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## Trial Transcript, Vol. 36, Morning Session

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case # 4993

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

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

Civil No. 4993

FILED

5/1 1981  
*Margaret W. Hampton* CLERK  
DEPUTY

VOLUME 36

Morning Session

Wednesday, April 15, 1981

**ORIGINAL**

APPEARANCES

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FOR THE STATE OF  
WYOMING:

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FOR THE UNITED STATES  
OF AMERICA:

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HALL & EVANS  
2900 Energy Center One Building  
717 17th Street  
Denver, CO 80202  
BY: MR. JAMES MERRILL and  
MR. MICHAEL D. WHITE,  
Special Assistant Attorneys  
General, and  
MR. STUART RIFKIN and  
MR. SCOTT KROB

MR. JAMES CLEAR  
Attorney at Law  
Land and Natural Resources  
Division  
Department of Justice  
Washington, DC 20006

and

MR. THOMAS ECHOHAWK  
Attorney at Law  
Land and Natural Resources  
Division  
Department of Justice  
1961 Stout Street  
Denver, CO 80294

and

MR. MYLES FLINT  
Department of Justice  
Washington, DC 20006

and

MR. JOSEPH MEMBRINO  
Department of Justice  
Washington, DC 20006

APPEARANCES (CONTINUED)

1

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3

FOR THE ARAPAHOE  
TRIBE:

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

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FOR THE SHOSHONE  
TRIBE:

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

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1 THE SPECIAL MASTER: Please come to order.

2 All right, Mr. White.

3 MR. ECHOHAWK: Mr. Master, before Mr. White  
4 resumes his cross-examination, we'd like to bring or  
5 clear up one point of business relating to the request  
6 for production of documents that Wyoming has out-  
7 standing and the interrogatories attached. I think it's  
8 their 9th set.

9 THE SPECIAL MASTER: Didn't I clear that up  
10 on the first set yesterday morning?

11 MR. ECHOHAWK: We have some information we  
12 can make available today and some arrangements to  
13 clear up.

14 THE SPECIAL MASTER: All right.

15 MR. ECHOHAWK: I have with me some -- the  
16 information requested from the Bureau of Reclamation  
17 or the designation of how you can obtain that  
18 information. Certain information we'll make available  
19 in Billings to review within the Reclamation office,  
20 and other information I have with me. And regards to  
21 information requested from Dr. Mesghinna, Mr. Clear  
22 can explain.

23 THE SPECIAL MASTER: All right, thank you.

24 MR. CLEAR: Yes, Your Honor. In the course  
25 of Dr. Mesghinna's last deposition in January, the

1 State's attorneys asked for quite a bit of information  
2 that Dr. Mesghinna did not have with him and they  
3 incorporated that in their request for production,  
4 and I've spoken with Dr. Mesghinna and we've gone  
5 through each of the requests relating to his information  
6 which is approximately No. 15 through No. 31. Some  
7 of the things the State requested for, there were  
8 documents in support. Other things he said he would  
9 try to get information on them, they were not documents  
10 that he had. And with respect to those he is  
11 preparing to draft an answer up, as if the request were  
12 an interrogatory.

13 The other matters he will make the documents  
14 available in his office in San Francisco at a  
15 convenient time and I can discuss each one of the  
16 requests with you later today to give you a written  
17 answer and on what other documents can be made  
18 available to you.

19 MR. WHITE: If we could have a little more  
20 specific response, Your Honor, we might be able to  
21 respond.

22 MR. CLEAR: Well --

23 MR. WHITE: I should set the stage for this.  
24 These are matters that Dr. Mesghinna said were facts  
25 and data upon which he based his conclusion or based

1 professional opinions, and we asked what are these  
2 facts and data and he said I don't have them with  
3 me but I can get them. That's what we're asking for,  
4 and we're asking for them to be provided just as they  
5 should have been provided during the deposition, but  
6 in a lax time schedule, and we don't think it's  
7 appropriate that we have to go to San Francisco. We'll  
8 pay for the postage if that's the problem, but I  
9 think they can provide them and I think they can be  
10 provided just as we have provided material to the  
11 United States and they have provided to us in a little  
12 more cooperative fashion other than saying they're  
13 in San Francisco, go and take a look at them.

14 MR. CLEAR: Your Honor, there are just a  
15 few matters that, you know, he has said, well -- Let  
16 me see if I can find one that's -- This is request for  
17 production No. 22. It says: As requested by Counsel  
18 for Wyoming during the deposition, please produce the  
19 distribution pipeline wall thickness associated with  
20 various pipe diameters and distribution pipeline  
21 pressure ranges used by Dr. Mesghinna.

22 Now, what he did, he went to Johns Mansville  
23 and got an estimate on the pipe cost based on the  
24 pressure the pipe would stand and that estimate,  
25 which is a booklet put out by Johns Mansville and doesn't



1 have the wall thickness. It says this pipe can  
2 stand so much pressure. Dr. Mesghinna is under-  
3 taking to find out what the thickness of each of  
4 those pipes are, and that will be provided in a  
5 written answer. Requests for production No. 23:  
6 Please produce the pipe layouts determined to be used  
7 by Dr. Mesghinna.

8           There are hundreds of these, and these  
9 are basically drawings, pencil drawings made by  
10 him on onionskin paper, and they are report papers,  
11 and he's using them to prepare his testimony and he  
12 will make them available for them to copy at his  
13 office, but I don't think it's -- I don't think he can  
14 ship them down here.

15           THE SPECIAL MASTER: Well, I'm hopeful  
16 you can work it out.

17           MR. WHITE: Your Honor, I don't want to let  
18 it rest because if this is the procedure, and material  
19 is available at people's offices for copying, that's  
20 fine. I don't care what the rules are, but whatever  
21 the rules are the State will start playing by the same  
22 rules, and it just seems to me to be preposterous  
23 at this stage of the litigation in light of the  
24 cooperation that has developed between the parties to  
25 all of a sudden say if you want to copy some onionskin

1 paper, send somebody to San Francisco to do it. And  
2 we would ask that you direct the United States to  
3 provide copies. If they do not, why we can start  
4 playing the same game.

5 THE SPECIAL MASTER: Well, I can't direct  
6 the United States to do much more than what they seem  
7 to be doing, trying to get the information you want.

8 MR. WHITE: I'm talking about copying  
9 documents that are in San Francisco.

10 THE SPECIAL MASTER: That wasn't his last  
11 example. What specific documents do you want copied,  
12 do you want to make a request for them now?

13 MR. WHITE: There request that is --

14 THE SPECIAL MASTER: You want the size of  
15 the pipe?

16 MR. WHITE: No.

17 THE SPECIAL MASTER: The thickness of a pipe is  
18 in that one question.

19 MR. WHITE: But the other was the pipe  
20 layouts, what layouts did Dr. Mesghinna use, and Mr.  
21 Clear said they are laid out on onionskin paper and  
22 if we want them, why we can fly to San Francisco and  
23 copy them.

