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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)
WYOMING.)

Civil No. 4993

FILED _____
6/23 19 81
Margaret T. Hampton CLERK
DEPUTY

VOLUME 67

Wednesday, May 20, 1981

Morning Session

ORIGINAL



APPEARANCES

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FOR THE STATE
OF WYOMING:

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FOR THE SHOSHONE
and ARAPAHOE TRIBES:

WILKINSON, CRAGUN & BARKER
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Washington, DC 20006
BY: MR. R. ANTHONY ROGERS

CLERK TO THE
SPECIAL MASTER:

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



1 THE SPECIAL MASTER: Is the Wyoming table ready,
2 Jim?

3 MR. MERRILL: Ready to go, Your Honor.

4 THE SPECIAL MASTER: And the United States?

5 MR. ECHOHAWK: We are ready.

6 THE SPECIAL MASTER: Okay. We will come to order.

7 Before we begin this morning, I want to make the
8 observation that Leo has prepared and we now have the
9 third batch of sheets I'm indexing of the Master's
10 exhibit list of this lawsuit. They run from Page 29
11 through Page 50, and they list what must be almost
12 1,000 exhibits that have been admitted into evidence
13 in this lawsuit. Here is yours, Mr. Merrill, as a sweet
14 souvenir for you and Mr. White, and one for the Tribes
15 and one for the United States. We are now on Page 5,801
16 of the transcript. I think it behooves all of us to
17 try and put a cap on this.

18 MR. ROGERS: That is just this trial, Your Honor.
19 That doesn't count the boundaries and dates trial.

20 THE SPECIAL MASTER: I forgot that. There is a
21 couple thousand there.

22 Well, on that note we will proceed with Mr. Dornbusch.

23 MR. MERRILL: Your Honor, before we begin -- excuse
24 me -- resume the cross-examination -- well, let me start
25 over. Your Honor, before I resume my cross-examination



1 of Mr. Dornbusch, I would like to report to the Court
2 that Mr. Rogers and Mr. Echohawk and myself met this
3 morning concerning the Master's visit to the Reservation
4 which, as you know, has been under discussion. We
5 looked at our calendars and would like to suggest that
6 the latter part of the week of June 8th might be a
7 good time for the Master to make his visit if it is
8 convenient with your schedule and that of Mr. Salazar.
9 We are in the process of agreeing on an itinerary
10 so that we hope you won't have to sort out our
11 disagreements as to where to go and so forth.

12 THE SPECIAL MASTER: What do you mean by the
13 latter part of June 8th?

14 MR. MERRILL: The latter part of that week, Your
15 Honor, starting about Wednesday --

16 THE SPECIAL MASTER: The latter part of that
17 week, starting Wednesday or Thursday?

18 MR. MERRILL: Yes.

19 THE SPECIAL MASTER: And taking it through Saturday?

20 MR. MERRILL: We are hoping we can agree on an
21 itinerary that can be done without long exhausting
22 days, in two or perhaps three days, and I think
23 probably we can cut it down to a two-day trip at the
24 most.

25 THE SPECIAL MASTER: Why don't we plan on getting



1 up there the morning of Wednesday the 10th -- I don't
2 have a calendar. Is that --

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

4 THE SPECIAL MASTER: And put in the remainder of
5 that day, if we can. If it will help all of you for
6 me to charter a seven-passenger airplane, I'll do that
7 and bring up five of you with Leo and me. Or Leo,
8 if you want to skip this, let me know. You be the
9 judge of that. I can do that, otherwise I will figure
10 some way to get myself up and we will put in, what, the
11 remainder of Wednesday the 10th, Thursday the 11th and
12 Friday the 12th and easily be home that night, if that
13 is what you want.

14 MR. ROGERS: Your Honor?

15 THE SPECIAL MASTER: Yes?

16 MR. ROGERS: I think the exact itinerary of what
17 will occur has not been quite worked out yet, but I
18 think one of the thoughts in our discussion was that
19 it would involve some helicoptering, and perhaps it
20 was wisely suggested by those who have done it before
21 that that should be restricted to the morning hours,
22 so we might want to take full advantage of the day on
23 Wednesday or full advantage of the morning on Wednesday
24 to try and do that, and possibly more of the same on
25 Thursday morning with sight visits by other means



1 Wednesday afternoon and Thursday afternoon.

2 THE SPECIAL MASTER: Well, do you want to --

3 MR. ROGERS: My personal plans were to probably
4 get up there Tuesday night and --

5 THE SPECIAL MASTER: Do you want to knock off
6 Tuesday noon and --

7 MR. ROGERS: I think, Your Honor, we also hoped we
8 would have no trial that week.

9 THE SPECIAL MASTER: Is that what you three hoped
10 this morning?

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

12 MR. MERRILL: Your Honor, I don't have any objection
13 to holding trial. through, say, Tuesday noon of that
14 week. I hate to throw out a schedule by --

15 THE SPECIAL MASTER: Two days isn't going to make
16 that much difference. So if you want to do that, that
17 is all right with me. We will figure -- let's get up
18 there Monday on our own -- Monday or Tuesday on our
19 own, and Wednesday be ready for helicoptering, and
20 Thursday, Wednesday and Thursday, two full days, or
21 if you schedule some on Tuesday afternoon, that's fine,
22 too.

23 MR. ROGERS: If there is some carry-over, we might
24 go into Friday, then we could do that, but I think we
25 can probably do it in those two days.



1 THE SPECIAL MASTER: Who is going to be in charge,
2 a committee of two of you, State and Federal? Are you
3 going to be in charge of everything so there is no
4 charge made that you got me to see something I should
5 not have or otherwise an unfair advantage taken of me?
6 I'm not worried about that --

7 MR. ROGERS: We are trying to work those details
8 out, Your Honor, and I think it will involve -- we do
9 want to have this reported.

10 THE SPECIAL MASTER: You want to have the tour
11 reported?

12 MR. MERRILL: I believe it would be a good idea,
13 Your Honor, to have any discussion between you and
14 counsel or the experts who might accompany you on the
15 record just for the good of all of us so that someone
16 doesn't come back later and question what we may have
17 said or done during our visit to the Reservation.

18 THE SPECIAL MASTER: I can't hardly fathom two
19 reporters with stenotypes sitting in a helicopter while
20 we are looking over some land. There is a little
21 reality here we have to face. On the other hand, if
22 we are so professional we can't sit around and tour
23 the place without fear of somebody ex-parte-ing a matter
24 to the Master, then that would be a sad thing.

25 MR. ROGERS: Your Honor, there are, perhaps, logistical



1 problems doing that with respect to the helicopter, and
2 I'm not backing off any agreement we have with the
3 State or Federal Government about having any of that
4 reported either, but at least I am -- I would be more
5 primarily concerned when we are actually on the ground
6 at the site --

7 THE SPECIAL MASTER: I appreciate that. You can
8 arrange for the reporters, and let's begin there, at
9 the Joint Travel Council offices, and open a session
10 there and show our appearances, then when we leave
11 there to go on the helicopter on our flight, I think we
12 ought to go with one from each side, maybe two
13 helicopters, one helicopter with Leo and one with me,
14 something like that, and you can't record those
15 conversations, but you don't need to if I have Tom
16 Echohawk and Sandy White with me, you don't have to
17 record that conversation. Nobody will get --

18 MR. MERRILL: I think that is right, Your Honor.

19 THE SPECIAL MASTER: And does that sound all right?

20 MR. ECHOHAWK: It sounds all right.

21 THE SPECIAL MASTER: Once we are back on the
22 ground, there's is no discussion of the evidence of the
23 subject matter until we are back in a formal session.

24 MR. MERRILL: That is fine with the State, Your
25 Honor.



1 MR. ECHOHAWK: That sounds all right, Your Honor.

2 There is one other question that has come up,
3 Your Honor, that we are not -- we don't seem to be able
4 to reach agreement on, and we would like your thoughts
5 on it; that being the State of Wyoming would like to,
6 while we are on the ground, have some soils experts
7 drill holes, log holes, and essentially test the area
8 for arability while we are out there. Our position is
9 all of that information is taken care of and that is the
10 sort of evidence that should be presented at court.

11 THE SPECIAL MASTER: I thought that was all taken
12 care of, too. Any requests like that ought to be put
13 in writing and ought to be put down with specific, you
14 know, what you want. Are you talking about holes in
15 unadjudicated areas, and if so, identify them as close
16 as you can to the field.

17 MR. ECHOHAWK: I think what they want to do is while
18 we are all out there is to show you certain holes that --

19 THE SPECIAL MASTER: I don't think that is necessary.
20 I don't want to see any diggings, I don't want to see
21 any holes because I wouldn't -- you know, the analysis
22 of the soil is what the case is about, not looking at
23 an augered hole.

24 * * * * *

25



1 MR. MERRILL: Well, Your Honor, our purpose in
2 drilling holes is not to present additional evidence in
3 the field and, in fact, I would stipulate that whatever
4 happens as a result of drilling those holes would not be
5 evidence in this case.

6 The purpose is simply to give you an idea of how
7 a hole is drilled and what it looks like when it comes
8 out of the ground.

9 THE SPECIAL MASTER: I appreciate that, but I don't
10 really care -- I think I would decline that.

11 MR. ROGERS: Your Honor, just for the record, the
12 Tribes share the United States' view in opposing that
13 as well. I just wanted to have that stated.

14 THE SPECIAL MASTER: Well, I have already covered
15 that.

16 MR. ROGERS: Yes, I know.

17 Can I get a clarification on -- I'm not quite clear
18 in my mind what you have said about whether or not we
19 will have a reporter present on ground sites.

20 THE SPECIAL MASTER: Yes.

21 MR. ROGERS: Well, okay.

22 THE SPECIAL MASTER: Don't rely on Leo to get them up.
23 You make your arrangements for transportation of the
24 reporters. And we'll have them because the parties request
25 it.



1 Now, is there a duty to let attorneys for other
2 defendants know of this, or does that turn into a caravan?

3 MR. MERRILL: We would undertake the burden of
4 notifying the private counsel who have been participating
5 in trial and offer them to accompany the expedition if
6 they would like to do so.

7 THE SPECIAL MASTER: And provide the additional
8 helicopters?

9 MR. MERRILL: We will arrange it. If they want to go,
10 we will arrange it one way or the other. The State will
11 take care of it.

12 THE SPECIAL MASTER: All right.

13 MR. MERRILL: I should point out to the Court that
14 Mr. Rogers and Mr. Echohawk and myself will be meeting
15 next week in an effort to thrash out an itinerary that we
16 can all agree to, and as soon as we do, we will make the
17 necessary travel arrangements and notify the court reporter
18 and the Court --

19 THE SPECIAL MASTER: All right.

20 MR. MERRILL: -- of our agreement.

21 THE SPECIAL MASTER: You gentlemen realize that we
22 have a hearing set for the week of June 2, beginning on
23 Tuesday, June the 2nd, and we will go through with it.

