

ORAL HISTORY INTERVIEW

GAIL BINGHAM



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Table of Contents

Table of Contents	i
Statement of Donation	xi
Introduction	xiii
Oral History Interview	1
Origins and Education	1
Attended Stanford to Study Anthropology	1
“I became very interested in conflict resolution as my way of finding meaning in my generation. I come from a Quaker background, and peacemaking is part of the beliefs of Quakers. . . .”	2
Graduated from Western Washington State University in Bellingham in Environmental Science and Planning	3
Choosing a Career	3
Worked in Local Government and Then Finished a Master’s Degree at University of California- Berkeley	4
Worked as a Planner in India for One Year Immediately after Graduate School	4
Mediating Environmental Issues	4
On the Basis of the First Environmental Mediation of an Issue in Washington State Decided on a Career Path	5

“‘This is what I want to do,’ take my environmental planning, environmental policy, environmental science background, but have the role explicitly of mediator. . . .”	5
Went to Work at Resolve, a Small Non-profit Then Headquartered in California	6
“ . . . I joined Resolve in 1979, and in 1981, Resolve merged into the Conservation Foundation, which is a policy think tank here in Washington, so I was hired by Conservation Foundation to continue the Resolve programs. . . . ”	6
The Conservation Foundation Merged into the World Wildlife Fund about 1990	7
Resolve Spun off from the World Wildlife Fund to Maintain Impartiality	7
President of Resolve	8
What Resolve Does	8
Resolve Brought Twenty Years of Mediation Experience with Environmental Issues to the Truckee- and Carson River Basins	8
“ . . . it is something that is growing in our country and internationally as part of human beings in democratic societies trying to understand how to govern themselves and how to deal with differences more constructively. . . . ”	9
“We are seeing increased tensions over the allocation of natural resources, . . . the costs of environmental protection, and yet increasing	

awareness of how mankind is dependent on a healthy environment as well. . . .”	9
Finding a Balance of Healthy Environment and Healthy Economy in an Area with More People than Available Water Can Support Is Hard to Apply in Practice	10
“So there’s a genuine dilemma over allocation of water resources, and those tensions play out into very difficult decisions. . . .”	10
“My values are that people have legitimately different interests. . . .”	10
“Conflict isn’t the problem; it’s how we deal with our differences that will bind us together in communities or tear us apart. . . .”	10
“But the fact that we have different interests isn’t bad. That’s human. And the fact that we have different perspectives about what’s in the public interest isn’t bad. So those values, I think, play out in this episode . . .”	11
Invited to Work on the Truckee-Carson Settlement	11
Met with Larry Werner from Senator Harry Reid’s Office and Dana Cooper from Senator Bill Bradley’s Office	13
Meeting with Senator Reid	14
Meeting Other Players in the Issues	16
Strengths as a Mediator and Learning about the Project	18
Believes one of her strengths is “an insatiable desire	

to learn. . . .”	19
“ . . . what I do . . . as a mediator, is listen, is create almost like a mosaic, an overlaying set of stories, and I don’t really find myself naturally inclined to judge the truthfulness of people’s stories. . . .”	19
“ . . . I’m really interested in . . . where they’re similar and where they differ, because you can build on where they’re similar, and where they differ may be places . . . intervention can happen. . . .”	20
How the Negotiations Should Be Conducted	21
Concerns about the Pre-negotiation Phase of the Process	21
Pre-negotiation Is Where You Learn the Issues, Points of View, Concerns, Hopes, and a Number of Other Facets of the Situation .	21
“A negotiation is a voluntary process. . . . you really want to be sure that you set up the process to have maximum incentives for voluntary agreement. . . .”	22
In August of 1994 Wrote a Report for Senator Reid Summarizing the Consensus on How to Proceed	23
Senator Harry Reid and the Views of the Fallon Community	24
Senator Reid’s Views of the Situation and the Community’s Views on Reid	26
National Election of November 1994 Was Important	

.....	29
Preparing for Negotiations by Interviewing the Players	30
Didn't Interview Upper Carson River Interests and Subsequently Felt She Should Have	31
“The concern was that if I called them, it would be a political firestorm and open up things that they wouldn't want to have opened up. . . .”	33
Mediator Does Not Decide How the Process Is to Be Structured	35
Asked Senator Reid Not to Act for Several Weeks So That Other Parties Could Contact Him with Concerns about Her Memo	35
“... it's really important for the process to be credible and for parties to feel like they own it. It's their process, it's not mine. It's their dispute; it should be their process. . . .” ...	36
First Meeting Scheduled in September 1994	37
There Was Some Confidence That Agreements Might Be Reached	38
“... I was testing, when I talked to people . . . When I asked them what they would like to see happen, ‘How do you think the others would react?’”	39
“... we had already talked about the legal advantages the tribe has, the court decisions that they had won, and the fact that they were a formidable opponent in the water wars . . . ‘Do you have	

ideas for what would cause the tribe to say yes?”	40
“... what I was really doing was ... trying to test whether they were able to engage in a dialogue with each other ...”	40
“... I was getting the sense that people wanted to try to solve each other’s problems–were at least willing to try. So what else can you ask?”	41
“People were coming from very far apart. ... But the fact of creative ideas floating and the willingness to try was enough for me at the time. ...”	41
The First Meeting During the Negotiations	41
“There was a feeling in the air in that room that this was a momentous day. ... But people said to me, this is the first time ever in history that that constellation of folks had all been in the same room. You could feel it. ...”	42
Why Ms. Bingham Handled this Negotiation Herself	42
“There’s two variables that matter ... One is experience with similar issues ... Second, how acute the dispute is ...”	43
“So this was a combination of a very polarized dispute where only I or two other people here would have the qualifications to mediate something that intense, and then also the water expertise mattered. ...”	44

How the Meetings Went	44
“That first meeting was different than all the others because it was open to the public, so it was in the Sierra Pacific auditorium. . . .”	45
Other Meetings Were Held at Various Locations	45
The Way the Rooms Were Set up	45
Concerns about the Size of the Group	46
“So we would have seventy or eighty people in the room . . .”	47
Planned All Agendas in Advance	47
“So there was a human rapport in the room all the time. There were also moments of high tension. . . .”	48
Issue of Recoupment	48
“ . . . it was a very intense meeting schedule, two days every other week, for the most part. . . .” .	49
Each Topic of Discussion Was Preceded by an Information Session to Try to Sort out the Facts and Present Differing Perspectives .	50
The Way the Problem Solving Process Works	51
“ . . . if you want to have negotiations be more likely to be successful, they should have a problem- solving tone. . . .”	51
“ . . . the information sessions used up a lot of time, and I worry about that some. . . .”	52
The Problem of One Side Accepting the Other Side’s Data	52
Water Modeling Working Group	53

Discussing the Negotiations with the Fallon Community as They Were Progressing ...	56
Went to Fallon at Various Times to Discuss What Was Going on with the Community	56
One Objective Was to Help the Lahontan Valley Negotiate	57
The Lahontan Valley Had the Most Diverse Group of Constituencies and Had Been Left out of Previous Negotiations	58
“There’s three negotiations that go on. One is the negotiation at the table. Another is the negotiation within a team of negotiators. . . . Then there’s the third dialogue in consensus- building process between the negotiators and their constituencies . . .”	59
Helping Lahontan Valley Residents Understand the Basics of Negotiation	60
An Agreement Was Almost Reached	61
Assigned Write-ups on the Various Issues	65
People Were Agreeing to Different Things than Others Were Agreeing to	66
“ . . . the areas of disagreement at the last meeting were so far apart on so many things that the positions that came in at the last meeting in several respects were so different from what had been discussed, that I think that what happened would have happened anyway. . . .”	67
LVEA Could Not Sell the Final Agreement to Their	

Community	67
The Effect of the November 1994 Elections	68
Ms. Bingham’s View of the Failure of the Negotiations	70
“The negotiations were forced too fast. . . . Human beings need to think through issues, they need to have a dialogue internally in that community, and there just wasn’t enough time for the processing of this much change from their historic view of what they ought to have as their future. . . .”	71
“There’s a process of discussion that a community needs to have to decide what they predict is going to happen as opposed to what they think is right to happen, and it just wasn’t enough time for them to come to a community vision of what they thought, rather than what other people told them. . . .”	71
The Entire LVEA Community Did Not Have Time to Move to a Consensus Position	72
Creation of LVEA, the Lahontan Valley Environmental Alliance	73
The Future of Negotiations over the Carson-Truckee- Disputes	74
Final Thoughts on the Negotiations	75
“. . . I pushed them harder than I’ve ever pushed any party in my life, and I worry that I pushed, if anything, too hard. . . .”	76

What's Different about this Negotiation 78

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OF ORAL HISTORY INTERVIEW OF
GAIL BINGHAM

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INTERVIEWER: DONALD B. SENEY

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Introduction

In 1988, Reclamation began to create a history program. While headquartered in Denver, the history program was developed as a bureau-wide program.

