

ORAL HISTORY INTERVIEWS

LYMAN MCCONNELL



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OPEN FOR RESEARCH



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Donald B. Seney in 1994, 1995
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Statement of Donation

**STATEMENT OF DONATION
OF ORAL HISTORY INTERVIEW OF
LYMAN F. McCONNELL**

1. In accordance with the provisions of Chapter 21 of Title 44, United States Code, and subject to the terms, conditions, and restrictions set forth in this instrument, I, LYMAN F. McCONNELL, (hereinafter referred to as "the Donor"), of FALLON, NEVADA do hereby give, donate, and convey to the National Archives and Records Administration (hereinafter referred to as "the National Archives"), acting for and on behalf of the United States of America, all of my rights and title to, and interest in the information and responses (hereinafter referred to as "the Donated Materials") provided during the interview conducted on AUGUST 19, 1994, SEPTEMBER 9, 1994 and AUGUST 1, 1995, at FALLON, NEVADA and prepared for deposit with the National Archives and Records Administration in the following format: tape recording and transcript. This donation includes, but is not limited to, all copyright interests I now possess in the Donated Materials.
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INTERVIEWER: DONALD B. SENEY

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Editorial Convention

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

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

While we attempt to conform to most standard academic rules of usage (see *The Chicago Manual of Style*), we do not conform to those standards in this interview for individual's titles which then would only be capitalized in the text when they are specifically used as a title connected to a name, e.g., "Secretary of the Interior Gale Norton" as opposed to "Gale Norton, the secretary of the interior;" or "Commissioner John Keys" as opposed to "the commissioner, who was John Keys at the time." The convention in the Federal government is to capitalize titles always. Likewise formal titles of acts and offices are capitalized but abbreviated usages are not, e.g., Division of Planning as opposed to "planning;" the Reclamation Projects Authorization and Adjustment Act of 1992, as opposed to "the 1992 act."

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

Introduction

In 1988, the Bureau of Reclamation created a History Program. While headquartered in Denver, the History Program was developed as a bureau-wide program.

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

In the case of the Newlands Project, the senior historian consulted the regional director to design a special research project to take an all around look at one Reclamation project. The regional director suggested the Newlands Project, and the research program occurred between 1994 and signing of the Truckee River Operating Agreement in 2008. Professor Donald B. Seney of the Government Department at California State University-Sacramento (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.

Questions, comments, and suggestions may be addressed:

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For additional information about the Bureau of Reclamation's history program see:

www.usbr.gov/history

**Oral History Interviews
Lyman McConnell**

Seney: Today is August 19, 1994. My name is Donald Seney and I'm with Lyman McConnell, Project Manager of T-C-I-D [Truckee-Carson Irrigation District], in the T-C-I-D Office in Fallon, Nevada.

Good morning, Lyman.

McConnell: Good morning.

Seney: I want to start by asking you to tell me a little about your mother and your father, what they did and where you were born and how you got where you are today—in some detail, don't be too brief.

Early Life

McConnell: Alright, I was born in Atascadero, California, which is about half-way between San Francisco and Los Angeles. I lived in Paso Robles until I was about twelve years old and then we moved to the Los Angeles area. My dad owned a gas station in Paso Robles and then the freeway and the road was going around he got into another business of . . .

Seney: He was bypassed by the freeway?

McConnell: Yeah, and then they got into a business with appliances and electronics, at that time in the late '50s and the . . .

Seney: When were you born, by the way? What's your birth date?

McConnell: I was born February 5, 1944. So then he moved to the Los Angeles area with his partner that he was in this appliance and electronics business with, and he went to work for Northrop Aircraft at that time. So we moved to Hawthorne, California, and I went to school then at Leuzinger High and upon graduation, [I] went across the United States with a friend. My dad . . .

Seney: Just a little tour you mean, just to look at things?

McConnell: Yeah, just a little tour. We crossed the United States and I ended up staying in Maryland for about six months, working there as an electrician; then coming back and joining the Navy with a friend. After I went to about one-and-a-half semesters of junior college at El Camino.

Seney: This is before you went in the Navy?

McConnell: Yes. (Seney: Go ahead.) And in the Navy, I was trained in electronics. After getting out of the Navy, I went to work for I-B-M, after I went to some junior

college in the Los Angeles area and had a couple of jobs: one with General Dynamics and one with T-R-W. Then I went to work for I-B-M and stayed with them for about five years and continued my education until I decided that I wanted to complete my education on a full-time basis instead of part-time. So I took a leave of absence from I-B-M and got my degree in business administration from San Jose State and then went to law school at McGeorge School of Law, University Pacific in Sacramento. [I] graduated from law school . . .

Seney: What year was that?

McConnell: 1977. And in 1976, I got an opportunity to work for Judge Smart in Fallon, Nevada, while I was in law school. I got a summer job with Judge Smart here in Fallon, Nevada.

Seney: Doing what?

McConnell: I was his clerk and bailiff.

Seney: What kind of judge is he?

McConnell: He was the District Judge for the State of Nevada and his territory included Churchill County, Eureka County and Lander County.

Seney: Was he a trial judge or appellate judge?

McConnell: He was a trial judge, and he would travel to Eureka and he would travel to Lander County and to Battle Mountain, to Austin, and then we also traveled to Yerington, we went to Minden . . .

Seney: He would sit and hold court in all of these areas?

McConnell: He went to Reno and where he ended up in all these other areas was as an exchange with other judges when there were conflicts and they would assign certain matters to him and we would handle those.

Seney: You just get this off the bulletin board of the McGeorge School of Law "Wanted: a clerk for . . ."

McConnell: Well, what happened in law school was, my first year I went up and just worked as a carpenter and a laborer my first summer. But the second summer, I was looking for employment in the legal field and interviewed for various positions, and *that* was available and I got selected for that. So I came to Nevada for my first time in the summer of '76 and spent the summer.

At the conclusion of that summer, Judge Smart offered me a position for a year upon graduation, doing the same thing. So that's how I ended up in Fallon, Nevada. After I graduated from my law school, I took the California Bar and moved to Nevada in August of 1977. [I] went to work for Judge Smart for

approximately a year and took the Nevada Bar exam then the following year after I established residency. [I] then went to work for Judge Smart's old law firm, who was Diehl, Reconzone and Evans [phonetic spellings] at the time, and they had their offices here in Fallon, Nevada.

So in September of 1978, I went to work for Diehl, Reconzone and Evans about the same time as when the Truckee-Carson Irrigation District decided that they wanted a new general counsel and they selected Mike Evans of that law firm as their new general counsel. They had a man named Jim Johnson prior to that time who was out of Reno. I had just recently joined the law firm, so Mike Evans used me, along with himself, to help represent the district as well as the school district and the city of Fallon—we had the City of Fallon as a client—and the Churchill County School District and the Truckee-Carson Irrigation District as well as all the other miscellaneous work. It was a general law practice, in a sense.

Seney: Had your work with Judge Smart help you prepare for dealing with, say, T-C-I-D problems?

McConnell: No, the only thing that came up during the time that I was with Judge Smart was a case that involved a dispute between two irrigators up on the bench.

Seney: When you say, "Up on the bench," you mean Swingle Bench?

McConnell: Yes, and it was, I believe Joe Dahl, [phonetic spelling] and Willie May [phonetic spelling] were the two irrigators, and it was a private ditch that the district delivered at the head gate and it went through Joe Dahl's property and down to Willie May's property. Joe Dahl had a number of horses on the property, and Willie May was complaining that the horses were tramping down the ditch bank so that not sufficient water could get through so that he could irrigate.

It resulted, I guess, in quite a dispute between the individuals and got the ditchrider involved in it, and the ditchrider ended up in a fight—one of the water users hit him. (Seney: Fist fight, you mean?) Yeah, hit the ditchrider over this thing—one of the water users and I can't remember who it was—but it ended up in court on a *civil* dispute rather than a criminal matter. Judge Smart decided the case on the basis that Willie May had the right to have the water go through Joe Dahl's property, through the private irrigation easement, and that Joe Dahl could not *unreasonably* interfere with that right, although he was the underlying property owner. He had an obligation or a burden to make sure that the water got through there, and that Willie May had the right to come on Joe Dahl's property and repair the ditch if he felt it was necessary, because there were trees, I guess, that were obstructing the flow and things like that too. So that was about the *only* connection that I ever had prior to coming to work for Diehl, Evans, and Associates. [phonetic spelling]

Seney: Let me ask you something about when you first came to Fallon, Nevada. Atascadero, of course, is a rather small community, but then you've lived in Los

Angeles. Did you travel in the Navy? Did you get to see a little bit of the world when you were in the Navy?

McConnell: Well, we lived in Hawthorne, and I was there until I graduated from high school and went to one-and-a-half semesters of college at El Camino College. Then me and my friend took on this excursion across the United States because his girlfriend had moved to the Washington, D.C. area. Her dad was a doctor in the Agriculture Department of the United States and he got transferred to Washington, D.C., so we went back there to visit her. And as it turned out, we ended up staying six months instead of just on a visit. But, we got jobs doing things as electricians. And then when I joined the Navy, I went to electronics training and then crypto [cryptography] training and then was assigned to an aircraft carrier as the crypto repairman.

Seney: Well, what I'm trying to get at is something else. (McConnell: Okay.) I like Fallon, although my opinion is not important here. (McConnell: Alright.) But it's a small town. (McConnell: Right.) It's summertime, (McConnell: That's correct.) it's hot today. (McConnell: Right.) It's always hot, it seems like, in the summertime here. I mean, there may be *some* breaks. Here you come to Fallon, having been around a bit: What was your impression of Fallon when you got here to work for Judge Smart?

First Impressions of Fallon

McConnell: When I came for the summer the first time, Judge Smart's secretary had made arrangements for me to stay in a mobile home that was on the Bob Ghetos [phonetic spelling] Ranch. It turned out another individual from the same school went to work as a summer intern for Diehl, Reconzone and Evans, and so he ended up staying with me in the trailer also, (intercom interrupts briefly) so my experience in Fallon was that I was set up with a place to stay, with a nominal rent, in a trailer on a water user or farmer's property in Fallon, who had been here, I guess, for a number of years, and his father owned the property before him. They apparently came in and homesteaded it when the project was started. So that was a good experience from that standpoint because . . .

Seney: Did you like the town right away when you got here and you said, "This is nice?" or, "What have I gotten myself into?"

McConnell: Well, the first time I drove across the mountains leaving . . . Well, it goes back I guess. One summer when I was in law school, we came over the hill to visit a friend of my wife's from high school that was teaching now at Carson City. And so I recall the *first* time that we broached the hill out of Lake Tahoe and headed down into Nevada, that it was somewhat of a shock, because there were no trees, you know, you could just see for miles and you couldn't see any trees. And we traveled across the state that time in our Volkswagen bus, and it was extremely hot and we had our little daughter with us at that time. And so that was our experience the first time with Nevada. So the second time, when I came back to work for Judge Smart, and I came through Reno, I remember the alkali flats. I

didn't recall those previously, but I remember passing through some alkali flats on the way to Fallon, and wondering to myself what kind of a desolate place was I going to? But then a few miles down the road, started running into the irrigation project and all of the agricultural land and the trees and the alfalfa fields. And then a sign that said, "Fallon, Oasis of Nevada," and it *was*, sort of, in that sense, because that's what it reminded me of at the time.

Then being able to spend some time on that ranch, getting to know those people personally, getting to know the people that Judge Smart was associated with, and being invited, over the period of that summer—although my family still lived in Sacramento, my wife was working during the summer and we had a daughter—I was up here by myself. I'd go back on a couple of occasions to Sacramento, but I didn't go back very often—maybe only once or twice during the summer. So I had occasion then to be invited to various matters in the community with people that I was staying with, with the law firm, and it was, in a sense, a very warm feeling because they treated me like I was part of the family in a sense. I was staying on their ranch and they took real good care of me and the fact that Judge Smart's secretary personally knew them and set this up for me for staying there, made it kind of special. So it wasn't difficult for me to decide that I would like to come back and try a year.

Working for Judge Smart

Beyond that, from a legal standpoint, Judge Smart, in my travels around Nevada *with* him, I learned *during* that summer that I had, I guess, to be fortunate enough to get with a judge that was considered very intelligent and a very good judge. His name kind of more or less describes him. He ended up getting *the* highest or the second highest score on the Nevada Bar exam that there ever was, and that reputation went through his practice in the law. And when he was appointed as judge, he maintained that reputation as a judge. So he was in demand, in a sense, when people wanted to have a visiting judge come in, they wanted to have Judge Smart come in.

He was assigned a lot of difficult cases. I remember we got these kind of cases from the appeals from the Public Service Commission where there were some real difficult legal issues and those were assigned to Judge Smart. And we actually went to the Nevada Supreme Court on occasion because they wanted him to sit up there when there was a chance for a conflict with a Supreme Court Judge.

Seney: He could be assigned then to replace that justice?

McConnell: For that particular case. So I had a chance to do *that* with him. So as a result of that summer, besides the community, there was a legal reason to come here and he was very, very intelligent. In fact, he helped me with the Nevada bar exam because getting out of law school, you go through these bar exam courses to study and cram for the bar exam and the California one was, I believe, at the end of July, and it was after that point that I moved to Nevada in August. And then during that

year, I established residency and then he helped me review and prepare along with the other work that we were doing.

Seney: That must have been a big help.

McConnell: Oh, it was an extreme help, yeah, because he had a very good grasp of the law and could articulate it really well too.

Seney: Let me raise something else that you've mentioned, (McConnell: Okay.) in the beginning of your testimony before Senator [Bill] Bradley¹ and Senator [Harry] Reid² in December of '93, and that is kind of a personal reflection of why you liked Fallon, and that is, when you *were* in Sacramento, there was a kind of notorious rapist and the business of the helicopters going over. I'm trying to get a sense of the community and why you found it attractive. And I thought that when you mentioned those things that was interesting, and maybe if you'd do that for us I'd appreciate it.

McConnell: Sure. Well, after I was here for that summer and Judge Smart offered me the position for a year, I told him that I would favorably consider that.

Seney: So you had one more year of law school to go?

Moving to Fallon

McConnell: Yes, I had one more year of law school to go. So then when I went back to Sacramento, that last year was kind of an interesting year because we ended up, like you said, with this guy called the East Area Rapist, and it was out in the area that we lived. We lived east of Sacramento. The law school was downtown Sacramento, but I think it was about sixteen miles that we lived east of Sacramento. He came along, and what it created from our standpoint is we had a little daughter that was getting ready to go to school and we were taking her to day care, and also her school was across an empty field from the homes—we were inside a new home subdivision. He was in our area for some reason. What *I* did is, I went out—because we found out how he was supposedly getting into the houses, at least—this is rumor and speculation—that he was getting the sliding glass doors and the sliding windows to be open—so I went around and made sure that, from my wife's standpoint and safety, that we put boards and other things to protect the sliding doors and the sliding windows. Then we found out that he could unscrew them from the outside, so I went out and I remember drilling the Phillips head screws out so that they were just a smooth hole so that there wasn't any possibility for him to do that. Because we found out also that on some occasions what he would do is wait until the husband had left for the day and then

1. Senator William (Bill) W. Bradley served in the U.S. Senate for the state of New Jersey from 1979 to 1997.

2. Elected to the U.S. Senate in 1986, Sen. Harry Reid represented the state of Nevada from 1987 to 2017.

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

come in and get the woman in the early mornings. And then he started getting more aggressive and just started doing it when everybody was home at night.

But the thing that kept it in our mind besides being on the news was that we lived along sort of a creek bed that had been turned in to a drainage channel, and the Sheriff's helicopter would fly over that every night with the big spotlight coming down from the helicopter. I presume that the main purpose of that was to let everybody know that "we're here to protect you" but it also reminded us that guy was still out there and so we had that constant reminder. And then a couple of the problems occurred with a couple of kids at the bus stops getting kidnapped and never being found, and so it made it real nervous for us.

Seney: Did you say to your wife, "Gee, Honey, you can't believe that in Fallon none of this goes on"?

McConnell: (chuckles) Well, at that time, see, I'd only been in Fallon a couple of months, and she came up and visited on one occasion and we went out to some of these areas. Then when we made the decision to move here at the end of my graduation from law school, she was kind of still uneasy about it, because it was, when she first came over to visit us, small. And she's used to the bigger cities, because I met her and we got married and lived in the Bay Area in a community called Belmont and that's where she had gone to high school.

Then when I went to law school, we moved to Sacramento so she was used to a larger community. I was, since I was about twelve years old, used to larger communities. So to come to Nevada for *her* was a challenge I guess, but we only committed it for one year. From our perspective, we were going back to California. But once we got here and once it started growing on you, once Nevada starts growing on you, you can see the mountains, you don't see any trees, you start getting used to the open space, you get used to the smaller community, you get used to the friendly atmosphere.

I remember when we first moved into the house and the neighbor moved in and he would go on vacation and he would tell us that he was leaving and he'd ask us to check on certain things. And we'd go over there and check it, and he wanted us to go in the house and do these various things. And we were kind of a little uncertain about it because if something was missing, we'd have the opportunity to be blamed for that. But when we did so, we found out that people didn't lock their houses when they go on vacation. People left their keys in their car when they left them downtown at the store! They'd just get out and leave the keys in the car, and they didn't lock it. We were coming from Sacramento and that problem that we experienced. We were the kind of people that *locked* everything when you left. You got out of the car, you locked it; you left the house, you locked it; you made sure it was all locked up. And from the experiences with that East Area Rapist, we went around and checked to make sure all the boards and everything were boarded, the windows so they couldn't be slid. So it was a different change and it was a *welcome* change in a sense.

But we never initially took to it, and I guess to a certain extent I *don't* take to it yet, because I still kind of lock the cars and I still kind of lock the house. Whereas, the neighbors still leave it open it today. Let's see, we've been here now seventeen years, and so it's the longest I've ever lived in any one place; it's the longest my wife has lived in any one place. And my children, with the exception of my oldest daughter, it's the only place that they've lived.

Seney: You know, as I read the various published comments, some of them in the testimony that Mr. Schank gave and in other places. I've read things he's written. I've noticed those too as I've read other oral histories up here in the Churchill County Museum, (McConnell: Yes.) something that the local people talk about over and over again is the style of life here in Fallon and that the community is viable *because* of the [Newlands] project.³ And that it's more than just water flowing and I mean it's a culture and it's a way of life that's threatened if the water is threatened. Do you see it that way as well?

Adjusting to a Small Community

McConnell: Well, what's really interesting to me is that you can still read letters to the editor in the local paper today of people that have come through Fallon, have experienced a problem, have received some help from people in the community and they write back to the editor (Seney: Maybe their car's broken down or something.) and tell them that they're really thankful for these people and what they did for them. What I infer from the letter is that they can't believe that it still occurs where strangers can be greeted by people and helped by somebody when they don't know them and never met them, probably never see them again.

So it still goes on, although the community is growing. Since we've been here, we've seen a lot of changes. It used to be that I could go and stop at any corner and immediately go with the traffic because there wasn't much traffic. Now, if you stop and you have to wait for six or seven or eight cars, it's like an infringement, I guess, (chuckles) on your freedom, in a sense. And we've gone back to Los Angeles and the Bay Area and Sacramento on vacations and visits and we've been in this atmosphere so long that now the traffic in those areas is overwhelming for us.

It took my wife about a year-and-a-half before she got adjusted to the community, because it was smaller and she liked the shopping and there wasn't much shopping and we'd go to Reno. It reminded me of when I was a child because we lived in Paso Robles and Paso Robles was a small community in comparison to San Luis Obispo, which was the county seat, and my aunt and uncle lived in San Luis Obispo. I remember riding in the car with my parents and it would take us about an hour at that time, even though it was only about

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

thirty-five miles, it took us about an hour to go to San Luis Obispo to visit my aunt and uncle and go shopping, because there was more shopping there. And so I started thinking about it, when we go to Reno with the kids, that it was a similar situation or circumstance, although it was in different context.

But the community is still a friendly community. It used to be that you could go into a store and you'd run into a whole bunch of people that you knew. Now, you see more people that you don't know, you see a lot of people still that you know, but you see a lot of people that you don't know. So the community is expanding and it's changing as a result of that.

Seney: Changing how?

McConnell: Well, it's changing in a sense that you don't feel as if everything you do, everybody knows about it. Whereas, before, in a smaller community, the disadvantage of a small community is it's like living in a glass house.

Seney: Takes some getting used to for you?

McConnell: Yeah, it does, because everybody knows *who* you are, everybody knows *what* you do, and if something goes wrong or maybe you do something that you don't think that somebody should know about, everybody's going to know about it. (Seney: There are no secrets.) No secrets, yeah, and that's *one* thing that we found in this community, *because* of that, is that you hear about more problems. You hear about medical problems that people have in the community that we didn't hear about in the larger communities. And I think that's more of the result of the fact that because it's smaller, you know more people, you talk about more things and they know more people and they talk about them. Whereas, in a larger community, you barely know your neighbor. (Seney: And you don't talk to anyone, really.) That's exactly right. You go to work, you talk to the people at work, you may talk to a couple neighbors around you and your relatives, but you don't have a community connection. Unless, I guess, you get into a community group that has a little broader connection or some club or something like that.

Seney: And all along you've been a prominent and visible member of the community. I mean I would think as a new lawyer, first of all, working for Judge Smart, you would have gotten known pretty widely, pretty quickly, and as you say, included in the social events of the people on whose farm on which you stayed. And then as you come back to work for him again and then go to work for the law firm, I mean, you're going to be pretty visible, I would think.

McConnell: Yeah, you're right. And in fact, what happened as a result of it, is that I got to meet quite a few people in the community, because basically they were the only, there was a couple of other law firms, but they were the *main* law firm and they had most of the business and most of the large ranchers actually used them.

END SIDE 1, TAPE 1. AUGUST 19, 1994.

BEGIN SIDE 2, TAPE 1. AUGUST 19, 1994.

Seney: Alright, this time I'm certain that we're in business here on this and that the tape is working. My apologies to you. We just had a problem with the tape not being turned on. So I'm going to have to ask you to repeat what you've already told me with my apologies, *on the tape*.

McConnell: Alright, where should we go back?

Seney: Well, why don't we start by . . . You know, some of the things you said were *really* interesting, and I could just kick myself all over the place for not getting it, because one of the things we want to get a feel of is the town too, and what the place is like. I mean this is all a part of the history of it and you were talking about working for both the school board and working in the city attorney's office prosecuting misdemeanors and some of the politics of prosecuting misdemeanors in a small town. And then you were talking too about them shifting over more into the water district and becoming involved in that and the various directors and the project managers and how their tenures have sort of shortened up, at least for a period of time. I'm sorry to have to ask you to go over this again.

McConnell: Well, we'll see if we can recreate it.

Seney: Alright, thank you. What I started out by asking was, say, the difference between working on the school board problems and working on T-C-I-D problems, because in a small town, both of these functions are very visible and there's a lot of politics, which means, I think, in a small town, a lot of people take an interest. You're going to get a lot of phone calls and probably when you're even out at the store, you're going to be stopped and maybe questioned or (McConnell: Sure.) people would be trying to influence you about these things. In that context, if you could talk about it for me.

Legal Issues in a Small Town

McConnell: Yeah, that's very true. In my position with the law firm I ended up representing the school district with Mike Evans and working with Mike Evans then on the [water] district business: He was the general counsel for the district [TCID]. And so we would share those responsibilities. At first, I was just doing it for research for him and he was the primary person that attended the meetings and then he would bring things back and ask me to do research on this or that. And then eventually, he started having *me* go to the meetings themselves, and then we eventually got to the point where he was doing one and I was doing the other. And then after a period of months we would shift so that we didn't get stale and that everybody could keep up on the current activities in case somebody left or had a problem, that they could come in and take over.

With the school district, when we first started, that was the most visible because as you indicated that there's always somebody watching the school district and the activities in a small community. There was negotiations always ongoing

with the teachers so I got involved in those negotiations.

And then I would start working, I did prosecutions for the city. I was working with Mario, he was the City Attorney, I was the Deputy City Attorney. He asked me to do the prosecutions and then he would back me up on those, so if I had conflicts in my major three responsibility areas, then he would handle them. But it was kind of difficult in a sense of prosecuting in the city, because I have never had any interest in criminal law. I only took the one criminal law course that was required in law school, [I] had no other interest in it. So when I was starting to prosecute the criminal matters in the city, it was a new and different experience for me. But it was difficult too, because people know people, they were always asking for special consideration. The Police Department was an old-time police department. They had people on there that had been there for years and knew community members. And so usually we didn't see the ones in the criminal court, except for the ones that they felt that they had no other choice but to charge them with some crime. There was also a transition period there where they were retiring, new people were being hired, and we ended up with a change in the Police Department so that there would be more and more criminal complaints filed, because they just didn't have the history or the connection with the community as the old-timers did.

Seney: Did you find yourself going to the police and saying, "Gees, we don't need these. I mean can you handle these another way?" Or . . .

McConnell: Well, we found ourselves talking some matters over with the police, but we had a police chief at that time who had attended the F-B-I Academy and he was a young fellow about my age at the time, and so we got along fairly well. And him, working with the judge, we're trying to meet out justice in a sense of how they administered the laws. And so you had a lot of flexibility, and it wasn't, "Because you broke the law, you're going to get a ticket and you're going to go to court and you're going to pay a fine." There was a lot of flexibility in how the law was administered, and it was trying to be accomplished, I think, in a fair manner. (Seney: Yeah.) But you always had what other people felt were favoritisms. People felt, "Well, this guy *always* gets off because of who he knows." And, to a certain extent you saw that, because people would come in that would be old-time friends or school buddies of the attorneys in the firm and they would be saying, "Well, you know, what about this? Can't you take care of this for me?" Or, "Can't you take care of that for me?" So then they would, on occasion, go over and talk to political appointees and see if there was some way to handle the matter in a different form.

Seney: And you'd have to be sensitive to that I would take it.

McConnell: That's correct. In fact, I remember one incident—I won't mention who it was (Seney: Sure.) but I remember when I was in the law office working on a project and I had a particular deadline. And one guy came in that was a friend of one of the partners in the firm and an old-time friend and a good friend and he wanted to

see him and he wasn't in, and so he wanted to see me about a particular matter. I told the girls that I was busy and I had to get this job done and then ask him if he could please make an appointment. That irritated him very much, so in fact, when the partner got back the next week, he heard about it from his friend, and so we had a discussion and talked about it as to why I couldn't have taken care of that for him.

And so I became a little more sensitive to those type of things. And you don't have the ability to stick to a particular problem when in this small community there's people come in (Seney: You drop it and you see them.) and they expect to be treated *right now*. (Seney: Yeah.) And they expect to see somebody (Seney: Right now.) right now. And I suppose, to a certain extent, that probably occurs in the big cities where you have power connections or whatever, that somebody thinks that they're very important and they need to be seen right now and people are sensitive to that. Well, I wasn't as sensitive to it as I should have been I guess.

Seney: That's true in this job that you have now, isn't it?

Issues in Managing the Water District

McConnell: Oh, it's *very* true in this job, very true and it makes it very difficult for me to get things done because of that. There's various interruptions and *all kinds* of interruptions and things just can't wait, they have to be taken care of, something has to be done.

Seney: And they won't necessarily be earthshaking matters (McConnell: That's right.) but somebody wants to see you and when I was here this morning getting ready to see you, someone said, "Where's Lyman?" And they said, "Well, he's busy." "Oh." I don't think it was a bad "oh", it was just, "Oh, he's busy." (McConnell: Right.) And they went on about their business. I'm sure you'll be seeing them later today when we're finished.

McConnell: That's correct, but that happens an awful lot. (Seney: Yeah.) We've tried to change the district from the time that I first came here into a little more professional business so that we can get the business of the district done. Because in the past, there would be so many interruptions that you just couldn't get anything [done]. (Seney: Yeah.) You were constantly handling these small little crises, in a sense, that were *urgent* but necessarily not that important. But they might have been important from that other person's perspective (Seney: Sure.) and that's what you get, is that it's a problem for them and it's most important for them, but it really isn't that important. But, we had to always take those kind of interruptions, and so now we're trying to smooth it into more of an appointment-type affair, trying to still take care of the problems, but do it on an appointment basis and not have as many as the spontaneous interruptions.

Seney: Are you making much headway with that?

McConnell: Oh yeah, we've been fairly successful. People recognize (Seney: Yeah.) the way we've approached it is to not just turn them off, and we've tried to be able to answer little questions by people (Seney: Yeah.), but the major things, we've moved them into appointments and the community has adjusted. At first it was difficult. We've had changes here at the district and there's always constant change, it seems, in today's world. I attribute that to the electronics. The fact that we have FAXes and computers, whereas before, when you mailed something, it took a few days to get it in the mail. And now everybody wants to FAX something to you, or they want to send it on the computer and they want an answer immediately, so you don't have as much time. And the issues are more complicated (Seney: Yeah.) so it really takes more time to deal with them but you have less time to do it, so it's a pressure from both ends. But in any event, we've been able to at least move the district in a better professional manner.

For example, when I first came to the district—just on an aside—the way they were sending out water cards, they had an old metal stamp . . .

Seney: What's a water card?

