CAP Oral History

Pam Stevenson (Q):

Today is Monday, June 4, 2007, we're here to do an Oral History CAP interview in Phoenix. I'm Pam Stevenson doing the interview and Manny Garcia is our videographer. Will you introduce yourself and give us your name?

Bill Swan (A):

I'm Bill Swan and I'm a lawyer, a little unusual, I'm a California lawyer that lives in Arizona and I practice law mostly in California.

Q: And you prefer Bill over William?

A: Bill is fine.

Q: When and where were you born?

A: I was born, believe it or not, because we will get into this later, in the Imperial Valley. I was born in El Centro, California in 1949. I lived there for about five years and then my family moved to San Diego. So I lived in San Diego for a period of time as a youngster and then my family, my father, was transferred to Phoenix so we lived in Scottsdale. I went to high school in Scottsdale. I went to college mostly at Arizona State University and then I went to law school in San Diego at California Western and was licensed to practice law in California and then eventually came to Arizona to work.

Q: What did your father do for a living?

A: He was with the Union Oil Company and so they moved him around a little bit, just in the Southwest here. So he was able to interestingly travel a lot of Arizona because he was sort of the kind of guy who checked in on people who sold

these products around Arizona so he was always going to the White Mountains and to Flagstaff. This was in the 60s and 70's when Arizona was a much smaller place and it was really a fun thing for him to get away and to see a lot of rural Arizona.

Q: Did you get to go with him?

A: I did, I did. I went up to, for example, when he went up to the White Mountains he would take me along and he would drive me in to some creek or stream with the fishing rod and a sack lunch. This shows you how different things are these days, say good-bye and he would go do his work during the day and then he'd come pick me up about six o'clock in the afternoon and we'd you know go to the hotel or wherever we were staying. We would do that for three, four, five days while he was up there, so it was great, I got to see a lot of Arizona that way and have a lot of fun.

Q: How old were you then?

A: Probably in my early teens, maybe 13, 14, 15 something like that.

Q: I was going to say you were like eight and that would not be good.

A: Probably a little bit too tough there, but I guess the theme here is that I was always attracted to the water side of Arizona. I always wanted to go where the streams were, the lakes were, try and do a little fishing whatever, but if it had to do with water I was there.

Q: How many kids were there in your family?

A: I have two brothers. I have an older brother who is a lawyer who works for a real estate company in Scottsdale and I have a younger brother who is doing

some more studying at ASU, after having been in the television and related businesses for a long time, so he may be getting back into that now.

Q: As a boy growing up then, did you have any ideas about what you wanted to do?

A: I suppose that I was influenced by my older brother when I got into college trying to think about what to do during college and after college I had a notion that I wanted to do a graduate work of some type. So as I got near my end of college undergraduate, law school seemed like a more attractive alternative and so I saw my older brother going to law school and I had some friends who were also approaching law school. So because of that, I gave it some serious thought and decided that should be my career as well.

So I applied to a variety of law schools, but I had some friends going to a law school, a good law school, in San Diego called California Western. Most of Southern California doesn't have public law schools they have one public law school in Southern California and that is UCLA everything else is private for about 20 million people. So this was a private law school in San Diego but it was very good and I enjoyed going to school there and so that's how I kind of got into it.

Q: What was your undergraduate in?

A: Economics, but Economics in Liberal Arts. It's interesting that you don't have to go to the business school so I was doing economics classes along with Shakespeare and things like that. Wish I could go back there too.

Q: A lot of lawyers are history majors too.

A: Yep. There are all kind of majors that end up being lawyers, yes.

Q: So when you thought about becoming a lawyer, what did you think you would be doing?

A: Well, that's a good question and I talk to a lot of law students these days and try and help them through that process and I really urge them to get focused on a type of law earlier than later. You know the sad thing is too many people graduate, maybe it's from any graduate school, but especially from law school and they say, "well I haven't thought about what I am going to do" and the next thing you know their brother-in-law's neighbor you know does some kind of law and they are doing that whether that's really their passion or not. So I try and urge people to get focused earlier on.

My focus in law school was a little in the direction of natural resources, you know land issues, water, that sort of thing and I didn't really have that crystallized until I finished law school and I came over to Arizona to sort of poke around and think about whether or not I wanted to live and work here or live and work in California. I found myself going to meetings believe it or not in regard to the CAP. I found myself going to meetings out of interest out at Fort McDowell because the original CAP Act had a dam that was going to be at the confluence of the Salt and the Verde Rivers and was going to flood out the Fort McDowell Reservation. So I was just fascinated by these meetings and the fact that they were going to flood an Indian Reservation, do away with the river running out there. It was going to be this big dam and you know it had all kinds of controversy and they kept having these meetings and I would go out to these meetings and I would talk to the reservation people, the Fort McDowell folks, about their legal counsel and you know that sort of thing. So I was kind of poking around in this area

Q: What year was this?

A: Probably 1976, in that vintage, and I went to law school with a woman in San Diego who ended up taking a job with the Department of Interior in Washington. So we were staying in communication and she said she liked her work and it was great and that's what I ought to do too. So she was telling me about these various offices that they had around the country. I mean Interior, like many big government agencies, has a bunch of lawyers in Washington probably 300 or something, but they have field offices because most of Interior's work is in the west. So they have offices in Denver and Seattle and San Francisco and Sacramento and that sort of thing. They had a field office in Phoenix. It's called the Field Solicitor's Office. The Chief Lawyer for the Interior's title is the Solicitor. So she kept telling me about this, that, and the other jobs and she called one day and she said there's an opening in Phoenix. So I applied for it and was hired by those folks and that's how I got started in the direction of resources and water and Indian law and all of that stuff and that was 1977. I think that was January of 1977.

Q: Was that your first major job out of school?

A: It was my first job out of law school. Yeah, I think maybe I worked for some judges in between just sort of temporary work, but that was the first major job, yes.

Q: And what were you doing then at that job?

A: Well, it is important to sort of understand about the way that the Department of Interior is organized. It has various agencies: the Bureau of Indian Affairs, Bureau of Land Management, Bureau of Reclamation, obviously National Park Service, Fish Wildlife Service. So as a lawyer, you're likely to do some of that work for all of those entities. If you're in Washington, you are assigned to one of those divisions. You don't sort of roam around. You do National Park Service work or you do Reclamation work or whatever. In the field offices it is a little bit

more free-form. You might do contract work, but your contract that you are working on might be for the Park Services or the Bureau of Reclamation or the BIA. So you get spread around to the agencies a little differently. When I first started working there, they needed help on a lot of Indian matters, especially some Indian water matters that were coming up. So I was working on that. I worked on a lot of just regular BIA matters. The BIA is a huge organization and Indian Affairs gets involved with law enforcement, government, water, timber, land management, building homes, health. I mean the BIA is like a mini United States Government. They cover a lot of things. So I did a lot of Indian law and became a bit of an Indian law expert. I did also just water rights for the BLM and some other agencies like that, some environmental law in regard to the Fish and Wildlife Service that sort of thing, and some work with the Bureau of Reclamation. It's important to say that at that time, in the 1970's and probably early 1980's, there was a separate office for this part of the Department of Interior in Boulder City, Nevada. That's where the Bureau of Reclamation's office is for the Lower Region which governs the Colorado River below Lake Powell, which would include the CAP. So all of the work to really manage what was going on in the Southwest for the Bureau of Reclamation was done out of Boulder City and they had a lawyer there, well they had two lawyers. So our office in Phoenix didn't do a lot of that Bureau of Reclamation work early on, but eventually the guys in Washington for some reason at Interior decided to close that Boulder City office. It had gone down to one lawyer, I think somebody had retired, or whatever, and the one lawyer was transferred to Phoenix. That one lawyer's name was Ernie London and he was really central to a lot of the formation of the CAP. The CAP really started to grow in the 1970's and I'm talking about the beginning of 1977, 1978, and 79, that's when the structure was being put together, the contractual arrangements, allocations of water, all kinds of things were happening in addition to building the canal. I mean they were building the pumping plant out at Lake Havasu, starting to plan the aqueduct and all of that stuff was happening in the 1970's.

So this attorney was really important and he was the single lawyer that they relied upon out of Boulder City to do all of that work: a lot of contracting, a lot of just structure of the project. What are we going to do here? What are we going to do there? All that stuff and somewhere, I'm not going to remember Pam, somewhere in the eighties, '83, '84, '85, something like that, he retired. So all of the sudden, the guy that they rely upon out of Boulder City and they no longer have a lawyer right next door that they use to have. The guy that they rely upon in Phoenix is gone. So for four or five or six years, I had been doing a variety of work, but a lot of it in the direction of water, and at that point in time in the 70's the BIA and the Indians were starting to bump up against SRP.

There was the issue of White Mountain Apache and the use of water on the Salt River. There were all kinds of conflicts going on and so they started moving in the direction of what we call the adjudications, the river adjudications, the adjudication of the Salt, the adjudication of the Verde, the adjudication of the Gila, the Agua Fria, all of those things started happening in order to adjudicate or litigate the water rights of those watersheds. And of course SRP would be a big player, but obviously the Indians would be a big player too and the Indians were generally represented by Interior as the trustee for the tribes. The BIA is the point person for Interior and I was the BIA's lawyer. So it was sort of me over here with the BIA and SRP over here and the tribes with me and we were, you know, often times butting heads a bit.

The reason I bring that up is because to understand SRP you have to understand the reclamation law, you have to understand reclamation projects, you have to understand reclamation water rights, you have to understand the history of the Salt River Project, all of that was necessary for my work. So along about somewhere in the mid-1980's, this fellow who was key to the Central Arizona Project, attorney Ernie London, retired. So then all of the sudden the Bureau of Reclamation out of Boulder City is saying who's going to do our work. So as I recall, it's a long time ago, but it was kind of divided up, it

was saying, well there's a lot of contracting to be done, when you're building a $4 billion project, there's a lot of contracting. So that went to sort of the contracting specialist lawyers. Okay then there's a lot of structural work. How are we going to structure this project? Who's going to manage it? What's going to be our contractual arrangement with the association, which turned out to be the CAP? What is going to be the priority of the water rights? How is this going to be Indian, non-Indian ag, municipalities? How's all that going to fit together? All of that had to be done and so they looked at our office and we sort of divided up the work. I ended up with an awful lot of sort of the water rights side of things for that office in Boulder City and also a lot of just structural day-in and day-out stuff in regard to the Central Arizona Project. Others were involved as well. We would have environmental issues you know NEPA and the Endangered Species Act. We would have lawsuits about the alignment of the canal, whether or not you did NEPA correctly, whether we had endangered species problems. A lot of that was divided up amongst several lawyers. I should say that in that office in Phoenix there were probably about seven lawyers on average, maybe sometimes eight, maybe sometimes six. So that's how we sort of divided things up, but there were other agencies to attend to other than the Bureau of Reclamation. But that's how we sort of divided things up and I started doing a lot more reclamation work for the Bureau of Reclamation.

The last thing I'll say on that is it was not just the Central Arizona Project. You have to think about that Boulder City office has jurisdiction below Grand Canyon. So they do everything for the Nevada water deliveries. They do everything for the California water deliveries out of the Colorado River, for Arizona, and they deal with Mexico. So as their main lawyer, from sort of a water or water management perspective, I had to learn the law of the Colorado River. So that's how I got into this whole thing and started learning piece by piece, not only all the players, you know, who's in Nevada, who does

what, how do they take the water out of Lake Mead, who's in California, I call those the gorillas over there in California. Who are the big players in California and how do they do it, how do they get along, sort of the structure of the California system, Arizona and the building of the CAP, and all of that, rights along the river and also issues with Mexico. So that's how I sort of drifted into all of this stuff if that's a long answer to your short question.

Q: You mentioned that you, by personal interest, that you got into the Orme Dam controversy. Did you get involved in that as part of your job?

A: I did, I did, eventually. I guess the way to answer that is that once you get enmeshed in this, you're really part of the army that's marching down the path. It's hard, I mean it's easy, I think, for people to look at it in Arizona and say well there's the CAP. By gosh, you know, that was just fine. That came along just great, but to build a 400 mile, or whatever it is, aqueduct and when I teach the "Law of the River" you know and I have an audience out there and we come to the '68 Act, the1968 Act. I say now let's do some geography here, what is the elevation of Lake Havasu? And most people you know they don't have a good clue, but somebody smart will say 300 feet, 400 feet above sea level, I say that's right. What's the elevation in Phoenix? 1100 feet. What's the elevation in Tucson? 2200 feet. Now what does that tell you about the CAP canal? And the audience is sitting there saying it flows uphill. It flows uphill. How does it flow uphill? Well you know, and you all know this, there's 15 or whatever pumping plants. So it's a big deal. I mean you've got to get the power. You've got to figure out how you're going to take the water, how are you going to move it, where are you going to store it. The whole thing. Once you get involved with that giant thing unfolding you're kind of into the middle of it, especially if you represent the agency that's building it, constructing the structure of it, the legal and physical structure of it. So I was involved with all of that stuff, you know are we going to finish Orme Dam? Are we going to do something else? That sort of thing. In a nutshell, I found that to be a very

fascinating situation because when Washington decides to do something, when Congress decides to do something they enact it. They say go do it and then, you know, sometimes they'll come back and revisit it. This is the whole thing of Jimmy Carter getting elected and saying is this project kind of a boondoggle? What should we do here? It's got some bad aspects too, it maybe Orme Dam is one of them. So there was a review of Orme Dam. It was a bit of a lackluster command. Let's look at that and in the Act, if I remember correctly, even says Orme Dam or suitable alternative, something like that. So there was already quite a bit of authority to maybe look at some other approach. So they started this process, and I'm not going to remember very well, but an administrative process inside of Interior of Reclamation to look at alternatives. They did a lot of public stuff here meetings and everything else. They did have some other approaches and I found it to be fascinating because over a period of several years, I guess it took to make this decision. The engineers quite quickly said well you know there might be a better approach. There might be a better way to do this. Orme Dam's okay; it's got a lot of problems, but by golly if we were to raise Roosevelt and re-do the dam out here at Lake Pleasant, we could even have a more efficient process with the reservoir to store the water. They wanted to put Cliff Dam on the Verde River. So with this other alternative that started to take shape, the engineers became somewhat enthused about it, but the politicians were way back here. The politicians were saying no, no, no. We're going to build Orme Dam. We're just doing this exercise to sort of placate the public and placate the President. But as time went on, the engineers talked more and more to the politicians and the politicians I think came around. It was DeConcini, and maybe Goldwater was in office, certainly Morris Udall. These were people that really had to think this through, Udall had been around the block on rethinking some things. Like as you know, the CAP originally had dams in the Grand Canyon to provide power to pump pumps, to send the water up hill. They had to abandon that and they built the Navajo Generator Station instead of that.

