**Colorado River Board**

**Of California**

**Oral History Project**

# Douglas Noble

**JAY MALINOWSKI**

Doug, I wonder if you can start the tape here with a little bit of personal background information. What part of the world are you from, where did you go to school, how did you get tied up into the wonderful world of water? We were talking earlier and you were in the Peace Corps and maybe talk about that for just a minute or two, just so people have a sense of the person.

**DOUG NOBLE**

Well, I'm a native Californian. I was born in Santa Monica, California in 1943. Lived there until I was eight, when my mother remarried and we moved to the valley where I went through school and I graduated from Van Nuys High School in 1960. I attended UCLA for a year and then transferred out to what was then Claremont Men's College and graduated there in 1964 with a major in political science. I went to Stanford Law School and graduated in 1967.

While I was at Stanford, my property law professor was Charles Meyers, who, as I later found out, was one of the two clerks, two main clerks, to special master Simon Rifkind in the original Arizona-California trial. And I also had Charlie, who became a good personal friend, for water law, and was always interested in that area, although I never dreamed that I would get so directly involved in what he had done.

After law school I went in the Peace Corps, partly out of altruism, partly to have alternative service to Vietnam. And I was in Guatemala for two years where I worked with rural savings and loan

credit cooperatives. A pretty good program, it was one that was funded by AID. And it was a period of time that I think really significantly affected my life in terms of making me more open to new ideas and challenges. And certainly, I'd always been interested in traveling. It certainly expanded that, and it got me away from home. And it was just a great experience.

**JM**

What kind of work (were you doing)? You weren't doing legal work for them, or were you?

**DN**

No, I was doing some accounting, working with their (savings and loan cooperative) -- various education and auditing committees. These were small credit unions in Indian towns where people had never had any experience really working together cooperatively. And where they had, in the past, before the credit unions came, when they needed money, (they) were forced to borrow from the town usurers at totally exorbitant rates. The credit unions provided them a vehicle not only to work together for the common good, but also to secure, to learn to save themselves, and to have a cheaper source of credit when they needed it -- the credit union.

I don't think the entrenched powers in Guatemala at that time, and Guatemala was fairly calm at that time, I don't think they realized what an essentially revolutionary thing a credit union was because it did, in a sense, begin to motivate these Indians, highlands Indians, who'd been totally separated from the economic and political mainstream of the country, to get involved, to realize they could do something about their lives.

And I think eventually, that was part of the element that led to the civil war. We certainly weren't fomenting revolution, but I think in a way, in an indirect way, we helped that happen. Now, whether that was a net good in the long run is subject to debate, because the civil war which came to Guatemala about 15 years, 10 to 15 years after we were there, resulted in a lot of people being killed, including my two best friends. I don't know whether the net gain, in the long run, was worth it or not, as often happens.

**JM**

They were Guatemalans, or?

**DN**

They were Guatemalans, yes, and I've kept a lot of contact with Guatemala. I've been back a number of times. We had a very closely knit group of volunteers in our group, and we've had six or seven reunions, all of which I've organized, pretty much. Some of my closest friends, to this day, are people (from) the Peace Corps. And in fact, I got into the Attorney General's office after the Peace Corps because there was a man in our group, well, a couple in our group, who left early. They terminated early; they didn't serve their full two years. But he came back and went to work in the California AG's office and we had become good friends already. He told me that he thought it would be a perfect place for me to work. So when I came back, in those days, getting hired was a little bit easier. There weren't too many hoops and he basically sort of kind of greased the wheels for me to be hired there. And I had interviews, but ...

**JM**

Had you passed the bar by then?

**DN**

I had taken and passed the bar before I went in the Peace Corps. In fact, I was sworn in Guatemala City and I had to pay the US Consul five dollars to swear me in, which was a hell of a lot of money when you were making only $90 a month. Anyway, I wanted to be sworn in, so I had more time in my bar history. Jeff Miller, who is now a Federal court judge in San Diego, really got me into the AG's office and we've remained very good friends since.

So I started in the AG's office in September of 1970, about six months after getting out of the Peace Corps. Like everyone in those days, I started in criminal appeals. Everyone in those days came into criminal appeals. They discovered, if they didn't know it before, whether or not you could write, which, because you were writing all the time; and of course, just because you went and graduated from law school didn't mean that you could write worth a damn.

That was kind of a test. At that time, it was understood that after serving two or three years in criminal appeals, if you wanted, you had the option of moving into another section. While I was there, I came to know Carl Boronkay, who was head of the then-Public Resources section. We became friends. I don't

remember how, but it was a small office in those days, and he was senior and I was very junior. But we became friends and his area sounded very interesting.

We started talking, and eventually, he had an opening. The section was very small in those days. There were only, I think, four people in the section. Jeff Freedman, Jane Goichman, who was my predecessor at the Colorado River Board, representing the Colorado River Board, and a couple of other people. And when one of those other people left, I was hired for that position in January of 1973.

**JM**

And you were located in LA.?

**DN**

I was always in LA. We were at various locations. When I started working we were at 217 West First Street in the old State Building, as was the Colorado River Board. We were on the fourth through, I don't know, the eighth floor. I was on the fourth floor. The Colorado River Board was right below us, on the third floor. And almost immediately . . .well, let me go back. When I was hired into Public Resources and I was interviewed by Carl and several other people, somebody in the interview, it was probably Carl, said to me, “you know, we know that you worked with Indians in Guatemala and you undoubtedly have sympathies,” and he knew that already. “It's very possible that when you come into the Resources section you will be assigned to work at least part time on the Arizona-California litigation, in which it's very possible that the state will be taking positions contrary to those of some of the Indian tribes along the river. Now, will that bother you, with your history in the Peace Corps?”

Of course, I gave that great lawyer answer that of course it wouldn't. You know, I could rise above that, and etc., etc., and they hired me. And I don't know. Hopefully ...

**JM**

We should probably point out early on here that Carl Boronkay ultimately became general manager at Metropolitan Water District. We don't need to cover his career here, because there is an oral history of Carl on file that people have access to. But just so they can make the connection.

**DN**

Right. Carl hired me in, and as I say, in January of '73. He left in June of '76 to go over to Met as the assistant general counsel to

Bob Will and then became general counsel and later general manager. But my association, and we can get into this later, my association with him didn't end at the time he left the AG's office, because he was the lead, one of the two lead attorneys, in the long Arizona versus California trial in 1980, in which I was representing the State of California.

So we worked together probably more closely when he was at Met, on the same case, then we ever had when he was my official boss. He still acted like he was my boss when he was at Met, and he never got past that. But anyway, that's beside the point. He hired me in and one of my first assignments was to be backup to Jane Goichman. I think maybe she was Jane Liebman, then. She was married around that time and she was counsel to the Colorado River Board.

And I was her backup. Went to a lot of meetings with her. It was, at that time, we just had to walk down one floor. And the meetings were held there. When she left the AG's office in August of '74, I became lead counsel and remained so until I retired in February of 1991.

**JM**

In addition to your Colorado River Board responsibilities, as part of the AG's office, certainly you had other responsibilities at the AG's office. Could you just cover those briefly, so we know what you did with the rest of your time, and then we'll move on to the Colorado River.

**DN**

Well, let me say going in that I became of the opinion, after some time, that the Colorado River Board could have used a full time attorney assigned to them. There was probably enough work. But I was assigned to them maybe a quarter of my time, a third of my time at most, and that included the Arizona-California case. We had a ton of clients in Resources. The name of our unit changed over time, but the clients basically stayed the same.

We represented just about every state agency that had anything to do with natural resources except the State Lands Commission and later, the Coastal Commission. But we represented the Coastal Commission in the early years. That was one of my main clients. I sat with the commissions in San Diego and Santa Barbara with all their meetings and handled a lot of their cases. We gave up that

client in about 1980, but we had clients that we maintained the whole way.

The Air Resources Board, the Water Quality Control Boards, Fish And Game, Parks And Recreation, Forestry, Food and Agriculture. Later on, all of the state fairs. God, we have so many, I'm forgetting them. But I had cases from all those different agencies, at various times, and acted for a few of the agencies, like the Coastal Commission, that initially didn't have house counsel, just as the Colorado River Board didn't. We acted as, not only as their attorneys for litigation, but also at their meetings.

In 1978, late 1978, I was made lead deputy of the Natural Resources section in Los Angeles. It wasn't the job I applied for, but there'd been a problem with the person who was in that position after Carl left the office. And so, our statewide section head Bob Connett, who succeeded Carl when Carl left, put me in as the lead deputy in the Los Angeles office and I had anywhere from eight to ten attorneys most of the time.

I served in that position for the remainder of my career there, which really took at least a third of my time, maybe sometimes more. So, I had a somewhat lighter caseload than the other people, but I always kept the Colorado River Board. And almost immediately after Jane Goichman left, we had a new attorney that came in, Emil Stipanovich. Emil was my backup on the Colorado River Board for years until he left the office in about 1987. He worked a lot on salinity control issues with Ernie Weber. That was his sort of special area with the Board. But I was lead counsel of the Board, basically, for the next 27 years.

**JM**

Would you say, Doug, that that was by choice or just happenstance? I mean, was water law an area that you gravitated to out of interest or it just happened?

**DN**

Well, as I said earlier, I took a course in water law in law school. I happened to like Charlie Meyers. I think he was my favorite professor. It was just an interesting area to me. When I came into the AG's office and got into Carl's section, we probably talked about it some. He made the assignment. I don't know that I asked for the Colorado River Board assignment, but he made it. At the same time, one of the earliest cases I had was a

groundwater case -- the Tehachapi-Cummings Irrigation District.

Our client up there was the prison. There were ground water rights, and I got really involved in that in the appellate phase of the case that other people had tried. And I guess I did well enough on it that he figured I could keep doing this. And of course, then when Jane left, I just automatically took over (representing) the (Colorado River) Board; and with it, the Arizona-California case, which I'd already been working on. And I know you'll get into the subject matter of that.

But I don't know. It was an area that I think Carl knew me well enough to assign me to, but I liked it immediately. Always liked it, always enjoyed it. It was always the most interesting thing that I did because it was both legal and political and historical. It wasn't just litigation, and it was rarely litigation, actually. And never-ending, of course, as we all know.

**JM**

In representing the Board and dealing with Arizona v. California, and other water issues, how would you characterize the level of oversight out of the AG's office, the Attorney General's office? Were you pretty much on your own and you became the expert, or were you closely monitored (by others with expertise)?

**DN**

Are you saying how much oversight I had within the office, or how much oversight we did of the Board? I'm a little ...

**JM**

Let's just, well, let's do it both ways. I'm interested in both ways. I'm interested in the level of autonomy that you had within the Attorney General's office, and I'm interested in what kind of direction you provided to the Colorado River Board and the (Colorado River) association. And the Six Agency Committee over time. So let's deal with the first question first.

**DN**

Well, actually, that's a real interesting question. I think Myron Holburt knew this. But when I, (during) the first 10 or 15 years that I worked on the Arizona-California case, that was a different billing item than representing the Board itself. Because the Arizona-California case was really a state case. The Board wasn't really the client. The Board had a great interest, but the Board wasn't really the client. And

for years, we billed the case to the Department of Water Resources. But we never consulted them. We virtually never consulted them. I consulted Myron. Who was, of course, the authority on everything. And ...

**JM**

We should state for the record, (is that) Myron Holburt was the chief executive officer of ...

**DN**

He was, he was called the chief engineer in those days.

**JM**

... of the Colorado River Board. Eventually, he migrated to Metropolitan Water District and retired from there. Mr. Holburt also is the subject of a separate oral history that people can have access to.

**DN**

Right. So, I would say for most of the time I had very little supervision either from the client that was being technically billed, the Department of Water Resources, or within our office. When Carl was there, in LA, which was the first couple of years that I worked on the case and worked with the Board, Carl knew enough about the case that there was some level of supervision, although we weren't in a heavy litigation phase at that moment.

But when Carl left and Bob Connett became head of the section, he was in Sacramento. He knew nothing about the Colorado River, or had known nothing except what I told him. And when the case went up to the Supreme Court in 1978, which I know we'll get to later, ordinarily in our office, I think a senior person might have taken that case away from me and argued it. But Bob Connett knew that he didn't really know the case as well as I did and he didn't try to take it away, which I certainly appreciated.

So, I had very little supervision from within the office or from our client. At some point in the 1980s, the Department of Water Resources suddenly started paying attention to the fact that they were being billed for everything I did on Arizona-California and wondered what the heck was going on. So at that point, we converted it to an AG's case. We billed it to ourselves. It was an Attorney General's case because it was brought on behalf of all the people of the State of California.

It wasn't brought just on behalf of one client agency. And of course,

the Colorado River Board really can't, isn't authorized to bring suits anyway under their enabling statute. So, it was an AG's case. And even when it was, though, I didn't have much supervision. Under Bill Lockyer, and when Rick Frank took over our division, our Public Rights Division was one, two notches above me, I think there was an attempt to make the case a little bit more responsive to the office. Assuming that would have made any difference. I don't think it would have. But that was right around the time I left. So, I really was pretty much on my own on that case for almost forever. But I was always working with the other parties who were involved. Most particularly Metropolitan Water District, Coachella when we had the trial, and also the states of Arizona and Nevada. So, we were a sort of a check on one another.

I know later on I think you're going to ask me about, did our views ever differ and what happened. There was one time, well, maybe I shouldn't get into this now. I think I'll wait. In terms of your second question -- how much sort of hands-on authority did we have over the Board, I would say pretty little. Not much. When Myron was there, I mean, Myron ran the Board, there was no doubt about that. He usually figured out what the law was himself. I think the time that he asked me for the most advice was when we started getting public members on the Board. He asked me once how I thought he was doing, in terms of how he was dealing with them, person to person. In the first few years that I represented the Board, before Jerry Brown became governor. . . and let's see, he became governor in 1974. . . well, it was almost right away -- but in the first couple of years, before the Brown administration had really begun (there was a) somewhat concerted effort to abolish the Board.