24 THE SPECIAL MASTER: Is that so, Mr. Clear?

25 MR. CLEAR: Pardon me, Your Honor?

1 THE SPECIAL MASTER: Is what he said so?

2 MR. CLEAR: With respect to the pipe  
3 layouts they are, as I said, pencil drawings of each --

4 THE SPECIAL MASTER: Can't they be Xeroxed?

5 MR. CLEAR: Well, the problem is he's using  
6 them now and to take them out of his office and  
7 separate them, it will take him a very long time and  
8 he's working --

9 THE SPECIAL MASTER: Why don't you tell him  
10 to hurry it up.

11 MR. CLEAR: Your Honor, I think the request  
12 for production said, allow the State of Wyoming to  
13 inspect and copy said materials at a mutually agreeable  
14 time and place, and that's what we're doing.

15 THE SPECIAL MASTER: You feel the most  
16 agreeable time and place without inconvenience to him  
17 and his work is right there at San Francisco, and  
18 make the copies there?

19 MR. CLEAR: Yes, Your Honor.

20 THE SPECIAL MASTER: How many sheets of  
21 paper are involved?

22 MR. CLEAR: Hundreds, Your Honor.

23 THE SPECIAL MASTER: What size?

24 MR. CLEAR: They're about, as I recall,  
25 they're about this size.

1 THE SPECIAL MASTER: Eight and a half by  
2 eleven?

3 MR. CLEAR: Yes.

4 THE SPECIAL MASTER: And there are 100  
5 involved?

6 MR. CLEAR: Hundreds.

7 THE SPECIAL MASTER: Do you feel you must  
8 have those?

9 MR. WHITE: Yes, sir. These rules are fine  
10 with us, but if that's the way they're going to play  
11 from now on --

12 THE SPECIAL MASTER: That's what I was going  
13 to say, we're reverting unfortunately back to earlier  
14 and more harsh tactics. I thought we'd accepted some  
15 degree of cooperation and civility in these things and  
16 I'm sorry that we're back.

17 MR. CLEAR: This is really for the convenience  
18 of Dr. Mesghinna. He just, I don't think physically  
19 can undertake this himself.

20 THE SPECIAL MASTER: All right. Right now  
21 why don't you find out from Dr. Mesghinna in the next  
22 day or two whether he can ship up those documents and --  
23 Well, I don't know what to tell you if he's not able.  
24 Does he work alone? Does he have an office staff?

25 MR. CLEAR: Yeah, but they're working on these



1 other things, Your Honor. They requested in a  
2 deposition about halfway through the deposition,  
3 Dr. Mesghinna estimated it would take six to eight  
4 weeks to gather this information, and then that was  
5 halfway through the deposition. And then they requested  
6 additional information after that, and as I said,  
7 they've cut down on that in these requests, but he is  
8 working on preparing his testimony.

9 THE SPECIAL MASTER: I'm not familiar  
10 with where you witnesses have been, and fortunately  
11 I'm not familiar with the massive amounts of depositions  
12 in the last three or four months, nor do I care to be,  
13 and I don't know how to order this, Mr. White. I know  
14 it would not be an undue burden on Wyoming if you  
15 had to send one staff person, either an engineer or  
16 lawyer to San Francisco and make these copies and get  
17 them made. In fact, he might welcome such an assignment  
18 if he picked the right opera season or baseball game  
19 or a few other things going on. I'm not sure it's all  
20 that much an inconvenience.

21 MR. WHITE: Your Honor --

22 THE SPECIAL MASTER: On the other hand, I  
23 don't want to break the pattern that's been very  
24 cooperative in supplying these things when we can,  
25 and not causing undue problems.



1 MR. CLEAR: The problem in this particular  
2 case is, I think it's virtually impossible for Dr.  
3 Mesghinna to do this, and he's told me that. The  
4 other thing --

5 THE SPECIAL MASTER: If that's the case,  
6 then it would appear to me that I better ask that  
7 you go ahead and send somebody to San Francisco.

8 MR. WHITE: That's fine, Your Honor. As I  
9 see it we're back to hard ball and we'll play hard  
10 ball.

11 THE SPECIAL MASTER: Further, Mr. White,  
12 you may have to appreciate that this may not be one  
13 case that's not motivated by uncooperativeness or  
14 malice or hard ball tenacity as it is by the fact  
15 that Dr. Mesghinna is working and this is the only way  
16 to get it done.

17 MR. CLEAR: It's just this one request.  
18 The other documents he could send here, but it's that  
19 one particular request.

20 THE SPECIAL MASTER: Okay. Well, now, how  
21 many other requests are there similiar or comparable  
22 to this?

23 MR. CLEAR: No, this is the most massive one.  
24 The other stuff he is gathering. He has also taken it  
25 upon himself to obtain information which he didn't have

1 and supply it to the State's counsel.

2 THE SPECIAL MASTER: Well, all right. We'd  
3 like him to continue that cooperation as much as he  
4 possibly can.

5 MR. CLEAR: It's just this one No. 3.

6 THE SPECIAL MASTER: Let's assume you  
7 probably have to send someone to San Francisco.

8 MR. WHITE: I understand, Your Honor.

9 THE SPECIAL MASTER: For copying arrange-  
10 ments, and copy the onionskin drawings.

11 MR. CLEAR: Pencil drawings. Frankly, I'm  
12 not sure, I'm trying to recollect how much of this  
13 we've come across on Xeroxing onionskins. They are  
14 very lightly penciled in and with figures on it.  
15 Seeing the originals --

16 THE SPECIAL MASTER: Mr. White has access  
17 to produce the originals if he wants to, and I'll  
18 let you work those out.

19 Yes, Mr. Echohawk.

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1 MR. ECHOHAWK: Your Honor, the United States  
2 is not changing tactics and playing hard ball. Yester-  
3 day we discussed the Tenth Request for Production of  
4 Documents, which relates to information requested during  
5 the deposition of Mr. Keene.

6 The United States is proceeding as fast as we  
7 can in producing that. HKM's computer is running almost  
8 constantly, and it will take five weeks to generate what  
9 is known as the depletion allowance. We are making  
10 copies. It's just that one particular request really  
11 puts us in a bind.

12 THE SPECIAL MASTER: I think Mr. White can  
13 appreciate that.

14 MR. WHITE: I understand what is going on  
15 fully, Your Honor, and we will play the game the same  
16 way.

17 THE SPECIAL MASTER: Well, I think that's an  
18 obstinate observation on your part and an unwarranted  
19 one, but if you want to do --

20 MR. WHITE: I know how much it costs to hire  
21 a Kelly Girl to make Xerox copies of letter-size pages,  
22 and the State would be willing to pay the cost of a  
23 Kelly Girl. We will pay the Xeroxing, and we will  
24 pay the postage.

25 Now, what it is is it is absolutely clear

1 the idea is to make it as inconvenient as possible for  
2 the State to get the information, and that's fine.  
3 That's one way to play the game of litigation.

4 THE SPECIAL MASTER: There are two ways to  
5 observe that. The State of Wyoming has been asking for  
6 information that almost shocks and expands the boundaries  
7 that I have ever known of in a lifetime of familiarity  
8 with law and law cases in asking for information in  
9 discovery.

10 The Tenth Request contains materials going  
11 back to the amounts of water required on some of the  
12 acreages in 1932, for God's sake.