Udall was familiar with sort of the need to be flexible. So the engineers slowly but surely convinced the politicians that there probably was a different approach that was better. So eventually Interior adopted this other approach to not build Orme Dam and to do these other alternatives and two of the three of those have come to fruition. They have raised Roosevelt. They have built a new dam out at Lake Pleasant and then they abandoned the Cliff Dam on the Verde. So that's how I saw all of that unfolding, especially in regard to the Orme Dam.

Q: The Indians were against Orme Dam all along.

A: Correct.

Q: Did they have any influence in that?

A: I think they did. I think that my perspective, I practiced Indian law for 20 years. So I think for all intents and purposes, I became a bit of an Indian law expert. I used to litigate over governance matters when tribes were fighting internally. I handled many, many lawsuits where the tribes were suing the Federal Government. There were all kinds of litigation, not having anything to do about water, just governments, the way that the tribes are structured, all kinds of issues. So I really got to know Indian affairs quite well and there was a perspective that I have about that and that is the Government really walks on eggshells when it comes to Indian tribes. They are deferential to them. They don't want to say harsh things. They don't like to tell them no, even though they should often times be told no because something just won't work right or the Indians don't have the authority or something else. The Government is very reluctant. A lot of that probably has to do with guilt and history and who knows what. So I do think that at that time, we were moving out of the phase of where Reclamation would say this is what we are going to do. We're going to build Glen Canyon Dam and everybody who might have some voice in it who

would say, "golly that's really a pretty place. Are we sure we want to put a dam there?" The answer would be, "we're not going to talk about it. We're just going to build Glen Canyon Dam." The Endangered Species Act didn't exist, NEPA didn't exist, we're just going to build it. I think we're moving out of that phase where people were saying we better take some other things into account. I think the more seriously that they looked at it with the tribe, the tribe didn't want to move. Moving them would be a mess and it had a lot of really negative aspects to it that became a serious consideration. When the engineers were able to say to the politicians, you know we've got a better approach here, I think guys like Morris Udall probably went, "Great, let's do that and let's leave the Fort McDowell tribe alone." So I think it was an important consideration, but you have to think about the way that the government deals with Indians and Native Americans.

Q: The environmentalists were very involved.

A: True.

Q: Frank Walsh?

A: True

Q: And the Audubon Society?

A: True.

Q: Robert Weitzman. We're going to interview him for the Central Arizona Project. I think he still holds a bit of a sensitive feeling about that. Were they powerful enough at the time?

A: Well, you know, it's funny. I'm going to draw a contrast for you here and that is I do an awful lot of work in California and I do these days most of my work is in California. I have to pay attention to matters in Arizona and the other six states on the Colorado River. My work fundamentally is in California and California is a very green state. They give a lot of deference to environmental organizations. I've done a lot of work in Sacramento and many times legislators there would say, "Mr. Swan, thank you. I appreciate what's going on with your client. We need to work on this. Go work it out with the environmental organizations and when you get it worked out come back and see me."

That's sort of the way they do things. In Arizona, environmental organizations don't have a lot of sway even in 2007. Back then they had even less, so were they really significantly influential? Well, only to a certain extent. They sometimes threatened lawsuits and that sort of thing. We did have a lawsuit over Cliff Dam which I think helped scuttle that, but the first guys were quite influential I think, Walsh and Weitzman. On certain areas of things that were being done, they had an impact and I think that the Government was paying attention. The influence of environmental organizations has increased over time, it wasn't huge then but it was meaningful.

Q: I know in Colorado and in Indian communities up there about water, many of them said that they've learned now that if they want to get something done that they need to wrap the project in feathers, have you heard that too?

A: You know that's true, and I really played that game for a long time. You have to think about what I've done when I was at Interior and that has a lot of meaning to it because of the way you do things. What I'm trying to say is during the 1980's and 1990's, I was really doing sort of two major things; number one, all of my Colorado River work and the CAP work, having to do with contracts and water delivery arrangements and litigation, all that stuff. But

there was a whole other thing and that was the Indian water rights having to do with these adjudications. We had to litigate the water rights. Prepare claims on behalf of the Indian tribes. It was the government's job in litigation if you have a lawsuit to decide the rights of the Salt River in Arizona; you have to decide the water rights of the Salt River Pima/Maricopa community, the water rights of the White Mountain Apache, and anybody else who's on that watershed. We had to do all that work. We were in the middle of doing it and getting prepared for litigation and doing a trustee's good job on their behalf. So I got to know the Indian reservations quite well and now I'm forgetting your question. Say your question again.

Q: That some people have said to get something done.

A: Yes, ah, thank you, thank you, what we quickly moved to in regard to the adjudication and litigation was, "isn't it better to settle these rights." Now when you say that, there has been some court clarification in the past that the Secretary of the Interior does not have the authority to sign off on a settlement for Indian tribes. Let's say you have "Tribe X" on the "Watershed Y," and everybody wants to settle, including the tribe. The tribe says "I'll take 10,000 acre-feet a year in perpetuity and I'll let everybody else alone."

Can the Secretary approve that settlement and have it be binding? The answer is no. Congress has to approve it. So when you talk about a settlement, and if you're a smart bunch of people, like SRP, you don't want just the Secretary to sign off on a settlement. You want a settlement that's bomb-proof. You want it approved by Congress. So right away we had to start going to Congress to get these things structured. Which ones are we talking about? Salt River was very early on, right out here by Scottsdale. Fort McDowell followed closely thereafter, Prescott, San Carlos Apache, The Tohono-O'odham reservation in part was settled. Lots of Indian water settlements were worked on, and I probably worked on six, seven, eight of them moving them

through Congress. Now, I may answer your question by saying, when you have a vehicle that is moving through Congress, and the main function is an Indian water settlement, it's a golden opportunity. At least it was then. I think now it's a harder climb in Congress. They look at it as sort of ho hum, we've done this a lot, they're expensive. So I don't think they're seen with the same sort of enthusiasm that they were in the 70's and 80's and early 90's. There was an enthusiasm, especially when you had an advocate like Morris Udall. Udall would take those settlements, and he would move them through Congress. So, was it easy to get $50 million for the Salt River Pima-Maricopa? You bet. And could we add onto that a number of things? Did SRP add on some things that were helpful to them? You bet. Would they have gotten those things had they not been wrapped in an Indian settlement? Probably not. So there's the answer to your question.

Can you get some things, as you're moving through the Congressional process, because it's wrapped in an Indian blanket? You bet. I'll give you an example: we learned a lot in regards to environmental compliance at Tohono-O'odham. After the settlement was approved, they had to do certain things and because of all that, it kind of went badly. There was confusion about what to do and all that. So in one of the later settlements, I think maybe it was Fort McDowell, I wrote in a waiver to part of the NEPA law. Now, getting a waiver for any of the environmental laws out of Congress is very difficult, but because that was in an Indian settlement, it went right through. Now, it didn't waive the whole act, it just said the Secretary won't do certain things under that environmental law and it was helpful to the tribe.

Q: For future generations, NEPA stands for?

A: National Environmental Policy Act. So that is the law that was enacted in the 1970's that requires Federal agencies to look at the environmental consequences of what they do before they do it. So, if NEPA would have been

in existence before they built Glen Canyon, would they had to have looked at the environmental consequences of building Glen Canyon? Yes. Did they look at the environmental consequences of building Glen Canyon? No, because it was 1956. So, we have a lot of environmental consequences as a result of that dam. And I'm not making an argument for or against the dam. I think it's actually a good thing that it's there, but that's what NEPA is all about, and getting some modifications is very difficult, but because it was an Indian settlement, we were able to move it through.

Q: The other thing that was going on in the late 70's, '78, '79 was flooding on the Salt River.

A: Right.

Q: So how did that impact…?

A: Well, that goes back to the alternatives for Orme Dam because Orme had a very significant flooding component. But the engineers figured out that by raising Roosevelt, and by putting in a big dam on the Agua Fria, they could solve most of that problem, and also a dam on the Verde. The dam on the Verde, I think, played a lesser role and the flood consequence of not having the Verde, having bigger dams was not that huge. So they were able to let go of that, but I think with a larger Roosevelt they really solved a lot of that problem to a great extent, bomb-proofed the city down here. Then they did local things for the Army Corps of Engineers which helped a lot in the flooding here. So, I think that that problem has largely been controlled, but that was part of the shift away from...

Q: So had there been the flooding at that time, it wouldn't have been as easy to...

A: Correct, no it wouldn't have. There's always a help when there's some sort of crisis or, I don't want to say tragedy, or a mess. If there's some sort of a mess that needs to be solved, it's easier to get the attention of Congress and get things moved through, so that was part of it.

Q: I was working at the news at that time, and I know when all those bridges on the Salt River were washed out, it certainly got people's attention.

A: Yes. Absolutely, absolutely, you couldn't get to Tempe.

Q: Right. People don't think about water unless it's...

A: Well, let me say something about that to bring you around to the present day, and sort of the work I do very quickly. I represent as a client, the Imperial Irrigation District in Southern California. Maybe you know, but the Salton Sea didn't exist before 1905 because there was a flood and the river jumped its banks and flowed into the Salton sink for two years and created the Salton Sea. That was in 1905. Well, if you say there was a flood, well where was the flood coming from? Well, certainly from the Colorado itself. But there was a massive flood on the Salt and Verde and the Gila. So that water was going, remember, we didn't have Roosevelt Dam then.

Q: They started to build it.

A: They had started okay, but here comes this flood, and if I have my numbers correct. The amount of water moving through the Salt River in Phoenix was about 210 or 220,000 cubic feet per second. That's greater than anything we've seen recently. That's a huge amount of water. Now, that water also reached the Yuma area at the same time that the main Colorado was flooding and that's why the works on the California side couldn't hold. They failed and the river breached its banks and went into the California path

instead of going down to Mexico. So as a consequence of that flood, in 1905, what did the Phoenix area do? They built that big bridge between Phoenix and Tempe that's got pylons that are gigantic, and all of us who moved here in the 60s, kept looking at that bridge saying, "It's on a dry river bed! Why is it so big?" The two 1905 floods is the reason they did that.

Q: I know I've done a lot of history with SRP and that's when they started to build the dam.

A: Yes.

Q: It reinforced the need of why they needed a dam there.

Manny:

And a lot of people have seen the footage of the other bridge they were building and it wasn't quite built and the river came and took...

A: That was 1983 I think.

Manny:

Everyone would see that old bridge in the background.

A: Standing there just fine.

Q: The one that actually was half built was in '91.

A: Was it '91? Oh, I thought it was '83.

Q: I was standing there when it collapsed

A: Oh, I thought it was the earlier flood. They had floods in the early 90's too.

Q: So, you've been working since the '70's for the Department of Interior?

A: Right.

Q: Originally you were a Department of Interior employee?

A: Yes. I was a Department of Interior employee in what's called the Office of the Solicitor. I was an Employee/Attorney for the Department of Interior until 1996. For most of that time, I was just a staff attorney in the Phoenix office and then about 1993 I think it was, I was appointed as the Field Solicitor. So I managed that office for a period of two or three years before I left in '96.

Q: That's almost twenty years.

A: It was about eighteen, nineteen years that I worked there.

Q: What made you decide to leave?

A: Well, I got tired of sort of the bureaucratic hassle of things. Being a manager is always difficult. So I had to deal with all of the management problems of the office, and it was seven or eight lawyers and four or five support staff if I remember correctly. I was sort of getting a little tired of government work and saying, "Gee, maybe I ought to do private practice for part of my career." So I talked to a number of people that I trusted, lawyers and others who I thought would be helpful and I talked to these guys as mentors and said, "What do you think?" And they all said, "Oh, I think you ought to go out in private practice and give it a try." So, I did that.

Another thing that moved me away was that, you have to picture Interior and these agencies like a corporation, and we were the lawyers for management, sort to speak. So you have all of these personnel problems. You know, for the

BIA and the BLM, and these cases took more and more time and they would come in with a stack "this" big, and you'd have to give it to a lawyer, and the lawyers didn't want them. So you have to go around, handing these things out. It was very unsatisfying, and it took you away from the main subject matter that you were supposed to do; whether it's land or water, or Indian or whatever the law that you really wanted to practice is. Instead, here you are doing this personnel stuff, and it was really dissatisfying, so that and a number of other reasons, I said it's time to move on and do private practice.

Q: And, how did you do that? Where did you go?

A: I just decided to go out and sort of cast about, and that's an interesting story. When I was thinking about leaving the government I talked to a number of people—and you probably heard these names in your interviews. One of them was Don Glaser, who was an assistant to the Reclamation Commissioner and he was very much involved in the CAP negotiations back in their early days when the Interior Department and CAP were first trying to solve the problems and I was part of that team. So Don Glaser was somebody I talked to. Dennis Underwood was a very influential fellow, who is recently deceased, it's very sad. Dennis was a Commissioner of Reclamation but he was also the Colorado River Board Manager for many years. Very significant influence in California, and he ended up being a General Manager, before he died, of the Metropolitan Water District of Southern California which is a gigantic organization. MWD I think is the largest public utility in the United States. It's really a gorilla. So Dennis was helpful to me and then a guy named Mike Clinton. Mike Clinton is, he's an engineer. He lives in Las Vegas now, but he worked for Interior for a long time and the Bureau of Reclamation. But in a critical period in the 80's, he was an assistant to like, the Undersecretary, something like that. He had some sort of high position there with good portfolio and he was given the command, "Go out to Arizona and work on those Indian settlements and try and get them done."

So he was really the reason that we had enough Washington connections. It's not enough for a lowly lawyer to be trying to cobble together a settlement but we had this guy who had the ear of the Undersecretary and the Secretary to work out a significant Indian water settlement. There hadn't been very many of them done. The Salt River was one of the early ones. So, Mike and I worked on those settlements significantly, a number of them. When I got close to leaving the Interior, those are the kinds of people that I talked to. Okay, there was probably a handful of them, but Mike Clinton was one of them. And, interestingly at that time, Clinton had worked for Interior, and he'd done some other things. He had, not too long before that, maybe a year or two been hired as the General Manager for the Imperial Irrigation District. Imperial is the largest irrigation district in the United States. They dwarf all other irrigation districts in volume of water. As far as land size, they may not be as large as Westlands in California, but Westlands is now selling off land so they will soon be the largest land area district as well.

