoming law.

9 This is the information we would like the Court
10 to note. We feel this information in and of itself is
11 sufficient to present a prima facie case that the land
12 covered by these certificates are entitled to a water
13 right in this action.

14 Now, to be very clear, the United States is not
15 saying anything else about this land. We are saying
16 the State of Wyoming gave this land a vested water
17 right. The State of Wyoming issued official documents
18 which said there were water delivery systems on the land
19 that anyone else in the Big Horn or Wind River Basin who
20 had this set of facts, the State of Wyoming would urge
21 the Court to say -- confirm these rights, these are
22 good water rights.

23 Therefore, this is a judicial admission by a party.
24 In fact, it's an extra-judicial admission by a party.
25 The law of admissions by parties is any statement by a

1 party, written or oral, inside or outside the court,
2 may be received in evidence.

3 It's an exception -- well, one of the treatise
4 writers says it's an exception to the hearsay rule.
5 Another one says the hearsay rule does not apply because
6 as a party they could always put on evidence of their
7 own such that they would not fall within the hearsay
8 problems of no chance of cross-examination and such as
9 that.

10 Our main point is that with these lands, if we
11 are held to go through something like what's been
12 going on -- we are held to a standard that far
13 surpasses anyone in the Basin that has an adjudicated
14 water right.

15 Now, the priority date is not the subject of
16 this motion. This is a legal question that lawyers
17 will be briefing for a long time, and the reason I
18 don't want to get into it -- and there are varying
19 priority dates.

20 For a large number of these we are going to be
21 claiming the State right with the State date. For
22 another number, the 1868 date. For another group,
23 if they are on land that was like in the Arapahoe Ranch,
24 which was purchased at a later time, we are not claiming
25 the State date. We are claiming the date of purchase

1 of the land.

2 Anyway, it gets -- each permit has to be treated
3 individually when it comes time to establish priority
4 dates, as Your Honor well knows, as does all the land
5 on the Reservation because the United States' position
6 is if it's something we want sold and then brought back
7 in trust, the latest date we have the land is the date
8 we bought it back, and for the other land that was never
9 sold, the date is 1868. So that all of this is going to
10 have to be broken down later on in the briefing.

11 What we are dealing with today is what has to be
12 applied to show that the land is entitled to a water
13 right.

14 The United States' position -- and we think that
15 this is a very valid position based on the law and
16 based on prior statements of the State of Wyoming and
17 prior positions of the State of Wyoming -- is that if
18 the land has an adjudicated water right, the State of
19 Wyoming has already admitted that that land then is
20 entitled to a water right, and we think it establishes a
21 prima facie case as to all parties that such land is
22 entitled to a water right and that that is sufficient
23 proof for these lands and no other proof is necessary
24 at this time until someone would overcome the presumption
25 raised.

1 THE SPECIAL MASTER: What other proof, such
2 as arability, irrigability, economic validity, and so
3 on?

4 MS. SLEATER: That's right, sir. What I'm
5 saying is if these rights weren't held by the United
6 States in trust for the Indians, they would be absolutely
7 good in the State of Wyoming and that it's a violation
8 of due process and the civil rights of the tribes and
9 anything else to say that we have to go through five or
10 six more steps when anyone else in the Basin would have
11 a perfectly good water right at this point in time.

12 THE SPECIAL MASTER: I didn't think I was
13 requiring you to do that.

14 MS. SLEATER: Well, Your Honor, we have
15 been trying in this case to put on a fairly cohesive
16 and direct case, and as you've noticed from what's
17 happening on cross -- and I'm not saying that the State is
18 not entitled to do this -- we are being held to a much
19 more stringent proof than was being suggested for the
20 holders of adjudicated rights, and all I'm saying is,
21 "Okay, for the land we have adjudicated rights for,
22 let's go back to the standard that everybody else used."

23 THE SPECIAL MASTER: Well, I think I have been
24 fair in trying to use the same standard and grant the
25 legal rights that each side has to examine with precision

1 and thoroughness the position of the other side,
2 and that's how we began on these water rights, and
3 you were very excellent in pursuing it that way with
4 every minute little detail, and the experts were out
5 around the ground. Had it not been for the stipulation,
6 we might have still been on those water rights, so
7 Mr. White has begun the same way on the Reservation,

8 He may not continue through every remaining acre
9 that way, but I can't call down the State or call it
10 to work a little less thorough on them, but we are making
11 progress toward a culmination of the lawsuit, and
12 that's what counts.

