

**ORAL HISTORY INTERVIEWS**

**PATRICIA M. ZELL**



**STATUS OF INTERVIEW:  
OPEN FOR RESEARCH**



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Bureau of Reclamation  
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## Statement of Donation

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INTERVIEWER: DONALD B. SENEY

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Patricia M. Zell  
Newlands Project Series

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### Editorial Convention

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

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

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

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



## Introduction

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

One of the program's component is its oral history activity. The primary objectives of the 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 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 project occurred between 1994 and the 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) 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;
- Limited water resources in an urbanizing area;
- Three Native American groups with sometimes conflicting interests;
- Private entities with competitive and sometimes misunderstood water rights;
- Many local governments with growing urban areas and water needs;

- U.S. Fish and Wildlife programs competing for water for endangered species in Pyramid Lake and for viability of the Stillwater Nation Wildlife Refuge to the east of Fallon, Nevada;
- And Reclamation's original water users, the Truckee-Carson Irrigation District.

Reclamation manages the limited water resources in a complex political climate while dealing with modern competition for some of the water supply that originally flowed to farms and ranches on the project.

Questions, comments, and suggestions may be addressed to:

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For additional information about Reclamation's History Program see:

[www.usbr.gov/history](http://www.usbr.gov/history)

### **Oral History Interview**

Seney: My name is Donald Seney, and I'm with Patricia Zell, the Democratic Staff Director and Chief Counsel of the Committee on [Senate] Indian Affairs, in her office in Washington, D.C. Today is March 27, 1997, and this is our first tape.

Patricia, why don't you tell me how you got to be a member of the staff of the Indian Affairs Committee, maybe a little about where you were born.

Zell: Well, I came to Washington in 1968, and my training was in clinical psychology. I worked for the American Psychological Association for seven years, primarily in the publishing of their scientific journals and articles.

### **Starting to Work in the Area of Indian Affairs**

So, I was looking to expand my horizons and learned of a joint congressional commission that had been authorized, a House-Senate commission, to study and report to the Congress on federal Indian policy. It was called the American Indian Policy Review Commission. They were divided into eleven task forces.

Seney: What attracted you to that?

Zell: I had been interested in Indians since I was a small child, had read everything in my school

library on Indians by the time I finished second grade.

Seney: Where did you grow up?

Zell: In St. Louis. Only later in my life did I learn of my mother's ancestry and that I was, in fact, a quarter Indian myself, but I had that natural interest from the time I was very small.

So, I learned about this commission and that they had eleven task forces, and that the Task Force on Tribal Government was looking for a Director of Research and someone to organize and write the report. So, I spoke with them and ended up thinking that I was perhaps not the right person for them but giving them a lot of free advice on what I thought the requirements of the job were. As it turned out, they decided that I was the right person, so that was really my first introduction, exposure in a formal way, to Indian affairs and Indian law. So, I worked on that task force.

I then came back and worked on the full commission report and worked for the U.S. Civil Right Commission on an Indian project and study in the state of Washington. [I] worked with tribes training Indian Court judges in New Mexico and finally was involved in putting on the first symposium on Indian water rights in the early eighties. But eventually I came to the committee, worked on the Senate committee for a while, and realized that I definitely wanted to stay, to devote a considerable portion of my professional life to

Indian matters, but that I was probably ill prepared by educational training to provide meaningful contribution, from my vantage point. So, I at that point went back to school, to law school at Georgetown [University] and earned a law degree there, then came back to the committee, and I've been here ever since.

**Going to Work for the Committee on Indian Affairs and Editing the *Indian Law Reporter***

- Seney: So, you've worked full time for the committee since—
- Zell: I started in 1978, but I came back to the committee in 1982, and I've been here full time ever since.
- Seney: Working your way up through the ranks?
- Zell: I guess one might say that, although not consciously so.
- Seney: I didn't mean striving and clawing. (laughter)
- Zell: So, I worked for all but one of the chairmen of the committee, and on the side, when I'm not working in the Senate, I serve as the editor of a legal publication called the *Indian Law Reporter*, that evaluates all the federal, state, local administrative tribal court cases in Indian law. And I've been doing that for the last twelve years. So, that provides a nice supplement in terms of substance and keeping abreast of the developments in the law for my work here.

- Seney: That must be a daunting task, I would think.
- Zell: Well, it doesn't leave me much spare time.
- Seney: There must be a lot to do, I would think, with gaming law these days.
- Zell: There seems to be a growing caseload at all levels of the court systems, litigating Indian issues, and certainly gaming has spawned a great deal of that proliferation in case law.
- Seney: I suppose there's always a lot of water issues to deal with. Are there?

### **Stream-Wide Water Rights Adjudications**

- Zell: Not so much in the case law area. Although there are, as you may know, stream-wide adjudications, but they take so many years that they don't tend to be reported on a regular basis.
- Seney: Tell me what that means, stream-wide adjudication.
- Zell: They're called stream-wide adjudications, but they're usually major rivers. It is a proceeding, usually in equity, usually in a state court forum, where the rights of all users of water in that water basin, watershed, or river, are adjudicated. So that everyone, hopefully, upon conclusion of the adjudication has a very definite idea of what their rights to water are, and who may be senior or junior appropriators, and how those appropriators and their rights may affect your rights as a water user and as an appropriator.

But they tend to take years and years and years.  
And when I say years and years and years,  
something in the nature of twenty to thirty  
years. So, it isn't something that gets reported  
on a frequent basis.

Seney: These would be things, in terms of the  
Newlands Project, like the Orr Ditch Decree<sup>1</sup>  
and the Alpine Decree<sup>2</sup>, in other words, that

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<sup>1</sup> “The Orr Ditch decree was entered by the U.S. District Court for the District of Nevada in 1944 in *United States v. Orr Water Ditch Co., et al.* The decree was the result of a legal action brought by the United States in 1913 to fully specify who owned water rights on the Truckee River and had rights to storage in Lake Tahoe. The Orr Ditch decree adjudicated water rights of the Truckee River in Nevada and established amounts, places, types of use, and priorities of the various rights, including the United States’ right to store water in Lake Tahoe for the Newlands Project. The decree also incorporated the 1935 Truckee River Agreement among Sierra Pacific Power Company (now Truckee Meadows Water Authority), TCID, Washoe County Water Conservation District, Department of the Interior, and certain other Truckee River water users. See, Truckee Carson Irrigation District, “What is the Orr Ditch Decree and why is it important?”

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

<sup>2</sup> “The Federal Court adjudication of the relative water rights on the Carson River which is the primary regulatory control of Carson River operations today. The decree is administered in the field by a watermaster appointed by the federal district court. The decree, initiated by the U.S. Department of the Interior on May 1, 1925 through *U.S. v. Alpine Land and Reservoir Company, et al.*, to adjudicate water rights along the Carson River. The decree was finally entered 55 years later on October 28, 1980, making it the longest lawsuit undertaken by the federal government against private parties over water rights. The decree established the respective water rights (to surface water only) of the parties to the original lawsuit, both in California and Nevada to Carson River water. The decree did not make an interstate allocation of the Carson River between California and Nevada; it only quantified individual water rights. Neither state was a party to the decree. In addition to Carson River surface water rights, it also established the

establish who has what water rights and what their priorities are.

Zell: Certainly, those decrees are typical of the kind of order that a court would issue. I'm well aware and familiar with those decrees and what they reach and address. But I am not certain that they entail a stream-wide adjudication like the one that has been going on in Arizona for years, adjudicating the rights to water in the Gila River.

Seney: It seems to me they probably were equivalent. I know you've seen these decrees. They're, judging by fingers, an inch thick in legal paper and listing what everybody gets and when they get it. Those, I think, took somewhere upwards of forty years to finally resolve.

Zell: Is that right?

Seney: In those two cases.

Zell: I know that once those decrees are entered, they are, for most intents and purposes, practically written in stone, etched in stone in the sense that

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rights to reservoir storage in the high alpine reservoirs and confirmed the historical practice of operating the river on rotation, so that irrigators with more junior priorities could be served as long as possible. These upper alpine reservoirs were permitted to fill out of priority order, in accordance with historical practice. The decree also specifically recognized Riparian Water Rights in California (as distinguished from the quantified Appropriative Water Rights used in Nevada)." For more information, see, Babylon Software, [www.babylon-software.com/definition/ALPINE\\_DECREE\\_\(California\\_and\\_Nevada\)/](http://www.babylon-software.com/definition/ALPINE_DECREE_(California_and_Nevada)/) (Accessed 5/2019).



it's very difficult to get a court to revisit the terms of those decrees. So, they take on a certain holiness of their own in terms of being a touchstone for how people are to shape the use of water and plan for the future uses of water in any particular watershed, because you always have to hark back to those decrees.

### **The Interstate Compact Between California and Nevada Dealing with Water Rights**

Seney: One of the things, as you know, I want to talk to you about was the proposed interstate compact between California and Nevada, apportioning the waters of Lake Tahoe and settling some other questions relating to the Truckee and the Carson rivers. You said you had worked on some of that. What are your recollections of the interstate compact before the Indian Affairs Committee?

Zell: My recollection is that we held—of course, it was a legislative proposal. It came to the Congress in that form, a legislative proposal, as I recall, for a settlement of the water rights claims of the Pyramid Lake Tribe with a second title that would have provided authority. In essence, what the Congress does is ratify compacts between two states. That second title was a compact between the state of Nevada and California, proposing to have the Congress ratify what the two states had agreed to in terms of the apportionment of waters as between the two states.

When subsequently President Ronald Reagan was Governor of the State of California, and subsequently senator from Nevada, Paul Laxalt, was the Governor of Nevada, so this compact had been entered into at an earlier time, and it was now before the Congress at a time when Ronald Reagan was serving as President of the United States, and Senator Laxalt was serving here in the Senate.<sup>3</sup> So, I think the conventional wisdom at the time, as I recall, was that given the alignment of those persons in those positions and the alignment of the political stars, it was thought that this would be an opportune time to have the Congress ratify that compact.

Seney: This is 1986 attempt?

Zell: Yes. As I recall it came up twice before it became clear that there was such significant resistance, in part because there was a perception amongst, for instance, the interests that we try to address, or are charged with addressing in the Senate, the rights of Indian tribes and their rights to water, as those rights were defined in the Orr Ditch Decree, and I think—is it Globe Equity? Maybe I'm mixing that up with another settlement.

