

ORAL HISTORY INTERVIEW

JOHN KRAMER



**STATUS OF INTERVIEW:
OPEN FOR RESEARCH**



Interview Conducted and Edited by:
Donald B. Seney in 2005
California State University-Sacramento
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By Andrew H. Gahan, Historian

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Editorial Conventions

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

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

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

Planning as opposed to “planning;” the Reclamation Projects Authorization and Adjustment Act of 1992, as opposed to “the 1992 act.”

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

Introduction

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

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

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

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

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

Oral History Interview

John Kramer

SENEY: . . . Resources building in Sacramento, California. Today is May 27, 2005. This is our first session and our first tape. And, it is K-R-A-M-E-R.

Good morning. Well, I guess, good afternoon John. (Laughter) Why don't you go ahead and just tell me a little bit about yourself?

Background

KRAMER: Okay. I was born in Oakland, California in 1942, a third generation Oaklander. I grew up in the Bay Area, and also at Murphy's in Calaveras County. I went to the University of California, Berkeley, both undergrad and law school. Department of Water Resources interviewed me at Bolt, and made me a job offer that I accepted. A couple of us came up here and thought we'd work in D-W-R [Department of Water Resources] for a couple of years, learn all the ropes, and then go out in private practice and make a killing. But, somewhere in the line, along the line I guess the seat of my pants got chained,

(Laugh) and here I am, now retired.

SENEY: Why do you think it's—why did you stay so long? Did you find it challenging?

KRAMER: Interesting and challenging. Got into some law that really interested me. Got into water rights law right at the beginning, and just had a jolly good time.

SENEY: All right. When did you start?

KRAMER: I started with the Department in 1968. In the (Seney: Okay.) autumn of 1968, right out of law school.

SENEY: All right. You know, when we spoke on the phone you told me that then-Director Ron Robie said to you in what 1972, “You need to go up and take care of this Truckee River business”? (Laugh) Talk about that conversation with the director.

Indian Business

KRAMER: Well Ron, when he came in, was interested in seeing that equity was done to Indian tribes on the Colorado, on the Truckee, and on other areas, and he formed an Indian Advisory Committee. And, the attorney that he put on it for some reason he pulled off

and called me into his office and said, "I'd like you to be on the Indian Advisory Committee, and oh by the way there's some sort of problems on the Truckee River. Why don't you go up and work on it and see if you can solve it." That's not what he said, but it was, you know, "Go do something about it."

SENEY: Words to that effect?

KRAMER: (Laugh) So, I'm still, I'm still trying.
(Laughter) But, I've been doing that since, since the early '70s, when—I forget when Ron became director. It was probably his first or second year as director. Second, because I was up, I went up to the Resources Agency when Claire Dedrick was the secretary. (Seney: But he [Robie] was . . .) Worked up there for a couple of years.

SENEY: Jerry Brown appointed him [Robie] (Kramer: Yes.) when Jerry Brown became [California] Governor in '72?

KRAMER: Yeah. And, and from '72 and part—in '73 I was in the Resources Agency working for Claire Dedrick. So, it'd have been maybe '73, '74, or something like that [Inaudible] would know.

SENEY: Right. Right. What was the exact, what exactly did you go up on the Truckee to look at in '72-'73?

California-Nevada Interstate Compact

KRAMER: Well, the tribe was opposing the California-Nevada Interstate Compact, which was pending.¹

SENEY: When you say "the tribe," you mean Pyramid Lake Paiutes?

KRAMER: Pyramid Lake Paiutes, right. Yeah.

SENEY: Yeah.

KRAMER: The compact was ratified by the California Legislature in 1969, and the Nevada Legislature again in 1970, because the California legislators had changed the compact. The tribe opposed it, as did the United States Department of Justice, and the United States Department of the Interior. So, it was still pending when Ron became

¹ For more information about the California-Nevada Compact, see Donald J. Pisani, "The Strange Death of the California-Nevada Compact: A Study in Interstate Water Negotiations," *Pacific Historical Review* 47: 4 (November 1978): 637-58; Leah J. Wilds, *Water Politics in Nevada: A Century of Struggle* (Reno: University of Nevada, Press, 2010).

director.

At that time there was litigation going on about Stampede Reservoir,² and the—we did not become *amicus curiae* to that legislation. That was the legislation where the litigation, where the Truckee Carson or Carson-Truckee Conservancy District was trying to get storage rights in Stampede and the federal courts ultimately held that the Secretary [of the Interior] had to use the water for endangered species and could not use it for M & I [Municipal and Industrial] uses.

SENEY: These were storage rights they thought they had, under the legislation to build the dam?

KRAMER: They thought they had them, and they thought also the secretary had an obligation to release the water that was stored under municipal and industrial purposes. Thought Washoe Project Act authorized the reservoir

² Completed in 1970, Stampede Dam is a rolled earth and rock-filled structure is 239 feet high and 1,511 feet long. The reservoir provides water primarily for fishery enhancement along the Truckee River and Pyramid Lake Fishway facilities operation. The reservoir also provides flood control, recreation, a reservoir fishery, and other fishery improvements on the main Truckee River, Little Truckee River, and Boca Reservoir.

for M & I.³ (Seney: Right.) California, in fact, in permitting it, carved some water that we were going to use at some point in the future from California out of Stampede. And, the old compact would have ratified that division, is one of several reasons while the tribe opposed the compact, back in the nineteen, oh about 1987.

“Hornswoggling the Indians”

The Congress finally [got] around to holding hearings on the compact. (Seney: Right.) And, David Kennedy and I went back to testify in support of the compact. We got up the morning of the hearing before the Senate Natural Resources Committee, and I opened up the *Washington Post*, to the editorial page, and there was a big banner headline all the way across the top of the page that said, “Hornswoggling the Indians.” And we thought, “Uh oh.” (Laughter) And, I was right. Congress never ratified the compact. (Seney: Yeah.) And, that’s when we started working, instead, on the

³ The Washoe Project was designed to improve the regulation of runoff from the Truckee and lower Carson River systems. It also provides fishery uses, flood protection, fish and wildlife benefits, and recreation development. For more information, see Carolyn Hartl, “Washoe Project,” Denver: Bureau of Reclamation History Program, 2001, www.usbr.gov/history/projhist.html.

settlement legislation.

SENEY: Well, that was a very sophisticated campaign run by Joe Ely⁴, and Bob Pelcyger?

KRAMER: And, Bob did just an excellent job. (Seney: Yeah.) I mean, he had that one absolutely worked out.⁵

SENEY: Yeah. You know . . .

KRAMER: He had a good public relations firm in Washington, D-C. (Seney: Right.) That

⁴ Joe Ely was Tribal Chairman of the Pyramid Lake Paiute during the Truckee River settlement negotiations. Mr. Ely also participated in Reclamation's oral history program. See, Joseph (Joe) H. Ely, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2011, www.usbr.gov/history/oralhist.html.

⁵ Robert Pelcyger served as the attorney representing the Pyramid Lake Paiute Tribe during the Truckee River settlement negotiation. Mr. Pelcyger also participated in Reclamation's oral history program. See, Robert (Bob) S. Pelcyger, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Professor Donald B. Seney for the Bureau of Reclamation, in 1995 and 2006, in Reno, Nevada, and Boulder, Colorado, 1995, interviews edited by Donald B. Seney and all interviews further edited by Brit Allan Storey, senior historian of the Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

also helped.

SENEY: Right. And they were up against Senator Paul Laxalt who was . . .

KRAMER: Senator Paul Laxalt, and his good friend Ronald Reagan. They were both governors (Seney: Yeah. Right.) in Nevada and California at the same time.

SENEY: Reagan is now president, (Kramer: Yeah.) when Laxalt . . .

KRAMER: Yeah. And, that was, that was when the two states thought they might have a run at the compact. But, it just clearly wasn't going to go anywhere.

SENEY: Yeah. Yeah.

KRAMER: And, after that was over, the two states looked briefly at an original jurisdiction law that the United States Supreme Court, which probably would have meant a lawyers full crew law if they'd gone that way.

SENEY: Wait. Wait. I'm sorry?

KRAMER: A lawyers full crew law. (Seney: Oh.) Just the amount of lawyers that would get involved in a (Seney: Right. Right.)

Supreme Court adjudication. (Seney: Yeah.) And also, just the incredible length of time that those cases take and the incredible amount of money. So, Senator [Harry] Reid⁶ began settlement negotiations initially with the tribe, and Sierra Pacific [Power Company], and the United States, and invited, invited Nevada in and then invited us in and then we joined in the settlement negotiations. And, those would ultimately culminate in Public Law 101-618.⁷

⁶ Senator Reid participated in Reclamation's oral history program. See, Harry Reid, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

⁷ 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-Shoshone Tribal Settlement Act
- Interstate allocation of waters of the Truckee and Carson rivers.
- Negotiation 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

SENEY: And, you took part in this California, one of the lead people for California in those negotiations?

Negotiating the Settlement Act

KRAMER: Dave Kennedy was probably California's lead negotiator. (Seney: Right.) We had actually California team of representatives from State Water Board, D-W-R [Department of Water Resources], Attorney General's Office, and from time to time, and also a lot of involvement with local agencies as the Settlement Act was being negotiated.⁸

-
- 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 is: http://www.usbr.gov/mp/lbao/public_law_101-618.html accessed on December 7, 2011.

⁸ "An agreement reached between the Pyramid Lake Paiute Tribe of Indians and Sierra Pacific Power Company (SPPCo) on May 23, 1989. The PSA provides SPPCo the ability to store its water rights in federally operated reservoirs along the Truckee River in California at times when it is not needed for municipal and industrial (M&I) water supply in the Reno-Sparks Metropolitan Area. In exchange, excess water in storage is used for fishery purposes when drought conditions are not in effect. Also, SPPCo forgoes its right to single-use hydroelectric flows in the Truckee River under the Orr Ditch Decree (Nevada and California), thereby enabling the United States and the

SENEY: I understand Mr. Kennedy did take an active part in those (Kramer: Very active.) negotiations?

KRAMER: He would—that was generally, oh, for a year, his number one thing when he was briefing the California Water Commission. He'd get up, and it was quite interesting what was going on. He said, "Well, here's what's going on in Cal-Nevada. Now, let me go on to explain the state water project."
(Laughter) So, you know. He enjoyed it and was a good negotiator. (Seney: Yeah.)
Did a good job for us.

