

ORAL HISTORY INTERVIEW

FREDERICK W. GIRARD



STATUS OF INTERVIEW
OPEN FOR RESEARCH



Interviews Conducted and Edited by:
Donald B. Seney in 1999
California State University, Sacramento
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Newlands Project Oral History Series



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By Andrew H. Gahan

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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

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

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

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

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

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

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For additional information about Reclamation's history program see:
www.usbr.gov/history

Oral History Interview of Frederick W. Girard

Seney: Donald Seney. I'm with Mr. Frederick Girard in his office in Sacramento, California. Today is July 20, 1999. This is our first session and our first tape.

Good afternoon, Mr. Girard.

Girard: Fine.

Seney: Good. Why don't you begin by just giving me a brief biography of when, where you were born, grew up, and . . .

Early Life

Girard: I was born in Modesto in 1923. My father was a miner, mining engineer. We moved to Grass Valley, California. I went to grade school, high school there. Graduated in 1941, and went in the Army, and was in the paratroops in World War II. I was shot in Italy. Came . . .

Seney: Saw a lot of action, probably?

Girard: Not a hell of a lot. I got shot fairly early.

Seney: Oh, no. (Laugh)

Girard: And, got discharged, started college. I went to Placer Junior College for a year, University of Redlands, and Boalt Hall for law school.

Seney: U-C Berkeley?

Girard: Right.

Seney: Right.

Girard: And then took the examination for Deputy Attorney General, and I think I was first or second on the state list and went to work for the [California State] Attorney General in Sacramento.

Seney: When would, when would that have been? What year?

Girard: Well, let's see, I got out of law school in '53. It would probably been late '53 or (Seney: Okay) early '54. (Seney: Okay) I'm not sure exactly when.

Seney: And, if my memory serves me right, the Interstate Compact Commission is set up in '55, wasn't it?

Girard: Well, it probably started then.

Seney: Yeah.

Girard: At that time, Adolph Moskovitz, who was, now was one of my partners here (Seney: Right) in the firm, he and Stan Kronick formed this firm, he was the attorney for the Compact Commission in California. (Seney: Ah) At some stage, some stage, I would guess somewhere within three or four years after that, Adolph quit the Attorney General's Office, and formed, he and Stan formed this firm, the present firm. I continued on and succeeded him as the attorney for the California Compact Commission, at that time.

Seney: Tell me about that. What did you do as attorney for them? You must have worked at his elbow, I take it?

California Compact Commission

Girard: Not really.

Seney: No? You just . . .

Girard: Not before.

Seney: No? (Laugh) You just jumped right in?

Girard: I just took it, and (Seney: Yeah) there was, it was just an awful lot of negotiations. The attorneys had a great deal of responsibility in

this, and we did all the drafting. Jim Johnson was the attorney for the Nevada Commission. I was the attorney for the California Commission at that stage. We got along fine. There was an attorney named Ed Skeen [Spelling?] out of Salt Lake City, who was the attorney for the Department of Interior, and we had many, many sessions together (Seney: Yeah) drafting, and we all (Seney: Yeah) participated in the negotiations verbally, and that kind of thing.

Seney: Now, this covered not only the Truckee and the Carson river basin . . .

Girard: But, the Walker [River].

Seney: Walker as well?

Girard: Yeah.

Seney: And, the interstate allocation at Tahoe? Those were the (Girard: Yeah. Truckee) four main elements (Girard: Yeah) of it? Right.

Girard: The biggest dispute, as I recall, was probably on the Lake Tahoe basin.

Seney: Yeah. How to divide the available (Girard: Yeah) surface and groundwater rights between the two states.

Girard: I think California was pretty, pretty well united. And my recollection is they had just made a survey of the land that could be reasonably developed to residential use, and then figured out so much per house and (Seney: Yeah) came up with an overall sum for both states. Everybody, I think, recognized there wasn't going to be anything other than recreational (Seney: Yeah) and minor commercial use of the (Seney: Right) Lake Tahoe basin. I think California people generally were a hundred percent in support of that kind of an allocation. (Seney: Yeah) Nevada was split. Will Bliss, Sr., at that time, was more or less on California's side, and the, George Devore, who represented, I believe, Sierra Pacific Power, (Seney: Right) and—who in the hell was the guy from Newlands Project at that time? I don't recall what his name—oh, Phil Hiibel, or something like that?¹

Seney: Yeah. I think that's right. Yeah.

¹ Will Bliss was actually a member of the Nevada Compact Commission along with Norman Brown, George Devore, James Johnson, B. F. Minister, Edward Peckham, Fred Settlemeyer, and Hugh Shamberger; see W. Turrentine Jackson and Donald J. Pisani, *A Case Study in Interstate Management: The California-Nevada Water Controversy, 1955-1968*, California Water Resources Center, University of California, Davis, Contribution No. 147, May 1974, 4.

Girard: I think he had, they, they generally opposed that idea, but eventually I think it was pretty well resolved along California's suggestions.

Seney: Yeah. Who did you get your marching orders from? Was [California] Governor [Goodwin] Knight² involved on a regular (Girard: No.) basis? Or . . .

Girard: Probably, well, I don't know. I don't know too much who was involved. Generally, when I first started, Harvey Banks was the director of [California Department of] Water Resources and he was pretty much the, all the commission members were equal, (Seney: Right.) but he was, he was probably as influential as any of them. And then when he left, Bill Warne³ became the director of Water Resources, and the guy, he had, Bill didn't take much part in the negotiations. He had an associate assistant director—what the hell was—Reginald Price [Spelling?] or something like that, (Seney: Right.) who attended a lot of the sessions.

Seney: Yeah.

² Goodwin Knight was governor of California from 1953 to 1959.

³ William Warne played an important role in Reclamation activities, serving as assistant commissioner from 1943 to 1946 and assistant secretary of the interior from 1947 to 1951. He also authored a brief history of the Bureau of Reclamation; see William E. Warne, *The Bureau of Reclamation* (New York: Praeger Publishers, 1973).

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Girard: Bill Gianelli⁴, who was Harvey Banks's chief assistant, also participated actively. There was George Kellet [Spelling?] was a member, Bill Bechdolt, Hubert Burns from Alpine County. A guy, what was the guy was Walker County, Walker Irrigation District, or Walker River?

Seney: Yeah. That is not . . .

Girard: Ray Charlebois or something like that.

Seney: That's not been of interest to me, so I'm afraid (Girard: Yeah) I'm not up on that one.

Girard: And, the meetings were, on the whole, frequent, a lot of drafts back and forth. Eventually, they reached a compact. My recollection is both states approved it, (Seney: Yes, they did) but it never got through Congress.⁵

⁴ William Gianelli participated in Reclamation's oral history program. See William (Bill) R. Gianelli, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by George Petershagen and Donald Seney, Bureau of Reclamation, July 28, 1994 and September 23, 1994, at the narrators home in Pebble Beach, California, Edited by George Petershagen, 2010, www.usbr.gov/history/oralhist.html.

⁵ For more information on the California-Nevada Compact, see Donald J. Pisani, "The Strange Death of the California-Nevada Compact: A Study in Interstate Water Negotiations," *Pacific Historical Review* 47:4 (November 1978): 637-58; Leah J. Wilds, *Water Politics in Nevada: A Century of Struggle* (Reno: University of Nevada Press, 2010).

Seney: Right. Did, I'm trying to remember, did California have eight members on its Commission? Is that . . .

Girard: Well, (Laugh) let's see. They had Warne, and then they had Colonel Barton, who was, I guess, kind of the chairman. He was head of the Reclamation Board at one time. He may have been still at that time. (Seney: Yeah.) There's Barton. I think the Director of Water Resources. One from Alpine County. One from, two from Lake Tahoe basin, which is Bechdolt and George Kellet. God, I don't, I couldn't tell. (Seney: Right) I can't recall any more than that.

Seney: That's close enough. That's close enough. We'll, (Girard: Yeah) I'll put it in in a footnote.⁶

Girard: Yeah.

Seney: Yeah. Would the Commission, the California Commission, meet separately on occasion (Girard: On occasion) to discuss what would be their plan and strategy? (Girard: Yeah) And, yeah.

⁶ Members of the California Compact Commission: Harvey O. Banks, A. M. Barton, William Bechdolt, Hubert Burns, Ray Charlebois, Cecil Edmunds, and Frank Rahbeck; see Jackson and Pisani, *A Case Study in Interstate Management: The California-Nevada Water Controversy, 1955-1968*, 4.

Girard: We'd meet separately and then we'd meet jointly. A lot of the meetings were up at Will Bliss's place at home, on the lake there.⁷

(Seney: Yeah) And, a lot, a lot, probably the majority of them were in Reno. Not too many in Sacramento.

Seney: By the way, when you tap your foot the microphone picks it up.

Girard: Okay.

Seney: If you can't keep from doing it, go ahead.

Girard: Okay.

Seney: Okay?

Girard: Okay.