Seney: The other decree [that establishes the water rights on the Carson River], you mean? That's the Alpine Decree.

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<sup>3</sup> Paul D. Laxalt served as governor for the state on Nevada from 1967 to 1971 before representing the state in the U.S. Senate from 1974 to 1987.

Zell: The Alpine Decree. Right.

Seney: On the Carson, and the Orr Ditch is on the Truckee.

Zell: Alpine Land Reservoir Company. The tribes believe that the compact would allocate water in a manner that was different from the rights that had been declared in those decrees. So, the Washoe Tribe, amongst others, came to the Congress and provided subsequent testimony with regard to the effect of the compact on those decrees, and the inconsistencies that the compact, if ratified, would affect.

Seney: May I ask, when you say the Washoe Tribe, you mean the tribe on the upper Carson [River], as opposed to the Pyramid Lake Paiutes?

Zell: Yes, the Washoe Tribe of Nevada. They're actually located in California, too.

Seney: I guess they are, come to think of it, aren't they? Right. I do go by the reservation, actually, frequently. It's in Alpine County.

Zell: Then there was a smaller tribe, the Walker River Paiute Tribe, whose rights, I think—maybe that was the Alpine Decree, one of the two decrees. They're a very small tribe, one that the Congress had, at least to my recollection, in the past not had much occasion to deal with specifically, but they came forward with considerable concerns about how their water rights would be affected. Of course, there were others. I don't mean to say that the tribes were

the only parties affected who were concerned about Congress taking this action.

Seney: Can you comment generally on interstate compacts? California ratified it in 1970, Nevada in 1968. Clearly this was a bistate matter, the allocation of the water at Lake Tahoe. Is it customary, do you know, for the Congress then to take a big interest in an interstate compact like that, or are they likely to defer to the states, who have already agreed upon this? Maybe there's not a general rule about that.

Zell: Well, I think that if the waters affected were only waters that were water rights being exercised by the states or private citizens or corporations that are incorporated under state law that may have rights to the use of water, whether they be utility companies or something else, power companies, that there might not be an interest on the part of Congress, and they might well defer to agreements between states.

But when federal water rights are implicated, federal water rights including not only their rights associated with military reservations, but also Indian reservations, then there clearly is a federal interest. And I think Congress, at least the executive branch of the government represented by the Justice Department and, perhaps to a lesser extent, the Interior Department, is not usually inclined to take a quiet seat elsewhere in the auditorium when these matters are front and center in Washington.

### **The Defeat of the Interstate Compact**

Seney: What would be considered a federal interest, in other words, at play? Because the Department of Interior objected to the interstate compact.

Zell: Yes, they did.

Seney: As did the Department of Justice, on the grounds that you're describing here. There were federal water issues, trust responsibilities, and military implications. What do you recall about the defeat of that? Were you surprised that the interstate compact did not go through, given this alignment of political stars that you described?

Zell: At first blush, when it was first brought forward as a second title to the bill, it seemed as though certainly the political will was there. I must say that, as I recall, it took quite a bit of persuasion on the part of particularly the tribes whose rights were affected, to persuade the Interior Department that, as trustee, they ought to be taking a very assertive role in asserting and protecting the tribe's water rights or what ramifications the ratification of the compact would have on those rights.

As I recall, the Solicitor's Office at the Department of Interior had to fight long and hard within the department to have the tribal interest elevated to a level that they would ultimately be articulated as part of the department position. Then, as I recall, the same sort of inter-workings went on at the Justice Department in terms of the Justice Department

obviously representing many different federal clients, federal agency clients, and wanting to make certain that all the interests were adequately represented and one not more dominant than the other.

So while there were citizens, be they tribal government citizens, or citizens of the two respective states who came forward expressing concerns about the compact, it's my recollection that the tide didn't turn in terms of the compact appearing to be on less than sure political footing, didn't turn until the Interior Department, Justice Department weighed in very strongly, and then the whole process took on a decidedly different cast. I seem to recall, and my memory could be very faulty in this regard, but that there was at one time composed of third title or some provision that tried to mitigate the impacts of the provisions of the compact on both the preceding decrees, as well as the contemporary water rights as they had changed since the time the compact had been entered into.

Of course, there were environmental concerns that perhaps not been as prominent in the seventies as they had become then by the mid-eighties. There were also the effects of the [U.S.] Army Corps of Engineers' attempts to rehabilitate, I think, the Truckee and Carson rivers, that had not been anticipated at the time the Army Corps initially did the work. So, it was a different horizon, a different lay of the land by the eighties than had been in the early seventies, so there was quite a lot of energy put

into language that would somehow condition or soften the impact of the compact if it were to be ratified.

That effort, as I recall, was ultimately deemed to be not worthwhile, because the thought was that it was uncertain exactly what the interaction of this subsequently enacted federal law would have on the ratification of the compact. In other words, I think that if the Congress were to ratify the compact but impose some additional conditions on the compact, the compact would have had to have been sent back to each respective state for their ratification of the conditions, the changed conditions, imposed by the Congress. And, as I recall, there were those who felt that that was going to be an unachievable goal on the part of one state or another.

#### **The Jurisdiction of Senate Committees over Matters Dealing with Indian Affairs**

Seney: Was the compact referred to the Indian Affairs Committee? Was that the committee which had jurisdiction over it, or is it the Judiciary Committee that handles interstate compacts in the Senate?

Zell: Yes, I think you're right. That would have been the Judiciary Committee. In the Senate, however, we have a very broad menu of options in terms of how bills are handled. Typically, in the water area, the Senate Energy and Natural Resources Committee and this committee would share jurisdiction. How we handle that shared

jurisdiction as it affects Indian water rights tends to be different with each settlement. Sometimes the Energy Committee will have primary jurisdiction, meaning that they will receive the bill first, it will be referred to them first, and once they have completed their deliberations, the bill will then be referred to this committee. Sometimes it's referred to both committees at the same time, and sometimes the reverse order is true; it will be referred to the Indian Committee, then referred to the Energy Committee. Usually that's because the settlements affect either more than one water source or a water source that crosses several jurisdictional boundaries so both committees' interests are implicated.

Seney: Is this something the two committee chairmen would work out between them, who gets it first?

Zell: We try. There was a time when I think those jurisdictions were more jealously guarded than they are today. I would feel in the last ten years we've tried to work very closely. The two committees have tried to work very closely and on friendly terms with one another to recognize our respective expertise, and the Energy Committee, for instance, would not usually put itself in the position of second-guessing the terms of an Indian water settlement.

For instance, it's not uncommon in an Indian water settlement, in addition to whatever terms would implement a settlement of claims between competing water users, to have an economic development fund or something that



would recognize that the tribe's rights to water had either been, in essence, forfeited for a number of years perhaps by water users off the reservation who were pumping groundwater and depleting the groundwater resources on the reservation, any one of a number of factors.

But in any event, there will be terms that will be extraneous, or seemingly extraneous, to the very closely-knit legal issues relating to the water rights themselves. And those in a manner and the terms by which an economic development fund, for instance, the purposes for which it may be expended. Those are matters that would clearly be in the Indian Committee's jurisdiction then, so the Energy Committee would not say, "Well, we think this is too much," or, "We think that they should be spending it on housing rather than health care," whatever it might be.

Seney: They wouldn't interfere in that kind of detail?

Zell: No.

### **The Role of the Pyramid Lake Tribe in the Defeat of the Interstate Compact**

Seney: What do you recall about the defeat of the interstate compact? Let me say a little bit more here. Pyramid Lake Tribe was not exactly an 800-pound gorilla when all this began, but it seems to me, from the people that I've talked to on both sides, that they had very skilfully mounted a campaign against the interstate compact, and ended up, for whatever reasons—

and maybe you can comment on what you think those reasons were—successful in defeating it. In the end, Senator Laxalt simply withdrew it, where it had ended up in the Appropriations Committee, because the amendments that had been agreed to were not acceptable to the state of Nevada and they were just at an impasse and time ran out. What do you recall about that and the defeat of that? And did you counsel in any way the Pyramid Lake Tribe? Did they come to you for advice or help in terms of how they might defeat the interstate compact?

Zell: Not in terms of how they might defeat the interstate compact. I recall that we worked very closely and were very attuned to what position the Interior Department was going to take. And we worked closely with the Interior Department because we were aware that there was a legal position emerging in the department, but that that legal position might or might not see the light of day in terms of being an official position communicated to the Congress. We felt that it was very important if somewhere in the department attorneys who had evaluated these issues very closely felt that there were problems, legal programs associated with them, that that ought to be information out in the public domain, that members of Congress needed to have all the facts before them before deciding whether the ratification of the compact would be an advisable action for the Congress to take. So, I recall that we tried very, very much to encourage the department to let those legal opinions surface and be made available to Congress.

Seney: You're starting to smile as you say this. Why are you smiling? What are you recollecting?

### **The Office of Management and Budget**

Zell: Well, in the way the government works, every federal agency is subject to what I often call or analogize to the wizard in the "Wizard of Oz." The great puppeteer behind the screen, in the federal government is the Office of Management and Budget. And the Office of Management and Budget, while supposed to be strictly a budgetary organization that tries to keep the whole federal budget under control, in fact, sets a lot of policy.

While it is supposed to be free from political influence, in my experience and certainly in the context of the Pyramid Lake settlement and the interstate compact, were very much players and were, if not subject to, there was certainly a lot of political pressure brought to bear upon the Office of Management and Budget to keep pots that are about to boil over down to the simmering level. And by that, I mean not allowing certain legal positions to surface and be put in the public domain. So, it was trying to remove all of those—not remove, but to, I guess, push back some of those political forces that would have kept information under wraps and smooth the journey of the compact through the legislative process.

Seney: I'm not quite sure I'm following you. You're being very guarded with me here. I want to see if I can get you to be less guarded. Senator

Laxalt was an important member of the Appropriations Committee. Might he be one of these people who would be in touch with O-M-B [Office of Management and Budget] to get them to keep the kettles from boiling over and these legal positions from getting out—is that what you’re getting at?

