

ORAL HISTORY INTERVIEWS

ALI SHAHROODY



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OPEN FOR RESEARCH



Interviews Conducted by:
Donald B. Seney in 2008
California State University-Sacramento
For the Bureau of Reclamation's
Newlands Project Oral History Series



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By Brit Allan Storey, Senior Historian

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STATEMENT OF DONATION
OF ORAL HISTORY INTERVIEW OF
ALI SHAHROODY

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, ALI SHAHROODY (hereinafter referred to as "the Donor"), of SAN RAFAEL, CALIFORNIA 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 interviews conducted on MARCH 18,2008 at RENO, NEVADA and APRIL 24,2008 at SAN RAFAEL, CALIFORNIA 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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Date 4/24/08

Signed 
ALI SHAHROODY

INTERVIEWER: DONALD B. SENEY

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Date: _____

Signed: _____
Archivist of the United States

Introduction

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

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

In the case of the Newlands Project, the senior historian consulted the regional director to design a special research project to take an all around look at one Reclamation project. The regional director suggested the Newlands Project, and the research program occurred between 1994 and signing of the Truckee River Operating Agreement in 2008. Professor Donald B. Seney of the Government Department at California State University - Sacramento (now emeritus and living in South Lake Tahoe, California) undertook this work. The Newlands Project, while a small- to medium-sized Reclamation project, represents a microcosm of issues found throughout Reclamation: water transportation over great distances; three Native American groups with sometimes conflicting interests; private entities with competitive and sometimes misunderstood water rights; many local governments with growing water needs; Fish and Wildlife Service programs competing for water for endangered species in Pyramid Lake and for viability of the Stillwater National Wildlife Refuge to the east of Fallon, Nevada; and Reclamation's original water user, the Truckee-Carson Irrigation District, having to deal with modern competition for some of the water supply that originally flowed to farms and ranches in its community.

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

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For additional information about Reclamation's history program see:

www.usbr.gov/history

Oral History Interviews
Ali Shahroody

Seney: [This is Don Seney]¹ in Reno, Nevada. Today is March 18th, 2008. This is our first tape, our first session and our first tape.

Good morning, Ali.

Shahroody: Good morning, Don.

Seney: Well, first of all why don't you tell me a little bit about yourself before we talk about this. When were you born and where?

Born in Tehran, Iran, in 1937

Shahroody: I was born in Tehran, Iran, in fact. And, you want to find out about my age, I guess? (Laughter)

Seney: Yeah, well, you know.

Shahroody: It's nineteen, January 1937, (Seney: All right.) in fact. And, I had my high school . . .

Seney: So, you're Iranian by birth?

1. 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.

In an effort to conform to standard academic rules of usage (see *The Chicago Manual of Style*), individual's titles are only 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." 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.

Attended American University in Beirut Studying Agricultural Science

Shahroody: By birth, yes. (Seney: Right.) By birth, yes. And then, after I finished my high school I went to, I left the country. I went to American University, now of course the location's in turmoil, in Beirut. (Seney: Yes.) That's one of the oldest established American Universities outside of the United States, with the Board of Trustees sitting in New York, in fact. And, school with a 2,000 student body, and I would say sixty percent of the faculty are, in fact, were in fact then from the United States, faculties of the United States. (Seney: Right.) So, there I got my bachelors degree in agricultural science.

He Then Attended the University of California in Davis to Study Water in Agriculture

And then, of course, I got fascinated quite a bit in terms of application of water and use of water in agriculture, and possible use of water in other areas, in terms of dams and canals. So, I made an application to the University of California in Davis, in California, and I got accepted. I got accepted to do my masters in irrigation, irrigation science. In fact, the University of California in Davis is one of the few schools that specialize in irrigation.

Finished His Master of Science in Irrigation in 1963

So, I did my irrigation there and did get my bachelor, sorry, master of science in irrigation at the University of California. That was in 19—oh, let me go back. I finished my bachelors out of American University in 1960, and then finished my masters in irrigation science from University of California-Davis in 1963.

In 1966 Received His Masters Degree in Civil Engineering, with a Specialty in Hydrology and Hydraulics at the University of California at Davis

But then still I was fascinated with water and I wanted to get into the heart of water design and works, so I did apply to go to the, to the School of Engineering, University of California in Davis, and could use some of my courses and had the basics in mathematics, and physics, and other things. But, I have to start, take some of the basics in engineering of statics and dynamics and fluid mechanics, (Seney: Right.) which I did. And, I did get a masters in civil engineering, so the speciality in hydrology and hydraulics. And, that happened in 1966.

Worked for the University for about a Year

Then I was doing associate work for university in terms of research assistant for about a, I think about a year.

Started Working with Thomas Stetson out of the San Francisco Office

Then, I started working with Stetson. Thomas Stetson had opened an office in San Francisco. He was one of the well-respected in water in California. He came out of Department of Water Resources, but then he was working for the Attorney General's Office in *Arizona vs. California*. And, in fact, that, that was before my time of course. (Seney: Right.) But, having finished that then he opened, he had opened an office in Los Angeles but then opened an office in San Francisco, and I was the first employee. (Seney: Ah.) I was the sole engineer, him and a secretary, and then of course he was a lot of time away from the office. (Seney: Right.) So, that's where I started at.

Seney: Now it's, it's a large engineering firm?

Shahroody: It's a large, it's large.

Seney: With offices in several locations, right?

Shahroody: That's correct. That's correct. Yeah, we have a large office in Southern California still. We have a large office now in the San Francisco area. And then, we have offices in Arizona, Bakersfield, Colorado. They're small offices, of course. (Seney: Right. Right.) So, and that's, that's where I started and I stayed, I stayed.

Seney: Are you a partner? Is that what you'd be called?

Is Now President of Stetson Engineering

Shahroody: I'm president of the company.

Seney: Oh, well then, that's even better.

Shahroody: So, the three of us basically have the major stocks. (Seney: Right. Right.) The one of them who heads the office in Southern California and the other one is in Northern California with me, together. (Seney: Ah.) So, one is Steve Johnson in Southern California. Oliver Page is in Northern California. So, we work together.

Seney: I see.

Enjoys the Diversity of the Work

Shahroody: So, that's basically stating, I said, a little peculiar a lot of times. People change jobs, go to different companies, (Seney: Right. Right.) and I stayed on. I stayed on because there's so many facets of different things, all the way from water quality to flood control, and of course (Seney: Right.) with my background in agriculture that helped quite a bit in terms of irrigations and farming efficiencies, and then of course do a lot of municipality stuff, which . . .

Seney: Well, there have been a lot of opportunities in the period since you've been there, haven't there, (Shahroody: It has.) in the area that you're in, the physical area, the geographical area?

Stetson Engineering Work for Indian Tribes

Shahroody: That's correct. (Seney: Yeah.) Quite expansive. Then, of course, we did a lot of work starting in the seventy, early '70s, early '70s starting to work for the Indian tribes. And, one led to another one.

Seney: How did you get started with the Indian tribes?

Thomas Stetson's Work in *Arizona V. California*

Shahroody: I think it came out of, in fact, Stetson's work, Stetson's work in terms of *Arizona vs. California*, because he had to also make a determination of the water allocations, or if you want to say "entitlements," as a part of the package on the dividing the Colorado River (Seney: Ah.) between the, between the two states, but also Indian tribes have to be treated the same way. So, he made determination of water requirements not only then existing but also the future potential for a **number** of Indian tribes along the Colorado River. So, and he was very fair. (Seney: Yeah. Right.) And that, so the word (Seney: Yeah.) got out.

Seney: Well, that's what I was going to suggest, that they must have felt that they were treated well?

Met Bob Pelcyger When He Was Working for the San Luis Rey Tribe in Southern California

Shahroody: That's, that's where, that's where, in fact, that was the feedback to that. And

then, of course, (Seney: Ah.) we *did* work for, starting with, that's where Bob Pelcyger, I got to know him, and he started working for San Luis Rey Indian tribes in Southern California, (Seney: Right.) in San Diego County. At that time there was FERC [Federal Energy Regulatory Commission] hearings coming up and I was doing a lot of number crunching for that.

Seney: FERC?

Shahroody: FERC, Federal Energy Regulatory Commission.

Seney: Ah.

Stetson Was Hired to Determine Practicably Irrigable Acreage

Shahroody: And, there was a small 'powerplant on the, on the reservation, and we were trying to get a non-power license as opposed to a power license by San Diego, San Diego Gas and Electric. So, I was doing the number crunching and Stetson was doing the testimonies in the FERC trials. So, and all of that came and we, we did a lot of determination, what's referred to as P-I-A, Practicably Irrigable Acreage, and that means what the tribes could use. When the basin gets adjudicated, (Seney: Right.) the tribes have to stake their claim. Their claim is not today, what they practicably could irrigate in the future. (Seney: Oh.) That goes all the way back to the Winters Doctrine. (Seney: Right.)

Worked for Various Tribes Around the West

So, we got pretty good in determination of P-I-A lands, and the word got around therefore we did a bunch of stuff for different Indian tribes in the West. And then, of course, some of them in the Northwest they have energy powerplants on their, (Seney: Right.) on their reservation. Under the FERC regulation, of course, what we call the 1E is a part of that section in the FERC Act which was passed by Congress. *Where* a company or, like for instance San Diego Gas and Electric, or PG&E [Pacific Gas & Electric] they have hydro plants on Indian reservation lands, they have to compensate based on their revenues from that, (Seney: Right.) and you have to go through and make a determination of how much they would make revenues and the what's called "annual charges" to pay. Or, if there's a water shed on a reservation, which is contributory to producing the water to generate the power, then you make that kind of determination. So, we got into that quite a bit. (Seney: Yeah.) That's where I was doing work for the Warm Spring Indian Reservation in Oregon on Deschutes River. And, done quite a bit on the Flat, we did work for the Flathead Indian tribe

on the Flathead River, Upper Columbia River. And, in fact, I did a project that's far away from the West, because of our reputation on the FERC analysis and then 1E, Section 1E compensation for the tribes. We were hired to do work for the Penobscot Indians, in Maine.

Seney: Oh my gosh. (Laugh)

Work on the Penobscot River

Shahroody: So, so I did, did work on the Penobscot (Seney: Yeah.) River.

Seney: Well, I would think, that's hydroelectric power, right? (Shahroody: Yes.) It's the same issues, (Shahroody: Yes.) and all that?

Shahroody: So. Rivers are different. They have two seasons of runoff. (Seney: Oh.) One, of course, you get the snowmelt. (Seney: Right.) (Laugh) And then the other one is the end of summer, or the latter part of summer you get a lot of rainfalls (Seney: Ah.) coming in. So, they have two peaks.

Seney: Oh, in Maine?

Shahroody: In Maine. Yes.

Seney: Oh, that's interesting.

Shahroody: That's one thing, that's one thing I had to learn. And, the rivers go basically year round fairly good, and when you're there, let's say, early summer, or mid, I would say—I wasn't there in summer.

The Hydrographers Who Determined the Flow of the Truckee River in the Late 1800s Were Apparently from the East and Assumed the Flow Characteristics Would Be Similar to Eastern Rivers, and They Worked During High Flow in the Spring So They Overestimated the Water Supply

But, you know, it was in the fall or in the (Seney: Yeah.) springtime, they were going pretty, pretty good. In fact, that's a segue way into (Laugh) Truckee River, talking about the river and basically how much water there is. (Seney: Right.) In fact, on Truckee River, I don't know, you may have, you may have known or not, there's a history on that where apparently hydrographers from the East they came to Truckee as a part of Newlands Project to make a determination of the water supply and how much, and of course the Truckee Canals going to go in place,

(Seney: Right.) how much water's going to be available into the river for the project. (Seney: Right.) And they made, I think this was late, late 1800, maybe early early 1900. They made a hydrographic determination as far as the flows. They made flow measurements and everything and I think they were here in the springtime. They were here in springtime, and of course they made all of their measurements and they made, and made, they came up with the calculation. They had come up with a pretty big number (Seney: Yeah. Yeah.) in terms of flows, (Seney: Yeah.) of the continued, coming from Truckee, and that was to some extent was based as a source of supply for, (Seney: Ah.) for the project.

Seney: Yeah, I am aware of the overestimation. (Laugh) I didn't realize it was because (Shahroody: Yeah.) they were used to eastern rivers, which do flow . . .

“ . . . they came up with a *substantial amount* of water supply throughout the year. And then, of course, *later*, once the project was built and everything, they found out it dries up in the summertime. . . .”

Shahroody: That's exactly, (Seney: Yeah.) but they measured. They said, “Well, at least ninety percent of it's going to be there in, year round.” (Seney: Yeah. Yeah.) They made the measurements in the springtime. (Seney: Right.) (Laughter) About *May* 1st. And so, they came up with a *substantial amount* of water supply throughout the year. (Seney: Yeah.) And then, of course, *later*, once the project was built and everything, they found out it dries up (Laughter) in the summertime.

Seney: That's right. Yeah.

Shahroody: And then, I guess, that's where the United States decided to, to go to basically it quiet title action to determine the rights of everyone and therefore they can take the balance of the water (Seney: Right.) to the Newlands Project. And, that's, (Seney: Yeah.) that's to some extent is the problem with the Truckee, and of course, with all of our western supplies. (Seney: Right.) They're, they come in in the winter months, and the snow melts, and of course then by summertime there will be *very low* flows. (Seney: Right.) And then, of course, in Truckee, just going back, there's, there were two dual purposes. One, of course, water supply for irrigation, not only irrigation into the Truckee Meadows, but you got all the canals, Steamboat Canal and just go down the line. A *number* of canals. And, to supply the irrigation to Truckee Meadows. And then, of course, you have the canal at Derby Dam to take water to the Newlands Project. So, in order to have water for irrigation, which is basically one of the mainstays they needed, then, reservoirs to, to have the reservoirs to provide the water during the (Seney:

Right.) dry months, which means the summertime. And so, that became the one factor in terms of Truckee River regulation. The other one, of course, the Truckee River General Electric, which of course at that time, this is before Sierra Pacific, to provide electricity. That's what happens in the wintertime, of course. In the summertime you don't have water because of dry season. Then, of course, you come in the wintertime you may get some precipitation in the form of snow because of the, but the freeze, (Seney: Yeah.) the freeze basically doesn't yield any water to the river, and therefore they needed the water to provide the power.

Hydroelectric Needs Resulted in Establishment of the Floriston Rates on the Truckee River

So, *they* had needs, but I'm talking about the power generating entities like the Truckee Hydroelectric, therefore they needed the reservoirs too, (Seney: Right.) to make the releases to have the flows. So, *out* of these two separate distinct needs, meaning the irrigation needs during the summer time and the fall, early fall, and of course water need during the cold of the winter for generating electricity, that *sort* of brought in what's referred to as Floriston Rates.

Floriston Rates is the, is the flow, basically, of the Truckee River on the state line. (Seney: Right.) Floriston is a small village right there at the state line (Seney: Right.) between California and Nevada. So, at that location, basically, they said they needed certain flows at certain times of the year. It became more of a man-made type of flow as opposed to a natural flow.

- Seney: And this is the reason, of course, for the Tahoe City Dam, right? (Shahroody: Yeah.) To ensure those flows?
- Shahroody: That is correct. Tahoe, therefore, being the easiest one there to provide the largest storage. (Seney: Right.) And, as you know, there's only basically six feet of (Seney: Right.) dam right there.
- Seney: That must have been a very cheap dam to build, I would think?
- Shahroody: That's correct. (Laugh)
- Seney: Yeah. (Laugh)
- Shahroody: It used to be an old dam with the logs and the straws, and the (Seney: Yeah.) whatever you want to call it, and mud. (Seney: Yeah.) But then, of course, that was, that was replaced. (Seney: Right.)

“ . . . the useable water in Tahoe that you can release . . . 740,000 acre feet . . . about 120,000 acre feet per foot, 6.9 feet. . . .”

And so, Tahoe is able to—the useable water in Tahoe that you can release it, 740,000 acre feet of water for about, you’re talking about 120,000 acre feet per foot, (Seney: Yeah.) 6.9 feet.

“ . . . as a part of . . . the General Electric Decree, then you have the Floriston Rates, which is basically 500 cfs in the summer months, that you maintain, and 400 cfs in the winter months. So, the winter months it’s providing the power and summer months provide the water for irrigation. . . .”

So, so that’s, that was the first thing to do and that’s where that Truckee River General Electric Company came to existence, and they did that. (Seney: Right.) Then, of course, after—and, as a part of that, as a part of that decree, the General Electric Decree, then you have the Floriston Rates, which is basically 500 cfs in the summer months, that you maintain, and 400 cfs in the winter months. So, the winter months it’s providing the power and summer months provide the water for irrigation. (Seney: Right.)

The Truckee River Agreement of 1935 Permitted Some Modification of the Floriston Rates

And *that*, of course, got then later, that decree got somewhat expanded as a part of Truckee River Agreement, which then Truckee River Agreement was entered back in 1935, (Seney: Right. Right.) between United States, Sierra Pacific Power Company, and T-C-I-D [Truckee Carson Irrigation District], at that time. And, and the reason for that, of course, was to make some—well, there are many, many reasons, but to make one, in terms of the Floriston Rate, to make adjustments to Floriston Rates, especially when you’ve got, when you’re in the dry periods and Lake Tahoe’s down, and you can’t get the water out. (Seney: Right.) And, there’s some adjustment is done there, and so 400 cfs would be 350 or 300 in the wintertime. (Seney: Right.) The 500 did not change, though, for summer months. And, they also make a provision for construction of the Boca Reservoir, and then, of course, there are other things, (Seney: Right.) many other things too in terms of . . .

Seney: Well, the precipitation for that was the fact that the river had dropped and the T-C-I-D people came up and dug a channel to get the water to flow again, right?

Shahroody: Well, that goes back into whatchamacallit, the Dust Bowl Era, (Seney: Yeah.)

they called it, (Seney: Right.) in the '30s, (Seney: Right.) because still, from 1928 through 1935, especially '30-, '31, they're one of the first drought years experienced on the, on the Truckee River, even as of today.

Seney: Is that right?

Shahroody: Those are the tests that we do in terms of the yield of the system. (Seney: Ah.) Those, the period 1928 through 1935. So, that's correct. At that time, of course, the, what happens when the water level drops down to elevation 6,223, (Seney: Right.) which is the basic sill of the dam, (Seney: Yeah.) of Tahoe, (Seney: Right.) but what happens is the free-flowing gravity system. Even if you opened up all of the gates, when it gets down to about you still have twenty-three, when you are at about twenty-four, the water can't get out that much. (Seney: Yeah.) It just doesn't have the head.

Seney: I've been there. In recent years it's been down to the natural rim. And, of course, you're standing at the, where the natural rim is and the, the dam is some distance down and it's absolutely dry (Shahroody: Yeah.) in between. Yeah.

Shahroody: That, that's correct. The rim is just, if you have twenty-three you're not getting out, you're not getting any water out. But even getting close to it you probably can get only maybe 50 cfs, or 100 cfs. (Seney: Right. Right.) Whereas requirements at the, at the state line is, of course, (Seney: Yeah.) is 500 cfs. But now, it goes down below the rim. It goes at times. It did it, in fact, in 1990s.

Seney: That must, yeah, right. Somewhere in there was when I saw that.

Boca Reservoir on the Little Truckee River

Shahroody: And, and so what happens, of course, what you're telling me then there was need for water and some farmers got out there, they wanted to try to open up a channel, (Seney: Right.) around the rim. (Seney: Right.) So. Then as a part of the Truckee River Agreement, therefore, Boca Reservoir was built, and that was finished in 1940. And, the storage capacity of Boca is about 39,500 acre feet, and that's on the little Truckee River. As a part of Truckee River Agreement, if you read it, was supposed to be built on the main stem of the Truckee, but apparently the cost was prohibitive and then, it, for the capacity that they were looking at they built the Boca Reservoir at, on the Little Truckee. And, the purpose of that was, of course, when Tahoe gets down to the rim (Seney: Right.) it doesn't have the water to provide. (Seney: Right.)

“ . . . Boca has got this 40,000 acre feet of water they can release to meet, to meet the Floriston Rates, water supply for the farmers . . . ”

Then, Boca has got this 40,000 acre feet of water they can release to meet, to meet the Floriston Rates, (Seney: Right.) water supply for the farmers, and on. And, there's a tricky balance between talking about dry years and the problem with the rim and hydraulic gravity at the Tahoe rim. There is the tricky balance between Boca and Tahoe. Which one would release? And, I don't have the numbers next to me in terms of elevation. When Tahoe is about above, I believe, twenty-six feet of elevation, 6,226 feet of elevation, Tahoe, Tahoe does not release water to meet the Floriston Rates. And anytime the elevation is above that, let's use, let's use twenty-six as a round number. (Seney: Right.) So, what it is basically because Tahoe, therefore, has the head, can always release it and keep it up there, and you can carry it over to next year and use Tahoe. (Seney: Right.) So, if you need water, when Tahoe's above twenty-six feet, you release water from Boca. Because, Boca you can empty it and then you can fill it up next season. And even if you didn't you'd have a dry year, a possible dry year, but Tahoe is still sitting up above twenty-six (Seney: Right.) feet and has got plenty of water to do it. So therefore, you create an opportunity for Boca to do that. But, if Tahoe goes below twenty-six, that's where the gravity restrictions start playing into it. Boca sits still, it would not release. Tahoe started releasing because it has to release, otherwise evaporation would lower it. (Seney: Ah.) So, it's a race between Tahoe getting the water out and leaving the water in Boca intact, (Seney: Ah.) or losing it to evaporation. So, therefore, there is that balancing act and I think it came out with experience it works (Seney: Right.) good.

Seney: Right. Prosser Creek Reservoir plays a role here too, doesn't it, in making up (Shahroody: Prosser Creek—okay.) Floriston Rates?

Prosser Creek Reservoir in the System

Shahroody: It does. It does. And once the Boca was done, and of course these are all between Boca and Tahoe, they're exclusively dedicated but referred to as the water rights and the pooled water. So, to maintain the Floriston Rates, to meet all the rights downstream. (Seney: Right.) Now, you have situations that the water would be coming from the, what I call it “unregulated water supply” below the dams, below Tahoe Dam, below Boca. (Seney: Right.) So, you can have runoff from natural, if you want to call it, unimpaired runoff, which meets the Floriston Rate, and these guys don't have to make any release, (Seney: Right.) and they're holding water. So, it came out that they found out that there is the reach below

Tahoe that, *yes*, Floriston Rates were being met because of water coming from all of the lower tributaries but it was dry, that reach below Tahoe Dam, (Seney: Right.) and that did not go well with the California Fish and Game, and Fish and Wildlife Service. They wanted to have some water there. (Seney: Yeah.) And then, of course, the feds were involved to some extent, therefore they said, “Okay. We understand. Tahoe doesn’t want to release because they don’t have to. Floriston Rates are met. They want to preserve the water for their own use. (Seney: Right.) So, why don’t we do this,” they said, “why don’t we build the Prosser Creek Reservoir,” which turned out to be the capacity of 30,000 acre feet. “Why don’t we do that and *then* we’ll store water at the low priority.” This is the water that otherwise, of course, would be going to Pyramid Lake. (Laughter) (Seney: Right.) Yeah. They forgot that behind the scene, everybody’s rights have been taken, taken (Seney: Ah.) care of, and the water would be flowing to Pyramid Lake. So therefore, “Why don’t we capture some of that there, (Seney: Yeah.) at the lower priority and then we’ll hold it in Prosser Creek Reservoir.”

The Tahoe/Prosser Exchange

And, the main attraction was everybody agreed and they came up with, in fact T-C-I-D and Sierra Pacific and the federal government are the signatory to (Seney: Yeah.) what’s called the Tahoe/Prosser Exchange, (Seney: Right.) to build the Tahoe. (Seney: Right.) So, they . . .

Seney: Not the tribe? The tribe was not involved?

Shahroody: The tribe was not. The tribe wasn’t even on the scene. (Laughter) So . . .

Seney: I guess, if I may, I guess the assumption was here that the federal government had a fiduciary duty to the tribe and if they were involved in it they were looking after that duty, and if they signed it then it was all right? Would that be the way it went over?

Shahroody: I don’t think it came to any of their agreement, in terms of . . .

Seney: It didn’t even enter their minds?

Water for Pyramid Lake Was Ignored as an Issue

Shahroody: Didn’t enter their mind. The same thing, probably, if you want to turn the clock back to 1902 when the Reclamation law was passed and then they had the canal, (Seney: Yeah.) Derby Dam, built in 1904, they just shut, shut the gates on the

Derby Dam (Seney: Right.) and basically fish, whatever was in the lower river, in Truckee, went their own way and (Seney: Yeah.) water was diverted to Truckee Canal to Lahontan Reservoir. It's the same mentality carried (Seney: Yeah. Yeah.) over to '50s. (Seney: Right.) In fact, all of this stuff was done in the 1950s, and I have all the spreadsheets then, handwritten, to determine what the flows were, when the flows are available, when the water would be going to Pyramid Lake, and those are a time, of course, Prosser Creek Reservoir would be storing. It would not be, there would be "no injury to anyone." (Laughter) So, that's, that's, that was the basis. When I said, "basis," this is what I'm reading behind. (Seney: Right.) That means, this water, when you look at the priority, this water would be the water that otherwise would be going to Pyramid Lake would be then stored (Seney: Yeah.) in Prosser Creek Reservoir. And, the basis of that was, of course, to have a Tahoe/Prosser Exchange.

The Tahoe/Prosser Exchange Did Introduce the Idea of Using Water to Benefit Fish

The *good thing* about Tahoe/Prosser Exchange was when it was a step in the right direction for the benefit of the fish. For the benefit of the fish, of course, was directed to be in the reach below Tahoe Dam.

Seney: Right. But, at least the precedent is established that you could do something for the fish, (Shahroody: That's correct.) in other words?

The Change Brought about by the Tahoe/Prosser Exchange Was That Tahoe Would Release Water During Summer Months When the Floriston Rates Were Already Met from Other Sources

Shahroody: That's absolutely correct, which I think is, (Seney: Yeah.) has helped us, of course, in later situations, (Seney: Ah. Yeah.) which I may, I will touch, (Seney: Sure.) touch upon that. So, then what had came out as a part of this Tahoe/Prosser Exchange is then Tahoe would release water in the summer months. Tahoe would release water when it does not *have* to release water to meet the Floriston Rates, because Floriston Rates are being met from (Seney: Right.) different, different sources.