24 We are scrubbing the hearing for the week of June 8th
25 because it will be a field hearing, in effect.



1 MR. ECHOHAWK: Right.

2 THE SPECIAL MASTER: So we are really not scrubbing
3 it. We are just transferring sites.

4 MR. ROGERS: We were proposing, Your Honor, too,
5 that we would also have a setting for the week of June 15.

6 THE SPECIAL MASTER: That's exactly what I'm coming to.

7 MR. ROGERS: Which we propose to leave on.

8 THE SPECIAL MASTER: The week of June 15 we continue
9 with. It will not be cancelled.

10 We do not plan any hearings for the week of June 22
11 and June 29, you know that?

12 MR. ROGERS: No, that's correct, Your Honor. I
13 believe we are in agreement on this too. The possibility
14 is seen, but not certain, that we might conclude the
15 government's case by the end of the week of the 15th. I
16 think there is some serious doubt about that, but that
17 we might -- I believe, didn't we agree to that? That the
18 week of the 22nd, that we would carry over to the week of
19 the 22nd to conclude.

20 MR. MERRILL: If it's agreeable with the Master.

21 THE SPECIAL MASTER: A few days the week of June 22?

22 MR. ROGERS: And then whenever that was concluded,
23 we would end the hearing at that point and pick up on the
24 6th of July of what would be the beginning of the Tribes'
25 case for the week of July 6 and 13.



1 THE SPECIAL MASTER: Very good.

2 MR. ECHOHAWK: That's fine with me.

3 THE SPECIAL MASTER: Okay, Mr. Merrill.

4 MR. MERRILL: Thank you, Your Honor.

5 CROSS-EXAMINATION (RESUMED)

6 BY MR. MERRILL:

7 Q Mr. Dornbusch, is it true that one of the production
8 costs included in your cost budgets was labor costs?

9 A. That's right.

10 Q And as I understand your direct testimony, you indicated
11 that you had used Mr. Agee's labor costs and made some
12 adjustments to those figures; is that correct?

13 A. That's correct.

14 Q Would you please explain first: how you normalized Mr.
15 Agee's labor costs?

16 A. Yes.

17 Q Why don't we use the crop budget for alfalfa in Mr. Agee's
18 report and use the corresponding crop budget in your
19 report?

20 A. Well, it's the same for all of the crop budgets, Mr.
21 Merrill, and we took Agee's labor costs, and then we
22 normalized it for labor for the 1979 normalized to obtain
23 the 1979 normalized costs, and in this case, it's rela-
24 tively simple because the normalizing factor is simply 1.00,

25 dornbusch - cross - merrill



1 so, in effect, we used Agee's costs with multiplying by
2 one, which gives you Agee's costs.

3 Then, the next step was to adjust for the opportunity
4 cost of labor.

5 Q. Okay. Would you just for a moment direct the Court to
6 the page of Exhibit ED-8 from which you took Mr. Agee's
7 labor costs?

8 A. ED-8 is the Agee report? Yes.

9 Okay. There are a series of crop budgets in that
10 exhibit, beginning on Page 20, where we have the table
11 for the alfalfa budget, and if you look to the second
12 column from the right, that's the labor column, and
13 just looking down that column, you can see that the
14 very first operation Mr. Agee has a price -- a cost
15 that is for labor of a dollar per acre.

16 Q. That's for spreading fertilizer?

17 A. That's correct.

18 Q. Now, what was Mr. Agee's labor cost for the entire
19 growing season for alfalfa for all the operations?

20 A. For all of the operations, he shows a cost of \$18.76.

21 Q. Are you including in that labor cost the miscellaneous
22 and interest on cash costs and so forth?

23 A. Well, I believe you asked me what his total labor cost
24 was. I'm just looking down at the bottom of the column.

25 dornbusch - cross - merrill



1 Q Doesn't that figure include some general overhead costs?

2 A Yes.

3 Q Now, would you explain to the Court how you normalized Mr.
4 Agee's labor costs?

5 A I think I just did that.

6 Q What normalizing factor did you use?

7 A I used the normalizing factor of 1.000.

8 Q And where did you get that normalizing factor?

9 A That comes from the same source as all of our other
10 normalizing factors come from, and I seem to have mislaid
11 that source for some reason.

12 I'm looking for the 1980 reference manual that I had,
13 the Reference Handbook.

14 I have it now. Excuse me.

15 Well, excuse me, but I misspoke. The adjustment
16 factor is the ratio of the current normalized index for
17 1979 which is 225 -- two hundred twenty-five -- and the
18 index for 1977 is 226 so the ratio is 225 over 226, and
19 with rounding, that is virtually one, so the normalizing
20 is effectively multiplying by one.

21 Q All right. Would you please turn to Table 2-A on Page 6
22 of Exhibit 268, which is your report?

23 A Table 2-A of 268?

24 Q Right. That, I believe, is your crop budget for baled
25 dornbusch - cross - merrill



1 alfalfa.

2 A. Okay. Yes.

3 Q. But you are saying that the normalizing factor was close
4 enough to one that it was simply to normalize the price,
5 was essentially a transfer of the same information from
6 one crop budget to another before the opportunity cost
7 for labor was taken into account?

8 A. That's right.

9 Q. Are you saying then, that labor costs in 1977 as shown
10 in Mr. Agee's report are the same as the labor costs
11 in Wyoming in 1979.

12 A. No, Mr. Merrill, what I'm saying is that the normalization
13 process focuses on the five-year period 1974 to 1978, and
14 weights the costs in that period.

15 I believe I described this at least once or twice
16 yesterday and a number of times before that. It is an
17 expression of the best cost to use because of the fact
18 that you do get fluctuations in prices and costs, and
19 this is the best estimate to use for the normalized price
20 in what we call '79 -- what the WRC has called normalized
21 price for '78, and it is to be applied in fiscal year 1980.
22 It's all the same.

23 Q. So the 1979 normalized prices that you used are, in fact,
24 virtually the same as the 1977 prices used by Mr. Agee;

25 dornbusch - cross - merrill



1 is that correct?

2 A. That's correct.

3 Q. What other adjustments did you make to farm labor costs?

4 A. I adjusted for the opportunity cost of labor.

5 Q. Would you please explain how you did that?

6 A. Yes, the opportunity cost means that you should recognize
7 the true cost of the resource that's used in the produc-
8 tion process, that cost being the value at its next best use.

9 In this case, we have a very high unemployment situa-
10 tion on the Wind River Indian Reservation, and in examining
11 the unemployment levels and the employment opportunities
12 in these projects, I determined that we had a potential
13 for drawing our labor for these farm enterprises virtually
14 entirely from the unemployed forces on the reservation, and
15 I made a determination that 80 percent would be the best
16 estimate of an expected level of labor drawn from that
17 unemployed pool and, consequently, I valued 80 percent of
18 the labor cost at an opportunity cost of zero and fully
19 costed the remaining 20 percent, and that's why you see in
20 my budget the figure of 20 cents per acre. That's simply
21 the 20 percent of the dollar.

22 * * * * *

23

24

25



1 Q (By Mr. Merrill) Okay. On what facts and data did you
2 base your determination that 80 percent of the labor
3 could be costed at a zero opportunity cost?

4 A The unemployment rate on the Reservation has been
5 historically very high. It has been running in the
6 range for the last ten years of about 45 percent.
7 The last few years and currently it's in the neighborhood
8 of over 600 people unemployed. The labor that would
9 be required for all of these enterprises is less than
10 50 percent of that unemployed level, and as a result
11 of that, the fact that in my judgment there are virtually
12 no prospects for employing those unemployed people
13 on the Reservation in the near or even distant future
14 without these development projects, I made a determination
15 that we could probably draw perhaps all, but for purposes
16 of this estimate I felt the best expected level would
17 be 80 percent.

18 Q On what information do you base your opinion that the
19 unemployment on the Reservation is in the range of 45
20 percent?

21 A The U.S. BIA. Billings area office publishes the
22 unemployment rates for the Wind River Reservation based
23 upon reports from the Reservation, and I have the
24 historic rates running back from the present back to 1971,

25

dornbusch-cross-merrill



1 and it shows that the rates have been running in the
2 range of in excess of 40 percent, and sometimes in
3 excess of 50 percent.

4 Q Are you referring to some notes concerning your
5 unemployment statistics?

6 A I am referring to a table.

7 Q May I examine it, please?

8 A Sure.

9 (Whereupon, the Witness
10 (hands a document to Mr.
(Merrill.

11 (Brief pause.

12 THE SPECIAL MASTER: What I observed, Mr. Merrill,
13 is I don't believe you should henceforth in this case
14 make an objection to anyone reading from an exhibit
15 not yet in evidence because you asked about four
16 questions now on ED-8 and another one and this one.

17 (Brief pause.

18 THE SPECIAL MASTER: While Mr. Merrill is working
19 on that, I have a question I would like to ask you,
20 Mr. Dornbusch.

21 THE WITNESS: Yes.

22 THE SPECIAL MASTER: We, I suppose, can sustain
23 your findings as being valid in the establishment of
24 benefits and by using your 80 percent of labor costs

25 dornbusch-cross-merrill



1 at zero because of the massive unemployment, but
2 doesn't that assume that 80 percent of the young
3 unemployed want an agricultural future and want to
4 go to work on new projects, and isn't that --

5 THE WITNESS: Yes.

6 THE SPECIAL MASTER: Isn't that somewhat a
7 doubtful assumption of any young people, Indian or
8 nonIndian, your kids or mine?

9 THE WITNESS: I don't know about your kids.

10 THE SPECIAL MASTER: I can't make ranchers or
11 farmers out of my children, I know. I mean, isn't
12 that a questionable assumption?

13 THE WITNESS: Yes, it is. For that very reason
14 I made some research as to not only the attitudes and
15 history of the unemployment and young unemployed and
16 young people on the Reservation, and not only this
17 Indian Reservation but on other Reservations where
18 agricultural projects were and are taking place, and I
19 spoke to a number of people just about that very fact,
20 and drew my conclusions based upon their discussions.

21 THE SPECIAL MASTER: I see, okay. Go ahead, Mr.
22 Merrill.

23 MR. MERRILL: Thank you, Your Honor.

24 Q (By Mr. Merrill) Mr. Dornbusch, I hand you what has been
25 dornbusch-cross-merrill



1 temporarily marked for identification as Exhibit ED-51.
2 Would you please identify that?

3 A Yes. ED-51 is a table that is published by the U.S.
4 BIA, Billings area office, which shows the unemployment
5 rate for a number of Indian Reservations, and included
6 is the Wind River Indian Reservation. It also shows
7 the report period, the total Indian population as of
8 that report period, the labor force, the employed and
9 unemployed.

10 Q Is that the source of information upon which you relied
11 in forming your opinions concerning the unemployment
12 on the Reservation to which you testified?

13 A Not entirely. I also spoke with Joe Smith whose title,
14 I believe, is Vocational Development Specialist on the
15 Wind River Indian Reservation. He in that capacity --
16 in that capacity he focuses particularly on the
17 unemployment situation, keeps the data, gathers the
18 data and is knowledgeable in that capacity as to what
19 the current situation is and what the expected situation
20 is.

