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File 184
4435
Box 12

Case # 4993

File # 184

4435

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IN THE DISTRICT COURT FOR THE FIFTH JUDICIAL DISTRICT

WASHAKIE COUNTY, STATE OF WYOMING

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

Civil No. 4993

FILED _____

6/23 1981

Margaret V. Hampton CLERK

DEPUTY

VOLUME 77

Friday, June 5, 1981

ORIGINAL

409 West 24th Street
Cheyenne, WY 82001
(307) 635-8280

Frontier Reporting Service



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APPEARANCES

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FOR THE STATE
OF WYOMING:

HALL & EVANS
2900 Energy Center Building
717 17th Street
Denver, CO 80294
BY: MR. MICHAEL D. WHITE, Special
Assistant Attorney General
and
MR. CHRIS HERMAN

FOR THE UNITED STATES
OF AMERICA:

MR. JOSEPH MEMBRINO
Attorney at Law
Land and Natural Resources Division
Department of Justice
P.O. Box 7415
Benjamin Franklin Station
Washington, DC 20044

FOR THE SHOSHONE and
ARAPAHOE TRIBES:

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

CLERK TO THE
SPECIAL MASTER:

MR. LEO SALAZAR
Attorney at Law
701 Rocky Mountain Plaza
Cheyenne, WY 82001



1 THE SPECIAL MASTER: Shall we come to order?

2 MR. WHITE: If I could have two minutes, Your Honor,
3 it would make it go much faster.

4 (Brief pause.)

5 MR. WHITE: Your Honor, I have given to Counsel and
6 I'd like to give to the Court, a replacement copy of
7 exhibit, Plaintiff's Exhibit FISH-280-77-A, which, as you
8 may recall, has the wrong cover sheet on it, and the
9 second sheet differs from the original only in, only
10 Number 204 in the original book is given rather than 204
11 and 205.

12 Q (By Mr. White) Mr. Vogel, I hand you what's been marked
13 for identification as Plaintiff's Exhibit WRIR FISH-103-A
14 and ask if you can identify that?

15 A This is a xerox copy of some of my field notes at Site
16 No. 1.

17 Q I hand you what's been marked for identification as
18 Plaintiff's Exhibit WRIR FISH-103-C-1. Can you identify
19 that, please?

20 A This is a xerox copy of my field notes at Site No. 1.

21 THE SPECIAL MASTER: At Plate No. 1?

22 MR. WHITE: At Site No. 1, Your Honor.

23 Q (By Mr. White) Does that have a date associated with it?

24 THE SPECIAL MASTER: At Site 1 means the same as --
25 vogel-cross-white



1 THE WITNESS: Reach No. 1.

2 THE SPECIAL MASTER: Reach 1.

3 THE WITNESS: Yes. The date's 7/26/79.

4 Q (By Mr. White) I hand you what's been marked for
5 identification as Plaintiff's Exhibit WRIR FISH-103-C-2,
6 ask you if you can identify that and include the date,
7 please?

8 A This is another copy of my field notes from Reach No. 1
9 dated 9/6/79.

10 Q I hand you what's been marked for identification as
11 WRIR FISH-103-C-3 and ask you if you can identify that,
12 please?

13 A This is another copy of my field notes collected from
14 Reach No. 1 dated 11/17/79.

15 Q I hand you what's been marked for identification as
16 Plaintiff's Exhibit WRIR FISH-103-D and ask you if you can
17 identify that?

18 A This is an original -- excuse me, this is a xerox copy
19 of my original coding sheets of my field data for
20 Reach No. 1.

21 Q Hand you what's been marked for identification as
22 Plaintiff's Exhibit WRIR FISH-103-F and ask if you can
23 identify that?

24 A This is a copy of the computer listing for the, my
25 vogel-cross-white



1 original data from Reach No. 1.

2 Q I hand you what has been marked for identification as
3 W -- Plaintiff's Exhibit -- Exhibits WRIR FISH-104-A,
4 104-A-1, 104-C-2, 104-D.

5 THE SPECIAL MASTER: D as in dog?

6 MR. WHITE: D as in dog, Your Honor.

7 Q (By Mr. White) 104-E and 104-F, and ask you if you can
8 identify those?

9 A By each exhibit number or just in general?

10 Q Just run through them quickly, you can just give the --
11 like 104, the first one is 104-A, and just describe what
12 it is. It's faster than if I have to ask you a question
13 each time.

14 A 104-A is a xerox copy of my field notes from Reach No. 2.
15 104-C-1 is --

16 THE SPECIAL MASTER: Is there an A-1 after A?

17 MR. WHITE: I don't believe so, Your Honor.

18 THE SPECIAL MASTER: Well, was C-1 your next exhibit
19 offered after 104-A that you asked him?

20 MR. WHITE: Let me look, Your Honor.

21 THE SPECIAL MASTER: Or the record can show us if
22 Merissa wants to look back at it.

23 MR. WHITE: It went from 104-A, Your Honor, to 104-C-1.

24 THE SPECIAL MASTER: All right.

25 vogel-cross-white



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THE WITNESS: 104-C-1 is a xerox copy of my field notes from Reach No. 2 dated 9/11/79.

104-C-2 is a xerox copy of my field notes dated 10/1/79.

THE SPECIAL MASTER: Reach 2?

THE WITNESS: Right.

Q (By Mr. White) The entire 104 series is for Reach No. 2, isn't it?

A Yes. 104-D is a xerox copy of the original computer coding form for Reach No. 2.

104-E is a xerox copy of some of the computer output for Reach No. 2.

104-F is a xerox copy of the computer data file, the original computer data file for Reach No. 2.

Q Mr. Vogel, I hand you what's been marked for identification as Plaintiff's Exhibit WRIR FISH-105-A, 105-C-1, 105-C-2, 105-C-3, 105-D, 105-E and 105-F, and ask you if you can first identify the Reach to which the 105 series applies and then identify each document?

A Before we go any further, did you want me to point out any inconsistencies or were you going to approach that later?

Q Once we get them identified, why we can go back through them if you like.

* * * * *

vogel-cross-white



1 A. 105-A is a copy of my field notes from Reach No. 3.

2 105-C-1 is a xerox copy of --

3 THE SPECIAL MASTER: What's that number again?

4 THE WITNESS: 105-C-1.

5 THE SPECIAL MASTER: Well now, where does 105-C-1
6 come from? He handed you 105-B-1 and B-2 and B-3.

7 MR. WHITE: It should be C-1, C-2 and C-3, Your
8 Honor.

9 THE SPECIAL MASTER: Does the exhibit show B or C?

10 THE WITNESS: C.

11 A. 105-C-1 is a xerox copy of my field notes from Reach No.
12 3 dated 8-7-79. 105-C-2 is a xerox copy of my field notes
13 from Reach No. 3 dated 9-7-79. 105-C-3 is a xerox copy
14 of my field notes from Reach No. 3 dated 10-9-79. 105-D
15 is a xerox copy of my original computer coding form for
16 Reach No. 3. 105, it must be E, is a xerox copy of some
17 of the computer output from Reach No. 3. 105-F is a
18 xerox copy of the original data file for Reach No. 3.

