

ORAL HISTORY INTERVIEW

Janet R. Carson



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OPEN FOR RESEARCH**



Interview Conducted and Edited by:
Donald B. Seney in 1999
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By Brit Allan Storey, Senior Historian

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Bob Firth and Jack Byrom 5

“ . . . he was going to be retiring . . . that’s always a problem, because these water issues take so many years to understand and so many years to solve that, if you don’t have somebody in the wings who’s learning, I think you can have some pretty big disruptions. . . .” 6

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“ . . . there’s always companies calling up and saying, ‘We’re interested in buying water businesses. Is yours for sale?’ Because there are people out there who are in the business of running water companies. You know, and the answer always is, ‘Well, anything is for sale. It just depends on . . . the terms and the price’ ” 16

“ . . . right at the moment . . . with respect to . . . Washoe County, it’s going fairly well with this wholesale concept. . . . it puts our interests in alignment. Now, instead of the county wishing to go out and develop its own resources and water supplies from somewhere else, they now have an interest in seeing us

succeed in developing Truckee River resources. . . .” 16

“ . . . now the county has its own self-interest in seeing the Negotiated Settlement succeed, because that’s our best resource option for providing the Truckee River as a longtime water supply. . . .” 17

Developers Are Now Required to Supply Water Rights 17

“ . . . prior to about 1980 it was, as it is today in 99 percent of communities, it’s the utility’s job to go get the resources for the community’s needs. The whole concept that the developer has to go find the resources and deed them over to the utility, that was a totally new concept in 1980 . . .” 18

After A Drought in the Later 1970s Residents of the Reno Metropolitan Area Became Concerned About Use of Water by Newly Expanded Casinos 18

“ . . . whoever—I guess it was probably Sierra Pacific. That’s before my time here—came up with this concept that . . . every new building has to go out and bring in a new resource. I mean, it’s brilliant, because it keeps the resource growing commensurate with the growth of the community. . . .” 19

“ . . . elected officials and developers from other communities are flabbergasted. They just can’t conceive of putting this burden on the developers. . . .” 20

“ . . . the risk is, they get so annoyed by this really arcane, complicated, expensive business . . . that some day they may just rise up and say, ‘Phooey. This is nuts. This is not how it should work.’ . . . So we try to make it as painless as we can for them. . . .”	21
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Or . . . somebody's subdividing their farm. . .
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he'll sell the extra ones. And there's,
surprisingly, still quite a large amount of
water rights in this valley. . . . Some wet,
some dry. It doesn't make any difference.
We'll take them all." 24

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“There's two different verbs. ‘Abandon’ applies to
water rights prior to 1913. ‘Forfeit’ applies to
rights after 1913. And you're correct. We
don't have very many of those in this valley.
So predominantly the issue is abandonment,
and it's very hard to prove. . . .” 26

“. . . we did have a couple of years of litigation on
that subject, where the . . . Pyramid Lake
Paiute Tribe, had been protesting water rights
in Fallon for years on grounds of
abandonment and forfeiture. And then about
two years ago, Fallon and Churchill County
decided to do that to us. They were pretty
frank about it, that the reason they were doing
it was to harness the political forces of the
Truckee Meadows to get rid of the problem
they were having with the tribe. . . .” 26

“. . . our whole manner of doing business here with
the water rights the developers get is, you
change them through the state process from

an agricultural water right to a municipal water right, which is allowed in the law. But doing that requires public notice and an opportunity for public protest. And that was what Fallon and Churchill implemented, was they protested every single change that we applied for. I mean, I will never get over my anger at that community for what they did to us. They don't get any water out of the deal at all. It was purely hostage-taking. . . ." 28

"If those people thought they were ever going to get any allies in the Truckee Meadows to solve their problems, they certainly will not after that escapade. . . ." 29

Walking Through Development of the Issues Among TCID, the Pyramid Lake Paiute Tribe, and Sierra Pacific 30

". . . there was a question in Lahontan Valley as to whether the rights had ever been put to beneficial use, which meant, was there ever a water right here to begin with. . . that was not an issue here because of the way the Orr Ditch Decree was researched, every water right was documented as having been put to beneficial use originally." 31

". . . he [the state engineer] found none of them had been abandoned, but he did find a few of them had been forfeited, because there are a few here that are post-1913. And then that was sent up to the court on appeal by both

sides. Neither side liked the outcome. . . .”
..... 32

Marcia DeBraga 32

“ . . . they came in with a bill that would have solved
their problem and damaged the tribe, not to
mince words. That, of course, then caused a
huge objection from the tribe, and they got
Senator Harry Reid involved on their behalf .
. . . ” 33

“ . . . it became a huge internal problem, I think, for
the Democratic party. . . . ” 34

“ . . . there was quite a lot of interest in finding a
solution to this problem, not the least of
whom was Sierra Pacific, because we had a
bill to solve our water protest problem, that
was a different bill, that was being held
hostage in Marcia’s committee, because it
was introduced in Assembly Natural
Resources, and she was the chair of that. She
was not about to let our bill see the light of
day unless there was some satisfaction of her
bill. . . . ”
..... 34

“ . . . three or four days of negotiations convened, in
private, over at the legislature, with Marcia
DeBraga chairing it. . . . and she said over and
over again, ‘It is not my intention that there
be more water diverted from the Truckee
River to Fallon because of this bill. I’m just
trying to get these farmers out from under all
this litigation.’ . . . ” 35

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solution that emerged was, we’ve got to
throw money at this problem. ... we buy out
the disputed water rights in Lahontan Valley?
Then the farmers get compensated, the tribe
doesn’t have to litigate anymore, the farmers
don’t have to litigate anymore. Fallon and
Churchill agreed ... they would withdraw
their protests from Truckee Meadows. So
everybody comes out happy. ...” 37
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to solve all the problems in the whole
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the price of the water out there. It’s the farm
with the water rights that is appraised. You
know, I can’t help the fact that the water

rights in Reno are more valuable. It’s just the way the market is. . . .” 41

“There are some actual technical reasons why the value is different . . . they have a lower priority than the water rights here in terms of their date, and the other is . . . I would only get to use a fraction of the right, because it’s two-thirds Carson River water and one-third Truckee River water. Well . . . that means I only get a third of the right that I’m buying. . . .” 42

“ . . . so there are some actual technical reasons why the price is different. But aside from all that, it’s just a marketplace thing. I think the price will go up over time, but it’ll never reach parity with Reno. The value just isn’t the same. . . .” 43

Leasing Project Water During Drought Years Might Benefit Both the Farmers and Reno 43

Sierra Pacific Power Company and the Pyramid Lake Tribe 45

“ . . . when the very first protest came in, and Gordon DePaoli and I went out and had a meeting with the leadership of Fallon and Churchill, the elected and lawyers, they were very blunt. They said, ‘Look, we’re going to keep protesting your water rights until you do something about the Pyramid Tribe. If you can get them off our back, then we’ll get off your back.’ . . .” 45

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all Nevada water users. . . .” 55

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ought to be managed for environmental
enhancement and really don’t care whose
hide it comes out of. . . . And so we have been
working all these years to provide
environmental enhancement in California in a
way that doesn’t deprive any Nevadans of
their water rights. . . .” 55

“. . . do they even know how much water was taken
away from the city of Los Angeles out of
Mono Lake? And if the city of Los Angeles
doesn’t have enough political pull to retain its
water, how in the world is the State of
Nevada going to retain its water if it gets in a
hostile situation with California? . . .” 56

“It’s particularly annoying to me that we’re on the
front-line doing all this fighting to retain the
water supply for Nevada collectively, and
then we’ve got the junior water rights holder
on the river fighting us. . . .” 57

Negotiated Settlement and Public Law 101-618 . 58

“The basic horse trade was that Sierra Pacific has a
lot of water rights, but we don’t have very
much storage, and . . . Pyramid [Lake Paiute]
Tribe had control of a large reservoir, but

they didn't have very many water rights to put in it. So somebody . . . figured out that there's a deal to be made here. We will give you our extra water if you'll let us use your reservoir. And then in a drought time we get to keep the extra water, and non-drought times we give it to you. . . ." 59

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John Sayre Testimony 61

"It was obvious that the Bureau of Reclamation was just going to stand in this ironclad way of looking at the world that they had always had and they weren't capable of looking at anything in a new way. . . ." 62

". . . he was probably inadequately briefed and his whole organization was out of step with this idea of a new flexible way of running a river and of negotiating a deal instead of litigating it. They were just out of sync with all of it. . . ." 62

To Support TCID, the National Water Resources Association Opposed Public Law 101-618 63

“Because the National Water Resources Association was trying to kill the settlement bill, the Nevada Water Resources Association . . . dropped out of the national group . . . and I said, ‘You . . . cannot be lobbying against this bill that is so beneficial to most of the northern Nevada population just because this group from TCID is telling you to. And we don’t want to belong to an organization that operates that way.’ . . .” 63

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“ . . . that, of course, is the tribe’s objective. Their long-term objective is to get rid of the Truckee Canal and not have any Truckee River water going out of the basin over to the Newlands Project. . . .” 69

“But then it did seem in the end that we—one day we thought we had a settlement. . . . Everybody

thought we were done, and then the next day the farmers came back and said, ‘No, we don’t have a deal,’ and that was kind of the end of it. . . .”
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“The big three-way tug-of-war was the tribe versus the farmers versus the wetlands interests, because to some degree, the Truckee water that goes over to Lahontan Valley ends up supporting wetlands in Lahontan Valley. . . .”
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How Sierra Pacific Works Out Its Negotiating Strategies 72

Key Sierra Pacific Players During the Settlement II Negotiations 74

“ . . . some of the parties to the Negotiated Settlement on TROA, they want us to say that any successor in interest to the TROA has to have the approval of the other parties to TROA, and we’re absolutely not going to agree to that. I mean, I’ve taken that to the top of the company, and we are not going to let our entity as a water company be determined by the State of California and the United States and Nevada and the tribe. . . .” 75

“ . . . those of us who are on the front line have been doing this for years and years, and we do have a pretty high level of confidence in what we know will work or won’t work. You know, if this is going to wipe out the drought

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that's a non-starter. . . ." 77

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“As an indication, I stopped going to the meetings
about halfway through. . . ." 77

“Somebody commented to me they thought the fatal
flaw was that sort of doing the negotiation at
all was a top-down mandate, Senator Reid
saying, ‘You and you and you, you go get in
that room and you negotiate.’ . . ." 78

“One of the fundamental things about negotiations is,
you’ve got to believe that the solution you’re
going to reach in the negotiation is better than
what you would get otherwise, and I don’t
think there was that conviction. . . ." 79

“ . . . one of the most dramatic moments on the recent
negotiations in the legislature over AB-380
was when Lyman McConnell and Bob
Pelcyger shook hands, and this Joint
Testimony . . .it’s the first document that has
ever been reached that’s signed by the
Lahontan Valley interests and the tribe, ever.
So this was a pretty big breakthrough . . .”
..... 80

“I believe that we would be doing better in these
negotiations if we had more women involved,
particularly in the farming community,
because the men out there are so dug in about
their rights, their privileges, their positions,
and they just are not very adept at seeing
solutions in a different way. . . ." 81

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“It’s the cheapest power we have. . . . if we generate less, that means we will have to go out and purchase that electricity somewhere else, and it’ll be more costly. . . .” 95

Under Public Law 101-618 Sierra Pacific is Compensated for its Losses for Not Generating As Much Hydropower 95

“ . . . that would mean . . . the water we were generating with is cut off, and when they subsequently let the water go next spring, when the flows are high anyway, it’s more water than we have capacity for, so it doesn’t do us any good. It’s not like we lose today, but we gain tomorrow. . . .” 97

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Independence Lake. Now we’ve added a few
more things and increased some yields. . . . so
now we’re up to 85, maybe, something like
that. And then with TROA, we get up to
119,000. So it’s a huge chunk of resources. .
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STATEMENT OF DONATION
OF ORAL HISTORY INTERVIEW OF
JANET R. CARSON

1. In accordance with the provisions of Chapter 21 of Title 44, United States Code, and subject to the terms, conditions, and restrictions set forth in this instrument, I, JANET R. CARSON (hereinafter referred to as "the Donor"), of RENO, NEVADA do hereby give, donate, and convey to the National Archives and Records Administration (hereinafter referred to as "the National Archives"), acting for and on behalf of the United States of America, all of my rights and title to, and interest in the information and responses (hereinafter referred to as "the Donated Materials") provided during the interviews conducted on and JULY 23, 1999 at RENO, NEVADA and prepared for deposit with the National Archives and Records Administration in the following format: tape recording and transcript. This donation includes, but is not limited to, all copyright interests I now possess in the Donated Materials.
2.
 - a. It is the intention of the Archivist to make Donated Materials available for display and research as soon as possible, and the Donor places no restrictions upon their use.
 - b. The Archivist may, subject only to restrictions placed upon him by law or regulation, provide for the preservation, arrangement, repair, and rehabilitation, duplication, and reproduction, description, exhibition, display, and servicing of the Donated Materials as may be needful and appropriate.
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3. Copies of the Donated Materials that do not have Donor restrictions on their use, may be deposited in or loaned to institutions other than the National Archives, including the Bureau of Reclamation. Copies of unrestricted Donated Materials may also may be provided to researchers. The Bureau of Reclamation may retain copies of tapes, transcripts, and other materials if there are no Donor restrictions on their use, and Reclamation may obtain copies of tapes, transcripts, and other materials at the time that Donor restrictions on the use of the materials ends.
4. The Archivist may dispose of Donated Materials at any time after title passes to the National Archives.

Date: 7/26/99Signed: 
JANET R. CARSON

INTERVIEWER: DONALD B. SENEY

Having determined that the materials donated above by JANET R. CARSON are appropriate for preservation as evidence of the United States Government's organization, functions, policies, decisions, procedures, and transactions, and considering it to be in the public interest to accept these materials for deposit with the National Archives and Records Administration, I accept this gift on behalf of the United States of America, subject to the terms, conditions, and restrictions set forth in the above instrument.

Date: _____

Signed: _____
Archivist of the United States

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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For additional information about Reclamation's history program see:

www.usbr.gov/history

**Oral History Interview
Janet R. Carson**

Seney: My name is Donald Seney. I'm with Janet Carson, in her office in Reno, Nevada. This is our first session and our first tape, and today is July 23, 1999.

Good afternoon.

Carson: Hi, Don.

Seney: Tell me about your background and how you got into the area of water policy.

Born in Minnesota But Raised in California

Attended Stanford and UCLA

Carson: I was born in Minnesota in 1952, but lived my whole life in California, was educated at Stanford and UCLA.

Seney: What sort of degrees did you get at those institutions?

**Received A Masters in Water Resources
Engineering At UCLA**

“ . . . moved to Nevada in 1980 and worked first for

the Federal Watermaster who runs the Truckee and Carson Rivers. . . .”

Carson: I got a bachelor’s degree in economics from Stanford and then a master’s degree in water resources engineering at UCLA, and then moved to Nevada in 1980 and worked first for the Federal Watermaster who runs the Truckee and Carson Rivers.

Seney: Was that Claude Dukes or was it Garry Stone by then?

Claude Dukes and Garry Stone

Carson: Originally Claude Dukes, and then he passed away while I worked there, and then I worked for Garry Stone.

Seney: What did you in that office?

