

Interview with Marvin Cohen

Intro: Today is August the 23rd, 2005 here in Scottsdale and I'm Pam Stevenson and Andy Garcia is the videographer. Now you introduce yourself.

A. I'm Marvin Cohen and I'm an attorney with Sacks Tierney here in Scottsdale. I've been living in Phoenix since about 1986 but I grew up in Tucson. I lived in Tucson from 1944 until I spent some time in Washington in the 70's and then moved to Phoenix to come home to Arizona.

Q. I'd like to start with some background about when and where you were born.

A. I was born in Akron, Ohio. My family moved around. My father was the manager of shoe stores, sort of a troubleshooter. So every year, they would move him to a new town until my mother got bronchitis. We were in Pittsburgh and the doctor said she wouldn't last another winter in Pittsburgh and we had to move to the west, to Tucson. So it was 1944, at the end of the Second World War. My folks bought a 16 foot house trailer and with a 1936 Chevy pulled that trailer across the country. We left Pittsburgh September 1, 1944, broke down just outside of Pittsburgh and set the tone for the trip. We finally arrived in Tucson on Christmas Eve. We probably would've done better with a mule team or a covered wagon.

Q. How old were you at the time?

A. Twelve. I turned thirteen during the trip but I think I aged more than that.

Q. What did you think of Tucson when you did finally arrive there?

A. There was about 65,000 people there. It was a lovely town. We lived in a trailer court on North Oracle Road called . . . it was miracle mile what they called that stretch of road. This was the Miracle Mile Trailer Court. I went to Amphitheatre Junior High, which was two miles away. I used to walk to school. I liked Tucson. I particularly liked that we stayed there. We didn't move around every year. I really enjoyed growing up in Arizona. I have great feelings for the state.

Q. You like the desert?

A. Oh yeah very much. I was in Boy Scouts and we used to camp out a lot and hike up Mount Baldy and right south of Tucson in the Santa Rita Mountains. We camped out near Patagonia in the summer. I really enjoyed growing up in the desert. My wife is more of a Tucsonan than I. Her family came here in the 1930's. So we are kind of old Arizonans.

Q. Were you a good student?

A. I was a pretty good student. When I was a senior in high school in 1949, the Kiwanis Club established a Key Club there so that us country kids north of Tucson could meet the establishment business people. There were two high schools then in Tucson, Tucson High and Amphitheatre. So they set the first Key Club at Amphitheatre and I was president of the Key Club. So the Kiwanis sent me to the Key Club National Convention in Washington DC. They bought me a bus ticket so I went Greyhound bus to Washington DC from Tucson. And one of my teachers, my favorite teacher, Lillian Cooper, arranged for me to meet somebody in Washington while I was there. It was a friend of hers from Coolidge, Arizona. He took me to the Willard Hotel, the Crystal Room, a wonderful dinner. I had snails for the first time in my life. I asked him what he was doing in Washington and he said I'm trying to get Congress to give us enough money to build a canal from the Colorado River to central Arizona. So that was my first knowledge about the Colorado River and what eventually became the Central Arizona Project.

Q. What did you think of that idea when he told you that?

A. I thought it sounded wonderful to bring more water into Arizona but I really didn't know much about the whole thing. It wasn't until a few years later after I graduated from the University of Arizona and the University of Arizona College of Law that I . . . I first went to work for Morris and Stewart Udall when Stewart was a congressman and Morris was a former county attorney who was the best trial lawyer in Arizona without a doubt. And I was very involved in politics and in the Kennedy/Nixon campaign of 1960. I was the Democratic County Chairman. In the spring of 1960, the Arizona State Party Democratic Convention was held and Carl Hayden and Ernest McFarland had assured Lyndon Johnson that Arizona would go for Johnson. And Stewart Udall led a bunch of young turks in turning that around and Arizona went for Jack Kennedy for president. I was part of that as a young person in mid-to-late 20's. Then when Stewart became the Secretary of the Interior his solicitor, who was a good friend and a very fine lawyer, Frank Berry—and I worked a little with Frank—called and asked me to come back to Washington to be special assistant to the solicitor of Interior. Back there, I learned more about water and the whole reclamation ethos and the whole history of reclamation from the 1902 Act forward. A wonderful book "Angle of Repose" tells the story, fiction, of how the private ditch companies in the west try to set up irrigation programs and failed and that eventually gave birth to the Reclamation Act in 1902. We got into a lot of issues relating to the settlement of the west really back in Interior with public lands, public waters, and how the mining law and all of that that gave birth to the west—all of importance to the State of Arizona.

Q. Sounds like an interesting time.

A. It was.

Q. To back up a little bit, how did you decide to go to law school? I mean when you were a student in high school what did you think you were going to do?

A. I'm the oldest of three brothers, one of our brothers said that our mother decided when we were quite young that I would be a lawyer, my middle brother would be a scientist, and my youngest brother a doctor. I know by the time I was eight years old that I intended on being a lawyer. Before moving to Tucson when we lived in Columbus, Ohio, I went to something called the Open Air School. I remember the teacher, someone did something wrong and the teacher decided to punish the whole class. I was so outraged; I think I was eight years old, that I walked out of school and wandered downtown Columbus. So I had a sense of injustice back when I was young.

Q. So you always planned on being a lawyer?

A. Yes. I would have preferred to be a symphony conductor but I didn't have the talent. I think the arts are probably the most important thing in our culture. Law is important to keep things going properly.

Q. Why did you choose the U of A law school?

A. This was 1950. First I went to the University of Arizona because I lived in Tucson and it was a sacrifice on our family for me not to go to work to help the family. There was no question about paying for college. I got a job to pay for college. So the idea of going anywhere else where there was tuition was just out of the question. I went to the law school because it was a good law school and because I wanted to practice law in Tucson. I thought the contacts made in three years of law school with other young people that were going to become lawyers would be important throughout a long practice in the State of Arizona.

Q. How did you end up working with the Udalls?

A. A man named Charles Ayres taught "wills" in my third year of law. Chuck was a partner of Stewart and Morris. I graduated second in my class and I couldn't get a job in Tucson. The lawyers at the other law firms I went to see said go to Kingman or Holbrook, they really need lawyers there. I did get a good job offer in Phoenix but I didn't want to move to Phoenix. I applied though to be a law clerk to then Chief Justice Levi Udall of the Arizona Supreme Court. Justice Udall, it was very close between me and another man and he

picked the other guy. I didn't have a job and Chuck Ayres told me that they had a spare office at their office; they had a spare room and that for a year I could work there and get overflow work and get started. And that's what happened. They had a young man named Paul Reese, who was an old high school friend of mine, was in the county attorney's office learning to try cases. And when Paul came back to them, there was an opening at the county attorney's office so I got that opening. Raul Castro was then the county attorney and was later governor of Arizona. Raul gave me the job and I was there a year and a half I'm guessing and then Raul ran for judge. And a man named Harry Akerman became county attorney. He had been a state legislator and I was chief civil deputy county attorney under Harry and then went to Washington.

