

CAP Oral History

Intro: Today is Monday, July 9, 2007; we're at the Central Arizona Project Headquarters in North Phoenix. I'm Pam Stevenson doing the interview and Manny Garcia is our videographer. Please give us your full name.

A. My name is Douglas K. Miller. I'm general counsel for the Central Arizona Water Conservation District.

Q. When and where were you born?

A. I was born on October 8, 1948, in Phoenix, Arizona at St. Joseph's Hospital.

Q. What was your family doing here in Arizona?

A. My father was a high school teacher, and he taught at Camelback High for many, many years. He then went to work for a federal education program after retiring from Camelback High School. Basically, I grew up here. I spent most of my life here. The only period in my life that I lived elsewhere was to go to law school at Stanford and then to work for the United States Department of Justice for a few years.

Q. What did your father teach at Camelback High?

A. He taught shop. He taught any number of things. He was a shop teacher. He handled the audio-visual department and a number of other things. He was working on his doctorate degree when he died.

Q. What field?

A. Education.

Q. Was he from Arizona also?

A. No. My parents were essentially from Colorado. They met and married in Colorado.

Q. What brought them to Arizona?

A. I really don't know. I'm really not sure.

Q. You never thought to ask?

A. No. I never thought to ask.

Q. What about your mother, did she work?

A. My mother did not work until after my father died. When my father died in 1969, my mother became a travel agent. Essentially, she got to travel all over the world. She made a pretty good living at that, and she is still alive here in Scottsdale.

Q. Were there other children in your family?

A. Yes. I have one brother who is a pediatrician working in Twin Falls, Idaho.

Q. Growing up with your father being a teacher I suppose you were a good student?

A. I was a good student. I worked hard. I had a few summertime jobs. One year, I had a job after school but for the most part my parents discouraged me from working. They wanted me to devote my time to doing well in school. And that's what I did.

Q. What were your favorite subjects?

A. In college, they were mostly in the hard sciences; geology, geochemistry, mineralogy, although my major was political science. I had a double major, political science and geochemistry. I graduated with a Bachelor of Science degree not a Bachelor of Arts degree. I went to Arizona State University. I wanted to be a lawyer, and I wanted to do environmental law. I thought that having a science background would be helpful in environmental law.

Q. Why did you want to be a lawyer?

A. I don't really know. I just seemed to gravitate toward that as I worked my way through school. I guess I had decided to become a lawyer even before I went to college. I was in several speech contests when I was in high school and won a couple of them and won a scholarship to Arizona State University. I think through the public speaking experience, I began to think I would be okay as a lawyer. I imagine that is how I got started.

Q. Did you know any lawyers?

A. I did not. Nobody in our family so far as I know had been a lawyer.

Q. What was Phoenix like when you were growing up here?

A. I remember that there weren't nearly as many people. I also remember that the population, at least of kids, was almost exclusively people who were born here. It was very unusual to meet anybody from out of state. I think things have really switched now. Most people who live in Arizona are from someplace other than Arizona. They're born elsewhere. When I was a kid, everyone was born here.

I remember that my brother and I loved to hunt from the time we were kids, and our dad bought us our first shotguns. We would hunt dove on a farm that is now Paradise Valley Mall. You didn't have to drive much further than Glendale Avenue to be in the sticks and by the time you got to what is now Shea Boulevard, it was

entirely rural and dirt roads. There was a big farm out there and it was a wonderful place to hunt.

Q. What other things did you do as a kid growing up?

A. Well because my father was a teacher, he got three months off in the summertime. I thought that everyone had that sort of a vacation schedule. I didn't realize how privileged we were. We did a lot of traveling throughout the West during those three months in the summer. My dad and mom bought a camper, and when we were kids we drove through most of the national parks in the West. We spent a lot of time in Colorado. We went up to Montana and Wyoming. We just had a great time visiting Yellowstone National Park, Glacier National Park, and lots of little places in between. I learned how to fly fish. It was great fun.

Q. Phoenix was a much smaller town then. Was everything still air conditioned?

A. I think our first home was probably cooled with a swamp cooler. That was when I was very small but everything after that I remembered being air conditioned. I don't really remember a time, except perhaps in my first home, where air conditioning wasn't used.

Q. You said very early you had ideas about your career . . .

A. I think so. I think that started in high school.

Q. Did you have some teachers that were mentors for you?

A. Yes, I did. I had a really wonderful speech coach, Mr. Harvey, at Camelback High School who encouraged me to enter several speaking contests and helped me with all of that. He helped me win some scholarships that helped me get through college.

Q. It must have been difficult when your father passed away. Was that sudden?

A. That was very sudden. It was in 1969 about ten days before my 21<sup>st</sup> birthday. We had just gotten home from Telluride, Colorado. My parents had bought a couple of small cabins in the town of Telluride. Telluride was about six hundred people at the time in the wintertime. No one thought of ski resorts. They were mostly miners and ranchers in that little town. My father had seen, learned about Telluride, Colorado as a result of our summertime travels and we just loved it. My father met somebody who owned a little piece of property in Telluride and was anxious to sell it and my dad said alright we'll buy it. So, my parents bought a couple of little lots that had a cabin on it, well over one hundred years old. They got the opportunity to buy another lot next door with another little cabin on it. And so, for a time, we would go up there every summer and work on those cabins. Restoring them and putting a bathroom in and a shower in. One summer, a tremendous flood came down a little creek that our cabins bordered, and it destroyed both cabins. It completely wiped them out. My brother and I were away, and my parents were warned by the folks next door to run out and get away before the cabin they were in was flattened. We just kind of picked up the pieces and went home that summer. My dad died the same summer, so it was a tough summer for my mom, my brother, and me.

Q. You were still in school?

A. I was. I would've been about a junior in college by that time starting my third year.

Q. You went back to school?

A. Oh yes. I stayed in school. My father left my mother in pretty good shape financially. Again, she started working about that same time too and my brother and I both stayed in school and eventually went on to graduate school.

Q. What happened to those lots in Telluride?

A. We owned those for a good long time. About four years ago, we sold them. My mother, frankly, needed the income and she doesn't need to worry about money anymore. My parents made one good investment and that was it.

Q. Did you ever rebuild on there?

A. Yes. My mother built another cabin further up the hill away from the creek and we went up there for many years in the summers. We would occasionally go up in the wintertime but most of the time I spent up there was in the summers.

Q. So, you were able to continue school even though you lost your father?

A. Yes.

Q. How were you able to go to law school? Did you have to start working yourself?

A. No. I had some scholarships, and my mom really put me through school. Together with what she gave me and a couple of scholarships I had, I was able to get through without too much difficulty.

Q. Why didn't you continue at ASU for your law degree?

A. There were about three schools in the country that were really good in environmental law. They were the University of Michigan, Harvard, and Stanford. I applied to all three and I got admitted into all three. I decided to stay out West because by that time, I had met a nice girl and we'd been dating a couple of years and I wanted to be closer to home. So, I decided to go to Stanford.

Q. What was Stanford like?

A. It was great. It was really fun, great student body. There were only 160 students in my graduating class, all of them very bright and very, very interesting people. I

had a wonderful group of professors. I got close to a fellow who later became Dean of Stanford Law School, Charlie Meyers. He taught water law at the time, and he also taught environmental law. So, I was able to take a couple of courses from him. Then I did an internship with a natural resources law firm, an environmental law firm, Natural Resources Defense Council during my third year. I had a great time. I think I got a good education. It was a lot of fun. It was nice to live near the San Francisco area.