First Worked in the Field Measuring How Much Water Was Used and Then Moved Into the Office

Carson: I started out monitoring the irrigators’ diversion out in the field, measuring how much water they put in their ditches.

Seney: Rubber boots and a pickup truck and—

Carson: Yes, making sure they’re not taking more than

they're supposed to. And then I got into more of the office end of it.

Seney: Did you find that they would take more if you weren't watching them, or was it pretty much self-policing? I mean, if one guy sees the other guy taking more, you're going to hear about it, probably.

“ . . . they would all take more than they were supposed to if they weren't monitored. A lot of that goes back to the historic thinking that it doesn't make any difference because the extra water flows back to the river at the downstream end of the valley . . . ”

Carson: I'd say they would all take more than they were supposed to if they weren't monitored. A lot of that goes back to the historic thinking that it doesn't make any difference because the extra water flows back to the river at the downstream end of the valley, and so what difference does it make if they divert more? More goes back into the river, and so no harm is done. That was the historic attitude.

Seney: Were you doing both the Carson and the Truckee Rivers?

Worked Mostly on the Truckee River

Carson: I worked mostly just on the Truckee River.

Seney: Okay.

Going to Work for Kennedy and Jenks and Then Sierra Pacific Power Beginning in 1989

Carson: They had other personnel on the Carson River. And then I got a job with the consulting engineering firm of Kennedy Jenks, and when I was with them I wrote a master plan for the Carson River on future dams, storage options, water management, a whole water resource plan for the Carson River, which gave me the exposure to the Carson side of the system. And then I left there and joined Sierra Pacific Power in 1989, and I've been here ever since.

Seney: How did it work out? Did Sierra Pacific Power come to you? Did you come to them? Was there an opening?

Sierra Pacific Recruited Her

Carson: They recruited me, basically.

Seney: Because you must have been known in, how do we say, water circles by this point.

“. . . they needed to start grooming some people

to come up through the ranks, because most of the people with the water expertise were approaching retirement age. . . .”

Carson: Yes, I had a pretty good background by that time and was pretty well known, and they needed to start grooming some people to come up through the ranks, because most of the people with the water expertise were approaching retirement age.

Seney: Who are you talking about now?

Bob Firth and Jack Byrom

Carson: I was really recruited by Bob Firth, and I don't know if you've met him.

Seney: No, I haven't yet.

Carson: He was my predecessor in this job. And a fellow named Jack Byrom, who was the vice president at that time.

Seney: Have they both retired now?

Carson: Bob has. Jack has gone on to other duties in the company. He's almost exclusively on the electric side now.

Seney: But you mean people more directly involved with

water were beginning to retire, and I guess that's who I was wondering—

“ . . . he was going to be retiring . . . that's always a problem, because these water issues take so many years to understand and so many years to solve that, if you don't have somebody in the wings who's learning, I think you can have some pretty big disruptions. . . . ”

Carson: The main one was Bob Firth, because he'd been in charge of the water department for quite a number of years and he was going to be retiring in the foreseeable future. And so they really, they needed to start doing some, what do you call it, succession planning or something. And that's always a problem, because these water issues take so many years to understand and so many years to solve that, if you don't have somebody in the wings who's learning, I think you can have some pretty big disruptions. Of course, we've had a tremendous benefit of wonderful consultants, both engineering and legal consultants, that have been with us throughout the whole process.

Seney: Now we're talking about Joe Burns on the engineering side.

Joe Burns, Rod Hall, Gordon DePaoli, and Sue Oldham

Carson: Talking about Joe Burns and an associate of his named Rod Hall. They're very good, and they've been in with us for twenty years, probably. And then Gordon DePaoli and Sue Oldham on the legal side. They're all just tremendous, and they've got the continuity, even if the personnel in the company changes.

Seney: Working for Claude Dukes and Garry Stone, and then doing the engineering for the firm, the Carson planning, you must have gotten an impression of Sierra Pacific Power, which, of course, is one of the reasons I'm here seeing you and so many others in the firm is that they're a major player in water on the Truckee and, to some lesser extent, on the Carson. Do you recall what your impression of Sierra Pacific Power was before you came to work for them?

Impressions of Sierra Pacific Power

Carson: Well, I have to qualify this. I had a favorable impression of the company because my then-husband worked here. So I thought Sierra Pacific was just fine.

Seney: Okay, all right. I'm just thinking in terms, you know, of the—that's a nice connection, but I'm thinking more in terms of the water mix in the area, if you had any—

Job is Resource Planning

Carson: I guess, I mean, my impression was they were the only ones doing anything in the water arena here. They were the only ones doing any resource planning, which is my fundamental job. Nobody else was doing anything about the Safe Drinking Water Act or Clean Water Act or trying to either litigate solutions to problems or negotiate, whichever the case may be. This was the only player for, oh, the first ten years or so that I was in Reno.

County Water Planning Commission

Then in about the late eighties, I'd say, then the county formed a Water Planning Commission, but [due largely to reasons outside their control] that group just has not been very effective.

“ . . . to this day Sierra Pacific continues to be the most . . . competent professional entity in our community on water issues. . . . ”

And so I believe to this day Sierra Pacific continues to be the most—I have to say this—the most competent professional entity in our community on water issues.

Seney: When I saw Sue [Oldham]¹ some time ago, she gave me a copy of your 1995-2015 Water Resource Plan. Is this still your current plan, or have you updated this one?

Carson: We did an update about two years ago on a few specific topics, but in terms of a general planning document, that's still current.

Seney: I have the larger one, too. I'm foraging the executive summary here. But the larger one listed a bunch of recommendations that the county water agency to which you referred had made, and my recollection, from reading those numerous things, is you quarrelled with all but maybe one of them, feeling they didn't really have jurisdiction over this, that statutes had required you to do

1. 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 also 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.

something else. So I take it your relationship, the company's relationship, with the county, what's it called, the Washoe County Resource—

Water Planning by the Local Water Planning Commission

Carson: It's the Water Planning Commission.

Seney: Isn't all that amiable. Then you said you didn't think they were doing much, and I take it you don't, maybe the company doesn't, view them as the—

Washoe County Staffs' Comments on Sierra Pacific's Water Resource Plan

Carson: Oh, I see. I don't recall that we disagreed with very many of their recommendations. We were intimately involved in the development of their plan, and everybody, I think, went to great efforts to make sure their plan and our plan were consistent.

Seney: Right. I didn't bring the long one. I guess what struck me, as I went through the points they were making, was that the company was, to some extent—yes, there you have it. Perhaps I gained a wrong impression. Let me show you what I have in mind here. I mean, I don't have any problem with that, if you're disagreeing with them.

You're longtime players in this and they come rather late to the process, and I can certainly understand that—here they are, on page one to ten.

It begins with, "This recommendation is inconsistent with state law, unacceptable to Sierra, unacceptable." This is what I'm talking about. And from this I inferred that maybe you weren't on the same wavelength, necessarily. I think there was only one—oh, here's one that was adopted. And then on the next page, fully considered options. These were adopted. Then there was a problem here, and agrees to some extent. That's what gave me the sense that maybe you weren't in close and intimate agreement with the water board.

Carson: Gee, I haven't read this for a long time.

Seney: But I think as you glance at it you can see why, from an outsider's perspective, it looked like disagreements.

Carson: But see, this is not the regional water plan, which is what I thought you were asking me about.

Seney: Okay. Fair enough.

"This is county staffs' comments. I mean, there's

been a longtime feud between Sierra Pacific and Washoe County staff, because we were in a turf battle, basically, over water service areas. . . .”

Carson: This is county staff’s comments. I mean, there’s been a longtime feud between Sierra Pacific and Washoe County staff, because we were in a turf battle, basically, over water service areas. And so during this period, ‘92-93, we had this dialogue going on to try to kind of figure out who had jurisdiction over what. So Sierra was seeking county staff input to this water resource plan—that being Sierra Pacific’s water resource plan—and the county staff’s comments included these points.

Seney: Okay. I should have read it more carefully, then. That’s the county staff rather than—

Carson: Yes. And so the county staff’s comments we did have a lot of problems with.

Seney: Okay.

Sierra Pacific and Washoe Country Agreed How to Split the Service Territory in the Mid- to Late-90s

Carson: Now, subsequent to this time, in about 1995, probably, or ‘6 or maybe ‘7, our CEO and the chairman of the county commission cut a deal on service territory and said, “Look. We are going to

stop fighting over service territory, and we're just going to draw a line on a map. And the county's going to serve this area, Sierra Pacific's going to serve this area, and we'll stop having all these fights." And that's what we've been living with to this day.

Seney: This is in '96, '97? That was roughly—

Carson Approximately.

Seney: Okay.

“ . . . we had . . . a settlement on the turf battle. So that provided a better atmosphere for the county and Sierra to work together . . . ”

Carson So we had, then, at least a settlement on the turf battle. So that provided a better atmosphere for the county and Sierra to work together, and that has—the relationship is much better now than it was five years ago.

Proportion of Washoe County Water Customers Served by Sierra Pacific Power

Seney: What proportion of the area residents, Washoe County residents, are served by Sierra Pacific and its WesPac Utilities subsidiary?

WesPac

Carson Yes, we kind of did away with the WesPac.

Seney: Did you?

Carson Now it's all Sierra Pacific.

Seney: What portion of Washoe County do you serve and what portion do they serve?

Counting Both Retail and Wholesale Water, Sierra Pacific Probably Serves About 85 Percent of the Population in Washoe County

Carson That used to be a simple question, and it was about 80 percent/20 percent. Since we came up with this division of the areas, a corollary part of that was, the Sierra Pacific would sell water on a wholesale basis to any of the county service areas that wanted it. So now I have to ask the question, how many people does Sierra Pacific serve, be it retail or wholesale, and that's, I'm going to say, about 85 percent of the population, probably.

Seney: Okay.

Carson So we still provide the majority of the water supply. It's just in some areas it's a wholesale instead of a retail.

Importance of the Water Business to Sierra Pacific Power

Seney When I interviewed the late Neal Plath, he said that there had been discussions and talks about spinning the water part off to the county when he was president of Sierra Pacific Power in the sixties. I guess those discussions are over with and you don't really—

Carson Oh, they come and go.

Seney: Do they?

“The conversation has gone the full spectrum, from us selling the county the water business to us buying out the county’s water business, and various things in between. . . .”

Carson The conversation has gone the full spectrum, from us selling the county the water business to us buying out the county’s water business, and various things in between.

“. . . there’s always companies calling up and saying, ‘We’re interested in buying water businesses. Is yours for sale?’ Because there are people out there who are in the business of running water companies. You know, and the answer always is, ‘Well, anything is for sale. It

just depends on . . . the terms and the price . . .”

And there’s always companies calling up and saying, “We’re interested in buying water businesses. Is yours for sale?” Because there are people out there who are in the business of running water companies. You know, and the answer always is, “Well, anything is for sale. It just depends on what the terms and the price is.”

Seney: Right.

“ . . . right at the moment . . . with respect to . . . Washoe County, it’s going fairly well with this wholesale concept. . . . it puts our interests in alignment. Now, instead of the county wishing to go out and develop its own resources and water supplies from somewhere else, they now have an interest in seeing us succeed in developing Truckee River resources. . . .”

Carson But I’d say right at the moment, at least with respect to us and Washoe County, it’s going fairly well with this wholesale concept.

Seney: Right.

Carson The nice thing about that is, it puts our interests in alignment. Now, instead of the county wishing to go out and develop its own resources and water supplies from somewhere else, they now have an

interest in seeing us succeed in developing Truckee River resources.

Seney: So you've got an ally instead of an adversary.

“ . . . now the county has its own self-interest in seeing the Negotiated Settlement succeed, because that's our best resource option for providing the Truckee River as a longtime water supply. . . . ”

Carson That's exactly right. And so now the county has its own self-interest in seeing the Negotiated Settlement succeed, because that's our best resource option for providing the Truckee River as a longtime water supply. So it really has improved things.

Seney: You were here, maybe, when Pete Sferrazza was Mayor of Reno. I've interviewed him, too, and I know one of his, as you well know, pillars of his view was to slow growth.

Carson Right.

Developers Are Now Required to Supply Water Rights

Seney: And apparently it was during his tenure as mayor that there became a requirement that, if I want to

develop a subdivision, I have to come with water rights. That was not the case before that, was it?

Carson: No. That rule came in about 1980, and I couldn't tell you if Pete Sferrazza was mayor at that time or if it was his predecessor, who was also a slow-growth person named Barbara Bennett. I'm not sure who was in office then.

“ . . . prior to about 1980 it was, as it is today in 99 percent of communities, it's the utility's job to go get the resources for the community's needs. The whole concept that the developer has to go find the resources and deed them over to the utility, that was a totally new concept in 1980 . . . ”

But right, prior to about 1980 it was, as it is today in 99 percent of communities, it's the utility's job to go get the resources for the community's needs. The whole concept that the developer has to go find the resources and deed them over to the utility, that was a totally new concept in 1980, and to my knowledge, there are only two or three other communities today that do it this way.

After A Drought in the Later 1970s Residents of the Reno Metropolitan Area Became Concerned About Use of Water by Newly Expanded Casinos

I don't know what the local politics with

respect to Mayor Sferrazza were at the time, but I know that what happened is, sequentially we had a drought in '76-77, and all the residents did a great job of conserving water. And then in '79-80, all these casinos were built. What was originally the MGM Grand was built. That's now the Hilton. A bunch of expansions downtown. And the residents looked around and said, "Wait a minute. We didn't do all that conservation in order to have all this growth occur. We want something done about it so that our conservation isn't going to these new casinos."

Seney: Right.

“ . . . whoever—I guess it was probably Sierra Pacific. That’s before my time here—came up with this concept that . . . every new building has to go out and bring in a new resource. I mean, it’s brilliant, because it keeps the resource growing commensurate with the growth of the community. . . . ”

Carson And then whoever—I guess it was probably Sierra Pacific. That’s before my time here—came up with this concept that, okay, so every new building has to go out and bring in a new resource. I mean, it’s brilliant, because it keeps the resource growing commensurate with the growth of the community.

Seney: Yes. And you have to give them what is called an “Intent to Serve” letter or something.

Carson We call it a “Will Serve” letter.

Seney: “Will Serve” letter.

“ . . . elected officials and developers from other communities are flabbergasted. They just can’t conceive of putting this burden on the developers. . . .”

Carson Right. And when I give talks to water conventions and whatnot, elected officials and developers from other communities are flabbergasted. They just can’t conceive of putting this burden on the developers. In parallel with that, new developers come to Reno every year to build, and they’ve built in other cities in the West, and you tell them, “Well, you’ve got to bring in water rights before we’ll serve you,” and they just scratch their heads and say, “Excuse me? You want me to do what?”

Seney: Does this make political allies out of them, though?

Carson In some ways it does. But it’s a delicate balance, because it makes them aware of the water issues and makes it possible to engage them when there’s an issue in the legislature or something.

“ . . . the risk is, they get so annoyed by this really arcane, complicated, expensive business . . . that some day they may just rise up and say, ‘Phooey. This is nuts. This is not how it should work.’ . . . So we try to make it as painless as we can for them. . . . ”

But the risk is, they get so annoyed by this really arcane, complicated, expensive business, you know, that some day they may just rise up and say, “Phooey. This is nuts. This is not how it should work.”

Seney: Yes.