21 Q Okay. Are there any other sources of information
22 on which you relied?

23 A Yes -- well, relied for what particular purpose?

24 Q For the unemployment rates.

25 dornbusch-cross-merrill



1 A For the unemployment rate on the Reservation?

2 Q Uh-huh.

3 A No, those are the sources.

4 Q How about for the number of unemployed people?

5 THE SPECIAL MASTER: That is about the same thing,
6 I think.

7 THE WITNESS: The same thing.

8 MR. MERRILL: Okay. I just didn't know if you were
9 drawing a distinction in your mind or not.

10 Your Honor, with the Court's permission, I will
11 withdraw Exhibit WRIR ED-51 and photocopy it and
12 replace it with regular marked copies after lunch.

13 THE SPECIAL MASTER: That will be fine.

14 Q (By Mr. Merrill) So throughout your farm budgets for
15 operation, maintenance and repair costs, you costed
16 your labor at 20 percent as an opportunity cost, is
17 that correct?

18 A Did you say for operation, repair and maintenance?

19 Q Yes, in your farm budget.

20 A Yes, that's correct.

21 Q Mr. Dornbusch, I hand you what has been marked as
22 Exhibit ED-6 for identification. Would you please
23 state for the record what that document is?

24 A ED-6 is a copy of the Federal Register as of Friday,
25 dornbusch-cross-merrill



1 December 14, 1971. It is labeled part 9, Water
2 Resources Council, "Procedures for Evaluation of
3 National Economic Development (NED), Benefits and
4 Costs in Water Resources Planning (Level C); Final
5 Rule."

6 Q Would you please turn to Page 72969 of that document.

7 MR. ECHOHAWK: What is that?

8 MR. MERRILL: 72969.

9 THE WITNESS: Yes.

10 Q (By Mr. Merrill) I direct your attention to sub-
11 part B of section 713.1203.

12 A All right.

13 Q Isn't it true that according to that paragraph the
14 Water Resources Council's guidelines allow you to
15 cost labor at a zero quantity cost only for resources
16 employed on the site in the construction or installation
17 and not the operation of a project?

18 A I think I have to go back and explain the philosophy.

19 Q You are welcome to do so, if you would please answer
20 the question about what the guidelines say.

21 A Yes, I will. What the guideline says, let me start
22 there, is that where you have substantial and
23 persistent unemployed, they instruct you to cost the
24 labor at an opportunity cost of zero.

25 dornbusch-cross-merrill



1 Q My question was, don't the guidelines --

2 THE SPECIAL MASTER: Let him finish answering,
3 why don't you, Mr. Merrill. He was just on when you
4 interrupted him. He may have some more to say.

5 THE WITNESS: The guidelines are skeptical as
6 to whether substantial and persistent unemployment
7 would persist indefinitely in general, and the
8 guidelines are really focused on the general case.
9 They specifically do say that on Indian Reservations
10 where there are substantial and persistent unemployment,
11 that you will cost the labor at opportunity cost zero
12 where that labor can be employed, and as I said, they're
13 talking about situations where they don't expect in
14 general the unemployed situation to continue indefinitely
15 in the future. In this particular case I am entirely
16 consistent with the concept used by the guidelines,
17 and that concept is where it is substantial and
18 persistent, and in this case where we -- I think any
19 reasonable person would expect that that labor, and I
20 expected that labor to be substantial and persistent
21 without these development projects, that you cost at
22 an opportunity cost zero as I have.

23 THE SPECIAL MASTER: I notice that the statement
24 on this Page 72969 states that, "Only the portion of
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1 projects construction activity located in a designated
 2 area is eligible for employment benefits . . . with
 3 the procedures specified below," then they go into the
 4 evaluation procedures that deal with the design, total
 5 construction contracting and construction work. Your
 6 cost figures are spread across operation and maintenance,
 7 too, are they not, on-farm costs?

8 THE WITNESS: That's right.

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1 THE SPECIAL MASTER: And your reasons are what you just
2 gave in answering Mr. Merrill?

3 THE WITNESS: Yes.

4 THE SPECIAL MASTER: That's fine.

5 Q (By Mr. Merrill) Mr. Dornbusch, can you direct the Court
6 to any principles and standards of the Water Resources
7 Council that allow you to cost labor at a zero opportunity
8 cost for operation and maintenance of a project?

9 A Well, I think, first of all, I'm not using these principles
10 and standards as the Bible. I believe that, for the most
11 part, the conceptual basis behind these is correct -- the
12 bases are correct, I should say.

13 The principles and standards generally approach the
14 situation that we are dealing with in the same way that I
15 am. I have not adhered to them strictly because we are
16 dealing with a specific case.

17 For example, in this situation we feel that there is
18 very strong reason to depart specifically from the direc-
19 tives. As I said, their directive is geared to the average
20 project, the water resource project anywhere in the country.

21 They are trying to prepare a cookbook for people with-
22 out knowing what the particular situations are in a given
23 situation, and what they are saying is that, look, in the
24 average case this is the situation, and in the average case,

25 dornbusch - cross - merrill



1 because of this situation, this is what I should do, but
2 they are very clear in allowing and, in fact, directing you
3 to cost employment at its opportunity cost. There's no
4 question about that. It's here. They tell you to do that.
5 They tell you to do that very clearly.

6 And the only reason that they don't direct you to do
7 it on indefinitely into the future is because they feel
8 that, for the most part, employment is mobile. People can
9 move from place to place.

10 If they are unemployed in Cheyenne, they can move to
11 somewhere in Utah and find employment. There are opportu-
12 nities for that.

13 That's not the situation on the Wind River Indian
14 Reservation. We're talking about unemployed Indians who
15 are on the Reservation, and we're seeking to develop an
16 analysis to provide projects and water for them.

17 As to the persistency of the unemployment, I think it's
18 clear from the history, it's clear from the fact that it
19 has been very high historically, and in doing my analysis
20 I tried to anticipate what projects might potentially em-
21 ploy these people on into the future, and I can see no pro-
22 jects that would have the potential for employing this
23 many people, this magnitude of employment, with the excep-
24 tion of these resource development projects that we have

25 dornbusch - cross - merrill



1 been talking about here.

2 So, therefore, for that reason, I would expect that
3 without these projects the unemployment to be persistent
4 and substantial into the future indefinitely, certainly
5 for the period of the project. And that's why I have
6 costed it at zero, and it's entirely consistent with the
7 principles laid down by the Water Resources Council.

8 Q Mr. Dornbusch, isn't it true that later down in Paragraph
9 B, still on Page 72969, it states that the Water Resource
10 Council will designate planning regions that have unemployed
11 or unemployed labor resources?

12 A Yes. I don't expect the Water Resources Council to be do-
13 ing my job for me. If it were that simple, there wouldn't
14 be the point of going through the analysis that we have.

15 I think what we have done is focused specifically on
16 a very special situation. We have performed an analysis
17 for that situation entirely consistent with the principles
18 that the WRC is using and have done just that.

19 I think that, in fact -- I don't recall if it was this
20 publication, but I think they do specify the Wind River
21 Indian Reservation as just that location where employment
22 is substantial and persistent.

23 Q Can you direct the Court to any Water Resources Council
24 publication that allows you to cost the labor for operation

25 dornbusch - cross - merrill



1 and maintenance of a project at zero?

2 A. Well, as I say, I don't see that the WRC either allows me
3 or doesn't allow me. If I were following a cookbook, then
4 perhaps such a question would apply, but I'm not following
5 a cookbook.

6 I'm using my judgment, and I'm using my judgment based
7 upon data that I have obtained for this particular situation,
8 interviews that I have conducted with people who are know-
9 ledgeable about this particular situation, and I don't feel
10 that a cookbook is the way to perform an analysis like
11 this.

12 Q. Isn't it true that any water resources project being
13 evaluated for Congressional approval would have to be
14 evaluated according to the WRC principles and standards?

15 A. I expect that that's probably true, but I'm not exactly
16 certain where the Congress stands now on that.

17 Q. Isn't it true that if a project is evaluated in accordance
18 with WRC principles and standards, the analysis of feasi-
19 bility may not include a zero labor cost for operation and
20 maintenance of a project?

21 MR. ECHOHAWK: Could I have the question read back?

22 (The above question was read back
23 (by the reporter as follows:
24 ("Q: Isn't it true that if a pro-
25 (ject is evaluated in accordance
(with WRC principles and standards,

25 dornbusch - cross - merrill



1 (the analysis of feasibility may
2 (not include a zero labor cost
3 (for operation and maintenance of
4 (a project?"

4 MR. ECHOHAWK: Objection, Your Honor. It calls for a
5 legal conclusion and outside the scope of direct.

6 THE SPECIAL MASTER: Well, it may be outside the
7 scope of direct, but it's squarely what's being discussed
8 on the cross, and I think that the witness, however, has
9 answered it quite definitely that he reserves the right as
10 a professional and as an expert to take issue with parti-
11 cular, literal interpretation of every word of WRC's
12 guidelines, and he made his exceptions thereon and
13 likened it to a cookbook in his analogy. And even if he
14 would answer you yes, but it doesn't bind me, and if he
15 answers no, I don't know -- I'll let him answer for what
16 it may be worth.

17 A. I don't think that the Congress ought to be bound, and I'm
18 not even sure that these principles and standards do bind
19 an analyst to that. I think they lay out general procedures.
20 I think they lay out some specific guidelines, but I think
21 that if an analyst were to make a case, as I believe I
22 have very soundly for doing just what I have done, that I
23 think that the Congress ought to and should respect that
24 and should take it into consideration as a more valid

25 dornbusch - cross - merrill



1 analytical approach.

2 I have, in fact, gone into this analysis far deeper,
3 I think, than most projects of its type.

4 THE SPECIAL MASTER: Yeah.

5 A. And I think with substantial evidence that, as we have done
6 here, I think the Congress would be only wise to consider
7 it, an economic analysis like the one we have done rather
8 than following a principle that is intended to apply to
9 all situations generally everywhere. but even in here
10 allows you the latitude to perform a special analysis for
11 the special situations.

12 THE SPECIAL MASTER: Mr. Merrill, yesterday I was
13 reminded by counsel that this case is not a Congressional
14 approval for authorization or funding of a western irriga-
15 tion project, fortunately. The movement in the country
16 wouldn't get very far these days, but this is, instead of
17 that, a test to put a quantification of a federal water
18 right. Mr. Echohawk reminded me of that a couple times,
19 so that makes a little bit of a difference, and I'm glad
20 that there was that difference because there's nothing in
21 my opinion, and I think I could take judicial notice of
22 this, more uncertain, indefinite and sometimes filled with
23 the need for rationalizing and justification by all sorts
24 of editorial efforts, that that factor of bringing a

25 dornbusch - cross - merrill



1 benefit-cost ratio into unity or better for western irriga-
2 tion reclamation projects.

3 We discussed this at some length yesterday, too, so I
4 think he's made his point on this and we have it in the re-
5 cord for whatever it's going to be worth in testing your
6 conclusions.

7 THE WITNESS: There's one other point, if I may, Your
8 Honor, and that is that WRC is not always right and, in
9 fact, acknowledges that they have been wrong in some of
10 their approaches and concepts presented here, and I believe
11 that when their errors are pointed out to them, they make
12 changes.

