

CAP Oral History

P: Phil Fortnam

Q: Kelli Ramirez

A: Tom McCann

Intro:

P: That, and do that and I'm just gonna clap to get an audio slate (Clapping in the background) You're a big help, Tom.

Q: He is. Hey, at least it's entertaining.

P: At least it's entertaining.

A: Trying to help.

P: Sort of entertaining.

Q: This is an oral history with Tom McCann, our Deputy General Manager. It is April 13, 2019. Mr. McCann, can you please tell us your name and age for the record.

A: Eight. My name is Tom McCann or Thomas W. McCann if you want the formal version. I'm 62 years old.

Q: And when and where were you born.

A: I was born in Austin, Texas, in 1957, which makes me 62. I only lived there for six months though, so don't ask me anything about Austin. My father was in grad

school there at the University of Texas when I was born. And then I think having me is partly what let him to realize he had to get a job, and so he left the grad school to work, so we moved to Houston.

Q: Wow. See I'm gonna bounce around.

A: That's fine.

Q: So what was it like growing up in Houston?

A: We lived there 'til I was six so I don't remember much about it. I went back years later. I had relatives that live there. I think the thing that would have struck me the most is hot and humid. Here we have heat, but there you have humidity as well, and it's a whole lot worse.

Q: Miserable.

A: Yeah.

Q: So, after Houston where did you move?

A: We moved to Atlanta, Georgia area.

Q: It's humid.

A: I lived there, eh somewhat, it was a pretty nice climate. I lived there from the time I was six 'til I was about fifteen.

Q: And then?

A: And then we moved back to Texas, but the Dallas-Fort Worth area. So I finished High School in Grapevine, Texas.

Q: Nice.

A: Which is where the airport is now, basically. They built the airport while we lived there.

Q: That's kind of hilarious. So what brought you to Arizona? Why did you come to Arizona?

A: I actually came to Arizona, initially, when I first got out of college. I was stationed at Ft. Huachuca and the school down there, and it was my first exposure to the – to the southwest and Arizona in particular, and Sierra Vista area, Ft. Huachuca, the climate is fantastic and summertime highs are maybe 94/95 and at night it gets 65/64 whatever. So, I thought this is a really nice place and so I was there for four and a half months or so and then went to Germany for four and a half years and then came back to Ft. Huachuca for another year and enjoyed it again, my time there. And so, then I went off to law school, and when I got done with law school I was looking around and thinking where do I want to end up and I remembered Arizona and thinking how nice the climate was, not realizing Phoenix is a little different than Sierra Vista.

Q: More than a little.

A: Like a lot. Yeah. But, Phoenix seemed to be a place that would offer, the advantages, in terms of legal work is what I was thinking, the advantages of a state capital and a big city, but without being the big city like at least then like Los Angeles or New York or someplace like that. So kind of a little bit of the best of both worlds. A smaller environment, but good quality work that would be available. That's why I settled here initially, and then I just stayed.

Q: Turned out to be true. So let's back up a little and talk about your education after high school.

A: Yeah. So I went to the West Point, United States Military Academy,

Graduated in 1979, and as everybody does who graduates there, I was commissioned as a second lieutenant in the Army. I guess some people went into other branches, but most of them went in the Army. And that's when I went to the Ft. Huachuca. I went in the military intelligence branch, which is sometimes referred to as the oxymoron branch or other names which I won't repeat here, but in any event, the officer basic school for military intelligence was at Ft. Huachuca at the time. I think it still is.

Q: And then?

A: And then I got my first permanent assignment to West Germany. I was stationed in Augsburg, Bavaria, not too far from Munich. It was wonderful there; I loved it. Was originally a three-year assignment, but I extended it for a year and a half so I stayed there for four and a half years and spent about three years or so, three-three and a half years with a field artillery unit and then the last year or so was with an ultra-intelligence unit, which wasn't as exciting as it sounds because I was the headquarters company commander. So I was responsible for the vehicle maintenance and the logistics and stuff like that.

Q: Wow. So when did you decide to leave the military and go to law school?

A: I came back from Germany to the officer advanced course back at Ft. Huachuca again and it's at that point where they start talking to you about your next, actually no, they start talking – they give you your next assignment and when I was in Germany and had met with an assignments officer, he's called a mill person, the military is a big bureaucracy you can imagine. They got an officer who is responsible for company-grade, officers in military intelligence and handles their assignments so anyway, that guy had come and visited me, and he told me at the time that my next assignment would be a strategic assignment. So something like defense intelligence agency, or something like that and I was looking forward

to that and thought that could be fun and exciting. So I come back, and then the assignments people come around and visited me at Ft. Huachuca, and they say, oh you're going to go to a tank battalion in Ft. Lewis, Washington. And I said this other guy said that it would be a strategic assignment and they go, we're not bound by that. So I said, how about an ROTC assignment? I figured, like a lot of people do, I could go to that and then pick up a master's degree or something while I was there at the college. Their response was, you're too junior for that.

And then there was another officer in the same officer advance course who was a year junior to me, female and don't know if that was a role, but she was going to Notre Dame for ROTC assignment.

And I say I don't believe you when you say that so they said, take it or leave it. So I said, I'll leave it. I don't know exactly in hindsight how I ended up in law school. It seemed like that is what I wanted to do, but years later, literally years later, I was at home one time, and my parents pulled out something I had written in high school for a college admission thing, and it said because I've decided I wanted to be a lawyer. And I thought really; I didn't remember that I had decided before I was eighteen that I wanted to be a lawyer. But the only thing I remember now is that sometimes when I was at my grandparents' house, I'd see old episodes of Perry Mason on TV.

Q: Loved that.

A: He was great! I wanted to be like Perry Mason. Not realizing that the price of law has basically nothing to do with what Perry Mason does. But anyway, I decided that that is what I would do coming out of the military was go to law school, and if nothing else, that would open up other opportunities for me.

Q: So where'd you go to law school then?