Q. Environmental law at that time was pretty new.

A. Yes, it was. Only two major environmental statutes had been enacted and one of them was enacted when I was still in school, the Federal Water Pollution Control Act. The two major environmental statutes were the Clean Air Act and the Federal Water Pollution Control Act. The Federal Water Pollution Control Act is now called the Clean Water Act, but at the time it was a new piece of legislation. It was enacted in 1972.

Q. What were you going to do with this degree in environmental law?

A. I had visions of working for a public interest law firm, but I discovered pretty quickly that they didn't need anybody new, right out of school. They had experienced lawyers who were anxious to work for them. So, I began to look around for other opportunities to continue working in that area. I can't remember how this occurred, but I had heard that there was an Environmental Section at the United States Department of Justice in Washington DC, pretty small. When you apply to work at the Department of Justice, you're not given any choice of where you're going to work, in what division. Charlie Meyers who was my friend then made a call, as I remember, to the Deputy Attorney General for the Lands and Natural Resources Division and basically got me my first job in what was then called the Pollution Control Section doing environmental law for the United States. That was great fun.

Q. Did that move you to Washington, DC?

A. It did. My wife and I moved right after I graduated. We moved to Washington, DC. We got married during my third year in law school, just before the start of my third year. We moved the very next year back to Washington, DC, and I spent three years there working for the United States Department of Justice.

Q. Were your plans to stay back in Washington?

A. No. As things really started to evolve, I thought, I wouldn't want to work more than three years for the United States. If I did, I was afraid I might be stuck in a government job with the United States forever. I didn't want to do that. I thought I'll stay here for about three years and then I'll start thinking about going elsewhere. But the time we spent back there was fun, very interesting. Great people to work with, great friends, a wonderful place to live. Most people don't know, but Washington, DC, is a very beautiful city. It's physically beautiful. Nothing is allowed to be built which is taller than the Capital Building and I think that even the Washington Monument meets that height restriction. The city is low and it's very beautiful.

Q. You were there about the time the bicentennial . . .

A. Right. We were there between '74 and '77. I started, as I remember, the fall of '74 and I left in the fall of '77. I got to see the bicentennial celebration and everything that went along with that. Of course, they had a wonderful fireworks display and everybody in Washington, DC and the surrounding areas tried to reach the fireworks display. So, we were all on the freeway trying to get to downtown Washington, DC at the same time. Finally, the traffic stopped. It literally stopped. So, all of us just parked our cars on the freeway, got out of our cars, there was a little hill where we had parked. We just kind of walked up the hill and sat in the grass and watched the fireworks from there. Then when it was all over, we got back in our cars, eventually the big traffic jam broke up, and we went home. It



was really something. That's the only time that I actually parked in the middle of a freeway.

Q. What did you do in that first job with the United States?

A. I mostly represented the Environmental Protection Agency (EPA) in actions under the Clean Air Act and the Clean Water Act. The other major environmental statutes weren't enacted until sometime a little later. So, I really didn't get much experience in those, but I did get a lot of experience under the Clean Air Act and the Clean Water Act, primarily defending EPA. EPA would get sued by industry for adopting regulations that industry thought were strict. It'd get sued by environmental groups for adopting regulations that the environmental groups thought were too lenient. So, it just couldn't win. There was a never-ending series of lawsuits that they had to have representation for. So, that is what I did most of the time.

Q. Was the job as a lawyer for environmental law what you thought it was going to be?

A. Actually, it was more exciting than I thought it was going to be. Those lawsuits could be interesting and fun. I didn't know it at the time, but I learned pretty quickly that the government lawyers had a big advantage. The courts were inclined to pay attention to what government lawyers said, even if they were young. They also respected the level of knowledge that was there because you could get help from other lawyers who'd been there for a while. They knew all the relevant cases that you needed to rely on. They represented the United States very well. The job wasn't easy, but you had a leg up on most other practitioners.

Q. Did you actually do court room work?

A. Yes, I did at the district court level. I didn't do any trials and haven't to this day ever done a trial. I had a lot of arguments in the district court on motions. In fact,

most practice in court consists of what's called motion practice. You write and argue motions to dispose of a case on legal grounds. Typically, that is a motion to dismiss or motion for summary judgment. Very, very few cases actually go to a trial, at least in the civil arena.

Q. Do you work out settlements then?

A. Yeah, sometimes you would but more often than not, we'd just win. We lost very seldom.

Q. Your time was up on your mental time. Were you ready to leave?

A. Yes, I was. We had made some really good friends but at the end of three years, we were ready to move back home. My father had died, and my wife's parents were both in good health at the time but we wanted to be back there to be of help to them if we needed to be. We also wanted to start to raise a family, and we thought we'd rather raise a family in an area other than DC. So, we moved back to Arizona in late 1977.

Q. Moved back to Phoenix?

A. Yes.

Q. Did you come back here without a job?

A. No. I had interviewed beforehand. I had interviewed several firms, and I came back and joined Fennemore Craig a law firm here in Phoenix.

Q. What were you going to do with them?

A. I did environmental law mostly for large mining companies. I also learned quite a bit of public lands and mining law that I did for them. I did quite a bit of work in

federal statutes that I hadn't been exposed to previously, including the Resource Conservation Recovery Act which deals with disposal of hazardous waste; the Safe Drinking Water Act and any number of other statutes that I had not had much experience with up to that point. The mining companies were good clients. They needed a lot of work. The only trouble with them is that they go through periods of up and down in the mining industry. Their fortunes rose and fell with the price of copper. So, there were times when they had some real difficulty. Everybody who did work for a mining company when they were having difficulty felt that. The boom and bust, you could never predict when it would go one way or the other. My mining clients were great people. The people that I worked with were great people. I represented mostly Kennecott Copper Corporation. They were a great client. I really enjoyed doing the work for them.

Q. What kind of legal issues were you working on?

A. We did a lot of work for Kennecott under the Clean Act area, a lot of work in the Clean Water Act area. We also helped them comply with some of the requirements of the Federal and Policy and Management Act which required rerecording of all mining claims. That was a huge effort. Work of that nature.

Q. What made you leave there?

A. I got a call one day; I'd been with the firm a little over six years, I guess. I got a call one day from a friend of mine who was the brother of another fellow at the firm. He told me of a job with the Central Arizona Project. He said it's a small organization but they're looking for their first in-house counsel and you might be interested. I was. I interviewed with CAWCD, from what I remember, in 1984. The very beginning of 1984, maybe the end of '83 I can't remember. I talked with Tom Clark who was then the general manager and he had me speak with a few folks who were then on the Board, including John Rhode's son, Jay Rhodes. They offered me the job and I took it. I thought I'd be with CAP four or five years. Get their contracts under control; they were just entering into all their water service

contracts with their customers. I thought I'd get that done and move on to something else. It hasn't worked out that way. I've had more and more work and more interesting work each year. So, I've stayed here for almost 25 years now.

Q. That was 1984?

A. Right. I joined CAP in February of 1984.

Q. That was right before they started delivering water to the valley.

A. Right before they started delivering water. They were still in the process of entering into all their contracts with water users. That was a big part of my job when I first joined the CAP.

Q. Did you know much about Colorado River water when you came here?

A. Absolutely nothing. I knew nothing about it. I knew nothing about the organization that I was going to work for. I had to learn all that. I knew a little bit of water law but not very much. I did know quite a bit about contracting. I knew a little bit about commercial transactions. So, that helped.