13 For example, we are currently in communication with
14 the WRC over the fact that they do not call for normalizing
15 costs, and I expect in your cross-examination we may very
16 well get to that, and the WRC has recognized the fact to
17 us that it is not valid to normalize returns, prices for
18 returns, and not also normalize costs. They have acknow-
19 ledged that to us.

20 They are considering it now, and I would expect that
21 sometime in the near future, if there is still a WRC to
22 change their guidelines, that they will accordingly.

23 So even the cookbook is not written in concrete. I
24 think the people who wrote it acknowledge that there are

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1 errors.

2 There is also another situation where they themselves
3 acknowledge that the discount rate that they've proposed
4 and is accepted and used by the Federal Government is the
5 wrong one and is inconsistent with the methods that they
6 are prescribing here, so there are errors.

7 There are inconsistencies, and I think they are willing
8 and eager to recognize them and to make changes wherever
9 necessary.

10 MR. MERRILL: Your Honor, I recognize in response to
11 your comments and those of the witness that we are not here
12 to test the project for Congressional funding. There have
13 been representations made by the witness, as well as by Mr.
14 Rogers yesterday, that the economic analysis in this case
15 can be side by side compared with the analysis used to sup-
16 port many projects that have been built throughout the
17 United States.

18 As I'll develop later in my cross-examination of Mr.
19 Dornbusch, those projects since 1973 or so have been
20 evaluated in accordance with WRC principles and standards.

21 The purpose of this part of the cross-examination is
22 to highlight for the Court's benefit those areas in which
23 Mr. Dornbusch has deviated from the principles and standards
24 of the WRC, and perhaps with some justification that he

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1 suggests in answering the questions.

2 I just want to give the Court some idea of what I'm
3 trying to do here. I'm not trying to hold them up as
4 the Bible, but I'm trying to find out, if, in fact, his
5 analysis is comparable, then let's see what the differences
6 are, and it will be up to the Court to decide if those
7 differences are significant.

8 THE SPECIAL MASTER: I appreciate that very, very
9 much and I wish that we could have everybody involved,
10 especially the leadership for the Indians and the Indians
11 and the State of Wyoming's leaders.

12 I wish we could have them all try to do some truly
13 original thinking on how does the United States of America
14 fulfill its obligation to the Indians vis a vis this water
15 right from the Winters case.

16 Does it have to be an irrigation permit if there
17 was something else that would fulfill that obligation
18 honestly and properly to the reservation instead of going
19 back to the old projects that have been rationalized,
20 unsuccessfully operated in many areas -- the track record
21 is not a good record for the success of western irrigation
22 reclamation projects.

23 Could there be a better measure we could use in this
24 lawsuit than what we are doing to identify the obligations

25 dornbusch - cross - merrill



1 and fulfill it.

2 That's a question that is philosophic, but I think we
3 have to recognize it.

4 MR. ECHOHAWK: As I pointed out in previous days,
5 the test that we are applying is the test set up in
6 Arizona vs. California.

7 THE SPECIAL MASTER: I recognize that.

8 MR. ECHOHAWK: And it's just a matter of showing
9 how you could irrigate these lands.

10 THE SPECIAL MASTER: Of course, and it's a precedent
11 that we have to deal with, but I wish we could do some
12 original thinking along some new lines to avoid the
13 not-so-successful tests frankly, but I guess we have
14 nothing else we can do.

15 Arizona vs. California used it as a guide, and so
16 there it is for us to follow, and until the Supreme Court
17 sets some other guide, this is what we do.

18 Go ahead, Mr. Merrill. I didn't mean to deviate on
19 you.

20 MR. MERRILL: That's quite all right, Your Honor.
21 It's an important question.

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dornbusch - cross - merrill



1 Q (By Mr. Merrill) Mr. Dornbusch, in costing labor or
2 80 percent of the labor at a zero opportunity cost
3 for the entire life of the irrigation project, are
4 you assuming, then, that the levels of unemployment
5 present today on the Wind River Indian Reservation
6 will persist over the next century?

7 A Not if you develop those projects.

8 Q I'm saying without these projects.

9 A Without these projects?

10 Q You are assuming that --

11 A I think the key -- rather than talking about percentages,
12 I think it is likely that the population of the
13 Reservation may grow or decline, but what I am saying
14 is the number of unemployed people available for
15 employment will equal or exceed those required for this
16 project, and therefore, yes, we can employ 80 percent
17 of the required employment in this project with
18 unemployed resources.

19 Q For the next 100 years?

20 A For the next 100 years.

21 Q Isn't that assumption also at odds with the principles
22 and standards?

23 A Perhaps I should read from these principles and standards.

24 Q Okay.

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1 A On the same page that you cited in that subparagraph
2 b that you talked about it says, "Conceptually, any
3 employment, anywhere in the Nation, of otherwise
4 unemployed or underemployed resources that results
5 from a project represents a valid NED benefit.
6 However, primarily because of identification and
7 measurement problems, and because unemployment is
8 regarded as a temporary phenomena, the Principles
9 and Standards specifically permit only those labor
10 resources employed onsite in construction," unquote.
11 Okay, the point here is they say, "Conceptually, any
12 employment, anywhere in the Nation, of otherwise
13 unemployed or underemployed." However, the identification
14 and measurement problem, we have gone around that
15 problem, we have identified and we have measured the
16 situation. I have also demonstrated, I think, through
17 my testimony that it is not just a temporary phenomena,
18 they are just assuming it's usually a temporary
19 phenomena. It is not here. So yes, I think very
20 definitely this situation is likely to hold without
21 these projects throughout the project life.

22 THE SPECIAL MASTER: I think it is a good time
23 to take a ten-minute break. We have been at it an
24 hour.

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1 (Whereupon, a ten-minute
2 (recess was taken.

3 THE SPECIAL MASTER: We will come to order, please.

4 Q (By Mr. Merrill) Mr. Dornbusch, I have just a few
5 more questions about labor, then we will wrap that
6 area up and move on.

7 As I understand your analysis with respect to
8 costs of labor, there are two principal distinctions
9 between your analysis and that suggested by the
10 WRC Principles and Standards, and correct me if I'm
11 wrong: The first of these is the Principles and
12 Standards say that conceptually you treat unemployed
13 as a temporary phenomena and you assumed in this case
14 it would be permanent; secondly, the Principles and
15 Standards say that you zero cost labor only for
16 construction and installation, and you extended that
17 concept to operation and maintenance. Does that
18 fairly characterize the distinctions?

19 A Well, it addresses the distinctions, but just to make
20 them clear, they say here that because of indentification
21 and measurement problems, and because unemployed is
22 regarded as a temporary phenomena, etcetera, they --
23 right, they are generally saying that -- to use the
24 work "General" again -- in general you consider it as a
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1 temporary phenomena, yes.

2 Q Don't the Principles --

3 A That does not hold in our case, correct.

4 Q Don't the Principles and Standards say you specifically,
5 and I quote the word specifically -- permit only those
6 labor resources employed onsite in the construction
7 or installation of a project for a non-structural
8 measure?

9 A Yes, because of the reasons I stated.

10 Q Okay, fine. In light of those two distinctions, do you
11 believe your economic feasibility analysis can be
12 side by side compared with other analyses which are
13 done in strict accordance with the WRC Principles and
14 Standards?

15 A Of course.

16 Q Okay.

17 A Well, if I understand your question.

18 THE SPECIAL MASTER: I think you did. Can they
19 be side by side compared.

20 THE WITNESS: Yes.

21 THE SPECIAL MASTER: All right, that's good.

22 Q (By Mr. Merrill) Isn't it true that in making these
23 comments and guidelines concerning unemployment, that
24 the Water Resources Council had in mind the specific

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1 unemployment problems of Indian Reservations?

2 THE SPECIAL MASTER: I would feel that question
3 is not appropriate because I don't know if you know
4 what the Resources Council staff writers had in mind
5 when they wrote that.

6 MR. MERRILL: Your Honor, I can tie my next
7 question in with this. The Witness himself indicated
8 the WRC may have designated the Wind River Indian
9 Reservation as an area of persistent unemployment,
10 and if permitted to ask a follow-up question, I think
11 I can tie this area in.

12 THE SPECIAL MASTER: I thought your question
13 dealt with asking him what the WRC thought, and I
14 didn't think it was appropriate. But if -- do you
15 want to try and rephrase it?

16 MR. MERRILL: Your Honor, let me indicate to
17 the Court what I'm trying to do, then I will take a
18 crack at rephrasing the question.

19 The Witness indicated he believed the Wind River
20 Indian Reservation presented a special case, distinct
21 from that addressed by the Principles and Standards,
22 and what I'm going to do is try to develop with the
23 next several questions whether or not that is, in fact,
24 the case or whether or not the Principles and Standards

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1 were developed with Indian Reservations as well as
2 other unemployed areas in mind.

3 THE SPECIAL MASTER: All right.

4 Q (By Mr. Merrill) Mr. Dornbusch, in subparagraph b
5 that we have been discussing on Page 72969 of ED-6,
6 don't the Principles and Standards state that the
7 WRC designate planning regions that have unemployed
8 or underemployed labor resources?

9 A Yes, they do.

10 Q And isn't it true that in one of the appendices
11 to the 1980 WRC Handbook there is such a list of
12 areas that the Water Resources Council considers
13 to have substantial amounts of unemployed or under-
14 employed labor resources?

15 A I believe that's right.

16 Q Isn't it true that the Wind River Indian Reservation
17 is one of these areas designated by the Water
18 Resources Council?

19 A Yes, and that is what I was referring to earlier.

20 Q Isn't it true that that list in back of the 1980
21 Handbook is, in fact, replete with listing of Indian
22 Reservations throughout the United States?

23 A Yes, it is.

24 Q Are you suggesting that all of those Indian Reservations
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1 present special cases that were not contemplated by
2 the Water Resources Council in establishing those
3 guidelines?

4 A Well, I think there are clearly special cases
5 contemplated by the Water Resources Council as
6 evidence of the fact they are mentioned specifically.
7 I think to draw the conclusion that -- well, let me
8 put it this way: They are clearly to be considered
9 as situations where unemployed is persistent and
10 substantial. To conclude that you are to stop there
11 and draw the inference that the substantial and
12 persistent unemployment is to no longer hold at some
13 point in the future, I don't see it. It is not in
14 there. What you are saying is that clearly it is
15 substantial and persistent in those situations, therefore,
16 you should consider unemployment at its opportunity
17 cost of zero for the conditions laid down, but I
18 don't think there is -- I don't see any implications
19 that you stop there. In fact, I think it probably
20 supports my argument very well, that this is a special
21 situation, and what I have described is that I have
22 done the next step to see how much -- how substantial
23 and how persistent the condition might be expected to
24 hold, and the WRC themselves agree that they are going

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1 to modify and change these standards when the
2 situation warrants. I think if they were to look
3 at the Wind River Reservation I would expect them --
4 although it's conjecture -- to draw the same conclusions
5 that I have.

6 Q Mr. Dornbusch, isn't it true that the national economic
7 philosophy of the United States is devoted to, among
8 other goals, the goal of low unemployment?

