

ORAL HISTORY INTERVIEWS

J. WILLIAM MCDONALD



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Statement of Donation

STATEMENT OF DONATION OF ORAL HISTORY INTERVIEW OF J. William McDonald

1. In accordance with the provisions of Chapter 21 of Title 44, United States Code, and subject to the terms, conditions, and restrictions set forth in this instrument, I, J. William McDonald, (hereinafter referred to as "the Donor"), of Boise, Idaho, do hereby give, donate, and convey to the National Archives and Records Administration (hereinafter referred to as "the National Archives"), acting for and on behalf of the United States of America, all of my rights and title to, and interest in the information and responses (hereinafter referred to as "the Donated Materials") provided during the interviews conducted on September 24, 1993 and January 19, 20, and 28, 2011, at Building 67 on the Denver Federal Center, and prepared for deposit with the National Archives and Records Administration in the following format: cassette tapes and transcripts. This donation includes, but is not limited to, all copyright interests I now possess in the Donated Materials.
2. Title to the Donated Materials remains with the Donor until acceptance of the Donated Materials by the Archivist of the United States. The Archivist shall accept by signing below.
3.
 - a. It is the intention of the Archivist to make Donated Materials available for display and research as soon as possible, and the Donor places the following restrictions upon their use: interviews will be made available for research beginning on January 15, 2015.
 - b. The Archivist may, subject only to restrictions placed upon him by law or regulation, provide for the preservation, arrangement, repair, rehabilitation, duplication, reproduction, description, exhibition, display, and servicing of the Donated Materials as may be needed and appropriate.
 - c. For Donated Materials with restrictions, the National Archives will provide access to the Bureau of Reclamation, if the Bureau of Reclamation presents written permission of the Donor specifying the types of information and proposed uses of said information.
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6. This statement of Donation replaces any and all earlier statements executed by the Donor.

Date: Jan. 15, 2014

Signed: J. William McDonald
J. William McDonald

INTERVIEWER: Britt Allan Stacey

Having determined that the materials donated above by J. William McDonald 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.

Date: _____

Signed: _____
Archivist of the United States

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.

A note on the nature of oral histories is in order for readers and researchers who have not worked with oral histories in the past. We attempt to process Reclamation's oral histories so that speech patterns and verbiage are preserved. Speech and formal written text vary greatly in most individuals, and we do not attempt to turn Reclamation's oral histories into polished formal discourse. Rather, the objective during editing of interviews is to convey the information as it was spoken during the interview. However, editorial changes often are made to clarify or expand meaning, and those are shown in the text.

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

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

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Oral History Interviews
J. William McDonald

Storey: This is tape one of an interview by Brit Allan Storey, senior historian of the Bureau of Reclamation, with J. William McDonald, assistant commissioner for resources management of the Bureau of Reclamation, on September 24, 1993, at 9:00 in the morning, in Building 67 on the Denver Federal Center.

Well, Mr. McDonald, would you tell me about where you were born and your early education and how you ended up at Reclamation?

Early Life

McDonald: Sure, I was born and raised in Greeley, Colorado, north of Denver here. I went to the public schools in Greeley. After graduating from high school, I went to the Colorado College in Colorado Springs, which is a small, private, liberal-arts institution. I got a degree in chemistry at Colorado College, and about the only thing that I proved to myself in getting *that* degree is that I didn't want to be a chemist. I chose to go to law school pretty much on a lark, frankly, and was fortunate to get into the University of Chicago Law School. So I was at the University of Chicago Law School from '68 to '71. I basically had decided by my third year in law school that I did not want to practice privately. I had sort of gone to law school with the intent of combining chemistry with law to be a patent attorney. I had the opportunity after my second year of law school to actually dabble in patent law, because I was with the Dow Chemical Company at its corporate headquarters in [Midland], Michigan, as a law clerk in the patent law department [during the summer of 1970]. And what I discovered about patent law is you have to know as much chemistry as a research chemist, and that was more chemistry (chuckles) than I wanted to know!

So I began fishing around for what I might do towards the middle of my third year in law school. Typical of those kinds of things, I was just sitting around with friends one afternoon, bemoaning the fact that I would have to go into the Army for a couple of years, because I had been in R-O-T-C [Reserve Officer Training Corps] in college, had received my commission, and had had a deferment to go to law school. So I knew I'd have to report in and go through basic officers' training and so on and so forth. I had in college chosen the Corps of Engineers as my particular branch. And in talking to these friends at the law school and explaining that that was what was coming for me in the summer after graduation, one of my friends said, "Well, you know, there's a professor," a gentleman by the name of [Dr.] Jack Schaeffer, who was not a law school professor, he was in some other department of the university, and at the time he was on a one-year sabbatical from the university, acting as a civilian scientific advisor to the assistant secretary of the Army for Civil Works—that being the assistant secretary who oversees the Civil Works Program of the Corps of Engineers. So my friend said, "You ought to get a hold of this professor. You've at least got the association of the university, and find out if you can get a job in the Pentagon." So I decided, sure, that sounded like fun. I was having *some* inclination at that point that I might be interested in natural resources law. I had helped establish an environmental law society at the law school while I was

there, and I was one of the officers of the society in my third year. We published some things and held a symposium or two. So I was getting interested in environmental and natural resource *kinds* of law.

I wrote this gentleman, whose name was Jack Schaeffer, if I didn't indicate that, and typical of the military, got a prompt response, having nothing to do with the merits of my situation, just that I fortunately had the University of Chicago association. Professor Schaeffer indicated that he was not aware of any opportunities in the Assistant Secretary's Office, but he thought there *would* be opportunities in the Civil Works Directorate in the Chief of Engineers' Office in Washington, D.C.—here's the person I need to call. So I called this person, and lo and behold, I had a two-star general (chuckles) on the other end of the line! Unbeknownst to me, who was the Director of Civil Works. And at the time, the Corps was faced with military manpower ceilings, limitations on full-time employees, F-T-Es. And in part they were getting around that in the Civil Works Program. . . . Pardon me, I misstated that, they had limitations on their *civilian* employment, but *not* on military personnel. So the Corps and the Civil Works Program at the time—this would have been, for me, the period of 1971—the Corps was getting around that by bringing in young military officers—first and second lieutenants, an occasional captain—who had advanced degrees, Ph.D.s, law degrees, what-have-you, and staffing their Civil Works Program with all these junior officers. And I just happened to stumble into a situation in which an attorney, much like me, who had been commissioned, gone to law school, and had his two years of duty come up, had been a legal policy kind of advisor, working on legislative kinds of things in the Policy Analysis Office of the Civil Works Directorate. And he was about ready to leave, [because] his two years was up. And it was just at the time that I would have gone into the Army and finished my two months of basic officers' training. So I talked my way into a job in the Civil Works Program, with the Corps of Engineers. And that's how I got started in water resources activities.

I spent those two years, which was basically 1972 and '73, on this policy analysis staff—most of that time spent on legislative policy analysis kinds of things; lots of time up on the Hill working with the Public Works Committee staffs, which were the committees of jurisdiction over the Corps of Engineers [Civil Works Program]; lots of times working with the general counsel for the Corps of Engineers on the legal policy interface. The National Water Commission, who ultimately published their final report in 1975, was in existence at the time, much of that being coordinated through the then-existing Water Resources Council, and at a staff level I did a lot of that work for the Corps of Engineers, given my legal background.

Getting Into Resource Management

Given that experience, I really did enjoy the "policy aspect" of the law, if you will, and very much enjoyed the natural resources, water resources management kinds of issues. And decided to go back to school at the University of Michigan, School of Natural Resources, and get a master's degree in resources management, which I did in 1974 through the middle of '76. And after getting the master's degree, I returned to Colorado—as much as anything, because it was home. I had the good fortune in coming

back in the summer of 1976 to be hired on the staff of the executive director of the Colorado Department of Natural Resources, working on a special water study which the legislature had funded at that time. Between '76 and '79, I worked both on that water study and on another study that was funded by the Federal Water Resources Council, pertaining to the availability of water for synthetic fuels [development] in the upper Colorado River basin. That being the period of time in which there was much activity about the potential of conversion of coal to synthetic gases and the oil shale industry, and much to do about the social, economic, and natural resource impacts, including water development. And so there were a series of studies being funded throughout the nation by the Water Resources Council, one of which *was* in the upper Colorado River basin, and the Colorado Department of Natural Resources chose to do that, and I ended up being the study manager for that particular activity.

Colorado Water Conservation Board

Then in September of 1979—earlier in the year [Felix L. Sparks] the prior long-term director of the Colorado Water Conservation Board, which is a division *within* the Department of Natural Resources, had retired. That was a civil service position. I applied and was fortunate enough to get selected to *be* the director of the Colorado Water Conservation Board, so I was the director of that state agency from September of 1979 into August of 1990, when I came to the Bureau of Reclamation. I've been with the Bureau for the last three years.

Storey: Tell me about the issues that you dealt with as the director of the Colorado Water Conservation Board. What are the ones that stand out the most in your mind? And especially, how do they relate to Reclamation?

McDonald: The Colorado Water Conservation Board, by statute, is the state agency, if you will, responsible for water resources planning, policy, and development. Four or five major programs for which the Water Conservation Board was responsible—the first and foremost, relative to the Bureau of Reclamation, and indeed the *history* for the creation of the Water Conservation Board in 1937, is that it was the agency that was the state advocate for garnering Corps of Engineer flood control projects and the Bureau of Reclamation irrigation and M&I [municipal and industrial] water supply projects. It was the advocate that worked the political process, sought congressional authorizations, sought the subsequent appropriations to get projects built. It was, for example, the major state entity in the long process of the early 1950s that led to the Colorado River Storage Project Act of 1956 [CRSP], that authorized that sequence of projects that we refer to as the CRSP; participating projects, many of which are in Colorado. That [act] was the authority for Reclamation to build Glen Canyon Dam, Flaming Gorge, [Navajo Dam] and what is now the Curecanti Unit on the Gunnison River here in Colorado. So that was one major activity.

A second major activity is that the Water Conservation Board was responsible for the state's flood plain management program, which was a pretty narrowly-defined program. We did not have regulatory authority. We did have to approve the technical adequacy of the engineering that defined the 100-year flood plain. Local governments

then had the choice as to whether they would like under state law to regulate or *not* regulate [land uses within the flood plain]. So ours was an engineering role and a technical assistance role.

The third major activity of the board is that the legislature had funded a water development fund out of which the board could make long-term, low-interest loans for the construction of water supply projects. The typical magnitude of those projects would have been several hundred thousand dollars. They were small kinds of projects, *mostly* emphasizing repair and rehabilitation of existing systems.

And then the fourth major area that the board had responsibility for is that the legislature in the '70s had created an in-stream flow program, by which I mean that the Colorado Water Conservation Board had been authorized to appropriate, in the same manner that other water rights are appropriated in Colorado in-stream flow water rights. And indeed, under Colorado law, the board is the *only* entity that can hold an appropriation for in-stream flows.

In the context of the first of those duties, being the proponent of the development of the compact [1922 Colorado River Compact] entitlements of the state of Colorado, I got very well acquainted with the Bureau of Reclamation, because it was obviously the task of the board, and me as director, to work very closely with Reclamation. On the one hand, [and with] the governor and the congressional delegation, on the other hand, to promote the completion of the authorized Colorado projects. I personally dealt with drafting two sets of amendments to the authorizing legislation for the Closed Basin Project and the San Luis Valley when that project ran into some troubles.¹ I [also] worked with then-Congressman [Ray] Kogovsek to garner amendments to the authorizing legislation for the Dallas Creek Project over by Montrose when we had some questions relative to the repayment contracts and the cost allocation for M&I. [We] ran into similar problems relative to cost allocation on the Dolores Project; ultimately [we] resolved that with Reclamation through contract amendments that did not require any legislative action.²

Not related to development of projects, per se, but certainly to protecting the ability of Colorado to develop its compact entitlements, was the Colorado River Basin Salinity Control Program, which was authorized by an act of the same name. That act was originally passed in 1974. The seven Colorado River basin states sought major amendments to that act in 1984. Again, the Water Conservation Board, on behalf of Colorado, was a major actor in that process. Essentially I, on behalf of the upper basin states; Myron Holburt, who was then the executive director of the Colorado River Board

1. The San Luis Project is in south-central Colorado and consists of the Conejos Division and the Closed Basin Division. The Closed Basin Project is designed to salvage shallow groundwater to be delivered to the Rio Grande for beneficial uses in accordance with the Rio Grande Compact.

2. Located in west-central Colorado, the Dallas Creek Project was constructed on the Uncompaghre River in 1987 to increase water supplies for irrigation, municipal and industrial, and flood control purposes; for more information, see Wm. Joe Simonds, "Dallas Creek Project," Denver: Bureau of Reclamation, 1999, www.usbr.gov/history/projhist.html; the Dolores Project is located in southwestern Colorado and provides water for irrigation and municipal and industrial uses; for more information, see Garrit Voggeser, "The Dolores Project," Denver: Bureau of Reclamation, 2001, www.usbr.gov/history/projhist.html.

of California, representing the lower basin states; and a gentleman by the name of Jack Barnett, who was then and continues today to be the Executive Director of the Colorado River Basin Salinity Control Forum,³ which is the association of the seven states to work on the salinity control problems—the three of us were the principal authors of those amendments from the states' perspective. And again, close involvement with Reclamation, because Reclamation is the entity authorized by the statute to build the salinity control units, such as the Grand Valley Project here in Colorado, the McElmo Creek Salinity Control Unit, Paradox Salinity Control Units, down by Cortez, and what have you.

So I got well acquainted with Reclamation during my tenure with the state, worked a lot both with the individual commissioners, and of course with the regional directors that had jurisdiction over Colorado.

Colorado Water Conservation Board's Relationship with Reclamation

Storey: The commissioners then would have been [Robert] Broadbent and Dale Duvall?

McDonald: Well, let's see, starting in 1979, you would have had an outgoing commissioner, because the Carter administration was just coming in, and I can't even remember who that commissioner was, off the top of my head. The first commissioner I really got to know was Keith Higginson,⁴ who was my counterpart, more or less, of course, from the state of Idaho, appointed by Secretary [Cecil] Andrus.⁵ And then following Higginson, you had the Republican administrations. (pause) I'm having to stop and think who the first . . . Well, I've got my sequence wrong, for a starter. I knew Keith as he was *leaving* as commissioner, because the Carter administration was exiting at the end of 1980. So, yeah, it was the Reagan administration coming in, and that would have been Broadbent. And then after Broadbent went on to be assistant secretary for water and science, we had quite a long period there with a couple of "actings," some career executives. And then Duvall came in. Following Duvall, Dennis Underwood, of course.

Storey: And how were Colorado's relations with each of those commissioners? Did they change or anything over the years?

McDonald: I, at least for the eleven-year piece of history that I have personal knowledge of, I would say not. There was a major flap with the Carter administration, which preceded my

3. "Created in 1973, the Colorado River Basin Salinity Control Forum (Forum) is an organization of the seven Colorado River Basin states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming. The purposes of the Forum are to coordinate salinity control efforts among the states, coordinate with federal agencies on the implementation of the Colorado River Basin Salinity Control Program (Program), work with Congress on the authorization and funding of the Program, act to disseminate information on salinity control and otherwise promote efforts to reduce the salt loading to the Colorado River," see www.coloradoriversalinity.org/oraganization (Accessed August 2014).

4. Mr. Higginson was commissioner of the Bureau of Reclamation from 1977 to 1981 and participated in Reclamation's oral history program. See R. Keith Higginson, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, March 22, 1995, and April 19, 1995, in Boise, Idaho, edited by Brit Allan Storey, www.usbr.gov/history/oralhist.html.

5. Cecil Andrus served as secretary of the interior during the presidency of Jimmy Carter from 1977 to 1981.

being director of the Water Conservation Board, because it happened in '77, and that was the so-called "hit list" that the Carter administration assembled in the very early days of its administration in 1977.⁶ That was of major concern to Colorado, and the Colorado political leadership went to great lengths to counter the proposals to delete those projects [stop the projects on the "hit list"]. But I was not personally involved in that. So relationships were probably somewhat strained during the late 1970s, with Reclamation, because of the Carter administration's position on the "hit list." Certainly my personal relationships with Keith Higginson as he was leaving office, and Bob Broadbent—both as commissioner and assistant secretary—and Dale Duvall⁷ as commissioner, and then Dennis Underwood—who I knew both as commissioner while I was *with* the state and commissioner when I came to Reclamation—were very good. They were professionals that I enjoyed working with. There were tough issues, but always, you know, hammered out in very amiable, professional ways.

Storey: When you say that your job was to promote the water projects and to obtain them for Colorado, who were you working with in doing that, and *how* were you working with them?

Promoting Water Projects in Colorado

McDonald: Essentially working with three sets of actors. Within the state, those who were the local proponents of those authorized projects for which we were still seeking appropriations, either to complete or to initiate construction, as the case may be. Secondly, of course, working with the governor and his administration to speak for them, advise them on the issues that we were running into. Several times I either testified on behalf of the governors, either Governor [Richard] Lamm or Governor [Roy] Romer, at appropriations hearings each spring in Congress, for example; or accompanied the governors if they chose to testify. And then thirdly, of course, worked very closely with the [Colorado congressional] delegation. The projects that were still pending for completion or initiation during *my* tenure were all [with the exception of the Narrows Project near Fort Morgan] on the West Slope, or in the case of the Closed Basin, in the San Luis Valley. With the redistricting of the congressional districts, that had occurred in 1980, that meant that that geography all fell to one congressional district, so I principally worked with whoever the congressperson was that represented that district. It started out with Ray Kogovsek, and then Ben Campbell, of course. And then on the Senate side, [I] worked closely with both senators of both parties—there was one of each party during my entire tenure. So that's principally who I worked with in terms of the

6. Jimmy Carter served as President of the United States from 1977 until 1981 after his election in 1976. Within a few weeks of the beginning of the Administration, an internal discussion document accidentally fell into the hands of a reporter. The document proposed cancellation of a number of water projects considered environmentally or economically unsound. This proposal came to be known as Jimmy Carter's "hit list." This happened while Commissioner Daniel P. Beard worked in the Carter Administration, and he discussed his perspective on the issue in his Reclamation oral history interviews and in "The Passage of the Central Valley Project Improvement Act, 1991-1992: The Role of George Miller," an Oral History interview by Malca Chall, 1996 for the Regional Oral History Office, Bancroft Library, University of California.

7. C. Dale Duvall was commissioner of the Bureau of Reclamation from 1985 to 1989 and participated in Reclamation's oral history program. See C. Dale Duvall, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, January 26, 1993, in Washington, D.C., edited by Brit Allan Storey, www.usbr.gov/history/oralhist.html.

Colorado congressional delegation. In terms of committees of jurisdiction, of course, you were working with the respective subcommittees on the House Interior and Insular Affairs Committee, as it was known in the 1980s, and the equivalent subcommittee on the Senate side for the full committee of Energy and Natural Resources. And necessarily, in the course of moving legislation through the Hill, you worked closely with those subcommittee staffs, and occasionally had personal contact with the [subcommittee] congressmen or the senators themselves. I often appeared to testify before those committees, of course. And then likewise, in terms of the appropriations process, I would work closely with the subcommittee staffs for the House Appropriations Committee and the Senate Appropriations Committee that had jurisdiction over Reclamation. During my tenure, we were not trying to move any Corps projects, so I really only appeared before the subcommittees that had jurisdiction over Reclamation—either substantively or in terms of appropriations.

Storey: Were there any Colorado congressmen who were more supportive of water projects—congressmen or senators—than others?

McDonald: Well, the congresspersons who represented the West Slope and San Luis Valley during my tenure were always quite supportive of the projects. The balance of the delegation on the House side generally was less interested, because they didn't have as large a political stake. Then-congressman Hank Brown, whose district was in northeastern Colorado and wrapping around the eastern plains and on down south, was always very supportive of the activities we were undertaking, even though they were not within his district, since they were on the West Slope or in the San Luis Valley. The balance of the delegation, basically when we sought to have the full support of the delegation in the form of letters or that kind of thing, was supportive with Pat Schroeder perhaps being less enthusiastic than the others, given both her district and her professed policy interests.

In terms of the senators, the Republican senators were always strongly supportive. The Democratic senators, of course, were Gary Hart and Tim Wirth. I certainly always found them to be fully cooperative, and in the end, supportive of the positions that Colorado was taking. Although, at times, I think they had *some* reluctance about the development agenda that was still being sought in the 1980s by the traditional Colorado water interests, and asked some tougher questions and perhaps had to be persuaded with a little stronger arguments as to the merits of those positions. But they, at all times, were supportive of what the governor and the Water Conservation Board were seeking.

Storey: I believe by the time you got into that job, the Narrows Project was a dead issue out on the Platte [River].

McDonald: To some large extent. The Narrows Project, which was an authorized project, that would have been constructed on the South Platte River in the vicinity of Fort Morgan, Colorado, had originally been authorized as part of the Pick-Sloan Missouri Basin Plan, had then lapsed in its authorization, had been reauthorized, if memory serves me correctly, in 1970. The Bureau of Reclamation had gone through the planning [and] environmental compliance [processes and] had even begun to acquire lands, as I recall,

in the 70s, in anticipation of construction, and was poised to go to construction when the Narrows showed up on the Carter administration's "hit list" in 1977. Colorado was *not* successful in getting the Narrows *off* the list, if you will. They did succeed with respect to Dolores and Dallas Creek, but not the Narrows. And in that context, when I became director of the board in 1979, while there was much interest in it, and while it continued to be the Water Conservation Board's official position well into the 1980s that we *did* support that project, I think the fact of the matter was, and it certainly was *my* personal assessment, that that was *not* a project that was any longer economically or politically viable. And eventually, by the mid-1980s the Water Conservation Board quit testifying in *favor* of the Narrows—it never took a position *against* it, it just disappeared from our annual testimony to the Appropriations Committee, and we quit seeking funding for it.

Storey: At that time, when the "hit list" came up, what do you think the complex of issues were that contributed to that issue, from your perspective? I recognize you came *after* that.

Carter's "Hit List"

McDonald: Sure. I think it was essentially the issue of whether the projects on the "hit list" were economically justified—that is to say, did the expenditures that they would entail in the way of federal budget outlays . . . Were the benefits that would flow from those expenditures sufficient and worthwhile to justify it? There was the budget crunch itself. The United States budget at that point in time, as I recall, was beginning to mount substantial deficits. And even as we debate in the 1990s, the deficit, that was an issue back in the 70s because of the impact of the expenditures of the Vietnam War. And then, of course, the Carter administration cast it, and as I recall, largely tried to package it as an environmental issue, that these were projects, all of them on the "hit list," with substantial negative environmental impacts that were not being appropriately mitigated and ameliorated. And *that*, when coupled with lack of economic justification, were the principal arguments against the projects. I would have to say I think those, in fact, were appropriate questions about those projects. While one can debate that issue pro and con, I would say that those, in fact, were fair issues, as to whether the expenditures were justified, and whether the economic benefits exceeded the costs, and whether the environmental costs that would be incurred were worth it to society in terms of the benefits that were going to be gained.

Storey: You've already mentioned, for instance, Dallas Creek and the San Luis Valley Project. Were there other projects like Animas-La Plata, and so on, that were around then?

Projects of Interest to the Water Conservation Board

McDonald: Animas-La Plata, in addition to the ones I've mentioned, is the other principal project that was in front of the Water Conservation Board during *my* tenure. It had been authorized as part of the 1968 Colorado River Basin Project Act. That was essentially a quid pro quo in 1968 in which Arizona got the authorization for the Central Arizona Project, and the four upper basin states got in return the authorization of a variety of projects. There were five additional CRSP participating projects that were authorized [in Colorado]: Animas-La Plata, the Dolores, the Dallas Creek, Fruitland Mesa, and West Divide.

Dolores and Dallas Creek were under construction in the 80s, West Divide and Fruitland Mesa were nowhere close, and it was fairly obvious that they *weren't* going to be, that they were not justified. Animas-La Plata was, however, the one that the state was still struggling to *bring* to fruition. That ultimately, of course, got wrapped up in what has become the [1986] Colorado Ute Indian Water Rights Settlement Agreement, and subsequently the Colorado Ute Indian Water Rights Settlement Act, passed by Congress [in 1988]. I had much involvement with that. The attorney general at the time, Duane Woodard, asked me to be one of the principal negotiators *for* Colorado with the federal government and the two Ute tribes.

The basic history of that is that the attorney general approached the tribes in December of 1984, in a meeting that he and I had in Durango, to see if they would be willing to explore the potential of negotiations. That initial meeting in December of 1984 eventually led to the attorney general, the governor, Dick Lamm, and several water officials in the state having a meeting in April of 1985, at which, if I recall correctly, the federal government was invited and in principle people agreed that yes, there looked to be a *potential* for a negotiated settlement of the long-standing reserve water right claims of the two Ute tribes. And so we basically commenced in April of 1985, the negotiations with the two tribes and with the federal government. Animas-La Plata was integral to those negotiations as both a means of providing water to the Indians in settlement of their claims, and likewise providing benefits to the non-Indian communities from *their* perspective for the things that they were going to give up in honoring other aspects of the reserve right claims of the two tribes. We negotiated very intensely from April of '85 until the Colorado Ute Indian Water Rights Settlement Agreement was signed in December of 1986. Then basically 1987 and '88 were years spent in trying to gain the necessary authorizing legislation *for* the settlement from the Congress. There were certain aspects of the settlement that could *not* be implemented without an act of Congress. That was a very intense effort. There was considerable opposition from those members of the Congress that were concerned about the economic aspects of the settlement, and those that were concerned about the environmental aspects. There was substantial opposition from . . . [the three lower Colorado River basin states because of a provision in the settlement that would have allowed the tribes to market water off the reservations on an interstate basis in certain circumstances].

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McDonald: Despite those elements of opposition, we were able to get that act passed, and that occurred in October of 1988. So, yes, the Animas-La Plata Project is one that I know inside out and backwards, as is the settlement agreement and the settlement legislation.

Storey: Harking back to that time when you were with the state: Water in the West is one of these emotional issues, and traditionally, westerners, I think, have looked at it as, "You have to have more water to have more development." Was the state still in that mode of thinking at that time, or had the state's thinking begun to evolve? And if so, how had it evolved?

A Transition in Ways People Thought About Water Projects

McDonald: I think clearly the thinking in the state—and by that I mean, the geographical boundaries of the state of Colorado, not the political leadership, *per se*—I think clearly the thinking had begun to change. I would characterize my tenure with the Water Conservation Board, which was essentially the decade of the 1980s, as ten years of change. And that was the exciting thing about it. It was a constant process of change, because Colorado was clearly moving from the tried and true traditional position that there was no such thing as a "bad" water project, to a position in which we were confronting the realities of economic justification and the environmental damage that projects *can* cause, and also coming to recognize that water left in a stream also was valuable, measured not only in esthetics and environmental values, but even in dollars and cents. [There was] intense debate in the 1980s about the board's in-stream flow program [and] the manner in which the board administered it. We became more and more aggressive over those ten years in acquiring in-stream flows on reaches of streams that got out of the mountains, which were essentially places where it was of no particular concern because you were above diversions, you were above communities, you were probably on federal property, in a national forest, [or] B-L-M [Bureau of Land Management] lands. And over the course of the ten years, we began to move our appropriations further and further downstream. So there was a clear transition occurring during the 1980s. The fact that the board, for example, when I came in 1979, was strongly supporting the Narrows Project, and gravitated to a position of simply falling silent on it in the mid-1980s is a pretty classic example of that transition. We did the same thing with the Fruitland Mesa and West Divide Projects. When I came in '79, the board's position was one of strong statements of support. By the mid-1980s, as with Narrows, we simply quit testifying for those projects. [We] never officially came out *against* them. For the record, if ever pushed, [we] would have said, "They're authorized projects, they still have the support of the state of Colorado." But the practical matter was, no state official was making any effort to move those projects forward, because we didn't think that they were appropriate parts of the public agenda any more. So very much a process of transition. [Since] the Ute Indian Water Rights Settlement,⁸ while built to some large extent around the Animas-La Plata Project, we *had* to confront the realities of the requirements of the Reagan administration for cost-sharing. Ultimately, as part of the Indian settlement and the associated cost-sharing, [we] agreed that essentially only half of that project would be built with federal funds. And much of that would have been up-front cost-shared. And the balance of the project, if it were ever to be built, would be non-federally-funded in its entirety. So a major shift in position, forced by the realities of what we were dealing with.

As I was leaving in 1990 from the Water Conservation Board, I think the pace of change was accelerating very substantially. The governor had made some new appointments to the board, people who clearly represented an environmental

8. The Colorado Ute Indian Water Rights Settlement of 1988 authorized the secretary of the Interior to supply water to the Ute Mountain and Southern Ute Indian tribes from the Animas-La Plata and Dolores projects. For more information, see "Colorado Ute Indian Water Rights Settlement," in United States Department of the Interior, Bureau of Reclamation, *Federal Reclamation and Related Laws Annotated (Preliminary)*, Volume V of Five Volumes 1983-1998, Donald L. Walker, editor (Denver: United States Government Printing Office, 2001), 2625-33.

perspective; people who in the last three years, as I now from somewhat afar [have observed], have even more aggressively moved the in-stream flow program down the road to take on some tough issues; people who are concerned about endangered species fish issues. So I think very much of that process of change was underway in the 1980s.

Storey: Was it a conscious change? Were they recognizing that the world was changing? Or was it because they had realities forced on them that caused them to change?

McDonald: It was probably more that realities were forced upon the state, to which it had to react, as opposed to the state, if you will, taking the initiative in enunciating, unilaterally, its own new position. My sense was that those of us involved—and that obviously included myself—were, however, being pretty darned responsible in recognizing those realities, and dealing with them in very straight-up ways. We came to grips with the cost-sharing problems, we cut projects back, we defended the in-stream flow program against a series of legislative attacks. The governor vetoed a sequence of bills over the course of four or five years that would have gutted the in-stream flow program, and the board in very public ways *urged* him to veto those bills. So while it was probably mostly reacting to pressures, I think it was reacting in a very responsible way. And a *lot* of the process, *I* at least perceived, was I was spending enormous amounts of time with the traditional water users trying to help them understand how the world was changing, and in prodding them along as best I could in *my* judgement to deal with those new realities and come to responsible public policy positions. Sometimes I was successful, sometimes I was not. (laughs) But the process was very much underway.

Storey: I gather the board was actually an appointed board by the governor?

McDonald: The Colorado Water Conservation Board is, as I said, a division within the Colorado Department of Natural Resources. By statute, however, it is an independent, decision-making and policy-making body. It presently—I say "presently" because over the years there have been statutory amendments that have reconstituted it in different ways. But it is presently a board that is composed of nine private citizens, appointed by the governor, subject to the confirmation of the Colorado Senate. Those nine private persons serve on staggered three-year terms. They represent nine geographic areas of the state of Colorado—eight of them drawn on river basin boundaries such as the South Platte River drainage, Arkansas River drainage, San Luis Valley, so on and so forth. The ninth is—if memory serves me, since 1937 when the board created it—the ninth has always been the city and county of Denver.⁹ And that simply represented the politics in 1937 of the city and county of Denver—and probably *still* represents the politics (laughs) in Colorado. And that was an outgrowth of the battles that brewed even in the 30s over transmountain diversions of the Colorado [River]. The tenth member of the board became, in the late 60s, the director of the Colorado Department of Natural Resources, sitting *ex officio* with a vote, when the department was created and the board was merged into the department. Prior to 1967 or 1968, Colorado did not have a departmental structure—it had 137-some odd individual entities reporting directly to the governor, in terms of an organizational box. And government was reorganized in '67 and '68 to create principal

9. McDonald editorial note: "This statement is incorrect. The city and county of Denver did not have an appointed board member until 1945, when the 1937 statute creating the board was amended."

departments. All these independent boards and commissions and divisions and what-have-you were merged under the series of departments that Colorado now has.

So when the Colorado Department of Natural Resources was created and the board was put into it as an administrative unit, albeit with its independent, policy-making authorities, the Director of the Department of Natural Resources, who is a gubernatorial appointee, was made an *ex officio voting* member of the Water Conservation Board. When I came in 1979—and as far as I know, this had *perhaps* been the arrangement since 19 . . . Well, that's not true. I was going to say it had been the arrangement since 1937, but I know it was not. For some very long period of time, and as I came in 1979, the other [ex officio] *voting* members of the board were the state engineer, who was the administrator of water rights in Colorado; the attorney general; and the director of the board, the staff director himself—in my case, me—which I always found to be a very awkward situation, because as staff director, you were basically the person framing issues and bringing recommendations *to* the board for its deliberation. And it put you in the posture of voting on your own recommendations. But my predecessors had done it, so I elected to go ahead and cast my vote. The fun story I always like to tell is, we had one tied vote about a year-and-a-half into my tenure, and I cast the deciding [tie breaking] vote. It was on an issue of whether we should fund a proposed project out of this construction fund that we could make loans from. [It] turns out that what I voted against was a project the developer for which was the county chairman of the Republican party in Mesa County. And the next year the General Assembly, which is of course controlled by Republicans, amended the statute to remove the director of the Water Conservation Board (chuckles) as a voting member of the board. And while they were at it, they took the state engineer and the attorney general out as voting members. Those three positions—the state engineer, the attorney general, and the director of the board, were left as *ex officio non-voting* members, but we lost our votes, which never hurt my feelings one little bit. It was much easier to make recommendations and debate them and not have to vote on them. So [the board] ended up with ten voting members.

Storey: It must have been an interesting situation with a Republican legislative branch and a Democratic executive branch appointing the members of the board throughout.

Partisan Politics Seldom an Issue in Making Colorado Water Policy

McDonald: Seldom an issue. At least during my tenure governors Lamm and Romer were quite sensitive to the makeup of the board. There is no statutory requirement, there was no statutory requirement at the time—I don't think its changed—for a political balance on the board.¹⁰ But the history, the unwritten rule, had been that governors sent appointments up that kept that political balance. I never really *personally* knew, unless a board member chose to divulge to me, what their party was. But my sense had been, in my eleven years with the board, that we probably always had about a five-four or five-five or maybe a six-four split between parties.

The other thing to understand, Brit, is that water—at least through the 80s—maybe

10. McDonald editorial note: "The statute that created the board was in fact amended in 1992 to require that no more than five of the nine appointed members could be from the same political party."

its changing now—while it was a political issue, was a nonpartisan issue. The politics of water in Colorado has essentially never been a Democrat-Republican kind of split. Its been a split between basins, its been a split between the East Slope and the West Slope, but if we had an East Slope-West Slope [issue], for example, I can guarantee you that it was Republicans and Democrats on the West Slope against Republicans and Democrats on the East Slope. So governors essentially didn't approach the job . . . At least I never thought that Romer and Lamm approached the job as one feeling the necessity to pick along political parties to represent their particular interests. They always were more seeking, I think, solid representation and a balance of political parties so that it *didn't* become an issue. So essentially, I did not have to deal on the board with that kind of issue.

Relative to the legislature, there were, of course, some partisan scraps. That's inevitable when you've got a Republican legislature and a Democratic governor. On the whole, though, the board did not get caught up in those kinds of things during my tenure. If we had debates, they were policy debates on the merits. And sometimes the legislature did not like what the board had done—no doubt about that! I had some bruising hearings, representing the board's position in front of the committees of jurisdiction. But they essentially went to the substance and policy, and different perspectives. For example, on the in-stream flow program. There were those in the legislature that clearly thought the board had gone much further with the in-stream flow program than intended. The board defended its actions, and the statute as we understood it, very strongly. The Republican leadership did not like that at all. To that extent, those became perhaps partisan issues, because it was a Democratic governor supporting the board, who vetoed, as I'd said earlier, a series of bills over four or five years, that endeavored to gut the program, before that issue kind of stabilized and the legislature figured out that it *wasn't* going to get anything past a Democratic governor, and so they quit trying.

Storey: What about the composition of the board in terms of women and minority balance? I know Governor Lamm appointed me to a little advisory board, and we had some strange bedfellows (laughter) because of balancing all of the these different issues of geography and sex and minorities and so on. Did you have any of that on this board?

Water Board's Demographic Make-Up

McDonald: Not particularly. The water business in Colorado, at least up until recent years, has been the domain of the traditional white male. When I came to the board in '79 there were nothing but white men on the board. Governor . . . (sigh) I think I'm right in saying that Governor Lamm did appoint a woman. I know a woman was appointed—I'm trying to remember who it was, Governor Lamm or Governor Romer. I think the first woman that was appointed while I was with the board was appointed by Governor Lamm. She was the *only* woman on the board, however. Then when her term was up and she left, a woman was appointed as a replacement, but only that one woman. There were no minorities—Hispanic, black, or what-have-you—on the board. To some large extent, that represented the fact that the universe of people who had an interest in water resource issues, who would accept an invitation to serve on the board, is essentially all-white

males. Even if you go to the environmental community, you're going to find largely the white population, as opposed to a black or Hispanic or some other population. Certainly could find females as opposed to men. But in my tenure there had only been those two women appointed—both from southwest Colorado, as a matter of fact.

Storey: And what did these folks do? Were these water professionals, or were they interested citizens, or what?

McDonald: For the most part, they were people who were intimately involved in the water resources business in Colorado—several of them practicing water rights attorneys, people who were city managers and therefore at least had a utility perspective on water supply issues, ranchers, farmers. One gentleman was a banker—during the time I was with the board—from Walden, but pretty well acquainted with water issues because as he made operating loans to farmers and ranchers, the quality of their water supply and their water rights was one of the things that his bank would evaluate in *making* operating loans. So for the most part they were people who had a pretty thorough acquaintance, at least as lay citizens, with water rights business. They ran water, they used water, or it was in some other way very much of concern *to* them. I'd have to get a list out and really look carefully, but I can't, as I sit here and think through it, I can't really think of anybody appointed to the board during *my* eleven years that didn't have a pretty firm finger in the water business. They might have been . . . One gentleman comes to mind—ran a hardware store. But he'd for years and years been on the board of a water conservancy district. So from that perspective he knew an awful lot about the water rights business. That's begun to change in the last couple or three years. As I was leaving the board, Governor Romer appointed a gentleman who, while he's a water rights attorney, is also a major official—or at the time was—in the Nature Conservancy: a fellow by the name of Dave Harrison from Boulder. And Dave brought a very unique perspective, both as an environmentalist and as one who knows the Colorado water rights system inside out and backwards. And there have been other appointments like that by Romer in the last two or three years. And I think, again, that's inevitable, as the perspective on the importance of water broadens as that process was clearly beginning to occur in the 80s. I think its both appropriate and politically inevitable that the current governor, Roy Romer, and subsequent governors are probably going to broaden the perspective of that board.

Storey: And did the board itself become involved in dealing with congressmen, dealing with the Bureau of Reclamation, and so on or was that mostly your [role]?

The Board's Political Routine

McDonald: Occasionally board members did, but because they were not compensated for their time and effort—they did get actual travel expenses, but not even a per diem—it was just literally out-of-pocket expenses under the statute. I essentially was the spokesperson for the board—I was the one that went to Washington and lobbied, testified and what-have-you. On occasion I would invite board members and have them come with me when we thought we were perhaps into a real crunch, and we wanted the leadership of the board . . . You know, there's a limit to what a career staff person can do in speaking for a politically-appointed board. I certainly understood where that line lay, and so did the

board members. But as a practical matter, its really tough to take a farmer or rancher off the farm—particularly if you hit the wrong season—and have them go blow off a week in Washington, D.C. to work the Hill. So essentially *I* did those things.

The board's meeting schedule, oh, when I came to the board they were typically meeting on a quarterly basis. The workload of the board got so intense in the 80s that within about a year we moved to a schedule of meeting every two months, and they've done that continuously since then. So essentially their task was to come into Denver, or if we were meeting someplace else in the state, go to that location for two days. We typically had two-day board meetings—*long*, two-day board meetings, eight or ten hours (chuckles) was not unusual, trying to get through the agenda in front of the board. They were *very* responsible people. I think the highlight, in a lot of ways, for me, of working with the board was—or *being* with the board—was actually working for the board itself as a group of citizens. Having board meetings, you were never quite sure where the board might come out. It was fun to have those debates, they were always good debates.

I was *always* impressed with how well-prepared people came. We would typically have an agenda with thirty or thirty-five different action items on it, for which I and my staff had prepared briefing memoranda in advance that were always mailed out—at least hopefully so—a week to ten days [in advance of each meeting]. Board members would come with an inch of reading material—fifty, sixty, seventy pages—to a board meeting, open to the public. Those [in the audience] who had a concern about the issue were invited to the microphone. A wide range of views [were] presented to the board in addition to whatever perspective I and the staff might have. Solid debate generally ensued, and sometimes it was hard to get a majority out of the board, and they really had to work at (chuckles) coming to a position. They were not afraid to cast "no" votes. The vast majority of the time, motions were made and passed unanimously. But there wasn't a board meeting that passed that there weren't a few motions that were hotly contested, and we'd have six-four or seven-three votes. And quite frequently there'd be one or two people that would vote against a motion. So it was a board that while it worked well together and was a lot of *fun* to work with, it was not the least bit abashed—in any of the composition of the ten people on it in my ten years, eleven years—that weren't prepared to debate the issues on merit, and cast their vote accordingly, and in a very public way. There was a lot of exposure on that board. Board members had to go home and answer to tough questions from constituencies on a lot of occasions. (laughs)

Storey: Did the board actually rotate? You said the terms were three years.

McDonald: When the board was set up, and ever since 1937 it was set up like boards are typically set up: a group of three people had a one-year term, in 1937 a group of three had a two-year term, and the last group of three had a three-year term, and *that* three-year rotation has continued ever since. So three of the nine gubernatorially-appointed people were always up each year, [when] their terms expired.¹¹

11. In 1937 there were only seven appointed members. They serve at the pleasure of the governor. In 1945 the statute which had created the board was amended to provide for nine appointed members. They served staggered
(continued...)

Storey: But were they reappointed?

McDonald: The governor was free to reappoint them—there was no statutory limit. When I *came* to the board, the tradition had been to reappoint people for fifteen, twenty years at a crack. The chairperson of the board, I think, had been there twenty-one years when I came; a couple of other members had been there for fifteen to eighteen years. Governor Lamm made a conscious decision to not do that, with respect to all of his appointments to boards and commissions, not just the Water Conservation Board. He announced in a very public way that it was *his* intent to basically hold people to two 4-year terms, or three 3-year terms, depending on which board or commission it was. So by the time I left, there was nobody on the board who'd been there when I came in 1979. The board had turned over entirely. And Governor Lamm, and for that matter, Governor Romer, were sticking to the general policy. And I'm sure they made exceptions from time-to-time, but sticking to the general policy that they would reappoint four-year people only to one second term, and three-year term people, in the case of the Water Conservation Board, to a total of nine years, which I think is healthy.

Storey: At Dallas Creek, for instance, I believe there's a recreation area run by the state of Colorado. (McDonald: Uh-huh, there is.) Did you become involved in negotiations of that type for uses for Reclamation projects?

McDonald: I did *not* at Dallas Creek, the reason being that it is the Colorado Division of Parks and Outdoor Recreation that administers state park areas, and Reclamation negotiated with the state through that division for those recreation facilities. There were no particular issues or problems that came out of those negotiations, so my other division counterpart [at] Parks and Outdoor Recreation, took care of that.

The only set of recreation kinds of facility issues I ever got into was on the Closed Basin [Project] and that essentially came up because the facilities are oriented to fish and wildlife. It therefore was the Colorado Division of Wildlife that became principally involved, and they did not have *that* set of facilities high on their budget priority list, and eventually the board got involved and contributed, through *our* authorities, some money to the cost-sharing under Public Law 89-72,¹² required for Closed Basin. So I got involved from that perspective, working with my counterpart at the Division of Wildlife. And then the other thing that happened is, the cost ceiling for Closed Basin was about to be exceeded in the '86, '87 time frame, and we had to get amendatory legislation to increase that cost. So when we went to *get* that amendatory legislation, the principal leadership of the Congress and the committees of jurisdiction hit us with cost-sharing requirements. So the board ended up negotiating, as part of the '88 amendments to the Closed Basin Act, some cost-sharing provisions which brought the board into that issue in a major way. And the requirements [of Public Law] 89-72 and overall project cost-sharing kind of came together at the same time. And the board then, after the '88 legislation, negotiated, and as I recall we got it done in three or four months and signed it in January of '89, entered into a master cost-sharing agreement to cover the Closed

11. (...continued)

three year terms. Thus, three board members terms expired each year.

12. Public Law 89-72 is the Federal Water Project Recreation Act, signed July 9, 1966.

Basin Project.

Storey: I guess what I was trying to get at is whether or not the board helped facilitate other Colorado agencies in their use of Reclamation projects, or whether that was just not the kind of thing you got involved in.

McDonald: Well, essentially, there were no other state agencies involved other than the Division of Parks and Outdoor Recreation, *if* there was a recreation facility. And at least during *my* tenure, there were no particular issues—those things went smoothly. As long as they were going smoothly, I didn't worry about them, the other division directors took care of it. And then fish and wildlife issues, of course—either in a sense of affirmative facilities for enhancement—and I largely left that to the Division of Wildlife, again, except for Closed Basin—*or* negative environmental impacts. The board and I very much got involved, of course, in the environmental impact issues, and oftentimes found ourselves negotiating with our own Colorado Division of Wildlife and then the [U.S.] Fish and Wildlife Service and Reclamation to sort through those environmental impact issues.

Storey: And what were the major kinds of environmental impact issues that you were involved with?

Environmental Impact Issues

McDonald: Principally two things—as always, in-stream flows. If you had a dam [on] or diversion from the main river channel, you're obviously depleting flows in the main channel, so there's always concerns about the remaining water for the trout fishery or other fisheries. And then the second principal issue was with respect to reservoir inundation, the habitat problems associated with that. The principal issue I ran into in that regard is the impacts that would be associated with the construction of the Ridges Basin Reservoir at Animas-La Plata, where substantial upland game habitat would be inundated. There was a *pretty* good-sized debate about what the appropriate mitigation package for that upland game habitat should be. [We] eventually got that sorted out at the stage of the E-I-S [Environmental Impact Statement]. I couldn't tell you what the current status of that may be—I don't know if that continues to be resolved or not.

I guess the other *major* issue I had that didn't go to projects under construction or being *proposed* for construction during my tenure, but it was the cumulative effects of development, water development, and other things that were causing native species to be listed as threatened or endangered. That turned into a major issue [in] the mid-1980s in Colorado, starting in 1984. And an *awful* lot of time was spent by the board, and myself representing the board, in negotiations that led to the Upper Colorado River Basin Recovery Implementation Program between the Fish and Wildlife Service; the Bureau of Reclamation; the states of Colorado, Utah, and Wyoming.¹³

13. The Upper Colorado River Endangered Fish Recovery Program was created in 1988 to aid in the recovery of four Colorado river endangered fish species: humpback chub, bonytail, Colorado pikeminnow, and razorback sucker. For more information, see Upper Colorado River Endangered Fish Recovery Program, "About the Upper Colorado River Endangered Fish Recovery Program," www.coloradoriverrecovery.org (Accessed August 2014).

Storey: And that was for a particular set of species, or a type of wildlife?

McDonald: It was for the Colorado squaw fish, which was listed as endangered at the time, and for the humpback and bony-tailed chub, which were likewise listed as endangered at the time. Subsequent to that, the razorback sucker has been listed. I don't know if that program has been officially amended to include the razorback sucker or not, but that was a basin-wide issue, because the [Colorado River] upper basin, among other streams, was the original habitat of those native warm-water fish species. And between reservoir construction inundating habitat, changes in velocities as a result of reservoir operation, changes in temperature and turbidity as a result of reservoir operations, introduction of non-native fish species that were predators on the natives, land use practices that were changing sedimental load patterns, and a *whole variety* of things going on, not just water development—those species are threatened or endangered, and that has become a major issue for the states and for Reclamation, in terms of managing the water supplies that have been developed. And from the perspective of Colorado, [the issue was] whether they will ever have the opportunity to complete the development of their compact entitlement, given the legal [requirements of the Endangered Species Act].

END OF SIDE 2, TAPE 1. SEPTEMBER 23, 1993

BEGINNING OF SIDE 1, TAPE 2. SEPTEMBER 23, 1993

Storey: This is Tape 2 of an interview by Brit Storey with J. William McDonald on September 24, 1993.

Well, on those problems, where was the board coming down on these issues? Were they fighting for increased use of water, or were they supporting species preservation, or what?