Q. Water law is pretty complex?

A. It is and the Law of the Colorado River is unique. It's not your typical water law. Arizona is what's called a prior appropriations state which means first in time, first in right. You establish a right by, generally, by recording a notice of intent to appropriate then actually appropriating the water; meaning taking it off the river and applying it to beneficial use. The first person to do that establishes a senior right. The Law of the Colorado River is entirely different. One acquires a right to the Colorado River through making a contract for the water with the Secretary of Interior and that's unique.

Q. The 1922 water law . . .

A. Right. The 1922 Compact between the upper basin states of Wyoming, Colorado, Utah, and New Mexico and the lower basin states of Arizona, California, and Nevada basically divided the Colorado River into two parts; an upper basin and a lower basin with each basin to receive 7.5 million acre-feet annually from the Colorado River. Then in 1944, the United States entered into a treaty with Mexico that gave Mexico 1.5 million acre-feet of Colorado River water annually.

Q. You had to learn all that stuff . . .

A. All that was brand new to me. I had some good people to work with. We worked very closely with the Bureau of Reclamation, and I worked closely with the Bureau of Reclamation lawyers, the Interior Department lawyers here in Phoenix and the Reclamation folks in Boulder City, Nevada. I was able to learn pretty quickly. Thankfully, Reclamation developed some standard form contracts that were a start for me to do the contracting part of my work. Lawyers are really trained to do anything. That sounds immodest but that is really the nature of your training. You're trained to become and to learn whatever you need to be and learn in order to represent a client properly, often times that requires that you learn an area of the law that you're not particularly familiar with. Everybody eventually, I think, specializes in one or another area. Really, lawyers are trained to be generalists and to do work of all kinds to meet the client's needs.

Q. You mentioned you're in contract law now. Who were the contracts with and who'd you write them for?

A. The contracts that I started out with were contracts among the District, the United States, and the water users like the City of Phoenix or Maricopa-Stanfield Irrigation and Drainage District, for delivery of Colorado River water through the Central Arizona Project. The forms of those contracts were developed with the Bureau of Reclamation and the water users, with a series of meetings with the Board of

Directors being held to consider various drafts and the water user community having the opportunity to make comments on those drafts. So, the standard form contracts were largely in place when I got here, at least the basis for them. There were little things that had to be modified to deal with particular situations and by and large, the M&I contracts needed some work before they could be finalized. M&I means municipal and industrial.

Q. So, the contracts were with irrigation districts not with people?

A. That's correct. The way that the water was actually divided up is that . . . let's go back a little bit. Arizona continued to have a significant dispute with California particularly about what Arizona's share of the Colorado River was. That was resolved in 1963 in a decision of the United States Supreme Court and in the Supreme Court's 1964 decree which allotted Arizona 2.8 million acre-feet of Colorado River water annually. California got 4.4 million-acre feet and Nevada got 300,000 acre-feet annually from the Lower Colorado River. The Supreme Court also said in its 1963 decision that the way one acquired a right to water from the Colorado River water was through a contract with the Secretary of the Interior. The Bureau of Reclamation generally represents the Secretary of the Interior in water contracting. So, the contracts that we were entering into included the Bureau of Reclamation, they included Central Arizona Water Conservation District, and they included the individual water users which for the most part were municipal corporations, irrigation districts, or cities and towns.

Q. Did all of those have to be put in place at one time, or were they gradual?

A. It took a while. Ideally, they would've been put into place at one time, but it took us two or three years to get the contracting completed. Just the process of offering them, working out individual difficulties with particular contracts, getting them all appropriately signed, and then there is a procedure under Arizona law whereby the contractor has to take the contract to a court and have the court declare the contract to be valid and binding. The process of getting the contracts

written, properly executed, and then validated took quite a bit of time. It took almost five years to get all of that into place.

Q. Roughly how many contracts are you talking about?

A. There are a little over sixty municipal and industrial contracts; contracts with cities, towns, and private water companies. I want to say there were ten or twelve irrigation district contracts.

Q. Do they all get different rates?

A. They have different rights to water and they have different delivery costs, different delivery charges. That's correct.

Q Did you have to deal with any Native Americans at that point?

A. No, but that wasn't by choice. The Secretary of the Interior made the decision that contracts with Indian tribes would be entered into exclusively between the United States and the tribe itself and CAWCD would not be a party to those contracts. That was okay with us, except that there were some drafting errors made in those contracts and they were important. They had to do with how much water each water user received in time of shortage. We didn't get that straightened out for 20 years. It took us 20 years to straighten that out. That was only straightened out in 2004. I think that if the United States had included us in the process of drafting the Indian contracts, we might have been able to avoid that.

Q. In 1984/85, most of the Indian Water Rights suits hadn't been settled yet.

A. That's true.

Q. So, were those sort of gradually settling out?

A. They were. I can't remember when I first became involved in the settlement of Indian water rights claims, but I know which one it was. The first settlement that I became actively involved in was the effort to settle the claims of the Salt River Pima-Maricopa Indian Community to the Salt and Verde Rivers. They were very significant claims. They were to the water supplies that the valley area cities depend upon and there were a lot of really difficult and contentious issues about how to go about settling those claims. In the process, CAP sort of figured out what its key policy positions would be in settling Indian water rights claims. One of them was that the claims would not be settled at the expense of CAP water users. But another one was that, if the water users themselves like the City of Phoenix or Mesa or Scottsdale or Tempe, supported using Central Arizona Project water to settle the claims that's okay. The Colorado River was not at risk for any of the Indian water right claims in central Arizona. The supplies that were at risk to those claims were the Salt, the Verde, and the Gila Rivers. Nevertheless, folks like the valley's cities decided that in order to firm up their local water supplies, to protect the supplies that they receive from the Salt River Project, from the Salt and Verde Rivers, they were willing to give up some of their CAP water to get that done. The Salt River Pima Maricopa Indian Community Water Right Settlement was the first such settlement in which that was done.

Q. Is that how CAP got involved because their water was being used?

A. Yes, that's exactly right. That's how we got involved. It was a huge settlement agreement. It was a very, very difficult to craft. It took years to do. It involved retiring some senior rights on the Colorado River that were held by Yuma-Mesa Irrigation District and transferring that water from Yuma-Mesa Irrigation District to CAP for use by the valley's cities. It was a big deal, a very, very difficult settlement to put together. It took years.

Q. I assume each of those entities had lawyers working on it.

A. That's correct.



Q. Did you all get together in one room?

A. Yes. Often. That was the way it was done by and large. Occasionally, we would have smaller groups of folks meeting but by and large all of us were together in one room trying to work out this deal.

Q. That was your first big Indian . . .

A. That was my first big settlement. There was another settlement that came along the same time with the Ak-Chin Indian Community but that was largely done without our participation. That was mostly done at the congressional level. I remember us becoming involved in the legislation to authorize that settlement to some extent, but we didn't have much to do with that one.

Q. What about the Gila River?

A. The Gila settlement was the most recent settlement to have been concluded. That was authorized by the Arizona Water Settlements Act of 2004. We completed the settlement about the time that the authorizing legislation was enacted. But we're still going through the process of getting that settlement approved by the court that administers the general adjudication, which would have included an adjudication of the rights of the Gila River Indian Community had they not been settled. That settlement was decades in the making. I was not involved in the first decade of efforts to get that done, but I was heavily involved in the second decade of efforts to get that done. That was another very difficult settlement to put together. Each of these settlements requires federal legislation to authorize the Indian Community to enter into the settlement agreement and the United States to enter into the settlement agreement on the community's behalf. The Gila settlement is the biggest one of all. That was the one concluded around 2004.

Q. If I understand it, a lot of the funding for it has to be then approved by Congress.

A. Yes, and then appropriations have to be made to carry out the settlement agreement. CAP has consistently supported appropriations to satisfy the terms of the Indian settlements, and we still do that.

