

ORAL HISTORY INTERVIEW

GORDON DE PAOLI



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Interviews Conducted and Edited by:
Donald B. Seney in 1999
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Statement of Donation

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Date: July 16, 1999

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GORDON H. DePAOLI

INTERVIEWER: DONALD B. SENEY

**Gordon De Paoli Oral History
Newlands Project Series**

Having determined that the materials donated above by GORDON H. DePOALI are appropriate for preservation as evidence of the United States Government's organization, functions, policies, decisions, procedures, and transactions, and considering it to be in the public interest to accept these materials for deposit with the National Archives and Records Administration, I accept this gift on behalf of the United States of America, subject to the terms, conditions, and restrictions set forth in the above instrument.

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

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

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

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

The senior historian of the Bureau of Reclamation developed the oral history program. 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

Oral History Interview Gordon De Paoli

Seney: My name is Donald Seney. I'm with Mr. Gordon De Paoli in his offices in Reno, Nevada. Today is July 15th?

De Paoli: Sixteenth.

Seney: Sixteenth, thank you, 1999. This is our first session and our first tape. Good morning, Mr. De Paoli.

De Paoli: Good morning.

Seney: Why don't you give me a brief, sort of, autobiography, when and where you were born, and whatnot.

Brief Biography

De Paoli: Okay. I was born in Reno on May 6, 1947. Pretty much my entire growing up was on my family's ranch in Wadsworth. My mom and dad moved out there in about 1951. I went to Wadsworth Elementary School for eight years, Fernley High School, graduated in 1965. I went to the University of Nevada in Reno from 1965

to 1969. I got a bachelors in political science. Got a, I went, at the University of Nevada I went through the R-O-T-C [Reserve Officers Training Corp] program and was commissioned in 1969, received a delayed active duty status to go to law school. I went to the University of Colorado Law School in Boulder from 1969 to 1972, then came back to Reno and went to work for Woodburn and Wedge. I spent some time on active duty and then I've been here with Woodburn and Wedge ever since.

Seney: This is a large firm, I take it. We're on the Sixteenth Floor of the Wells Fargo building looking at a beautiful view of Reno.

De Paoli: It's . . .

Seney: Fifteenth, I guess? We're on the Fifteenth Floor?

De Paoli: We're on the Fifteenth Floor. (Seney: Right.) It's an old-time law firm. The, on the walls you can see some of the history. But, the senior Woodburn and some other, and another gentleman named George Thatcher started the firm in 1918. And, we have about twenty lawyers at this time.

Seney: Uhm-hmm. Okay. Tell me a little bit about your ranch out in Wadsworth. When did that

come in? You're smiling. I don't know why, but you'll tell me why you're smiling.

De Paoli: Well, that's a, that's a long story. (Laughter) I don't know where you want to start.

Seney: Well, you know, I want to ask you about it, because in a sense it bears on Public Law 101-618.¹ And, if it didn't, I, outside of a general curiosity about history I don't suppose I'd ask you very many details. But, because it relates to

¹ Public Law 101-618 became law on November 16, 1990. The law contains two acts: The Fallon Paiute-Shoshone Tribal Settlement and the Truckee-Carson Pyramid Lake Water Rights Settlement Act. The main topics of the legislation are:

- Fallon Paiute-Shoshone Tribal Settlement Act
 - Interstate allocation of waters of the Truckee and Carson rivers.
 - Negotiate a new Truckee River Operating Agreement (TROA).
 - Water rights purchase program is authorized for Lahontan Valley wetlands, with the intent of sustaining an average of about 25,000 acres of wetlands.
 - Recovery program is to be developed for the Pyramid Lake cui-ui and Lahontan cutthroat trout.
 - The Newlands Project is re-authorized to serve additional purposes, including recreation, fish and wildlife, and municipal water supply for Churchill and Lyon Counties. A project efficiency study is required.
 - Contingencies are placed on the effective date of the legislation and various parties to the settlement are required to dismiss specified legislation.
-

(De Paoli: Okay.) the Indian reservation. So, if you could talk about it in that context. It was, it was right up against the Indian reservation, right?

Family Ranch in Wadsworth

De Paoli: Yeah. I guess I, to talk about that I need to start with my great grandparents on my father's side, both his father, his father's parents and his mother's parents. My dad's mother's father and mother, I'm not sure when they came exactly to Nevada, but they first, from what I know about them first is my great grandmother, or grandfather, they lived up in what is known as the Lockwood Canyon, which is sort of between the Truckee River and Virginia City in the Virginia Mountains. And, my great grandfather cut wood for the mines in Virginia City in the early years. This was probably in the 1870s or 1880s. And then, they eventually moved to Wadsworth, acquiring a ranch below Wadsworth known as the Proctor Ranch. That was probably in around 1890.

My grandfather's father came to Nevada in the 1870s, late 1870s, and went to work in the mines in Virginia City. But, I think at the time they lived in Dayton. And then he, he died and my great grandmother married a fellow who's

name was Dominico Serasola [Spelling?], and they stayed in Dayton for a while, and around 1900 moved to Wadsworth and acquired what was known as the Bolinghouse [Spelling?] and Felnagle [Spelling?] ranches, which were also below Wadsworth.

And then, I guess, my grandmother and grandfather met and I think they were married in about 1905, in Wadsworth. And after a few years, I think it was in about 1918—well, let me, let me back up. My grandfather then, who was a young man in about 1905, he had a number of half brothers. There was Bill Serasola [Spelling?], and Fred Serasola [Spelling?], and Louis Serasola [Spelling?], and a number of half sisters, and they were all working with his stepfather and mother on what was then the Serasola [Spelling?] Ranch. After my grandfather married my grandmother and after they had some of their—I guess they had all five. They had, the first children were five boys and they had had all five boys by then, by 1918. They moved to and took over my grandmother's father's ranch, the Proctor Ranch, and a number of other ranches. They had most of the ranches below Wadsworth, from Wadsworth down to what was called the Salt Marsh. And, all those ranches were inside the boundaries of the reservation, and there's a long history about

how that happened, but it relates to the Central Pacific Railroad.

When the reservation was set aside in 1859, when the line of the Central Pacific was determined, Wadsworth was one of the principal stopping off points, I guess, for the railroad. And, and so, there was a series of things that happened in about 1865, which in my judgment resulted in the abandonment of the reservation from Wadsworth ten miles down river. Anyhow, that's how the government, United States, began to issue patents to people within that area. And . . .

Seney: Had these been railroad lands, the alternate sections that they were given as (De Paoli: Well . . .) part of it?

State and Railroad Patents Issued to the Land

De Paoli: That's, that was the, that was part of the idea. They were both railroad. There was railroad patent issued to land and also state patents issued to (Seney: Yeah.) land within there, and that's how some of, how they actually acquired the patents within the reservation.

Seney: But, you used the term, if I may, "abandonment," that you were, you're

convinced that there had been abandonment of this land that became your family's ranches, and I guess maybe some other's owned property there too?

De Paoli: Yeah. There were others. There were other families. But, the other prominent original seller down there was a fellow by the name of T. G. Herman. (Seney: Uhm-hmm.) Anyhow, there were patents issued and people were occupying the lands thinking they were going to be able to get title to them, and about nineteen-oh . . .

Seney: Actually, I want to stop and say, why did you think they were abandoned? What led you . . .

De Paoli: Well, there's a series of correspondence between the, within the Department of Interior that essentially says that, that the, "The reservation along the line of the Central Pacific Railroad is abandoned." And, I could show you all this. I have it.

Seney: No. No, I believe you. I believe you.

De Paoli: I have all kinds of stuff.

Seney: I'm just curious as to why, why you . . .

De Paoli: “It is abandoned (Seney: Yeah.) from the (Seney: Right.) line of the Central Pacific Railroad ten miles down river.” (Seney: Right.) It’s basically what the communication (Seney: Yeah.) said.

Seney: No. I accept what you say. I was just, the word “abandonment” perked up my ears.

Wadsworth was a Bustling Community

De Paoli: And actually there were, there was, I mean there’s a whole history of, of what was going on there in the 1890s, Senator [William] Stewart appointed a, or the Congress appointed a commission to negotiate with the tribe to actually abandon more of the reservation, and that, that kind of fell apart. Wadsworth, at that time, was a very busy, hustling, bustling community and people wanted to get things straightened out as to what the status was. Unfortunately, in the research that I’ve done, Senator Stewart, I think, got, got a little bit too—I’m not sure if “greedy” is the right word—but, he had a, his proposal was to abandon the Walker River Paiute Reservation entirely and move the Walker River Paiute Tribe to Pyramid Lake, and that’s where the Indians said, “Enough is enough. We aren’t

going to go with that deal,” and it never got through the Congress.

Seney: He had ambitions dealing with Walker Lake, obviously?

De Paoli: Well, I don't know what, exactly what his plans were over there. (Seney: Yeah.) (Laughter) You can read a lot about Senator Stewart. Supposedly he was, did whatever the railroad companies wanted him to do.

Seney: Oh, I see. Okay. Not an unusual situation (De Paoli: Right.) in the late 19th century. Yeah.

De Paoli: Anyhow, what happened is in 1902 the railroad moved all of their operations, they changed the line of the railroad and they moved all their operations either to Fernley or to Sparks and Wadsworth no longer was the community it had been. And so, a lot of the pressure to accomplish things went away. But, in 1924 an act was passed by the Congress that essentially said two, two things. One, it confirmed the validity of all patents that had been issued in the, within the reservation. And second, it allowed people who were occupying land within the reservation, for which they did not have title, to buy that land. And, that was legislation that got through by, through the work of one of

the—there were two brothers—Pittman, Senator Pittman, Senator Key Pittman, if I recall. I think that's who it was.

Anyhow, my family, still down on what was the Proctor Ranch, and the Serasola [Spelling?] family still on their ranch, applied to buy the land that they didn't have patents for. Another family, the Garabana [Spelling?] family, who were now on the ranch that Herman had originally put together, did the same thing. The first thing that happened was a disagreement over how you established the value. The United States took the position that the value should be based on the way the ranches were at that time, which were in, in an improved state. The settlers out there took the position that, "No, we're the ones who, it was our efforts that did that and therefore you ought to value it the way it was when we got here, not as farms." And, that went on for a while and they, eventually the government prevailed and there was a payment schedule.

And then what happened with my family was the Depression hit and they didn't have the money to make the payments. Sort of at the same time, Senator [Pat] McCarran was working to circumvent that whole process and pass legislation that would simply eliminate any need to make any payments. He was

completely unsuccessful with that. Finally, my grandfather came to Reno and borrowed some money from an Italian man, Manuel Caparata [Spelling?], who was sort of a wheeler-dealer in this, in the Truckee Meadows, and made the final payment, but the payment was late and the government refused to accept it. And so, litigation was filed to evict my dad's family from, from the land that they didn't have patents for. That litigation they won. My family won in the U.S. District Court in Reno on the basis of that the government, having gotten the payment and kept it, was estopped from claiming it was late. That went to the 9th Circuit Court of Appeals and the Court of Appeals reversed saying that, "No, you couldn't, the government couldn't be estopped, and the payment was late, and therefore they should be evicted from the land that they didn't have a patent to." And, they were. But, they still had 160 acres that they did have a patent to down there.

