

ORAL HISTORY INTERVIEW

MARCUS FAUST



STATUS OF INTERVIEW:
OPEN FOR RESEARCH



Interview Conducted and Edited by:
Donald B. Seney in 1995
California State University-
Sacramento
For the Bureau of Reclamation's
Newlands Project Oral History Series



Interview desktop published–2019
By Brit Allan Storey, Senior Historian

Oral History Program
Bureau of Reclamation
Denver, Colorado

SUGGESTED CITATION:

FAUST, MARCUS. ORAL HISTORY INTERVIEW.

Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney. Edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation.

Repository for the record copy of the interview transcript is the National Archives and Records Administration in College Park, Maryland.

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Statement of Donation

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INTERVIEWER: DONALD B. SENEY

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Editorial Convention

A note on editorial conventions. In the text of these interviews, 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.

While we attempt to conform to most standard academic rules of usage (see *The Chicago Manual of Style*), we do not conform to those standards in this interview for individual's titles which then would only be capitalized in the text when they are specifically used as a title connected to a name, e.g., "Secretary of the Interior Gale Norton" as opposed to "Gale Norton, the secretary of the interior;" or "Commissioner John Keys" as opposed to "the commissioner, who was John Keys at the time." The convention in the Federal government is to capitalize titles

always. Likewise formal titles of acts and offices are capitalized but abbreviated usages are not, e.g., Division of Planning as opposed to “planning;” the Reclamation Projects Authorization and Adjustment Act of 1992, as opposed to “the 1992 act.”

The convention with acronyms is that if they are pronounced as a word then they are treated as if they are a word. If they are spelled out by the speaker then they have a hyphen between each letter. An example is the Agency for International Development’s acronym: said as a word, it appears as AID but spelled out it appears as A-I-D; another example is the acronym for State Historic Preservation Officer: SHPO when said as a word, but S-H-P-O when spelled out.

Introduction

In 1988, Reclamation created 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; U.S. 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.

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For additional information about Reclamation's history program see:

www.usbr.gov/history

**Oral History Interview
Marcus Faust**

Seney: Today is November 9, 1995. My name is Donald Seney. I'm with Mr. Marcus Faust in his office in Washington, D.C.

Good morning, Mr. Faust.

Faust: Good morning.

Family, Early Life and Education

Seney: Why don't we just start by you giving us a brief biography and telling us how you got to be the lobbyist for Sierra Pacific Power [Company].

Faust: I was born and raised in Salt Lake City, Utah, and always had a significant interest in being an attorney. My grandfather and father are both attorneys, and I've also had a significant interest in politics, even as a young man.

When I was in law school, I had the opportunity to go to work as a staff representative for a United States Senator from Utah, Senator Frank [E.] Moss. And I

worked for him for about a year and a half, with the open expectation that upon my graduation, which would have been in December of 1976, that I could move to Washington D.C., and work on his legislative staff here. He was defeated, however, in November of that year.
(laughter)

Seney: How thoughtless of him. (laughter)

Faust: However, I was fortunate enough to have made several other acquaintances, one of whom was the congressman from the First District of Utah, Congressman Gunn McKay.

Seney: Could I just interrupt? I understand you're from a very prominent Mormon family.

Faust: Yes.

Seney: Your father is a very important person within the Mormon Church, one of the members of the presidency?

Faust: Yes.

Seney: And so probably your family has been involved in politics for some time, I would think.

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- Faust: My father and my grandfather both had an interest in politics and both had been involved in political campaigns. My father, at an early age in his law practice, was elected to serve in the Utah state legislature, and I think a part of that rubbed off on me.
- Seney: Sure. So it's part of the family history, too.
- Faust: Certainly. I remember at the age of fourteen, on my birthday, going to a political fundraiser where Senator Ted [Edward M.] Kennedy was in attendance in Salt Lake City. It was kind of a bizarre thing. I was the only eighth-grader in my class that could name every member of the cabinet back in whenever that was. (Laughter)

Coming to Work in Washington, D.C.

And so I was very pleased to be able to come to Washington and work for Congressman McKay, who was a conservative Democrat who represented a very large portion of the state. I worked for him as a legislative assistant from 1977 until 1980, and Congressman McKay himself was defeated in the [Ronald] Reagan landslide of 1980.

And the day after the election—the congressman's best friend in the House of Representatives was a neighboring congressman from the state of Nevada. He was an at-large congressman, which meant he represented the entire state, named Jim Santini. And Jim Santini was the Chairman of the House Interior Subcommittee on Mines and Mining, and he was looking for a legislative counsel to work for him, and I had worked for him on other issues. The day after the election, he called and offered me a position with him, which I was very grateful for at the time. And so for a couple of years, I served as counsel to the House Interior Committee, and in the course of working with Congressman Santini. Of course, I became acquainted with the people who were on his personal staff, including those who were in the Las Vegas and Reno offices.

The woman who was responsible for the Reno office for the congressman was a woman named Lynn Atchison [phonetic], and after Congressman Santini sought in 1980—I actually parted his employment in 1981 and opened up my own law practice, which is what I've been doing since then. He ran for the Senate in 1982 and was defeated. Lynn Atchison then made

application to go to work for Sierra Pacific Power Company, and she was given the position of federal affairs representative and local government affairs representative for Sierra Pacific.

Becoming a Lobbyist for Sierra Pacific Power Company

I had done quite a bit of work for the investor-owned electric utility from the state of Utah when I was in the employ of the congressman from Utah. And when I left Capitol Hill and opened up my practice, I was immediately retained by Utah Power and Light Company. There was a national convention for governmental affairs representatives in New Orleans, and I was there in attendance on behalf of my representation of Utah Power and Light Company, and I ran into Lynn Atchison, and so we reacquainted our friendship there.

Right during that period of time, '83, '84, there were some very serious negotiations that Sierra Pacific had been engaged in relative to the negotiated settlement and the compact. In 1985, Utah Power and Light had a change in administration. They decided that they did not want to justify the

expenditure of a Washington office, and simultaneously, Sierra Pacific Power Company had concluded an agreement with the tribe, Pyramid Lake Tribe, and also with T-C-I-D [Truckee-Carson Irrigation District] and with others to support ratification of a compact and what I would refer to then as an agreement to agree. It wasn't an actual settlement. It did not address many of the substantive issues that ultimately were passed by Congress in the final settlement approval. It was more of a kind of a armistice.

Everybody agreed that there would be a period of time when they would come out from behind the legal walls that they had built up, and they would sit down and try and negotiate an agreement within a period of time, and if it didn't happen, then everything was void. They [Sierra Pacific Power] needed to have a Washington attorney to represent their interests in trying to get this first agreement passed. Lynn Atchison called me and asked me if I was interested. [She] was aware of my representation of another investor-own electric utility. And so I entered into a relationship with them then in 1985, really for the principal purpose of trying to secure congressional enactment of this preliminary

first agreement.

Working on the Truckee River Agreement and Other Matters

The representational arrangement was broader than just the Truckee River settlement. And went, as well, to providing general representation on electric issues and gas issues and interfacing with members of the Nevada congressional delegation on their behalf, representing their interests at the National Trade Association, Edison Electric Institute, which I have done continuously since 1985. And have very much enjoyed my relationship with Sierra Pacific in that regard, through numerous different chairmen and presidents.

The chairman then was Joe Gremban. Joe had invested a lot of his own personal time and attention on this agreement, as had Sue Oldham, who is the attorney, and Bob Pelcyger¹ for the tribe, and T-C-I-D and a

1. Robert (Bob) Pelcyger participated in Reclamation's Newlands Series oral history project. See, Robert (Bob) S. Pelcyger, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Professor Donald B. Seney for the Bureau of Reclamation, in 1995 and 2006, in Reno, Nevada, and

(continued...)

number of others, and the then tribal chairman. They invited me to come out to Nevada and become a little bit oriented to what it was that they were doing. And I have to say, then, that while I was not in a position to really be telling them one way or the other what it was that they were going to do, I immediately saw, based upon the experience that I had had in Washington, that they were, I really believe, somewhat naive with respect to what it takes to secure congressional ratification and enactment.

They had actually been so thorough as to go ahead and draft a piece of implementing legislation. And it was done by attorneys who really are excellent attorneys when it comes to drafting contracts and writing business agreements and those types of things, but did not have experience with legislative drafting. I think ultimately that was a part of the problem as to why that original agreement really didn't go forward. [It] was that they were not in a position to really understand what the legislative process was going to do to them. They'd never had a Washington representative to

1. (...continued)
Boulder, Colorado, 1995 interviews edited by Donald B. Seney and all interviews further edited by Brit Allan Storey, senior historian of the Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

tell them. They had not been in contact on an ongoing basis with anyone in the congressional delegation to tell them whether certain things would fly or wouldn't fly. I think they wholly underestimated the difficulty that it would take, and this is not unusual. This is not in any way disparaging towards them, because I find this is the case with many of my other clients in the West. You know, they're 2,000, 3,000 miles away from Washington.

Nevadans themselves have kind of an attitude of, "You stay away from Washington, and Washington will stay away from us." You know, they're used to working with their legislature, which is very small and very—Nevada is a small state, you know everybody. And they just thought you could just come back to Washington and get Congress to do this the same way you would pass something through the legislature.

The Role of Senator Laxalt

Senator [Paul] Laxalt was the senior member of the delegation and, I should say, was very, very influential within the Reagan

administration.² He had been the governor when the original compact had been negotiated, and he was also, as you know, the president's best friend.

Seney: Could I just stop you to say that often when I talk to people out in the project, when they bring up Senator Laxalt, they stress his closeness to President Reagan, and they sometimes will say he was the second or third most powerful man in the country and still couldn't get this passed. Are they exaggerating things a little?

Faust: Let me pause for a minute. I just received a fax from Brazil. I need to look at it.

Seney: Please, go right ahead. [Tape recorder turned off.]

Faust: Senator Laxalt was extremely judicious in how he used his relationship to the president. Senator Laxalt, who remains to this day a very close friend.

Seney: A close friend of yours, you mean.

Faust: A close friend of mine, and I have ongoing

2. Paul Laxalt served as Governor for the State of Nevada from 1967 to 1971, and went on to have a distinguished career in the U.S. Senate from 1974 to 1987.

relationships with him, [he] is an extremely gracious person. I don't know if he's on your interview list, but he should be.

Seney: Should he be? All right.