Q. Initially when the CAP was proposed and all those years the people fought for it, it was thought of first to bring water to farmers and then for cities.

A. Yes.

Q. When did the Indians enter into this?

A. There is rather a complex history associated with that. To start with, Arizona versus California resolved the claims of certain Indian Tribes on the Colorado River to the Colorado River. And in fact, the court decreed certain rights for Indian Tribes on the Colorado River that resulted in those tribes receiving substantial allocations of Colorado River water. That still left quite a bit for use by the Central Arizona Project. When you take care of all the rights on the river, not just Indian rights but non-Indian rights as well, it left about 1.5 million acre-feet on average available to users of CAP water.

The Secretary of the Interior allocated the CAP supply among Indian, municipal, and farming uses I want to say beginning in about 1983. Originally as I remember it, the Indian allocation was about 36% of the CAP supply. I may not have the figures right, but it'll illustrate the point. As time went on, there was a greater desire on behalf of the Department of Interior to resolve these unresolved Indian Water Rights claims. And through a combination of settlements that have occurred since that original allocation and as a result of the settlement of a financial dispute that we had with the United States over CAP costs, CAP water is now roughly 47% Indian and 53% non-Indian supply.

Q. How do you think that would impact Central Arizona Project over the years in the future?

A. I don't think it will affect CAP users substantially. Honestly, I do believe there will be enough water available from the project to meet the needs of non-Indian water users. A number of the Indian water settlements have provisions for the tribes to lease their water to non-Indians. In fact, that sort of leasing has occurred. I think there will be more of that leasing in the future. I think as the tribes determine that they will not be able to put all their water to use, and some will but others will not, that more leasing of Indian water will occur. All these settlements were made after extensive public process were the ramifications of settlements for non-Indians users were fully discussed and the affected non-users, like the big valley cities, supported the settlements. I have to believe they knew what they were doing and if they didn't, well they only have themselves to blame.

Q. Were the Indian cases represented by large law firms from Washington?

A. They were represented by folks from Phoenix; most of them had their own in-house counsel. They were well represented. They had good lawyers. Not only did they have good lawyers, but they had good water managers. They had folks that really knew what they were doing. A fellow that comes to mind that I did a lot of work with and who I thought was just first rate was a guy named Bill Chase who was the water manager for the City of Phoenix. He was very much involved in virtually every settlement that I was involved in.

Q. I know Rodney Lewis was Gila. He is a Gila River Indian.

A. Right. They also had outside counsel. They relied both on Rod and outside counsel in all the settlement negotiations. That has been typical of the Indian community. They've had inside counsel and outside counsel, as well as being represented by the United States. They were well represented.

Q. I know Mary Thomas once told me that the casinos are nice for now but long range, the water rights are much more important.

A. Sure. I can understand that perspective because it secures their future.

Q. And the Gila River plans on using some . . .

A. They will use more for farming than any other Indian community. They really plan to put all of their water to use which would be consistent with what I understand to be their tribal history. They have a long history of farming.

Q. Are there any other milestones in Western water history that you played a part in?

A. I don't know about overall Western water history but there were some significant CAP milestones that strike me as being important. One was the enactment in 1984 of the Hoover Power Plant Act. That Act authorized the sale of what's called Navajo Surplus Power. That's power from the Navajo Generating Station at Page that is surplus to the needs of CAP pumping. So, a certain amount of power generated by the Navajo Generating Station, CAP is entitled to, if I remember right, 24.3% of that power and not all of it is needed to pump water. So, the Hoover Power Plant Act authorized that power to be sold, and it authorized the collection of an additional rate component on the sale of the power to be used to help repay the capital costs of CAP, and to fund any upfront contribution for CAP construction costs. That was done in the Hoover Power Plant Act.

Around the same time, the United States began to put pressure on the CAP to make a significant upfront contribution toward the cost of construction of the CAP; not only on us, but on other non-Indian beneficiaries of the project. So, in 1986, an agreement was crafted to provide upfront funding for various CAP features. By up front funding, I mean our making a contribution in advance towards costs of construction as opposed to having like a house loan where the house is built, and you pay off the loan. That was the way the project was originally structured. We have a repayment contract with the United States which provides that, over a period of 50 years, we'll repay the capital costs of the

project. Well, the government said that's not good enough. We want you guys to pay a significant upfront contribution toward construction costs.

So, in '86, a large group of users, affected entities, agreed with the United States to make an upfront contribution towards CAP construction costs. CAWCD agreed to contribute \$175 million toward the cost of construction of New Waddell Dam, the regulatory storage feature on the CAP. It was called Plan 6. It not only provided up front funding for construction of New Waddell Dam but other features of Plan 6 for the regulatory storage division of CAP, including modifications to Theodore Roosevelt Dam.

We agreed to make an upfront contribution of \$175 million for the cost of construction of New Waddell Dam. In order to do that, we needed to borrow money. So, we began to put together a piece of state legislation, which is in this book, and it was to authorize us to issue bonds which were going to be secured by revenues from the sale of Navajo Surplus power and the additional rate component to be added to the price of that Navajo Surplus power. There was a huge political fight over who was going to have the authority to issue the bonds with Salt River Project, Arizona Public Service Company, and the Arizona Power Authority pressing to have that authority given to the Arizona Power Authority. The Authority is the traditional marketer of power from the hydroelectric dams on the Colorado River. I remember us working very hard to get a piece of legislation passed that authorized CAWCD to issue those bonds rather than the Arizona Power Authority. One would think that that's not a big deal but at the time, it was an enormous deal because it involved us participating in the sale of power. SRP didn't want to see us do that. APS didn't want to see us do that. Arizona Power Authority didn't want us to do that.

I remember sitting late one night in a conference room in the offices of Gust Rosenfeld with some other folks who were working with us on the issue; Tom Clark, Fred Rosenfeld, and Marv Cohen of the City of Tucson. While there, we learned that the Arizona Republic was going to come out with an editorial the next day

supporting our being given the authority to issue the bonds. We learned about that at about four o'clock in the morning. We were called by the fellow who was writing the editorial. That editorial came out and it of really tipped the balance and got the legislation passed that we were working on to authorize CAWCD to issue the bonds.

Q. Why did you want to issue the bonds rather than have somebody else do it for you?

A. Because it had very much to do with our ability to repay CAP costs. It put us in the driver's seat with respect to the obligation to repay the construction costs of New Waddell Dam. And it also put us in the driver's seat with the terms and conditions under which the power would be sold. That was really important. We didn't want somebody else telling us how much that power was going to be sold for when the money was going to be used to repay an obligation that we owed. We wanted to control that. After the legislation was passed, we then went on to negotiate a plan for marketing the power. We then negotiated contracts for the sale of the power, principally to Salt River Project. In fact, exclusively to Salt River Project, APS was in the mix, but we just could not find a way to make that work under some restrictions and federal power law that precluded us from ultimately making a deal with APS. We tried to put a deal together that would include APS, but we just couldn't do it because of restrictions and federal power law. We did manage to sell a very sizable chunk of the power that included an additional rate component, charged to Salt River Project, that was dedicated to the repayment of bonds that were issued to fund our contribution toward the costs of Plan 6. So, we then went on to issue two series of bonds and two refundings of those bonds. It really helped secure the legal and the political future of this organization to have done that.