Seney: All right. This is a very sensitive microphone and very fancy equipment. We'll get a good recording here. My understanding is that the negotiations went on so long (Girard: A long time) that you had to keep going back from time

⁷ The Bliss family donated 744 acres of land on the west shore of Lake Tahoe, just north of Emerald Bay State Park. The state of California turned the land into D. L. Bliss State Park in honor of timber and railroad magnate Duane Leroy Bliss.

to time to get a baseline on, on, I guess, usage and so forth. Do you recollect that?

Girard: What do you mean “usage”? On what uses (Seney: Well . . .) what were the ongoing uses?

Seney: Yeah. You said you surveyed how many could build . . .

Girard: Well, I meant generally speaking in compact negotiations, and this is not limited to this compact, that you recognize existing uses and try to kind of accommodate them before you make the allocation between the states. And there was always a, I’d presume some consideration of that. Although, the uses, certainly the uses of irrigation water, which was by far the dominant, had pretty well finalized long before the compact even started.

Seney: Right. With the Orr Ditch Decree and the Alpine Decree?

Influence of Water Decrees on the Compact

Girard: Well, the Orr Ditch Decree on the Truckee, but the Orr Ditch Decree, the Orr Ditch Decree only covered the Truckee River in Nevada.⁸ (Seney:

⁸ For a brief description of the Orr Ditch Decree, see “What if the Orr Ditch Decree and why is it important,” www.tcid.org/support/faqdetail-view/wahtistheorrditchdecreewhyisitimportant (Accessed November 2013).

Right) It didn't affect Lake Tahoe. Those uses were still going on and increasing. That's probably the only existing uses that were not pretty well fixed.

Seney: Because the Alpine Decree had fixed them on the Carson?

Girard: No. The Alpine Decree had not been entered yet.

Seney: That's right, it hadn't. It didn't.

Girard: The Alpine Decree was entered in 1980.⁹

Seney: Yeah. There was a preliminary . . .

Girard: But, as a preliminary injunction (Seney: Right) and that kind of thing, (Seney: Yeah) on it. I don't recall, there wasn't a hell of a lot of dispute. I think, my recollection they, they

⁹ The Alpine Decree "established the respective water rights (to surface water only) of the parties to the original lawsuit, both in California and Nevada to Carson River water. The decree did not make an interstate allocation of the Carson River between California and Nevada; it only quantified individual water rights." For more information, see Division of Water Planning, *Nevada State Water Plan: Part I—Background and Resource Assessment*, Section 8, Glossary on Selected Water-Related Decrees, Agreements, and Operating Criteria, www.water.nv.gov/programs/planning/stateplan/documents/pt1-sec8.pdf. (Accessed June 2014).

arrived at some kind of a sum, 2,000 or 3,000 acre feet of water to cover unused, additional uses that occurred in California.

Seney: Right. Right.

Girard: Not much in Nevada.

Seney: Yeah.

Girard: But, Nevada's are pretty well fixed within the Alpine Decree.

Seney: Right. And, you said there were a lot of, it was tough negotiating?

Girard: On the Tahoe then I think most of the arguments were probably on the Lake Tahoe portion.

Seney: The allocation up there? Right.

Girard: Yeah. Yeah, because—and, I don't think anyone quarreled with that, you know, the decree allocations in the Orr Ditch Decree. My recollection isn't.

Seney: No. I think that that was settled.

Girard: Pretty much settled.

Seney: Yeah. Right.

Girard: It was just a question what uses were going to be permitted in California (Seney: Yeah) and how much. And, it was pretty much divided by area and then blocked out, and then Harvey Banks, or whoever, engineer made this analysis of what the hell the anticipated areas for development would occur, and they allocated so much for each area. (Seney: Right) And, that was, it was kind of a mechanical thing.

Seney: Right. And it ends up two-thirds to California and one-third to . . .

Girard: Well, that pretty much represented the geographic area of the Tahoe Basin, I think.

Seney: Ah. Yeah. That is about right, isn't it? Yeah.

Girard: Yeah. I think that's what it was based on.

Time Spent on Compact Issues

Seney: Yeah. Yeah. How much of your time as deputy attorney general was taken up on compact matters?

Girard: Oh, it varied. At various times, full-time, at various times not.

- Seney: Because, you were working on other matters, right, on the Feather [River]?
- Girard: Yeah. I was trying the Fallbrook case down in San Diego involving the water rights at Camp Pendleton. I did all the condemnation work for Orville Dam and Feather River Project¹⁰ before I quit, and (Seney: Yeah) that kind of thing. I pretty, I think I quit basically just before the compact finalized. I left in '67. (Seney: Right) I think Jim Sanderson [Spelling?], who took over after I left; he died here a couple years ago.
- Seney: Well, it was, what, passed in '70 and '71?
- Girard: Yeah.
- Seney: Nevada first, I think (Girard: I don't know) and then California? Something like that? Yeah.
- Girard: Yeah. But, most of the negotiations went on when I was there.
- Seney: Had you intended to get into water law or did it just happen?
- Girard: No. No. It just—(Laugh) in the A-G's [Attorney General] Office, you know, you—I

¹⁰ The Feather River Project eventually morphed into the California State Water Project; see Norris Hundley, Jr., *The Great Thirst: Californians and Water, A History* (Berkeley: University of California Press, 2001), 279-91.

started out in the criminal section, worked on the Chessman case, and . . .

Seney: Oh, did you?

Girard: As a very minor participant.

Seney: Oh, that was such a notorious case.

Girard: Clarence Bennett [Spelling?] and

Seney: Yeah.

Girard: And then at that time, when I came up here I was, there was only three of us in the Criminal Section, in the Sacramento office, (Seney: Whoa) and one of them was a part-time clerk of the Assembly. (Laugh) So, there was really only, actually three full-time lawyers. (Seney: Yeah) Now there's probably 200.

Seney: Yeah. I'm sure there is. Yeah. Yeah.

Girard: And when we, then I went into the Civil Section shortly after that.

Seney: And that's when, obviously, you got involved in the water (Girard: I got into water) matters. Yeah.

Girard: And then, (Seney: Right) condemnation, and that kind (Seney: Right) of thing.

Seney: Was it in '67 that you joined the firm that you're with now?

Girard: Yeah.

Entering Private Practice

Seney: Right. And, this again, Mr. Moskovitz is here and he's continuing to work in water matters?

Girard: Oh, he continued. He died here about two years ago.

Seney: Yes. I'm aware of that. Right. (Girard: Yeah) I'm sorry I missed . . .

Girard: Adolph worked—yeah. In fact, during the compact negotiations, when I was the attorney, he represented Placer County in the negotiations.

Seney: Uh huh.

Girard: Al Landis [Spelling?], I think, represented El Dorado County, and Martin McDonahoo [Spelling?] represented Alpine County. So, there was three of the senior guys in water law field (Seney: Yeah) were there and I had just

started and was representing California in the (Seney: Yeah) water law field.

Seney: Yeah. How did you come to work with the firm? Mr. Moskowitz invite you to come work?

Girard: Yeah. Well, I knew Mr. Moskowitz, Mr. Kronick, and then a guy named Mark Vanderlawn [Spelling?] that was in the firm at that time. We came out of the Attorney General's Office. Adolph, and I, and Mark all came out of the Attorney General's Office. And when Kronick was the attorney with the Department of Water Resources they were, I had known them quite a while.

Seney: Yeah. Did you go to law school together?

Girard: No.

Seney: Or, were they Berkeley (Girard: No) grads too. Or . . .

Girard: Well, Adolph was a Berkeley grad. He was year or two years ahead of me, I think, (Seney: Yeah) in law school.

Seney: Did that matter, by the way, (Girard: What?) that you were both Boalt Hall people?

- Girard: No. It didn't mean . . . (Laugh)
- Seney: It didn't?
- Girard: You know, nobody gives a damn what law school you go to (Seney: Okay) after you get your first job.
- Seney: I suppose not. Yeah.
- Girard: My view. Now, I'm sure that law schools don't believe that. (Laugh)
- Seney: Yeah.
- Girard: You know, I don't think you can judge it, make a hell of a lot of conclusions (Seney: Sure.) out of what law school somebody went to.
- Seney: Sure. Did you begin to work on water matters right away when you came to the firm?

Working on Water Matters

- Girard: Water matters and, well, yeah, an awful lot of condemnation and construction litigation. I don't know, they had, right at that period of time we were involved in some major, major litigation involving the Placer County Middle Fork Project.¹¹ That's Hell Hole and French

¹¹ The Middle Fork Project is a multi-purpose water project with a hydropower element on the Middle Fork American River and Rubicon

Meadows [reservoirs], and a contractor named Kaiser, (Seney: Yeah) and I probably worked on that for years, several years.

Seney: Yeah. When did you start working for T-C-I-D [Truckee-Carson Irrigation District]?

Working for TCID

Girard: I'm not sure. Probably about the time the United States filed the action. The United State and the Indians filed the case that went to the U.S. Supreme Court.

Seney: That would have been 1972, I think.

Girard: Well, whatever time period that was.

Seney: Yeah. Yeah.