SENEY: Right. Senator Reid, I've interviewed Senator Reid and he said that he thought that Kennedy's participation was absolutely critical in California's participation. He spoke very highly of his work.

KRAMER: Well, Dave was a good director, and they were very interested in this topic and took it very much to heart.

Tribe to store water for fishery benefit at certain times of the year. The PSA is incorporated into Public Law 101-618 (the Negotiated Settlement) by reference." See Ecology Dictionary.org, "Preliminary Settlement Agreement (PSA) Nevada," [http://www.ecologydictionary.org/PRELIMINARY_SETTLEMENT_AGREEMENT_\(PSA\)_Nevada](http://www.ecologydictionary.org/PRELIMINARY_SETTLEMENT_AGREEMENT_(PSA)_Nevada) (Accessed 2/2016).

California's Interests

SENEY: What were you guys looking for you on the California side in this, in these negotiations? What were you trying to get for California?

KRAMER: First and foremost an interstate allocation, because the old compact divided the water between California and Nevada. (Seney: Right.) And, with its failure, there was uncertainty how much water would be available for appropriation.

SENEY: And, I'm talking both Tahoe Basin and . . .

KRAMER: Tahoe Basin, the Truckee [River] basin, and also the 101-618 settled the Carson River basin.

SENEY: Right.

KRAMER: It allocates all three. And, back in 1972 the State Water Board had adopted a policy, we call it "the moratorium that wasn't," on appropriations. First, because there was no interstate allocation, and second, because the tribe had filed a suit in the 1970s, *Paiutes v. California*, that sought reserve rights against California uses with an 1859 priority.

SENEY: This is now the Winter's Doctrine?⁹

KRAMER: Yeah. (Seney: Yeah.) See, the tribe originally had—the Orr Ditch Decree¹⁰ adjudicated only irrigation rights for the tribe, for their bench lands and bottom lands.

⁹ “The federal reserved water rights doctrine was established by the U.S. Supreme Court in 1908 in *Winters v. United States*. In this case, the U.S. Supreme Court found that an Indian reservation (in the case, the Fort Belknap Indian Reservation) may reserve water for future use in an amount necessary to fulfill the purpose of the reservation, with a priority dating from the treaty that established the reservation. This doctrine establishes that when the federal government created Indian reservations, water rights were reserved in sufficient quantity to meet the purposes for which the reservation was established.” Source: <http://www.blm.gov/nstc/WaterLaws/fedreservedwater.html> accessed on December 16, 2011.

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

It did not adjudicate any water for the lake. So, when the compact was pending, the tribe brought one suit against Nevada and another against California, seeking to get reserve rights for the lake, because Pyramid Lake was getting low (Seney: Right.) and its fishery was threatened, (Seney: Sure.) and all of those problems. And, that ultimately got to a Supreme Court decision, *Nevada v. United States*,¹¹ that held that the United States was not trustee for the tribe in the same way as a private trustee would be. The Court said that the Secretary of Interior was charged with carrying water on both shoulders, so that he had to represent both T-C-I-D [Truckee Carson Irrigation District] and the tribe. And, ultimately the Court said that the Orr Ditch Decree was *res judicata* for the tribes reserve rights.

SENEY: It was a settled matter?

Paiutes v. California

KRAMER: And, put that issue aside. Though, the *Paiutes v. California* lived on because it, the

¹¹ For more information on *Nevada v. United States*, see Justia U.S. Supreme Court, “Nevada v. United States 463 US 110 (1983),” <https://supreme.justia.com/cases/federal/us/463/110/>. (Accessed July 2016)

state tried to get a summary judgment motion, it's saying that it too could rely on Orr Ditch the same way everybody else did. And, the U.S. District Court up here denied the summary judgment, saying that Orr Ditch could apply for anybody in California who had appropriated rights. For occurring rights? Eh, nobody knows. (Seney: Yeah.) And, but the state could not use it for its unappropriated water.

So, the *Paiutes v. California* remained like a Sword of Damocles over uses of water in California. And, for that reason the board has had a policy since 1972 that it would not act on any applications to appropriate water in California. You certainly accept an application but not act on it until this, these two issues, interstate allocation and the tribe suit are settled. [Public Law] 101-618 does both of those, and they were two objectives that we wanted to get out of the suit, (Seney: Oh. You . . .) settle the tribal claims, and to get an interstate allocation.

SENEY: To settle the water rights so (Kramer: Yeah.) people could rely on them?

KRAMER: So, we'd know what's available (Seney: Yeah. Yeah.) for use in California.

SENEY: What you ended up with, and I guess perhaps pursued, was the same allocation that had been on the Interstate Compact?

Deliberately Worked to Get Compact Allocations

KRAMER: We worked, we worked on that deliberately. The two states, when they got the compact, even when it was pending before Congress, voluntarily complied with it, (Seney: Right.) particularly the Tahoe allocation, 23,000 acre feet for California and 11,000 for Nevada. (Seney: Right.) Roland Westergard [Nevada State Engineer] was adamant that that would be the allocation. And, we agreed with that. We basically (Seney: Sure.) just wanted to carry the old compacts and interstate allocations over into the Settlement Act. Tahoe Basin is almost exactly the old Compact. Truckee Basin, there's a few twists and turns that are a little different.

SENEY: But, the basic allocation, ninety-percent to Nevada, ten percent to California, that remains (Kramer: Yeah.) from the Compact? Any thought about changing it at all?

KRAMER: No.

SENEY: Attempt to change it?

KRAMER: Hmm-uhm.

SENEY: That was . . . ?

KRAMER: The Truckee River is fully appropriated in Nevada right now, and there's water reserved for future uses in California in the Truckee Basin.

SENEY: So, you couldn't have changed it anyway, if you'd wanted?

KRAMER: No.

SENEY: Under, say, the Orr Ditch Decree, that would have . . .

KRAMER: Well, we, it was, nobody wanted to change it in Tahoe because they didn't—the Tahoe Basin plan relies basically on the numbers of the Compact (Seney: Right.) of the old Interstate Compact.

SENEY: 11/22?

KRAMER: Yeah.

SENEY: Yeah. I'm thinking more of on the Truckee River itself, the ninety percent going to Nevada, the ten percent to California. I

guess . . .

KRAMER: Well, and some, western Nevada is where most of the water use is.

SENEY: I guess I'm answering my own question because 101-618 says, first of all the Orr Ditch now Alpine Decrees¹² are now incorporated into legislation. So, that's, or recognizing (Kramer: Yeah.) legislation. So, that's, all that water use down there is recognized anyway so you couldn't change it, even if Nevada would have?

KRAMER: Well, we could have in negotiations, and in one way we did because we reserved water

¹² “The Federal Court adjudication of the relative water rights on the Carson River which is the primary regulatory control of Carson River operations today. The decree is administered in the field by a watermaster appointed by the federal district court. The decree, initiated by the U.S. Department of the Interior on May 1, 1925 through U.S. v. Alpine Land and Reservoir Company, et al., to adjudicate water rights along the Carson River. The decree was finally entered 55 years later on October 28, 1980, making it the longest lawsuit undertaken by the federal government against private parties over water rights. The decree established the respective water rights (to surface water only) of the parties to the original lawsuit, both in California and Nevada to Carson River water.” See Nevada Division of Water Planning, “Nevada State Water Plan, Part 1–Background and Resource Assessment,” <http://water.nv.gov/programs/planning/stateplan/documents/pt1-sec8.pdf>. (Accessed July 2016).

for future use in California. The Compact
...

Water Allocations

SENEY: The 32,000 acre feet?

KRAMER: The 32,000 acre feet, of which 10,000 can be surface water. So, there's a cap. No more than 10,000 surface. (Seney: Right.) The remainder, groundwater. But, even if that use encroached on an Orr Ditch right, it's recognized and valid because it's an interstate allocation. (Seney: Ah.) So, California is guaranteed, no questions asked, the water allocated by the Settlement Act.

SENEY: That's going to be taken out before the rest of the water gets down to [inaudible].

KRAMER: Whatever we use within our allocation we get, and the rest goes to Nevada.

SENEY: No date on those, then, as there is on other appropriations?

KRAMER: No, because it's a strict—because like an interstate compact it's a straight division of water between two states. This is allocated to State A, the rest is allocated to State B,

and there's no melding of the priorities together. (Seney: Okay.) The Settlement Act does a little bit. The tribe's Orr Ditch claims, number one and two, were paramount to all the uses in California, (Seney: Right.) and uses initiated after the Settlement Act are subordinate to the 40 c-f-s [cubic feet per second] right for Westpac Utility, for Sierra Pacific.

SENEY: The old Floriston rates?

KRAMER: No. Not the Floriston, Floriston rates. A very, very old right that the Sierra Pacific held for 40 c-f-s recognized in the Orr Ditch Decree. And, the Settlement Act makes new uses, and California is subordinate that that old 40 c-f-s right.

SENEY: Is that the old General Electric one?

KRAMER: No. No. It's just a very, very old water right with a, about 1880 or 1870 priority, or something like that. One of the earliest. It depends on M & I rights on the stream.

SENEY: And, that's the minimum flow in Tahoe, in the Truckee River?

KRAMER: No. Not necessarily. It's just an obligation that if the river gets down to a point where

only the tribe's claims one and two can be satisfied, and the 40 c-f-s, then there would be no other diversion (Seney: Ah. Okay.) from the river in either state.

SENEY: Okay.

KRAMER: Because the Settlement Act makes the new diversions subject to that. And, the diversions that were there prior to the Settlement Act can go right on diverting, because they're not subject to the 40 c-f-s right. But, that's kind of what we were doing in the Settlement Act, was just melding the priorities in and giving California a clearer allocation of water for future, for present and future uses.

SENEY: Sort of accomplishing what could, wasn't accomplished when the Interstate Compact wasn't ratified?

Worked for Congressional Water Allocation

KRAMER: It, yeah. What we did was something very deliberate. The Supreme Court, in its 1963 decree in *Arizona v. California*, basically dismissed California's demands for an interstate allocation on the Colorado River. California wanted to adjudicate its rights

verses Arizona's. And, the Supreme Court said, "We don't have to do that. Congress did it already. They did it in 1928 Boulder Canyon Project Act, and Congress has the authority to divide water between two states." (Seney: Wow.) It's a short little paragraph. It's about two inches long, but there it is, just perfectly explicit. (Seney: Ah.)