Q. Is the fact that SRP runs that plant, did that affect it at all?

A. I can't tell you for certain. I'm sure it did but I'm sure that they wanted other people to be in control of how the surplus power was going to be sold. They're entitled to a piece of the plant themselves, but they were also hoping to buy a piece of the power that was dedicated to CAP. I'm sure that they would've preferred that somebody else have more to do with the pricing of the power than we did.

Q. APS is more of a private profit-making organization where SRP is more of a municipality.

A. That makes a big difference in the federal power arena. SRP was a qualified purchaser of the power. We would not have been able to sell any power to APS, but we were trying to put a deal together that would have allowed them to take power by exchange and ultimately, we just couldn't do it.

Q. So, does that mean that you're also a power company?

A. Not really. That was one of the things that we had to give up in the authorizing legislation, this piece of legislation that was enacted in '86. It's Chapter 21 of Laws of 1986. I have held on to it (the book) since then because it was very significant in our history. It put us on a solid financial footing. It gave us the ability to issue bonds. We were able to prove our ability to issue bonds. We got good bond ratings. All the bonds have been sold in each issue that we've made. It really strengthened us. It strengthened us financially. It strengthened us politically. It strengthened us legally to have been able to do that.

Q. Are they considered municipal?

A. They are municipal bonds. So, they have municipal bond rates and the interest on the bonds are tax free. That was important in order for us to raise the money at a relatively lower cost.

Q. At that point, you really weren't delivering that much water so what other source of income did you have?

A. We have three important sources of income. One is through sale of water. We have water service capital charges that go toward helping repay the capital obligation of the Central Arizona Project. We have tax revenues which are levied throughout our three-county service area. I know that there are more revenues than this now, but I want to say tax revenues were somewhere around \$12 and \$18 million dollars annually. So, that's a fairly significant source of revenues. Then we also have revenues from the sale of Navajo surplus power. In addition to the power sales contracts that support the bonds that we issued, we sold Salt River Project an additional block of Navajo surplus power which I believe contributes about \$18 million annually toward project repayment. It might be more than that, but I think it's that.

Q. You were talking about the milestones that you were involved in, and you mentioned a couple of times, the whole repayment issue. Is that a milestone?

A. Yes. Let me mention one other, in addition to marketing Navajo Surplus Power, we also wanted to acquire the right to purchase a certain portion of power from Hoover Dam on the Colorado River. Hoover Dam generates a very significant amount of very inexpensive energy. A plan was put together, also part of the Hoover Power Plant Act of 1984, to market Hoover power that's marketed by the Arizona Power Authority. The purpose of the marketing was to provide monies to up-rate the generators at Hoover Dam; to build more generating capacity into the generators there and use the revenue from the sale of that additional generating capacity to pay the costs of the up-rating. We worked very hard to get an allocation of Hoover power. That involved our competing for that allocation with many other traditional users of Hoover power. Salt River Project, any number of irrigation and electrical districts in this state, and others who wanted that power. That was a major struggle as well, but we were able to



persuade folks that it was appropriate for the Central Arizona Project to receive a portion of that power so as to better serve the needs of CAP customers. So, that was another important milestone in our history. And as it turns out, the CAP is the most important source of revenues for the Arizona Power Authority for the payment of the bonds that they issued to up-rate the generators at Hoover Dam. So, we are a very significant customer now of the Arizona Power Authority.

You had asked me, I had mentioned the dispute with the United States regarding CAP repayment. In about 1993, it began to come clear that we had some major differences with the United States over how much we owed for repayment of the Central Arizona Project. The Colorado River Basin Project Act, the Act that authorized construction of the CAP, was passed in 1968. It included a section that said that in order to effect project repayment, the Secretary was authorized to enter into a contract with an entity that had power to levy ad valorem taxes. Shortly after the Colorado Basin Project Act was enacted, the Secretary asked Arizona to form such an organization. CAWCD was formed as a result of that request. It was formed in 1971 from Maricopa, Pinal, and Pima counties. In 1972, CAWCD entered into a contract with the Secretary of the Interior for repayment of CAP costs. That contract provided, as I recall, that CAWCD would repay up to \$1.2 billion of those costs with the possibility for renegotiating that number upward if it looked like our obligation would exceed that. It began to be pretty clear that the obligation would exceed \$1.2 billion. So, a new contract was negotiated in 1980, which increased our repayment obligation to \$1.78 billion and made a number of significant changes to the basic repayment contract. So, the government was authorized to bill us, if you will, \$1.78 billion dollars for the construction costs of the Central Arizona Project. In 1993, it became clear that that number was going to be exceeded; that the United States had blown past what we understood to be the limit on our repayment obligation; and that they were going to be looking for substantially more money from us. In fact, I'm going to say in 1994, I might have these dates a little backwards, and around 1994 they indicated to us that our repayment obligation would exceed \$2 billion. By 1994, it appeared that our repayment obligation could be as much as \$2.2 billion. We

thought our repayment obligation was about \$1.8 billion. The United States was telling us that our actual repayment obligation was more like \$2.2 billion. Very, very significant efforts were made to try to resolve that dispute. With a half a billion dollars in play, you've got to figure out a way to try, if you can, to work that out. There were very significant efforts made to settle that dispute, but ultimately, we could not.

Q. They're sending bills. Is somebody keeping track of the costs all along?

A. Yes. We didn't actually start to be billed by the United States until 1994. Then we started getting bills from the government that were based on a much larger amount than the \$1.78 billion we thought we owed. Instead of paying them what they billed us, we calculated what our repayment obligation should be on the basis of the \$1.78 billion and we remitted payment for that amount. So, they began to accrue both what they saw as billed but unpaid amounts and penalties and interest on those unpaid amounts, very, very significant penalties and interest. Failing to reach a settlement with the United States, we eventually sued the United States in 1995 to try to get a Federal District Court here in Phoenix to resolve the issue. They sued us back. They said CAWCD owed a lot more than \$1.78 billion and they sued us over a number of other things. They raised a number of other issues that they wanted to pursue.

To make a long story short, because of its complexity the trial court divided the case into phases. The first phase was devoted to the question of the limit on our repayment obligation: was it the \$1.78 billion we thought we owed or was it the \$2.2 to \$2.3 billion that the United States thought we owed. Well, we had a trial on that issue and after the trial, the Federal District Court decided that we were right about what we owed, and that the CAWCD did not owe the \$2.2 billion that the United States claimed, but only owed \$1.78 billion and could not be made to pay more.

That was a very significant victory for us and a very significant loss for the United States, and then the trial of the second phase began. The trial of the second phase went very well for us. The government saw that it was going very well for us and essentially said let's see if we can settle. "We lost the first phase. This phase is not going any better than the first phase for us; let's see if we can settle." We told the judge to hold up rendering any decision on the second phase of the litigation, because we're going to make another effort to settle. We did that. We were eventually able to craft a settlement agreement which was put into place in the year 2000 which, among other things, divides the project water supply between Indian and non-Indian uses; makes a permanent division with 53% going to non-Indian uses and 47% going to Indian uses. It also fixes our repayment obligation at about \$1.65 billion, because more water was going to be devoted to Indian tribes than what we had first assumed and the United States takes on the capital costs obligation for delivery of Indian water. So, our repayment obligation actually went down.

Now the Board would have been happy to have the obligation go up if it got more water, but we weren't able to negotiate that deal. So, the Government got more water to settle Indian Water Rights claims. We got a lower repayment obligation and we've been operating under that settlement for over six years now, going on seven.

Q. Were you the lawyer in court arguing all this?

A. No, I was not. A couple of us inside the District, Tom McCann and I, did a lot of work with our outside counsel. Our outside counsel were Stu Somach and Bob Hoffman. You might talk with them at some point. They did a very, very good job. They were really excellent. Marv Cohen also helped out, not as our counsel but as counsel for the cities who had intervened.

