

Oral History

CAP Board President Pam Pickard (Q):

Senator it is such a pleasure for me to be here today, you have been the ultimate Statesman for the State of Arizona. On behalf of all of us, thank you so much and I'm sure you hear that a lot.

Jon Kyl (A):

And I never tire of it.

Q: And I'm delighted to get the chance to be able to tell you. So many of us, as I've said, you have represented Arizona for so many years and so many of us feel like we have this great personal connection with you, whether we've gotten to meet you or not. We know you always have our best interests in mind. So, in order to get to know you just a little better, where and when were you born?

A: I was born in Nebraska in a little town called Oakland in 1942. My parents were both school teachers and I grew up in Nebraska and then Iowa. In 1960 after graduating from high school I moved to Tucson to attend the University of Arizona and I've been here ever since.

Q: Wonderful, and are we delighted that's for sure. When you first arrived at the University of Arizona, what did you start to study?

A: The first study was just the general liberal arts at the liberal arts college---a lot of government and history and then I graduated and attended law school and graduated from law school in 1966.

Q: In 1966 when you were laying there thinking about passing the bar and your first job – where was your first job?

A: I had clerked at both of my law school summers at Jennings Strouss and Salmon Phoenix law firm and they offered me a position, so upon my graduation that's where I started and I was with the firm for 19 years. My entire time in the practice of law before I ran for Congress.

Jennings Strouss was the firm that had historically represented the Salt River Project and it had a lot of expertise in both water and power laws, as well as all the other things, that are unique to the Project. Because the Salt River Project is such a unique institution, let me correct myself -- it is a unique institution, nothing else in the world like it. A multi-purpose reclamation project first created under the 1902 Reclamation Act, formed in 1903 Salt River Valley Water Users Association. I really started the history of water development and water law in the State of Arizona. The law firm for which I was affiliated had represented the Salt River Project, so it was part of that history, a part of the creation of the body of law, both case law, and statutory law and federal law that governed the Salt River Project. It is interesting to me to become one of the young lawyers working on Salt River Project matters and eventually the lawyer that became responsible for all of the Projects work that our firm did.

Q: Was it the uniqueness of Salt River Project or what actually drew you to water issues?

A: One of the senior attorneys asked me to help; that is what drew me to it. It was fascinating to me and once you get into it and know something about it, then you realize its significance. To me also interesting was the federal history, the federal reclamation connection to the Salt River Project and the fact that it was oriented toward agriculture. I've always, my dad was a frustrated farmer and he incidentally was a member of the United States Congress representing the District in Iowa. When I came to Arizona to go to college, he had been in Congress about six months and he had a career there roughly a dozen years or so in the House. He was on what was then called the Interior and Ancillary Affairs Committee and I

remember talking to him about the Central Arizona Project, which was then being debated in the United States Congress. He was not a person to support federal money being spent on anything in particular; this idea that there would be so much federal money dedicated to this ditch out in Arizona was not necessarily appealing to him until I talked to him. Then it came to pass that when the House of Representatives voted on the Central Arizona Project he decided he had a conflict of interest and therefore did not vote against it. And I always appreciated that. He then eventually moved to Arizona after he retired and got to know some of the people on the Gila River Indian Reservation where they have the agricultural works and so on and he really took quite an interest in the concept of agricultural irrigation. It was interesting to me to complete that circle with him and have him see the benefits of both pumping water, but also the bringing in the water to serve the agricultural needs here in the State of Arizona.

Q: It is interesting to find out you had influence in Congress before you even went to Congress. What kind of role did your father play in your decision to go to Congress for the State of Arizona?

A: He discouraged me from it, he had already been there done that knew what it was like and said, "Look you have a perfectly good job why would you want to go to Washington?" I said for the same reason you did, and he inspired me to public service, and I can't pinpoint anything in particular, but he was always interested in land and water issues. He happened to be a member of the Public Land Law Review Commission that is the Commission -- the title of the publication they put out was one-third of the nation's land. And of course it covers all of the land out here in the West including Arizona. Paul Fannin was a Senator then, he was active in that, the issues they worked was the reclamation kind of issues and when I was Editor in Chief of the Arizona Law Review we devoted a special symposium issue to that report and study and got Morris K. Udall, then a Representative from Arizona, to write something for us. So I had an interest in those issues when I went

to the law firm but it was a few years later that Ted Riggins who was responsible for the Salt River Project's work at that time really brought into in a deep way.