Seney: Now, this is not much? It's 2 or 3 cfs, right?

Shahroody: It's more than that. It's more than that.

Seney: Is it?

Fish Flow Rates Are 70 cfs in Summer and 50 cfs in Winter and Tahoe Would Get Credit for the Water in Prosser Reservoir

Shahroody: Other reservoirs have that, low flows like that, (Seney: Yeah.) when they have to release, but this, this is 70 cfs (Seney: Ah.) in, which is a good, good amount, in summertime, and 50 cfs in the wintertime. (Seney: Uh huh.) But then, Tahoe gets credit for that in Prosser. In Prosser they would chalk it up that they have so much credit in the storage. (Seney: Uh huh.) Or, if there's a space and they're entitled to store, so water flowing in they would store it. So, then that would go to the credit for Tahoe. (Seney: Right.)

“ . . . once then Tahoe started releasing this for irrigation, then of course you don't have exchange because that water being released from Tahoe for irrigation, or for power . . . it does the same purpose for the fish. The fish doesn't care from what account the water is coming from. . . .”

Now, once then Tahoe started releasing this for irrigation, then of course you don't have exchange because that water being released from Tahoe for irrigation, or for power if you want to call it, (Seney: Right.) it does the same purpose for the fish. (Seney: Right.) The fish doesn't care from what account the water is coming from.

Seney: Yeah. (Laugh) It's all just water, right?

Shahroody: Right. (Seney: Yeah.) So then, then after doing, after it's done, of course, then what happens, of course, that's a situation that Tahoe basically is kept, kept full. Now, you mentioned that therefore they use Prosser for Floriston Rate regulation?

Seney: Right.

An Example of How the Tahoe/Prosser Exchange Might Work

Shahroody: Yes. When the system, like Boca and Tahoe is supposed to make certain releases, like for instance Tahoe is supposed to make 200 cfs releases to meet the Floriston Rate, or Boca is supposed to make a release of 100 cfs to meet the Floriston Rate, then what they do they'll make a release of, let's say, 100 cfs from, from Prosser, from the Tahoe/Prosser Exchange account, and Tahoe has to only release 100 instead of 200. (Seney: Uh huh.) Boca doesn't have to release its 100. (Seney: I see.) It'll come from there. (Seney: Yeah.) They would use it up and that's, that's where it comes. But *now*, the full reservoir doesn't have to be dedicated to

that. The *first* dedication is, of course, for Tahoe/Prosser Exchange. (Seney: Right.)

How Pyramid Lake Benefits from the Way the Truckee River System Is Managed

But, the *leftover* project water, then the tribe gets that water as a result of, I'll call it, as a result of the Stampede decision. It's a derivative out of the Stampede decision. (Seney: Right.) So, the tribe also gets the project water.

Seney: How much do they get, on an average, off of that?

Shahroody: Out of . . .

Seney: Do you have a sense of it?

Shahroody: Out of Prosser Creek Reservoir? I would say, on a controlled release, if you want to call it, for the purpose of fish I would say probably anywhere from 8-12,000 acre feet they would get it. But then, an uncontrolled release they would get more because there is a flood control feature involved in Prosser Creek Reservoir. Come November, November 15, the reservoir has to be brought down to 10,000 acre feet (Seney: Ah.) from thirty. So, when they evacuate that then, at least historically, then watermaster, of course, has the management of these reservoirs, (Seney: Right.) under agreement with Bureau of Reclamation. They're evacuating the water out, therefore that water therefore would go to Pyramid Lake. They'll get a certain amount. But, the tribe has been pretty smart through the Fish and Wildlife Service over these years, at least recent years. They don't want to go through that unregulated evacuation. They try to take advantage of it ahead of time, (Seney: Right.) during the qui ui spawning, (Seney: Right.) for the L-C-T [Lahontan Cutthroat Trout].

Seney: Which is May-June?

The Washoe Project

Shahroody: Which is, which is May-June, and sometime during the summer, summer months to maintain flows, (Seney: Right.) they'll take some water. But then, of course, you have the recreation aspect to deal with. (Seney: Right.) You can't draw it down too fast, (Seney: Yeah.) at the same time. (Seney: Right.) So, that's where the Prosser Creek Reservoir came into play as a part of Washoe, Washoe Project. Washoe Project included Stampede Reservoir, which is on the Little Truckee, upstream of Boca. And then the Prosser, Prosser Creek Reservoir on the Prosser

Creek itself.

The Washoe Project Included Watashemu Dam Which Was Never Built

And, it also included the Watashemu [Dam]² out of Carson, but Watashemu was not built.

Seney: The unbuilt Watashemu Dam?

Shahroody: That's correct. And finally, I think, the Bureau of Reclamation withdrew their . . .

END SIDE 1, TAPE 1. MARCH 18, 2008.

BEGIN SIDE 2, TAPE 1. MARCH 18, 2008.

Seney: That the Bureau withdrew their permit, the application for Watashemu. That was the last one.

Shahroody: That happened about, I think, five or six years ago. (Seney: Right.) Somebody brought it to our attention.

Seney: That it was still extant?

***Pyramid Lake v. Secretary* Established the Carson River as the Primary Source of Water for the Carson Division of the Newlands Project and Established the Truckee River as a Supplementary Source**

Shahroody: And especially even when matters of P-L 101-618³ was passed and basically and

2. Watashemu Dam was proposed on the east fork of the Carson River.

3. 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.

Source is: http://www.usbr.gov/mp/lbao/public_law_101-618.html accessed on December 7, 2011, at about
(continued...)

also OCAP⁴ being in place, and Carson being actually the primary source of supply to the Lahontan Reservoir, (Seney: Right.) and the Truckee being supplemental. And, just also, putting all of the pieces together, the court decision coming out, coming out from Judge [Gerhard A.] Gesell, and that's, that's the *Pyramid Lake vs. Secretary*. (Seney: Right.) So, to maximize the use of Carson and minimize the use of Truckee for the (Seney: Right.) Newlands Project in the Carson Division. So, basically he said, "Hello. (Laughter) (Seney: Yeah.) What do you want to do with this Watashemu?" It was additional use.

Seney: My understanding is the Watashemu Dam was killed because the big farmers up in the Upper Carson did not want to trade water right water ~~for~~ under the Alpine Ditch Decree for contract water from the Bureau of Reclamation.

Shahroody: Well, that may have been. That may have been through the Alpine Decree process, but this still was there.

Seney: It was still there

Shahroody: It was killed, not to build it, I think (Seney: Right. Right.) that you may be right. But, at the same time Watashemu, if you look at the project, all the features and benefit cost ratios that would provide additional water, in fact, to lands to be irrigated *outside* of the Alpine. But probably, they would, they, if I remember the Bureau would have done the same thing they did at Lahontan at the turn of the century, they would basically honor the vested rights on the river. That means they would provide water by releases, but *then* they would make additional releases for new lands. (Seney: Right.) But, I assume some of the old ranchers they didn't want to get into, under Bureau's umbrella.

Seney: Right. Right. Yeah.

Shahroody: I could see that.

Seney: Yeah. Right. Right.

Shahroody: So, and I'm sure there would have been some obligation of the O&M payments too. (Seney: Right. Right.) They could have waived the capital payments, capital cost payments, but the O&M definitely would have been on. (Seney: Yeah. Yeah.) So, they didn't want to probably pay.

3. (...continued)

2:00 in the afternoon.

4. Operating Criteria and Procedures.

Seney: Yeah. Well, I guess Springmeyer was one of them and some of the other big names up in, on the Upper Carson who have very early priority rights and a great deal of water.

Shahroody: That's correct. (Seney: Yeah.) That's correct.

Seney: They don't want to mess with it.

Shahroody: Yeah, I'm sure those were factors. (Seney: Yeah.) But, it stayed on the books, (Seney: Yeah.) but finally said, "There's a permit still sitting there. (Seney: Right.) What do you want, what do you want to do, because it's a live permit?" (Seney: Right.) So.

Seney: Let me ask you about Independence Lake, because that's above Stampede and above Boca, right?

Shahroody: Yes. I'm going, (Seney: Okay.) I'm going to go there.

Seney: Go right ahead. Do it the way you want to Ali.

Shahroody: That, on the, on the Little Truckee, as I've mentioned, the dam was, for Boca, was built back in the '30s and '40s. Well, '30s. It was done by 1940. Then, in fact, prior to building as a part of the Washoe Project, prior to building the Prosser Creek Reservoir—well, let me step back here. Yeah. Here it is. They had to get permits from the state, California State Water Resource Control Board. The permit for Stampede work was earlier. The application was made earlier than Prosser's was made. But then the, they built the Prosser before Stampede. (Seney: Ah.) They finished Prosser by 1963, I believe. But, in terms of priority Prosser is the lowest and Stampede is one step senior to Prosser. (Seney: Ah.) But then they built the Stampede in '60, late '60s. It was finished by 1969.

Seney: That's, if I may, because the priorities date from when the applications were made, rather than when the dam was built?

Shahroody: That's correct.

Seney: Rather than when the dam is built?

Stampede, Prosser Creek, and Boca Reservoirs

Shahroody: That's correct. (Seney: Yeah.) And usually, the application date when you put

your application there. Now, Prosser is on Prosser Creek itself, which is near Truckee, and then of course Boca is on the Little Truckee, and Stampede is also on the Little Truckee upstream of Boca, immediately upstream of Boca. (Seney: Right.) As I said, Prosser has got a capacity of 30,000 acre feet, Boca 40,000. Stampede was built with a capacity of 226,000 acre feet. The thing now we are *grappling* with, by the way, right now in fact, and I'll get to that a little bit later, (Seney: Uh huh.) as a part of TROA,⁵ the Bureau of Reclamation, when they made the application they asked for 126,000 acre feet, and *then*, of course, they got authorization to *build*, from the Congress, to build the reservoir for **226,000** acre feet, 100,000 acre feet more than their permit (Seney: Oh.) basically showed. But, all these years, of course, they have been filling it up when there was an opportunity to go to 226,000 acre feet. And, as a part of TROA negotiations all of a sudden (Seney: Oh.) we said, "Whoops! There is 100,000 acre feet is unappropriated water, I mean is, is there, that somebody could appropriate." So, we got into a real—this is, I'm taking a tangent—in terms of (Seney: That's all right. Go ahead.) TROA negotiations we got into a little hassle with the, with the real opportunity seekers from Sierra Pacific Power Company, or if you want to call it TMWA⁶ [Truckee Meadows Water Authority]. (Seney: Yeah.) They basically said, "Oh well, because we have, as part of TROA we have these priority, we have these different credit waters built up, the M-&-I [Municipal & Industrial] Credit Water, or Fish Credit Water, (Seney: Right.) and so the main, there are three chunks of water for M-&-I Credit Water, which was negotiated under Preliminary Settlement Agreement with the Sierra Pacific Power Company. And, it's important how, and they're supposed to store in the empty space of the reservoir. But, at this juncture, when they became, claimed that there's only you can put project water up to 126,000 acre feet, whereas you had made a negotiation that could only, Sierra Pacific could only put water in an empty space, they said, "Well, there's empty space. That 100,000," which is virtually, wasn't the case in our mind. (Laugh) (Seney: Oh.) It was, because the project, Stampede had been filling up to 226,000. Basically we said, "If it goes down below 226,000 you can put some water there, for the M-&-I." (Seney: Right.) But, all of a sudden there became a gap between 126,000 they could go, and of course we wanted that additional 100,000, (Seney: Right.) by . . .

Seney: You mean the tribe?

Shahroody: The tribe. (Seney: Yeah.) And they could go into in between. And, between 100,000 and 126,000 and put their water with that, but the priority would be prior to the next 100,000 acre feet, (Seney: Oh.) because we have to make an

5. Truckee River Operating Agreement.

6. Pronounce tum wuh.

application now with the priority of year 2005 to put that 100,000 acre feet there. So, we got into a big hassle.

Seney: Was this the so-called “fork in the road?”

Shahroody: No. No. (Seney: Okay.) The fork in the road . . . (Laugh)

Seney: We’ll get to that later then? (Shahroody: Yeah.) All right.

Developing Use of 100,000 Acre Feet of New Appropriation Capacity Beyond the Authorized Storage Size of 126,000 Acre Feet in Stampede Reservoir

Shahroody: This, this thing is more of a, it became an opportunity. Sierra wanted to add their credit water to be, of course they want to have it in Stampede, get it out of Tahoe because Tahoe goes below the rim. (Seney: Right.) And, they wanted, of course, stick it right in between, between 100,000 and 126,000. Basically, point blank, he said, “It would be gapless. (Laugh) This 100,000 acre feet is going to be there gapless.” And then, of course, we kicked it around, “How are we going to deal with that in terms of the State Water Resource Control Board.” Which now, of course, the Bureau filed petitions starting in 2005. And then, as recently as this year I made the analysis to show the State Water Resource Control Board there is, the analysis called Water Availability Analysis, that there is water available to store for new appropriation of 100,000 acre feet without injuring *anybody* else (Seney: Right.) down that stream.” (Seney: Right.) And, the thesis *behind* that is, this is the water that would go to Pyramid, which would *otherwise* go to Pyramid Lake. And, we have to prove that to the California State Board. (Seney: Right.) So, the way we constructed the TROA, that additional 100,000 acre feet would be the Fish Credit Water, because, because the project water was defined to be the 126,000 acre feet. And then, that would, for all practical purposes, that 100,000 acre feet would be treated like a project water, would have *all* of the attributes of the hundred and twenty-six thousand. (Seney: Yeah.) So that’s, at least, the water’s got calmed in that fashion.

Seney: So now, as a practical matter, who does that 100,000 belong to, that 100,000 acre feet, the extra that all of a sudden was discovered without an appropriation to it?

“ . . . when *all* the rights are satisfied . . . then there’s water in the Little Truckee which would otherwise flow to Pyramid Lake. Then it would be stored in Stampede Reservoir. . . . this is the water that would be going to Pyramid Lake so therefore you can’t give it to somebody else, at least on the books. . . . luckily nobody new wanted it . . . filed an application to appropriate that water. So, this

has been appropriated by the Bureau of Reclamation—on behalf of the tribe . . .”

Shahroody: Well, since it is the water that otherwise would be going to Pyramid Lake, and the historical practice has shown that. (Seney: Right.) Because, the priority of the Stampede is so low to store, ~~it has to store~~, only can it store, when *all* the rights are satisfied, (Seney: Yeah.) and the watermaster allows it, and the, all the rights including the Truckee Canal, all those rights are satisfied, then there’s water in the Little Truckee which would otherwise flow to Pyramid Lake. Then it would be stored in Stampede Reservoir. (Seney: Ah.) So, therefore, the genesis of that, this is the water that would be going to Pyramid Lake so therefore you can’t give it to somebody else, at least on the books. (Seney: Right.) State of California want’s to have a *different* test for that. And, first of all, is the water available, and if it is then there hasn’t been anybody else, at least luckily nobody new wanted it, filed and, filed an application to appropriate that water. So, this has been appropriated by the Bureau of Reclamation—on behalf of the tribe, of course.

Seney: Ah. What, how does the whole idea of unappropriated flows work in here, because doesn’t the tribe have a right to the unappropriated flows of the river?

The Pyramid Lake Paiute Tribe Has Been Awarded the Unappropriated Flows of the Truckee River

Shahroody: The tribe, tribe does. (Seney: Yeah.) The tribe does. This is a part of the P-L-101-618, part of the, the application the tribe had in the state engineer back in 1984. (Seney: Right.)

“ . . . there is an M-O-U [Memorandum of Understanding] between the . . . tribe and the State of Nevada to satisfy the requirement of Public Law 101-618. That means . . . all of the remaining water [is] to be appropriated to, for the benefit of the tribe, while protecting the vested and perfected rights then existing. . . .”

And, the state engineer’s decision on those two applications, and then of course there is an M-O-U [Memorandum of Understanding] between the . . .

Seney: Memorandum of Understanding?

Shahroody: That’s correct. Between the tribe and the State of Nevada to satisfy the requirement of Public Law 101-618. That means, all of the remainings of the water, waters of Truckee River to be appropriated, to be allocated to the tribe. To the extent—all of the remaining water to be appropriated to, for the benefit of the tribe, while protecting the vested and perfected rights (Seney: Right.) then

existing.

Seney: Now, I'm thinking this, this means, often, maybe always, say when we have a *really heavy* water year and the water goes rushing down and everybody's using their water rights, and you have all this extra water flowing, that instead of, that if it were given to the T-C-I-D it would be diverted into Lahontan Reservoir to be stored there. *Now it* goes all of it to the Pyramid Lake, is that right?

Shahroody: Well, that's true. That's usually, it happens in wet years, (Seney: Yeah.) wet years. And, of course, we'll get to that in terms of T-C-I-D in probably pre-OCAP they could have taken everything and then what happened on the other side could be concurrently, be in either flooded or receiving a lot of water from Carson and would be basically spilling out of Lahontan Reservoir. (Seney: Right.) But, under the OCAP they can't, because under the OCAP they would be only taking water that's necessary under the OCAP. (Seney: Right.) So, this water would be, most all of it would be, (Seney: Right.) under those conditions, going to, (Seney: Yeah.) Pyramid. And so . . .

Seney: Now, the T-C-I-D did file a petition for the unappropriated water but they filed it after the tribe did, right? In the Truckee? Didn't they have an application for unappropriated water also?

TCID Filed for the 100,000 Acre Feet of Water in 1930, but the Federal Government Would Not Allow the Truckee Canal to Be Used to Convey the Water to the Carson Division of the Newlands Project

Shahroody: For, for 100,000 acre feet. (Seney: Yeah.) They did, but they filed it in 1930.

Seney: Oh, that's right. It's way before. That's right. (Laugh)

Shahroody: And, it came up when the state engineer was hearing the tribe's application of 1980, (Seney: That's right.) in 1984, (Seney: Yeah.) for the remaining unappropriated (Seney: Yeah.) water. And, it came up and it's still, it's still, of course, on the—well, that's one of the reason you have two decisions.

“ . . . the famous letter from Betsy Rieke . . . that the federal government *cannot* provide their facilities to be used to convey this water. . . . It's saying that . . . unless they sign a Warren Act Contract. . . . basically . . . there is no such contract, have not entered any process to initiate that. And, *given*, . . . the trust responsibility that the federal government has for the tribe, the likelihood of that contract . . . is basically none. . . .”

One decision that the state engineer rendered to deal with the, with T-C-I-D's 1930 application for 100,000 acre feet, and that's the famous letter from Betsy Rieke from Under Secretary of Interior that, that the federal government *cannot* provide their facilities to be used to convey (Seney: Right.) this water. (Seney: Right.) And, basically the state engineer looked at the practicality, first of all. The practicality (Seney: Right.) in this matter, therefore it, the T-C-I-D did not come up with the facility to take this water, plus other things. (Seney: Yeah.) The public, public interest issue with respect to the qui ui and the L-C-T. (Seney: Right.) Which is a matter, of course, . . .

Seney: Lahontan cutthroat trout?

Shahroody: That's correct. Lahontan cutthroat trout and the qui ui.

Seney: So what Rieke's letter said, essentially, is "You can't take it to the Truckee Canal"?

Shahroody: That is a famous letter, in fact. It's probably one of the exhibits that the state engineer has as part of his decision. (Seney: Yeah.) It's saying that under, unless they sign a Warren Act Contract. A Warren Act Contract requires to use the public, the federal facilities for the purpose of public uses by privately-owned, privately-owned waters. So therefore, basically letters that there is no such contract, have not entered any (Seney: Ah.) process to initiate that. And, *given*, given the trust responsibility that the federal government has for the tribe, the likelihood of that contract or that Warren Act Contract to be, to be done is basically none. (Seney: Yeah.) So, that's basically where ,(Seney: Ah.) where it came, (Seney: Yeah.) where it basically cropped up.

Seney: Right. Right.

“. . . there are also opportunities to store water in Stampede. It doesn't have to be a wet year. . . .” because the water rights are satisfied on a day to day basis

Shahroody: So that, that said, in terms of, you said, you said most of the time that Stampede gets the water there in wet years, (Seney: Right.) that's correct. But, there are also opportunities to store water in Stampede. It doesn't have to be a wet year. I can give you an . . .

Seney: Why are you smiling when you say that?

- Shahroody: Because a lot of people think that that's, that would be the (Laugh) thing. Is because, you have to be opportunistic there, because you can have a dry year. Not too, too much of a dry year. You have a dry, below normal year, you have a good snow pack, you get nice *hot* days in April, you get *big* melts. (Seney: Yeah. Yeah.) You get big melts coming and going off. You can have a couple of thousand cfs coming down the river for about a few days. All the rights are met. (Seney: Yeah.) But, those few days they can store the water, and they have done that, (Seney: Ah.) in Stampede.
- Seney: Just, so if all the rights are met on those (Shahroody: Days.) say six days, (Shahroody: Yes.) then whatever, on those six days, is above that goes into Stampede?
- Shahroody: That's correct. Coming out of (Seney: Ah.) coming out of the Little Truckee River.
- Seney: Ah. See, what I guess I would think, when you say, "Well, they've got to meet all the rights," that those extend out further than that, say for the whole summer. But this, if you're meeting the rights on that day . . .
- Shahroody: It's a daily operation. That's what the watermaster (Seney: Ah.) does.
- Seney: It's a daily operation.
- Shahroody: Everything is daily. Everything is based on cfs, cubic feet per second.
- Seney: Ah. So what, if on May 15th we're meeting everybody's needs and we've got an extra God knows what, right into Stampede it goes?
- Shahroody: Correct.
- Seney: The next day the melt, it may chill out, the melt goes way down.
- Shahroody: Stampede has to pass through.
- Seney: Stampede passes through.
- Shahroody: It has to go to meet the rights downstream, what's coming in.
- Seney: They have to pass through what's coming in?

-
- Shahroody: Correct. That's right.
- Seney: And, there's a gauge above it and a gauge below it?
- Shahroody: That's correct.
- Seney: So, they—ah.
- Shahroody: That's correct.
- Seney: So, no wonder you're smiling. (Laughter)
- Shahroody: I'm smiling because always the State Board has said, "Well, okay, these are all the wet years." I said, "Not necessarily." (Laughter) I gave them an example. (Seney: Ah.) So. So, that's, again, it's just a matter of priorities. (Seney: Right. Right.) So, you don't want to have an injury. The . . .
- Seney: An injury in this case would mean that someone is not getting the rights they're entitled to?

Flood Control Operations in Boca and Stampede Reservoirs

- Shahroody: That's correct. (Seney: Yeah.) Under the Orr Ditch Decree. (Seney: Right.) Under the Truckee River Agreement. (Seney: Right.) So, then as a part of Boca/Stampede, both, as a part of Stampede there is and there is also a flood control aspect to Boca too, which is not that much, because there's only 40,000 acre feet total capacity. I think it's about 10,000. They play that in combination with the space in Stampede. Stampede is 226,000 acre feet, 24,000 acre feet of that is for flood control. That means, come November 15, if it is that full, the watermaster has to bring it down to about 2,000, I mean, I'm sorry, 203,000 or so. (Seney: Yeah.) So, so there is a small flood control feature. Not, as much . . .
- Seney: But, that water would pass through, presumably, to Pyramid Lake, wouldn't it?

Independence Dam and Lake

- Shahroody: If they, if they make that kind of releases, yes it would, but it's been rarely that situation. (Seney: Yeah.) Because, by that time they have used the water for, (Seney: Right.) for the purpose of the species, (Seney: Yeah.) and there's space already available (Seney: Right.) for that purpose. But they have to keep it at the

(Seney: Right.) 203,000 acre feet throughout the wintertime, so in case you got rain on the snow there's flood coming out to (Seney: Right.) be able to store it. (Seney: Right.) And they have done that, (Seney: Yeah.) and then do that and then release it later. On Little Truckee, further upstream, waiting in its headwaters, there is, on Little Truckee there's Weber Lake, which is basically unregulated. It's very small. And, on the, a tributary of the Little Truckee there is Independence Creek. On the Independence Creek there used to be, I believe, five or six isolated lakes, natural lakes, which then, of course, was dammed. Lake Tahoe and basically Sierra Pacific Power Company has been operating that and using, and they have the ownership of the dam and the reservoir on Independence Lake. So, after they put the dam it's only one lake, (Seney: Right.) and they use that water, which is solely owned by Sierra Pacific Power Company and that water which they can store. They have a permit from the State of California to store water, and the capacity of that is about 14,000 acre feet. But, I think they can go down—the outlet works probably the way it's situated they cannot take advantage of all of the 14,000 acre feet. They would be, if I remember, probably in the area of ten or 12,000 acre feet. Because after, below the outlet there it's still pooled. They cannot get it out. (Seney: Right.) So, that water would be released, as Sierra Pacific has done in the past in the summer months, when they need it. This would be over and above the Floriston Rates, what's called "privately-owned (Seney: Yeah.) stored water." (Seney: Yeah.) And, they would release it to Stampede, and then of course, through Boca and on, and then Sierra would take diversion of that. But, Sierra does that primarily in dry years. That's what historically they did, because the Floriston Rates are not met, and Tahoe would probably be close to the rim. Boca doesn't have much water. That's basically their, it used to be their dry-water supply. But then, again, as I said that's a very limited amount and they counted on that. So, as a part of, as part of Preliminary Settlement Agreement and the P-L 101-618 Sierra Pacific, now TMWA, could use those releases even if it's not a dry year. It could use those releases to build or create their, their M-&-I Credit Water.

Donner Lake

So, that has been a sort of a contention for, between, between T-C-I-D and, and TMWA on another reservoir, (Seney: Uh huh.) which is Donner Lake.

Seney: Yeah. I was going to ask you about Donner, because I know there's not much water in Donner Lake but it, it matters somewhat, doesn't it? I mean, there's what, about 10,000 acre feet?