Girard: A guy named Jim Johnson was attorney for T-C-I-D, (Seney: Yeah) and he was a one-man firm and a very, and Jim was a very competent lawyer, but he just didn't have the, the staff or the thing to do the type of research that was involved (Seney: Sure) in that kind of a case. So, Jim brought me in at that time, shortly after

River that provides municipal, industrial, and agricultural water for Placer County, California.

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it was filed, I believe. I'm not sure exactly when.

Seney: Well I'm, you know, I thought I had brought a copy of the, the *United States v. Nevada*¹² (Girard: Yeah) with me today, but what I brought instead was what I think you're referring to, and that's the *United States v. Nevada and California*, and it indicates, does this look familiar to you, it indicates September 22, 1972 it was filed.

Girard: Yeah. That's, that's, that would be the (Seney: That's the one isn't it?) that would be the Supreme Court opinion, (Seney: Right) which is much later.

¹² "This case stems from a suit over Truckee River water that began in 1913. In 1913, the federal government asked the District Court to settle all water claims on the river. A decision, known as the Orr Ditch decree, was finally issued 31 years later, in 1944. Significantly more water was allocated to the irrigators than to the tribe. In 1973 the US and the Pyramid Lake Paiute tribe went back to court to claim additional water rights. They argued that the 1944 agreement only determined the tribe's right to irrigation water, not to the water necessary to maintain the river and lake's fisheries. By this time the Lahontan cutthroat trout was extinct, and another species, the cui-ui, was near extinction. The US Supreme Court decided that the original 1944 settlement should remain in force. It argued that the government had gone to court in 1913 to settle water claims on the Truckee once and for all, and with the 1944 decree, got what it asked for. Therefore under the doctrine of *res judicata* it had no right to come back and reopen the case." For more information, see www.focuswest.org/law/nevada.efm (Accessed June 2014)

Seney: Yeah. The Supreme Court opinion and this is the filing with the Supreme Court, wanting to plead for original jurisdiction on these matters, and the appointment of a master and whatnot?

Girard: Is this the complaint?

Seney: I think it is, yeah. I think it's the original filing, isn't it, before the Supreme Court? I'm sorry, I'm not a lawyer so I don't know that it's the complaint.

Girard: Well, what I'm having a little problem here, and I'm sure, there may be some technicality, the case was filed in the United States District Court for the District of Nevada.

Seney: Yeah. Yeah. And this . . .

Girard: And, I don't know what they're doing, why they filed in the United States Supreme Court.

Seney: Yeah, I don't . . .

Girard: Now, this may have been, this may have been some kind of a complaint to where the, where the United States was suing Nevada and, states of Nevada and California. (Seney: Yeah) Now that, that . . .

- Seney: I think that's how the case began, wasn't it?
- Girard: I don't know. You may be right. (Laugh)
- Seney: Yeah. I think it began as United States vs. . . .
- Girard: It's titled, titled *United States v. Nevada* and . . .
- Seney: And then when it shakes out it becomes (Girard: Yeah) *United States v. Nevada*. Because . . .
- Girard: Well I, shortly, that's probably about the time I started (Seney: Yeah) working there.
- Seney: Because, the real complaint in that case, and then I'll leave it to explain that, was . . .
- Girard: Really, the real complaint in that case was against T-C-I-D. (Laugh)
- Seney: That's right. Yeah. (Laugh) Talk about that. Talk about the *United States v. Nevada*.

United States v. Nevada

- Girard: Well, basically the Indians claimed they had been sold down the river by the government attorneys way back when the Newlands Project

started, which is what, about turn of the century,
(Seney: Right) 1902-1903?¹³

Seney: Nineteen oh-two. Right.

Girard: In that period of time, and that they were represented adequately in that proceeding involving the Orr Ditch Decree and that they wanted to relitigate their water rights. And, of course, the farmers contended that they had been there since 1902 and it's a little late to be making those contentions. (Seney: Yeah) And.
..

Seney: And, of course, in the end the farmers prevailed? The court agreed (Girard: Huh?) unanimously with, in the end the farmers prevailed? The court agreed unanimously?

Girard: Yeah. We lost. We lost it. We won in the District Court, when the judge from Idaho, that later became a Circuit Court judge . . .

Seney: Solomon?

Girard: No.

¹³ For more information on the Newlands Project, see Wm. Joe Simonds, "The Newlands Project," Denver, Colorado: Bureau of Reclamation, 1996, www.usbr.gov/history/projhist.html.

Seney: No?

Girard: No. That wasn't his name.

Seney: I'm trying to . . .

Girard: Anderson.

Seney: That's it. Yeah.

Girard: And, Judge Anderson out of Idaho was the District Court judge who was assigned there, because Judge Thompson, who was the only judge at the time in the Nevada District Court at that time, in this area, he was, I think, one of the holder of water rights under the Orr Ditch Decree.

Seney: Yeah. He was. Right. (Laugh)

Girard: I think so. And so, he didn't hear the case.

Seney: Yeah.

Girard: He did try the Alpine case later, but Anderson ruled in our favor. The Ninth Circuit ruled against us. We got certiorari and won in the Supreme Court. But, it was kind of a hollow victory, (Laugh) really, (Seney: Yeah) because they just abrogated the ruling by writing Operating Criteria [Operating Criteria and

Procedures] which just gave all the water to the Indians.¹⁴

Seney: Yeah. Yeah. Let's talk about the [Supreme Court] opinion a little bit. Did you, did you think when the case, and it takes a long time for these things to wend their way through the courts. I mean (Girard: Yeah) if we're right that this was filed in '72 (Girard: Yeah) it was '83 before the Supreme Court finally (Girard: Yeah) hands down its ruling.

“Case Moved Around Pretty Good”

Girard: Yeah. This case moved around pretty good too, once (Seney: Yeah) it started. The trial was a long trial. My recollection is several months, (Seney: Right. Right) at least, and then there were briefs that were filed, and then Circuit Court of Appeals. I don't think anyone delayed it. (Seney: Yeah. Right) It wasn't one of these cases where everybody was just, once it started

¹⁴ “The OCAP is a federal rule that lays out how Reclamation's Newlands Project is operated. Its main purposes are: to ensure legitimate Newlands Project water rights are served; to regulate the timing and amount of water that can be diverted out of the Truckee River to serve Newlands Project water rights; to minimize the use of the Truckee River and maximize the use of the Carson River.” For more information, see United States Bureau of Reclamation, “Operating Criteria and Procedures for the Newlands Reclamation Project (OPAC),” www.usbr.gov/mp/lboa/opac.html.

it pretty well, (Seney: Right) the trial was, there was a guy named Doug King, who was a trial attorney for the government at that time, and then I think he may have been involved in writing some of the brief, but my, but he didn't argue the case. I think he died before that. The Solicitor's Office, anyway, (Seney: Uh huh) argues cases for Justice.

Seney: Right.

Girard: And, I had known, I had known—well, there's a guy named Don Redd. He was an attorney for the government, for the Navy back in the old Fallbrook case, (Seney: Ah) way back. So, I had known him, but he didn't play a real active part in the case. But, the major, major attorney on trial level was a guy that came from, out of Washington. And . . .

Seney: You know, the major complaint on the part of the government, now that it's changed its mind, and the Indians too, was, here you had a Justice Department, Interior Department representing both the Indians (Girard: Yeah) and the irrigators, (Girard: Right) but they clearly favored the irrigators (Girard: Well . . .) at the time the original (Girard: Well . . .) Orr Ditch Decree was done?

Girard: You've got to look at the standard. (Laugh) I wish, personally, you would have, if they had

just gone ahead and allocated water to the Indians based on what they needed, hell it wouldn't have been anywhere near what they were claiming in 1982.

Seney: Yeah.

Girard: You know, times change.

Seney: Sure.

“Priorities Changed”

Girard: At that period of time, you know, they were advertising in the paper for the farmers to leave Wisconsin, or wherever it was, and come out and open the Newlands Project, and priorities changed. (Seney: Yeah) And I think, my recollection is, one thing that always struck me of the [Chief Justice of the Supreme Court William] Rehnquist's Opinion was that, you know, the government carries, or the represented, they carry water on both shoulders, and that's their job. And, I don't think there's any question in my mind. I really don't think there's any question, honestly, in the government's mind that the attorneys who represented the government were good-faith attorneys who really felt they were doing a good

job. (Seney: Right) Just, just circumstances changed.

Seney: That's right. That's right. Given the times, yeah.

Girard: You know, what, what was a good job in 1901, or '02, or '03, or whatever the hell it was is, wasn't what the Indians wanted in 1980s.

Seney: Yeah. Yeah. Do you remember what you thought, that this case was winnable, not winnable? Did you, do you recall?

Girard: Oh, I think we were always pretty confident.

Seney: Were you?

Girard: We were right.

Seney: Yeah.

Girard: I think Jim Johnson and I were.

Seney: Yeah. Is this *res judicata*? Is that the doctrine?

Girard: Yeah. Well, we were arguing, essentially, that, that the decree, which was entered in the Alpine, the Orr Ditch case, was binding on everybody, including the farmers and the . . .