A: Stanford. I was there for three years. Palo Alto, I clerked one summer here in Phoenix for the law firm. My first summer I actually clerked back in Houston and was able to live at home with my grandmother, which was good. My grandfather had passed away right when I came home from Germany, so he'd been dead for a couple of years, and I spent the summer living with my grandmother in her house cause it was close to downtown. She had passed away the next spring, so it was good that I had some time to spend with her. The second year in law school, I clerked both here in Phoenix, and then I think for a month back in Houston again, and then decided that Phoenix was a better fit for me.

Q: In Houston. And you're married?

A: Yeah

Q: Do you want to talk about your wife and kids real quick.

A: Sure. I didn't get married 'til a number of years later, matter of fact, I got married when I was thirty-six, I think, thirty-six or thirty-seven, thirty-six I guess it was. We met at the law firm. We both worked at the law firm where I worked here in Phoenix. We have two kids, both of whom we adopted. Our daughter, we adopted when she was eight, and our son when he was five. My daughter is now twenty-six, about to be twenty-six, and my son is twenty.

Q: Raising kids is a trip, is it not?

A: It was interesting, yes.

Q: Not for the faint of heart, yes.

A: It was a challenge.

Q: So how did you get into water?

A: Well, I came to Phoenix and went to work at a law firm out of law school, and I worked there for about five years – five and a half years and just got disillusioned with it at the end kind of wondering, may it was an early midlife crisis or something. Kind of wondering, what am I doing here? What's my role? What value am I adding to society, or I don't know if I thought in quite so grandiose terms, but it seemed like, at the end of the day, in private practice, the question was just is your client going to end up with the money? Or is the other guys' client going to end up with the money? At some point, you kind of think, what difference does it make? So I actually quit, I resigned from the law firm and was kind of in a period, I guess, of trying to figure out what I wanted to do. I was working from home, had been in patent litigation and I had gotten admission to the Patent Bar, so I was doing some patent work from home and wasn't particularly exciting. I also played a fair amount of golf during that time.

Q: It was not Perry Mason.

A: No, it was not Perry Mason at all. It was me, by myself, in my office at my home, all day long. It was what it was. And my wife that encouraged me, you need to get out and do something. So I don't remember if she saw it first, or I saw it, but somehow I saw an ad in the, I think it was the Phoenix Business Gazette. One of those types of things, those newspaper things for Central Arizona Water Conservation District looking for water lawyer. I thought well, I took a water law class in law school and water, that's gotta be important in Arizona, and I knew nothing other than that about it, but I put in my application, and I think it helped that Doug Miller also went to Stanford, and so we had a connection whether I knew it or not. I'm not sure, maybe he just didn't get any other good applicants or something, but I was lucky enough to get offered the job by Doug. In '94, I started in October of 1994. I think it was the day after Columbus Day. Been here ever since.

Q: So when you first started at CAP, what kind of issues were you working on?

A: When I first started, one of the first things, there were two or three sort of hot issues at the time, one of which was our repayment dispute with the U.S., but I didn't work on that initially. Doug had been very active in that, along with Tom Clark, and then Sid Wilson, and Larry Dozier, in trying to negotiate a settlement. I'll try to come back to that in a little bit. So that was kind of what Doug was wrapped up in. There was also this biological opinion that had been issued by the fish and wildlife service on the delivery of CAP water in the Gila River Basin. They concluded that by delivering CAP water, we were endangering a number of endangered, threatened or endangered, fish that were in the upper reaches of the Verde River, and Aravaipa Creek, and the Salt River system. And the opinion was, I'll just say it was fairly shoddy academic work, but it was basically organized blackmail because what's called the reasonable and prudent alternative, which is what a biological opinion says if you are causing jeopardy, you have to find a reasonable and prudent alternative to the action that will allow you to avoid jeopardy. So the reasonable and prudent alternative was for Reclamation to transfer \$500,000 a year to the fish and wildlife services for 25 years. That's why I concluded that it was essentially blackmail. And the money was to do research on the fish. And they also required them to build some fish barriers in the upper reaches of these streams, and we're still doing that today, and we are still – Reclamation is still building those, and we're still being handed them over for operations and maintenance. Like Fossil Creek and Aravaipa Creek, we are responsible for the maintenance of those fish barriers. That's where that work comes from. So one of the things that Doug asked me to do was to basically write a rebuttal to the biological opinion. And I probably spent four months or maybe even longer researching and writing – ended up being probably a 60, 80-page treatise on exactly why the opinion was wrong factually on all these different areas and it was a good opportunity for me because it was a way to learn about different parts of the system and I got out in vehicles and went to a lot of places I've never been to since, like the confluence of the San Pedro and the Gila River. I've never been there, but got to see some of the places that became more important and later. The Pima Lateral where the Gila River Indian Community takes their water from the CAP and other facilities.



We wrote this report, and we submitted to the Secretary of Interior saying basically, you need to override this biological opinion because it's not founded in facts and they blew us off.

If I jump ahead a couple of years, that was – that would have been early '95, probably May of '95 is when we sent a report in and then in '97 I think it was, what was then called the Southwest Center for Biological Diversity filed suit against Reclamation under the Endangered Species Act related to the same biological opinion. Their basic argument was that it didn't go far enough. It should have done all these things and put all these other restrictions on there so we also sued the fish and wildlife service and then the two cases were joined. You basically had the Center saying it didn't go far enough, and us saying it went way too far, it wasn't justified, and we had a visiting judge from Hawaii who said, I'll just defer to the agency. Got rid of both suits and so the biological opinion stood.