Zell: Well, I think that in every settlement there has had to be strong congressional proponents who are willing to fight any battle at any level to clear the way, clear the path. Senator Laxalt at one time certainly was very prominent and had obviously a long-term interest in the compact. At some point Senator [Harry] Reid played also a very prominent role and certainly toward the end, were it not for Senator Reid’s active involvement on every level, the Pyramid Lake settlement would never have gotten through.<sup>4</sup>

It is not known to me exactly—or if it was known to me at the time, I’ve since forgotten—exactly what the pressures were and who brought them to bear. But I think the conventional thinking was that if the president wanted to see this compact go forward because it’s something in which he had invested his time and energies when he was governor, and

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<sup>4</sup> Harry M. Reid had a distinguished career representing the state of Nevada in the U.S. Senate from 1987 to 2017. Senator Reid also participated in Reclamation’s Newlands Series oral history project. See, Harry Reid, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2013, [www.usbr.gov/history/oralhist.html](http://www.usbr.gov/history/oralhist.html).

Senator Laxalt wanted to see it go through, that a Republican administration and an Office of Management and Budget that reports directly to the president would likely be receiving strong encouragement from the White House to find a way to encourage the parties to agree that the ratification of the compact would be an advisable thing for the Congress to do.

### **The Dynamics within the Department of the Interior**

Seney: And you think that was happening, in other words, that the administration was, through the Office of Management and Budget, trying to keep the Department of Justice and the Department of the Interior from making its legal position in opposition to the compact known?

Zell: That was my recollection. There are people whom you may have spoken with. Joe Membrino and Ann Creighton both were in the Interior Department Solicitor's Office at the time, and Joe Membrino specifically was very much involved in this settlement. So, he would know, have a better idea of what the dynamics were inside the executive branch.

I know that that was a very big part of what was going on. At least that's what I recall.

Seney: This, to me, makes the defeat of the compact—

END SIDE A, TAPE 1.  
BEGINNING SIDE B, TAPE 1.

Seney: As the tape went off, you were saying that Joe Membrino and the other name is—

Zell: Ann Creighton.

Seney: In the Solicitor's Office of the Interior Department, would be the ones who would have a perspective on what was going on. The Solicitor's Office develops a legal position for the Interior Department, right?

Zell: That's right, but there are divisions of the Solicitor's Office. Those two people happened to be in the Indian Division, and, of course, there are other bureaus within the department. They have separate representations in the Solicitor's Office. And I don't recall whether this time there were competing legal positions even before the Solicitor decided what would be the official position of the department, or whether or not there was this Indian position that people had an interest in suppressing.

Seney: At this point, given the relative standing of the bureaus within the department, the Bureau of Reclamation would have been more ascendant than the Bureau of Indian Affairs, would it not have been at this point? And would the bias of the department be more in line with what the Bureau of Reclamation wanted than with what the Bureau of Indian Affairs might want?

Zell: I just don't feel suited to comment on that. I don't recall at the time. I know that—it seems to me that the commissioner of the Bureau of

Reclamation was Bob Broadbent at the time, is that right?<sup>5</sup>

Seney: Right.

**This Compact was More Visible and Politically Important than Usual**

Zell: And he was from Nevada, so it seemed to me, as I recall, that there were quite a few people involved at the federal level who, in former professional phases in their life, had had some contact or some real significant involvement in either California or Nevada. So that was part of the political dynamic, because there were people who had, in previous professional incarnations, devoted time and energy to this effort, who knew a lot about the issues.

And it would generally be the case that if something affected primarily the state of Nevada—and I'm sort of getting ahead of this story, because we're talking about the compact—but in terms of the Pyramid Lake settlement, the parties in Nevada and the Nevada congressional delegation in every other circumstance would probably be deferred to, and other members of the Congress wouldn't think it was appropriate for them to even be passing judgment on the specific terms of a compact or the settlement to which it was linked.

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<sup>5</sup> Robert M. Broadbent served as Commissioner of the Bureau of Reclamation under the Reagan administration from 1981 to 1984.

What was interesting, I think, was, as I recall, the compact had been brought before the Congress before it failed to pass. Then it came back in the incarnation—

Seney: I believe this was maybe the fifth time, in one way or the other, it had bubbled up. Sometimes it didn't get a hearing, there were times it had committee hearings, but I think this, in 1986, was maybe the fourth or fifth time it was up.

Zell: But I think there were those whose suspicions were raised because it was tacked on to an Indian water settlement, and there was an unusual amount of pressure being brought to bear, such that that also put people on alert that there might be something else going on here than meets the eye.

Seney: So that raises a flag among staffers and people who know how the process works.

Zell: Right. And there are some members who, by virtue of either their position or their interest, take stronger interest in these matters than others. Senator [Bill] Bradley certainly was one of those people, through his service on the Energy and Natural Resources Committee, and Chairmanship of the Subcommittee on Water and Power, was one that became absolutely integrally involved in all of the deliberations and played a very prominent role which ordinarily you wouldn't expect of a senator



from New Jersey.<sup>6</sup> Indeed, the ultimate settlement was very much shaped by his views and his plans for the overall watershed.

### **Tribal Opposition to the Compact**

Seney: Let me go back to the interstate compact. When it was defeated, were you surprised? If you remember it, it was somehow in the Judiciary Committee or Indian Affairs, and now I can't recall which, and I should be able to. It was not going to get out of the committee, so Senator Laxalt, as a member of the Appropriations Committee, got it attached to an appropriations bill, just a short sentence that, "The California and Nevada Interstate Compact shall be approved." You're smiling and nodding your head.

Zell: I just remember that, now that—

Seney: Yes. And Joe Ely<sup>7</sup> and Bob Pelcyger<sup>8</sup> went to Senator [Mark] Hatfield, who was then—at that

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<sup>6</sup> William (Bill) W. Bradley represented the state of New Jersey in the U.S. Senate from 1979 to 1997.

<sup>7</sup> Joseph (Joe) H. Ely participated in Reclamation's Newlands Series oral history project. See, Joseph (Joe) H. Ely, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2011, [www.usbr.gov/history/oralhist.html](http://www.usbr.gov/history/oralhist.html).

<sup>8</sup> Robert (Bob) S. Pelcyger participated in Reclamation's Newlands Series oral history program. See, Robert (Bob) S. Pelcyger, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Professor Donald B. Seney for the Bureau of Reclamation, in 1995 and 2006, in Reno, Nevada, and

point the Republicans were still in the majority in the Senate—went to Senator Hatfield of Oregon, the committee chairman in Appropriations, and appealed to him, based on their opposition. At that point he asked Laxalt couldn't they work something out between them. Those were the negotiations that Laxalt apparently had agreed to, but when he checked back with people in Nevada, they said, "No, no, we can't live with the things that you've agreed to." At that point, Laxalt withdrew it, threw up his hands, and said, "I quit. That's it." Do you remember that defeat for him and the victory for the Pyramid Lake Tribe?

Zell: I remember it. I don't remember it in detail. But I also think that the Walker River Paiute Tribe and the Washoe Tribe, with a bit more emphasis on the Washoe Tribe, but I think both of those tribes as well had appealed to Senator Hatfield.

Seney: And worked to kill it off.

Zell: Well, to have the equities considered. You had asked earlier about whether or not the tribe consulted us on how to defeat [the compact]. I think that our role as a committee is usually more in making certain that views are brought to light and that they're given full consideration. It would be considered very inappropriate, and, in fact, I think repercussions of a negative sort would flow if committee staff were found to be

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Boulder, Colorado, 1995 interviews edited by Donald B. Seney and all interviews further edited by Brit Allan Storey, senior historian of the Bureau of Reclamation, 2013, [www.usbr.gov/history/oralhist.html](http://www.usbr.gov/history/oralhist.html).

actively involved in working against something that a senator wanted to have happen.

So, I know that ultimately the Pyramid Lake Tribe sought help by an organization that has quite a bit of experience in lobbying and so forth to secure passage of the settlement.

### **The Role of the Wexler-Reynolds Firm in the Defeat of the Interstate Compact**

Seney: The Wexler—

Zell: The Wexler Reynolds firm. But they were able to do things for the tribe.

Seney: To advise them?

Zell: Yes, that we could not involve ourselves in or even counsel them.

Seney: Did you advise them to seek that kind of help?

Zell: As I recall, we thought that they needed the assistance of people who had a better knowledge of how Washington works and the various different interests on both sides of the aisle.

Seney: I can understand why you wouldn't want to be huddling here with them in your office, figuring out ways to frustrate and ultimately defeat someone like Senator Laxalt. I mean, clearly that would land you in a good deal of hot water, but it wouldn't be inconsistent with your responsibilities to say, "Listen. You need to

hire someone to give you a hand on this. This is a serious piece of business, and the people who are in favor of it are powerful and well organized, and you ought to go out and hire someone.” That kind of advice you mean you might offer them, or did you? Or would you say that to them?

Zell: I don’t—

Seney: I’m not trying to put you in a box here or embarrass you or get you to admit to something untoward, but I could understand that if I were a staff person and you came to me, I’d say, “Gee, I can’t tell you what to do, but there are a lot of good firms here in town that can, and one of them is the Wexler firm, etc. You might go talk to them.” That I wouldn’t think would be inconsistent with what a staff person would do.

Zell: I don’t recall being aware of the Wexler firm before the tribe engaged that firm. We were subsequently very, very impressed with the work that they did, because it did seem as though the tribes were up against an array of forces that absolutely could not be overcome. In a situation like that, often the only possibility of turning that tide back would be to thoroughly educate practically every member of Congress so that you have a broader base of people who might bring their actions and decisions to bear on something. And that is a formidable task for an Indian tribe that would come in for a week at a time and then be gone for the next three weeks back attending to the many problems that they have on the home front.

So, in terms of whether or not they were counselled, committee staff counselled them to seek assistance, I can't recall. I certainly know that once they did, we thought that that was a very good idea, and as it turned out, essential, absolutely essential.

### **The Impact of the Defeat of the Interstate Compact**

Seney: I want to ask you, what was your reaction to the Pyramid Lake Tribe's victory here? Now I'm asking you more on an emotional level, more on a visceral sort of reaction. Do you remember your reaction along those lines at that level?

Zell: I think that it was certainly perceived as an unusual victory for a smaller, almost insignificant interest in the political arena, and that was highly unusual that people would take up the cause of one or more Indian tribes. That's very, very unusual in Congress, unless the interests of those tribes are aligned with the delegation from the state that represents them.

Seney: And they weren't in this case.

Zell: And since they were pitted against one another, or felt that their interests were pitted against one another for a while, it was an extraordinary, extraordinary event. I think that turning really informed what transpired thereafter, because it seems to me—and again, my recollection may be extremely faulty in this regard—but it seems to me that people, the players in Nevada, began to have a different attitude about coming up with something that all the parties generally, not

in every specific, could stand shoulder to shoulder on as they came before the Congress.