Faust: And I can make the introduction if you want.

Seney: That would be great.

Faust: The senator sought to, and I think appropriately so, insulate his relationship with the President of the United States from the legislative and political agenda. His relationship was one of a counselor and as an advisor with respect to politics and the direction of the Reagan presidency, and he was very reluctant to use that relationship, trade upon that relationship for his own personal agenda, except in very rare circumstances I'm aware of. I'm aware of two. I'm presuming there were more, but I'm only aware of two where he used his personal relationship with the president to try and affect administration policy that he did not want.

The first was on the deployment of the M-X missile in Utah and in Nevada, which

he successfully defeated over the objections of the Department of Defense, and that was a very, very significant battle. The second was this ratification of this compact. I'm getting a little ahead of the story, however.

Seney: Okay, excuse me. Go back to where you think we need to be.

Truckee River Legislation Killed by Tribe

Faust: What happened is that I went to Reno, got all of the papers, including the draft legislation, those folks came to Washington, Joe Gremban, Sue Oldham. We sat down with the congressional delegation and we told them that we had an agreement, that agreement had been ratified by the Tribal Business Committee, it was supported by T-C-I-D, that we outlined for them what was in the agreement as ratification of the compact and basically a disarmament of legal positions during a negotiating period. The delegation introduced the bill and immediately sought to schedule hearings.

Some short period of time thereafter, dissidents within the tribe who were opposed to the agreement where extremely proactive in seeking to overturn the Tribal Business Committee's ratification of the

agreement. And they were successful at getting a tribal referendum called and, at the tribal referendum, disapproved the agreement. That effort was led by an extremely able fellow who I have since had other dealings with, and that was Joe Ely³.

Tribal Politics and the Success of Bob Pelcyger

During the course of that very stressful period in intertribal politics, the then chairman had a heart attack and died. And so the principal supporter on the business committee was gone. A very young and charismatic and well-spoken dissident leader was fighting against it and ultimately ran for the vacant position of chairman and was elected. That changed the dynamics significantly. Bob Pelcyger had successfully managed to—and Bob has a keen and innate sense of how to go with the various changes in the business committee.

3. Joseph (Joe) Ely participated in Reclamation's Newlands Series oral history project. See, Joseph (Joe) H. Ely, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2011, www.usbr.gov/history/oralhist.html.

Seney: You're smiling when you say that.

Faust: Yeah. Bob has survived a number of changes on the business committee, up and down. One of the things that I have found in the context of doing this and other Indian settlements—and I've done some in Montana and in Utah, including the Ute Indian settlement, which is by comparison much larger than this settlement—is that these business committees, and I don't know whether this is just a fact of reservation life or what it is, but there is always internal turmoil within the tribe. There is always a group, and they're usually family oriented, of loyal opponents or loyal opposition or dissidents for whatever happens, and they seem to have different periods of time when they'll come in and take over a business committee, and then the dissidents will be out. Then after a while, people will grow dissatisfied with that, and then they'll put these other people back in. It goes back and forth, and it's very cyclical.

I have known a lot of Indian attorneys who have been retained by one group or a faction and had the client relationship for one or two years and then get tossed out by new group that comes in. Bob has managed to survive through several of those types of

things, and I've worked with him on his representation of other Indian tribes, including the Crow Indians in Montana, which is also a very political, tumultuous tribe. And he manages to survive all of those, because he's very canny at reading the politics of the business committee, and he'll push an agenda of that business committee until he sees that it's shifting. And then he's able to adapt and change to reflect the new prospective of his clients. There were other attorneys who were involved in the original agreement who were not as fortunate as Bob was.

There were also times when I viewed Bob in this process as a problem, particularly after Joe Ely was elected. And the then tribal attorney that had negotiated the settlement was let go. And Bob Pelcyger came in, because Bob was then principally a litigator, and there was a tremendous belief that he wasn't interested in pursuing a settlement. Because he was the one who had filed the lawsuits and had his own involvement in perpetuating those lawsuits and thought he had a good case and wanted to win them. And as a result, why settle something that you think you can win in

court?

As a result, there were times when I don't think Bob was completely committed to the settlement process. And there were times in our own negotiations when Joe Ely would have to sit on him, because I think Joe was committed. He would say, "Look, I'm committed to a settlement, but I don't like this one. What we need is a better deal." He was committed to a settlement, and there were many times in the negotiations when we were seeking to get an agreement, when he sat on his lawyer and said, "No, we're going do this." So it was an interesting thing to watch.

Trying to Pass the Interstate Compact

I also believe, this is my personal opinion, that one of the reasons why ultimately the settlement that was approved by Congress did survive was because at least one piece of litigation also survived, and that was litigation that Bob was involved with relative to T-C-I-D. And so there was still that element that was still left for those who wanted to litigate in court. That was still something that they were in a position of doing. Notwithstanding the fact that there was a new tribal business chairman and

notwithstanding the fact that they were now opposed to the existing settlement, we still felt as though we wanted to pursue it. This was in the final months of Senator Laxalt's term as a United States senator. He had announced his intention not to seek reelection, and he very much wanted to get this done.

The tribe, and this is on Bob's advice, was very smart, went out and hired a very, very able Washington lobbyist named Dale Snape, who was with Anne Wexler group at the time, very well connected. She was, I think, in the [Jimmy] Carter administration, and they were very well connected to a lot of the Hill leadership and to the public opinion leaders and, for that matter, to the *Washington Post*. And, of course, all of those with whom they were well connected had a sympathetic ear for Indian causes.

There was also an internal struggle down within the Department of the Interior; while the Bureau of Reclamation, the commissioner, Bob Broadbent,⁴ who is a good friend of mine and now a present client

4. Robert Broadbent served as Commissioner of the Bureau of Reclamation under the Reagan administration from 1981 to 1984.

as the head of Las Vegas Airport, was a protégé of Senator Laxalt's and worked hard to push the Interior Department into a position of supporting the legislation. Equally working as hard on the other side was Bob Pelcyger and Dale Snape with the B-I-A [Bureau of Indian Affairs], trying to influence the Department of the Interior to be opposed to the settlement.

This is where Senator Laxalt's relationship with the president was helpful, because he then went to the president and said, "President, you remember that agreement that we reached ourselves with respect to how to divide the waters of the Truckee River? We need to go ahead with that and ratify it while you're president and while I'm a senator. It's been years while this has been pending. It's never been ratified because of opposition from the tribe. We had support of the tribe. We had a vote of the Tribal Business Committee and that was supportive. They've changed their minds, but we're still going to press ahead."

Senator Laxalt was a member of the Select Committee on Indian Affairs, held a hearing, was extremely gracious, heard those members of the Business Committee who had supported the agreement, heard Joe Ely,

who at the time had not been elected chairman, and was extremely gracious to all concerned, but his desire was to move this thing forward. We worked very hard with Senator Laxalt and with the administration to try and move the bill.

Seney: Can I stop you and ask you about something I've been told about? That is that there were some private meetings that were held with—Senator Laxalt was there and Joe Ely was there and Bob Pelcyger, and I don't know if you were there.

Faust: Yes, I was.

Seney: And in one of those meetings, at least, Senator Laxalt was very vigorous, apparently, in his representations to Joe Ely that, "You should support this and not oppose this."

Faust: Oh, very much so. He was most determined to do this as kind of the capstone of his career. Senator Laxalt, for a variety of reasons, some of which was the fact that he was on the Appropriations Committee, others of which was that he was general chairman of the Republican party, was not a

prolific legislator. By that I mean he did not introduce, write, sponsor, [do the] inside jockeying [on legislation]. He's not a Robert Bird. He's not a Bennett Johnston type of legislator. His long suit was his own personal graciousness in his relationship with Democrats and Republicans. The Appropriations Committee itself was not a partisan committee, and it principally was a committee that just funded different aspects and agencies of the government. So he was chairman of a subcommittee there, and that's where he focused his time and effort. And as a result, he had not, himself, engaged in a lot of political battles. He had a lot of very positive relationships, and he went about calling upon those relationships.

The Congress was controlled by Democrats, and he was a Republican. Nevertheless, he called upon those relationships, and they responded favorably because of who he was and because of his own personal style. I really think you should meet him, because I think you will be impressed by his own demeanor.

As a result, we were moving this bill. We were trying to attach it to another bill that was going to be a "must pass" piece of legislation in the Senate, and we had the

support of the administration.

Seney: That was the appropriations bill, wasn't it?

Faust: Yes. The tribe was successful at actually getting the *Washington Post* to editorialize against Senator Laxalt's efforts in this regard, claiming that Laxalt was pushing this as a capstone to his career, but it was an unworthy capstone, something to that effect, and it criticized him for taking advantage of these poor tribal members. And I have to say, at the time, given the advocacy that I was pursuing—and we very much wanted to have this agreement ratified—that we thought that—

Seney: "We" meaning Sierra Pacific Power.

Faust: "We" meaning Sierra Pacific, still strongly wanted to make this work. Now, we weren't necessarily just trying to run over them. We were certainly meeting with them, we were discussing with them. Frankly, my opinion was that T-C-I-D was kind of disgusted with them. They were involved in litigation and spent hundreds of thousands of dollars on lawyers. And when the politics changed in the Tribal Business Committee and Joe Ely

was elected chairman, I think T-C-I-D just kind of threw up their hands and said, "Okay, that's it. We're pursuing the litigation course."

Sierra Pacific always played the mediator role between T-C-I-D and the tribe. We tried to maintain a relationship with them through Bob Pelcyger and with Joe Ely. And we had numerous private meetings with these individuals in Senator Laxalt's office, trying to figure out if there were little changes that could be made here and there. You could change the agreement in little ways. You could appropriate money. You could do certain things that could help the tribe in other ways, and that's what we were trying to pursue. You could not change the essence of the compact. You could not change, really, materially the essence of the way in which everyone had agreed to disarm legally during this negotiation period, and, ultimately, we ran out of time.

I think had we had more time, we would have probably succeeded, but finally Senator Laxalt saw that we weren't going to be able to get it done, based upon opposition from some of the more liberal Democrats. The tribe had gone to them and gotten their ear, so we abandoned that process.

