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Trial Transcript, Vol. 89, Afternoon Session

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Case # 4993

File # 196

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

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

Civil No. 4993

FILED _____

8/3 19 81

Margaret V. Hampton CLERK

DEPUTY

VOLUME 89

Afternoon Session

Thursday, July 16, 1981

ORIGINAL



1 THE SPECIAL MASTER: Come to order, please.

2 MR. ECHOHAWK: At this time the United States would
3 like to call its next and final witness, Mae Eckman.

4 THE SPECIAL MASTER: Pardon while I inscribe again,
5 final witness. I've been waiting to write this for four
6 months.

7 Would you raise your right hand, please.

8 MAE ECKMAN

9 having been first duly sworn, was examined and testified as
10 follows, to-wit:

11 THE SPECIAL MASTER: Take this seat, please.

12 DIRECT EXAMINATION

13 BY MR. ECHOHAWK:

14 Q Would you please state your name for the record.

15 A My name is Mae M. Eckman.

16 Q Would you please spell your last name.

17 A E-c-k-m-a-n.

18 Q Ms. Eckman, where are you employed?

19 A I am employed as the manager of the Land, Titles and
20 Records Section, Billings area office for the Bureau of
21 Indian Affairs in Billings, Montana.

22 Q And Ms. Eckman, how long have you held that particular
23 position?

24 A The present position I have held for a year.

25 eckman - direct - echohawk



1 Q And where were you -- What position did you have prior to
2 that time?

3 A Okay. Prior to my present position I was five years out
4 at one of the Indian agencies and prior to that I was 15
5 years in with the Land, Titles and Records Section.

6 THE SPECIAL MASTER: With what section?

7 THE WITNESS: Land, Titles and Records Section.

8 Q (By Mr. Echohawk) Ms. Eckman, would you please describe
9 for us what your duties are in your current position.

10 A Okay. My current duties as a manager of the Land, Records
11 and Titles Section is I provide and maintain the land
12 records that pertain to the reservation that are within
13 the -- under the jurisdiction of the Billings area office.

14 Q And would the Wind River Indian Reservation be within your
15 responsibilities?

16 A Yes, it is.

17 Q And in your current position, are you the custodian of
18 all the title and record documents pertaining to the
19 Wind River Indian Reservation?

20 A Yes, I am.

21 Q And in your position and as a result of your experience
22 with the Bureau of Indian Affairs, are you familiar
23 with the way that the land title records are kept in
24 relation to the Wind River Indian Reservation?

25 eckman - direct - echohawk



1 A Yes, I am.

2 Q Ms. Eckman, I direct your attention to the four boxes,
3 the two that are sitting on your table and the other
4 two that are over here to your immediate left. Do you
5 know what documents are contained within those four boxes?

6 A Okay. In these four boxes represent the land, titles
7 and records that pertain to the Wind River Reservation.
8 It's an automated data of all records that pertain to
9 the Wind River Reservation, and it is formatted by section,
10 township and range within the boundaries of the Wind River
11 Reservation.

12 MR. ECHOHAWK: Okay. Your Honor, for purposes of
13 the record, I would like to mark the documents contained
14 within those four boxes as one exhibit, United States
15 Exhibit WRIR C-317, to be treated as one complete exhibit.

16 THE SPECIAL MASTER: Very well.

17 Q (By Mr. Echohawk) Ms. Eckman, I direct your attention
18 to what I have marked as United States Exhibit WRIR C-317A,
19 which is a single page of the land index. Ms. Eckman, what
20 I'd like you to do -- Well, before we get into the specifics
21 of how the index operates, would you please just, in general,
22 describe what type of information is contained within the
23 land index.

24 A Okay. The information that is on the land index is a
25 eckman - direct - echohawk



1 chronological listing of all documents pertaining to a
2 particular parcel of land, and it is described by legal
3 subdivisions, and it shows on there the various types of
4 documents that affect each parcel of land within this
5 section.

6 Q You stated it was in chronological order. How far back
7 does the land index go?

8 A Okay. On this particular one that I have here --

9 Q I just need you to talk about the land index in general.

10 A Okay. Well, it starts -- It's in historical format. In
11 other words, it shows from the -- from the present up to
12 the first time a document was approved for some sort of
13 a type -- for some type of transaction.

14 Q Okay. Would that mean then that if a treaty or act of
15 Congress dealt with creation or addition to a portion of
16 the Indian Reservation, would that document be listed?

17 A Yes.

18 Q So all documents from the original creation of the reser-
19 vation are reflected within the land index; is that correct?

20 A Yes.

21 Q And you said that they run up to the present. To the
22 best of your knowledge what is the -- How current is the
23 land index that we have here in the courtroom?

24 A Okay. This one is current as of April of 1979.

25 eckman - direct - echohawk



1 THE SPECIAL MASTER: When you say "this one", you mean
2 the document he just handed you?

3 THE WITNESS: Yes.

4 MR. ECHOHAWK: Your Honor, I believe the land index
5 would be all the documents contained within the four boxes,
6 the title land index is current up through April of '79.

7 Your Honor, at this point what I would like to ask
8 is permission from the Court to, at a later date, hopefully
9 as early as the week of July 27th, to supplement, as an
10 update, as current, as of June, 1981, through an over-
11 sight the land index that we had reprinted did not have
12 the most current information. What I would like to do
13 is put this information in the record with leave to supple-
14 ment and bring it up to current as of June, '81.

15 THE SPECIAL MASTER: I have no objection to that.
16 317-A says it's been posted as of June 22nd, 1981. Is
17 that --

18 MR. ECHOHAWK: I believe there's a difference as to
19 what --

20 THE WITNESS: Yes.

21 THE SPECIAL MASTER: Will you explain the difference?

22 THE WITNESS: This date, Your Honor, is the date this
23 was run from our machine.

24 Q (By Mr. Echohawk) Okay. Ms. Eckman, so far we've gone
25 eckman - direct - echohawk



1 through that this shows chronological order of all trans-
2 actions relating to parcels on the reservation. Now, in
3 reference to the exhibits that I handed you, Exhibit 317-A,
4 would you describe for us with reference to the various
5 portions of the document, how this document is used, how
6 we can tell what transactions have taken place in regard
7 to the particular parcels listed and what the various
8 codes mean.

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25 eckman - direct - echohawk

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1 THE WITNESS: Over onto the side there is a code
2 that is referred to as Type Document.

3 Q (By Mr. Echohawk) Is that on the right-hand side of
4 the document?

5 A Yes.

6 Q Under the column listed "legend"?

7 A Under legend, uh-huh.

8 Q Okay.

9 A And then the chronological listing then starts from the
10 day, day one, as to like there is 20 documents. That
11 means the allotment, to time the allotment selection
12 was made that's identified as Document 20, and the date
13 the allotment was made and to whom it was made to.

14 Q Let me see if I understand this. Under the legend column
15 where you have Type Document, if you go down and find
16 that number 20 is that what you are referring to?

17 A Yes.

18 Q Will it say Allotment Schedule?

19 A Yes.

20 Q Where would the Allotment Schedule be located on the
21 document?

22 A It would be located under the heading Type Document.

23 Q That is approximately in the middle of the page, middle
24 column?

25 echman-direct-echohawk



1 A Oh, yes, uh-huh, under the heading of Document.

2 Q Okay. And further under the delineation of Type?

3 A Okay, and then that's under the legend, under where it
4 says Type Document.

5 Q Okay. Perhaps for a point of clarity --

6 THE SPECIAL MASTER: That's okay. We understand
7 that the type column is the first one on the document.

8 Would the Witness explain the very first column to
9 the left of the northeast quarter section where they have
10 12790 and "Y" and "W" and what that means? Would you
11 have her do that?

12 THE WITNESS: Oh, this one? Okay. Your Honor, that
13 is just an in-house documentation that we use, and that
14 is a control under where we can go back and find where
15 this document was extracted.

16 THE SPECIAL MASTER: Where it was extracted?

17 THE WITNESS: Yes, under what number we can go back to.
18 That's what we refer to as a control number.

19 THE SPECIAL MASTER: Go ahead, Mr. Echohawk.

20 Q (By Mr. Echohawk) Ms. Echman, assuming we want to go
21 back and find a certain parcel of land on the Reservation
22 and find out the current land status, whether or not it
23 is fee land or trust land, how can we do that using the
24 land index?

25 echman-direct-echohawk



1 A Okay, you -- the land index will take you up, if you what
2 to find out the present status of the property, that should
3 show as your last document on the land index.

4 THE SPECIAL MASTER: What do the numbers mean in the
5 column number section in the column type under Document?

6 A Okay, that is what we -- that's our recording number. If
7 a document -- when a document comes into the Land Titles
8 and Record section, it gets recorded and is given a
9 document number, and then the document is filed under this
10 number.

11 Q Let me see if I understand this, Ms. Echman. Second to
12 the entry under Document shows the number, the typed
13 number 20, the type document 20, which you stated earlier
14 was the allotment schedule. Does that mean an allotment
15 was issued for that particular parcel?

16 A Yes.

17 Q So at that point that would indicate that the land is
18 in trust status being an allotment, is that correct?

19 MR. KROB: Objection, Your Honor, I believe that
20 calls for a legal conclusion.

21 THE SPECIAL MASTER: Sustained. She can just state
22 it is, in fact, an allotment schedule, and we will take it
23 from there. I don't think she is competent to give the
24 legal significance of that.

25 echman-direct-echohawk



1 Q (By Mr. Echohawk) So as long as the three following
2 entries, the three entries that are left, the one and the
3 11, do not take that land and put it in fee status, the
4 proper assumption would it remains the allotment, the
5 same allotment?

6 MR. KROB: Same objection, Your Honor.

7 THE WITNESS: Right.

8 MR. KROB: He is asking --

9 THE SPECIAL MASTER: I really didn't follow it.
10 I'm sorry I didn't, but I don't think any damage was
11 done. I hope you agree.

12 Is this "trust patient" supposed to be "trust
13 patent," do you suppose?

14 Q (By Mr. Echohawk) Ms. Echman, under the legend column
15 under Typed Document, the first increment 01, should
16 that read "trust patent" or "trust patient"?

17 A Trust patent. Our computer goofed, Your Honor.

18 Q (By Mr. Echohawk) Okay. Ms. Echman, continuing on down
19 under the Legend column it says there's another delineation
20 under ownership of Tribal or Government owned land in a
21 column designated Identification Number. Would you
22 please explain that to us?

23 A Okay. Under the Ownership, the X, the three X's and the
24 10, that is an identification number that refers to --
25 echman-direct-echohawk



1 if you see it over in the Grantor/Grantee column, you
2 would see 280-10. That indicates to us that land is
3 the original Tribal land belonging to the Wind River
4 Tribes.

5 Q Okay. Would you please explain to us what those other
6 codes mean, the 10, 20, 30 and so on?

7 A Okay. The 280-20 would indicate Tribal reserve land.

8 Q What do you mean by that?

9 A Tribal reserve land could mean a specific parcel of land
10 had been reserved or a set aside for cemeteries or a
11 school or -- what else? Anyway, it's -- they set up
12 certain types of reserves that were given to specific --
13 like to the churches or to the cemeteries or to any --
14 there is various types of reserves that were set aside for
15 some specific reserves.

16 Q Okay. Will you please describe to us the 30, the
17 acquisition of allotted land?

18 A Okay. The 30, acquisition of allotted lands, is just
19 what it says. It is a land that a Tribe has purchased
20 from the allottees.

21 Q All right. I guess the other numbers are self-
22 explanatory. Would you just elaborate a little more on
23 the 55? It says "owned in fee."

24 A Okay. That is just what it says. Anytime you saw a 280-55,
25 echman-direct-echohawk



1 that would indicate that parcel of land was in fee
2 status.

3 Q And Ms. Echman, the remainder of each of these 'indices'
4 that are contained in the other four boxes, are they
5 laid out in the same format as the one we have been
6 discussing in 317-A?

7 A Yes, they do.

8 MR. ECHOHAWK: Your Honor, at this time I would
9 move the admission of the documents contained in the
10 four boxes identified as United States Exhibit WRIR 317-A --
11 excuse me -- 317.

12 THE SPECIAL MASTER: Tom, one problem before there is
13 voir dire by the State, Mr. Echohawk, and that is is there
14 some arrangement so you aren't going to have any difficulty
15 we have already had on exhibits as far as the people
16 getting into those boxes and pulling out a number of these
17 land sheets, the land indices? Each page there isn't
18 marked as a part of the exhibit, is it?

19 MR. ECHOHAWK: No, Your Honor.

20 THE SPECIAL MASTER: Well, maybe it doesn't have to,
21 we will see. Mr. Krob, would you like to -- would you
22 like to voir dire?

23 MR. KROB: I just have a few questions on voir dire,
24 Your Honor.

25 echman-direct@echohawk



VOIR DIRE EXAMINATION

1
2 BY MR. KROB:

3 Q Turning first to WRIR C-³17-A, Ms. Echman, just to the
4 right -- there is a column of numbers on the left-hand
5 edge of the page. Just to the right of those numbers
6 are some letters. What do those letters refer to?

7 A You mean like the L/2?

8 Q For example, in the very upper left-hand corner there is
9 12790, then a space, then the letters YW. Underneath
10 are the letters A and B. What does those letters refer
11 to?

12 THE SPECIAL MASTER: In the first column over to the
13 left? You told me it was in-house coding.

14 THE WITNESS: Oh, I see.

15 Q (By Mr. Krob) That's part of the in-house code also?

16 A Yes.

17 Q Okay. Then to the right of the column marked underneath
18 the column marked Guarantee/Heirs, there are a couple
19 of names. To the right of that column are two very thin
20 columns marked GG and REL. What are those delineations?

21 A Okay, the GG is the guarantee, and the REL is the
22 relationship code.

23 Q What would the numbers there signify?

24 A The legend is explained down here (indicating). As far
25 echman-voir dire-krob



1 as where the relationship code is, that's on the bottom
2 of the index.

3 Q By "down here," you are referring to the column marked
4 "Legend" next to the last group entitled "Guarantor/
5 Guarantee?"

6 A Yes.

7 Q All right.

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echman-voir dire=krob



1 Q (By Mr. Krob) Taking in that legend column for just a
2 moment, underneath would be ownership section?

3 A Yes.

4 Q Down there there are three X's followed by a 52. The
5 explanation is "other". What could that be?

6 A Okay, "other", it could be leases, like homesite
7 leases or oil and gas leases. It merely pertains to some
8 type of a lease that the Tribe has.

9 Q One last question on this exhibit, and that is with
10 regard to the very top level of entries there is a
11 section, township, range, meridian, county, state,
12 resident code. Under the meridian entry, is the entry
13 on all these documents "WR"?

14 A Yes.

15 Q And what does that refer to?

16 A Wind River Meridian.

17 MR. ECHOHAWK: I believe the documents speak for
18 themselves on that.

19 MR. KROB: I just asked what the document said.

20 THE SPECIAL MASTER: Go ahead with your questions.

21 Q (By Mr. Krob) Ms. Eckman, isn't this essentially an
22 index to the documents themselves?

23 A Yes, it is. It's an automated index.

24 Q Who has custody of those documents?

25 echman=voir dire=krob



1 A My office.

2 Q Are these documents filed with the clerk in which the --
3 or the clerk in the county where the transactions occur
4 or where the land is located?

5 A No, they aren't. They are recorded in the Land, Title
6 and Records office in Billings.

7 Q So when you testified earlier that these are the lands,
8 titles and records pertaining to the Wind River, this is
9 actually just the index to those records?

10 A Yes, it is.

11 MR. KROB: Your Honor, the State has no objection to
12 the introduction of these documents other than to reserve
13 the right to strike any portions of the index it may
14 later find to be inaccurate. The reason that I asked
15 for that reservation is because although I must
16 congratulate the United States on having made the five-
17 day rule with these documents, we simply have not been
18 able to examine the full set.

19 THE SPECIAL MASTER: You'd always have the right to
20 strike any exhibit if you find some error.

21 MR. KROB: Absent that one reservation, we have no
22 objection.

23 THE SPECIAL MASTER: All righty. I'd like to ask
24 a question or two about it, Mr. Echohawk.

25 echman-voir dire-krob



1 Ms. Fickman, for example, let's take the entry of
2 9953, the second one. It shows that that ownership, I
3 guess it's in the Tribes or in Charley Aragon -- Is it
4 in the name of the Wind River Tribes or the name of
5 Charley Aragon?