Carson So we try to make it as painless as we can for them.

Seney: If I come tomorrow and I want to build 500 houses in the Truckee Meadows and you say to me, “You’ve got to get water rights for that,” how many acre-feet will I need for those 500 houses, and where will I find them?

How Water Might Be Obtained for A Development

Carson A good rule of thumb is a half an acre-foot per house.

Seney: So I need 250 acre-feet.

Carson And there's a sliding scale, depending on how big your lots are going be. If you're doing that large a project, you probably have a water rights broker that you engage, and they go out and they beat the bushes and find water rights to purchase from some landowner who's got water rights for sale. If you're building a smaller project, maybe you're going to build a little motel or a 7-Eleven or a duplex, then you would come to us and we would sell you the rights, if you want.

Seney: How much would I have to pay as my broker is beating the bush? What's the going rate?

The Price of An Acre Foot of Water in 1999 Was About \$3,000

Carson Currently it's about 3,000 dollars an acre-foot.

Seney: If I want to build that motel or 7-Eleven and I come to you, you're going to charge me whatever's the going rate for them?

“Our rules provide that we go out and we buy, not a huge amount of water rights, but we keep an inventory to help the little guy out. So we go out. We pay whatever the market price is, and then we add on our staff time to do the research and the paperwork and the deeds, and then we get to collect interest on the time we hold the rights. And we roll that together and come up with a

price which you would pay us, which typically it's about 10 percent over what we paid for them. . . ."

Carson Our rules provide that we go out and we buy, not a huge amount of water rights, but we keep an inventory to help the little guy out. So we go out. We pay whatever the market price is, and then we add on our staff time to do the research and the paperwork and the deeds, and then we get to collect interest on the time we hold the rights. And we roll that together and come up with a price which you would pay us, which typically it's about 10 percent over what we paid for them. And for most people who aren't in a big project and they don't want to hire an expert, the convenient thing to do is to just buy from us. And that's why we do it.

"It's not really a money-maker, but it is a customer convenience. . . ."

It's not really a money-maker, but it is a customer convenience.

Seney: And these water rights are likely to come from, say, farmers in the Truckee Meadows who have decided to give up farming and sell their water rights, as well as their land?

". . . all the rights we deal with are local, here in

the Truckee Meadows. We're not into interbasin transfers. . . ."

Carson Right. And what typically happens, all the rights we deal with are local, here in the Truckee Meadows. We're not into interbasin transfers.

Seney: Well, you can't be, can you? You can't buy water from the Truckee-Carson Irrigation District irrigators at this point.

Believes That in the Future Sierra Pacific May Be Able to Buy Water Rights From the Truckee-Carson Irrigation District Irrigators

Carson: Well, not yet. I believe in the future that'll happen.

“ . . . typically, some guy who used to irrigate . . . doesn't need the water rights, will sell them. Or . . . somebody's subdividing their farm. . . . he's got more water rights than he needs. So he'll sell the extra ones. And there's, surprisingly, still quite a large amount of water rights in this valley. . . . Some wet, some dry. It doesn't make any difference. We'll take them all.”

So typically, some guy who used to irrigate and put a parking lot on his property, doesn't need the water rights, will sell them. Or another common one is, somebody's subdividing

their farm. But an acre of alfalfa takes more water than an acre of houses, so he's got more water rights than he needs. So he'll sell the extra ones. And there's, surprisingly, still quite a large amount of water rights in this valley.

Seney: These are wet water rights?

Carson: Some wet, some dry. It doesn't make any difference. We'll take them all.

The Difference Between Abandonment and Forfeiture of Water Rights and Objections to the Transfer of Water Rights

Seney: What is the practical difference—maybe there is none. Maybe you've answered my question—between wet water rights and dry water rights.

Carson: That's a big legal debate. The water rights can be abandoned if it's proven that the intent of the owner was to abandon them. Well, that's a pretty high standard of proof, so it's never been done here.

Seney: These are pre-1913 water rights, generally speaking, in Truckee Meadows, so you really have to do a lot more to abandon and forfeit those rights than you do rights granted after 1913, right?

“There’s two different verbs. ‘Abandon’ applies to water rights prior to 1913. ‘Forfeit’ applies to rights after 1913. And you’re correct. We don’t have very many of those in this valley. So predominantly the issue is abandonment, and it’s very hard to prove. . . .”

Carson Right. There’s two different verbs. “Abandon” applies to water rights prior to 1913. “Forfeit” applies to rights after 1913. And you’re correct. We don’t have very many of those in this valley. So predominantly the issue is abandonment, and it’s very hard to prove.

“ . . . we did have a couple of years of litigation on that subject, where the . . . Pyramid Lake Paiute Tribe, had been protesting water rights in Fallon for years on grounds of abandonment and forfeiture. And then about two years ago, Fallon and Churchill County decided to do that to us. They were pretty frank about it, that the reason they were doing it was to harness the political forces of the Truckee Meadows to get rid of the problem they were having with the tribe. . . .”

So we did have a couple of years of litigation on that subject, where the Indians, Pyramid Lake Paiute Tribe, had been protesting water rights in Fallon for years on grounds of abandonment and forfeiture.

And then about two years ago, Fallon and Churchill County decided to do that to us. They were pretty frank about it, that the reason they were doing it was to harness the political forces of the Truckee Meadows to get rid of the problem they were having with the tribe.

Seney: Did it work?

Carson Yes, I'd say it did. You know, it was a nasty, ugly situation, but I'd say strategically it worked.

Seney: If I understand what the tribe was doing down in the Truckee-Carson Irrigation District, they wanted to stop transfers of water rights in order to squeeze more water out of the Truckee system for Pyramid Lake.

Carson Right.

Seney: I mean, that was essentially what they were up to. And they have complained to me, when I've interviewed them, that, well, why didn't the Indians sue you all up here over water transfers? But Bob Pelcyger made this pre-1913, post-1913 distinction to me. But I guess what Churchill County and Fallon began to do was to question these transfers before the State Engineer that you were making.

“ . . . our whole manner of doing business here with the water rights the developers get is, you change them through the state process from an agricultural water right to a municipal water right, which is allowed in the law. But doing that requires public notice and an opportunity for public protest. And that was what Fallon and Churchill implemented, was they protested every single change that we applied for. I mean, I will never get over my anger at that community for what they did to us. They don’t get any water out of the deal at all. It was purely hostage-taking. . . .”

Carson Right. Because our whole manner of doing business here with the water rights the developers get is, you change them through the state process from an agricultural water right to a municipal water right, which is allowed in the law. But doing that requires public notice and an opportunity for public protest.

And that was what Fallon and Churchill implemented, was they protested every single change that we applied for. I mean, I will never get over my anger at that community for what they did to us. They don’t get any water out of the deal at all. It was purely hostage-taking.

Seney: I can see the anger on your face. The tape won’t see that. But you’re clearly annoyed.

“If those people thought they were ever going to get any allies in the Truckee Meadows to solve their problems, they certainly will not after that escapade. . . .”

Carson I mean, the bitterness. If those people thought they were ever going to get any allies in the Truckee Meadows to solve their problems, they certainly will not after that escapade.

What happened, though, was we reached a settlement in the legislature to basically—

Seney: I understand how annoyed you are, and I would be, too, if I were sitting in your position. And again, the tape won't see it, but it's clear on your face that you're really annoyed by what was done down there. But can you give me a kind of step-by-step description of how you got to the legislature and then the resolution in the legislature. And then apparently, when we spoke on the phone you said there were negotiations that had gone on between the tribe and the Fallon/Churchill County interests, which, I guess, you guys were involved in, too. So could you give me—don't spare us any details, in other words.

Carson Well, let me back up, then.

Seney: Sure.

**Walking Through Development of the Issues
Among TCID, the Pyramid Lake Paiute Tribe, and
Sierra Pacific**

Carson So for thirteen years, the tribe's protesting the water rights out in Lahontan Valley and going through the courts, and this went back and forth, the State Engineer to district court, back to the State Engineer, up to the Ninth Circuit Court of Appeals, and back to district court, up and down, through the judicial system, for all these years.

Many of the issues are the same in Fallon as they are in the Truckee Meadows. Does a piece of property that's been paved over for twenty-five years still have a valid water right? So there were some similarities in the issues. Then, as Bob Pelcyger evidently already mentioned to you, there were some differences, too, the biggest one being the age of the water rights.

Seney: Right.

“. . . there was a question in Lahontan Valley as to whether the rights had ever been put to beneficial use, which meant, was there ever a water right here to begin with. . . . that was not an issue here because of the way the Orr Ditch Decree was

researched, every water right was documented as having been put to beneficial use originally.”

Carson Another big difference was that there was a question in Lahontan Valley as to whether the rights had ever been put to beneficial use, which meant, was there ever a water right here to begin with.

Seney: On their land.

Carson On their land. And that was not an issue here because of the way the Orr Ditch Decree was researched, every water right was documented as having been put to beneficial use originally.

Seney: Let me just stop to say that what Bob Pelcyger and the tribe were talking about were areas like roads on the farms, corrals, places where buildings were put, which clearly had never been irrigated. And that's what you're saying, that the challenge is there to transferring that kind of water right. Those had never been put to beneficial use.

Carson Right. And so we had this, you know, we headed for litigation on our protests. The State Engineer held a hearing.

Seney: This is Mike Turnipseed.

“ . . . he [the state engineer] found none of them had been abandoned, but he did find a few of them had been forfeited, because there are a few here that are post-1913. And then that was sent up to the court on appeal by both sides. Neither side liked the outcome. . . .”

Carson Right. Mike Turnipseed held a hearing on the water rights here in Reno that were under protest, and he found none of them had been abandoned, but he did find a few of them had been forfeited, because there are a few here that are post-1913. And then that was sent up to the court on appeal by both sides. Neither side liked the outcome. So we had, then, pending in the U.S. District Court the appeal of this Reno decision.

Marcia DeBraga

That was last fall, the fall of '98. And then we had our legislative session the first four months of 1999. What happened there was that the parties from Fallon have an assemblywoman named Marcia DeBraga, who's the Chairman of the Assembly Natural Resources Committee. So she sits in a very influential seat in the legislature. And they came in with a proposed bill that said basically forfeiture doesn't exist on surface water rights, and in order to prove abandonment, you have—excuse me. Abandonment can be rebutted by any of the following evidence, and a whole

long list of things.

“ . . . they came in with a bill that would have solved their problem and damaged the tribe, not to mince words. That, of course, then caused a huge objection from the tribe, and they got Senator Harry Reid involved on their behalf . . . ”

Basically, they came in with a bill that would have solved their problem and damaged the tribe, not to mince words. That, of course, then caused a huge objection from the tribe, and they got Senator [Harry] Reid involved on their behalf to try to kill this bill. It was a very close call politically as to who was going to be able to get the votes, Marcia Debraga, on behalf of the Fallon people supporting this bill, or Senator Reid being able to kill it on behalf of the tribe.

Seney: My understanding is Senator Reid applied considerable pressure on behalf of the tribe. Was that your impression, as well?

Carson Yes. I would say that's my impression, too.

Seney: I've been told that maybe he went too far and annoyed some of the legislators. Would that be your analysis at all?

“ . . . it became a huge internal problem, I think, for

the Democratic party. . . .”

Carson I think there’s a general resentment to having the U.S. Senator leap into the middle of the Nevada legislative process. And then since you have Senator Reid as a Democrat on the one side, and Marsha Debraga, who’s a Democrat, and the Speaker of the Assembly, Joe Dini, who’s also a Democrat, on the other side, it became a huge internal problem, I think, for the Democratic party.

“ . . . there was quite a lot of interest in finding a solution to this problem, not the least of whom was Sierra Pacific, because we had a bill to solve our water protest problem, that was a different bill, that was being held hostage in Marcia’s committee, because it was introduced in Assembly Natural Resources, and she was the chair of that. She was not about to let our bill see the light of day unless there was some satisfaction of her bill. . . .”

So there was quite a lot of interest in finding a solution to this problem, not the least of whom was Sierra Pacific, because we had a bill to solve our water protest problem, that was a different bill, that was being held hostage in Marcia’s committee, because it was introduced in Assembly Natural Resources, and she was the

chair of that. She was not about to let our bill see the light of day unless there was some satisfaction of her bill. So we wanted to see a solution found, too.

“ . . . three or four days of negotiations convened, in private, over at the legislature, with Marcia DeBraga chairing it. . . . and she said over and over again, ‘It is not my intention that there be more water diverted from the Truckee River to Fallon because of this bill. I’m just trying to get these farmers out from under all this litigation.’ . . . ”

There was three or four days of negotiations convened, in private, over at the legislature, with Marcia DeBraga chairing it. I have to give her a huge amount of credit, because she really tried to come up with something that was fair, and she said over and over again, “It is not my intention that there be more water diverted from the Truckee River to Fallon because of this bill. I’m just trying to get these farmers out from under all this litigation.”

Seney: Who was at the negotiating? I take it was the power company, the tribe, and the farmers.

Participating Parties in the Negotiations

Carson Yes. It was, let's see, several different interests from Lahontan Valley, the city of Fallon, Churchill County. Actually, TCID [Truckee-Carson Irrigation District] was not there.

Seney: Newlands Water Protective Association.

Carson Newlands Water Protective was—excuse me. No, they were not there, the reason for that being, the chairman of the Newlands Water Protective Association is a fellow named Norm Frey. Norm Frey was the Republican opponent to Marcia in her last campaign, so he was not included.

END SIDE 1, TAPE 1. JULY 23, 1999.

BEGIN SIDE 2, TAPE 1. JULY 23, 1999.

Carson The Bureau of Reclamation was there. They were there mostly in a kind of an advisory role. There's a new organization—it's not a new organization—a newly revived organization on the Upper Carson called the Carson Water Subconservancy District. They were there, and they ended up becoming sort of the implementer of the solution we came to.

“ . . . after some just whining about . . . the basic solution that emerged was, we've got to throw money at this problem. . . . we buy out the disputed water rights in Lahontan Valley? Then the farmers get compensated, the tribe doesn't

have to litigate anymore, the farmers don't have to litigate anymore. Fallon and Churchill agreed . . . they would withdraw their protests from Truckee Meadows. So everybody comes out happy. . . ."

So, you know, after some just whining about, "Oh, woe is us," and so forth, the basic solution that emerged was, we've got to throw money at this problem. If we can come up with enough money, can we buy out the disputed water rights in Lahontan Valley? Then the farmers get compensated, the tribe doesn't have to litigate anymore, the farmers don't have to litigate anymore. Fallon and Churchill agreed that they would withdraw their protests from Truckee Meadows. So everybody comes out happy.

Where the \$13,500,000 Came From

We did manage to muster—of course, here again, without Senator Reid it would not have happened, because he committed 7 million dollars in Federal money. The State of Nevada came up with four million, and the Reno-Sparks community is committed to two and a half million.

Seney: When you say the Reno-Sparks community, do you mean Sierra Pacific Power?

Carson We will collect the money, but it'll actually be paid by developers.

Seney: Okay.

Carson I mean, we were representing the community in figuring out how we could raise the money. But the money will actually come from development.

Seney: So we're talking about, what, eleven and a half million?

Carson Seven and four is eleven. Thirteen and a half million.

Seney: Thirteen and a half million to buy the water rights in Lahontan Valley.