TCID and Sierra Pacific Power Company Jointly Own the Water in Donner Lake

Shahroody: It's about 9,300 acre feet in Donner that's releaseable. And, Donner Lake, useable part of Donner Lake, Sierra Pacific Power Company back in '40s and Truckee Carson Irrigation District, they bought that from the Donner Land Company and they have a joint ownership. When I say "joint ownership" it's basically, it's not spelled out to be half and half, (Seney: Uh huh.) fifty-fifty. It's basically joint ownership in, I've forgot the term, is used legally that means, it's like a husband and wife, if one doesn't (Laugh) if one is now dead the other one owns a hundred percent of it. (Seney: Yeah. Yeah.) And, one uses based on the Operating Criteria (Seney: Right.) to the extent they can use it under the Operating Criteria the other one uses. These are not my opinion. These are the contentions they have. (Seney: Right.)

“ . . . since the Donner Lake was acquired . . . in the '40s, Sierra Pacific was operating Donner Lake for the benefit of both of them, and in fact at one time Donner Dam needed certain repairs, T-C-I-D was not able or did not want to reach in their pocket and the Sierra Pacific put \$300,000 and repaired it because for them it's an M-&-I source of water. . . .”

And, but what has been, in a practical sense, since the Donner Lake was acquired between Sierra Pacific and T-C-I-D in the '40s, Sierra Pacific was operating Donner Lake for the benefit of both of them, (Seney: Right.) and in fact at one time Donner Dam needed certain repairs, T-C-I-D was not able or did not want to reach in their pocket and the Sierra Pacific put \$300,000 and repaired it because for them it's an M-&-I source of water. (Seney: Right.) At least, at least for their half. (Seney: Right.) And, the way it was being operated between at least Sierra, and also the watermaster, fifty percent was sent to Sierra and fifty percent was sent to T-C-I-D, and that was preeminent in 1991. In 1994, when Sierra took its own, the extreme dry years, and I remember Sierra took their half out of diversion water to the Glendale Treatment Plant, and water for T-C-I-D was supposed to be delivered all the way to Derby Dam. And, under Truckee River Agreement it says that all privately owned water they don't bear any losses, river losses, and you sort of open up the gates at Donner, a thousand acre feet, you'll get a thousand acre feet (Seney: At Derby?) fifty miles down, or (Seney: Yeah.) sixty miles down. But, in 1994 the watermaster was not able to do that because there was no water in the river, for the carriage losses. (Seney: Oh.) So, they told T-C-I-D, "It is what it is. (Seney: Yeah.) You have to come and get whatever you can." (Laughter) And, and then Sierra Pac[ific] had basically plastics put on the little diversion dam. They could not move, when they, first they took their water, it was first their turn, (Seney: Yeah.) but now, they did not want any water to leak down. (Laughter) So, that was a test. So, it's fifty-fifty. (Seney: Oh.) And then,

of course, they've been practicing fifty all these years. (Seney: Right.) But, T-C-I-D basically has come out and, and saying, they have a different claim. And, *part* of the, the contention they're using, of course--this is, these are observation from outside. (Seney: Right.) They're not, we're not party to that. (Seney: Yeah.) Is basically, in Sierra using--I have to backspace here. As a part of P-L 101-618 the Sierra was afforded to have, until the Truckee River Operating Agreement to be put in place, from 1990 when the P-L 101-618 was passed until the Truckee River Operating Agreement to be put in place, Sierra was afforded what's referred to as Interim Storage Contract, and that provides a base of 5,000 acre feet and, of course, they can build it up (Seney: Yeah.) in certain dry years. (Seney: Right.) So, but they have to bring their own water to store, to have interim storage water for drought water supply in Boca and Stampede, primarily Stampede. So, what they have done, they've used some of the Independence water being released and stored to build up that (Seney: Ah.) interim storage credit. They've also used Donner water. In other word, when, in the fall, after the labor day . . .

Seney: Right. Because, they can't release before that?

Shahroody: That's correct. (Seney: Yeah.) After Labor Day, when they make their releases, then TMWA calls for the water to be released. But, to get it to Stampede at that time Boca has to make a release to make the Floriston Rates. (Seney: Oh.) So basically, based on that call, then Boca would hold their release to meet the Floriston Rates, and TMWA's water from Donner would be released (Seney: And it would make the . . .) to meet the Floriston Rates.

Seney: Yeah. Because otherwise Donner water is not obligated to Floriston Rates?

Shahroody: No, it's not.

Seney: It's just traded?

Shahroody: It's privately-owned.

Seney: Yeah.

Donner Lake Water Exchanges with Boca Reservoir and Stampede Reservoir Water

Shahroody: So, that part is privately-owned stored water. (Seney: Right.) And then, the water then exchanges with Boca, which was otherwise had to release. So, once it

sits in Boca then Boca says I've got a priority over Stampede water, and when the Stampede has to, when the Stampede gets flows and Boca's entitled to store, well, Stampede will hold that water and Boca will keep the Donner water there, (Seney: Ah.) and Sierra Pacific gets credit in Stampede (Seney: Uh huh.) through exchanging and move it that way. (Seney: Right. Right.)

TCID and TMWA Have Issues about Donner Lake Water

So, the contention, if I understand, between T-C-I-D and TMWA is that *using* Donner water to *build* the interim storage credit water for TMWA it wasn't in the books, because (Seney: Ah.) the extent they can't use their, the indenture then T-C-I-D should get all of it. (Seney: Ah.) But, TMWA says, "I've got half, whatever I do with it."

Seney: "No matter how I manage it, it's mine?"

“. . . 9,300 acre feet is the available water in Donner to be released by gravity. But . . . siltation in the . . . outlet channel of Donner . . . basically chops off another 2,000 that you can't get out, unless you want to go and dredge it. But, to dredge it they have to go through the full CEQA [California Environmental Quality Act] process. . . .”

Shahroody: Right. Right. (Seney: Yeah.) And, T-C-I-D says, "Well, you're only supposed to do these things. (Laugh) (Seney: Oh.) So that's basically where the privately-owned stored water from Independence and Donner, and Donner, as I said, 7,300 acre feet. No, I'm sorry, 9,300 acre feet is the available water in Donner to be released (Seney: Yeah.) by gravity. But, there as been siltation in the channel, the outlet channel of Donner, and that what happens is that that creates a new rim. (Seney: Oh.) That rim basically chops off another 2,000 that you can't get out, unless you want to go and dredge it. But, to dredge it they have to go through the full CEQA [California Environmental Quality Act, pronounced see qwa] process.

Seney: Huge permit process, I would think?

TCID Can't Really Use the Donner Lake Water it Owns

Shahroody: That's correct. They've got to get a 404 permit and those, that, that's what one reason—it is about 7,300. (Seney: Oh.) The round number, they're getting about 3,500 each.

Seney: Now is it, my understanding is, is a practical matter that T-C-I-D really can't take

the water out of there?

Shahroody: That's correct, (Seney: Yeah.) because that will fall back on the Warren Act contract again.

Seney: Right. And, they can't take through the Truckee Canal?

Shahroody: That's correct. (Seney: Yeah.) Because, they have tried it several times.

Seney: Yeah. Yeah.

TCID Would like to Use Donner Lake Water to Repay its Recoupment Water Debt, but since They Cannot Divert the Water into the Truckee Canal They Cannot Use it as Recoupment Water Because They Are Unable to Forego Use of the Water in Repayment of the Debt

Shahroody: And, they don't have a Warren Act Contract with the federal government. And, of course, the contention has been under the recoupment T-C-I-D says, "Well, it's our water and we ask," they have done it for two years and there's an appeal on that, in fact, through, through the court, all the way to the Ninth Circuit now. They write instructions to the federal watermaster, "Now this is after Labor Day. We want our water, our water." They claim for the whole Donner Lake, (Seney: Yeah.) including TMWA's, but anyway their water, "to go to Pyramid Lake." That would be our payment. Of course, as a part of recoupment this would be the water that they, they would be using, and they would, would forego their own use and then they'd make a payment.

Seney: Right. But they're not, this doesn't come under that category?

Shahroody: They can't use it because they can't divert it.

Seney: So, they can't use it as a payment?

Shahroody: That's correct. (Seney: Yeah.) That's the contention. (Seney: Yeah.) Because, that water would be going to Pyramid Lake anyway. (Seney: Yeah. Yeah.) (Laughter) And, and the watermaster has to lower it based on the Safety of Dams permit on the, on the dam on Donner Lake, from the State of California. (Seney: Yeah.) Division of Safety of Dams has got a permit requirement. After Labor Day, until I believe November 10, they have to bring it down all the way, (Seney: Ah.) empty it. (Seney: Ah.) And the gates would just stay open until April 15. (Seney: Ah.)

END SIDE 2, TAPE 1. MARCH 18, 2008.
 BEGIN SIDE 1, TAPE 2. MARCH 18, 2008.

Seney: [This is Don Seney] again with Ali Shahroody in Reno, Nevada. Today is March 18th2008. This is our first session and our second tape.

So, again, we're talking about Donner and that's just pyrrhic victory for ownership for T-C-I-D. They get nothing out of that, huh?

“ . . . historically, Donner was supposed to provide drought supply when basically there isn't any water left for the priority of the Truckee Division, so they would release water from Donner. . . . ”

Shahroody: That's, that's the way it is. But, *there* has been some situation they *have* benefitted. And, first of all, Donner was, T-C-I-D has set up the Donner supply primarily for Truckee Division, Fernley area. (Seney: Ah.) Because, that's the only sole source of water from, their sole source of water is from Truckee River, whereas T-C-I-D's Carson Division, Newlands-Carson Division, it takes water from Carson River, Lahontan Reservoir of course is the storage, (Seney: Right.) and then ~~Pyramid. I'm sorry,~~ Truckee River. (Seney: Right.) So, historically, Donner was supposed to provide drought supply when basically there isn't any water left for the priority of the Truckee Division, so they would release water from Donner. So, under those circumstances, what the watermaster had done in the past, of course, was basically the Floriston Rates were not met and based on understanding between the Sierra Pacific and T-C-I-D, of course watermaster would be mastering it, (Seney: Right.) the releases would be made from Donner, but would be below Floriston Rates. *By that time*, watermaster would—there are a couple of situations. Either watermaster basically had already stopped any diversion by all the parties because there's not anymore water left in the lower priorities or in the mid priorities, (Seney: Right.) in the Truckee River, or basically watermaster would have the understanding to convey this water all the way to, to Derby Dam. But, these would be under the guise of, I mean the Bureau doesn't recognize it of course, but I've observed it over the years, (Seney: Right.) would be under the guise of them meeting Floriston Rates. That means, the Floriston Rates are not being met and this water is put there without any label. Now, if somebody would come out of the woodwork and say, “Hey, there's water. I want to take it,” that hasn't happened so therefore water would end up going to reaching Derby Dam and would be diverted. (Seney: Yeah.) So, basically it's a sort of an unstated understanding between various parties. But, those are the situation when the Floriston Rates are not met, and those are relatively infrequent situations. So.

“ . . . the OCAP are supposed to provide their entitlement to the use of 3.5 acre feet on the bottom lands and 4.5 acre feet on the bench land from available sources. . . . OCAP is supposed to provide their needs.”

But, other than that take the water and take it to Newlands Project, unless they find a new buyer here, that cannot happen because of the Operating Criteria and Procedures, because the OCAP are supposed to provide their entitlement to the use of 3.5 [acre feet] on the bottom lands and 4.5 [acre feet] on the bench land (Seney: Right.) from available sources. (Seney: Yeah.) So, you can't really stack it on top of that. So that, that would not be beneficial use. That's one foundational issue. But anyway, there isn't, there isn't any, and there isn't any Warren Act agreement and the Bureau of Reclamation doesn't justify it, because OCAP is supposed to provide their needs.

Seney: Right. Right.

“This is a source of water for drought water supply for Fernley, and one time I pointed out to the Fernley folks, I said, ‘You know, T-C-I-D may be selling it, this is your source of water. . . . based on your historical use you have certain rights on Donner Lake water as a drought water supply.’ . . .”

Shahroody: But, one issue, of course, as I said, is the Truckee Division at Fernley. This is a source of water for drought water supply for Fernley, and one time I pointed out to the Fernley folks, I said, “You know, T-C-I-D may be selling it, this is your source of water. You have basically, based on your historical use you have certain rights on Donner Lake water as a drought water supply.” But, I assume the Fernley folks didn't want to go out, did not want to be at odds with their . . .

Seney: Bretheren over in Fallon, huh?

Shahroody: Southern friends. Yes. (Laughter)

Seney: Yeah. Well, that's, that's likely to change, isn't it, as Fernley changes and gets less dependent on agriculture, and—you think?

Shahroody: Yes. Especially with the breach in the canal.⁷ Yes. Could, but I don't know if they want to do that. They're watching the—there's a litigation going on, by the way, between, I'm sure you know, between T-C-I-D and TMWA?

7. Referring to a break in the Truckee Canal which damaged many homes in the area of Fernley. The breach occurred January 5, 2008.

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- Seney: I don't know about that, actually.
- Shahroody: Oh yes. There is a T-C-I-D filed—I'll give you the example of, as one of the issues, TMWA using water from Donner in order to build up their interim storage (Seney: Right.) supply. (Seney: Right.) So, that's one of the contentions. There are several other contentions in terms of (Seney: Right.) the 1943 Operating Agreement between them. So, there is a lawsuit in the state court in California. And, Nevada County? Donner falls in Nevada County doesn't it?
- Seney: I think it does. Yes. (Shahroody: Yes.) It does. Yeah.
- Shahroody: Yeah. It's in Nevada County.
- Seney: Well, T-C-I-D is involved in so many suits that it's hard to keep track sometimes, and I'm not aware that they're—is this a recent suit that they've filed?
- Shahroody: As recent as about a year and half.
- Seney: Yeah. Yeah. And, this is over the Donner water? They want some of that Donner water?
- Shahroody: Well, basically they, they want to somewhat enforce that agreement, agreement between T-C-I-D and TMWA.
- Seney: Right. Right. Anything else you want to say about the various reservoirs?

Martis Creek Reservoir

- Shahroody: Well, there's one, one reservoir which we did not cover, which is the Martis Creek Reservoir. (Seney: Right.) That's a Corp of Engineer reservoir and it's all flood control, although it did have a feature at some point in time for possibly 5,000 acre feet. It's a 20,000 acre feet reservoir, 5,000 acre feet for possible other uses, M-&-I, fish, and other things. (Seney: Right.) But, the dam has been leaky over the years. So, the Corp can't store any water behind it anyway. And, in very rare occasions they have. And I say "rare occasion," in flood situations the Corp has stored water on Martis, coming out of Martis Valley, for a very limited time, like only two or four days and then it would release it. Because, because of the leakiness of the reservoir, they don't want to put a lot of pressure behind it.
- Seney: If they did, the fear is it would break?
- Shahroody: Well, it's just a matter of that, you know, you have the water, you have the

earthquake, you have something happening, and you don't want to, you don't want to push it. (Seney: Right.) So, (Seney: Right.) they'll hold it to let the peak pass in the flood event, and then after three or four days gradually they would release it. (Seney: Ah.) And, and you want to do that anyway for the, for flood control, because you want to have the space if there would be another flood coming up.

Seney: I don't suppose people really want to build a leaky dam? Somebody must have screwed up?

Shahroody: They must have, because they did some tests about ten years ago, maybe even more than that, early '90s. They put some bore holes in the abutment and I think they determined it would cost a lot of money to go in and grout it and do the whole (Seney: Right.) cleanup. So, (Seney: Yeah.) I don't think anybody has pushed, anybody has demanded for an additional five, for that 5,000 acre feet to be used for the purpose of —&-I or other purposes. I think it's sort of in a half-hearted way it fulfills its flood control function, (Seney: Right.) as I explained.

Seney: Ah. Yeah. But it's, everything I've heard about it that it's, it was just a mess-up and it's used that way because that's about the only way it can be used?

Shahroody: Yeah. Yeah.

Seney: Is that your impression?

Shahroody: That's, that's what it is. It's sort of a, it's not a big capacity anyways. (Seney: Yeah.) You're talking about 20,000 acre feet. (Seney: Right. Right.) We have some provision in TROA and I think I was, that was sort of insisted on, that again if they're holding water in those peak events, and most likely all of those waters go into Pyramid Lake, and this water then, if the reservoir is repaired, or something like that, if it is, the wording is, "If it released later it would not be subject to diversion." (Seney: Right.) It would have to go to Pyramid Lake. (Seney: Right.) So.

Seney: How long have you worked for the, for the tribe?

Started Working for the Pyramid Lake Paiute Tribe in Late 1979

Shahroody: I started in late 1979.

Seney: Ah, a long time?

Shahroody: Yes. Yes.

Seney: Yeah. So, you were obviously familiar with the Preliminary Settlement Agreement?⁸

Preliminary Settlement Agreement of 1989

Shahroody: I was involved from day one.

Seney: I would think. Right.

Shahroody: Yeah.

Seney: Right. How did that come about, from your perspective? Do you want to talk about that now? Because I . . .

Until the Preliminary Settlement Agreement it Had Always Been All the Water Interests in Nevada Lined up Against the Pyramid Lake Paiute Tribe

Shahroody: Sure. (Seney: Yeah.) Sure. I think, (Laugh) you know, the history of it of course is that there has been contention between tribe and all of the, all of the water interests in Nevada. (Seney: Right.) And, I'm sure you have heard from attorneys. And, it was, it was very hard to break that mold. That means that all of the other water interests, on one side and the tribe, the other side.

“ . . . Stampede Reservoir . . . had irrigation, it had M-&I, and all of the parties on the Nevada side they wanted to have . . . the water to be dedicated for *them* as it was . . . authorized. But then, of course, the Stampede decision. . . ” earmarked the water for Pyramid Lake

And basically, of course, there were fights on the Stampede Reservoir because, because the Stampede feature. It had, it had irrigation, it had M-&I, and all of the parties on the Nevada side they wanted to have that (Seney: Yeah.) thing sort of implemented, therefore the water to be dedicated for *them* as it was (Seney: Right.) so-called authorized. But then, of course, the Stampede decision put cold water in their hands and the Stampede decision was taken all the way to the Ninth Circuit and the cold water was still there, and I think it was (taps table) taken to the Supreme Court. Of course, it was not accepted, so therefore (Seney: Right.) it stayed.

8. The Pyramid Lake Paiute Tribe and Sierra Pacific Power Company entered into the Preliminary Settlement Agreement on May 23, 1989, regarding use of Stampede Reservoir and other matters. Text found at http://www.usbr.gov/mp/nepa/documentShow.cfm?Doc_ID=1115 on April 9, 2013, at about 11:20 A.M.

Sierra Pacific's Views on Stampede Reservoir

- Seney: Well, Sierra Pacific Power's view was that that was their dam, that was their water?
- Shahroody: It could be.
- Seney: No question about it. I mean, there's no quibbling about it. I interviewed two of the presidents of Sierra Pacific Power. One was Joe Gremban (Shahroody: Uh huh.) and then his predecessor. Oh, I should remember the man's name.
- Shahroody: I don't remember his name. Yeah. He's in Reno, in fact.
- Seney: Yeah. It may have been the . . .
- Shahroody: It's S-H, it started with S-H, or C-H.
- Seney: It may have been the, actually the one before that, even.

Joe Gremban of Sierra Pacific Power Saw the Light Because They Lost the Court Case over Stampede Reservoir and There Was a California Court Decision Which Potentially Could Open the Floriston Rates to Challenge So Sierra Pacific Opened Negotiations with the Pyramid Lake Paiute Tribe

- Shahroody: Joe was a, Joe Gremban⁹ was really the one that actually broke the ice. (Seney: Right. Right.) And, he had the, he had the, I think, the will and the power to do that. (Seney: Right.) And, the successor I think you're referring to then, he was the, the head of West Pac [Western Pacific], which was then split to Power and Water. (Seney: Right.) When we negotiated it was one piece?
- Seney: No, I'm thinking, the predecessor. I'm thinking of the predecessor.
- Shahroody: Oh, predecessor, not a successor?
- Seney: Oh, oh yeah. Of Gremban. And, I can't think of the gentleman's name now.
- Shahroody: I wouldn't know.
- Seney: But, he was adamant that that was their dam?
- Shahroody: That's correct. That's correct.

9. Joe Gremban contributed to Reclamation's oral history work in the Newlands Project Oral History Series.

Seney: And it was, he was president when it was, all that business went through, and it was for them, and “God damn it,” this and that.

Shahroody: That’s good. That’s correct. (Seney: Yeah. Right. Right.) As I said, Gremban was (Seney: Yeah.) able to break the mold. And, two really, I think two things came out. One, of course, it’s not probably stated anyplace, was on Tahoe Dam issue. Tahoe Dam, because of Safety of Dam issues, back in the ‘80s Bureau of Reclamation wanted, had to do, would the Safety of Dams do repairs and everything else. (Seney: Right.) But, in terms of doing that they did not do their full E-I-S [Environmental Impact Statement]. They did a E-A [Environmental Analysis]. They basically . . .

Seney: What’s, an EA is a?

Shahroody: Which is Environmental Assessment. It’s a very brief sort of treatment of the environmental impact and then you come up with a FONSI, Finding of No Significant Impact, and then you go on your way. (Laughter) You don’t think people will comment. (Seney: Yeah.) So, but in a situation through E-A to find out, “Hey, there are some issues here,” then they’ll convert that as a sort of starter to convert it to the full E-I-S. (Seney: Ah.) But, this was not done. They just did the E-A and they issued the FONSI and then they went through what they were supposed to do in terms of doing the hard construction. (Seney: Right.) Basically we had comments, and they did not actually follow. I had comments. And then, we took them to court. Took them basically, since Tahoe’s in California, it was taken to federal court in Sacramento. In fact, the sitting judge was, well still is I’m sure, is Judge Karlton. (Seney: Right.) Judge, he’s, he’s pretty good.

Seney: Lawrence Karlton. Yes.

Judge Lawrence Karlton Suggested He Would Be Open to Considering a Case on the Impact of Flow Regime on Wildlife Downstream of Tahoe Dam

Shahroody: Yes. (Seney: Right.) Yes. And when this matter came to hearing, (Laugh) in fact, I was there, and basically he looked at some of the issues, some of the matters in terms of the E-A and other things, and he said, “Well, you know, I know they made a mistake, they didn’t do this and that, but there’s something they have to do on Safety of Dams.” But some of the issues that we raised that they didn’t *consider*, which are the flow-related matters. (Seney: Right.) So, the judge said, “You know,” he said, “in the matter of flow regime I could see where you’re going but this is not the place.” (Seney: Yeah.) He said, “I would be open, if you want to bring this matter as a separate case on the flow regime and the impact, impact of that on the wildlife downstream.” He basically opened a

door, and I think Sierra got it. Sierra got it. (Seney: Ah.) Here's the point, the whole thing could be wide open. We could actually bring the Floriston Rate, which is the man-made. Basically in flow instead of just a hydrograph, (Seney: Yeah.) and this could be opened out. And Judge Karlton was, he is I would say the right person to actually delve into this kind of stuff. (Seney: Yeah.) This was like about '87-, '88 or something. (Seney: Yeah. Yeah.)

Karlton's Willingness to Consider Environmental Issues Raised the Possibility of a Challenge to the Principles Behind Operation of the Truckee River

And, I think *then* we had engagement with Sierra, after seeing that, "This is a dead end. This could impact not only what they were asking in terms of Stampede, they've got a dead end, but also just a new *avenue* could be opened up, (Seney: Right.) could actually challenge the whole principle of the river operation." (Seney: Yeah.) We asked Sierra, we got into finally in discussion they said, "*What* do you guys *need* on the Stampede?" And, at that time they had their water resource reports, and I think Joe Burns's¹⁰ firm was involved.

“. . . Sierra did have the water rights that they're buying from agriculture, converting them to M-&-I. The *problem* of—and also the rate of dedication . . . if you [as a developer] want to have a will-serve letter of one-acre foot you have to dedicate 1.72. The reason is that in dry years that only fifty percent of supply is going to be there. Or, they want to store that .72 someplace. . . .” and the issue was where could they store their water in anticipation of drought years

There are about four volumes of water resource reports for the twenty-year planning, and it showed in terms of development and the future expansion Sierra did have the water rights that they're buying from agriculture, converting them to M-&-I. The *problem* of—and also the rate of dedication, they were requiring dedication of, if you want to have a will-serve letter of one-acre foot you have to dedicate 1.72. (Seney: Yeah.) The reason is that in dry years that only fifty percent of supply is going to be there. Or, they want to store that .72 someplace. (Seney: Yeah.) But, they didn't have the space. So, they showed, as a part of looking at the present-day reservoirs in operation, but historical run-off, if you want to call it, and they went all the way back to the '20s, which included the dry periods of 1928 through '35 (Seney: Right.) as a test. So, they had these bar graphs as a, as a supply, or as a demand, and the ultimate demand was 119,000 acre feet that they had, (Seney: Right.) they said it worked out. And, at that time they were taking like about 60,000 acre feet. The 119,000 was this magical number that this bar graph for each year, (Seney: Yeah.) 119,000 being fulfilled from the supply. Just all of them meeting the 117,000, 119,000 line. But then,

10. Joe Burns contributed to Reclamation's oral history work on the Newlands Project.

using historical hydrology starting, I think starting in 1901, yes, and then this was like for instance, for, until 1982, for eighty-two years. But then, all of a sudden, you see in these bar graphs of supply meeting the demand there were holes. There were holes in drought years of the '30s. (Seney: Ah.) There's several years of holes and the water was not *there* to meet the demand. Even if you take the, their Donner water supply, you take their Independence water supply, you get everything from the pooled water from Tahoe and Boca, it's just, ~~not water~~, water is not there. They said, "Is that you wanted?" They said, "We, in order for us to grow with our 119,000 as reliable source we've got to be able to have the supply for those years."

Seney: And, there were very few years, right?

Shahroody: There were very few years. (Seney: Yeah.) We said, "All right. What if we do that? What if we provide you? We make it happen that you can have water, in storage, to basically to be released in those kind of years, in the worst drought conditions that you would have experienced based on historical record?" And, and what was in the heart of this was that .72 acre feet that they were getting from developers. They had no place to put it. (Seney: Yeah.) It was just a matter of saying, "Okay, I only get fifty percent of the yield during the, during the dry years, because that's where all the water, all the yield you can get from the river itself." (Seney: Right. Right.) So, if you take that water and just store it, in the space you can provide for that, (Seney: Yeah.) then once the drought comes in therefore the water is there.