And, we and Nevada used that very deliberately when we negotiated the interstate, to basically have a congressional apportionment rather than an interstate compact. (Seney: Ah.) So, 101-618 does exactly what an interstate compact would do in Lake Tahoe, the Truckee River, and Carson River basins. It left out the Walker [River] Basin, which we're presently negotiating settlements on, because there's no hydrologic connection as there is between the Carson and Truckee.

SENEY: Right. Right. Okay.

KRAMER: So, that's, that the first time, probably, that two states ever deliberately negotiated a congressional apportionment act.

SENEY: Outside of say interstate compact, and using that mechanism instead?

Water Allocation Mechanisms

KRAMER: Well, there's three mechanisms. You can go to the Supreme Court and one state can sue another. It's the only place the states can sue each other.

SENEY: Right.

KRAMER: You can negotiate an interstate compact. The legislature is supposed to authorize negotiation with one. You negotiate it. The legislatures in both states ratify it, and then you send it back to Congress for its consent. But, the Supreme Court says Congress can do it directly. So, that's exactly what we did.

SENEY: What else did . . .

KRAMER: Professor [Norris] Hundley¹³ points out that two—Texas and Arkansas did a congressional apportionment back in the 1930s somewhere, but nothing ever came of it. So, maybe we don't have the first, but we have

¹³ Dr. Hundley is a leading scholar in western water history, who has written numerous studies on the subject, including *Water and the West: The Colorado River Compact and Politics of Water in the West*, 1975; *The Great Thirst: California and Water, a History*, 2001.

the first one that actually worked. (Laugh)

SENEY: Ah. What else was California looking for in the Settlement Act besides these allocations?

KRAMER: Settlement of the *Paiutes v. California*, so that the uncertainty of the amount of water would be resolved.

SENEY: And, that was taken care of?

KRAMER: The Settlement Act says that when the TROA [Truckee River Operating Agreement], when all of the conditions of the Settlement Act take affect *Paiutes v. California* would be dismissed. And, there's a bunch of other laws that named in the Settlement Act. All of those would be dismissed with prejudice or other acceptable resolution. And, so those were really the two main things we were looking at in getting the Compact, in the Settlement Act.

SENEY: I know the Tahoe City Public Utilities District was interested in some things. One is they wanted to have their water allocation measured at the intake, rather than at the houses themselves, which would have required metering, and it would have exposed . . .

Local Concerns

KRAMER: No. It's quite the other way around. It would have—what North Tahoe Public Utility District wanted was to have the California allocation measured as the sum of all the domestic meters, as long as all of them are metered, rather than at the point of diversion. And, the reason for that is that in winter they sometimes open a fire hydrant and flush it, and some of those uses wouldn't necessarily be charged. The trade off, if you look at the Settlement Act is they get to do that only if they have a massive water conservation plan in place. A lot of the elements in the Settlement Act were lifted from the then Urban Water Management Planning Act in the Water Code. They're a little different.

SENEY: I guess, I'm thinking of not the North Tahoe Public Utility District, but the Tahoe City Public Utility District, instead. (Kramer: Yeah.) They have a leaky system. (Kramer: Uhm-hmm.) They didn't want to be responsible for those leaks.

KRAMER: Well some, some of the domestic meters would do exactly the same thing. It would basically measure all of the—it would

measure the consumptive use as the total of all of the readings of the domestic meters, since they're a fully-metered system. And, it would not take into account any line leakage that was occurring.

SENEY: I guess that's what I'm thinking.

KRAMER: Yeah.

SENEY: Right. Right. Did you play any part in helping them get that?

KRAMER: We were all, we were all involved in negotiating those things. Another area where a different agency was very much involved in negotiating the Settlement Act are the special rules that apply to the Town of Truckee Sanitation Agency. Adolf Moscovicz [spelling?] participated in a lot of those negotiations to get the specific criteria (Seney: Right. Right.) and the T-T-S-A [Town of Truckee Sanitation Agency].

SENEY: Well, he represented the T-T-S-A and the Tahoe City Public Utility District?

KRAMER: Right. Yeah. Neil Anderson [spelling?] represented the North Tahoe Public Utility District.

SENEY: Right. And still does?

KRAMER: And still does.

SENEY: Yeah. Right.

KRAMER: And, they will now be a signatory of TROA.

SENEY: And will the Tahoe City P-U-D [Public Utility District]?

KRAMER: No. I don't think so.

SENEY: Yeah. Would you all, in the California side, get together and meet, (Kramer: Oh yeah.) and discuss what you needed to do?

KRAMER: We would have meetings within the California team, within state government, and meetings with the local agencies from time to time, coordinating closely on where the negotiations were going; the issues that would come up. Sometimes we told them what was coming up. Sometimes they were actually invited to participate in the actual negotiations. So, yeah, we maintained close liaison with the local agencies.

SENEY: Any big sticking points or problems, and something these local people wanted that

you guys didn't want in the state?

KRAMER: Not so much between us and the local agencies. There were some sticking points between us and the tribe, or other parties as we negotiated.

Snow Making

One that carried all the way over into TROA was snow making. (Seney: Right.) We've mentioned when we were in a negotiation, the question of applied snow came up. Or, I might have even raised it. You know, if you put snow on the mountains it's going to melt and it's coming back down in the river, no way is that consumed a hundred percent, and California shouldn't be charged for it. And, that started off, "Well, what should you charge for snow making?" And, that went on through the Settlement Act negotiations. Then it got to a time when the Settlement Act was ready to go and for lack of anything else they punted it over into the TROA. (Seney: Yeah.) And, it was a hot issue through the TROA negotiations too, until we finally negotiated a number for snow making.

You probably heard the story that we battled years on that. Now, there were

competing studies from the California entities. And, again, Tahoe City P-U-D was strong on the issue of what it wanted to charge snow making. (Seney: Right. Right.) Namely nothing, or as little as possible. (Seney: Yeah.) The tribe . . .

SENEY: The thing is that it melts (Kramer: Yeah.) and comes right back down?

KRAMER: The tribe was hanging in that consumptive use was somewhere around twenty percent, using some studies that came out of Colorado. And, from time to time, with other TROA negotiations we'd get back to snow making and thrash it around (Laugh) before we finally set it aside. Finally, we're having this big marathon meeting. The United States was so tired of snow making and they're ready to get up and walk out, and say, "Give me a call when you're done."

We got down to seventeen percent, and sixteen percent got, the tribe saying "Nothing, nothing less than seventeen percent," and we're saying "Sixteen percent. And, we're giving too much as it is." And, a member of the audience jumped up and said, "Hey, let's flip a coin." And, he tossed a coin in the air, (Laugh) and finally one of the

parties said, you know, “Heads or tails?”
And it came out sixteen percent. And, that
literally is how (Seney: Yeah.) we got the
allocation. You’ll hear people say, “Well,
the allocation was decided on a coin toss,”
not really but it was (Seney: Yeah.) the end
of a long and exhausting meeting involving,
(Laughter) “My number’s better than your
number.”

SENEY: Yeah. Yeah. Right.

KRAMER: So.

SENEY: And, you’re not talking about very much
water here, are you?

KRAMER: Uhm, no.

SENEY: A thousand . . .

KRAMER: No.

SENEY: In the thousands of an inch, low thousands,
maybe?

KRAMER: The State Water Project rounds off its yield
to what, the nearest ten thousand acre feet?
And, they’re, people can get really
passionate about fifty acre feet.

SENEY: Yeah. Right. Right. Well, I interviewed Wayne Mehl, and when he was conducting negotiations on the Settlement Act for Senator Reid. He told me about one meeting where they were hassling about snow (Laughter) making and there was—he said, “How much are we talking about?” And, they said, “Six hundred acre feet.” He said, “Oh my god, let’s include it,” you know. (Laugh) And, “Forget it. It’s not going to go against anybody’s allocation.” (Laughter) You know, and he was from Ohio, and he said he had a hard time understanding (Laughter) why people would argue so much over 600 acre feet of water.

KRAMER: Welcome to the West. (Laughter)

SENEY: Yeah. (Laugh) That’s right.

Settlement Act

KRAMER: Well, the Settlement Act actually excludes, it basically carves out of the allocation the first 600 acre feet to California. And, in the Tahoe Basin, what, 200 acre feet in Nevada. That’s just carved out. That’s not charged to either allocation. (Seney: Right.) So, then what came after those numbers is what gets involved in this big need to figure out what

the formula was.

SENEY: I know the tribe was very insistent on this matter, even though it was a small amount, (Kramer: Uhm-hmm.) and that they have been insistent on other matters, very insistent. Is this just part of Bob Pelcyger's negotiating strategy, you think, to . . .

KRAMER: Well that, or he's dealing with the tribal council, where he has got inevitably, of his staff, ten percent that doesn't like anything that's being done. (Seney: Right.) I mean, it's like belonging to a home owner's association, except it's mandatory you can't leave it.

SENEY: Yeah. (Laugh) Right.

KRAMER: So I, you know, sometimes you've got a tough client, in terms of these things, and sometimes things become a matter of principle, and it's easy to understand how that happens. (Seney: Right.) But yeah, sometimes Bob would dig in too. Sometimes we dug in, (Seney: Right.) I'm sure, as Bob he'll tell you.

SENEY: (Laugh) I'm sure he'd say that. (Laughter) I have interviewed him. (Laughter) I may interview him again. He's a delightful

person.

KRAMER: Oh. He's a fascinating guy. (Seney: Yeah.)
I mean he was brilliant.

SENEY: Absolutely, yeah. He's really a gifted
(Kramer: Yeah.) advocate. Right. That's
my general impression, by the way, of
people I've interviewed. Just very able
people working on this. And, I think it's
because of the difficulty (Kramer: Yeah.)
one has in grasping this. Well, where were
some of the places, since you mentioned
California dug in, where were some of the
places that California dug in on things?

“We Wanted Our Interstate Allocation”

KRAMER: Well, we wanted our interstate allocation.
That was the bottom line. Nobody said we
weren't going to get it, but California and
Nevada tended to work pretty closely on
what they wanted on the interstate
allocation, because we had the compact as
the template, and the two states had
followed it. They had a compact. So, we
often then . . .

SENEY: And, that had been thoroughly negotiated?
That was not . . .