Carson Right. And there's a—I'll give you a copy of it if you want. I don't know if you want documents.

Seney: Yes, absolutely.

Carson There's a thing called the Joint Testimony, which was entered into the record by the parties to the negotiation, to say, "Look, this is what we are committing ourselves to do." So we have now got some of our protest withdrawn. Churchill County has been withdrawing the protests they filed here in Reno. We've got the necessary administrative changes under way to get our share of the money

started. And then there's this Carson Water Subconservancy District I mentioned has stepped up and said, "We would be willing to administer this thing," and they're developing now the procedures.

Seney: They're kind of a neutral party.

Carson They're kind of a neutral party, yes. So the crux of it is, an individual farmer gets to choose does he want to sell his disputed water rights to this fund and get paid, from which then those rights will be retired, or does he want to continue to litigate with the Pyramid Tribe because he thinks he's going to win? I mean, I would assume that's why somebody would choose that avenue.

"There are two reasons, I believe, this deal succeeded where others have failed. One is, it didn't try to solve all the problems in the whole Newlands Project. It just tried to solve one problem. And the other thing is . . . Each individual gets to choose whether they want to participate or not. . . ."

There are two reasons, I believe, this deal succeeded where others have failed. One is, it didn't try to solve all the problems in the whole Newlands Project. It just tried to solve one problem. And the other thing is, it's not

something where the local government or TCID is speaking on behalf of everybody. Each individual gets to choose whether they want to participate or not. And so I think those are the main reasons why this worked. Of course, we haven't had our first purchase yet, but I'm optimistic that it'll work out.

Price of Water Rights in Fallon Versus the Price of Water Rights in the Truckee Meadows

Seney: One of the things that the people in the project have complained to me about is that the water rights down there are artificially low because the Federal Government won't permit any competition for the water rights, and I think they usually go for less than water rights go for here in the Truckee Meadows, do they not?

Carson Oh, they're significantly less.

Seney: More like—

Carson Probably a tenth.

Seney: So 300 dollars an acre.

Carson Yes.

Seney: Did they raise that question?

TCID Irrigators Believe Their Water Rights Should Be Worth More Money and the Price is Being Held Down

Carson That was the first thing out of Chairman Regan's mouth in the negotiations was, "You've been ripping us off for years on water right values. Now you're just going to implement another program to do the same."

Seney: This is the Churchill County Board of Supervisors.

Carson Chairman of the Board of Commissioners, yes.

"The reality is that a farm is a farm is a farm. They trade hands, they get sold, and appraisals are done on them routinely, and that establishes the price of the water out there. It's the farm with the water rights that is appraised. You know, I can't help the fact that the water rights in Reno are more valuable. It's just the way the market is. . . ."

Carson The reality is that a farm is a farm is a farm. They trade hands, they get sold, and appraisals are done on them routinely, and that establishes the price of the water out there. It's the farm with the water rights that is appraised. You know, I can't help the fact that the water rights in Reno are more valuable. It's just the way the market is.

Seney: Yes.

“There are some actual technical reasons why the value is different . . . they have a lower priority than the water rights here in terms of their date, and the other is . . . I would only get to use a fraction of the right, because it’s two-thirds Carson River water and one-third Truckee River water. Well . . . that means I only get a third of the right that I’m buying. . . .”

Carson There are some actual technical reasons why the value is different, and that gets into the fact they have a lower priority than the water rights here in terms of their date, and the other is that if you bought a water right, if I could go out and buy a water right in Fallon and try to use it here in Reno, I would only get to use a fraction of the right, because it’s two-thirds Carson River water and one-third Truckee River water. Well, unless we want to build a pipeline from the Carson River over here to Reno, that means I only get a third of the right that I’m buying.

Seney: So if you bought 300 acre-feet, you’d be able to deliver 100 acre-feet.

“. . . so there are some actual technical reasons why the price is different. But aside from all that, it’s just a marketplace thing. I think the price will go up over time, but it’ll never reach parity with

Reno. The value just isn't the same. . . ."

Carson Right. And so there are some actual technical reasons why the price is different. But aside from all that, it's just a marketplace thing. I think the price will go up over time, but it'll never reach parity with Reno. The value just isn't the same.

Seney: Well, you know, this really sticks in their throats, this business that water rights are much more valuable here than there.

**Leasing Project Water During Drought Years
Might Benefit Both the Farmers and Reno**

Carson Right. Now, one thing I think might be a possible solution to this in the future is, in a drought they don't do very well economically, because they'd only get a couple cuttings of hay. And this came up during the last drought. They might be happier to say, "Let's not talk about me selling my water right to Reno, but let's talk about a long-term lease option, so the next time there's a drought, Reno's going to pay me not to irrigate. Reno then gets to use the water—which we're short during the drought—and then I just don't grow crops that year."

You know, that's pretty parallel to a lot of Federal subsidy programs where, for various

reasons, they get paid not to grow a crop, and I think it might be a real solution that will be palatable for them and it would help us with our drought needs.

Seney: This was an idea that Charlie Frey had floated through a water leasing authority, and it had been shot down for a while, as I understand it.

Carson Yes. That ran into some problems having to do with anti-trust issues. So if this comes back to life, it's going to have to be done in some way that everybody thinks is fair.

Seney: I think it was the way the bidding was done on who would sell the rights or something, wasn't it?

Carson You know, I never did understand what the objection was.

Seney: Yes, I didn't, either. I think it centered on the bid process, which, when Charlie explained to me, was fairly complex, I thought. But that's only because I'm unfamiliar with these kinds of arrangements.

Did all of this—I don't know if this might have been one of Churchill County/Fallon communities objectives, as well—that is, kind of drive a wedge between the Sierra Pacific Power Company and the Pyramid Lake Tribe.

Sierra Pacific Power Company and the Pyramid Lake Tribe

“ . . . when the very first protest came in, and Gordon DePaoli and I went out and had a meeting with the leadership of Fallon and Churchill, the elected and lawyers, they were very blunt. They said, ‘Look, we’re going to keep protesting your water rights until you do something about the Pyramid Tribe. If you can get them off our back, then we’ll get off your back.’ . . . ”

Carson Oh, I think that was definitely an objective they had, because, I mean, when the very first protest came in, and Gordon DePaoli and I went out and had a meeting with the leadership of Fallon and Churchill, the elected and lawyers, they were very blunt. They said, “Look, we’re going to keep protesting your water rights until you do something about the Pyramid Tribe. If you can get them off our back, then we’ll get off your back.” And that was pretty much in a nutshell what they had in mind. Of course, that caused us to do a lot of hard thinking about how can we solve this problem without clobbering the pretty good partnership we have with the tribe, you know, because we really don’t want to ruin that.

Concerns About How the Legislative Solution Will Be Implemented

And so I'm really relieved that we did get a legislative solution. Now my biggest concern is that we have a concept and some very well-intentioned people trying to say, "Okay, here's how we're going to implement it." And we have a whole bunch of lawyers, who don't want to lose their billing hours, saying to their clients in Lahontan Valley, "Well, you shouldn't sign up for this program. Here's all the things that could go wrong. Here's all the questions they haven't answered."

I was very disappointed at the first meeting, in which several of the farmers' attorneys were just bad-mouthing the whole approach to settlement. That was disappointing.

How to Solve the Problems with the Truckee-Carson Irrigation District

Seney: When we spoke on the phone, I asked you if this were negotiations that had been facilitated by the State of Nevada. Specially, Pete Morros had convened some negotiations that didn't really go anywhere. And your comment to me was that, no, that they didn't really play an active role in these negotiations, and he didn't play an active role.

Pete Morros Would Like to Find A Settlement for the Newlands Project

Bureau of Reclamation History Program

Carson Pete has tried to facilitate a solution, a global settlement, for the Newlands Project for a long time, and I think that's one of his career goals is to find a global settlement out there. You know, I think that's commendable, but the rest of us have watched this try and fail and try and fail and try and fail for years.

So in this particular session at the legislature, we had some different faces. We had Marcia DeBraga, who really hadn't been involved before, and she had a big role in it. And then the State of Nevada was represented more at the staff level. The state engineer was there and his assistant to provide sort of a state law input. So, you know, I think having a few different personalities involved. And then, as I say, I think that, as I mentioned a little while ago, one of the reasons I think this succeeded was because it limited the scope to one issue, and Pete had always wanted to solve all of the issues. You know, there's still problems that need solving, but it's my personal conviction that the only way we're going to solve them is if we kind of chip away at them little by little. And so I think it was effective to just have some different personalities in the mix.

Seney: Lyman McConnell wasn't there.

Carson He was there toward the end, but not at the outset. Because he's another one. A lot of us, we've been fighting these fights for so long, it's real hard not to sort of dig in your heels with the same old positions you've always had. And then, you know, there's this new guy named Ed James. He's the young manager of the Carson Water Subconservancy District. I thought he was helpful. He said, "Well, I can administer this thing," and everybody looked at him and said, "Well, you don't seem to have any biases, and a volunteer is always a good thing."

Seney: Right. (laughter)

“. . . neither side felt confident that they would win if it came to a vote on the original bill that Fallon had introduced. . . .”

Carson And also, it was a combination of factors, and also just the closeness of the politics motivated both sides to do something, because neither side felt confident that they would win if it came to a vote on the original bill that Fallon had introduced. So fear is a great motivator.

Seney: Yes. So no bill actually came out. It was resolved by this agreement.

Carson Well, the agreement then resulted in a revised bill.

Seney: [Assembly Bill] AB-380.

Carson AB-380 then was revised to reflect the agreement, and that then became the statute that was enacted.

TCID and the Fallon Interests Continue to Attempt to Exert Leverage

Seney: As annoyed as you are at the people out in Fallon, I mean, they've lost pretty much what leverage they may have had over you, haven't they, now that this is resolved?

“ . . . they [TCID] continue to try to exert leverage in other ways and through litigation. I believe their continuing litigation against the Negotiated Settlement is really an effort to leverage the Truckee Meadows to helping solve their problems. . . . ”

Carson Well, they continue to try to exert leverage in other ways and through litigation. I believe their continuing litigation against the Negotiated Settlement is really an effort to leverage the Truckee Meadows to helping solve their problems. I'm not sure they actually have that much of a quarrel with the Truckee River Operating Agreement, but they know that it's important to us, and perhaps by trying to clobber what we're trying to do, maybe we would help

them out. I don't think that's going to work.

Seney: I know they've sued over the EIS/EIR, [Environmental Impact Statement/Environmental Impact Report] and apparently prevailed. At least they announced it as a victory on the Newlands Water Protective Association website. I guess from your point of view it really wasn't so much a victory for them, although this process has now been started again and has to be gone through a little more.

Carson: You know, I meant to look this up and refresh my memory before you came over. But there was a court decision that there had been a motion to just summarily dismiss the suit, and that was denied. So they construed that as a victory. It was not a ruling on the merits of the case. All it said was, "No, we're not going to do summary dismissal." So there wasn't this big victory. I mean, at least I don't consider it a big victory. But at least they avoided a total disaster.

And that EIS thing is still in court. I've forgotten what stage it's at. There's briefs and motions and whatnot going back and forth. And what I think it did accomplish was it made the Federal Government decide to do another draft EIS on TROA [Truckee River Operating Agreement], but they're still litigating against a programmatic EIS, which is what the lawsuit is

about.

Seney: Right.

Carson I'm not an attorney, but it seems to me a programmatic EIS is a term that everybody's really fighting over, and I don't think it's really the point.

Seney: A programmatic one is a much broader, more comprehensive kind of document, isn't it, than what has been contemplated as satisfying the Federal and California statutes for environmental impact statements and environmental impact reports on the TROA? Did that make sense? I think it made sense.

Carson Yes, but I think you're describing it in the same way that Fallon is.

Seney: That could very well be.

Carson What I understand, from talking to the Federal lawyers, is that a programmatic EIS is something you do. For instance, if you're going to have a program to lease coal in the Western United States, you would do a programmatic EIS on that whole operation, and then you would do an individual EIS at each location that you were going to lease the coal.

That model doesn't quite fit this situation, because we're only talking about one location, that's the Truckee-Carson watershed. And so what the feds are saying is, "We agree. We need to do an analysis of the—what's the word—combined effects—I think that's the right word—of different things going on." But that's not the same thing as a programmatic EIS.

So anyway, to me it seems like there's an awful lot of argument about semantics, and there again, I think the I-S process is being used to try to obstruct something, because it doesn't solve Fallon's problems. You know, I'm sure you've done enough interviews and you've heard all the history of the effort in the first place way back in the beginning was to solve all of the problems, and that turned out just not to be achievable. So we solved the problems we can solve—te interstate allocation, the drought supply for Reno, the Pyramid Lake issues—and set the other issues surrounding the Newlands Project aside for another day. But I think their fear is that once we get our problems solved that there won't be any incentive to solve their problems.

Seney: What other kind of litigation are they pursuing besides the EIR/EIS litigation?

“One of the other things that has happened in the last year is that the State Engineer granted the

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Pyramid Lake Tribe the unappropriated water in the Truckee River, which is a condition to the settlement taking effect. TCID, and perhaps Fallon and Churchill, I'm not sure, they're appealing that decision through the courts, because TCID had an application for the unappropriated water also. . . ."

Carson One of the other things that has happened in the last year is that the State Engineer granted the Pyramid Lake Tribe the unappropriated water in the Truckee River, which is a condition to the settlement taking effect. TCID, and perhaps Fallon and Churchill, I'm not sure, they're appealing that decision through the courts, because TCID had an application for the unappropriated water also. The State Engineer denied their application and gave it to the tribe, and so they're protesting and appealing that ruling. And then there's a big dispute about which court that belongs in. So that is another litigation thing that's going on.

Seney: My understanding about that issue is that even if the courts side with TCID, the Federal Government will not permit them to transport those unappropriated flows to the Truckee Canal.

Carson Right. The whole original case that was put on was from a letter that said that. So the State

Engineer said, “Well, if you can’t take delivery of the water, you can’t make beneficial use of the water. Therefore, it would be improper for me to grant you the permit.”

Seney: Well, it’s this kind of litigation, along with what some people would say, referring to previous EIS/EIR litigation, it’s just stalling tactics, just putting a hammer in the works and hoping that something will accrue to them over it.

Carson Yes, I think that’s right. I don’t know how they pay for it all. But I think it is a stall tactic.

Interstate Allocation of Water Between California and Nevada

Seney: Yes.

“ . . . one of the biggest benefits of the whole Negotiated Settlement is to get the interstate allocation between Nevada and California secured. . . . ”

Lahontan Valley Interests Don’t Appear to Have A Grasp of the California Water Situation

Carson I don’t think that they [the Lahontan Valley

interests]² have any grasp of is the atmosphere in California, because one of the biggest benefits of the whole Negotiated Settlement is to get the interstate allocation between Nevada and California secured.

Seney: You're not talking so much about the Lake Tahoe allocation. You're talking about the allocation of the Truckee River, the 90 percent to Nevada, 10 percent to California.

“The Tahoe allocation is not as much a concern. But that 90/10 on the Truckee Basin is crucial to all Nevada water users. . . .”

Carson Right. The Tahoe allocation is not as much a concern. But that 90/10 on the Truckee Basin is crucial to all Nevada water users.

“ . . . environmentalists in California . . . the water ought to be managed for environmental enhancement and really don't care whose hide it comes out of. . . . And so we have been working all these years to provide environmental enhancement in California in a way that doesn't deprive any Nevadans of their water rights. . . .”