13 MR. WHITE: That's facts and data upon which  
14 their witness based his opinion.

15 THE SPECIAL MASTER: Let me finish my point,  
16 and if the State continues this strategy, I don't find  
17 it unreasonable to see that other people might just  
18 conclude that it's too much, too much on the part of the  
19 State, too deep of an inquiry, too constant of an in-  
20 quiry of everything that could be found.

21 Do you have to have every copy of all the  
22 hundreds of the sheets of this Doctor's pipe drawings  
23 for -- what is this for? For sprinkler irrigation?

24 MR. CLEAR: Yes, Your Honor. As I recall it,  
25 it's from the pumping station to the laterals.



1 THE SPECIAL MASTER: And is it an absolute  
2 necessity that that has to be had in every instance?  
3 It may be, and the answer may be yes, it is, but it  
4 comes at a point when what you say has to be examined  
5 minutely because you have asked for so many things.

6 Now, have I made that point clear? That has  
7 to be considered in balance with your observation that  
8 if the rules are being changed back to hard ball, okay,  
9 two -- can play, so

10 MR. WHITE: All I want to know is what the  
11 rules are, and we will play the game by the rules.

12 THE SPECIAL MASTER: The rules are pretty  
13 obvious and no ambiguities.

14 MR. ECHOHAWK: There is one additional matter  
15 that we would like to clear up, and that is the matter  
16 of the schedule of the remainder of this week, to build  
17 some certainty into what we are going to do.

18 THE SPECIAL MASTER: The remainder of this  
19 week is to go throughout today, until as late as neces-  
20 sary tonight, 5:00 or 5:30, but we intend a full day's  
21 day, a full day tomorrow, until 5:00 or 6:00 in the  
22 evening if necessary.

23 Friday I would rather not hold session, and  
24 Friday, Saturday, and Sunday give you the Easter week-  
25 end for all involved.



1 Next week we start promptly on Monday morning,  
2 and we go the full week, so far as I am concerned,  
3 except for Wednesday afternoon we will adjourn at 2:00  
4 on Wednesday.

5 Now, do you want to proceed into the last week  
6 of April, which includes the first few days of May, or  
7 do you not want that last week of April? I don't know.  
8 It's too early to tell you.

9 If you want to see how you proceed next week --

10 MR. ECHOHAWK: I would rather take that week  
11 off.

12 THE SPECIAL MASTER: Is that the week begin-  
13 ning with the 27th?

14 MR. WHITE: According to the schedule the  
15 Court established earlier from April 14 through the  
16 end of June was a continuous setting with the first week  
17 of May and the first week of June being optional. If  
18 everybody agreed that we were tired out, we would take  
19 the weeks off.

20 Now, I'm afraid that if we start taking extra  
21 weeks off or if we take any time off during that period,  
22 more than a day here or a day there to catch our breath,  
23 we are not going to complete this case in the foreseeable  
24 future.

25 THE SPECIAL MASTER: Mr. White, I'm shocked

1 to think that you would make that observation, having  
2 contributed as much as you have to the alterations of  
3 set schedules and having seen this Special Master bend  
4 his neck backwards and forwards to accommodate you in  
5 having such schedules to hear you now say something of  
6 that kind.

7 MR. WHITE: I'm not shocked, and I'll tell  
8 you why.

9 THE SPECIAL MASTER: I know you are not, and  
10 I appreciate that.

11 MR. WHITE: This case was set to start October  
12 1 --

13 THE SPECIAL MASTER: What are you complaining  
14 about? Are you complaining about the fact that Mr.  
15 Echohawk has just asked for the last week of April to  
16 possibly not have hearings?

17 MR. WHITE: What I'm asking is that we follow  
18 the schedule and that we proceed with litigation as set  
19 from now until the end of June. I don't see any reason  
20 to take time off.

21 THE SPECIAL MASTER: Well, Mr. White, and we  
22 intend to, but that doesn't preclude accommodating  
23 parties in this case, as you have been accommodated, and  
24 if Mr. Echohawk would rather not work the last four days  
25 of April after two full weeks of hearings, I'm about to

1 accommodate him, just as I have you time after time.

2 MR. WHITE: I'm not aware of the times you  
3 have changed the schedule for my benefit, but I  
4 appreciate your concern.

5 I just would like to say for the record that  
6 the United States has had four years to get their case  
7 ready. They've had at least two continuances at the  
8 beginning --

9 THE SPECIAL MASTER: Let's don't get into  
10 that, and I don't care to put into the record the occasions  
11 that I have accommodated you and your other clients and  
12 other cases in this lawsuit, but, by God, I have time  
13 after time, and you are aware of them, so let's not get  
14 into that.

15 We will set the hearings. They are set now,  
16 as I say, for the rest of this week. They are set for  
17 all of next week, and they are set for the last week in  
18 April.

19 Now, do you have cause that you wish to make  
20 and raise a request that they not be held beginning the  
21 week of the 27th of April?

22 MR. ECHOHAWK: It's just, Your Honor, that  
23 based on the last experience we had where we had two  
24 weeks of trial, firstly, I think that's about as much  
25 as we could all bear.

1 I would rather go on a schedule of maybe two  
2 weeks on, a week off, two weeks on, a week off. That  
3 makes it a little more bearable.

4 THE SPECIAL MASTER: We will try to accommodate  
5 everybody in that regard. I can appreciate that after  
6 two weeks of solid hearings I feel a weariness, and if  
7 it gets to be where it's constant headaches, I will call  
8 off the third week in spite of Mr. White's terrible  
9 objections, and let's proceed now. Let's speed along  
10 a little faster and better if we can, and I believe all  
11 of us are doing that.

12 MR. ECHOHAWK: What we would like to do, Your  
13 Honor, is put some certainty into the schedule on down  
14 the road so --

15 THE SPECIAL MASTER: We have got it now pretty  
16 much. We have got at least all of this week and all of  
17 next week. We have got virtually all of May, except  
18 for the fact that all of us know we are not going to  
19 work four full weeks in May. I don't think we are cap-  
20 able.

21 I know of very few trials that can go four  
22 full weeks, so I suspect one of the weeks of May we will  
23 be along the lines that you mentioned, Mr. Echohawk.  
24 Either the first week or the last week we are going to  
25 be tired and we are going to quit and rest or work on



1 your case or something else.

2 I don't care whether you work the last week  
3 in April, but if you want to know that we will not work  
4 the last week in April, that's all right with me. If  
5 you want to make a motion that we do not hold hearings  
6 the week of April 27th but resume them on -- what's the  
7 next day? On Monday, May the 4th, make that motion,  
8 and I will consider it and probably grant it.

9 I will see what inconvenience it will cause  
10 to other parties if any.

11 MR. ECHOHAWK: The United States would so move  
12 that the schedule be adjusted.

13 THE SPECIAL MASTER: Now, Mr. White, can you  
14 give me the reasons, or Mr. Merrill, or anyone else,  
15 any other counsel, why this would create such a shocking  
16 affront to our scheduling that it cannot be abided in.

17 MR. WHITE: I will be glad to. In informal  
18 conversations with counsel for the United States and  
19 the Tribes, it appears, that there are roughly sixty  
20 days remaining in the United States' case-in-chief,  
21 allowing an approximate ratio of two days of cross-  
22 examination for one day of direct.