**JM**

You're talking about the Jerry Brown.

**DN**

The Jerry Brown administration, yes. The Board had six members. DWP, MWD, San Diego city and county, Imperial, Coachella, and Palo Verde. Just six members. And Myron was the executive director. Harold Pellegrin was the executive secretary, who actually was the only exempt position under the state statute. Myron wasn't the exempt position, that was another interesting little fact. Anyway, in those first few years, and I don't know if you want me to

go through the personalities at this point. . .but Myron, those meetings were so short, they never lasted more than 50 minutes. Myron manned the whole meeting. There were very few questions. He was on top of everything and pretty much everyone was of the same mind, it seemed. I mean, there was very little dissent that I can recall. And a lot of the people were, you know, like Joe Jensen from MWD. (He) was quite old and didn't have a lot to say, although he was certainly there. And obviously a force. But in terms of the meetings, really, they were almost non events. It was like Myron just reporting and there was sort of rubber stamp for what he wanted to do. And of course, Myron was always totally on top of everything. So he wasn't used to many questions. At that time, you know, I was fairly new. But we would discuss things. But, you know, I mean, in terms of us really having much authority or even trying to exercise it over the Board, it was pretty, pretty minor.

At least as to the Board functioning itself. On the litigation, which at that time we were trying to get the present perfected rights decree entered by the court, and I know we probably want to go there, too. But as time went on, well, maybe I'm getting too far ahead here as to how the Board changed, and the introduction of the public members, and . . ..

**JM**

No, actually, I think you're right on target, in terms of a kind of change that happened at the Board, that changed the dynamics of the Board.

**DN**

Yes, absolutely.

**JM**

And I suspect maybe changed the relationship of the Board and the AG.

**DN**

I'm not sure that so much, but certainly changed the dynamics of the Board. During the Jerry Brown administration there was an effort made to abolish the Board. And I think the thought was, there was no need for a separate board; it was technically under the Department of Water Resources, but it was sort of out there operating independently. It was made up of all these individual agencies that took water and to some degree, I guess the feeling was that it maybe didn't always represent the welfare of the state as a whole as much as it represented the welfare of the six agencies.

And there were all kinds of political things going on. Most of these people on the Board were pretty conservative. And the Brown administration was pretty liberal. It was just. . . there were a lot of issues. But there was an effort made to abolish the Board. And what came out of that was a compromise where the Board was allowed to continue to exist although even at that time the Six Agency Committee, made up of the six original members of the Board, already existed to contribute some of the funding to the Board's annual budget.

I think when I first associated with the Board, it was maybe a third of the Board's annual budget? I may be totally wrong on that. But that's why the Six Agency Committee basically existed, was to funnel the money in to support the Board. And then the state supported the Board two thirds. Gradually, over the years, the percentages changed, so that now, the Six Agency Committee contributes what, 80 percent? Almost all, now, I think, because with the new budget, I think the state has withdrawn all funding.

**JM**

Right. As, as a matter of record in 2003, the state withdrew their funding.

**DN**

Right. Which is ...

**JM**

Was 20 percent.

**DN**

Yes. They had gotten the 20 percent, and I think that actually, in my view, has very ominous implications. And I think where the state isn't supporting the Board at all, you, well, I won't get into that. But ...

**JM**

Although, again, just for the record, it is an agency of the State of California.

**DN**

Absolutely. It is a (state) agency, and that's why I think for the state not to support it at all is not right. But anyway.

**JM**

I don't want to get you too far off track but can you think of another agency of the State of California where the employees are state employees, and where they take direction from a state agency, in this case, Resources. Is there another agency that is completely funded by (itself)...

**DN**

I don't know. On the other hand, I don't think the Colorado River Board, in my experience, took many directions from Resources, either. I mean, you know, vaguely, but I think it was pretty much out there.

Anyway, getting back to the Brown administration, the attempt to abolish the Board, I think one of the compromises was that the Six Agency Committee percentage of the Board's budget was raised. But perhaps more important than that was the fact that five new members were added to the Board, to the original six. Three public members, to be appointed by the governor, and two ex-officio members who served on the Board as a result of their office. Namely, the director of Department of Fish And Game, and the director of the Department of Water Resources. Over the years, that changed. The number of public members decreased from three to two. So that now, instead of 11 members of the Board, there are only 10.

And often, the public members are not visible or present. But that's another issue. And they rarely get changed with new administrations. I don't think soon to be ex-Governor (Gray) Davis ever made an appointment to that position. I think the people that are holding that position were the ones that were there under Governor (Pete) Wilson, although one has now resigned and the other hasn't attended a meeting in several years. In any case, that was one of the changes that was made, the compromise with the Brown administration to keep the Board alive. And also, another change that was made was that the Board was no longer given the authority to elect its own chairperson. The chairperson for years had been Ray Rummonds from Coachella. But during that compromise, the governor, as I recall, was given the authority to appoint the chairperson. So, he appointed Patricia Nagle, who was the representative from DWP. Department Of Water and Power, City of LA.

(The Governor) also appointed, if I'm not mistaken, the three original public members. Well actually, I haven't gone through all the members of the original Board yet, either. But, but there were three public members in that first Board. The woman, I think her name was Helen Burke from Berkeley. She was kind of an environmental activist. There was Sandy Smith, who was a Native American, attorney, a member of, I think, of one of the Ute tribes. And then Milt Nathanson, who was the just-

retired Interior Solicitor in Riverside. They were, I believe, the first three public members of the Board. There've been others obviously, since. And as I said, the number of public members has declined from three to two. But that was the compromise made. And suddenly, the Board meetings had these five additional people there who weren't from the six agencies -- some of whom were asking, especially Helen Burke I remember, a lot of questions that, who knows if they were good questions or not.

I'm sure that initially, they weren't met with total receptivity by the old guard at the Board. But, you know, that was the way it is, and that was the way it was supposed to be. And I think for Myron, it was a new ballgame because suddenly people were asking questions in the meetings, and some of them were kind of aggressive at times, although over a period of time, what happened was that he knew so much more about what was going on than any of the new people, except, well, Milt Nathanson knew a lot, because he'd been working in that area.

But Milt didn't ask a lot of horribly leading questions either, so it was a different dynamic. And of course, there was a different chair of the Board and (that chair) was a woman of all things. My God, you know, I shouldn't, I will say this on the tape because I don't think you're interviewing Jane Goichman. But when she was counsel to the Board before I was, there were a couple times when she was sort of excluded from things, like extracurricular Board functions because she was a woman.

I mean, it was an old boys' network, there was no doubt about it. And, you used to go to meetings and there would be jokes told, not at Board meetings, but at like outside meetings, and things were told that, you know, they weren't horribly obscene or anything, but they were a little shady. There are things that just wouldn't have been told, probably, to a mixed audience, mixed gender audience.

So, it was a different. . . the world was changing and the Colorado River Board slowly was changing with it. I said at my retirement lunch a couple of years ago that the word environment, environmental or environment, was almost sort of a bad word to use at the Colorado River Board. And it was always (that way) over the years. I mean, it truly was. There was just a very narrow focus. And it changed a lot over the years and the Board changed with it.

**JM**

A later appointment to the Board was, speaking of environmentalist, was Tom Graff.

**DN**

Oh, right, right, right, yes.

**JM**

Of the, ...

**DN**

The Environmental Defense Fund, right.

**JM**

The Environmental Defense Fund. And my guess is that while the dynamics were changing, he probably kind of put that in the fast lane, to some degree.

**DN**

Yeah. To some degree. But I think to some degree people like Tom, and I don't want to get into too much about personalities here, but I think to some degree, people like Tom or like Helen Burke made their points. But in the final analysis, they didn't really control the votes, assuming that it came to that. And I think to a certain degree, they kind of made their points and then they faded a little into the background. And I don't think they were ongoing power bases on the Board. I mean, the Board still basically functioned as it did, in the final analysis.

**JM**

Right. And the people that you're talking about, the public members and the two ex-officio members, they were not, and are not, represented on the Six Agency Committee.

**DN**

That's right, that's right.

**JM**

And some functionary events go on there that do impact the Board.

**DN**

Right. And, in fact, we did not represent, the Attorney General didn't represent the Six Agency Committee or the Colorado River Association. And when I joined the Board, Jane, as I recall, and I always did, when the Board meeting ended and the Six Agency Committee meeting convened and the association meeting, I would get up and leave the table. Now, in the later years, that blurred a little, and I would just stay at the table and not say a lot.

And occasionally, they would ask me questions and I would say, well, you know, you really need to refer to your own agency counsel

on this because this isn't my job. These were not state agencies. Our job was to represent the Colorado River Board, not the Six Agency Committee or the Colorado River Association.

**JM**

It would probably be helpful, Doug, to define those three entities because, as you will describe, you know, they are boards. But the three entities are the Colorado River Board . . .

**DN**

Which is an agency of the State of California, under the Department of Water Resources and within the Resources Agency.

**JM**

Okay, and then you've got the Six Agency Committee.

**DN**

Right. Which is made up of Imperial, Coachella, Palo Verde, San Diego, LADWP, and Metropolitan. As I understand it, its main function is as a conduit for the agency contributions, money contribution, to the Colorado River Board budget. That, I understand, is its main function.

**JM**

And that board of those six people are the same six people that sit on the Colorado River Board.

**DN**

That's right. They represent their agencies on the Colorado River Board, right.

**JM**

Okay.

**DN**

And then the Colorado River Association is also the people, as I understand, from the six agencies. The same people. But that's sort of the public relations arm of the Board and the Six Agency Committee. And they're the ones that would put on the tours of the river and you were quite involved with them, I think, weren't you, at one time?

**JM**

Yes. All right, let's change subjects, move on from there. One of the things that occurred to us while we were putting together a little outline here is that you were in the Attorney General's office, which in a general sense represents the State of California. The State of California is made up of lots of agencies. There are water issues that occur where all

of the agencies of the state are not necessarily together. I don't want you to get into personalities and dogfights and whatnot, but I am interested in you talking about how the AG's office would resolve those kinds of conflicts where you've got agency A of the state thinking we ought to go this way and agency B of the state wanting to go in some other direction. And you're representing both of them. Let's assume, just for the sake of discussion here, that we're litigating Arizona v California and the Department of Water Resources or the Colorado River Board wants to go in one direction, and, say, Metropolitan Water District, which you did not represent directly, but still, they're a California water agency, wanted to go in another direction. I don't even know if that occurred, it's not important. What is important is how does the AG's office balance all that stuff, and take a course?

**DN**

I think there are two questions here. Let me try to … one is conflicts between state agencies. The other is conflict between the state as the main party in Arizona-California, and Metropolitan, or one of the other parties in that case. I think those are two different issues.

**JM**

All right.

**DN**

To my knowledge, I can't really remember an instance where some other state agency wanted to take a different position then the Colorado River Board. There were instances, and later, in the Lower Colorado River Multiple Species Conservation Plan, is that what it's called? Where Fish And Game is a major party to that. And they also were ex-officio on the Board. And there certainly was a potential for conflict there, because they have somewhat, to some degree, somewhat different interests.

But I never really got into that. Within the AG's office, when there was a conflict between clients, we tried to resolve it. If we couldn’t resolve it, the AG would usually take the side of one client and authorize the other client to go out and hire outside counsel. I mean, that's the way that usually works. I'm not sure how to get a handle on all this. In terms of the conflict between our office and some of the members of the Colorado River Board -- I mean it’s such a . . . it's sort of messy in a way, because here we're counsel, the AG is counsel to the Colorado River Board. But it's made up of

all these different agencies that have their own counsel and their own separate parties, particularly in a lawsuit. There was one instance which I remember vividly. The trouble is, I can't remember what the particular issue was. But it was at some point in the Arizona-California litigation where we were clearly opposing the additional claims of the riparian Indian tribes along the Colorado River.

It occurred to me that even though the tribes were certainly . . . the US was their trustee and had a special relationship with them. The tribes were nevertheless citizens of the State of California. And I didn't see, at one point, how the state could continue to take sides with one entity in California against another when there wasn't some compelling reason. And anyway, I remember going into . . . in fact, it was a meeting at Met, over on Beaudry and Sunset. (Metropolitan Water District headquarters for a number of years.)

Myron was there. And I can't remember if Myron Holburt was then at Met or he was still with the Colorado River Board. But I remember Bob Connett was there from our office and I was there. And we basically announced that we were going to take a more neutral position on the litigation which meant kind of backing off. And I really don't remember when this was. I think it was after the big trial before Special Master Tuttle.

It may have been during the trial on the boundary phase of the case. I just don't remember. All I know is it set off this incredible firestorm among the six agencies and led by Myron, saying, “you know, you've always been on our side on this. I mean, the overall interests of the State of California, and certainly the overall interests of the 12, then 12 million people in Southern California who get their water through Met, is more compelling than these interests of these little tribes. And they're represented by the US. And besides, since you've always been on our side, and if you suddenly became neutral, it looks like you've abandoned us and you think we're wrong, on this.” And they went on and on and we realized that we had probably made an error. We kind of backed out. And we finally resolved it in terms of saying, well, we really could make a decision as to what was in the best overall interest of the citizens of the State of California. After all, these tribes already had quite a bit of water from the 1964 decree. And there were very valid arguments on our side. So we eventually came back

into line. We had one other time. . .

**JM**

I'm going to come back to that one other time but let me see if I can put a timeline on this. Who, do you remember, who was general counsel at MWD?

**DN**

No, I don't remember.

**JM**

Was it Warren (Abbott) or? . . .