Seney: Right. It had been fully litigated. And . . .

Girard: Fully litigated, and . . .

Seney: You couldn't go back?

Girard: There wasn't any breach of any, of any fiduciary duties, and that kind of thing. (Seney: Right. Right) And, you know, we went back. We got all of the records and everything else, (Seney: Sure) and there is nothing in there to indicate anybody was bending over for the farmers (Seney: Right) any more than they—the government attorneys really felt they were doing a good job.

Seney: Right. Right.

Girard: And, that's essentially Judge Anderson's opinion. His findings were essentially that.

Seney: Yeah. And, the Circuit Court overturned it.

Girard: Circuit Court overruled on the (Seney: Yeah) basis of breach of fiduciary duty, as I recall. And then we (Seney: Yeah) petitioned for certiorari. We, by "we" and the State of Nevada. Now, the State of Nevada was also very instrumental on our side.

Seney: That's right.

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- Girard: At that time the State of Nevada was represented by Ed Reed, who is a district court judge now, or is retired now. Shortly after Judge Anderson ruled, Judge, I mean State of Nevada, Ed Reed was appointed to the District Court judge, and he didn't play any real part in the appeal of the case.
- Seney: Ah, I see.
- Girard: Because, he was a judge at that time.
- Seney: Once he got it through the District Court he then goes on himself?
- Girard: Yeah. He was active during the trial in the District Court. (Seney: Right) And also Sierra Pacific was active on our side too, (Seney: Yeah) and they, they were actively represented by a guy named Blakeley [Spelling?], Blakey, as I recall who was a partner in that firm, in Gordon De Paoli's firm, (Seney: Right. Right) I think. And, I think—who was the two guys in Ed Reed's office who worked on that case? Younger guys. Both of them good lawyers. And of course, then the U.S. Supreme, when it got in the Supreme Court, Nevada hired a Washington D.C. specialist to argue their case.
- Seney: Did you argue?

Girard: I argued for T-C-I-D.

Appearing Before the Supreme Court

Seney: You've appeared before the Supreme Court?

Girard: Yeah, in that case.

Seney: First time ever?

Girard: Yeah. First time.

Seney: Only time? Or . . .

Girard: Yeah. Only time.

Seney: Only time? What did you think of that experience? What was it like?

Girard: It's quite an experience. It's very unusual, really. Yeah. I think myself and the guy from the State of Nevada, the fellow in Washington, (Seney: Yeah) we were the two that argued for the water users.

Seney: Say a little more. Tell us, tell me about it. What did you feel like? I mean, you could have, you were a relatively young lawyer, still, at this point, were you not?

Girard: Oh, yeah. I had been practicing a long time, but I, remember I was in the California Attorney General's Office for fourteen years. I had had a lot of appellate experience. (Seney: Yeah) I had argued cases in the California Supreme Court, four or five of them. So, it wasn't a total surprise. (Seney: Yeah) But, arguing a case in front of the U.S. Supreme Court is something most lawyers don't do. (Seney: Yeah) And, it's very interesting.

Seney: Yeah. Yeah. And it looked like a victory for T-C-I-D didn't it? I mean, and the State of Nevada?

Girard: Oh yeah. Yeah. At that time. Yeah. But, then they came out with the Operating Criteria. I always felt the worst thing that, and I've never, never been much of an advocate for this judge in Washington D.C. that came out with that decision on the Operating Criteria.

Seney: Judge Gesell?

Judge Gesell

Girard: Gesell. I think he's a phony, in my opinion.

Seney: Yeah.

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- Girard: I mean, he should have never, never ever decided that case without T-C-I-D being in the courtroom.
- Seney: This, we're talking now about Pyramid Lake Tribe vs. (Girard: Pyramid Lake) Morton?
- Girard: They're suit, and Morton, that, (Seney: Right) in my opinion that was just an inexcusable and a very outlandish use of the federal court.¹⁵
- Seney: Were you . . .
- Girard: To come out and decide a case without the real party of interest being there, (Seney: Yeah) and they didn't pay any attention at all to the U.S. Supreme Court decision, which said we owned the water rights, not the government.
- Seney: Yeah. Yeah.
- Girard: So, I have, I have, that, of course, gave the government the authority to write the rules and regulations and they just wrote rules and regulations, (Laugh) (Seney: Right. Right) which ended up taking the water that T-C-I-D had won (Seney: Yeah) away from T-C-I-D.

¹⁵ For more information, see *Pyramid Lake Paiute Tribe of Indians v. Morton*, www.legal.com (Accessed June 2014).

Seney: Yeah. That was a very . . .

Girard: But, of course, you've got to recognize, hell, it's a political thing too. (Seney: Right) You're seeing it all the time.

Seney: You know, I'm told that T-C-I-D was advised by its attorneys, and I don't know if that was your firm at the time, that they didn't really need to get involved in this, that this was not . . .

Girard: Well, it wasn't a point of "need to." We didn't have any opportunity to. (Laugh)

Seney: You couldn't have intervened back in D.C.?

Girard: No, we didn't, we felt that, at least Jim Johnson felt—I was not the attorney for T-C-I-D.

Seney: Okay. He was the one who made the recommendation, then?

Girard: I don't know who (Seney: Yeah) made the recommendation (Seney: Yeah) at all to T-C-I-D. But, Jim was the attorney for T-C-I-D, and I would have concurred with him, that, you know, the case should be litigated in the Nevada District Court where the parties are.

Seney: Right. Right.

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- Girard: Not run off to some political hack like Gesell in Washington D.C.
- Seney: Bob Pelcyger, I asked him about this (Girard: Yeah) and he tells me that the reason it was filed in D.C. was, at that point, (Girard: Yeah) 1969-70, whenever it was filed, that if you were going to sue a department of the (Girard: Yeah) government you had then the option of filing in the U.S. District Court in Washington D.C.?
- Girard: Oh, I don't think there's any question that they had the legal option.
- Seney: Right.
- Girard: But, what I criticize is the judge and the government not coming in and saying, "Look, we don't own these water rights. The farmers do."
- Seney: Yeah. Yeah.
- Girard: And, and because that's what the U.S. Supreme Court said (Seney: Right) specifically was, was the case.
- Seney: Yeah. Yeah. And, well, of course . . .
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Girard: And, Judge Gesell always operated as if these water rights were owned by the government.
(Laugh)

Seney: Well, as I read the decision, and I agree with you (Girard: Yeah) it's fundamentally a political decision.

Girard: Yeah. I agree.

Seney: You know, I think, I don't think there's any doubt (Girard: Yeah) about that. But, I think most important court decisions are. I mean, (Girard: Yeah) you know, there are legal grounds but there are other forces at work. What, what the judge is doing in this case is he's saying, "Okay, you have a right to a certain amount of water, but you've been taking too much water out of the Truckee River. You can satisfy your legal entitlement to water, 3.5 acre feet for bottom lands, 4.5 acre feet for bench lands, without taking so much water."

“People That Are Using the Water Ought to be in the Courtroom”

Girard: Well, the real problem with that is if the people that are using the water ought to be in the courtroom.

Seney: Yeah. Right. And they . . .

Girard: That's the only thing, that's the only (Seney: Yeah) thing I [inaudible].

Seney: Right.

Girard: Because, I think if we'd have been there we could have shown that we weren't taking too much. But, Commander Redd represented the government and he just caved in, really.

Seney: Who is this?

Girard: Don Redd, who represented the government in that lawsuit. (Seney: Right) He never put up any defense at all.

Seney: And I'm told it was . . .

Girard: I, I think it was just a rigged case and I don't think Gesell was smart enough to realize it.

Seney: You think so?

Girard: That's my opinion.

Seney: Yeah. And then the Solicitor General, Mr. Griswold, Erwin Griswold, (Girard: Uh huh) decides not to appeal the case?

“It Was a Rigged Case”

Girard: Yeah. It was, it was a rigged case right from the start, (Seney: Yeah) in my opinion. And I, I’ve, I don’t know, but that’s just my opinion.

Seney: What would, what would lead you to, I mean how would it be rigged? What, what would . . .

Girard: Well, I mean, I’m sure . . .

Seney: What would be the rigging here?

Girard: Pelcyger goes to the government. He said, “I’m going to file this lawsuit there.” They say, “Fine. Go ahead. We’re going to contest it on not equitable grounds, but just on some kind of rigmarole that we don’t, we don’t own the water right, or something.” And, it was a very short trial, my recollection, a day or two, wasn’t it?

Seney: Well, I don’t think it was very long.

Girard: It wasn’t very long, (Seney: Yeah) and they didn’t appeal the damn thing and they just let it go.

Seney: Yeah. And, the opinion is quite detailed in terms of spelling out (Girard: Yeah) what the diversions, allowable diversions are.

Girard: But nobody, nobody represented the T-C-I-D (Seney: Right) that they weren't diverting the water, excess water. (Seney: Right) Nobody made that contingent.

Seney: Right. Did you become involved in any way of what is now called the "recoupment issue"?¹⁶ That is, remember T-C-I-D did not agree with that Morton case.