Q. Grady Gammage mentioned he worked on a lot of it gratis.

A. I think he did. Oh Grady, he did. He did put a lot of time into that without receiving anything for it. But eventually we were able to craft a settlement, we've been working under that settlement for seven years and things have been going just fine. The settlement required that certain things be done in order for it to become final and fully effective. Among other things, it required that we settle the water right claims of the Gila River Indian Community. That's now been done. And that we resolve the water right claims for the Tohono O'odam Nation and that's now been done. The only thing left to be done is to have those two water right settlements approved by court, and that should be done by the summer's end; and to adopt a new plan for marketing of Navajo surplus power, and that should also be done by year's end. So hopefully by December 31 of this year, our financial settlement with the United States will be final and fully effective and we'll never have to worry about that again.

Q. When will it all be paid for then?

A. Let's see, how long have we been paying? We've been paying for about 13 years now. In about another 40 years, a major share of the project will be paid for. The bulk of the project will have been paid for.

Q. What is the life of the project?

A. It's indefinite. It can last forever if it's property maintained and it will be. It's concrete and steel. We'll have to replace pumps and motors as time goes on, but it will last forever if we maintain it properly.

Q. Are there any other challenges that you worked on for CAP that you want to talk about?

A. There are. In most recent years, the environmental challenges have really come to the fore again. I didn't think that would be true here. We're not a heavy industry. We don't generate pollution. We're a clean industry. But there have been some

decisions involving other Reclamation projects, and in particular in the endangered species area, that really represent a threat to all projects that use water. For example, wherever there has been a conflict between a Reclamation project and the needs of endangered fish or between the needs of endangered fish and the operation of dams; the fish have always won. Irrigation projects and the users of the dams have always lost. There is only one exception to that and that involves the Colorado River. That was a case that was extremely important to us that we prevailed on.

One of the challenges facing the CAP and other users of the Colorado River is the fact that there are some endangered fish in the Colorado River. Most of the Colorado River has been designated as critical habitat for those endangered fish. There are some other species that live near the river that are endangered species. So, some while back, a group of Colorado River users became concerned about the potential impact of that on the operations of the dams that provide us our water supply and on the operation of our projects.

One of the things that we began to become concerned about was the possibility that we would be accused of killing endangered fish in the pumps at the Havasu Pumping Plant on the Colorado River. Nobody has seen an endangered fish in that particular stretch of the river for quite some time; nevertheless, it's possible that could occur. A group of Colorado River water users which included CAP began working a decade ago on a plan to protect endangered species on the Colorado River in return for receiving insurances from the United States Government that our water and power operations could continue. Over about ten years of effort which concluded in April of 2005, the parties, including CAP, put together a program to contribute money toward the costs of acquiring and maintaining habitat for endangered species on the Colorado River and also rearing and stocking hundreds of thousands endangered fish in the river. In return we received guarantees from the United States that no effort would be made to try to prevent us from making use of the water and power resources that we all thought we had firm rights to. That plan was concluded in April 2005. It's called the

Lower Colorado River Multi-Species Conservation Plan. I did not work very much on that early on. I did a great deal of work on that later on to help try to bring it to closure here in Arizona. We did manage to put together a plan that included most Arizona water and power users. Each of us is making a significant financial contribution towards the cost of that plan. The total non-Federal costs of the plan will be \$323 million over 50 years. The total plan itself will involve expending \$626 million in present value terms to conserve endangered fish and their habitat on the Colorado River. So, it's a very significant effort. That is really where I see the challenges in the future. I see the challenges in the endangered species area; I see challenges in the Clear Water Act area; but somebody else is probably going to have to deal with it. I won't be around to do this much longer.

Q. Is that the entire length of the river or the Lower Colorado?

A. The plan involves the area from the upper reaches of Lake Mead to the southerly international boundary with Mexico. I want to say it's a little over 300 river miles. It's quite a stretch. It's a very significant effort. It'll conserve over 8,000 acres of habitat. It'll result in the rearing and stocking of, I want to say, 200,000 endangered fish and then maintaining all of that over a 50 year period.

Q. Are there some fish that survived and are in the canal?

A. Oh yeah. We do have fish in the canal. We have some that we planted ourselves. We use a form of carp to help us control weeds. There are fish larvae and I'm sure fish eggs that get through the pumps, survive, and grow up in the aqueduct probably including some striped bass, maybe some sunfish, some crappie, and perhaps some bass. The aqueduct is a pretty good place for them.

Q. Do you allow fishing along the canal?

A. No. We do not allow that.

Q. Is there fencing over all of it?

A. The entire aqueduct is fenced and we're trying to put in security fence throughout all those areas where we go through any sort of urbanization. So yes, the entire aqueduct is fenced from beginning to end.

Q. Do you ever think that someone could look at that and say it cuts the state almost in half and it's fenced, that there might be wildlife or something that might . . .

A. Yes. In order to deal with that, the government constructed a number of wildlife bridges. The fence will come up to the wildlife bridge, it'll go across the bridge, and then it will go out. Nobody can get from the wildlife bridge into the aqueduct but the wildlife can get across. There are a number of places across the aqueduct, both west of here and down towards Tucson, where we've constructed wildlife bridges. In some places down towards Tucson where we know that we've got desert tortoises, they've actually put in little desert tortoise enclosures every so often along the wildlife bridges, so they won't be preyed upon by hawks and eagles while trying to get across the aqueduct.

Q. Are you concerned, you said security, about terrorists . . .

A. Nobody really thought about it in those terms before 9/11. It is really for purposes of protecting people. The water is relatively swift and it's cold. The aqueduct has a fairly steep aqueduct prism, and it's covered with algae. It's very slippery and difficult to get out of. If you fall in, you have to have the presence of mind to float to the nearest downstream ladder and get out that way. Otherwise, it's very difficult to get out. It's really done for public safety.

Q. It does seem since that is our drinking supply that it's susceptible . . .

A. It is but there is so much water. The volume is so great that it would be very, very difficult to put anything in it in enough volume to cause harm and it does go

through water treatment plants. Its quality is monitored continuously. We monitor the quality of the aqueduct on a regular basis. I think there is some continuous monitoring of water quality, and we share that data with all the cities. Then the cities have their own water quality monitoring programs in place.

Q. Looking at all these issues that you've dealt with, are there any individuals or groups that you've kind of considered your allies in solving these issues?

A. The Valley cities and the City of Tucson have been especially helpful with all the Indian Water Rights settlements. The irrigation districts have been our traditional allies on those settlements as well and also in helping us craft plans for dealing with the financial dispute with the United States with our repayment obligation. The Arizona Power Authority has become an ally ours and Salt River Project has been an ally on any number of these things, including some of these Endangered Species Act issues. We've had great support among the water user community. We've also had great support from the Arizona Department of Water Resources. We have worked hand and glove with them over the years on repayment issues, on issues involving marketing Navajo Power, and most importantly on issues involving the Colorado River. The other folks that I would count as allies are the folks in Nevada and California that we have managed to make common cause with on some of these difficult issues that affect us all, like endangered species issues.

Q. I would think of Nevada and California as being your opponents on most things.

A. On some things involving the administration of the river but on things like how to cope with these difficult endangered species problems, they've been allies.

Q. Who do you consider your opponents?

A. I don't think of folks that way anymore. I suppose there might have been a time where I might have but as I've gotten older and gotten more experienced, I



realize that if you treat someone as an opponent, you treat somebody as an adversary, you don't get much done. You have to find a way to find common ground with others if you are going to get anything done; especially anything done that requires their cooperation. I don't think of other people in those terms anymore.