**DN**

I just . . .you know, this is very vague. I have probably a file somewhere that could tell me this. Bob Connett might even be able to. I think it was after the trial, before Special Master Tuttle. And I'm pretty sure it was in the boundary phase. And that, at that point, I guess Carl was probably general . . . or no. Well, if Carl was general manager, Carl Boronkay, then Warren Abbott was general counsel. I don't remember.

Well, there was another case which didn't specifically involve the . . . well, there are several other cases I could talk about. One was the acreage limitation case in the Imperial Valley -- the 160-acre limitation case in which the state had gotten involved under Governor Reagan, through Ed Meese, who was his chief of staff then. (He) got us involved before I ever even joined the AG's office, on the side of the Imperial Irrigation District, which was fighting, what was it? The US, and this guy Ben Yellin (sought to) basically enforce the 160-acre limitation under reclamation law. And Imperial had O'Melveny and Meyers as their attorneys, and they weren't messing around at all. And here we were, the little state. We came in and we took a fairly narrow position in support of Imperial Irrigation District, which was not so much that the acreage limitation should or shouldn't apply to Imperial for a variety of reasons, but that there'd been a letter from the Interior Solicitor to Imperial in 1933 basically telling them that the acreage limitation didn't apply to them, and that they had relied on that for, at that time, what, 40 years. And that it (enforcement of the 160-acre limitation) was unfair then --(that) the Federal government should have been stopped from suddenly enforcing that limitation against them so many years later, after they had relied on a solicitor opinion. And that was the position we took.

But I really felt down there that that was another situation. That involved small-time farmers,

people that apparently wanted to break up some of the large holdings in Imperial. And of course, those people were citizens of the state as much as the large farmers and the Imperial Irrigation District. And I just felt, again, that the state was probably taking sides where it shouldn't and I tried to get us to basically back out of that case at a certain time. Evelle Younger was Attorney General then. And, I don't know if I should say all this. I guess I can. We were ready to back out and I think I had some support within the office. But attorneys for Imperial Irrigation District or perhaps some of the big farmers came in and they put a lot of pressure on the Attorney General. There was a big meeting. I think it was Imperial, or maybe it was some individual farmers in Imperial. I have to think about that, and I don't want to misstate that. But there was a big meeting, and the Attorney General decided that we should stay in the case.

And in fact, he told me that if I was very uncomfortable with that they could reassign it to someone else. I don't know if that would have been a bad mark on me if I had agreed. But I could stay in and write the argument; tailor it in a narrow way, and I did so. But that, of course, didn't specifically involve the Colorado River Board as such, but it certainly involved Imperial. The only, the other case I remember was, yes . . .

**JM**

Wait a minute. We'll get there. I need you to define for us the importance of the 160-acre limitation. Who cares how much property I own in Imperial?

**DN**

Well, I think the point was that it was under the Reclamation Act . . . the water that came there was, I forget if it was free or extremely cheap. I'm vague on this, and I don't want to misspeak.

**JM**

It was extremely cheap.

**DN**

Extremely cheap, right.

**JM**

It was developed by the Federal government.

**DN**

Right. And it was felt that it shouldn't be benefiting just these huge land holdings and there was some interest in preserving the so-called family farm. And (the Congress) thought, somehow, that 160 acres was as much land as anyone getting this benefit under

the Reclamation Act, through Reclamation water, should be able to farm and still get that benefit. So, there was an effort to, I think, to maintain the small family farm and not just have everything gobbled up in huge agribusiness and corporate farming.

That issue has obviously been important in other places, too, like up in the Westlands (area), up in the San Joaquin Valley, and . . .

**JM**

Right. So, one issue, I mean the compelling issue is that if you, and correct me if I'm wrong, if you, as an individual owner owned more than 160 acres, that was okay. But you could only get Colorado River water for the 160 acres, not for anything beyond that. Or is that oversimplified?

**DN**

Something like that, but I'm not sure, you know, now it's very hazy. This is almost 30 years ago. Maybe you could have gotten Colorado River water, but not at the ...

**JM**

Oh, not at the lower price?

**DN**

... the lower price. I'm just not sure. But I mean, it was certainly a threat to the big farms if that had been enforced. There was no question about that. And the small farmers said, you know, we should have a chance. You know, everything's been gobbled up by the big farms.

**JM**

Well, tell us what the outcome of all that was, before we move on .

**DN**

The outcome was that the court ruled against the small farmers. The court upheld the non-applicability of that acreage limitation to Imperial. And it wasn't necessarily on our argument. It was on a more detailed argument that it simply shouldn't apply to them. And you know, at this point, this is real hazy. I remember a lot more about Arizona-California than that. Because that's a long time ago.

The other case that I just want to briefly mention is a waste-of-water case that was brought by this farmer, Elmore, who made a complaint to the state Water Resources Control Board about Imperial – you know, Imperial's unlined canals, wasting water, causing the Salton Sea to rise and flooding his farm which was near the sea. (Elmore) Complained to the state water board, which is also our client.

The state water board brought a suit against Imperial for wasting water and I specifically took myself as far away from that as I could, because of representing the Colorado River Board and Imperial being on the Board. The case was handled by a deputy, Anne Jennings, in our San Francisco office. I kept out of that completely. Of course, that didn't specifically involve one of our clients versus another client. But it did involve one of our clients versus a constituent member of the Colorado River Board.

So, that was, and there've been other issues, too. There've been a lot of issues, I know, between Fish and Game and Coachella and Imperial on various things for the Salton Sea and other items. I know when the Coachella Canal was going to be lined there were environmental concerns about suddenly cutting off all this water that was leaking out and supporting various habitats along the canal. And there were issues there. But I stayed clear of that because again, that was too close to the client. I mean, the whole thing, though, was the fact that the Colorado River Board was made up, essentially, of these other agencies that had issues with other state agencies . . . always made it kind of a blur. It was a little bit of a messy situation. And I just, I just stayed as clear as I could from our other clients whom I represented in other cases. You know, Fish and Game, the water boards, I mean, they were my clients as much as anyone else's. But not in those issues that involved constituent members of the Colorado River Board.

**JM**

Speaking of IID and the Elmore suit, was there an issue or dispute that caused IID to decline to participate with the Board for some time ?

**DN**

You know, I looked at the outline, obviously, before we came into this, and I think there was, and I'm trying to remember. There was a time when IID wasn't sitting there, but I can't remember. I can't remember what that was about. I'm blanked on that. I mean, the original Board, when I was there, there were only six members. There was Ray Badger, from San Diego city and County Water Authority. There was, , Carl Bevins from . . .

**JM**

. . .let me stop you there, because the San Diego entity is commonly referred to as the San Diego County Water Authority and you have used the phrase city and

county. The San Diego City and County. And so I'm wondering, is there some legal nicety there that I'm missing, or . . .?

**DN**

They were originally, in the original Arizona-California lawsuit, I'm almost certain of this, there were two separate parties. San Diego city, and San Diego county. And at some point they merged into the County Water Authority or something, and they became one party in the suit and one party on the Board. Now, I don't know if they had two representatives on the Colorado River Board at one time or not. Certainly when I was there, there was one person representing both and that included the city and county.

So Ray Badger was the representative from San Diego. He's a very elegant old, older man, very tall, gray haired. Didn't say a lot. Carl Bevins from Imperial was there for quite a while. But he died very suddenly and was replaced by Robert Carter, I think, who was their general manager at that time. And he was there for many years. Virgil Jones was always there and was there my entire tenure.

**JM**

From PVID?

**DN**

From Palo Verde Irrigation District. And of course, Virgil became chair of the Board when Ray Rummonds died in what, 1998 I think it was? And Virgil was there when I left, and of course, unfortunately, he died, what, a year and a half ago. But Virgil was a wonderful man. A perfect old salt of a farmer. He'd come from New Mexico after the war. I think he's from Las Cruces, New Mexico, and settled in the Palo Verde Valley in 1947 and had been there for years and years raising, I guess, mainly cotton and alfalfa, if I'm not mistaken. Maybe some other vegetables. He was truly a farmer and he was a farmer 'til the end. He died out in his fields loading something or other, I don't know. Ray Rummonds from Coachella was the chair of the Board the entire time I was there, except for those few years when, as I said earlier, Patricia Nagle from DWP was appointed Board chair by the governor, by then-Governor Jerry Brown.

But at some point after that, the statute was amended, the Board was again . . .I think that was when the number of public members on the Board was cut from three to two, and the authority for appointing the Board chair was returned from the governor to the Board. And also, I

think the governor was required to appoint Board members, but from a group of people submitted by each agency. Anyway, after the authority to pick its chair was returned to the Board, Ray Rummonds became chair again and served as chair until he died.

He was from Coachella. I think he was a Realtor more than a farmer if I'm not mistaken. And he was always real political. He was involved in a lot of (organizations related to the Colorado River). I have forgotten who was the representative from LA Department of Water And Power at that time. But the representative from MWD was Joe Jensen, who was definitely a legend. By the time I got there, he was quite an old man, although he actually seemed to me a lot older than he was. He was 87 at that time and I remember thinking that he seemed much older than that because he was very quiet. He was pretty quiet in the meetings and didn't say much.

He was, I think, a little past his prime by then. But I just remember, his face was almost waxen and white. I mean, I would see him at these meetings and I thought my goodness, how old can this man be? Of course, I had no history with him when he was the real powerful force at MWD. And I guess with the Board, too. By the time I got there he didn't contribute a lot.

**JM**

He was chairman of the Metropolitan Water District's board of directors?

**DN**

I don't know if he was chair of the Board at the time I was there. I think he ...

**JM**

Yes, at one time he was. I believe he represented the City of Los Angeles on Metropolitan's board.

**DN**

That, I'm not sure of. He died within a year, two or three years after I started working with the Board. He was replaced by, was it Warren Butler? I think initially, yes. And then a series of other people over the years. But that was the original Board, and they were, I mean, it was a fairly old Board to say the least. The (average) age (of the Board) has gotten lower as time has gone on. And there have been a series of very interesting people there over the years. I could probably go into them, but. . .

**JM**

This is tape number two. We're with Doug Noble, November the fifth, 2003. We took a pause at the end of tape one. We were talking about some of the people who were on the original Colorado River Board of California. And I suppose we probably should move on at this stage of the game. I don't know, there's probably no easy way to jump into Arizona v. California and the boundary case and whatnot. Let me ask you where is a good place to start with regard to those particular pieces of litigation.

**DN**

Probably with what I first got involved with when I came into the section, which was the Present Perfected Rights decree. When I entered our section and went to work for the Colorado River Board, the Board was . . .and Myron Holburt specifically, because he was chief engineer at the time . . . was trying to get an agreed upon supplemental decree to the court's decree in Arizona v., California, listing Presented Perfected Rights. Now I should, I'll try to define that.

**JM**

Okay.

**DN**

The Arizona . . . the original Arizona-California case which was tried in the late '50s and early '60s, was a suit by Arizona against California basically trying to figure our how much of the lower basin's share of the Colorado River, under the Colorado River Compact, Arizona was entitled to. Because Arizona had trouble getting anyone to support, or enough people to support its plans for the Central Arizona Project in Congress until it knew how much water it was entitled to from the Colorado River.

So it brought the suit against California and various other parties joined. All the agencies in California joined. That case was resolved and was decided in 1963 with a decree entered in 1964 and I'm sure other people have talked about that. I don't think I probably need to do that. But the basis of the decision in that case was the court held that the United States Congress, when it passed the Boulder Canyon Project Act in 1928, had, in effect, apportioned the lower basin's share of the Colorado River between Arizona and Nevada and California, but at the same time, the court said that people, users of water in the lower basin that had been using water up to the date of that legislation,

may have established what are called present perfected rights.

They had perfected a right to use that water and that right was a presently perfected right as of the effective date of the Boulder Canyon Project Act, which I believe was June 25, 1929. So, as part of its decree in 1964, the Court ordered the United States and all the parties to the case, which were Arizona and Nevada, plus not only California, but the California agencies and I think Utah and New Mexico had intervened in the case too, but they didn't really participate in this.

(The court) ordered all the parties to, within I think two years of the decree, to come back with a list of those people in each state who had present perfected rights. . .who had rights that existed as of the time of the passage of the Boulder Canyon Project Act and those people would be, in a time of shortage, would be entitled to get water basically ahead of anyone else without regard to state lines but with regard to their date of priority as to the date that they had perfected their right.

Well, first of all, and this happened before I came aboard, first of all the states were arguing over the various rights because people came up with lists and they argued over the lists and then I think finally the states sort of came together. But then the US, which was trustee for the Indian tribes, had some problems. The US not only had claimed some present perfected rights of its own regarding Federal establishments. There was like a wildlife. . .I forget what it was called and I don't have the decree in front of me, but there was a wildlife refuge down there that the US had some reserved water rights for. But more importantly the US represented the five Indian tribes as trustee along the river and had obtained for them over 900,000 acre feet of water in the Colorado River that came out of the lower basin's 7.5 million acre feet and that hadn't really been apportioned as to which state it came out of, but that right was existing.

The US . . . well there were different issues involved as I came aboard and we were basically trying to get the US to sign on to the agreed upon list of present perfected rights that we could take back to the court and we'd already passed the two years and then they'd extended it for a year. But we were way past the deadline for submitting anything to the court. So, the US . . . there was some feeling generated a lot by some of the Indian tribes and particularly by a guy named Bill Veeder, who was an attorney for some of the

tribes that are, I don't remember now exactly . . . but basically there was a feeling that the tribes had been short changed in the original lawsuit . . . that they had this 900,000 acre feet that they got was far less than they should have been entitled to. Moreover, there was the feeling that the then-agreed upon list of present perfected rights that the states had agreed upon, which included a lot of rights in Imperial Valley -- not their entire contract right, but I think 2.6 million acre feet to Imperial and quite a bit to Palo Verde, that somehow those rights were going to . . . if those rights had been recognized as present perfected rights in a time of shortage, they might somehow prejudice the five Indian tribes rights along the lower Colorado River.