Girard: That's right.

¹⁶ "On behalf of the Pyramid Lake Indian Tribe, the USDI now claims that between 1973 and 1987 (15 years) TCID over-diverted approximately 1,057,000 acre-feet of Truckee River water and is calling for this recoupment to be repaid to Pyramid Lake. Churchill County, the City of Fallon, and TCID officials, as well as Newlands Project farmers, have claimed that because the City of Fallon filed a 1974 lawsuit against the implementation of the new OCAP, in part calling for a complete Environmental Impact Statement (EIS) under the National Environmental Protection Act (NEPA), the 1973 OCAP should not have been implemented. TCID has further claimed that, as the appeals process for these suits against the implementation of the new OCAP were not fully resolved until 1988, the claim for recoupment of excessive diversions before that date is unreasonable. The recoupment of Truckee River waters remains a major issue in the eventual resolution of the Negotiated Settlement Act (Public Law 101-618) which, when passed by Congress in November 1990, was intended to settle the myriad of claims and outstanding lawsuits associated with these issues." See State of Nevada Division of Water Resources, "Truckee River Chronology," www.water.nv.gov/mapping/chronologies/truckee/part1.cfm (Accessed June 2014).

Seney: Pyramid Lake vs. Morton.

Girard: Yeah.

Seney: Which said, "You can only take so much out of the Truckee Canal."

Girard: Yeah. We, I know they came, I got involved and they came in and they wanted an injunction or something. There were some discussions there. What happened, I know Jim Johnson and I went back to Washington D.C. and we met with Alan Bible.

Seney: Senator Bible of Nevada?

Girard: Senator Bible. And, Senator Bible took out of the budget any goddamn money he expended to take back the project on behalf, out of that criteria. He just said, "You can't spend any, Department of Justice you can't spend any money in that." So, he got that. So, they couldn't really do anything.

Seney: In other words, to take away the threat, the credible threat of . . .

Girard: Of repossessing the property.

Seney: Okay.

Girard: Now at that time, the government also, and there's a document somewhere, one of the related cases, where they advised the court that they would not, not attempt to take over the project until the court upheld that the Gesell Opinion was proper. And that, that subsequently occurred. (Seney: Yeah) Now, I was never involved in the recoupment and I don't know why in hell, how in the hell they could get around the statute of limitations. That's always bothered me. I don't know . . .

Seney: Yeah. I, there's . . .

Girard: Huh?

Seney: There's so many issues in the recoupment (Girard: I don't . . .) thing. Yeah.

Nobody Extended the Statute of Limitations

Girard: I don't understand how in the heck, you know, ordinarily if you want to recoup something, somebody, you have a certain period of time that you can do it. And, as far as I know nobody ever, (Laugh) ever extended the statute of limitations. (Seney: Yeah) I've always wondered why they never raised that problem. But, I'm not involved in it and I never had anything to do with it.

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Seney: Yeah. I, I'm not aware of that either. That there—I am aware that the Secretary of the Interior wrote T-C-I-D and (Girard: Yeah.) said, “You'd better, (Girard: Yeah.) better behave yourselves. You'd better go along with this ruling. (Girard: Yeah) If you don't (Girard: Yeah) I'm going to suspend the, (Girard: Yeah. He . . .) abrogate the contract.”

Girard: You know, he . . .

Seney: Let me turn this over.

END OF SIDE 1, TAPE 1. JULY 20, 1999.

BEGINNING OF SIDE 2, TAPE 1. JULY 20, 1999.

Girard: Present I, I'm not too active in this, but I believe he did threaten to turn over, take the—I don't know if he ever did or not. I don't know.

Seney: Well, no, he abrogated the 1926 contract (Girard: Twenty-six contract?) in '74.

Never Involved in the Settlement Act

Girard: Then again entered into another one, or some damn thing. I don't know. And, I've never been involved in these, you know, the negotiations (Seney: Yeah) here in the

Settlement Act¹⁷, and that kind of thing. I've never had anything to do with that.

Seney: T-C-I-D sued the Department of Interior, the Bureau of Reclamation, claiming that they couldn't overturn the contract. Did you play any part in that lawsuit?

¹⁷ 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:

- Fallon-Paiute Tribal Settlement Act
- Interstate Allocation of water of the Truckee and Carson rivers.
- Negotiations of a new Truckee River Operating Agreement (TROA).
- 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.
- Recovery program is to be developed for the Pyramid Lake cui-ui and Lahontan cutthroat trout.
- 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.
- 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
(Accessed December 2011).

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The Alpine Case

- Girard: If it was a case that, I was involved in the case that the, where the government prevailed, that I believed they held that the, that they had a right to terminate the contract (Seney: Right. Exactly) just on the violation (Seney: Right) of the Gesell Opinion, (Seney: Right) or something like that.
- Seney: That, the Circuit . . .
- Girard: That we went to the Ninth Circuit (Seney: Yes) and lost there.
- Seney: And, that was, that decision came down maybe a month after *United States vs. Nevada*.
- Girard: I don't, I don't know.
- Seney: Yeah. The, well I've talked to, you know, Cyril Schank and Ernie Schank, and hear this.
- Girard: I don't know that.
- Seney: Because they say, "My gosh, we think we've won so much."
- Girard: I know we were in the, we were in the Alpine case. The Alpine case, I guess, that decree was entered in 1980. (Seney: Right) The decree was entered in 1980, but that went to the Ninth
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Circuit and we prevailed on that, in the Ninth Circuit, which really, that's the case where the government was contending that the 3.5 and the 4.5 were excessive and shouldn't be the water duty, and Judge Thompson shot that argument down and ruled in our favor (Seney: Right) that that was appropriate water duty.

Seney: We're talking now about bench and bottom lands?

Girard: Bench and bottom. Yes. Yeah.

Seney: Right. Right.

Girard: That was a, that was appealed to the Ninth Circuit and I think that, I know the decree was entered in 1980, December of 1980, in the District Court. So, it had to be at least a year or two after that before the Ninth Circuit Opinion came out.

Seney: Right. Right. Is this the one you're talking about here?

Girard: Yeah. [Pages turning] No.

Seney: That's yet another one?

Girard: That's Scopel [Spelling?]. I don't know. The judge that decided the Alpine case was Judge Kennedy.

Seney: Yeah.

Girard: Not Judge Scopel [Spelling?]. And, Kennedy wrote the opinion in the Alpine case, before he got appointed to the U.S. Supreme Court, where he upheld that.

Seney: That's Justice [Anthony M.] Kennedy?

Girard: Yeah. Judge, (Seney: Yeah) Circuit Judge Kennedy at that time.

Seney: Right.

Girard: And then he, later on, was appointed to the (Seney: United States) Supreme Court.

Seney: Right.

Girard: But, Kennedy wrote the decision in the Alpine case.

Seney: Ah, he did?

Girard: Yeah.

Seney: For the Ninth Circuit?

Girard: For the Ninth Circuit.

Seney: Yeah.

Girard: Which upheld that.

Seney: Here I'm looking, this is a different one. This is a, this is the, Scopel [Spelling?] is the Circuit Judge in this case, and it's, this is a, is yet another one, in which you took part. Your name is in here.

Girard: I'm sure I did.

Seney: Yeah. Fred Girard for T-C-I-D.

Girard: That may have been the Operating Criteria suit.

Seney: I think this is the Operating Criteria case.

Girard: Yeah. That's probably that.

Operating Criteria Case

Seney: Talk a little bit about—so, this is known as OCAP, in brief, Operating Criteria and (Girard: Yeah) Procedure. And that came out of the Gesell decision, didn't it?

Girard: Yeah.

Seney: That terminology?

Girard: Yeah. That was, really what the OCAP does, it just allowed the Secretary [of the Interior] to do whatever he wanted, and there's no real appeal from the, they have, you have a right to appeal but the law it made an administrative, instead of a judicial decision where the court can weigh the evidence. What it, the law, appealing from an administrative decision is any evidence. The court has to affirm the administrative decision.

Seney: It's very hard to overturn one of those, isn't it?

Girard: Oh, it's impossible.

Seney: Yeah.

Girard: All you have to do is get one guy to get up and say, "This is reasonable," and I find that even if you've got fifty guys to the (Seney: Yeah) contrary, (Seney: Yeah. Yeah) it's, it's no appeal at all.

Seney: I mean, the statute mandates that all kinds of deference be given to the Secretary's rulemaking authority?

Girard: Oh, the deference is complete. (Seney: Yeah) If there's any evidence at all (Seney: Yeah) to support it. Now, if there's no evidence, but hell

there's always going to be some evidence, (Seney: Right) some engineer from the Bureau is going to come up and say, "This is a reasonable water to me," (Seney: Yeah) (Laugh) or, "This is that."

Seney: Yeah. Yeah. Right.

Girard: In fact, you know, I think, I think Judge Thompson clearly indicated in one of his decisions that he agreed, much with our evidence on what it was, but it doesn't mean shit.

Seney: Yeah. Yeah.