The other aspect of the California

2. Clarification provided by Ms. Carson.

settlement is that environmentalists in California really have an attitude that the water ought to be managed for environmental enhancement; and we really don't care whose hide it comes out of. At least that's my perception. And so we have been working all these years to provide environmental enhancement in California in a way that doesn't deprive any Nevadans of their water rights. And I don't think the people in Fallon have much of a understanding of the flavor of that whole dynamic.

Seney: Yes.

“ . . . do they even know how much water was taken away from the city of Los Angeles out of Mono Lake? And if the city of Los Angeles doesn't have enough political pull to retain its water, how in the world is the State of Nevada going to retain its water if it gets in a hostile situation with California? . . . ”

Carson For instance, do they even know how much water was taken away from the city of Los Angeles out of Mono Lake? And if the city of Los Angeles doesn't have enough political pull to retain its water, how in the world is the State of Nevada going to retain its water if it gets in a hostile situation with California?

“It's particularly annoying to me that we're on the

front-line doing all this fighting to retain the water supply for Nevada collectively, and then we've got the junior water rights holder on the river fighting us. . . ."

It's particularly annoying to me that we're on the front-line doing all this fighting to retain the water supply for Nevada collectively, and then we've got the junior water rights holder on the river fighting us.

Seney: Yes. I know that there are other Nevada interests that I've interviewed, Reno interests particularly, that are concerned that it's possible that the settlement might unravel.

Carson Well, that's always possible.

Seney: That's their big concern. This is someone who hasn't approved their interview yet, so I don't want to say who it is. But that's their big concern, that this 90/10 business will not hold.

Carson I mean, if the settlement unraveled, then there'd be just lots more litigation, and we'd be in some Supreme Court adjudication proceeding, I guess.

Seney: Right.

Carson Anyway, so, yes, that's a big concern is, if this

unravels, where are we on all the issues?

Seney: Let me go back with you to 1989, before we talk about the TROA, because, actually, that's what we've been hinting at here is the TROA negotiations, because I want to find out what you did, as you came here, in terms of the Negotiated Settlement and Public Law 101-618.

Negotiated Settlement and Public Law 101-618

Carson Well, the Preliminary Settlement Agreement between Sierra Pacific and the tribe was signed in '89.

Seney: Were you here then?

Carson I had just been here a few months when that happened, so I was not really involved with negotiating that Preliminary Settlement at all.

Seney: This deals with Stampede Reservoir and storage rights and fish protection and drought protection and that kind of thing?

“The basic horse trade was that Sierra Pacific has a lot of water rights, but we don't have very much storage, and . . . Pyramid [Lake Paiute] Tribe had control of a large reservoir, but they didn't have very many water rights to put in it. So somebody . . . figured out that there's a deal to be made here.

We will give you our extra water if you'll let us use your reservoir. And then in a drought time we get to keep the extra water, and non-drought times we give it to you. . . .”

Carson Right. The basic horse trade was that Sierra Pacific has a lot of water rights, but we don't have very much storage, and because of the U.S. Court of Appeals decision on Stampede, Pyramid Tribe had control of a large reservoir, but they didn't have very many water rights to put in it. So somebody, I don't know if it was Sue Oldham or Bob Pelcyger got together, figured out that there's a deal to be made here. We will give you our extra water if you'll let us use your reservoir. And then in a drought time we get to keep the extra water, and non-drought times we give it to you.

Why the Pyramid Lake Paiute Tribe Was Not Protesting Water Rights Transfers in the Truckee Meadows

That basic concept—I want to go back, if I could, to something that was said a half hour ago, which is about, why didn't the tribe protest water rights in the Truckee Meadows? I mean, there's a legal distinction about how difficult it is, but the other big reality is, in the Preliminary Settlement Agreement, we already agreed to give them 90

percent of the extra rights. If you look over a long period of time, this provision in which we store all the extra water we have in good years and give it to the fish in Pyramid Lake and we only get to keep it in drought years, well, the drought years are few in number, so the aggregate volumes of water involved over a 100-year, say, period, is 90 percent of the water we give to Pyramid Lake.

Seney: Right.

Carson And we keep the 10 percent during the dry years.

Seney: It's a very elegant agreement, I think.

Carson Oh, it was a brilliant, brilliant concept. So why should the tribe bother to protest the water rights here in Truckee Meadows when we're going to give them 90 percent of it anyway? There was really no motivation.

Seney: Sure.

Hearings Before the U.S. Senate Subcommittee on Water and Power

Carson But anyway, the PSA [Preliminary Settlement Agreement] was signed. Then the legislation [Public Law 101-618] was passed in Congress in '90.

“I did have the privilege of going to the Senate subcommittee hearings on the bill, which was fascinating. . . .”

Now, I really wasn't involved much during that time, because it was so far gone and I was too new on the staff, although I did have the privilege of going to the Senate subcommittee hearings on the bill, which was fascinating.

Seney: How do you mean?

Carson Oh, just to have the opportunity to see the Senate in action on a subject that I know something about and to see the players and who's saying what. It was really a wonderful opportunity.

Seney: Were you there when John Sayre appeared for the Department of the Interior?

John Sayre Testimony

Carson Yes, I sure was. And that was the first time I'd ever been to a hearing, and I thought all hearings were like that.

Seney: Like what? Describe what you saw.

Carson Oh, he just got—he looked like a fool. He couldn't answer any of the questions. Senator Bradley was

very well prepared, and he was just asking him questions about things that Sayre had in his testimony that made no sense.

“It was obvious that the Bureau of Reclamation was just going to stand in this ironclad way of looking at the world that they had always had and they weren’t capable of looking at anything in a new way. . . .”

It was obvious that the Bureau of Reclamation was just going to stand in this ironclad way of looking at the world that they had always had and they weren’t capable of looking at anything in a new way.

Seney: They were clearly the authors of this testimony, that he was reading in ignorance?

“. . . he was probably inadequately briefed and his whole organization was out of step with this idea of a new flexible way of running a river and of negotiating a deal instead of litigating it. They were just out of sync with all of it. . . .”

Carson I would say he was probably inadequately briefed and his whole organization was out of step with this idea of a new flexible way of running a river and of negotiating a deal instead of litigating it. They were just out of sync with all of it.

Seney: I'm told that the hearing room, the atmosphere was kind of electric in the hearing room.

To Support TCID, the National Water Resources Association Opposed Public Law 101-618

Carson: It was. It was very exciting. Of course, there was the National Water Resources Association, which is a pretty influential lobbying group, and they were trying to kill the settlement.

Seney: What would be their motive in killing the settlement?

“Because the National Water Resources Association was trying to kill the settlement bill, the Nevada Water Resources Association . . . dropped out of the national group . . . and I said, ‘You . . . cannot be lobbying against this bill that is so beneficial to most of the northern Nevada population just because this group from TCID is telling you to. And we don’t want to belong to an organization that operates that way.’ . . .”

Carson: Because the farmers in Newlands Project told them to try to kill it, because the Newlands people still, you know, they believed then and they believe now that it was real bad for them, which is another interesting little tangent. Because the

National Water Resources Association was trying to kill the settlement bill, the Nevada Water Resources Association, which at that time was an affiliate, dropped out of the national group, and that was my doing, because I was president of the Nevada organization at that time, and I said, "You guys, you cannot be lobbying against this bill that is so beneficial to most of the northern Nevada population just because this group from TCID is telling you to. And we don't want to belong to an organization that operates that way."

Seney: I would think that that would have undercut their opposition, the national organization's opposition, to have the Nevada affiliate drop out.

Carson I think it has diminished their ability to do anything on Nevada water issues since then. At the time, it was too late to impair them at that moment.

Seney: Yes. There was too much momentum behind the settlement for it to be stopped by these people, you mean?

Carson Well, I couldn't get the Nevada Water Resource Association to move fast enough to have an affect on that particular bill.

Seney: And this would have been part of the lobbying that TCID undertook in that ninety-day period

from that hearing, when Senator Bradley said, “We’ll give you ninety days to try to work these things out.”

Carson Right.

Seney: TCID essentially opposed the bill during that period.

Carson Right, and did lobbying to try and get it killed. I mean, Marcus [Faust, the Washington D.C. lobbyist for Sierra Pacific Power] would be the best one to talk to on that.

Seney: Yes, right. He’s told me all about that, right.

Carson I mean, I’d have to say, when I was there, I was real green and didn’t have as much of an understanding of what was going on. And Marcus would be the one who really would understand what was going on in the undercurrents.

Seney: He has told me, and others, Bob Pelcyger, Tom Jensen [staff counsel to the Subcommittee on Water and Power], that this is the origins of Section 209 in the Settlement Act, that works not necessarily to the benefit, to put it mildly, of TCID and the farmers.

Carson I have heard that, also.

Seney: There was anger, and it was expressed in Section 209.

Carson Right. I have heard that, also.

Seney: Yes. What about, then, when Senator Reid decides to convene the so-called Settlement II negotiations.

Settlement II Negotiations

Carson Well, when the second-round negotiations were convened, it was Senator Reid's initiative, and I'd have to say it was an intense six-months' effort, a lot of time and energy invested, and the closest I've ever seen to finding a settlement for the Lower Truckee River issues. But in the end it didn't succeed, and—

Seney: Let me change the tape.

END SIDE 2, TAPE 1. JULY 23, 1999.

BEGIN SIDE 1, TAPE 2. JULY 23, 1999.

Seney: My name is Donald Seney. I'm with Janet Carson, in her office in Reno, Nevada. This is our first session, our second tape. Today is July 23, 1999.

Liked Having A Professional Facilitator During Settlement II Negotiations

Carson We were talking about the second-round negotiations. I think that having a professional facilitator was really helpful.

Seney: I was going to ask about that. You liked that? You thought that was good?

“... one of the problems with the whole TROA process is, because there’s nobody in charge of the negotiating process, it tends to wander and people come unprepared . . . a lot of process inefficiency. . . .”

Carson Yes, it was more efficient. I don’t know, I mean, maybe efficiency isn’t the most important thing in these negotiations. But one of the problems with the whole TROA process is, because there’s nobody in charge of the negotiating process, it tends to wander and people come unprepared or nobody really knows what the agenda is, a lot of process inefficiency. It’s part of the reason it’s taken us nine years.

Seney: Yes.

Carson Whereas in the second-generation settlement, there was a professional facilitator whose job it

was to say, “All right, these are the subjects we’re going to tackle, and here are the assignments, who’s going to do what,” and try to get the parties to come up with solutions.

Seney: We’re talking about Gail Bingham?

Gail Bingham as Facilitator

Carson Gail Bingham, right. And there’s been, you know, criticism that she wasn’t hard enough on the parties to kind of do a little more butt-kicking to get us to come to agreement.

“ . . . in the end, obviously there’s all this debate about who walked out. . . .”

And then in the end, obviously there’s all this debate about who walked out.

An environmental group said ‘There is not enough water in this system to cut off the Truckee Canal. You can’t do it.’ . . .”

I will never forget one of the remarks made by—they called themselves the Environmental Coalition, or something like that. It was kind of an amalgam of environmental interests—who said to the Pyramid Tribe, to Bob Pelcyger, “There is not enough water in this system to cut off the Truckee Canal. You can’t

do it.”

“. . . that, of course, is the tribe’s objective. Their long-term objective is to get rid of the Truckee Canal and not have any Truckee River water going out of the basin over to the Newlands Project. . . .”

And that, of course, is the tribe’s objective. Their long-term objective is to get rid of the Truckee Canal and not have any Truckee River water going out of the basin over to the Newlands Project.

“But then it did seem in the end that we—one day we thought we had a settlement. . . . Everybody thought we were done, and then the next day the farmers came back and said, ‘No, we don’t have a deal,’ and that was kind of the end of it. . . .”

But then it did seem in the end that we—one day we thought we had a settlement.

Seney: So I’m told. There was applause and hugging and jubilation.

Carson Yes. Everybody thought we were done, and then the next day the farmers came back and said, “No, we don’t have a deal,” and that was kind of the end of it.

You know, there was some pieces of it that went forward. The Water Quality Settlement ended up being implemented. It seems to me there were a couple of other items that got solved, with that as the starting point. Oh, the Fernley water system.

I believe there will be another effort like that once we get TROA done. I think once we get the tasks before us wrapped up, Governor [Kenny] Guinn has indicated an interest in helping to find a solution to the remaining problems, and I think he and Senator Reid jointly might kickoff something.

Seney: Let me go back to the Settlement II negotiations. Sierra Pacific Power didn't really have a lot on the table, as I understand it, in those negotiations. They were mainly issues dealing with the tribe and TCID

“The big three-way tug-of-war was the tribe versus the farmers versus the wetlands interests, because to some degree, the Truckee water that goes over to Lahontan Valley ends up supporting wetlands in Lahontan Valley. . . .”

Carson The big three-way tug-of-war was the tribe versus the farmers versus the wetlands interests, because to some degree, the Truckee water that goes over to Lahontan Valley ends up supporting wetlands

in Lahontan Valley. So that was the three-way pull.

Sierra Pacific had two interests. One was just, "Let's get rid of this litigation and solve the water problems, if we can." The other one is, we have some big electric issues out in Lahontan Valley.

Seney: You're running the system out there and the contract was coming up, right?

Carson Right. And so we wanted to solve the electric issues, and part of the electric solution—when we talk about electric issues, there's money involved, and so part of the money could have been used as a bargaining chip in stimulating a water settlement, maybe.

Anyway, we ended up we did not get solution there on the electric issues. The contract did expire just a year ago this summer, and that ended up going to litigation in a fairly acrimonious hearing at the Public Utilities Commission, in which the PUC found that TCID was not—I've forgotten the word—not able to or capable of running the electric system, and they denied their request to provide electric service.

Seney: So it's still in your hands.

Carson So it's still in our hands, and we did negotiate a new contract. The electric stuff I'm not expert on.

Seney: Sure. I understand the two [water and electricity] are quite different.

Carson I don't know the ins and outs of that. But that was the other piece of the pie that we had.

How Sierra Pacific Works Out Its Negotiating Strategies

Seney: At Sierra Pacific Power, when you're going to take part in these Settlement II negotiations, from the company's side, what is the process of deciding what positions you're going to take and what your strategy is going to be and that kind of thing? How does that work?

Carson If it's a straight water issue, then we would get three or four or five of us together who are into these issues, and we do lengthy arguing. We probably argue more than any of the other negotiating teams on the river.

Seney: I'm told that's part of Sierra Pacific's culture, is that there's a lot of argument among people over things.

Carson Maybe so. I thought it was just the water side, but I don't know, maybe it's the way it is throughout

the company. We have a lot of internal debate on stuff, but then usually we come up with some kind of a agreeable approach. And oftentimes what turns out is, one of us will be thinking in terms of how we want it to turn out, and the other one is thinking about, "Well, that's fine, but how to you make it also work out for this other party?" Because one of the things that's part of our water culture—I don't know about the electric side—is trying to solve everybody else's problems, too, and we get into immense, immense investment of time and energy trying to solve the other party's issues.

That was one of our big roles in the whole TROA process was keeping track of the issues, helping facilitate between two other parties that have a difference. We were trying to act as facilitator and negotiating entity.

Seney: Let me follow up with that. I take it at this point Sue Oldham was still Director of Water.