19 THE SPECIAL MASTER: Mr. White, how many more reaches
20 will there be comparable to these?

21 MR. WHITE: I think we have them for virtually
22 every reach.

23 THE SPECIAL MASTER: Do you intend to have each
24 one put into evidence this way?

25 vogel-cross-white



1 MR. WHITE: Yes, sir.

2 THE SPECIAL MASTER: What is the purpose of the
3 offer? I may rule that has been done in a repetitious
4 manner and rule against any more of these if the evi-
5 dence to be adduced by the remaining thirteen reaches
6 is identical to show improper work or to attack the
7 witness' direct evidence that can be adduced from
8 these --

9 MR. WHITE: The purpose of identifying and
10 eventually offering these exhibits -- Well, the exhibits
11 will be offered for the purpose of showing the facts and
12 data upon which each of the flow recommendations made
13 for each of the --

14 THE SPECIAL MASTER: Each reach?

15 MR. WHITE: -- each of the reaches were based and
16 by doing it this way, Your Honor, with I believe one
17 exception, we'll be able -- and perhaps too, we'll be
18 able to deal with any inconsistencies, discrepancies,
19 numerical errors and so forth as part of our direct
20 case, rather than as part of cross-examination.
21 Because only by getting these in evidence can we have
22 our own experts testify, based on them. So that's the
23 purpose of this, is to hopefully shortcut it by, instead
24 of going through and saying, "Okay, what are the facts

25 vogel-cross-white



1 and data you used for Reach 3", and then start hammering
2 at them, simply say, get him to indicate that these are
3 the facts and data that he used for Reach 3, or whatever
4 it is, and then our expert can deal with it later on.

5 THE SPECIAL MASTER: Then you offer them in evi-
6 dence, and you will have them when your case comes,
7 is that it?

8 MR. WHITE: That's it.

9 MR. MEMBRINO: Your Honor, we might even short-
10 circuit this more if Mr. Vogel is permitted to report
11 on the number of hours he spent last night reviewing
12 those documents. I believe he found that, in many
13 cases, they don't reflect accurately his work.

14 THE SPECIAL MASTER: Well, I'm trying to shortcut
15 what looks like it's going to be all morning just with
16 exhibits because we have eleven more reaches. But go
17 ahead, Mr. White.

18 MR. WHITE: Your Honor, I would anticipate we'll
19 be done with cross-examination in forty-five minutes
20 to an hour.

21 THE SPECIAL MASTER: All right. Go ahead, Mr.
22 White.

23 MR. WHITE: We can move right along.

24 THE WITNESS: Excuse me, Your Honor. Referring

25 vogel-cross-white



1 back to the relevance to the subject, if Mr. White
2 turns around and asks me about the accuracy of this
3 information that he's showing me, I spent several
4 hours last night going through them, and many of the
5 pages are illegible --

6 THE SPECIAL MASTER: That can come when we get
7 to the specifics. Right now, all we want to do is
8 get them identified so we can have that in the record.
9 So, if you have a group for Reach 4, and you can
10 identify them, and if they will follow the same pattern
11 of having been your field notes and computer coding
12 forms and outputs and data, if we can just lump them
13 into one number and group them for the reach, 5, 6, 7
14 and so on --

15 MR. WHITE: Would you do -- that may not be
16 possible, Your Honor, because sometimes, one of those
17 numbers falls out a little bit.

18 THE SPECIAL MASTER: All right. Move along as
19 best you can.

20 Q (By Mr. White) Mr. Vogel, I hand you what has been
21 marked for identification as plaintiff's WRIR FISH-109,
22 109-A, 109-C, 109-C-2 --

23 THE SPECIAL MASTER: B-2 or D-2?

24 MR. WHITE: C, Your Honor. I'm sorry, cocoa.

25 vogel - cross - white



1 Q. C, as in cocoa, 3, 109-D, 109-E and 109-F, and ask you
2 to identify those.

3 THE WITNESS: Your Honor, to speed this up, would
4 you just like me to give a general answer saying these
5 follow the same pattern?

6 THE SPECIAL MASTER: Just answer his question any
7 way you wish.

8 A. Okay. 109-A is a copy of some of my field notes from
9 Reach No. 6. 109, I believe it is C-1, is a copy of
10 some of my field notes for Reach No. 6. 109-C-2 is a
11 copy of some of my field notes from Reach No. 6 dated
12 10-15-79. I should point out that the previous
13 Exhibit 109-C-1 was dated 8-28-79. 109-C-3 is a copy
14 of some of my field notes from Reach No. 6 dated
15 10-16-79. 109-D is a copy of my original computer
16 for Reach No. 6. 109-E is a copy of some of the computer
17 output from Reach No. 6. 109-F is a copy of the original
18 computer data from Reach No. 6.

19 Q. (By Mr. White) Mr. Vogel, I hand you what has been
20 marked for identification as plaintiff's Exhibit WRIR
21 FISH-110-A and C, C as in cocoa, D, E and F, and ask
22 you if you can identify those?

23 A. 110-A is a copy of some of my field notes from Reach
24 No. 7. 110-C is a copy of some of my field notes from
25 vogel-cross-white



1 Reach No. 7 dated 10-24-79. 110-D is a copy of the
2 original computer data form for Reach No. 7. 110-E
3 is a copy of some of the computer output from Reach
4 No. 7. 110-F is a copy of the original data file
5 from Reach No. 7.

6 Q. Mr. Vogel, I hand you what has been marked for identi-
7 fication as plaintiff's Exhibits WRIR-FISH-111-C-1,
8 C as in cocoa, C-2, C-3, D, E and F, and ask you to
9 identify those.

10 A. 111-C-1 is a copy of some of my field notes from Reach
11 No. 9 dated 10-3-79. 111-C-2 is a copy of some of my
12 field notes from Reach No. 9 dated 10-4-79. 111-C-3
13 is a copy of some of my field notes from Reach No. 9
14 dated 10-5-79. 111-D is a copy of the original computer
15 data form for Reach No. 9. 111-E is a copy of some
16 of the computer output for Reach No. 9. 111-F is a
17 copy of the original data file, computer data file for
18 Reach No. 9.

19 Q. Mr. Vogel, I hand you what has been marked for identi-
20 fication as plaintiff's Exhibits WRIR-FISH-112-A, C,
21 D, E and F, and ask you to identify those, please.

22 A. 112-A is a copy of some of my field notes from Reach
23 No. 8. 112-C is a copy of some of my field notes from
24 Reach No. 8 dated 11-17-79. 112-D is a copy of the

25 vogel-cross-white



1 original computer coding form for Reach No. 8. 112-E
2 is a copy of some of the computer output from Reach No.
3 8. 112-F is a copy of the original computer data file
4 for Reach No. 8.

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1 Q (By Mr. White) Mr. Vogel, I hand you what have been
2 marked for identification as Plaintiff's Exhibits WRIR
3 FISH-113-A, C, D, E and F, and ask you to identify those,
4 please.

5 A 113-A, is a copy of some of my field notes from Reach
6 No. 10.

7 113-C is a copy of some of my field notes from
8 Reach No. 10, dated 1/23/79.

9 113-D, is a copy of the original computer data form
10 for Reach No. 10.

11 113-E, is a copy of some of the computer output for
12 Reach No. 10.

13 113-F, is a copy of the original computer data file
14 for Reach No. 10.

15 Q Mr. Vogel, I hand you what have been marked for
16 identification as Plaintiff's Exhibits WRIR FISH-114-A-1,
17 A-2, C, D, E and F, and ask you to identify those.

18 A 114-A-1, is a copy of some of my field notes from
19 Reach No. 11.

20 112 -- Excuse me, 114-A-2 is a copy of some of my
21 field notes from Reach No. 11.