Girard: You know, because you're bound to accept the decision of the Secretary. And, it isn't the Secretary. He doesn't know anything about it. (Seney: Right) You know, this is somebody in the, in the, (Seney: Bureau of Reclamation?) Bureau of Reclamation and the Department of Justice (Seney: Yeah) who are making the decision, not the Secretary.

Seney: Right. Right.

"It's Not a Partnership"

**Frederick W. Girard
Newlands Project Oral History**

Girard: And so, it's really a, that's why I'm always very leery to go into any partnership agreement with the United States on water projects, which in any way gives them the authority to make rules and regulations. Because there, you're just turning the complete discretion over to them. It's not a partnership.

Seney: Ah.

Girard: So, you want to be very careful when you, in water projects when they talk about partnerships. (Seney: Right) As long as you reach an agreement and they don't have authority to interpret it, you're okay. But, if they have authority to interpret it or adopt rules, then you might as well blow up the agreement.

Seney: Because the rules will always be upheld?

Girard: Because whatever he does is going to be upheld. (Laugh)

Seney: Yeah. Yeah. I know the farmers feel strongly, and I'm sure you'd agree (Girard: Uh huh) here too, that OCAP is just a way of squeezing water out of the project?

Girard: That's all it is. I'm sure they won't admit it, but I'm sure they know it is.

Seney: The government, you mean?

Girard: They know it is.

Seney: Yeah.

Girard: And, they know that's why it's set up.

Seney: Yeah.

Girard: I remember one time, what the heck was it we, they came out with one criteria, which they reached a certain conclusion on so much water, and it was clearly wrong. They, they had made a fundamental error and I don't know what the error was, but it was something that was (Seney: Yeah) but it was something that was obvious. Even they had to admit it. So, they went back and did it and came back and changed another factor and come out with the same amount. It's just, it was just a phony deal.

Seney: So, you would say then they had targeted the amount.

Girard: Oh, they knew the amount.

Seney: And then they found a rationalization for it?

Girard: They found what they wanted and then they got their rationale for it. And, I don't think there's any question in my mind that's what occurred.

Seney: Yeah. Yeah.

Girard: But, but that's what the law is, you know.
(Laugh) They can do that.

Seney: Right. Right. Now, you didn't take part in any of the settlement negotiations, though?

Girard: No. Not at all.

Seney: Or advised T-C-I-D on any of that?

Girard: No. I did not. I had not part of that at all.

Seney: Yeah.

Girard: I really know nothing about it, other than what I read in the papers.

Seney: Right. They would call you in primarily for appeals and so forth, appellate work?

Girard: Well, I tried the cases. I tried the Alpine case. I tried the Nevada case and handled the appeals in those cases. I think I tried the, the case involving the Operating Criteria. The Alpine case was tried in front of Judge Thompson.

Seney: He was a highly regarded judge, was he not?

Judge Thompson was Highly Regarded

Girard: Oh, very, very well, a very good judge, (Seney: Yeah) and I don't think anybody disputes it.

Seney: Right.

Girard: He tried, he tried the Gesell, I mean the Operating Criteria case, (Seney: Yeah) and Anderson tried the *Nevada vs. U.S.* I tried those three cases and handled appeals, although Jim was actively involved in all of it. (Seney: Right) I probably did the leg, most of the brief writing and all of that stuff, (Seney: Yeah) and the arguments on those cases.

Seney: You know, one thing I've always wondered the difference between the Alpine and the Orr Ditch decree is that Judge Thompson in the Alpine Decree divided the river into segments. I think six segments?

Girard: That's the Alpine. That's the . . .

Seney: In the Alpine?

Girard: That's in the Alpine. Well, what he did is, you've got to remember the Alpine case

involved one real issue and that was the water duty in Newlands Project. Nobody really cares, in the Alpine case, about what the hell the amount of water allocated to the upstream people were. Because, the, everyone agrees that whether you pour five acre foot per acre or ten acre feet per acre, it all gets back in.

Seney: Yeah. Upstream?

Girard: Upstream.

Seney: Yeah.

The Issue was Water Duty and Consumptive Use

Girard: And, that was not the issue. The whole issue, if you read the transcript, was a water duty and a consumptive use of water, and that kind of thing. And, it was only on the Carson River. And, what had happened, under the Temporary Restraining Order that had been issued way back in, I think, in '26 or somewhere, the watermaster, federal court watermaster had been appointed and they had been, and there was two, one or two other state court decrees up there in California too that had already been entered, and they had been operating that, that river in segments for years, (Seney: Uh huh) and all they did was incorporate what had been done before. He broke it into segments and I don't think anybody quarreled with that at all, (Seney:

Yeah) of any—in fact, I think the government made it pretty, they really had no interest in that too much.

Seney: And, that's not uncommon, is it, in water matters, to take what the practice has been (Girard: Yeah. Why not?) and to make that into law?

Girard: As long as, you know, as long as it's not hurting anybody. (Seney: Right) And, I think one of the days, probably, the Indians or somebody is going to want to crank down and they're going to contend that they're diverting more water onto the lands upstream than they're entitled to do. (Seney: Yeah) I know, I'm not sure how that hurts anybody, because the judge found also that the consumptive use of water was so much.

Consumptive Use

Seney: Right.

Girard: And, it's, how, it wouldn't, it really wouldn't hurt anybody whether you, as long as the only amount of water is being consumed what difference does it make what you apply as long as it gets back in the river.

Seney: Right. Right.

- Girard: But, they would contend it probably all doesn't get back in the river, and that kind of thing.
- Seney: My understanding is that, and again I think this distinguishes the Alpine Decree from the Orr Ditch Decree (Girard: Yeah) is that the allowable diversion, if I've got 3.5 acre feet allotment I can only really take 2.99 acre feet.
- Girard: You can only consume 2.99. The crops. When you talk about consumptive use, the 2.99 means the crop. In order, if you put 3.5 or 4.5 acre feet per acre on the land the crops, in growing, will consume 2.99 acre feet. And it's, of course, they had higher applied water duties up there and a little different, so I think they, (Seney: Yeah) they have, I think, oh I think some areas they allow upstream, eight, eight acre feet per acre. (Seney: Right) Because, the water runs right through and the crops don't get a chance to get it. (Seney: Yeah) And, that's the water, you know, in growing crops they use water, (Seney: Right) and you're assuming alfalfa, too.
- Seney: Right. Right. I do know, I guess I bring this up because, and maybe you can explain this to me, I'm sure you can, when the people out at the wetlands want to buy water rights on the Carson [River] to put them on the wetlands (Girard: Uhm-hmm) if they buy 3.5 acre feet they only get 2.99 acre-feet?

Girard: No. I don't know. It's only if you change the manner of place and use. Now, I represent South Tahoe P-U-D [Public Utility District], who, who have acquired water rights in California to be used in exchange for some water they use in their sewage export reservoir in Alpine County. There we acquired irrigation water rights, which were 3.5, which were 4, no six acre feet per acre, and that was a water duty. Now, we can only convert to storage in that reservoir to replace the evaporation, that kind of thing, we can only divert 2.5 acre feet per acre, (Seney: Uh huh) which is the amount of the consumptive use in that area.

Seney: Ah. I see.

Girard: Now, I don't know, when you exchange the water, for example, for Newlands Project water, which is irrigation, and they're going to use it down in the marshlands or something (Seney: Right) for the ducks, (Seney: Right) I don't know whether they treat that as a change in irrigation or not. (Seney: Okay) I just don't know that. But, ordinarily if you change irrigation to irrigation you'd still be entitled to divert exactly the same amount. (Seney: Okay) But here you're, in Tahoe, you were changing, South Tahoe, you were changing irrigation to

recreation, which is a different use. (Seney: Ah) And Judge, and the reason Judge Thompson put that requirement in the decree, in Nevada you have to go through the state engineer to change a water right. In California, you don't if it's a pre-1914 right. And, all the rights in the Carson River were pre-1914. (Seney: Right. Right) So, technically, under California law the guy could have just taken his water right and transferred it somewhere else and done the, you know, transferred the whole damn thing. But, Thompson did put in that change that if you change to different (Seney: Ah) use. So, he limited the change to what the consumptive use would be.

Seney: Sort of blending the Nevada and California regulations, in a sense?

Girard: Well, Nevada still has to go through the state engineer, (Seney: Yeah) but California you have to go to the, you have to go to the District Court and get an Order, which we did in two cases for South Tahoe P-U-D's reservoirs. Which, in essence, allowed us to take an irrigation water right. We have acquired the land to build the reservoir, and transfer that water right to the reservoir for a different use, not for irrigation. But we were only limited and we can only take 2.5 acre feet per acre, where the water right was six.

Seney: Okay. But, because if you had used that water right, that six acre feet, for the intended original agricultural (Girard: Yeah) purposes, what, 3.5 acre feet of it would have found it's way back (Girard: Right) into the river?

Girard: The 2.5 was the consumptive use for the crops.

Seney: Ah.

Girard: And you couldn't, and if you took the, so if you just took that water over there, the farmers, the downstream people are in exactly the same position as they would have been if it had been used for irrigation.