In the meantime, the Garabana [Spelling?] family was evicted from the portion of the Herman Ranch that they didn't have a patent to. And, Senator McCarran continued to work on trying to get some resolution legislatively. Finally, in 1955 he was able to get some legislation through that, resulted in a payment to my family of some money for some of the

improvements that were on the property downriver. And then, they also entered into an exchange with the United States and they essentially exchanged so that they would have their ranch in entirely one spot.

Part of the Ranch was Within the Reservation

I need to back up. When my, when we, when my mom and dad and I moved to Wadsworth in 1951 it was because my family had purchased what was left of the Garabana [Spelling?] Ranch, also within the reservation. And, in 1955 they essentially traded the patented land downriver for the land that the Garabanas [Spelling?] had lost. And so, the ranch that, where I grew up, was put back together and was right at the entrance to the reservation. Actually, part of it was out of the, entirely outside the reservation, right on Interstate 80, where Interstate 80 crosses the Truckee River headed east toward Lovelock. So, that was the ranch that we had when I grew up, or where I grew up, and that was the ranch that was part of the exchange that happened as a result of Public Law 101-618.

Seney: How large was the ranch by the time it was exchanged in 101-618?

De Paoli: Well, the ranch, the ranch itself, on the river, was about 500 acres. In addition, my grandfather, and my dad, and his brothers had purchased about 11,000 acres in the Parra Range of the Virginia Mountains, completely outside the reservation but abutting the reservation. It's a range of mountains that is sort of along the highway from Wadsworth to Nixon. So, there was a little over 11,000 acres in the ranch in both places. What, I'll tell you what brought about the idea for doing something in 101-618 (Seney: Please.) to have some provisions for exchanges.

And I don't, I can't give you the exact dates. But, at some point in time the Tribal Council enacted a tax code on the reservation, which applied to all non-Indian businesses, including my family's ranch operation. It was essentially a two percent tax on, essentially upon gross income, and we had a lawsuit over whether that tax could be, could or couldn't be enforced against people within the reservation. That went on for several years and ultimately Judge Bruce Thompson ruled that based on the history that, that the tax code could not be enforced against my family. In addition, the tribe was enacting some zoning codes and other things and it was clear that, it was clear to me that we were going to have a long disagreement over how much

jurisdiction the tribe had over fee lands within the reservation, over [inaudible] issues.

Seney: They were trying to encourage you to get out, you think?

De Paoli: I'm not so sure that that was what they were trying to do, really. I think they were just trying to, I mean as all over the country Indian tribal sovereignty is an important issue for Indian tribes and they were simply trying to assert that. I think they weren't concerned, really, about the ranching operation that my family had, but they were more concerned about what would happen if someone who didn't want a ranch acquired those properties and started to subdivide. (Seney: Yeah.) And, that was a potential with another ranch nearby. Anyhow, there was a culmination of things I guess that happened. One, it was clear we were going to have a long and lengthy and expensive bit of litigation over how much authority the tribe had. The other thing that happened is my, my dad and his four brothers ran the family ranch and at about the same time three of the brothers died and it was fairly clear that we were getting to the point where something would have to change, just from the standpoint of the family, because there wasn't going to be family there to continue.

Seney: You weren't going to give up your law practice (De Paoli: Continue to . . .) to go out and ranch?

De Paoli: Right, to continue to run the ranch. And, my dad had a serious heart attack in 1986 and then had to have two, a heart surgery then and then another one in 1990. So, it all kind of came together and the family decided to sell everything, the entire ranch, and it was listed and, and it was available for sale.

Seney: I wouldn't think it would be a particularly easy property to sell given what the tribe was up to and the litigation you had been through?

Sale of the Ranch Coupled with P.L. 101-618

De Paoli: I don't think it would have been. I mean it, we had it on the market for a couple, couple of years, I guess, before 101-618 and we had one, one or two very serious offers, but they didn't actually come, come together.

Seney: How much did you value it for for sale?

De Paoli: We were asking, I think, \$6 million for the . . .

Seney: It's a very valuable piece of property, isn't it?

De Paoli: An entire ranch. Well, the land and the water on the ranch, based on prices was, (Seney: Right.) was pretty valuable. The—anyhow I remember when 101-618 was being worked on there were, in Section 210 there's a number of things that the tribe was getting that kind of were not completely related to the water settlement, but were intended to avoid arguments about jurisdiction, and that sort of thing, one related to who owned bed and banks of the river and the lake, who had the jurisdiction over hunting and fishing in the reservation, and things like that. And anyhow, Bob Pelcyger² and I, the tribe's attorney, got to talking and we sort of jointly decided that, you know, it might be a good idea to put something else in here that would encourage a way to resolve other potential disputes.

And so, we wrote up the provision and presented it to Senator Reid with an explanation and he included it. And so, then our listing expired with the real estate broker that we had

² Robert Pelcyger represented the Pyramid Lake Paiute Tribe during the Truckee River negotiations and participated in Reclamation's oral history program, see Robert (Bob) S. Pelcyger, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Professor Donald B. Seney for the Bureau of Reclamation, in 1995 and 2006, in Reno, Nevada and Boulder, Colorado, 1995 interviews edited by Donald B. Seney and all other interviews further edited by Brit Allan Storey, senior historian of the Bureau of Reclamation, 2013.

and we got some other people involved who had worked diligently with the American Land Conservancy on exchanges like this. And so, we hired them. They got the American Land Conservancy involved and our first, our first approach was to couple this into an exchange for property in Las Vegas. And, the Del Webb Corporation was the first to, they were very interested. We actually had a contract with the Del Webb Corporation, and what happened with them, unfortunately, is they, there was some politics down south between what they were trying to do and what the Summa Company was trying to do. And . . .

Seney: Summa was Howard Hughes' old company, wasn't it?

De Paoli: Right. And, they weren't—because, at that point Webb was, for all Webb's developments down there, Webb was buying land from Summa and they didn't want to see that go away. (Seney: Oh.) So, anyhow that . . .

Seney: They put the kibosh kind of one your . . .

De Paoli: They put the kibosh on what Webb was, the land that Webb was trying to get down there. And so, Webb dropped out of the picture. But, at the same time the Mount, the Galena-Mt.

Rose land exchange was underway, and Harriett Burgess of A-L-C [American Land Conservancy] was able to include our property in two phases. The first phase was the ranch on the river in that, in the first part of that exchange. And then, the rangeland in the mountains went in the exchange, the second phase of that exchange about six or eight months later.

Seney: Yeah. But, part of it actually had enlarged the reservation, did it not? Was that the range in the mountains?

De Paoli: Well, I'm not sure if that's ever been—I can show you a map later about how that (Seney: Okay.) worked. But, I'm not sure if that's ever been resolved. There is, certainly along the river there was a, and that was a reason the provision was written the way it was in the bill. There was part of our property that was inside and part was outside, but it was all contiguous. I expect that did. The range land was entirely outside, but we had, because it was railroad land there were alternate pieces of property that touched the reservation and I don't know if the tribe and the United States have ever (Seney: Yeah.) solved that issue as to whether that land is now in or out of the reservation.

Seney: So, what did your family end up with, land up at the end of Mt. Rose area?

De Paoli: No. What happened is that, the Mt. Rose exchange involved Las Vegas, Clark County land exchange as well. (Seney: Okay.) It was essentially, it was essentially land up in northern Nevada, including the Mt. Rose area, was purchased and exchanged to the United States for land in Clark County. And someone, (Seney: Right.) and I can't tell you who, wound up with land in, in Las Vegas for development.

Seney: And, but where . . .

De Paoli: And, my family was just paid.

Seney: Money?

De Paoli: Money.

Seney: Okay. Okay.

De Paoli: Based on . . .

Seney: I see. Okay.

De Paoli: Based on the final appraisal for the ranch property, (Seney: Okay.) which finally turned out to be about \$4.8 million.

Seney: I see. Okay. And that was all taken care of through 101-618?

De Paoli: Yes. It was.

Seney: I assume you've been paid, and . . .

De Paoli: It was finished, the second phase of it was finished in the early part of 1995.

Seney: Okay. And, that was all, obviously, agreeable to you and the other parties, (De Paoli: Yes.) and everybody (De Paoli: Yes.) benefited, I guess? I know the tribe was very happy to get that land.

De Paoli: Oh I, yeah, I think it was a good, it was a good way to solve the problem for everyone.

Seney: Right. Right.

De Paoli: Yeah. It avoided a lot of issues (Seney: Yeah.) down the road.

Seney: That's fascinating, because I guess until 1924, even though you ended up losing, because of the Depression, some of that land that your parents had filed on, your grandparents, it wasn't until then you had clear title to what you had thought was yours all along anyway, right?

De Paoli: That's right.

Seney: Yeah.

De Paoli: That's right.

Seney: It's interesting. Nevada history is very interesting with all this public (De Paoli: Yeah.) land, and whatnot. And you, of course, are Italian? De Paoli's an Italian name?

De Paoli: Yes.

Seney: And so, your family on both sides are Italian? And, there were a lot of Italian immigrants who came to work in the mines and around the mines?

De Paoli: Yes. Yes.

Seney: Yeah. What part of Italy did your family come from?

De Paoli: Liguria, which is Genoa, and they came from the mountain country in Liguria, which is kind of a narrow province right along the coast bordering Tuscany.

Seney: Have you been back to visit? I'm sure you must have.

De Paoli: I have not.

Seney: You have not?

De Paoli: But, I intend to go, someday.

Seney: Well, you should go. Yes.

De Paoli: Yeah.

Seney: Yes. Definitely. Yeah. When—anything else we should know about the land exchange? Or, I take it, you've known Bob Pelcyger, the tribal attorney, for a long time?

Land Transfer Made Sense to Everyone

De Paoli: Well, ever since I got involved in the (Seney: Right. Right.) Truckee River water rights.

Seney: Right. So, this was not a difficult arrangement to come to? It made sense to him as well and to the tribal people, Joe Ely and others?

De Paoli: Yeah. It made sense to everyone.

Seney: Right. The government didn't object? They thought it was (De Paoli: No.) sensible too?

De Paoli: No. They did not

Seney: No?

De Paoli: They thought it was, I think everybody thought it was (Seney: Yeah.) a good idea.

Seney: Did you have to haggle with them much over the price?

De Paoli: The price was determined through an appraisal process. In land exchanges there has to be an appraisal.

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Seney: Go ahead. You were saying that there's a (De Paoli: Yeah.) standard appraisal process.