Seney: Now, this, this 1.72 acre feet would have been water used for agriculture purposes in the Truckee Meadows, and would have been water which was recognized and appropriated under the Orr Ditch Decree?

Shahroody: Correct.

Seney: So, if no one was *calling* for that water, or if they were only calling for one acre foot, then you could reserve the .72 in Stampede, couldn't you?

Shahroody: That is exactly what it is. (Seney: Yeah.) In terms of developers, they *bring* agricultural water right and as a, as a dedication. So, they bring, they want one acre-foot (Seney: Yeah.) for a subdivision. (Seney: Right.) They will bring 1.72 because I think that was Rule, Rule 7, I believe, under the PUC the Public Services Commission at that time. (Seney: Ah.) So, they had to bring, bring the additional water. So, two reason. The studies showed, of course, in dry years the full acre-foot is not going to be there. The second one, of course, Sierra said they would be able to stick it someplace. (Seney: Right. Right.) If they don't have

the place, they don't. (Seney: Right. Right.) So, therefore, you're right. This agricultural water to start with gets transferred to M-&I water but it takes more than one acre-foot (Seney: Right.) in order to serve the one-acre foot. (Seney: Right.) So *basically*, we *sort of did a little bit of work, or eye opener*.

“We said, ‘Okay, you have this .72. So, what you need is space?’ In other words, we are not going to give them Stampede water project water, but we’re willing to give the space in Stampede. So, have the .72 brought in, and then store it there. . .”

We said, “Okay, you have this .72. So, what you need is space?” In other words, we are not going to give them Stampede water project water, (Seney: Right.) but we’re willing to give the space in Stampede. So, have the .72 brought in, (Seney: Right.) and then store it there. (Seney: Right.) And they would run hydrology based on that. Sure enough, they all saw it, (Seney: Yeah.) 119,000 acre feet. So, we came up with three categories and then, of course, became this situation of “What if the hydrology gets *worse* than what it is?” So, we came up with the additional analysis, worse than worst-situation scenario.

The Management System for Water in Stampede Reservoir

So, we came up with the three categories of drought water supply for them. One is what's called “*non-firm*.” That means it is there but could spill, but it would be the first water to be spilled than compared to other waters, (Seney: Yeah.) like for instance Fish Credit Water that you will have. And then this next one is the “*firm water*,” that they would, category, that would be staying there, except only would be spilled if the, if there's *no* other water except the project water. It's the last water to spill before the project water itself. (Seney: Right.) Then we came out with what's called “emergency and the worst of worst drought water supply,” which is 7,500 acre feet which stays in the bottom of the reservoir. It wouldn't spill. It's *always* there. (Seney: Yeah.) Unless, when they get a worse situation they can draw on this.

Seney: So, they call on that and that water comes up. But, spillage is when you have what, too much water in the reservoir?

Shahroody: Well yeah, you have too much water, but that's, we showed them, “Yeah, you lose the water but then there's plenty of water everywhere.” (Seney: Yeah. Yeah.) You're not worried. So, you can, after the spill over then you can still put those .72s (Seney: Right.) and then build it up again, (Seney: Right.) because there will be space available. (Seney: Right.) So, the PSC [Public Services Commission] saw this and they said, “Well, you can have reservoir.” The result

of this showed pretty good. They said, “You don’t need .72.” (Laugh) After certain, after certain dedication the .72s are still there. (Seney: Yeah.) But after, I think after 80,000 acre feet of . . .

Seney: Firm? That’s firm?

Shahroody: Eighty thousand acre feet of supply (Seney: Right.) for the use (Seney: Right.) in the Truckee Meadows. After that anything they bring in, all they have to bring is .12. It becomes 1.12. (Seney: Ah.) So, because you already have stocked the .72s up to that point. (Seney: Right.) Yeah.

Seney: And so many of them that you don’t really need to worry about it?

Shahroody: That’s correct.

Seney: Yeah.

Once the Pyramid Lake Paiute Tribe and Sierra Pacific Came to Agreement in the Preliminary Settlement Agreement, the Other Nevada Interests, Except TCID, Fell into Line

Shahroody: So, so basically we entered showing them, Gremban, I think, was very smart. He saw that. He said, “Well, that fulfills what we wanted to do.” I think combination of this and combination with Judge Karlton basically opened up, these guys said, “Okay.” (Seney: Yeah.)

“ . . . Joe Gremban and Joe Ely, they basically opened up the trail and we negotiated P-S-A [Preliminary Settlement Agreement]. . . .”

So, we got into a, between Joe Gremban and Joe Ely,¹¹ they basically opened up the trail and we negotiated P-S-A [Preliminary Settlement Agreement]. And, that’s where I think that it had some domino effect. Basically the other Nevada interests, the water interests, they were not happy, but finally Nevada came in line, (Seney: Yeah.) state of Nevada. And, I think the other interests in Truckee Meadows, they’re basically, they’re fine. (Seney: Right.)

“T-C-I-D, I think, just basically was unhappy. . . .”

T-C-I-D, I think, just basically was unhappy. (Seney: Right.)

“ . . . the P-S-A got approved by the federal government, ratified, and then became

11. Joe Ely contributed to Reclamation’s work on the Newlands Project Oral History Series.

part of the P-L 101-618. . . .”

Then following that, of course, the P-S-A got approved by the federal government, ratified, and then became part of the P-L 101-618.

Seney: Right. Right. Well, prior to this agreement between, essentially between Gremban and Ely, who I understand were very important to have those two individuals in the positions they were in at this particular time, (Shahroody: Yes.) was probably critical (Shahroody: Yes.) even?

Shahroody: Yes.

Seney: You’d agree with that?

“ . . . Joe being a chairman of Pyramid Lake tribe and was able to not only fully understand this but also be able to explain to the council and tribal membership. . . . And Joe Gremban . . . was able to come out of the shell. . . .”

Shahroody: Yes, Joe being a chairman of Pyramid Lake tribe and was able to not only fully understand this but also be able to explain to the council and tribal membership. He had that ability, (Seney: Right.) and basically was able to take a step forward. (Seney: Right.) And Joe Gremban, I give him a lot of credit. He was able to come out of the shell.

Seney: Right. Right. I’ve interviewed him. He was a very interesting man, I thought, Gremban.

Shahroody: Yes.

Seney: And, I interviewed Joe Ely too, (Shahroody: Yeah.) of course. (Shahroody: Yeah.) But, I thought, and Gremban’s background was interesting, I thought, and may have played into this. You know, he had been with—what is the engineering firm? I know you know the name of it. Babcock and (Shahroody: Yes.) Wilcox, is it?

Shahroody: Yes.

Seney: Yes. And they owned a bunch of power companies, one of which was Sierra Pacific Power, and he had been other places and served in one in Illinois, and I can’t remember . . .

Shahroody: Yeah. They’re out of Chicago, I think. (Seney: Yeah.) But, yes.

Seney: Right. Right.

Shahroody: Yes.

Seney: And I thought that it was kind of interesting that he wasn't a native, and a local, which may have given him a slightly (Laugh) different perspective on all of this?

Shahroody: Yes. Yes. Yea, I mean, that's I think both of them get a lot of this credit for (Seney: Right.) breaking the (Seney: Right.) breaking the mold.

Seney: Right. Well, prior to the Sierra Pacific Power and *T-C-I-D* had been very close?

TCID and Sierra Pacific Are Very Close

Shahroody: They're very close. They're very close all together and close to the heart of Donner Lake, as I said, (Seney: Yeah.) which is, "We can work it out together." And, even the example I gave you, the repair, \$300,000, (Seney: Right.) basically, (Seney: Right.) that Sierra Pacific put forward.

Seney: I'm, if I may, I'm also thinking about the contract between T-C-I-D and Sierra Pacific to run the Churchill County power system as well?

Shahroody: That's correct. The contract at the, at the Lahontan Reservoir and also the, that powerplant also took water directly from Truckee River.

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

Shahroody: So, from the Truckee Canal generated power.

Seney: For winter power?

Shahroody: Yes. And then there's a twenty-six foot drop (Seney: Yeah.) 'powerplant there and that is correct.

Seney: Yeah.

Shahroody: That's now . . .

Seney: Because, that had been run, that whole system, by T-C-I-D for a long time?

“. . . the water analysis, hydrology analysis, the same consultants did work for Sierra Pacific Power Company also *did* work for T-C-I-D. . . .”

Shahroody: And, maybe you don't know this, but also their consultants in all of these analysis, the water analysis, hydrology analysis, the same consultants did work for Sierra Pacific Power Company also *did* work for T-C-I-D.

Seney: Ah, was that Joe Burns?

Shahroody: Joe Burns and Rob Hall, both of them. (Laugh)

Seney: Yeah. Yeah. And, that makes a difference, you think?

“ . . . after the P-S-A I think . . . Joe Burns understood, ‘You can’t do both.’ So, he had to make a decision which way he wants to go. . . . Sierra Pacific was the one to go with. . . . ”

Shahroody: Well, I mean, they were finally, I think, after the P-S-A I think Joe understood, Joe Burns understood, “You can’t do both.” (Laughter) So, he had to make a decision which way he wants to go. (Seney: Yeah.) Rightly so, Sierra Pacific was the one to ~~do it~~; (Seney: Right.) ~~I mean, to~~ go with. (Laugh)

Seney: Right. Right. Right. Right. Yeah. Yeah.

Truckee-Carson Technical Committee

Shahroody: So, yeah, when I started back in '79, and then we got into, I got into the Truckee-Carson Technical Committee. When I walked in this already, the technical committee was going on. Of course, Joe was there, and Rod Hall was there, and the Bureau of Reclamation, Bianchi.¹²

Seney: Right. Monte Bianchi?

Shahroody: Monte Bianchi, and it was basically, I said, “Gee.” And then, when it got into working, my thing was all technical stuff as trying to bring factors to be (Seney: Right. Right.) considered. I said, “Jesus, there’s a wall there.” (Seney: Yeah.) Even there, because when I started suggesting, “Oh, you can’t do that,” (Laugh) when I’d say, “You can’t do that,” they’d say, “Why not?” “Well, you can analyze it.” (Seney: Yeah.) But basically, I felt like a dart board. (Laughter) So, but gradually that opened up.

Seney: See, well outsiders would think, “Well, gee, you’re all hydrologists. You’re all looking at the same river system and whatnot. You must come to the same

12. Monte Bianchi contributed to Reclamation’s Newlands Project Oral History Series.

conclusions?”

When he first started working for the Pyramid Lake Paiute Tribe “There were interests pretty much lined up, and . . . you had litigation, primarily, you didn’t have agreements. So, everybody basically was litigation mentality . . .”

Shahroody: True, but the thing is this was, this was going on. This was going on, as I said. There were interests pretty much lined up, (Seney: Yeah.) and then, of course, what you had litigation, primarily, you didn’t have agreements. So, everybody basically was litigation mentality, if you want to call it that.

Seney: Right. Right. Right.

“ . . . then, we got into OCAP, and we had a pretty good situation in OCAP. . . .”

Shahroody: But, the fact of the matter, then, we got into OCAP, and we had a pretty good situation in OCAP. Basically . . .

Seney: Now, this, if I may go back, this was mandated under Judge Gesell’s decision, wasn’t it, to come to some understanding about how much under the *Pyramid Lake Tribe vs. Morton*, how much water could be used, and there had to be some limits on it. And, that was an outgrowth of that decision, right? The OCAPs?

“ . . . Judge Gesell . . . that’s a 1973 decision. . . . his decision *enforces* OCAP but also puts the matter in proper perspective, in terms of what OCAP is supposed to accomplish. And, . . . the federal government’s trust responsibility in doing so . . . OCAP . . . came into existence back in 1967. . . .”

Shahroody: He had, Judge Gesell, I wasn’t around but basically going through his decision, that’s a 1973 decision. (Seney: Right.) Basically, he not only in, his decision *enforces* OCAP but also puts the matter in proper perspective, (Seney: Right.) in terms of what OCAP is supposed to accomplish. And, of course, the federal government’s trust responsibility in doing so, (Seney: Right.) *and* endangered species, for that matter. The trust responsibility goes that far. OCAP was in existence prior to that. (Seney: Right.) That came into existence back in 1967. (Seney: Right.) And Judge Gesell, basically, yes, tightened it up but of course it was never . . .

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BEGIN SIDE 2, TAPE 2. MARCH 18, 2008.

Seney: What was the status of the OCAP when you arrived in 1979?

When he started working for the Pyramid Lake Paiute Tribe in 1979 “Basically, we didn’t have OCAP . . . although there were letters from Bureau of Reclamation . . . with no enforcement on it, ‘Just be aware you can only take this much this year,’ . . . But, T-C-I-D did take what they wanted to take. . . . until 1985; ‘84-‘85 . . .”

Shahroody: Nonexistent. Basically, we didn’t have OCAP, and diversions were made, and although there were letters from Bureau of Reclamation, kind of letters with no enforcement on it, “Just be aware you can only take this much this year,” in the form of a letter, not even following necessarily the OCAP enforcement type. But, T-C-I-D did take what they wanted to take. (Seney: Right.) And, there were similar things to come. Until, until 1985; ‘84-‘85, after the, after the final (tapping table) decision on Alpine, because Alpine basically, the final decision was not, was not rendered.

Seney: Right. This is the Alpine Ditch Decree that, that allocates the water on the Carson River? (Shahroody: Yeah.) Right.

Alpine Lake Decree

Shahroody: It’s called Alpine Lake Decree.

Seney: Sorry, that’s right. It’s Orr Ditch, isn’t it?

Shahroody: Yes, that’s correct.

Seney: Yeah. Okay.

“ . . . with that coming out then I think the feds start, started enforcing the Alpine based on ‘ . . . 3.5 [acre feet] for the bottom lands, 4.5 for bench lands, therefore then that’s, that’s all you need to take.’ So, as a result of that the Bureau went through a number of interim OCAP, . . . and they were not necessarily followed either. There was 1985 OCAP, 1986 OCAP, and 1987 OCAP. ”

Shahroody: So, that’s, I think with that coming out then I think the feds start, started enforcing the Alpine based on 3.5 and 4.5 [acre feet], and based on that they said they would require therefore put the OCAP in a form which does that. (Seney: Yeah. Right.) That meeting, “There, your rights at 3.5 and 4.5, 3.5 for the bottom lands, 4.5 for bench lands, (Seney: Right.) therefore then that’s, that’s all you need to take.” So, as a result of that the Bureau went through a number of interim OCAP, if you want to call it, year-by-year OCAP, and they were not necessarily followed either. There was 1985 OCAP, 1986 OCAP, and 1987 OCAP. So, coming, . . .

Seney: Let me ask you . . .

Shahroody: To answer your question, though, (Seney: Yeah.) earlier you said, “How did . . .”

Seney: Yeah. I just wanted to ask you about this. How, did, was there an accounting of how many bench land, how many acres of bench land there were and how many acres of bottom land?

How the Number of Acres in Bench Land and Bottom Land Was Determined

Shahroody: No, there weren't. (Seney: Okay.) I mean, T-C-I-D *had* a number, but it was vastly different than what it's supposed to be. (Seney: Right.) There was another process that was going on in the '80s, for the determination after the Alpine Decree, Alpine decision, to make a determination of what is the, how many acreage of bench land we have, how many acreage of bottom land we have. And that, in fact, went through a number of iterations. It ended up to court, Judge Thompson's court. I testified at that time. And, the Bureau folks from the Sacramento worked on it. And, based on the land capability they used all of the soil attributes and classification to come up with the bench and bottom classification, which of course that reduced the, the bench, what T-C-I-D at least claimed to be the bench. That reduced it by, if I remember, it was some order of 7- to 8,000 acres. That's just, just from the bench became bottom. (Seney: Right.) So, at the calculation at that time you're talking about 10- or 12,000 acre feet of different water. (Seney: Okay.) Only one foot difference, but by the time you take that efficiency into play that, it'd be that much. (Seney: Right.)

Truckee-Carson Technical Committee and Doug Olsen's Use of It

So, I'm just going to go back and, when you said, “How it came about in terms of technical committee?” (Seney: Right.) It sort of in, it got into a pretty functioning committee in '83, and especially after Alpine decision coming out. To use this technical committee to come up [with] OCAP criteria on a year-by-year basis. So, the Carson City Bureau of Reclamation manager, I don't know whether you came across his name or not, Doug Olsen [spelling?].

Seney: I've just heard his name, right.

“ . . . engaged this Truckee-Carson Technical Committee to actually make the analysis . . . by coming up with diversion criteria to Lahontan Reservoir and setting up certain storage targets for Lahontan Reservoir for diversion of water from Truckee . . . we also were developing the model . . . as a part of this technical committee, Monte Bianchi has already . . . developed it. We were

expanding it. . . .”

Shahroody: Doug was pretty good. Doug was pretty open-minded compared to previous ones. And, he basically engaged this Truckee-Carson Technical Committee to actually make the analysis to see by coming up with diversion criteria to Lahontan Reservoir and setting up certain storage targets for Lahontan Reservoir for diversion of water from Truckee, whether there would be shortages, there would be a shortage possibility of a year, like for instance (Seney: Right.) next year would be less than normal, or something, what it would be. So, based on those things, based on the analysis and we also were developing the model as a part of this technical committee, Monte Bianchi¹³ April 11, 2013 has already developed. He developed it. We were expanding it. So, to give the answers. So it took them both. At that time people, as you said, it’s a technical, the answers should be the same, (Seney: Right.) that ended up to be that four, finally, and was used to, then, to have these interim, if you want to say, OCAP for ‘85, ‘86, ‘87. I’m not sure if there was ‘84 also.

“ . . . then ‘88, then they did a final OCAP. . . . full-blown E-I-S process, and they used the result of bench and bottom analysis, court decision, coming out of the Judge Thompson’s, and they were all used as a part of this . . . 1988 OCAP. . . .”

But then ‘88, then they did a final OCAP. They went the full-blown E-I-S process, and they used the result of bench and bottom analysis, court decision, coming out of the Judge Thompson’s, and they were all used as a part of this final (Seney: Right.) OCAP, what’s referred to as 1988 OCAP.

Seney: How many acre feet of diversions did that ‘88 OCAP allow? Do you remember?

Arriving at the Diversions That Would Occur under the 1988 OCAP

Shahroody: It all depended. It all depended on what would be the snow pack. It became more of snow-pack driven, and (Seney: Ah.) the forecasting. And, the—I was, I’m trying to remember. In terms of diversions, where we had to deal with that in terms of what would, if you did under this Operating Criteria, and you replicated the hydrology of a hundred years, or at that time it was eighty-two years, (Seney: Right.) and you had all the reservoirs in place, and all the regulations, Tahoe and everybody, in place, so you go through all of these years what would you average in diversions? And, that’s what we were looking at. And, like for instance numbers were anywhere from 180,000 acre feet on average down to 130,000 acre feet. Like when it’s ‘88, probably, when it about 130,000 (Seney: Right.) average, to be diverted from Truckee. (Seney: Right.) So, that’s, those are the

13. Monte Bianchi contributed to Reclamation’s Newlands Project Oral History Series.

kind of yardstick we were, we were working with.

Seney: Did the, did T-C-I-D pay any attention to these OCAPs?

TCID Finally Began to Observe the OCAP after 1988

Shahroody: Finally in 1988, yes. After 1988, because of the court decisions. On interim OCAP of '85, '86, '87—partly. (Seney: Yeah.) Partly, because (Seney: Right.) of all the diversions. (Seney: Right.) Of all the diversions going on.

Seney: Now, what period was the so-called recoupment diversions?

Recoupment Came into Play Because of Judge Gerhard Gesell's Decision

Shahroody: Recoupment is, that's where Judge Gesell comes (Seney: Right.) comes into play, because basically he laid it out very succinctly, very much in detail. He laid it out. As to, "You do the forecasting, you do the deserved targets, the acreages, and the 3.5, and 4.5, (Seney: Right.) and all of those," and then what happens to the pasture lands and the wet lands? And there were differing sort of testimonies but it finally, once the judge made the decision that's what he came up with.

“. . . the recoupment period goes all the way from 1973 through 1987. . . .”

And, so the recoupment period goes all the way from 1973 through 1987. (Seney: Right.) Before the, before the implementation of 1988 final OCAP.

Seney: And there was, in contention there are what 1,057,000 or 1,058,000 acre feet? I've seen both numbers.

Shahroody: That's the contention of both the federal government, both the state, the federal government Department of Justice, and the tribe, (Seney: Right.) to start with. Yes.

Seney: You must have taken part in the, in the recoupment case, or no?

He Was Involved in the Recoupment Case, but He Came Late into it Because the Pyramid Lake Paiute Tribe Wanted the Federal Government to Carry the Ball on That Issue

Shahroody: Yes, *but*—when I say “yes” I came, purposely came into it a little bit late in the game, (Seney: Right.) because we wanted to have this, this ball to be carried by the federal government. And we basically had it so, for a number of years, to be

prepared. And I was just, I was on the periphery, although I knew what was going on, but I was (Seney: Yeah.) on the periphery, and talking to their consultants, and the Bureau of Reclamation. (Seney: Right.)

How Reclamation Arrived at the 1,000,000 Acre Feet of Water It Believed TCID Had to Pay Back Through Recoupment

But, as it came to, to the trial, the year before that, one of the Bureau of Reclamation persons, who had actually done spreadsheet and analysis, done a really good job, in fact, I saw. That's where the number, it's pretty close to a million acre feet comes from too. (Seney: Right.) And, his name is Al Olson [spelling?]. Al basically took early retirement and went and worked for the Department of Water Resources in Sacramento, (Seney: Uh huh.) out of Carson City. So, *that* became more or less, that work was left by itself. (Seney: Right.) And, a little bit of complex work. Basically it shows what they did in terms of numerically, month-by-month analysis, or what they should have done under the applicable OCAP. You have the 1973 OCAP going all the way to 1984, and then after that would be interim OCAP (tapping table) year by year, (Seney: Right.) so different criteria. And, he did a very good job, in fact. So, they didn't have, didn't have that benefit. And then the government had a consultant out of UC-Davis, Jerry Orloff. He's a professor there, and with his assistants, and then they would do the analysis.

“The less you see the face of the tribe the better it is, because this is government, and it's mandated for them to do it because the act requires them to do that. . . .”

The less you see the face of the tribe the better it is, because this is government, and (Seney: Right. Right.) it's mandated for them to do it because (Seney: Right.) the act requires them (Seney: Right. Exactly. Yeah.) to do that. But then, things got a little bit not in place, organized toward the end, and because Al Olson [spelling?] was not there. He was not willing to come and testify, and part of it not willing because he's not a public person. He's a man of very few words. (Seney: Yeah.) Pretty brainy guy. (Seney: Yeah.) And then, in terms of what came out of the U-C-Davis, they sort of, there were some factors they hadn't considered.

“. . . I was thrown into it in . . . The last two or three months. . . .”

So, to make a long story short, I was thrown into it in (Laugh) very last, very last months. (Seney: Yeah. Yeah.) The last two or three months. So, (Laugh) which I basically took over what Al Olson [spelling?] had done, which by that time it's, it's just too late. It wasn't even in the, it wasn't even . . . [sigh] it wasn't an

exhibit, or was part of some sort of deposition, but it wasn't part of an exhibit.

Seney: Well my, as I read the recoupment decision the judge was not at all impressed with Mr. Orloff, and the government's experts, (Shahroody: That's what I said.) and he was with T-C-I-D's.

Shahroody: With Chuck Binder. Chuck basically took a very simple approach and then, of course, Mike Turnipseed was there, (Seney: Yeah.) and they basically . . .

Seney: Well, he's state engineer, and what not?

Shahroody: Yes, he was the state engineer at that--well he was the head of Natural Resources.

Seney: At that time?

Shahroody: Yeah. But, it took more of a, more of a event situation. "Oh, I knew that in 1982 there was a big flood, and it happened. They had already taken some water out to Lahontan Reservoir, rightly so, and then the flood occurred and of course that water, yes, was lost. Truckee water was lost. (Seney: Right.) But, nobody would know. And when I did an analysis of it, Al Olson [spelling?] had done it rightly so. He said, "Well, this water if foregone water. (Seney: Yeah.) You don't claim for it." (Seney: Yeah.) But Jerry, Orloff didn't know that. He just had made a claim on it so therefore that created some holes in his analysis. (Seney: Yeah.) So, *basically*, I looked at that and simplified it, but then I was too late, (Seney: Yeah.) too late in the, in the hearings. But, there are problems with what happened though in terms of what T-C-I-D did. Because, in terms of talking about science and technology here.

Issues with the Reliability of the USGS Water Gauges Relevant to the Recoupment Case

Again, we had U-S-G-S folks there to testify. In U-S-G-S gauges there is rating involved and you rate them from poor to excellent. (Seney: Right.) And, the gauge which has got, which is excellent basically ninety-five percent of the time would read exactly the amount of water that actually has crossed, gone through. (Seney: Right.) It's that excellent. All the time would read it. And, that's basically would be, would say, "It's good five to ten percent of the time. That there is a possibility it would be up or down a little bit," (Seney: Right.) which is very, very, (Seney: Right.) five percent of the time, let's say. And, the pool would be, twenty-five percent of the time it would miss. (Seney: Right.) It would be up. It was over-reading or under-reading.

“ . . . T-C-I-D’s expert reduced all the gauge readings by twenty-five percent. . . .”

But, what happened, of course, is that T-C-I-D’s expert reduced all the gauge readings by twenty-five percent. (Laugh) (Seney: Ah.) Now, it could go either direction.

Seney: Well, the judge didn’t like the gauges though? Didn’t he say that?