Seney: But, if you impounded the six, they wouldn't be?

Girard: If we impounded the six they wouldn't have gotten anything back.

Seney: You would have been depriving them of water rights (Girard: Right) down the road?

Girard: That's the reason he put that in there. (Seney: Yeah) And it's, I think it's worked very well.

Seney: When you bought those water rights you must have been concerned about how senior they would be? Were you?

Girard: No. Because remember, in the, well in the first place these were old, old water rights. (Seney: Okay) The ones we bought were as old as anyone. But, it was an, you know, remember you, in the Alpine case you're on segments.

Seney: So, you're on the first segment?

Girard: We're on I think the second segment.

Seney: Segment? Okay.

Girard: Out there, Woodfords. We're, I don't think we're the top one. Maybe we are, but we're one of the top ones. So, we don't give a damn what they . . .

Seney: So, you get to take it before it goes by?

Girard: And, you've got to remember in the Alpine case, too, on the west fork, where these waters were, after June 1st California gets all the water in the river one week, Nevada gets all the water in the river the other week. So, Nevada people couldn't complain, really, of what anybody did in California, because they wouldn't have gotten any water during that week anyway.

Seney: Oh, I see.

Girard: So, it's a little, it's a lot different than the Truckee.

Seney: It is a lot different, isn't it? Yeah. I've tried to comprehend the two.

Girard: I think Thompson really did a good job in the Alpine case. He really did.

Seney: Well, I've heard nothing, no matter what side people are on, but good things about (Girard: Yeah) Judge Thompson. Yeah.

Girard: Well, he was a, you know, he was a tough taskmaster. He wasn't anybody's fool. (Laugh) You didn't screw around (Seney: Yeah) with him. (Laugh) He was a good judge. I thought one of the better judges I've ever (Seney: Is that right?) argued a case.

Seney: Yeah. I've heard nothing but good things.

Girard: He ruled right away, didn't screw around. He ruled. (Seney: Yeah) And, you know, if he ruled he didn't even want an argument. That was it. (Laughter)

Seney: It was settled as far as he was concerned, huh?

Girard: Yeah.

Seney: Yeah.

Girard: That's right. Uh huh. I thought he was a good judge.

Seney: Yeah. Well, that's better from your point of view, isn't it, if you're litigating something?

Girard: Yeah.

Seney: You want to know what it is.

Girard: First place, in ninety percent of the rulings the attorneys really don't give a shit how he rules. (Laugh) They can get around it one way or another. (Laughter) The worst kind of a judge looks on little stupid motion, you know, and the guy makes an objection or something that takes six months to decide the damn thing, where he really, he really doesn't have an awful lot of impact (Seney: Yeah) on the bottom line.

Seney: Yeah. Yeah.

Girard: But, Thompson was, I thought, a very conscientious and able judge. (Seney: Right) He knew what was important and what wasn't, and he decided cases adequately and fast, and just a nice guy. I don't know him personally at

all. I never (Seney: Yeah) saw him outside of the courtroom.

Seney: Right. Right. Right.

Girard: Right.

Seney: I don't know if these other people have either, but there's generally (Girard: No) a good opinion of him.

Girard: Oh, I think all—Jim Johnson, I know, who's an old-time Nevada lawyer up there, he had nothing but high regard for Judge Thompson.

Seney: Yeah. Yeah.

Girard: Yeah.

Seney: Well, I would think . . .

Girard: And, I suspect Ed Reed is somewhat the same way, (Seney: Yeah) although I never tried a case in front of Ed, and I've tried a case with him on the same side.

Alpine Case Revisited

Seney: Right. How long did you work on the Alpine case?

Girard: Oh, from the time it—well, I'd say, you know, it started way back when and they got the, then they got that Temporary Restraining Order and it sat there for years and (Seney: Yeah) nobody did anything. And I don't know when the heck it became active. But at some stage, probably in the '70s or '80s, the government started pushing it. I know the tribe tried to intervene and I think they were denied intervention at one time, because they didn't have any standing because they didn't have any rights to the Carson River water.

Seney: Right.

Girard: And then the government decided to push it. And, they used that case as an attempt to lower the water duties that were set forth in the—see, the water duty for the Newlands Project in the Alpine, in the Orr Ditch Decree was 3.5 and 4.5, bench and bottom. (Seney: Right) I believe that was the same duty that had been set by the Temporary Restraining Order. They tried to lower that (Seney: Ah) in the Alpine case, hoping to get it less water, (Seney: Yeah) and the judge didn't buy that. (Seney: Yeah) We had a lot of, a lot of expert water duty people and that kind of thing in that evidence and . . .

Seney: There have been a number of attempts to reduce the amount of water flowing out to the

Newlands Project and one of them has been this bench and bottoms (Girard: Yeah) controversy, of reclassifying bench lands, which have before now . . .

Girard: Yeah. T-C-I-D had classified various properties as bench land. The government contended they should be bottom land, and I think there's been a lot of activity on that, that regard.

Seney: Right. Have you been involved in that all?

Girard: I was involved in some of it, but not much of it really. A lot of that was in the water right transfers. (Seney: Right) We started out in the water rights transfers and my recollection the Nevada state engineer pretty much accepted T-C-I-D's position and I think the District Court kind of went along and the Circuit Court may have reversed one or two of them. I don't really, I'm not familiar with that. (Seney: Right) Those changes in, in the water duties and those kinds of things.

Bench and Bottom Lands Issues

Seney: Right. Right.

Girard: But, that's, whether bench and bottom land, there was never any criteria set forth in either decree for bench or bottom land.

Seney: Right. Right.

Girard: But, what we probably should have done is, in the Alpine case, just submit a list of all the damn water rights in the project that we consider to be bottom land and we considered to be bench land, and I'm sure the judge would have bought it because no one would have objected to it at that time. (Seney: Yeah. Yeah) It would have ended it.

Seney: That's right.

Girard: But, we never had that list and we should have, should have done it.

Seney: Well, did it occur to you that that would become . . .

Girard: Never even occurred. Never even, (Seney: Yeah) I never, I never even envisioned that anybody would object on that basis.

Seney: Yeah.

Girard: But, that more or less related to the transfers, because a lot of these transfers have been transferred—see, the government's position

originally, years ago, was you didn't need to go to anybody to get a transfer. If the Bureau knew about it and did it—and, most of these transfers had occurred many, many years ago, but they've never been approved by anybody. And, I think in one of the decrees, I think it was in the Alpine Decree, or somebody, transfers of water rights had to be, got to the Nevada state engineer, and the government had a right to appeal if they wanted to, and that kind of a thing. (Seney: Yeah) That's where that issue came in.

Seney: Yeah. Yeah.

Girard: I don't really know how much water is involved in that at all. I suspect that all overall it might affect the lake, Pyramid Lake level, maybe an inch. (Laugh)

Seney: Yeah. I'm sure. I mean you're talking . . .

Girard: It's talking about [inaudible], really.

Seney: Yeah. Yeah. You're talking 7,000-8,000 acre feet of water. Yeah.

Girard: You're not talking much water.

Robert Pelcyger

**Frederick W. Girard
Newlands Project Oral History**

Seney: Right. Yeah. Yeah. You must have dealt with Bob Pelcyger¹⁸ (Girard: Yeah) a good deal?

Girard: Uhm-hmm.

Seney: What is your . . .

Girard: I think Bob's a very able lawyer. I, he's a tenacious guy and he's very, very able. I have no, no—always had a place—he always knew what was important. (Seney: Yeah) He was a good arguer. He wasn't, I don't think, in my opinion he wasn't a shyster in anyway. (Seney: Right.) He was above-board. I have nothing but (Seney: Yeah.) good things to say about Pelcyger.

Seney: A good, a good advocate and (Girard: Yeah) . . .

Girard: He represented, you know, he's . . .

Seney: A good adversary?

¹⁸ Robert Pelcyger participated in Reclamation's oral history program. 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 Boulder, Colorado. 1995 interviews edited by Donald B. Seney and all further interviews edited by Brit Allan Storey, senior historian of the Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

Girard: He's devoted. He's more than an advocate.
He's devoted to the Indians.

Seney: Yeah. I think so too.

Girard: And, that's fine.

Seney: Yeah.

Girard: Yeah.

Seney: Yeah. How was T-C-I-D as a client? How
were they to work for?

TCID as a Client

Girard: Fine. Fine. I had no problems with them. Most
of the time when I was there Jim Wood was the
manager.

Seney: Right.

Girard: And then Lyman came in (Seney: Right) after
that. (Seney: Right) And, I haven't had, I
haven't had a quarrel with them. I thought Ted
de Braga¹⁹ and those guys were very nice. All
of them are farmers, really.

¹⁹ Ted de Braga participated in Reclamation's oral history program.
See Ted de Braga, *Oral History Interviews*, Transcript of tape-recorded
Bureau of Reclamation Oral History Interviews conducted by Donald

Seney: Oh yeah, they're good guys. I like them.

Girard: Good guys.