De Paoli: There's an appraisal process that the, this was through, the exchange went through the Bureau of Land Management and they have to approve who appraises the property. They approved the appraiser for our property, who is Lee Smith.

Seney: Do you have right of approval too on that?

De Paoli: Oh yeah.

Seney: Yeah.

De Paoli: If we weren't satisfied. And we had, we had a lot of arguments with Lee over the, where he,

how he came out. I thought, and still think, that he discounted the, the value of the water more than he should have. Then his appraisal was reviewed by someone inside the Bureau of Land Management, who made some more small adjustments, and then that established a price and it was for us to say yes or no.

Seney: And, you felt that was fair, obviously, or as fair as you could get?

De Paoli: Fair as we could get, and it, you know, it still made sense (Seney: Sure.) over the long run.

Seney: Sure. Right. Okay. When—and, you came to work for the law firm in '71. Do I remember right?

De Paoli: In '72.

Seney: Seventy-two? Did you start to work on water problems right away? How did you get into this water business?

Getting Into This Water Business

De Paoli: No. I didn't. Although, I had an interest in water. I actually, when I was at the University of Colorado I wrote a paper on the Truckee River water (Seney: Ah.) issues, working at that

time with some of the people at the Native American Rights Foundation, which is in Boulder. But no, when I first came back and started practicing I was actually doing a lot of litigation, tort litigation, business, commercial litigation. And I, maybe, I may have my dates wrong here, but when the trial court issued its decision in the case United States vs. T-C-I-D [Truckee-Carson Irrigation District], which is the case that went to the U.S. Supreme Court, I, I was aware of what was going on during that trial but didn't, didn't actually participate in it.

Seney: Is this the case that's United States vs. Nevada [inaudible]?

De Paoli: Yes. It became U.S. v. Nevada. Then that went to the Court of Appeals and at that point I had started working with Richard Blakey [Spelling?], who this guy there.

Seney: Uh huh. Yeah. There's a—we're in the conference room and there are a number of distinguished gentlemen, some in judges robes, who have come out of your firm, I take it?

De Paoli: Yes. The far left is Judge Proctor Hug who is the Chief Judge of the Ninth Circuit Court of Appeals (Seney: Oh yeah.) at this time.

Seney: Sure. He's a very well known jurist.

De Paoli: Yeah.

Seney: Yeah.

De Paoli: The next one is Gordon Thompson, who was Bruce Thompson's brother and on the Nevada Supreme Court.

Seney: Bruce Thompson was a federal judge?

De Paoli: Yes.

Seney: Yes.

De Paoli: And, the next one is William N. Foreman, who was a State District Court Judge. (Seney: Uh huh.) And then the next one is, that's the senior Woodburn, William Woodburn, George Thatcher, and the senior William Foreman.

Seney: Yeah.

Nevada v. U.S.

De Paoli: Anyhow, I had started working with Richard Blakey [Spelling?] on other things and the Truckee River case was in the Court of Appeals. And, at that point I, with Richard, wrote, wrote

the brief for the Ninth Circuit on Nevada vs. U.S., for Sierra Pacific Power Company, argued the case to the Ninth Circuit, and then wrote the brief for Sierra Pacific in the U.S. Supreme Court, but didn't argue.

Seney: Now, this must have been a what, a friend of the court? I'm trying to think of the right term, because they were not party, Sierra Pacific?

De Paoli: Oh, yes, Sierra Pacific was a party to that litigation.

Seney: Was a party to what became United States vs. Nevada?

De Paoli: Yes. Uh huh.

Seney: Okay.

De Paoli: Yeah. And, so that got me started in the Truckee River water things and of course the, even though everyone thought Nevada vs. United States was going to be the end of everything, it wasn't, (Seney: Yeah.) because of the Endangered Species Act and unavailability of Stampede Reservoir (Seney: Right.) and those things. And so . . .

Seney: We might say here that the brunt of that decision was that you couldn't reexamine the Orr Ditch Decree,³ that that was a settled matter, and, which is what the tribe and the government had tried to do was say, "Well, we didn't represent the tribe correctly to begin with and they should have had more water rights." And, the court said "Sorry. It's too late."

De Paoli: That's right.

Seney: Yeah.

Senator Laxalt's Compact Efforts

De Paoli: And so, I then got involved in all the other Truckee River things that were going on. Got involved in the, Senator [Paul] Laxalt's efforts to get the Nevada-California Interstate Compact approved, and other . . .

Seney: Let me just stop you before we go on to ask you, why does your, what is the background of your firm representing Sierra Pacific Power? I would think they would have had, would have their

³ For a brief summary of the Orr Ditch Decree see "What is the Orr Ditch Decree and why is it important?", www.tcid.org/support/faqdetail-view/what-is-the-orr-ditch-decree-and-why-is-it-important (Accessed November 2013).

own legal counsel, and they must to some extent, do they not?

De Paoli: Sierra Pacific has a fairly large legal department now, but didn't for a long time. But, the senior Woodburn and the senior Thatcher, and Mr. Thatcher represented, had represented Sierra Pacific Power Company from (Seney: Ah.) early on and actually represented Sierra Pacific Power Company in Orr Ditch, in the Orr Ditch litigation.

Seney: Ah

De Paoli: George Thatcher represented them throughout that litigation. So this firm is, I don't know when this firm first started representing Sierra Pacific, but it goes back (Seney: Yeah.) to the '20s and '30s, at least.

Seney: So, you have a big reservoir of knowledge? Did Mr. Blakey [Spelling?] work with Mr. Thatcher and you then worked with—somehow there must have been passing down of all of this?

De Paoli: Yeah. What happened, after Mr. Thatcher, and I don't know when he died, but Foreman senior took over Sierra Pacific Power Company, and then Blakey [Spelling?] took over from him.

Seney: And, now, now you're in charge?

De Paoli: Now I'm involved with that. But, the legal department at Sierra Pacific handled, I think, the, well they really didn't handle any of the litigation in house, relative to the water.

Seney: Okay. It's all been handled through your firm here?

De Paoli: With one exception. We did not handle the Stampede Dam case. That was handled by a law firm in San Francisco.

Seney: Okay. Well, we'll get to that. But, you must feel good that you didn't handle that one, (Laughter) since it kind of backfired on the company?

De Paoli: Yeah.

Seney: We'll, and I'm not sure it did, we'll talk about that. Maybe it was the best thing. We'll see. But, you got involved with Senator Laxalt on the attempt in 1986, the final attempt to get the Interstate Compact through?

De Paoli: Yes.

Seney: Tell me about that and don't spare us any details, and don't be modest about your role. We want to know.

De Paoli: Well, again, I'm a little fuzzy on dates, but . . .

Seney: Don't worry about that.

Laxalt's Legislation was Different than 101-618

De Paoli: I'll tell you what happened (Seney: Sure.) as I remember it. For quite some time there were negotiations among the interested parties: Sierra Pacific, the tribe, T-C-I-D, the state of Nevada. I think those were the main players. And, there was actually . . .

Seney: California was not involved?

De Paoli: California was not involved, as I recall, at that time. California was involved only from the standpoint that part of that process was to lead to the approval of the old Interstate Compact that California and Nevada had agreed to in 1970. And, the parties agreed to a settlement, which turned out to be in the form of a bill that Senator Laxalt introduced and that was, in a lot of ways, somewhat different than 101-618 in that it had contemplated the actual approval of

the Interstate Compact. It contemplated that Sierra Pacific Power Company would get some of the Stampede Reservoir water, that there would be some resolution to Operating Criteria and Procedures for the Newlands Project, and the Interstate Compact would be approved. That was introduced, it was agreed upon, introduced, and we all went back to testify in support of it before committees, House committees and Senate committees.

And, I think one of the things that happened at that time was the tribe, some members of the tribe were not happy that water from Stampede Reservoir was going to be actually or potentially would be allocated to, for the Reno-Sparks municipal supply. And, there sort of started a rebellion, I guess, within, within the ranks of the tribe and the tribe was not as supportive of that legislation as everyone had hoped they would be. And, and so, that legislation simply, when the tribe, I think they may have had a referendum on it or something at that point in time.

Seney: I think they did.

De Paoli: And when they kind of withdrew their support for it, that legislation was not going to go anywhere and didn't go anywhere. And, about that time there was an attorney, who was

representing the tribe, at that time, named Michael Thorpe [Spelling?] from the Eisenhower firm in Seattle. At that point, the tribe switched from Michael to Pelcyger, although I think Bob had represented them before Michael represented them as well. But anyhow, and I don't know all that (Seney: Yeah.) worked, but that legislation wasn't going anywhere and didn't go anywhere.

Seney: Now if I may, this legislation comes after the Court of Appeals in San Francisco has ruled that Stampede has got to be operated for cui-ui recovery?

De Paoli: Yes.

Seney: That's the case your firm did not handle?

De Paoli: Right.

Seney: Right.

De Paoli: And, it came after the Supreme Court decision in Nevada vs. U.S.

Seney: Right. Right. Actually, why don't we say something about that, that Stampede Reservoir case, because maybe it makes sense to do that now because it sets the stage for what comes. I

interviewed Neil, Mr. Neil Plath, the late Neil Plath⁴ and Joe Gremban, and Mr. Plath particularly was incensed that the Stampede Reservoir did not, as it was intended to, come into the control of Sierra Pacific Power. I mean, that was the point of that reservoir as far as he was concerned and their lobbying on behalf of the Washoe Project, of which that was part. So the, did they come to you to, with the notion that the suit should be filed to get the secretary to sign that contract with, I guess, the Washoe County Water Conservancy, right?

Stampede Reservoir Case

De Paoli: It was the . . .

Seney: Have I got the name wrong?

De Paoli: Truckee-Carson Conservancy (Seney: Conservancy?) District or Carson-Truckee. I can't remember. (Seney: Yeah.) It's Carson-Truckee. (Seney: Right.) There was a district

⁴ Neil Plath was president of the Sierra Pacific Power Company and participated in Reclamation's oral history program, 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.

that was set up to be the contractor for (Seney: Right.) Stampede Reservoir.

Seney: Because the law did not allow the government to contract with Westpac Utilities, which is a private entity?

De Paoli: Right.

Seney: For the same right?

De Paoli: Right.

Seney: Okay.

De Paoli: Right.

Seney: Did they come to you and say, “We should sue” and . . . ?

De Paoli: No, I’m, see that all got started before I became involved and I don’t really know (Seney: Okay.) how the decision was made to file that lawsuit, or why, and who was, (Seney: Yeah.) how they decided on who would handle it.

Seney: Because, the outcome of that lawsuit, before the Court of Appeals looked like a terrible defeat for Sierra Pacific Power, did it not, in the sense that it . . .

De Paoli: It was. Seney: Yeah.

De Paoli: It was a, it was, well it was the sort of the death knell to any idea that Stampede Reservoir might be available as part of the municipal supply. And I'm not, I would not be critical of the decision to bring the lawsuit or critical of someone saying someone did or didn't do a good job litigating it, because I have no basis for thinking that.