The rights that had already been decreed, much less anything additional that the tribes were entitled to, and this was because the tribe said well, there's this doctrine, the tribes and then the US sort of picked up the tribes' argument. There's a Doctrine of Relation Back that allows a priority date to be set from the date when an appropriation or a water source is first developed.

I'm really speaking very badly here, but the point is . . . let me go back. The tribes and the US as their trustee were basically saying a lot of these state rights that are being listed as present perfected rights that the states have agreed upon have priority dates that are too early and that's because of this doctrine called the Doctrine of Relation Back, which gives you a priority date -- not when you really started using the water, but when you started diversion systems, started building the means to get the water to you.

And the tribes said the Doctrine of Relation Back should not be applied vis a vis us, because it gives these state entities water ahead of us and may screw us, basically out of our water in time of shortage. Now of course the problem with the tribal water is that a lot of it wasn't based on actual use. It was based on a Winters' Doctrine reserved right, which gives you a priority date as of the time the reservation is established irrespective of whether water was actually being used. So this was all a little confusing.

But the point was that the tribes and the US basically held up the decree, saying that the priority dates we were assigning, especially to the big people like

Imperial and Palo Verde and some of the small -- there were some municipalities that had present perfected rights -- that was somehow going to prejudice the tribes and that's around the time when I was first involved. How we finally solved it was basically we had a subordination clause. We agreed that in times of shortage and we honestly couldn't see that this would ever happen, that there would never be so little water that we couldn't satisfy all the present perfected rights including the Indian rights. So we felt really that we weren't giving away a lot and we didn't really know why the tribes thought this was so important because we thought they would be protected in any case. But to get rid of that issue we agreed to subordinate all the major present perfected rights. All the major state present perfected rights. In other words, the 900,000 or so acre feet of Indian reserved right claims on the five reservations in times of shortage would be satisfied ahead of any of the major present perfected rights claimants in the states. The non-Indian people, including Imperial, Palo Verde, whatever.

We didn't include the miscellaneous present perfected rights holders. There were a whole bunch of people that had the right to one acre foot and we couldn't get all of them to sign off on this. There were 40 or 50 of them at least, but the tribes were willing and the US, as their trustee, was willing to accept this subordination agreement where we let the Indian rights be satisfied ahead of the present perfected rights holders. And that really brought the US aboard and agreed with the entry of the decree.

Now as I recall, a couple of the tribes went along with that. I'm getting a little hazy on this. A couple of the tribes went along with that, but several of them didn't. I think the Chemehuevis and Fort Yumas didn't go along with it. Plus all of the tribes, at this time, decided that since we had this agreement with the US on this supplemental decree listing present perfected rights and had to go up to the Supreme Court to have them enter this supplemental decree that at the same time that, that the tribes obviously decided, and the US on their behalf decided, that they would file a motion to expand the number of Indian reserved rights along the river based on this feeling that they had been short changed at the original trial. And that motion was made in 1978 and that's what's really kept this case alive ever since. The Present Perfected Rights decree we argued and it

was entered by the court and that was my Supreme Court argument, October 1978.

**JM**

We're discussing the United States Supreme Court?

**DN**

United States Supreme Court, but the other issue, the reopening of the case to assert additional rights for the Indian tribes based on two different theories, one on what's called omitted lands and the other boundary lands, which we can talk about, that's an issue that has remained open to this day -- at least as to one of the reservations, the Fort Yuma. It still hasn't been settled 25 years later.

**JM**

As long as we have the phrase right on the tip of our tongue, why don't we define, if you would, admitted lands versus boundary lands. What is that issue?

**DN**

Omitted lands.

**JM**

Omitted, I'm sorry.

**DN**

Okay. And let me say at this point, I hope I've explained present perfected rights well enough. I should say also and I know you're going to make a copy of this, that I did a whole separate tape myself three years ago on the Law of the River in which I talked about some of the stuff, so maybe it isn't necessary to get into all of it now. But, let's just say this: all of this went up to the Supreme Court at once. The agreed-upon decree on present perfected rights which the states, the US and most of the tribes were in support of and a couple of the tribes for various reasons were opposed to, went up to the court at the same time that the tribes-- now up to this point the US alone had been representing the five Indian tribes as trustee in the lawsuit and had represented them in the original trial and had been the architects of their claims, all of which were recognized -- their water rights claims -- but which some of the tribes now said were inadequate. So the tribes themselves asked to intervene in the case as parties so they could assert their own additional water rights claims. And the US apparently was buying into this. They were supporting the intervention of the tribes, but they were also going to continue to represent the tribes and maybe also assert some additional water rights claims on the behalf of the tribes themselves.

Okay, so we go up to the Supreme Court. Various people took various positions. There were seven people arguing that day. It was incredible. I don't know, the court generally gives an hour and a half for oral argument. Or an hour. This time they gave an hour and a half and they allowed seven people to argue. I went first. I was representing the State of California and the state of Nevada and all the agencies. And I think I was speaking for Met, too, although Bob Will, who was general counsel at Met, also argued.

My position was, one, the decree of present perfected rights should be entered. Two, the tribes should be allowed to intervene to represent themselves in the case, but that there shouldn't be dual representation. In other words, the tribes should be forced to choose. Did they get represented by the US as trustee, or by their own attorneys? I think Met took the same position. Arizona argued . . . Ralph Hunsaker argued for Arizona, and they opposed the intervention by the tribes. They were of course, in support of the PPR decree. Present Perfected Rights decree. But they opposed the intervention by the tribes.

Then the four tribal attorneys argue. There was Terry Noble Fiske who represented, I think, the Colorado River Indian Tribes; Larry Aschenbrenner, who represented the Chemehuevis and the Cocopahs; Ray Simpson, who represented the Fort Yumas. And the Fort Yumas seemed to be opposed to everything.

And who was the other attorney representing the Fort Mojaves? It wasn't Dan Israel. That’s where I'm blanking. And Louis Claiborne represented the United States I think. Anyway, that's right. There were three, that's right, there were just three Indian tribes represented. The US, Arizona, Met, and California. So that's the seven attorneys. And I went first, and I was speaking for more people than anyone else was speaking for. But everybody had their speaking room as they wanted.

**JM**

Now, you said you only had an hour. Is that an hour total, or ...

**DN**

Hour and a half total. No, I had 20 minutes.

**JM**

Okay.

**DN**

Bob Will had, I don't know, 10 or (so minutes). I don't remember, but ...

**JM**

Okay.

**DN**

What happened was, the court entered the decree. I know some place you wanted to ask me how I prepared for that. You can do that in a minute, I guess. The court entered the decree. They also allowed the Indian tribes to intervene as parties, but they didn't limit them to single representation. They let the US continue to represent them, too, which of course, had a major, major impact on the lawsuit we had, because we were, as I'll explain later, we were faced with two different sets of claims, both on behalf of the Indian tribes. And then they also appointed a special master, Albert Tuttle, of the Fifth Circuit (retired) -- United States Court of Appeal for the Fifth Circuit out of New Orleans, although he was from Atlanta. (He was a retired judge of the Fifth Circuit to be special master in our case) to hear the claims -- the Indian Tribes and the US claims for additional water rights for the five Indian reservations along the river, based on these omitted land and boundary land claims. And so, that's what we're still working on. So the PPR decree was entered.

That's what we really wanted. But then Pandora's Box was really opened for the next 25 years. So, it went really well.

**JM**

You're going before (everyone else). Was that the only argument that you made before ...

**DN**

That's the only one. I'd been there three more times, but Carl argued once, Jerry Muys argued twice for Met because, and we can get into this, but by the time we got into the '80s, it was real obvious that the main party with interest in what was going on was Metropolitan Water District because they had the lowest priority under the Seven Party Agreement and they were the ones whose ox would really be gored by additional Indian water rights. It sort of naturally gravitated that they be the lead party. But we certainly participated.

**JM**

Can you define the Seven Party Agreement for us?

**DN**

Seven Party Agreement was basically an agreement among the seven parties in California, and I say those are the six members of the Colorado River Board that we've talked about before, plus at that time, San Diego was both city and county. So that's the seven parties. And they basically, now I have to make sure I'm stating this right. This was 1931. They basically set priorities for the water available to California. And it went beyond the 4.4 million acre-feet, which was the figure talked about in the Boulder Canyon Project Act. But it did allocate the first 4.4 million acre-feet. Met got 550,000, the three agricultural agencies, Imperial, Palo Verde and Coachella, were essentially allocated three million . . . wait a minute.

**JM**

I think it's 3.85.

**DN**

Right. 3,850,000 acre feet of water at the top, and then Metropolitan, within the first 4.4 million acre-feet got 550,000. Now Met signed a contract later for over 1.2 million acre feet. But within the first 4.4 million acre feet, they were only having a priority of 550,000. But that priority is decreased by any present perfected rights. Any present perfected rights other than those held by Imperial and Palo Verde. Any (rights) relating to all the individual people, plus any reserved rights held by Indian tribes in California.

Now, within California, I said earlier there was, I think it was 917,000 (or) 910,000 acre-feet of consumptive use rights allocated to the five Indian tribes along the Colorado River. This was in the original trial. This is before you get to any additional Indian water rights claims. Of those 900,000 plus acre-feet, most were in Arizona. So most would go against Arizona's share of the river. But about 150,000 maybe of those were in California. And those would go against California's share. And those would be satisfied ahead of anything else.

And basically, since Met was the lowest priority and had only 550,000 of the first 4.4 million, those would come out of Met. Plus, any additional water rights that the tribes would get for new rights in 1978 would also come out of Met, which is why Met is obviously the most interested party.

**JM**

Okay, where do we want to go from here?

**DN**

Well, do you want to talk about how do we prepare for the Supreme Court or something?

**JM**

Yes, in fact, I started into that a few minutes ago and I sidetracked both of us. My question at the time was, was that your first appearance -- the first time you'd argued before the Supreme Court, and you indicated that it was.

**DN**

First and last.

**JM**

Then my interest is, you had an hour and a half, there were seven attorneys that had to squeeze their arguments into that time period. You don't ask the Supreme Court for a little more time. I mean ...

**DN**

We were lucky to get an hour and a half. That was very unusual ...

**JM**

And ...

**DN**

... and lucky for them to let us have more than one attorney on each side. That was very unusual.

**JM**

Why do you think that was? Why do you think the Supreme Court ...

**DN**

. . .because there were people with so many different positions, for one thing. And I guess they just recognized it was a big case, and I don't know. You know, now it's hard to go back and try to figure that out, but, ...

**JM**

But it was, and remains, an uncommon case.

**DN**

Absolutely.

**JM**

Because, as of this date ... it is still open.

**DN**

Absolutely. And my preparation for it was uncommon, too, because there wasn't a lot of case law applicable to our case. Our case was kind of its own law. The Law of the River, and so I didn't really have to prepare as much,

perhaps, as most people do for Supreme Court arguments because most of the law was within our case. I mean, there were some other things that applied. I ended up being the lead because we were on the side making the motion. We had brought the motion to enter the decree.

**JM**

We, California?

**DN**

The state parties. Nevada at that time was represented by a guy who was younger and less experienced than I, and, as I say, Arizona had a slightly different position. But California -- we all felt that our position would be better if the state represented us, rather than trying to get somebody from each agency, or maybe one agency, or the six agencies speaking for California.

Now, Met entered and you know, it's hard to remember now how this decision was made, but it was apparently a fairly obvious decision, that California should take the lead. And I guess they had enough confidence in me that they let me do it. And then, because Met really had such an interest in the case, especially in the subsequent litigation with the tribes coming in, I think Met felt the need to have Bob Will argue in addition.

But basically we had the identical position. I believe we did. As I said, Arizona's position was a little different. So it was just agreed that I would go first, and I guess we divided the time equally between the state parties, and then, I guess, the US, and the Indians took half of it. I forget how it was done. I'm pretty sure I had 20 minutes. Bob Will had 10 and Ralph Hunsaker had five. I think that was the way it was.

So there's 35 minutes out of the 90. No, we had more than . . . I don't know. I have the transcript here. We can go back and check it. Anyway, and I might add, this is mildly humorous, and I don't know if you want all these personal things, but it livens it up a little. We certainly didn't stay in the lap of luxury. We stayed in the Quality Inn on New Jersey Avenue right down the street from the, from the capitol, but also right down the street from Georgetown University Law School, which was very fortunate because the day before the case -- I'm someone who usually prepares at the last minute and is up late -- but I felt so fully prepared, and I'd had a moot court within our office. Now the AG's office, whenever anyone is going to argue in the Supreme Court it is a very elaborate thing, I

think they send you back to the National Association of Attorneys' General for a briefing and all kinds of stuff.

But in our case there were a couple things that were unique about this. One, I had planned a trip to South America for about three weeks right before the case and the office said, well, basically you can argue the case and go to South America, but you have to prove to us in your moot court before you leave for South America that you're okay. Various people in the office thought I was nuts -- that I could argue it after coming back from a trip, but I did. And then, the other thing was that . . . I kind of lost my train of thought.

**JM**

Well, you're staying at a cheap motel.

**DN**

No, that wasn't it. It was, oh, damn it. Well, anyway, so we get back there, and I've had my moot court, and we stay at the Quality Inn. It was okay. And for one of the few times ever I felt fully prepared by mid-afternoon. And I actually, I never take a nap. I never take a nap in the middle of the afternoon. I may fall asleep in my chair at work by mistake, but I would never lie down and take a nap. I decided to lie down and take a nap.

And I had no sooner lain down than the phone rings and it's, I think it was Ralph Hunsaker who, as I said, was counsel for Arizona, saying Metropolitan just called us. They couldn't get a hold of Bob Will and they called me to tell me that we had just gotten a memo of eight cases submitted by Larry Aschenbrenner who was counsel for the Chemehuevis and Cocopahh tribes.