So here's Clinton down there running, as the General Manager, the Imperial Irrigation District which I will refer to as IID. So, I called Clinton when I was getting ready to leave, and thinking about, you know, I'm going to have to make a living, it sure would be nice to have a client or two, but all of them assured me, "Oh, you'll find clients, not a problem." I called him and I said, "Mike, I have an idea. I think San Diego is going to be a big player in the Colorado River here in the next decade or so, and they need legal help."

It's really the San Diego County Water Authority, which is the big entity over there. I could just see it on the horizon, I knew what was coming as far as their conflicts with MWD and they needed an independent water supply, they were talking to IID, that sort of thing. He said, "You're right, they do need help." And he said, this is a great suggestion, and I know that he was in contact with that

manager all the time. He said, "I'll talk to them about it and I'll get back to you."

So a couple weeks later he calls me up, and I left in August, so this is probably, you know, early August he's telling me this, he calls me up one day and he says, "Well, I've talked to San Diego. Good news and bad news." I said, "What's the bad news?" He said, "They're not interested." I said, "What's the good news?" He said, "We are."

So he arranged for me to go down and meet the General Counsel at IID and said we want to hire you and to be part of our outside counsel. I figured my work with IID would be 10 or 20% of my work, now it's 98% of my work. So it has just grown over time because they are such a, if there is a gorilla on the Colorado River, it's IID. And maybe you understand this, but let me say this quickly. In volume of water, IID's water entitlement is around 3.4 million acre feet. They have temporarily quantified it at 3.1 for a period of years. Arizona has 2.8, and Nevada has 300,000. So IID, a district by itself, just a farming district, has more water than the state of Arizona and Nevada put together. It's huge. So when the states get together, having IID sit there is almost like a state by itself.

Q: They have the vast majority of California don't they?

A: They have about three-fourths of California's apportionment.

Q: Of Colorado River water?

A: Colorado River Water. California has 4.4 million acre feet and IID's maximum right is about 3.4.

Q: So, what were the issues when you started working for them in '96?

A: '96.

Q: What were the big issues?

A: Well, what happened over a period of time, and I guess we'll come back to the CAP in a minute. What happened at that time to put it in a nutshell, the California thing is exceedingly complicated. I mean it makes some of the things that I worked on over here seem a little bit simple. The quantification settlement agreement that I'll get to in a minute, we call it the QSA, was 40 contracts, all 100 pages, I mean, it's really, really complicated stuff. But you can boil it down to a very simple situation and that is, out there in that Valley you have about 180,000 people, sitting on a water right that is more than what God has, okay. Over on the other side of the mountains, you have 18 million people, with not such a great water right. Okay. So there's the tension. So water needs to move from the ag community, IID, to the urban area, and that was primarily to San Diego. They were the ones that wanted to do the deal. MWD was a foot dragger. And so, what happened in '96 and in the late '90's is that all of that started to mature, a transfer to San Diego, how to make it work, and then you get dragged into issues with Coachella, MWD, environmental problems, the Salton Sea, all kinds of details that I won't go into. But it took us ten years, essentially, to negotiate our way through all of that stuff. Finally a deal was signed, and it took a lot of state legislation, and everything else. I almost lived in Sacramento for a while in 2003. In October 2003, we finished that. So that's really what took an awful lot of time and my work just increased and increased and increased for IID. In 2003, I'm sure I was working 60 and 70 hour weeks because there was that much to do.

We had very significant litigation against the United States that erupted as a result of that. We had to sue the Government in District Court and it was a real mess. So in addition to just that, the water matters I do a whole host of things for them, a lot of environmental compliance. We've done a great big

endangered species program on the river that's called the MSCP (the Multi-Species Conservation Program). The CAP is a big player in that but so are the California guys. It's almost a billion dollars over a long period of years to deal with endangered species. I do all kinds of environmental compliance, ESA, endangered species, NEPA—we've already talked about—California environmental laws, and then just the big river issues. I mean we now have lots of seven states meetings, lots of stuff going on as far as rearranging things on the river, trying to be more creative. IID attends all those meetings. So, I have to be involved with all of that. So in a nutshell that's kind of what I do for them, a great variety of work.

Q: So, are they giving their water, is it going from the agriculture to the urban?

A: Well, the key is that if you're an agriculture community, what you want to do is say okay, I can engage in water conservation, that would cause me to use less water, and you can have the saved water for a period of years. I don't want to get rid of the water right, but I'll let you have the water for a period of years. If I do the conservation correctly, and it's pretty expensive, because I've done the cheap stuff over the years, I'm not stupid. I've done the cheap, now we're doing the more expensive stuff that you can help pay for. I can farm the same amount of land with less water. They don't want to quit farming areas. They don't want to do what's called the 'F' word, fallowing. Fallowing puts farmers out of business. It puts all of the community that relies on the farmer--the seed guy, the tire guy, the pesticide guy--they all suffer when farms don't farm. So they'd want to avoid fallowing. So to put a long story short, a lot of the effort over there has been to figure out how to do efficiency conservation so they can farm the same amount of land with less water. The problem is that has consequences on the Salton Sea, and that's all wrapped up together. We're dealing with all of that now. But the answer is we're on a stair step build up where over time, about 500,000 acre feet of water will move from IID to the urban area, for a long period of years, 75 years or so. 500,000 acre-feet is

probably more than the City of Phoenix uses as an annual water supply. So 500,000 is a huge amount of water. It's the largest water rights transfer in the United States, ever done.

Q: Are they still going to be able to farm?

A: They can still farm, and we hopefully will farm the same amount of land with less water.

Q: Same crops or different crops?

A: Same crops. They grow a whole variety of crops. They grow probably 20 or 30 different crops every year.

Q: You can tell by the smell.

A: Yes. Exactly, and importantly this is where we as a society will be foolish if we don't maintain those farms. Imperial Valley and Yuma Valley is where about 90% of our winter vegetables come from in the winter time. Where else can you grow things in the winter other than there, in Texas, and in Florida? You know, it's too cold every place else. Now, we can import all of that if we want to, but that brings its own problems. So right now we survive off those places, and Arizona is going to be very foolish, in my opinion, if it doesn't preserve some of those farms down in Yuma. California will be foolish if they don't preserve their farms both in Imperial and the Central Valley, but, you know, neither state seems to be moving in the direction of wisdom in my judgment.

Q: Now that they're talking more about growing locally food, it may be changing the dynamic.

A: Well, I hope so, I hope so. We really do need to. We just have an attitude of like, well there's growth and there's urban sprawl and there's nothing I can do about it. Well, there are things you can do about it. You can take farms and buy them and put them in trusts. You can take the fee; you have to acquire the fee so that the developer can't get it and put it away someplace. If you want to know whether this can work, just go to Scottsdale. Scottsdale has been taxing their citizens for ten or fifteen years and going out and buying desert land to just leave it in desert land. Just to have open space, that's all. Now, you can do the same thing, and just have somebody farm it.

Q: The Salt River Valley used to be all farms too.

A: It's very sad. All that wonderful greenery in Buckeye is all going to be paved.

Q: And even down around Coolidge. We interviewed Howard Wuertz.

A: Correct, yes. That's very sad. We just ought to preserve some of that and frankly, to come back to the CAP for a minute. It's very important to understand, and if you want to know how in my current work I'm still involved with Arizona, well, I represent really California. I am a major spokesperson for California because I represent such a big entity over there. Do we butt heads with Arizona sometimes, yes. Do we work cooperatively most of the time? Absolutely. But an area we have friction, is because in the CAP Act, as I'm sure you understand. When it was approved, it couldn't have gotten through Congress without California supporting it. California could have easily blocked it, and did that for years. They finally let it through because they put in a provision saying that the CAP water would be junior to all of California's 4.4 million acre feet. So when we have shortages, and you have to start cutting people back, and the way that I describe a shortage in a water rights contract, context, is to someone who doesn't know it, is to think about shaving a ham. You just slice it off, and you just peel off a little slice. That's how you do

water rights. You start with the most junior person and you start peeling them off and you say, you're not getting water this year or you're not getting your full supply. You're going to get just a part of it and so the CAP gets shaved down. This is legally I'm not sure how it'll work, you know, they'll be a lot of other deals and all kinds of other things going on, but legally it will go to zero before any cutback occurs in California. So it is very important to understand the relationship of these states and how their personalities are and that subordination of CAP has been a sore point for a long time, but it's one of the reasons why California has a position of priority and also sort of wellbeing when it comes to water in the Colorado River.

Q: Getting back to the Imperial Valley a little bit. How are they saving all of this water?

A: Well, that's a little bit of a sore point because the Salton Sea is such a fragile ecosystem and this return flow when you farm over there the return flow goes to feed the Salton Sea. If you do efficiency conservation where you do away with some of that return flow and that's what you would send to the urban area then you short the sea. So in order to make everything work, IID was forced to do fallowing for a period of years and provide the water to San Diego that way and to also fallow to make sure that enough water goes to the Salton Sea. So they are in a huge fallowing program right now that is ramping up at about 20,000 acre-feet a year. They are fallowing more land all the time and they're doing it for two reasons: part of the water is shipped to San Diego, via the MWD system, and part of it goes to the Salton Sea to keep the Salton Sea full and to not have a concentration of salt kill the fish and the birds. Now that fallowing will end over a period of time and we will start phasing in efficiency conservation. So the fallowing will go like this and the efficiency conservation will go like this and pretty soon the fallowing will be zero and the efficiency conservation will be the full amount that needs to be transferred. So I don't know if I am answering your question correctly, but that's how they are

generating the water now by fallowing. They are actually paying farmers not to fallow. The community does not want to do that. They don't like it. There is a lot of angst about it, there's a lot of anger, and some people want to do away with this big settlement called the QSA. They still want to throw it out even though it's a big deal. Those are very sensitive matters when you get into a farming community, but that's how the water's being generated now and the community wants to move to efficiency conservations sooner, but that is all tied up with the Salton Sea. In fact, the state has just issued a plan for restoration of the Salton Sea. So all of this stuff is sort of unfolding together.

Q: Even though the Salton Sea was really an accident of nature?

A: But California is really green. California has a long memory and it looks back and see that the Salton Sea did exist. In previous centuries, because the river jumped its banks before man had any influence on it, and created the lake there and then would go back into the Gulf of California and then it would dry up. So that lake existed in times past.

Q: You're talking about the conservation measures with...

A: Yes.

Q: What measures are those?

A: Well, some of it is that the All American Canal is a big example. The All American Canal is a gigantic canal. We see the Arizona Canal, you know, in our community here. It's really small compared to the All American Canal. The All American Canal is gigantic. It carries at the beginning of it at 15,000 cubic feet per second. That's when you see people floating through the Colorado River in the Grand Canyon on their rafts? That's about 15,000 cubic feet per second. It's a lot of water so the same size that's going through the Grand

Canyon is actually going through the desert of California. So that canal is earthen and it leaks. So there's a process right now of building a parallel line canal that will save a lot of water. And then the other methods are to do things like pump backs where you put a little reservoir at the bottom of your field and then you either have a portable or a permanent pump system where you have a pump and you have a pipe and you take the runoff water so that it doesn't go into a canal and go to the Salton Sea. It goes to a reservoir, you pump it back up to the top of the field and you farm with it again. So it's called a pump back system. They also put in what are called lateral interceptors where they have these canals that catch a certain kind of drain water that's good quality. They take it to a reservoir, they reuse it. All of that is expensive and I can list, you know, eight or ten other kinds of conservation measures that they will do that would cause them to use less water.

Q: Is that through irrigation?

A: Well, people always say that. Why don't you do drip? Why don't you do sprinklers? I'm trying not in any way to offend anybody, but I always say to people, you know, farmers are not stupid. They are not stupid. If drip worked, they would have done it a long time ago. They're not in a conspiracy to sort of overuse water or use flood irrigation because they are ornery folks. You have to think about the Colorado River and it comes through salty territory, a lot of Colorado and Utah has very significant salt areas. We should think about our own state. Why is the Salt River called the Salt River? It goes through salt. I've been up there. I've seen them. You go through kind of a half cave and there are salt stalactites and stalagmites because there is so much salt going into this river. It's a very salty region here. Then you have people using and re-using the water as it comes down. By the time it gets to Imperial Dam, the water is this salty. If you took an acre-foot of water and we have a sense of what that is if you look at our typical Arcadia lot. They're about an acre, one foot deep okay, now there's your acre foot. You have a dump truck pull up with one ton

of salt and the dump truck dumps the salt into the water. That's how much salt is in the water at Imperial Dam. So now the answer is go farm with that. Go make that work. Well they do make it work. They make it work in Yuma and they make it work in Imperial because of the way they farm, the way they leach the soils and all of that stuff. The problem is, it's really salty. So when you have a really tiny emitter hole, they get clogged. So dripping all of that stuff is a constant maintenance hassle. It's very expensive to use it. So until they can figure out some way to clean the water better before it goes into that system, which would also be expensive, they rely mostly on flood irrigation or they do some sprinkle. Sprinkling doesn't work very well when it's 112 degrees, a lot of it evaporates. So flood irrigation is very good. Now a lot of people would criticize that and say, no, it's an inefficient way to farm and blah, blah, blah. This is one of the miracles of our ancestors and our predecessors because they were such hardy folks. Not only did they settle the Salt River Valley, it was hot here too, but it was hotter in Imperial Valley, and they settled there, you know, with no trees. Oh my God, in 1900 or whatever. But they created a system where they moved 3.8 million acre feet of water by gravity flow. They don't pump it. They don't have ground water that's useable. So they move all that water around and they farm 365 days a year. They say we take one day off and that's Christmas. So it's really a miracle as far as farming and they do an incredible job. You know, is there some waste? You bet. We can find waste on the farms in Buckeye and SRP too. But it's a very tough situation, so there's the answer to your question, the water is very salty.