23 THE SPECIAL MASTER: May I hear that? Two  
24 days of cross for one of direct? Was this after you  
25 had used ten days of cross on one and a half of direct?



1 MR. WHITE: That's probably right, Your Honor.

2 THE SPECIAL MASTER: Because you did use ten  
3 days of cross-examination on one and a half days of  
4 direct just recently.

5 MR. WHITE: Correct. The estimate is sixty  
6 days until the United States' case-in-chief is done.

7 THE SPECIAL MASTER: Okay. Proceed.

8 MR. WHITE: If we don't proceed without break,  
9 that will not be completed by the end of June. That's  
10 the United States' case-in-chief.

11 THE SPECIAL MASTER: If we proceed to allow  
12 you to take ten days for one and a half days of direct,  
13 we will not be finished in sixty days anyway. It will  
14 be closer to a hundred and sixty days.

15 MR. WHITE: If you will give me ten days for  
16 every one of those, I will agree to the extension, or  
17 to the continuance.

18 THE SPECIAL MASTER: I'm not going to give you  
19 ten days, but I'm not going to limit you, and I think I  
20 have been patient.

21 MR. WHITE: I was just explaining --

22 THE SPECIAL MASTER: And I intend to continue  
23 to be pretty patient.

24 MR. WHITE: I was just explaining the conserva-  
25 tive nature of the scheduling. The scheduling was based

1 on that approximate ratio or the time estimate, and  
2 that's sixty days. That means that we will not be done  
3 with the United States' case-in-chief by the end of  
4 June, even if we take no breaks.

5 THE SPECIAL MASTER: We really don't know that  
6 yet, do we? We can assume it.

7 MR. WHITE: I'm just telling the Court that's  
8 what the counsel got together and thought. We still  
9 have the Tribes' case-in-chief, which is estimated to  
10 be a week to two weeks.

11 THE SPECIAL MASTER: Is that right, Mr. Rogers?  
12 How could you use up two weeks after the United States'  
13 case?

14 MR. ROGERS: Your Honor, in terms of direct,  
15 I doubt that the Tribes' case would take more than a  
16 couple days, and again with the ratio of cross-examination  
17 and so forth, I think we could probably count on some-  
18 where between a week and two weeks for the Tribes' case.

19 MR. WHITE: Then the State comes on with its  
20 case, and I'm estimating between eight and twelve weeks  
21 on that, and then we all go into our rebuttal and sur-  
22 rebuttal case.

23 So what we are looking at, we would be in hear-  
24 ings on the Indian Reservation matter essentially for  
25 the rest of the year. I think the time has come to bite

1 the bullet, and it's not at all uncommon for trials  
2 to go ten weeks, twelve or fourteen weeks straight  
3 without a break.

4 THE SPECIAL MASTER: Well, we are going to  
5 make some analogy, if I could, to observations, but  
6 I'll put it this way: It has been necessary for all  
7 parties in this case to ask for extensions and to use  
8 extensions of time. That includes the Tribes. That  
9 includes the United States, and that includes Wyoming  
10 in a good many instances.

11 All we can do is move ahead and do the best  
12 we can. Right now we will recognize that even though  
13 there are cases that can go six and eight weeks with-  
14 out breaks in them, maybe we can do it this summer and  
15 maybe we can't. We'll just try the best we can, but  
16 I don't think we can work four weeks in a row in May  
17 and in June, frankly, but we will try, and if we can,  
18 we can.

19 I have no commitments that would detract from  
20 four full weeks in May and June, but I would like some  
21 of those weeks to be four-day weeks so the man can get  
22 a three-day weekend.

23 I will then grant your order now, Mr. Echohawk,  
24 that we not hold sessions the week of April 27th, and  
25 we will resume on May 4.

1 I have also made a change the other evening  
2 that most of you are familiar with in this case, and  
3 that is that we will not resume the first Monday of June,  
4 but on the next day, which is the 2nd of June, not  
5 the 1st of June.

6 The last week in May is too early, I guess,  
7 to look to Memorial Day. We will cross that bridge  
8 when we get to it along about the third week of May.

9 All right, Mr. White?

10 MR. WHITE: Fine.

11 THE SPECIAL MASTER: Let's proceed with the  
12 case.

13 MR. ECHOHAWK: Before Mr. White starts, after  
14 Mr. Kersich's testimony last night, I think Mr. White  
15 had asked him whether or not he had the HKM laboratory  
16 manual here, and Mr. Kersich had answered no, but we  
17 were looking through our stuff last night, and we found  
18 it, so I wanted to let Mr. White know we have it here.

19 MR. WHITE: Could I see it, please? Could  
20 we take about five minutes, and I'll promise the Court  
21 I will be done with my cross-examination by --

22 THE SPECIAL MASTER: I'm happy to accommodate  
23 you, Mr. White, when you ask for five or fifteen minutes,  
24 but I'm reminded of what you have just been telling me  
25 the last thirty minutes.



1 MR. WHITE: Okay. I'm ready to go.

2 THE SPECIAL MASTER: I just want --

3 MR. WHITE: Just so long as everybody plays  
4 it the same.

5 THE SPECIAL MASTER: It's just a case of  
6 trying to get through the lawsuit.

7 CROSS-EXAMINATION

8 BY MR. WHITE:

9 Q Mr. Kersich, were the laboratory tests which you  
10 conducted and which are described in Exhibit C-43  
11 conducted exactly in accordance with the procedures  
12 that are set out in your laboratory manual?

13 A. Basically, yes.

14 Q You say basically?

15 A. Well, sometimes if there were some small variations,  
16 I may not be aware of them.

17 Q I'll hand you your laboratory manual, which we will  
18 copy and mark for identification as SK-50.

19 MR. WHITE: I don't think we have a 50. And  
20 I would ask leave of counsel to refer to this as  
21 SK-50, even though it's not marked, and make a copy  
22 and mark it.

23 MR. ECHOHAWK: That's fine.

24 MR. WHITE: That way you have got your original.

25 kersich-cross-white



1 THE SPECIAL MASTER: I have only seen 42  
2 and 43 yesterday.

3 MR. WHITE: I don't have my list, Your  
4 Honor, and I know we don't have a 50. I can't  
5 remember where we left off.

6 Q (By Mr. White) I hand you what's been marked for  
7 identification as SK-50. Would you please indicate  
8 the areas in which you changed procedures, if any?

9 A To the best of my knowledge, we did not.

10 Q You did not?

11 A Right, to the best of my knowledge.

12 Q How would you find out whether or not you changed  
13 your procedures so you could give me an answer  
14 with certainty?

15 A About the only way I could do it would be to call  
16 Carol Stone and ask her if there were any changes  
17 in any of the criteria.

18 Q If I furnished you a telephone and charged the call  
19 to the State, can you call her?

20 A No one has to furnish any telephones for me. If  
21 counsel directs me to do it, I'll do it.

22 MR. WHITE: Let me ask counsel for the United  
23 States, would you please instruct your witness to  
24 call his staff member and find out whether or not

25 kersich-cross-white



1 THE SPECIAL MASTER: You want it read back  
2 to you?

3 THE WITNESS: No. Okay.

4 Q (By Mr. White) Did you find the memorandum from  
5 Ralph Saunders concerning the checking of the  
6 scale rectification of the mosaics?

