

Oral History

Bonnie Leverton (Q):

Okay, it's May 24, 2005, I'm Bonnie Leverton doing the interview and Bill Leverton is the photographer and you are...

Bob Lynch (A):

I'm Bob Lynch.

Q: Do you prefer Bob to Robert?

A: Yes, only my parents call me Robert.

Q: Tell me what you're doing now. What's your association as a lawyer?

A: Well, I'm an attorney, as you know in private practice here. I came back to Arizona in the spring of 1972 to work on Environmental Impact Statements for the Central Arizona Project. I was at the Justice Department litigating those matters and various places around the country. The powers to be decided they needed somebody here to keep the Bureau of Reclamation from tripping over this new law and I was it.

Q: Let's start where you were born and when you were born and what your education was and how you ended up doing what you're doing.

A: I was born in Manistee, Michigan. I came out here with my family in 1940. My father was called active duty and was sent to Fort Huachuca and I grew up in Tucson. We sort of waited out the war while he was in the Pacific and went to school there. Went to various incendiary universities and got a couple of degrees at U of A, went off to the Marine Corp, went to the Justice Department from there. Got a Master's of Law Degree while I was there and I was litigating environmental law, issues. Then when the delegation and the governor and the CAP people

were looking for somebody to help them out with environmental clearances, especially environmental impact statements, why I ended up getting interviewed and came out here. I joined a private firm. It's called Rawlins, Ellis, Burrus & Kiewit and I was environmental counsel to the Arizona Water Commission, which at the time was the State Water Agency and my department was handling water rights but there was water issues related to the Colorado River and that sort of thing was all handled through the Commission, as a successor to the Interstate Stream Commission. And I did that for twelve years and worked on all the Environmental Impact Statements. CAP actually invented the concept of the programmatic Environmental Impact Statement. There was an initial Impact statement to cover the whole project then; each of the major features had their own more detailed Environmental Impact Statement. And I'm still doing work for CAP mostly lobbying in Washington related to environmental issues and budget issues. And I still practice natural resource and environmental law.

Q: Why environmental law? How did you get into that?

A: Well, I sort of fell into it. I was getting out of the Marine Corp and I needed a job and I was young and single. I didn't want to go back to Tucson in that condition. And a fellow named Mo Udall made a phone call for me. And I ended up in the Lands Division in the Justice Department because the Assistant Attorney General was the son of a state Democrat and chairman of the State of New York and a friend of Mo's, pretty good deal for a young Republican. And I wandered in there and they, at the time, handled all of the natural resource and all the environmental law done in the federal government in terms of litigation. This was of course before the Clean Air Act, before the Clean Water Act, before the Endangered Species Act, and before NEPA (National Environmental Policy Act). I wanted to be a trial lawyer. I've been a lawyer in the Marine Corp. And they didn't have any room for me in their litigation section, but they had room for me in their appellate section. And so I sort of fell in to that, which was like going back to graduate school all by itself, a handful of really brilliant lawyers who just handily shaped all this law in the country. And I got to play. And along the way I got to do

the first Clean Air Act case in the nation and I got to do the first NEPA case. I was there and the NEPA case was even funnier because these guys were all standing around wondering what to do this appeal. The President signed this law in January 1, 1970. It's now February and there's a case going on to the 9th Circuit in San Francisco. And these people are all standing around, they're all from Harvard and Columbia and NYU and places like that and they think out west is Pittsburgh, and so they're figuring out where is the Gila River and where is the Safford Valley and Safford, Arizona and what is all of this? They thought Arizona was next to Texas. And I said, "Oh you mean Gila River and Safford just something about Safford Valley," and they said, "This is your case." So that's how I got to handle the first case under the National Environmental Policy Act. But it was just being there. The Clean Air Case was under the old act before 1970 where a governor had to come ask the Federal Government for help, which the governor of Delaware did. We ended up shutting down a chicken rendering plant on the eastern shore of Maryland that was stinking up southern Delaware, while proving the constitutionality of the Federal Government's right to regulate air quality in interstate commerce. Just happened to be there.

Q: Is that how you got the CAP also?

A: Well, they were looking for somebody. I was litigating NEPA cases including a little minor case involving the Alaska pipeline. I was from Arizona and I was interviewing with a member of the Arizona Bar. And so I found out about this and put my oar in the water and then we all saddled up and came back to Arizona.

Q: Was that the first dealings you had as far as CAP was concerned? Is that the first time you became aware of them or what did you know about them before?