Q. What particular accomplishments concerning CAP are you proudest of personally?

A. I think overall, my service to the Board. I've tried to serve the Board and the management of this place to the best of my ability for almost 25 years. I suppose I could call out individual things like the Multi-Species Conservation Plan, or the issuance of bonds, or the successful completion of the Plan 6 agreement. But the thing that I feel best about is just feeling like I've done my best for this place for almost 25 years.

Q. The Multi-Species . . . you said you started your career wanting to work on environmental laws. Is that really one of the most environmental things . . .

A. It is. It was not law that I was at all familiar with before I began to work on the Multi-Species Conservation Plan and then I learned a lot. I had to learn a lot in a big hurry. It has become a subject of very intense litigation all across the United States, especially in the West because of these conflicts between resources, the need to use resources, and the needs of the endangered species that are affected by that. I think, my guess is that there is more litigation now under the Endangered Species Act than any other environmental statute.

Q. I remember seeing up in the Northwest where they've built dams, and the salmon have to go back up in order to regenerate. Is that where that all started?

A. Well that is one of the hot spots. There is plenty of litigation all throughout the West, in the Southwest, in Colorado, and New Mexico. This is plenty of litigation all throughout the West over endangered species issues.

Q. Colorado seems to have water in streams all year round for the fish.

A. You need to have that but sometimes that conflicts with the needs of resource users too.

Q. Most of our rivers were always partially dry.

A. Yep.

Q. The San Pedro is the one I'm thinking of that they're so worried about it going dry.

A. That is really a tough problem because there isn't a good source of supply for that area. I just don't know how to fix that problem. That's a really tough problem.

Q. You mentioned working with the Board for 25 years. Talk about how the Board has changed over those 25 years.

A. I'm going to characterize it this, but it may not have been this way in fact. It was sort of a joke that the CAWCD Board was where old politicians came to retire. In my experience, the old politicians that we had on the Board were also some of the brightest, most capable, most knowledgeable, water folks that you could want. We had great boards. We had boards that included former Governors, former Senators, former Representatives, people who actually worked on getting the CAP authorized, former Interior Department Solicitors, former Secretaries of the Interior. Goodness, gracious these were highly professional Boards. People who have been there, done that. In more recent years, we've gotten folks on the Board who don't have that depth of experience or knowledge to call upon. I think that's made it a little bit tougher for the District frankly. I wish we had some of the

old water buffalos back, but unfortunately there aren't that many old water buffalos left. I worked with some really great people. I won't try to name them all but I worked with some wonderful people; former Governors, Senators, Representatives, Secretaries of the Interior, just some really wonderful people over the years. I loved doing it.

Q. They had lived through it.

A. Exactly.

Q. Not that they didn't have any specific knowledge, but they lived through it.

A. They lived it. They knew what the public policies were when we would explain what the public policy issues were. They caught on right away. They knew because they lived it and that was an enormously valuable resource to be able to call upon. It made the Board, in my judgment, really first rate.

Q. What about the water issues and how have they changed over the years?

A. I think the issues in more recent years have been issues of scarcity. For a long time, the issues were, for me anyway, were how to get the project paid for and working out the problems that the agricultural community had paying what we knew that they owed and couldn't afford; settling with the United States about how much we owed for the project; setting Indian Water claims. Now the problems seem to be shifting towards issues of scarcity, and how do we deal with pervasive, long-term drought that may result in shortages sooner or later to Central Arizona Project water supplies.

Are the things we can do today to protect water users from the effects of water supply shortages? The answer is yes there are. We're trying to do those things like bringing more water in while we still have it and putting it underground for eventual use during periods of shortages. There are some other ideas that we are

exploring to deal with period of shortages. I think the issues of scarcity have also brought to a head some long-standing disputes among the basin states, both states from the upper basin and the lower basin about how to manage the Colorado River. Right now, and for the last several years, there have been some intensive negotiations among all the basin states about how to manage the reservoirs a little differently, and how to deal with shortages on the Colorado River. Those issues have been very, very contentious but I think we've managed to work out a solution to most of those problems. But I see issues of scarcity occupying a lot of our attention for the foreseeable future.

Q. When you say scarcity, are you talking about drought?

A. Yes. Drought, and the fact that the Colorado River is now in the eighth year of a drought that may be of truly historic proportions; it may be the worst drought that we've experienced in 500 years. If that continues, there's no question but CAP will eventually have to endure a period of shortage. The idea is to try to figure out how to manage that to cause the least disruption as possible.

Q. Perhaps the estimate of 1922 of how much water was in the river weren't accurate.

A. That's right. The compact was negotiated after a period of very high flows on the river, a period during which there were ample water supplies available to meet both the upper basin's 7.5 million, the lower basin's 7.5 million, and some amount for Mexico; people thought there'd be plenty of water to meet all those needs. Well, probably not. Right now, there's been more commitment of the water than there is water available to supply all the commitments.

Q. If the population continues to grow, we'll need more water too.

A. Right.

Q. I read recently about U of A doing some tree-ring stuff and showing that actually there have been periods in the Colorado that have been long droughts. What are some of those?

A. Oh gosh, I can't give you the exact numbers. There have been worse periods than the one we're going through. But it looks like the one that we're going through could be one of the worst in 500 years.

Q. What issues related to water resources do you think are most critical today?

A. I think its issues related to scarcity and I think its issues involving population growth, and nobody having a very good answer to demands created by population growth. The Southwest is still a very desirable place for people to move to. I just read in the paper that Phoenix is now the fifth largest city in the nation. That's astonishing. There doesn't appear to be any let up in the rate at which we're growing. That's going to put a strain on all kinds of resources, not just water resources. To some extent legal issues, in particular involving Endangered Species Act, are going to continue to be tough ones.

Q. Did you even think growing up in Phoenix that it would become the fifth largest city?

A. No. I always thought it was kind of a one-horse town when I was kid. I loved growing up here. I loved living here, but I always thought it was a one-horse town.

Q. I think about going hunting with my dad and our favorite place to go hunt doves and rabbits was at the end of Scottsdale Road. The end of Scottsdale Road was about where Camelback is. The pavement ended at Indian School. Then you went on a dirt road and then it ended. We'd stop and my dad would get his shotgun out.

A. As I remember, where I lived the pavement stopped at about Glendale. There was a dirt road way on out. There was a Shea Boulevard, but it was a dirt track. There were maize fields and the doves would fly into the maize fields and we'd just have a great time hunting them.

Q. Let's talk about some of the other issues in relation to the CAP. Some of the things that have come up more recently is the Arizona Water Bank. Have you been involved with that?

A. I don't do much with the Water Bank. The guys who work on that are folks like Tom McCann and Larry Dozier. I haven't done much with the bank.

Q. What about the Yuma Desalination Plant?

A. The Desalination Plant? I have done a little work on that. I know that if we were able to operate the plant at full capacity, we'd save about 100,000 acre-feet of Colorado River water every year. That is one foot in Lake Mead. That is a lot of water. It would be extremely helpful from a water supply perspective to operate the Yuma Desalting Plant, but it's very difficult to get the United States to spend money to do that. We work every year to try to get appropriations for that purpose, to try and get some language in the appropriation bills that directs the Interior Department to operate that plant. If they don't want to do it, they won't do it.