22 114-C is a copy of some of my field notes from
23 Reach No. 11, dated 10/5/79.

24 114-D, is a copy of the original computer data for

25 vogel-cross-white



1 Reach No. 11.

2 114-E is a copy of some of the computer output
3 from Reach No. 11.

4 114-F is a copy of some of the computer -- Excuse me,
5 is a copy of the original computer data file for Reach No.
6 No. 11.

7 Q Mr. Vogel, I hand you what's been marked for identification
8 as Plaintiff's Exhibits WRIR FISH-115-A, 115-C, 115-D,
9 115-E, and 115-F, and ask you if you could identify those,
10 please.

11 A 115-A is a copy of some of my field notes from Reach No. 12.

12 115-C is a copy of some of my field notes from
13 Reach No. 12, dated 9/14/79.

14 115-D is a copy of the original computer data form
15 for Reach No. 12.

16 115-E is a copy of some of the computer output from
17 Reach No. 12.

18 115-F is a copy of the original computer data file
19 for Reach No. 12.

20 Q Mr. Vogel, I hand you what's been marked for identification
21 as -- what has been marked for identification as
22 Plaintiff's Exhibits WRIR FISH-116-A, C, D, E and F, and
23 ask you to identify those.

24 A 116-A is a copy of some of my field notes from Reach
25 vogel-cross-white



1 No. 14.

2 116-C is a copy of some of my field notes from
3 Reach No. 14, dated 10/12/79.

4 116-D is a copy of the original computer coding form
5 for Reach No. 14.

6 116-E is a copy of some of the computer output from
7 Reach No. 14.

8 116-F is a copy of the original computer data file
9 for Reach No. 14.

10 Q Mr. Vogel, I hand you what's been marked for identification
11 as Plaintiff's Exhibits WRIR FISH-117-A, C, D, E and F,
12 and ask you to identify those, please.

13 A 117-A is a copy of some of my field notes from Reach
14 No. 13.

15 THE SPECIAL MASTER: What number?

16 THE WITNESS: 117-A.

17 THE SPECIAL MASTER: Field notes for reach number?

18 THE WITNESS: Thirteen.

19 THE SPECIAL MASTER: You're putting 13 after 14; is
20 that correct?

21 MR. WHITE: Yes, sir. These exhibits are in the
22 same --

23 THE SPECIAL MASTER: That's all I wanted to know,
24 you've answered his question.

25 vogel-cross-white



1 THE WITNESS: 117-C is a copy of some of my field
2 notes for Reach No. 13, dated 10/11/79.

3 117-D is a copy of the original computer data forms
4 for Reach No. 13.

5 117-E is a copy of some of the computer output from
6 Reach No. 13.

7 117-F is a copy of the original computer data file
8 for Reach No. 13.

9 Q (By Mr. White) Hand you what's been marked for
10 identification as Plaintiff's Exhibits WRIR FISH-118-A,
11 C, D, E and F, and ask if you can identify those?

12 A 118-A is a copy of some of my field notes from Reach No. 15.

13 118-C is a copy of some of my field notes from
14 Reach No. 15, dated 10/22/79.

15 118-D is a copy of the original computer coding forms
16 for Reach No. 15.

17 118-E is a copy of some of the computer output from
18 Reach No. 15.

19 118-F is a copy of the original computer data file
20 for Reach No. 15.

21 Q Hand you what's been marked for identification as
22 Plaintiff's Exhibits WRIR FISH-119-A, 119-C --

23 THE SPECIAL MASTER: Speak up, Mr. White.

24 MR. WHITE: I'm sorry.

25 vogel-cross-white



- 3-5
- 1 THE SPECIAL MASTER: Speak up.
- 2 Q (By Mr. White) 119-A as in alfalfa, C as in cocoa, D as in
- 3 delta, E as in echo and F as in foxtrot, and ask you to
- 4 identify these, please.
- 5 A 119-A is a copy of some of my field notes from Reach No. 16.
- 6 119-C is a copy of some of my field notes from
- 7 Reach No. 16, dated 10/25/79.
- 8 119-D is a copy of the original computer coding form
- 9 for Reach No. 16.
- 10 119-E is a -- excuse me, is a copy of some of the
- 11 computer output from Reach No. 16.
- 12 119-F is a copy of the original computer data file
- 13 for Reach No. 16.
- 14 Q Mr. Vogel, I hand you what's been marked for identification
- 15 as Plaintiff's Exhibit WRIR FISH-120, and ask you to
- 16 identify that, please.
- 17 A 120 is a copy of substrate coding.
- 18 THE SPECIAL MASTER: Substrate?
- 19 THE WITNESS: Substrate coding I used in instream
- 20 flow study on the Reservation. There's two copies of that
- 21 that look identical in this exhibit. In addition, on the
- 22 back page there's, what appears to be a redrawing of an
- 23 original from my deposition in May of 1979.
- 24 Q (By Mr. White) That wasn't part of the facts and data that
- 25 vogel-cross-white



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you gave us during the deposition?

A Yes. Yes, it was in my May, 1979 deposition.

Q But I don't want to hoist off on you something somebody did. Did you prepare that document?

A I didn't prepare this document.

Q You want to rip it off the back then.

(Witness complied.)

Q That's the third page of that exhibit.

THE SPECIAL MASTER: What does it consist of, just two pages of substrate coding?

THE WITNESS: Yes, that appear to be identical.

Q (By Mr. White) Why don't you just jerk the second page off and we'll have a one-page exhibit.

THE SPECIAL MASTER: It's now one page of substrate coding?

THE WITNESS: That's correct.

Q (By Mr. White) Hand you what's been marked for identification as Plaintiff's Exhibit WRIR FISH-131, and ask you if you can identify that, please?

A 131 is a copy of some of my field notes from Reach No. 4, dated 8/21/80.

Q Hand you what's been marked for identification as WRIR FISH-32 ---Let's change that to 132.

THE SPECIAL MASTER: Before you answer, on 132, will vogel-cross-white

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you read to me what 131 again is, please, Merissa.

(Thereupon the following
(answer was read back as
(follows: "A 131 is a copy
(of some of my field notes
(from Reach No. 4, dated,
(8/21/80."

Q (By Mr. White) Hand you what's been marked for
identification as --

THE SPECIAL MASTER: One moment, Mr. White, please.

Okay, go ahead. Thank you.

* * * * *

vogel-cross-white



- 1 Q (By Mr. White) Mr. Vogel, I hand you what has been
2 marked for identification plaintiff's Exhibit WRIR-FISH-
3 132 and ask you to identify that?
- 4 A 132 is a copy of some of my field notes from Reach No. 4,
5 dated 1-8-80.
- 6 Q I hand you what has been marked for identification as
7 plaintiff's Exhibit FISH-133 and ask you to identify
8 that.
- 9 A 133 is a copy of some of my field notes from Reach No. 4.
10 That's also including a copy of some of the computer
11 graphs as an output from Reach No. 4. It's also including
12 a copy of the original computer coding form for Reach No.
13 4.
- 14 Q I hand you what has been marked for identification as
15 plaintiff's Exhibits WRIR-FISH-134 and 135, and ask you
16 to identify those.
- 17 A 134 is a copy of some of my field notes from Reach No.
18 4. It also includes a copy of some of the computer
19 graphs produced from Reach No. 4. It also includes a
20 copy of the original computer coding form for Reach No.
21 4.
- 22 Q I hand you what has been --
- 23 THE SPECIAL MASTER: How about 135?
- 24 MR. WHITE: I'm sorry. Excuse me.
- 25 vogel-cross-white



1 A. 135 is a copy of some of my field notes from Reach No.
2 5. It also includes a copy of some of the computer
3 graphs produced from Reach No. 5. It includes some
4 more copies of some of my original field notes from
5 Reach No. 5. It includes a copy of the original
6 computer coding forms for Reach No. 5.