Issues Affecting the Judge’s Ruling in the Recoupment Case

Shahroody: No, he didn’t like the gauges, but then not all of them, of course, either were poor. Some were, but of course, some of them were excellent. Some of them were fair. Some were good. (Seney: Ah.) So, I reduced them by twenty-five. But, the U-S-G-S guys there, they said, “We do calibration. We rate them. (Seney: Yeah.) But they, over the long-term, some are going to go this way, some are going to go this way, and these are going to stay the course. So, but, just, if you’re going to adjust the water rate, then for some time adjust it that way, the other way too, (Seney: Yeah.) depending on what the calibration has been.” (Seney: Yeah. Right. Right.) So, that sort of judge accepted what T-C-I-D did though.

Seney: Well, he gave them the benefit of every doubt on that, didn’t he?

Shahroody: He just gave them the benefit of the doubt. (Seney: Yeah.) And then, there were the situation of the main big hole is 1981 through 1984, 1980 through, 1981 through 1984, four years. Four years, basically, the judge said the Alpine was, in fact, was not effective.

Seney: Right. Yeah. Yeah.

Shahroody: And basically threw out everything, (Seney: Yeah. That’s right.) He said it’s a big black hole. (Tapping table.)

Seney: Yeah. Yeah. No claims before the Alpine gets finalized.

Shahroody: Yeah. But then of course, including all the water taken that spilled out there. So, I’m not trying to push one . . .

Seney: No. No. No. I know. No, I mean the judge clearly is going to, you know, he’s going to decide these things as he sees them, and that’s not necessarily the way someone else is going to see them.

Shahroody: Yeah. I mean . . .

Seney: Yeah.

Shahroody: And, that doesn't mean that once you do these corrections that doesn't mean that brings you up to a million acre feet. No, it doesn't. (Seney: Right. Right.) It probably brings you up to about in the area of four or five hundred thousand (Seney: Right.) acre feet.

Seney: But what did he say, two eighty-four?

The Judge Granted 197,000 Acre Feet of Recoupment to Be Paid by TCID

Shahroody: No, he said one ninety-seven [197,000 acre feet].

Seney: One ninety-seven? Right.

The Judge Applied Interest to the Water Debt of TCID as of the Date of the Recoupment Decision

Shahroody: And then, of course, there's the issue of the interest, the water interest on it. (Seney: Right. Right.) So, basically you apply the interest from the day of his decision, or at least [tapping table] the implementation of his decision, but he did not grant a pre-judgment decision, or interest, which goes all the way back to 1973.

Seney: Right. Right. And how, now you've mentioned the, the Donner Lake business and T-C-I-D's attempt to pay back on Donner Lake, and that's apparently going nowhere, or is it?

TCID Would like to Use Donner Lake Water to Apply to the Recoupment Water Debt

Shahroody: Well, I didn't say that in terms of the attempt. Yes, I did allude to that because they said, (Seney: Yeah.) this water is going down there. (Seney: Right.) That's to, the judge did, at least, grant it, now it's being appealed of course, (Seney: Right.) for two years. Because, watermaster has to certify it through the court. For two years for the amount being released, and I believe watermaster just took T-C-I-D's half. Not what T-C-I-D was asking for, all of it. (Seney: Yeah.) And saying, "This was released on top of the Floriston Rates," and just because it's on top of the Floriston Rate, because a lot of time they used, they used the Donner Lake also, generally it was used as part of Floriston Rates and then Tahoe would

release less and the water would be theirs (Seney: Right.) supposedly. (Seney: Right.) But, you have to backtrack that, and just the fact that the watermaster said, “It was on top of the Floriston Rate, therefore T-C-I-D should get credit.” (Seney: Right.) But then if you look at the hydrology of this and top or under it, it’s going to go it down anyway. (Seney: Yeah. Right. Right.) So, then since there was, this lawsuit was brought to the attention of Judge McKibbon, the California lawsuit between T-C-I-D and TMWA, and watermaster, watermaster, this is February of 2007, said basically that this loss is going on and he can’t do anything about it. (Seney: Right.) And, the judge agreed, he said, “There’s nothing that’s going to be done about crediting any water from Donner Lake until this lawsuit is settled.” Basically, he put a stop on it. (Seney: Ah.) And that, that’s where it is.

Seney: What other things has, has T-C-I-D done to, to pay back to the tribe? Anything else?

TCID’s Incentive Credit Water and Debit Credit Water under OCAP

Shahroody: Yes. Yes. There is the Incentive Credit Water, which is under the OCAP. I don’t know how much you know about it. There is, there is Incentive Credit Water and, if you want to call it disincentive or Debit Credit Water, Debit Water. That means, if T-C-I-D does not operate the project each, in the year-by-year basis, because each year under the OCAP the efficiencies and the diversion amounts are set, and T-C-I-D is supposed to do what’s referred to as “maximum allowable diversion” is set up, and T-C-I-D is supposed to *follow* that. And then, of course, there is audit made by the Bureau of Reclamation at the end of irrigation season after everything’s done and measured, and that maximum allowable diversion is sort of adjusted based on the realities on the ground. (Seney: Right.) So, once that’s done, then, and there, and the OCAP sets efficiencies, if T-C-I-D’s performance showed that they were, their operation was, their efficiency was *higher* than the OCAP efficiency they would have certain incentive water. That means the amount of water which was saved. They would get two-third of it, and the origin of the two-third is that the supply of water to the Carson Division, on average, one-third is coming from Truckee and two-third is coming from Carson. (Seney: Right.) They can’t keep the Truckee water because that’s supposed to go to Truckee. (Seney: Right.) So, they’ll keep their Carson water. (Seney: Right.) So, they’ll get incentive credit water based on the amount of the saving, two-third of the saving. And, that water, therefore, is kept in Lahontan Reservoir and T-C-I-D could actually use it for any purpose. They can sell it, they can lend it, they can use it for wildlife, they can use it or sell it to wetlands. In fact there was, there were several applications to do that for the wetlands, to a tune of two or three hundred thousand dollars (Seney: Right.) in

one year. But, it has to be beneficial use. So, what T-C-I-D then did in—okay, this is, they had incentive credit water being carried over for two or three years. We said, “Great.” We applauded that. “T-C-I-D is (Seney: Right.) achieving the efficiencies greater than the OCAP efficiencies.”

TCID Had a Debit of 26,000 Acre Feet of Water Initially after Implementation of the 1988 OCAP

Although *earlier* in, like 1989, I think in one instant, and ‘90 possibly, T-C-I-D, when the first final OCAP came up in 1988, T-C-I-D still was in their mind set of OCAPs (Seney: Right.) didn’t matter. So they, their efficiency was lower than the OCAP efficiency. They had debits. So, at one time they had a debit of 26,000 acre feet. But their debit, of course, got washed away because debit could be washed away if there is a drought. That means, the only way you pay the debit, that means you take a shortage. You take less water, you pay it off, therefore you divert less water from Truckee. But then, if you’ve got a natural shortage, (Seney: That counts?) that counts. (Seney: Oh.) So, that got washed out. (Seney: Yeah.) And then after that you had years of, wet years and stuff like that. So, (Seney: Yeah.) in the mid ‘90s. (Seney: Right.) So, the, the 2000 part was, I think starting with 2000, 2001 and 2002 they started accumulating Incentive Credit Water and they were carrying it on. And then, come 2006—and they, they didn’t, in fact in order to take the Incentive Credit Water in 2000, 2000, it was 2004, 2004 wasn’t a good year and that Incentive Credit Water they didn’t want to, they had certain, we started discussion on that as a (Seney: Right.) repayment. And they had—oh, I remember now. [Tapping table.] They said they’d do it to pay toward the recoupment., (Seney: Right.) but, they wanted a hundred percent not the two—they wanted, they wanted the other one-third to go toward the payment too. I said, “Well, the structure of the Incentive Credit says it, exactly. (Seney: Yeah.) That’s where the Bureau makes the determination. If you, if you got hundred, so you got sixty-six goes to Incentive Credit and it’s stored there (Seney: Yeah.) and they keep account of it.” So, that’s sort of a, (Laugh) it’s not like we shoved the, well we showed one-third of it was, but at the same time it’s the principle (Seney: Right. Right.) the way it was structured. So anyway, it came, then we had the 2006. That’s another bone of contention that we have, of course, with the Bureau of Reclamation, unfortunately. But, 2006 came up and then, of course, the Incentive Credit is, is on top. Then, of course, OCAP says, “When the spill occurs in Lahontan Reservoir the non-project water,” which is the Incentive Credit Water is non-project water, “will be the first water spilled.” Well, what happened, again, and I don’t want to get into a judgment situation. I’ll give you a little bit of, sort of a surface history here, of events happening. And, there is also an agreement between Bureau of Reclamation and the parties and the T-C-I-D for, since Lahontan does not have a

flood protection feature, like for instance Stampede or Martis, so to—and you know how much snow pack you have (Seney: Right.) up in the mountains, you know it's going to come down in a big melt, and you can calculate that it's going to be a big spill and you can calculate there's going to be a big flood downstream, (Seney: Right.) unless you have a space to attenuate that, (Seney: Right.) to take the peak off. So basically, the Bureau of Reclamation—and, and there's a court order on that to do the parties, and how that counts generally. (Seney: Yeah.) The water is being released, somebody diverts it toward irrigation, that would count toward irrigation. (Seney: Right.) Because, they want to fill up the canals and nobody wants the water, that would protect the property owners, (Seney: Yeah.) to be done, or the first water to be, to protect the property owners to go to the wetlands, for instance. Sort of a clean type of simple thing to do that. (Seney: Right. Right.) So, basically, Bureau wanted to tell—this is 2006, March, and there's a lot of snow pack up there. The Bureau said to T-C-I-D, “You want to make some precautionary drawdowns because a lot of water's coming in, and then this way we can protect the life and property downstream.” (Seney: Yeah.) From what I understood from what's been said, the communication that I've seen, that T-C-I-D didn't want to do that because if they did it then the Incentive Water would be the first one going down. And so, I don't *know* what happened within the Bureau and T-C-I-D. It's structured such that if it doesn't spill from the, from the lip of the spillway, if it goes as a precautionary drawdown through the, from the bottom, even if it is to the tune of 2,000 or 3,000 cfs being released ahead of time, then the, the Incentive Water would be okay. And, I think we got into the reading of the OCAP. And, the OCAP is pretty clear when it talks about spill water. And, precautionary water, there is a, there is a provision saying that if you did a precautionary water and the, the big flood didn't show up, (Seney: Right.) and you lost water, and therefore the reservoir, the project water was low, the certain amount of Incentive Water could be put there and sort of remedy this. It's sort of a, a hazy, unclear clause there, (Seney: Right.) for that extreme event, situation. If you did the precautionary drawdown and somehow snow evaporated, (Seney: Yeah.) didn't melt, (Seney: Right.) instead you're holding an empty, (Laugh) sort of somewhat empty space. (Seney: Yeah.) But, if you had Incentive Credit Water that couldn't count. So, apparently they latched on that provision saying that, “Gee, if the OCAP was one or two precautionary drawdown,” because generally reservoir operation, precautionary, precautionary drawdown is the water that would, would be spilling anyway except you change the time of that spill (Seney: Right.) in order to happen as part of the event you regulate that event. (Seney: Ah.) You have it going ahead of time, so therefore you don't have this *peak* flood event (Seney: Right.) to create damage to property down the stream. (Seney: Right.) Because you calculated there's so much space in the reservoir, if it's got so much, you've got a reservoir, let's say it's 300,000 acre feet, you've already got 250,000 acre feet, you have 50,000 acre feet of space.

(Seney: Right.) So, you've got another 250,000 acre feet is coming is going to fill it up and spill. (Seney: Ah.) So, they go 200,000 (Seney: Yeah.) acre feet of spill. So, what you say, "You've got 250,000 acre feet, so why don't you bring it down to 200,000. This gives you 100,000 acre feet (Seney: Right.) of space." (Seney: Right.) So, when it comes down, when the 250 comes down then the main impact of that would be attenuated, so you don't have that peak (Seney: Ah.) flow going over the spillway. So, it became involved with semantic, then the Bureau basically, I don't know what promise, what arrangement they had, I don't know. I may be wrong. But, that means if T-C-I-D made the release as a precautionary drawdown *way ahead* in March, before the peak's coming in, let's say, in May, and keep the outlet works working, then the Incentive Credit would be intact. (Seney: Yeah.) And, we had 180, I made a calculation, 183,000 acre feet of spill, that water, that means—when I say "spill" water that got out. (Seney: Right.) That was not part of the project. It could be stored. (Seney: Right.) And, the Bureau made a calculation, because the outlet work has got a capacity of 3,000 cfs, plus created this space, they were able to fine tune, which is good, to fine tune within the T-C-I-D and the Bureau to get enough water ahead of time and to get enough water out contemporaneously during the storm events, I mean the run-off event (Seney: Right.) coming. So, it ended up to be very minuscule amount of water going over the lip of the spillway. The fly, the, (Seney: Yeah.) yes, flash boards (Seney: Right.) on the spillway. So, the Bureau calculated that there was—I mean, this is, this is very small. There was only fifty acre feet of spill. So, we calculated 183,000 acre feet of spill.

Seney: Right. Right. (Laughter) A slight difference.

Shahroody: So, I did all of that. So, to make a long story short, then the project ended up having a 30,000 acre feet of water sitting there, which is probably the only stored water, (Seney: Oh.) which is contrary to the interests of the Bureau of Reclamation. The Bureau of Reclamation is always protective of their project *yields*. (Seney: Yeah. Yeah.) Anybody else's water . . .

END SIDE 2, TAPE 2. MARCH 18, 2008.
BEGIN SIDE 1, TAPE 1. APRIL 24, 2008.

Seney: [This is Donald Seney with Ali Shahroody of] Stetson Engineering, in his office in San Rafael, California. Today is April 24th, 2008. This is our second session and our first tape.

Good morning, Ali.

Shahroody: Good morning, Don.

- Seney: I think we had finished talking about the preliminaries up to TROA, up through the Alpine Ditch Decree, and concerns, but if we think of something that maybe we didn't talk about, we can go over it.
- Shahroody: Yeah, I will come back. We can, (Seney: Yeah.) if there's, I mean if there's some, some things come back to OCAP [Operating Criteria and Procedures] and I think sometimes they're, (Seney: Right.) they're interrelated (Seney: Absolutely.) we can pick it up.
- Seney: Absolutely.
- Shahroody: And, and I, I take it we covered the breach in the canal?
- Seney: I think we have not talked about that yet.
- Shahroody: Yeah, that's rather . . .
- Seney: Why don't we begin there, if you want?

Effects of the Breach in the Truckee Canal on January 5, 2008

- Shahroody: Yeah, why don't we do that. That's rather significant. Well, the breach itself and its impact in the, in the Fernley area. But in terms of the, the Newlands Project and diversion of water at Derby Dam, which basically started in 1904. It's a hundred years, more than a hundred years. (Seney: Right.) So, and then, of course, Operations Criteria and Procedures put in place since 1967 to regulate the flows and having under the 1973 court decision by Judge Gesell—by the way, Judge Gesell was the famous judge involved in the Watergate, too.
- Seney: That's right. He was wasn't he? Yeah.
- Shahroody: About that time, or afterward.
- Seney: Yeah, that's right. He was.

Judge Gesell's 1973 Court Decision Required Maximizing Use of the Carson River and Minimizing the Truckee River

- Shahroody: So, it's, here, I'm sorry, his main point in the, when you read the decision, is to *maximize* the use of Carson River for, for the Newlands Project of the Carson Division of course, and *minimize* the use of Truckee River. So, that has basically been the mantra on the, on the OCAP process.

“ . . . in normal years and less than normal years . . . to the extent water is available in . . . Truckee River . . . a substantial amount of water gets exported to the Carson Basin, because the Carson’s not able to provide main supply. . . .”

But again, of course, what happens is that in, in normal years and less than normal years, especially when it’s less than normal years to the extent water is available in Truckee which has got the reservoirs in Truckee River to regulate the flows, and a substantial amount of water gets exported to the Carson Basin, because [the] Carson’s not able to provide main supply.

“ . . . in the wet years . . . Carson [River] is able to provide under the OCAP, and we get most, most all of the flows in the Truckee going to Pyramid Lake. . . .”

And, of course, in the wet years you don’t, and, because Carson is able to provide under the OCAP, and we get most, most all of the flows in [the] Truckee going to Pyramid Lake. But that, we have had to grapple with that only in dry years but sometime in normal years, from one month to another month it switches that you—one month you would be diverting in the Truckee Canal to Lahontan Reservoir in Carson Basin, the other month you *don’t*, depending on the targets. But now with the breach it has opened a new, so . . .

Seney: Ali, let me, let me stop you and ask you about something there. This, it seems to me this, we got a fairly decent snowfall this year, but we’ve had a *really* cold spring and I think that slowed the runoff, and that plays a factor, doesn’t it, in which river can supply the Newlands Project if you get a cold spring and the water melts more slowly and more of it goes into the ground than into the rivers?

The OCAPs Have Evolved and Been Refined to Determine How Much and When Water Needs to Be Diverted from the Truckee River to Lahontan Reservoir Beginning in January of Each Year

Shahroody: It generally should, but what, what’s important is how much Carson is able to produce. And usually the OCAP, OCAPs, I have to say here, now, have been refined over the years. What it does then, the criteria, when you, when you go to the season starting from, let’s call it a snow season starting from January on, it then incorporates what’s on the Carson watershed in terms of snow pack. (Seney: Uh huh.) The snow pack, the amount of the snow, and the forecasted runoff from that snow is taken into account in the equation as to how much water to be diverted from Truckee starting in January. So, we started pretty good, in fact, this year, as you said. And, the *temperature* plays a role but to the extent that you have a space in, in Lahontan Reservoir. And, the runoff, let’s say, if it gets warm in April or so, therefore sure there’s a, there’s, faster water would be coming in,

but still it's going to be caught, captured by Lahontan Reservoir. (Seney: Right.) So that's, that's basically okay. There is a factor, of course, if Lahontan spills and then you lose some of that water quickly that's, that's not a good thing to do. But generally, the way it is set up we'd look up what the full, what the amount of snow pack is and we say, "Gee, Lahontan may not be full. It may be *half* full, but you have that snow pack, which will make it full, (Seney: Right. Right.) which will bring it up (Seney: Right. Right.) to meet the targets. So therefore, being in January, or February, or March you don't need to take the water now because it's coming. (Seney: Yeah.) It's coming because of the higher temperature of April and May, and will come in. If it's not in April it will be in May. If not, definitely your peaks are going to happen in June. (Seney: Right.) So, that's the way it plays. But, in terms of this year it started pretty good. We got a good, good snow pack, especially in January. And, but unfortunately we got into a dry period. We got into a dry period. It started about 105 percent, 110 percent normal, but now, and especially on the Carson, we ended up to be like more eighty percent. But, under the normal situation, when I say "normal," if this situation had, was in place, which is in place of course, but if we didn't have the breach then the picture would have been different. There would have been, a lot of water would be taken out to, from Truckee, into Lahontan Reservoir (Seney: Ah.) because Lahontan is down.

Seney: I see. So, okay, that segue ways us into the breach then, if you want to talk about that now that would be great.

There Should Have Been Considerable Diversions to Lahontan Reservoir from the Truckee River in 2008, but the Canal Breach at Fernley Prevented Those Diversions

Shahroody: It does. As a result of the breach then what has happened, the canal was shut, because for the, to—first of all, they had to shut it because of the water would be straight going to the neighborhoods in Fernley area. So, it, the canal was shut and then of course they started doing some, some immediate repair and excavations, and just make sure there would not be any water going that direction. But, of course, then the Bureau of Reclamation had to go into, into *actual* determination, assessment of what's going on here and what the extent of these weak embankments, or, in Truckee Canal, not only in the Fernley area but also upstream and also downstream going toward Lahontan Reservoir.

Reclamation Set up Criteria for Steps to Reopen the Canal and Put it Back into Use

So, having *said* that you, the *Bureau of Reclamation* has come up with the, a set

of criteria on the steps to, to open up the canal, if you want to say that. But since there is a certain amount of demand for water still on the irrigation in the Fernley area, they have to provide some water to them. But, given some storage in Lahontan Reservoir, snow pack, even if it is eighty percent, it still is decent. That is not going to be putting the Fallon farmers in, in any hardship, at least not this year. So, the Bureau came up with the, with the criteria after the immediate repairs had been done in terms of the breach, that they would charge the canal no more than 150 cfs. And, they have to go through certain steps. That means “they” meaning that T-C-I-D has to go through certain step of doing certain repairs and certain studies. And, after that they can increase it to 300 cfs. And there, then there would be another set of steps that T-C-I-D has to go through and they, they can go to 450 cfs. And, those are good, those steps are pretty onerous. They’re not that easy. But, to go into the full opening of the canal, which is, canal capacity is rated to be about 900 cfs, although it was built 1,200 cfs but I don’t think has been able to carry any more than maybe slightly over 900 cfs, to go there they have to go through full construction of at least, if you want to say north embankment, or the embankment to the south of Fernley, to quite a bit of distance. And, that would be different ways of doing construction, whether they would put an impermeable embankment, they would put, either they’d put pile sheets. But, the cost could go anywhere from \$40 to \$200 million. So, there’s a money aspect to that, and there’s also, then they have to go through the E-I-S [environmental impact statement] process.

As they upgrade the canal “. . . they[’re currently] only allowed to take 150 cubic feet per second, which means that it provides a good amount of flow in the river to go to Pyramid Lake. . . .”

So, in the meantime, *now*, they[’re] only allowed to take 150 cubic feet per second, which means that it provides a good amount of flow in the river to go to Pyramid Lake. (Seney: Right.) If the canal, if they didn’t have the breach, *given* the circumstances in Lahontan Reservoir, and the demand, they could have been taking probably all of the flow except what’s required for irrigation uses downstream of Derby. And, there would not have been a flow for the qui ui, let’s say, (Seney: Ah.) or Lahontan cutthroat trout, and we would have had to release water from Stampede Reservoir in order to *meet* the requirement of the spawning season. Luckily, we haven’t, and the flows, the natural flows, and of course more is going to be coming because of the snow melt and it’s going to warm up, we had about three or four days of warm days, about two weeks ago, (Seney: Right.) two weekends ago, (Seney: Right.) and that really prompted quite a bit of migration on the part of qui ui, a substantial amount of migration has taken place already, (Seney: Uh huh.) based on natural flow. Because, the natural flow is not, then, deflected out. (Seney: Ah.) It’s going down, with the exception of 150 cfs now.

Seney: Which is nothing, really?

The Net Effect of Allowing Water, That Would Have Been Diverted to the Carson River Watershed, to Flow to Pyramid Lake Is That Water Stored in Stampede Reservoir for the Fish Can Be Saved for Use Later in the Season

Shahroody: Which is nothing compared to flows at this, at this time of the year. (Seney: Yeah.) So, we're going to have *more* coming and I think it would be saving water in Stampede for the later part of the season.

Seney: Because Stampede has never really been full, has it?

Shahroody: Stampede has been full.

Seney: Has it?

Shahroody: Stampede has spilled. (Seney: Yeah.) It has spilled. It has been . . .

Seney: But, that's unusual, isn't it or am I wrong about that?

How Stampede Reservoir Might Store Water During Dry or Normal Water Years

Shahroody: Not unusual. I think the Little Truckee River, which Stampede Reservoir is on is pretty productive, but Stampede has got the lowest priority. And, I think we talked about this last time.

Seney: We did. Yes, we did.

Shahroody: Yeah. (Seney: Right.) And, the California State Board process, in terms of permitting and of course its priority in the whole system of other reservoirs, and Floriston Rates, and the Nevada Water Rights on the (Seney: Yeah.) Orr Ditch. So, Stampede is basically of lowest priority to store water. That means, *all* the rights have to be satisfied. Floriston Rates have to be met at the ~~interstate~~, at the state line, that all of the Orr Ditch rights downstream have to be met, *and including* the claim three, which is on the Orr Ditch, which is the Newlands right for diversion at Derby Dam. *They* have to be met. And, *at that time* [tapping on table] the waters that otherwise would be going to Pyramid Lake. Then, which we called "unappropriated water," which then would be held back and stored in Stampede. (Seney: Uh huh.) Now, because of that the frequency is not as much. (Seney: Right. Right.) So, *but* there, there are wet years. Right? We experienced it in 1997 and in 2000, several years, the year 2000, (Seney: Right.) through that. We have had the spills, pretty healthy spills, because what happened you get the,

in good wet years you get the warm weather coming in, you get the snow melt and *runoff* taking place, all the rights are satisfied, but you have this substantial amount of water coming in a short period of time, like about a month and a half. (Seney: Yeah.) So, then Stampede—the Stampede is let’s say half full or three-quarter full, it will spill.

Seney: Yeah. Well, you told me that, and this is frankly something I should have known, and probably Garry Stone told me this when I interviewed him but maybe I didn’t appreciate the significance of it was, that this is a day-by-day process?

Shahroody: Correct. Correct.

Seney: Today the, probably today everybody’s rights are fulfilled so you leave it in Stampede Reservoir or you shunt it down to the lake?

Shahroody: That’s absolutely right.

Seney: Tomorrow it may cool down and you don’t get everybody’s rights taken care of and you don’t get to leave it in Stampede?

Shahroody: That’s correct. Or, Stampede wouldn’t, wouldn’t have the opportunity to store because it’s cooled down, they still have to meet the 500 cfs at Floriston.

Seney: So, you’ve got to let some out even?

Shahroody: So, you pass it through. (Seney: Yeah.) Or, you won’t release anything from storage, because that’s the water that otherwise would have been going to Pyramid Lake. (Seney: Ah.) You had it from, let’s say, a previous year, stored. (Seney: Ah.) So, but what comes in from Little Truckee, instead of Tahoe or Boca making a release then, because they have higher priorities, (Seney: Right.) so therefore Stampede has to pass it through because it’s, it’s, priority wise it’s low on the totem pole. (Seney: Right.) They pass it through therefore that means Stampede doesn’t have the opportunity to store.

Seney: And, if they did, say now tomorrow it warms up but it goes back again, Stampede now can store this water, which becomes then Fish Credit Water?