McDonald: Well, the essential position of the board was that the Endangered Species Act should not be applied in a manner that impaired the ability of Colorado to further develop its compact entitlements. That principle was essentially the foundation around which we negotiated in creating the Upper Colorado River Basin Recovery Program. Effectively, the negotiating posture was, again, we were presented with a reality—we came to recognize that reality. So while you were trying to address the reality on the one hand, you were trying to be sure you kept the door open for legitimate water development on the other hand. My personal opinion at this point in time would be that the Endangered Species Act will prevail. I don't think Colorado will ever end up developing, in a beneficial consumptive-use way, its full compact entitlement under the Colorado River Compact and the Upper Colorado River Compact.¹⁴ And its more than the Endangered Species Act—I think it is also probably changes over time that Colorado itself will come to in recognizing that there is major value to be had in some water being left *in* the stream for the aesthetic, environmental, and economic benefits that flow from that—the rafting

14. The Upper Colorado River Compact, signed in 1949 by the states of Colorado, Utah, Wyoming, and New Mexico, allotted each state its share of Colorado River water, based on the upper basins allotment stipulated in the 1922 Colorado River Compact: Colorado received 51.75 percent, 11.25 percent to New Mexico; 23 percent to Utah; 14 percent to Wyoming.

industry, recreation, fishing—and that the traditional perspective that because it has been allocated to us by compact, it therefore *has* to be consumed, is a perspective over time that is not going to prevail.

Storey: One of the interesting things about Reclamation's involvement with Colorado, I think, is the diversion of West Slope water to the East Slope. And for instance, [with the] Colorado-Big Thompson [Project, Colorado], Congressman Taylor was *very* insistent that the West Slope be taken care of. And they took care of it for late 1930s agriculture, basically. They didn't take care of it in terms of town development and retirement community development and those sorts of things. Did you run into those tensions between the East and West Slope as they related to Reclamation, in any way? And how were they playing out in the 80s?

West Slope/Front Range Rivalry

McDonald: (chuckles) Absolutely! You know, two major East Slope-West Slope diversions that the Bureau of Reclamation is a party to: The Colorado-Big Thompson Project that you've already talked about, and then the Fryingpan-Arkansas Project.¹⁵ The major debate on the Colorado-Big Thompson Project has been the manner of operation of Green Mountain Reservoir, which is subject to something called Senate Document 80. Senate Document 80 is the name of the report published by the Senate—actually it's a Bureau of Reclamation report that the Senate embraced and simply gave that document number. That was part of the legislative history for the authorizing legislation for the Colorado-Big Thompson Project. There has been *much* debate over the years—and enormous amounts of litigation, for that matter, as to what Senate Document 80 meant with respect to the replacement supplies that Green Mountain Reservoir is to provide. And associated with that long sequence of litigation going all the way back to the mid-50s is something called the Blue River Decrees in which the water rights for the project were litigated and claims made by the United States in federal district court.¹⁶ Some issues relative to the operation of Green Mountain Reservoir and the meaning of Senate Document 80 *did* come up in the 1980s, and ultimately lead to major filings of water rights suits, both in State Water Court, and in the federal court—again, because the federal court has retained jurisdiction of the Blue River cases all the way since 1955 and

15. Construction began on the Colorado-Big Thompson Project in the 1930s with construction of Green Mountain Reservoir on the Blue River south of Kremmling, Colorado. This was the water committed to guarantee water supply meeting the rights of West Slope water users in Colorado as insisted on by Member of Congress Ed Taylor. Most work on the project was undertaken in the 1940s and 1950s. For more information, see Robert Autobee, "Colorado-Big Thompson Project," Denver: Bureau of Reclamation, 1996, www.usbr.gov/history/projhist.html; The Fryingpan-Arkansas Project is a multipurpose transmountain diversion that takes 69,200 acre feet of water from the Fryingpan River along Colorado's West Slope to the Arkansas River and provides 80,400 acre feet of municipal and industrial water to Front Range communities and supplemental irrigation water to 280,600 acres in the Arkansas River valley. For more information, see Jedidiah S. Rogers, "Fryingpan-Arkansas Project," Denver: Bureau of Reclamation, 2006, www.usbr.gov/history/projhist.html.

16. "The Blue River Decree was finalized by a federal court decision in 1955 and was the result of a dispute dating back to 1937. In 1937, Congress authorized a reclamation project known as the Colorado-Big Thompson Project ("CBT"). This project was developed to store replacement water at Green Mountain Reservoir for use by the western slope to compensate for other Colorado River water diverted to the eastern slope as part of the CBT. The Decree recognized the Federal Government's right to fill and utilize Green Mountain Reservoir and described Denver's water rights to the use of Blue River water and its tributaries." For more information, see Blue River Watershed Group, "Summary of the Blue River Decree," www.blueriverwatershed.org (Accessed August 2014).

'56. And Judge Hirage [phonetic spelling], who heard the cases in '56, was still on the bench when they came back up in the 1980s.

The board was largely only tangentially involved, interestingly enough. Major federal project. In a lot of places in the state, the board would have been just politically swept-up into the whole thing as a major actor. That, for a variety of reasons, has never been [mentioned in] the history on the Colorado-Big Thompson Project. The local actors on the Colorado-Big Thompson Project, both East Slope and West Slope, I always perceived, for whatever reasons—really don't know the history of it—didn't *want* the board involved. And so essentially the board never took the issues up. It was not invited to take a position on it. We were not asked to weigh-in, either in the litigation or in the politics of it. The board consciously debated and decided to stay *out* of the litigation that arose again in the 1980s, except in a very narrow sense that I'll come back to. And in that context, the board, and I personally as its director, really did not have much at all to do with the settlement that ultimately was just reached a few months ago, as a matter of fact, relative to the interpretation of Senate Document 80, the operation of Green Mountain [Reservoir] and the series of water rights filings made in the 80s that led to the litigation that led to the settlement a few months ago.

Storey: We're talking about Denver, the state water rights

McDonald: Denver filing for all of its exchanges and transfers of water rights, and then the absolute *mass* of counterclaims that were filed by everybody else who ever thought they had a water right claim on the Blue River or on the upper Colorado [River], within Colorado—all of which cases got ultimately consolidated into a single proceeding. The board's involvement was very narrow and selective, and that is that the board, under the statute that allows it to appropriate in-stream flows, in the mid to late 80s moved to appropriate in-stream flows above Dillon Reservoir, which is owned by Denver, on the Blue River and its tributaries; and then *below* Dillon Reservoir on the Blue River, between Dillon and Green Mountain. And while those are very junior water rights—that is to say, we were seeking our appropriations in the 1980s, claiming a date of priority as of the day the board met and voted, to *seek* an appropriation. Because its an in-stream flow water right, you can't basically change a water right upstream from a downstream [location below an] in-stream flow water right, because you'll change the pattern of flows and return flows. And under Colorado law, that constitutes injury [to the in-stream flow water right]. And the board, therefore, with an in-stream flow water right appropriated, becomes a *very* major actor in everybody else's change of water right proceedings, because the board can often demonstrate that there is injury to that in-stream flow water right, because the in-flow stream water right is entitled to take the flow regime in the way it found it as of the day of the appropriation.

So when people start trying to make exchanges or to transfer water rights upstream or downstream from their historical point of diversion or to a new use from the historical use, injury is always the issue, and the board's in-stream flow rights are always in the middle of that battle. Well when the board started to appropriate water rights on the upper Blue River above Dillon, and then proposed to go to in-stream flow appropriations between Dillon and Green Mountain, we threw all the water users—which

includes Denver at Dillon, Reclamation at Green Mountain, and everybody else in between—into an absolute dither, because what was going on in Summit County was essentially two things. Above Dillon, the ski resorts, Keystone and Breckenridge, wanted to make October, November, and December, and perhaps into January and February, winter withdrawals for snow making. The board was filing for amounts of water—might only be one, two, three cubic feet per second, because when the stream flow freezes up in the winter, that's the only kind of flow that's *left*. So very small flows, but that might be the one or two cubic feet per second that the ski resorts were counting on to make snow—major economic issue in Summit County.

The other thing is those rights that the ski industry wanted were typically out of priority against Dillon or Green Mountain, which had senior storage rights that would continue to fill in the fall after downstream summer irrigation, which is senior to Dillon and Green Mountain, had ceased and had fallen out of priority. So the ski resorts are having to go buy rights and move them upstream. Although senior to the in-stream flow rights of the board, that constituted injury. So we became a major fly in the ointment—"we" the board—from the perspective of the ski industry, and from the perspective of those who were trying to move water rights up and down the Blue River for the sake of their various diversions. So it was in that fairly narrow sense that we began to get involved into the middle of all that. We eventually extracted ourselves by negotiating out an agreement with Summit County, and an enormous number of other parties in which we essentially compromised in a way that we thought appropriately protected the in-stream flows, but left Summit County and the ski industry with enough flexibility to go do their snow making most of the time without damage to the fishery. And when it *did* do damage to the fishery, we negotiated for the first time a very innovative arrangement in which they had to mitigate. They had to go back in and stock; they had to do habitat improvements. We negotiated arrangements in which they had to go out and affirmatively spend money to place boulders in the streams, to create pools that wouldn't freeze up and *would* hold water while they were doing snow-making, so the trout had someplace to retreat to, and otherwise crafted a fairly interesting compromise as to how to handle the fisheries in Summit County. So once we negotiated out the settlement, we were able to stipulate out to our piece of the litigation and get out of that mess. And as a consequence, the board, as I said originally, and I really didn't have much to do with the *much* bigger issues about the interpretation and application of Senate Document 80 and the manner in which Green Mountain Reservoir was operated. Suited me just fine! (chuckles)

Storey: I did some research on C-B-T [Colorado-Big Thompson], and Senate Document 80 is hard to locate if you don't know exactly (chuckles) where to look! (laughs) (McDonald: It is—very hard.) Well, I know from your answer that the board was not directly involved in the tensions between the East and West Slopes, but I'm sure you, as the director of the board, had some perspectives on it. Is there anything that you could elucidate about current development over there and how its causing tension over the water that's been diverted under prior rights?

Big East Slope/West Slope Issues

McDonald: Probably the . . . Well, two big disputes relative to the East—two current, big disputes

relative to the East Slope-West Slope historical tensions. Throughout the latter part of the 80s, into the last two or three years, this argument that I've just been talking about on the Blue River and the upper reaches of the Colorado River within Colorado, relative to Green Mountain Reservoir and the meaning of Senate Document 80 and all the exchange cases filed by Denver, and then all the counter-exchange cases filed by everybody else. That, as I indicated, has basically been compromised out now and taken care of.

The other recent, still on-going, debate has been the proposal by first private parties and now Arapahoe County, that in the upper reaches of the Gunnison River in Gunnison County, major facilities be developed for a new transmountain diversion to the East Slope to the benefit of the city of Aurora and Arapahoe County and the southern suburbs. That has been a very large kind of traditional East Slope-West Slope fight. Again, the board, at least during my tenure, essentially did not get into that debate. It was not a proposed federal project, it was to be—if it ever is—a privately-financed project. So the board's traditional role of working on a Reclamation project just was not coming to play. Politically, the board had no need or desire to get into the middle of that kind of fight, so they very consciously stayed out of it. It just was a very awkward position. Four appointed members representing geographic areas divided right down the continental divide—because that's the way the basins divide—it was always awkward for them to get into a transmountain fight, and so they always assiduously stayed out them during *my* tenure.

Again, we got tangentially involved in the upper Gunnison cases, only because of the in-stream flow water rights held by the board. And the proposed development would have inundated *some* reaches of stream on which we held in-stream flows, which raised the issue of whether that constituted injury under Colorado law, because you just wouldn't have any in-stream flow reach *left*. And otherwise, even where inundation was not involved, would have moved water around in ways that constituted injury. Those cases were only in their preliminary stages as I left the [employ of the] state, and I really don't know either how they've been resolved, if they have, nor precisely what posture the board has taken in that litigation. But as it began to start in the late 80s, the board was pretty uncomfortable about the whole thing, because it was not—at a political level—it was not the kind of issue the board could deal with in a very constructive way, because it just forced board members, if they were going to represent the constituency in the basin they were from, to go head-to-head, simply on geographic boundaries. And they were astute enough to understand that that was not a win-win situation (chuckles) for them as board members. So we basically ducked and weaved and stayed out of it.

Storey: Well, it almost sounds to me as if the tensions between the East Slope and West Slope were going to continue to intensify, because the East Slope, because of its urban development, has a need for more and more water—so its going to want more and more water. That's what was happening on the Blue [River], I think.

McDonald: Well, if it chooses to go to transmountain diversions, but I think that's a huge "if," Brit.

Certainly with the demise of Two Forks,¹⁷ with the settlement of the Blue River cases—and that settlement is built around some very cooperative efforts between the West Slope and Denver to *get* more water supplies on a firm basis for Denver out of the Colorado [River] basin watershed, but in exchange for things for the West Slope that made them feel like they had been made whole. Denver is certainly not pursuing, to my understanding, transmountain diversions at this point in time. They are looking elsewhere for improvements in efficiency of the systems, small increments that they can pick up other places. I don't think it's the present attitude of the leadership of the Denver Water Board that transmountain diversions hold any promise at all. At this point in time, it is only Aurora and Arapahoe County who continue to push *any* transmountain diversion scheme at all on the upper Gunnison [River]. My personal opinion is, that's about a one in a thousand shot, between environmental considerations, which includes things like federal endangered species, which while not in the headwaters, they are downstream, and every drop you take out of the Gunnison, Fish and Wildlife Service is going to allege is adversely affecting the Colorado squaw fish two hundred miles away. Between *those* kind of environmental constraints, the enormous financial costs associated with it, the *years* of litigation that is still underway and will go on forever, I have a hard time believing that is a viable alternative for the East Slope. I think the bigger issue is going to be that the opportunity for more water out of the West Slope has simply slipped through the hands of the East Slope as a practical matter. To the extent there's growth that needs to be sustained, the issue is going to be being more efficient with the water supplies which the East Slope has already developed, getting really *serious* about water conservation, as opposed to paying lip service to it.

And the other issue which has been on the table for a long time is, the cities on the East Slope have enormous amounts of water right at their fingertips if they just go buy out irrigated ag [agriculture]. But that's its own political issue, because that then begins to impact the social and economic structure of the counties to the north of Denver, or if you get down to Colorado Springs and Pueblo, down in the Arkansas Valley. But that's a process that's been underway for forty years in Colorado. It's an accepted policy, it's imbedded in the water law of Colorado that willing sellers and willing buyers can go cut their own deal without government being involved. And so the process of water moving from the ag sector to the M&I sector has *been* underway for forty years in this state, on the East Slope. And I think it will only intensify in the years ahead, because they aren't going to be able to stick any more straws through the mountains, I don't think. So you're going to get a different debate, and it may be just as intense as the traditional East Slope-West Slope debate, but its going to be a Denver versus the relatively agricultural communities to the north debate. Or if you get down into the Arkansas, its going to be a Pueblo-Colorado Springs versus the farmers debate. And those debates are already going on. As you may know, arising in the mid to late 1880s, major proposals for

17. In 1986 the Denver Board of Water Commissioners applied for federal approval to construct Two Forks Dam on the South Platte River 25 miles upstream from Denver. Plans called for a 500' to 600' dam with a storage capacity of 1.1 million acre feet. In 1990 the Environmental Protection Agency rejected the Two Forks proposal. "EPA concluded that each of the Two Forks dam proposals would significantly damage fisheries and recreational areas, and that this loss was avoidable because there were less environmentally damaging alternatives to Two Forks." In 1996 a federal judge upheld EPA's decision. See Denver Water Board and Metropolitan Water Providers, "Two Forks: Environmental Protection and Mitigation Plan," June 1987; www.justice.gov/opa/pr/1996/Jun96/271.enr.htm, (Accessed June 2014).

buying-out *huge* blocks of irrigated agriculture in the Arkansas [River basin] and moving that water all the way up to Aurora, as a matter of fact. And those things continue to pend in litigation, as a matter of fact.

Storey: You said the 1880s, I think you meant the 1980s. (McDonald: The 1980s. [chuckles]) Well, you've mentioned conservation, in the last few minutes, several times. And I'm intrigued with the title of the Water Conservation Board. Is that a carry-over from the 30s when this was created with a different vision of what conservation is? (McDonald: Sure.) Is it moving into the area of conservation at all, in its responsibilities and activities?

Conservation

McDonald: The word "conservation" in the title of the Water Conservation Board I think without a doubt was conservation as that word was coined and used at the turn of the [20th] century by Teddy Roosevelt. Its conservation in the sense of Gifford Pinchot, and all those who created the political movement known as the Conservation Movement at the turn of the century.¹⁸ And in the context of the board being created in 1937, it did not mean anything other than building dams to conserve water by storage at the peak of the hydrograph so it was available for subsequent use later in the year, or even to carry into subsequent years. And the board, into the 1980s, didn't understand it in any other context. The board as a state agency through my tenure, really did not get into the question of improving efficiency of use, which I think is what most people, when they talk about "let's improve water conservation" mean in this day and age. They mean "produce the same unit of output, but do so with less water consumed." The state—and I can speak only very generally because this has happened since I left in August of 1990—the state has created some programs in water conservation, in the sense of improvement of efficiency of use, education programs, what-have-you. Those have been housed in the Water Conservation Board staff, but beyond that I confess I really don't know what's happened. It had not happened prior to my leaving—these are programs that have been instituted in the last two or three years.

Storey: Well, we are at, I think, sort of moving into your tenure at Reclamation (McDonald: Okay. [chuckles]), the last three years. Why don't I ask you to just go over it in your own mind, what you thought you were coming to, what the reality turned out to be—I think there's always a difference—and then the major issues that you confronted as you've been at Reclamation.

Coming to Reclamation

McDonald: Sure. [I] came to Reclamation, of course, in August of 1990. [I] didn't have a strong desire to leave the [employ of the] state—it was certainly not that anything was going wrong at the state, but having been there eleven years, I'd always kind of told myself eight or ten years is probably long enough in one place—both you and the institution need a change of pace. I *loved* the work I did with the state. I liked the size of state government but was feeling some sense that I needed to move on. And frankly,

18. Progressive Era Conservation Ethic: "a utilitarian doctrine that argued for proper scientific management of natural Resources for the greatest goos, for the greatest number, over the longest period."

unfortunately salary had become an issue. State salaries at my level had been frozen for eight years. Meanwhile, my wife and I had adopted six kids and had two home-made kids, and the financial thing was kind of getting untenable. So between that and just feeling the sense that it was time to move on. [I] had not really gone looking, but was aware that my predecessor in the position I now have at Reclamation, was retiring. The commissioner, of course, was Dennis Underwood.¹⁹ Dennis was my state counterpart when he was with the state of California as the executive director of the Colorado River Board of California, Dennis having followed Mryon Holburt, who I spoke about earlier in the interview. Dennis and I had become quite good friends, professionally and personally, during our state tenure. California and the lower basin states adamantly opposed the [Colorado Ute] Indian Water Rights Settlement, and as things turned out, Dennis essentially became the spokesman for the lower basin with the attorney that was their lobbyist, a fellow by the name of Bob Will who [has] offices in Washington, D.C. I, of course, was one of the two or three spokesmen for Colorado, so Dennis and I, albeit in a very professional way, had gone at it eyeball-to-eyeball and jawbone-to-jawbone during '86, '87, and '88, as California differed with us on the provisions of the Indian Water Rights Settlement that pertained to the potential marketing of water off the reservation and outside the state of Colorado. But in that professional context, [we] also became very good professional friends. It was one of those deals where you argue like hell and then you go out and have a drink. [I] still had a *lot* of respect for Dennis, and when Bill Martin left this position of assistant commissioner for resources management, I just kind of mentioned it to Dennis as a lark over breakfast one morning. We were at some meeting that Reclamation was at, and I was at for the state of Colorado, and Dennis took me up on my observation and said if I was serious, he'd be interested. So I ended up applying for the job and Dennis ultimately picked me, and off to Reclamation I came!

Perspectives Coming into Reclamation

I think its largely been the job I expected. I knew enough about Reclamation, I knew enough about Dennis, I knew enough about the Assessment '87 process and the reorganization of '88 to have a *pretty* good handle on what to expect. I knew it was a lot bigger bureaucracy, with all the frustrations (chuckles) that come with it, than the state of Colorado. I'd say in retrospect the only things that are particularly different are that I perhaps didn't understand as well as I do now that the function of this position is *not*—or at least in my judgement—*should* not be to deal with what I would call day-to-day program issues. That's what regional directors take care of, and under our current arrangement, if those issues need to go up the line, they go back to those in the Washington Office, and rarely do I deal with that kind of issue. And that's a big change from being a director of a state agency—because effectively, as director of a state agency, I was the counterpart of a regional director in Reclamation, and you argued about those day-to-day issues and policy [decisions]. The assistant commissioner for resources

19. Dennis Underwood served as commissioner of the Bureau of Reclamation under the administration of President George H. W. Bush from 1989 to 1993 and participated in Reclamation's oral history program. See Dennis B. Underwood, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, from 1995 to 1998, in Los Angeles and Ontario, California, edited by Brit Allan Storey, www.usbr.gov/history/oralhist.html.

management is much more focused on establishing the broad parameters of policy direction and program requirements as opposed to dealing with what should be the preferred alternative in this C-I-S [Congressional Information Service]. What should that repayment contract look like? Should we change these reservoir operations or not? That's *not* what the ACRM [Assistant Commissioner for Resources Management] organization is, for the most part, all about. And to some extent, that's a disappointment, because I liked the day-to-day hurly-burly. On the other hand, Reclamation has such an incredible plateful of new policy issues that its been a ton of fun dealing with trying to establish what that new program direction and policy parameter should be.

The other thing that has proved to be a little different than I expected—and I think this is simply because Dennis's own thinking changed over the tenure of *his* being commissioner—is that I didn't have the kind of one-to-one relationship with and access to him that I had thought I would have, coming into the organization. And that's principally because the 1988 reorganization just, in my judgement, didn't work out as intended, starting with the fact that the '88 reorganization was premised on the commissioner being officed in Denver. And when that didn't happen, *I've* come to conclude that some parts of the '88 reorganization should have been rethought and not handled in the way they were, because leaving the commissioner in Washington just simply changes the chemistry of the decision-making process. Dennis was frustrated by that, because the bulk of what was the resource that he uses in a staff capacity is out here in Denver, fifteen hundred miles away, and his manner of handling that was to begin to put staff back in the Washington Office—created a new management position, as we all know, in the course of the last couple of years. And the lines of responsibility became, one, very extended, and two, over layered in ways that I had not anticipated coming in. And that's what we're in the process of sorting out right now, of course, under the new commissioner's [Daniel Beard] leadership. But I'd say, with only those two exceptions, which I'd characterize from my *personal* perspective, as relatively minor, the job has been what I expected it to be.

You know, the only other major change has been the obvious one: When you're in the senior executive service in this kind of position, and politically-appointed commissioners come and go, you take your chances with the system. And its just one of those things. I'm [as] aware of it as anybody else is. Maybe Dennis was going to be their for eight years, maybe he was going to be there for four years. It ended up to be four years, and we have a new commissioner. And that new commissioner, I *absolutely* understand and respect, is entitled to make some arrangements that are suitable to him personally, and we all just have to see how those things sort out. (chuckles) That comes with the terrain.

Storey: Yes. The reorganization, over '87 and '88, seems to signal a recognition by Reclamation that the world was changing and that Reclamation's role was going to change. From *your* point of view, what do you think that change is that they perceive is necessary for Reclamation to make?

1988 Reorganization and Managing Water Resources

McDonald: I would agree. I think *Assessment '87*, the report called *Assessment '87*,²⁰ in a formal kind of way marks Reclamation institutionally acknowledging that we face change and we have to respond to that change. I think the thought process had begun before '87, in varying degrees and ways was being dealt with, but '87 is kind of the marker point that historians can now look to and say, "That was the point of departure." It seems to me that what has happened, Brit, that while that's kind of a formal, institutional acknowledgment of change and the need to face it, it really is an acknowledgment that in a lot of ways hasn't matured until the last year or two. Maybe put another way, it was a little bit on the lip service side in '87. Its becoming a reality in '91, '92 . . .

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McDonald: . . . tried to capture that, as I don't *think* there's much doubt that its fair to characterize Reclamation's first ninety years, let's say—since we've just had a ninetieth anniversary in the summer of '92—as ninety years in which the sole, distinct mission of this agency was to develop additional increments of water supply. And you did that by building dams and reservoirs and all the appurtenant works that go with it. What this agency was all about was creating additional increments of firm yield that could be applied to beneficial consumptive use as that term is understood both legally and institutionally in the western United States. We aren't going to—except for the projects we're now finishing the construction of—we aren't going to, in my judgement, with one or two perhaps minor exceptions in the years ahead, we aren't going to develop additional increments of raw water supplies in Reclamation—for both economic and environmental reasons. So what that means is, we have this major set of facilities and the associated water supply that we have developed, for which the issue now becomes: How are we going to use these already-developed supplies? And how are we going to manage that which we have already developed?

I think there'll be several components to that turn from being a development agency to a management agency, as we've been saying around the halls and corridors in the last couple of years. I think the most stark example will be that in some instances, probably guided by legislation for the *most* part, water that has historically been devoted to the irrigation economy from a Reclamation project, may be simply removed from the hands of the irrigator and put into new and different uses. And those new and different uses will either be beneficial consumptive uses for M&I, or they will be devoting project water supplies to in-stream flows and other environmental uses—some of which environmental uses may themselves be consumptive. Flooding a wetland, for example, *is* a consumptive water use to some extent. But the point is, rather than devoting the water supplies we've developed to yielding the benefits associated with irrigation, we're clearly in a process of society saying, "There are *other* benefits I'd *rather* achieve with that

20. In 1987 the Bureau of Reclamation released *Assessment '87: A New Direction for the Bureau of Reclamation*. The document announced that "the era of constructing large federally financed water projects is drawing to a close," and that "the bureau's mission must change from one based on effective and environmentally sensitive resource management." Reclamation would accomplish these goals by: improving operations of existing facilities; implementing a larger cost-sharing process; working closer with other federal, state, and local agencies on water resource issues; becoming more involved in the day-to-day operations of water projects, enforcing federal regulations, and asserting a visible presence.

same chunk of water that I deem more valuable, more beneficial. I want to move the water away from irrigation and into those other uses that yield benefits that we deem to be more valuable to us." That outright reallocation of the water supply, I think is something that'll happen in Reclamation. I think it'll *tend* to be directed by legislation because of the fact that we've tied up those water supplies in long-term contracts, and probably will find ourselves unable in that context to unilaterally reallocate. So it'll take legislative action. Title XXXIV of P-L 102-575, I think is the salient current example of that, and more is probably to follow.²¹

I think a second major thing we'll find ourselves doing is where we *do* have, under existing law, the discretion to manipulate the operation of our projects away from operations that yield the traditional set of economic benefits [to] operations that yield a new set of economic benefits, or environmental and recreational benefits. We'll be called upon to exercise that discretion and we'll do so. And the best current example of that is the clear change that we've made in the power operations at Glen Canyon Dam. And you can cite other power plants where that's happened, where, from a pure economic perspective, the most valuable use of the water running through the turbines at Glen Canyon is as a peaking power plant. Because of the environmental, archaeological, and cultural costs that that has, we are clearly going to change—we already, on an interim basis, *have* changed the operations at Glen Canyon Dam, so that the same amount of water of course still goes through the turbines, but because of the timing and the quantity of water *at* those different times that we run through the turbines, it is a *less* valuable economic resource to the power customer. But that water released in that different pattern is more valuable to the environmental, cultural, and recreational values that are downstream. A one-to-one trade off—absolutely no doubt about it—within our discretion to do, to some extent, bolstered and confirmed by Title XVIII of P-L 102-575.²² But the bottom line is, within some parameters, Reclamation probably could have done all that, and prevailed in any litigation against it. So I think you'll see *that* kind of reallocation.

I think the other thing you're going to see is where we have, we do have some projects that we've built, developed, but the water supply has not been contracted for in its entirety—historical expectations about how that water will be used. A good example would be Ruedi Reservoir right here in Colorado, a feature of the Fryingpan-Arkansas Project, a firm annual yield of about fifty thousand acre feet per year, give or take a few hundred acre feet—not a drop of it has been contracted for. The expectations of the 50s and the 60s about the agricultural or M&I need for that water just simply never materialized. That's a water bucket, that while the legislative history says it is devoted to the benefit of the West Slope for irrigation and M&I, is probably *never* going to be used to any significant extent for M&I, let alone irrigation, because it just doesn't make any sense. So there's fifty thousand acre feet that Reclamation can manage in a different way. We in fact are already devoting ten thousand acre feet a year to releases into the river, timed to benefit the Colorado squaw fish, driven by the Endangered Species Act. Arguably, that's not an authorized purpose of that project, but we have found ways. And

21. Public Law 102-575 is the Reclamation Projects and Authorization Adjustment Act of 1992, and title XXXIV is the Central Valley Project Improvement Act.

22. Title XVIII is the Grand Canyon Protection Act of Public Law 102-575.

I, in fact, was on the other end of those negotiations in the 80s as director of the state water board—ways were found to construct a compromise that solved both legal and political problems that allowed Reclamation to go forward and make that management change in the operation of Ruedi Reservoir. And I think over time, ten or fifteen years from now, we'll look back at Ruedi Reservoir and find that hardly any of it has been contracted out for consumptive use; the federal investment will have been written off as nonreimbursable; and the reservoir will be devoted to a combination of holding it high in the summer for summer recreation, dropping it in August and September for the benefit of the endangered fish; and in other months, running it to benefit the trout fishery that's below the dam on the . . . On the what? (Storey: Fryingpan, I think.) No. (Storey: Well, there's a creek that flows into the Fryingpan, I think.) Yeah, maybe it is, and I've drawn a blank. I think it *is* on the Fryingpan. So that's a good example of where Reclamation has some discretion, to take water developed in the institutional memory of a *lot* of people for one purpose, traditional beneficial consumptive uses, but for a variety of reasons it's never been [fully] contracted out. And Reclamation is going to end up saying to those local people, "Maybe that was your expectation and maybe that's a promise you'd like to try to still hold onto, but times have overcome you, and Reclamation's going to devote that water to something else."

I think the other major thing that we're going to do to manage our water supplies, is where we have, as we admittedly have, as *any* water project admittedly has, created environmental costs—negative environmental impacts, if you will—that either have not been mitigated at all, or haven't been mitigated to an acceptable contemporary standard. We're going to find ourselves going back in with dollars and with water, or both, and doing a better job of mitigating those impacts. Glen Canyon, in a way, is an example of that. The things that Title XXXIV under P-L 102-575 calls for, in actually devoting [Central Valley Project] water project supplies to flooding of wetlands for the benefit of the migratory waterfowl that go through the Central Valley of California, are examples of that. On the lands around our reservoirs, mechanically manipulating the land and the habitat to improve it, are ways that I think we'll come to. Mechanically improving the habitat *below* our dams where you simply decide that the cost of giving up the present use of the water is perhaps too great, and your minimum flows can only be so high. But you can get in there and stick boulders in, create pools, create ripples, plant things along the bank to establish the bank and the shade that cools the water for the trout fishery—those are all opportunities that we'll find ourselves doing. We'll find ourselves doing as we've already done, going back in and retrofitting mechanical devices like valves and outlet structures that were never designed with the intent of a low winter flow, for example, because the original design was simply to shut the thing down in the winter, store all water in the reservoir, and let the ten miles of the stream below the dam be absolutely dry. We've taken steps, of course, in some places now to actually go back in, put in a differently-engineered valve that you can open to five and ten second-foot increments and allow water that's coming *in* the river not to be stored in the reservoir and go ahead and flow on through and establish a winter fishery that didn't used to be there.

That's, I think, what we're trying to say by "management," that we're going to take that chunk of water we've developed, but we're going to use it in different ways, we're going to manipulate it in different ways. We clearly are an agency whose task is still to

deal with regulated systems. That's what we've created, is an enormous set of regulated systems. But depending on *how* you regulate the system, you can achieve different sets of benefits and costs. And what we're clearly going to be called upon [to do] is to regulate that system in ways different from what we've done in the past, in order to achieve a different set of benefits than we have achieved in the past, and to reduce some of the environmental costs that we have caused in the past.

Storey: Well, clearly one of the . . . Those are issues that have to do with our *outside* constituency. But one of the problems that Reclamation *seems* to be confronting now, if I'm understanding it correctly, is that there's a difference between *saying* that you're going to change, and actually making the transition from the old ways of doing things. I guess the first part of my question has to do with the fact that people who are close to events don't often see the *flow* of the events, because they don't step back and look at them. If you were to try to step back and look at what has happened, to *your* knowledge, since '87, '88, what changes *have* been made?

Difficulties in Making the Transition

McDonald: I don't think there's any doubt that Reclamation has made changes. One could probably debate endlessly about whether the changes have been enough and have come *fast* enough. But I think you can point to some very concrete examples of the changes that have occurred, and they kind of relate to the things I've already ticked off. We *have* changed the operation of the power plant at Glen Canyon, in ways that have sacrificed the benefits *to* the traditional power customer/constituency of Reclamation, *for* the benefit of downstream environmental, recreational, and cultural values. I don't think there's any question about that. You can point to other power plants where we've done the same thing. We bypassed the power plant in Shasta [Dam], in the Central Valley Project, in order to manage the temperature of the releases *into* the Sacramento River for the benefit of the salmon run. Traditionally, we would have run every drop of water through the turbine in order to generate more low-cost power for the power customer. From the perspective of the power customer, they'd probably say we have turned our back on them, walked away from them, changed that power plant operation to generate a new set of benefits; several places where we've done things like go in and put in new valves so that we can do low flows or winter flows. We just opened on the North Platte River this winter for the first time, we'll have the capacity to run that North Platte system and maintain in-stream flows, where for fifty years now, we've simply shut the gates in November, stored every drop of in-flow to the reservoir for five months, and dried up the stream below. Water being moved in the Central Valley Project into wetlands that traditionally we would have sacrificed the wetland in favor of the farmer. We've made those kinds of changes in the last six years.

I think areas where we're having trouble, much of the kind of thing that we're trying to do, by virtue of the way our budget is set up, comes in what we call the O&M [operation and maintenance] appropriation. While we've been successful in getting the operation and maintenance budget substantially increased in the last eight years, much of that increase has been taken up by the fact that we are finishing a series of projects in the 80s, bringing them on-line, and as construction is done, then they go to an operation and

maintenance mode. And so you need new dollars in operation and maintenance to operate the projects that you're completing and bringing on-line. So while we've added a lot of money, we've used a lot of that money up right away, simply operating the traditional water supply project. I think we've had real difficulty in that regard in getting significant new sources of funding earmarked for these new management activities that we like to undertake for better management of our recreation facilities, for getting into water conservation in the sense of improvement in and efficiency, we have probably fallen short of the mark. I think we collectively have a frustration in that regard. We've *asked* for the dollars, but they haven't been forthcoming from the Department and O-M-B [Office of Management and Budget], in the context of the budget crunch we face.

On the other hand, Reclamation, I think, would have to say to itself, we could have given up, if we wanted to make the hard policy choice, dollars that are over in the construction budget, in exchange for—if we could have talked the Department and O-M-B into it, and I'm not sure we *could* have—even bigger dollars in the O&M budget." But up until now—although I think we are *about* to see that change with the new commissioner—we have not given those construction dollars up. We have held the construction dollars to keep the Central Arizona projects and the Central Utah projects of the world on schedule as we complete the last of the major traditional water supply facilities that we're building. And it's only been essentially in '93, and now it will continue into '94, '95, and '96, that you've had the big drop off on the construction projects. If we'd wanted to make the tough choices, we arguably could have taken tens of millions of dollars out of construction, starting in the late 80s, moved it into the operation and maintenance program, and moved more aggressively and more quickly on these things that we're now talking about doing. Those were not the judgements that were made at the time. So that's "for history to judge," I guess you could say. (laughs) But *I* do think Reclamation has made progress. I think the pace of events [under] this administration, this commissioner, will substantially accelerate (laughs) the course of change. And *I* would anticipate, *my* prediction would be whether Dan Beard is here for four years or eight years, when he leaves, what a historian would say is that the process of change formally started in '87, and at the end of Dan's tenure can probably be pretty well marked as a process that has in fact evolved and taken place.

Storey: Well, as I indicated, there's a second part to my question, but it has to do with: How do you get people to change? (McDonald: [laughs]) And how do you organizationally change things? And I know that you're helping the commissioner write the reorganization proposal that's in process now, so I think this would be a good time to stop *this* section of the interview. (McDonald: Fine.) And after the reorganization comes out, we'll do the second interview, if that's alright.

McDonald: I don't know if that's fair or not! (laughter)

Storey: Would you rather do it now?

McDonald: I might exercise my twenty-five year rights! It probably would be, as a practical matter, Brit, probably be more useful to talk about it after Dan makes his decisions and announces them in public.

Storey: You'll feel freer to discuss it, I think.

McDonald: I think I'll be free to discuss it either way—it doesn't bother me. But it may be more fruitful, perhaps, because then we can reflect on what the options were that were in front of us, versus the thing that Dan chose to do, out of his menu of choices.

Storey: I guess the last thing I'd like to ask you, whether you feel now that you want to make a decision about whether or not you would like to close the interview, or have it open for research by Bureau of Reclamation staff and by outside researchers—and that would include both the tapes and the transcripts.

McDonald: Sure, for this segment, I'm more than glad to leave it open.

Storey: Okay, so we can use it for research and so on?

McDonald: Sure.

Storey: Good, I appreciate that. Thank you. I look forward to the next one.

McDonald: Not at all. Thank you, it was fun to do.

END OF SIDE 2, TAPE 2. SEPTEMBER 23, 1993
BEGINNING OF SIDE 1, TAPE 1. JANUARY 19, 2011

Storey: This is Brit Allan Storey, senior historian of the Bureau of Reclamation, interviewing J. William McDonald, Bill McDonald, of the Bureau of Reclamation on January 19th, 2011, at about 9:00 o'clock in the morning on the Denver Federal Center in Building 67. This is tape 1.²³

Well, I know in our last interview [in 1993] we talked about your work with the state and so on. I'm wondering how you came to end up at Reclamation? How did that transition take place?

The Transition from State Work to Reclamation

McDonald: Yeah. Well, at the time, this would have been 1990, Dennis Underwood was the commissioner, and that would have been in the first Bush administration. I had gotten to know Dennis quite well in the preceding five-, six-, seven years when he served as the executive director of the Colorado River Board of the state of California. And he, therefore, represented California on Colorado River issues, compact issues, reservoir operations, that sort of thing. And I represented Colorado as the director of the Colorado Water Conservation Board in a similar fashion. So Dennis and I had gotten to know each other quite well, particularly working on the Colorado River Flood Control Act, and I'm not sure I've got the right title, that resulted from the high flows in '83 when we spilled Hoover [Dam] and [Lake] Powell. And then in the course of

23. Mr. McDonald had retired from the Bureau of Reclamation in September of 2010

Colorado seeking the legislative implementation of the Colorado Ute Indian Water Rights Settlement, which California strongly opposed. So [I] spent a lot of time with Dennis working through those issues. So, he and I had gotten very well acquainted, and he and I were having dinner or lunch one day, I don't remember particularly, and he let me know that there was a vacancy for, at the time, the assistant commissioner of resources management here in the Denver Office and asked me if I'd have an interest in it. I hadn't really ever thought about the idea at that point, was thoroughly enjoying my Colorado state government career, but puzzled about that for a couple of weeks and decided I'd throw my hat in the ring. You know it was a competitive civil service process, and Dennis ended up selecting me to be the assistant commissioner. So that's how I got to Reclamation in August of 1990.

Storey: Um-hmm. So, did you do an interview?

McDonald: I did do an interview, and if memory serves me, I'll probably say that many times here, "if memory serves me," Joe Hall actually conducted the interviews of the candidates. Joe was the deputy commissioner at the time and technically the assistant commissioners reported to him as deputy, not directly to the commissioner. So I'm pretty sure the formal interview, if you will, was done by Joe. But again, Dennis knew me well, he wouldn't really have needed to do an interview. (Storey: Yeah.) He knew the weaknesses and the strengths without having to do an interview.

Storey: This was when Joe was deputy commissioner and two years after the reorganization had taken (McDonald: Yes. He had come back to Reclamation from the Western Area Power Administration.) and how was that working?

Significant Issues Related to the '88 Reorganization

McDonald: There were some significant issues still as an outgrowth of that '87, '88 reorganization. You know, the—insofar as the assistant commissioner for resources management organization was concerned, which was an organizational unit *created* by that '87, '88 reorganization. The central idea of that reorganization had been that the planning program, what at the time would historically have been called the general investigations program, had gotten so small that it could not be efficiently maintained with a planning staff in each of the, would have been five regions at that time. So the thought process was to pull all those planning staff into Denver. Literally have directed reassignments to Denver. And get that central mass of expertise that goes into the planning process *in* Denver in that one organization. So what you ended up with was an assistant commissioner's organization that was both the service provider of the planning function to the five regions, but they also continued to wear, if you will, the headquarters agency/policy/oversight function. And for my money, once I got here and dug into that that wasn't working very well. The regions in varying degrees really had not supported the consolidation of the planning staffs out of the five regions into the assistant commissioner for resources management. Some regions had just kind of tucked some people away, and kept them back home in the regional office. So there was a *lot* of differences of opinion as I came to Reclamation about what the role and the process for using the assistant commissioner for resources management organization ought to be.

And I probably spent as much time as anything for the four years I was assistant commissioner trying to work our way through those issues, and, frankly, I'd have to say we were not successful, and that, in part, is what led to the further restructuring that occurred in 1994, where all of the service support to the regions was consolidated in what now has become the Technical Service Center [TSC]. So you didn't have people wearing a policy hat at the same time they wore a service provider hat. You know, as we all well know, the Technical Service Center now is literally a service provider, a fee-for-service arrangement, and they don't quote "do policy." They may get called upon by the offices that do policy, under a service agreement, to provide technical input [and] support. So that's essentially what happened to the assistant commissioner for resources management is, having been created in '87, '88, it was taken apart in '94, and split between what, as of this date, has become the Policy and Administration Office and the Technical Service Center.

Storey: Were there any regions that were more amenable to the reorganization than other regions?

McDonald: To the '87, '88 reorganization, Brit? I think its fair to say probably so. Although I obviously came to Reclamation two years *after* the reorganization. So I was not literally in Reclamation as part of the reorganization, but *as I came* to Reclamation, conventional wisdom was that the Mid-Pacific Region had been the least supportive and had tucked more people away than *other* regions. And at the other extreme people probably agreed that the Upper Colorado Region had most completely moved its planning staff over to the assistant commissioner for resources management in Denver.

Storey: Let's see, that would have been David Houston and . . .

McDonald: It was David Houston in Mid-Pacific and, I'd have to look the records up to remember who that might have been in U-C.

Storey: Cliff Barrett.

McDonald: It might have been Cliff Barrett, or it might have been Roland (Storey: Robison) Robison. I can't remember exactly when Roland became the regional director in U-C.

Storey: Well, that had been an exciting two years, though. Let's see, Terry Lynott²⁴ was ACRM, assistant (McDonald: He was.) commissioner for resources management. (McDonald: Yes.) Then I recall Joe Hall calling us over to the meeting room across the street and announcing that Billy Martin²⁵ was going to be ACRM.

24. Terry Lynott contributed to Reclamation's oral history program. See Terry P. Lynott, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, in 1993 and 1994, in Lakewood, Colorado, edited by Brit Allan Storey, 2012, www.usbr.gov/history/oralhist.html.

25. Billy E. Martin contributed to Reclamation's oral history program. See Billy E. Martin, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, from 1994 to 1996, in Sacramento, California, edited by Brit Allan Storey, 2012, www.usbr.gov/history/oralhist.html.
(continued...)

- McDonald: That's right, Billy Martin came down from being the regional director in Billings, and he was the assistant commissioner for eighteen months-, two years.
- Storey: Something like that.
- McDonald: And then he retired and that was the vacancy for which I applied. It was after Billy Martin retired.
- Storey: Did you have any insight into why those changes were going on?
- McDonald: Only that, for whatever reason, things just did not work out with Terry Lynott. You know, who continued to be part of the assistant commissioner's staff and worked for me. Billy simply retired. You know, he was—I always got the impression that he had to be talked into sticking around for a couple of years to be the assistant commissioner because I think he was eligible [for retirement] before he moved here, and for the good of the organization wanted to try to help get the ACRM organization, A-C-R-M being the acronym for assistant commissioner resources management, try to get that organization moving along. So he agreed to come down to Denver for a couple of years, but he just purely was ready to retire as far as I know.
- Storey: And so then, let's see, you would have had Terry Lynott and (McDonald: Ray Willms.) Ray Willms.
- McDonald: Ray Willms²⁶ was the deputy assistant commissioner.
- Storey: And how did things go as you were running the office? You were spending all your time with the regions and somebody else was running the office, how did that work?

"There Were Unresolved Issues About How ACRM Ought to Function"

- McDonald: Initially, knowing that there were unresolved issues about how ACRM ought to function and why it had gotten created, Joe Hall and the commissioner had the regional directors and myself sit down and try to finish sorting through what really was intended with the '87, '88 reorganization and how to make it work. So in the first year there was a fair amount of my personal time that was devoted to that. What I also discovered in the course of that, Brit, was there was, among the ACRM staff, you know, many of whom had been required to come to Denver, and it was a difficult move for people that had to uproot families and, you know, move kids in the middle of school years, all that kind of thing. There was a pretty high degree of dissatisfaction among some staff in terms of their perspective as to regions having held back people and having not quote "played fair" end quote in the course of the reorganization. And so I also found myself spending

25. (...continued)

Storey, 2010, www.usbr.gov/history/oralhist.html.

26. Ray Willms contributed to Reclamation's oral history program. See Raymond (Ray) H. Willms, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, in 1994, in Denver, Colorado, edited by Brit Allan Storey, 2010, www.usbr.gov/history/oralhist.html.

a lot of time with the ACRM managers trying to get everybody over the hump and let history be history and move on to having a functioning organization. And, in retrospect, I don't feel as if I was terribly successful at that, frankly.

There were just a lot of hard feelings about how ACRM had gotten created. And, like I said, where it really led—and I fully supported it, when we got to Commissioner Beard's²⁷ reorganization in 1994—was to separate the policy function of ACRM from the technical service function. The fundamental conclusion I came to is trying to mix those two together just was not going to work. It was a fundamentally flawed concept from '87, '88. So I fully supported, when we got to '94, taking those functions apart and putting all the hydrology, economics, environmental sciences, that kind of thing over in what's become the Technical Service Center and keeping the policy/oversight function in what's become the Office of Policy.

Storey: Yeah, I remember, I was on the staff, (McDonald: Sure you were.) of course, there was a lot of confusion about it.

McDonald: It became very clear very quickly when I got there that there was a lot of confusion.

Storey: Well, and if the regions were also confused. I remember one of them said to us, "Well you're paying for part of this," and I said something like "Well, we're looking toward developing policy out of this," and that upset them mightily, you know. We were doing a project in the region, but it was going to be policy setting, and well, anyway. Course this would have, let's see, would Dale Duvall, no Dennis was the commissioner.

McDonald: Dennis was the commissioner when I came in 1990.

Storey: What kind of commissioner was Dennis.

Commissioner Dennis Underwood

McDonald: Dennis was a hands-on, detail oriented kind of guy. Anybody you've ever talked to will tell you that about Dennis Underwood. Incredibly hard worker, smart as a tack, you know, if, as I often say, with all human beings, myself included, your strengths taken just a touch too far become your weaknesses. And in Dennis's case, you know, in the capacity of a politically appointed head of an agency that needed to have the vision and the long view, his strength of incredible grasp of information and details became his weakness. Because he just got too far in the details, and to some extent, you know, that held him back from being as effective a commissioner as I think he *could* have been. But he was still a very effective commissioner. Very well liked by employees. Very personable kind of guy. But the stories of him getting into the weeds are legendary. But, you know, he was really devoted to Reclamation, to a good program,

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

to moving things forward, and I obviously personally enjoyed working with Dennis. And, to me, it was a lot of fun because he and I had gotten acquainted in the, you know, the classical context of interstate conflict and during the day we were enemies and at night we'd go out and have dinner and have good time together. And I just really grew to respect him enormously and really enjoyed my tenure with him until the change of administrations.

Storey: Now if I'm recalling, those would have been the days of the Executive Management Committee, the E-M-C.

Executive Management Committee Activities

McDonald: At the time the leadership team was called the Executive Management Committee.

Storey: And what was going on there? What was going on in that organization at the time?