We were just talking Pam about the '68 Act and the dams in the Grand Canyon and that sort of thing. I was going to tell you a quick story. There's an organization and if [you] aren't aware of it, it's helpful to know about it. It's called the Grand Canyon Boatman Organization and they're out of Flagstaff. And they produce a document or publication if you're not familiar with it, I urge you to. It's called the Boatman's Quarterly. They have wonderful stories and by the way they have great histories of all these guys who used to run the

river and who had influence on the Grand Canyon, part of the river. They do wonderful histories of these people. They periodically have meetings. You can imagine what the guys talk about: health problems and emergency medical problems and sediments. But they also want to learn a little bit about the river and the law and all that. So time to time, they've had me come talk to them. They were having sort of an old timers gathering, and they often do this at the Hatch Warehouse which is at Marble Canyon. So it's hard to get to. When they invite me, I take two or three days. They don't pay me or anything. So I agreed to come and I'll do a talk on the law of the river. It will take me about two hours to kind of walk people through. Even the boatmen, they don't know where the water comes from or where it goes and why. So I sort of boil all this law down to about two hours.

To make a long story short, there were a bunch of old timers there and one of them was Martin Linton. Linton was a writer for the LA Times. He got on this story about the dams in the Grand Canyon and wrote long pieces. He became a huge advocate against the dams in the Grand Canyon and kind of saddled up with the Sierra Club folks who were putting the ads in the New York Times which really created the demise of that plan. Linton went on to be a boat company owner. He had these dories that he created and he owned that company. He rafted through the Grand Canyon. So he became a very familiar person when it came to the Grand Canyon and he was there and I was giving this talk and I get to the '68 Act and here's what happened to these dams. Now Martin Linton could tell this story better than I could and he chuckled. So I finished my talk, I think they were taking a break. He jumps out of his chair, comes over and shakes my hand and said I should've talked for six hours. That was the best summary he had heard. He probably didn't even understand where it comes from, where it goes, why Congress did this and that. So people always appreciate getting that overview of the river and why it is the way it is. He was very gracious. I think he's even rafted the river recently at age 81 or 82 something like that.

Q: Is he still alive?

A: Yes.

Q: Sounds like somebody we should interview?

A: Absolutely. He's a very significant guy. Martin Linton and he lives up in the Bay area. He had a huge role in the formulation of the '68 Act. He was an LA Times writer and I'm sure he's got copies of all those stories that he wrote to bring the attention public.

Q: You would've been in college at that time. Were you aware of any of that happening?

A: I graduated from high school in 1967 and was in college until '72 or so. I don't know if I was aware of it or not. It doesn't ring a bell to me. I was aware, at the time, of a Sierra Club publication. That is sort of an interesting thing. You have to say what gave rise to the environmental movement in America. You can almost point to three or four single people or elements. One of them was Rachel Carson whose anniversary of her death just occurred recently and her book was out in the spring. That was huge. Then along comes the fight over on the Colorado River in the 1956 period. The fight over where to put the big dam and the big dam was proposed further up on the Colorado, Dinosaur National Monument. They were going to talk about flooding part of the Indian Reservation with CAP. They were going to flood a national monument. That was the best place, engineers thought, to put the big dam.

The '56 Act was going to have four big components to it. The '56 Act was the Upper Basin saying to Congress, you have given all the benefits to the Lower Basin. It's now the1950s, we haven't got anything. We've been shortchanged. We feel like the stepchild. You now have to do stuff for us. So Congress was

getting ready to do four big things. They call them four big units: the Navajo Dam on the San Juan; Flaming Gorge up on the Green; the Curecanti or Aspinall on the Gunnison that whole thing; and the last one was this big one that was going to save a lot of water and do a lot of storage and all that and they were going to put it up there where the Yampa and I think the Colorado come together. It would have flooded part of Dinosaur. The Sierra Club and others got involved with that and created a big mess. So that was one of their first big movements in the national playing fields so to speak. They came...for heaven's sake, they're a club. I always think Sierra Club. It's like saying the local Canasta Club or something. It's a club. All of the sudden, it's a national thing. What happened there was just to finish the story just like the '68 Act; there was a brew-ha-ha. The engineers said okay we won't put the dams there; we'll put it down here at Glen Canyon. Nobody knew anything about Glen Canyon. Getting back to the Sierra Club and giving them a compliment, not only did they grow into a national organization but they started publishing books. One of the books they published was called "A Place No One Knew." What a perfect title because that's exactly the story. In 1950, the area between Arizona and Utah was just empty. There was nobody up there. Unfortunately, there were a handful of people who had the blessing to find Glen Canyon. Go up there and explore it. One of them is Katie whatever her name is that lives up in Jerome. Very sad, I'm glad that I don't have her life because I would be just crushed. She got to play around in that canyon system before it got flooded. Nobody knew it was there. From an engineering perspective, we could make a big reservoir here and they did. So they moved the dam from up above to down below. Nobody knew about it. Congress said fine. So there's your fourth unit. It's Glen Canyon.

Then in '68, the Sierra Club also stepped up and it was David Brower who convinced...the group was going to go along with the dams in the Grand Canyon with certain compromises. He said this is ridiculous. Martin Linton was writing these articles in the LA Times. So finally they changed the tide and they

said no we're going to oppose these and they put the articles in the New York Times and all that. So they became a real national organization but they brought the environmental movement to sort of a national awareness. The Colorado and even the CAP has had a big role in that maturity of the environmental movement in America.

Q: Was the Glen Canyon already built at that time in '68?

A: The Glen Canyon Dam was authorized in 1956 and the gates were closed in 1960/61. It was finished in 1961. In '68 was when the CAP Act was passed. CAP was something that came along later. It was a later project. The '56 Act is called "CRSP" (Colorado River Storage Project Act). Some people call is CRSP and some people call it CRSPA. That's where Glen Canyon came from.

Q: What projects or legal developments do you think prepared Arizona for what it has become today?

A: I really urge you to try and pick around in a lot of the Morris Udall materials. There's such great stuff there and there is great humor too. I don't know if you know this or not, but Morris Udall went over in 1967 or '68 to talk to some organization in Los Angeles to give a speech to try and promote this project. It's a great speech, very funny. He tells a story. When Arizona became a state, one of the Senators was there in Congress trying to pump up this state. He said, "Senators we have such a great baby state here. This is a wonderful baby state. It will be a wonderful place. All we need for this great State of Arizona to succeed is water. And the other we need is good people." And some gruff old Senator says, "That's what they need in Hell as well."

What Arizona has done over the period of time is play its cards very well. It did an awful lot in the 1930's when sort of all this Colorado River stuff was coming together. You have to realize in a course of time that California was way

ahead. California had all these things going on. Imperial had appropriated all this water under State law. It had a giant water right and Los Angeles was growing. They built the California Colorado River Aqueduct without going to the Federal Government and saying would you please do a project for us. They got the bond money and did it themselves. MWD built Parker Dam. The Federal Government didn't, as far as I know, or maybe they paid the Federal Government to do it. It was done because California was so aggressive in getting moving on this stuff. Frankly if you want to go back to the beginning, the reason Hoover Dam is sitting there is because of California. It's not because of Arizona or Nevada. It's because of California and primarily Imperial Valley. Yuma pushed for Hoover Dam because of the floods and the need to control the rivers so they could farm.

So when you say what happened to Arizona, in the 1930's, here's California solidifying contracts to the Colorado River. Nevada was asleep at the switch. Arizona was flopping around with things but Arizona goes to the Supreme Court four times challenging control of the Colorado. Now most people know about Arizona versus California in the 1960s. I'm talking four times earlier than that in the 1930's. They'd sue the Secretary. They'd sue California. They went to the Supreme Court on four different occasions, three or four anyway, and lost on every one. They were saying the Federal Government didn't have the authority to build Parker Dam. So they were very aggressive in trying to hang onto what they had, to try and get more. When I teach this stuff, I refer to Arizona as the grumpy state. You really need to understand some of the historical facts. You can satisfy an interstate dispute on a river system by litigating it in the Supreme Court or you can do a compact. That's what we did on the Colorado. They did the 1922 Colorado River Compact. It really just affected the upper basin and the lower basin not the individual states. That had to be ratified by Congress. They did ratify it in 1929. Congress said if six of the seven states approve it, we will approve it. Now just think about that. They said if six of the seven approve it, not only is that sort of a dramatic thing to do.

We're going to throw one state under the bus is basically what they said. We know which state that was. It was Arizona. They were uncooperative. So all the states approved the compact and it went into effect in1929 when Congress approved it and Arizona had not. Arizona finally approved it in the 1940s and they entered into a contract in the 1940s for their 2.8 million acre feet and Nevada entered into a contract for 300,000 in the 1940s. California had already entered into contracts large enough to cover its 4.4. It does not have a state contract with the Secretary like the other two states. It also has an act of its legislature that limits its rights to 4.4. When you bundle all that stuff, that's how you allocate the 7.5 in the lower basin; 2.8 to Arizona, 4.4 to California, and 300,000 to Nevada. Was the 2.8 a victory? That is a huge amount of water. Go talk to Nevada.

Q: When you said only six approved it, I figured Nevada was the one that didn't approve it.

A: Arizona. Arizona is the grumpy one. Then in the 1950s and '60s, they're plugging for the CAP. Congress is saying we don't know. California continues to roll hand grenades. Basically saying there isn't enough water in the system for the CAP, it's not going to have enough water. There's going to be shortages and that sort of thing. We're dealing with that in the present day. But they were able to push it through.

Maybe you know this, but they really tried to get the CAP in the '50s and the '60s. Congress said we're not going to do it because there is a cloud over your water right. You think you've got 2.8, but California says you really don't. They took the CAP, the drafted act, and put it on the shelf in like 1954. Right away Arizona went and sued California in the Supreme Court. That's when we litigated Arizona versus California. I say we, I wasn't there at the time, but in 1963 the Court issued its decision, in 1964 the decree. Now we knew that Arizona had 2.8. So if it's '64 and you have a decree within four years they had

the CAP Act. It just showed you how Arizona behaved. Now from '68 to the present day, Arizona has taken care of its 2.8. It has done a lot of smart things in regard to water management. One of the best examples that I point out to people, this is sort of still a grumpy perspective, is that for many years California used a lot more than 4.4. Did they do it legally? Yes because the decree says if unused in one state in a year, the Secretary can authorize that water to be used in another state. For many years, Arizona did not use 2.8. They used about two million. So there's 800,000 sitting in the river and Nevada didn't use 300,000. So there was water from Nevada sitting there. Well guess who used it? California. So they used about 5.2/5.3 instead of 4.4. The states got grumpy about that and said you shouldn't continue to do that. You're going to be like a heroin addict. We won't be able to get you off of it, etc. So in the 1990s, to their credit, Arizona starts studying. Arizona is very methodical. They set up study groups and they have the community and the legislators and all that. And in the 1990s, the passed the Groundwater Storage Act, whatever, the Arizona Water Bank Act.

When I teach this stuff, I teach people and I say they were two reasons why Arizona did that. This is the Arizona Legislature creating a program where they're going to pump water that's unused, but belongs to Arizona, in through the CAP and put it underground in big aquifers. Two reasons: number one, good water management, and number two, poke California in the eye. Is it a sustainable program? Does it pay for itself? No. They have to subsidize it with tax dollars because it costs a lot to pump the water into Central Arizona. Is this something we, the citizens, are paying for? You bet. But is it good water management? Sure it is. We're recharging our aquifers. Why? It's a good idea to recharge them but also because Arizona is going to suffer shortages first. So when they do get cut back they will be able to go to the groundwater that they've stored over the years. They would've stored several million acre-feet.

I don't know if that answers your question. I know it's a long story but in the context of river meetings to this day, there are several—trying to be respectful to all of the States; they have equal dignity. It doesn't matter how much water they have--but are there several elephants in the room? You bet. One is Colorado. Why? Because that is where seventy percent of the water comes from and they think they own the river. Who's another elephant? California. Probably the biggest elephant. Why? They have the largest entitlement but they don't contribute any water to the river. Think about that. If you are in Colorado, do you like that? You provide seventy percent of the water in this whole river and you have a smaller state apportionment than California and California contributes nothing. California also has two Senators but it has about fifty representatives or so. It has enormous political power. So everybody sits in worry of California that they're going to do something. Then you have Arizona who's another big influence. Big power in my opinion and then you have the other states. Nevada makes a lot of noise but they only have 300,000; Utah, New Mexico, and Wyoming. The three big players in my opinion are Colorado, Arizona, and California.

Q: Some people in Colorado, I've been up there doing interviews, talk about they should reopen the 1922 compact. What do you think about that?

A: I think that reopening the contract is like saying we should have a wholesale revision of the Arizona Constitution. There may be people banging around out there saying that's a good idea. It'll never happen. We will change the Arizona Constitution or even the US Constitution a little bit here and there on the fringes making little adjustments. Nobody is going to reopen the compact. There's too much in it to keep it where it is. There are voices around the edge, environmentalists and others, who would say it's time to redo it. Even Pat Mulroy from Nevada would like to see that because she thinks she has a higher and better use and she got short-changed with only 300,000. Everybody else would say to Pat, "go pound sand." We have water rights. The Supreme Court

of the United States and other courts respect water rights. You're going to have to do what you can to play the game and they're doing that now. They're getting water from northern Nevada as far as wellfield. We're doing some other cooperative things that Nevada can get water. They will eventually be paying [for] water from [a] desalt plant in Mexico probably. So there is a lot that can be done rather than reopening the compact. Reopening the compact is a waste of conversation and it's not going to happen. We might make small adjustments here and there but it's too important as far as the bedrock of the law.

Q: It sounds to me that Arizona did pretty well in that compact. In 1922, they were barely a state.

A: Again, if you want to go back and become a student of the compact, you again see the very important people that were there. The most important guy probably was the Colorado Representative because he was just a very astute well-trained lawyer who had really studied compacts and interstate streams and all that. Well of course you have four or five major interstate streams that start in Colorado. So he came with a lot of knowledge. Another important player was the Arizona Representative and important player but a little more quiet was California. Then you had the others all wrestling.

Remember not to look at the compact as something that benefited a single state. It's not very helpful to say Arizona came out well. The three states negotiated the division where the upper states would get seven and a half million acre-feet and the lower states would get seven and a half million acre-feet. That's all that came out of it. Nobody knew about 2.8 at that point in time or California's 4.4. The 7.5 was left to be divided later. So Arizona came out well as far as getting the 7.5 articulated and also the obligation of the upper states to send the 7.5 to the lower states. It's very clear in the compact, other things are less clear. It is a good document. It is important to us down here,

critically important to us in regard to what comes down especially from Glen Canyon every year. It's a really big deal.