Carson Yes.

Seney: And then it would have been you.

Carson In the second-round negotiations?

Seney: Yes. And Bob Firth, was he still here?

Key Sierra Pacific Players During the Settlement II Negotiations

Carson No, he was gone by that time. You know who the key players were, really, were Sue Oldham, Gordon DePaoli, and Rod Hall, because Sue has great conceptual ideas, Rod has the analytical understanding.

Seney: Again, from the engineering firm.

Carson From an engineering standpoint. And Gordon has a great grasp of how you could implement legally and also how that would be perceived over on the farmers' side, because Gordon has clients who are farmers, too.

Seney: Right. I'm aware of that.

Carson And so he often can shed some light on what might or might not work from the other side.

Seney: Now, once these things are hashed out and you come to a position, do you go to the president then and brief him on how you think these things should go? Does it go to the board eventually or just to the President?

Carson Only on a very big issue. Most of these, if our little group argues it out to conclusion, then the president of the company has a high degree of

confidence that we have probably exhausted all the issues. You know, it would have to be a fairly large issue of—I mean, we argue endlessly about little stuff. It would have to be something big to go to that level.

“ . . . some of the parties to the Negotiated Settlement on TROA, they want us to say that any successor in interest to the TROA has to have the approval of the other parties to TROA, and we’re absolutely not going to agree to that. I mean, I’ve taken that to the top of the company, and we are not going to let our entity as a water company be determined by the State of California and the United States and Nevada and the tribe. . . . ”

For instance, an example that’s currently on the table, some of the parties to the Negotiated Settlement on TROA, they want us to say that any successor in interest to the TROA has to have the approval of the other parties to TROA, and we’re absolutely not going to agree to that. I mean, I’ve taken that to the top of the company, and we are not going to let our entity as a water company be determined by the State of California and the United States and Nevada and the tribe.

Seney: In other words, if you decided to sell the water company or amalgamate with some other power company and create a new entity, that would have

to be approved by the TROA signatories.

Carson That's their position.

Seney: I can understand why you're not anxious to have that happen.

Carson Right. I mean, we're going through a merger right now. That 's a good example. We're not going to let the whole well being of our corporation be subject to the approval of the TROA parties.

Seney: Why do they want to be able to do that?

Carson They're looking at the TROA as a contract, and they're saying it is customary in contracts that, if you sign over your privileges and responsibilities under the contract to a third party, we get to approve that third party. So we'll see. But that's the kind of issue that would go to the top of the company.

Seney: I see. Okay.

Carson Something fundamental.

Seney: Well, I can understand both why you don't want to be bound and why you take it up higher, to make sure that you had the proper direction and the oomph behind you when you say, "Listen, our

board of directors won't buy this," right?

“ . . . those of us who are on the front line have been doing this for years and years, and we do have a pretty high level of confidence in what we know will work or won't work. You know, if this is going to wipe out the drought benefits we get under the deal, we know that's a non-starter. . . .”

Carson Right. You know, partly it's because it's so complex, and those of us who are on the front line have been doing this for years and years, and we do have a pretty high level of confidence in what we know will work or won't work. You know, if this is going to wipe out the drought benefits we get under the deal, we know that's a non-starter.

Seney: Right. I want to go back a minute to the—excuse me for skipping back and forth—to the Settlement II negotiations. Were you optimistic that something would be resolved when that began, do you remember?

Failure of the Settlement II Negotiations

Carson I think at the beginning I was.

“As an indication, I stopped going to the meetings about halfway through. . . .”

As an indication, I stopped going to the meetings about halfway through.

Seney: And that was your–

Carson Because I just thought it wasn't worth my time. We still had Sue and Rod and Gordon there, but it wasn't just–

Seney: So by that time you had the feeling this isn't happening.

“Somebody commented to me they thought the fatal flaw was that sort of doing the negotiation at all was a top-down mandate, Senator Reid saying, ‘You and you and you, you go get in that room and you negotiate.’ . . .”

Carson Yes. I just didn't think it was going anywhere. Somebody commented to me they thought the fatal flaw was that sort of doing the negotiation at all was a top-down mandate, Senator Reid saying, “You and you and you, you go get in that room and you negotiate.” I mean, myself, I didn't think that was a problem, but I guess some of the folks from Lahontan Valley thought that was not inspiring to success.

“One of the fundamental things about negotiations is, you've got to believe that the solution you're going to reach in the negotiation

is better than what you would get otherwise, and I don't think there was that conviction. . . .”

One of the fundamental things about negotiations is, you've got to believe that the solution you're going to reach in the negotiation is better than what you would get otherwise, and I don't think there was that conviction.

Seney: On the part of the Truckee-Carson Irrigation District, at least?

Carson Right.

Seney: You know, they did have a new face, maybe someone more cynical would say a new facade, at those negotiations in the form of the Lahontan Valley Environmental Alliance, which had been just recently formed.

Carson Right.

Seney: And perhaps if you stopped going to the meetings you weren't able to observe this, but I'm told that Lyman McConnell began as a kind of observer and then moved up to the table, and the closer he got to the table, the less likely it looked that there would be an agreement, that he was picking it apart.

“ . . . one of the most dramatic moments on the recent negotiations in the legislature over AB-380 was when Lyman McConnell and Bob Pelcyger shook hands, and this Joint Testimony . . . it’s the first document that has ever been reached that’s signed by the Lahontan Valley interests and the tribe, ever. So this was a pretty big breakthrough . . . ”

Carson Well, that wouldn’t surprise me. Well, I just want to make two comments. One is, one of the most dramatic moments on the recent negotiations in the legislature over AB-380 was when Lyman McConnell and Bob Pelcyger shook hands, and this Joint Testimony—I’ll give you a copy of it—it’s the first document that has ever been reached that’s signed by the Lahontan Valley interests and the tribe, ever. So this was a pretty big breakthrough, and possibly giving the Lahontan Valley people a little taste of success in negotiating maybe will encourage more negotiated solutions. I hope so.

Seney: Yes, right.

“I believe that we would be doing better in these negotiations if we had more women involved, particularly in the farming community, because the men out there are so dug in about their rights, their privileges, their positions, and they just are not very adept at seeing solutions in a different

way. . . .”

Carson And then the other comment I will make, and historians can call me a sexist if you want, but I believe that we would be doing better in these negotiations if we had more women involved, particularly in the farming community, because the men out there are so dug in about their rights, their privileges, their positions, and they just are not very adept at seeing solutions in a different way.

We had a meeting—it wasn’t a meeting, exactly. It was sort of a reception for Patty Beneke when she became Assistant Secretary [for Water and Science in the U.S. Department of the Interior], all women, from the tribe and from the farming community and from the Reno-Sparks community, and we had kind of a little round table discussion. The fascinating thing to me was the Indian women and the farming women said exactly the same thing.

Seney: I would think they’d have a great deal in common.

Carson Which is, they want a nice, small community to raise their kids in. They want to get rid of all this fighting. And it was just really a revealing thing.

Seney: One of the things that’s struck me in the

interviewing I've done is how many women are involved in this issue, not so much out in the project area, but otherwise. I mean, yourself and all kinds of women. I mean, dozens.

Carson Yes, there a lot of women in Nevada, and in southern Nevada, even more so.

Seney: Is that right?

Chris Theil

Carson Yes. And, you know, that may be another factor in why the AB-380 was successful. You asked about representation for the State of Nevada. Well, there's a woman over there who's becoming more and more a part of their leadership. Her name's Chris Theil. She started out as more or less a technical adviser, and she's getting more and more into the negotiations, and she's real good.

Seney: Yes.

Carson The town of Fernley is represented by a woman. The town of Truckee is represented by a woman. And these are entities that have succeeded—

Seney: You mean Rebecca Harold in the case of Fernley and Kathleen Eagan in the case of Truckee.

Marcia DeBraga

Carson Right. And they've succeeded in making things work. And there's Fallon with no women at all on their team, although I'm optimistic that Marcia DeBraga, I think, is going to be a new force in the water arena.

Seney: Is she Ted DeBraga's daughter-in-law?

Carson Sister-in-law. Marcia's husband is Ted's brother, and I can't remember his name. But anyway, I think she has a real potential to be an influence for problem-solving.

Seney: Well, Mary Reid plays an interesting role out there, I think.

Mary Reid

Carson I think she could be very effective, but I haven't seen her very involved in the last year or so. You know she went to Jordan for a period.

Seney: I did know that, right.

Carson And since she got back, I haven't seen too much of her. But she does, she has, I think, the potential to do a lot of good. But then you've got to have people who have authority to say yes.

Seney: Well, that's very different, say, than the power company. Here you hash these things out. You come to a unified position. If need be, you go to the president or the board to get the proper institutional support, and you present one voice. There you've got all these, what, 3,000 water rights holders or whatever it is, and they're all independent operators, really.

“I have the luxury of, this is only one organization. We can make a decision and implement it, and I don't have to work with all this consensus-building and unanimity, necessarily. So I'm lucky. I work for an organization that has a fairly well-defined voice. . . .”

Carson And I do forget that. I have the luxury of, this is only one organization. We can make a decision and implement it, and I don't have to work with all this consensus-building and unanimity, necessarily. So I'm lucky. I work for an organization that has a fairly well-defined voice.

Seney: Before we began, I mentioned the tours that Sierra Pacific is well known for. You said they're not doing this so much now, because I guess settlements have been reached and there hasn't been a drought. That was a very effective way for you to present your point of view.

Sierra Pacific Has Provided Educational Tours of

Bureau of Reclamation History Program

the Area and Sierra Pacific Facilities

Carson Yes.

Seney: Marcus Faust talked about that, being able to bring people out from Washington and give them a nice tour, and the resources the company has to devote to this are considerable, as well.

Carson Right. Right. And they are a wonderful educational path. There's nothing like getting people out to look at the reservoir and say, "Look, here's Stampede. You see there's empty space there? Well, we're going to put water in it."

Seney: The essence of lobbying, is just this kind of educational activity, where you get an opportunity to give your point of view and persuade and charm and all that sort of thing. You have a really nice, charming smile on your face now. You know what I mean.

Carson Yes, it is. It is very helpful.

Seney: I think in that institutional sense, the farmers are at a disadvantage over other entities that they have to deal with. I mean, I don't think that's particularly an excuse, but it's something of an explanation, perhaps, for why they do what they do.

**Suggests That the People Invested in the
Newlands Project Might Better Spend Their Money
on Problem Solving Rather Than Litigation**

Carson But, you know, if they would spend the money they spend on litigation on problem-solving and resource development. For instance, Fallon and Churchill County, to my knowledge, have never done a water resource plan like we've done, and yet they seem to have lots of money available to litigate.

Seney: Yes. Hundreds of thousands a year it costs them.

Carson Yes, I'm sure it does.

Seney: As much as 300,000-plus per year.

Carson That's incredible.

Seney: That all comes out of the farmers' pockets.
That's assessed to the farmers.

Carson Yes.

Seney: Above the O&M costs.

Carson I don't know. I believe God helps those who help themselves.

Seney: Well, I think a lot of people feel that way. It's a

very tough situation when you have a kind of clash of cultures, in a way.

Water Education Foundation's Film *Healing the Waters*

Carson Yes. Did you see the film "Healing the Waters"? It was done by the Water Education Foundation.

Seney: I did. I thought that was pretty good.

Carson Yes, I thought they did a nice job.

Seney: I thought they got it right, yes. I think they talked to the right people and asked the right questions. I was impressed with that.

Carson Yes.

Seney: That's a California organization.

Carson Right.

Seney: I'm familiar with them, and they do pretty good stuff, I think, and that was a good example.

Carson It was. It was very illuminating, I think, on what's the problem with the Lower Truckee River, in particular.

Seney: Let me ask you about the TROA, because, of course, the TROA has to be signed off on before all of these things. It's kind of interlocking, the TROA. You won't get your finalized storage rights until it's signed, right?

Truckee River Operating Agreement (TROA) Negotiations

Carson Right.

Seney: The tribe won't get its development money until it's signed.

Carson Right.

Seney: The interstate allocation won't be finalized until California and Nevada sign.

Carson Right.

Seney: The Federal Government is the other signatory, and I don't know if there's anything in it for them, is there?

Carson Of course, as trustee for the tribe and the endangered fish, they get benefits.

Seney: Right.

Carson And they're going to get money from us for

storage, probably. We'll have to pay for the storage in the Federal reservoirs.

Seney: Right. I know you have paid, what, the Washoe County Water Conservancy for storage in Boca. I guess that's their reservoir, isn't it?

Drought Protection Storage for Sierra Pacific in Boca and Stampede Reservoirs

Carson Yes. That agreement, though, lapsed when we reached a new agreement in '94 to allow us to store in Boca and Stampede. We're paying 200,000 dollars a year for that privilege, and every one of the years since we've signed, the water has spilled because it's been so wet.

Seney: Is that your water that's spilling?

Carson That's our water that spills.

Seney: And you're storing, what, about 5,000 acre-feet there, right?

Carson Yes.

Seney: Something in that neighborhood.

Carson Yes, right. So every year we fill it up, and every spring it spills, and then we write a check for

200,000 dollars anyway.

Seney: But, of course, it is a drought protection agreement, isn't it?

Carson Yes.

Seney: I mean, I can understand why you're kind of annoyed that in the last number of years you've been writing checks for—

Carson For nothing.

Seney: Yes.

Carson But it is. It's good insurance.

Seney: Yes.

TROA is in Intertwined with Many Other Issues

Carson But you're right. The whole TROA is intertwined with these different provisions. One of the things that is confusing—and I had a slide made so I could explain it to groups—is, okay, in Public Law 101-618 there are many provisions. Which ones are linked and are mutually contingent and which ones are separate? Because there's a huge, I believe, deliberate effort by the Lahontan Valley interests to characterize it as the whole thing is one big contingent deal; hence, why it needs a

programmatic EIS. But when you actually read the act, some things are contingent and some things are not, and you did a good job of capturing the main ones that are contingent.

And so TROA, now that we think we have finished agreeing, in concept and in principle at least, is the biggest one of those contingencies that has to be completed. I don't think that readers are going to see very much difference between the final TROA and what was released as a public draft a year and a half ago. Little fine-tuning and some added bells and whistles, but the basic deal hasn't changed. Instead of running water down the river at a constant rate all the time for generation purposes, you store it when there's no need for the water and release it later. Basic principle really hasn't changed.

Seney: Well, the company has agreed to abandon the Floriston rates, right?

Effects Upon the Floriston Rates

Carson Not to abandon them, but to relax them.

Seney: Okay. And this required 500 cfs from March 1 to September 1, and 400 cfs for the balance of the year, measured at Farad.

Carson Right. The gauge is up there by the state line.

Truckee River Electric Company

Seney: This is from the old Truckee River Electric Company's right for flows, when you used to make a lot of power out of hydroelectric sources.

“In the 1800s, there was a constant flow for running the lumber mills, and then around the turn of the century, when the electric generators were built, in order to provide electricity to the mines in Virginia City, then those milling rights were converted to electric rights. . . .”

Carson Right. In the 1800s, there was a constant flow for running the lumber mills, and then around the turn of the century, when the electric generators were built, in order to provide electricity to the mines in Virginia City, then those milling rights were converted to electric rights. And so that's what the flow is designed to optimize those generators.