Q. There is a lot of Arizona history there.

A. A lot of things.

Q. Did your brother become a doctor?

A. He became a dentist. Now his specialty is temporal mandibular joint and facial pain and he just finished a year as president of the international group that specialized in that, and a lot of doctors send their patients to him because of his expertise in facial pain and temporal mandibular joint. Yeah, he's doing very well and my middle brother became a scientist. He's retired now.

When I got out of law school and was practicing with Morris in Morris's office, Sam's office was just around the corner. Sam and Frank Berry were partners. Frank then became Solicitor of Interior. I have known Sam since I was county chairman of the Democratic Party, Sam was the state chairman of the Democratic Party. In fact, he and his wife and my wife and I were invited by Jack Greenway who then owned the Arizona Inn, who is Isabelle Greenway King's son. She was a congresswoman from Arizona. She had been a bridesmaid at Franklin and Eleanor's wedding. So Jack invited Sam and Judy and Francis and I to have tea with Aunt Eleanor. In January of 1961, we spent an afternoon with Eleanor Roosevelt. That we will never forget. It was quite something. So Sam is an old and good friend.

Q. It sounds like you got involved very early in the water issues?

A. Yes. I had been involved for quite some time. After I left the Department of Interior in 1963 and came back to Tucson, I joined a law firm. I was just a practicing lawyer for about fifteen years. We didn't do legal practice in the water area because we had clients that were fighting with each other. So we would conflict it out. We represented farms and we represented mines. And they were fighting in Tucson with the cities. It was a three-sided war over water down there. I got involved really on a volunteer basis with the City of Tucson helping them address the problem of conservation in the early 1970's. I don't know how much history that you know about the Tucson area but we had a group of liberal councilmen elected and they decided to do away with blue ribbon committees and have participatory democracy to address such problems as water rights. They held public meetings. Nobody came until all of the sudden the water rates were changed so they approximated costs. If you lived in the foothills, you had to pay extra for the cost of pumping the water up to you in the foothills and all hell broke loose. Most of them were recalled, the council members. I suggested to a friend of mine, named Kennedy who survived on the council, that he set up not a blue ribbon committee but a broadly represented committee of people to address the water issues. I was on that committee. A man named George Rosenberg was chairman and we met every Friday for about three months to review the water situation and what was needed and to learn how water works, peaking, and you need to have the facilities there to meet the peak. Although much of it is not used during the winter at all and we started something called "Beat the Peak" program to keep the peaks down. Our report became an insert to the daily newspaper, morning and afternoon, to get out to everybody. It was really the beginning of Tucson going down to where they used about 160 gallons per capita per day, while up here it's anywhere between 225 and 500. There's a different conservation ethic with water in Tucson and this was part of the beginning of it. That leads into ... my involvement with water as a lawyer grew out of that.

In 1978, I was appointed by President Carter to the Civil Aeronautics Board. I was very involved with airline deregulation and acted as chairman of that board after Fred Collin who had started airline deregulation. I

was chairman for three years and when I left I joined a law firm in Washington, actually a Washington office of a New York firm. Mo Udall was trying to get a settlement bill through congress to settle the Tohono O'odham Indian water claims, a lawsuit that had been filed in 1975. This was 1982 and Mo got the bill through Congress but President Reagan vetoed it. So Tucson was looking for a law firm to represent the city to try and work out a settlement that the administration would accept and not veto. Since I knew the Tucson water situation well and one of my partners knew the Secretary of the Interior pretty well, we started representing the city in 1982 in Washington. We were successful in making the changes in the settlement that the United States wanted and Mo got the bill passed and the President signed it. And then other water issues kept coming up involving the Central Arizona Project, and that's when I started to do work representing the City of Tucson on specific Central Arizona Project issues and working with the Central Arizona Water Conservation District from about 1983 on. So that's been about twenty-two years that I've been working with them.

Q. Somebody said that you were actually an attorney for the city but were you actually an attorney working for the city or were you . . .

A. I've been an outside sort of water council for the City of Tucson now since 1982 that's about twenty-three years and I continue to do work for them.

Q. The Tohono O'odham water rights, was that one of the first Indian water right claims?

A. Yes. Then they were called the Papago Tribe. There were two lawsuits filed, one by the United States and one by the Papago Tribe itself. The United States sued on behalf of the tribe and the Allotees at the San Xavier Reservation. There were two districts of what is now the Tohono O'odham Nation that were involved, not the entire Nation. The districts were San Xavier, which is physically separated from the rest of the Nation, and the Eastern Shuk Toak District, which was called the Garcia Strip, I think. It's over in Avra Valley. I don't know if you know Tucson but its west and north of Tucson Mountain Park and Old Tucson in that area. It's just a strip of land that's quite narrow, maybe two miles wide, that's a few miles across that valley.

Q. So it was not the tribes in Sells, I usually think of the Tohono O'odham as being . . .

A. The headquarters is in Sells and the tribe was the plaintiff but it was only to the water claims that related to the Santa Cruz River and its tributaries, which are the Altar, Avra, Black Wash, I think, and one or two others that go through Avra Valley that involved the Eastern Shuk Toak, and of course the San Xavier is right on the Santa Cruz River. There were claims arising out of those. And they're based on the doctrine of reserved rights. They sought to enjoin Tucson from pumping any more groundwater on the basis that it lowered the Santa Cruz. By then the Santa Cruz was basically gone though. Any connection between the groundwater and the Santa Cruz surface flow had been gone for some long period of time. A settlement was reached. This was the second Indian water claims settlement in Arizona that was resolved. The first one was the Ak-Chin Reservation claim and ours was the second one. They were very close in time. It set a pattern of using Central Arizona Project water to settle Indian claims. What happened was the tribe got 37,800 acre feet of Central Arizona Project water with the federal government agreeing to pay the cost of that water, both capital costs and operation and maintenance costs. It required establishing a fund of money to which the government contributed half and local interests contributed half. And it was that local half that I negotiated to get Tucson, FICO (Farmers Investment Company), ASARCO (American Smelting and Refining Company), and the State of Arizona to contribute a total of I think five and a quarter million and the federal government put in five and a quarter million and we established this cooperative fund in which it sat there from 1984 on while the Central Arizona Project was being built. It accumulated money and then when the water finally got to Southern Arizona, the money there was supposed to be enough that the interest would pay for the costs of the Central Arizona Project water for the tribe. There was also to be 28,200 acre-feet of effluent. Part of the Tucson contribution of the settlement was that Tucson agreed to give the Secretary of the Interior 28,200 acre-feet of effluent. And the Secretary then would use that effluent to find 28,200 acre-feet of water suitable for irrigation to deliver to the tribe. The tribe didn't want the effluent piped to them. The Secretary was to sell the effluent or trade with somebody in order to get more water to bring to the tribe. That settlement has not yet been finished.