The last second (he sent these) to the court with the thought the court should look at them and would be instructive on the case. And Ralph said, I've taken a look at these cases, and I don't really think they're anything. But, I said, I think I better satisfy myself, too, and go look. So here I am, you know, the last afternoon, thinking I'm relaxing. I raced over to Georgetown University Library and I was there, oh, I don't know how long.

All I know is the first case looked extremely bad for us. These were cases none of us had ever come across. I mean, I don't know why we hadn't. All I know is the first case I looked at said something that was very damning to our position. I thought, God. And it's getting late now and I'm reading all these eight cases. I'm in the

library, and it's a big social hour for all the students there, and they're laughing.

I'm panicking because the argument's the next morning, and we just got these cases. It required reading the very last case of the eight to distinguish the first case, and answer it, and basically put it to bed, and gave us a good argument. But I was there 'til, like, 9:30 at night.

And so then, what happens is, the next morning we go in early to meet with the clerk and he needed some special help. This was Michael Rodak who was clerk at the court then. He was kind of fussy and very uptight and he was just so concerned that there was this incredible number of seven attorneys. There was the chair for each counsel at the front table and then there were two other chairs at each table. But that's a total of only six. Three on each side. And there were seven of us. And where was the seventh person going to sit. And I said, well, I'm going first so I will go up to the lectern and when I finish, I'll be glad to go back and sit in one of the other rows, toward the back. And he said, oh, would you do that? He said, that would be so great. I would so appreciate it. And I said, you know, I don't care. I mean, I'm done. It was quite amazing.

So we took a little tour of the Supreme Court Library, which was pretty exciting. But we talked to him about this late submission that I had wasted my anxiety over the night before. And he said, “oh, that's ridiculous.” He said, “I didn't even show that to the court. I just didn't even give it to them.” I said, “no?” “(It came in) much too late. Totally inappropriate.” So that was it.

So we go in for the argument and ordinarily, even in those days, our office would send you back a couple days early to see another argument if you've never seen it. I'd never been in the Supreme Court in my life. But this was the opening day of the October term. There was no other argument to see. So the only argument I saw was the case ahead of us that very morning. Here we go in there, and sit.

We're in the, what they call the “on-deck circle” which aren't the rows at counsel table, but a separate section of chairs there and around the side. That's where I would later sit after my argument. That's the “on-deck circle”. And so we sat there and we watched this argument and the argument went on and on. The one thing I noticed was I had written my points out on yellow sheets. (We went to white much later because they were cheaper.) But I was

using legal size tablets which are 8 ½ by 14. And Michael Rodak, again the rather fussy clerk, made it very clear that that was really bad because if the sheets were too long they overlapped the lectern and hit the microphone and they caused, you know, they caused interference. So, fortunately for us, the first case didn't end at lunch. It was still going. So they dismissed us for lunch and at lunch I spent the entire lunch hour rewriting my notes on 8 ½ by 11 sheets so they wouldn't interfere with the microphone.

So we go in after lunch. We're sitting in the “on-deck circle”. I thought I was very calm. I know I'm talking about this too long, but this was ...

**JM**

No, no, no. Not at all.

**DN**

... an interesting experience. I always thought I was very calm on that morning. I ate breakfast and I didn't have my usual -- I have certain reactions to stress, but you won't need to go into those. But anyway, I thought I was very calm. But sitting in this on deck circle, waiting for the other case to end, I was getting really parched and there was no water there. The only water was up at the counsel table.

So when I went up. They called our case finally. I walked right up to the lectern with my notes and I asked someone to pour me some water because I really was parched. And as I picked up the water, I realized for the first time how nervous I was, because I was shaking so much, I couldn't hold the glass in one hand. I had to take it in two hands and drink it. And then I started out, and I can't believe I said this, but the transcript probably doesn't lie. It says, “I'm Douglas Noble, representing the state of California in the case of Arizona versus Arizona.”

**JM**

Oh no ...

**DN**

It's right in the transcript. I didn't make another mistake. I didn't misspeak on anything else, but I did that, apparently. Anyway, the argument went fine. They asked me -- Stewart and White asked me -- Justice White asked me some questions about the Subordination Agreement, where we had subordinated all the major present perfected rights to the Indian rights. And he asked some question which was kind of off the wall and didn't make a lot of

sense, but he was, he was being very persnickety, and I didn't quite understand where he was going. I think I asked him a question back to clarify. And a good friend of mine -- I made the serious mistake of not inviting my parents to see me argue -- but I did have a good friend, an old Peace Corps friend from Washington D.C. who came. He was the product of a very Catholic education that respected authority and I remember him telling me afterwards how impertinent he thought I was to Justice White. But no one else apparently thought I was, so that was the argument and it was an experience. I think I more enjoyed going back when I could just sit up there and watch other people argue on a case I knew all about. It was a once in a lifetime thing. Anyway ...

**JM**

Well, and then to start of referencing the case erroneously . . .

**DN**

Well, they knew what the case was and I'm still not convinced that wasn't a typo in the transcript, which I have. These were produced when they were still doing these things in mimeograph, you know. It's all this sort of faint pink or purple ...

**JM**

That purplish ...

**DN**

... purplish, yeah, yeah. Very informal too. The court in many respects is very informal and hangs loose about certain things, and that was one of them. You know, most transcripts you'd get are very formal and nice. And this was just, sort of, this thing someone had typed up and sent out. But, , anyway.

**JM**

Do they redo those? This is kind of off the subject, but for a permanent record are they holding the same mimeographed, horrible-looking, purple copy that you've got.

**DN**

I don't know, actually. They don't allow you to make corrections. It's not like a deposition or like this.

**JM**

You had mentioned this Special Master, and I think we probably need to define what a Special Master is -- specifically, there are two that I'm interested in. Tuttle and Rifkind . Is what came. . .

**DN**

Well, we certainly have had others. No, Rifkind was before Tuttle.

**JM**

Oh, Rifkind was first, okay.

**DN**

He was on the original trial, and I never knew him ...

**JM**

Well, that's fine then.

**DN**

... He just died a few years ago. He was 92. He was the one that Charlie Meyers, my water law professor at Stanford, clerked for. And that was Charlie's connection to the case ...

**JM**

Oh, I see.

**DN**

... and led to some further dialogue with me later when I was working on the case, which was real interesting.

**JM**

Okay, well, I wonder if you could define for us, briefly, what a special master does, and then maybe talk a little bit about . . . do you call him Judge, or do you call him Special Master Tuttle?

**DN**

I think we called him Judge, because that's really what he was. He was a judge of the Fifth Circuit. Or Your Honor. Well, this was an original jurisdiction case in the Supreme Court, which, because it was originally a case between two states -- and in a case between two states, it is the Supreme Court alone that is the trial court -- it has original jurisdiction. You don't get up there on appeal. You go there right away. Well, the Supreme Court obviously can't conduct what turned out to be an 8-week trial. I mean, they don't conduct trials. So when in cases of original jurisdiction, they will appoint usually some very esteemed, often retired, judge from somewhere that they know or have confidence in. Or sometimes an attorney. Jerry Muys was a Special Master in a groundwater case between, I guess it was Kansas and Oklahoma and Colorado.

And, as I say, I did not know Simon Rifkind. He was from New York, I believe. He wasn't actually the first Special Master in the original case. The first guy was a guy named George Haight. He died and they had to start over with Simon Rifkind. But in our

case, as I said earlier, the Supreme Court entered the Present Perfected Rights Decree. They allowed the Indian tribes to intervene as their own attorneys, but also kept the U.S. as their attorneys and appointed Special Master Albert Tuttle, a retired -- I guess he was Senior Status Judge Of The Fifth Circuit Court Of Appeals -- to be Special Master in our case for all purposes, basically. Judge Tuttle was quite an amazing man. He was known as one of the big five desegregation judges in the South along with Frank Johnson, John Minor Wisdom. I forget the other two. In fact, there's a book written about the five of them because they were in the school desegregation cases. They were just major, major players. Tuttle was a Republican. He was from Atlanta and he'd been an Army guy. He may have had some connection with General Eisenhower in World War II. I'm trying to remember. But anyway, he had helped deliver the Georgia delegation for Eisenhower at the 1952 Republican Convention when Eisenhower was battling Taft for the nomination. So he was active in Republican politics in Georgia, which, of course, Republican politics in Georgia wasn't much in those days. But it was enough at the convention.

I think he was in the Treasury Department in the Eisenhower administration. Something. Some sub-Cabinet position which I've forgotten. Anyway, he was later appointed directly to the Fifth Circuit. I can't remember if he was a trial judge. In any case, he'd been on the Fifth Circuit. Operated out of New Orleans, but he lived in Atlanta.

And, as I said, he was one of the key five judges in the desegregation cases. His family was very concerned about crosses being burned on his lawn. I don't know if there ever was one burned on his lawn, but in those days, in the '50s, things were pretty heated in the South. So, here he was, the Republican, the pretty liberal Republican who'd made these very courageous decisions, more than one of them.

I truly believe, not out of disrespect to him -- in fact, he got the Presidential Medal Of Freedom from President Carter during our trial and recessed it for one day. (He) was very proud of it and had us over to his house later at one point when we were meeting in Atlanta, toward the end of the trial -- but I truly think that he subconsciously, whatever, had such a strong affinity (toward minorities, it was his) view that the

Indians generally had been wronged and that most of the people that were fighting them in this case were fat cats. I know one at one point he actually made reference to the fact that, didn't most of the people -- farmers in the Imperial Valley -- drive Cadillacs. I remember that. We had the feeling, frankly, and I don't say this out of disrespect for him, we had the feeling that he had somewhat prejudged some of his – that he gave the Indians more benefit of the doubt than they should have had. I know there certainly are rules in boundary disputes (or) cases involving interpretation of documents that are sometimes tried that Indian tribes are to be given the benefit of the doubt. It was hardly that. This was basically . . . well, there are a lot of issues in this case and we felt that in a way we got a little short changed. That wasn't to say that he ruled in favor of the tribe on everything. He certainly didn't. But he did conduct an interesting case. He was pretty military in his bearing. Very formal. But a decent man. He and his wife drove all over the country. He was 81 when he took over the case. He lived to be 97 or 98. Basically, the trial was held wherever he and his wife wanted to go. So, we had a month in Denver – of course we had some preliminary hearings too and I think some of them were in Atlanta. But the actual trial itself took place in Denver in September of 1980 for a month, then we were in Phoenix for two weeks in December of 1980; we were in Atlanta for nine or ten days in the Spring of 1981 and then we had a final session in the then-Huntington Sheraton Hotel in Pasadena where he was staying and a one-day session probably in April of 1981. Then we were given five or six weeks to write and exchange trial briefs. This is my *magnum opus* – it's not all mine, but most of it is – 268 pages plus another 100 of appendices. This is our post-trial opening brief in the case and this is our reply brief (holding up documents) to which I have to say our opening brief – I think the tribes knew they had a leg up going in with the judge because they dismissed our arguments with a brief that was about a third the size. It was rather annoying.

**JM**

For the record, what is the name of the case?

**DN**

Name of the case? State of Arizona complainant vs. State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella County Water District, the Metropolitan Water District of

Southern California, the City of Los Angeles, the City of San Diego and the County of San Diego defendants. United States of America and the State of Arizona as interveners –why Arizona was an intervener . . . well they were the complainant. I don't remember why that is. And then State of New Mexico and State of Utah impleaded defendants. They didn't really participate. Nor did Palo Verde and Imperial after a certain point. They decided they had their present perfected rights. They had early contract rights. The didn't really have much at stake; they weren't suffering much from the tribes getting more water rights along the river. And Coachella, because their rights were a little more uncertain in terms of the quantity and also they had a relationship with Met's rights that I won't get into. So Coachella stayed in and, of course, Met stayed in. San Diego and LA stayed in because, of course, they took (water) through Met, but they played a pretty minor role.

Do you want me to talk about the principals of the case?

**JM**

That would probably be a good idea.

**DN**

And then we can get to the legal issues.

The two lead trial attorneys on our side were Carl Boronkay, who at that time was chief counsel at Metropolitan and Ralph Hunsaker who was with a private firm in Arizona, but they represented the Arizona Department of Water Resources.

So Ralph and Carl were the main trial attorneys. There were two more of us, at least early on, including me. But I wasn't really the litigator. I was assigned pretty early as being the note-taker and being largely responsible for the trial brief.

The US and the tribes had made the motion. We had made the motion to enter the PPR decree, but that was done. The US and the tribes were the moving parties on getting more rights for the tribes. So I think they basically submitted their claims and we answered them.

The US hired a firm called HKM in Helena or Billings, Montana – a guy by the name of Al Kersich was their lead partner. And they made certain additional claims. They also had an economist named Alan Kleinman. They had some soils analysis place in Albuquerque that did a soils report. Al Kersich was their main

expert and their attorney was a guy named of Myles Flynt who was head of the division that dealt with this at Justice. These are Justice Department attorneys. And his young deputy, Scott McElroy, who subsequently became counsel for a number of the tribes. He was US counsel – a young guy, he was younger than I was – he was the main trial attorney for the US in the case.

The US . . . let me go back later to the difference between omitted and boundary lands and then the nature of the claim and how the US made different claims than the tribes did.

For the moment, let me just talk about personalities. The tribes were represented by a guy by the name of John Mullins from a firm Denver – a private firm represented the Colorado River Indian Tribe – by far the tribe with the most water rights although most of them are in Arizona. And I think early on the Fort Mojave tribe was represented by a guy by the name of Dan Israel who is from Boulder, Colorado.