6 THE WITNESS: Charley Aragon.

7 THE SPECIAL MASTER: Okay. It says in Section 1,
8 NE 1/4 he owns the NE 1/4 of the NE 1/4, but what's the
9 1 mean, arabic one?

10 THE WITNESS: That is the designation of Lot 1.

11 THE SPECIAL MASTER: Lot 1 in that corner of the
12 township?

13 THE WITNESS: Right, in the NE NE corner.

14 THE SPECIAL MASTER: What does 2 mean, Lot 2?

15 THE WITNESS: Yes.

16 THE SPECIAL MASTER: Lot 3 means the same on the
17 NW 1/4?

18 THE WITNESS: Yes, Your Honor.

19 THE SPECIAL MASTER: Total three lots comes to an
20 acreage of 138.30?

21 THE WITNESS: That's right, Your Honor.

22 THE SPECIAL MASTER: That figure. And what is it if
23 he owns the entire quarter section, you put X's in there
24 or zeros or --

25 eckman-examination-the special master



1 THE WITNESS: X's.

2 THE SPECIAL MASTER: What does a zero mean in the
3 NW of the NW 1/4?

4 THE WITNESS: Okay. The X -- or the zero in the NW
5 NW 1/4 indicates, if you will go over to where it says
6 "remarks", okay. The E-4 means that he owns the East 1/2
7 of the Lot 4.

8 THE SPECIAL MASTER: Remarks.

9 THE WITNESS: Over on the left-hand corner.

10 THE SPECIAL MASTER: So that's E-4 acres and that's
11 the East?

12 THE WITNESS: East of Lot 4.

13 THE SPECIAL MASTER: I see.

14 THE WITNESS: East 1/2 of the Lot 4.

15 THE SPECIAL MASTER: I see, okay. All right. I
16 think I understand, thank you.

17 All right. Under the column identification number,
18 Mr. Salazar asks under Charles Aragon there is Rosie Yourick,
19 Frank Enos, Irtense Enos, what are the numbers in the
20 identification column, like U-7474, N-9987?

21 THE WITNESS: Okay. Those are the identification
22 numbers for those people that are listed there.

23 THE SPECIAL MASTER: What does that mean, they have
24 a file of their own under their number?

25 echman-examination-the-special master



1 THE WITNESS: Yes.

2 THE SPECIAL MASTER: And if they're cross referenced --

3 THE WITNESS: It's like the Social Security number.

4 THE SPECIAL MASTER: A little more stable we hope.

5 THE WITNESS: Yes.

6 THE SPECIAL MASTER: Okay. The United States Wind
7 River Indian Reservation Exhibit C-317 which consists of
8 four boxes of land index records, being the same are
9 hereby admitted into evidence.

10 (Whereupon U.S. Exhibit WRIR
11 (C-³17 was received into
evidence.)

12 MR. ECHOHAWK: Your Honor, for point of clarification,
13 I also add for my offer, Exhibit 317-A.

14 THE SPECIAL MASTER: All right. And the sheet
15 317-A.

16 (Whereupon U.S. Exhibit WRIR
17 (C-³17-A was received into
evidence.)

18 THE SPECIAL MASTER: Is it taken from the full four
19 boxes or is it in addition thereto?

20 MR. ECHOHAWK: Merely one of the documents pulled
21 out of the boxes.

22 THE SPECIAL MASTER: All right.

23

24

25 echman-examination-the special master



DIRECT EXAMINATION (RESUMED)

1
2 BY MR. ECHOHAWK:

3 Q Ms. Eckman, in compiling the information, title
4 information that is contained within the land index,
5 would you describe for us the process of what happens
6 when there is a land transaction on the Reservation, how
7 does that information get conveyed to you?

8 A Okay. Let's take a deed. It comes to us from the agency,
9 and we record it, we record the deed or the document and
10 since we are the Office of Record and this then is put
11 into our computer. And this is the report or the listing
12 of all such documents that we record.

13 Q Is your office in Billings the official depository for all
14 title transactions on the Wind River Indian Reservation?

15 A Yes, it is.

16 THE SPECIAL MASTER: We can keep asking questions
17 about some of this, but the grantor/decedant, grantee/
18 heirs column can be a little confusing, but I gather that
19 Charles Aragon was a grantor to the four names under
20 here; is that correct?

21 THE WITNESS: Right.

22 THE SPECIAL MASTER: And William Aragon Sr. was a
23 grantor to the three names under his name who are
24 grantees; is that right?

25 echman-direct-echohawk



1 THE WITNESS: In this case, Your Honor, it would be
2 your Code 11, which means a probate. That means Mr.
3 Aragon died, which would be the decedant and these four
4 people are then, were then his heirs.

5 THE SPECIAL MASTER: I see. And what are the letters,
6 what do the letters mean in Column GG?

7 THE WITNESS: Grantor/grantee, and that will apply
8 in that case.

9 THE SPECIAL MASTER: That identifies them, doesn't it?

10 THE WITNESS: Yes.

11 THE SPECIAL MASTER: But why would the United States
12 be a grantor with a Number 1 and yet Charles Aragon with
13 a Number 2 and William Aragon with a Number 2 -- Oh,
14 Indian and non-Indian, I see.

15 THE WITNESS: Yes.

16 THE SPECIAL MASTER: All right. I think I've asked
17 all the questions I can on the document.

18 RL means?

19 THE WITNESS: Relationship.

20 THE SPECIAL MASTER: Relationship. And again,
21 coded.

22 A legal question would naturally follow. How could
23 William Aragon Sr. be a grantor of the land in Section 1
24 when nothing on the land index ever shows that he ever

25 echman-direct-echohawk



1 received any land in Section 1? Let's assume we had to
2 give a title examination as to the status of William
3 Aragon's ownership of that land that he gave.

4 THE WITNESS: Okay. That is a legal question, and
5 as we do our title examination of this particular tract,
6 we could then determine, when we did our title
7 examination, as to how William Aragon became part of this.

8 THE SPECIAL MASTER: In other words, every land
9 index doesn't necessarily show the chain of title of the
10 grantor?

11 THE WITNESS: Yes, it does. It just shows what we
12 have of record.

13 THE SPECIAL MASTER: If you don't have a record of
14 how William Aragon took title, no one else has --

15 THE WITNESS: See, we would, as one of the things we
16 do, we run title status, title examination to each of
17 these tracts, and like in this case if we was to run a
18 title examination to this particular tract, just from my
19 experience I can say that at the time he inherited
20 through some previous probate, but the probate that he
21 may have inherited from omitted the entries that he
22 received in this allotment. But that would be reviewed
23 at the time we ran the title examination and a subsequent
24 modification would be issued and entered into the index.

25 echman-direct-echohawk



1 THE SPECIAL MASTER: Well, it has no bearing on the
2 exhibits anyway for the purposes we're going to use them.
3 All right.

4 MR. ECHOHAWK: Your Honor, at this time I would like
5 to also move into evidence a certified copy of United
6 States -- what has been marked as United States Exhibit
7 WRIR C-318, which is a package of documents from the
8 Bureau of Indian Affairs on file in Billings, the Billings
9 area office pertaining to land that has been brought into
10 question that was taken for the Boysen Reservoir,
11 remaining with Indians retaining a right of occupancy
12 of that land, and these documents go to that particular
13 point. And pursuant to Rule 902 --

14 THE SPECIAL MASTER: Yes, this deals with the matter
15 we had a few months ago that involved whether or not your
16 claim of water for land which had been, in fact been
17 conveyed away for flood stage and part of the storage
18 of Boysen Reservoir.

19 MR. ECHOHAWK: That is correct, and it's contained
20 within the United States' future claim for Riverton East,
21 I believe.

22 THE SPECIAL MASTER: Yes, and I wasn't happy with it,
23 as I remember, because I don't believe you can have two
24 status'. If it's going to be conveyed away, then you got

25 echman-direct-echohawk



1 a consideration. I don't think you should be given a
2 water right on it.

3 MR. ECHOHAWK: That's a point we're reserving for
4 briefs, Your Honor.

5 THE SPECIAL MASTER: Anyone want to look it over?

6 MR. KROB: We received a copy of it and we would
7 object to its admission on a variety of grounds.

8 THE SPECIAL MASTER: On what grounds?

9 MR. KROB: First of all on foundation. There is no
10 real correlation between those documents and the lands
11 described there and Dr. Mesghinna's fields, because
12 Mesghinna's fields cover part of that, but Mr. Kersich's
13 land didn't cover part of those, so it's not really
14 clear when the economists and engineers became aware of
15 the situation with these lands and when they considered it
16 or if they considered it in their analysis.

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1 THE SPECIAL MASTER: How many acres is involved in
2 the Boysen Reservoir flooding stage upon that furthest
3 south and west portion of that? You are talking about
4 30, 35, 40 acres?

5 MR. ECHOHAWK: No, Your Honor, a much larger tract
6 than that.

7 MR. KROB: The other objections we have, Your Honor,
8 if you want me to go ahead with them and rule on them
9 all at once, and as Your Honor has pointed out, they
10 can't have it both ways, it's either the Indian's or it
11 isn't. The United States claims to asserted rights only
12 for lands it holds in fee or holds in trust for the
13 Indians. That is clearly not the status of that land,
14 and therefore, a claim should not -- it is certainly not
15 within the scope of the claims they are asserting.
16 Additionally, we have no idea how long the Indians are
17 going to have this right to use this occupancy. If you
18 grant them a reserved right and they use it for a year,
19 it's inundated, what happens to that reserved right
20 there? There's too much uncertainty with what happens
21 to that reserved right because of the uncertain nature
22 of that land.

23 MR. ECHOHAWK: But, Your Honor, that doesn't go to
24 the admissibility of the document itself.

25 THE SPECIAL MASTER: Of course it doesn't.



1 We are at the heart of our argument again, but I
2 appreciate that. I think you are both right, we are
3 going to have to brief it, and I will remain sceptical
4 on it. I don't believe there can be the same reserved
5 right for water on this land as there is on either the
6 historic or futures. I think it has been affected, some-
7 thing has happened which tinges its right to be given
8 an 1868 date, and that tinging took place when the
9 consideration was accepted for the Tribes for this land,
10 and it may only be flooded once every ten years, but it's
11 going to flood occasionally. The other nine it may very
12 well be used for a good one or two soakings and a nice
13 grazing, Class 4 or some use of grazing for some way, but
14 it's not going to become crop land, you can't put in an
15 irrigating system when you know it's going to flood
16 stage and possibly going to flood out periodically. So
17 it can't have the same, in my opinion, right to water that
18 the other thousands of acres will have.

19 I am going to admit the document into evidence
20 because we have to refer to them when we get to the
21 document. U.S. Exhibit WRIR C-318, being a record of
22 correspondence plus a deed dealing with the land
23 descriptions dealing with the dam site of Boysen and the
24 Reservoir lands in Boysen, and this is a deed which
25 conveys some land from the Shoshone and Arapahoe Tribes



1 back to the United States of America, and I presume it
2 lists some conditions in it regarding surface rights and
3 diversion in case there is no longer a reservoir, and
4 that kind of thing.

5 MR. KROB: Could we also get a clarification of
6 Counsel? I understand what a few of the documents are,
7 but could you tell us what all the documents are?

8 THE SPECIAL MASTER: All right, let me have it again.
9 The exhibit contains as follows: A certified true copy
10 of a memorandum to the Secretary of Interior through the
11 Fish and Wildlife Service from the Commission of the
12 Bureau of Reclamation, and it deals with the acquisition
13 of deed Indian lands, and is dated April 20, 1950, a
14 two-page document; a memorandum of understanding between
15 the Bureau of Reclamation and the Office of Indian
16 Affairs covering compensation for Indian lands taken for
17 the Boysen unit of the Missouri River Basin Project,
18 and that document is dated January 4, 1952, and consists
19 of -- well, oh boy, I got into something here.

20 MR. ECHOHAWK: Just for a point of clarification,
21 I believe Mr. Krob has the exact same set of documents.

22 THE SPECIAL MASTER: I think you do.

23 MR. KROB: Well, what I was asking is if the United
24 States is going to offer these, they should be able to
25 tell us what they are.



1 THE SPECIAL MASTER: Well, that's getting a little
2 far fetched. In any event, the second document is a
3 60 -- about 68 pages of description of the land involved,
4 and the next is three pages of additional land described,
5 and it is signed by Michael Straus, and D.S. Myer, and
6 is the last of the pages. The next document is dated
7 April 8, 1952, and is a memorandum dealing with the same
8 subject matter. The next document is a resolution of
9 the title land signed by G.W. Lineweaver, acting
10 Commissioner of the Bureau of Reclamation and D.S. Myer,
11 Commissioner of the Bureau of Indian Affairs, resolving
12 that they both on general counsel assembled, that
13 approval be and is hereby given for the Government's
14 acquisition of Tribal and individual Indian rights in the
15 taking area of the Boysen Unit of the Missouri River
16 Basin Project, in substantial accordance with the
17 following terms, and the last document is a deed which
18 cites a consideration of \$456,000 for the land.

19 This completes the United States' --

20 MR. ECHOHAWK: Just about, Your Honor.

21 THE SPECIAL MASTER: -- evidence?

22 MR. ECHOHAWK: Could I have permission to withdraw
23 that exhibit and made additional copies, because that's
24 the only copy I do have.

25 THE SPECIAL MASTER: It is so ordered.



1 MR. ECHOHAWK: Just one additional matter, Your
2 Honor, and it's relating to the same portion of land that
3 we just discussed. I have a map that goes along with that
4 same area that describes it and so forth. I just received
5 it today. Mr. Krob hasn't yet seen it, but I would also
6 like to include that as Exhibit WRIR C-319, and if
7 necessary, I could have Ms. Echman identify it and
8 authenticate it because it is not a certified copy.

9 THE SPECIAL MASTER: Do you want to make an objection?

10 MR. KROB: I haven't seen it at all, Your Honor.

11 THE SPECIAL MASTER: Why don't you show it to Mr.
12 Krob, and make any objections, if you have any, but I
13 will admit it for illustrative purposes only.

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

15 MR. KROB: For the purpose of a clean record, I
16 would at least ask it be identified and authenticated by
17 the Witness, then we would, of course, have our five-day
18 objection, too.

19 THE SPECIAL MASTER: I'm going to not sustain an
20 objection based on the five-day matter because it's
21 an illustrative map only, and we can go to a half dozen
22 maps already in the exhibits and find that land.

23 Does it purport to show the exact lands conveyed?

24 MR. ECHOHAWK: Yes.

25 THE SPECIAL MASTER: We will go by the description,



1 not by any map.

2 MR. ECHOHAWK: Okay.

3 THE SPECIAL MASTER: So it has no value actually in
4 the case, so there should be no objection to it. It has
5 no probative value to me.

6 MR. ECHOHAWK: Your Honor, if I may interrupt, the
7 map, as I understand it, is referred to in the documents
8 that have been admitted in evidence, and they refer to
9 the red lands and yellow lands, and it's just an aid.

10 THE SPECIAL MASTER: It's an aid going through the
11 descriptions in the deed, and it has a helpful value as
12 far as knowing what you are talking about as to where
13 these lands are, but the description, legal description
14 of the land is what we will go by to govern whether it
15 should be given a right or denied a right. Okay, Mr.
16 Echohawk.

17 MR. ECHOHAWK: Your Honor, I would identify this map --

18 THE SPECIAL MASTER: 319..

19 MR. ECHOHAWK: As -319 a map entitled Missouri Basin
20 Project, Boysen Unit, Wyoming, Boysen Reservoir, ownership
21 map, in paranthesis, Private Owned Lands, being identified
22 as WRIR C-319 and offer it into evidence for illustrative
23 purposes.

24 THE SPECIAL MASTER: Very well. It is received.

25 MR. ECHOHAWK: I would also like to have leave to



1 withdraw this exhibit to make copies, as this is the
2 original map itself.

3 THE SPECIAL MASTER: With no objections, so ordered.

4 (Thereupon U.S. Exhibit WRIR
5 (C-319 was received into
6 evidence.)

7 MR. ECHOHAWK: I have no further questions for Ms.
8 Echman.

9 THE SPECIAL MASTER: Do you have any questions of
10 Ms. Echman?

11 MR. KROB: No, sir, Your Honor.

12 THE SPECIAL MASTER: You may be excused, and you may
13 sit in the Courtroom if you wish.

14 MR. ECHOHAWK: Your Honor, we have come to that long
15 awaited point, the United States has finally closed its
16 direct case. At this time, Your Honor, I would move to
17 confirm the pleadings filed by the United States in this
18 action to the evidence that has been presented by the
19 United States' witnesses.