7 THE SPECIAL MASTER: Okay.

8 Q. (By Mr. White) Mr. Vogel, do the exhibits which you
9 have just identified -- Well, strike that. Let's
10 start again.

11 You mentioned to the Master that there were
12 contradictions, omissions and illegibilities in some
13 of those exhibits. Could you please identify where
14 those contradictions or other problems occur?

15 MR. WHITE: And I would ask counsel for the
16 United States, since those are exhibits from the
17 deposition, that if once they are identified, we
18 could simply make the best copies we can from the
19 deposition exhibits and replace those portions with
20 those copies.

21 THE SPECIAL MASTER: You gentlemen have been
22 working most of the night on this. I presume you're --
23 do you need more than this morning to do that?

24 MR. MEMBRINO: I think he has a list, Your Honor.
25 vogel-cross-white



1 THE SPECIAL MASTER: Do you -- Okay. Go ahead, Mr.
2 Vogel.

3 THE WITNESS: Your Honor, this is quite substantial.
4 There were many copies that are illegible, numbers were
5 illegible, there was missing pages, pages out of order.
6 There's probably a hundred or more than a hundred pages
7 that were upside down. There was a substantial number
8 of duplicates also included in there.

9 THE SPECIAL MASTER: Well, do you want to take the
10 list you're reading from and make it an exhibit, or do
11 you want to read it into the record?

12 MR. WHITE: Sure. I would be glad to make it an
13 exhibit, and we can just get the corrections made --

14 MR. MEMBRINO: Excuse me, Your Honor, to make some --
15 to make it more clear, we should probably rewrite that.
16 Those were notes he prepared --

17 THE SPECIAL MASTER: If you wish, if it's not going
18 to take more than five or ten minutes, read it into the
19 record, and you will have it in the record, if that's
20 what you would like to do, and it saves any more copies.

21 MR. WHITE: I think what we're really concerned
22 about would be the illegibilities, the missing pages
23 and pages which we may have cropped off a number.

24 THE SPECIAL MASTER: What's the best way to identify
25 that and establish it in the record, by reading it in, now



1 or by xeroxing some copies of the notes he's holding
2 in his hand, gentlemen, that's my question to the two
3 of you.

4 MR. MEMBRINO: If we could have two minutes, we
5 could just devise a way to arrange those notes, and
6 he probably can read them into the record.

7 THE SPECIAL MASTER: All right. Do you want to
8 take five minutes?

9 MR. WHITE: That's fine, Your Honor. We're getting
10 real close to being done.

11 THE SPECIAL MASTER: All righty.

12 (Recess 10:00 a.m.)

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THE SPECIAL MASTER: Okay, let's resume, Mr. White.

(Off-the-record discussion.)

Q (By Mr. White) Okay. Mr. Vogel, you've had a chance to go through the list which you made last night along with the exhibits which have been identified today, and Mr. Membrino indicates to me that you can indicate where there are problems in the exhibits that you have just identified; is that correct?

A Yes.

Q Would you go ahead and do that.

MR. WHITE: And I believe I can state for the record that Counsel has stipulated that where there is a problem, either in terms of illegibility, numbers being crossed off from the xerox, or a page missing or a document missing --

THE SPECIAL MASTER: Are these problems all formal and procedural rather than substantive, or do some of the problems involve the figures?

MR. WHITE: I don't think there's any problem with substance. It's really a question of the quality, quality control in copying.

THE SPECIAL MASTER: Mechanics.

MR. WHITE: And I believe Counsel stipulated that where Mr. Vogel identifies such a problem the State will rectify the problem, show the page from the deposition

vogel-cross-white



1 exhibit to Counsel for the Tribes and the United States
2 and then substitute it.

3 THE SPECIAL MASTER: All right, fine, Mr. White.

4 Q (By Mr. White) Go ahead, Dave.

5 A Did you want me to omit those ones, those exhibits where
6 pages are upside down and out of order? There's like 11
7 exhibits that were upside down in places and probably
8 four or five that pages were out of order. Do you want me
9 to omit those?

10 MR. WHITE: Would the major concern to you be pages
11 that were upside down?

12 MR. MEMBRINO: No. There was just so many of them
13 it's hard for us to verify what was there.

14 MR. WHITE: How about the out of order pages, can we
15 get those back in order?

16 MR. MEMBRINO: I assume you can order them and get
17 the exhibits in order that are out of order.

18 MR. WHITE: All right. We'll do it.

19 Q (By Mr. White) Go ahead, Dave.

20 A 103-F was incomplete, 104-A was partially illegible,
21 104-D was incomplete, 104-F was incomplete, 105-E was
22 incomplete, 109-C-1 was illegible in part, 109-C-2 was
23 illegible in part, 109-C-3 was illegible in part,
24 111-C-1 had missing data, there was a missing transect.

25 vogel-cross-white



1 112-C was partially illegible.

2 THE SPECIAL MASTER: What number, please?

3 THE WITNESS: 112-C was partially illegible.

4 THE SPECIAL MASTER: Thank you.

5 A 113-C was partially illegible, 118-D was partially
6 illegible, and I believe that's it.

7 I'd say in general they appear to be copies of my
8 own data. However, I did not go through number by number
9 to check the legibility of every single one. There's
10 literally, probably tens of thousands of numbers there,
11 I just merely picked the ones that were most obvious.

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vogel-cross-white

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1 MR. WHITE: I assume that counsel would also stipulate
2 that if the illegibility, because of the illegibility of
3 deposition exhibits, we could make a copy of the originals
4 that are in Mr. Vogel's possession?

5 MR. MEMBRINO: Yes.

6 THE SPECIAL MASTER: Okay.

7 Q (By Mr. White) Mr. Vogel, I hand you what's been marked
8 as Plaintiff's Exhibit WRIR FISH-140 - and state to the
9 Court that this is a list of curves indicated by reach in
10 C-280,, page number, for which the State of Wyoming was un-
11 able to find the data from which the curves were plotted.
12 And it contains four pages. And the stipulation that
13 counsel had reached, I believe I can accurately state it,
14 is that Mr. Vogel will provide us the information neces-
15 sary to access his files at our own expense and obtain
16 the data from which the curves were plotted. Is that
17 correct?

18 MR. MEMBRINO: Yes. May I make one addendum to that?

19 MR. WHITE: Yes.

20 MR. MEMBRINO: And that is that Mr. Vogel told me
21 that he wants to be sure that the information in the data
22 file is still in the order he left it before the State
23 turns -- it is turned over to the State. And so, he
24 would like to be able to do that. That will cost some

25 vogel - cross - white



1 small amount of money. It will be for your convenience,
2 but we would also like that at the State's expense.