Q. And what year was this whole settlement worked out?

A. 1982. The Allottees . . . the U.S. in its infinite wisdom decided in the 1880's to adopt something called the Daws Act which was their effort to integrate Native Americans into the mainstream of American life by taking their reservations and breaking them up and giving the land to the individuals and families as allotments they were called. So these families could then farm or ranch or whatever and be integrated. And what happened was the minute the land got out from under the US Trust Relationship, the non-Indians—us white eyes—came and bought all that land and quickly gave them money that disappeared. The system didn't work well at all. It took the United States some years . . . fortunately, most of the land remained in trust for twenty years but after the twenty year period was over, the government held on to much of it. At San Xavier, some small amount of land went into private ownership and some of it to the Catholic Church for the San Xavier Mission as a matter of fact. But most of it remains in the hands of Allottees. When the original Grantees of this land died, then it was divided among their descendents and the system all over the country now Native Americans own like one three hundredths of an acre somewhere. It's all divided up in a terrible mess. So the Allottees claimed that the water in the settlement belonged to them and the Nation claimed the water belonged to it. We got caught in the middle trying to get the settlement done.

Q. We being?

A. The City of Tucson. I represented the City of Tucson on all of this. We got caught in the middle and we've been trying to work it out ever since this issue came up in about 1990/1991. We think with the passage of the Arizona Water Settlement Acts in December [2004] that Senator Kyl worked so hard to get through Congress and its signature by President Bush, that there is a real potential that we will get all of this done finally. There are loose ends that are still being worked on to tie down. All the loose ends have to be tied down by the end of 2007 and we are all working hard to get that done.

Q. Why is that the deadline?

A. That's a deadline in the statute, the statute that authorized the settlement. The Southern Arizona Water Rights Settlement is the one I've been talking about. It's one of the basic elements of that bill, the act that passed in December.

Q. And you said that was one of the first that used CAP water to settle Indian Water Rights?

A. Yes.

Q. Then did that become a model for the others?

A. Yes. It certainly did. The first one was the Ak-Chin Settlement, which is the tribe that is just south of the Gila Indian Community and north of Maricopa, Arizona. They have an active farm there. It's a very successful tribe.

Q. Harrah's Casino is what they are known for.

A. Yes, they have a lovely casino but they also have a very productive farm and are active farmers. They got the first settlement and then ours, the Southern Arizona Water Rights Settlement, was the next one within months, I think. They went through close together. But it set the pattern for using . . . if we didn't have Central Arizona Project water, there would have been serious battles about the pumping of groundwater and the use of surface water particularly in this valley.

Q. Originally when the people were trying to get the Central Arizona Project and get the water here, did they think it would ever be used in that way?

A. The original allocations were 309,000 acre-feet for Native American use, about 640,000 acre-feet for municipal and industrial use, and the rest for agricultural use. Back then, I don't think there was any thought that some of that additional water was going to be used for Indian settlements. Back in the 1980's, it was contemplated that it would take a long time for Arizona to actually use its entire 2.8 million acre-feet allocation of Colorado River water. So the idea of taking some off the top to give for Indian settlements was not terribly controversial. The biggest claim was the claim by the Gila River Indian Community. By the time that claim was being seriously addressed for settlement, Arizona was finally using all of its Central Arizona Project water. By the term use, I'm including storage of some of it underground for future use in periods of drought and shortage. It was more controversial to take CAP water and use it for Indian settlements in recent years than it had been twenty years ago.

Q. You mentioned you were back in Washington in the 60's, were you involved at all . . . that was back when they were trying to get the Central Arizona Project approved.

A. The only other involvement was when Arizona vs. California was argued at the U.S. Supreme Court with Mark Wilmer for Arizona and Mike Ely for California and Archibald Cox, the Solicitor General for the United States. I was there and heard the argument. It was very interesting to hear the argument in front of the Warren Court and the questioning and all. By the time the issues were related to the Central Arizona Project came to a head in 1968, I had returned to Tucson and joined a law firm and was sort of an ordinary practitioner of the law doing legal things unrelated to water.

Q. How did you happen to hear the Supreme Court hearing?

A. I was still in the Interior Department and was much involved with Reclamation law, which was broader. I was involved in a number of issues in California in Reclamation law context but not the Central Arizona Project. But I was very interested in Arizona v. California. I knew its history. At that time, the concept of bringing Colorado River water into central Arizona depended on the result of that lawsuit, that case. I was very interested and wanted to hear it.

Q. It wasn't part of your job necessarily?

A. No.

Q. It was sort of the David versus Goliath wasn't it?

A. Yes. I must say the most impressive argument was from Archibald Cox. The decision, I think Justice Black's decision surprised a number of people. It was very important for the history of Arizona that it came out that way.

Q. How did you think it was going to come out?

A. I can't remember frankly. I just remember being impressed and hoping Arizona would win.

Q. So you were pretty much involved with water in different ways then since early in your career?

A. Oh yes. I've always been interested in water in various ways. Cecil Andrus, the Secretary of the Interior in the Carter Administration, said to the State of Arizona if you want to get Central Arizona Project water, you're going to have to do something about your pumping of underground water. That's when then

Governor Bruce Babbitt and a whole group of folks at the legislature starting working on putting together a Groundwater Management Act. Jim Kolbe, was then a State Senator, he's now a Congressman from Tucson. He has been for many years. Jim asked a small group in Tucson to sort of be a shadow committee to look at how the state should to approach groundwater management while there was another committee up here in the valley. Another man and I were chairmen of that committee to look at the issue, before I went to Washington the second time. This was in 1974, 75, 76. Then in 1980, the famous story about the governor putting people in a room and saying you're not allowed out until we had a Groundwater Management Act and we got the Groundwater Management Act, which is one of the most important acts of our history and a very forward looking act from a national standpoint about controlling the pumping of groundwater and trying to retain groundwater as a long term resource for society.

Q. Where you there in that meeting?

A. No. I was back in Washington then doing deregulation.

Q. It was my understanding that when CAP first got down here that some of it was used to pump into the aquifer?

A. They first used it on farms on the west side like Harquahala and in that area because that is when the first water came in. I don't recall recharge then. Recharge started a little later.

Q. I was doing some things with SRP in '88 and they were starting to do things then.

A. The Gila River Underground Storage area was back around then. Water starting reaching this area but at that point, the government was selling the water at affordable prices so that farmers could use it. Provisions of the basic contract between the United States and the Central Arizona Water Conservation District would not kick in until the project was finished. So the whole time that the project was being built from this valley down to the southern boundaries of the San Xavier Indian Reservation, they could sell water at a very low price to agriculture. The crises hit in 1992. But I want to tell you a story about power before that.