20 MR. KROB: The State of Wyoming would object to that
21 motion as being untimely, having been informed so many
22 times there was a divergent.

23 THE SPECIAL MASTER: Mr. Echohawk, I think it is a
24 pro forma motion that's abided in and engaged in in our
25 process of this business of fact finding. As a matter of
fact, in a case a mammoth and massive as this, pleadings



1 others, and when I use the word "split" I mean about
2 equal division of time, and the witness examination
3 rather than direct or cross is because two witnesses
4 appeared for the State support of a contention by that
5 party.

6 Briefly the United States dominated twenty-one and a
7 half day sessions during the presentation of your case
8 to date. And the State dominated fifty-seven and a half
9 sessions, mostly all carrying on cross-examination of
10 State witnesses. During the presentation of the United
11 States' case, the United States introduced approximately
12 303 exhibits, of which 297 were admitted. During the
13 presentation of the United States' case, the State of
14 Wyoming introduced approximately 481 exhibits of which
15 389 are now in evidence and were admitted.

16 The United States has dominated the examination of
17 three witnesses out of the 14 appearing. There were 12
18 for the United States and two for the State's contention.
19 This excludes Ms. Sleater's brief stint on the stand,
20 not counting her as a witness in this matter.

21 Nine and a half sessions were split between the
22 United States and the State or other parties and were
23 usually dominated by third parties or other matters, I
24 think that was during the Worland hearings on the
25 confirmation of water rights.



1 THE SPECIAL MASTER: Thank you very much for that,
2 and I commend all of you on the matters that have been
3 presented here.

4 MR. KROB: Just for the sake of the record, Wyoming
5 reserves its right to file a 41 motion subsequent to the
6 completion of the Tribes' case.

7 THE SPECIAL MASTER: Yes, that's granted. I think
8 that I'd like to have a few minutes to make some
9 observations that are cogent and to get these into the
10 record so that they will constitute a record proof of
11 the reasonableness of the last order issued which was
12 one targeting and fixing its finer schedules of this
13 litigation.

14 There has been some talk that it was a little too
15 harsh or cut somebody out of time and other things, but
16 I must say that this case up until now in the presentation
17 of the United States has been, has proved that there has
18 been economical use of time by the United States and a
19 great degree of diligence by the State of Wyoming in the
20 examination of witnesses during the United States' case.
21 There has been a review made of 87 volumes that currently
22 constitute the record so far in this litigation, and of
23 the filing cabinets carrying the materials.

24 When I use the word "dominate" here it means that one
25 person took up more time examining a witness than did the



1 on it at that time, but --

2 MR. KROB: I would affirm on behalf of the State it
3 is in Mr. White's sole possession, and has not been used
4 outside the bounds prescribed by the Master, and will not
5 be so used.

6 THE SPECIAL MASTER: It has great sensitivity, and if
7 you wish to make an issue of it, I will hear argument on
8 that. It is up to you two.

9 MR. ECHOHAWK: So as long as we can maintain assurance
10 of the State of Wyoming it is not used by their experts
11 for their work --

12 THE SPECIAL MASTER: Mr. Krob has done that, given
13 you that assurance.

14 MR. KROB: Yes.

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1 programs that Mr. White has in his possession that he
2 reserved for his own use in cross-examination of our
3 witnesses. Now that our witnesses will no longer take the
4 stand, we would again make that request to have that
5 computer program returned.

6 THE SPECIAL MASTER: I'm sure there is no problem.

7 MR. KROB: There is a problem, Your Honor, in that all
8 those witnesses are subject to recall.

9 THE SPECIAL MASTER: Except for the fact they are
10 subject to recall, there's no problem, is that correct?
11 Does he need it?

12 MR. KROB: Yes.

13 THE SPECIAL MASTER: If he needs it for a continuation
14 of the case, he has a right to it. You know he has it
15 and he knows he has it.

16 MR. ECHOHAWK: He reserved it for cross-examination,
17 and that was what it was for.

18 THE SPECIAL MASTER: That's right, but if he needs it
19 in the presentation of his own case and makes a demand for
20 it, I'll have to sustain his request.

21 MR. ECHOHAWK: I think it is a point of semantics,
22 Your Honor. He is now going to call Mr. Kersich and Mr.
23 Waples or anyone else, and that is --

24 THE SPECIAL MASTER: That is true. If you want to
25 make a demand for it, and he resists, we can hear the law



1 as complex as this, I suspect it would take weeks to go
2 back over and conform both the details of the procedure,
3 which is one thing, and the substance is another. I don't
4 know how to rule on the motion, but I suspect you are
5 making it in behalf of a pro forma matter, and I would
6 overrule the motion and sustain what you are doing, but
7 again, it has no substantive gutsy merit as far as
8 conclusives.

9 I would like to know if the Tribes have ever amended
10 their Statement of Claims.

11 MR. ROGERS: The next item of business, Your Honor.

12 THE SPECIAL MASTER: I'm a little early. Okay. Mr.
13 Echohawk?

14 MR. ECHOHAWK: Your Honor, the pleadings also I was
15 referring to was the Statement of Claims the United
16 States has filed. Rather than file the formal claim, we
17 have presented all this evidence, offered the report
18 contained in the claim.

19 THE SPECIAL MASTER: I'm so pleased we have arrived
20 at one of the key crucial positions in this case, and that
21 is the United States is now at rest. Or have you concluded?

22 MR. ECHOHAWK: Just one other small item, Your Honor.
23 Since the United States has now come to the close of its
24 case, the United States witnesses have all testified, we
25 would again request from the State of Wyoming the computer



1 THE SPECIAL MASTER: Okay, we will come to order,
2 please. Mr. Rogers?

3 MR. ROGERS: Your Honor, on behalf of the Shoshone
4 and the Arapahoe Tribes as we open our case, I would like
5 to report that the Tribes have today filed an amended
6 statement of their claim for the measurement of the
7 Tribal reserve water rights, amending the statement they
8 originally filed on or about April 7, 1980. The pleading
9 has been mailed to major counsel of record and to the
10 Court, and I have served just now courtesy copies on the
11 Court and those counsel who are present. The statement
12 reflects the development of the Tribes' case since its
13 initial filing. It reflects certain changes which have
14 been made due to the fact incorporations of portions of
15 the Tribes initial claim have been made in the claim
16 presented by the United States through its proof. It also
17 developed some additional concepts of measuring the
18 reserved rights that the Tribes are going to claim through
19 the proof they present here in the next couple of weeks.
20 I would like to highlight the aspects of the amended
21 statement, and by noting first that the Tribes do continue to
22 oppose quantification of their reserved water rights, and
23 we particularly oppose the quantification in state courts.
24 These are points that we have, of course, before made.

25 THE SPECIAL MASTER: These are points you reserved



1 before you were appointed a Special Master.

2 MR. ROGERS: We are reserving them, Your Honor, but
3 we wanted to make it clear at the time of making this
4 claims statement. Our primary objection to the
5 quantification of rights is that by the very nature they
6 are to serve future needs that arise on the Reservation,
7 and it is impossible even through the most competent and
8 greatest degree of expertise available to us today to
9 predict now what all of those future requirements are.
10 The Tribes believe that it could essentially come to pass
11 that they would be -- they would require all of the waters
12 of the Reservation.

13 Nonetheless, we will go forward with the proof we
14 have been able to develop through our own case and through
15 the United States, and make this additional claim to that
16 made by the Government. Two specific claims, the first
17 of which is the claim for water to supply fee lands
18 within the Wind River Indian Reservation owned by members
19 of the Tribes or by the direct decendants, and we are
20 defining direct decendants to be unenrolled children
21 or grandchildren of Tribal members. There are
22 approximately 15,000 acres of such Indian owned fee land
23 within the Reservation today.

24 THE SPECIAL MASTER: Mr. Rogers, I hope you don't
25 mind an interruption from time to time, but honest



1 questions come to mind and ought to be asked when they
2 come to mind. Isn't there a shocking inconsistency in
3 the law to deny, as the United States Supreme Court did
4 under the 1964 Civil Rights Act, any relief to the un-
5 enrolled 'quasi Indian human beings who have less than
6 the criteria of the quantum established by the Tribes, on
7 the one hand, but come back 20 years later and say, "But
8 we reserve some water for them." If they are not good
9 enough to take a little bit of the Tribal value, how can
10 they be good enough to be counted for reserve water
11 rights?

12 MR. ROGERS: There became some problem, Your Honor,
13 as to proof as to who would benefit by such an enlarge-
14 ment of it. There was a discussion with the Tribes, and
15 we make the legal determination or decision to go forward
16 with the legal claim after consultation with the Tribes
17 to just claim for Tribal members and these direct
18 decendants. And actually all we are talking about at this
19 time, of course, if fee land owned by such persons. With
20 respect to any trust land on the Reservation, which could
21 be conceivably owned by and I'm sure is owned by Indians
22 who are not enrolled members of the Tribes, to the extent
23 that land is irrigable, the Government has advanced that
24 claim for them.

25 THE SPECIAL MASTER: That's right.



1 MR. ROGERS: This is a rather specialized situation,
2 and there was some problem even of identifying who a large
3 group of Indians might be. The proof that Mr. Sachse
4 will describe that we will be presenting in the evidence
5 will show how we went about proving the fee ownership of
6 those Indians we did identify.

7 Nonetheless, there are about 15,000 acres of fee
8 land owned by Tribal members or their direct descendants.
9 We have identified somewhat more than 10,000 acres of that
10 land as either presently irrigated or practicably
11 irrigable, and we will present proof to that effect. We,
12 therefore, assert a claim for that 10,374 acres which
13 will have a diversion requirement of 45,390 acre-feet
14 per year. We retained expert witnesses, engineers, to
15 investigate the engineering work done by the Government
16 witnesses, asking them if there were means to develop
17 additional lands within the arable land base identified
18 by HKM and the future project areas defined by Stetson
19 Engineers. Our experts will testify that there is an
20 additional two areas -- there are two additional areas
21 of land which Stetson Engineers did not identify which
22 are practicable irrigable and which we claim for the
23 Tribes. The total of these two, some of which are located
24 in the Big Horn Flats area, and another of which is
25 located in the Stagner Ridge area, are a total of 9,970



1 acres not now irrigated and not claimed by the United
2 States that will require an additional 25,159 acre-feet
3 per year.

4 Initially in the Tribes' claim statement dealing with
5 the problem of quantifying now for all time what the
6 Tribes' right would be, we had initially adopted a formula
7 of 50 percent of the arable land base of the Reservation.
8 It is a very difficult thing to anticipate all of the
9 lands obviously that one day will become the subject or
10 the need for the Tribe to preserve water. We don't think
11 it is possible to identify all of those. We are
12 therefore asserting as part of our claims today that
13 because of this feature, because there may be lands that
14 could be reacquired in the future by the Tribes right
15 into their own ownership or trust ownership or because
16 they are irrigable lands omitted from the designs of the
17 engineers of the Government's case or even our own
18 engineers could not identify because of technology or
19 economics or simply the lack of time and money to study
20 them today, and to cover other contingencies of mineral
21 developments that we cannot now foresee of larger cities
22 and towns on the Reservation that could not now be
23 predicted, that some measures should be adopted by the
24 Court in its final decree to account for this potential
25 unforeseeable enlargement.



1 We are asking that the Master also decree a 20
2 percent factor of a certain total, and we have derived
3 at this total as follows: We have calculated the
4 Government claims as presented by their proof at trial
5 that they are claiming as an irrigation diversion
6 requirement of 584,583 acre-feet per year.

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1 MR. ROGERS: (Continued) The Tribes, in addition to
2 the two categories I just mentioned, the fee land and
3 additional lands on Big Horn Flats near Stagner Ridge
4 are claiming a total of 70,000, an additional 70,549
5 acre-feet per year.

6 We have applied that twenty percent contingency
7 factor to that total to ask for an additional 131,026
8 acre-feet per year for that contingency.

9 The following, the final portion of the Tribe's
10 claim statement, it marks no change from what we initially
11 filed in April of 1980. It is verbatim, the same as our
12 groundwater claim at that time. I would mention our ob-
13 jective there is to prevent the mining of water, lowering
14 of water tables that would disrupt the economic and --
15 economic life of the reservation and to preserve the
16 right of the Tribes to mine if necessary and to account
17 for their future needs.

18 THE SPECIAL MASTER: Again, I've got to leave the
19 questions that come out, that come to mind naturally.
20 The life of the Wind River depends upon the feeding by
21 a live river of the alluvium of the Wind River. The
22 life of many thousands of Indians and many thousands of
23 non-Indians who have settled the open area beginning in
24 1905 depend upon a live river. Isn't there almost a
25 shocking bad piece of public relations, let alone what



1 the law part is, to assert on the one hand a reservation
2 for the right to mine water that can do irreparable dam-
3 age not only to yourselves but to others who have a common
4 interest in the river, in the ecosystem and yet want to
5 reserve the right not to have anybody else mine any water?
6 How can a Court with an equitable conscience say you've got
7 a right to prevent someone from doing any mining damage to
8 your ecosystem but how can that same question give you a
9 right to do a damage to that ecosystem?

10 MR. ROGERS: Your Honor, at this time we are not
11 aware --

12 THE SPECIAL MASTER: Just throwing these out so you
13 can answer them, gentlemen, giving you a good long early
14 notice, that these things will come back into my mind
15 again as I'm doing the decree and it's nice that you all
16 know what my thinking is.

17 MR. ROGERS: I appreciate that, Your Honor, and I
18 can say at this time I am personally not aware of any
19 situation in which the Tribe's own operations on the
20 reservation have in fact resulted in any such mining of
21 groundwater.

22 THE SPECIAL MASTER: Even if there was, Mr. Rogers,
23 that mining is almost impossible to measure, and if you've
24 been engaging in secondary recovery of oil wells for how
25 many years, 30, 40 years? There's no question about the



1 priority of that, if that mines water that mines water. .
2 But that's not the alluvial system that feeds the river.
3 It's that first three or four hundred feet of nice, rich
4 alluvium that's the problem, but the deeper stuff I don't
5 think any of us can tell what's happening in the Madison
6 limestone.

7 MR. ROGERS: Our primary -- Our primary concern, and
8 I'm not going to rule out the problem of the alluvial
9 system, is for development such as you mentioned with oil
10 and gas and perhaps other minerals that might require and
11 that might in fact result temporarily or permanently in
12 some sort of mining of groundwater resources.

13 It is true and that's what we pointed out in our
14 statement, as Your Honor said, that what in fact is mining
15 and what the recharge rate of various aquifers is on the
16 reservation is presently unknown and unknowable. We simply
17 assert given this one, shall we say year in court, forced
18 to this one year in court by the filing of the case by the
19 State, I've got to make some statement as best we can with
20 what technology we've got to make the claim for reserved
21 rights for groundwater and the reservation was reserved
22 for the use of the Tribes for the development of it as
23 a homeland for them. If that involves development of
24 minerals that may in fact or other uses that may in fact
25 cause mining of water, we believe the Court's should be



1 prepared to account for that.

2 As I say, we have no present operations that do in
3 fact do that and we are not aware of any of the claims,
4 specific claims that we are making today that in fact do
5 that.

6 So in conclusion, Your Honor, and the summaries con-
7 tained on page 3 of our statement with the irrigation of
8 fee lands, the irrigation of the additional future lands
9 and this contingency factor of twenty percent, the Tribes
10 are asserting a diversion requirement of 201,575 acre-feet.

11 THE SPECIAL MASTER: Please repeat that last sentence
12 or two, I beg your pardon. You're quoting from the sum-
13 mary?

14 MR. ROGERS: No, Your Honor. I was extemporizing.

15 THE SPECIAL MASTER: Well, I am sorry about that,
16 I was trying to ask -- Is there a copy available in court
17 of your original estimate filed April 7th of '80?

18 MR. ROGERS: I have a copy here, one copy here. It
19 could be zeroxed.

20 THE SPECIAL MASTER: We don't have one here?

21 MR. SALAZAR: No.

22 THE SPECIAL MASTER: I am sorry to cause an inter-
23 ruption. Go ahead, Mr. Rogers.

24 MR. ROGERS: I would point out to Your Honor if
25 you're interested in the difference, the bottom line



1 difference rather than giving each item, our initial
2 claim statement was for 900 -- 931,348 acre-feet, 931,348
3 above the United State's claim, that was what we filed
4 in April, 1980. Today it's 201,575.