Shahroody: That’s correct. That’s, that’s a very good observation. In fact, we were meeting with the State Board, I think, about two or three months ago. They, their impression was, which is the case, that Stampede could store only in wet years. I said, “Generally it’s true, *but* there are also, there are times that it can store in normal years, even in some dry years.” And, they said, “How so?” I said, “Even

in a dry year you have a seventy percent snow pack. But then, let's say, in April or May you get three or four days of, three or four days of extremely hot days and you have this runoff coming about 1,500 cfs, (Seney: Yeah.) it exceeds Floriston rates, meets everybody's rights, there'll be a couple of days that Stampede could store." (Seney: Yeah. Yeah.) But, that's not conducive to spill. That's just put some water into storage.

Seney: Right. Right. Right. That's really, you're really, you know, you're really clearing a lot of this stuff up. I always, you know, this is so complex and I've been at this so long, and when I realize sometimes how little I know it's really embarrassing. (Laughter)

Shahroody: Well, it is complex and at the same time it's simple, but it is, it could be complicated.

Seney: Now, don't say that. (Laughter)

Shahroody: When I say "simple" . . .

Seney: Don't say that. I'm going to have to edit that out of here Ali.

Shahroody: Yeah. (Laughter) It's a, on a *run-of-the-mill* normal day everything stays in a steady state (Seney: Yeah.) and, yeah, it's, everything's taking care of itself. It's as you say when the temperature changes, when you go in a dry year, dry years are the worst because then they have to go in, in the regulation, river regulation. Who's going to get it? I remember back in 1994 that they, Garry Stone had to shut the system off in Truckee Meadows as of, I think it was 13th of June. They just, "That's it." There wasn't, they could not pick up any water because they were, their priority was only, only claims one and two could pick up water, in fact.

Seney: The Pyramid Lake claims?

Shahroody: The Pyramid Lake. But, on, on, since the Pyramid Lake is not exercising all of its rights, only a limited amount, in fact none of their rights on claim two, limited amount on claim one, and *that* was being furnished from the return flows out of the Truckee Meadows Water Reclamation Facility at Vista. (Seney: Oh.) So, I said, and Truckee Meadows Water Authority, at that time Sierra Pacific, (Seney: Right.) in 1994, they were scooping water out of, out of the river to Glendale Treatment Plant because they could not afford to let any water go beyond. And, that water wasn't a priority. That's what's referred to as privately-owned stored water. (Seney: Oh.) They were releasing water from . . .

Seney: Donner and Independence?

Shahroody: Donner, well primarily Independence. (Seney: Yeah.) So, I have a sort of another joke, but I said to the guys, I said, “You know,” to the TMWA [Truckee Meadows Water Authority] folks, I said, “If you have a repeat of 1994 and Pyramid Lake has all of its claims one and two in exercise condition,” that means they can actually use the water for beneficial purposes, “the whole system would be shut off because there wasn’t enough water.” Because Tahoe was below the rim. (Seney: Right.) And, the side flows coming in, whatever it was, it was just very limited. And, yes, Truckee Meadows Water Authority was picking up some water aside from their Independence water, because their claims one demand was being satisfied. But, if it wasn’t satisfied, even earlier than June 13th, probably the system would have then actually had to pass the water through to go to Pyramid Lake.

But anyway, that’s—getting back to Stampede. Stampede is pretty much in, (Seney: Right.) in, in a low-priority to store.

Seney: Let me ask you about this, if I could go back just for a second Ali. When, in ‘94 when the Pyramid Lake rights were being met by the return flows from the sewage treatment plant, is that when you began to put some pressure on to think about Water Quality Agreement that subsequently was negotiated?

Water Quality Issues on the Truckee River

Shahroody: Yes. Yes, of course. The pressure first got mounted on local governments, because their water quality standards in, all the way from Farrod to Pyramid Lake. The upstream of McCarran Bridge, in Sparks, those water quality standards are being met, because the water’s pretty much pristine coming down. (Seney: Yeah.) But, from McCarran Bridge on then you get Steamboat Creek coming in. There’s a sewage treatment plant. That’s, that’s a major one, discharging, plus of course you got a North Truckee drain coming in, and the more you pick up further down. So, the cities of Reno and Sparks they have a permit, NPDES [National Pollution Discharge Elimination System] permit from the NDEP [Nevada Division of Environmental Protection?] of Nevada. And, they not only have to meet their discharge requirements . . .

Seney: That’s Nevada Public Works?

Shahroody: Nevada Department of, Division of, (clears throat) excuse me, Division of Environmental Protection, (Seney: Okay.) which works under E-P-A [Environmental Protection Agency]. So, not only do they have to meet the

requirement of their permit, but also they have to meet the water quality standards at various stations as you go to Pyramid Lake. Now, if those requirements are not met, if the water quality standards are not met, that means it becomes encumbered on them to do a lot more treatment, (Seney: Right. Right.) which becomes very expensive. So, that was a, that was a factor and then of course we had a standing litigation against Nevada, against cities of Reno and Sparks, and the E-P-A on what's referred to expansion of the treatment facilities. And, the reason for that, of course, the expansion of treatment facilities back in the early '80s were financed or funded by monies coming from E-P-A. And, as a result of that there was the E-I-S and, of course, the E-I-S did not take into account what we, what we see, the other possible alternatives to, to make sure that water quality is not impaired down the stream for the listed species. And, as a result of that they were, there was a standing loss, a pretty active standing lawsuit. And, in fact, I was deposed by, I think, attorneys for city of Reno and Sparks for a whole day on that. But, that's, that was another impetus to have this, this Water Quality Settlement Agreement, (Seney: Right.) which, which involved then of course the State of Nevada, cities of Reno and Sparks, and the E-P-A, which then, as a part of the settlement, which involved certain funding and, to buy water rights.

Seney: Where there was a total of \$24 million to buy water rights?

Shahroody: That's correct, \$12 million from local governments and \$12 million on the side of the federal government, (Seney: Right.) yes.

Seney: Right. And, has that purchase pretty much been completed, do you know?

Shahroody: It's not. It's fairly getting close. I think they may have another \$6- or \$7 million left to do additional purchases.

Seney: And, that's generally thought of as a good agreement, I understand?

Shahroody: It was, it is a good agreement. (Seney: Yeah.) It's a very good agreement, in fact. So, I think also as a result of that agreement, talking about TROA, when you're making these water right purchases then cities of Reno, Sparks, and Washoe County, which are involved in this. Well, Washoe County got involved in terms of the settlement too, in terms of funding also, because they have certain interests in the plant. As a result of TROA then, these rights being purchased, the water rights being purchased, you can leave it in the river, but in the terms of better getting a benefit, like a 1994 type, which there was a pressure on the city's permit (Seney: Right.) to violate the water quality and violate water quality standard down the stream. (Seney: Right.) So, they *can* actually. I mean, it will help them to. Under TROA they can store these water as a credit water, what we

call a Water Quality Credit Water that can be used for drought waters, credit waters. They can store them up in Truckee River Reservoirs and if you get a repeat of 1994 you can release those water (Seney: Oh.) so therefore the only water in the lower river would *not* be the effluent coming in. (Seney: Ah. Yeah.) You would have actually fresh water coming (Seney: Right.) for dilution purposes, (Seney: Right.) and which would help them to meet the water quality standards. (Seney: Yeah. Yeah.) So, they got onboard then. (Seney: Right. Right.) And I said “they,” this is Reno, Sparks, and Washoe, they got onboard on TROA because they’re not mandatory signatories, (Seney: Right.) but they have become now signatories.

Seney: Ah. Because, what you’re saying is, if they’ve got water below the McCarran Bridge that is not so hot, they let out some of this environmental quality, water quality water and that dilutes that (Shahroody: Yes.) and now they’re back in the ball park with the standards?

Shahroody: That’s correct. In fact (Seney: Ah.) what they, they were looking and they said, “Yes. I mean, this is the vehicle, (Seney: Yeah.) and you buy these water rights it’s not going to be there in the drought year sometimes.” (Seney: Yeah.) Which was in 1994 the case. (Seney: Yeah.) The diversion to, to Truckee and even lower river. So, if they buy it they exercise it in normal year, the part that’s basically of those rights are supplied from releases from Tahoe or even Stampede, and (Seney: Right.) pass through from Stampede (Seney: Right.) they could say, “Gee, there’s enough water going down there. Water quality standard’s are being met. (Seney: Yeah.) Why don’t you hold that water? Don’t release it. (Seney: Right.) Just hold it up.”

Seney: And let it accumulate?

TROA Now Includes Water Quality Credit Water

Shahroody: Accumulate as credit water. And, it’s what’s referred to in TROA now as Water Quality Credit Water.

Seney: That’s a very elegant agreement, isn’t it?

Shahroody: It sure is. (Laugh) It sure is. It’s elegant, of course, but complicated at the same time. Yes.

Seney: Right. Right. And, at \$24 million a lot cheaper than say having to rebuild newer plants and treat more? It must be a lot cheaper, I would think, than having to build state-of-the-art tertiary plants?

Total Dissolved Solids as an Issue

Shahroody: That, that, no it isn't a tertiary plant, but the question is that whether you want to go the additional step of reducing the mineral, what we call T-D-S, total dissolved solids, (Seney: Right.) or salinity (Seney: Right.) in the water. The water quality standard down below says, down below the treatment plant says, "cannot exceed 500 mg per liter." And . . .

Seney: That's T-D-S?

Shahroody: That's T-D-S.

Seney: Yeah.

Shahroody: So, for them to do it, to *meet* that kind of thing, which they are meeting it, through dilution. But, if it gets concentrated, of course, you've got a local contributions coming in too, because of the geology and other things. (Seney: Right.) So, that means they have, the NPDES permit therefore would, could be tightened up in order to meet that standard down below. That means they have to do reverse osmosis, (Seney: Oh.) which is very, very expensive.

Seney: Yeah. That's the only other step available to them after their tertiary plant?

Shahroody: That's correct.

Seney: Ah.

Nitrogen as an Issue

Shahroody: *And*, and the *nitrogen* could be a problem. Nitrogen, the way it is right now, although it is pretty stringent, it's still under low-flow conditions, what we call, it depresses the D-O, which is the dissolved oxygen in the river. Which, a low D-O, which is basically quite adverse to the fish, aquatic life. (Seney: Ah.) So therefore, one of the problem with the low D-O is because it increases algae activity and algae *loves* (Seney: Ah.) nitrogen. (Laugh)

Seney: So you're even making it worse by using reverse osmosis, maybe?

Shahroody: Well, reverse osmosis on the mineral, (Seney: Ah.) primarily.

Seney: Oh, I see. Okay.

Shahroody: So . . .

Seney: But, that would increase the nitrogen level?

Removing Nitrogen from Treated Effluent and Issues That Arose at the Reno/Sparks Sewage Treatment Plant

Shahroody: No it, the existing, the existing permit allows them a certain level of nitrogen, (Seney: I see.) although they do pretty advanced treatment through a biological approach, what we call nitrification and denitrification. They have got these towers and they, in this way they digest the nitrogen and (Seney: Ah, okay.) basically remove it. So, to a level of accepted concentration. But what happens with that, that works out fine if you have other waters in the river, in the stream too. If the water is primarily limited to what comes out of the treatment plant, then the concentration would stay high, (Seney: Ah. Yeah.) because of other contributions, so therefore the algae would grow. With the growth of algae you get the reduced dissolved oxygen, especially at night, and then of course that's, that's pretty much anathema for fish. (Seney: Uh huh.) It's like for us not having enough air to breath. (Seney: Right. Right.) So. (Laugh)

Seney: Too much smog? Yeah. (Shahroody: Yeah.) (Laugh) Right. Right. Yeah.

Shahroody: So, that's, that would be another avoidance of doing it, (Seney: Uh huh.) *really* stringent nitrogen removal. In fact, they had a problem with nitrogen for years because they do a process, of course they don't want to use a chemical, but TDSA was using chemical in, in . . .

Seney: The Truckee-Donner Sanitation . . .

Shahroody: The Truckee Donner Sanitation District. (Seney: Yeah.) And, in using the chemical treatment to remove the nitrogen you add then minerals, you increase the T-D-S. (Seney: Oh.) So, they didn't want to do that and it's not desirable either, of course, so they went through the biological approach and the biological approach is that they have these, they built these towers where therefore they have—are we okay?

Seney: We're good. Yeah. Go ahead.

Shahroody: They have the, basically treated effluent, it's pretty much cleaned up and everything else. It will shower on the side of the tower as it comes down and through the aeration and they have organisms, organism on the sides of the tower, that's living inside of the tower. As this water slowly in a sheet flows, seeping

down, these organisms basically remove the nitrogen. They just live on it. They grow.

Seney: Wow.

Shahroody: So, what works out was, was the plan was supposed to work and it didn't. They started working pretty good. Let's put it this way, and then they didn't. It sort of broke apart. And, all of a sudden the nitrogen limit was supposed to be 1 mg per liter and it starts getting ten-, twelve. And, this went over several years. We were really at them. And, we could see that they were all frustrated. They were doing *everything* possible (Seney: Right.) to see what's the problem with these organisms and they would bring organisms from different places, they were failing, and they brought scientists from all over the country. (Laugh) They just did everything they could. And, what happened was they had a snail . . .

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BEGIN SIDE 2, TAPE 1. APRIL 24, 2008.

Seney: Snails were eating the organisms?

Shahroody: Snails, snails were eating the organism which was supposed to be, to be digesting the nitrogen. And so, that's why the system was failing. By that time it was very clear, the snails were just, there's a snail infestation in these towers. (Seney: Yeah. Yeah.) So, they were concentrating *how* to remove the snails, kill them without killing the organisms. (Laughter) They weren't able to do it. They just went on and on for several years, spent a lot of money, and we could see that these guys were trying. (Seney: Right. Right.) We weren't complaining. And, they were getting notices from NDEP as to just a lot of things, their NPDES permit. (Laugh) (Seney: Yeah.) So finally they had this, I think one of the guys in charge in the plant, the second man in charge, and the man on top I think had retired and the second man in charge took over, and he's been there. And, he's just a pretty practical guy.

Seney: Craig Woods? Is that Craig Woods?

Shahroody: No. John Gonzalez was in charge. John moved on to the City Hall in Sparks and basically did paperwork. And, Randolph Gray [spelling?] (Seney: Ah.) took over. (Laugh) Basically, he finally said—he fixed it, but he wouldn't tell anybody how he fixed it. (Laughter) So finally I said, "I want to know what you did." He said: Very simple. Very simple. What I did, when the effluent comes into the plant, usually you try to take all of the solids and everything else to get it from, pretty much to clear, clear water, (Seney: Right.) if you want. Not *clear*, I mean, just a

(Seney: Yeah.) liquid. (Seney: Right.) You take all the solids out, (Seney: Right.) and then you go through the process of treatment. And, of course, in this liquid as you have that comes out from the toilets and the bathrooms, and everything else, (Seney: Right.) plus other things. So, what he did, instead of going, taking all of it through the whole process, at the end of the process, of course, it goes through these towers, (Seney: Right.) where it's supposed to be cleaned up, to remove the nitrogen. So, he spooned off, he took some of the crude sort of effluent coming in without the solids, and actually then what he did, he went to towers, each tower for treatment of cleanup. In other words, they have five towers and they would have four of them in operation. One would be in maintenance. They would wash them, and clean them, and everything (Seney: Right.) else to get rid of the snails. And so, what he did actually he just hosed them down with this, with this fluid, which is basically effluent, untreated effluent, with this fluid and this basically, it killed them. So basically, I said, "What you're using, (Laugh) you're using a urine, because it's highly urinated (Seney: Yeah.) concentration?" He said, "That's exactly what he did. He just used the effluent with the high urine concentration on these snail."

Seney: Ah. Because once you purified it to the way they did it before all those, that was all gone? (Shahroody: Yes.) So, the snails thrived? (Laugh) (Shahroody: Yeah, exactly.) Once you say "urinated on them," shall we say . . .

Shahroody: Exactly. That's what I told him. (Laugh) I said, "That's what you did. You basically urinated on the snails and it has worked." It has worked. So, what they do, (Seney: That's incredible.) they alternate. They take one out and just basically they do this process and they put them back and then the . . .

Seney: So simple?

Shahroody: Yes. It has worked. It was genius of the guy (Seney: Yeah.) doing it.

Seney: Well, a new person looking at the problem differently. (Laugh) You know, I mean.

Shahroody: You're right. And he, he's been working there. So. (Seney: Yeah.) Have you been in the plant?

Seney: I haven't. Huh-uh.

Shahroody: It's amazing. You ought to walk through that plant. It's not a plant in terms of being closed like a factory. It's a factory. (Seney: Right.) It's a *huge* factory, (Seney: Right.) but you have open space. Everything is open. (Seney: Right.)

You walk through there you can see this, this like cauldron, everything is moving and (Seney: I know.) doing their thing. (Seney: I know.) Different smells going to different places. (Laughter)

Seney: I've been through plants like that, yeah. Yeah. But, not, the one I've been nearest is the Truckee-Donner plant. You're not talking about that now? (Shahroody: No.) You're talking about the Sparks plant?

The Truckee-Donner Sewage Treatment Plant Process for Removing Nitrogen and Phosphorus from Effluent

Shahroody: I'm talking about Reno/Sparks. Donner, the Truckee-Donner plant is, Donner plant is, first of all it's a smaller plant. (Seney: Right.) It's 5 million gallons per day and the other one is 40 million gallons per day. And, they have a pretty, pretty advanced too. And, for nitrogen and phosphorous removal, after they do the chemical treatment to remove it, but they don't remove all of it, they inject it in the Martis Valley Formation. (Seney: Right. Right.) And then of course . . .

Seney: I know they put it in, settle it out and whatnot.

Shahroody: Yeah, put it in the ground. (Seney: Yeah.) They inject it in the soil. And then, of course it, it shows up in the river after about three or four days. (Seney: Right.) And, this way the soil treatment removes the, as much as, in other words they will polish it. (Seney: Yeah.) They remove the remaining nitrogen and phosphorous. So, when they expanded, of course, they wanted to do expansion. This was about four or five years ago. To go to a 10 mgd [million gallons per day] and then to do, the soil and effluent has got a limited capacity for utilizing all of that. (Seney: Yeah.) So, they wanted to go into an expanded chemical treatment, which would have increased the T-D-S in the river, and then which would actually put a lot more pressure for TMWA coming down, in terms of T-D-S. T-D-S doesn't go away. (Seney: Yeah.) So, (Laugh) that means they would have to go to reverse osmosis. So, it's funny, we had a strange bedfellows. (Laugh) The Reno/Sparks people started screaming about the high concentration of the solids. (Laughter) I say, "Guess who's talking." (Laughter) So, so we teamed up together. We went after the T-D-S-A, and T-D-S-A said biological treatment is going to cost them too much money. (Seney: Yeah.) And it's chemical, they know how to do it. And interesting enough, we were able to, to, *with them* I think we were able to go to California, D-W-R [Department of Water Resources] and other powers to be, and the legislators, and we were able to get a funding from the California Board on the, on their own Clean Water (Seney: Yeah.) funding. I think they got about, pretty close to \$60 million to go through the biological treatment for removal (Seney: Ah.) of the nitrogen. I . . .

Seney: That's, that's funny. (Laughter) They're down there complaining about T-D-S.

Shahroody: But that's, that's what you have to do. You have to look for the river in terms of water quality. You have to go all the way to the headwaters. (Seney: Right.) Right. We found out.

Seney: Absolutely.

“ . . . back to the breach. Now, it is 150 cubic feet per second is being diverted and that's primarily for Truckee Division or Fernley irrigators are taking the water, and the balance of it is going to Lahontan Reservoir. . . . ”

Shahroody: So, but getting back to the breach. (Seney: Yes.) *Now*, it is 150 cubic feet per second is being diverted and that's primarily for Truckee Division or Fernley irrigators are taking the water, and the balance of it is going to Lahontan Reservoir. We see an opportunity here that, of course, through the OCAP, process of OCAP started in 1967, and Judge Gesell's decision in 1973, and T-C-I-D violation all along because they would not follow the OCAP, and as I mentioned before we had the final OCAP in 1988, finally T-C-I-D came around.

“ . . . the final adjusted OCAPs in 1997. . . . were based on *meeting the rights* of the T-C-I-D farmers . . . the Secretary has got the discretion to do that efficiently. . . . to conserve more water in Truckee, and . . . the working of the OCAP is really that. . . . so the diversions has decreased. Historically, . . . from 1920s to 1967 . . . the average diversion was 240,000 acre feet to the Truckee Canal. . . . but with the present OCAP in place . . . It has reduced to about . . . 80,000 acre feet per year, from 240,000. . . . ”

And then, of course, we had had the final adjusted OCAPs in 1997. But, all of these, of course, were based on *meeting the rights* of the T-C-I-D farmers under the Orr Ditch and Alpine for their delivery of 3.5 and 4.5 acre feet per acre, where it's the bottom lands or bench land. (Seney: Right.) But, moreover, the Secretary has got the discretion to do that efficiently. So, in doing it efficiently, therefore, to conserve more water in Truckee, and that's basically the, the working of the OCAP is really that. So, as a result of successive OCAP, while meeting the rights of the T-C-I-D, it has tightened up. It has tightened up the diversions. And, of course, the irrigated base also has decreased and making sure water is delivered to water-righted irrigated lands (Seney: Right.) with their limit of 3.5 and 4.5, not other lands.¹⁴ So, as a result of all of this successive work, so the diversions has decreased. Historically, before the OCAP, if you took the average of diversions,

14. See also the oral history interviews of Robert (Bob) Pelcyger in Reclamation's Newlands Project Series of oral history interviews.

let's say from 19-, you have data from 1920s to 1967, when the OCAP started, the average diversion was 240,000 acre feet to the Truckee Canal. And the, the flows of Truckee River at the interstate, I mean state line, is about 550,000 acre feet. So, we're just taking *half* of the Truckee River, basically. (Seney: Yeah.) And, that's where the period, of course, the lake went down quite a bit. (Seney: Right.) But, as a result of the OCAP, OCAPs, *and* what requires to be done in terms of the land base, irrigated land base, to making sure it, only the water-righted lands are being irrigated, the proper head gate entitlement, the diversions now, if you have the repeat of the hydrology based on the model analysis that we have done, repeated the, historical hydrology but with the present OCAP in place, the regulations in place, and it shows it. It has reduced to about something in the order of 80,000 acre feet per year, from 240,000.

Seney: So, it's down to *a third* of what it was?

Shahroody: That's correct. (Seney: Yeah.) Now, this is *average*, of course. (Seney: Right.) Given some normal years, some below-normal years they can take more because Carson is not producing. (Seney: Right.) But, in the other years, better-than-normal years there *would not* be any diversion, except you provide water for the Fernley area. (Seney: Right.)

“ . . . we' re looking at the possibility of actually getting closer and closer, to less and less, because of certain measures that we put in place. And, if you get closer and closer to something on the order of fifty- or thirty thousand acre feet, then you would be looking at possibly alternative ways of remedying that need . . . ”

So, *we' re* looking at the possibility of actually getting closer and closer, to less and less, because of certain measures that we put in place.

As the Need for Diversions in the Truckee Canal Grows Smaller, He Suggests the Cost of Properly Repairing the Canal, Some \$40,000,000 to \$100,000,000, Might Better Be Used to Deal with the Truckee River Diversions in Other Ways

And, if you get closer and closer to something on the order of fifty- or thirty thousand acre feet, then you would be looking at possibly alternative ways of remedying that need, i.e. for instance, we were talking about if they're going to spend like \$100 million for Truckee Canal, well there are ways you can put that money, one of the alternatives would be, instead of doing that, putting money there, you can put it in a trust fund and then you can use that money in years that there would be diversions. You can ask a certain number of farmers, I mean they can apply, (Seney: Yeah.) not to irrigate and they get paid. So, you reduce the demand. If you reduce the demand therefore you don't have to send that 30,000

and 40,000 acre feet over, on average. (Seney: Right.) So, in fact, the Bureau of Reclamation is, in fact, I was talking to them. They said this would be part of this E-I-S. (Seney: Ah.) We looked at alternatives and just going and spending the money in the hard concrete and, or embankment constructions, or putting piles and spending, as I said, anywhere from \$60- to a \$100 million. (Seney: Yeah.) So, that's where it opens an opportunity to do this kind of stuff. That's why, (Seney: Ah.) that's why the breach is important to us.

Seney: I see what you mean. I figured that from your point of view in representing the tribe that this was good news?

Shahroody: Right. In fact, (Laughter) in fact if, definitely good news. The interesting part was that after the breach, you know, there are litigation going on there, (Seney: Right.) I got calls. They wanted to hire me. I said, "No way." (Laughter)

Seney: Who wanted to hire you?

Shahroody: Oh, they were, they were firms (Seney: Oh, I see.) that have litigations on behalf of the homeowners.

Seney: Oh, okay.

Shahroody: On Fernley.

Seney: That's what I, that's what I was going to say. Yeah.

Shahroody: And not only, of course, I've got a conflict, but more importantly that, we're looking at something above all of these. (Seney: Yeah. Yeah.) (Laugh)

Seney: I would think from the point of view of the City of Fernley, and the growth that those people obviously want to encourage out there that this is bad news, that this breaking of this levy is going to make it *much* more difficult to develop those areas out there as long as there's water in it. I mean, where do you get banks to loan money? Who's going to insure that?

Fernley Development Issues Raised by the Truckee Canal Breach and Water Supply Issues

Shahroody: That's, yeah absolutely. That's correct. That's, that really has cast a sort of a cloud on their, on their developments in the future, and it's just a matter of, the farms are going out. Either being purchased through the Water Quality Program, and also the City of Fernley requires dedication, like the Truckee Meadows Water

Authority, if any developer wants to have subdivisions they have to bring water rights and they buy the water rights from the farms in the Fernley area. Most all of the farms are going to go out. (Seney: Yeah.) So, Fernley is going to be the primary user of the water, and therefore the canal is a pass-through through their community. (Seney: Right.) And, Fernley actually could take the water directly from the river, if they want to.

Seney: They have a right to do that? Or . . .

Shahroody: We're negotiating with them.

Seney: That's, I know, for a long time the tribe has been working on various plans and arrangements, one to let them drill wells, (Shahroody: Uhm-hmm.) right adjacent, what, to the river and tap into it that way, right? (Shahroody: Well . . .) Was that one of the plans? (Shahroody: The . . .) Well, why don't you tell me what the plans were?