Q: So far no one I've talked thinks we should reopen it.

A: College professors talk about it, environmentalists. None of them have very much power when it comes to that stuff.

Q: Of the areas of water history and all the milestones you've talked about, are there any particular ones that you actually played a part in?

A: Let's talk about the CAP for a minute. In the context of the CAP, I had a lot to do with sort of the structure of the contractual arrangements and that sort of thing. You have to think of CAP as a master contract between the CAP entity and the Department of the Interior. Then you have all these subcontracts. We also had contracts between the Secretary and the Indian Tribes. That was done in the Carter Administration. That was a big deal. I was involved with that as well. There was a lot of pain around that. There was litigation that followed the Indian Contracts because non-Indians were unhappy about it. Then we have all these subcontracts for the M&I users, for the ag users, all of that. There isn't time to talk about all of that stuff but I'm going to give you an example of the kind of things that the agency lawyer would work on. The CAP is largely a good idea, but it's awfully expensive. It turned out to be a lot more expensive than they thought. Maybe you know this but if you read the act, it says eight [hundred] million dollars are appropriated. That is less than a billion. They spent more than four billion on it. Gosh, that's four times as expensive. Somewhere along the way, it got awfully expensive. The result of that was you know, a number of big ag guys went bankrupt. When you're creating something like this, the hardest thing to do as a lawyer is going to say what's going to go wrong. As a client, it would always be a good task or drill to say to the lawyer we're getting close to finishing this now, I want you to go off and I'm going to

pay you to think of ten bad things that can happen in the future and whether or not we're prepared for those. The human mind wants to think that things will be okay. It's going to work fine. This big project and everybody's going to get water and they're going to make their payments. We'll pay it off. It's all going to go great. All of the sudden, here's these big users and they're going bankrupt. So the client agency, the Bureau of Reclamation, come rushing into our office and says these people aren't going to make their payments, are we going to cut their water off? To show you how lawyering works, we probably get three lawyers there; me and two others that work in my office. We say let's not worry about, let's grab the contracts. Now we have the master contract that we would look at maybe but that's not the issue. It's the subcontracts with those irrigation districts.

It's 60 pages long. We look at the index and it says termination for non-payment or something like that. We go there it is. We flip through. There's the title for the section. It says something like termination for non-payment of assessments or something like that. Perfect. We read the text, it doesn't say that. This is little bit of a slight to the guy I mentioned earlier, Ernie London, who was a Harvard education lawyer. He wrote most of those contracts. He was the crafter of a lot of that stuff. Obviously the CAP folks had some role in it and of course, the irrigation districts that were going to sign them had some role in what they said. We're reading this stuff as lawyers and the title reads what we want it to say but the text didn't say that. The text said something like you can kind of fall into rears in your payments but you can make them up. It didn't say if you don't pay your assessments for a number of months, we get to terminate your water supply. That's what the Bureau wanted to do. They wanted to terminate those guys at least while they were in bankruptcy not making the payments.

That gives you an example of the kind of stuff you have to deal with of a project of this magnitude and the kinds of problems that come along. Nobody

expected them to go bankrupt. A lot of rearrangement of things had to occur that's why you see different pricing that exists now. To try to make a long story short, that's the kind of thing we worked on all the time. I worked on the Orme Dam litigation. I worked on the change in the master contract. At some point, we decided to do a revised master contract and that's the contract that is in place now between CAWCD and the government. We added some provisions in there. One of them was that the municipalities could recharge their water. The municipalities were growing into their water rights. Let's say it was 1985. Phoenix was probably using that much of its CAP water and now it's using this much because it grows into it over a period of time. Who's thinking of using that water when the cities weren't going to use it? The farmers. So if we said the cities could recharge it, that sort of took it away from the farmers didn't it? So we put that in the contract. We sign it knowing what we're doing and then we have litigation from the farmers against the Secretary saying you couldn't put that in there. So we have to litigate that sort of thing.

So that's the kind of thing I did sort of day in and day out in regard to the CAP.

Now, one final comment and that is we ended up with problems in regard to the CAP, maybe because what I already said. It was too expensive. The payment became confused. How much of it was designed for Indian and therefore not reimbursable? How much of it is for non-Indians and therefore reimbursable? How much of it was for environmental compliance? It got very complicated and even the economists had a difficult time with it. So along about the time I left, I think it was in the early 90's. I can't remember whether CAP had filed litigation. I think they had but we had litigation going on where they were suing trying to get a determination of the right, the economic situation of the repayment burden and all that stuff. Their fight over the water. How much would go to Indian and how much too non-Indian? It was just all boiling up in the middle of the 1990s.

We had, I think, five Justice Department lawyers on that case led by a guy who was ex-Navy lawyer who had cut his teeth on the bankruptcy on the big nuclear power plants in Washington state. This guy was very smart. So they put one of their best guys on this thing. There was a lot of litigation going on but then we also tried the negotiation process of trying to settle CAP. Common sense tells you who's going to lead that charge. The Regional Director of the Bureau of Reclamation, Bob Johnson, somebody from Washington, it turned out to be an assistant commissioner Don Glaser. A guy I used later when I was leaving government practice. Barry Welsh was an Area Assistant Manager of the Bureau of Indian Affairs. Why BIA? Because the Indians were getting a bunch of CAP water and then they needed a lawyer, me. I don't know if that was our whole team. We sat down and started negotiations with CAP. Babbitt was in office at the time. Betsy Rieke who used to be a very significant Arizona official, she was the Assistant Secretary for Water and Science. We were trying to solve the CAP mess but it was really huge.

Q: Who were the people at CAP?

A: It was Grady Gammage; I think he was President of the Board at the time, Sid, Larry, and Doug Miller. It seemed to me they had a couple of consultants or whatever that helped them. We would have these meetings all the time where we would argue about things. Again, trying to make a long story short, that went okay but sometimes settlements go like this. You make progress then you don't have such good progress for a while. Then you make some progress and then you don't. Then finally you get there. Sometimes it's like a basketball team, you have to take out the team that is tired and put in a new team. We did as much as we could. I think we handled a lot of issues well but it was too big. Frankly, what later happened was part of it needed to be litigated. So we went ahead and had a trial. I think it was after I left that the CAP hired an attorney; a very good attorney from Sacramento by the name of Stu Somach, who helped them take this to trial. He really became a lead advisor in all of this

for them. They had some other people helping out. They took it to trial in one of the first phases and they won. That's very helpful from CAP's perspective because it increases your negotiation position. Thereafter, they were able to work out a settlement as you know from the period of 1995 to whenever it matured in 2000 or 2001 and recently, with the reenactment of the Central Arizona Gila River Settlement and CAP settlement by Senator Kyl. Was that 2005? The whole thing was put into a congressional bundle.

What I'm trying to say is that I was involved in that kind of effort. We were more successful in some areas then in other areas with the negotiations. By the time I had left, it had not reached maturity.

Q: In all these negotiations who do you see as the groups of people that was on your side that was your allies?

A: Basically when you have to think about it, it's really the government and the government wanting to be repaid for a project. Also, the government having the responsibility to run something and to figure out how much of a role it needed to retain on behalf of the Indians for which is had a trust responsibility and how much it could turn the project over to the non-Indians, etc.

Let me go back and draw a contrast. California is not such a stupid place. So you're MWD in the 1930's and you say should I go on my hands and knees to Congress and try to get the money for them to build an aqueduct from Lake Havasu to over to our area or should I just do it on my own. I'm going to do it on my own. I don't need the Bureaucratic baggage of all this government stuff. I'll just do it on my own.

In contrast, Arizona may not have had any options, I don't know. They said we're going to go beg to Congress. We're going to get the '68 Act and we're going to have the government build this big aqueduct. When you do that, you

get the government baggage. On my side were the Secretary, the Assistant Secretary, the Commissioner of Reclamation, the local Regional Director, and the BIA. The BIA had such a huge role as far as the water going to the Indian Tribes. The Indian Tribes were all on my side. On the other side was the CAP, all of their subcontractors, municipalities like Phoenix and Scottsdale that all wanted the water and wanted more of it then less of it. Generally you have a division like that.

Q: I heard there were some people in the 40s and the 50s that thought Arizona should just build it themselves.

A: Those were smart folks and without being disrespectful to the government, I just think it's a lot simpler when you do it on your own and just figure out how to pay for it somehow rather than take all the government baggage. I'm sure somebody like Sid would say yes in hindsight I wish we would've done that.

Q: You mentioned some of the irrigation districts were going bankrupt. How was that resolved? Do you want to name any of those districts?

A: Maricopa-Stanfield, Central Arizona Irrigation Drainage District, I don't remember these names very well. Those are two big ones. These are the largest irrigation districts that take CAP water. Maybe there were some others. They just couldn't handle the payments. They saddled themselves with a lot of debt.

Don't forget a lot of this is just common sense. I keep telling people just apply common sense. They think of CAP as a big canal. That doesn't do anybody any good unless you can somehow connect to that canal. So those districts that are down there in Eloy, Casa Grande, and that whole Pinal County area, they had to build very expensive systems to go over and touch the canal, pump it, and distribute it. All of that cost a lot of money. They got federal loans

to do that but they had to repay that stuff. So when it came to the price of the water, the Federal loans, probably crappy farm markets at the time. Who knows, probably a whole group of factors probably caused them to sink. They just couldn't financially carry it. So they went into bankruptcy.

Q: Did they come out of bankruptcy?

A: Yes. CAP rearranged its pricing. A lot has happened since then, this is much too detailed to go in to, but a lot of those districts have given up their CAP rights in the context of Indian settlements to have other benefits. To get out under certain debt, to be able to do other things so they've actually given up those CAP water rights.

Q: It seems like a lot of the CAP water is now going to the Indians.

A: That again is I think a common sense thing. I want you to think a little bit like SRP. You are SRP and you've built a pretty good system for yourself. It comes from the Salt and the Verde and you've got six reservoirs and you've got an area and everything is fine. All of the sudden the Salt River, Pima, and Maricopa communities is in litigation in the context of adjudication. They got a bunch of flat land out there and their claim to water that was put together by Bill Swan, with a bunch of experts, but I'm the guy who actually created the claim that we filed with the court is for a very large amount of water because it's flat land and they're right on the river and they were there first. The way Indian Water Rights go, the water right dates back to the establishment of the reservation. A lot of those reservations were in the 1800s. So that's a big problem if you're SRP.

Holy smokes! All of the sudden a big chunk of my supply is not going to be with me anymore. It's going to be with them.

Now if you're smart, you sit there and say, "How can I cobble together a water budget for the Salt River Pima-Maricopa community that they might accept?" Let's start with some groundwater. They can pump some groundwater. Let's start with a little bit from the Salt and Verde River. They already have some under the Kent Decree, so let's say we give a little bit more out of our hide and then let's say we give them this much CAP water. Aren't you smart to say let's settle this problem with somebody else's water? So that's how the CAP water got easily brought into these Indian settlements. It was not all allocated. Some of it could be moved around. Some of it had been offered to people who declined it like the mining companies. There was wiggle room there. So smart guys like SRP, and not just SRP not to sort of pick on them. Picture me and this guy Mike Clinton and the BIA guy having our own meetings. We need to get to about this much water for the Salt River Pima-Maricopa communities, we're 20,000 short. We've used about as much CAP water as we can. We've squeezed about as much out of that as we can, where are we going to come up with 20,000 acre-feet? We go down to Wellton-Mohawk. Believe me! We have Congress pay Wellton-Mohawk to buy some land that then they retire and they got some other benefits. Remember the thing around wrapping it in a blanket? We got 20,000 from Wellton-Mohawk. Now we got our budget. We got our settlement. Not to worry about the Salt River Pima-Maricopas, they sign a waiver and we do too on behalf of the United States Government against all of the other users in the watershed as long as they get their water budget.

Now has SRP given something up? Yes, not a lot. But were they exposure for a lot? You bet. Did they solve it a bit on the back of the CAP? Yes.

Q: Gila River got a lot too?

A: Huge. That's a long story about even the budget for the Gila Indian Community and what kind of difficulty that created. Even in the Interior there was a lot of disagreement about how much water they were really entitled

too. It's a very difficult situation because you have to look at things geographically. They are on the Gila River but the part of the reservation down by Buckeye actually touches the Salt River. I suggest you go walk someday from the Salt River by Mesa down south until you run into the old Gila River bed. Tell me whether or not you go up some sort of steep thing like this and then down the other side which would demark a watershed. It's not really there. It's just flat. So you can't really tell where the Salt River watershed ends and the Gila River watershed picks up in some of that area in the Gila River Reservation. There are mountains in some places, flat in others. So it's hard to tell where Salt River water might go to the Gila River Community if you were to litigate the whole thing. Do you see what I mean? And there are all kinds of complicated issues about what we call "res judicata"—maybe things got decided earlier by certain judges and they can't re-litigate them. It's very complicated stuff.

So how much they were entitled to was a very difficult matter. I worked on many settlements. We were successful. I count this as some of my most significant accomplishments. Some of my most significant accomplishments were being involved with those settlements that we moved through Congress. We got them funded and the tribes ended up with really good water rights in a very significant satisfactory resolution. The hardest one was Gila River. I just ran out of gas. There were a lot of difficulties but by 1996 we weren't getting there in regards to settling theirs. It took almost another ten years for really good people who worked on it, not only the tribal folks but SRP, Senator Kyl and others to bring about that settlement. It's very complicated. I don't know if you know this, but the Act of Congress is about 100 pages. So it's a big deal. I just needed to move on to new territory before we could climb that mountain. The Gila River settlement is a huge, huge thing. It took cutting our teeth, in my opinion, on easy ones before getting to that big one. If Kyl was sitting there, that's what he'd say.

Q: Do you think the people who first envisioned the CAP ever thought about the Indians?

A: I do think they thought about it pretty early on. I'm sure when they thought about it in the 40s and the 50s, they thought about it as a non-Indian project. This is part of the problem in bringing in the Federal Government. It's pretty hard to bring the Department of Interior into a situation like that when they have a trust obligation for Indian tribes. It is a difficult situation.