Q. Let's go back a little bit about the groundwater law. The whole CAP under the Carter administration, Cecil Andrus threatened sometimes that they were going to cut off the funding.

A. Yes I know.

Q. Were you involved with that?

A. I worked with Tucson to help assure that the project went beyond Pinal County. There were big farmers in Pinal County and the threat that Andrus and the Carter Administration made was that they would stop the aqueduct north of Picacho. When I started to work for Tucson, by then there was a new Secretary of the Interior and a new president, Reagan. I worked with the Interior folks to keep the project going down to Tucson. There was a big dispute over the alignment whether it should go on the west side of the Tucson Mountains or the east side of the Tucson Mountains. And a lawsuit was filed to stop them from building it on the west side of the Tucson Mountains and to force them to build it on the east side. I represented Tucson intervening in that lawsuit. The suit was against the Bureau of Reclamation. Tucson intervened . . .

Q. Which side was Tucson on?

A. We were on the Bureau's side to put it where they said it should go, which was down through Avra Valley. We won in the lower court and they took it up on appeal and I argued on behalf of Tucson as an intervener to the Ninth Circuit Court of Appeals in support of the Bureau's decision. The court upheld the Bureau so they were then able to build it on the west side as they had planned to.

Q. Now who was it that didn't want it there?

A. It was an environmental group that did not want it to go through Avra Valley because they thought it would cause environmental damage there. The east side of the mountains was already urbanized so it wouldn't hurt the environment as much that way was their contention. I can't remember the other details but it was an interesting and important case for us to get the aqueduct built.

Prior to that I wanted to tell you something that you probably haven't heard about when I was practicing in Washington, I knew something about public power because of my work with the Interior Department. They were reallocating the Hoover Dam power and this was in the period of 1983, 1984, 1985. They had upgraded the generators. They rewound the generators at Hoover, which meant they could produce more power than they had in the past. So they had three classes of Hoover Power: Hoover "A" which is the power that they were already producing and which had been allocated mostly to agriculture; Hoover "B" which was new power to be created by rewinding of the generators; and Hoover "C" which is power that would only be produced when there was surplus water going through the turbines. When you operate a Reclamation project with a dam and reservoir, the dam has an electric power production capability. And the whole concept of Reclamation was the money from selling the power subsidized the production of the distribution of the water for agriculture. So it was the key marriage of power production and water delivery that made it work economically. The Central Arizona Project, they tried to put a dam in Marble Canyon and that resuscitated the Sierra Club. So Stewart Udall, he probably told you this story, came up with the idea of buying a portion of a coal-fired plant that was being built near Page, Arizona, and using that as a cash register and a power producer for the pumping of the water instead of a hydroelectric dam. I'll get to that in a moment, these things do tie together.

The City of Tucson was working with a number of cities in the valley; Phoenix, Mesa, Scottsdale, Coolidge, all were working in AMWUA (Arizona Municipal Water Users Association) to see if we could get some of that new preference power or reallocated preference power from Hoover Dam to help cities pump groundwater. The way that electricity was used to help farmers pump groundwater because power was much cheaper than buying it from your local utility. Since I was the only one involved who knew something about power that was my assignment. I knew and was unable to do anything about the fact that the Bureau of Reclamation as a matter of policy gives priority to agricultural use of power, unless the city is an owner like Mesa of its own electric system in which case they could be a preference power customer. There's nothing in the law that kept cities from buying preference water to pump groundwater, but the policy was not to allow that as long as the demand was there for using this power for other things. So what we decided to do—I think I suggested it to AMWUA, the city group, Phoenix, Mesa, Tucson, others—was to try and see if we could get the Hoover "B" power to the Central Arizona Water Conservation District to assist in the Central Arizona Project so that they would have the power from the Navajo Generating Station, supplemented by the Hoover "B" power. We had a huge fight with the agricultural interests over that. Governor Babbitt was of great assistance to us and we won the battle. The governor put a bunch of us in a room and closed the door and said you work this out. So the agricultural interests put a bunch of conditions on it. CAWCD could get this Hoover "B" power but only if they met these conditions, thinking the conditions wouldn't be met. Well, they were met. Ever since the project really started operating, they've had the benefit of Hoover "B" power.

I remember I worked closely with the staff at CAWCD then. And with two of their experts, I remember staying up all night working on the numbers as to how you combine the Navajo power with the Hoover "B" power to make the best optimum product for use and sale of the power. This was all in connection with something called Plan 6. Plan 6 was the substitute for Orme Dam. Orme Dam was to be at the junction of the Salt and Verde. No, that's Cliff Dam which wasn't built. I think Orme Dam was at the Salt, but at any rate Plan 6 was to increase the size of Roosevelt Dam and to build a new dam on the Agua Fria, the Waddell Dam. To build a new dam there, to build a bigger, larger new Lake Pleasant. The concept of the new dam at Lake Pleasant was that in the winter when power was cheap and readily available, you pump as much water out of the Colorado River as possible and store it at Lake Pleasant. Then in the summer when power is valuable and expensive instead of having to use our valuable power for pumping the big pumping job of getting it out of the river and in to Central Arizona, we get the water from Lake Pleasant and have it flow into Central Arizona and Southern Arizona—you still have to pump it but it's much less use of power—and sell the power that you saved, that you switched it from winter power to summer power, and that created enough money to pay the cost of building New Waddell and to pay about half of the costs that we had to repay the Federal Government for building the project. That has worked out very well. Plan 6 was putting all of that together.

One of the questions was how much the Central Arizona Water Conservation District would contribute to the cost of New Waddell. They wanted to give \$150 million. The governor wanted them to give \$200 million. And I served as a mediator going back and forth between Governor Babbitt and Tom Clark, who was then the General Manager of the Central Arizona Project. I remember many breakfasts with Tom at the Biltmore in the back where they have the little cowboy breakfast place with saw dust on the floor. I remember that Wes Steiner was then the top water person in Arizona and George Britton was the governor's advisor. Against Wes's and George's advice, the governor agreed to go along with \$175 million and so did Tom Clark. So we reached an agreement on that and that's what it was.

Q. Compromised right in the middle.

A. Yeah, right in the middle. It shouldn't have been difficult but it did take a lot of going back and forth between them to get it done. So my first involvement was that and getting the power thing where we got the Hoover "B" power and the "C" power by the way over to the Central Arizona Project. And it's made a rather large financial difference I think for us over the past twenty years.

Q. Sounds like you've been involved in a lot of the real detailed financial, legal . . .

A. Some of these things in terms of the history of the project that Hoover "B", Hoover "C" is an important element that most people don't even know happened and forget happened.