One component of Reclamation's history program is its oral history activity. The primary objectives of Reclamation's oral history activities are: preservation of historical data not normally available through Reclamation records (supplementing already available data on the whole range of Reclamation's history); making the preserved data available to researchers inside and outside Reclamation.

In the case of the Newlands Project, the senior historian consulted the regional director to design a special research project to take an all around look at one Reclamation project. The regional director suggested the Newlands Project, and the research program occurred between 1994 and signing of the Truckee- River Operating Agreement in 2008. Professor Donald B. Seney of the Government Department at California State University - Sacramento (now emeritus and living in South Lake Tahoe, California) undertook this work. The Newlands Project, while a small- to medium-sized Reclamation project, represents a microcosm of issues found throughout Reclamation: water transportation over great distances; three Native American groups with sometimes conflicting interests; private entities with competitive and sometimes

misunderstood water rights; many local governments with growing water needs; Fish and Wildlife Service programs competing for water for endangered species in Pyramid Lake and for viability of the Stillwater National Wildlife Refuge to the east of Fallon, Nevada; and Reclamation's original water user, the Truckee-Carson Irrigation District, having to deal with modern competition for some of the water supply that originally flowed to farms and ranches in its community.

The senior historian of the Bureau of Reclamation developed and directs the oral history program. Questions, comments, and suggestions may be addressed to the senior historian.

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Oral History Interview **Gail Bingham**

Origins and Education

Seney: Today is November 8, 1995. My name is Donald Seney. I'm with Gail Bingham of Resolve, in her office in Washington, D.C.

Good afternoon, Gail.

Bingham: Hi.

Seney: Why don't you start by telling me a little bit about yourself, a little brief biography, including your birth date, if you don't mind, in there somewhere.

Bingham: Sure. I am forty-five years old. I was born April 19, 1950, in Seattle, Washington. Still feel myself from the "real Washington," feel myself a Westerner by identity.

Attended Stanford to Study Anthropology

Left Washington State to go to college at Stanford [University], studied anthropology. The sixties were a very

troubled time in our society, and trying to become an adult during that time was a confusing thing to do.

“I became very interested in conflict resolution as my way of finding meaning in my generation. I come from a Quaker background, and peacemaking is part of the beliefs of Quakers. . . .”

I became very interested in conflict resolution as my way of finding meaning in my generation. I come from a Quaker background, and peacemaking is part of the beliefs of Quakers.

Seney: Do you actually attend the Quaker Church?

Bingham: Yeah, I am a member of the Friends Meeting of Washington.

Seney: It's not called a church; I'm sorry.

Bingham: It's called a meeting.

Seney: A meeting.

Bingham: That's right. Although in the West, they are called Quaker churches, and I attended the

Quaker Church in Berkeley, California, when I was in graduate school there.

Graduated from Western Washington State University in Bellingham in Environmental Science and Planning

I actually graduated from Western Washington State University in Bellingham, Washington. They have a Huxley College of Environmental Studies. My study of anthropology at Stanford was an interest in how human communities organize themselves to deal with controversy, but I decided, I think ignorantly, that I didn't want to do what I thought anthropologists did. It seemed like going to somebody else's culture and watching them, and that seemed patronizing and alienating, both personally and to other people.

Choosing a Career

So I was trying to figure out what I could do in my own culture in communities, and planning seemed to be a role that people helped be a catalyst for controversy, and I decided that I didn't want to just do planning in the abstract. I'm interested in the science,

so I studied environmental science and planning at Huxley College. I went back to Washington State, Bellingham, Washington, to finish.

Worked in Local Government and Then Finished a Master's Degree at University of California-Berkeley

Worked as a Planner in India for One Year Immediately after Graduate School

I worked in local government for a little while in Washington State, finished my master's program at Berkeley in environmental planning, and with one year working as a planner in India, right after graduate school—because I still was interested in cross-cultural kinds of things, and I decided before I really launched back into my planning career, that this was an easy opportunity to take an extended year. So I did that, and was interested in Gandhian methods of consensus-building and community formation. That's a whole other set of stories, the kinds of stories I found there. Those are fun.

Mediating Environmental Issues

Seney: But you did bring some of that to what you do now?

**On the Basis of the First Environmental Mediation
of an Issue in Washington State Decided on a
Career Path**

Bingham: Sure. Sure. In the meantime, when I was working as a planner in local government in Washington State between my undergraduate and graduate years, the first occasions of the formal application of mediation techniques to environmental issues happened in Washington State.

The first case of mediation in environmental issues was over a proposed flood-control dam on one of the forks of the Snoqualmie River east of Seattle. This was in 1974.

**“This is what I want to do,’ take my
environmental planning, environmental policy,
environmental science background, but have the
role explicitly of mediator. . . .”**

A friend of a friend was the governor’s liaison to that mediation process, and it sort of brought everything together for me, and I said,

“This is what I want to do,” take my environmental planning, environmental policy, environmental science background, but have the role explicitly of mediator.

Went to Work at Resolve, a Small Non-profit Then Headquartered in California

So in 1974-75, that became my goal, and when I came back from India after graduate school and that experience, I was able to get a job at Resolve, which was then in California, a small nonprofit set up for two purposes that remain our purposes today. The first is to mediate solutions to controversial environmental problems, and the second is to do research and education to promote conflict resolution strategies in society.

“ . . . I joined Resolve in 1979, and in 1981, Resolve merged into the Conservation Foundation, which is a policy think tank here in Washington, so I was hired by Conservation Foundation to continue the Resolve programs. . . .”

So that’s what we still do. In fact, I joined Resolve in 1979, and in 1981, Resolve merged into the Conservation Foundation, which is a policy think tank here in

Washington, so I was hired by Conservation Foundation to continue the Resolve programs. So from '81 on, I've had the Resolve work here in D.C.

The Conservation Foundation Merged into the World Wildlife Fund about 1990

Conservation Foundation merged into World Wildlife Fund around 1990, and it was clear that although a neutral think tank could be the base for mediation, an environmental membership organization probably wasn't a proper base.

Seney: An advocacy organization.

Resolve Spun off from the World Wildlife Fund to Maintain Impartiality

Bingham: Correct. And so with their generous support, we spun off and we've been independent, to back full circle to those days in California since.

Seney: And you are the president?¹

1. October 1, 2008, Resolve's board appointed a new president and gave Gail Bingham the title "President Emeritus."

President of Resolve

Bingham: I'm the president of Resolve. We have seventeen people here, ten mediators or associates, ten professional staff, and since January of '94, we've been on our own, working in this kind of work.

What Resolve Does

Resolve Brought Twenty Years of Mediation Experience with Environmental Issues to the Truckee- and Carson River Basins

It's something that is so fundamentally constructive, and I think part of just sort of what I'd like history to think about for the context for mediation in the Truckee- and Carson River Basins is that, first of all, there had been twenty years of experience with mediation applied to environmental issues before I started into my short role in this long history.

Seney: That you brought, in other words.

“. . . it is something that is growing in our country

and internationally as part of human beings in democratic societies trying to understand how to govern themselves and how to deal with differences more constructively. . . .”

Bingham: That I bought into this. And that it is something that is growing in our country and internationally as part of human beings in democratic societies trying to understand how to govern themselves and how to deal with differences more constructively. And I think it's as important today, if not more so, than when it started.

“We are seeing increased tensions over the allocation of natural resources, . . . the costs of environmental protection, and yet increasing awareness of how mankind is dependent on a healthy environment as well. . . .”

We are seeing increased tensions over the allocation of natural resources, resource-based, resource-dependent communities struggling with the costs of environmental protection, and yet increasing awareness of how mankind is dependent on a healthy environment as well.

Finding a Balance of Healthy Environment and

**Healthy Economy in an Area with More People
than Available Water Can Support Is Hard to
Apply in Practice**

It's easy enough to say—although maybe not everybody agrees with this—that human beings need a healthy economy and a healthy environment and that we need to find sustainable economies on which to base our communities, but that's much, much harder to apply in practice when, as in western Nevada, there are more people than available water for many years.

“So there's a genuine dilemma over allocation of water resources, and those tensions play out into very difficult decisions. . . .”

“My values are that people have legitimately different interests. . . .”

“Conflict isn't the problem; it's how we deal with our differences that will bind us together in communities or tear us apart. . . .”

So there's a genuine dilemma over allocation of water resources, and those tensions play out into very difficult decisions. My values are that people have legitimately

different interests. Conflict isn't the problem; it's how we deal with our differences that will bind us together in communities or tear us apart. And that's how we identify with which community we're in, whether we have an expansive sense of "we" or whether we have a narrow sense of "we" and "they" that will affect how we approach conflicts as well.

“But the fact that we have different interests isn't bad. That's human. And the fact that we have different perspectives about what's in the public interest isn't bad. So those values, I think, play out in this episode . . .”

