

**ORAL HISTORY INTERVIEW**

**THOMAS JENSEN**



**STATUS OF INTERVIEW:  
OPEN FOR RESEARCH**



Interview Conducted and Edited by:  
Donald B. Seney in 1995  
California State University-Sacramento  
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## Statement of Donation

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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 struck-out 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.

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## Introduction

In 1988, the Bureau of 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 undertook this work. The Newlands Project, while a small- to medium-sized Reclamation project, represents a microcosm of issues found throughout Reclamation:

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

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

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**Oral History Interview  
Thomas Jensen**

Seney; Today is November 8, 1995. My name is Donald Seney. I'm with Mr. Thomas Jensen in his office in Washington, D.C. Good afternoon, Tom.

Jensen: Good afternoon, Don.

Seney; Why don't you begin by giving me a brief biography. Tell me a little bit about yourself and how you got to work for Senator [Bill] Bradley.<sup>1</sup>

**Growing Up in the West**

Jensen: I would call myself a classically twentieth-century westerner, which means I have no real home. I grew up all over the American West, the child of parents who'd grown up in the inter-mountain West themselves. The children of, on one hand, Oklahomans who'd fled the Dust Bowl, and on the other hand, Danish immigrants who'd come into the country in the 1800s to work in farming, and in one case, for the Reclamation Service, which gets back to the story we're exploring here today.

I went to law school in the Pacific Northwest.

Seney; Whereabouts?

Jensen: Lewis and Clark in Portland and developed an interest there in western natural resource issues, water law, and water policy. Worked for the tribes for a while on the Columbia River. I ended up helping negotiate a treaty with Canada, the Pacific Salmon Treaty, and in the course of negotiating that, I found myself creating the institution that would implement the treaty and ultimately, after a couple of years of trying to make that work from the outside, was offered the job of working for the Salmon Commission as the head American staff representative. I worked there in Vancouver, British Columbia, for a couple of years.

Then we moved to Washington [D.C.], because I had a bad case of Potomac Fever. I had enjoyed working on natural resource issues and wanted to try my hand at it, so did the unusual thing of sending out resumes successfully. I sent out resumes to [Senator] Bennett Johnston and to [Senator] Bill Bradley, right out of the congressional directory. I didn't have any connection. I just got my paper on the right desk at the right time. The timing was right because the—

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<sup>1</sup> Senator Bill Bradley represented the state of New Jersey in the U.S. Senate from 1979 to 1997.



Seney; Excuse me, Bennett Johnston, being Chairman of the Natural Resources Committee in the Senate?

### **Going to Work in Washington, DC**

Jensen: Yes. Yeah, he was chair of the committee, the senior senator from Louisiana. He really inherited the mantle of leadership from [Senator] “Scoop” [Henry] Jackson on the Democratic side. He succeeded [Senator] Jim McClure, who’d been the chairman before that. Bill Bradley was the Chair of the Water and Power Subcommittee.

As I said, the timing was right, because my predecessor, Russ Brown, had not been a good match, a good fit, for Bill Bradley. He, Russ, had been in that job or similar jobs for many, many years, and didn’t share Bradley’s sense of reformist zeal, I think. Russ – I hesitate to put words in his mouth, but I think Russ was more comfortable with the status quo than Bradley was, and it brought them into conflict and after variety of maneuvers and steps, there was an opening created for a new lawyer to staff the Water and Power Subcommittee. So, I was hired by Bennett Johnston and Bill Bradley after a long, slow process of deliberation.

Bill Bradley doesn’t make any decision quickly, and he took about six weeks to decide between me and another guy, putting us through briefing tests. He would say, “Okay, this week I want you to brief me on X, Indian water rights, or water marketing.” We would have to pull together briefing memos, and he ended up making a very good choice, I think, from my standpoint. (laughter)

Seney; Choosing you over your opponent.

Jensen: Yeah, he made the choice I would have made.

Seney; Let me stop you to ask you about something you alluded to, and that is that your predecessor, Mr. Brown, had been in the business, I take it, for some time, in the natural resources water business for some time.

Jensen: Yes.

Seney; In my brief experience with this project, and observing one of the meetings, the TROA [Truckee River Operating Agreement]<sup>2</sup> meetings, one of the things I was

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<sup>2</sup> “More than 27 years in the making, the Truckee River Operating Agreement (TROA) now guides use of the river that winds nearly 120 miles from the mountains of Lake Tahoe to Pyramid Lake and is the primary water source for Reno and Sparks. The long-pursued plan brings the Truckee River’s management into modern times, protects the

struck by is how comfortable all the people are with one another in this meeting, whether they represent Sierra Pacific Power [Company], the Department of Justice, or the Department of the Interior, the state of California, the state of Nevada, the signatories to the new TROA, the major players. I was struck by how far these people all go back in this policy area. Is that generally true in the water area, do you find, that it's hard to bring someone in from the outside to shake things up? Is it kind of a settled policy area, or was it?

### **Truckee River Water Policy Development**

Jensen: I think water policy had continued with virtually the same players, the same overall philosophy, the same goals, and the same expectations for a good half a century. Change started coming in significant ways, started coming in the seventies and eighties. The momentum built up over the prior half of the century was so enormous that the changes that were occurring, and people in public opinion, and budget priorities and available funds, have continued to catch up with that momentum. But they've been trying to catch up now for almost twenty years.

I spent most of my time, when working on water issues, working with people who had been in the business for thirty years, in many cases. Certainly, around the Newlands Project,<sup>3</sup> in many cases, we were working with individuals who measured their connectedness with the issue in terms of generations and not just periods in their own careers. It's obviously true on the tribal side, but also on the side of the farmers. These were people who were the sons, or in most cases the sons, or grandsons, of the folks who responded to the flyers posted in 1902, or, in fact, prior, responded to the blandishments of [Senator] Francis Newlands<sup>4</sup>

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area from protracted droughts and offers a promising future for the region...

"The agreement brings an end to historic uncertainty between Nevada and California over distribution of the river's water, allocating 90 percent to Nevada. Beyond enhanced drought storage for the Truckee Meadows community, it modifies the operation of federal and selected non-federal reservoirs in the river system to protect and improve water quality and enhances conditions for the endangered Pyramid Lake cui-ui and the threatened Lahontan cutthroat trout. By retaining more water in upstream reservoirs, TROA also expands the range of recreational opportunities, including boating and fishing." See, Truckee Meadows Water Authority, "Truckee River Operating Agreement," [http://tmwa.com/water\\_system\\_settlement/](http://tmwa.com/water_system_settlement/) (Accessed 2/2019)

<sup>3</sup> Authorized in March 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), <https://www.usbr.gov/projects/pdf.php?id=142>.

<sup>4</sup> Francis G. Newlands began his political career in 1893 serving the state of Nevada in the U.S. House of Representatives. It was there that he led the fight for the Reclamation Act of 1902, and the start of federal

to come irrigate the Carson Valley.

It has always been the most rewarding part of my job, and probably the most distressing part to them, but the most rewarding part has been working with people who had tremendous reservoirs of information and indomitable senses of place around these water projects. The water projects provided the coherence for their lives. It's hard not to find that quite compelling and something you approach with humility and caution, because they're always going to know a lot more than you are. By rights, they will always know much more and have very different opinions than someone coming from the outside looking at it.

### **Senator Bill Bradley**

A lot of the dynamic of working for Bill Bradley on that issue or other issues emerged from the fact that he was not a Westerner. Though he's from Missouri originally, people think of him as an Easterner. He is not a rural person, although he came from a small, rural town, originally, a largely rural town, he's seen as a big-city guy. Through all of the legislative efforts we worked on, he was always viewed as a stranger to whatever issue it was. Whether it was the Truckee-Carson issue or later in the Central Valley in California, people from those places always wanted to start the conversation with something that amounted to, "Well, as an Easterner, you couldn't possibly understand."

Bradley's success was the fact that he may have been an Easterner, but he was a hell of a good student and had an insatiable appetite for, and capacity to retain information about these projects and about the people in them. If you gave him thirty pages on the history of the Newlands Project, he'd want another thirty pages on some nuance of the first thirty pages. He'd read it and he'd remember it and you'd get it back with circles and arrows around things, and every other line underlined, and a list of questions. He just has a great intellectual appetite. So we go to these places, hold a hearing, do a site visit, meet with people in his office, and though they wanted to start these encounters with, "You couldn't possibly understand." By the end of the meeting, often they would either say, or afterwards you would learn that they had said to their colleagues, they couldn't believe what he knew, how much he knew about that and how good the questions were. It was the sign of a senator who was interested in the topic and did his homework.

Seney;            Yet, he brought fresh thinking, you think, to the problems.

Jensen:           He brought fresh thinking.

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reclamation efforts in the arid West. The 1902 Act is often referred to as the Newlands Act.

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Seney; Did you bring it, too, do you think, to these problems?

Jensen: I think I gave some legs to ideas that he had. I think I helped him carry ideas and priorities that he largely developed or decided he was going to pursue before we ever met. Bill Bradley is a reformer at heart. He wants to make things better. He wants to fix problems. He responds with aversion to environmental degradation or to taxpayer rip-offs or to otherwise patently stupid arrangements that we've made deliberately or inadvertently over the years, and western water certainly got its full share of those.

I don't know what he would tell you about the roots of his interest in western water, but in my experience, he was a curious student of history, growing up in Missouri there at the stepping-off point for the western journey on wagon train across the Oregon Trail. As a kid growing up in the West, we were always taught about those people leaving from Missouri, and the stories we heard were about people coming to where we were. I think he must have grown up with stories about people leaving from where he was, and he had some underlying curiosity about it.