Shahroody: You're right, in terms of the groundwater and drilling wells. But, I think they have problems on their own wells because of the, again, T-D-S and also arsenic.

Seney: Arsenic, right.

Shahroody: But, to go drill wells adjacent to the river, I don't think they can, but of course they would be taking the river water. They have to, you have to, before it was any recharge current from the farming operations. (Seney: Right. Right.) And, of course, that's going away. That's going to make the water quality worse for them. (Seney: Sure.) So the, what we have been negotiating in the past was, the groundwater in the South Wadsworth area within the reservation is really good. It's river water, of course, (Seney: Right. Right.) it's in direct communication with the river. We did a lot of pump testing and drilling to get the, basically the lithology understood completely where you want to put wells and get the best quality of water and we did quite a bit of extensive work on that. In fact, we worked with D-R-I [Desert Research Institute] and we did a lot of testing. D-R-I did the modeling. So, so the approach was, therefore, instead of Fernley getting these dedicated water rights, which of course, they either have to take it from the canal, and there, of course, to take it from the canal, of course, they have to go through getting permits and everything else from the federal government, because they would be using the, the Reclamation facility for (Seney: Right.) city uses. And, the other thing, of course, the canal would have certain problems in terms of, if they did that it could increase the losses in the canal. There are times there is no need to make deliveries to Lahontan Reservoir. In fact, there would be, given the present circumstances under OCAP, (Seney: Right.) so therefore you

have to put water in the [tapping on table or desk] canal in January to deliver water for them. (Seney: Yeah.) Which, of course, the canal doesn't do that unless you're delivering water to the Lahontan Reservoir under the OCAP. So, there we had a problem, and they saw that, and the Bureau has some problems of course, Bureau of Reclamation. So anyway, we basically said, "Why don't you dedicate your water from the developers that you have, to the river, and then take water from the Wadsworth, groundwater. Because the surface water, even if they took they would have to treat it. (Seney: Yeah.) Whereas the groundwater, you don't have to treat it. (Seney: Ah.) There's a saving for them in that respect. And furthermore, the [tapping table] surface water, even with their rights, take 1994, (Seney: Yeah.) they had zilch. (Seney: Right. Right.) There's no water. (Laugh) Because, the system goes in priority, they're lowest in the priority, claim three. This is a 1904 priority. (Seney: Yeah. Yeah. Right.) (Laughter) Everybody else is like 1800's. (Seney: Yeah.) So, the other thing of course is that in the low-flow condition, guess what, the kind of water they have. They have the effluent from the treatment plant. (Seney: Yeah. Yeah.) They have to take that and super treat it.

Seney: Oh god.

Working with Fernley to Have Them Take Their Water out of the River or from Wells Tapping Groundwater Tied to the River

Shahroody: So, whereas the groundwater is a drought proof, you have it all the time, (Seney: Yeah.) and you know, it's a clean water, so eventually, of course, it gets recharge from the river, through the recharge it gets, it gets filtered, (Seney: Yeah.) completely. So, they saw that finally, and then we, we basically, of course, we posed them, because of all of these advantages that they would have they wouldn't have to spend all these monies for the treatment plant, and most importantly, drought water supply. TMWA has gone through all of this process of the, the TROA, talking about TROA. (Seney: Right.) In order to have the drought water stored, (Seney: Right.) up in the Truckee, that's one reason they *are* in the TROA (Seney: Yeah.) so therefore they have water in Stampede or, primarily Stampede, during the drought periods because they would bring their own water and store it up there. So, what basically we said to Fernley, "You'd get a drought protection by using the groundwater basin within the reservation. So, as a result of that you don't *have* to store water, or haul water, (Seney: Yeah.) because you have to take from your rights some portion of it and set it aside." (Seney: Yeah.) So, if you've got a one-acre foot you've got to put, let's say, a quarter of it for the drought years, (Seney: Right.) and then use the three-quarter of it. So, we came up with a ratio, so I said, "Any acre-foot you take for direct municipal use you would dedicate something more (Seney: Right.) than that."

They balked at it. They balked at it and we said, “Well, what do you want? You want to take it one to one?” They said, “Yes.” They said, “We’ve got to take it one to one.” I said, “Well, take it from the river.” They were a little surprised when we said it. (Seney: Yeah.) And, they said they will. So basically, we were working with them to take it directly from the river.

Seney: Ah. Because they think somehow anything less than one to one is, they’re coming up short on that?

Shahroody: They said they’re coming up short. You’re absolutely correct.

Some Water Rights Fernley Accepted from Developers Were Not Active

Because, they have made commitments, when you add up their commitments. Because what happened (Seney: Oh.) in the past, they, they took dedications of water rights, which some of them are what I call “not active rights.” They were rights under the streets, and that kind of thing. They were not active farm . . .

Seney: Not wet-water rights?

Shahroody: Not active. That’s right. (Seney: Yeah.) So now, they’re held with these dry-water rights, so therefore they have to meet that. They have given commitments.

Seney: Oh no.

Shahroody: So, (Laugh) they said they’re short. Understood. I said, “Well, we don’t want to be short either.” So, “We don’t want to solve Fernley’s problem.” I said, “The best thing is that since we want to have you guys not to be on the canal,” because of the reasons I gave, (Seney: Right.) “so the best thing is take it from the river, if you want to.” And, they wanted to, in fact. (Seney: Yeah.) They wanted it. They sort of felt it as if we were trying to get them to the groundwater and get something more than one acre-foot.

Seney: Put something over on them, huh?

Shahroody: Right. So, right where the river bends, in fact, on I-80, the river bends to go into, well it’s in the reservation but it heads north. (Seney: Yeah.) Just about there, their plan, in fact they have started, a treatment facility for arsenic from the groundwater. But they, and I know that, that treatment plant could be expanded to treat the surface water. (Seney: Ah.) And, [tapping desk or table] that’s very short, to have a pipeline built on the side of the hill. It’s not that steep, (Seney: Yeah.) and take the water from the river. So, with *Fernley* out of the way, that’s

what we're hoping, so it's going to be basically in the canal, the Lahontan Reservoir, and Fallon.

Seney: Let me ask you, let me ask something about Fernley. Did, did they know what they were doing when they over-committed these dry water rights?

Shahroody: No, they didn't.

Seney: So, you think it was an honest mistake on their part?

Shahroody: Well, it was a honest mistake. The question was that we had already filed in, in courts, in the Alpine court and the Orr Ditch court basically we had *mapped* the land with water rights and irrigation. There were a lot of lands that were out of, out of production, probably never irrigated even, (Seney: Yeah.) some of them. Some. But a lot them out of production going back to the '70s and '60s. And basically, our findings were, because of not putting the water to beneficial use they either have forfeited or abandoned, and those were filed. And, I don't think, at that time, I never noticed, (Seney: Yeah.) they were all noticed, but I don't think as usually the mentality, of course, in T-C-I-D and Newlands Project, basically that they balked at it. (Seney: Yeah.) So, that's, that's part of the reason I guess. I don't know.

Seney: Right. Right. Well, go ahead you were talking, started talking . . .

“If Fernley . . . takes water directly from the river, via pipeline, given the present OCAP . . . only . . . thirty-three percent of the months there would be water diverted to Lahontan Reservoir. Because, under the OCAP Carson could take care of it. . . .” and that would be complicated by issues surrounding “. . . the breach, and . . . OCAP, . . . the recoupment. . . .”

Shahroody: Well, I said in terms of, if you have Fernley out that means they would be directly taking water from the river, that the canal was, basically would be delivering water to Lahontan Reservoir, and that means—I did an analysis. If Fernley basically takes water directly from the river, via pipeline, given the present OCAP there would be only, and I used a hundred years of hydrology for the analysis, on a monthly basis, there would be only thirty-three percent of the months there would be water diverted to Lahontan Reservoir. Because, under the OCAP Carson could take care of it. (Seney: Ah.) So, we got in very close, as far as the duration of the time that the water would be diverted there, and that's one reason the breach, and what's happening in terms of OCAP, but there's also the issue of the recoupment. I don't know how much you know about that?

Seney: A little. Yeah. A bit. Right.

Believes Rather than Repairing the Truckee Canal after the Breach That a Fund Should Be Set up with Repair Monies to Pay Farmers Not to Irrigate on the Carson Division in Order to Minimize Diversions

Shahroody: And then with the recoupment of the water, which is now in appeals, of course. So, and of course, as I said, with a fund to be set up, like a (Seney: Yeah.) \$100 million fund, and when you look at the alternative, which would pay for certain farmers not to irrigate, I think we got a, we're going to get pretty close to minimizing diversions.

Seney: What did the judge rule, 297,000 acre feet in recoupment?

Shahroody: One hundred ninety-seven.

Seney: One ninety-seven? (Shahroody: Uh huh.) But there's been some interest on that now, hasn't there? So, it's up a little?

Shahroody: Two percent interest. Yes.

Seney: Yeah. And, I'm aware, and I assume you're aware too that there's been an investigation out on T-C-I-D concerning the records kept by T-C-I-D in the last few years having to do with the amount of water they've saved?

Trying to Use TCID Efficiency Incentive Water to Apply to the Recoupment Water Debt

Shahroody: That's correct. That, in fact, backs into the recoupment too. The, I'm aware of the investigation, (Seney: Right.) but what I understood, T-C-I-D, of course, one of the ways wants to make the repayment towards recoupment because the judge had basically stated to reduce their diversions or reduce their deliveries, but also T-C-I-D, as a result, under the OCAP, we had persuaded, under the OCAP, if you're efficient you would deserve to have incentive. (Seney: Right.) So, they would, they would have an incentive when the years that they are more efficient than the OCAP criteria require. So, that's all keyed to the deliveries. (Seney: Right.) And, and how you calculate the deliveries and how you report it. So, they had incentive water starting, I believe, in 2001, accumulating up to about 30,000 acre feet, which then in December of 2005 was the first time that, that they had, I think at that time that they hadn't gone up to 30,000 but they had pretty good. I think they had about like 23,000 acre feet sitting in the Lahontan Reservoir, on top of the project water. (Seney: Right.) And, we did a test, well

I'll just call it experimental, but at the same time an opportunity to then use that Incentive Credit Water toward the repayment. (Seney: Right.) And then, not to divert, to, under the OCAP. (Seney: Right.) So, therefore, instead of diverting it you would, they would use that incentive water, they'd plow it in, into the project water. (Seney: Right.) So therefore, toward the targets. And, it was successful.

We did it in, in December, but ~~didn't, the~~ Mother Nature did not give us the opportunity. And, we had, we had gone into about 900 acre feet, I believe, deliveries. Then we had the heavy precipitation. (Seney: Right.) And, snow and everything else, which then goes into, once you have the snow pack, immediately there, and you make assessment based on the forecast, (Seney: Right.) they said, "Well, the targets are, will be met. There's no reason to make a diversion." (Seney: Yeah.) It's just a routine calculation under the OCAP. (Seney: Right.) It tells us. And, you do those calculation[s] twice a month. So, it stopped.

So, but then, then there were, then there are a sequence of other events taking place that, that we got into the Year 2006, of course, which was also a wet year. But anyway, T-C-I-D wanted to use that Incentive Credit Water toward the repayment. There were problems in terms of the, in a wet year where would that water be (Seney: Right.) if you had a spill? (Seney: Right.) But, getting back to Incentive Credit Water, then the question came up as a result of this investigation what I, little I know, the questions were in how the calculations and the records were kept in deliveries. And they just said that and they said something maybe related to incentive, *knowing* how the mechanics worked, sure that delivery record is the main ingredient in working with the calculation of the incentive credit. (Seney: Right. Right.) Or, debit. Because, if you're less than efficient (Seney: Right.) there is a debit involved that they have to pay. (Seney: Yeah.) And, that's where it was, in fact, when you started, they started the OCAP in 1988. In 1989, before getting the drought, '89 was a normal year, T-C-I-D was immediately in debit by 26,000 acre feet. And then, of course, we come to the, to 2000, 2001, and all of a sudden, because in between we had all these wet years, we had dry years the OCAP really doesn't, would not apply. (Seney: Yeah.) Because, it's just, there's not enough water to meet their targets. And then we got into wet years, Carson's providing all the water. (Seney: Yeah.) So, truly year 2000-2001 was the start of, again, test of these efficiencies. And it's interesting, you know, you've got to wait ten years to test it again. (Laughter)

Seney: Yeah. Right.

Shahroody: So, that became the test, and all of a sudden we started going on the incentive credit. We applaud. (Seney: Yeah.) Great. But, they started adding every year. (Laugh) So, and they said it takes pretty detailed calculations. But, the main

ingredient in those calculations are delivery records, (Seney: Yeah. Yeah.) which we don't have any handle on those. (Laugh) Just take . . .

Seney: That's totally, that's totally T-C-I-D?

Shahroody: That's correct. Just a hand-me-down.

Seney: Yeah. (Laughter)

Shahroody: Do you know any more in terms of that, that investigation?

Seney: Well, not really. No. Huh-uh.

Shahroody: In terms of where it is? How it is?

Seney: No, not really. Huh-uh.

Shahroody: Okay. (Seney: Yeah.) Okay.

Seney: But, that's, that's another kind of fly in the ointment, isn't it, in terms of—maybe. Who knows? Well, we'll see where it comes out.

Shahroody: Well, again, I don't, I don't know, but I think again we like to see, my interest in is not necessarily in the investigation. I'd like to see the data (Seney: Yeah.) that at least (Seney: Yeah.) what has been looked at. And, I think we have the opportunity to look at the data too, (Seney: Right.) because those data, I mean the data is going to be, the similar data is going to be used for, for future years (Seney: Right.) in the calculations. (Seney: Right.) We just want to know the quality of the data. (Seney: Yeah. Yeah.) That's my interest.

Seney: Well, why don't we talk about TROA, finally?

Shahroody: Yeah. Why don't we do that?

Seney: Do you want to do that?

Shahroody: Sure.

Seney: You want to take a break?

Shahroody: Yeah, why don't we take a break.

Seney: All right Ali, why don't we go ahead and talk about the TROA now, or whatever, whatever comes up.

The Truckee River Operating Agreement (TROA)

Shahroody: Well, TROA, I think, in fact the part of the thing we . . .

END SIDE 2, TAPE 1. APRIL 24, 2008.

BEGIN SIDE 1, TAPE 2. APRIL 24, 2008.

Seney: [This is Donald Seney, I'm with Ali Shahroody of] Stetson Engineers, in his office in San Rafael, California. Today is ~~April 28th, 24th, I'm sorry,~~ April 24th, 2008. This is our second session and our second tape.

Go ahead, Ali.

The Preliminary Settlement Agreement Between Sierra Pacific Power Company and the Pyramid Lake Paiute Tribe

Shahroody: In terms of TROA, I guess, you're familiar with the Preliminary Settlement Agreement (Seney: Right.) between, between the Sierra Pacific Power Company and the tribe, (Seney: Right.) Pyramid Lake Paiute Tribe?

Public Law 101-618 Incorporated the Preliminary Settlement Agreement

“ . . . it has taken . . . about seventeen years . . . ”

And, of course, then the ratification by the federal government and P-L-101-618. And, P-L-101-618 requires to incorporate the terms of the, the P-S-A, and then of course to have the Operating Criteria for the operation of reservoirs on Truckee River. That's really where it comes from. And, it has taken, of course, I must say probably about seventeen years to . . .

Seney: Why did it take so long?

Believes involvement of the parties' attorneys resulted in it taking so long because “ . . . once they get into it then it gets into a lot more detailed. . . . ”

Shahroody: Good question, but I think a part of the reason was involvement of, of course, I'm going to say the attorneys for all the parties, (Laugh) and once they get into it then it gets into a lot more detailed. It started with the, with the technical folks in terms of putting the operation together, in writing the criteria for operation of the

reservoirs.

Seney: This would be people like yourself?

Shahroody: Myself, Bureau of Reclamation, of course, (Seney: Right.) the, the Sierra Pacific folks, and California. And, but then of course those were handed over to, if you want to say, to lawyers, but then it came to a point that they thought that there was, there is more into this that those type of writings because they were not, they were not watertight. (Laughter) (Seney: Right.) So, no pun intended.

Seney: Non-lawyer tight, right?

The “Fork in the Road” Where it Was Realized Everyone Was Not on the Same Page in Terms of What They Thought the Agreements Were

Shahroody: Right. (Laughter) So, once they started rolling up their sleeves then I said, “Well, there’s no reason for us to then do a two-step process. Let’s do everything we want to do here. (Seney: Yeah.) So, then as a result of that, of course, there was, there was sort of a step back, a major step back at some point that we thought we had it close, but I think we refer to it as “fork in the road” situation. (Seney: Right.) And that’s sort of took us back maybe at least a couple of years.

“ . . . it was completed as of the October of 2003. That’s what we refer to as the October draft. From there on was basically tinkering . . . clarification . . . ”

And then, of course, it, it was, let’s put it this way it was completed as of the October of 2003. That’s what we refer to as the October draft. From there on was basically tinkering, if you want to call it, clarification, and then, of course . . .

Seney: Go ahead . [Tape distortion] [Recording paused]

Water Quality and Truckee Meadows Issues in TROA

Shahroody: The issue of what’s referred to as 6,700 acre feet (feedback) which is referred to as 1E4 in the TROA. That’s 6,700 acre feet that would be dedicated by local governments, Reno, Sparks, and Washoe County, of the water rights in Truckee Meadows to, for, of course for the purpose of improving the water quality. This is over and above the, the Water Quality Settlement Agreement. And that also, then, the tribe would not–well, the end result of it is to improve the Water Quality Agreement. (Seney: Right.) Not agreement. Water quality and Truckee River. But, the genesis of that is basically in the unappropriated water and the tribe’s applications for the remainings of the water in the Truckee River, and the,

importantly is the issue of the groundwater component of return flows. (Seney: Right.) The groundwater component of return flows from the, from the treatment facility, as we talked before, that is basically comes out to be, once calculated it's a 6,700 acre feet, pretty close. And, that 6,700 acre feet, by having the dedications into, into the river, basically the tribe is not going to raise who owns the groundwater component. Because, the local governments believe that the return flows has got a groundwater component on it. (Seney: Right.) It's theirs, they can reuse it and do whatever they want to. That's one. The other thing, of course, are additional groundwater development. Well, when I say, "additional," meaning that if there are going to be changes in the place of these groundwater permits. So basically, the tribe is not going to challenge those. There are a number of these things all packed together saying that this 6,700 acre feet is going to basically resolve all of the tribe concerns in terms of the groundwater component and unappropriated water. So, between the tribe and Reno, Sparks, and Washoe entities.

Seney: And, that was a *long* one to work out?

Shahroody: That was a long one to work out. That was, because, unfortunately what happened is we were in a negotiation process and basically the cities didn't want to come to the table, if you want to call it. (Seney: Yeah.) Although, that was the, that was the, sort of a missing link, as a part of the, to do things in the TROA. And, finally I think, with pressure, and as I said this goes back to our application to the, when I say "our" it means the tribe's application, to the state engineer to get all of the unappropriated water, and there were applications standing, in fact, before the tribe's application. The tribe's applications are dated 1984. There were applications by, by Sierra Pacific and also Reno and Sparks. So, and then there were applications by Washoe County, too. We came, we had an agreement, basically, therefore how the tribe would go ahead and get this permit. And, of course, they, they would work with the tribe and also keep them, keep them whole based on, based on the compensation or the *need* to meet the groundwater component. (Seney: Right.) But, the tribe did get a favorable decision from the state engineer regarding its applications for the remaining waters of the river, and they did not. Their application basically based on public interest issues, the applications were, were denied. And, they were going to, when I say "they" local governments were going to appeal. Basically it was understood that it's not going to get anywhere. And, we would, we would honor what we had said in terms of working with them with respect to groundwater component. But, these are all 1999 issues, (Seney: Right.) 1998 issues. (Seney: Right.) So, but then I think as the time went on and I could see the local governments didn't have or didn't have the desire to put forward 6,700 acre feet of Truckee Meadows water to be dedicated to the river, and they didn't have the water, or if the waters were

primarily what we call “diffracted rights” they’re all underneath the streets and the roads and everything else. (Seney: Right.) But, if they were going to get those, get their title clear, and then have those water become active there were certain demands for those too, at the same time. (Seney: Yeah.) But, basically it took a number of years to get the negotiation going on. Finally the negotiations were done and we . . . I think we came to a point, after a number of years you negotiate, all of a sudden the value of water just went up. When we were negotiating the value of water in Truckee Meadows was, you know, in the order of ~~three million, I mean~~ \$3,000 or \$4,000 per acre-foot. (Seney: Right.) By the time we were done with negotiation, and got close to, let’s say, *signing* the agreement—there are several agreements, in fact. There were three agreements. And, by that time 6,700 acre feet at the price of let’s say, \$28,000 or \$35,000 per acre-foot, you were looking at about \$300 million. (Seney: Yeah.) Basically, the local entities were saying that, “What the hell? Why are we going buy? Why are we doing this?” (Laugh) Because each of them, like City of Reno, City of Sparks and Reno, Reno had the major share of those and they said, they could use the money, basically selling it to developers, to TMWA (Seney: Yeah.) and then use the money for whatever they want to do with it for the city, for infrastructures, (Seney: Right.) and whatever, whatever else. That took quite a doing. So finally, it got consummated. *Finally*, it got signed. So, that’s where, even after the October draft, October 2003, once these agreements were signed, therefore basically they filled that hole in the TROA.

“ . . . I would say the last five years . . . there wasn’t heavy lifting on TROA. . . . ”

I think there were some minor items, when I say “minor” I would say there were some other things that had to be tinkered with, but I would say the last five years, to be fair, there wasn’t heavy lifting on TROA. And you are, you had the opportunity to come to some of those sessions? (Seney: Right. Right.) But, most of the heavy liftings were done back in the ‘90s, and I would say, going to 2000-2002, 2003. But, that’s what the TROA is.

Seney: What was the “fork in the road?”

Shahroody: You’re going to really tap my memory now.

Seney: Well, I’ve got to get an understanding of this. I’ve had several people try to explain it to me and I have a hunch you’ll be the best.

Shahroody: Why don’t I think it through during the lunch hour?

Seney: Sure.

The Fork in the Road

Shahroody: Because I had it, I had it, then I had it. I have dealt with all along. (Seney: Yeah.) (Laugh) And, it was, it was the matter of TMWA having their priority of storing their credit water in Stampede Reservoir and the kind of water, I think it's coming, the kind of water that they could *use* to store in Stampede Reservoir for, to build up their M-&I Credit Water. And, in that, the principle of storing, principle of TMWA storing their M-&I Credit Water is embedded in the P-S-A, Preliminary Settlement Agreement. That means the tribe and the federal government will provide the space. They'll bring their rights and store it. It came out, the way that the model runs were made that the opportunity and the timing to create that credit water in Stampede Reservoir was not directly tied in exercising their rights. In other word, they would be exercising their right, but it has to be the time that you're meeting the Floriston Rates, as a derivative of the Floriston Rates, that releases are made from storage in, let's say, Tahoe. Yeah, it has to be Tahoe or Boca, because Tahoe and Boca are dedicated to support the Floriston Rates, (Seney: Right.) are dedicated to what are called, what we call the "pool water," to maintain the Floriston Rates for the downstream water rights to be satisfied. So, under those circumstances, when the, when, when the water is being released from those two reservoirs to meet the, the water's being passed through, if you want to call it, to meet the Floriston Rate, TMWA would then say, "Okay, they got so many rights that they don't want to exercise, and but they have the right to use it, the water should be held back in Tahoe or any of the reservoirs, that's either Tahoe or Boca if they're releasing from storage, or if water's being passed through, like at Stampede for instance, for that purpose." And that's what they have to go through to build it, but if I remember, the way the model was set up that they could also exercise this in the middle of the winter, let's say, or in the spring in a fashion that they would then would say they have so much right they would not exercise. And if the water's coming to Stampede and Stampede could store it, has got the right to store, they would say this water could go toward their exercise of their, their rights. In fact, what it does then, it would give them the water but they, it's not a derivative from Floriston Rate. It's not the water that would be released either from Stampede, no released from Tahoe or Boca, or any pass through that Stampede cannot store. But, this is the time that Stampede *can* store. (Seney: Ah.) And, they would, they would take that water because they said, "Well, we then, we then satisfy our rights, and then the other times that we can, that we have this right when we're not exercising, this water actually could go to Pyramid Lake." In essence, it's a paper water exercise, that they're saying that "Because we can, we can exercise and this water could go either to Stampede Reservoir to be stored or could be going to the, to the Pyramid Lake, independent of the Floriston Rates." They're saying that, "We exercise it now, therefore hold that water back in Stampede as for our credit." (Seney: Ah.) Which is sort of,

defeats the central point of their exercise comes from the Floriston Rate itself, and the Floriston Rate would be coming from the Tahoe and Boca, or (tapping table or desk) the water other people don't have any right to, to store. (Seney: Right.) That means water being released to meet the 500 cfs at the state line. Now they can exercise, therefore they would release 400. That hundred would be held back. But, the way the model was set up, let's say Stampede either could store or would make the, would make the release which would pass the water, which would be going to the Pyramid Lake, over and above the Floriston Rates, let's say. And then they said, "No, don't do it, because there's space. Hold it back." And that's where we said, "Now, wait a second. That screws up the Stampede's yield, (Seney: Yeah.) and that's not where you're supposed to get it." They said, "Well, Sierra Pacific was all concerned because, because *that's* the only way they said they can exercise, to be *assured* that they could the kind of water for drought water supply." We said, "Try it again." (Seney: Yeah.) So, they had to go back and retool it.

Seney: And, this took a couple of years, didn't it?

Shahroody: Took a couple of years.

Seney: Yeah.

Shahroody: In terms of, because they were first upset that this was going to really undermine their credit amount that they had credit water for drought water supply they were counting on. And, we did, we did actually sort of a compromise to make sure that they would be, would get into the same level of M-&I Credit Water storage. And, one of the compromises, I believe, were in terms of their priority of moving their water, let's say, from Tahoe up to Stampede. They would have the first right to move it. (Seney: Right.) And, the other ones, of course, were in terms of the, giving more protection in terms of the spill.