McConnell: A water card is what they send to the users once a month telling them how much water that we've delivered to them and how much water they have available left, and so it's sort of a monthly report on their water use. And so they had a metal stamp with each one of the water users' name and address on this metal stamp, and they had it put on a drum and they would roll these cards through this drum with an ink pen of some sort and that's how they stamped the card and sent it out. We didn't have any computers, everything was hand done at that time and we're talking about 1984, so it wasn't that long ago. (Seney: Yeah.) But, in any event, it was very difficult to get information because of that, because everything had to be done by hand. But we didn't have the particular problems we have now either, it was just starting.

Seney: Let me ask you to say something you've said already, wouldn't have to say again if I'd only pushed the pause button, and that is about the shortening tenures of the directors and the project managers. You've been here ten years.

McConnell: I'll be here ten years the first of November.

Seney: But tell me a little about what you said before about the tenure of the directors.

Water District Manager Tenures

McConnell: Yeah, we talked a little bit about the board members being long-tenured board members. (Seney: Right, board members.) Ted De Braga's⁴ been on the board for

4. Mr. Ted De Braga participated in Reclamation's Newlands Series oral history project. See Ted De Braga, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Donald B. Seney, Bureau of Reclamation, August 5 and 11, 1994, in Fallon, Nevada, edited by Donald B. Seney, (continued...)

twenty years and that was pretty much the norm, and in fact . . .

Seney: Unopposed in elections and . . .

McConnell: Normally that's true, or they had it all figured out who was going to do it, or they got together and said, "Okay, this guy's handling it." So they were on the board for long-term . . .

Seney: "It's his turn now, I'm going to quit. (McConnell: Right.) And you take over for me," and everybody agrees and there's no controversy over it.

McConnell: Right, and that was up until the late '60s, that was when the manager of the project was apparently long-term because he had been with the project for, I believe, twenty years or more when he retired. And then they hired a new manager and at that time he was an accountant, I believe. They hired him and he lasted ten years. And then when *he* was released—and I think they probably resulted in these various changes—like in the late '60s, you had all these negotiations about the Nine-Point Program and the new OCAPs, [operating criteria and procedures]. So maybe the old-time manager sees things becoming more difficult, harder to deal with, so he's been here long enough, he's going to retire. So that might have been an amicable transfer.

The new manager comes on, and in ten years now you're into the late '70s and you've got a lot of litigation ongoing with the Alpine Decree on the Carson River to get *it* concluded.⁵ You have a change in allocation of water on the system for the Fernley people, which is very controversial, and you have a drought. So you have a number of things that create a lot of conflict, and so that manager . . .

Seney: Let me just stop you to ask you to maybe explain a little more: What was the change on the Fernley? That's the Truckee Division of the project. What was the change in the allocation there that caused a problem?

McConnell: Up until the time, I guess, that they got into the litigation which started in 1973 or '72 . . .

Seney: This was Judge Gesell's . . .

McConnell: Judge Gesell's litigation . . .

4. (...continued)

www.usbr.gov/history/oralhist.html.

5. 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. The decree did not make an interstate allocation of the Carson River between California and Nevada; it only quantified individual water rights.

Seney: . . . decision that really begins the OCAP process.

McConnell: OCAP, right. Up until that time, and maybe even up until '68, I don't know if we recorded the stuff that we talked about when this started in the late '60s or mid '60s.

Seney: No, we should probably say that again, I'm afraid.

Background of Irrigation District's Legal Issues

McConnell: Okay. My perspective from being here the length of time I have, plus the legal work I did for the district prior to becoming the manager, my perspective the history is that it started somewhere in the mid '60s and that . . .

Seney: When it becomes controversial and more difficult to manage the project.

McConnell: Right. And you have the Endangered Species Act being passed, you have the *quii* being one of the first ones listed, if not the first one. You have the Pyramid [Lake Paiute] Tribe trying to get more acknowledgment of water for them and you had Senator [Ted] Kennedy and Senator [John] Tunney from California,⁶ come out and look at the lake and recognize, (Seney: Pyramid Lake.) Pyramid Lake—and recognize that there are problems, and saying that they can solve this problem with the stroke of the pen—presumably meaning legislation, they could create legislation. So you have negotiations then with the water users and you have a new OCAP in 1968, and then you have the Nine-Point Program that was agreed to by the water users. The major thing that it did was change the flow of water through the project. Prior to 1968, the project had, and controlled, all of the electrical distribution system for electrical household residential use in Churchill [County], Lyon [County], parts of Storey County, parts of Washoe County. And they used the hydropower generation at Lahontan [Dam]⁷ to provide some of that power. Then they built, in the mid '50s, *another* power plant on the canal system that added additional power. So they would run water *constantly* year round, through Lahontan, through the power plant and through the power plant on the Villas out to the wetlands. So up until that time there was always sufficient water for the wetlands, that wasn't a problem. And it really became then a tug between Pyramid Lake and the wetlands in a sense, or the project, as to who should have that water.

So that was one of the first things that occurred, to agree and stop water going through the power plants during the non-irrigation season, instead of year round. So that was the beginning of less water for the project. And then, at the same time, the states were concluding their negotiations on the Interstate Compacts on the Truckee River, the Carson River and the Walker River: All

6. Massachusetts Senator Edward (Ted) Kennedy served in the U.S. Senate from 1962 to 2007; Senator John Tunney represented the state of California from 1971 to 1977.

7. Reclamation completed construction of Lahontan Dam in 1915. The dam and reservoir provide the primary storage for the Newlands Project on the Carson River.

three rivers start in California and all terminate in Nevada.⁸ And the state legislatures in '69 and '70 *approving* that Interstate Compact on those three rivers and that being submitted to Washington, D.C. for approval by Congress, along with the Nine-Point Program to try to set a new standard for water use on the project and an operating criteria being sent to Washington, D.C. for approval.

Seney: Let me ask you, did the district, to your knowledge, and the users, regard giving up the winter generation of power as a big compromise on their part?

McConnell: I think they *did*, because at the same time, what they did is, they turned over the electrical distribution system in a lease to Sierra Pacific for thirty years. So they . . .

Seney: I wanted to ask you about that, I know Sierra Pacific now operates the power generation and the system itself.

McConnell: Yeah, in June of 1968, which was the same time that we're talking about the negotiations in this Nine-Point Program, the reduction of flow of water year round, the district leases the electrical distribution system to Sierra Pacific Power Company for thirty years. So they see that they're not going to have the power production to deliver the power to the residents.

Seney: Which helped the revenue offset operating of O&M [operation and maintenance] costs on the project, didn't it?

McConnell: Yes, the revenue that we got from the lease of that was used to offset O&M costs to the water users. At *that* time, the water costs were real small and it was flat for everybody, and there was no concern, or wasn't a *major* concern as to how much water was provided to people. Because under the Reclamation Act they could provide excess water, they could sell excess water, so they were in the business of selling excess water. (Seney: The district was.) The district was, yeah.

Seney: I know people used to water their lawns off of the canals, didn't they and the laterals and so forth?

McConnell: Some still do.

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

Seney: Some still do?

McConnell: Yeah.

Seney: And they did in those days?

McConnell: I presume they did, yeah. (Seney: Yeah.) So the end of '68, you have a long-time manager, you have a lot of long-time board members and you have a lot of controversy occurring, so the board starts to change. The manager decides to retire, they hire a new manager, he comes on and he's here for ten years, so now he's only here for *half* the period of time that the prior managers; the board members change. So in 1977 or '78 is when *that* manager left after ten years.

Seney: Do you know why he left, any specifics about his leaving?

McConnell: No, I don't. (Seney: Okay.) But I know what happened is that the board took one of their own members and made them the manager, so their might have been . . . Maybe it's the personality of the people, because that board member that became manager on an interim basis became and stayed for *five* years.

Seney: And his name was?

McConnell: And his name was Dick Latton [phonetic spelling] and then he was eventually let go because of a power struggle between the board members and himself. So maybe he was an overriding political force or outspoken force in that termination of the prior manager. Because he eventually ended up in a situation of power struggle with the board, thinking that he had the better knowledge and the best knowledge to make the decisions rather than the board, and the board felt that it was a collective decision, which is proper.

So we have early '70s that the Pyramid Lake Task Force being formed; we have, as I said, the Nine-Point Program and the Interstate Compacts going to Washington to be approved by Congress.

Seney: Which they were not, the Interstate Compacts.

McConnell: Which they eventually were not, that's correct.

Seney: Why wasn't that? What's your understanding of the defeat of the Interstate Compact?

McConnell: It's my perspective that the reason that the Interstate Compact did not get approved is because of the Pyramid Tribe's objections to it. That's the only thing I can say. At the same time, they had the Pyramid Lake Task Force formed and the Nine-Point Program; they were all defeated. The Task Force came up with programs to improve the efficiency on the project to get more water to Pyramid Lake.

[In] 1972, there's a lawsuit brought against the United States in Washington, D.C. by the Pyramid Tribe to say that the OCAP that they developed didn't go far enough.⁹ So, out of *that* litigation, they eventually got a *new* OCAP that the tribe liked.

Seney: Now the district did not participate in this?

McConnell: That's correct, we were not a participant in that lawsuit, and so what happened then, when the government got the court order and then told the district to comply with that court order, the district felt that there was no way that we *could*, because it was a *drastic* reduction. It was from 406 [acre feet], which was the OCAP 1968 maximum amount for the project down to 288 [acre feet], so it was a *drastic* reduction.

Seney: If I could say, the 406, when that comes into Lahontan [Reservoir], because there's a sixty-two percent efficiency, I think, in the district, you need the 406 in order to deliver something around a little less than 300,000 acre feet, actually out to the water users. Do I understand that right?

McConnell: We were using at that time, in the neighborhood, I think, of around 360,000 to 390,000 [acre feet] for the total project, so the 406 was sufficient when you shut off the power generation. You take the power generation and it's substantially more, because you're running water year round through that power plant. (Seney: Yeah.) So the 406 is substantial to meet everybody's water rights, and then if you take today's water rights, which is basically the water rights that were in existence then, and you divide them by the current efficiency under the OCAP, to deliver the current water, it takes in the neighborhood of 420,000 acre feet. So the 406 was less than what it would have taken to deliver all the water, but everybody wasn't using all of their water. (Seney: Yeah.) So the 406 apparently was considered to be reasonable and was apparently acceptable by the district, because they had things Nine-Point Program that they were willing to agree upon, which part of it was to give up this hydrogeneration during the winter months.

Seney: But Judge Gesell's order is for an OCAP of 285. That is, you're only going to get 285 into Lahontan [Reservoir], and the district thinks that this is *way* below what's appropriate and necessary.

McConnell: Right, because they've been using in the neighborhood of 360 to 390, (Seney: Right.) so there was *no way* they felt that there was any way that they could comply with that particular criteria. So when the order came out in '73, and the government sent that to the district to comply with it, they had discussions, they complied with various provisions of it. For example, at that time, the way water was ordered and delivered, the ditchriders took the water orders from the users and delivered the water. One of the conditions of that OCAP in '73 was that there be a *central* water-ordering system, so that was developed and begun.

9. The case referred to here is *Pyramid Lake Paiute Tribe v. Rogers C.B. Morton, Secretary of the Interior* (1972).

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- Seney: So you get a watermaster now for the first time in the . . .
- McConnell: Well, I think that, and I'm not sure how the watermaster, how far they go back, but it seems like the watermaster has been around for a long time and I can't tell you how that really evolved, but . . .
- Seney: There's seven sub-districts within T-C-I-D, am I right?
- McConnell: There's seven sub-districts for board members.
- Seney: Are those the same districts that the ditchriders oversee?
- McConnell: Those are *not*, at the current time, and I don't know if they were at one time.
- Seney: Whether they were then, when we're talking about this sort of, where the ditchrider would take the order (McConnell: Right.) and then just deliver without a central . . .
- McConnell: Right. Right now there's ten, I think, irrigation sub-districts that we call them, and there's seven sub-districts for election of board members, and they overlap, they're not the same.
- Seney: So you were saying that now under the OCAP you've got to have a central system for . . .
- McConnell: Central system for ordering, that's one of the criteria. The other criteria is . . .
- Seney: And the district was willing to go along with that?
- McConnell: Oh, the district began doing a lot of the things under that OCAP, it's the 288 [acre feet] that they weren't willing to comply with, and they felt *couldn't* comply with based upon the water that they were using and delivering, and the efficiencies on the project. So basically they ended up with a dispute over that with the Secretary [of the Interior]. And the Secretary gave them notice under the contract—it was a 1926 contract—gave them notice that they were going to terminate that '26 contract in one year. That was the provisions in the contract, one-year notice of termination.
- So, you have that occurring in '73, '74, and the district then bringing a lawsuit saying, "You can't terminate the contract because we weren't parties to that lawsuit and besides it doesn't deliver water in accords with the decrees." And at the same time . . .
- Seney: Decrees being the . . .
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McConnell: Alpine and the Orr Ditch decrees.¹⁰

Seney: Yeah, interim Alpine and the final Orr Ditch Decree.

McConnell: So then I believe it was about that same time that they began the process of concluding the Alpine Decree to a final decree and so [in] '74, '75, '73—I'm not sure exactly when that started pushing—but I believe in '75 it was tried and the decision was made in 1980.

Seney: Now on the Carson [River], the district has very junior rights, don't they, to water?

McConnell: On the Carson, we're the last priority on the system, and there's a couple of water rights that are below the project that have an earlier priority, and then the government has acquired . . . At the time the project was begun, there was about 20,000 acres that was being irrigated in the valley, so they have 1800 priorities, so they had earlier priorities in the project. The government acquired those water rights in exchange for a project water right and that provided them with the storage in Lahontan, provided them with a better supply. [That] was the theory, for people to trade their water rights, that they would get a better supply because there would be carryover storage and then there would be supplemental water from the Truckee River.

So then you have these controversial matters happening with the new manager, the second manager that I was referring to.

Seney: The man who was the board member?

McConnell: No, this was before him.

Seney: Before him?

McConnell: Yeah, this guy, his name was . . . I'll have to get it for you, I can't think of it right now. And then you have the drought in '76 and '77, then you have . . .

Seney: That was a very severe drought, although not a very long one.

McConnell: Right, exactly. And the prior drought to that was in '61 and '62, so you're talking about fifteen, sixteen years, so the project people hadn't been used to any kind of a dry year, when we get a fifty percent year.

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?](http://www.tcid.org/support/faq-detail-view/what-is-the-orr-ditch-decree-and-why-is-it-important) (Accessed 5/2016).

Seney: Is that '70-what?

McConnell: [In] '77 [it] was a fifty percent year—fifty or forty, I'm not sure, but I think it was in that neighborhood. (Seney: Yeah.) So that's pretty drastic for the folks to experience over this long period of time.

At the same time, with the Alpine litigation ongoing, you have a need by the government and the OCAP from the '73 OCAP to say, "You guys can't be distributing excess water." And so there was a . . .

Seney: There *isn't* any excess water anymore.

McConnell: Right. So then on the Truckee Division, they were delivering six and seven acre feet *per acre* to those folks, because they felt that they needed it and were willing to pay for it.

Seney: Even though their right would have been . . .

McConnell: Four-and-a-half.

Seney: We're talking now about Fernley and up in the Truckee Division of the project?

McConnell: That's correct.

Seney: Swingle Bench and so forth.

McConnell: That's correct. So there was a meeting then, that was held, to *cut back* everybody to four-and-a-half, and *that's* going to occur in that time. So there's a lot of controversy now for the current manager and then on the board itself. So there's a change of *that* manager after ten years. (Seney: Right.)

END SIDE 2, TAPE 1. AUGUST 19, 1994.

BEGIN SIDE 1, TAPE 2. AUGUST 19, 1994.

Seney: This August 19, 1994, my name is Donald Seney, and I'm with Lyman McConnell, Project Manager of T-C-I-D, in the T-C-I-D office in Fallon, Nevada. Go ahead Lyman, we're talking about some more about the controversy surrounding the manager.

Early Controversies and Issues with the Project Manager

McConnell: So in 1977-78 period is when they have a lot of these controversies ongoing and the drought, so there is a change in management. I can't tell you why. I don't know the circumstances other than the personality of the board member that becomes the manager, and remains the manager for the next five years, gets into a dispute with the board in the five years as a power struggle as to whether who should be making the decisions. And so he's let go by the board, and so maybe he

had some influence in that process. Then they hire a new manager and he last for two years.

Seney: Now we're up to about 1983 or so. And you're here now handling legal problems for the board, or at least working with the partner and whatnot handling the legal problems.

McConnell: Right. We started, Mike Evans started being the general council I believe in September of '78, which is about the same time that I come to work for the law firm. And so I'm doing research for him, getting a little familiar with it. Then I become moving in doing some of the attendance at the board meetings, then taking over some the responsibilities on a primary basis, and then shifting around with Mike Evans. I'm becoming more familiar through the late '70s early '80s.

Seney: You were observing then this conflict with this former board member, now manager, and the board itself

McConnell: No. We didn't detect it. Most of our dealings were with the manager and secretary treasurer. They got along very well and operated the district and they would bring these problems to us. And on occasion we would have to come to the board meetings. One thing we didn't do, which I think in retrospect probably should have been different, we didn't attend the board meetings on a regular basis. We only came to board meetings when there was a potential problem, or when they requested our attendance. Whereas it should have been, we should have been there on a regular basis just to pick up on what's going on; to see what's happening. But that wasn't the way they wanted to operate, or that wasn't the way Mike wanted to operate. And I'm not sure how that worked out, but we were only at board meetings for specific subjects and only when we were requested. So most of our dealings were with the manager. I didn't detect that until it actually occurred.

Seney: Let me just ask you, because I'm kind of curious about this, because we're talking about the fish bowl existence, which the board operates. In the community there wasn't much indication of the struggle that was going on until it actually erupted when the manager is terminated? You were not aware of it.

McConnell: I was not aware of it. I don't have any specific or clear recollection of that at the time.

Seney: You started talking about the Alpine Ditch Decree

McConnell: Back when the new OCAP was implemented '73-'74, the city and the county and the wildlife federation of Nevada filed suit against the government for implementation of the OCAP, saying that an E-I-S had not been done, environmental impact study. And so that got to a head and the government agreed to do an E-I-S. So in '76-'77 was the draft E-I-S, which they never completed.

Seney: Why wasn't it completed?

McConnell: Well I think why it wasn't completed was because in 1980 the Alpine Decree came out and changed the basic understandings of everybody. Some of the contracts on the project had a limit of acre feet per acre, and the Alpine Decree said that the government couldn't limit it 3 acre feet; beneficial use was the limitation, and set 3 ½ acre feet as the limit for bottom lands and 4 ½ acre feet as the limit for bench lands. And said that the water users basically own the water rights not the United States, and that any transfers would go through the State Engineer's Office in the State of Nevada. Prior to that time, the government was handling any particular transfers of water rights and it was considered to be owned by the government, because the Orr Ditch Decree says that the water was given to the United States for the project. And the Alpine was basically saying the same thing because the government had gone in to appropriate the water for the project.

Seney: A little earlier in '73 there was a court case *Nevada v. United States* where the Supreme Court had said that, is it '73, am I right about Nevada against the United States (McConnell: No that's '83) okay '83.

Pyramid Lake Paiute Tribes Legal Actions

McConnell: So you have the Alpine case finished in 1980 and then you also have started back in 1973 in addition to the OCAP case the tribe and the government filed action in the Orr Ditch case to open up the Orr Ditch Decree and give the tribe an 1859 priority, the date when the reservation was acknowledged. And so they were looking for a right that would almost precede everybody on the Truckee River. And that ends up then with the decision of the district court and the 9th Circuit . . . Well what it actually turned out the district court said that the decree is over, *race judicata*, the United States represented the tribe, if you've got any bitch with the outcome, then you go sue the government. Okay, and they had, by the way they had. And in 1976 they had settled with the government for \$8 million for loss of water up to that point.

Seney: Because the situation was when negotiations went on originally over the project the federal government, the Reclamation Service, was representing both the project and the Indians. (McConnell: That's correct) And that was the Indians' complaint, "Gees, how can they represent us and these people they are clearly favoring here."

McConnell: That's correct. So when it was appealed to the 9th Circuit, the 9th Circuit said, "Okay, that may be right, except for the project," because the government was representing the project. So it's not *race judicata* to the project.

Seney: What does *race judicata* mean?

McConnell: *Race judicata* means it a final judgement, it's already been decided and we're not going to do it again. What it is is a provision in law that ends matters. Okay, so once you go to judgement on an issue and its decided and all appeals are final, we don't go back and decide them again. It says we're finished.

Seney: Now did the district court say it was *race judicata*?

McConnell: The district court said it was. "The Orr Ditch had already decided all of that. We've had 17,000 people that have relied on it since 1944, and the government was represented by you and you basically sued them and got a settlement from them for loss of the water for \$8 million . . ."

Seney: When did that \$8 million settlement occur?

McConnell: 1976 was when that was signed. They signed that settlement in 1976, and took a settlement of \$8 million for loss of all water prior to that time. But they didn't agree to give up any future water. So that was appealed to the 9th Circuit, and the 9th Circuit said, "Well, the government owed a trust to the Indians, and they were representing the Indians and the project, and therefore it's not ended as to the project. The Indians can come in and get a portion of the project water right." So that was petitioned to the U.S. Supreme Court, and the Supreme Court took review of it. It's not an automatic appeal, you have to ask them to review it and they did. And then their decision came out in 1983 that basically said that, "Yes decree had ended the government, even though they were representing the Indians and the project users, have that problem where they have to represent various interests, and they have to weigh those interests, and they paid the Indians for the loss of that water up to that time. So we're not going to reopen it."

Seney: So the Orr Ditch Decree, that's it.

McConnell: That's right.

Seney: They agree with the district court, in other words, that this has finally been decided and we're not going to open up the Orr Ditch Decree and reallocate the water again.

McConnell: Right. And reemphasize that the water is beneficially owned on the project by the water users, even though the United States hold the legal title. It's a nominal holding similar to what you'd have on a mortgage on your house. The bank actually holds the legal title, or the trustee holds the legal title for the bank, you're the beneficial owner until you paid that obligation off. That's basically the way they said the United States, they hold that nominal right.

Supreme Court Ruling did not Settle Issues

Seney: The water rights belong to the users (McConnell: Right) that's what it says. The champagne corks must have popping here at T-C-I-D.

McConnell: I'm sure that's true. It was a significant decision, and we had been involved in some negotiations, or maybe that started after that, I'm not sure, might have started after that.

Seney: But this didn't really settle matters?

McConnell: No, it didn't.

Seney: You'd think it would.

McConnell: Well, that's what a lot of people thought, that it would. But what happens is the way legal cases are decided is they are very specific to issues are addressed to the case and points. And so there is always room to bring other matters up in a different form. And so then the government's push then was to develop another operating criteria that would provide their trust responsibility to the tribe. Because Judge Gesell's case says they have a trust responsibility to the tribe and they need to minimize the Truckee River use on the project and maximize the Carson River use, and not provide any more water than is absolutely necessary. So then they began the process of developing a new OCAP. Prior to this case, is when they had the falling out with the current manager at that time who was also a water user, major water users. Grandparents had settled here and had lots of relatives and a lot of friends. The board got rid of him in 1982, and that was a very controversial thing. I wasn't directly involved in it. Mike Evans handled that for the district.

Seney: What would he have to handle for the district in terms of the termination of this manager? Are you familiar with this at all with what he was doing?

McConnell: Well, I'm familiar with the fact that they went through a series of close-door sessions, in discussion with him to try to get the termination accomplished as best as they could.

Seney: Some kind of buy out even?

McConnell: Some kind of buy even, some kind of a settlement of sorts. And I'm not familiar with the terms, or anything that occurred as a result of that. But I am familiar with the fact that they has a lot of these close-door meetings that were pretty hot and heavy and lasted until late in the evening. And that they ended up involving other supervisors in the district. They were called in to talk about this for various reasons about what's going on. So at that time, they tell me that they asked me to be the project manager in 1982, but I don't recall that. I don't have any memory of that at all. It wasn't of significance to me, if they did ask me. So they went about hiring another manager and they hired a manager in '82. And then he lasted until 1984. And the controversy that occurred in 1984 that surrounded this was after the Alpine case was decided in 1980 that goes on to appeal to the 9th Circuit; 1983 the 9th Circuit basically upheld the Alpine case. The tribe asked the Supreme Court to review it. The Supreme Court denies review, so the Alpine in 1983 becomes final. The U.S. Supreme Court case comes out saying the water users own the water rights. The government begins the process of new OCAP. This case that was filed by the city and county and the Wildlife Federation against the United States for not doing an E-I-S is dismissed in 1984 because of no action occurring. Prior to that time, the attorney every year after the judge asked him what's going on would file an affidavit saying, "I've contacted the government, the

B-I-A [Bureau of Indian Affairs] and they're still working on a final E-I-S, they've not concluded it, and until they've concluded it we don't know whether this case needs to be continued or not. Well in 1983 or '84, I'm not sure exactly of the date, the attorney failed to file the affidavit, so the judge dismissed it without prejudice on the basis that it's a long standing case without activity . . .

Seney: Meaning it could be re-filed.

Confusion Surrounding the 1973 OCAP

McConnell: Right. So after that case is dismissed then the tribe's attorney goes back to the Gesell court and says in 1984, "The diversions to the project are exceeding the 1973 OCAP." Okay, so in this period of time between "1973 when the Gesell case comes out and 1983-'84, you're operating sort of in a who's doing what business, because the '73 OCAP is presumably on hold while their doing the E-I-S. The government . . .

Seney: That's the district's view, isn't it? This is T-C-I-D's view that they put this on hold.

McConnell: Yes. And the government's view is that they apparently published this '73 OCAP, year to year. I'm not sure if they published this every year, but periodically published this '73 OCAP.

Seney: Meaning from their point of view it's legal, valid and binding, I suppose.

McConnell: Yeah, but nobody's enforcing it. That's the difficult part about all of this.

Seney: I have heard some say that the district says, "You can't do this and we're going to divert what we've always diverted." That's one view. You must be familiar with that view where the district says, You can't do this. We have a 1926 contract. You agreed to give us all this water. We don't care what Judge Gessel says."

McConnell: Well, part of what's been expressed is that they said they were not party to the actions, so they're not bound by it. Okay, and then you had the district had filed a lawsuit to enjoin the government from enforcement. The city and the county and the Wildlife Federation, in a separate action, had filed an action saying it can't be enforced because no E-I-S was done. And the parties agreed to do an E-I-S. And basically you have an affidavit, in one of the cases, saying they expect the district to operate the project reasonably during this interim time. And then you have all these other cases coming to conclusion. And then you have the case the district filed against the Secretary saying "Yeah, the one that was dismissed for lack of action. And then you have the one the district brought against the Secretary saying you couldn't cancel the contract," coming to the conclusion, and the court saying yes, "it's a management agreement and it can be cancelled." And then you have the tribe's attorney going back to the Gesell court in Washington, D.C., and saying, "We want an order to make them comply with the '73 OCAP." And so Judge Gesell issues an order to stop diversions at Derby Dam in September of 1984.

Seney: Now we get into the recoupment problem right? Recouping the water that the tribe says the district took that it shouldn't have taken over and above the '73 OCAP that Gesell put in place.

McConnell: Same time what you have is a situation where the government and the tribe were trying to put pressure on the watermaster to operate the upstream diversions on the Truckee River in a different manner, feeling there were over diversions in the Truckee Meadows. And the watermaster at that time was Claude Dukes, and he filed an action in court asking for instruction, saying, "I know what I'm doing, and I'm going to get the court to tell me that." Well, it turned out a little different, and the court actually told him to do some things different then he had been doing it and monitor it more closely. And so, he had the heart attack, and it's presumably part and parcel of the new regulations, putting pressure on him that he has to go out telling these people that they can't take water at this time and that time when he hasn't in the past. And he had been there twenty, thirty years. And his dad had been the watermaster, and then you had some interim guy in there that was family. So you have a long history of the watermaster's office on the Truckee. So, you get a new watermaster in 1984, about September, you get the order from the Gesell court saying, "Stop diversions at Derby Dam," in September of '84. You have an ongoing controversy, that was unrelated to that, with the current manager. Remember he was hired in 1982. So we've gone from twenty years, to ten years, to five years, and now it appears two years. He thinks he's terminated because he has to enforce the judge's order to stop diversions at Derby Dam,¹¹ as of September of '84. He was let go about the same time. And so that's what he relates to the reason for him being terminated because he had to enforce that order.

Seney: But that's not the reason though?

Internal Struggles within the TCID Board

McConnell: That's not the reason, no. He had financial problems and there were other things.. There had been an ongoing tug-of-war between him and the secretary treasurer and the board.

Seney: When you say financial problems, you're saying he had personal financial problems; nothing to do with books in the district.

McConnell: No, not that I'm aware of. And so they had an internal struggle, and so the board was at a position to let him go, and then they did. Then they asked me at that point if I wanted to be the project manager. Okay so, now I've been with Diehl, Reconzone and Evans, Mario Reconzone had left a couple of years earlier to become the district judge where Smart was the district judge. Judge Smart had stayed until he some heart arrhythmia, he past out and had his head hit. And so he

11. Completed in 1905, Derby Dam is the first dam constructed by the Bureau of Reclamation. The dam diverts water from the Truckee River through the Truckee Canal, providing additional water supplies to irrigators on the Newlands Project in the Lahontan Valley.

wasn't certain when the next one was going to occur, the pressure I guess. So he retired and Mario Reconzone in the law firm gets appointed as the judge, and so now the law firm is Diehl, Evans and Associates. So it's Jack Diehl, Mike Evans, and myself, and then they start bringing in some new associates to help with the work. And then the district asks if I would be the project manager and, then backing up a little bit, there started being negotiations after the Supreme Court decision and the new OCAPs. Laxalt and the administration wanted to try and see if they could negotiate a conclusion to this. So there had been some ongoing negotiations. I hadn't been involved in the water, but they wanted me to attend these negotiations sessions to become familiar with it. So I could advise them on a regular basis along with their water attorney. Because they could see more and more the daily operations being asked questions about the water, and them not being familiar with it and the attorney being in Sacramento, and it was difficult to have him up here all the time. So, I start thinking about it and I talked over with Mike Evans and Jack Diehl. I talked it over with board and reached agreement with them. So I become the project manager on November 1, 1984.