7 A Yes, I did.

8 Q Can I see that, please?

9 A Yes, you may.

10 Q Have you already shown that to your lawyer?

11 A I suggest that you look at it first.

12 (Brief pause.

13 Q Mr. Kersich, isn't it true that Mr. Saunders'  
14 verification of accuracy was based on comparison  
15 between the photo and USGS quad sheets?

16 A Yes.

17 Q Isn't it true that there was no ground verification  
18 of the photography scale?

19 A That's correct.

20 Q I hand you what will be marked as SK-51 and  
21 ask you if that collection of papers accurately  
22 represents the memorandum.-- I should say  
23 memoranda to you from Mr. Saunders?

24 A Yes, it does.

25 kersich-cross-white

1 MR. WHITE: Off the record.

2 (Off-the-record discussion.)

3 Q (By Mr. White) Do you know the dates of the  
4 quad sheets which were used as control checks?

5 A No, I do not personally.

6 Q Do you know whether the photography which you  
7 checked using the quad sheets -- excuse me --  
8 Yes, the photography which you checked using the  
9 quad sheets was or was not the source material  
10 for the quad sheets themselves?

11 A I can't answer that question.

12 Q So it is entirely possible that you were checking  
13 the quad sheets against the material from which  
14 they were prepared; is that correct?

15 MR. ECHOHAWK: Objection, Your Honor.

16 THE SPECIAL MASTER: He said he couldn't  
17 answer. I'll object to it, he said he couldn't  
18 answer the question so your question is obvious  
19 and the obvious is unutterable.

20 Q (By Mr. White) I believe you testified that the  
21 photography which you got from ASCS, which went  
22 into the mosaics had been scale rectified by  
23 ASCS?

24 A That's correct.

25 kersich-cross-white



- 1 Q Do you know that of your own personal knowledge  
2 or did someone tell you that?
- 3 A That was information I got from Mr. Saunders.
- 4 Q Did he give you that information in oral or  
5 written form?
- 6 A Orally.
- 7 Q How was the scale rectification of the ASCS  
8 photography accomplished, if you know?
- 9 A Well, I don't know.
- 10 Q Do you know the scale to which the rectification  
11 of ASCS photography was made?
- 12 A No, I depended on Mr. Saunders in this matter.
- 13 Q Have you conducted any work other than that which  
14 I may have asked you about, which would tend to  
15 verify the scale rectification of those photo-  
16 graphs based on field observations or field  
17 measurements actually on the ground?
- 18 A No, we did no --
- 19 Q Okay.
- 20 A -- survey work, no field work. It was done by  
21 checking the quads versus the photographs in the  
22 office.
- 23 Q Now, do you recall yesterday agreeing very  
24 kindly to check for some apparent discrepancies  
25 kersich-cross-white

1           between your workbook photography and the exhibits,  
2           do you recall being asked to do that?

3           A     Yes, I do.

4           Q     And do you also recall saying that you needed to  
5           take a look at the tabulations, your tabulations  
6           to see whether or not the acreages shown on the  
7           individual map exhibits as well as the end of your  
8           report were taken from the photographs as they  
9           appear or from the indications on the map which  
10          are exhibits?

11          A     Yes, I do.

12          Q     And have you, using those tabulations, determined  
13          whether or not the acreages shown on each of the  
14          exhibits such as C-44 and similar exhibits,  
15          accurately reflect those acreages shown in your  
16          tabulations?

17          A     Yes.

18          Q     Have you found any errors or any discrepancies  
19          between the tabulation figures and the figures  
20          which appear in your exhibits?

21                   MR. ECHOHAWK: Your Honor, could I have the  
22          previous question read back?

23                   THE SPECIAL MASTER: Sure. The one just  
24          before the last one?

25          kersich-cross-white

1 MR. ECHOHAWK: Yes, the one just before he  
2 finished.

3 (Thereupon the question was  
4 (read back as follows: "Q  
5 (And do you also recall  
6 (saying that you needed to  
7 (take a look at the tab-  
8 (ulations, your tabulations  
9 (to see whether or not the  
10 (acreages shown on the  
11 (individual map exhibits as  
12 (well as the end of your  
13 (report were taken from the  
14 (photographs as they appear or  
15 (from the indications on the  
16 (map which are exhibits?"

17 MR. ECHOHAWK: As I understand it, the  
18 request dealt with very specific items.

19 THE SPECIAL MASTER: That's what Mr. White  
20 obviously meant. He meant those lists he's  
21 referring to and alluding to.

22 MR. WHITE: Right. That was the preliminary  
23 question for the whole line of questioning.

24 THE SPECIAL MASTER: And the answer was --  
25 and the question was answered, was it not?

MR. WHITE: And the follow-up question was  
did you find any discrepancy.

THE SPECIAL MASTER: Did you find any  
discrepancies. Thank you.

THE WITNESS: Between what you had and what  
kersich-cross-white

1 we had?

2 Q (By Mr. White) Right.

3 A Yes. There are some where we're not agreeing  
4 with you.

5 Q Could you just briefly describe those areas,  
6 perhaps if you could follow the form of SK-41  
7 and SK-42. Are there any changes which would  
8 be reflected there?

9 A There may be one, yes.

10 Q Okay. All I'm really concerned about is to get  
11 the total number of figures right.

12 A Okay.

13 Q Go ahead and tell me what you find.

14 A We checked these individually, the items that  
15 you had listed on the list you gave us. I didn't  
16 have the time to go through and check all the  
17 arithmetic to get to here. There was some items  
18 that you asked us to look at which we are  
19 disagreeing with.

20 Q Okay.

21 A We don't agree with your correction to us.  
22 There are items that you have brought out with  
23 regard to map errors which we are in agreement  
24 with, and there are some acreages which we feel  
25 kersich-cross-white



1 we've taken into consideration in answer to your  
 2 question on that yesterday. And there is one  
 3 particular place of 26 acres that we agree with  
 4 you, a piece of fee land was inadvertently  
 5 included in the totals and should be excluded  
 6 from the totals.

7 Q From what particular project was that?

8 A That's South Crowheart on the sprinkler, Township  
 9 2 North, Range 1 East, Section 23.

10 Q And what was it classified as?

11 A I don't know what it was classified. I don't  
 12 have my notes here. I'd have to -- I didn't  
 13 get a copy of your stuff last night.

14 Q Oh, well, I didn't get it back until this  
 15 morning. Here's my stuff if you want to look at  
 16 it.

17 MR. WHITE: Could we take just a minute?  
 18 We can look at this, get some Xeroxing done,  
 19 ask a couple of questions.

20 THE SPECIAL MASTER: Very good. We'll take  
 21 a five minute break.

22 (Thereupon a 25 minute  
 23 recess was taken.)