9 MR. ECHOHAWK: Your Honor, it calls for speculation.

10 MR. MERRILL: Your Honor, this Witness has been
11 qualified as an expert in the field of economics, and
12 the line of questioning that I'm about to embark on --

13 THE SPECIAL MASTER: He many answer, I will overrule
14 the objection.

15 THE WITNESS: Yes, I think that is a reasonable
16 explanation of a goal, of any goal.

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1 Q (By Mr. Merrill) Are you saying that in light of that
2 national economic goal and the policies behind it that
3 the irrigation projects that you have evaluated for
4 this case are the only chance of economic development
5 on the Wind River Indian Reservation?

6 A Well, having a goal and attaining a goal are two
7 different things.

8 And I think in this situation, from what I can see,
9 the best chance for attaining that goal are just the
10 projects that I have outlined here. In fact, I don't
11 see the opportunity to do so otherwise, to attain that
12 goal otherwise.

13 Q So you are saying that the only future for the Wind
14 River Indian Reservation is a farming future?

15 A I'm saying that I do not see what projects have the
16 potential for employing so many people on the Wind
17 River Indian Reservation that we would not be able
18 to draw the 80 percent from unemployed that I've used
19 in my analysis.

20 Q Mr. Dornbusch, are you aware of the growth and economic
21 development that's occurring in the State of Wyoming
22 today as a result of energy development?

23 A To some degree, yes.

24 Q Are you saying that the Wind River Indian Reservation
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1 and its inhabitants will be purposely excluded from
2 the growth in Wyoming based on energy development?

3 A Not at all, but to employ the unemployed Indians on
4 the Wind River Indian Reservation I do not see the
5 potential for employing those Indians to the degree
6 necessary to divert so many that you would not be
7 able to draw the 80 percent that I've used.

8 Q What specific projects external to the Reservation have
9 you examined to see if they might employ a significant
10 part of the labor force on the Reservation?

11 A No specific projects.

12 Q Why don't we move on to the area of costs -- excuse
13 me. I have a couple of more questions on labor. I'm
14 sorry.

15 You mentioned in response to one of the Special
16 Master's questions concerning the inclination of
17 future inhabitants of the Reservation to work on the
18 irrigation projects that you performed a survey of
19 attitudes; is that correct?

20 A No, I did not perform a survey of attitudes. I
21 interviewed people who are knowledgable about attitudes.

22 Q Who did you interview?

23 A I interviewed a number of people both on the Wind
24 River Reservation and on other Indian Reservations

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1 where similar development projects have occurred
2 and where Indians are being employed.

3 Specifically with regards to management labor,
4 for example, I interviewed Gene Nelson, who is
5 the personnel manager of Ball Agricultural Systems,
6 concerning the Navajo development projects, and he --

7 Q Excuse me. Is Ball the professional outfit that's
8 now managing the Navajo Irrigation Project?

9 A That's correct. And he gave me specific information
10 as to the Indians being employed in the work force
11 and the training of those Indians and a number of --
12 let me restate that.

13 He gave me various information on the activities
14 of those Indians in management and explained that
15 his feeling was it's a realistic target to use
16 Indians entirely, developing them through on-the-job
17 training.

18 Specifically with regard to on-farm labor, I
19 spoke with Rose King, who is the personnel director
20 of the Navajo Agricultural Products Industry.

21 She informed me that in 1976 she started with
22 90 percent Indians. Only a small percentage of them
23 were already trained. Most of the training occurred
24 as on-the-job training.

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1 In 1980 and '81, 97 percent of the on-farm
2 planting, cultivation, harvest, etcetera, and
3 irrigation on-farm operation workers were and are
4 Indian.

5 And, by the way, the crops that they are raising
6 in that project are the same, many of them the same
7 as ours, and using side roll and hand move sprinkler
8 systems.

9 Q Have you been referring to notes in describing these
10 interviews?

11 A Yes, I am.

12 Q May I examine those, please?

13 A Yes.

14 MR. ECHOHAWK: He's entitled to finish his
15 answer first.

16 MR. MERRILL: That's all right, Your Honor. I'm
17 sorry.

18 Q (By Mr. Merrill) Why don't you set those in a
19 separate stack somewhere and we will just look at
20 them when you are done with your answer.

21 A I spoke with Walt Egged, supervising civil engineer --
22 that is, the irrigation engineer on the Crow
23 Reservation.

24 By the way, on that Navajo project, we are
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1 talking about large acreages as well. They have
2 been adding 10,000 acres each year since 1976, and
3 they are now up to 50,000 acres.

4 The Crow Reservation project has 37,500 acres
5 with a possibility of an additional 6,000 acres.

6 All Indians, with the exception of one equipment
7 operation foreman, are involved in the irrigation
8 system, operation maintenance and repair, labor.

9 He told me that the skills can be acquired on
10 the job in a few months. Most of the Indians were
11 unskilled when they came.

12 I spoke with Lloyd Tucker, operations manager
13 of the Navajo Indian Irrigation Project in Farmington,
14 again with respect to irrigation system OM and R,
15 and he informed me that all of those employees are
16 Indian. Again, they were trained with on-the-job
17 training. In one to two weeks they were functional,
18 and in one year they were fully trained.

19 He made the point that many of the Indians had
20 construction jobs and skills previously and those
21 types of jobs and skills are eminently transferable..

22 And in my discussions with Joe Smith on the Wind
23 River Indian Reservation it seemed that the same
24 situation is so on the Wind River Indian Reservation,

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1 that many of the unemployed have construction skills.

2 Lloyd Tucker, in fact, said that he thought it
3 might take ten years to train an Indian for his
4 position, and he's doing it right now, and he was
5 expecting that an Indian would take over his job in
6 1984.

7 Specifically with respect to the Wind River --
8 wait. I think I have one more.

9 Yes, I have one more other project, and that's
10 at the Rocky Boys Agency in Montana.

11 THE SPECIAL MASTER: How do you spell that?

12 THE WITNESS: Rocky, R-o-c-k-y, new word, B-o-y-s.

13 I spoke with --

14 THE SPECIAL MASTER: Where is that?

15 THE WITNESS: In Montana.

16 THE SPECIAL MASTER: The Northern Cheyenne?

17 THE WITNESS: No, it's the Rocky Boys.

18 THE SPECIAL MASTER: That's the name of the Tribe?

19 THE WITNESS: It's the name of the Reservation
20 and Tribe, I believe.

21 THE SPECIAL MASTER: What Indians are on that
22 Tribe, Mr. Merrill?

23 MR. MERRILL: Your Honor, I have no idea.

24 MR. ROGERS: If you asked me, Your Honor, I could
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1 tell you.

2 THE SPECIAL MASTER: All right. Let it go.

3 MR. ROGERS: It is one of the seven Indian
4 Reservations in Montana.

5 A Tom Parisian was the person I interviewed. He's the
6 assistant manager of the Dry Forks Farm operation.
7 It's a tribal enterprise, and he explained that the
8 employees are exclusively Indians. They are all
9 Indians except the manager.

10 He says there's no trouble attracting the Indians
11 They need the jobs, and they will take them when they
12 are available.

13 Q Would you spell Parisian for the Court Reporter? I'm
14 sure they would appreciate it.

15 A I believe it's P-a-r-i-s-i-a-n.

16 Q Thank you.

17 A Okay.

18 THE SPECIAL MASTER: Do you want anymore examples,
19 or is that sufficient, Mr. Merrill?

20 MR. MERRILL: I would like to hear the information
21 that he has, Your Honor.

22 THE SPECIAL MASTER: Go ahead.

23 A With specific regard to the Wind River Indian
24 Reservation, I spoke with Joe Smith, who is the
25 dornbusch-cross-merrill



1 vocational development specialist.

2 He sees no problem employing Indians when the
3 jobs are available. They have experience in farming
4 and ranching and in equipment operations and in farm
5 labor.

6 I spoke with Mr. Ron Hoffman. He said that
7 95 to 97 percent are Indians working as farm hands
8 and ranch hands. Few are non-Indians, obviously by
9 the percentage.

10 The manager is a non-Indian. The foremen are
11 are Indians also. There are six foremen who are
12 Indians. Four to five managers are all Indians.

13 I asked him whether he thought that any Indians
14 could take over his job, and he said several could.

15 I asked him if there are Indians applying for
16 jobs. He says he gets calls all the time from Indians
17 wanting jobs. In the last three weeks he had 12 calls
18 for jobs, and the time of that interview was January
19 of this year.

20 I spoke with Fred Nichols -- excuse me -- Fred
21 Nichols, Jr. He's a counselor in the Lander High
22 School -- excuse me -- Lander Valley High School.

23 I was concerned with the same subject you were
24 concerned with: What about the young Indians who

25 dornbusch-cross-merrill



1 are growing up on the Reservation?

2 He's had a number of them in the high school
3 for the past ten years. He said that the attitude
4 is constantly improving.

5 He says they want jobs without leaving homes on
6 the Reservation. He says if there's new development
7 and there's new jobs, he says he feels that they
8 definitely will work in those positions.

9 He said there are not enough jobs for them, and
10 that's the essence of that interview.

11 And that's a summary of my notes.

12 Q May I examine the notes to which you have been
13 referring in answering this question?

14 A Yes, you may.

15 THE SPECIAL MASTER: What is the next area,
16 Mr. Merrill, or you are not quite ready for it?

17 MR. MERRILL: The next area will be management,
18 Your Honor,

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dornbusch-cross-merrill



1 Q. (By Mr. Merrill) Mr. Dornbusch, I hand you what has been
2 temporarily marked for identification as Exhibit WRIR ED52.
3 Would you please identify that?

4 A. Yes. This is a series of notes that I made in my
5 conversations with a number of people concerning potential
6 for employing unemployed Indians on the Wind Indian
7 Reservation.

8 MR. MERRILL: Your Honor, as with the previous exhibit,
9 I will request the Court's permission to withdraw it and
10 makes copies.

11 THE SPECIAL MASTER: Very well.

12 MR. MERRILL: Thank you.

13 THE SPECIAL MASTER: I may start denying the
14 practice that has been engaged so freely heretofore of
15 saying to a witness -- the only trouble is if I deny it
16 now, will that permit it to the one side and not to the
17 other, I guess, so I guess I will leave the rule open for a
18 while, but it strikes me as something harsh and no quite
19 dignifying to the legal profession for attorneys to ask
20 questions of a witness, induce the information they want
21 from the witness who is looking at his notes and work
22 papers, then go seize his notes and work papers, copy them
23 and put them into evidence. You got what you wanted in
24 the record by having asked the questions. If you want something
25 dornbusch - cross - merrill



1 else he has, you can recall him as your own witness on
2 your case and bring up what you wish from him. Why must
3 he let his work papers be seized from notebooks and
4 notebooks and from page to page and find them in evidence.
5 I'm not sure it is appropriate, frankly, but I have been
6 allowing it only because I suppose it is better to error
7 in the side of getting everything in that both sides want
8 rather than limit somebody on a search of what prove to
9 be crucial evidentiary material.