I think that they realized that if there was dissention amongst them, then this would become a political hot potato and no one would want to get near it. There were so many diverse interests to be served by the compact issue aside, by the settlement of claims to water in an area where water was scarce, that people began, as I recall, meeting more often and with more productivity on a more constructive basis back in Nevada than they had in prior years.

As I recall, what ultimately manifested was that the Truckee-Carson Irrigation District [TCID], which in the past—we kept hearing rumors that notwithstanding the fact that Sierra Pacific and other major interests in Reno—and I don't mean to single out Sierra Pacific, because we kept hearing that various parties at the table who were seemingly friendly and wanting to work things out with the tribe, were behind the scenes, fanning the flames of resistance on the part of the Truckee-Carson Irrigation District and that the Truckee-Carson Irrigation District was put out there to be the straw man, if you will.

As this ultimately took a different form and shape, it seems to me that T-C-I-D became the only resistant parties, and then many, many attempts were made to encourage them into the process, to drag them kicking and screaming into the process, to provide incentives and disincentives for them to come into the process.

I recall a number of trips of both the Energy Committee staff and Senator Reid's staff and myself, going out to Nevada countless times, for meetings, trying to bring everyone in under the aegis of one umbrella, and there was great pressure to have [them in on any agreement]—and I can't recall from where that was coming, but I remember certain members of the senate saying, "There will be no settlement unless all of these parties agree and unless we have some finality to this. So, if Truckee-Carson Irrigation District does not come along, well, then phone us on another day. Bring this up in another session of Congress when you've worked it out with them." As it turned out, that wasn't capable of being realized.

#### **The 1986 Election of Senator Harry Reid and the Start of Negotiations on Truckee-Carson Water Issues**

Seney: After the defeat of Senator Laxalt and the compact, the election in 1986 comes very quickly. Senator Laxalt had not intended to run for election. Senator Reid is now elected, and, as I'm sure you know, when he was asked, on election night, when his victory was clear—as I'm sure you know, he only carried Clark County in that '86 election. He lost every other county in the state, but since they don't have much population outside of Washoe County and Douglas County. It didn't really matter, because he carried Clark County, with Las Vegas, by such a large margin.

When he was asked, "What's your first priority?" He said, "Settle the water wars on the

Truckee River.” He has told me he really didn’t appreciate what he was getting himself into when he said that, but he immediately dispatches Wayne Mehl out to Nevada, whom I’m sure you know very well, to look things over and see what can be done.<sup>9</sup>

Were you involved in any of that? Did Wayne Mehl come to you at that time and say, “What can you tell me about what’s going on out here?” Did you work with him at all? I’m talking now about the period from ’86 to ’89 when the settlement negotiations [that proceeded Public Law 101-618]<sup>10</sup> are being put

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<sup>9</sup> Wayne E. Mehl participated in Reclamation’s Newlands Series oral history project. See, Wayne E. Mehl, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2013, [www.usbr.gov/history/oralhist.html](http://www.usbr.gov/history/oralhist.html).

<sup>10</sup> Public Law 101-618 became law on November 16, 1990. The Law contains two acts: The Fallon Paiute-Shoshone Tribal Settlement Act and the Truckee-Carson-Pyramid Lake Water Rights Settlement Act. The main topics of the legislation are:

- Fallon-Paiute Tribal Settlement Act
- Interstate Allocation of water of the Truckee and Carson rivers.
- Negotiations of a new Truckee River Operating Agreement (TROA).
- Water rights purchase program is authorized for the Lahontan Valley wetlands, with the intent of sustaining an average of about 25,000 acres of wetlands.
- Recovery program is to be developed for the Pyramid Lake cui-ui and Lahontan cutthroat trout.
- The Newlands Project is re-authorized to serve additional purposes, including recreation, fish and wildlife, and municipal water supply for Churchill and Lyon counties. A project efficiency study is required.



in place and are ongoing. What was your role during that period?

Zell: Well, we certainly worked with Wayne. Wayne had worked for Senator [John] Melcher prior to that, and Senator Melcher had been chairman of this committee for a period of time when I was not here; I was in law school. So, he had worked with Wayne over the years. As I recall, Senator Reid—you're certainly right, and perhaps by understatement, that Senator Reid was not prepared for the kind of lightning rod that he would ultimately serve in this process, nor the extent to which he would be whipsawed by the different interests, by the public statements that were made. I have absolutely no recollection as to pinning this down to a year's time.

Seney: Let me stop you for a minute to ask you to amplify what you mean, "whipsawed," in terms of public statements.

Zell: Well, what I was about to say, I don't recall exactly what the span of years or when these years were, but I remember that it was typical that the parties would meet, and then they would go out—they would sort of agree, "Well, we're going to try to keep this under wraps," and within a matter of days, that agreement would unravel, and one or another, whether it be the

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- Contingencies are placed on the effective date of the legislation and various parties to the settlement are required to dismiss specified litigation.

Source: [http://www.usbr.gov/mp/lboa/public law 101-618.html](http://www.usbr.gov/mp/lboa/public%20law%20101-618.html)  
(Accessed December 2011).

chairman of Sierra Pacific or someone else, would go and either say something publicly or say something privately that was attributed to him, and then that would be carried in the Nevada newspapers. So, it was just chaos. Everybody would say, "Oh, yes, we're going to keep this under wraps," but, in fact, they'd go out and advance their respective agendas, and the next time they'd come together, they'd spend half of their time trying to mend fences before they could then move beyond where they had left off.

So, at some point, I recall this being at the time when Senator Reid started in on this, because he would think that he had everybody under one tent, and that they were proceeding along, and then they'd go out and make these sort of incendiary statements. He would be whipsawed between having to do damage control with the other parties who were offended by Person X going out and saying, "Well, here's what's really going on. These are the real deals that are being cut behind closed doors," and there was an awful lot of that. It seemed to be a situation that was in chaos.

And then there were times when somebody totally unexpected, like someone representing the interests of the Fallon Naval Air Station, would come forward and say something, and they weren't even really considered to be, I don't want to say a political player, but it was just not expected that they would be someone that would cause trouble, that they would be the source of some trouble. I

don't want to hold the tribes harmless or above it all and say they didn't find it in their interests to do similar things. Whether it was to counter some off-the-record statement that someone made, or public statement, or whether, in fact, this became such an accepted mode of behavior that there were times when they went and secretly talked to someone from the *Sacramento Bee* or someplace that would feed back into the public opinion that was trying to be shaped.

It seems to me that Senator Reid had to really exercise an extraordinary amount of control over disparate interests who did not see it in their interest necessarily to cooperate with him. He was sort of the new kid on the block, not because he was a new player to Nevada, but they weren't sure how much of an advocate he might be, and certainly perhaps even he couldn't have forecast, at the outset, what an extraordinarily prominent role he would have to play, nor how many arms he would have to twist and how hard he would have to twist to get people to either acquiesce or look the other way or be supportive. But it's to his credit that he took this on and he was willing to continue to bite off far more than he probably thought he was going to chew at the outset.

### **Sierra Pacific Power Company and the Pyramid Lake Tribe**

Seney: In the midst of these negotiations, Sierra Pacific Power Company approaches the Pyramid Lake Tribe, wanting to do a deal over Stampede

Reservoir,<sup>11</sup> which was originally built, Sierra Pacific Power thought, to serve the M&I [Municipal and Industrial] needs of Reno and Sparks, but the courts and the Secretary of the Interior had awarded that reservoir to the tribe, Pyramid Lake Tribe, for *cui-ui* restoration. So, the Sierra Pacific gets water, the tribe has a dam but no water, and they need to get together. Do you remember that? Were you aware that that was going on at the time?

Zell: Yes, I thought that the tribe's rights in the Stampede Reservoir were such that it went to the maintenance of certain levels of water in the reservoir as opposed to having primary rights or senior rights to the reservoir.

Seney: My understanding is that the reservoir had to be used primarily for, under court decrees and under the Secretary of the Interior's decision, primarily for *cui-ui* restoration. That was what the reservoir was to be used for. Sierra Pacific Power had lobbied for the building of that project so that that would be their reservoir to store drought protection water in.

Now, as I understand it from Joe Gremban<sup>12</sup> and Joe Ely and others, Sue Oldham

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<sup>11</sup> Constructed by the Bureau of Reclamation in 1970, Stampede Dam and Reservoir are features of the Washoe Project, which also includes Prosser Creek Dam and Reservoir (1962), Marble Bluff Dam, and the Pyramid Lake Fishway (1975). For more information, see Carolyn Hartl, "Washoe Project," Denver: Bureau of Reclamation History Program, 2001, [www.usbr.gov/projects/pdf.php?id=208](http://www.usbr.gov/projects/pdf.php?id=208).

<sup>12</sup> Joe L. Gremban participated in Reclamation's Newlands Series oral history project. See, Joe L. Gremban, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History

and so forth, here the Indians had a reservoir and no water, and Sierra Pacific Power had water and no reservoir, and they needed to work this out. So now the Preliminary Settlement Agreement, as it's known, allows Sierra Pacific to store water for drought protection in the Stampede.

When the water isn't needed for drought protection, it can be let out for the *cui-ui* run, which, given the nature of the *cui-ui*, they don't have to spawn every year to maintain the population. There are lots of details, of course, to this agreement, it's voluminous and all that, who pays for it and all of that. It's got all kinds of water in it. It's got M&I water in it, firm fish credit water, non-firm fish credit water, and I don't really understand that.

Zell: And the points at which the water flow is monitored and when [unclear], yes.

Seney: But that's essentially what the problem was. One had a dam and no water, the other had water and no dam, so they're drawn together by mutual interest. Do you remember when that went on, and about that?

Zell: I don't know what you'd like me to comment on. I remember that.

Seney: Let me give you a conclusion and then let me see if you agree with it or not. When the '86

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Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Andrew H. Gahan, historian, Bureau of Reclamation, 2015, [www.usbr.gov/history/oralhist.html](http://www.usbr.gov/history/oralhist.html).

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**Patricia M. Zell**  
**Newlands Project Series**

compact is defeated, this is a watershed—  
forgive me, that almost sounds like a pun—for  
the distribution of political power in this area.