Then with the publication of books like *Cadillac Desert* in 1985, '86, *Cadillac Desert*, more than anything else, I guess put a public face, an approachable face, on western water policy. [Marc] Reisner's storytelling of how western water projects were built, how they were funded, how they were manipulated through the congressional process, and then how often it was that the results on the ground were not the glowing benefits the promoters promised, but were environmental tragedies, like the Kesterson Reservoir<sup>5</sup> incident in California, or the loss of pristine riparian habit or beautiful canyons, or theft—outright theft—of water from Indian tribes to be used by non-Indian growers. I think Bill responded with a sense of outrage and a reformer's desire to fix things to those kinds of stories.

The Newlands Project just happened to come in front of the radar screen at the right time, a time when he got a staffer who wanted to help, who shared some of the reformer's impulses. And at a time when the votes and the committee

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<sup>5</sup> “Completed in 1971 by the Bureau of Reclamation, Kesterson included 12 evaporation ponds for irrigation drainage water. The reservoir, a part of the San Luis National Wildlife Refuge, was an important stopping point for waterfowl. In the 1960s officials proposed a 290-mile drainage canal to the ocean known as the San Luis Drain. Only 85 miles were completed, however, and work on the drain halted in 1986 after scientists discovered bird deformities due to drainage at Kesterson.” For more information, see Water Education Foundation, “Kesterson Reservoir,” [www.watereducation.org/aquapedia/kesterson-reservoir](http://www.watereducation.org/aquapedia/kesterson-reservoir) (Accessed 5/2016).

leadership and the general tenor of congressional agendas matched his own. So, he got lucky.

Seney; When you came in 1989, the negotiations over what became Public Law 101-618<sup>6</sup> were already under way, were they not?

### Public Law 101-618

Jensen: Yes.

Seney; At what point did you step into that process?

Jensen: We got involved when subcommittees usually get involved. Senator [Harry M.] Reid<sup>7</sup> had introduced the legislation, I think it was S1554 had been introduced, and referred to the Energy Committee, and then to the Water and Power Subcommittee for us to work with. Senator Reid requested hearings. It was clear as soon as the bill came to us, that for partisan reasons, and because, frankly, this was the committee that had stuck Harry Reid and Senator Chic Hecht with the nuclear repository in Nevada,<sup>8</sup> this was also a committee that would like to do

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<sup>6</sup> 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](http://www.usbr.gov/mp/lboa/public%20law%20101-618.html) (Accessed December 2011).

<sup>7</sup> Senator Harry M. 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, <https://www.usbr.gov/history/oralhist.html>.

<sup>8</sup> "In 1982, Congress passed the Nuclear Waste Policy Act (NWPA), tasking the Department of Energy (DOE) to construct a central geological repository in the United States by 1998. The Act was passed to address the buildup of hazardous nuclear waste, a byproduct of the growing use of nuclear power for its otherwise relatively clean, reliable, and cost-competitive energy. The proposed deep geological repository would exist to safely store and dispose of high-level nuclear waste.... In 1987, Congress enacted the Nuclear Waste Policy Amendments Act. This Act declared that Yucca Mountain would be the site of the geological repository outlined in the NWPA. Yucca Mountain was selected based on many empirical factors related to its location, dry climate, rock type, and distance

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something nice for Harry Reid. When he came to the committee saying, “Would you please help me with this water settlement? It’s going to make some people mad, but overall, it’s a good thing to do and it’s a high priority for me, and I want your help.” Well, our directions to staff were to be as helpful as we could, to put the energy and time into it.

Seney; Say just a little bit more about sticking Hecht and Reid with the nuclear dump in Nevada.

### **Yucca Mountain**

Jensen: Well, I don’t know that anyone would ever agree that the passage of the water legislation was linked to Yucca Mountain, but I’ll tell you my recollection is that in the prior Congress, the Energy Committee, through Bennett Johnston, had forced onto Nevada the unique distinction of being the single site designated for long-term, high-level waste storage. That was when Senator Hecht, on the floor of the Senate, referred to it as “the nuclear suppository,” which was one of the best characterizations its ever had in the years it’s been discussed.

The Senate, out of expediency and a genuine sense of needing to do something with nuclear waste, ended up doing something that the Senate is basically organized to prevent, namely, one state being rolled by the majority of the other states. It’s an anti-democratic institution in that regard and–

Seney; Was designed to be.

Jensen: –designed to be, and the members are just almost universally, almost homogeneously, resistant to measures that really screw a particular state. And everyone knew that Nevada had been screwed.

People liked Harry Reid. He’s a friendly, warm, very decent man, and I think there was some sense that if Nevada was going to carry the nuclear waste repository for the nation, that in those moments when Nevada came looking for help on other things, they ought to get it. That ties in with the general partisan dynamic, of when a member of your party comes to you and says he or she has a priority, you try to help them out. In any event, it’s a door-opener. I think it served as a door-opener. It meant that there was a decision made to commit the staff resources, the time resources required, to move a complex piece of legislation. Committees don’t move every bill that comes in front of them,

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to the nearest water basin.” See, Nick Barber, “Yucca Mountain and the U.S. Nuclear Waste Storage Problem,” March 2, 2021, Yucca Mountain and the U.S. Nuclear Waste Storage Problem (stanford.edu). (Accessed June 2022).

especially those like S1554, that facially had lots more work. You could tell it needed a lot more work in order to be ready for passage, that it was a skeleton of a house, just the framing, not the house itself. And you hadn't even identified the occupants yet or the neighborhood, let alone the zoning plan. It was just the beginning, and it was obvious to all of us it was going to take a lot of time and a lot of muscle.

Seney; Let me stop you just to jump ahead for a second.

Jensen: Sure.

Seney; Because, as I think I mentioned to you, I interviewed Senator Reid this morning.

Jensen: Good.

Seney; He indicated that it was almost miraculous, I think was the word he used, some derivative of miracle, that when Senate Bill 1554 came to the Senate floor, it just passed without any discussion or opposition. Is this, do you think, a function of what you've just been describing, having to do with Yucca Mountain?

Jensen: I assume you're saying he's talking about the final passage.

Seney; Yes, that's right.

Jensen: When it was finally passed.

Seney; Right.

Jensen: Well, I guess I remember it a little differently. I don't remember it passing painlessly; in fact, it was a very close call. It could easily not have passed. I think maybe Senator Reid's reaction is—I give him credit for—I'm sure that's how he experienced it, because it was the end of the session and he, like every other senator, had twenty-five other pieces of critical business that were moving. I'm not sure he knew exactly what everyone was doing in order to get the bill passed.

I do remember, I saw him immediately after the bill passed. It was two or three in the morning, and his office is in the Hart Building. My office was adjacent in the connected Dirksen Building. I was watching on the television monitor, saw the House clerk on T-V receive unanimous consent for passage of the settlement. It was the second to last or the last measure cleared by the House. We'd gotten it out of the Senate and were trying to get it out of the House before we adjourned for this session. It passed, and I got up out of my office, walked

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around the corner, walked out into that wonderful atrium of the Hart Building, and I saw Harry Reid, this normally very staid guy, bouncing out of his office doors, literally bounding the way that my kids, today, bound out in the back yard, with his hands over his head going, “We did it! We did it!” He’s all by himself. The lights were on in his office and staff members still in there, but he comes bouncing down the hallway outside of his office and bounces out of the building just exalting the whole way. It was one of the most delightful scenes. Here was a man who had gotten something he wanted very badly.

Seney; Did he see you, too?

Jensen: No, no, because I just saw him go past. (laughter) I was off in the distance.

Seney; That’s wonderful.

Jensen: I walked into the office to congratulate his staff, then I went home.

Seney; Well, forgive me from moving you ahead. Let’s go back to where you think we should start here so we’ll have a full understanding. I’m not sure I gave you the little spiel that I like to give when I do these interviews, and that is, 100 years from now when people are going to be reading these, they’ll be printed on acid-free paper, so they won’t fuse like the pulp paper will, so what we need to try to think about is what we want in the record and how much detail and so forth. The more the better, really, about what’s entailed in getting a piece of legislation like this through. So, with that in mind, go back to where you think we should start here.

### **Senator Harry Reid**

Jensen: In telling the story of the passage of this legislation, there’s several threads that got woven together, and one of them is Harry Reid. He’s a major part of this story. The second is some very innovative dealmakers, both at the Pyramid Lake Tribe and with Sierra Pacific Power. Then the third is an inquisitive reform-oriented member of the Senate and chair of the appropriate subcommittee in Bill Bradley. Those three things were, I think, the principal threads woven together to make this bill, and the settlement, and all the other consequences, come into being.

Harry Reid took a risk that no other western politician up to that point had ever done in the history of the country, at least as you measure by one set of criteria. He was the first western politician ever to understand that the coalition of



water development interests and land development and agricultural development interests, who together had led to the creation of the Reclamation program, and really driven water policy in the West—[Reid's the] to first understand that that group had grown weak, that they were no longer the dominant presence, at least in his state and in a number of other western states, that they had been thought to be throughout the West, and had run the place for a long time. What he figured out by counting votes, like any good politician, is that all the votes were in Clark County, Las Vegas, and in Reno, and that there were a handful of votes out in Fernley and Fallon, and Hazen. Hazen? Hazen, I guess—

Seney; Yeah. Swingle Bench.

Jensen: Swingle Bench, that's right. And that for a politician who runs statewide as he does, what counted was delivering for the people of Clark County and for Reno first, what counted in terms of votes, and that he could afford to even think about taking a step away from the traditional western water constituency. He was presented with a group of stakeholders in the Reno area who had learned the hard way that they couldn't simply steal water from the Pyramid Lake Tribe. They'd lost case after case, and Pyramid Lake Tribe was a relentless, extremely well-represented adversary.