But while I'm on the subject of endangered species, there was another case that also filed by the Southwest Center in 1997, yeah it would have been in '97. This one is really interesting in hindsight because, if you remember, at the time the nineties had been a wet period, and Lake Mead was very full and in fact had gotten up to about elevation of twelve-fifteen -which was inundating a lot of the delta areas where the Colorado River flows in, and where the Virgin / Muddy River flow in. So this lawsuit was arguing that the Secretary of the Interior should be required to release water from Lake Mead to lower the level of Lake Mead because it was inundating habitat for the Southwest Willow Flycatcher. So we, along with Arizona and other states, joined in that suit against the plaintiffs on the side of the U.S. in saying, I don't remember the arguments now, but basically no, there's not a reason to dump water. And we won, which is good because if we had to dump water we would have had less water at the start of this drought in 2000 than what we did have. So anyway, you said what did I work on initially, I think, is how I got started off on this tangent. So the endangered species work was one of the first things, and one of the other things I worked on for a while was the transfer of the so-called exchange subcontracts. There were a number of entities that had

received allocations of CAP water that could only take it by exchange, and we are talking about those folks like Payson, Prescott, Camp Verde, Cotton Wood, Nogales I think was one, there's a couple of others I'm not thinking of right now.

Q: Cause they didn't have access?

A: Right, because the idea was that they would take water out of, say the Verde River, and somebody like SRP downstream would get the CAP water in exchange. Well after those allocations were made, and after contracts were signed, then Fish and Wildlife came along and said basically you can't do any withdrawals from the Verde River cause it would endanger fish that are there. So, the alternative that they came up with, we described it as water for money, for water.

You could look at it as they sold their subcontracts, but they didn't just get the money to go into their general cash account. The counterparty on every one of them was the City of Scottsdale. So they got all the water allocations added to their subcontract, and the money that they paid went into individual trust accounts for each of those entities, and the trust accounts were to be used to develop alternative water supplies for their communities - whether it be groundwater or some other local supply. That was when we were working with the Department of Water Resources because they were, I think they were set up effectively to be the trustee of the account to make sure the money was spent appropriately. Those were a little controversial because our board, didn't, at the time, did not like the idea of contractors being able to sell their allocations for money and so that led to a policy that the board adopted that essentially it is still in place till today.

The extension says you can't do that. You can get back what you put in, in certain circumstances, but you can't make any profit off of it. So let's see, I guess the other, initially, couple of hot things at the time. The other, that was really, for the most part before I got to the district, we had been involved in litigation with Ameron, who had made the siphons, the pre-cast or pre-stressed concrete

cylinder pipe siphons and there were a lot of problems with those, and they were already having to be replaced. We had sued them in Federal District Court...

Q: CAP?

A: CAP – CAWCD had, this was this was one of, even though I wasn't involved at the stage, I was looking at, and I may have worked on appeal, I can't remember for sure if we had appealed it or not, but it was one of a couple of cases that kind of destroyed my faith in the legal system. I won't bother with the other at this point, although they were the same judge curiously, but the judge in that case, ruled there's a legal doctrine that says you have to exhaust your administrative remedies before you can go to court. It's a way of not bringing suits in court that should be resolved through other means. So the judge ruled that CAWCD should have...that we didn't follow that doctrine, that we didn't exhaust our administrative remedies because we hadn't gone to the board of contract appeals for the Department of Interior – and then in the next sentence, basically, the opinion said, of course, that avenue wasn't available to CAWCD but nevertheless because you didn't do it, then your barred for this suit. It's like, What!?

Q: That doesn't even make sense.

A: Exactly, but that was the opinion and, again, I can't remember if we appealed it or not, but if we did, it was affirmed. So again, that's yet another reason why I kind of lost a lot of faith in the legal system over the years. So I think I worked on some of that as I said, after the fact, I think Doug just had me take a look at some of what was in there because I had had a lot of litigation experience in my previous legal career, more so than other things. More so than water certainly. By the way, you had asked me what had brought me to water, and kind of not exactly to that question but Larry Dozier told me years later – let me back up. When I started, Tom Clark was the GM, so I started – I was here for about his last three months as GM, and then Sid transitioned in, in January of 1995. So I had a little bit of experience with Tom, not much. I didn't get to work with him particularly – directly, but he

must have had some exposure to me because years later, Larry Dozier told me years later that Tom Clark had told him, that guy doesn't know anything. I told Larry, at the time, well he was right! I didn't know anything at that point. I had to learn it. The way I learned actually was kind of the next thing I had worked on in the legal department.

I mentioned that we had been in negotiations with the U.S. related to the repayment dispute and there was, what was called, an agreement in principle, that was reached more or less and was going to be signed in June of 1995. At the last minute, Secretary of Interior Babbitt said, well I'm not going to be there. I'm not signing it.

There were various reasons that were given. Various stories that were told. We later saw documentary evidence that indicated that the Nevada's Congressional Delegation had reached out through the White House and they pulled the plug on it because Nevada thought that as long as the repayment dispute was hanging over Arizona, Arizona would be more pliable in Colorado River negotiations. But Babbitt denied that, but we saw the documents later that proved that it was true. Anyway, when that agreement and principle fell through in June of 1995, then the next step was litigation, and the repayment litigation was filed in July of 1995. It originally started in a bankruptcy case in one of the AG districts, cause it was just the vehicle that was already there to file these things, but we filed suit, then the United States filed suit, then both of those suits were removed and consolidated before Judge Carol in Federal District court here so mid-1995 really through the end of 1998 was full-blown litigation with the US and once it was end of the litigation, then Doug brought me in to work on that again because I think again because of my background in litigation and so...

Q: You knew how to fight.

A: I guess I've always known how to fight. So I got to be part of our litigation team, along with our outside attorneys that were basically, or primarily led by Stuart

Somach and Bob Hoffman. We also had, he wasn't representing us, but Marvin Cohen was representing the City of Tucson, and they had intervened in the suit, and Marvin was a part of our strategy team and so the four of us in particular when we were getting ready for the second phase of trial, the four of us went off to a consultant in Palo Alto, I think, for most of a week, to develop our trial strategy for that phase of trial and figure out witnesses and how we were going to do things. So that, that was a good time, good experience for those few years there. I got to take a few of the depositions and litigation. You'd asked or were going to ask me about interesting stories, and I was thinking, I don't really have any, but the one that comes to mind that's kind of an interesting story is at one point I accompanies Stuart Somach, and we deposed the Regional Director for the Bureau of Reclamation, it was Bob Johnson at the time. We did it in Bob's office in Boulder City and at one time, I suspect the only time in history, where you completed a deposition and at the end of the depositions the deponent says, would you guys like to have a private tour of Hoover Dam, and we said sure and we finished the deposition then went down and got to tour the innards of Hoover Dam in places they don't get to go usually – by the Regional Director himself giving us the tour, so that was kind of interesting.