3 MR. WHITE: Sure.

4 Q (By Mr..White) How much is that going to cost us, Dave?

5 A I don't know. First of all, I have to check out the
6 access to a terminal now that I have moved out in
7 California. I assume I can use a terminal down in
8 Sacramento, and then, once I do that, I'll have to get
9 access to the files, check through them. It will take me
10 a couple of days just to set that up and then a couple of
11 days just to call out the computer -- or the computer
12 files, and then I'll have to do something with the com-
13 puter files so that I can enable the State to gain access
14 to them. But, you know, I don't want to -- so that they
15 can -- inadvertently they might be able to wipe out a
16 file by accident. So there is a process, I can do that.
17 But I'll have to check that out.

18 Q Is there any way you can simply, once you access your
19 file and be sure it is in the order that it originally
20 was, that you can just go ahead and have it printed out
21 and we'll pay you all the costs involved?

22 A Yes, I believe that could be done.

23 MR. WHITE: Maybe that would be the easiest way, and
24 you can do that by punching a button rather than making a

25 vogel - cross - white



1 bunch of telephone calls.

2 Q (By Mr. White) Mr. Vogel, aside from the exhibits in the
3 100 series which have been identified and subject to the
4 stipulations involved in those exhibits and the facts and
5 data which you disclosed during your direct and cross-
6 examination, are there any other facts and data or, rather,
7 should I say the facts and data to which I referred, do
8 those facts and data comprise the facts and data upon
9 which you relied in reaching your professional opinion?

10 A In general, I would say that the information I'll supply
11 you through the computer files, the computer printout of
12 my computer files, will comprise all of the facts and
13 data upon which I based my conclusions. In addition, I
14 might point out I'll have to let Mr. Sinning know, or I
15 could simply state for the record right here that the
16 additional fish curves that are in the computer files,
17 which I'll give him printouts of, will be for those
18 reaches on the Big Wind River. The upper reaches, I
19 used IFG fish curves in their data file called FISHFIL.

20 THE WITNESS: Your Honor, may I have a minute or two
21 just to --

22 THE SPECIAL MASTER: Make sure?

23 THE WITNESS: Make sure.

24 THE SPECIAL MASTER: Sure. Of course.

25 vogel - cross - white



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MR. WHITE: Okay.

THE SPECIAL MASTER: It is a pretty important question.

MR. WHITE: After that, Your Honor, I just have one short series of questions.

THE SPECIAL MASTER: Okay.

Any redirect?

MR. MEMBRINO: I don't think so, Your Honor. I'll just need a couple of minutes at the end to make sure, but I think not.

(Off-the-record discussion.)

* * * * *



1 THE SPECIAL MASTER: All right. On the record,
2 please.

3 Q (By Mr. White) What did you find out?

4 A I believe you will have all the information that we've
5 discussed.

6 MR. WHITE: Your Honor, counsel, I believe, have
7 also stipulated that once the State gets the replacement
8 pages for the problems that Mr. Vogel identified with
9 the 100 series exhibits, and once Mr. Vogel has an
10 opportunity to get the information that was involved
11 with Exhibit FISH-140, then those will be marked and
12 moved in by stipulation.

13 THE SPECIAL MASTER: Substituted?

14 MR. WHITE: Well, there will be substitutions for
15 the illegible or incomplete pages; insertion of the
16 incomplete pages and stipulated admission of the docu-
17 ments related to Exhibit 140.

18 THE SPECIAL MASTER: Very well.

19 Q (By Mr. White) Mr. Vogel, I'd like you to cast your
20 attention, your mind to Stretch No. 1, Claim Reach No. 1.
21 Is it true that for use of, in calibration, you used
22 discharges of 248, 436 and 786?

23 A Would you please repeat those numbers?

24 Q 248, 436, 786.

25 vogel-cross-white



- 1 A. That's correct.
- 2 Q. Could you describe the source of 436 and 786?
- 3 A. Those were average discharges computed from my transects,
4 No. 1 and No. 2.
- 5 Q. And the 248 was your discharge at the control transect,
6 downstream transect; is that correct?
- 7 A. 248, the low flow discharge, was computed from the
8 average discharge as determined from Transects No. 1, 2
9 and 7.
- 10 Q. Could you explain the process which you used in deter-
11 mining which transect flows would be used for calibration?
12 I'm meaning this to be a guide for a general question
13 about all your IFG-4 reaches.
- 14 A. Generally, I chose a transect that I figured would give
15 the best cross-section to determine the discharge. It
16 varied depending upon flow, and it varied from study
17 site to study site.
- 18 Q. Okay. What factors did you consider in determining
19 which transects to select in your determination of
20 calibration flows?
- 21 A. Generally, I just determined the general shape of the
22 channel, the depth of the water, type of substrate,
23 the angle of the flow in comparison to the streambed.
24 I tried to choose those transects I figured would give
25 vogel-cross-white



1 me the most representative flow through a given transect.

2 MR. WHITE: Okay. Your Honor, I'm ready to offer
3 all these exhibits. Would you like to take a break
4 and get some coffee? This might be a good time to do
5 so. It will probably take twenty to twenty-five
6 minutes to get through all these.

7 THE SPECIAL MASTER: All right, go ahead Mr.
8 White. We can grab our coffee while we're working.

9 (Brief pause.

10 THE SPECIAL MASTER: Okay. Take off, Mr. White.

11 MR. WHITE: Let me ask something off the record,
12 Your Honor.

13 (Off the record discussion.

14 MR. WHITE: Your Honor, at this time, the State
15 would offer the following exhibits, all of which are
16 in the plaintiff's WRIR-FISH series, and I will describe
17 them only by number and not prefix, to make this go a
18 little quicker.

19 THE SPECIAL MASTER: That will be fine. That will
20 be appreciated.

21 MR. WHITE: 1-A is the script for the Instream
22 Flow Group Slide Show on Incremental Methodology, it's
23 offered for illustrative purposes.

24 THE SPECIAL MASTER: Very good.

25 vogel-cross-white



1 MR. WHITE: The State would offer 2, which is a
2 copy of the page from Everhart and Young's solely
3 for illustrative purposes.

4 The State would offer 200, 201, 202, for the
5 purposes of showing facts and data upon which Mr.
6 Vogel based his opinion.

7 THE SPECIAL MASTER: Which are what?

8 MR. WHITE: Creel survey memos for 1978, '79 and '80.

9 The State offers 280-77-A which is the USGS gauging
10 record information.

11 THE SPECIAL MASTER: September, years '50 to '60?

12 MR. WHITE: Right, contained in the manual dealing
13 with the 1950 to 1960 time period which we directed Mr.
14 Vogel's attention, I believe to the year 1955. And that
15 would be offered for the truth of its contents.

16 Off the record.

17 (Off the record discussion.)

18 MR. WHITE: Is that the document you have there,
19 Your Honor?

20 THE SPECIAL MASTER: I think it is, it looks like
21 280/24e.

22 MR. WHITE: That's it.

23 THE SPECIAL MASTER: It's the -- it's the Big
24 Wind River above Dinwoody Creek Confluence for Rainbow
25 Trout, the scale for it.



1 MR. MEMBRINO: Your Honor, is there a figure for
2 it?

3 THE SPECIAL MASTER: A figure number on it?

4 MR. SALAZAR: Yeah, it's figure No. 7.

5 THE SPECIAL MASTER: It's figure No. 7 from C-280,
6 and it's Page 24 from C-280.

7 MR. WHITE: That's offered solely for illustrative
8 purposes, Your Honor.

9 The State would offer No. 31, 32. 31 is a copy of
10 Mr. Vogel's notes called up from the computer program,
11 and 32 is a copy of the user guide, P-HABSIM system
12 which he used. Those are offered for the purpose of
13 illustrating the facts and data and analyses, assumptions
14 upon which the conclusions are based.