Becoming TCID Project Manager

- Seney: Now forgive me for saying this but this out of the frying pan into the fire isn't it? I mean didn't you have some trepidation here and what you were getting yourself into.
- McConnell: Yeah, but at the same time, people were interpreting that Supreme Court victory as being a very good victory and maybe some stabilization as to what the project had. Because you can read that and take parts out of that and it basically says in there that the government can't shift water around like bushels of wheat.
- Seney: So you thought maybe that a new day was dawning and you'd get some stability here finally.
- McConnell: Right, exactly. Even though we have OCAP arguments, we have a Supreme Court case that is fairly definitive on who owns the water rights, and how they should be protected in a sense. Not really foreseeing all these other actions coming along that the government filed with their new OCAPs. Also it's a period of time when I was looking for some method, for a change, because in a small practice in a small town you can't very well specialize. You have to be general, and here I am still prosecuting the city stuff. We've now moved away from the school district, still working with the district stuff. I was involved in the formation of a new community bank, got into that. And then I have other general practice things that I'm involved with on a regular basis with various other clients. So I'm looking spread out, and the laws getting more difficult, and maybe it always has been, but I'm recognizing that it's not as easy to practice as it used to be from the standpoint of being a generalist. More and more laws are being passed, it's becoming more complicated. So part of the decision making process was the opportunity to specialize, in a sense, in the water area, and the board was looking at from that perspective too in the sense that they not only get a manager but they get somebody with a legal background that had specialized knowledge

that will help them.

Seney: Yeah, this seems kind of unusual. You'd think that a guy in your chair would be an engineer maybe or something.

McConnell: Well the interesting part of that is that the bureau made some comments about that they should be an engineer. And some of Dick Latten's friends came to the board meeting when they were going to approve my hiring and objected. They wanted Dick Latten back in there; they saw that this was maybe another step away from what they considered the good-old-boy business. And they objected. So there were a number of water users objecting to my appointment because I didn't have an engineering background and didn't have what they were using as rationale

Seney: Given that the kinds of conflicts that the district finding itself in, I suppose a lawyer makes a lot of sense as a project manager, with all the legal cases you got going.

McConnell: In retrospect I don't know how they survived the prior ten years, or maybe fifteen years. They should have probably had an attorney on board back in the early seventies when it started. Because what has happened is, and I recognize as I go along with board meetings and various actions in the district, is people will take and do things from a business standpoint trying to get something done without considering the consequences of it and the legal ramifications. So you back and look at the decision they made in '73, although they had an attorney given them advice . . .

Seney: This to ignore the OCAP, Gesell's OCAP.

McConnell: If they had somebody there that was . . .

Seney: You're saying yes, you're agreeing with what I'm saying to ignore the OCAP, because the tape won't see you nod.

McConnell: That was the advice. The advice was that they didn't have to comply with the OCAP. And they waited until the government terminated it before they took action. And they should of at that time taken action prior to it.

Seney: Because that turned out to be not very good advice.

McConnell: That's exactly right. The one thing you have to recognize too from the standpoint of water users and farmers is that they're independent folks. They're a different type of business. They're in business for themselves. They're independent, and they have to put up with the vagaries of the weather, from the standpoint of their livelihood. Because they grow the crops and they can plan and do everything right, but if they don't get the right kind of weather they're going to have problems. So they're subject to those kind of problem and they're not adverse to making decisions; not adverse to making decisions that are contrary, or maybe could be

considered adversarial. They'll make those decisions, and they did, and they're willing to make those decisions. And they're ready to make those decisions! Okay, they're not going to sit back on a lot of things and hem an haw about what they should do.

Seney: If I'm right in thinking this, the farmers, water users, have a strong sense that the government made a deal with them. "Abundant water," I can't remember exactly what the poster, you have nice original out there, says, but it's abundant in perpetuity essentially. Abundant water in perpetuity, those aren't quite the words but that's what they mean. And they thought a deal was a deal, didn't they?

Government's Obligation to Water Users

McConnell: Right. That's another thing too is an interesting part about the practice of law in the community, is up until you get into the mid '80s people are still making oral agreements and handshake agreements in this small community. They believe, just like you said, a deal is a deal; a man's word is a man's word and you're not into the contracts and the fine language in the contracts. You're still having those kinds of problems in the community where people have made these oral agreements; now people are not abiding by them. So it's starting to shift in Fallon. You're starting to see Fallon change in sense because now you're getting more controversy; you're getting all this litigation with the government. So you have to look at what happens in the district from a broader perspective than the way they've practiced the business before, which was make a decision and go on, without the opportunity, or the time, to reflect on what the consequences of that decision might be in the long run, or the near future.

Seney: And now you've got forces too in the Department of the Interior, Department of Justice, and the Pyramid Lake Tribe, through their attorneys, who are looking for any way they can to switch the distribution of water on the river and to undermine the standing, if you will, of the district in terms of its water rights. It has never had this kind of a situation to face before, hasn't it?

McConnell: That's correct, yeah. We're coming into an era where people think things have been settled by the '83 decision of the U.S. Supreme Court and, in fact, they're just beginning to start unraveling. A lot of people didn't recognize that including myself.

Seney: Right, let's stop there.

END SIDE 1, TAPE 2. AUGUST 19, 1994.
BEGIN SIDE 1, TAPE 1. SEPTEMBER 9, 1994.

Seney: Today is September 9, 1994, my name is Donald Seney, I'm with Lyman McConnell, the Project Manager of T-C-I-D in his office in Fallon, Nevada.

Good afternoon, Lyman.

McConnell: Hi.

Seney: We ended last time by talking about when you became manager of the district, and tell me how that came about.

Importance of Legal Advice on District Matters

McConnell: It was in 1984, and it was at a time when they'd just had a new manager that was here for about two years and they let him go, and they asked me if I wanted to be the manager. At that time, I'd been working for them as a legal advisor on general legal matters, and had been involved in the water stuff, but not as their legal advisor. They had special water right counsel from Sacramento, but I just kind of kept them informed, and then they'd ask my opinion of various things and they just wanted to know those things. So they asked me if I would be the manager, because during the last couple months of the other manager's tenure, they were having me do more and more administrative things. I guess as their confidence waned in him, they asked me to do more and more administrative things. So I was doing a lot of administrative things, rather than legal projects.

Seney: What do you mean by "administrative things"?

McConnell: Well, they [didn't] necessarily required an attorney to do them. But as I look back on it now, I'm surprised that the project managers were able to get along as long and as well as they did *without* having legal training. Unless, since I've been here, it's been more contentious. I know that there's been more activity, I agree with that, but on the other hand, looking back over the past, maybe if they had that background, then maybe they could have avoided some of the problems sooner.

Seney: You mean there's been a good deal of litigation since you've been here (McConnell: That's true.) and your legal training is useful in evaluating all that.

McConnell: Right. And in addition, though, there's always perhaps a connection with a lot of activities that occur on a day-to-day basis that may have an impact on litigation in the future, or may have an impact on the current litigation. And if you're not attuned to those nuances, you can go trekking down the street and bump into the wall.

Seney: Can you give me some examples of that?

McConnell: Not specifically, but I know over time that I've noticed them. One big example, I'd say—of course they had legal counsel at that time—but on the other hand, the question would be as to how much of legal advice it was, because I've heard stories about the legal counsel's participation. He was at the meetings, but he didn't really participate very much. And generally speaking, he always gave them an opinion that they wanted to hear. And I think that's why, then, they shifted in about 1978 to Mike Evans. They were looking for somebody that would probably question what they're doing and tell them whether they were right or wrong, rather

than have somebody just agree with what they want to do, because that's not really any counsel, that's just . . . Well, I don't know what it is, I guess it's *no* counsel at all, really. Because what you're supposed to do is tell them what you think, whether it's right or wrong, or whether they like it or don't like it. And I see what happens at some of the board meetings now, when issues come up, they've got their background, and they just want to get something resolved. But they'll do something, and they won't think of the consequences on other areas, so I'm constantly trying to remind them of how it might impact some other area.

Seney: When you started this as district manager, was it difficult, or did you find it was pretty easy, and you kind of swam in the water pretty quickly?

Learning the District Manager Job

McConnell: Well, the biggest problem I think I experienced, that I didn't expect or didn't have background in, was personnel problems. I wasn't used to it. I didn't have to deal with it before. Working in a small law firm, there weren't very many people that were working for you. So I soon learned that a lot of problems occur in managing a company, and a lot of problems occur through the employees. And so you have to be able to figure out how you're going to deal with those particular problems, and try to make sure that the job gets done. The employees are happy, and you avoid some problems and try to minimize the problems that are created. I found out that if employees are disgruntled or upset, then they can waste a lot of money. They can waste a lot of time. They can do things that you don't have any control over that can really make the job be more difficult to get accomplished.

Seney: And here the nature of the work, I expect the employees are out where no one is watching them a good bit of the time.

McConnell: That's right. So it's a matter here of just trying to get the best employees and giving them what you feel is the best situation, working circumstances for them, and then review their work periodically to make sure that they're going on. And what we've done. My management style is more in the nature of I delegate a lot of authority, rather than oversight day-to-day operations. People take on more and more responsibility, and in the process of doing that, I think they really take more of an interest in their job.

Seney: I understand you actually have an employee union here.

District Employee Union

McConnell: Yes, there is one, that's correct.

Seney: How did that come about? How long has there been a union here? Was that before your time?

McConnell: That was before I came, yeah. And before I got here, there were talks of bringing in some of the bigger, national unions as a support. But they've pretty much, since

I've been here, I've talked to them and tried to deal with them on a fair basis and the board treats the employees pretty good. And I think that, looking at it overall in this county, that they probably have the best benefits of any governmental entity around. And the board treats them kind of like in a paternalistic way. I try to convey that to the employees, that there's a certain sense of relationship between people that sometimes makes it more compatible. Even though you may not get everything you want, by having a good relationship, you get more in the long run, and you're better off in the long run than you are to go for short-term type of benefits. Yeah, but difference of opinion in employees, you get the younger guys, they want more money, because that's what they're interested in now. The older guys, they're interested in the benefits. (Seney: The retirement.) The retirement, exactly. So it shifts as they've been here. But we do have a pretty stable crew from the standpoint of turnover. We've had a small amount of turnover, but generally speaking, there's quite a few people here that have been here a long time.

Seney: These must be pretty good jobs for the Fallon area, I would think, with the district.

McConnell: It's fairly decent. It's not the best-paying job. But it's steady. We've had people that felt that they could make more money in construction, and they would go out and do that, and then six months later they're on unemployment. So the construction industry is kind of a hit and a miss, whereas here it's steady. Plus there's good benefits here if you're a family man. It's got insurance, and you've got the retirement, you've got vacation, you have sick leave and all that kind of stuff. So it just depends on the individual. And I can understand some of the younger guys wanting to make more money.

Seney: Sure. You know, it sort of surprised me when, I think it was Ted De Braga mentioned to me that you have a union here actually, but in a small community in a relatively small operation—about fifty employees, roughly? (McConnell: Yes.) that you *would* have a union. Do you know how that came about? Are you aware of the circumstances of what led to the . . .

McConnell: No, I'm not. The only thing I can surmise is it had to do with prior management, and maybe employee disgruntlement. So they formed together and then they looked for outside support, and then they decided to come back and not.

Seney: So it's just a little local union.

McConnell: It's just a local union, yeah. And see, since we're a state agency, we're also subject to the state laws on bargaining, and so there's an Employee-Management Relations Board, and a statute that covers employee relations for public entities. So we're subject to all of that, and so they get notification of everything that goes on. We annually bargain for pay increases and that kind of stuff. But so far, at least it's getting better. The relationship is working really well. At first when I got here, the first couple of years, it was kind of tough, difficult.

Seney: A little confrontational, maybe?

McConnell: Yeah, and they didn't know what I was going to be like. Usually, what happens too, is when you come into a new place, you're a little more strict than you were after you've been here a while and you get to know people. So I think that's happened too. I'm probably not as strict as I was when I first got here: new job, new position, new authority. [You] want to make sure things are going the way you think they are, until you learn who'll do what and which ones you can rely upon, then you don't have to be as strict. And so there's a little more flexibility built in. And it helps the relationship.

Seney: Sure. You know, one of the things I asked you about, and we began to talk about last time was what your wife's reaction was to you becoming project manager.

New Position's Impact on the Family

McConnell: Yeah, I think I started to tell you that. (Seney: You started to tell me that, right.)

McConnell: Yeah, she didn't think I'd do it. For one reason or another, she didn't think I would do it. When we talked about making the change and stuff, she just didn't think I would make the change. So that kind of surprised her when I did. But from looking back at it, it's been a good decision. I've learned a lot in this position, learned things that I probably never would have learned if I'd stayed as an attorney. And a lot of it has helped me personally, it's helped me with my family.

Seney: How do you mean it's helped you personally?

McConnell: Well, you learn, for example, like I was saying with the employees, you learn a little more how to deal with people, and you're confronted with different circumstances. And then because the job and the position is so visible in the community, and because there's so many things that are occurring to the water users that aggravate them, they take it out on us. And so you deal with a lot of controversy, and you deal with a lot of problems, and you learn to cope with it. You learn to handle it, and it helps in my own personal situation, for *me* to develop as a person. And in my family relationship too, so that when I go home, I've had enough dissension from things at work that I don't *want* any at home. So it's changed atmosphere in that respect. But I also see the benefit of the family a little more, and I'm looking for ways for me to divert my attention from my job. So I'm getting involved more with my family, paying more attention to them and things like that. So from that standpoint, it's helped me a lot.

And then looking at how you manage people and how you deal with conflict and how you deal with it personally, because at first I was taking everything personally, and I was taking it home. It was boiling over into my family and my other activities. So I had to learn to deal with that. So people have wondered how I'm able to cope with all the problems that occur in the district, and it's been maybe an evolution of my personality, in a sense. To some extent, I probably had a tendency to be able to deal with it, but on the other hand, I've

evolved quite a bit, I think, in my ability to deal with it and not take it home and not bring it out in the family and not bring it out in other relationships. So in that way I think I've gained a lot of personal benefit.

Seney: Other than the nights when the board meets, are the hours particularly long?

Working with the Board

McConnell: Yeah, they are. It comes and goes, but generally speaking, my calendar fills up about two weeks in advance. If I schedule things further ahead, I can keep my calendar open for those things, but if I'm trying to schedule something within the last two or three weeks, I'm almost done.

But the board meetings are getting better, because we're starting a new process where we're giving the board members a notebook of all the items and background information, and giving that to them beforehand so that they can read up on it. So we've shortened our board meetings quite a bit as a result of that. But in the past we were having very long board meetings.

The biggest time consumption is the meetings that occur as a result of all the things that are ongoing. Most of the water users, it's very difficult for them to meet during the day because of their farming activities in the daylight hours. So most of your meetings that deal with them are at night. And so I'll be here all day long, and then I'll have to go to those night meetings. So there's some days that I'm putting in twelve to fourteen hours. And generally there's no make-up of that time. It's just generally, I give that extra time to the district, and I expect that I'm going to do that, because of my position.

But I'm also learning now a little bit more as to how to focus my attention on the things that are most important, and trying to delegate more of the other items that other people can take care of. When I first came here, I pretty much thought I had to have hands-on on everything, from the standpoint of what was going through the district. But I've learned over time as to who can handle what and how they handle it, and I've become more comfortable, and so with various issues I can delegate those. And then other things, I've just learned to say that they're not important enough and they have to be put aside and deal with the most important items. That was a tremendous help for me, as far as my personal development, too, is to be able to do that. Because everybody wanted to see me, everybody wanted to call me, and if anybody had a complaint, they always wanted to talk to the boss. So I've been able to try to make the district a little more professional too in the sense of how we deal with the public.

And that's been a cause of a little bit of the tension between the water users and the district in the past, but I think that's all smoothed out by now. But people used to be able to come in here and talk to anybody at any time, and maybe that was at a time when there were less activities and less important things to get done. But now you have to have an appointment. If you want to see me, you have to

have an appointment almost; very few people catch me on the run. And the same thing with our engineering office. We expect people to make appointments to see those folks, because they're so busy that the walk-in interruptions can't be handled anymore. There are people that still come in that are unscheduled that are looking for permits, licenses, information, documents, things like that, that we still have to deal with, but we're trying to keep the people that are working on special projects isolated from that. And that's why we've probably hired more administrative people in the last couple of years to try to deal with those unscheduled interruptions and be able to keep the rest of the people focused on the job.

Seney: As the manager at T-C-I-D [Truckee-Carson Irrigation District], you're automatically one of the most prominent people in the community. I'm sure everybody must know who you are.

Changes within the Community

McConnell: Used to be that way. I don't think it is that way much anymore.

Seney: It's grown enough, you mean?

McConnell: Yeah, it's growing to where a lot of people don't know who T-C-I-D is, or they don't know what we do. They don't understand the background of it. It's becoming more of the new users or little users, subdivisions, small parcels. It's looked on more as a convenience for them, rather than a vocation and a means of earning an income. It's more for esthetics. They come from the cities, and there, they could turn the tap on and off. And they don't understand our problems of why we can't get the water to them when they want it, and right away, and why we have to go through all this process and stuff like that.

And it used to be, when I first got here and took this job too, you go to Raley's, and that's the local supermarket, and it has been since 1978, I guess. The Safeway was here before that, but since '78, Raley's. My wife worked there, so we always went there. You would run into people all the time that you knew, and they were always asking questions about this or that. But now, I can go in there and with the exception of the employees that work there, very few people will I run into that I know. It's not like you run into everybody you know. Now, you run into a few people you know. So there's been a lot of growth in the community, although it's not a *big* community, 20,000 people, but there's been a lot of growth in the last few years to where you see those kind of changes and differences.

Seney: On another aspect of your relationship with the community at large, do you serve on committees of one kind or another in the community at large—maybe in local government communities or fund-raising committees and other kinds of things like that, by virtue of your position?

McConnell: I used to. I used to participate in a lot more community activities than I do presently. What I've done now, as a result of the additional time constraints on the

job, that I focus more of my attention now *off* the job, to my family, rather than community-oriented projects. So I've kind of withdrawn in that respect, only because I see that my family is only going to be around for a limited amount of time, and I want to spend my free time with them, rather than doing other activities.

Seney: What other kinds of things in the past would you take part in?

McConnell: Well, I first got started when I was in the law office, with Rotary. So being in a law office we were also exposed to, as I mentioned before, the school district and the city, and to some extent the Planning Department. So I was always asked to participate and give them information and advice and help with various projects in the community. And since I've been over here, probably the first few years here I was asked a lot to be involved in those kind of activities. And what I've started to do is started to turn those down. And that was tough for me too, at first, because I felt an obligation. I don't feel the same obligation anymore, because of the way I've changed my personal outlook. Now if I'm going to participate in those activities, I'll do it because I *want* to, not because I feel like I have an obligation to. And right now, my activities are centered around my family, so we get into, for example, softball for my daughter, and now it's volleyball, then it was basketball. So those things are the ones that I spend my time with now. My only real social activity on a regular basis is bowling, and I play occasional golf.

I used to be active in tennis. My wife is a real good tennis player and I learned from her and I became "decent," and we played quite a bit, but we've backed off a lot of that lately too. I don't know, maybe it's just because I'm getting older and I can't function as well as I used to. Can't stay up as late, can't hear as well. (laughter) Can't see as well, I've got big glasses on now. So it's just the aging process probably slowing me down.

TCID's Relationship with Local Governments

Seney: I want to see if I can get you to talk about the relationship between T-C-I-D and the other local governments, and when you come in contact, say, with county government or with city government over problems that necessarily arise because of your responsibilities. How often, and under what circumstances do you come in contact with Churchill County government, to begin with?

McConnell: Churchill County we probably deal with a lot more than the city of Fallon. We're in contact with the Planning Department in Churchill County probably on a regular basis. Myself and the county manager are talking on a regular basis about various problems in the community.

Seney: What are you and Mr. [Bjorn P.] Selinder likely to—if the phone rings and it's Mr. Selinder on the phone, what sort of things is he likely to want to talk to you about? As specifically as you can.

McConnell: Well, specifically now it's primarily the water issues, and the negotiations. That's the main things that we're working on right now, are the negotiation package that the county is involved in, that we're involved in, the water right transfers, and the water issues in the community. In the past, we dealt with the county on roads, until we were able to work out a three-way road agreement between the county, the Bureau [of Reclamation], and the T-C-I-D to prevent any further encroachments in project easements for development purposes. We review all the parcel maps to make sure the easements and water rights are correct, and so we have constant interaction with the county on those matters. And right now, what we're trying to do is change county ordinances in regard to our review of those maps, to deal with water rights in a better manner. That's primarily where we deal with the county.

Now we do have a cooperative working relationship between ourselves and the county as far as maintenance of facilities, because a lot of our canals and drains go under the roads. So we share responsibility for that maintenance in the sense that we don't know who was there first, the chicken or the egg. So we've agreed to just share responsibility on those maintenance problems. They, in the road agreement, have agreed that they will expand the road and do safety work along those canal and easements for protection of the public. And then if there's a failure or construction needed across the road, then we'll do most of the work, and then they'll come in and blacktop it. So we've got a working relationship with them, mainly through our O&M [operations and maintenance] supervisor and the road department supervisor—they work really well together.

Seney: Do you share equipment with them?

McConnell: Only if it's something that they need that they don't have, and they need some special equipment. Then we'll allow them to use it, or we'll go help them—something to that effect. So that's on an occasional basis, not on a regular basis.

Seney: What are you talking about, to the extent you can tell me, in terms of the upcoming negotiations. Are you coordinating your positions on that?

Preparing for the Upcoming Negotiations

McConnell: Yes. About a year ago, a number of us from this community went to a seminar in Boulder, Colorado, and listened to people talk about problems in communities around the country. There were some different groups there. And Mr. [Robert] Pelcyger¹² was there talking about the negotiations that he was involved in on this project, and how he used the "top down" approach, which he said was to get

12. Robert (Bob) S. Pelcyger was the attorney for the Pyramid Lake Paiute Tribe and participated in Reclamation's Newlands Series oral history project. See, Robert (Bob) S. Pelcyger, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Professor Donald B. Seney for the Bureau of Reclamation, in 1995 and 2006, in Reno, Nevada, and Boulder, Colorado, 1995 interviews edited by Donald B. Seney and all interviews further edited by Brit Allan Storey, senior historian of the Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

[Senator] Harry Reid to pound us on the head to get things done. And then there was another guy there that said that their approach in the community in Montana was to get all the people in the community together and get them to understand the problems, and from the bottom up solve the problems, instead of from the top down. So after we got back, we started talking amongst ourselves about how that could work in this community, with the water problems that we have, and the situation circumstances with the government and Pyramid Tribe. And there were a couple of groups that were already in existence, Lahontan 2,000 and Nevada Gold, I think it was.

So we held a meeting over at the Convention Center and invited as many people as we could to talk about a broad-based community group that could deal with these situations and problems and have the input from all of the folks at the bottom of this process, instead of at the top down. And see if we couldn't develop then an approach to solving the problem from the bottom up. And that resulted in the Lahontan Valley Environmental Alliance, which a number of folks have taken a lead on, and have put together a real good working group, I think, that has given us now an opportunity for all *kinds* of different agencies to meet on a regular basis, talk about the problems, and see how we can solve them. And in that manner, it's brought the people that work on that group, closer together. So it's easier for them now to work any other problems out that might occur in the community.

Seney: Was this in part a judgement on the district's part that in the upcoming negotiations it might be better to have a broader community organization for more influence in negotiations?

Creating a Broader Community Organization

McConnell: Our judgement on that was that what was happening at the time is the Nature Conservancy and the Environmental Defense Fund had come up with an approach that everybody referred to as "the second generation settlement." They had circulated a paper on what items they thought ought to be part of that negotiations. The only thing that came out of that was an offer to the community of a water system. And although we would probably have authority to get into that, we didn't have the broad-based representation on our board to deal with that. So that was, from *our* standpoint, the judgement as to why we should bring in a more broad-based, general group to deal with the so-called "benefits" from additional settlement and additional water leaving the valley, is the community water system. Is that what the community wants? So that was our impetus to get into this broad-based group, was to say, "Okay, what does the community want from that standpoint and that settlement? Are they interested in a water system? Are they *not* interested in a water system? Do they want to keep the water here? Are they willing to share the water with others?", and things like that. So that was our judgement as to why we should start this community broad-based group.

Seney: And you feel so far it's been successful in bringing . . .

McConnell: Yeah, I think so, it really has. It's been difficult, because you have various different viewpoints, but what has happened is, it's been based on consensus. And there's been some people from the university that have come down and talked to the groups as to how consensus works, and given them workshops and forums. And we'd have a guy who'd be a facilitator from the university, probably the first few months of meetings, once the organization got started. We had public meetings to form the organization, how we were going to pay for it, to get the funds, then how it was going to be formed, who was going to be the signatories to it, and that all came down to the ability to fund it, is how the signatories ended up. And then who was going to be represented by how many people. And so it came out the county would have four, and the city would have two, and the district would have one, et cetera. And so then those bodies went and appointed representatives to it, and then once that group got started, then they brought in the facilitator to help them run their meetings, conduct meetings and get some of their problems solved.

END SIDE 1, TAPE 1. SEPTEMBER 9, 1994.

BEGIN SIDE 2, TAPE 1. SEPTEMBER 9, 1994.

McConnell: So I think that helped a lot too, to have the facilitator from the university show the community people, the new folks that are operating this group now, how to operate a community-based group. And consensus was the basis for it, and there was a lot of problems with that at first, for people to understand what that meant, and whether that was going to somehow interfere with their rights or their property interests, or the results that might come out. So it's been a good process there too.

Seney: Community education on how to *make* a coalition (McConnell: Yeah, exactly.) and have a concerted effort.

McConnell: And how it works and how people can work together in that regard. And it's worked really well.

Seney: Let me go back for a minute, a little further back, and then we'll come back, to Public Law 101-618.¹³ How do you all think that you guys did in Public Law 101-

13. 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
- 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.

(continued...)

618? What's the district's and your view on that law?

District's View on P.L. 101-618

McConnell: Well, our view is that we got screwed. When we went into that process, we were told that it wouldn't interfere with any of our rights, and they were going to try to settle the differences between the tribe and the power company, that they had worked out a preliminary settlement agreement. Of course it goes back a little bit further than that. But when they started earlier to try to solve everybody's problems, and we couldn't get ours worked out with the tribe, we felt that the reason for that was the government. Because the government's attorney said there wouldn't be any money put into the project to settle this fund, there wouldn't be any change in the operating criteria. So without those sources of revenue and ability to change things, there wasn't going to be much that the district could do, or the people here could do. So we weren't able to work it out with the tribe. The power company worked out an agreement with the tribe, and they were going to implement that. We were told that it wouldn't interfere with our rights, and so we said, "That's fine." Once we started learning how it *did* start to interfere with some of our rights, then we started bringing up our objections to it. But we never really got into it from the standpoint of trying to develop an overall settlement for the district. We were just making sure that it didn't interfere with our rights. And then what they did is, they put in a whole section for us that was just bad stuff, and it didn't involve the upstream people at all—it was just kind of, in my opinion, it was . . . a vindictive act.

Seney: What part are you referring to?

McConnell: This would be Section 209, wherein Section 209 they said that there would be a moratorium on the OCAP and that everything the Secretary does in the past is okay, and that the OCAP can't be challenged for six or seven years. And then they put in some case law in there that helped the tribe in any future litigation. So those are the areas I'm talking about in Section 209. We tried to get just 209-J taken out, which was the OCAP stuff, and they wouldn't even take that out for us. So then we tried to kill the whole bill, because we saw that that wasn't going to be beneficial to us, it was going to be hurtful to us, and if they're not going to take it out, which didn't have any impact on the rest of the legislation, then the only thing we'd have left is to try to kill the bill. So we tried to do that, and that wasn't successful.

Seney: What did you do to try to kill it?

McConnell: Well, after we met, myself and Mike Evans and Mike Macadon [phonetic

13. (...continued)

Source is: http://www.usbr.gov/mp/lbao/public_law_101-618.html (accessed December, 2011).

spellings] and Senator [Richard] Bryan,¹⁴ we met with Harry Reid, Senator Reid back in Washington D.C., with his man Wayne Mehl.¹⁵ And we talked about how those sections impact us, and that we wanted Senator Reid to take those out. And once that meeting was over and he told us he couldn't do that. The only thing I could figure out, if *he* didn't have anything to do with it, then he was capitulating to maybe the government's or the tribe's request to put those things in there to cinch-down on us or something. If it wasn't *his* doing, then he left it in there because he felt that it was necessary to get the government's support for the rest of the legislation, which was a whole bunch of money to the Pyramid Tribe. And in order to get the Pyramid Tribe to agree to the Preliminary Settlement Agreement, he had to give them a whole bunch of money. And so that was to the benefit of Reno and Sparks and Sierra Pacific.