I don't know when it matured into that kind of thinking. I don't know if whether that was before Arizona versus California did they say we might be able to satisfy some Indian uses here too, especially close to the canal or whether it was after that in the 60s. Clearly by the time I got involved in the 70s, it was very clearly understood that there would be a significant Indian component.

Q: You mentioned some of the things that you're proud of. What accomplishment related to CAP are you proudest of?

A: Well that's an interesting question. I'm going to be a little bit funny in my answer and then I will give you a more serious answer. My older brother used to be a lawyer for a big downtown law firm, Fennemore Craig. One of his co-lawyers at the time at that firm was Doug Miller. Doug Miller is the Chief Counsel for CAP. Doug was a private practice lawyer doing some stuff, environmental compliance. I don't know what he was doing but he had worked at the Justice Department at Washington representing the EPA and he would come out to Arizona. I got to know Doug through having lunch with my brother and that sort of thing. Doug called me one day. This is probably 1978, 1979, it could've been the early 80s and said he was unhappy doing that legal work at the law firm. He was very unhappy and he wanted to explore other options. He thought I was happy with my work at Interior and he wanted to know if I could help him. So I told him to relax. I'm sure we'd think of things and

I did like my work and I was sure there were other opportunities. I don't remember if it was that first meeting or a subsequent meeting, I told him I had a suggestion for him. I represent Reclamation. I know a lot about the CAP and the CAP entity that has been created, they use outside lawyers. They are going to hire an in-house lawyer. I told him he ought to apply for that. Doug said he didn't know enough about water law. I told him he represented the Justice Department and EPA. He knew about government administrative law and I told him he'd do fine. He's a graduate of Stanford, you know. He eventually applied for that job and got it. I don't think he would've known about it if I hadn't told him. One of my accomplishments is getting Doug Miller in as the General Counsel. I didn't get him hired but I got him hired in the right direction.

On a more serious note, I suppose the major accomplishment is really in the direction of these Indian settlements. I was teasing a little bit ago when I said it's easy for SRP to settle things on the back of CAP. It's really wise water management for the state to do it that way. You've got settled uses of the SRP water. It's not very helpful for me to say you don't get water anymore from SRP because we're going to have to give it to some Indian tribe. That kind of disruption doesn't work very well. SRP can give a little away to the Salt River Pima-Maricopas and Fort McDowell and Gila River, etc. The better thing to do is solve it with CAP water because that water isn't all used. It can be allocated without any pain to anybody else.

I think the significant accomplishment from my perspective is working with my knowledge of the CAP and all of that and water rights in general and the Indian claims and then working out those settlements with the CAP being a critical part of it. Those are huge accomplishments for Arizona. To not have to bother with that is a really big deal. The Salt River Pima-Maricopa are developing their reservation in the way that they want to. They have sufficient water. Same with Fort McDowell, those are benefits, spin-offs to our community

as far as economics and other things. Whatever they're not using, they're leasing to cities. There are a lot of benefits to those things. Those were very significant accomplishments that I feel good about.

Q: Do you think they will actually use some of that water for farming?

A: Yes some of them will. I think some of them are very serious about that. The problem is even though they were serious about it when we were negotiating things, along came Indian gaming and those kinds of things. People just didn't anticipate. So is Fort McDowell serious about farming?

They were. Whether or not they've carried through on that is another story. I think they've gone more in the direction of Indian gaming, golf courses, and resorts. So they probably aren't big farmers. But the Gila River folks really are serious farmers.

This takes us back to the culture of farming. I represent farmers day in and day out. I understand their passion about farming. Those guys down there in Imperial Valley, they just like to farm. They hope that their kids will farm. They know that they've got a long history ahead of them farming because they've got a senior water right. They have fertile soil. They plan to be there farming a long time. They don't like Los Angeles. I think the Gila River folks are the same way. They're farmers. They have "farmery" in their blood and they want to create a community that has farming and they realize the rest of us are stupid enough to pave over our farms and they're not going to do that because they don't have a need for housing on the reservation. They don't suffer the same risk of developers that the other land does. So they can have farms there. They can supply the needs of the area. So I do think they will do a lot of farming there.

Will other Indian tribes do a lot of farming? Don't forget over on the river, you've got the Colorado River Indian Reservation. They have 800,000 acre-feet of water with a water right from the Supreme Court, no small thing. Some of it dating back to the 1860s or something like that. Those guys are serious when it comes to water rights and farming. The Colorado River Indian Tribe will farm for a long time. The Fort Mohaves will farm. Quechan down by Yuma will farm. So a lot of those places are very serious about farming for a long time. And what happens with several generations from now? Don't know.

Q: Mary Thomas at Gila River once told me the casinos are nice for now but long range the water rights will be more important.

A: Absolutely. You just don't know what will happen with gaming. She is a very intelligent person. I appreciated getting to know a lot of the Indian tribal leaders over my course of work at Interior. I have high regard for some of them and Mary Thomas is one of them. Clinton Peteya at Fort McDowell was a visionary. He was running those meetings when I would go out there at Fort McDowell about Orme Dam. He's probably still kicking around out there. I'm not sure. He's been hugely helpful.

Q: What about Rodney Lewis?

A: Rod Lewis that is just an incredible story. A fellow from that reservation would end up going to college then going to UCLA Law School; a very smart guy who then becomes the General Counsel. Here comes the hometown boy who's got a law degree, thank God, when they need it and are maturing from a very unsophisticated rural place to a very sophisticated place. That's a huge maturation of that community over a period of probably 20 years. To have Rod Lewis there was just a godsend. People think all we did was water rights for CAP. We did a lot of other stuff. We did general Indian law. There's a lot of taxation, boundary issues, governmental stuff that we had to litigate and deal

with and so did Rod. Rod took a number of cases to the Supreme Court, Indian taxation and that sort of thing and argued in the Supreme Court. That's huge! I've argued at the Court of Appeals but I've never come close to the Supreme Court. You have to have a great sense of ability to argue well in front of the Supreme Court. So Rod is just a very accomplished attorney and absolute godsend to the community at that point in time. And I think he was wise enough in the 1990s that negotiations for a settlement in that community were not going well and changes needed to be made. They made changes in their legal representation and in other ways. If we got so far, then these changes allowed them to go to a new plateau and finally get to the settlement. I think his leadership has been incredible. It's really important.

Q: Is there anything that you would've done differently looking back?

A: Oh boy, I don't know about that. I feel pretty good about things. I think one of the problems with being a government lawyer is that there is so much bureaucracy that's underneath you that it's kind of easy to say no to things or to drag your feet. When you do that, you slow a lot of people down and you slow the private sector down. There's a lot of people waiting for contracts or waiting to build something or waiting to supply some service. So one of the things that I always tried to do and the guys that I worked with, we had a really good reputation for an office of government lawyers. We tried to move things along. Get them done timely, not delay the client or the private sector. So I feel good about that. There's not a lot of that that I would change. I probably would've appreciated going into private practice a little sooner. I think I stayed in government service a little too long. It's such a push, pull. On one hand they don't pay you enough, but on the other you get five weeks paid vacation. I haven't taken five weeks off in ten years.

So I don't know what I would've done differently. I think we could've approached the CAP negotiations with a little bit more horsepower maybe.

That's a function of personalities and who's available to work on things. There's a lot of chemistry. Other than that, I can't think of anything really that I would've done that much differently.

Q: How have you seen Western water issues change during your career?

A: We really are entering a very significant period now. There has been quite an abundance of water. There was a fascinating article written in 1977 and that was our last sort of major drought. It was in the 70s. A guy who is an editor of a paper and magazine writer up in Colorado wrote an article for Harpers. The basic message of his article was there is water rationing in Denver. There is water rationing in San Francisco. There is rationing in Los Angeles but there is no rationing in Phoenix. To tell that story, he goes back to Hoover Dam, the big entities that built it, the construction of Hoover Dam, the movement of water, the development of the CAP, how Phoenix has groundwater, the Salt River Project, and now the CAP. Here you have the hottest desert place and they're water fine and these places that are supposed to be wetter; Denver, San Francisco, and Los Angeles are rationing. It's sort of an interesting story of where the water is and moving it around and that sort of thing. If you would've asked me five years ago, maybe even four and as soon as three years ago, are things good for a period of time? I would've said yes. Then this darn drought has dragged on to the sixth or seventh or whatever year. So now my perspective has changed a little bit. Global warming is a problem and population growth is a huge problem. The stress is really starting to occur. And then you would throw in there environmental complications. All of that soup means we have greater problems than we used to have. I think we're bumping up against the limits of our entitlement. I say that carefully because don't forget that if [we] end up with a shortage here in this community because the CAP gets cut back, we will go down to Yuma and rent water for a number of years because there is about 800,000 acre-feet down there of good high-priority water. So we have safeguards. What does California have?

They have IID. They've got a problem in Southern California, they'll go to IID. Now IID may not want to cooperate, but I tease that one of these days, and it may happen pretty soon, you're going to see the jet from Sacramento land in the little old Imperial Airport and the limousine will go to the headquarters of the IID and Schwarzenegger will sit down with just the five Board Members and he will say he doesn't want any lawyers, no General Manager. I want just those five elected Board Members. They're going to have a little chat and then when he leaves, we'll be in agreement that some water will go to the urban area for a period of time to get them through a drought. That kind of thing is going to happen. They just can't stop it. Now maybe you get your water back because Mother Nature begins to snow again. But let me give you one example of a sort of catastrophe that's on the horizon. You have to see the interconnection of all this stuff. You might say here's old Scottsdale over here, they don't have anything to do with Sacramento but it's all interconnected. You have to say to yourself that there is eighteen to twenty million people in Southern California. They need water. Now where do they get it? It's very simple. They have some local water but not a lot. They get it out of the big Colorado River Aqueduct. We all know about the aqueduct that comes down from behind the Sierras. That is the Chinatown story. Then you have the giant aqueduct. The largest in the world probably that comes from the Bay-Delta down to the urban areas of Southern California. That's the California aqueduct, 450 miles long. So an awful lot of water for MWD comes from that area. Guess what? That pumping plant, that gives rise to that aqueduct, is in the Bay-Delta. It's called the Harvey O. Banks Pumping Plant. It's huge and they have in the Delta an endangered species called the Delta smelt. The smelt numbers have been going down and down and down and all of the sudden this year, the numbers have crashed. They're worried about extinction of the fish. So you know what they've done with that plant? They've shut it down. Twenty-five million people get water from that pumping plant. It's not running now. California has very serious problems. Now if that continues for a

period of time, I guarantee you those twenty-five million people aren't going to go without water. They're going to get it from some place. Now are they going to come steal it from Arizona? No. They'll take it from in the state first from IID and places like that. It creates great tension because even the guys in Colorado know that if the elephant in California needs more water, that's a problem. You can't build these salt plants very quickly. So we have this kind of situation happening all over the place whether it's the Delta, the Salton Sea, the buildup of salt over here in the Arizona area because of CAP water use. Too many people.

Q: You started to touch on one of the things I wanted to ask you about the Yuma Desalting Plant. Is desalting the ocean for water practical?

A: It is. Let me just start with desalinization generally and then move to the desalting plant. This is a big deal and we're going to see a lot more of it. Again, apply common sense. You have to think like a Californian here a little bit. Will California put in desalting plants? Yes. They've put in a lot of little ones. Little ones are fine because the environmental consequences aren't great but they have yet to put in a great big one. A big one would be like at Tampa, Florida, they have a big one down there. Is California going to have to put in some big ones? I guess that they will have to and I'm sure that they see it that way. A big one has environmental consequences. You have a brine stream. That's salty water that's real salty that you've taken out of the ocean. You've got to dispose of it someplace. So they would build what's called an outfall which is a pipe that goes out into the ocean and they would disperse it out there. Are there people in California that think that's a bad idea? Yes. They think it's going to affect the fish and all other kinds of environments. They don't want to do it. So is there an anti-desalt factor in California? Yes. Will they have some influence in the legislature? Yes. Will the legislature sort of go in the direction of desalt? Yes, but with trepidation, etc. So is it going to happen? Yes, but it will be slow.

Now here's a very critical point. Let's say Nevada with a fist full of money or Arizona with a fist full of money goes over to California and says I'll build a desalt plant for you on the coast and you supply that water to Los Angeles and I'll take some of the LA Colorado River water. So I get more water by building a desalt plant. In my judgment will California do that? No. That's bad news for Nevada and Arizona because I think they think about that. They think one of these days they'll do that. It'll be economical to do that. I don't think California will. California will say, "Go pound sand. I'll build my own plant and I'll use the water. We need the Colorado River and the new water I'm going to create and I'm not going to give you...if I have ten great spots for desalt plant, why would I give one either away to Nevada or Arizona? I'm not an idiot." So you have to say that it'll help California which is important and their population is going up. So that's important but it really doesn't help Arizona or Nevada. So where will they go? Mexico. Are we talking about a desalt plant on the coast of Baja? You bet. I'm involved with a group that's trying to do that right now. Can I show you a study that's this thick from the 1960s that looked at a nuclear power plant and desalt plant north of Puerto Penasco on the Gulf? Yes. Why would you put it there? Because if you're close to Imperial Dam, you have a huge flexibility. You have to think of the volume of water that goes to Imperial Dam. I already told you IID is 3.4, if you add in Coachella and you add in Yuma, you're talking maybe five million acre feet that goes to Imperial Dam. Why is that important? Because if you build a big plant there and you put the pipeline up to Imperial Dam, you can supply Yuma and IID with that treated water and their Colorado River water could be backed up. Do you see what I mean? Nevada pays for the plant. It generates 100,000 acre feet, the 100,000 acre feet would be put in Imperial. The farmers would use it and Nevada would get an extra 100,000 or 500,000 whatever the number is. It's a big deal. So are we going to go there? Yes, but that's in the future, a decade or more into the future.