The private water utility in the Reno area got smart. They got innovative. They were creative enough to understand that they had to make a deal, if they were going to secure water supplies for their future. And they understood that they also could move away from the traditional water constituency, that their interests were not coextensive with the interests of the agricultural water developers. Throughout the West, generally, the urban water developers, water interests, had tagged along behind the agricultural interests and collected a few crumbs that were brought home by the ag[riculture] guys working with Congress to get their projects built. Well, here for the first time was an urban district who said, "We don't need those guys. In fact, we can afford to do something that they won't like, because it's in our interest to make a deal with the tribe."

Well, they proceeded to do so, and they had a responsive senator who was also prepared to understand that there was some new politics in town, basically, and that he could work with those politics, and that, in fact, it would be good for the state as a whole if he did. It was a very gutsy move. Western senators don't cross traditional water interest often. It'll happen more and more as time goes on and the demographics of the region change. But Harry Reid was the first.

This is a guy who, as gaming commissioner in the state of Nevada, had a remote-start for his car because it got blown up. His car was blown up on his

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driveway by his wife using the remote start. As I understand the stories, and I've heard it a number of times, he's a gutsy guy, and he sticks to his guns. He really laid the table for this deal. He was the only Nevada politician to really come out in front on this. I give him primary credit.

What he and his staff brought to light, as S1554, was a structure for reallocating the rights to use, in practical terms, rights to use water at different times and under different conditions, out of the Truckee and the Carson river systems, particularly the Truckee, in a way that provided additional security, long-term stability, and reliability of water supplies for the urban area, so it could grow and deal with the periodic droughts in the region. And at the same time resulted in a long-term net increase in inflow into Pyramid Lake, to the benefit of the Pyramid Lake Tribe, which had been fighting for decades to get—well, since the fifties, really—to get increased water supplies to protect its resources, and particularly the fishery resources, but also the tribe's cultural identity and way of life, and to some extent economic development possibilities, also.

The negotiations between the water utility and the tribe had originally attempted to include the water project contractors. But by all accounts, by the time the bill got to us, the water project contractors had decided they weren't interested, that this was not a deal that they were going to be a part of, and that they would fight it.

### **Truckee-Carson Irrigation District**

Seney: I get a different story, that either they [the representatives of the Truckee-Carson Irrigation District] were thrown out or they walked out, depending on who you talk to. What is your understanding of why the water users, the district, the farmers, weren't a party to the negotiations that led up to 101-618?

Jensen: My impression, and it's really only an impression, is that the terms of the negotiations became intolerable to the agricultural interests, and so they walked, feeling they had been thrown out. I think you combine the two perspectives, and you get the truth, which is that the urban interests and the tribal interests learned during the course of these negotiations that they might be able to cut a separate deal and started exploring that in the negotiations. While each probably also still trying to play a little bit, trying to figure out whether they could get some sort of victory working with the ag guys.

- I think the irrigation interests felt the ground slipping out from under their feet, and they did the traditional thing of leaving the room. They did clearly feel

that they had been treated badly. They felt that they had been ganged up on, that they had been excluded from something. To their mind, that was their project and their water, and it was theirs by something that exceeded normal contractual relationships. It was theirs because, by God, it was theirs. It was something they'd been given, fair and square, that they'd fulfilled their end of the bargain, and nobody should be taking it from them. They had a sense of real indignation, fueled over the years by their conflicts with the Pyramid Lake Tribe. But also consistent with this, it fit very well with this brand of kind of western "welfare-ism" that you get from some in the ranching community and some in the farming community and some in the logging and the mining and the irrigation community. That it's all theirs by something like divine right, and it's not rational, but it's very powerful and very emotional. As the tribe and the city, or West Pac Utilities [the water utility for the Reno-Sparks area], and the irrigators came to Congress, the tribe and the city were sort of excited, because they were exploring new ground, and the irrigators felt the ground moving out from under them.

Seney: Let me turn this over.

END SIDE A, TAPE 1. NOVEMBER 8, 1995.

BEGIN SIDE B, TAPE 1. NOVEMBER 8, 1995.

Seney; Your point that how strongly they feel about water rights, I've encountered that, too. It's almost—I don't know if I want to say religious, but it gets about as close as you can get to that without being that.

Jensen: Well, it is—if it isn't religious, it's cultural, and it is not like any other form of business relationship that I know. And in many cases, it is religious. Certainly, in the Mormon irrigation, western irrigation communities, the religious link is very, very strong. It's a link with prophecy by the prophet, and that the desert will blossom as a rose. People argue about what Brigham Young actually meant with that, but many of the people in the Carson Valley and elsewhere around western water projects have a sense that they are fulfilling destiny.

Seney; And it's also the history of the Mormons in the West to irrigate.

Jensen: Absolutely.

Seney; Either publicly or privately have their own little systems.

Jensen: To work cooperatively, to divert water, to put it to beneficial use. These folks clearly felt that their capacity to live that destiny, to fulfill that destiny, to retain the thing that they were about, that was at risk, from their perspective.

Seney; One of the things that struck me by interviewing the farmers on the project, and they've all been very cooperative and very nice—

Jensen: Sure.

Seney; – very forthcoming, is the similarity in outlook and phraseology, even. The words they use are the same when they discuss these problems. Have you encountered that as well?

Jensen: Well, it's true throughout the western irrigation community. One of the things that I think—it's common among stakeholder groups, particularly so in small rural communities or stakeholder groups within small rural communities. They spend a lot of time talking to each other about the same things for many years. The homogeneity of language and outlook is reinforced. I think that's one of the things people find most comforting about small communities is, in fact, that they develop a shared sense of identity. There's not the pluralism of the big cities, and it's easier to know who you are and what you stand for and who your friends are.

I grew up with a lot of that. It's pure coincidence, pure ironic turn of fate, but my great-grandfather on my father's side had been the paymaster for the Newlands Project when it was being constructed. He was a Danish immigrant, or the son of Danish immigrants. Nils Knute Jensen. He went by N-K. He didn't want people to know that he had this Danish name but couldn't get rid of Jensen. But N-K Jensen and his wife moved to Fallon in 1902. He was one of the original employees of the Reclamation Service. My family has a picture of him and his wife in a boxcar that had been hauled on the railroad down to Fallon, I suppose, or Fernley. The boxcar converted was into living quarters with a metal chimney pipe sticking out of a hole in the ceiling of this boxcar. N-K and his wife posed in the doorway of it.

I mentioned this to Lyman McConnell<sup>9</sup> [Manager, Truckee-Carson Irrigation District (TCID)] and Ted de Braga<sup>10</sup> [President, Board of Directors, TCID] at one point when they visited me, and I don't think that they believed me,

<sup>9</sup> Lyman McConnell participated in Reclamation's Newlands Series oral history project. See, Lyman McConnell, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Andrew H. Gahan, historian, Bureau of Reclamation, 2018, <https://www.usbr.gov/history/oralhist.html>.

<sup>10</sup> Ted de Braga participated in Reclamation's Newlands Series oral history project. See, Ted de Braga, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Donald B. Seney, Bureau of Reclamation, August 5 and 11, 1994, in Fallon, Nevada, edited by Donald B. Seney, <https://www.usbr.gov/history/oralhist.html>.

but they couldn't be sure. So, they went back, and I believe at the time the irrigation district was going through a microfilming of its files, and they had all their archive files available, and looked it up and found his name on pay records and other things. At least for a while, Lyman at some point told me—I believe Lyman told me—that they had trouble reconciling my role and what they perceived as the destruction or the damaging of their project, with my ancestor's role in creating it.

There's a parallelism there. He was sort of a bit player, a key but bit player in that early part of the drama. And I was a player, a bit player, in the latter part of the drama, and always wish I'd had a chance to tell this story to Wallace Stegner, because it would have fit his notions of how the American West worked.

Seney; (laughter) Yeah.

Jensen: But that little piece of my history reminds me of some of his stories in, *Angle of Repose* and elsewhere, about how the West and its people keep changing, how we change roles within the West, but the land doesn't really change much around us

Seney; I've been told you're more than a bit player. I've been urged by numerous people that I must talk to you. So, whatever you may think of your role, the others don't characterize it that way.

Jensen: Probably the people who were happy and unhappy with it, both, the same way. (laughter)

### Settlement Legislation

Seney; Probably so, yes, as a matter of fact. Let's go back to when you get involved in this, because by the time in '89 you come to work for the subcommittee. The legislation has been put in in August of '89, I believe?

Jensen: Yes, the legislation came in that summer. We knew it was coming, and I don't remember all the details, by any means, but we started meetings with people, various stakeholder groups, irrigators, West Pac Utilities, state of California, representatives of the state of Nevada, representatives of the environmental groups, the tribe, all started coming in, and their interest really was in determining whether we would hold hearings, when we would hold hearings, would they be allowed to testify, what were our plans for the disposition of the bill.

Seney; Your view was, as it came in, it was a very incomplete piece of legislation.

Jensen: Very incomplete.

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Seney; Skeletal.

Jensen: Skeletal, but the skeleton is a key part of any structure, and Senator Reid and Wayne Mehl,<sup>11</sup> his aide, had done an extraordinary job of getting it that far. But they're both real good students of the legislative process. And they understood that at that point they'd carried their talks in Nevada as far as they could, that they needed additional leverage to push this settlement through to completion, and that the best way to do that was to write a bill and get it up moving, get it going in Congress.

Seney; Because that's just another step in the process.