24 \* \* \* \* \*

25 kersich-cross-white

1 Q (By Mr. White) Mr. Kersich, I hand you what has  
2 now been marked for identification as SK-50 and  
3 51 and ask you whether or not those are true and  
4 accurate copies of your laboratory manual entitled,  
5 "HKM Associates Laboratory Procedures, Soil  
6 Chemistry Lab," and the memoranda from Mr. Saunders  
7 to you concerning the AFCS aerial photography,  
8 respectively?

9 A Yes, they appear to be.

10 Q I hand you now a collection of loose files which  
11 will be bound and which have been marked as SK-53  
12 and ask you whether or not they are a true and  
13 correct copy of the tabulations of acreage within  
14 your arable land opinion which you provided to us?

15 A They essentially appear to be correct, yes.

16 MR. WHITE: Your Honor, I would ask permission  
17 later to withdraw these and make extra copies for  
18 everyone involved.

19 MR. ECHOHAWK: What number is that?

20 THE SPECIAL MASTER: Does your number on top  
21 of 53 apply to all of those?

22 MR. WHITE: Yes, and we will just bind them  
23 up with tabs.

24 THE SPECIAL MASTER: There are six manila

25 kersich-cross-white

1 envelopes, legal size, that make up that exhibit;  
2 is that correct?

3 MR. WHITE: That's right, Your Honor.

4 Q (By Mr. White) Mr. Kersich, I hand you what's  
5 been marked for identification as SK-52 and ask  
6 you whether or not that is a copy of one of your  
7 lab reports?

8 A Yes, it is.

9 Q Let me ask you just a couple definitional questions  
10 about the headings.

11 About halfway across the top is a row that  
12 under sodium adsorption ratio is labeled TSC  
13 Me/l?

14 A Yes.

15 Q Do the values that appear there represent simply  
16 arithmetic sums of the values in the following  
17 three columns, or is that value arrived at independ-  
18 ently?

19 A I believe that value is arrived at by using the  
20 electro conductivity. There's a conversion.  
21 Using the electro conductivity, you can determine  
22 the total salts concentration or total salts con-  
23 centration in milliequivalents per liter.

24 Q So that is not the arithmetic sum of the three  
25 columns? That's arrived at independently; is that

kersich-cross-white

- 1 correct?
- 2 A. Can I go into this a little more to explain it?
- 3 Q. Sure.
- 4 A. We titrated the calcium-magnesium. We determined  
5 the total solids content from the  $E_C$  and then  
6 the sodium was assumed to be the rest of the  
7 salts, so, yes, they will add up. They should add  
8 up, but you get TSC under one. You get the calcium  
9 and magnesium under laboratory procedures, and  
10 then the sodium is the difference.
- 11 Q. Then over underestimated SAR --
- 12 A. Yes.
- 13 Q. -- you indicated that you used an atomic something  
14 or other --
- 15 A. No; I said that some of the work had been done --  
16 the '78-'79 work was done by titration and the  
17 reason that's called estimated is, as I pointed  
18 out, that once you know the total salts, once you  
19 know the calcium and magnesium, you subtract the  
20 calcium-magnesium from the total salts and assume  
21 that's the sodium. That's a conservative approach.  
22 Okay? That's why that is called estimated SAR,  
23 so we did check a few of them on our atomic  
24 adsorption unit afterwards.

25 We didn't get that until last summer, the

~~kersich-cross-white~~



1 summer of 1980, so the AA unit was used in some  
2 of our quality control checks where we actually  
3 did check all three cations here, sodium, calcium,  
4 and magnesium.

5  
6 \* \* \* \* \*

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kersich-cross-white

1 Q (By Mr. White) So your basic work was done by  
2 titration; is that right?

3 A Right.

4 Q And your quality control was done by --

5 A Both ways. We did quality control both ways  
6 just to check ourselves in our process.

7 Q But the basic work was titration?

8 A That's right.

9 MR. ECHOHAWK: Is this something you got  
10 through discovery?

11 MR. WHITE: I don't know.

12 THE SPECIAL MASTER: Did you wish your  
13 interrogatories on the record, you two?

14 MR. ECHOHAWK: Yes.

15 THE SPECIAL MASTER: It's just one sheet  
16 out of the whole bunch of it?

17 MR. WHITE: Right. It was just an  
18 example because I didn't understand the headings.

19 MR. ECHOHAWK: That's the only reason?

20 MR. WHITE: Yeah. I put it in for the  
21 truth of the headings.

22 MR. ECHOHAWK: Truth of the headings.

23 MR. WHITE: The record should reflect some  
24 laughter.

25 kersich-cross-white

1 Q (By Mr. White) Now, with respect to the 26  
2 acres upon which we can agree, where are they  
3 and what class?

4 A Can I put this away?

5 Q You bet.

6 A I'll put it over here, and I won't get in trouble  
7 for taking it.

8 Okay. This would be in South Crowheart,  
9 Township 2 North, 1 East, Section 23. It appears  
10 that we may have included 26 acres of fee land  
11 and that was brought to our attention by you.

12 The others --

13 Q The others we can't agree on; is that right?

14 A That's correct.

15 Q Okay. So the 26 acres is reflected in the total  
16 for South Crowheart, gravity or South Crowheart  
17 sprinkler or both?

18 A That would be in South Crowheart sprinkler, and  
19 it's indicated on my map here as Class 1 sprinkler.

20 Q Do you want to check that against the exhibit?

21 A I was going to check that exhibit against our  
22 photo. On our photo it's indicated as 1.

23 Q How about on Exhibit C-47?

24 A Yes. On the Exhibit it's Class 1, on Exhibit C-47.

25 kersich-cross-white

1 Q So the value for Class 1 lands shown on Exhibit  
2 C-47, as 1,487 should be reduced to 1,461; is  
3 that correct?

4 A Yes, that is correct.

5 MR. WHITE: Your Honor, at this time we  
6 would offer the following exhibits for their  
7 indicated purposes.

8 MR. ECHOHAWK: Can you go slow?

9 MR. WHITE: No. SK-2 --

10 THE SPECIAL MASTER: Gentlemen, if you're  
11 going to have an exchange of side or carry on  
12 a dialogue while we're in session, I wish you would  
13 be kind enough to do it in such a way that I am  
14 addressed and can follow what you're doing.

15 MR. WHITE: I apologize.

16 THE SPECIAL MASTER: These asides are getting  
17 away from me.

18 MR. ECHOHAWK: I apologize.

19 THE SPECIAL MASTER: If you need time, I'll  
20 be glad to give you time off the record for  
21 discussion.

22 MR. WHITE: I do apologize, Your Honor.  
23 It was just a private joke between me and Mr.  
24 Echohawk.

25 kersich-cross-white



1 THE SPECIAL MASTER: Okay. SK Exhibits.

2 MR. WHITE: SK-2. That's offered for the  
3 purposes of impeachment.

4 THE SPECIAL MASTER: All right, go ahead,  
5 Mr. White.

6 MR. ECHOHAWK: Your Honor, could I have  
7 Mr. White identify what those documents are?  
8 I'd like to keep track and note if I have any  
9 objection as we go along.

10 MR. WHITE: Those are, as I recall, other  
11 land classification standards which were  
12 developed or provided during Mr. Waples'  
13 deposition, as I recall, and showed a difference  
14 between the land classification standards  
15 described there and the land classification  
16 standards which were contained in C-43 and  
17 resulted in the ones in C-44 being amended.