A: I knew about the act because we were doing water issues at the Justice Department and of course the act was passed in 1968 while I was there. The long-range operating criteria had been announced in 1970. So we were sort of aware it was out there. It wasn't a target of anything at the time. You have to understand

that right after NEPA was passed, you had this explosion of litigation. We were just up to our eyeballs in lawsuits because every environmental group in the country got a piece of something to say wait a minute you have to do this new thing, this Environmental Impact Statement. The agencies were all saying wait a minute, Congress already told us we could build this. We don't have to do that. Well, the agencies were wrong. So we just...I did my Master of Law thesis on NEPA which I delivered to George Washington University on my way out to Arizona in May of 1972. And there were a hundred recorded decisions by then in a year and a half. That's the flood and we were the floodgate. So it was a great experience, but it wasn't until I started focusing on CAP specifically that I really became familiar with it at all. And that was because the Bureau of Reclamation had drafted an Environmental Impact Statement for this huge project which was that thick. And I'd been in the middle of litigating the Alaskan pipeline litigation which had a five volume Environmental Impact Statement about like that, a seven volume appendix in a room at the Department of Interior with supporting documents in it that the litigants could go look through and copy. And I looked at this thing and I realized I had my work cut out for me. So for about five months, I just didn't do anything but seven days a week work on this. Forced anybody I could to give me information and basically help the agency write a document that might stand up to litigation. Because everybody believed at the time, that the minute the Secretary signed the Master Water Contract, there'd be litigation. And this was the Environmental Impact Statement to support that decision. And so that's how I got...

Q: Why wasn't there already like all this stuff, I mean they'd been trying to get it going since the early 1900s.

A: Yes, but from a Federal Agency's standpoint, you had a new law. No one was certain just exactly how you know this is supposed to work, what they're responsibilities were. Even though the project had been authorized, enough other authorized projects had been enjoined until they did these documents. But I think clear heads prevailed and they just decided they had to do something. But after

all, what? I mean that's the problem. It started off within a year or so after this law had been passed. I mean there were no guidelines. There was no counsel on environmental quality guidelines new regulations. It was...I mean everybody was feeling their way. And they just didn't understand in the field, if you will, the magnitude of the requirement. But we got through all of that and got a draft of this final document about yeah big with shelves of back up studies to the secretary in August. They got the thing through the federal process in the fall and the Master Water Contract was signed and nothing happened. No suit. So we went on to the first of the feature statements, one for the Havasu Pumping Plant. Finished all of that, nothing happened. Well, then we started on what was then called the Granite Reef Aqueduct from the river over to Phoenix. In the middle of that, here comes a lawsuit. And the thesis of the lawsuit was that the storage reservoir, the mid-system storage and water management reservoir that the system needed, would have its location predetermined by the location of the canal. Well, they filed and they filed for a temporary restraining order you know for a ten-day period to halt everything until they could have a hearing on a preliminary injunction. We went in there...I'm drawing a blank on the lawyer's name that did the Colorado River work for us. Ralph with O'Connor Cavanaugh, I don't know. I'm drawing a blank on his name. I second chaired this case with him because I knew the NEPA things. We're in front of Carl Mickey who is highly regarded as probably the most liberal judge in the Western United States in the Federal System. And the plaintiff's did such a bad job that he just reamed them and they didn't get their temporary restraining order. And they didn't file for a preliminary injunction. And then one of their lawyers sort of saddled up the young U.S. Attorney said, "Gee do you think you can sort of agree with us to dismiss this case without prejudice?" And he came to me and I don't know if I physically threatened him, but I may have suggested something about his employability. And they didn't get off the hook. They never came back. And we went on our way doing Environmental Impact Statements for the Salt-Gila Aqueduct and leading up all of these too, of course Orme Dam, which became the fiasco of the project. But we never had a problem with any litigation after that one.

Q: Did you ever figure out why?

A: Well, no, in a word. It just...people had other things to do with their money or they didn't have the money. Or having stomped them so hard, maybe they thought that there isn't really any target of opportunity. We weren't missing any deadlines. I mean all the early litigation on the Endangered Species Act was all about the Fish and Wildlife Service not being able to make the deadlines that Congress put into law. I mean twelve year olds could get injunctions in those kinds of cases. We weren't doing that. We were dotting "i's" and crossing "t's" and we were getting studies done and we were pulling stuff off the shelf. At one point, somebody told me that we had hired virtually every graduate archeology student in the Western United States to work on the Granite Reef Aqueduct. And they literally walked the 190 miles. And at the time, archeology books taught that the human language, Native Americans, to which the Yavapai's are related linguistically, had to come farther up the river and cross over around where Prescott is now and go over to the Verde and come back down this way that they couldn't have possibly come straight across. Well they had to throw that all out because the archeologists found all kinds of evidence of people coming across that desert. And I suppose half the PhD dissertations in the Western United States grew out of that one aqueduct. It was...I think we just worked hard. We knew what we were doing and we were going the extra mile to make sure that we had good information. That we had done the analysis properly and that the product that ultimately the Bureau of Reclamation would hand to the Secretary of the Interior could stand up. And I think that caused a lot of people to back off.

Bill Leverton:

What were some of the environmental issues during this study that stand out in your mind that you had to deal with or resolve?