KRAMER: Oh yeah. That was, that had taken ten years to negotiate, (Seney: Right.) and that appended before Congress for another fifteen years. There's nothing quick about Truckee River negotiations. (Laugh) They tend to go on forever. But yeah, the two states worked pretty cooperatively and closely on the allocations. There weren't really, I think, much of any issues between California and Nevada. At one point, when we were working on that Tahoe, measuring the water in the meters, and Tahoe, somebody said, "Ah heck, why don't we just raise the 23,000 to twenty-five and be done with it?" And, Roland's answer to that was not only "No," but "Hell no!" (Laugh) I mean it was red lining the table. We were not going to touch those allocations. They're in the compact. (Seney: Yeah.) Carved in stone.

SENEY: Let me turn this thing up.

KRAMER: So, we, we, that's basically how we adjusted the number. And, there really were no significant disputes between California and Nevada in the negotiation of the Settlement Act.

SENEY: Right. You know, I, I've interviewed the people on the upper Truckee River too,

some who have been disappointed over time in California's representation of their interests as they see it. And, some of them say that at least they think, maybe believe, that if the TROA doesn't go through that there may be some attempt to renegotiate the interstate allocation and give more to California.

Possibility of Renegotiating the Interstate Allocation

KRAMER: Good luck.

SENEY: Do you see that happening?

KRAMER: Good luck, because the Truckee River is fully appropriated right now in Nevada. Uhm, I suppose anything's possible.

SENEY: Right. Right.

KRAMER: Sometimes you have people who will say, "We'll be happier with a court judgment," even if they lose more. (Laugh)

SENEY: Yeah. Yeah.

KRAMER: But, I don't know what would happen. I don't know if you could renegotiate the Settlement Act. Maybe the other option, at

that point, would be to take the river. Who knows?

SENEY: Well, you know that there's been some unhappiness on the part of some of the people on the Truckee who think that California has been more interested, maybe, in the Tahoe Basin than they have in the Truckee River part of California?

“Nothing in TROA that applies to Lake Tahoe”

KRAMER: Frankly, I find that amazing since we spent the last twelve years negotiating the rules that apply to the Truckee Basin. (Seney: Yeah.) There's nothing in TROA that applies to Lake Tahoe other than the accounting procedures for the allocation.

SENEY: Right. No, I'm not saying they're right. (Kramer: Yeah.) That's what they tell me when I interview them, (Kramer: Right.) that they feel—well, your reaction to that is, that's hard for you to understand how they would feel that way?

KRAMER: No. I could understand how people in any water situation feel. I mean, all you have to do is go down to San Francisco and listen to how they talk about water in the [San Francisco-San Joaquin] Delta, as though

they own it all.

SENEY: (Laugh) Yeah. [inaudible] Huh?

KRAMER: [inaudible]

SENEY: Yeah. Right. Right.

KRAMER: I belong to a men's club and there's three things, a men's club in San Francisco, and I've learned three things you never talk about down there: religion, politics, and water.

SENEY: Yeah. Otherwise you're all right?
(Laughter) What has been the toughest part of the TROA negotiations, do you think, on the California part of the deal?

Toughest Part of TROA

KRAMER: Hmm. I'd have to think about that some. Well, early in the negotiations, snow making, that disproportionate amount of water was a tough one. The, we had a hard time when we first came into TROA because we assumed that California law would apply to the reservoirs in the way it usually does, 59-37 Fish and Game Code, where you could set instream flows for reservoirs,

public recreation and where you go back and revisit appropriations for reservoirs and change some.

And, we had some full and frank exchange of views early about how those California laws would applied. And, we ultimately recognized you couldn't, because the Settlement Act says that the TROA cannot affect, Orr Ditch rights cannot—the TROA must serve all Orr Ditch rights (Seney: Right.) except to the extent that they have been waived, as Sierra Pacific did. (Seney: Right.) With the rate, the Floriston rates that we're just turning the wheels at the power plants in winter, (Seney: Yeah.) and doing nothing else. That became the Fish Credit Water that the tribe stores in the reservoirs. (Seney: Right.)

But we, it took us a while to work through the process where we would deal with instream flows through exchanges in one of the reservoirs, through credit water that we ourselves have for instream flows, and by having the ability under many circumstances to compel a release in which somebody downstream wants a release of water from one reservoir. We can, in some cases, exchange it to another and release it from another if that will improve instream

flows. So, we had to do a lot of that stuff. And, that was kind of tough working through that.

The local people initially thought that we hadn't done enough about instream flows when Gray Davis came in as Governor.¹⁴ They got to the governor and said that we needed a little time out to take a look at TROA, which we did. We basically told folks we were going to shut down TROA negotiations for about six months, met with the locals. The resources agencies formed a group, of which we were members and the locals were members, to sort through what we could do, in the way of coming up with better instream flows, better recreation pulls in the reservoirs. And, it was a good process. It did result in us, I think, getting a little more, and getting it more effectively, without getting in other people's face, and without using the documents that it would be so difficult, if not impossible, to use.

SENEY: Did that tend to bring those Upper Truckee people around (Kramer: Yeah.) to your point of view, and educate them a little?

¹⁴ Gray Davis was Governor of California from 1999 to 2003.

KRAMER: Not only that, it brought them into the process. (Seney: Yeah.) They all participated in the TROA negotiations and they're happy. Or at least, on the, when they, you know, when the observers could be present they were.

SENEY: Right. Right.

KRAMER: And, it also got them all, I think, more involved in the E-I-S [Environmental Impact Statement] process that followed.

SENEY: Let me go back just a second with instream flows and the fish question. I take it you kind of have to represent the Fish and Game people?

Fish Issues

KRAMER: They were (Seney: Yeah.) part of our California team. They were actually involved in the negotiations. And, often in the TROA negotiations, Matthew Curtis [spelling?] or somebody else from the Department of Fish and Game was present. For the TROA we always had what was called "a California team," and it always had representatives of D-W-R, State Water Resources, Control Board, and the Department of Fish and Game. And then

sometimes, a liaison with the [California] Attorney General's Office. There were some very difficult legal questions that we worked through in the TROA (Seney: Yeah.) that we had active participation from the Attorney General's Office.

SENEY: So, you would have to get, sort of work through these flow agreements with Fish and Game and get them to understand what could and couldn't be done, (Kramer: Uhm-hmm.) given the interstate nature of things involved?

KRAMER: And also they started out with some target flows, preferred instream flows. And, we got a lot of them through the rules in TROA, but what we couldn't do is you would do a reservoir on this side is just insist on a waterway condition, that "x" amount of water be released, (Seney: Right.). If that's not enough we come back.

SENEY: Well, they wanted 75 c-f-s, something along those lines, didn't they?

KRAMER: That's about what the release is out of Lake Tahoe. (Seney: Yeah.) Tahoe was raised, but not all that much. (Seney: Right.) And, there were releases from other . . .

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KRAMER: On Prosser Reservoir,¹⁵ for example, there were release criteria that we negotiated, and that the number the Fish and Game wanted was just right in between a small pipe and a big pipe. You could either release the small pipe or the big pipe, but not both. (Seney: Yeah.) So TROA, there, had to say releases of a certain amount. But if, when they, Prosser was changed, then the releases could be the other number. So, there's a lot of that kind of pragmatic working through in getting instream flows.

SENEY: You said . . .

Credit Water

KRAMER: And TROA gives a variety of different types of credit water that we can use for instream flows on our own. The giant program Fish Credit Water, which is carved out of the tribe's Fish Credit Water. It's the tribe's

¹⁵ A feature of the Washoe Project, Prosser Creek Dam and Reservoir was completed in 1962. "Water stored in the reservoir is used in an exchange of releases with Lake Tahoe to improve fishery flows in the Truckee River." See U.S. Department of the Interior, Water and Power Resources Service, *Project Data* (Denver: United States Government Printing Office, 1981), 1289.

Fish Credit Water but we in California can manage it, and use it for instream flows or recreation pools as we want, the condition being that when it's released it flows down to Pyramid Lake. We have . . .

SENEY: Does it need to flow to Pyramid Lake during the cui-ui run, during that part of the year?

KRAMER: No.

SENEY: It would be . . .

KRAMER: Because we're managing it and releasing it for instream flows as we need to.

SENEY: I see.

KRAMER: The deal is, somebody down in Nevada can't divert it.

SENEY: When it's gone . . .

KRAMER: It has to go all the way through to Pyramid Lake and the administrator is charged with making sure that that happens. (Seney: Yeah.) We have two categories of credit water that we can acquire for instream flows to California, Environmental Credit Water, and Additional Environmental Credit Water

that we can acquire that can be stored upstream in the reservoirs and used for instream flows. California Environmental Credit Water can be obtained from, either by appropriating unappropriated water in California or applying water rates and then changing them to instream flows. Additional Environmental Credit Water we'd have to buy from users in Nevada and store upstream. (Seney: Right.) But, there's a variety of things like that in TROA that we worked out to deal with instream flows, and reservoir recreation pools, both were a major concern.

SENEY: These unappropriated waters would be excess flows? You know, when you have your water?

KRAMER: No, unappropriated water would be part of the water allocated to California.

SENEY: Ah. That's not been used?

KRAMER: Yeah.

SENEY: Part of the 13,000?

KRAMER: That's up to 10,000 acre feet.

SENEY: That's right.

KRAMER: Ten. Once ten is hit, that's California's allocation of surface water.

SENEY: But, up to the time that's hit—where are they now on that? What is the appropriation level on that now?

KRAMER: Four thousand, five thousand. John Sarna, John Sarna would have the accurate number.

SENEY: Yeah. So, you could have 6,000 of that too?

KRAMER: Yeah. Whatever it is.

SENEY: Are appropriated to use as credit water?

Environmental Credit Water

KRAMER: Whatever the existing water, whatever the existing farms and ranches are not using, (Seney: Right.) we could use as credit, appropriate it and use as credit water, or various other things. There are various other ways that California might use the surface water. But, one of them is California Environmental Credit Water. And that, if it's so stored, it would be, it could be used only for reservoir pools and instream flows. (Seney: Okay.) It's not water that can be used for M & I.

SENEY: Let me ask you, what, what is the different responsibility and outlook of the Department of Water Resources and the Water Resources Control Board?