5 THE SPECIAL MASTER: 931,348 is what you just said,
6 right?

7 MR. ROGERS: 931,348.

8 THE SPECIAL MASTER: That's been reduced how much?

9 MR. ROGERS: 201,575.

10 THE SPECIAL MASTER: While we are on that subject
11 matter, Mr. Rogers, that claim was made for about 50 or
12 60,000 acre-feet a year for evapotranspiration on Boysen
13 Reservoir before any of us knew the meaning of what the
14 word meant, I'm not sure.

15 MR. ROGERS: 85,350 in April, 1980 we claim for
16 that.

17 THE SPECIAL MASTER: You're still claiming that?

18 MR. ROGERS: No, sir.

19 THE SPECIAL MASTER: You following these reductions?

20 MR. KROB: Yes, Your Honor.

21 THE SPECIAL MASTER: Okay, Mr. Rogers.

22 MR. ROGERS: Your Honor, that concludes my presenta-
23 tion of the Tribe's claim statement unless you have any
24 other questions.

25 * * * * *



1 MR. KROB: The State would like to interject an ob-
2 jection at this point, Your Honor. I had expected to
3 hear some presentation by the Tribes as to why they
4 should be allowed to file the amended motion and how
5 they satisfied the requirements of Rule 15 under the
6 Wyoming Rules for filing of amended pleadings, which
7 require either the consent of the opposing party at this
8 stage or the Court.

9 THE SPECIAL MASTER: Well, I'm not sure, Mr. Krob,
10 but I think counsel for the Tribes have been talking
11 either with Mr. Merrill or Mr. White or maybe with you
12 for the last two months about amending the petition.
13 It takes nobody by surprise; we've been looking forward
14 to it, frankly.

15 MR. KROB: Well, they have to do one of two things,
16 they either have to get your permission to file it or our
17 consent to file it.

18 MR. ROGERS: We were acting under what I understood
19 the Master's order to be to file amended claims.

20 THE SPECIAL MASTER: I was of the opinion we went
21 through this, and I think somewhere in the record there
22 was some discussion of this when we were in open court.

23 MR. KROB: If they do have it in the file, then I
24 will withdraw my objection.

25 THE SPECIAL MASTER: I'm positive they have.



1 Okay, Mr. Sachse.

2 MR. ROGERS: Thank you, Your Honor.

3 MR. SACHSE: I want to take this time to go over the
4 list of witnesses that we intend to present and the issues
5 that we intend to prove through these witnesses so that
6 you'll have the picture right now of everything we intend
7 to do in our presentation of the case.

8 I would think it would be better to know that at the
9 beginning so you can follow along better and so there's
10 no surprises to anyone.

11 We want to begin with the three witnesses who are
12 members of the two Tribes. We'll start with Robert Harris,
13 who is the chairman on the Shoshone Tribe and who's been
14 chairman of the Tribe off and on many, many years.

15 We have -- There are several points that Mr. Harris
16 will be talking about. One will be the Tribes' own
17 understanding of their water rights; another will be the
18 experience, particularly of the members of the Shoshone
19 Tribe, with irrigation over a long period of years. The
20 third will be the program of the two Tribes to reacquire
21 land which has been an extremely successful program of
22 reacquiring land; and finally, the need for additional
23 irrigation for the growing population of the Indian
24 people of the Reservation.

25 Of course, he will go into these issues in more



1 detail.

2 We then intend to present Mr. Pius Moss of the
3 Arapahoe Tribe and Mr. Frank Enos of the Shoshone Tribe,
4 both of whom have personal situations on the Reservation
5 that are illustrative of why we're making a claim for
6 water for land owned in fee by members of the Tribes.
7 And I should say that 90 percent of the claims that we're
8 making are for people who are enrolled members. There are
9 a few cases where there's a claim for someone who's a son
10 of an enrolled member or grandson.

11 The situation of these people often has been this:
12 That land was purchased from another Indian, the land had
13 been in fee -- excuse me -- had been in trust, always was
14 in trust, was part of the original land of the Reservation,
15 but because of Bureau of Indian Affairs' policies, at
16 certain times if one member of the Tribe wanted to sell
17 property to another member of the Tribe, they were forced
18 to take it out of trust and put it into fee. So that
19 many people on the Tribes -- in the Tribes who, either
20 because of a bought property from an Indian or from a
21 non-Indian, owned some land that's in fee and other land
22 that's in trust. It's usually ranched and farmed together,
23 it's usually irrigated together using the Tribes' reserved
24 water right without there being any state water right that
25 supports it.



1 If the Master was suddenly to say that these people
2 have no reserved water right, no right to use the water
3 of the Tribe and they never applied for a state water
4 right because they thought all these years they had the
5 right to use the water of the Tribe so that they could
6 only have a 1980 -- might be 2 by the time this is
7 finished -- water right, the result of that would be to
8 take some of the most diligent people on the Reservation,
9 people who have developed their land, and to cut them out
10 from all water. And we think it's important that one way
11 or another that this Court protect these people because
12 they're in a situation that's no fault of their own and
13 needs some, needs to be protected.

14 THE SPECIAL MASTER: Do you -- Though I have not
15 seen it in your Statement of Claims, but I've forgotten
16 whether it's in there or not, do you also assert that the
17 same legal rationale applies to protect a reserved right
18 for one Indian or non-Indian who has taken title of some
19 fee land from an Indian who owned it in fee?

20 MR. SACHSE: No. It's our position, though we know
21 the law keeps shifting around on this, but it's our posi-
22 tion that if a non-Indian purchases land from an Indian,
23 he knows he's got to go to the State and get a state-
24 adjudicated water right; but that when an Indian living
25 on the Reservation, just as he always has, has a piece



1 of property, that he has reasonable expectation that he
2 can share in the reserved water right and that he's not
3 under the jurisdiction of the State at all.

4 In order to present this claim in an orderly way,
5 we've had Miss Elsie Kolstad, who has appeared in this
6 case previously, who used to be the head of the title
7 plant in Billings, take a list of the members of the
8 Tribe, and the tribal members themselves have helped in
9 this a great deal, go through the county records, identify
10 the property that is owned in fee by Indians on the Reser-
11 vation, particularly by members of the two Tribes.

12 We then have had Mr. Keith Higginson. I'll tell you
13 who he is. He was, until six months ago, was the Director
14 of the Bureau of Reclamation. Before that he was the
15 water engineer for the State of Idaho for many years.

16 THE SPECIAL MASTER: Will you say his name, please?

17 MR. SACHSE: Keith Higginson.

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1 MR. SACHSE: He is now a private consultant in Salt
2 Lake City. But Mr. Higgenson took the materials that Ms.
3 Kolstad prepared, went out and examined every piece of
4 property owned by an Indian in fee, and also went to the
5 State Engineer's office here and got the records of any
6 State water rights that applied to any of that property.
7 He interviewed most of the Indians who owned the property,
8 and he made a determination as to how much of this property
9 is currently in irrigation, how much of it that is not
10 in irrigation, is clearly practicably irrigable acreage,
11 and how much is not irrigable. He also made a determination
12 of the amount of water that would be needed to irrigate
13 this property and the source from which the water could
14 come. He has prepared a report which we have -- on
15 everything except the source of water, which is being
16 prepared now, but on everything else I have discussed,
17 which we have already submitted to the State, and which
18 we will submit to the Court in connection with this
19 testimony.

20 He will also testify as to the quality of the
21 irrigation in farming that he saw on the Reservation,
22 which was extremely high. I think he was surprised at
23 the skill with which the Tribal members irrigate their
24 land.

25 I should point this out, too, because you may be



1 wondering about this, you may say, "Well, what about the
2 economics of this," and I want to put right out front
3 our view of this. There was no economic testimony in the
4 Winters case, there was no economic testimony in Arizona
5 versus California that said the standard for practicably
6 irrigated acreage is to be used in determining the Tribes'
7 water right. The United States has taken a position in
8 this case that to show practicably irrigable acreage you
9 have to have an economist testify that in a cost benefit
10 ratio this would come out better than one to one, or that
11 seems to be the position they have taken, or at least it
12 would be very near one to one.

13 We don't think that is accurate. We think, first,
14 and I'll take it with the simplest case first, that in
15 doing something like an examination of these lands held
16 in fee and its individual tracts of land very near a source
17 of water, most of which are already under irrigation, and
18 that which isn't under irrigation it's just a question
19 of putting a pipe in and putting in a sprinkler or
20 extending the ditch, that the testimony of an experienced
21 irrigation engineer such as Mr. Higgenson whose been, as
22 I said, a State Engineer, head of the Bureau of Reclamation,
23 that this is practicable acreage, is a good deal more
24 persuasive than any kind of figures an economist can come
25 up with. What he can say is "In my years of experience in



1 dealing with irrigated land, this is the kind of land
2 you see irrigated around the west, and that if this
3 kind of land is irrigated by the non-Indians, then this
4 is practicably irrigated acreage when you find it on an
5 Indian Reservation." And I just want no confusion about
6 it, we do not accept the position that the definition of
7 practicably irrigable acreage depends on the final
8 testimony of an economist. We also think that economists
9 have ways of playing with numbers that's not nearly as
10 reliable as the testimony of an engineer about whether
11 this is something that will work or something that won't
12 work.

13 Our next witnesses after Dr. Higgenson are three
14 other engineers.

15 THE SPECIAL MASTER: Three other --

16 MR. SACHSE: Irrigation engineers. Their names are
17 Ronald Bliesner; Jack Keller, Dr. Jack Keller actually;
18 Dr. Lyman Willardson. We asked these people to do two
19 things, and Tony has already alluded to this. When we
20 saw the cost figures that Dr. Mesghinna was coming up
21 with for these irrigation projects and the way they kept
22 rising through the course of his depositions, we began
23 to think there was something wrong with these cost
24 figures, and we decided that we could no longer just rely
25 on Stetson Engineers to have the final word on the cost



1 figures as far as we were concerned, so we hired these
2 three men, all of whom work out of Logan, Utah. Dr.
3 Keller is the head of the Department of Agricultural
4 Engineering at Utah State University. Dr. Willardson
5 teaches drainage engineering at Utah State University.

6 THE SPECIAL MASTER: He may well have taught Dr.
7 Mesghinna what he knows.

8 MR. SACHSE: Dr. Willardson was Dr. Mesghinna's
9 professor on the drainage, and not only that, Dr. Mesghinna
10 came to Dr. Willardson while he was doing his work and
11 asked some advice from Dr. Willardson on how to set up
12 the drainage program, but just at a very early stage of
13 it. Dr. Keller and Dr. Willardson literally wrote the
14 books on sprinkler irrigation and on drainage. They
15 contributed to the major texts on those areas. They have
16 been in business for 20 or 30 years, and they are
17 eminent world-wide on these areas, as I think you will
18 see when we present them as witnesses. Mr. Bliesner is
19 in the business of building sprinkler irrigation, and has
20 also been the manager of a large agricultural project
21 in California. They are not people whose principal
22 occupation is in any way testifying in lawsuits, they are
23 people who do the work.

24 Mr. Bliesner and Mr. -- well, let me start first
25 with Mr. Bliesner. He found two -- well, he first



1 identified that he thought there was too much drainage
2 in the Mesghinna Plan, and that's why he wanted Dr.
3 Willardson to look at it. But he also thought that the
4 pipe costs and the pumping costs were too high. You will
5 remember in my cross-examination of Dr. Mesghinna that
6 he himself pretty much admitted that those costs were a
7 bit high. Mr. Bliesner will testify as to these costs
8 and as to the design for pumping stations that would
9 actually be done in an irrigation project of this sort
10 and that he has actually seen done.

11 Dr. Willardson will testify basically along these
12 lines: That Dr. Mesghinna did an excellent job of the
13 computation of the drainage figures, and there is nothing
14 about Dr. Mesghinna's program that wouldn't work. You
15 could build Dr. Mesghinna's plan and everything about it
16 is something that will work, but that when Dr. Willardson
17 went out to the Reservation and looked around, he said
18 it was just obvious to him that there was a great deal
19 of natural drainage in the areas that were planned for
20 the future projects.

21 THE SPECIAL MASTER: That had not been utilized?

22 MR. SACHSE: That had not been utilized in Dr.
23 Mesghinna's plan.

24 He went around looking at the land and checking out
25 what he saw as fractures in the sandstone and fractures



1 in the shale that made things that technically were a
2 barrier, that were classified as a barrier in the holes,
3 not true barriers in terms of the drainage, and he re-
4 designed the drainage. We will present his redesign of
5 that drainage. He also designed the drainage for the
6 additional 10,000 acres on Big Horn Flats and Stagner
7 Ridge. He also compared his drainage ideas with what was
8 being done in the Midvale Irrigation District, and his
9 drainage, as designed, is still more than Midvale even
10 plans to put in, though it's considerably less than Dr.
11 Mesghinna had planned.

12 He will also testify that the drainage that -- that
13 the problem of drainage in the Midvale District is
14 considerably greater than what the drainage problem should
15 be in these higher lands that we are talking about. In
16 other words, there is some disadvantage in having to
17 develop the higher lands, that there are also advantages,
18 and one of the big advantages is drainage. We will present
19 testimony about that.

20 The result of the testimony of Mr. Bliesner and Dr.
21 Willardson will be that the per acre cost of the projects
22 will be on the average reduced \$421.

23 THE SPECIAL MASTER: Per acre cost would be reduced
24 \$421 per acre?

25 MR. SACHSE: The per acre cost would be reduced \$421.



1 THE SPECIAL MASTER: What percentage of cost is that?

2 MR. SACHSE: That is about a third or more than a
3 third reduction in cost. We think when you hear the
4 testimony you will hear that' it's quite solid and quite
5 conservative itself.

6 Dr. Keller -- I should point out the significance
7 of that is obvious, because if these costs were that much
8 higher than they needed to be, then all of the economics
9 figured by Mr. Dornbusch, they're tighter, closer, more
10 questionable than they need to be. The economics would
11 really be quite better on these projects than Mr.
12 Dornbusch's figures would show. He had to use the cost
13 figures he was given, but the cost figures he was given
14 were too high.

15 THE SPECIAL MASTER: Well, I don't like to interrupt
16 your argument, and they are able ones, but while we are
17 in that phase of matters, let me observe that I appreciate
18 experts questioning other experts and coming up with less
19 facilities for drainage, but I have had a lifetime with
20 irrigation projects where I have walked the alkali,
21 walked the alkali, scratched these 80 acres because the
22 drainage was insufficient, so you are going to have to
23 show me --

24 MR. SACHSE: When Dr. Willardson is here, you can
25 ask him about your experiences on that.



1 THE SPECIAL MASTER: I sure will.

2 MR. SACHSE: I'm not saying he was saying there is
3 no drainage needed there at all. In fact, he has
4 increased the size of some of the drains.

5 THE SPECIAL MASTER: It will be interesting.

6 MR. SACHSE: But he basically designed it too
7 mechanically, there's too much in there.

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1 MR. SACHSE: (Continued) Dr. Keller will essentially
2 testify that he's worked with Dr. Bliesner and Dr. Willard-
3 son and in his experience what they're doing is correct
4 and the -- he helped design a center pivot sprinkler
5 system for Big Horn Flats and Stagner Ridge, which he
6 thinks is the best way to do that because of the reduced
7 pressure and because the water holding capacity of the
8 land worked better with a center pivot that puts the
9 water on more even.

10 Now, he'll also testify as to how these projects,
11 from an engineering standpoint and from the standpoint
12 of just a practicality, compare with other projects that
13 he's been involved in in terms of the kind of -- The way
14 he puts it is that these are off-the-shelf projects and
15 he thinks that's good, something that will work; that this
16 is the kind of land where people irrigate successfully.
17 It's the kind of equipment that has been used successfully.
18 The crops being grown are the ordinary crops, nobody's
19 talking about avocados and Christmas trees, not even talk-
20 ing about potatoes, they could grow potatoes there; that
21 in his opinion these are practical projects and that these
22 are practicably irrigable acreage.

23 Now, for everything I've said about economists,
24 we're still going to have an economist. He's Dr. Ronald
25 Cummings. To some extent, he's going to testify that you



1 don't need economists for this, but to some extent he'll
2 do the work that the economists do.

3 Dr. Cummings is a professor at the University of New
4 Mexico. He's also an extremely experienced agricultural
5 economist.

6 The first part of his testimony will be that, this
7 concept of practicably irrigable acreage doesn't really
8 have any precise meaning in economics.