10 Go ahead, Mr. Merrill.

11 MR. MERRILL: Your Honor, I realize the procedure is
12 burdensome to the Court and does take a fair amount of time,
13 but the problem here is that these are materials we have
14 not seen previously, and I believe under the rules of
15 evidence if a witness refers to a document while testifying,
16 the rules state the witness shall make that document
17 available to all parties so that they can examine it and
18 see what information the witness is referring to when
19 putting his testimony into the record.

20 THE SPECIAL MASTER: Well, that is true, Mr. Merrill,
21 and it is also true we must take new steps as we did forty
22 years ago to avoid surprise, so we devised the law of
23 deposition and discovery. I'm beginning to believe the
24 sooner we repeal that, the better off justice will be.

25 dornbusch - cross - merrill



1 Q. (By Mr. Merrill) Mr. Dornbusch, was another item in your
2 production costs a charge for management?

3 A. Yes, it was.

4 Q. Would you please refer again to Table 2A in Exhibit C268,
5 that being your report, and calculate for the Court what
6 your management charge for alfalfa would be before you
7 adjust that management charge for opportunity costs?

8 A. Well, the way it's done and if you look at that table,
9 once you derive the subtotals that are shown at the bottom
10 of the main columns in that crop budget, you then make
11 some additional charges to the budget, and one is for
12 management. In Doug Agee's report and in a number of
13 farm management studies that I have seen by extension
14 agencies, extension people, they apply a percentage to
15 that. That percentage is usually five percent. Others use
16 a higher percentage, as much as ten percent. I use ten
17 percent.

18 THE SPECIAL MASTER: Ten percent of what?

19 THE WITNESS: Ten percent of that subtotal.

20 THE SPECIAL MASTER: Ten percent of 71.17 would have
21 been seven dollars and not a dollar thirty-two.

22 THE WITNESS: I will explain.

23 THE SPECIAL MASTER: All right. That is why your
24 ten percent threw me.

25 dornbusch - cross - merrill



1 THE WITNESS: That's right. And the ten percent
2 normally would have applied to the 71.17, and we did that
3 as a first step. The second step was to adjust for the
4 opportunity costs of labor once again. So the method
5 here is not to take the ten percent of the 71.17 because
6 generally that percentage is taken of a fully costed labor
7 budget, and that 71.17 does not reflect a fully costed
8 but it reflects some opportunity costs for labor. There-
9 fore, just for the purpose of this calculation, I determined
10 what the fully costed labor would have been at one hundred
11 percent had it been used at 100 years.

12 Q. (By Mr. Merrill) What amount did you determine for fully
13 costed labor?

14 A. For that budget?

15 Q. Uh-huh.

16 A. I believe fully costed labor was, with a general
17 miscellaneous and interest and all of that included,
18 would have been \$12.17. So the simple process of
19 determining the fully costed subtotal would be to take the
20 71.17, add the 12.17 that I just explained would have been
21 the fully costed amount, subtract out the 2.89 and I have
22 a figure of \$80.45. Okay?

23 Q. Uh-huh.

24 A. Ten percent of that is just eight dollars four and a half
25 dornbusch - cross - merrill



1 cents. Okay, now I made an adjustment for the opportunity
2 costs, and the way I did that was to determine at what rate
3 the unemployed Indians would be absorbed into the
4 management set forth, and again, on the basis of the
5 interviews I conducted, I determined that a ten-year
6 program for absorbing unemployed Indians starting at a
7 low rate of ten percent in the first year, ten percent
8 unemployed Indians and then training them through an
9 on-the-job training program and increasing that percentage
10 by ten percent each year for the ten years, would give
11 the program of absorption. Then by determining what the
12 value of that absorption program is to determine the
13 opportunity costs of absorbing those unemployed Indians,
14 I determined the management charge. Then for that budget
15 it is a \$1.32, which is on the order of something in the
16 neighborhood of eighty percent of the fully costed -- I'm
17 sorry, it's reducing eighty percent, it is actually --
18 this is 16.4 percent of the fully costed management.

19 Q. Will you please explain how you determined to use a
20 16.4 percent factor for computing your management chart?

21 A. Yes. It really follows the same principle of present value --
22 present value discounting that I explained before. If you
23 increase -- if you look in the first year and you see that
24 80 percent of the managers will be non-Indian or previously

25 dornbusch - cross - merrill



1 employed, Indian or non-Indian, ten percent will be
2 previously unemployed Indians and you increase that
3 percentage of Indian participation by ten percent each
4 year up to 100 percent in the tenth year, and then you
5 then have a curve which shows how the absorbtion is
6 increased each year for ten years. You could at this
7 point multiply percentages by dollars and then discount
8 to the present. An equivalent way, and the way I did it,
9 was just use percentages and discount the percentages
10 because you could either take percentages times dollars
11 and discount that or just take the percentages first and
12 discount and multiply by dollars, and that is what I did.
13 At the four percent discount rate what you get is 16.4
14 percent being the cost to be applied to the fully costed
15 dollars.

16 THE SPECIAL MASTER: Tell us again what percentage
17 of the total cost of production as evidenced in your last
18 column. What did you use to determine management, because
19 where you had 71.17 you got \$1.32; where you had \$135.47
20 for your total cost you had \$2.46. Isn't that a constant
21 percentage of the total cost you used for management?

22 THE WITNESS: I didn't follow the last part of your
23 question.

24 THE SPECIAL MASTER: Take, for example -- to see if
25 dernbush - cross - merrill



1 I can make this easier -- Table 2A we are looking at.
2 The next one is Table 2B.

3 THE WITNESS: Right.

4 THE SPECIAL MASTER: On 2A your total cost -- your
5 subtotal line 71 dollars; management cranked in \$1.32.

6 THE WITNESS: Right.

7 THE SPECIAL MASTER: Land and improvements stayed
8 constant, 4.81. The next page subtotal is \$135.47;
9 management you cranked in as 2.46 and land improvement
10 stayed constant at 4.81.

11 THE WITNESS: That's right.

12 THE SPECIAL MASTER: What do you do then to determine
13 management, don't you take a percentage of the total
14 cost?

15 THE WITNESS: Yes, I take a percentage of the subtotal
16 cost, but because the percentage generally used to begin
17 with is ten percent, Your Honor --

18 THE SPECIAL MASTER: You said ten percent?

19 THE WITNESS: Ten percent is generally taken at a
20 fully costed labor. So had I started with ten percent of
21 only 71.17, I would have started out with less management
22 than is generally applied.

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dornbusch - cross - merrill



1 THE SPECIAL MASTER: I frankly admit that I
2 cannot follow you.

3 THE WITNESS: Okay.

4 THE SPECIAL MASTER: I frankly admit I cannot
5 follow you.

6 THE WITNESS: If labor did not have the opportunity
7 cost removed, on the labor column, it would have read
8 \$12.71.

9 THE SPECIAL MASTER: Instead of 2.89?

10 THE WITNESS: Instead of 2.89.

11 THE SPECIAL MASTER: All right.

12 THE WITNESS: And the subtotal would have been,
13 instead of 71.17 --

14 THE SPECIAL MASTER: \$81 -- \$83 --

15 THE WITNESS: It would have read \$80.45, okay,
16 since you add back the 80 percent. You add back
17 12.17, subtract 2.89. Okay. So it would have read
18 \$80.45.

19 Now, when I calculate my management, I would
20 have taken 10 percent of that, okay, and ten percent
21 of that \$80.45 is \$8.045, rounding up --

22 THE SPECIAL MASTER: Okay. I think so. If Mr.
23 Merrill understands that, I'm sure it's all right.

24 Isn't the conclusion of what you are saying is
25 dornbusch-cross-merrill



1 that if you reduce labor costs because of the
2 opportunity cost of labor, you have the right
3 to reduce management costs proportionately?

4 THE WITNESS: Not necessarily. The two are
5 related because you are drawing the on-farm labor
6 from an unemployed pool, and I'm also drawing the
7 management labor from an unemployed pool, but I'm
8 not handling them the same.

9 I'm saying right in the first year we are going
10 to be able to attract 80 percent for the on-farm
11 labor, but for management it's a special case. We
12 are going to be training them through time, and we
13 start at 10 percent and continue on for ten years.

14 THE SPECIAL MASTER: All right. I think I grasp
15 it now. Thank you.

16 Q (By Mr. Merrill) In other words, Mr. Dornbusch, you
17 used as an end result management charge in your crop
18 budgets a figure that's approximately 1.8 percent of
19 the total costs in each crop budget; isn't that
20 correct?

21 A You are saying management as a percent of the total?

22 Q Yes.

23 A Well, I haven't calculated it for all of them, but
24 I just checked the alfalfa budget that we are talking

25 dornbusch-cross-merrill



1 about, and it's about that.

2 Q Would the method for determining that be just to
3 simply divide the management charge in each crop
4 budget by the total cost?

5 A Ask your question again, please?

6 Q Would the procedure for determining the percentage
7 which management costs are of total cost be to simply
8 divide the management charge in each crop budget by
9 the total cost?

10 A That's not the way I did it.

11 Q Would you explain how you did it?

12 THE SPECIAL MASTER: He just did to me. And if
13 I can understand it, I know you can, Mr. Merrill.

14 MR. MERRILL: I'm not sure, Your Honor.

15 THE SPECIAL MASTER: He went back again and took
16 his ten percent factor for labor and explained how
17 he arrived at the management reduction therefrom,
18 and he did it on the alfalfa, baled alfalfa, Table 2-A,
19 with the \$7.11, and explaining that there would be
20 \$12.89 and not 2.89 on labor had he not discounted
21 the opportunity cost of labor or considered it, rather,
22 and it's in the record now, so I'm sure you can read
23 it tomorrow.

24 Q (By Mr. Merrill) Mr. Dornbusch, for alfalfa then
25 dornbusch-cross-merrill



1 your fully costed management charge would be approximately
2 \$8.05; is that correct?

3 A That would be the financial cost. It would not be the
4 economic cost.

5 Q Right. I'm speaking just of the financial cost.

6 A Yes.

7 Q And you stated in your direct testimony, I believe,
8 that Mr. Agee uses five percent to compute his
9 management charge; is that correct?

10 A That's correct.

11 Q And you used ten percent?

12 A That's correct.

13 Q And you also stated in your direct testimony that the
14 use of a ten percent figure resulted in a higher
15 management charge than that assumed by Mr. Agee; is
16 that correct?

17 A That's correct.

18 Q And that is to take into account that you have
19 progressive management, better than average management?

20 A What I'm doing here is trying to allow for the costs
21 that would provide the best management possible -- well,
22 for the best management that might be reasonable in
23 a situation like this, and I believe if the WRC
24 that uses ten percent, and there are ranges, and I

25 dornbusch-cross-merrill



1 wanted to be sure that I had sufficient management
2 in there to perform the functions of operating these
3 farms and certainly from the first year where they
4 would be operating farms that were new farms and
5 also be training ten percent initially unemployed
6 Indians to be managers.

7 Q I direct your attention to Exhibit ED-8, the Agee
8 report, Page 20, crop budgets for alfalfa, and ask
9 you if in that report Mr. Agee used a figure of
10 \$10.12 for management?