13 MS. SLEATER: I was not suggesting that what
14 had gone on was not perfectly proper.

15 All I was saying is that since these lands have
16 an adjudicated water right, that they are entitled to
17 recognition of that fact and recognition of the fact
18 that the State of Wyoming has said that if the land
19 has an adjudicated water right, that's the best right,
20 and that, in and of itself, establishes a prima facie
21 case.

22 You will notice, Your Honor, that --

23 THE SPECIAL MASTER: I understand you.

24 MS. SLEATER: -- we listed these by permit
25 number rather than by adjudication number because all the

1 evidence has gone in by permit numbers, and it's my
2 understanding from talking to private counsel that
3 the common way is to deal with it by permit number, but
4 we could provide adjudication numbers also.

5 THE SPECIAL MASTER: Do you assert now
6 that every acre of these 15,557-1/2 acres are trust lands
7 held by the United States in trust for the Indians?

8 MS. SLEATER: Yes, sir. With the adjudicated
9 water right covered by trust and fee lands, we omitted,
10 from the acreage figure the fee lands, so the permit
11 number may, in fact -- where we list a permit number
12 for 102.4, the permit may cover 150 acres, of which
13 the 47.6 or whatever are fee land and the 102 is trust.

14 Thank you.

15 THE SPECIAL MASTER: Very well. Thank you.

16 MR. WHITE: I would like to make two inquiries.
17 The first inquiry may substantially shorten the argument
18 this morning, and that is if the United States relies
19 on these certificates as evidence of the water right
20 associated with these lands and relies on State law
21 for those rights, including the priority date, we have
22 no objection.

23 THE SPECIAL MASTER: I don't believe Regina
24 said anything about State law in her argument.

25 MR. WHITE: That's what the certificates are

1 issued under, and I want to find out from the United
2 States --

3 THE SPECIAL MASTER: We can't keep this from
4 getting any more complicated than -- Regina asserts
5 State water rights, qualifies it to be considered for
6 a grant of a decree of water rights for this land. She
7 doesn't say that this should be that way because the
8 State gave it a permit. She said the fact that it has
9 a permit, it should be entitled --

10 MR. WHITE: What changes have been made from
11 the original --

12 THE SPECIAL MASTER: Now, that's a good
13 question.

14 MR. WHITE:-- from the original to the amended
15 motion? I would like to know.

16 THE SPECIAL MASTER: My answer is it doesn't
17 make much difference. She has withdrawn the original
18 motion and now we have an amended motion, and that may
19 be unfair because you waived the ten-day notice on
20 your original, not on the amendment.

21 MR. WHITE: I have a stack of certificates,
22 Your Honor, with respect to the original, and I think
23 I'm entitled to know what the new one is.

24 THE SPECIAL MASTER: Would you like ten to
25 fifteen minutes to do that?

1 MR. WHITE: Yes.

2 THE SPECIAL MASTER: And, Regina, would you
3 help to do that?

4 MS. SLEATER: Yes.

5 THE SPECIAL MASTER: We will take a recess,
6 not a break. We will stay close by in case you get
7 it done a little earlier.

8 (Brief recess.)

9

10

11

12

13

14

15

16

* * * * *

17

18

19

20

21

22

23

24

25

1 THE SPECIAL MASTER: Mr. White.

2 MR. WHITE: Your Honor, we've reviewed the
3 amended motion which was submitted today, and there
4 are a large number of additions and changes which
5 we've not had an opportunity to take the time to
6 examine that we ought to. On the other hand, we
7 have some general evidence and argument that we're
8 ready to proceed with and we might as well get that
9 out of the way as long as we have the time set aside.
10 I think Ms. Sleater agreed we can go back and deal
11 with the details sometime in the future, and we
12 could go ahead and set a date to do that if you like,
13 Your Honor, or we can wait until we get back in
14 session to deal with those. I'd like to go ahead and
15 deal with the general aspects of the motion.