9 THE SPECIAL MASTER: It doesn't in the law either,
10 tell him,

11 MR. SACHSE: That's right.

12 THE SPECIAL MASTER: It happens to come out of some-
13 body's mind of a Special Master in a case called Arizona
14 vs. California.

15 MR. SACHSE: That's right. The second point he'll
16 make is that the Bureau of Reclamation, in approving irri-
17 gation projects over the years, has used a variety of
18 standards, and that the projects that have been approved
19 and built have not been built under the standards in
20 effect now. They've been built under standards that were
21 more lenient, and it's our position and his position that
22 when you're asking what's practicably irrigable out there
23 for the Indians, you can't take a tighter standard now
24 just because this suit's brought this year, than we used
25 when projects were actually built all around the West.



1 One of the things he's done, which will be quite
2 interesting to you, is he's made a comparison of some 20
3 or 30 irrigation projects that have been built in Wyoming,
4 Montana, North Dakota and South Dakota, which are roughly
5 similar areas, and he's recomputed the cost-benefit analysis
6 under which -- He's taken the cost-benefit analysis under
7 which they were actually built and he's recomputed it the
8 way it would be done if you used the national economic
9 development account that Dr. -- Mr. Dornbusch pretty much
10 used, and that the Water Resource Council used. And
11 there's not one of them which would have come out one to
12 one.

13 Now, on the average they come out about .7 to 1 if
14 you do it that way.

15 The next point that he'll make is that -- is that in
16 most of the projects that were built, the way he got
17 above one to one was to add a figure pretty much taken
18 out of the air for secondary benefits, and by that it
19 means that if we're -- you see the price of these pro-
20 jects and you think, my God, you're talking about spend-
21 ing millions of dollars. But if you're going to spend
22 two million dollars in Fremont County, that's going to
23 make a lot of business for them because people are going
24 to be selling pipe, people are going to be selling irri-
25 gation equipment, people are going to be installing things,



1 and that sort of thing. And if you've got more irrigation
2 than you had before, that's even more business, people
3 are going to be selling fuel, people are going to be --
4 etc., etc.

5 Now, that's a secondary benefit, and in his opinion
6 if you're to use economic analysis to say whether the
7 Indian land is practicably irrigable, they ought to get
8 the benefit of those secondary benefits just as anyone
9 else did. And if you apply secondary benefits to any of
10 these projects, they're just way over the line for
11 benefit-cost analysis.

12 Our final witness will be Dr. Omar Stewart. Dr.
13 Stewart is a retired professor of history who probably,
14 next to Robert Harris, knows more about the history of
15 the Shoshone Indian Tribe than anyone around. He's
16 studied it for years and years.

17 We have him for a limited point, and we don't expect
18 lengthy testimony at all. Questions come up, did the
19 Shoshones fish, would the Shoshones in 1868, would have
20 expected that by getting this Reservation as their home-
21 land, they were going to have the streams and the right
22 to fish for those fish and be able to make their own
23 decisions about what they wanted to do about fisheries.
24 And his testimony will be, yes, that the Shoshones all
25 fished, they weren't like the Sioux that way or some of



1 the other Plains Tribes; that they had been mountain
2 people, they were used to fishing for trout and for salmon
3 in Idaho and it was a standard part of their life that
4 they fished.

5 Now, we've given you quite a list of witnesses. We
6 don't intend to have terribly lengthy presentations or to
7 go through every step of everything that's already been
8 testified to before in the government's case. So we
9 think using the government's case as the basis on which
10 we build these extra points, that -- that we can do this
11 fairly expeditiously and we're prepared to start today
12 with the three tribal witnesses whose names I've mentioned.

13 I should -- This really ends my opening statement,
14 but I think I should probably ask you a planning question
15 that we have. Our schedule is the three tribal witnesses,
16 then Miss Kolstad. The next witness will be Dr. Higginson.
17 Our assumption so far as been that the tribal witnesses
18 and Miss Kolstad will be enough for these two, and we'd
19 start with Dr. Higginson on Monday. If that's not so and
20 if we have to have him waiting --

21 THE SPECIAL MASTER: A week from Monday.

22 MR. SACHSE: A week from Monday. And if that's not
23 so and we have to have him waiting, then we have to call
24 him and have him waiting in the wings. But we would be
25 content to call on the tribal witnesses and Miss Kolstad



1 those two days and start with Mr.Higginson after Sandy
2 White and Jim Merrill areback a week from Monday.

3 THE SPECIAL MASTER: That sounds agreeable to me.

4 MR. KROB: That's fine with the State, Your Honor.

5 MR. ROGERS: Even though the speed with which we move
6 through these is maybe at a somewhat faster rate than
7 we're used to in this case, we might finish even in the
8 morning sometime.

9 THE SPECIAL MASTER: Either we do or we don't; we'll
10 get through the four witnesses today or tomorrow.

11 MR. SACHSE: That said, unless someone wants a recess,
12 I'm ready to start with --

13 THE SPECIAL MASTER: I see no need for a recess.
14 Does anybody want a break? If not, why don't we proceed,
15 Mr.Sachse.

16 MR. SACHSE: I call Mr. Robert Harris.

17 THE SPECIAL MASTER: You might have all four of them
18 sworn at the same time, if you wish.

19 MR. SACHSE: All right Mr. Moss, Mr. Enos -- and
20 Miss Kolstad's already been sworn.

21 THE SPECIAL MASTER: Frank Enos, Mr. Moss, gentlemen,
22 raise your right hands, please.

23 (Thereupon Mr. Robert Harris,
24 (Pius Moss and Frank Enos were
25 (sworn in to tell the truth at
this time.



1 THE SPECIAL MASTER: They all assented.

2 (Off-the-record discussion.

3 TRIBES' EVIDENCE

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5 ROBERT N. HARRIS

6 was called as a witness by the Tribes and, having been first
7 duly sworn, testified as follows, to wit:

8 DIRECT EXAMINATION

9 BY MR. SACHSE:

10 Q Would you give the Court your full name?

11 A Robert N. Harris, Sr.

12 Q Are you the Chairman of the Shoshone Business Council?

13 A Yes, I am.

14 Q How long have you been on the Business Council, off and
15 on?

16 A Well, for approximately 37 years.

17 Q Do you live on the Wind River Indian Reservation?

18 A Yes, I do.

19 Q Have you lived there all your life?

20 A All my life with the exception of the time I was in
21 school in California and with four years I was in Fort
22 Collins.

23 Q Do you live north or south of the Big Wind River?

24 A I live on the north side of Big Wind River.

25 Q That's in the part of the Reservation that we refer to as



- 1 the open part?
- 2 A. Yes, sir, it is.
- 3 Q. How long have you lived there?
- 4 A. I've lived there since '41.
- 5 Q. Do you do any ranching?
- 6 A. Yes, sir, it's my livelihood.
- 7 Q. How long have you been ranching?
- 8 A. Since '41 and about four or five years before, prior to
- 9 the time that I moved out where my present location is.
- 10 Q. About how many head of cattle do you have?
- 11 A. I have 250 head of cows, run on a cow and calf basis.
- 12 Q. Do you irrigate any land in connection with your ranching?
- 13 A. Yes, I do.
- 14 Q. How long have you been irrigating land?
- 15 A. Since 41 years.
- 16 Q. What sort of crops do you grow on the irrigated land?
- 17 A. My crops consist of hay and small grains.
- 18 Q. Are there other Shoshone Indians who irrigate land either
- 19 as cattlemen or farmers?
- 20 A. Yes, there is.
- 21 Q. Are there some of each?
- 22 A. There is some of each, yes, sir; the Arapahoes and
- 23 Shoshones both.
- 24 Q. Is all the irrigation in connection with cattle or is some
- 25 of it in connection with farming for itself?



1 A. Some is in connection with just farming.

2 Q. What percentage of the Shoshone farms are involved in any
3 kind of irrigated farming or cattle raising?

4 A. Well, I'd say approximately from 30 to 40 percent of
5 the Shoshones are involved in farming or cattle operation,
6 ranching or cattle operation.

7 Q. Now, are you familiar with the history of the Shoshone
8 Tribe on the Wind River Reservation?

9 A. Yes, sir.

10 Q. What are your sources of familiarity with it?

11 A. I don't follow you there.

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1 Q. (By Mr. Sachse) Where did you get your knowledge from,
2 books, people or both?

3 A. Mostly from the people, extensive reading.

4 Q. Do you know when irrigation by Indians began on the
5 Shoshone Reservation?

6 MR. KROB: Objection, Your Honor. We would object
7 to any testimony as to the history and traditions of
8 the Tribes which are based on oral history, the objection
9 being one of hearsay.

10 THE SPECIAL MASTER: I would overrule the objection.
11 He may answer if he knows.

12 THE WITNESS: One of the earliest documents setting
13 up farming by Indians on the Reservation was by Reverend
14 Roberts, and the date that he gives is 1873.

15 THE SPECIAL MASTER: Do you have the name of the
16 publication or the history where it's available in the
17 archives?

18 Q. (By Mr. Sachse) Do you have the name or a copy of
19 Reverend Roberts' book?

20 A. No, I do not. This is merely in the files. It is an
21 old manuscript.

22 MR. KROB: Your Honor, we would again object on the
23 basis of hearsay. Although it may be written, it's still
24 hearsay and we request a continuing objection on the basis

25 harris - direct - sachse



1 THE SPECIAL MASTER: It is granted.

2 Q. (By Mr. Sachse) Are there private ditches used for irri-
3 gation on the Reservation?

4 A. Yes, sir, there are.

5 THE SPECIAL MASTER: What do you mean by private
6 ditches, Mr. Sachse?

7 MR. SACHSE: Well, it might be better to ask Mr.
8 Harris what he means.

9 THE SPECIAL MASTER: You asked the question.

10 MR. SACHSE: Then I will explain. What I mean is not
11 part of an irrigation project, but a ditch that a group of
12 people dug.

13 THE SPECIAL MASTER: On-farm type conveyance of water?

14 MR. SACHSE: Yes, to get water to their farms.

15 THE WITNESS: Yes, there is numerous private ditches
16 on the Reservation that are maintained by the people that
17 get water from these ditches.

18 Q. (By Mr. Sachse) Were some of those ditches actually dug
19 by the Indians themselves?

20 A. Yes, they were.

21 Q. About how early are the records of private ditches being
22 dug by the Indians for irrigation?

23 A. There is a volume of early history of the projects in
24 Volume II, and I think in there it sets up somewhere

25 harris - direct - sachse



1 around 1880, along in there, that some of these ditches
2 were built. There is 124 ditches listed within that
3 volume.

4 Q. Did the Indians do any of the work on the Federal Indian
5 Irrigation Projects, what we have called in this suit the
6 FIP?

7 A. Yes, sir, they did.

8 Q. What kind of work did they do?

9 A. Mostly teamwork, single hands, shoveling, scrapers and
10 teams.

11 Q. Do Indians work today on that maintenance of those Federal
12 Indian Projects?

13 A. Some Indians are federal employees who serve as ditchriders.
14 The assistant project manager is an Indian, Shoshone
15 Indian.

16 Q. So it's fair to say that the Indians on the Wind River
17 Indian Reservation have had 75 or 80 years of experience
18 with irrigation?

19 A. I could say that.

20 Q. Is all the irrigation done by Indians on the Reservation
21 today gravity irrigation?

22 A. A majority of it is, yes, sir.

23 Q. Has there been any move toward sprinkler irrigation;
24 particularly, is there any sprinkler irrigation being

25 harris - direct - sachse



1 run by the Indians today or this year? I don't mean water
2 is coming out right now.

3 A. I can recall about two or three that went to sprinkler
4 irrigation.

5 Q. Could you tell me who those people are and tell me what
6 kind of sprinklers they are using?

7 A. My son has a sprinkler system. It is a row-type, wheel-
8 type sprinkler system. Roaring Bull, owned by Jimmy Dale,
9 has pivot systems on it. I think the Harpoon Ranch has a
10 system, irrigation system on it. I'm not too familiar
11 with what type it is, whether it is wheel, row, or just
12 what it is.

13 Q. Would you explain what the Harpoon Ranch is?

14 A. That was a ranch that was recently purchased by the
15 Tribes. It is a bordering -- it's a ranch that borders
16 the Reservation on the south boundary.

17 Q. It's in the Reservation, but on the south boundary?

18 A. Yes, sir, on the Reservation, it's inside the Reservation.

19 Q. Do you have any plans yourself to put up any sprinkler
20 irrigation?

21 A. Yes, sir, I'm planning on putting 288 acres of land on
22 the south side of that river just across from where I live
23 into a sprinkler system.

24 Q. Over the last five or six years has the Tribe made any

25 harris - direct - sachse



1 plans or preliminary plans for any kind of a tribal
2 sprinkler irrigation system?

3 A. Yes, sir. They have been developing plans for quite a
4 while on what they refer to as East Riverton, and then on
5 an area that's between the North Fork of the Popo Agie
6 and the Little Wind River.

7 Q. Does Ball Engineering Company have any role in that?

8 A. Yes. We contacted Ball Engineering with the possibility
9 of them doing all the engineering work, the establishment
10 of these sprinkler systems and getting them into operation.

11 Q. Now, those plans have not been built. Could you tell us
12 what has held things up?

13 A. Most of the things that held us up, we contacted -- in
14 our contact with Ball Engineering and also with the
15 university at Provo, who has a gentleman Straddling
16 (phonetic), who was interested in getting some of these
17 things started, we also called upon him to start. Ball
18 Engineering came on out, gave us a complete lineup of
19 what they could do with it, of how it would be. They
20 felt it was some of the best land on the Reservation,
21 or even on the project.

22 Then we started looking at the feasibility program,
23 and we started looking around to find somebody who could
24 develop a feasibility report on this land. We were

25 harris - direct - sachse



1 informed by our attorneys and also by the United States
2 Government that as soon as this lawsuit was over they
3 should have feasibility studies from the experts who was
4 testifying in this, namely Stetson, Inc. So we have
5 delayed it until this is completed.

6 Q. That area is what I gather is part of the area that's
7 classified as Riverton East in this lawsuit?

8 A. Yes, sir.

9 THE SPECIAL MASTER: What is the other one between
10 the two smaller rivers?

11 THE WITNESS: I'm not sure what they refer to that
12 as. I think it was just merely referred to as the Arapahoe
13 Project.

14 MR. SACHSE: I hear in the back a voice that says
15 that is part of the Arapahoe Unit.

16 THE WITNESS: Thank you.

17 Q. (By Mr. Sachse) Now, I want to ask you about this land
18 acquisition program of the Tribes. You have already told
19 us about the purchase of the Harpoon Realty -- the Harpoon
20 Ranch property. When did the land acquisition program of
21 the Shoshone and the Arapahoe Tribes really begin?

22 A. This started possibly around in 1838 when the Shoshone
23 Judgment Act came out of Congress. This result is a

24 harris - direct - sachse
25



1 successful conclusion of the case against the United
2 States Government for the placing of the Arapahoes among
3 the Shoshone Reservation. When this was successfully
4 concluded, attempts were then taken by the Shoshones to
5 immediately take over the rangelands on that north side
6 of the Reservation. People were moved under the -- it
7 was the non-Indians who had this -- homesteaded, non-Indians
8 were immediately notified that under their grazing permits
9 they had a 30-day cancellation clause and that the Tribes
10 intended to carry out that cancellation of those grazing
11 permits within that 30-day period.

12 Q Why were the Tribes then interested in canceling those
13 grazing permits?

14 A. Because under the Shoshone Judgment Act it set up a
15 certain amount of money to each individual member of each
16 of the families that gave them money to where they could
17 go to the banks and finance cattle operations, people who
18 had been striving to get into cattle operations and wanted
19 to get in there, people who were in smaller operations
20 could enlarge their operations had the opportunity when
21 the Shoshone Judgment Act was concluded.

22 Q Now, before the Shoshone Judgment Act, had the Tribe
23 itself been getting money from the leases of land on the
24 north part?

25 harris - direct - sachse



1 A. Yes, sir. All those grazing leases were --

2 THE SPECIAL MASTER: On the north what?

3 MR. SACHSE: North part of the Reservation, the open
4 part of the Reservation.

5 THE SPECIAL MASTER: You said north of the Reserva-
6 tion, or do you mean north of the river?

7 THE WITNESS: North. It is called the north part of
8 the Reservation, ceded portion. I don't like to refer to
9 it as the ceded portion, but --

10 THE SPECIAL MASTER: I want to make sure of the
11 terms because I thought you said north of the Reservation.

12 MR. SACHSE: No, the north part.

13 THE WITNESS: This is all within the exterior boun-
14 daries of the Reservation.

15 Q (By Mr. Sachse) I want to get back to the land acquisition
16 programs. Did Senator O'Manie (phonetic) have anything to
17 do with that?