But the fact that we have different interests isn't bad. That's human. And the fact that we have different perspectives about what's in the public interest isn't bad. So those values, I think, play out in this episode of what I was trying to do and what I believe that my partners in these negotiations were trying to do in terms of the values of the process.

Invited to Work on the Truckee-Carson Settlement

Seney: How did you get drawn into this specifically?
 How did that happen?

Bingham: I was contacted in May of 1994, I think. It may have been April. My understanding about what preceded the approach to me was that—the facts are that there were hearings in December of 1993 and in April of 1994. I understand from Senator [Harry M.] Reid and from Graham Chisholm [Nature Conservancy]² and David Yargas [Environmental Defense Fund] that the environmental folks had been approaching Senator Reid, encouraging a resumption of negotiations, a second round of negotiations, and I understand from folks in the Newlands Water Protection Association and the Truckee-Carson Irrigation District (TCID), from Mike Clinton, from Bookman-Edmiston,

2. Note that in the text of these interviews, as opposed to headings, information in parentheses, (), is actually on the tape. Information in brackets, [], has been added to the tape either by the editor to clarify meaning or at the request of the interviewee in order to correct, enlarge, or clarify the interview as it was originally spoken. Words have sometimes been struck out by editor or interviewee in order to clarify meaning or eliminate repetition. In the case of strikeouts, that material has been printed at 50% density to aid in reading the interviews but assuring that the struckout material is readable.

The transcriber and editor have removed some extraneous words such as false starts and repetitions without indicating their removal. The meaning of the interview has not been changed by this editing.

Lyman McConnell [Manager, Truckee-Carson Irrigation District], and others, that they had had a meeting, I think they told me after the April hearings here in D.C., with Senator Reid, where they also discussed with the senator possibilities of resumption of the settlement negotiations that had led to the 1990 Settlement Act.

I understand from the folks in the Lahontan Valley that they had said that they would find that a good idea, that, in fact, they were promoting the idea, but as long as there was a neutral mediator.

Met with Larry Werner from Senator Harry Reid's Office and Dana Cooper from Senator Bill Bradley's Office

I had a meeting. I was invited to come to a meeting with Larry Werner, from Senator Reid's office, where we just had lunch together, and he wanted to know—he had been consulting, I'm not sure how many, of the parties. I know he'd consulted Graham Chisholm, he may have consulted other people about ~~given~~ the request for a neutral mediator, who a good candidate would be.

I really am not quite sure how they picked me as one of the ones that rose to the top. I don't know that they met anybody else, but anyway, I had a lunch meeting with him and with Dana Cooper of Senator [Bill] Bradley's office.

Meeting with Senator Reid

And we just talked about– they asked me what I thought about mediation, how would I approach this, what would the strategy be, and based on that conversation, Larry set up a meeting with me and Senator Reid.

That was a really–I enjoyed that meeting so much. I was caught very much by surprise by his style. I personally have walked away from my experience here with a very high regard for the senator, for his statesmanship. All I've ever seen has been this really deep integrity for wanting to find solutions that satisfied the concerns of people in the region, that brought the region closer together.

It was funny, looking back on the experience, because I sat down, and I have never had an interview that reminded me so

much of a machine gun. I mean, he just fired questions at me. First I'd get a quarter of the way through the answer and he'd fire another one, so I would just stop and answer the next one. Then I started getting halfway through an answer before I got another question. I don't think it was because I was talking so much. Anyway, I think I had a twelve-minute interview. He got through a lot of material real fast. (laughter)

Seney: At this point, you didn't really know much about the Truckee-Carson conflict, I assume.

Bingham: No.

Seney: They were more talking to you about what was your approach to resolving problems?

Bingham: Right, and the way I answer that kind of question is by asking questions back, although not in a situation with a senator.

Seney: Right.

Bingham: I don't remember what I did. There were two things that made me think after he stood up and shook my hand and it was clear the audience was over, that he thought I was okay.

One was that he'd let me finish a couple of answers by the end of the interview, and because his eyes smiled a couple of times. I didn't exactly make him laugh, but I tried.

Meeting Other Players in the Issues

So what Larry told me that the senator said was that I was okay with him as long as I was okay with the people in the Lahontan Valley, because by that time I had also been introduced [to] by Graham Chisholm, talked to Graham on the phone. Actually, I had had a telephone conversation with Mike Clinton, who was a consultant to the folks in the valley, the TCID at that point.

So I called Lyman O'Connell, and Lyman had been alerted to expect my call, and he and I had a conversation. Then he set up a conference call for a couple of days later. I called in. He had just extended an open invitation to anybody in the community who wanted to come to the TCID conference room, and they just put me on a speaker phone and let anybody ask any questions they want[ed] to.

I felt like I had both hands and one

foot tied behind my back, because one of the most important things is to be acceptable as a mediator and being acceptable, you need to build trust, and a way to build trust is to have somebody see you and look in your eyes and know that you meet them, their eyes. People read body language. Is this woman honest or is she not? Does she have stature? Does she not? The first question–

Seney: So that wasn't the forum that was appropriate.

Bingham: That was not great, because on a telephone speaker phone, this disembodied voice, how can I establish rapport with people that way?

Again, the very first question out of somebody's mouth got me by surprise, and it's one of my most special memories. It was, "Well, do you listen to Rush Limbaugh?" I was expecting all kinds of questions, you know, about my qualifications or whatever.

I gulped, and I thought, "All right. How is this woman who lives in the Sodom and Gomorrah of Washington, D.C. (from the perspective of people in the West) going to establish credibility on this one?"

I don't know where the answer came from, but it was the truth. I said, "Nope, I don't listen to Rush Limbaugh." I said, "I have little kids, and about all I can manage in my life is being a mom and a mediator." And we went on from there.

Then I guess—I don't know what conversations happened to decide that I was not at least unacceptable.

Seney: How long did this telephone call last?

Bingham: At least an hour.

Seney: And again, since you really didn't know anything about the substance of the issues at this point—

Bingham: I think by then I had learned something.

Seney: Had you learned some things?

Strengths as a Mediator and Learning about the Project

Bingham: Yeah. One of my strengths—and I shouldn't brag on a—

Seney: Please be straightforward with us.

Believes one of her strengths is “an insatiable desire to learn. . . .”

Bingham: –on a tape or on anything, but I believe one of my strengths, and this was volunteered to me by several people in the process, is an insatiable desire to learn. One of the things I love about what I do, there’s many things, but it’s the opportunity to learn things I don’t know anything about. So I have a very sharp learning curve. I absorb situations very quickly, and what Bob Pelcyger and others have said is that they really couldn’t believe how fast I learned what had happened.

So by then I had talked to Mike, I had talked to Graham, I had talked to Larry, so I did have quite a few basic facts about the process, about the history, nothing much about–well, I had people’s opinions about dynamics.

“. . . what I do . . . as a mediator, is listen, is create almost like a mosaic, an overlaying set of stories, and I don’t really find myself naturally inclined to judge the truthfulness of people’s stories. . . .”

What a mediator—what I do, anyway, as a mediator, is listen, is create almost like a mosaic, an overlaying set of stories, and I don't really find myself naturally inclined to judge the truthfulness of people's stories.

“... I'm really interested in ... where they're similar and where they differ, because you can build on where they're similar, and where they differ may be places ... intervention can happen. . . .”

What I'm really interested in is where they're similar and where they differ, because you can build on where they're similar, and where they differ may be places that we can act or that intervention can happen. It's at least an opportunity for conversation amongst those people when they really see the history very differently.

So I was just in my sponge mode. At that point, I was listening to people saying, “We don't have very much money.” “We really don't have a lot of time.” “We want to get on with this.”

Seney: This is what you heard from the questions that were being asked?

How the Negotiations Should Be Conducted

Bingham: Not in that telephone conversation. But I laid out a proposal to the senator and to the parties of a strategy where they would have five meetings, and that what people were telling me that I was talking to at that point was that they thought there was a smaller subset of people who really could run models and would form a working group for generating proposals for the group as a whole.

Concerns about the Pre-negotiation Phase of the Process

But what I said was, the most important thing to me makes all of these numbers of meetings or how to design the process really speculation, the most important thing to me as mediator is pre-negotiation phase, where this is what we're learned works on these kinds of disputes, where I talk one on one with anybody [that] anybody tells me to talk to.

Pre-negotiation Is Where You Learn the Issues, Points of View, Concerns, Hopes, and a Number of Other Facets of the Situation

I set out a structured set of questions, which I used in interviewing the players, to find out what were the issues from their point of view; what their concerns were about those; what they felt was important to happen; why the status quo wasn't okay; what they wanted to have happen in the future; who else shared their perspectives; who could represent that cluster of people, who had their respect, who could represent them; why did they need a negotiation at all, why was that a better course than the procedures they were currently using for lawsuits and legislation.