A: The...one of the...well, there were a number of issues. At one point in time, we were doing the Granite Reef study. We sent off a draft to EPA for review. It had maps in it see and you have all of these watercourses in western Arizona and nice

little blue lines on them. And the aqueduct was siphoning under some of the major watercourses. It was providing overchutes for some of them but there were some small washes that would just be cut. And the reviewer from EPA said, "What are you doing about all the fish in Western Arizona? You're blocking their migration paths." And we said, "No water. No fish." He said, "You got blue lines on the map." I had to fly this guy out here, put him in a helicopter, run him out to the river and back, put him back on a plane, never heard from him again. On Orme Dame, the Park Service wanted to force the Reclamation to do archeological survey of the entire reservoir pool including the flood pool. And they headed this study and they had all these citations and books and stuff. I went and read them. And the one leading scientist that they were eyeing the most had a study that said if you properly sample 25% of an area, you'll gain all the knowledge you can gain. After that you're just collecting pots. I took that back and asserted in the appropriate dialogue. There was a rumor for a period of time that my name was on a dart in the Chief of the National Parks Service Office. But that backed that off and that resulted in an amendment in Congress limiting the amount of money that can be spent on archeological surveys related to a water project. I think one of the biggest problems that this sort of exercise has is that this is like giving a scientist a sand box. This is what people do. I mean they love to study the things that are going on. And it's very difficult sometimes to get them to focus on the task which is - is this particular proposal going to have an impact? And if so, what is it? And then of course, you have peer review. Well who's going to criticize who because the next the shoe is on the other foot, right. So everybody dances around all of these things. And to a certain extent, you get into position to where you are trying to herd cats together to get all this science that you actually need pulled together in a logical fashion so that it focuses on the task. Because the document is supposed to create an analysis for the decision maker to decide well should I go forward with this? Should I pick one of these alternatives? It gives you an array of things to support a decision making process but you've got to stay for the game. And that I've always found is sort of one of the major undertaking, is to get the scientist to sort of stay focused on the end result that the decision maker needs.

Q: Was Arizona unique when you were doing the Environmental Impact Statements? Was the state unique in what you were going to find out there? What they had out there?

A: Well, yes actually in two ways. What we were doing was unique. This was the first time. I mean now for instance, you'll find programmatic Environmental Impact Statements for grazing programs in certain areas of the Western United States. And then there'll be follow up in particular districts for the Bureau of Land of Management, the Forest Service. And that whole thing has now been folded into the regulations where it is institutionalized. But we were flying blind. I mean there were no rules. The rules were, can you duck the next lawsuit. So we started this programmatic statement. We got by. We started into these features and it worked until we got to Orme Dam. And that had nothing to do with the Environmental Impact Statement. It was unique in that we were dealing in an environmental that hadn't been intensively studied. I mean most of these projects that had been litigated, were being litigated at the time, a lot of them in the east and in California and in the northwest. But doing this kind of analysis in the desert was new and challenging. From my standpoint as a lawyer, it was gangbusters.

Q: Because this started so late 1970, I mean Arizona has been around for a long time, had environmental damages been done already in that it was going to affect the CAP or did they only have concern about what happened from 1970 on?

A: No, the baseline, if you will, is where you start. You take what you find. I'm not sure you have time to talk about environmental damage that had been done in Arizona before 1970.

Q: Only related to the CAP.

A: We started with the environment as we found it and the purpose of the analysis was to look at what the impacts would be of the project as it was proposed and what the law calls reasonable alternatives. So it was a going-forward analysis. It

created a lot of science and very helpful science I think. It changed some basic assumptions about archeology in the desert and collected a lot of information about Native American history in the state. Focused a lot of our Native flora and fauna and a lot of ancillary programs and sensitivities that have come out of that. And I think that's good. In the meantime, we got the project built.

Q: Did you lose any battles along the way?

A: Did I lose any battles, no.

Q: No, did CAP lose any battles?

A: If you consider the fact that Orme Dam wasn't built and would be full today from this winter's run off if it were there then yeah, I consider that a loss. I think the environmental issues that were swirled around that loosely involving the bald eagle were a sham. There was a lot of misinformation being tossed around. At the time before the decision to back off, I was collecting every bald eagle study I could find in the Western United States preparing to be able to refute some of the accusations and I thought the eagles would be just fine. There was...one of the big lies circulating around the time is that bald eagles in the southwest need to live along streams. They can't live along reservoirs. Well don't tell that to the bald eagles that nest at Lake Pleasant, they might disagree with you. And it's not true. And we had studies that showed not only that bald eagles could successfully nest and reproduce in lake environments, but that they could do so with a fair amount of human incursion and didn't disturb their success. But that's not what killed Orme Dam. Orme Dam died because the Fort McDowell Yavapai decided not to support it anymore, which I think was unfortunate for them. I think it delayed the kind of progress we're seeing in that community now a couple decades. And I'm not sure having headquarters where they have it now or having one next to Fountain Hills was a...make much of a difference in terms of their long-term cultural needs.

Q: What was Orme Dam supposed to do in, you referred to it as a fiasco?

A: Well Orme Dam was to be the re-regulating reservoir for CAP water. You can't import water over a long distance and on the assumption that this is what people need today and then seven to ten days later they may need something else. You have to be able to re-regulate the system. So there had to be an internal re-regulating reservoir here. And there's not enough storage on the Verde. The Verde's watershed is the same size as the Salt's but it doesn't have a Roosevelt Dam and it doesn't have a site for Roosevelt Dam. And so the need to be able to capture extra run off from the Verde has always been in the background of the Salt/Verde system as a need. And so this reservoir would do actually three things. It would've been the reregulating reservoir for CAP. It would have provided flood control for metropolitan Phoenix. And it would've provided extra conservation storage for Verde River run off that the system needed. And we saw how that works this winter. And I think it would have done an enormous amount of good for the Fort McDowell Yavapais in terms of giving them a new headquarters and housing area. It was modern and up to date and access to a fairly large amount of money for each of the families. And it would've jumped started their economic development the way Indian gaming has done now, but long before that. And I think it would've given the tribe a resource to manage and a reason to send people to school to come out and be conservation managers and biologists, and basically have a facility on their reservation that was a recreational asset. As I remember, the change in attitude was related to an election where the vice-chairman changed his mind about his position. The chairman being a skilled politician then changed his and then there wasn't anything to argue over but of course, we were not favored because that was their internal political need.