Seney: Right. And, I'm not asking you to.

De Paoli: I think part of, part of what happened there is they got assigned a cranky old judge from up in Washington, I think, and his name escapes me.

Seney: Idaho maybe?

De Paoli: No. Idaho was U.S. vs. T-C-I-D. That was Judge Anderson.

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

De Paoli: This was Judge Solomon.

Seney: Solomon.

De Paoli: Judge Solomon.

Seney: Yeah.

De Paoli: Yeah. And, I think that was part of the difficulty. It might have been, you know, a lot of people, I think, misinterpret the Stampede Dam case. What the Court of Appeals ruled in that case was that, that the secretary had the discretion to utilize Stampede Reservoir for the benefit of the cui-ui and cutthroat trout. What I think is lost, and everyone has interpreted that as meaning that Stampede would be assigned forever to that goal. But, but really a different secretary, under different circumstances, could have decided that not all or none of Stampede was required any longer for those purposes and could have made a different decision based on different facts. (Seney: Yeah.) Yeah. But, that didn't happen or hasn't happened.

Seney: So, at the time, back to the legislation you were helping to negotiate, one, certainly one of the power company's objectives was to get part of Stampede, and I guess that's what the law said, and for that reason the tribe not only withdrew support but apparently actively worked against it?

De Paoli: I, yes, I think that's right.

Seney: Yeah. And also in the, in the Interstate, now, this is separate from the Interstate Compact, the last attempt by Mr. Laxalt to get that through?

De Paoli: Yeah. There was a last attempt on the Interstate Compact (Seney: Right.) that I could tell you about too.

Seney: Please do. I want to hear all about that.

Last Attempt at an Interstate Compact

De Paoli: Well, and again I, it was right during the time when Senator, he had, he was not running for reelection and he was in his last legislative days, and I don't remember what year that was. I guess it was.⁵

Seney: Nineteen eighty-six?

De Paoli: Eighty-six. Let's see, yeah. It would have been 1986, sometime in 1986, fall I think. Anyhow, sort of, I guess, on his own he wanted to make one last effort to get the Compact approved and had actually had language inserted in. And, I don't know if it was an appropriations bill, or some kind of a bill.

Seney: It was. Right.

⁵ For more information on the California-Nevada Compact, see Donald J. Pisani, "The Strange Death of the California-Nevada Compact: A Study in Interstate Water Negotiations," *Pacific Historical Review* 47:4 (November 1978): 637-58; Leah J. Wilds, *Water Politics in Nevada: A Century of Struggle* (Reno: University of Nevada Press, 2010).

De Paoli: But, that just essentially said, “The Congress hereby approves the California-Nevada Interstate Compact.”

Seney: One sentence in an appropriations?

De Paoli: One sentence.

Seney: Yeah.

De Paoli: And, he had also negotiated the tribe’s support for that, I believe, through some sort of other provision to provide payment of a sum of money to the tribe, and they were sort of neutralized. The power company got, were made aware of that, and I got a call from Joe Gremban and essentially was told that I was going to Washington to explain to Senator Laxalt why he shouldn’t do that, which I did.

Seney: Now there, if I may, my understanding from reading these materials is there was a little bit more than that. That is the, the, one of the reasons the federal government objected to this Compact was it was unusual in the sense that—and, I’m trying now to remember the specifics of it, because the federal government itself was somewhat opposed to this as well?

De Paoli: Yes.

Seney: Now I'm trying to, I just read this material and it slipped out of my head. And, that was because of (De Paoli: I think . . .) trust responsibilities, and lawsuits, and . . .

De Paoli: Well, I think part of what the, and this is almost guessing, but I think the Compact set up a commission composed of representatives of two states and, I think, of the United States to sort of manage the allocations, and I don't think the federal government was thrilled with the makeup of the commission because I think it was set up in a way where the federal government would be outvoted on anything (Seney: Yeah.) or could be outvoted, (Seney: Yeah.) and I think that was part of it. There was also opposition to the Compact from the Walker River tribe, to a certain extent, because it didn't recognize sufficient additional water for that reservation, at least in their mind. And then there was a contingency of folks from Mineral County, who were opposed to it because it didn't do anything for Walker Lake. But, so that was, (Seney: Yeah.) there was some opposition, (Seney: Yeah.) but at least as I understood it Senator Laxalt, at that point in time, had the horses to get it, get it approved.

Seney: What was Mr., what did Mr. Gremban send you back to, on what basis was the power company objecting, in other words?

De Paoli: The concern was, was again connected to a drought supply for Reno and Sparks. The Compact is, was and is good in the sense of allocating the water between the two states, but it doesn't do anything—the fundamental problem for Reno and Sparks was upstream storage, and it did nothing for upstream storage. (Seney: Right.) The power company's concern was that if the tribe were paid a sum of money at that point in time there would be no way to get the tribe to the table on negotiating the upstream storage (Seney: Ah.) needs for the two communities. And so, (Seney: I see.) even though the, even though there was a desire to get the Compact approved the feeling was, "If the tribe gets too much at this point in time, they just won't be interested in talking. They've got Stampede tied up through the Stampede Dam case and why will they want to talk to us about anything (Seney: Yeah.) after that?"

And so, that was the concern and that was what I was sent to (Seney: Ah.) the senator (Seney: I can understand that. Right.) about, which I did. And, I think he, he agreed that, that he would pull that from the, from the bill. And so, I was on my way back to Dulles Airport and I, I actually was at the airport, and I called my office and I had another message that said that I needed to go back because they were, wanted to

discuss, have some further discussions about a way to, to solve all these problems. And I, it's been a long time since I looked at that. But, I did. I went back to, back into the city and had some discussions with the lobbyist for the tribe back there, whose name I can't remember.

Seney: Bill Snipe [Spelling?], maybe? Or . . .

De Paoli: I don't know. It could have been. Anyhow, somewhere I have my notes from that. We actually started talking about some expanded, broadened way to resolve this so that this could, could get settled at that time. And we just, I remember calling Roland Westergard to talk to him about it, and the conclusion, I think, we reached, was we just didn't have enough time, because, this was right at the end (Seney: Yeah. Yeah.) of the legislative session, we didn't have enough time to put all the details together, and from his standpoint at the state that they just didn't want to do that and they thought we better put the breaks on everything, and that's, that's what we did. And, and so after spending another day or two I went back. And, I remember when that came up on the floor, that language, I think Joe Gremban had to call Senator Laxalt while he was on the floor of the Senate to make sure that he took that out, and he did.

Seney: Yeah.

De Paoli: That, and so that (Seney: Yeah.) set the stage for, when that was taken out that set the stage for when Senator Reid was elected and asked that, that night he was elected, what he thought the most significant problem in northern Nevada was and what he was going to do about it. And, it turned out to be Truckee River water (Seney: Yeah.) and led to 101-618.

Seney: I have actually interviewed him and I asked him about that and he said he didn't really know what he was getting into.

De Paoli: I'm sure he didn't. (Laugh)

Seney: But he said . . . (Laughter) You know, you mentioned Roland Westergard, whom I've also talked to, and when, Roland was kind of modest. You know what he's like?

De Paoli: Yes.

Seney: I mean, it was very difficult to own up to the kind of influence that he's had over this process. But, and by the way, I'll take that card away from you if you (De Paoli: Oh, I'm sorry.) keep tapping. (Laugh) It'll come through. It's a very sensitive microphone. He's, I know too,

just as you said, that not only did the power company object, but apparently Roland did too, who was then State Water, what, Conservation and Natural Resources?

Objections of the Nevada Department of Conservation and Natural Resources

De Paoli: He was the director of the Department of Conservation and (Seney: Right.) Natural Resources.

Seney: And, what was their basis for objecting to it, do you recall?

De Paoli: Same thing.

Seney: Same thing?

De Paoli: Same thing.

Seney: That it would, that it would pacify the Indians and make them unwilling, perhaps, to negotiate and to resolve these matters?

De Paoli: Yeah. It was (Seney: Yeah.) just the, there may never be anyway to get any upstream storage.

Seney: Okay. Because the major point of that was really allocation on the Lake Tahoe basin, is my

understanding of the Compact, that that was one of the major things it did was to allocate the water between Nevada and California on, in the Tahoe Basin.

De Paoli: It allocated the Tahoe Basin, Truckee River, Carson River, and (Seney: Walker? Right.) Walker River.

Seney: Right. Yeah.

De Paoli: It allocated, (Seney: Yeah.) it would, it allocated everything.

Seney: I don't mean to disparage the importance to Carson Basin, Walker River basin, but from your, the Company's, interest, I would think mostly they would be interested in the Truckee business, (De Paoli: Yes.) and the allocation on the Truckee?

De Paoli: Yes.

Seney: And, that was the 90/10, wasn't it, allocation on the Truckee River below the Tahoe City dam? That essentially ninety percent of the water that comes out of there is (De Paoli: That's . . .) for power?

De Paoli: That's probably right. I think, I think the way it worked was California, California got 16,000 acre feet and Nevada got the rest, (Seney: Right.) on the Truckee.

Seney: Right. Yeah. Okay. So, this is then the preliminaries to what became known as the Preliminary Settlement Agreement?

De Paoli: Yes.

Seney: Yeah.

De Paoli: What happened, after Senator Reid was elected . . . [Tape paused] They need me. (Laugh)

Seney: Okay. Good enough.

Senator Harry Reid Got All the Participants Together

De Paoli: Senator Reid got all of the participants back together, and I, I guess it must have been sometime in 1987, and said we were going to have another go at it. And, and I think we did. We made—the entire group negotiated together for a period of time, and at some point in time Wayne Mehl⁶ got involved, for the senator, and

⁶ Wayne Mehl was the legislative director for Nevada Senator Harry Reid and participated in Reclamation's oral history Program, see Wayne E. Mehl, *Oral History Interview*, Transcript of tape-recorded

I don't know exactly when that was. But anyhow, they reached a conclusion that there, instead of having everyone negotiate together these parties should separate some and try to negotiate their own issues separately. So, that T-C-I-D and the tribe would have a series of negotiations over their issues, Sierra Pacific and the tribe would have a series of negotiations over their, their issues, and I think we all stayed involved in terms of—when I say “all,” Nevada, California, T-C-I-D, the tribe, the United States—on the interstate issues. I think there were probably some separate negotiations involving the Fallon Tribe and the United States and some of their problems.

And so, that was the direction that people went in. And so, the power company, at that point, began separate negotiations with the tribe over the issues that were most important to the power company. T-C-I-D did the same. And of the, of those, out of that came the Preliminary Settlement Agreement in 1989. The tribe and T-C-I-D were not able to reach an agreement. The negotiations over the interstate issues went along fairly well and all the parties were able to agree to how that should be. The Walker, at that

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point, was dropped out of, out of the discussions.

Seney: They essentially took the Interstate Compact Agreements, did they not, on the diversions?