18 A. Senator O'Manie (phonetic) was the one that drafted and
19 introduced the Shoshone Judgment Act.

20 THE SPECIAL MASTER: There should be an objection to
21 that question, but there wasn't, so we will let it stay.

22 MR. KROB: I'm just as interested.

23 Q (By Mr. Sachse) Did that Judgment Act provide funds the
24 Tribes used for reacquiring land?

25 A. If I could go back, the Shoshone Judgment Act was
harris - direct - sachse



1 concluded in 1838. The Shoshone Judgment Act was the act
2 that distributed the money and the authority of what to
3 do with the money and how to do the money. Upon the
4 advent of the Tribes with their notification of cancella-
5 tion of grazing leases, and each one of the people that
6 would be left out there with no way to run their cattle
7 if the grazing land were taken away from them, they
8 immediately approached Congress with the fact that they
9 would be left without grazing lands and could not operate.
10 Out of this Senator O'Manie (phonetic) developed the
11 Shoshone Judgment Act which required the Tribes to purchase
12 these lands.

13 Q So under the Act the Tribes were --

14 A To protect the white homesteader.

15 Q -- were provided with funds and required to buy back the
16 lands that non-Indians no longer wanted on the --

17 MR. KROB: At this point I will object, Your Honor.
18 We have overstepped the bounds, I think, of asking the
19 lay witness to testify as to the legal import of the Act
20 several times now, and I think that, although it is
21 interesting, we have reached the bounds of that.

22 THE SPECIAL MASTER: Yes. Mr. Sachse, be a little
23 more careful and move on and let's get going.

24 MR. SACHSE: I will move on.

25 * * * * *



1 Q (By Mr. Sachse) Now, has the Tribe's program of reacquiring
2 land continued up to the present?

3 A Yes, sir, it has.

4 Q Can you give us some examples of land acquired by the
5 Tribes in the last four, five years?

6 A Last four or five years lands have been purchased under
7 a FHA loan and under that land there has been, I assume
8 around 400 acres of deeded land which has been purchased,
9 namely the Harpoon Ranch.

10 Q Let me stop you there; FHA loan. Would you explain what
11 that is. Everyone may not know.

12 A Farmer's Home Administration.

13 THE SPECIAL MASTER: That's not the Federal --

14 Q (By Mr. Sachse) Is this a Federal Government loan to
15 the Tribes for the purpose of purchasing land on the
16 reservation?

17 A Yes.

18 Q All right. Continue. You were telling me about the
19 lands purchased in the last few years.

20 A There's been quite a number of other areas of land pur-
21 chased. I'm not in a position right now to give you
22 those lands.

23 THE SPECIAL MASTER: Mr. Harris, may I ask you a
24 question in between here? In acquiring of these lands,

25 harris - direct - sachse



1 was it also your policy -- What was your policy regarding
2 acquiring water rights that ran with these lands?

3 THE WITNESS: I think possibly the whole thought
4 of the Tribes were that they were endowed with water
5 rights, were paramount under the Winter's doctrine, that
6 all water that was underground raised on the -- rose on
7 the reservation, flowed through or traversed the outside
8 was the property of the Tribes.

9 THE SPECIAL MASTER: Thank you, I appreciate that,
10 but what was your policy, say when you bought the Harpoon
11 Ranch? You got some State water rights with it, didn't
12 you?

13 THE WITNESS: With the Harpoon Ranch we got State
14 water rights and some of those were rights out of a reser-
15 voir that comes down through the Popo Agie. There's
16 certain shares within that which was acquired with the
17 Harpoon Ranch.

18 THE SPECIAL MASTER: Didn't prudence itself dictate
19 that when you could buy some of these properties and
20 there were water rights on them that you would take the
21 water rights also?

22 THE WITNESS: Yes, sir.

23 THE SPECIAL MASTER: Go ahead, Mr. Sachse.

24 Q (By Mr. Sachse) Now, I want to ask you some more; you
25 harris - direct - sachse



1 started to get into it about your understanding of the
2 Tribe's understanding of its water rights. For instance,
3 do you think that if there's land on the reservation that
4 belongs to the Tribe, that you have the right to put
5 it into irrigation if and when you want to?

6 MR. KROB: Objection, Your Honor, whatever he thinks --

7 THE SPECIAL MASTER: Please make the objection.

8 MR. KROB: What he thinks as to what they have a
9 right to do is really irrelevant to this.

10 THE SPECIAL MASTER: It's a hard one to pass judgment
11 on, and I have to sustain --

12 MR. SACHSE: May I --

13 THE SPECIAL MASTER: I believe I have to sustain
14 that, but you may speak to it.

15 MR. SACHSE: I would like to speak to it because
16 I think that while in general a question like that might
17 be inadmissible, that directed to the chairman of one of
18 the parties in the case, that his own expectations and
19 ideas and the ideas of his people about his water right
20 does have some relevance. I'm not saying that it's deter-
21 minative, but it's the sort of thing that seems to me
22 the Court would want to hear.

23 THE SPECIAL MASTER: Well, it's probative value is
24 going to be limited in large amount because Mr. Harris
25 just doesn't have much application to facts, that he's



1 elucidating for a benefit. Furthermore, he's already
2 stated it to me in answering my question, what he thought.

3 MR. SACHSE: Actually it has already been stated, so
4 I'll move on to the next point.

5 THE SPECIAL MASTER: Very fine.

6 Q (By Mr. Sachse) I am going to hand you a copy of the
7 Tribe's amended statement of claims. Have you read that
8 statement prior to today?

9 A Yes, sir, I have.

10 Q Do you agree with it?

11 A Yes, I do.

12 Q Would you go over it item by item and tell us why you agree
13 with it.

14 A Well, starting at the top, "The Tribe's oppose any quanti-
15 fication of their water rights, particularly in the State
16 Court, and affirm that they have paramount rights to all
17 water rising and flowing through our reservation for both
18 present and future needs."

19 I think we are all aware that the Tribes oppose any
20 action by the State for -- to draw the Tribes into a State
21 forum for the adjudication of these rights.

22 Being not an attorney or anything, but the filings
23 of the Tribes is that actually quantification of their
24 rights and their rights alone more or less looks like it

25 harris - direct - sachse



1 might not be equal protection under the law because nobody
2 else's water rights is being quantified.

3 Q You reviewed the part on water for fee lands?

4 A I saw it, I can't find it now.

5 This is water to supply fee lands on the reservation
6 presently owned by the members of Shosone and Arapahoe
7 tribes or their direct descendants. And this is required
8 diversion of 45,390 acre-feet or enough water to irrigate
9 10,374 acres. This has always been a concern of the
10 Tribes, is what would happen to these fee lands that have --
11 that were formally trust lands that the Indians had ac-
12 quired. The Indians were required to take them in fee
13 status, and they take them in fee status, remove them
14 from the inherent water rights as they're trying to prove
15 now. Then our concern is what happens to these lands?
16 Do they set there dry? An Indian that had acquired 160
17 acres of fee land, if he has no water right on it, has
18 no State Water Right, what happens to it? Does it dry
19 up? When he irrigates his own land, which this land is
20 possibly under the very same ditch, what does he do, miss
21 it, --

22 THE SPECIAL MASTER: How many people --

23 A -- dam the water up so it can't go on?

24 THE SPECIAL MASTER: How many families are involved
25 harris - direct - sachse



1 in this specific category, about five of the old families
2 on the reservation or more?

3 MR. SACHSE: No, many more.

4 MR. PERRY: 40 or 50.

5 THE SPECIAL MASTER: 40 or 50 families?

6 MR. SACHSE: 40 or 50 families.

7 THE SPECIAL MASTER: Several thousand or several
8 hundred acres?

9 MR. PERRY: It's about 15,000 acres in fee.

10 MR. SACHSE: Of which about 10,000 are irrigable
11 and we're making a claim for.

12 Q (By Mr. Sachse) Now, I'm not going to ask you about the
13 Big Horn Flats and Stagner Ridge because that's a question
14 for the experts, but I do want to ask you about the Tribe's
15 need of water for the future. I want to begin that by
16 asking you to tell us, if you can, about what the current
17 enrolled membership of the Shoshone and Arapahoe tribes
18 are.

19 A The current enrollment of the Shoshone tribes is approxi-
20 mately 2200. I think the Arapahoe's is approximately
21 3500. It's steadily increasing.

22 THE SPECIAL MASTER: Give me the criteria again.
23 Are these 18 and over or 21 and over?

24 THE WITNESS: Yes, sir, 18 and over.

25 harris - direct - sachse



1 THE SPECIAL MASTER: 18 years or more. Does not
2 include children?

3 THE WITNESS: Yes, sir.

4 THE SPECIAL MASTER: It does?

5 MR. SACHSE: Let's make sure everybody's hearing
6 everybody.

7 Q (By Mr. Sachse) The 2200 Shoshones, that would include
8 children who have the --

9 THE SPECIAL MASTER: Enrolled status.

10 A Those are enrolled members of the Tribe.

11 THE SPECIAL MASTER: Children, adults, everything
12 else?

13 THE WITNESS: Yes, sir, all of them.

14 THE SPECIAL MASTER: That answers my question.

15 All right.

16 Q (By Mr. Sachse) Now, you stated that the population
17 has not been stable, that it's been growing.

18 A No, it's been steadily increasing all the way through.

19 Q Can you tell me now what you see as the reason for the
20 Tribe to need to use additional water in the future over
21 what it's using now?

22 A I can see the land resources and the water resources as
23 the only real salvage for the reservation to remain as
24 a homeland for the Shoshone and Arapahoe Indians.

25 harris - direct - sachse



1 We have younger members of the Tribe that goes off
2 to school and returns and comes back, they have no em-
3 ployment, there's no place to go. The only place for
4 them to look to is their own lands; it's their home and
5 they don't want to leave it. The only recourse they have
6 is agriculture, farming, and use of the land resources.

7 Q I want to ask you one other question. In your knowledge,
8 do the Shoshone fish?

9 A Shoshone have always fished. They're one of the fish
10 eating people.

11 THE SPECIAL MASTER: I was about to say do Italians
12 love opera, but I guess I ought to be careful.

13 A The Indians on the Salmon River who are merely Shoshones
14 and Bannocks are known in the Shoshone language as aqua-
15 diggers, that's salmon eaters.

16 Q (By Mr. Sachse) As long as you can remember, have Sho-
17 shones fished on the Wind River Reservation?

18 A Yes, sir.

19 Q Did the older generation before you speak about fishing
20 on the reservation?

21 A Yes. There's quite a bit of evidence. One is a narrative
22 of a journal from the Rockies to the Columbia. This
23 was written by Townsend. In here he tells of the des-
24 picable condition of the Shoshone women as he viewed them

25 harris - direct - sachse



1 covered with fish gills, fish blood and how wretched
2 they looked. I think it's a good description of how
3 the Indians smoked to preserve their salmon and all
4 other fishes.

5 MR. SACHSE: I have no other questions.

6 THE SPECIAL MASTER: All right. Mr. Krob --

7 Do you want to take a break?

8 THE WITNESS: I'd like to.

9 THE SPECIAL MASTER: Let's take a ten minute break.

10 (Thereupon a ten minute recess
11 (was taken.

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1 THE SPECIAL MASTER: All right. May we come to order,
2 please? Is there cross-examination -- or Mr. Echohawk?

3 MR. ECHOHAWK: No cross-examination by the United
4 States, Your Honor.

5 THE SPECIAL MASTER: Mr. Krob, any by the State of
6 Wyoming?

7 MR. KROB: I believe it has been our procedure to let
8 the individual appropriators go first.

9 THE SPECIAL MASTER: Cross by Counsel for other
10 defendants. Do you know Mr. Radosevich?

11 CROSS-EXAMINATION

12 BY MR. RADOSEVICH:

13 Q Mr. Harris, I remarked to the other people if we could
14 have informative testimony by all the other witnesses we
15 had before, this would be a very interesting lawsuit all
16 the way through. I find it from a historical and personal
17 standpoint very fascinating.

18 The questions I have relate to some of the answers
19 you provided when Mr. Sachse was directing his questions.
20 One was with respect to the amended statement in which you
21 gave as your reason, the reason for the Tribes opposing
22 quantification, that nobody else's water rights were being
23 quantified. Would you elaborate on this point, why you
24 feel nobody else's water rights are quantified?

25 harris-cross-radosevich



1 A I see no evidence of quantification of anybody else's
2 water rights. The Bureau of Reclamation, third division,
3 I see no quantification of those rights.

4 Q What about the fact the duty of water statute under the
5 State law provides for a certain quantity of water in
6 allocating the water to the lands, is that not a form of
7 quantification?

8 A I'm not aware of that State law.

9 Q Are you aware that there is a certain amount of water
10 allotted to the lands under the Federal Irrigation Project?

11 A Yes.

12 Q Is that a form of quantification?

13 A I don't know, sir.

14 Q Okay. In your opinion it's -- you can't form a judgment
15 on that?

16 A No. I haven't -- I haven't even thought about that.

17 Q You have stated with respect to 2-A, as far as basis for
18 claiming some of the water for Indians who are not enrolled,
19 that there would be a problem or you see where there might
20 be some difficulty in the sense there may be some land
21 that would have to go idle, the water which passed by land
22 owned by those individuals to land owned by an enrolled
23 member. I would like your opinion as to what would be the
24 impact or what would be the equity in also having a

25 harris-cross-radosevich



1 non-Indian's land who may now not receive water because
2 he's taken out of priority as a result of the Reservation
3 Doctrine, what is your feeling as far as non-Indian's
4 land not receiving water, and he may be on the same lateral
5 that an Indian may be?

6 A My personal feelings on that is that there should be some
7 method of water for those lands. I think Walton sets up
8 a water right that they are entitled to, also Powers said
9 they are entitled to some kind of a water right. The
10 determination of what this water right is, I do not know.

11 Q Mr. Harris, how many non-Indians are there on the Wind
12 River Indian Reservation?

13 A I have no idea.

14 Q Are there considerable irrigated acres --

15 THE SPECIAL MASTER: When can I get an answer to that
16 question? I have asked that before, and I keep getting
17 the same answer from three different witnesses, that
18 they don't know. Is that going to come into the trial
19 before we are through?

20 MR. ECHOHAWK: Not through the United States.

21 MR. RADOSEVICH: Your Honor, I believe it will come
22 in, as I understand it, in some of the testimony that the
23 State is working on, and the acreages from some of the
24 earlier maps that the U.S. Government had put on indicated
25 harris-cross-radosevich



1 that it might be considerable.

2 THE SPECIAL MASTER: Haven't we got problems of
3 those that are Indian and non-Indian both and that you
4 have members of a Tribe that include Indian and several
5 are not on enrolled status, yet they are man or wife and
6 family?

7 THE WITNESS: I don't know.

8 MR. RADOSEVICH: It was my understanding that they
9 do.

10 THE SPECIAL MASTER: I would welcome some facts on
11 which to be of mind on that material.

12 Q (By Mr. Radosevich) Mr. Harris, do you know of any
13 circumstances in which there was an Indian and non-
14 Indian --

15 THE SPECIAL MASTER: I don't mean now. They are
16 going to get it.

17 Q (By Mr. Radosevich) Yes, but I mean in terms of do you
18 know of any circumstances or any conditions on the Wind
19 River Indian Reservation in which there's an Indian and
20 non-Indian on the same lateral receiving water?

21 MR. ECHOHAWK: Objection, Your Honor. This is
22 irrelevant to the issues of practicably irrigated acreage.
23 I think we have taken a turnoff into an entirely different
24 area in the lawsuit which is not relevant.

25 harris-cross-radosevich



1 THE SPECIAL MASTER: It may not be relevant to the
2 lawsuit, but it is a factual question and I'm going to
3 overrule the objection and admit the answer in the event
4 it should have some probative value.

5 Do you want to hear the question again?

6 THE WITNESS: No, I think I can answer. Yes, there
7 is circumstances of where an Indian and non-Indian are on
8 the same lateral.

9 Q (By Mr. Radosevich) Have you had any discussions with your
10 Counsel as to what the impact of this lawsuit would be
11 upon those individuals?