So I started off on this by how did I learned about CAP and how I learned was because one of the things that's typical in litigation is you have document production. In fact, this room that we're in was our war room for the litigation. Originally, I understand, it was called the chicken room. It back to when Ed Hallenbeck was the area manager, I think, for Reclamation and they were here, and not exactly sure how it got that name, might have been something to do with wall decorations, I don't know but this room was where we had all the walls surrounded with shelves filled with binders. We'd had document production, where Reclamation would have a room full of paper, and that was my job, was to go read everything. We knew what the issues were in litigation, and there were a whole bunch of them, and so every time we were going through these things, it was sort of cross-referencing well this relates to this issue, this relates to that issue, and then I ended up putting together a set of binders that we called hot

documents for lack of a better term, but it was basically a chronological set of – a chronological account of most of the things relevant to repayment, anyway, that had happened from the late eighties into the mid-nineties and I found myself referring back to those binders years and years later because I would say, well I remember that so and so wrote a letter and it was in July of '92. So I'd pull out my July '92 binder, and I can find it or otherwise could never find that document again.

Q: That's crazy.

A: That's how I learned most of – that's how I learned everything that I know of what happened at CAP up to 1994. The stuff that happened since I've been here, I've been involved with a lot of it, but anyway, the litigation was a good learning experience for me.

Q: Well I believe you're pretty much known as the expert on the law of the river, is that the reason why would you say?

A: The law of the river stuff came later, actually, cause the repayment litigation didn't relate to the law of the river. The law of the river, Larry brought me in to help him in on that to basically to be his attorney on Colorado River stuff and that...I probably did some things in the late '90s, I think we did. Can't remember when various things happened now, but we did some interstate banking agreements and things like that. But certainly, by the time the drought had kicked off and when we started the process and ended up with the 2007 guidelines, I was working closely with Larry on those things at that point. So probably by the early 2000s, I had started working on Colorado River stuff more directly.

Q: Become the guru. So talk about the resolution of the lawsuit after all that effort and what happened with that.

A: So we went to trial, the trial, the case was divided it was going to be I believe five or six phases of trial to handle all the issues that were raise in the complaints. And what they are, what they were beyond the first two, I couldn't tell you anymore because they never happened. The first phase of trial was held in mid-1998, and that issue was the repayment sealing in the contract. And I think it was November maybe of 1998 the court issued its opinion and decided with us, essentially across the board, that our repayment obligation was limited to \$1.781 billion, not the two \$2 billion that the US said. But the US was also saying, yeah well the repayment ceiling is \$2 billion, but you have to pay 2.3 anyway because that's what it cost and if you want to use the facility, you had to pay the whole amount. And the court said no, that's not right and agreed with us and our interpretation of the contract, so we had that win and that was right around the time that we were trying phase two of the case. And phase two was the Bureau's cost allocation, and we had, in simplified terms, we had argued that their cost allocation was wrong in many respects and they were over allocating costs to various functions that we were responsible for repaying, particularly the function called commercial power that they had allocated far too much to that and they were allocating costs of modifying Roosevelt Dam to us when we got no benefit from that, even though it was..

The modifications were constructed as a CAP feature or related to CAP legislation. But in any event, that phase of the trial was several weeks long as I recall, not very many witnesses, but extensive cross-examination that was when - where I had worked with Marvin Cohen, and I think Marvin was the primary cross-examiner of Reclamation's main person on the cost allocation. We thought that phase of the trial went very well for us, and maybe the US did too, because right after that phase was tried, before the court could issue an opinion, but we also had the opinion from phase one that the parties decided that it made sense to enter into settlement talks. And Grady Gammage was instrumental in that.

He was the Board President at the time, and I think David Hayes was the either Assistant or Deputy Secretary of Interior, at that point. That was kind of Grady's

counterpart. Through their efforts and lots and lots of meetings over the next couple of years, we reached a stipulated settlement or resolution in the litigation in May of 2000, and we filed that with the court.

Because of the way the issues were resolved, there were a lot of other conditions to it, like completing a settlement for the Gila River Indian Community and getting federal legislation that allowed a completely different way of using the Lower Colorado River Basin Development Fund. And I don't know if, you know, in hindsight why we thought this, but we gave ourselves three years to get these conditions done. So the stipulations said they had to be done by, I believe it was May of 2003. It was pretty clear early on that wasn't going to happen in that time frame. So we went back in 2003 and filed a revised stipulation that addressed a few other things that had come up, but by in large the main thing it did was to extend the deadline for the conditions to about 2012, I think it was. But then we got the Arizona Water Settlements Act through in December of 2004 and we had negotiated the Gila River Indian Community Settlement and we weren't so much involved, but others had negotiated amendments to the Southern Arizona Water Rights Settlement Agreement, the Tohono O'odham, and all those things came together in the Arizona Water Settlements Act, and that in itself then had conditions that had to be satisfied and those conditions were finally satisfied in December of 2007, and at that point all the conditions for all the various interlocking agreements were all satisfied, and everything became final. There were several things that were happening in parallel then starting around 2000, when we got the settlement of the repayment litigation we're working on the Gila River Indian Settlement, Doug did some of that, I did a lot of that.