“A negotiation is a voluntary process. . . . you really want to be sure that you set up the process to have maximum incentives for voluntary agreement. . . .”

A negotiation is a voluntary process. Participation is voluntary, and certainly agreement coming [in] and going out is voluntary. So you really want to be sure that you set up the process to have maximum incentives for voluntary agreement. So I don't assume that people should negotiate, and I don't assume that they should have a mediator.

Then I continue on into their opinions about how to design this process constructively, and as I build this overlay of interviews, I can see where there's consensus about how to proceed and where there are differences, and then I mediated that summer some of the differences. We didn't get consensus on all of them. We'd step back and say, "The outcome of this pre-negotiation planning phase, in my view, ideally is a consensus on how to conduct the negotiations; who should be there; what should be on and off the table; should the meetings be open or closed; is a mediator helpful; who should it be." I went in explicitly saying, "You don't have to rely on me any time after this planning phase. If after the end of the planning phase I'm not the right mediator for you, I'll be the first to back out." So that was also part of it.

In August of 1994 Wrote a Report for Senator Reid Summarizing the Consensus on How to Proceed

And that report that I wrote to Senator Reid in August of '94, the goal was to summarize the consensus of the parties on how to proceed. It was a fact-finding process, a feasibility assessment process, and we didn't quite get there. There were a couple of

disagreements still that I reflected in that report.

So I was probably contacted initially in April. I put together a brief budget and strategy in May. I went out—I was approved at some point in May.

Seney: The phone call has occurred?

Senator Harry Reid and the Views of the Fallon Community

Bingham: The phone call has occurred sometime in May. The meeting with Senator Reid occurred in May, the phone call with the folks in Lahontan Valley sometime in May.

Seney: Senator Reid was explicit that they would have to agree to you and what was going on?

Bingham: Yes, yes.

Seney: There's no question about that?

Bingham: Yes. It was after that, that he sent out letters introducing me. He made it clear he wouldn't do that if the folks in the valley didn't agree to me.

Seney: Let me ask you something here. You know and I know that the people out in the valley are very suspicious of Senator Reid.

Bingham: Yes.

Seney: And there's a lot of antagonism towards Senator Reid.

Bingham: They were very clear about that. He's very knowledgeable about that.

Seney: Right. Right. I spoke to him about the same issues, and he certainly knows about them. But your clear impression and understanding was that he really wanted them to take part in this?

Bingham: Yes.

Seney: And that they essentially had a veto over you—

Bingham: Yes.

Seney: —and over the procedures.

Bingham: Yes.

Seney: And as far as you're concerned, that was all

genuine on his part?

Bingham: Yes.

Seney: How do you square, or do you, can you square, his apparent views on these matters and their understanding of what his views are?

Senator Reid's Views of the Situation and the Community's Views on Reid

Bingham: They have a different view of him than I do. Their view of him comes from a different vantage point. They have a history and a pride. In their history, one of the things about communities that are so special, one of the sad aspects of losing community in these big sprawling urban areas, although people find it in other ways, is the identity of who I am rooted in my community's history and in my relationships with the people there.

And Fallon [Nevada] is a community in that best sense, and their history includes the experience of their grandfathers or great-grandfathers and great-grandmothers coming to this region believing in a promise of water from the federal government, believing in the Newlands Project, and fighting a very adverse,

hostile environment to build this community there. It's built on water.

So I can't say how they view Senator Reid. I don't want to speak for any other human being. But if I were to put myself in their shoes, which I've tried to do a lot over the last year, I would assume that any powerful figure, any leader who moved legislation that they perceived as adverse to the lifeblood of their community and as against the promises as they see them—others don't see those promises the same way—I don't make a value judgment about who's right.

Seney: I understand. My approach is the same. We're in the same position.

Bingham: We have the same position in that way. Right. He has taken action that they perceive as hostile to their future, and they're direct and honest people, and they still would have him in their home, but he's an adversary.

I believe they did see his appointment of a mediator as a good-faith thing and that they understood that they had a veto power—I never asked them this—and that they

recognized what he was doing. I think they are sophisticated enough to make a distinction between his actions and his opinions on the substance and his actions in convening a fair process, and I think that they believed him, that he meant this process to be fair.

Seney: I've seen the—

Bingham: I don't know. You may know that better than I from your interviews.

Seney: Well, I think that their suspicion, as you know, runs very deep.

Bingham: Oh, yeah.

Seney: And there were those who felt that, if I may be permitted to say something and you can respond to it, because my views are not important here, but I think there were those who felt that this may have been simply something that the senator felt he needed to do before he moved forward with more legislation which would not be in their interests. I think there might have been some suspicion that this was not—they are so

suspicious of him that even something that bespoke good will of this kind could have been misunderstood, and I think was misunderstood.

National Election of November 1994 Was Important

Bingham: That may very well be. In any community there's a wide range of opinion, and there are many people in the Lahontan Valley who feel that the law is still on their side and they will eventually prevail in the courts and that's the proper procedure, and that any political action would be against their interests. The election [of November 1994]³ was certainly a watershed.

Seney: They view it that way, certainly.

Bingham: And there was the threat—it was made explicit—that if they couldn't come to a consensus, Senator Bradley would introduce legislation that Senator Reid would support, whether they liked it or not.

Seney: And that threat disappeared with the election.

3. In that election, the Republicans gained control of both houses of the U.S. Congress.

Bingham: Right.

**Preparing for Negotiations by Interviewing the
Players**

Seney: Again I allude to the memo that you wrote to Senator Reid, and there you listed the people that you had talked to. I thought it was a very complete list, by the way, from my vantage point.

Bingham: There actually are more people that I talked to than that, because some of the—

Seney: That were not on that list?

Bingham: Just because a couple of the interviews, one in particular, the one with Lahontan Valley Environmental Alliance, was open to the public and there were thirty or forty people in the room, and I wasn't able to list everybody who was in the room.

Seney: Again, I think that you did a very thorough job—

Bingham: Thank you.

Seney: —it would be my observation, of going out and

looking at all the Carson people, the Fernley people, the tribes, and so forth. It's quite a list.

Didn't Interview Upper Carson River Interests and Subsequently Felt She Should Have

Bingham: Actually, I would criticize it, in retrospect. I consciously didn't interview people, because I was asked not to, that I think was a mistake. I didn't interview the upper Carson constituencies. There was a concern by others that they would—the opinion that was related to me was, “The folks in the upper Carson don't want to be part of this fight. They have their own situation. They deserve to be, and prefer to be, left alone.”

Seney: And that wasn't so, was it?

Bingham: That was not so. And I argued back at the time. I said, “Well, but if you were the mayor of Carson City or if you were a water rights holder, wouldn't you like at least to be asked whether you'd like to be interviewed?” But since I was new, and interviewing people is a subtle form of intervention, and I had the mantle of the senator behind me, I deferred to the judgment of others.

Seney: Whose judgment were you deferring to?

Bingham: I'll come back and see if I feel like I can say that. It was several people. Others urged me that people from Pyramid Lake Paiute Tribe, and from the Lahontan Valley wanted me very much to talk to them.

Seney: So we're talking probably about the senator's office, then?

Bingham: Um...

Seney: Are you uncomfortable saying?

Bingham: Yeah.

Seney: I don't know why you would.

Bingham: Just because I'm saying that I'd rather criticize myself for not having done it. I asked the people in the state government, not the senator's office. It came from the state government more intensely than anybody else, and I trusted their judgment. I wouldn't put my political judgment up against Pete Morros [Director of the Department of Natural Resources, State of Nevada] or somebody like that, because I respected him.

So Pete offered, and Roland Westergard [former Director of the Department of Natural Resources, State of Nevada] offered, to contact the folks in the upper Carson to see if they would want to be interviewed, and in the end, I don't know if it didn't happen or it just fell through the cracks, and I think—I know that I should have called them. I had meetings with them later where they said they felt offended that I hadn't. What I was being told at the time, and I told them this, and we reconciled it and made it up.

Seney: And they ended up at the table.

Bingham: They ended up at the table.

Seney: Appropriately so.

“The concern was that if I called them, it would be a political firestorm and open up things that they wouldn't want to have opened up. . . .”

Bingham: I think so. The concern was that if I called them, it would be a political firestorm and open up things that they wouldn't want to have opened up. I didn't want to substitute my judgment for others. So anyway, that, I think, was the gap of who I talked to.

Seney: And you told me who the others are.

Bingham: Yes.

Seney: And you're saying this, too, this is part of the process, too, is who gets included and who doesn't get included.

Bingham: It's fundamental. And it was a disagreement. That memo that I wrote to the senator included disagreements about the two upstream communities.

Seney: Let me turn this over.

END OF SIDE 1, TAPE 1. NOVEMBER 8, 1995.
BEGINNING OF SIDE 2, TAPE 1. NOVEMBER 8, 1995.