Q: What year was the Orme Dam thing?

A: Oh, I want to say '76 but don't hold me to that.

Q: Since it didn't go through and everything else and we don't have an Orme Dam, what's been the result? Since then has it proven that no we really should have had it or it didn't matter or did something else an alternative come up?

A: Well the alternative was called Plan 6. That's why we have an enlarged Lake Pleasant. The Federal Government took that over, that was private dam, public dam held by a special district. And the dam had been built in the '20s and incorporated the water of the Agua Fria River. The Federal Government took it over and it is now the re-regulating reservoir for CAP. There was a proposal to build another dam on the Verde, that didn't happen. So the extra conservation storage and flood control benefits that Orme Dam would've provided had it happened. And when you get a good run off this winter, say a half a million acre feet of water go by you that's interesting and entertaining, but it's not particularly good water conservation.

Q: Were you involved in Plant 6?

A: Yeah I was involved in that and we were doing the Tucson Aqueduct at the same time. That all got...well it got worked out and the Environmental Impact Statement completed and the rest of the studies done and life went on. And I don't suppose there will ever be an Orme Dam, but I still think that it could've been done in a way that would've benefited everybody, if we would've gotten past the rhetoric. But what the heck, you can't win them all.

Q: Tell me what your impressions of Arizona's water issues were when you first started dealing with this?

A: Are you talking about Colorado River issues?

Q: Yes, the Colorado River and the CAP and stuff like that.

A: Not internal, okay.

Q: Yes.

A: Well, Arizona had cut a deal in '68 and this was the major byproduct of it was to be able to import the remaining amount of Arizona's allocation into central Arizona. Meanwhile the appropriation document doesn't apply to the Colorado River, the use it or lose it concept, politics sometimes applies that to water whether the law does or not. And I think the powers to be correctly felt if we weren't going to get to build this thing and actually use our allocation that sooner or later somebody else would use it. And as Senator Wallop from Wyoming said in hearing one year, "If you let them drink, you'll never get it back." So that's what we've been trying to do is keep our friends in California from drinking our water. We had put off a lot of problems. The 1970 long-range operating criteria for management of Colorado River dams was negotiated with the basin states. It was something required by the '68 act and there were a lot of compromises, major compromises that were put together in that document that the Secretary announced in 1970. And while that is reviewed every five years, the people pretty much left it alone up until recently and wisely so. These compromises cut off further litigation that would have had to take place had the deals not been cut. And there would've been winners and losers. And my friends in Colorado are still waiting to come back and revisit all of those things. And they have a tendency to remind me on a yearly basis. But we were looking pretty good from a water supply standpoint. There's a lot of talk about oh we'll run out of water or this or that or the other thing. Agricultural is going to go away. And none of that happened. Necessity is the mother of invention and we've been very inventive. The 1980 Groundwater Act, which changed some major principles about water management that had previous applied, not only created a lot of regulation but actually changed some very significant legal principles that had been previous applied in Arizona, at least as to the regulated areas. And we've...I think been pretty inventive. We've been late to the table on groundwater recharge. California got way ahead of us on that but we're there. And it makes sense. And contrary to my friends in Colorado, that's not wasting water which they sort of started mumbling about in the last six months.

Q: Are they going to have to revisit all this stuff? A lot of things that happened that you're talking about happened like twenty-five, thirty years ago. Arizona has grown I think probably more than anyone predicted it would grow. Is the water still going to be there you think?

A: Well the water is going to be there. The question is who's going to get it. What you started to say and didn't finish was are we going to revisit some of these issues? And the answer is, we already have once this year and Arizona dodged a bullet because the Secretary of the Interior decided not to mess with the operations of Glen Canyon Dam, this year. Next year it's a different story. We should've had this interview on Friday because I'll be at a meeting on Thursday about this very subject. Because in her know, to the upper basin states, was a little tag which says that I'm coming back for next year. So the basin states will all be gathering and the rest of us who dabble in water to see just exactly what these folks think they are going to do. So one of the nice things about water law is that is never goes away.

Bill Leverton:

Are you predicting then that this could turn into another "brouhaha" with the states, and different states wanting to realign where the water goes and how its managed even though it seems to be kind of in place for the moment.

A: Is that why you keep him around? Well, I'm not predicting it will happen but I will tell you it is an absolute dead certainty that if this re-opens Pandora's Box which is firmly ensconced in the long-range operating criteria, it will be World War III on the Colorado River. It can't be avoided. The Coloradoans are still mad over the fact that we think that they, the Upper Basin, has an obligation of the Mexican Water Treaty of 1944 to share half of the water that is delivered to Mexico annually.