The Truckee-Carson Irrigation District  
begins to fade as a player, and the Pyramid Lake  
Tribe becomes more prominent. Sierra Pacific  
Power, which I think is a very wily company,  
led by very wily people—at least the two former  
presidents I interviewed struck me as that  
way—now they read the tea leaves and they say,  
“We’ve got a deal with Pyramid Lake and  
maybe we can work something out.” I guess  
what I’m trying to get you to comment on is, do  
you see it the same way? Do you see the defeat  
of the compact, the rapprochement between  
Sierra Pacific and the tribe and their agreement  
over Stampede Reservoir, as changing the  
political complexion in this basin and over the  
water matters?

Zell: Oh, yes. I think that when the compact was  
defeated, it seemed as though there was very  
little political will in the state. Perhaps people’s  
energies were drained, because it didn’t seem as  
though there was going to be any coming  
together in the near future. I recall at the time  
that Sierra Pacific’s sitting down with the tribe  
was viewed as a very promising proposition,  
because they were asserting some leadership at  
a time when probably it was very unpopular in  
the state for them to be talking with the tribe.

So, we took that as a good sign that they  
could possibly be the driving wedge to get other  
people at the table. Will you refresh my

recollection as to the names of the two chairmen?

Seney: Joe Gremban and--of Sierra Pacific Power, you mean?

Zell: Yes.

Seney: Joe Gremban would have been president of the power company at this time. The man who I referred to earlier, whose name now escapes me [Neil Plath],<sup>13</sup> had been Joe Gremban's predecessor, and he was not involved in these negotiations. It was Joe Gremban who called Joe Ely and said, "Why don't we get together and talk about these matters."

Zell: Is he a silver-haired gentleman?

Seney: Yes.

Zell: I didn't remember that name.

Seney: Round-faced, not so tall, the kind of bearing you'd expect from someone who's lived a long time now in Nevada and the West, kind of informal but very smart. He's a very—

Zell: I'm thinking of someone else that may have been—he was the C-E-O?

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<sup>13</sup> Neil Plath participated in Reclamation Newlands Series oral history project. See, Neil W. Plath, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, Bureau of Reclamation, August 14, 1994, at Reno, Nevada, edited by Donald B. Seney, [www.usbr.gov/history/oralhist.html](http://www.usbr.gov/history/oralhist.html).

Seney: Right. Gremban.

Zell: Because I'm thinking of someone who was not typical of the other people, at least in terms of Gremban, in terms of retiring presidents from Sierra Pacific. It may have been him.

Seney: Gordon De Paoli?<sup>14</sup>

Zell: That sounds more—

Seney: Gordon De Paoli's a little more elegant in terms of his dress.

Zell: He was always wearing a three-piece suit and very elegantly dressed.

Seney: Dark hair?

Zell: He had silver hair. Maybe I'm just mixing the two.

Seney: Maybe it was Gremban. I saw him at his home in chinos and a polo shirt.

Zell: He was in a suit and everybody else was in Western clothing.

Seney: Maybe it was. That could have been.

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<sup>14</sup> Gordon De Paoli participated in Reclamation's Newlands Series oral history project. See, Gordon De Paoli, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Andrew H. Gahan, historian, Bureau of Reclamation, 2013, [www.usbr.gov/history/oralhist.html](http://www.usbr.gov/history/oralhist.html).



Zell: So, he stood out. Sometimes when people from states come in to Washington, you can pick out people who seem as though they're sent from central casting. "We don't know any of these people in this room, but these people must be from T-C-I-D and this person must be from Sierra Pacific." I remember this cast of characters. Many of them looked as though—

Seney: That could very well have been him. He was very informal with me, but I can see where he would have a different side to him.

Zell: I didn't have the impression of him being wily. We thought how extraordinary that he would have the presence to pick things up and try to salvage what had been done.

Seney: Well, I guess that's what I mean by being wily; by understanding now that things had changed and that you move with those changes, and that you're not encumbered by a lot of baggage and habits of doing things the same way, but that you move in this other direction. He came to Sierra Pacific Power from a big engineering firm that provided management services to Sierra Pacific Power. It was the last remnants of the Old Insol Power empire, and both he and his predecessor had come from this, and I know you would know the name of this if I can only remember the engineering firm. And he had worked at a number of places and actually started out at Southern Illinois Power. And I always thought that this gave these guys an advantage over some of the others because he

seemed more skilled to me than maybe the people out at T-C-I-D ... So you recall this?

Zell: So, we viewed that as being an exercise in leadership, because without someone of that at least prominence in the state saying, "Let's get this thing back on track," who knows how long it would have taken and how further things might have disassembled before ever getting back on track.

### **The Role of Joe Ely**

Seney: Let me say, I would not only use the word "wily" in terms of describing Mr. Gremban, as I've outlined my understanding of the word to you, but I would say that about Joe Ely as well, that he's a person of some vision, really. You're shaking your head, yes, you agree that he's a fairly capable leader?

Zell: Yes. I think at the time that I—

END SIDE B, TAPE 1.  
BEGINNING SIDE A, TAPE 2.

Seney: My name is Donald Seney. I'm with Patricia Zell of the Indian Affairs Committee, in her office in Washington, D.C., and today is March 27, 1997. This is our second tape.

It has a leader on the end, so a little of what we were saying didn't make it. I was asking you about Joe Ely and your evaluation of Joe as a leader.

Zell: Well, I think that at the time we first met him, Joe seemed to be—he was both young and naïve in the ways of Washington, and his attorney, whom I had known for many more years and held in high regard—

Seney: Bob Pelcyger.

Zell: —was also very naïve in the ways of Washington, as it turned out, and I would say that to his face and I think he would acknowledge that. So, I never would have—and I think this is true for most of us—never would have imagined not that Joe didn't have the leadership capabilities, but that they would emerge in such strident and forceful fashion, and when the situation in Washington almost demanded those kind of qualities.

As we saw that, and then in hindsight look back on what we knew of what was going on in Nevada, we probably—I can only speak for myself, obviously—probably had an insight that he was a lot more responsible for—yes, I think “wily” is a good word. Very astute at what would be necessary to bring this whole settlement about and was not afraid or reluctant in any way to sit down with any person at any time, for any purpose, to try to advance that agenda.

I'm not sure every Indian leader would do that, in part because they might not feel comfortable sitting down with the head of a major power company. They might not feel that they would be treated as equals or accorded the

respect that they might feel they're due. And a general uneasiness, perhaps, with non-Indians generally and not knowing what their agendas were, but expecting, because history has dictated such, that they would be taken advantage of.

So, what we later saw, much, much later in the process, of course, was who he was. He might have been unsophisticated in the ways of Washington, but he wasn't unsophisticated in the ways of people and what it took and what it would take to get what he was trying to achieve for his tribe.

#### **TCID Leaves the Negotiations that Preceded Public Law 101-618**

Seney: During this period of negotiations between '87 and '89, the power company is involved, the two tribes are involved, the T-C-I-D is involved, Reno and Sparks is represented, and at some point T-C-I-D drops out of these negotiations. Do you remember that? Were you close enough to them and keeping in touch with what was going on to recall that part of it?

Zell: Well, they were, from the very outset, from the very first time they ever appeared before the Senate committees, it was clear that they were going to be the intransigent players in this scenario. They continued to be hostile to the tribal efforts, what the tribe perceived as its interests. They saw their interests as being inimical to those of the tribe. They eventually stirred up an enormous backlash amongst non-

Indian irrigators in the area, people who had not seen this to be a controversy in which they needed to involve themselves, so they ultimately became very politically active at the local level.

But it was absolutely no surprise that they would ultimately drop out, because they were, as far back as I can recollect, sending shots across the various parties' bow that, "We're not going to come into this lightly, if at all. Don't take us for granted. Don't think that there's any deal that can be struck that isn't shaped around what our objectives and priorities are, and then we'll talk about what other people need."

They really felt that they owned that Reclamation project and had some pride associated with being the first Reclamation project in the United States.<sup>15</sup> They had

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<sup>15</sup> Authorized by the Secretary of the Interior March 14, 1903, the Newlands Project was one of the first Reclamation projects. It provides irrigation water from the Truckee and Carson Rivers for about 57,000 acres of cropland in the Lahontan Valley near Fallon and bench lands near Fernley in western Nevada. In addition, water from about 6,000 acres of project land has been transferred to the Lahontan Valley Wetlands near Fallon. Lake Tahoe Dam, a small dam at the outlet of Lake Tahoe, the source of the Truckee River, controls releases into the river. Downstream, the Derby Diversion Dam diverts the water into the Truckee Canal and carries it to the Carson River. Overall, the project has 68.5 miles of main canals with a combined diversion capacity of 2,000 cfs. In addition to the primary canals, more than 300 miles of laterals and almost 350 miles of drains have been constructed since work on the first laterals began in 1904.

Other features include Lahontan Dam and Reservoir, Carson River Diversion Dam, and Old Lahontan Power Plant. The Truckee-Carson project (renamed the Newlands Project) was.

Principal features include:

- Lake Tahoe Dam

tentacles throughout the Bureau of Reclamation, so that they had people both at the federal and local level, actually throughout the whole national Bureau of Reclamation system, that were doing their part to advance the interests of T-C-I-D or to protect the interests of T-C-I-D. So, they turned out to be a fairly formidable—I can't say ally—formidable adversary in many respects. So, their intransigence at the end was only an extension of where they started, I thought.

### **Tom Jensen's Role in the Settlement Process**

Seney: Were you surprised that a settlement was actually reached by the other parties in this negotiation?

Zell: No, because it seemed as though there were too many interdependent interests, and I think what I was surprised with was that ultimately, with the entry of Tom Jensen into this whole mix. As you probably know from having spoken to him, I think his grandfather was an engineer in that area. So that from the time he was a small child, he was learning about or hearing stories about this area.

Ultimately, everything that the parties had done amongst themselves before took on a totally different shape when Tom got involved

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- Lahontan Dam, Reservoir, and Power Plant
  - Truckee Canal
  - Carson River Diversion Dam
  - Derby Diversion Dam, and
  - "T" and "V" Canals and Power Plant

and started asking questions about the future of the watershed and whether or not there ought to be water meters, and really looking at the whole area with, I think, a broader vision both in terms of contemporary times and future times. I think prior to that time, people were looking right at the present day, wanting to hammer out present-day solutions, perhaps not looking at the management of the whole watershed. So, he added that value into the discussions and took things, I think, from where he found them to a very different place ultimately, and skilfully used the power and authority of his principal, Senator Bradley, to, in some cases, foist upon the parties terms that they would not have introduced on their own, and probably not would have accepted.