California Water Resources Departments

KRAMER: Well, the department has always represented the state in instream, in interstate negotiations. We're a member on the Klamath River Compact Commission. We were the staff to the old California-Nevada Interstate Compact Commission that negotiated the old interstate compact. We've had various other roles. We were also involved in the Walker River Settlement negotiations (Seney: Right.) that are going on right now. It's just a matter of longstanding and recognizing some provisions of the government code that this is just a responsibility the Department has, where the state's a member on the Western States Water Council.

But, the State Water Resources Control Board has been charged for the preferred administration of water rates laws. That's one reason they have always been intimately involved in interstate negotiations on the Settlement Act, on the TROA, and now as well on the Walker River Settlements.

SENEY: So, they monitor and manage water rights?

KRAMER: They are, they are the agency that's in charge of granting applications to appropriate water. They're the agency charged with enforcing the California constitution prohibition against waste and unreasonable use, and unreasonable method of diversion of water. (Seney: Right.) They are charged by National Audubon Society, the California Supreme Court decision, with administering the public trust with regard to appropriation and use of water. So they're, they're the regulatory agency over water use. And, they don't have any regulatory authority over groundwater, unless it's water flowing in known and definite underground channels.

SENEY: Right. My understanding is in California you can just drill a well and just let them know you've drilled one.

Groundwater Regulations

KRAMER: As long as it's not an adjudicated basin, or as long as somebody doesn't have a 30-30 Plan in place with groundwater management that would preclude that, (Seney: Right.) generally that's right. We're not quite as

crazy as Texas, but we're close. (Laugh)
Texas still follows the Absolute Rule of
Capture. The bigger the well, the deeper,
and they get all the water, period.

SENEY: Is that right?

KRAMER: Yeah.

SENEY: Well, I'm not surprised, I guess, (Laugh)
when I think about it.

KRAMER: Well, see, it was common law. They've
always applied it. We applied a variation of
it, (Seney: Oh.) to our groundwater. Texas
still slavishly applies the original English
Common Law, which is an absolute right of
capture.

SENEY: Huh.

KRAMER: We apply a modification of it, [inaudible]
rates, where all of the overlying users of the
basin share the safe yield of the basin.

SENEY: Is that the 30/30 Plan?

KRAMER: No. 80-30-30 (Seney: Oh, I'm sorry.) was
the law that allows local water agencies to
adopt groundwater management plans, with
specifying elements.

SENEY: What sort of things were, was in the Settlement Act and the TROA that the Water Resource Control Board were interested in, from the point of view of managing what they manage?

Water Resources Control Board Interests

KRAMER: Almost, most of it. Because a lot of it has to do with charging an allocation, which is a cap on what they can make available for appropriation, and specific rules for its management. So, they've been heavily and intimately involved throughout the TROA, and probably didn't get wildly passionate about snow making. (Laugh) But there, there were, they've been consistently involved throughout, and often attend negotiating meetings. An attorney or staff from the board attends most, if not all, the meetings.

SENEY: Right. Right . Did, Mr. Markum [spelling?], did he represent them or the Department of Water Resources?

KRAMER: He was, he was Assistant Chief Council and started attending a lot of the negotiations, representing the State Water Resources Control Board. When he retired, we picked

him up as a retired annuitant, but he continued to help both parties.

SENEY: I see.

KRAMER: As the, as an expert on water rights [inaudible].

SENEY: Right. When I spoke to him, he said that his real field, was water rights.

KRAMER: Uhm-hmm. And, a damn good draftsman as well. I mean, he could red pencil your draft and find all sorts of amazing things in there (Seney: Is that right?) you didn't know about.

SENEY: Yeah. Yeah.

KRAMER: He was an English, he was either an English teacher or an English professor before he became a lawyer. (Seney: Ah.) His use of the English language is pleasure to watch. Once when we were working on the California add list, Jeanine Jones wrote it, and we edited it, there was almost nothing to edit. She writes so well. But, it referred to the Sierra Nevada Mountains and Jim sent an email into our editorial people saying that's not right, that should be called the Sierra Nevadas, pointing out in Gudde

California Place Names. And, they got an email back that said, “It’s D-W-R policy, it refers to the Sierra Nevada Mountains.” And, he sent an email back that said, “I’m duly chastened. I shall hereafter refer to them as Sierras Nevadas Snowy Mountain Range.” (Laughter)

SENEY: Nothing like a good . . .

KRAMER: So, Jim . . .

SENEY: Nothing like a good grammarian.

KRAMER: Jim always had a little fun in him too.
(Laughter)

SENEY: How have—you know, some people think that maybe the TROA negotiations have gone a bit long?

Length of TROA Negotiations

KRAMER: (Laugh) Oh, I don’t know. They’ve only been going for twelve years, and we’ve gotten to a draft E-I-S [Environmental Impact Statement]. (Laugh) They have gone on a long time, probably an outrageously long time, but when you look at the TROA you can see why. It is

incredibly complex. The rules for accounting, the rules for storage of credit water, the rules for whose credit water that's stored in a reservoir spills first when it spills, rules for how it's counted vis a vis Floriston rates. Difficult arguments that had to be settled: Can we store credit water in Lake Tahoe when it goes below the rim? That was a major dispute with the United States. They said, "You can't store credit water in Tahoe when it goes below the rim, it disappears." And, the department said, "No it doesn't, it'll just reappear like Venus rising on the half-shell (Laugh) once the lake comes above its natural rim, and it took several years.

SENEY: And when it comes in that'll be the credit water?

KRAMER: Well, yeah. And, provided the credit water doesn't get in the way of normal Lake Tahoe operations, and Floriston rates, and whatever everybody's water rights are in Tahoe. But, it took a couple years to hammer that one out.

SENEY: Now, can you store (Kramer: Yes. Yes.) credit water in Tahoe?

Credit Water

KRAMER: Credit water is—well, you know, we can always store credit water in Tahoe, but now there are even provisions that allow it to remain under wonderfully complicated rules, if Lake Tahoe drops (Seney: Oh, I see.) below the natural rim. It's still there. It may be like the smile of the Cheshire Cat, but it's still there. (Seney: Ah.) You know, that's just illustrative of the complexity (Seney: Right.) of the negotiations, (Seney: Right.) and the amount of time it took to hammer them out.

SENEY: Keep going.

KRAMER: And so. (Laugh)

SENEY: Keeping going. Don't stop.

KRAMER: (Laugh) Well, I'm trying to think of the next thing to say. (Laughter)

SENEY: Well, assume you're on the spot. This is a press conference. (Laugh) "What the hell are you doing on this TROA wasting our money? How come it took so long?"

KRAMER: Well, the main reason is just the—A, you had

a room full of lawyers doing that which lawyers do, and that can take a significant amount of time to do it. Sierra Pacific was vigilantly guarding its rights, its M & I supply. That's really about the only place they can look, their existing reservoirs, to meet their present (Seney: Right.) and future M & I needs. So, a lot of TROA has very complicated rules in it for the Municipal and Industrial Credit Water, the M & I Credit Water.

SENEY: Well, I have been told that there are some who think that those representing Sierra Pacific Power did maybe lengthen the procedure a bit?

Sierra Pacific Power

KRAMER: Well, I'm not sure they deliberately lengthened it. It just took a long time to work through all of the issues.

SENEY: It never struck you as frivolous, what they brought up, or . . .?

KRAMER: No. I don't think so. I mean, sometimes it struck me that if they, rather than asking you for your entire salami they'd be quite happy to take it a little slice at a time. (Seney: Yeah.) That's not unusual in any

negotiation. (Seney: Right.) There were probably things where we did that too. (Laugh) But, other, it was just a very difficult negotiations, and very complex issues. Could it have been quicker? Sure. Once you get to the agreement, it would be easy to see how you might have gotten there quicker. (Seney: Yeah.) But, that doesn't rule out all of the disputes that had to be settled along the way. It doesn't rule out the times where one party or another had to take a break and go back, and catch its breath (Seney: Right.) as we did at one point. So, all of that just takes time.

SENEY: Right. I take it, though, under all these administrations, Jerry Brown and George Deukmajian, Pete Wilson, and Gray Davis, and even up to the current administration, that the approaches remained consistent however?

Approach in Negotiations Remained Consistent

KRAMER: That's right. Yes. All have supported the Settlement Act and the negotiation of an Interstate Operating, of an Operating Agreement to effect the allocations and the other provisions.

SENEY: So, there hasn't been any difficulty? And things haven't had to go, probably past Mr. Kennedy when he was director and doing the negotiations on the Settlement Act. Or, was he pretty much able to do what he thought was right on that, do you think?

KRAMER: He was keeping the Resources Agency informed on what's going on. (Seney: Of course.) And, of course we made the usual communications with the Governor's Office to get the authority to negotiate. (Seney: Right.) But Dave Kennedy made a lot of the decisions. (Seney: Right.) And basically just checked back from time to time with the front office.

SENEY: Right. Because I guess, the point is there's a lot of consensus within the governing apparatus of California about what should be done on the Truckee River and on the Carson River, and so forth?

KRAMER: Yeah.

SENEY: Yeah. Right. What other notable things did you have to—that were interesting or difficult to negotiate on the Truckee River? I'm trying to get you to give us a picture. You explained this really well, and you know it's one thing to read the document, which is

almost impossible for anybody. (Laugh)
No. And quite another to be able to hear it
from someone like yourself. So, what else
would you explain to people who are curious
about this process?

Sovereign Immunity

KRAMER: Well, I've explained the document to people
with the good illustration of Churchill
coming in one time to the Parliament
carrying the Cunard Covenants with the
Admiralty, the Debentures, and Churchill
held these up and said that "They are full of
terms as prolix as they are onerous."
(Laugh) And, that's a snapshot of TROA. It
has a lot of very very complicated details in
it.

We had, for example we had great
difficulty in working out the question of
sovereign immunity. Nevada, and the tribe,
and the federal government are all parties to
Orr Ditch. California is not a party to Orr
Ditch. So, we would come into the TROA
with the same general application that the
others have to appearing before a United
States District Court in another state. And,
we worked out some rules under which
California does consent to appear before the

Orr Ditch Board, with regard to its interstate, compliance with the interstate allocations and compliance with the TROA provisions, but not in other ways that one might be sued by a federal court in another state. Again, that took a couple of years to work out. That's one the Attorney General was involved in primarily.