Q: Arizona is so lucky to have so many families with such a political history, as your family does. Maybe not necessarily just the State of Arizona, but just that knowledge and mentoring that our statesmen get has been a huge benefit to our State.

A: On a related point, the thing that has always struck me is that throughout Arizona history, starting when we were a territory, there were people who foresaw the need to do something about a water problem, worked together to get something done about it. The first thing of course was the Salt River Valley Water User's Association. They knew they had to tame the Salt River that overflowed there little dams that hardly held back any water and when the flooding came they would just wash out. They had to build stronger dams to hold the waters so they would have an assured supply throughout dry months of the summer. That was the first idea that germinated in the folks here in Arizona in the late 1800's to go back to Washington to go back and lobby for Reclamation Act so they could apply for the funding to build the dams that are now on the Salt and later Verde River. That group of people was really responsible for the foundation of the development of State of Arizona through the 1950's and first part of the 1960's. But, another generation came along and realized that's fine for agriculture and for some of the Phoenix supply but after WWII this valley is going to explode. We need a more assured supply, and besides that, we need to be able to take advantage of the water rights that have been confirmed to us by the United States Supreme Court and the Colorado River and how else are we going to get that to Arizona except through some sort of aqueduct. Thus, the Central Arizona Project and in a totally bipartisan way our political leaders and our civic leaders people like Salt River Project and others all worked to develop the consensus for the Central Arizona Project. It was a long time coming, but all of the Arizona Representative and Senators worked together on it and eventually it

passed. The funding was a very important thing every year when I first started in the United States House of Representatives in 1987 we were still trudging up to the appropriations subcommittee room for the hearing every year, Democrats, Republicans, Governors whoever that was and pleading for the funding the Central Arizona Project, it was all fixed and was going to get done, but we had to go through the ritual. That was the second great phase of water development and planning in the State. Then during the 1970's we had a water war breakout between the mining interests, the cities and agricultural interests. Eventually, the Arizona Supreme Court ruled in the FICO case that you couldn't suck the lot of underground water from somebody else's land and transport it someplace else for your own benefit. That was what the mines were doing southwest of Tucson. FICO what had farming interests down there didn't like and sued and they won. They ended up winning the battle and losing the war. Because we then began a long protracted negotiation that resulted in the 1980 Groundwater Act and those three sides were represented and I worked to represent agricultural interests along with Jack Pfister, who was then General Manager of Salt River Project, and Leroy Michael the General Counsel of Salt River Project who sat through countless meetings with representatives of mining industry the cities and Governor Babbitt and people that later became the Department of Water Resource were involved as well. And over the course of about a year, worked out a regime for the first time really to control the amount of groundwater pumping and regulate its usage via different property owners complex suffice it to say it was the third stage in planning and development of Arizona water policy that came at a pretty critical time because our state was exploding population-wise. Cities needed to have some constraint in continuing to approve zoning projects if there was no water, so we required 100-year water supply and some of the other features of that act. The Arizona Department of Water Resources was created, so you had a third stage. This time not surface water as Salt River Project and Central Arizona Project had focused on, but groundwater. And then I would say the fourth phase and the one that we are currently working though is the phase that deals with the resolution of competing claims, primarily to surface water, that the Indian Tribes in the state

had made and that need to be resolved because under United States Supreme Court Law Tribes get to claim the water and there is certain amount that is assumed to be reserved for use on the reservation, but those claims compete with claims that are being made by irrigators, mining companies, communities and the State of Arizona and some federal uses and they have to be resolved.

Q: I would love to hear you talk about the Indian water settlement that you have – must have been a huge part of your efforts back in Washington.