16 THE SPECIAL MASTER: All right, proceed.

17 MR. WHITE: Your Honor, in general, while
18 the United States -- Well, the State of Wyoming feels
19 that the motion should not be granted for several
20 reasons. The most important of those reasons is that
21 certification of a water right under Wyoming law has
22 nothing to do with the irrigable nature of the lands
23 covered by that water right. The purpose of the
24 motion, according to the motion, is to show the lands
25 described in those certificates is irrigable, which is,

1 of course, a test for a reserved right but the State
2 of Wyoming would suggest to the Court that it is not
3 a test for a state awarded water right, and as a
4 result, we would object to judicial notice or these
5 documents being used as evidence because as the
6 Court pointed out, most if not all of them have been
7 admitted.

8 The use of the facts contained in those
9 certificates, whether by judicial notice or by fact
10 that they've already been admitted to show irrigability
11 is simply inappropriate. And to support our case on
12 that we would at this time call Mr. George Christopulos.

13 THE SPECIAL MASTER: Okay. Mr. Christopulos,
14 do you want to be sworn in again? Might just as well.

15 GEORGE CHRISTOPULOS

16
17 having been first duly sworn, was examined and testified
18 as follows, to wit:

19 DIRECT EXAMINATION

20 BY MR. WHITE:

21 MR. WHITE: Sit at the red table, please.

22 Q Would you please state your full name.

23 A George Christopulos, C-H-R-I-S-T-O-P-U-L-O-S.

24 THE SPECIAL MASTER: Mr. Christopulos, when
25 christopulos-direct-white

1 the day ever comes we don't have to spell our
2 names in this hearing, we're doomed.

3 MR. WHITE: George has learned by long
4 experience.

5 THE SPECIAL MASTER: So have I.

6 Q (By Mr. White) What is your occupation, Mr.
7 Christopulos?

8 A I'm the State Engineer of the State of Wyoming.

9 Q How long have you been State Engineer?

10 A I've been State Engineer for slightly more than
11 six years.

12 Q Were you employed by the State Engineer's office
13 prior to the time you became State Engineer?

14 A Yes. I have been in the State Engineer's office
15 more than 27 years. I was Deputy State Engineer
16 for nearly 17 years prior to the time I was
17 appointed State Engineer.

18 Q In addition to your position as State Engineer,
19 do you hold any position on the Wyoming State
20 Board of Control?

21 A I'm the president of the Board of Control.

22 Q And how long have you been president of the
23 Board of Control?

24 A For slightly more than six years, since I've been
25 christopulos-direct-white

1 State Engineer.

2 Q Does the Wyoming Board of Control adjudicate
3 state permitted water rights?

4 A Yes, it does.

5 Q Does it issue certificates such as those --

6 A Yes.

7 Q --involved in the motion that's before the Court?

8 A Yes, they do.

9 Q Does the certificate constitute evidence of an
10 adjudicated water right?

11 A That's correct.

12 Q As president of the Board of Control, are you
13 familiar with the procedures used by the Board
14 of Control?

15 A Yes, I am.

16 Q Are you familiar with the issues that are considered
17 by the Board of Control when adjudicating a state
18 water right?

19 A Yes.

20 Q And that would involve the certification of
21 water rights such as is involved in the certificates
22 before the Court this morning?

23 A Yes.

24 Q In adjudicating a water right, an irrigation

25 christopulos-direct-white

1 water right, does the Board of Control consider
2 the nature of the land involved?

3 A No.

4 THE SPECIAL MASTER: Would you define for
5 me what you mean by nature of land, I don't
6 know what that means.

7 MR.. WHITE: I got that today, Your Honor.

8 Q (By Mr.. White) Does it consider the chemical
9 nature of the parcel of land involved?

10 A No.

11 Q Does it consider the physical nature of the
12 parcel of land involved?

13 A No.

14 Q Does it make any determination as to whether
15 or not the land involved can sustain long-term
16 irrigation?

17 A No.

18 Q Does it make any decision as to whether or not
19 the land involved can be irrigated over a sustained
20 period at reasonable cost?