Q. Many people that I've talked to talked about construction and the planning, and engineering, a lot of engineering people. But I think we forget sometimes that with out the legal part and those financial things that the construction wouldn't have happened.

A. Did they tell you about pre-stressed concrete siphons?

Q. Yes. There are some horror stories about those.

A. I worked on that with Doug Miller initially.

Q. What was your involvement with that?

A. I was representing the Central Arizona Water Conservation District on that until the Federal Government sort of took it over.

Q. What was the legal aspect of that? I've heard from the engineers about the problems.

A. I haven't thought about that for a long time. It was a question of whether the contractor violated the contract.

Q. Maybe for people who are going to hear this tape, you should explain what the issue was?

A. The issue was that concrete . . . the Bureau of Reclamation decided to build the largest siphon. These are big huge pipes. I forget the exact size, maybe twenty feet in diameter or maybe fifteen. I know that I've walked down into them. They are huge pipes and are some of the largest in the world. They decided to use pre-stressed concrete rather than steel. Pre-stressed means that the concrete could be thinner because it was stressed with steel wiring around it and the problem was not too many years later, the steel wiring started snapping, breaking, creating the potential for blowholes because this water was under terrific

pressure. These are siphons that went underneath the Agua Fria Wash, underneath the Salt River, underneath other washes. Huge quantities of water under terrific pressure and the fear was that there would be a blow hole where the water would come up and cause injuries or damage because the steel wire that stressed the concrete was not remaining in place. It was breaking up.

Q. How did they discover that?

A. That's a good question. I'm not sure. I think they dug down to check them, just a regular check, and they found that this had happened in some places and then found that it happened in a number of places. Then had to turn off the aqueduct and then come in and replace these with steel.

Q. And how did you get involved?

A. Just to look at the legal aspects of product liability, the degree to which the United States was responsible, the degree to which the contractor was responsible, and the degree to which the engineers/designers were responsible. There had been pre-stressed concrete problems all around the world. As a matter of fact, we weren't dissimilar to these problems.

Q. How did the case work out?

A. The United States agreed to pay to do much of it, I forget exactly how the responsibilities were divided and I think that the contractor paid something too. Doug Miller, the Legal Counsel for CAWCD then as he is now, he would be more familiar with how exactly it worked out. It was a fairly satisfactory resolution of it.

Q. Were all those siphons replaced?

A. They may be still in the process of replacing some but I know they've been through the process on the major ones. The most important ones have been replaced I believe with steel.

Q. So did that actually go to court then?

A. No, it was settled out of court. The United States sort of took on the problem and they used I think some of the appropriated funds. Congress in making the appropriations recognized that money would be needed for this.

I don't know to what degree you've gotten into the story of what had happened in 1992 when the project was finished. The agricultural users of CAP water had problems. Have you gotten in to any of that?

Q. Not really.

A. In about 1992, when the construction of the Central Arizona Project was completed, or substantially completed, the basic contract between the United States and the Central Arizona Water Conservation District kicked in. The terms of it kicked in. It provided that the agricultural subcontractors were to pay their share of operating, maintenance and replacement costs. OM&R it's called and there are two kinds of those costs. The variable costs which is really the power costs for pumping the water from the river to wherever it's going to be used and the fixed OM&R costs which are the costs of having the District and running it and the people and the maintenance and all of that sort of thing. And those fixed costs are costs that aren't related to the amount of water that is being used. The variable costs or the cost of power relate to how much water is being used. The farmers were paying I think around \$15 to \$20 an acre-foot. At that time, I think the combined cost, actual cost of fixed operation, maintenance, and replacement and power were around \$60 and the farmers said we can't afford to pay that and continue to farm. So there was a real crisis. Most of the water that we were taking off the river was being used by farmers. The governor, I think it was Governor Symington then, appointed a governor's committee to look into what we could do and how

could we deal with this. The federal government had an idea about what to do. The state didn't want to do it their way. I won't trouble you with the details of it. I could if you wanted. Finally, the Central Arizona Water Conservation District decided essentially to suspend the subcontracts with farmers and issue a ten-year letter agreement to provide the water at affordable prices, which were well below cost, so that the farmers could continue to use Colorado River water. Essentially, that whole thing was subsidized by the tax dollars that are paid in the three counties that form the District. See this is a District composed of Maricopa County, Pinal County, and Pima County. There's a property tax of up to ten cents per hundred dollar of valuation that has been in effect since I think 1960 or the middle to late '60's. That was to provide the seed money and to provide extra money to make sure that the project worked. That tax money has gone essentially to subsidize the cost of water for agriculture on a ten-year basis. By the time the deal was done, it was 1994 and that ten-year period ended last December 31st (2003). The issue that came up, what was going to happen after that and that issue came up the same time that the settlement package from Gila River Indian Community and the Southern Arizona Water Rights Settlement Act was being put together. Essentially, the third controversy during that period started in about 1996, 1998 sometime in there. The federal government claimed that repayment obligation for the state, the Central Arizona Water Conservation District, for its share for the cost of the project was \$2.3 billion. The state's position, the District's position was that it was \$1.78 billion, a little half a billion dollar difference. They ended up going to court. The Central Arizona Water Conservation District sued the United States and the United States counter-claimed, sued the District. Our city group, the City of Tucson and other cities, intervened in that lawsuit. It was pending in front of Judge Earl Carroll. Judge Carroll said that he would allow one city lawyer to participate actively in trying the case and I was the lawyer that participated as a trial lawyer in the case on behalf of all the cities. There was a very good lawyer from Sacramento, Stuart Somach, who represented the Central Arizona Water Conservation District and assisted by Robert Hoffman who was then with Snell & Wilmer. So essentially, Stuart and I were the trial lawyers in the case. We won the first case which was mostly Stuart's doing. We went to the second phase, which was how to allocate the costs between the federal government and the CAWCD. After that phase was over and before the court ruled, the United States agreed to a settlement. That settlement was incorporated into this large package, which just passed Congress in December (2004). The repayment obligation was fixed somewhat below the 1.78 billion because part of the settlement package was to shift water from agricultural subcontracts over to federal use for Indian settlements, particularly to the Gila River Indian Community Settlement. Essentially there were 300,000 acre-feet of agricultural Central Arizona Project water long term. The deal was that 200,000 acre feet of that water would go to Uncle Sam to be used for Indian settlement, including the Gila River settlement and finishing the SAWRSA settlement to replace that effluent that Tucson gave the city. The other 100,000 acre-feet of water would remain in the state hands and would be allocated as junior priority water to municipal users over the next thirty years, in three tranches over the ten years. So each ten years, they'd allocate thirty thousand or thirty-three thousand of that chunk of water. But the key to it was for the agricultural subcontractors to relinquish their subcontracts. The Central Arizona Project said to them, "If you want to keep your subcontract now that the 10 year period is over, you have to pay the regular charges which will be about \$75 an acre-foot." They couldn't afford the \$75, so a compromise was reached. The Districts all agreed to relinquish their subcontracts. In return, they got a contract to receive excess water—that is, water that's available over and above the contracted amount of water. They get up to 400,000 acre-feet between now and 2030, but reducing during that period to 300,000 and then to 225,000 and ending in the year 2030 and to receive that water at the cost of pumping the electricity for pumping the water, which is \$30 to \$40 dollars rather than \$75.