Jensen: It's another step in the process, and it creates leverage. If a bill is moving, people have to really focus on commenting, on making deals, trying to stop the bill, trying to move the bill, but in the long run, at least, it brings better focus to the debate.

Seney; You're gathering your friends and smoking out your opposition.

Jensen: Yes. Yes. I can't remember when I made my first trip out there, but that summer or fall, I know I went out to Reno where I had lived. I went to junior high and high school in Reno, and so I was glad to get back and see the old stomping grounds. In fact, the first meeting we had there was in Harry Reid's office, which was right across the street from my old high school, literally. I felt like I was going home again.

It's a very complex water system with complex—what would it be—110, 115-year-old administrative structures, layered one on top of another, with competing rights. And it took me a while to figure out who had what and who was negotiating for what, who had what to give up. I know we did a tour of the drainage of the system coming down out of [Lake] Tahoe, a bus tour with various people. I remember marching around in the snow up at Tahoe. The lake at that point was below the rim. We were in the midst of a drought. It was a tough water year.

Most committee staff go through a process when presented with a

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<sup>11</sup> Wayne E. 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, <https://www.usbr.gov/history/oralhist.html>.

complex bill, of trying to learn who all the players are. You realize that the people coming in to see you only give you little pieces of the story. So, you try to pull together your own coherent understanding of the overall arrangement, and then make a determination of how to push through to closure, how to get a deal.

I have to confess with great regret that I do not recall all the details of the give and take in the negotiations that finally led to the bill. But the overall dynamic was one where time and again, we pushed, either in hearings or meetings or subsequent visits. We pushed the agricultural interest, T-C-I-D and Churchill County and the town of Fernley and all the interests, including at one point the Navy base out there, which decided it wanted to behave like one of the irrigation contractors. We kept pushing them to come up with their own ideas of what they would need out of the project, out of the deal, in order to have a deal. We offered a variety of different inducements over the months, to try to get them to agree. Needless to say—

Seney; Are the details coming back about what was offered in terms of—because T-C-I-D had, if I may say, they had dropped out of the negotiations that preceded the legislation.

### **Negotiating the Legislation**

Jensen: Right.

Seney; So, the legislation is put in without input from them. Senator Bradley indicated in the February 1990 hearings that there would be a ninety-day period now where T-C-I-D would become involved. Are we talking, now, about that ninety-day period?

Jensen: The ninety-day period and afterwards. The ninety-day period was one of fairly aggressive—we set that deadline in order to put pressure on people to try to come to closure. And then the deadline would slip as they always do, particularly in the Senate. But the goal was to find a way of getting the irrigators into the tent, so that we would have an agreement among all the principal parties.

Throughout this time, Sierra Pacific and the state of Nevada and the state of California and the [Pyramid Lake] Tribe continued working with various degrees of success and intensity to reconcile the residual problems among them. The interstate issues were fairly complex, and there was some history there of the prior compact between California and Nevada having been blown up, or derailed legislatively, when [Senator] Paul Laxalt and [President] Ronald Reagan tried to

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push it through.<sup>12</sup> Those parties seemed determined to use this legislative initiative to resolve their problems.

We could never find a way to bring the irrigators around to seeing this legislation as something that offered them anything. We, at one point in discussions with, I believe it was directly with T-C-I-D, we offered, in exchange for the other pieces, general pieces of the deal, a closed, treated, pressurized domestic water supply for the Fernley area. They have horrible groundwater—arsenic, coliform, you name it, all sorts of nasty stuff. As a way of inducing them to change, to agree to some water reallocations, we offered them a water supply that would have guaranteed everybody in the region good-quality water and a water supply they could rely on for future growth. They wouldn't do it.

It was an offer worth, as I recall, somewhere between \$25 and \$50 million dollars, something that most communities would kill to get. But here it meant, to them, giving up control over something that they viewed as just not negotiable, not anything they should ever have to give away. They rejected the premise that they should have to give anything up, that they should have to make a deal.

- Seney; In a sense, were you talking to the wrong people about an offer like this for a domestic water system? Because you were really only talking to farmers, and not the Fallon, Fernley, non-farm community as a whole, weren't you?
- Jensen: Well, we were also talking to the leaders in Churchill County and city government officials, and the fact is that there's virtually no meaningful distinction between the T-C-I-D board and community leadership. They were, for practical purposes, certainly on issues of this scope, they were one and the same.

I thought you were going to take the question a little bit differently. I think we should have gone over the heads of the leaders to the people. In retrospect, if I were calculating it then with what I know now, I would have

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<sup>12</sup> California–Nevada Interstate Compact [California and Nevada]—After thirteen years of negotiations between the two states (begun in 1955), the joint California–Nevada Interstate Compact Commission approved a provisional Interstate Compact in July 1968 for the division of the waters of Lake Tahoe, and the Truckee, Carson, and Walker rivers. This provisional compact, with some modification, was eventually ratified by both states (California in September 1970 and Nevada in March 1971). The compact created the Tahoe Regional Planning Agency (TRPA) to oversee land-use planning and environmental issues within the Lake Tahoe Basin. However, the compact was never ratified by Congress which would have made it law. A major issue of contention was a phrase in the compact which stated that the use of waters by the federal government, its agencies, instrumentalities, or wards was to be against the use by the state in which it is made. This limitation, combined with new court interpretations of the federal reserved water rights (Winters Doctrine), waters required for Pyramid Lake fish species under the Endangered Species Act (ESA), and public trust doctrine issues combined to derail Congressional approval.



recommended that someone go and hold a community meeting and ask the citizens, place the offer to the citizens. The people who were drinking this God-awful stuff from groundwater, and who wanted clean, safe water for their kids. The small-business people or even land developers who wanted a good water supply to attract business. As it is, we went to the people who had the most invested in the status quo of water management in the valley, and they were the folks we were negotiating with at the time, and they just weren't interested.

### **Frustrating Process**

My greatest frustration with the legislation that finally emerged was that we never got the farmers in the tent. In a sense, it was only a partial settlement, and we knew it at the time. We regretted it at the time, but it was the best deal we could get, because we could never, despite lots of effort and lots of creative thinking, find a way to get the irrigators to agree to even the simplest redefinition of how water would be used to benefit Pyramid Lake or the [Truckee] Meadows. It was very frustrating.

- Seney; Not only couldn't you get them in the tent, according to the farmers themselves, Section 206, if I have that right, was added, which has some, from their point of view, kind of punitive aspects to it, in the sense that it—let me find it here—that it adds some things in it that they think operates against them.
- Jensen: Requirements for them to give up litigation or to give up water or other things.
- Seney; Right. Exactly.
- Jensen: That whole section reflects, I think, the frustration, the sense that many of us had at the time was that the irrigators were being completely unreasonable, that because of the emotionalism of the conflict, because they had become polarized, because the dialogue had become so polarized, that they had, as a practical matter, lost the ability to negotiate rationally. So, we put into the bill a series of provisions that were designed to, when read later after the heat of battle had died down a bit, would steer them in a direction toward what we understood ought to be the final, a more final, a more complete deal. It was meant to be a set of clear rewards and punishments, negative and positive, direction for them, so that they would walk in a direction that would lead to a better result.
- Seney; Who came up with these?
- Jensen: Oh, it's always hard to assign parentage to various pieces of legislation. The

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people who worked hardest on this throughout, and who were involved in the detailed drafting, well, I was one of them, my Republican counterpart, Jim Beirne, was involved at various times, quite constructively.

Seney: I'm thinking now of Section 209.

Jensen: Well, I don't remember exactly. It would have been—I'm going to guess here, but I would guess that I would have consulted with Bob Pelcyger<sup>13</sup> [Tribal Attorney for the Pyramid Lake Tribe], I would have consulted with David Yardas<sup>14</sup> [of the Environmental Defense Fund], Fred Disheroon<sup>15</sup> at the Department of Justice, and Bill Bettenberg<sup>16</sup> at the Department of the Interior, and Jim Beirne of the Republican staff.

Now, by suggesting that I don't mean to suggest that any one of them was necessarily the parent of any one provision. I claim specific parentage of only one provision, which is the—call it the Endangered Species Act sufficiency language, or the override language, which, as someone who is generally identified with the environmental causes, many of my friends don't view that as a merit badge. But I actually think that one of the most innovative things, and one of the best things we did in that bill, is—what is it, 210J or something, I've lost track of the statute. It's been a long time, Don.

Seney: That's all right. You're doing fine.

Jensen: But the provision that barred judicial enforcement, or barred courts from hearing more fights between these parties, between the irrigators and Pyramid Lake under

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<sup>13</sup> Robert S. 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 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, <https://www.usbr.gov/history/oralhist.html>.

<sup>14</sup> David R. Yardas participated in Reclamation's Newlands Series oral history project. See, David R. Yardas, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Donald E. Seney, Historian, Bureau of Reclamation, in 1995, in Oakland, California, edited and desktop published by Andrew H. Gahan, historian, Bureau of Reclamation, 2017, <https://www.usbr.gov/history/oralhist.html>.

<sup>15</sup> Fred Disheroon participated in Reclamation's Newlands Series oral history project. See, Fred Disheroon, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2010, <https://www.usbr.gov/history/oralhist.html>.

<sup>16</sup> William 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, <https://www.usbr.gov/history/oralhist.html>.

the Endangered Species Act for a period of seven years, in order to try to let the dust settle. We believed that in this bill we had crafted a reallocation of water with enough environmental and other public-interest guarantees that we should allow that new system of water operations to work, see what we get on the ground, see how the marshes and the lake and the people and the animals respond, without having everything, every six months, upset by a new court ruling, with one side or the other being victorious and being able to pound the other side for a period of time. Trying to find a period, a window of peace, or of relative peace, in which neither side could really slam the other through the courts, at least under the Endangered Species Act, was one of the best things we did in that bill. It goes unnoticed often, but I think if we hadn't done that, all of this would have still been in court, and everybody's concerns would have been unaddressed.