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I would offer No. 45, which was the large facsimile of Slide No. 45 from the Instream Group Film Slide Show for illustrative purposes.

We offer FISH-4 -- I apologize for not having these in numerical order --

THE SPECIAL MASTER: That's all right.

MR. WHITE: But we have them in the order in which they were dealt with in the cross-examination which is the Instream Flow Group's 4, No. 4, for the purposes of impeachment.

We offer M-1-A, which is the overlay of Mr. Vogel's stream reaches which fits on Exhibit M-1 for illustrative purposes.

We offer No. 284, which is the blow-up of -- excuse me, a copy of U.S. Exhibit C-284 which was then extended to the right side and upon which notations were placed on cross-examination for the purpose of illustrating that testimony.

THE SPECIAL MASTER: That's the long strip -- is this it?

MR. WHITE: Yes, sir.

Let me ask, Your Honor, whether or not we have a copy of 31, which was Mr. Vogel's handwritten notes when he got into the computer and he needed to block off certain sensitive information? And I am wondering whether



1 or not a copy of that was provided, the original copy
2 was provided to Leo or to yourself, Your Honor?

3 THE SPECIAL MASTER: I don't have it.

4 MR. SALAZAR: (Nodding head negatively.)

5 MR. CHRIS HERMAN: It's upstairs.

6 MR. WHITE: Upstairs?

7 Then for the purpose of showing the facts and data
8 upon which Mr. Vogel relied in reaching his professional
9 opinion subject to stipulation of Counsel regarding those
10 exhibits and with the understanding that Mr. Vogel also
11 relied on other facts and data, which he may have described
12 during his direct and cross-examination, or which he did
13 describe during his direct and cross-examination, the
14 State would offer the following exhibits: 103-A, C-1,
15 C-2, C-3, D, E, which was identified yesterday rather
16 than today; F. 104-A, C-1, C-2, D, F,--

17 THE SPECIAL MASTER: You're not offering E?

18 MR. WHITE: I didn't find it on my list. I guess I
19 missed it, Your Honor. We will also offer E.

20 THE SPECIAL MASTER: Thank you. Because I wanted
21 to double check that with you.

22 MR. WHITE: Thank you.

23 105-A, C-1, C-2, C-3, D, E and F. 109-A, C-1, C-2,
24 C-3, D, E and F. 110-A, C, D, E, F. 111-C-1, C-2, C-3,
25 D, E, F. 112-A, C, D, E, F. 113-A, C, D, E, F.



1 114-A-1, A-2, C, D, E, F. 115-A, C, D, E and F. 116-A,
2 C, D, E, F. 117-A, C, D, E and F.

3 THE SPECIAL MASTER: Did you say F?

4 MR. WHITE: Yes, sir, I meant to say that.

5 THE SPECIAL MASTER: Okay.

6 MR. WHITE: 118-A, C, D, E, F. 119-A, C, D, E and F.
7 120, 131, 132, 133, 134, 135 and 140. 140 being offered
8 simply for illustrative purposes.

9 Now, if I might have a moment I'll go through and
10 check once more, Your Honor.

11 THE SPECIAL MASTER: All right.

12 MR. WHITE: To make sure I've got the ones that I
13 should offer.

14 THE SPECIAL MASTER: All right.

15 MR. WHITE: I'll back up and offer No. 50 solely
16 for illustrative purposes.

17 THE SPECIAL MASTER: Fifty?

18 MR. WHITE: Fifty, five zero.

19 THE SPECIAL MASTER: Okay.

20 MR. WHITE: That was the two pages No. 78 and 79
21 pasted together.

22 THE SPECIAL MASTER: Right. I've got it right here.

23 MR. WHITE: And probably it ought to be offered
24 simply because it goes along with the transcript, although
25 no annotation --



1 THE SPECIAL MASTER: It cleans up my house, so we'll
2 see.

3 MR. WHITE: Your Honor, with respect to No. 1, FISH-1,
4 which was a slide show and was not offered, I would like
5 to ask for the consent of the Court and Counsel for that
6 exhibit which normally once identified should be kept as
7 part of the --

8 THE SPECIAL MASTER: Record?

9 MR. WHITE: -- record to instead be checked out on an
10 indefinite basis until such time as the parties would need
11 it, and returned to the custody of the Instream Flow Group,
12 the Fish and Wildlife Service of the United States.

13 THE SPECIAL MASTER: Who are its owners?

14 MR. WHITE: Who are its owners.

15 THE SPECIAL MASTER: Very good.

16 MR. WHITE: It seems to me we have the narrative
17 and the script and copies of those slides and it's being
18 put into the possession of an adverse party, so I'm sure
19 it is not going to go anywhere.

20 THE SPECIAL MASTER: All right.

21 MR. MEMBRINO: Your Honor, I have no objection to that
22 since I think Fort Collins is such a short distance away
23 should the Court have any need for it. It could be made
24 available in a couple of hours.

25 THE SPECIAL MASTER: All right. Does it sound



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all right, Mr. Sachse?

MR. SACHSE: No problem.

THE SPECIAL MASTER: All right. So ordered.

Off the record, please.

(Off-the-record discussion.)

THE SPECIAL MASTER: All right.

MR. WHITE: Your Honor, I think with respect to the slide show, I probably, in order to keep the record complete, should offer it for illustrative purposes along with 1-A.

THE SPECIAL MASTER: And reserving the right to bring it back to its owner as you previously asked for?

MR. WHITE: But asking for the right to take it out indefinitely and return it to the United States.

THE SPECIAL MASTER: All right.

MR. WHITE: That completes the offer, Your Honor.

I would like to ask -- off the record.

(Off-the-record discussion.)

MR. WHITE: That completes the offer, Your Honor.

THE SPECIAL MASTER: Okay. Mr. Membrino, I can't imagine my reaction if you want to take a week to do any voir diring of these exhibits.

MR. MEMBRINO: No, Your Honor. In fact, I just have two or three questions, not very many at all.

THE SPECIAL MASTER: Very good. All right. You may



1 proceed.

2 VOIR DIRE EXAMINATION

3 BY MR. MEMBRINO:

4 Q Mr. Vogel, with regard to the 100 series of exhibits, I
5 think that's how Mr. White has described them, that you
6 reviewed last night and you identified today, were those
7 copies of the same documents that you provided to the
8 State at your deposition in May of 1980, with, of course,
9 the understanding that some of them have defects in them
10 and you're going to correct?

11 I would amend that question to ask you whether it is
12 the May, 1980 or the November 12, 1980 deposition?

13 A Maybe somebody should explain again what the 100 series is.

14 THE SPECIAL MASTER: It began with 103, which were
15 your field notes on Reaches 1 and went through all of the
16 notes, coding forms, output and data files on the various
17 reaches we went through earlier, which you identified.

18 MR. WHITE: These.

19 A Okay. Yes, that's correct. I supplied the State with all
20 of this information with the exception of Reaches No. 4
21 and 5 in the May, 1980 deposition and for Reaches No. 4
22 and 5, I supplied them with that information in the
23 November, 1980 deposition.