18 THE SPECIAL MASTER: Mr. Echohawk and Mr.  
19 Rogers and other Counsel present, I will describe  
20 after each mention of a number that Mr. White  
21 gives to these exhibits offered for introduction  
22 into evidence, how they will be identified in  
23 the record of this case. If you have questions,  
24 please let me know.

25 kersich-cross-white

1 MR. WHITE: There are several land  
2 classification standards, but that is a correct  
3 title for that, Your Honor.

4 SK-3, offered for the same purpose, and  
5 it's another set of land classification standards  
6 which came from Mr. Toedter's deposition.

7 THE SPECIAL MASTER: T-o-e-d-t-e-r?

8 MR. WHITE: Yes, sir, and also contained  
9 information which resulted in addition to the  
10 land classification standards set forth in  
11 Exhibit 43.

12 THE SPECIAL MASTER: And if those are  
13 described as Toedter Deposition Exhibits Re;  
14 classification standards, will that be acceptable?

15 MR. WHITE: I think the first one -- I'm  
16 going to have to check because I don't have my  
17 copy here, Your Honor.-- might be better described  
18 as Waples' land classification standards.

19 THE SPECIAL MASTER: Okay. We'll put those  
20 in quotes.

21 MR. WHITE: I was wrong, Your Honor. SK-2  
22 is a set of land classification standards that  
23 came out of Mr. Kersich's deposition, and those  
24 could be just called Kersich land classification

25 kersich-cross-white

1 standards.

2 THE SPECIAL MASTER: All right.

3 MR. ECHOHAWK: Perhaps if we attached a  
4 date to the deposition exhibit also.

5 MR. WHITE: Well, they have the deposition  
6 exhibit sticker shown on them, Your Honor.

7 MR. ECHOHAWK: Okay, that's fine.

8 THE SPECIAL MASTER: Okay. SK-4.

9 MR. WHITE: Next would be SK-4, and would  
10 be offered for the truth of its contents, and  
11 it's a copy of Bureau of Reclamation manual.

12 THE SPECIAL MASTER: Portion of Bureau of  
13 Reclamation?

14 MR. WHITE: Or WPRS -- excuse me, Water  
15 and Power Resources manual.

16 SK-5 --

17 THE SPECIAL MASTER: If it's all the same  
18 to the parties in this lawsuit, I'd just as soon  
19 leave that portion of Bureau of Reclamation  
20 manual. I worked with it for many years, I  
21 don't like the other name.

22 MR. WHITE: SK-5 is another portion of the  
23 manual. It's offered for the same purposes.

24 THE SPECIAL MASTER: Is it a newer manual,

25 kersich-cross-white

1 later date?

2 MR. WHITE: One of those was in the '50's  
3 and one was in 1980, and I'm not sure which one.  
4 They're not replacements, one is just a refinement  
5 of the other.

6 THE SPECIAL MASTER: If we call that new,  
7 is that earlier or later?

8 MR. ECHOHAWK: SK-5 is May 15, 1980.

9 THE SPECIAL MASTER: Okay. I'll call that  
10 the 1980.

11 MR. ROGERS: SK-4 I believe is '53.

12 MR. WHITE: Fifty-three is my recollection.

13 THE SPECIAL MASTER: All right, thank you.  
14 SK-8.

15 MR. WHITE: SK-8's offered for impeachment  
16 purposes, and that's an excerpt from a document  
17 entitled Preliminary Draft of Inventory Water  
18 Resources, done by HKM sometime ago for the Wind  
19 River Indian Reservation.

20 THE SPECIAL MASTER: All right. That will  
21 be identified in the schedule of exhibits in this  
22 lawsuit as first two packages of preliminary  
23 draft by HKM, inventory of water resources, if  
24 that's agreeable.

25 kersich-cross-white



1 MR. ECHOHAWK: Is that phase one and phase  
2 two or just phase --

3 MR. WHITE: I think it's just phase one.

4 THE SPECIAL MASTER: I beg your pardon. The  
5 first two pages, not packages, first two pages.

6 MR. ECHOHAWK: Phase two.

7 MR. WHITE: Phase two, Your Honor, and it's  
8 two cover pages and page V.7.

9 Next is SK-9. It's --

10 THE SPECIAL MASTER: You do not wish SK-7  
11 introduced?

12 MR. WHITE: No, I couldn't lay a foundation  
13 for that.

14 THE SPECIAL MASTER: All right.

15 MR. WHITE: SK-9 is offered for the truth  
16 of its contents and contains a cover page as  
17 well as pages 42 and 67 of 1957 special report  
18 for the third division.

19 THE SPECIAL MASTER: SK-9 will be identified  
20 as pages from 1957 special report, third division  
21 Riverton Project.

22 MR. WHITE: Thank you. Next I'd offer SK-9A  
23 which is the entirety of that report.

24 THE SPECIAL MASTER: Which is the what,  
25 kersich-cross-white

1 Mr. White?

2 MR. WHITE: Entirety of that 1957 report.

3 THE SPECIAL MASTER: Let's slip it in.

4 I thought SK-9A was a map of the North Portal  
5 Area of the above report.

6 MR. WHITE: Then after some discussion  
7 it was agreed upon among Counsel, Your Honor,  
8 just to put the whole report in, which we did.

9 THE SPECIAL MASTER: So SK-9A --

10 MR. WHITE: Is that your recollection, Tom?

11 MR. ECHOHAWK: That's my recollection,  
12 Your Honor.

13 THE SPECIAL MASTER: Very well, Mr. White.

14 MR. WHITE: Next would be SK-10. It's  
15 offered for the truth of its contents. It's  
16 Muddy Ridge land classification standards.

17 THE SPECIAL MASTER: SK-10, did he say  
18 Muddy Ridge?

19 MR. WHITE: Muddy Ridge, yes, sir.

20 THE SPECIAL MASTER: Muddy Ridge land  
21 classification standards. U.S. Bureau of  
22 Reclamation standards for Muddy Ridge, SK-10.  
23 You're going to that exhibit which was not  
24 introduced until February 13th, does it make any

25 kersich-cross-white

1 difference to you that we probably ought to use  
 2 10-A, 10-B and others that were introduced on  
 3 the same day, and 9 and 9-A which was February 11th,  
 4 to keep continuity, correct? SK-10 was not  
 5 offered, was not identified and presented until  
 6 February 13th.

7 MR. WHITE: I understand, Your Honor. If  
 8 you want to do that, that would be fine, but the  
 9 transcript already has it one way. It was my  
 10 fault. What I did was I marked them and I got  
 11 out of order.

12 THE SPECIAL MASTER: Nobody's fault. We'll  
 13 not use dates then of introduction and just call  
 14 these ---

18 \* \* \* \* \*

25 kersich-cross-white

1 MR. ROGERS: Mr. White, could you repeat the  
2 purposes for SK-10 and 9-A's introduction? I  
3 didn't get those. Are they both for the truth of  
4 the contents?

5 MR. WHITE: Right.

6 THE SPECIAL MASTER: If this is the case then,  
7 Leo, then, Mr. Salazar, we will take SK-10 and move  
8 it up after 9-A.