SENEY: Is this something you can just put in the TROA (Kramer: Yeah.) or does this require federal legislation, or . . . ?

KRAMER: No. No. It's just us consenting in how we will waive our sovereign immunity.

SENEY: I see. Because the TROA does, it comes under the Orr Ditch Court?

KRAMER: Yeah.

SENEY: It's going to oversee it?

KRAMER: And the Orr Ditch Court will enforce it against California too, particularly with regard to the interstate allocations and the obligations that we have under TROA.

SENEY: But only now because you agreed to do that?

KRAMER: Yes. Because we, because in signing TROA

there, you look in TROA and you'll find some specific provisions that deal with, I think they're in Article II, that deal with the jurisdiction over the various parties.

SENEY: What was the State Attorney General's interest in this?

KRAMER: Basically representing the state in what we needed to put in there. That's a very legalistic thing, and the question of sovereign immunity involved.

SENEY: Can you explain that?

KRAMER: Well the question of sovereign . . .

SENEY: What's involved?

KRAMER: Basically just involving the assistance of the Attorney General, who has great expertise in this very knotted legal area of the TROA.

SENEY: "Sovereign immunity" means, of course, that you can't be sued or taken to court unless you give permission?

KRAMER: That's right.

SENEY: And, you needed to give that permission to

the Orr Ditch Court?

KRAMER: We had, we had to because of the, because of the state's sovereign immunity and because of the eleventh amendment that limits the ability of the citizens of one state to sue another state in federal district courts.

SENEY: Right. Right. Right. Did the Indian, did the tribe end up doing the same sort of thing? Because they claim the Doctrine of Sovereign Immunity?

KRAMER: The tribes can waive their sovereign immunity anytime they want to, and they were already a party to Orr Ditch. They were a party to Orr Ditch from the very beginning.

SENEY: Ah. Of course. Of course. So, that was . . .

KRAMER: And, it's actually easier for the tribes to waive their sovereign immunity than it is for the state. I don't want to give the impression that we waived the sovereign immunity in the TROA. We worked out a way in which it would appear . . .

SENEY: No. No. No. I'm not, right. No. No.
(Kramer: Yeah.)

KRAMER: Because in general . . .

SENEY: Generally the way the fund . . .

KRAMER: In general, states can only waive their sovereign immunity by the action of the legislature.

SENEY: Right.

KRAMER: Same way the United States can waive its sovereign immunity only with an act of Congress.

SENEY: But you were able to do this (Kramer: Yeah.) or where it amounted to doing this?

KRAMER: Yeah. Working out . . .

SENEY: In a controlled way?

Orr Ditch Court Having Jurisdiction Over TROA

KRAMER: Working it out so the Orr Ditch Court would have jurisdiction over the TROA.

SENEY: So, in other words if I think . . .

KRAMER: And also, it was important also because the administrator under TROA has to be the

same person that, as the Watermaster (Seney: Right. Right.). Under the Orr Ditch Decree, and disputes are taken, first of all, to a Dispute Hearing Officer under the TROA, and then to the Orr Ditch Court, or to the United States District Court in Nevada (Seney: Right. Right.) if they go to court. (Seney: Right. Right.) So, that's where the venue is for enforcing TROA.

SENEY: Right. What judge is in charge of that now?

KRAMER: Hmm. I should know.

SENEY: I should remember it.

KRAMER: McQuaid [spelling?]

SENEY: Yeah. I've actually spoken to him. Because we're a, I wanted to talk to him about a lot of things, and he actually was kind enough to turn me down himself. (Laugh) [inaudible] I told him I very much appreciated that. (Laughter) He said, "Well, keep your eye open. When I retire I'll be happy to talk to you about these." (Laughter) I thought that was . . .

KRAMER: And not before? (Laugh)

SENEY: Yes. Yes. I thought, well I thought that was

very gentlemanly of him, and very much in the Nevada tradition, (Laugh) you know, of their openness.

California State Attorney General's Role

KRAMER: The other reason the Attorney General has been involved from time to time throughout this is that while I am an attorney, I cannot appear and represent D-W-R in court. I'm basically house council.

SENEY: That's right. It has to be the Attorney General?

KRAMER: And, the Attorney General is the trial council for all state agencies, except Caltrans and the Public Utilities Commission. And, because a lot of this resolves litigation, litigation settlement, and one of the major things we're getting out of the Settlement Act, a lot of it, early on, when we were looking at whether or not we would have to adjudicate the river, I mean, all of that involved the Attorney General's Office.

SENEY: Right.

KRAMER: So, they've been involved periodically throughout the TROA.

SENEY: Right. Right. What else?

KRAMER: Hmm. (Laugh) What questions did you have that I can answer? I find all the TROA so daunting, it's (Laugh) it's a little bit like the History 4A question, "Discuss the role of the Roman Catholic Church in European politics. Be specific."

SENEY: (Laugh) Yeah. Right. "Use examples." (Laughter) Well, I'm sorry for that kind of question and you're absolutely right to call me on it. But, there's the whole idea of coming up with the notion, I guess, based on the Prosser-Tahoe Agreement¹⁶ of storing water, and credit water, (Kramer: Uhm-hmm.) and so forth and working out the flexibility of TROA. Here you have a situation where you have all these reservoirs, Stampede (Kramer: Uhm-hmm.). I guess

¹⁶ "Also referred to as the 'Agreement for Water Exchange Operations of Lake Tahoe and Prosser Creek Reservoir,' this agreement was finalized in June 1959 and designated certain waters in Prosser Reservoir in the Truckee River Basin as 'Tahoe Exchange Water.' By this agreement, when waters were to be released from Lake Tahoe for a minimum instream flow (50 cfs winter; 70 cfs summer) and when such releases from Lake Tahoe were not necessary for Floriston Rates due to normal flows elsewhere in the river, then an equal amount of water (exchange water) could be stored in Prosser Reservoir and used for releases at other times. See "Tahoe-Prosser Exchange Agreement," http://www.ecologydictionary.org/TAHOE-PROSSER_EXCHANGE_AGREEMENT. (Accessed July 2016)

Independence is really a private one?

Working Out the Flexibility of TROA

KRAMER: Independence and Donner (Seney: Donner.) are what they call privately-owned stored water. (Seney: Right. Right.) But, they were involved to some degree in TROA operations anyway. (Seney: Right.) But, mainly, it doesn't create any new water. It doesn't build any new facilities. All it does is operate the existing federal reservoirs more efficiently: Lake Tahoe, Stampede, Prosser, Boca, and Martis, though Martis doesn't store any water.

SENEY: Is there, do you think there's any chance of fixing Martis so that it will.

KRAMER: No. No reason to.

SENEY: Yeah.

KRAMER: Not that I can see.

SENEY: It's not going to . . .

KRAMER: It's basically a flood control reservoir. It's owned by the Corps [U.S. Corps of Engineers] and it's just operated

independently of the others. (Seney: Right.) It's not part of Orr Ditch. There's some reference to Martis in the TROA, because there's some things that it can do, (Seney: Right.) but it's not a reservoir where you go and park water. The reservoir leaks like a straw hat.

SENEY: Well, I've been told, perhaps by cynics, that the Army Corp built it not knowing it would be a flood control project. And once it was (Kramer: Oh yes it was.) clearly understood that it was a flood control project, that is in the sense it leaks like a sieve . . .

KRAMER: Well, it was always built and authorized as a flood control.

SENEY: Was it?

KRAMER: Yeah.

SENEY: Well, all Army Corp dams are, you know that. That's . . .

KRAMER: Well, not only that, it doesn't have a water right or need one because it doesn't use, carry over storage. Wink. Wink.

SENEY: Yeah. Yeah. Right. (Laughter) But, there's no pressure to make it do that and to

collect some of that water and carry it? That would be somebody's water, I guess, wouldn't it?

KRAMER: Well, it would just have to be water that came from somewhere. (Seney: Right.) And right now you're dealing with a fully-appropriated system.

SENEY: What do you, do you see any problem with the Truckee Carson Irrigation District not being a signatory to the TROA?

Truckee-Carson Irrigation District

KRAMER: Yeah. It has been a problem throughout, all the way back to the early negotiations of the Settlement Act, when they were both in and out of the negotiations. They came into the TROA negotiations for a while, left, kind of returned, then they had just one person who came and monitored for a while, (Seney: Yeah.) and then finally he dropped out. So, yeah, that's a problem. (Seney: Right.) You know, they're, they're on the outside looking in, at this point, and I don't know what they're going to do in the future. They may well do something to try and challenge TROA.

SENEY: Well, they were signatories to the original Truckee River Agreement? (Kramer: Uhm-hmm.) And, they won't be signatories to this one, which succeeds it, right?

KRAMER: It does, but their water rates aren't affected. It does not affect these water rights. (Seney: Yeah.) Their rights to water, are set forward from the OCAP [Operating Criteria And Procedures]. They're going to get all the water that OCAP gives them.

SENEY: Are they going to be a fly in the ointment here, more than that, you think? Are they going to derail this thing?

KRAMER: Who knows? If you're, if you're outside the tent, why I guess anything's possible.

SENEY: Right. Right. Right. Look, you know you're looking unhappy as I bring up just the idea. (Laugh) Your smile has gone off your face. Your lips are a little pursed here. Tell me why.

KRAMER: Well, the reason I was smiling then was I was thinking of the old L-B-J story about why he reappointed Hoover as the . . .

SENEY: I know that one. It's better to have him . . .

KRAMER: Outside the, inside—and that’s what I was thinking.

SENEY: Yeah. Right.

KRAMER: So, they’re outside the tent right now.

SENEY: No. No. I didn’t mean that. (Laugh) The smile I understand, but you looked a little—you weren’t smiling so much when I mentioned T-C-I-D.

KRAMER: No. It’s not . . .

SENEY: Why not?

TCID’s Refusal to Negotiate a Missed Opportunity

KRAMER: Well, it’s, it’s both because it’s unfortunate to see a major water user who has an opportunity to participate who has not done so. I mean, there are things they could have gotten out of TROA had they participated in it. And now, I think they’re more likely to be on the outside challenging it, and it’s a lost opportunity. It’s one that’s been lost over a period of time. There were a whole series of settlement negotiations that we did not to participate in, that affected the lower river interests, where they had a mediator in

to try and see if they could work something out. And, it came all the way to the eleventh hour and they picked up their marbles and left in the last negotiation, and left some pretty hard feelings behind.