So after that, then we . . . And at the same time, of course we were talking to Barbara Vucanovich, who was a Republican in the House side, and Reid being a Democrat on the Senate side. And she wasn't able to do much for us because the political forces from the power company were able to attenuate all of our efforts. Once we went in and talked to the people and got them to agree with us, then as soon as we left, in came Marcus Faust [phonetic spelling] who's the lobbyist for the power company, and he just changed them all around again. So it was a back-and-forth thing like that. And as it turned out at the end, she was afraid to do anything for us, because she was afraid that it would hurt her chances for reelection in the Reno-Sparks area. And so she wouldn't kill it for us.

And so then we tried to line up other Republican people that could, because at that time in the later days of the session, all the rules are off. And it was our understanding that if a senator or representative voiced an objection to a bill, it wouldn't be passed until they worked through that objection, or else it was just set aside. And so when we finally got somebody that would stand up for it, he asked Barbara Vucanovich¹⁶ what her opinion was, and she gave it, and so then he backed away. And rightfully so, it wasn't in his state, wasn't a matter to his constituents, so he wasn't going to step on *her* toes for no benefit to himself. But we did have somebody lined up that would have made the objection, and *did*, for a period of four hours in the waning days, until they talked it out. Then they came back on the House floor and he removed his hold, and then the legislation passed. It was one of the last five bills to pass in that Congress. So it was down to the nip-and-tuck in that Congress to get it passed. So we made our best efforts and

14. Senator Richard Bryan was Attorney General of Nevada from 1983-89; the 25th Governor of the State of Nevada from 1983-89, and served as United States Senator from Nevada from 1989 to 2001.

15. Wayne E. Mehl participated in Reclamation's Newlands Project oral history series. 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.

16. Barbara Farrell Vucanovich was the first woman and first Hispanic woman to represent Nevada elected to serve in the United States House of Representatives, in which she served from 1983 to 1997. Mrs. Vucanovich also participated in Reclamation's Newlands Project oral history series. See, Barbara Vucanovich, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2013, www.usbr.gov/history/oralhist.html.

weren't able to get it concluded.

Seney: And you were back there, helping to orchestrate the effort?

McConnell: No, we were doing it by phone, so we weren't there, physically present. But it was interesting, the process is interesting, to say the least, but it's not fair.

Seney: How did you know to do these things?

McConnell: We learned from people. People tell us. So then we go out and go one place to another and get it done. In the long run, all we did was get a big black eye for trying to kill it.

Seney: Was it a mistake, do you think, to try to kill it?

Attempts to Kill the Bill

McConnell: No, I don't think it was a mistake, it's just that . . . (Seney: You paid a price for it.) Yeah, that's right, we did, and we're *still* continuing to pay that price for it. But I think the damage was already done, before that. I think that just added to it.

Seney: How was the damage done before that?

McConnell: Well, because they put in those provisions, and then wouldn't remove it upon our request, when we felt that it didn't impact the rest of the legislation at all. And it wasn't in the last draft. I remember we went to Washington and we had a meeting in Tom . . . I can't think of his last name now, but he was Senator Bradley's aide and was dealing with this legislation, and we met in one of the conference rooms there in the Senate Building, and it was *everybody*, basically. It was the tribe, and Bob Pelcyger, and it was the United States and [Fred] Disheroon¹⁷ and [Bill] Bettenberg¹⁸ and it was ourselves. I think Carl Dodge¹⁹ was there, and the state was there, Pete Morros and Roland Westergard, and California interests were there, and Sierra Pacific Power Company was there. I can't remember if there were any other folks there, but it was a large room and a large contingency around

17. Fred Disheroon was an attorney in the Department of Justice and participated in Reclamation's Newlands Project oral history series. See, Fred Disheroon, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2010, www.usbr.gov/history/oralhist.html.

18. William D. Bettenberg was the Deputy Director of the Office of Policy and Analysis in the Department of the Interior. Mr. Bettenberg also participated in Reclamation's Newlands Project oral history series. See, William Bettenberg, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2009, www.usbr.gov/history/oralhist.html.

19. Senator Carl Dodge was a long-time resident of the Fallon area and served in the Nevada State Legislature from 1958 to 1980. Senator Dodge also participated in Reclamation's Newlands Project oral history series. See, Senator Carl Dodge, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview, conducted by Donald B. Seney, Bureau of Reclamation, August 5, 1994, in his home in Fallon, Nevada, edited by Donald B. Seney, www.usbr.gov/history/oralhist.html.

the table, to go through what was considered to be the final legislation and see if there were things that could be worked out when they were trying to change the language. And we were told by Tom then that that was the final draft, and unless he had messed up in his notes or something, there wouldn't be any changes to it, and that's the way it would go.

Seney: Section 209 was not in there?

McConnell: Exactly. [Section] 209-J was not in there. So that came in *afterwards*, and when we discovered that, after we saw the draft, that's when we started making the moves to try to get it changed and to find out *why* it was in there and what the deal was.

Seney: It sounds to me like they kind of blindsided you.

McConnell: That was September, and the thing was passed in November, so it was within that last month, month-and-a-half, that it got in there towards the end of September, and then we had about a little over a month to try to get it out.

Seney: And "J" was the section that dealt with the OCAP, (McConnell: Right.) that made it mandatory and unappealable for a period of years.

McConnell: Yeah, and made it pretty much in discretion of the Secretary.

Seney: Whose hand do you see behind that?

McConnell: We've been told two different people, so I'm not sure what the real result was, but we were told it was the government wanted it so that they could have more control over us.

Seney: The Interior Department?

Community Protests over P.L. 101-618

McConnell: Yeah. And we were told that Pelcyger wanted it, the tribe wanted it so that it could create more control for them. And it may have been a combination. I presume the reason that Reid supported it was because they were in concert to make sure that the legislation got passed, and if they felt that these people needed this and it would help get it passed, fine, to the extent that it didn't hurt any of the others and hurt us, it didn't really matter. I think he was a little vindictive towards us anyhow. That was caused as a result of his celebration out here at the wetlands where people put up a number of signs, protesting.

Seney: I understand there was even someone in a gorilla costume.

McConnell: Well, what it was, it was one of those gorillas that's probably about six foot tall, and the local office supply guy used to have it out in front of his office, just as an attraction, for people to see and look over. It was an advertising attraction. Well,

what somebody thought would be a good idea is to take that gorilla and put Harry Reid's name on it. They spelled it differently, they spelled it R-E-A-D, and they spelled Harry H-A-I-R-Y, so it was "Hairy Read," and they put that name on this gorilla and set it out there in plain view for people that were coming through town that they could see it. So it was a big spoof on Harry Reid. And then of course they put signs all over the roads, all the way out to the Stillwater [Wildlife National Refuge] area so that anybody who was driving through would get the message of what they thought about Harry Reid. And Reid didn't even drive through town, he flew in by helicopter out to the wetlands, so he didn't get to see them, but I'm sure everybody reported it. And then out there *at* the ceremony, people had their signs on sticks, and they were out there with their civil disobedience. Nobody got violent, nobody yelled or screamed, they just listened to him, but they had their signs with them. It was a silent type of protest. And then the federal officials tried to throw them off of the Wildlife Area, and that was a mistake. I mean, all that did was just stir the emotions. They didn't have the authority to throw them off anyhow. They *claim* they did, but they didn't. But it didn't work anyhow. What they were going is, they were passing out at the gate, when people come through, they were passing out their paper leaflets about what *they* thought. So that's where Harry, I think, really began a big dislike for the community, and that was June of 1990, I think is when it was.

Seney: So this was before Public Law 101-618 was passed. And that November, a few months later, it's now passed.

Reid's Attempt to Change the Make-Up of the Board

McConnell: Yeah, and then see, July comes along and they've got a new draft and we get it, it has some new stuff in there about changing the make-up of the board, putting other people on the board.

Seney: T-C-I-D board?

McConnell: Yes. And we think that's Harry's handicraft now, because of the June problems, and he's blaming it on us as being the ones that brought it about, and it basically is just a group of farmers that are now the Newlands Water Protective Association, I guess—most of which are. And at that time it was an *informal* group. So they put this provision in there that says he's going to make the district board more broad-based, get more interest on there instead of just those agriculture guys. And they started carping about the board members and stuff like that. So when we got that, we asked the state and the Governor for time to review that, and so the Governor intervened and asked for thirty days to review it. It wasn't a big deal, but Harry Reid and the power company folks that were supporting the legislation saw it as maybe a move to derail the legislation. And so the political forces started calling the Governor and Pete Morros and everybody else, and pretty soon they had those guys just ragged, because the rhetoric was that he was killing the bill. The Governor didn't see it that way, of course, but afterwards, it didn't matter *what* he saw, he wasn't going to do anything, because of the political pressure that he got.

But it was during the August recess and so we went and put together another set of legislation that we called the Nevada, the *Nevada* Settlement Package, and it was the *Nevada* group then that put it together. And we submitted that then to Congress. And what happened is, we decided, okay, they want to change the make-up of the board? Fine! We'll make it a more broad-based group, we'll have representatives on there from wildlife interests, we'll have representatives from the community interests, so why don't they just then contribute \$30 million towards the community water system and recreation in the community? Then they'll have their broad-based group and they can get rid of the "antagonists" as they see it, and they can infuse some money into the community and make a good deal out of it. Well, because we accepted the idea, it was rejected! (ppffft) That's as far as it went right there. So the only thing I can figure out is it was just some act of vindictiveness, "I'll show these guys! I'll do this!" And then when he started thinking about it and looking at what the Nevada interests came back with and *supported* it, well, shit, it isn't a vindictive act any more, and just got rid of it. "I'm not going to support that." That's the only thing I can figure out from why it disappeared. It was in there, and then it disappeared. And then the September meeting, we were down to what we thought was the last bit of the legislation, and then popped in after that was the 209-J. So the only thing I can figure out, and it might have been again, then, part of Harry Reid's vindictiveness towards the community, and Wayne Mehl. Maybe, you know, they talked and maybe Wayne Mehl, in talking with Pelcyger or Disheroon or other people that don't like the community, or don't like the district, came up with that as a method to put us down.

Seney: Just rejecting out-of-hand the compromise you'd put forward with them?

McConnell: That happened earlier. No, what I was talking about is they got together to come up with the 209-J stuff, that would help them and then hurt us. So I really don't know what the truth of it is. You can sit here and speculate all day long and may or may not be right.

Seney: It's probably discouraging, I would think, in terms of what role you think you're going to be able to play in settling these things.

McConnell: Well, that's true, and that's why I guess the community-based group is a more important group. It gives a broader perspective to what needs to be done, instead of the narrower perspective from the district's standpoint. And it does, and what it has ended up doing is putting the district out of the center of this thing. The district is really one member now out of nine, and the input that we have, of course, is just the technical input and our own version, and you've got all these other entities putting in their versions. So it's taking us out of being the prime mover and person that would reach any kind of an agreement to the whole community now. So if there's going to be an agreement, it'll be based on the community instead of what the district has come up with.

Seney: You know, the last time we talked you gave me a description of what had gone on with the OCAPs and what-not, up to 1984 when you became project manager.

What went on between 1984 and 1990 that we should know and understand about the relationship with the district, to the Bureau and to the Department of Interior and all the other players?

Trying to Develop an OCAP, 1984-1990

McConnell: In 1984 they came out with an interim OCAP, a *new* interim OCAP after the Supreme Court decision in 1983.

Seney: That was in *Nevada v. California*?

McConnell: No, *Nevada v. U.S.*²⁰ (Seney: I'm sorry.) So they had identified, I guess, lands that they considered non-water-righted, that were being irrigated. And they said that if a transfer was filed with the state engineer by March 15 or the beginning of the normal irrigation season, then they would be okay for that year. And then they assumed that the transfers would be approved for the next and following years. So that was the first thing that was the big rush, was to try to get all those transfers on file. And that occurred in early 1984, and the district went ahead and helped all the individuals file those transfers and draw maps and things like that.

In the latter part of 1984, about September, sometime before that, Pelcyger filed a motion with the Gesell Court, the OCAP court in Washington, D.C. to enforce the '73 OCAP. Up until that time, there'd never been an action on the '73 OCAP because of this prior lawsuit that was brought by the city and the county, and then Nevada Wildlife Federation. And then that was finally dismissed in November of 1983 because of no action. So Pelcyger filed a motion in the Gesell Court to enforce the decree and got an order from Judge Gesell to shut the Truckee Canal off in September. That order was complied with, the manager that was here blames that as the reason for him getting fired, because he complied with that order, but it didn't have anything to do with that. And at the same time, then Claude Dukes [phonetic spelling], the federal watermaster, had a heart attack and died. So they appointed a new watermaster, which was Gary Stone,²¹ who had been working for Claude Dukes for thirty years.

And then come November 1 [1984], I'm appointed as the *new* manager of the project. And so the first thing I had to deal with is they sent me down to Phoenix. There was a National Water Resource Association meeting going in

20. In 1973 the U.S. and the Pyramid Lake Paiute tribe went back to court to claim additional water rights on the Truckee River. They argued that the 1944 agreement only determined the tribe's right to irrigation water, not to the water necessary to maintain the river and lake's fisheries. By this time the Lahontan cutthroat trout was extinct, and another species, the *cui-ui*, was near extinction. In 1983 the U.S. Supreme Court decided that the original 1944 settlement should remain in force. It argued that the government had gone to court in 1913 to settle water claims on the Truckee once and for all, and with the 1944 decree, got what it asked for. Therefore under the doctrine of *res judicata* it had no right to come back and reopen the case.

21. Garry Stone was the federal watermaster for the Truckee River and participated in Reclamation's Newlands Project oral history series. See, Garry Stone, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, Bureau of Reclamation, August 15, 1994, in Reno, Nevada, edited by Donald B. Seney, www.usbr.gov/history/oralhist.html.

Phoenix, and the first thing *I* did was fly to Phoenix to meet with the Bureau people—David Houston was the Regional Manager—and talk about ongoing matters in the project. I can't remember the specifics of it now, but I remember flying down there and then flying back up.

And then the second thing I had to deal with, of course, was this diversion. And so what happened is, we formed a water users' organization, a group, to take the issue to the watermaster on the basis that it was interfering with their water rights. We had the Supreme Court decision that said the water users own it. So that's what happened, we set up the meeting with the watermaster to have the watermaster turn Derby Dam back on, and he agreed with that and said that he was going to do that. And then the Bureau told him not to, because it was a federal facility, unless he had a court order. So then he went and got a court order from a judge. Then we turned it on, and at the same time then, the government filed a motion in January to overturn that decision. And there was a hearing in Reno, and the judge said it wasn't unreasonable for the Bureau to work with the watermaster in developing a reasonable operating criteria for the project. So the water was turned back on in January and we started diverting water. And then they came out with a series of these temporary . . . (brief interruption) So then the Bureau began a series of giving us interim OCAPs on a six-month basis, and then we told them what we really wanted them to do is give us a final OCAP so we can avoid this uncertainty every few months with some new . . . So they began the process of working on a full and final OCAP and came out with a draft E-I-S [environmental impact statement] on it, and then actually came out with a final E-I-S, but it got killed in Washington, D.C., so it never hit the streets. The final E-I-S was drafted and sent to Washington, approved by the local Bureau here and then sent to Washington, but never made it out of Washington, because apparently somebody in there that had political control didn't like the results. So they kiboshed it and started again.

Seney: What *were* the results? Did you like that one?

McConnell: Well, it was much better than the one we have now. It was an OCAP that provided to make sure that there weren't going to be any losses in the project, and it was one that was in conformance with the judge's order that they were working with the watermaster. When they had problems, they dealt with the watermaster on it to make sure that the water rights were met. And so then what happened as a result of that one being killed then, is they started *another* one and completely changed it, and then came out with the '88 OCAP as it was. It came out in '87 with the new diversion criteria. It was the first time we got stuck with that, was in '87, and they agreed, when they took it to court, to get court approval for it, that the difference between the two diversion schedules would be stored in Stampede [Reservoir] as a credit for the project. We asked them if it was a carryover credit, and then of course they avoided that answer.

Seney: What difference would it make if it were a carryover credit?

McConnell: Well, if it were a carryover credit, then it would be used in future years.

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- Seney: Wouldn't have to be used this year, (McConnell: Right.) you could leave it for next, if that were possible.
- McConnell: And if it *wasn't* a carryover, then there wasn't any credit at all, because the way the circumstances of 1987 is that there was sufficient water that the credit wouldn't have been a credit.
- Seney: Was that a hundred percent year?
- McConnell: Yeah. And it had a lot of water in the reservoir [Lahontan], so there was no chance of there being any need for that water in 1987. As it turned out, then, 1988 was a dry water year and we needed the water to meet seventy percent. So we called on it, and the Bureau denied that it was a carryover at that time. So we took it to court with the judge that had heard the prior testimony and explained to him, "Look, if it wasn't a carryover then they were just giving you a bunch of bullshit about it being a credit, because we all knew that it wouldn't be used *last* year. So it's just basically saying, 'We're changing your diversion schedule and we're not giving you credit at all.'" So the judge, in reviewing that, agreed, and gave us the water. And then it was appealed to the Ninth Circuit, and the Ninth Circuit said, "No, you got to give more deference to the United States and *their* interpretation of their rules and regulations." So then when it came back for a hearing before the same judge again. The legislation [P.L. 101-618] was already passed, and the legislation said that no court could interfere with the OCAP for six years until 1997. Because what our objections were, that if it *was* not a carryover, then it diminished the water supply and interfered with the water rights. And he said, "Well, based on the legislation I have no choice but to just turn it back over to the Secretary [of the Interior], and the Secretary has control over the OCAP and I can't issue any opinions. Now, if you want to challenge the legislation as being unconstitutional and violating the due process rights, then you have to bring that in a separate action." So that's what happened to the OCAP. We got a final OCAP in '88, the same year that we asked for the credit to be utilized, and we got to utilize it, and that's the final OCAP that we're operating under now.
- Seney: How many acre feet does that give you out of the Truckee [River]?

Water Diversions Based on '88 OCAP

- McConnell: On a long-term average, the way the Bureau analyzed it, it'd be about 125,000 acre feet annually, on a long-term average.
- Seney: How does that compare with what was taken out of the Truckee in years past?
- McConnell: Well, prior to 1968, they ran hydrogeneration power at Lahontan year-round. So they diverted water from the Truckee year-round, for hydrogeneration, and it went back down to the wetlands, mainly. And so it was probably, if you consider the time before 1968, maybe half of what was diverted before. After they stopped the power generation, that reduced the diversions from the Truckee, so I don't know

what the relationship would be after that. But if you go back before when the hydroplant was operating year-round, then it'd probably be about half. But that requires to get the sixty-eight percent efficient. What we did at that time is, we said, "Look, we don't have any problem trying to be more efficient, but we don't think that we can reach the levels that you're talking about in that OCAP. If you're willing to come in here and help us, we're willing to let you come in here and help us. We're not trying to hide anything. So they jumped on that real quick, and so we got the OCAP Office over here in 1988. It was towards the middle to the end of 1988 by the time they got it set up and in place. So for the 1988 water year, there was no affect, in essence. So then we started working with them on trying to implement some of these—in fact, we tried to implement all . . .

END SIDE 2, TAPE 1. SEPTEMBER 9, 1994.

BEGIN SIDE 1, TAPE 2. SEPTEMBER 9, 1994.

Seney: This is September 9, 1994, my name is Donald Seney, and I'm with Lyman McConnell, the Project Manager of T-C-I-D [Truckee-Carson Irrigation District] in his office in Fallon, Nevada.

You were talking about the Bureau of Reclamation setting up an OCAP Office here, which we can look right out your window and see it, actually. Has that been a problem? Or has it been useful? How has that worked out?

Reclamation's OCAP Office

McConnell: For us it worked out really well, because they brought in some fellas, engineers, that were interested in trying to see if they could solve the problems. And they worked with our watermaster and ourselves really well for a couple of years there, and finally realized that some of the processes that the government was using previously with the satellite imagery and their photography in 1984 and their digitizing down in Sacramento wasn't really that accurate.

Seney: This is looking for water-righted lands that were not being used?

McConnell: Right, and also irrigated lands that were water-righted, and then improperly irrigated. And so they came to that conclusion, after they were here for a while and working with us, that that stuff wasn't that accurate. So then they came up with a new method and took new photos in 1990 and digitized them differently, put them on an Auto-CAD system, instead of a G-I-S [geographic information system] system. And used some of the same processes and methods that S-C-S and A-S-C-S used for looking at agricultural land and irrigated lands.

Seney: S-C-S is the Soil Conservation Service, and A-S-C-S is the . . .

McConnell: Agricultural Stabilization and Conservation Service, I think. A-S-C-S are the folks that get into crop subsidies and irrigated lands. There's not a whole bunch of it in this valley, because most of them are grains and wheat, but still, they review people's practices and cost-share in improvements. In this valley there's been a lot

of land levelling, and they've shared in those practices to improve the use of water, and also with concrete lining of irrigation ditches within the owner's land, in order to make him more efficient in his use of the water. So that's where they've got involved with keeping track of the people's irrigated lands. And then there's been a few—less and less each year—but a few people that can take advantage of the wheat programs and corn or whatever it was—oats or something, I don't know. I don't know that much about it. We did find out from them how much was in the valley, and it's only been like \$300,000 in the last five years, payments, so it's not a substantial use in this project, but they *do* have the office here, and they kept records of irrigated lands. So the Bureau people reviewed how they did that, and thought it was a very good method. And so they tried to emulate it with theirs, and it's more accurate, but it still is not completely good, but it's better than what it was.

Well, after a period, I guess, of time, when the estimates that were placed in the OCAP that the Bureau had developed weren't bearing themselves out through practice, the people got real frustrated. And so a number of them looked for other positions, because they found out after a period of time that it wasn't the intent of the Bureau to find out what was going on here and improve the efficiencies. The intent was to cut down on the water use, and OCAP and efficiencies were just the rationalization for that. So they went and found other jobs, and since they've left, they've never been replaced. And so now what we have as an OCAP Office is somebody that's a spy on us, rather than someone that's helping us. Then once the legislation was passed that says in there they're supposed to look at increasing our efficiencies to seventy-five percent and report to Congress within three years, and we still have a similar process going to occur with that, as what happened with the OCAP. And that is that they would do a bunch of number crunching and then a couple of months before the report's due, they'd sit around in a hotel room somewhere and pull numbers out of the air and report to Congress, and say, "Yeah, we can achieve it by doing this, this, this, and this." And we didn't think that was very beneficial, because of our experience with the OCAP. So we tried and spend a year negotiating with the Bureau to be involved in the efficiency study as a cooperating contractor. So once we got that in place, then they moved in *another* office over here, the Efficiency Study Office, and were going to work with us on the efficiency study. Well, that went along so far, until it got down to the time when they had to report to Congress, and then all of a sudden the program fell apart, and they had somebody write the results somewhere else, and they came out with some really erroneous stuff. They withdrew the people that were going to be helping us and put them on other functions because the TROA [Truckee River Operating Agreement] and the E-I-S on the TROA became a big demand on the Carson City Office, so they used them over there. So we've had a couple of instances where the Bureau has come in here and we've asked for their assistance to come in here and help us, and they've started that, and then when it gets critical, they were withdrawn for other purposes.

Seney: What do you make of that?

McConnell: I don't know.

Seney: Is it just bureaucratic ineptitude do you think, or is there a method there?

McConnell: No, I think what it is, thinking about it, is the new manager over there, Ed Solbos, is probably more cognizant of the political nature of things, as well as budget. So he's looking at the TROA as being the most important item that he has to deal with, and that's where he's going to focus his attention on the budget. And we've got the OCAP and we can't do anything about it until the end of '97, so he has full control over us in that regard. He doesn't have to worry about it, if we don't comply, if we don't meet it, fine, that's our problem, it's not *their* problem.

Seney: What happens if you don't comply with the OCAP?

Meeting OCAP Efficiencies

McConnell: There's been one good thing that's occurred since the OCAP has been put in place, and that's been the drought. (Seney chuckles) People won't believe that, but that's good because it hasn't caused the water users to suffer any OCAP-related deficits. But the way the OCAP is set up, is if we don't meet the efficiencies, then they look at what water we *did* use, and the difference between what we used and what the efficiency we *should* have used, is debited against the project. And when that debit reaches 26,000 acre feet, then we're supposed to pay it back, which means that we're supposed to cut back on the water use from the water users.

Seney: Does this mean 26,000 acre feet less diverted at Derby Dam, or 26,000 acre feet less consumed in the district, whether it comes . . .

McConnell: If 26,000 acre feet has to be paid back, that means that we have to reduce the water users' allocations by 26,000 acre feet, so it's a penalty against them for us not meeting the efficiencies.

Seney: So even if it's a hundred percent year, they wouldn't get a hundred percent, they'd get some percent of . . .

McConnell: Ninety percent or something like that.

Seney: Can you meet the efficiencies in the OCAP?

McConnell: We haven't been able to. We've been able to reach, during this period of time, the *best* was just under sixty-three percent, or right at sixty-three percent.

Seney: And the expectation is sixty-seven percent?

McConnell: Sixty-eight percent. And last year then was a hundred percent water supply, and it was the first year that we bumped up against the maximum allowable diversion. And what they do is, in the OCAP, they figure out how many acres are going to be irrigated and apply the efficiency to it and say, "Okay, you can release so much

water." Well, it turned out our efficiencies were real crappy last year, because of the drought, we had seeps throughout the valley out of our canals that we'd never experienced before. We had the Bureau, we had two engineering firms *with* the Bureau, review it and see if they could find a solution or find out what the problem was.

Seney: Let me stop you a second. Am I right in thinking that what happened, you had a couple of dry years, so immediately next to the canals it's very dry, so when you run the water down, more leaves the canal as a result?

McConnell: Yeah. The theory, I guess what some of the people think what happened is that as a result of the canals being dry, '92, for example, we were through irrigating at the end of July, and normal season is November.

Seney: Because you had no more water left?

McConnell: No more water left in '92. That was the worst year that we could find on record for the project, was '92. It was a twenty-eight percent allocation. So we were through at the end of July, no water in the canal at the end of July, the twenty-eighth I think it was. So the theory is, as what happened is, during the rest of the hot season, the canals and the sand and the other materials dried out and just cracked, separated and lost the seal that might have been there as a result of the water moving them together and compacting them or whatever. And so then when you put water in it, you've got all these fissures, in a sense, where the water can go, and it's no longer sealed.

At the same time, they attribute the fact that we were diverting less water off the Truckee River, and in fact *no* water after a period of time, and it was all coming in the Carson [River] side, so that there was no silt. The water coming out of the reservoir was clear, because the canal dumps in right near the takeout, and so it's stirring the pot, and so there's silt coming out of the reservoir, but when it comes in on the Carson side, it has a few miles to settle out, so by the time it gets there, it's pretty clear, so there's less silt in the water, they think, so there's less ability to seal those fissures up. So there's all kinds of theories—we could never figure it really out.

We did a lot of work, we went in and bentonited a number of areas that we could.

Seney: But '93 is a hundred percent year, and this is when you lose all the . . . What *was* your efficiency that year?

McConnell: I was going to say fifty-seven, but I'd have to check with Willis to be sure, but I was thinking that.

So we asked the Bureau for relief, because in the OCAP it says "for unforeseen circumstances you can ask for relief from that maximum allowable

diversion." And we asked them for relief from that and they gave us partial relief, but not full relief. And so people thought we were going to be out of water, with this maximum allowable diversion, sometime around the first of September. Turned out we were able to stretch that until about the ninth of October, so a lot of people didn't do things that they were planning to do because of this uncertainty. They didn't want to go ahead and plant a fall crop and have the water shut off on the first of September, or early September and have it shut off right after that. So that created a lot of problems for them. And then they issued us a deficit for last year of about 35,000 acre feet.

And what happens if the water year is less than seventy-five percent, then there's no efficiency requirement. The reason for that is that they figure that there's a certain fixed amount of losses in the system, and once it gets below seventy-five percent delivery to the farm, the fixed losses pretty much prevent you from meeting good efficiencies. Well once you get above that, you're supposed to go on this sloping line of efficiencies up to a hundred percent, which would be sixty-eight percent.

So it's less than a seventy-five percent year this year, it's fifty-seven in our opinion, and the Bureau will analyze it at the end and figure out what *they* say the percentage was.

Seney: But it's clearly below seventy-five.

McConnell: Yeah, clearly below seventy-five percent, so there's no efficiency target. And the rationale behind all of that, of course, is that when that occurs we're going to use up all the water anyhow. So the people that lose, if we're not efficient, is the farmers, because if we were more efficient, we'd be able to deliver more of that water to them, and have a higher allocation, if you see what I'm saying. (Seney: Sure.) And if we're inefficient, then *they're* the ones that lose—not anybody else on the river system, because we're going to use all the water anyhow, so the other people aren't going to be affected one way or the other. But the theory on a hundred percent year is that the more efficient we are, the less we're going to draw from the Truckee [River], and so that would help the Pyramid Tribe.

The other thing that happens, of course, is that if there's a deficit that carries over and there's a natural drought—doesn't have to be an artificial drought—then that natural drought also counts toward the repayment of these so-called deficits, because it, in effect, is the same result: the water users suffering. If they'd been more efficient the year before, supposedly we'd have more carryover, we could have issued them more water. The theory goes that way. So it appears that we'll start next year with a clean slate, unless the Bureau comes up with some surprise for us.