“ . . . we wanted to keep the principle that . . . it has to be their own water, and *their* water derivative of the Floriston Rates, nothing else. . . . ”

So, but we wanted to keep the principle that they, it has to be their own water, and *their* water derivative of the Floriston Rates, nothing else. (Seney: Yeah.) Not just paper exercise of the water.

Seney: How did, how was this discovered?

The Issue of How the Model Worked Was Discovered During a Meeting

Shahroody: I think it was discovered, it came out of a couple of meetings, because by that time we were not using the model. They were using the model. Because primarily I was interested in terms of hammering down, because we knew what we wanted, hammering down in the agreement, not necessarily relying on, on the model, but I think it came out of one of the sessions they said, well they indicated that *they* would *get* these, these amounts these years. And, at that time I said, “No, this time of year you wouldn’t.” And they said, “Well sure we do.” And, I think at that time we had the chance, we then looked at the models. (Seney: Right.) And, of course, I ran the models too but I thought, “We’re just negotiating on the principles.” (Seney: Yeah.)

“ . . . they weren’t . . . hiding anything. That’s what they *thought* is supposed to work. . . .”

And then I think it was discovered, it wasn’t, they weren’t sort of hiding anything. That’s what they *thought* is supposed to work.

Seney: Ah. So, there was no chicanery here, you don’t think, (Shahroody: No.) on the part of Sierra Pacific?

Shahroody: But the other part,¹⁵ of course, which also took so much time, which is a good example of it, is we, meaning the tribe, we were after, of course, doing the early modeling and everything, but from there on it was pretty clear for us how then it should be negotiated based on the principle of the matters. And, we were negotiating accordingly, based on how the, how the river’s supposed to be operated, how it was operated, what the P-S-A said (Seney: Right.) you operate it. But Sierra Pacific/TMWA, they would come to negotiation and then run the model on what the model would say and they would fine tune it, because of some of the possibilities. (Seney: Ah.) They would look at a one in one hundred years some situation may happen. Then, if we got into a situation in terms of negotiation they would say, “Well, we can’t go any further because we think it’s going to be this way.” What it meant that they would go back and make a whole bunch of number of model runs—thank you [addressing another person in the room—set item on table]—and then they would come back to the negotiation table.

“ . . . they were actually negotiating from the model, from the model runs, what the model would tell them. We were negotiating based on our own experience. . . .”

So they were, they were actually negotiating from the model, from the model runs, what the model would tell them. (Seney: Oh.) We were negotiating based on our own experience. (Seney: Oh.) So, that was time consuming. And, in fact,

15. See also Bob Pelcyger’s oral history interviews on the Newlands Project regarding the “fork in the road.”

as a result of that this thing showed up, this, the fork in the, this is the fork in the road. (Seney: Ah.) Because, they said, “Well, you see, it shows this way.” I mean, they wouldn’t bring the, generally the model runs to negotiation, you know, sort of a, it was a sounding board to them. They would go *back* to their (Seney: Oh.) sort of headquarters, make the model runs, and come back to negotiation. But this time, they said, “The model said this, because we know.” I said, “I’d like to see that.” And that’s what happened. (Seney: Oh.) So, there are two things. One, of course, fork in the road came up this way, which as you said took two years. But, the other thing is that they were using, at just the run-of-the-mill negotiation, they were using quite a bit of model run results to tell them how to navigate through these negotiation, and look at the impossibilities.

I can give you an example. They would say, for instance, “Gee, we have a situation that Stampede is full and Tahoe is getting empty, getting close to the rim. We want to make sure there is space and we want to get our water out of Tahoe before Tahoe goes below the rim because then the water would not be available, let’s say, if it is their M-&-I Credit Water.” (Seney: Right.) Our question is that, “That’s really an impossibility. You have Stampede full, (Laugh) and you have Tahoe going empty.” But, they may have seen something, some situation, extreme, extreme situation as a result of a model run or something, (Seney: Oh.) and *that* would take about days to negotiate that. Now, what do you do, whose water do you want to take out? And a lot of time I said, “Oh, let’s give them some, because I know damn well when Tahoe goes down that far they’re probably half empty.” (Laughter) (Seney: Right.) So, that was the basic approach. (Seney: Yeah.) But, those are the kind of things which took, took a lot time.

Seney: Right. Right. You know, I asked you about the chicanery, if you, if you thought there might be chicanery here, because I know that there was some time in which the Sierra Pacific people were keeping track of the kind of, of amendments that were being made along the way. And their, as a result of that people began to think, “Wait a minute, that wasn’t what we agreed on quite. That wasn’t the language we agreed on,” and that there was some suspicion that maybe Sierra Pacific, and I’m thinking of Sue Oldham¹⁶ here who I guess did this particularly, was, well, maybe massaging things a little bit in there to their advantage? You’re smiling as I say this.

Issues That Arose as a Result of Trying to Keep Track of Agreements Reached During Discussions

Shahroody: Well, it doesn’t take chicanery. That’s the way that Sue’s mind works.

16. Susan Oldham contributed to Reclamation’s work on the Newlands Project Oral History Series.

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- Seney: Yeah. (Laugh)
- Shahroody: She always reads things the way she wants to read them. (Seney: Yeah.) And, she always wants to have things worked out all the way she thinks it's supposed to be. But, yeah, that's another thing, the protect, protection of let's say if they add a paragraph, or a section, or provision to be drafted after discussing it, (Seney: Right.) she'll draft it and it's not what we discussed. Like that?
- Seney: Yeah, that's what I'm thinking.
- Shahroody: Yes.
- Seney: Yeah. Right. Right. Yeah.
- Shahroody: That's, that's correct. (Seney: Yeah.) That's . . .
- Seney: And so, after a while that was left to Bettenburg to do, or something, wasn't it?
- Shahroody: Well that, yeah, Bettenburg had to keep track of it. He did a damn good job. (Seney: Yeah.) But then, TMWA or Sierra Pacific they had their own team. They had their own modelers. They had, Janet Carson has a staff. Of course, she's pretty good. Sue and Gordon. (Seney: Right.) And, they had to go through their own gyration and sometime they would come to the meeting and there would be differences between Gordon and Sue, or differences between Sue and Janet. (Seney: Oh.) So, and the same way with the modelers. (Seney: Yeah.) So, that's, that, I would say quite a bit of it, in terms of delay, not pointing fingers, (Seney: Right.) it's, (Seney: Right.) it goes to this type of process.
- Seney: Well, someone else I interviewed, one of the many people from the federal side, said they thought their opinion was that Sue Oldham had added about four years to the process.
- Shahroody: I wouldn't, wouldn't be surprised. (Seney: Yeah.) Yes. I would, I would say her, as a person, but at the same time the machinations that they went through, as I explained, (Seney: Right.) all together, yes. (Seney: Right. Right.) Yes.
- Seney: Shall we take a break?
- Shahroody: Yes.
- Seney: Okay. [Recording paused]
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My understanding is that it looked like the agreement, TROA had been done and then Fernley raised some issues at the end that prolonged things. Can you talk about that?

Issues with Fernley That Prolonged TROA Negotiations

Shahroody: I can, and this is post 2003, of course?

Seney: Right.

Shahroody: Yeah. (Seney: Right. Right.) Yeah, I can.

Seney: Please.

Shahroody: You want to go on record just as you . . .

Seney: We are now, right.

Shahroody: That involved Fernley's right to store water in the Truckee River reservoirs, to use the rights in Truckee Division. Of course, most of those rights were challenged, for one thing. And, the other part of it, of course, was the use of the Truckee Canal to deliver the credit water that they want to have under the TROA in Truckee River reservoirs, primarily the federal reservoirs. We're talking about like Stampede and Prosser. And, delivering those by, to Fernley at times that the canal would not be used for any purposes, like for instance in the winter time. And, if they need that water, therefore, that would increase the losses in the canal, which means that somebody has to pay for those losses, which would be coming from the Truckee River, those carriage losses. (Seney: Right.) The other thing, of course, would be the issue of getting permits, or to be, to getting permits to use the federal project for the purpose of delivering water up to Fernley. So, all in all these are the concerns that the tribe had that they had to be actually ironed out between Fernley and the tribe. And, *in fact*, when we were negotiating the, the part that Fernley wanted to be in, I, I don't know whether you know Rebecca . . .

Seney: Harold?

Shahroody: Harold.¹⁷ (Seney: Yes. Right.) She, in fact, she was in all of the negotiation of the TROA over all these years, and I really hand it to her, in terms of Fernley wanted to be part of TROA. And, we raised these issues when we were drafting the TROA (Seney: Right.) to put the provision for Fernley, and it was stated that, like for instance, tribe and TMWA worked their differences as a P-S-A type, and

17. Rebecca Harold contributed to Reclamation's Newlands Project Oral History Series.

Fernley and the tribe would get together and negotiate and then come back, and they would put the provision in the TROA. They had it, subject that the tribe and Fernley would negotiate to take care of the differences. (Seney: Right.) So, but we did have a number of sessions with Fernley in negotiating these issues, as I mentioned.

Unfortunately, it did not work out. At that time, the town board chairman, David Stix, had his own ideas, and it just didn't work out and, of course, subsequently they had Rebecca leaving and then they had a new lawyer, and he had, or he has, his own ideas. That's Paul Taggert. So, so we ended up basically coming back to the TROA committee. In fact, at that time, coming to the TROA committee, while we were negotiating, because I think, I believe it was Bill Bettenburg said that, "We've got to get the EIS going on." So, *Bill* basically instructed that the EIS go, to go two ways, one with and one without the Fernley (Seney: Right.) as part of the credit water, so the EIS would go forward subject to these negotiations. So then, then we did not have, and the TROA draft came out and, of course, we could not resolve our differences and Fernley wasn't interested, (Seney: Right.) in fact. And, they, they felt that they want to, if they want, if the federal government wants Fernley to be a signatory this is the way they want it. So . . .

Seney: Do you think Fernley came in so late because they thought they'd throw a monkey wrench in the works and get more out of it?

Shahroody: Well, as I said they didn't come late, but they came in—we put a condition. (Seney: Yeah.) But, they were not happy about the conditions negotiated with the tribe, or anything. They just wanted straight out (Seney: Yeah.) their, their credit water. And, we couldn't see, because usually, not usually we have had differences with different parties, like California, like Nevada, and Nevada on the Newlands Project credit water, for instance. We had quite a bit of going back and forth, with TMWA definitely. But, we worked out our differences (Seney: Right.) to go forward, and so therefore once we signed, once we signed the TROA and once you remove all of the contingencies, and then, then basically you're all together. So, we had these outstanding issues, especially on forfeiture and abandonment and the water rights and other things that they're going to use to store water. So, how can you go forward? (Seney: Right.) So that means, you're silent, you're going to litigate afterward? So, that's one of the reasons, that's the, I think one of the things that . . .

END SIDE 1, TAPE 2. APRIL 24, 2008.

BEGIN SIDE 2, TAPE 2. APRIL 24, 2008.

“ . . . one of the conditions, of course, I mean as part of negotiations, Fernley wanted to be protected for the canal’s seepage losses. . . .”

Shahroody: They wanted to go ahead without, without any condition. So, and one of the conditions, of course, I mean as part of negotiations, Fernley wanted to be protected for the canal’s seepage losses. (Seney: Ah.) Because, there’s about, depending on how you calculate it, it could be as much as 10,000 acre feet of seepage losses, which they see as a possibility of recharging the groundwater basin. But, depending on how you, if you take the whole canal or part of the canal, they’re, they’re looking at the whole canal, *I think*. (Seney: Yeah.) And then, well, I mean they wanted to claim rights on that and the federal government basically would not accept such things, because just the fact that it had a little seepage that doesn’t mean they’re, they have rights on it. And then, as I said, the way the canal is, was operated, is going to be operated, is going to be operated in the future, depending on what happens in Lahontan Valley, what’s happening with respect to irrigation, the irrigated acreage is in Truckee Division, which is (Seney: Right.) going out of production. The canal may be operated, as I said, one third of the time. So, those all together, basically, came out *not* to have a successful negotiation with Fernley, (Seney: Right.) but then I believe it, it was put forward that Fernley is going to go ahead, independent of all of these, and that the federal government at least presented, I believe, you were at one or two of those meetings in Tahoe, (Seney: Right.) on, I think it was—was it a year and a half ago, (Seney: Right.) or something? So . . .

Seney: Something like that. Yeah.

Shahroody: Yeah. So, that’s what I think we did have problem. So, finally we were successful to craft the language which would state that those issues have to be resolved, and which would be subject to certain court determinations. And, as a result of that, of course, I think the matter is, did get resolved and I think the final EIS states that Fernley would be a signatory, they would not, it was not going to be with or without. (Seney: Right.) It’s going to be with. And, I think right now Fernley is trying to understand the TROA, fully.

Seney: Right. Well, so it looks like they’re going to be incorporated into it as a full-fledged signatory, in other words?

Shahroody: That’s the way it’s set up. Yeah.

Seney: Yeah. Right.

Shahroody: But, there are conditions, though, in doing so. There are conditions as a part of

language putting, which is referred to, the famous language of, is it 7-F-1, I think, in the, in that section, which relates to Fernley, (Seney: Ah.) and that language was finally hammered out between the tribe and the government's attorneys. And, it is in the TROA.

Seney: Right. So, it looks like things are ripe for a signature? You were saying before we began, in August it looks like there'll be?

Shahroody: Now it's going to be in August.

Seney: It's going to be August?

August 14, 2008, Has Been Set as the Date for Signing of TROA

Shahroody: It's going to be August, I think August 14th.

Seney: August 14th?

Shahroody: Part of the Tahoe Summit.

Seney: Right. Well, I know the federal government has approved it. The tribe is going to have, what, May 20th a referendum sometime in there?

Shahroody: May 31st the tribe is having their referendum.

Seney: May 31st? Right. Has the State of Nevada approved it yet, do you know?

Shahroody: Oh . . .

Seney: Or California?

Shahroody: Well, it's been quiet in terms of the State of Nevada. It hasn't been clear what the approval means on their part, at least. I, in other word there's, there is no specified step that they have to go through. I don't know. (Seney: Yeah.) That's a little bit vague. I'm sure it's going to be, something's going to come out of the woodwork. (Seney: Right.) But generally, of course, Nevada's onboard. (Seney: Right.) We know that. (Seney: Right.) It's just a matter of one step. But, in California it's different. The Secretary of Resources, Mike Chrisman has to actually approve it, and he does have his own staff, which they would go through it. (Seney: Right.) And, and that's a somewhat elaborate process, but I'm a little bit in the dark. There hasn't been any word out yet.

Seney: Yeah. You don't see a problem with California, though? I mean, they've been there all along?

Shahroody: Yeah. I don't see any problem at all. (Seney: Yeah.) It's just a question of the process that they have to go through themselves. (Seney: I see. I see.) And whether they have started the process or not, I don't know.

Seney: Yeah. What was the most difficult thing, do you think, to resolve in the whole TROA negotiations, the thorniest problem? (Laugh)

Shahroody: I don't know if there are gradations of that. (Laughter)

Seney: They were all thorny?

Newlands Project Credit Water

Shahroody: Yeah. That's, (Seney: A lot of thorns?) that's the, sort of a part. I think that interestingly enough that the difficult one was the Newlands Project credit water, which came totally in the latter end of the process, and the concept of it, of course, was difficult for Nevada to accept it, and Nevada, of course, was, they didn't want to have anything to do with it. And, the federal government, in this situation, insisted. This is, they have accommodated, they have worked through all of these negotiations and coordinated everybody. This is the only one thing that they *want*, (Seney: Yeah.) this is their asking, and I think they insisted on that. And finally it worked, but it took quite a bit of iteration. It wasn't necessarily the write-up or the calculations or seeing how it works, it's just a matter of the concept and the fact of the matter is that this is, this is the water that, that would be in Lahontan, which would be over and above the target, if you want to call it, or over and above and possibly there could be spills, and this you would take an additional step to, to hold it back and then basically again maximize the use of Carson and minimize the diversions. And, that wasn't that foreign either, because under the OCAP we do have a provision. We did, although not exercised.

I think it goes all the way back to 1967 OCAP. Well not '67, '67 did not have it, but 1973 OCAP under Judge Gesell did have it, a provision what's called a Stampede credit water for the Newlands. So, that means there are times that you *don't* know about the forecast or you're in the blind part of the year. Blind part of the years is November and December. (Seney: Yeah.) You don't *know*. You're just coming, you don't know what kind of year you have, (Seney: Right. Right.) and sort of a, you're, under those circumstances if you made calculations to make diversions under the OCAP you can hold that water back in the

Stampede. And, those water could be held back and then give the Newlands Project credit and see how the year plays out. (Seney: Right.) Or, the same thing doing the forecast. Forecasts can't be exact. It's sort of an in-between type year, you can do it in January, or February, or March. But then if it turned out to be that water is needed to meet the targets you release it, (Seney: Yeah.) and they divert it. (Seney: Yeah.) If it turned out to be that Carson already took care of it, you hold it back. So, what we were doing here basically applying the same principal to be used in all of the reservoirs. (Seney: Ah.) That means, this wasn't water only released from Stampede, let's say, during the spawning season. The project, let's say, in January, is entitled to make, take the, take the remaining flows in the Truckee River at Derby and we are making releases, let's say 500 cubic feet per second, for the spawning. And, we could say, "Gee, you know, you can forego that 300. We give you credit." And, we only release 200. (Seney: Yeah.) So, we needed 500 to take care of the fish. Let's see what happens later. (Seney: Yeah.) So, it wasn't, we could only do that with Stampede under the OCAP. But, what TROA basically sets forth for the Newlands Project credit water, you can do it under operation of Tahoe, Boca, Prosser. That means that water that's being released or passed through could be held back and give them a credit. (Seney: Right.) And, the other thing, of course, you could do it, also not only in terms of those waters going for spawning, which would be over and above the Floriston Rate, could do this within the Floriston Rate. (Seney: Uh huh.) So, that's why it was, why it is significant.

Seney: Right. Is this—you know, I understand that the people in the whole negotiation knew that T-C-I-D was going to oppose this and file a lawsuit when it was all over with on a variety of grounds, one of which was they were signatories of the original Truckee River Agreement and weren't included in this one, and so forth and so on, so this was a real attempt, I've been told, to sort of bend over backwards to look at the, to take into account the interests of T-C-I-D. Is this an example of that, do you think?

TCID and Its Relationship to TROA

Shahroody: This is an example, but as I said, but what you're referring to as TROA itself, we, everybody has—first of all, T-C-I-D was invited to participate in the TROA process, and they did participate a couple of session at the outset but they didn't just continue to participate.

“Everyone has been conscious . . . in TROA not to affect T-C-I-D and their rights. . . .”

Everyone has been conscious of everything to be done in TROA not to affect T-

C-I-D and their rights. And, and also getting in here, in terms of Newlands Project credit water, it's basically the offshoot of what we have in OCAP, as I mentioned, the Stampede credit water. It's not something newly created, (Seney: Right.) it's just made it more efficient. So, that's the rate has been in terms of making sure that T-C-I-D is kept whole, but of course T-C-I-D has got somewhat of a different view in terms of Truckee River Agreement because there's, their statements are that, "This is going to modify the Truckee River Agreement." Yes, parts of it's going to be modified. It's going to be submitted to the Orr Ditch Court. Are going to be the parts basically done, but not affecting T-C-I-D's rights.

Seney: These are the Floriston Rates, really, aren't they?

Shahroody: These are the Floriston Rates and also, in terms of Sierra Pacific being able to store water as credit water, because Sierra Pacific is a signatory to the Truckee River Agreement. It is T-C-I-D, U.S., and Sierra Pacific. So, they're also taking issue with Sierra Pacific. (Seney: Right.) In terms of what the agreement says, in addition what are the terms of that agreement that are going to be implemented from the 1935 Truckee River Agreement.

Seney: Right. Is there anything you're going to miss about these negotiations not going on?

Shahroody: (Laugh) That will be the day. (Laughter) I think once we have the--this is--we're entering a different phase. In fact, of course, we have, we don't have a so-called negotiations as such, (Seney: Yeah.) but you have, then we have the other facets of California State Water Resource Control Board, state engineering hearings which is going to start pretty soon.

Seney: That's Nevada?

Shahroody: It's in Nevada. And, the California, I would say it starts probably about a year from now, and then there are going to be appeals from those through the various courts, and then you have the Orr Ditch Court. It's going to be a full-blown evidentiary trial. And, before then, I'm sure there's an (inaudible) of depositions. So. (Laughter)

Seney: It's hardly over?

Shahroody: So, it's just a different facet. (Laughter)

Seney: Yeah. Well, it's amazing how long this has taken.

Shahroody: It is.

Seney: You know. I mean, it's, you know, and people looking in from the outside must be particularly perplexed. I mean, I have some appreciation, you know, for the complexities and how they get introduced. I mean, how you argue about snow-making water.

Shahroody: That was the *easy* one.

Seney: Was it?

Shahroody: I tell you that was the easy one, because I think Dave Kennedy must have been there. That was in Tahoe City, it was, because I made calculations that the losses from snowmaking, for consumptive use losses, because before it was snowmaking, everything's going to runoff, (Seney: Yeah.) go back. Not necessarily so. The losses were calculated to be twenty-five percent, and they had calculated the losses to be ten percent. And finally they came back and they said, "Well, we'll take the losses to be ten percent in the Tahoe Basin and twenty percent in Truckee Basin. That was just flying in the face of the principles of science there. (Seney: Yeah. Right.) So, they said, "We'll take the average. It comes out fifteen percent." And then I think we had compromised partly, partly had come down to twenty percent, I believe, because of some additional information. And then, it came out to be a flip of the coin, to take between those. (Seney: Yeah.) Oh, it took, then they took an average of twenty percent and the fifteen percent and it became seventeen and a half percent. And they said, "Well that doesn't," they didn't agree on it. I guess the reason they're agreeing because by that time they were dug in and I think the, then the issue came out to be whether it should be seventeen percent or not. They just wanted to pick out a number, what would be (Seney: Yeah.), would be a, would be average between those two, so they flipped a coin. They won. They got seventeen percent. So. (Laughter)

Seney: Maybe you should have done that more often, huh?

Shahroody: Yeah. (Laughter)

Seney: You know, one of the things that struck me in the meetings that I went to, especially one of the earlier ones, was, you know, Russ Armstrong was attending then, as he did briefly for the T-C-I-D. (Shahroody: Yes.) In the morning Russ used to come and hear the, he was sitting out in the audience, actually, and here were all the people up at the table. You know, Bob was there, and I know you were, and Fred Disheroon, and Bill Bettenburg, and Gordon DePaoli, and Sue

Oldham, and probably Janet Carson, but I can't remember exactly if Janet was there, (Shahroody: Right.) and the people from California, you know, John Markel, I think, maybe was there.

Shahroody: Jim Markel?

Seney: Yeah. And John Sarna, and so forth, and how you all knew one another quite well at that point?

Shahroody: And Nevada was there. Roland [Westergard]¹⁸ was there.

Seney: Yes, Roland, obviously.

Shahroody: He was there.

Seney: Yes, Roland was there.

Shahroody: Christine Teal. (Seney: Right.) Yeah.

Seney: And how well you all knew one another, you know, and when Russell Armstrong, if somebody asked him, "Do you have a question?" maybe he stood up and asked a question and it was really clear that he was kind of the odd-man-out in that situation. I mean, the people at the table *knew* each other well, and that their, I don't know, it seemed to an outsider at least who didn't know a whole lot about it at that time, that there probably wasn't much of a place given, now given the history I know, of negotiations over 101-618 and the perceived role of the district in trying to torpedo that legislation at the last minute, and their walking out of those negotiations, and so forth. And, I know there have been a lot of explanations for that. The one that seems to resound the most is they thought the negotiations would go nowhere. So, why should they mess with them? And when they did culminate in the legislation they then tried to sabotage it. But they, it really did strike me as they were the odd-man-out.

TCID Voluntarily Pulled out of Various Negotiations

Shahroody: Well, that's what they chose to be. (Seney: Yeah.) I mean, they were, there were a number of avenues open. In fact, not only Senator Reid's office did everything it could, and of course, his chief of staff helping negotiations, meeting with them. I think there were a couple of sessions in the early part of the negotiations of P-L-101-618 (Seney: Right.) that, in fact we were meeting at Sierra Pacific's famous conference room, at that time. And, they did come in, I think two sessions, I

18. Roland Westergard contributed to Reclamation Newlands Project Oral History Series.

guess they decided not to participate. (Seney: Right.) Then, of course, you know, they were second generation settlement negotiations (Seney: Right. Right.) under Bill Bradley. So, also. (Seney: Right.) And, and then Betsy [Rieke] was involved in the negotiations. It came pretty close. (Seney: Right. Right.) But, they decided at the last minute, they brought, they had consultants and everybody, you know, they were involved in the analysis, and then at the last minute they finally decided to pull out. They got cold feet.

Seney: Yeah. Well, I know that there's no question that they have time and again, to most people on the other side's viewpoint, missed chances that they should have taken, and had they taken them opposed, opposed to what they ended up with they would have been much better off. But, they're very reluctant to go along.

Shahroody: Correct. That's the way it has been all along. (Seney: Yeah.) So. I don't know.

Seney: Well, that's all the questions I have Ali. Anything else you want to . . .

Shahroody: Well, I think you've . . .

Seney: Deep, dark secrets you want to reveal here?

Shahroody: No, I don't have any deep dark secrets at all, I think. I think you have covered, you have covered ground, I thought we started with OCAP, and that's what you were going to do. But, I think they're (Seney: Right.) intermeshed. And, (Seney: Yeah. Right.) we worked it back and forth, and I think (Seney: Yeah.) just, just pretty much covers.

Seney: I think so too.

Shahroody: Yeah.

Seney: I think, I really appreciate this. Because, again, at the end of this long process, as I indicate here, this is my last interview, I really finally feel like I understand something about how the river system operates, (Laugh) thanks to you.

Shahroody: You did pretty good.

Seney: And, I know the people who read this will, will do that too. Well, thank you very much.

Shahroody: Well, thank you.

END SIDE 2, TAPE 2. APRIL 24, 2008.
END OF INTERVIEWS.