De Paoli: Not entirely.

Seney: Not entirely?

De Paoli: The Tahoe portion is, is pretty much the same. The Carson River portion is pretty much the same. But, the Truckee portion is somewhat different in that it gets into both surface water and groundwater. And, I think California comes out about the same, but it's a little bit different approach than was in there.

Seney: Let me ask you about the political—(clears throat) excuse me—climate, which my understanding was fundamentally changed by the Stampede decision. Prior to that, the power company and T-C-I-D had been natural allies, for a number of reasons. One being that the Sierra Pacific Power operated the power system out there, for them, under contract. And, just sentimentally, apparently, over the years they had been cooperating on matters, and the tribe had been kind of the odd man out in this regard? You're shaking your head yes.

De Paoli: Yes.

Seney: Yeah. And now, with the Preliminary Settlement, or rather with the Stampede decision Mr. Gremban understands, as he's told me, that now the tribe is the key player and T-C-I-D is not the key player. Is that the way you saw it too, that it was very important for the power company and the tribe to come to agreement, whether or not this made T-C-I-D happy or not? Maybe I'm putting it the wrong way and you'd want to put it another way?

TCID No Longer the Key Player

De Paoli: Well, I think certainly the interests of the power company and T-C-I-D were very much the same in the Nevada vs. U.S. litigation. They were both interested in protecting the Orr Ditch Decree (Seney: Okay.) from the claim of the tribe. And, the power company and T-C-I-D probably were aligned on the Interstate Compact issues. But where they . . .

END SIDE 2, TAPE 1. JULY 16, 1999.

BEGINNING SIDE 1, TAPE 2. JULY 16, 1999.

Seney: Donald Seney. I'm with Gordon De Paoli in his offices in Reno, Nevada. Today is July 16,

1999. This is our first session and our second tape. Go ahead, Mr. De Paoli.

De Paoli: Okay. As I was saying, Sierra Pacific and T-C-I-D had aligned interests on protecting the Orr Ditch Decree and on the interstate issues with California. They each had separate issues, though, and separate needs. The power company had a very important need for upstream storage to take care of a drought supply in Reno and Sparks. The Newlands Project had a separate set of issues related to, essentially related to how much water should they be able to divert from the Truckee River to Lahontan Reservoir, the OCAP or Operating Criteria problem. And, their issues on, on those, two points, or their interests on those two points were, were essentially not necessarily aligned. The power company needed upstream storage, which wouldn't impact T-C-I-D one way or the other. T-C-I-D needed some resolution to how much water they could divert from the Truckee, which again wouldn't impact the power company one way or the other. And so, at that point, on those issues, they just weren't aligned in terms of what their needs were. They had, however, up until that point sort of, there was sort of a silent agreement, I guess, to support one another and to stay unified in dealing with the tribe in the sense that, "We're going to settle

everybody's issues or we're not going to settle any issues."

I think what, what happened when Senator Reid's folks decided that the parties should negotiate separately that was, in my mind, planted the seed to sort of break that, "We're going to settle everybody or we're not going to settle anything" approach to the problem. And so, as each party went off in good faith to try to resolve their issues what happened is the power company was able to come up with a solution to its issues and T-C-I-D apparently wasn't. And, when that happened the power company wasn't, was no longer either intentionally or unintentionally in a position to say, "We're not going to go forward with our deal if T-C-I-D can't get its issues solved." It was in a position to say, "We need to, we've solved this much of the problem. Let's go forward with it." And, that, that was, I think, the key to sort of breaking the unified effort (Seney: Yeah.) to solving all issues or none.

Seney: And, this would have been a political decision made by Joe Gremban and the board, probably?

De Paoli: Certainly made by Joe. I have no idea what involvement the board had.

Seney: Okay. Certainly from the point of view of the power company, having drought supply guarantees, as Stampede and the Preliminary Settlement Agreement makes provision for, and you expect it would work pretty well, right? You expect it's going to?

De Paoli: Yes. It's an entirely different approach.

Seney: Right.

Preliminary Settlement Agreement

De Paoli: It's a, it's not, we won't, the power company won't have any Stampede project water but it will be able to put some of its water into storage, water it doesn't need, during the good years to have available during the drought years.

Seney: Right. Right. Actually, why don't you, you sort of generally alluded to what it does, but it's a very complicated agreement. I mean, there are things like fish credit water, firm fish credit water, non-firm fish credit water, firm M&I [Municipal and Industrial] water, non-firm M&I water. I mean, any poor fool who looks at that reservoir thinks it's just water and doesn't understand (Laugh) the categories of water. I mean, it's a relatively, I think, elegant agreement in the sense I think it's imaginative

and makes sense, but it's also—excuse me (cough)—a somewhat complex agreement too, would you say?

De Paoli: Very complicated.

Seney: So you . . .

De Paoli: And gotten more complicated over time.

Seney: I guess the TROA [Truckee River Operating Agreement] has helped that, hasn't it? We'll get to that later, but explain to us what the Preliminary Settlement does and how it does it, and take as much time as you like.

De Paoli: Well, I'll, in just very general terms there's, I think when you look at what the Preliminary Settlement Agreement does you have to go back to what the Truckee River Agreement did, which the Truckee River Agreement is the agreement between the United States, T-C-I-D, Sierra Pacific, and the Washoe County Water Conservation District that was reached in 1935, led to the construction of Boca Reservoir, and led to the settlement of the Orr Ditch litigation.

And, what it did was it, it required that Lake Tahoe and Boca be operated to maintain a rate of flow at Floristan, or near the Nevada state

line, of 500 cubic feet per second during the irrigation season, and 400 cubic feet per second during the winter months, essentially. There are some variations on that. And, that was very well suited to the, to the times. It did a couple of things. One, it was, those flows were connected to the hydroelectric generation on the four power plants that the power company has along the river, and to irrigation both in the Truckee Meadows and on the Newlands Project. What happened, from 1944 until the Preliminary Settlement Agreement, was that . . .

Seney: Nineteen forty-four being the date the Orr Ditch Decree was settled?

De Paoli: Right. The date of the Orr Ditch Decree was that Truckee Meadows changed dramatically, both from the standpoint of the amount of irrigation that was left, as well as the power company depended very little on the hydroelectric generation, although cheap and a form of power was a very small fraction of the power company's electric needs. And, a lot of the irrigation rights in the Truckee Meadows had been and were continuing to be changed to municipal and industrial use. And, what that resulted in is, but the rate of, the flow regime stayed the same. And, what happened then was there was a lot of, there were times when water that had been changed to municipal use was

going down the river when the Power Company really didn't need it.

And, with the advent of OCAP regulation was no longer going to the Newlands Project but was going to Pyramid Lake. There were also times when the flow in the river, a portion of the flow in the river, was satisfying no water rights other than the electric generation and was, that water, after being used, was going to Pyramid Lake. And, the tribe wanted to change the timing of some of that water to be more suited to the needs of the fish at Pyramid Lake. So, and in addition, since 1944, the United States built Stampede Reservoir, and Prosser Creek Reservoir, and Martis Reservoir on the upstream Truckee and tributaries. So, what you had is, is, at times, water going downstream when it really wasn't needed, and you had some space in upstream reservoirs where that water could be held. And so, the essential ingredients of the deal with the tribe was whenever the, some portion of the flow in the river was there only for hydroelectric generation, if there was empty space upstream it would be put into that empty space, and whatever that was, because it ultimately would have flowed to Pyramid Lake anyhow, would become fish credit water to be released when the people who operate the needs of the fish wanted to release it. In addition, the

irrigation rights that, or a portion of the irrigation rights, the consumptive use component that the power company had acquired, but which at some time might not be needed for M&I needs in the Truckee Meadows, if there was space available, that water would be held upstream.

A portion of it would be so-called firm credit water, which is water that once it's in, and it's in Stampede it has to be in Stampede Reservoir, it doesn't spill. It's not subject to evaporation losses. And, that was sort of a last, a supply of last resort for the power company, so to speak. Anything over that firm amount was considered non-firm and it would be available, as well, for drought use in the Truckee Meadows. And, there were some base amounts set up. And if, if there was more water in storage in April of a year, more non-firm credit water than a base amount, in a particular year, if the year was not considered to be a drought and the drought is tied to elevations of Lake Tahoe and Floristan availability of water to support the rate of flow at Floristan, if it wasn't a drought any water above the base, any non-firm credit water above the base, becomes firm credit water and ultimately is available for Pyramid Lake fishes.

If it turns out that it's a drought, then anything above the base amount remains credit water for M&I needs and you can add more water to it. That, that in a nutshell, was the Preliminary Settlement Agreement, really. It was a way to use empty space in Truckee River reservoirs, a way to keep in that empty space water that would otherwise flow to Pyramid Lake, and under certain conditions the water is available for drought supply, and under other conditions it goes to Pyramid Lake.

Seney: One of the key matters, in terms of this agreement, was the cui-ui itself, and the fact it lives so long that it doesn't need to spawn every year. So that, you can actually, in a drought year, say, "We won't let enough water go down, under the agreement, to guarantee a spawning run, because that water is going to be needed for M&I purposes in the Truckee Meadows." Do I have that right?

Stampede Water Remained Available for Pyramid Lake Fish

De Paoli: Well, that's part of it. The other, I guess the other aspect of the Preliminary Settlement Agreement was a commitment on the part of the power company that at Stampede, that the yield

of Stampede Reservoir, the project water in Stampede would remain available for the Pyramid Lake fish, essentially in perpetuity. In other words, the power company was giving up any effort to get the project water at Stampede for an M&I supply. So, you have a couple of things. Part, yes you are right. Unless there is, unless there hasn't been a spawn of cui-ui for many, many years, in years of extremely short supply it doesn't make sense to generate that kind of a spawn because the chances are there won't be sufficient water later on to get the fish back out of the river down to Pyramid Lake. And so, that was, it was part of the idea.

But, in terms of the fish credit water and the base amounts, and that sort of thing. But, there, there also would be still the Stampede project water available to have a spawn run, even in a, in a very dry year, if that were necessary. And, I think, 1994 is probably an example of that. I think the Fish & Wildlife—it may not have been '94. But, one of the drought years the Fish & Wildlife Service thought there was a need to have a spawning run of cui-ui and so they used a great deal of the Stampede water to do just that.

Seney: I think that was 1994. (De Paoli: Yeah.) The people on the Upper Truckee complained bitterly that within a day or two it seemed that Stampede Reservoir was gone (De Paoli: Right.)

just when they wanted it for recreational purposes.

De Paoli: Right.

Seney: Yeah. What do you mean when you say “project water,” “Stampede project water”?