Seney: So in other words, the 35,000 acre foot deficit you accumulated last year is wiped out because of the low water year this year.

McConnell: Right.

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- Seney: So that's why you say that's the only blessing in the drought, that it hasn't kicked-in these OCAP things.
- McConnell: Right. And the blessing has been that we've at least had this five- or six-year period of time to implement as many of those practices as we can to improve efficiencies, and at the same time, not being able to meet it, the deficits haven't caused a problem for the water user yet. It's been nature that's caused the deficit or the problems for them.
- Seney: What are some of those things that you can do to improve the efficiencies? I mean, obviously, lining the canals is too expensive and that's kind of out, so what are you doing, short of that, to improve efficiencies?

Improving Project Efficiencies

- McConnell: They gave us a list of twenty-one items, and they said if we did the first seven, we could meet the sixty-eight percent. And they said that's little or no cost. That means, it says, what we need to do is measure the water to the water users more accurately. Instead of doing it on the quarter hour or the half-hour, do it on the minute. Instead of rounding it off to the c-f-s [cubic feet per second], do it to the tenth of c-f-s. Instead of releasing water out of Lahontan on some kind of an unscheduled basis, make it on demand, release your water on a different basis. Now what that's caused for the water users, as I heard last night, is that that causes *them* a problem because now they have to wait longer to get their water. Because we're trying to operate the system more efficiently, we don't have water in the system all the time for them. And so when they say what *they've* been taught to do through all these programs they've been going to, is to learn when to water the crops for maximum efficiency there and best crop yields. So when they get to the point where they know it's time to water, they order the water, and they expect to have it, in order to get the most efficiency on the land. Now they have to wait ten days, so they lose efficiency, the plants go down and they don't get those yields. So they're upset over that process.

So that's a trade-off on efficiencies, because it's not anything that's lost, it's not used, just goes out, and it's not given credit for it to the wetlands. We don't get credit for that, for our return flows, even though they have water rights out there for those return flows, the Bureau doesn't give us any credit for them as part of our process. Like for example in Las Vegas, they have 300,000 acre foot water supply of the Colorado River, but they get credit for every acre foot they return to the Colorado River, so they can go up to maybe 480,000 acre feet, drawing out off the Colorado River, because they're returning 180,000. So their net use is only 300,000. We don't get any credit for returns or flows to the wetlands, and so our efficiencies are based upon how much water we put to use, and those return flows, no credit is given. That's one thing we're working on in the settlement.

- Seney: And you think that's unfair.

McConnell: Right. Now, the tribe's position is, "Well, if you gave them credit, then they could be as inefficient as they wanted to, because then they'd get credit for all of that, and there's no incentive for efficiencies."

Seney: Have they got a point there?

McConnell: Yeah. But on the other hand, then, there has to be some level of efficiency that this project can meet and still get credit for that, because if you consider the return flows, we're eighty-eight percent efficient. So that means then that we're not operating that bad, when you compare them with other projects that get return flows, and their efficiencies are in the seventies. And what they're doing, is they're comparing us with those and saying our efficiencies, because they're down in the fifty and sixties, are bad.

Seney: But the fact is, they're using a different standard to measure the two.

McConnell: Right. And see now, for example, on the Truckee Division, they're seventy to seventy-two percent efficient. The reason they are is they don't count the losses in the Truckee Canal. So when Willis analyzes all of our laterals, sublaterals off of here, it's similar, it's in the seventy percent efficiency for delivering that water on the sublaterals. But when you count all the losses, bringing the water all the way through the system, and the losses as a result of return flows, then we're down to sixty-some percent efficiency. The best we've gotten is that sixty-three, and this year it's been fifty-seven up until the last week, because now what we're doing is, we're holding back on the deliveries and we're forcing people to wait longer so that we can deliver more water at one time and have less losses. And then with the end of the season we'll just drain it down from the top to the bottom and get the efficiencies of all the water in the system, so we'll be more efficient at the end. And then that'll bring up our overall year-end efficiency a little bit.

Seney: You mean at the end you'll let it out, but you'll make sure every bit of that is going to go into the fields.

McConnell: Yeah. See, what we'll do is, after we finish taking all the orders, then we'll schedule and deliver them up at the top end of the system first, the bottom end of the system last, so that we'll take advantage of drawing the system down and prevent the water from getting by. If it gets by, it'll go to people down below, we'll keep it working that way, so it'll be more efficient operation.

Seney: Then you'll be more efficient, and that will work into your efficiency average and raise your overall average for efficiency.

McConnell: Yeah, but it won't do that much because the end of the year we're delivering 5,000 acre feet, and 5,000 acre feet out of normally 200,000 acre feet is like a couple percent when you average it out. So then you take the difference and that might up us one percent overall.

Seney: Willis tells me that today there's 10,000 acre feet left in Lahontan Reservoir, so

you've got to leave 4,000.

McConnell: Yeah, we've decided to leave 4,000 for fish restoration or conservation, to make sure they don't all die and create a health hazard, besides the loss of the fish and the public outcry for that, it would create a smelly health mess.

Seney: So you've got 6,000 acre-feet left (McConnell: Right, to draw on.) to put through the project.

I want you to comment for me, if you would, on the relationship of the district to the Bureau over the years that you've been associated with it. I mean here, just in this last discussion where you're talking about no credit for return flows on this project, where they give them on other projects, would make a cynical person maybe think, again, that you're being singled-out here somehow for especially negative treatment by the Bureau. And I guess if a person were prone to feel sorry for one's self, this might be an opportunity (McConnell: Yeah, right.) and to feel that you were being kind of mistreated by the Bureau. But with that sort of at the end, can you give me a sense of how you think . . . ?

Relationship with Reclamation Getting Worse

McConnell: It's been getting worse.

Seney: Tell me a little about it.

McConnell: Well, you're going from a Republican administration, which doesn't necessarily mean they're a hundred percent in favor of us (Seney: Do you think you're better treated generally?) because most of the farmers are Democrats, which is kind of a strange thing. But we felt like we got better treatment because they were less government oriented, in a sense, you know, their philosophy, and it takes a while to trickle-down through the system. And then we had better access to the people. Of course there's been pressure in the last few years *against* agriculture, West-wide, not just in this project, West-wide. We've have Congress with [California Congressman] George Miller²² and [New Jersey Senator Bill] Bradley leading the fight in both the houses to clamp down on agriculture use and public resources. And George Miller's been a real advocate against the Central Valley Project because he represents people there in the Delta area. And so they've risen to power in Congress. And then when you had the [President George H. W.] Bush administration change, that was the start of the change in the attitude of the administration—even though Bush was a Republican, his philosophy was a little different, I think. And so then when the Clinton administration changed, you had a radical change. What happened there is they appointed Dan Beard as the

22. Congressman George Miller served as a United States Representative from California from 1975 until his retirement in 2015. Miller was chairman of the House Natural Resources Committee from 1991 to 1994, and instrumental in the passage of the Central Valley Improvement Act of 1992, which altered the management of the Central Valley Project in California to protect fish and wildlife in the Bay-Delta Area.

Reclamation Commissioner,²³ and he was George Miller's staff advisor for many, many years, and what George was fighting [was] the Central Valley Project and other Reclamation problems. So their philosophy was anti-Reclamation, anti-agriculture. And now he's [Dan Beard] in the helm. So they're swinging more pro-environmental, they're swinging more pro-Indian individual rights and things like that. And so relationships between the Bureau and the projects have deteriorated over the years. It's just on a downward swing. And that's seen here on this project, particularly, in the kind of decisions they've made in the last few years, especially since they've had control over the OCAP without any court oversight. They've come out with these administrative decisions to say that the water rights are invalid without going to court, and causing us to have to go to court. And other instructions where they believe that they have the control, I guess, to do whatever they want, now that the OCAP is in their court and there's no court oversight.

Seney: So you don't look to the Bureau as a friend and ally, as the project would have, of course, years and years ago.

McConnell: No, not at all. At this point it's more of like an oversight or a policeman in a sense, looking at what we're doing, telling us what we're doing wrong, and things like that. Rather than just a few years ago where it was in the process of trying to *help* us meet these OCAP deficiencies. Now there's very little help in that regard. It's more that, "You haven't done it, and here's the penalty for not complying."

Seney: And you feel as though some of the OCAP Office here is kind of a spy operation to keep an eye on you?

McConnell: Yeah, I think so. Yeah, it's *definitely* gone from a transition from helping us try to *meet* the OCAP efficiencies, to one of oversight and regulation. And that's borne out by our request for help and the refusal, and telling us that that's *our* responsibility under the OCAP—reading it literally and not reading it with the *intent* behind the document.

Seney: You know, it's hard for me maybe to accept or believe that the Bureau, who was responsible for this project, would have evolved now into an organization which was hostile to it, wanting almost to destroy it, but would you think that might be the case?

McConnell: Sure. And it's going to take a while for that to occur, because you've got employees within the Bureau that are oriented just the opposite, don't *like* what's happening.

Seney: Are still sympathetic to projects like this one?

23. Daniel Beard served Commissioner of the Bureau of Reclamation from 1993 to 1995 and participated in Reclamation's oral history program. See, Daniel P. Beard, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, from 1993 to 1995, in Washington, D. C., 2009, www.usbr.gov/history/oralhist.html.

McConnell: Right, exactly. Of course those people are being constrained more and more all the time, so there's going to be less and less of the working relationship. It's going to be more animosity, more oversight, more of a policeman type of an atmosphere than it will be of a working relationship and a helping atmosphere. And I don't see that in the future.

Seney: Let's bring it right up to today, as a matter of fact, because I know, and you know that I know, that just today you received here in the office an order from the Carson Office of the Bureau of Reclamation to ship out almost 500 acre feet of water to the "S" Line Reservoir, to be held there to be then shipped out to the Fallon-Paiute-Shoshone Indians. Tell me a little bit about the background, what's happening here.

Controversy Over Sending Water to the Fallon-Paiute-Shoshone Indians

McConnell: Alright, how that happened, I was gone at the August 7 or August 8 board meeting—I don't remember which day it was now, it's supposed to be on the seventh, but I don't know whether the seventh was a holiday or a weekend. But I was gone, I wasn't here. But at that meeting, the Fallon Tribe, through their representative, Bill DuBois,²⁴ brought a letter to the board asking the board, saying that they thought they would have 1,400 acre feet left of their water at the end of the season, which was projected to be around the fifteenth of September, and they wanted them to deliver that to the "S" Line Reservoir so that the users could use it *beyond* September 15. And the board denied that request because they said that they'd had several other requests from other water users for late-season water. And what we've done in the past is, in a short water year, we'd stop the season maybe in the middle of September, hold some water back, and then use it in the early to middle of October for late-season watering and for fall crops. But because of the shortage of the water this year, the board decided not to do that. They felt that the best thing to do was just run it through. They wouldn't have any water, they felt, if they tried to hold onto it until October, and run it through and have people just manage the water the best they can and do the best they can with it until that time. So they denied several other requests, so they denied the tribe's request.

That's when the Bureau, I guess, got involved with it. And I'm not sure as to where the Bureau got involved before that or not. But then the Bureau wrote a letter to the district requesting that they reconsider that decision. So the board had set up a special meeting on the eighteenth of August to consider other matters, and so they put that on there to reconsider it. And then at the eighteenth meeting the Bureau came and there was innuendos that this business about our contractual relationship and canceling our contract and all those kind of things, that if we

24. Francis (Bill) DuBois was Tribal Chairman of the Paiute-Shoshone Fallon Indians and participated in Reclamation's Newlands Project oral history series. See, Francis (Bill) DuBois, *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, 2011, www.usbr.gov/history/oralhist.html.

didn't comply with this order, we were subject to.

Seney: This has to do with the threats by the Bureau of Reclamation to come and take over and run the district and displace T-C-I-D.

McConnell: Right. And that came about because they told us earlier this year that they were going to get into contract negotiations with us for a new contract that would last for two years, and then they would renew it after that.

Seney: Do you have a contract at this point?

McConnell: At this point we're operating under *two* contracts. We have a 1926 contract that was giving us notice of termination back in 1973, and then was subject to litigation until 1983 when it was finally said and done that the courts said that the government could cancel the contract because it was a management agreement. But in between there, while it was on appeal, they entered into another O&M [operations and maintenance] agreement that has a forty-five day termination clause in it. The '26 contract doesn't have a termination clause in it, it has a breach clause—if you breach it, then it can be terminated. What has happened with the '26 contract then, is up until the time we signed this one in '84, we were operating under it, while the litigation was ongoing. And now the Bureau considers the only contract to be the 1984 temporary agreement. But we take a contrary view in the sense that the '26 contract provided for us to repay the construction charges and they've continued to bill us on those since, and we've paid them every year. So we figure that the '26 contract is still in effect and maybe modified to a certain extent by the '84 one. But they figure they can just give us forty-five days' notice and terminate it and go from there.

Seney: Sounds like in the court decision maybe they can. Do you think? Or you're not so sure.

McConnell: Yeah, not so sure at this time, because of the relationship and actions that have occurred. But in any event, that's what the contract business is about. So that's been put on hold now that we're going into these negotiations.

Other matters that have been ongoing is this issue of recoupment which was also in the 209-J that said that we were supposed to find the solution for this recoupment that the tribe claims that we've diverted a million acre feet away from their system in violation of the '73 decree, and we disagree with that, of course.²⁵

25. The United States pursued “recoupment of the diversions made by the District in violation of the operating criteria in effect from 1973 until 1987. Following a four week bench trial in 2002, the district court issued judgment against the District and directed it to repay the Truckee River 197,152 acre feet of water over twenty years. In 2010, the Ninth Circuit affirmed the district court's ruling on liability, but remanded to the district court to recalculate the amount of water that the District was required to repay without adjustments that had lowered the amount under the original judgment. Remand proceedings, to recalculate the amount of water owed to the Truckee River, are pending. The case represented one of the first uses of a restitutionary remedy in the context of water rights and federal Indian trust responsibilities.” See United States Department of Justice, “Truckee Carson Litigation,”

(continued...)

Seney: The district essentially refused to go along with the '73 OCAP from the Gesell Court. When that was upheld, there was a million acre feet, allegedly, that had been taken that shouldn't have been taken, says the Indian tribe—that's the recoupment?

McConnell: Right. The Indians say that because we didn't comply with the '73 OCAP . . .

END SIDE 1, TAPE 2. SEPTEMBER 9, 1994.
BEGIN SIDE 2, TAPE 2. SEPTEMBER 9, 1994.

McConnell: And we had several discussions with the government over the solution of that too, but never got it worked out. And last year we told them that unless they were willing to have a mediator at our further discussions, there wasn't any need to continue it. Negotiating with the government under the circumstances *we* negotiated with them is if you don't agree with what the government wants to do, you're not negotiating. And so we felt it was a one-sided deal. So if you want to have a mediator there, then we'll sit down again and negotiate, but without the mediator, we don't think it's worthwhile. So that, to some extent, has led to this process that we're in now with the mediator, because we brought up those same concerns over and over again, and the Nature Conservancy started to buy-into that process and looked for a mediator, and then when we were back there with that congressional hearing and talked to Senator Reid, he'd agreed to it by then too, because the Nature Conservancy had been working with him and his staff and they'd kind of agreed that that was a good concept. So that's where we are with negotiations.

But in any event, the "S" Line matter was reconsidered at the [August] eighteenth board meeting.

Seney: Let me ask you, do you think it might have gone differently if you had been there at the meeting on the eighth? Would you have said to the board, "Well, maybe we should think about this"?

McConnell: Well, what I would have done, in retrospect, thinking about it, I would have said, "Well, we haven't even had a chance, from the staff point of view, to review that." In fact, I wouldn't have let it on the board agenda, because our new process of trying to make the meeting more smoother. We're requiring to have backup information for all requests, and have them in writing, because we have the open meeting problem. You can't come here and ask for something that isn't specific on the agenda and have the board take action on it, because it doesn't meet the open meeting law requirement of specific notice to the public as to what's going on. So we can't have the tribe come in under a general discussion and then make a formal request.

25. (...continued)
<https://www.justice.gov/enrd/project-water-rights> (Accessed 4/2017).

Seney: And that's what happened at this meeting.

McConnell: Yeah. So anyhow, at the [August] eighteenth meeting, it was decided that we would turn it over to a committee and we would meet with the tribe, try to find out what they're really after, and see if there's some way we could meet it and discuss it with them. But then we had a *real* problem, because we'd turned down these people already, other people, and how do we get out of that particular problem with the tribe facing us with a similar request? They're putting us in between a rock and a hard place. If we agreed to it, then everybody else was going to be mad at us, and if we don't, then the tribe's going to be mad at us and the Bureau is going to be mad at us, because they're involved in it now. So we met with the tribal members out at their reservation a couple of days after that meeting and went through and explained all that, and also explained to them that we had requested them two or three years ago to have a member of their organization be a member of *our* board, and that way then when they have items come up, they're in the middle of it, bring it up and we can get it straightened out before it becomes a problem, or before it's at the end of the irrigation season, so if they have special considerations we can take care of them. But they've refused to do that because of the sovereign entity issue. I think that if they participate on our board somehow that's going to interfere with their sovereignty.

But in any event, we met with them and we met a couple of other times with this committee and the tribal members and the Bureau—probably six times now—and looked at the water supply, and it didn't appear like they had as much water that they said they did. And furthermore, it didn't appear like we were going to have as much water as some people thought we would have to provide this water to them. And so went back to the board meeting on the seventh of August [later corrected to September] and all that was presented to the board and the committee, and the board decided that they didn't see how they could do it, it would just be too much of a problem for them.

Seney: This was the seventh of September?

McConnell: Yeah, September. So the Bureau was there, Ed Solbos was there from the Bureau, and after the meeting the tribe and him met outside and then that was a couple of days ago. (Seney: Wednesday.) Yeah. And today we got the letter in the mail saying that we should do that. What I've done with that letter, of course, is I've responded to Ed Solbos this morning with a FAX that just went off this afternoon, asking him for a couple of things, one of which is the basis for the demand, the legal, contractual, OCAP—what's the basis for his authority in this case.

Seney: Because he's essentially ordered you to do this.

McConnell: Right, exactly. So I've asked him for the authority to do that, in the first instance. And in the second instance, I have indicated to him that we've met over the last couple of weeks on several occasions and gone over this and we've all agreed that there really isn't—there's a possibility we won't have the water available. And are you saying in your letter here that the tribe is to get preference over the other

water users? And if so, what is the basis for that and authority for that? And then indicated to him how the discussions that we've had before. So we're waiting for his reply.

Seney: Did you think when this came up that the Bureau would order you to do this?

McConnell: There's an implied threat, a veiled threat that they would, through all of this. But that doesn't do any good. I mean, the one thing I can say about the board is that in general, since I've been there and have attended the meetings, they've generally been fair to everybody. We've looked at issues beyond just the agriculture interests with regard to the wildlife interests and the Fallon Tribe. And in fact, the issue with the Fallon Tribe is that we don't get involved in their internal affairs as much as we do other people in the project. And they've already been delivered seventy percent of their water supply, and if they get *all* their water, they'll get eighty-six percent, and they've got the opportunity to order that and perhaps get most of that before the end of the season runs out. So they'll get eighty-six percent, most of the other people in the project will get fifty-seven percent, and the Truckee Division gets twenty-eight percent, because of the problems in the water supply over there.

Seney: How does it work out that they get so much out at the tribe?

Water Allocations to the Fallon Tribe

McConnell: Well, see, they've got 5,000 acres of water-righted land out there. So what they do, they're only irrigating 1,700, and so they take the other water-righted land, and whoever owns it, they enter into agreements to let somebody else use their water rights. And they just do that internally, they shift these water rights around so that a guy who's only irrigating 100 acres, but he's got maybe 180 acres of water rights attributed to him, just through internal mechanism on the reservation. (Seney: Ah!) *Off* the reservation, an individual can go do that, he can go bargain with his neighbor to borrow his water rights, but he has to file an application to the state engineer for a transfer. Out on the reservation they don't have to do that. So in that respect, we've given them . . . (Seney: Turned a blind eye to that kind of?) We've turned a blind eye to them, and given them that consideration, to try to let them work their own things out there, without trying to oversight on them, and give them a special consideration to try to let them know that we know they have problems out there and we're willing to work with them. We want them to be part of us as well. And the only time we *don't* turn a blind eye is if they're moving it to non-water-righted ground. And the only time that occurs is they've got a bunch of land they were given by Congress in 1978 called Fallon II, and it's all non-water-righted. So when they want to move water out there, they have to file an application with the state engineer, and they've done that, that's not a problem.

So that's where we are now. They've already gotten a better deal than the rest of the users, but that's simply because of their internal affairs. And we don't make that public, we don't want to rile the troops any more than we have to, but

that's a fact, that those people have gotten a better deal.

Seney: Let me suggest this to you: In these upcoming negotiations I would suspect some friends around the table wouldn't hurt (McConnell: Right.) and that would certainly include the Fallon Tribe. (McConnell: Right.) Wouldn't it have been possible to kind of get together and say, "You know, we could move some water out to the S Reservoir and maybe not say much about it and as we don't about the way they do things internally and we'll ship it on out to them and let them have it. If we tell the farmers here in the district they're going to get angry, but as a matter of fact, what we're doing here is trying to get some edge in these negotiations that will *benefit* our users in the long run." Any kind of thought along those lines?

McConnell: Yeah, we talked to them about that. And then the other thing we said too is, one way that we can overcome this issue is have somebody at the board meeting and say that "we're ready to have this individual sit on the board as a representative from the reservation," and then we could say that that's a major step, and say that this is not going to be something that's going to kill anybody, but go ahead and do it. And then I told them the same thing that you're saying too, the less publicity there is of this thing, the more difficult it's going to get to be accomplished.

Seney: The *more* publicity, the *more* difficult, right.

McConnell: And so Ed Solbos, I guess, even called some water users, because he didn't think it was much of an issue. He thought the water users would think it's okay. And we kept telling him, "That isn't the word *we're* getting, and that isn't the way the board members feel." We want to treat them fairly, and we told them, too, that we know that they've got water rights out there that they're not using and they can use them. All they have to do is get together with us early in the season, get that all worked out, get whatever has to be done taken care of, and they can use all the water they want. It's just that now the board has already been put in a position of denying a number of people the late stuff, and then they come in and make the request on top of it. So they're trying to separate us and we're hearing all this business about them getting special consideration and stuff, and they're not being treated fairly. We don't want to create a war, and we explained that to them out there, "You've really put us in a difficult position. No matter what we do, we're going to end up in trouble, because of the request."

Seney: You know, it doesn't seem to me that there's really a way to work this out.

McConnell: Well, there *was*. We told them, "The main thing we can do for you is just wait and see how much water we have, and if we've got water, we'll leave it there in the 'S' Line Reservoir."

Seney: But they don't accept that.

McConnell: No. They don't accept the idea that we'll try to work something out on that basis. They want to have a preference at this point, and they've pushed it, I guess, and I don't know whether they continue to push it, or whether Ed continues to push it on

behalf of the Bureau, to make an issue out of it. That part I'm really not certain of, and I've been trying to find out and ask people, but I don't know, I get varying stories. One story is that there's some new young bucks out at the reservation, and they've been schooled in their rights of Indians, and they feel that the Fallon Tribe hasn't gotten their due respect and due credits or what's due them, and they need to assert themselves more. And then of course Tommy Burton²⁶ is a young fellah, and he was elected by some of those guys and he's coming up for election again the end of this year for chairmanship, and so he's probably asserting his voice. And so there might be some of that behind it, you know, just to show how strong they are.

Then on the other hand, we've heard rumors that it's partly the government stirring this up so that they can separate the Fallon Tribe from us at the negotiating table and create another separation of trying to get this thing resolved on our behalf, put more salt in the wound, aggravate it. So I don't really know.

That's why we've tried to meet with them and try to find out what they *really* wanted out of this thing. Now we find out that they want—we thought at first that it was for the people to use it for late season, and now we find out that they're going to use it on their wetlands. We looked at their wetlands, they're practically full now, and if they took the water order to the rest of them they'd get most of that. The only thing is, see, they can't put it out there to their wetlands because they need a transfer. But they could still get it there, because they know devious enough—they can always take the water order and then just spill it, and it'd end up in their wetlands, because it's going to be a spill, if they just turn their gates off while we're not looking or something to that effect. There's always ways to do it, but they've chose the way to do it the way they have. I don't know *how* we're going to get it resolved at this point. Hopefully we'll have water left, we'll leave it in the S Line for them.

Seney: Is this a serious matter, do you think?

McConnell: I don't know. The Bureau, through Ed, of course, has implied and indicated that this business with the cancellation of the contract and all these people are looking at us, and it's not good to go into negotiations with this kind of a problem, and all that kind of crap. That's the way I just . . . The way I feel about it, it's just a bunch of crap.

Seney: Let me ask you about something else that's happened just recently, and that's the bench/bottomlands case, the decision. I may have it wrong, but is it 12,000 acres involved?

26. In 1994 Thomas C. Burton was the Tribal Chairman of the Fallon-Paiute Shoshone Tribe and participated in Reclamation's Newlands Project oral history series. See Thomas C. Burton, *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, 2011, www.usbr.gov/history/oralhist.html.

Bench/Bottom Lands Issue

McConnell: About that.

Seney: About that. And the Bureau has developed new standards to distinguish between bench and bottomlands. (McConnell: Right.) Benchlands get 4½ acre feet per year; bottom, 3½ acre feet. If you can change benchlands to bottomlands, you cut down the amount of water the district is due. Do I have that about right?

McConnell: That's right.

Seney: And the District Court has ruled that in fact these new standards that change these 12,000 approximately acres are fine. I take it the change has been made at this point, or will be made?

McConnell: Yeah, it will be made. We've asked the Bureau for a listing of the properties that are involved. We know generally where they are.

Seney: So they've actually gone out through their office here locally and looked at these properties and decided that these were really in fact bottom instead of bench?

McConnell: What happened there is back in the mid-80s, '85, '84, '85 probably, '86, they told the water users that they couldn't transfer any land to a land that was not classified as irrigable by Bureau standards. So then they had all these people sign up for an irrigation reclassification to make sure that these lands are all classified as irrigable by the Bureau. So once they entered into that contract with these people to go through the reclassification of some of their land, they went out and did soil samples and water table testing to make sure that it was irrigable land. At the same time then they used a lot of that information in their study and to develop the information and data for this bench/bottom criteria. And they haven't really gone out on any specific lands and classified it as bench or bottom. What they've done is they came up with a map that they generally have applied to say that all the lands in this area are bottomlands, and all the lands in this area are benchlands, based upon a number of samples that they've taken throughout the project, based on the S-C-S soil survey that was done in the 50s and 60s and based on the water table information that they did in the mid-80s. And they've actually changed the map three times. The first time it was scattered out like somebody took a paintbrush and (ping). The second time it was based on an artificial elevation line that you can't distinguish out here. So then the third time they lowered the water table and changed it to the S-C-S . . . Well, they were using the S-C-S soil classification before, but they changed the water table and came up with a new criteria. That's the third one they went back to.

Seney: And you quarrel with the criteria, the district doesn't agree with their criteria.

McConnell: That's correct. Yeah, we argued it, and basically what the judge did, after the Ninth Circuit said that the Bureau had a right to make rules and regulations on that. The first issue was whether they had the right to do it, the court felt that it

was a court function under the Alpine Decree to set the duties, and the Bureau convinced the Ninth Circuit that they had the right to do it under rules and regulations, so the Ninth Circuit agreed with them. So then we went back to court in the last round on that basis and the judge said that what they did was not . . . He could find substantial basis for what they did, but then he set up a process that said if anybody's yields are impacted, or classifications are in err, that they go to the watermaster and get it reviewed and changed. So we were supposed to have a meeting with the watermaster on the sixth to set up a process of how these people would do that if they wanted to. And then that was canceled by Disheroon, the attorney for the Justice Department, because he said that the local Bureau office shouldn't be the one that deals with that because this was a *Department* criteria, and the Department should set up the procedure for review. And so that's where we're at on it. But we're trying to get a process set up, so that if anybody does . . . There's three or four that have already said from prior actions that their lands were mis-classified because the soils are not what they say they are, and want them reviewed.

Seney: That is that they were mis-classified as bottom when they should have remained benchlands. (McConnell: Yeah.) Okay. But this is all final. I mean, the court is finished with this and you're actually going to have to go through the classification process now.

McConnell: Yeah, the appeal process, the end of that is October 8, and then once that comes, you don't have any more appeal. But we've looked at it from our perspective and don't see a basis for appeal.

Seney: So that date will come and go without your filing, then.

McConnell: I think so, from our perspective. And then the individuals will have to take it up with the watermaster. And the watermaster in the past has looked at us for giving him a recommendation, he's looked at the Bureau for giving him a recommendation, he'll look at the Pyramid Tribe for giving him a recommendation. So he'll get all that input, I'm sure, and then make a decision. He doesn't want to have a bunch of hearings, though—he's already told us that. So it's going to be difficult for the people.

Seney: You trust Mr. Stone to do a fair job on this?