A: First, we had to create a process for the filing of these claims and their adjudication in the state courts. I was active in the state legislature back in the late 1970's to amend our statutes so we could process the claims in State court. The Indian Tribes objected to resolution of their claims in State Court. They wanted to have Federal District Court to resolve their claims. But that doesn't work, because if you are all claiming a pot of water, you can't have one court decide one person's claims and another court decide another person's claims and you have a conflicting resolution of the claims and it doesn't work it has to be resolved in the same place at the same time with the same parties. A lawsuit was filed by the San Carlos Apache Tribe, but it was filed against State of Arizona and all the Indian Tribes essentially joined in the Federal Government side along with all the Indian Tribes, against the State of Arizona and the states like the State of Montana for example to resolve the question in federal court –United States Supreme Court where the right place to try these claims were – Indian position was you go try yours where you want to be but we are trying ours in federal court. The McCarran Amendment allowed for the resolution of claims all in one court and that only made sense.

We argued to the United States Supreme Court– I argued in March of 1983, that not only did the McCarran Act require that all of the claims to be adjudicated in the same court at same time, the legal phrase is inter se, but that the state courts were the appropriate forum for doing that. That the Tribes objected too – they

wanted it in federal court. The state court had the mechanisms for adjudicating these claims – they had state agencies that could help provide scientific analysis the determination of what kind of watersheds and how much water there was on the watersheds, to take stock of all of the water users to file the claims to process them so on. The court in that case ruled in our favor. They all had to be done altogether and the state courts were the appropriate forum. We had one minor issue that had to be resolved by the Arizona Supreme Court, which I argued later, regarding the Arizona Enabling Act. That was a technicality the reality was that decision fixed into law that these claims would all be adjudicated together in the state court. So the state court system that we had developed through the Amendment of the Arizona Statutes became the mechanism for doing this. The Arizona Department of Water Resources, which had been established as part of the Arizona Groundwater Act became, in effect, the court's technical advisor on all of the water issues which was very important. The parties, after some initial filing of litigation, finally figured out that it may make more sense to sit down and talk together and settle these claims then to litigate them in court. It can be very expensive and nobody was quite sure how the courts would settle. A process of settlements began and over time we have now done about 7 basic water settlements and we are in the process of the 7th and there will be some more after these. This really is the culmination of that phase of water planning in the State of Arizona. Salt River Project developed the surface water, and Central Arizona Project brought in the Colorado River Water, Groundwater Act helped figured out how to manage our groundwater. Finally, we had a way to resolve all the competing claims.

This also then brought in the Central Arizona Project in the following way – much of Central Arizona Project water that the Supreme Court identified as Arizona's share had remained unallocated by the Secretary of Interior who was given responsibility for allocating the water. Part of the reason for that was that we knew that these claims had to be resolved and in some cases there would need to be a source of water to satisfy the claims. The reason for this was that we had over

usage in effect you were using more than 100% of the water. Nobody wanted to say to the City of Phoenix, for example, you have to cut back 30% on the amount of water you are using, or to the farmers who had been using that you can't keep using that water from the Gila River or the Verde River. No one wanted to disrupt what was going right now, but the only way to solve this problem was to augment the water that was available. And everyone understood that it would have to be allocated to the Indian Tribes through this adjudication or settlement process. They went about beginning to settling the claims, and the first one was relatively small, and the big one that really I argue that is the fourth key in Arizona water planning and management was the Arizona Water Settlements Act that effectuated the Gila River Indian Settlement because it did two big things in addition to resolving the Gila River Tribes claims and providing water for the Tribe and money to build their irrigation projects. It established a fund of money to help pay for future projects and established a pot of water, this Central Arizona Project water, that was unallocated for future Indian Water Settlements. We knew once this was done we could resolve all of the other water claims with new water, CAP water, nobody was going to have to cut back and of course certainty about the what kind of water you have is the key to all of this. We knew that we had enough water if we were careful in the future settlements, and we have been, and the key for the Indians was not a decree or paper water as they call it – it's wet water. They needed projects so that they could put their water to use. Now why should somebody pay for those well, first of all there were allegations by the tribe that they had been denied water for a long time that they should have had and they made claims against parties, primarily against the United States for failure to comply with its trust responsibility to see to it that the water that they had could be utilized. So where would the money come from?