We had countless meetings down at the Gila River Indian Community in various temporary buildings before they had built their casino buildings and all that. Hotel. We also, we, in this case, CAP, DWR, and Department of Interior negotiated the Arizona Water Settlement Agreement, which was sort of the resolution of how the CAP water supply would be divvied up and whether how much would be federal, how much would be non-federal, or who would get it. There were a lot of



outstanding or unanswered questions out there. There was about 65,000 acre-feet uncontracted M&I water that needed to be reallocated and contracted. There was a segment of the non-Indian AG priority water that had never been contracted for cause people had not accepted the contract offers. There was the rest of the NIA supply that was relinquished by the AG districts as part of all these different settlement agreements and to was being reallocated then some to settle Indian claims and some to go to municipal and industrial uses, and so we basically set out the terms of that in that Arizona Water Settlement Agreement and it's confusing because there's the Arizona Water Settlements Acts, and it's got a plural in it cause it's the CAP Settlement, the Gila River Settlement, and the SAWSA settlement – then there's the Arizona Water Settlement Agreement, which is between us, the ADWR, and the Department of Interior about the CAP water supply. But all these things were happening in parallel.

Q: It sounds like it was an incredibly complicated time and busy time.

A: It was, but it was fun, it was interesting. In many ways it really, the collection of those different agreements is kind of set the stage and created the foundation for how we operate today, and who's got what water, and what the rules are.

Q: Well, talk about the impact of that. I mean, it was a very long and drawn-out process, but the changes it made and the dramatic impact it had on CAP.

P: Let me interject for a second here. We're looking at about 50 minutes. Does anyone need a break?

A: I could drink water. Yeah.

P: Okay.

A: Fifty minutes? Man, somebody is longwinded.

Q: You have a lot – you've been here a long time, you've done a lot of things, you have a lot to say.

A: I've only gotten through the first half – well, I've gotten through a lot.

Q: I was going to say, some of this kind have overlap. They're more of reminders of what we need to talk about and

A: Yeah. So what were you just asking about?

Q: I just asked you if you could talk about the impact that had on CAP, and how we did this, this, and how we operate today.

A: Yeah – so one thing, we think back to the situation when we went into the repayment dispute – I'll jump back to when I was interviewing for the job – again, didn't know anything about CAWCD. Didn't even know what kind of questions to ask except that I had read probably some advice for interviewees and it said, "make sure you ask about the financial health of the company," or something like that. So I did. I say well how are the finances of the organization and Doug was telling me about how we had a couple of hundred million dollars in our reserves, and I thought that sounds pretty good, okay. But the reason that we had that was because of this dispute between us and the United States. Because what the United States had argued that we needed to pay at the highest point was around \$2.3 billion and what we said we owed was less than 1.8 so think about five to six hundred million dollars was what was in dispute and part of the result of that was we had our tax rate set at the max and were collecting these reserves because we didn't know what was going to happen and we had to have this cushion. Well once the settlement was done, then our finances changed dramatically and, I guess I should back up. One of the other reasons why there were other impacts on the finances before that point was the target pricing program that CAP had adopted in 1993.

So that happened the year before I came, but it was still pretty fresh when I had started. And as part of that, CAP was using tax money to reduce the cost to AG but there was a repayment benefit that we got because less of our repayment obligation was interest-bearing, which in turn saved money to the cities and so part of that package had been increased capital charges to the cities, so the settlement comes along in 2000 and the board, at that time, wanted to do something to recognize that and so

Q: {sneeze}

A: Bless you.

Q: Thank you.

A: So they did two things pretty quickly. They lowered the tax rate, and they lowered the capital charges. And that was fine for a number of years, and we had the big reserves that we needed to kind of work off some of, but then if you look at some of the issues that hit us around the downturn around 2008 when the economy dropped, and the tax revenues dropped off and then all the sudden we were running deficits basically. We were having to draw on our reserves to cover costs because we had arguably, in hindsight, we had overreacted by lowering various rates and taxes, capital charges, etc. those are issues that are still there today.

Taxes had come back up. Capital charges had come back up, but the cities went to capital charges back down again, and I'm sure various people want the taxes down as well. So those are recurring issues that we had, but the settlements and the framework that we've put in place gives a little – gives us a lot more certainty and ability to manage those rates and know what our financiers are doing as a result. There's not nearly the uncertainty that there was before 2000.

Q: Talk about some of the people you've worked with over the years. Some of the leadership here and some of your experiences with them. You've been one of the few people to work under every...

A: I've worked under every GM. Yeah there's others that have been here a good deal longer than me. People that started ten years before I did. Mr. Moody's been here, one of the longest, but there's others that've been here longer than him even. But yeah, Tom Clark was the first GM and was hired in 1981. So I came in right at the very tail end of Tom's tenure, the last two and half, three months and was here for the transition then to Sid, and was here for the whole time that Sid was here until the transition to David Modeer, and then the transition to Ted as well. Those will be the only GMs that I see. But it's been interesting and if you think about – a lot of organizations you don't really get that opportunity to sort of - to experience every aspect of the leadership of the organization from its creation. We're a somewhat newer organization. Even though we've been around a long time now, but the talk I gave recently on CAP 101, we know the board was created in '72 or '71, but we didn't actually hire a general manager until 1981. So, the board, for nearly ten years, the board was simply the board, and that was the whole of CAWCD was the board. And they had an outside lawyer that advised them and maybe an outside consultant, or two, and then they had an office manager that they hired in the late '70s, so she was, I think, the first employee of the district. But it was pretty small at that point. We used to be that I had a high employee number, and now I have a relatively low, but there's still a lot of people that are hundreds, lower than me.

Q: What's your number

A: Five six-six and there's people that are, I think we may still have some in the one hundreds that are here, but we definitely have some two hundreds that are here. But the new people are more like fifteen-hundred or more.

Q: I'm eight ninety-seven, and I've been here for fourteen years.

A: Yeah. Yeah. Cause I know when I was resource planning manager, I hired two people at the same time. One of them is still here, one of them is Ken Seasholes. I believe that was 2007. You had to be either between '06 or '08, I think it was around 2007 and either Ken or the other one we hired at the same time was number 1000. It was right at that time.

Q: Ken. I think it's Ken.