McDonald: The Executive Management Committee was being used by Dennis in the same manner that, for the most part, principally with the exception of Commissioner Beard, *all* the commissioners that I have served had used it, Brit, and that is to be the leadership team to which the major issues of policy direction and vision for the agency were brought. So, during Dennis's time, for example, that administration wanted a strategic plan from each agency, and Reclamation built from the '87, '88 documents that described a vision for Reclamation in the '87, '88 time frame to the strategic plan that very much bore the mark of Dennis's personal perspective, and that became a published document,²⁸ as you well know. So the R-L-T [Reclamation Leadership Team] was spending time, a *lot of time*, as a matter of fact, having pretty intense debates about what that vision ought to be. There's always tension when you write a document like that between the breadth of what you say versus the details that make it more concrete, and, you know, trying to find that balance was fun with Dennis because he was the detail guy, and then you'd have people like Joe Hall—who are the big vision—fewer words is a better way to do it—wanting a much shorter document. So a lot of time spent on those kind of things. A lot of time in the E-M-C spent on individual policy issues, you know, how to handle E-S-A [Endangered Species Act] consultations; the Reclamation Reform Act. The acreage limitation requirements were still going through a lot of growing pains in terms of the enforcement of that program so a lot of time [was] spent on what the interpretation of the rules ought to be and eventually there were actual rule amendments.

Lot of time spent on the budget issues. In fact, the process we have [had] since the early '90s for the Budget Review Committee was a process that got started in '91 or '92 under Dennis's tenure, and it really got prompted by the fact that very clearly Reclamation was headed into a flattening, if not declining, budget in terms of congressionally appropriated dollars. But the regions were coming in with annual requests that just bore no relationship to that budgetary reality. And, frankly, were not very well thought out. In terms of things such as major construction jobs, you've got to

28. United States Department of the Interior, Bureau of Reclamation, *Reclamation's Strategic Plan: A Long-term Framework for Water Resources Management, Development, and Protection*, June 1992.

line up a lot of prerequisites before you get to the point where you can actually spend, in a given fiscal year, money on construction. You've got to have environmental compliance done and out of the way. You've got to get out of the procurement process. You have to have planned all the time it takes for final design and engineering, and regions were coming in and asking for tens of millions of dollars for stuff they were nowhere close to getting prerequisites done in a timely fashion. So that kind of problem led to Don Glaser²⁹ and myself, principally, coming up with the idea of the Budget Review Committee. So there was a lot of effort devoted in the E-M-C to budget which evolved into having the B-R-C and then the B-R-C making reports to the E-M-C in trying to get a handle on the budget process. And it was driven by two or three really big projects: Animas-La Plata, which at the time was still the full-scale Animas-La Plata Project before the amendatory legislation that downsized it. And that was a half a billion dollar kind of figure, and here we were with a total annual budget of *probably* nine hundred and fifty million at that point in time and *clearly* it wasn't going up, and it was probably going down; some major features of the Central Valley Project that needed work; we were still wrapping up the Central Arizona Project so that was taking fifty-, sixty-, seventy-, eighty million dollars a year, and that *clearly* was the priority to keep on track so you could get to completion of construction. So the budget process needed a lot of attention. So probably to summarize those three things: a lot of time on Dennis's strategic plan, lot of time on budget specifically and the whole budget formulation process, and then, thirdly, the individual policy issues that were the hot ticket items, E-S-A, Reclamation Reform, O&M costs, issues about cost sharing with water users, in the context of O&M, that kind of thing.

Storey: One of the things that's of interest, I think, is Dennis became commissioner after the '87, '88 reorganization occurred. (McDonald: Yeah, he became commissioner in [1989]) How did he respond to the reorganization? Did he make it his own? Did he—how did that work?

McDonald: Good question, Brit. I don't know that I have an insight on that because, again, the '87, '88 reorganization occurred the election would have been fall of '88, so Dennis would have become the commissioner in late spring/early summer '89, however long it took him to clear the Senate. So the reorganization had been very publicly announced and pronounced *before* Dennis became commissioner and then I was not around during '89 and until August of '90 as Dennis took what had been handed to him, if you will, and began to work with it. So I don't know that I really know what his attitude was. When I came in 1990, you know my clear guidance from him was the ACRM organization was not working well, the reorganization had people that were still not comfortable with it and resisting it to some extent. And one of my first jobs, you know, very clear direction from Dennis, was dig into that and see if you can figure out what we need to do. But I don't recall, Brit, that I got a sense that he wanted to own it or disown it. It was simply more we aren't doing well, and we got to get our arms wrapped around it and do a better job (Storey: Um-hmm.) of—so I would infer—but it's an inference,

29. Don Glaser participated in Reclamations oral history program. See Donald R. Glaser, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, from 1993 to 2013, in various locations, edited by Brit Allan Storey, and further edited and desktop published by Andrew H. Gahan, 2014, www.usbr.gov/history/oralhist.html.

nothing Dennis ever said to me that I can recall, here it was, it was given to me, I need to work with it. Don't recall him trying to put his fingerprints on it, particularly, one way or the other, other than to—it was done, we need to make it work and be efficient about it.

Storey: I think he appointed a deputy commissioner in D.C.

McDonald: I don't recall that. I'd have to go back and look at the records. My . . .

Storey: That would be Larry Hancock.

McDonald: Well, was that before Joe retired? I just don't remember. (Storey: I think so, but doesn't matter . . .) Have to get the records in front of me. I mean, at one point, you're correct, Larry Hancock became a deputy commissioner officed in Washington, D.C., but I just—no, I think you're right. Dennis did get Larry started before Joe retired, because Dan Beard didn't do it. (Storey: Yeah, and I think Joe retired under Dan.) Joe retired under Dan when Dan did his reorganization and shifted several of us around (laughs), myself included. Yeah Joe—Joe at that point retired, Ray Willms retired, I got moved to Sacramento, Terry Lynott took a I-P-A³⁰ for two years, which I think was extended to four years, then he retired. Those were all part of the personnel shifts that it was the commissioner's prerogative to make for those of us that were career S-E-S.³¹ Boy I'd have to have somebody put the list in front of me to remember exactly when Larry's tenure was.

Storey: Well, let's see. After Dennis was Dan, right? (McDonald: Dan was, yeah, because the election . . .) Who was acting commissioner in there?

McDonald: The election was '92, and Dan would have come in '93 for about two and a half years. (Storey: Yeah.) It wasn't me. I didn't do acting commissioner until 2001. Let's see, Don Glaser . . . (Storey: Oh, it was Larry, I think.) Don Glaser was the acting assistant secretary for that transition, right? I don't remember. I'd have to . . . (Storey: Might have been Larry) Have H-R [Human Resources] get the records out and give me a list.

Storey: Well, Dan brought a different perspective to Reclamation. (McDonald: Oh, very different, absolutely.) And what was going on there?

Commissioner Daniel Beard

McDonald: I've always thought, Brit, at least two things. One is that Dan, by his own admission, he was very up-front about it, was a quote "political beast" end quote. And his whole view of the world was through that lens that I am a, in his case, Democrat, and I am here to advance the platform, and the policies, and the perspectives of that party. And my decisions are made heavily weighted by a political perspective of the right kind of policies. He was up-front about it. And his interest in being in an appointed position was to be a political beast—to play the political game. I mean, I always perceived Dan .

30. Intergovernmental Personnel Act.

31. Senior Executive Service.

. . he [was] one of these kind of guys that kept the win/loss column, and it was I won versus I lost, measured in political terms. The second thing, very clearly, and, again, he was right up-front about it, is he thought Reclamation needed to be much more environmentally oriented. You know, this was a gentleman who had been on Congressman George Miller's staff as the act that became the Central Valley Project Improvement Act in 1992 had been moved through Congress in '90, '91, and '92. Dan was one of the principal architects of that. You know, the whole *point* of the Central Valley Project Improvement Act was to address environmental issues on the Central Valley Project. That's just where Dan, and the secretary, Secretary [Bruce] Babbitt, that presidential administration were coming from. So Dan made no bones that he was there to strike a different emphasis than had historically been the case with the agency. And he articulated that. The third thing that I've always thought Dan was about, but I don't recall him being up-front with it as he was with the first two, but it clearly became the centerpiece of his reorganization to some extent, is he did not, with a couple of exceptions, really trust any of those of us that were the career senior executives.

And so he did a couple of interesting things. He essentially quit using the executive management committee. And, you know, the first few meetings of management he began to draw in project managers or otherwise go down into the staff of the assistant commissioners and the regional directors, what have you, and he would overtly not invite the senior executives to those meetings. I mean, I can remember a meeting or two where he told us we were not welcome. I never quite understood what his thinking was, and I quite frankly have not ever gone back and read his oral history to see what he might have said about it. But where it eventually led, and I've always been struck by it because it was nothing I predicted Dan Beard would do, and I knew him pretty darn well because as director of the Colorado Water Conservation Board through the whole '80s, I had moved a lot of legislation through the subcommittee or the full committee that Dan was staff director for with George Miller. And I had a lot of battles with Dan because I was kind of moving the traditional Colorado agenda—things like the Animas-La Plata Project . . .

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Storey: You and Dan were well-acquainted.

McDonald: Yeah, so Dan and I had gotten well-acquainted. And I just never would have predicted, because he was, you know, a little bit on the uppity side, I guess I'd say, that he took the '94, '95 reorganization the direction he did in that he *devolved* a lot of responsibility to what has become the area offices. And that was a sea change organizationally for Reclamation. The whole of history of Reclamation, particularly post World War II, had been responsibility and *authority*, if you will, *decision-making* authority, was very clearly focused in, and essentially limited, to the regional offices, and the *enormous* change that Dan made, to his credit, I would unequivocally say, is he devolved a level of organizational authority and responsibility down to what we now call the area offices, and was very insightful about that. And I've never understood why he had that perspective and that insight because I just absolutely would not have predicted

it from him. And where he eventually ended up, I think, Brit, is once we kind of moved through that discussion and Dan put his finger on what he wanted to do, he re-instituted the Executive Management Committee to an extent, but he also coupled it, of course, with meetings of the entire leadership of the area managers. And never went back to *just* the Executive Management Committee being the leadership team with which he met. He, as I recall it, he, for the balance of his tenure in '94 and '95—he stepped down in '95 didn't he? (Storey: I think that'd be about right—'93 to part of '95) May of '95 as I recall—he never went back during his tenure to the leadership team being *just* the Executive Management Committee. He started involving the area managers. And we drifted more back since Dan's tenure to the focus of the leadership team being the Executive Management Committee—now called the Reclamation Leadership Team. But still, with a mix of area manager meetings in there as well. But that is very clearly the third major thing Dan did, we devolved authority from the regional offices down to the area offices. That was absolutely unique in the entire history of Reclamation as far as I understand it.

Storey: Well, let's follow that. What did that result in? What were the results of that devolution of authority?

Results of Beard's Devolving Reclamation

McDonald: Well, I think probably a lot of results. The answer off the top of my head, this may be one where I come back and read the transcript and have a couple of thoughts to add. First, and foremost, it obviously removed a degree of authority from the regional directors and the regional office managers—the traditional 100, 200, 400, 700 chiefs, you know, construction, planning, O&M, engineering and design, those are not in order per the numbers. It moved what traditionally had been the authority and decision making lodged in them at the regional office to some larger degree down into the area offices, and *put* decision making much closer to the day-to-day interface with the customer, with the water user and the irrigators, and to some extent with other stakeholders like environmental groups that have an interest in how projects are operated, and with tribes in many contexts.

The second thing I always thought it did—I always said this to my staff in the Pacific Northwest when I got up there—is it took the issue about service providers [also] wearing a policy hat from the ACRM level down to the regional office, and it repeated it all over again. [This is] because the other concept that was in that '94, '95 reorganization—besides taking all the technical services in Denver and collecting them in the Technical Service Center, and making the Technical Service Center a fee for [service] provider was that that fee for service provider now worked for a combination of regional offices and area offices. Not just the regional office as would have historically been the case. Meanwhile, the regional offices maintained the technical staff that had ended up being there in the mid-1990s as a result of the combination of the '87/'88 and '94/'95 reorganizations. So all of the regional offices have a group of engineers that provide services to the region; a group of economists in some cases, pretty much we've gotten away from that simply for lack of work; you know, major capabilities in environmental compliance and biological sciences, because that's so

much a part of day-to-day business; staff with expertise in land management. So you kind of took that whole ACRM issue [of a service provider also being responsible for setting agency policy] and you just shifted it down into the regions, [where] it became a further discussion about what should be the technical services centralized in the regional office that the area offices have to *come* to the regional office to use versus the area office staffing up.

I particularly, in my region, although I know the other regional directors did too, spent a lot of time on trying to really get explicit about what the arrangement in the P-N Region would be, who was going to staff up for what; and more importantly getting *our* leadership team in the P-N Region to have a joint decision-making process before positions got created, or if vacated, got readvertised. To stop and think about is what we need something better placed in the regional office or is it better placed out in the area office. And, you know, the model I came to in the region is part of how we got into the new business model that came out of M-4-E³² too, where you really have to create a rigorous process that keeps an eye focused on the *total* workload, how the workload flows, and then where can you most efficiently use and *maintain* the expertise that you need. So, in a lot of ways, it just shifted that ACRM debate right down to the regions, and *all* the regions spent three-, four-, five more years working their way through that issue. (laughs)

Storey: What about—my sense was at the beginning the idea was all these decisions were going to be made down at the area office. And as we have evolved since, its been sixteen years now, I keep hearing little hints from commissioners and so on that, "Well, there're some issues because this area office does it *this* way and this area office does it *that* way, and the water users talk to one another (McDonald: Oh sure, you bet.) and that causes issues within Reclamation. Have you run across anything.

Area Offices

McDonald: Oh, sure. You know there absolutely has been that discussion, and you're absolutely right, the water users pick up on it. I guess I'd have a couple observations. I think you'll have that issue whether its framed as, "*This* area office does it this way, *that* area office does it that way." Or just to posit an example, what if you got rid of the area offices, let the five regions still have the degree of authority that we've delegated out to the field traditionally. You'd have the same thing. Region A does it this way, Region B does it that way, what's going on? The real issue is not area office existence or not. The real issue is we are a large, relatively large, decentralized, geographically far flung organization in which I personally believe it does make a lot of sense to have certain critical masses of expertise out there in the field on the ground in combinations of what now are regional office and area office. And in the context of a decentralized organization you will always struggle, I would submit, Brit, with trying to find the right balance between agency-wide policies and procedures that kind of put the outside perimeter on what people can do, and thereby constrain to a degree what they can do. There will always be tension between that, for the sake of a reasonable degree of

32. Managing for Excellence.

consistency, versus giving the field the latitude to get the job done. And that, I would argue, is inherent in any organization, private or government. I mean, you go to the private sector, you know, now that I'm retired and I'm talking about doing private consulting, I've started talking to some of the big engineering firms, and you know what, they've got the same stinking issue. They've got international field office overseas, and they're arguing about how much corporate control should there be from headquarters. Its just human nature.

So, yeah, we had that conversation. I think Reclamation will continue forever to have that conversation because I think its inherent in any large organization of human beings. What I would say, beyond that, is Dan Beard clearly wanted to really shove aside the structure of the career senior executives as he viewed it and create those area managers and put a lot of authority in them. And as '94, '95 reorganization occurred and moved through that first couple-, three-, four-, five years, area managers kind of really grabbed that bull by the horns, said, "This is wonderful; we like it," and got pretty independent. And, you know, it led to some mid-course corrections, I guess you'd say, as regional directors collectively and individually sat down with their area managers and talked through where the pendulum needs to lie to be in the middle here. And I think its fair to say we pulled back after five or six years to [not] quite as much unfettered discretion as at least some area managers like to exercise, and came to what I always felt was a pretty comfortable balance between what a regional director kept to him or herself and his regional office managers versus the area managers.

And you'll never reach absolute uniformity either because we again are all human beings, and I had my management style and I had *my* degree of comfort with my staff at any given point in time. Area managers are human beings. Some of them are going to be more independent than others. So, you know, again, there will always be conversations about trying to keep the right sort of balance there. But very clearly, as we came immediately out of that '94, '95 reorganization, the people that were the first round of area managers really liked the idea, and they stepped right up, with encouragement from Dan Beard, to be pretty independent in ways that Reclamation had never experiences. And there was some pulling back of that over five or six years. In the end [with] the R-Ds getting more firmly back in the saddle. But certainly *not* the way it was in the good old days. I think all of the regional directors that I served with in the eleven or twelve years I was an R-D came to a really good balance in terms of the *right* degree of decision-making authority out in the area offices so you could get the job done, and almost all area managers having a real good sense of what they needed to kick up and be sure the R-D understood where they were headed and how they were trying to handle it.

Storey: And, of course, combined with the creation of the area offices was the sunseting of all the . . .

Sunsetting the *Reclamation Instructions*

McDonald: What formerly were the *Reclamation Instructions*. (Storey: *Reclamation Instructions* was it? The manual, too?) No, the only thing that existed as we went into

the '94, '95 reorganization in the way of formal written Reclamation policy was that set of documents called the *Reclamation Instructions*. And then a couple-, three formal rules and regulations, you know, codified in the *Code of Federal Regulations*. (Storey: Right.) So what Dan did by stroke of the pen was terminate all of the *Reclamation Instructions*. He couldn't do that to something that was a formal rule and reg, of course. That's a different process, but Reclamation has almost no rules and regs, as you well know. The principal rule and reg is [for implementation of] the Reclamation Reform Act. So, it was Dan's prerogative, since the *Reclamation Instructions* are really internal policy, not formal regulations, to get rid of them, and that's what he did. He sunset them all.

That's an approach, and when your intent seems to be what Dan's intent *was*, to really shake up the bureaucracy and get it out of the "mold," quote, unquote, that he viewed it had been in, *Reclamation Instructions* I always perceived to Dan were the written representation of that bureaucratic mold that he was trying to free Reclamation from, I guess would be a way to put it. You know, then one way to do it—and it may have, frankly, been an insightful move on his part—is just wipe the slate clean because otherwise you aren't going to get the bureaucracy to work through it. That was a pretty extreme way to do it, though, because it then left Reclamation without any guidance at all, and it contributed to the discussions in the next four or five years of, "Well, I'm the area manager, and I don't have any *Reclamation Instructions* I have to follow any more, and I've got a lot of independence. I don't have to even be talking to my regional director." So, you know, the centrifugal force of a dispersed organization began to take over, and you got more and more independence and less and less uniformity, and it *came back to bite us* because, you know, it was a good thing taken one step too far would be my perspective.

And, yeah, it was great from a water user perspective. If your area manager had all that latitude and didn't have to follow any *Reclamation Instructions*, and they made the decision you wanted. But as soon as that area manager *didn't* make the decision you want, you then, you went and talked to your colleagues in the area office next door and discovered something was being done differently, and in a way that you would have preferred, and then independence became a negative not a positive. (Laughs.) Part of the process of pulling back is recognizing that you can't just run an agency like this without some reasonable set of minimum policy and procedural guidance which brackets how the agency's going to do business. So that there is a reasonable degree of uniformity. You know, in the eleven years I was regional director, we probably spent as much time as anything on discussing what's a reasonable degree of uniformity, and there was a real philosophical difference among the regional directors, with a couple of us tending to be more in favor of enough guidance to really *get* some uniformity versus a couple or three *other* of the regional directors that preferred as much latitude as we could get away with. And again, I would suggest that's a conversation that'll go on forever because its just the nature of a organization made up of human beings. (Laughs)

Storey: Um-hmm. Yeah.

McDonald: Well, to complete the thought process, and now, of course, where we are is we're moving back towards more and more guidance, now called the *Reclamation Manual*. And, if you go talk to the people that are writing pieces in the *Reclamation Manual*, lots of time they go get the old *Reclamation Instructions* off the shelf to see what they said and how they approached it, and that at least informs the thinking process about what to put in the *Reclamation Manual*. I think, however, we've been reasonably careful and successful as we begin to expand on and build up the *Reclamation Manual* in the last ten years, to *not* get to the highly prescriptive requirements that were kind of the hallmark of the *Reclamation Instructions*. I mean, the *Reclamation Instructions*, good grief, were about, literally, six or eight shelf feet of paper that told you how to cross "t"s and dot "i"s if you were doing a planning study, for example. (Storey: Um-hmm.) The policies and the directives and standards that now constitute the *Reclamation Manual*, at least to this point, haven't become anywhere close to that prescriptive, you know, and the test for a bureaucracy like Reclamation is going to be can we strike the right balance between enough guidance to achieve that reasonableness of the way in which the agency's going to do business on the one hand versus enough latitude to get the job done and *not* become so prescriptive that you can't be light enough on your feet to make decisions and keep moving along. And there will always be tension and philosophical differences about where that balance lies.

Storey: Um-hmm. One of the things that happened during this reorganization under Dan was the creation of the Commissioner's Program and Organization Review Team, I think was the name, CPORT . . .³³

Commissioner's Program and Organizational Review Team (CPORT)

McDonald: Actually, CPORT—wasn't that the team Dan created that generated a report, and from that flowed the '94, '95 reorganization. Yeah.

Storey: What are your perspectives on the way he put the CPORT team together.

McDonald: I'm hesitating simply to try to refresh my memory. I think the key thing that I recollect about it, that reflects Dan Beard's perspective and thinking process, is he very intentionally put no senior executives on that team of—he went to, if I recall correctly, it was a team made up entirely of career people at the GS-14/15 management level. I think Larry Walkoviak was the team leader, but I'm not sure of that. And Dan was very clear, "I'm leaving senior executives off because I want to get around those of you that have a vested interest (in his perspective) in protecting turf and tradition. And I want to hear from the employees." So he put that team together. He did have Don Glaser, you know, sponsor the team—I don't think those are the words Dan used, but Don Glaser, who at the time was either an assistant commissioner back in D.C., or he might have just moved out here to Denver to be an assistant to Joe Hall. I can't remember exactly what the timing was, but, anyhow, Don, whichever hat he had on,

33. The "Report of the Commissioner's Program and Organization Review Team" which Reclamation published in 1993 is commonly known as the CPORT (pronounced "see port" or "sea port") report. It was one of two major 1993 documents produced during Commissioner Beard's reorganization of Reclamation. The other document was Commissioner Daniel P. Beard's *Blueprint for Reform: The Commissioner's Plan for Reinventing Reclamation*.

you know, was the executive sponsor of CPORT, if you will. CPORT rendered a report, you know, and that report really became the point of discussion, then, about the key recommendations—what ought to be done, what changes should be made in Reclamation. In response to the CPORT report, and in a lot of ways, Brit, the way I think of it is CPORT evolved into Beard's *Blueprint for Reform*. I mean, the CPORT report and the observations made by that group of people—and, as I recall, they sought all employee input a number of times—kind of shaped Dan's thinking process. And then we did have two or three Executive Management Committee meetings with just Dan and the senior executives to talk through what CPORT had come to, you know, Dan began to lay out his vision that ultimately became the *Blueprint for Reform*.

And *to me personally*, one of the, I've always thought one of the ironies of that whole process was that once Dan kind of got his finger on what he wanted to do, he asked Don Glaser to be the person that crafted the *Blueprint for Reform* and Don turned to me, and *I largely* was the one that literally wrote the *Blueprint for Reform*. And *I clearly* was the guy that Dan Beard least trusted (laughs), you know, and that's why he sent me to California and got me out of management ranks. So Don and I have always mused about how that came to pass because I ultimately ended up being the one that captured Dan's vision in writing for him and he was quite pleased with it. I remember having a meeting with him. He was kind of dumbfounded when Don walked in with me in tow and announced that I'd principally been the one that wrote the *Blueprint for Reform*. And Dan had a few comments, and we made some adjustments to capture what he wanted, and, you know, on it went from there. But that's my recollection of CPORT, Brit, is it really became the foundation for Dan thinking through and the Executive Management Committee, with Dan, thinking through do we want to make this fundamental shift of devolving the concentration of responsibility and authority from the regions into what have become the area offices. And Dan very much engaged the then current executive leadership in that discussion, and it was a very robust discussion. Dan entertained the full range of perspectives, but, you know, clearly at the end of the day made a cut and said, "This is what we're going to do." I think, on the whole, we all satisfied ourselves, though, it was the right thing to do in its general drift. (Storey: Um-hmm.) Maybe not in all the particulars, but I think everybody got convinced that the nature of the issues that Reclamation faced, the speed with which they moved, the budget climate in which we were working, it really did make sense to decentralize this organization from the concentration that it had historically had in the regional directors.

Technical Service Center

The *bigger* debate *probably* was about the idea of what has become the Technical Service Center and how to make that work. That, I think, a lot of us just weren't clear on what the right thing to do would be and how to go about it. And, indeed, I think if you go back and look at the first three-, four-, five years of the Technical Service Center, it took that long to really get the rough edges off the central idea and make it workable. And for my money I think its become very workable, and my hat's off to the Technical Service Center. I think those guys have pulled their fair share and then some in the last fifteen years in really making that a solid organization

that provides good services.

Storey: I keep getting a perspective that the budgeting for the T-S-C was changed. Do you have any recollection of what happened?

McDonald: Well, the biggest thing that clearly happened, and then beyond that my memory's weak, I'd have to go back and read some written records, is the precursor to the Technical Service Center, of course, was largely the assistant commissioner for engineering and research, ACER, A-C-E-R. And *that* part of ACRM, my organization, that was providing technical services, so the hydrologists, the environmental compliance people, the biology folks, etcetera. Those people had all done their work based on appropriated dollars. So, for example, to put it in the context of ACRM, if there was a planning study that ACRM was going to do, the appropriated dollars were moved into ACRM and *I* became responsible, not a regional director, for those appropriated dollars, and the region didn't have any control over it. ACER really was the same way. The traditional context in ACER would have been engineering design work on a construction project. The appropriated dollars for project A, if it was going to go to engineering design, that became part of ACER's appropriated budget, and *that* assistant commissioner managed it.

You know, the fundamental concept of T-S-C is we were going to terminate that process. A project, if it was out in region A, the *responsibility* for the project would be region A. The Technical Service Center would provide services to region A, but region A was responsible for results, and, you know, we thought of it as the technical service being, [the] Technical Service Center being, the contractor, if you will, to put it in the context of a private sector A&E firm. The Technical Service Center became an internal A&E firm to the regions or the Dam Safety Office, as an example. *That*, you know, that was a huge change for Reclamation. Frankly, a huge change in general for how to run any government agency—although a lot of that was beginning to happen in the '90s, with a lot of government agencies *with* the "Reinvention of Government" platform of Vice-President Gore. So, you know, the tough part of getting the T-S-C up and running was to figure out how to manage organizations in Reclamation well enough that we could get the workload into T-S-C with a reasonable degree of certainty so those poor guys knew what they were trying to staff for and where the money was going to come from to pay salaries. And it took, like I said, three to four or five years to really get the basics down, and we still, I think, struggled until about two or three years ago as we finished up M-4-E and made some more adjustments to really get a handle on how to run an organization like that within the bigger agency. And have processes that get workload queued up far enough in advance that the T-S-C can figure out how to schedule it, plan for it, if they've got vacancies, you know, be looking out two or three years and say, it looks like the workload's there, we do need that kind of expertise, we need to fill that vacancy, or not as the case may be. And that's been a really, really difficult process. You know I don't think it totally gelled until about two-, three years ago.

Storey: Interesting. When these functions were taken from ACRM and put over into the T-S-C (McDonald: Right.) were they acquiring new types of expertise they hadn't had

before?

Supplying TSC with the Right Expertise

McDonald: Yeah. The ACER organization had essentially, as I recall it, been limited to engineering and design work. You know, it was the traditional Chief Engineer Office is what it boiled down to. (Storey: Um-hmm.) Fact, I think it had been called the chief engineer until the '87-'88 reorganization,³⁴ and as I recall the Chief Engineer Office had been created post-World War II. The Chief Engineer's Office was simply the top dog in Reclamation, plain and simple, and so ACER was . . .

END OF SIDE 2, TAPE 1. JANUARY 19, 2011
BEGINNING OF SIDE 1, TAPE 2. JANUARY 19, 2011.

Storey: This is tape two of an interview by Brit Storey with Bill McDonald on January 19, 2011.

So ACER was the new name.

McDonald: Yeah, ACER was the new name for the Chief Engineer Office. So it was almost entirely engineering and design services. So as you took the technical staff in ACRM and combined it with the technical staff in ACER to *create* the Technical Service Center, the Technical Service Center, as compared to ACER was picking up all the disciplines that had been in ACRM that *were not* in ACER. So what ACRM had that ACER did not was the environmental and biological sciences, the social sciences, hydrology was over in ACRM as opposed to ACER although there was overlap, that's not a easy distinction to make, but you know hydrology for planning studies, in particular, was over in ACRM. So very clearly the Technical Service Center ended up gathering up all of ACER and about half of ACRM to create a new combined single organizational unit with all the technical expertise, and all the technical disciplines, if you will.

Storey: Yeah. One of the things I found very interesting about Dan Beard was, I said, "Well, how do you know what's going to happen," and he said "I don't, but I know its going to change."

McDonald: That's interesting. He said that in his oral history?

Storey: Um-hmm.

"It Didn't Surprise Me that Dan Beard Wanted to Move Me"

34. Reclamation established the position of chief engineer in 1902 and that title continued in use until 1948 when the title became "assistant commissioner and chief engineer." Then in February of 1963 the title "chief engineer" was dropped in favor of "director, Office of Design and Construction." Then in 1978 the title evolved into "assistant commissioner for engineering and research," and that title was used until the office was discontinued in 1994 with creation of the Technical Service Center. However, the person occupying the position was unofficially often referred to within Reclamation as the "chief engineer" until Reclamation discontinued the position entirely.

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- McDonald: Like I said, I've never really gone back to read it. Its on my bucket list now that I'm retired because it fascinated me. It was very personal when it happened, Brit, because basically [I] got fired. You know I'd never been fired before, and I—it wasn't for performance (Storey: That would be very shocking.) and Dan acknowledged it. But it's the way the S-E-S works so I didn't have any problem with that. *My problem*, frankly, was only that Dan did not have the professional courtesy to ever come to me. He sent his emissaries, and that's just not acceptable. If the guy needed to move me, which it is clearly his *lawful* prerogative to do, and frankly I could understand that I didn't fit on his team, given my history with him, you know management is a lot the chemistry of personality. So it didn't surprise me in the least that Dan Beard wanted to move me. I kind of braced myself for that. But that he would not *have the courtesy* of personally coming to talk to me, particularly when his first request [was] that I leave Reclamation, which, again, that was his prerogative to do [was unprofessional]. I respectfully declined his request and we went through, via his emissaries, a couple of conversations about what to do. So that never—that he'd want me to move on was troubling but that's the way the system worked, and I understood. The only thing that troubled me is he didn't have the professional guts to look me in the eye and say, "Bill, you're just not part of my team, and here's why." He send Hancock originally and somebody in the middle and ultimately Don Glaser, so basically Don and I worked out my detail to the Solicitor's Office, which is where I spent five years after Dan made those moves.
- Storey: And he did this to a number of people.
- McDonald: Well, you know, he clearly did things that Joe Hall realized it was time for him to retire. When he moved me Ray Willms decided he didn't want to stick around so Ray retired. Likewise, when he moved me, and given the way he handled me, Terry Lynott didn't want to stay around, but Terry, I don't think, was eligible [to retire], so he worked out the deal for an I-P-A and went to, think we had him over at the Soil Conservation Service.
- Storey: National Irrigation something or the other, I think, I've forgotten the name of it.
- McDonald: That's right. It was a joint program between Interior and Department of Ag as I recall.
- Storey: Oh, is that what it was?
- McDonald: I think it was. It was good fit for Terry, so that made a lot sense, and he got to retirement. I think, if memory serves me, those were the three or four key moves because Don stayed around. Austin Burke stayed around. Larry Hancock stayed around. All the R-Ds stayed around. I can't think of any other immediate changes that he made, Brit, but I'd have to get the list out and refresh my memory.
- Storey: Did he move . . . golly, I'm having an increasing problem I keep wanting to say Jerry Rogers, but that isn't right. The guy who went from Great Plains to M-P as regional director and created CALFED.
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- McDonald: Oh, Roger, Roger Patterson.³⁵
- Storey: Roger Patterson, and then he would have appointed Neil Stessman,³⁶ I guess as regional director up there. And I think he appointed Bob Johnson down in . . .
- McDonald: I'd have to get the chronology out to remember all that, Brit . . .
- Storey: But next—so Ed Osann was somebody who was in his staff.

Ed Osann was There to Push the Environmental Agenda

- McDonald: Dan Beard brought Ed Osann in.³⁷ Of course, Ed had been with the National Wildlife Federation. Ed was a political appointee. I don't remember if he was Schedule C or non-career S-E-S. I don't know that I ever knew. But, you know, he was a front office special-assistant type. I can't remember what exact title he had, but he was clearly brought in by Dan to promote the environmental agenda and to get after Reclamation for, you know, Central Valley Project Improvement Act-type things where Dan clearly on behalf of that administration wanted things to happen in Reclamation. So Ed was the point person on that. It was never clear to me if it was really Dan Beard's personal decision to bring Ed Osann in, or if it was one of those where Dan pretty much was told he needed to take Ed Osann—I mean that happens all the time. Assistant secretaries and directors of bureaus don't always get to entirely pick their own staffs because Ed was not effective. And, you know, Dan never ever said anything publicly, you wouldn't expect him to, but my perspective was Ed actually caused Beard a fair number of headaches because he was such a bull in a china closet that he wasn't effective at getting the agenda that Dan wanted promoted. You know, he just would pour gasoline on a fire, and Dan was picking off some big issues that were going to be controversial anyhow without pouring gasoline on them. So, I have no idea what may have happened there. I certainly would have been that last guy to be privy to it, but, you know, Ed was there to push the environmental agenda.

As much as anything he worked on the Central Valley Project Improvement Act implementation issues. And I crossed paths, in that context, with Ed *a lot* because when I was moved to the regional solicitor's office out in Sacramento, by Dan, one of the *principal* rationales for doing that—appropriately, let me say for the record—was that

35. Roger Patterson was regional director of the Great Plains Region (1988-1991), Mid-Pacific Region (1991-1998), and participated in Reclamation's oral history program. See Roger K. Patterson, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, from 1994 to 2000, in Sacramento, California and Lincoln, Nebraska, edited by Brit Allan Storey, 2011, www.usbr.gov/history/oralhist.html.

36. Neil Stessman was regional director of the Great Plains Region (1991-1998) and participated in Reclamation's oral history program. See Neil J. Stessman, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, from 1994 to 1996, in Billings, Montana, edited by Brit Allan Storey, 2009, www.usbr.gov/history/oralhist.html.

37. Ed Ossen was the Bureau of Reclamation's director of Policy and External Affairs from 1994 to 1995 and participated in Reclamation's oral history program. See Edward Ossen, *Oral History Interviews*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, in 1995, in Washington, D.C., edited by Brit Allan Storey, and desktop published by Andrew H. Gahan, 2013, www.usbr.gov/history/oralhist.html.

there was an enormous workload to negotiate the first two year interim contracts required by that Central Valley Project Improvement Act. So Reclamation had like about a hundred and fifty contracts that had to be negotiated in six months, and since I had a law degree and was admitted to the Colorado Bar, there was some logic in throwing me into that team to work as an attorney on contract negotiations and drafting. And Ed was right in the middle of the controversial policy issues relative to some key contract provisions on the Central Valley Project Improvement Act. And, again, my take was, I understood where they wanted to get [to] as a matter of legal policy, but Osann would just consistently make it worse because he just drove the water users nuts, and the harder he argued the madder they got and the deeper they dug in. And they still had enough clout left, you know, that they weren't going away. (Laughs.) So, you know, *to me*, it just—Ed just didn't constructively contribute to Beard's agenda, in *my* perspective. I have no idea what the commissioner might have thought, though. You'd have to ask him. (Laughs.)

Storey: Well, let's talk about these contracts. I think the original contracts were forty years contracts, maybe.

Central Valley Project Contracts

McDonald: The bulk, if not the entirety, of the Central Valley Project contracts are water service contracts as opposed to repayment contracts. They, therefore, had, at most, forty year durations. And basically what the Central Valley Project Improvement Act required, Brit, is all of those . . . The forty year water service contracts [be] transitioned to *new* long term water service contracts, let's see, *not to exceed* twenty-five years by statute, if I recall. And because they, the ones that existed as of '92, were running out at staggered intervals, the act called for these two year interim contracts so that you could get rid of the old one and start moving towards the legislative objectives of the new long term ones, but recognize that it would take interim contracts to kind of work through the process. And so when *I was* transferred out there, it was the first round of these two year interim contracts. The legislation actually allowed subsequent two year interim contracts, and *I don't* recall for sure, but *I think* Reclamation ended up doing three two year interim contracts for just about everybody—simply because they had to do the environmental compliance on the new contract requirements before they could go to the twenty-five year entirely new contracts.

So the interim contracts were intended to capture some of the minimum basic elements of the new legislative requirements—by far and away the biggest controversy was the so-called shortage provision. You know, when Reclamation can't deliver the contract amount, who's liable? And that to this day continues to be the central debate in the Central Valley Project in the face of E-S-A [Endangered Species Act] regulatory constraints and what have you. Because, you know, its clearly reached the point where Reclamation cannot deliver, probably most years, the contracted face amount of a contract—simply because the water can't physically or as a regulatory matter get moved from the Sacramento River through the delta [San Francisco/San Joaquin Delta] to the users [south of the delta]. So that was the major debate, and the water users were dug in deep. Roger Patterson was the R-D at the time. Principally two attorneys were

doing the negotiating and the contracting with the regional office policy staff, Jim Turner and myself, I did the contracts in the Sacramento River Division. Jim was doing the contracts down in the San Joaquin, but the shortage provision Reclamation intended to be the same in all of them. At the staff level, and even at Roger Patterson's level, we couldn't get the language on the shortage clause that was acceptable to Ed Osann, representing the policy perspective for the commissioner, *or* what John Leshy as the solicitor was saying he demanded. So the fun part of that story is it got to the point where Roger and we attorneys thought we simply had gotten the last ounce of blood. Leshy wouldn't sign off on it so Roger called Beard and Leshy and said, "If you want to negotiate further, you get on the airplane and come out and do it yourself." So, lo and behold, Leshy and Ed Osann came out to a meeting, spent a whole afternoon with the attorneys for the water users and walked out without one word changed and caved, and finally accepted the last offer the water users put on the table. And Ed Osann didn't stick around much longer after that as I recall. He resigned and went back to the private sector.

Storey: I'd like to get straight the relationship between the solicitor's function and the regional function in contracting. I understood you to say the attorneys in the Solicitor's Office were doing the negotiating of the contracts.

The Role of the Solicitor's Office in Contract Negotiations

McDonald: The regional solicitor's office—well, we were participating in the negotiations. I mean the client, Reclamation, in the form of the contracting chief in the regional office, and then as we got down to the key issues, Roger Patterson himself as the regional director, participated in negotiations. So the attorneys were there, you know, in the typical attorney-client relationship of providing legal services to the client, Reclamation, represented by its policy managerial people.

Storey: So the responsibility is in Reclamation, not in the regional solicitor's office.

McDonald: The ultimate responsibility, but the tension, Brit, is always this. The theory in the Department of the Interior is that the Solicitor's Office is the attorney for the secretary, not for individual bureaus and individual assistant secretaries, but the solicitor is the attorney for the secretary. And so when you get into difficult legal, slash, policy issues, there is always tension as to whether the individual bureau perspective that somebody may want to effect as a matter of policy is going to prevail or a legal perspective which is always colored by a lawyer's sense of policy, if they're honest with you, is at play to. And what was happening in the Central Valley [Project] Improvement ~~Project~~ Act is John Leshy, as solicitor, who had the total confidence of Secretary Babbitt, and John Leshy, who was as much a policy beast as a legal beast, was heavily involved in saying we're only going to go so far as a, quote, "legal," end quote, matter on the shortage clause and a couple of other things. Which clearly is a legal issue, no doubt about it, Brit, but the shortage clause is all about the business issue of who's going to bear risk, and that's a policy choice. For example, I can say to my attorney, if I'm the client, "I'm unwilling to accept any risk in this contractual arrangement. I want all the risks on the guy that's trying to make a deal with me." And a lawyer can craft language that does

that. But I could also say, as the client, "I'm willing to share the business risk of this deal with the guy I'm making the contract with. Write a different set of words for me." What was going on is the Solicitor's Office was as much in the role of policy as to who should bear the risks of shortages as they were merely crafting legal language, and that [is] why at the end of the day Roger Patterson just called Beard up and said, "I've gone as far as I can get. I've taken every request and nuance you've wanted back to these guys. They're rejecting it. They're dug in deep. You know, you've got a political train wreck on your hands. If you don't think I'm doing an adequate job, then John Leshy personally needs to come out here and cut the deal that John Leshy wants to cut." Like I said, Leshy literally came out, spent four or five hours, he didn't get [a single] "i" dotted or a "t" crossed [differently], and he walked out of the room and caved.

Storey: I'm having trouble understanding what risk means in this context because if there's only fifty percent water supply or twenty percent water supply, that's all there is. You don't "get any more." (McDonald: Sure.) So, what does that mean?

Who Bears the Risk in the Case of Water Shortages?

McDonald: The risk perhaps is better stated this way, Brit, that *if* Reclamation says, "We're going to give you a hundred thousand acre feet of *project* water," and *then* Reclamation, for whatever reason, only delivers sixty thousand acre feet, and the irrigation district's therefore *short* forty thousand acre feet, and *probably* suffers negative consequences of that, (Storey: Right.) damages if you will, the legal issue is: is the United States liable for reimbursing the irrigation district for the damages it suffered by virtue of the contract, *or* is there no liability on the back of the United States? So the risk, if you will, is who bears the liability for a shortage in water supply. And the debate really was around *if* the shortage was created by United States decisions about regulatory actions, like the Endangered Species Act, the irrigators were arguing, "That's a federal decision. You're creating a, quote, 'artificial,' end quote, regulatory shortage. *You* should pay us damages, United States, if you do that." The United States position fundamentally was, "We're complying with the law. If you want to do business with us, you've got to take the risk that we may not deliver all the water that we would hope to deliver, and its your problem. Its not the United States' problem." It's the regulatory taking issue, and it is alive and well today.

Storey: And, for instance, I think Don Glaser told me last year that he was going from our oral history to a telephone conference to tell them they were going to get, I've forgotten what the number was, maybe it was twenty percent or thirty percent water supply.

McDonald: I don't remember the particulars but that's typical, you know, fifteen-, twenty-, thirty percent is about all we're able to get south of the delta now.

Storey: So, what does that mean? Does that mean we're *paying* them money to . . . ?

McDonald: No. Ultimately the language that got into the contracts protects the United States from being responsible for that shortage—at least in the eyes of the United States. But there will be litigation, Brit, I mean there's a lot of litigation out there already, and I'm not up

to speed as of this oral history interview, but the issue lurking behind the scenes in several of those cases very much is the issue of whether the United States should be liable for the consequences of that regulatory action under the Endangered Species Act. And there's essentially two prongs to the argument, and every water user in the West has been maneuvering on this issue for fifteen years now. The first prong is the contractual provision about shortages—*if* there's a shortage, and *if* the shortage is caused by drought or acts of God, nobody has argued that the United States should be liable for that. The argument's been if the shortage is created by *regulatory* actions, principally E-S-A, why shouldn't the United States—because its their stinking law, you know, if you're an irrigator, that's your argument—why shouldn't the United States be liable for that?

The other way the issue is going to play out is lots of litigation in the West has occurred in the last ten or fifteen years in which irrigators are trying to set up the argument that their contracts with Reclamation, particularly repayment contracts, give them an ownership interest in the underlying water rights. And if they can't get the *water* that that water right should be able to provide, it is a taking of a property right in which the irrigator has a vested property interest. And they are trying to set up the argument, the constitutional argument, that its an uncompensated taking of—well, it's a taking of property and it has to be compensated. And, you know, I've had very candid conversations in the course of that litigation in the Pacific Northwest with the attorneys for the districts that that's exactly what they're intending to do is create a legal argument that it is the irrigator, not Reclamation, that is the "owner," quote, unquote, of the water right and that that's a property right within the meaning of the constitution. And if Reclamation doesn't deliver the water that that water right calls for it's a regulatory taking that must be compensated. *That* case has not squarely come up to be litigated yet, but, you know, I'll bet my bank account its coming in the next fifteen or twenty years.

Storey: I thought that the Supreme Court had already ruled on whether or not . . .

It's a Question of Water Rights Ownership

McDonald: The *Ninth Circuit* in the context of the Klamath cases has come very, very close, but, to my recollection, the facts of those cases haven't quite gotten to the bottom line issue of it being a constitutional taking, and, or, the court has chosen to duck the constitutional issue and limit its decision based on the facts and statutory interpretations. (Storey: Um-hmm. Good.) But, yeah, the Klamath is where the issues *most* nearly coming up—followed by the Central Valley Project.

Storey: Okay. I'm wondering about this issue of risk, still. Did we end up ever paying anybody, you know, if they refused to let go of their stand on it. How did that work.

McDonald: To my knowledge, Brit, Reclamation has never been found liable for a failure to deliver water. The so-called shortage provision, whatever its form over the years, has always been broad enough that it entirely favors the United States, and that will always be the United States' position, frankly, under any administration. But it'll be a heated debate

as the E-S-A issues get even more difficult to deal with, and like I said before we took the break, the other prong of this is going to be ultimately litigation over the issue about whether there is a regulatory taking of a property right with the fundamental water user argument being *they* own the water right—not the United States. Obviously what's going on there, Brit, is if the United States owns the water right, and the United States chooses to not exercise that water right, they're only hurting the United States, *not* the irrigator. Because if the United States owns the water right, it's the property owner, the irrigator hasn't got any property right they can *assert* needs to be compensated. So, in the general stream adjudications where the quantity and ownership of water rights is being adjudicated, for me this issue came up I the Idaho Snake River adjudication—[there are] *major* battles and legal maneuvering to try to get the position that it's the water user that *owns* the water right, not Reclamation. Even if Reclamation filed for the water right, did everything under state law, which typically is what was done. They're angling for legal arguments that because Reclamation isn't the actual user of the water, which is correct, the irrigator ultimately puts the water to beneficial use, that ownership actually ends up being vested *in the* individual irrigator and/or the irrigation district. And there are different legal theories emerging about which it should be. In Idaho the decision went all the way to the Idaho Supreme Court, and Reclamation lost. We asserted ownership, and the court concluded that we *do not* have ownership. So, someday in Idaho, I think, given the relatively conservative nature of the water community up there, there will be litigation in which the irrigation interests will assert that their supreme court has concluded that the property interest is owned not by Reclamation but by the irrigator, and if Reclamation doesn't deliver the water by virtue of regulatory acts, as opposed to drought, they won't argue about drought, but if we don't deliver water because of a regulatory act, they're going to assert that is a taking of private property as decreed by their supreme court, and its compensable under the U.S. constitution.

Storey: Why wouldn't we appeal a decision like that to the U.S. Supreme Court?

McDonald: There were a couple of perspectives on that. That litigation was called, by the way, *Pioneer Irrigation District v. the United States*. That litigation arose during the second Bush administration so the policy perspective was one of that administration, which, you know, very clearly favored states rights and a smaller footprint of federal government than the Democratic administrations would typically advocate. So the initial decision that needed to be made, [which] was aired out in the department was whether Reclamation would continue to pursue the litigation *in* the state court at all or try to vacate it to the federal court. The adjudication started in state court because it's a state procedure, and under the so-called McCarran Amendment, the United States waived [sovereign immunity] and allows itself to be brought in the state water right adjudications. So, we very clearly were properly in front of the state court for that procedure, but the issue became, once you got into the question of property right ownership, there was a potential legal argument that the case should be removed for that one issue to the federal court. Because it was Reclamation that clearly as a matter of *fact* had filed and claimed the water rights as a matter of state law and was now asserting a *federal* ownership—a *federal* property. And one can argue that if its federally owned property, and there's litigation about the nature and characteristics of

that property right, that's subject to the jurisdiction of the federal courts, and the federal courts would decide and you'd go back to state court to finish the process. But the feds would determine what the ownership is. The Bush administration made the judgement to stay in federal court, so that's why the appeal was to the Idaho Supreme Court. (Storey: To stay in state court.) To stay in state court.

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BEGINNING OF SIDE 2, TAPE 2. JANUARY 19, 2011.

Storey: . . . decided to stay in state court instead of appeal.

McDonald: Decided to leave the issue in the state court and appeal the state district court decision up to the Idaho Supreme Court. So that was the first part of the decision, and that was a legal policy decision very clearly of that administration. When the United States lost in the Idaho Supreme Court there was some discussion about whether or not to seek to have the United States Supreme Court review the Idaho Supreme Court decision. And, again, legal arguments could be made that would justify that position, but essentially the decision made by the Solicitor's Office was, I think twofold: [first] that administration from a legal *policy* perspective was deferential to states and wanted to leave it with the Idaho Supreme Court. But [second], in fairness to the administration, I think I need to say they judged, and I certainly, based on my experience, agreed the odds of the U.S. Supreme Court taking up the case were very, very small and the Idaho Supreme Court had ruled in such an ambiguous manner that it wasn't necessarily a good case to seek U.S. Supreme Court appellate review of. You could have gotten an messier situation. So we ultimately concluded that it was probably better to just stick with the results of the Idaho Supreme Court and over a period of time here, ten or fifteen-, twenty years, we're going to have to take that Idaho Supreme Court decision, apply it to facts on the ground, and, you know, it'll probably begin to achieve some clarification about how exactly to interpret and handle the Idaho Supreme Court decision. (Storey: Um-hmm.) That could lead to, you know, a future administration pursuing additional litigation based on a new set of facts and arguments about whether the Idaho Supreme Court has disposed of the entire issue or not. So that's—those were the two essential reasons for the decision to let it stand with the Idaho Supreme Court.