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- Seney: Let me tell you some of the things I've been told about this, just to see if I've got it right. In the Indian Affairs Committee, it didn't pass the Indian Affairs Committee, the compact.
- Faust: It was never called for a vote. That's correct.
- Seney: Right. And I guess it was because the judgment was made, it wouldn't have had the votes.
- Faust: Senator [Daniel K.] Inouye was the then chairman of the committee, very, very strongly pro-Native American on just about every issue, and they had done a very good job with him. What had happened is that because that committee wasn't going to move the bill, Laxalt said, "Well, then I'm going to stick it on the appropriations bill, then it won't go through that committee." So you are correct, and the reason why is because there weren't the votes there for it.
- Seney: My understanding, then, is that Joe Ely went with Bob Pelcyger to Senator [Mark] Hatfield and raised objections, and Senator Hatfield then said, as I think is usually the case, "Work this out amongst yourselves."

Faust: "You go work it out with Paul." Right.

Seney: And that's what couldn't be worked out in the end.

After the Attempt to Pass the Compact Failed

Faust: We tried to work it out. We offered them a number of different incentives to try and move forward, and each one was rejected for one reason or another, and ultimately the whole process fell apart, and it was a very bitter time. At that point in time, T-C-I-D just totally walked away from the process. There had been an agreement, the original agreement . . .

Seney: Let me turn this tape.

END SIDE A, TAPE 1. NOVEMBER 9, 1995.
BEGIN SIDE B, TAPE 1. NOVEMBER 9, 1995.

Faust: The original agreement was one whereby all the parties had pledged to one another that they would not make any changes to the agreement unless everyone else had agreed. When the whole thing died, T-C-I-D got up and walked away from the process. And at that point in time, you know, Ely was taking big-time hits in the media in Reno, and the tribe was getting a lot of bad press, because they had pulled the plug.

[Congresswoman] Barbara Vucanovich⁵ was furious with them. It was kind of like, "See, you can't work with the Indians. They're not reliable. You get an agreement with them. You think you've got something, and then all of a sudden, it's worthless." And this just fueled those who wanted to litigate everything and say that, "Fine, we'll go back to the court, because the only thing that we can find that is enforceable against these people is a court decision. You cannot reach an agreement with them that will have any staying power." That was their experience and their perspective, and in some respects, I think, had some validity at that time, and that's the attitude that T-C-I-D accepted.

Sierra Pacific, though, we had different problem. We had an urban area that was expanding. We had very, very limited storage rights. We had participated in the construction

5. Barbara Vucanovich was the first woman and Hispanic woman to serve the State of Nevada in the U.S. House of Representatives. Ms. Vucanovich also participated in Reclamation's Newlands Series oral history project. See, Barbara Vucanovich, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

of the dam [Stampede Reservoir]⁶ that was now, because of a court decision of the Ninth Circuit, been totally dedicated to the Endangered Species Act.

Seney: Could I stop you just to ask, this whole compact controversy here, how would you characterize that in terms of a legislative struggle? Was that a big one, a little one, a really tough one, in your experience? How was that?

Faust: It was a tough one. It was a difficult one. There's no question about that. I'm a firm believer that you couldn't go back in and renegotiate the compact, which is what some of the tribal members wanted to do.

Seney: The legislatures [of California and Nevada] had approved it.

Faust: The legislatures had approved it, and it had

6. Stampede Reservoir is the body of water that stands behind Stampede Dam, the primary facility of the Washoe Project in northwestern Nevada. The water storage capacity is 226,500 acre feet, which is reserved by court decree for fishery enhancement, primarily for the spawning of the endangered cui-ui, along the Truckee River downstream from Derby Dam and facilities operation of the Pyramid Lake Fishway. For more information on the Washoe Project, see Carolyn Hartl, "Washoe Project," Denver: Bureau of Reclamation History Program, 2001, www.usbr.gov/projects/pdf.php?id=208.

been approved in the sixties—I think it was in the sixties—I was of the opinion, that if you went back in, Nevada wasn't going to get 90 percent of the water, which is what basically the split was then, and Nevada stood to lose.

What Sierra Pacific Power Wanted and Needed

It was not just the compact, though, that was driving us. Sure, that was important to have a final division of the water between the states. Ultimately and finally, though, that water flows downhill. It's going to end up in Nevada. (laughter) You know, the snow melts and it goes. And it had been during the entire time since the compact had been negotiated. It was kind of like that scene from "Out of Africa" where—I don't know if you remember it—she builds the dam on her land, and she's trying to divert the water for irrigation into her fields, and the rains come and they're washing away the dams, and she and her people are out there fighting. He looks at her and says, "This water belongs in Mombasa anyway." That's the attitude. That's where it goes and that's where it's supposed to go. You shouldn't stop Mother Nature.

That's kind of what was happening. The

water was coming down. The problem was, we couldn't store it. We [Sierra Pacific Power Company] had a lot of water rights, but they were paper water rights, without storage water rights. And as a result, they were limited in their ability to deliver storage. We had really some very expensive alternatives that we were going to be forced to pursue if we couldn't figure out a way to change the way in which the river was managed to allow for an opportunity to store M&I water in Stampede Reservoir.

We were absolutely persuaded and convinced that you could figure out a way to operate the reservoir so that you would not be posing a detriment to the recovery of the cui-ui. And at the same time you could provide an adequate drought supply, which is what we were seeking to obtain, and the reason why is because those cui-ui don't spawn every year. They only spawn when there's a lot of water, and when there's a lot of water, you're not at a drought. You've got a lot of water in the mountains. The water comes down. We don't need the storage as much. When we need to storage is in the drought years. And if it's a drought year, you're not going to have a lot of water in the Truckee in the springtime.

And as a result, we could work cooperatively with the [U.S.] Fish and Wildlife Service and with the tribe to determine when, in which years, there was going to be good snowpack and a good runoff, so that you could generate sufficient water in the lower Truckee [River] to generate a spawning run.

And so there was really a win/win scenario there. We saw that. We knew that. Joe Burns, our fellow in Sacramento who's our hydrologist, had modeled it.⁷ And really that formed, I think, the key basis of what it was that we wanted to accomplish, and we had no choice but to try and continue negotiations. And, frankly, and I think politically Joe Ely had no choice. He was the bad guy. He had killed this thing. He was the guy that had defeated Laxalt. I mean, everybody was angry with him. He wanted to get back to the negotiating table. T-C-I-D didn't want to have anything to do with it. As a result, the initial discussions were really just held one on one

7. Joseph I. Burns participated in Reclamation's Newlands Series oral history project. See, Joseph I. Burns, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2010, www.usbr.gov/history/oralhist.html.

between the tribe and Sierra Pacific, and we proceeded to talk about their objections, and we talked about things that we might be able to do together to move forward.

I do believe that one of the problems, the fundamental problems, of the original deal that we were trying to put forward was that it was not a real settlement. It did not address the substantive issues and provide solutions to them.

Seney: This was the compact, you mean.

Faust: Right. Well, no. No. I want to separate the compact. The compact is one thing. The compact itself divides the waters of the Truckee River. Then there is a settlement agreement between the parties in Nevada as to how that water is to be divided up. That was the negotiated settlement agreement. Okay?

Seney: Okay.

Faust: They were married together in the context of the legislation. In fact, at one point Senator Laxalt wanted to take the compact, rip the agreement off that the tribe was objecting to, and run the compact approval ratification by itself.

We did not support that, because that really didn't do a lot for us. It didn't give us the storage that we needed in Stampede Reservoir which was storage that had really been won by the tribe relative to their Endangered Species Act case. As a result, we resisted the perforation of the Truckee River settlement with the Pyramid Lake Paiute Indian Tribe and the compact, itself. Okay? What I was really referring to was the settlement itself not the compact. The compact was an ancillary part, an important part, but, in my opinion, a secondary part ultimately to what was passed and enacted.

California's interest was in getting the compact, so that there wouldn't be continuing Nevada encroachment of their water rights. They wanted to preserve their water rights and entitlements, and their participation was important. But that was the only thing they were really getting out of this deal, was certainty as a result of approval by Congress of this compact. We were afraid that if you dismissed that, passed it by itself, that that would really kind of release a lot of the steam that was still pushing the parties to negotiate a settlement agreement as to how to divide Nevada's water up.

The tribe itself had adopted what I really thought were some pretty unreasonable positions relative to claiming water over in the state of California. And part of the California interest was in getting those lawsuits dismissed with prejudice so that the tribe's claims in California were exterminated. And so they had to remain linked for the deal to work.

Ultimately and finally, after a number of months of negotiation, they were able to put together something that I think was a good process. I mean was kind of a good outline of a process to proceed to address, really for the first time, the substance of the disagreements, not just an agreement to sit down and negotiate, but actually sit down and negotiate.

Then the time was when my client came and said, "Well, we need to get the new senator from Nevada up to speed on this, and we need to get him to get involved and remain involved, and we need his support the same way we had Laxalt's."

Senator Harry Reid Becomes Active in Settlement Process

I was a good friend of Senator Harry [M.]

Reid,⁸ having met him, actually, when I was on Santini's staff when Senator Reid sought to run and was elected in the seat that Congressman Santini was vacating in southern Nevada. I met him before he was elected to Congress, and we had a good relationship and that remains. Senator Reid—I'll never forget this meeting—he had been positioned in his temporary office in the Senate, which was just a small office, maybe twelve by twelve. For a senator, that's a very small office. And my assignment was to go in and persuade him to jump into the middle of this issue. Senator Reid himself had not really been all that active in northern Nevada, plugged into northern Nevada politics. He didn't need to be. He was strong in southern Nevada, which is more than 65 percent of the electorate. You can lose Washoe County and the rest of the state, carry Clark County, and still win, which he did.

8. Senator Harry Reid represented the State of Nevada in the U.S. Senate from 1987 to 2017. Senator Reid also participated in Reclamation's Newlands Series oral history project. See, Harry Reid, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation., 2013, www.usbr.gov/history/oralhist.html.

I went in and sat down and explained this situation to him, which is very complex in terms of how the river operates, etc., and he looked at me and he said, "Why on earth would I want to get involved in an issue where Paul Laxalt has failed?" Because Laxalt was viewed as being one of the most powerful men in Washington. And I said to him, "Because, Senator Reid, when we succeed, you will have done something that Senator Laxalt couldn't." And he thought about it for a minute, and he said, "Okay." (laughter)

And it helped that he was in the majority party. And it helped that he, too, was on Appropriations. And it helped that, I think, he, too, was viewed by the tribe as being more of a friend to them than Laxalt was. Senator Reid's role was invaluable in cajoling and pressuring and sometimes giving Dutch blessings to the tribe and in moving the process along to the point where an agreement was reach.