Where are we with the [Yuma] Desalting Plant? Well, that's a complicated matter. It's a long story. It was built because it was thought it was needed at the time. They saw the development of the river and the development of the CAP and that sort of thing and it would be needed. It turned out that the water was abundant with water in the 80s and 90s, so it really wasn't needed. So the unfortunate building of this plant really didn't need to be undertaken and now it's sitting there. This is sort of the example of Rube Goldberg "interconnectiveness" of all this stuff. If I took somebody from New Jersey and said we have a desalt plant there on the Colorado, I'm sure the guy would say you probably treat Colorado River water right? No. We treat the drain water from Wellton-Mohawk that's really salty because they farm on a really salty area. So I think taxpayers would look at you and say why do we have Wellton-Mohawk there? Well because Congress wanted to create a farming place, an opportunity for World War II veterans, really. They didn't realize that it was a salty place to farm. But they are there now and they have families and communities and everything else so we have to deal with the return flow. So we're going to run the return flow through the plant and clean it up and take the good water, put it in the river, and send it to Mexico and take the brine stream and send it to Mexico some place. Instead of doing that—we had to because the plant wasn't needed—they took the Wellton-Mohawk drain water and they bypassed it. They don't put it in the river because that ruins the quality for Mexico and the treaty. So they bypassed it and they took it in a pipe and through a canal down to a slough in Mexico. Is it pretty salty water? Yes. Is it really crummy water? No. So what happened when they put all that water in the slough? It's about 100,000 acre-feet a year? This slough became this big wetland with cattails and now all these birds are down there and Mexico, wisely, sort of designated it as a wildlife area. It's all very complicated. What lives there? Yuma Clapper Rails live there. That's an endangered species, a bird. You say damn it, we want to run the plant and we got thirty million from Congress. So we're going to run the plant. So we take all that drain

water, we don't bypass it anymore; we put it in to the plant. We clean it up. We get 100,000 acre feet of clean water and 30,000 of brine stream. We send that brine water down to that slough and we kill the slough. That's what would happen.

Now Mexico would be unhappy. The birds would be unhappy and environmentalists would be unhappy. Are we going to do that? I don't think so. So is it smart to run it at one-third capacity? Yeah, to try and figure things out but how you deal with all that arrangement now that we created is complicated now. You can't just say we're going to quit sending the water down to Mexico because they've created a wildlife area.

The Yuma Desalting Plant is a tool. The point I'm going to make here is hopefully education. You can look at the plant at the perspective of the CAP that is this perspective; or Arizona which is a little bigger; or Arizona and California. You can broaden your perspective. CAP says since we're junior that waste of water hurts us. It drains Lake Mead. Let's stop that leak and let's do something. Let's run the plant. Arizona is kind of supportive of that but they got a broader community to deal with, including a Democratic Governor who doesn't necessarily like running the plant. So you have to broaden out from CAP to Arizona because the Governor has a role now. Now let's go across here to California. Does California want to run the plant? They are sort of lukewarm about it. Remember California is green. So they see the benefit of that wildlife area down there. They aren't real anxious to just trash it. They also have mild sympathy for Arizona with the drought. It's kind of like, well, prepare for it.

You've got water bank, etc. You don't necessarily need to run this desalting plant. So California is not jumping up and down about the desalting plant. They want to be courteous but they don't want to go...so do you see what I mean? If you're Interior, you kind of get mixed signals. You talk to Sid one

minute and get one message. You talk to the Governor and get another message. If you talk to big guys in California you get another message. It's hard to figure out what to do in those circumstances and the environmentalists have a big role in it.

Q: What about Mexico? Do they have a say?

A: Sure they do. They are a player. The Mexico thing is very complicated right now because Mexico needs to share in shortages. The question is how much? So we're trying to put together right now a package of things that we would have to negotiate with Mexico. The desalting plant might even be part of that. We have to figure out the bundle of things that we will negotiate with Mexico to try and solve some of these problems.

Q: I heard they spent a fortune to build that plant.

A: Three hundred million.

Q: It sat idle for so long and I heard that not even maintenance was being done.

A: They do maintain it. They maintain it at a considerable cost to the Government. They maintain it in a ready state so it can be turned on and that's to the Government's credit. The problem is they don't maintain the membranes. So they've had these membranes sitting there for years and years and they've deteriorated. If they start it up again, they have to buy new membranes which are expensive. So we've lost the value of the membranes.

Q: They did start up a small part of it?

A: Yes, one-third capacity to just kind of prove things and to maybe figure out what to do with the water. Maybe you can use it for municipal uses even in

Mexico. Let's say in this whole complex bundle of stuff that we work out with Mexico, this may just be a thought. It might not be anything realistic at all. You might say Mexico if you give in on some other areas, maybe we'll run the plant. The United States Government and we'll send the treated water to San Luis or Mexicali or somewhere you use it for potable purposes.

Q: I heard there were some people from Saudi Arabia who came to look at the plant?

A: I think it is a state-of-the-art plant or at least it was. The folks in the Middle East are pretty smart about desalting so we might even be touring their plants as far as I know. They put a lot of money in that kind of stuff. I'm sure now that they are starting it up that people are starting to come and see it and see what's going on and try to learn from it.

Q: You mentioned that California would tell Arizona to use your water bank. Talk about the water bank.

A: I think the water bank is very good water management. I want to make something real clear here being on the California side of things. When we get to talk about shortages, California is very clear. We don't suffer shortages. We have a statute. Until it gets down to a certain degree, we don't take any of that. I'm sure what Arizona holds out hope for is that if things get bad enough...don't forget when you start cutting down through the CAP, you first do the non-Indian ag. Those guys can pump or do something else. Then you get into the M&I and the Indian, don't forget that a lot of the Indian is ag. So maybe they can suffer some cutbacks without a lot of pain. At some point, you're going to get into people and their showers and bathing their children and all that. That is serious stuff. I'm sure what Arizona is saying is at some point when we get down there; we'll kind of have consultations. We'll talk. It may be that Arizona will go to Yuma. But I'm sure that they hold out hope, and

Nevada, too, don't forget Nevada doesn't have a lot of options. They don't have agriculture to go to. So if you're getting cut back in Nevada, you either got the water stored some place or you got some other project or you're screwed. When you get into a more serious shortage, would it like to come to IID and say could we pay you to fallow for a few years so we can have twenty or thirty thousand acre-feet? You bet. When they think about that sort of thing, do they think about Coachella or the Yuma project on the California side? Those are little districts. IID is gigantic. So people would say one percent of IID's use is thirty thousand acre-feet. That would do Las Vegas just fine. Would IID miss one percent? See what I mean?

The point is that water bank is really important to protect Arizona in times of shortage. Part of what I'm saying is California will stand on its rights. Who knows when things get bad enough what kinds of deals will be struck and they might. But for a period of time anyway as it's going down, California will stand on its rights. So Arizona had better be prepared and the way to do that, and to their credit, is the water bank to store water. We have now created a new arrangement in Lake Mead that's called intentionally created surplus. It's a way that you can have an account of water that sits there and it's for your use. Arizona and some of the entities here will take advantage of that. So they will have that too and the water bank. All these things kinds of add up. Will Arizona be prepared in times of shortage? I think so. It depends on how bad the shortage is and how frequently they come. The water bank is really important and another example of Arizona being smart about water management and getting to it early on.

Q: Can you explain briefly how the water bank works?

A: If Arizona had 2.8 million acre feet, 1.3 million acre feet is used over on the river and that leaves about 1.5 for CAP. Is the 1.5 used? No. CAP is not in its infancy but it's still like a teenager. Tucson probably has close to 200,000 acre feet of

CAP rights and probably only uses half of that. The Gila River community doesn't use all of its water. You know that. They just got their settlement and they haven't built all the structures. Does the San Carlos Tribe use all of its CAP water? No. So there is a lot of unused CAP water. Now Arizona can either let that sit in the river or Lake Mead and if it sits in the river, who's going to use it? California in a heartbeat and they will use it. We're all using it. MWD used some unused apportionments recently. My client is using unused apportionments. Unused apportionments mean water not used by Nevada or Arizona. They are all over it and they will take it. In lieu of that, you can take tax money and say I will pay CAP the pumping costs, the maintenance costs, and the cost to develop a recharge project. I will pay those costs to bring that water in and put it under ground. That is what the bank is. It is the state as an entity saying that's a smart thing to do. We will work with SRP and others to try to subsidize this a little bit but we're willing to pay tax money to do that to bring the water in. So what they're taking is the unused part of Arizona's 2.8, 300,000 acre feet or whatever that is and instead of leaving it in the river; they're pumping it over and putting it in the ground. Like a squirrel hiding acorns.

Q: And they're keeping track of how much...

A: They are keeping track of it.

Q: Even though they really don't know what is going through to get there.

A: I think it's better than you probably think as far as where it goes and where it's confined and that sort of thing.

Q: What about the Central Arizona Groundwater Replenishment District?

A: Now you are getting out of my territory to a certain extent but I want to say something about that. I urge you to spend a lot of time with Grady Gammage

on this. Part of the problem we have in the Southwest is growth. A lot of people are saying to Nevada that you should stop the growth in the Las Vegas area. People like Pat Mulroy up there want to go find more water like Los Angeles behaved for many years, maybe still does, and say, "no, we want the growth still going." That's a huge tension about whether or not you should just let the growth go or whether you should try to put a damper on it. In Arizona when you have the Groundwater Management Act and you have to show a 100 year assured supply, at some point if you have allocated all of the CAP water and you know where the SRP water goes and you can't pump new groundwater because it's an active management area, you're stuck. You don't have an ocean. You're stuck. What's a creative way out that for the legislature to enact? The Groundwater Replenishment District. What does it mean? Well developer "X" or a community over here can say I need four thousand acre-feet for a development. I'm agreeing to pay the fees to the Central Arizona Groundwater Replenishment District in order to have water to survive and do my development. I will pay the fees to this replenishment district. What they will do is go buy water some place. They'll rent it from an Indian Tribe and store it underground. They'll go buy-out a right over on the Colorado River. They'll do something to go get water and they'll bring it into Central Arizona and put it underground. They will replenish gallon for gallon for what I take out. Great idea! Are they a little behind? Yes. So you have all these houses now built on this basis and the replenishment district is not bringing the water in to replace it. They're behind. Now if this state is subject to criticism in a serious way that's it. Gammage should really answer that. That is, at least in my judgment as a citizen, one of the flaws that we have where this is now kind of a house of cards. Do I think it's all B.S.? No because they could go do a deal right now with the Colorado River Indian Tribes who would like to lease water. We might have to get Jon Kyl's help with legislation that allows it. They don't want to lease it for 100 years but they would lease it for ten years. How about 20,000 acre-feet for ten years? That is 200,000 acre-feet. You could bring it into

CAP and put it underground. You could do that in a flash. They need to get busy doing that stuff. You don't have to do something permanently; you can acquire temporary rights and then store the water underground.

The guy that runs it is Cliff Neal. I knew Cliff years ago. I haven't talked to Cliff in years. I don't know what his thinking is or what he's doing but Gammage knows that stuff. I think Gammage is a bit of a critic of the replenishment districts. A bit too much theory and not much real action.

Q: What do you see as Arizona's future water challenges?

A: I think I already mentioned that to a certain extent. Gammage likes to say that maybe the sustainable population here in the valley is about seven million and once we get there, we ought to stop. People don't like to hear that. Political leaders don't. This is really a sad area because recently there is a great struggle up in Prescott. Carol Springer who used to be on the legislature is up there on the Board of Supervisors. She says without growth, Prescott would die. I don't accept that. It's illogical. It's just not the truth. They can have a fine community up there that isn't growing. They're creating local industry or whatever. They don't have to have the development industry to survive as a community. They would not die. There is that mentality that unless we keep growing that we will somehow wither and die. I just don't think that is the truth. I think Gammage would agree to that.

So at some point, you have to say what's the realistic limit of our supply? I don't think Arizona has really tackled that yet. We're going to bump up against it now pretty soon because SRP is maxed out. The groundwater really is maxed out. The CAP is all allocated and it will be used eventually. If we haven't yet grown into all those rights, we'll eventually grow into them. Scottsdale will use all of its and Glendale will use all of its and Tucson all of its and the Indians will use all of theirs and that will be the end of it.

Where are you going to get other water, especially with global warming? There are guys running around who remember that study. One of the guys here, Karl Kohlhoff from Mesa, wanted me to come to a speech that he was going to give in Tucson because he was going to talk about the nuclear power plant and desalt plant in Baja. Does it continue that we simply go out and get water from someplace else and bring it in so we can keep growing? The answer is yes. At some point the community is just going to have to try and deal with that and say have we reached the limit of our land area or whatever, we don't want to do it anymore.

So that is the biggest challenge. So I think there is two; supply and salt. If you interview people over at DWR, you can ask them more. After a while, the accumulation of salt, because you're importing this salty water from the CAP, creates a problem there. They're going to have to get rid of it somehow. And they're going to have to figure out pipelines down to the Gulf or something. It's going to be a complicated problem for our children and our grandchildren to solve.

The supply is the other big problem. For the time being, it works okay. We have relative abundance. The CAP isn't all used up. We have Yuma to fall back on. If you're California, you can have tragedy and crises like this pumping plant. And still if the urban area had to, they could come to IID and get three-hundred acre-feet just like that. We just quit farming. It's like you can turn it on and off like a switch but the community doesn't want to do it.

Q: You talk about stopping growth at certain limits, how do you do that if people still want to come here?

A: I'm not smart enough to tell you how to do that. But there are people who do know about that sort of thing and we have had a ballot measure here, as you remember, people voted down. It was a growth control scheme.

They have done it in Portland. They have done it elsewhere. The question is will those things eventually become more common, better understood, and better crafted. Will the legality of those be tested? Yes and I don't have an answer about where everybody would go. They don't have to come here. They can stay in Des Moines where they have plenty of water and live there. At some point, a community ends up with a maximum of its supply. If you want to know where that happens on the ground? Go interview people in Monterey, California. They permit houses to be built on a house by house basis. They have to show the availability of water. If you can't show it, they won't allow it. Why would we allow you to build a house, we don't have the water for it. You can talk to Gammage about this. The intersection of zoning and water supply is now happening. It used to be you would have the zoning hearing and nobody would say is there sufficient water. That was somebody else's business. It's DWR or City of Phoenix water supply. Now the zoning and the water supply are starting to intersect. It's especially intersecting in places like Monterey. The cities have to show the actual water per house.

Q: It seems like that would work in small communities. Los Angeles and San Diego looked like they've outgrown their water years ago.

A: I suppose you have to give credit, I suppose, if you want to see it that way, to these engineers, like Mulholland and those guys who brought the water down from the back of the Sierras and Governor Brown back in the 60s. To build a 450-mile aqueduct from the Bay-Delta to urban California is a huge undertaking but California does that sort of thing. The question is what more is there to do? I don't know.