Storey: What about, you know, not being a erudite in all of this stuff, why couldn't Lesly have just gone in and said, "Okay, you don't want to sign the contract, we'll move the water to somebody else."

McDonald: I think politically impossible at the time. I mean, you know, there's a point at which you can only take so much heat for your political policy decisions, you know, and California just would come unglued at the Clinton administration if Secretary Babbitt and John Lesly had simply refused to enter into new interim contracts. So, you know, I think John had to make a call at the end of the day that he was close enough, and he's going to have to call it a deal.

Storey: This is where the politics comes into it.

McDonald: It does, you know, it's the judgement call that politically appointed people are entitled to make. (Storey: Um-hmm.) You know, I was not personally in the room for the last negotiation that John Leshy came out for, so I can't personally report on what John said or what arguments he made, but I'd *guess* that he sized up the situation, like any good attorney, and decided he'd gotten all he was going to get. And it was better to take that than to have a complete political blow-up.

Storey: What about legal issues? Would there be (brief conversation about the recording equipment.) Are there legal issues.

McDonald: What do you mean? What about legal issues?

Storey: Well, you know, for instance, I don't know how it applies in the Central Valley Project, there was water spreading as an issue—delivering water outside the legal service area, that kind of thing.

Water Spreading

McDonald: Oh, during Commissioner Beard's (Storey: Yeah, Beard and . . .) yeah, that was a big issue to him. It clearly was an issue, Brit, you know the context is that between authorizing documents for a project and/or contract terms and provisions, either water service contracts or repayment contracts, the typical, although not uniform. But the typical Reclamation approach to describing where project water could be used was to say that the water available under water service or repayment contract had to be used within district boundaries or maybe even a smaller subset of the lands within a district boundary by describing project lands that might not be *all* the land in a district. So the essential issue was that Reclamation very clearly over the years had not paid attention to those details, nor had the districts, and project water was being delivered to lands that were technically *not* authorized by authorizing orders or statutes or by contracts to receive water. So a technical violation of the law—no question about it. In the hands of Commissioner Beard I think the point was *not* that there was technical violation of law or contract. The point that I think Dan really *hoped* to achieve was project water was being delivered to people that did not have a right to it, we should cut them off and by doing so we would free up project water for environmental purposes. I think that was the commissioner's policy objective.

On the whole, that's been cleaned up. It took ten-, twelve-, fifteen years for all the regions to work through that with their various districts, you know, I guess we're not *absolutely* perfect to this day. And it's a continuing problem because farmers are always selling properties, recombining properties, irrigation technology changes, and the descriptions about what lands water can be use on are not all precise, sometimes. It was not a [big] deal in the '20s and the—was not an *issue* in the '20s and the '30s, for example. So people weren't terribly precise. So there will always be a process of having to keep track of whether water is being applied on appropriate lands, and Reclamation, you know, now has periodic *processes* in place for that purpose. But to the extent the issue was that kind of technical question of being in compliance, I think we're cleaned up. What's not at all clear to me is, if I'm correct that Commissioner

Beard's *policy objective* was to free up water, for environmental purposes, *I don't know* that that has particularly happened. Because, for the most part, at least in my experience in the Pacific Northwest, the districts [with water spreading], ~~that were~~ *appropriately*, tended to be able to beneficially use more water [on other eligible lands] such that the assumption that water freed up by getting the land issue cleaned up would automatically go to the environment didn't necessarily work as a one to one deal.

On the other hand, I think there probably are, clearly, cases where water got freed up by taking it away from lands that were not legally entitled to it, and it now, perhaps, is a piece of project yield that's being used to manipulate stream flows to solve an E-S-A issue. So certainly some of that has gone to environmental purposes. I doubt if it was nearly as sweeping as Commissioner Beard had thought it might be. I think the real world turns out to be a tad bit more complicated than that, (Storey: Yeah.) but certainly some of it has resulted in water being available to move into environmental purposes, mostly I'd guess for E-S-A regulatory things *without* taking water away from the lands that *were entitled* to receive water. (Storey: Um-hmm.) But other lands *not* entitled have been dried up in a lot of cases—I certainly had to do it in the P-N Region.

Storey: Yeah. Well, water spreading, of course, was one of the issues, but I didn't ask my question right, I guess—correctly. When Leshy was negotiating with these folks, were there legal constraints that prevented him from saying, "I'm going to move the water—we're going to move the water. Reclamation is going to do it for the secretary"?

McDonald: I think very clearly there were legal constraints on, not just policy, . . .

Storey: So he had to maneuver within those boundaries as all this was . . .

McDonald: There is a whole body of Reclamation law, as you well know, that defines a lot of rights and responsibilities of irrigators.

Storey: Yeah. A lot more than most bureaus have to deal with.

McDonald: Sure. Yeah. And those had to be observed. You know, this hasn't been on, I hope its been picking up.

Storey: It'll be OK, I think. Let's just check though.

McDonald: . . . attention to that part when we reread it.

Storey: What did you deal with besides contracts while you were in Sacramento?

Other Work Within the Regional Solicitor's Office

McDonald: For Reclamation, almost all of the legal work I did, Brit, was devoted to the interim water service contracts, and two or three other contracts that *were not* interim water service contracts. The principal additional contract was a deal with the Sacramento

Area Flood Control Authority over issues regarding allocation of space for flood control purposes versus M&I purposes in Folsom [Reservoir]. And there were some physical changes that needed to be made in the gates and the outlet structure as I recall. So there was a cost sharing agreement that I helped negotiate. The other key thing, though, that happened, is I got assigned, as the work on the Reclamation contracts began to wind down, to handle a real estate acquisition for the U.S. Fish and Wildlife Service. It was the acquisition of a property called Rancho San Diego which is about eighteen hundred and fifty acres in the San Diego County. At the time, sort of out on the east edge of the San Diego metropolitan area, that was habitat for an endangered bird, and darned if I can remember the name of the bird right now, but, anyhow, it had been slated for development. It had been privately owned. It had gone through the county planning process so it was encumbered with sewer bonds, school bonds, all the road improvements that were going to need to be made, you know, all the things that a developer has to commit to before they get county approval. And then that developer went belly up in the late '80s as part of the savings and loan scandal. (Storey: Um-hmm.) And the property had been taken over by the Resolution Trust Corporation. That was the quasi-federal entity created to deal with all those bad loans in the S&L scandal.

And one of the provisions of the congressional statute that created the Resolution Trust Corporation is that a federal agency had first right of refusal to get a property that was in the hands of the Resolution Trust Corporation *if* that federal agency wanted to use it for *their* federally authorized purposes. So when this property went into bankruptcy and was taken over by the R-T-C, which is what the Resolution Trust Corporation was called, and because it was habitat for this listed, threatened or endangered bird, I don't remember which category. Fish and Wildlife Service stepped up right away and wanted to get their hands on that property. So I got assigned as the attorney to work with the real property office of the Fish and Wildlife Service regional office up in Portland. At the time they did the real estate management for Southern California fish and wildlife activities. And gave them legal counsel and ended up actually doing a lot of the negotiations and drafting of contract instruments. Essentially the legal quirk there was all of these commitments the developer had had to make to the sewer district, the highway district, the county, the school district, had to be undone. So you had to reverse the process and relinquish all the bonding requirements and do that sort of thing. So it was a fairly complicated deal. And then the federal statute that created the Resolution Trust Corporation had a lot of *additional protections* for the federal process that you wouldn't find in a normal real estate transaction, and, you know, I had the inevitable questions about being sure there were no hazardous materials on the property, which there were not. And then one other kind of fun issue, which was if anybody *lived* on the property, they were eligible for relocation assistance under the Uniform Relocation Assistance Act. And lo and behold there was a ranch, a little ranch out there that was a place to board your horses, and it had a couple of riding rings and all that sort of thing. So we had to relocate the horse boarding operation, and that was a whole series of its own negotiations with the owner of that business. And they liked where they were, so the big issue with them became trying to squeeze them onto a different part of the parcel being acquired that they currently occupied that was of less environmental concern to the Fish and Wildlife Service.

So I spent a fair amount of time on that, and that, frankly, was very fun. And then as *that* was going on another deal was taking shape up at Huntington Beach in Orange County, south of Los Angeles. And what was going on there is that the ports of Long Beach and Los Angeles wanted to expand their harbor facilities. That would entail some additional dredging of the seabed, which would have environmental impacts on benthic organisms and then the balance of the food chain. So in the course of the regulatory process the two harbors confronted both federal and state [requirements that] they needed to mitigate for those impacts. And the concept that emerged is that the mitigation should be the acquisition of what was the last remnant coastal wetland in Southern California, about a thousand acres right in Huntington Beach along U.S. Highway 1. And that was going to constitute the mitigation.

So what the two harbor authorities did was put the money up to go buy that wetland. The state land board asserted the position that as a wetland adjacent to the beach, it was subject to state jurisdiction. So the ultimate deal was between the port authorities, state land board, and several federal agencies, and I was representing the U.S. Fish and Wildlife Service as the people that would acquire and manage the property. So we had to put together a thirteen party, hundred million dollar deal to acquire the property, describe all the responsibilities for reconnecting this marsh to the ocean—it had originally been a natural channel saltwater marsh influenced by the tide. Shortly after the turn of the century a duck club had come in, cut off the natural channel, turned it into a freshwater marsh because they wanted duck hunting as opposed to saltwater marsh hunting. (Storey: Yeah.) So that got to the California [Coastal] Commission involved because if you're going to do anything on a *beach*, and I think actually if you're going to do anything within a mile of the beach, you trigger a whole series of state law issues. So it was very fascinating deal, and it became a very high priority of Secretary Babbitt. And while I started out doing the *legal* work, it got to the point that the secretary's office, through Assistant Secretary George Frampton, wanted me to be the lead negotiator for the secretary. So they actually had me step out of my legal role and become the client, if you will. So I negotiated on behalf of all of the federal agencies with input from their respective legal counsels what the deal would be.

The other *really* interesting aspect of it is this wetland was then, and to this day is, an operating oil and gas field. So besides simply the straight forward real estate transaction of acquiring the surface ownership, you had to deal with all the mineral rights and the operating oil and gas field operators, which a little slice was Chevron and the balance of the field was mostly Shell—I think its all changed hands now. And obviously there were huge hazardous waste issues associated with that because they *dumped* their drilling mud and, you know, had spills and all that sort of thing. So extensive negotiations and very long documents about how the liability for cleaning up the field over time would be shared. And the concept was not to shut the field down, but let it play out its useful life economically. So that took about a year and half of ten and twelve hours a day, non-stop. It was a huge complicated deal. And, as I said, I ended up actually being the negotiator, not the lawyer, and worked directly for George Frampton. And managed to get that done, and I've been back down. They've actually cut the channel back to the ocean so it has now been restored as a saltwater tidal marsh. The process of phasing out oil and gas production has begun, but it'll go on for

a number of years I suspect, and *as they* take individual wells out they go out and clean out that piece of real estate, and so that was a fascinating process. I, frankly, *really* enjoyed it. It was a tough one. So, you know, I was in the Solicitor's Office, actually in the Solicitor's Office about three and a half years, but I probably only spent about two-, two and a half doing real legal work and then I got shifted on to being negotiator for this wetland. It was called Bolsa Chica, and finished that after about a year-, year and a half, before I came back to Reclamation.

Storey: Um-hmm. Any other projects?

McDonald: Those were the ones that took up the vast majority of my time the five years I was out there. (Storey: So how did you . . .) Come to think of it there was one other thing. Don Glaser, somewhere in there, went over to be the executive director of the Western Water Policy Review [Advisory] Commission, does that sound right? I may not have the exact title . . .

Storey: Yeah, that governor . . .

McDonald: Congress passed the statute, as they often do for a study commission, and in the, I think that statute may be dated to about '94-, '95, and it, you know, called for a review of western water policy. The statute prescribed a certain number of senators, a certain number of representatives from the House of Representatives and a spectrum of representatives of private parties to be on the commission, and then appropriated money, and the commission hired a staff. Don was the executive director of that staff, and Don talked me into doing a report for the commission. So I probably took about three or four months while I was in the Solicitor's Office to do essentially nothing but write that report, which became one of the reports published by the commission.

Storey: Um-hmm. Good. So how did you end up coming back to Reclamation?

Coming Back to Reclamation

McDonald: Well, when the—technically I'd never left Reclamation. You know, I was a Reclamation employee on the Reclamation payroll *detailed* to the regional solicitor's office in Sacramento. What happened is as this last real estate transaction for secretary and Assistant Secretary George Frampton, the Bolsa Chica at Huntington Beach, wrapped up, the obvious question became, "Well, okay, what do I do next?" By that point, that would have been 1997, Commissioner Beard had left, of course, in '95. Eluid Martinez had become the commissioner about a year after Dan left, and Eluid had been my New Mexico counterpart when I was with Colorado state government. Although he and I had only overlapped a little bit. I was just leaving state government as Eluid became the New Mexico state engineer. But I'd met him and worked a *little bit* with him so I knew him, and I simply approached him at one point, Brit, and said, "I'm out in the regional solicitor's office. I'm having a ton of fun, but if you need a resource to come back, if you will, to Reclamation, that's really what I want to do, and you're paying for me so you probably ought to use me instead of Fish and Wildlife Service getting all these free service." So Eluid and I had a couple of conversations and he did very much

want me to come back. So sometime, I think in 1997, I'd have to check the paper trail, I was actually made a special assistant reporting directly to Eluid as commissioner. And did that until he asked me to be the regional director for the Pacific Northwest starting in June of 1999.

Special Assistant to the Commissioner

So for about two years I was in this capacity as special assistant to the commissioner. I continued to physically office out in Sacramento. I didn't move. And largely what Eluid had me do was work on some water right adjudication issues that were getting a little complicated and controversial in a couple of the regions. So I basically pitched in and helped the R-Ds and their staffs work on some water right adjudications. And the biggest one I worked on were the issues on the middle Rio Grande—our Rio Grande Project,³⁸ which is Caballo and Elephant Butte reservoirs. State of New Mexico had started an adjudication. We were having a lot of controversy about that, and also, in the middle of all that, a major debate between the Elephant Butte Irrigation District, which is the New Mexico project beneficiary, and the El Paso Number One District which is the Texas beneficiary of the project, over the allocation of water, which is obviously an interstate allocation, of those two entities' issues about what the proper sharing of O&M costs should be and issues about water quality. Because at that point you're at the tail end of the Rio Grande system. It picked up a lot of salt naturally and by virtue of irrigation return flows and El Paso Number One had a lot of concerns about the water quality as it was being delivered to them—that had historically been a matter of contention between the two districts. So I spent a fair amount of time on that. Reclamation had actually agreed to a court appointed mediator to see if that log jam could be broken so I participated with the U-C [Upper Colorado Region] people in that mediation—unsuccessfully. We didn't get anywhere, but spent the better part of those two years working on that issue and a couple of others in other states.

Storey: And that's mostly what you did those two years you were special assistant?

McDonald: Worked on, you know, a few odds and ends here and there, policy issues, worked on some E-S-A issues, but [the] principal point of having me be special assistant at that point in time is we were having some troubles with a couple of these big adjudications, and with my state background where I'd done a lot of water right work, and my legal background, it seemed like a useful fit. Help Reclamation in that context.

Storey: I think this is about the time that Roger Patterson left Mid-Pacific and Neil Stessman left Great Plains, and you went up there to become . . . no, no.

McDonald: You're right about Roger. I don't remember the exact year, but he left Reclamation to go to Nebraska state . . . (Storey: Right.) Neil retired somewhere in about that same time frame. So we're talking '97-, '98, *I think*, without a chart in front of me to refresh

38. The Rio Grande Project provides irrigation water for almost 178,000 acres in south-central New Mexico and west Texas. For more information on the Rio Grande Project, see Robert Autobee, "The Rio Grande Project," Denver: Bureau of Reclamation, 1994, www.usbr.gov/history/projhist.html.

my memory. I was asked to go up to Pacific Northwest because John Keys retired in about April or May of 1998 because it was almost exactly a year before I went up to Pacific Northwest. And I went in June of 1999. So I was the one that replaced John Keys. Who the heck replaced Roger Patterson. (Storey: Kirk Rogers, I'm thinking.) No, Kirk was acting for a period of time. Because (Storey: Oh, Lester was in there.) Lester Snow was appointed to go in there. Lester was only there for about two years because in early calendar years 2001, when I served as the acting commissioner for seven months, and the wheels came off the Klamath Project, Kirk . . . I, in fact, appointed Kirk as the acting R-D, that's what happened because Lester's resignation came right at the beginning of my tenure, or right before, I can't remember which, my tenure as acting commissioner. And I think I actually signed the paperwork to make Kirk the ~~acting commissioner, pardon me, the~~ acting regional director.

END OF SIDE 2, TAPE 2. JANUARY 19, 2011.

BEGINNING OF SIDE 1, TAPE 3. JANUARY 19, 2011.

Storey: This is tape 3 of an interview by Brit Storey with Bill McDonald on January 19, 2011.

So Kirk didn't get the job right away.

McDonald: No, he wasn't selected to fill it that time, boy sitting here again drawing a blank about who the regional director was, because that next regional director after Roger was likewise there a relatively short period of time, and when it was advertised again Kirk applied and that's when he was selected. And then when Neil stepped down, wasn't it Maryanne Bach,³⁹ after Neil, because she spent five or six years in the Great Plains Region. (Storey: Yeah.) Yeah, because Maryanne was an R-D while I was an R-D.

Storey: So Eluid was making quite a few changes in there.

McDonald: Yeah, by virtue of vacancies, not—unlike Dan Beard who didn't have vacancies but made conscious decisions about where he wanted to move with his management team, but again, all his prerogative. What Eluid hit was a string of resignations and retirements. So, he had vacancies to fill.

Storey: So, tell me about Eluid as commissioner.

Commissioner Eluid Martinez

McDonald: You know the exact opposite of Dennis Underwood probably would be a good way to describe it. Eluid was not into details *at all*. Very much wanted to keep the broad perspective and not get into day-to-day kinds of things at all. You know, probably the other thing that one would say about Eluid's tenure is I don't really think he had the

39. Maryanne Bach was regional director for the Great Plains Region (1998-2005) and participated in Reclamation's oral history program. See Maryanne C. Bach, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, in 1994, 1995, 2009, and 2011, in Denver and Evergreen, Colorado, and Billings, Montana, edited by Brit Allan Storey, www.usbr.gov/history/oralhist.html.

confidence of, to a large degree, of Secretary Babbitt. So he just was not an instrumental actor in the last part of Secretary Babbitt's administration. You know, he just, in the way those things work politically back there, he was just not one of the insiders among the political appointees for that administration. Think the other thing I'd say about Eluid is one thing he really did want to accomplish, though, and to my understanding had the blessing of Secretary Babbitt to do it, and that was to reverse course a bit on Dan Beard to the extent Dan basically said, "I don't care about the traditional constituent." You know, for example, Dan quit going to National Water Resources Association, any of the state annual meetings of the water user groups, would not make himself generally available for speeches at those groups, you know, didn't go out to have meetings in the West with that, quote, "traditional constituency," end quote. Eluid very consciously reversed course on that and sought, I think what Eluid would have described as, a more balanced middle ground. Eluid certainly was not saying Reclamation should return to the good old days of being an *advocate* for the water users, and none of us on the leadership team at that point in time thought that was the right or appropriate thing to do. But, you know, they are, after all, the people with whom we have contracts. They've got legal and contractual rights. The purpose of the program *was* to get them water, but it certainly had to be balanced about it. With a changing set of societal values many of which changes were being captured in regulatory laws like E-S-A.

So Eluid very consciously wanted to reestablish the rapport with the traditional constituency, but help them understand we weren't *just* there to do their beck and call, as they had hoped we would be, you know, based on the '40s, the '50s, and the '60s. That just wasn't going to happen. So, a large part of Eluid's tenure was spent in mending those bridges, or in mending those fences and rebuilding those bridges. (Storey: Yeah.) And I think if you ask Eluid he'd say he was pretty darn proud that it got done, and it did, you know, we began to swing back and I think we've struck a good balance. I mean, I certainly in my eleven years as regional director had a lot of conversations with water users as they would whine some at me about, "You ought to be our advocate." You know, I'd just tell them straight up, "Look, I understand that's the way it used to be, but that's just not the real world anymore. We're public officials that need to make informed, balanced, public decisions, and we've got to take a lot into account other than your interests. And we have to listen to people other than you, and we have to thoughtfully listen to them, not just go through the motions. And, you know, that meant environmentalists and tribes, in particular, and that's just the real world you guys work in." You know, as much as anything, I spent eleven years in the Pacific Northwest [Region], and I know the regional directors in all the other regions were doing the same thing: helping our traditional constituency kind of move in to this new age that they were going to have to live in.

Storey: Yeah. That was pretty hard for them, and Dan Beard was quite a shock for them.

McDonald: Yeah, I mean it was *really hard* with Dan, for them. And Dan very consciously was sending them a message. So it basically took Eluid's tenure of three-, four-, five years there to get those bridges rebuilt and get the irrigators comfortable. And of course they were happy as a clam, then, when John Keys came along. You know, perceived by

them as one of their own. But John was equally forthcoming. You know, this was not the good old days. "I, John, am more sympathetic to you than a Dan Beard was, but we aren't simply going to do what the irrigators want to do. That *just* not how the game's going to work any more."

Storey: Yeah. So what were the kinds of issues you were confronting when you became regional director?

Issues Facing the Pacific Northwest Region

McDonald. Well, like every region, a whole bunch, Brit. You know, by far and away the biggest issue, and it lasted the entire time that I was regional director, was compliance of operation of the Federal Columbia River Power System,⁴⁰ or so-called F-C-R-P-S, with the requirements of the Endangered Species Act. There had been litigation, to make a very long story short, there had been litigation in the 1990s about whether the federal agencies that operate the F-C-R-P-S were in compliance with the Endangered Species Act. That led to a major new consultation that was on-going in 1999 as I became the regional director and concluded with a new biological opinion in December of 2000—which immediately moved back into litigation, and that litigation continued for the entire time that I was regional direct and is *still* continuing. Probably final ruling of the judge should occur sometime this spring—spring of 2011. So, a huge amount of time throughout that eleven years taken in working with the other agencies on the consultation and then the litigation and we lost two rounds of litigation so had to do new consultations each time. In there, there was an effort one time to mediate, and I represented the department, all the bureaus in the mediation for four or five months. Again, that was unsuccessful.

The other key aspect, besides simply working with the other federal agencies. is that after the second round of litigation, with the tribes being plaintiffs, and supporting the environmental plaintiff perspective, we tried to open up conversations with all of the tribes that have treaty rights to salmon fishing to see if we could make any headway with them. One, they have legal rights. Two, they have important cultural and religious perspectives on salmon in the Columbia River, and, you know, any measure of success relative to the salmon has to include the tribes being on board and participating in what's being done up there. So, when we got to the 2006-2007 time frame we had extensive negotiations with the so-called treaty tribes, and eventually reached an agreement with three of the four treaty tribes—the Warm Springs Tribe, Umatilla Tribe, and the Yakima Nation. We were not able to reach an agreement with Nez Perce Tribe so we ended up with a split there, but lot of time spent on that activity. And that's likely to go on for years.

40. "The 31 federally owned multipurpose dams on the Columbia and its tributaries that comprise the FCRPS provide about 60 percent of the region's hydroelectric generating capacity. The dams operate to protect migrating fish, and they supply irrigation water to more than a million acres of land in Washington, Oregon, Idaho and Montana. As a major river navigation route, the Columbia-Snake Inland Waterway provides shipping access from the Pacific Ocean to Lewiston, Idaho, 465 miles inland. Water storage at all projects on the major tributaries and mainstem of the Columbia totals 55.3 million acre-feet, much of which enhances flood control;" for more information on the FCRPS, see "Federal Columbia River Power System," www.bpa.gov/power/pg/fcrps_brochure_17X11.pdf (Accessed August 2014).

Water Rights Adjudication on the Snake River

A second major activity was the adjudication of the water rights by the state of Idaho in the Snake River basin. Reclamation's big projects in southern Idaho are all in the Snake River and its tributaries, so we were in the middle of *that* process and there were a lot of issues being litigated. I'd already talked about the question of ownership of water rights that went to the Idaho Supreme Court. Entangled up in the middle of all that was an effort to reach a settlement with the state of Idaho and the Idaho water users *vis-à-vis* the federal government and the Nez Perce Tribe as to the claims of the Nez Perce Tribe which were part of the adjudication. And the United States, as trustee for the tribe, as well as the tribe acting through its own legal counsel, had filed claims in the Snake River adjudication. *That* effort to negotiate was on-going when I became regional director in 1999. So I immediately became involved in that as one of the several federal agencies involved. Came within an inch, towards the end of 2000, of reaching a deal, but couldn't quite put it to bed so *that* all temporarily fell apart as you changed administrations going from the Clinton administration to the Bush administration.

You know, typical of something like that, major policy issue, nothing happened for the first six to eight months of the second Bush administration because you were waiting to get a new commissioner and a solicitor and political appointees in place. But that was one of the key issues that we career people early on queued up for the new secretary, who would have been Gale Norton, and her politically appointed staff to think about whether they wanted to try to reinitiate those negotiations and reach a settlement *on* the Nez Perce claims as among the United States and the Nez Perce, state and the water users. And they ultimately decided to do so. Lady by the name of Ann Klee, who was special counselor to the secretary by title, was assigned that task. So I and other regional directors started working directly with Ann and the state and the tribe *were* willing to reinitiate those negotiations. So that *process* got underway, and that was a pretty intense year-, year and a half, trying to finish that process up, and it relates to the F-C-R-P-S because, by that point in time you had the [FCRPS] biological opinion in 2000; litigation started in 2001; and that's when Secretary Norton took office. It was very clear what the environmental plaintiff position was going to be. Idaho felt very *threatened* by that position. Idaho perceived they had a friend in the form of the second Bush administration, as opposed to the Clinton administration. So what the state and the water users did, as the Bush Administration expressed a willingness to restart the negotiations with the Nez Perce Tribe, they threw the E-S-A issue on the table as to whether Idaho would have any obligation to deliver water out of the *Snake River* for the benefit of salmon in the lower Snake River and on the mainstem of the Columbia. So those two processes, in a way, came together, and ultimately the settlement was achieved between the state and the water users, the federal government, and the Nez Perce Tribe. And has some provisions that relate to what the deal is between the federal government and the state *vis-à-vis* water for salmon coming out of Idaho. And then that was built into the next consultation when the judge ruled against the 2000 biological opinion, because the biological opinion didn't have a settlement that it needed to deal with. The next biological opinion didn't occur until the settlement had been achieved so . . .

Storey: Now, this is the Fish and Wildlife Service or National Marine Fisheries Service.

McDonald: This would be National Marine Fisheries Service because salmon, being an anadromous fish species, are subject to the jurisdiction of National Marine Fisheries. But, on a parallel track, Brit, that reminds me there are other listed species in the Snake River, most notably some snail species in southern Idaho and bull trout in Idaho, Montana, and Oregon in the upper reaches of the Columbia River watershed, that are also listed species. So Reclamation was not only going through a consultation with the National Marine Fisheries Service on salmon but *concurrently* going through a consultation with Fish and Wildlife Service on bull trout and the snails which are physically *located* in Idaho. And how to get those two biological opinions to mesh was one of the big issues that we were working through. Anyhow, the negotiation was successfully concluded.

It was *consulted on* in the next consultation after the 2000 biop was ruled against. The environmental plaintiffs brought a suit against the Fish and Wildlife consultation, second time around, *not* just the NMFS biological opinion, but basically have agreed to put the litigation of the Fish and Wildlife Service biological opinion on hold all these years, dating back to 2004 and '5. They've simply parked that litigation against Fish and Wildlife Service while the litigation over the National Marine Fisheries Service biological opinion on salmon went forward because the legal issues being asserted are the same, and the environmental plaintiffs clearly perceived they've got the upper hand and the best chance, *from their perspective*, in the litigation over NMFS biological opinion.

Storey: Over the salmon.

McDonald: Yeah. So once the judge rules on salmon this spring, one of the interesting issues is going to be do the environmental plaintiffs reactivate the litigation that's just been sitting there by mutual agreement of the parties against the Fish and Wildlife Service biological opinion on Reclamation's project operations in Idaho relative to bull trout and snails. (Storey: Hmm.) So that saga will continue for ten-, fifteen-, twenty years, I suspect. But, anyhow, *that* was a very major activity.

Repayment Contracts

Third activity that took a lot of time is when I came to the region there were about twenty or twenty-five water service contracts—so, again, contracts that had a term of forty years as opposed to a repayment contract in perpetuity—for irrigation service out of Lucky Peak Reservoir which is a Corps of Engineers flood control facility, but (Storey: Up above Boise, there?) right above Boise. But, as you well know, if Congress authorized a Corps flood control project to have an irrigation component, then, by law, Reclamation markets the irrigation water. So that's why Reclamation had water service contracts for irrigation. They were about five or six years away from their expiration. You know, getting sat down, getting caught up on issues, eventually within the next few months [after becoming R-D] the staff brought this one to my attention, and my immediate reaction, having just come from California and

all the issues about water service contract there, was if we've got five years guys its time to get going because we'll be lucky if we get it done in five years. So I immediately accelerated that process. Staff was going to wait until the last year or so. And it took about three or four years to work our way through the water service contracts on Lucky Peak. Again, hit a couple of key issues. The shortage provision was one of them, just as it had been in California, and I ended up doing, personally, some of the negotiation, not just staff. Very clearly the dynamic in those negotiations was water users—because this was the Bush administration—thought they probably had friends in the Department of Interior that would deliver whatever result the water user wanted. And the interesting outcome of all that was that's not what happened. Essentially we ended up in the Lucky Peak contracts with a shortage provision that does the same thing that the Democratic administration settled for in the Central Valley Project. So that was the key issues and, again, a lot of give and take. I was allowed to do all the negotiation. Never had to have a solicitor come help me. But there was a lot of, you know, back and forth between me and the solicitor about what the ultimate position would be. But the secretary and the solicitor decided to pretty much stick with where it ended up in California—*much* to the disappointment of the Idaho water users. So that was a very big activity.

Yakima River Water Rights Adjudication

Another really major activity was the adjudication of the water rights by the state of Washington in the Yakima River basin. That is Reclamation's Yakima Project which is five reservoirs and a number of diversions. And from a United States perspective very importantly the Yakima Nation has treaty claims to the Yakima River. That was an adjudication started in 1977, so when I get up there its 1999—we're in the twenty-second year of the adjudication. The legal issues have been to the Washington Supreme Court three times and then sent back down to the adjudication court. The federal government was absolutely at the throat of the state and vice versa—almost to the point where the attorneys wouldn't talk to each other. So I kind of sized that situation up for a few months and, frankly, decided that it was just nuts for public agencies spending taxpayers' money to be twenty-two years in doing [land] adjudication and essentially have gotten no further than they couldn't talk to each other.

So I approached the director of the Washington Department of Ecology, who is more or less the head official in terms of how Washington is organized—(Storey: Its time.) let me finish the Yakima—is the lead official over their water rights program, water management, so on and so forth. Very constructive gentleman by the name of Tom Fitzsimmons, and basically planted the idea, "Tom, I, as a public servant, I just am not comfortable with this kind of situation, and the United States is as much at fault as anybody." My analysis was we've frankly had some personality conflicts and we had some lawyers dug in on their respective perspectives, and nothing was going to happen if negotiations and process [were] through the attorneys. So I proposed to Tom [that] he and I literally throw the attorneys out—his attorneys, my attorneys, all of them, [water] district attorneys, too—and Tom and I see if we could negotiate as policy people a framework within which we were willing to negotiate, [and then] bring the attorneys back in because we were dealing with legal issues, and we had to have counsel,

although Tom and I by training were both attorneys. So Tom and I decided to do that. And we, quite literally, had some dinner meetings of just the two of us. It ultimately culminated, I remember it very well, in a dinner meeting he and I had at a hotel across the street from Sea-Tac [Seattle-Tacoma Airport] Reservoir up in Seattle. He typically would come down from Olympia and I'd fly over to Seattle, that was convenient. (Storey: Sea-Tac Airport?) Sea-Tac Airport, and we'd go meet at the Red Lion across the street. So you know [we] had dinner, kind of polished up what we were amenable to, brought the attorneys in, and we had an evening meeting that went from about 6 til 11 o'clock at night, as I recall. And we wouldn't let the attorneys leave until they got it sorted out, within the broad framework of what Tom and I wanted to do—thought was appropriate to do.

And we actually came out of there with a global agreement, as we called it. It was only a couple or three pages long, that, you know, set the vision for what we wanted to do, what the fundamental position would be, and, while not in the document, it certainly was orally said by Tom and myself to our respective staffs: "We expect a change in how people work together, and if there is not a change, we will find different people to work together." So, with that, negotiations commenced between the tribe, the United States, and each of the five major districts, or divisions as they're called within the Yakima Project, to see if we could settle as opposed to litigate the Reclamation claims in a manner acceptable to the tribe, [and] dispose of the tribal claims insofar as they related to the Reclamation project at the same time. Some tribal claims had nothing to do with Reclamation's project—they were up on tributaries that didn't have project features, so we didn't deal with those—but if it was on any of the tributaries or the mainstem where we had project features, we sought to settle the tribal claim as well. [We picked] the district, frankly, where we thought we had the most opportunity for success first by virtue of less complex issues, least onerous demands of the respective parties, the right set of personalities, the forward looking district manager/board of directors. And, you know, frankly a little surprisingly, we succeeded. And got the first district on board; went to the second district and so on and so forth and succeeded in working our way through all five districts and negotiated a settlement of the entire set of water right claims *for* the project *and* the tribal claims insofar as they related to the project. We reduced, by virtue of that settlement, the [amount of the] claims of every single district. So I got very comfortable that we moved from paper rights to real water rights. Tribe got very comfortable with that, and it has become the fundamental foundation for how things are going to move forward in the Yakima.

Now, *that said*, and I'm obviously pleased with it, I really regard it as one of my major accomplishments, none of that's been finally decreed by the court. Its all been entered in front of the court over the signature of the parties, the court's taken objections which were very, very minor, but the court's not officially ruled, and its largely because these other tribal claims that are up on some tributaries, with which Reclamation has no involvement at all, the tribe has decided, and the *court* has decided, they want to move *those* to conclusion before they do a single final master order for *every* water right in the river basin. So, technically the project rights are just on hold until the court wraps up the litigation of the remainder of the tribal claims

because *non*-Reclamation water users on the tributaries are not agreeing, and they're going to have to litigate the tributaries—last I heard.

What I think, you know, within three-, four years when that litigation's done the court will come back, accept everything the parties negotiated on the Yakima Project, and we will have successfully quit litigating after twenty-two years and gone to a negotiated settlement. (Storey: Um-hmm.) That was a major effort, hats off to solicitor's [Boise field] office, Jack Hochberger, ton of work from the Department of Justice, excellent support, lot of area office involvement because a lot of the issues were just kind of the real world of [how] day-to-day water rights translate into day-to-day operations. Area office really pulled their weight on building a relationship with the Yakima Nation, which *had not* been a good relationship up to that point in time. John Keys was very helpful. John went out at a couple of critical junctures physically and met with the tribe and met with some of the key irrigation district people and said, you know, "guys we got to get this one off the dime." (Storey: This would have been while he was commissioner?) While he was commissioner, yeah, while he was commissioner because this was all stuff that I was doing, Brit, between, what, it woulda been—I think Tom Fitzsimmons and I started having our heart to hearts late in 2001. I think the global agreement we came to was either late 2001 or early 2002, I'd have to pull paper records out to be sure of the dates. So John would have been commissioner by then, and I *specifically* remember calling John up and saying, "I need help John," because he had a tremendous rapport with both the Yakima Nation and the irrigation districts, and, you know, there're points at which you just admit to yourself, "I'm not going to be the guy that can deliver the goods here, and the commissioner's got what it takes." So John came out for a key meeting with the tribal council at the Yakima Nation and, at least, if memory serves me, made a couple of phone calls for me to a couple of key district managers, and, you know, probably pulled them aside at N-W-R-A⁴¹ and had some heart to heart. So John was politically instrumental in giving me momentum at the right point in time. And the state was an absolute gem. I just can't say enough about Tom Fitzsimmons, who actually went on to be chief of staff for Governor [Christine] Gregoire and the gentleman that came behind him has been equally committed, a fellow by the name of Jay Manning. To just . . .

END OF SIDE 1, TAPE 3. JANUARY 19, 2011.

BEGINNING OF SIDE 2, TAPE 3. JANUARY 19, 2011.

McDonald: equally committed to getting the relationship between Reclamation and the Washington Department of Ecology back on track because it had *badly* deteriorated in '70s and the '80s, and John Keys would be the first to admit that to me. It was one of his great frustrations. They just got some personalities in that Department of Ecology that liked, *and* in their attorney general's office, that liked to argue just to argue. And, you know, it had gotten really bad. So, you know, as a public servant it felt really good to me to get that one back on track. (Storey: Good.) And that actually led, remind me when we start the next interview, that led to, *then*, a major set of negotiations with the state of Washington *and* our Columbia Basin irrigation districts about the future use of the water

41. National Water Resources Association.

supply in Lake Roosevelt behind Grand Coulee Dam. And *that* never would have happened if we hadn't mended fences and gotten a rapport with the state rebuilt based on the Yakima. And *that* became another major effort that I can talk about.

Storey: Good. Well, I'm wondering if you have thought about what you want to do in terms of releasing the information on the tapes and transcripts?

McDonald: Do you mind if we finish all the interviews and I kind of think about it?

Storey: No, that's fine.

McDonald: That any problem? I presume until they're transcribed you and look at them they don't go anywhere anyhow.

Storey: That's right, but I would like some sort of release so that if something happens to one of us its covered.

McDonald: Yeah, that's a good idea.

Storey: We can do that off tape.

McDonald: Yeah.

END OF SIDE 2, TAPE 3. JANUARY 19, 2011.
BEGINNING OF SIDE 1, TAPE 1. JANUARY 20, 2011.

Storey: This is Brit Allan Storey, senior historian of the Bureau of Reclamation, interviewing J. William, "Bill," McDonald, former regional director in the Pacific Northwest Region, former acting commissioner, former assistant commissioner for resources management of the Bureau of Reclamation. We are in Building 67 on the Denver Federal Center at about 1:00 in the afternoon. This is tape one.

You were saying that you remembered something about Dennis [Underwood] that you'd like to talk about.

The EMC Nut

McDonald: Yes, yesterday we were talking about Dennis Underwood, the first commissioner I served with, and you had asked a question about some of the priorities during *his* tenure, one of which was a *Strategic Plan* for Reclamation. I talked about, and remembered a story about, Dennis in that regard that I think's a lot of fun. Dennis was a very easy guy to work with, very low key, laid back, until you crossed the line with him, and if you ever crossed the line with him and irritated him you knew it instantly because he would get bright red, literally bright red. You know, it was like he kept it all under control until you just went one inch too far, and if he was *really* disgusted with you, you very quickly knew it. Well, we were in a leadership team meeting at the time, as we talked in yesterday's interview, the Executive Management Committee, was what

it was called, working on the *Strategic Plan*, the development of the *Strategic Plan*. And Dennis as I'd indicated in my comments in yesterday's interview, was a very detail-oriented kind of person, and we were in the E-M-C meeting, and one of the principal points of discussion among the leadership was how detailed should the *Strategic Plan* be on the one hand versus how broad and visionary it should be on the other hand. And Dennis, being a detail sort of guy, was really wanting a *Strategic Plan* that, indeed as it ended up, if you go back and look at it, was maybe twenty pages of pretty detailed stuff. And from the perspective of some, not what a broad visionary strategic plan should be about.

So the *conversation* was getting a little heated, and we hit that point where all of a sudden the commissioner began to turn bright red, physically bright red, and that was the clue. So Don Glaser, who was an assistant commissioner, if I recall, at the time, and I was one of the assistant commissioners as well, Don called time out and said, "This is probably an opportune time to have a five or ten minute break." So we took a break. And we were at a hotel, and it was nice weather, I don't remember particularly what time of year, but nice weather. And there was a little patio terrace, and we were up on the top of the hotel, top level, so several of us went out there during the break. And Roger Patterson, who was the regional director in Great Plains at the time, and Don and I were conversing about how to kind of get things unjammed with the commissioner on this conversation we'd been having. And Roger looked down, Don and I remember this story exactly the same way, Roger looked down on the patio, and here was a good sized nut, about an inch round, that you'd fit over a bolt, and he picked it up and made a crack about how we needed to take the nut back into the meeting and if anybody got out of line then we would hand them the nut and tell them they were nuts if they irritated the commissioner any further. (Laughs.)

So Roger did that. He literally, when we got back seated after ten-, fifteen minutes of the break, sat down and just had the nut in his pocket, didn't say anything about it. And this part of the story I'm not clear on, but it was Don or I who pressed the commissioner a little far right off the bat, and so Roger takes this nut out of his pocket and rolls it all the way down the middle of this long conference table, and you know this is a big steel nut so it goes "klunk, klunk, klunk, klunk" and makes some comment about you are henceforth gonna get the E-M-C nut if you make comments that irritate the commissioner. And so Don and I, and Roger grabbed that crazy nut after the meeting, and one of the three of us carried it around to all future E-M-C meetings, probably for two or three years, and if somebody, you know, made kind of a dumb comment or got out on the end of the limb and was making a fool out of themselves we'd just take this nut out and roll it down the table. Nobody'd ever say anything. The nut would just roll down the table, and whoever it was intended to be the recipient of got it. And when a couple of three people that were in that group—when the idea of the E-M-C nut first came up—and they came to retirement and we had retirement parties for them, we actually got these big six or eight inch nuts that you'd find on the bolt heads for a turbine runner or, you know, generator, or something like that, and mounted them, painted them gold, and gave people a commemorative E-M-C nuts. And it was one of Dennis's favorite stories. He loved to tell it.

The other story about the *Strategic Plan* that just has to be told because anybody that was serving when Dennis was the commissioner loved to tell the story. Dennis was born and raised in Maine, and he had a distinct New England accent. And his pronunciation of the *Strategic Plan* was the "Streegic Plan," S-T-R-E-E-G-I-C, and we just used to tease him unmercifully about his "Streegic Plan" and that it was way too detailed. And that, that during his tenure, got to be a standing joke among the E-M-C. For the historical record a couple of fun stories about Commissioner Underwood.

Storey: Good. You raised an issue yesterday, I think maybe after we turned the tape off, about the Columbia Basin Project. But one of the things I remember discussing with John Keys⁴² when he was regional director was that he was buying a lot of water for salmon, literally spending, as I recall, millions of dollars (McDonald: Yes.). And he was having some heated discussions with the state of Washington about the fact that they couldn't use his salmon water—they couldn't reappropriate it when he had sent it downstream, I guess. But you got into some negotiations with Washington also about the Columbia Basin Project, I think, and using the water in Lake Roosevelt. You wanted to talk about that.

Pumping Water Supplies from Lake Roosevelt

McDonald: Yes, what I had been talking about as we wrapped it up yesterday was the progress we'd made with the state of Washington in the Yakima [River] adjudication where, after twenty-two years of litigation and no progress at all, we, Reclamation and the state Department of Ecology got in the room and figured out a way to move through that, as I commented yesterday, [and] successfully negotiated the settlement of all the project claims *vis-à-vis* the parallel claims of the Yakima Nation. And what that laid was some groundwork for some tremendous cooperation between Reclamation and the state of Washington through their Department of Ecology. And the next step we took after getting the Yakima adjudication in hand is there had been long debates between Reclamation and the state of Washington about further pumping of water supplies from Lake Roosevelt, which is the reservoir formed by Grand Coulee Dam. And it is the water supply for Reclamation's Columbia Basin Project, which is a project authorized with an *originally envisioned* irrigation acreage of a little in excess of a million acres. But only about, if memory serves me, only about five hundred and sixty-five thousand acres have actually been brought into irrigation. And the *reason* for that, among others, is that as the project was being developed, and as it was originally envisioned would take decades to develop in the sense of building the delivery system from Lake Roosevelt through this far flung million acres, much of which also required a drainage system. So you had to install tile in every field so that you'd have appropriate drainage out of the root zone. And in the face of budget constraints and just construction schedules that process was going to take decades. So the project had certainly been

42. John Keys was the regional director for the Northwest Region (1986-1998) before becoming commissioner of the Bureau of Reclamation (2001-2006) and participated in Reclamation's oral history program. See John W. Keys, III, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, from 1994 to 2006, in Denver, Colorado; Boise, Idaho; Washington, D.C.; and Moab, Utah, edited by Brit Allan Storey, 2008, www.usbr.gov/history/oralhist.html.

moving along, as I said, about five hundred and sixty-five thousand acres developed. But that development, which we began back in the '50s, as you got to the mid- to late '80s got caught up in the issue about salmon populations declining and eventually getting listed as endangered fish.

And John Keys, in the '80s, as the, late '80s and on into the '90s, as the regional director in the Pacific Northwest, found himself in the middle of a major controversy about whether the Columbia Basin Project development should continue as planned, which would cause more depletions to the Columbia River, or in the face of the salmon issues if that further development beyond what existed at the time, needed to be reconsidered. To make a long story short, basically what happened is that Reclamation made the determination that it would not be able to continue with further development and could not contract with the irrigation districts for more water supplies until environmental compliance was achieved both in the form of the National Environmental Policy Act and the Endangered Species Act—until that compliance was achieved there couldn't be more water marketing. So John Keys, as regional director, put a moratorium, I think in 1992 or '93, on further contracting from the Columbia Basin Project. And that was a major disappointment to the irrigation districts under the Columbia Basin Project. And largely the state of Washington had taken Reclamation's side on that issue. So it was the state and Reclamation of the view that further development could not proceed absent environmental compliance, and the irrigation districts [were] quite irritated with that decision.

So basically, everything just got put on hold throughout the 1990s, as the initial litigation over the Federal Columbia River Power System, of which Grand Coulee is a *key* component, went forward, and then the 2000 biological opinion that I talked about yesterday. But that 2000 biological opinion was immediately taken into litigation by environmental plaintiffs in 2001. So even as you continued into the first decade of the next century, you still did not have completed environmental compliance. You just had on-going litigation. So for that whole twelve or fifteen year period, the Columbia Basin Project was not proceeding, and [the state of] Washington was fairly content with that, because they very much had a focus on preserving water on the mainstem of the river for the benefit of the salmon. But after we got this Yakima issue resolved, the state actually approached me and said they wanted to see if some progress could be made on Lake Roosevelt. And the immediate impetus for that was the following situation: that when the moratorium had been placed on further water contracting from Lake Roosevelt and further development of the project, people that were above the main delivery canal started putting in wells thinking that the federal project over fifteen-, twenty-, thirty years would get completed; they would go *off* wells and go back to surface water pumped out of Lake Roosevelt. Problem is that wasn't happening, obviously, between budget constraints and the moratorium that John Keys had to put in place, and the groundwater level was dropping rapidly. Clearly the aquifer was being mined far beyond its ability to sustain itself over the long haul. So the state's interest became, in about the 2005 time frame, we need to move the next phase of the Columbia Basin Project along so we can get these wells shut down and over onto surface water or we're going to lose the irrigated ag that had been built up based on those wells. And, if memory serves me, that was about a hundred and sixty-five or

seventy-five thousand acres—very sizeable piece of the agricultural economy of eastern Washington.

Renewed Interest in Expanding the Columbia Basin Project

The districts obviously [were] very much in favor of that, but the districts, given the position that Washington had taken in siding with Reclamation fifteen years ago, were *very* distrustful of the state Department of Ecology. So basically *I* ended up, Reclamation ended up, being the middle man, bringing the state and the irrigators together to see if we could work out an understanding about what studies would go forward and the circumstance under which more water might be pumped out of Lake Roosevelt, made available for the Columbia Basin Project, with the purpose of getting these well, or at least a substantial number of them, retired so that groundwater mining would cease.