Seney: What do you mean by Dutch blessing? I'm not familiar with that, and our readers may not be either, what you're trying to convey when you say that.

Faust: Whenever—and it went both ways—whenever one party was becoming recalcitrant and it

looked as though they may break down, Senator Reid would call up and say, "I understand you're having a problem. Get over it. Figure it out. Let's move. I don't care what it is, but do it." And, you know, it's very hard to tell the United States Senator when he calls you up, "Well, tough beans." So that did help a lot when there were impasses to have him call up the parties.

And he had two people who were working on it. Wayne Mehl⁹ became the principal, and he was very involved, intimately familiar with the details of the settlement and participated in many, many of the meetings, did a tremendous job for Senator Reid.

Ultimately and finally they reached the agreement that was acceptable to Sierra Pacific and to the tribe.

Seney: Along this negotiation process, which I guess

9. Wayne Mehl participated in Reclamation's Newlands Series oral history project. See, Wayne E. Mehl, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

begins in '87, the senator sends out a letter.

Faust: Right.

Seney: You must have been familiar with that.

Faust: We wrote the letter. We put the letter together, gave it to him, asked them to call the parties together to resume negotiations again.

Seney: Okay. Good.

Faust: It was our desire to move the negotiations forward. We had sensed that the tribe felt as though they needed to get back to the table, because they were getting the credit and the blame for killing the last deal. And that was not good for them and their standing out there at all. So we knew they'd want to come back, and we thought that the senator could encourage them to come back. Let me say this, T-C-I-D did return for a while.

TCID and the Settlement Process

Seney: That's what I wanted to ask you about, get your take on the T-C-I-D's withdrawal from the negotiations and your understanding of that.

Faust: T-C-I-D, in my opinion, because of the way it

is organized as a district, does not have the ability to come to a unified position with respect to these water matters. They have not delegated to their executive director a significant amount of authority that is independent from the board. Board members themselves retain almost exclusive jurisdiction over the different aspects of running the project, and different parts of the district themselves have different interests that are served.

So it's a very difficult process to get the board of the Truckee-Carson Irrigation District to reach unanimous agreements, like the Politburo. You have to have unanimous agreement, almost, to get anything done, and you would seldom get unanimous agreement, and I think that has handicapped them. They would have had, I think, numerous opportunities. I know of at least three where they could have gotten a very good deal had they been able to overcome what I think has been an unfortunate attitude that they can win more in court than they can through negotiation and overcome, I think, bitterness and feelings of resentment towards the tribe, which were then ultimately, to some extent, translated to Sierra Pacific, because we decided

to go ahead and continue to negotiate with them [the tribe] and reach an agreement with them. They kept saying, "Well, we thought that if it wasn't all for one and one for all that there wouldn't be anything." They really believed that if they stayed away and walked out on the process, that no agreement could pass. And they worked very hard, ultimately, when an agreement was reached, to try and stop the process and delay the process, using at their disposal their political contacts to try and derail the negotiated settlement from a link through Congress. And they almost succeeded on at least one occasion.

Seney: At this point the situation changes, and you allude to this; that is, T-C-I-D and Sierra Pacific Power had been allies and friends.

Faust: Yes.

Seney: Against the Indians, the Pyramid Lake Tribe.

Faust: The reason why that was the case is because of the litigation. We always had adopted the same basic legal position as it related to the Orr

Ditch Decree,¹⁰ and as it related to the various court cases. And as a result, it was the tribe as the plaintiff and us as the defendants, or us as the plaintiffs and them as the defendants, and that was the reason why we had been historical partners with T-C-I-D for all of these many years.

We did a lot of their legal work, because we had a deeper pocket than they did on some litigation. We didn't have an interest, direct litigation between T-C-I-D and the tribe, and that's the one piece of litigation that remained, you will remember that I alluded to earlier, that

10. The Orr Ditch decree was entered by the U.S. District Court for the District of Nevada in 1944 in *United States v. Orr Water Ditch Co., et al.* The decree was the result of a legal action brought by the United States in 1913 to fully specify who owned water rights on the Truckee River and had rights to storage in Lake Tahoe. The Orr Ditch decree adjudicated water rights of the Truckee River in Nevada and established amounts, places, types of use, and priorities of the various rights, including the United States' right to store water in Lake Tahoe for the Newlands Project. The decree also incorporated the 1935 Truckee River Agreement among Sierra Pacific Power Company (now Truckee Meadows Water Authority), TCID, Washoe County Water Conservation District, Department of the Interior, and certain other Truckee River water users. See Truckee Carson Irrigation District, "What is the Orr Ditch Decree and why is it important?" <http://www.tcid.org/support/faq-detail-view/what-is-the-orr-ditch-decree-and-why-is-it-important> (Accessed 5/2016)

was not resolved in the context of this negotiated settlement.

Seney: And that addresses which issues, that piece of litigation?

Faust: It addressed issues relating to the OCAP [Operating Criteria and Procedures]. It related to whether or not the T-C-I-D had taken more water than they were entitled to, those kinds of issues.

Seney: That wouldn't have been of interest to Sierra Pacific Power because that water had already gone by.

Faust: It was past us. That's why T-C-I-D was interested originally in a comprehensive settlement, was to get rid of that litigation. Ultimately, we couldn't negotiate on their behalf, and they decided that they didn't want to sit at the table and negotiate on their own behalf, and therefore we were in a position of having to go forward only with settlement of the issues that were important to Sierra Pacific.

We certainly couldn't negotiate their lawsuits, and so those are the one that remain. And, in my opinion, Pelcyger was just very happy to have those remain, because he's

continued to have some lawsuits that he could continue to litigate.

The Importance of Stampede Reservoir

Seney: Is the key here the affirming by the Ninth Circuit Court of the control of Stampede by the tribe for cui-ui recovery water?

Faust: As it relates to Sierra Pacific, yes.

Seney: Right. That changed everything, didn't it?

Faust: It changed everything from the context of our ability to store water. The problem was, is that it really did very little for the tribe.

Seney: Because there's no water?

Faust: Well, the reason why is because the tribe didn't own the water. There was basically a Mexican standoff, and this was illustrated very graphically when in the summer you could take a tour of the river system, which I did almost every single year, at least once, usually two or three times. When I would take congressional staff, congressional members of Congress, the new assistant secretary [of the Interior], John Sayre, people from the Department of the

Interior, we would take them out to Reno. The best way to tell the story is to get in a car and drive up and start at Lake Tahoe at Fanny Bridge. And you would show them where the rim is, and you would show them where the water comes into the system. And then you would go up to Donner [Lake], and you would then go over Stampede [Reservoir], and you would see where all the water was in the system.

And when you got to Stampede—this beautiful reservoir up in just the most gorgeous country—it was almost empty, and the reason why it was empty is because the tribe had decided to flush it for a cui-ui run. Well, under the Supreme Court decision which we had won with respect to the priority of water rights and how the river system fills its reservoirs, Stampede was last on the system. Stampede did not receive a priority filling. And as a result of the way in which the river system ran, there were many years when Stampede could not refill, because we had the right to pass our water through Stampede from our upstream reservoir to Boca [Reservoir],¹¹ our lower

11. Boca Reservoir is the body of water that sits behind Boca Dam, a major facility of the Truckee Storage Project. The reservoir has a storage capacity of 40,000 acre feet of water from the Little Truckee
(continued...)

stream reservoir.

So the tribe, while they had the ability to control releases from Stampede Reservoir, those release where of absolutely no value to them without any wet water, and they had no ability to put wet water in Stampede Reservoir, because our Supreme Court decision kind of trumped their Ninth Circuit Court decision. We couldn't store our water in Stampede and use it when we needed it during the drought, but they couldn't either capture and use our water because of our Supreme Court decision. And so we would then take these people up and show them this in a very graphic and—that was my simplistic way was explaining it.

And then after you leave Stampede, we'd drive down the Truckee and have lunch, and that was kind of fun, or into Reno, and then we would proceed off into the desert, and it would get hotter and hotter. You know, everybody in August recess loves to go out into the Alpine and here we went to [Lake] Tahoe. And by

11. (...continued)
River. For more information, see Carolyn Hartl, "Truckee Storage Project," Denver: Bureau of Reclamation History Program, 2001, www.usbr.gov/projects/pdf.php?id=200.

three o'clock in the afternoon we're down at Pyramid Lake, and there's this huge body of water at in the middle of the desert, and we said, "Now you know all the water that's supposed to be up in Stampede? Here it is. This is where it is." "You're kidding me." And then we would throw in the evaporation-rate differences of storing water downstream as opposed to upstream and how it's flushed down for a two-week period of time the recover the endangered species. You know, the Endangered Species Act is not that popular of a statute out West, for a variety of reasons, and it didn't make a lot of sense. They could see where the water was, and it wasn't where they thought logically it should be.

Seney: What you're doing here, by the way, is kind of the essence of lobbying work, isn't it?

Faust: Where you tell your story, absolutely. Yeah, absolutely. It is very graphic. And that was the best way to tell a story.

And then along the way in the car, while they're drinking their coffee and eating their donuts, you tell them the history of the court decisions and you tell them that the various battles back and forth, and then you explain to them how you're proposing to settle this with

an agreement. The settlement, I think, fundamentally, was a sound one, and the outline, as I explained earlier, was that we were going to be able to store our water in Stampede. When we didn't need our water, we would sell it to the United States Department of the Interior. They would buy it and use it to flush it down for cui-ui. Now, in reality, they were just giving us a credit towards other obligations that we had for storage in Stampede.

Seney: Storage costs.

Faust: Yeah, etc.

Seney: So no money changes hands.

Faust: You'll have to ask Sue Oldham on that one. I'm not exactly sure how that ultimately is going to work out, because some of the implementing agreements are not yet done, as you know.

Seney: Right.

Faust: And so we haven't actually negotiated a permanent storage agreement with a fee arrangement yet. We did win, however—and

this was stuck in kind of by amendment during the legislative process—the right to immediately store at least 5,000 acre feet. Now, it took us three or four years to get that agreement in place, but we ultimately did, and we now have the capability to store 5,000 acre feet for drought supplies. When we don't need the water, they use it. When we need the water, they usually don't want it anyway. And it has worked out to be a pretty good situation to kind of re-time the river releases, etc.