Q: You were talking about World War III.

A: You had asked me about, before we were technically interrupted, actually Bill had asked me, whether we were going to get back into these issues and I said we already had and then dodged a bullet this year because Secretary decided not to mess with the operating criteria at Glen Canyon Dam.

Q: You said that Colorado was upset about...

A: I've got a copy of the long-range operating criteria which I have edited. Then I can go back to and remind myself where the bodies are buried and there are about a dozen of them. I made that remark at one of these meetings this spring before the Secretary made her decision. The fellow from the Colorado River Board of California, Jerry Zimmerman, he used to be the Director of the Upper Basin Commission. I mean he's been around forever. He knows all these issues. He calls me up and says, "What are the bodies buried in the release criteria?" I said, "I'm not going to tell you." He says, "How many are there?" I said, "Three" and he says, "Oh, I guess you're right." He says, "What about the other nine?" I said, "I'm not going to tell you." I have to decide whether you're a friend or not. Well I get a call from the Upper Basin, same thing. "What are the twelve?" I said, "None of your business." You know we're still sorting out who are friends are. Those are the things that happened in 1970. Deals that were cut instead of litigating to an end result; this is how we're going to handle it. It didn't say yeah, you're liable for this and we're liable for that. It just said this is what we're going to do. If you know what the issues were, you know what the compromises are. And if we start fiddling with those, one of the big issues that's on the table it's one of the reasons I'm going on Thursday, is can the Secretary change the minimum release at Glen Canyon Dam and make it less than it is in the criteria without having to change the criteria. Can she just do it? Her letter doesn't say. She was very careful or Reclamation was very careful. And that's a lawsuit. Four basin states have already said that's a lawsuit. You mess with that without re-opening the criteria, we're in court. There are some folks wandering around in the Upper Basin, in Colorado especially one particular attorney, wants to sue because nothing can be settled without the context of a lawsuit. Maybe more complicated but the last time Arizona v. California was in

front of the U.S. Supreme Court, they said this is it. It's over and this proceeding is concluded. Where do you go? File a new original action in the Supreme Court? What are you complaining about or do you file in District Court because you're complaining about the actions of the Secretary? The...I mean for a water lawyer this is a great game. For the future of the State of Arizona, it sucks. I don't think we'd lose but I think that we'd spend an awful lot of money over a long period of time and probably end up pretty much where we are now. And that's not good government as far as I'm concerned.

Bill Leverton:

When you did all this and the Environmental Impact Statements and working the different things that you worked to bring the CAP to perdition, I get the impression there were a lot of smoking back rooms and like you said give and take and compromises made. One guy will give you this and another guy will give you that. Are you ever going to have that kind of atmosphere again or do you think that was a good atmosphere? You said you were just kind of, you were kind of inventing things as you went along in terms of the whole concept.

A: There wasn't really a backroom. I mean what you're doing is working on an Environmental Impact Statement. You're building a public document in a public process. There were a lot of fights. Some of them you know may have been in meetings rather than public venues. But my job was to make sure that 1, the process we were going through satisfied the laws so nobody could complain they weren't given an opportunity to comment or have their views heard and 2, that the product you ended up with could withstand litigation as satisfying the requirements of NEPA as in the Environmental Impact Statement. Well, for instance, this dust up over how much you have to sample was all done in the context of meetings amongst agencies which are not public meetings in that sense. We were talking about "well what are the requirements of the law" and that sort of thing. But in terms of doing Environmental Impact Statements, I don't think the process changes much. There are public requirements. You do a draft. You put it out for public review. You get comments back. You assess those. You

create a final product. It's either good enough or it isn't. And if it is, then whoever the decision maker is can rely on it as the environmental underpinning of the decision making process. It's not a decision document. It's an advisory document. I don't think you'll ever have a process like we had. The days of water projects like that are gone at least for the time being. There will be compelling circumstances I think in the future to do some very different things that we are not talking about right now. Just all kinds of things that aren't economically on the table but major \$5 billion water transfer projects. Even with "Scoop" Jackson dead, I don't think we're getting water out of the Columbia.

Bill Leverton:

You're never going to get a canal from the Columbia down to the...

A: It wouldn't have come from the Columbia anyway. It would have had to come from the Snake. But either way, you talk about putting our National Guard on the Colorado. You can imagine what Idaho would do on the Snake or Wyoming if we were thinking about a transfer from the Snake to the Green. We'll figure it out. I'm just one of those people who believe that you just confront the problem and you figure out what you can get done. Some of the avenues maybe blocked by litigation, some by economic realities but sooner or later we'll figure it out. We'll adjust and we'll have the water we need to keep going.

Q: Do you think CAP's future looks good as far as what they're doing and being out there or do you think that things are going to change, it's going to affect them?