And that brought John Keys as commissioner back into the issue. It was an issue that irrigators really wanted to know where the commissioner, particularly because he had been the regional director that had had to shut things off in the 1990s. They really wanted to know where he was going to be. And, frankly, it was also a bit of a partisan issue in that the governor of Washington at the time was a Democrat. John Keys would have been commissioner during the [second] Republican Bush administration, and there was quite a bit of distrust in that context, with a *Republican* administration wondering why it was they should try to help a Democratic governor. John and I were able to bridge that gap inside the Department of Interior, get the districts comfortable that we *believed* the state of Washington really did want to seriously get after this problem and solve it. And I pointed to my success in the Yakima adjudication as an example of how I thought Washington really had changed its attitude and really did want to work with water interests in eastern Washington, and that in the form of the executive directors of the department, Tom Fitzsimmons followed by Jay Manning, they really had credible gubernatorial representatives that were serious about making progress.

So we were able, while John was commissioner and Mark Limbaugh was the assistant secretary, to reach an agreement that was an agreement in principle kind of document, not legally binding on anybody. But an agreement in principle that laid out the roadmap for the studies that Reclamation would undertake with very sizeable cost sharing from the state and the irrigation water users. There were side agreements between the state and the two tribes whose reservations border Lake Roosevelt and therefore had a interest in how Lake Roosevelt elevation levels might fluctuate as more water was pumped, and how those fluctuations might affect the fisheries that the tribes have in the reservoir. (Storey: When you say "the tribes," you're talking about the Colville and the Spokane?) Yes, the Spokane, thank you Brit, Spokane Tribe and the Colville Tribes are the two tribes whose reservation border parts of Lake Roosevelt. Also of interest to the tribes because they have recreational facilities, commercial marinas. And religiously and culturally important to the tribes because the river valleys flooded by Lake Roosevelt were aboriginal lands, and there are lots of human and cultural remains in the body of the reservoir, which, if you draw the reservoir down, not

if, *when* we draw the reservoir down, particularly in drought years, and you draw down substantially you find yourself exposing those cultural and human remains. So its very important concern, quite understandably, to the two tribes.

But, anyhow, the state made some arrangements with the tribes to solve their concerns about how to address appropriate protection of cultural and human remains, as an example. Because more pumping out of Lake Roosevelt will cause an additional drawdown, although at most only about one foot in elevation, which out a reservoir that's five hundred feet deep, is, as a number, not much. But from the perspective of the tribes its an important one foot change in elevation because horizontally it can expose a lot of mud flats and, therefore, a lot of cultural and human resource remains that are of interest for the tribes.

So, again, in terms of my tenure as regional director in Pacific Northwest, that was an effort that a lot of time was devoted to, and [I'm] quite pleased with it. At this point in time as of January of 2011, the first major study has gone forward, and the alternatives as to how we might approach additional pumping out of Lake Roosevelt and how many of these wells could then be taken out of production is a completed study, environmental compliance is close to completion. Its very pricey so there's going to have to be a lot of further public debate about whether and how this might proceed, but, again, a second *excellent* example of marked improvements between Reclamation and the Department of Ecology in the eleven years I was up there. And, you know, I can't say enough about Washington having stepped up and been a major partner in that effort.

Storey: Is this the area that I keep seeing in the news clips the Odessa area?

McDonald: Yes, the groundwater area is called the Odessa Subaquifer, that's the title given to it by the state as they went through their regulatory process many years ago, and set up a management area for groundwater, and you had to get groundwater permits. So that's the Odessa Subarea.

Storey: Oh, okay, good. Since you were mentioning the Colville, it raise to my mind the fact that the Colville believe they were promised, as I understand it, free electricity out of Grand Coulee. Did that, and my recollection is this was a recently settled issue with them, were you involved in that at all? Or do I even understand the situation?

Mitigating Tribal Claims

McDonald: You're close. Let me back up a touch, Brit, and I'm hesitating because I'm not sure I remember it very well, either. Original lands *prior* to the construction of Grand Coulee Dam of both of those two tribes included the river bottoms and the valleys that to some very large part were flooded when Lake Roosevelt filled. Very generally speaking, the perspective of both tribes is that they were due compensation from the United States for the taking of those lands, which were part of their original reservations because those lands obviously are now flooded by the reservoir and not available to the tribes.

The Colville Tribe was the tribe that made the first claim that they had not been properly compensated at the time Grand Coulee Dam was constructed. The essence of the argument was not that they were owed electricity, but that the value of their land that was taken for the sake of the reservoir did not fairly reflect the value gained by the United States by building a dam that could generate hydroelectric power. Put another way, the tribal perspective was the land was worth not just its real estate value, it was also worth the value of the stream of revenues generated for the benefit of the United States by hydropower production and sale. The Colvilles actually litigated the issue and successfully arrived at an arrangement by which they got additional compensation above and beyond, if I recall correctly, what they originally received that reflected them getting a share of the value to the United States of hydroelectric power generation. The value, if you will, of falling water because before you had a dam you didn't have five hundred feet of head. Now you've got five hundred feet of head. That creates value. In the business we call that the falling water value.

The Spokanes, for highly technical reasons, did not make a claim in a timely fashion in the right forum from the perspective of the United States. So the United States has long taken the position that while the Colvilles got compensated, and while the Spokanes could have made the same claim, I don't know what the United States perspective would be, but *could* have made the same claim. They failed to make it in a timely fashion. So the United States has always ignored, as a legal matter, the Spokanes' continuing assertion that they're due, in principle, the same deal the Colvilles got. The Spokanes, as one can understand, have been very frustrated by the position of the United States for a long time. So they eventually, I think starting six years ago, it might have been eight years ago, drafted, on their own, proposed legislation, got some members of the Washington delegation to support the introduction of that legislation, and they began to get a legislative fix that they would argue in principle is akin to the deal the Colvilles got. They've never succeeded in getting the bill passed through Congress. If memory serves me, there was a Congress in which they got it through one chamber, but they didn't get it through the next chamber. It garnered the official opposition of the administration while John Keys was commissioner. In fact, John was actually the administration official that testified against the bill on behalf of the administration officially. My involvement became that I thought the tribe made an appropriate moral claim, let me put it that way. Although I full well understood what the legal position of the United States was, and over and over again kept reminding the tribe what the United States formal legal position was. But I personally had a sense that they had a legitimate gripe that, *if* we could find a way to reasonably frame it and come up with dollar amounts that were not overreaching, there might be something to be had there in the way of a piece of legislation that could pass. It might not have the support of any given administration, but it might well be gotten through Congress.

My basic difference of opinion with the Spokanes is I thought they were reaching quite a bit further than they could make a good argument for legally or morally, if you will, and were asking for quite a bit more than the Colvilles got. So I had a number of conversations with the Spokane Tribe, tribal council and their attorney, over the last three or four years trying to encourage them to a different perspective, myself trying to better understand their perspective, also a lot of conversations simply about I

was having difficulty understanding the facts that they asserted and how they framed the facts. And our real estate records, for example, Reclamation's real estate records on exactly how many lands were taken from the tribes when Lake Roosevelt was flooded didn't match their assertion of real property records. And it turned out as we dug that there was a difference—not a difference, but [rather] that the lands taken were [in] two different categories. They were lands that were reservation lands that had not been allotted to individual members of the tribes. So that meant *that* land was still in the hands of the tribe and it was the tribe as a entity that got compensated. But other lands had been allotted to individual tribal members, and the government, in fact, paid the individual tribal members. They were compensated. And there was a lot of confusion about those kinds of facts. So, spent a lot of time, but I certainly never reached any kind of understanding with the tribe that I would have been willing to take to the administration. So the official position that has been articulated by the United States government is the position John Keys articulated about five or six years ago, and in this last Congress nothing moved. If the tribe's going to try to reintroduce the bill in the Congress that just started in January of 2011, I don't know Brit, I haven't been in touch with them. But that's kind of the history of why the Spokanes are arguing that they have not been fully compensated as compared to the Colvilles.

Storey: Ummm. Interesting. The Colville, did they get a lump sum, or do they get a continuing percentage, or how did that work? Do you happen to remember?

McDonald: I'm not the least bit clear about this. So anybody who reads this twenty years from now, be careful. I think what the Colvilles got was a lump sum payment plus a continuing annual piece of the revenues generated by power generation at Coulee. And that's provided to them by the Bonneville Power Administration which markets the capacity and the energy at Coulee, but I'm not at all sure I'm correct about that brief summary.

Storey: Okay. We were talk—you talked about the Yakima adjudication yesterday, and one of the projects that's been kicking around recently . . .

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Anyway, I think there was a supplementary water project proposed called Black Rock, and I wondered what you might be able to tell me about that.

Black Rock Project

McDonald: Okay. There was a proposal several years ago, while I was regional director, to look at a proposed project called Black Rock. It would be a dam built *off* the mainstem of the Yakima River—what we'd call an off-channel facility—and water would have to be *pumped* into the reservoir. The actual proposal is that the dam, which would lie east of the Yakima and west of the Columbia River, in other words between the two, would be filled with water pumped out of the Columbia River and then the water would be pumped a *second* time out of the reservoir and delivered into the Yakima River with,

depending on the particular combination of proposals that you look at, part of the water supply going to firm up irrigation supplies for the districts that are water short, and part going to in-stream flows for the benefit of the Yakima River, where you have listed and non-listed salmon species that are of great importance to the Yakima Nation. Congressman Doc Hastings from Washington was the main congressional proponent of doing studies of that proposed Black Rock facility. So he actually got authorizing legislation and successfully year after year for about five, maybe six, years got money appropriated by Congress. No administration ever put it in their budget so Congressman Hastings was always doing write-ins. Washington Department of Ecology did a very large piece of cost sharing on it, and Reclamation did complete, we completed it about eighteen months- two years ago, a feasibility level study and environmental compliance, NEPA documents on Black Rock Reservoir. It *proved* to be an enormously expensive proposition, running into billions of dollars, minimum cost of about three and half billion. Upper cost, if you formulate [a] larger reservoir, well in excess of five or six billion. Benefit-cost ratios of zero point one to zero point three. Federal standard, of course, is you gotta have a benefit-cost ratio of one to one or greater. So it *did not* meet the economic criteria that are applied by the federal government. So, basically the study leads to a conclusion that there's *not* a viable project there.

What then happened is key irrigators got together and said, tacitly, nobody even publicly said Black Rock's dead, but tacitly people acknowledged it just wasn't going to happen in the real world of budget constraints and what have you. But the irrigation shortages in the Yakima River basin and the flows for the salmon fish are very real issues. So key parties got together and said, you know, "we have *got* to come up with some way to get at the real water supply problems in the Yakima. Black Rock's clearly not going to be the way to do it." So an effort was launched that involved key people from the irrigation community, that [Washington] state Department of Ecology, Reclamation, principally involved through our area manager, who at the time was a gentleman by the name of Jerry Kelso; the tribes were instrumental, the counties were represented, and most importantly the environmental community was made a part of the process. And it was a roundtable kind of process, basically trying to find if there was a center of gravity around which a political consensus could perhaps be achieved as to the direction further efforts in the Yakima River basin might take.

And, I think frankly to everybody's surprise, because the issue of further development for the benefit of the water short irrigation districts has been *highly* controversial for about thirty-, thirty-five years in the Yakima. And nobody ever thought any kind of basic deal could be achieved, but those parties were able to put together a vision, if you will, of what combination of things could be done in the Yakima that would possibly bring those parties together to allow a degree of future development, as well as additional flows for in-stream flow purposes for the salmon species. It's a very conceptual kind of thing. It doesn't constitute a planning study at all, but it very clearly articulates, you know, half a dozen key principles. Black Rock's no longer part of the conversation, as an example. There is a much smaller in-basin but off the main channel reservoir that, in concept, would be a key piece of it. One other reservoir that people are willing to give further thought to, that's on a tributary of the

mainstem of the Yakima [River], although not without its own sets of controversies. Major commitments to water conservation would be coupled with that. There's a lot of room to improve the efficiencies of the system in that valley, and the irrigators are getting *quite* progressive, particularly the Sunnyside Irrigation District, in doing water conservation measures. Physical improvements in diversion dams [would be made] so there's better passage for both adult and juvenile salmon as they pass upstream and downstream. Steelhead as well, actually it's the steelhead that's the E-S-A listed species.

Another guiding principle is looking at opportunities for further reintroduction of extirpated salmon species that had been indigenous. That's greatly important to the tribe. Some very general thoughts about where hatchery management would fit into that overall scheme of things, relative particularly to the ~~reinduced~~ [reintroduction of] species that had been extirpated. So those kinds of principles have been articulated by that group. You know, *now* the rubber meets the road though, because its going to take more planning studies, which are expensive, and some of those physical projects will be very expensive. Those kinds of deals always teeter on who gets to go first and who has to go last in terms of receiving the expected benefits of the kind of political handshake those things represent. You know, I was very pleased with the outcome. Jerry Kelso, on behalf of Reclamation, was really the key person involved. I attended a meeting or two to, you know, kind of kick things off and express my commitment, as did Jay Manning, the director of the Washington Department of Ecology, but basically it was the residents and the people that live and have a livelihood in the Yakima River valley that pulled this together. The next step obviously becomes a new Congress, a new Washington congressional delegation, to find out *what* the delegation may be willing to do, particularly now in the face of these very difficult economic and budget times, to start the process of putting money into more planning studies, more water conservation measures, and that kind of thing, to try to hold this coalition together that has come together in the last year. I will get to watch from afar. I hope they're successful. (Laughs.)

Storey: Did I understand Black Rock would be *above* the Columbia but *below* the Yakima?

McDonald: It is higher in elevation than either the Columbia River or the Yakima River. In terms of east to west distance, it lies between the two rivers.

Storey: But why would you have to pump water out to get it to the Yakima?

McDonald: There's a ridge. Basically you have, if you were looking at a map and north was up, you've got the Columbia River on the right, and then you have a ridge that you have to pump over to get water into the reservoir. The reservoir lies to the west, to the left, of that first ridge, but then there's a second ridge on the left, to the west of the reservoir between (Storey: And it had to be gotten over.) you and the Yakima [River]. So you've either got to pump over it or tunnel through it. We looked at a range of alternatives, Brit, and if memory serves me we looked at a combination of pumping and tunneling, although I'm not clear on that. But its that second ridge that creates the problem. You can't just drop it by gravity into the Yakima.

Storey: I think yesterday you mentioned a Snake River adjudication, am I remembering that?

Snake River Adjudication and Nez Perce Claims

McDonald: I did. One of the other major activities that took a lot of my time and a lot of other people's time was the adjudication of the water rights in the Snake River by the state of Idaho. That was an adjudication, again, that had begun under the McCarran Act, by which the United States waived its [sovereign immunity] to be brought into litigation to adjudicate water rights it was an adjudication that started in the late 1980s, I'm pretty sure. It certainly was far along before I got there. So Reclamation was part of the adjudication because of the project water rights we have for the various projects that are in the, principally in southern Idaho. The claims of the Nez Perce Tribe were also part of that adjudication asserted by the United States as trustee on behalf of the tribe. And the tribe also entered into the litigation on their own through their own counsel, and then all the private non-federal claimants in the form of non-federal project irrigators, cities, what have you. Also, to paint a complete picture, two other important sets of federal claims. There's a lot of Bureau of Land Management public lands in central and southern Idaho so a lot of claims were made by the United States for the Bureau of Land Management for springs and other natural water sources for livestock watering, that kind of thing in association with leases for livestock grazing. And then the other important claim was Fish and Wildlife Service asserted a reserved water right claim, a federal reserved water right claim for the national wildlife refuge that lies in the Snake River in the form of a whole string of islands starting roughly due south of Boise and then running basically northwest to about the point where the Snake River reaches Ontario, Oregon.⁴³ And that string of islands is a formally designed national wildlife refuge. So the United States made claims for in-stream flows to maintain the habitat associated with that riparian zone and those islands.

From a Reclamation perspective the key issues were the claims of the Nez Perce Tribe, which undoubtedly were senior in priority to the project water rights. Given that date of priority, if that claim were too large, you could have dried up the projects and a lot of private irrigation parties as well. So the views of the Nez Perce Tribe were quite important. Also of interest to Reclamation were the claims of the Fish and Wildlife Service for the national wildlife refuge that I just spoke about. And then the third major issue were our own claims, and particularly, as I discussed yesterday, the central issue got to become the question of who owns water rights for a Reclamation project when unarguably Reclamation appropriated the water rights in the first place, formed the intent, filed the necessary paperwork with the Idaho state engineer back in the '10s, and the '20s, and the '30s. Spent the money, built the facilities. But now, of course, is not literally the party that puts the water to a beneficial use—it's the ultimate end user, the farmer. And that got to be a very major issue in that litigation as I described yesterday and ultimately ended up as *Pioneer Irrigation*

43. Deer Flat National Wildlife Refuge was founded in 1909, and is one of the nation's oldest national wildlife refuges. In 1937, thirty-six islands in the Snake River were added to the refuge. Currently the refuge comprises of over 11,000 acres, including 101 Snake River islands between Ada-Canyon County in Idaho to Farewell Bend in Oregon. For more information, see "Deer Flat National Wildlife Refuge," www.fws.gov/Deerflat (Accessed August 2014).

District v. the United States being decided by the Idaho Supreme Court.

The other really major set of issues that have been involved in the litigation, pardon me, in the *adjudication* and are still in litigation, unresolved at this point in time, are differences of opinion between the Idaho Power Company, a private electrical utility, and Reclamation over what happened when American Falls Dam was built in terms of an Idaho powerplant that had been there prior to the Reclamation project. [It] was removed so that the American Falls Dam could be built, and a contract was entered into between Idaho Power Company *and* the United States at that time back in the '20s. And there is pending litigation over the interpretation of that contract and what benefits Idaho Power Company does or does not get out of that contract. And we've never, we Reclamation, have never seen eye to eye to Idaho Power about that. I don't know if that will end up going all the way to a trial, or if we may be able to settle with Idaho Power. We had some informal discussions, trying to see if there was any middle ground, while I was regional director in the last couple years. We didn't get to a point that it looked promising so that litigation at this point in time is still scheduled to go to trial in either later this calendar year or early next calendar year.

Storey: Was there any involvement of Teton in this?

Renewed Interest in Teton Dam

McDonald: You know, that's a darn good question. I just don't know if the United States, in this adjudication, has asserted claims to the water rights for Teton Dam, which of course failed in 1976 and has never been rebuilt, or not. I don't, I just don't know Brit. I'm drawing a blank as to whether we claimed those rights in an effort to keep them alive or not.

Storey: I understand there's still a lot of interest in it.

McDonald: There certainly are irrigators in the Teton Valley and downstream, after the Teton [River] joins the Snake River that are interested, and from time to time over the years, have expressed that interest. It most recently became a matter of quite a bit of discussion in just the last year [2010]. And where that has gotten is I worked a lot, as did Jerry Gregg, the area manager for the Snake River Area Office, with environmental interests and irrigation interests to see if we could achieve an understanding, which we seem to have been able to achieve, that while studies would go forward, and while the rebuilding of Teton to some size would be one of the alternatives examined. It certainly would not be the exclusive alternative, and that we would look at a full range of the ways in which the irrigation water supply problems of that neck of the woods could be addressed. Including, you know, improvements in efficiencies of systems, water conservation measures, tighter operations, not merely a rebuild of Teton, which is anathema to the environmental community, frankly. The Fremont-Madison District in particular has really stepped up and acknowledged the concerns of the environmental community and was instrumental in leading the way in the last year to the understanding that has been achieved as to a broader scope of study. There's no written understanding in that regard. It was conversations and that sort of thing, and

Reclamation right now is going through the scoping process for that study. So the scoping process is being used by the parties to, you know, confirm their understanding as to how they're willing to proceed. Seems to have been quite successful. I was really pleased. Spent a lot of time on that in the last year trying to encourage the irrigators to have a broader perspective and try to understand who [in] the irrigation community—were going to be the right set of people to demonstrate leadership in that regard among their community. And looks like its off on the right foot.

Storey: Good. Well, I'm very interested in the Nez Perce. We were getting these clippings, news clips, you know, with legislators [claiming], "Oh my God, they're taking all the water of the state" kind of stuff. And I'm wondering what Reclamation's perspective [was], and what involvement we had?

Reclamation's Perspectives on Nez Perce Claims

McDonald: Well, as I said a few minutes ago, the claims of the Nez Perce Tribe were asserted in the Snake River Adjudication by the United States and by the tribes. What happened is the key parties, the key parties being the Nez Perce Tribe, the United States, the state of Idaho, and the various irrigation interests, which are principally the surface water users under our reclamation projects, entered into negotiations back in the 1990s to see if they could resolve the claims of the Nez Perce Tribe in a manner satisfactory to all the parties. And the central issue was the initial assertion of claims by the United States and the Nez Perce Tribes were so large that if they had been realized they clearly would have cut into the water supply available for the existing irrigation economy.

I think as I indicated in our conversation yesterday *that* negotiation proceeded in the 1990s—no I've got my time frame out of—no, that's correct, was proceeding in the 1990s, late 1990s as I became the regional director in 1999. Reclamation had been deeply involved, field solicitor's office in Boise had been deeply involved in the regional solicitor's office over in Portland. A concerted effort [was] made in the later part of 1999 and 2000 to bring that negotiation to a conclusion. There was even a professional mediator jointly hired by the parties to guide the process. But *just* at the end of 2000, keeping in mind that was a presidential election year, a couple of key issues just did not come to closure, as I indicated yesterday. And as the Clinton administration left office, the negotiations stalled, and they were unable to ink a deal while Secretary Babbitt was [still] the secretary. So, what happened, of course, is you had a new administration come in in early 2001, takes five-, six-, eight-, ten months to get the new political leadership, political appointees in place, so those of us who had been working on the negotiation pretty much just set it aside because we had to wait for new people to come into play. When they got in place, and that would have included, of course, John Keys as commissioner, we career people who had been handling the negotiations brought the new administration people up to speed. And the issue before them, obviously was did they want to try to reinstate negotiations or simply go through litigation. And after a period of time, relatively short, the new administration clearly decided that it was worth taking a crack at further negotiations. As I mentioned yesterday, a lady by the name of Ann Klee, who was counselor to the secretary, that

would have been Secretary [Gale] Norton, was put on point on behalf of the department and really on behalf of the United States.

So Ann re-engaged the parties. The parties agreed to maintain the same mediator, a gentleman by the name of Francis McGovern, and we got after it again. And it turned out to be about an eighteen month or two year process, very aggressively led by Ann Klee. She was *very* personally involved, very much the spokesperson for the United States. The various agencies, Reclamation included, were in a support role to her. We did a *lot* of staff work out of the Pacific Northwest regional office. I personally came to key meetings, but Ann really was the energy and the brains behind the effort, and I mainly just assured that my staff was giving her the kind of support that she needed. And to make a long story short, the parties were able to achieve a negotiated settlement that was signed by the Nez Perce, the United States, the state of Idaho, and the representatives of the water user community.

From a *Reclamation* and a water user perspective, Brit, the settlement did two key things. A lot of aspects to it, so I'm only picking off the two that are of concern to Reclamation and the water users in southern Idaho. The first thing it did was trim the claims back very, very substantially so that there was essentially no, well there was just really no impact on the existing irrigation economy. The tribe got a lot of things in exchange for that. Economic development funds, so on and so forth. The other *key* provision of the settlement insofar as it pertained to Reclamation and the Idaho water users and the state is that there's a segment of the settlement that speaks to endangered species compliance for a period of thirty years from the date the settlement became effective. And it effectively said that Reclamation had to go *consult* with National Marine Fisheries Service, relative to listed salmon and steelhead and go consult with the Fish and Wildlife Service for impacts on bull trout and snails, and those consultations had to cover a period of thirty years into the future. No guarantee what the *outcome* of the consultations would be, you can't, obviously, commit those two regulatory agencies in advance, but the commitment was the consultation *would* be done. *If* it was non-jeopardy opinions they would have a term of thirty years, and the water users would abide by the settlement. *If* we had gotten *jeopardy* opinions, then the water users could elect to walk from the deal. *But* the tribal commitments to reduce their water right claims was good no matter what. That, for Idaho, was the key part of the deal.

The fact of the matter is that we got from the Fish and Wildlife Service a non-jeopardy opinion, although it was an opinion with reasonable and prudent measures so we had to do some tinkering, but that all proved to be acceptable to the tribe and the water users and Reclamation. So on that front the deal has held. Relative to the salmon and the listed steelhead, which is, of course, the consultations with National Marine Fisheries Service, all of that's been folded into the consultation on the Federal Columbia River Power System, so that goes back to the opinion first issued in 2000, litigated in 2001. The federal agencies have lost twice now, but the Idaho water users have stuck it out this far, even though we've never succeeded in bringing the litigation over the salmon biological opinion to a conclusion. And they haven't pulled the plug on the Nez Perce deal. They may still be able to do that if the judge this spring should rule against the most recent biop and that probably just leaves things totally up in the air.

And, therefore, there would not be a biological opinion with a thirty year life relative to salmon, and that would permit the Idaho interests, state or private water users, to pull the plug on the deal. But, again, the tribal claims are forever decided, whether the Idaho users pull the plug on the deal or not. What it means is the Idaho water users, if they pull the plug, then have to figure out what risks they will confront in having to deal with the Endangered Species Act, because they won't have any coverage. And that tension was built into the negotiated settlement on purpose. That means Idaho's got to think really hard before they pull the plug. (Laughs) (Storey: Um-hmm.) You know, they will have succeeded in getting a much reduced claim of the Nez Perce Tribe that the Nez Perce Tribe cannot reopen. But they, Idaho, will then be without coverage under the Endangered Species Act, and whether or not Reclamation *can* continue to operate the projects and deliver water supplies in the face of *that* circumstance, were it to come to happen, will be the thing Idaho water users will have to think about. So *that* tension was built into the negotiated settlement quite purposefully. (Laughs).

Storey: When I came through the Nez Perce one time, where is it, Lapwai, maybe, . . .

McDonald: Lapwai is the central community, and its where tribal headquarters and offices are, yeah.

Storey: Everything was straight up and down. (McDonald: What do you mean "straight up and down?") It was all valleys. (McDonald: Oh, it's a very narrow valley, yes. Lapwai is in a very narrow valley.) And so what did they want water for? Not to grow corn, I don't think.

Native American Water Rights in the Pacific Northwest

McDonald: (Laughs) The Nez Perce Tribe is one of four tribes on the Columbia River, in the Pacific Northwest, that entered into treaties with the United States in 1855. The four tribes are the Warm Springs Tribe, the Yakima Nation, the Umatilla Tribe, and the Nez Perce Tribe. So those four tribes have treaties in the literal constitutional sense of the word, entered into with the United States. So a treaty between two sovereign nations is the legal theory, entered into back . . .

END OF SIDE 2, TAPE 1. JANUARY 20, 2011.

BEGINNING OF SIDE 1, TAPE 2. JANUARY 20, 2011.

Storey; This is tape two of an interview by Brit Storey with J. William McDonald on January 20, 2011.

Those 1855 treaties . . .

McDonald: Yeah, those 1855 treaties, not just the one for the Nez Perce Tribe, provide, in layman's language, to each of those tribes the continuing right to fish for anadromous salmon in the Columbia River. So, those four tribes are in the unique, somewhat unique, posture of having two kinds of legal claims in a water right adjudication. A claim, based on their treaties, for enough water to allow the aboriginal fishing to

continue. And then what we lawyers would refer to as a federal reserved right claim, that is to say, a claim that arose from the creation of the reservation, for which the U.S. Supreme Court in 1909 in the so-called *Winters Case*⁴⁴ enunciated the doctrine that Congress, when it created a reservation, must surely have intended, even if it didn't say so, enough water to have an irrigation culture for the benefit of the economy of the reservation. So the tribes really have in-stream flow treaty rights to assert and on-reservation *Winters Doctrine* rights to assert—the latter being for irrigation. The former are for the purpose of leaving water in the stream. What Idaho was concerned about was that treaty right asserting water for in-stream flows because the tribe's original assertion, made both by the tribe and the United States, was for *enormous* quantities of water to come down the Snake River, out of the state of Idaho, and simply flow into the Columbia River—not for irrigation, but for the benefit of fish. So the *treaty right* really was the critical issue with the Nez Perce Tribe, not the *Winters Doctrine* rights

Storey: And do you remember the details of the settlement at all?

McDonald: I remember the details *relative* to the Reclamation projects, you know, and our Snake River piece. The other major elements of the settlement, Reclamation, via me or anybody else, really didn't have anything to do with, Brit. We didn't even participate in the negotiation sessions that pertained to the other elements. Those were issues of great interest to the state, but we didn't participate, and without the settlement in front of me, I wouldn't even try to speculate what my memory is because I just wasn't involved.

Storey: Well, what about how did it affect Reclamation?

McDonald: Well, basically we came out where the water users did. As I said, the settlement called for *us* to consult with the Fish and Wildlife Service and get a biological opinion to achieve compliance with E-S-A. *If we got* that compliance then our projects will continue to operate for the next thirty years, and, barring unforeseen circumstance, we'll have a biological opinion that says we are in compliance with E-S-A, and we will continue to deliver water to our irrigators. If we *had not* gotten that biological opinion, the posture Reclamation would have been in is I simply would have had to turn to the water users and say, "I understand you don't like it, but as a federal official I have no choice. I have to go re-consult, and I'm going to have to come up with some means of operating the project that complies with the Endangered Species Act. And you may or may not like what I have to come up with, but that's my obligation as a federal agency." Fortunately we haven't had to cross that bridge. The bridge Reclamation *will* have to cross is when the thirty years runs out, Reclamation will have to re-consult on the operation of the Snake River projects, and there are *no* guarantees to Reclamation, the state of Idaho, or the water users, as to what happens in year thirty-one.

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

Storey: So, for instance, the settlement does not require water out of Reclamation projects.

Reclamation's Responsibilities to Indian Settlements

McDonald: What—I see what you're getting at—what the settlement required is that Reclamation would seek to obtain water through the mechanism of state law each year to contribute to flow augmentation for the benefit of the salmon. And you made the comment, several minutes ago, about John Keys, when he was *regional director*, finding himself in the posture of having to obtain water from the irrigators for flow augmentation. That is a key provision of the settlement, and it basically says Reclamation, although not absolutely legally bound, will go out and try to obtain a certain amount of water each year to provide for flow augmentation, which is something NMFS⁴⁵ has required in the biological opinions. (Storey: National Marine . . .) National Marine Fisheries Service, NMFS, whatever that acronym would be. And that was just a continuation of what John had started in the 1990s on an informal basis apart from a settlement. The particulars of the way that got negotiated out were, again, Reclamation's not absolutely bound to a number that we absolutely have to achieve every year, but the settlement articulates the expected results in probabilistic terms over a period time. So it recognizes there're going to be some drought years, and you're just not going to *achieve* the maximum intended amount. There will be other years, of course, where you can achieve the maximum intended amount and probably exceed it. And then there will be years in between. But its laid out, literally, as a color graph as to how often we're going to do which. And if we're below a certain point flow, augmentation's lower; if we're above certain points flow augmentation's higher. The way we have actually *achieved* flow augmentation is, and again, this all started back in the 1990s with John Keys, we first of all went to a couple of our projects that had a water supply that nobody'd ever asked to contract for—so it was unused reservoir storage, and we simply took that off the table and said its no longer available for contracting to anybody. So we, Reclamation, started using part of the annual yield of those projects to release water at the times the National Marine Fisheries Service wants it for flow augmentation.

The second thing we do, and again it started with John, is at American Falls and Palisades, and the other upstream reservoirs that are in southeast Idaho. Those projects were basically built to firm up water supplies for private development that had occurred before Reclamation came along. And the nature of that private development was plenty of water in April, May, June, during high, peak snowmelt runoff. Snake River [then] begins to fall off in July, *rapidly* falls off in August and September, and the junior private water rights would start falling out of priority and they'd be water short. So the Reclamation projects were built *not*, for the most part, to provide a full water supply, but to provide that guarantee that you could finish off the irrigation season and not run short. So, depending on the water year, the people who have contracts from the reservoir projects in southeast Idaho may not need all of the water that they're entitled to because if the river stays pretty high, well into July, maybe even into early August some years, because its been a heavy snowmelt year, they don't need as much reservoir storage.

45. Said as “nymphs.”

On the other hand, in a drought year where you've got really low snowpack, and it comes early, and it comes fast, they may need all the storage water to which they are contractually entitled. So what those irrigators have done is create a water bank, which is really a way under Idaho state law to make one year, temporary transfers of water between one owner to a different owner. Actually, we call them "space holders;" their contracts are called "space holder contracts." They have a right to a certain amount of space in American Falls or Palisades reservoirs. So those individual irrigation entities that have those contracts can choose, through the mechanism the state has set up, to say, "I'm looking at the water supply. I'm looking at soil moisture conditions. I'm looking at what my irrigators want to do, and I'm not going to need all the water that I have a contractual right to. So I put the water, on paper, into the water bank." And then anybody can come to the water bank and lease that water out for a year and use it. So District A may say, "I think I've got twenty thousand acre feet more than I will need this year so I put twenty thousand acre feet in the water bank, and somebody can come buy it."

Well, Reclamation has gone into the water bank, and we have become a buyer. And we have to get congressional appropriated money every year to go in there and be a buyer. One of the major points of contention in the negotiations was "what are going to be the rules for the water bank?" Because it's a state mechanism under state law, and I insisted that I know what the rules were going to be and that they can't just be changed willy nilly, you know, over a thirty year period, which is what the biops call for. Because I wouldn't know what kind of deal we'd make. So we had a *lot* of debates with the state of Idaho about how price would escalate over time, you know, who'd share risks if things went wrong, and that kind of thing. So that is the essential feature of how we go and get water out of the Idaho water bank.

High Lift Pumps

The third thing that we did, Brit, is those two sources—the supplies we took back in the 1990s that had never been contracted for, and, then, the annual process of going into the water bank, which started in the 1990s and has continued under the settlement—that didn't yield enough water with the degree of consistency required by the negotiated settlement to meet the objective or the requirements of the settlement. So the third thing that the settlement recognized is that Reclamation could go acquire other water sources from private parties that don't have any reservoirs in the Snake River, but they *pump* out of the Snake River up those, you know, real steep canyons that are eight hundred-, nine hundred-, a thousand feet. Idaho people call them "high lift pumps." We all perceived in the course of negotiations that the high lift pumps were getting at the break even point in a lot of cases where they just couldn't continue in business so the settlement anticipated the possibility of Reclamation, with congressionally appropriated money, buying some high lift pumps. Didn't require it, but it set up the mechanism by which the state agreed that it would not object to Reclamation doing it. That's what it boiled down to.

What I wanted to be sure was Idaho wouldn't come back at us and say, "We don't want you taking a chunk of our economy away from us," because we were

literally going to buy the high lift pumpers out and retire the land and it would go out of irrigated production. They might go to dry land production, but they wouldn't irrigate. So the commitment Idaho made is they wouldn't object to it, and the negotiated settlement had some basic rules about how the process would proceed. Fortunately we, with great help from the Idaho Department of Water Resources, particularly Karl Dreher, the director of the department at the time, we did approach the key district that was a high lift pumper, were able to work a deal to buy them out. We, Reclamation, didn't have all the money in the bank that we needed to actually close the transaction so we, Reclamation, worked out an arrangement with Idaho, which has the authority to issue bonds. So they issued bonds to pay the full capital amount. We made an initial year contribution, promised we'd pay over a period of time, if I remember correctly, Idaho agreed to give us a couple a three years without interest, and then if we hadn't paid it all off interest kicked in. *I think* we will end up paying it off this year or next. It was a twenty year deal, but I made it a point to make it a really high priority in our budget so we could avoid interest charges. So that's been quite successful. Those have become the three major sources of water for flow augmentation under the settlement, and Reclamation's met its settlement obligations, relative to flow augmentation, every year, (Storey: Good.) thus far. Hopefully so in the future.

Storey: Okay. You've talked about this water supply that had never been contracted, and that raises some interesting issues. Of course Reclamation projects are supposed to be repaid by the water users, and I understand Idaho has this *different* kind of system about you buy storage space you don't buy water or—I don't understand the details of it, but I understand that it's a little different than most states. So, if we had uncontracted water in a reservoir or these reservoirs, and O&M costs are supposed to be paid by the water users, and repayment is supposed to be made by the water users, who's paying for that uncontracted water?

Uncontracted Water

McDonald: Um-hmm. I can answer part of that question, but I frankly can't answer all of it. The decision that Reclamation would use that uncontracted space, as I indicated, was made by John Keys while he was regional director before I came, and I never had occasion, Brit, to dig back through that. And I just, frankly, off the top of my head, I don't know, relative to repaying construction costs, what has happened, and I never thought to ask the question. I can tell you what is going on on O&M on those projects, and its, frankly what happened throughout Reclamation. When we hit the situation that the full water supply of a project doesn't get contracted, to the extent its been contracted, the districts that are contracting for it pay their share of costs allocated to irrigation. And what Reclamation does when the full supply has not been contracted for is we look at the annual costs and we allocated the costs between what the districts pay generally pro rata to the water supply available, and the balance remains for Reclamation to pay, and we have to get appropriated funding for it. (Storey: Okay.) So, in the two reservoirs that are at play in this particular case, out of a total O&M bill, part of its being paid by the districts. Part of it is in Reclamation's budget. (Storey: Okay.) You know, on capital construction costs, I don't know. I don't remember. (Laughs.) Whoever reads this someday, they'll have to go ask Reclamation what the answer is.

- Storey: Well, Idaho has this issue with groundwater depletion, I've forgotten what the area is called, but (McDonald: Its called the Eastern Snake River Aquifer Plain.) does that affect Reclamation in any way?
- McDonald: In Reclamation's view, it has a very major effect, and it is one of the key issues at the heart of the Snake River adjudication. Actually, could we pause so I can go hit the water . . .
- Storey: The groundwater issues . . .

Idaho Groundwater Issues

- McDonald: Oh, in Idaho, of course, a *huge* issue and front and center in the state adjudication on the Snake River. Just a touch of background for those who may read this somewhere down the road. The geology of Idaho is that much of southern, and particularly southeastern Idaho, is a prehistoric lava flow. So it's a very fractured basalt, and, therefore, it holds a lot of water. And it lies to the north and west of the Snake River as the Snake River comes down out of Wyoming and then makes a big arc across southern Idaho. So what's referred to as the Eastern Snake River Aquifer Plain is that basalt aquifer that lies to the northwest, generally speaking, of the Snake River in south-central and southeastern Idaho. There has been very, very substantial development, groundwater development, by virtue of putting in wells in that aquifer to the tune of, I, . . . oh shoot, at *least* a million acres, and it may be more than that. But I think the point is the magnitude is clear. It's a very major irrigation development. Its very important to the economy of Idaho. *But*, that fractured basalt, being very fractured, is also the kind of geologic formation through which groundwater, relatively speaking, moves fairly quickly so that pumping affects can be noticed in fairly short order. The other key attribute is that that fractured basalt, lying to the northwest of the Snake River, is what the Snake River has cut through. So, *much* of the groundwater flow that moves through that fractured basalt aquifer is groundwater flow that surfaces in the walls of the canyon that form the Snake River. And that groundwater is, therefore, and it shows up in the form of magnificent springs that pop out of the walls of the Snake River Canyon. Those springs are *very* large, several thousand of second feet of water, you're not talking a dribble here, and constitutes a pretty large fraction of the surface flow of the Snake River after those springs exit from the basalt formation.

So, to make a long story short, the groundwater pumping, *in the view of* Reclamation, has very clearly negatively impacted the flows of the Snake River to the detriment of our American Falls Project.⁴⁶ And those people who contract with us for water out of American Falls very much agree with our hydrologic assessment of that impact's existence and its general magnitude. So one of the *major* issues in the Snake River adjudication has been what ought to be done, if anything, about that groundwater pumping, the extent to which it is affecting the surface flows of the Snake River, and the relative rights therefore between the groundwater pumpers and the surface irrigators out

46. American Falls Dam, on the Snake River in Idaho is a major feature of the Minidoka Project. For more information see, Eric A. Stene. "Minidoka Project," Denver: Bureau of Reclamation, 1997, www.usbr.gov/history/projhist.html.

of the Snake River. The other key point to make is surface irrigation is historically what developed first. Therefore, the priority of the surface water rights, if not entirely, is *almost* entirely senior to the rights of groundwater pumpers. Groundwater pumping, basically, throughout the western United States, is a post-World War II phenomenon, usually dating back to the 1950s, and that's exactly what happened in Idaho. So these groundwater pumpers are all junior to the surface water rights. But, you'd have to cut off the economic [benefits] and the policy issue, if you will, is that you would have to cut off so many groundwater pumpers, given the time that it takes for water to move through the aquifer, even though its moving in geologic terms relatively quickly, you'd have to cut off so many groundwater pumpers to make up the fraction of flow that is arguably owed to the Snake River that you'd just decimate the economy in that groundwater area.

So, a major issue. There have been a series of court rulings at the district court level. None have been up to the Idaho Supreme Court yet, with one or two exceptions. It clearly will take more cases going to the Idaho Supreme Court before that groundwater issue will be resolved. And my *personal* guess would be there is another ten or more years of litigation before that all gets sorted out. Reclamation, represented by the Department of Justice, is just bound to be in all of those cases because of the effects on American Falls. The best I've been able to determine, the fundamental position of the state of Idaho has been they're desperately trying to figure out some way to protect that groundwater economy. It has become such a large part, and its bigger than the surface water irrigation economy probably, that they clearly are motivated to try to figure out some way to protect the wells. And where the rubber is going to meet the road at the end of the day of that issue, I don't know. Its going to be a really difficult one.

Idaho, in Bill McDonald's personal opinion, made the same mistake that just about every other western state has made since the 1950s, and that is they initially looked at groundwater as a wonderful free supply, and [in] that day and age technically didn't understand very well the connection between groundwater and surface water. They let their groundwater pumping systems get way ahead of them. They had very lax or non-existent permitting systems. They didn't have good hydrologic analyses of what the consequences would be, and essentially every western state had dug a huge hole for itself and allowed groundwater pumping economies to get developed, that [now] are very important to them from an economic perspective. But they're interfering with the surface water users, and there's just major tension within the appropriation *doctrine* in all of the states about what to do with the usually junior groundwater pumpers *vis á vis* the senior surface water [rights] pumpers. Every state's had to deal with it. Some are still ignoring it hoping it'll go away, but its not. Arizona probably stepped up sooner than anybody to deal with it. Colorado had a pretty sophisticated system. Idaho's struggling with it now. Washington's just beginning to struggle with aspects of it that I've already mentioned. And its an issue that'll play out in the western states, probably for another fifty years.

Storey: I understood, though, that Idaho has closed down some of the wells.

Fish Farms

McDonald: What's happened in the litigation in Idaho by virtue of court decisions, in cases brought, not by Reclamation, but brought by some fish farms who built their facilities right at the foot of these springs that come out of the basalt and flow into the Snake River. And the springs, as you can well imagine, provide very clear water, water quality is excellent, and the temperature is very constant, of course, because its coming from a groundwater source. And it happens to be a temperature that's just absolutely perfect for raising trout commercially. So, in an area of the Snake River Canyon called Thousand Springs, where a lot of these springs come out of the canyon wall, over the last thirty years or so, a series of commercial trout production farms got built between the river and the springs. They made surface water claims to those springs for the benefit of running water through the raceways to grow the trout in, and they brought a series of law suits asserting that they were being damaged by pumping that was reducing the flow of the springs. I think everybody would agree that the flow of the springs, compared to what they were in, say 1950, pre-groundwater development, have very clearly declined substantially, and without going into a lot of legal details, essentially there has been a court ruling or two up to this point in time that found in favor of the fish farms *against* pumpers that are right at, are right at the rim of the canyon, and therefore who its pretty easy to prove are within weeks and months of affecting the flow of the springs.

So, what had happened is the court ruled in favor of the fish farms, that bucked the issue back to the director of the Idaho Department of Water Resources under Idaho law as to how to administer the pumps. And those executive directors, there's been three different people in the last five or six years, have been going through a series of administrative proceedings and issuing administrative orders about how much flow needed to be augmented and if it could not be achieved then wells would have to be shut down. I essentially lost track of what's happened in the last year, Brit, so I wouldn't try to say on the record, here, exactly where it stands now. But that's the general nature of the issue is the fish farms won, and the director of the Department of Water Resources is having to issue orders to cut the wells off within the immediate edge of the rim to try to bring those spring flows back up. And that's, again, an issue that'll probably go up to the Idaho Supreme Court another two or three times in the course of the adjudication. Not of immediate interest to Reclamation because the springs, the major spring supplies, are downstream from American Falls where the trout farms are. So we, Reclamation, are not in the midst of the immediate issue raised by the fish farms. Our issue is upstream of American Falls where inflows to American Falls from groundwater have very clearly declined.

Storey: Good. The Federal Columbia River Power System, who all participates in that and is there like an executive or something that runs it? How does all that stuff work?

Federal Columbia River Power System

McDonald: Sure. I talked some about it yesterday in the context of the biological consultations for the operation and maintenance of the Federal Columbia River Power System which we use the acronyms F-C-R-P-S, and that's what I'll talk about. In terms of facilities,

when people talk about the F-C-R-P-S, we're really talking about two different things. I'd better clarify it. In its most general sense, it means all of the Corps of Engineer and Bureau of Reclamation authorized projects in the Columbia River basin which have powerplants on them and generate power. So those projects are either operated by the Corps of Engineers, if it's a Corps project, operated by Reclamation, if it's a Reclamation project, and then for *all* projects the power is marketed by the Bonneville Power Administration in the Department of Energy.

From a *financial* perspective, all powerplants are thought of as the F-C-R-P-S.

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McDonald: In terms of the endangered species issues and the consultations, a smaller set of facilities is what we refer to when we talk about the F-C-R-P-S. The reason for that is simply—of the occupied habitat today, that is to say areas in the Columbia River that fish can still swim to. There are only fourteen dams and powerplants out of all the powerplants that are in occupied habitat. So the consultations have pertained only to the operation of those fourteen. And those fourteen are two Reclamation facilities that impact the flows of the Columbia River; that's Grand Coulee Dam, which forms Lake Roosevelt, and Hungry Horse Dam up in Montana. The other twelve facilities are owned and operated by the Corps of Engineers. Four of those are the run of the river hydropower dams on the lower Snake River, four run of the river dams on the Columbia River mainstem, the fifth Corps run of the river dam is Chief Joseph Dam which is immediately downstream from Grand Coulee Dam. And it basically serves as a re-regulation facility for Grand Coulee. Or, put another way, the way Grand Coulee's powerplant is operated, because it is so large, is it is fluctuated up and down rather drastically in response to daily peak loads and power demand, and unregulated by the next dam downstream, that would cause a lot of surface elevations [fluctuations] frequently in the course of a day down the Columbia River. So, to damp those fluctuations out, Chief Joe was authorized by Congress and built by the Corps, and basically Chief Joe grabs that water when we release it out of Grand Coulee, and *they* in turn release it, but they don't fluctuate up and down as drastically. They intentionally operate their powerplant at a more stable, constant, *closer* to a more stable, constant flow. And then the Corps—so that's nine Corps facilities, and then there are three other Corps facilities that are water storage reservoirs, not merely run of the river powerplants, and each of those three water storage reservoirs has a powerplant. So that's where you get the fourteen facilities combined. Nine Corps of Engineers run of the river, three Corps of Engineers storage reservoirs, and two Reclamation reservoirs. So those are the fourteen reservoirs that were consulted upon and continue, by virtue of the litigation, to be consulted upon with National Marine Fisheries Services in an effort to achieve Endangered Species Act compliance relative to listed steelhead and listed salmon.

In terms of governance, if you will, Brit, to answer that question. There's no formal structure. Each agency is authorized by statute to operate their own facilities.

The responsibilities of Bonneville Power Administration as the marketing agency are spelled out in statutes and in executive orders that created the Department of Energy back in 1977. And *I say that* because Bonneville Power Administration and the other federal power marketing administrations had originally been in the Department of Interior, and it was Reclamation itself that marketed power from its own powerplants. But when the Department of Energy was created in the 1970s that power marketing function was moved out of Reclamation and the Department of Interior and given to the Department of Energy. So power marketing agencies like the Bonneville Power Administration and the Western Area Power Administration, which are the two that Reclamation works with, are now components of the Department of Energy. So, the basic legal structure and responsibilities are simply laid out in the statutes and in the reorganization orders.

In the day-to-day *real* world, as a practical matter, the leadership of the three agencies work very, very closely. In fact, I have always said one of the highlights of my eleven years as regional director in the Pacific Northwest [Region] *was* the working relationship with Bonneville Power Administration and the Corps of Engineers, particularly along with the National Marine Fisheries Service which was the regulatory agency for E-S-A and my regional director counterparts at the Fish and Wildlife Service. Just a superb working relationship, I think. Frankly it can be held out as a model of how bureaus should work together and just tremendous professional and personal rapport. And we used that forum at the level of we regional directors to vet the major issues, sort through the direction that our staffs collectively needed to work, and really developed just a tremendous positive working relationship that many, many people comment on. But its not formally in writing anywhere, and its nothing required by statute. Its simply, in my view, good government. Its what public servants ought to do. You know, agencies and bureaus have different perspectives, we all know, from time to time. That's the way the world works. Congress set us up to do different things so there *are* tough issues, and there *are* different perspectives, and there are conflicts, but regional executives get paid to sit down and solve those problems. So we just worked terribly hard in the last eleven years to really cement a good relationship. It is formalized to the extent that there's a memorandum of understanding among the agencies, but its not a legally binding document. Really, it was just the way the regional executives committed to paper so we could remind ourselves from time to time and hold it out to our staffs that we were professionals, and we were going to work together, and in general terms these were the principles that we would follow in working together as public servants.