The Truckee-Carson Irrigation District had natural allies. They had a longtime Department of Natural Resources head, who—

Seney: Roland Westergard? You're nodding your head.

Faust: Yes, Roland Westergard, who was sympathetic to their issues. He worked for Governor Richard Bryan. At the time, Governor Bryan had, I think, sought to intervene with Senator Reid on T-C-I-D's behalf on numerous occasions.

Public Law 101-618¹²

As far as Sierra Pacific was concerned, T-C-I-D was always welcome back at the negotiating table, and, in our opinion, they really just decided to pursue a totally different strategy. It bothered us, ultimately and finally, when we came to Congress, and they had lost

12. Public Law 101-618 became law on November 16, 1990. The Law contains two acts: The Fallon Paiute-Shoshone Tribal Settlement Act and the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. The main topics of the legislation are:

1. Fallon-Paiute Tribal Settlement Act
2. Interstate Allocation of water of the Truckee and Carson rivers.
3. Negotiations of a new Truckee River Operating Agreement (TROA).
4. Water rights purchase program is authorized for the Lahontan Valley wetlands, with the intent of sustaining an average of about 25,000 acres of wetlands.
5. Recovery program is to be developed for the Pyramid Lake cui-ui and Lahontan cutthroat trout.
6. The Newlands Project is re-authorized to serve additional purposes, including recreation, fish and wildlife, and municipal water supply for Churchill and Lyon counties. A project efficiency study is required.
7. Contingencies are placed on the effective date of the legislation and various parties to the settlement are required to dismiss specified litigation.

Source: [http://www.usbr.gov/mp/lboa/public law 101-618.html](http://www.usbr.gov/mp/lboa/public%20law%20101-618.html)
(Accessed December 2011).

some lawsuits along the way, then they come back and say, "We weren't consulted. We weren't invited to participate. We were kept out of the process," which really is not a fair and accurate representation. They would really try and importune Barbara Vucanovich to represent their interest. Now, Barbara is another real superstar in terms of what occurred in getting this legislation passed.

Seney: Now we're talking about Public Law 101-618.

Faust: Yes, the ultimate bill that finally became law. We produced an agreement with the tribe. We took it back to the congressional delegation. They introduced it, Senator Reid on the Senate side, Congresswoman Vucanovich on the House side. And it moved forward to resolve those issues that existed between ourselves, the tribe, the operation of the upstream reservoirs on the Truckee system, and also to ratify the compact itself between California and Nevada.

The state of Nevada liked it because it did ratify the compact. Same thing with the state of California; they were getting their cases vis-a-vis the Pyramid Lake Tribe dismissed. And again the issues that remain unresolved were how much water TC-I-D could get out of the Truckee River diversion, and that remained to

be litigated and dealt with at a future date, not by our choosing, but by T-C-I-D's choosing.

The legislation itself had some difficult times. We had Senator [Bill] Bradley,¹³ who was very helpful and is very, very pro-Native American. You've already talked to Tom Jensen, and so you know all about all of their perspective. We had many different obstacles to overcome.

Seney: Could you tell me a little bit, kind of in detail, how you proceed with something like this on behalf of Sierra Pacific Power, what you do?

Faust: The first thing that you have to do is to go to the committee which has jurisdiction over your bill and acquaint the staff of that committee with what this thing is all about. And because of the twenty-five years of litigation and the complex relationships, both legal and otherwise, you just can't sit down and do that over lunch, and that's why we invited them to come out to tour the Truckee River system and to sit down with us and with everyone else and get a first-hand explanation of what it was.

13. Senator Bill Bradley represented the State of New Jersey in the U.S. Senate from 1979 to 1997.

We had Congressman [Norman D.] Shumway, who was the congressman from the California district. We took him on a similar tour and an air tour. He didn't have the opportunity to drive down to Pyramid Lake, so we flew him down and showed him where the water was. (laughter) And, of course, they were under a lot of pressure from the folks who recreate up there in those mountains. They didn't understand any of this. They'd pull up to Stampede, and it's two-thirds empty, and they can't figure out why.

So it was of tremendous interest to try and make something happen, and so we would arrange to take them out. We would explain what this is all about and why. And then, of course, your first step is to schedule hearings, and at the hearings, the administration presents their testimony, and the administration then can indicate what it is that they want to have happen.

One of the first problems that we encountered was in the [George H. W.] Bush administration. You know, we had Reagan pretty well okay, and we had Bob Broadbent as the Commissioner of Reclamation, but when Bush came in, he appointed a whole new bunch of people. Then those people, John

Sayre who was Assistant Secretary for Water and Science, but he was a lawyer from Denver.¹⁴ He did not have a significant amount of background with respect to the Truckee River Water wars, and all he could do was rely upon information that he received from the—

END SIDE B, TAPE 1 NOVEMBER 9, 1995.

BEGIN SIDE A, TAPE 2. NOVEMBER 9, 1995.

Seney: Today is November 9, 1995. My name is Donald Seney. I'm with Marcus Faust in his office in Washington D.C. This is our second tape.

Go ahead, Mr. Faust. Resident expert might not have got on the tape, because it started to make a little noise. It's on the run-off part there. Mr. Sayre had to rely on the resident experts in the department.

Faust: Within the Department of the Interior, to help him with this, and they were resident within the Bureau of Reclamation. The Bureau of Reclamation, being the sponsoring agency that

14. John M. Sayre served as Assistant Secretary of the Interior for Water and Science under the Bush administration from 1989 to 1993.

created the Truckee-Carson Irrigation District, had a natural sympathy to their position with respect to these issues.

Senator Bradley scheduled an immediate hearing on this whole question and invited Mr. Sayre to come up and testify. It was his first hearing, first congressional hearing, right out of the box. He had relied upon testimony that had been prepared by the Bureau of Reclamation. He walked up, and I had been in to see him, introduced this issue to him. He hadn't really, I think, understood what I was trying to educate him about, and he went up and walked right into a buzz saw, because his testimony was in opposition to the settlement. It was in opposition to trying to get this issue resolved in the way in which we were trying to move it. It totally reflected the Truckee-Carson Irrigation District perspective, which at that point in time was simply not the politically popular thing to say in front of a Democratic Congress and committee chaired by Senator Bradley.

Senator Bradley chewed him up and spit him out, and to my knowledge, John Sayre never went back to the Hill to offer testimony. Whenever he was invited to return for the entire remaining time that he was assistant

secretary, he would send someone else to go up and testify. Now, he may have gone up to some appropriations hearing that I'm not familiar with, but I really don't think that he ever went back up, because it was such a really sad experience for him.

As soon as that experience happened, I then went in and said, "Listen, you've got to come out and see what's going on here. You cannot understand it based upon briefings that you're getting from the Bureau of Reclamation people." So in February—remember the administration came in January—in February, we arranged for a trip for the assistant secretary and his staff.

Originally the Bureau of Reclamation tried to work it out so that none of us got to be on the bus with him, because they wanted to be able to be the ones who were exclusively whispering in his ear about what this was all about. We exercised a little political interference from Congresswoman Vucanovich and from Senator Reid, and that got turned around. And we took, in the middle of winter—the only time I've done this tour in the winter—we took John Sayre and his people up, and he heard from everybody. We had a huge

bus. We had the T-C-I-D people on it, we had the environmentalists on it, we had the tribe members on it. We had everybody on it.

When he finally got an understanding of the big picture, what it was that we were trying to accomplish for the community of Reno and Sparks, how we were settling an issue, how we were not adversely impacting, we were just leaving the status quo as it related to T-C-I-D. He then, I think, came around and came to an understanding of what was going on here. And since that trip, I think, just decided to let this thing move its way through, without being a major player.

Seney: I've been told about that testimony and I read it, and it was certainly embarrassing. I mean, not only did he have the wrong perspective, but he wasn't well prepared.

Faust: At all.

Seney: I mean, that was clear, too. Apparently he didn't understand from you what a complicated subject this was, and then his counterparts, assistant secretaries [Constance] Harriman and [Eddie F.] Brown, were not very well prepared either. I mean, the whole Department of the Interior looked very bad.

Conflicts Within the Federal Government Over Truckee River Operations

Faust: Part of the whole problem with the Truckee River story, in my judgment, is the fact that the Department of the Interior has to represent conflicting and different perspectives: the perspectives of Fish and Wildlife, the perspectives of Indians, the perspectives of water users, the perspectives of others. And as a result, they don't speak with one voice. There is no coordination. So you'd have Fish and Wildlife Service saying one thing, and then Bureau of Reclamation saying something different, and B-I-A saying a third thing. One of the things that I credit Senator Reid and Congresswoman Vucanovich with doing is actually getting the attention of the secretary, forcing the identification of an individual, Bill Bettenberg,¹⁵ down at the department, who worked out of the office of the secretary, who had the imprimatur of the secretary, who could

15. William (Bill) Bettenberg participated in Reclamation's Newlands Series oral history project. See, William Bettenberg, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2009, www.usbr.gov/history/oralhist.html.

come in and take the bureaucrats within each of those agencies and crack heads to get a uniform position. John Sayre came to rely upon Bettenburg for his judgment and advice, and he knew that Bettenburg was a career employee, he had no political ax to grind.

Bettenburg went out and figured out what was going on and immediately came to the conclusion that there were certain things that were wrong with the operation of the Truckee-Carson Irrigation District and the Newlands Project.¹⁶ And that there were other things that could be done do improve the cooperation of the Interior Department with the water users in the Truckee Meadows area and also with the tribe. Ultimately, they became also a very strong, positive input and player and remained so in terms of getting the operating agreement, the environmental impact statement of the operating agreement process moving forward.

16. Authorized in 1903, the Newlands Project was one of the first Reclamation projects. It provides irrigation water from the Truckee and Carson Rivers for about 57,000 acres of cropland in the Lahontan Valley near Fallon and bench lands near Fernley in western Nevada. In addition, water from about 6,000 acres of project land has been transferred to the Lahontan Valley Wetlands near Fallon. For more information, see Wm. Joe Simonds, "The Newlands Project," Denver: Bureau of Reclamation History Program, 1996, www.usbr.gov/projects/pdf.php?id=142.

One of the things, it's been frustratingly long in this process, and that's because it's being run by the federal bureaucracy. But another thing that is a positive about having it be run by the federal bureaucracy is that once it starts, it's methodical and you just can't stop it. It just keeps moving. And, you know, they've got more meetings. It takes way too long, but it's also very hard to stop.