Issues are Becoming Technically Difficult

McConnell: Yeah, I think so. He's a pretty fair person. But he's getting to the point where he doesn't want to hassle with a lot of that, so you don't know what . . . That's what we think happened with the judge. It got too technical and too difficult for him to deal with it, so it was easy to just get rid of it, because his decision was a crappy decision. I mean, it doesn't even follow the arguments, or our arguments, and it doesn't even have support for it really. I mean, it's pretty bad, a pretty bad decision. And it's the second now in the decisions that he's come out with; the

first one had to do with the water right transfers. When you read it and anybody who reads it that understands it would just say that he didn't understand what he was doing. So the only thing I can figure out is he's just wanting to get rid of those cases. And I think that's partly it because they've got this law that says that the judge is supposed to report on all cases that are outstanding more than a certain period of time, and at this last judicial conference they were proudly saying how high Nevada was in the Ninth Circuit—they were second in the Ninth Circuit for keeping their case load under control, so I think he's got a lot to do with that. Instead of hanging onto these things for months and months and trying to figure it out, he just gets rid of them—that way it's done. That's my cynical opinion, I guess.

Seney: Well, the trouble is, things like that do drive decisions.

McConnell: Yup, that's right. You know, people can believe in the justice system and it being all technically-based on the law and all that stuff, but it's all human too, and so you have the human factor that's involved in it. You've got biases, prejudices, human frustrations, their own priorities. And what happens too—and I've seen it with the federal judges—is after they get there for a while, because they're appointed for life, nobody can take them out unless they do something really bad. They start to become a little more autocratic and less tolerant, and you can see it in their dispositions. So that person really has to have some kind of check on himself, to stay in balance, because you know the old adage goes "absolute power corrupts absolutely." And that's pretty much what happens to those guys. I'll read about them in my legal newspaper all over the country where you get these District Court judges that are just out of control. And they're trying to reign them in and they can't, until they find something really bad on them. Now they've got a judicial evaluation or something that's in the Circuit Courts now that can review these things, but a lot of those judges will challenge them all the way up through the impeachment process. You've had a couple of them that have gone to Congress, in fact, and some to the U.S. Supreme Court. So it's interesting, you have to make sure that you get the right kind of individuals that can handle that kind of a circumstance. They have to just kind of keep checking themselves to make sure that they're not getting out of control, and that they're trying to be fair and trying to do the right job, and make sure that they *are* doing the right job.

Seney: The district has relied on litigation for some time—at least others would say that, I'm not sure how you would feel about it—but given the way these court decisions have gone recently and what you're just saying now, do you think you're less likely to recommend to the board that maybe we ought to litigate this matter?

Concerted Effort to Change Water Allocations

McConnell: That's certainly true, but on the other hand I don't think that the district has been the litigious party—it's been that the district has had to *defend* itself, and we've done that in court as a last resort. But it's a circumstance where there's a mass effort to change the water allocation on the project, and there's no relief for it, with the exception of just saying that you have to defend yourself in court. Most of the cases weren't brought by the district, they were brought by other parties. The

district gets involved in them to try to protect its rights.

Seney: Are you optimistic that five years from now that the district will be irrigating approximately the same amount it's irrigating today? Or are you one of those who thinks it's going to shrink considerably?

McConnell: It's changing every day because of the development and the new people coming in here, so you have agricultural land being taken out on a regular basis now. When I first got to the project and saw changes occurring then, I was more optimistic than I am now about getting these issues resolved—now with the exception that this negotiation process is probably [what] I'm the most optimistic about, because [of] two reasons: We've hired a professional to negotiate on our behalf, and it's a community-based negotiation, so it's not just the district; and we've got a professional mediator. And the question will be is, that's probably the best forum that we've had, with the exception of, I guess back when Laxalt was trying to get it resolved. He had the federal government in there really working with all the parties to get it worked out, and we had legislation, and then it got to Congress and the Pyramid Tribe killed it because they didn't agree with it. Somebody in the tribe didn't agree with it, although the tribal members were part of it, and the tribal chairman had agreed to it. So it was a struggle over there. And as it turns out, it was to their advantage, I guess, because now they've gotten more out of the new legislation. And I guess they feel at this point—I would feel if I were on their side—that they continue to gain as this thing goes on. So until there's a reversal, I don't think you'll see that this thing will be resolved, and that reversal won't occur until you get politics involved in it that say, "Wait a minute, enough's enough, we're going to get it resolved." What they've done, they've basically said, "Enough is enough *to us*. If *you* don't get it resolved, we're going to just continue to take things away from you legislatively." So people have to recognize that that's where we are right now. We're not negotiating from a power of strength, we're negotiating from a weak position. And you certainly can't negotiate the same way as you could if you had strength, like the other side does. The tribe feels they're in a strong position.

We've heard rumors that the tribe . . . (Seney: Pyramid Lake?) Pyramid Lake, yeah. . . . want to decouple the system in the negotiations, and that if that's not going to occur, then they have no business being at the table. So we've heard responses to the effect that says that if they don't show up at the table then maybe they'll have trouble with their funding. There's kind of implied innuendos that are always constantly behind everybody's motives for deliveries, like they do with us all the time. The question would be whether or not they could be carried forth.

Seney: That is, the agreement can be carried forth?

McConnell: Or the threats.

Seney: The threats, I see. Well, it'll be interesting to see what these negotiations bring.

McConnell: Yeah, it will be.

Seney: They're going to be quick ones, as opposed to some of them which drag on for years. These are slated to last only a few months.

McConnell: Right. And I guess, the way I understand it, they're going to try to have at least two meetings a month. So it'll be an intense one, from the time-consumption, because there'll be a lot of activity ongoing between those meetings that'll have to be handled. And then I guess if it's not concluded by January and there's a possibility that if it was extended it would be extended . . . (Seney: If it looks like it's going to be fruitful.) Right. And a lot of that, I guess, depends on where we end up going out of this thing, because certainly a lot of things people are not going to be considered to be on the table, from the things that are already resolved in the prior legislation, like the upstream credit storage scheme. But there's still a lot of things . . . See, the implementation of a lot of those things have not gone as smoothly as everybody thought. And the reason it hasn't is because they just tried to roll over us, and they found that we're involved in more things than they expected us to, or they thought that the areas were of no concern. But it turned out to be contrary to that, and they've recognized that, so they know that there's a need to try to settle these things. Now Tom told me a year ago at one of these meetings—he was no longer with Senator Bradley—but he tells me that he told the people at that time that until they took care of the problems here in this community, that this thing wouldn't be resolved, and he thought it was a mistake the way they handled it before. But he was part of it. He certainly had some input into it, and he could have stopped it, I presume, if he really felt strongly enough about it, but I guess he didn't really feel that strongly about it.

Seney: Well, listen, let me thank you for talking to me again today, and if you don't mind, maybe sometime next summer I can come and spend another hour with you, after these negotiations are over, and we can find out what happened about them in terms of the district.

McConnell: Alright, that'd be fine.

Seney: Thank you, Lyman.

END SIDE 2, TAPE 2. SEPTEMBER 9, 1994.

BEGIN SIDE 1, TAPE 1. AUGUST 1, 1995.

Seney: Today is August 1, 1995, my name is Donald Seney, and I'm with Lyman McConnell, the Project Manager of the Truckee-Carson Irrigation District in his office in Fallon, Nevada. This is Tape 1.

Why don't we talk about the Settlement II negotiations? As I indicated before I turned the tape on, I'd just like you to give me your synopsis of the negotiations as you saw them, and the roles of the various participants.

Need for Community Consensus

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- McConnell: How far back do you want to go?
- Seney: Well, as far back as you think is useful for us to understand it and put it in context.
- McConnell: Alright. After the legislation was passed . . .
- Seney: This is Public Law 101-618?
- McConnell: This is Public Law 101-618, in November of '90, then the various entities began their discussions and various aspects of that legislation to implement it. And during the period following that, it became apparent, through discussions with Nature Conservancy and other organizations, Nature Conservancy got involved in the purchase program from the standpoint of trying to help acquire water rights for the wetlands.
- Seney: And there were purchase requirements in that legislation, weren't there?
- McConnell: Yes, they were supposed to acquire water rights from willing sellers—willing sellers from willing buyers, for maintenance of 25,000 acres, long-term average, of wetlands in the valley. And they described those as Stillwater Refuge, the Carson Lake Pasture, and the Fallon Indian Reservation. And they designated the number of acres in each one. So it became apparent through further discussions that the legislation left out a lot of problems that still existed here in the project in the community area. The Nature Conservancy somewhere along the line prepared what they considered their second-generation negotiations paper, and submitted that to people, in preliminary draft, I guess, to review in the community. From that perspective, the only thing that was being offered to the community for a reduction in water use, and the acquisition of water for the wetlands was a municipal water system, and they would support that municipal water system.

Well, I started thinking about that, and since we're more focused on agricultural delivery, even though we have looked at other interests, it became apparent to me that we should not be representing the broader community interests, because our focus is more limited. And if in fact the community wanted to give up some of their water resources in exchange for a municipal water system, then that should be broadly based on a broader-based community interest. So what happened is, a number of us went to a conference in Boulder, Colorado, and at that conference we heard about how other communities were dealing with some of the issues that they were involved in with water resources. And this one area in Montana—Northern Lights, I think, or Montana Northern Lights—I can't remember exactly the name of it. But the individual who gave the presentation talked about the fact that he got all of the community interests together, and they tried to work on a consensus basis. And he said that the reason that they felt that that was working, even though it's a much, much slower process, is that you give the opportunity for everybody to be a participant and everybody to buy into the program, and then whatever you find out is the solution, everybody's already

bought-into, instead of having it imposed. And at that same conference, of course Bob Pelcyger, the tribe's attorney, was one of the presenters, and his presentation was on the basis of how he got Public Law 101-618 passed, and he was suggesting that the best way was the way *they* did it, which was the top-down approach, and the hammer, just like pounding somebody on the head with a hammer until you drive them into the ground far enough and you can get what you want. Now he, of course, had the political power to get that accomplished with what he was trying to get done. So it was obvious there's a difference in approaches.

So we came back, a number of us came back, and we started talking about it amongst ourselves, and I proposed to the board that we hold a meeting to bring in these other community interests. There were already some other groups that were forming, like there was one called Lahontan 2000, and they were more or less an educational group that was formed. Mary Reid was involved in that, and some others, Tim Findley [phonetic spelling] I think. They formed this group called Lahontan 2000 to look at what would be the Lahontan Valley in the year 2000. I guess that's where the name came from. And where are we going with these water problems and these water resource issues? So that group was up and they were starting to educate the community a little bit about the problems. However, it was a *different* group. I mean, it wasn't involved with the normal water resource people, it was new people in town, mostly, that were forming it. And then they had another one called Nevada Gold which was looking at the shallow wells, because of the drought and other problems foreseen on the water use in the valley, that shallow wells were going to become a problem. So Mary Reid—and I'm not sure who else was involved in organizing that—she was making people aware of the problems that could be created. So I felt, in talking to a number of these people, that the district got to hold a meeting on these negotiations, and one issue that was outstanding was this so-called recoupment, the million acre-feet—I don't know how familiar you are with that, (Seney: Right.) but the million acre-feet that the tribe and the United States say that we over-diverted, based upon the '73 OCAP.

- Seney: We talked about that when we talked nearly a year ago. This will all be in one volume, so it'll all be sandwiched together, but we did talk about the recoupment, that the waters that the district continued to divert after the Gesell OCAP, that are in controversy.
- McConnell: Yeah. And so that was one of the issues that the government wanted to get resolved under the public law, for us to make improvements in this area for conservation purposes. So the board decided to hold two meetings. We talked also about the protection of the water right owners, now that we get into this situation where we're representing various interests, because the law authorized the project for a number of different interests, beyond just agriculture. And one of the early versions of the law had actually imposed the criteria on the board to change its makeup, a federally-imposed idea, which was rejected by them in Washington when we finally accepted and they took it out of the legislation. But what we did is went to the Nevada Legislature and got *state* authority to change

the makeup of the board. So we were aware that things were changing, uses were going to be changing, our makeup of the board might be changing, we might form a different group, instead of just being an irrigation district, might be a conservation district. So we got additional and new powers.

Lahontan Valley Environmental Alliance

And so we decided to hold two meetings, one of which was a meeting for community, broad-based interests. And we notified all these groups and held a meeting at the community center, and then that same night, after *that* meeting, we held a meeting with the water users to explain to them what's going on and encourage them of forming some kind of an organization to protect themselves. Since we might be in a position where in the past the district had pretty much been carrying the laboring oar for all the water users in the valley, and everybody depended on us to continue to do that, and it appeared that maybe that wasn't going to be the case in the future. So we held those two meetings, and that was the beginning, then, of L-V-E-A [Lahontan Valley Environmental Alliance], and N-W-P-A [Newlands Water Protective Association]. And then Carl Dodge was one of the people that we had talked to, and he took up a lot of responsibility in going to the public entities and convincing them of the L-V-E-A and an organizational structure. And we tried to form it after two or three other ones: Las Vegas Valley Water District, and then they had one up in the Humboldt River area that was formed to protect itself against the EcoVision application. So we had a couple of models, anyhow, as to how to form this. But we eventually went with an interagency local agreement, and formed L-V-E-A. And L-V-E-A then became more or less a broad-based community organization, and there were representatives from most of the community agencies, and then they started forming themselves in that direction. And then Newlands Water Protective Association formed themselves and started getting membership and going in *their* direction.

So once that got started and we got further discussion into the negotiations, we had the hearings. The next thing that occurred was the hearings in April of '94, I believe it was. Is that right? The one that you just asked about the copy on.

Hearings in Reno

Seney: There were hearings in December of '93, and then there were hearings in March of '94.

McConnell: Okay, then I missed the December hearings. But come the December hearings, we already have those organizations in the formation process, or they may have been formed by then.

Seney: They were, they were formed by then.

- McConnell: Because I believe this was in '93 when all this took place, from the standpoint of those meetings—August of '93, just about two years ago.
- Seney: I think the L-V-E-A first met, the first organization, was around October of '93, and then a board was finally in place by April of '94.
- McConnell: Okay, so that's about the right timing, then. The August of '93 would have been the time when we had those public meetings.
- Seney: That's right.
- McConnell: Okay. So Senator [Harry] Reid had those December hearings in Reno, which was an oversight hearing, and people testified at those as to why things—I guess he was concerned as to why things weren't going the way he expected them to. Now we're three years after the implementation of the legislation, and people were perceived as having interfered with the implementation to some extent. I really don't know what goes through his mind.
- Seney: Would that have been the district he was kind of holding responsible for that, to some extent, you mean?
- McConnell: Oh, I'm sure he does, because he holds us responsible for a lot of things, and in fact I remember this meeting, the last meeting we had with him before the legislation was passed in 1990. We went there to tell him about the change that the last meeting we had, the legislation was different, and it was told to us that that was going to be the final version, and then they made some additional changes and stuck this recoupment in there, and stuck all this moratorium for the OCAP and some other things in there. And so we went to talk to him about that, and asking him to reverse it back to what was the meeting in September, where everybody was sort of in agreement, and that was the end of the legislation. He said something to me after the meeting, it was about a two- or three-hour meeting we had. We invited Senator [Richard H.] Bryan, and he stayed for about an hour, and it was myself and Mike Macadon [phonetic spelling] and Mike Evans, and Senator Bryan. I think that was all that was at the meeting at Senator Reid's office. So we had a long and heated discussion over some of the issues in that provision of the law. He said something at the end of that meeting after we thanked him for his time and were leaving. I was walking out of his door and he was talking to somebody else and he said, "Oh, by the way, Lyman, I'm no longer mad at you." And I never have been able to figure that out. I didn't know what the hell he meant, and what he means by it or anything. But I know that for one reason or another he has a . . . I don't want to use that phrase! (both chuckle) He has some reason he feels that we are opposed to him, and he has an issue with us from the standpoint of not liking us and wanting to do something to get back at us for whatever reason.

But in any event, he held those hearings up in Reno—he didn't hold them here in Fallon. And people were kind of upset with the way he went about it, with all of these metal detectors. (Seney: A lot of security?) Security people. And so

when people came, they were really surprised to see this thing barricaded, in a sense, and the only way you could get in is go through these metal detectors. And it shows you some of his paranoia, I guess, or his feelings towards the community. He feels apparently that whatever his feeling is toward the community, that we somehow have the same feeling about him, and that we're willing to harm him for some reason, which doesn't make sense. But anyhow, that hearing occurred in December, and then they scheduled another hearing in, I thought it was April, but you're saying it was March. And that was in Washington, D.C.

Seney: I could be wrong, it could be April.

McConnell: Okay. Well, in the meantime, see, we're also negotiating with the United States on the recoupment issue, because that's one of these issues that had to be taken care of in order to get some benefits for the project and the project users for these efficiencies that they've mandated on us.

Seney: What were the benefits that were the carrot in this case?

McConnell: Well, originally in the legislation was, settle the OCAP, operating criteria, then the state, in the past, for the settlement of this Truckee River litigation, had passed an \$8 million bond issue, and they were putting up \$8 million for improvements in the project, and for whatever else was necessary to get this Truckee River litigation settled. And so what they did is, when this legislation was passed, and maybe a little bit before that, because there was a senator before Bryan. (Seney: Inouye?) No, from Nevada. (Seney: Laxalt?) No, the other one. He was only in for one term, but I can't remember his name now. He was from Las Vegas, and he defeated . . . [Howard] Cannon. Okay, because Cannon got caught up with the Mafia or some allegations of having Mafia influence. And then Santini ran against him in the Democratic Party. So that weakened Cannon in the senatorial election, and so this guy . . . God, I can't think of his name! He came out from nowhere in Las Vegas and beat Cannon.²⁷ And so he was in there for one term, but before the end of his term, the flood in '86 ruined a lot of the dikes out in the wetlands area. And so they had some money that was allocated for repair of that. And that's when Senator Reid got elected in '86, and he introduced his legislation and he was trying to get some wetlands protection, a lot of waterfowl people were in favor of wetlands protection.

And so he held a hearing in Reno real early-on, because he started these negotiations quite a bit ago. And for one reason or another, the Pyramid Tribe couldn't get in negotiations, so he introduced a bill just strictly for the wetlands, and I remember that hearing, because Joe Ely²⁸ was there on behalf of the Pyramid

27. Nevada Senator Jacob (Chic) Hetch is the individual McConnell to whom McConnell is referring. Senator Hetch served one term in the U.S. Senate, 1983-1989.

28. Joe Ely served as Tribal Chairman for the Pyramid Lake Paiute Tribe from 1983 to 1988. Mr. Ely also participated in Reclamation's Newlands Series oral history project. See Joseph (Joe) H. Ely, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by (continued...)

Tribe, and he testified that they thought he was a pretty good senator until he introduced this bill. I mean, he confronted him right there in public in Reno, at Senator Reid's hearing. And that shows you how much deference these minority groups or so-called disadvantaged groups have, because they can confront people without being taken like it's a threat to them, or vindictive towards them back. You know, they kind of kowtow to them in a sense. But in any event . . .

Boy, I've rambled around here. I keep getting lost in what my point was, now. But we were in negotiations for recoupment, and what the state did in the meantime then, because he had introduced this other legislation just for the wetlands, then the other senator from Nevada—I'll think of his name . . .

Seney: What I was asking you about was what was the carrot in 101-618, if that helps you.

McConnell: Yeah, I'm getting to it. The state then took that \$8 million and split it in half. Okay, the other senator from Nevada got a change in the legislation that allowed them to take the money that they were going to use for improvements out at the wetlands and buy water rights for it. And we had agreed that if they bought no more than 20,000 acre feet within certain parameters, that we felt that that wouldn't be a significant impact on the project. So that's how the purchase program got started, before Reid's legislation even passed. And in fact, up to this date, they're still buying water rights under that original E-A for the 20,000 acre feet, because they've never acquired that much at this time. So they really haven't started buying under Reid's legislation, because they have to do an E-I-S [environmental impact statement] and they haven't completed that one yet. As of today, they haven't completed it. They've got a draft out now. (Seney: Just out?) Yeah. So the state split theirs in half. So \$4 million was going to go towards improvements, and the other \$4 million was going to go towards purchase of water rights for the wetlands, and the state was managing the Carson Lake Pasture under a Fleischmann Foundation agreement that the district had entered into in the 80s or late 70s, and the feds wanted them to contribute some of this wetlands too, so that's how the state made *their* contribution. So they split that \$8 million in half.

So the carrot that you were asking about is now \$4 million from the state for conservation measures on the project, and the feds were in agreement to match that. So that's basically the carrot. The other carrot was they were going to forgive all the remaining obligation of the district, which is about \$1.5 million. And then we would continue to collect those monies, but we would use them for conservation measures. And then in the legislation, the other carrot was water bank, we'll authorize a water bank and authorize a recreation study. So that negotiations was ongoing for recoupment, and it finally came to a halt, and I wrote a letter to [William D.] Bettenberg, who was the guy that was in charge of those

28. (...continued)

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.

negotiations, basically outlining that we were willing to continue negotiations, but we didn't think it was going to be fruitful because of the discussions between ourselves and the United States. They treat us more or less like we're their lackey and we should do everything they say, and that's not really a negotiations—it's more or less, "if we don't agree with you, we're not negotiating," is the United States' position. So we said that we would continue negotiations on the recoupment, but only if we had an independent mediator. So that thing had been sitting for a year now, nothing had happened with it. And we were receiving threats that they were going to file a lawsuit on the recoupment, and we were telling them, "We're still willing to negotiate it, but we don't think the current atmosphere was working," because they were, more or less, dictating to us what we ought to accept.

Hearings in Washington, D.C.

The L-V-E-A and N-W-P-A are now coming up and they're doing their things, and comes the April or March hearings in '94 in Washington, D.C. So we're back there with some other folks, listening to the hearing, and what we do amongst ourselves is say that we need to somehow get this negotiation process restarted if we're going to get anything resolved. And so after those hearings, Senator Reid's man, Larry Warner, came up to us. We'd talked to him and tried to meet him while we were there, and he came up to us and told us beforehand, we were trying to get a meeting, and he told us that the senator would meet with us that afternoon after the hearing at about five o'clock in the evening, but he'd only meet with Ernie Schank and myself, Ernie and Lyman, and the rest of the people weren't invited. So we told everybody that, then we talked about what we should do and how we should handle it.

Seney: Any insight into why he might just want to talk to you and Ernie Schank?

McConnell: I have no idea. I can't figure the guy out. I know that I don't agree with what *he's* doing, and maybe I don't like him because of that, but I'm not in a position to do anything about it. I can't control his life like he can control our lives, and I don't try to do anything to get back at him. I'm not that kind of a personality, in a sense. I'm not going to dwell my time on figuring out a way to get even with him. And I don't know whether he has that attitude or not. I read a book one time called *Power Politics*, and it was how [Lyndon B.] Johnson was the power politician, and his main theme is that if you bucked him in a vote, when he was trying to accomplish something, that he made sure that you knew that that hurt him and the next time around he was going to get even with you—and he *did* that. When he became president, he still kept all these notes or books or something, and he got even with these guys that bucked him, by just eliminating programs in their areas or something like that. And I always thought that Reid was following that prescription, because if he felt like you were bucking him, if he interpreted it that way, then he was going to somehow make you aware of that and make you know that *he's* the one with the power and get even with you. And I don't know if that's just a perception that I have and every time something happens I just add that to my perception, which just reinforces it, or if he really is that way.

Need for a Mediator to the Upcoming Negotiations

But anyhow, I don't know why he would only meet with us, but that's the only two people he said he'd meet with. So we went and met with him, and we set down to talk to him about the negotiations, told him that we were willing to negotiate, told him we were willing to come back to the community and try to get negotiations going again, that we're not opposed to negotiations, we *prefer* negotiations over litigation, and we'd like to get these things behind us, because it's a constant aggravation. But one thing we *did* say to him was that we wouldn't negotiate, though, unless there was an independent mediator. And as a result of that prior position with the recoument, we had talked over that same idea with the Nature Conservancy after they came out with their paper, the second-generation white paper, and so they picked up on that and thought, well, maybe perhaps that could occur. And they had apparently also talked with Senator Reid, because he was aware of this idea, and we were aware that the Nature Conservancy had been talking to various different people to try to get something together. So it wasn't like it was just out of the cold, there was discussions ongoing, but this was the first time we'd had a chance to talk to Senator Reid about it. And so he seemed to be in agreement with it. And I think the reason was because the Nature Conservancy was sort of behind it—not because it was *our* idea, but because the Nature Conservancy had supported it, and they had talked with a number of different mediators.

So at the same time, the government had held some hearings in Reno, and I don't know, it might have been just after this hearing in Reno and Washington, D.C., but they were threatening us with canceling our contract for operation of the project and entering into a new agreement. And so that was an overhanging threat. So Reid said somewhere along the line, and I don't know if it was at that meeting or a later conversation, but he had agreed that he would ask the federal government to hold back on these actions if we could get back into these negotiations, give us a chance to work that out. So that was the beginning, I think, with all these other things going on at the same time, of the start of the new negotiations again, this second round of negotiations with everybody involved.

So that led to, then, the selection of a mediator, and the Nature Conservancy had talked to four different people and they liked this lady from RESOLVE, in Washington, D.C., and wanted to know if we'd be interested in talking to her. And so we talked to her on the phone on a couple of occasions, and then she came out here and met with us, and what *her* position was, is she would be willing to come out here and talk to all the parties and find out if it's something that she would be willing to do, because she didn't want to get into the middle of something that was going to be a failure from the very start. So she wanted to talk to everybody and get their feeling, and also wanted us to get comfortable with her, if it was going to be the person we selected. So there was some initial money that we had to come up with and contribute towards her visit out here to pay for her visit out here. And I don't remember the exact timing of that, but she came out on a couple of occasions, talked to us and talked to the other groups, and we decided that she should be a suitable mediator, because even though she had the

environmental background and was connected to the World Wildlife Fund at one time, she was able to show to us that she was a true mediator in the sense that any biases that she might have, she'd try to keep those transparent.

END SIDE 1, TAPE 1. AUGUST 1, 1995.

BEGIN SIDE 2, TAPE 1. AUGUST 1, 1995.

McConnell: So that was in line with the L-V-E-A formation and completion, and *who* was going to lead the negotiations, and *how* was it going to happen community-wise. When she met with us, she said it would be just as easy to put the Newlands Water Protective Association in there as a separate party, put T-C-I-D [Truckee-Carson Irrigation District] in there as a separate party, put the community in there as a separate party.

Seney: That would have been alright with her?

Working Out Community Problems

McConnell: That would have been alright with her, and it would have been alright with some people in the community. But *I* felt, and others felt, that our strength was in being unified, that if we couldn't get our own problems worked out amongst ourselves, and figure out where we were wanting to go and where we were going to be, that we'd end up at the negotiating table arguing against ourselves—could. And that wouldn't be beneficial to the community at all. It might be beneficial to one individual group or party, but it wouldn't be beneficial to the community. And the only thing that was offered in this thing was the water system for the community, there was nothing offered for anything else.

Seney: Up front when these Settlement II negotiations began, that was really the only thing that was clearly on the table to the *advantage* of the community was the water system?

McConnell: That's correct. And we'd worked with a guy named Mike Clinton in our recoupment negotiations, and we had brought him into that community meeting in August and let him talk about what he perceived as the problems for the community. And he apparently worked for some communities in Arizona and some other places, and when it got down to the L-V-E-A and T-C-I-D, he said he preferred to represent the community. And I don't know what reason that was for, or whether he was perceiving that as the better position or what. But there was opposition at the beginning to that occurring, because he had worked for T-C-I-D and some people thought that that was just translating T-C-I-D's influence into the L-V-E-A and the negotiations.

Seney: You didn't feel that way, though?

TCID Should Not Take the Lead in Negotiations

McConnell: No, we didn't feel that way at all, and Mike didn't feel that way, and pretty soon, L-V-E-A didn't feel that way. Because once they got to meet him and once we started backing out, withdrawing from this process, and I necessarily did that on purpose, because I could see that people were reacting, thinking that it was some T-C-I-D-led program, and that our influence was guiding the community and that it was "really the farmers again," and that kind of an attitude. So I thought that the more I stayed free of it and the more the district kind of stayed free of it, the better the process would work out, because then the community would be able to find out what they really wanted, and from different people without our influence. And if it meant that it was compatible with our interests, fine; if it meant it *wasn't* compatible with our interests, fine, we'd have to deal with that, because we knew that the community was changing, we knew that there was outside influence to *get* us to change anyhow.

Seney: Did part of this come from the fact that for whatever reason, T-C-I-D had kind of gotten a black eye in these negotiations . . .

McConnell: T-C-I-D always ended up with a black eye. The thing that I'll never forget in all the negotiations was the article in the paper that they quoted Harry Reid, besides us walking out of the negotiations, the other thing was that there's 200,000 people in Reno and Sparks and there's only a few hundred farmers in Fallon. So it set the stage politically as to what was the problem. We got the black eye for walking out of the negotiations, which we never did walk out, all we said was that we would agree to let these people go forward with their discussions and get *their* issues resolved. If we can't resolve ours, then we couldn't, with the Pyramid Tribe . . . (phone call interrupts) Where were we?

Seney: We were talking about getting a black eye . . . What was the date of these negotiations?

McConnell: Which ones now?

Seney: The ones you were accused of walking out on.

McConnell: That was . . .

Seney: That had to do with 101-618, didn't it?