Seney; The irrigators do say that you barred them from suing, but you didn't really bar the tribe from suing.

### **Forestalling Endangered Species Act Litigation**

Jensen: Well, the tribe has, if you look over this period of time, they have not been able to sue under the Endangered Species Act. They've been obliged to collaborate in a fairly imaginative way, to try to make this deal work. The irrigators retained plenty of discretion and plenty of leverage under this agreement, to keep change from happening. Their control over the state legislative process, their control over how water rights could be moved and allocated and acquired left them with an awful lot of leverage.

As a practical matter, they may have—I don't believe—I did not believe at the time and don't believe now, that the burden of that provision fell unequally on different parties. It also kept the environmental community from using these issues in court. It kept the urban water interests, it kept everybody out of court, at least on those issues which had the potential of being the most disruptive of them all. It was quite possible, I think, for a court to have found that the Endangered Species Act would have barred further diversions of water from the Truckee River, notwithstanding the contracts or state water law or authorizing legislation.

Similarly, it's quite possible that a court would have required a different pattern of releases from Lahontan Reservoir to get direct flows into the marshes further than agricultural return flows. I can imagine a number of different ways in which the act or provisions that function in similar ways under different laws, such as the Clean Water Act, 404, might have caused real disruption. I think keeping the courts out of, at least, those new kinds of challenges helped.

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- Seney; All sides.
- Jensen: All sides. All sides. The last thing these guys needed was one more thing to fight about, or ten more things.
- Seney; The people on the project tell me that they never saw this section. This got into law, and they never knew it was coming.
- Jensen: Nobody did. Nobody did. And they weren't singled out. It was something that Jim Beirne and I worked up as a way of trying to give the parties some time to make this work. We all saw the real risk that this would just turn into a brand-new mire of litigation. I think Jim and I both felt that this needed some time to work itself out.
- Seney; Then obviously this is something Senator Bradley and Senator Reid concurred in.
- Jensen: Yes. Both Senator Bradley and Senator Reid were familiar with this provision as well as the other key provisions in the bill. It doesn't surprise me that the irrigators would feel that they were somehow left out. I think they feel that way about virtually the whole thing.
- Seney; Right.
- Jensen: It's hard to recreate, in telling the story now, the frustration and the sense of unreasonableness, the frustration we had, all of us on the [Capitol] Hill had, with the irrigators. Our view was that—and this is a bipartisan, multi-regional view—was that these guys didn't know when to say yes, that they had gotten beat pure and simple. They'd gotten out-lawyered and out-politicked by the tribes. They'd gotten out-politicked by the city. They had no elected member who was really committed to their side, and they were not able to make a rational calculation of when to cut their loses.
- So frankly, I'll tell you, one of the reasons that that section on E-S-A got in there, is that we were very—
- Seney; E-S-A meaning?
- Jensen: Endangered Species Act—was that we were very concerned that the tribe would continue to just kick the living hell out of the farmers, and we'd see the whole deal and the opportunity for peace to go on. The feelings were so hard among
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these parties that I actually—I remember, I had a conversation with Joe Ely<sup>17</sup> one of the last nights we were still working on the text of the bill. It was on this section. I remember Joe talking. Joe had grown up the hard way, a remarkable guy, brilliant, brilliant, visionary guy, but he'd come up through the school of hard knocks. Joe was resisting something. It wasn't this provision on the E-S-A, but it was something similar where we were trying to make the folks lay down a weapon of some kind. I remember Joe saying, "I've got them down, I've got them down, and all my instincts tell me to keep kicking him until he can't move."

I remember saying to Joe, "We can't do that. This bill can't work if that's where it ends up. You've got to let them up, Joe. You've got to let them up easy, like Abe Lincoln said, 'You got to let them up easy.'" And he did.

But this was one of those provision that we put in to try to get the sides to pry their fingers off of each other's throats for a while and try to make it work, which may have been a naive hope, but it was our hope. (laughter) It was precisely our hope that we could make what you might even call a marginal adjustment in water allocations and expectations under the project. And it would fix some problems for long enough that these parties would figure out how to work together rather than just kick the bejeezus out of each other every chance they got.

Seney; The essence of the legislative process, of course, is to compromise and to know when to cut your losses and when to say, "All right, this is the best we can do. We'll do this." Did the failure of T-C-I-D to grasp this leave you all who were participants in this process, and who value that kind of insight, to get even more fed up with them that they just didn't know how to play the game. They wouldn't play the game. They wouldn't be sensible? "Goddamn it, we've asked you over and over again, and you still won't be sensible." And just throw up your hands and really maybe say when you put 209 in there, "Goddamn it, we'll teach them a lesson with this?" I mean, was there some of that at work?

Jensen: No.

END SIDE B, TAPE 1. NOVEMBER 8, 1995.

BEGIN SIDE A, TAPE 2. NOVEMBER 8, 1995.

Seney; It's November 6, 1995. My name is Donald Seney. I'm talking with Mr. Tom Jensen in his office in Washington, D.C. This is our second tape. Go ahead,

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<sup>17</sup> Joseph H. 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, <https://www.usbr.gov/history/oralhist.html>.

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Tom. I think that we cut it off before we lost any of what we were saying.

### **Results Surprised TCID**

Jensen: I think people were surprised. Remember, this was the first time that a water district, a group of irrigators in a federal Reclamation project, had found themselves in this kind of political predicament. This was not a group of people who were accustomed to losing. This is a group of people who have been winning for a century and getting their way. And they didn't have the survival instincts that the rest of the American public, at least as they represent themselves in front of Congress, have of knowing when to say no and when to say yes and moving on.

I don't believe that any provision of the bill is fairly characterized as vindictive. I'm confident that the irrigators view many provisions of the bill as vindictive, and that's a legacy of the philosophical and the ideological and personal disconnect that plagued these negotiations and this "settlement" from the very beginning. They never bought into the notion that they had to be a part of the deal. The overarching philosophy was, "Leave us alone. Leave us alone. This is our water, it's our dam, it's our river, it's our share of your river." It really is this wonderful sense, naive sense, of isolation and independence.

It must have been nice out there when they really were independent, when they really were isolated, when they really did get their way. It must have been a hell of a life, that spectacular view, those incredible marshes, clouds of ducks coming in in the fall and winter, a steady crop from a reliable water supply. The lure of Reno over the hillside, so if you needed a little titillation, you could head over and drop a few quarters, but you could always come home to nice, safe Fallon. Then the Naval Air Base out there, which made you feel like you were a part of America's grander sense of self. It must have been a pretty nice deal. And having Indians and city dwellers and environmentalists and the Easterners and yuppy scum like me involved in deciding their future must have been harrowing and disorienting to them, at least to many of them.

I'm sure that in time I've lost some of my sense of where all the leverage points were in this, but I do remember at a number of points being presented with ideas from Sierra Pacific, or from the tribe, or, for that matter, from the federal government, that struck me as unfair. Remember, right up until the very end we were trying to think of ways to get the growers to come in. I remember resisting those efforts.

Seney; Hard-nosed provisions by the government, or Sierra Pacific Power or the tribe?

Jensen: Right. Right. Right. Things that felt like overreaching, that felt unfair. I couldn't tell you now what those things were at the time. A bill like this attracts hundreds of ideas than never get used. A bill of this scale is like a big-budget Hollywood movie, miles and miles and miles of footage that never get used in telling the two-hour story of "Apocalypse Now," whatever the right comparison is, but those ideas are out there. They're probably somewhere in my files or draft amendments generated by Fred Disheroon or Bob Pelcyger or Sue Oldham or the state of California or God knows who.

Washoe County would swing in on a vine periodically and offer an opinion and then disappear. Pelcyger would send—I can't remember, we had a nickname for Bob, but Bob was the most determined drafter, just indomitable energy. He and Joe Ely were a wonderful pair, because Joe had the determination and the grit and the drive, and Bob had the words. Bob would crank out a new fax to me every couple of hours, it felt, some days, there would be a new transmittal from Pelcyger. If I didn't answer his phone calls, there would be two or three faxes come in. Stuff would just pour in off the fax machine, and this was before any of us had plain-paper faxes, so I had heaps of these curly thermal paper faxes from Bob piled up on my desk. I wonder where all that stuff is today.  
(laughter)

Seney: Well, this was actually designed, I think, initially by Mr. Bradley to be part of a larger bill, to be part of an omnibus settlement bill, was it not, for a variety of water project problems and that he was convinced that this ought to stand on its own?

### **Bill's Original Intention**

Jensen: Well, at that time in '89 and '90, [Congressman] George Miller was becoming chair. He was chair of the Water, Power and Offshore Energy Resources Subcommittee in the House, but [Congressman] Mo Udall had Parkinson's Disease. He was chair of the full committee, and [Congressman] George [Miller] had taken over, for all practical purposes, management, the functional role as chair, but ultimately was named chair of that committee. He was working very hard to put his policy stamp on western water programs and was beginning a process that would ultimately play out in 1992. In October of '92, of bundling every water bill together, of logrolling, really, of taking—what did we end up with, forty different bills packaged in one great big pile. Bills representing water projects and changes in water projects, all over the West, and in some cases beyond the West, to try to create leverage to crack the stranglehold that Central

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Valley–California Central Valley–agribusiness had on that state’s water supply.<sup>18</sup>

There was a period of time when it seemed as if the Pyramid Lake settlement legislation might get tied up there. We wanted to do it. It was a bill we wanted to move. It was not pork that we wanted to use as leverage to achieve reform with respect to the Central Valley growers. So, it was allowed by Bradley and Miller to go on its own. It was clearly linked to other water projects and other water project legislation, though.