Seney: Do you think that it will be resolved at some point.

Faust: Yeah. And I think we're finally just about to the point, within the next six to twelve months, we going to get a lot of these agreements hammered out now that the federal NEPA [National Environmental Policy Act] process has been complied with and a variety of other hoops have been jumped through.

Passing Public Law 101-618 Through Congress

Seney: Let me go back to the negotiations over 101-618 and how that got passed, because you mentioned that Joe Ely was in everybody's doghouse after the collapse of the compact legislation. Then the meetings that Senator Reid called together through that letter that you

all had him send out—that may not be putting it quite correctly, but we understand what I'm say here, I think.

Faust: I don't know if he would agree that we had him send it out.

Seney: Well, that's why I'm quarreling with my own language. I doesn't sound right. My understanding, too, if we could go back to that for a minute, because I meant to ask you, the night that he was elected, he's up in Reno and they said, "What are you going to do?" and he said, "I'm going to settle the northern Nevada water wars." And he has said to me in an interview, he didn't know what—

Faust: He didn't know what he was talking about.

Seney: That's right. He said he had no idea what he was getting into.

Faust: He did not know what he was talking about. Well, it was the number-one hot issue up there. He knew it. And Senator Reid did not have a significant basis support of Reno.

Seney: Well, he got 35 percent of the vote that first election in Washoe County.

Faust: Right. And that has given him, I think, contacts. You see, we created—Sierra Pacific created a coalition of businessmen in Reno to support the negotiated settlement. We reached out to a lot of the duck hunters that go out to Stillwater [National Wildlife Refuge], who are the residents up there, the hook and bullet crowd, okay, and also the environmentalists. And they really represented the significant movers and shakers, the chamber of commerce and others, and their interface with Harry over the years really gave him a numbers of contacts that he just did not have previously, because he hadn't represented that part of the state.

So the negotiated settlement really kind of became his calling card, his fundamental achievement for the Reno area in terms of settling the water war. And he did it with Congresswoman Vucanovich's help and sometimes over the opposition of Governor Bryan and later, when Bryan became senator. Senator Bryan, who, I still think, had greater sympathies with respect to the perspective of T-C-I-D and wanted to slow the process down in order to enable—and I don't think that Senator Bryan was seeking to kill the whole process. I do think there were times when he wanted to stop the legislation in order to try

and get T-C-I-D to come into the process, but, frankly, from my perspective—and I have heard this on two or three occasions, even including as recently as this year where T-C-I-D is involved in negotiations, they are invited, they walk away, they say, "We can't come to an agreement," and then other people come to an agreement, they move forward, and then T-C-I-D comes in and says, "We weren't invited. We weren't consulted. We weren't involved." They did that with Senator Bryan, and he believed them. And, therefore, he wanted to bring everybody back to the negotiating table, get T-C-I-D involved. We said, "Hey, they had their chance. They had their opportunity."

The same thing happened on these Newlands negotiations that occurred this year with Resolve, and they had been in with Barbara [Vucanovich], and Barbara had said, "Look, why don't you get involved? Why don't you negotiate?" This was last year and this year. And then the election [in November, 1994] happened, and the Republicans took over Congress, and all of a sudden they thought, "Hey, we don't have to do any of this stuff." She was very disappointed, and then she went and told them that they should stay at the table.

I think that that was the third or fourth iteration, and she's now aware that when they come back and say, "Well, geez, isn't there anything we can do to be consulted? Can't we get into this process?" Because they are now concerned. They've come to her and they want to stop the E-I-S [Environmental Impact Statement] and they want to stop the settlement agreement from going forward, and they want to stop the process. She's been through the process enough to know that they really have had an opportunity to engage the process and have been unwilling to do so.

Seney: My understanding is that she's told them that there won't be any rolling back of 101-618.

Faust: Exactly.

Seney: That there are too many happy people, including Sierra Pacific Power, the states of Nevada and California, the tribe.

Faust: While she represents Churchill County, she also has a lot more voters in Washoe County, and she knows that the continued economic well being of the Reno-Sparks area is predicated upon the continuing ability to have a firm water supply during periods of drought.

There have been more summers in the last five years where they have had water rationing and odd/even watering days and other strict Stage Three conservation measures implemented than not. So she knows the hardship that those people face, and she also knows that this is the best and quickest and cheapest solution. And that's why she was such a hero.

Attempts to Hold Up Public Law 101-618 in the House of Representatives

Let me tell you a little vignette about that. We had moved this legislation on the Senate side because of Senator Reid's strength and Senator Bradley's interest, and he personally had been out to Nevada on at least two occasions. He was moving it through, and it was a part of a big omnibus bill, and we finally separated it out when it looked as though that omnibus bill was going to die because of controversies over the Central Valley Project of California. It moved out, in just the final days, out of the Senate, and it came over to the House side. It was the very last night when it finally came over on to the House floor.

Bobby Walker was then in the minority, congressman from Pennsylvania, who was then one of the [Newt] Gingrich bomb-throwers,

and he had decided—right then all of the rules of the House were being suspended, and they were kind of operating the way the Senate does, which is, "I request unanimous consent to call up the following twenty-five bills and pass them as read." You know what I mean, instead of considering them one at a time. And all these members are trying to get things through. Walker had decided that he was not going to allow any bill to pass unless that bill had a House counterpart. Okay? The Senate bill that came over, unless there was an H-R bill. And whether or not that H-R bill had had a hearing in the committee of jurisdiction in the House, at least some element of a House process to acquiesce to what was going on.

We never had a hearing in the House on this bill. We had taken the congressional staff out. A very close friend of mine who's now the administrative assistant to Utah Senator Robert Bennett, Jim Barker, was then counsel to the minority on the Interior Committee, had been out, understood what was going on. The bill came over, and it ultimately was the second to the last bill passed in that session of Congress, and Walker had stopped it. He and Barbara went over to Walker and said, "Don't stop this. This is my bill."

He said, "Well, has it held hearings?"

And he said, "Well, we didn't hold Washington hearings, but we went out on a field trip," which is the field trip that I've referred to. And that satisfied Walker. The process had been satisfied, and he decided to release the bill and let it go through, and it passed the second to the last bill through, on the floor.

Seney: I'm told that there was a hold put on it for a number of hours.

Faust: By Walker.

Seney: That was by Walker?

Faust: That's how it was released. It went over on the floor. Barbara did and Jim Barker did, who was staff and was on the floor, staff for the committee on the minority side, and said, "Take this off. You're just hurting Barbara." And then Barbara went over and pleaded with him, and he released it.

Seney: And he did this out of kind of a general approach to legislation.

Faust: Yeah.

- Seney: Not on behalf of T-C-I-D, particularly.
- Faust: Oh, no. Oh, no. He didn't have any idea who T-C-I-D was. This was just the minorities, the loyal opposition, and their job is to make sure that the Democrats and the majority don't pass things they shouldn't. And he was seeing all these bills run through, and they had no idea what was in them. So he says, "Hey, we're not going to pass anything that we haven't had a hearing on, or there isn't a bill on, over on our side, 'til our people know what it is."
- Seney: Very interesting.
- Faust: So we got it through the very last day.
- Seney: Because I've heard a number of stories about what happened there on the House side, that there was a hang-up, that T-C-I-D had gone to [Congressman] Gary Studds, for example, the subcommittee chairman in Merchant Marine and Fisheries, because of the endangered species aspect. Senator Reid had to go and explain to—
- Faust: That's true.
- Seney: That was T-C-I-D's hand in that case. Do you

know that?

Faust: I don't know that. I think that's probably what Wayne [Mehl] told you, but I don't know. I don't know.

Seney: Right. Once the bill was passed—

Faust: That may have been the case. T-C-I-D had retained, ironically, my old boss, Jim Santini, at that time to help.

Trying to Include TCID in Public Law 101-618

Seney: Actually, let me go back a minute to talk a little more about the bill. Senator Bradley said that he wanted to include T-C-I-D, and he said that—

Faust: We all did.

Seney: Sure, I understand, but he said, "Let's take another ninety days here on this and see if we can't bring them in." I sure you were all in agreement with that, and I guess an attempt was made at that point to bring them in again.

Faust: Yeah. In fact, we were ready to move the bill in July, and then when the August recess came and they said, "Let's delay the bill and try and

negotiate something over the August recess," and we said, "Look, if we wait 'til September to come back and take the first legislative step, you know, there are only like fifteen or sixteen legislative steps you've got to make through this thing. We've got to make everyone correctly, or we're going to slip and fall."

And nevertheless—and this was something that T-C-I-D did—they got Senator Bryan and Governor [Bob] Miller to request Senator Bradley to postpone moving the bill so to allow T-C-I-D to come in try and figure out a way to accommodate them. And so they did. They came to Washington and they sat down with them. The state had picked up their perspective to some extent and was negotiating on their behalf, and there were some very, very tense discussions and meetings between Senator Reid and Senator Bryan and Governor Miller.

Ultimately, neither of them felt as though they wanted to be responsible for killing the bill and for handing Senator Reid a defeat and opposing our interests. They really did believe that they could force the tribe to sit down and deal with T-C-I-D. Frankly, those were the opportunities—and I've alluded to several

opportunities—in time throughout the years when T-C-I-D could have cut a fat hog if they wanted to. They could have had the whole system totally renovated. They could have had the newest, shiniest, brightest, most water-efficient, sprinkled pivot irrigation water project in the Western United States, and they wouldn't have had to cost-share any of it. And they probably wouldn't have had to repay any of it, because it would have been repaid with zero percent interest over fifty years from power revenues, if they would have been willing to come on board with respect to an agreement as to how much water they could get from the Truckee River system. And they had these ideas they were going to get 465,000 acre feet.

Seney: Like they always had in the past.

Faust: Like they always had in the past, and they were being led, I think inappropriately, by people within the Bureau of Reclamation who did not know the big picture, who had blinders on and who thought, "Well, we'll help you, and we'll get this water for you," blah, blah, blah. And they had a false sense of security and, I think, an inaccurate sense of where the reality was politically and the strength of their position. And, ultimately, they wouldn't bite on any of

that.

Seney: You're describing the carrots that were held out to them.

Faust: Absolutely.

Seney: The municipal water system.

Faust: Municipal water system. You heard that from Tom Jensen. Absolutely. Absolutely. Gifts.