12 A No, sir, I haven't.

13 Q Have you formed any opinion of your own about what the
14 impact would be?

15 A No, sir, I haven't.

16 MR. RADOSEVICH: Your Honor, I have no further
17 questions since we cannot go into the quantification at
18 this time.

19 THE SPECIAL MASTER: All right. Mr. Harris, I have
20 just a couple of questions.

21 Of the 2,200 enrolled members of the Shoshone Tribe,
22 how many are over 18, do you know?

23 THE WITNESS: Well, approximate.

24 THE SPECIAL MASTER: All right.

25 harris-cross-radosevich



1 THE WITNESS: There's approximately 800 18 years and
2 older. That is just an approximate figure because the
3 rolls can change continually, but we get this from a
4 recent referendum where there is possibly in the
5 neighborhood of 800 enrolled members who were eligible
6 to vote. Not all those voted.

7 THE SPECIAL MASTER: I see.

8 THE WITNESS: But the number puts it up around
9 pretty close to 800.

10 THE SPECIAL MASTER: Voting age. Men and women?
11 How many of the 3,500 Arapahoe's -- I suppose I ought
12 not ask you this question, we will wait for another
13 witness.

14 I guess I have no other questions either.

15 MR. KROB: The State just has a few, Your Honor.

16 THE SPECIAL MASTER: All right.

17 CROSS-EXAMINATION

18 BY MR. KROB:

19 Q Mr. Harris, were you here during the opening remarks of
20 Mr. Sachse?

21 A I never heard you.

22 Q I'm sorry, I'll try to speak up a little bit. Were you
23 here during the opening remarks of Mr. Sachse?

24 A Yes, I was.

25 harris-cross-krob



1 Q Do you recall his reference to claims being made for
2 90 percent of the enrolled members and about -- are claims
3 they are asserting for about 90 percent of them, or 90
4 percent of them were for enrolled Tribal members and 10
5 percent were for direct decendants of the enrolled Tribal
6 members?

7 A Yes.

8 Q In what situations would a direct decendant not be an
9 enrolled member?

10 A As long as they are not eligible under the enrollment
11 regulations, they are not enrolled.

12 Q And what are those regulations?

13 A I think that's one of the -- one of the requirements is
14 one-fourth degree Shoshone blood with one parent being an
15 enrolled member in that Tribe. The other one that is not
16 eligible is any woman who's married to a white man cannot
17 enroll her child.

18 Q Are these the type of people who fall into that 10 percent
19 category for which the Tribes are asserting the claim?

20 A I didn't get that.

21 Q Are these the type of people who fall into that 10 percent
22 category?

23 A Yes, sir.

24 Q You also indicated that the Tribal rolls are increasing
25 harris-cross-krob



1 in size, is that correct?

2 A Yes, sir.

3 Q How much are they increasing?

4 A Oh, I'm not sure of the increase, but its increased from
5 I think around 1,200 up to 22,000 here within the last
6 seven or eight years.

7 Q So it was 1,200 seven or eight years ago?

8 A I'm not too sure, but I think it's about that number.

9 Q Roughly. Turning to your ranching for a minute, Mr.
10 Harris, where do you get the water that you use on your
11 ranch?

12 A My water is delivered from the Midvale Irrigation System.

13 Q Do you pay Midvale for that water?

14 A Yes, sir, I do.

15 Q Is it true that that water that is delievered to your
16 ranch may be broken down into allotted water and excess
17 water?

18 A Midvale -- in distribution of their water they break it
19 down into excess water and then your regular acre-foot
20 per acre basis. It goes through a weir and it's measured.
21 Is that your question?

22 Q Could you just briefly explain what you mean by excess
23 and allotted water you get from Midvale?

24 MR. SACHSE: Objection. The Witness didn't say
25 harris-cross-krob



1 allotted water, he said excess.

2 THE SPECIAL MASTER: He said it.

3 MR. SACHSE: And ordinary, some other word.

4 Q (By Mr. Krob) Does the term allotted water mean anything
5 to you with regard to the water you get from Midvale?

6 A No, sir.

7 Q Does the ordinary water -- could you explain to the Court
8 the difference between what you have referred to as the
9 ordinary water you get from Midvale and the excess water?

10 A Midvale sets a certain amount of water that would be
11 delivered to so many acre-feet of water to so many acres.
12 I think it's two cubic feet of water for every two acres.
13 As soon as you go over that allotment amount, then you start
14 on excess water. This is Midvale's operation, and I'm
15 subject to the same operations as any other member of
16 Midvale.

17 Q Do you pay Midvale for both what you have referred to as
18 your ordinary water and your excess water?

19 A Yes, sir.

20 THE SPECIAL MASTER: This has really gotten a long
21 way of the departure from the direct, and you know that,
22 but I hear no objections so I'm letting you go ahead.
23 He testified nothing about this in his direct testimony.

24 Q (By Mr. Krob) Is it true you run your cattle on what is
25 harris-cross-krob



1 known as the Big Horn Flats area?

2 A No, I do not. I run my cattle on Big Horn Draw.

3 Q Would Big Horn Draw be inundated if the Big Horn Flats
4 project goes through?

5 A No, sir.

6 MR. KROB: I will have to talk to that expert.

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harris-cross-krob



1 Q (By Mr. Krob) Mr. Harris, you spoke about the expanding
2 needs of the people or the young people in particular that
3 leave the Reservation and come back, and you mentioned that
4 utilization of the resource is the only means they have of
5 supporting themselves when they come back; is that correct?

6 A Yes, sir.

7 THE SPECIAL MASTER: I doubt very much that he said
8 the utilization of this resource.

9 MR. KROB: I believe the testimony was water resource.

10 THE SPECIAL MASTER: Of the land and water.

11 MR. KROB: Including the water.

12 THE WITNESS: Land and water resources, I think I said.

13 Q (By Mr. Krob) Okay. Are you aware of any plans being
14 considered by the Tribes other than irrigated agriculture
15 or livestock to provide livelihoods for those people?

16 A Yes. There's quite a few other areas that they're examin-
17 ing and hope to get into.

18 Q Would you please describe some of those, please?

19 A Some of those is certain forms of industry. Because of
20 the isolated condition of the Reservation, this has not
21 been possible in the past.

22 Q Are there any other than industry, any other plans?

23 A Not that I know of, outside of the oil industry.

24 Q With regard to the irrigated agriculture and the livestock
25 resources of the Reservation, what is the constraining
harris - cross - krob



1 factor on expanding the livestock operations on the Reser-
2 vation?

3 A. There's a 250 head limit placed upon each family unit.

4 Q. Who places that limitation?

5 A. It's placed jointly by the government and by the Tribes.

6 Q. Is that the only factor that constrains -- at the present
7 time constrains the expansion of the livestock industry?

8 A. The only thing I know of on the grazing lands.

9 Q. Directing your attention to the amended statement of the
10 Tribes that I believe Mr. Sachse handed to you earlier.

11 A. Yes, sir.

12 Q. When did you first examine this document?

13 A. I think this was given to me in this form yesterday about
14 4:00 or 5:00.

15 Q. What input did you have in the preparation of this document?

16 A. I think that the first part of this has always been my
17 input.

18 Q. By the "first part" you're referring to what?

19 A. By the paramount rights, prior rights.

20 Q. So it is your opinion that all of the water claim is
21 necessary for the expanded development of the Reservation?

22 A. Yes, sir.

23 Q. Why?

24 A. Because it's provided by Winters; feel that it's a lawful
25 right and all that it takes is to put it to use and that's
harris - cross - krob



1 what future generations will have for their benefit.
2 Q. Who came up with the quantities claimed within the amended
3 Statement of Claims, if you know?

4 A. What's that?

5 Q. Who provided the quantities that are contained in the
6 Statement of Claims, if you know, the amended statement?

7 A. I think most of these came from the experts and what it
8 would it would take to, from the evidence that's been
9 collected and combined by the experts.

10 Q. Has the Shoshone or -- Well, has the Shoshone Business
11 Council ever considered the construction of a dam on the
12 Reservation?

13 MR. ECHOHAWK: Objection, Your Honor, beyond the
14 scope of direct.

15 THE SPECIAL MASTER: It's beyond the scope of direct,
16 but I sure wish you wouldn't object, I'd like to hear the
17 -- although it is beyond the scope of direct examination,
18 but I think the witness may answer if he wishes.

19 In your years, Mr. Harris, has the Council ever --
20 What did you say, discuss?

21 MR. KROB: Consider dams.

22 THE SPECIAL MASTER: Consider dams on the Reservation?

23 THE WITNESS: Not to my knowledge, they haven't took
24 into consideration the actual building of the dams. I

25 harris - cross - krob



1 think this is more or less up to the people that need the
2 water. They have the reserved rights.

3 Q. (By Mr. Krob) During your direct testimony, you indicated
4 that the Harpoon Ranch is within the Reservation boundary;
5 is that correct?

6 A. What's that?

7 Q. During your direct testimony, you indicated that the Har-
8 poon Ranch is within the Reservation boundaries?

9 A. Yes, sir.

10 Q. Do you happen to have a general idea of the legal descrip-
11 tion of the Harpoon Ranch?

12 A. No, I don't.

13 Q. Upon what do you base your conclusion that the Harpoon
14 Ranch is within the boundaries of the Wind River Indian
15 Reservation?

16 A. By the boundaries of the Reservation, it's all to the
17 north of that boundary line.

18 Q. At one point in your direct testimony you refer to the
19 report by a reverend.

20 A. Yes, sir. This is Reverend Roberts.

21 Q. May I see that report, please?

22 (Witness complied.)

23 Q. Do you have with you any other notes to which you
24 referred during your testimony?

25 harris - cross - krob



1 A. No, sir. The only other report that I have is in the
2 hotel, is the book that I referred to as the official
3 investigation of the project. It's Volume II of that.

4 Q. Okay. I'm sorry, could you go through the title of that
5 again?

6 A. I think it's the Study of the Project, Volume II.

7 THE SPECIAL MASTER: Of which project, Mr. Harris?

8 THE WITNESS: It's the Reservation Project. It
9 lists within this all the individual ditches that people
10 constructed.

11 THE SPECIAL MASTER: Oh.

12 MR. KROB: If there are no objections from counsel,
13 we would like to obtain a copy of the report that he
14 referred to.

15 THE SPECIAL MASTER: Is that the document that you
16 just handed him? You can copy that. May we see that?

17 THE WITNESS: I have no objection to any copying as
18 long as it doesn't destroy that.

19 THE SPECIAL MASTER: No, it won't. You can take it
20 and copy it on the Xerox machine.

21 MR. SACHSE: We have no objections --

22 THE SPECIAL MASTER: The United States?

23 MR. ECHOHAWK: We have no objection.

24 MR. SACHSE: -- of copying that report.

25 harris - cross - krob



1 Q (By Mr. Krob) With regard to fishing on the Reservation,
2 when did the Shoshone Tribe first begin to fish?

3 A I think the Shoshone Tribes have fished from time im-
4 memorial.

5 Q Is it a primary source of food for the Tribe?

6 A It was at one time, yes.

7 Q Was it a primary source of food for the Tribe at the time
8 the Reservation was created?

9 A Yes, in the '63 Treaty, which comprises the Green, the
10 Salmon and all of that, that was the original home of
11 the Shoshones, all fishing grounds.

12 Q How about in 1868?

13 A 1868 was the hunting grounds, which was carved out of
14 that. I don't know who all owned it, Sioux, Crow, Black-
15 foot.

16 Q And fishing was still a primary source of food?

17 A Yes, sir, the Big Wind River.

18 Q At one point in your testimony you indicated that you
19 felt that tribal lands were endowed with a reserved
20 right based on Winters; is that correct?

21 A Yes, sir.

22 Q Is that extended from the time of the creation of the
23 Reservation to all lands throughout the Reservation?

24 A Yes, sir.

25 harris - cross - krob



1 Q Okay. If the Shoshone Indians, in fact, had this reserved
2 right or this Winters' Doctrine right, why did they apply
3 for state rights?

4 THE SPECIAL MASTER: Well, I think that's -- Well --

5 MR. ECHOHAWK: Objection, objection, Your Honor.

6 THE SPECIAL MASTER: I can't try your case. The
7 objection is overruled. It comes too late. It comes --

8 MR. ECHOHAWK: The witness has not answered.

9 THE SPECIAL MASTER: But it comes from my observation,
10 reaction.

11 Mr. Harris is not the man to go back over the 1905,
12 1908, all the hours that we've put on of water rights
13 right after the area was thrown open. He can answer if
14 he wishes.

15 THE WITNESS: I'll attempt to answer that.

16 THE SPECIAL MASTER: All right.

17 THE WITNESS: I think the Tribes come out and started
18 developing their own ditches on their land lands, feeling
19 that it was their right. I think that the United States
20 Government was more or less required to notify the State,
21 not for the purpose of adjudicating that right, but for the
22 purpose of letting the State know how much water has
23 actually been adjudicated out of those rivers, and this
24 continued on up, as I understand it, until 1908 when the

25 harris - cross - krob



1 Winters Doctrine came out, and at that time I understand
2 the United States Government ceased this.

3 Q. (By Mr. Krob) When you testified as to the history of the
4 Tribe, its reliance on fishing historically, its reliance
5 on irrigated agriculture and livestock historically, do
6 you depend in significant amount on oral history that's
7 been told to you by other members of the Tribes?

8 A. Yes, also a lot of reading.

9 MR. KROB: I have no further questions of this wit-
10 ness, but would move that all the portion of the witness'
11 testimony that relies on oral history, as has been told
12 him, be stricken as to hearsay.

13 THE SPECIAL MASTER: We would overrule the objection.
14 It's inevitable in a case of this kind to permit a certain
15 amount of it, just as it is to permit some evidence on
16 impact, although the Good Book says sometimes not to.

17 MR. KROB: All right.

18 THE SPECIAL MASTER: Thank you very much, Mr. Harris.
19 You're still under oath, and stick around because you may
20 be recalled later in the case.

21 Next witness, please. Gentlemen, it's 4:20, that's
22 up to you if you think you need tomorrow for the other
23 witnesses and if you're tired and really, really want to
24 adjourn, you won't get a big argument out of me.

25 harris - cross - krob



1 MR. ROGERS: I'd like to try and go ahead and do
2 this witness, Your Honor.

3 THE SPECIAL MASTER: Next witness.

4 MR. ROGERS: The Tribes would call Pius Francis Moss
5 to the stand, please.

6 THE SPECIAL MASTER: Mr. Moss, you've just been sworn
7 earlier today. Fine, take your seat, please.

8 PIUS FRANCIS MOSS

9 having been first previously duly sworn, was examined and tes-
10 tified as follows, to wit:

11 DIRECT EXAMINATION

12 BY MR. ROGERS:

13 Q Would you please state your name for the record, please?

14 A My name is Pius Moss.

15 Q Mr. Moss, where do you live?

16 A I live in the Arapahoe area, Wind River Indian Reservation.

17 Q Wind River Reservation. Is that an area of the Reservation
18 south of Riverton?

19 A South and west of Riverton.

20 Q Are you a member of either the Shoshone or the Arapahoe
21 Tribes?

22 A I'm a member of the Northern Arapahoe Tribe.

23 Q What degree of Indian blood do you have, Mr. Moss?

24 A Four fourths.

25 moss - direct - rogers



1 Q. Four fourths?

2 A. Full blood.

3 Q. You're a full blood Northern Arapahoe Indian.

4 How long have you lived on the Reservation?

5 A. All my life.

6 Q. I'd like to go back over a bit and discuss the various
7 things you've done in your life here on the Reservation.

8 What was your initial occupation? Well, let me ask
9 you first, what degree of schooling did you have?

10 A. I completed the eighth grade.

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1 Q. (By Mr. Rogers) And what did you begin to do after the
2 eighth grade?

3 A. Upon completion of the eighth grade, I started work for
4 St. Steven's Missions School.

5 Q. Which, of course, is on the Reservation?

6 A. Yeah.

7 Q. What did you do for the school?

8 A. Well, as I stated before, I was jack of all trades and
9 master of none.

10 Q. What sort of things would be included in that, what sort
11 of things did you do?

12 A. I was a carpenter, plumber, electrician, cowboy, farmer,
13 you name it and I did it.

14 Q. How long did you continue doing that for the Missions
15 School?

16 A. About 30 years.

17 Q. What period of time are we talking about?

18 A. I began in 1929, and I went on my own, as we say, as I
19 put it, started ranching in 1960.

20 Q. This was your own ranch?

21 A. Yeah.

22 Q. About how many acres were on your ranch?

23 A. Our own property, along with some land I bought and what
24 I lease of tribal ground and my relatives, approximately

25 moss - direct - rogers



1 400 acres.