A: One thousand, yeah

Q: Which is crazy. Well, talk about your career path here, because you didn't stay in legal for your whole time obviously.

A: I was in legal for twelve years, and like a lot of people here, you look, and you think how can I move up in the organization, and I'm sure for a lot of that time, well someday maybe I can get Doug's job. But it became pretty clear that Doug wasn't leaving that job any time soon. So I had to start kind of changing my sights I guess a little bit, and in 2006, Larry Dozier created a new job, created a new department basically, the Resource Planning and Analysis Department. We didn't, as far as I remember, we didn't have a department called that, at that time. But the initial job description was really somebody to be his number two on Colorado River stuff, and I had been doing that work, getting into that work from the legal perspective and was really interested in doing more of that and continuing in that regard, so I looked at it as a really good opportunity to get more involved in Colorado River stuff. And, although I was leaving legal department, some would say I never really stopped being a lawyer, but officially I have. I have been inactive for a number of years now. As far as the bar is concerned, but the basic habits and traits that lawyers do, you can't take those out of your system, I guess. So 2006, I think it was July, I moved over to be Resource Planning and Analysis Manager, and I was in that position for three years. And, in 2009, David Modeer was the General Manager, and by that time, I think he had started the beginning of 2009 and Larry had decided to...gonna move over from being, I don't know if

his title as Deputy or it was Assistant General Manager at the time, but he did have a number of units that reported directly to him, primarily the Operations Water Control, the Resource Planning, and Engineering. And Larry moved into a sort of Deputy General Manager position, what you might call without portfolio. No one reporting directly to him, and they created this AGM slot to take over his direct reports, and David selected me for that job. I guess as long as we're talking sort of humorous stories, maybe I shouldn't say this, but when David was retiring, Katherine Royer hosted a dinner for him at her place and so when it came time for him to give remarks he was commenting on each of the people on his senior management team and when he got to me, he said, "Tom, when I selected you for that position, I wasn't sure you could do it." And I thought, well thanks, number one, but, if you didn't think I could do, why'd you hire me. But it's worked out.

Q: He underestimated you.

A: So that was 2009, that I moved into the what was then called the senior management team and that basically stayed the same, the responsibilities basically stayed the same until late 2014. In 2014, we had two of our senior management team were leaving. Greg Ramon took a job in Arkansas and Tom Delgado retired and so where we had five assistant general managers responsible for the various groups, we, the three of us that were left, got together and we thought about how to address things, and we decided to take the departments and groups that had reported to them and basically divide them up among the three of us. So, the titles changed to deputy at that point which is not really significant, but we went from five assistant general managers responsible for different groups to three and divided the groups up a little differently. So in that reorganization I lost, if you will, the Colorado River work, I lost the planning group, I lost CAGR, and I gained the maintenance group. Which was a large group. And so that was a good opportunity for me to learn about a whole very vital sector of our organization that I had never really had much experience with. I'd never done much of anything with maintenance when I was in legal cause most of my legal work was focused on our kind of external threats, I guess I'd say. Other people

worked on contracting and things like that, so I had to learn a lot of new stuff and one of the ways I did that, I can't remember now if it was Bob Moody or Rich Weissinger, somebody had loaned me a book on RCM, Reliability Center Maintenance, and I read it, and I found that it was one of the best sort of business books I ever read, because most of those...most of them I don't read. Most of them, I look at them. It's like this is just full of jargon, and what does this really mean. And what am I supposed to do with this? Well that book was written in real easy to understand language, and from a very practical perspective in saying well you need to do this, these guys need to have buy-in here, you need to do this, you need to do that, and it made sense to me. And so some of the guys later kind of joked and said you came back and there were all these flags on the pages of the book and they were kind of worried I guess. I still had a lot of learning to do following that. But it was a good experience for me, and they were also very good about bringing me along, educating me in the maintenance. And so they didn't get upset if I offered dumb suggestions or ideas.

Some of them they accepted, and apparently, maybe that is a different way to do it, and others said that don't work and here's why. Okay, that's fine. So anyway. The last few years had been a little different. I had a bit of a health scare in 2015, and I lost a little bit of time, a couple months because of that, and then took a little while to back into things, but that seems to be behind me now, which is good. So, the last couple of years, really two to three years, had been focused mainly on what we've labeled as asset management. And it sounds like a fancy term, but really all it is, is trying to do a better job of working together across the organization. To make sure that what you guys are doing in communications is linked in with what maintenance is doing and what water control's doing, and what finance is doing, and it's a recognition that nobody can do their job in isolation.

You can't. Resource Planning can't go off and just do their thing and not talk to anybody else because it won't be effective. And so just today, in fact, we'll be sending out a draft of our strategic asset management plan, which is a

culmination of what we've been doing for the last couple years that tries to document how every department has to work together across the organization to achieve our overall goals, and I think that's been a valuable experience. It's been good for me in helping understand, but as we've...in the individual groups put together the different chapters in the plan it was a very good opportunity to kind of reevaluate how we do things. So we set out things saying this isn't going to be a description – just a description of how we work today. It's going also to include aspirational elements so how should we be doing this. What's the better way to do this. So we put things in there that aren't exactly how we do them today, but they become the roadmap for how we can work this year, next year, in the years future to do a better job of coordinating our activities.

Q: Not an easy thing. As you reflect back over the last 24 years, what do you think...what was your favorite part of working at CAP? You've had a lot of different positions. You've done a lot of different things. I mean, you're one of the few, I would say, that's really been across the organization. From legal to maintenance, come on.

A: I was trying to think...I was trying to think of which departments I've never been responsible for, and Finance is one area. And basically everything is in Finance, I mean material handling. Risk Management, I've never been responsible for those areas. I've never been responsible for communications. But I couldn't think of many more other than that that I hadn't been responsible for at one time or another. And frankly, that's one of the things that's been interesting, exciting because there was always something different and I used to, hadn't thought of it this way, but I used to not like about private practice the fact that you would get thoroughly enmeshed in this particular case and learning this technology for this patent infringement litigation suit, and then it ends, and it's like forget all that, now learn something completely different.