Seney: I wish the tape could picture your face when you said, "gifts," because you were implying here that they were very foolish not to accept all this, you think.

Faust: I think so.

Seney: I understand that these inducements were offered. Did they think that the bill was not going to pass, still?

Faust: Yeah, they thought they could kill it.

The Bureau of Reclamation and TCID

Seney: What level in the Bureau was this coming from? The area, the region? Higher up, do

you think?

Faust: It started at the district level, and there was some support at the Sacramento level. Interestingly enough, what has happened is that through time, particularly since the legislation has been enacted, those folks have been the ones that have kind of turned around, because they've had the lead now in implementing the negotiated settlement. And they're the ones who have been holding the scoping hearings and doing the drafting of the settlement agreement. I think they've become converts.

Seney: The Bureau people.

Faust: Yeah, the Bureau people. And there have been some good folks that have worked on in, both at Sacramento and at the district level recently. But back then, back in the eighties, the late eighties when we were working on this, they certainly had the perspective of their constituency, which was the Truckee-Carson Irrigation District folks.

Sierra Pacific Power and Public Law 101-618

Seney: You've mentioned that Governor Miller and Senator Bryan raised questions about the bill, and Sierra Pacific Power, no doubt, made clear

to them that you wanted this bill.

Faust: We did, and their response to us always was, "We understand that, and we're supportive of that. However, we think that it doesn't go far enough. If we're going to settle this, let's settle all of the issues. Let's embrace a settlement that also includes a resolution of T-C-I-D's concerns."

Seney: The problem being you couldn't get T-C-I-D, then, to come to an agreement.

Faust: We didn't think so.

Getting President Bush to Sign Public Law 101-618

Seney: Once the bill was passed, did you play any role at all in getting President Bush to sign it?

Faust: Yes, and that was an interesting process. In the Senate, when we were moving the bill out, the T-C-I-D folks had found an ear with [Senator] Malcolm Wallop from Wyoming, who had represented agricultural interests in his state. The T-C-I-D farmers had been active in an organization called the National Water Resources Association. They had gone to their association, and Tom Donnelly had helped

them get appointments with Senator Wallop.

Senator Wallop's staff, the minority staff on the Senate Energy Committee who did water matters, really were opposed to getting this bill through, but they were under tremendous pressure from Senator Reid and Senator Bradley and Senator Wallop and others to move this bill at the end of the session. What ended up happening was these minority staffers called down to the White House, [to] President Bush's people, and got what they thought was a commitment that the bill was going to be vetoed. And based upon the commitment, they then decided, "Well, why should we take the political heat? We'll let it go, knowing that its not going to become law, and we'll get a veto, because we'll get the veto."

Seney: You're smiling big-time now. (laughter)

Faust: (laughter) I know. That's because he didn't veto it.

Seney: Yeah, crucial misjudgment on their part.

Faust: That's because he didn't veto it.

How Bills Can Be Killed in the Senate

- Seney: Could Senator Wallop have killed the bill?
- Faust: Yes.
- Seney: One senator can do that, can't he?
- Faust: Oh, yes. And, in fact, they often do; I mean, they can do it now in a normal legislative period of time just by threatening to filibuster any bill that comes up and therefore tie up the Senate's time. And, therefore you have to have unanimous consent, which means 100 percent of all senators have to agree to allow a bill to even come up to the floor for debate. And so without that unanimous consent, a bill can't be presented for debate on the Senate floor. All he had to do is object to its consideration and it wouldn't have come, let alone get out of the committee that he was on.

It's even more so the case in the final hours of a Congress, because there are so many people who have waited so long to move their bills, there's only a limited amount of floor time. The only way that you can get on the calendar is if there is an agreement that you can pass a bill they way I described earlier, where the majority leader stands up and says, "The following twenty-five bills are deemed read

and passed." And then he reads out the numbers and they go. In fact, they don't even read the numbers sometimes. All they do is refer to a slate of bills that are pending with the secretary of the Senate, and it's all done by unanimous consent. So there's no question that it could have been stopped, and they were prepared to do it, but they had been promised by the Bush administration that they would veto the bill.

President Signs Public Law 101-618

Seney: How did you work around that? Did you know this at the time, that they had gotten what seemed to be a veto pledge out of the White House?

Faust: Yeah, we thought they were going to get a veto. First, Barbara Vucanovich, and I would have to say that she did more than anyone else to make sure that the president signed this legislation. It was interesting that it was occurring during the period of time when the president and she had a good relationship. I think she had the opportunity to fly with him somewhere on Air Force One. She had met with him personally on this subject and talked to him about it.

Frankly, we also enlisted the help of Senator Laxalt, who was then retired, and asked him to see if he could help intervene with James Baker, the chief of staff, which he did as well. We had good information with respect to who within the White House was going to ultimately make recommendations. Of course, the Indians were working hard through their contacts. Senator Reid, even though it was more limited, had spoken to the congressional liaison people who had worked for President Bush.

We worked with the Department of the Interior to make sure that they didn't jump in and recommend a veto. Bill Bettenburg was helpful in that context, to prevent Interior from recommending a veto to the president.

Seney: By this time, Bill Bettenburg had a pretty critical role in Interior over this legislation.

Faust: Yes, he did. By then he was the czar of the Truckee River, and he was out of the Office of the Secretary, and so they weren't recommending a veto either. They thought ultimately that this is something that should happen.

So we just brought every tool that we had to bear to make sure that they knew things were going on. I also have to say, I believe, even though I cannot recall that with any specificity, there were certain things that President Bush and the administration wanted out of our congressional delegation, as well, in terms of some close votes on some major pieces of legislation that they had to get through at the end. There was some discussion about those, even before the bill went down to the White House—"Gees, we get this down to you, we've got to get it passed," etc.

Seney: A little bit of the usual kind of trading back and forth?

Faust: Yeah, yeah. I don't think ultimately President Bush wanted to be the one to tell the Indians no, and to tell the folks in northern Nevada no, and to be the bad guy, so to speak. Senator Wallup didn't want to be the bad guy, he wanted Bush to be the bad guy. Well, it got down there, and Bush decided he didn't want to be the bad guy. (laughter)

Seney: Did former President Reagan get involved at all because of his interest in having been governor [at the time the interstate compact was agreed upon by the two states]?

Faust: We asked Senator Laxalt to contact former President Reagan and have him weigh in. He said that he did communicate with him. I think that what happened is that Senator Laxalt was authorized by President Reagan to speak on his behalf to Baker and to those folks about that bill.

Seney: I understand Senator [Pete] Wilson, soon to be Governor Wilson at that point, was also important.

Faust: Yeah, he was. They supported it. They want enactment of this, and so he had himself pushed for signing it.

Ultimately and finally, there were more reasons to sign it than there were reasons to veto it, and that's how all of these work out on these political equations, is that there are more reasons to sign it than not to sign it.

Seney: Were you surprised the bill went through?

Faust: No, I wasn't. I really wasn't. I was always confident that we would get it through. There were times when I thought it looked pretty dismal, but I still believed in our ability to—maybe I'm an eternal optimist. I've had bills

that were deader than this one, certainly deader than this one, that have been resuscitated.

At the end of a session, it's kind of an open season, because all of the rules don't apply anymore. You can get done whatever you've got the political muscle to pull off, and that's what happens at the end of a session. I thought that we had some pretty strong allies with Senator Bradley and Senator Reid and Congresswoman Vucanovich and some of the others who were strongly supporting this legislation.

The Settlement II Negotiations

Seney: What role did you play in the Settlement II negotiations and the run-up to those. Do you get involved in anything like that, these most recent one?

Faust: Oh, the most recent ones with Resolve?

Seney: That fell apart.

Faust: Unfortunately. Let me say this.

END SIDE A, TAPE 2. NOVEMBER 9, 1995.
BEGIN SIDE B, TAPE 2. NOVEMBER 9, 1995.

- Seney: Your very last words, you were saying Sierra Pacific was trying.
- Faust: Sierra Pacific was always trying to figure out a way to accommodate T-C-I-D's interests, because we believe that there is a benefit to having everyone on the river satisfied. It's not good for any of us. We have an interest in what they do, and we share resources. We share the Donner Lake with them 50-50. So there is a connection there that remains important for us. We, in fact, attempted to try and bring them into some post-negotiated settlement negotiations in the context of the preliminary settlement agreement, and T-C-I-D went out and hired an excellent, excellent counselor, he was a consultant, then with Bookman-Edmiston Engineering, whose name is Mike Clinton. He is now the general manager of, I think, the largest irrigation district in the country in California, the Imperial Irrigation District. Mike was retained by them to try and represent their interest; I think they were stunned that the bill passed. I think they were stunned that it didn't stop it, and I think that they temporarily thought, "Well, gees, maybe we better jump on the train now." They could have gotten a lot more if they had jumped on it earlier.

So they sat down, and Mike tried to work with them. There were some series of negotiations with everybody in the context of really initiating this process of the whole settlement agreement. There were times when he was optimistic that he could bring them on board, but true to form, ultimately and finally the disagreement among the board members and the inability of the executive director to really take a strong position with backing of the majority of his board, caused them to break off those negotiations and again leave the process. So there was, even before the negotiations, the recent negotiations that were done by Resolve, an attempt to bring them in, and they had hired a consultant to try and represent their interests. That failed.

So this is like the third or fourth attempt that I know of, in the ten years I've been involved, where T-C-I-D had been brought into a process with the expectation that we could accommodate some of their interests. I think fundamentally one of the reasons why they have been unsuccessful and unable to come to terms with it is because they do not have a realistic perspective with respect to where they are, what kind of a position they're in, and where their strengths are and where their risks and exposures are. That's very unfortunate for

them, because where there is no vision, the people perish.

Working for Sierra Pacific Power

Seney: Let me ask you a little bit about how you work with Sierra Pacific and how they are to work with. One of the problems that T-C-I-D has, of course, is it has all these different water-right holders and it's very difficult for them to come to a decision and have a unified view of what they do. The Pyramid Lake Tribe has achieved that. They still quarrel among themselves. But certainly as an entity, Sierra Pacific Power is at a great advantage here being a corporate structure with clear lines of decision-making and people who have real authority that can make decisions.

Faust: There is no question that that's an advantage, and they also have financial resources that they've committed to this process, which is another advantage. We couldn't have done this without their willingness to pay to bring people out to be briefed and have field hearings and field trips with respect to how the Truckee River system operates.