21 A No.

22 Q Does it make any economic determinations?

23 A No.

24 MR.. WHITE: I have no further questions, Your
25 christopulos-direct-white

1 Honor.

2 MS. SLEATER: Your Honor, I have just a
3 very few.

4 CROSS-EXAMINATION

5 BY MS. SLEATER:

6 Q Isn't it true, Mr. Christopulos, that after a
7 water right is adjudicated, it's treated by the
8 Board of Control and the State Engineer as a
9 vested water right?

10 A Yes.

11 Q Without any of the showings Mr. White has
12 previously mentioned?

13 A I think the Board of Control, when they adjudicate
14 a water right, determine that whether or not the
15 lands have been irrigated in terms of permit by
16 field inspection. If it's found that they are
17 in fact being irrigated by that field irrigation,
18 the Board adjudicates. The Board does not look
19 down the line to see whether it will be going
20 out of production five years down the line or
21 ten or twenty because of a physical situation on
22 the ground or any -- whether they go out of
23 production because those economics, because the
24 lands could not produce for that rancher or farmer.

25 christopulos-cross-sleater

1 The risk is all the appropriators, he is the one
2 that determines whether they wish to proceed.
3 The Board decides whether or not in fact the terms
4 of permit have been met in determining whether
5 to adjudicate.

6 Q And if the Board finds that the terms of permit
7 have been met, a system is built, then the person,
8 the applicator is --

9 A Appropriator.

10 Q The appropriator is given a water right that is
11 good for purposes of Wyoming water management?

12 A Yes. They're issued a Certificate of Appropriation,
13 which is good until such time as it's challenged,
14 until such time as somebody determines the lands
15 are not being irrigated, and, of course, an
16 abandonment proceedings could be brought against
17 that appropriation.

18 MS. SLEATER: Thank you.

19 MR. RADOSEVICH: Your Honor, may I just ask
20 Mr. Christopulos a few questions?

21 THE SPECIAL MASTER: Surely.

22 CROSS-EXAMINATION

23 BY MR. RADOSEVICH:

24 Q Mr. Christopulos, are these water rights that are
25 christopulos-cross-sleater
christopulos-cross-radosevich

1 adjudicated by the State subject to the Doctrine
2 of Beneficial Use?

3 A Yes.

4 Q Are they also subject to the duty of water
5 concept as far as a standard for allocating water
6 for irrigation?

7 A Yes, they are.

8 Q Are they also subject to statutory forfeit for
9 non-use?

10 A Yes, they are.

11 MR. RADOSEVICH: Thank you, Your Honor. I
12 don't have any other questions at this point.

13 MR. WHITE: Redirect, Your Honor.

14 THE SPECIAL MASTER: Yes.

15 REDIRECT EXAMINATION

16 BY MR. WHITE:

17 Q Mr. Christopoulos, it was asked on cross-
18 examination by Ms. Sleater that the certificates
19 were treated as vested water rights; is that
20 correct?

21 A Yes.

22 Q Are they treated as vested water rights with a
23 priority?

24 A Yes.

25 christopoulos-cross-radosevich
christopoulos-redirect-white

1 Q How is that priority determined?

2 A The priority is established by date.

3 MS. SLEATER: I object, this is outside
4 both direct and cross.

5 THE SPECIAL MASTER: Objection's overruled.
6 It may go in. It touches the argument you
7 raised on your argument that some of these may
8 be the date of the application, some may be
9 something else.

10 Go ahead and answer.

11 THE WITNESS: The priority date is established
12 by the date the application is received in the
13 State Engineer's office, and if a permit is issued,
14 of course, the adjudication dates from the time
15 the application is received and therefore priority
16 date is established under state law for that right.

17 THE SPECIAL MASTER: Regina, if I may, I
18 have to sustain -- I have to overrule that
19 because there is already in evidence a massive
20 chart showing virtually every one of these as to
21 whether it applies as to a ceded portion and an
22 unceded portion of the Reservation. One of the
23 hundreds of exhibits in this case clearly points
24 out a good many of these water rights, and where

25 christopulos-redirect-white

1 they're located, and most of them came in about
2 1905 as I recall, 1906, 1907.