9 Go ahead, Mr. White.

10 MR. WHITE: We just finished SK-10? All  
11 right. Next would be SK-10-A, and that is offered  
12 for the purpose of impeachment, and it is a Bureau  
13 of Reclamation Soils Log for a hole in Township 1  
14 South, 4 East.

15 THE SPECIAL MASTER: It will be identified as  
16 USBR semi-detailed land classification map, Town-  
17 ship 1 South, Range 4 East.

18 I guess that's all right.

19 MR. WHITE: Your Honor, what description does  
20 Leo have for 10-B?

21 THE SPECIAL MASTER: Our notes show that this  
22 is a map that Mr. White provided during the  
23 depositions by Mr. Kersich. I have a transcript  
24 page when that offer was made at page 1608.

25 kersich-cross-white



1 MR. WHITE: Maybe we could check that page,  
2 Your Honor. I had the description for 10-B as  
3 what you read for 10-A. I may have had it switched.

4 THE SPECIAL MASTER: Let's have a look at  
5 them and see.

6 (Pause.

7 MR. WHITE: 10-B, I think, Your Honor, should  
8 be an excerpt from the Bureau of Reclamation map  
9 which was provided during discovery by the United  
10 States to the State of Wyoming.

11 Would that agree with your records, Leo?

12 MR. SALAZAR: Yes.

13 THE SPECIAL MASTER: Yes, and it will be so  
14 identified.

15 MR. WHITE: And SK-20 for the purposes --

16 THE SPECIAL MASTER: Just a minute, Mr. White.

17 (Whereupon an off-the-record  
discussion was held.)

18 THE SPECIAL MASTER: All right, Mr. White.

19 MR. WHITE: SK-20 is offered for the purposes  
20 of impeachment as a copy of land classification  
21 symbols.

22 THE SPECIAL MASTER: A copy of what?

23 MR. WHITE: Of a table of land classification  
24 symbols, provided by Mr. Waples during his deposition.

25 kersich-cross-white

1 THE SPECIAL MASTER: All right. It will be  
2 identified as Waples land classification map  
3 symbol code.

4 MR. WHITE: Fine.

5 THE SPECIAL MASTER: SK-30?

6 MR. WHITE: SK-30 is offered for the purposes  
7 of impeachment. It's a Bureau of Reclamation  
8 semi-detailed drainage study for Township 4 North,  
9 1 East.

10 THE SPECIAL MASTER: And it will be so  
11 identified, USBR semi-detailed drainage investiga-  
12 tion map of Township 4 North, Range 1 East. That's  
13 it.

14 MR. WHITE: SK-40 is a laboratory procedures  
15 excerpt from the Bureau of Reclamation manual.

16 THE SPECIAL MASTER: Laboratory procedures --

17 MR. WHITE: It's offered for the truth of  
18 its contents.

19 THE SPECIAL MASTER: What did Mr. White say,  
20 laboratory procedures what?

21 MR. WHITE: Excerpt.

22 THE SPECIAL MASTER: Thank you. Yes. Next,  
23 Mr. White?

24 MR. WHITE: SK-50 is the HKM lab manual.

25 THE SPECIAL MASTER: HKM laboratory soils

1 chemistry lab manual.

2 MR. WHITE: It's offered for the truth of  
3 its contents.

4 SK-51 is the collection memoranda from  
5 Ralph Saunders to Al Kersich concerning the scale  
6 of the ASCS photography, and it's offered for the  
7 purpose of showing facts and data upon which Mr.  
8 Kersich's opinions were, in part, based.

9 THE SPECIAL MASTER: SK-51 will be identified  
10 -- SK-51 will be so identified.

11 MR. WHITE: SK-52 is the HKM -- is a copy of  
12 an HKM lab sheet which is offered for illustrative  
13 purposes.

14 THE SPECIAL MASTER: And will be so identified  
15 as HKM laboratory sheet.

16 Do you want to say dealing with sodium  
17 adsorption ratio?

18 MR. WHITE: No, that's all right.

19 SK-53, copies of the HKM tabulations of the  
20 lands included within the acreage totals for  
21 arable lands.

22 THE SPECIAL MASTER: And they will be so  
23 identified.

24 MR. WHITE: Yes, sir.

25 THE SPECIAL MASTER: And you are withdrawing

1 these?

2 MR. WHITE: They are offered solely for  
3 illustrative purposes and for the purpose of  
4 showing the subtotals which are included within  
5 the grand totals testified to by Mr. Kersich,  
6 and I would ask, upon the admission of Exhibit  
7 SK-53, that we be allowed to withdraw that and  
8 make copies of it for ourselves, for the Court,  
9 as well as for the other parties.

10 THE SPECIAL MASTER: Very well.

11 MR. WHITE: That's all I have, Your Honor,  
12 in terms of the offer.

13 Your Honor, I might as well go ahead and  
14 offer Exhibits 41 and 42. They are simply copies  
15 of summaries which appear towards the back of  
16 US WRIR C-43, but for the purposes of reference,  
17 it may be convenient to have them in the record,  
18 and they are offered not for the truth of their  
19 contents, but simply to summarize evidence already  
20 of record.

21 THE SPECIAL MASTER: They shall be so received.

22 Are there objections from any counsel to the  
23 series of exhibits to which Mr. White has just  
24 alluded and that he has just offered for introduction  
25 into evidence?



1 MR. ECHOHAWK: I don't think there are, but  
2 could we perhaps have a couple minutes to regroup  
3 and see if there are any others that --

4 THE SPECIAL MASTER: I can indeed.

5 Do you have materials to take up time between  
6 now and lunch?

7 MR. WHITE: No, Your Honor. I'm practically  
8 done.

9 THE SPECIAL MASTER: All right. Why don't  
10 we, in that case, let you have the time between  
11 now and lunch, providing that if all parties are  
12 through with Mr. Kersich, then he may ask to be  
13 excused, or do you intend to stay in town the  
14 rest of the week?

15 MR. ECHOHAWK: We have some ground to cover  
16 with Mr. Kersich also.

17 THE SPECIAL MASTER: All right. That being  
18 the case, you are reserving some objections to the  
19 SK group of exhibits, but we can take an adjourn-  
20 ment then until 1:00. We'll save a half hour on  
21 the other end and give you a half hour on this  
22 end, gentlemen.

23 MR. WHITE: That's fine.

24 THE SPECIAL MASTER: Let's stand in recess  
25 until 1:00 at which time, Mr. Echohawk, I will

1 expect any objections to this group to be made,  
2 if any, and if you have none, then they will be  
3 admitted into evidence.

4 MR. WHITE: Before we adjourn, I would like  
5 to ask Leo, after we adjourn, if he could show us  
6 his list of those exhibits that were identified  
7 just to make sure I haven't missed offering some-  
8 thing.

9 MR. ECHOHAWK: That's what I'm concerned about  
10 is any that weren't offered.

11 THE SPECIAL MASTER: Let's use the next 30  
12 minutes for that purpose, and we are in recess  
13 now until 1:00.

14 (Whereupon the hearing recessed  
15 at 11:08 a.m. to reconvene at  
16 1:00 p.m.)

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