A: Well you have to remember, CAP's a junior right on the river. And that deal was cut in part because the '68 Act also says the Federal Government has got an obligation to augment the river's water supply. Well that's an unmet promise. I haven't seen anybody in the Federal Government rushing around saying oh my god we didn't do this, we have to do it now. They're all say oh, we weren't going to talk about that. But sooner or later that concept has got to be faced. Virtually every problem you can think of environmental or otherwise on the Colorado River

system can be satisfied with more water. We're either talking about transfers from the west slope to the east slope in Colorado. You're talking about the Endangered Fish Recovery System in the upper Colorado or any of the problems in the lower Colorado. You have more water; you can throw out the problems literally. And we can get it but it takes the political world to do it. This system isn't as efficient as it could be in producing water.

Q: You say you can get it, but can you get it like fast enough so you would need it or because there's going to be a lot of other people out there who also are saying well we can get it. You can tie it up in court forever.

A: Well, you can and you can't. It depends. A certain amount of this you may have to ask Congress to help you with it. I'd like to see the old cloud seeding problem, started it up in the basin. The Bureau of Reclamation had a cloud seeding program headquartered in Denver. I don't know all the details, but they kind of got cross ways with the Colorado people and the next thing you know, they got booted out of their quarters. They ended up in Prescott with a plane rented from the University of Wyoming doing experiments along the rim. And having some pretty good success showing and at the time, the Navajo's were interested, the ranchers down in southeastern Arizona were interested. A lot of people were interested in, is there a possibility of creating a more efficient system for getting precipitation stored in the winter, i.e. snow. And I think that we could re-institute that on the Federal lands in the basin and literally find water. It would take the political world to do it. It would need a lot environmental clearances. You'd have to get people to a mindset where they're willing to do something whether they know what the outcome is going to be or not. Because one, it's not expensive to try and two, if it helps, everybody benefits. But that's for a day when the political world says we should try something like that. We're doing vegetation management in Arizona right now. It's not a program. It's a beetle. It's killing the trees of which we had too many. After they burn, which they will eventually, if they aren't cleared, sooner or later those lands will go back to being grass lands. If we had the watershed environment we had in the 1870s in Arizona now, we'd have

an awful lot more water because that watershed produced more water, produced more grasses, and fewer trees because of wildfire. We've been suppressing wildfire since the National Forest Act of 1878. And we're living with the result. It may look pretty, but it's dangerous. Rodeo Chediski and bark beetle give you a million and a half acres of fewer trees. Not particularly well thought out in terms of location or volume, nature doesn't consider those as parameters that are worthy of consideration and things just happen. But there will be long-term results from that, environmental results, and hopefully people will study them and they will see what can be done on a rational basis. And we're moving towards that Congress, Legislature not so much, but Congress is trying to move towards some more intelligent management scheme that gets all these values right for a change. And it's difficult. We'll figure it out. It will just take the right set of circumstances at the right time. What's the old song, no force is so strong as an idea, his time has come. And that's the way the water world works.

Q: Let's talk about the Groundwater Act. Were you involved with that?

A: Yes, fortunately or unfortunately.

Q: Could you tell us some stories?

A: No, it was an interesting exercise. It really was. Of course it all kicked off with Mark Wilmer winning the FICO case against a mining company down in Tucson. And of course it was all his fault. See if he hadn't been such a good lawyer and had just absolutely beat them in the ground over this issue on protecting groundwater from neighbors, the mines and cities wouldn't have gotten together and gone to the governor and said, "We have to do something." And so they did. And the whole idea was to beat up on agricultural. Well, it was 1980 so now we're twenty-five years later almost to the day if you will. And agricultural is doing just fine, thank you. And the cities are just getting hammered right and left by this law as the developers know because the assumption that if you had a city that had water, went away in the late '90s and now everything has to be proven. So now

agricultural people have more or less adapted to this and figured it out. There are still some ongoing controversies that aren't resolved but by and large, agricultural has had to spend a lot less money living with the 1980 Groundwater Act than the cities. And of course the copper market took care of the mines. I mean they're coming back except for Phelps Dodge and their problems attribute to Salt River why a lot of these things went away because the mines shut down because the copper price went down. So they hadn't had as at least in what I've been able to observe is much pain. But it's an interesting law. I'm litigating about it as we speak.

Q: There's still litigation?

A: Oh yeah, but that's a different story.

Q: Would the CAP, if they haven't gotten the Groundwater Act, would the CAP have gone away? It was supposed to be on the hit list.

A: If we called Jimmy Carter's bluff. No, I think he could've made it a lot more difficult. If you have an administration opposing you in the Appropriations Committees, that's sticky. They can be a problem. And I think that's where it would've gone. I mean Congress had passed the laws. Really the only hammer he had was if you don't do what we want then we'll go yell and scream in Congress. I think that could've been something of a problem. But it would've been nicer to have a little more time. I mean the 1980 Groundwater Act is the Internal Revenue Code of water. You just don't understand the nuances of what you're reading. You cannot read that thing and understand what it means. You can't. There is so much that is underlying it. And the way it's interrupted and what people think words mean. It is so complex now. And they have legislated for every exception in the world. I mean to where there are specific statues about specific watercourses or separate basins. And so you know, it's created a whole new arena of work for lawyers, for hydrologists, for all sorts of people. And like most programs that do that, it'll never go away because it has its own constituency there to defend its existence just like the Internal Revenue Code.