Seney: What do you mean?

Zell: Without having gone back and reviewed the report, I couldn't say specifically. I know that the tenor of the discussions changed fairly dramatically once he became involved. And he held many meetings here and in Nevada and spent an extraordinary amount of time educating people and bringing them around, or trying to bring them around, to his point of view as to what is the responsible thing to do here. How can we provide for all of the uses that may ultimately compete against one another?

He perhaps has the influence of a great equalizer, equalizer in the sense that he conveyed to the parties that in the eyes of the Senate committee, or at least the principal for

whom he worked, none of them had a higher standing than any other one, and none of them were inherently bad or good actors coming to the table with clean or unclean hands. There was a certain amount of resentment that was engendered from that, but he also brought people around and brought them to see the wisdom of his way.

### **The Hearing on Public Law 101-618**

Seney: By February of 1990, a preliminary bill has been drawn up. Senator Bradley then holds hearings in February of 1990. Do you recall those hearings?

Zell: I think they were joint hearings, weren't they? Or no?

Seney: I can't remember now if they were, and I just was reviewing them this morning. I didn't bring the book with me. It seemed to me that they were in front of the Water and Power Subcommittee, and these were in February 1990. Numerous people testified, including officials from the Department of Interior and T-C-I-D. It was quite a voluminous hearing book.

In that, Bradley had said T-C-I-D now realized that maybe there was going to be a settlement and some legislation, and they wanted back in. It was at that point that Bradley said, "We'll wait ninety days to see if T-C-I-D can be brought back in." Does that tell you what you need to know?



Zell: Yes, it was a joint hearing.

Seney: It was a joint hearing. Okay. So, Senator Bradley says, “You can have another ninety days for T-C-I-D to be brought in.” You’re smiling and nodding.

Zell: Yes.

Seney: Why are you smiling and nodding?

Zell: I just think at that point there was a point when members of Congress, Senator Bradley and later Senator Reid, began issuing ultimatums and putting the parties on a time line, and many times it was said, “This train is leaving the station. You get on it or you don’t, but we’re never—”

Seney: To T-C-I-D especially?

Zell: Well, to T-C-I-D certainly much strongly, but to all the parties. “You get on this train or you don’t.” I think Senator Bradley sent the message, “We are never going to revisit this. We have invested an enormous amount of staff time in this, and we’re not going to do this again.” It’s been my experience that oftentimes you need somebody from outside the immediate affected area and affected parties to either issue ultimatums or to light a fire under people, and Senator Bradley certainly served that purpose.

### **The Fallon Paiute Tribe Settlement**

The unfortunate extension of that same dynamic was where the Fallon Paiute Tribe found themselves ultimately situated, because they had begun—were in the early stages of discussions with a federal negotiating team to resolve their water rights. And the Office of Management and Budget had set down very strict guidelines that, “We don’t want water settlements coming through this pipeline of water settlements any sooner than we have deigned them to come through. And we want to regulate the time line on which water settlement negotiations come to fruition or put in legislative form and brought to the Congress, because we are now entering times of budgetary constraints and we don’t have the wherewithal to fund every settlement that might come to the fore if we don’t try to impose some sort of order, order in terms of time, on these settlements.”

So, the Fallon Paiute had been scheduled for three-year negotiation. All of a sudden you have Senator Bradley and Senator Reid saying, “The Pyramid Lake Paiute Settlement train is leaving the station,” and Senator Reid having, I think, reached a level of extreme frustration with the parties in the Pyramid Lake Settlement, was feeling that he just didn’t have the stomach to start all over again in the next session of Congress with another tribe, involving some of the same parties in the next Congress. I think—was he about to be up for re-election?

Seney: '92, he would have been up, yes.

Zell: And this was '90. So, in the life of a senator, two years before your re-election is when you start gearing up for your next campaign, and he clearly was not going to have the time to put into it. So, he basically said to the Fallon Paiutes, "We're moving on this, and if you want to settle your claims, it's going to have to be on the back of the Pyramid Lake Settlement."

So, the tribe took him at his word and went to Interior Department and said, "We've got to rush this thing through," and the Interior Department said, "No way. O-M-B won't let us do that." And Tom Jensen had his hands full trying to tie up the loose ends of the Pyramid Lake Settlement.

At that point we got involved, "we" being the committee. Myself, personally, got involved, called the people in from Interior, and said, "We understand what your process is, and we would not want to wreak havoc on that process, but the fact is that this tribe will be left with its water rights unaddressed if things don't happen now. So why can't we spend some time and try to put together a settlement of their claims?"

We had the tribe's wish list and we had what the Bureau of Reclamation felt was reasonable, and we began, in the space of a week's time, hammering out a settlement, much to the chagrin of O-M-B. I must say there has never been a settlement that was put together and then put through the legislative process as quickly as the Fallon Paiute Settlement was.

But those were the political realities, and they could not be ignored.

### **The Omnibus Water Settlement Bill and the Fate of the Pyramid Lake and Fallon Tribe Settlements**

Then as I related to you, I think, on the phone when we spoke, another anomaly, another strange manifestation of the legislative process, there was an omnibus bill that the Pyramid Lake Settlement had been made a part of. There were disagreements between the House and Senate as to provisions of that omnibus bill. It became increasingly clear that that omnibus bill was probably not going to receive the favorable action of both houses in that session of the Congress. We have, in colloquial terms, we've been there and done that. We had been there and done that a few times, and so right from the outset we fashioned the Fallon Paiute Bill as a separate bill and as an amendment to the Pyramid Lake Settlement.

So, by that time we were computerized. We had two computer disks. One went to Tom Jensen and he worked the Fallon Paiute Settlement through the Energy Committee. We worked it as a separate bill, reported from the Indian Committee in very close working relationship with Senator Reid. I recall that we had a meeting down at Interior with the secretary on the whole Pyramid Lake bill and the omnibus bill and what the Interior Secretary might be willing to do at the last minute in terms of coming back to the Congress and saying, "Okay, if this omnibus bill is going to die, let's

pluck the Pyramid Lake Settlement out of it and let it go through and let it not be held hostage to these other interests.”

Seney: You had to make sure that you had the secretary’s agreement to that?

Zell: Well, I think Senator Reid wanted to see him assert—come to the Senate and say, “This is a high priority for me,” come to the House and Senate, for that matter, and say, “This is a high priority. I want to see this thing go through.”

Seney: Did he do that?

Zell: So, we went down to Interior— “we” being Senator Reid, Senator Inouye, my boss, and myself, and Wayne Mehl might have been with us at the time. But I recall on the way back from the Interior Department, we were in a cab, and it must have been the situation that we didn’t get a response from the Secretary of Interior that led us to believe that, in fact, he was going to say, “This is a high priority.”

So, on the way back, I mentioned to Senator Reid, “You know, we have this Fallon Paiute Bill sitting out here as another vehicle for the very precise reason that we could see that the omnibus bill might be coming to a train wreck. If you think it would be at all useful, we could tack the Pyramid Lake Bill on to that, to the Fallon Paiute Bill. It would go forward. It would be enmeshed in the mire of the omnibus bill, and it just might work as a legislative

trick.” Indeed, that’s what we ultimately had to resort to.

Seney: He liked that idea, did he?

Zell: I remember that it was like a light bulb went off and his face showed a great deal of relief, and the thought “My goodness, there might be a light here at the end of the tunnel.” I think it was a few more days before we saw that indeed that was going to be the saving grace for the Pyramid Lake Settlement.

Then by that time we were, as I recall, fairly late in the process, and this was a matter of first impression to the House—not the Pyramid Lake Settlement, but the Fallon Paiute Settlement, and the Pyramid Lake Settlement being tacked on to that. So, I recall that Senator Reid had to go see the man from Boston who was head of the Merchant Marine Fisheries Committee, [Congressman] Gary Studds, and had to persuade him that notwithstanding the interests of his committee in the fisheries issues, Lahontan cutthroat trout and the *cui-ui*, that he needed to waive the jurisdiction of his committee or step aside so that this bill could get through.

Seney: Because we’re now talking about the final days of the session.

Zell: Right. I had a friend on that committee who worked for Congressman Studds, who was in the meeting, and he said, “Gee, Harry Reid was willing to do anything and everything. He had

many, many arguments in his quiver of arrows that he was going to serve up to persuade Gary Studds, and it was very clear from the time he came into the room that he was not going to leave with an answer that he didn't like." Ultimately Congressman Studds accommodated him they just stepped aside, I think, or they didn't assert their jurisdiction over the bill.

Seney: My understanding is that the T-C-I-D people tried to kill it there at that point in front of Congressman Studds's subcommittee and had gone first to him and had said things about the bill that weren't so. Did you understand that to be the case?

### **How Information Flows in Washington**

Zell: Yes. What's interesting in all of this is that notwithstanding people's perceptions who don't know Washington, is that Washington is a very, very small town, and many people who've been here for any length of time have been recycled into different government jobs. So, the people in the Indian Division in the Solicitor's Office were people with whom we worked with because of our mutual interest of the Indian Affairs Committee. My husband had formerly been the minority counsel on this committee and was now working in the Indian Division of the Solicitor's Office, so I was aware of what was going on inside, even though the people in the Solicitor's Office couldn't always be forthcoming with me as to the battles they were fighting.

Another person who worked in the Solicitor's Office was now staff to Gary Studds, and he was close friends with Joe Membrino in the Indian Division of the Solicitor's Office. He was not in the Indian Division of the Solicitor's Office; this other friend Don Barry. So, he had a back channel to know who T-C-I-D was, what role they had played in the history of this whole thing, and why they might be misrepresenting the nature of reality to Congressman Studds, and why they would see him as their really last hope to defeat the settlement.

So those were just a few of the back channels of communication that were going on that probably will never be known to most people, but that were very key in terms of turning things around.

Seney: And Congressman Studds could not have been very happy when he realized the situation had been misrepresented to him.

Zell: I don't know about that, but I suspect not.

### **The Fallon Settlement**

Seney: Let me ask you a little bit about the content of the Fallon Bill. There are a couple of things in it. First of all, there's a settlement fund, a \$143 million fund, which apparently originally was \$50 million, and Secretary [Manuel] Lujan [Jr.]<sup>16</sup>, in a letter that accompanies this report,

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<sup>16</sup> Manuel Lujan served as Secretary of the Interior under the administration of President George H. W. Bush from 1989 to 1993.



objected to that amount. So, it was reduced to 43 million to accommodate the objections of the Secretary of the Interior.