11 A Yes, he did.

12 Q Isn't it true that your management figure at fully
13 costed labor is less than Mr. Agee's?

14 A All right. In Mr. Agee's budget he includes a number
15 of irrigation operations which I have handled separately
16 and which in their separate accounting also have a
17 management included, so to compare his budget directly
18 to mine, what you must do is take the irrigation
19 operations and put them together with the on-farm
20 operations which he has in one budget and I have done
21 in two separate budgets, and I think you'd probably
22 find that our management would come out higher if you
23 did that.

24 Q Isn't it true that your management charges on Table 2-A
25 dornbusch-cross-merrill



1 are expressed in 1979 normalized dollars whereas
2 Mr. Agee's are expressed in 1977 dollars?

3 A Yes, that's right.

4 Q What computation did Mr. Agee use to determine his
5 management charge?

6 A Well, it says here that he applied five percent of
7 the expected gross.

8 Q And you used ten percent of another figure; is that
9 correct?

10 A Yes, I used the procedure that I believe is used by
11 the Water Resources Council in calculating management.

12 There are different ways -- it's a percentage
13 that you are taking. It's not a building up of
14 specifying specific numbers of people and their
15 salaries.

16 It's a procedure that's generally used by all of
17 the people that I'm aware of who developed these
18 budgets, and they'll take a percentage of the total
19 to apply to management and different people apply
20 different percentages and apply it to different amounts,
21 but it comes out roughly the same, I think.

22 Some of them use a little bit higher management
23 and some a little bit lower.

24 Q Mr. Dornbusch, would your management charges for
25 dornbusch-cross-merrill



1 irrigation show up on Table 4, Page 12, of your
2 report under annual on-farm irrigation O and M costs?

3 MR. ECHOHAWK: Which report are you referring to?

4 THE SPECIAL MASTER: The same one we have now,
5 I expect.

6 MR. MERRILL: Exhibit C-268, Mr. Dornbusch's
7 report.

8 THE SPECIAL MASTER: Could I hear that question,
9 please?

10 (Whereupon, the following
11 (question was read back by
12 (the Reporter: "Q Mr.
13 (Dornbusch, would your
14 (management charges for
15 (irrigation show up on
16 (Table 4, Page 12, of your
17 (report under annual on-farm
18 (irrigation O and M costs?"

19 A For that portion of the budgets, yes, that's right.

20 Q (By Mr. Merrill) What portion of the annual on-farm
21 irrigation O and M costs would be management charges?

22 A Okay. Are we moving to that portion? Can I put this
23 material away and move into --

24 Q Well, you had better hang onto it because I'm going to
25 come back and tie that in to your other management
charges on Table 2-A.

A All right. Now, would you repeat the question, please?

Q Yes. Would you please tell the Court what portion of
dornbusch-cross-merrill



1 the annual on-farm irrigation O and M costs shown on
2 Table 4 of your report are management charges?

3 A Okay. I applied the same principle that I applied
4 here for the on-farm operations.

5 I took the repair and maintenance and the labor
6 to reset the irrigation system, applied a miscellaneous
7 overhead, a cost movement time just as you see in that
8 budget, and developed a subtotal the same way that I
9 did in the exhibit that you referred to earlier, and
10 then applied a management by taking -- applying ten
11 percent and then taking out the opportunity cost.

12 THE SPECIAL MASTER: Are you saying that on direct
13 testimony you did not say that in addition to the
14 annual on-farm irrigation O and M costs on Table 4,
15 Page 12, there was more management expense?

16 THE WITNESS: No, there is management expense
17 within the O and M cost shown on that table.

18 THE SPECIAL MASTER: So if you say that on South
19 Crowheart your only on-farm irrigation O and M cost
20 is \$6.01 --

21 THE WITNESS: Right.

22 THE SPECIAL MASTER: -- that it does not include
23 more management expense?

24 THE WITNESS: It includes the management expense.

25 dornbusch-cross-merrill



1 MR. MERRILL: I'm saying that figure includes
2 management expense.

3 THE SPECIAL MASTER: That's what I understood him
4 to say. My notes show that he did say on direct --
5 so we probably should have that cleared up.

6 My notes show that your direct testimony was that
7 there should be another column and that there would
8 be more management expense in addition to what is
9 there. Am I in error?

10 THE WITNESS: Well, I can't recall what I said
11 on direct, but if my -- my intention was, I believe,
12 to say that the management was included within --

13 THE SPECIAL MASTER: All right. Thank you.

14 THE WITNESS: -- that O and M cost.

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dornbusch-cross-merrill

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1 MR. ROGERS: Your Honor, perhaps the fact that
2 he's also got management costs in the other portions
3 of his budgets here that we went through just before
4 this exercise.

5 THE SPECIAL MASTER: All right. Go ahead, Mr.
6 Dornbusch.

7 MR. MERRILL: Thank you, Your Honor.

8 Q (By Mr. Merrill) Mr. Dornbusch, can you give the Court
9 a rough idea of what proportion of the annual on-farm
10 irrigation O and M costs shown on Table 4, roughly
11 what portion of those are management costs?

12 A Well, it is a little difficult to do, but in general --
13 because I'm combining side roll and hand move sprinklers,
14 and I would have to go back and calculate a weighted
15 average, but from that subtotal I take the ten percent
16 just as I did here, and then I take out something like
17 80 percent for the opportunity cost. In fact, whatever
18 the number was.

19 Q Why don't we take the highest figure for South
20 Crowheart, six dollars and one cent. Are you saying
21 that you would first take ten percent of that number?

22 A No, no, no, I take ten percent of the subtotal before
23 you get to that number. The number, six dollars and
24 one cent, is a weighted average according to the

25 dornbusch-cross-merrill



1 percentage of irrigation system that you have in side
2 roll and the percentage that you have in hand move.
3 Now, the hand move and the side roll sprinklers each
4 have a separate budget that I calculated separately.

5 Q I understand.

6 A I obtain a subtotal for each one of those, apply
7 it to management and get a total for each one of
8 those. Then according to the weights -- or the
9 percentage of side roll versus hand move, I then
10 determine the six dollars and one cent.

11 Q Of the six dollars and one cent --

12 A Yes.

13 Q -- is half of that management charge --

14 A Oh, no.

15 Q -- or roughly a tenth of that or five percent of that,
16 can you give the Court a ballpark figure?

17 A Roughly?

18 Q Yes.

19 A Okay. At fully costed it would be -- just a moment.

20 (Brief pause.)

21 Okay, at fully costed it would be in the
22 neighborhood of 30 to 40 percent of the total, but
23 then when I adjust for the opportunity cost, it's
24 less, about a fifth of that, about six percent.

25 dornbusch-cross-merrill



1 Between six and nine percent, something around there.

2 Q Let's stick with fully costed figures for a moment
3 and assume the higher of the range you gave me, which
4 is 40 percent. That means that you would have manage-
5 ment charge of roughly \$2.40 within the \$6.01, is
6 that correct? And this is before we change it for
7 opportunity costs.

8 A I'm not exactly following because, as I said, we are
9 using a weighted average of the side roll and the
10 hand move. The subtotal to which I'm applying the
11 management percentage has already removed an opportunity
12 cost for the labor for resetting the irrigation systems.

13 Q What I am trying to get you to do, and maybe I haven't
14 been asking it the right way, is to give the Court
15 an idea of how many dollars and cents, and as a rough
16 estimate for now, of the \$6.01 for South Crowheart
17 would be management and how much would be all other
18 things?

19 A Well, I think I gave you the percentages.

20 Q Roughly 40 percent of that?

21 A Well, I forgot what I said now. I think it was --
22 well, I can't recall. Perhaps the Recorder can tell me,
23 but you could take those percentages as a percentage of
24 the total and calculate them. I didn't write them down.

25 dornbusch-cross-merrill



1 MR. ROGERS: Your Honor, would the Court be
2 interested in what my notes show he said on that?

3 MR. MERRILL: Let me just ask the Witness if it
4 was 69 percent, somewhere in that range?

5 THE WITNESS: After the opportunity cost was
6 taken out, yes, I recall that.

7 THE SPECIAL MASTER: That means as of right now
8 I will make no further reference to my notes if none
9 of you will do the same. Let's let the record speak
10 for what it's supposed to say, and that is our first
11 evidence of the truth of the proceedings.

12 MR. MERRILL: Excuse me just a moment, Your Honor.

13 (Off-the-record discussion.)

14 (Brief pause.)

15 THE WITNESS: All right.

16 Q (By Mr. Merrill) All set?

17 A Yes.

18 Q If I were to take, say, nine percent just to be on
19 the high side of the on-farm irrigation cost, would
20 that give me a rough approximation of the management
21 component with that figure?

22 A Well, permit me -- you said nine percent?

23 Q Uh-huh, just to be on the high side.

24 A I think the way to see this is if what you are getting
25 dornbusch-cross-merrill



1 at is to compare what the fully costed management
2 cost would be without taking an opportunity cost
3 in order to compare it to the Agee budget, is that
4 where you are headed?

5 Q Yes.

6 A Okay. What I estimate is about \$2.00 -- in excess of
7 \$2.00 of the on-farm irrigation cost would be manage-
8 ment, something in the order of \$8.00 -- I have forgotten
9 exactly how much -- applied to the on-farm operation
10 for a total of something over \$10.

11 Q Okay. And the Agee budget shows approximately the
12 same amount, \$10?

13 A However, the Agee budget is for surface irrigation,
14 and not sprinkler irrigation. They are just not
15 comparable.

16 Q Does sprinkler irrigation require more management
17 than surface irrigation?

18 A Well, I can add up the operations.

19 Q I just meant as a conceptual matter for now without
20 getting into specific numbers.

21 A Well, it's different.

22 (Brief pause.)

23 I just can't say what the dollars would come out
24 to if we applied surface irrigation to the Agee budget,

25 dornbusch-cross-merrill



1 I would have to just run a separate calculation
2 and see what that would do. I can tell you that
3 his irrigation operations, according to my quick
4 calculations, show something in excess of \$11 for
5 the surface irrigation, and that is even before the
6 application of miscellaneous, the five percent and
7 the interest cost and the management, so it is higher
8 than that for the surface irrigation cost.

9 Q You are saying that Agee's budget shows more than \$11
10 for irrigation?

11 A Yes, according to my calculations if you take his
12 operations that are applied for the surface irrigation.

13 Q I'm asking you only about the management costs
14 associated with irrigation.

15 A All right. Then what is your question?
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dornbusch-cross-merrill



1 Q (By Mr. Merrill) It's your testimony, if I'm not
2 mistaken then, that with respect to these equivalent
3 crop budgets, in each case you have a higher management
4 charge than does Mr. Agee; is that correct?

5 A Well, I didn't compare it. I just explained that we
6 used a different percentage than he used, and I
7 didn't try to run down a comparison at each step.

8 I used a percentage that seemed to be at the
9 high end -- not seemed to be -- is at the high end
10 of the percentage that is used to determine the
11 management cost of the farm budgets that I have
12 examined.

13 They used different percentages, taken on
14 different things. I used what I thought was at the
15 high end.

16 Q Are you saying then that there is no real way because
17 of the differences in labor cost and irrigation type
18 to compare your management costs with those in the
19 Agee budgets?