If you read Bradley’s opening statement from the February hearing, you’ll see an oblique reference to—I can’t remember the words exactly, but he characterizes the bill as a model and says, “It’s a model that should be taken to other valleys.” I wrote that, and I wrote that because at the same time we were drafting legislation for the Central Valley and applying many of the same principles that we had identified in connection with the Pyramid Lake settlement–water marketing, environmental standards, the political alignment between urban and agricultural interests, that allow such a bill to pass. Bill Bradley was signaling, in his discreet way, his intent to take these principles and take what he had learned in this experience and apply it elsewhere.

### Hearings in 1990

Seney: As long as you’ve brought up those 1990 hearings, I wanted to ask you about the Interior Department’s performance at those hearings, especially Assistant Secretary of the Interior for Water and Science, John Sayre. When I began to work on this project, Bill Bettenberg, whom I think you’ve mentioned, and, of course, you know, alluded to these hearings, and said I should read them, and particularly I should read Mr. Sayre’s testimony with an eye to its deficiencies and the reaction of the chairman. Do you remember that testimony?

Jensen: Very well. You know, it was—yeah, I remember that. (laughter)

Seney: Hardly know where to start, eh?

Jensen: Hardly know where to start. I guess I have a personal reaction. Professionally and personally, I always liked John Sayre a lot, but I’ve seen John, he’s fifty years my elder. He looks a lot like my mother’s father. He looks like my grandfather, and he behaves in the same gentlemanly, very decent, kind style my grandfather

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<sup>18</sup> Mr. Jensen is referring to the Reclamation Projects Authorization and Adjustment Act of 1992, P.L. 102-575. The bill was an omnibus measure affecting the development and management of 60 water projects throughout the West.



had. I wanted to like him. You wanted to do nice things for John Sayre. You wanted to treat him respectfully. You wanted to acknowledge the fact that he'd been a real leader in western water for a long time.

Nobody was gunning for John Sayre. Nobody wanted a conflict with him. I think everyone's motivation, instincts, inclinations were in the other direction, which made the conflict with him, when it came, quite poignant for us. He represented the government. He had a career that suggested he was capable of mastering very complex details and explaining hard things easily. He had all the resources of a significant federal agency at his disposal.

When it came time to testify on this, it was awful. Not only did he seem unfamiliar with the substance, but the testimony was—let's see—weak. It suggested through its inaccuracies, its, boy, anachronistic perspectives, and a patronizing tone, suggested that the Department and the Bureau of Reclamation were utterly out of touch with what the needs and directions of that region were. It was as if this was the testimony of the Assistant Secretary of Water and Science at the time decisions were being made to build the project in the first place, and not to remedy shortcomings that had emerged in the project ninety years after its construction. It was startling.

I think the best way to characterize Bill Bradley's reaction and mine at the time, and probably others in the room, although I hesitate to speak for them, is that we were stunned that the presentation was so strikingly at odds with what we understood about the project, what we knew about the problems, what we knew about the opportunities to resolve those problems. I don't know what John Sayre knew and what he didn't know, but that piece of testimony permanently cost him any credibility he may have had with Bradley, and it eroded the credibility of the department as a whole.

It's to the credit of somebody at the Department of the Interior, and I don't know whom, that after that hearing, they got together, collected themselves, and decided they needed to put some energetic folks on top of the issue. We were rewarded with Bill Bettenberg, in the long run, who was a tremendously constructive presence, I mean, very energetic and very determined, and Mike Brennan, who was then an assistant to the head of the Fish and Wildlife Service, assistant to John Turner. Mike and Bettenberg together brought terrific thinking and energy, and real what I consider extremely high standards of public service to the job.

It was an awful conflict with Sayre. It still makes me cringe, frankly, that moment. I've been a part of a lot of staged confrontations, and I've been a part of

a lot of spontaneous confrontations, but I've never been a part of one that was so startling in its occurrence. It marked a real turning point. It meant that leadership of the Reclamation program was, for at least a period of time, handed from the Bureau of Reclamation to Congress, that the people that–

Seney: That was the upshot of it?

Jensen: In my mind, that was a sea change right there, was when the Bureau of Reclamation, through the Assistant Secretary of Water and Science, demonstrated its unwillingness to change. It could not have done it in a more compelling fashion. John Sayre and Dennis Underwood<sup>19</sup> [the Commissioner of Reclamation], for the next three years, with Bill Bradley–

Seney; The Commissioner of Reclamation.

### **Bureau of Reclamation became a Nonentity**

Jensen: –the Commissioner of Reclamation–were seen as nonentities. It was as if John Sayre had come up there and said, “We don't want to play; we don't need to play; we're not paying attention to the details; we're not going to be a part of the solution, so would you please ignore us.” Couldn't have been more stark.

Seney; So that really gave you a freer hand, then, to craft this legislation.

Jensen: We had a free hand, and more than that, we actually got some talent out of the department, we got Bettenberg and Brennan, who were good. They were smart, well informed, creative, energetic, and they really helped sort through a lot of the problems and figure out how to make particular things work well. They deserve a lot of the credit for the good and the bad. (laughter)

Seney: And Interior came to the conclusion that change was necessary at this point.

Jensen: I think they came to the conclusion that legislation would happen with or without them, and that it would be better to try to achieve some things. This was particularly true from the Fish and Wildlife side of the Interior operation. They wanted to win on this one. They were philosophically in accord with what we

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<sup>19</sup> Dennis B. Underwood served as Commissioner of the Bureau of Reclamation under the administration President George H. W. Bush from 1989 to 1993. Mr. Underwood also participated in Reclamation's oral history program. See, Dennis B. Underwood, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, from 1995 to 1998, in Los Angeles and Ontario, California, edited by Brit Allan Storey, <https://www.usbr.gov/history/oralhist.html>.

were trying to do. The Bureau of Reclamation wasn't. But Fish and Wildlife Service and that whole branch of Interior was thrilled to see somebody doing something to protect the waterfowl and the refuge at Stillwater and Pyramid Lake. Certainly, the Indian side at Interior was pleased.

Think about it. You had Bureau of Indian Affairs, Bureau of Reclamation, Fish and Wildlife Service, all deeply invested in the results of this legislation. The majority of the stakeholders there were aligned philosophically with where Harry Reid and Bill Bradley wanted to go, and the Bureau of Reclamation was left sticking out like a sore thumb.

Seney: Sort of in tandem with T-C-I-D.

Jensen: Yeah. Yeah. The Bureau suffered from inadequate leadership at that time, and it showed. They had tried to do things, little marginal fixes over the years, but they'd never really caught up with the scope of the problem, and they were clearly much more comfortable dealing with, and on behalf of, the irrigation community. That was their traditional group. Who can blame them? It's hard to change.

Seney: What role did Congresswoman [Barbara] Vucanovich<sup>20</sup> play in this?

### **Nevada Politics**

Jensen: I view her as having played a fairly constructive role here. I think she came to the same conclusion the rest of us did, which was that this was a group of her constituents who had missed the opportunity to say yes to some reasonable offers.

Seney; This went back some period of time, didn't it, back into the early eighties when there were attempts to negotiate some of these matters?

Jensen: Yes. I don't know much about her history with the project or with these people. I never had the contact with her that I did with Harry Reid, but all of my contact with her was that she played it exactly as a congresswoman from that district ought to play it. She tried hard to persuade us to do things that her constituency was looking for. She listened—she was grateful when we did—she listened when we explained why we couldn't. It struck me, as I look back on it, that she made an independent assessment of the merits and ultimately decided to agree with

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<sup>20</sup> Barbara Vucanovich represented the state of Nevada in the U.S House of Representatives from 1983 to 1997. 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, <https://www.usbr.gov/history/oralhist.html>.

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Harry Reid and [Senator] Dick Bryan and Governor [Bob] Miller that this was about as good a deal as we were going to get, and we needed to move on with business.

Seney: Against her opposition, you couldn't have prevailed in the House.

Jensen: Oh, I don't think it would have been a problem in the House. I would disagree.

Seney: Oh, would you?

Jensen: Strongly, that with the support of the Democratic senators, the Democratic governor, and the sort of bemused support of George Miller and his staff, we could easily have moved the bill through the House.

Seney: Oh, okay.

Jensen: The democratic nature of the House only works up to a point. I don't think she could have blocked this. I think Harry Reid would have found a way to move it on legislation that she couldn't have touched.

Seney: You mean attach it to something?

Jensen: Yeah, or find some way of moving it through, probably attaching it.

Seney: My understanding is that T-C-I-D tried to kill it off in the final stages.

Jensen: Absolutely.

Seney: Tell me a little about that. Tell me a lot about it, actually.

### **Getting Settlement Act Passed**

Jensen: I can tell you that the water bill—the Pyramid Lake settlement existed in two forms at the end. In one form it was attached to this package of western water bills, but it also stood alone. It passed standing alone, because the package got stalled because now-Governor [of California], then-Senator Pete Wilson blocked the passage of the package of bills, because he objected to provisions related to acreage limitation, water pricing, that would have disadvantaged Central Valley growers. He essentially filibustered. Without standing on the floor, he just put a hold on this legislation, and it died at the end of the session.