Well, it turns that we were having a big fight with the Department of the Interior about how much money the State of Arizona needed to repay to the United States Government for its costs for building the Central Arizona Project. Part of the cost of building that project was on Arizona, it wasn't just federal money, and

there was a big legal dispute about that and a lawsuit had been filed. The Secretary of the Interior then, Bruce Babbitt a former Arizona Governor, asked to see me in my office in the Senate. He said we have a problem here. The Arizona people negotiating these water settlements here, particularly the Gila River Indian Settlements, don't really trust me to represent their interests because I'm on the other side of the litigation. He said you really need to get involved in this, so would you step in and represent more of the state interests, the non-Indian party interests, and I'll represent the Indian interests and let's see if we can get this resolved. He was very constructive in his approach. Obviously, as Secretary of the Interior, he represented all of the people in the United States, not just Indians, and as a Senator for the State of Arizona I represented all of the citizens of Arizona, as well as the United States not just non-Indian parties. It was clear that we had to get some leadership with the two sides coming together and fortunately we agreed on a process for negotiations. So, while we were theoretically adverse to each other, we were working all the time trying to bring this to resolution. It created a good atmosphere for constructive resolution of the problem.

One thing about water law that should be noted for historical purposes is, and I say this as a lawyer always interested in conflicts of interest, there is one area of the law that cannot avoid conflict of interest and that's water law. It is because you have thousands and thousands of claimants and fortunately we don't have thousands and thousands of water lawyers. So not every claimant can have his or her own lawyer; that means that lawyers have to represent a multitude of clients. They try and get the clients together who have generally the same interest, but they still could have some disagreements amongst themselves but that's just the way it is in water law. The lawyers representing the different sides just have to have a little special responsibility to know that there's almost just a public responsibility there in addition to the pure responsibility to their particular clients. And that's the way we approached the negotiations over the Arizona Water Settlement. We all represented the same people but we agreed to champion the cause for different parties and it worked out well. The money that we eventually came up with as the

source of funding for projects that could provide water for Indians and actually put to use, like irrigation projects or municipal water projects that money eventually came primarily from the obligation that Arizona owed to the Department of the Interior, Bureau of Reclamation, United States Government to repay the costs of the Central Arizona Project.

What we ultimately agreed to was to settle the lawsuit, reduce the amount that Arizona owed, we got a pretty good deal on that, and put the rest of the amount of money that Arizona owed into a trust fund to be managed by the Bureau of Reclamation, Department of the Interior, for the purpose for paying for these water settlements. That made it easier to get approval from Congress because we didn't have to go back to Congress and get new money appropriated we were using money that was going to come to the federal government but why not divert it and put it into this trust fund go right back into Arizona to build these projects. I thought that was a fairly creative idea. That worked, we still had some problems later with Congress but that was the idea for that fund. It has been possible to draw from that fund – the original authorization I think for the Gila River Indian Community was a \$400 million irrigation project which I think when you run all the costs out was probably twice that. It was a lot of money. So to have a pot of money where at least part of that money could come from was very important. And the same, to allocate the CAP water because obviously as I said we didn't want to take it away from someone else. That Water Settlement was eventually approved and it was the granddaddy of all or the mother of all Indian Water Settlements. We got it through the Congress and it therefore not only resolved the Gila River Indian Tribe's claims it created the opportunity to resolve the rest of the big settlement that we had to do in Arizona.

The next one that we did was the Apache Settlement it wasn't huge in terms of water or costs we could have never gotten it done without that pot of money and without that pot of water. And the White Mountain Apache Tribe now and after years of refusing to negotiate with anyone, because after all there at the top of

the water shed they have a good claim to that water it is falling on their land and they wanted to make sure they could preserve enough of that water to take care of the Tribe. In the meantime, the Salt River Project and the municipalities had pretty much claimed all that water because it flows downhill through Tonto Creek and Salt River and Gila River and so technically their claim wasn't that great, but they were there first. This could have gone back and forth and Ronnie Lupe the Chairman of the Tribe at that point said let's do a little horse trading and they were pretty shrewd and they got Miner Flat Dam and a municipal water source that the Tribe desperately needs and that's on track now to be completed – it will take several years.

But that is the kind of solution that parties of good will can come together and get something done and so I say that's the fourth big piece Salt River Project, Central Arizona Project, Groundwater Management Act and now the resolution of these Indian water claims along with everybody else's claims primarily through the Arizona Water Settlements Act. At the right time, Arizona leaders stepped up, they had foresight to realize that something had to be done and they worked to do it. Our state leaders, the Arizona Department of Water Resources, Salt River Project, and others were instrumental in helping to work with the people of Nevada and California and the Department of the Interior on sharing the shortage in effect. We now realize that at the time that the United States Supreme Court divided up the water rights to the Colorado River it happened to be basing all of its data and decisions on the wettest possible time and it's never been that wet. So there has never been that much water, so it divided for more water that exists. Now we are in a long-term drought period and we have seen what Lake Mead looks like for example. Sharing the shortage is a big problem and fortunately the water officials in the three states have been able to work together to do that.