So, its called the Federal Caucus, and it involved *not just* the Corps of Engineers, Bureau of Reclamation, Bonneville Power, and National Marine Fisheries, but also Fish and Wildlife Service, National Park, Bureau of Indian Affairs, all of the resource agencies, including some from the Department of Agriculture, that are engaged in these very broad based, overarching, natural resource issues in the Columbia River basin.

Storey: Hmm. Okay. I'd like to talk for a little bit about, I guess I might call them collateral duties, (laughs) the kinds of things that *come up*, you know, serving on committees and

that sort of thing. But I'm particularly interested, you were acting commissioner in 2000 and 2001, I think you said. (McDonald: 2001 and 2009.) And that leads me to a point of curiosity because for the 2001 acting period you would have been appointed by a Democratic administration, and in 2009 by a Republican administration, and I'm just sort of wondering your perspective on all of this.

Acting Commissioner

McDonald: (Laughs) Well, let's say a bit more about how that works for future readers down the road. You know, obviously when there is a change in presidents, as of noon on January 20th, the date of inauguration, all political appointees and elected officials leave office at 11:59 a.m., and new president takes office at noon. So, to be sure there is continuity of authority and real warm bodies that can do things, it is an outgoing administration, prior to noon on January 20th, that picks career people to fill political positions temporarily until the *new* administration can come in, get organized, make political appointments, and to the extent those political appointees are subject to confirmation of the United States Senate, go through the confirmation process. So in 2001, which of course, was the incoming Bush administration, second Bush administration, the outgoing administration was the Democratic Clinton administration.

So I was asked by the Secretary Babbitt staff, specifically then Deputy Secretary David Hayes, if I would agree to serve as the acting commissioner of Reclamation, which I agreed to do. It may be in writing someplace, Brit, I don't think so, but the clearly understood rule among all of we career executives is we go back to act, you know, usually go back to D.C. on January 18th or 19th so you're ready to go at noon on the twentieth, or, technically, the twenty-first, because government closes down because of security, and none of the offices are open on the twentieth. And you're ready to, you know, be there, and start making decisions. But we all understand that the new administration can tell us thank you for your service, go back to your career job, anytime they want. So, in my case, and I know my colleagues in the other bureau director positions did the same thing, within a couple a three weeks as the incoming secretary, who was Secretary Norton, was getting organized, we would chat with her immediate new political appointees, who would be Schedule Cs not subject to Senate confirmation, and say, you know, "We're here, I'm willing to do it, or I'm not." Some people would prefer not to do it, and they asked if they could step down.

And I happened to know Secretary Norton because she and I had both come from Colorado state government. So I talked to the people on her staff and said—unlike, if memory serves me, every other acting bureau director, I was the only one from out of town—not from D.C. The rest of them were deputy directors or assistant directors in their headquarter offices in D.C., but I was the one living out of a suitcase. So they actually asked me if I wanted or was willing to stay or, because I was living out of a suitcase, I wanted to get home. And I indicated that I would be willing to stay, but I understood it was their prerogative. But I was asked if I would stay, and, to my memory, I think everybody who had been picked by the Clinton people to stay continued under Secretary Norton until the new political appointees were actually confirmed. But, its an interesting process. And, of course, it was, in terms of political

parties, the reverse in 2009 because it was the outgoing Bush administration. And, in that case, I was asked by Secretary Kempthorne, who, of course, I knew as Governor Kempthorne in Idaho, when I was regional director, if I would stay, and I told Dirk I would be glad to stay. And then when the new secretary came in, Secretary Ken Salazar, again a Coloradan, my home roots, and I knew Ken going back to 1980s when I was director of the Colorado Water Conservation Board and he was Governor Dick Lamm's legal advisor. So Ken and I chatted. We're personal friends, and I said, "Yeah, I'd be glad to stay." But its their prerogative when they come in to pick new people if they want to. And, sometimes it happens. (Laughs.)

Storey: They're consciously, then, appointing career employees?

McDonald: Sure, because all political appointees or elected political officials resign prior to January 20th when the new president is sworn in. To me it was the greatest privilege of my career in Reclamation, because in our form of government at noon on January 20th you really have only one official—it is the president. All the rest are career civil servants, and we are filling in while the political system goes through the process of putting new political people in place. Now, at the level of the cabinet secretaries, of course, that happens very quickly. New presidents try to name their cabinets, in general, prior to January 20th, but, you know, even *that* doesn't always happen. My recollection, for example, is Secretary Norton in 2001 wasn't sworn in until maybe about January 25th because she hadn't completed the Senate confirmation process. Last year-, year before last, in 2009, Secretary Salazar had been confirmed by the Senate prior to January 20th so he was actually sworn in and physically came to the building first thing on the morning of January 21st. So, you know, it can vary. And then the speed with which the bureau directors and assistant secretaries are filled can vary depending on who the nominee is, how long the clearance process takes, and then after they're publicly announced and nominated they have to be queued up for Senate confirmation. Its just time consuming, even if there's *not* controversy. If there is controversy, then a Senate committee chairman may be very slow in scheduling a hearing on a nominee. May take a long time for a committee vote. And ultimately there may be a hold on the Senate floor. So some of my colleagues [were acting for many months], my two tenures were fairly smooth, in 2001 I was there from January 20th, if you will, through the middle of July, I think John Keys was sworn in on July 17th, so, you know, I packed my bags and I was on the next plane out of town that night.

And, then in 2009, actually I went back sooner because Bob Johnson was the outgoing commissioner, but he had been, of course, one of our regional directors, *before* he became a political appointee, so his retirement system was actually the career civil service system, and it behooved him to retire on January 2nd or 3rd, not January 20th. So he actually left town early, and I became the acting commissioner the very first week in January. So I actually ended up working for the outgoing secretary and then on January 21st for the incoming secretary. And in that case the current commissioner, Mike Connor, moved very rapidly through the process, and he was sworn in, I think, on June 1st or 2nd. I'd actually *left* and gone home for the Memorial Day weekend. So I was there five months.

Other of my actings, I remember both in 2001 and 2009 the nominees for those positions got, you know, got Senate holds put on them, and there were some actings back there for ten-, eleven months, you know, almost the whole first year of a new administration because they couldn't get their political nominee cleared. So, its highly variable. (Laughs)

Storey: Okay.

McDonald: But it beats the alternative. It is a peaceful transition of power, and as I said, I always thought it was, in a lot of ways, the highest privilege of my thirty-nine years of government service, to be part of that transition process.

Storey: Let's talk about other kinds of duties. What I, we have a few minutes . . .

McDonald: I was going to say few . . .

Storey: Collateral duties, or we could do that another time, if you want.

McDonald: Why don't we pick up, because . . .

Storey: Okay.

McDonald: I'll think about it, and I think there is a lot of ground to cover there that would be worthwhile, Brit.

Storey: Good. I think that's all.

McDonald: Okay.

END OF SIDE 2, TAPE 2. JANUARY 20, 2011.

BEGINNING OF SIDE 1, TAPE 1. JANUARY 28, 2011.

Storey: This is Brit Allan Storey, senior historian of the Bureau of Reclamation, interviewing J. William McDonald, Bill McDonald, on January 28th, 2011, at about two o'clock in the afternoon in Building 67 on the Denver Federal Center. This is tape one.

Well, I think one of the things we were going to talk about today was collateral duties, things like M-4-E, which, as I recall, you chaired, and the B-R-C and the Western Water Policy Review [Advisory] Commission, and all of those kinds of things.

Collateral Duties

McDonald: Um-hmm. Okay. Well, maybe a general comment to set the stage. There are lots of things that come up from time to time that, you know, take a special emphasis for a short period of time, although short sometimes easily turns into a year or two. So it was quite typical for Reclamation to assemble teams at all levels in the organization that knock off special things, you know, other duties as assigned, if you will. And so those

of us who are senior executives by the same token, from time to time, would do those extra things just as we'd put teams of staff together for any particular problem that might need extra attention. Probably the ones that, in my twenty year career, I spent the most time on were the Budget Review Committee, which became an annual process; the Managing for Excellence or M-4-E, as Reclamation called it, that was about a two-, two and a half year process undertaken, basically in the late '06-, and then '07, '08 time frame; thirdly, the effort that eventually became Commissioner Beard's *Blueprint for Reform* back in 1994; and then a specific collateral duty, if you will, that was mine, individually, was a request that I do some work for the Western Water Policy Review [Advisory] Commission, which was really kind of out of the ordinary, and I might just touch on that first to set it aside.

Western Water Policy Review Advisory Commission

From time to time, dating back decades, Congress has passed an act that would create a commission or a body to look at issues relative to federal water policy, water project development, what have you. It dates all the way back to the Hoover Commission in the '30s, National Water Commission in the early 1970s. And the so-called Western Water Policy Review [Advisory] Commission, which was in the mid to late '90s time frame was one of those bodies. I don't remember the particulars, but it was fairly typical in that the commission, as such, was prescribed by statute to be a certain number of the people of the House of Representatives, as I recall, a certain number of senators, and then some presidential appointees, and I think they were geographically distributed or distributed by interest group, something like that. So that was the commission *per se*. Congress appropriated money as they typically did for those things over the years, and a small staff was hired and the executive director of that staff ended up being Don Glaser. And Don had been with Reclamation, he'd been one of my fellow assistant commissioners in the early '90s when I came to Reclamation. He had left Reclamation, gone to Bureau of Land Management for a period of time and then had left federal government but had been hired back as the executive director of this particular commission. And certain members of the commission had an interest in the issue of former political deals in which states and water interests in the upper part of a river basin would make political deals with states and water interests in the lower part of a water basin relative to—the context was project development by the Bureau of Reclamation, and commission members had an interest in what happened to those political deals.

So Don asked me to write a report for the commission which became part of their public record, and basically what I did in that report was explore the history of the key political deals in the Colorado River basin and in the Missouri River basin and drew some observations about how the political system treats those deals.⁴⁷ And, you know, frankly, the basic observation, which was not rocket science at all, is those are political deals that are encompassed in statutes. But because Congress has the constitutional authority to amend or repeal any statute that a previous Congress passed, those political deals, although they got reflected in statutes, *really* were no better than the

47. See J. William McDonald, "The Upper Basin's Political Conundrum: A Deal is Not a Deal," A Report to the Western Water Policy Review Commission (Springfield, Virginia: National Technical Information Service, 1997).

personalities associated with them. And if those key personalities left office or were defeated and not reelected, you know, those historical commitments and understandings, frankly, didn't stand the test of time. And, basically what happened in both the Colorado River and in the Missouri River basins is the upstream, upper basin, states did not get, pretty uniformly, what they had bargained for but the lower, down river states did because they had more clout in Congress to get the appropriations to move projects to a conclusion. So that was a collateral duty that was kind of unusual in that it was just a personal effort on my part, and I was given about three months from my duties with the regional solicitor's office out in Sacramento to write that report.

Budget Review Committee

The other three, let me go back to the Budget Review Committee. When I came to Reclamation, which was 1990, of course, the budget declines had started that continued to be experienced throughout the '90s and into the first decade of *this* century. But Reclamation had really not come to grips with the fact that the budgets were declining. And the other thing that was going on is that Reclamation was at the tail end of constructing the Central Arizona Project, which was taking a *huge*, relatively speaking, a huge piece of the budget. And so what Reclamation was struggling with was its traditional approach—at least the approach it had used, let's say, in the '70s and '80s to formulate "the budget"—pretty much left it to the regions to seek all the dollars that they would be interested in having and put no particular constraints on what the regions would come in and ask for. And you were getting, you know, in round figures, two billion dollars of proposed budget requests in a climate that clearly would not have appropriations of more than a billion and probably more in the eight fifty to nine-, nine hundred and fifty million. And it was kind of a process a bit out of control. There was so much being asked that it was tough to sift through it and get a handle on what was real, what the priorities needed to be.

The other thing that was happening is that the field and the regions were not as attentive to the prerequisites that it takes to bring a project to construction as they made requests for money. So they'd be asking for tens of millions of dollars in a fiscal year that would be two years away, but if you'd sit down and take a hard look at *all* the things that had to be done to *get* to the actual award of a construction contract so you could spend that money—planning completed, environmental compliance completed, cost sharing lined up—all those things that are prerequisites to getting to construction. What we discovered is the regions really were not on top of, as well as they needed to be, looking at their schedule over a two to three year period and being sure they *actually* would be ready to spend the money they were asking for. So it led to some conversations among the leadership at the time, of course, called the Executive Management Committee. And the commissioner, Dennis Underwood, asked Don Glaser, my fellow assistant commissioner, and I to take the lead in thinking about how to get a handle on that. And the conclusion Don and I came to is we needed a review process in the hands of the executives so that we had to become engaged is what it boiled down to, you know. Force us to be more knowledgeable about what staff was putting together for budget requests. And so, I think the recommendation was made to form the first Budget Review Committee in '91, which means that committee, if I'm

correct in my recollection, would have been looking at the F-Y-[fiscal year] 93 budget request, two years out. I might be off by one year. Could have been '92 looking at '94.

And essentially the proposal was that certain senior executives be on the Budget Review Committee, number one; number two, that there be rotation every year so that all of us were having, over a period of time, to become involved. And the purpose of the Budget Review Committee was basically to really put some thoughtful guidance together before the annual budget process was ever launched to give a sense of what the agency-wide priorities as guided by the commissioner should be, get people focused on those priorities, put some processes in place so that prerequisites really had to be looked at. And in your budget submittal you had to document that you had a schedule that was going to get you to the point that, you know, you *truly* could use the kind of money you needed. So that was the process, and it has continued in-place to this date. There's been a Budget Review Committee every year. It essentially started out as a committee chaired each year by the senior executive that was in charge of budget and program formulation. Over a period of time it evolved, for a variety of reasons, to a committee that was chaired by a regional director, and then the regional directors would rotate through being the chair person. I'd have to look back at the records, but I think I ended up being on the committee five times by virtue of being around for twenty years, and my term kept coming up, and I probably chaired the committee two or three of those times. So that's certainly a good example of a collateral duty. And we'd rotate the regional directors through, we'd rotate what at the time, in the beginning, were assistant commissioners, now the office directors in Denver. And we also, after a period of time, began to put an area manager after the 1994 reorganization. And then [we] also decided, really in a lot of ways, was a pretty good training opportunity. So most budget review committees would have somebody on the budget review committee that we certainly expected them to make their contribution. But we also took people that it was a real stretch experience for them, and gave them an opportunity to see different aspects of Reclamation than they might have been accustomed to, and give them an opportunity to really see the nuts and bolts of program and budget formulation processes as part of their growth opportunity.

Managing for Excellence

The Managing for [Excellence] ~~Review~~ exercise was something that grew out of a review by the National Research Council⁴⁸ that had been requested by then Assistant Secretary Bennett Raley, which would have been in the early years of the second Bush administration. Bennett had concerns that Reclamation needed to give some thought about the maintenance of the right kind of engineering and construction expertise in the face of declining budgets and some associated issues. So he contracted with the National Research Council to go through their typical process of assembling some academic and outside experts to examine Reclamation's organizational structure and capabilities, again, focused on that aspect of technical services and to make some recommendations. And when those recommendations came down, the commissioner,

48. The National Science Foundation, National Research Council, Division of Engineering and Physical Sciences, Board on Infrastructure and the Constructed Environment. This study began in early 2005.

and that would have been John Keys at the time, decided that we needed a process that we gave the name of Managing for Excellence to proactively address the recommendations in the report from the National Research Council, *and even* go more broadly at looking at issues associated with *how* we did business, what we needed to do to be more cost effective and efficient, not just focused on the more narrow question that the National Research Council asked in terms of capability and engineering expertise.

As I recall, the commissioner put one of the deputy commissioners, Larry Todd⁴⁹ at the time, in charge of the overall effort. And typical of those things, a number of us then participated in an executive committee, a steering committee, for the overall effort. Lots of staff input was also provided in the way of a variety of teams, so it's a good example of collateral duty not just being just among the executives, but the proper mix of staff people. I was not initially involved, but at some point one of the regional directors, Maryanne Bach, who was the lead executive on a series of teams focused on the issue of core capabilities for engineering and associated expertise, left Reclamation. So we needed somebody to step in and finish the process. So I took over as that process was part way underway and basically was working with teams that were looking at the question of what core capabilities in engineering and other technical services does Reclamation need to maintain and what processes do we need to be able to better predict and manage that capability. And I state it that way because the essential problem you have in Reclamation, although you really have it in the private sector as well in large architectural and engineering firms, is you're trying to predict workload because the workload drives the amount of capacity you need and the nature of the workload the qualifications and the expertise you need.

So we ended up, to make a long story short, deciding on a new business model for how we would better predict and manage workload, ensure that there were good clear lines of communication between area offices, regional offices, and the Technical Service Center in Denver. Each of whom has some degree of this technical capability and justifiably so. But the problem we needed to be sure we're on top of is each of those levels of the organization maintaining the right expertise in skill and in quantity so that we weren't overlapping with each other and creating inefficiencies. And it took a lot of conversation about what should be the nature of the expertise right down there on the ground in the area office versus the kind of expertise that an area office couldn't efficiently maintain, because they weren't going to be able to use somebody consistently three hundred and sixty-five days a year. They might have a technical qualification that's very much needed, but you might only need it three months out of twelve on average. So that kind of expertise you needed to ship up to the *regional* office so that a regional office could take that *kind* of experience and use it in four area offices, not one.

And then the final step is you had the particularly high level of expertise and the

49. Larry Todd participated in Reclamation's oral history program, see Larry Todd, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interviews conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, fro 2000 to 2009, in Washington, D.C., and Billings, Montana, edited by Brit Allan Storey, 2010, www.usbr.gov/history/oralhist.html.

necessity for having a core capability in the Technical Service Center that when the regions either had workloads that were beyond their ability to handle in any given year, so you're trying to smooth out peaks and valleys, *or* simply it was that really high level technical stuff, particularly in the engineering fields related to dam safety and other facility safety issues like the embankment sections of canals. Its simply an expertise that Reclamation's gotta have, but you can't efficiently have it spread out in five regions because five regions can't use it year in and year out. You know, two thousand hours a year per person. So we generated a new business model that is designed to address all of those issues. It [M4E] was a very big effort, both in terms of the steering committee, the executives, and, boy I think we had what, thirty some odd teams of people put together. Nobody relieved of their day to day duties. It was squeeze it in and tack it on as best you can. Again, Managing for Excellence [is] a very good example of collateral duties.

Commissioner's *Blueprint for Reform*

The third one you mentioned, Brit, that I cast as Commissioner Beard's *Blueprint for Reform*, again a very good example. I think we touched on this in an earlier conversation that one of the things Commissioner Beard did when he came in, as he began to explore the idea of what eventually became the decentralization of the organization relative to what historically had been the case. And we created the area offices and devolved responsibility from the regional offices to the area offices in ways that were new and different for Reclamation. The first step in that is Dan put together an employee group that we called CPORT, and you would have to help me remember what CPORT stands for.

Storey: Commissioner's Program and Organizational Review Team.

McDonald” Review Team, that was it. And the commissioner chose not to have any executives on that. And, again, I think I touched on this in previous remarks that Commissioner Beard literally came in with a perspective that he wanted to reach beyond the senior executives—seemed to have a level of distrust, or at least new vision for how to gain a different perspective from other parts of the organization. So he put this CPORT team together. He did have *an* executive to be sure it got guided in the right direction, and that was Don Glaser, but the team itself was all non-senior executive personnel. I think probably mostly GS-14s and 15s—people at the mid-management level who had a good thorough perspective on Reclamation. And that, again, was very much collateral duties as assigned—although I think the team lead, who I recall to be Larry Walkoviak, might have been given a couple-, three months off from his regular duties to take this on because Commissioner Beard wanted it done very rapidly. As I recall, they did that whole thing in about ninety or a hundred and twenty days with a very robust employee comment period so they had a lot of comments to digest from employees and a lot of issues that Commissioner Beard wanted addressed.

So, again, another very good example. And the last step in the process that I know I touched on in earlier remarks is after Dan got that report from the CPORT team, it led to conversations among the Executive Management Committee. Dan began

to shape and direct where he wanted to go with it, and eventually his ultimate conclusions were captured in a document called *The Commissioner's Blueprint for Reform* which ended up certainly being a product of the commissioner's ultimate decisions, but with a very robust, and sometimes heated, frankly, debate among the executives on the Executive Management Committee. And then ultimately Don Glaser, since he'd been the executive lead for the CPORT team, was asked to actually capture it and create this *Blueprint for Reform* report. And ironically, as I know I said in my remarks an interview or two ago, Dan ended up not knowing that Don turned to me to essentially be the person that authored the *Blueprint* report. And about the time I got the *Blueprint* report done, the commissioner decided he didn't have a need for me on his management team so I went to do other duties as assigned, which was his prerogative to do. But, again, it's a good example of a special task taken on from time to time and the organization just has to shift some priorities around and figure out what kind of resources to bring to bear and get the job done, whatever it may be. And it happens all the time. There would be a lot of examples that I could give, but those are the four that I *personally* was involved in over the course of twenty years most deeply. Other executives handled a lot of other things.

Storey: Well, if you go back and think about it, you know, they put you on committees, task forces, all of that kind of stuff. How much time do you suppose you would have spent on those kinds of things as opposed to your actual job to be done. Is there any way of guesstimating that?

The Time Involved Performing Collateral Duties

McDonald: I could guess, but it would be an uninformed guess. One, your memory, even at the time, is not good about those things. Twenty years after the fact it would even be worse. You know, maybe I could give it this context. In any year in which any executive sat on the Budget Review Committee, that was a process that essentially occurred between January and May, you know. I'll bet in the course of those five months, any executive on the Budget Review Committee would have devoted, easily, ten percent of their time over the course of those five months. Maybe as much as fifteen percent, particularly the chairperson. And we have all come to understand that the year you're on the Budget Review Committee it's a tough year. And, in fact, while we tended to have a rotation, particularly among the regional directors, we would occasionally *skip* somebody that quote "was next" simply because we knew the issues they had out in their region coming up were just too much to add the Budget Review Committee process on top of it. So, you know, it's understood that's an intense process.

Blueprint for Reform, you know, I was in a little different posture in that, that again, was something that the commissioner wanted done in the course of a very short period of time. Basically in just about six weeks, so that was one where I pretty much needed to turn to my deputy assistant commissioners at the time and said, you need to take care of the organization for six weeks. I'm going to have to, to some large extent, disappear. The Managing for Excellence, basically, as I said, I only stepped in later in the process after Maryanne Bach resigned, and so I was deeply involved for about

eighteen months. And I'll bet in the course of that eighteen months I spent a good ten percent of my time, and it was really intense effort. There were some significant issues that needed to be addressed, and there was, you know, a broad range of opinions within Reclamation about how we could go about doing it and legitimate, important differences in perspective that really needed to be aired out. So a large part of my time was spent in a series of meetings with the [Reclamation] Leadership Team and with the area managers vetting out some tough issues, and then working with the team itself, which was eight or ten people as I recall, to craft a final report that ended up being about fifty pages. And we were having a hard time putting our finger on exactly what we were trying to say, and we *really* struggled. It took about three or four drafts, and we would farm out different chunks, but at the end you got to have somebody to kinda take it from cover to cover, and I ended up doing a lot of that myself to get an executive oversight and shaping and also because people seem to think I could write well, which I'm not sure was good judgement. But, you know, ten percent on an effort like that, is probably not unusual at all. The efforts can be quite intense.

Storey: And, for instance, when you were doing M-4-E and you were regional director, there are these other things that call upon your time as regional director (McDonald: Yeah, they don't slow down.) in terms of meetings with water users, various kinds of, I'm thinking there about meetings with districts, and so on.

McDonald: Sure.

Storey: But also state water meetings and regional and so on. How about an idea of how that all works for a regional director?

Regional Director's Workload

McDonald: Oh, okay. You know, every regional director spends a lot of time on that sort of thing. Area managers, at a smaller geographic area, but nonetheless, do the same thing. My experience as a regional director, of course, was entirely in the Pacific Northwest, framed by the issues that occurred during my tenure between 1999 and last year when I retired in 2010. And, again, as we've already covered in a previous interview, *the* central issue, in a lot of ways, was the issue of the operation of the Federal Columbia River Power System in the face of the listing of the salmon and the steelhead species under the E-S-A. And because that Federal Columbia River Power System is the joint responsibility of the Corps of Engineers, Bureau of Reclamation, and Bonneville Power Administration, *and* because, from a Department of Interior perspective, that issue was of importance to the tribes, therefore to the Bureau of Indian Affairs and to the Fish and Wildlife Service. It took a lot of time to attend interagency meetings, because we're in litigation, lots of meetings with the Department of Justice as one thought through litigation strategy, prepared depositions, affidavits, . . .

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BEGINNING OF SIDE 2, TAPE 1. JANUARY 28, 2011.

McDonald: So, you know, that kind of kind of interagency activity was particularly intense in my

particular instance. But I bet I could go to any other region and any regional director could point to an example where things at least came to a head for a year or two or three on a particular issue, and you just find yourself spending *gobs* of time on that kind of thing. You know, over the course of eleven years, how much time did I personally spend on the salmon issue. You know, purely a guesstimate, I don't have time sheets to look at, but I'll bet it easily ran fifteen to twenty percent of my time. When I count not only the immediate issues of the Federal Columbia River Power System, but all the other consultations on individual projects, the Yakima Project, the Deschutes Project, the projects in the Boise River, all of which were part of the salmon issue. I easily spent fifteen to twenty percent of my time in the course of eleven years working on all those issues. So, personally, working with the attorneys, working with the other agencies, meeting with the environmental plaintiffs, trying to resolve issues, you know, day-to-day, hands on. And, you know, the nature of the business for a regional director is there will always be, from time to time, an issue that pops up that in its policy complexities, legal complexities, and political nature simply demands a big piece of your personal time because its got to be shaped. The people concerned about it on the outside expect the personal attention of the regional director to the issue. Or a commissioner, if its political enough, may need an R-D to give it personal attention to keep it reasonably well under control. So, its just the nature of the business of a regional director that *every* year there was going to be something that popped up that you'd find yourself spending a disproportionate amount of time on and always struggling to keep the-day to-day things going and be sure you're providing good leadership to the region and all the things that most people never see day-to-day, but they're critical to an efficient and effective program . . .

Storey: What kinds of things?

McDonald: Of day-to-day things?

Storey: Day-to-day, the leadership kinds of things.

McDonald: You know, it runs the whole gamut. If you're a regional director, of course, you're responsible for every single project and program that Reclamation has that's executed at the level of a region. So it would range, you know, all the way from personnel and public safety to civil rights and human resource management, equal employment opportunity to be sure you were not violating the law there, dealing with employee complaints lodged in the E-E-O process. You know, the heart of the business is operating and maintaining the water projects day in and day out, you know, that *largely* is done by the area managers at their level. But regional directors *always* had to be attentive to: "Do we have good work plans in place, are we getting money spent efficiently and effectively, or are we operating well, is the maintenance we schedule getting done." If we had extraordinary maintenance are we on time with it? So, you certainly weren't, as a regional director, doing operation and maintenance in a day-to-day sense, but you certainly had to be sure you had your organization working effectively and efficiently. And all of us would have the devices by which we were checking in all the time on our subordinate managers to see if interim quarterly goals were being met, you know, looking at how expenditures were coming, and looking at

construction schedules on extraordinary maintenance, that kind of thing.

Facilities security—you had to spend a lot of time being sure, particularly post-9/11, because it threw us into a whole new era of facility security, and all the regional directors and several offices here in Denver spent a *really big* chunk of time in 2002 through 2006, 2007 until we kind of got our feet firmly on the ground, [and] got all the new program and policies and procedures in place. Lot of time spent evaluating this new risk environment we were in, learning things about law enforcement authority that we'd never had. And so all of us were learning about what it meant to have an armed law enforcement officer on our staffs and what their authorities and responsibilities were and, you know, what the rules of the game are when it comes to use of force, where citizens can be harmed by your law enforcement officers. So, you know, there's a period of time there where you found yourself having to spend a disproportionate amount of your time learning about something that was new to Reclamation as an agency.

Construction, everybody had construction. It might be new project construction; it might be major replacements and additions [to] existing projects, but you're always, as a regional director, doing milestone checks, generally quarterly to be absolutely sure that construction schedules are on-target, moving along. Planning studies, the same sort of thing. You always have an annual work plan for planning studies. You want to be sure those things are on-target. Regulatory compliance, you know, there's nothing you can do in the water business any more that doesn't have some aspect of environmental regulatory compliance. So, again, you've always got to try to predict and project what kind of workload I have, what hoops do I need to jump through, what schedules do I maintain. So, *all* the regional directors would have in place a whole series of processes by which their subordinate managers would be reporting back so you would be sure that milestones were being met, budgets were being met, all that kind of thing. And, again, it was everything from nuts and bolts, from "a to z," because the regional director is responsible for absolutely everything that happens in the line organization. Certainly we have to operate within legal limits, and the policies established Reclamation-wide that are agency-wide policies. But, execution is the job of the regional director so it basically *all* happens out in the regions, and regional directors have to carve out a lot of time to be sure those things stay on track.

You know, employee morale is part of what you're always dealing with. You go through an exercise, for example, like Commissioner Beard's *Blueprint for Reform*, which did lead literally to a RIF [Reduction in Force] in the Denver Office. Those are terribly important issues to employees, and executives have to spend a lot of time trying to help the organization work through those issues, stay calm even though it's a very *personal* kind of issue to a lot of employees, deal with the personal impacts that creates on people's lives. And you don't take that thing lightly, you know, the welfare of the staff is critically important—step number one to success in any organization. So you spend time on those things, you make trips to the field offices just to have employee meetings to be sure you're getting day-to-day feedback. Getting isolated sitting at the quote "top" of the organization is the worst thing you can do when you're an executive.

And it's a struggle because people don't like to bring you bad news. Its just not human nature, and you lose track of what's going on in your organization if you're *not* out in a very positive, open-minded way really encouraging people to tell you what they really see down in their job from their perspective. Because if you get it filtered after three or four layers of supervision, you're not probably getting a very accurate picture of what's going on in your organization. So, *all* the regional directors would spend a lot of time just trying to interface with employees and be sure you had a pulse on what was going on in the organization.

Storey: And yet, I don't remember what they're called, but these Department of [the] Interior employee satisfaction surveys that go on like every two-, three years . . .

McDonald: For the last six years its been every two years, Brit, . . .

Storey: Reclamation hasn't ranked very highly as I recall.

McDonald: Brit, Reclamation hasn't, you know, I can't quote the statistics without them in front of me, and that has been a cause of concern for each of the commissioners under whom those surveys came out and all of us who were career executives. It prompted a lot of introspection because, I guess speaking candidly, a lot of us were surprised to some extent about *certain* of the results. Some we would have predicted, but there were some areas where we very clearly were not getting as high a positive response rate as one should strive for that surprised us; caught us off guard. So the Reclamation leadership team for *each* of those surveys, particularly after the first one that came out, and there hadn't been an employee survey for a long, long time, really sat down and scratched its head about where we were missing the boat, what kind of improvements we needed to make, what communication lines were not working that we needed to be more attentive to. The last survey, I think I fairly can say, shows over a period of six years pretty much across the board improvements in most of the organizational units in Reclamation. But I retired before the Reclamation leadership team had had thorough discussions about that. But certainly our initial reaction, you know, very uniformly was its good to see the progress, but we still are not satisfied with where we are, and we want to keep working at it. You know, the survey questions are—by design, its one of these surveys that asks awfully open-ended questions, so *partly* its hard to understand what interpretation to make out of open-ended questions like that. But, on the other hand, you know, where the Reclamation leadership team clearly ended up was don't overwork the exercise—take it in its broad-sketch generalities for what it tells you, and it tells you you have room for improvement, no question about it. And let's not try to be overly analytical about any one question or series of questions. It paints a basic message, and leadership needs to pay attention to it.

Storey: Well, I can imagine, for instance, that a place like Coulee, a place like Hungry Horse, I'm trying to think what the other big ones are, maybe Arrowrock . . .

McDonald: Hoover, Shasta, and . . .

Storey: Yeah, but I mean in P-N.

McDonald: Oh, in P-N, well, you know, Coulee's the granddaddy of them all. The other significant powerplants would be Hungry Horse and Anderson Ranch and Palisades.

Storey: Yeah, all of a sudden you have all of these security and law enforcement requirements, or you're talking about this. And there are people who want people with guns, and there are people who *don't want* people with guns (laughs). There are security zones around the dams, and so on. Talk a little, if you would, about the kinds of things that came up, and *who was espousing what*, and how it ended up.

Facilities Security

McDonald: Well, first of all, of course, was all the immediate outgrowth of the airplanes flying into the Pentagon and the World Trade Towers on 9/11. Nothing that Reclamation or any other federal government agency was prepared for. And what it prompted, of course, both in the government sector and in the *private* sector was a lot of very rapid scrambling around, you know, a kind of, "Oh, my gosh, we've got to do something" atmosphere. Which I would observe is typical of those kinds of situations. And absolutely the first thing, I think, anybody who took a deep breath and stopped to think about a *little* bit had to acknowledge is we just absolutely didn't have information that allowed any reasonably calculated, intelligent decision to be made. Because we just didn't know if that terrorist attack was an aberration, unlikely to be repeated, or if it indicated a capability to attack targets on American soil in fairly short order, you know, in the next year or two or three. You know, utter lack of information. At least not flowing from the military and the national intelligence system to those of us outside that system who were not a part of it; didn't have the necessary clearances to even receive information. It was a big sucking vacuum, frankly, Brit, from Bill McDonald's perspective. We just didn't know what was going on, and it made it extremely difficult to try to make useful judgements.

But the *politics* of the moment were very clear. And that was we're going to throw money at this, hopefully smartly, but we're going to throw money at it because we got to look like we're doing something, and, I don't want anything to have happened on my watch. (Laughs.) And I, again, it is Bill McDonald's personal judgement, I was disappointed about how the Department of Interior handled that first two or three years, because it had the flavor of just do something so it looks like we're doing something. And we had a lot of really intense discussions between the assistant secretary, the commissioner, and the [Reclamation] Leadership Team about what the right thing to do would be. But at the level of the political appointees, again, frankly, it was made clear to us at the career level go do something because we don't want to be the ones holding the bag if something goes wrong.

You know, the other key thing on an issue like this that becomes immediately clear, but, again, its not rocket science, its just the nature of the business, is that the odds of something happening are very, very low. But *if it happens* the consequences are potentially huge, and that makes for very difficult public policy decision making, because you're dealing with a very low probability event, about which you don't know a whole lot, at best. So while your gut tells you its low probability, you don't know how

low a probability. You're [not] getting, again, in a civilian agency in those beginning years, in the loop on what intelligence information was or was not out there. You're getting very poor information with which to make terribly important decisions, because if you're wrong that consequence will be so enormously high in the way of loss of life and property. So there was enormous tension in the system as you try to come to grips with that kind of issue. Its not like, however, the issue you face in dam safety, it's [not] the same sort of thing. You have better information because its an engineering/science *kind* of question. You can take a more deterministic approach in dam safety issues, to defining the risk that could be encountered, the probability of that *risk* coming to pass through any particular failure mode in a dam because you're dealing with known quantities, you know. You can really begin to get some sort of fix on if it failed this rapidly *and* the reservoir was full, how fast would the water move downstream, how far would it spread out, how deep would it be, what velocities would it have, and therefore what kind of population's at risk. Those are far more quantifiable, even though they are estimates, too, but they're far more quantifiable than this question of is a dam a likely terrorist target; if so, in what kind of time frame; and what physical features at a dam are actually vulnerable to what kind of attack. And that started getting into a whole lot of technical engineering issues about explosives, how they can be deployed; and how embankments, concrete, steel withstand impacts.

And, you know, we just didn't have any information in that first three-, four-, five years. *But*, clearly the direction was, "Go out and do something." *I* think civilian agencies on the whole overreacted and spent a lot of money that its not clear to me has been well spent, but its been done. You know, there it is. You know, I think we certainly got smart fairly rapidly about what kinds of features really represent risks from explosive kinds of devices or personnel attacks. By the latter, I mean a terrorist organization literally using people to get to major operating features of a dam or a powerplant, which, if they got control of, could wreak havoc. So we got a much better understanding of that, although, still, very intense debates about how much money do you spend to avoid a risk that is so small that you're not even sure what it is. *But*, again, the consequences could just be enormous. And what I'd emphasize there above all is that's just a really hard public policy call, and people bring different attitudes and perspectives to bear on that kind of issue. So just, you know, tons of debate about that. It certainly led Reclamation to what I think, now, although it was a rough four or five years getting our arms wrapped around it. I think we've got a pretty darn intelligent and thoughtful process that tries to make that risk-consequence trade off, you know, brings some common sense to bear on what kind of expenditures you make and that last little increment of risk is not worth the enormous marginal cost, and life's not risk-free. Its just the way its going to be.

Road Closures

But there're going to be more debates to be had out there. Probably the principal one remaining at this point in time is road closures. The tops of many dams in Reclamation are public roads, to the point that county and state highways, you know, were intentionally designed across the tops of dams. The two or three biggest hot ticket items, like the road across Folsom, have been dealt with, decisions made, but

there're several more road closure decisions pending, and that, again, is a very difficult issue because the odds of somebody driving a truck out on top of a dam full of explosives, which is going to be the issue, *has* to be exceedingly small, *but* its crystal clear that the right size truck packed with the right stuff can do damage. And if the hole at the top of a dam is big enough and the reservoir's full when it happens, you clearly have a failure mode. But, you know, what are the odds of that happening versus the expense of relocating roads or the public inconvenience to just flat closing roads and telling people you gotta make a circle fifty miles longer than you used to because you're not going to drive across the top of the dam. And it brings the national perspective on security directly in conflict with local preferences and economics where people are accustomed to driving across the dam to get to the ranch or to get to the campground or to take a shortcut. And they just feel, in most cases, totally put out that the federal government would even *think* about closing the road across the dam. The general public, in a lot of ways because of the nature of the issue, you can't provide them the kind of intelligence we're aware of that makes us sensitive to why you've got to worry about a road closure. (laughs)

So, that makes it difficult because you're got a public that needs to know as much as possible, but you've got a national security issue that you really walk a fine line about how much you can say and how you characterize the nature of the risk. So, you leave the public somewhat uninformed, necessarily, and that makes it really hard for the public to react in a thoughtful way. So, I think we got some tough road closure issues still coming. Other than that, I mean there's always things that will need to be tightened up a little bit more, and if the nature of the risk in the future changes significantly compared to the assessments that are available to us as of, you know, '08, '09, 2010, then, you know, that may reflect on the decision-making process.

Issues with Armed Guards

The other big debate was having armed personnel at dams. And that could be a discussion that continues in the future. I think, at least as I was retiring four months ago, I think Reclamation had pretty well settled its decision-making process in that regard. The decision that had gotten made is that we would have armed personnel at several key facilities.

The only one that we decided to actually use federal Reclamation employees to be that armed guard force was Grand Coulee, of course. The other facilities where we have armed guards, that's been done by contractually hiring security firms that have that capability. Lot of pros and cons as to which way you do it. Personally, Bill McDonald, as regional director responsible for Grand Coulee, there is only one thing in my whole career that I ever lost sleep about. It was not dam safety. It was not the employee that went berserk. What *I* lost sleep about was the armed guards at Grand Coulee. Because they were carrying heavy firepower, and if there was every going to be an accident, *that* was likely to be the place where it occurred with a loss of life. And we, in fact, had some close calls up there. And it just petrified me to be responsible for forty-five folks who liked being in a job where they carried firepower for the purpose of killing people. That just brings a mentality that is foreign to me

personally and my value set, although I understand why we needed it and what it was there for. But it is so difficult, and the military has the same problem, any armed force like that that you've got to keep on their toes, you have to keep them disciplined, but you also have to keep them engaged and interested because the nature of the duty is they're there twenty-four/seven for the potential of that extraordinarily unlikely event which means their job, fundamentally, is a very boring, *tedious*, repetitive job. And when human beings have that kind of job, then that's when they make mistakes. You know, it happens around big machinery; it happens when you've got firearms like that, the slightest laxness, slackness in the discipline of that work force, is when accidents happen. And it just petrified me to have to have that responsibility. So I was glad to retire and get that one off my plate.

You know, that said, I want to say that after some struggles we really have, you know I want a clear historical record here, a couple of key people we were able to hire—former police chiefs, that are very knowledgeable about that business. They are very attentive to the safety and training requirements, and I got a lot more comfortable after three or four years, but we had some real growing pains. I mean trying to stand up an armed guard force from scratch, when you've never been in the business, you know, we had to learn the standards, we had to learn the peculiarities of some federal requirements relative to employing people that have the authority to carry firearms. They're not a police force, they're not commissioned law officers, so you had real tricky issues about use of force, how they interfaced with law enforcement, you know, where federal jurisdiction started and ended, could they give chase and leave the federal owned property—some very difficult issues in that regard.

And we had some false starts in the first three or four years, before we began to get a handle on it. I'm worried at Coulee that it will continue, however, to be a long term problem because the federal grade structure is such that we really are not competitive with what the private security firms pay people who are as highly trained as the people at Coulee. And we rapidly discovered that what was happening at Coulee is we were giving these people an excellent training program in the use of firearms, etcetera, and they'd spend a couple years up there and then they'd go make twice as much money in the private security firms. *And* Grand Coulee's a pretty remote small community with not a lot of things to do for the typical kind of person that would apply for a job up there which would be a young man, some young women, probably military background, single, and that's a pretty boring community for, you know, "kids," quote, unquote, in their twenties to live in. And the rate of turnover was just enormous. So it, one, was making it very difficult to build a cohesive force, and two, it was costing a fortune because you were training these people, and they were going off to the private firms. You know, we *never*, from the day we started until I stepped down as regional director, we had never, ever [have] gotten to the full force capability of forty-five people that we wanted up there, because we'd not sooner get them trained than they'd either get hired away or we'd have a disciplinary problem and have to get rid of somebody. So it was a heck of a headache.

Storey: Was that their whole job, was carrying guns?

McDonald: That was it. (Storey: They weren't doing anything else?) No other, they weren't mechanics, they weren't operators, they were armed security guards.

Storey: If they weren't a, let's see, how to ask this question—my understanding from what you've said is we didn't get authorization for a police force.

McDonald: No, they are *not* policemen—they are *not* law enforcement officers.

Storey: So, what are they? How is they're entitled to carry on a federal project. . .

McDonald: The best way to think about them is they are a defensive . . .

END OF SIDE 2, TAPE 1. JANUARY 28, 2011.

BEGINNING OF SIDE 1, TAPE 2. JANUARY 28, 2011.

Storey: This is tape two of an interview by Brit Storey with Bill McDonald on January 28th, 2011.

If Grand Coulee happened to be attacked . . .

McDonald: If Grand Coulee were attacked, they are a defensive security force. So, if terrorists entered onto the federal property, they are the first line of defense and authorized under federal law to use firearms to stop intruders that technically have trespassed; that's what if boils down to. The statues are clear; they have the authority to use armed force, but they could not make an arrest. Let me take that example a step further to help illustrate it. I need to stop and think about how much I can say on the record here versus what's government-use only information. Let's just keep it really simple.

They are armed. There are duty stations, you know, guard posts, the obvious stuff. They see an intruder come past the point of the federal property line, whole place has been fenced and signed now so its crystal clear you're on federal property where you're not entitled to be. They observe somebody come on, they call out to that person to stop, person doesn't stop, they become suspicious or they see weapons, or a big truck is being driven in that, you know, they're clearly trained to recognize different sizes of trucks can have different explosive capabilities. They are authorized to react to that and to use firearms if they have to stop that intruder or that vehicle from proceeding. Let's say they shot the tires out of a truck, so the truck's stopped. The drive jumps out and doesn't run further onto the federal property but heads back up the road to get off federal property. They can chase that person; it would be reasonable for them to do so. They can use force to stop that person. And let's say they successfully do that, they cannot arrest that person, but they do have authority to detain that person until the local law enforcement officers can be called, and arrive, and make the arrest. If that person had gotten off the federal property and was not threatening to turn around and aim a gun, the guards basically need to stop at the federal property line, because they do not have the authority to use force off the federal property arguably, unless they are in hot pursuit. (Storey: Um-hmm.) So they are *not* law enforcement. They are a defensive security force—best way to think about them.

Storey: But not deputized or anything.

McDonald: Not deputized or anything like it. One of the very conscious decisions—we didn't even want to do that. To get law enforcement presence, what Reclamation did at Coulee, and, fundamentally what we did everywhere else, is we entered into contracts with country sheriffs or local municipal entities or state patrols to be that law enforcement presence. And we actually have been paying them money to beef up capabilities, communications, SWAT teams, equipment. So the law enforcement personnel in the jurisdictions around Coulee, as an example, will actually come on site and physically train at and on and inside Coulee so they are familiar, should they ever have to be called upon, with what they're going to do. Particularly SWAT teams come and train on-site and one of the *tough* management issues is how to interface law enforcement presence and personnel with the guard force so they don't end up literally tripping over each other and inadvertently shooting at each other in opposite directions. And that, again, is a real nightmare. We had some real lessons learned when we did tactical training exercises about the difficulty of controlling that command situation when you had a mix of law enforcement with their authorities, not under Reclamation's control, and our security guards not under, technically, law enforcement control. Basically solved that problem by saying law enforcement takes over. The chief of our security will sit there and work with law enforcement to do what law enforcement needs.

Storey: Interesting. Another thing that I . . .

McDonald: [If] somebody told me when I got in the water business that I had to worry about that issue, Brit, I would've—I never would have guessed that I would be in the security business towards the end of my career. And it was interesting, I mean, yeah, I mean it was learning something new, a whole different perspective on the world we live in, but like I said, it's the one thing that I lost sleep over.

Storey: Another thing I've sort of been watching over the years—when we created area offices back in '94, I guess it was, (McDonald: Um-hmm. '94, '95.) there was one created, I think it might have been called the Lower Columbia Office (McDonald: Yes.) in Vancouver. (McDonald: Vancouver, Washington. That was the first physical location, yes.) And then all of a sudden it was in Portland, and now its in Bend. Tell me about what's going on there.

Lower Columbia Area Office

McDonald: That was—the original creation of the that area office, all of the area offices, for that matter, preceded me being the regional director. That was the period of time after I helped write the commissioner's *Blueprint for Reform* that I was transferred out to the regional solicitor's office in Sacramento. So I don't have any first hand knowledge of why that area office was originally located in Vancouver. The story I recollect, and I frankly may not be correct in this, is Reclamation, the Pacific Northwest Region, had a small office in Vancouver, they basically were beginning to work on the salmon issues in the Columbia River. And I think it might have only been two or three people—four or five, maybe. But they lived in Vancouver, and they had office space so it was left in

Vancouver. And I think, as I understood it, some capacity was added to that small nucleus of people already there, but it was, even in the beginning, a very small office. I think less than ten people. As I understand it, there were some personnel changes, and maybe a better deal to be had on a lease across the river in Portland. *Plus*, the federal agencies we were working with were all officed in Portland, and, in fact, in an area of town called the Lloyd Center. So, I think the move from Vancouver across the river to Portland was just the right thing to do in terms of efficiency and what have you, so that we were literally in the same building or across the street from Fish and Wildlife Service, the Portland Regional Solicitor's Office, the National Marine Fisheries Service, Bonneville Power Administration, B-I-A, Fish and Wildlife Service; made more sense to be there.

Storey: This is the area out east of downtown toward the airport or the B-P-A building?

McDonald: Yes, right, the building Reclamation was in was right across the street from B-P-A. So I think that's what that was all about. The office, it was small when I came. I don't think the office ever got bigger than fifteen or sixteen people. It was a unique office in that it had no Reclamation projects under its geographic jurisdiction that were operated by Reclamation. That is to say there were no reserved works. Every other area office in the region, and with only two exceptions I can think of, every other area office in Reclamation, has operating projects that are reserved works. So you got Reclamation employees that you're managing doing day-to-day operation and maintenance. The office in Portland, which was called the Lower Columbia River Area Office at the time, had no reserved works so it was a small office because it had no operating and maintenance personnel and it really didn't have a program—was the ultimate problem that I ran into. It had a few planning studies that the Oregon delegation was getting written in. It worked on E-S-A issues in the way of individual consultations on the Umatilla Project, Deschutes Project, and the Tualatin Project. It, you know, worked on the water conservation field services program with the districts, had to deal with some of the recreational management issues without partners at the projects, but it was that tangential sort of thing, and for that reason a very small staff. And in a lot of ways the capabilities to do the work in that area office were over in the regional office in the Resource and Technical Services Group because the area office didn't have enough work to have a full time engineer, to have a full time recreation specialist, you know, have a full time land management specialist. It just didn't have that work load.