Some small group of farmers in Pinal County claim that this was their water and the District could not give up the subcontracts without their approval and they didn't approve and they took that matter to court. I represented about 200 landowners in that case.

Q. Pinal County landowners?

A. Yes. I worked with the Maricopa-Stanfield Irrigation District and their lawyer, Don Peters, and with Central Arizona Irrigation and Drainage District and their lawyer, Mark McGinnis. We fought that case and Judge Robertson in Pinal County ruled against us and in favor of the landowners. We went to the Arizona Supreme Court with a special action seeking to overturn that ruling. Arizona Supreme Court has taken jurisdiction of that case and there will be oral arguments in that case on October 3rd (2005). So it is an issue that is pending. Meanwhile, this same group of farmers who are opposed to relinquishing their subcontracts also sued Central Arizona Water Conservation District. The District removed the case to Federal Court. Judge Carroll heard the case and dismissed it because he held that these farmers were not third party beneficiaries and didn't have any legal rights under the contract to try and enforce some right they

had under the subcontracts. He ruled that way. The small group of farmers appealed to the Ninth Circuit and the Ninth Circuit ruled in favor of Judge Carroll's decision to dismiss that. So this is an issue that has to be resolved in order to get the settlement that is in the December Act of Congress in order to get that completed.

Q. Did you ever think when you started working on this and you mentioned that it was primarily a league of farmers who were trying to bring water here for agriculture that it would change as it has?

A. By the time I got involved, it had already changed. But I can understand and I think the farming community deserved a great deal of credit. When I have spoken in the public about the project, I try to give them the credit for being the moving force in bringing this water to Central Arizona. It's kind of tragic that it's been such a problem for them, but on the other hand they have had the benefit of cheap water since it first arrived in 1988 and will have the benefit until 2030. That is quite a period of forty or fifty years.

Q. Do you think there will be any farms left by then?

A. What's happening in Pinal County now is that a lot of this farm land is being used for housing. It's like Maricopa County, there's still some farming in Maricopa County but significantly less than it used to be. And when that water is shifted from agricultural use to municipal use, less water is used per acre. Agriculture is still the largest user of water in the state by quite a bit.

Q. People don't realize that?

A. No, they don't but that's the fact.

Q. What about the whole Indian using? Did anyone anticipate that the Indians would be such a large part of this?

A. No. I don't think it was anticipated at the time of the project that the Indians would have more than this 309,000 acre-feet they were allocated out of million five (hundred) thousand acre-feet. There wasn't much thought about Indian water claims. It's very difficult to think in terms of a hundred years from now or fifty years from now. But in the water business because of the Groundwater Management Act, the water community has been forced now to think in those terms because the Groundwater Management Act requires you to have a hundred year supply of renewable water before you can add additional subdivisions and in these active management areas. So it's forced the water providers—large municipalities and others—to look at long range planning and what's going to happen with water long term instead of just five or ten years. It's been very healthy that way.

Q. Some people have said that if they had known that all the Indians were going to get the water that maybe they wouldn't have worked so hard to get the Central Arizona Project.

A. I've heard that. What they don't realize that if the Indians didn't get this water then the Indians would get the water that we are now using instead. It isn't that they weren't entitled to water. The Winters Doctrine says that when the United States sets aside a reservation for a purpose, it reserves enough water to meet that purpose. If the purpose is an Indian Reservation for Indians with a history of farming, particularly the Gila River Indian Community, its history is farming from the water of the Gila River until the Gila River pretty much dried up because lots of other people used the water, but they were there first. They had a large claim. If the Central Arizona Project was not used to satisfy those claims, then we'd be looking at taking water that we are now using, taking groundwater and perhaps taking Salt River water that is behind Roosevelt. The Salt River has created that water. Well, Uncle Sam created it by building the dams, the projects up there. It's interesting that this whole valley is settled because of federal largess and a federal Reclamation project.

Q. A lot of people worked very hard to get that!

A. That's right. I'm thinking it's ironic because so many people in this valley think that the federal government is terrible and we can take care of ourselves my goodness. They forget the history that this wouldn't be here without the federal government. The whole settlement of the west was the federal government causing the west to be settled and providing land and water and money to cause it to happen.

Q. Mary Thomas of the Gila River Community told me when I interviewed her one time and we were talking about the new wealth with the casinos. She told me that the casinos are nice but they're nothing compared to the water rights.

A. Yes. I know Mary and I've talked to her many times and many of the other people. I was involved in the negotiation of the Gila River Settlement from representing a number of landowners in Pinal County. And in extended negotiations with the Tohono over the last twenty years, I have gotten a real appreciation for their sense of water and its importance long term and a more religious tie to land and water than the non-Indian community can understand or has understood in the past.

Q. In all of your work with the Central Arizona Project, were there any opponents to the project that you recall?

A. In Tucson, there was a controversy early on about whether Tucson wanted to be part of the Central Arizona Project or not. There were a number of people there, including at least one of the mayors and I don't remember which one. I don't want to accuse any of the mayors falsely about this. But in the early days, there were some opposition in Tucson to bringing in Central Arizona Project water. They got smart though. They started putting an extra surcharge on the water bill in order to put together enough money to afford CAP water and fought to get the water there. It turned out to be very important to Tucson. I don't know about opposition in this valley. I don't think the environmental community was very active in opposition back then. It was Orme Dam and then Cliff Dam after that that was opposed. I don't recall opposition to the project itself. Although maybe the man who blew up, who lived in Tucson, who used to blow up billboards and wrote a successful book or two might have opposed it. I don't know.

Q. "The Monkey Wrench Gang".

A. Yeah, that's it.

Q. Edward Abbey.

A. Yeah, Edward Abbey.

Q. The Audubon Society here was real involved too with Cliff Dam and Orme Dam.

A. Yeah with those but I don't know that they were opposed to the project itself.

Q. Are there any people that you would identify as being the key people that made this whole project happen? Who you would give credit to?