Q: Your great commitment and interest and work for so many years to ensure the water health of the State of Arizona has been ongoing and I'm sure even when

you leave office in January it will not be far from your heart. What do you think right now is the critical issues for the water in the State of Arizona today?

A: First, let me say that I had a lot of great help from lawyers in my law firm. I would like to talk about that for historical reasons. Rex Lee who became the Solicitor General for the United States of America was one of the finest lawyers this country had ever seen. He was one of my law partners at Jennings Strouss & Salmon. He actually started the process of the amending of the state law before he left to go back to Washington, he was head of the Civil Division of the Department of Justice and then he was called to start the law school up at Brigham Young University before President Reagan appointed him as Solicitor General. Rex Lee argued a very important case that I lost in the 9th Circuit Court of Appeals two to one but he won it in the United States Supreme Court and we worked together that helped to allow the Salt River Project to continue to be a leader in all of this and I can't say enough about the role that the Salt River Project has played because without its historical knowledge and commitment and willingness to put a resources to these issues I don't know where Arizona would have been. And fortunately after the Department of Water Resources was created, it helped to take up some of that slack. But the reality is it has never been adequately funded and it needs to be funded more than it is because it is a great asset to the State and Salt River Project can't carry the full load. But there was an attack on the Salt River Project Board and the method by which its Board of Directors was elected. The claim was that they should be elected by one person one vote. It is an agricultural improvement district and it's owned by its land owners and the land owners are the ones that fund it and care about it for which is was created and we argued that the land owners should be the ones that elect the Board of Directors. It's like the stockholder of a corporation. It is a complicated issue, but eventually the United States Supreme Court agreed with our position.

And as a result, Salt River Project was able to continue as an entity that was focused mostly on water. The other side had argued, well it's become a huge

electrical generation facility, which it has and the water is really the tail wagging the dog. To some extent that is true, but it was created to preserve and develop the water. It was created to provide water for the water users and the electricity subsidizes that water effort. We argued that it was important and proper the Arizona state legislature recognized that through statutes in the State and it was important to preserve that through that case Ball vs. James. We were able to preserve the Salt River Project's important role in maintaining a focus on water.

Another group of people helping were my law partners like Neil Wake, who is now a federal judge; Fred Martone, who is now a federal judge and John Weldon, who I think is the finest water lawyer in the state and continues to do a lot of water law work for the Salt River Project. And a lot of other folks in the law firm and people at Salt River Project, Dick Silverman with whom I went to law school with he was the lawyer for the project and I was the outside counsel. They called me the out-house counsel and Dick was the in-house counsel and what a great working relationship we had now and he became General Manager after Jack Pfister who had also been a partner at Jennings Strouss. I can't think of two greater people to work with than Jack Pfister and Dick Silverman. Dick is now retired and you have new leadership of the project throughout and we've had a great relationship – Leroy Michael as I mentioned as General Counsel. There are a lot of people there at the project that I had the ability to work with and I don't want to make it sound like I was the only one who did this, but because I learned water law and had this experience when I went to Congress people naturally turned to me and not a lot of people have the benefit of learning water law. For better for worse, I was the person they turned to and I know that's one reason Bruce Babbitt came and talked to me. So I couldn't get away from it and it's really a good thing because somebody had to take the lead. John McCain has always said – kidded about it – but very willing to allow me to take the lead and back me up on it and I'm grateful for that he's always feigned great disinterest but he's very interested in it and very helpful in backing up what I wanted to do as well as members of the House delegation starting with Jay Rhodes who came into the House with me and

who had a great background in this because of his father and just his knowledge of it. So many people played an important part of this throughout the years. Yes, while I have been in the Senate I've been the person they turn to and I have had great staff who has worked on this too and frankly much of the work has been done by the staff. And as a result they have been able to do a lot of the detail work that I could never have done by myself. I've talked to people who will be in the Congress next year I think will be in the Congress since we filmed this particular segment just before the election about carrying it on. And Senator McCain knows that he will have a little more responsibility here now too.