Seney: Yeah. Right. What I'm more interested in is, you know, the, over the years there's been a history of the way in which the district operates, where the board plays a very strong role (Girard: Oh, yeah) in the day-to-day operations, really, of what goes on.

Girard: Yeah. I never got involved in the day-to-day, (Seney: Yeah) and I, I attended virtually no board meetings.

Seney: I'm thinking when they, when you would deal with them, when you would be reporting, say, on the status of the case, (Girard: Oh) you'd go through Jim Woods or Lyman or would you call Ted de Braga?

Girard: Most of the time I would go through Jim, and a lot of times we would have meetings with the board.

Seney: Right. That's what I was . . .

B. Seney, Bureau of Reclamation, August 5 and 11, 1994, in Fallon, Nevada, Edited by Donald B. Seney,
www.usbr.gov/history/oralhist.html.

Bureau of Reclamation History Program

Girard: I'd go to Fallon and we'd sit down and talk about it, (Seney: Yeah) and that kind of thing. (Seney: Yeah) Probably not, not as much with Lyman, because Lyman was a lawyer. (Seney: Right) So, if you told him, I mean, he could convey what, (Seney: Right) what our position was just as easily as we could. But, I had no, a lot of contact with the T-C-I-D Board in those days, a lot of meetings with them.

Seney: What else did you work on besides the, besides the Alpine Decree and the *United States v. Nevada* for them?

Girard: Well, outside of I had the Operating Criteria litigation in front of Thompson. I worked on that.

Operating Criteria Litigation

Seney: Talk about that, what you were up to in that, trying to achieve there.

Girard: Well, our contention was essentially that the, Judge Gesell didn't have jurisdiction to enter the order that he did and we lost. And, we appealed it and lost there. (Seney: Yeah) Thompson ruled against us, as I recall, (Seney: Right) and we lost on the Ninth Circuit. We didn't get

certiorari granted in that case. We didn't really expect to.

Seney: Right. Right. Was your contention that Gesell lacked jurisdiction (Girard: Yeah) in this matter?

Girard: Yeah. We, our contention, we owned the water rights. And, (Laugh) they're going to say (Seney: Yeah) we're using water in excess of our water rights we ought to be in the courtroom, (Seney: Yeah) and but that, but under the federal criteria, the Operating Criteria and Procedures the government has authority, according to the courts, to (Seney: Yeah) adopt these rules and regulations and that kind of thing. And see the, my recollection is, Judge Gesell ordered the government to adopt Operating Criteria.

Seney: That's right. That's right.

Girard: That's my recollection.

Seney: That's right.

Girard: And, they did that.

Seney: That's right.

Girard: And, our position was that that was, he shouldn't have (Seney: Right) entered that,

made that Order, because in essence he was affecting our water rights, which we owned, and we weren't there.

Seney: And, he also set a maximum allowable diversions from the Truckee River (Girard: Yeah) based upon (Girard: I think he did. Yeah) the production of the . . .

Girard: Production. There were a lot of things we objected to (Seney: Yeah. Right) in that.

Seney: Right.

Girard: I think, I think, I think Gesell just did a terrible job.

Seney: You know, I won't quarrel with you on that (Girard: No) because . . .

**Certain that the Government and Indians Felt Gesell
"Did a Great Job"**

Girard: I'm sure the government feels, and the Indians feel he did a great job.

Seney: I'm sure they do. Right. Yeah.

Girard: Right. Yeah.

Seney: Right.

Girard: I just don't understand. If I were a judge I would never, ever consider entering a decree which deprived people of their water rights unless somebody told me they were in the courtroom.

Seney: Yeah. Yeah. You know, I guess the argument that I hear from the Indians, and my reading of the Morton case, is he's not, the argument could be made that is that he's not depriving the district and the farmers individually as the property right owners here (Girard: Yeah) of the water, of their rights. He's saying, "Okay, you get 3.5 acre-feet for bottom and 4.5 for bench, but you've been taking too much. (Girard: Yeah) Too much is being diverted."

"That Thing was Rigged from the Start"

Girard: Well, he wasn't doing that, really. It's a question, though, that they should be in the courtroom (Seney: Yeah) to tell you. It's very easy to win a lawsuit if you're the only one in there.

Seney: Yeah. Yeah.

Girard: It's like a default, and I really think in front of Gesell, despite what [U.S. Department of] Justice may say it was a default case.

Seney: You think it was a sweetheart job?

Girard: Oh, I don't have any doubt about it.

Seney: Yeah. Yeah. Well, I won't quarrel with you.
(Girard: Yeah) I mean, it could very well
(Girard: Yeah) have been.

Girard: That thing was rigged right from the start.

Seney: Yeah. Yeah.

Girard: But, you know, that's the way the cookie
crumbles, I guess. (Laughter)

Seney: Well, you know, it turns out to be kind of an
elegant way to reallocate the water.

Girard: Yeah.

Seney: To say on the one hand, "Sure, you've got rights
to this, but wait a minute, you're taking too
much."

Girard: Yeah. "You own the water rights but we think
you're taking too much."

Seney: Right.

Girard: But ordinarily that should be, I think, (Seney: Yeah) the function of the court.

Seney: And, that's where we get to the OCAP isn't it? (Girard: Yeah) I'm saying to you, if I'm the judge and you're a water right holder, "Of course you've got rights to 3.5 feet (Girard: Yeah) but, you know, it's taken ten acre feet to give you your 3.5 acre-feet."

Trouble with OCAP

Girard: But, the trouble with OCAP, you have no, you know, you're there completely at the mercy of the Secretary. You have no right to appeal his decision. Yeah, you can appeal it, but the standard of review means you can't win. (Seney: Yeah) I mean, in the standard review if you have, you know, if you have ten witnesses (Laugh) that saw things one way, (Seney: Yeah) including the four judges and four priests, and a protestant and a rabbi, and some drunk in the goddamn alley said he saw it another way, (Seney: Yeah) if the Secretary believed that drunk that's the end of it.

Seney: Yeah. Yeah. No, I can understand perfectly why . . .

Girard: And, that, that bothers me, really.

Seney: Why the district and why (Girard: Yeah) you, as their advocate, (Girard: Yeah) feels that this was, this was done the wrong way. But, that's the essence of it, is it not?

Girard: Yeah.

Seney: That I'm saying to you, "You got no quarrel about that 3.5 acre feet."

Girard: Well, how can they quarrel with that?

Seney: "The problem is it takes ten to (Girard: They can't . . .) get to you."

Girard: They can't quarrel on the (Seney: Right) 3.5, because there's two federal court decrees that say that.

Seney: Yeah. So . . .

Girard: So, we'll go around another way and say you're taking more than you need, or you're applying it, you're applying 3.5 or 4.5 to land that should be 3.5.

Seney: Right. Right. Or that it's . . .

Girard: That's it. Now, that argument I don't have a—I think that's a legitimate argument, although I

think the court ought to decide that, not the Secretary.

Seney: What are bench and bottom lands?

Girard: What are bench and bottom lands. (Seney: Yeah) That's my thing.

Seney: Right. Right. Yeah.

Girard: Because that never was the same.

Seney: Yeah. Right. But, a lot of the Operating Criteria and Procedures, as I understand them and this is very (Girard: Yeah) complex, is, has to do with things like transportation losses and who gets credit for evaporation, and who has to pay for the evaporation, and all that kind of thing?

Girard: And I don't, I've got, I know it's very detailed, (Seney: Yeah) I don't have any recollection of all of the details of it, although I know we felt they were very, very unfair.

The Major Cases

Seney: Yeah. Yeah. So, those were the major cases you worked on then, OCAP, (Girard: Yeah) the *United States vs. Nevada*, and the Alpine Ditch Decree?

Girard: Right.

Seney: Anything else for T-C-I-D?

Girard: I don't think so. (Seney: Okay) I, you know, with hindsight maybe I'll think of something, (Seney: Okay) but not, not of anything of major consequence, (Seney: Yeah) I don't think. I never got involved in any of the negotiations and with, you know the . . .

Seney: The settlement negotiations?

Girard: [Inaudible].

Seney: Yeah. Right. Right.

Girard: I know Gordon De Paoli was active in that for Sierra.

Seney: Right. I've interviewed him.

Girard: A very good lawyer.

Seney: And I'm going to be interviewing him again.

Girard: A very, very good lawyer.

Seney: Oh yeah. An excellent fellow, I think, yeah.

Girard: A very good lawyer.

Seney: Yeah. Right. Well, you know, that's all the questions I have for you.

Girard: Okay.

Seney: And, you've put it all very vigorously and (Laugh) very effectively.

Girard: Yeah. What good did it do? (Laughter)

Seney: Well, thank you.

Girard: No. It was a lot of fun working up there.
(Seney: Yeah) I enjoyed it, and I use a lot of it now. I represent—off the record now, I guess.

Seney: Wait a minute. Let me just say thanks. On behalf of the Bureau thanks for (Girard: Okay) taking part. I appreciate it.

END OF SIDE 2, TAPE 1. JULY 20, 1999.
END OF INTERVIEW.