Bingham: And it was the perspective of the state, particularly, but some others, too. Well, I'm not sure. Because the folks in the state government were concerned about having the process collapse of its own weight, that we'd be trying to take on too many issues if we went upstream, up either river, they felt we should stick with the parties who were involved in the downstream concerns. But the [Pyramid Lake] tribe and the Lahontan Valley folks felt that the solutions were upstream,

and Sierra Pacific Power [Company] and others, West Pac, felt that the solutions included the upstream counties.

Mediator Does Not Decide How the Process Is to Be Structured

So I just reported the disagreement, as a mediator. Taking a position of who's at the table is itself a non-neutral decision. So a mediator can make a mistake in trying to say, "This is who, from an opinion on high, from a conflict resolution point of view, ought to be at the table," and I think that's wrong. That's not my philosophy as a mediator. I think you mediate those kinds of decisions.

So what I set up, I discussed it with Larry and with the parties, I told them—

Seney: Larry Werner.

Asked Senator Reid Not to Act for Several Weeks So That Other Parties Could Contact Him with Concerns about Her Memo

Bingham: Larry Werner. And I told all the other parties that I happened to be talking to at the time intentionally that this was what I was going to

do, that I would submit—first of all, I circulated my report in draft form to the people I interviewed, and got comments on it. Then I submitted it to the senator with the request to the senator that he not act for a few weeks so that he could hear directly from anybody, and I sent it simultaneously to all the people I interviewed at the time I sent it to the senator.

“ . . . it’s really important for the process to be credible and for parties to feel like they own it. It’s their process, it’s not mine. It’s their dispute; it should be their process. . . .”

They knew that I was saying this to him, that he could hear directly from anybody I talked to either about whether I had mischaracterized where there was consensus about how to proceed and what their position was on the open issues, the open issues being whether to include the upstream parties and whether the meeting should be open or closed. I think those were the two key disputes about how to go ahead. Because it’s really important for the process to be credible and for parties to feel like they own it. It’s their process, it’s not mine. It’s their dispute; it should be their process.

So my strategy as a mediator is to be as transparent as possible, including about why I'm doing what I'm doing tactically, so that then they could talk to the senator directly about what their—I mean, they may not have trusted me enough to tell me what they thought, either. So that they could tell him directly, if they wanted to, anything about how to proceed, and I think that I had gotten it accurately enough about where there was consensus to proceed, that he heard only supporting comments.

Seney: He did hear some things?

Bingham: Did he? I don't know.

Seney: I don't know that he did.

Bingham: I mean that to be a speculation.

Seney: He didn't say to me if he did.

First Meeting Scheduled in September 1994

Bingham: I don't know either, but I'm assuming he heard nothing or that he heard supportive things, because he then went ahead and encouraged us all to meet. We scheduled a

date for the end of September. I was, meanwhile, talking with all the parties both about were they still willing to meet with each other, was this a convenient date. We scheduled it for when he could be there and could kick it off.

There Was Some Confidence That Agreements Might Be Reached

- Seney: And you, in the memo to him, conclude that you thought there was a possibility for some agreements to be reached.
- Bingham: I did.
- Seney: What was your confidence level there on a scale of one to ten, do you think, at that point?
- Bingham: Three.
- Seney: Three?
- Bingham: (laughter) Ten being high. I don't know. I try hard not to predict. I trust people, self-determination, and they all said they wanted to try.
- Seney: So you didn't quibble with their statements.

Bingham: So I didn't want to quibble with that, and I saw, and I wrote in the report, several reasons for optimism, including the ideas that people were trying to come up with, new ideas for how to make better use of water, more efficient use of water, so I saw, I mean, on the substantive side, maybe some creative options that could be dealt with.

“ . . . I was testing, when I talked to people . . . When I asked them what they would like to see happen, ‘How do you think the others would react?’”

And on the relationship side, one of the things I test, going back to those values of community and conflict resolution, how broad is the “we” we can create, that vocabulary I said a while back, I was testing, when I talked to people, “How do you think the other side would feel about that?” When I asked them what they would like to see happen, “How do you think the others would react?”

“ . . . we had already talked about the legal advantages the tribe has, the court decisions that they had won, and the fact that they were a formidable opponent in the water wars . . . ‘Do you have ideas for what would cause the tribe to

say yes?”

Then I would go further if I got the ability to answer that question. “What do you think their concerns are? Have you had any thoughts about how you could achieve what you want and for them to have some of their concerns met?” So when I was talking to people in the valley, they know that the concerns of the tribe include cui-ui recovery, and I would ask, “Do you have ideas?” Because we had already talked about the legal advantages the tribe has, the court decisions that they had won, and the fact that they were a formidable opponent in the water wars if these would continue to be fought out in the courts. I do some process education, “You know that in a negotiation there has to be voluntary agreement. Do you have ideas for what would cause the tribe to say yes?”

“ . . . what I was really doing was . . . trying to test whether they were able to engage in a dialogue with each other . . . ”

As I talked to people, what I was really doing was not trying to play out the negotiations in advance, but more trying to test whether they were able to engage in a

dialogue with each other.

“ . . . I was getting the sense that people wanted to try to solve each other’s problems—were at least willing to try. So what else can you ask?”

Because being able to ask questions and make proposals is part of the feasibility of a negotiation, and I was getting the sense that people wanted to try to solve each other’s problems—were at least willing to try. So what else can you ask?

“People were coming from very far apart. . . . But the fact of creative ideas floating and the willingness to try was enough for me. . . .”

I didn’t see a solution out there that would be easy. People were coming from very far apart. So that’s why I say now “three,” in 20-20 hindsight, which should be lower than that, because they were so far apart. But the fact of creative ideas floating and the willingness to try was enough for me at the time.

The First Meeting During the Negotiations

Seney: I understand the first meeting went pretty well. That's what I've heard.

Bingham: That's what you've heard? I haven't asked people what they thought.

Seney: And made statements and that there was a sense of good feeling.

“There was a feeling in the air in that room that this was a momentous day. . . . But people said to me, this is the first time ever in history that that constellation of folks had all been in the same room. You could feel it. . . .”

Bingham: There was a feeling in the air in that room that this was a momentous day. I had that feeling. Of course, I was nervous, too, because I was the one outsider in the room, and as a mediator, you care a lot about being helpful, and I'm humble enough to worry that, as an outsider, can I [do it] this time? But people said to me, this is the first time ever in history that that constellation of folks had all been in the same room. You could feel it.

Why Ms. Bingham Handled this Negotiation Herself

Seney: You have other mediators here in your organization?

Bingham: Yes.

Seney: And yet you took this one on yourself.

Bingham: Right.

Seney: Why was that? Did they ask for you specifically?

Bingham: Yes, they asked for–

Seney: Your name came up specifically?

“There’s two variables that matter . . . One is experience with similar issues . . . Second, how acute the dispute is . . .”

Bingham: My name came up specifically, but I sometimes pass cases on to other staff members. There’s two variables that matter differentially, in different situations. One is experience with similar issues, and I have the most experience with water issues here. Second, how acute the dispute is, how intense the situation is, and so the less polarized the dispute, the less the issue substance matters.

“So this was a combination of a very polarized dispute where only I or two other people here would have the qualifications to mediate something that intense, and then also the water expertise mattered. . . .”

So this was a combination of a very polarized dispute where only I or two other people here would have the qualifications to mediate something that intense, and then also the water expertise mattered. And then the personal aspect that entered into it is I just love being—back to my being a Westerner, I love Western issues, so I “dibs” it. (laughter)

Seney: As is your right, your prerogative.

Bingham: Right. I get to dibs.

How the Meetings Went

Seney: Give us a sense of how these meetings went. As I said to you, I’ve had difficulty getting information, the written information. The federal government has given me their side, because I’m, in this sense, a government employee working on a government project, and others have been somewhat forthcoming. People have been very willing, by the way, to talk about what went on—

Bingham: I will, too.

Seney: –in the negotiations. But give us a sense of how these went, what the process was like, the give and take, and put us in the room, to the extent that you can.

“That first meeting was different than all the others because it was open to the public, so it was in the Sierra Pacific auditorium. . . .”

Bingham: All right. That first meeting was different than all the others because it was open to the public, so it was in the Sierra Pacific auditorium. There were lots of observers around. There were well over 100 people in the room.

Other Meetings Were Held at Various Locations

There were several other meetings in that conference room. Most of the meetings were in the Fernley Town Hall. One was up at Nixon, the Pyramid Lake Tribal Headquarters, and one was in Fallon, I believe. Yes.

The Way the Rooms Were Set up

All of them, it looked the same. I set

up the room as a horseshoe. There were nine tables and there were nine parties. Each party had three people at the table. We discussed this all in advance of the first meeting. So there were three people at each table in a long narrow horseshoe.

Then there were up to ten people, usually five or six, but the Lahontan Valley Environmental Alliance (LVEA) needed ten because it's a much more diverse group.