De Paoli: The water that is put in, water that was essentially unappropriated water on the Truckee River system after the Orr Ditch Decree. It’s water that, that is captured in Stampede Reservoir pursuant to the water right for Stampede Reservoir that was issued by the state of California. In other words, it’s not water that’s committed under the Orr Ditch Decree. (Seney: Okay.) It’s water over and above that, which from time to time has been available to place in storage in Stampede. There are, in some of the very dry years, you can’t establish any project water in Stampede Reservoir because it all has to go to meet earlier rights. (Seney: Right.) But, in years of plenty, like the last five that we’ve had, (Seney: Yeah.) there’s water that is stored in Stampede under its own water right.

Seney: Okay. And, again, that would be what would be called “unappropriated water,” that is water in

excess of what everybody's been given in the Orr Ditch Decree?

De Paoli: Right.

Seney: Okay. Good.

De Paoli: And, it was appropriated by the United States in the (Seney: Yeah.) Stampede process.

Seney: You know, one of the things that, that I certainly came to appreciate dealing with this subject is how complex it is, what a difficult subject it is to grasp. And, I mean, someone like yourself, and I'm sure the law firm, is very valuable to Sierra Pacific Power because you have this long background, and history, and fund of knowledge that makes you perhaps even indispensable. And I—you're smiling. (Laugh)

De Paoli: Yeah.

Seney: No one is indispensable?

De Paoli: No one is indispensable.

Seney: Remembering that, of course. But, I know when I, and maybe I told you this, when I started on this project I thought, when I looked at the, you know, few farmers out in Fallon, "How hard can this be?" right. And, little did I

know how complicated this was. And, all of this is leading up to ask you to, to select some part of the Preliminary Settlement Agreement that's particularly complex and try to explain that to us so that the people who read this years hence—I mean, I'm offering you immortality here (Laugh) because this is going on acid-free paper. Long after everything is fused together your words will be here to inspire future generations. But, give us a sense of what, how complex an agreement like this can be.

De Paoli: Well, I'm not . . .

Seney: Maybe it doesn't seem complex to you after all this time? (Laugh)

Settlement Agreement Very Complicated

De Paoli: No. It is complex in the, in the sense of the difference between firm M&I credit water and non-firm M&I credit water, and fish credit water, and what is considered a drought, and not a drought. A lot of, a lot of those terms, I guess, aren't necessarily consistent with what someone would consider to be a drought or not a drought. They're tied to Lake Tahoe elevations and that sort of thing. The, I guess those are some of, I

would say that's probably the most complicated part. There's an addition.

Seney: This business that you've just been explaining to us?

De Paoli: Yeah.

Seney: I thought you did an excellent job, by the way, of making that clear, that the fish credit water is this kind of excess flow under the old Floristan rates that the power company was willing to give up. Because, those flows are no longer, would be no longer maintained in a short year. Right?

De Paoli: Right.

Seney: Yeah. And that you're willing to put into Stampede for the Indians?

De Paoli: Or into any of the upstream reservoirs, (Seney: Right.) at Tahoe, Boca, wherever it's coming, wherever you can capture it.

Seney: Okay.

De Paoli: There's, there's another aspect to the Preliminary Settlement Agreement that I didn't get into, that part of the water that can be included is what is referred to "privately-owned"

stored water,” which is water the power company has in Donner and Independence lakes. That can be included. Then there’s what is referred to as the “emergency drought supply,” which is water available to the power company in the so-called “worse-than-worst” case drought, and that’s water that’s essentially intended to sit in Stampede Reservoir in perpetuity until it’s, until we have this worse-than-worst case drought. And its water that really has priority for that space, even above Stampede project water. Its water that sits on the very bottom of the reservoir, so to speak, (Seney: Right.) if you were looking (Seney: Right.) at it in terms of elevation.

Seney: How much water is there for this worse-than-worst?

De Paoli: Seven thousand five hundred acre feet.

Seney: Is that, how much, how long would that last?

De Paoli: It wouldn’t last a long time if that’s all you had, but it was, it was based on—actually, I can’t really tell you exactly how that was, that number was arrived (Seney: Okay.) at. But it, it was based on a sort of an educated guess, I suppose, that with that amount of water, if we had a drought worse than the worst, at the time

at least, the worst-case drought was considered the drought in the early '30s, if we had a drought that was worse than that, with the water that was available both in the river, credit water, Donner Lake and Independence water, that that should be enough to get us by, with conservation, to get the communities by until mother nature was more kind in terms of (Seney: Yeah.) providing water.

Seney: And, are the water rights here sufficiently senior? I suppose they are. That you could take that water before it had to go to the Irrigation District?

De Paoli: Yes. The Orr Ditch water rights, Truckee Meadows water rights are all, almost all—I shouldn't say all. There are a few that aren't—but almost all are senior to the (Seney: 1902?) 1902 water right for the Newlands Project.

Seney: Right. So, that 7,500 you could take it all?

De Paoli: Well, essentially that 7,500 gets into Stampede Reservoir in one of two ways, and this is maybe where things (Seney: Good. Good.) say about getting complicated. It is, it can get into Stampede Reservoir as the first 7,500 acre feet of non-firm M&I credit water that has been converted to—let's see, maybe I'm wrong about that. Actually, I can't, I—it's either the first

7,500 acre feet of non-firm M&I credit water that has been converted to fish credit water, or it's the first 7,500 acre feet of fish credit water that results from the change in the hydroelectric flows. I can't remember which. Or, the power company can put 7,500 acre feet of Donner and Independence water in there and essentially fill it up that way. (Seney: Yeah.) So that, that's how it gets into Stampede Reservoir.

Seney: When you say, "put Donner and Independence water in there," you can't actually run that water into that reservoir? You use that first?

De Paoli: Right.

Seney: You leave water in there?

De Paoli: You can—Independence Creek is tributary. You can actually run water (Seney: That's right.) from Independence into Stampede. You can't Donner. Donner water can only get into Stampede through some sort of an exchange. In other words, (Seney: Yeah. Right.) trading 7,500 acre feet of Donner water for 7,500 acre feet of Stampede water, or some other kind of water.

Seney: Was this a difficult settlement to reach for this? You must have played a key part on behalf of

the power company in the negotiations, and you, probably Sue Oldham was involved too?

Key Player in the Settlement Agreement

De Paoli: Yeah. Sue was probably the key player in the Preliminary Settlement Agreement negotiations. I was involved. It was, I would say the conceptual part of it was, was not really the fundamental issue, but the details. (Seney: Yeah.) I think the concepts made sense to both sides almost from the beginning, but the numbers of, “Well, how much is going to be the base amount of firm credit water? How much is going to be the emergency drought supply? What are we entitled to do if we’re in a drought? What other supplies are available?” It was the details that (Seney: Yeah.) were probably the toughest part of the agreement.

Seney: Could you comment on the role of Joe Gremban and Joe Ely in all of this?

De Paoli: I would say they were both indispensable to the process. Joe Gremban was committed to coming to some sort of resolution and some sort of way to have upstream storage for these communities. Joe Ely was, in my judgment, I don’t think, without Joe Ely I don’t think there

would have been an agreement reached.⁷ He was, I would say, unique. In the time, in the period of time that I've been involved, as far as being a tribal chairman who was, had the foresight to know that ultimately the tribe also needed to come to some final conclusion, and that it might have to give up some things that it didn't want to give up in order to get there. And, Joe Ely was probably the best, the best at overruling his attorney, from time to time, when he needed to, or when he thought he needed to.

Seney: You're smiling when you say that. (Laugh)
Why are you smiling?

De Paoli: Well, just because, I mean, and Joe was . . .

Seney: We're talking about Bob Pelcyger?

De Paoli: Bob Pelcyger. (Seney: Uhm-hmm.) Yeah. I mean, there were, there are very few times in my experience where anyone from the tribe

⁷ Joe Ely was Pyramid Lake Paiute Tribal Chairman through negotiations of the Settlement Agreement and the passage of 101-616. He also participated in Reclamation's oral history program, see Joseph (Joe) H. Ely, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation oral history interview conducted by Donald B. Seney, edited by Donald B. Seney and further edited and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2011.

would, will disagree with Bob, but Joe Ely didn't hesitate to do that, and when he made a decision that was the decision. It didn't get changed.

Seney: You know, he played a key role in the defeat of the 1986 Interstate Compact that leads to all of this as well. Did you have a chance to observe, you must have, what Joe Ely did to defeat the Interstate Compact?

De Paoli: No, not really. I didn't, I didn't actually know that Joe was, had been involved in that.

Seney: Yeah. Maybe when we're finished I'll say a little bit about that, (De Paoli: Yeah.) based upon what Joe's told me. Because, I've spent many hours with him and with Bob Pelcyger, (De Paoli: Uhm-hmm.) as well. And, of course, Bob's a very forceful and intelligent individual and I can understand why it's not, perhaps, easy for many to disagree with him. But, knowing Joe as I do I understand that was the case.

De Paoli: And, I guess I'll add, Joe was also, I think, a real pragmatist in terms of land exchange provisions that got into the bill, (Seney: Yeah.) and coming with (Seney: He didn't have a problem with that?) with a solution with that. No. (Seney: Yeah.) No. He was very supportive of that.

- Seney: I thought that was a—back to that from when we talked about it at the beginning—I thought that was an excellent agreement from the point of view of the Indians.
- De Paoli: Well, they had nothing to lose and everything to gain.
- Seney: Yeah. I mean, it didn't cost them a penny (De Paoli: Right.) and they, and the federal government got to reimburse your family. Right? That's where that money came from (De Paoli: Right.) for your exchange. And, when I interviewed Norm Harry he was, he showed me the map, the reservation, how it had been enlarged, and they were quite happy about that. So, that must have been a nice carrot, I would think, in terms of 101-618, for the tribe as well to have that in there?
- De Paoli: Yes.
- Seney: Yeah. Right. I'm trying to think of, I had another question on the Preliminary Settlement Agreement. It takes about three or four years to get this all negotiated, doesn't it? Two years, two and a half? I'm trying to think of the (De Paoli: Well . . .) time frame.

De Paoli: I mean, Senator Reid took office in '87 and the Preliminary Settlement Agreement was signed in May of 1989.

Seney: So, two years?

An Intense Process Towards the End

De Paoli: It was a little, about, a little, two years. And, I don't remember when we started negotiating separately. It was, (Seney: Yeah.) it was actually a very intense process towards the end. We were, we were involved frequently in that last (Seney: Yeah.) bit of time between . . .

Seney: And, I'm told during that last face [to face] that Joe Ely and Joe Gremban were very important. They would take long walks in the parking lot.

De Paoli: Yes.

Seney: And, when the two sides, the two negotiators had to refer to their superiors on matters and it would be resolved between the two of them?

De Paoli: Yes.

Seney: The will was there, obviously, between the two of them to make this agreement?

De Paoli: That's right.

Seney: Yeah. Okay. And, but the agreement has not been tested yet, has it, in terms of water?
(Phone rings) Has it been tested?

De Paoli: No. It hasn't.