I wanted to say, what happened with that, and I wanted that continuity or the ability to kind of do things and build on them and see how they play out. And this,



I don't want to say this job, but this time at CAP has allowed me to do that very well, and I've gotten to, sometimes pros and cons, I've gotten the experience where well we didn't write that quite clearly enough in hindsight, you know, that now we've got this problem here and I wish we had said it better back then. But you learn, and you just keep growing on it. But it's the ability to do a lot of different things, and yet all in the context of water for Arizona, which back to where I started. This is, I wanted this to be a job that I could feel good about, and a mission, an organization that I could feel good about and I have. Somebody was just saying the other day, can't remember the context now we were talking about, it was at the Supervisor Academy, somebody in one of their closing remarks said, what we do here matters. It's important, and that's true. And that gives a different perspective on your job. It's not just a job that you go to, it's a mission. It's a calling, almost, if you want to look at it that way.

Q: You found what you were looking for.

A: Yeah, yeah.

Q: A purpose. So would you say you are a water lover now? Officially a water buffalo?

A: Well you know, years ago, I don't remember if it was Sid that had these made, but they made some water buffalo pins, and I didn't get one.

Q: You didn't?

A: Officially, I was never a water buffalo, I guess. Yeah.

Q: You know you are.

A: But, although the water buffalo connotation too is kind of the old fogies who are stuck in their ways, some people look at them that way anyway.

Q: Yeah, I think it's just people who are knee-deep in it.

A: So I got the old part, but hopefully I'm not stuck in my ways.

Q: I don't see anything about you that I think is stuck in anyways Mr. Managed everyone here. So were you surprised about everything that's happened in Arizona water in the last ten years? Or what surprises you?

A: The only, not really, the only thing that surprised me was, I would say, and I don't want to get too far into it cause this is for the record, but the shift a year and a half ago surprised me. Basically the...I'll just say it...the governor's office declaring war on CAP. I thought it was totally uncalled for. Totally unprofessional, and totally out of touch with everything we've done the whole rest of the career that I've had here, and even before me. That we, historically, we were always very closely aligned with DWR. We worked together. We coordinated our efforts. I tell people one anecdote about that when in the lead up to the 2007 guidelines, one of the things we had to do was negotiate a shortage sharing agreement between Arizona and Nevada. So Tom Carr was the lead for DWR on that, and I was the lead for CAP on that. And Tom and I talked ahead of time, and we had done, we at CAP, I had done research in, we came up with an argument that Nevada should bear, I think it was 13.7 percent of the shortage. Nevada was arguing zero. And DWR was arguing, I think, seven percent, or some number in that range. And so we talked about it and said, look, we could be the bad guy. We can come in out here on this level, and you could be there and then together we'll counteract there, and we ended up at about four percent, which was roughly in line with the relative allocations of Colorado River Water between Nevada and Arizona, but I don't know if we would have gotten there if we weren't, we in Arizona, both DWR and CAP, kind of working together and taking that firm position on what that ought to be. But that example, the YDP efforts in the early 2000s, we were always, you know, completely aligned with DWR. So the 2017 thing really came out of the blue, and I guess I don't want to say a lot more about that, but that was the one thing that's truly surprised me. And although we've done some work to mend the

fences in a sense, I think that those fundamental relationships, or the fundamental relationship between our two organizations has been fractured and I don't know if it'll ever be the same again, at least not for a long time. Not 'til maybe there's changes in personalities.

Q: Turnover

A: Yeah

Q: That always happens. Do you want to talk about DCP at all? And the impact, what you've worked on it?

A: I haven't worked on it.

Q: Okay.

A: I haven't been involved in DCP. I was thinking the couple of things that I didn't mention sidelights here and there although they were a few years of my time in each case. I written down it was 2003 to 2006. I think that's right. I was the...I was our legislative liaison so I did the lobbying work with Don Isaacson at the time and then Suzanne took over me, and then later it went to Bridget, and now we've got a whole, well I wouldn't say a whole group of people, Jeff Gray that does that now. But I did that for a few years, and we were able to get some good legislation through. Got some clarifications and AR Statutes at that time.

Q: Anything that stands out with those?

A: They were smaller things by and large, clarifying our ability to sell energy that we had purchased for CAP. Some of the folks didn't want us to. They thought we'd be in competition so we clarified that we can't sell it to retail. We don't want to be in the retail power business, but we did clarify that we could sell energy on the wholesale market. There was one instance where, I don't know if it was City of

Phoenix or Mesa or both, but somebody got in their minds that because SRP bills the Bureau for our share of Navajo, because they're the operator and they send the bureau the bill, and we pay it, that we were buying energy from SRP and that we should pay tax on our purchase and that was going to be many millions of dollars. The transaction privilege tax that they tried to assess. So we went down, Don Isaacson and I made the rounds, and we actually got some legislation in that said we don't have to pay that.

Q: That had to feel good.

A: Yeah. Well, it's kind of like where'd you get this crazy idea. But it felt good that we stopped it from happening. Yeah.

Q: They saw a pot of money, and they went after it.

A: Yeah. The other thing that probably occupied at least two, if not four years of my time, a lot of my time, was AG water. I was...the thing I was most disappointed about actually was recently the board had a Customer Service Task Force last year, and there were...they'd asked for input from customers. And one of, I don't know who, but one of our customers had put in a comment in, and it ended up on a slide about going to be like AG Water that augured into the ground. Like it was a failed effort. And I actually took offense at that somewhat because I think the work that we did on AG water was good work. It was participative if I pronounced that correctly, but we involved everybody. We had steering teams – steering committee meetings of all different interest groups for months, and months, and months, if not years that we did that and we took everybody's viewpoint into account. We developed what we called an emerging consensus on a lot of different issues.