Seney: And there was some discussion of that amongst the others, an agreement that that would be allowed?

Concerns about the Size of the Group

Bingham: That's right. There was concern going in about how big this was going to be. I tried to be reassuring and say, "That's not a problem. We can create a dialogue with a large number of people." People don't have that experience, so there was a lot of concern that I was already letting too many people in. The pressure on the other side was, "But we need our constituencies there, too. We need our technical experts. We need our legal experts." That was valid, as well.

So the compromise was three at the table and, I think, six behind or five behind. I don't even remember the numbers anymore. LVEA requested more, and I thought that was fair, and I recommended that to everybody and they accepted my recommendation.

“So we would have seventy or eighty people in the room . . .”

So we would have seventy or eighty people in the room, generally. So you have these sort of two rings, one at the table and one around. I had a small table at the front, intentionally, not closing the “U,” so that I could walk in the middle, because there were so many people. I had to get their attention somehow some of the time. Sometimes you could hear a pin drop.

Planned All Agendas in Advance

I always planned the agendas in advance, consulted all the parties, so there was no tension over the agenda. We followed fairly orderly process moving through the agenda, because everybody had been consulted in advance. There was doughnuts and coffee, and there was a human element,

people would mingle and chat with each other. There was a rapport and a laughter that you would not expect. People talked a lot about—talked some at the time about, “Gee, nobody who isn’t here and who knows how tense these negotiations have been and still are would understand why there’s laughter.”

“So there was a human rapport in the room all the time. There were also moments of high tension. . . .”

Pete Morros, Bob Pelcyger tested each other at the table. They would do these zinging asides about the—it started out with the University of Colorado football games. When they realized that they could tease each other, they escalated the teasing to real things. And that helps. I’m informal enough in meetings and personal enough to try to have that level, too, and I’d tell stories about my seven-year-old daughter when that was relevant. So there was a human rapport in the room all the time. There were also moments of high tension.

Seney: What would some of the moments of high tension be over?

Issue of Recoupment

Bingham: Well, we talked about recoupment.

Seney: Was that one of the stickiest things, the stickiest issues, likely to make the most tense atmosphere?

Bingham: Yes, and we didn't get to it even at the table in the plenary sessions. It was sticky enough that we didn't get to an exchange of offers very much. We did some. I'm trying to think how to say this, how to give a picture.

“ . . . it was a very intense meeting schedule, two days every other week, for the most part. . . . ”

There was a sequence of meetings. We ended up having nine two-day meetings, which is important in the micro sense of trying to give someone a picture of what happened in the room. I laid out to people in advance, both verbally and then eventually in writing, some suggestions about sequencing topics by meeting dates. We had the meetings scheduled out in advance. They were pretty much every other week, so it was a very intense meeting schedule, two days every other week, for the most part. So recoupment was on the agenda several meetings out.

Each Topic of Discussion Was Preceded by an Information Session to Try to Sort out the Facts and Present Differing Perspectives

Let me just say that one of the dynamics early on, it came from both the participants' request but also my view about complex environmental negotiations, is that facts and analysis matter, and there were a number of issues where people really viewed the facts differently, and exchange of technical information was important. So we planned the topics out in advance with the idea of having an information session on each topic before we got into an exchange of offers and before we got into the negotiations or forming working groups where negotiations would happen in between meetings, which happened also.

These information sessions where I consulted in advance who should be giving them, so people felt that it wasn't a one-sided presentation of information and so there was sometimes a couple of different presentations from different points of view on a piece of information, or on a topic, or the recovery plan or operations of the irrigation system or the Stillwater wildlife wetlands area, or

population. I mean, municipal and industrial needs in the Lahontan Valley population growth projections, those kinds of statistical things.

The Way the Problem Solving Process Works

So that led [to] a tone of civility, of constructiveness, of problem-solving. I said to people—again, this is my view of being transparent about why I’m recommending what we do in the negotiations—I said, “Now that we’re over this planning phase, the negotiations I see as having three phases, then the final big phase is implementation if we get there. It’s like a chess game. There’s an opening game, a mid-game, and an end game within the negotiation phase.”

“ . . . if you want to have negotiations be more likely to be successful, they should have a problem-solving tone. . . . ”

My experience, if you want to have negotiations be more likely to be successful, they should have a problem-solving tone. One of the lessons from problem-solving is you exchange information early on, you understand the problem, you analyze it, then

you shift into generating options and you look at those options, and then you start narrowing and applying criteria to getting closure to what you can agree to.

So there's a natural life cycle to negotiations that I have consciously in my mind, and I shared with them and they liked, because they wanted to make a reasoned decision. So these information sessions were part of that. So that's part of what would happen in the room, would be presentations. Then exchanges of policy papers back and forth came later.

“ . . . the information sessions used up a lot of time, and I worry about that some. . . .”

I, in retrospect, have a variety of concerns, but they're conflicting, about those strategies. I don't know how to do it any other way. Well, I shouldn't say that. There are lots of ways to go about it, but any other way than a problem-solving way. But the information sessions used up a lot of time, and I worry about that some.

The Problem of One Side Accepting the Other Side's Data

Seney: My understanding is that the people out on the project, farmers particularly, did not really accept a lot of the modeling that was done by, say, David Yargas and the environmentalists or the models that came from the government, that they quarreled with the factual outcomes, the inputs and the outcomes of those.

Bingham: Right.

Seney: Is that your observation, too?

Bingham: Yeah, I think so, except there's more to the story than that. I think you need to make a distinction between those from the water-rights-holder community who were part of the process, who were close to it, and those who weren't. Those who weren't, that's absolutely true to this day. Those who were part of it, I would be interested in their view.

Water Modeling Working Group

What I believe happened was we formed a water modeling working group, and Bookman-Edmiston was representing the Lahontan Valley Environmental Alliance, including TCID, in those. I participated personally. I solicited those groups

personally, because I thought it was so important to have facts that everybody thought were credible, that we wouldn't have the situation as you described it, and the modelers exchanged the software for their models so that those from Sierra Pacific, Bureau of Reclamation, TCID, Bookman-Edmiston, and David [Yardas], and the state also, were all running the same software, they negotiated out a set of starting conditions to calibrate the models. They all agreed that their models were generating the same information. This was the upstream stuff. Bookman-Edmiston, representing TCID, said all of that was accurate and valid.

They remained having two separate models for what happened from Lahontan Dam downstream into the Newlands Project for predicting return flow, and that was a continuing source of factual dispute within the negotiations.

Seney: That has impact on the wetlands question.

Bingham: Correct. The modelers from Bookman-Edmiston, representing the valley, and David, had the two models. The feds used David's downstream model. Those guys, those two

models, the people who ran those two models, had a very professional, respectful interaction with one another. They questioned each other sharply back and forth, but they narrowed down the reasons for their differences quite carefully, so I think we had the basis, even though they continued to believe in two separate methods of calculation, that we had the basis for identifying common ground, because they understood the reasons for where there were differences, and agreed on the reasons for where there were differences.

So if we had been able to sustain the negotiations longer or bridge other policy disagreements, like who ended up getting how much water, the modeling aspects, I don't believe—the modeling differences were there, but they were engaged in such a constructive dialogue with one another that I think that was not the barrier.

Seney: It wouldn't have been a problem.

Bingham: No. That's my opinion. But I don't think people outside the negotiations—

Seney: Understood that.

Discussing the Negotiations with the Fallon Community as They Were Progressing

Bingham: No. Right.

Seney: I understand that during the negotiations, you actually went down to Fallon–

Went to Fallon at Various Times to Discuss What Was Going on with the Community

Bingham: Yes.

Seney: –to discuss with the community what was going on here.

Bingham: Yes.

Seney: Tell me about that. Why did you do that, and what did you do?

Bingham: That's a really important piece. The negotiations leading up to the 1990 settlement negotiations, the Settlement Act, led to action. Lots of people signed on to it, some reluctantly. The major constituency, the major part of that western Nevada community that objected were the folks in the Lahontan Valley.

One Objective Was to Help the Lahontan Valley Negotiate

So one of the dynamics of power that I wanted to assess was whether there was real willingness to bring them in, because life could continue on, it wouldn't be my value judgment if I were living out there that it should, but [in a] Machiavellian sense, it could, keeping them out, and the rest of western Nevada could continue on with its deals and let people in Lahontan Valley sue and win where they could win and not win where they couldn't win.

So I asked a variety of parties, "Why do you want to negotiate again, and certainly why do you want a mediator? I can see why the valley wants a mediator; they're the ones who didn't get what they wanted in the previous negotiation, who felt their interests weren't met. But your upstream Reno community isn't downstream on the Truckee-Pyramid Lake Paiute tribe. You guys are negotiating with each other fine without a mediator. Why do you need me?"