The Chemehuevis and Cocopahs weren't participating much. They had some claims, but I think they got resolved or something. But the Fort Yuma tribe were always marching to their own drummer. They initially had Ray Simpson as their attorney. Ray was old-time trial attorney who had this massive shock of white hair. He looked like a stereotypical old-style attorney, or a caricature. He was very glib and sometimes, we felt, a little lacking in substance. I remember when we flew to Atlanta for one of the hearings – all of us are flying coach and suddenly this man comes back from first class and its Ray Simpson. He's suddenly very chagrined that we've seen him come from first class since he's representing this impoverished Indian tribe and undoubtedly flying on their money and he said, "now I hope you understand, that, you know . . ." and he was kind of apologetic and we just laughed.

He was actually supplanted in the case, I think by his choice, quite early by a guy by the name of Bob Kirkpatrick or Killpatrick from Long Beach who was much more of a trial attorney and really a pretty effective guy and a little bit of a pit bull in a kind of way. Of course, the Fort Yumas, they always took a different tack from anyone else. They had reports that frankly didn't have much substance to them, to say the least.

Anyway, on our side, we hired Bookman Edmonston Engineers as our expert. I should be candid here. The state, for years, the State of California, had Tom Stetson under a retainer contract

and he did various things for us and probably would have participated in this case, but apparently he had worked at the Colorado River Board when Myron was first there and Myron didn't get along with him. To be quite candid, before I even knew it, the Six Agency Committee had hired Bookman Edmonston Engineers. They became our experts and they were fine.

Tom Stetson, who was under contract to the state, had some minor role. But Bookman Edmonston was the main series of experts on our side.

They had four people. One was a guy named John Bailey who was an old salt guy. He was a man, probably pushing 70 at the time. He was a soils man and he analyzed the soils and was as honest as the day is long and unfortunately he was assigned to work with this young attorney from Met that Carl finally removed from the case because we were having some problems with him. Ralph Hunsaker ended up taking over John's testimony.

Maurice Langley was old time Bureau of Reclamation guy from Washington D.C. who developed a system of measuring water holding capacity of soils and he had very strong and well-developed opinions about the inability to grow anything on sandy soils, basically, and strong views about gravelly, cobbly soils, which most of these soils were. Most of the land that was claimed for additional water rights was either land that hadn't been so obviously irrigable in the first place that the US claimed it back in the original case, or lands that had to do with boundary disputes, which we can talk about in a minute.

But they tended to be marginal lands. They were lands that were either really bad and not irrigable in our view, or lands that were a little marginal in terms of their content of soils, how high they were above the river, which had to do with pumping costs – what could be grown there, whatever.

**JM**

Just to be clear here, we're talking about practically irrigable acres?

**DN**

Practicably irrigable acreage. The measure of the Indian water right as held by the Supreme Court in the original case of Arizona v California – and this is the first time the term had been used. The measure of the Indian water right was to be how much water was needed to irrigate all the practicably irrigable acreage within the reservation. (That meant) you

could farm it economically. Practicably irrigable is different from arable. Arable was basically was the soil good enough to grow a crop. Practicably irrigable meant could you grow the crop but also sell it and market it profitably.

**JM**

One of the important points here is that in a fashion very much like this year's Quantification Settlement Agreement, the argument was not over a finite, stated amount of water, but rather the amount of water that would be needed to irrigate practicably irrigable acreage. I just want to make sure that's correct.

**DN**

Well, yeah. When we entered the supplemental decree in 1979 on Present Perfected Rights we had incorporated within that decree the subordination agreement which allowed the Indian rights to be satisfied ahead of the major pprs. But we also included in that any additional rights that the tribes would get through their claims.

And we'd assigned a water duty for each reservation based on some figures from the original case. In Fort Yuma (for example) any additional acreage was to be given 6.67 acre feet of diversion right (per acre). I think it was something like that. It varied by each reservation. So the amount of diversion right of water you were to get on each reservation was already fixed in the supplemental decree of 1979. All we had to determine was how many practicably irrigable acres there were.

**JM**

If the tribes said there were 100 irrigable acres and the states said there were 10, that's a difference of 90 acres . . .

**DN**

. . .and that's what the judge had to resolve. We had a battle of agricultural economists, soils people, yields people, power, pumping costs. We had the battle of experts to determine that and what I'm telling you about now are the four experts on our side – John Bailey who worked for Bookman Edmonston, he was a soils person; Maurice Langley, he had this view on water holding capacity of sandy soils and he had developed this system. To some degree, in my view, he was so tied into his own system – and it was based a lot on flood irrigation (in contrast to sprinkler or drip). When we were faced in the case with claims based on sprinkler or drip, I'm sure in his view maybe his system answered everything.

I can’t go back now and give you a detailed analysis of why some of us had doubts about that, but I think in a sense we got too tied into his view of water holding capacity.

Well, the third expert was a guy named Bob Beeby, who I was actually assigned to question. This was one of my few litigation assignments in the case although I will say I did get to cross examine the chief partner from Boyle Engineers on . . . they were the experts for the tribes who were making all these ridiculous claims about permanent crops. But I did get to cross examine him on some point about calculating interest that he had totally missed.

I think I hung him out, frankly. But that was one of my few triumphs. But I was assigned to take Bob Beeby as one of the four experts, and he was just a wonderful witness. He was a junior partner but he testified on agricultural economics and tried to pull together some of the testimony of the soils people. And then the fourth expert was the senior partner at Bookman Edmonston, Dave Powell, whom Carl Boronkay took. Dave was supposed to give sort of an overview and he did that. And Carl took him. So, those were the four experts.

Let me go next to the nature of the issues here, and what was involved. Some of this, as I say, is on the other tapes I've done. But, let me do it briefly. There were two types of claims here. One was for what were called omitted lands. These were lands that the tribes and the US claimed were practicably irrigable, and which were considered and accepted to be part of the Indian reservations during the time of the original lawsuit. Anyway, the omitted lands were claims for lands that were part of the Indian reservation, could have been asserted as practicably irrigable for water rights in the original lawsuit, but for whatever reason, were not. Now, the tribes’ position was that they were not asserted as irrigable because the US was basically incompetent. The US didn't really give any reason why they didn't assert them, but that didn't seem to block them from asserting them now.

We took the position from the beginning that that could not be done. That was basically (over). It had been determined. The issue could have been before the court before. Any lands within the original boundaries of the reservation that were irrigable should have been asserted as such at the original trial and that

once they weren't, they were done. Special Master Tuttle dismissed that argument basically out of hand.

(Tuttle) went ahead and conducted a trial on the practicable irrigability of those lands. It was only later, when we filed exceptions to his report to the Supreme Court, and I think we should say that when a special master takes a case and acts as the trial judge, he makes a report to the Supreme Court because he's acting as their agent, really. And then it's up to the Court itself to decide whether to accept the report. Parties that don't like the Master's recommendation can file what are called exceptions.

We filed a number of exceptions, including on his ruling about omitted lands. And the court itself, when Carl Boronkay argued the case in 1982, upheld our position. They threw out all the claims for omitted lands, saying those should have been made before at the earlier trial. And when they weren't, you're barred from making them now. Nevertheless, we had gone ahead and conducted a trial on the practicable irrigability of all of those lands for nothing. But, we won in the final analysis.

The other claims were for what were called boundary lands. These were lands that were not recognized as being part of the Indian reservations at the time of the original trial, but two of which at least, on Fort Mojave and the Colorado River Reservations, had disputes over the boundary of each reservation, which was in existence at the time of the original trial and which had come before the court. In other words, the US, representing as trustee the Colorado River reservation and the Fort Mojave reservation had asserted, before Special Master Rifkind at the original trial, that the reservations were . . . that certain boundary disputes should be resolved in favor of the Indian reservations, which would have enlarged the reservations and given them the basis for claiming more practicably irrigable land.

Special Master Rifkind had actually ruled in the states' favor on both of those boundary disputes, saying that the reservations weren't larger. But because there were a lot of other potential non-Indian parties involved, and there were other parties that had some potential stake in those determinations and who hadn't been joined as parties, I think that was the main reason the state of California actually raised the point that they didn't think maybe it was appropriate to try and make that recommendation.

And so, those issues were never resolved at the original trial. And the boundary disputes remained in dispute. A third boundary dispute, the Fort Yuma, everyone thought had been resolved back in 1936, by a solicitor's opinion by Solicitor Margold at the Department of Interior. But the issue got raised again in the early seventies. I think it came from the Fort Yuma tribe, but then it was picked up by the Bureau Of Indian Affairs. Anyway, it was during the Reagan, no, no, wait a minute, let's go back here. It was during the Ford administration. Ford or Nixon administration, that the Department of Interior basically opened up the issue of this Fort Yuma dispute.

Anyway, it was reopened and it was Secretary Kleppe, I think, Thomas Kleppe, who had been governor of North Dakota, who was Secretary of the Interior. Carl Boronkay (who was still in our office) and I went back for a meeting (with Kleppe). I'm pretty sure we went back there and presented our arguments as to why the Fort Yuma claim was not a valid claim on the Fort Yuma's behalf.

Emil Stipanovich and I, who as I told you earlier was my backup on the Colorado River Board, wrote a long paper on that, taking one position, arguing against the Fort Yuma claim. Jerry Muys, who hadn't at that time been really involved in the case for some time, although he'd been in it in the fifties and sixties, he wrote an additional paper which probably was a little bit better reasoned, legally, and had some other points in it that sort of became the state's position on the Fort Yuma dispute.

Basically, before the Ford Administration ended, an opinion was written. I think it was by Solicitor Greg Austin that upheld the former opinion, the Margold opinion, if I'm not mistaken. I'm getting this a little confused. Anyway, by the time the Ford administration ended, the matter was still basically resting on the earlier solicitor's opinion that the Fort Yuma claim for additional lands, boundary lands, was not valid. When the Carter administration came in, he appointed a guy named Leo Krulitz as solicitor at the Department of Interior and it became apparent that there was going to be a move by Interior, under the new administration, to overturn the Margold opinion from 1936 and recognize the Fort Yuma claim. We asked that we be given our day in court to be heard before any such decision was made. We were told, I think, that we would, and we never were. Then the tribes in the US filed their motion

to reopen the case, which was in response to our motion on the Present Perfected Rights Decree.

When they filed that motion on December 20, 1978, the day before that, December 19, 1978, Solicitor Krulitz had issued an opinion overturning the Margold opinion, recognizing the Fort Yuma claim. And the Secretary of the Interior, I think, had signed off on it, giving it some semblance of validity. We were outraged. I mean, I don't think there's any other way to describe it because we were totally given no day in court. Not only that, but as to the other two boundary disputes, I think there were Secretarial orders issued on those, too.

One Secretarial, one solicitor's opinion adopted by the Secretary of the Interior in order. One in '69 and one in '74. And in none of those, those two or the Krulitz opinion, did the state parties really have their day in court. So, the US and the tribes were coming in based on orders by the Secretary of the Interior resolving long-standing boundary disputes and on the basis of those orders were making a claim for additional present perfected rights.

We said before Special Master Tuttle that we hadn't had our day in court, that we were entitled to litigate the validity of those Secretarial orders recognizing the Indian position on the boundaries. Special Master Tuttle denied us that opportunity and said that if additional water rights were assigned for those boundary lands, that at that time we'd have an opportunity before those were finally decreed by the court to raise the issue, or something like that, I'm trying to remember.

Our position was, if we're right on the boundaries, if you can make a decision on the boundaries now, and the decision is in our favor, we won't even have to litigate the question of how many practicably irrigable acres there are within those boundary lands. Similarly, for the omitted lands, we said if you throw these out now on the grounds that all those claims should have been made earlier, then we won't even have to have this long trial on practicably irrigable acreage.

He refused to do either, so we had the trial. As it turns out, when we went back to the Supreme Court on our exceptions, as I said earlier, the Court threw out the omitted lands claims completely. Gone, done. As to the boundary lands, they said well, these boundaries have not been, quote, finally determined, because the other parties with an interest weren't given their day in court.

**JM**

Now, these were boundaries of the Indian reservation?

**DN**

Boundaries of the Indian reservations, that's right. While this was all pending . . .let me go back to the practicably irrigable acreage issues in a minute. Special Master Tuttle basically forced us to have a full trial on the practicably irrigable acreage for both the omitted and boundary lands, okay? And while that trial is proceeding, and then it ended, at some point in there and before we went up to the Supreme Court with our exceptions about boundary and omitted lands Metropolitan Water District decided that the best strategy was to file an action in Federal District Court challenging each of the secretarial orders on the boundary disputes, even as we were litigating the practicably irrigable acreage within those acreages before the Special Master. I don't remember the exact timing, but I know it was before we went up to the Supreme Court with our exceptions. So, they filed in San Diego. We were assigned to Judge Rudy Brewster, US District Court judge there. I think Coachella was in it, and the state, the state joined. So, we had a trial and they decided to try one boundary dispute at a time, so we did the Fort Mojave one first. And that was a long -- it was a two or three day trial just arguing legal points. Then the judge took it under submission for over a year. I mean, it was incredible, how long it took. He finally made a decision in favor of the state parties against the claim of the US and the tribes.

Meantime, and this is where I'm getting a little hazy, and I'm sure Carl remembers this better. Meantime, when we made our exceptions to the Supreme Court, we went up to the Supreme Court challenging the judge's (Tuttle's) hearing the case at all, because he shouldn't have heard it, because the omitted boundary lands shouldn't have been before him, and challenging the number of practicably irrigable acreage he found. We pointed out that we'd filed this other case.

Carl Boronkay was arguing and he pointed out that Met had already filed this case challenging, trying to get our day in court on the boundary lands in District Court. And in that case, the US down at the District Court level had asserted sovereign immunity as a defense to being sued by a state over these boundary determinations. And I won't get into that. But before the Supreme Court, Louis Claiborne from the solicitor's office, arguing for the

US, said he basically disavowed that defense.