Myth of TCID Walking Out of the 1988 Negotiations

McConnell: Oh yeah, but it was early-on. It would have been in '88 or early '89, when we were meeting with all the other entities that Reid had set up to try to . . . Senator Laxalt was involved in trying to get a legislative package, and then that got killed by the Pyramid Tribe. And then so Reid came in with the idea he'd promised, I guess, in the election that he would try to get it resolved, so he started another group. We met with them in here, and at the time we told them that we didn't have *any* problem with upstream negotiations for them to better their situation, as long as it didn't interfere with our water rights, and we would participate in any

negotiations on that basis. So when we couldn't work it out with the Pyramid Tribe on the issues that were separating us, then we just basically told them that we haven't been able to work ours out, but that doesn't mean you couldn't work yours out. And since they suggested that they would like to continue their talks between the Pyramid Tribe and the power company, we said that we don't have any opposition to that.

And so we left the meeting that day, but it was agreed that I would continue to participate on behalf of T-C-I-D at all these other sessions, even though there wouldn't be any one-on-one with the Pyramid Tribe. Pyramid Tribe could go one-on-one with the power company, we'd meet periodically in a larger group and inform everybody of the progress and where we're going, and if there was any problems that we foresaw in that. So I continued to stay involved in all those negotiations. So the walkout business was attributed to the day that we had the big meeting at the power company where we reported that we couldn't get our issues worked out with the Pyramid Tribe, but that we had no opposition for them going forward on their discussions. And so we left the meeting so they could continue their discussions with the understanding that I would continue to participate in those big meetings, and I did. And in fact, up until the meeting that we had in Washington, D.C., in September of 1990, before the legislation was passed in November, I was at that, and various community members were at that. Carl Dodge was there, I think Rebecca Harold²⁹ was there, I think B-J from the county was there, Jim Reagan [phonetic spelling] from the county was there. So there was still a lot of community participation in that legislation before it went in. So it wasn't a walk-out as it was characterized, but they used that day of leaving that meeting as sort of a symbolic statement that we walked out of the meeting.

Seney: That's certainly part of this sort of mythology, isn't it, though, that you walked out (McConnell: Yeah.) and were difficult to deal with and won't negotiate and so forth.

Problem is They Want Our Water

McConnell: Right. And the problem is, and it always has been, is that they want our water. That's the problem, and we're not willing to just give it away. We're willing to negotiate it, and we're willing to get things in return for it, but we're not willing to just give it away, and that's what the problem has been, is they just want to take it from us. That's our perception of where everybody else is coming from. So there was some of that still hanging over, and it was in our own community! New people would come in here that hadn't been involved in negotiations, not involved in the day-to-day operations, not knowing what's going on, they're reading the

29. Rebecca Ann Harold was the Town Attorney for the Town of Fernley, Nevada. Ms. Harold also participated in Reclamation's Newlands Series oral history project. See, Rebecca Ann Harold, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, Professor of Government, California State University, Sacramento, October 9, 1995, in the narrator's office in Fernley, Nevada, edited by Donald B. Seney, and desk-top edited and published by Andrew H. Gahan, historian, Bureau of Reclamation, 2012, www.usbr.gov/history/oralhist.html.

Reno paper just like everybody else, and they're getting the same impression about us.

So there was no reason for us to even be in the middle of this anymore, because it was counterproductive, we were a scapegoat in a sense. And if the community was going to get a water system out of it, we weren't going to stand in the way—that was *my* feeling. If the only thing that they're going to give us is a community water system, which I felt is needed and still feel is needed, then we weren't going to get in it, be the one that's going to create the problem for that occurring. So we're going to say let them come to their own conclusion. We've got Newlands [Water Protective Association] out there, we've got L-V-E-A now that's broad-based community representative, and we're just another player. So I intentionally stayed away from all those meetings as much as I possibly could, unless they specifically invited me. And let them go, let them develop their own personality, their own position, and things like that. And then once Mike Clinton got involved with them, then the only time that we got involved is on a technical basis where we're talking about operations of the project and how much water's here and how much water's there, and those kind of things. So we used the support there and worked with their technical people for them to learn that stuff.

Seney: Did you feel like the L-V-E-A had a pretty well-developed position when negotiations started?

Establishing a Negotiating Team

McConnell: Well, what happened then is that there had to be a negotiating team. So L-V-E-A had all these little working groups, and they had to form a negotiating team, and so there was a process of kind of developing a negotiating team. And there was a group that was meeting that was working on negotiation issues, and we just invited L-V-E-A into that. Because the community had to start working on a negotiation position, because they were setting deadlines and time frames for these things to be set up, and you had to have a position. And so there was a *little* concern about the makeup of that negotiating group. You know, there was this tug-of-war between the Newlands people and the L-V-E-A. The Newlands people saw L-V-E-A as being counter to them, and L-V-E-A saw the Newlands people as being counter to the community, so it had to be worked out. So it was real interesting to have those meetings and hear these comments, but we were at least able to get people in there that could work together. And we decided that, "Look, we can't go to negotiations with outside interests"—and at that time negotiations had eight different parties involved in it, major parties, the community being just one of those parties—"without getting our interests worked out amongst ourselves." So we had to sort it out. And so we had some heated discussions at times, but it had to be done in order for us to develop a unified position. We weren't going to go into the negotiations all split up, because if we did, we're wasting our time and we're wasting everybody else's time, we had to develop a position.

Seney: Were you able to do that?

McConnell: Well, we were able to develop a paper, a negotiations paper that had our position on it, and we were able to present that as L-V-E-A's negotiation position. And the way it came down as who would sit at the table, who would be the chief negotiators, Mike Clinton would be the chief negotiator and spokesman. Sitting at the table with him would be an L-V-E-A representative and an N-W-P-A representative. (Seney: And who were those?) And they selected Jim Johnson from L-V-E-A and N-W-P-A selected Ernie Schank.

Seney: I know Mr. Schank, of course, is a farmer and water user and is president of the Newlands Protective . . . Or treasurer maybe.

McConnell: I don't know.

Seney: I know he *was* treasurer or whatever. Who's Mr. Johnson?

McConnell: Jim Johnson was an individual that apparently was initially involved in Lahontan 2000, and came over to L-V-E-A as a community person. He's an accountant, he works for Cofferi [phonetic spelling] and Armstrong, and he was born and raised here, left after his education and went to Winnemucca, working for Cofferi, and then he transferred back to the community a few years ago, I don't know the exact date. But he got started in Lahontan 2000 and then he went over to L-V-E-A and became a board member on behalf of the county. You know, we set up how we were going to make up the board, and the district was—there's six public agencies, and it was an inter-local agreement that formed L-V-E-A, and the reason for it is they were looking for funding, and they were looking for taxing authority. So we set up this inter-local agreement to form this group and to try to lessen the influence, again, of the district, we accepted one member on the board. We're one-sixth of the agencies, but we only got one member on the board.

Seney: Who did you put on the board?

Water Users' Concerns over the Make Up of the Negotiating Team

McConnell: We put on a board member, and the initial one was Roger Mills. And then subsequent to that time now, there's been a switch and it's Richard Aramand [phonetic spelling]. He was the alternate.

Seney: Another board member?

McConnell: Yeah. And so the county, I think, got three or four positions, I don't remember exactly, and then the city got two or three positions. Fernley got one. There were two conservation districts, they got one between them. So that's how the board was made up. So our influence was one-ninth in that respect. So a lot of people were concerned that we were sort of "abandoning the ship" in a sense.

Seney: Meaning the water users maybe?

McConnell: Yeah, that we were abandoning the water users. But I had to continually tell people that that's not the case. What we're doing is we're letting the community decide what's best for the community, and not being the out-front person to decide that for the community, because in the past, we didn't do it effectively.

Seney: Were you able to convince the water users of that? I'm sure it varied, but overall, what was the feeling?

McConnell: There's some of them that feel . . . For example, one lady came in and asked me about it. She perceived what we were kind of doing, and she asked me the question if I was trying to wean the water users, and I said, "That's a good term," but I think that's a correct, accurate term, because they depended on us for everything—all the litigation, all the negotiations and everything. We weren't doing an effective job in the sense that we were doing the best we could, but we weren't getting the job done. And it just had to be either us or lack of resources or perceptions or whatever, but it had to change, if it was going to change for the community. We had a lot of opposition in the community, and I imagine we still do, because any public agency, there's a tendency to snipe at them and bitch at them and complain about them and things like that, because you have to, as a public agency, you have to make certain rules and regulations for your operations and stuff, and people don't like that. And there'd be times that we'd do something that somebody didn't like, and they'd take that out on us.

So there's always that squabble amongst the users. And so then the word passes and you get . . . We didn't have an effective public relations program. It was one of those things that they started in the 70s and it didn't pan out for them. We tried it again in the negotiations and that didn't pan out, so the board members were real reluctant on public relations, they just don't see the value of it. But we did eventually start a program where we're putting out these newsletters, and that's been going for a year-and-a-half now, and that's been well received, and a real good job was done on that. And then we have a morning radio program, five minutes, where five days a week for five minutes there's a radio program, local radio program, that we put out information on. So those are the two things that we're doing public-relations-wise. And we're using a guy named Tim Findley [phonetic spelling] for that, and he's got a lot of that background. And I think it's worked out really great for us, to tell you the truth, but there's still some commotion about it, still some feelings about it, that it's a waste of money and this kind of stuff. So we're always rehashing that a little bit, but public relations is one of the things we have to do. We're basically here, as I see our mission, is to deliver water to the water users, and that means that they're our customers and we have to pay attention to them. Even though we're nonprofit, we're not out there to make a profit, and we don't have any gimmick or product or service to sell to make money out of, we're here as a service, and so public relations is part of that, to keep people going. And I think it's helped a lot.

But anyhow, getting back to the negotiations: We got the negotiations group set up and we had to start meeting weekly, and that's pretty hard for a bunch of volunteer people to do. So there'd be good meetings and there'd be bad

meetings.

Community's Negotiation Group Meetings

Seney: Now these meetings were of the . . .

McConnell: L-V-E-A negotiating team. (Seney: Okay.) After we got that worked out, because there was a split on who was going to be this negotiating team, because L-V-E-A had already formed this other committee called a Water Budget Committee, and so there was a little conflict on that, because the Water Budget Committee was supposed to figure out how much water is used in the valley, what we need, and things like that, for developing a position in negotiations. So it turned out that you still had the Water Budget Committee going, and you had a negotiating team. And you had federal interests in the valley that couldn't be on the negotiating team, didn't *want* to be on the negotiating team, because of the potential conflict.

Seney: This would be Fish and Wildlife?

McConnell: And Nevada Division of Wildlife, people that live in the community, but they're still involved in L-V-E-A. So you ended up with L-V-E-A members that some of them are water users, some of them weren't. And you'd have *big* water users, N-W-P-A involved in the negotiations, and then all the other interests in L-V-E-A: The Town of Fernley, the City of Fallon, the County of Churchill, T-C-I-D. And so we formed this group, a negotiating committee, and we came up with this negotiating package, working with Mike Clinton. And he would draft some things and give to us, and we'd draft some things and give to him, and we worked out a package eventually.

Now the thing that the other participants don't see in all of this is the fact that we represented so many diverse interests, whereas Sierra Pacific Power Company is at the table, and they represent *their* interests. Pyramid Lake Tribe is at the table, and they represented *their* interests. But we represented a broader interest and bigger interest than anybody else, so it made it a little more difficult for us to come up with a negotiating position that was going to be compatible for the community.

Seney: What was on that list of things you'd agreed upon?

Issued that Unified the Community

McConnell: Well, as it turned out, one of the things that we wanted to get rid of, of course, was the federal government intrusion and the local operations. We wanted to get rid of the litigation if we could, because that was a big issue. While all this is going on, Pelcyger has filed 2,000 lawsuits against everybody in the valley. That was part of the jelling. There's two things in addition to this meeting and discussions that jelled the Newlands Water Protective Association, two other things. In June of '93, I believe it was, the government, Bureau with Ed Solbos as

the man over in Carson City, sent us a letter telling us that the water right transfers that were on appeal, the twenty-five, the initial ones under the Alpine Decree, which a decision was finally rendered in January of that year—well May, he sends a letter because Pelcyger and Disheroon are convincing him that they're not valid any longer, that those water right transfers are no longer valid, based on the court's decision, and we cannot deliver any water to them, and if we do, we'll get penalized. Then Pelcyger convinces him to send a similar letter in June that saying *all* of the water right transfers that are outstanding that are sitting in the District Court that haven't had a hearing, are *also* invalid. So we get *those* letters, which created a firestorm of things in the valley, helped to jell. And then at the same time, Pelcyger's sending out these—or *about* the same time, maybe it's that November or October or whenever, he started sending the summons. He starts sending out these summons to about 2,000 different people, abandoning and forfeiting their water rights.

So those two items really jelled the water users into a group that helped mold them as an organization to protect the water users. And then you had all this other ongoing stuff from the administration where they were basically attacking the West on every water use issue. I mean, it was a major change in the Bureau when the new administration came in, and they had Dan Beard appointed as the Bureau Commissioner, when Dan Beard was George Miller's right-hand man and chief of staff or whatever it was in the committee where he was doing all this legislation that was against the Central Valley [Project] and against every other irrigation district—him and Senator Bradley were the architects of a lot of that, and our legislation was just one piece of that. So you had a completely different approach towards water users in the West. So you had a lot of these groups, Klamath Falls and other organizations starting to form. So it was just part of the program that occurred, that they all came together. So the timing of all this was coincidental, but it all came together, so you had those organizations. So we were looking for less government, and if we were going to give up water, we wanted the government out of here. We were looking for a settlement of the litigation, because that was a big community problem for a lot of people, and we were looking for a municipal water system and help in that regard. And then we were willing to reduce our water use.

Now, there were a couple of problems with that, and one of them is, the government wants to purchase all this water right for the wetlands, and all that does is just shift the water around, it doesn't reduce the water. A little bit it reduces it, because you have the change in water duty, but significantly it doesn't change the water use. So if you take the farmlands and put them out to the wetlands, we'll still have the big water use, and so that doesn't solve the problem over on the Truckee River which was the main problem, is reducing water use on the Truckee side. So after discussion with Mike Clinton, the proposition was to allow them to acquire water rights, then retire them, so that our water use in diversions from the Truckee River would be reduced. And then to make up for that, they would acquire water rights for the wetlands upstream on the Carson River to supplement the flows into here, so that we could solve something for Pyramid Lake, because otherwise, solving it for the wetlands doesn't solve it for

Pyramid Lake, because all you're doing is just changing the water from here to there, and we still draw the same amount from the Truckee River.

So that's what I can remember as the major focus of our negotiations.

Seney: Okay. What happened when the negotiations began? What were your impressions as the negotiations got underway?

Impressions on the Negotiations

McConnell: Well, like all negotiations, they start out slow, and they start out trying to deal with the issues that people can reach agreement on. The tribe presented their position that they wanted us cut off from the Truckee River, and there was no way for us to accept that—that wasn't possible. So we tried to work around that by trying to find a mechanism to reduce the Truckee River diversions. And so then they started setting up these different working groups also, and Gail Bingham was the mediator, and she designated these working groups to work on various issues. So we'd have those working groups, and then we'd have the negotiation sessions, and there was only supposed to be so many negotiating sessions, and it was supposed to be over in January. Well, come December and November, heck, we're not even near completion of that, so everybody agreed to continue those a little bit, and so it went to March, I think March 2 or 6 or something like that was the very last meeting. And the government had Betsy Rieke³⁰ involved in it. She's the Assistant Secretary for Water and Science, and she was a very good influence on the negotiation process from the standpoint of trying to bring some rationality into the negotiations. It wasn't just one-sided, pick on those guys down there. Let's try to get something worked out amongst us all that'll work and be long-lasting, because they found out in the legislation that if they just ignored our problems down here, that they would resurface somewhere else, that we're integrally tied-in to all water on both systems, and they'd have to find a solution. Well, those sessions went on and there were various discussions within those sessions, and we had one meeting that I felt was very productive in negotiations, and there was only about five of us, totally in the group.

Seney: This was one of the working groups?

McConnell: No, it was a negotiation session, but I can't remember why there were only five of us there. From the community there were five designated people, and I happened to be one of them. And the only reason that I got designated, and I kept telling these people that they'd be better off to just do it without me, because of my past involvement and these other things I mentioned earlier on. I just thought that

30. Elizabeth Ann Rieke was the Assistant Secretary of Water and Science for the Department of the Interior, under the Clinton administration from 1993 to 1996. Ms. Rieke also participated in Reclamation's Newlands Series oral history project. See, Elizabeth (Betsy) Rieke, *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.

there'd be different negative reactions, and maybe other people can do it better, because it hadn't worked in the past. But they always drug me in there, because of my knowledge of the system and the operations. So I participated on that basis, but I always felt that it would be better for other people to be the spokesmen and come up with the ideas, because our ideas hadn't worked. I really wanted to get a solution, because it's a waste of money and resources. I mean, you can't *imagine* the things that we want to do around here, from the standpoint of improvements on the project, but we can't because we don't have the money because it's all tied up in all this litigation and all this hassling over all these different threats we have. You know, I'm all stacked up here now because we're in these contract negotiations for O&M, and we've got one a week to work on contract negotiations, so we have to get through an O&M contract that's going to be . . .

END SIDE 2, TAPE 1. AUGUST 1, 1995.

BEGIN SIDE 1, TAPE 2. AUGUST 1, 1995.

Seney: This is August 1, 1995, my name is Donald Seney, I'm with Lyman McConnell, the Project Manager of Truckee-Carson Irrigation District in his office in Fallon, Nevada, and this is Tape 2.

Lyman, as the tape ran out, you were talking about the contract negotiations that are taking so much of your time, these weekly negotiations.

McConnell: Yeah. And the reason it's aggravating for me is it's just politics, it's rhetoric, they're trying to make changes in the West, and they're trying to free up water for other resources. They're just anti-agriculture, and so they're going through all these different programs to try to change the water use, and a lot of times it doesn't work, but we have to go through the process. And we can't just walk away from the standpoint of saying, "Go ahead and let them do it," because then it'd be *real* devastating. So we have to participate, we have to pay attorneys, we have to pay experts, and we waste a lot of money on those kinds of things as opposed to putting them into project improvements, which I'd *love* to get into and change focus.

Seney: How much are you spending a year, on average, on legal fees?

McConnell: Well, last year during the negotiations, we contributed heavily to L-V-E-A to make sure that that went and continued to go, is that we spent over half a million dollars last year in that kind of expense. That could go a long ways for a lot of improvements in the project that we would like to see happen. And all they tell us is, "Well, all you have to do is agree!" It's kind of a ridiculous statement for them to say. (Seney: Yeah.) I mean, just throw a rope around my neck and drag me around and I'll do anything you want, but it isn't going to happen. I'm not going to let them do that. But in any event, we have to put up with a lot of that stuff. So if we can get rid of micro-management of the project, that would go a long ways for us making improvements.

Seney: Talk a little bit about the individual participants in the negotiations. Certainly

there are the substantive issues and those things you have to come to a meeting of the minds about. But as you know, personality makes a big difference in these kind of proceedings, and I'd like you to talk a little bit about that—about the different individuals who were involved and their contributions and positions. How about Graham Chisholm? Was he at the table?

Negotiation Participants

McConnell: Did you want to talk about other people, or people within L-V-E-A?

Seney: Either way, but I'd like you to talk about some of the other participants from Sierra Pacific Power, from the tribe, from the federal government—get your perspective on those individuals and their contributions and so forth.

McConnell: I'd just as soon not.

Seney: I *know* you wouldn't. Let me see if I can approach it in a different way. Was there anyone that you thought—you mentioned former Assistant Secretary Rieke, who you thought was a positive influence. (McConnell: Right.) Was there anyone else you thought was a positive influence?

McConnell: (long pause) Well, Gail Bingham,³¹ you know, from the standpoint of the mediator. She tried to do what she could to try to keep the discussions going, and trying to make sure that we kept on an even keel. (pause) I can't think of anybody that I felt really contributed a real positive position in the negotiations. They were all there for their own interests. Nobody I could see, with the exception of—Betsy Rieke stood out because she was, of course, the major influence of the federal government. And when she was there, she had a leveling influence on some of the bureaucrats and their enthusiasm as to how they wanted to handle things. So she was able to present positive steps, positive ideas there. I guess you could say everybody contributed what they thought might have been positive, but it doesn't necessarily turn out that way from our perspective.

Seney: Was there ever a time you thought that the negotiations would be successful?

Positive Outlook Toward the Negotiations

McConnell: Oh yeah, yeah. When we had presented our package and we had the people that we had at the table that I thought that our negotiations were going to be successful all the way through this. I thought if there *ever* was going to be a negotiated settlement, it was going to be in these talks, because we had Mike Clinton as an outside influence, had had experience within the Department of Interior, as well as his influence in other projects, and he had worked with Pelcyger, so we thought

31. Gail Bingham participated in Reclamation's Newlands Series oral history project. See, Gail Bingham, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney. Edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2009, www.usbr.gov/history/oralhist.html.

that was positive—he had a good relationship with Pelcyger. And then we had Ernie Schank who is one of the best persons that N-W-P-A could have selected from the standpoint of a negotiator, because he's able to talk openly with people and friendly and present a position without getting too upset about it. And then Jim Johnson for L-V-E-A, we thought that that was . . . So we *thought* we had a good combination of the spokes people and the position of the project, and we were trying to come up with ideas that we thought were going to solve this problem by reducing the water diversions from the Truckee and also meeting the concerns down in the wetlands. As it turned out, it wasn't such a good plan from other people's perspective—just as, I guess, some of their plans weren't such a good idea from *our* perspective.

Seney: Were there any of the elements in the negotiation you thought that you got the feeling maybe that weren't really interested in negotiating the settlement?

McConnell: I don't think anybody wasn't interested in negotiating a settlement. I think everybody was interested in a negotiated settlement. Everybody just had a different idea as to what it would take to get it solved. And of course every one of those ideas are coming from their perspective as to what interests they have. So I always felt that there was always a good positive relationship. In fact, our discussions with the government came so close to having agreement it's unbelievable.

Seney: What do you think kept that from happening?

Looking for Money to Build an M&I System

McConnell: I don't know what the real reason was. We, at the last there, towards the end of the negotiations we were looking for money for the M&I [municipal and industrial] system, and our value of that was a *lot* greater than anybody on the other side apparently had.

Seney: How much it would cost.

McConnell: Yeah, our evaluation of the cost and how much we wanted people to contribute were *way* beyond what anybody on the other side or any of the other negotiators were willing to support, as it turned out, because what we eventually got out of that was in the last day or two of the negotiations when it came down to cutting the cheese. We held our meeting and Senator Reid's people came in and said that they would support I think around \$37 million or \$35 million for an M&I system, which would include both Fernley and Fallon. I mean, that money would be spread both the ways. And Fernley's was, I think, more than that by itself.

Seney: You mean, your estimates of what the cost . . . (McConnell: Yeah.) What did you estimate the Fernley system to cost?

McConnell: I was going to say around forty or fifty million, but I don't know if that's correct or not. I thought down here it was in the eighty to a hundred million, or something

like that. And that just may be wrong information, because I don't really remember.

Seney: I've heard that number for here—a higher number, even, for here.

McConnell: Yeah, over a hundred thousand.

Seney: Yeah. But I've not heard a number for Fernley.

McConnell: Yeah, they put in a number for Fernley. And what the tribe was trying to do with Fernley was trying to get them with Wadsworth on a water system for Wadsworth. And Fernley doesn't have any problem with sharing the resources with them, but they didn't want to be dependent on them. They didn't want to get themselves in a situation where they were dependent on water from the reservation. So they wanted to be able to continue to develop their own wells and recharge those in the Fernley area, but could certainly hook up with them as some kind of a sharing process. Didn't want to be dependent on them. That's the fall-down there. And our perception from the tribe's standpoint is they were trying to separate Fernley from the rest of the project in the standpoint of getting them a water system with Wadsworth, which would help Wadsworth, but then getting them independent from the canal. They wanted Fernley independent from the canal, because their goal was, and they stated at the beginning, was to shut off the canal. But anyhow, Senator Reid's people said they would support that not as a budget item, but as an appropriation item, which means that he and the Appropriations Committee would have to get that money authorized in the appropriations for the settlement. And the government would not give up on the litigation. They would not, they refused to give up on the litigation.

Government Would Not Give Up Litigation

The only thing I can think of there is, and this may be my cynical or sinister view of things sometimes, but they told us that eventually that issue has to be solved, as to whether there's abandonment or forfeiture on the project, and what it means under Nevada State Law, because there'll be transfers in the future, even if we get *these* settled. (Seney: Right.) But we told them what we would do is, we'd be willing to cooperate with them in acquisition, if they put up some federal money—acquisition of those inactive water rights—*buy* them at a discounted rate, and we would participate, and we would probably be able to get them at a much cheaper rate than they would, and then we'd retire them as part of this program to reduce the water demands and the potential water demands. But I think—and this was based on a conversation we had at a meeting in Reno on a negotiations subgroup negotiation with Disheroon. Because we talked to him, we said, "You know, if you continue with this litigation over abandonment and forfeiture, that's going to eventually affect Reno and Sparks, because even though forfeiture may not apply to them because of the date, abandonment *is*." Because what Disheroon told us what he wanted to do is, he wanted to get the court to define what an abandonment was. And if you put a road down the water rights, or

if you put a house on it, or a barn, or permanent structure, he wanted the courts to say that was an automatic abandonment, because the law in the state now says that you have to prove intent, you have to prove that the guy *intended* to abandon the water rights, and just because he put a house there and he might have been using it somewhere else, or he might plan on using it over here or whatever, that didn't show an abandonment—it was just one element of it. You had to show that he *intended* abandonment, and that's very difficult to prove, somebody's intent. (Seney: Sure.) So he wanted the courts to just flat out come up with a definition of what constitutes an abandonment without having to get into this intent argument. And we told him, "Well, you know what's going to happen *there* then, is that if that's what the courts decide, then that means all those unused water rights in Reno and Sparks are also going to be abandoned." And he just kind of smiled.

So I had a feeling that there's more to this than what meets the eye, from the standpoint of . . . And it goes back to a prior meeting that we had with Reno and Sparks that we met with, and the first thing that Reno and Sparks and Washoe County asked the tribe was, "Are we going to be able to use . . ." and they called them "fractured" water rights then, because they were all split up amongst all these little lots. "Are we going to be able to use our fractured water rights in the future for development?" And Pelcyger would never answer them, and he'd always just say that we could negotiate that, or we can talk about that. So I think that what they're trying to do is, they were trying to eventually get rid of all these so-called fractured and abandoned water rights in Reno and Sparks at the same time they get rid of these, which would drastically reduce the demand on the whole system for Pyramid Lake. So that's the *only* reason I can figure out as to why they wouldn't be willing to give up the litigation on those water rights, because that was an important issue for the community. We said, "We can't go back and say to the community that we have reduced our water use and still have those people faced with the litigation on these water right transfers, and litigation on these abandonments. If we can find a solution for that, by us agreeing to buy these inactive water rights, and you just letting the existing transfers go, then we can go back and say, "Okay, we had to give up certain supply of water for the community, but we got this and we got that." And they wouldn't give that to us—they would not give that to us, for some reason. So then the last very day it got down to separating the diversion issue, the Truckee River diversion issue settlement, and the wetlands issues, separate item. And we had to hold fast on the position of saying that we had to have some money for the community's water system before we could do that.

Seney: And more than what you were being offered?

McConnell: No, we were willing to accept that. I think at the last, we were willing to accept that as (Seney: The \$37 million) a starting point. Figured that's better than nothing. Then they tied it to the Truckee River. We were willing to separate the two of them, and they tied it to the Truckee River, for us to reduce the diversions there, and we tied that to the M&I system. And they tied their litigation, they wouldn't give up the litigation on that, so the thing just deadlocked. We got so

close to getting things resolved. I don't know, attitudes, positions, long-time positions—and that's one of the reasons why I thought in all of this, that I should play a lesser role, because of past participation and past positions and biases—you're not going to get it solved.

Seney: First of all, the idea of abandonment and forfeiture it seems to me is a very emotional issue among the water users.

Abandonment and Forfeiture Issue

McConnell: Oh yeah! You know why? It's the taking. They're trying to *take* my property from me. And all they have to do is offer them some money for it. And the way we explained it to them, you've got this litigation hanging over their head, and they'll start looking at whether they want to continue with litigation or they want to just sell it. And that's why I thought that we could get those kind of water rights for lesser value, much lesser expense. Then you *solve* the problem with the individuals over this perception of the government taking things from us—just trying to *take* our water rights, they're not willing to *pay* us for them. And people would be willing to . . . You look at the sales now on these water rights—they're not tremendous value. I mean, I can't believe how some of these people are selling. But they get to the point where they want to change, or they're tired or whatever, and they sell out, and they sell out at values that are not really inflated values, they're *low* values.

Seney: But this is clearly not an issue on which you could have folded, as far as the water use at all, "Go ahead with your lawsuit, we'll forget that, and work out these other things." I mean, you really felt strongly that you had to insist that they drop their lawsuits on that.