So, frankly we struggled the whole time I was regional director about how to manage and be efficient about that office. I ultimately concluded that it was really getting difficult to justify that office as being cost efficient and effective. You know, there is a point at which you're just too small to effectively have an office that'll stand on its own, because it carries a disproportionately large amount of overhead to keep it going. So, when a particular area manager stepped down, which created a vacancy and gave me the opportunity to think about did I want to fill that vacancy or do something different, I decided, late in 2008, early in 2009, that we really had to admit it was not a cost effective office and that what it was responsible for could, I concluded, be handled out of the area office that was in Yakima. So we technically closed the area office, we physically did close the facility in Portland. We did not move the area office

to Bend. Bend had always had been there as a field office. We did move some personnel to avoid a RIF to Bend because it made sense. But Bend merely became a field office of the Yakima Area Office, and we renamed the Yakima Area Office something, Yakima had been what, the Upper Columbia Area Office, and we ended up just calling it the Columbia Cascades Area Office, because it became responsible for everything in Oregon and everything in Washington east and west of the Cascades.

Storey: Interesting.

McDonald: Just a straight forward management decision about what we could afford and how we could be efficient and effective at it. It was just too small an office. We had to bite the bullet and do the right thing and deal with the personnel disruptions that it admittedly caused. Its never nice to do those things, but you get paid the big bucks to make that kind of hard decision, as the saying goes. (Laughs.)

Storey: One of the things I think we were going to talk about is the major issues when you were acting commissioner.

McDonald: Yes. Where you want to start, 2001 or 2009?

Storey: Well, let's start with the first one.

Acting Commissioner in 2001

McDonald: Okay. 2001, acting commissioner from late January, I think I was asked to report on the 19th or the 20th, the day of inauguration, until the middle of July when John Keys was sworn in as commissioner. Absolutely no doubt what *the* two big issues in 2001 were. That was a drought year in the Columbia River Basin, and generally speaking in the areas west of the Cascade Mountains, including the Klamath Project, which was not something I was responsible for as regional director. The Klamath Project is under the jurisdiction of the Mid-Pacific Region. But a pretty serious drought and two issues that pretty much consumed my attention as the acting commissioner. The first was that certain fish species had been listed in the Upper Klamath Lake, which is a feature of the Klamath Project, a natural lake that had been dammed to increase its elevation and serves as a project storage feature. A sucker species had been listed in Upper Klamath Lake, and *also* a salmon species that occupies the Klamath River and the Trinity [River], to which the Klamath is a tributary downstream, had been listed.⁵⁰ And Reclamation, for a period of time, had been in consultation with both the Fish and Wildlife Service, which has jurisdiction over the sucker, and the National Marine Fisheries Service, which had jurisdiction over the salmon species—had been in consultation about E-S-A compliance relative to reservoir operations. And, *if* memory serves me correctly, what had happened is for lack of agreement on kind of an overall scheme of things there had been two, or perhaps three, biological opinions that had given E-S-A coverage under section 7 one year at a time.

50. The Trinity River is actually a tributary of the Klamath River.

Issues on the Klamath Project

So, when I became commissioner, acting commissioner, in January of 2001, Reclamation was in the process of working on yet another annual biological opinion for the 2001 irrigation season, and, to make a long story short, *that* consultation was not going anywhere. The Fish and Wildlife Service, for its part, was sending all kinds of signals right away as I settled in, in late January-, early February, that they would issue a jeopardy opinion, and *if* there were reasonable and prudent alternatives they would be of the nature that would simply require for the water year we thought we were probably looking at in 2001 that the project be shut down with no delivery of water. So intense and, on the salmon side, relative to National Marine Fisheries Service, likewise indications as I stepped in that we were going to get a jeopardy opinion and if it had a reasonable and prudent alternative it would require significantly greater flows in the river than project operations historically had resulted in. And *also* the other thing that became very apparent is the requirements that *probably* were going to come out of National Marine Fisheries Service were in conflict with the requirements that Fish and Wildlife Service was looking at relative to the sucker in terms of how Upper Klamath Lake should be operated.

So, just an enormous amount of time spent trying to see if those two agencies and Reclamation could get onto the same page with a legally defensible pair of consultations. Just didn't make any progress in the course of February and March. Typically water is turned on on that project in the first week or two of April; generally not later than April 15th. So it was getting to be a very urgent issue. Meanwhile the water year very much did develop as a very dry drought year so water supplies were going to be pinched anyhow, making it extremely difficult to maintain the elevation of Upper Klamath Lake, which was the key issue for the sucker *vis á vis* trying to maintain streamflows *downstream* from Upper Klamath Lake for the sake of the salmon. By, generally speaking, early March, I concluded that it was *not* looking good at all, so I started bringing it to the attention of what few political appointees there in office at that point in time. Again, keep in mind, of course, assistant secretaries, the solicitor, the commissioner, the other bureau directors, are all positions subject to Senate confirmation. So, in the March time frame, none of those people had been confirmed. Some of them hadn't even had public announcements of nominations. The White House was still going through the vetting process in many instances.

So, when I say I turned to the people that were there in political positions, what it fundamentally boiled down to is the chief of staff, a gentleman by the name of Brian Wademann, the deputy chief of staff, lady by the name of Sue Ellen Wooldridge, the counselor to the secretary, a lady by the name of Anne Klee, a communications director, director of the Congressional Affairs Office, and the secretary herself, Gale Norton. That was it. There weren't any other, you know, political policy officials in place. So I basically went to the chief of staff and the deputy chief of staff to start briefing them and raise the issue. They made the decision that Sue Ellen Wooldridge, the deputy chief of staff, would become my point of contact and my counterpart's acting director of the Fish and Wildlife Service's contact. And in the course of March, Sue Ellen, the person serving as the acting director of Fish and Wildlife Service, and myself

began to wrestle with the issue at the executive level. Where it all led, by the end of March was just crystal clear that the agencies at the level of the career people were not going to be able to make a decision and there was a frantic series of meeting in the last two or three days of March, and in the first five days of April in 2001 trying to bring the issue to a head, focus more on the clear difference between what NMFS thought it needed for salmon and Fish and Wildlife Service thought it needed for the sucker in Upper Klamath Lake. Eventually, in the course of that period of about ten days the tribes on the Klamath and Trinity rivers, who have a—well, let me back up.

The tribes who have an interest in the sucker, and its part of their culture and religion in Upper Klamath Lake, wanted to express their perspective to the new administration. The tribes downstream on the Trinity, the Yuroks and the Hoopa, who have an interest in the salmon, again part of *their* culture and their religion, wanted to express their view to the new—Hoopa and Yurok wanted to express their perspectives to the new administration. So there was a whole series of meetings. I think I probably devoted twelve hours a day in those last few days of March and the first week of April working through the process trying to see if *any* kind of agreement could be reached where the two regulatory agencies would be comfortable there was an adequate R-P-A. And Reclamation, for its part, could look at the R-P-A and say it gives me *some* water supply to operate the Klamath Project with. (Storey: R-P-A is?) Reasonable and prudent alternative to the *proposed* operation. The *proposed* action was found to cause jeopardy—that is to say, the operation Reclamation proposed for the 2001 irrigation season. And so, under the statute and the regulations, the regulatory agencies are obligated to propose a reasonable alternative to what's being sought by the agency if they think it would cause jeopardy. In the midst of all that, National Marine Fishery Service and Fish and Wildlife Service went behind closed doors, excluded Reclamation from the conversation, to settle their differences about how much water the National Marine Fisheries Service wanted out of Upper Klamath Lake for salmon flows. And the Fish and Wildlife Service had to come to a decision about how much water it was willing to allow to be taken out of Upper Klamath Lake without jeopardizing the continued existence of the sucker.

So they kind of disappeared for a forty-eight hour period in there, came out of those meetings, and announced what their conclusions would be. And their conclusion was not a single acre foot of water could be delivered that year if avoiding jeopardy to the species was to occur. That led to a series of meetings all day on April fourth and conference calls with the people out in the field in the two regulatory agencies. Didn't get anywhere. Those people were asked to get on airplanes and fly in. They literally came in overnight, and we ended up having meetings, would have to actually pull a calendar out, but we ended up meeting late into a Friday night, had a major meeting on Saturday for hours in the secretary's conference room, attended by we career officials and Sue Ellen Wooldridge, and it ultimately became apparent overnight on April 5th going into April 6th, that there just—it simply *was* the final conclusion of National Marine Fisheries Service and Fish and Wildlife Service that the operation they proposed in the form of reasonable and prudent alternatives, which required zero delivery of project waters, was simply where they were going to end up. *At that point*, contrary to what people think actually happened, Sue Ellen Wooldridge, the political appointee, deputy

chief of staff, basically turned to me and said, "you," Bill McDonald, "are the career official that knows this business, and you're in charge as the acting commissioner, you simply need to make the right decision." So what I'd say on the record and to leave a clear history of, is there was absolutely no political interference with the decision the two regulatory agencies made or I ended up making, which was to shut down the project, as everybody knows, for the 2001 irrigation season.

That decision, unfortunately, was left to me to make. Secretary Norton never had any involvement. I never personally spoke to her throughout the whole thing. I'm confident her staff was keeping her apprised, but the decision was left to the career people to struggle through and do what we collectively thought the law required. And *I* ultimately ended up on the night of the fifth and the morning of the sixth, you know, simply having no choice since the regulatory agencies were firmly of the view that the only reasonable and prudent alternative was to shut down the project for the 2001 irrigation season. I really had no choice because you're obligated under the E-S-A statute and regulations to not jeopardize the continued existence of the species, and our scientists, which we had some looking at the issue independently, were not prepared to advise me that they could stand apart from the two regulatory agencies and insist that they were wrong and Reclamation was right. You know, they did *think* reasonably different interpretations of the scientific data could be arrived at, but they couldn't—they informed me that they couldn't stand up and say they, in their views, were absolutely right, and the others were wrong. So I was faced with that kind of split vote, and I informed Sue Ellen on the sixth that it was my decision that Reclamation had no choice but to close down any deliveries of water to the Klamath Project for that operating season. And that announcement was made publicly on April sixth.

Closing Down Water Deliveries to the Klamath Project

The secretary's office did participate in coordinating a press announcement, of course, because we all knew it was going to blow up and be extraordinarily controversial. So that in fact happened. Then the next step became that there literally was an uprising in the local community. And in the course of April and May, Reclamation found, a couple of times, that people went out at night and cut the locks off the gates to get to the dam on Upper Klamath [Lake] and opened the gates so that water started flowing down the canals, and we had to go back out and close the gates. I think we did that once or twice, and after it happened, say, a second time, we went out and we welded the stem valve on the gate shut so you couldn't open the gate. Couple of nights later somebody went out with a blow torch and cut that off. (Laughs) I mean it was that kind of emotional issue, and quite understandably. I mean, we were tearing a community apart in terms of just cutting their livelihood out from under them. You know, it led to public protests, congressional delegations became immediately involved, but the decision stood. The new administration made no effort to reverse the independent judgement of the two regulatory agencies. In the middle of all that, the person who had been the area manager in previous years and then in the January-, February-, March-, early April time frame, Karl Wirkus, who's now the regional director in the Pacific Northwest, had an opportunity to move to a different position in Reclamation, so I, as acting commissioner, confronted a vacancy in that area manager

office right in the middle of this process of people cutting down fences and breaking locks off and taking welding torches in and cutting the welds off the gate. The public protests it started, you know, people were making inflamed comments about people getting killed. It was a serious situation. So I asked Eric Glover, who I had enormous respect for as a really calm head, to temporarily go up to Klamath and be the acting area manager. He at the time was my area manager, as regional director, down in the Lower Columbia Area Office we were just talking about. So Eric, bless his heart took the task on. It got so bad that we actually . . .

END OF SIDE 1, TAPE 2. JANUARY 28, 2011.

BEGINNING OF SIDE 2, TAPE 2. JANUARY 28, 2011.

McDonald: We actually closed the area office because of security concerns. Fish and Wildlife Service, to whom a lot of this animosity was obviously directed, had their office right across the parking lot. They likewise were closed. There's a period of time in which we asked the sheriff to patrol the parking lot and put armed sheriffs out there. We reached a point where it got so volatile in April that we allowed employees to choose whether to come to work or not. Some of them felt so deeply threatened, and, I mean, honest to God threats were being made to individuals. We were getting anonymous notes slipped under the office door at night. Threatening phone calls would show up on the voice machine. It was a serious situation. You know, evolved into a couple of rallies at the dam on Upper Klamath, and one of these events what happened is somebody got in overnight, lifted the gates so water began to run down the canal and chained it. So we needed to go out there and cut the chain off and drop the gate again. And it was so bad at that point that I would not let Eric Glover go out there without the sheriff going along because there was a crowd at the fence, and that particular instance it was pretty tense. The sheriff finally got the crowd calmed down and made a pathway so that Eric could get to the gate and go out and, with a couple other folks, get the chains cut and lower the gate again. But, I mean, it was that kind of terribly emotional and intense and threatening kind of situation.

So, as you well imagine, I spent all of April and May essentially doing nothing but trying to manage the Klamath situation. The nature of that kind of security incident was certainly most intense in April. It began to taper off some in May. Things were a bit calmer. The new administration, of course, had to begin to deal with the political fallout of that, and Sue Ellen Wooldridge, on behalf of the department, again, got put on point and became deeply involved at that point. While she'd left the decision about what to do to me, you know, the politics needed to be dealt with by a political appointee. And the local community started holding public meetings and rallies, of course, to protest the decision. They got so big they had to have them down at the fairground. Three or four thousand people would show up, and they started asking Sue Ellen to come out to a variety of meetings to explain herself and how could the administration let this happen. The dynamic, of course, is this is a Republican administration, our irrigators probably tend to be of that persuasion politically, and one of the dynamics was how could a new administration let this environmental law have this kind of impact on our local community. I mean, at the political level, there was just intense bitterness that the Bush administration, that a lot of people figured would deliver

them from the environmentalism as they perceived it, of the Clinton administration, could let this happen. You know, it was the first thing coming right out of the block, three months into their tenure on April 6th and I have to announce that we're going to shut a project down because of biological opinions. So, you can *imagine* how deeply the emotions ran.

Meeting an Angry Public

At one point I accompanied Sue Ellen, as an example, to a meeting at the public fairgrounds in which we sought to explain where we were trying to move given that the decision had been made. It was so volatile at that point that when we all flew to Sacramento and got in a car, we rented a car so it wouldn't have government plates. At the advice of the sheriff, when we got close to town, called ahead, the sheriff deputies met us on the highway outside of town and literally convoyed us in with a patrol in front and back of us, to the hotel where they very quietly registered us for the evening. And the event was the next morning, and, again, we were accompanied by sheriff's patrols down to the fairgrounds, and the secretary's bodyguards actually accompanied Sue Ellen Wooldridge. I mean, they were that concerned about the personal safety of Sue Ellen. You know, in the midst of a very, very difficult situation like that there still were things to chuckle about, and there's one worth saying for the oral record. The bodyguards for the secretary that had accompanied Sue Ellen and were obviously with all of us, but their point was to be sure she was protected. Number one, [these] are guys that are, you know, big, sturdy, burley guys in great shape. They all have earpieces on because they're in communication with each other through their radio systems. But to top it off, and that makes them fairly obvious, and they, somebody hadn't clued them what it meant to go out to a western community, so they're in their suits and ties, you know. They stood out like secret service guys (laughs), and then, to top it off, one of them was an African American gentlemen who was *probably* the biggest of them. He looked like a football player, and he had deep, black skin and was bald. And we were all sitting up on the podium, and these guys were just nervous—well, not nervous, I mean they are in the business. They're calm, cool, and collected, but they were on their toes because Sue Ellen was headed up to the podium. But here was this black dude that, you know, you could have picked out from a mile away in a white, ranching, you know, western community town, and Sue Ellen and myself and Steve Thompson [who] was the representative of Fish and Wildlife Service, got to chuckling to ourselves up on the podium about surely the crowd has no idea that security is here. And you could just pick these guys out from a mile away. (Laughs.)

So, it was that kind of a very intense and difficult period, and its, other [than] my armed guards at Grand Coulee, it's the only other time I lost, and I lost a lot of sleep. I was really worried that some federal employees in any of the three agencies, Fish and Wildlife Service, National Marine Fisheries, and Reclamation, were going to get physically get harmed. And I was likewise very concerned about the local community, because it was *clearly* going to have an enormous impact. It's a terrible feeling to sit in that chair and have that kind of decision to make where it was crystal clear what I needed to do under the law, given the scientific judgements of the two

regulatory agencies had come to whether I agreed or not, it was their prerogative to make that call, and I had no choice, essentially, but to observe it. But the *consequences* were just enormous. And it's an example of the Endangered Species Act, in my opinion, having appropriate policy objectives but in execution it's a very blunt and sometimes not thoughtful approach to dealing with the issue of an endangered species, and when that happens you get the kind of thing that happened at the Klamath Project.

We fortunately managed to get through all that without anybody getting shot or physically harmed. There was a lot of property damage. We had to keep fixing the fence and doing those kinds of things. The community, though, I've been told, Brit, I've never really looked at statistics, but, you know, there were farms that folded in the face of having no irrigation water and therefore no crops. I've been told that the county health service, for example, kept statistics and, you know, their case load of people struggling rapidly mounted in the few months after that decision. I've been told, I can't say it's accurate at all, but the suicide rate went up for a period of time. I mean, it tore that community apart. You know, and there are families in that community that were the families of Fish and Wildlife Service employees, and they lived in fear of their life and their property for a period of time. It was a really ugly situation. John Keys inherited it the day he became commissioner, and he spent an enormous amount of time trying to continue to deal with those threats and security issues and just trying to calm the situation down and then get ready for the same issue being repeated in 2002, since we only had a one year biological opinion and that shut the project down, number one, but again only had a duration of a year. So whole darn process had to be redone in the winter of '01-, '02, heading into the spring for the irrigation season. Fortunately water supply outlook improved for 2002, little more give and take among the regulatory agencies. I don't remember the particulars. We didn't have to totally shut the project down in 2002, and we haven't since 2001, but they've never had a full supply because of water shortages and regulatory constraints since 2001, and it continues to be one of the toughest issues that Reclamation's still trying to work its way through. (Storey: Um-hmm.)

The other big issue, need to stop for now, but remind me to come back to it. The other thing is not only did you have the drought in the Klamath, but the drought was throughout the Columbia River Basin. It was the entire Pacific Northwest. So while all this stuff was happening on the Klamath, the other train wreck was Columbia River flows were at historic lows. And the premise of the 2000 biological opinion, that had been issued by the National Marine Fisheries Service on salmon, fundamentally was not working out as we moved into 2001. So, need to come back and talk about that.

California Power Market Unraveled

And the other thing that happened is the independent system operator, the institutional arrangement in California by which they set up a mechanism for the marketing of power across utilities in California, was in only the first or second full year of its operation, and, with the drought, the federal agencies could not ship power to California in the winter and early spring of 2001 as they normally do. And that set off a

frantic trading war in the electrical utility markets in California to buy electricity on the spot market. And, as you may recall, the California electrical market unraveled in the spring of 2001, (Storey: Yeah.) because, in part, the Federal Columbia River Power System couldn't generate the energy that it typically did and *shipped* to northern California. And the other big issue was because of the way the transmission system was configured at the time, you couldn't get electricity between southern and northern California. You had a bottleneck in a key intertie. So, Klamath unraveled and the California power markets all unraveled at the same time in February, March, and April of 2001. So, my acting commissioner tenure that first time through was almost totally devoted to those two issues. (Laughs.)

Storey: Well, we can discuss them in more detail next time.

McDonald: About all there was to do.

Storey: Good. Thank you.

McDonald: Thank you.

END OF SIDE 2, TAPE 2. JANUARY 28, 2011.
BEGINNING OF SIDE 1, TAPE 1. NOVEMBER 8, 2011.

Storey: This is Brit Allan Storey, senior historian of the Bureau of Reclamation, interviewing J. William McDonald, a retiree from the Bureau of Reclamation on November 8th, 2011, at about 8:30 in the morning in Building 67 on the Denver Federal Center. This is tape one.

Well, I know that we had mentioned the McCarran amendment before where the United States waived its sovereignty in water rights issues, I'm wondering if you could talk a little more about that.

McCarran Amendment and U.S. Sovereignty

McDonald: Just a little, Brit, I'm not a student steeped in the history of all that. But basically the fundamental law is that a party cannot sue the United States, because the United States is the ultimate sovereign, unless the United States provides that it can be sued. So in the course of the development of the various water rights systems in the West, in the early part of the 1900s, one of the growing issues in the federal-state relationship, particularly as the Reclamation program matured, was whether or not the United States could be sued to quiet title to water rights or otherwise make claims to water rights. And eventually that issue came to a head, actually here in Colorado, with some lawsuits brought on the West Slope, and Congress passed a statute that we refer to as the McCarran Amendment that allows a state to bring the United States into state court to go through a general stream adjudication procedure. So that, if the United States is claiming water rights, either appropriated water rights, which would be the example for a Bureau of Reclamation project, or a reserved water right under the *Winters Doctrine*, which would be in-stream flows on national forests or national parks, water rights claim for fish and wildlife refuges, that sort of thing, those claims are all under the reserved rights

doctrine enunciated by the U.S. Supreme Court back in 1907 or 1909. So, it gives, the McCarran Amendment gives a state the ability to bring the United States in and assert their claims, and then the decision of the state court is binding on the federal government. So, basically it was about being able to bring the United States into general stream adjudications so that the right to federal claims could be adjudicated, forever put to rest. Prior to that you had to go to federal district court to get jurisdiction over the United States.

Storey: Uh-huh. Good. Actually somebody was talking about this recently with me about NEPA [National Environmental Protection Act] and how the United States waived its sovereign right under NEPA, and that just opened up, you know, a whole world of litigation.

McDonald: There's been a whole series of, I think, what people would generally call environmental statutes. There may have been some that preceded NEPA, but NEPA's certainly a kind of a marker, if you will. And generally what the United States did, what Congress did when they passed these laws, is they provided that third parties could bring what we call citizen suits. Since the environment, if you will, can't sue on its own behalf, Congress came up with this legal fiction, if you will, that the environment could be represented by interested citizens who have an interest in how a river basin is managed, whether a river's going to flow or not, how the Endangered Species Act is being enforced. So, those citizen suits are what environmental groups, and other groups, bring against agencies like the Bureau of Reclamation for failure to comply with an environmental statute. But absent Congress saying a citizen can sue, you could not do that. (Storey: Um-hmm.) So, it's again the same legal theory put into operation as a matter of policy in a different fashion by Congress. (Storey: Yeah.) That's where all these environmental citizen suits come from. They're essentially private groups asserting that a federal agency has not done what it's supposed to do under the law *vis à vis* protecting the environment. [However, these suits must be brought in federal, not state, courts. Sovereign immunity has not been waived.]

Storey: Yeah. That's very interesting. Let's see, you were acting commissioner, I'm trying to remember, was it between John Keys and Eluid?

McDonald: I was acting commissioner in 2001, so that would have been after Eluid and prior to Dan Beard, that was the transition from the first Bush Administration to the Clinton.

Storey: Well, Dan was *before* Eluid.

McDonald: Right. From Eluid to John Keys. Yeah. I apologize. Because that was going from the Clinton administration to the second Bush administration.

Storey: And as I recall, that was several months.

McDonald: Six months almost to the day from January 20th when the administrations changed, of course, until, I think it was the 17th of July when John Keys was sworn in. (Storey: Yeah.) And then the second time was during the 2009 transition—so that was from the second Bush administration to the Obama administration. So that was between Bob

Johnson at the end of the Bush administration and the current commissioner, Mike Connor, who was selected by President Obama. And that was five months, a little shorter. Mike's [Senate confirmation] moved pretty quickly.

Storey: So what kinds of issues came up during your first stint in that position?

California Power Crisis

McDonald: In the 2001 transition, there were two major issues that consumed a lot of time. One, that was a drought year, pretty generally in the West, but particularly in the Pacific Northwest. One of the lowest years on record in the Pacific Northwest in the context of the Columbia River. [Reclamation] was struggling through the first long term biological opinion that had been issued, and because of the drought many of the objectives relative to transport of salmon or spill to bypass salmon around turbines over the spillways, the flows could not be met, number one. And, number two, the power system was way short of power, and in particular that was the year the California I-S-O power crisis occurred and their approach to unregulated markets began to unravel, and you had enormous spikes in the cost of power. And basically the way the Pacific Northwest system operated at the time, is that California needed the bigger part of its power in the summer for air conditioning and irrigation pumping. So the Pacific Northwest Columbia River system, the Federal Columbia River Power System, tended to exchange power into California, but only northern California because they lacked an intertie to get to southern California. So the Pacific Northwest system would interchange electricity into California in the summer, and then California would have excess capacity, and they'd run it back up to the Northwest in the winter, which is the heavy electrical demand in the Pacific Northwest.

That system entirely broke down in 2001, and so you had rolling brown-outs in California. The Pacific Northwest came within a fraction of an inch of getting into rolling brown-outs but managed to get through it. But they were paying, you know, five-, six-, seven hundred percent normal prices because of these tremendous peaks in the spot market driven by the I-S-O deregulated market system in California falling apart. (Storey: I-S-O is?) Independent System Operator, which was the mechanism under state law that the state created to have an unregulated, more or less, purely market-based approach, and you had all kinds of people trading electricity futures, effectively, an hour at a time. You'd buy an hour of capacity and energy, and the market just went nuts in the face of a low water year and other conditions. So, that was a very hectic period, and the administration, of course, as an incoming administration was immediately confronted with, I think its probably fair to say, in that case the crisis of power shortages in California.

Klamath Endangered Species Issues

The other enormous issue was that was the year that Reclamation, the Fish and Wildlife Service, and National Marine Fisheries Service could not find a way to avoid a jeopardy opinion on the operation of the Klamath Project. So, I ultimately ended up having to make the decision to shut down the entire Klamath Project that year. That's the year that we delivered not a drop of water in the Klamath Project, and it was chaotic, to

put it mildly. (Laughs.) You know, we had locked the headgate. Vandals would come out at night and torch the locks off the gate and [it] got so volatile and personal safety was such an issue that Fish and Wildlife Service's and Reclamation's field offices, which co-located, were closed a couple of times for several days because it simply was not safe for employees to be there. There were bomb threats. Weapons started appearing all over town, which, you know, its an open weapons, in accordance with Oregon law nobody was breaking the law, but, I mean, the town just bristled with anger at the federal government. So, I spent the better part of my tenure as acting commissioner struggling with the Klamath issue from early March until the day I left and John Keys got to step into it.

Storey: Um-hmm. And Klamath would have been out of P-N?

McDonald: No, Klamath, the Klamath River, is a tributary to the Trinity River. Trinity River then goes into the Pacific Ocean. The Trinity courses through northern California so its part of the Mid-Pacific Region. (Storey: Right.) There's actually a trans-mountain diversion out of the Trinity into the Central Valley Project. So the Trinity Division is a part of the Central Valley Project so (Storey: So neither you nor John had had a lot of experience with the Klamath.)⁵¹ No, I had not really worked Klamath issues until then. So the area office, Klamath Area Office was under Mid-Pacific Region.

Storey: Um-hmm. Just consumed your time, I'll bet.

McDonald: It did. I mean, it was, one, a tragic situation relative to the local community. Enormous environmental issues about what alleged damage might be done to the suckers in the Upper Klamath Lake or the downstream listed coho salmon. You know, personally a dangerous situation for the federal employees, and then to cut, ultimately have to cut water off to the entire project. I mean, we laid waste to the project that summer. Not a single crop was grown that required irrigation, and they really couldn't shift [to] any kind of dry land farming. It was a tragic set of circumstances all the way around. When I or departmental officials traveled out there we traveled with bodyguards. That's how volatile it was. They gave us the secretary's security contingent which was always one of my, you know, in every tough situation there's something funny, and this is a western, southwestern Oregon, small farm community, almost entirely white, as you can well imagine. And the secretary's bodyguards at the time were all these huge black guys, all of them, at least the ones I had contingencies with, all with shaved heads. So you'd go out to Klamath, and these guys, of course, would be in their white shirts, suit coats, ties, ear phones, you know, coiled cord running down the collar down behind their shirt and their jacket. And, you know, you couldn't help but laugh that we all stood out like major targets compliments of our security guards because we just didn't fit in the community. So, it was an interesting anecdote in an otherwise pretty miserable period.

Storey: To diverge a little if we may, what kind of security contingent does the secretary have?

Secretary's Security Contingent

51. For more information on the Trinity Division, see Eric A. Stene, "Trinity Division: Central Valley Project," Denver: Bureau of Reclamation, 1996, www.usbr.gov/history/projhist.html.

McDonald: I really don't know. I mean I have no personal awareness, and if I did, I probably couldn't talk about it. (Storey: Talk about it anyway.) All I can say is, you know, having been around the department for twenty years and, you know, often physically in the secretary's office or on the road at a variety of occasions with the secretary, there is some kind of contingent. Oh boy, when I was around, there'd be at least two or three people with the secretary that were obviously security personnel. I would assume they packed weapons. If nothing else, you could see bulges in obvious places. I don't know, frankly, what their legal stature is. That is to say, I don't know if they are National Park police, which would be logical to me, because that—well, I mean there are other bureaus in the department that have law enforcement authority. Maybe these are people that rotate through, you know, for one-, two-, three year duties that come from National Park police or Fish and Wildlife rangers, law enforcement personnel, Bureau of Land Management, Bureau of Indian Affairs. They all have law enforcement authority and most law enforcement officers are commissioned officers who can carry weapons. Could be the security contingent is selected from those people, but I really don't know. (Storey: Interesting.) Any time the secretary's around you will see a contingent of those folks, and they would typically send us or the secretary's staff, when we went to Klamath, during all of that, send three or four folks with us. As well as getting picked up in motorcades. I mean, they wouldn't even let us drive into town without a law enforcement motorcade. Cops in front of us; cops behind us; its be sheriff or highway patrol. Sometimes the sheriff, I mean it got so volatile, the sheriff would decline to participate, and we'd have to get federal law enforcement officials to accompany us, or the state highway patrol, I remember once did. It was *ugly*, just flat ugly.

Storey: Yeah. Was that arranged by the security detachment, or did Reclamation have to arrange that, or . . .

McDonald: The only times I was out there, there were officials from the secretary's office, never the secretary, when I was there, so that stuff was taken care of by somebody. I don't know who, and I was just part of the entourage. But in terms of, for example, the Klamath Area Office and the Fish and Wildlife Service counterpart, we, Reclamation, and I was deeply involved in this with the regional director in Sacramento and the area manager in Klamath. We had to try work with the federal marshal, particularly after the sheriff basically bowed out and would not provide property or personal protection—the sheriff being an elected official. (Laughs.) So the federal marshal really ended up providing most of the services, as I recall, that our local employees and offices required. *And* we moved a variety of federal law enforcement officials in the way of park rangers, Fish and Wildlife Service personnel, into the area, so there was kind of a contingent there when we thought things were pretty volatile. I don't remember the particulars, but we probably had Department of Interior law enforcement officials there from April well through the summer. It was that volatile all summer long.

Storey: How many times did you go out there?

Meeting with Klamath Project Community

McDonald: I only went out there twice that I recall. The regional director went there quite a bit more,

and I don't recall departmental officials going out there except for one trip that I made with the deputy chief of staff, a lady by the name of Sue Ellen Wooldridge, and that was probably in May or June. I think that's the first time that a departmental official went out there. You know, again, kind of one of the anecdotes here is people would always assume that this was a decision, the decision to close the project, was made at the highest political levels—you know, surely the secretary, Gale Norton at the time, had her fingers on this, all those sorts of things. The fact of the matter is the decision was explicitly left to me and me alone. Sue Ellen Wooldridge had never done natural resources work. She was an attorney who had come from the California Attorney General's Office, and her claim to fame was she'd litigated California's case against the tobacco companies. When several states, you know, sued over the issue of the tobacco companies enticing people to smoke and causing cancer. So natural resources was *not* Sue Ellen's field. She was an incredibly quick study and sharp and easy to work with, but when it came down to the wire on April 5th and 6th, she literally said to me, you know, "This needs to be a decision made by a professional. Tell me in the morning what your decision is." (Storey: Um-hmm.) So, you know, I ended up literally on the night of April 5th up almost all night long, scratching my head trying to figure out if there was any way short of shutting the project down to comply with the law and working with people in the Solicitor's Office that were advising me. The regional director and I, the Solicitor's Office, you know, all career professionals, not a political person in sight, decided we were stuck. So it was Bill McDonald's decision. It was nobody else's. And the story on the street is always to the contrary—that the secretary, you know, must have dropped the ball, or Sue Ellen must have dropped the ball, or where was the White House? The White House was smart, they sent over some of their new appointees as the issue really began to unravel the last week in March. They came to one meeting in Interior, and I never saw them again. (Laughs.) They got as far away from it as they could get.

Storey: Yeah. And why did you go out there? What was going on that caused you to go.

McDonald: There was a public meeting. We had decided, we being the Fish and Wildlife Service, the career acting, like myself, Sue Ellen Wooldridge, myself, [and] the [Reclamation] regional director, we'd, I can't remember at what juncture we were in the process. This was after we'd shut it down, and, you know, there was a mad scramble to find ways to bring federal assistance to the community, crop insurance, mechanisms in the United States Department of Agriculture that could be available, that sort of thing. So it was that context, and I think local officials were demanding a public meeting with a political appointee, instead of all we career guys. So, it was a public meeting in the fairgrounds—that's where they were having public meetings because two-, three-, four thousand people would show up in the fairgrounds for a public meeting. That was the only place in town that would hold an audience that large. So they would set up a platform and a podium down on the dirt in the rain—it's a regular old rodeo fairgrounds. (Storey: Um-hmm.) And the crowd would be up in the bleachers, and the podium was usually pretty far back from the bleachers so that there could be a contingent of law enforcement officers between the podium and the bleachers. And sometimes they set up magnometers and people had to go through the magnometers checking for weapons. It was *that* kind of very volatile situation. I didn't speak. This lady by the name of Sue Ellen Wooldridge, it was her forum trying to explain to the crowd where the

administration was, that sort of thing. And I and my career counterparts were there basically to do the day-before briefing and assist with that kind of thing. But she took the podium. I didn't have to do any talking.

Storey: So this wasn't the public meeting where public input was being solicited. Is that what I'm hearing?

McDonald: I don't recall particularly in that physical setting, in an audience that large, I don't recall that questions were taken in any fashion from the public. And I don't recall that particular meeting being formatted in a way that people could come to the microphone. There were some congressionals there who made their statements. You know, it *was* shaped in a way so that Sue Ellen Wooldridge could hear community concerns, but it got expressed by pre-determined people invited to be speakers who were on the platform with her. And, again, I don't remember the particulars, but it was probably mayors and county commissioners, and some representatives of the community, representatives of the irrigation interests. But they were all invited and screened and up on the podium—I think, again, driven as much by security as anything.

Storey: And were both of your visits this kind of a situation?

McDonald: No, one was, if I'm, and I'm really vague on it, Brit, but I think my first one out there was just the regional director and myself, and I don't even recall that I met with community people. I was there just working with the Reclamation staff, and I probably, then, would have been talking to Fish and Wildlife Service staff. This would have been after I made the decision on April 6th to shut the project down—or *not* deliver—we just didn't turn water on that year. So, you know, we were working through some of the issues and what to do next. And the security problems at the headgate on the A Canal, which is the main delivery canal out of Upper Klamath Lake, because we'd go close it, and like I said, somebody'd show up with a torch and cut the fence, burn the locks off, torch the locks off. We eventually welded the whole gate shut because everything we did to the stem valve, you know, to open or close the gate, they'd work their way around. So the whole gate got welded shut eventually.

Storey: Did we have to do anything like relocate families or . . . ?

McDonald: I do not recall that we did any of that as an official act of the government. I heard stories, as I recall, I can't verify any of them, that some employees had their families leave town, at least on occasion take a long weekend (Storey: Um-hmm.) just to not be around. It was volatile. As I look back on it, it's a wonder somebody didn't get hurt because passions were running that high. And it's a credit to the local community in a lot of ways that something really bad didn't happen, as angry as they were, which I totally understand, and as tense as it got sometimes, some cooler heads managed to prevail at all junctures. We worked our way through that immediate summer. You know, the overall issue is alive to this day. We're still struggling with biological opinions on how to operate the Klamath Project, and it's been non-stop litigation since 2001. Probably won't go away for a long time.

Storey: Well, going back a little bit before that, to Dan Beard's time, somebody mentioned to me, I think, that you were one of the primary authors of the *Blueprint for Reform*.

Authoring the *Blueprint for Reform*

McDonald: I was. In this sense. Dan Beard had tasked Don Glaser, really, as the lead career executive to kind of manage that process. Don, in turn, turned to me and asked me to help shape and frame things along with him, and ultimately I ended up doing a lot of the writing and presenting the first draft to Dan to see whether we had captured where he wanted to go with it. And he did put his personal pen to that initial product that he was given and did some significant shaping to really capture the way he wanted to approach the *Blueprint for Reform*, and then Don and I basically polished it off. But, yeah in a lot of ways it was Don and I that took Dan's initial kind of general ideas, the sort of thing you'd expect to get from a political appointee until they really sink their teeth in it and shaped it a lot for him and then gave him something that I think he really figured out where he wanted to end up with final direction, and then we put the polish on it, and that's what became the *Blueprint for Reform*. You know, the irony, for me, is it cost me my job, but that's the way the world works.

Storey: Yeah, a lot of people left when Dan showed up.

McDonald: There were a lot of people that, you know, were eligible for retirement or very close to it, and those changes, you know, given their range of personal perspectives became an opportunity to move on. You know, Joe Hall retired as sort of part of that process. Ray Willms, who was one of my deputies at the time, retired, Terry Lynott, who was another of my deputies took a two year I-P-A⁵² with U-S-D-A., and then he retired. You know, Dan moved me out to California, which it was his prerogative to do. (unclear) Boy, I can't remember when Bill Klostermeyer, now, Bill had left before Dan Beard came. I don't recall that I even worked with Klostermeyer. I came in 1990. I mean, I knew Bill in my capacity as director of the Colorado Water Conservation Board, but he'd already retired, I think in '88 or '89. Because Bill was not there when I came in 1990. To some extent Don Glaser had become the assistant commissioner type-position, and by the title that Klostermeyer had previously had. Fact, I guess that's how Don got back there. Don went back there after Bill retired, I think that's what happened, Brit. I'd have to get the list out and double check that, but I think that's the case.⁵³

Storey: Well, by the time you'd been acting, you'd been regional director for several years up in P-N.

52. Intergovernmental Personnel Act.

53. William (Bill) Klostermeyer served as assistant commissioner for administration from 1981 until 1988. During the 1988 reorganization under Commissioner Dale Duvall the title of the position changed to assistant commissioner for administration and liaison, and Bill Klostermeyer served in that position until the following year at which time Don Glaser moved into the position. Mr. Klostermeyer also participated in Reclamation's oral history program. See William C. Klostermeyer, *Oral History Interview*, Transcript of tape-recorded Bureau of Reclamation Oral History Interview conducted by Brit Allan Storey, senior historian, Bureau of Reclamation, and Donald B. Seney, Sacramento State University-Sacramento, from 1995 to 1996, in Washington, D.C., edited by Brit Allan Storey and Donald B. Seney, 2008, www.usbr.gov/history/oralhist.html.

McDonald: Yeah, because I went to P-N in June of '99 so I was acting commissioner January to July of 2001. So two years later, yeah.

Storey: Tell me about . . .

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BEGINNING OF SIDE 2, TAPE 1. NOVEMBER 8, 2011.

Storey: Tell me about P-N's relationship with the various states in that region. That would be Oregon, Idaho, little bit of Montana, maybe.

Region's Relationship with PN Region States

McDonald: The principle states would have been Idaho, Oregon, and Washington. There's a small slice of the P-N Region in the extreme western part of Montana, basically it boils down to Hungry Horse Reservoir being the project up there.

There are a couple of small transfer irrigation projects that we, Reclamation, had very little to do with any more. And then the upper part of the Snake River system is in extreme *western* Wyoming—(Storey: Um-hmm.) Jackson Lake being the feature up there. So there were, you know, some occasions to work with Montana and Wyoming, but it fundamentally boiled down to Idaho, Washington, and Oregon.

Really one of the highlights of my ten or eleven years up there was the improved relationships with Washington and Oregon, and that's not to take anything away from John Keys. I don't want to imply that, because John was a magnificent person in working with other states, and he had a great relationship. The problem as *I* came is that John had been confronted with some litigation from Oregon over water rights that I actually worked on, on behalf of Commissioner Martinez when I was his special assistant in the transition from John's retirement until I came. And we managed to resolve that particular water rights dispute, and that laid some groundwork and gave me an opportunity to pick up where John just hadn't had a chance to go to make some significant improvements in the relationship with the Oregon Department of Water Resources. Oregon had kind of gotten itself wrapped around the axle arguing against Reclamation claims for water rights. So we had a chance to clear the air on that and just ended up with a tremendous working relationship with the Oregon Department of Water Resources over a succession of directors during my tenure.

And then the other *really big* change, again, John had—no fault of John's at all, but in Washington water rights and water policy matters, if you will, are vested in their Department of Ecology. And as one might gather from that name, that's a department with a diverse statutory portfolios of responsibilities that ranges from the traditional kind of state engineer water rights administration as handled by statute in Washington on the one hand, to a department that is charged with worrying about the environmental aspects of in-stream flows, water pollution. The water quality control program is in the Department of Ecology. And the tradition of that department *vis à vis* Reclamation and the Columbia Basin Project and the local irrigators of eastern Washington, dating back to

the '70s, had been a pretty difficult situation. Washington had, for whatever reasons, elected back in the 1970s to basically just fight Reclamation and the eastern Washington irrigators at every turn on every issue they could come up with. And it particularly came to a head with the initiation of a general stream adjudication in the Yakima River basin by the state in 1977. And the state just opposed every claim the United States was making for the benefit of the project, and, to some extent, the irrigation districts themselves did because the United States was asserting that *it* owned the water rights for the Yakima Project. And *that* litigation just got very bitter. By the time I came, three cases had gone up to the Washington Supreme Court. The United States had lost all three cases. So *Washington* was kind of feeling its oats, if you will, but as I began to size the situation up in my first several months, kind of getting ready for the next big round of litigation, and I should back up here.

Yakima Project Agreement

The claims being made for the benefit of Reclamation's Yakima Project were *not* the first claims addressed in the adjudication. The first claims addressed were the Indian reserved water right claims for the Yakima Nation. And those issues were principally what had gone up on appeal to the Washington Supreme Court, but they were laying down Washington law relative to, you know, the United States claiming title. So we were getting geared up to go to the case in chief, that is, putting on evidence of the United States' claims for the Reclamation project as I came. And after trying to, you know, get my arms wrapped around that issue for several months, I decided that it just wasn't good public policy to continue to have this awful relationship with Washington. It was just going to have attorneys for both parties in court arguing for years. So, I approached the director of the Department of Ecology, who's a gubernatorial appointee, at the time a gentleman by the name of Tom Fitzsimmons who was an appointee of Governor Gary Locke. And I said to Tom, who by then I'd met a few times, and he seemed like a really easy guy to work with, he'd come from the Attorney General's Office so he understood the policy aspects of, you know, being a lawyer. So I approached Tom, probably hallway conversation to begin with, saying, you know, "Tom, we're spending incredible amounts of the taxpayers' money litigating. My gut tells me there's a way to negotiate our way through this. Are you willing to explore it?" And he said "Absolutely," he'd love to have an opportunity to see what we could put together.

So we had a couple of meetings with the range of staff and attorneys on both side, and it, frankly, became obvious to me that with attorneys in the room for the state and the feds we weren't going to get anywhere. It had turned into a personality fight as much as anything. So Tom and I agreed that he and I, literally by ourselves, we'd throw everybody else out of the room, and we would establish a framework for negotiations, kind of a global template of where we wanted to get and some basic thoughts about how to get there. That we would then provide to our respective parties and say, "This is the way it's going to be." And Tom and I did that. We literally did over a dinner one night at a hotel at Sea/Tac Airport, and brought the staff back in a couple of weeks later after Tom and I had exchanged some drafts, and presented it as a draft—I mean, we needed our attorneys' input, and it had to be something the attorneys could swallow at the end of the day. Tom had brought in fresh blood at the attorney level so that he had not just the

day-to-day litigator, but a supervisor who was very constructive and I counseled with our solicitors that I needed a change in approach here. And so one evening working from about six until nine or ten o'clock at night, we hammered out this two or three page framework for the whole succession of negotiations we'd hoped to get through in a—basically it was an agreement that these are the issues we'll try to work through on the front end, and we agreed that here's a set of issues that [we] will knowingly kick the can down the road for future efforts, and here's the sequence in which we'll try to work through the different division claims on the Yakima Project.

And with *that* global template in mind we put the negotiation teams back together at the table, sat in on the first couple of meetings to be sure the tenor was an appropriate professional tenor, and, you know, we got off dotting "i"s and crossing "t"s to get the job done. And to make a long story short, we, the state, and Reclamation, *with* the participation of the Yakima Nation at every juncture, because you can't do anything on the Yakima Project without working through the rights and the responsibilities of the Yakima Nation, we managed to negotiate a settlement of all five divisions of the Yakima Project. Didn't have to litigate any of it. And *out of that* just came a tremendous working relationship with Tom personally and his key people at the Department of Ecology. His successor was a gentleman by the name of Jay Manning, and Jay very much picked up where Tom had left off.

Columbia Basin Project Issues

And somewhere in there, and I wasn't a big part of it, although Tom did seek my counsel about how *he* could improve his working relationships with his eastern Washington irrigators. I gave him some thoughts, and then I kind of informally went and explored things with the irrigation districts *for* him because the irrigation districts just hated the Department of Ecology. So I was kind of the broker to see if everybody would come to the table and start having some discussions that they just hadn't had for twenty or twenty-five years. And to the credit of the irrigation districts, they were willing to do it. They were pretty darned skeptical about whether *that* was going to be worthwhile, but Tom was just excellent to work with, and he went out there, had a lot of meetings with our Columbia Basin districts. And it eventually led to an agreement, if memory serves me, it would have been December of [2004] ~~1994~~ and John Keys was the commissioner, Mark Limbaugh was the (Storey: 2004, right?) Pardon me, what'd I say? 2004. (Storey: You said '94.) No, 2004, led to a memorandum of understanding signed by the irrigators and Reclamation. John Keys was the commissioner, Mark Limbaugh was either the deputy commissioner for external affairs or had become the assistant secretary [for water and science] at that point, I can't remember. But, anyhow, again, kind of a global framework for how the state, Reclamation, and the irrigation districts would work their way through some issues on the Columbia Basin Project relative to water rights, making project water available to some downstream municipalities that the state had denied water rights to under state law, purely apart from the project, but therefore those municipalities needed some sources of supply, and releases out of Grand Coulee were the obvious way to do it. But you had to work through that stuff with Reclamation, or course, because ultimately it takes contracts.

And *then a really key* feature of it was how to move forward in dealing with the problem that there's over a hundred thousand acres, about a hundred and fifty, *within* the intended boundaries of the Columbia Basin Project that have never received project water, that is to say, surface supplies *pumped* from Grand Coulee. And it was an intentional decision by the state back in the '60s to allow groundwater pumping to occur, thinking that the project would be completed in twenty or thirty years so groundwater pumping would be temporary. And *as* the project was completed surface waters would replace groundwater and the wells would just be shut off. Well, the project hasn't been completed, and the groundwater pumping has grown to the point that there's serious depletion so they're getting into great depths on a lot of these wells. They're running into water quality problems as they drill deeper. And there's a serious problem of an important chunk of ag over a, not too distant period time, going out of production. So, the state, you know, *complete* change from where they were in the '60s and '70s in this memorandum of agreement, laid out a process to work with the irrigation districts to see if they could persuade Reclamation to undertake more planning studies, all subject to congressional appropriations of course, to look at this problem of groundwater pumping in an area that's called the Odessa Subaquifer. And that has all borne fruit. Reclamation, in fact, went out and did an appraisal study while I was still R-D, state funded, most of it, they really put their money where their mouth was. In fact, they passed a major bond issue personally supported by Governor Gregoire in part of her second campaign, and, you know, just completely changed the tenor of working with Reclamation and the districts during the 2000s. So, you know, *that* was a major change in pace.