There are still so many important things to do – I'll divide your question into two parts – First we have to complete the Indian Water Settlements and the biggest of those is the Navajo Hopi Settlement. We had spent years negotiating the settlement and putting together legislation to resolve their claims after their lawyers agreed with all the other lawyers to the Settlement and wrote letters to their respective counsels recommending approval as did the other lawyers recommending approval to the cities, Salt River Project, Arizona Public Service, all of the different parties. The two tribal councils in close votes decided not to support the settlement. The problem therein is there won't be time to do it before this year, realistically speaking. As a result, somebody else will have to take that up and complete the process. It is becoming much harder now to get these projects through the Congress because there still is a federal money component to it because of the earmark issue – if they call it an earmark, because it is not an earmark when you settle litigation and have to pay what you have agreed to pay but there are people who refer to it that way and you have to work through that in the Congress. Probably the biggest difficulty is that there are other settlements around the country and people know if you want to get one passed hang it on to the Arizona Settlement it will get passed. They are not all worthy and some of them are way too expensive and some are very controversial and I thought we had a clear path to get the Navajo Hopi done like we did the Apache Settlement. I don't know that will be the case in the future. I think a great opportunity here was

squandered and people of goodwill can differ about that the merits of the settlement but it will be difficult to get that done in the future. If there is something I can do to help I'll be happy to do it but I don't know what my future holds or that I'll be in a position to be able to do that, but if I can I certainly will.

You have asked about other water issues and that opens up an entire set of things to talk about. Let me just mention a few...we still have to finish the water settlements to complete these projects and we know that the Groundwater Act didn't settle all of the problems about the stress on our water supplies and development continues to occur and we are at a hiatus now because of the downturn of the economy, but if and when Arizona growth begins to occur seriously again in the future we will be putting even more stress on our limited water supplies. Now, one could argue that there isn't any more, we are using everything that the Salt River Project has developed, nobody wants to build more dams and we will be using everything that the Central Arizona Project has allocated to Arizona and both Nevada and California are doing likewise.

So where are we going to get the water to satisfy future needs? And realistically there are two ways you can approach it – obviously water conservation is one and Arizona could do a lot more, but there is a limit to that. One way that we did it for example, was a bill that Senator Feinstein from California and I worked on and Senator Reid and Ensign from Nevada to line the All American Canal in southern California, which saved an enormous amount of water because that canal leaked pretty badly and that water was wasted a lot of it went on down to Mexico and they were happy to get the water but it wasn't a water right that belonged to Mexico, but that costs money. As water becomes more and more valuable, as there are fewer people to put claim to what we have, those kinds of investments will probably have to be made to preserve the water that we have. The other side is augmentation and we still continue to work on the desalination plant down in Yuma and I frankly think we will not be able to pipe a lot of water in from the northwest, they are not going to let us do that although I think California

has become a little more relaxed about sharing water north to south and so on. That opportunity for us in Arizona is not really that available. I continue to believe that weather cloud seeding and so on it sounds a little farfetched, but scientifically it actually does work and it can produce significant benefits. Water shed management has always been a forte of the Salt River Project; we need to get back to that. Our forests are managed very poorly and we know what to do. Dr. Wally Covington up in Northern Arizona University with the Ecological Restoration Institute has provided the scientific basis for it and Salt River Project knew that basis and worked it for years. That watershed management could preserve a lot of water if we did it right so we need to focus on that and other augmentation methodology. I have always been an advocate for pretty free growth, but I can see the day where Arizona communities are just going to have to be much tighter in their planning because the water per population and growth needs is just not going to be there. Those are going to be huge challenges and I'll put that down as the fifth great challenge a few years down the road for the next generation of leaders.

Q: I think you found firsthand that the forests are not managed well up by your house in Greer. The last little bit here, if you do not mind, I would like to ask you Central Arizona Project specific questions? How did the CAP change Arizona?