24 Q (By Mr. Membrino) Now, you also agreed that you would
25 make available your data sheets that are on -- in the

~~vogel-voir-dire-membrino~~



1 computer that you worked with. To the extent that there
 2 is any discrepancy between the computer work and these
 3 exhibits we just described, which would be the controlling
 4 document?

5 A The more accurate document would be the information I'm
 6 going to supply them that's currently on the computer
 7 at the present time.

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vogel-voir dire-membrino



1 MR. MEMBRINO: Your Honor, I believe that's all the
2 voir dire I have.

3 THE SPECIAL MASTER: Okay.

4 MR. WHITE: I have no further questions, Your
5 Honor.

6 THE SPECIAL MASTER: Mr. Sachse?

7 MR. SACHSE: None, Your Honor.

8 THE SPECIAL MASTER: The State exhibits just offered
9 by Mr. White --

10 MR. MEMBRINO: Your Honor, I do have some --

11 MR. WHITE: I have closed my cross. I said, "No
12 further questions."

13 THE SPECIAL MASTER: I'm going to move -- I'm
14 going to rule now on the offers of the exhibits.

15 MR. MEMBRINO: I do have one or two objections,
16 Your Honor.

17 THE SPECIAL MASTER: Very well, proceed and state
18 your objections.

19 MR. MEMBRINO: With regard to FISH-2, which is
20 the excerpt from the Everhart and Young text, I realize
21 that it's being offered for illustrative purposes, but
22 I would request that the State be required to submit
23 the text because the definition that's discussed there
24 should be read in the context of a basic fisheries text.

25 MR. WHITE: I'd be glad to substitute it.



1 THE SPECIAL MASTER: Mr. White has one in his hand,
2 and he's going to offer it.

3 MR. WHITE: There's no problem. I would simply
4 request that I be able to remove the FISH-2 that's
5 there.

6 Let me mark the text as FISH-2-A, and I will offer
7 that for the same purpose.

8 THE SPECIAL MASTER: Very good.

9 MR. WHITE: As for which FISH-2 was offered.

10 Off the record.

11 (Off the record discussion.)

12 MR. WHITE: You want to look at it?

13 MR. MEMBRINO: No.

14 THE SPECIAL MASTER: All right, Sandy.

15 MR. MEMBRINO: Your Honor, with regard to No.
16 280-77a, which is the USGS gauging information, that's
17 offered for the truth of its contents, and that also
18 is an excerpt from the document Mr. White cited, I
19 note that yesterday afternoon there was two pages
20 included, he has reduced that to one page, and I --
21 my objection is to its being submitted in isolation
22 because I think when seen in the context of the other
23 flows that have been recorded for other streams, we
24 could get a much more accurate indication of the
25 historic flows on which Mr. White is relying and was



1 using that exhibit for, in impeaching Mr. Vogel's work.
2 So I'd like to see that document admitted in its entirety.

3 MR. WHITE: Your Honor, we'll make a copy for the
4 Court of all three hundred some odd pages of that, if
5 the Court wants it. It seems to me this may be the
6 area where the Court would like to exercise a little
7 of its discretionary power with respect to that parti-
8 cular rule, since the testimony dealt only with that
9 particular page and since the exhibit was here, the
10 entire volume was here.

11 THE SPECIAL MASTER: Is that the exhibit where the
12 temperature scale was left out of the --

13 MR. WHITE: No, Your Honor.

14 THE SPECIAL MASTER -- the duplication?

15 MR. WHITE: That's the USGS Stream Flow Volume,
16 that's the one where we looked at 1955, May 5th through
17 13th.

18 THE SPECIAL MASTER: Yes. Yes, I know which one
19 you mean. Where we substituted --

20 MR. WHITE: To make it easy, it's up to you, we'll
21 make a copy if that's what you want.

22 THE SPECIAL MASTER: Do you have a copy of the book,
23 an extra copy of the book?

24 MR. WHITE: No, we don't. Those are about as rare
25 as hen's teeth.



1 THE SPECIAL MASTER: I was going to say if they
2 contain stream flows of the rest of the basin, they
3 are as rare as hen's teeth, and probably one ought to
4 be in the record sooner or later.

5 Do they contain flows of the entire basin?

6 MR. WHITE: No, Your Honor.

7 MR. MEMBRINO: They do, for example, Your Honor,
8 contain, on the original exhibit submitted yesterday,
9 which had 205, they had, I noticed flows for Bull Lake
10 Creek above Bull Lake, which includes one of our gauging
11 stations. And the flows for one of the years there
12 substantially exceeded what Mr. Vogel had recommended
13 for instream flows, and I just want to be sure that
14 we are seeing, that these years that are being referred
15 to are taken in isolation and may not necessarily be
16 reflective of the mean flows that -- that the offer,
17 as Mr. White has presented, would suggest.

18 MR. WHITE: Maybe I ought to re-open the cross-
19 examination and get the others, but I won't.

20 Your Honor, the exhibit can be copied. I don't
21 want to whine about it, I'm just wondering whether you
22 want all of it in your file.

23 THE SPECIAL MASTER: I'm going to admit 280-77a
24 even though it is in excerpt form. The document from
25 which this is taken is a statistical compilation that's



1 in the library and files of Congress, of the Department
2 of Interior, of the Library of Congress and will be
3 obtainable to this Court for its use and therefore,
4 I'll save you having to reproduce a couple hundred pages
5 of it.

6 MR. WHITE: Your Honor, I made a representation
7 to the Court that I need to qualify. You asked whether
8 it was of all the gauges in the basin, the answer I
9 gave you was, "No". The answer is incorrect in that it
10 includes all the gauges on the Missouri above Sioux City,
11 I believe.

12 THE SPECIAL MASTER: Above Sioux City, I just noticed
13 that.

14 MR. WHITE: Only for the period of 1950 to '60, as
15 I recall, and therefore, it's not a complete set.

16 If the Master would like to have a complete set,
17 we'll be glad to mark those as some other exhibit and
18 make xerox copies of those available to the Master.

19 THE SPECIAL MASTER: Well, I think there are two
20 volumes switched by this courtroom this week. One of
21 them was these compilations of, records of surface
22 waters up to September, 1950 of this area. And then
23 there was a second volume of 1950 to 1960 --

24 MR. WHITE: Your Honor --

25 THE SPECIAL MASTER: And get my little warm hands



1 on those later on in this case, because I think it
2 will be necessary in this case toward our deliberations.

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1 MR. WHITE: There are -- It's more complicated
2 than that in terms of volumes, because the reporting
3 process changed after the years that we've discussed
4 so far.

5 If the United States does not provide you a
6 complete set for the basin for all years, we will.

7 THE SPECIAL MASTER: All right. I'm also going
8 to leave in the record the -- the WRIR FISH-280-77a
9 first time around and second substitution. Is that
10 clear?