SENEY: These are the so-called Settlement II negotiations, right?

KRAMER: Yeah. Yeah. That's right. But again, it reminds, reminds one of Abba Eban's observation of Arafat, that "Arafat never passes up an opportunity to pass up an opportunity." (Laugh) I think that kind of describes T-C-I-D's participation. (Seney: Yeah.) They became so obsessed that, "We're not being listened to. Our water rights are adversely affected and nobody is paying any attention to us," which is not true, they just didn't stay in.

SENEY: What kind of things do you think they could have gotten out of TROA?

KRAMER: I think they could have participated in being a credit storage, as other parties.

SENEY: Some upstream storage?

KRAMER: Yeah. In fact, there's a area of credit water that's reserved in TROA, Newlands Project

Credit Water. They could have had a say in, as they did sometimes when they were in it, how some of the other TROA provisions came together. They could have had a representative on the, on the various committees the TROA sets up, had standing, as a TROA party. I think, all in all, it's a lost opportunity. (Seney: Right.) I'm sure you get much clearer views from the folks in Nevada who deal with them regularly, or on the far upstream that have not been involved in it as much as some of the other parties have. But (Seney: Right.) certainly it was an opportunity lost there. I'm not sure whether it was lost or deliberately abandoned, but either way . . .

SENEY: You know, one of the—I've only attended a couple of the TROA meetings, probably because—

KRAMER: You came and took some pictures at one time (Seney: Yes I did.) with a flash camera? Yes. That's where I recognize you from.

SENEY: Yes, I did. Those were nice pictures. (Laugh) Did Janet Carson show them to you?

KRAMER: Yes.

SENEY: Did you see them?

KRAMER: Yes. She brought, brought us copies and then circulated them around.

SENEY: Yeah. Yeah. They, some of them turned out pretty well, actually. Yeah. Yeah. She said, “No one had ever taken pictures before.” (Laugh) You know, I actually got a picture of . . . [tape paused] Yeah, those pictures turned out pretty well, I thought.

KRAMER: Yeah. No, they were great.

SENEY: Yeah. Right. Well, one of them I went to was, you know, there were, I’m sure you were there. Bob Pelcyger was there and Bill Bettenburg and Fred Disheroon¹⁷ and Sue Oldham, and I don’t . . .

¹⁷ Both William Bettenburg and Fred Disheroon participated in Reclamation’s oral history program. See William Bettenburg, *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; 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, www.usbr.gov/history/oralhist.html.

KRAMER: Carol Hammond [spelling?] from D-W-R.

SENEY: Maybe Carol Hammond [spelling?] was there. I don't know that I've ever met him.

KRAMER: Oh, you should. He's the . . .

SENEY: Right. I do want to talk to him. Right.

KRAMER: He is designated the Director's Special Representative for TROA negotiations. (Seney: Right.) And, he was designated by Kennedy and that designation has carried over subsequently.

SENEY: Great. Well, I do want to speak to him. And, I'd also, I also hope to get to interview Mr. Kennedy as well.

KRAMER: There's a story there. Joe Burns¹⁸ came to Dave Kennedy one time and said, "I'd like to have a little grey hair on your California negotiating team," which I took as a compliment. (Laugh)

¹⁸ Joseph Burns participated in Reclamation's oral history program. See, Joseph I Burns, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2010, www.usbr.gov/history/oralhist.html.

SENEY: Yeah. Well you've got--yeah. (Laugh)
Gesturing to your gray hair.

KRAMER: Carol Hammond [spelling?] liked to point out, "Well, you can get into almost everything you want Joe, but not everything. You've got a bald head on California's team." (Laughter)

SENEY: But, and here was the, it wasn't Dave Overvold who I knew began to come later. It was the guy who proceeded him from T-C-I-D. And, he raised a question that was not, I think, a very informed question about whatever the subject matter was. And, just sitting and watching, it was very interesting. Because, here there were the rest of you who clearly knew one another very well, who had been working together for a long time.

KRAMER: I don't know Limon Connelly [spelling?] probably. Probably Limon

SENEY: No. It wasn't Limon. It was--I can't remember his name, but he was the one who used to come in and . . .

KRAMER: Oh yeah. Russ--what's his name? (Seney: Yeah. Yeah.) I can't remember think what his name is.

SENEY: Yes. Yes. Yeah. He was the first [inaudible].

KRAMER: Yes. When they said they were coming up with several people Russ came to the (Seney: Yes.), view it or sit there, or just to take notes.

SENEY: Right. Right. And here were the rest of you up there who have, you know, a close rapport, and obviously you're looking after your own interests, but you have friendly relations, and repartee back and forth, and a lot of laughter. It was quite a contrast for someone to see this, (Kramer: Uhm-hmm.) to see way in the back of the room poor Russ sitting there, who really wasn't up to speed on any of this, and here were the rest of you up here who were really knowledgeable. It was, again, from the point of view of an observer it was quite interesting to see the wide gulf between the two.

TCID On the Outside Looking In

KRAMER: Well, that went on even in the earlier negotiations. When Limon and those folks came it was almost inevitable that at some point Limon [spelling?] would go drag a red herring across the table and he and Pelcyger

would have at it. Or, the other way around, Bob would say something that rang Limon's bells and wham! They'd be . . . (Laugh)

SENEY: Yeah. Yeah. Yeah.

KRAMER: They'd be at each other.

SENEY: Right. I'm aware of that too.

KRAMER: And it was, you know, they've been at it for a long time on a number of cases all the way back to the original OCAP case (Seney: Yeah.) in 1971.

SENEY: Well, I appreciate your frustration here, because you must also, too, feel somehow that here you put all this effort and work into it, this settlement of the TROA, and it may come a cropper because of one set of interests who wouldn't . . .

KRAMER: I don't think it will. I think, if they try I wish them good luck. I think we've got a pretty clear mandate under federal law and have done a pretty good, darn good job.

SENEY: This is something the courts are likely to say, "This has been going on too long and it's too legit, and too much effort"?

KRAMER: There's certainly been a—certainly if effort counts, (Laugh) (Seney: Right.) that's been invested in heavily.

SENEY: Right. Right. Right.

KRAMER: I don't purport to guess the outcome of litigation. I just hope litigation doesn't happen. It doesn't help anybody get there any easier.

SENEY: Right. Can you talk a little bit about the question of depletion and that controversy over the 32,000 acre foot allocation?

32,000 Acre Foot Allocation

KRAMER: Yeah. We had a 32,000 allocation and at one point in the negotiation—I think Bob brought the issue up first—when we were negotiating the Settlement Act we started negotiating an allocation for California that was an allocation by depletion. And, but in the course of the allocation, the negotiations of the Settlement Act, that was changed to a gross diversion allocation instead. And, Bob and the Nevada parties began to realize, “Wow, if they take that whole 32,000 acre feet and manage to consume it all, we're taking a hit.” So, they started, they wanted

to see some depletion limits on it.

SENEY: Well, you started to say, first of all, it was a diversion by depletion and then a gross depletion?

KRAMER: Well, you're allowed to consume and deplete this much. You can divert more but you can only consume a certain amount.

SENEY: And, the rest has to be returned?

KRAMER: Well, yeah. The, however you use the water you can't consumptively use more than "X". But, the allocations in the Settlement Act are gross diversion allocations. There is allocated to California, 32,000 acre feet, of which 10,000, we're really talking about that 10,000 (Seney: Right. Right.) is water that can be diverted.

SENEY: Those are surface water runs?

Formula for Depletion

KRAMER: Yeah. And so, it took us probably a year or two to come up with a means to agree to and come up with a formula for a depletion of that 32,000 acre feet. I think it's 17,000. I'd have to look in TROA. But, there's some number in there which is . . .

SENEY: Right, 17,600 I think.

KRAMER: The amount that we can deplete. And, there is a formula in there, which was the very finest minds of engineers at work showing how that depletion will be calculated. But, the local entities were very concerned by depletion because they saw that as maybe crippling them and not giving them the benefit they thought they got out of 32,000, since the depletion applies both to ground water and surface water use. So, they retained a consultant that did a study that showed the 17,000 gives them comfortable room for diverting and using the water that's allocated to California. But, yeah, that was a major problem.

SENEY: So, they can use the whole 32,000 feet but they've got to . . .

KRAMER: Well, they can divert the whole 32,000 feet, but they can't consumptively make vanish more than 17,000.

SENEY: Let me put in a different . . .

END SIDE 2, TAPE 1. MAY 27, 2005.

BEGIN SIDE 1, TAPE 2. MAY 27, 2005.

SENEY: . . . The Department of Water Resources Office Building in Sacramento, California. Today is May 27, 2005. This is our first session and our second tape. Go ahead with on the depletion John.

KRAMER: Well, I think that was basically . . .

SENEY: You said they had their own consultant and they . . .

Negotiating the Depletion Rate

KRAMER: Yeah, they had a, they retained a consultant to evaluate their water use and how much would be consumptively used and how much would return, and ultimately determined that the number was okay. We actually, I think, negotiated the number initially with Nevada. Nevada was concerned about how much of the 32,000 we would deplete. And, I think we came to the initial agreement with Nevada.

In other words, in the period of time where folks had to look at it and had to kind of think it through, and see if it would work, (Seney: Right.) and finally decided that it would. That was, again, an area I think where the locals were initially really concerned (Seney: Right.) about the fact of

the negotiations, and did—they were very helpful—they did a study that we all participated in and came up with the result that it would be okay.

SENEY: You know, in interviewing the people on the Upper Truckee a number of them said that, and they had a kind of conspiratorial take on California's representation of their interests, which they thought maybe could have been a little more vigorous in this depletion business. And, I want to give this to you so you can respond to it, because it's going to be in their interviews and I want you to respond to it. And, that is they had the view that when it came to the Settlement Act, that Kennedy was very busy and hardworking in that and got that through. When it came to the TROA, however, that they felt like too much was being given to Nevada by the California interests. And, I, the view was expressed amongst several people that what was going on was that California really wanted concessions out of Nevada over the Colorado River, and so there was easing up on the Truckee in order to facilitate some give and take on the (Kramer: No.)—You're shaking your head no.