Reclamation's Relationship with Idaho

Idaho was a little different story. Had a good relationship, [but] the Snake River basin general stream adjudication was underway in Idaho when I came, and the claims of the United States were coming to a head. And Idaho water users and the Idaho Attorney General's Office decided to push the issue of who owned water rights for Reclamation projects. Their theory being it was the districts that owned the water rights, not Reclamation. Reclamation defended the position that federal government had appropriated the water and taken all the necessary steps to build the projects, even though the United States was not the ultimate consumer—obviously individual irrigators are—[so] title properly belonged in the United States *for* the benefit of the irrigators. *And* I managed to negotiate that general arrangement with districts on the Payette River, but when we got to the mainstem of the Snake River and the Boise rivers, those districts decided they wanted to litigate the issue. So we remained on friendly terms, but there was some tension. That case ultimately went all the way up to the Idaho Supreme Court. And it colored the relationship with Idaho to some extent.

The other difficult issue in Idaho is they have allowed groundwater pumping. Like most groundwater pumping in the western states, major development began back in the 1950s. The groundwater pumping's in the southeastern part of the state, in something called the Snake River Plain Aquifer, which is a highly fractured basalt aquifer. And as groundwater goes, it moves through that aquifer rather quickly. And the result is that you can see in the water table and in the flows out of springs that come through that fractured basalt, literally to the canyon walls of the Snake River, and you see these enormous

springs pouring into the Snake River. It's a major part of the supply of the Snake River. Those springs respond fairly quickly to pumping, and they've been declining rapidly in the last twenty to thirty years. And Reclamation was convinced groundwater pumping was depleting river flows and very significantly cutting into project water supply, particularly in American Falls [Reservoir]. So we had a lot of difficult issues that, to this day, remain in litigation in Idaho, and the adjudication court has not ruled on all of them yet, so they have yet to potentially be appealed to the Idaho Supreme Court. I'd guess Idaho and anything its water users lose they will appeal. If the United States loses, it may or may not appeal. That'll be a different calculus, but that made it difficult in some ways to work through things with Idaho. But it was still fundamentally a very cooperative, professional working relationship, but there were, you know, some rough points.

Storey: Do they have a groundwater law.

Groundwater Issues in Idaho

McDonald: They have a groundwater law.

Storey: I know there've been, what is it, calls on the pumping in recent years.

McDonald: Yes. Part of the litigation. The particular litigation you're referring to is not brought by Reclamation, it was brought by surface irrigation districts, most of whom, if not all of whom, are irrigation districts served by Reclamation project water. But those districts made a call on the groundwater pumpers. So a lot of the litigation, which Reclamation has either simply sat on the sidelines and observed, or has only been tangentially involved—you know, we became a party, but very selectively picked the issues that we would choose to argue about. A lot of the litigation's just been between the surface water users and the groundwater users over what Idaho law provides relative to the relationship between groundwater pumping, which by definition is junior water rights to the senior water rights because the senior water rights all date to prior to 1900 or right after 1900. The pumping rights, by definition, are 1940-, 1950-, or more recent. And *that* litigation is still wending its way through hearing officers, the adjudication judge, and ultimately that's clearly all going to go to the Idaho Supreme Court.

Storey: And part of the issue, I think was the hatcheries down at Thousand Springs, is it?

McDonald: Thousand Springs is the area where the biggest springs come out of this fractured basalt through the canyon walls down into the mainstem of the Snake River. A lot of private, commercial fish hatcheries, you know, trout to market at the super market, had gone in there because this water coming out of the aquifer is a perfect temperature for a trout farm, great water quality, historically, you know, very stable flow that you could count on year in and year out. It wasn't subject to summer/winter weather patterns, temperature stayed constant. *But* as the pumping has occurred, and particularly the pumping within just a few miles of the rim of the canyon, those springs that fed those private fish farms, all of whom had adjudicated surface water rights, or had claimed and are in the adjudication, [began to decline]. And those fish farms brought a series of suits against the groundwater pumpers. It was really those suits that were the first to be brought on the issue of the

relationship between the surface water rights and the pumpers. And then the irrigation districts came in later and filed even more lawsuits against the groundwater pumpers.

Storey: So Reclamation was not involved . . .

McDonald: Reclamation, if memory serves me, Reclamation did not get involved in the suits brought by the commercial fish farms *at all*. That's not project water. We had no stake. We had an interest, but we didn't have a legally defensible stake that we needed to protect. But, you know, the precedents being set were *of* concern, but we made a conscious decision to stay out of the fish farm litigation. We have participated in the litigation brought by the *districts*, but rather selectively. We haven't argued all of the points they've argued, and we haven't argued the ones we chose to argue exactly the way the irrigators did in all cases. Sometimes made a different legal argument or a more limited legal argument than the irrigators made. So, you know, a little tension between Reclamation and Idaho during my tenure, but, again, very professional relationship with the attorney general and the state engineer, but we didn't always see it the same way.

Teton Dam

Storey: Yeah, I don't remember whether we've talked about Teton or not. I keep hearing Idaho wants to build Teton—again.

McDonald: I don't recall that we have, Brit. And for the record, I should make a full disclosure here, since I've retired and started into some private consulting. I now have a client who's interested in the current on-going planning study. So, you know, I have a client interest to represent, but I think I can talk in general terms and that is about all I know anyhow. Teton obviously preceded my coming to the region—it having failed back in 1976. There certainly is an element in eastern Idaho during my tenure in the early 2000s that was from the school that, "By golly, we ought to rebuild Teton." And the public record of elected and appointed officials often would be that they supported Teton and it should be rebuilt. I think, as the years have passed, you can get people, privately at least, to acknowledge that that is unlikely in this budgetary and environmental climate.

But the current on-going study, as an example, partially funded by the state of Idaho, partially by Reclamation, and its in response to a act passed by the state legislature three years ago, I think, that directed the Idaho Water Resources Board to do a study of storage opportunities in the Teton Basin. Then the state came and asked Reclamation to do the study and put some money into it. So that's what's underway. You know, Teton is on the table, *but* what's also on the table is a whole lot of other much smaller storage alternatives in explicit recognition of the fact that Teton is a long shot so if you put all of your eggs in the Teton basket you're going to get nothing. And then the environmental community, and this is where my client comes in, they are one of the environmental groups, is pushing hard that non-structural alternatives should be part of this study along with the structural alternatives. And that study's, I think, about a year away from completion. So it's a work in progress. I don't know where it will come out, but its personally inconceivable to me that Teton would be recommended as a logical next step because its just dead on arrival in this political and budgetary climate.

Storey: Uh-huh. Let's talk a little about Canada, and I think the Columbia River Treaty is coming up for renewal fairly quickly.

Columbia River Treaty

McDonald: The Columbia River Treaty runs out in 2024.

Storey: Well, it isn't as quickly as I thought . . .

McDonald: But it has a provision that either country must give notice by 2014 as to whether they're going to pull out of the treaty or want to renegotiate. So, per the terms of the treaty, the Canadian parties and the United States parties, internal to each, are busily looking at the issues associated with whether they want to stay in the treaty or might want to tackle certain provisions for the benefit of their respective interests. So the United States, for its part, is geared up through the lead of the Corps of Engineers and the Bonneville Power Administration, who are the two designated representatives of the United States for treaty matters; in the midst a lot of studies about different approaches to the Canadian and American storage system, power trade offs against flood control trade offs. The whole issue of in-stream flows for salmon is necessarily embedded in it. That's a process that all got geared up just as I was retiring so I really have not been in the loop. Its largely all occurred in the last twelve to fifteen months and will go on until 2014. But I do know, just from talking to folks, that everybody's heavily engaged, and it'll end up back in D.C. as departmental decisions and ultimately a Department of State decision since its an international matter. (Storey: Um-hmm.) I've no idea what the Canadians are doing. I've had no occasion to talk to Canadian officials, and I haven't talked to any of my Reclamation, B-P-A, or Corps friends, so I don't really know what *they* know about Canada's deliberations.

Storey: So, did you participate with the International Boundary Commission up north, isn't it.

McDonald: I never did. There really were no significant treaty issues in my eleven year tenure up there, and, again, Reclamation isn't the lead agency anyhow—its Bonneville Power Administration and the Corps of Engineers. But even in that context, there were not any particular issues of out of the ordinary run of the mill stuff the treaty was designed to address, principally related to power operations, which is a B-P-A/British Columbia–B-C Hydro kind of day-to-day issue. I was tangentially aware of some of that stuff because it would affect how we were trying to manage Grand Coulee as part of the Federal Columbia River Power System, but I had no responsibilities to meet face to face with B-C Hydro officials. So I just didn't do treaty issues because there weren't many, number one, and they were of the nature the two U.S. lead agencies were involved in. My staff did the day-to-day, you know, hydrologic modeling, the level was involved in the interagency stuff, but there were not major policy issues or international disputes.

Storey: Let's talk about Trail Smelter. (McDonald: Uh-huh.) They've been dumping slag, I guess, tailings, whatever you want to call it, (McDonald: Tailings, slag.) into the Columbia for years (McDonald: Into the Columbia, right.) and years. We happened to drive through there a few years ago, and it's a huge facility.

McDonald: Its one of their major world production facilities.

Storey: What kind of issues are there for Reclamation?

Trail Smelter and Lake Roosevelt

McDonald: The major issue all revolves around the fact that the Trail Smelter, which is just seven or eight miles upstream of the Canadian/U.S. border, and therefore just immediately upstream of the headwaters of what's now Lake Roosevelt, obviously is sending slag, until they changed their operational procedures, was sending slag directly into Lake Roosevelt. So what the issue became in the last ten to fifteen years was whether there had been damage to the natural environment or human health by virtue of that slag being deposited in Lake Roosevelt. And the slag is, necessarily, of course, heavy and has large amounts of heavy metal constituents. So the human health concern and the natural environment concern is whether those heavy metals have gotten into the environmental cycle. The tribes, in particular, the Spokane Tribe and the Colville Tribes, whose reservations *border* the upper reaches of Lake Roosevelt, had substantial concerns, basically in three categories. One, Lake Roosevelt's typical operation is to be drawn down fairly far in the winter as you're both dumping water through the turbines to generate power and you're drawing down so you've got flood control space the next spring anyhow. So that exposes an awful lot of shoreline, and in places where the topography of the reservoir is relatively flat, the water goes down far enough that you expose, you know, tens of thousands of acres of reservoir bottom, and you get winter storms up there blow through and you create a lot of dust blowing around and so the heavy metals are presumably, that's one of the technical issues, floating around in the air . . .

END OF SIDE 2, TAPE 1. NOVEMBER 8, 2011.

BEGINNING OF SIDE 1, TAPE 2. NOVEMBER 8, 2011.

Storey: This is tape two of an interview by Brit Storey with J. William McDonald on November 8th, 2011.

So they could be breathed in or deposited on . . .

McDonald: Yeah. Deposited on vegetation. So the issue was what human health effects or natural resource effects might there be. Secondly, from a tribal perspective, particularly in the very upper reaches, there are some beaches that are just slag beaches. I mean, you go out there and they're black, which is the color of the slag. The natural sand over the years has been covered up. And then, thirdly, there's the technical issue of whether those contaminants get suspended in the water column through turbidity and that sort of thing, and the chemical reactions of the sediment with the water, depending on the Ph of the water, so on and so forth. And *if* suspended in the water column what's the uptake by benthic organisms, fish, what have you. So the tribes pressed a lot on Reclamation and E-P-A and other agencies, initially taking the position that CERCLA, [Comprehensive Environmental Response, Compensation, and Liability Act] the "Superfund" act, that governs who's responsible for hazardous waste clean-up [applies]. The tribes pressed

hard that the United States, one, had jurisdiction over a Canadian company, physically located outside the boundaries of the United States, which is a novel legal issue under CERCLA, and secondly, that the United States therefore ought to go after the company, a company by the name of Teck, T-E-C-K, Cominco, C-O-M-I-N-C-O, and bring litigation in *U.S. court* against this Canadian company. So, while I was regional director, there were a lot of discussions within the United States agencies with State Department and Department of Justice, as to whether a suit should be brought or not. Meanwhile, individual members of the Colville Tribe brought suit on their own, which was their way of forcing the issue legally. (Laughs)

So there was lots of give and take in the 2002 to 2011 time frame while I was R-D about what the United States should do. Up to the time I had left, the United States had decided not to bring suit and not to participate in the lawsuits brought by the individual members of the tribe. E-P-A, United States Environmental Protection Agency, did negotiate an enforcement order with this company to undertake a remedial investigation/feasibility study, basically pursuant to the standards of CERCLA, but not in the name of CERCLA, as such, because the Canadian company would not admit to jurisdiction in the United States. So *that* process of working with the company, who was putting the money up to do the remedial investigation/feasibility study, was underway as I left. There were a range of views in the United States as to whether the process was being successful, whether the company was acting in good faith, so on and so forth. I haven't been in touch with the issue for a year and half, and, frankly, since its still in litigation, it wouldn't be appropriate for me to comment on what's going on anyhow, since the United States still has to sort through ultimate positions on litigation.

But I would say this, its one of those *kinds* of issues that is so complicated that it is *bound* to drag on for years. You know, frankly, from the perspective of *that* Canadian company, it is a whole lot cheaper to study and litigate than to confess to damages and pay hundreds of millions if not billions of dollars. Secondly, I think there're probably going to prove to be some real technical questions as to whether the slag depositions really are affecting human health *or* the natural environment. You know, there's junk there, there's no doubt about it, but its very complicated chemistry of those heavy metals being chemically bound to the particles that carried them down the river, you know, the rocks and the minerals that come out on the slag process. And the fact that they're there doesn't necessarily mean they're in the water column or they mix in the natural environment in a way that's inimical to either human health or natural resources. So there's going to be some enormous technical questions that the Canadians will undoubtedly dispute every inch of the way about whether, in fact, even if CERCLA applies and we, the United States, clearly have legal jurisdiction, whether as a technical matter there really are human health risks, and if so, to a great extent or a limited extent. By the same token, are there really natural resource effects, and if so are they big time or are they not.

The other thing, frankly, going on behind the scenes, there are hazardous waste contamination sites all over this country for mining operations, oil and gas, what have you, that absolutely, undoubtedly present *huge* human health risks, and there's only so much money to go around to deal with all these area. And Congress has not well funded that

CERCLA program in recent years, and I would assume with the budget crunch they aren't going to fund it any better. So, one of the debates we were having internal to the United States is what's your priorities—yeah, there's a bunch of slag out there, but absolutely compelling evidence of major natural resource damage effects, which is where the Department of Interior comes into the whole thing. You've got to make some tough, hard-nosed choices about where to spend your money as among all the sites in the United States that have natural resource damages resulting from the deposition of hazardous materials. So, a debate that was underway while I was there, but a debate that'll go on for many, many years henceforth. (Storey: Yeah.) And, you know, Reclamation's in the middle of it in the sense that Lake Roosevelt's obviously what we own and operate, and, in fact, the secretary made me his authorized official for the natural resource damage assessment process. So I had the lead to coordinate the bureaus in Interior, and when I retired that designation was passed on to my successor, and I assume it'll continue that way although it need not. But, you know, it was not unilateral action on Reclamation's part. We were coordinating with the B-I-A, National Park Service, and Fish and Wildlife Service to develop the departmental positions.

Storey: I have a note here about M-4-E and the budget. (McDonald: Okay.) Was there any, of course you were one of the key people in the M-4-E studies that were going on. Were there any budget implications from M-4-E?

Budget Implications from M4E

McDonald: I wouldn't say that there was budget implications from M-4-E. I'd say it the other way around, Brit, which was declining budgets were in part what simply required us to take a hard look at whether we were being as cost effective and efficient in managing our engineering and technical services as we needed to be *in the face of* declining budgets. So, if there were any budget implications that came *out* of M-4-E, I would *hope* it is that we got on top of some business practices that allow us to do a *much* better job predicting workload, where that workload needs to be taken care of technically, that is to say at the area office level, at the regional office level, or here in Denver with the Technical Service Center. That allows all elements of the organization to be more efficient in trying to line up appropriated dollars and preserving the right core technical capability based on workload. So, if anything, I would hope we've helped spend our ever scarcer dollars more efficiently than before we put the new business model in-place.

Storey: Let's talk about your second acting period between Commissioner Bennett and Bob Johnson, I believe it was, that one was five months.

Second Term as Acting Commissioner

McDonald: After Bob, before Mike Connor. (Storey: Right. Right.) That was five months, early January to Memorial Day weekend is when Mike was sworn in, as I recall. The big issue then was the Recovery Act.⁵⁴ You know, 2009 was, obviously, the new Congress immediately after the collapse of the financial markets and the bailouts in 2008 so the

54. President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009.

outgoing [second] Bush administration had been struggling with how to handle that, the TARP⁵⁵ legislation for the bailouts that passed. And, you know, the debate carried over from that outgoing Congress and the outgoing Bush administration to the incoming Congress and the incoming Obama administration as to whether there should be this major infusion of public monies to generate jobs, and that became, of course, A-R-R-A, or the Recovery Act. And Reclamation got, in round figures, a billion dollars of that appropriation. You know, the political concept being we would build stuff fast—it had to be, quote, "shovel ready"—the whole point being to generate jobs, of course. The personal perspective of Bill McDonald, the fallacy in the whole thing was no relief was given on the regular procedures you've got to go through as a federal agency, even if you had shovel ready, which is a *whole* different question. And, you know, by design the federal procedures relative to procurement processes to ensure fairness and competitiveness on the one hand and all the environmental regulatory processes to ensure appropriate consideration of the environment take time.

So, I largely spent a lot of time from mid-February, when that act was passed by Congress and signed into law by President Obama, until I left, guiding Reclamation through the process of identifying our shovel ready projects, doing everything we could to see if we could shorten up the time frame in which they could be done, just laboring through the process of what was it going to take to get them through the procurement system, did we really have all the environmental compliance done. It created an enormous bow wave of work, particularly for engineering and design services of Reclamation and environmental compliance staff to get all the prerequisites polished up, and then the procurement staff who was going to have this *huge* chunk of workload coming at them that just hadn't been scheduled. The law [was] signed on February 19th and everybody wants stuff underway on February 20th. So, we just spent an enormous amount of time between mid-February and when I left and Commissioner Connor continued to spend an enormous amount of time trying to get all those things lined up. And, you know, there were some policy perspectives of the new administration that we needed to deal with in terms of where they would like to spend money given the range of opportunities we had. For example, one of the key things the Obama administration ended up taking a look at is how to expand on what got called the Water Smart Program⁵⁶, could they put more money into grants for water conservation kinds of activities. And that led to a whole nother tier of questions which were the sponsors that would seek those grants ready to move—did they have shovel ready project, were all their engineering and design specs done, and then that created workload on our grants and financial assistance staff, who tend to be duplicative of the procurement staff.

So it was largely a *big, huge* workload management process and scrambling to keep up with a secretary that, quite understandably, given the chair he sat in, wanted everything yesterday. So, and largely my second tenure of acting was devoted to the

55. Troubled Asset Relief Program signed into law by President George W. Bush on October 3, 2008.

56. "Reclamation plays a key role in the WaterSMART program as the Department's main water management agency. Focused on improving water conservation and helping water and resource managers make wise decisions about water use, Reclamation's portion of the WaterSMART program is achieved through administration of grants, scientific studies, technical assistance, and scientific expertise." For more information, see www.usbr.gov/waterSMART/.

Recovery Act, and that was about it. Plus, you know, just keeping the ship running. Fortunately in 2009 we didn't have huge droughts, we didn't close any Klamath Projects, so it was mainly about the budget process and the procurement process and getting these projects lined up and dealing with all the requirements of the Recovery Act.

Storey: Um-hmm. But we do have drought in the Colorado River basin.

Colorado River Basin Drought Issues

McDonald: We did. And in that time frame, basically the Colorado River was headed into the eighth or ninth year of an extended drought. Bob Johnson had dealt, as commissioner, extensively with those issues. Hoover [Dam] and [Lake] Powell, for example, on the Colorado River had reached their historic low points *post* the filling of Powell in 1980, had reached their historic low points in the fall of 2004. And, you know, the system was just kind of barely limping along at those low levels without recovering in 2005-, '6-, '7-, '8-, and it continued into '9. So there'd been a whole series of things that I was not involved with in the late 1990s, early 2000s, that led to new shortage criteria on the Colorado River addressing issues about long range coordinated operating criteria and what would happen if this drought continued and Hoover got down to the critical level that essentially you couldn't make the deliveries to the lower division states that the Colorado River Compact called for. Fortunately we skated by in 2009 so I didn't have to particularly deal with that issue, and the *timing* of the issue is such that it really doesn't come to a head until May and June, as you're into the spring refill. So [if] things had gone south, since I left on Memorial Day, it would have been Mike Connor's problem not Bill McDonald's problem. But, like I said, we skated by in 2009 so it really did not get to be a major issue at the political level that I needed to deal with.

But what *did* get pretty wound up was a continuation of an issue that had been going on for years, the question of the effects of the operation of the Glen Canyon Dam on the Grand Canyon National Park. And the National Park Service, through its National Park superintendent at the time, brought that issue to the forefront with the incoming people of the administration. So I spent a fair amount of time working with my career counterpart at the National Park Service trying to clear the air on that issue and keep it under control, if you will, until the new appointees could get in place and bring their policy perspective to bear on how the Grand Canyon issues ought to be dealt with. And that's a debate that continues to this day, you know, something Secretary Salazar, and Assistant Secretary Anne Castle, and Assistant Secretary Tom Strickland gave immediate attention to in their first couple of years, and its led to a recent announcement that there would be another E-I-S prepared on the Glen Canyon Dam operating procedures and test flow requirements relative to the beach erosion and habitat issues in the Grand Canyon. So stay tuned, that saga will continue.

Storey: Yeah. As I recall the superintendent was upset because we weren't doing it as often as he thought we ought to be or something.

McDonald: Basically the superintendent's perspective was Glen Canyon was obviously the entire source of the problem and the current operations, even as they had been adjusted by the

test flows done a number of years ago, were not adequate. And, you know, Reclamation just ought to change operations and quit asking questions. (Laughs.) Other perspectives were that a lot more information was needed to really understand the ecological parameters that were going on in the Grand Canyon, you know, U-S-G-S was doing a lot of the work on behalf of the Department of Interior, it wasn't Reclamation doing it unilaterally. And National Park Service was denying trip permits to go down the Grand Canyon to collect data. I mean, it was getting to be one of those non-professional kinds of situations going on behind the scenes that I did not succeed in resolving much of while I was there for five months, but we worked at trying to get that stuff pointed in the right direction.

Storey: Well, what were your major issues in your last few years as regional director?

Regional Issues

McDonald: Well, Lake Roosevelt was, you know, kind of coming to a head, in the 2008-, 2009-, 2010 time frame so spent a fair amount of time on those contaminant issues and how to proceed as the secretary's authorized official of the natural resources damage assessment process. And the tribes were pretty disgusted with Interior for the decision not to participate in the litigation, and personally thought I was the bad guy because I had resisted going into the formal process dating all the way back to 2001. And my principal reason, I was very public about it, was simply that it struck me as premature to pull that trigger until you tried to get Teck Cominco to pay for the studies because the department didn't have enough money to pay for the studies. The tribal perspective, of course, was its United States obligation, why don't you guys just pay for it, but the reality is none of us had an appropriation to engage in the multi-million dollar studies that you get into when you do a natural resource damage assessment claim. So its nice in theory to say the United States is responsible as the trustee of the natural resources, but the reality is you got to have money—otherwise you're just flapping in the breeze. So I was arguing for trying to negotiate with Teck Cominco, and ultimately what happened, as I indicated, is that E-P-A, relative to human health resource effects, which is their responsibility, as opposed to natural resource damages, did negotiate with Teck Cominco and, not a perfect deal, but at least they got something underway.

So *then* my perspective was, you know, the typical way to approach a natural resource damage assessment—if you can get somebody to pay first for the human resource health effect assessment is to let the human resource stuff get done first. Because you pick up an enormous amount of the data you need for natural resource damages free of charge to the Department of Interior by letting E-P-A go ahead with the human health effects. So I was in no way trying to delay looking at the legitimate question of potential damages to natural resources. But, again, I'm sitting there having to look at the realities of budget and the reality of the politics of how these things get done, and there's no way the department was going to round up tens of millions of dollars to do a natural resource damage assessment. So I had been arguing, let's do everything we can to push on and assist the E-P-A, get Teck Cominco to spend their money, spend it in an intelligent way, you know, put together a technical team that's looking over Teck Cominco's shoulders along with E-P-A, but let's milk them for all we can get because it'll

save Interior a lot of money at the end of the day. And again my perspective from forty years of experience is these issues just drag on and there is nothing you can do about it.

The tribe viewed that as me not supporting the tribal claim. So in the 2008 time frame I had a number of conversations with tribal councils to try to clear the air and see if I could help them understand what my perspective was, number one, and try to persuade them, obviously, that it was a legitimate perspective. And *ultimately* with, some very good leadership and help from tribes, it certainly wasn't just me, we *did* reach an agreement among all the trustees *of* the natural resources as to the process we ought to pursue, and we signed a memorandum of agreement. So spent a lot of time on that in the '08-, '09, '10 time frame.

Columbia River Endangered Species Issues

The other issue, of course, that had dragged on my whole tenure was the biological consultations for the listed salmon and steelhead species on the operation of the Federal Columbia River [Power System] project, and we were, by the '09-, 2010-, 2011 period we were in the third of the biops that had been done during my tenure, with continuing litigation the whole time. And the third of the biops had been finished right at the end of 2008 so it was a product of the outgoing Bush administration. Inevitably, of course, on an issue that controversial, that's something that a new incoming administration wants to revisit. The environmental community, of course, with a new Democratic president, saw an opportunity from their perspective to get a reconsideration. So they approached the new political appointees, particularly Dr. Jane Lubchenco, who was the new deputy under secretary or under secretary, can't remember the exact title, but, anyhow, the official over all of NOAA, which includes National Marine Fisheries Service. So, you know, the new administration was approached to reconsider the biological opinion from late 2008, and the court, itself, delayed the schedule and officially, in writing, invited the new administration to reconsider the biological opinion. So, sitting back there in 2009 as the acting commissioner, but by chance the one from the P-N Region and then continuing through the summer, when I came back to the region, on into the fall, I was heavily engaged in briefings with the new administration reconsidering what they might want to do. They eventually did decide to do a supplement so all the regional execs were engaged in the process of working through what would be done to basically beef up some aspects of the 2008 biological opinion that the new administration thought ought to be addressed. And then presenting that to the court, and then we were into the briefing schedule. So, you know, that always eats your clock in terms of helping Justice write and review draft briefs, and you think about the legal and policy position you're trying to take. So, kind of non-stop salmon for 2008 through 2011 [2010 when I retired], but it had been non-stop salmon since 1999 for that matter.

Storey: Of course Reclamation in a significant way shares the Columbia–Coulee's our only facility.

McDonald: [Grand] Coulee and Hungry Horse [dams].

Storey: Oh, way up. Way up above . . .

McDonald: Way up. Hungry Horse is a critical part of the power and flood control system . . .

Storey: Yeah. But its above Grand Coulee isn't it.

McDonald: Its above Grand Coulee. Its in Montana.

Storey: But we share the river [with] at least two P-U-Ds [Public Utility Districts] I think, maybe more, . . .

McDonald: Basically, Brit, when we federal agencies in the context of the salmon issue, talk about the Federal Columbia River Power System, we mean the fourteen dams and reservoirs that are operated by the Corps of Engineers and Reclamation *as a* single integrated system for power and flood control (Storey: For B-P-A.) and then Bonneville markets all the power generated. So essentially it's a three agency operated system, and day-to-day delivery orders are governed by Bonneville Power Administration for power generation purposes—*minus*, during the irrigation season, irrigation water pumped out of Grand Coulee is the first priority. So all of this work on salmon has been a joint three agency effort between the Corps, B-P-A, and Reclamation because we share the responsibility of making this fourteen dam system work. And the two facilities Reclamation has are Grand Coulee and Hungry Horse. And between the two of them, they account for the bulk of water conservation storage in the system. Most of the Corps facilities are run of the river power—that is to say they've got [no active] storage. They just, give or take a foot or two, they just create head.

So we're integral to the flood control operation and the storage system for power purposes. We're basically, you're storing in the spring to avoid the floods, you hold it for the summer at Coulee subject to moving what you need downstream for power and pumping into the irrigation system, the Columbia Basin Project, then the traditional operation is you bring [Lake] Roosevelt way down during the winter, during the peak electrical demands system in the Pacific Northwest, to generate. (Storey: Then you bring it up with the runoff.) You bring it up with the runoff. And there are, literally, Coulee has formal flood control space which means the Corps of Engineers makes the final call on how much space has to be available at Lake Roosevelt, which is the reservoir behind Grand Coulee Dam, *at* particular times in April and May, and that's all a function of the runoff forecast and predictions of downstream flood damage. So, the basic operation is you try to get to the lowest point you want to be by April 10th. And then you bring it up based on a curve of predicted runoff conditions.

Storey: But I can imagine that with three different federal agencies on the river there might be some friction among them.

McDonald: You, there is the potential for some differences of opinion because each agency is really charged with some different statutory responsibilities. You know, Bonneville Power Administration is obviously in the business of selling power and wants to run the system from a financial perspective to obviate cost to themselves so that they don't have to go onto the private power market and buy power to meet their commitments. Reclamation, of course, very interested in power generation, but first priority needs to go to the

Columbia Basin Project for irrigation as a matter of law. Corps of Engineers more focused on flood control, using both Coulee and their own facilities, and navigation. And then interlaced with all that for [the] three agencies are the requirements of the Endangered Species Act relative to salmon. So, you know, there can be differences of perspective. There's no doubt about that. What I would say, though, and really regard it in a lot of ways as the highlight [of my tenure as R-D is that these agencies and]. . .

END OF SIDE 1, TAPE 2. NOVEMBER 8, 2011.

BEGINNING OF SIDE 2, TAPE 2. NOVEMBER 8, 2011.

Great Working Relationship within FCRPS

McDonald: . . . the National Marine Fisheries Service, which is the agency that did the biological consultations, absolutely worked hand in glove. It was the finest professional working relationship across agencies that I had the privilege of experiencing during my career, and it came from we four regional execs, all of whom were senior executives, sitting down basically in 1999-, 2000-, and 2001. As we got into the first round of litigation, [and agreeing] that we simply *had* to make this system work, and there was no excuse for the four agencies *not* to work together. And indeed, that series of issues from 2001 until I left in 2010 was consistently so intense that we had regularly scheduled Friday morning calls of the four regional execs and our key staff that we had just about every Friday. Occasionally life was a little slower. We were all out of pocket, and we would cancel a Friday call, but it was that important to us. And I value the relationship I had with the generals and the career senior executives at the Corps, Steve Wright, who's the administrator of B-P-A throughout this whole tenure, Bob Lohn and Will Stelle who were the administrators at NOAA Fisheries, just, you know, absolute professionals to work with, and the four of us made a commitment that this was going to happen, and we were going to do it right. You know, I've stayed in touch with the generals that have come and gone just because they were such great professionals. You know, they're just people you respected and liked to work with no matter how tough the issue went (Storey: You probably would have had . . .) so we had our differences, but, you know, we committed to hammer them out. And they all got hammered out.

Storey: You would have had five or six generals, I suppose.

McDonald: There probably were five or six, and they had a varying degree of interest in the particulars of the salmon issue and that turned on a couple of things—whether the general had had previous experience with the Corps' civil works program or not. A couple of them had not, they'd come up through the military construction side of the organization, and they just weren't terribly excited about natural resource issues. And a division office in the Corps of Engineers has military construction responsibilities, not just civil works program water resource responsibilities. So, particularly, a couple of generals were diverted into the Iraq and Afghanistan conflicts in terms of responsibilities for construction management or the logistics to get materials overseas during build-up. So, you know, that sort of thing understandably took a lot of their time. Once or twice, you know, they were on three month special tours overseas to those theaters. So they would delegate that to the key career senior executive, who in the most recent years was a gentleman by

the name of Witt Anderson, who was just a gem to work with.

A couple of the generals, a gentleman by the name of Bill Grissoli who just got his third star and went to the Pentagon, the current general who was coming as I left, gentleman by the name of John McMahn, and then back in the 2003-, '4-, '5 time frame a third general who, of course, his name escapes me, and it shouldn't because [he] went on to be the chief of engineers, got his third star, were very engaged in the salmon issue and these general in the Corps were just top notch people. I mean, a lot of them came out of West Point. They're usually engineers that [have] Ph.D.s in nuclear physics, or what have you, and they're just a pleasure to work with. So, again, tremendous working relationship with those agencies throughout my tenure, and, really, a major highlight of my career because we just broke down all the traditional fences you hear about among agencies, and said look, "That's just not how you should do the public business. Let's work together." (Storey: Um-hmm.) So it was a lot of fun. I really enjoy those people.

Storey: Any issues for Reclamation like out of Hanford, for instance?

Black Rock Project

McDonald: Not directly. The only Hanford Reservation issue which is the nuclear disposal site, for those that may not know, in extreme southeastern Washington, and the site borders the Columbia River. The only major issue that I dealt with, Brit, is during my tenure Congressman Doc Hastings from Washington sponsored and succeeded in getting enacted into law a feasibility study authorization for the potential Black Rock Reservoir site in Washington that would have pumped water out of the Columbia River to a reservoir built on a dry streambed, so off-channel, if you will, east of the Yakima River, and then it would have redelivered out of Black Rock into the Yakima system. One of the technical issues was whether or not water in that reservoir, were it built, would have leaked out of the reservoir *or* at the dam site back under the ridge into the Hanford Reservation and accelerated the movement of groundwater pollution which exists undeniably, but would have *accelerated* that groundwater pollution *through* the Hanford Reservation *towards* the Columbia River, which we all know is where its headed. The question is how fast its going to get there and can you draw down the surface water table enough to slow down that migration. So that really was the only technical issue that I got into. The basic conclusion of that study is that that's not going to be a economically justified, financially viable project so it really didn't go anywhere, and we didn't have to do more than lay out the basics of what the technical issue was, what the findings were, and all the modeling was done by the Hanford people for us.

Storey: In my recollection, Black Rock was supplemental water for the Yakima system.

McDonald: Basically, what it would have been is a substitute supply for diverting out of the Yakima River. So what you would have done is brought an acre foot out of the Columbia River and stored it in Black Rock and then delivered it out of Black Rock to the Yakima irrigators on the lower end of the system during irrigation season, and they would have foregone an acre foot of diversion at their headgate on the Yakima River so you improved instream flows in the Yakima River. That's fundamentally what it boiled down

to. (Storey: For fish.) For fish. Depending on how you designed the size of Black Rock, you could have provided a more firm supply than those districts now have from the Yakima during drought years, or you could have had a smaller reservoir that woulda left them with the same exposure to drought that they've got now. You know, *that* became a cost issue, clearly. Bottom line was, even if you sized Black Rock *down* so that it basically gave no greater protection against drought than what those people *now* have using the Yakima River, it was still *not* an economically justified project. Just way too expensive to build a new bucket for irrigation.

Storey: And on the Yakima, there, where—what's the position of the tribe geographically, I mean.

McDonald: They're on the lower end of the system on the west/southwest side of the river, but their fishery . . . well, let me back up. That's where the reservation is located. (Storey: Okay.) There is a Bureau of Indian Affairs Indian irrigation project on the reservation. Its diversion is basically adjacent to the second lowermost Reclamation diversion, so that serves the Indian project—the so-called Wapato Project. The tribe therefore has a claim for reserved water rights to be used on the reservation for irrigation. But the other claim of the tribes is by virtue of their 1855 treaty with the United States they have claims to appropriate flows to sustain the fishery that they historically used for cultural and subsistence purposes. And that fishery extends far up the Yakima River. So they've got claims relative to their treaty fishery rights basically throughout the basin. That's a bit of an oversimplification, but that's what it boils down to. (Storey: Okay.) Wherever the salmon historically returned (Storey: Yeah, that's what I was wondering.) to spawn. And some of those spawning areas are cut off by the upstream Reclamation dams—Keechelus, Kachess, and Cle Elum. So part of the issue with the tribes is potential restoration in and above those reservoirs.

Storey: Hmm. Interesting. What else was going on in your later years there—last years.

Regional Construction Activities

McDonald: Well, I spoke about it. There was a lot of on-going litigation in Idaho coming out of the general stream adjudication and the groundwater debates, and the key case on ownership that went up to the Idaho Supreme Court. So, you know, lot of time spent thinking about the policy/legal positions as they interfaced. You know, couple of major efforts to try to negotiate resolution of those issues with the state and the irrigators, none of which succeeded, unfortunately. Some *major* construction activities in the last couple of years, particularly getting prepared for the replacement of the spillway at Minidoka Dam, and that, I see, is now scheduled to go to construction in December of this year—2011. So that was fairly long process just because it's a big multi-tens of millions of dollars fix. There were some real issues about the ability of the irrigators to come up with the money they needed. I couldn't get it into the budget for the federal share of the appropriation given the constraints on the budget. Part of the costs of the project are non-reimbursable, therefore Reclamation has to pay those shares, but because its O&M you gotta *stuff* it into the annual O&M budget. Just couldn't get it there. So, lot of conversations with irrigators about how to work our way around that problem. There are listed species of snails in the Snake River below Minidoka Dam so we had all the E-S-A issues associated

with consultation and what the effect of construction, and then after construction, continued operation would be. So, lot of time spent trying to get that project poised to move along, and, you know, it's a pleasure to finally see that one get money and get rolling. That'll be a three year– three season–construction job.

You know, I chaired the Budget Review Committee in one of those last years. That always takes a chunk of your time to do that. And then the M-4-E stuff was going on, and the time I spent with the so-called team twelve and the development of the new business model in 2007-, '8, and the implementation in '09 started going on into '10, took an awful lot of time. Lot of hours spent on that. (Storey: Yeah.) And everything else, you know, still just day-to-day, gotta keep things running. (Laughs.)

Storey: And how were you doing that if you were away so much?

Superb Regional Staff

McDonald: Well, number one, I had a superb staff from top to bottom, and I'm one of those guys [who] never has problems delegating. I'd much prefer to give people a long rope and let them hang themselves a couple of times and learn the lessons that need to be learned as opposed to micro manage. So, just, you know, an excellent leadership team, and P-N always has been, and people have been there a long time so they knew the issues, they knew the constituents, they had the interagency relationships. So, you know, I could give general guidance and they knew what they needed to do. The other thing is they knew me, which is not necessarily good. And its frankly one of the reasons I decided I'd come to a point where retirement made sense, because I've always thought you can reach the point, as an executive, where your staff knows you too well. And then you get into the danger of group think, and people quit being innovative and they quit thinking outside the box, and then you're going to have a dinosaur on your hands. And *my* rule of thumb over the career had been eight-, ten years in a position's probably about right, and then you ought to move on, and I'd been in P-N for eleven. And you have the advantage of a staff that knows you well so they can read between the lines and quickly translate what your probable point of view is into action. But, like I said, that's got the downside that they quit thinking for themselves and having insights that I might not, and speaking up and saying, "You know, that's a really dumb idea Bill. We ought to try something different." (Laughs) Which I *welcome* and I try to encourage, but you get to know people too well, and you quit thinking, and that's not good. Its healthy to bring in fresh perspectives.

Storey: So that's at least part of why you decided to retire?

McDonald: That was among the reasons, yeah. And that's why I agreed to, you know, go back and just do an open-ended stint as deputy commissioner [during 2010] while the commissioner was filling those vacant positions. [It was] a good time to leave the region, a good time to help Mike [Connor, the new commissioner in 2010] get settled in, and I, at that point, had the flexibility personally. All the kids were grown and out of the house, well, not out of the house, but grown. (Laughs) So my wife and I weren't tied down, and living in an apartment for "x" number of months in D.C. was, one, easy to do, fun, personally, to do, we enjoy D.C., and it was an easy way for me to help out the

commissioner. So, yeah, timing was just right to go ahead and move on in 2010.

Storey: Um-hmm. Tell how me you get appointed acting twice by two different administrations.

Being Appointed Acting Commissioner

McDonald: Well, the first one has an interesting story. The second was just kind of straight forward. The first time, I don't know that I even thought about how acting commissioners get selected, to tell you the truth, Brit. Eluid Martinez, as we've mentioned earlier in this interview, was the outgoing commissioner for Reclamation in the Clinton administration, and at the end of the Clinton administration the deputy secretary of the department was a gentleman by the name of David Hayes. And I had become acquainted with David in '99 and 2000 because, at the time, the department's Office of Indian Water Rights, which basically dealt with the adjudication of Indian water rights and potential settlements, was under David's purview, and, in fact, now commissioner Mike Connor was the head of that office. And *that's* the time frame, as again, I've talked about earlier in my interview, that I had approached the state of Washington to see if we could break the log jam in the Yakima adjudication with non-stop litigation and get people to the table to negotiate, which, as I described, the state, through Tom Fitzsimmons, was willing to do. Well, that necessarily, then, made it important to start working with the interests in the department that represented the Indians, the Yakima Nation, because their claims were being adjudicated as part of this process. So, you know, any settlement between the state and Reclamation and the irrigation districts had to have the Yakima Nation also, who was both represented by the department and independently through their own attorneys was part of the adjudication.

So, I had begun working with Mike Connor as the director of the Indian Water Rights Office, you know, had some major kind of shaping of the policy issues on the front end so. I'd had occasion to work with David and brief him some, and he signed off on my suggestion that we go for this global settlement process. So, anyhow, I knew David to that limited extent, and he knew me and had formed whatever opinions he formed, I don't know. But I got a call, probably the third week in December, it was not long before Christmas, from the commissioner, Eluid Martinez, and he simply, you know, picked up the phone, "Hi, Bill, its Eluid, you're going to be the acting commissioner." And after a pause, I'm sure I said something like, "What the hell do you mean I'm going to be the acting commissioner." He said, "Yeah, David Hayes called me last night, and they want you to be the acting commissioner." And I said, "Well, that's a real privilege, let me talk to my wife because, you know, that means living out of a suitcase," and the two youngest, at that point in 2001, were still at home and in school, junior high and high school. So I chatted with my wife and probably within a day or two called Eluid and said, "Well, you know, if people think I can help, I'll go back and do it."

And, you know, I once asked Eluid after that, I said, "How the heck did that every come to pass?" And he said, "I don't really know. David just called me up, said he'd worked with you and he'd like you to be the acting commissioner." So I went back to do it, and, of course, its an outgoing administration that needs to pick the career executives that they wish to be actings because, literally, at noon on January 20th, that

outgoing administration leaves, the new president is, you know, sworn in when the clock points to noon up at the Capitol, but they don't have any officials with them. You know, they may have a few cabinet appointments within a day or two. So there's nobody to run the American government, you know, for a period of time in there. So its an outgoing administration that selects career officials to sit into the spots of the appointees until they get filled. A new administration can come in, of course, and change [actings], so what I did was I went back on, you know the federal government's closed on the 20th, I think I want back on January 19th so I could get into the hotel and be there fresh on the morning of the 21st. Secretary Norton, I think, got sworn in within a day or two, and, you know, maybe within a week she'd had a few of her Schedule C political appointees, not subject to Senate confirmation, with her.

And maybe within two weeks we career [acting] *appointees* had a meeting with the chief of staff. And they would have appointed a director of communications, public affairs, and, in that transition in particular, the incoming administration had a lot of people on contract which, under federal law you can do. An incoming administration can put people non-competitively under contract for a hundred and twenty days, and I think they can extend for a hundred and twenty days. And you don't have to go through the [civil service] system. So it's the way for an incoming administration to collect people of their party to temporarily *help* them work through a transition. Well, it turns out I knew the secretary, Gale Norton, who was an attorney general from Colorado. I'd been the director of the Colorado Water Conservation Board for eleven years. I had not worked with Gale. She was elected as I left the state, but our paths had crossed, and I'd worked a couple issues with her on behalf of Reclamation. So, she knew who I was. She brought a lot of Colorado people with her, so, frankly, it was kind of homecoming week for me. And then the other thing is one of these hundred and twenty day contract folks was a fellow by the name of Tom Weimer who had been chief of staff for Manuel Lujan, Secretary Manuel Lujan during the *first* Bush administration, and that's when I was director of the Colorado Water Conservation Board. There'd been some major Colorado River issues that Tom, as chief of staff, had handled. So I'd gotten to know Tom pretty well while I was still with state government. So, when Tom came he got put in charge of U-S-G-S and Reclamation for the purposes of the transition. So eventually Tom and I had a chance to sit down, and I just said, you know, "Tom, if you guys want me to stay, fine, if not I'm in a hotel, haven't promised to stay more than one additional night, so I can check out at no expense to the federal government. It's your choice." And he said, you know, "Appreciate it. If you *want* to go home since you're living out of a suitcase, we'd certainly respect your personal decision." I was the only career person from outside D-C. Everybody else had been a deputy or an assistant director already officed in D-C. So I said, "Nahh, I'm willing to stay, and particularly as a favor to Gale Norton if I could help since I *know* her." So he called back in a couple of days and said, "Well, we've run the traplines, and we'd like you to stay." So I stayed.

In 2009 a little different situation. I actually went to Bob Johnson and said, "you know, we know how the process works. If I can help I'd be glad to do it, if you want to float my name, fine, and if you don't want to float my name, I don't care. Its entirely up to you." And we actually, kind of off-line, talked about it at a Reclamation Leadership Team meeting and everybody said, "McDonald, if you're sucker enough to go

to D.C. be our guest. We'd rather not." So Bob ran that trapline. I don't know who all was involved, and the outgoing Kempthorne folks, you know, selected their career people, oh, again, I think before Christmas and announcements were made. But, again, as the incoming people came in I went to them and said, "You know, I'm living out of a suitcase. Don't mind doing it, but if you want me to leave and pick somebody else, you're more than welcome to do it." But, again by chance, I knew the secretary, Ken Salazar. Ken had been the attorney for Governor Lamm when I was director of the state water board, and he'd taken on natural resource issues. He was a fairly young attorney. In a lot of ways I kind of took him under my arm and showed him some of the ropes of state government—was the first time he'd ever been in state government. So I had stayed in touch with Ken over the years, and, again, he brought some Colorado people with him from his senatorial staff, and otherwise, and so it was, as with Gale Norton, it was kind of old homecoming week again for me with Colorado people.

So whatever trap lines they ran, they were okay with me sticking around again. So, went ahead and stayed until Mike was appointed. It's the other highlight of my career, you know, besides the work with the other regional executives in the Pacific Northwest, was certainly being the acting commissioner. Because it is unique to our form of government, and what better way to have such a wonderfully smooth transition of power as opposed to the alternative of guns and revolutions (Storey: Coups.) and, you know, parliaments that can't last longer than five days, and what have you. Divisive as the political debate seems to be in this country right now, it was an enormous privilege to be invited to undertake that process and to have the respect of the incoming political people—which I did and I felt all the career people, frankly, did. Gale Norton respected that we were there to do a job. Ken Salazar did, and the people they brought in did, and, you know, they were very smooth transitions despite some pretty darn tough issues. And those people came to us, and they used us. They didn't go around us. So, you know, real privilege to see that part of our constitutional form of government and get to make a personal contribution to it.

Storey: So, when did you finally retire?

Retirement

McDonald: September 30th of 2010. (Storey: A little over a year ago.) A little over a year ago. I'm now free to talk to you guys without violating any post-employment statutes.

Storey: So what have you been doing since?

McDonald: Well, I just kind of took the first three months off to unwind and travel and see the family and that sort of thing. And then in early 2011, like folks like me typically do set up a limited liability company as a device for doing some consulting, and I'm now a part time consulting—just on my own. I'm not associated with any businesses or anything, and have a sprinkling of clients in the Oregon, Idaho, Colorado, and doing some work for Bonneville Power Administration. So, an interesting range of stuff, and my first clients [are] my grandkids. Everything else comes second.

Storey: Well, I guess I know about that since I just got my first one.

McDonald: My standard form of contract even has a provision that says, "If I travel and you therefore have to pay me, my point of departure can be" (and I list all the cities where the kids and the grandkids live). So far I've managed to talk everybody into it.

Storey: Good, well, let me ask you if there is anything else you want to talk about?

McDonald: Well, I was looking at the list that I think you and I made a few months ago when we started talking, and I don't see anything here we haven't touched on, and I don't know that I would have anything really useful to contribute to history anyhow, Brit, so probably leave it at that. Maybe after you and I read the transcripts we'll see something worthwhile, probably ought to read the transcripts before you waste any more time on me.

Storey: Okay. Well, let me ask, then, if you're willing for the information on these tapes and the resulting transcripts to be used by researchers inside and outside Reclamation.

McDonald: Yeah. I think the statement I've been signing said they're releasable upon the date of my death.

END OF SIDE 2, TAPE 2. NOVEMBER 8, 2011.
END OF INTERVIEWS