Then no more than 20 percent of it can be allowed for individual disbursements. What's the thinking behind that?

Zell: That has more a history of its own, and that is that per capita payments—

Seney: I guess that's what I mean, per capita.

Zell: Per capita payments of judgment fund distributions, judgments from the claims court, or in settlements—that's less frequent—have had the unfortunate effect of being distributed to people who are not accustomed to having large windfalls of cash. So over time, I think the classic example that in prior years would be advanced would be that you would see a lot of new fancy pickup trucks on the reservation right after there had been a distribution of judgment funds, but then it would often happen that the persons could not keep up the payments on new vehicles or whatever they might have purchased with that windfall of cash. That's been a story that's repeated itself throughout time in Indian country.

So, the Congress, or this committee, more specifically, has a bias against per-capita distributions of any sort of large fund, and has certainly in the last fifteen years not only limited every per-capita distribution, limited not only its amount, but the purposes for which it can be

expended. So, you will find all sorts of laws that have that same pattern in them, and that was what would inform this settlement.

I would say also the Fallon Paiute Settlement, by virtue of the fact that all this had to be put together in a very short time, and by virtue of the fact that great, great battles were waged over the amount of the federal contribution to the Pyramid Lake Settlement, that the Fallon Paiute could have been asking for \$100,000, and that would have been, from the Office of Management and Budget's vantage point, more than the traffic would bear, and they really had an uphill battle to get a dime of funding in their settlement. So, they were at an extreme disadvantage in that regard.

Seney: Another aspect of this—and I think I mentioned this to you when I spoke to you initially over the phone—was the number of acres that were now going to be allowed to be irrigated on the reservation. The legislation actually cuts down the number of allowed acres, but this \$43 million fund can now be used to acquire other acres that are water-righted up to a certain limit. Only 2,415.3 acres of land can be acquired, and no more than 8,453.55 acre feet per year of water rights so acquired.

It's been suggested to me that this was meant to cut down the overall diversions from the Truckee River. That is, you limit the number of acres, you cut down the number of acres that the Fallon Tribe can irrigate. Then you say, "Here's money. If you want more, buy

them. They've got to buy them from other people. The net effect of that is to reduce the amount of water flowing through the Truckee Canal into the Lahontan Reservoir. Is that how you understand that?

Zell: Well, I guess, in short, yes. Again, everything has to be couched in terms of the short amount of time, so that we didn't have time to work out areas of disagreement to their ideal conclusion. First of all, the federal contribution was going to be restricted, whether it was in money or in terms of what the federal government would say the tribe had a right to X amount of irrigated acres. So that was one factor. The Bureau [of Reclamation] was the more prominent player in this because they were going to strictly hold the line and say, "No more." And the tribe was very much at a disadvantage in that regard.

Secondly, it was unknown how much mitigation efforts were being undertaken by the Fallon Naval Air Station to reduce the amount of water that was used, for instance, to spray down the runways so that the dust would compact. They were using a lot of water, as I recall, to do that, so there was an unknown factor of how much water could be acquired by the tribe, either through willing sellers in the Truckee-Carson Irrigation District or how much water might be ultimately saved from the Fallon Naval Air Station.

The tribe clearly did not want to be restricted by what the Bureau of Reclamation was saying, "You can only have this much," or,

“The only amount of acreage we’re willing to help you irrigate,” and that’s why their fund really is different perhaps from other water settlement economic development funds, because it clearly always had the intent that the tribe was going to want to expand its base of—

END SIDE A, TAPE 2.

BEGINNING SIDE B, TAPE 2.

Seney: That got cut off about the acreage.

Zell: The tribe had wanted to irrigate more acreage than the government thought was viable or appropriate, and that was part of a larger debate that was going on at the time about the viability of irrigated agriculture generally. A debate that had taken place in the context of another water settlement, the San Luis Rey Water Settlement, in terms of lining of canals. I think the government basically felt that there was a lot that could be done on the Fallon Paiute Reservation to conserve the amount of water that was already being used for irrigated agriculture by lining canals, by a lot of repair and rehabilitation to their existing water system, which the tribe had been—this is typical, happened all over the country—the tribe was promised certain benefits from the Reclamation project which were never forthcoming. When you go out on the land, you can see where the canals fall in disrepair and then were never built onto the Indian land.

So, the tribe wanted, “Hey, we want the benefits that we should have gotten from the

Reclamation project to begin with, and we think that's our starting point." The government comes in, in 1980s and '90s, and says, "Well, we don't know if irrigated agriculture is such a good idea anymore. It's not an effective use of water, and we don't think that as a government policy we should be fostering and raising expectations that irrigated agriculture is the answer to a viable economic future for you, the Fallon Paiute Tribe."

### **Relationship between the Fallon Tribe and the Pyramid Lake Tribe**

There is some significant degree of paternalism going on here in terms of what the Interior Department feels is good for the tribe and what the tribe feels is good for it. And the tribe, not being of any near size or the same political influence or clout as the Pyramid Lake Tribe. And the Pyramid Lake Tribe was fighting its own battles to have its water settlement survive, so while they were sympathetic, they could not really take on that fight.

There's a lot of intermarriage between the Fallon and Pyramid Lake Paiute Tribes, and there was a time—when I talked about getting whipsawed, I don't think I used the word in this context, but sort of the back channels when the players in Nevada had two agendas, the one that they were running with the parties and the ones that they had of their own. There was a time when we were getting rumblings that there was a perception that was, I believe, fed by certain

people, not necessarily the leadership of the Truckee-Carson Irrigation District, but people who were part of that irrigation district, who were fanning the flames of a perception by the Fallon Paiute Tribe that the Pyramid Lake Tribe was on some level working to undercut or defeat a settlement for the Fallon Paiute Tribe.

Seney: You don't think that was true?

Zell: I don't know. I don't know.

Seney: Let me say, I asked you about this acreage business because it's been suggested to me by Joe Ely that that's exactly what went on here, that the Pyramid Lake Tribe was angry at the Fallon Tribe for slights. There was an incident when there had been a death—as you say there was a good deal of intermarriage, and a woman who had married from the Pyramid Lake Tribe to the Fallon Tribe had died, and a bunch of them [from the Pyramid Lake Tribe] went down to the funeral. There's a rec room, and they go into the kitchen and they ask for a drink of water, and the Fallon Indians say to them, "What do you want our water for? You've got all our water already. You can't have any water."

And when Joe Ely related that to me, his face completely changed. He was really angry about that and said, "You don't treat our old people that way." He suggested to me that this was part and parcel of payback for that kind of slight and insult and siding with T-C-I-D against the Pyramid Lake Tribe.

- Zell: Well, I guess the Fallon Tribe.
- Seney: I'm sorry. Yes. No, no, Fallon siding with T-C-I-D against the Pyramid Lake Tribe.
- Zell: What I'm aware of is that T-C-I-D sponsored meetings or participated in meetings where they were actively trying to pit the two tribes against one another and have the Fallon Paiute Tribe feel as though Fallon Paiute and T-C-I-D were in the same shoes interest-wise, and Pyramid Lake was their adversary. There were various little family interactions that fed into this as between the two tribes, but it was clearly in T-C-I-D's interest to have Fallon Paiute adopt this mind-set.

It was at that point that Senator Inouye intervened and went out.<sup>17</sup> I mean, here's a senator from Hawaii, takes it upon himself to go out and meet with each of the tribes separately, and hear from them, let them share with him all of their grievances, be they against other Nevada parties, but particularly the relations between the two tribes. So, we hear chapter and verse of that particular incident, other little family picnics where so-and-so wasn't invited, or someone was slighted, and there were things that would go on, I think, in communities that are intermarried anywhere, I suppose. But there were a lot of other interests that were trying to make this battle worse than it was.

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<sup>17</sup> Daniel K. Inouye represented the state of Hawaii in the House of Representatives from 1959 to 1963 and went on to become U.S. Senator from 1963 to 2012.

The senator went in, and after hearing out each tribe, said, “You know, I’d like you for a moment to look at this world through my eyes, what I see as a person of an ethnic minority background,” him being of Japanese-American ancestry. And a person who, notwithstanding the proud record of the 442nd Regimental Combat Battalion that he was part of in World War II, suffered at the hands of discrimination in many ways after the war. He said to the tribes, “I hope that you can see that it is in the interests of non-Indian people in this state to divide you and pit you against one another and have brother fighting brother and uncle fighting uncle. And while you’re fighting, they will steal your resources and they will take advantage of you. So, in my view, you don’t have the luxury to fight amongst one another, and even if you do have good reasons to be at war on a family level or on a tribal level, I would ask you for the time being and for the sake of future generations to put your disagreements aside and understand that you will be used and manipulated in the worst of ways if you allow anybody to drive a wedge between you.”

He met first with the Pyramid Lake Tribe and then we spent a second day with the Fallon Paiute Tribe, and at the end of the second meeting, the leadership for the Fallon Paiute Tribe agreed, or offered—they didn’t agree, because this wasn’t something Senator Inouye proposed, but they said, “Senator, we’ve taken your words to heart, and we were planning to have a big picnic in about—” I think it was the next week or ten days away. “To show you our



good faith, even though we think we'll be rejected, we're going to offer and invite the leadership of the Pyramid Lake Tribe down here and we will eat together, we will break bread together, and hopefully we will begin to mend our fences and try to heal our wounds."

So that was unusual in the sense that it was the smaller tribe, the less powerful tribe, that was inviting the bigger tribe and the more powerful tribe to come to the table, and it showed tremendous largesse on their part, and leadership as well.

Joe [Ely] can have a very hot temper. So, it was clear early on that it was going to be difficult to bring him around. But I think, as I've seen the senator do his work both in terms of the respect that he has earned in this body, but also as an older person and a person who has earned great respect in Indian country, even though that was early on in the tenure of his chairmanship, I think the elders of the tribe heard him and respected him because of his age and his experience, and, not unimportantly, because he was a minority himself and could relate to them and could relate to their life experience. They heeded what he said. And, again, as I said before, the role that Senator Bradley played in terms of being someone from the outside, urging people to—issuing ultimatums, and Senator Reid probably issued an equal number of ultimatums, but he was one of the insiders. And for some reason, people don't take people on the inside as seriously as they do outsiders.