3 MS. SLEATER: Your Honor, I'd like to point
4 out that on the aerial photographs and overlays
5 that were introduced by Mr. Billstein, in fact
6 all of these permits are located, that's one of
7 the color codings that's on those exhibits.

8 THE SPECIAL MASTER: Thank you. Go ahead,
9 Mr. White.

10 Q (By Mr. White) Mr. Christopulos, Ms. Sleater
11 also asked you whether or not an inspection
12 was made to see whether or not an irrigation
13 system was built and irrigation actually took
14 place. Do you recall that question?

15 A Yes.

16 Q Isn't it true that the inspection determines
17 only whether or not there's been irrigation once --

18 A Yes.

19 Q -- for that parcel of land?

20 A Yes. It would determine whether or not actually
21 that land was being irrigated at the time of
22 inspection.

23 Q Mr. Christopulos, assuming that the definition
24 of irrigable acreage is that acreage capable of
25 christopulos-redirect-white

1 sustaining long-term irrigation at reasonable
2 cost, does any decision by the Board of Control
3 and the certification process or does any
4 inspection by your office or the offices of the
5 Board of Control reach the issue of whether or
6 not those lands are irrigable?

7 A Not under that definition, it does not.

8 MR. WHITE: Thank you, Your Honor.

9

10

11

12

13

14

* * * * *

15

16

17

18

19

20

21

22

23

24

25

1 THE SPECIAL MASTER: No further arguments from
2 either side? I'm ready to rule on the motion now.

3 I'm going to grant this motion to take judicial
4 notice, and I believe it's altogether appropriate that
5 it be granted.

6 MR. WHITE: Could we have a chance to take
7 a crack at the specifics, Your Honor? I would tell the
8 Court that there are certificates in this list that are
9 outside Water Division 3 that have the wrong listing
10 for the source, have all sorts of problems with them,
11 which we were granted an opportunity to take a look at.

12 THE SPECIAL MASTER: If the certificate
13 numbered in here is outside Water Division No. 3,
14 obviously we will have no jurisdiction over it and it
15 can be stricken subject to a motion to strike.

16 If it has other objections, that fall in the category
17 called the clutter in the State Engineer's Office,
18 we are not paying much attention to that. I can't help
19 that if there's an incompleteness.

20 MR. WHITE: As agreed by counsel and I thought
21 agreed by the Court, I thought we would have an opportunity
22 to speak to the specifics.

23 MS. SLEATER: I hate to agree with Mr. White here,
24 Your Honor --

25 THE SPECIAL MASTER: I know that you do.

1 MS. SLEATER: The reason that we filed an
2 amendment is that we noticed in the typing that there
3 had been transpositions and some of the additions had
4 been left out. I think what Mr. White will find when
5 he reviews the amended motion, the objections he just
6 mentioned will no longer be appropriate. That's the
7 reason we filed an amendment.

8 THE SPECIAL MASTER: You certainly have
9 leave to make further inquiry. I don't propose to
10 enter an order today granting this as to the specifics,
11 but I will grant the motion to take judicial notice of
12 the appropriate and proper State water rights that are
13 on the Reservation. I think I have a duty to do that.

14 MS. SLEATER: Thank you, Your Honor.

15 THE SPECIAL MASTER: Mr. Christopolis, we
16 are going to see an awful lot of you in the months
17 ahead.

18 That's all I had unless the parties had more.

19 MR. WHITE: All through, Your Honor.

20 MR. RADOSEVICH: Excuse me, Your Honor, a
21 moment. I would like to make a motion that to the
22 extent that judicial notice has been granted in
23 connection with this motion that judicial notice be
24 taken of all other adjudicated water rights on the
25 Reservation and in the Third Water Division for the

1 purposes of the Court --

2 THE SPECIAL MASTER: The adjudicated water
3 rights, Mr. Radosevich, are already in evidence. For
4 one thing, they have already been introduced into
5 evidence in Master's Exhibit No. 1, so there should be
6 no question about that.

7 This would include all the adjudicated water rights
8 in Riverton -- all of the Reclamation Projects of the
9 Riverton area that sit in that wide area within the
10 Reservation.