A. Stewart Udall, Morris Udall, Barry Goldwater, and Ernest McFarland. Have you read the biography of Ernest McFarland? It's rather interesting. It really is. He was much involved. And a lot of the agricultural community that worked on this for decades, people going back to Washington and pushing the project. Tom Clark is a better person to give you those because I was not involved back then. I just have read about it or have heard about it from Tom and others. Sam Goddard was involved of course. He was governor and

then he was on the Board and many early members of the Central Arizona Water Conservation District Board that were involved. Getting it initially you have to go back quite a ways to the 1920's and 30's. The 1930's when Arizona tried to get the Supreme Court to take jurisdiction to decide between Arizona and California and lost three times until it finally got the court to take the case. All the people who worked on that: Charles Carson, Mark Wilmer, of course, and Wes Steiner.

Q. He was an interesting one because he was from California.

A. Yes, I know. He's back in California now.

Q. We went over and interviewed him actually. They thought it was important enough that they sent us over there. He was really a key person.

A. Oh yeah. He was one of the great water people for Arizona. He did a very fine job.

Q. We've taken up arms against California for water that's in the history books.

A. The water difficulties are not over. We're still facing shortages. There are issues coming up. Stuart Somach—the man that I mentioned was a lawyer from Sacramento who represented the Central Arizona Water Conservation District in the case about repayment obligation—he and I are now representing the state in Colorado River matters involving ongoing discussions with Colorado, Nevada, and California, the seven basin states. So we continue to be involved in all of these things.

Q. Just a week ago, there was an article in the newspaper about draught and how they've scientifically seen back that the Northern is no different than the Southern.

A. The "Tree Ring" articles, there are some limitations on "tree rings". They don't show the high surpluses and they don't show the outer edges. So they've been trying to refine the information. There was a conference in Boulder, Colorado a couple of months ago where they said their refined "tree ring" information is that the average flow of the Colorado River was about 14.8 million acre feet. Previously, it's at lower figures than that. At the time of the Colorado River Basin Compact in 1922, they think the average flow to be something over 16 million. They dealt with 16 million. We actually have 16 1/2 million acre-feet are supposed to be obligated from the river between Mexico and the two upper and lower.

Q. Did you have anything to do with the desalinization?

A. No. I know the issue and am familiar with the state position and agree with it that we need to operate the desalinization plant because we need to save that water in Lake Mead.

Q. What has been the biggest surprise for you regarding the CAP?

A. I guess the first surprise was that economically it didn't work for agricultural. When people predict the future, they tend to draw straight lines. The future is never a straight line. The future is always different than what you imagine it. The straight lines indicated that the CAP water would be economical for farming but it was because farm prices didn't go up. There were too many problems. That was sort of a fundamental surprise for the project as a whole.

I guess I'm surprised that there's an effort to try and get rid of Glen Canyon Dam because we are in a five-year drought that may continue. It's rather important to store water. The story of Joseph in Egypt we could learn from. Store it for seven years when there's seven years of plenty and when seven years of famine came, they stored it. That is a great story. That is what we are doing with water here, putting water underground for the future. We're the ones who will suffer the first effects of shortages. When we do have

enough water and there's going to be periods when the river flows, it's important to capture as much as you can. It's crazy to give up half of that storage like getting rid of the dam. One thing you might think of is, I talked to Tucson, my client, and the Santa Cruz River is running very full and heavy right now as we sit here. I talked to a friend and a client in Nogales this morning and they have more water than they know what to do with. The fact that we've been in a drought and the rivers are dry, we forget that the other situation can occur and it's important to be able to save that water and make use of it.

One thing that I might say is that long term there's going to be enough water. The question is how are we going to use it? How much are we going to have to pay to get it where we want it to be? There's a lot of water in places that there aren't people and there's a lot of people in places there's no water. You either move the people to the water or you move the water to the people. We're now paying more for a bottle of water than we pay for the gasoline that we put in our car. It's all a question of relative needs and relative costs and the problem of change. We can't make drastic changes in things like cost; but over time, we'll be able to provide the water that people need. It'll just cost more and we'll have to deal with how it may discomfort some groups of people. Sort of when we went from horses to cars, the folks who made horseshoes had a lot of problems. We're constantly in that kind of a period. The same things will happen with water.

Q. Is there a part in your role with working for CAP that you're the most proud of?

A. I'm very proud of getting the Hoover "B" and Hoover "C" power for them because it has made millions and millions of dollars of difference in the past years. I feel kind of personally responsible because I was the lead in getting that done and the cities pushed to get that done and we succeeded. I was very pleased about participating in the litigation in front of Earl Carroll on the repayment obligation. I think it had some effect on being able to work out a successful settlement with that. I have generally been pleased with working with the City of Tucson. It's nice to grow up in a city and have a real affection for it and then represent them for twenty-two years and do good things for them.

Q. And that's why you are now in Scottsdale.

A. When I moved back to Arizona from Washington, we thought about it. Do we move back home to Tucson or do we move to Phoenix? My favorite client was the City of Tucson and I had enough life experience by then to realize that if I wanted to maintain Tucson as a client long term, I had to live at least ninety miles away from the city. And it's been true. I don't know of any local person in Tucson who has been a consultant or outside counsel to them for any period approaching twenty-two years. Tucson has needed somebody in Phoenix representing their interests because the action on water was here. Meetings would occur at the legislature, at Department of Water Resources, Arizona Municipal Water User's Association, where they would figure out what to do with water and forget Tucson is there and very concerned about water. So being here meant that Tucson had a presence. So I have a foot in each camp.

Q. With all of your experience, I liked the part that you said from 1949 when you first heard of the CAP, with that in mind what would it be like if we didn't have the CAP? What would you see in your mind? What would've happened?

A. What would've happen is we wouldn't have been able to do the Groundwater Management Act and we would be pumping our reservoirs dry. Phoenix would be dependent on the Gila and the Salt River and groundwater. And groundwater is not a real dependable source in this valley. It is in some areas. I think eventually the state would've had to do it and pay for it itself instead of having the federal government do it. It would've had to be done.

Q. Otherwise we couldn't have grown to the size we are, right?

A. We could grow to this size by taking the water that the farmers are using and not worrying about drying up in a hundred years. The question is do you worry about long term and the idea of a renewable water supply? That is thinking long term. When I was chairman of the Civil Aeronautical Board, I visited the

Kingdom of Jordan. They took me to the Ruins of Jerash, which was a Roman city that had been very prosperous in the 3rd and 4th Century. It had been in a crossroads for the caravan routes and when the caravan routes changed, the city dried up and went away. The question here is when you run out of water, like the Hohokam possibly ran out of water, would it dry up and blow away a hundred years from now?