Q. Yet they're talking about putting plants on the West coast and here is one sitting here.

A. It was operated recently on a test basis and operated very well. It started right up and it produced a very clean stream of water and the best thing to do with that water would be to provide it directly for municipal use to communities in Arizona, and communities in Mexico, rather than putting it back into the river. That could be done if people had the will to do it. It's got to start with the United States

Government because they own the plant. It would have to start with some kind of federal appropriation to operate it. I understand that Tom McCann and Larry are working on a proposal to have Las Vegas start operating that plant and take the benefit of the water somehow. I think by exchange. That is a great idea just to get it going and get it used.

Q. Bill Swan talked a lot about San Diego wanting water. It's closer to get it to San Diego than Las Vegas.

A. Well, what you would do is operate that plant and let Las Vegas use another 100,000 acre-feet of water out of Lake Mead. There would be no net loss to the river because the operation of the plant conserves 100,000 acre-feet of water.

Q. The Groundwater Replenishment District are you involved with that?

A. I don't do much work with that. I let other folks on my staff deal with that.

Q. It is actually operated by the Central Arizona Project?

A. Yes.

Q. Bill Swan said he thought there could be problems there in the future.

A. I don't think so. I think the District's Board is able to distinguish between its obligations to the members of the CAGR D and its obligations to the users of the CAP system. The users of the CAP system are fearful, I think, that the Board won't be able to properly separate its role and its responsibilities to them as opposed to responsibilities of the members of the CAGR D. But I think they can, and they have so far as best I can tell.

Q. People have said that we've seen the end of big water projects like dams and reservoirs . . .

A. I am certain that is so. I think you might see small projects, but I don't think you'll see any other major projects built. The conflicts among other things between existing dams and endangered species are just so great. As I said, every place that I can think of except one, endangered species have always won. The folks who use the dams have always lost. I think it very unlikely that a new major dam could be built anywhere in the West.

Q. What about major canal project like the CAP?

A. I think that's impossible.

Q. Could we expect to see projects to import water from other regions if money were available?

A. I suppose if there is enough money. If you could find enough money maybe you'd find a will to do it. I just don't see anything like that happening. Regions that begin to be targeted for export of their water supply tend to resist that very, very highly.

Q. Even the Mississippi and all that water over there?

A. Even the Mississippi.

Q. What about the 1922 Colorado River Compact? Some people say that should be reopened and renegotiated.

A. I don't have a view whether it should be opened or not. I don't think it will be. I think there will be some tinkering around the edges of that to solve particular problems. But that's a key piece of the Law of the Colorado River, and I don't think the Law of the Colorado River is going to be changed in fundamental ways. People have too much invested in the Law of the River as it exists. Everybody is fearful about the consequences of making changes to the Law of the River. They're also fearful, I think, of their inability to predict all the implications from a



change in the Law of the River. I just don't think there will be any major changes to the Compact or any other major change to the Law of the River.

Q. The Law of the River is that appropriation doctrine first in time, first in right?

A. No. The Law of the River is a series of documents that have been put together over time that govern the use and distribution of the waters of the Colorado River. They include things like the 1922 Colorado River Compact and the Boulder Canyon Project Act that authorized the construction of Hoover Dam. That was enacted in 1928. They include the Supreme Court's decision in Arizona versus California in 1963 that allotted water among Arizona, California, and Nevada. They include the 1944 Treaty with Mexico that gave Mexico the right to 1.5 million acre-feet of Colorado River water annually. The Law of the River includes all the contracts that the Secretary has entered into over the years for the delivery of Colorado River water. It's a collection of documents of one kind or another that govern the use and distribution of Colorado River water, but it is not the Prior Appropriation Doctrine.

Q. That applies to all water not just Colorado . . .

A. the Prior Appropriation Doctrine applies to most other streams in the West but not the Colorado River.

Q. Is it also a part of groundwater?

A. No. Each state has a different mechanism for regulating groundwater. I can't tell you what the groundwater law is. I just don't know.

Q. We are going to wrap up. Is there anything else that you wanted to talk about?

A. I just appreciate you guys giving me the chance to do this. This is a neat project.

Q. What do you see as the future of Arizona and Arizona water?

A. Because of the fact that we live in a very, very arid area, and because I think that the climate probably is changing for the worse and unless that's controlled, problems of water scarcity will continue to plague Arizona. I would say because of the construction of the Central Arizona Project and the foresight that our forbearers had here in getting the project authorized and built, Arizona is in a much better position in terms of its water supply than is California or Nevada. We do have a plentiful surface water supply in relative terms and we also have a very plentiful groundwater supply. Our rights to use groundwater are restricted by the Arizona Groundwater Management Act and ultimately in active management areas in the Phoenix and Tucson area, the effort will be to try and bring groundwater withdrawals and groundwater replenishment in to balance so there is no net withdrawal of groundwater over time. I don't know whether we'll be able to achieve that goal, especially as our population continues to grow. My own view of the water future is that people who come after me are going to have to be extremely creative in figuring out how to deal with more and more demanding problems of scarcity.

Q. What about the areas of Arizona that don't have the active groundwater management?

A. We already know that some of those are in fact already in trouble; Williams, perhaps Flagstaff. The difficulty is they don't have ample groundwater supplies, essentially no surface water supplies, and no groundwater supplies. They're going to have to find a way to manage their growth. They've not wanted to do that. That ultimately is what will have to be done unless some way is found to import a new water supply into those areas, which I think is going to be tough to do.

Q. Do you think people understand water in Arizona, the average person?

A. I don't mean to demean the intelligence of the reasonably well-educated person who reads the newspaper; I think if you're paying attention, you know water issues are important. Most people take water for granted. They turn on their taps and turn on their hoses and they go out and swim in their pool and they just take water for granted here. I think anybody who thinks about it, and they don't have to think about it for very long, or anybody that reads a paper ought to know that providing water here is a big deal. Scarcity is going to be a challenge.

Q. Most people move to Tempe from Illinois and they see all those lakes.

A. It gives the illusion that water is plentiful.

Q. And it's relatively cheap.

A. It is cheap. It still only costs us basically what you have to spend to pump it out of the ground.

Q. Some people said we should make it more expensive if we want people to save it.

A. Yeah, but what do you do with the money?

Q. One thing I noticed when I was up in Colorado, it seemed like there was a lot more education programs for the general public and schools. I don't see that here.

A. Kathryn Schmitt, I don't know if you've interviewed her, but you ought to because Kathryn has been wonderful at creating those for schools related to CAP. She has a very small budget and does a great job with it. Much of her effort is devoted to trying to educate ordinary people and school kids on the importance of water and about the CAP. I do agree with you. I can't think of anybody at any point in my entire school career having said much about water.

Q. As you look back over your career, what advice do you give young people today that are thinking about what they want to do with their lives?

A. I am a person of faith. So, I believe you ought to probably pray about what it is you want to do with your life. I believe that you ought to spend some time in contemplation about what you ought to do with your life. I think that is one of the most important decisions that you make. For me being a lawyer has been a really good life. Working for a public agency has been a really good life. Having worked for both public entities and private practice, I find more job satisfaction and personal fulfillment in working in the public arena. You'll never make as much money as a lawyer in the public arena as you would in private practice but there are other rewards. The rewards are feeling good about yourself at the end of the day; feeling good about yourself at the end of your career; looking back and being able to say that you really did something for the people who are served by the CAP; you did something for the people of Arizona by helping keep this place on sound financial footing; help this place stay on a sound legal footing; and helping provide the basis for Arizona's water future. I think doing something of that kind whether it's in water or anything else you might choose, finding an area of work or avocation that allows you to do some good for other people will give you greater job satisfaction and greater sense of personal fulfillment.

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