11 MR. RADOSEVICH: Yes, Your Honor, but to the
12 extent that there will be any difference in the judicial
13 notice taken on these rights contained in this motion
14 by the Federal Government, I would like to make a
15 motion that the same judicial notice be taken of other
16 adjudicated water rights as far as their --

17 THE SPECIAL MASTER: I believe there is no
18 doubt that that is appropriate and can be granted
19 because I know of no other person in these proceedings
20 that intends to use the water right for the purpose
21 that the United States is here.

22 Well, can we proceed to Mr. Billstein, or are you
23 not going to call him until this afternoon?

24 MR. ECHOHAWK: Your Honor, I anticipated this
25 would take much longer. Mr. Billstein is back at the hotel

4-4

1 resting because he didn't feel very well.

2 THE SPECIAL MASTER: I was hoping we could keep
3 one witness from getting sick.

4 MR. ECHOHAWK: He did all right until about
5 10:00 last night.

6 THE SPECIAL MASTER: Should we call him at
7 1:00?

8 MR. WHITE: I would like to go ahead, but
9 I recognize the problem they have with Mr. Billstein,
10 and I would not urge the Court to go ahead when you have a
11 witness sick.

12 And I would ask that when we reconvene -- I
13 might have an opportunity this afternoon to take my
14 father to the doctor sometime during the afternoon.
15 He's got a badly infected foot, and I have yet to be able
16 to get an exact appointment, and perhaps we could
17 start at 1:30 and start with Ron and I could advise
18 the Court what time I might be able to get an appointment.

19 THE SPECIAL MASTER: If you want time off this
20 afternoon, arrangements will be given to you without
21 any doubt.

22 We have nothing we can put on now between now and
23 then?

24 MR. ECHOHAWK: No, Your Honor.

25 THE SPECIAL MASTER: All right. I

1 want to take this opportunity to say to all of you that
2 I hope that there has been apparent in this lawsuit
3 so far a genuine and sincere desire on my part to
4 cooperate in every way possible in the presentation of
5 your evidence and bringing on everything to be brought
6 forth so we can adjudicate it properly and fairly,
7 but we are now coming to the area where after this week
8 we are going to try to assess the actual hours of a
9 direct witness' testimony and make a judgment as to
10 what is the proper time for cross-examination of that
11 direct testimony because we have to keep moving ahead,
12 and we're going to try and measure it in that term so
13 we can put an end to these proceedings because we
14 simply have to come to a conclusion as early or earlier
15 than that date which we have for that.

16 We are in the toughest and meanest part of it now.
17 We are in the heart of the lawsuit, and I hope that we
18 can finish up with Mr. Billstein, what, Regina, in today
19 and tomorrow?

20 MS. SLEATER: Your Honor, I'm not cross-
21 examining. You had better ask Mr. White.

22 THE SPECIAL MASTER: Mr. White, do you think
23 today and tomorrow?

24 MR. WHITE: I would think that's probably
25 right, Your Honor, if we can quickly get the results of

1 the stipulation between the United States and the
2 State and the tribes with respect to the identification
3 of the tracts.

4 Private counsel didn't get involved in that
5 stipulation, and I don't think they particularly cared
6 about that stipulation, but once we get the results of
7 tract numbers, the numbering effort done, and the
8 identification of the types and acreage in each tract,
9 then it ought to go very quickly, and my present guess
10 is that if everything goes according to schedule, we
11 are looking at around somewhere between Wednesday noon
12 and Thursday noon to be through.

13 THE SPECIAL MASTER: Do you have anybody
14 else you can put on at that time to use up Thursday and
15 Friday?

16 MR. ECHOHAWK: I think we could probably get
17 Mr. Kersich down.

18 THE SPECIAL MASTER: Is he available?

19 MR. ECHOHAWK: He's through in California.

20 THE SPECIAL MASTER: Is he in town now?

21 MR. ECHOHAWK: No, I think he's on the
22 Reservation.

23 THE SPECIAL MASTER: All right. We will stand
24 in recess until 1:30 unless you hear that you can be with
25 your dad at 1:30. If you will call our office and let

1 me know, we will stay in recess until you can come back,
2 two or three or four o'clock.

(Recessed at 10:55 to
(reconvene at 1:30.

* * * * *