Seney: Okay. [Recording paused] Yeah, let me go back to the general negotiations out of which the Preliminary Settlement Agreement comes. I mean, while you're negotiating that agreement you're still meeting with Wayne Mehl and the California, Nevada, T-C-I-D for a period of time, and the other interests. Who am I thinking of? The tribe was still there. And, I guess I've got all the players, right?

De Paoli: Yes.

Seney: Sierra Pacific, the two states?

De Paoli: Yes.

Seney: The federal government?

De Paoli: Yes.

Seney: I should say the federal government was there. And, there's one, you know this is like the blind

man with the elephant business, and one of the things that I've asked everyone about is that this is, whether or not T-C-I-D walked out or was kicked out of the negotiations. What is your recollection of the, that they're ceasing to participate, I think, in '88, if I'm not mistaken, in the negotiations? Because I take it you would have—I know Sue Oldham went to all the sessions. I take it you'd be there too?

TDIC Never Stopped Participating

De Paoli: Yes. I think I went to most of the sessions. I think, I don't know that T-C-I-D, I don't think T-C-I-D ever stopped participating in the overall discussions, but when the tribe and T-C-I-D reached a point where they couldn't come to an agreement on their issues they just, there was a mutual stopping of negotiation, I guess. (Seney: Yeah.) I mean, I don't think T-C-I-D ever walked out on any negotiations. They simply, they and the tribe simply couldn't agree on their issues. And, they just reached a point where they weren't going to agree. And so, at that point there wasn't, I don't know that either one of them could have done anything more. But I .

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END SIDE 1, TAPE 2. JULY 16, 1999.

BEGINNING SIDE 2, TAPE 2. JULY 16, 1999.

Bureau of Reclamation History Program

De Paoli: T-C-I-D, as best I can recall, T-C-I-D continued to be involved in the discussions on the interstate issues and continued to be involved in what Public Law 101-618 would look like.

Seney: My understanding is slightly different from a number of participants, and that is there came a time, and I think the meeting was held out at Nixon, when the whole board came and said, “Well, we wish you all well but we don’t think we can resolve any of these issues that bear on us.” And, I guess their disagreements with the tribe had to do, of course, fundamentally with diversions from the Truckee River basin, and around things like project efficiency and target storage levels, and carryover storage levels in Lahontan Reservoir, and what happened when they spilled water after they had taken it out of the Truckee River and it would have gone to the Pyramid Lake, and whatnot. But, that’s not your recollection, that they, there came a point when they said . . .

De Paoli: There definitely came a point when it was clear that the tribe and T-C-I-D weren’t going to reach an agreement. And, I don’t recall (Seney: Okay.) what you just related. I’m not saying that didn’t happen, but I just don’t recall it. I mean, I think, I think T-C-I-D gets a bad rap on this issue of “They walked out of the

negotiations.” It takes two to agree and they had a position and the tribe had a position, and neither one was going to budge from those positions. And so, (Seney: Yeah.) I mean, how can anyone say that T-C-I-D walked out of that without saying the tribe did the same? They just simply weren’t going to agree and they didn’t agree. (Seney: Yeah.) And, that’s, that’s what happened. But, and there, you know, there may have been a time when they related that to the whole group. They probably did. I just don’t, don’t recall. But, I didn’t, I would not have considered that, them walking out of the negotiations. And, as I say, they did stay involved in the, in the interstate discussions, as best I recall.

Seney: Did you spend any time back in Washington D.C. on Public Law 101-618?

De Paoli: Yes.

Seney: What did you do in relation to that?

Working on Public Law 101-618

De Paoli: I remember being back there on more than one occasion, and exactly what was going on at that time I don’t know. There was a time when there

were hearings on 101-618, (Seney: Right.)
which I went back for.

Seney: Those were in February 1990, before Senator [Bill] Bradley and the Subcommittee on Water and Power.

De Paoli: Okay. And, there were times when, but I, but we were back there more than just for, more than on those hearing occasions. We went back on more than one occasion to talk with Jensen, who was the . . .

Seney: Tom Jensen?

De Paoli: Tom Jensen was the Senate Natural Resources guy, and the person in the House. And, I can't remember who that was.⁸

Seney: Was it Dan Beard?

De Paoli: Dan. I think so. Dan Beard.⁹ (Seney: Yeah.) Yeah. I'm, there were more than, there was more than (Seney: Yeah.) one trip, but I can't remember all of them.

⁸ Thomas Jensen was Chief Council for the Senate Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

⁹ Daniel Beard was staff director for the House Committee on Natural Resources and went on to become commissioner of the Bureau of Reclamation during the Clinton Administration.

Seney: Let me, let me maybe jog your memory a little. There was that hearing in February of 1990 and T-C-I-D appeared at that hearing and objected that their interests had not been taken into account.

De Paoli: Yes.

Seney: At that point, Senator Bradley said, “We’ll take another ninety days for the parties to try to get together and take into account the concerns of T-C-I-D.” And, then there were apparently meetings during that ninety-day period, but coincidental with those meetings T-C-I-D was going around trying to kill the legislation, and that made people like Tom Jensen, whom I’ve interviewed, and Markus Spouse [Spelling?] too, kind of annoyed. I’m putting it mildly. And, the sort of monument to that annoyance is Section 209 of Public Law 101-618, which (De Paoli: Yes.)—and, you’re kind of smiling as you’re shaking your head yes.

Section 209 Annoyed TCID

De Paoli: There was, there’s not question that whoever did 209, Section 209, was annoyed at T-C-I-D. (Seney: Yeah.) I know that.

Seney: Did you take any part in that, in that section, drawing up that section?

De Paoli: No.

Seney: It does things like forbid them to sue and try to force negotiations on recoupment, and (De Paoli: Right.) have an abeyance (De Paoli: No.) for a period of time, and then the government could sue, which they're doing now over that issue. There are a number of other things that the district looked upon as retribution. And, I must say that people, Tom Jensen and others, looked upon it as retribution too.

De Paoli: I didn't. Not with 209 as it turned out. But, I did—I was asked by Barbara Vucanovich to draft a Newlands section for 101-618, which I did. And I don't, I haven't looked at that in a long time, but it's not the 209 that's in there. It was, it was a different approach to the problem. And, I don't know what or why that didn't go anywhere, but I did, I did draft a Newlands section for her eyes, and why it didn't . . .

Seney: Can you remember what was in there?

De Paoli: I don't. I'd have to get my file out and look at it.

Seney: Did it include things like some federal support for a municipal water system?

De Paoli: It might have. I don't, I just don't remember.

Seney: Okay.

De Paoli: But, it certainly didn't have in it some of the things that turned out to be in 209. One of the things that I think was a terrible mistake of 209, which causes a lot of our problems today, or our potential problems today, is the, is the moratorium on litigation over OCAP. At the time with, and with the consent of the power company, I had been representing a group of farmers called the Newlands Project Water Right Holders, in the OCAP litigation. And, we had fully briefed, before Judge Bruce Thompson, some major fundamental threshold issues relative to OCAP that Judge—and we had argued them, and the judge, I think, was poised to decide them. And, then whoever it was drafted 209, with the provision in it that there would be no jurisdiction in any federal court to change the OCAP during that period of time. And . . .

Seney: Ten years, isn't it? Was it?

De Paoli: Ten years, I think. Or, nine.

Seney: Seven?

De Paoli: Seven years, I think it was.

Seney: Seven. Yeah.

The Moratorium was a Mistake

De Paoli: And, when that was enacted and signed by the president, Judge Thompson called us all in and said that he felt at that point he had no authority to do anything. Judge Thompson was an amazing judge, but had, I am certain he would roll over in his grave if he knew how 209 came about. He had the upmost respect for what the Congress of the United States wanted done and so he essentially dismissed the OCAP litigation. I say that as, that that provision, that moratorium provision was a mistake because what it did is it postponed some final answers to some critical questions, which we would all have been better off knowing the answers to over these last nine years. (Seney: Yeah.)

I think that had those issues been finally answered we would have had a much better chance of having the Truckee-Carson Irrigation District and the Newlands Project folks be a part of the Truckee River Operating Agreement.

And, because those questions didn't get answered—You know, part of the problem with the reason the tribe and T-C-I-D haven't, they haven't been able to resolve their issues is, has been the issue over diversions from the Truckee, and who had what authority, and how, and what were the parameters of that authority, and that sort of thing. And, those, the courts were to provide by now we would have had a final answer to those questions. And, with that final answer, I think, they would have, one or the other would, they, whoever—well, I shouldn't say one or the other—both of them would then have had a basis on which they could have probably come to a conclusion in their discussions.

Seney: And, I was aware that you represented some of the water rights holders, from other reading that I've done, and obviously, as you say, this was done with the approval of the power company, since you're a major attorney for them. And, they concluded there's no conflict and you've concluded that there's no conflict.

De Paoli: There certainly wasn't at the time.

Seney: Okay. Might there be now, do you think, with . . .

De Paoli: And I don't do, I don't represent them anymore.

Seney: Okay. What, you know, you said generally that, “There were some things that if they had only been resolved we’d be in better shape.” Be more specific, if you could, please.

Fundamental Issues are Diversions from the Truckee River

De Paoli: Well, the key is, in my mind, that the, the, probably the most fundamental issue in the OCAP litigation at the time relates to how diversions from the Truckee River are taken over to Lahontan Reservoir. In the days of no regulation the attitude was, “We will take as much water from the Truckee as we need to to keep Lahontan full all the time.” That was regardless of what the Carson River would, would produce. And, in that litigation I, I mean I told those folks, you know, “You can’t, that, that isn’t going to fly, that kind of an approach. There has to be some—the government’s approach of, of taking into account what the Carson River is going to produce, in deciding on how much to divert from the Truckee, makes sense. You can’t take Truckee River water over there and just spill it to the wetlands, because the Carson River is going to come down and cause Lahontan to spill. There has to be some (Seney: Yeah.) rational way of doing that.”

Seney: Or, use it for winter power generation as they used to in the past?

De Paoli: Right. The position that we had was that you ought to be able, when the best available information indicated that the Carson would not fill Lahontan in a particular season you ought to be able to take over enough Truckee River water to fill Lahontan. The government took—and, full Lahontan is 280-some thousand, without boards, flash boards, and 315,000 with. The United States, in '88, revised the Operating Criteria—that was what we were litigating about—to say, “Regardless of what the information is on the Carson River, we will only allow you to take over enough Truckee River water to bring Lahontan to 215,000 acre feet by the end of June, which is generally the end of the runoff season.” And, that was the argument we were having at that time, is no, if the information is clear that the Lahontan isn't going to fill from the Carson, and at 215 it isn't going to fill, you ought to be able to take enough from the Truckee to fill it. And that was, that was the fundamental debate.

Since that time, the revised OCAP takes that 215 number down, I think, to 197, even somewhat lower. That was the main issue. There were other issues about how much authority did the Bureau have to mandate

efficiencies, and what happens if you don't meet those efficiencies? But, the fundamental issue was diversions from, from the Truckee. And, I think if that question had been answered the two sides would have been able to get together and (Seney: Would have forced some resolution?) they would have come to some (Seney: Yeah.) resolution. With no answer to that question, and with an Interior Department that has been taking a pretty hard line in terms of what that number should be, it was very difficult to get them together.