The Pyramid Lake bill went on its own through a maneuver by Harry Reid where he got it referred to and routed very quickly through the Indian Affairs Committee, and shot out the door of the Indian Affairs Committee, moved by unanimous consent on the floor of the Senate, and then approved by unanimous consent in the House.

Seney: It was a pretty wily move of his?

Jensen: It was an extremely wily move. He gets complete credit for that. He had no help. In fact, the [Senate] Energy Committee, we were not being very helpful to him at that point, because all our energies were focused on trying to move this big water package. All of my time, all of Bill Bradley's time, Bennett Johnston's time, was invested in trying to get this package to move, and the clock was running. About a day before we were going to break the Pyramid Lake bill loose, Senator Reid, without telling us, lost his patience. I think he figured we were failing him, and he moved in independently. He was on the Indian Affairs Committee. The bill had existed. I'm trying to remember the parliamentary process.

Seney: Did it get referred to the Bureau of Indian Affairs, too, because of this?

Jensen: I think there had been a sequential referral, or joint referral, to Indian Affairs. That's right. When it had come to us, it had also been referred to Indian Affairs. So Indian Affairs reported it out overnight. They just took the same text that we had negotiated, put an Indian Affairs Committee letterhead on it, basically, sent it to the floor, and everyone was distracted, and Reid got it out by unanimous consent, because no one was paying attention. It came out under the title of the Fallon Paiute Shoshone Indian Water Rights Settlement, whatever it is.

Seney: And for other purposes.

Jensen: And for other purposes. It didn't come out saying—it didn't come out with the title, "It's that bill you've been hearing about that our western farmers hate."

Seney: So that's why it came out with this title on there.

Jensen: Absolutely.

Seney: Because it got shunted through Indian Affairs—

Jensen: Yes. Yes.

Seney: — and out onto the floor.

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- Jensen: Right.
- Seney: Well, I must say when Senator Reid described what happened, he was very modest, and he only indicated he didn't want part of this omnibus bill, but he wasn't nearly as detailed in his explanation as you're being.
- Jensen: Well, he and Wayne Mehl engineered that entirely on their own. They were very frustrated with us, I think. In the end, I think they were quite pleased, and whatever hard feelings there may have been were overcome. But we had a package of water bills that included the Central Utah Project, included all this Reclamation Reform Act stuff, and I don't remember at the time whether we had fourteen or twenty.
- Seney: Did any of that stuff get through?
- Jensen: No. It all got held up.
- Seney: Just because of Pete Wilson.
- Jensen: Just because of Pete Wilson. Ironically, or not ironically, I guess, for the same reasons two years later, it was the end of the session, we were down there with the California senator who succeeded Pete Wilson, actually filibustering on the floor trying to hold up the water package again. Ultimately, he lost, but Pyramid Lake was the only one of all the water-related bills in a period of six years that went on its own, and it was Harry Reid's parliamentary maneuvering that got it out, slipped it past all of us. We didn't even know he did it. I saw it go on the floor and I didn't even recognize it. It took me about a half an hour to realize what had happened.
- Seney: Because the clerk is reading the short title, which now doesn't say anything about Pyramid Lake.
- Jensen: That's right. Well, there's a senator standing at the podium saying, at eleven at night, after all the debate has been done going through the consent calendar, and he stands there and he says, "Mr. President, I request unanimous consent that the Senate proceed in the immediate consideration of S-blah blah blah blah, a bill to settle the Fallon Paiute Shoshone settlement." I can't remember, but he essentially asked for unanimous consent that it be deemed to have been voted on and passed and sent to the House.

- Seney: In effect, it hasn't been voted on.
- Jensen: Well, it has been pursuant to Senate rules. If you agreed, anything is real. If you ask unanimous consent that the sky is green, the sky is green, if you get unanimous consent. And that's what he—
- Seney: So, then it goes right to the House.
- Jensen: It went right to the House, and when I discovered that it had gone, I was shocked. One, we were distracted with these other things. I thought, "Well, what the hell do we do now? Do we tell anyone?" (laughter) "What if we tell? What do we tell the Republicans? Does this make it harder or easier to pass the whole package? What is this going to mean?"
- But we were very quiet about it, and it got over there, and the House approved it. The other reason it went out of Indian Affairs so fast, is that Dan [Daniel K.] Inouye, the chairman of the committee at that time, had been out to Pyramid Lake. I went on a visit with him. He was very moved by what he heard and what he saw. He and his aide, Patricia Zell,<sup>21</sup> and I, and I can't remember if we had somebody else with us, we might have, went out there in the spring sometime, and went to Fallon, drove around, went out to Pyramid Lake and drove around, met Senator Reid back in, as I recall, I think we met him back in Reno that evening. But he was sympathetic. He wanted to help.
- Seney: Joe Ely must have been along on the tour of Pyramid Lake, I would think.
- Jensen: Oh, yeah. Yeah. I think we picked Joe up at the tribal headquarters.
- Seney: He could be very persuasive in this matters.
- Jensen: Oh, yeah. Yeah. Joe was the real champ here. Every chance he got, he made the case. He combined information, advocacy and articulation and passion in a way that none of the other players did.
- Seney: When it zooms over to the House, do you do anything at all?
- Jensen: There's nothing for us to do.

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<sup>21</sup> Patricia Zell participated in Reclamation's Newlands Series oral history project. See, Patricia M. Zell, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Donald E. Seney, Historian, Bureau of Reclamation, in 1997, in Washington, D.C., edited and desktop published by Andrew H. Gahan, historian, Bureau of Reclamation, 2019, <https://www.usbr.gov/history/oralhist.html>.

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- Seney: You figure Reid has got this handled.
- Jensen: The only thing that the Senate can do at that point is go through a process of essentially rescinding its vote, but that takes unanimous consent, too. It's really a process reserved for mistakes. This wasn't a mistake; it was just one that got away. So, it's over there. George Miller said, "I've got it. What do I do with it?" "Well, sir, pass it."
- Seney: This is you talking to Miller?
- Jensen: Yeah. I get a call from his aide, Dan Beard,<sup>22</sup> saying, "Well, so we've got Pyramid Lake," because that committee had both Indian jurisdiction and water jurisdiction. I said, "Yeah, I know you do, Dan, that's great. Would you mind approving it?" "Well, what's in it?"
- So, we had to march over and explain the bill and reassure him that it was okay. We also had to do the same with the House Merchant Marine Committee staff.
- Seney: Because of the endangered species.
- Jensen: Yeah, and the wildlife refuges. They had jurisdiction over those things, so we reassured them that it was a wonderful bill, there are no problems, and by God, they should let it go, and they did.
- Seney: Now, at this point the committee simply passes it out to the floor, both these committees. Do they take a vote, or can the chairman do this?
- Jensen: This was passed—well, the committees have to vote, but given the way things were working, it was pro forma. I don't remember there being a serious conflict over it. Remember, in the committee process—I'm trying to remember how it happened. I'm confident I'm missing some part of the parliamentary process, but the settlement, as part of the package, had already gone back and forth between the House and the Senate. The House committee had done its thing, had the hearing, or had the—

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<sup>22</sup> Daniel P. Beard served as Commissioner of the Bureau of Reclamation under the Clinton administration from 1993 to 1995. Mr. Beard also participated in Reclamation's oral history program. See, Daniel P. Beard, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Story, senior historian, Bureau of Reclamation, from 1993 to 1995, in Washington, D. C., edited by Brit Allan Storey, 2009, <https://www.usbr.gov/history/oralhist.html>.



Seney: As part of the package of legislation.

Jensen: As part of the package. So, what we'd sent over, what Harry Reid had gotten sent over, was really just a piece of the package. As I remember, there was some sort of expedited way of getting it out of committee, because it already—

END SIDE A, TAPE 2. NOVEMBER 8, 1995.

BEGIN SIDE B, TAPE 2. NOVEMBER 8, 1995.

Seney; There's a parliamentary procedure that lets them expedite this out of the committee.

Jensen: I don't remember exactly how they did it, but they got it to the floor, it got onto the calendar for floor consideration, and it was really the last day of the session and last night of the session, and because—oh, I wish you were going to see Harry Reid again. As I recall, there was Reid and others were pushing on the House side, calling their House counterparts to try to get this bill calendared, to come up under the consent orders at the end of the day, when somehow this one made it before they gavelled it shut. I think there was one other vote right after this one, and out it went.

Seney; Let me ask you, since our time is limited—

Jensen: Or not a vote, but unanimous consent.

Seney; About a couple of things. One thing, there were apparently some negotiations going on about the bill, what would be in the bill, and the environmentalists were not privy to those negotiations. David Yardas tells me this and he wanted me to ask you about this. Apparently, Sierra Pacific Power were there and the Tribe was there, I don't know who all was there, maybe T-C-I-D even was there at this point, and there was a question about the wetlands and what was going to happen to the wetlands, and Yardas called. He said, "Don't worry about it. We'll take care of it." Do you recall that part?

### **The Wetlands**

Jensen: No, it's funny how our recollections differ of these things. No, I don't. I can imagine having—

Seney; They were happy with the outcome, by the way.

Jensen: Yeah.

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Seney: You took care of them like you said you would.

Jensen: Yeah, I can imagine telling them that, that I would have—oh, I know what he's referring to. (laughter) Yeah, the untold story. The refuge manager at the time, Ron Anglin,<sup>23</sup> and I—I was out in Reno. I remember it was cold. I don't remember when it was. Ron and I had gone out and toured the refuge, and then he drove me back to Reno. We met in Reno. We went to this Basque restaurant right in back of Harrah's. I think it's the Santa Fe. Ron insisted on ordering these God-awful pecan liquor drinks called—I think he called them pecans, some sort of Basque drink.