And Sue Oldham, from Sierra Pacific, articulated it best, what I was hearing, which

is, “Sure, we could do that, but this region needs stability. We need to unify, and the only way we can do that is if we reach out to the valley, and we need a mediator to do that.”

So I felt I had permission. I had the request from the valley to have a neutral mediator, and I felt I had permission from the other parties to spend more time assisting that community to negotiate.

There were two other dynamics.

Seney: They needed it most of all the players.

The Lahontan Valley Had the Most Diverse Group of Constituencies and Had Been Left out of Previous Negotiations

Bingham: Well, that’s what I was going to say. They had the most diverse constituencies. They were trying to represent half a dozen different entities under one umbrella. The tribe has a single decision-making strategy. I guess the federal government had three different bureaus, but there was an assistant secretary there keeping them together. The state had a leader. Sierra Pacific has its own corporate decision-making process.

But there was this huge negotiation and consensus-building process that had to happen within the umbrella of LVEA for them to then sit at the table and negotiate and say what they could say yes or no to. So not only had they been left out of previous negotiations, had not concurred, had not had their interests met, but they had the hardest job of all in terms of figuring out what they could say yes or no to. So I felt that it was important. The dynamics of a negotiation like this is it's not a deal if the people at the table say yes. They're representing whole constituencies.

“There’s three negotiations that go on. One is the negotiation at the table. Another is the negotiation within a team of negotiators. . . . Then there’s the third dialogue in consensus-building process between the negotiators and their constituencies . . .”

There’s three negotiations that go on. One is the negotiation at the table. Another is the negotiation within a team of negotiators. Scientists may speak better with a scientist across the room than with the lawyers on their own side, right? There’s a real dialogue that has to happen within a negotiation team. Then there’s the third dialogue in consensus-

building process between the negotiators and their constituencies, and that is a huge job.

Helping Lahontan Valley Residents Understand the Basics of Negotiation

I felt it was very important to provide whatever process assistance I could, first to communicate. I went down and was part of public meetings, answering questions about the process. I was honored to be invited to a Newlands Water Protective Association private meeting. I went to LVEA committee meetings, to board meetings, and was part of public meetings. Sometimes what I was doing was trying to help them reach out to their constituencies and keep them informed. Other times I was actually with an LVEA negotiating group, several times just trying to be a catalyst to help them debrief from the last negotiation. “What were you trying to accomplish? Did people say yes? Why didn’t they say yes? What did you hear them say their problems were? What are you going to do? Do you think they’re right? If you don’t think they’re right, what information do you think you want to provide to help persuade them? If you do think they’re right, how might you change your position to accommodate what you learned from them?”

Coaching in a negotiation process.

Seney: Sounds like a training session.

Bingham: In a way. Training/coaching. You have to do that as a mediator very carefully, because it's not my job to take sides. So I feel good that I didn't—I feel right that I didn't do that. I was trying to help them think about how they were going to integrate what they learned in the negotiations in the last round with what they were going to do next and what they needed to prepare to respond, because there was a lot of work that needed to happen between meetings to figure out what to respond to.

An Agreement Was Almost Reached

Seney: As the first meeting goes, the public meeting, second, third, fourth, do you feel optimistic? I know at one point, I think in the next to last meeting, it seemed like there had been a big breakthrough, didn't it?

Bingham: Yeah, it did. I honestly don't know what happened between the second to last meeting and the last meeting. We thought we had a deal.

Seney: Could I relay something to you and get you to

comment?

Bingham: Yeah.

Seney: The reactions I've had to what you did were very positive.

Bingham: I'm glad.

Seney: People liked you and thought you did a good job.

Bingham: Thank you.

Seney: One person did say if they thought there was any criticism to make, it would be in that next to the last meeting. It was a long meeting, it was late in the day when this breakthrough came through and so forth, and they felt that if a little more time had been taken—

Bingham: To summarize what happened.

Seney: —to summarize.

Bingham: Yes, they've said that to me directly.

Seney: Tie it up and so forth. Talk about that a little and how you saw that part of it.

Bingham: Right.

Seney: It's obviously a judgment you have to make based on the situation, but I'm curious about your thinking as you recall it.

Bingham: Right. The last meeting, what I did is I—it's very important to be clear what people are agreeing to and what they're not agreeing to, so I had, at the beginning of that meeting. Visuals, having it in writing in front of people, was one tool for doing that, and I had up on the board two different packages at that point, at the beginning of that meeting. I wrote down the elements.

At previous meetings I had matrices with key elements to compare proposals on different quantitative things, and I put these two slightly different conceptual packages up in front of people for them to see. There had been a model run over a lunch period, a conversation between David Yardas and folks from LVEA, and also with the tribe. David laid out a package, and I went through these pieces of paper and said, "Okay, David's proposal is—" and I pointed at each of the pieces. So I was trying to do that summarizing as they were going through the discussion to say yes or no.

LVEA went out, had a long caucus, came back. Nobody knew if they were going to say yes or no to it. The tribe said yes. I verbally went through what were they saying yes to, repeated it again. There was a long, several-hour caucus that LVEA had. They came back and they said they had some questions. Mike Clinton said, “Do you mean this or this?” It was answered. I don’t remember what they were anymore. “Do you mean X or Y? Do you mean A or B?” And for three or four things that was answered. He said, “Okay. Given that, we can say yes to what David proposed.”

And there was this incredible surprise and joy. There was a bursting out of applause, spontaneous applause in the room. I had tears in my eyes. I get tears in my eyes now, thinking about it. I am.

Seney: The tape won’t see that, but you do have tears in your eyes.

Bingham: I care so much about those people and I had so much hope for that, that this would provide some stability for them.

There was very little time left and it was up on the board. The kind of summary–

END OF SIDE 2, TAPE 1. NOVEMBER 8, 1995.
BEGINNING OF SIDE 1, TAPE 2. NOVEMBER 8, 1995.

Seney: You were just saying that [Assistant Secretary of the Interior for Water and Science] Betsy [Rieke] was standing up and writing on the board. She did tell me, by the way, that her handwriting was better than yours.

Bingham: (laughter) She's proud of that, huh? I'll defend myself and say, first of all, her handwriting is better than mine, but she got to write when it was slow. I let it take the time for her to write it carefully and, plus, I was facilitating and she was writing. When I was writing, I was facilitating and writing simultaneously, because they wouldn't let me hire an assistant, which they were right to do.

Assigned Write-ups on the Various Issues

What we did is we went down, issue by issue, what needed to get drafted, to summarize what we'd agreed to, made assignments, had a lead person, had a couple of others who were going to be part of a drafting committee, and dates and times. So what we did as a wrap-up was make assignments for drafting things. People who

say, “If Gail had summarized it one more time, maybe we would have realized we were agreeing to different things,” may be right, and I regret that, too.

People Were Agreeing to Different Things than Others Were Agreeing to

I consciously thought about it at the time and made the decision not to, and maybe I was wrong, but I believed we had done it several times over the course of the day. We were out of time. It was late, so I chose to make the assignments instead. I was tired, I thought everybody else was, and I decided that we could be reopening things when there wasn't time to go through them. I didn't perceive any risk. I thought hard on my feet about whether there was a risk of people disagreeing, thinking they were agreeing to different things, and I truly thought there wasn't that risk, because I thought it had been clear enough. I know that one should do that. I usually do that at the end of a meeting, so it's a fair criticism, and I don't feel defensive about wishing that I had.

“ . . . the areas of disagreement at the last meeting were so far apart on so many things that the positions that came in at the last meeting in

several respects were so different from what had been discussed, that I think that what happened would have happened anyway. . . .”

I will also say that the areas of disagreement at the last meeting were so far apart on so many things that the positions that came in at the last meeting in several respects were so different from what had been discussed, that I think that what happened would have happened anyway. But I think that people’s wish that I had done that is fair, and I wish I had, too, but I don’t think it would have changed the history.

LVEA Could Not Sell the Final Agreement to Their Community

Seney: Let me give you another take on that and ask you to comment on that, and that is that you’re probably right here, that is, that the positions were so far apart between that next to the last meeting and the last meeting that what had really happened is that LVEA went home with that proposal–

Bingham: And couldn’t sell it.

Seney: –discussed it with whom they had to discuss, and couldn’t sell it.

Bingham: That also has been said to me by many people. One of the negotiators for the Lahontan Valley Environmental Alliance spoke movingly and was respected as he said it, in my view. The tone of the meeting was very respectful at the last meeting when he said, "I talked to some neighbors and went over what we were being asked to agree to," and I forget which tradeoffs he pointed out now, and he said, "My neighbors told me that we should say no." So statements at the meeting support that in an honorable way, statements made at that last meeting.

Seney: That probably would have been Ernie Schank.

Bingham: Yes, and I think he was respected for that. I think that nobody felt it was dishonorable to disagree, and it was discussed precisely in those ways at that meeting.