Maybe if we're getting close to the end here, I will tell you a quick story. This is almost hard to believe. Are there places to go to get water? Well, sure there are. Canada is loaded, right? If you can just get Canada to pass the laws that would allow the export. In American, where is there a lot of water? Mississippi

River; is there talk about an aqueduct from the Mississippi? Yes. Now if you know your geography, how far would we have to bring that canal? We'd bring it to Northern New Mexico because that is where the San Juan River is. Do you see what I mean? You don't have to bring it to Los Angeles. You bring it and put it in the San Juan River which flows into Lake Powell, which flows into Lake Mead. Do you see what I mean? Now how far is that aqueduct? You get out your geography book later this evening and you can check the distance. It crosses three states or something. It's not that far. Remember I said the All American canal pumps fifteen thousand cubic feet per second? If you took fifteen thousand cubic feet per second off the Mississippi, do you think they'd miss it? Will we see that in our grandchildren's lifetime? The reason I brought it up is because I am part of the California group. The California group, to some extent, has sort of several big players but one of them is the Director of the Colorado River Board in California. That's the Board that manages California's Colorado River interests. They have an executive director. He said to me the other day that we're going to have to get moving on preliminary plans for the aqueduct from Mississippi.

Q: People said years ago that was the end of big water project. Do you think we'll see big water projects again?

A: The answer is yes and no. What I say is that we've ended the era of big dams but now we're in the era of pipelines. So you watch, the pipelines are going to go everywhere. If you want a really good example, go to St. George, Utah. A wonderful place to live, a beautiful climate, lots of people want to live there, they're going to run out of water. So what's the plan? It's to bring a pipeline over from Lake Powell to St. George. Utah has unused Colorado River entitlement. They can't use it all. The water is on the East side of the Wasatch Mountains and the people are on the West side. It's hard to get the water over there. So they would like to use it. It will cost them millions to build this pipeline. They are moving on it and they will do it. We're talking about pipelines from

Lake Powell down to Northern Arizona to Cameron over to Williams onto the Navajo Reservation. The big deal we have right now is the big pipeline from the San Juan River/Navajo Dam area in New Mexico down to Gallup and over to Window Rock and that sort of thing. When I finish this, I will go work on that legislation because we're picking it apart. Pipelines are going to be everywhere. This idea that we're not going to do water projects anymore, that's just a mistake. Are [we] going to build big dams like Hoover, Grand Coulee, and Glen Canyon? I don't think so. The environmental consequences are too steep for that. Although Schwarzenegger is pushing for two dams that are kind of less environmentally difficult but he's even getting resistance from a lot of the legislators, but he wants to build two dams.

Will we do other things like a big aqueduct from the Mississippi? I my opinion, yes it's just a canal and pumping plants. It's not a big dam.

Q: But you'll need to store that water when it gets to...

A: Well, maybe not. If you bring it to San Juan, your storage is Lake Powell. We already have the storage.

Q: As long as it's not a drought year.

A: A lot of people say that Lake Powell won't fill as much as it used to. Maybe that's when you need that water is when Mother Nature is not snowy on the Rockies; you can bring it in from the Mississippi. Now I'm saying the Mississippi thing a little tongue and cheek but when somebody of influence says to me, we will see preliminary work on that in our lifetime.

Q: The other river I heard is the Columbia River.

A: Yes that's all doable. It's not as big as the Mississippi and it's got more political problems. I think we would see the Mississippi-state Senators would all oppose. I don't know. It's such a small amount of water. They would also say, "Oh my God" and they wouldn't think of Arizona. What would they think about? California. That's what they think about. California is now dependent on my Mississippi. That will be a big national thing. The Columbia is just a hard political nut to crack. They just don't want to let go of much of it but maybe that's a possibility.

Q: The Appropriation Doctrine that everything is built on now; first in time, first in right. Do you think that is going to survive?

A: The answer is I think it will. When you ask about the compact, it's the same answer I'm going to give you. That coctrine is like the bedrock of our society in the West. If you want an example of this, there is a court decision that you can read. It's from the Supreme Court of California. It's called the Mojave River decision. Some people will say Bill doesn't know what he's talking about, it's really sort of a groundwater matter. It doesn't matter. It's water in California. The situation was out in that desert part North of LA in Mojave Valley, they had overuse of water and there were a lot of farmers out there that used that water from an underground source for farming. Then a lot of people moved in around them and then they had water supply problems and they got into litigation over it. In California, they have a thing that's called, I'm going to forget the name of it now, its name and it's a doctrine where a court can say...it's called physical solution doctrine. I think it is. We can impose the cost of importation on everybody to solve the problem. It's a tool that the courts can use. Here a lot of the municipal folks said you do that in court, you just impose it on everybody. Well, the farmers resisted saying, "Wait a minute, we have senior vested prior appropriation rights. We were here first." They didn't want to pay for some new importation; they wanted the newcomers to pay for that. But the judge was lazy. He didn't want to do a whole new adjudication and

everything else. He said, "Let's do that." Then it went to the Court of Appeals. The Court of Appeals ruled in favor of the farmers. Citing senior vested rights really do mean something. The prior appropriation doctrine hasn't been done away with. I don't care what population growth is happening, it's still there. The Supreme Court tends to say this, too. They've said things about water rights being the bedrock of society and the West and you just don't easily disturb them. Then the stage is set, okay. It got appealed to the California Supreme Court. So the main issue is, are those senior vested rights what they really used to be? A lot of commentators in California, lawyers and others, were saying the law has changed. It's morphed into something where we share more and we look at the public good and this whole thing about the appropriation doctrine is antiquated. We're in a new era. So guess what? The court got a lot of what we call amicus briefs. It was a big deal. How do you think the court ruled? Unanimously in favor of the farmers, not one dissent. Prior appropriation is the bedrock of the water rights in our State. Whoever is misreading our law and saying that it has changed is wrong. They have misread our decisions. They even disapproved some decisions or pieces of them that mislead people. They said, "It's the bedrock of our society." They said, "If you want to do deals with them, do deal with them. If you want to go rent water from a senior guy, go rent it. If you're a municipality and you want to condemn the right, condemn it." There are tools, most of it is money, but we're not going to upset the doctrine. So all these yo-yo's and some of them come from Colorado, professors the appropriation doctrine is old and antiquated and it's going to go away, it's not going to go away. How do you like that for an answer? The Mojave River decision from the State of California unanimous Supreme Court opinion.

Q: You got the law to back you up.

A: I handout it out when I give speeches. There is a Supreme Court Justice in Colorado who follows a lot of this stuff. The last time I saw him I gave him a copy.

Q: It wouldn't be Greg Hobbs would it?

A: Yes.

Q: I interviewed him last year.

A: I said Hobbs read this just in case.

Q: Some of the things have changed in talking about appropriations, Indian Rights, environmental issues, in Colorado the recreational uses have changed some the ways of looking at water rights. What else could change?

A: Again, I think all of that fits into the system. Just because you may have a new water right that is an in place water right for instream flow or recreation that's fine. They just come along with a priority date that might be 2005. It doesn't get to be 1890 so they're junior to others or they can go buy a right which people are doing a lot of now. In Reno, they're out buying water rights. If you want to have enough of a stream to float a boat in, then go buy some water rights and put water back into the stream. So legislators are responding to that. They are creating those kinds of water rights and all of that stuff. The intersection of the environmental laws and the water is a very difficult problem and I don't know how it's going to go. Some people will say the fish don't have any rights and the endangered species act gives them rights. I don't know about that. Water law is a little different. You may have to change your operations to accommodate some fish or bird. That is not like saying they get a water right. It's an adjustment of your operations. To their credit, CAP was a very hard driver in putting together this MSCP on the Colorado River that we

just finished a few years ago. It's a very expensive thing but it's like an insurance policy to say that we will not have endangered species effecting our operations because we've already paid and we're paying to prop them up and do good things for them for them on the river. It's going to take us fifty years to do this program.

So those are very far-sighted things and frankly with some other developments with the Endangered Species Act in the West, we now look like geniuses having put together the MSCP. Doug Miller will agree with that.

Q: What is MSCP?

A: MSCP is Multi-Species Conservation Program. It's an Endangered Species program for the Lower Colorado River. I don't know what's going to happen with endangered species in some water situations. That is a hard situation. I think a lot of the rest of this stuff just follows. It's okay to have recreational water rights. They come with a lower priority. You get them more recently. That's fine. You may get cut off sooner or you have to buy something to prop them up to make them work. All of that can work and you can have instream flows. The only other thing that I would say on it is pay attention to the common sense spin-off here. Where is Colorado? Colorado is schizophrenic. On the one hand they want to grow and they want to use all of the water. Do they use their full apportionment from the Colorado? No. Remember that thing where seventy percent...? Well they have right to about 3.8 million acre feet, do they use it all? No. Why? Because the people are on the east side and the water is on the west side. Why are they schizophrenic? Because a lot of their citizens want their water to be left in the stream with trout in there. So is Colorado going to have an easy time to build a bunch of dams, divert the water, and dry up the rivers? No way. Their citizens won't stand for it. So they have a difficult situation where whether they like it or not, their society is going to cause a lot of that

water to go unused downstream to the rascals of Arizona and California. They just value those instream situations.

Q: As you mentioned, they do have a split between where the population is on the Front Range and the West Slope where the water is.

A: It's very difficult.

Q: What advice do have for the people operating the Central Arizona Project today?

A: I don't know if I have any advice for them. I think they do a good job. I just don't know if I have an answer for that. I think Arizona generally does a very good job in regard to water management. I mean the folks over at the Department of Water Resources. I see the evidence of the people at the City of Phoenix doing very smart things. For example, we in California are very much involved with the MSCP when it was getting going. Arizona was a little slow coming up on it and I think the people from Phoenix and other urban areas said we need to get with the program here and CAP got more involved. So I see a lot of wisdom coming from big entities like Phoenix. Finally with CAP, I see CAP very well managed. They're smart. I think SRP is the same way, very capable, well run organization. They think in advance. So I don't really have a lot of advice for them. I do think in Arizona the Achilles Heel right now is that Groundwater Replenishment District which is housed out of the CAP and somehow part of the CAP family. I don't know enough about that because I don't work in that area but that's a problem. I guess my only piece of advice would be to get a handle on the Groundwater Replenishment District.

Q: They had a major change over in their Board after this last election.

A: Yes that's what I understand. I don't have any thought on that. I know a few of the Board Members. I have high regard for most of those folks. A lot of them I just don't know. I'm sort of an odd bird in the fact that I really spend my time in California even though I am physically here. All my attention really is over there unless I'm doing the seven states stuff, where I have to pay attention to the dialogue in Arizona, Colorado, and elsewhere. I don't get involved with a lot of the local stuff very much. I know some of their Board Members are very capable people. I have the same problem in California with my Board. I have some difficult Board situations right now with the Imperial District. I find that after Board Members are on the Board for a while, they tend to think maybe the hotheaded stuff they were saying when they got elected may not be as smart as they now see now that they understand the facts better. These are very complex situations and they require a lot of study. So once you become knowledgeable about the CAP or the Imperial Irrigation District, it's a little bit harder to be such a loose cannon.

Q: The CAP Board used to be long time water people, farmers, former governors, congressmen, and that's changing.

A: I think that's changing. I don't know whether that's good or bad. I think some history in regards to all of this is very helpful. If you can find Board Members that have some history, a recent candidate was Richard Morrison who has an office here. Richard is really a very knowledgeable, capable, a lawyer, but he's also a citizen whose family is very involved in the southeast Phoenix area. He would have been an outstanding Board Member but didn't make it. Whenever you can come by that sort of thing is really helpful. There aren't a lot of people with water backgrounds.

Q: You mentioned that most of your work is in California and you are here. Why are you here?

A: I'm here because I am divorced. My two children are here. I have a son at ASU in Honors College and I have a daughter that is graduating from high school the day after tomorrow. Because they're here, I want to be here. It has been effective for me to live here and practice over there. I don't need to be there all the time. The most important thing is that my family is here. My mother is still alive. She'll be 90 this summer. She lives in McCormack Ranch. My older brother lives here. My younger brother lives here. Will I move to California one of these days? Yes, as soon as I can afford a summer home in San Diego. I see myself eventually going back and forth but it will depend upon where my kids live and that sort of thing.

Q: Is there anything else that you wanted to add that I didn't ask?

A: No. I'm glad I got into the story about Doug Miller. I wanted you to know about that, that little known fact about knowledge of a position at CAP. I have high regard for Doug and I've worked with him for years and years. I think that he is a very capable, careful, thoughtful lawyer and I'm really glad he ended up where he did. I'm sure that he is very happy with his work over the years. I think it's something that turned out well for him and I'm glad to have had a little role in that.

The only other comment that I would make is that my situation is a little unique in that most people have a narrower perspective. You're Grady Gammage you know a lot about the CAP. You're Jeff Kightlinger who runs the Metropolitan Water District; you know a lot about MWD and the California water situation. Not too many people get to see the big picture. Because I represented the Bureau, I had to understand at the time the California mess, the Nevada mess, the Arizona mess, the Mexico mess and deal with all of it. I got the big picture. Now it is a blessing that I worked for IID because even though IID is down there and by itself and could be insulated and parochial and not do much, they really pay attention. They want me and others to

watch endangered species stuff that goes on in the West; water matters in the seven-state area. They really are interested in keeping track of what's going on. They think that if they don't keep an eye on it, they will be thrown under the bus. I'm fortunate that I get to work on a lot of things from a broader perspective and that's what makes it fun for me. I know a lot about Tucson Water. That's interesting but I'd rather play from a bigger perspective. So I've been fortunate to be able to do that both at Interior and in my work now.

Q: It sounds like you have a real passion for it.

A: I do. I like water and I guess I'm lucky as a lawyer because the field of law is huge. You could do tax. You could do divorce or whatever. I'm glad that I'm part of it, this resource part of it. It's interesting as far as I'm concerned.

Q: What advice do you have for young people who are try to decide on a career?

A: I've actually talked to two of them recently who have come at me in different connections about looking at not only environmental fields but also water. I just try to tell them about what I do and to go about talking to people so they get a network of experience. Like who does what and how you do it and how you go about getting it and that sort of thing. I urge people to look at what they're interested in and if they are sort of interested in sort of the resources area then how to make a plan for that. It depends on how they want to impact things. If you want to be a significant policy impact, being a lawyer is a good way to do it. It depends on where you work.

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