2 Q 400 acres. And so this was a mixture then of that land
3 you owned --

4 A. Yes.

5 Q -- and land your relatives owned?

6 A. Yes.

7 Q And then you say you leased some?

8 A. I leased tribal ground, right.

9 Q Leased from the Tribes?

10 A. Right.

11 Q So you had to put this all together then to get the size
12 spread you needed?

13 A. Yes.

14 Q With respect to all of the land you owned, did you own
15 all of it in trust?

16 A. No.

17 Q Some was owned in fee?

18 A. We bought this particular tract of land from my wife's
19 brother, who's an enrolled member of that Northern Arapahoe
20 Tribe which was held in trust for him. We negotiated with
21 him to buy this land, and when the time came to sign the
22 papers, we were instructed we had to buy or take this
23 land in fee. Before that, I have no knowledge of having
24 to take the land in fee.

25 moss - direct - rogers



- 1 Q. Who instructed you that you would have to --
- 2 A. One of the BIA men that had charge of the realty depart-
- 3 ment. I don't recall his name.
- 4 Q. Let me understand then, this was a situation where you
- 5 purchased from another Indian?
- 6 A. Yeah.
- 7 Q. And you had negotiated with him a price and the arrangements
- 8 for sale?
- 9 A. Yes.
- 10 Q. He held the land in trust?
- 11 A. Uh-huh. I mean, yes.
- 12 Q. Did you say he was a relation of yours?
- 13 A. My wife's brother.
- 14 Q. Your wife's brother.
- 15 A. One Indian buying from another Indian using tribal money.
- 16 Q. Do I take it then after you negotiate such a deal to
- 17 purchase trust land like this, that you then go to the BIA
- 18 and complete the transaction there?
- 19 A. We signed the papers there at the agency's office at Fort
- 20 Washakie, and from there, of course, it went to the area
- 21 office, and whatever process it had to go through. It
- 22 eventually came back to us with me and my wife's signature
- 23 on this particular tract of land.
- 24 Q. But this was the Bureau of Indian Affairs official at the
- 25 moss - direct - rogers



1 agency that told you you would have to take it in fee?

2 A. Yes.

3 Q. Did he explain to you why you would have to take it in
4 fee?

5 A. He didn't explain to me why.

6 Q. For what reason would you want to take the land in trust
7 in the first place?

8 A. For the simple reason that we didn't have to pay taxes.

9 Q. On that land. Why did you then go ahead and take the land
10 in fee?

11 A. Before signing the papers I and my wife got together and
12 spoke on the matter of then eventually trying to get it
13 back into trust, and to this day we have never succeeded.

14 Q. Did you continue to make efforts after you purchased that
15 land to get it in trust?

16 A. Yeah, uh-huh.

17 Q. Do you still -- Excuse me.

18 A. In the meantime we gift-deeded this particular tract to my
19 daughter, the second oldest, and she, in turn, has pro-
20 ceeded to try to get this particular tract into trust.
21 But up to this point they told her they would send her some
22 papers to fill out. Well, this was about six months ago
23 and up to this point she has received nothing.

24 Q. Have they given her any promises it will be put into

25 moss - direct - rogers



1 trust if --

2 MR. KROB: Objection, Your Honor, it calls for hear-
3 say.

4 THE SPECIAL MASTER: It does call for hearsay. Sus-
5 tained.

6 Q. (By Mr. Rogers) What funds did you use to purchase this --
7 By the way, what size tract of fee land are we talking
8 about?

9 A. Eighty acres.

10 Q. What funds did you use to purchase this land?

11 A. We borrowed the money from the Arapahoe Tribal Credit
12 Program.

13 Q. What is the source of the funds in the Arapahoe Tribel
14 Credit Program?

15 A. From tribal resources and --

16 Q. Income from tribal resources?

17 A. Yeah.

18 Q. What are some examples of that?

19 A. Oil, gas, grass, tribal leases, fishing permits.

20 Q. These are trust funds?

21 A. Yes.

22 Q. Tribal trust funds. Are they sometimes referred to in-
23 formally among tribal members as Indian money?

24 A. Yeah.

25 moss - direct - rogers



1 Q. So you were trying to purchase a piece of Indian trust
2 land with Indian money?

3 A. Uh-huh.

4 Q. And the Bureau told you you had to take it in fee, is
5 that correct?

6 A. Yes.

7 THE SPECIAL MASTER: What year was that, Mr. Moss?

8 THE WITNESS: I think we signed the papers in 1961.
9 '60 or '61, I don't recall exactly.

10 Q. (By Mr. Rogers) Mr. Moss, are you aware since the time
11 you purchased this particular tract of trust land, are
12 you aware whether or not other Indians on the Reservation
13 are being allowed by the Bureau to purchase trust land
14 and take it in trust themselves?

15 A. Yes.

16 MR. KROB: Objection, Your Honor. I'm not sure the
17 foundation has been laid for that question. He is asking
18 what all these other folks are doing.

19 THE SPECIAL MASTER: So far the question has been
20 asked and answered. Now, let's see what the next question
21 is and see what we can do.

22 MR. ROGERS: I have no other questions, Your Honor.

23 Q. (By Mr. Rogers) Mr. Moss, if we may step back a moment,
24 as we reviewed your life career, we have gotten to the
25 point of discussing your ranching and part of it was this
moss - direct - rogers



1 80-acre tract of fee land. How many head of cattle did
2 you run on that ranch?

3 A. At what time, counting cows and calves running with the
4 Lower Arapahoe Cattle Association, one summer and one
5 fall I checked out 386 head of cows and calves.

6 Q. How long did you stay in the ranching business?

7 A. Approximately eleven, twelve years.

8 Q. Why did you bring it to a close?

9 A. In working in my fields I ran into my baler, the portion
10 that turns the bales in the back of the baler, I run that
11 piece of strap iron into my groin, and that disrupted a
12 blood vessel and from that day on my leg has been no
13 good. So consequently, I had to sell out.

14 Q. You sold your -- What exactly did you sell? What exactly
15 did you sell to go out of the ranching business?

16 A. Just the cows. The rest of the property we still have.

17 Q. Except this 80-acre tract of fee land now that you deeded
18 to your daughter?

19 A. That's right.

20 Q. I assume in all this career of ranching and whatnot --
21 you said you done farming for the Missions School --
22 have you had any experience with irrigation?

23 MR. KROB: Objection, Your Honor.

24 THE WITNESS: I've been irrigating for --

25 moss - direct - rogers



1 MR. KROB: We have been informed by counsel during
2 the deposition of Mr. Moss that the only area he would
3 testify to is the conveyance regarding the change from
4 trust to fee lands, that he would not be asked about his
5 irrigation or transient operation. We object to this
6 line of questioning.

7 THE SPECIAL MASTER: I don't think it's going to make
8 any difference.

9 MR. PERRY: In addition, Your Honor, he was questioned
10 about that very subject during the deposition, so I don't
11 see any grounds for it.

12 MR. ROGERS: Your Honor, it's going to relate to a
13 piece of fee land, in the first place.

14 THE SPECIAL MASTER: I will overrule the objection.
15 He may answer.

16 THE WITNESS: What was the question again?

17 Q (By Mr. Rogers) Have you had any experience in irrigation?

18 A I've had experience ever since I was ten years old, and
19 every year I have had to irrigate.

20 Q Every year since you were ten?

21 A Yeah.

22 Q What types of irrigation are you familiar with?

23 A Flood irrigation, and eventually tubes, and was in the
24 process of going into sprinkler irrigation on the fee

25 moss - direct - rogers



1 land that we purchased and on our own tract, our own
2 ground, approximately 90 acres.

3 Q. Did you have occasion in this period of life doing these
4 things to design your own layouts and so forth?

5 A. Well, my dad taught me just what he meant to, spread
6 water or use flood irrigation, gravity or whatever you
7 call it, water seeking itself. There was one area in
8 the field that I recall that I could not get wet. I
9 had my canvas dam too far below. I did not know about
10 it. The water kept to the left of this one hump. All
11 right, he was there and he directed me to go up the
12 lateral a little bit. So I went up the lateral, I don't
13 know how many feet, and I put my dam there. Then it went
14 the other way, and then he said, "What does that tell you,
15 it's going that way here and down here it's going that
16 way. If you want it there on that one little hump, then
17 put it in the middle," he said. So I proceeded to do that,
18 and eventually that hump got wet. So man has to be kind
19 of an engineer with a lot of horse sense and practical
20 knowledge through direct experience to gain that area of
21 information for himself.

22 Q. Thank you. Did you irrigate the 80-acre tract of fee
23 land you owned?

24 A. Yes.

25 moss - direct - rogers



- 1 Q. How many acres of it did you irrigate?
- 2 A. Eighteen acres was irrigable on this particular tract.
- 3 Q. Irrigable or that you actually did irrigate?
- 4 A. Yes.
- 5 Q. You irrigated 18 acres?
- 6 A. Yes.
- 7 Q. Do you have a state water right?
- 8 A. No.
- 9 Q. Or did you have a state water right?
- 10 A. No.
- 11 Q. Does your daughter?
- 12 A. No.
- 13 Q. How is that land served?
- 14 A. The Subagency Canal of Lower Arapahoe.
- 15 Q. Is that part of the Federal Indian Project?
- 16 A. Yes.

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1 Q (By Mr. Rogers) I believe you said your daughter --
2 or did you say your daughter still irrigates that land?

3 A She leased the ground. Of course the lessee does the
4 irrigating.

5 Q But it is irrigated?

6 A Yes.

7 Q Do you do any fishing, Mr. Moss?

8 A That's what I did all during my growing up years, fished
9 about, not maybe every day of the year, but a good
10 portion of those times.

11 Q Did you fish for sport or did you fish for food?

12 A Food.

13 Q Was this a custom among most Arapahoes or was this some-
14 thing you did on your own?

15 A In my growing years, all the children, kids of my age
16 fished for food because of the time, there was no money.

17 Q Did they fish for food for the entire family?

18 A Yes, for the entire family.

19 Q What do you do now, Mr. Moss, since you got out of the
20 ranching business?

21 A I now work for St. Steven's Indian School. I did say
22 mission school, which it was at that time, but now Indian
23 school because of the Indians taking over the schools
24 through a BIA contract, so now I work for the St. Steven's

25 moss - direct - rogers



1 Indian School as a language and culture teacher.

2 Q What language and culture?

3 A Teacher, Northern Arapahoe History.

4 Q You teach the Arapahoe language there?

5 A Arapahoe language.

6 Q Are you a certified teacher in?

7 A By the State of Wyoming.

8 Q By the State of Wyoming?

9 A Yes.

10 MR. ROGERS: I have no further questions, Your Honor.

11 THE SPECIAL MASTER: Thank you. United States?

12 MR. ECHOHAWK: No cross by the United States.

13 THE SPECIAL MASTER: Cross by other defendants?

14 MR. RADOSEVICH: Your Honor, I have just one question
15 that I would like to ask.

16 CROSS-EXAMINATION

17 BY MR. RADOSEVICH:

18 Q Mr. Moss, you testified that one of the reasons why you
19 preferred to take the land in trust is you do not pay
20 taxes. My curiosity immediately went forward. Do you
21 pay taxes then on deeded land?

22 A We would -- While we owned this, before I gave it to my
23 daughter we did pay taxes on it.

24 Q But this is --

25 moss - direct - rogers

~~MOSS - CROSS - radosevich~~



1 A But that's the reason why I say, the reason why I want it
2 back in trust, is I don't have to pay taxes on it.

3 Q And that is the practice on the reservation that --

4 A Yeah.

5 Q An Indian owning --

6 A Fee land.

7 Q Trust land, fee land would not pay. If he owns it in
8 trust he does not pay taxes?

9 A Right.

10 MR. RADOSEVICH: If it's deeded land he pays taxes.
11 Your Honor, I have no further questions.

12 THE SPECIAL MASTER: Does the State of Wyoming have
13 cross-examination?

14 MR. KROB: Your Honor, I would ask that we be able
15 to hold off on cross-examination for two reasons. First,
16 it's now 4:35, but more importantly, I have the transcript
17 of the deposition before me, and I know that the Court
18 does not like to get involved in depositions, but if the
19 Court would like, I would read the portions that indicate
20 that I asked the witness what he was going to testify to,
21 I asked his counsel what he was going to testify to and
22 got assurance from both the witness and counsel that his
23 only testimony would be as to the unfairness of the con-
24 veyance with which he was involved, not about his ranching

25 moss - cross - radosevich



1 operation.

2 THE SPECIAL MASTER: There's no harm done about what
3 he said. There's no probative value to what he said on
4 being an expert of irrigation or any other contribution
5 toward solving my problems of determining issues based
6 upon irrigation.

7 MR. KROB: My point is, Your Honor, I would like to
8 have the opportunity, since I was taken a little bit by
9 surprise, to look at the deposition over the evening,
10 see if there is anything I need to ask him in these other
11 areas.

12 THE SPECIAL MASTER: I presume Mr. Moss is going to
13 be in town overnight anyway?

14 THE WITNESS: Yeah.

15 THE SPECIAL MASTER: So why don't we do that and
16 meet at nine, nine o'clock in the morning.

17 MR. KROB: Thank you, Your Honor.

18 THE SPECIAL MASTER: Is that agreeable, is there
19 any --

20 MR. ROGERS: Well, Your Honor, I frankly do object
21 to the procedure. I don't see the point of hanging over
22 just to find out whether Mr. Krob can find a line or
23 two in the deposition.

24 THE SPECIAL MASTER: Well, I don't either, but
25 I'm trying to be a nice guy.



1 MR. ROGERS: We spent a great deal --

2 THE SPECIAL MASTER: Just a minute, please.

3 MR. ROGERS: The Court's time and --

4 THE SPECIAL MASTER: Just a minute, please, just a
5 minute, please. Let's don't end on the usual cacophony
6 at the end of a day's work.

7 Are you trying to get out of town tonight?

8 MR. ROGERS: No, sir.

9 THE SPECIAL MASTER: Well then, we've got no problem.

10 MR. ROGERS: I don't think holding over the witness
11 for this particular purpose is -- with as much time as we
12 have left in the day --

13 THE SPECIAL MASTER: Well, let's do and let's have
14 him back on the stand in the morning at nine for a few
15 questions of the subject matter. And you'll have one
16 coming from him on the same arrangement.

17 All right, we're in recess until tomorrow morning
18 at nine o'clock.

19 (Proceedings recessed at 4:40 p.m.)

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INDEX TO EXHIBITS

	<u>IDENTIFIED</u>	<u>RECEIVED</u>
Exhibit WRIR GS-1	7777	
Exhibit WRIR GS-4	7768	
Exhibit WRIR-C-317, C-317-A	7842	7858
Exhibit WRIR-C-319		7870

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

INDEX TO EXAMINATION

PAGE

WITNESS: GEORGE CHRISTOPULOS

Direct Examination By Mr. Krob 7766

WITNESS: MAE ECKMAN

Direct Examination By Mr. Echohawk 7842

Voir Dire Examination By Mr. Krob 7852

Direct Examination (Resumed) By Mr. Echohawk 7859

TRIBES' EVIDENCE

WITNESS: ROBERT N. HARRIS

Direct Examination By Mr. Sachse 7907

Cross-Examination By Mr. Radosevich 7929

Cross-Examination By Mr. Krob 7934

WITNESS: PIUS FRANCIS MOSS

Direct Examination By Mr. Rogers 7946

Cross-Examination By Mr. Radosevich 7959



REPORTERS' CERTIFICATE

1
2 State of Wyoming)
3 : SS
4 County of Laramie)

5 We, Merissa Racine and Mary Nelson, Registered Pro-
6 fessional Reporters and Notaries Public in and for the First
7 Judicial District, State of Wyoming, hereby certify that the
8 facts as stated in the caption hereof are true; that we did
9 at the time, date and place, as set forth, report the proceed-
10 ings had before the Honorable Teno Roncalio, Special Master
11 Presiding, in stenotype; that the foregoing pages, numbered
12 7749-7962, inclusive, constitute a true, correct and complete
13 transcript of our stenographic notes as reduced to typewritten
14 form under our direction.

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

18 Dated this 16th day of July, 1981.

19 Merissa Racine
20 MERISSA RACINE
21 Registered Professional
22 Reporter

23 Mary Nelson
24 MARY NELSON
25 Registered Professional
Reporter