In this case, Senator Inouye had a key role to play as a person from the outside, urging them in the strongest possible terms not to come before anyone in Washington and let their dirty laundry or their disagreements be aired in public. At one point he said, "If we have another hearing on this and if you can't agree, then I would urge one or both of you not to come to Washington. If you do nothing else, don't come to Washington in a public hearing format and say anything against one another, undermine each other in any way, shape, or form, because if you do, you'll never ever be able to recoup the losses and effects that will have for future generations."

And they needed to hear that, because otherwise I think they wouldn't have been able to rise above the differences that preoccupied them at the time.

Seney: That must have been quite moving, I would think, when he said that. Was it an emotional moment?

Zell: Oh! it was. In both places there was a lot of crying, and it affected people on a very deep emotional level.

### **The Truckee-Carson Settlement**

Seney: I would think. What is your view, overall, of the Truckee-Carson Settlement? Do you think it's a good one? Does it settle enough?

Zell: Well, there were issues like the OCAP [Operating Criteria and Procedures] issues. I think at every step of the process of the settlement, there was still all this litigation going on, and there were issues that probably people thought could never be resolved. And certainly, there were issues that were not going to be resolved in the settlement, some of which would have to reach their fruition in the litigation process, and others which were settled.

#### **Who Benefitted from the Truckee-Carson Settlement**

Seney: Of course, the OCAP, T-C-I-D can't sue on the OCAP until this December 31st. It's here already, and I'm sure they will be in court over that. The letter from Secretary Lujan that's appended to this, it gives quite a list of the advantages that this brings to the Pyramid Lake Tribe. In reading this, one would think that in this Title II, [of Public Law 101-618] that Pyramid Lake is really the big winner here. Would you see it that way?

Zell: Well, I think that hopefully the fish were the big winners, but I think that there were a lot of benefits spread around the table. In fact, while in some arenas this committee would be heard to say that no Indian water settlement is a precedent for any other Indian water settlement. After this settlement, word spread like wildfire across the West that the way to resolve non-Indian water rights was to have an Indian water settlement be the engine that drives any broader settlement of non-Indian water rights.

So, I think that people who were very cynical in saying the benefits that accrued to the cities of Reno and Sparks, to Sierra Pacific, and generally to water users in that area certainly equalled, if in some instances outweighed the benefits that the tribe received. And I would not be surprised, though I have no way of knowing, that the secretary felt it important to give prominence to what benefits the tribe derived from the settlement, to sort of counteract those countervailing impressions, that everybody else was capitalizing and reaping benefits on the back of the tribe.

Seney: Well, certainly California and Nevada got what they wanted, the two states, in terms of the finality in the interstate allocation of water as well. Is this a good settlement act, do you think, as you see these things?

Zell: I think it's—let me say the reason I'm hesitating is that there was a conference last Monday and Tuesday in Phoenix on Indian water rights and Indian water settlements. And gathered there were pretty much every person that's been involved in one or another aspect or phase of Indian water settlements. So, my mind is filled with a lot of recent input, because things are changing rapidly, and what was good about the Pyramid Lake settlement and what was good at the time is now being revisited under the guise of budgetary constraints.

What was good about the settlement is that the parties reached some agreement and that, in fact, the values that the different parties had did

receive some degree of protection. The amount of money that the Pyramid Lake Tribe received was thereafter sought by any other tribe that was involved in a water settlement. It became—no pun intended—the watermark for every other settlement, and any tribe that came in—the next settlement we worked on was the land claim settlement, and the tribe came in and said, “Good enough for the Pyramid Lake Tribe, it’s good enough for us. We want 75 million,” and that’s where we start.

And it was a game of skillful poker playing that Joe Ely exercised, the brinkmanship that he did, and refused to take any less, and almost saw the whole thing fall apart, but he held fast. For a young man at the age he was at the time, to have taken on that risk, he could have been shot down and been left with nothing. It was an enormous display of courage on his part. But I digress from the goodness of the settlement.

Generally, the view of this committee has been, and we thought what also informed federal policy, was that negotiated settlements were far a more preferable route to take than litigation. In part, because litigation spawns winners or losers, and all of the attendant feelings that accompanied those respective statuses, outcomes. Whereas, the process of negotiation inevitably puts parties who may have perceived their interests as being pitted against one another in a posture of having to not only reconcile their competing interests, but plan for the future of the watershed and how

their waters are going to be allocated amongst their respective interests, uses, values.

That is the reality in which they will continue to live, because, after all, the tribes are not going to leave, and non-Indians are not likely to pull up stakes and move someplace else. So, people have to, or ought to, in the best of all possible worlds, think of themselves as partners in the future. And they ought to be able to overlook their differences in ethnicity and history and experience and see themselves as legitimate stakeholders in the future. Those are the immeasurable values that negotiated settlements have engendered and, in our view, are far more preferable, and you can't put a price tag on that.

Once the parties get their settlement to the Congress, they've got 535—subtract the members of the delegation, so whatever the balance is, let's say in the case of Nevada, 532 members of the Congress who at least theoretically are going to bring their infinite wisdom to bear on whether or not they think this is a good settlement, good for the government, good for the country, so on and so forth.

What inevitably happens is the legislative process is so tortuous that the parties become almost joined at the hip, because if, failing that, they can't accomplish anything because they've got too many fires to put out on too many fronts, so once they finally emerge—and we've seen this time and again—they're bonded in a way that even celestial beings couldn't bond them

together in quite that fashion. That's perhaps the beauty, as well as the downside, of the legislative process.

So, I think for those reasons, then, for the fact that this settlement continues to have such prominence in the world, in the universe of Indian water settlements, I think it was a good settlement. In terms of its specific terms, I don't think I'm in a position to gauge that, and in terms of how the Fallon Paiute Tribe may feel about what it bargained for and what it got today, I don't know. I don't know how to measure that.

#### **TCID and Section 209 of Public Law 101-618**

Seney: Probably the only loser in this, or people who think they are losers, is T-C-I-D, through Section 209, I guess. This was the part that they see as punitive, that offers them a water bank and other kinds of advantages, but they've got to do certain sorts of things. They've got to resolve the recoupment issues and all that.<sup>18</sup>

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<sup>18</sup> On behalf of the Pyramid Lake Paiute Tribe, the Interior Department claimed that between 1973 and 1987 (15 years) the Truckee-Carson Irrigation District (TCID) over-diverted approximately 1,057,000 acre feet of Truckee River water and called for a recoupment to be repaid to Pyramid Lake. Churchill County, the City of Fallon, and TCID officials, as well as Newlands Project farmers, claimed that because of a lawsuit filed by the City of Fallon in 1974 against the implementation of the 1973 OCAP, and because the appeals process for these suits against the implementation of the new OCAP were not fully resolved until 1988, the claim for recoupment of excessive diversions before that date is unreasonable. The recoupment of Truckee River waters remains a major issue in the eventual resolution of the Negotiated Settlement Act (Public Law 101-618) which, when passed by Congress in

And some people see this as punitive, that this was put in to pay back T-C-I-D for trying to kill the legislation at several points. Do you recall the genesis of 209 and how it came to be in the legislation?

Zell: Well, I think when you look at the federal government and what could be construed as awesome power, when it comes right down to the ground, the federal government has very few tools to use. It's simple elements like a carrot and a stick, and I think that sincere people were trying to employ both carrots and sticks to get T-C-I-D to come into the fold. And so, what might be viewed as incentives to some, or disincentives, would be viewed as punitive to others.

But you look at the way the Highway Trust Fund is administered. The federal government says you do it to each state. "You do X, Y, and Z, or you're not going to get this money. Even though it's your money that you paid into this fund, we're not going to give it back." That conditioning, trying to get people to behave well, in however "well" is defined at the time, is something that the United States does all the time.

I suspect that in this little slice of the world and in this little slice of the exposure T-C-I-D has to the United States generally, they don't see perhaps their neighbors in other

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November 1990, was intended to settle the myriad of claims and outstanding lawsuits associated with these issues.



Reclamation projects being treated the same way, if they've looked that far, if that's their yardstick. But I would suggest that it's not dissimilar at all in terms of the way the United States tries to bring people around.

T-C-I-D has never done itself any favor in terms of its public intransigence on OCAP, on recoupment, on any sort of water-saving measures. And I think in contemporary times, it just cuts against the grain of what most people feel is absolutely necessary if there's going to be sufficient water resources to serve the needs, all the needs that there are.

Seney: That's all the questions I have for you. Anything you want to add? Anything we should know that's not here?

### **The Future of Water Settlements**

Zell: I think what's said—and this was discussed at length last week—now the government seems to be of the view, and the Secretary of Interior—you might want to get a copy of the transcript of his remarks before this conference sponsored by the Western Water Policy Review Advisory Commission, but he basically—and he was speaking from the context of his experience as Governor of Arizona and the water settlements that they entered into or were part of at the time that he was governor.<sup>19</sup>

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<sup>19</sup> At the time of this interview, Bruce Babbitt was the Secretary of the Interior, serving under the Clinton administration.

Now, as Secretary of Interior, he is calling into question whether the United States has the necessary leverage to encourage parties to pursue the negotiated settlement route. While he didn't come out and endorse litigation, he certainly seemed to suggest that maybe we need to return to an era of litigation so that parties can see the contrasting wisdom that informs the negotiated settlement policy.

But I think if we do indeed need to return to that era, that would be most unfortunate. There have been at any one point in time something like thirty-three negotiating teams out in the West, trying to negotiate water settlements. So, people's expectations, both Indian and non-Indian, have been raised that this is United States policy, we're all going to walk this path. And now it's not atypical, but unfortunately the government seems to be shifting gears and sending different signals.

So, the Pyramid Lake settlement may become one of less than a dozen, and we may not see these manifestations of people trying to work together and fashion the best solutions for a long time to come. I don't know. I can't look into the future. But there have always been budgetary constraints. There clearly have always been budgetary constraints in Indian country, and I know the tribes would suggest that none of the reclamation projects, Bureau of Reclamation or Army Corps of Engineers' projects, have ever provided the benefits that were promised to the tribes, whether its Pick-Sloan on the Missouri River basin or other

Reclamation or Army Corps projects in the West.

So, there's a checkered history and, in some respects, the Pyramid Lake settlement and others which followed represent the high point. And I fear we're on a downward trend or a decline in that mode of problem-solving. I think that's most unfortunate from a federal policy point of view.

Seney: Okay. That's great. I really appreciate it. Thank you, on behalf of the Bureau.

END OF INTERVIEW.