A: Several interesting changes and I think of one, it's not the first one, but Tucson was always looked down its nose at Central Arizona Project. It had the world's largest underground aquifer, great drinking water and they didn't want that smelly Central Arizona Project water. Well, they do now and rightly so. Morris Udall was one of the people that insisted that the Central Arizona Project canal delivering water to Tucson. He knew they were not going to be able to rely on their great underground aquifer forever. Fortunately they have that delivery now to augment their underground supply. It's been important for the Tohono O'odham Reservation, City of Tucson, areas in between and Pinal County. That is one of the changes that occurred. The water that has been made available for delivery to

Central Arizona Indian Tribes has just been critical and the ability to trade for other Tribes to trade punitive water rights to Central Arizona Project for wet water that comes from some other source. The Navajo for example, if they can resolve their claims to the main stem of the Colorado River, can gain access to almost 7,000 acre-feet of water that comes from southern Colorado through New Mexico down to Gallup into a pipeline over to Window Rock that is their Central Arizona Project water but it doesn't come from Central Arizona Project. You can move the water rights around even through it's harder to move the water around and that has made a huge difference. Third, it has relieved the central Arizona cities, particularly Phoenix metropolitan area here, of reliance on just Salt River Project surface and ground water. The surface water was never enough. They always pumped about a third of the water in tough times maybe up to two-thirds and that can't last.

So in addition to the Salt River Project water and the groundwater, the metropolitan area here needed another supply and two things occurred to create that. First, the agricultural usage within the 236,000 acres of Salt River Project area was diminished to the point of – I don't want to say almost nothing -- but there's very little agricultural use left. Fortunately, if you take an acre of agricultural land it used about as much of water as one acre of houses and as a result through the arrangements between Salt River Project, land owners, and municipalities they had in affect converted – the water still belongs to the land owner, but the landowners are now home owners and its being handled by the cities. It is serendipitous in effect that we created that for agriculture it supplied agriculture for all of these years to help the valley grow, but when agriculture converted to municipalities that water has been available for them, but that's still not enough and that's where the CAP water has come in to support the municipalities. The CAP water that is still being delivered to Pinal County for agricultural purposes will gradually phase out as the municipalities need the water down there as well. So, you have farmers helping to repay the costs using the water right now and beneficially recharging the aquifers in Pinal County that had

been depleted very badly. Hopefully, the CAP water is being put on the farms, now some of it is now some of it is consumptively used but a lot of it drains on down and replenishes the aquifers so it will be there for the future in Pinal County as well so there are a lot of benefits to bringing down the Central Arizona Project water.

There is a big challenge to that one of the things the leaders will have to do is get the right adjustment between the cost and benefit of environmental regulation at the Navajo Generating Station. The Navajo Generating Station is one-third owned by the Federal Government – Bureau of Reclamation operates that for the pumping that Central Arizona Project requires because it is expensive to pump almost the level of the ocean, the Colorado River is a little above that but not much, above sea level, to pump it over two thousand feet high to Tucson, thirteen hundred feet to Phoenix metropolitan area. It costs a lot of money for pumping for the ag uses and as a result a cost of pumping that is subsidized by the Navajo Generating Station is one of the key reasons that that water can be delivered and still be cost effective. If it becomes too pricey because the environmental controls put on the Navajo Generating Station require jacking up the price of power too much than several things happen. First of all farmers are going to say it's cheaper for us to pump groundwater. We don't want that to be done, but it will be cheaper for them and they have right to do that. The same thing for the cities the Indian Tribes like the Gila River Indian Community, which made their Indian Water Settlement based upon a set up assumptions that the cost of water are rethinking that. One calculation is that about \$250 million of additional costs will be imposed on the Central Arizona Project users with the higher prices that would be reflected in this new environmental equipment that Environmental Protection Agency might say Navajo Generating Station needs to install. The Environmental Protection Agency right now is sitting on a decision what will it require and this is not for public health this is just for visibility and very rarely do the winds blow from the northeast blow the Navajo Generating Station gasses does it rarely blow back down towards the southwest toward the Grand Canyon. Virtually all of the haze that

exists at any given times in the canyon in its vicinity to the southwest primarily southern California some to some indigenous cities. But because occasionally just maybe there may be some loss of visibility, Environmental Protection Agency might be requiring something like over a billion dollars in new investments. Well, the Navajo Generating Station has already doubled, more than doubled, the investment in the plan with environmental equipment versus what the plant first cost. It is at a critical stage now where they have to make a decision about whether to renew the leases and permits and the operation of the plant for other twenty, thirty or forty years. And so some tough decisions have to be made. If the Environmental Protection Agency makes the wrong decision and they are required to install the most expensive technology, which in my view is not warranted on any cost benefit rationale, then the future of Central Arizona Project pumping is up in the air. That will be a huge challenge for the next set of leaders for the State of Arizona and the Indian Tribes which also have been letting Environmental Protection Agency know their concerns about this. So it's the people directly affected and all the people indirectly affected both Indian and non-Indian throughout the State.