In 1935 “. . . the Truckee River Agreement divvied the water up between the farming community in Reno at that time and the farming community in Fallon. . . .”

Also, along with providing a constant flow rate, then the Truckee River Agreement divvied the water up between the farming community in

Reno at that time and the farming community in Fallon.

Seney: This is the original TROA.

Carson The original—

Seney: 1935.

“ . . . so now we’re saying, ‘Look, we could get along with not quite such a rigid flow regime and allow the 500 and 400 cfs to vary some, if we get something for it,’ and the something we get for it is drought storage. . . .”

Carson 1935 agreement, right. And so now we’re saying, “Look, we could get along with not quite such a rigid flow regime and allow the 500 and 400 cfs to vary some, if we get something for it,” and the something we get for it is drought storage.

Seney: Well, that’s a really nice chip you have to play, though, isn’t it, willing to be flexible, as you say, on the Floriston rates.

Sierra Pacific’s Flexibility About the Floriston Rates Would Benefit Spring Spawning Runs Out of Pyramid Lake

Carson Right. And so what that’ll mean is, some times

when there would be 500 cfs in the river, and we'd be generating, but the water is flowing into Pyramid Lake at a time that the fish are not spawning and there's not a real beneficial use, the tribe could call up the administrator of the river and say, "We'd like you to retain that water up in the reservoirs. Don't send it to Pyramid Lake at this time. We want to have it available next spring for spawning." And that means the timing of the water has changed, and it means we lose electric generation.

Seney: But this is, what, 1 percent or less than 1 percent now of the power you actually generate and use.

About 1 percent of Sierra Pacific power comes from the hydroelectric plants, but ". . . each one of those little plants generates over a million dollars a year worth of electricity. . . ."

Carson It's about 1 percent. Everybody likes to characterize that as being unimportant, but if you look at it, each one of those little plants generates over a million dollars a year worth of electricity. And so we're looking at a fairly large dollar value for those generators, and there's practically no cost of operation. There's no fuel required.

Seney: Cheapest power you can get.

"It's the cheapest power we have. . . . if we

generate less, that means we will have to go out and purchase that electricity somewhere else, and it'll be more costly. . . .”

Carson It's the cheapest power we have. And so if we stop generating, or if we generate less, that means we will have to go out and purchase that electricity somewhere else, and it'll be more costly.

**Under Public Law 101-618 Sierra Pacific is
Compensated for its Losses for Not Generating
As Much Hydropower**

So we said in the agreement, we said, “Okay, we will allow a relaxation of those flow regimes, and the power will be reduced by doing that, but the Act says we get compensated for that.” So here again is an example of, let's throw money at this problem to try to solve it.

Seney: And this is essentially folding into Public Law 101-618 the Preliminary Settlement Agreement.

Carson Right.

Seney: Because that's what you all decided to do in the Preliminary Settlement Agreement.

Carson Right.

Seney: I thought an interesting aspect of that, by the way, was that here was negotiations between the power company and the Indian tribe over a Federal reservoir and you didn't manage to invite the Feds, and later they had to come in and say, "Well, we need to be signing, too." And I guess they changed a couple of semi-colons to commas or something, and so their feelings wouldn't be hurt, you let them sign, too.

Carson Yes. I've heard that there are other settlements that have been arrived at this way, where the real parties and interests come to some kind of a deal and then they take it to the United States and say, "We need your concurrence."

Seney: Yes. One can only speculate here, but I would think it would have been a lot harder to come to an agreement if you'd had the Federal Government at the table, do you think?

Carson Oh, yes. I think so. It's always harder. The more parties you have, the harder it gets.

Seney: Sure.

Carson And the United States is difficult because they have so many different agencies, often with conflicting objectives.

Seney: Right. Absolutely. Especially here. I mean, even

the Fish and Wildlife Service is schizophrenic, whether it's the wetlands people or the fish people at the Pyramid Lake.

Carson That's right.

Seney: When you say those plants created a million dollars a year revenue, that whole amount is not wiped out. I mean, you're now reducing it to two-thirds of that or half or some fraction.

“ . . . that would mean . . . the water we were generating with is cut off, and when they subsequently let the water go next spring, when the flows are high anyway, it's more water than we have capacity for, so it doesn't do us any good. It's not like we lose today, but we gain tomorrow. . . . ”

Carson Right. It doesn't completely lose generation. It just gets reduced. Because often what will happen is, for instance, if you had this 500 cfs flowing into Pyramid Lake and they decide to not have that water come down now but have it come in the spring, what that would mean then is the water we were generating with is cut off, and when they subsequently let the water go next spring, when the flows are high anyway, it's more water than we have capacity for, so it doesn't do us any good. It's not like we lose today, but we

gain tomorrow.

Seney: Right. You do lose, there's no question.

“ . . . that is also why Sierra Pacific is in the negotiations, because of our electric rights. Most people think it's because we're the water company. . . . the reason is because we have these electric rights that we are willing to sacrifice to some extent. . . . ”

Carson We lose, and we lose on the net. But that is also why Sierra Pacific is in the negotiations, because of our electric rights. Most people think it's because we're the water company. You know, we're the only private entity in this whole project, and the reason is because we have these electric rights that we are willing to sacrifice to some extent.

Seney: That's why I say it's a wonderful chip for you to be able to play in these negotiations to protect your interests for the water. I would think that even, say, if it's only two-thirds generation that you get year after year, that's cheap compared to what it would cost you to build a reservoir, if you could build one somewhere, that would hold as much water as you're going to benefit from, would it not be, in drought years?

The Negotiated Settlement is Not the Least Cost

Bureau of Reclamation History Program

Option for Sierra Pacific Power

Carson Well, actually, this deal is not the cheapest alternative we have. In our water resource planning process, we are required by the PUC to look at all of our resource options and identify what's the least-cost option, and the Negotiated Settlement is not our least-cost option, and that surprises a lot of people. But we have options surrounding groundwater, artificial recharge, swapping water with our neighboring systems. So we have different options that are less expensive.

So far, our regulator at the PUC has been willing to say, "We realize this is not the least-cost option," because that's the mantra. In regulated utilities, that is the thing you're always supposed to do. But we believe that the benefits are sufficiently great to justify this not being the cheapest.

[Looking through papers.] What I'm looking for is—in our Water Resource Plan at page 9-14—I think this is also in the skinny one—we looked at a little tree diagram. So if we get the Negotiated Settlement, we're on this path.

Seney: Let me turn this over.

END SIDE 1, TAPE 2. JULY 23, 1999.

BEGIN SIDE 2, TAPE 2. JULY 23, 1999.

Carson So we have four branches on this tree diagram. If we get the settlement, we're on path A, and the present value of that, which you really have to say is with water meters, because that was one of the requirements in the Preliminary Settlement Agreement, we're at 28 million dollars. If we don't have the settlement, then we identified three different possible scenarios. And I'm going to say, D I will rule out. This was assuming that we had arsenic and radon rules applied that would be very costly, and that hasn't happened yet.

Seney: They still haven't finalized those standards?

Carson They have not. So if we looked at the other two, B and C, I think C is our most likely non-settlement future. You see it's got some artificial recharge. It's got conjunctive use, which basically means you just don't pump the groundwater during good times and you pump the heck out of it in droughts. We had our 5,000 acre-foot storage contract that the bill provided us. The Act gave us that privilege.

Seney: Is that Boca or Stampede?

Carson It's both. And then we did an additional artificial recharge project, and then eventually, out in the year 2044, we would build a small reservoir up in

the hills that are east of Reno. And so we looked at all that, and the present value of that is only 17 million dollars. So we're looking at a 17 million dollars present value on this scenario versus a 28 million dollars present value for the settlement. So I cannot make the pitch that this is our least-cost resource.

Seney: And this one is with water meters and this one says nothing about water meters.

Carson Right. Because meters aren't required if we don't have the settlement.

Seney: Do you think the settlement is, though, going to give you more reliable supply than this alternative?

Carson Not necessarily. One of the things that the settlement doesn't solve is our dependence on that canyon to deliver our water to us, because all the reservoirs under the settlement are upstream, and they all bring the water to Reno through a canyon which has the railroad and the highway on top of it. So one of the big concerns, particularly by the Health Department, is, what if you get a toxic spill in the river, and then three-quarters of your water supply is contaminated.

Seney: Because one-quarter will come out of

groundwater supplies.

Carson One-quarter will come out of wells. This other path, path C, has much more reliance on additional groundwater development and local supplies. So when you say reliability, there are two aspects. One is drought reliability, and the other one is toxic spill.

Seney: Because on the Feather River toxic spill in California—of course, I don't think the train tracks curve anywhere in the Truckee River Canyon the way they do on the Feather River on that very dangerous part—where they dumped all kinds of chemicals into that river and made a huge mess.

Carson And it was that train accident that really brought this issue up front and center, was how much of our water comes down that canyon and what are we going to do if we get some kind of a large, persistent accident?

Seney: Why, then, are you pursuing a Negotiated Settlement if this other option is good?

Carson Well, that's a really good question. Part of it, I think, is, what this cost comparison doesn't reflect is how much would we be spending on litigation if we don't have a settlement. How much in jeopardy would our current reliance on the Truckee River be? So I think there's a

tremendous value to getting rid of the litigation threats that we would have if we didn't have a settlement. I'd say that's probably the most-compelling reason.

Seney: That's a very big reason, wouldn't you say?

Carson Yes, it is a big reason, because we don't know what would happen to the interstate allocation. The tribe has various lawsuits that are on hold, pending the settlement being completed.

Seney: Right.

Carson You know, and all those things, I'm sure, would come back to life if the settlement collapsed.

Seney: I'm sure, too—let me just phrase it rather than in the form of a conclusion but a question. Joe Gremban was—I expect all your presidents are a pretty powerful institution, are they not? Isn't that a pretty powerful office in this company?

Carson Oh, yes. That's the top dog.

Seney: Right. While there's a board of directors, they traditionally have a lot of autonomy, do they not, the presidents?

Carson Right.

Seney: When I interviewed Joe Gremban, he impressed me as an individual who understood power and how to use it and acquire it and was maybe one of the more powerful presidents among all these powerful ones, would you say?

Carson You know, I didn't interact with him enough to know. I'm sure you've spent more time with him than I have.

Seney: Just a couple hours. But anyway, the other thing is, is it possible that because Mr. Gremban negotiated this settlement that helps to give it some pressure for realization to the company culture, too?

Carson I think so. Also, I'd say our board members are quite interested in the water issues and better informed than I would think. A lot of them have water rights, they own water rights. Water gets a huge amount of play in the press, which they see all the time, year after year. And I'd say Sue Oldham is to be credited for keeping the board informed about water issues, because she was before them a lot during the early negotiating time. But I think it doesn't hurt to have the president of the company strike the original deal.

Seney: And I would think, too, in terms of, again, corporate culture and sort of history and outlook, that losing the case over Stampede Reservoir

would make, maybe, the company a bit skittish about depending on litigation.

Court Determined That Stampede Reservoir in the Washoe Project Would Not Be Available for Municipal Water

Carson I think you're right. I think that was a real shock, because for many, many years the assumption was that Stampede would be available for municipal use.

Seney: That's what the Washoe Project Act³ says, isn't it?

Carson Right. That's what Congress said. So that was a pretty dramatic wake-up call.

Seney: I mean, that would make me negotiate. I think I would have a lot less faith in the legal process after I'd been dealt a setback like that.

Carson Yes.

Seney: When I interviewed Mr. Plath, he was—because that was under his watch.

3. Congress authorized the Washoe Project in “An act to authorize the Secretary of the Interior to construct, operate, and maintain the Washoe Reclamation project, Nevada and California,” an Act of August 1, 1956, ch. 809, 70 Stat. 775.

Carson Was that under his watch?

“ . . . they thought they had made provisions for municipal and industrial supply for drought years, and all of a sudden the appeals court says this can't be the first use; it's got to be endangered species. . . . ”

Seney: Yes. He became president about the time the Washoe Act was passed, and he'd been active in that. So he was incensed that it had been taken away from the company, which was his viewpoint, and I can certainly understand that. From his point of view, they thought they had made provisions for municipal and industrial supply for drought years, and all of a sudden the appeals court says this can't be the first use; it's got to be endangered species.

Relationship Between Water Supply and Electricity Sales

Carson Yes, that must have been a shock.

Seney: Yes.

“ . . . we were already immersed in the Truckee River debates. And then if somebody doesn't take care of the water issues, the community won't grow, and that's bad for our corporation. . . . partly because of that phenomenon, also, we

invested a lot of time in trying to solve the wastewater issues around here, the water quality side of the river . . .”

Carson And, you know, the reason the company is in the water business is because historically there wasn't anybody else around here taking care of the water issues. Since we had the hydroelectric plants, we were already immersed in the Truckee River debates. And then if somebody doesn't take care of the water issues, the community won't grow, and that's bad for our corporation.

Seney: You won't sell more electricity, which is really what you want to do.

Carson We won't sell more electricity, that's exactly right. And partly because of that phenomenon, also, we invested a lot of time in trying to solve the wastewater issues around here, the water quality side of the river and waste disposal side, because that has equal, or greater, risk of a moratorium. So I spend much of my time—

Seney: When you say “moratorium,” you mean building moratorium.

Carson A building moratorium, right.

Seney: If you're putting awful stuff in the river, the

Health Department's going to say you have to solve that problem before you can issue more building permits, don't they?

Carson That's right, and that's bad for electric revenues.

Seney: Yes, that's right. I mean, you want to keep those growing.

Carson Right. And for a long time, I think we tried to sort of not say that out loud. But then what I found since I've been here is, it actually helps clear the air if everybody understands what your objective is.

Seney: Sure. I think it's a little disingenuous to pretend that these two aren't related.

Carson Right.

Seney: And that the one, the water doesn't precede the other.

“It's because the water division doesn't make money. . . . It used to be a flat-out loss, but now we make a little bit of money. . . .”

Carson And why is it the company continues to engage in a losing line of business? It's because the water division doesn't make money.

Seney: Does it break even?

Carson Now we do. It used to be a flat-out loss, but now we make a little bit of money.

Seney: I can't imagine the board letting it go, or the President.

Carson I don't know. That'll be interesting.

Seney: You're right, everything has its price.

Merger Between Sierra Pacific Power and Nevada Power

Carson After the merger with Nevada Power, which is going to be completed at the end of this month, there may be a slightly different philosophy, because in the south, they're accustomed to the water issues being taken care of by the Southern Nevada Water Authority, which is a government entity, and the concept that the water issues are taken care of by a division of our own company is going to be real different for the southern Nevada leadership.

Seney: Which is the bigger of the utilities, the southern Nevada one?

Carson They're pretty similar in size. Geographically,

the northern division is much bigger, because we do all of northern Nevada. In the south, they only do Clark County. In terms of personnel, they're similar in size. In terms of revenue, I think they're pretty similar. It's fairly equal.

Seney: What's the board going to look like after the merger? Is it going to be half and half? Are they going to expand it?

Carson I should know this, and I don't. It seemed to me it was about equal members of both former boards put together in a slightly enlarged board, but with quite a few people retiring. So maybe the board got bigger by a third or 50 percent, and I think it was about an equal number from both ends.

Seney: So we're talking about, what, a thirteen-member board, maybe, or fifteen-member board?

Carson Fifteen, I think.

Seney: Who's going to be president?