The Effect of the November 1994 Elections

Seney: To go back slightly, did you see a difference in the tone from the LVEA, particularly the farm community component of LVEA, after the election?

Bingham: No.

Seney: You didn't get a sense that this was something they regarded as important?

Bingham: Oh, they regarded the election as important, but I saw no difference in tone, in intent, in seriousness, for trying to solve this problem after the election as before. In fact, there were some very frank, confidential discussions at the Newlands Water Protection Association meeting that I attended about what their strategy ought to be, given the election.

Seney: They did this in front of you?

Bingham: They did it in front of me, and I hesitate saying this for the tape, in fear that I shouldn't say it, but it is such a positive—

Seney: I think others said the same thing.

Bingham: —leadership thing. Ernie Schank has my undying admiration for a variety of reasons. One of them is his leadership in that meeting. He said—and there was general consensus, I thought; it was their meeting—was the change from the election was this threat of Bradley-authored legislation was gone, he said, “But we're not going to be able to move legislation

that changes [Public Law] 101-618,⁴ so it is still in our interest to try to find a solution for the implementation of this act, given that it exists. We don't have to worry about more bad things coming down on us, but we're going to have to live within the constraints of this legislation well into the future."

So that was said openly in front of me, and even without that, I saw no change in the tone of the negotiations before and after. I know there's a lot of attribution that that's the cause of no agreement. I think it took away a stick, so it was relevant, but I think there was very, very, very serious efforts to solve it after the election.

Ms. Bingham's View of the Failure of the Negotiations

Seney: As a mediator in this and an outsider, how do you diagnose the failure of the farm community and the Lahontan Valley Environmental Alliance to agree to a settlement?

4. This is the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990. The act contains two titles: Title I is the Fallon Paiute Shoshone Tribal Settlement Act. Title II is the Truckee-Carson-Pyramid Lake Water Settlement Act.

“The negotiations were forced too fast. . . . Human beings need to think through issues, they need to have a dialogue internally in that community, and there just wasn’t enough time for the processing of this much change from their historic view of what they ought to have as their future. . . .”

Bingham: The negotiations were forced too fast. I think that a community’s pace needs to be respected. Human beings need to think through issues, they need to have a dialogue internally in that community, and there just wasn’t enough time for the processing of this much change from their historic view of what they ought to have as their future.

“There’s a process of discussion that a community needs to have to decide what they predict is going to happen as opposed to what they think is right to happen, and it just wasn’t enough time for them to come to a community vision of what they thought, rather than what other people told them. . . .”

What anybody’s asked in a negotiation is to compare and offer against a likely future alternative, but many people in that community were comparing it against what they thought was right and proper, and I don’t blame them. There’s a process of discussion

that a community needs to have to decide what they predict is going to happen as opposed to what they think is right to happen, and it just wasn't enough time for them to come to a community vision of what they thought, rather than what other people told them. Why should they trust what other people tell them will happen to them? Those are threats. What do they realistically process to be the future in the absence of an agreement against what they're being offered?

The Entire LVEA Community Did Not Have Time to Move to a Consensus Position

Many of the negotiators from LVEA, when I asked them in private caucuses, "How does this offer compare? Does it make you better off or worse off than what you think you will be?" some felt it would make them better off. Others thought not. But I think the ultimate decision—and I could easily be wrong—came down to a decision within LVEA not only about that split of whether they'd be better off or worse off than what they predicted a future scenario would be, because they were able to get there, but against what they could sell back in their community, given how much engaged the whole community was in a consensus about what the prediction of

the future would be. And they just didn't have enough time to get there. I am sad about that.

Creation of LVEA, the Lahontan Valley Environmental Alliance

- Seney: LVEA was formed in the fall of '93, if my recollection is right.
- Bingham: Probably on paper.
- Seney: Right, and they had begun to have some meetings.
- Bingham: My understanding was that the real fleshing of human life into LVEA happened much closer to the beginning of the negotiation, more in the spring of '94, with the board elections and the committee structures and the infusion of life into it.
- Seney: There had been some meetings, but you're right. Obviously the coming of the negotiations quickened the pace of the formation of the organization. It's been expressed to me they just didn't have enough time to do what I expect you're saying here is necessary in the community, and that is to really discuss these matters and really come to terms with what the community needs to do.

The Future of Negotiations over the Carson-Truckee- Disputes

- Bingham: Right. That's my opinion.
- Seney: Are you at all optimistic for future negotiations?
- Bingham: I don't have a view. I don't know.
- Seney: You mean you'd rather not say?
- Bingham: No, I really don't know. I would say, but I don't.
- Seney: Let me ask you to comment on anything you think we ought to—
- Bingham: Let me say why.
- Seney: Sure. You bet.
- Bingham: Human beings, one of the things about us is that we can make choices. It sort of depends on whether you have a religious view of why that's the case, whether it's original sin or will, but from a Christian perspective, God made us in His image to see if we would choose Him. We have free choice, right? So I don't think any of us can know what people's

choices will be now about how they're going to handle the present, and that will do more to determine future negotiations than anything, is whether people choose to continue to exchange information, whether they choose to propose moderate solutions, or to try to get the most possible, whether they choose to treat each other with respect, whether they choose to make offers to solve each other's problems or only make demands to solve their own, and that will do more than anything.

And economic forces that are not human choice will change the world. If they negotiate again in the future some day, it will be from whatever the economic base is in that valley, what the population demands are in Reno at the time, what the federal laws are at the time. There are a lot of external forces.

Final Thoughts on the Negotiations

Seney: Is there anything I haven't asked you that we need to understand about these negotiations?

Bingham: The thing that comes to my mind is what I've already said, which is the laughter in the room at times. Given that it failed to reach an agreement, I want history to remember that people were able to laugh with each other.

That's interesting for me to say, for me to hear myself say, because I'm a mediator who tends to focus more on the science, more on the data, more on the facts, more on the solutions and less on the relationship side of mediation. But these were so tense and intense. I think that's important. I said that before.

What have you not asked me? Again touching on something, we've already talked about what I wish I had done more of was spend more time in the valley, given my view of the most important cause.

Seney: Should you have pushed them harder?

Bingham: No. I pushed very hard. (laughter) I sometimes worry that I pushed too hard. I'm personally pleased to know that you, generally speaking, heard positive things about my role.

Seney: I did.

“ . . . I pushed them harder than I've ever pushed any party in my life, and I worry that I pushed, if anything, too hard. . . . ”

Bingham: Because I pushed people in the valley in particular, you know, not saying what they should agree to, that's just not responsible of

me, but I pushed them harder than I've ever pushed any party in my life, and I worry that I pushed, if anything, too hard.

Seney: Did you find yourself getting a little involved, you mean, when you pushed them hard to get a solution, that you yourself were becoming committed to—

Bingham: Not what the solution should be, no.

Seney: But just a solution.

Bingham: No, I was more pushing—well, I don't ever think there should be a solution for a solution, but pushing where I thought they were saying to me that they thought they would be made better off. No, I think that, if anything, I should have pushed harder on those who really felt that the negotiations should end, and question why not give it a little more time.

Seney: Were these different negotiations for you than others you've worked on?

Bingham: Well, every one's a little bit different. I've worked on negotiations that have been equally complex, the same magnitude of people. The disinfection byproducts negotiated rulemaking

I mediated a few years ago affects everybody in the United States and potentially thousands and thousands of avoided cancer cases in the country. The stakes are really important. The costs, there was a potentially \$20 billion cost to society. So those are high stakes, intense, complex issues. I may be involved in the Middle East pretty soon; we'll see. Probably not on Arab-Israeli—well, maybe. We'll see.

Seney: On water questions?

What's Different about this Negotiation

Bingham: On water questions. We'll see. I'm not sure whether this is going to happen or what the issues will end up being.

But what's different about this one? This one, more than any other, people's livelihoods and identities rested in this resource. Whether it's the Pyramid Lake Tribe's identity around the lake and around the cui-ui and their historical experience of having no voice for many decades, and their courage, their dignity in being willing, when they were winning, to reach out is really deep personally. And the proud pioneer history in the valley and the needs of the wetlands for water to survive.

The survival dynamics and the personal and culture identities on all sides, it's much more abstract at the national level, and it moved me a lot in ways that no other case has. So in that sense it was different.

Seney: That's all the questions I have for you.

Bingham: That's all?

Seney: Want to add something else?

Bingham: We could talk for hours and elaborate. I could tell you meeting by meeting, other dynamics.

Seney: I'm not sure we shouldn't have done that, and if we'd had time, maybe we would.

Bingham: Or maybe some day in the future if you're back in Washington, we will again.

Seney: We'll try again.

Bingham: But I think these are the important things.

Seney: All right. Good. On behalf of the Bureau, I appreciate your taking the time for us.

Bingham: Happy to.

Seney: Thank you.

END SIDE 1, TAPE 2. NOVEMBER 8, 1995.
END OF INTERVIEW.