He disavowed, before the US Supreme Court representing the US, the defenses asserted by Department Of Justice attorneys in the District Court case. We figured that would probably put an end to that defense in the District Court, but it didn't. And what happened was, the government went right ahead and asserted the defense, and when they appealed Judge Brewster's ruling on the Fort Mojave tribe, they asserted sovereign immunity and the Ninth Circuit bought it.

They overturned Judge Brewster's opinion and that case eventually went up to the US Supreme Court (with) Jerry Muys arguing it. And the court split four to four. Thurgood Marshall recused himself because he'd been in the administration during the original lawsuit. And so, he recused himself. It was four to four. And on four to four, the lower court decision stands. So, our case, in which we had won on the Fort Mojave boundary dispute, was thrown out.

The dispute was still pending. And the other two disputes had never even been reached -- the Fort Yuma and the Colorado. When that happened, we petitioned the Supreme Court again and said, you know, you should have resolved this. You should have sent this out for trial. The court had refused. Well, I'm getting very muddled here, but hopefully, it will all sort out later. At that point the Supreme Court had decided that we were entitled to our day in court on the boundary disputes. But that they weren't the court to conduct that hearing because, let me try to explain this so it's clear --. Let's leave aside the practicably irrigable acreage claims for the moment. Let's just leave those aside, we'll go back to them. As you recall, Judge Tuttle said (he didn’t) care if there are boundary disputes and you claim you haven't had your day in court. But if I assign water rights based on these enlarged boundaries, then, at that time, you can challenge the boundaries.

And we said, that's ridiculous, but that was what we were stuck with. So, when we took his ruling up to the Supreme Court, we said he never should have even conducted the trial on practicably irrigable acreage because these boundaries haven't finally been determined. And we'd like the court to appoint – or -- they need to be finally determined. And the court said, well, you've already filed this case in Federal District

Court. So, even though we don't think the boundaries have been finally determined, it looks like they're going to be determined there. So, we'll let them do it.

Then, of course, that case got thrown out on sovereign immunity. So we go back to the Supreme Court and say look, we can't get them determined because the US has asserted this defense. So, Supreme Court, you've got to take this up. And at that point all the parties agreed the first time. And they appointed a special master, a guy named McKay, who was a professor at New York University Law School to be the special master to determine the Fort Mojave, the Colorado River, and the Fort Yuma boundary disputes. Special Master McKay died on the eve of one of our hearings and they appointed Frank McGarr, who was a Federal court judge in Chicago, to handle the case. And he's been the Special Master ever since. Our first meeting with him was on his 70th birthday, and that was 12 or 13 years ago and the case is still going. And he's still alive and in Chicago. The Colorado and the Fort Mojave have since settled. The Fort Yuma dispute is still before him.

Now, I jumped way ahead. I understand that. Let me go back. Shall I go back to the third issue before Tuttle? Judge Tuttle rejected the state's arguments on the omitted lands and boundary lands and said we're going to have a trial on the practicably irrigable acreage claims for all those lands. And we did. Eight weeks. Now, here's the deal. The US and the tribes both represented the tribes. The tribes had two sets of counsel. The US, as I said, Myles Flint, Scott McElroy (for) the tribes. Each tribe was different, but they combined. The Fort Mojave and the Colorado River tribes both hired Boyle Engineers in Irvine. Now, as I told you, the US had hired Al Kersich (of) HKM Associates in Helena or Billings, Montana. And they, in their claims, had made relatively within the ballpark, claims based on crops that had traditionally been grown in the Colorado River Valley -- cotton, alfalfa, wheat, lemons, those crops that had a history of growth there. So we could at least accept that fundamental premise. Our argument with them was, how bad are these soils? What's the water holding capacity, what will the nature of sandy or gravelly, cobbly soils do to yields? How expensive will it be to get power up to some of the lands that are above the grade of the river.

**JM**

You mean to pump water up there.

**DN**

To pump water. The claim was made by the US that the tribes were entitled, under the Leavitt Act, to some beneficial power rate, a specially subsidized rate or something. And we said that should be irrelevant to this because that's a special benefit of the tribe. But that doesn't go to whether the land itself can be irrigated economically because somebody is absorbing that cost. We didn't get too far with that argument.

Anyway, the point was that we argued against them face to face. I mean, that was based on crops that we could get a handle on, that we felt were at least appropriate to being grown there, even if we thought the soils were inappropriate. So we accepted some of the claims by the US on behalf of the tribes, that those lands were practicably irrigable. We agreed with some of them, and we disagreed with others. And we litigated the ones we disagreed with.

We, at some point, reached an agreement on the Colorado River claims. I think we reached an agreement as to how much, how many of those were practicably irrigable. And then we went ahead and litigated the others. But I'm getting a little mixed up there. Anyway, that was our dispute with the US.

The tribal experts, Boyle Engineers, they projected far more lands as being practicably irrigable than the US did. But in order to do that, (and) these were lousy lands, they were way up, they were real gravelly, they were crummy lands, which is why the US couldn't project them as profitably being able to grow alfalfa or cotton or whatever. What the tribes did, Boyle Engineers did, was project high revenue (for) what we called exotic crops on those lands that would bring in, if you could produce them, enough revenue to offset the increased costs attendant to the fact that these were crappy lands.

And what they did was they projected pistachios, almonds, figs and table grapes as growing there. Well, there was no history, no commercial history, of any of those crops, except maybe table grapes, growing in the area. So we said it's inappropriate. One, it's inappropriate up front to even project them. Inappropriate agricultural economics. It just shouldn't be considered at all. But then, of course, we knew that Judge Tuttle was going to consider them.

So we had to go through each one and analyze, point by point. That's what takes up a lot of room in this brief. You know, like for pistachios. To grow pistachios at all -- I'm just doing this as an example -- you have to have a certain number of what's called chilling hours. The temperature has to be below a certain temperature and stay within some range. And it has to be below that temperature for a certain number of hours for the plant to properly mature. They cited evidence. There are a lot of pistachios grown in the San Joaquin Valley, as you know. And they took figures from there and projected them to the Colorado River Valley. The only problem was, in the Colorado River Valley, while the temperature may get down as low as it does in the San Joaquin Valley, it also gets above a certain point. And it was our position, based on our economists' view and analysis and study, that you have to offset the number of chilling hours below 45 degrees by the number, I think, above 70 degrees, and you get a lower number.

And they hadn't done that. And in the San Joaquin Valley you don't, in the winter, you don't have those temperatures above 70 or whatever it was, whereas you do in the Colorado. So, that's just one example. We did all kinds of things. How difficult is it? Almonds (for example) are harvested off the ground. How difficult is it to harvest almonds when you've got gravel and pebbles all around? Grapes get an ambering effect if it's too hot in the sun. I mean, all kinds of issues as to each crop. We raised those, but we had to go to the mat on everything. And the judge, I will say to his credit, he didn't rule in their favor on everything. On the Fort Yuma reservation, most of their claim was for this alluvial plain that slopes up from the All America Canal and most of it's called the Araz Wash and it's gullied and rutted and it's got rocks and everything on it. And he threw out a lot of that, but he also gave them a lot of it.

He didn't accept figs or pistachios, we convinced him on that, somehow. But he accepted almonds and table grapes. But almonds? Now, let's see. Almonds and table grapes, though, were projected for the Colorado and Fort Mojave reservations. As I said, we settled on Colorado early on, so I think that was out of the park. Or maybe that was just to the US claims. That's right. That's right. We settled as to the US claims there, we didn't settle as to the Boyle Engineers Indian claims.

So he basically found almonds and table grapes on both those northern reservations. But there wasn't actually that much land involved there. There was a lot of land, though, on the Fort Yuma reservation. Now, as I think I said earlier, the Fort Yuma is with this guy Ray Simpson, with his lock of white hair, his mane, flying first class air at the expense of presumably this impoverished Indian tribe. They always had to do their own thing and they hired a separate soils guy and a separate economist -- Lord and King.

And I have to say, in all honesty, that there was very little substance in their reports. They tacked onto Boyle Engineers on some of their figures. They were throwing all kinds of things out there. They were talking about growing jojoba beans as a crop. I mean, they just talked about it. They didn't give any figures. They only projected table grapes as viable, and that was what Judge Tuttle found.

And he gave them the equivalent of, God, it was like 50,000 acre-feet based on table grapes. We had an expert, one of our attorneys, one of the Coachella attorneys, was convinced that he had the expert that could blow out the Yuma claim on table grapes. The only trouble is, and I won't mention the attorney or the expert, because I really felt strongly about what a bad miscalculation this was. But the expert turned out to be a grape grower in the Coachella Valley who obviously had a complete vested interest in not having more grapes grown down on the Colorado that would compete with him.

What I think should've carried the piece was that in order to make the Araz Wash lands, and if this case ever goes to trial -- because this is the dispute that's still out there -- if this case is ever re-litigated as to practical irrigable acreage, and I think it will be -- if the Yumas win on their boundary dispute, if it's ever re-litigated as to practical irrigable acreage, maybe this'll no longer be an issue.

But, as of 1980, in order to make this land appear practicably irrigable, in other words, economic to farm, they had to project such a high price for their grapes that they projected an unrealistic grape price. It was based on a spot market in Phoenix, Arizona, but the spot market in Phoenix, which would've come in at the same time as the grapes in Fort Yuma, was for a very small quantity of grapes.

So in other words, if the number of acres that Judge Tuttle gave the tribe, the Fort Yumas, for grapes came in at the same time (as the grapes in Phoenix) it would've destroyed the price in that spot

market, because it would've flooded it with more supply and brought the price down. So it was totally, totally absurd to project that spot market price, and without that, it wasn't practically irrigable. We made that point. The judge basically said, too bad, you know, it's a good price, I'll take it, or something, so that was it.

So, it was a fascinating case. As I said, Carl Boronkay and Ralph Hunsaker were the two main trial attorneys, as I took one of the four experts. But they did most of the cross-examining of the other side's experts, and they did most of the litigation, and I was the note-taker.

They could see early on that I liked taking notes. I guess they were happy to have me do that,. I ended up putting in the most time I've ever put in on any case. I averaged 100 hours a week for three weeks and was working 'til, like, three in the morning doing this brief everyday, because we had very little time and there was a lot to put in. We had a 7200 page transcript which, luckily, I had taken enough notes on that I didn't have to read the whole transcript. I could reference from my notes as to where we were in the transcript and find the information I needed because I had pretty good notes With a lot of input from Carl and also Jerry Muys who was talking from DC, we produced this brief, and we also had an appendix for each claim. Each claim was based on a particular parcel of land. The U.S. claim as well as the tribal claim, because they had separated their claims into particular parcels.

So we analyzed each parcel. We (created) an appendix for each parcel of land and we had our general objections to their claims, as I've outlined before. We submitted it. They (the US and the Tribes) replied with very short shrift. They kind of knew, I think, they had the judge wired and they didn't really address a lot of our points or they dismissed them. They probably could've made a better case had they thought they needed to because our side -- we had compelling arguments I thought. But they weren't open and shut. They basically stiffed us, I thought, on their briefs and then, of course we had to file a reply. The judge came down with his decision sometime later. As I said before, he recognized most of the disputed claims that the U.S. had made. He gave us a few, but as to the tribal claims, he threw out figs and pistachios but gave them almonds and table grapes.

He threw out some of the lands, but he gave them about, what was it, I'm forgetting now, but upwards of 100,000 additional acre-feet.

We of course filed exceptions, both on the omitted and boundary lands. We won on those. We filed exceptions on the practicably irrigable acreage claims, but because the court threw out all the omitted lands and said the boundary lands hadn't been finally determined, the court, the Supreme Court, on our exceptions, never got to our exceptions on the practicably irrigable acreage determination. So as far as technically speaking, those, the exceptions are still pending. If we ever went back to the court, and let's say on the one remaining case, the Fort Yuma case, and we lost on the boundaries and the court upheld the enlarged boundaries for the Fort Yumas, then technically our exceptions to the practicably irrigable acreage determination for those boundary lands made by Judge Tuttle 23 years ago would still be before the court.

But the parties now have agreed that we will have to have a new trial on practicably irrigable acreage, and I think they're going to conduct it unless the case settles. They (also) have the argument over the boundary dispute itself, because one thing is clear, the Supreme Court does not want to have this piecemeal, they want to have it only one more time. They've made that clear.

So even though we might be wasting our time -- I'm not there anymore. It looks like there is going to be a new trial on practicable irrigable acreage and on the boundary dispute for the Fort Yuma reservation, assuming it doesn't settle, and that case has now been turned over to my successor, Bill Abbey, in the AG's office, and Linus Masouredis is the lead attorney, along with Jerry Muys, from Met, and there you are.

**JM**

Okay. Doug, you were involved, I think, at the very tail end of what's known as the Laughlin River tours case. It was an important case at the time because it involved tours in Laughlin, Arizona, which of course has exploded here in the last few years.

**DN**

Laughlin, Nevada.

**JM**

Laughlin, Nevada, thank you. Tell us about picking up the pieces at the end of that case.

**DN**

Well, the basic issue, as I recall, was whether a certain minimal level of water needed to be maintained in Lake Mojave to support these stern wheeler

riverboats that were operating there. The Laughlin people were asserting that where the -- let's see is it Arizona -- the (Boulder Canyon Project Act) talks about maintaining the river for navigation, irrigation, various things -- that navigation somehow should have an equal role, or at least an equal role, to other uses of the river.

Therefore, to make it navigable you had to keep the water higher, and that, of course, meant wasting a lot of water and not controlling the river in a way that would maximize the use of the water by the downstream users. I mean, that was it, basically, and very poorly stated. I just simply went for the final argument of Pam Civitan -- now Pam Collins -- who was in our office. (She) had handled the case. She later went over and served on the staff at Met before she moved to Montana.

She basically left right before the case was having its final argument, so I did very little on the case except go over to Las Vegas for the final argument in District Court. I don't remember exactly what my arguments were, but it was certainly to the point that the navigation element shouldn't take precedence over everything else, and that there was balancing to do, as I recall. And the Secretary (of the Interior) had to make decisions like that.