Q: When you're talking about how complicated the Groundwater Act is, the average person they're never going to understand exactly all the specifics and everything else. Do they need to know? Do they need to understand? Or just assume that CAP and the lawyers and everybody else will take care of it and we'll all be wonderful?

A: Well not only does the average person not understand it, the average lawyer doesn't understand it. I don't know. I mean do you need to understand the Internal Revenue Code or do you just go by advice from somebody and hope they're right. There's a lot of money circulating around on this right now, that and the adjudications which is a whole different kettle of fish. But anybody these days who makes a significant investment in property that doesn't have somebody screen it for them. Now I'm not talking about selling your house in your neighborhood in Phoenix kind of thing, although even that has some interesting aspects to it depending on where it is. But basically this kind of thing that we've been able to do without lawyers ever since I was in law school. We passed an initiative in my third year in law school and my property "prof" told us, don't worry about it. You're never going to make any money reviewing deeds to house sales like they still do in Virginia. But if anybody says they don't need a lawyer to do real estate, all you have to do is wait a couple years and you'll make all your money off of all the mess they make out of everything when they're outside the venue of buying and selling someone's home in the city. He was right. The Groundwater Act just has created a whole new set of circumstances that if you don't understand or you don't have somebody who does understand helping you, you're going to trip over it. Doesn't make any difference whether you have a lot of money or not, the question is where is the land? It's a growth industry.

Q: You're involved with the CAWCD. What is that?

A: The District, yeah. The District, somebody may have told you this already, but Stu Udall said I'm not contracting with all these people. I've done the Central Valley Project once. I don't like that with individual contractors. I want an umbrella

group. That was a part of...a number of us suspected a way of sort of putting everything off. Well, the Legislature reacted to virtually instantaneously and created the Central Arizona Water Conservation District. And first round appointments to it were most of the retired major politicians in the State of Arizona, which was a very good thing. Because that is a lot of political clout and that was in '71. And I showed up in '72. And they had a small office and a secretary, Zada Darter, and all the heavy lifting was still being done by the Water Commission so that's where I went to work. And then gradually over time, the District sort of grew. There was a lot of feeling that they didn't want to create another Salt River Project. Well it didn't because Salt River Project delivers electricity and water retail, as well as wholesale. And CAP is a power customer, not an electric utility. And it operates as a wholesale water supplier but in terms of its impact, they did create another Salt River Project. And one that may even be bigger because there is a tendency now as the District has grown as it became the political reality that the District should take over management. I mean they went from thirty to three hundred employees in a year, year in a half. I think that was the period when Tom Clark was the manager. That was huge. I mean that was a major shift in the identity of the District as a political subdivision in Arizona. And now, oh I don't know how many employees they have now it's got to be over four hundred, but they are a major force. And what has happened recently is this whole problem with do we have enough water supply for development is now being shifted toward them, to some mechanisms I won't bore you with. But people are seeing the CAP more and more as a place to locate problems so that CAP finds the solution. That has its drawbacks. It complicates the mission of the entity and it complicates its image but it's happening. And in the evolution of this thing is it's been very remarkable. Nobody cared about this to start with. Then it grew a little. Arizona cared because they needed the money to build CAP and we would go back to Washington and we would have lunches and we would lobby our brains out. And things sort of built to this crescendo where the Dahl requirements were sort of like a bell curve. We got sort of down on the backside of the bell curve and then everybody started looking at more about what do we need for money now? And what do we need from management? And that's the point at which CAP's management role grew.

And it is a major force in water policy in the southwest. Sure you have the Department of Water Resources in the state, you have the water interests on the Colorado River especially in Yuma, but CAP is now a major force in all these dialogues. They really don't have a dialogue on water policy issue related to the Colorado River without them. And given the fact that they are still the junior priority on the river that's a very good thing to me, I don't know if we will ever solve that conundrum. There was some talk about it this year that caused a little angst in certain quarters. But whether we do or not, what it did was and what the District doing is focusing on its role in on this junior status and saying wait a minute we have to protect this water supply. And if we aren't going to do it by doing away with this junior priority, what else are we going to do? The District's evolution was, I mean, I think in part because the Board saw that as a natural progression and partly because they had some very good managers. And they've been real lucky with their personnel. They've had some top flight people who are capable of operating in this environment both from a technical skilled standpoint and a political skilled standpoint. So we have another special District in town, if you will, that is a major force in state and regional policy. And so the fears that all the people had in passing Legislation in 1971 where right on, they did create another great big water agency.

Q: You think that is a good thing though, huh?

A: Well, yeah because there's no one else that really owns the issue of the junior priority of this water supply. If the District owns anything, it owns that problem and without that focus on who can pick the issue up. Who wants that kind of pain? It'd be a tough sell to some other entity.

Q: You are still a lobbyist for CAP?

A: Yes.

Q: What are your main concerns right now? Your main issues that you...

A: I've work on the budget and budget issues. I work on environmental laws that impact the operation of the CAP; Clean Water Act, Endangered Species Act, NEPA. Whatever comes along that might if it develops in some sort of legislative proposal might then apply to the CAP.

Q: From the time you first started, have you seen a lot of differences as far as when you're talking Environmental Impacts and stuff like that? Are there things that you need to be up on to make sure you're ahead of the game?