Never a Quid Pro Quo on the Colorado River

KRAMER: No. I've been involved in the work on the Truckee, like I say, all the way back to the beginning. And, I never heard anyone ever make any mention about a quid pro quo on the Colorado [River]. Colorado stuff is just handled by entirely differently people in the Department, and I've never heard anything about that from any director that I've worked with.

SENEY: So, you never handled, you never worked on Colorado stuff?

KRAMER: No. Well, I did a little bit for Kennedy (Seney: Yeah.) but when Kennedy left the next director came in. Really, all I did was attend meetings. I think Kennedy just wanted us there, an attorney with him. (Seney: Yeah.) He knew the law of the Colorado dead-bang cold.

SENEY: Yeah. He was not an attorney?

KRAMER: No. He's an engineer.

SENEY: Yeah.

KRAMER: But, he certainly did know the Colorado. But no, he never—I'm sure it was never a

consideration of Kennedy's. He just wouldn't be that—he wouldn't do something like that. And, there was certainly no consideration of any director following him. We negotiated on TROA what I think we could get. An agreement is an agreement where you can get a meeting of the minds. And yes, depletion came up late in the process. Had we negotiated the interstate allocation from the beginning, with depletion, we'd have probably come up with an allocation of 16,000 acre feet by depletion, because I think that was the number that was in the old compact.

But, we certainly recognized the problem that depletion would cause to the Nevada interests, and negotiated something. And yes, we were taken to task that, "You didn't get a good enough number. You cut our allocation in half." We hadn't, but it took a lot of kind of working through perceptions to get folks to go along with depletion.

SENEY: You know, I know that the Upper Truckee people appealed to the members of Congress and to the State Legislature as well when they thought they were coming up on the short end of the stick. Did any of that ever get back to you in transcending this pressure

from those sources?

No Pressure from Congressional or State Legislators

KRAMER: Not pressure from those sources. There was, as we were negotiating TROA, one thing the T-T-S-A was concerned about and that was the, when they were doing an expansion of their waste treatment facilities they had to go to biological nitrogen removal, and the downtown Nevada party, the downstream Nevada parties complained about the water quality impacts that would occur downstream.

We had a bill in the legislature to change a water code provision so that we could give comity to the Nevada State Engineer decisions. They opposed the bill. And, ultimately, everything was nicely settled, with us contributing \$11 million to their, as their biological nitrogen removal process. But again, there they felt the TROA was adversely affecting their ability to do B-N-R [Biological Nitrogen Removal]. And, it was really not so much TROA as the opposition, the downstream Nevada parties to the N-A-R [Nitrogen Analysis Report].

SENEY: Did that \$11 million go to the Truckee Meadows Treatment people?

KRAMER: No. It went to the Tahoe, Tahoe Truckee Sanitation Agency's (Seney: Oh.)—it paid for part of the biological nitrogen removal.

SENEY: Oh, I see. They were, they were worried too much was going to get in?

KRAMER: Yeah. The Nevadans were worried that their expanding the plant would increase the loading (Seney: Ah.) downstream, and the only way to remove nitrogen is with biological nitrogen removal. So, the state paid in part for the B-N-R process. That's one case where the locals felt, we're very concerned about TROA and what it would do.

SENEY: Well, that was probably a good thing all the way around then wasn't it?

KRAMER: Yeah. It was a win-win.

SENEY: Yeah. Right. I mean in other words . . .

KRAMER: It was fortunate, it was fortunate it happened at a time when they had the money in the budget to do that.

SENEY: (Laugh) It wouldn't happen today?

KRAMER: Nope. Nope. (Laugh)

SENEY: Has the, there isn't any other money coming from the California side, though, on these things is there?

KRAMER: No.

SENEY: I know Senator Reid has [inaudible] reasons from time to time, if it needs to be done.

Senator Reid's Involvement

KRAMER: Oh yeah. There's no, no bond act or appropriations. (Seney: Right.) I mean, down the road there could be. The legislature can always (Seney: Right.) we can only do that which we have funding and authority to do, and the legislature could always provide it. (Seney: Right.) Senator Reid has provided funding for certain things that relate to TROA, and put \$200 million in the farm bill for, basically for restoration desert lakes. Some of that money has been made available.

SENEY: That's nice.

KRAMER: And he's put in place to reform the lake, Pyramid Lake.

SENEY: Oh. Yeah. Yeah. But, he's very clever at that kind of thing?

KRAMER: He's very good.

SENEY: He's a really capable legislator I think.

KRAMER: And, he's a very interesting man, because he has a concierge's memory. If he has ever met you he will remember you and say hello by name. (Seney: Yeah.) He has always gone way out of his way to say how he appreciates California, (Seney: Yeah.) and that was something that I greatly appreciated.

SENEY: Well, he certainly seems . . .

KRAMER: Inevitably whenever I've seen him he's always said how he is, and named my director, and "Do say hello to him for me, and we appreciate so much about what California's doing." (Seney: Yeah.) I mean, it's not just politics, he does it because he really means it.

SENEY: Yeah. Yeah. Right. Right. I think that's the way he is. He's a sensitive small-town guy.

KRAMER: Yeah.

SENEY: Right. Yeah.

KRAMER: Right. Right. But, he has certainly been a good friend to California.

SENEY: Yeah. Well, he's very wily, too. I mean there's no question he's got a good instinct for the process.

KRAMER: Well, it has been said on N-P-R [National Public Radio] that nobody plays the inside baseball in Congress better than he does.

SENEY: Yeah. Yeah. I believe that. And, his staff people that I've interviewed are just, you know, these people back in D-C want to just, are first rate. And, of course, Mary Conelly¹⁹ is too.

KRAMER: Oh yeah. She's terrific.

SENEY: Superb. Right. Right.

¹⁹ Mary Conelly served as Senator Reid's manager of his state Senate Office and participated in Reclamation's oral history program. See Mary Conelly, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation oral history interviews conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

- KRAMER: She's the senator's eyes, and ears, and nose, around, very effectively so.
- SENEY: Right. Yeah. Yeah. Yeah, she's . . .
- KRAMER: And, Wayne Mehl was good in the negotiations.²⁰
- SENEY: Yeah.
- KRAMER: One has heard from some people that they didn't like him. I thought he was terrific in the negotiations. They did a great job of keeping it moving as a facilitator. And, if he promised you something, you got it.
- SENEY: Right. I must say I've never heard any critical remarks on him with the people I've interviewed. That doesn't mean there weren't, or that they might not have said some things, (Kramer: Yeah.) but—yeah. And, I interviewed him too, obviously, and I thought he was very capable guy.

²⁰ Wayne Mehl participated in Reclamation's oral history program. See, Wayne E. Mehl, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

KRAMER: Very, very sharp, and capable. (Seney: Yeah.) Great facilitator. (Seney: Yeah.) One that had a great ability to keep the negotiations moving, (Seney: Right. Right.) rather by praise, or threat, or—we had one negotiation where we were all summoned back to Washington D-C, and I think the only reason for being back in Washington, D-C was A, to be in an incredibly cramped meeting room, and B, to remind all of the negotiators that “This is Washington, D-C. This is where it’s going to happen. (Laughter) Let’s keep things moving.”

Senator Reid Kept Things Moving

SENEY: That’s interesting isn’t it? Yeah.

KRAMER: Yeah.

SENEY: Well, I know Senator Reid maintains a constant interest in what’s happening with this stuff.

KRAMER: He has a great interest in, (Seney: Yeah.) in all of the water issues of western Nevada, (Seney: Right. Right.) Truckee and Walker [rivers] both.

SENEY: Yeah. I don’t know what—you know, I asked him when I interviewed him, “What made

you so interested?” “Well, it’s important,” he said, you know. And, . . .

KRAMER: Well, he was . . .

SENEY: Just nonchalantly.

KRAMER: He was done in the Senate when the wheels really fell off the train.

SENEY: Right. Right.

KRAMER: California had bombed on its interstate compact. Nevada, or the tribe had, was up against the ropes because they lost in the U.S. Supreme Court. (Seney: Yeah.) Nobody else was getting anything. Everybody else was just hanging onto the ropes, and he came at an excellent time and with great skill to get the parties talking to each other again. I mean, the two states were thinking, you know, “The heck with this, we’ll go up to the Supreme Court.”

SENEY: Yeah. Yeah. Well, you know, on election night in Reno, before he flew down to Las Vegas they said, “Well, what’s the, what’s your first priority as a senator?” And he said, you know, “To solve the water wars in northern Nevada. (Kramer: Uhm-hmm.) I

asked him, "Did you have any idea what you were getting into?" (Laugh) He laughed. He says, "No. I did not," you know. And . . .

KRAMER: But, he's hung in there, (Seney: Yes.) all the way along.

SENEY: Yeah. Yeah. Absolutely. That's—and it was interesting, not in this last election when he didn't have any opposition, but in the election before when he did, and it was a close election, there were a good many people in Reno who were very concerned Republicans to get him reelected, because of this settlement and the interstate allocation and maintaining that.

KRAMER: Right. Yeah. Somebody asked him why he won with 400 votes, what that meant. And he said, "Well, I had a 400 more votes than I needed." (Laugh) It was a real squeaker.

SENEY: It was. Yeah. And, which is not unusual in Nevada.

KRAMER: No. They . . .

SENEY: The home of close races. I think Laxalt won the first time by about seventy votes (Kramer: Uhm-hmm.) or something of that sort. Anything else you want to add on this

process?

KRAMER: Oh, I'll probably think of things.

SENEY: Well, think of something now before I go.

KRAMER: Wait a minute. Wait a minute, Don.
(Laughter)

SENEY: Before I'm down the hallway. (Laughter)

KRAMER: Stop. Well, you mentioned it's the first of several interviews. I'd like to—you know, you'll think of things, I'll think of things. (Seney: Right.) And, if you're doing a double whammy, (Seney: Okay.) I'll be happy to participate in that.

SENEY: Okay. Well, I may come back and do a follow-up with you. (Kramer: Sure.) And, if you can give me a call, and maybe make, if you like, make some notes after we've (Kramer: Yeah.) finished and, on things you want to discuss.

KRAMER: Or, as you listen to the tapes then—I meant to add, I'm happy to do that too.

SENEY: Okay. Well, so for now, thanks very much. And, on behalf of the Bureau I appreciate

your doing it.

KRAMER: Sure. Happy to do it.

SENEY: Okay.

END SIDE 1, TAPE 2. MAY 27, 2005.
END OF INTERVIEWS.