All I know is that we won and basically the regimen of the river was preserved. I mean, it would've been quite a threat if all this water, if this additional water, had been required to be released from, I guess it's Davis Dam, or is Davis below? Anyway, you would've had to release additional water above the demands in order to keep the river high enough to float these boats.

And that water simply would've been lost, because it would've been more water than the downstream users could take at that time of year. I mean, it was something to keep the level up, I think, all year round, which isn't the way it works.

**JM**

Right. This is 2003. I don't want to get into every piece of water litigation that's going on right now, we'd be here for days, but the Quantification Settlement Agreement has just been signed, within the last month of this interview; Arizona v. California, of course, continues; other water litigation continues. Without regard to any specific piece of litigation, or legislation for that matter, what do you see in the water future? I didn't mean to give

a speech with this question, but one of the headlines, with respect to the Quantification Settlement Agreement was “Peace On The River,” and of course there are a lot of people who think, well, maybe not. So with regard to the Law of the River and what's going on today, where do you see the Colorado River and its resources headed?

**DN**

Well, I'm not sure I'm the person to answer that, but you know, I guess I was pretty amazed when the QSA was finally signed. It seems like we've had so many false starts and prospects of being signed, and then something happens at the last minute, and of course in the final analysis I get the . . . I guess the vote at Imperial was still only three to two in favor of signing it. They've lost a few of those three to two votes in the past that have undone them quite a bit.

I guess the simple fact is that there's more demand for the river water than there is supply. We've passed the era of big dams, we've passed any notion of taking water from the Pacific Northwest, we've gotten to the point where Nevada and Arizona use their full share of the river. And for California to continue to use more than 800,000 feet more than its basic apportionment each year simply couldn't be continued unless there's some permanent condition of surplus, which there isn't going to be.

And right now I guess we're in a sort of a drought condition, so that's exacerbated the problem even more. Obviously there's a lot of things that can be done, but you're dealing ultimately, and I try to be objective about this, I mean, I think there's just a long-standing, almost institutional conflict between city and farm here. I mean Imperial, which has three quarters, basically, of the California share of the first seven point five million acre feet -- they, in the view of many people, for years have been wasting water because they've had unlined canals. That “wasted” water, though, or the drainage water, has been what's kept the Salton Sea alive, and of course some people think the Salton Sea should be allowed to die.

But on the theory that it's going to be kept alive the only solution to saving it is to somehow keep more water, or enough water flowing into it. And how's that going to be done if you line Imperial's canals to make them more efficient and allow them to take less water from the Colorado, freeing more for MWD. I mean, I'm stating some

pretty basic issues that have gone on here.

But also, I think there's this underlying suspicion that's always been there by people at Imperial that Met and the big city is going to come in and take their water eventually. Of course, there's the feeling from the other side that Imperial is wasting water and as with any retirement of any agricultural land, you free up so much water by retiring even a small portion of agricultural land for municipal/industrial use. So there's just been this conflict there forever.

I doubt that this (QSA) solves it. I'm sure there will be issues that come up in the future, but at least it appears, and I know I've been gone for three years, although I read the paper and I occasionally go to Colorado River Board meetings, but I assume that this means that at least there's a reasonable chance now of getting the acquiescence of the other states to, having surplus declarations made by the Secretary during the period that California's ratcheting down from five point two to its four point four million acre feet.

Now, of course, I think probably what prompted the final QSA agreement was the fact that this administration in Washington had actually cut that off. It cut off California at its four point four when it couldn't get its act together earlier. I don't know what the future is, and I don't think I'm the right person to ask, because I'm a lawyer, not a, not a water planner.

It is kind of amazing to me that we've gotten this far. I would imagine, without knowing any more than I do, that pressure, that the actual cutback and the pressure from the Federal government had a lot to do with finally shaping everyone up. But I'm not sure. I don't know enough about it to know who finally gave, or if both sides did. I assume both sides, or all sides, gave in the end, somewhat.

But what's always amazed me is what a conspiracy of politeness there is on the Colorado River Board. I mean, these people meet every month and they're very gentlemanly to each other, and here they're out, you know, they're fighting hammer and tongs and castigating each other in the press too. Not necessarily the same individuals. But it's always kind of amazed me. There was sort of a sense of unreality at times on the Board itself, because people were kind of sitting there, politely working together while their agencies were fighting it out, I find it fascinating.

**JM**

In the last few minutes here, you've mentioned a number of people. Carl Boronkay comes to mind, Myron Holburt. I think we have a sense of what your thoughts are about them unless you want to add anything, but one of the things that we have been asking people is (to provide) just a quick impression of some of the people -- some of the interesting people that you ran across.

Now, why would we want to know that. Just for your own thought process, we are trying to help someone that is doing some research 20, 30, 40 years from now. I think they're going to want to know who the other players were, who were some of the other players involved, and I don't know them all. So if someone comes to your mind that you think should be jotted down in this particular oral history so that someone in the future can look them up and say, what did he or she have to do with it. So, what I'd like you to . . . I'll just say a couple of names and we'll see where that leads. But like I say, just a sentence or two about their significance and, you know, if there was something special about their personality, toss that in. So let's start with Dennis Underwood.

**DN**

Well, I can say this about Dennis. Jim Ryan, who was my backup on the Colorado River Board after Emil Stipanovich left the office, told me once he thought Dennis was the perfect client. He said he, and I agreed, I mean Dennis was always on top of things, but he would keep you informed. He knew when to ask you to come in for your advice. He didn't do crazy things.

And I'm not making invidious comparisons to anyone else by saying this, but Dennis was on top of things. He also had a collegial relationship with you, and you always knew that you were sort of involved where you needed to be. I think the world of Dennis, and obviously other people did too, because not too many people go from the executive director of the Colorado River Board to the Commissioner of Reclamation, and of course Dennis has. And now he's back at MWD. I like Dennis very much and always found it very easy to work with him.

**JM**

One of the names that keeps coming up in these oral histories, and I'm aware that you did not work directly with him because of the sequencing, is a fellow by the

name of Mike Ely . . . an attorney by the name of Mike Ely. But you had to have run across him historically, if you will, by writing or by reputation. If this prompts you, I will tell you that some of the people I have talked to thought he was just the greatest. And some of the people that I have talked to have suggested that he was just the worst. I've never run across a person who's defined that way by so many different people. Having relied, I presume to some extent, on his writings or his legal work, any thoughts about Mike and his significance to the river?

**DN**

Well, I think in his time he was really a giant in terms of his effect. Now, I mentioned earlier, and I believe I'm correct on this, unless my memory has really deserted me, that in the acreage limitation case, our argument was that Imperial rightly relied on a letter from the Interior solicitor written in 1933 telling them basically that they weren't covered by acreage limitation, and I think Mike Ely was the guy that wrote that letter. He was solicitor under Ray Lyman Wilbur, Secretary of the Interior in 1933 when he was a young man -- he would've been about 30 years old I think. He was hired by the State of California (much later) as special counsel to represent them in the original trial. It was he who associated with himself a very young Jerry Muys right out of Stanford Law School, and Jerry, of course, worked on the original trial out of Washington D.C.

Mike Ely, I know he was very controversial in our office. My impression of him was from what I heard from other people . . .that he never had any doubts about the correctness of his position or his strategy, and that sometimes that was both strength and a weakness. I know after we lost Arizona v California, and we did lose it at the original trial, he was, as I understand it, the architect of our position a lot. Although there was a guy in our office named Charlie Corker, who was quite heavily involved too. I don't know if this applied just to Charlie or to Mike, but there was some controversy in the AG's office after the case came down, because most people in the office had had something to do with the case. It was a very small office then. It was a big case, and there was a guy in the office named Gil Nelson, who apparently disliked Charlie Corker, perhaps Mike Ely too, quite intensely. And after the case came down and we lost, Nelson circulated a memo around the office saying we would've done better had we defaulted. I think DWP kept Mike under contract for years. The first ten

years or so (that) I worked with the Colorado River Board, he was under a $1500 a month retainer to the Six Agency Committee and I know that Myron Holburt bristled at that thought because he obviously didn't think very highly of Mike.

I met him (Ely) maybe only once or twice, oddly enough. I had the feeling that he was perhaps a little out of touch with the reality of things -- that he was so wedded to the positions that he took that he couldn't divorce himself from them. I've seen that with other people. I think I saw it with Maurice Langley in our case that I talked about on water holding capacity.

I think sometimes people get so stuck in the positions they have. I found myself wondering the same thing . . . and I know I'm drifting here a little . . . but I've felt for years on the issue of whether or not Indian tribal reserved rights can be used or sold for use off the reservations. I felt that is just a black and white, open and shut issue relating from the Winters Doctrine which basically was a court created doctrine to allow Indians to inhabit a particular area and make it profitable for themselves. And therefore, any water rights they had had to pertain, and be used on, the very land that was in the reservation and the thought of using it elsewhere just for profit just was totally contrary to Winters, which, as I said before, was a court created sort of artificial right to begin with. I see over the years (that) I may have been subject to the same thing.

I see over the years there's such a movement away from that, to give Indian reservations as much opportunity as they can to improve themselves; that whether or not legally/technically, in a pure sense, that was a correct legal doctrine may not be in touch with the reality. I think (the same thing) to some degree, about some of Mike Ely's stuff, when you look back, when I look now at the Boulder Canyon Project Act and the position that we took in the case. Talking about (for example) how basically Arizona's use of the Gila River should be counted against its share of the Colorado. I know I've looked at that sometimes since, and I thought, how could we make that argument? I mean, why, what were we doing there and yet that was a big thing in our argument. That was something that we were wedded to, and we went down in flames.

And so I think, I'm sure, Mike Ely was a great man and was obviously a giant in Western water, but I think maybe at least in

the years when I knew anything about him, it seemed like perhaps he was fighting some battles that had already been lost.

**JM**

Does anyone else come to mind that . . . we've talked about a lot of people in the course of this interview, anybody we've ...

**DN**

Well, I talked about Carl, whom I think the world of, and he was my mentor in the Attorney General's office. I was crushed when he left to go to Met. Met regularly cherry-picked the best attorneys from our office. Warren Abbott of course. When (Carl) was at MET and lead council in the trial before Judge Tuttle and I was lead council from the state, he acted as if I was still under his supervision, which in effect I was.

Bob Will, who I know very well and have known for years, I think a great deal of Bob. Bob, I don't think enjoyed litigating as much as lobbying, and that's where he ended up. I guess he's about to retire, from what I've heard, but Bob was an unforgettable character and I know him and his family pretty well and have known them for years. In fact, I have a bookcase that Bob made that he generously gave me when he moved to Washington 20 some years ago.

Jerry Muys, who's been special counsel to Met for probably the last 20 years or so -- I'm not sure how big a role he's playing in the case now, now that Linus has taken over, but I think the world of Jerry. I know there were some issues with him and Greg Taylor at one time in Met over prosecuting a case, and I know Greg Taylor quite well from the AG's office.

Greg is a unique personality who I like very much, although I'm not sure I agreed with him in his little thing with Jerry Muys. But that's beside the point. I think Jerry did a really good job in the case over many years and I always enjoyed working with him.

I worked with four different chief engineers and then executive directors of the Colorado River Board. Myron we talked about. I like Myron very much, although as I said, Myron never had any doubt about the correctness of his position. I'm sure he would freely admit that and say, “well, yes, I take that position because it's right” and, you know, that's Myron . . .so you argue with (him around) the periphery a little bit.

Vern Valantine, who succeeded Myron, was there for a short time and I worked with Vern quite a bit before he became executive director. When he was (executive director) I didn't work with him that much. Vern was there a short time and then he went off on a mission, I think, for his church. Dennis, as I've said earlier, was just a wonderful, excellent guy.

And Jerry Zimmerman, who I probably worked with longer than anyone else, I find to be a very, sort of intriguing fellow. He doesn't come across as being very political or sometimes doesn't really fully express himself, although I think he's changed a lot, but I think Jerry's very bright and really knows the river and the law on the issues as well as anyone I've worked with. But I found that working with him, I had to sort of draw him out and he didn't always bring me in when perhaps he should have.

I didn't feel aggrieved by this, I just felt that sometimes he got so busy with stuff that he was doing that maybe by the time I heard about an issue it was already well down the line. But then when I'd go over and talk to him, it would be kind of, well, I won't say pulling teeth, but Jerry really knew the stuff. It was just a question of getting him to fully explaining it. But he's been there a long time and I think he's done a real good job.

There are a lot of people I've worked with there who I enjoyed -- Dick Angelos who I worked with for years on the lower Colorado River Supply Project. That was the project for lining the All America Canal. By lining the All American Canal and preventing leakage, which goes to Mexico, which has created an international incident, you were allowing Imperial to divert less water from the river, allowing more water to stay in the river to create a five to ten thousand acre-foot supply of water for people along the river who otherwise don't have rights. Dick and I worked for some time trying to craft a sort of procedure for the Board to employ while shielding itself from litigation to do its part in administering that project. I worked with him a lot.

I worked with Ron Hightower for years before he left; Harold Pellagrin, who was the executive secretary -- very, very nice man whom I knew and worked with a long time.

Ernie Weber, who . . . Ernie worked more on the salinity control stuff, and as I said, he worked with Emil Stipanovich. But I worked with Ernie a lot the last few years, and Fred Worthley, who I had known before. He was

at Fish and Game and was our client and I had some cases with him. And George Spencer more recently, who came over from DWP . . . plus, some of the other people like some of the truly unforgettable characters like Merle Tostrud, with all of his various toys that he had, we occasionally would share toys.

**JM**

Doug, thank you very much to taking the time here today. This oral history will be transcribed and will eventually be available on tape and as a transcription at the Colorado River Board.

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