20 A Well, I suppose you could. I haven't done it specifically.
21 I did it for the -- I calculated the management costs.
22 I explained that I used, instead of the five percent
23 that he shows, ten percent.

24 Q If you didn't make a comparison between your management
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1 costs and those developed by Mr. Agee, what was the
2 basis of your statement in your direct testimony on
3 Page 4991 of the transcript that you have higher
4 management costs than does Mr. Agee?

5 THE SPECIAL MASTER: I thought he described that
6 quite adequately, Mr. Merrill?

7 Do you want to field it again briefly? You may.

8 A Well, the basis was the percentage that I used.

9 Q (By Mr. Merrill) So you are saying you used a higher
10 percentage, but not necessarily a higher management
11 charge; is that correct?

12 A To be specific, I guess you'd have to say that I did
13 not compare the dollars in his budget to the dollars
14 in my budget.

15 Q Mr. Dornbusch, you've spoken --

16 MR. MERRILL: Your Honor, if you want to break,
17 I'm just about done.

18 THE SPECIAL MASTER: If you think you can finish
19 up Mr. Dornbusch on cross and you have no other
20 witnesses to put on, we will go through the noon hour.

21 If not, we will adjourn soon and come back this
22 afternoon.

23 MR. MERRILL: I don't think I can. I suspect we
24 will go into some tomorrow. I don't know how much

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1 of the day.

2 THE SPECIAL MASTER: Go ahead a few minutes and
3 we will adjourn for lunch.

4 MR. MERRILL: I am about to the end of management,
5 and if I could complete that, it would be a good time
6 to take a break.

7 THE SPECIAL MASTER: All right.

8 Q (By Mr. Merrill) Mr. Dornbusch, you have spoken
9 a good bit about a training program to train the
10 managers of the irrigation project?

11 A Yes.

12 Q As part of your economic feasibility analysis, did
13 you include anywhere a cost for the training program?

14 A No, it's an on-the-job training program. It's contained
15 within the management costs that I have. I mean,
16 the cost of employing the managers reflect a cost for
17 the training program.

18 Q Are the managers going to be able to work as efficiently
19 in managing the project when they are, at the same
20 time, running a training program as they would be
21 able to work if they were not conducting such a
22 program?

23 A According to my interviews, you are not losing that
24 much, if any, efficiency by doing that.

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1 As I pointed out, we are only starting out with
2 ten percent previously unemployed Indians in that
3 on-the-job training program.

4 That means 90 percent of your managers are already
5 skilled managers.

6 I have already explained that I used a somewhat --
7 I used the higher percentage of the range of percentages
8 that are used and, therefore, I conclude that, no, we
9 would not be losing efficiency.

10 Q Mr. Dornbusch, do you really believe that it's possible
11 to train a complete management force for an irrigation
12 project of this size and complexity in a period of
13 ten years?

14 A Yes, I do.

15 Q Can you point to any Indian Reservation where such a
16 management training program has been used and has
17 trained a completely unemployed work force in a period
18 of ten years?

19 A Let me refer to my notes once again, the same notes
20 that you have identified as ED-52.

21 Q Okay.

22 A Mr. Hoffman, Ron Hoffman, who is the manager of the
23 Arapahoe Ranch, told me that from -- if you took
24 somebody with no skills, no skills whatever, that they

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1 could take over his job, and that's the top manager
2 job. I'm not talking about all of the managers --
3 all of the people in the manager capacity -- that he
4 could train somebody for his job in ten to twenty
5 years.

6 Now, that's the top management position. It's
7 not all of the management positions.

8 Q What kind of operation does Mr. Hoffman manage?

9 A It's a ranching operation.

10 Q It's not an irrigated agriculture operation with 50,000
11 acres of farm land, is it?

12 A Correct.

13 Let me continue. I spoke with Lloyd Tucker, the
14 operations manager of the Navajo Indian Irrigation
15 Project. I asked him the same question.

16 He said it would take ten years to train an
17 Indian for his position, and he was doing it at the
18 present time, and he was expecting that person to
19 take over his job in 1984.

20 Q Isn't it true that the management of the Navajo
21 Indian Reservation Project was a few years ago,
22 contracted out to the Ball Agricultural Systems
23 because --

24 MR. ECHOHAWK: Objection, Your Honor. No foundation.

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1 THE SPECIAL MASTER: There is foundation. I'll
2 overrule it. Proceed and answer the question.

3 MR. MERRILL: Let me restate the question, if I
4 may, to complete it.

5 Q (By Mr. Merrill) Mr. Dornbusch, isn't it true that a
6 few years ago the management of the Navajo Indian
7 Reservation Project was turned over to Ball Agricultural
8 Systems because the on-farm management was not doing
9 the job?

10 THE SPECIAL MASTER: Well, now, that's a different
11 story. That question is not permitted. What the
12 reason is is not within this witness' purview.

13 MR. MERRILL: Your Honor, he said that he
14 interviewed people with Ball Agricultural Systems.

15 THE SPECIAL MASTER: That's right, but he didn't
16 say that they were hired because their predecessors
17 didn't do the job right, and that's what your question
18 is.

19 MR. MERRILL: I'm asking him if he knows that.

20 THE SPECIAL MASTER: That's not a fair question.
21 I will sustain the objection to the question until
22 you frame it the way I feel is proper.

23 Q (By Mr. Merrill) Mr. Dornbusch, do you know why Ball
24 Agricultural Systems was contracted to manage the
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1 Navajo Indian Reservation Project?

2 A No, I do not.

3 Q Is it true that they are currently managing that
4 project?

5 A Yes, they are.

6 MR. ECHOHAWK: Could we have a clarification as
7 to what Mr. Merrill means by management?

8 THE SPECIAL MASTER: It would be hard to clarify
9 that, I think.

10 MR. ECHOHAWK: I think there's a distinction
11 between what Ball Agricultural Systems does --

12 THE SPECIAL MASTER: I think there's no confusion
13 there in my mind. They are hired managers, are they
14 not? You can use whatever term, honcho -- we can use
15 a lot of terms.

16 MR. ECHOHAWK: I think there's a difference
17 between management and consultants.

18 MR. MERRILL: If that's the case --

19 MR. ECHOHAWK: And I think the distinction should
20 be drawn.

21 THE SPECIAL MASTER: Well, I think Mr. Merrill
22 can ask who this man works for that the witness

23 interviewed and what his function is on the Navajo

24 Ranch, and that's what we are trying to get to is a

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1 test of management costs.

2 MR. ECHOHAWK: My point is, Your Honor, there's
3 a distinction between actual irrigation management
4 and irrigation consultants, a firm that's been hired
5 as a consultant to the irrigation managers, or the
6 farm managers, and I think that is the point where
7 Mr. Merrill's question is misleading.

8 THE SPECIAL MASTER: Well, if you want to get it
9 on redirect, go ahead.

10 Go ahead with your question.

11 Q (By Mr. Merrill) Mr. Dornbusch, are you aware of the
12 management duties that Ball Agricultural Systems is
13 performing for the Navajo Indian Irrigation Project?

14 A Well, I'm aware that they are performing management
15 functions. I am aware that they are training Indians
16 on the job for management functions and doing it
17 presently.

18 There are Indians in those management functions,
19 and what I'm trying to explain is that he, Mr. Floyd
20 Tucker, told me that in his estimation it would take
21 ten years to train an Indian fully for his position,
22 and that's his position. That's the top management,
23 not the full range management positions, and that he
24 was doing it now, and he was expecting this person to

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1 take over in 1984.

2 And my conversation with him was as of January, '81,
3 so '84 is just three years from now. He's evidently
4 seven years along, either in fact in seven years or
5 at least in progress seven years' worth, so I believe
6 he has some evidence to draw from to conclude that
7 ten years is a reasonable time to conclude the
8 management training program for his position, and let
9 me emphasize that again.

10 Q Do you have any other sources than your interviews
11 with Lloyd Tucker and Ron Hoffman?

12 A My conversation with Gene Nelson, the personnel manager,
13 again of Ball Agricultural Systems. We spoke
14 specifically of management labor, and he told me that
15 he expects that within five years that they could
16 train a fully qualified Navajo, or at least he will be
17 very well along with the development pattern.

18 That's a direct quote from him, so five years
19 to be fully trained or very well along, and he said
20 again it's a realistic target to use Indians entirely
21 by developing them through on-the-job training.

22 THE SPECIAL MASTER: Mr. Merrill, I'm sure you are
23 aware of my cliché and pet phrase by now regarding
24 redundancy and duplication and repetition, and I'm
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1 about to use it again pretty soon after the percentage
2 of management.

3 MR. MERRILL: I figured that you were, Your Honor.

4 THE SPECIAL MASTER: Okay.

5 MR. MERRILL: I think it's a very important area
6 that needs to be brought out. It has a lot of bearing
7 on the feasibility of these projects, and that's why
8 I'm questioning the witness so much about it.

9 THE SPECIAL MASTER: It has indeed.

10 Q (By Mr. Merrill) Mr. Dornbusch, are you aware of how
11 long the Navajo Irrigation Project has been operated?

12 A No.

13 Q Do you have any other sources on which you rely in
14 forming your opinion that the management of this project,
15 the Wind River Irrigation future projects can be
16 successfully accomplished by a now unemployed labor
17 force within ten years?

18 THE SPECIAL MASTER: Even if you nave, I'm afraid
19 that I would rule that we have heard enough on this
20 subject matter. We must move on to the next subject
21 matter, Mr. Merrill. I think you can appreciate that.

22 By the way, we might go on to lunch if that's
23 what you have in mind. It's about that time.

24 Let's take a break until, what, 1:30? Or I'll make
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1 it 1:00 if that will help us finish up this afternoon.

2 If we are not that pressed --

3 MR. MERRILL 1:30 would be better.

4 MR. ECHOHAWK: Perhaps we could get an indication
5 from Mr. Merrill as to how much more he has, say, going
6 into tomorrow. As you know, there's that 2:00 plane
7 that gets out tomorrow that helps some people.

8 THE SPECIAL MASTER: If it helps finish up tomorrow
9 and at least give us a day to do some other things
10 involving this case -- I have got some interviewing I
11 have got to do tomorrow, and I would like to do it
12 tomorrow if we can finish it up today.

13 MR. MERRILL: In all candor, I don't see how I can
14 do that. I have quite a number of questions concerning
15 the historic projects feasibility which I haven't even
16 started on, and also I have a fairly extensive line
17 of questioning about the WRC.

18 THE SPECIAL MASTER: We'll do the best we can then,
19 Mr. Echohawk, to go as long as we can today, start in
20 the morning at 9:00, and finish up by 12:00.

21 If we can finish it up, fine. If not, we can
22 carry it over to the next session.

23 MR. ECHOHAWK: I thought the whole purpose we
24 deferred the cross was so he could cover both projects
25 at the same time, and he indicated that he only had



1 a half a day of cross on future projects.

2 THE SPECIAL MASTER: That's true, and we have been
3 on 268 most of the morning on future as well as
4 historic, so let's do the best we can and meet at
5 1:30.

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