A: Well yes and no. The laws that are potentially impacting, or in a different way than they are now, are all the same laws. I mean this all stems from that period of time when I was at the Justice Department and right after that. I did the NEPA, the Clean Air Act, this is also 1970, Clean Water Act '72, Endangered Species Act in '73, I think the National Historical Preservation Act which was the remake of that was I want to say in '74. But anyway, there's this flood of laws that had been refined. I mean there are a lot more sophisticated in many respects in terms of water quality and hazardous materials and all kinds of stuff. The issues are still there, jurisdiction, what applies to what. How much do you have to do? What is a reasonable alternative if you have to study alternatives? How many acres do you really need for this bird? And so the issues are all the same. The sophistication of addressing them has obviously grown. The complexity has grown because the knowledge base has grown. There are things that have gotten more interesting. The yes part of the question is that the additional complexity, the additional information, the broader scope of communication, you know we can blame it all on the Internet I suppose. Just life is a lot more complex and you realize that fourteen of us got to control all these national resource environmental laws in the nation as the appellate attorneys in the Lands Division in the late '60's and early '70's. And now they've hundreds of people doing that and thousands of lawyers doing it around the country. It's sort of a barometer. The issues are still there. The laws are still there. It's just that everything's gotten much more complex.

Q: Okay my last question, and this is one of CAP's. What do you see for the state's water issues? Where do you see the future for the state concerning water issues?

A: Well, I see a lot of business for water lawyers. One of the things we haven't talked about of course is the adjudication process which was started, awakened from its sleep it's been in the law since 1919, but in the mid-'70's we're still arguing over the shape of the table and there's not been a single water ever adjudicated in any of these adjudications since then. Those are going to affect the river basins and a lot of people and it creates some enormous problems. You have to add that into the equation because that's coming and it's huge. And were just on the cusp of getting around to where these things actually affect people's lives and that is going to be huge both legally and politically. The Groundwater Act, there are still some ongoing concerns but you have to remember that we started with the 1980 Groundwater Act and we didn't go back to legislature and fix it until the next year. And we had this group that got together every year and brought together problems that were coming up because of this complex law. No complex law can rest on its own for more than one legislative session and this one couldn't either. For the need to do fixes to the Act, there've been years where we really had an omnibus bill that is a bill that the water interests all agree, addressed things that needed to be fixed, problems. So we're running out of things that people have a consensus on, not that there aren't issues. We're running out of consensus issues to tweak the law with. And that says that some of the environmental laws that are things are regularizing into the economic community in a way that is becoming more manageable. The Colorado River thing is up for grabs as far as I'm concerned, it all depends. As I said, I'm going to a meeting on Thursday. I don't know what's going to happen. The Secretary's under a lot of pressure. She's a Colorado lawyer, she's not a water lawyer, but she is a Colorado lawyer. And I just don't...you know we've got a new Assistant Secretary that was just nominated; a nice guy, sharp, not a lawyer, from Boise (Mark Limbaugh). But he's the policy guy. The guy that preceded him was a water lawyer from Colorado; smart, tough, did a lot of things. I mean he was a real hit man in the Interior Department, Bennett Raley. I don't know where that takes the Interior Department in terms of where

they're going to go with their set of issues. And I don't know, I think they're feeding rapid pills to the lawyers in Colorado. Maybe they don't need too. Maybe they, you know sort of like in Arizona, if you're a water lawyer you don't need a paranoid pill because they're out to get you. And since we know that, we're on guard. That's a whole different kettle of fish. You know if it keeps raining, there's nothing like water to make drought discussions go away. Just like drying out will end all discussions of further flood control projects.

Q: If it quits raining and you get back into your drought, it could go 25 years then what?

A: Well, then there's going to be a lot of lawyers doing a lot of work because they'll be a lot of fights and we'll see where that goes. You know the old song whiskey's for drinking, water's for fighting. And there's no place that it's been more true than Arizona. We've got to defend ourselves. There's a "highority" and a priority and when you're at the lower end of the pipe, you're always worried about the people with the "highority" and what they'll invent in a way of an idea to hold on to the water whether you have the priority or not. So we, you know...the water belongs to the vigilant and that's what we have to be.

Q: The one thing that we didn't discuss was the Indian water rights. Were you involved in any of that litigation?

A: No, just peripherally. I've been following it and people have come to me from time to time and asked me what things meant and asked me to write things to suggest as part of the legislation. But that mercifully was not one of my recent tasks.

Q: Any thing I didn't ask you about with concerns of the CAP and everything else, anything I didn't ask you about that you thought I would ask you about?

A: You mean to which I would respond. (Laughing) No, but I'll have thought of at least ten of them on the drive back. There are a series of stories that require scotch.

Q: You don't work exclusively for CAP?

A: No. I'm in private practice, got my own firm. We're just ready to cause trouble whenever anybody needs it.

Q: I bet if this stuff comes up after your meeting and everything else, you may actually have a lot more work than you thought you were gonna have as far as they're concerned.

A: I do a lot of work for power interest and of course CAP is a big power user in Arizona too. And so a lot of people are worried about what our water decisions mean for how the dams are able to generate electricity. So I'll get involved on that side of it.

- - - End of Interview - - -