The water part of Sierra Pacific's business,

however, is not a revenue generator, it's a revenue loser, and it's only been recently that they've made money at the water business, and it's a small part of their business at that. It has occupied an inordinate amount of senior management time. But, it is such an important political issue for the economic future of the area that they recognize that they have almost a public duty and responsibility to continue to commit the kind of resources to a resolution of the water issues that they have, even though it's certainly disproportionate to their basic main business functions. It will become even greater after they end up merging with Washington Water Power here within the next several months.

Seney: If I'm looking out as president of Sierra Pacific Power and I see this 10 percent that I think water is of their revenue stream, if I'm not mistaken, but it's key to the 90 percent. That is, if we don't have enough water to have development, I'm not, as president of Sierra Pacific Power, going to be able to sell the electricity. Is that how they see that?

Faust: That is a part of how they see it. They've had several opportunities to sell the water business. They've refused to do so. One of which was, of course, to just cede everything over to the

county. Frankly, the business community and the Truckee Meadows didn't want to do it because of some of the problems. I don't know whether anybody's told you about the Honey Lake Project or any of that stuff.

Seney: A little bit, yes.

Faust: The county got involved with it. But ultimately those have been unmitigated disasters and fiascos, and everyone, including Senator Reid and others, have just kind of basically plead with Sierra Pacific to maintain the water company and to maintain the water system and to stay the course with respect to the full implementation of the negotiated settlement, and we remain committed to that course.

Tribe's Second Thoughts about the Negotiated Settlement

It's interesting that even after the negotiated settlement passed, the tribe—you talk about the difficulty of achieving some kind of clear consensus and direction, even the tribe had second thoughts about it. And part of that was driven by the fact that they saw that over in Utah, on a bill that I worked for on behalf of

the Central Utah Water Conservancy District, the Utah Utes got a \$195 million settlement, and they said, "Well, we only got \$45 million, they got \$195 million. We got screwed." (laughter)

So they went to Bob Pelcyger, and Bob was on the ropes. This was another one of those instances I referred to where the business committee and others were saying, "Well, this isn't as good a deal as we thought it was. We should have gotten more." And part of the problem—and I see this in the Indian world everywhere—is that they don't know how to take yes for an answer, and it's always popular in the tribe and in tribal politics to run on the platform of, "We've been disadvantaged. We were taken advantage of. We have not gotten a square deal. People haven't been truthful and honest with us. They've broken their agreements." Those are the mantras of political campaigns in tribal politics, and even after they got what they wanted, which was a negotiated settlement. The next group then came in and started to say, "We got screwed. We didn't get the deal we should have. We were taken advantage of," etc., etc.

It got so bad that Bob had to dismiss himself from the process. He recommended

the tribe go hire another lawyer who was an expert in evaluating and had done a lot of Indian settlements, had him do an independent analysis of (A) the tribe's claims and (B) what the settlement was and how they relate to one another. So the business committee went out and hired a lawyer here in Washington named Joe Membrino, and Joe Membrino was retained for several months to do an analysis. He came in and interviewed me and others. His fundamental conclusion was that the tribe didn't have \$45 million worth of claims against the government, that, in fact, they got a better deal than they should have, and that they ought to be very happy with what it is that they got. He went back and made that report to the business committee, and I think ultimately that has now quieted that aspect of this.

Senator Reid's continued attention to the tribe and its needs and school appropriations and other things has continued to help, and even Senator Bradley's continuing interest has helped out there. They all went out for a cui-ui run, even after the settlement bill was passed, which was a positive thing. So it has been an advantage to work for a client that has had a clear mission, clear vision, and has not been conflicted with respect to internal politics the

way both the tribe and T-C-I-D has been. It has one purpose, and that is to find the least expensive source of water supply for the growth of the Truckee Meadows, for the benefit of the rate payers, and, as such, we've been able, I think, to be brokers and to maintain relationships with respect to both groups.

Recent Actions by the House Interior Subcommittee

Seney: Did you get involved at all just recently when the—I think it was the House Interior Appropriations Subcommittee X'ed out the \$8 million, was it?

Faust: Yes, yes.

Seney: Did you get involved in that?

Faust: Very much so. In fact, it never occurred to us that they would take out the \$8 million that was in there for the tribe.

Seney: The final payment.

Faust: The final payment to the tribe trust fund. We were more focused on the \$2 million appropriation that was going for acquisition of water rights associated with the recovery

program, because that was related to water supply.

Seney: So that's more of interest to Sierra Pacific Power?

Faust: Well, we thought the other was safe, but it was the \$2 million that we thought was in jeopardy. So we had been working with Barbara and with Senator Reid, but since the appropriations bill initiated and began in the House, we started with Barbara to make sure that \$2 million was safe. Well, the Interior Appropriations Committee staff certainly heard Barbara say, "Yeah, we'll protect that \$2 million," but they just never told her they were going to take out the \$8 [million].

Coincidentally, the day after this all happened, and it was marked up in subcommittee and it became public, the chairman of the board of Sierra Pacific, Walt Higgins, was here with me visiting with our congressional delegation. And we had the opportunity to go over to the Appropriations Committee and we met with Barbara in the hallway, pulled her out of Interior Approps, we talked to her about the issue. She was really upset that she had been let down by the

committee staff, and that's just not done. You don't take a member of the subcommittee and cut money out of her program and not tell her. So she went to Ralph Regula, chairman of the committee, and said, "Look, when this bill comes to full committee, I want to offer an amendment to restore it," and they basically said no. She said, "I've got to get this back in."

So then we decided to adopt a floor strategy of seeing whether or not we couldn't get her to get a commitment relative to a colloquy from Chairman Regula, that if the money was restored on the Senate side, that he would accede to the Senate position in conference. Well, coincidentally, there were some freshmen Republicans who wanted to cut funding for a \$16 million program, and because of the pressure that Barbara had put on them for messing with her project, the staff knew they were in trouble with her, and they knew that this amendment that was going to cut \$16 million from the bill was likely to pass.

They went to Barbara and they said, "Okay, Barbara, here's the deal. These guys are going to offer an amendment. We're going to oppose it, but it's probably going to go, because there aren't a lot of supporters for this." These men who manage these bills, men

and women—and Barbara's one of them—have a pretty good idea where the votes are when people offer amendments, so they knew it was lost. They said, "We'll be \$16 million under our budget allocation at that point. We want you to be standing in the well with your amendment ready to restore the \$8 million, because we'll have room to put it back in the bill."

Seney: Now that the \$16 million is gone.

Faust: Now that the \$16 million is gone. So all these members marched down to the House floor, cast this great vote to balance the budget and reduce appropriations by \$16 million, and then Barbara walked up to the mike, the very next amendment, and that was a recorded vote. "The gentle lady from Nevada is recognized." She says, "I have an amendment at the desk." They read the amendment. Well, they don't really read the amendment, because reading of the amendment is dispensed with by unanimous consent always, because it takes too long. So they read the first three words of the amendment, and she says, "I ask unanimous consent that the reading of the amendment be dispensed with," so they dispense with the reading of the amendment, and then Barbara

says, "This is to restore money that was requested by the administration. It's for the implementation of the settlement. It's very important."

And Chairman Regula, on the other side, says, "We accept the amendment from the gentle lady, and we agree to it."

Then the Speaker says, "Question is on the amendment. All those in favor, say aye. The ayes have it. The amendment is agreed to," and they move on. It takes a matter of two minutes and the money gets put back in, and most of the members of the House don't even have any idea, they just thought they'd saved \$16 million.

Seney: And they ended up saving \$8 million, really.

Faust: Yeah, and actually what's happened is that the freshmen have finally figured out now what happens. So now they've got a new procedure that they're trying to get approved that requires that any savings that occurs on any appropriations bill as a result of a vote to cut money stays cut. (laughter) You can't put it back in. Which then puts the burden on anyone who wants to offer an amendment to put money into the bill, to go find somewhere

else in the bill where they have to come up with an offset.

Seney: So the net cut stays.

Faust: Precisely.

Seney: That's interesting. So this is something you have to keep your eye on.

Faust: No question about it. No question about it.

Seney: I would think that the settlement fund is kind of tangential to you.

Faust: It's very important.

Seney: If that doesn't go, it unravels the whole thing.

Faust: That's right.

Seney: I guess that's what I'm trying to say.

Faust: Absolutely. We worked very hard to try and get that tribal money restored.

Seney: And even though the settlement act was passed when Joe Gremban was president, now Mr. Higgins is president, and there was someone in

between.

Faust: There were two in between, Austin Steadham and Bill Kuipers.

Seney: But do you have a consistency of policy here on this?

Faust: Yes.

Seney: And you don't expect Mr. Higgins to change any of that?

Faust: No.

Seney: Is there anything I haven't asked you that you can tell me that's important?

Faust: Gosh, I don't think so. You've been very thorough.

Seney: Well, you know a lot and you know a lot more than I've asked you about. Everyone has a piece of the puzzle, and all these fit together, very nicely, but your perspective is certainly a valuable one here in terms of what someone does on behalf of a client like Sierra Pacific Power and what a lobbyist has to know and what a lobbyist has to do. In the future, as people read this, I think they'll get a flavor for

what your responsibilities are. I take it you expect to be working for Sierra Pacific Power for a long time.

Faust: Gosh, I hope so.

Seney: Is that how it works with a lobbyist? Do you tend to keep clients over a long period of time?

Faust: Not usually. Many clients and many of the big law firms actually go out and look for particular projects and then they pile on the work and run up huge gigantic bills and really makes the client glad when he gets the problem solved. Then he goes away and tries not to come back again. That's the way a lot of them work.

I adopted a strategy for a variety of reasons many years ago to try and be a long-distance runner, thinking that it would be much better to have a smaller stable of very secure long-term multi-year relationship clients. As a result, I really have kind of become, even though I'm not an employee of Sierra Pacific, I'm viewed as their Washington office in every sense of the word.

Seney: And you strategize with them over these kinds

of things?

Faust: Continually. I'm going out there, in fact, this weekend, to meet with Walt, just for a quick trip.

Seney: Great. On behalf of the Bureau, I really appreciate you giving us this time.

Faust: You're very welcome.

Seney: Thank you.

END SIDE B, TAPE 2. NOVEMBER 9, 1995.
END OF INTERVIEW.