We sat there on this cold night drinking these pecans, and I remember asking him, "Okay, how many acres of wetland can you support? How many acres and where?" We sat there, literally on these paper menus, or paper placemats, sort of white, rough-surfaced placemats, and we ended up drawing out the general contours of the refuge and agreeing on how much wetland we would try to restore, how much functional wetland habitat we would try to recreate.

In asking the environmentalists not to worry, it was because in the wake of the meeting, in related conversations with people, I was pretty confident I knew what our target had to be on the wetlands.

Seney: And the 25,000-acre figure came out of that.

Jensen: Yep. Yeah, as a combination of 11,000 here and 14,000 there, and I don't remember how it all worked out, but it was at the Santa Fe Restaurant in downtown Reno on a cold, windy night with Ron Anglin.

Seney: Let me ask you another thing. The farmers have told me that this 101-618 is just the death knell of the project. This is the way they add it up. You've got this 25,000 acres of wetlands, give or take, on average, which requires 125,000 acre feet of water on average. Then you've got in the legislation a mandate for a *cui-ui* recovery program. That's now 100,000 acre feet are going to be needed for that. You add those two together, you've got 225,000 acre feet. The project uses about 285,000 acre feet, give or take. You subtract the 225 from the 285, you've got 60,000 acre feet left. Three and a half, four feet, three and a half to four and a

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<sup>23</sup> Ronald M. Anglin participated in Reclamation's Newlands Series oral history project. See, Anglin, Ronald M. *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, historian, Bureau of Reclamation, October 14, 1994, in the narrator's office in Fallon, Nevada, edited by Donald B. Seney, <https://www.usbr.gov/history/oralhist.html>.

half is the duty, take four for middle, that's probably high. You divide that up, and you get back to right around 13 to 15,000 acres, maybe a little more, about what it was, a little less than what it was before the project was put in. Is that how you see it?

### **Settlement's Effect on the Project**

Jensen: Well, I have to confess, I don't remember how the arithmetic works out.

Seney: That's how it works out, although some people quarrel a little bit with the numbers.

Jensen: They quarrel with the numbers; they quarrel with the contribution from return flows—

Seney: Right. Exactly. Exactly.

Jensen: —and how that plays in, and what benefits you can achieve by different measures of efficiency with canal lining here or buyouts there. I think what we expected was that the 25,000-acre figure would reflect a long-term acquisition target, and that it would be achieved in combination with a set of market relationships between the refuge and irrigators and other water customers within the system, that would allow for reallocation to reflect need in dry and critically dry years, and that in above average years, that benefits would be shared, and in dry years, burdens would be shared, but critical needs would get met, and that for once the refuge would count among the critical needs, as well as the lake.

There was never an effort, at least I was never part of any effort, to consciously achieve a particular acreage for the project. I think all of us agreed—most of the people involved in the negotiation agreed—that over the long haul, the amount of water used for agricultural purposes in the Carson Valley area would diminish. That the amount used for urban or municipal residential water supply would increase, and that a firm-base amount would be allocated to the refuge that would fluctuate with the seasons, and that flexible water marketing arrangements within the Carson Basin, both inside the project and out, and the Truckee Basin, including use of sewage effluent, land retirement on the Fernley bench, would all add up to creation of enough flexibility in the system that there would continue to be production agriculture in the Carson Valley, that you would reduce the number of—what was it at the time, 85 percent or more of the land in agricultural use was in plots of two and a half acres or less.

Seney: Yeah, five acres or less.

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Jensen: Was it five acres or less? I remember Bradley asking Lyman McConnell, “When does a pasture become a lawn? What size is it a house and no longer a farm?” I don’t think he answered then and he wouldn’t answer now.

There was a great deal of uncertainty with regard to every piece of water reallocation here, particularly because we knew we were leaving the growers in charge of much of the water reallocation process, that, directly or indirectly, they would have a huge say in how much water got moved around. And that by creating these targets and creating the other sets of incentives and disincentives in the bill, over time, over a lot of time, like five, six, seven years, you’d start seeing patterns of water use, and people’s attitudes toward ownership of water, realign, reconfigure themselves. And the water would start moving around to different purposes, and that it was an iterative thing. It would change over time, that everyone, including the people who felt they were losers and those who felt they were winners, would have to learn to work within this very different system. And that there were incentives pulling water away from traditional uses, but legal control and legal authorities held by the growers, holding onto and restraining those changes. Then they’d work out over time.

The values reflected in the bill were fairly certain; the concrete results, the details of the results, were speculative. I think at the end we all knew that there would be many subsequent rounds of negotiation, but that this got things unfrozen. And with luck, it got them out of court, or at least less embedded in court, and more on the road toward the way we normally resolve things, which is by talking about them and making deals and, frankly, using markets.

Seney: I know you’ve been off the committee for a couple of years as a staff person, and probably you’ve lost touch a little bit, or a lot maybe with what’s going on.

Jensen: Sure.

Seney: Are you familiar at all with what happened in this Settlement Two negotiations?

### **Settlement 2 Negotiations**

Jensen: I’ve just heard little bits and pieces of it. My general impression is that things haven’t gone particularly well, and that the intransigence continues, and that things must not be that bad in Fallon and Fernley that, but they don’t seem to want to negotiate. The clock’s running on the E-S-A litigation. Another—what is it—another two years, and the embargo is off on litigation, and everybody can go

back and grab each other's throats again. I'm hopeful it won't come to that.

I think the elections in November [1994] certainly emboldened the Fallon area irrigators to fight environmental initiatives. I mean, I think they are among many of the stakeholders who thought the election was about reclaiming the West from the greenies in the cities and taking back their rights.

I hope these folks can find a way to yes. I think some people are going to have to retire, and some folks are going to have to die, and some kids are going to have to come back from college and take jobs, come into these jobs with different attitudes. You're looking at settlement through success, settlement where things will never be settled, and the success of which, and the overall benefit of which, is going to be measured by generations. Its strengths and weaknesses will be revealed over many years.

At the rate the West is changing, the demographics are changing particularly, the economic structure, it's only appropriate that you view this settlement as something that puts some flexibility into the system, even if it didn't solve all the problems, because it's going to need that flexibility. I really do hope that there are people who are around who are willing to continue to work with that flexibility, like Harry Reid. A thankless job. I mean, its public service, by God. I don't know where it comes out.

Seney: Is there anything I haven't asked you we should have on the record?

Jensen: Well, frankly, I'm out of time. There are other things. I think you would find it interesting to pursue what people know about the connections among people involved. Marcus Faust.<sup>24</sup> Why was Marcus Faust a central player here? What are his connections?

Seney: And he was.

Jensen: Oh, absolutely. Absolutely. If you haven't talked to Dan Beard, you ought to talk to Beard. I'd be fascinated to hear the House side's reaction on this.

One of the things, I mentioned Faust, Marcus is not only a—he's a lobbyist, a lawyer lobbyist here in town. He represented West Pac, but he also represents a number of interests in Clark County, so he knows Nevada politics real well. He's

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<sup>24</sup> Marcus Faust participated in Reclamation's Newlands Series oral history project. See, Marcus Faust, *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, 2019, <https://www.usbr.gov/history/oralhist.html>.

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a Mormon, understands the way those connections work. He also represented the Central Utah Water Conservancy District at the time we were negotiating this package, and the Central Utah Project was in the package. So, he had not only Senator Jake Garn trying to get his career legacy legislation passed, but Harry Reid and West Pac's legacy legislation moving through. Marcus would have a fascinating story to tell about the balancing act he was walking there. He'd be fun to talk to.

Seney: I'm seeing him Thursday morning.

Jensen: Are you? Good. Good.

Seney: At your suggestion.

Jensen: Good. Good. Yeah, Marcus was right in the middle of this, right in the middle, one of the most effective inside players in Washington I know, one of the people who brought the message of ingenuity and flexibility to his clients, a very key player here, very smart, and the first lobbyist who ever came to see me with the last name Faust. A day or two into my job, someone named Faust walks into my door, and I thought, "Oh, my God, this is going to be an interesting position."  
(laughter)

There's probably more of the story you could draw out of me with the right questions, but off the top of my head, I don't recall. And I've got to go and meet on strategy.

Seney: All right, then I've taken as much of your time as I can, and I really appreciate your giving me this time for the Bureau on this project.

Jensen: I enjoyed having the chance to reassemble some memories here.

Seney: Good. A lot of people find this exercise enjoyable.

Jensen: It's very pleasant, remembering people, remembering incidents. It was a very rewarding experience. I go back to Stegner and I think about his vision of the West having two different kinds of people, boomers and stickers. This was such a wonderful essay into Stegner's vision of the West, I mean, boomers and stickers all over the place, the Mormon tradition mixed in with this strange, dangerous aspect of adult life that Nevada caters to. A wonderful experience.

Charles Wilkinson took his law symposium out there a year or so after the bill passed. I remember Charles calling me after the experience. I think I'd urged

him to do it, and he called to tell me that I was right. "It had everything. This is a story that had everything. It's got Indians. It's got two states. It's got birds. It's got fish. It's got irrigators. It's got cities." It had every possible combination of players. It was a microcosm of what the West itself is experiencing, and it happened to be a lab for a group of reformers who are now out of power, but who were in power because of the demographics of the West, not because of their own initiative.

Even though there aren't liberal-minded Democrats pushing reform, budget changes, de-federalization, changes in governments are going to push these kind of changes on other water projects around the West. And I hope we can come up with clearer settlements the next time, I really do. Personally, I'd love to see something emerge that has everyone in the tent when the bell finally rings. I've got to go.

Seney;           All right. Thank you very much.

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