Seney: Let me ask you about that. Because, of course, this is a Bureau of Reclamation project and one of the things we wanted people to do is comment on the role of the Bureau of Reclamation and their perceptions of the role, whether or not it's good, or bad, or indifferent. The Bureau doesn't care. I certainly don't care. So, what, how would you respond to that, the role of the Bureau in all of this and how they have behaved, and how their behavior has been helpful, not helpful, how they may have changed during that period of time?

Reclamation Has Not Controlled the Situation

De Paoli: Well, I think to a large extent the Bureau has not been in control of the situation for a long time. I think the, and certainly in the OCAP discussions what happened in '88 was the, what the Bureau was told they needed to do to get a non-jeopardy opinion out of the U.S. Fish & Wildlife Service for the cui-*ui*. And that, that I think was what drove the change from full reservoir to 215. Certainly in the negotiations that led up to 101-618 and the TROA negotiations themselves, the Bureau has not been in the, in a position of control and, you know, there's been a, for right or for wrong, or for better or for worse, there's been a broader federal approach than just the Bureau of Reclamation, than what the Bureau of Reclamation might or might not want. It's, you know, it's been, to a large extent, the Justice Department has had a large voice and has, and has had the U.S. Fish & Wildlife Service and the Bureau of Indian Affairs. And, you know, that's, I think, inherent in the federal government's roles. The federal government just has more than one role in this whole process.

Seney: Yeah. There was a period of time, of course, when the Bureau of Reclamation was the dominant Bureau with the Department of the Interior, and the others, the Fish & Wildlife Service and the Bureau of Indian Affairs would have deferred to them. That's no longer the

case. I think Indian Affairs and Fish & Wildlife Service may have the ear of the higher ups and somewhat more than the Bureau does.

De Paoli: Certainly have. Certainly have during the, the time frames since, since Laxalt was out of the picture, I would say.

Seney: Yeah. Yeah. And it's, that about coincides with it, doesn't it?

De Paoli: Yes.

Seney: I can't think who the commissioner was then, but it wasn't, it was a Nevada person, was it not?

De Paoli: It was, Bob Broadbent was the commissioner (Seney: Right.) during some of the Laxalt, during the, that period of time.

Seney: And, he's a Nevadan?

De Paoli: He was from Las Vegas. Yes.

Seney: Is he now director of the airport down there?

De Paoli: Yes, he is.

Seney: And, I understand he's a very influential man in the state?

De Paoli: Yes, he is.

Seney: Would I be wrong in thinking that?

De Paoli: No. You're right.

Seney: Yeah. Okay. And, I'm also, have been told by several people that when Laxalt was senator and Reagan was president that he really kind of, Laxalt, called the shots on what went on in Nevada, in terms of the federal government, which is a large role here since a huge amount of the land was owned by the federal government. You sort of smile when I say that. Would that be right, do you think?

De Paoli: Well, he certainly had the confidence and the ear of the president and I'm sure if he wanted something to happen or not to happen there were people who would at least listen, if not, if not perform.

Seney: Yeah. Right. What interests did the power company have in 101-618? Which parts of that are of particular interest to the power company and did you spend your time on either making sure they stayed in there or expanding them?

Power Company Interests in 101-618

De Paoli: Well, the key interest of the power company were the allocation of the Truckee River water, and particularly the limitations placed on use of water and surface water in the state of California, and changes to—the power company was very interested in doing its best to insure that there would be, whatever water California used that whatever the return flows from that would continue to come down the river. Obviously the Truckee River Operating Agreement provisions were key to the power company, especially the part requiring the implementation of the Preliminary Settlement Agreement. The power company was very interested in provisions in the bill that insured that once . . .

Seney: Let me just stop you for a second on the Preliminary Settlement Agreement, because there's something else I wanted to raise. That is, by reference, made part of the law, is it not, the Preliminary Settlement Agreement, in 101-618?

De Paoli: What, yeah, what this, what it says is that the, "any operating agreement must implement the Preliminary Settlement Agreement."

Seney: There is a sort of addendum, and I'm not sure that's the right term, to the Preliminary Settlement Agreement. I mean you, being the power company, and the tribe negotiated over who would operate and control the federal reservoir?

De Paoli: Right.

Seney: And, at some point the federal government said, "Gee."

Federal Government was the Most Important Party at the Table

De Paoli: "We should be involved." Right. That's right. The, that was, the Preliminary Settlement Agreement, I guess, is unique that in that we were negotiating over issues that without the, the single, the most important party at the table, which was the United States, because it was clear that none of the things we were agreeing to could happen unless the United States also agreed. And so, there came a time, after the Preliminary Settlement Agreement but before 101-618, where we negotiated what was referred to as a Ratification Agreement. And that is referenced in the law. There is an agreement called the Ratification Agreement, but to my knowledge it never was signed by the

secretary of the interior, or anyone, but it was essentially built into the statute (Seney: Uhm-hmm.) by reference. And, I, there were some, some parts of the Ratification Agreement that required modifications to the Preliminary Settlement Agreement.

Seney: But, they're really trivial, are they not?

De Paoli: They are trivial. Yes. They're not, not material to the key elements.

Seney: Let me ask you, you must have known that at some point the federal government would need to be involved in this or want to be involved. Did you and the tribe, the power company and the tribe, make a conscious decision that, "This will be a hell of a lot harder to do with the federal government sitting here at the table?"

De Paoli: I can't remember how, whether there was any conscious decision or how that came about. I think it was, I think we were assigned to go negotiate. The tribe and the power company were assigned to go negotiate among themselves and at the time there really wasn't set up the kind of federal—what's the word I want to say?

Seney: "Mechanism" maybe?

De Paoli: Yeah. A mechanism to bring all the federal interests into one room and in to speak with one voice. And so, I mean I think it would have been almost impossible during that period of time to have gotten someone at the table who could have said yes or no on behalf of the United States.

Seney: There was no Bill Bettenberg?¹⁰

De Paoli: There was no Bill Bettenberg then. (Seney: Yeah.) There was no one who was heading up the, all of the federal agencies and bringing them to the table with one voice.

Seney: Well, however that was arranged, and you have just the slightest smile on your face at this point, (Laugh) it was probably a good idea to keep them out of the negotiations?

De Paoli: Yes.

Seney: Do you suppose?

¹⁰ Bill Bettenberg took the lead for the Department of the Interior in Truckee-Carson river issues leading up to and implementing P.L. 101-618 and participated in Reclamation's oral history program, see William Bettenberg, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Donald B. Seney, edited by Donald B. Seney and desktop published by Brit Allan Storey, senior historian, Bureau of Reclamation, 2009.

De Paoli: I think so.

Seney: Yeah. And, my understanding is that these trivial things in the Ratification Agreement are almost, what do I want to say, kind of an ego thing by some peoples' likes. They had to make a little change here, a little change there. And, I don't want to say they changed a semicolon to a comma, but it wasn't much beyond that?

De Paoli: It wasn't. That's my recollection. (Seney: Yeah.) And, it's been a while since I looked (Seney: Yeah.) at that. And there was something in there that we, that the tribe and Sierra had to be satisfied with the legislation that Congress enacted, and that seemed to offend some of the people and so they wanted that (Seney: Uhm-hmm.) deleted.

Seney: Yeah. Yeah. Yeah.

De Paoli: But, you're right, it was, it didn't go to the key, to the heart of the (Seney: Right.) agreement.

Seney: Right. Okay. Okay, what else was there in 101-618? I'm sorry for interrupting you on that.

Power Company Wanted Authority to Store Water in Stampede

De Paoli: There was, one of the things that was important to the power company was that there be some sort of an interim authority to have a contract to store water in Stampede while the Truckee River Operating Agreement was being (Laugh) negotiated, which as taken a much . . .

Seney: And, a year or two . . .

De Paoli: Much, much longer than anyone (Laugh) anticipated. That was one of the differences between the Laxalt bill and the, and 101-618. As I recall, the Laxalt bill had a time limit in it for when the parties had to have an agreement and this one didn't, as you know, does not.

Seney: Yeah.

De Paoli: The power company was also very concerned as to how or what, what burden would be placed, how the, how NEPA [National Environmental Policy Act] would have to be complied with, and the Endangered Species Act. That, too, was one of the differences between the Laxalt bill and 101-618. The Laxalt bill actually had some provisions in it that were intended to avoid full compliance with NEPA. We were told in the 101-618 discussions that, "That just won't fly."

If you have anything like that in there the environmental groups will make sure that it goes nowhere, because they don't want to see that kind of precedent in any federal legislation." So, that was a concern. And, basically the outcome of it was a full, a requirement that NEPA be complied with fully.

There was the interim storage. The power company was somewhat interested in, well was very interested in the parts of the bill that would be contingent on, their effectiveness would be contingent on getting an agreement. And, you know, it was, the bill was, those contingencies were written, I guess, sort of with the same thing in mind, same thing that we had in mind when we objected to Laxalt's getting the Compact approved and paying the tribe some money without keeping everyone's feet to the fire. And so the, the fact that the contingencies that we wouldn't have an effective allocation until the Operating Agreement was done, the tribe would not get any of the economic development money until the Operating Agreement was done. The permanent commitment of Stampede Reservoir to the fish would not happen until 101-6[18], or until the Operating Agreement was done. The . . .

Seney: The Tahoe division of water would not become effective?

De Paoli: Yeah. Right. All of that wouldn't become effective. There was something else that I was thinking about and it kind of left me. Oh, the cui-ui purchase program would not be effective until the Operating Agreement was done. The Operating Agreement would not be effective unless all the litigation that was pending was resolved and dismissed. Those were all important things that the power company was interested in. The power company was interested in the provisions that . . .

Seney: "Interested" in meaning supported those?

Interests in Provisions Protecting Water Rights

De Paoli: Well, supported and was concerned, you know, (Seney: Yeah.) was directly involved in making sure that the provisions read the way we wanted them to read. (Seney: Right.) The power company had some interest or was very interested in the provisions that said we wouldn't affect anyone's water rights and was interested in the provisions that essentially say that "Once there is an Operating Agreement there will be no more claims for additional water for Pyramid Lake under any kind of

theory.” Those were key. There was an interest of the power company on, there’s a provision in the bill that sort of allows the power company to improve those hydroelectric facilities without having to go through the Federal Energy Regulatory Commission process, which was an important provision as far as the power company was concerned. I would say that’s, off the top of my head, those are the ones that I recall right now. There were other provisions that we stayed involved in. The provisions relative to the Fallon Naval Air Station was . . .

Seney: Why don’t we leave it there for now?

END SIDE 2, TAPE 2. JULY 16, 1999.

END INTERVIEW.