McConnell: Yeah. Our position to them is that if we can go back to the community and explain to them what we got in return for the reduced diversions from the river, and the acquisition of all these water rights without an M&I system, some support—if we can't go back and tell the community "this is what we got in exchange for that," then we can't sell the settlement to the community. And if you can't sell it to the community, why go back and try to present it? And that's based upon these people talking amongst themselves while the negotiations are ongoing, and what people really felt strongly about, things like that. And it was that litigation where Pelcyger filed those 2,000 lawsuits, that just riled people, it *really* upset them. And it upset them so much in the Fernley area that it started causing confrontation between the Pyramid Tribe and Fernley folks when they're so tight, they're so close in mixing, that it's really created a problem for Pyramid Lake. And in fact, what's happening now is, they bring these letters from Pelcyger on these contract negotiations, and the tribal members that bring them *apologize* beforehand. They've read the letter, obviously, but we haven't seen it, and they're apologizing for the letter, and they *want* us to work things out, and they *want* us to be neighbors, but yet they continue to just kind of pass you the aggravating letter afterwards. So it's kind of a tough situation. They don't like it, but at the same

time, they know that he's probably doing good for them from what they really want is the water and things like that. So that's what they have to put up with.

Seney: Did you get the feeling that Pelcyger and the tribe were serious about the negotiations? Let me preface it by saying this: They've been very successful in litigation, the Pyramid Lake Tribe has—you'd agree? (McConnell: Yeah.) And successful with legislation; 101-618 worked *very* much to their advantage. (McConnell: Right.) Did you have the feeling that while they were negotiating, maybe they weren't negotiating with as much enthusiasm as you'd like?

Sierra Pacific Power Company

McConnell: Well, I guess I could agree with that statement, because Pelcyger's a very difficult person to negotiate with. The power company was able to negotiate something with them.

Seney: You mean at this negotiation? (McConnell: No.) The Preliminary Settlement Agreement?³²

McConnell: Yeah, the Preliminary Settlement Agreement—they were able to get *that* worked out. But it worked for *both* of them. The power company didn't lose anything, they gained some. The tribe didn't lose anything, they gained some. And the question is, at whose expense? And where are the gains going to be? The power company's in the business of making a profit and they get the water from the developers. So if there's no water available, there's no development. But they're in *favor* of development, because that's how they make their money. They make their money off of the power, not the water. So if there's continued development, then they're going to make money.

Seney: And grow and profit. (McConnell: Right.) Did you feel like the power company was interested in settling pretty much? Sue Oldham was their lead negotiator, was she not?

McConnell: Yeah. Well, they didn't really have anything to contribute toward the negotiations, other than coming up with ideas for how things could be solved. One of the things *we* proposed, and we proposed it in the recoupment, was we've got a new hydroplant up here that we have a partnership with Synergics in, and we propose that if the government bought Synergics out, that we would dedicate those funds

32. "An agreement reached between the Pyramid Lake Paiute Tribe of Indians and Sierra Pacific Power Company (SPPCo) on May 23, 1989. The Preliminary Settlement Agreement 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 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).

that we're using now to repay those loans, to Synergics. If they bought them out, then we would repay those, use the monies and all the revenues for that for improvements on the project, for their water acquisition program, and we'd double their return. We'd do it on the basis of if they put up \$5 million to buy the interest, then we'd contribute \$10 million of the revenues from that stuff for it. Then they'd get \$10 million worth of benefit instead of \$5 million with whatever they could do with \$5 million. And we proposed that. And what the power company did, though, is of course their . . . We've got a lease agreement with them for their electrical facilities here, the retail distribution, and that expires in 1998. And what they wanted to do was tie all of that to us giving them the power distribution facilities. And their offer was basically, okay, the agreement says at the end of thirty years, which is in 1998, all improvements that have been made by the power company to the facilities in the thirty years of the contract we can buy back from the power company at the depreciated value. So if they made it thirty years ago and it's fully depreciated, we owe them nothing. If it was done last year and it's only one year depreciated, then we pay them. So right now it's about twenty million bucks, because of the growth and improvements. So at the end of thirty years if we want to get back into that business, we have to pay them for their improvements. That was the lease agreement. So what *they* suggested is that as part of this agreement, that they would . . . They wanted to first renegotiate the power that they pay us for the New Lahontan [powerplant], down a penny or so, a megawatt or a kilowatt. And then they would agree to pay a certain amount on the *old* Lahontan [powerplant], which they have now under the lease agreement, if we would just give them the lease agreement. I mean, they said that they would forgive our debt of \$20 million, and they would just take over the lease agreement. Well, I mean, that's no offer at all. I mean, they didn't offer us anything for our facilities. We can go out and borrow the \$20 million, pay them back, and then we're back in the business.

Seney: How long would it take you to pay the \$20 million off, do you suppose?

McConnell: Oh, I have no idea. That would be some financial . . . We'd have to pay them off immediately. We'd have to go borrow it, through bonds or some other method.

Seney: But it wouldn't be a bad deal for you necessarily.

McConnell: Oh no! Shit, they make, off of this lease, they make annual revenues are like twelve to fourteen million bucks. That's not all profit. (Seney: Sure.) But that's the gross revenue. So you're talking about the system being worth two years of gross revenue, so I don't know how you would evaluate that, but everybody that we've talked to says that it's worth getting back into the business as a revenue-making proposition, even though you have a \$20 million obligation to buy the system. So we've been working on that, and they're aware of that. And that is opposed to what they want. They want to just have *all* of the electrical business in Northern Nevada. And then they tell us that it's a rural area so it's not real profitable. Well, if it's not real profitable, then they shouldn't worry about buying it back, but they're out there in Mount Wheeler and Ely, bidding on *that* system.

So if it's so unprofitable, why are they bidding on another one? They're a profit-making company and a monopoly and they have control over everything.

There is one drawback, and that is, of course, we see that electrical distribution and power is going to be like the gas business, and it's going to be open market. There'll be more competition in it. There won't be these little territories where everybody has the monopoly anymore, because people will be able to come in and pick off the profitable user and cause there to be more competition. So they know that's coming and we know it's coming, and they don't like the idea, I don't think, of us being so close to them in Reno where they would have big customers. But on the other hand, we don't have any generation facilities, so we've got to buy from them, or we've got to buy from somebody else, and we've got to bring it through their system, so they really have somewhat, still have some control over it.

Seney: Yeah, you don't generate enough here, obviously, since you only generate part of the year.

McConnell: Yeah. Before we leased it, I guess we were generating all the requirements, and that may be one reason why they leased it, because that was about the time that the power generation during the winter months were taken away from us by the first operating criteria. So that might have been one of the reasons the district leased it out, we didn't have the generating facilities. But we could have certainly entered into an agreement with them to buy it, because the city of Fallon does it. City of Fallon owns their own electrical system, and they used to buy it from us, when we leased it, now they buy it from Sierra. So Sierra sells directly to the city and the city distributes it within the city. So we could have done the same thing. There might have been other reasons then, there must have been other reasons, and I don't know what those really are.

So that's what *they'd* offered in the settlement negotiations. They offered to help the Old Lahontan generate some power.

Seney: What about the state of Nevada? Roland Westergard was representing them. What was their position?

Upper Carson River Interests

McConnell: Well, initially, you know, they didn't want anybody interfering with the upper Carson River because they saw that as creating a real big problem in the state. But we ended up with the upstream users being involved in it through representatives, Ira Rackley [phonetic spelling] represented the sub-conservancy district and Peggy Tvetd was their attorney, and then . . . Dorothy Timmeon Palmer [phonetic spelling] from the city of Carson, Carson City's Public Works Director. So those were the three people that ended up representing the upper Carson interests. So once they got into it, the threat was there that "we're going to sue you for your water use upstream, because we think you're wasteful." And we put pressure on them to buy and sell water rights for the wetlands to contribute

towards the wetlands themselves. So those became pretty big issues, and they ended up toward the end agreeing with the Department of Interior and the Pyramid Tribe to go into a process of evaluating water use upstream, and asked anybody else to be parties to that if they wanted to. We told them that we'd want to be a party to it, because we knew that anything that happens upstream could affect us in Lahontan, and whatever they want to do, store water or transport it to the wetlands, or whatever, would have some influence. They eventually came down to where they said they needed some money for modeling and we told them that we didn't have the funds or the source to do that—we'd still like to participate. And right now the government, I guess, is not interested in it either. So that agreement, as far as I can tell, has fallen apart, although there was a meeting today at one o'clock, so I'll know tomorrow more about what's happening there.

But the impression I get from the government, the U-S-G-S [United States Geological Survey] is working on their modeling for the Carson and the Truckee [rivers] and they don't want to pay some outside firm \$100,000 to do *their* modeling. So that's the impression I get.

Seney: I know they had to be included at the last minute, because it seemed to be a big oversight, not to have the users on the upper Carson [River].

McConnell: Yeah, and it was kind of a tug-of-war as to whether they should be part of it or not.

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BEGIN SIDE 2, TAPE 2. AUGUST 1, 1995.

Seney: You said there was a little bit of a tug-of-war whether or not they should be involved. But I think what the consensus was, was "gee, these are important people." (McConnell: Right.) What about the environmental negotiators, Graham Chisholm and David Yardis, I think. Were those two at the table?

Environmental Interests

McConnell: There was three of them. There was

Seney: I take it Graham Chisholm and Yardis were probably the prominent ones, were they not?

McConnell: Yeah, the third guy was an ex-Nevada Department of Wildlife individual, and he represented the Nevada Wildlife Federation. They had met with the Lahontan Valley Wetlands Coalition, they had met with the Nevada Waterfowl Association, and those groups, and together with Fish and Wildlife and NDOW [pronounced "Endow"] for positions. Although NDOW was represented by the state.

Seney: NDOW is . . .

McConnell: Nevada Division of Wildlife. And the Fish and Wildlife Service is represented by the United States, but they had met with them, you know, from the standpoint of positions and stuff like that. David Yardis is a very numbers-oriented guy. He has an economics degree. So he liked the modeling. He'd been doing some modeling on the model below Lahontan [Reservoir], and he figured out some numbers. He does a lot of that modeling analysis, so he was very precise in reviewing those numbers and good about being able to analyze that and give some input on that.

Seney: Do you feel like you could trust his numbers?

McConnell: (pause) Well, Willis worked with him on the model below Lahontan. And what he'd done is, he'd gotten the model from the Bureau, and the Bureau's model was set up to give a certain amount of water to the land out of Lahontan—that was the purpose of the model, based on consumptive use and things like irrigated acreage. And he'd modified it a little bit to see how much water could get to the wetlands, based on how much would come out of Lahontan. And what he did is use 1989 data to calibrate the model, and that's as far as he would go. He wouldn't put in other years to verify it. As long as he got the model down to where it pretty closely simulated what happened in 1989, he was satisfied with it. So we never just accepted those numbers face value. We always looked at them. And we had the guys from Bookman Edmonston in it, a guy named Neil Allen [phonetic spelling] and did the modeling and worked with another guy at Bookman Edmonston. They did the modeling. They had a modeling group, one of these working groups. So they and David Yardis was part of that. I was never part of that. I might have attended one meeting or something. I never participated in that. And so they got into the numbers and they would hash them back and forth and vice versa. So I don't think there was ever anybody that just accepted one person's numbers, there was always some evolution or some evaluation of the numbers and opinions.

Seney: And their main interest, I take it, would be water for the wetlands.

McConnell: That's correct. But at the same time, though, their interest is also tied with Pyramid Lake. So they were wanting less water in the valley and more water to the wetlands. So their position is more or less squeeze us, if it took a sponge, they were going to twist us, and have part of it run that way, and the other part run that way. So that was their position, is to protect both of those interests. So they weren't really representing just strictly the wetlands. They were representing the Pyramid Lake area too. And where David Yardis has always been an advocate for Pyramid Lake from the very beginning when he came to work on this project ten years ago, when he first came in here, if it was that long, to limit the diversions from the Truckee River. He's always had that position. And so when the Nature Conservancy came in and had full-time people, they modified his position a little bit, from the standpoint of protection for the wetlands. But his advocacy was still mainly focused on Pyramid Lake.

Seney: You see a difference then between the position he represented and the one that

Graham Chisholm represented?

McConnell: No, I don't think so. I think they worked on those positions together. They worked very well together. I think they both have the same kind of goals in mind. The Nature Conservancy, when they first came into the valley, they were interested in wetlands purchases, but once they got full-time in Nevada, I think they became just as much interested in Pyramid Lake and maybe now *more* interested in Pyramid Lake than they are in the wetlands. They still participate from the standpoint of the wetlands and stuff, but they have more focus, I think on Pyramid Lake.

Seney: On restoring Pyramid Lake and raising the water levels there?

McConnell: Yeah, they're working on a program where they're growing cottonwoods along the edge of the river, and so the watermaster has to manage the lower Truckee River for cottonwoods. And he can't lower the river more than one inch a day or something like that, because of the way the roots spread out from the new cottonwood seedlings. They have to be able to reach down to the water so that they can continue to grow. It's becoming somewhat of a farce, I would say. It goes a little overboard, but that's what happens with the extremists.

Seney: Well, there's some feeling, isn't there, that because those trees were taken away, it has an impact on the fish breeding?

McConnell: Yeah, the idea is that it somehow increases the temperature, because there's no shade on the river. And I don't really know . . . The first thing I was told was that the Corps of Engineers took them all out, to re-channel the river. Then I've heard that the Indians took them all out and sold them for firewood. So I don't know who contributed what, or who's the responsible party, but it's being blamed on the Corps of Engineers. And what impact it'll have, I don't know. I don't really know how much those . . . The fish are only in the river for a month at the most, and then they go back in the lake, so I don't know how much of a big influence it's going to have. I think it's just another, my own personal opinion, it's just another way to grab water, have an excuse for needing water down there. They've got as much water going down there now as they did during the *cui-ui* run, or more, and calling on it, out of Stampede [Reservoir], for these cottonwood—they call it "cottonwood recruitment." And it's not just any *ordinary* cottonwood, it's got to be the old *Fremont* cottonwood. So I don't know if that's . . . That's what we've been told. And the first time we heard about it, I almost laughed. That's going from the ridiculous to the sublime. And now the issue they know is going away from *cui-ui*, so now it's focusing on water quality. So that's the next stage of arguments, is going to be water quality.

Water Quality Issues

Seney: Ah, you mean water quality in Pyramid Lake itself?

McConnell: Yes, and in the lower Truckee River.

Seney: If there's some modification on the words of the Endangered Species Act, that *might* have granted some relief to you all, that will simply be replaced by water quality mitigation concerns.

McConnell: That's correct. What's happening, of course, is that in 1994, which turned out to be a low water year for us, fifty-seven percent year, they said at the beginning it was going to be a hundred percent and made us repay that 21,000 twice. They had the biggest *cui-ui* run they ever had, and they only used 120,000 acre feet, total. And all their plans and all their proposals required over 200,000 acre feet, and so they had the *biggest* run that they've ever recorded. And then of course this year being a big year that it is, they got *twice* as many as they did in '94. And now all the talk about the water quality is to set a lake level, and here's where it's connected in. In the *cui-ui* habitat model that they did, to show how many *cui-ui* would survive under certain water conditions, they had an artificial lake level, 3,812, set in the model, so that when the lake was ever below 3,812, zero *cui-ui* spawned, because they couldn't get over the delta—that was the theory.

So it turns out now that in the water quality plan they're trying to meet a lake level of 3,810. It's amazing how these things all come around together. But we told them that was a bunch of crap on the 3,812, because all the time the lake, from 1944 to 1986 the lake was below 3,812, and if that's the case, then you wouldn't *have* any *cui-ui*. So what happened to them in those years? And we know it's not the lake level that makes them get over the delta, it's the amount of water going over the delta. And that's why in a big year like this year, when you've got a lot of flow going in there, the fish can swim up. And then they claim the pelicans ate 300,000 this year. Three hundred thousand fish they claim the pelicans ate. No, I'm sorry, 7,000 pelicans, and they figure they eat one fish a day for thirty days, 210,000 *cui-ui* coming up the delta or around the fishway. And they'd never been successful in the past because they used these guns, these propane guns, and the pelicans got used to them, didn't bother them.

Seney: They land on them, probably now.

McConnell: Yeah, close to them. So the issue is not the fish, the issue is not water quality, the issue is water—quantity into Pyramid Lake. So that's the next thing that we're going to face, is water quality. And interestingly enough, they had a meeting in the Truckee River Strategy not too long ago, and everybody's talking about this so-called 3,810 level of Pyramid Lake for water quality purposes. And interestingly enough, it shows up in Pelcyger's letter of last Friday where "the Bureau should be concerned with our diversions from the river in these O&M contracts because of water quality for the lower Truckee River," and they should put a criteria in the contract for our diversions. And at the same time he said we were negotiating in bad faith, and that they should cancel the negotiations, they should cancel our contract, and they should take over immediately the operation of Lahontan, Derby, and Lake Tahoe dams. The guy is just going nuts! Churchill County, I guess in today's paper it said they're going to ask the government for

30,000 acre feet of water for the municipal supply out of the Truckee River, out of their diversion rights. When Pelcyger finds out about that, he's going to go through the roof. The last couple of letters have been real bad letters. He's real frustrated or something—I don't know what the deal's going on with that.

Seney: Well, I was going to ask you "Where do we go from here?," but I expect you've just given me part of that answer, and that is that now these other issues are going to be raised.

Clean Water Act

McConnell: Right. Yeah, what the Clean Water Act did back in 1988 or somewhere around that time, they gave the tribes the same status as a state to set water quality standards, so that a tribe can set a water quality standard for the water within the tribe's reservation—just like the state of Nevada can set water quality standards for the Truckee River, just like California can set water quality standards for the Truckee River. And if they don't jive, since they're all going downstream, then they go to the E-P-A [Environmental Protection Agency] for arbitration and mediation, to determine what should be the water quality standards for the river. And you can see what's going to happen is that Pyramid Lake is going to be the tail wagging the dog in water quality.

And the one thing that they've always tried to get in the Clean Water Act is saying that a discharge from a dam is a point source discharge, and therefore they need a permit. And therefore, in order to discharge, they'd have to meet water quality standards under a permit, knowing full well that every discharge from a dam probably doesn't meet those standards, because they're coming from the bottom and they're probably picking up silt and all kinds of other things—just to interfere with storage of water in dams, so that that water has to keep flowing, and it has to meet water quality influences. So that's going to be the next battleground.

We've known it's been coming for a long time. (Seney: Have you?) Yeah, because the water quality study that they've done on the river is they've been in a fight with Reno and Sparks and their sewage treatment plant for a number of years. And what they're trying to say is the *real* problem is below Derby [Dam], and so what Reno and Sparks is saying is if we weren't diverting water at Derby, they wouldn't have a water quality problem. And that came up in the negotiations. What we said is that they want to buy 24,000 acre feet of water so that they can store it upstream to meet instream flows, to kind of balance that water quality for the treatment plant, so they can continue to operate and expand the treatment plant and continue to dump more sewage effluent in the river, which creates a loading factor in Pyramid. Even though they're meeting current standards, the loading keeps loading. It's like filling a jar with water and sand—eventually the sand is going to fill half the jar up. So you're still loading that jar, so there's very little clean water left. But because of our diversions at low flow time below Derby, there's a dissolved oxygen problem, where it's toxic for any fish that would live

there. So their proposal is to buy 24,000 acre feet—it just turns out that the Truckee Division has 24,000 acre feet. They want to buy the Truckee Division out, because that's the cheapest place to buy. And when we asked them about buying it upstream, they said they don't want to do that. They don't want to buy them in their *own* backyard, they want to buy them in *our* back yard. So we said that we'd be willing to let them buy water rights on the project to the extent of our contribution towards the water quality problem, and that to the extent that *other* people shared in that water quality problem, that they buy water rights other places. And the first thing they said was when they bought the water right, they didn't want to pay us the O&M.

Seney: And they're required to do that.

McConnell: Yeah. And we said we wouldn't agree to that. And they said, "Well, what we'll do is, we'll give you a million dollars out of that upstream fund in the water conservation district, to buy inactive water rights." "Well, that would be good, but we still need to have the O&M." And then they wanted us to take off our restriction on the contribution ratio, and we never have. But whether we can stop them from buying water rights is another thing. The question will be is when they transfer them, what kind of problems that creates from the standpoint of a transfer. But *that's* the issue that they have on water quality, so we know that there's going to be a problem for those diversions and whether or not that turns out to be something that causes a problem for our diversions is going to be real troublesome. So the Clean Water Act is important.

Seney: You know, when I spoke to you on the phone, despite this difficulty, you said you felt better about things, you thought things were going a little better than they were a year ago.

New Administration in Reclamation's Lahontan Basin Area Office

McConnell: Yeah, that's true. When I talked to you on the phone, we have new administration in the Carson City Office, Ann Ball³³—much different. And you already know that from Ed Solbos. What we learned over here, when Ed Solbos came on board and we started losing some of the Bureau people that were working with us on the efficiencies, is they called Ed "Too Tall Ed," so he was somewhat of a dictator in the sense of his administration style. So your comment about Ann, where she has the little, "Ann says," with a circle and a slash through it, is kind of conducive as to the different personalities—probably 180 degrees out. (Seney: Yeah.) Ed would probably have his up there that says, "Ed says," and have nothing around it. So there's a completely different attitude as to how to solve problems, and it doesn't mean that the problems will go away, and it doesn't mean that we won't have difficulty and disputes with the government. But it means that maybe we can

33. Ann Ball was the Lahontan Basin Area Office Manager in Carson City, Nevada from 1995 to 1998. Ms. Ball also participated in Reclamation's Newlands Series oral history project. See Ann M. Ball, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Donald B. Seney, from 1995 to 1998, in Carson City and Reno, Nevada, edited by Donald B. Seney with final editing and layout by Brit Allan Storey, 2009, www.usbr.gov/history/oralhist.html.

work in cooperation and in a partnership to try to solve those problems, instead of shooting at each other. So that's what I meant by the fact that things are going a lot better than they were. Because if you're *always* in a constant firing-line and always arguing with people, you're spending all your energy in how you're going to respond and what you're going to say and what you're going to do, or how you can get around what he's going to say, instead of trying to solve the problem, and that's that difference. So people will be able to measure our success, I guess, in the long run, and they'll be able to measure Ed's success in the long run. I'm sure that Ann Ball's a lot like Betsy Rieke in her approach to trying to solve problems, and I think that that's probably why we'll probably have more success. Because you can get the job done in a different manner, and if you can do it in cooperation, and you get the job done, what difference does it make how you do it? But if you have to be the boss, and you have to *tell* people how to do it, and it has to be done just the way you tell them to do it, and if they don't do it, you react and you start doing these things and that things to them, then people start reacting to it, and you *don't* get the job done. They spend their time reacting to your instructions. And people resist that, I guess. So that's what I meant by that.

Seney: Anything else you want to add about the Settlement II negotiations?

McConnell: I just want to add one other thing I just thought of when we were talking about things going better. We are now perceived to be out of this long-term drought, because of the water supply this year, and so that has everybody in a better mood too, because we've got plenty of water. As you said at the beginning, Lahontan [Reservoir] looks good. We probably won't divert water for at least another year, and maybe two years out of the Truckee River for storage in Lahontan. That's how good it looks. So they're working on an interim OCAP [operating criteria and procedures] which is a waste of time, because we *know* that there's not going to be any diversions from the Truckee River, so why even worry about trying to change it. If you want to change the OCAP, work on it long-term, try to see what you can do from solving the problem in the long-term basis, because the interim is just another, in my opinion, work product, a waste of time. (intercom interrupts briefly)

Now, the other question you asked at the end there, that I didn't answer. You said something about the negotiations.

Seney: Well, what I started to say is, where do we go from here after the negotiations, and I think you partially answered that. You're going to be getting into the water quality. (McConnell: Yeah.) Anything else that you see coming? Are there going to be more negotiations?

McConnell: Yeah, we've got the O&M contract negotiations ongoing now, and we have a thing that's called the interim OCAP and that they're going to be working on another permanent OCAP that they have to do an E-I-S for. The recoupment that they've been threatening to sue us over the recoupment for the last couple of years, so we don't know what's going to happen with the recoupment.

Seney: Do you get any credit on the recoupment issue for not taking water for a couple of years?

McConnell: No, no credit. That's just considered the way that things operate, and that we weren't entitled to it in the first place, so there's no credit.

Seney: Anything else you want to say on the Settlement II negotiations?

Disappointment Over the Settlement II Negotiations

McConnell: No, the only thing I can say is that I'm disappointed that it didn't work out, because we put a lot of time and effort into it. The last few weeks of that negotiations we had a small core group that was working real hard to try to come up with a solution, and we weren't able to get it done. So that's a disappointment because of all the hard work that was put in by all the people. People from the other areas, they don't see it. They don't see how the community worked together to try to come up with a solution. So that's the only thing that I could say, that I'm a little disappointed that we couldn't get it worked out. I think if we had more congressional support that we probably *could* get things worked out. But we don't have any, basically. We're isolated the way the politics are set up for the voting. We just don't have a big enough impact on anybody's vote to make a difference. And so they don't pay much attention to us. And we've been characterized as the bad side of the coin, and so they don't want to associate with us in that regard either. So we have no political power to get things resolved.

Seney: Well you must feel that way. I can understand why you do.

McConnell: So we just have to kind of eke it out ourselves.

Seney: What do you think the general perception of the failure of the negotiations was? Were you looked upon as the bad guys again who wouldn't agree? Or did everybody realize the positions are so different here, we just can't come to a reasonable accommodation.

McConnell: Yeah, the Reno paper tried to characterize us that way, as that we were the ones that failed to reach an agreement. But at the end of the negotiations we all agreed that there be a public statement made, and the public statement was that there were a lot of different positions that people took, and that everybody worked hard to try to solve the problems, but no one individual is to blame for them not working out. It's just that there's too much of a difference in what needs to be accomplished, and not enough money or whatever. But the Reno paper initially tried to convey it as us being the bad guys, and give the perception that we were the ones at fault. So that's an interesting sidelight. They do a lot of that. But that's their editorial guidelines, I guess.

Seney: Their reporting has not been, over a period of time, very complimentary toward the district, in any case, has it?

Negotiations Still Going On

McConnell: No. No, so we wouldn't have expected anything different. But that's the way we left it, and also we left it with the understanding that we . . . See, one thing that Betsy Rieke did was, she set up this Truckee-Carson Coordination Office, and she put Jeff Zippen [phonetic spelling] in charge, and they were supposed to coordinate all the different federal agencies in the Department of Interior out here and report to Betsy Rieke. So that's one positive thing that came out of the negotiations, is that they do have that coordination office.

Seney: Mr. Zippen was with the U-S-G-S, was he?, the geological service?

McConnell: I don't know where he came from. But he is the key guy at that office now, the Coordination Office. That's been a positive thing. The other thing is that they were going to continue to work on the various problems that were raised during the negotiations with various working groups. So they have this Upper Carson Working Group. They're working with the Reno-Sparks group to get that water purchase program implemented, and L-V-E-A has set up various working groups to continue discussion on project improvements and efficiency in OCAP, with the project people and community individuals—M&I was another one—and meeting with the federal interests to try to see if there's some way to get any of that resolved and worked out.

Seney: So in a sense the negotiations are still going on, in a way.

McConnell: Yeah, in a way that's true. We did come out from the negotiations with a better communication amongst parties. And I think one of the things that came out of it was this change in administration over at the [Bureau of Reclamation] Carson [City] Office. I don't really know what precipitated that, but that occurred shortly after the negotiations. So that has created a different atmosphere of working and cooperation, and we've worked fairly well with the Truckee-Carson Coordination Office. So communications with the federal government has been much better since then, and I think we'll probably be able to get some things worked out—as long as we don't get back into the process of just doing what they want to do without trying to solve the problems, working with everybody. And the one issue that's outstanding right now is they did an E-A [environmental assessment] for water rights for the *cui-ui* on the Fernley Division. And the E-A was criticized by the town of Fernley, by the County of Churchill, and by the Nevada Division of Wildlife, and ourselves, and L-V-E-A as not being adequate, because it didn't address the cumulative impacts of the program. And so they're setting up a meeting with the Fish and Wildlife people, because they're in charge of the E-A, to say, "Look . . ." What we've told them is, "If you just push that thing forward and ignore all of our comments, all you're doing is setting the stage for future discussions, because you've told us all along that the purpose of the Coordination Office and the purpose of the meetings is to build consensus and cooperation. And if you ignore that, after you've developed that system, if you ignore it and just push forward with your programs without considering those comments and trying

to address them, then you're just setting the stage for the rest of the discussions.

Seney: Souring them.

McConnell: You'll sour them and you'll lose trust. So it's going to be real interesting to see what happens on that. They held a meeting last Friday on that very issue. The idea now is to meet with the Fish and Wildlife people, and a letter was drafted by all of these people to the Regional Director up in Portland. So we'll see what comes out of that. But I know that's an issue that the Pyramid Tribe really wants, because they want to start buying water rights for themselves. Well, they want the federal government to buy water rights for them, and they just want to get that program started.

Seney: Yeah. That's the pressure, you think, behind this E-A?

McConnell: Yeah. Yeah, and then the Fish and Wildlife Service getting a lot of pressure from the tribe. Nothing in the public law required them, but it authorized them. One of the big criticisms was that since you've had such success in the *cui-ui* spawning in the last couple of years, and because of that you're going to reevaluate the *cui-ui* recovery plan, why don't you wait until you do the reevaluation to determine what you need in the way of water rights? Because they've told us that this is just the beginning. Kind of like what they did here with the 20,000 in addition to going up to 125,000. But that was before all this negotiation and the E-A, the 20,000. Now what they're trying to do is say, "Well . . ."

END SIDE 2, TAPE 2. AUGUST 1, 1995.
END OF INTERVIEWS.