11 MR. WHITE: Why don't we make the second one
12 then, have a 77a-1 and a-2.

13 THE SPECIAL MASTER: Okay.

14 MR. WHITE: Would that be all right, Your Honor?

15 THE SPECIAL MASTER: All right.

16 MR. WHITE: If I could get the original, I'll
17 change those.

18 THE SPECIAL MASTER: Those are the only notations,
19 Mr. Membrino?

20 MR. MEMBRINO: That's all we have, Your Honor.

21 THE SPECIAL MASTER: All right. I will now rule
22 that the State's offer and identified exhibits, being
23 the same, are hereby admitted into evidence in these
24 proceedings. Those exhibits begin with WRIR FISH-1
25 and including 1, 1-A, 2, 200, 201, 22, 280-77a, 288/24e,



1 31, --

2 MR. WHITE: Excuse me, Your Honor. I think 77a
3 is now as 77a-1.

4 THE SPECIAL MASTER: a-1 and a-2, 31, 32, 45, 50,
5 No. 4, M-1-A the overlay, 284 and 103-A, plus the
6 entire series beginning, 100 series, designated as
7 the 100 series beginning with 103-A and concluding with
8 135, which were identified earlier this morning by
9 this witness, plus --

10 MR. WHITE: 140, your Honor?

11 THE SPECIAL MASTER: 140, the four pages of Exhibit
12 140.

13 Okay. Now, the State has completed its cross-
14 examination, and the United States does not have some
15 redirect, or does it have some redirect?

16 MR. MEMBRINO: No, we have no redirect.

17 THE SPECIAL MASTER: And the Tribes, no redirect?

18 MR. SACHSE: No.

19 THE SPECIAL MASTER: I have only just a few questions;
20 I don't want to delay things this morning, but I would
21 like to ask some questions which I think should be in
22 the record.

23 Mr. Vogel, I thank you for a week's worth with us,
24 and I want to ask you about your answers dealing with
25 the Creel Surveys and responses of those fishermen who



1 elected to answer questions put out about their catch.

2 Are you familiar with the policies of the Wyoming
3 State Game and Fish Commission and the Tribal authorities
4 governing fishing on the Wind River Indian Reservation?

5 THE WITNESS: No, Your Honor. Our office, as I
6 understand it, based in Lander, Wyoming, is the agency
7 that is responsible for managing or supplying technical
8 advice to the Shoshone and Arapahoe Tribes for the
9 management of the fishery resources for the streams.

10 THE SPECIAL MASTER: But the licensing of fisher-
11 men is not in your province?

12 THE WITNESS: No.

13 THE SPECIAL MASTER: You answered my question;
14 you saved the rest of the questions, and I'll save
15 them for some other witnesses. Okay, I have no further
16 questions.

17 I got to have in the record sooner or later, though,
18 lots of evidence on what the policies have been of the
19 Wyoming Game and Fish Commission and the Tribes
20 regarding fishing over the decades, and we'll get to
21 that some time later.

22 If no one has anything further for these proceedings,
23 they will stand in recess until we do the field
24 examination which will not include the taking of evi-
25 dence, but may include some -- Is that right?



1 MR. WHITE: I don't know, I'm not the chief mogul
2 on the field trip. I was under the impression that
3 the court reporter was going to accompany --

4 THE SPECIAL MASTER: She will indeed, because
5 any statements to be made or any observations made
6 by counsel, of course, we will be there, and if opposi-
7 tion counsel wishes to counter, they can. But I meant
8 taking of evidence as such, we don't have witnesses.

9 MR. WHITE: I think there are some witnesses who
10 are going along, two, from the federal government
11 and two from the State.

12 THE SPECIAL MASTER: Is that right?

13 MR. SACHSE: Yeah. May I --

14 MR. WHITE: That's my understanding.

15 MR. SACHSE: My understanding is the same as
16 what the Master has stated, that this is a chance for
17 the Master to view the reservation, view the sites
18 that have been chosen by the State and by the United
19 States and by the Tribes.

20 THE SPECIAL MASTER: I would look --

21 MR. SACHSE: That the Master had already ruled,
22 for instance, that there would be no soil testing or
23 other physical demonstration done on this tour. Both
24 the State and the United States will have -- The State
25 will have one expert witness with them, I think that's



1 Mr. Sostrom. The United States will have Mr. Kersich
2 and one other person.

3 It's my understanding that the purposes here
4 are more as tour guide than anything else, to point
5 out the different --

6 THE SPECIAL MASTER: I want the record to show
7 that the only reason I ceded to this arrangement for
8 next week was at the request of the two of you, the
9 United States and the State of Wyoming saying, "Yes,
10 we think you should do this, Mr. Master", otherwise
11 I have no need to tour the reservation.

12 MR. WHITE: I think that Mr. Membrino and I were
13 somewhat uncertain at the time because neither one of
14 us have been intimately involved with the arrangements
15 of the tour. However, as I understand it, the statements
16 of any person, counsel or expert witness, would be
17 recorded, and to the extent that it's a statement of
18 an expert witness, I suppose to some extent, it's
19 evidence, and so --

20 THE SPECIAL MASTER: I see what you mean. And in
21 that event, of course, it's in the record, but I don't
22 propose that either side proposes to swear any witness,
23 a new one or to remind other old witnesses of their oath
24 and seek them before me for purposes of adducing evidence.

25 MR. WHITE: I don't think there's going to be any --



1 THE SPECIAL MASTER: There may be some comments
2 made as to a particular hole or particular area, I can
3 appreciate that. And you're right in a sense that is
4 evidence.

5 MR. WHITE: Your Honor, I believe that the State's
6 going to have two witnesses just as if -- as the United
7 States has two witnesses, Mr. Sostrom --

8 MR. SACHSE: It may be useful for me to state on
9 the record the arrangements that I understand that have
10 been made largely by Mr. Merrill, and we've concurred
11 in. There would be two helicopters. In one helicopter,
12 we're going to have the Master and the expert witnesses.
13 In the other helicopter, we're going to have the lawyers.
14 There are no arrangements for taking minutes while we're
15 in flight, but when we land, if there's some discussion
16 we will take, -- have the court reporter there to take the
17 transcript of what's done.

18 MR. WHITE: I substantially agree with that.

19 THE SPECIAL MASTER: That's Wednesday morning. We'll
20 be ready at 7:00 o'clock, the local field to board that.
21 And Leo will not be accompanying me. And we intend, we'll
22 be home that night 7:00, 8:00 o'clock, I suppose.

23 MR. MEMBRINO: Have a good flight, Your Honor.

24 THE SPECIAL MASTER: Thank you. Now, the next session
25 after that, of course, will be --



1 MR. WHITE: June 15th or 14th.

2 THE SPECIAL MASTER: June 15th in Room 302, the Capitol,
3 providing we are not evicted in the interim. That's all.

4 MR. MEMBRINO: Before we conclude, it's my under-
5 standing now that there's no need of the State for this
6 witness?

7 MR. WHITE: Well, we reserve our usual request, that
8 he be kept in the jurisdiction of the Court for recall
9 by any party.

10 THE SPECIAL MASTER: Oh, sure.

11 MR. WHITE: But at this time I can tell the Court
12 that we do not anticipate recalling Mr. Vogel as part of
13 our case, and if we do so, we'll give substantial notice.

14 THE SPECIAL MASTER: All right, thank you. We'll
15 stand in recess.

16 (Proceedings concluded at:
17 (11:10 a.m.

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6 First Judicial District, State of Wyoming, hereby certify
7 that the facts as stated in the caption hereof are true;
8 that we did at the time, date and place, as set forth, re-
9 port the proceedings had before the Honorable Teno Roncalio,
10 Special Master Presiding, in stenotype; that the foregoing
11 pages, numbered 6846-6901, inclusive, constitute a true,
12 correct and complete transcript of our stenographic notes
13 as reduced to typewritten form under our direction.

14 We further certify that we are not agents, attor-
15 neys or counsel for any of the parties hereto, nor are we
16 interested in the outcome thereof.

17 Dated this 5th day of June, 1981.

18
19 
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22 Reporter

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