Q: If you were sitting in a room by yourself with a room full of the next generation of water leaders what would you tell them?

A: First of all, reflect on the fact that each moment in our state's history when we needed to have a group of people come together and work on the next set of water problems it happened. It was frequently bi-partisan it was almost all bi-partisan in terms of politics the water interests all fought each other but they fought each other with a set of rules that resulted in good water policy for the State. I think that is something the state can be enormously proud of, it's the best things about our State of all of the challenges that we have that's been the most ongoing serious important challenge to the wellbeing of the people of our state. We have managed it so far, so now it's your turn. You have some big problems here and you need to come together with the same expertise and commitment.

You like to celebrate the legacy of our state as we are in this Centennial then recognize that you have an obligation to do the same thing that the people who came before you did. To tackle these problems and get the results in a sensible common sense way that preserves our future. This is the best place in the world to live that's why so many people come here – preserve it so that our future generation can have what we have. I would tell them to be sensible about this on this environmental part – I know there are people that just want to shut down all coal fired plants and shut down all nuclear plants what's left – okay wind and solar. Wind and solar can't supply a fraction of what we need. Here's another challenge: the cheapest solar technology uses enormous quantities of water. This is the thermal-powered wet-cooled solar concentration where you collect the sun's rays and you concentrate on an area and you heat water or some other liquid that then creates the steam the pressures that generates the power. As opposed to the full voltaic this doesn't use essentially any water at all. And I think if we are going to rely on solar generation in the future, which is fine because we have a lot of sun, we have to be sure we do it without using enormous quantities of water particularly because Nevada and California have figured out that they don't want to do this and can't afford to use their water this way. They are happy to have Arizona use up our very scarce water resources to produce electricity to send to California. What's that about? You have people on the Corporation Commission that think that's just fine. Arizona needs to wake up to realize that we don't have enough water to waste on a generation of electrical power to send to California when they have figured out that they are not going to let that happen with their scarce water resources. We have to be very careful as to how we use our water in the future. Solar is fine, but don't use the kind of solar that will use up our precious water resources. Those are the kinds of challenges people need to think about in the future.

Q: Any closing statements you would like to make?

A: I appreciate you preserving the history of these things because I'm forgetting it fast. I had forgotten the year that I argued the case in the United States Supreme Court – I remember parts of the argument very well. I also suggest that those on our staff who worked all the details be interviewed because they will remember a lot more than those of us that are at the top of it. I went back because my staff was interested in the argument I made to the United States Supreme Court so I got the transcript and read it last year and I forgot that I knew all of that stuff at one time. It was very complicated and the court asks some very good questions so your memory fades and it's important to preserve the knowledge while we still have some sense of it. Part of the reason is because it's not just the specific arguments that were made or the historical events that occurred but it's what was behind it and that's the point I've made twice now – we were blessed with people who had a vision of the future of Arizona they knew what the challenges would be and that water was central to those challenges. If we hadn't created the Salt River Project and fought for the Central Arizona Project, and it was a hard fought battle, and we hadn't had the leaders that we had, the Central Arizona Project continuing to implement the policies that were created earlier based upon the knowledge of why this is so important we wouldn't be where we are today. If you interview the first 1,000 people on the streets of Phoenix and ask them what about water they will say what about it – it's something they have come to expect and to not think about it and shouldn't have to think about it. People need to think about who is taking care of that what are the costs, and what the challenges to it are in the future. It didn't just happen somebody made it happen because they were thinking and need leaders in the future who will think about it and have the right view toward ensuring that the resources that we have been given are managed in an appropriate way. We have the stewardship of a wonderful state and that includes the water and we need to pay attention to it in the future.

Q: Thank you.