One of the things that concern me having children and grandchildren is that we don't think enough about the long-term future. There is so much concern about self-gratification in this society that it's very disturbing. I was pleased to see that Governor Napolitano in the morning paper that she is going to talk about a report on the importance of shifting some of our wealth into education to keep up with the rest of the world. We used to be the best in the world. We're not anymore. Why? Because we want to spend our money on three cars, SUVs, colored television sets in every room, and we're being deprived if we don't get that and our children don't get the education that they deserve. We are busy satisfying ourselves. I would hope that we will realize that soon. How would we finance it? It would be very interesting that this would be financed by not getting rid of the inheritance tax. Unfortunately, too many people want to get rid of the inheritance tax and don't seem to care. They rather blame someone else for the fact that our education system isn't as good as it used to be. It's someone else's fault. We show people how we honor people by the way we compensate them and we don't honor teachers. We honor lawyers more than they deserve but we don't honor teachers and we don't get the kind of teaching that our children deserve. Shouldn't we care about our children enough to put more of our wealth towards that? That is the same thing as planning for the water future. If we didn't have a CAP, we would be letting a million and a half acre-feet of water go to California instead of here. And they would use it in a minute. If we weren't willing to build our own project to bring the water in to Central Arizona, then we would have to spend the money. We would use up the water that we had and say heck to future generations, which is too much of our culture already.

Q. Is there anything that you would've done differently with the CAP?

A. We probably should've recognized the agricultural problems early. We changed as situations changed. It's very difficult to say in 1950 what should be done in 1980 or in 1980 what should be done in 2005 because situations change.

No, I don't think so. I suppose we could have had the State of Arizona do this instead of the federal government. But our state has not shown itself to be willing to make those types of investments.

Q. Any advice that you have for the people running CAP today or tomorrow?

A. Just keep up the good work and focus on the long term. Pay attention to long term and we should be in Arizona right now looking at where our next bucket is coming from. CAP is a bucket and it served us well. And we are getting to where we are going to use it all and where is our next bucket going to come from and how that should be done. That has to be given some attention.

Q. Any ideas?

A. Expanding the capacity of the aqueduct of the Central Arizona Project, making it easier to move water within the state. Right now water cannot be moved from one area to another very easily because each area wants to keep its own water. Our biggest water problem today is in rural Arizona where the counties are not even empowered to require a hundred-year water supply as a condition of sub-dividing land. And it's outrageous that the Board of Supervisors from each county cannot require that as a condition of development. Under state law, they don't have that authority. A lot of us think that the Arizona Policy Forum put out a paper—I was one of the co-chairman of the project on rural water issues—which urged that state wide that there be a requirement that no subdivision be approved unless there is a physical supply of water available for that development for a hundred years. That is not exactly the same as the requirement for the active management areas Phoenix, Tucson, Prescott, and Nogales because these areas need to have a renewable supply for a hundred years. You have to have a physical supply and renewable water. We proposed that in the rural areas where you can't make that renewable requirement realistically that there should be at least a physical availability. People shouldn't be going in and buying houses in a subdivision and ten years later find out that there's no water. That is quite possible now. It's a disgrace that the Arizona legislature will not at least give the Board of Supervisors of the counties the power to act responsibly and

require the water to be there. That was proposed this year and it was killed in the legislature. I hope it will be proposed again and that they will come to their senses and do it. That is the most important thing.

The other terrible thing in Arizona is wildcat subdivisions and small wells. A proliferation of what are called exempt wells. Wells pumping less than thirty-five gallons per minute are exempt from regulation. You just go in and punch down a well. There are thousands of those wells now up in the Prescott area. It's using up the groundwater. No regulation. No controls. No reporting. We don't know what's going on but we have these loop holes that allow wildcat subdivisions and the realtors fight to keep that because tomorrow's dollar is much more important than what happens to the state ten years from now. We're supposed to have a legislature that represents the public to deal with that kind of thing from a long-term policy view point, instead of the voice as the realtor or whoever. Unfortunately, we don't have that.

Q. And water is a complicated issue; I'd think a lot of our legislature is interested?

A. No. There are a few who do and they've tried to help. They haven't been able to get enough support. They've passed some laws that everybody agreed on last year in some areas. But wildcat subdivisions and exempt wells and the having a water supply to serve a subdivision long term are basic things that have not been adequately addressed and should be.

Q. Are you acquainted with the arrangement that Pulte or Del Webb made to make Anthem?

A. Sure. Ak-Chin. It's a lease of Indian water for a hundred years.

Q. So they made a deal with Ak-Chin. Was that CAP water?

A. Yes. They are leasing CAP water. Indians can lease their water. Municipal subcontractors cannot do that. It's Colorado River water that Ak-Chin is entitled to and they can deal with it as a property. Our subcontracts for the cities are for us to use the water and nobody with a CAP subcontract, except Indians who have contracts with the federal government, but the subcontractors cannot sell their subcontracts. Like a liquor license for example, you can't do that. You can't make a profit. What you can do is transfer it if the Department of Water Resources says it's good from a water policy standpoint and get back the money you paid in but not make a profit on it.

Q. What do you think the future will be for the Indians to lease their water rights to outlying subdivisions?

A. That is happening a lot now but I don't know if it will happen as much as some people may think. Part of the deal for the Gila River settlement was for them to lease water to the valley cities and they have. The San Carlos Apache Tribe I believe has leased water. So far the Tohono O'odam Nation has not. They should in the future be in a position to and we will see. Tucson will be interested. We did make sure that the law allows for that to happen.

Q. So it's a hundred-year lease?

A. Yes.

Q. Will there be like I remember years ago like a Holly Lake, they had twenty-five year leases on cabins and it ran out. Now with hundred-year leases, will Anthem in a hundred years suddenly dry up and go away because they won't renew their lease?

A. One of the issues that the Arizona Department of Water Resources have been dealing with is when those leases need to be renewed, if they want fifty years from now new growth in Anthem they have to show that they are renewing the lease. At least that issue is being addressed.

Q. They are not physically taking water from the CAP? They're just trading?

A. Physically taking water as I understand it. Anthem doesn't have groundwater. So they have to get water from somewhere and so they're piping the water up there as I understand it.

Q. I thought there was a trade, there's a lot of trading going on.

A. There is a lot of that when there is a physical supply of groundwater. But when there's not a physical supply and you want to do a development, then you have a real problem unless you want to build a pipeline and a treatment plant to pipe that water up. The thing about Anthem is that the CAP project, the aqueduct, is up north around Happy Valley Road. So it's not terribly far from there to Anthem. They can pipe the water up there.

Q. The contractor then being Del Webb I guess, he built the pipeline? That was his money that built the pipeline?

A. I would think what he did was establish a water company and have them build the pipeline or he built it and turned it over to the water company.

Q. The water company would have the lease, too?

A. Yes, the water company would have the lease I would think. I haven't looked into the exact structure. I would image that is what it is. That water company would then be regulated by the Corporation Commission for rates and things.

- - - End of Interview - - -