Many of them, which are now being implemented in one way or other through the system use agreement in the wheeling context, so it's not...hasn't been useless in that sense, but at its heart, what AG water was about was recognition, that, at

that time anyway, there was a view that people, water providers in the CAP area were going to need more water in the future and they could all go out individually and compete with each other and whatever and find their individual supplies, or CAP could be a clearinghouse for that. Go be the acquirer, pull the water and then make it available in a program to these users. And it made a lot of sense. And so that's what we pursued for all this time, and the Bureau of Reclamation was right there. DWR was right there in the meetings. The area manager for the Bureau of Reclamation stood up at our board meeting at one point when this consensus document was coming out and said, we support this absolutely. Well then basically at the end of the process, Reclamation said, oh well Colorado River water, you can't be the acquirer, it has to go directly to whoever the end-user is, so, you can't be the middle man, and then DWR said, well groundwater you can't be it...has to go directly to there. And so between the two of them, they completely undercut the premise of AG water which was that we would be the aggregator of the supply, so that's where we ended up with wheeling after years of going through these meetings. So you know that was kind of frustrating in that sense, but we had really good discussions, and we got to consensus on things like how the pricing ought to work, how the priorities ought to work, that sort of thing. So a lot of that, I think is being implemented or at least adapted in the system use agreement context and new efforts on wheeling. I took offense at the notion that AG water was a failure. It wasn't our fault. We did a good job, I think and I don't know Phil if you were the one who taped those meetings, but you probably have hours and hours, if not weeks of video somewhere of those meetings.

Q: They were a big deal.

A: And that, why I remember I know that other people were very involved. Terri Sue Rossi was really involved in it, and Cliff Neil, and others here too. I just remember most of the meetings, I had to chair them, and I had to be the one who took all these different things and try to find some way to blend them together. Anyway.

Q. Negotiator. So what do you see happening in the world of water in the next ten to twenty years in Arizona?

A: Well, I think it's sort of hard to separate the future of water in Arizona from the Colorado River. There are other water supplies, but the Colorado River situation is the one that's going to drive a lot of that, I think, or at least the CAP will be at the center of it if it's non-project water supplies that are being moved. But where I've been for some time, and actually I refer to this publication frequently because I just find it fascinating, but in the Basin Project Act in 1968, the Secretary was directed to do a study of the water needs of the west, and particularly the Colorado River Basin and publish his results. So there was a study that was published in 1975, it was called the...and the shorthand was the West Wide Study, it was water problems facing the eleven western states or something like that. And that report said there's not enough water to go around and I'm simplifying and shortening a bit, but on the Colorado River section it said look, the basin has two choices. You can either accept the limitation and the supply and pattern your economic development around that reduced supply, or you can go out and augment the river, here's a bunch of ways to do that. And here we are forty- four years later and we've not overtly selected either alternative, impliedly we've selected the alternative to pattern our future to the supply because we haven't done the augmentation, but we haven't been willing to change anything on growth either. So one of the things that CAP in particular and I was involved in, and Chuck's been involved in, Larry Dozier before me, we for a long time had been very focused on augmentation and trying to advance efforts of augmentation of the river. The fundamental issue there is virtually all of those augmentation solutions are very expensive and that's what it comes down to is people who have water today aren't going to be willing to increase their bills by a large amount to pay for more water to be added to their system. I've got mine, and so I want to keep my price down low. At some point, I think we will, as a state, be willing...that new growth wants to come in and if we say new growth, water is going to be \$2000 an acre-foot, or \$5000 an acre-foot, whatever it is, they're probably going to be willing to pay that at some point, but we haven't reached

that point yet. And because we haven't reached that point, and because we haven't forced the point, we haven't forced that new development to pay that price, the GRD is kind of on the cutting edge of doing that in a sense, but we haven't reached that point then no one's willing to invest in the augmentation efforts. And so we have a supply that's being challenged because of climate change, because of drought or whatever reason you want to attribute to, and simply the fact that the uses have increased. When the lower basin wasn't using all of its water, and when there were wet years, and when the upper basin wasn't using that much, and there was all this water coming down, we were...we were fat, dumb, and happy, I guess you could say. But we kept going, we kept using the water, and we kept building.

Well, it's time we got smart and leaned up, or whatever and I see that day somewhere on the horizon. But when it is, I don't know. And what it's going to take to get us to that point where we make new development pay the way, or pay the cost of getting the supplies for them, I don't know what it'll take.

Q: So why should all Arizonans know more about water?

A: We live in a desert. You could leave it at that. You know, over the years, it's been...I'd say most of the time when you're out in the world, and somebody says what do you do, and you say you work for Central Arizona Project, and most people are like what's that. And we've tried over the years to have education campaigns and all, and still, most people don't know where their water comes from. They don't care. It comes from the faucet. I turn on the faucet, and the water comes out, and I pay the City of Phoenix, or I pay the City of Mesa, or whoever it may be, and that's all they know, and that's...to some extent that's all they care about. And so when you talked about, you mentioned DCP kind of in passing, but over the last year and a half or so, the DCP and all the discussions related to that then very prominent in the news and all these different stories, and I would say ninety percent of the articles that I see in, doesn't matter which publication, are wrong or inaccurate – are characterizing things one way and not

really understanding what it's about, and I don't see that changing, unfortunately. There isn't – there isn't some universally trusted source that you can go to.

In our society today, it seems that's less and less likely that all –all news outlets almost are tainted or viewed as tainted in one way or the other and so, therefore, I don't...people say I don't believe whatever this network produces because they're liberal, or they're conservative, or they're whatever it may be all the labels we put on things and on people, it's just interfered with the ability to exchange facts and to talk about reality.

Q: Kind of sad.

A: Yeah. It is.

Q: Phil, have I missed anything you can think of? Tom, have I missed anything? I've made you talk for nearly 90 minutes.

P: I really can't think of anything, so I'd really like to know who your two favorite coworkers are.

A: Oh, that's easy, that's easy.

Q: Only when we have you locked in a hot room.

A: My two favorite coworkers at this point in time are Kelli and Phil.