Carson Mike Niggli (phonetic), who's the CEO in the south. And our President, Mahlon Malquist (phonetic), will be Chief Operating Officer, I think. So it'll be a different situation.

Seney: Yes, definitely.

Carson One thing that we do know, though, is, we don't know who's going to be in all the jobs, but we do know the Vice President in charge of the northern Nevada water system is a fellow named Jeff Ceccarelli, who's been involved with it before. He knows the water issues. So we will have at least consistent leadership at that level.

Seney: And you'll be staying in your position?

Carson I'll be staying here until the settlement's done, and then I'll be moving on to other things.

Seney: Well, you may be here forever, then.

Carson Yes. Well, we'll see. (Laughter) That's not the hope.

Seney: So you know where you'll be within the company or will you be leaving the company at that point?

Carson I'll be leaving the company when the settlement is finished.

Seney: I don't mean to inquire too much personally, but does this mean a buyout for you and a retirement and, I hope, a nice, bright, shiny, golden parachute?

Carson Yes, that's what it means.

Seney: Are you happy?

Carson Oh, I'm thrilled.

Seney: Great. I'm glad to hear that. Apparently that's what happened with Sue Oldham previously, right?

Carson Right.

Seney: She retired.

Carson She took the earlier merger buyout, and then she contracts back to us. And again, once the settlement's done, then our need for her services and my services will be maybe not zero, but it'll be much, much less.

Why TROA Has Taken So Long to Complete

Seney: Sure. You know, I think that TROA was contemplated to take, what, two or three years, maybe, to work out?

Carson I think it was contemplated to take five years, and I'd have to say that it's disappointing how long it has taken. Because we started with the first scoping sessions for the EIS were in 1991, and then the EIS just never went anywhere. But then the negotiations weren't moving very fast, either, and a lot of it has to do with, there never has been

a deadline. And so everybody has busy schedules. They put it on their back burner, and nothing happens.

Seney: And as you said in the context of Settlement II negotiations, there's been no facilitator.

Carson Right. There hasn't been anybody sort of nagging the participants.

Seney: Who calls the meetings? There's going to be, as we've talked about, meetings were last week and this coming week.

Carson Usually at the close of one meeting, we schedule a next meeting by consensus, and then the actual meeting notice and arrangements and stuff is usually handled by Gordon DePaoli. And that's been part of the problem, is just lack of structure. But I'd say that ever since California appointed an actual lead negotiator, that has helped a lot, because now they have a focal point.

Seney: Is this since the recent election?

Carson No. This goes back about three years ago. Dave Kennedy appointed a guy named Carroll Hamon as the lead negotiator for California. He's a retired fellow. So at least they had a point man, which helped. And then just recently, in the last

year, Bill Bettenberg has really had a fire lit under him, because he wants to get this whole thing finished before Bruce Babbitt leaves office. So now there's a much more sense of urgency than there used to be.

Seney: You know, I've been told that David Kennedy, who was the former Department of Water Resources Director in California, was very interested in Public Law 101-618, was very involved in that. But once that legislation was passed, California seemed not to be so interested in matters. Is that your feeling, too?

Carson You know, I don't know if I have that much insight on cause and effect, but I know that we went along for the first five years with almost no participation by California, just minimal staff or attention. And then we started getting more involvement, and the state people thought—we thought we were done in 1996. I'll never forget this meeting in a snowstorm in Truckee, and we said to each other, "Well, I think we've finished up all the California issues now." Well, now here it is three years later, and the California issues were the last thing on the negotiating table.

Seney: I've talked to the people on the Upper Truckee on the California side, and, of course, one of the things they complained about is that they weren't consulted or included in the Public Law 101-618.

You had in that law the adoption of matters that had been negotiated in the Interstate Compact. Their feeling was that California was more concerned about the allocation on Lake Tahoe than they were in the allocation from the Tahoe City Dam to the Nevada border, where you've got the 90/10 that you've been talking about. And then you had that drawdown in 1994 on Memorial Day weekend of Stampede, I think it was.

Carson Yes.

Seney: And, "My God, what's happened to our water?" Well, they were rudely, from their point of view, informed it's not their water, it belongs to Pyramid Lake, and we need a cui-ui run, and then they get involved.

Carson They got very involved, yes, and they never had been before. So now we had a whole new contingency that had to be brought up to speed and informed, a lot of perception issues about who owns the water and what's it there for.

One of the fundamental differences between the Act and what those folks in Truckee want today is the Act deals mostly with the allocation and doesn't say very much about environmental use of the water. The people in Truckee are really most concerned about in-

stream flows, recreation levels, and all this stuff.

Seney: Right.

Carson And to the degree we can satisfy those needs, we're happy to do that. But when it crosses a line over to, "Well, you shall do it this way to benefit our environment," and it's going to be detrimental to our water supply, we're going to say, "I'm sorry, we can't do that."

TROA Negotiations Become More Detailed Over Time

Seney: Yes. One of the things they've told me is that as the negotiations have gone on, everything has gotten more and more detailed and there's been more and more of a tendency to hard-wire and try to anticipate every conceivable future that there can be.

Carson Right.

Seney: And one of the issues—and I know you'll be familiar with this—that they have raised to me is this issue of depletion.

The Issue of Depletion in the System

Carson We did finally reach—

Seney: Did you reach an agreement?

Carson We reached an agreement on depletion.

Seney: This is essentially—correct me if I’m wrong. This is the issue of how efficient they’re going to be in using their water. The assumption is, they get 35,000 acre-feet.

Carson Thirty-two thousand.

Seney: Thirty-two. And they’re going to be returning half of that to the river system.

Carson That was the assumption by the Nevada parties.

Seney: Right.

Carson Because that’s how it works over here is, you get a water right, but that doesn’t mean you get to consume all of it.

Seney: Right. And you’ve got to be concerned, I think, maybe Sierra Pacific Power and the tribe, that they would get more efficient at using that water and might return just a quarter of it or 30 percent of it rather than 50 percent.

Carson Right. And particularly when we found out that California has statutes that say you shall

maximize the re-use of your water. Well, that's great. It sounds wonderful, unless you're the downstream party, and then it doesn't sound so good.

Seney: Yes, I can see that.

Carson That's what really got us alarmed about this issue was when we found out that they actually have statutory mandates to do recycling, and that recycling translates into less water for us. That was why we got onto this concept that we need to put some limits on how much you deplete. And I think in the end we did come up with a very detailed solution, but I think it's going to be a problem that they will never have to worry about, unless they get into some really aggressive cutting-edge recycling, and that shouldn't be really cost-effective, I don't think, for a hundred years.

Seney: And they'll still have, I think, from your point of view, enough water to build out what would be an appropriate level before they lose the values they're trying to maintain.

“ . . . the thing that I have to not get too irritated with the folks in Truckee, but they get a water supply for fifty years for free, and down here we're getting a water supply for forty years, approximately, and every acre-foot of it has to be

purchased. . . .”

- Carson Right. I mean, the thing that I have to not get too irritated with the folks in Truckee, but they get a water supply for fifty years for free, and down here we're getting a water supply for forty years, approximately, and every acre-foot of it has to be purchased.
- Seney: I don't understand what you mean, they're getting fifty years free water.
- Carson The Interstate Allocation grants them 32,000 acre-feet of water that the state can just issue to people. It doesn't have to be bought from an existing user.
- Seney: Oh, I see what you mean. You have to buy it if you want to expand.
- Carson We have to buy it from an existing user. And so the value of what they got out of this deal is just enormous. I mean, 32,000 acre-feet, say at Reno prices at [\$]3,000 an acre-foot, isn't that like 100 million dollars, if my math is right?
- Seney: I think you are right, yes. (Laughter) Let me ask you about depletion, because this doesn't necessarily always make sense to me, these things, and maybe not to people who will be reading this in the future. But wouldn't an

example of that be, say, if California were to mandate in an area like the Upper Truckee that you have to have a gray water system, that you have to disentangle your drainage within each home so that the sewage [human waste] goes into one receptacle. The other water, that can be used now on the lawn and the shrubs, goes into another one, and maybe you'll catch some of that and hold it, and then you'll use it on your bushes and so forth. Would that be what you're talking about in terms of recycling it and maybe returning less to the river?

Carson Right. And it depends on what they do with the gray water. If they put it on landscaping, then it gets consumed, and that would count as a depletion. If they put it into a leach field, say, and it goes through the soil and eventually gets back to the system, that would not count as a depletion.

Seney: By this, you mean this is part of the agreement you've worked out.

Carson This is part of the agreement, right. And this is why it's so detailed, because you have all these possible situations.

Seney: I can't blame you for wanting to do it, from your point of view.

Carson Yes. People in Truckee like to say, "Well, we

don't have much landscaping up here, because most people have native plants and trees and such." But my observation, as I drive up there, is the new developments in the Truckee area, they all have the same kind of landscaping that people have everywhere. They have their lawn and their shrubs.

Seney: Right. There's more of that, I think, going on.

Carson Yes. So I think as the community grows, it's going to become less and less different, even look more like other communities.

TCID is Not A Signatory to the Current TROA

Seney: Does it bother you that the Truckee-Carson Irrigation District is not a signatory to the TROA? Would you like them to sign off on it?

Assumes That Sierra Pacific Will Be Litigating with TCID Since They Are Not Signatory to TROA

Carson Oh, I'd love them to be a signatory. It would be wonderful. We invested years trying to get them on as a signatory. I mean, it would mean, for one thing, that we wouldn't be litigating with them. But, you know, many people, talented people, including Betsy Rieke and Pete Morros (phonetic) and Ann Ball, tried their darndest to get them into

the deal and were unable to. So I'm sort of resigned now that, okay, so we're going to be litigating with them. It's too bad, but I think every effort was made to get them into the deal.

Seney: What are they likely to litigate over the TROA? We mentioned the EIR/EIS, which is TROA-related, but what are they likely, as the TROA has taken shape now, what are they likely to raise questions about?

Relationship of TROA to the Orr Ditch Decree—Believes TCID Will Try to Argue That the 1935 TROA Agreement Cannot Be Changed

Carson I think there are two things. One is the EIS aspects of it, and the other is changing the Truckee River Agreement, because the Truckee River Agreement from 1935, it's an agreement among the United States, Sierra Pacific, TCID, the Washoe County Water Conservation District. And what we will plan to do—because certain things in TROA changed provisions of the 1935 agreement. And so we are saying, “Okay, we have to take this, then, to the Orr Ditch court to get that approved,” because the Truckee River Agreement became part of the Orr Ditch Decree.

Seney: Right.

Carson And I'm sure what they will say is, “Well, you

can't change that old agreement, period. You can't change it." And the judge will have to decide.

Seney: A lot of judges will have to decide.

Carson Yes.

Seney: I mean, that will be appealed no matter which way it goes, right?

Carson Sure. And that's why I say I would love for them to be a signatory, because then we wouldn't have so many years of litigation ahead of us.

Seney: If this materializes in the way you hope doesn't—that is, there's all this litigation—that will keep in the air, then, your storage rights and the tribe's getting the money and the interstate allocation. All that will remain unsettled until the decree is finalized by the Orr Ditch court, you think?

Carson That will be another question for the court to decide. The court could either say, "We're going to implement this TROA now and continue to litigate, and we can always take it out of effect later," or the court might say, "No, we're not going to implement it until after we litigate." And I don't have a clue which way that will go. We

have an interim storage contract in effect now that stays in effect until TROA gets done and in place. It's only 5,000 acre-feet, so it's not a really big amount of storage, but it's enough to keep us going.

Seney: What have you got under your plan? I think you've got at this point, what, 85,000 acre-feet guaranteed supply?

“ . . . our benchmark we use is, 80,000 acre-feet has been our historic resource yield, based on our old stuff that we had—Donner Lake, Independence Lake. Now we've added a few more things and increased some yields. . . . so now we're up to 85, maybe, something like that. And then with TROA, we get up to 119,000. So it's a huge chunk of resources. . . . ”

Carson Kind of our benchmark we use is, 80,000 acre-feet has been our historic resource yield, based on our old stuff that we had—Donner Lake, Independence Lake. Now we've added a few more things and increased some yields.

Seney: Wells and—

Carson More wells, and more water rights have been acquired. And so now we're up to 85, maybe, something like that. And then with TROA, we get up to 119,000. So it's a huge chunk of

resources.

Seney: You bet. We mentioned that they have not done the cyanide and radon gas standards yet.

Arsenic and Radon in Well Water

Carson Arsenic and radon.

Seney: Arsenic, I'm sorry.

Carson EPA's talking about that.

Seney: Did I say cyanide?

Carson Yes.

Seney: I went a step up. I got some arsenic in.

Carson Yes, they haven't implemented those rules yet, and the rumor is all over the map about what they might adopt.

Seney: Because you've got some wells that have both arsenic and radon, and at this point, are you diluting them somewhat?

Carson Arsenic we do handle by dilution, and radon we haven't had to do anything with.

Seney: You can actually liberate that out by some surface process, right, by bringing it up to the surface.

Carson You just aerate it and it goes away.

Seney: Right.

Carson So radon's not that difficult to deal with. Arsenic is much harder to get rid of.

Seney: I guess your question with radon is if they say you can't aerate it anymore and can't let it escape, if you've got to then somehow capture it and treat it.

Carson Yes. And then you'd have a hazardous waste.

Seney: Right.

Carson And arsenic, I mean, some rumors are they might go as low as 5 parts per billion on arsenic, and I believe the Truckee River would violate that, it's that low. It's fairly nutty some of the things that are being proposed, and very expensive.

Seney: Yes. And that's not only your groundwater, but then, as you say, the Truckee River would violate the 5 parts per billion.

Carson I may be wrong on that, but I think that's what I heard. Now, out in Lahontan Valley, out in Fallon, they have tremendously high levels of

arsenic, and have had for years.

Seney: Yes, I know they do.

Carson They just violate them, and nobody seems to be getting sick. So I'm not sure what a small community like that will do.

Seney: A lot of that's naturally occurring, but a lot of it comes down the Carson, doesn't it, from the former mining areas?

Carson I don't think so.

Seney: No?

Carson Because the arsenic from the mines, from what I understood, gets trapped in Lahontan Reservoir, I think, and gets buried in the sediments there. But you're right, it is naturally occurring all over Lahontan Valley.

Seney: And here, too.

Carson And here, too. It's all naturally occurring throughout the West, just part of the soil. I don't know what will happen with that.

Seney: But you think the TROA's going to be wrapped up pretty soon?

Carson I think so. The hoped-for schedule is to get the agreement finalized so that it reflects what we've agreed to by the end of the summer, get the draft EIS done by the end of the year, have public hearings and public input first couple months of next year, then get the final EIS done, I think, by summer of next year, and then have the signing of the—see, the United States and California can't sign TROA until after the final EIS is done. So if they get the final EIS done, say, next summer, and then have a signing of TROA in the fall of next year, and the goal being to get it signed before Bruce Babbitt and this administration is over.

Seney: Well, I hope I see you at the victory party.

Carson I hope so, too.

Seney: Well, that's all the questions I have. I appreciate the time and all the information.

Carson: Well, you're very well organized, for not having any notes or anything.

Seney: Oh, thank you. Again, on behalf of the Bureau, thanks for giving us this time.

END SIDE 2, TAPE 2. JULY 23, 1999.
END OF INTERVIEW.
